

VOL. IV OF VI

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

TAVARUS LEE ROGERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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1 Q. You would listen to testimony or would have heard
2 testimony about the character of the defendant, what
3 kind of person that he was; the circumstances of the
4 crime, exactly what happened at the scene of the crime
5 that he is accused of; and you would perhaps have
6 evidence of mitigation. That is, reasons not to give
7 him the death penalty. Would you listen to and
8 consider all of those things before you made any
9 decision?

10 A. Yes, sir, I would consider both sides before I
11 made a decision.

12 Q. Okay, sir. And after considering those things,
13 would you ever under any circumstances be able to
14 impose the death penalty?

15 A. I think I could, sir.

16 Q. Okay, sir. And, on the other hand, if you thought
17 that it was appropriate, could you impose life
18 imprisonment?

19 A. Yes, sir.

20 Q. Now, one of the things that would have to occur if
21 you were sitting on a jury and if you and the other
22 eleven members of the jury said 'yes, this is a case
23 that is so bad that the defendant deserves the death
24 penalty' -- you'all have made that decision now, in my
25 question to you.

1 A. Okay.

2 Q. You would then be required to sign a sheet of
3 paper -- this is not the sheet of paper, by any means,
4 but a sheet of paper. A sheet of paper that would have
5 twelve lines on it and up at the top would have words
6 to this effect, "We, the undersigned jury, recommend
7 that the defendant suffer the death penalty."

8 If you had decided that it was bad enough, you and
9 the other members of the jury, could you sign your name
10 to that sheet of paper?

11 A. Yes, sir.

12 Q. You work with McDonald's?

13 A. That's correct.

14 Q. In what area?

15 A. I supervise all the stores in Hilton Head,
16 Bluffton and Hardeeville.

17 Q. That is, what? Five?

18 A. Four stores.

19 Q. Four. Okay, sir. And how long have you been
20 doing that?

21 A. I have been working for McDonald's for twenty-six
22 years, and for this gentleman twenty-one years.

23 Q. Who owns McDonald's now?

24 A. Mark Stern.

25 Q. Where did you come from to Beaufort County?

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1 A. I lived in Los Angeles before Beaufort County.

2 I moved here in 1987.

3 Q. Thirteen, fourteen years ago?

4 A. Fourteen years ago.

5 Q. And you worked with McDonald's in California?

6 A. Correct. I started working for Mr. Stern in 1980.

7 Q. He's got stores out there, too?

8 A. He had one and he sold it to come out here and he
9 brought me with him.

10 Q. How long have you lived in Beaufort County?

11 A. Fourteen years.

12 Q. Where do you live? Bluffton?

13 A. Hilton Head Island.

14 Q. Whereabouts?

15 A. Hilton Head Plantation.

16 Q. On the left as you're going on the Island?

17 A. Correct.

18 Q. And you are married?

19 A. Yes.

20 Q. How long have you been married?

21 A. Eighteen years. Eighteen years Monday.

22 Q. Congratulations. Do you have children?

23 A. Two children. A son who is sixteen and a daughter
24 who is thirteen.

25 Q. Does your wife work?

1 A. Yes.

2 Q. Where does she work?

3 A. She works for a refrigeration and an air-
4 conditioning company called Preferred Air on Hilton
5 Head.

6 Q. What does she do with them?

7 A. She runs their office for them, office manager.

8 MR. MURDAUGH: I think you very much for putting
9 you out, making you come back and forth, and for your
10 frank and candid answers. Thank you, sir.

11 POTENTIAL JUROR: Thank you.

12 MR. KULP: May it please the Court.

13 THE COURT: Mr. Kulp.

14 EXAMINATION

15 BY MR. KULP:

16 Q. Good morning, Mr. Schaller.

17 A. Good morning.

18 Q. My name is Tim Kulp. Mr. Fleming and I represent
19 the accused, Mr. Rogers. I appreciate your answers to
20 these questions. You indicated that you work for
21 McDonald's or that you have worked for them for twenty-
22 one years?

23 A. I have worked for Mr. Stern for twenty-one years,
24 and I worked for McDonald's before that also, during
25 college.

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1 Q. Total time?

2 A. About twenty-five years altogether.

3 Q. Now, does your supervisory responsibilities, do
4 they include Jasper County?

5 A. Right, the Hardeeville McDonald's. Yes, sir.

6 Q. Do you have relation to any of the litigation,
7 civil litigation, that goes on with the McDonald's?

8 A. Occasionally, yes.

9 Q. Now, Ryder University. Where is that?

10 A. It is in Trenton, New Jersey.

11 Q. Is that where you grew up, in Loyola?

12 A. Correct. I was eleven years in Illinois, eleven
13 years in New Jersey, eight years in Los Angeles and now
14 this ---

15 Q. Out of those four locations, including Hilton
16 Head, do you have a preference?

17 A. Hilton Head. Definitely Hilton Head.

18 Q. That was a rhetorical question. Now, you
19 understand that these questions we are asking you about
20 your opinions and your feelings about the most serious
21 form of punishment or penalty that we have in our
22 country doesn't -- that in doing so we're not omitting
23 a very important part of our proceeding, that being the
24 first part of the proceeding, that is the determination
25 of whether the defendant is not guilty. You understand

1 that?

2 A. Yes, sir.

3 Q. And that though we have to do that to ensure that
4 you don't have a disposition wherein you would
5 automatically, not matter what the facts and
6 circumstances, tell us that you would always give them
7 life imprisonment no matter what? Or on the other hand
8 that you would always give or decide that the death
9 penalty was appropriate? Because, in fact, that would
10 be a clear indicator that you wouldn't be able to do
11 what is so critical in this case and that is to hear
12 all -- listen to all the facts and circumstances before
13 making such a decision. You understand that?

14 A. Yes, I do.

15 Q. And you understand that in fact that if the
16 decision made by the jury was that the State failed to
17 meet their burden of proof that the jury might very
18 well decide and render a verdict that the defendant was
19 not guilty?

20 A. That's correct.

21 Q. And that, if so, there certainly logically is no
22 need to go forth with what we are discussing now of
23 there being punishment or the penalty phase?

24 A. Right.

25 Q. The Solicitor asked you if you would be able to

1 sign your name to a verdict in the penalty or
2 punishment phase verifying that your decision,
3 individually, and the decision of the jury was that the
4 death penalty was the appropriate punishment. Do you
5 remember him asking you that?

6 A. Yes.

7 Q. And you understand, as well, that the decision of
8 the jury might very well be, based on the evidence and
9 the testimony that it heard, that the appropriate
10 decision would be life imprisonment in jail. Could you
11 then sign the document with that reflecting your
12 decision?

13 A. Yes.

14 MR. KULP: Thank you very much.

15 THE COURT: Any questions regarding this juror?

16 MR. MURDAUGH: No, sir.

17 MR. KULP: No, sir, Your Honor. Thank you.

18 THE COURT: Sir, I think you're well qualified
19 to serve as a juror on this case. We will select the
20 jury at 9:30 tomorrow here. Please bring your bag
21 packed for three nights, because the jury will be
22 sequestered. There's a Hampton Inn just a couple of
23 blocks from here.

24 Of course, don't discuss the case with anyone or
25 allow anyone to discuss the case with you, as you have

1 correctly done.

2 Also, don't take any steps to read, do research or
3 try to educate yourself in criminal law or criminal
4 procedures or about this case. In other words, you
5 have been qualified as you are, so just come as you
6 are. And the jury will be drawn tomorrow.

7 Any questions?

8 POTENTIAL JUROR: Yes, Your Honor. I was
9 informed that I could appeal. I was here approximately
10 two weeks ago to try to -- I hate to use the term but
11 to "get out of jury duty". I was told that it not
12 deemed a business inconvenience at that time, but that
13 I could resubmit at this time to be excused from jury
14 duty. I want to make it very plain that I consider it
15 an honor to be doing jury duty, and I have done it
16 before on Hilton Head, and would like to do it again
17 but I have been working for three years on this project
18 of opening up a new McDonald's in Hardeeville and it is
19 happening right now and I am the one who is doing it.

20 THE COURT: Well, let me -- just a second then.
21 I should have asked you that question earlier. I did
22 not know that you came earlier.

23 Would the attorneys approach a sidebar?

24 SIDEBAR:

25 THE COURT: Any objection to him being excused?

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1 MR. MURDAUGH: No.

2 MR. KULP: No, especially since Cory has a
3 case against McDonald for a "hot
4 coffee case".

5 THE COURT: Okay.

6 (SIDEBAR CONCLUDED)

7 THE COURT: Okay, we have enough jurors, the
8 attorneys agree. So with their concurrence, you are
9 excused. Would you transfer this juror to another
10 term?

11 (POTENTIAL JUROR STEPS DOWN)

12 POTENTIAL JUROR: That would be great.

13 THE COURT: Have a nice weekend, then.

14 POTENTIAL JUROR: Thank you, Your Honor.

15 (POTENTIAL JUROR EXITS COURTROOM)

16 THE COURT: Katherine Reese, Juror No. 308,
17 By the way, I saw the air conditioner man and he said
18 that it knocked off yesterday but that they hope to
19 have it up and running by 11:00.

20 MR. KULP: Thank you very much, Your Honor.

21 THE COURT: So if we can survive for another
22 hour.

23 (POTENTIAL JUROR TAKES STAND)

24 KATHERINE REESE, being
25 duly sworn to tell the truth, the whole truth and

1 nothing but the truth, testified as follows:

2 EXAMINATION

3 BY THE COURT:

4 Q. Good morning.

5 A. Good morning.

6 Q. Ms. Reese?

7 A. Yes, sir.

8 Q. Couple of questions. One, have you ever heard
9 anything about this case before?

10 A. I remember when it happened.

11 Q. You did?

12 A. Yes, sir.

13 Q. What do you remember?

14 A. Just that it occurred.

15 Q. Did you read or hear anything about the case in
16 the months or the weeks afterwards other than just the
17 initial ---

18 A. No, sir.

19 Q. How about since Monday, have you heard anything
20 about the case?

21 A. No, sir.

22 Q. Hadn't talked to anybody and nobody has talked to
23 you?

24 A. No.

25 Q. And hadn't read anything about it in the

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1 newspapers or on TV or radio or anything?

2 A. (Negative gesture).

3 Q. Did you read this pretrial questionnaire?

4 A. Yes, sir.

5 Q. Did you understand it?

6 A. Yes, sir.

7 Q. What kind of juror do you feel that you are?

8 A. I am the third.

9 Q. The third?

10 A. Yes, sir.

11 Q. In other words you feel like the death penalty is
12 appropriate in some cases and that you could vote for
13 it?

14 A. Yes, sir.

15 Q. And on the other hand not every murder case, you
16 feel, warrants the death penalty?

17 A. No, sir.

18 Q. And if that was the case, you'd vote for life
19 imprisonment?

20 A. Life in prison, yes, sir. I feel that they both
21 are just as bad. One is just a shorter sentence.

22 Q. One is a shorter sentence than the other one?

23 A. (Affirmative nod).

24 Q. Okay, that's a good way to put it. Do you know
25 Kenneth Williams or Richard Rivers?

1 A. No, sir.

2 THE COURT: Solicitor Murdaugh?

3 EXAMINATION

4 BY MR. MURDAUGH:

5 Q. Ms. Reese, how are you doing?

6 A. Fine, thank you.

7 Q. I am Randolph Murdaugh. I am the Solicitor for
8 this area, for this judicial circuit of which Beaufort
9 is one of the counties. With that title goes the
10 obligation of prosecution.

11 I listened to your answers to the judge and I need
12 to ask you a few more questions. In order to do that I
13 need to lay a little groundwork.

14 Normally in the state of South Carolina when a
15 criminal case is being tried, the jury is concerned
16 with one thing and one thing only. That is the guilt
17 or innocence of the defendant. Once that decision has
18 been made, you're finished. The judge does the
19 sentencing.

20 A. Yes, sir.

21 Q. Where there is a murder and the death penalty is
22 being asked for is an exception to that rule. In that
23 situation, the jury still -- in the first part of the
24 trial -- is concerned only with the guilt or innocence
25 of the defendant. And if they find him guilty in the

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1 first part, you go to the second part. Then contrary
2 to every other criminal case, the jury does the
3 sentencing.

4 In the second phase of the trial, you will have
5 heard testimony from the first part and there may be
6 some additional testimony, the State is obligated to
7 prove a thing called an "aggravating circumstance".
8 Your Honor will tell you what the technical aspects of
9 aggravating circumstances are. But for the time being,
10 suffice it to say that that is a reason to give the
11 death penalty.

12 A. Okay.

13 Q. The State has to prove the aggravating
14 circumstances. If we prove the aggravating
15 circumstances, you then must consult other testimony,
16 the character of the defendant, the circumstances of
17 the crime itself, evidence in mitigation; which are
18 reasons not to give the death penalty.

19 You must consider all the -- listen to and
20 consider all of that testimony before you make a
21 decision. Can you do that?

22 A. Yes, sir.

23 Q. If after listening and after considering all of
24 that testimony, could you ever -- and I am not talking
25 about in this case, we are talking about in general.

1 Could you ever vote for the death penalty?

2 A. Yes, sir.

3 Q. Conversely, could you vote for life imprisonment?

4 A. Yes, sir.

5 Q. If you were sitting on this jury and if you and
6 the other eleven members of the jury started debating
7 the sentence and if you and the other eleven members of
8 the jury came to the conclusion that this case was so
9 bad that the defendant deserved the death penalty and
10 all twelve of you voted 'yes, we think that he needs
11 the death penalty, you need to go one step further.
12 And when I say 'you', I am talking about the jury.
13 The jury would be required to sign a sheet of paper.
14 There would be twelve names on it. Up at the top would
15 be words to this effect, "We, the undersigned jurors,
16 recommend that the defendant suffer the death penalty."
17 While it says "recommend", that's not what it really
18 means. It means that you'all are doing it.

19 A. Yes, sir.

20 Q. Could you sign your name to that if you thought
21 the case was bad enough?

22 A. It was proven that he committed -- if he is proven
23 guilty and there's no reasonable ---

24 THE COURT: Excuse me. Could you speak
25 directly in the microphone.

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1 POTENTIAL JUROR: If there is no reasonable
2 doubt with the jury verdict.

3 EXAMINATION

4 BY MR. MURDAUGH:

5 Q. That is what I am saying. This is a case where
6 you'all have decided that he ought to get the death
7 penalty. I mean, all of that is over with but you just
8 haven't done all the formalities.

9 A. Yes, sir.

10 Q. The formality would be the signing of that paper
11 with that thing up at the top?

12 A. I could sign that.

13 Q. How long have you lived in Beaufort County?

14 A. Since 1953 when I was born.

15 Q. You were born and raised -- where did you grow up?

16 A. Do you know where the Farm Bureau is?

17 Q. In Beaufort?

18 A. Yes, sir.

19 Q. Yes, ma'am.

20 A. I live right near there at the Farm Bureau.

21 That's where I was raised at.

22 Q. And I believe that you have children?

23 A. One, sir.

24 Q. One son?

25 A. Yes, sir.

1 Q. And his age?

2 A. He's fifteen.

3 Q. I have got to ask you some questions and probably
4 you'd rather me not ask them but I -- and you don't
5 want to answer me, just tell me.

6 A. Okay.

7 Q. Frankly, what we're trying to do is to determine
8 whether we want you to serve on the jury or not.
9 You're divorced?

10 A. Yes, sir.

11 Q. May I ask who you were married to?

12 A. His name was Bert Reese.

13 Q. And where was he from?

14 A. He was born in North Carolina.

15 Q. He was not a Beaufort County resident?

16 A. He wasn't when I married him. His dad was in the
17 military and they moved here, then -- his dad died in
18 Beaufort County. He's buried down at the National
19 Cemetery.

20 Q. Where do you work?

21 A. I work at Heavenly Ham.

22 Q. What is Heavenly Ham?

23 A. It's a sandwich shop.

24 Q. Where is it?

25 A. In Hilton Head.

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1 Q. But where?

2 A. On Matthews Drive right across from the Bi-Lo and
3 Sam's Club.

4 Q. How long have you worked with them.

5 A. Right around five years.

6 Q. I think I remember from your questionnaire that
7 you do everything there. You're in charge of the shop
8 and working.

9 A. Yes, sir.

10 Q. Supervise other employees?

11 A. Yes, sir. My boss, her husband is in the military
12 and she and him transferred to Mississippi so I am
13 running the business while she's there in Mississippi.
14 So I have to -- I do everything.

15 Q. I am sure that they're glad that they have you.

16 A. Yes, sir.

17 Q. Where do you live now?

18 A. I live on down by the Air Station.

19 MR. MURDAUGH: Okay, I got you. Thank you for
20 being so fair and candid with me.

21 MR. KULP: May it please the Court.

22 THE COURT: Mr. Kulp.

23 EXAMINATION

24 BY MR. KULP:

25 Q. Good morning, Ms. Reese.

1 A. Good morning.

2 Q. My name is Tim Kulp and Mr. Fleming and I
3 represent the accused, Mr. Rogers. I would like to ask
4 you a few questions and I appreciate your answers in
5 this setting.

6 A. Yes, sir.

7 Q. Now, I couldn't hear because sometimes the
8 microphone is not loud enough for my hearing, but
9 didn't you say to the Judge that between life
10 imprisonment and the death penalty as a sentence --
11 what did you say the sentence was?

12 A. Okay. I said that one was just as shorter
13 sentence then the other.

14 Q. Can you explain that a little bit?

15 A. Well, both of them would be the rest of his life.
16 But the death penalty, you know when you're going to
17 die.

18 Q. I see. Now, you were talking a minute ago or you
19 testified a minute ago in response to one of the
20 Solicitor's questions -- or rather you addressed the
21 issue of "proven guilty". I would like to ask you a
22 question about that, if I may.

23 Is it your understanding, and are you saying, that
24 if a person is proven guilty of murder beyond a
25 reasonable doubt and that that decision is made that

1 the appropriate punishment would be the death penalty?

2 A. It depends on how he committed the murders and,
3 you know, if he -- he had already thought to do it
4 before he got there, or if it was just a spur of the
5 moment, you know, in passion or whatever. It would
6 really depend on the circumstances of why he committed
7 the crime.

8 Q. If he had already thought about it before he got
9 there, would that mean that it would be your decision
10 that if he were found guilty of murder beyond a
11 reasonable doubt, if that should be proven, that he
12 should get the death penalty?

13 A. If he had already -- you know, if he came into
14 their place and said 'I've come here to kill somebody',
15 then yes.

16 Q. And if that was the case, that would be your
17 decision regardless of any other information?

18 A. Well, you know, it depends on what he had in mind
19 when he went in there. If he went there to just have
20 an argument and it escalated to murder, then that
21 wasn't, you know, premeditated.

22 Q. When you use that word, premeditated, if it was
23 premeditated and if he was found guilty by a jury
24 beyond a reasonable doubt of murder, would you feel
25 that regardless of any other circumstances, if those

1 were the circumstances, that your decision should be
2 that he should get the death penalty?

3 A. Right.

4 Q. You do?

5 A. Yes.

6 MR. KULP: Thank you.

7 THE COURT: Any discussion regarding this
8 juror?

9 MR. KULP: Yes, sir, Your Honor.

10 THE COURT: Ms. Reese, would you please ---

11 MR. MURDAUGH: May I ask her something else?

12 THE COURT: Sure, go ahead.

13 MR. MURDAUGH: Ms. Reese, I listened to some of
14 your answers to Mr. Kulp and I need to ask you one or
15 two other questions. As I explained to you, a two-part
16 trial, guilt or innocence in the first part. If he is
17 found guilty, then you go to the second part in which
18 you have to consider reasons to give him the death
19 penalty, reasons not to give him the death penalty.

20 POTENTIAL JUROR: Right.

21 MR. MURDAUGH: And you told me that you would
22 consider all of those things with an ear to either
23 giving him life imprisonment or the death penalty,
24 depending on how you felt after you listened to them.
25 You answered Mr. Kulp that if it was a premeditated

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1 thing that you would always give the death penalty.

2 POTENTIAL JUROR: Yes, sir. If he come there
3 to kill somebody then, you know, I'd give him that.

4 MR. MURDAUGH: If we went there for the purpose of
5 killing someone?

6 POTENTIAL JUROR: Killing somebody. Yes. If he
7 wasn't ---

8 MR. MURDAUGH: How about if he didn't go there
9 with the purpose of killing somebody but committed
10 murder?

11 POTENTIAL JUROR: Then life imprisonment would
12 be also.

13 MR. MURDAUGH: Always?

14 POTENTIAL JUROR: Well, -- life imprisonment
15 would be appropriate if he didn't intend to kill
16 anyone. If it was a premeditated murder, then I
17 believe the death penalty is appropriate.

18 MR. MURDAUGH: Thank you, ma'am.

19 THE COURT: Ms. Reese, would you just step out
20 back and we'll get back to you in just a minute.

21 POTENTIAL JUROR: Yes, sir.

22 (POTENTIAL JUROR STEPS DOWN/EXITS COURTROOM)

23 THE COURT: Solicitor, what do you say? Or --
24 wait a minute, you didn't want to have any discussions.
25 Mr. Kulp?

1 MR. KULP: I don't think that she is
2 qualified, Your Honor, because she doesn't get to the
3 point -- if she gets to the point ---

4 MR. MURDAUGH: I do not disagree, sir.

5 THE COURT: Well, I think that she is
6 qualified. I believe that we could deem her to be
7 qualified, but if you'all want to excuse her, she is
8 excused.

9 MR. MURDAUGH: Thank you, Your Honor. Would you
10 please send Ms. Reese back in.

11 (POTENTIAL JUROR RETURNS TO COURTROOM)

12 THE COURT: Ms. Reese, thank you so much for
13 coming. You are excused. Thank you very much.

14 The next juror is Emma Campbell, Juror No. 44.
15 We are slowing down again, we are starting off slow
16 today. And if we do have another one that is kind of
17 like that, why don't you'all just have a consultation
18 and it might save us a lot of time.

19 MR. KULP: Yes, sir. We can move over to the
20 side and ---

21 THE COURT: Right, you'all can just talk about
22 that.

23 MR. KULP: Be happy to do that, Your Honor.

24 (POTENTIAL JUROR TAKES STAND)

25 EMMA CAMPBELL, being duly

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1 sworn to tell the truth, the whole truth and nothing
2 but the truth, testified as follows:

3 EXAMINATION

4 BY THE COURT:

5 Q. Good morning.

6 A. Good morning.

7 Q. Ms. Campbell, first off, I remind you that you're
8 still under oath from Monday when the Clerk of Court
9 swore you in.

10 A. Right.

11 Q. Did you read the pretrial questionnaire?

12 A. Yes, I did.

13 Q. Did you understand it?

14 A. Yes, I did.

15 Q. What kind of juror do you feel that you are?

16 A. That under no circumstances can I agree with the
17 death penalty.

18 Q. So you, either in your conscience or religion or
19 whatever, could never give the death penalty?

20 A. I could never.

21 Q. Do you know Kenneth Williams or Richard Rivers?
22 That's two names of two possible witnesses that were
23 not called out on Monday.

24 A. Kenneth Williams sounds familiar but, (negative
25 gesture).

1 Q. You can't place him?

2 A. I can't place him.

3 THE COURT: Any questions?

4 MR. MURDAUGH: I have no questions.

5 MR. KULP: Very briefly, Your Honor.

6 EXAMINATION

7 BY MR. KULP:

8 Q. Ms. Campbell, good morning.

9 A. Good morning.

10 Q. I am Mr. Kulp and this is Mr. Fleming. We
11 represent the accused Mr. Rogers. It is incumbent upon
12 me to ask you are there any circumstances, since you
13 have heard nothing about this case and know nothing
14 about this case, where you would consider, consider,
15 evidence supporting an argument that the death penalty
16 is the appropriate punishment for murder.

17 A. I don't know of any where I would consider it.

18 THE COURT: Okay.

19 MR. KULP: Thank you very much.

20 THE COURT: Thank you for coming, Ms. Campbell.

21 You are excused.

22 POTENTIAL JUROR: Thank you, sir.

23 (POTENTIAL JUROR STEPS DOWN)

24 POTENTIAL JUROR: I don't have to go back to the
25 next room.

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1 THE COURT: No, you can go home. You're
2 excused for the week. Thank you very much. Richard
3 Wiles is our next witness, Juror No. 421.

4 (POTENTIAL JUROR TAKES STAND)

5 RICHARD WILES, being duly
6 sworn to tell the truth, the whole truth and nothing
7 but the truth, testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q. How are you, Mr. Wiles?

11 A. Good. How are you this morning?

12 Q. Fine. Mr. Wiles, did you read this pretrial --
13 first off, I remind you that you are still under oath
14 from Monday.

15 A. Yes, sir.

16 Q. Speak into the microphone so that they can all
17 hear you out here.

18 A. Yes, sir.

19 Q. Did you read this pretrial questionnaire?

20 A. I did.

21 Q. Did you understand it?

22 A. I did.

23 Q. What kind of juror do you think you are?

24 A. The kind who would not draw any conclusions until
25 they had heard all the evidence.

1 Q. And do you feel like ---

2 A. And any mitigating circumstances.

3 Q. And do you feel like in a case that you thought
4 appropriate that you would and could vote the death
5 penalty, and that if you felt like it was -- but that
6 you don't feel like every murder case or every time
7 that someone is convicted of murder that they should
8 get the death penalty? Right?

9 A. There would be extenuating circumstances in some
10 cases.

11 Q. Do you know Kenneth Williams or Richard Rivers?

12 A. I do not.

13 Q. Had you ever heard anything about this case before
14 Monday?

15 A. No.

16 Q. Have you heard anything about I since Monday,
17 either by people asking you about or the media,
18 newspapers, TV, radio?

19 A. Only in the courtroom.

20 Q. Only in the courtroom?

21 A. (Affirmative nod).

22 Q. Okay. And have you talked to anyone about the
23 case?

24 A. No.

25 THE COURT: Solicitor Murdaugh.

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EXAMINATION

1

2 BY MR. MURDAUGH:

3 Q. Mr. Wiles, how are you doing?

4 A. Fine.

5 Q. I am Randolph Murdaugh. I am the Solicitor of the
6 14th Judicial Circuit, of which Beaufort is one of the
7 counties. With that title, I get the privilege of --
8 or obligation, I am not sure which -- prosecuting.

9 I need to ask you some questions, quite frankly to
10 find out if we want you to sit on the jury or not. And
11 I want you to understand that there are no 'right' nor
12 'wrong' answers. Just we need to get a feeling about
13 you. I listened to your answers that -- before I
14 start going into that, do you have any reason why you
15 could not serve as a juror?

16 A. No.

17 Q. Okay. As I told you, I listened to your answers
18 and I think that I understand but I need to ask you
19 some additional questions and I need to lay a little
20 groundwork in order that we understand.

21 Unlike the normal case, the normal criminal case,
22 the jury is concerned with one thing only, guilt or
23 innocence of the defendant. Once that issue is
24 decided, your duties are over with and the judge does
25 the sentencing.

1 In a case where there is an allegation of a murder
2 having been committed and where the State seeks the
3 death penalty, it changes things. It makes it a whole
4 different ballgame. It makes it incumbent upon the
5 jury to do the sentencing.

6 So in a case like this, you would have the same
7 thing that you normally have, a first phase of a
8 bifurcated trial in which the jury determines guilt or
9 innocence. If you find them guilty, then you go to the
10 second stage. In that second stage, as I told you, you
11 -- if you were serving on the jury -- would decide what
12 sentence would be appropriate in the case. And in
13 doing that, you would listen to testimony and consider
14 testimony. But before you would -- you would -- the
15 State is obligated to prove a thing called an
16 "aggravating circumstance". His Honor will tell you in
17 detail what that is, but for the purpose of this
18 conversation suffice it to say that that is 'a reason
19 to give the death penalty.'

20 You would have heard or would hear testimony
21 relating to the character of the defendant, the
22 circumstances of the crime, how it happened. You
23 perhaps would hear testimony in mitigation, reasons not
24 to give the death penalty.

25 Would, sir, you as a juror, if you were selected

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1 to this jury, would you consider each and every thing
2 that came from the witness stand, physical evidence
3 that was introduced, and the charge that the judge gave
4 you, before you made a decision?

5 A. It would be my duty to do that, (affirmative nod).

6 Q. And would you do that?

7 A. I would.

8 Q. All right, sir. If you had gotten to the point --
9 and when I say 'you', again I am talking about if you

10 proceeded as a juror and if the jury made these
11 decisions, guilty at the first phase, in the second
12 phase you and the other eleven members of the jury
13 decided that this crime was so bad, so heinous that the
14 appropriate punishment was the death penalty, could you
15 vote for it?

16 A. Yes.

17 Q. And if you'all had decided that, if you and the
18 other eleven members decided that 'yes, this is a bad
19 case and it deserves the death penalty', you've got to
20 go further than that. You would be required, you and
21 each of the jurors, to sign a sheet of paper -- and
22 this isn't the sheet of paper by any means -- in which
23 up at the top would be words to this effect, "We, the
24 undersigned jury, recommend that the defendant suffer
25 the death penalty." Twelve lines, and each juror would

1 have to sign it. ~~was~~ Could you sign it if you thought the
2 case was bad enough to where the defendant deserved the
3 death penalty?

4 A. Yes, sir.

5 Q. You live on Hilton Head, I believe?

6 A. I do.

7 Q. Whereabouts, sir?

8 A. Palmetto Hall.

9 Q. Palmetto Hall?

10 A. (Affirmative nod), one of the smaller plantations.

11 Q. Do you play golf?

12 A. No, but I live right by the starter shack.

13 Q. I think I know where your house is. You worked
14 where?

15 A. I am retired.

16 Q. I understand that but where did you work?

17 A. My last employment was the Military Operations
18 Research Society.

19 Q. What is that?

20 A. It is a professional association like the ABA but
21 for those who practice military operations research.

22 Q. Prior to that where did you work?

23 A. I worked as a practicing research analyst for
24 O.R.I., Incorporated in Silver Springs.

25 Q. O.R.I. is?

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1 A. It is just O.R.I. Originally it was Operations
2 Research, Incorporated. Not it is just O.R.I. In
3 fact, it not longer exists.

4 Q. What did you do with them?

5 A. I helped the Department of Defense put on field
6 experiments testing concepts for new weapons.

7 Q. When did you move to Beaufort County?

8 A. About fifteen months ago.

9 Q. And you came from where?

10 A. Northern Virginia. Alexandria.

11 Q. Okay, sir.

12 A. I am also a retired Army officer. That was my
13 first career.

14 Q. Were you ever stationed in this area? I guess it
15 was the Army that you wouldn't have been?

16 A. No.

17 Q. Never at Fort Jackson?

18 A. No.

19 Q. Never at Hinesville?

20 A. No. Washington was about as close as I was
21 stationed here.

22 Q. And you are married?

23 A. I am.

24 Q. And you have children?

25 A. Three.

1 Q. Two girls and a boy?

2 A. Yes, sir.

3 Q. What are their ages?

4 A. 48, 46, 44.

5 Q. What do they do?

6 A. The older one is civilian employee for the
7 Department of the Army, who was in the Pentagon when it
8 was struck, on the side that was struck.

9 Q. He's all right?

10 A. She is.

11 Q. She -- okay. Thank God for that, sir.

12 A. The second daughter works for the West Virginia
13 University, for the vice-provost for technology.

14 Q. Morgantown?

15 A. Morgantown, (affirmative nod).

16 Q. The hardest place to get to in the world?

17 A. Yes. And my son is a Lieutenant Colonel of
18 Infantry, he's the Professor of Military Science at the
19 University of Toledo.

20 Q. Your wife, does she work now?

21 A. She was a registered nurse but she is also
22 retired.

23 Q. Yes, sir. Always in the nursing profession?

24 A. Yes. Well, at one time she tried real estate but
25 that didn't work.

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1 MR. MURDAUGH: Mr. Wiles, I thank you very much
2 for your candor and your frankness. Thank you, sir.

3 THE COURT: Mr. Kulp.

4 MR. KULP: May it please the Court.

5 EXAMINATION

6 BY MR. KULP:

7 Q. Mr. Wiles, good morning to you.

8 A. Good morning.

9 Q. My name is Tim Kulp and Mr. Fleming and I, who you
10 may recall we were introduced on Monday, at some
11 distance, ---

12 A. Yes.

13 Q. We represent the accused, Mr. Rogers.

14 A. Yes, sir.

15 Q. We certainly all appreciate your answers here this
16 morning in this serious matter. You spent about thirty
17 years in the United States Army?

18 A. I did.

19 Q. You are a West Point graduate?

20 A. Yes.

21 Q. Did your service ever take you outside the United
22 States?

23 A. It did.

24 Q. What --

25 A. Korea, Japan, Vietnam, Germany and Belgium.

1 Q. Have you been watching to see if the FAE or fuel
2 air explosion is used in current circumstances, or did
3 you have any experience in ---

4 A. My last experience was in Vietnam.

5 Q. If I might ask -- you brought a book with you
6 today?

7 A. Yes.

8 Q. What are you reading these days?

9 A. It is a historical novel about Richard Sharpe, a
10 major in the Napoleonic wars.

11 Q. Very good. You have a strong interest in military
12 history?

13 A. Yes.

14 Q. I am surprised that you were never asked to teach?

15 A. If I taught, it would probably be Operations
16 Research rather than Military History.

17 Q. Not much market for that, outside the military.

18 I just wanted to clarify one thing if I could, you --
19 you have indicated, appropriately, in terms of the
20 issue, being fair and impartial, that you wouldn't draw
21 any conclusions in this matter should you be selected
22 and that you have no predisposition about the
23 appropriate punishment should, should, the issue of
24 punishment be addressed.

25 A. That's correct.

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1 Q. And I just wanted to clarify one thing. You said
2 that there would be extenuating circumstances in some
3 cases, and I wanted to ask you a question about that
4 answer. It is not the case, is it, that you are of the
5 opinion and disposition that if murder has been proven
6 that you would be in a position to conclude that the
7 death penalty was an appropriate punishment unless
8 there were extenuating circumstances? Is that the
9 case?

10 A. Extenuating circumstances, given the guidance that
11 I am sure that we would get from the Judge.

12 Q. Yes, sir. And I want to make sure, and I believe
13 it to be the case, that you are not of a perspective
14 that if murder ---

15 A. I would not automatically be predisposed to the
16 death penalty. I would want to hear all of the
17 evidence, extenuation, mitigation -- both from you and
18 from the Solicitor.

19 Q. Very good. And you understand that -- clearly
20 understand that this is the more serious type of case
21 that we can address in this forum?

22 A. Yes.

23 Q. And that part of what you would be asked to
24 consider, should we get to an assessment or a
25 determination of punishment, would be information that

1 is called mitigating that would certainly be offered

2 for your consideration as to making that critical
3 decision?

4 A. Yes, sir.

5 MR. KULP: Thank you very much.

6 THE COURT: Any discussion regarding this
7 juror?

8 MR. MURDAUGH: No, sir.

9 MR. KULP: No, sir.

10 THE COURT: Is that Sharpe thing the one that
11 was featured on PBS several years ago?

12 POTENTIAL JUROR: It was.

13 THE COURT: I remember it very pleasantly.

14 You are qualified as a juror in this case, Mr. Wiles.
15 We will draw the jury at 9:30 tomorrow. If you will,
16 be present here with your clothes for a three-night
17 stay. There's a Hampton Inn within a block or so of
18 the courthouse. As you've done in the past, don't
19 discuss the case with anyone, of course, or allow
20 anyone to discuss it with you.

21 Also, don't do any research or reading about
22 criminal law or criminal procedure or anything. You've
23 been qualified the way that you are, so don't do any
24 sort of research.

25 POTENTIAL JUROR: I'll just finish up Mr.

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1 Sharpe, sir.

2 THE COURT: That's fine. A pleasure to see
3 you.

4 (POTENTIAL JUROR STEPS DOWN)

5 THE COURT: The next juror is Alvena Dennis,
6 Juror No. 77.

7 (POTENTIAL JUROR TAKES STAND)

8 ALVENA DENNIS, being duly
9 sworn to tell the truth, the whole truth and nothing
10 but the truth, testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q. Ms. Dennis, please speak into the microphone. I
14 remind you, Ms. Dennis, that you're still under oath
15 from Monday when the Clerk of Court swore you in.

16 A. Yes, sir.

17 Q. First off, did you read the handout out there
18 about the pretrial questionnaire?

19 A. Yes.

20 Q. Did you understand it?

21 A. Yes.

22 Q. What type juror do you feel that you are?

23 A. Well, I ain't never been a juror before. So --
24 (pause).

25 Q. Well, let me -- basically -- that was probably not

1 a fair way to put it. What I am referring is basically
2 your views on the death penalty for a convicted
3 murderer.

4 The type one juror is someone who would say that a
5 death penalty is always appropriate.

6 The type two juror would say that 'I have
7 objections to the death penalty, for religious reasons
8 or otherwise, and no matter what the crime, I could not
9 vote to give somebody the death penalty.'

10 The type three juror would be someone who would
11 say that, 'There are some circumstances where I feel
12 the death penalty would be appropriate and I would vote
13 for the death penalty in those cases. There are other
14 times when I feel like the death penalty is not
15 appropriate for someone convicted for murder and I
16 would vote against it. I would listen to the facts and
17 circumstances of each case and make a determination as
18 to whether I thought the death penalty was appropriate
19 in a case.' Is that kind of ---

20 A. Well, I guess that I would go with the last one.

21 Q. The last one?

22 A. (Affirmative nod).

23 Q. So you think that the death penalty is appropriate
24 in some cases of murder but not all cases of murder?

25 A. Right.

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1 Q. Do you know Kenneth Williams or Richard Rivers?

2 A. No, not that I know of.

3 Q. Are you available for jury service? Do you have
4 any personal reasons why you would not be able to
5 serve?

6 A. I have a three-year-old grandson that lives with
7 me and I have a sixty-seven-year-old daddy that has
8 head trauma from a car accident. Both of them live
9 with me, and I would have a problem if it would be
10 overnight.

11 Q. Well, it is likely that this would be three nights
12 overnight. Would that greatly inconvenience your
13 family?

14 A. Well, I have someone that cares for them in the
15 daytime because I work in the daytime, but at nighttime
16 it is only me.

17 Q. Nobody else?

18 A. Nobody else.

19 THE COURT: Sidebar, please.

20 SIDEBAR:

21 THE COURT: Any objection?

22 MR. KNIGHT: I don't see any problem, having the
23 small child and her father.

24 MR. KULP: Sounds like she has two children,
25 with her father.

1 ~~THE COURT:~~ So by agreement?

2 MR. KULP: Yes, sir.

3 (SIDEBAR CONCLUDED)

4 THE COURT: Ms. Dennis, you are excused.

5 (POTENTIAL JUROR STEPS DOWN)

6 THE COURT: Thank you very much for coming.

7 Because of your responsibilities at home, we would not
8 want, Ms. Dennis, to add to that. I can see with the
9 small child that you are responsible for and your
10 father that -- so you are excused. Thank you for
11 coming.

12 POTENTIAL JUROR: Thank you.

13 (POTENTIAL JUROR EXITS COURTROOM)

14 THE COURT: And that was without objection of
15 either side. Next juror, Margaret Harms, Juror No.
16 139. After this one we will take a break.

17 MR. KNIGHT: Thank you so much, Your Honor.

18 THE COURT: In fact, it has occurred to me that
19 I am going to start keeping all the lawyers, that I am
20 not going to let the Solicitor slip out of here and
21 maybe we will move quicker.

22 MR. KNIGHT: I would agree with that.

23 (POTENTIAL JUROR TAKES STAND)

24 MARGARET HARMS, being
25 duly sworn to tell the truth, the whole truth and

1 nothing but the truth, testified as follows:

2 EXAMINATION

3 BY THE COURT:

4 Q. Good morning.

5 A. Good morning.

6 Q. Ms. Harms, I remind you that you're still under
7 oath from Monday.

8 A. Okay.

9 Q. At first, I'd ask the question is there any reason
10 that you could -- do you have any reason that you
11 couldn't not serve, from any responsibilities or
12 anything?

13 A. I don't believe so.

14 Q. Okay. Is there ---

15 A. I probably should make you aware that I took your
16 instructions very seriously when we left here on Monday
17 and did not read the section of the paper where there
18 might be information about the trial. I have not
19 watched local television newscasts but someone did make
20 me aware, on Tuesday afternoon, of an article that was
21 in *The Island Packet*.

22 Q. Did they discuss the contents of it or just tell
23 you that there was an article in the paper about it?

24 A. No, they discussed the contents.

25 Q. What was the contents of that?

~~1 A. The person --- I have not read the article. But~~

2 the person did say to me was I aware of the fact that
3 Mr. Rogers had confessed to the crimes but that
4 information was not admissible.

5 Q. Okay.

6 A. It was out before I could say anything.

7 THE COURT: Would the attorney approach the
8 sidebar?

9 *SIDEBAR:*

10 THE COURT: I think she ---

11 MR. MURDAUGH: I would agree, Your Honor.

12 MR. KULP: Yes, sir.

13 *(SIDEBAR CONCLUDED)*

14 THE COURT: Well, I am sorry that happened, Ms.
15 Harms. You would have been a very good juror and I
16 know that you didn't mean for it to happen. Sometimes
17 it does. But I'm going to excuse you from the trial of
18 the case based on that.

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: Thank you for coming.

21 *(POTENTIAL JUROR STEPS DOWN)*

22 THE COURT: We will take a fifteen-minute
23 recess at this time.

24 *(BRIEF RECESS 10:40 to 11:10)*

25 THE COURT: Let's go. James Smalls, Juror No.

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1 356.

2 (POTENTIAL JUROR TAKES STAND)

3 JAMES SMALLS, being duly
4 sworn to tell the truth, the whole truth and nothing
5 but the truth, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q. Mr. Smalls, have a seat, please.

9 A. Yes, sir.

10 Q. How are you today, sir?

11 A. Just fine. And you?

12 Q. Fine. I remind you, sir, that you are still under
13 oath.

14 A. Okay.

15 Q. If you would, speak directly into that microphone
16 so that everybody in the courtroom can hear you
17 clearly.

18 Q. Did you read this pretrial questionnaire in the
19 jury room?

20 A. Not exactly.

21 Q. You didn't read it?

22 A. (Negative gesture).

23 Q. Well, I am going to ask you something about that
24 in a minute but, first, did you know anything about
25 this case before Monday?

1 A. No, sir. No, sir.

2 Q. Have you read anything about it since Monday?

3 A. No, sir.

4 Q. Has anybody talked to you about it or have you
5 talked to anybody else about it?

6 A. No, sir.

7 Q. Have you heard anything on the radio?

8 A. No, sir.

9 Q. Well, that's good. In a case such as this where
10 the State is seeking the death penalty, it has been
11 found that -- uh, there are two possible verdicts in
12 South Carolina. One is the death penalty and the other
13 is life imprisonment if the person is found guilty of
14 murder.

15 And there's three types of jurors. One type of
16 juror feels like if somebody has been convicted of
17 murder that they ought to get the death sentence.

18 The second type of juror is opposed to the death
19 penalty and no matter what the situation is could never
20 vote for the death penalty, just would not ever vote
21 for it.

22 Then there is a third type of juror who feels like
23 they believe that the death penalty is the right thing
24 in certain cases where a person is convicted of murder
25 but not every case. And in some cases they would vote

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1 for life imprisonment and against the death penalty.

2 But they would need to hear the facts and circumstances
3 of what went into the whole incident and everything.

4 Now, which kind of juror would you be?

5 A. Not any of them.

6 Q. You wouldn't be any of them?

7 A. No, sir.

8 Q. What do you mean by that?

9 A. According to my Christian experience I am against
10 criminal punishment.

11 MR. MURDAUGH: It is difficult to hear him.

12 THE COURT: Would you get close to the
13 microphone, just sit up straight. Go ahead now, say
14 that again?

15 POTENTIAL JUROR: According to my religion I am
16 against criminal punishment.

17 THE COURT: Any punishment?

18 POTENTIAL JUROR: Yes, sir, murder and -- that's
19 the kind of juror that I would be, that's what I'd have
20 to say.

21 THE COURT: Are you against the death penalty
22 or are you against sending somebody to prison, or are
23 you against both?

24 POTENTIAL JUROR: I am against the death penalty
25 and I am against -- well, that's it.

1 THE COURT: You are against the death penalty?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: Can you think of -- if somebody was
4 found guilty of murder, could you ever think of a case
5 were you would -- that if you on a jury that you would
6 vote to send somebody to death, to give them the death
7 penalty, to send them to the electric chair?

8 POTENTIAL JUROR: No, sir.

9 THE COURT: Any questions, Solicitor?

10 MR. MURDAUGH: No, sir.

11 CLERK: I beg the Court's indulgence. (After
12 consulting with Mr. Fleming), no, sir. Thank you.

13 THE COURT: Thank you very much, Mr. Smalls. I
14 am going to excuse you from the trial of this case.
15 You are excused for the week.

16 POTENTIAL JUROR: Thank you very much.

17 (POTENTIAL JUROR STEPS DOWN)

18 THE COURT: The next one is Sandra Strickland,
19 Juror No. 382.

20 MR. MURDAUGH: What about Delores Lawyer?

21 THE COURT: We have already done her. She's a
22 type two and she's been excused. We took her out of
23 order.

24 MR. MURDAUGH: That's right, we had two of them
25 that we took out of order.

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1 THE COURT: Right. She had something. I
2 believe that she is a substitute teacher or something
3 and she was going to be working today. Isn't that
4 right?

5 LAW CLERK: We did her yesterday.

6 (POTENTIAL JUROR TAKES STAND)

7 SANDRA STRICKLAND, being
8 duly sworn to tell the truth, the whole truth and
9 nothing but the truth, testified as follows:

10 EXAMINATION.

11 BY THE COURT:

12 Q. How are you, Ms. Strickland?

13 A. I'm fine, thank you.

14 Q. Please speak into the microphone so that everybody
15 can hear you.

16 A. Okay.

17 Q. Is there any reason that you feel like you could
18 not serve as a juror on this case, that you know of?

19 A. No, sir.

20 Q. Have you heard anything or read anything about
21 this case before Monday when we started this?

22 A. Whether I read it when it happened, I don't
23 recall.

24 Q. You don't have any recollection of having read
25 anything about it before?

1 A. No.

2 Q. Since Monday have you read or heard anything about
3 it or seen anything in the newspaper about it or has
4 anybody talked to you about it?

5 A. I turned the page in the newspaper when I saw the
6 jury selection thing. I did not read it.

7 Q. That's what you were supposed to do. Thank you
8 for following my instructions. Did you read this
9 pretrial questionnaire?

10 A. Yes.

11 Q. Did you understand it?

12 A. Yes.

13 Q. What kind of juror do you feel that you are?

14 A. The third kind.

15 Q. That you feel that the death penalty is
16 appropriate in some cases and that you would give the
17 death penalty if you felt that it was but that you
18 don't feel like the death penalty is appropriate in
19 every case where a person is convicted of murder; is
20 that a fair statement?

21 A. Yes, sir.

22 Q. Do you know Kenneth Williams or Richard Rivers?
23 They are two persons whose name was not called out
24 Monday that may be witnesses. Do you know either one
25 of those persons?

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1 A. No, sir.

2 THE COURT: Solicitor Murdaugh?

3 EXAMINATION

4 BY MR. MURDAUGH:

5 Q. Ms. Strickland, I am Randolph Murdaugh. I am the
6 Solicitor for this judicial circuit, of which Beaufort
7 is one of the counties. With that title comes the
8 privilege or obligation, I am not sure which, of
9 prosecutor.

10 I need to ask you some questions to find out
11 whether I want you to sit on this jury or not.

12 A. Okay.

13 Q. I want you to understand that there are no 'right'
14 or 'wrong' answers, we're just trying to get a feeling
15 about you.

16 A. Okay.

17 Q. You live on Hilton Head?

18 A. Yes, sir.

19 Q. Where about?

20 A. Squires Pope Rod.

21 Q. How long have you lived there?

22 A. On Squires Pope, I've lived there four and a half
23 years.

24 Q. Prior to that where did you live?

25 A. SeaPines.

1 Q. Where in SeaPines?

2 A. Acorn.

3 Q. That's the first right?

4 A. Right.

5 Q. This is a different case than you normally have in
6 front of the court. Normally a jury will come in and
7 they will decide the guilt or innocence of the
8 defendant and would be through. The judge would do the
9 sentencing.

10 In a case where there is an allegation of murder
11 and where the State is asking for the death penalty, it
12 becomes the jury's duty, should they find him guilty in
13 the first part of the trial, to then sentence the
14 defendant. And in that sentencing phase, you would
15 have or would have heard testimony as to whether or not
16 there existed an aggravating circumstance. And His
17 Honor will tell you what aggravating circumstances are,
18 but for purposes of our discussion let's just say that
19 it is 'a reason to give the death penalty'.

20 You would have to find the aggravating
21 circumstances. You would hear testimony about the
22 character of the defendant; the circumstances of the
23 crime; mitigating circumstances, or reasons not to give
24 the death penalty. And if you sat as a juror, you
25 would be required to listen to and consider everything

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1 that you heard in this courtroom. Do you understand

2 that?

3 A. Yes.

4 Q. Could you do that?

5 A. I have thought a lot about it and I could.

6 Q. If after hearing all that testimony, if you
7 thought that the case was appropriate for the death
8 penalty, could you vote for the death penalty?

9 A. Yes.

10 Q. Conversely, if you thought that it was appropriate
11 for life imprisonment, could you vote for life
12 imprisonment?

13 A. Yes.

14 Q. One of the things that would happen if you served
15 on the jury and if you and the other eleven members of
16 the jury said, 'yes, this is a bad enough case that the
17 death penalty is deserved by the defendant', you'all
18 have voted on that in the jury room and decided that,
19 you would then have to sign a sheet of paper. At the
20 top of that paper would be words to the effect, "We,
21 the unsigned jury, do recommend that the defendant
22 suffer the death penalty." Twelve lines and each
23 juror would have to sign it.

24 If you thought that it was a bad enough case and
25 met all the rules that the Judge set out in his charge

1 and after listening to the testimony said, 'He got to
2 get the death penalty', could you sign your name to
3 that?

4 A. Yes.

5 Q. You live on Hilton Head?

6 A. (Affirmative nod).

7 Q. Do you work?

8 A. Yes.

9 Q. Where do you work?

10 A. Lowcountry Home Oxygen.

11 Q. What is that?

12 A. It's home medical supplies, oxygen and breathing
13 equipment.

14 Q. Are you a registered nurse, I believe?

15 A. Licensed Practical Nurse.

16 Q. LPN?

17 A. (Affirmative nod).

18 Q. Okay. And how long have you worked for Oxygen
19 whatever?

20 A. One year.

21 Q. Where did you work before that?

22 A. Heritage Medical Partners.

23 Q. What did you do with them?

24 A. I was front office there.

25 Q. How long have you lived -- you aren't originally ..

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1 from Beaufort County?

2 A. No.

3 Q. How long have you lived in Beaufort County?

4 A. Twenty-seven years.

5 Q. Was all of that on Hilton Head?

6 A. Yes, sir.

7 Q. Are you married?

8 A. Divorced.

9 Q. Divorced?

10 A. (Affirmative nod).

11 Q. And may I ask how long you have been divorced?

12 A. Five years.

13 Q. What did your husband do or what does he do?

14 A. He is an assistant chief with the Hilton Head Fire
15 Department.

16 Q. Do you have children?

17 A. Yes, sir.

18 Q. What are their sexes and ages?

19 A. I have one son who is sixteen and a daughter who
20 will be fifteen in a couple of weeks.

21 MR. MURDAUGH: Thank you for your fairness and
22 your candor. Thank you, ma'am.

23 THE COURT: Mr. Kulp?

24 MR. KULP: May it please the Court.

25 EXAMINATION

1 BY MR. KULP:

2 Q. Good morning, Ms. Strickland.

3 A. Good morning.

4 Q. My name is Tim Kulp. Mr. Cory Fleming and I
5 represent the accused, Mr. Rogers. You indicated on
6 your questionnaire that you had close friends with the
7 Sheriff's Department?

8 A. Yes, sir.

9 Q. Did you develop and make those close friends
10 through you ex-husband's occupation as a fireman?

11 A. Yes.

12 Q. Who are your close friends at the Sheriff's
13 Department?

14 A. Well, actually, only one is a very close friend,
15 Major Rick Hoover.

16 Q. How long have you known him?

17 A. Probably about thirteen or fourteen years.

18 Q. When is the last time that you spoke with him?

19 A. Last week.

20 Q. Did you mention anything to him about getting a
21 summons for jury duty?

22 A. Yes, sir.

23 Q. What did he say about that?

24 A. He said, 'If you don't want to do it, lie.'

25 I said, 'I can't do that!'

1 Q. That relationship with him and with possibly other
2 members of the Sheriff's Department, would that affect
3 your ability in any way to be fair and impartial during
4 the trial of this case, as to any of the issues
5 involved that would be submitted to the jury?

6 A. No, sir.

7 Q. Have you served on a jury before?

8 A. Yes, sir.

9 Q. Where was that and when?

10 A. It was here in Beaufort in 1992.

11 Q. Was it a criminal case?

12 A. No, sir.

13 Q. One thing that I just wanted to mention and ask
14 you about was, do you understand the primary reasons
15 that we're going through this process and asking
16 questions of potential jurors is because of the
17 seriousness of this charge?

18 A. Yes.

19 Q. And it is important for us to determine that you
20 do not have -- or for the court to determine that you
21 have no predisposition or strong feelings about these
22 issues that we are asking you about, so that you
23 wouldn't be in a position of automatically making one
24 decision or another. Do you understand?

25 A. Yes.

1 Q. Now, as well, we are -- do you understand that
2 because we are asking you questions about an
3 appropriate penalty on some unknown set of facts,
4 because we are broaching that, it doesn't mean that
5 anyone of us, any of us here, have lost sight of the
6 first part in this proceeding, which is the
7 determination as to whether or not the defendant is not
8 guilty or guilty. Do you understand?

9 A. Right.

10 Q. But that it's important for us to make sure that
11 everyone who is involved as a juror is fair and
12 impartial?

13 A. Right.

14 Q. And that if in fact a jury's decision was that the
15 State was unable or could not meet its burden of proof
16 to prove each and every element of each offense that
17 they have accused the accused of committing, that the
18 jury would be compelled and instructed by the Judge to
19 return a verdict of not guilty?

20 A. Yes, sir.

21 Q. And, if so, then this issue of the appropriate
22 punishment would be -- that there would be no need to
23 address that.

24 Anything that you haven't mentioned that you would
25 consider important for us to know as to -- that might

1 affect your ability to be fair and impartial in any
2 aspect of this case?

3 A. No, sir.

4 MR. KULP: Thank you very much.

5 THE COURT: Any discussion?

6 MR. MURDAUGH: No, sir.

7 MR. KULP: No, sir, Your Honor.

8 THE COURT: Ms. Strickland, I find that you are
9 qualified. This jury will be selected. You, of
10 course, are in the pool along with other who are in it.
11 We will select the jury at 9:30 tomorrow so that we can
12 go immediately to work.

13 The jury, of course, will be sequestered for what
14 looks like about three nights and will be staying at
15 the Hampton Inn, which is behind Applebee's right
16 across the marsh here.

17 If you will, please be here at that time. Have
18 your clothes ready in case you are selected.

19 Of course, don't discuss the case with anybody or
20 allow anybody to discuss it with you or read any
21 articles about it or anything.

22 The other thing is, don't do any research on
23 criminal law or criminal procedure or anything else.
24 In other words, you have been qualified as you are.
25 So don't go on the internet or read any books about

1 criminal law or whatever. With that, thank you very
2 much. Look forward to seeing you tomorrow.

3 (POTENTIAL JUROR STEPS DOWN)

4 THE COURT: Krista Solley, Juror No. 370. And
5 this is the last one.

6 (POTENTIAL JUROR TAKES STAND)

7 KRISTA SOLLEY, being duly
8 sworn to tell the truth, the whole truth and nothing
9 but the truth, testified as follows:

10 EXAMINATION

11 BY THE COURT:

12 Q. Good morning.

13 A. Hey.

14 Q. Please have a seat and speak into the microphone.
15 How do you pronounce your last name?

16 A. Solley (Sol-lee).

17 Q. That's what I thought.

18 A. Yes, sir.

19 Q. Ms. Solley, I remind you that you are still under
20 oath. Is there any reason you would not be able to
21 serve as a juror on this case?

22 A. Well, I am actually going to South Africa next
23 Thursday.

24 Q. Next Thursday? In other words, a week from today?

25 A. Yes, the 18th.

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1 Q. Well, we won't be involved in this case next
2 Thursday. Do you have anything between now and then?

3 A. No, just that I am going to -- just that I
4 wouldn't be able to ---

5 Q. Okay. We would definitely have you out of here by
6 Tuesday or Wednesday at the latest.

7 A. Okay.

8 Q. And I hope that you have a nice trip.

9 A. Thank you.

10 Q. Had you ever heard anything about this case
11 before?

12 A. No.

13 Q. Have you heard anything about it since Monday?

14 A. I saw in the paper -- yeah, Monday night I saw it
15 in the paper but I didn't read anything. I noticed the
16 headline of Jury Selection Started.

17 Q. But you say that you did not read the article?

18 A. No, I didn't read the article.

19 Q. Well, good. That's what you were supposed to do.

20 A. I didn't read it.

21 Q. Have you talked to anybody about the case or has
22 anybody talked to you about the specifics of the case?

23 A. No, sir.

24 Q. Did you read the pretrial questionnaire?

25 A. I did.

1 Q. Did you understand what it was talking about about
2 the three types of jurors?

3 A. Correct.

4 Q. Which type of juror do you feel that you are?

5 A. I would say the third.

6 Q. Third?

7 A. (Affirmative nod).

8 Q. And that is a person who believes in the death
9 penalty in some cases and would vote for the death
10 penalty?

11 A. Right.

12 Q. But not every person convicted of murder who
13 received the death penalty?

14 A. Right.

15 Q. And that you would like to and would require
16 before you decided what was right you'd want to hear
17 all the facts and circumstances and make your decision
18 based upon that?

19 A. Right.

20 Q. There are two witnesses who were not listed on
21 Monday, potential witnesses, Kenneth Williams and
22 Richard Rivers. Do you know either of those persons?

23 A. No, I do not.

24 THE COURT: Solicitor Murdaugh.

25 MR. MURDAUGH: Could you pronounce your name?

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1 POTENTIAL JUROR: Krista Solley.

2 EXAMINATION

3 BY MR. MURDAUGH:

4 Q. Ms. Solley, I am Randolph Murdaugh. How are you
5 doing?

6 A. Very well.

7 Q. I am the Solicitor and with that title comes the
8 obligation of prosecution. I need to ask you some
9 questions to find out whether or not I want you on this
10 jury or not.

11 A. Okay.

12 Q. I want you to understand that there are no right
13 nor wrong answers. We just need to find out a little
14 bit about you.

15 A. Okay.

16 Q. I listened to your answers to the Judge's
17 questions and as I understand your answers, you would
18 listen to everything that transpired in this courtroom,
19 his instructions about the law, the testimony that came
20 from the witness stand, the physical evidence
21 introduced and you would -- you would consider all of
22 that?

23 A. Yes.

24 Q. And if after considering that, if you were on the
25 jury and the jury had determined that the defendant was

1 guilty of murder, you realized that contrary to the
2 normal case that you would have to do the sentencing.

3 A. Okay.

4 Q. Generally once they find guilt, a jury is through.
5 The judge does the sentencing.

6 A. Right.

7 Q. This is a different case. If you find him guilty,
8 then you would have to listen to or hear testimony of a
9 thing called aggravating circumstances, which for the
10 purpose of this conversation, we shall say, are
11 'reasons to give the death penalty'.

12 A. Okay.

13 Q. Characteristics of the defendant, circumstances of
14 the crime, mitigating circumstances or reasons not to
15 give the death penalty. Would you listen to and
16 consider all of those before making a decision?

17 A. Yes.

18 Q. And if you thought, after listening to all of
19 those things and considering those things, if you
20 thought that the case was bad enough could you vote for
21 the death penalty?

22 A. I could if I honestly believed that the case was
23 as bad and -- yeah. I certainly could.

24 Q. Conversely, if you didn't think that it was bad
25 enough you could vote for life imprisonment?

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1 A. Yes.

2 Q. One of the things that would occur if you sit on
3 the jury and if you and the other eleven jurors, after
4 listening to and considering all of the evidence in
5 this case, and the judge's charge, after listening to
6 all that, if you'all said that this case is so bad
7 until the defendant deserves death penalty; you all
8 vote on it in the jury room, and you come to that
9 conclusion; you would then -- that is not enough. You
10 would have to do one additional thing. You would be
11 required to sign your name to a sign of paper. There
12 would be twelve lines on it and up at the top it would
13 say words to this effect, "We, the undersigned jurors,
14 recommend that the defendant suffer the death penalty."
15 And each and every one of you would have to sign that
16 sheet of paper. If you thought it was bad enough and
17 if you all had voted that the death penalty was the
18 appropriate sentence, could you sign your name to that
19 sheet of paper?

20 A. If I thought it was bad enough, (affirmative nod).

21 Q. Okay. Well, that was my premise, that you'all had
22 already voted on that.

23 A. Right.

24 Q. The signing of the paper would give you no
25 concern?

1 A. No.

2 Q. I gather from listening to you that -- and I
3 understand that to give the death penalty is not an
4 easy thing to do.

5 A. No.

6 Q. But you aren't precluded from doing that,
7 depending on what your view of the evidence is?

8 A. Right.

9 Q. How long have you lived in Beaufort County?

10 A. On and off on Hilton Head for six years.

11 Q. Where did you -- off and on?

12 A. Yes. Usually I leave during the wintertime and
13 then come back in the summertime.

14 Q. I got you. That's right, you serve ---

15 A. I wait tables in Hilton Head.

16 Q. Where?

17 A. At San Miguel's.

18 Q. Have you worked other places down there?

19 A. Wild Wings. Wild Wings Café.

20 Q. Good food.

21 A. Yeah.

22 Q. Where do you generally go in the wintertime?

23 A. I moved out to Hawaii last winter and Colorado the
24 winter before that.

25 Q. Where in Colorado?

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1 A. I lived up in Beaver Creek.

2 Q. You are not married?

3 A. No.

4 Q. Where were you born and raised?

5 A. In Reston, Virginia. Northern Virginia.

6 Q. Ruston?

7 A. Reston.

8 MR. MURDAUGH: Thank you, ma'am. I appreciate
9 your openness and your candor.

10 MR. KULP: May it please the Court, Your
11 Honor?

12 THE COURT: Mr. Kulp.

13 EXAMINATION

14 BY MR. KULP:

15 Q. Good morning, Ms. Solley.

16 A. Hi.

17 Q. My name is Tim Kulp. Mr. Cory Fleming and I
18 represent the accused, Mr. Rogers. You may have heard
19 our names on Monday, but I wanted to introduce myself
20 again.

21 Is San Miguel's associated with the business
22 entity out of Charleston at one time?

23 A. No. I don't think so, no.

24 Q. How long have you worked at San Miguel's?

25 A. I worked there too during college, so on and off

1 there for six years. I came down during the summer,

2 you know, and worked during college. I worked at Wild
3 Wings for a couple of years and then back at San
4 Miguel's for like the past two years.

5 Q. Where did you go to college?

6 A. VCU, Virginia Commonwealth.

7 Q. You've been to Hawaii and Colorado and are now
8 heading to South Africa?

9 A. Yeah.

10 Q. Are you going down there to work for a while?

11 A. No, I am going to visit a friend that I met this
12 summer.

13 Q. Very good. Excited about that trip?

14 A. Yeah.

15 Q. You understand that when these inquiries have been
16 made about your approach to or your opinions about an
17 appropriate punishment in a murder case that it is for
18 the purpose of determining and insuring that you can be
19 fair and impartial in this trial about these serious
20 charges? You understand that?

21 A. Yes.

22 Q. Have you ever served on a jury before?

23 A. No.

24 Q. Jumping around a little, what did you study at
25 PCU?

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1 A. It was a Fashion minor but a Business major.

2 Q. Did you have occasion to be involved in an
3 accident? Did you put something in your questionnaire
4 about that?

5 A. Yeah. I was in a drunk driving accident about
6 three years ago, maybe, now. It was late at night, it
7 was like 2:00 o'clock, and I was actually delivering
8 pizzas for a friend of mine that owns a business in
9 Hilton Head. And a lady pulled out and ran into my
10 car, and she was drunk.

11 Q. I hope that you weren't injured?

12 A. No, I wasn't hurt.

13 Q. And did that proceed along through the system as
14 you expected?

15 A. I talked to my lawyer probably once and then I --
16 I actually moved out to Hawaii during that time, so he
17 took care of it. I don't really know whatever happened
18 to her. She never showed up for court, you know, the
19 day that I was there to testify against her. Then
20 after that, I don't know really what happened.

21 Q. That was here?

22 A. Yes.

23 Q. And I think that you told the judge that you saw a
24 newspaper but that you didn't read it?

25 A. I didn't read it, no.

1 Q. Do you understand that there are two parts to this
2 serious proceeding? One is the determination of
3 whether the defendant is not guilty or guilty.

4 A. (Affirmative nod).

5 Q. And that if in fact it was the jury's decision --
6 if the jury were to make a decision in that case that
7 the State failed to meet their burden of proof as to
8 the accusation made against him during the process of
9 the trial that they would be -- that it would be the
10 jury's duty, and the Court would tell the jury, that
11 the verdict that they would have to return would be a
12 "not guilty" verdict. Do you understand that?

13 A. Yes.

14 Q. And that if in fact that was the jury's decision
15 that logically you would never proceed to a
16 determination of an appropriate punishment?

17 A. Right.

18 Q. And you also understand -- the Solicitor mentioned
19 aggravating circumstances and mitigating circumstances
20 and characterized types of evidence that you might be
21 exposed to and that you might hear during the
22 proceeding, penalty or punishment proceeding, if that
23 ever came before you?

24 A. Right.

25 Q. You understand that it is a little bit more

1 involved -- and I appreciate your answer, because this
2 is all speculation. You've heard nothing about any
3 evidence or testimony in this case. It's a lot more
4 involved than whether it is "bad enough" or not.

5 A. Right.

6 Q. And that the Judge, the Court, at the end of the
7 proceedings would provide the jury instructions and
8 guidelines of the law to go about doing your duty in
9 determining whether the appropriate punishment would be
10 life imprisonment or the death penalty. Do you
11 understand that?

12 A. Right.

13 Q. And that it would be your individual decision
14 about that, coupled with the other jurors, to make that
15 determination?

16 A. Right.

17 Q. That you would consider everything presented by
18 the accused as a guide for making that determination?

19 A. Right.

20 MR. KULP: Thank you.

21 THE COURT: Any discussion?

22 MR. MURDAUGH: Might I inquire sir, did you ask
23 about the two witnesses?

24 THE COURT: I did. Anything else? Mr. Kulp?

25 MR. KULP: No, sir.

1 THE COURT: Ms. Solley, you are qualified to
2 serve as a juror on this case. As I told you before,
3 don't read anything about the case or let anybody talk
4 to you about it. If anybody should contact you, please
5 report it -- well, you can report it tomorrow. We are
6 going to draw this jury at 9:30 tomorrow. Bring your
7 suitcase so that you can have clothes for three nights.
8 You can stay at the Hampton Inn, which is right over
9 here behind Applebee's.

10 Also, don't do any research or go on the internet
11 or read any books to try to prepare to serve as a
12 juror. You are qualified the way you are, so don't do
13 anything that might change your views or whatever other
14 than normal reading and so forth. Don't make any
15 special preparations to serve as a juror.

16 Hope you have a nice afternoon and we look forward
17 to seeing you tomorrow. 9:30, here.

18 We want everybody to bring -- because we are going
19 to -- you're in the pool that we are going to select
20 the jury from but we want all the people in the pool to
21 bring their stuff so that we don't select them and then
22 everybody have to go home and get their clothes
23 together.

24 POTENTIAL JUROR: Okay. Thank you.

25 (POTENTIAL JUROR STEPS DOWN)

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1 (JUROR EXITS COURTROOM)

2 THE COURT: That is the panel, is it not? I am
3 going to tell them -- Ms. Fields, I guess you can now
4 excuse the jurors and tell the people that are here now
5 and here after, as they come, that they are excused.
6 If they need a certificate for their job, they are
7 excused for the week. You can tell Gloria to get on
8 the phone and start calling the rest of them. That's
9 the last one. I didn't think that we were going to
10 reach this.

11 Do you'all want a few minutes to get organized
12 about other matters? What I would like to do is go
13 ahead and take care of everything that we are going to
14 do right now before lunch and then -- so that we can
15 not have to -- I don't see that we've got that much
16 more to do today.

17 One thing, I assume that you're going to have some
18 challenges to several jurors for the Court to
19 reconsider. Is that right?

20 MR. KULP: Yes, sir. We want to go over our
21 list and make sure that we only broach those that we
22 think are worth ---

23 THE COURT: Well, I had said that I wanted to
24 possibly -- we addressed the one juror, Juror No. 183,
25 Leonard Kieny. He had some responses that concerned me

1 some. I've asked the Solicitor if he would look back
2 on his notes and see if they insist on him.

3 And the only other one that I would like to
4 readdress is Joseph Stonebraker because he had about --
5 he is well-qualified and all but I have the letter that
6 was written by his job and he had -- it was going to be
7 a great burden, for economic reasons -- and we've
8 excused all the rest of them -- because of his job
9 responsibility. I think that he works for that Jones
10 whatever.

11 MR. KNIGHT: The government agency that had all
12 the contracts.

13 THE COURT: Right, small engine, aircraft
14 engines and all that sort of thing?

15 MR. KNIGHT: Yes, sir.

16 THE COURT: Those are the two that I have
17 concerns about.

18 MR. MURDAUGH: May I ---

19 THE COURT: I am going to take a recess now and
20 then ---

21 MR. MURDAUGH: May I ask that the Defense lawyers
22 give me the people that they are concerned with so that
23 I -- rather than me having to go through everything, I
24 can just address those.

25 THE COURT: Well, let me ask you this, does the

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1 State have any that they have concerns about?

2 MR. MURDAUGH: No, sir.

3 THE COURT: So we will take a break. Those are
4 the two that I am concerned about. One, Mr.
5 Stonebraker, strictly from the standpoint that with
6 everybody else we have tried to accommodate, and I
7 don't want to unnecessarily make him stay.

8 MR. MURDAUGH: I understand that.

9 THE COURT: Then Mr. Kieny -- and if you want
10 to, I can get the court reporter to try to look up his
11 answers and we can review that. Could you do that?

12 COURT REPORTER: Yes, sir. Mr. Stonebraker was
13 also the friends killed at the Phelon plant.

14 THE COURT: That's right, Mr. Stonebraker had a
15 friend killed over in that Aiken situation.

16 MR. KNIGHT: And he worked there at the time?

17 THE COURT: Right. We're off the record, then,
18 and we're in recess. How long do you'all want?

19 MR. FLEMING: Ten or fifteen minutes.

20 MR. KULP: Fifteen or twenty minutes.

21 (BRIEF RECESS)

22 (DEFENDANT PRESENT)

23 THE COURT: Are we ready? So if you find
24 something else -- what I plan to do, I was willing to
25 address some of the things, the arguments, on matters

1 that came up for you to ask me to change my mind on
2 stuff. But if you didn't bring it up as to anybody
3 else prior to that, I don't think that it has any
4 relevance.

5 MR. KULP: No, Your Honor. If it wasn't a
6 controversial one, we would accept your ruling. We
7 wouldn't now go back and say, 'We agreed to that one
8 but now we have second thoughts.' Absolutely not.

9 THE COURT: Good. Just so we start off on the
10 same page. Let me say this, what I thought we would do
11 tomorrow is after everybody comes and gets over there,
12 and some of them are probably going to have their
13 luggage with them, and of course we will have security
14 over there for them.

15 We will bring them in and then I am going to ask
16 them generally if anything has happened since they were
17 qualified that they want to talk about and the nature,
18 if anybody has had a change in their statute that they
19 want to talk to the Court about.

20 If there are any of them, we will take those names
21 down and bring them in here one at a time and address
22 it. That relates to contacts or news articles or if
23 somebody mentioned something to them about it. It also
24 relates to their schedule as to whether they have had
25 some kind of family or business emergency that might

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1 make it a problem. Assuming that there aren't any,
2 then they would go back over there and then we would
3 come back over here and strike the jury. We will stay
4 here and strike the jury here, out of their presence.

5 Then if there are any *Batson Motions* or anything
6 like that that come up, we will argue those at the
7 time.

8 And we will work from -- after we finish this, we
9 will work from what I think will be an official list.
10 That's why I wanted everybody to look through and see
11 if we have made any errors on it.

12 Like Juror No. 21, I think was "Koran" and not
13 "Karen". And Juror No. 38, John Stanton, he was listed
14 as a white female and he is obviously a white male.
15 Juror 35 is listed as the wrong juror number.

16 THE COURT: I have got that correct now.

17 THE COURT: That's right, and we have that
18 correct.

19 MR. MURDAUGH: And Juror No. 77 says Mumford,
20 M-u--f-o-r-d. Juror No. 42 has an "e" on the end of
21 his name.

22 THE COURT: Yeah, I saw that. And what was the
23 other one, Ms. Mitchell, what number is that?

24 CLERK: No. 238.

25 THE COURT: Okay. The first list had her wrong

1 for some reason. I've forgotten. In other words, we
2 will make those corrections and get a list that will be
3 the official list. Anybody else got any other
4 suggestions?

5 MR. MURDAUGH: No, sir.

6 THE COURT: Do you need a few minutes?

7 MR. KULP: Yes, sir.

8 MR. FLEMING: Your Honor, in our previous
9 proceeding you'd asked that myself and the Solicitor
10 meet and discuss any particular Motions that I had
11 filed on behalf of Mr. Rogers. The Solicitor and I did
12 do that, and I would like to put on the record the
13 results of that discussion.

14 First is, with regard -- I filed last year a
15 Motion to exclude the introduction of any weapons found
16 in this matter. The Solicitor has conceded that he
17 does not intend to introduce weapons in the trial of
18 this case, any weapons that they have in evidence in
19 the trial of this case.

20 MR. MURDAUGH: That's right.

21 MR. FLEMING: With regard to the Motion to
22 exclude crime scene photographs, and by that I meant
23 the ones that we contend are overly prejudicial as a
24 result of being either graphic or ---

25 THE COURT: We are including these in the

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1 guilty phase only. We talked about that.

2 MR. FLEMING: Yes, sir. Not the weapons in just
3 the -- the weapons are in the entire trial.

4 THE COURT: I understand.

5 MR. FLEMING: But the crime scene photographs,
6 this Motion pertains only to the first part of this
7 trial. The Solicitor has informed me that he does not
8 intend to introduce any graphic pictures in the guilt
9 portion of the trial. However, if we get past that
10 portion he may introduce everything that he's got
11 concerning photographs. That's in his discretion.

12 Therefore, what he indicated to me that he will,
13 ahead of time, show the photographs that he intends to
14 introduce in the guilt portion of this trial. With
15 that, we will just hold a -- this Motion may be moot if
16 we can agree on those particular pictures. If not, I
17 would reserve the right to bring it back up.

18 THE COURT: Yes. I understand.

19 MR. FLEMING: And then the next Motion that the
20 Solicitor discussed regarding a Motion concerning the
21 witness Toby Reischl ---

22 MR. MURDAUGH: I think that we have already done
23 that.

24 MR. FLEMING: Yes, sir, we have already handled
25 that on the record. Yes, sir.

1 THE COURT: The reminder of the -- I won't
2 bring any of the remainder evidentiary Motions up until
3 the appropriate time in trial, according to your
4 rulings.

5 THE COURT: Mr. Kulp, are you ready to proceed
6 on the jurors yet?

7 MR. KULP: Yes, sir, Your Honor.

8 THE COURT: All right.

9 MR. KULP: The first ---

10 THE COURT: Let's take them in order, starting
11 at the top. The reason that I do that is because I was
12 interested in Mr. Stonebraker, because of his job
13 commitments and so forth. He so genuinely felt like he
14 did not have the time to do this, that it was going to
15 be -- and, of course, we have a letter from the company
16 and so forth. What do you'all say about him?

17 MR. KULP: Your Honor, we consulted about Mr.
18 Stonebraker. Even considering his exposure to the
19 Aiken situation, we feel that he would be an extremely
20 fair juror. We have in our notes, I have in my notes,
21 that he struck us that way. I know that he has asked
22 to be out but I ---

23 THE COURT: Do you object to it?

24 MR. KULP: Yes, sir, I think that we need to.
25 Let me consult a minute, (sidebar with Mr. Fleming).

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1 Yes, sir.

2 THE COURT: All right. Who is your next one?

3 MR. KULP: Mr. Speir, Juror No. 373 on the
4 master list.

5 THE COURT: He is the Marine?

6 MR. KULP: Yes, sir. The reasons, we will
7 just reiterate for the Court's consideration, is that
8 he made a comment in reference to "if a person is evil,
9 I am all for it." As well, he is subject to
10 deployment. We discussed that, but that wasn't the
11 primary concerns that we had. He would be a qualified
12 juror even with that. Our concern was his reference to
13 one being "outright evil" and "being all for it".

14 THE COURT: Solicitor?

15 MR. MURDAUGH: If Your Honor please, he said all
16 the proper things that he needed to say. He said that
17 he would consider everything before he would vote one
18 way or the other, and that makes him qualified -- in my
19 recollection.

20 THE COURT: I thought that he -- he sounded to
21 me -- he impressed me as a very forthright and serious
22 person and tried his best to -- he said the right
23 things, so I -- (pause). I've reconsidered Mr. Speir
24 and I think that he is well qualified.

25 MR. KULP: Thank you, Your Honor. Next would

1 be Mr. Kieny, Juror No. 183 on the master list. We
2 spent very little time with Mr. Kieny. My notes
3 indicate that ---

4 MR. MURDAUGH: No objection, sir.

5 THE COURT: Okay. Mr. Kieny is excused without
6 objection. He is one that I was certainly concerned
7 about.

8 MR. KULP: The next juror would be Juror No.
9 119 on the master list, Mr. Earl Gibson. The basis for
10 our request that his qualification be reconsidered are
11 that he did have some knowledge, he didn't mention
12 specific articles but he was aware that a trailer had
13 been entered on St. Helena Island and that "a couple of
14 people had been killed".

15 THE COURT: Is he the one that lived over
16 there and had a park of some kind where he ---

17 MR. KULP: No, that was the other gentlemen
18 who ran the trailer park or campground.

19 COURT REPORTER: Mr. Polaschan.

20 THE COURT: Right, Mr. Polaschan. I am trying
21 to place Mr. Gibson.

22 MR. KULP: He was -- his mother was a
23 dispatcher.

24 THE COURT: Yeah, I remember him now.

25 MR. KULP: But the primary reason that we had,

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1 Your Honor, for our request is that he did indicate
2 that he had some prior knowledge. And I think that he
3 did indicate that he had read some article but that he
4 wasn't sure or could not identify exactly what he'd
5 read.

6 THE COURT: My recollection is that he said all
7 the right things.

8 MR. MURDAUGH: Absolutely.

9 MR. KULP: The next juror would be Mr. Michael
10 Everette, Juror No. 95. Mr. Everette was the
11 gentleman who said things like he could not -- that he
12 wasn't sure that he could get it out of his mind. He
13 is the one that introduced -- I guess *sua sponte*
14 wouldn't be the right description, but I believe that
15 he volunteered the expression "executed" when no one
16 else had interjected it in the hearing or his
17 testimony. He said that he'd read two or three
18 articles about the crime and ---

19 THE COURT: Had read at the time that it
20 happened?

21 MR. KULP: Yes, sir. And, well, he also said
22 -- this is how it came up, if you recall, Judge, he
23 said that there were two articles about the crime and
24 he also remembers two people being killed who were told
25 to "get down and were executed".

1 ~~Then he also said, "the problem that I have is~~

2 that if they were found guilty, I would have to
3 recommend the death penalty, no question about it."

4 We had a great deal of argument about the issues
5 in that case, and then he finally said -- I have in my
6 notes that he said that he was "not sure that what he
7 read in the paper that he could get out of his mind."

8 And -- but I think that -- I recall him, Your
9 Honor, I even recall his face that our concern is that
10 he had a preconceived notice of the crime. We noted
11 and I think that we -- I think in terms of reference to
12 the court exhibits, the newspaper articles that we
13 submitted to the Court, where "executed" or "execution"
14 was not in any of the articles. I don't know where he
15 got that information from, but that ---

16 THE COURT: What do you say about that, Mr.
17 Solicitor?

18 MR. MURDAUGH: My recollection of the potential
19 juror is that he again said everything that he -- he
20 said that he would consider everything with an open
21 mind towards either one penalty or the other.

22 He did say something about the newspaper article,
23 and I believe that he said that he scanned it and that
24 he did not read it.

25 MR. KULP: I think that's not right.

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1 THE COURT: If you (court reporter) could,
2 please find Michael Everette's testimony?

3 COURT REPORTER: Yes, sir, I have it.

4 THE COURT: Either I -- you'all go through a
5 five-minute soliloquy and then say, 'Do you agree with
6 that?'

7 MR. MURDAUGH: My recollection is generally better
8 at the time when you're making the decision than two
9 days later.

10 THE COURT: Well, we will go off the record
11 and, Mrs. Garrison, you can go ahead and find that.

12 COURT REPORTER: I have it, Judge.

13 THE COURT: You have it?

14 COURT REPORTER: Yes, sir.

15 THE COURT: Do you want to read it or do you
16 want to play it?

17 COURT REPORTER: How much of it do you want?
18 Let me start and you just tell me if I am reading more
19 than you want, (reading):

20 THE COURT: Did you read anything today?

21 JUROR: I just read the headline and
22 realized that it was that, and I
23 didn't read any more.

24 THE COURT: Can you tell us what you read
25 before?

1 JUROR: I read where two individual entered
2 the house and held some people at
3 gunpoint and basically, what I
4 considered, executed them.

5 THE COURT: Do you remember when you read that?

6 JUROR: Well it was right about the time
7 that it happened. I believe that
8 it was right after the incident. I
9 know that I read two articles
10 regarding that and it may have been
11 three over a period of time.

12 THE COURT: What do you recall from reading
13 them, the basic two or three,
14 whatever they were?

15 JUROR: Well, basically it gave the
16 suspects' names and I didn't recall
17 the name until this, all this
18 stated. I basically recall that
19 there were some people held against
20 their will. I don't recall how
21 long a period of time. And I
22 basically recall that it was two
23 that were killed.

24 THE COURT: Do you understand that if you were
25 selected as a juror that you would

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1 have to decide this issue solely
2 from the testimony that you read
3 here in Court.

4 JUROR: Yes, Your Honor. The only problem
5 that I would have is that if the
6 individual would be found guilty, I
7 would have to recommend the death
8 penalty, no question about it.

9 THE COURT: Is that because of the fact that
10 you have heard about this case?

11 (READBACK CONCLUDED)

12 COURT REPORTER: Excuse me, I don't know what I
13 hit but the screen just flipped back. Let me find it.

14 READBACK (Continued):

15 THE COURT: So you are telling the Court that
16 in this case or in any case that
17 you do not feel that the death
18 penalty is a proper punishment in
19 every case?

20 JUROR: Well, no, sir, I do not.

21 THE COURT: You do not?

22 JUROR: No, sir, I do not feel that the
23 death penalty is proper in every
24 case.

25 THE COURT: So right now it would be your

1 opinion that the death penalty is
2 proper?

3 MR. MURDAUGH: We are satisfied with his answers
4 and do not wish to question him.

5 (READBACK CONCLUDED)

6 And then Mr. Kulp asks him if he has ever heard of
7 Sweetwater, Tennessee -- and he did not answer.

8 Philadelphia -- and he did not answer.

9 Up 411 ---

10 THE COURT: That's fine, I don't need to hear
11 all that. You can skip over all that. All that bait
12 stuff, you'all trying to charm them.

13 MR. KULP: If they don't take the baited hooks
14 home it didn't do any good.

15 COURT REPORTER: Well, I apologize, I just hit
16 whatever again and the screen has flipped back. Let me
17 find it.

18 THE COURT: Take your time. I would rather
19 listen to silence than have to go through all that
20 again.

21 COURT REPORTER: Then in Mr. Kulp's
22 examination:

23 READBACK:

24 MR. KULP: You testified that you read two or
25 three articles?

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1 JUROR: I believe that it was two or three.

2 MR. KULP: Do you recall anything else about
3 those articles. If you would,
4 really think about it and see if
5 you can recall.

6 JUROR: As well as I remember, there was a
7 party. It was two people, they
8 came and it seems like they made
9 one of the victims get down in the
10 living room and the other one in
11 the bedroom and then they shot
12 them. That's the way that I
13 remember it.

14 MR. KULP: Do you remember how long ago that
15 it happened?

16 (READBACK CONCLUDED)

17 THE COURT: You can stop right there. This is
18 off the record and then I will rule on the record in
19 just a moment.

20 (OFF RECORD COMMENTS)

21 THE COURT: After hearing portions of Mr.
22 Everette's testimony, that being Juror No. 95, which is
23 number eight on the list, I am going to grant Defense's
24 Motion that he be excused for cause.

25 I believe that he was about the worse one other

1 than Mr. Kieny. There were just a couple of them that
2 bothered me. Okay.

3 I will hear you again now.

4 MR. KULP: Thank you, Your Honor. If it
5 please the court, the next juror would be Mr. Harkins,
6 Juror No. 183 from the master list.

7 THE COURT: What number is it on our list?

8 MR. MURDAUGH: I believe that it is No. 26.

9 THE COURT: All right. Tell me about Mr.
10 Harkins.

11 MR. KULP: All right. My primary concern
12 about Mr. Harkins relates to his ability to be fair and
13 impartial in the possible sentencing/punishment phase.
14 My notes indicate that he was very, very adamant about
15 his opinion about having a hard life alone would not be
16 a mitigating factor. And he was very convincing on
17 that part.

18 THE COURT: Well, I have to tell you that he
19 said just exactly the same thing -- I remember that and
20 he said exactly what I would say. Just the mere fact
21 that somebody had a hard life doesn't excuse something
22 that happens twenty years later or ten years later.
23 If you've got -- logically you -- we don't want to get
24 too current, but the World Trade Center, who knows what
25 kind of life that they grow up in in the Middle East,

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1 but I'm not going to excuse them for that. I couldn't
2 conscientiously. So I agree with everything that he
3 said, I felt that it was just commonsense and was a
4 fair response to the question.

5 What do you say, Solicitor?

6 MR. MURDAUGH: I agree, sir.

7 THE COURT: So that Motion is denied.

8 MR. KULP: The next would be Mr. Charles Hood,
9 Juror No. ---

10 THE COURT: Yes, his father was a retired FBI
11 Agent. I remember him.

12 MR. KULP: Yes, sir, I do. I'd have to say
13 that I am a former FBI agent but ---

14 THE COURT: Oh, you are?

15 MR. KULP: --- my mother doesn't have a
16 concealed weapons permit. I just found that to be ---

17 THE COURT: Well, isn't that legal? Is that
18 against the law?

19 MR. KULP: No, it is not against the law but
20 it is real unusual. We also, Your Honor, had -- we had
21 some concerns about him based on his responses. He
22 made a remark, Your Honor, that we had some concern
23 about, about "usually guilty". It was confusing
24 whether it related to his description of the planned
25 assault -- you know, I have copious notes but I --

1 (pause).

2 THE COURT: I remember him very well because he
3 was the accountant and he first tried to get off and
4 said that he thought about it and he felt like he could
5 get it ---

6 MR. KULP: That's right.

7 THE COURT: You made all this Motion at the
8 time and were concerned about it. You weren't
9 concerned about Mr. Stonebraker's business, but you
10 were concerned about Mr. Hood's business.

11 MR. KULP: There is a difference. A distinct
12 difference. The difference is that at first he sends
13 his responses back and indicates that he can't do it.
14 Then all of a sudden he comes in and says that he can
15 do it because he has some informal determination ---

16 THE COURT: Well, I think -- that's not
17 unusual. Some of our best jurors just first despise
18 it, just get mad when they're summoned. Then they come
19 and get involved in the process and it turns into a
20 very positive experience for them. I think that's not
21 an uncommon reaction. It's like being drafted, you
22 know?

23 MR. KULP: Thank you, Your Honor. The next
24 would be Mary Bouilly.

25 THE COURT: Yeah, I remember her.

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1 MR. KULP: Ms. Bouilly said that she had
2 scanned *The Island Packet* and was not limiting her
3 testimony to say that she had only seen the title or
4 the header, the heading of the article. We talked to
5 her about that and she did not or could not deny that
6 she had -- she did not assert that she scanned portions
7 of it but we believe that she would be reasonably
8 appropriate in saying that she scanned the entire
9 thing.

10 THE COURT: I remember her testimony about that
11 and I made a specific finding at the time on that
12 issue, I believe. I find that she was -- that I was
13 satisfied with her answers and I thought that they were
14 believable.

15 MR. KULP: Yes, Your Honor. The only aspect
16 would be that we recall her making the expression that
17 people in prison were a "burden on the economy." If
18 that is what her true belief is, then in the penalty or
19 punishment phase she would be more inclined to lean
20 towards the death penalty since the overall cost -- she
21 was the lady who -- her husband was a stockholder and
22 she was also involved in some aspect of security sales
23 or management, some trading, and she had that economic
24 approach to the issue. It worried us that maybe she
25 would more inclined to give the death penalty as

1 opposed to life imprisonment because the cost the
2 taxpayers would have to bear on that for a young man.
3 Thank you.

4 THE COURT: You're welcome. That wasn't Nancy
5 Small that we excused because she had some off-the-wall
6 -- was it? Ms. Bouilly, I don't recall that about her.
7 I remember Ms. Smalls had some kind of unusual, to say
8 the least, responses to the question.

9 MR. KULP: I am pretty sure that it was Ms.
10 Bouilly, Your Honor.

11 COURT REPORTER: Ms. Bouilly said:

12 READBACK:

13 JUROR: I think the death penalty has
14 a place in our law. I think
15 that there are crimes that
16 call for the death penalty and
17 not life imprisonment. I
18 think that if it were not so
19 that the burden on our economy
20 would be unconscionable.

21 MR. MURDAUGH: So are there crimes - does
22 that mandate the death penalty
23 irrespective of other
24 considerations?

25 JUROR: It is not the crime itself, it

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1 is all the other extenuating
2 circumstances.

3 (READBACK CONCLUDED)

4 THE COURT: I think as a whole, I don't see the
5 same person that you do.

6 MR. KULP: I look at it mathematically, Your
7 Honor. If I say -- if in my testimony I would say I'd
8 automatically give the death penalty in every case of
9 murder and then I say 'but I'd go ahead and listen to
10 all the mitigating' -- in other words, it is kind of
11 like we have a red herring out there.

12 THE COURT: Where did she say?

13 MR. KULP: No, no, she didn't say that. If
14 someone says something that causes us to pause, it is a
15 serious element or indicator of a predisposition of the
16 sentencing and punishment that her attempt to correct
17 it by saying that she would consider everything falls
18 within the shadow of that statement.

19 When someone says that -- she associates it first
20 with the crime, alone. 'Certain crimes call for the
21 death penalty but I would go ahead and listen to
22 everything.' That is really the gravamen of our
23 concern about Ms. Bouilly.

24 THE COURT: Well, I don't think that her
25 testimony to have been the way that you summarized it.

1 I think that she is qualified. What do you say,
2 Solicitor?

3 MR. MURDAUGH: I thought that your ruling was
4 right the first time and I think that it is still
5 right, Your Honor.

6 THE COURT: Any more?

7 MR. KULP: The next one is one that we don't
8 have on the Solicitor's list but we could probably
9 locate it pretty quickly. Mr. James Lindsay, his
10 original number was 202 and thirty-seven on the
11 current/final list.

12 THE COURT: Right.

13 MR. KULP: He is the gentleman who said that
14 he had been for some time close friends with the
15 Sheriff, Sheriff Tanner, a close family friend. I am
16 not from around here but I am advised that Deputy
17 Solicitor McCall is engaged to the Sheriff. She's here
18 at the table and may participate or will participate
19 during the course of the trial. You know, I think that
20 considering the gravity of this case that we would
21 address that issue.

22 THE COURT: Is Sheriff Tanner involved in the
23 case?

24 MR. MURDAUGH: No, sir.

25 MR. KULP: Well, he is the Sheriff.

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1 THE COURT: Is he a witness or anything?

2 MR. KNIGHT: As a matter of fact, Your Honor,
3 this event occurred only two or three days after the
4 Sheriff took office for the first time.

5 MS. McCALL: It was before he took office.

6 MR. KNIGHT: Before he took office. Sorry, I
7 got my dates backwards.

8 MS. McCALL: Your Honor, I don't recognize him.

9 MR. KULP: We mention it because we did know
10 that.

11 THE COURT: Well, I don't think knowing someone
12 is -- and I think the cases are pretty clear on that,
13 that the fact that you know somebody who is a witness
14 or are friends with him or something. And, of course,
15 you've had the opportunity to ask questions -- and I am
16 sure that we did ask if that would make any difference.
17 If it was asked, I am sure that he gave the right
18 answer.

19 MR. KULP: Thank you, Your Honor.

20 THE COURT: In fact, I have in my notes,
21 (reading): "The mere fact that a person is a friend or
22 acquaintance of a party or a witness does not render
23 him incompetent as a juror. That is just established
24 law."

25 MR. KULP: Yes, sir. I just think that if

1 there was some connection, some issue, that we -- thank
2 you, Your Honor, we will go on to the next one.

3 THE COURT: Okay.

4 MR. KULP: Mr. John Stanton, Juror No. 376,
5 number thirty-eight on the final list. Mr. Stanton was
6 a qualified juror Poughkeepsie, New York. The concerns
7 that we have on that, on him, is that he saw just the
8 headlines. I think that he said, although I am not
9 sure, and I will be happy to be corrected about that,
10 however he did say that -- he said, "If I feel that a
11 crime has been committed that warrants the death
12 penalty, then the death penalty is warranted."
13 Although -- he said that if mitigating circumstance can
14 be considered that he would consider them.

15 He said, 'I might have a leaning towards the death
16 penalty in a trial of this nature', which I attempted
17 to argue to the Court was an indicator and certainly
18 established impairment.

19 THE COURT: Didn't we seat jurors who seemed to
20 say that they would vote, in a proper case, for the
21 death penalty but that they leaned towards life? I
22 don't think that leaning is -- I think that -- I doubt
23 that there are very many people who says that it is
24 fifty-fifty. So that's just not the test, I don't
25 believe.

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1 MR. KULP: I think that his testimony was "if
2 someone kills someone that it seems to me that under
3 the circumstances of murder that the death penalty
4 would be appropriate." I then asked him, "So you think
5 the death penalty is appropriate?" And he said, "That
6 is correct."

7 I reflect in my notes here and they may be ---

8 THE COURT: Do you want to listen to his
9 testimony?

10 MR. KULP: I have in my notes that he made the
11 comment "a life for a life", and I'm not sure ---

12 THE COURT: No, somebody else said that. I
13 thought about using "an eye for an eye" and "a tooth
14 for a tooth", so forth, but I -- but since that one was
15 gone anyway, I just went ahead and used it.

16 MR. KULP: Yeah, our concerns with Mr. Stanton
17 was that he indicated that -- he did say that if
18 someone has taken a life that a just punishment was to
19 take theirs. He did say that.

20 THE COURT: Okay.

21 MR. KULP: But there are other factors to
22 consider, not just the fact that it was murder.

23 THE COURT: I think that he is qualified. What
24 do you say?

25 MR. MURDAUGH: I ---

1 THE COURT: Your objection is duly noted.

2 MR. KULP: Thank you, Your Honor. And I do
3 believe that that was the last one.

4 Let me clarify our preservation of our exceptions
5 -- not as to the ones that we did not except to your
6 ruling, but we also at this juncture of the proceeding
7 bring up every person that we did make exceptions to
8 for the purposes of arguing now. Those ones that we
9 did not specifically address but excepted to earlier,
10 we just want to preserve our exceptions as to those.
11 It's just our position that we don't need to reargue
12 that to the Court.

13 THE COURT: I understand.

14 MR. KULP: Thank you, Your Honor.

15 THE COURT: In other words, any of these that
16 are on here that you made an objection to, by not
17 mentioning it now you're not waiving any objections
18 that you made at the time simultaneously when we were
19 considering the qualification.

20 MR. KULP: Absolutely, Your Honor. Thank you.

21 THE COURT: Okay. That's all the juror stuff,
22 is that right?

23 MR. KULP: Yes, sir. I beg the Court's
24 indulgence, (sidebar with Mr. Fleming).

25 MR. MURDAUGH: While he is talking, sir, are you

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1 going to get somebody with your staff to redact from
2 this list these ones that have been excused and ---

3 THE COURT: We will renumber them and make a
4 list. Of course, number five and eight come off. So
5 the numbers on this list ---

6 CLERK: Right.

7 THE COURT: And we've made those corrections
8 that you have mentioned. If there are any other
9 corrections, we will try to make them now. Anything
10 else?

11 MR. KULP: Yes, sir, there is another matter
12 if we could approach the bench. A sidebar?

13 THE COURT: Does this have anything to do with
14 -- on the record?

15 MR. KULP: Off the record.

16 (OFF RECORD DISCUSSION)

17 MR. KULP: If it please the Court, Your Honor,
18 the next Motions that we have is a Motion that we would
19 make for the Court's assistance, the Court's Order, to
20 procure evidence critical to the Defense and the
21 ability to cross-examine witnesses called and testified
22 against them.

23 Basically, Your Honor, we would submit to the
24 Court that a critical witness in this case who has
25 testified in previous proceedings is Ms. Jocelyn Wendel

1 Shough and that her father, who was here, ---

2 THE COURT: Excuse me one second, (sidebar with
3 law clerk). Sorry for the interruption, go ahead.

4 MR. KULP: Yes, sir. That a critical witness
5 in this case is Ms. Jocelyn Wendel Shough. She has
6 testified in prior proceedings, during the month of
7 August, I think. Her father is Mr. Scott Wendel. He
8 was present, Your Honor, during those previous
9 proceedings. He advised the Solicitor, in a letter
10 that I have here and that I can procure for the Court's
11 review, that he collected a great deal of information
12 about this case. He suggests in the letter that he
13 reviewed a great deal of evidence in the case, which
14 logically could not have been reported in the initial
15 incident report. It is collected, and I think that it
16 came out during the testimony of Ms. Shough that it is
17 a scrapbook or album that contains information about
18 the case.

19 Our point is that if this album or scrapbook
20 contains information about the case's investigative
21 file not readily available to the public and that
22 information has been reviewed by Ms. Shough, and she
23 testified in those proceedings that she had reviewed
24 it, it is clear that her testimony could have been
25 affected thereby.

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1 For us to competently exercise our right of cross-
2 examination when she testifies, we would need to
3 procure that document or that object intact to be able
4 to use it should an issue arise during her cross-
5 examination. Now, she ---

6 THE COURT: I think that I've heard enough. So
7 what you want is the opportunity to review -- at this
8 stage you just want the opportunity to review and
9 possibly make copies of things in that scrapbook or
10 album?

11 MR. KULP: Yes, sir, Your Honor. It was directly
12 mentioned in the proceedings and the testimony of Ms.
13 Wendel, and we just think in the best interest of --
14 that it be preserved intact and that, uh, -- we ask for
15 the Court's assistant, as the Court has the authority
16 to do, in procuring that document intact, in a reliable
17 way, so that it is not any issue as to what it
18 contained or did not contain because it could in fact
19 relate very critically to this.

20 THE COURT: Solicitor, do you have a position
21 in this?

22 MR. MURDAUGH: Your Honor, please, it is the
23 purpose in my duties as the Solicitor to see that
24 justice is fulfilled. I will leave it to your
25 discretion. If you feel that it will facilitate

1 justice, I have no problem with it.

2 THE COURT: Mr. Wendel, could you come forward,
3 sir?

4 SCOTT WENDEL: Yes, sir.

5 THE COURT: Do you have such an album or
6 scrapbook of materials relating to this?

7 THE COURT: No, sir, I do not. What he was
8 talking about is a matter of public record, basically,
9 the incident reports. It is a scrapbook and it's got
10 all the newspaper clippings since the beginning. The
11 mother-in-law actually has that, that is in her
12 possession. The mother of ---

13 THE COURT: Is she here? Do you have it?

14 MS. DUNCAN: Yes, sir, I do. And all it
15 contains is anything that they want to get from the
16 back papers.

17 MR. WENDEL: Newspaper clippings.

18 MS. DUNCAN: Of my son and cards from the people
19 who sent cards to us.

20 THE COURT: Well, let me ask you this. Is
21 there any objection to just letting them see it? Let
22 me ask you this first, is there any kind of personal
23 things that would cause some embarrassment to you or
24 your family or anything?

25 MS. DUNCAN: I think that it is very personal,

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1 sir. It's the death of my son.

2 THE COURT: What now?

3 MS. DUNCAN: I said that it is very personal.

4 THE COURT: Come forward so that the court
5 reporter can take all this down.

6 COURT REPORTER: What is her name, for the
7 record? Her response was, "I think it is very
8 personal, sir. It is the death of my son."

9 THE COURT: Yeah, I just want her to step up
10 here. You say that it is personal?

11 MS. DUNCAN: It is personal. It is pictures of
12 my son when he was young, through time. It has ---

13 THE COURT: Let me ask you this. I want to
14 make sure that the record is clear on this. Would
15 there be any objection -- in other words, this is a
16 trial and we only want to go through this one time.
17 Would you have any objections to -- in fact, I can have
18 a deputy go out there with you and get it, wherever it
19 is, and bring it back. They are going to -- it is not
20 going to be destroyed.

21 MS. DUNCAN: Oh, no.

22 THE COURT: And let them look at it to see what
23 is in there.

24 MS. DUNCAN: I will let you look at it.

25 THE COURT: Let me look at it?

1 MS. DUNCAN: Yes, sir.

2 THE COURT: That is good enough. Where is it
3 located?

4 MS. DUNCAN: I live here in town.

5 THE COURT: Shall I have a deputy zip you home
6 so that you can pick it up and you'all come right back
7 here, and I'll be glad to look at it. What I will do
8 is I will look at it, in your presence, and then if I
9 find -- then I will come back and if there is anything
10 that I think relates to it, I will come back and talk
11 to the lawyers. Would that offend you?

12 MS. DUNCAN: Not at all.

13 THE COURT: Yes, sir, Mr. Wendel?

14 MR. WENDEL: I just wanted to make sure that --
15 they may say that is not good enough because of the
16 fact when I sent that letter to Mr. Murdaugh, we had
17 the incident reports and it showed, like, I don't know
18 how many pieces of evidence because they counted every
19 beer can as evidence. That's what we were referred to
20 and not getting the trial underway. That has already
21 come before you once and you said that's 'whatever' and
22 that was the end of that.

23 THE COURT: I just don't want any technicality,
24 anybody trying to make a mountain out of a molehill and
25 I know that you don't either.

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1 COURT REPORTER: I need your name, ma'am.

2 MS. DUNCAN: Linda Duncan.

3 MR. KULP: Gentlemen, what Mr. Wendel referred
4 to is exactly what we want. We are not interested in
5 seeing this lady's ---

6 THE COURT: Well, I am going to ask her to
7 bring the whole thing in and we're going over it
8 together. Do you have a question, Mr. Green:

9 DEPUTY GREEN: I was going to take her straight
10 away to pick up ---

11 THE COURT: Great. If you would, do that. It
12 won't take but a minute and we will wait here.

13 MR. KULP: But also, Your Honor, what he is
14 referring to is the incident report.

15 THE COURT: We will talk about it after we see
16 it. I don't know exactly what is in there. In other
17 words, you want to see ---

18 MR. KULP: I think that it is a different
19 location.

20 THE COURT: Do you have it?

21 MS. DUNCAN: Of course I have it.

22 MR. KULP: Very good.

23 MR. WENDEL: She's got it.

24 MS. DUNCAN: I am his mother. I am allowed to
25 know what happened to him.

1 THE COURT: We are off the record and we will
2 just stand at-ease until she gets back and then we will
3 sort this out. Before I do anything else, anything
4 else? Oh, yeah, I do have one other thing. Did you --
5 this purports to be, and it could change if somebody
6 finds some error, but this is the final corrected
7 version of the jury list. I am going to go ahead and
8 make it a Court's exhibit and we can change it later.
9 Is that ---

10 MR. KULP: Yes, sir, Your Honor.

11 COURT REPORTER: Court's Exhibit 7.

12 (SO ENTERED AS COURT'S EXHIBIT 7.)

13 MR. KULP: Thank you, Your Honor.

14 THE COURT: We will stand at-ease until Mr.
15 Green gets back with Ms. Wendel (sic), and then we can
16 get that out of the way.

17 (BRIEF RECESS 12:40 to 1:30 P.M.)

18 (OFF RECORD REVIEW OF SCRAPBOOK)

19 THE COURT: Mr. Kulp -- well, actually Mr.
20 Fleming made this Motion. Mr. Fleming, I have been
21 through the scrapbook and there it is -- Ms. Duncan is
22 holding it. I have taken out these documents which
23 appear to be the Detective's file, photocopies of
24 everything. I will let you look at this.

25 The remaining matters in there are all of a

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1 personal nature and have no evidentiary value that I
2 can think of, unless you can tell me something. It is
3 things like photographs at various ages of him. And is
4 that his sister, too? The child sitting in the back
5 back there?

6 MS. DUNCAN: (Affirmative nod).

7 THE COURT: Photographs from as recently as
8 when he was buying a truck or thinking about buying one
9 some few months ago, and then cards and all that people
10 sent at the time of the funeral. And newspaper
11 articles, all of which were published here in Beaufort
12 County for the -- and the Beaufort Gazette off the
13 internet, which was the same thing as each one of those
14 things published in the paper.

15 Now, this is the information that I am sure was
16 given by the Solicitor or somebody on behalf of the
17 State.

18 MR. FLEMING: Thank you, Your Honor.

19 MR. KULP: And we want to make sure the
20 photographs and stuff, the material that you reviewed,
21 that there are no photographs of the Defendant, either
22 depicted in a newspaper article or in any other
23 respect. Is that the case?

24 THE COURT: No, there are photographs of the
25 Defendant in there.

1 MR. KULP: There are?

2 THE COURT: (Affirmative nod), like he was
3 buying a truck ---

4 MR. KULP: No, not -- of Mr. Rogers.

5 THE COURT: Oh, oh, the defendant. I'm sorry.

6 MR. KULP: Yes, sir.

7 THE COURT: There is nothing in there of Mr.
8 Rogers unless his photograph might been, and I did not
9 look that carefully, but the only way that it would
10 have been in there would be if it was part of a news
11 article. And I don't believe that was the case.

12 There is nothing in there that refers to Mr.
13 Rogers unless it was mentioned in a newspaper article.
14 Is that right?

15 MS. DUNCAN: Correct.

16 THE COURT: Ms. Duncan says that is correct.
17 It's strictly just a family thing. There must be fifty
18 or a hundred cards and things when they published the
19 little memory -- put the thing in the newspaper. It is
20 just exactly what it purports to be.

21 MR. KULP: Yes, sir, I will just flip through
22 this very briefly.

23 THE COURT: Take your time.

24 MR. FLEMING: Your Honor, while we are waiting,
25 if I may submit this as a court's exhibit, this is our

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1 compilation of the media coverage that we found that
2 would be offered in addition to that which we have
3 already submitted. There are just photocopies of
4 newspaper articles for the record.

5 THE COURT: Any objection, Solicitor?

6 MR. MURDAUGH: No, sir.

7 THE COURT: Received without objection.

8 COURT REPORTER: Marked collectively as Court's
9 Exhibit 8.

10 (SO ENTERED AS COURT'S EXHIBIT 8)

11 MR. KULP: I have perused this very carefully
12 and some of this are documents that we have not been
13 provided in discovery. Could we get a copy of these,
14 Your Honor, for our files?

15 THE COURT: I am satisfied that you got every
16 one of those. Don't you think?

17 MR. KULP: Well, I know but it just ---

18 THE COURT: Well, if you want to make a copy of
19 it -- any objection to him holding onto that for a
20 while and making a copy of it?

21 MS. DUNCAN: No.

22 MR. KULP: Thank you, Your Honor.

23 MR. MURDAUGH: We will make it.

24 THE COURT: You go make a copy of it.

25 MR. KULP: Thank you, Your Honor

1 THE COURT: Anything else?

2 MR. KULP: Appreciate it.

3 THE COURT: Is there anything else that we need
4 to do until tomorrow?

5 MR. KULP: No, Your Honor.

6 THE COURT: Solicitor, you will have your
7 witness ready to go as soon as the trial starts?

8 MR. MURDAUGH: Yes, sir.

9 THE COURT: What I intend to do is -- I think
10 this is probably the best way. From my experience --
11 not from my experience but in talking with other judges
12 and so forth, is to turn them over and let the SLED
13 agents -- I will swear in the jury, swear in the agents
14 who are going to be taking care of them, turn them over
15 to them and then they can take them over and get them
16 settled in the hotel so that they don't have to worry
17 about their belongings and everything. So we won't
18 start the case right then.

19 MR. MURDAUGH: Which means that we would be 9:30,
20 10:30, probably 11:30 starting?

21 THE COURT: Yeah. One other thing that we
22 could.

23 MR. MURDAUGH: We could wait and take them over
24 there at lunch. Have a little bit longer lunch hour.

25 THE COURT: Well, why don't we do it that way.

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1 That way we can at least get the opening statements out
2 of the way. And if you've got a short witness or
3 something.

4 MR. MURDAUGH: Three witnesses, which would be
5 about half of my case.

6 THE COURT: All right. What about any requests
7 to charge, are you'all going to have any?

8 MR. FLEMING: We are working on them now.

9 MR. MURDAUGH: I can get you some but I think that
10 you've got everything. It's going to be straight
11 murder.

12 MR. KULP: What might facilitate that, Your
13 Honor, is if the Court would entertain our request and
14 Motion to review the Court's charges, standard charges
15 and then we wouldn't duplicate any. If you're opposed
16 to that, we do have some.

17 THE COURT: Well, of course, we got -- we're
18 off the record.

19 (COURT IN RECESS AT 2:15 P.M.)

20 (TRANSCRIPT CONTINUED NEXT PAGE)

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25

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

99-GS-07-221 thru 222

99-GS-07-281 thru 288

TAVARUS ROGERS

Defendant.

JURY TRIAL
OCTOBER 12, 2001 - Volume 5 of 7 Volumes

The within Jury Trial was held before the Honorable Jackson V. Gregory, on October 8-16, 2001, in Courtroom No. 1 of the Beaufort Government Center, Beaufort, South Carolina; attended by counsel, as follows:

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Steven Knight, Deputy Solicitor
Angie McCall, Deputy Solicitor
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1 OCTOBER 12, 2001

9:30 A.M.

2 (DEFENDANT PRESENT)

3 THE COURT: Good morning. The Clerk is over
4 there calling the roll of the jurors. When she
5 concludes that, we will bring them in and I -- I've
6 told you what I am going to do. I am going to ask them
7 if there is anything new. And if anybody has any
8 response to any questions, then we are -- I am going to
9 send them over there and we're going to strike the Jury
10 out of their presence anyway. But if there are any
11 problems then we will, of course, bring those people in
12 individually and talk to them on the record.

13 MR. MURDAUGH: If Your Honor, please, I might
14 announce to the Court that it is not the intention of
15 the Solicitor's office to go to trial on Indictment 99-
16 GS-07-287, which is the indictment against Tavarus
17 Rogers for possession of firearms during the commission
18 of a crime.

19 THE COURT: Okay.

20 MR. MURDAUGH: I have null proessed it and am
21 turning it over to the Clerk of Court, (tendering to
22 Deputy Clerk). My reason for doing that, sir, is that
23 in examining the statute, I find that if he is
24 convicted of murder, given life or death, that he

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1 cannot then be sentenced on that charge. So it is just
2 superfluous.

3 THE COURT: Very good.

4 MR. MURDAUGH: And it simplifies the trial a
5 little bit. Not much.

6 THE COURT: Go ahead.

7 MR. KULP: Your Honor, another matter if the
8 Court please.

9 THE COURT: Yes, sir?

10 MR. KULP: Mr. Fleming and I had a meeting
11 last night and we thought about the process of
12 striking. It does bear a resemblance to the method of
13 striking in a civil proceeding, by just striking off
14 the list that we have. We were thinking of asking you
15 to consider the possibility of bringing the jurors just
16 here to the rail, as they did when they first came back
17 in, so that we can again match faces and names and so
18 forth. That might aid in exercising our challenges.
19 Then at that point ask them ---

20 THE COURT: Well, why did you wait until we
21 called the roll? Because I could have very easily have
22 brought them in here. If you will, please -- if that
23 is what you want, I am not going to strike them in here
24 -- ask the Clerk to stop and let the jurors come in
25 here and call the roll. I am not going to do that.

1 I told you how I am going to do it. It's been done
2 this way numerous times.

3 MR. KULP: Yes, sir. I understand. And then
4 you will ask them collectively if they've been exposed
5 to ---

6 THE COURT: I am going to ask them. Then if
7 there is any response, I am going to send them across
8 the hall. But we are going to strike out of their
9 presence.

10 MR. KULP: Very good, Your Honor.

11 THE COURT: We can do it a lot quicker and
12 there is a lot less chance, because you'all can speak
13 freely, and I think everybody is -- the record is a
14 whole lot better served by that. Is the jury ready to
15 come in?

16 MR. MURDAUGH: Juror 7, Your Honor, ---

17 THE COURT: Yes, let's put something on the
18 record. Is the jury ready to come in?

19 BAILIFF: Yes, sir. The jury is all here,
20 sir. They are now ready to come in.

21 THE COURT: Bring them in.

22 MR. KULP: I think that would be fine, and
23 would take a lot less time. Thank you.

24 THE COURT: While the jury is coming in, Juror
25 No. 7 on this list, Mr. Youmans is excused by

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1 agreement. It that correct?

2 MR. KULP: That is correct, Your Honor.

3 MR. MURDAUGH: That's correct.

4 (PANEL OF POTENTIAL JURORS ENTERS COURTROOM)

5 THE COURT: Everybody is here, except Mr.
6 Youmans?

7 THE CLERK: Yes, sir.

8 THE COURT: Good morning, Ladies and Gentlemen.
9 Let me get my microphone on. I hope everyone is doing
10 well and ready to go to work.

11 I had instructed Mrs. Smith to call the roll
12 across the hall but then the lawyers requested, and I
13 thought that it was a fair request, that the roll be
14 called -- since we have been doing this all week -- and
15 that each juror please stand so that they can reaffirm
16 the connection of a name with a face. I thought that
17 was a reasonable thing to do, so I have granted that
18 request.

19 If you will, please proceed Mrs. Smith.

20 THE CLERK:

21 Joseph Stonebraker

22 Lucille Morrison

23 Clyletha Williams

24 Michael Speir

25 Judith Hillis

1	Earl Gibson
2	June Gambla
3	Leslie Rhodan
4	Susan Singleton
5	Donna Johnston
6	Molly Strimpfel McDonough
7	Cheryl Barton
8	Frankie Primus
9	Suzanne Munford
10	Pamela Darden
11	Joseph Polaschan
12	Carmalita McMullen
13	Harvey Rutland
14	Betty Middleton
15	Barbara Barrett
16	Thomas Schau
17	Janice Roeder
18	John Harkins
19	Stan McLaughlin
20	Teri Derouen
21	Charles Hood
22	Mary Bouilly
23	Koren Pope
24	Janet Belle-Isle
25	Patricia Williams

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1 Sharon DeMars
2 Delores Mitchell
3 Geneva Wright
4 James Lindsay
5 John Stanton
6 Diane Garnett
7 Harold Womack
8 Judy Messer
9 James Locke
10 Susan Murphy
11 Walter Burns
12 Richard Wiles
13 Sandra Strickland
14 Krista Solley

15 THE COURT: Thank you very much, Ladies and
16 Gentlemen. At this time -- if anyone has a response to
17 the next couple of questions, I'd ask that you please
18 stand and give us your name and juror number. And, of
19 course, I remind you that you were placed under oath on
20 Monday and that you're still under oath.

21 Has any member of the panel since you were
22 interviewed or if you've been thinking about something
23 that may -- some answer that you gave that you want to
24 reconsider or something like that, uh, -- but has
25 anybody heard anything, has anybody talked to anyone

1 about it or seen any media reports: newspaper, TV,
2 radio? Anything that has happened -- and, of course,
3 we have been through this so many times -- that you
4 feel like you need to report to the Court?

5 Your name, please?

6 POTENTIAL JUROR: Molly McDonough. Juror No.
7 383.

8 THE COURT: Okay, Ms. McDonough, please be
9 seated. Yes, ma'am.

10 POTENTIAL JUROR: Frankie Primus.

11 THE COURT: Yes, ma'am?

12 POTENTIAL JUROR: Leslie Roldan, Juror No. 329.

13 THE COURT: Okay. Yes, sir?

14 POTENTIAL JUROR: Michael Speir, Juror No. 373.

15 THE COURT: Is there anyone else? (No
16 response). Has anyone had any family business, any
17 other kind of situations that might have changed your
18 situation with regard to your ability to be sequestered
19 for three nights? Any kind of family emergencies or
20 health problems or anything like that? (No response).

21 Anybody have anything else that they want to talk
22 to me about? (No response). That's good.

23 If you would, I am going to ask that all the
24 jurors please go back across the hall. I am going to
25 call these jurors in individually so that we can

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1 clarify those matters and then we will continue until
2 we get the jury seated. You may retire across the
3 hall.

4 (PANEL OF POTENTIAL JURORS EXIT COURTROOM)

5 THE COURT: All jurors have departed, the door
6 is closed. Now I will turn off my microphone. First
7 off, -- do you want us to take up Mr. Stonebreaker's
8 situation last? Well, let's take it up first.

9 MR. FLEMING: Your Honor, we have -- in our
10 discussions yesterday concerning this juror, you
11 indicated that you had some concerns about his work
12 requirements, the fact that he was involved in
13 something that was important to his company. After
14 further review -- we initially objected to his removal.
15 After further review, we would withdraw our objection
16 and understand the dilemma that he is in.

17 THE COURT: What is the State's position?

18 MR. MURDAUGH: Yesterday, I told you that I didn't
19 have any problem with that. But I tell you what, he'd
20 be a darn good juror for me. I am sympathetic to his
21 plight but, on the other hand, I don't want to excuse
22 him. I think he's qualified.

23 THE COURT: Okay. Then anything else that
24 anybody wants to say before we bring in the jurors?

25 MR. KULP: No, sir.

1 THE COURT: Okay. The first one is Michael
2 Speirs, Juror No. 373. Tell Mr. Speirs to come on in.

3 (POTENTIAL JUROR ENTERS COURTROOM)

4 THE COURT: Come right on up here, Mr. Speir.
5 Mr. Speirs, I remind you that you're still under oath.

6 MR. SPIERS: Yes, sir. I haven't discussed the
7 case or anything like that other than just to let
8 people know what I was doing during the qualification,
9 no discussion. But it was brought to my attention,
10 something that I need to let you know that I didn't
11 think of the other day. My permanent place of
12 residence is in North Carolina. I am here on orders.
13 I do own a home in Beaufort but my residence is in
14 North Carolina. I didn't think of that the other day.
15 I have a driver's license for South Carolina. But I
16 thought perhaps I should bring this to your attention,
17 because the people that I work with mentioned that ---

18 THE COURT: In other words, you pay your taxes
19 through North Carolina?

20 MR. SPEIRS: Yes, sir.

21 MR. MURDAUGH: Voter registration?

22 THE COURT: Where do you vote?

23 MR. SPEIRS: I vote in North Carolina.

24 THE CLERK: He drives here, though.

25 THE COURT: I understand. And, of course, the

1 military is about the only ones that -- do you'all want
2 to approach the sidebar?

3 MR. MURDAUGH: I don't think that it is necessary.

4 MR. FLEMING: No, sir.

5 MR. MURDAUGH: I think that he is disqualified.

6 THE COURT: I think that he is, too. Do you
7 agree with that?

8 MR. FLEMING: Obviously.

9 THE COURT: Thank you, sir. I think you're
10 disqualified, too, because I think your voter
11 registration -- if you were not registered to vote, I
12 think you probably would be qualified -- if you were
13 not registered to vote anywhere. I think that you are
14 a North Carolina resident and ---

15 MR. SPEIRS: Yes, sir, (affirmative nod).

16 THE COURT: So you are excused, by agreement.
17 Have a nice day.

18 (JUROR EXCUSED)

19 THE COURT: Juror No. 329, Leslie Roldan.

20 (POTENTIAL JUROR ENTERS COURTROOM)

21 THE COURT: Yes, ma'am?

22 MS. ROLDAN: Could I speak to you aside?

23 THE COURT: Excuse me?

24 MS. ROLDAN: Could I talk to you rather than the
25 whole court?

1 THE COURT: Well, I could speak to you but it
2 would -- is it okay for the attorneys to be present?

3 MS. ROLDAN: Oh, yes, that's fine.

4 THE COURT: Just come around over here.

5 SIDEBAR:

6 THE COURT: Yes, ma'am?

7 MS. ROLDAN: I work with Lewis Dore's
8 office and I didn't know that
9 we are -- and when I entered
10 the courtroom this morning I
11 recognize one of the women
12 that is with the defendant.

13 THE COURT: What do you do there?

14 MS. ROLDAN: I am the receptionist.

15 THE COURT: Which one are you talking
16 about?

17 MS. ROLDAN: With the Defendant. I don't
18 know her name.

19 THE COURT: On this side of the room?

20 MS. ROLDAN: Yes, sir.

21 THE COURT: We're representing some of the
22 Rogers family -- or we're
23 working with Mrs. Rogers on
24 something. I think her name is
25 Gwen Rogers. I didn't know

1 would be a problem for me but
2 she might not ---

3 THE COURT: Well, the test is whether it
4 would cause you any problems,
5 make you feel funny or cause
6 you any embarrassment.

7 MS. ROLDAN: Well, I don't think that I
8 would be embarrassed but I
9 would feel funny, you know, if
10 she thought -- you know, with
11 her coming in the office and
12 the case not being settled.
13 We have to work with her on
14 the case.

15 MR. MURDAUGH: Well, I can see how it would
16 be a problem.

17 (SIDEBAR CONCLUDED)

18 THE COURT: If you will, just step back and let
19 me discuss it with the attorneys.

20 MR. MURDAUGH: I think she is disqualified.

21 THE COURT: Where is Ms. Roldan?

22 MS. ROLDAN: Here I am.

23 THE COURT: Sorry, I overlooked you you're so
24 small. Ms. Roldan, we have discussed the matter and
25 I'd ask that you please retire back to the jury

1 assembly room. We'll call you back in here in just a
2 moment after we've discussed the matter fully.

3 (POTENTIAL JUROR EXITS COURTROOM)

4 THE COURT: I am going to -- I don't think that
5 I would be violating -- I didn't ask her about
6 discussing that with her but I think ---

7 MR. MURDAUGH: I think that we need to get it on
8 the record, if Your Honor please, unless there is an
9 agreement -- and there isn't.

10 THE COURT: Well, I wonder if I ought not to
11 tell -- I don't think she would care. It's got to be
12 on the record. Okay. Basically -- and if anybody --
13 the attorneys for both sides were present, but I am
14 going to state what Ms. Roldan's concern was. She is
15 the receptionist at the Louis Dore Law firm. A family
16 member of the defendant, Gwen Rogers, who -- is that
17 the mother?

18 MR. *FLEMING: She is a relative but she is not on
19 the witness list.

20 THE COURT: She is not on the witness list.
21 But she has ongoing business with the firm -- and of
22 course we don't have any right to know, and don't know,
23 what kind of business it is. She has an ongoing -- and
24 in her job, she anticipates that she will -- that she
25 has, since this, and will in the future -- have contact

1 with Mrs. Rogers and feels like the matter makes her
2 feel funny. Of course, it came up in a previous
3 conference and it was pretty close, is my recollection,
4 that Mr. Dore may have at one time -- was it Anthony or
5 Louis?

6 MR. MURDAUGH: Louis Dore represented West
7 McKinnon at one point.

8 THE COURT: Who is a codefendant?

9 MR. MURDAUGH: Is a codefendant.

10 THE COURT: But we felt that that was okay.
11 because that was before she went to work at the law
12 firm and she had no personal knowledge of anything
13 about that.

14 MR. MURDAUGH: That's what she said.

15 THE COURT: That's what she said, and we think
16 that she is -- is there any other thing that I left out
17 about what she just said? She also said that she
18 actually didn't know of any connection with Mrs. Gwen
19 Rogers and with the defendant until she came in today
20 and saw her sitting with the family.

21 MR. MURDAUGH: That's true. That's correct.

22 THE COURT: What is the State's position?

23 MR. MURDAUGH: She should be excused.

24 MR. FLEMING: The individual that she says that
25 she is familiar with is not a witness in this case.

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1 Additionally, she did not say that she couldn't be fair
2 and impartial based on the relationship. It is
3 analogous to the relationship of the juror, Mr. James
4 Lindsay, who is close personal friends of Sheriff
5 Tanner. Sheriff Tanner has nothing particular to do
6 with this case, however four of his lead detectives do
7 and have assisted in the prosecution of this case. The
8 relationship is analogous. And if Mr. Lindsey is
9 qualified to serve, then so should Ms. Roldan be
10 qualified to serve.

11 THE COURT: Well, I think that you have to act
12 -- this Court sort of takes them one at a time. I
13 don't think that there is any precedent there.

14 Of course, Ms. Roldan was pretty clear that she
15 will have a continuing relationship in her employment
16 with Mrs. Rogers. And she said that she would feel
17 funny. The test of friendship or acquaintance, that
18 does not render a person incompetent as a juror. I
19 agree with that to the extent that the issue to
20 determine is whether or not the relationship would
21 prevent the juror from giving a fair and impartial
22 trial. I think that she indicated to me that she would
23 rather not and that she said that she felt -- I believe
24 that she said that she felt funny about it or
25 something. Or maybe I asked her -- she said that she

1 wouldn't be embarrassed or whatever but that she had
2 concerns.

3 And the fact that she addressed the court -- I am going
4 to -- I think that it is necessary that Ms. Roldan be
5 excused. Anything else that you want to put on the
6 record?

7 MR. FLEMING: No, sir.

8 THE COURT: Would you show Ms. Roldan in,
9 please?

10 (POTENTIAL JUROR RETURNS TO COURTROOM)

11 THE COURT: Ms. Roldan, having considered what
12 you told the Court and the attorneys and everything, I
13 think it is necessary that you be excused from the
14 trial of this case. Thank you for being forthright. I
15 hope that you have a nice day. You are excused.

16 (JUROR EXCUSED)

17 THE COURT: Juror No. 383, Molly Strimpfel
18 McDonough.

19 (POTENTIAL JUROR ENTERS COURTROOM)

20 THE COURT: Ms. McDonough, just come down to
21 the front unless you think that it is something pretty
22 complicated. Do you want to come up here? Is this
23 something personal?

24 MS. McDONOUGH: I don't know if I can say it
25 to everyone because it is about information that was

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1 given to me about the case.

2 THE COURT: Huh?

3 MS. McDONOUGH: It is about information that
4 was given to me about the case.

5 THE COURT: Okay, that's the reason that I am
6 taking these things up outside the presence of the
7 other jurors.

8 MS. McDONOUGH: Okay.

9 THE COURT: What do you have?

10 MS. McDONOUGH: I was given information about
11 the case. I guess somebody had read in the paper and
12 they didn't realize that I was a potential juror and
13 they told me that he had confessed to the murders and
14 that the confession wouldn't be allowed in the court
15 because it was obtained illegally. So with this
16 information, I don't think that I should be a juror.

17 THE COURT: Well, I think you're correct. Any
18 objection?

19 MR. KULP: None, Your Honor.

20 MR. MURDAUGH: No, sir.

21 THE COURT: I'm sorry that they told you that.
22 I know that you didn't want that to happen. I will,
23 therefore, excuse you.

24 MR. KULP: Before the young lady leaves, will
25 the Court please inquire of her as to whether or not

1 she shared that information with any other juror?

2 THE COURT: Okay. Did you speak of that to any
3 other juror?

4 MS. McDONOUGH: No, I did not.

5 THE COURT: Of course, when you leave don't say
6 anything about that.

7 MR. KULP: Is she aware of any other juror on
8 the panel who encountered similar circumstances?

9 MS. McDONOUGH: No.

10 MR. KULP: Thank you.

11 THE COURT: Thank you for being forthright.
12 You are excused.

13 (JUROR EXCUSED)

14 THE COURT: Frankie Primus, Juror No. 298.

15 (POTENTIAL JUROR ENTERS COURTROOM)

16 THE COURT: Good morning, Ms. Primus. How are
17 you? Go ahead.

18 MS. PRIMUS: Since I have had time to think
19 about this and what I am participating in, I have a
20 brother who is spending life in prison and I don't
21 think that he should be spending life in prison because
22 of what he did. I don't feel like I should judge
23 someone for what they have done. I feel like God is
24 the only person who can -- that's between God and them.

25 THE COURT: So you feel like the fact that you

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1 have a brother who is serving a life sentence that you
2 just don't feel like ---

3 MS. PRIMUS: That I would be -- that I could not
4 make a decision on whether or not he lives or dies, or
5 whether he should spend life in prison. It's not for
6 me to say.

7 THE COURT: Any questions from the State of Ms.
8 Primus?

9 MR. MURDAUGH: Yes, sir. Could you inquire of
10 her, and I think that she has answered the question,
11 specifically the question, "Would the matter that she
12 has brought to the Court, ---

13 THE COURT: Just go ahead and ask her.

14 MR. MURDAUGH: "...would that affect her ability
15 to be fair and impartial in rendering a decision?"

16 THE COURT: Oh, okay. Would this, or anything
17 else, prevent you from giving a fair and impartial
18 trial to both the State and the defendant?

19 MS. PRIMUS: I think so.

20 THE COURT: All right. Could you lay aside
21 this thing dealing with your brother and everything
22 else and render a verdict based upon the evidence or
23 would this thing about your brother be too overwhelming
24 for you?

25 MS. PRIMUS: I probably could lay aside the

1 issue with my brother but also what I am saying is that
2 hearing his information, I know for a fact that with my
3 brother that a lot of things didn't come up in his
4 trial that could have made a difference in his
5 sentence. So I'm thinking maybe some stuff in this
6 trial wouldn't come out to the jurors, and -- you know,
7 I could be making the wrong decision if I didn't hear
8 it.

9 THE COURT: Let me ask you this, can you
10 follow the law as charged and base your verdict, in
11 both the guilt phase and the penalty phase, based on
12 the evidence presented?

13 MS. PRIMUS: Can you say that again?

14 THE COURT: Can you follow the law as the Court
15 charges you, can you follow the law as charged and base
16 your verdict, both in the guilt phase and the penalty
17 phase, if we get that far, upon the evidence that is
18 presented in the trial?

19 MS. PRIMUS: I would like to say that I could
20 but in the back of my mind I would be wondering if
21 something else was there and I don't know it.

22 THE COURT: In other words, are you telling me
23 that you always -- that the experience with your
24 brother's case would always -- that you would always
25 evaluate this evidence based upon what happened in that

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1 case?

2 MS. PRIMUS: No, I wouldn't base it on what
3 happened in his case. I don't know how to explain it
4 but I'm just saying that because of knowing what
5 happened in his case, some things -- evidence,
6 witnesses -- were not there to say what exactly
7 happened, things like that. And, you know, that could
8 happen in his (indicating defendant) case.

9 THE COURT: And what would that cause ---

10 MS. PRIMUS: If I say, 'oh, yeah, he's guilty'
11 and then later on someone who was a witness or -- I
12 would feel like, with all my heart, that I chose the
13 wrong sentence if I didn't get all the information.

14 THE COURT: Okay. Any other questions from the
15 State?

16 MR. MURDAUGH: No, sir.

17 THE COURT: Anything from the defense?

18 MR. FLEMING: May we have some discussion on it?

19 THE COURT: Would you please -- and while
20 you're back in there, as I told you before, don't talk
21 to any other jurors. We'll bring you back in here in
22 just a moment.

23 (POTENTIAL JUROR EXITS COURTROOM)

24 THE COURT: What says the State?

25 MR. MURDAUGH: If Your Honor please, I think that

1 she is absolutely disqualified. She's said, in
2 essence, that her brother was wrongfully convicted of
3 murder and that it would have a play in her decision,
4 in the back of her mind. I just think that she is
5 disqualified.

6 THE COURT: Mr. Fleming?

7 MR. FLEMING: I disagree with the Solicitor, Your
8 Honor. She, in essence, did not say that. In fact,
9 she said that she could be -- that consciously that she
10 could be fair. She has met the standard. What she
11 said was that her life experience, that she would draw
12 on her life experiences to make a decision in this
13 case; which is what Your Honor will eventually charge
14 the jury, and what the Solicitor will say -- 'your good
15 commonsense and your life experience, you don't leave
16 that at the door.' She is just saying that she's got
17 life experiences different than the particular juror
18 that the Solicitor wants. If he doesn't like her, he
19 can strike her. But she is qualified pursuant to the
20 standards of ---

21 MR. MURDAUGH: That is not what she says. She
22 says that consciously that she could be fair but that
23 subconsciously she could not. And you can't go
24 consciously or subconsciously. She said that sub-
25 consciously that she could not be fair.

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1 THE COURT: Well, she said some of all of that.

2 MR. FLEMING: Yes, sir.

3 THE COURT: In other words she said it both
4 ways, I think.

5 MR. MURDAUGH: And Mr. Knight just reminded me
6 that she, in essence, says that she couldn't give death
7 or life.

8 THE COURT: Well, she did something else, too.

9 MR. MURDAUGH: I understand.

10 THE COURT: She also said that she would be
11 thinking outside the record because she would always
12 have in her mind that there's something else outside
13 the record. Usually that's where the State, way back
14 yonder used to ---

15 MR. MURDAUGH: Still do.

16 THE COURT: Try to. But, uh, she -- she was
17 expressing the fact that she would not be able to keep
18 her considerations within the trial record because of
19 what happened to her brother. That's the part that
20 bothers me about the case, because she would always
21 wonder about those unknown witnesses, about what they
22 might say and everything. In my mind, she therefore
23 wouldn't be following the charge and the law.

24 I will hear you on that point, Mr. Fleming, if you
25 want to. That, to my mind, concerns me more than

1 anything else, is that she would be taking into
2 consideration -- going into the case expecting there to
3 be some untold story out there. I think that's wrong.
4 Anything else that you want to say?

5 MR. FLEMING: No.

6 THE COURT: The juror is excused -- over your
7 objection.

8 MR. KULP: Yes, please note our exception,
9 Your Honor. And as to the other ---

10 THE COURT: Now, the only two that you excepted
11 to was Ms. Roldan and Ms. Primus.

12 MR. KULP: Yes, sir.

13 THE COURT: You -- nobody excepted to Ms.
14 McDonough. And, of course, Mr. Youmans, we -- have we
15 already put that on the record? Let's do it again
16 because that was while the jury was here.

17 Mr. Youmans is Juror No. 441. He called in and
18 left a message with the Clerk's Office and said that he
19 was sick and on his way to a doctor. So he is excused
20 without objection. Is that correct?

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

22 MR. MURDAUGH: (Affirmative nod).

23 THE COURT: And Mr. Speir was excused also, and
24 that was without objection.

25 MR. KULP: Yes, sir. As well as Ms.

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1 McDonough.

2 THE COURT: Ms. McDonough, yes.. Are we now
3 ready? Anything else that anybody has?

4 MR. MURDAUGH: No, sir.

5 THE COURT: Oh, there was one other juror that
6 I had a message about, and I am not sure where this
7 message came from. Ms. Messer called in -- did you
8 speak with Ms. Messer, who is a Catholic, who said that
9 she had to have Mass on Sunday or something?

10 THE CLERK: No, Your Honor, I didn't speak with
11 her. She called in and spoke with Joni.

12 THE COURT: What did she say?

13 DEPUTY CLERK: She inquired if she would be
14 able to go to Mass. She felt like she ought to be able
15 to do that.

16 THE COURT: I just want you'all to know that.
17 She didn't stand up, and she was given an opportunity.
18 I just wanted anything that we knew about a juror to --
19 I think that you'all ought to be informed, too. But I
20 don't take that as a request to be excused and I don't
21 think that is grounds to be excused. Do you'all agree
22 with that?

23 MR. KULP: Yes, sir.

24 MR. MURDAUGH: I do, sir?

25 THE COURT: Do you have something else, sir?

1 MR. MURDAUGH: Yes, sir. We have excused five
2 jurors out of the first fourteen, which significantly
3 changes my strikes. Can I have about five minutes?

4 THE COURT: Sure. One thing now, you can't go
5 ahead and work it out as you do in a civil thing about
6 the -- I want to make sure that there is no confusion
7 there, because -- suppose the entire fifteen strikes
8 are not used. We start the alternatives with the next
9 one.

10 MR. MURDAUGH: I understand.

11 THE COURT: And if you don't use them on the
12 alternates, though, we will have to go down each time
13 and we will confirm that each time. But you'all
14 understand that, don't you?

15 MR. KNIGHT: Yes, sir.

16 MR. KULP: Yes, sir, Your Honor.

17 MR. MURDAUGH: I am pretty sure that I know who
18 they're going to strike and they are pretty sure they
19 know who I am going to strike.

20 THE COURT: It is now approaching twenty after
21 10:00, do you'all want ten minutes?

22 MR. MURDAUGH: Five minutes is all I need, sir.

23 MR. KNIGHT: I don't recall you excusing Ms.
24 Primus.

25 THE COURT: Oh, I did not. Would you send Ms.

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1 Primus in, sir? Thank you, sir. I appreciate that.
2 I don't think I could ever run a railroad.

3 (POTENTIAL JUROR RETURNS TO COURTROOM)

4 THE COURT: Ms. Primus, thank you for being so
5 forthcoming and candid about the situation. Because of
6 the emotional turmoil this thing has brought back to
7 you, I have excused you from the trial of this case.
8 When you go back in there, obviously don't speak to
9 anyone. The officers will help you get your stuff if
10 you have any up here. You are excused for the week.
11 Thank you, ma'am.

12 (JUROR EXCUSED)

13 THE COURT: You'all just want five minutes,
14 then?

15 MR. MURDAUGH: Yes, sir.

16 THE COURT: Twenty-five after, I will be back
17 in.

18 MR. KULP: Yes, sir, Your Honor.

19 (BRIEF RECESS 10:12 to 10:25 A.M.)

20 (DEFENDANT PRESENT)

21 THE COURT: Is the State ready to proceed?

22 MR. MURDAUGH: Yes, sir.

23 THE COURT: Is the Defense?

24 MR. KULP: Yes, sir.

25 THE COURT: Madame Clerk?

1 THE CLERK: Yes, sir.

2 THE COURT: Call out the names -- and, of
3 course, you have taken off Juror No. 4, No. 7, No. 9
4 and No. 14?

5 THE CLERK: Yes, sir. Everybody has the same
6 list, which is marked a Court's Exhibit.

7 MR. MURDAUGH: The list that I have lists Joseph
8 Stonebreaker as number one and two as -- is that the
9 same list?

10 THE COURT: Exactly. It's the one that we did
11 yesterday afternoon. It hasn't been changed.

12 MR. KULP: Yes, sir.

13 THE COURT: Each juror will be called in this
14 order. The State has to respond first and then the
15 Defense, as is done in criminal cases. Any objection
16 to that procedure?

17 MR. MURDAUGH: None from the State.

18 THE COURT: Okay, Madame Clerk.

19 THE CLERK: Juror number one, Joseph
20 Stonebreaker.

21 MR. MURDAUGH: Present the juror.

22 MR. KULP: Please excuse the juror, Your
23 Honor.

24 THE CLERK: The jurors are not to be in the
25 courtroom?

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1 THE COURT: No, the jurors are outside the
2 courtroom, by agreement.

3 THE CLERK: Thank you, sir. Jury number two,
4 Lucille Morrison.

5 MR. MURDAUGH: Present the juror.

6 MR. KULP: Please seat the juror.

7 THE CLERK: Juror three, Clyletha Williams.

8 MR. MURDAUGH: Excuse the juror.

9 THE CLERK: Juror five, Judith Hillis.

10 MR. MURDAUGH: Present the juror.

11 MR. KULP: Please excuse the juror, Your
12 Honor.

13 THE CLERK: Juror six, Earl Gibson.

14 MR. MURDAUGH: Present the Juror.

15 MR. KULP: Please excuse the juror, Your
16 Honor.

17 THE COURT: Of course, I didn't say it but the
18 strikes are five and ten; is that correct?

19 MR. MURDAUGH: That is correct.

20 MR. KULP: Yes, sir, Your Honor.

21 THE CLERK: Juror eight, June Gambla.

22 MR. MURDAUGH: Present the Juror.

23 MR. KULP: Please seat the juror, Your Honor.

24 THE CLERK: Juror ten, Susan Singleton.

25 MR. MURDAUGH: Present the Juror.

1 MR. KULP: Please seat the juror, Your Honor.
2 THE CLERK: Juror eleven, Donna Johnston.
3 MR. MURDAUGH: Present the Juror.
4 MR. KULP: Please excuse the juror, Your
5 Honor.
6 THE CLERK: Juror thirteen, Cheryl Martin.
7 MR. MURDAUGH: Present the Juror.
8 MR. KULP: Please seat the juror, Your Honor.
9 THE CLERK: Juror fifteen, Suzanne Munford.
10 MR. MURDAUGH: Please excuse the juror, Your
11 Honor.
12 THE CLERK: Juror sixteen, Pamela Darden.
13 MR. MURDAUGH: Present the Juror.
14 MR. KULP: Please seat the juror, Your Honor.
15 THE CLERK: Juror seventeen, Joseph Polaschan.
16 MR. MURDAUGH: Present the Juror.
17 MR. KULP: Please excuse the juror, Your
18 Honor.
19 THE CLERK: Juror eighteen, Carmalita McMullen.
20 MR. KULP: Please excuse the juror, Your
21 Honor.
22 THE CLERK: Juror nineteen, Harvey Rutland.
23 MR. MURDAUGH: Present the Juror.
24 MR. KULP: Please seat the juror, Your Honor.
25 THE CLERK: Juror twenty, Betty Middleton.

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1 MR. MURDAUGH: Present the Juror.
2 MR. KULP: Please seat the juror, Your Honor.
3 THE CLERK: Juror twenty-one, Barbara Barrette.
4 MR. MURDAUGH: Present the Juror.
5 MR. KULP: Please excuse the juror, Your
6 Honor.
7 THE CLERK: Juror twenty-two, Thomas Schau.
8 MR. MURDAUGH: Present the Juror.
9 MR. KULP: Please excuse the juror, Your
10 Honor.
11 THE CLERK: Juror twenty-three, Janice Roeder.
12 MR. MURDAUGH: Present the Juror.
13 MR. KULP: Please seat the juror, Your Honor.
14 THE CLERK: Juror twenty-four, John Harkins.
15 MR. MURDAUGH: Present the Juror.
16 MR. KULP: Please excuse the juror, Your Honor.
17 THE CLERK: Juror twenty-five, Stan McLaughlin.
18 MR. MURDAUGH: Present the Juror.
19 MR. KULP: Please seat the juror, Your Honor.
20 THE CLERK: Juror twenty-six, Teri Derouen.
21 MR. MURDAUGH: Present the Juror.
22 MR. KULP: Please seat the juror, Your Honor.
23 THE CLERK: Juror twenty-seven, Charles Hood.
24 MR. MURDAUGH: Present the Juror.
25 MR. KULP: Please excuse the juror, Your

1 Honor.

2 THE CLERK: Juror twenty-eight, Mary Bouilly.

3 MR. MURDAUGH: Present the Juror.

4 MR. KULP: Please excuse the juror, Your

5 Honor.

6 THE CLERK: The Defense has exhausted their ten

7 strikes, Your Honor.

8 THE COURT: Okay.

9 MR. KULP: We acknowledge that. Thank you.

10 THE CLERK: Juror twenty-nine, Koren Pope.

11 MR. MURDAUGH: Present the Juror.

12 THE CLERK: Juror thirty, Janet Belle-Isle.

13 MR. MURDAUGH: Present the Juror.

14 THE CLERK: Your Honor, that is twelve jurors.

15 THE COURT: Okay. Does everybody agree that

16 that is twelve, that that is the jury?

17 MR. FLEMING: Before we go into the Alternates,

18 could we list the names for the record?

19 THE COURT: Certainly. Go ahead and read them

20 out.

21 THE CLERK: Juror No. 245, Lucille Morrison.

22 MR. MURDAUGH: Can you use the other numbers?

23 THE CLERK: Okay, (reading):

24 Juror 2 Lucille Morrison

25 Juror 8 June Gambla

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1 Juror 10 Susan Singleton
2 Juror 13 Cheryl Martin
3 Juror 16 Pamela Darden
4 Juror 19 Harvey Rutland
5 Juror 20 Betty Middleton
6 Juror 23 Janice Roeder
7 Juror 25 Stan McLaughlin
8 Juror 26 Teri Derouen
9 Juror 29 Koren Pope
10 Juror 30 Janet Belle-Isle

11 THE COURT: Does everybody agree that that is
12 the jury?

13 MR. MURDAUGH: Yes, sir.

14 MR. KULP: Yes, sir.

15 THE COURT: Are we ready to proceed with
16 alternates?

17 MR. MURDAUGH: Yes, sir.

18 MR. FLEMING: Your Honor, that is two strikes and
19 one strike?

20 THE COURT: That is exactly right. Do you
21 agree with that, Solicitor?

22 MR. MURDAUGH: Yes, sir, I do.

23 THE CLERK: Juror 31, Patricia Williams.

24 MR. MURDAUGH: Please excuse the juror, Your
25 Honor.

1 THE CLERK: Juror 32, Sharon Demars.
2 MR. MURDAUGH: Present the Juror.
3 MR. KULP: Please excuse the juror, Your
4 Honor.
5 THE CLERK: Juror 33, Delores Mitchell.
6 MR. MURDAUGH: Present the Juror.
7 MR. KULP: Please excuse the juror, Your
8 Honor.
9 THE CLERK: Juror 34, Geneva Wright is our
10 first alternate.
11 THE COURT: Give them a minute to look at it.
12 They have to look at all four of them basically. Do
13 you'all need a minute?
14 MR. MURDAUGH: Right, exactly. Okay, we're ready,
15 sir.
16 THE COURT: Is the Defense ready?
17 MR. FLEMING: Yes, sir.
18 MR. KULP: Yes, sir.
19 THE COURT: Go ahead.
20 THE CLERK: Juror 35, James Lindsey.
21 MR. MURDAUGH: Present the Juror.
22 MR. KULP: Please excuse the juror, Your
23 Honor.
24 THE CLERK: Juror 36, John Stanton.
25 MR. MURDAUGH: Present the Juror.

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1 MR. KULP: Please excuse the juror, Your
2 Honor.
3 THE CLERK: Number thirty-seven, Diane Garnett
4 (Juror No. 114).
5 MR. MURDAUGH: Just one moment -- okay. Where are
6 we now?
7 THE CLERK: Number 37, Diane Garnett?
8 MR. MURDAUGH: Please excuse the juror.
9 THE CLERK: Our second Alternate is Carol
10 Womack.
11 THE COURT: Number three alternate -- I will
12 give you a minute to look at it. Tell me when you're
13 ready.
14 MR. MURDAUGH: We're ready, sir.
15 THE COURT: The Defense indicates that they are
16 ready. Go ahead.
17 THE CLERK: Juror 39, Judy Messer.
18 MR. MURDAUGH: Present the Juror.
19 MR. KULP: Please seat the juror, Your Honor.
20 THE CLERK: Ms. Messer is our third Alternate.
21 THE COURT: The alternates, then, are:
22 Juror 34 Geneva Wright
23 Juror 38 Carol Womack
24 Juror 39 Judy Messer
25 MR. MURDAUGH: Yes, sir.

1 MR. KULP: Yes, sir.

2 THE COURT: Are there any Motions regarding the
3 selection of the jury?

4 MR. MURDAUGH: Not from the State.

5 MR. KULP: Could you give us a minute, Your
6 Honor?

7 THE COURT: Yes, sir.

8 MR. KULP: Thank you, (consults with Mr.
9 Fleming). Your Honor, thank you.

10 THE COURT: Mr. Kulp?

11 MR. KULP: Your Honor, our notes indicate that
12 the State struck juror three on the final list, an
13 African-American female, Ms. Clyletha Williams. They
14 also struck number thirty-one on the list, Patricia
15 Williams, also an African-American female and selected
16 -- we would move at this time to establish a reason
17 based on the Batson case as to jurors three and thirty-
18 one on the final list.

19 MR. MURDAUGH: If Your Honor please, on number
20 three, Clyletha Williams, she testified that she was
21 from Muddy Creek Road. She is a Williams. I have
22 prosecuted nine Williamses recently, all of them -- not
23 all of them but a number of them from Muddy Creek Road.
24 We felt that she would not be a good juror because she
25 is related to some of those.

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1 THE COURT: Where is Muddy Creek Road?

2 MR. MURDAUGH: Muddy Creek Road is on the right-
3 hand side of Marshland Drive, I believe it is, on
4 Hilton Head Island. It is a hotbed of crime, sir.

5 THE COURT: okay. Go ahead. I will hear you
6 for the other one, too.

7 MR. MURDAUGH: Number thirty-one, if Your Honor
8 please, Patricia Williams. We had seated a panel of
9 twelve jurors at that time. So we had to look at who
10 would be the best juror insofar as ---

11 THE COURT: The alternative is also an African-
12 American?

13 MR. MURDAUGH: Yes, sir, and I struck her knowing
14 that most probably Carol Womack -- excuse me, that's
15 not the ---

16 THE COURT: Sarah Demars.

17 MR. MURDAUGH: No, sir. That Geneva Wright would
18 be seated, because I had anticipated that they had to
19 strike Sharon DeMars and Delores Mitchell. Geneva
20 Black (sic) -- or, excuse me, Geneva Wright is a black
21 female. She was stronger than Patricia Williams was
22 for the State, in my opinion, -- for the State of South
23 Carolina and for the death penalty. That's my reason.

24 THE COURT: And, of course, in a case after
25 having interviewed the witnesses you have a pretty good

1 indication for nonracial reasons. It is not a normal
2 one where you just have to take some -- when you don't
3 know anything about them personally. You get to know
4 them when you interview them.

5 MR. MURDAUGH: Right. And I might add, sir, if
6 Your Honor please, I struck number fifteen, which is a
7 white female; I struck number eighteen, which is a
8 white female; and ---

9 THE COURT: So you used three strikes, one
10 black female and two white females.

11 MR. MURDAUGH: That's correct, sir. And the
12 reason for all of those, other than Clyletha Williams,
13 the other two, sir, was simply because they were not as
14 strong as the other jurors on the death penalty. The
15 fact is, Ms. Munford said that, while she would make an
16 excellent juror, -- she said, in essence, 'I can't give
17 the death penalty', even though she didn't put it in
18 those words.

19 THE COURT: Okay. Anything else? Any
20 argument?

21 MR. FLEMING: Yes, Your Honor, real briefly.
22 With regard to the first juror and the allegedly
23 racial-neutral reason that the Solicitor proposed, he
24 said the Williams of Muddy Creek, that he had
25 prosecuted them eleven times ---

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1 MR. MURDAUGH: Nine times.

2 MR. FLEMING: Nine times. Pardon me. In, uh, --
3 about a year and a half ago, prior to the first trial,
4 I filed a Motion to prevent the Solicitor from
5 investigating potential jurors and, in the alternative,
6 that he make his investigations known to us. Your
7 Honor denied those Motions. It rises now because we
8 have no way to determine, without looking at the
9 Solicitor's investigations because obviously he
10 investigated Ms. Williams to know that her family were
11 being prosecuted. We have no way to go back and look
12 at whether anybody else is similarly situated on the
13 jury panel. In other words, we don't know because
14 we're not privy to the investigation of ---

15 THE COURT: Well, -- excuse me for interrupting
16 you. It is my understanding that the Solicitor found
17 that information out when the juror was up here being
18 voir dired by the two of you.

19 MR. MURDAUGH: No, sir, I knew about her. Let me
20 tell you something. I prosecuted Saul Williams and he
21 got ninety-nine years or something like that. Mitchell
22 and -- I can't think of all their names. I did no
23 investigation, sir. I knew -- I know -- I know how
24 these people are.

25 MR. FLEMING: Your Honor, what I am saying is

1 that it is incumbent upon us to be able to determine
2 whether or not other jurors, not struck by the
3 Solicitor, are similarly situated. That was one of the
4 purposes of filing the Motion to have the Solicitor
5 give us information concerning his investigation of the
6 jurors, because he is uniquely situated to be able to
7 determine whether or not any one of these jurors is
8 similarly situated, whether their family members have
9 been prosecuted but nonetheless the Solicitor chose to
10 ignore that particular prosecution and seat the juror.
11 Because if that is the case, then it is not a race-
12 neutral reason and then, obviously, the Batson
13 challenge would go forward. Thank you, Your Honor.

14 MR. MURDAUGH: If Your Honor please, if there had
15 been somebody similarly situated, I would have struck
16 them too, sir.

17 THE COURT: Okay. I find that the Solicitor
18 has given race-neutral reasons for the strikes. And
19 based on the overall strikes used by the Solicitor and
20 the fact that each juror was interviewed, as done in
21 this kind of case, I find that there is no showing of
22 any racial bias. The Batson Motion is denied.

23 Are we ready for the jury to be seated?

24 MR. MURDAUGH: The State is.

25 THE COURT: Then do we want to go directly into

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1 the opening statements?

2 MR. MURDAUGH: I will leave that up to you. I'm
3 prepared to do that, sir. However you want to handle
4 it, it ---

5 THE COURT: Well, ---

6 MR. MURDAUGH: I made the suggestion yesterday
7 that we not send the jury -- but I have no problem with
8 letting them go on and get settled (in the hotel).
9 Whatever you want to do suits me, sir.

10 THE COURT: My thinking is that if they are
11 going to have to take them out -- if they go get
12 settled in now they -- it's 11:00. They've been up
13 here for several hours. And I believe that you can eat
14 lunch quicker earlier than you can late, so I am of the
15 opinion that we might just go ahead and take a break
16 and then maybe we can get back and be ready to go at
17 1:30.

18 MR. MURDAUGH: Whatever you do suits me, sir.

19 THE COURT: I believe that it will be more
20 efficient to do that because of the hour. I know that
21 if you go into a restaurant right at noon you get
22 served a whole lot quicker than you do when you go in
23 at 12:30 or 1:00.

24 MR. FLEMING: Yes, sir. Two issues. I want to
25 renew our Motion to sequester the witnesses. I am

1 certain that the Solicitor will consent to that.

2 MR. MURDAUGH: Let's take care of the jury first.

3 MR. FLEMING: Okay.

4 THE COURT: Yeah, let's do that.

5 MR. FLEMING: Yes, sir.

6 THE COURT: Anything else?

7 MR. KULP: No, sir, Your Honor. Thank you.

8 THE COURT: Go ahead and get the jury and bring
9 them in here. Then I'll let you go back in there and
10 excuse them, but I want them all seated here before you
11 excuse the rest of the jury.

12 MR. MURDAUGH: One thing that just occurred to me,
13 sir. Probably we ought to bring the jury in and seat
14 them; excuse the balance of them; swear the bailiffs
15 that will be ---

16 THE COURT: I am going to do that.

17 MR. MURDAUGH: I am trying to tend to your
18 business and you know more about it than I do.

19 THE COURT: I was going to do that but I didn't
20 want to let the other jurors go until we had all of
21 them sitting in here. Then after that they will -- of
22 course, if any of them have got their luggage in there,
23 you make sure that everybody's luggage is accounted
24 for, of the jurors that come in here. So you might --
25 when somebody has luggage, you set it aside so that

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1 they don't have to bring it with them, and leave it so
2 that when the other jurors leave we don't have to worry
3 about that. Okay.

4 (JURY PANEL ENTERS COURTROOM)

5 BAILIFF: Your Honor, all jurors are present.

6 THE COURT: Very good. Members of the jury,
7 you are the jury. So at this time, Madame Clerk, would
8 you please swear in the jury?

9 (WHEREUPON JURY SWORN)

10 THE COURT: Please be seated. Would the SLED
11 agents come around, please? (Agents comply). First
12 off, please identify yourself for the court reporter.

13 AGENT: I am Keisha Sinkler.

14 AGENT: Vance Boone.

15 AGENT: Rick McLeod.

16 AGENT: Kenny Mears.

17 AGENT: Buck Cockrell.

18 AGENT: Tom Wicker.

19 THE COURT: Madame Clerk, would you please
20 swear them in?

21 THE CLERK: Do you each of you swear that you
22 will keep the jury in the appointed housing; that you
23 will allow no persons to speak to them without leave of
24 the Court, that you will not speak to them regarding
25 this case nor permit them to speak to one another about

1 this case; that you will present them at this court at
2 the appointed time and see to their care and safety
3 while they are in your charge, so help you, God?

4 (WHEREUPON SLED AGENTS SWORN)

5 THE COURT: You can be seated. Members of the
6 jury, this lady and these gentlemen are with SLED, the
7 State Law Enforcement Division. They are specifically
8 empowered under their oath to take charge of you and,
9 of course, of your personal needs -- to take you to
10 lunch, which we are going to do shortly.

11 Are the other jurors still in there?

12 THE CLERK: Yes, sir.

13 THE COURT: You want to go ahead and excuse
14 them?

15 THE CLERK: Yes, sir, I will.

16 THE COURT: They will be at the Hampton Inn
17 with you to look after you. They are well-trained in
18 their duties as this. This is not the first time that
19 they have done that. So if any of -- any of your
20 personal needs, you just ask and they will do what they
21 can to take care of you. Of course, they cannot and
22 will not -- and it is your duty also not to ask them --
23 make any comments about the case that is being tried
24 before you. In other words, they have nothing to do
25 with that and they will not talk to you about the case.

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1 You, of course, each and every one of you, know not to
2 talk to them about the case.

3 I am going to give you a brief introduction to the
4 trial of this case and then I am going to turn you over
5 to the SLED agents and they're going to get you squared
6 away at the hotel and then take you to lunch.

7 When we come back from lunch, and hopefully we can
8 get an early start, then the attorneys will make their
9 opening statements and we will proceed into the trial
10 of the case early this afternoon -- I hope.

11 What I am about to tell you is not a substitute
12 for the detailed instructions for the law, which I will
13 give you at the close of the case before you retire to
14 consider your verdict.

15 This is a criminal case commenced by the State,
16 sometimes referred to as the prosecution, against
17 Tavarus Rogers. This case is based on a number of
18 indictments, which I published to you on Monday and
19 which the Solicitor will explain to you in greater
20 detail in his opening statement.

21 But I want you to distinctly understand that each
22 indictment is simply a charge and is not evidence of
23 the allegations contained within it. The defendant has
24 pled not guilty to each indictment and the State
25 therefore has the burden of proving each of the

1 essential elements of the indictment, each indictment,
2 beyond a reasonable doubt. The purpose of the trial is
3 to determine whether the State has met this burden.

4 Your purpose as jurors is to find and to determine
5 the facts. Under our system of criminal procedure, you
6 are the sole judges of the facts. If at any time I
7 should make any comments regarding the facts, you are
8 at liberty to disregard it. It is especially important
9 that you perform your duty of determining the facts
10 diligently because ordinarily there are no means of
11 correcting an erroneous determination of the facts by a
12 jury.

13 On the other hand, and with equal emphasis, I
14 instruct you that the law, as given by the Court,
15 meaning me as a judge, constitutes the only guidance
16 and it is your duty to follow the law as I give it to
17 you, even though you may disagree with the law.

18 You are to determine the facts from the testimony
19 that you hear and the other evidence introduced in
20 court. It is up to you to determine the inferences
21 which you feel may properly be drawn from the evidence.
22 You must not consider anything that you may have read
23 or heard about the case outside the courtroom, whether
24 before or during the trial. And until the case is
25 submitted to you, you must not discuss it with anyone,

1 even among your fellow jurors.

2 After it is submitted to you, you must discuss it
3 only in the jury room with your fellow jurors. It is
4 important that you keep an open mind and not decide any
5 issue in the case until the entire case has been
6 submitted to you under the instructions of the court.

7 A couple of other things. I am going to allow --
8 and I want to make sure that we're on the same page
9 here. Geneva Wright, you are Alternate No. 1. Carol
10 Womack, you are Alternate No. 2. Judy Messer, you are
11 Alternate No. 3. So you'all will always sit on the
12 back row. The rest of you will sit somewhere on the
13 other two rows.

14 I am going to allow you the jury, the first twelve
15 selected, to select from among yourselves a foreperson.
16 The foreperson has one vote, just like everybody else
17 on the jury does. The duties of the foreperson are to
18 preside in the jury room, be the jury's spokesperson
19 here in court.

20 There is no rush. We're going to be here for some
21 time. After you get to know each other, sometime when
22 you're in the jury room you can select whoever it is
23 that you wish to chose to be your foreperson. After
24 that person is chosen, that person will take the first
25 chair. The rest of you can of course sit anywhere that

1 you want to.

2 During the trial, we will try to be as comfortable
3 as we can. If you like, bring in your Coca-Cola, your
4 coffee or whatever to sip on while you -- or water --
5 while you're sitting there. If you don't have anything
6 to drink and suddenly you need something, usually there
7 is a bailiff right there. If you will signal them,
8 usually they will get you a cup of water at any time.
9 If at any time you need to take a break, get my
10 attention or the bailiff's attention and we can take a
11 break at any time.

12 Since we are here and -- the number of hours that
13 we work will depend upon how the case is proceeding,
14 but I hope that we can start early and work late. But
15 we don't want to wear ourselves out either. I would
16 anticipate that we would go to 6:00 or 6:30 or
17 something this afternoon and move along. Since we are
18 all right here, we can be a lot more efficient than we
19 can when jurors have to go some distances.

20 I think that that is about all that I have to tell
21 you at this time. With that, -- anybody else got
22 anything else that they want me to discuss with the
23 jury?

24 MR. MURDAUGH: The State does not, sir. Well,
25 probably about any outside information about this

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1 trial, sir.

2 THE COURT: Okay. During this trial, the -- of
3 course, the SLED agents have it set up and they will be
4 more specific with you. But they have -- your
5 entertainment and so forth, your reading materials, it
6 is important during this trial that you not read or
7 hear anything about this case. So when you get your
8 newspaper in the morning, if there is a scissored-out
9 part in that, that is because it possibly had something
10 to do about this trial. You won't be able to see
11 anything about it. And, of course, if you should find
12 -- if something happens that you are, if something
13 somehow gets in front of your face that you see, please
14 report it to the Court immediately or report it to the
15 officers and they will report it to me.

16 If you have any questions, uh -- and, of course,
17 they will also tell you about contacting your family
18 and so forth. They will take care of that when they --
19 they will give you a certain orientation on it.

20 During the trial -- and I cannot emphasize enough
21 that while you are here, obviously, that you cannot
22 discuss the case. So you should not be dividing up and
23 talking about the case during the trial. Do not
24 discuss the case, among yourselves even.

25 Also, I don't believe that there is any reason for

1 THE COURT: I missed something. What are you
2 talking about?

3 MR. KULP: To avoid any issues that might
4 arise, it is our understanding that in addition to
5 saying, you know, -- whatever conversations,
6 instructions or explanation about the sequestration
7 process will occur, if it is read from prepared text by
8 the agents, or ---

9 THE COURT: Oh, oh. Okay. Do you'all have
10 some kind of outline that you use when you talk to
11 them?

12 MR. MCLEOD: We've got forms where they sign
13 that the ---

14 THE COURT: Come around and look at what
15 they've got.

16 MR. KULP: In other words, any conversation
17 that they have with them, we have no reason to think
18 that there is any impropriety but ---

19 THE COURT: Do you want Mr. Martinez and Mr.
20 Dorsey sworn in, too?

21 MR. KULP: Yes, sir.

22 THE COURT: If all the bailiffs and so forth
23 who are going to be helping here and in the back, if
24 you would, bring everybody in here and let's swear
25 them.

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1 THE CLERK: Yes, sir. Your Honor, Pete is at
2 the doctor.

3 THE COURT: We will do him later.

4 (WHEREUPON BAILIFFS WERE SWORN)

5 THE COURT: You'all are excused to go about
6 your business now.

7 THE CLERK: And only the SLED agents will have
8 any real contact with the jurors. All the bailiffs and
9 deputies will do is get them coffee or cokes and assist
10 them here in the courtroom.

11 THE COURT: That's right. They will do their
12 regular job.

13 MR. KULP: If the Court please, I have
14 reviewed the Order of Sequestration. Will the Clerk
15 read that to them or will each juror get a copy? How
16 will the jury be advised of the provisions of your
17 Order?

18 MR. MURDAUGH: I would rather the Clerk go over
19 it.

20 THE COURT: Well, the Clerk hasn't been sworn
21 in.

22 MR. KULP: I was just thinking that, you know,
23 they are the ---

24 THE COURT: I will ask the Clerk to make
25 available some of those for them, and you'all (Mr.

1 McLeod) will go over it with them. That's part of your
2 training. Rather than just stand up there and read it,
3 have copies for them.

4 THE CLERK: Your Honor, if I may be -- could
5 you swear me in because I will have to talk to them
6 about some things such as meals, that kind of thing?

7 THE COURT: I will swear you in.

8 (WHEREUPON CLERK OF COURT, ELIZABETH SMITH,
9 WAS SWORN)

10 THE COURT: As I understand, what has happened
11 is that SLED has agents specially trained, by seminars
12 and so forth, how these things are. So they -- and, of
13 course, if you have any special requests.

14 MR. KULP: Yes, Your Honor, and I have no
15 problem with that. To me, the idea comes to mind of
16 the traditional role of the bailiff where if the jury
17 has a question, they knock on the door and the bailiff
18 then communicates whatever -- brings the note. I think
19 that just out of an abundance of caution what we would
20 prefer and move the Court to do is direct those
21 individuals who are participating in the sequestration
22 -- I know that they are not going to engage in any
23 discussion.

24 THE COURT: The bailiff only see to their
25 personal needs. And they also have guidelines as far

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1 as contacting family members and other stuff, and we
2 will work into those things later. We will bring to
3 your attention, Mr. Kulp, if you want us to, how that
4 is going to be done other the weekend and so forth.

5 Such as, family members will only see them in the
6 community room. Is that right?

7 MR. MCLEOD: Whatever you allow.

8 MR. KULP: I didn't even know that that ---

9 THE COURT: Well, we will address that when we
10 get into it, but we -- we will see how long this trial
11 is going to last. A lot of that will depend on the
12 length. If it drags out -- you know, with a one day
13 case that becomes, like the jury selection, five days
14 then -- I don't know how long you'all are going to take
15 to try this case.

16 MR. KULP: Yes, sir.

17 THE COURT: Some of these things might not
18 arise.

19 MR. KULP: Yes, sir. Absolutely. I am just
20 trying to find some middle ground here with the
21 concerns that I have. We'd request that if there is
22 anything other than, 'When are we going to eat?', 'Can
23 I go do this?' -- anything other than the absolutely
24 normal course of event that that information be
25 communicated by the agents to the Clerk, the Clerk

1 advise the Court, the Court advise us?

2 THE COURT: Well, I am going to ---

3 MR. KULP: And that may be what they do
4 anyway.

5 THE COURT: They are going to do it and they --
6 but I am not going to say 'go to the Court'. I am
7 going to say if whoever has the information if they
8 will bring it to us that we will discuss it together on
9 the record.

10 MR. KULP: Very good.

11 THE COURT: Things get lost in transition and
12 we're going to have all the agents right here. The
13 Clerk is going to be helping with the meals and so
14 forth, she's been sworn in also, and everybody
15 recognizes the seriousness of it. I am not going to
16 set up any chain of command but I -- I would think that
17 Mr. McLeod, who is the one in charge of the details, --
18 and I assure you that if anything comes up that needs
19 to be addressed that you will be in on it.

20 MR. KULP: Thank you. I think the only thing
21 that kind of hit the brake is when I heard that they
22 would be explaining what the sequestration is all
23 about. I just think that ---

24 THE COURT: Well, I am not talking about
25 anything other than what they are going to do about the

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1 room, the televisions, papers, other things.

2 MR. KULP: And I don't mean the Stockholm
3 Syndrome but they're pretty much captive by these
4 gentlemen and if they're standing there reading the
5 rules of the road to them, it just -- I think that --
6 I think that you've addressed it.

7 THE COURT: Okay.

8 MR. KULP: Thank you.

9 THE COURT: And we will address things from
10 time to time as things arise.

11 MR. KULP: Yes, sir.

12 THE COURT: There is one other thing, one
13 specific request. Pamela Darden, one of the jurors,
14 she stated on the record that she has a child, a four-
15 year-old, -- and I don't have any concern about a four-
16 year-old having any knowledge about the case, that
17 there is going to be a time on Monday morning, between
18 7:00 and 8:00 -- do you'all remember that?

19 MR. KULP: Yes, sir.

20 MR. MURDAUGH: Yes, sir.

21 THE COURT: And I told her that it would be
22 okay for her husband to drop that child off at the
23 hotel and that he could stay with her until school time
24 and that we would get that child to school that day.
25 Something to that effect. Do you'all remember that?

1 MR. KULP: Yes, sir. And we agree,
2 absolutely.

3 MR. MURDAUGH: Yeah.

4 THE COURT: So we will know more about it and I
5 will -- and it's only a four-year-old. If it was a
6 teenager, I'd have some concerns about it, but a four-
7 year-old.

8 MR. KULP: And it is not my four-year-old,
9 which would be a problem.

10 THE COURT: Just so that you'all know about
11 that situation so that we can work with her on that.

12 MR. McLEOD: Are we supposed to get her to
13 school?

14 THE COURT: I can't remember exactly.

15 LAW CLERK, MS. RHOAD: Judge, you said that you
16 would arrange for someone to take her to school.

17 THE COURT: Right. In other words, there's
18 going to be a couple of hours where the child is going
19 to need a place to be and she can stay with her mother,
20 and then you can take her on to school.

21 MR. KULP: Thank you, Your Honor.

22 THE COURT: Okay, let's get on the record
23 anything else that we've got. There was a Motion to
24 sequester the witnesses. Let's talk about that.

25 MR. FLEMING: Yes, Your Honor.

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1 THE COURT: I want to make sure that any -- of
2 course, that goes both ways, I presume?

3 MR. FLEMING: Yes, Your Honor.

4 THE COURT: Is that in both the guilt and the
5 penalty phase?

6 MR. FLEMING: If -- Your Honor, we are not
7 addressing the sequestration of potential penalty phase
8 witnesses in this phase.

9 THE COURT: In other words, you don't make any
10 Motions about anything that deals with that? The State
11 might have one.

12 MR. FLEMING: Well, we will raise that -- if we
13 get to that point, then it may be appropriate to
14 sequester witnesses who will be testifying then, in
15 that setting.

16 THE COURT: Well, I agree. I don't see how it
17 would make much difference in that.

18 MR. FLEMING: That's right. But with regard to
19 the witnesses in the trial of this case that we're
20 getting ready to start, we will move to sequester those
21 witnesses for several reasons. The most integral one
22 is that the consistency of testimony is a very
23 important issue ---

24 THE COURT: You have an objection to his ---

25 MR. MURDAUGH: Yes, sir?

1 THE COURT: All right, tell me.

2 MR. MURDAUGH: Our witnesses can be broken down
3 into three categories, the first being the victims at
4 the scene, who will all be witnesses. That is Miss
5 Joceyln Shough, Kristal Wire and Toby Reischl. Each of
6 them are listed as victims in one of the indictments
7 that we are trying, so the Victim Witness Bill of
8 Rights says that you cannot exclude them from the
9 courtroom.

10 THE COURT: Have you got that Code section
11 handy?

12 MR. MURDAUGH: No, sir. I've asked Angie to get
13 it and I anticipate ---

14 MS. McCALL: I will get it for you during the
15 lunch break.

16 MR. KULP: I will get it for you, Your Honor.

17 MR. MURDAUGH: And while we are waiting to get
18 that, sir, the next set of witnesses are law
19 enforcement officers, the coroner, the firemen that
20 went to the scene. Do you want them sequestered?

21 MR. FLEMING: I would prefer to have a blanket
22 sequestration, yes, sir.

23 MR. MURDAUGH: Okay, sir. Now, I am
24 entitled, as I understand the law, to keep Matt
25 Averill, who is the lead investigator, in the courtroom

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1 in spite of any sequestration order.

2 THE COURT: What do you say to that?

3 MR. FLEMING: We have no challenge for that, Your
4 Honor.

5 MR. MURDAUGH: The next set of witnesses is four
6 people who were involved with the note that Mr. Fleming
7 has discussed with you, and I think he's entitled in
8 that one to have them sequestered -- except John Black,
9 wh is a SLED agent.

10 MR. FLEMING: I think that he would be more
11 comfortable outside the courtroom anyway, so we will go
12 ahead and have ---

13 MR. MURDAUGH: I don't think that he is.

14 MR. FLEMING: --- it apply to him also.

15 THE COURT: What is that statute called about
16 the victims' rights.

17 MR. MURDAUGH: The Victim Witness Bill of Rights.

18 MR. KULP: I am pulling it right now, Your
19 Honor.

20 THE COURT: 16-3-1530?

21 MR. MURDAUGH: I'll be honest with you, I
22 never was any good with numbers.

23 THE COURT: (Sidebar with law clerk)

24 MR. KULP: 16-3-1545, in that area, Your
25 Honor.

1 THE COURT: I don't believe that you can
2 exclude a victim. What do you'all say about that?

3 MR. FLEMING: Your Honor, under no circumstances
4 can a State law enacted by our legislature trump the
5 United States Constitution. The Fourth, Fifth, Sixth,
6 Eighth and Fourteenth Amendment ---

7 THE COURT: I tell you what I am going to do on
8 this. We've got a lot of time.

9 MR. KULP: I am looking it up.

10 THE COURT: I want you'all to come in here with
11 case law and so forth. We will resume -- the jury is
12 coming back at 2:00. Hopefully they will be back, I
13 shortened up the time. He said 3:00 and I said 'Let's
14 start at 2:00.' So we've got some time. Let's be back
15 at 1:00 o'clock. We can debate that in detail.

16 MR. FLEMING: Okay, sir.

17 THE COURT: Are there any other Motions?

18 MR. FLEMING: One more, Your Honor. You have
19 held in abeyance a Motion in Limine to exclude the
20 State's introduction of this jail note that we're
21 referring to. Because Your Honor has held in abeyance
22 and will rule on it at the time, at the appropriate
23 time in the scheme of evidence presentation, we would
24 ask that the Solicitor would not mention it in his
25 opening statement as to do so would be prejudicial.

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1 Then if Your Honor so decided that it is not admissible
2 then the bell has been rung, and it would be
3 prejudicial.

4 THE COURT: I would agree with that.

5 MR. MURDAUGH: Quite frankly, I wasn't planning on
6 doing it anyhow. If you ruled it out, I'd look like a
7 fool. Wouldn't I?

8 THE COURT: (Sidebar with law clerk), I can't
9 find exactly where it says what you say.

10 MR. MURDAUGH: I will find it for you over the
11 lunch hour.

12 THE COURT: Any other Motions? I want
13 everybody to -- these last-minute Motions are what is
14 killing us, and I want you to ---

15 MR. MURDAUGH: I don't have any, sir.

16 MR. KULP: The other thing we would like for
17 you to entertain is we were going to make a Motion that
18 we thought everyone would agree to, and that is to
19 suppress any hearsay testimony from any of the State's
20 witnesses such as ---

21 THE COURT: I will have to rule on evidence in
22 the old-fashioned way. I am glad that you mentioned
23 that, though, because I have another question.

24 MR. KULP: Yes, sir?

25 THE COURT: Now that we have started the trial

1 of the case, I have some concerns about taking up any
2 questions of evidence and so forth outside the presence
3 of the defendant. So my thinking is that is going to
4 be -- unless you'all want to make some waiver and he
5 wants to make a waiver, then we will -- anything that
6 is going to be on the record, the jury will have to be
7 sent out. So there won't be any sidebars unless there
8 is just some administrative situation about lunch or
9 something like that. I point that out. What is your
10 position on that, Solicitor?

11 MR. MURDAUGH: I agree with you, sir.

12 MR. FLEMING: One second, Your Honor.

13 MR. KULP: Your Honor, we have no problem with
14 that.

15 MR. FLEMING: Wait a minute. Mr. Rogers
16 indicates that as long as the sidebar is on the record
17 he does not have to be present. We can just tell him
18 what was said. He'd waive the right. So if we need to
19 have a sidebar and leave the jury in the box, as long
20 as the court reporter is able to take down what is
21 said, Mr. Rogers has indicated that he does not have to
22 be at the sidebar to hear it.

23 THE COURT: What do you say to that, Solicitor?
24 Is that sufficient to you?

25 MR. MURDAUGH: Let's address it on an individual

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1 basis, sir. Probably that will be satisfactory but
2 there may be times when I don't agree with that, sir,
3 and I will tell you that I need more ---

4 THE COURT: No. I am going to ask him whether
5 he agrees. If it is something that either side feels
6 like should be done on the record, that it is of some
7 importance, then we will send the jury out.

8 But for any time is what I am talking about.

9 MR. MURDAUGH: There are some matters that will
10 come up that there will be no need to send the jury
11 out. There are other things that there may be such a
12 need, sir. I just think that we need to address them
13 on an individual basis.

14 THE COURT: Well, but my point is this, unless
15 Mr. Rogers tells me that he ---

16 MR. MURDAUGH: Oh, I understand.

17 THE COURT: --- is willing to have a sidebar
18 without him -- and I do not want him to have to come up
19 here, because I don't know what effect it might make on
20 the jury and everything.

21 MR. MURDAUGH: Yes, sir. I understand.

22 THE COURT: Mr. Rogers, would you please stand?

23 DEFENDANT: (Complies)

24 THE COURT: You heard the discussion about
25 whether or not you want to be involved in every kind of

1 conference that we have that might come up during the
2 trial. We call it a "sidebar", we get over in the
3 corner outside the hearing of the jury.

4 DEFENDANT: I understand, Your Honor.

5 THE COURT: Mr. Fleming tells me that you
6 discussed it with him and with Mr. Kulp.

7 DEFENDANT: Yes, sir.

8 THE COURT: And if it is something that they
9 feel like is not -- that they feel like they can handle
10 outside your presence, that you are agreeable to not
11 being involved in those matters. Is that right?

12 DEFENDANT: Yes, sir. I agree, sir.

13 THE COURT: In other words that you will remain
14 seated and they'll tell you about it when they get back
15 to the table.

16 DEFENDANT: Yes, sir.

17 THE COURT: And this does not in any way say
18 that there might not be matters that would come up that
19 we will send the jury out and state in open court.

20 DEFENDANT: As long as it is on the record,
21 sir.

22 THE COURT: As long as it is on the record,
23 you're satisfied with that?

24 DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: And, of course, we won't have

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1 anything then that is said that the court reporter does
2 not take down everything on the record. Is that
3 sufficient?

4 MR. KULP: Very good, Your Honor.

5 THE COURT: We will reconvene then at 1:00 and
6 we will take up the sequestration of witnesses and
7 anything else that you have at that time.

8 MR. MURDAUGH: Did you say 1:00?

9 THE COURT: Right. In other words, the jury is
10 coming back at 2:00. Court is in recess until 1:00
11 o'clock.

12 MR. MURDAUGH: If Your Honor please, may I
13 make one other inquiry of the Court?

14 THE COURT: Yes, sir.

15 MR. MURDAUGH: May I reserve the front two
16 rows on this side for the family of the victims?

17 THE COURT: Any objection?

18 MR. KULP: No, Your Honor.

19 THE COURT: Do you want anything over on the
20 other side reserved, or not?

21 MR. KULP: As well, Your Honor. That would be
22 appropriate.

23 THE COURT: The first two rows are reserved for
24 the victims on this side, the families and so forth
25 other than as law enforcement -- well, not law

1 enforcement but other than as security deems
2 appropriate. If security needs for them to be reseated
3 anywhere, they of course are going to go ahead and do
4 that.

5 I am not going to say rope it off or anything but
6 if it gets too crowded in there and you need more room,
7 just bring it to my attention.

8 MR. MURDAUGH: Thank you, sir.

9 MR. KULP: Very good.

10 (LUNCH RECESS 12:20 TO 1:00 P.M.)

11 (DEFENDANT PRESENT)

12 THE COURT: Based on security concerns by law
13 enforcement, I am going to ask now that we have got
14 plenty of room, I am going to ask that the first two
15 rows of these two seats be left vacant. You can sit
16 back and that will give everybody plenty of room.
17 Like I said, this is addressing concerns about -- I
18 always let the security people make the decision.

19 Now, the first seat is awfully close to the jury,
20 so I am going to ask that that seat be vacated, too.
21 Then the next seat is for the photographers and press
22 and so forth -- are you'all with the press?

23 BY MALE: Yes, sir.

24 THE COURT: I am going to reserve that second
25 seat for you'all. Of course, you well know that you

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1 cannot I would like for you to take pictures across
2 this way (indicating away from jury box) because if you
3 were over here you might get the jurors and that, of
4 course, is not allowed. So please just step back one
5 row, and everybody else just slide back a couple seats
6 and I think we will be ready.

7 Of course, that is not to say that the attorneys,
8 if they have a witness, a proposed witness or somebody
9 that they need to consult with, they can put them on
10 this front row. They can do that. But I'm talking
11 about from the standpoint of -- and, obviously we've
12 got plenty of room.

13 And you're not required to sit there. If you want
14 to, you can sit on the side. But I want those two rows
15 right here behind the benches clear. Thank you.

16 The first order of business had to do with the
17 Motion to sequester the witnesses, I believe. Isn't
18 that correct?

19 MR. FLEMING: Yes, Your Honor.

20 THE COURT: Have you got something that you
21 want to call my attention to before I rule on that?

22 MR. FLEMING: The Solicitor has brought to your
23 attention \$16-3-1550 and I assume that he contends (b)
24 of that section is what is relying on for authority
25 when he says that a person must not be sequestered who

1 is a victim.

2 I would point out for the Court, however, that in
3 every instance in which this Act refers to individuals
4 that they refer to them both as "victims or witness" or
5 "victim and witness". In this particular section, (b),
6 it only refers to victim. Therefore, we must read it
7 to exclude witness in the context.

8 Therefore, this section should not be read and
9 construed to say that a witness who is also a victim
10 cannot be sequestered. And the reason for that is
11 sequestration, while in your ---

12 THE COURT: Well, just stop and think about
13 what you're saying. If you put "witness" in that
14 thing, then you would done away with -- the Court would
15 have no authority to sequester any witness.

16 MR. FLEMING: Yes, sir, but this is the
17 Victim/Witness Bill of Rights. And when you think --
18 and it applies -- in each context they make a
19 distinction between "victim and witness" in this
20 particular section alone.

21 If the victim is not a witness, of course they
22 can't be sequestered out of the courtroom. I think
23 that speaks for itself.

24 And I bring Your Honor's attention to the case of
25 -- well, it is actually Jack Williams -- In Re: State

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1 of South Carolina with the Respondent being Jack
2 Williams heard September 20th, 2000, by the South
3 Carolina Supreme Court. And what they -- the basic
4 ruling was this, the Victim/Witness Bill of Rights
5 could not trump Constitutional provisions and
6 protections of the defendant. What they tried to do
7 was -- the Solicitor in that particular case didn't
8 abide by the Victim/Witness Bill of Rights.

9 And the particular victim in that case asked that
10 the proceedings be overturned as a result of the
11 violation of this law. The Court said "No, you can't
12 do that. There are greater considerations." And those
13 considerations are the United States and State
14 constitutional protections for the defendant's rights
15 because this is the Defendant's trial and he is the one
16 -- he is the one that will receive the outcome of this
17 trial.

18 Now, pursuant to the United States Constitution,
19 the Fourth, the Fifth, the Sixth, the Eighth and the
20 Fourteenth Amendments, it is fundamental due process
21 that this defendant should receive a fair trial. And
22 in order to do that the witnesses in this case must be
23 sequestered because issues of credibility, recall of
24 the particular facts in the case have already been
25 brought before Your Honor. And if these witnesses have

1 the opportunity to hear testimony from the witness
2 stand, and in particular arguments and opening
3 statements and, in particular, cross-examinations they
4 would be able to either gather new information and
5 potentially tailor their testimony to suit the
6 circumstances that will exist at the time.

7 THE COURT: Well, let me ask you this. One
8 thing that occurs to me in this case that is almost
9 unique is the fact that all of these witnesses have
10 already testified before this Court in preliminary
11 matters before this and been subjected to cross-
12 examination by yourself and Mr. Kulp. Isn't that
13 correct?

14 MR. MURDAUGH: Yes, sir, it is.

15 MR. FLEMING: But not in full. We don't know the
16 -- only in limited areas and limited issues on the
17 case.

18 THE COURT: But it's certainly exactly the same
19 thing about identification and what happened later.

20 MR. FLEMING: Yes, but they weren't -- they were
21 actually sequestered from that. They didn't
22 participate and hear other witnesses' testimony -- or
23 each other's.

24 THE COURT: They were sequestered to that; by
25 agreement, I believe.

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1 MR. FLEMING: Yes, sir. And the problem becomes
2 that if there are other witnesses that are going to be
3 testifying in this trial, that may or may not have
4 testified in those hearings, -- and our problem is, and
5 the Defense case rests squarely on the problems with
6 consistency in testimony and the problems with recall.

7 If these witnesses are allowed to bolster their
8 recall and the consistency of their testimony, then it
9 is high prejudicial to the defendant and may very well
10 deprive him of a right to a fair trial.

11 Just because the State constitution -- and it is
12 not the State constitution, I don't think -- well, it
13 is the State constitution. Just because the State
14 constitution makes a law, it cannot contravene the
15 United States Constitution, which is the fundamental
16 giver of these rights to all citizens. No state in the
17 country can make a law that contravenes those.

18 THE COURT: Well, I am looking at Rule 6-15 of
19 the Circuit Court Rules. It says, which is entitled
20 "Exclusion of Witnesses", in the note under that, State
21 v. Jackson, it says that the Federal rule "requires
22 sequestration of witnesses upon the request of a party.
23 The South Carolina rule adheres to prior State
24 practice, which leaves the sequestration decision to
25 the sound discretion of the trial court."

1 Of course, since we also have a statute that --
2 well, let me ask you this. This comes up all the time.
3 Do you have any decisions of our court on this matter?

4 MR. FLEMING: We have not been able to locate any
5 decisions ---

6 MR. MURDAUGH: Your Honor, it has not been
7 addressed, as I understand ---

8 THE COURT: And I think that there is a good
9 reason for that, because the rule is pretty clear that
10 it is in the judge's discretion.

11 And, of course, the Victim/Witness Bill of Rights
12 -- and it seems here that it says the 1995 amendment
13 revised subsection (b) of this section. I don't know
14 how it read before that, but this is the one.

15 But it could be much more clearer than, (reading):
16 "A person must not be sequestered from a proceeding
17 adjudicating an offense of which he was a victim."

18 Well, let me ask you this. Have you got any
19 Fourth Circuit or U.S. Supreme Court decisions on that
20 issue?

21 MR. FLEMING: Not on our Code section. No, sir.
22 However, I will point out Your Honor another chapter of
23 the Victim/Witness Bill of Rights, §16-3-1410,
24 subsection (2) (b). It talks about the "State
25 victim/witness program shall assist the office of Court

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1 Administration and South Carolina Sentencing Guidelines
2 Commission in developing guidelines for all judges to
3 follow in the handling of victims, to include but not
4 limited to separate waiting rooms for prosecution and
5 defense witnesses. Clearly if read in conjunction, we
6 must assume that the Legislature did not intend for
7 witnesses not to be sequestered if they're going to
8 have waiting rooms for the prosecution's witnesses.

9 THE COURT: Still, though, there are witnesses
10 who are not victims. You now, "victim" is a very
11 precise and very limited category. To my mind, §16-3-
12 1550(b), how am I read to that any other way than its
13 clear, plain meaning? In fact, I've got a feeling that
14 it was clarified and made more specific that a person
15 must not, must not, be sequestered from a proceeding
16 adjudicating an offense to which he was a victim.

17 As I say, the need for sequestration is lessened
18 since in a prior Hearing on the identification -- and
19 that is, you know, the witnesses that we're talking
20 about, at least two of them, and the third was not, I
21 don't believe.

22 MR. MURDAUGH: No, sir, just two.

23 THE COURT: The two ladies were cross-examined
24 in great detail about everything dealing with that
25 particular night, or at least it seemed to me that they

1 were. I am sure that you've got a transcript of it.

2 MR. FLEMING: Yes, sir. Please note our
3 objection.

4 THE COURT: Okay.

5 MR. FLEMING: And we would make an additional
6 argument, Your Honor, that we would add, at the
7 appropriate time, with regard to the challenge to the
8 reliability of the in court identification, we would
9 also like to add this additional argument concerning
10 the sequestration of witnesses in conjunction with our
11 Motion to suppress the in court identification.

12 THE COURT: Okay. I guess I understand what
13 you said.

14 MR. KULP: Well, ---

15 MR. MURDAUGH: I am not sure that I did, sir.

16 MR. FLEMING: So as not to raise it blindly,
17 since once you rule on this issue you can't unrule on
18 it. So what I would say is that you have already
19 denied our Motion to suppress the in court
20 identification of the defendant. So at this time, we
21 would renew that Motion in conjunction with the Motion
22 to sequester the State's witnesses, as being directly
23 related and affected by your rulings on the
24 sequestration of these witnesses.

25 And the reason that I raise it now is because you

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1 must be given the opportunity to rule on it in
2 conjunction with this Motion or we may have waived it.

3 THE COURT: Would you start over again? I'm
4 sorry, I can't ---

5 MR. FLEMING: Yes, sir. As you know, we filed a
6 Motion to suppress the in court identification of
7 Tavarus Rogers.

8 THE COURT: Correct.

9 MR. FLEMING: And the two witnesses that you're
10 referring to are actually the ones that testified in
11 the Hearings that you've been referring to, and you
12 have denied that Motion. And because we believe that
13 your ruling concerning whether or not to sequester
14 these witnesses directly bears on their identification
15 procedures in this courtroom today or tomorrow, I would
16 add an additional grounds to our Motion to suppress the
17 in court identification based on and in conjunction
18 with your rulings concerning the Motion to sequester
19 witnesses.

20 If you don't sequester the witnesses, we feel like
21 it will again add additional suggestibility and destroy
22 the reliability of these witnesses in the in court
23 identification process.

24 And I raise that now for Your Honor because ---

25 THE COURT: Your objection is duly noted.

1 MR. FLEMING: Thank you.

2 THE COURT: Now, on the sequestration -- now,
3 that had to do with the victims. Now do you have a
4 Motion that you want to make about sequestration about
5 the rest of it, or do you have any Motion regarding
6 sequestration of other witnesses? I did not rule
7 except on the victims.

8 MR. MURDAUGH: And that is three people, I
9 understand.

10 THE COURT: Isn't that right?

11 MR. MURDAUGH: Yes, sir, that's correct:
12 Joceyln Shough, Kristal Wire and Toby Reischl.

13 THE COURT: Okay.

14 MR. FLEMING: Then I do have -- I think, Your
15 Honor, that the Solicitor and I have worked out the
16 particular witnesses that need to be sequestered and
17 we've taken those steps already.

18 MR. MURDAUGH: Okay.

19 THE COURT: Let's put it on the record.

20 MR. FLEMING: I believe John Black is going to be
21 sequestered. And the only other -- and I see him
22 leaving the courtroom now.

23 MR. MURDAUGH: What about Rivers and
24 Williams?

25 MR. FLEMING: Yes, I would like sequestered.

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1 COURT REPORTER: That name again?

2 MR. MURDAUGH: I was just talking to him, off
3 the record. What he has asked of me, sir, and what I
4 am in agreement with is that if he wants -- and you
5 correct me if I don't state it correctly, please, Mr.
6 Fleming, that he wants Richard Rivers, Kenneth
7 Williams, Phil Foote and John Black sequestered. I
8 have no problem with that.

9 THE COURT: Okay. Are they here, or you going
10 to bring them or -- do we need to bring them in and
11 speak to them and tell them -- how do you want to
12 handle that? I mean, some of them might not
13 necessarily have to be here until they're called.

14 MR. FLEMING: And one additional witness, Your
15 Honor, Scott Wendel. And the reason for that is that
16 Your Honor asked him, one time in a previous
17 proceeding, to leave the courtroom under the
18 possibility of suggesting that he was in some way
19 trying to communicate with a witness. And he also went
20 into a room when witnesses were sequestered.

21 We would ask that he be sequestered and he is not
22 -- he could technically be considered a victim but Your
23 Honor has already made a ruling one time that he had to
24 leave the Court. So it is very likely or at least
25 possible that he is going to attempt to do the same

1 thing again.

2 MR. MURDAUGH: He is not a victim under the
3 definition in the ---

4 THE COURT: I do not anticipate any problems
5 with him or with anyone else in this courtroom. If it
6 is brought to my attention that there is someone that
7 is creating a problem, for whatever reason, with the
8 security that we have and the amount of people, I think
9 I will be in a position to take immediate care of it.
10 I don't believe that is applicable. The last thing I
11 anticipate is any problem on that. So that Motion is
12 denied.

13 MR. FLEMING: Thank you.

14 MR. KULP: Your Honor, if it please the Court,
15 I just conducted a nationwide search and it appears
16 that the Arkansas Supreme Court addressed this very
17 issue in the case of *Christopher Epps v. State of*
18 *Arkansas* and rendered an opinion on April 20, 2000. I
19 have flipped it over to that relevant portion, and I
20 would like to proffer it to the Court, (tendering to
21 Court).

22 THE COURT: Give it to opposing counsel first.

23 MR. KULP: I will make him a copy, Your Honor.
24 It is an interesting issue. I'm happy to see that
25 somebody has addressed it. As you said, Your Honor, it

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1 comes up more than ---

2 THE COURT: I have had it come up numerous
3 times myself but nobody has ever appealed it or
4 anything. (Upon review), it looks to me like
5 Arkansas has the Federal Rule where it is required.
6 Well, of course, this says that the rule in Arkansas,
7 Rule 615, interestingly that's the same number that
8 we've got -- I guess that they use the Federal Rules,
9 (reading): "shall order witnesses excluded from the
10 courtroom so that they cannot hear the testimony of
11 other witnesses." Rule 616 predates an exception when
12 one of the witnesses is a victim.

13 Of course, this had to do with the father or
14 something. There is no question that we're talking
15 about victims in this case.

16 I don't think that -- it doesn't say that the
17 victim should be excluded. Does it?

18 MR. KULP: Well, Your Honor, I think that it
19 does differ from the Federal Rule. As you see there,
20 while 615 says that, Rule 616 says that that automatic
21 sequestration on request did not apply in criminal
22 cases. And the case goes on further to say that Mr.
23 Melbourne, the father, did not testify about the
24 circumstances of the murder or the kidnaping. Rather
25 he testified about when his son left the house on the

1 day of the murder, what occurred when he picked John,
2 Jr. up from the police station after his arrest, and
3 about the time of day that John, Jr. secretly left home
4 and was never seen again. Then he gave victim impact
5 testimony.

6 In short, we do not see how Mr. Melbourne's
7 testimony, which was essentially limited to matters in
8 which he was the only witness to have personal
9 knowledge could have been affected by his opportunity
10 to hear the testimony of the accomplices to the
11 kidnaping and murder. Then they made a note that ---

12 THE COURT: I understand all that but our Rule
13 says that the court may. Their's apparently says that
14 they shall. Our Rule leaves it to the judge's
15 discretion. Do you agree with that?

16 MR. KULP: Yes, sir, I understand but the only
17 thing is that is -- if the Arkansas court found that to
18 be the absolute rule, I don't know why they bothered to
19 consider the circumstances of the relationship with the
20 other witnesses and engaged in that analysis.

21 THE COURT: Well, I think because they found
22 that it was wrong because the person, the father, was
23 not exempt. He should have been excluded.

24 However, they went on to rule that they didn't
25 suffer any prejudice because under Arkansas law the

1 father should have been excluded, but they didn't.
2 They didn't reverse it as a result.

3 Isn't that the way that you read it, Solicitor?

4 MR. MURDAUGH: Yes, sir.

5 THE COURT: The judge there erred in not
6 excluding the father as a witness, because under the
7 Rule he was required to do so.

8 MR. KULP: Respectfully, I don't read it that
9 way.

10 THE COURT: Okay. Well, let's look at it a
11 minute. (Reading): "We have not yet interpreted the
12 rule to allow the parent or legal guardian or a
13 murdered child to remain in the courtroom after the
14 Rule has been invoked, nor have we interpreted the
15 Rule's exceptions for victims of the crime to include
16 the immediate family of a murder victim."

17 They left the father in there, but they said that
18 was wrong. He should have been sequestered.

19 MR. KULP: That is the part that I don't see.

20 THE COURT: I am on Page 13 of 16 at the top of
21 the page. Then they say, (reading): "We conclude
22 however that Epps did not suffer any prejudice as a
23 result of the trial court's ruling." So they didn't
24 reverse the case. They said that there was no
25 prejudice. He was wrong in doing it.

1 MR. KULP: I know that, Your Honor, but the
2 point is that there is a distinction between facts
3 there. In that case, the father had the only testimony
4 that no other witness in the trial could offer. So he
5 was a singular source and substance witness.

6 In this case, we're talking about the preservation
7 of the integrity of the testimony of two people, who
8 both will be testifying to similar events in addition
9 to other witnesses. Thank you, Your Honor.

10 THE COURT: Motion to sequester the victims is
11 denied, and your exceptions are duly noted.

12 MR. KULP: Thank you, Your Honor.

13 THE COURT: And we have already put on the
14 record the other witnesses. Is that correct?

15 MR. FLEMING: Yes, sir.

16 THE COURT: Anything else?

17 MR. MURDAUGH: Nothing from the State.

18 THE COURT: I am informed by my law clerk that
19 the jury is present in the courthouse and eating their
20 lunch. Mr. Proulx would you come around and be sworn?
21 I want to put you under oath as a bailiff.

22 MR. MURDAUGH: I always did want to ask him some
23 questions.

24 (WHEREUPON PETE PROULX, CHIEF BAILIFF SWORN)

25 THE COURT: If anybody else comes on duty, we

1 will swear them as the case goes along. We will be at-
2 ease. When the jury is finished, I will give you'all a
3 little notice so that you'all can get ready.

4 (BRIEF RECESS 2:10 to 2:40 P.M.)

5 THE COURT: I asked Mr. McLeod, the chief SLED
6 agent -- he mentioned something about a book that one
7 of the jurors was reading. I want to be very careful
8 about anything that I -- as I told you earlier, any
9 time that I come across anything, I will bring it
10 before you'all. I understand that it is a murder
11 mystery, sort of like an Agatha Christie or something
12 like that one of them is reading. Do you remember the
13 name, Mr. Kulp?

14 MR. KULP: Yes, it is called P is for Peril.
15 I am looking it up right now to find out what ---

16 MR. FLEMING: Susan Grafton.

17 MR. KULP: Thank you --- to see if I can find
18 a description of it, to see what it is about.

19 THE COURT: I think that it is sort of a ---

20 MR. KULP: I think that she admitted to Mr.
21 McLeod that it is a murder mystery. Well, a lot of
22 these are ---

23 THE COURT: All you've got to do is just say
24 that you'd rather she not have it.

25 MR. KULP: Yes, sir, we would rather not have

1 it if we don't take the hit for being the one who ---

2 THE COURT: That's fine.

3 MR. KULP: Thank you, Judge.

4 THE COURT: Would you (Mr. McLeod) tell them
5 that under the circumstances that the book that the
6 juror has, P is for Peril, that I have decided that I
7 would rather that she not read it and that we will get
8 it back to her at the close of the case?

9 MR. McLEOD: Yes, sir.

10 THE COURT: We don't need to discuss it. I
11 will just leave it up to you.

12 MR. KULP: Thank you, sir.

13 MR. MURDAUGH: Your Honor, one thing before
14 the jury comes in. I have a high suspicion, and I've
15 asked Mr. Fleming and he won't tell me, that he intends
16 to use exhibits that have been premarked in his opening
17 statement, some that we have agreed to by consent. I
18 would ask that he not be allowed to do that, sir, until
19 they are introduced during trial. He can make
20 reference to them but not use the exhibits themselves.

21 THE COURT: Any objection?

22 MR. FLEMING: Yes, sir. I wish to use them in
23 opening statement but I will ---

24 THE COURT: There is nothing in evidence at
25 this stage. They may have been premarked but until

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1 something is in evidence it cannot be referred to
2 because the Court would have to rule it. Even though
3 it has been premarked, I would think that that would be
4 inappropriate.

5 Now, that's not to say that you can't talk about
6 the things but you can't use them as an exhibit. If
7 you want to, you can discuss them.

8 MR. FLEMING: Yes, sir.

9 THE COURT: Are we now ready?

10 MR. MURDAUGH: State is.

11 THE COURT: Is the Defense ready?

12 MR. KULP: Yes, sir.

13 THE COURT: Anything else that anybody wanted
14 me to say in opening remarks that I didn't say? I
15 think that I covered about everything.

16 MR. MURDAUGH: Not from the State, sir.

17 MR. KULP: You addressed it very well, Your
18 Honor, but based on that recent ruling about
19 deliberation before the case gets to them, I would ask
20 that, if you think appropriate, Your Honor, that you
21 remind them that they are not to discuss or begin
22 deliberation ---

23 THE COURT: What our custom is, I am not going
24 to do it now. I will do that at the close of the day.

25 MR. KULP: Yes, sir. Thank you, Judge.

1 THE COURT: And if I don't do it, then please
2 call it to my attention. I will make reference to it
3 each time, in a passing way of 'Don't discuss the case
4 with anybody, don't discuss it among yourselves' --
5 and, you know, I have already told them that one time.
6 I don't want to insult their intelligence either, but
7 in closing today I.-- it is my plan to mention it to
8 them.

9 MR. KULP: Thank you, Your Honor.

10 THE COURT: But I don't want to overdo it
11 either because I think that belittles their
12 intelligence. If that's okay, I will do it before we
13 leave each day.

14 MR. KULP: Thank you, Your Honor. Anything
15 else?

16 MR. KULP: Are you going to inquire of them if
17 they have at this juncture appointed a foreperson?

18 THE COURT: Not at this juncture unless they
19 mention it, because I specifically told them that there
20 was no hurry.

21 MR. KULP: Yes, sir.

22 THE COURT: That they could get to know each
23 other. If they want to, they can do it tomorrow.

24 MR. KULP: Very good, Your Honor. Thank you.

25 MR. KNIGHT: Your Honor, Agent McLeod has the

1 book in question from the juror.

2 MR. McLEOD: (Tenders to Judge).

3 THE COURT: I am going to give it to Mrs.
4 Smith, (tendering). If you will, just put that down
5 there and return it to her afterwards. Is that ---

6 THE CLERK: Yes, sir.

7 MR. McLEOD: Judge, some of the others have
8 indicated that they've got books, too, but they won't
9 read them.

10 THE COURT: If you would, just look at them.
11 If the rest of them want to write down their books and
12 let the defense counsel and all review either the books
13 or the titles, we can do that. I guess the best thing
14 to do is to go ahead and do that now. It won't take
15 but a minute and we probably need to get that out of
16 the way. In other words, if they've got a book -- or
17 if it in their luggage, we can give you instructions
18 about picking it up at the hotel. So, if you would, go
19 ahead and get a list of them and come back with that.

20 MR. McLEOD: Yes, sir.

21 THE COURT: Anything else that you'all have?

22 MR. KULP: Nothing from the Defense, Your
23 Honor.

24 MR. MURDAUGH: No, sir.

25 THE COURT: Then we will just stand at-ease for

1 a few minutes.

2 (BRIEF RECESS 2:20 to 2:30)

3 MR. McLEOD: Well, Your Honor, there is one that
4 kind of stands out.

5 THE COURT: Which one?

6 AGENT McLEOD: The Runaway Jury.

7 THE COURT: That is by?

8 COURT REPORTER: John Grisham.

9 MR. MURDAUGH: I don't have any objection to any
10 of them, including the one that we took.

11 THE COURT: I didn't think that you would
12 object to that one.

13 MR. MURDAUGH: I don't object to anything much.

14 MR. KULP: Well, The Runaway Jury, is --
15 (tenders to Clerk).

16 THE COURT: Are the rest of them okay?

17 MR. KULP: (Upon review), the rest seem to be
18 fine and innocuous. Thank you.

19 THE COURT: Go ahead and take the books and
20 give them to Ms. Smith, the Clerk, and she will return
21 them when we finish. If they don't have the book with
22 them, then you can pick it up at the hotel.

23 MR. McLEOD: Yes, sir. Everyone indicated that
24 they would make their books available when we get back
25 to the rooms tonight and that any book of any

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1 questionable nature they'd be glad to turn them over to
2 me and we can bring them to you; or we can hold onto
3 it, whichever you want us to do.

4 THE COURT: Well, what you do, just like this
5 other one you give it to the Clerk and then she can get
6 it back to the owner at the end of the trial.

7 MR. KULP: Very good, Your Honor.

8 THE COURT: Okay, we're all set now?

9 MR. KULP: Yes, sir.

10 THE COURT: Bring in the jury. And, Solicitor,
11 as long as you've got witnesses today, let's -- what
12 time do you have your dinner reservations for?

13 THE CLERK: I told them we might arrive as late
14 as 8:00. Is that correct, Judge?

15 THE COURT: I am willing to go to, say, 6:30 or
16 7:00 and that'll give you'all -- I think that they
17 ought to have time to freshen up or something before
18 they go out. So, say 6:30 or so. How about that?

19 MR. MURDAUGH: Let's wait until -- if I get down
20 to where I don't have but one witness left, let's run a
21 little bit longer.

22 THE COURT: Okay.

23 MR. MURDAUGH: If I've got a bunch, we can quit
24 early.

25 MR. KULP: We would just ask ---

1 THE COURT: We can talk about it.

2 MR. KULP: We would prefer not to work any
3 later than 6:30. We've got a witness to pick up at the
4 airport and we ---

5 THE COURT: I will try to accommodate you.

6 MR. KULP: Thank you, Judge.

7 (JURY IN at 2:31 P.M.)

8 BAILIFF DORSEY: Your Honor, all jurors are
9 present.

10 THE COURT: Thank you, Mr. Dorsey. Okay.
11 Members of the jury, I hope that everyone settled in
12 and had a nice lunch. It certainly did smell good,
13 those Alvin Ord sandwiches.

14 We will now have the opening statements of the
15 attorneys and then we will proceed into the testimony
16 and the evidence.

17 MR. MURDAUGH: May it please the Court?

18 THE COURT: Solicitor Murdaugh.

19 MR. MURDAUGH: Ladies and Gentlemen of the jury,
20 you'all will probably know more about this case than
21 any jury -- well, not any jury -- but more than most
22 juries do because we went through this long and tedious
23 voir dire. That's what you call it when we were
24 talking to you'all up there.

25 Basically what we have is that you'all have one

1 consideration -- forget about the death penalty -- and
2 that is the guilt or innocence of the Defendant in this
3 case.

4 You will considering during the trial of this case
5 two murder cases, one where the Defendant is accused of
6 killing James Mitchell Riley and one where he is
7 accused of killing Paul Reischl.

8 In addition to the two murder cases, you will hear
9 testimony that all of this occurred at the same time,
10 you will hear testimony regarding a burglary in the
11 first degree. I am not going to tell you any law but,
12 just so that you know what to look for when we're
13 trying this case, I will tell you that "murder" is the
14 unlawful killing of another person with malice
15 aforethought.

16 His Honor will charge you later during this trial
17 all the technicalities. I think that I made mention of
18 some of that early. He will tell you what the law is.

19 But for the sake of knowing what to look for, the
20 unlawful killing of another person with malice
21 aforethought. In other words, it had to have been in
22 his head ahead of time.

23 Burglary is the unlawful breaking and entering of
24 the dwelling/house of another during the nighttime with
25 the intent to commit a crime therein. Unlawful

1 breaking and entering the dwelling of another person
2 during the nighttime with the intent to commit a crime
3 therein.

4 In addition, he is charged with five counts of
5 kidnaping. "Kidnaping" is defined by the laws of the
6 state of South Carolina as a crime in which a person
7 unlawfully seizes, confines, conveigles, decoys, --
8 whatever all that means. But, anyhow, seizes and
9 confines another person.

10 Okay, now you'all know about as much about the law
11 as I do.

12 The State intends during the trial of this case --
13 and I promise you that the trial of this case will be a
14 whole shorter than jury selection was.

15 The State of South Carolina will introduce
16 evidence from that witness stand and maybe a couple of
17 pieces of physical evidence that on the date that is
18 alleged in these indictments, that is July (sic) the
19 2nd, 1999, in the early morning hours of New Year's
20 night, at around 3:00 or 4:00 o'clock there was a house
21 that was owned by Paul Reischl. At that house there
22 were a number of people celebrating New Years. Those
23 people were James Michael Riley -- Mitchell Riley,
24 excuse me. James Mitchell Riley, Jocelyn Wendel,
25 Kristal Wire, Toby Reischl and another fellow by the

1 name of John Byars who nobody knows where he is now.

2 That at some point that night four people came to
3 the house and were invited in by Paul Reischl and
4 stayed there for a length of time, which you will hear
5 testimony about. Certain things happened -- not bad,
6 just a friendly visit. That then those four people
7 left. Later, around 3:00 in the morning, two people
8 came back. There was a knock on the door -- and this
9 is the testimony that you will hear from the witnesses,
10 that there was a knock on the door and when the door
11 was opened it was pushed in and two people came in
12 carrying shotguns. They made everybody lie down, under
13 threats of bodily injury, on the floor.

14 They took Paul Reischl and they took him to a
15 bedroom. While in the bedroom, the person who took him
16 under gunpoint shot him twice in the back or side, from
17 which injuries he died.

18 And that fellow, while he was in that bedroom,
19 another fellow, whose name is West McKinnon, was
20 standing with a shotgun holding everybody down on the
21 floor.

22 That when the fellow in the bedroom came out James
23 Mitchell Riley, and you'll just have to listen to the
24 testimony about this, did something to aggravate the
25 person who had been in the bedroom, and who was Tavarus

1 Rogers, and he shot him in close proximity and killed
2 him.

3 You will hear two young ladies, Jocelyn Wendel
4 Though and Kristel Wire, testify that 'yes', they had
5 been at the house earlier when these four people were
6 there; that they were also there when the two people
7 came back; and that the person that took Paul Reischl
8 into the bedroom was Tavarus Rogers. They will tell
9 you that the person who was holding everybody at
10 gunpoint, making them lie down on the floor, was West
11 McKinnon.

12 We're only trying Tavarus Rogers.

13 They will tell you, or one of them will tell you,
14 that when Tavarus came back out of the bedroom and when
15 the little conflict with James Mitchell Riley took
16 place that the other defendant, West McKinnon, says,
17 "Don't do this, V!" BAM! He was dead.

18 That's what this whole case is about. That's it.

19 You may hear other testimony in the trial. When
20 you hear it, give it whatever consideration that you
21 deem appropriate. If you feel that from the testimony
22 that you find the Defendant is guilty, not only of
23 murder but of kidnaping, seizing and confining these
24 people, of burglary, breaking into the house, and of
25 armed robbery, you will hear testimony during the trial

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1 that -- and I might as well be upfront with you about
2 it -- there was some dope in the house, some cocaine
3 and some marijuana. And you will hear testimony that
4 the reason Tavarus Rogers came back around there with
5 West McKinnon is that he wanted to steal Paul Reischl's
6 dope. Thank you.

7 One thing I did not tell you. You will have these
8 Indictments in the jury room. They have absolutely no
9 evidentiary value at all. The only reason you'll have
10 them is because they're sort of like a road map, it
11 gives you a path by which you can remember what he's
12 charged with and which direction that you need to
13 proceed to find guilt or innocence. Thank you.

14 MR. FLEMING: May it please the Court, Your
15 Honor.

16 THE COURT: Mr. Fleming.

17 MR. FLEMING: Your Honor. Solicitor. Good
18 afternoon. You will also hear from that witness stand
19 that it wasn't two days from this shooting that each
20 one of these eyewitnesses was read a statement
21 something to the effect of, (reading):

22 "You will be asked to look at a group of
23 photographs, the fact that the photographs are shown to
24 you should not influence your opinion. You should not
25 concluded or guess that the photographs contain the

1 picture of the person who committed the crime. You are
2 not obligated to identify anyone. It is just as
3 important to free innocent persons from suspicion as it
4 is to identify guilty parties."

5 Because, you see, within two days after reading
6 that statement, Detective Averill and Detective Rosier
7 showed Jocelyn Wendel Though and Kristal Wire and Toby
8 Reischl a series of photographs, a photographic lineup
9 of six photographs of young black men. They studied
10 them carefully -- and you will hear this from the
11 testimony -- they studied carefully each picture,
12 individually. They could not identify anybody in
13 Lineup No. 3 as being the intruder, as being one who
14 committed this crime. The importance of that, Ladies
15 and Gentlemen, is that Tavarus Rogers' picture was in
16 that lineup. That's right. Two days, while this
17 incident was fresh in their minds, the eyewitnesses
18 were shown Tavarus Rogers' picture of his face and they
19 could not identify him as being one of these intruders,
20 one of the people who committed this crime.

21 That's what this case is about.

22 You will also hear from the witness stand that
23 within an hour that this man right here was on the
24 scene, within an hour of this crime. His name is
25 Detective Averill. He will testify. And he will tell

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1 you that his deputy got there within forty-five minutes
2 of the crime and had already secured the crime scene.
3 What that means is that nobody is allowed in or out, to
4 preserve the evidence. And Detective Averill, the lead
5 investigator on this case, along with his team of
6 Sheriff's deputies searched the residence, Coffin
7 Point Road, the place where this crime was committed.
8 They scoured the entire mobile home, they dusted the
9 entire place for fingerprints, they collected over
10 sixty pieces of physical evidence: telephone handset,
11 playing cards, beer cans, fifty or so beer cans.
12 They lifted numerous fingerprints.
13 They took all that evidence and they secured it.
14 In other words, they preserved the evidence, they
15 transported it to Columbia to a place called SLED -- we
16 all, by now, know what SLED is, these gentlemen in the
17 courtroom. Within SLED there's a division of SLED
18 called SLED laboratories. What they do is they
19 forensically and scientifically test physical evidence.
20 And you will hear that all of the evidence collected by
21 Detective Averill was tested forensically by the SLED
22 laboratory and not one piece of physical links Tavarus
23 Rogers to this crime scene. Not one fingerprint, not
24 one bloodstain, not one hair fiber. Nothing.
25 We have already been introduced but I would like

1 to tell you now that this is Tavarus Rogers. As you
2 know, you came in the courtroom and actually took the
3 stand and you realized as you looked in the courtroom
4 and you saw all the lawyers and policemen sitting here
5 and you saw Mr. Kulp and I at this table, obviously you
6 concluded that this Tavarus Rogers -- if the Judge
7 didn't tell you who he was. He's surrounded by his
8 family and friends today, because he is on trial for
9 his life.

10 The Court and the Judge is going to give you the
11 framework to apply to the facts of this case. The
12 first thing that he has told you and that he will tell
13 you is that Tavarus Rogers is presumed innocent. He
14 must prove nothing. He doesn't have to prove his
15 innocence, because it is presumed. For that fact, he
16 doesn't even have to take the witness stand because he
17 bears no burden of proof. In fact, the Judge will tell
18 you that not taking the witness stand is a part of it.
19 He doesn't have to do that. The burden of proof in
20 this case is on this table, the Solicitor. He must
21 prove that all those Indictments that he showed you, he
22 must prove each and every element of these offenses
23 beyond every reasonable doubt.

24 A horrible crime was committed, there is no
25 question about it. We agree with the Solicitor there.

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1 But under no circumstances will he ever be able to
2 prove beyond a reasonable doubt that Tavarus Rogers
3 committed that crime.

4 I want to talk to you one more thing about what
5 the Judge is going to tell you on the law. You took
6 an oath and he said, and I wrote it down, "that is very
7 important for you not to decide any issues until all
8 the testimony is presented." I ask you, please, to do
9 that.

10 And there is a very important reason for that, and
11 that is because of the credibility of the witnesses,
12 the believability of the witnesses, the inconsistencies
13 in their statements. The Solicitor told you what he
14 expects that evidence to show, but I want to go a
15 little bit further than that because there is more to
16 it, there's a lot more to it. He indicated that the
17 two women who are in the courtroom today are going to
18 take the stand and -- actually what they'll do is they
19 will call them around, they will come up to this stand
20 and sit right here. The Solicitor will be asking them
21 questions and at some point during their testimony he
22 is going to ask them, "Is the man who committed this
23 offense in the room today?" In a big dramatic way,
24 with a collective gasp, she is going to look over in
25 the courtroom -- each one of these witnesses. And she

1 is going to look at this table (State's table), and
2 there's no young black man at this table. Of course,
3 the Solicitor is sitting here. It is not this black
4 gentleman, he's a retired United States Marine. It is
5 not anybody up here (indicating bench). It certainly
6 is not these two gentlemen wearing uniforms. She is
7 going to look directly to this table (Defense table)
8 and look directly at that chair, the chair that
9 everybody in this courtroom knows that Tavarus Rogers
10 is sitting in. She is going to say, 'That's him.'
11 'That's the man, that's the one who did this.'

12 She is going to do that, each of them, not because
13 Tavarus Rogers is the man who committed this offense
14 and not because they could identify him as this "V" or
15 "B" person that the Solicitor referred to. They are
16 going to identify him by virtue of the fact that he is
17 sitting at that table and in that chair.

18 And you ask me, well, how do I know that?
19 Because, Ladies and Gentlemen, you will hear testimony,
20 thank goodness, that within eight hours of this
21 shooting that Detective Rosier and Detective Eva
22 Campbell took statements from each of these witnesses
23 and each of them said, and you will hear, that they did
24 not describe these intruders, they did not know who
25 they were, they were "two black men, wearing masks".

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1 Ladies and gentlemen, you don't have to believe
2 me. You don't even have to believe these detectives.
3 You will hear with your own ears, we will play for you
4 the 911 tape in this case, because what you will hear
5 is that after this horrible crime was committed that
6 Jocelyn Wendel and Kristal Wire ran out, as I am
7 certain that I would have, and they ran next-door to
8 the house next door, Coffin Point Road, and asked a
9 nice man there, who is now deceased, a very nice man
10 who helped them, to call 911. You will hear him talk
11 to the 911 Operator and he's unable to explain what
12 happened, because he didn't know, and standing there on
13 the telephone Kristal Wire gets on the phone and she
14 tells the 911 Operator what we know to be the truth.
15 You will hear the 911 Operator say, "Do you know who it
16 was?" And there was a 'no', Ms. Wire says, "No, ma'am.
17 It was two black males and they had masks on."

18 Today and tomorrow in the courtroom, they will not
19 identify Tavarus Rogers because they did not see who it
20 was. They can only identify him because of the chair
21 that he sits in. You cannot convict this young man,
22 any young man, because of the chair that he sits in.

23 Thank you.

24 THE COURT: Solicitor?

25 MR. MURDAUGH: We call Jocelyn Wendell Shough.

1 (WITNESS TAKES STAND)

2 JOCELYN SHOUGH WENDEL, being
3 duly sworn to tell the truth, the whole truth, and
4 nothing but the truth, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MURDAUGH:

7 Q. Give us your full name and spell your last name,
8 please?

9 A. Jocelyn Elizabeth Shough Wendel. Do you want me
10 to spell both of them?

11 Q. I thought that it was Wendel Shough.

12 A. No. S-h-o-u-g-h W-e-n-d-e-l.

13 Q. Ms. Wendel, how old are you?

14 Q. Eighteen.

15 Q. Where do you live?

16 A. Savannah Highway.

17 Q. Is that in Beaufort?

18 A. Yes, sir.

19 Q. Please pull your chair up a bit closer because I
20 want you to speak into that microphone so that these
21 last jurors can hear everything that you say clearly
22 and distinctly. If you can, talk as loud as I do
23 because I know they could hear you then.

24 A. (Takes microphone from holder and puts to her
25 mouth).

1 Q How long have you lived in Beaufort?

2 A. Eight years.

3 Q January the 2nd, January the 1st, 1999, did you
4 live in Beaufort County?

5 A. Yes, sir.

6 Q. Did you have occasion that night to go to
7 anybody's house to celebrate New Year's?

8 A. Yes, sir.

9 Q. Whose house did you go to?

10 A. I was at my parents' house to celebrate New Year's
11 and then we went to ---

12 Q. Your parents?

13 A. My parents, (affirmative nod).

14 Q. Scott Wendel?

15 A. Scott Wendel, (affirmative nod) is my father.

16 Q. And then you went to ---

17 A. And then we went to Paul's house because he ---

18 Q. Paul who?

19 A. Paul Reischl.

20 Q. These Ladies and Gentlemen of the jury don't know
21 who you are talking about.

22 A. We went to Paul Reischl's house because he was
23 under the influence of alcohol and we went to his house
24 to take him some more alcohol. So we went there.

25 Q. Who went there?

1 A. James Mitchell Riley, Kristal Mae Wire and myself.

2 Q. Okay. When you got to that house, who was there?

3 A. There were Tavarus Rogers, West McKinnon, Jonathon

4 Gadsen, Collins Gadsen -- I don't know how to pronounce

5 his name -- and Paul Reischl, John Byars -- John Byars

6 and three of us -- and Toby Reischl.

7 Q. There were six people there before you'all got

8 there?

9 A. Yes, sir.

10 Q. Those people being Tavarus Rogers, West McKinnon,

11 the two Gadsen boys, John Byars and Paul Reischl?

12 A. And Toby was there also.

13 Q. Toby Reischl?

14 A. (Affirmative nod).

15 Q. So there were seven people there?

16 A. Yes, sir.

17 Q. When you got -- what time did you get to the

18 house?

19 A. We got there around 12:30 a.m.

20 Q. That would have been the late night of the first,

21 early morning of the second of January?

22 A. Yes, sir.

23 Q. When you got there, did you have an occasion to

24 meet the people there that -- were there some there

25 that you did not know?

1 A. There were -- I didn't know anyone there except
2 for my uncle and Kristal. I was introduced to -- or,
3 I was told who everyone was.

4 MR. KULP: We would object to that being
5 hearsay testimony pursuant to the rule of evidence that
6 prohibits that, unless the Court is to determine the
7 testimony that is to be hearsay falls under some
8 exception rule.

9 THE COURT: I don't think that was hearsay. I
10 think that she -- your objection is noted.

11 MR. KULP: Not to that, Your Honor, but ---

12 THE COURT: Oh, okay. The Solicitor has
13 obviously ---

14 MR. KULP: Right. Thank you.

15 EXAMINATION CONTINUED

16 BY MR. MURDAUGH:

17 Q. How did it come about that you met the people
18 there?

19 A. I met Paul first. He was standing outside,
20 waiting for us.

21 Q. Did you not know Paul?

22 A. No, I hadn't met Paul before. I'd had known his
23 name, I'd known him through my uncle but I had never
24 met him before.

25 Q. Okay.

- 1 A. Then we met John as we came in.
- 2 Q. John Byars.
- 3 A. John Byars, he introduced himself to me.
- 4 Q. Okay.
- 5 A. And then I met Tavarus. He introduced himself to
- 6 me as "V".
- 7 Q. I'm sorry, do what?
- 8 Q. Tavarus Rogers, he introduced himself to me as
- 9 "V".
- 10 Q. "V" like in victory?
- 11 A. Yes.
- 12 Q. Okay.
- 13 A. Then I met West and then Toby and then Collins and
- 14 then John -- in that order.
- 15 Q. Okay. What did you'all do after you got there?
- 16 A. Sat around for a while. I sat there and listened
- 17 to everybody talk. We just talked, talking with
- 18 everybody. And eventually we played cards, I played
- 19 cards with Collins Gadsen and Paul Reischl. And Toby
- 20 got on the phone.
- 21 Q. Let me ask you this question. When you were
- 22 introduced to Tavarus Rogers as "V", how close were you
- 23 to him?
- 24 A. I had never met him before. I didn't know him at
- 25 all.

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1 Q. No, how close were you to him?

2 A. Oh, sorry. Uh, approximately five or ten feet
3 away. I was seated at the couch, he was straight in
4 front of me and he had to pull his head back to talk to
5 me, to introduce himself to me. Sort of like
6 (gesturing) and introduced himself to me.

7 Q. All right.

8 Q. How long were you in the presence of the person
9 who introduced himself to you as "V" who you say that
10 you later learned -- who is "V"?

11 A. Who is V?

12 Q. Yes, ma'am.

13 A. Tavarus Rogers.

14 Q. How long were you in the presence of Tavarus
15 Rogers, the two Gadsen boys and -- who was the other
16 one?

17 A. West McKinnon.

18 Q. And West McKinnon?

19 A. When you say "how long", do you mean like in the
20 house or ---

21 Q. In the house, yes, ma'am.

22 A. Uh, probably about an hour and a half to two
23 hours.

24 Q. And you got there about 12:30? 1:30, 2:30, so you
25 would not have been in their presence after 2:30 or

1 3:00 o'clock?

2 A. Yes, sir. Correct.

3 Q. Why weren't you in their presence after 2:30 or
4 3:00?

5 A. Because they all left.

6 Q. All four of them?

7 A. All four of the men.

8 Q. Who?

9 A. The men that were sitting at the table when we
10 came in.

11 Q. Who?

12 A. Tavarus Rogers, West McKinnon and Collins Gadsen
13 and the other Gadsen, Jonathon Gadsen.

14 Q. Did you see any of them later that night?

15 A. Yes, I did.

16 Q. Tell the ladies and gentlemen on the jury how long
17 it was before you saw them and the circumstances under
18 which you saw them.

19 A. It was about an hour or an hour-and-a-half and all
20 of a sudden they came into the house with the gun.

21 Q. And how did they get into the house?

22 A. The door was opened for them.

23 Q. Was opened for them by who?

24 A. By John Byars.

25 Q. By John Byars?

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1 A. Yes, sir.

2 Q. And when they came into the house, describe for
3 the ladies and gentlemen on the jury what you observed.

4 A. When I looked over at the door, I saw Tavarus
5 standing there. I recognized him because I saw his
6 face. His mask had fallen down.

7 And I saw West and I knew it was him by the
8 Raiders jacket that he had on.

9 Q. The what?

10 A. The Raiders jacket that he had on.

11 Q. Raiders?

12 A. Raiders; (affirmative nod), the football team.

13 Q. Did he have it on when he was there earlier?

14 A. Yes, he did.

15 Q. Okay.

16 A. I recognized West from his jacket.

17 Q. What did they --- did they come into the house?

18 A. Yes, they did.

19 Q. What did either of them do once they got into the
20 house?

21 A. Tavarus pushed Paul and then started hitting him,
22 hitting Paul -- Tavarus kept hitting -- I'm sorry, not
23 Paul. He kept hitting John until John ---

24 Q. John Byars?

25 A. John Byars (affirmative nod). Until John Byars

1 fell over the couch from the force and fell onto the
2 floor. Then he ran in.

3 Q. Did they say anything during that period of time?

4 A. Yes, sir, they told us to get down on the floor --
5 and there were a few choice words involved in that.
6 Cuss words.

7 Q. I want to hear exactly what was said by the two
8 men that came into the house.

9 MR. KULP: Your Honor, we would object again
10 to any hearsay. Of course, ---

11 THE COURT: Hearsay?

12 MR. KULP: Yes, sir, as to ---

13 THE COURT: What hearsay are you referring to?

14 MR. KULP: Maybe we could approach, Your
15 Honor.

16 THE COURT: Well, he asked what words were
17 said. Do you contend that is hearsay?

18 MR. KULP: I contend that the hearsay rule of
19 evidence states that "hearsay" is the testimony of what
20 a person said that is extrajudicial, that is outside
21 the courtroom.

22 THE COURT: Your objection is duly noted and it
23 is overruled based on the facts and circumstances of
24 this case. I will be glad to give you a more indepth
25 ruling later, but I don't think that is necessary. It

1 is duly noted and overruled.

2 MR. KULP: Thank you, Your Honor.

3 EXAMINATION CONTINUED

4 BY MR. MURDAUGH:

5 Q. What did the people say when they came into the
6 house?

7 A. "Get the fuck down on the floor", ---

8 Q I'm sorry, I can't hear you.

9 A. "Get the fuck down on the floor!" "Get the hell
10 down on the floor, get down, get down now!"

11 Q. Please don't move the microphone away from your
12 mouth.

13 A. Just used those words over and over again. Paul
14 was ---

15 THE COURT: Excuse me. If it will help you,
16 you can -- you've got the microphone in your hand and
17 you can stand up, but the jury has got to be able to
18 hear you. They have to be able to hear you. Everybody
19 in this courtroom has to hear you. Sit up straight
20 and you can stand up if you want to. Go ahead.

21 THE WITNESS: What was the question again? I'm
22 sorry.

23 MR. MURDAUGH: You have answered my question. I
24 don't want to go through it again.

25 EXAMINATION CONTINUED

1 BY MR. MURDAUGH:

2 Q. After they -- do you know who it was that was
3 saying these things?

4 A. Tavarus was the main one saying them. West
5 pitched in a few words, "Now", such as "Get down now!",
6 stuff like that. "Get down right now!"

7 Q. And when they said that, what did you and anybody
8 else that was in the house do?

9 A. The others got down. I was thrown on the floor.

10 Q. Excuse me?

11 A. The others got down on the floor and I was thrown
12 on the floor.

13 Q By whom?

14 A. By Tavarus.

15 Q. What about Paul Reischl?

16 A. Paul, I did not see Paul at that time. I saw his
17 feet when he got up and walked past me when Tavarus
18 ordered him to get up.

19 Q. So Tavarus ordered him to get up?

20 A. (Affirmative nod).

21 Q. And you saw him walk?

22 A. (Affirmative nod).

23 Q. Where did you see him walking?

24 A. To the back bedroom down the hall. Down the hall.

25 Q. Excuse me.

1 A. I didn't see him walk to the bedroom. I saw him
2 walk down the hall.

3 Q. The direction that they were walking in, was that
4 towards the bedroom?

5 A. Yes, sir.

6 Q. Did you hear anything that Tavarus Rogers said to
7 Paul Reischl?

8 A. "Give me the stuff" or "Give me your money."
9 First it was "give me your money" and then it was "give
10 me the stuff." And then Paul said -- no, Tavarus
11 said, "I know you have more than that." Paul said,
12 "Sorry, man, that's all that I've got."

13 And West was calling about, "Don't do it, V --
14 don't do it, V!" I guess he could see him, I don't
15 know. And then he shot him.

16 Q. Was anybody in that back bedroom besides Tavarus
17 Rogers and Paul Reischl?

18 A. No, sir.

19 Q. What happened after you heard the shots back
20 there?

21 A. There was a little silence and Tavarus came back,
22 walked back into the living room and he saw Mitchell
23 and he, uh, -- James Mitchell Riley -- and he asked him
24 what he was doing. And he said, "I'm just putting my
25 cigarette out, man. I'm just putting my cigarette

1 out." He threw him on the floor and started kicking
2 him, I saw him start kicking him, and he said, "Give me
3 your money!" Mitchell pulled out some change from his
4 pocket and gave it to Tavarus; he kicked him some more,
5 and then he shot him.

6 Q. How close was Tavarus Rogers to James Mitchell
7 Riley when he shot him?

8 A. He was right next to him, he wasn't that far away.

9 Q. What happened after he shot James Mitchell Riley?

10 A. He walked over to me and asked if anybody had seen
11 anything and, of course, we told him no. Then he went
12 into the front room where the front door was and I
13 heard four or five very loud thumps and then he left.

14 Q. You heard four or five thumps?

15 A. Yeah, I came in after they'd left and I saw John
16 Byars on the floor seizing and bleeding.

17 Q. I'm sorry, I couldn't understand you.

18 A. I came in after they had left, to lock the front
19 door so that they couldn't get back in, and I saw John
20 on the floor seizing and bleeding.

21 Q. Seizing? Having a seizure?

22 A. Having a seizure, (affirmative nod). So I assume
23 that that was him hurting him because he could've
24 punched him that hard.

25 Q. Do you have any idea where John Byars is?

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- 1 A. Last I heard, he was in Tennessee with his father.
- 2 Q When Tavarus said, first, "Give me your money" --
- 3 and what?
- 4 A. "Give me the stuff!"
- 5 Q. What was he talking about when he said "the
- 6 stuff"?
- 7 A. I assumed he was referring to the cocaine.
- 8 Q. And he later said what about it?
- 9 A. "I know that you have more."
- 10 Q. "I know that you have more"?
- 11 A. (Affirmative nod).
- 12 Q. And that is the point where he took him to the
- 13 bedroom?
- 14 A. No, they were in the bedroom then.
- 15 Q. They were in the bedroom then?
- 16 A. Yes.
- 17 Q. Okay. Did you see the use of any illegal drugs at
- 18 Paul Reischl's house that night?
- 19 A. Yes, sir.
- 20 Q. Tell the ladies and gentlemen of the jury what you
- 21 observed.
- 22 A. I saw a very large bag of cocaine, and I saw a
- 23 joint, and I saw ---
- 24 Q. A "joint"?
- 25 A. (Affirmative nod), a joint, weed.

- 1 Q. Marijuana?
- 2 A. Marijuana.
- 3 Q. Okay.
- 4 A. And then I saw Paul, Paul Reischl, and James
- 5 Mitchell Riley smoking off a waterbong.
- 6 Q. Water bomb?
- 7 A. Something that people smoke weed out of, marijuana
- 8 off of, weed off it.
- 9 Q. Are those the only two people that you saw using
- 10 any drugs?
- 11 A. Yes, sir.
- 12 Q. I show you four photographs and ask if you can
- 13 identify these?
- 14 A. That's Paul's house.
- 15 Q. Can you speak a little louder so that they (the
- 16 jury) can hear you?
- 17 A. That's Paul Reischl's house.
- 18 Q. The yellow tape that you see in them, was it there
- 19 that night or was it later put up by the police?
- 20 A. It was later put up by the police.
- 21 MR. MURDAUGH: If Your Honor, please, I would at
- 22 this time offer these as Exhibits.
- 23 THE COURT: Any objection?
- 24 MR. KULP: Without objection, Your Honor.
- 25 (SO ENTERED AS STATE'S EXHIBITS 1 THROUGH 4)

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1 MR. MURDAUGH: If Your Honor please, they have
2 been marked as State's Exhibit 1, Exhibit 2, Exhibit 3
3 and Exhibit 4.

4 EXAMINATION CONTINUED

5 BY MR. MURDAUGH:

6 Q. Ms. Wendel, I ask you, are these four photographs
7 of the outside of the house, taken from four different
8 directions?

9 A. Yes, sir.

10 MR. MURDAUGH: May I publish them to the jury,
11 sir?

12 THE COURT: Yes, sir. Members of the jury,
13 from time to time something that has been introduced
14 into evidence will be passed around for you to look at.
15 Look at it as long as you want to, but you do not have
16 to try to remember everything that is on it, because if
17 it has been introduced into evidence you will have it
18 in the jury room with you during deliberations, to look
19 at for as long as you need to or want to.

20 EXAMINATION CONTINUED

21 BY MR. MURDAUGH:

22 Q. Ms. Wendel, I show you three sheets of paper and
23 ask you if you can identify these?

24 A. Just give me one second, (review). Yes, this is
25 the front room. This is the front room that we were

1 sitting in.

2 MR. MURDAUGH: If Your Honor please, I would at
3 this time offer this as State's Exhibit 7.

4 MR. KULP: Without objection. I think that
5 the Solicitor would stipulate that it is not to scale.

6 MR. MURDAUGH: Absolutely.

7 MR. KULP: Without objection.

8 (SO ENTERED AS STATE'S EXHIBIT 7)

9 EXAMINATION CONTINUED

10 BY MR. MURDAUGH:

11 Q. Looking at State's Exhibit 7, I would ask if you
12 could identify that?

13 A. Yes, it is Paul's house.

14 Q. A sketch of his house?

15 A. Yes, sir.

16 Q. State's Exhibit 5, I ask you if you can identify
17 that?

18 A. Yes, that is Paul Reischl's kitchen.

19 Q. And State's Exhibit 6?

20 A. It looks to be Paul's room.

21 Q. I ask you whether or not after Tavarus and West
22 McKinnon left the house if you went to the back
23 bedroom?

24 A. Yes, sir.

25 Q. I ask you if this looks like where -- what did you

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1 find in the bedroom?

2 A. I saw the bed ---

3 Q. I'm sorry?

4 A. I -- (pause).

5 THE COURT: Go ahead.

6 THE WITNESS: I saw the bed and I saw that it was
7 overturned. I figured that his body would be under it,
8 so I didn't touch anything. I walked out.

9 EXAMINATION CONTINUED

10 BY MR. MURDAUGH:

11 Q. Did you see a body?

12 A. No, sir.

13 Q. Okay.

14 A. I didn't look.

15 Q. I show you State's Exhibit 5 and ask you -- you
16 testified that that is a sketch of the kitchen?

17 A. Yes, sir.

18 Q. Did you see a body in the kitchen?

19 A. Yes, sir.

20 Q. Where did you see the body in the kitchen?

21 A. Next to the counter.

22 Q. Is that where this thing that looks similar to a
23 human body is sketched out?

24 A. Yes, sir.

25 MR. MURDAUGH: May I publish these to the Jury?

1 And may I ask the witness to step down to ask her a
2 question to where the jury can see where she is
3 indicating?

4 THE COURT: Certainly.

5 MR. MURDAUGH: Come down here, if you would,
6 ma'am.

7 THE WITNESS: (Complies)

8 THE COURT: Leave your microphone there.
9 There's another one there that you can use.

10 MR. MURDAUGH: And may I do this on both ends of
11 the (jury) box so that everyone can see it?

12 THE COURT: If you would. That's exactly
13 right, do it on both so that half the jury can see it
14 one time and half the other. Make sure that the
15 question and the response is the same for both of them.

16 EXAMINATION CONTINUED

17 BY MR. MURDAUGH:

18 Q. Ms. Wendel, I am showing you State's Exhibit 7.
19 You have identified this as being the living room of
20 Paul Reischl's house?

21 A. Yes, sir.

22 THE COURT: Wait a minute, we can't hear her.
23 She is going to have to speak into the microphone.

24 EXAMINATION CONTINUED

25 BY MR. MURDAUGH:

1 Q. You have identified this as being a sketch of Paul
2 Reischl's living room?

3 A. Yes, sir.

4 Q. If you will, show the Ladies and Gentlemen of the
5 jury -- you testified that you were sitting on a couch,
6 I believe?

7 A. Yes, sir.

8 Q. What couch were you sitting on?

9 A. Well, there was a couch right here where the
10 stereo is marked. The stereo was right here somewhere
11 on the wall and the front door -- I was sitting on the
12 couch and the front door was right here, and I was
13 sitting right here by the front door that somebody has
14 sketched.

15 Q. Come right down here, please, (moving along jury
16 box) and explain to these ladies and gentlemen --
17 explain to them on the sketch where you were and all of
18 that.

19 A. I was sitting here where there was supposed to be
20 a couch, there was a chair right here and the front
21 door was right here. I looked over and saw them.

22 Q. You can have a seat back up there (on the witness
23 stand).

24 A. Yes, sir, (complies).

25 Q. Ms. Wendel, you said that a person introduced

1 himself to you as "V"?

2 A. Yes, sir.

3 Q. Is that person in the courtroom?

4 A. Yes, sir.

5 Q. Where is that person in the courtroom?

6 A. Right there (gesturing to defense table).

7 Q. You're pointing to the table where Mr. Kulp and
8 Mr. Fleming are seated?

9 A. Yes, sir.

10 Q. And are you talking about the man on whose
11 shoulder I now place my hand (places hand on Tavarus
12 Rogers' shoulder)?

13 A. Yes, sir.

14 Q. Is the person who introduced himself to you as "V"
15 the same person who came back into that house?

16 A. Yes, sir.

17 Q. And again let me ask you, how do you know that it
18 was him? How long had it been since he had left the
19 house?

20 A. About an hour and a half.

21 Q. And you had been with him almost two and a half
22 hours? How long did you say? I don't want to ---

23 A. Right around two hours. An hour and a half or two
24 hours. I am not quite sure.

25 Q. So you had been with him for him for about an hour

1 and a half to two hours and he'd left?

2 A. Yes, sir.

3 Q. Then about an hour and a half later, he came back
4 to the house?

5 A. Yes, sir, about an hour to an hour-and-a-half.

6 Q. So then about an hour or an hour-and-a-half later
7 he came back to the house?

8 A. Yes, sir.

9 Q How do you know that it was the same person that
10 was introduced to you as "V"?

11 A. Well, at the time he introduced himself to me, he
12 had his hair done, and part of it was, uh, half of it
13 was -- I don't know how you say it, but it was twisted
14 up and part of it was just regular -- just regular, I
15 don't know how you'd call it. And when he came in, I
16 saw that one piece of hair was just like it was before
17 and one piece of the hair was -- and I also saw his
18 face because his mask came down, when he opened the
19 door.

20 Q. What kind of a mask did he have on?

21 A. It looked to me like a tee shirt with the sleeves
22 cut in it.

23 Q. And what happened to the tee shirt?

24 A. It fell down underneath his eyes.

25 Q. Is that person that took Paul Reischl into the

1 bedroom, where you heard the shots, in the courtroom?

2 A. Yes.

3 Q. Who is he?

4 A. He's Tavarus Rogers.

5 Q. And where is he?

6 A. Right there (indicating).

7 Q. And is that the same person who I put my hand on
8 his shoulder a moment ago?

9 A. Yes, sir.

10 Q. Is the person who shot James Mitchell Riley in the
11 courtroom?

12 A. Yes, sir.

13 Q. And where is he?

14 A. Sitting at that table.

15 Q. Is that the same person?

16 A. Yes, sir.

17 Q. And did West McKinnon, who you have identified as
18 the second person coming into the house, say anything
19 to Tavarus Rogers while they were in there?

20 A. Yes, sir.

21 Q. And you ---

22 MR. KULP: We would renew our earlier
23 objection, Your Honor.

24 THE COURT: Duly noted.

25 EXAMINATION CONTINUED

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1 BY MR. MURDAUGH:

2 Q. And what did West McKinnon say to Tavarus Rogers?

3 A. "Don't do it, V!" "Don't do it, V!"

4 Q. "Don't do it, V"?

5 A. Yes.

6 Q. "V" as in victory?

7 A. Yes, sir.

8 Q. And you were introduced to Tavarus as what?

9 A. "V".

10 A. Yes. At first I thought that he'd said "Feet" and

11 then John told me that it was "V". And I said, "V?"

12 And he said, "Yeah, that's his name."

13 Q. Tavarus Rogers said that?

14 A. John Byars told me that, because I misunderstood

15 what he was trying to me. I thought that he'd said

16 "Feet" and John said, "No, it's "V".

17 MR. MURDAUGH: Thank you. Answer any questions

18 that these gentlemen may have.

19 MR. KULP: May it please the Court.

20 THE COURT: Mr. Kulp.

21 MR. KULP: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. KULP:

24 Q. Good afternoon, Ms. Wendel. How are you?

25 A. (No response)

1 Q. Excuse me one second, -- (Sets up pad on easel),
2 would you mind coming down here?

3 A. (Complies)

4 Q. Can you see that?

5 A. Yes, sir.

6 Q. Just a minute ago when you were testifying, in
7 response to the Solicitor's question, about the
8 exhibits containing the diagrams, I think you made a
9 remark, did you not, that it wasn't exactly right?

10 A. Yes, sir.

11 Q. When you said that -- I don't want to draw on the
12 exhibit, and that's why we brought this thing
13 (indicating pad on easel).

14 But if we look at the floorplan, would you agree that,
15 as you recall, it how Paul's trailer used to be. There
16 is an area ---

17 MR. MURDAUGH: If Your Honor please, I think that
18 we need to move the witness so that the jury can see
19 what we're talking about.

20 THE COURT: Yes. If you would, stand aside.

21 THE WITNESS: (Complies)

22 THE COURT: That's good.

23 CROSS EXAMINATION CONTINUED

24 BY MR. KULP:

25 Q. Now, there are rooms -- let's see -- now, is it

- 1 the case that the reason that that diagram was a little
2 off is because when you talk about the couch that you
3 were sitting on, that couch was back here?
- 4 A. Yes, sir.
- 5 Q. And if the front door of the trailer opened,
6 either this way or the other way, it opens about right
7 here?
- 8 A. Yes, sir.
- 9 Q. This little area out here?
- 10 A. Yes, sir.
- 11 Q. And this is the back of the trailer, is it not?
- 12 A. Yes, sir.
- 13 Q. And would this fairly represent, not to scale, a
14 little bar sort of area, a little checker-board bar?
- 15 A. Yes, sir.
- 16 Q. And, so then, this would be the kitchen area?
- 17 A. Yes, sir.
- 18 Q. And the telephones in fact were located back over
19 here?
- 20 A. Yes.
- 21 Q. So you were seated on this ---
- 22 A. Yes, sir.
- 23 Q. This is, I guess, the living room?
- 24 A. Yes, sir.
- 25 Q. When you referred to the living room, this is kind

1 of where everybody was gathered ---

2 A. Yes, sir.

3 Q. --- because that is where the drinks were and the
4 drugs and some other things, the cocaine on the plate?

5 A. Yes, sir.

6 Q. Very good. Thank you very much. Would you please
7 return to the witness stand?

8 A. (Complies).

9 Q. Now, you testified that this was New Year's, but
10 in fact it was New Year's Day.

11 A. Yes, sir.

12 Q. So the 12:30 a.m. that evening, A.M., when you
13 went out would have been January 2nd?

14 A. Yes, sir.

15 Q. So it was not New Year's Eve?

16 A. No, sir it was New Year's Day not New Year's Eve.

17 Q. And one of the things that I would like to clarify
18 is that when you testified on direct, in response to
19 the Solicitor's questions, in describing who you met,
20 what people you saw and so forth when you arrived at
21 Paul's trailer that night, at that location, you were
22 calling people by names but to make sure that it is
23 clear to the ladies and gentlemen of the jury, in fact,
24 at that time you didn't know any of the names of the
25 four men at the trailer?

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1 A. At what time?

2 Q. When you arrived at the trailer?

3 A. Oh, no, I didn't know anyone.

4 Q. And you had never met them before?

5 A. No.

6 Q. And in fact, for clarity's sake, all of those
7 young black men were African-American?

8 A. Yes, sir.

9 Q. And your testimony is that - but now you've
10 identified the accused as being the person who was "B"?

11 A. Yes, sir.

12 Q. I mean "V".

13 A. Yes, sir.

14 Q. Or was it "D"?

15 A. No, it was "V". I thought that you said "V" the
16 first time.

17 Q. Was it "P"?

18 A. No, sir.

19 Q. "E"?

20 A. No, sir.

21 Q. Or "T"?

22 A. No, sir.

23 Q. Or "Z"?

24 A. No, sir.

25 Q. And you saw these men playing cards?

1 A. I didn't see what they were doing at first.

2 Q. Did you see them drinking any beers or engaging in
3 the social activities of the people who were there?

4 A. They stayed in that room pretty much the first
5 little bit, I don't know how long. Tavarus was one of
6 the first to come out and get a beer and a cigarette
7 off the counter. There were a number of phone calls
8 made to the house, that West and Tavarus came out to
9 answer.

10 Q. And I think that you testified on direct that at
11 some given point you were about five feet away from
12 him?

13 A. Yes, sir, when he first came in. Five to ten
14 feet.

15 Q. And you said that you were -- you were five to ten
16 feet away from him?

17 A. Yes, sir.

18 Q. And you had conversation with him, to some limited
19 degree?

20 A. Yes, sir.

21 Q. Now, you made reference in your direct testimony
22 to the cocaine?

23 A. Yes, sir.

24 Q. So when you arrived that evening you saw a big
25 plate of cocaine?

- 1 A. No, sir.
- 2 Q. You saw a large quantity of cocaine?
- 3 A. Yes, sir. And Paul pulled a bag out of his
- 4 pocket or somewhere off his person.
- 5 Q. And you said that you saw Paul and Mitch smoking
- 6 off of a bong? Is that like a kind of big water-based
- 7 marijuana pipe? Like a hookah?
- 8 A. Yes, sir. It was sitting on the counter. It was
- 9 about that big (gesturing approximately ten inches).
- 10 Q. And did you see anyone with a syringe?
- 11 A. No, sir.
- 12 Q. And I think that you testified, as well, that you
- 13 went to the back room to check on Paul?
- 14 A. After he was shot, yes.
- 15 Q. After the two men left?
- 16 A. Yes, sir.
- 17 Q. And you saw Toby there? You met Toby?
- 18 A. Yes, sir.
- 19 Q. Did you ever see Toby go check on Paul, as well?
- 20 A. No, sir, I didn't see anything.
- 21 Q. Did he get up and run out the back door?
- 22 A. He got up and ran. I got up and went to the
- 23 living room, I didn't see where he went.
- 24 Q. Yes, ma'am. Let me ask you a few questions about
- 25 that evening, the timeframe of 12:30 a.m. on January

1 1999. Were you -- how old were you then?

2 A. Fifteen.

3 Q. And you left your house at about 12:30 a.m. with
4 Ms. Wire; correct?

5 A. And Mitchell, James Mitchell.

6 Q. And her new boyfriend, who was ---

7 A. That was my uncle.

8 Q. I know, but was he going out with her at the time?

9 A. He was dating her.

10 Q. But she used to go out and had a long relationship
11 with Toby; correct?

12 A. That's the father of her children.

13 Q. Toby wasn't very happy about that?

14 A. No, sir.

15 Q. So at 12:30 you got over there and your testimony
16 is that when these men broke in and did these horrible
17 things it was about 4:00 a.m.?

18 A. About that. Around about then.

19 Q. I don't mean to ask this the wrong way, but these
20 are very serious matters. You weren't doing any
21 cocaine at the time?

22 A. No, sir.

23 Q. And you weren't doing any other drugs or drinking
24 any alcohol?

25 A. No, sir.

1 Q. Did your dad or your mom know that you had gone
2 out at that hour of the night?

3 A. I think I recall writing a letter to them; and it
4 was my uncle, they trusted my uncle.

5 Q. Were you tired at 3:00 a.m., 4:00 a.m., or
6 anything?

7 A. During many, many times that night I asked my
8 uncle if we could leave. And the fact that I asked
9 him, I guess just bugged him and he just wanted to stay
10 and talk.

11 Q. And you wanted to leave because you were tired?

12 A. Yeah.

13 Q. So you were back on the couch there and one of the
14 things that you did, when in fact you couldn't get
15 Mitch to leave was you got on the telephone and you had
16 a long conversation with someone?

17 A. Yes, sir.

18 Q. You didn't mention anything in your direct
19 testimony about the lighting in the trailer at that
20 time, but I can't imagine that it would be very bright,
21 with people doing drugs -- you saw what you saw, and I
22 know that you said that you weren't using drugs, but
23 the lighting couldn't have been very bright.

24 A. What lighting are you referring to?

25 Q. Any.

1 A. The kitchen light was on, there was light on in
2 the living room -- I remember seeing the lamp knocked
3 over. The light at the table that the men were sitting
4 at, that light was on when they came in also.

5 Q. You were sitting somewhere on this couch?

6 A. Yes, sir.

7 Q. Okay.

8 A. Not when I first came in.

9 Q. I mean at the time that the two men came in?

10 A. Yes, sir.

11 Q. And they came in through here, through the front
12 door?

13 A. Right.

14 Q. Now, you testified in an earlier proceeding in
15 this case that two men, in seconds, came bursting in
16 through the front door; that they were wearing masks
17 and I heard your testimony about that there was a
18 problem ---

19 MR. MURDAUGH: What page are you on?

20 MR. KULP: I don't know right now, but I will let
21 you know as soon as I find it.

22 EXAMINATION CONTINUED

23 BY MR. KULP:

24 Q. That the masks were was there and that there was a
25 problem with one, but that as soon as they came in the

1 door that you determined who it was. It that correct?

2 A. Um-humm.

3 BY COURT REPORTER: Is that a yes?

4 THE WITNESS: "Yes", that's correct.

5 EXAMINATION CONTINUED

6 BY MR. KULP:

7 Q. And, as a matter of fact, you also testified in
8 that prior proceeding that you never saw his face, that
9 being the person that you later matched up with the
10 name "Tavarus Rogers"; it that correct?

11 A. Excuse me?

12 Q. Did you or did you not testify in a prior
13 proceeding that you did not see his face?

14 A. When he came in?

15 Q. Yes, ma'am.

16 A. No, I never said that.

17 Q. We will deal with that in a minute when we get the
18 proper references, but let me move on for now.

19 Now, forty-eight hours after the incident you were
20 shown a photo lineup that you now know contained a
21 photo of Tavarus Rogers and you could not identify the
22 face. You could not identify him. Correct?

23 A. Yes, sir.

24 Q. Then -- that was forty-eight hours after the 2nd,
25 say on the 4th of January 1999.

- 1 A. Yes, sir.
- 2 Q. And then during the interim your father kept a
3 collection of the news articles and a scrapbook about
4 this case; is that correct?
- 5 A. Yes, sir.
- 6 Q. You helped him assemble it?
- 7 A. No, sir, I didn't help with any of the assemble.
- 8 Q. Okay. Well, we will come back to that, too. But
9 in any event you were aware of it and you saw it?
- 10 A. Yes, sir.
- 11 Q. Can you describe the outside of it?
- 12 A. It was an American flag, the design of an American
13 flag which just goes all the way around.
- 14 Q. And that contained news articles about the case
15 and other things?
- 16 A. Yes, sir.
- 17 Q. And those indicated that the police had charged
18 Tavarus Rogers with the murder; correct?
- 19 A. Yes, sir.
- 20 Q. After that or during that interim period, you had
21 the occasion to come into court for some preliminary
22 proceedings and to see Mr. Rogers; standing before the
23 court, spoken to as "Mr. Rogers" and -- you saw that?
- 24 A. Yes, sir.
- 25 Q. And you saw that?

1 A. Yes, sir.

2 Q. Now, thirty-two months later you came to this
3 courtroom; correct?

4 A. Yes, sir.

5 Q. And in a prior proceeding examined the photo-
6 graphic lineup again and you still could not identify
7 the photograph of Mr. Rogers in that lineup; isn't that
8 correct?

9 A. Yes, sir.

10 Q. So at that point, thirty-two months after the
11 incident -- after not identifying him, you came into
12 this courtroom and you did identify him; didn't you?

13 A. Yes, sir.

14 Q. And he was at that table, correct?

15 A. Yes, sir.

16 Q. And that is where you looked when you were asked
17 if you could identify him; correct?

18 A. Yes, sir.

19 Q. And you testified that that was where you expected
20 him to be; correct?

21 A. Yes, sir.

22 Q. And he was the only young black male in the
23 courtroom wearing an orange jumpsuit, isn't that
24 correct?

25 A. Yes, sir.

1 Q. And then, at that time, you testified that it was
2 him, that you were sure, and that he was the killer;
3 is that correct?

4 A. Yes, sir.

5 Q. And you also testified that day, after you
6 identified the young black man in the orange jumpsuit
7 seated there at that table between his lawyers, you
8 then testified, did you not, that he was the only
9 person who could be the Defendant; didn't you?

10 A. I don't understand what you are asking me.

11 Q. That day, after you identified him, in response to
12 my questions, you testified that he, in the orange
13 jumpsuit, was the only person who could be the
14 defendant; didn't you?

15 A. Yes, sir.

16 Q. Thank you very much. I might have -- let me check
17 with cocounsel for a minute (sidebar with Mr. Fleming).
18 Have you had occasion to review a transcript of your
19 testimony in August?

20 A. Yes.

21 Q. You read through the entire transcript?

22 A. Of my testimony, yes.

23 Q. Do you recall when the Solicitor asked you, on
24 direct testimony, saying "How did you identify Tavarus
25 Rogers?" and you testified, "Because I saw his face"?

1 A. Yes, sir.

2 Q. Then do you recall testifying, when I asked you
3 about that, that "it showed that he had a little slit
4 right..." ---

5 MR. MURDAUGH: What page?

6 MR. KULP: 145, sir.

7 EXAMINATION CONTINUED

8 BY MR. KULP:

9 Q. (Reading):

10 "That it showed that he had a little slit right
11 here and then a piece was falling down from right
12 here. As soon as he opened the door, it kind of
13 just fell down -- I don't, I never saw his face."

14 A. I saw his face.

15 Q. I am just asking you what you testified to?

16 A. I didn't see his whole face, I saw his facial
17 features.

18 Q. I am just asking you if you saw his face?

19 A. Yes.

20 Q. You've have talked to a lot of people about the
21 case in that twenty-two months. You talked to Ms. Wire
22 -- you'all have chatted about the case?

23 A. Yes, sir.

24 Q. And you talked to your father, Scott Wendel, about
25 the case?

1 A. Yes, sir.

2 MR. KULP: Thank you, ma'am. Appreciate it
3 very much.

4 REDIRECT EXAMINATION

5 BY MR. MURDAUGH:

6 Q. Ms. Wendel, I ask you to look at the transcript on
7 Page 136, which is nine pages ahead of where he just
8 asked you about. Were you asked by Mr. Kulp:

9 "Q. Okay, you have said that Tavarus Rogers did
10 this?

11 A. Yes, sir.

12 Q. How did you identify Tavarus Rogers?

13 A. Because I saw his face."

14 Is that what you testified, on Page 136 of your
15 transcript earlier?

16 A. Yes, sir.

17 Q. Did you see his face?

18 A. Yes, sir.

19 Q. And who is he?

20 A. Tavarus Rogers.

21 Q. You said that you were shown a photo ID? I show
22 you an item and ask if you can identify that?

23 A. I can't positively identify his face.

24 Q. What I am asking is if you can identify what I
25 showed you?

1 A. Yes, they showed me this right after.

2 Q. Everybody has referred to this as a photo ID?

3 A. Yes, sir.

4 Q. Is that a photo or is that a copy?

5 A. It's a copy.

6 MR. MURDAUGH: If Your Honor please, I would offer
7 this as exhibit.

8 MR. KULP: Without objection, Your Honor.

9 MR. MURDAUGH: May we approach? This is not
10 something that needs to be on the record at all.

11 (SIDEBAR CONFERENCE)

12 MR. MURDAUGH: If Your Honor please, I would at
13 this time offer as an exhibit an item which had been
14 marked at the prior Hearing that we discussed as
15 State's Exhibit 3 for ID.

16 THE COURT: It is being received in evidence
17 without objection, so just put it (the sticker) on top
18 of that previous one so that there won't be any
19 confusion in this Hearing.

20 MR. MURDAUGH: Okay.

21 COURT REPORTER: State's Exhibit 10.

22 (SO ENTERED AS STATE'S EXHIBIT 10)

23 MR. MURDAUGH: Your Honor, the reporter has
24 reminded me that Exhibits 5, 6 and 7, the sketches,
25 were not moved into evidence. I thought that I had ---

1 THE COURT: I thought that they were all
2 received into evidence without objection. Isn't that
3 correct, Mr. Kulp?

4 MR. KULP: Yes, sir.

5 THE COURT: Okay, they are in evidence without
6 objection. That's for all the previous ones; isn't
7 that right?

8 MR. MURDAUGH: Yes, sir. Four photographs and
9 three sketches, and two things that we haven't talked
10 about yet. And this is State's Exhibit 10.

11 THE COURT: Thank you, sir.

12 REDIRECT EXAMINATION CONTINUED

13 BY MR. MURDAUGH:

14 Q. Exhibit 10, this is what was shown to you?

15 A. Yes, sir.

16 Q. Were you able to identify him at the time that it
17 was shown to you?

18 A. No, sir.

19 Q. Can you identify him now, from this?

20 A. Not positive.

21 MR. MURDAUGH: If Your Honor please, I would ask
22 that this be entered as Exhibit 10.

23 THE COURT: All right, without objection. For
24 all attorneys, anytime that an exhibit is introduced
25 into evidence, it may be published to the jury at your

1 convenience. Of course, nothing that has not been
2 introduced into evidence may be published to the jury.

3 MR. MURDAUGH: Thank you, sir. Please answer any
4 other questions that they may have.

5 MR. KULP: Just a couple, Your Honor:

6 RECROSS EXAMINATION

7 BY MR. KULP:

8 Q. When you were looking at the lineup forty-eight
9 hours after the incident, were you rushed in any way?

10 A. No, sir.

11 Q. You had all the time that you wanted?

12 A. Yes, sir.

13 Q. No one hurried you along in any fashion?

14 A. No, sir.

15 Q. And you were five to ten feet away when you met
16 this person?

17 A. Yes, sir.

18 Q. And you say that you could not identify the
19 defendant's face?

20 A. No, sir.

21 MR. KULP: Thank you.

22 RE-REDIRECT EXAMINATION

23 BY MR. MURDAUGH:

24 Q. Ms. Wendel, I realize that this is somewhat
25 trivial, but you said that you could not identify a

1 photograph of him?

2 A. (Affirmative nod). No, sir.

3 Q. Actually you couldn't identify a copy of a
4 photograph of him?

5 A. Excuse me? I didn't get that.

6 Q. I mean, that's not a photograph in that Photo ID;
7 is it?

8 A. No, sir.

9 Q. It is a copy of a photograph?

10 A. Yes, sir.

11 MR. MURDAUGH: Thank you, ma'am.

12 BY MR. KULP: Just a couple of questions.

13 RE-RECROSS EXAMINATION

14 BY MR. KULP:

15 Q. Ms. Wendel, did you say to the police officers
16 when you were looking at this, "This looks like him,
17 this might be him, do you have a better photograph that
18 I can look at?"

19 A. No, sir.

20 BY MR. KULP: Thank you. No further questions.

21 THE COURT: You may come down.

22 (WITNESS STEPS DOWN)

23 (TESTIMONY OF JOCELYN WENDEL CONCLUDED)

24 THE COURT: Solicitor, call your next witness.

25 MR. MURDAUGH: I call Kristal Wire. Put your left

1 hand on the Bible and hold up your right hand to be
2 sworn, please.

3 THE COURT: Okay. Ms. Wire, you can speak into
4 the microphone, and it's not a bad idea, if you want
5 to, to take it out of that stand so you can hold it
6 real close so you can get the full effects of it, and
7 speak up.

8 KRISTAL MAE WIRE, being
9 duly sworn to tell the truth, the whole truth, and
10 nothing but the truth, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MURDAUGH:

13 Q. Your full name, please, ma'am?

14 A. Kristal Mae Wire.

15 Q. And how old are you, Ms. Wire?

16 A. Twenty-five.

17 Q. Okay. I ask you, where do you live?

18 A. Spanish Trace Apartments. That's in Beaufort.

19 Q. How long have you lived in Beaufort?

20 A. About sixteen years.

21 Q. Directing your attention to January the 1st or
22 2nd, in that vicinity, of 1999, I ask you if you had an
23 occasion to go to Paul Reischl's house on Coffin Point?

24 A. Yes, sir.

25 Q. And why did you happen to go there?

1 A. Paul is -- was a good friend of mine, and he
2 wanted us to bring him some beer and some soda.

3 Q. Okay. And did you'all get some beer and soda to
4 take around there?

5 A. Yes, we did.

6 Q. And who is "us"?

7 A. James Mitchell Riley, myself and Jocelyn Wendel.

8 Q. What is your relationship with James Mitchell
9 Riley?

10 A. He was my fiancé' at the time.

11 Q. Okay. And you and Jocelyn, the lady that just
12 testified?

13 A. Excuse me?

14 Q. You, James Mitchell Riley, and Jocelyn, who is the
15 lady that just testified, went to that house, ---

16 A. Yes, sir.

17 Q. --- the three of you'all?

18 A. Yes, sir.

19 Q. Okay. When you arrived at that house, who was
20 there?

21 A. Paul was standing outside. He walked in with us.
22 We walked through the living room, which John -- I
23 believe John was in there, John Byers.

24 Q. John Byers.

25 A. We walked through into the little dining area

- 1 where there were four black gentleman. Paul proceeded
2 to introduce us to them. One stood up and shook my
3 hand and said, "My name is "V", what's yours?" I said,
4 "My name is Kristal." He sat back down. We went ahead
5 on into the kitchen, Paul, Mitch and I, and stood in
6 the kitchen and pretty much stayed in the kitchen
7 almost the whole, entire time.
- 8 Q. Okay. Did you have any conversation with anybody
9 that was in that house?
- 10 A. Not really.
- 11 Q. Huh?
- 12 A. Not really, except for Mitch and Paul.
- 13 Q. Okay. Did you have an occasion to observe the
14 people other than Mitch and Paul?
- 15 A. Yes.
- 16 Q. Okay. Do you see any of the people that were in
17 that house that night in the courtroom today?
- 18 A. Yes.
- 19 Q. And who is that?
- 20 A. Tavarus Rogers.
- 21 Q. Describe to the Jury how he is dressed.
- 22 A. It appears to be a black or dark blue suit, white
23 collared, button-up shirt, and a blue tie.
- 24 Q. Okay. And seated between Mr. Kulp and Mr.
25 Fleming?

- 1 A. Yes, sir.
- 2 Q. Okay. And you were introduced -- he introduced
3 himself to you as "V"?
- 4 A. Yes, sir.
- 5 Q. How long were you'all there until anybody left?
- 6 A. Over an hour. I'm not sure from -- the exact
7 amount of time.
- 8 Q. About what time did you'all get there?
- 9 A. I honestly couldn't tell you about what time we
10 got there. I know it was late.
- 11 Q. Late, like ---
- 12 A. After 10:00 o'clock.
- 13 Q. Okay. And you stayed there for some length of
14 time?
- 15 A. Yes.
- 16 Q. Had you been drinking that night?
- 17 A. I had a couple of beers.
- 18 Q. Okay. Use any drugs?
- 19 A. No.
- 20 Q. Did at some point in time the four black males
21 leave?
- 22 A. Yes.
- 23 Q. Do you know about what time that was?
- 24 A. No, I have no idea what time it was.
- 25 Q. Did at some point in time any of those four black

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1 males come back to the house?

2 A. Two of them, that I know of.

3 Q. Okay. How do you know -- tell me about that.

4 About how long after they left before they came back?

5 A. I'm not sure how long it was, but when they did
6 come back, we heard a knock on the door. Mitch, Paul
7 and I were around the bar in the kitchen. Toby was
8 standing somewhere in the kitchen.

9 Q. Who?

10 A. Toby.

11 Q. Toby Reischl?

12 A. Yeah, in a little area in there. Jocelyn was
13 sitting behind me on a couch against the wall, and John
14 was in the living room, John Byers. We heard beating
15 on the door. We heard John yell he would get the door.
16 While -- so we just still stood there. We had the
17 stereo going. Well, we heard a bunch of ruckus, like
18 hitting the walls and, you know, just a bunch of
19 ruckus, so Paul went to go see what it was. When he
20 went to go around the corner, the two ran in holding
21 shotguns and telling us to get down. We all stood
22 there for a couple of seconds. I'm not sure how long,
23 but stood there. His mask came down off his face.

24 Q. "His," who?

25 A. His, Tavarus', off of the bottom half of his face,

1 that I can remember. And they told us to get down. We
2 got down. Paul got down right in front of me to where
3 our heads were meeting, and Tavarus was over him
4 telling him to give him everything he had. He was on
5 his right side, grabbing drugs or money, or whatever --
6 I have no idea -- out of his pocket and handing it up
7 to Tavarus while West stood on the other side right
8 there holding us by gunpoint.

9 After Paul gave everything out of his pocket,
10 Tavarus got him up, took him into the bedroom. Back
11 there is where we heard him asking for the drugs, that
12 he knew he had more and he wanted everything. And then
13 we heard West yelling, "Come on, man! We got -- we got
14 what -- we got what we came for. Come on, 'V', let's
15 get out of here, dog." Then we heard "V" yelling, "No,
16 man. I'm going to shoot him, man. I'm going to shoot
17 him!" And then West saying, "No. No, 'V.' We got
18 what we came for, dog. Let's get out of here." And
19 then I heard two shots fired.

20 He came down the hallway and ---

21 Q. He?

22 A. "V" -- and as he ---

23 Q. That's Tavarus?

24 A. Yes. As he entered the room where we were in at
25 the end of the hallway, he asked where Mitch was. I

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1 could hear Mitch say, "I'm right here, Bo. I'm not
2 going anywhere. I'm just putting a cigarette out."
3 And he walks past all of us. As he walks past Toby, he
4 says, "Toby, put your head down and do not look."

5 He goes into the kitchen, and you can hear them
6 kicking him around, Mitch begging for him not to shoot
7 him.

8 Q. Saying what?

9 A. Pretty much, 'Don't do it.' And I heard two shots
10 fired. And then he ran out ---

11 Q. He? He, who?

12 A. Tavarus ran around. Then we heard all the thumps.
13 And then he runs in to where we were. He says,
14 "Everybody stay down. Don't move. You didn't see
15 anything, or you're all wet," and ran out the front
16 door.

17 Q. Okay. You said that you saw -- how did you see
18 Tavarus? How do you know it was Tavarus Rogers?

19 A. He's got a very -- personally, I think he has a
20 very distinctive nose and around his lip area and neck
21 area.

22 Q. Okay.

23 A. His nose stands out, to me.

24 Q. And did you see that?

25 A. I seen his nose. I didn't ---

1 Q. How?

2 A. When I met him, when I first got there, that night
3 when he came back in with a gun and -- yeah, both
4 times.

5 Q. Okay. How did you see him when he came back in
6 with a gun?

7 A. Because whatever he had -- it was a white cloth-
8 type, whatever it was -- fell down on this part of his
9 face (demonstrating) when he came through the door.

10 Q. Okay. How did you recognize Tavarus Rogers -- I
11 mean, West McKinnon?

12 A. Him, he has like very droopy-looking, big eyes.
13 That's about it on him.

14 Q. Did you see that night any drugs at the house?

15 A. Yes.

16 Q. Tell the ladies and gentleman on the Jury about
17 that.

18 A. There was -- I don't know how much cocaine, a lot
19 of it; and there was marijuana, I don't know how much
20 of that.

21 Q. Did you see anybody using any of it?

22 A. Mitch and Paul both smoked the marijuana.

23 Q. Okay. Did anybody use any cocaine while you were
24 there?

25 A. No.

1 Q. If they had, would you ---

2 A. That I know of, no.

3 Q. If they had, would you have been able to see them?

4 A. Pretty much, because we were all pretty much in
5 the open, standing in the kitchen.

6 Q. Okay. Now, at what point did you realize that
7 James Mitchell Riley, your fiancé', had been killed?

8 A. Soon as he was shot.

9 Q. Did you become hysterical?

10 A. Shock.

11 MR. FLEMING: Object to the leading, Your Honor,
12 "Did you become hysterical?"

13 MR. MURDAUGH: I apologize.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. MURDAUGH:

16 Q. What were your feelings after you learned that he
17 had been shot and killed?

18 A. I was in shock.

19 Q. Did you -- after they left, talking about Tavarus
20 Rogers and West McKinnon, did you then go next-door and
21 call 911?

22 A. Yes.

23 Q. What was your condition at that time?

24 A. I very, very vaguely remember even talking to 911.
25 I was very emotional. We were trying to get away. We

1 didn't know if they were coming back to get us. We
2 were trying to stay out of eye's way of anybody so
3 nobody would see us and come back to get us and kill
4 us. I was hysterical. So -- I don't know. I mean,
5 just wasn't in the right state of mind.

6 MR. MURDAUGH: Just one second, please.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. MURDAUGH:

9 Q. You've testified that Tavarus was standing over
10 Mitch, James Mitchell Riley, I think; did you not?

11 A. At what point?

12 Q. After he came out of the bedroom, after you heard
13 the two shots?

14 A. I didn't see him standing over him. We heard --
15 I, personally, heard them fighting and him kicking
16 Mitch, and then the two gunshots.

17 Q. Okay. Did you look at him at that point?

18 A. No.

19 Q. Okay. Did you see him after the time you heard
20 the two shots in the bedroom?

21 A. Yes, I did.

22 Q. Did he have anything in his hands during the time
23 you saw him?

24 A. When he came straight down the hallway, as soon as
25 he entered the room we had -- or that we were in -- he

1 had a gun in his hand, ---

2 Q. Okay.

3 A. --- and that's when he asked where Mitch was.

4 Q. And did West McKinnon have a gun in his hand?

5 A. Yes.

6 Q. Okay. You said that at the point where he came
7 out of the bedroom into the kitchen area where you'all
8 were lying, I think -- is that right?

9 A. Uh-huh, (affirmative nod).

10 Q. What did Tavarus Rogers do in regards to James
11 Mitchell Riley?

12 A. What, as soon as he came out from the hallway
13 after shooting Paul?

14 Q. Yes, ma'am.

15 A. As soon as he came out, as soon as he hit the room
16 we were in, he asked where Mitch was, and you could
17 hear Mitch saying, "I'm right here, Bo. I'm not going
18 anywhere. I'm just putting a cigarette out." He
19 passed all of us up. As he was passing Toby, he said,
20 "Toby, put your head down. Don't look." Went into the
21 kitchen where Mitch was. You heard them fighting, him
22 kicking him, and then the two shots.

23 Q. Where were you when that was going on?

24 A. Right on the other side of the bar.

25 Q. Okay. Where were you -- you testified earlier

1 about Tavarus Rogers saying something to Paul about
2 drugs, and what was that?

3 A. When he had him in the bedroom?

4 Q. Anything he said to him about drugs ---

5 A. He just ---

6 Q. --- or money.

7 A. When he put him on the ground in the same room we
8 were, he said he wanted his money and drugs.

9 Q. Okay.

10 A. And then after Paul handed him everything out of
11 his left pocket, it was, and lifted -- or handed it up
12 to him, he said he knew that that wasn't all of it and
13 took him to the bedroom where they proceeded to -- he
14 proceeded to get it. From back there, you could hear
15 them, you know, Paul saying, "I'm sorry, Bo. Don't" --
16 you know, "Don't do it. Come on, man. Don't do it."

17 Q. Let me ask you this, please, ma'am. When you
18 called 911, were you asked, "Do you know the names of
19 the people that did this?"

20 A. I have no idea if I was, if I told them.

21 Q. If you had been asked, would you have known the
22 names of them then?

23 A. I could -- yes, I could have said "V," because of
24 what was said during the whole procedure, the entire
25 time.

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1 Q. So the name "Tavarus" never came up during the
2 introduction; is that correct?

3 A. Excuse me?

4 Q. That young man over there was never introduced to
5 you as "Tavarus Rogers"?

6 A. No. Just as "V."

7 Q. Just as "V." Okay. Was West McKinnon ever
8 introduced to you as "West McKinnon"?

9 A. No.

10 MR. MURDAUGH: Okay. Got you covered. Thank you.
11 Answer any questions these gentleman might -- I mean,
12 Mr. Kulp and Mr. Fleming may have.

13 MR. FLEMING: If it please the Court, Your Honor.

14 THE COURT: Mr. Fleming.

15 MR. FLEMING: Your Honor, we -- for the benefit of
16 the Jury, we have a projector to show some particular
17 exhibits. It may take a couple of seconds. If the
18 juror -- jurors need to take a break and use the rest
19 room or something ---

20 THE COURT: Well, let me ask them. Are you'all
21 okay? Do you want -- nobody seems to -- yeah,
22 everybody seems to be okay. Go ahead and set it up.

23 MR. FLEMING: I can start in a little bit.

24 CROSS EXAMINATION

25 BY MR. FLEMING:

1 Q. Good afternoon.

2 A. Hi.

3 Q. You were never introduced to a man named Tavarus;
4 were you?

5 A. Not as "Tavarus," no.

6 Q. And, in fact, the person that you were introduced
7 to, you say, was named "V," correct?

8 A. Uh-huh, (affirmative nod).

9 Q. And so when you're using the name "Tavarus" very
10 freely for the jury, you're actually assuming that
11 Tavarus is "V," aren't you?

12 A. Well, when I was introduced, he said, "They call
13 me "V", what's your name?"

14 Q. I understand that. And the reason that you know
15 this is Tavarus is because this is where Tavarus is
16 sitting; correct?

17 A. That's not the reason I know that's him, no.

18 Q. You just testified to the jury that nobody was
19 using cocaine at this cocaine party; is that right?

20 A. That I seen of.

21 Q. And then you told the Solicitor, "Well, if
22 somebody was, I pretty much was right there. I would
23 have seen it." Correct?

24 A. Right.

25 Q. Well, then, nobody was using cocaine at this

1 cocaine party; were they?

2 A. Not that I seen of.

3 Q. Come on. Somebody was using cocaine at this
4 party, weren't they?

5 A. Maybe, but I didn't see them then.

6 Q. And you weren't using any at all?

7 A. No.

8 Q. Isn't the truth, actually, that Mitch was
9 supplying you cocaine?

10 A. Wrong.

11 Q. This good friend of yours, Paul; was actually a
12 cocaine dealer; wasn't he?

13 A. Right.

14 Q. And, in fact, he dealt cocaine out of that very
15 trailer; didn't he?

16 A. Right.

17 Q. And then from time to time many different people
18 would come in to buy cocaine from that trailer; isn't
19 that true?

20 A. Never when I was there, so I can't say that's
21 true.

22 Q. You were escorted by the police from the crime
23 scene within, say, about an hour and a half of when it
24 happened; right?

25 A. Right.

1 Q. And they took you, basically, to this area right
2 here, the facility next-door, the Law Enforcement
3 Center; correct?

4 A. Right.

5 Q. And at that point -- at that point, you were safe?
6 The police were around you; right?

7 A. Right.

8 Q. I mean, in fact, Detective Roser had his sidearm
9 right next to you; didn't he?

10 A. Right.

11 Q. And there's really no safer place in the world to
12 be but in the midst of the police station; right?

13 A. Right.

14 Q. And so it's safe to say, then, that you felt
15 comfortable and safe at that point; correct?

16 A. I don't know what I felt at that point.

17 Q. Well, nonetheless, you gave a statement to the
18 police within about five hours of witnessing this
19 event; correct?

20 A. Uh-huh, (affirmative nod).

21 COURT REPORTER: Is that a "yes"?

22 THE WITNESS: "Yes."

23 CROSS EXAMINATION CONTINUED

24 BY MR. FLEMING:

25 Q. And that was when the incident was still fresh in

1 your mind; right?

2 A. Right.

3 Q. And you, actually, wrote -- wrote out -- hand-
4 wrote two separate statements, didn't you?

5 A. Yes.

6 Q. Okay. And everything that you told the police at
7 that time was the truth, wasn't it?

8 A. Excuse me?

9 Q. Everything that you told the police was the truth;
10 wasn't it?

11 A. Yes.

12 Q. And they asked you to be as detailed as possible,
13 didn't they?

14 A. Yes.

15 Q. Okay. And you tried to be; right?

16 A. Uh-huh, (affirmative nod). Yes.

17 Q. And you tried to put down every detail that you
18 could remember ---

19 A. Yes.

20 Q. --- everything that you saw, right?

21 A. Yes.

22 Q. Okay. I will now show you what has been marked
23 previously, and you have previously identified in a
24 prior court hearing ---

25 MR. FLEMING: May I approach the witness? I

1 -- apologize.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION CONTINUED

4 BY MR. FLEMING:

5 Q. --- these two copies. Are these copies of the
6 statements that you hand-wrote to the police within
7 five hours of this incident?

8 A. (Upon review), yes.

9 MR. FLEMING: Mr. Kulp, could you put that up for
10 the Jury so that they can go through it with us?

11 MR. KULP: (Complies)

12 CROSS EXAMINATION CONTINUED

13 BY MR. FLEMING:

14 Q. While he's doing that, I want to ask you another
15 question. One of the important reasons that you make a
16 statement when the incident is -- incidents or things
17 are fresh in your mind is because over time memories
18 fade; don't they?

19 A. Some.

20 Q. Some?

21 A. (Affirmative nod).

22 Q. And, in fact, I believe that you told the
23 Solicitor when he was talking to you that, now,
24 you don't really remember when you got to the
25 trailer that night; do you? I mean ---

1 A. Not exactly what time.

2 Q. Not exactly what time. But I will show you the
3 very first sentence of your statement that you wrote
4 -- and as he gets it up there, the Jury can see it.

5 It says, (reading): "Me, Mitch and Jocelyn got to
6 Paul's house about 12:30 or 1:00 o'clock." Isn't that
7 what you wrote?

8 A. That's what I wrote.

9 Q. Okay. And the reason that you were able to put it
10 into this document was because the incident was fresh
11 in your mind; right?

12 A. Right.

13 Q. But as the thirty-two months, or however long it's
14 took, gone by, you've forgotten that point, obviously;
15 right?

16 A. Obviously, I guess.

17 Q. Okay. And, of course, the explanation for that is
18 that memories fade over time. Right?

19 A. Some of them.

20 Q. Okay. Now, I'm going to ask you about your
21 statements to the police concerning your description of
22 the intruders. Now, in these statements -- and what
23 I'll do is I'll let you have these, okay, so that you
24 can refer to them, and I'm going to take a real quick
25 break and let you read them. Okay?

1 A. Do you want me to read both of these?

2 Q. Just to yourself so you can familiarize yourself
3 with them. Okay? And Mr. Kulp is working on the
4 projector.

5 A. I really don't need to read them.

6 Q. Fine. Well, let's just wait for just a second.

7 MR. FLEMING: Well, Your Honor -- I'm sorry. Are
8 you ready?

9 MR. KULP: Yes.

10 MR. FLEMING: Okay. At this time, having been
11 identified, I would move to admit those statements,
12 those two documents, which would be identified as
13 Defense Exhibits 2 and 3.

14 MR. MURDAUGH: No objections.

15 THE COURT: Okay. Do you want to put on the
16 record the previous identification numbers?

17 MR. FLEMING: May I see them?

18 THE WITNESS: (Tenders documents to Mr. Fleming)

19 MR. FLEMING: Your Honor, they were previously
20 identified as 2A and 2B.

21 THE COURT: Okay.

22 MR. FLEMING: I will now ---

23 THE COURT: Okay. Well, the court reporter will
24 assign a number to them. Go ahead. Put it on there.

25 (SO ENTERED AS DEFENDANT'S EXHIBIT 2 thru 4)

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1 BY JUROR: (Raises hand and stands up)

2 MR. MURDAUGH: Judge, why don't we take a short
3 break, sir?

4 THE COURT: Oh, yes. Okay. Yes, ma'am. Anytime
5 you'all need to take a break, just let me know. We
6 think now is a good time. Please retire to the jury
7 room, and we'll continue in just a moment.

8 (JURY OUT AT 4:19 P.M.)

9 THE COURT: Let's have order in the Court until
10 the jury gets out.

11 THE BAILIFF: Order in the Court..

12 THE COURT: In fact, I want everybody to come back
13 in here, please. Come on back in here. I've got some
14 -- sit down because -- that's good. I'll just let you
15 stand right there. But from now on during this week --
16 we've got a lot of people here, and so when the Jury
17 goes and comes out and the Court is still in session,
18 you sit where you are. In just a minute I will excuse
19 everybody to leave. That's not to say you can't go out
20 one at a time, but every time something like this
21 happens, I do not want everybody to get up and go back
22 there and start talking again. If it happens again --
23 you know, I just want everybody to know so we'll know
24 where we are. I can put somebody in jail six months
25 just like that, because of disturbing the courtroom.

1 I don't want to do that and I don't want there to be
2 any misunderstanding, but we're not going to have any
3 demonstrations during this entire process.

4 In other words, everybody is going to sit here and
5 take the testimony as it comes.

6 And, with that, go ahead. We're in recess, but
7 don't let this happen again.

8 The Court is in recess for fifteen minutes.

9 MR. FLEMING: Your Honor, the witness is on the
10 stand ---

11 THE COURT: Yes, sir?

12 MR. FLEMING: --- and she can't talk to anybody,
13 but she would be more comfortable in another room,
14 maybe.

15 THE COURT: Well, you don't have to sit right
16 there. I'll have the Bailiff -- we've got a room.
17 Are you okay?

18 THE WITNESS: I'm fine.

19 THE COURT: Do you need the rest room?

20 THE WITNESS: If it's going to be fifteen minutes,
21 (affirmative nod).

22 (BRIEF RECESS 4:20 to 4:33 P.M.)

23 THE COURT: Okay. We're all set?

24 (WITNESS TAKES STAND)

25 (4:33 DEFENDANT PRESENT)

1 THE COURT: Okay, I'm going to wait just a
2 minute. Everybody that's out there that's coming in,
3 let them come on in, but we're not going to have
4 everybody just traipsing in after the Jury gets here.

5 MR. MURDAUGH: While they're doing that, if Your
6 Honor please, I noticed on the screen that they have
7 projected there are certain things that have been
8 outlined and marked in purple. I ask that ---

9 THE COURT: Highlighted?

10 MR. MURDAUGH: Yes, sir, highlighted. I ask that
11 that not be exhibited to the Jury.

12 MR. KULP: I can fix that, but it will take me
13 about three minutes.

14 MR. FLEMING: Scan the one that she's identified
15 into the ---

16 MR. KULP: I'll be happy to substitute that,
17 Solicitor, with a ---

18 THE COURT: I think that's reasonable. I think it
19 ought to not be highlighted because I'm not sure -- so
20 go ahead and take it -- take that out.

21 MR. KULP: Yes, sir.

22 THE COURT: If you would, Mr. Harris, just
23 announce out there to -- or you'all go ahead and
24 announce that everybody that wants to come in, come on
25 in now. Then don't let them in because we've got --

1 we've got to keep some order in this place.

2 THE BAILIFF: Yes, sir.

3 THE COURT: Bring them back.

4 (JURY IN AT 4:35 P.M.)

5 THE BAILIFF: Your Honor, all jurors are present.

6 THE COURT: Very good.

7 MR. FLEMING: May it please the Court, sir?

8 THE COURT: Mr. Fleming, you may proceed.

9 MR. FLEMING: Thank you, sir.

10 CROSS EXAMINATION RESUMED

11 BY MR. FLEMING:

12 Q. Now, Ms. Wire, we had already established that you
13 were -- we were at the point where you were giving
14 these statements to the police. Do you recall that?

15 A. Right.

16 Q. Okay. And we had already established that they
17 had asked you to be as detailed as possible in your
18 recount of what took place; right?

19 A. Right.

20 Q. And what is on the -- and if you need to step
21 down. You have it in front of you, but it's
22 Defendant's Exhibit 3. And what you have -- that's the
23 statement that you wrote for the police, isn't it, one
24 of the statements, the front page; correct?

25 A. Right.

- 1 Q. Now, I'm going to ask you some questions about
2 your statements to the police concerning your
3 description of the intruders. Okay? Now, in these
4 statements you said the intruders were two black males;
5 correct?
- 6 A. Right.
- 7 Q. Okay. Right there in your statement, "two black
8 males with white cloth of some kind around their face";
9 correct?
- 10 A. Uh-huh, (affirmative nod).
- 11 Q. Okay.
- 12 A. Right.
- 13 Q. You could not describe their facial features;
14 correct?
- 15 A. That's what I wrote.
- 16 Q. That's right. You could not describe their
17 height?
- 18 A. That's what I wrote.
- 19 Q. Nor their weight?
- 20 A. That's what I wrote.
- 21 Q. Nor their hairstyles?
- 22 A. That's what I wrote.
- 23 Q. Nor their teeth?
- 24 A. That's what I wrote.
- 25 Q. Nor their clothing?

- 1 A. That's what I wrote.
- 2 Q. And you couldn't describe their skin tone?
- 3 A. Obviously, that's what I wrote.
- 4 Q. Okay. You also couldn't recognize the intruders'
- 5 voices; could you?
- 6 A. In my statement, that's what I wrote.
- 7 Q. You never told the police that you had seen the
- 8 intruders before; did you?
- 9 A. Not that I recall.
- 10 Q. You never told the police that these intruders
- 11 were at the trailer earlier that night; did you?
- 12 A. No. At the time, we did not.
- 13 Q. You actually told Detective Roser that you knew
- 14 the intruders were black because the eyes and nose area
- 15 was open; correct?
- 16 A. Correct.
- 17 Q. But the rest of their head was covered with white
- 18 clothing or masks; correct?
- 19 A. Correct.
- 20 Q. Now, you also said that once you got on the floor,
- 21 you never looked up; isn't that correct?
- 22 A. That's what I said.
- 23 Q. Okay.
- 24 MR. MURDAUGH: Where is that?
- 25 MR. FLEMING: It's not in this. That's what she

1 told the police. You can't look at my notes,
2 Solicitor. I apologize, but these are my notes.

3 MR. MURDAUGH: I thought you were reading from the
4 statement.

5 MR. FLEMING: Your Honor, I don't know that the
6 Solicitor has an objection, but I will address it if he
7 does.

8 MR. MURDAUGH: I'm just curious. I was of the
9 impression that he was examining her on the statement,
10 but that's -- you aren't talking about the statement
11 now? I just want to know.

12 MR. FLEMING: I'm not on the stand. I don't
13 understand. Is he asking me to ---

14 THE COURT: Well, go ahead and ask the question,
15 and I'll do it.

16 MR. MURDAUGH: Okay.

17 CROSS EXAMINATION CONTINUED

18 BY MR. FLEMING:

19 Q. You gave statements to Detective Roser, did you
20 not?

21 A. Yes.

22 Q. Okay. Part of giving that statement ---

23 THE COURT: Excuse me. Do you have an objection
24 to him ---

25 MR. MURDAUGH: No, sir. I just -- if he's using

1 the statement, I want to know where he is in the
2 statement ---

3 THE COURT: Oh, okay.

4 MR. MURDAUGH: --- because I couldn't find what he
5 was asking in the statement, sir.

6 THE COURT: Oh, okay. I see what you're saying.
7 If you're going to refer to the statement, if you're
8 going to ask her about something in the statement, and
9 if you're going to direct the witness to anything, you
10 tell the page so the Solicitor can find it.

11 MR. FLEMING: Yes, sir.

12 THE COURT: If you ask a question about the
13 statement, generally, you don't have to say anything
14 about the statement..

15 MR. FLEMING: That's correct. What I'm saying is,
16 Your Honor, that she didn't say any of this in her
17 statement -- and it's there for the Jury to see for
18 themselves.

19 MR. MURDAUGH: All right. So you aren't
20 questioning her from statement. Got that.

21 THE COURT: Okay.

22 CROSS EXAMINATION CONTINUED

23 BY MR. FLEMING:

24 Q. And so, in conclusion, regarding your description
25 of these intruders, when the event was fresh in your

1 mind and when asked by the police, you could not
2 describe the intruders; could you?

3 A. When asked at the time, no. But can I say
4 something regarding that question with my answer?

5 THE COURT: I think that ---

6 THE WITNESS: The question that he asked me, can I
7 say something regarding my answer on that?

8 THE COURT: Yes, you can explain it.

9 THE WITNESS: No, I did not describe them for
10 them at the time. But when you just saw that and the
11 people were still on the loose, you're scared for your
12 life, and you don't want to identify them until they
13 are caught. Yes, I knew who they were when they came
14 in. But, no, did I tell that to the officer? No,
15 because at the time I feared for my life because they
16 weren't caught at the time.

17 CROSS EXAMINATION CONTINUED

18 BY MR. FLEMING:

19 Q. You were -- I recall you telling the Solicitor in
20 Direct Examination that you really remember this West
21 McKinnon fellow because of his droopy eyes. Isn't that
22 what you said?

23 A. Yeah. His eyes stand out.

24 Q. And, in fact, that was the thing that stood out to
25 you, according to your statements to the Solicitor;

1 right?

2 A. Right.

3 Q. Now, I will ask you, did you -- within twenty-four
4 hours of this shooting, were you asked to come back --
5 no. I'm sorry. Let me set the stage.

6 After you gave these statements to the police, you
7 went home with Jocelyn and Scott Wendel?

8 A. No, I did not.

9 Q. Okay. Where did you go?

10 A. I went home with my father.

11 Q. Okay. And you were asked to come back about 1:30
12 the following morning?

13 A. If I can remember right.

14 Q. Okay. And Detective Averill asked you to come;
15 didn't he?

16 A. I believe so.

17 Q. He said, "I've got some pictures to look -- for
18 you to look at." Right?

19 A. Uh-huh, (affirmative nod). Yes.

20 Q. Okay. And, in fact, he showed you a series of six
21 pictures; did he not?

22 A. Right.

23 Q. He, actually, showed you twelve but I'm to refer
24 to this. And he read to you off the back of it, I
25 think, and can I -- can I look at it and read it to you

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- 1 and see if you remember this?
- 2 A. You can, if you'd like to.
- 3 Q. Okay. He told you, and you were sitting in the
4 room with -- with detectives in a comfortable room;
5 right?
- 6 A. If I can recall, (affirmative nod).
- 7 Q. Okay. And he said, (reading): "You will be asked
8 to look at a group of photographs. The fact that the
9 photographs are shown to you should not influence your
10 judgment. You should not conclude or guess that the
11 photographs contain the picture of the person who
12 committed the crime. You are not obligated to identify
13 anyone. It is just as important to free innocent
14 persons from suspicion as to identify guilty parties.
15 Please do not discuss the case with other witnesses nor
16 indicate in any way that you have identified somebody."
17 Okay. Do you recall that being read to you by
18 Detective Averill?
- 19 A. Right.
- 20 Q. And then he showed you this series of color
21 photographs; did he not?
- 22 A. Yes.
- 23 Q. Okay. And you did not identify anyone in this
24 lineup as being one of the intruders; did you?
- 25 A. No. That I recall, no.

1 Q. Okay. And you did not identify anyone in this
2 lineup as being present at the party earlier that
3 night; did you?

4 A. No.

5 Q. You told the Solicitor that the thing that made
6 you remember West McKinnon was his droopy eyes;
7 correct?

8 A. Uh-huh, (affirmative nod).

9 Q. And you now know, of course, that number three is
10 West McKinnon in this lineup; do you not?

11 A. Now I do.

12 Q. Okay. And, of course, you couldn't recognize his
13 droopy eyes in this picture; could you?

14 A. At the time, no. I said "no".

15 Q. That's right. The following day, twenty-four more
16 hours after that, Detective Averill asked you to come
17 back to the Law Enforcement Center; correct?

18 A. Uh-huh, (affirmative nod). Right.

19 Q. Right. And he said, "I've got another set of
20 pictures for you to look at," didn't he?

21 A. Right.

22 Q. Right. And, in fact, he read the same exact
23 statement to you; correct?

24 A. Right.

25 Q. And by that -- by now, you knew how important this

- 1 statement was; right?
- 2 A. Uh-huh, (affirmative nod).
- 3 Q. Okay. And you looked at each of these pictures;
- 4 did you not?
- 5 A. Yeah.
- 6 Q. I'm sorry. This is State's Exhibit 10, right
- 7 there.
- 8 A. Yes, I did.
- 9 Q. Okay. And you took your time, and you looked at
- 10 each picture carefully; right?
- 11 A. Right.
- 12 Q. The thing that you told the Solicitor, I believe,
- 13 that you remember about Tavarus Rogers was his
- 14 distinctive nose. Didn't you say that?
- 15 A. Right.
- 16 Q. Can you look at number six and tell me if you can
- 17 see the nose on that picture?
- 18 A. (Upon review), yeah.
- 19 Q. Okay. You did not identify anybody in this lineup
- 20 as being the intruder; did you?
- 21 A. No, I did not.
- 22 Q. In fact, you didn't identify anybody in this
- 23 lineup as being this person named "V", did you?
- 24 A. You're right.
- 25 Q. That's right. You didn't identify anybody in this

1 lineup as being at the trailer earlier that night; did
2 you?

3 A. No.

4 Q. So when all of these events were fresh in your
5 mind, and thinking about this distinctive nose, you
6 couldn't identify anyone in that lineup; could you?

7 A. Hairstyle was different. I mean, I was in shock.
8 I wasn't in my right state of mind to even want to be
9 looking at the pictures.

10 Q. Isn't the reason that you can't identify anyone
11 was because you, in fact, were partying that night?

12 A. No, sir.

13 Q. Were you asked to take a blood test or a urine
14 test by the police?

15 A. No.

16 Q. Going back to your statement, you told the -- now,
17 I'm going to ask you questions about your description
18 of the people at the party earlier that night. Do you
19 understand?

20 A. Uh-huh, (affirmative nod).

21 Q. Okay. You told the police that there were four
22 black males at the trailer earlier that night; correct?

23 A. Right.

24 Q. And, in fact, you wrote it right here?

25 MR. MURDAUGH: Are you now on one of the

1 statements?

2 MR. FLEMING: That's correct.

3 MR. MURDAUGH: Which one, sir?

4 MR. FLEMING: The one I'm -- on the board right
5 now.

6 MR. MURDAUGH: I can't tell. ---

7 THE COURT: What page are you on?

8 MR. FLEMING: It's Defense Exhibit 3, Your Honor.

9 CROSS EXAMINATION CONTINUED

10 BY MR. FLEMING:

11 Q. (Reading): "Me and Mitch Riley..." ---

12 THE COURT: Wait just a minute. Let the Solicitor
13 find it.

14 MR. MURDAUGH: Whoa.

15 MR. FLEMING: Well, he can see it right here.

16 MR. MURDAUGH: I can't see that far.

17 THE COURT: Please, Mr. Fleming. I said let the
18 Solicitor find it ---

19 MR. FLEMING: Yes, sir.

20 THE COURT: --- and don't parry words with me.

21 Okay?

22 MR. FLEMING: Yes, sir.

23 MR. MURDAUGH: I've got it, sir.

24 MR. FLEMING: Ready?

25 MR. MURDAUGH: Yes, sir.

1 THE COURT: Go ahead.

2 CROSS EXAMINATION CONTINUED

3 BY MR. FLEMING:

4 Q. (Reading): "Me, Mitch Riley and Jocelyn Wendel
5 got to Paul Reischl's at about 12:30. There were four
6 black males."

7 A. Right.

8 Q. And that's the extent of your description of the
9 people at the party; isn't that correct?

10 A. That's what I wrote on my paper.

11 Q. Okay. You could not describe their facial
12 features, could you?

13 A. I probably could have, but didn't. At the time, I
14 didn't -- I really didn't think I was in a position to
15 write a statement after what had just happened.

16 Q. Didn't know their height or weight, did you?

17 A. I'm sure that if I sat and thought about it that I
18 could have wrote it, but at the time it just wasn't
19 appropriate for me to even be writing one.

20 Q. You state -- so to wrap this up on that issue, you
21 didn't describe the four black males, did you?

22 A. Not on my statement, no.

23 Q. Okay. And I'm going to remind you of something.
24 You -- you first testified that an individual
25 introduced himself as "V"; correct?

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- 1 A. Right.
- 2 Q. You didn't describe any of -- you didn't describe
- 3 V's teeth to anyone; did you?
- 4 A. His teeth?
- 5 Q. Yes.
- 6 A. No.
- 7 Q. You didn't know any of the other names; correct?
- 8 A. I knew West.
- 9 Q. Okay. You never told the police about the name
- 10 "West," did you?
- 11 A. Not that I know of. I don't remember.
- 12 Q. And you didn't tell the police about a black man
- 13 named Derrick; did you?
- 14 A. I don't -- I don't remember.
- 15 Q. Now, I want to now focus your attention on the
- 16 events that occurred after the arrest. Okay?
- 17 A. Okay.
- 18 Q. When the police arrested Tavarus Rogers, Detective
- 19 Averill called and told you that; didn't he?
- 20 A. Right.
- 21 Q. He told you his name?
- 22 A. Right.
- 23 Q. Okay. And you read it in the newspaper; didn't
- 24 you?
- 25 A. I believe so, or I was just told about it.

- 1 Q. And you talked about it with Jocelyn and with
2 Toby; didn't you?
- 3 A. Not really, no.
- 4 Q. Now, Detective Averill asked you to come to a bond
5 hearing that you have in every criminal case. Do you
6 understand?
- 7 A. Uh-huh, (affirmative nod).
- 8 Q. Any person charged with a crime has a bond
9 hearing. Do you understand that?
- 10 A. Uh-huh, (affirmative nod).
- 11 Q. And, in fact, that bond ---
- 12 A. Yes.
- 13 Q. --- that bond hearing took place here in this
14 courtroom; didn't it?
- 15 A. Yes.
- 16 Q. And you came in and you sat where some of these
17 people would sit, and the Judge -- it may have been
18 Judge Gregory or another Judge -- said, "We will now
19 hear the matter of Tavarus Rogers." Right?
- 20 A. Right.
- 21 Q. Or something to that effect?
- 22 A. (Affirmative nod).
- 23 Q. And so Tavarus Rogers came forward, and you looked
24 at him; didn't you?
- 25 A. He didn't come forward. There was four of them

1 standing there, and they all stood in the same spot
2 that they were standing in.

3 Q. And he was identified as Tavarus Rogers in the
4 courtroom, was he not?

5 A. I believe so.

6 Q. Now, immediately after this crime took place, you
7 -- you and Jocelyn got out of the trailer; correct?

8 A. Uh-huh, (affirmative nod).

9 COURT REPORTER: Is that a "yes"?

10 THE WITNESS: Right.

11 CROSS EXAMINATION CONTINUED

12 BY MR. FLEMING:

13 Q. Okay. And Toby ran off? Toby Reischl ran off?

14 A. We didn't know where he was.

15 Q. You didn't know where he went?

16 A. Right.

17 Q. But he wasn't protecting you?

18 A. No.

19 Q. You and Toby -- had a significant relationship for
20 about eight years, correct? Toby Reischl?

21 A. Right.

22 Q. And you have two children by him; correct?

23 A. Right.

24 Q. Okay. But you'all were not in a relationship at
25 this point, obviously?

- 1 A. No.
- 2 Q. Okay. And, in fact, Toby was not very happy with
3 your relationship with Mitch; correct? Mitch Riley?
- 4 A. With any of my relationships.
- 5 Q. I understand. And, in fact, Toby was quite angry
6 and had threatened to physically harm Mitch; did he
7 not?
- 8 A. Yeah. He wanted to fight him.
- 9 Q. Right. And, in fact, you asked Scott Wendel if
10 you could stay with him, you and Mitch could stay with
11 him because you were afraid of Toby?
- 12 A. Mitchell did.
- 13 Q. Mitchell asked that?
- 14 A. Yes.
- 15 Q. Okay. Now, immediately after this happened, you
16 and Jocelyn ran out of the trailer, and you went down
17 the road a piece; right?
- 18 A. Through the woods.
- 19 Q. Through the woods to a little white trailer;
20 correct?
- 21 A. Yeah.
- 22 Q. Coffin Point Road; isn't it?
- 23 A. I -- I'm assuming. I don't know.
- 24 Q. Okay. And there was a nice man there?
- 25 A. An older couple, yes.

- 1 Q. An older couple. And he asked you -- you asked
2 him if he would call 911, didn't you?
- 3 A. Right.
- 4 Q. And he called it for you, didn't he?
- 5 A. Right.
- 6 Q. And he was attempting to explain to the 911
7 operator what -- what had happened, but he really
8 didn't know; right?
- 9 A. Right.
- 10 Q. And so he asked you to get on the telephone;
11 correct?
- 12 A. Right.
- 13 Q. And you talked to the 911 operator; right?
- 14 A. I vaguely remember but (pause) ---
- 15 Q. Okay.
- 16 A. --- I couldn't tell you what I said.
- 17 Q. Can I -- can I ask you this? Is it your testimony
18 that when you went down to that trailer, the one next-
19 door, is it your testimony that you knew who the
20 intruders were?
- 21 A. (No response)
- 22 Q. When you physically ran from the crime scene ---
- 23 A. Uh-huh, (affirmative nod).
- 24 Q. --- to the trailer next-door, at that time did you
25 know who the intruders were?

- 1 A. Of course. It was the ones that were there
2 earlier, which was West McKinnon and Tavarus Rogers ---
3 Q. And there's ---
4 A. --- or "V."
5 Q. There's no question in your mind you knew who the
6 intruders were; right?
7 A. Yeah.
8 Q. Okay. And you asked that man to call 911, and at
9 that point you knew who the intruders were; isn't that
10 correct?
11 A. Yeah.
12 Q. Isn't that your testimony?
13 A. Right.
14 Q. And when you spoke to the 911 operator, is it your
15 testimony that you knew who the intruders were?
16 A. I have no idea, to be honest with you, what I said
17 to them.
18 Q. I'm not asking you what you said. I'm asking you,
19 when you talked to the 911 operator within twenty
20 minutes after this event, is it your testimony that you
21 knew who the intruders were?
22 A. I knew who they were, yes.
23 Q. Okay. If I play this tape for you, can you
24 identify your voice?
25 A. Yes, I can.

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1 MR. FLEMING: Okay. Solicitor, do you have any
2 objection to me playing the tape?

3 MR. MURDAUGH: I have no objection whatsoever.

4 MR. FLEMING: Your Honor, may I play the tape,
5 sir?

6 THE COURT: Yes.

7 MR. FLEMING: May I ask the witness to come down,
8 in case she can't hear it.

9 THE WITNESS: I can hear fine.

10 MR. FLEMING: (Plays audio recording of 991
11 call):

12 "OPERATOR: 911. What is the emergency?

13 INDIVIDUAL: I have two young people out on my
14 porch claiming that are claiming that someone just
15 got shot. I told her to sit there, that I would
16 call 911.

17 OPERATOR: Okay. You're at Coffin Point Road?

18 INDIVIDUAL: That is correct.

19 OPERATOR: Okay. Now, these people, are they
20 still there on your porch?

21 INDIVIDUAL: Yeah, they're sitting on the porch.

22 OPERATOR: Okay. Did they say where this person
23 is at that got shot?

24 INDIVIDUAL: They said across the street. I don't
25 know exactly where.

1 OPERATOR: From your residence?
2 INDIVIDUAL: I would have to say it's probably
3 down the street.
4 OPERATOR: Okay. Hold on just a second here.
5 Okay? (Pause) -- Sir? Okay, are the -- were the
6 people able to advise if the person that got shot,
7 if he's still alive?
8 INDIVIDUAL: Do you know if the kids are still --
9 do you know if anybody is still alive? What's --
10 what's the story on that? Yeah, just hang on just
11 a minute, please.
12 OPERATOR: Oh, I am, sir. I'm talking to somebody
13 on ---
14 MS. WIRE: Hi.
15 OPERATOR: Hello. Can you please tell me what's
16 going on?
17 MS. WIRE: I sure will. Okay. I was with my
18 fiancé and his niece. We went to the store to
19 get some headache powder because I had a headache.
20 Well, he had stopped by his friend's house to drop
21 something off. When we got there and got out of
22 the car, these black guys, you know, with masks
23 came in, and I guess were trying to rob the place.
24 I don't know. But they shot two people. We got
25 away, ---

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1 OPERATOR: Now ---
2 MS. WIRE: --- and one other person got away.
3 OPERATOR: You said the men were black guys
4 wearing masks. Now, were they still there when
5 you left, or where did they go?
6 MS. WIRE: No. They left.
7 OPERATOR: Okay. Did they leave on foot or in a
8 car? Do you know?
9 MS. WIRE: I think they drove off in a car.
10 OPERATOR: They drove off in a car. Do you know
11 which way they were headed?
12 MS. WIRE: Ma'am, I don't know.
13 OPERATOR: You don't know?
14 MS. WIRE: They told us to get down, and we got
15 down and ---
16 OPERATOR: Okay. How many men were there?
17 MS. WIRE: There were two.
18 OPERATOR: There were two black men in masks?
19 MS. WIRE: Yeah. One was a dude who called his
20 name out as "V", I believe.
21 OPERATOR: "V"? Okay. There were two black males
22 in masks who left in a car, unknown direction of
23 travel. Do you remember what the car looked like,
24 ma'am?
25 MS. WIRE: No, ma'am, I don't. We were all on the

1 ground.

2 OPERATOR: Okay. Now, the person that got shot --
3 yeah, I'm talking to the people who were on the
4 porch now.

5 MS. WIRE: It was two people.

6 OPERATOR: Okay. You think two people might have
7 got shot?

8 MS. WIRE: I think so.

9 OPERATOR: Okay. Now, were they at Coffin
10 Point Road?

11 MS. WIRE: I don't know what the address is,
12 ma'am.

13 OPERATOR: Okay. All right. All right. Hold on
14 a minute. We're getting -- an officer is coming
15 out there now.

16 MS. WIRE: Can they please come pick me up?

17 OPERATOR: No. Just stay on the phone just a
18 little bit longer. Now, you're at this
19 gentleman's house at Coffin Point Road now?

20 MS. WIRE: Yes.

21 OPERATOR: All right. Now, these guys, they were
22 already gone before you left the house?

23 MS. WIRE: Yes.

24 OPERATOR: Okay.

25 MS. WIRE: There's one more of them -- I don't

1 know how -- I don't know.

2 OPERATOR: Maybe two or three of them?

3 MS. WIRE: No. There was two them, I believe.

4 There was definitely two.

5 OPERATOR: Okay. Now, you did not know who these

6 people were; right?

7 MS. WIRE: No. They were masked and black.

8 OPERATOR: They were masked and had black on ---

9 MS. WIRE: They were black, you know..

10 OPERATOR: Okay. But they were black men, that

11 you know of?

12 MS. WIRE: Yes.

13 OPERATOR: Okay. Now, these other guys that were

14 shot, who are they in relation to you? Were they

15 your friends, or what?

16 MS. WIRE: ~~One~~ was my fiancé. One was a friend.

17 OPERATOR: Okay. Fiancé' and friend. Okay. All

18 right. Just stay on the phone with me just a

19 little bit longer until we can get our officers

20 out there. Our officers should be there in just a

21 little bit. They're in the general vicinity.

22 MS. WIRE: Thank you.

23 OPERATOR: (Background conversation): They were

24 all there together. They were all there at a

25 person's house, and two black men wearing masks

1 came in, and she thinks she saw something, maybe
2 another man, and then they -- they told them to
3 get down, and then the guys left.

4 Ma'am?

5 MS. WIRE: Uh-huh, (affirmative nod).

6 OPERATOR: Do you happen to know where those
7 people were shot at, in the ---

8 MS. WIRE: I don't know. I don't know.

9 OPERATOR: You don't know. It all happened too
10 fast?

11 MS. WIRE: Yes.

12 OPERATOR: (Background conversation): No, she
13 doesn't know. She was just at a house somewhere.
14 Maybe so.

15 Ma'am, you were -- you are unsure of the exact
16 address you were at that those came in at; right?

17 MS. WIRE: I'm unsure.

18 OPERATOR: So you don't know?

19 MS. WIRE: No.

20 OPERATOR: Okay. We were told an address of
21 Coffin Point Road. Does that sound familiar?

22 MS. WIRE: Probably, yes.

23 OPERATOR: (Background conversation): She says
24 sounds familiar.. Supposedly, the guys left.

25 Okay. Apparently, now we have two officers at

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1 Coffin Point Road now, and they're going to be
2 looking around there, so if you can stay on the
3 phone with me until they tell us what's going on.
4 Okay?

5 MS. WIRE: Okay.

6 OPERATOR: (Background conversation): She says as
7 far as she knows, it was her fiancé and another
8 male friend that was shot. She does not know
9 where. Okay. That would be best and then they
10 can always just -- yeah.

11 (Audio recording stopped)

12 MR. FLEMING: If the Solicitor doesn't have any
13 objection, I'm not going to go through these long
14 pauses and everything else. But if the Jury would like
15 to hear the rest of the tape, they, of course, can. Is
16 that ---

17 THE COURT: Is that offered into evidence?

18 MR. FLEMING: Yes, sir, it is offered into
19 evidence.

20 THE COURT: Has it been marked?

21 MR. MURDAUGH: I have no objections.

22 COURT REPORTER: It has been marked as Defendant's
23 Exhibit 1.

24 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

25 MR. FLEMING: And I will eject it from the tape

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1 player, Your Honor. Is that ---

2 THE COURT: Okay. Well, let me just say this. If
3 you offer it into evidence, I think you ought to play
4 it so they can hear the whole thing. Or if you're
5 going to play it later, you can do that, but it's got
6 to be played and published to them.

7 MR. FLEMING: I understand. I'll -- I apologize.
8 I will play the rest of it if that's ---

9 THE COURT: Well, it's got to be done sometime
10 because it's got to be published.

11 MR. FLEMING: Okay, sir. I'll do that -- (audio
12 tape continued):

13 MS. WIRE: They've got two officers there; right?

14 OPERATOR: Yeah. We've got two officers there,
15 but you can stay on the phone with me until they
16 are able to tell us where you are.

17 MS. WIRE: Okay. Could you -- could you hurry up?

18 OPERATOR: Ma'am, I have no control over it.

19 We've got them out there now. As soon as I find
20 out, I'll let you know something. Okay? And let
21 me have your name, too, please?

22 MS. WIRE: Kristal Wire.

23 OPERATOR: You're Kristal Wire?

24 MS. WIRE: Yes.

25 MR. MURDAUGH: If Your Honor, please, I concur

1 with Mr. Fleming that there probably is no evidentiary
2 value after that point.

3 THE COURT: Okay. Members of the Jury -- go ahead
4 and mark that into evidence.

5 MR. FLEMING: Your Honor, this has been marked as
6 Defense Exhibit 1, sir.

7 THE COURT: Oh, it's already marked?

8 MR. FLEMING: Yes, sir.

9 THE COURT: So that's received into evidence
10 without objection?

11 MR. MURDAUGH: That's correct, sir.

12 THE COURT: What we will do, when you begin your
13 deliberations, we will give you an opportunity to play
14 that. Most likely, we will come back in here and let
15 you listen to the whole tape so that you can know
16 everything that's on it, but there's no use -- I think
17 we can do that at a later time. But the tape is in
18 evidence.

19 MR. FLEMING: Thank you, Your Honor.

20 CROSS EXAMINATION RESUMED

21 BY MR. FLEMING:

22 Q. Ms. Wire, some quick follow-up questions for you.
23 It appears from listening to that tape that, in fact,
24 you weren't at a party earlier that night; but, in
25 fact, had just dropped by to drop off some headache

1 powder; isn't that correct?

2 A. No. I picked up headache powder for myself, and
3 at that same time picked up a twelve-pack and a Coca-
4 Cola for Paul.

5 Q. Isn't it true that one of the intruders referred
6 to the other as "V"?

7 A. Right.

8 Q. Isn't that correct?

9 A. (Affirmative nod).

10 Q. And isn't it true that that's the extent of your
11 description of the intruders?

12 A. At the time, yeah.

13 Q. Now, when you came in to testify today, when you
14 walked into this courtroom, you knew that this was the
15 case against Tavarus Rogers; correct?

16 A. Right.

17 Q. And you knew that Tavarus Rogers was going to be
18 sitting at this table; correct?

19 A. Right.

20 Q. Okay. And isn't it the case that the reason that
21 you identified Tavarus Rogers is because he's sitting
22 at that table?

23 A. That is not the reason, no.

24 Q. And isn't -- isn't that the reason because, as you
25 said to the 911 operator, there were two men with --

1 two black men with white masks covering their faces,
2 and she said to you, "Do you know who they were?" and
3 you said, "No, ma'am".

4 A. At the time, yes, but you're not in your right
5 state of mind at a time like that happens.

6 MR. FLEMING: One second, Your Honor. That's all
7 the questions we have, sir.

8 REDIRECT EXAMINATION

9 BY MR. MURDAUGH:

10 Q. Ms. Wendel (sic), how are you? At the time this
11 thing happened, had you ever heard of Tavarus Rogers?

12 A. At what time? When we first got to the house, or
13 when it happened?

14 Q. I'm talking about at any time up until after he
15 was arrested, had you ever heard the name "Tavarus
16 Rogers"?

17 A. Have I? Until -- before he got arrested?

18 Q. Before he got arrested, had you ever heard the
19 name "Tavarus Rogers"?

20 A. Yes.

21 Q. Okay. Where?

22 A. I'm not sure where.

23 Q. Did you know that the fellow that had -- that was
24 introduced to you as "V" that night was Tavarus Rogers?

25 A. Yes.

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1 Q. Okay. How did you know that?

2 A. Because of him being introduced by other people.

3 Personally, to me, he introduced himself as "V."

4 Q. Okay. So you heard other people introduce him ---

5 A. Right.

6 Q. --- as Tavarus?

7 A. As Tavarus, (affirmative nod).

8 Q. Okay. Now, I wasn't aware of that. Did you in
9 your statement that they had up on that screen --
10 that's this one I hand to you right here now and which
11 is marked as Defense Exhibit Number 3. Did you tell
12 them in there on the bottom of the first page -- --
13 what did you say, starting right there where my finger
14 is?

15 A. (Reading): "He was yelling out, 'Come on V, let's
16 get out of here.'"

17 Q. "Come on," what?

18 A. (Reading): "He was yelling out, 'Come on, "V."
19 Let's get out of here.'"

20 Q. Okay. So you did tell them it was "V"?

21 A. Uh-huh, (affirmative nod).

22 Q. Okay. On that tape, who did you tell them it was
23 that had done the killing?

24 A. "V."

25 MR. MURDAUGH: Thank you, ma'am.

1 MR. FLEMING: One more thing, Your Honor.

2 MR. MURDAUGH: Oh, excuse me.

3 REDIRECT EXAMINATION CONTINUED

4 BY MR. MURDAUGH:

5 Q. Who is "V"?

6 A. Tavarus.

7 MR. MURDAUGH: Thank you.

8 RECROSS EXAMINATION

9 BY MR. FLEMING:

10 Q. If I can get this straight real quick, Ms. Wire,
11 you just told the Solicitor that you knew -- there's no
12 question that you told the police that the fellow who
13 did the shooting was named "V." It's in your
14 statement; correct?

15 A. Right.

16 Q. No question about that?

17 A. (Negative gesture).

18 Q. You just told the Solicitor that you knew that "V"
19 was Tavarus Rogers before he was ever arrested?

20 A. Right, as introduced to somebody else as Tavarus.

21 Q. Ms. Wire, your fiancé was killed. You say you
22 knew the man who -- the name of the man who killed him,
23 and you never told the police?!

24 A. (Pause).

25 Q. You didn't tell the police, did you?

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1 A. Listen to me, let me tell you something. When
2 you're out of your mind and just seen two people being
3 murdered in front of you, you block a lot out of your
4 mind and you don't know what you're saying half the
5 time. So, no, I didn't at the time; but I know who it
6 was, and it was Tavarus Rogers.

7 MR. FLEMING: No more questions, Judge.

8 THE COURT: You may come down.

9 THE WITNESS: Thank you.

10 (WITNESS STEPS DOWN)

11 MR. MURDAUGH: I call Toby Reischl.

12 THE COURT: Yeah, come on down.

13 THE WITNESS: Here. Do I give these ---

14 THE COURT: Yeah. Give that to the court
15 reporter.

16 THE WITNESS: (Tenders Defense Exhibit No. 3 to
17 reporter)

18 (TESTIMONY OF KRISTAL WIRE CONCLUDED)

19 MR. MURDAUGH: Your Honor, we call Toby Reischl.

20 THE COURT: Come forward, sir. Please place your
21 left hand on the Bible and raise your right hand.

22 (WITNESS TAKES STAND)

23 TOBY REISCHL, being duly
24 sworn to tell the truth, the whole truth, and nothing
25 but the truth, testified as follows:

3. Q. Your name is Toby Reischl?

8 A. Yes, I was.

15 Q. Did you know them?

17 Q. Did you meet them as "Tavarus Rogers", "West
18 McKinnon" and "Collins Gadsen"?

19 A. My brother introduced me to them. Tavarus walked
20 up to me, shook my hand. He goes, "I've heard a lot of
21 good shit about you," and shook my hand. Then they
22 wanted to play games, and I said, "I don't play" --
23 they wanted to play Spades, actually, and I said, "I
24 don't play Spades." I went and sat in the living room.
25 And then I -- I was just real tired from the night

1 before, partying, and I went and laid down on the back
2 bedroom because my ride had left. I woke up, I don't
3 know, 3:30 or something like that. And then we heard
4 booming on the door, and my brother said, "Who's
5 beating on my door at 4:00 in the morning?" And then
6 people -- I heard a lot of noise ---

7 Q. Your brother is?

8 A. Paul Reischl.

9 Q. Paul Reischl.

10 A. And I heard booming and like a lot of ruckus
11 coming in when they was coming through the door, and I
12 really didn't think nothing of it. I was fixing to put
13 a bandanna on my head because I had just woke up, and I
14 seen a fellow come around from the right ---

15 Q. Okay. Let me stop you right there. Did two
16 people come into the trailer?

17 A. Yes.

18 Q. Okay, sir. And just answer this question 'yes' or
19 'no'. Can you identify either of the two people that
20 came into the trailer?

21 A. Yes. Not at that time, that night or earlier that
22 day.

23 MR. FLEMING: Your Honor, objection.

24 MR. MURDAUGH: If Your Honor please, we have a
25 matter we need to take up with you, sir.

1 THE COURT: Okay. Members of the Jury, please
2 retire to the jury room. There's a matter that must be
3 taken up outside your presence.

4 (JURY OUT AT 5:18 P.M.)

5 MR. MURDAUGH: If Your Honor please, I was of the
6 impression that Mr. Reischl was unable to identify the
7 two people that came in at the time of the killing, and
8 I had so told Mr. Fleming and I -- he had made a motion
9 that that not be brought up in trial. I told him that
10 wasn't a problem. And I, specifically, asked that
11 question in such a manner that it would elicit either a
12 'yes' or a 'no'. And may I follow through with it now?

13 THE COURT: Well, I think you need -- we need a
14 hearing on it before his testimony will be allowed.

15 MR. MURDAUGH: And that's why I asked the jury to
16 be excused.

17 THE COURT: Anything from -- just please proceed.

18 DIRECT EXAMINATION RESUMED

19 (OUT OF PRESENCE OF THE JURY)

20 BY MR. MURDAUGH:

21 Q. Toby, let me ask you this. Can you identify from
22 that night the two people that came into the trailer
23 after they -- I'm not talking about -- there were
24 people there earlier?

25 A. Uh-huh, (affirmative nod).

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- 1 Q. You know who they were?
- 2 A. Yes.
- 3 Q. Those people left. I believe you were asleep,
- 4 though?
- 5 A. I was asleep. I didn't even know they'd left.
- 6 Q. So about 4:00, you hear some knocking on the door;
- 7 two people come in?
- 8 A. Right.
- 9 Q. Were you that night able to identify who it was
- 10 that came in?
- 11 A. No. Not at that time, no.
- 12 Q. Did you see them?
- 13 A. I seen one, but I didn't see his face.
- 14 Q. Okay, sir. When you say that you can now identify
- 15 them, how can you identify them?
- 16 A. I picked them out -- picked them out of the lineup
- 17 that I was shown, for one.
- 18 Q. But that was people that had been there earlier?
- 19 A. Right.
- 20 Q. Okay. But what I'm -- I'm not talking about being
- 21 there earlier. I'm talking about the two people that
- 22 came in. Were you able to identify them as being the
- 23 people that did the shooting and ---
- 24 A. No.
- 25 Q. --- holding everybody at ---

1 A. No.

2 MR. MURDAUGH: Okay.

3 THE COURT: Okay. So when you say you can
4 identify them, all you're saying is you identify them
5 as being there some several hours before then?

6 THE WITNESS: Right.

7 MR. KULP: Your Honor, this illustrates the point
8 we made -- or why we made a Motion that didn't make
9 much sense then, but now it really does.

10 THE COURT: And what Motion is that?

11 MR. KULP: That was the Motion to prohibit
12 witnesses for the State from referring to people by
13 their names, reflecting an event that happened before
14 they knew their name. In other words, if he had said,
15 "the man," and then later he learns somehow -- see what
16 I mean?

17 THE COURT: Well, I don't know any way to refer to
18 somebody except by their name.

19 MR. MURDAUGH: Nor do I, sir.

20 THE COURT: I'm sorry. I see what you're saying,
21 but I just don't think that -- you know, we don't have
22 a DNA and we don't have anything else to go on, so your
23 Motion -- but I don't see that there's anything wrong,
24 because I think he's going to clarify it. It's ---

25 MR. MURDAUGH: I had made a statement to Counsel

1 with my understanding of one thing, and when it
2 appeared that that wasn't correct, I just wanted to ---

3 THE COURT: Well, after you get into the full
4 testimony, he has no identification of him. And ---

5 MR. MURDAUGH: Yes, sir.

6 THE COURT: Well, let me ask you this. Is there
7 an issue as to whether or not the Defendant was there
8 two hours earlier?

9 MR. KULP: Judge, the issue is -- it's just -- I'm
10 not sure exactly how it happens in the course of
11 examination of the witness -- and it's not the
12 Solicitor's intent, I'm not saying that -- but when he
13 says -- he asks him a question about, "Who," prior to
14 the time in the course of their testimony they learn
15 who, whether it's "V", Tavarus, whoever, that creates a
16 problem.

17 THE COURT: Well, if I understand the way it's
18 likely to proceed, he said he was introduced to him as
19 "V", and he will most likely be asked if he the person
20 who's known as "V" in Court, and that would then
21 identify the person and then there cannot be any
22 confusion about who he's identifying. And, of course,
23 this is the time several hours before the murders
24 occur.

25 MR. KULP: I know. Let me give you -- I'll give

1 you a pinpoint example.

2 THE COURT: I understand what you're asking me,
3 but I can't help you. I just don't think that there's
4 anything there.

5 MR. KULP: Well, for example, ---

6 THE COURT: What do you -- how do you suggest that
7 you refer to a person?

8 MR. KULP: Well, let ---

9 THE COURT: You're "Mr. Kulp". You know, that's
10 what your name is..

11 MR. KULP: Right. But if I walk in a store over
12 here across the street, they don't know I'm "Mr. Kulp"
13 until they're told. And if they were talking about my
14 entering the building at the time they didn't know who
15 I was, "A man walked in the door, who I later learned
16 to be Mr. Kulp."

17 I just think that it misleads the Jury about the
18 witness' ability to identify the person and when they
19 could do so; and it's left to be cleaned up on Cross
20 Examination, but I don't think that's an effective
21 remedy. I think the remedy that could be offered is
22 for the Solicitor to either say, "Now, at that time" --
23 not to ask, "Did you see who came through the door?"

24 THE COURT: Well, I'm going to put it to you this
25 way.

1 MR. KULP: Yes, Judge.

2 THE COURT: If I understand the way you do that is
3 if you think the Solicitor asks a question that's
4 confusing or unfair or misleading, you object to it,
5 and I'll rule on it.

6 MR. KULP: Okay. That's what we did before in the
7 Motion, and that's what we're doing now, just to keep
8 from getting up and down. If he says -- well, I think
9 there's a way it could be handled, but it's not my
10 witness. I think we got in this problem because of the
11 fact that the witness misunderstood the question and
12 was saying, later in the chronological course of his
13 testimony, that he didn't know.

14 I guess it's either the form of the question, or
15 whatever, but I just don't want to be in a position of
16 objecting every time.

17 MR. MURDAUGH: Let me ask the same question one
18 more time.

19 MR. KULP: Maybe the Solicitor has a remedy.

20 DIRECT EXAMINATION CONTINUED

21 (OUT OF THE PRESENCE OF THE JURY)

22 BY MR. MURDAUGH:

23 Q. Can you identify the people that came into the
24 trailer at the time of the shooting?

25 A. No.

1 MR. MURDAUGH: Okay. That's the same question I
2 asked the last time.

3 THE COURT: All right. Well, I want to ask
4 another question so there can't be any dispute.
5 Can you identify the people who came in when you --
6 that you saw earlier that evening?

7 THE WITNESS: Yeah.

8 THE COURT: And how many were there?

9 THE WITNESS: Four.

10 THE COURT: Do you see any of those four persons
11 in the courtroom?

12 THE WITNESS: One of them.

13 THE COURT: And who is that?

14 THE WITNESS: Tavarus over there.

15 THE COURT: And what was he known as at that
16 time? How was he introduced to you?

17 THE WITNESS: My brother introduced his name to
18 me, and he come up to me and shook my hand. He didn't
19 say who his name was.

20 THE COURT: What did your brother say to you?

21 THE WITNESS: He introduced me to all four of
22 them.

23 THE COURT: As what?

24 THE WITNESS: As "Tavarus".

25 THE COURT: What name did your brother call that

1 gentleman?

2 THE WITNESS: He called him "V." He called him
3 "John." And he called -- he didn't know John's -- I
4 guess it's his cousin or brother, the other Gadsen boy.
5 He didn't know him. He just -- my brother had just --
6 Paul had just met him that day. And West, he
7 introduced me to.

8 Tavarus walked up to me and shook my hand, said,
9 "I've heard a lot of good shit about you," which he
10 never heard ---

11 THE COURT: And he never said what his name was?

12 THE WITNESS: No. But my brother did.

13 THE COURT: And your brother said his name was?

14 THE WITNESS: "V."

15 THE COURT: "V." Okay. Did you later learn --
16 all right. Well, no, not that. Can you identify today
17 the person your brother said was "V" and that you saw
18 there that night?

19 THE WITNESS: Yeah.

20 THE COURT: And who is that?

21 THE WITNESS: Tavarus Rogers.

22 THE COURT: This gentleman seated right there?

23 THE WITNESS: Yeah.

24 THE COURT: Okay. Now, what's wrong with that?

25 Isn't that ---

1 MR. KULP: Yes, if it went that way. Maybe we can
2 fix it on the fly. But ---

3 THE COURT: Well, I think the Solicitor was
4 trying to clarify it so that we would not have a
5 problem.

6 MR. KULP: And I am not surprised with that,
7 because that is the way that the Solicitor does things.
8 But the other issue that just popped up was the issue
9 that I made earlier that the Court denied, my Motion
10 regarding hearsay. What this gentleman is going to be
11 testifying to is statement made by a deceased ---

12 THE COURT: I am glad that you brought that up
13 because I think that is hearsay or that it is
14 admissible when it is stated -- and that is what
15 happened when the person is there.

16 MR. MURDAUGH: That's exactly -- that's an
17 exception, sir.

18 THE COURT: I will be glad to look that up but
19 I think that's an exception and "V", who subsequently
20 has been identified as Tavarus Rogers is standing right
21 there. The same way with the earlier witness when
22 you'all objected to it. If he is there and that's what
23 when on back and forth, I think that is admissible.
24 Now, if you want to let me look it up -- I think that's
25 basic ----

1 MR. MURDAUGH: That absolutely is the law, that is
2 an exception to the hearsay rule. If the defendant is
3 in the presence of the person making the statement, it
4 is admissible.

5 MR. FLEMING: What number is that exception?

6 MR. MURDAUGH: What exception?

7 MR. FLEMING: To the hearsay Rule.

8 MR. MURDAUGH: You know I ain't never known
9 anything about numbers, but I know the law, Cory, and
10 you know that ---

11 THE COURT: Hearsay rule is Rule 801. The
12 exceptions to it is 803. I think this might help you.

13 MR. FLEMING: (Review of document)

14 MR. KULP: (Review of document)

15 MR. MURDAUGH: (Review of document)

16 THE COURT: Well, the statements by co-conspirator
17 in the furtherance of a conspiracy are admissible.
18 Anyway, that is -- anything that the Defendant has said
19 to these people in the course of this thing, it's my
20 impression -- in other words, from what you're saying,
21 if somebody goes in to rob a bank and says, "Stick them
22 up," that's not admissible, and that's a statement
23 against interest.

24 MR. KULP: Yes, Your Honor. I'm not talking about
25 statements of the accused. I'm talking about

1 statements of the deceased.

2 THE COURT: Oh, okay.

3 MR. KULP: In other words, he's going to say, "And
4 Paul said to me, 'That's him.'" Now, it either ---

5 THE COURT: Okay.

6 MR. KULP: Paul is not a co-conspirator.

7 THE COURT: But in his presence?

8 MR. KULP: Paul is not a co-conspirator. And, as
9 well, I can't seem to find that reference ---

10 THE COURT: I see what you mean now.

11 MR. KULP: Yes, sir. I'm sorry if I made that a
12 little confusing, Your Honor. Well, the hearsay rule
13 is about one step away from the UCC, as far as I'm
14 concerned.

15 THE COURT: What about an unavailable witness?
16 "Declarant Unavailable," in other words, since this
17 person is now deceased?

18 In 804, "Declarant Unavailable", he's saying what
19 was said by the declarant. "804, Declarant
20 Unavailable." Do you see that?

21 MR. KULP: Well, I don't see which subsection that
22 it would ---

23 THE COURT: Well, (reading): "Unavailability Of
24 The witness." Okay. And then it says, under (4),
25 (reading) "...is unable to be present or testify at

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1 the Hearing because of death or existing physical or
2 mental illness or infirmity."

3 MR. KULP: Right. And once you establish that,
4 then you get to the exceptions that apply under 804,
5 which are either former testimony, statement upon the
6 belief of impending death, -- which not accurate at
7 that time -- and statement against interest, which is
8 the declarant's personal interest. Or statement of
9 personal or family ---

10 THE COURT: Oh, okay. That doesn't apply. You're
11 right about that.

12 MR. KULP: And, see, that was my concern.

13 THE COURT: All right. In other words, you object
14 to this witness testifying that his brother said, "This
15 is "V" while he's there, ---

16 MR. KULP: That's what ---

17 THE COURT: --- that he was introduced to him by
18 his brother as "V"?

19 MR. KULP: That's what I meant when I jumped up
20 awhile ago.

21 THE COURT: Well, I can't find it right now, but
22 I'm satisfied that is admissible, and I don't know if
23 that's one that -- but it's certainly admissible.

24 Well, I am satisfied when a person -- he can testify
25 that he was introduced to the person as "V," and that

1 "V" -- and, of course, here's a case right here that
2 says, (reading): "Testimony the defendant was silent
3 in response to an accusation by a third party is
4 admissible."

5 And so I think that if he stood there and allowed
6 himself to be introduced as "V," that that is
7 admissible, and I so rule.

8 And I understand that you except to the ruling?

9 MR. KULP: Yes, sir. Respectfully, Your Honor.

10 THE COURT: Anything else?

11 MR. KULP: Nothing at this time, sir. Thank you.

12 THE COURT: Bring the Jury back.

13 MR. KULP: For the record, that exception would
14 also apply to the way that same issue impacted the
15 testimony of the preceding witness as well when she
16 said -- I think she, too, made references.

17 THE BAILIFF: Your Honor, they need just a
18 minute.

19 THE COURT: Oh, okay. Well, let us know before we
20 come back because we might be talking about something.

21 MR. KULP: What I just meant, Judge, was that --
22 I'm gathering and would except to -- I'm gathering that
23 your ruling would also apply in that regard to the
24 statements which I objected to during the testimony of
25 Ms. Wendel as to issues of identification by -- I can't

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1 remember off the top of my head but, particularly, the
2 statement of West. And I think she said, "And West
3 said to me...", or something. That may fall under the
4 co-conspirator rule. I'm trying to recall if she
5 testified as to anything that either of the deceased
6 said. If so, I just ---

7 THE COURT: Well, when West and all -- and when
8 the event was happening, that's excited utterance, I
9 would think. That would certainly come within that, I
10 would think, when all that was going on there.

11 MR. KULP: But, if so -- yes, but I'm talking about
12 introductions; which is the same thing that Mr. Reischl
13 is talking about now..

14 THE COURT: Introductions. Okay.

15 MR. KULP: Yes, sir. Thank you.

16 THE BAILIFF: Your Honor, they're back. Are you
17 ready?

18 THE COURT: Bring them in.

19 (JURY IN AT 5:37 P.M.)

20 THE BAILIFF: Your Honor, all jurors are present.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. MURDAUGH:

23 Q. Mr. Reischl, I asked you the question -- I think
24 you had testified that you heard somebody say, "Who's
25 knocking at my door at 4:00?"

- 1 A. Right, my brother.
- 2 Q. You had just gotten up out of the bed?
- 3 A. Right.
- 4 Q. What happened?
- 5 A. From when I heard the knocking on the door?
- 6 Q. Yeah.
- 7 A. I heard like -- it was just seconds when it
- 8 happened. I was fixing to put a bandanna over my head,
- 9 and then when one come around from the right ---
- 10 Q. What ---
- 11 A. One of the gunmen come in through the right and
- 12 yelling, "Get down!"
- 13 Q. Okay.
- 14 A. And then -- I mean, I was in the process of
- 15 putting my bandanna on my head, and then I just -- out
- 16 of the corner of this eye, I seen the barrel of a gun
- 17 in the other doorway ---
- 18 Q. Okay.
- 19 A. --- and I went down.
- 20 Q. Now, it is my understanding that you cannot
- 21 identify the two men that came into the trailer that
- 22 night ---
- 23 A. Right.
- 24 Q. --- is that correct?
- 25 A. Right.

1 Q. Okay. After they got into the trailer, tell me
2 what happened.

3 A. They told people to get down. When I went down, I
4 sat like between the stereo and a little wall in the
5 kitchen, and I kept my bandanna on my face. And he was
6 asking Paul where the stuff was at, referring to the
7 coke and ---

8 Q. The cocaine?

9 A. Right. And Paul gave him something, and the guy
10 said something like, "This is..." or "This ain't all of
11 it." And I heard a little scuffling, and they went
12 back in the room. I heard some arguing or something
13 going on back there, and then I heard the two gunshots.
14 Well, before the two gunshots went off the other fellow
15 with the gun standing near us was telling him, saying,
16 "Don't do it, V, let's go. We got what we came for."
17 He said that repeatedly. And ---

18 Q. Said what?

19 A. He said it repeatedly, "Don't do it. We got what
20 we got" ---

21 Q. "Don't do it", who?

22 A. "Don't do it, V."

23 Q. "V"?

24 A. Right. And said, "We got what we came for."

25 Shot Paul. Come up, stepped over me. As he was coming

- 1 over, he asked me where Mitch was at. I guess Mitch
2 walked into the little -- there's another little
3 kitchen off to the side of the big kitchen, and I'm
4 just assuming that's where Mitch was at. He come
5 around and said, "I'm just putting my cigarette out."
6 And he forced Mitch to the ground, and then shot him.
7 And then as they were walking out, said, "Anybody seen
8 anything?" "No way."
- 9 Q. Okay, sir. Now, all of this transpired at around
10 4:00 in the morning?
- 11 A. Right.
- 12 Q. Okay, sir. Earlier that night, were some people
13 at that trailer?
- 14 A. Yes.
- 15 Q. Do you see anybody in the courtroom that was at
16 that trailer that night?
- 17 A. Yeah.
- 18 Q. Was that person that you see in the courtroom
19 introduced to you that night?
- 20 A. Right.
- 21 Q. And who introduced you, sir?
- 22 A. My brother did, Paul.
- 23 Q. And that's Paul Reischl?
- 24 A. Right.
- 25 Q. And who did he introduce you to?

1 A. As -- as who he was?

2 Q. Who did he introduce you to, and what did he
3 introduce him as?

4 A. They, the three of them walked in at first. I
5 guess the other one was by the door. My brother Paul,
6 he said, "This is my brother, Toby." He said, "This is
7 West, and this is "V", this is John," -- and I didn't
8 know the other -- Paul didn't know the other Gadsen
9 boy.

10 Q. Okay, sir. Who was introduced to you as "V"?

11 A. Tavarus (pointing to defendant).

12 Q. You have done pointed with your finger. Be more
13 specific who you are talking about.

14 A. The black gentleman sitting at that table over
15 there between the two white lawyers.

16 MR. MURDAUGH: Thank you, sir.

17 MR. FLEMING: If it please the Court, Your Honor.

18 THE COURT: Mr. Fleming.

19 CROSS EXAMINATION

20 BY MR. FLEMING:

21 Q. Hello, Mr. Reischl. How are you, sir?

22 A. All right.

23 Q. I think we've met before?

24 A. Yeah.

25 Q. You gave a statement to the police within five

1 hours after this shooting; didn't you?

2 A. I ain't sure about the time. It was in the
3 morning, early in the morning.

4 Q. You're not going to argue about it -- it was
5 pretty much five hours; right?

6 A. Yeah.

7 Q. In fact, what happened was Detective Roser -- the
8 detectives found you somewhere near the crime scene, I
9 think. Wherever they found you or you found them, they
10 put you in an automobile and they took you back to the Law
11 Enforcement Center; correct?

12 A. Yeah.

13 Q. Just like they did Jocelyn, and just like they did
14 Kristal; right?

15 A. I don't recall how they got there. I don't recall
16 how Kristal and Jocelyn got to the police station.

17 Q. I understand. And the police sat you down over at
18 the Law Enforcement Center ---

19 A. Yeah.

20 Q. --- and you were comfortable at that time?

21 A. Right.

22 Q. Right. And asked you to make a statement? They
23 interviewed you, didn't they?

24 A. Yeah.

25 Q. Okay. And you made a handwritten statement to the

1 police; didn't you?

2 A. Yes.

3 Q. All right. Now, before you made that statement,
4 they read you your Miranda rights; didn't they?

5 A. Yeah.

6 Q. They said you had the right to remain silent;
7 right?

8 A. Yeah.

9 Q. And you had a right for a lawyer to be present?

10 A. (Affirmative nod).

11 Q. And they said that you didn't have to make a
12 statement, but that if you did that it would be used
13 against you in a court of law. Do you remember them
14 saying that?

15 A. Yeah.

16 Q. And you said, "I'll make a statement"?

17 A. Right.

18 Q. Okay. And you did it in your own writing;
19 correct?

20 A. Yeah.

21 Q. I'm going to show you this document ---

22 MR. FLEMING: Which I'll first show the
23 Solicitor.

24 MR. MURDAUGH: I've got a copy.

25 MR. FLEMING: I want to show you my copy,

1 (tendering document to Solicitor).

2 MR. MURDAUGH: All right.

3 CROSS EXAMINATION CONTINUED

4 BY MR. FLEMING:

5 Q. Mr. Reischl, I will now show you a copy of this.

6 Is that a copy of the statement that you gave to police
7 in your own handwriting within five hours of this
8 shooting?

9 A. Yeah.

10 MR. FLEMING: I would like to have this marked.

11 (SO ENTERED AS DEFENDANT'S EXHIBIT 6)

12 CROSS EXAMINATION CONTINUED

13 BY MR. FLEMING:

14 Q. If you can, I'll give it back to you and ask if
15 you can review it and familiarize yourself with what
16 you told the police that night or, actually, that early
17 morning.

18 A. (Reviewing document).

19 MR. MURDAUGH: You can use this one, (tenders
20 document to Mr. Fleming. He's through, sir.

21 MR. FLEMING: Thank you.

22 CROSS EXAMINATION CONTINUED

23 BY MR. FLEMING:

24 Q. All right. Mr. Reischl, I'll ask you -- in that
25 statement, of course, you wrote, (reading):

1 "Two fellows entered the room we were in and said,
2 "Everyone down!" I went down with a bandanna covering
3 my face." Isn't that correct?

4 A. That is correct.

5 Q. And, in fact, the only intruder you saw had a
6 white mask over his face; right?

7 A. Yeah, for a second.

8 Q. Okay. Now, the statements -- in your interview
9 with the police and in your statements, your
10 handwritten statements, is everything you told the
11 police true?

12 A. All except where I said, "B." "V," it all sounds
13 the same thing, at that point in time.

14 Q. Okay, let me get to that. You have referred -- in
15 your statement, your handwritten statement, you said,
16 and I'll quote: "The other guy was saying, 'Come on,
17 B" -- as in "boy", isn't that correct?

18 A. Yeah.

19 Q. And you wrote that; correct?

20 A. Yeah.

21 Q. And now after hearing the testimony of Kristal
22 Wire and Jocelyn Wendel, you now say it's "V"; ---

23 A. No.

24 Q. --- is that correct?

25 A. It was two or three -- no. It was three years ago

1 when I decided to change "B" to "V." It wasn't just
2 today.

3 Q. Okay. Let's -- let me talk about your statements
4 to the police concerning what happened earlier that
5 day. Now, you say that several black males came to
6 that trailer earlier that afternoon; correct?

7 A. Yeah.

8 Q. The sun was still out?

9 A. Yeah. It was probably going down.

10 Q. You ---

11 MR. MURDAUGH: Is that in the statement?

12 THE WITNESS: No.

13 THE COURT: Excuse me. That question wasn't to
14 you.

15 MR. MURDAUGH: No. Is that in -- what's you're
16 questioning about, is it in the statement or not?

17 MR. FLEMING: Your Honor, the reason that I know
18 this is because the detectives made notes of their
19 interviews with Mr. Reischl, I'm using my reference,
20 my personal reference, to those notes in my questioning
21 of him.

22 THE COURT: Well, if you're going to cross ---

23 MR. FLEMING: It's not from this statement.

24 THE COURT: Well, all I can say is if you're
25 going to cross-examine him about something he may have

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1 said or written earlier, I think you've got to be
2 careful about not misleading, and tell him where it
3 came from. If you're trying to impeach his ---

4 MR. MURDAUGH: I'm getting confused because I
5 don't know when he's talking about the statement that
6 he made and when he's not talking about it. If he
7 could just let me know when he's talking ---

8 THE COURT: Yeah.

9 MR. MURDAUGH: --- about a statement that he made,
10 the statement.

11 THE COURT: Yeah, I think so. I think you're
12 going to have to refer to something more specific.

13 MR. FLEMING: Certainly, Your Honor. I will.

14 CROSS EXAMINATION RESUMED

15 BY MR. FLEMING:

16 Q. Not your handwritten statement, but your interview
17 with the police during this same period of time, this
18 five hours after the event, that's what I'm talking
19 about. Okay?

20 A. Yeah.

21 Q. Did you tell the detectives that several black
22 males came to the trailer earlier in the afternoon?

23 A. Yeah.

24 Q. You didn't describe any of the black males, did
25 you?

1 A. A little bit, I think.

2 Q. And your testimony to this Jury is that you
3 described the black males?

4 A. Yeah, I did.

5 Q. You didn't describe their facial features, did
6 you?

7 A. No. It was mainly just the build of their bodies.

8 Q. Their height and weight?

9 A. I can't tell how tall you are and how heavy you
10 are, but I give them an idea.

11 Q. Did you describe their height and weight to these
12 detectives five hours after the event? Did you do
13 that?

14 A. Yeah, in a way.

15 Q. No, sir, not "in a way". Did you do it?

16 A. Yeah.

17 Q. Okay. And it's your testimony to this Jury that
18 you told these detectives that?

19 A. Yeah.

20 Q. Okay. Is it your testimony to this Jury that you
21 also described these people at the trailer earlier that
22 day by their clothing?

23 A. No.

24 Q. Did you describe their clothing?

25 A. No.

1 because I remember I ended up remembering West's name
2 because he was on the phone the whole time that I was
3 there.

4 Q. Okay. Your testimony under oath to this Jury
5 today is that you told these detectives the names of
6 the people at the party earlier that day? Think very
7 carefully.

8 A. (Pause) -- yeah, I had to. Yeah.

9 Q. Isn't it the case that the only name that you told
10 the police about in this entire event was the name
11 "Derrick"?

12 A. No.

13 Q. Well, isn't Derrick the black male -- was the name
14 of a black male at the trailer earlier that day?

15 A. Yes.

16 Q. And, in fact, isn't Derrick the fellow who rode
17 with your brother, Paul, to get cocaine?

18 A. Yeah.

19 Q. And, in fact, they went to this club called The
20 Zone to get cocaine?

21 A. I don't know where he picked it up at, but I rode
22 along with them.

23 Q. You ---

24 A. It was on our way home, yeah.

25 Q. All right. You were on your way home from

1 partying New Year's Eve, January 1st; right?

2 A. Yeah.

3 Q. And you were partying downtown Beaufort?

4 A. Right.

5 Q. And you all got in an automobile, you and Paul and
6 Derrick; correct?

7 A. Right.

8 Q. And you'all stopped at a club called The Zone?

9 A. I don't recall the name of it. There's two clubs
10 on the way from there.

11 Q. A club, and, for lack of a better term it's more
12 frequented by black persons than white persons;
13 correct?

14 A. Yeah.

15 Q. All right. And Paul and Derrick went inside this
16 club; correct?

17 A. Yeah.

18 Q. And they came back out; correct?

19 A. Yeah.

20 Q. And when you'all then went directly to the
21 trailer, he had a lot of cocaine on him; didn't he?
22 Paul did?

23 A. I can't recall exactly if he got it from the bar
24 or if it was brought to his house and it was there when
25 we got there. I don't know. I did see it.

1 Q. Okay. But there's no question that Paul was a
2 cocaine dealer?

3 A. Yeah, he dealt it.

4 Q. Okay. And, in fact, he was a drug dealer most of
5 his life, wasn't he?

6 A. Yeah, I reckon.

7 Q. All right. He dealt cocaine out of that very
8 trailer, didn't he?

9 A. Yeah.

10 Q. And people would routinely come to the trailer to
11 buy cocaine, wouldn't they?

12 A. Yeah.

13 Q. All right. And isn't it also true that Mitch
14 Riley was supplying cocaine to Kristal Wire?

15 A. I can't say that for sure.

16 Q. Didn't you say previously that the reason that you
17 and Kristal broke up was because of cocaine?

18 A. I feel that had a big factor in our relationship.

19 Q. And you were mad at Mitch because Mitch was
20 feeding her cocaine habit; wasn't he?

21 A. I thought that he was getting it for her when she
22 couldn't get it, or she had already got it.

23 MR. FLEMING: One second, Your Honor.

24 THE COURT: Okay.

25 MR. MURDAUGH: Are you going to introduce the

1 statement?

2 MR. FLEMING: The Solicitor has reminded me, Your
3 Honor, that I failed to introduce Mr. Reischl's
4 statement. It is Defense Exhibit 6 and I move to
5 introduce it at this time.

6 MR. MURDAUGH: No objection.

7 THE COURT: Without objection. Has it been
8 marked?

9 MR. FLEMING: Yes, sir.

10 MR. MURDAUGH: It has not been marked?

11 MR. FLEMING: It has been marked.

12 MR. MURDAUGH: Excuse me.

13 CROSS EXAMINATION RESUMED

14 BY MR. FLEMING:

15 Q. Now, let's talk about when you woke up around 3:00
16 or 4:00'ish. You testified ---

17 A. About 3:30.

18 Q. At 3:30, who was at the house?

19 A. Kristal, Mitch -- Kristal Wire, Jocelyn Wendel,
20 Mitch Riley, my brother Paul Reischl, John Byers and
21 myself.

22 Q. Okay. And when you woke up, you immediately got
23 up and you snorted a line of cocaine, and you did a
24 shot of liquor; right?

25 A. Right.

1 Q. In fact, you had been, over the previous two days,
2 snorting cocaine most of the time?

3 A. No.

4 Q. Well, how much cocaine did you snort during this
5 period of time?

6 A. I done a couple of lines when we were all partying
7 for New Year's Eve, and I did a little, a couple of
8 pumps, before I went to bed that afternoon.

9 Q. You threw darts, drank some beers, did a couple of
10 lines, that kind of thing?

11 A. Yeah. Uh-huh, (affirmative nod). Smoked a joint.

12 Q. Smoked a joint, you say?

13 A. Uh-huh, (affirmative nod).

14 Q. Now, Kristal was using cocaine; wasn't she?

15 A. I didn't see her actually do it.

16 Q. You testified, I think, I believe, that around mid
17 afternoon, before dark, that four black males came to
18 the trailer; right?

19 A. Yeah.

20 Q. And about an hour and a half later, you went to
21 bed? Isn't that the truth?

22 A. Oh, it was probably a couple of hours.

23 Q. Well, around 6:00 o'clock you went to bed?

24 A. I don't know. Something came on TV that I was
25 watching.

1 Q. Matter of fact, that was "Ultimate Fighting" or
2 something like that, right?

3 A. Right.

4 Q. And you were watching it with John?

5 A. Right.

6 Q. Okay. When it was over, you went to bed?

7 A. I didn't watch the whole thing.

8 Q. You didn't watch -- so you actually went to bed
9 before it was over?

10 A. Right.

11 Q. And you previously testified, did you not, that
12 you actually went to bed around 6:00 o'clock? It was
13 just starting to get dark; right?

14 A. As far as I know.

15 Q. Okay. And then you said that you woke up at some
16 point and heard some partying ---

17 A. Yeah.

18 Q. --- but that you didn't go out to see who it was?
19 You just woke up, got a blanket, and went back to bed;
20 right?

21 A. Paul met me in the hallway, and I asked him for a
22 blanket.

23 Q. Okay. And you woke -- and then -- and then you
24 stayed asleep and you woke up -- so you went to sleep
25 around 6:00 o'clock in the afternoon, right before it

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1 was dark, and you didn't really wake up again until
2 3:00 o'clock, 4:00 o'clock in the morning; right?

3 A. Yeah.

4 Q. So, give or take, you were asleep between eight to
5 ten hours; isn't that right?

6 A. Yeah.

7 Q. Yeah. So -- and you were never -- you never saw
8 -- when you were with Kristal and Jocelyn in the
9 trailer, when you first saw them, there weren't any
10 black men in the trailer; were there?

11 A. No.

12 Q. Okay. In fact, when you woke up and you came out
13 and you did your line and your shot, you testified it
14 was you, Paul, Mitch and Kristal and Jocelyn, Toby,
15 you, and John?

16 A. Uh-huh, (affirmative nod).

17 Q. Right? Okay. So from the period of time that you
18 went to sleep at 6:00 o'clock in the afternoon, before
19 dark, and 3:34 A.M. in the morning, you don't have any
20 idea who came and went to that trailer; do you?

21 A. No, I don't.

22 Q. And you don't know how many people came to buy
23 drugs; do you?

24 A. No.

25 Q. And you don't know who Jocelyn or Kristal may have

1 seen at that trailer; do you?

2 A. No.

3 Q. Now, you've previously testified and you told the
4 Solicitor and then you told me -- obviously, in your
5 statement, you said that this intruder -- one of the
6 intruders -- said to the other, "Come on, 'B'.

7 Isn't that correct? You said that in your statement?

8 A. Yeah.

9 MR. FLEMING: That was from the statement.

10 MR. MURDAUGH: Uh-huh, (Affirmative nod).

11 CROSS EXAMINATION CONTINUED

12 BY MR. FLEMING:

13 Q. You have testified today that they said "V", isn't
14 that correct?

15 A. Yeah.

16 Q. You have also testified under oath that they said,
17 "Come on, T!" Isn't that true?

18 A. (Affirmative nod)

19 Q. You indicated that you were in jail. You were
20 involved in litigation, correct?

21 A. What do you mean by that?

22 Q. You're suing someone?

23 A. No.

24 Q. You're suing the County?

25 A. No.

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1 Q. I have in my hand ---

2 A. Not at this point I'm not, no.

3 Q. Or you did sue the County?

4 A. Yeah.

5 Q. Okay. And in that litigation you had an occasion
6 to give a sworn deposition, did you not?

7 A. Yeah.

8 Q. And in that deposition a gentleman, a lawyer, by
9 the name of Francesca Macchiaverna -- do you remember
10 that lawyer, the female lawyer taking your deposition?

11 A. Yeah.

12 Q. Okay. And she asked you ---

13 MR. FLEMING: And I will show the Solicitor
14 first, (tendering document to Solicitor).

15 MR. MURDAUGH: Okay, sir.

16 CROSS EXAMINATION RESUMED

17 BY MR. FLEMING:

18 Q. Let's just cut to the chase, Mr. Reischl. Don't
19 you recall now telling Ms. Machiaverna that the name --
20 that the letter that you recall was "T"?

21 A. I don't recall.

22 Q. But you could have said that, couldn't have you?

23 A. I could have. "T", "V" or "B", they all sound all
24 the same.

25 Q. They do, don't they?

1 A. Yeah.

2 Q. And "D" and "C" and all that?

3 A. Uh-huh, (affirmative nod).

4 Q. Yeah. Now, when Tavarus was arrested, you were
5 told by the police that he was arrested, weren't you?

6 A. Yeah.

7 Q. And your family told you, right?

8 A. Yeah.

9 Q. And you've seen newspaper articles with Tavarus
10 Rogers' name in it; haven't you?

11 A. Yeah.

12 Q. And you've discussed these events with Kristal and
13 other people, haven't you?

14 A. Yes.

15 MR. FLEMING: All right. One second, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION CONTINUED

18 BY MR. FLEMING:

19 Q. Very briefly, back to the time when the intruders
20 came in. When you saw the intruder, he had a white
21 mask on his face; correct?

22 A. Yeah.

23 Q. And it had not slipped off, had it?

24 A. I don't know. I can't tell you that. I didn't
25 see anything after that.

1 Q. You didn't tell the police you were introduced to
2 any of these people?

3 A. There were a lot of little details that were left
4 out when I first wrote this statement. Because of the
5 shit you're going through like that, you don't
6 remember. They said, "Write a statement." I wrote
7 basically what happened.

8 Q. Yeah, details that are easily filled in when you
9 hear the testimony of other witnesses; isn't it?

10 A. No.

11 Q. Yes.

12 A. Shit comes to you when you're thinking about it.
13 I think about it every day -- when you put a shotgun to
14 my head, where I could have been next after Mitch.

15 Q. But you were the only male in the trailer who
16 wasn't hurt?

17 A. So what's your point?

18 Q. Don't have a point. You didn't like Mitch very
19 much, did you?

20 A. Mitch was my best friend almost. I mean, from the
21 time that we met. Me and him had a little disagreement
22 over Kristal. Big deal. We would have a fight and
23 been over with it.

24 Q. Mitch was so scared of you that he asked Scott
25 Wendel to live with him?

- 1 A. So? I didn't ---
- 2 Q. That doesn't sound like a best friend.
- 3 A. Well, all friends don't do -- things happen.
- 4 Q. He was a cocaine friend, wasn't he?
- 5 A. No, he wasn't. I didn't do cocaine with Mitch.
- 6 Q. Did the police ask you to take a blood test the
- 7 morning that you told them you were snorting cocaine?
- 8 A. No, because I told them I did.
- 9 Q. You told the police you weren't snorting cocaine?
- 10 A. No, I told them I was snorting so there wasn't any
- 11 need for a test.
- 12 Q. So you didn't take a blood test or a urine test?
- 13 A. There was no need to.
- 14 Q. To determine just how much you were?
- 15 A. (Negative gesture).
- 16 Q. Let me ask you one last question. Just how good
- 17 is your memory when you're snorting cocaine and
- 18 drinking liquor?
- 19 A. I don't know. I'd had plenty of sleep.
- 20 MR. FLEMING: No further questions, Your Honor.
- 21 MR. MURDAUGH: I have no further questions, sir.
- 22 THE COURT: You may come down.
- 23 (WITNESS STEPS DOWN)
- 24 (CONCLUSION OF TESTIMONY OF TOBY REISCHL)
- 25 MR. MURDAUGH: If Your Honor please, it appears

1 that we are at a point that is -- my watch is about ten
2 minutes off. I think it's about ten minutes after
3 6:00.

4 THE COURT: It's exactly 6:00. Do you want to
5 stop for today?

6 MR. MURDAUGH: Yes, sir. But we've got some other
7 work for -- I don't know whether I want to tell you
8 that or not, sir. There are some other things that we
9 need to discuss with you, sir.

10 THE COURT: Okay. Very good. Members of the
11 Jury, we've made some progress today, and we'll
12 continue tomorrow. I don't know exactly -- I don't
13 know exactly what time. I feel like that probably the
14 best idea is to start at 9:00 o'clock because everybody
15 gets up and has breakfast and then -- because we're
16 going to work all day. If you put in about seven or
17 eight hours in here, that's about all you can do
18 anyway, because it wears you out. Obviously, it does.
19 So we will resume in the morning at 9:00 o'clock.
20 Hope you'all have a nice evening. I understand you're
21 going to have a nice dinner tonight and so -- I don't
22 guess they've told you where it is.

23 And are there any exhibits that are still up there
24 in the jury box?

25 BY FOREMAN: That's all, (tendering to Mr.

1 Murdaugh).

2 THE COURT: And I remind you, as I will from
3 time to time, don't discuss the case among yourselves.
4 Don't let anybody discuss the case with you. If anyone
5 should attempt to -- and I, obviously, don't anticipate
6 that -- please report it immediately to Mr. McLeod, or
7 somebody else who is supervising you.

8 With that, I hope you'all have a nice evening, and
9 we'll see tomorrow at 9:00 o'clock. And, actually, if
10 we start at 9:00, it will probably take about twenty
11 minutes for you to get from the hotel to here, or
12 wherever you'all eat breakfast, and so forth.

13 So -- see you tomorrow.

14 (JURY OUT AT 6:11 P.M.)

15 THE COURT: Okay. The Jury has left. If anybody
16 -- before we start taking up these other matters,
17 anybody else wants to leave, you may do so at this
18 time.

19 MR. MURDAUGH: Judge, could Mr. Fleming, Mr. Kulp
20 and I have perhaps a few minutes just to see if we
21 can ---

22 THE COURT: Absolutely. So we'll stand at-ease
23 for about five minutes for you'all to see what you can
24 do.

25 (BRIEF RECESS 6:15 to 6:22 P.M.)

1 MR. MURDAUGH: We are not going to be able to agree
2 but for the purpose of the hearing that we need to
3 hold, sir, I think the attorneys have entered into a
4 stipulation as to what would be testified if this is
5 admissible. And I'm going to state what I understand
6 it, and they can -- I'm sure they will correct me.
7 That on a date -- and I, frankly, don't remember when
8 it was ---

9 MR. FLEMING: January 22nd.

10 MR. MURDAUGH: --- Tavarus Rogers was walking down
11 -- was incarcerated, walking down the corridor at the
12 jailhouse, the last of four people who was following a
13 counselor by the name of Barnes. An officer by the
14 name of Richard Rivers was in the walled-off part with
15 glass on it looking at them. He saw Tavarus Rogers
16 lean down and put something under the door of a cell.
17 He got on the radio and called Kenneth Williams.
18 Kenneth Williams went to the place where Richard Rivers
19 saw him put it -- and continued to watch it -- and
20 picked these two items up, fanned the book, and the
21 book -- the note fell out of the book.

22 That note was taken to a SLED Agent by the name of
23 John Black. He fingerprinted it and lifted, I think,
24 eight prints, or a number of prints, and matched them
25 to a card that was kept on file at SLED under the name

1 of Tavarus Rogers that had been submitted earlier by
2 Beaufort County.

3 That's basically it, isn't it? Is there anything
4 else?

5 THE COURT: Is the statement being offered into
6 evidence?

7 MR. MURDAUGH: I will at the -- yes, sir, I will
8 offer it into evidence. And that is the statement that
9 was found in the course -- is there anything else we
10 need to add to the stipulation? I think that pretty
11 well covers it.

12 THE COURT: Do you want to mark that for
13 identification, or what?

14 MR. MURDAUGH: No, sir. I don't even need to do
15 that now. If you rule -- we just need you to rule
16 based on that stipulation of fact whether or not it is
17 of evidentiary value.

18 THE COURT: What does it say?

19 MR. MURDAUGH: It ---

20 THE COURT: I didn't know you wanted me to read
21 the whole thing.

22 MR. MURDAUGH: Yes, sir, if you don't mind.

23 THE COURT: (Upon review), who was in that other
24 cell?

25 MR. MURDAUGH: That, I don't know.

1 THE COURT: Oh, it wasn't necessarily one of the
2 defendants but maybe to be passed to them, is your
3 theory?

4 MR. MURDAUGH: Yes, sir.

5 THE COURT: And this is Chris Wilson?

6 MR. MURDAUGH: Chris Wilson is ---

7 THE COURT: Who is Ms. Wilson? The Public
8 Defender?

9 MR. MURDAUGH: At that time was an investigator
10 with the Public Defender's Office; whom Tavarus was
11 represented by, I think.

12 THE COURT: And, of course, he was being
13 represented for the charges which are involved in here?

14 MR. MURDAUGH: That is correct, sir.

15 THE COURT: And so -- well, let me hear from the
16 Defense?

17 MR. FLEMING: Your Honor, we have two basis for
18 the exclusion of this note.

19 THE COURT: Okay.

20 MR. FLEMING: The first one is the ultimate hurdle
21 that every piece of evidence has to go through. It is
22 its relevance, and then its probative value over its
23 prejudicial effect. And if I take it -- it has to be
24 the Solicitor's point that that is in some way an
25 incriminating statement by the Defendant or it wouldn't

1 be relevant. And so assuming for this argument that
2 the Solicitor contends that this is an incriminating
3 statement, we do not know who was the intended
4 recipient of that letter. There is no indication on
5 the letter who it's written to. There is no indication
6 on that letter who it was written by. There are
7 fingerprints that the State will allege were put on
8 there, and, I assume, circumstantially, will argue that
9 that means that Tavarus Rogers wrote the letter.
10 However, the Jury will be left to speculate as to who
11 it was sent to even if they believe that the Defendant
12 wrote the letter. The Jury can't be allowed to
13 speculate on a -- on a particular piece of evidence.

14 THE COURT: Well, I would presume that the State
15 can show that -- that at least one and possibly three
16 other alleged -- other ones were at the jail during
17 that time; can't they?

18 MR. MURDAUGH: I'd have to find that out, sir. I
19 cannot tell you that, Judge.

20 MR. FLEMING: Your Honor, I would expect that
21 there was a hundred ---

22 MR. MURDAUGH: McKinnon was in jail, yes, sir.
23 I'm sorry.

24 MR. FLEMING: Well, I assume that that's now added
25 to our stipulation concerning what the ---

1 THE COURT: Well, they can prove that with some
2 other testimony, ---

3 MR. MURDAUGH: No. The Judge asked me a question.

4 THE COURT: --- if you need to.

5 MR. FLEMING: Well, assuming that the State can
6 show that another co-defendant was in jail at the same
7 time, they cannot show in any reliable fashion that
8 that letter was sent to that person.

9 THE COURT: Well, who -- why does it matter? In
10 other words, McKinnon is not on trial here. If he's
11 trying to concoct a story about what happened for what
12 he was in jail for. ---

13 MR. FLEMING: Well, and that brings us to my next
14 point. We don't know what that letter means. It's
15 very vague reference to something, and the Solicitor
16 certainly can't interpret it.

17 MR. MURDAUGH: Oh, yes, I can.

18 THE COURT: Well, I can certainly interpret it
19 that they've got to get together and make sure that all
20 their stories are together, that they -- if they want
21 to come up with something. I mean, that's implicit in
22 the thing. I mean, I can interpret that. Can't you?

23 MR. FLEMING: No, sir. I'm not willing to make
24 that interpretation.

25 THE COURT: Okay. Well, if you can't interpret

1 it, I -- it's one of those things that maybe it ought
2 to come in for whatever it's worth.

3 MR. KULP: Well, the point is, Judge, that ---

4 THE COURT: Well, how is it prejudicial if you
5 can't interpret it?

6 MR. KULP: Well, my point -- respectfully,
7 Your Honor. Pardon me. Wait a minute.

8 THE COURT: Well, you'all don't ---

9 MR. KULP: It's been a long day. Excuse
10 me.

11 THE COURT: That's not your point. You think
12 -- you don't feel like that it can't be interpreted,
13 then, obviously?

14 MR. KULP: You're asking a personal question.

15 THE COURT: You'all would take opposing sides?

16 MR. KULP: When you say "they," the question
17 is "Who?"

18 THE COURT: The Jury.

19 MR. KULP: Who are the parties to whom the
20 information on the note, whatever it means, was
21 communicated, and who is it from? Now, the SLED expert
22 will testify -- and he told me that he cannot testify
23 as to when latent fingerprints were placed on that
24 standard piece of paper available in any jail.
25 Secondly, he cannot testify -- I didn't specifically

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1 ask him this, but I think forensic science yields that
2 he cannot testify whether the prints were placed there
3 before or after the writing was proscribed on the
4 paper.

5 THE COURT: Well, now, doesn't the witness say
6 that they saw the Defendant place that paper there?

7 MR. KNIGHT: Yes, sir.

8 MR. MURDAUGH: Yes, sir.

9 MR. KULP: There's some confusion about that
10 because it appears that what they saw was a magazine --
11 correct me; just jump right in if I'm wrong on this.
12 That the gentleman in the tower or booth saw a magazine
13 slipped under a door that the directed a second party
14 to go and retrieve it; and when he retrieved it, he
15 found the paper therein.

16 THE COURT: With his ---

17 MR. MURDAUGH: And nobody touched it in the
18 interim period.

19 THE COURT: With his fingerprints on it?

20 MR. KNIGHT: Yes, sir.

21 MR. MURDAUGH: Yes, sir.

22 THE COURT: So that you can testify that he
23 placed the magazine and there was found, very quickly
24 thereafter in the magazine with that, and that custody
25 was ---

1 MR. KULP: Okay. So at that point, by way of
2 review, Your Honor, what do we have? We have the
3 Defendant's possession of the note.

4 THE COURT: Well ---

5 MR. KULP: We have, of course, his
6 fingerprints, but that's no big deal because we already
7 know he possessed it. Now, did he write the note? Or
8 is it just the case that the best they can get out of
9 the note for purposes of trying to meet the burden of
10 proof of relevancy so they can submit it to the Jury is
11 simply, did he write the note?

12 Now, if he just handled the note from some person,
13 then we don't know, we can't identify who -- that was
14 directed to some other person who can't be identified.
15 There's no name on that note. There's no context in
16 which it would -- there are a bunch of people in the
17 jail over there who have co-defendants who are
18 communicating back and forth by what I told the
19 Solicitor was "jail E-mail." And, you know, Judge --
20 so what do we have at best? We have a piece of paper
21 that was handled by the Defendant at one time and slid
22 under a door. That's it. There's no other logical way
23 for any witness in any sense to associate it with the
24 Defendant. He possessed it. And because it's so
25 prejudicial, we think that the mere fact that they can

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1 only prove that he possessed it is not sufficient to
2 allow the prejudice to go to the Jury. And what is it
3 probative of?

4 THE COURT: Well, go ahead and make your
5 argument any way you want to and protect the record. I
6 feel like it's admissible.

7 MR. FLEMING: Your Honor, I had -- as I told you,
8 I had two arguments, and the second argument is based
9 on the previous ruling from Your Honor. You had
10 already ruled that on January 8th -- well, we all know
11 that Tavarus Rogers was initially detained on an
12 illegal coroner's warrant, and that is the ruling of
13 this Court.

14 THE COURT: Uh-huh, (affirmative nod).

15 MR. FLEMING: This note -- I looked back, and
16 this note was found January 20th of 1999.

17 THE COURT: January 20th?

18 MR. FLEMING: January 20th of 1999. This case
19 had not been presented to the Grand Jury by January
20 20th of 1999.

21 THE COURT: Well, ---

22 MR. FLEMING: Therefore, he was -- now, they had
23 gotten arrest warrants but the State had gotten arrest
24 warrants based on information that they illegally
25 obtained by illegally detaining Tavarus Rogers. So he

1 was still in jail without probable cause and this ---

2 THE COURT: But he was not being questioned?

3 He wasn't being questioned ---

4 MR. FLEMING: No, sir, but ---

5 THE COURT: --- and he wasn't even held. I

6 mean, they didn't do anything to get this. This was

7 volunteered.

8 MR. FLEMING: And I will remind the Court, Your

9 Honor, because it's been a long time since we argued

10 that motion -- but I will remind the Court that this is

11 a Fourth Amendment issue, and the Courts have said that

12 any evidence at all, statements, physical evidence,

13 fingerprints, anything, gained by the State as a result

14 of an illegal detention is the fruit of the poisonous

15 tree and must be excluded. And this is just nothing

16 more than a simple -- one more step over. Had he been

17 indicted by the Grand Jury, they would have had him in

18 jail legally but -- because we can't know what the

19 Grand Jury did. But we know that his arrest warrants

20 were illegal because they were based on the information

21 they obtained as a result of the illegal detention

22 which Your Honor has already ruled on. And so it ---

23 THE COURT: Well, yeah, I ruled so far as the

24 statement was concerned that it was -- and I excluded

25 it. That's right.

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1 MR. KULP: But if I may ---

2 MR. FLEMING: And this -- and this would also --
3 this could be one of two types of evidence. This could
4 either be a statement such as a confession; in other
5 words, the Solicitor will say or argue that he is
6 saying 'because we need to get our stories straight',
7 or whatever it is that he just said, that he must,
8 therefore, have been the guy that did it, and,
9 therefore, it is some sort of statement against his own
10 interest. Or it's used as a piece of physical
11 evidence. Either way, the Fourth Amendment
12 exclusionary doctrine, the fruit of the poisonous tree,
13 does not differentiate between the types of evidence.
14 The State can't use any evidence that they procure as a
15 result of a Fourth Amendment violation. They procured
16 this as a result of a Fourth Amendment violation, and
17 there was no intervening event that cured that
18 violation. The Grand Jury would have cured it ---

19 THE COURT: Your point is made but I don't
20 agree with it, so it's overruled.

21 MR. KULP: Even though it's been a long day, I
22 just wanted to add one sentence to that, Your Honor.
23 But for his illegal detention, the note would have not
24 been able to have been wrote. Thank you.

25 THE COURT: I understand that, but I don't

1 think that it's quite that broad. "But for" a person
2 happened to be in the World Trade Center, you know,
3 they would have been okay, you know, or something.
4 You know, there's any kind -- you can go to infinity on
5 that, but that's not -- anyway, I rule that this is
6 admissible for whatever it's worth.

7 MR. KULP: Thank you, Your Honor.

8 THE COURT: Anything else today?

9 MR. MURDAUGH: With that, sir, let's go home.

10 THE COURT: Well, I'm ready. Wait just a
11 second, I've got one other thing. So often when I'm
12 trying cases like this, you get there and then the
13 lawyers have something else they want to do. We've got
14 the Jury coming in at 9:00 o'clock. I'll be here at
15 8:30. The court reporter will be here at 8:30. If
16 you've got something ahead of time, we're going to put
17 it on the record then. You don't have to come -- well,
18 let's see. I guess you will have to come. If
19 everybody gets here at 8:30, we can be going and if --
20 at 9:00 o'clock, I want to start the case. I'm not
21 going to interrupt it to take these preliminary matters
22 and all.

23 MR. KULP: Okay, sir. No problem.

24 THE COURT: But if at anytime you need more
25 time, we'll do it late at -- we'll do it after they

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1 leave or earlier in the mornings.

2 MR. KULP: Yes, sir. I have no problem. I've
3 moved here.

4 THE COURT: Yeah.

5 (COURT IN RECESS AT 7:10 P.M.)

6 (TRANSCRIPT CONTINUED NEXT PAGE)

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STATE OF SOUTH CAROLINA	}	COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT		

STATE OF SOUTH CAROLINA,	}	
Plaintiff,		
vs.		99-GS-07-221 thru 222
TAVARUS ROGERS		99-GS-07-281 thru 288
Defendant.		

JURY TRIAL
October 13, 2001 - Volume 6 of 7 Volumes

The within Jury Trial was held before the Honorable Jackson V. Gregory, on October 8-16, 2001, in Courtroom No. 1 of the Beaufort Government Center, Beaufort, South Carolina; attended by counsel, as follows:

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Steven Knight, Deputy Solicitor
Angie McCall, Deputy Solicitor
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1 OCTOBER 13, 2001

8:30 A.M.

2 (DEFENDANT PRESENT)

3 (Judge In at 9:12 A.M.)

4 MR. KULP: Good morning, Judge.

5 THE COURT: Good morning.

6 MR. KULP: How are you?

7 THE COURT: Fine, thanks. Everybody ready to
8 proceed?

9 MR. MURDAUGH: Yes, sir.

10 MR. KULP: Let me put the screen down.

11 THE COURT: You can bring the Jury in.

12 MR. FLEMING: Your Honor?

13 THE COURT: Wait a minute. Do you want to stop?

14 MR. FLEMING: Please stop.

15 THE COURT: Let me ---

16 MR. FLEMING: Your Honor, we have a Motion as a
17 result of some information that Solicitor turned over
18 to us about five minutes before 9:00 o'clock, ten
19 minutes before 9:00 o'clock.

20 THE COURT: Okay.

21 MR. FLEMING: With all due respect to the
22 Solicitor, he turned it over as soon as he got it.

23 THE COURT: Okay.

24 MR. FLEMING: Nonetheless, and we -- and please
25 understand, Your Honor, we have not had time -- we have

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1 had about fifteen minutes to review the information.
2 It concerns -- it concerns the -- it concerns the
3 Motion regarding the jail note.

4 I hold in my hand -- and I guess what I'll do is
5 we can may get a copy eventually for the Court --
6 information. It's called the January 20th, 1999
7 Classification Status Report. There are -- in it, it
8 refers to -- ostensibly refers to the incident
9 regarding this jail note. We have not seen this
10 before. The Solicitor just gave it to us.

11 THE COURT: And that was in his file at the jail,
12 the Defendant's file at the jail?

13 MR. FLEMING: I have absolutely no idea where it
14 was.

15 MR. MURDAUGH: That is my understanding, sir.

16 MR. FLEMING: And I understand that they procured
17 it either late last night, obviously, or early this
18 morning. There is a -- in this package of information
19 there is what purports to be a statement written by
20 Tavarus Rogers regarding this incident; and, in fact,
21 an admission concerning it. The ---

22 THE COURT: Oh. In other words, for -- for
23 violation of the jail rules?

24 MR. FLEMING: That's correct. That's what it
25 appears to be. I need not remind Your Honor that we

1 filed discovery motions two years ago and we have been
2 in discovery ---

3 THE COURT: Well, let me ask you this. Isn't that
4 -- wasn't that information available to you, at any
5 time to you, too?

6 MR. FLEMING: Your Honor, I don't believe that
7 that is the standard for --

8 MR. KULP: Yes, Your Honor, but the issue is if
9 it's something they intend to offer and use at trial as
10 evidence, they need to disclose it. It's not up to us
11 to go ferret out everything that ---

12 THE COURT: I don't think they have to give you
13 everything they wish to offer. That's not the rule, is
14 it? What's -- what is the rule? Let's see. Just a
15 minute. In other words, they have to lay out their
16 case in full, and you don't have to put out anything of
17 yours except the alibi witnesses? That's not exactly
18 right.

19 MR. KULP: Yes, sir. Rule 5, paramount Rule 5(a),
20 indicates ---

21 THE COURT: Okay. One second, let me get the Rule
22 5 before me.

23 MR. KULP: I'm sorry, Your Honor.

24 THE COURT: Let me get this Rule 5 here.

25 MR. KULP: Yes, sir.

1 THE COURT: Okay. I've got it before me. Which
2 one?

3 MR. KULP: Yes, sir. 5(a).

4 THE COURT: Okay.

5 MR. KULP: Excuse me. 5(1)(A). It's -- one of
6 the primary aspects, is that upon request which would
7 be made the State must provide to us any statements of
8 the Defendant which is in their possession.

9 Now, *Cowes v. Whitney*, -- I don't know whether it
10 was *Whitney* or -- but I think *Whitney* provided the law
11 that was incorporated in *State vs. Gullede* that
12 indicates that if something is in the possession of a
13 law enforcement entity associated with a case
14 associated with the Solicitor, that that is considered
15 to be within his possession. The only thing that
16 wouldn't be ---

17 THE COURT: Well, do you think the jail employees
18 are in same category as the detectives?

19 MR. KULP: Yes, sir. And the question is why ---

20 THE COURT: Have you got some authority to that?
21 I wouldn't think that would be the law.

22 MR. KULP: Well, they provided us with the note.
23 The Sheriff, I assume, here in this county operates the
24 jail as well as his investigators in the Sheriff's
25 Department.

1 MR. KNIGHT: No, sir.

2 THE COURT: Who operates the jail?

3 MR. KNIGHT: It's an entirely different ---

4 MR. KULP: Is it?

5 MR. KNIGHT: The County ---

6 MR. KULP: Okay.

7 MR. MURDAUGH: Mark Fitzgivens is the Jail
8 Administrator. It is entirely separate from the
9 Sheriff's Department.

10 THE COURT: That's what I thought.

11 MR. KULP: Well, nonetheless, the jail (sic)
12 came from that separate entity. It was provided to us
13 in discovery. They intend to use that. Now they
14 disclose documents which contain a statement of the
15 Defendant which they intend to use, and the request was
16 made for any statement of the Defendant. If it was a
17 happenstance thing that it wasn't provided to the
18 Solicitor, it came from a source from which they
19 procured part of the information. The primary notion
20 is that it's a statement, a writing of the Defendant.
21 And, you know, equal availability, Your Honor, if that
22 were the argument that -- that predominated, then the
23 Solicitor would never have to provide the case filing
24 and say, "Well, you can do an FOI Request or a subpoena
25 and get it from them." But he has a duty. And we also

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1 filed a request ---

2 THE COURT: Well, it says "...within the
3 possession, custody and control of the prosecution,...

4 MR. KULP: Yes, sir.

5 THE COURT: ...the existence of which is known or
6 may become known to the attorney for the prosecution."
7 But it looks to me like you have an equal duty to be
8 diligent. I mean, you have a client that you could ask
9 him, ---

10 MR. KULP: No -- I'm sorry, Your Honor...

11 THE COURT: --- and, of course, I would rule,
12 unless you've got some authority to the contrary, that
13 the jail is not the prosecution. The jail administra-
14 tion is a separate entity -- any more than the County
15 Administrator is. In fact, the jail -- Mr. Fitzgivens,
16 I'm sure he presents his budget to the Mr. Catchmart
17 (phonetic), the County Administrator, and to the County
18 Council separate and apart from the Sheriff.

19 MR. KNIGHT: That's correct, Your Honor.

20 MR. KULP: I have that authority, Judge.

21 THE COURT: Okay.

22 MR. KULP: I'll pull a portion from the Cowes
23 case and also from State vs. Gullede in just a second.

24 THE COURT: All right, sir.

25 MR. FLEMING: And while he's doing that, Your

1 Honor, may I also make an additional argument which is
2 the shoehorn of what I argued yesterday. With regard
3 to the suppression of the statements contained in this
4 document, in the document which -- may I go ahead and
5 make it a Court's exhibit, Your Honor?

6 THE COURT: Yes, sir. I would like to read it.
7 Yes, sir.

8 MR. FLEMING: Yes, sir.

9 COURT REPORTER: Court's Exhibit 11.

10 (SO ENTERED AS COURT'S EXHIBIT 11)

11 THE COURT: (Upon review) -- Well, it would
12 appear to be cumulative, anyway, because they saw him
13 drop it and it had his fingerprints on it, if all it
14 says is to whether or not he put it there.

15 MR. FLEMING: And, Your Honor, the crux of my
16 argument -- and I would like to renew in reference my
17 Motion To Suppress based on the Fourth Amendment
18 violations as a result of the illegal detention of Mr.
19 Rogers, and I would make direct reference to the
20 arguments made in that Motion and further argue that
21 your ruling concerning the suppression of any
22 statements made by Tavarus Rogers while he was
23 illegally detained carries over as to that particular
24 statement and any of the events that occurred until the
25 time that he was indicted. Because until he was

1 indicted they did not detain legally and were in
2 continual violation of the Fourth Amendment, sir.
3 I would add that additional one.

4 MR. MURDAUGH: Your Honor, please, let me call one
5 thing to your attention:

6 THE COURT: Wait a minute, now. Wasn't there a
7 warrant, a valid warrant, issued in this case at some
8 time?

9 MR. FLEMING: No, sir.

10 THE COURT: Not -- you say there never was one?

11 MR. FLEMING: There was a warrant issued as a
12 result of the information they gained in violation of
13 the Fourth Amendment. They could not have gotten this
14 information without violating his Fourth Amendment.

15 THE COURT: Well, I would think that if there
16 was a warrant from a duly authorized Magistrate having
17 jurisdiction that he was under lawful arrest until that
18 time.

19 MR. MURDAUGH: I would think so. Irregardless of
20 that, sir, I think the case that Mr. Kulp has called to
21 your attention is one dealing with a Brady violation;
22 that is, the failure of the State to turn over
23 exculpatory information, which is not the case here.

24 THE COURT: Okay.

25 MR. MURDAUGH: The case law in South Carolina is

1 clear that as long as the Defense is given notice of
2 matters prior to its introduction that that is
3 sufficient to fulfill Rule 5 -- or rule whatever it is,
4 it used to be Rule 5. I can't remember those numbers.

5 THE COURT: It's still Rule 5(1)(A) -- or
6 5(a)(1)(A). This also says, (reading): "...in
7 response to interrogation by any person then known to
8 the Defendant to be a prosecution agent."

9 MR. KULP: I am printing out both of those
10 cases right now, Your Honor.

11 THE COURT: But it's -- okay. Well, there's
12 another thing that I could do that I don't know that
13 would make much difference is -- of course, if the -- I
14 know it would be admissible if the Defendant took the
15 stand and denied it. Wouldn't you agree with that, Mr.
16 Knight?

17 MR. KNIGHT: Yes, sir.

18 THE COURT: No question about that.

19 MR. KNIGHT: No question about that. The door
20 is open.

21 THE COURT: Well, let me just say this. I'm
22 not going to stand around and spend a lot of time on
23 this. It's now 9:30, and I've been here since about
24 8:30 and we said that's what we would do. Do you
25 intend to offer this at this time?

1 MR. MURDAUGH: I am considering it, sir.

2 THE COURT: Well, while you were out it occurs
3 to me that, aside from everything else -- and I'm going
4 -- I want to err on the side of caution. I think it's
5 admissible. But, on the other hand, if the Defendant
6 should take the stand and deny it, I know it's
7 admissible.

8 MR. MURDAUGH: Yeah, that's -- no question about
9 it.

10 THE COURT: And it is just cumulative, anyway.

11 MR. MURDAUGH: I won't offer it, sir, the
12 statement.

13 THE COURT: Okay. Well, that solves the
14 problem. Are we ready to go forward? Unless you come
15 back before me, and then we'll argue it some more.

16 MR. KNIGHT: And I'll have the law ready then,
17 Your Honor, should that arise.

18 THE COURT: Okay. I'm going to pass this back
19 down to you. I believe I lost the -- all this is one
20 exhibit; isn't it?

21 COURT REPORTER: Yes, sir.

22 THE COURT: Are we now ready for the Jury?

23 MR. MURDAUGH: Yes, sir.

24 THE COURT: Bring them in.

25 MR. KULP: Your Honor, you asked me to remind you

1 and I forgot yesterday, and I think you may have done
2 it anyway. I didn't know if you also said that you
3 were going to -- when the Jury came down and you polled
4 them, to see if anybody had -- there was a significant
5 article in the paper this morning. I know they've been
6 sequestered.

7 THE COURT: I will certainly ask them.

8 MR. KULP: Sir?

9 THE COURT: I will ask them.

10 MR. KULP: Thank you, sir.

11 MR. MURDAUGH: I don't think it has a thing to do
12 with the trial of this case, sir, but on yesterday you
13 asked the Bailiff -- SLED Bailiffs -- to get certain
14 books. I think we ought to just put on the record
15 whether that was done.

16 THE COURT: It was, and they're right here. There
17 are two of them, and I just told her (Clerk) -- show
18 them the books. And they're going to stay right here.

19 MR. MURDAUGH: I don't need to see them. I just
20 want it on the record as to what happened.

21 THE COURT: They are, and we have the -- they were
22 brought to us by Mr. McLeod, I believe.

23 MR. MURDAUGH: And those were the two books that
24 Defense Counsel were interested in?

25 THE COURT: Exactly. Isn't that right? Did you

1 see the books? Isn't that -- isn't that right, Mr.
2 Kulp? Did you see these two books?

3 MR. KULP: Yes, sir. I have, Your Honor,
4 reviewed them. Yes.

5 THE COURT: And they are here, and I told her
6 (Clerk) to take them off of the top because I didn't
7 want them to even see them.

8 MR. KULP: Very good, Your Honor.

9 THE COURT: Okay.

10 MR. MURDAUGH: I just wanted to get that on the
11 record.

12 THE COURT: Thank you.

13 (JURY IN AT 9:27 A.M.)

14 THE BAILIFF: Your Honor, all jurors are present.

15 THE COURT: Thank you, Mr. Dorsey. Good morning,
16 Ladies and Gentlemen. Hope everyone had an enjoyable
17 time last evening, and we are now ready to go to work.
18 I'm sorry that we are starting a little late. Just for
19 the record, does anybody have any kind of -- anything
20 to report, if they might have read anything, or seen
21 anything, or anybody said anything to them that they
22 shouldn't have, based upon my previous instructions?
23 (No response from Jurors).

24 With that, Solicitor, call your next witness.

25 THE SOLICITOR: I call Bonito Reyes.

1 (WITNESS TAKES STAND)

2 BONITO YOGI REYES, being duly
3 sworn to tell the truth, the whole truth and nothing
4 but the truth, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MURDAUGH:

7 Q. Your name is Bonito Yogi Reyes?

8 A. Yes, sir.

9 Q. Mr. Reyes, are you employed by the Sheriff's
10 Department of Beaufort County in the capacity as a
11 Deputy?

12 A. Yes, sir, I am.

13 Q. Okay, sir. And were you so employed on January
14 the 2nd, 1999?

15 A. Yes, sir.

16 Q. As a result of a radio message, did you go
17 anywhere that night?

18 A. Yes, sir. We responded to the residence of
19 Coffin Point Road.

20 Q. Okay, sir. And when you got there, did you make a
21 -- just 'yes' or 'no'. Did you make a determination as
22 to what had happened?

23 A. Yes, sir.

24 Q. Did you find -- what did you find when you got
25 there?

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1 A. The initial response -- there was several people
2 on the outside of the residence. As we walked up to
3 the residence, we seen an individual on the ground
4 inside the living room with a pool of blood.

5 Q. Okay. And did you then secure those premises?

6 A. Yes, sir.

7 Q. And when you say "secure them," what does that
8 mean?

9 A. Well, we did several things. First, we -- I
10 notified my supervisor what the situation was and what
11 we were intending to do, to force our way into the
12 residence, to take care of the victim that was on the
13 ground, and to see if there were any suspects in the
14 area.

15 Q. Okay, sir. Did you also cordon the area off ---

16 A. Yes, sir.

17 Q. --- with yellow tape? And I show you State's
18 Exhibit Number 2 -- 1, 2, 3 and 4 -- and ask you if
19 that yellow tape in there was put there at your
20 direction?

21 A. Yes, sir, it was.

22 Q. Okay, sir. And thereafter ---

23 MR. MURDAUGH: May I publish these to the Jury?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. MURDAUGH:

2 Q. Thereafter, did the Detective Division come along
3 with other people such as the Coroner, Curt Copeland?

4 A. Yes, sir. EMS personnel went inside the living
5 room, and then the duty detectives arrived.

6 MR. MURDAUGH: Okay. Thank you, sir. Answer any
7 questions they may have.

8 MR. FLEMING: Thank you, Officer. We have no
9 questions.

10 MR. MURDAUGH: You may be excused.

11 THE COURT: You are excused.

12 (WITNESS STEPS DOWN)

13 (TESTIMONY OF BENITO REYES CONCLUDED)

14 THE COURT: Call your next witness.

15 MR. MURDAUGH: The State calls Curt Copeland.

16 (WITNESS TAKES STAND)

17 CURT COPELAND, being duly
18 sworn to tell the truth, the whole truth and nothing
19 but the truth testified, as follows:

20 DIRECT EXAMINATION

21 BY MR. MURDAUGH:

22 Q. Mr. Copeland, I ask you whether or not you are the
23 duly elected and installed Coroner for Beaufort County?

24 A. I am.

25 Q. And how long have you been Coroner?

1 A. Since January the 1st of 1981.

2 Q. What's a Coroner?

3 A. To investigate deaths that occur within the
4 county, to determine the manner of death, i.e.,
5 natural, suicide, homicide, accidental, and to sign
6 death certificates accordingly, order autopsies.

7 Q. A bunch of stuff relating to death?

8 A. Yes, sir.

9 Q. Okay, sir. I ask you whether -- how long have you
10 been the Coroner? Did I ask you that?

11 A. You didn't ask me how long I had been, but
12 translated from January the 1st of 1981 to date comes
13 up to about almost twenty-one years.

14 Q. Okay, sir. On the early morning of January the
15 2nd, 1999, did you have an occasion to respond to a
16 call at Coffin Point?

17 A. I did.

18 Q. Did you go to the residence that is located in
19 State's Exhibits Number 1, 2, 3 and 4?

20 A. Yes, sir, I did.

21 Q. Okay, sir. What did you find when you got there,
22 sir?

23 A. Found one body in the kitchen area and another one
24 in the bedroom.

25 Q. Okay, sir. I show you State's Exhibits Number 5

1 and 6 and ask you if you recognize those as being a
2 sketch of that residence?

3 A. Yes, sir.

4 Q. Okay, sir. On Number 5 there is a thing right by
5 a place called "counter/bar" showing a figure?

6 A. Correct.

7 Q. Is that where you found the body, in that room?

8 A. (Affirmative nod), I think that is well stated.

9 Q. Okay, sir. In State's Exhibit Number 6, it would
10 indicate -- well, it does indicate that it is a
11 bedroom?

12 A. Right.

13 Q. And it shows a little stick figure, sort of,
14 between the dresser and the bed. Is that where you ---

15 A. That is well represented, (affirmative nod).

16 Q. Okay, sir. When you say it's well represented, is
17 that where the bodies were?

18 A. Yes, sir.

19 Q. Okay, sir.

20 A. It's a good drawing, that's what I'm trying to
21 say.

22 Q. Will you describe to the jury what you observed
23 when you looked -- start at the body in the kitchen.

24 A. In the kitchen. That body ---

25 Q. No. Let's start with the bedroom.

1 A. That body was kind of close between the dresser, I
2 believe, -- or whatever it was called -- and the bed.
3 That body had what appeared to be two gunshot wounds in
4 the abdomen area, what would -- two gunshot -- gunshot
5 wounds by a shotgun, wounds to it, and the other body
6 was close up against ---

7 Q. That would be the one in the kitchen?

8 A. The one in the kitchen was close up to the
9 cabinets, and it had what appeared to be a shotgun
10 blast to the head, close contact.

11 Q. If you will, Coroner Copeland, will you come down
12 and indicate on me where you found the wounds to the
13 body that was in the bedroom? May I take my coat off,
14 sir?

15 A. Yes, sir.

16

17 Q. Just show the jury where the wounds were.

18 A. As I recall -- and I don't have any pictures to
19 refresh my memory, but as I recall they were in this
20 area here:

21 Q. Okay, sir. Put an "X" mark where they were.

22 A. On your shirt?

23 Q. Yes, sir.

24 A. (Complies)

25 Q. I used to do it with a pen, but my wife told me to

1 quit doing that.

2 A. You were smart and listened to your wife. Okay,
3 somewhere in that area. Don't hold me to that
4 exactly.

5 Q. Okay, sir. Now, you say that was the body in the
6 bedroom?

7 A. Correct.

8 Q. And did you learn who that was? Was it Paul
9 Reischl?

10 A. That was Paul Reischl.

11 Q. Okay, sir. Did you later learn who the body was
12 in the kitchen?

13 A. That was Mr. Riley.

14 Q. Okay, sir. Mr. Riley, you said that he had a
15 shotgun wound?

16 A. To the head.

17 Q. Indicate to the jury where the shotgun wound was.

18 A. It was -- would be somewhere right in this area,
19 in that direction.

20 Q. Okay. Move around so there won't be you between
21 them and me.

22 A. So approximately in this -- this area, that
23 direction.

24 Q. Okay. And you're talking about the back, right-
25 hand side of the head?.

- 1 A. (Affirmative nod).
- 2 Q. Okay, sir.
- 3 Q. Mr. Copeland, can you describe to the jury the
- 4 wound to Riley, the one in the kitchen?
- 5 A. It appeared to be a reasonably close contact
- 6 wound.
- 7 Q. Why do you say that, sir?
- 8 A. With a shotgun, the further the distance away, the
- 9 larger the hole, and that one was reasonably close.
- 10 I'm -- I can't tell you exactly how close it was, but
- 11 it was close to the head.
- 12 Q. What damage did it do to the head?
- 13 A. Obviously, it did massive damage to the skull,
- 14 with great deterioration to the head.
- 15 Q. Mr. Copeland, the place at Coffin Point where you
- 16 found the bodies, is -- was that in Beaufort County?
- 17 A. That was in Beaufort County.
- 18 Q. Okay.
- 19 A. Is still.
- 20 Q. Okay, sir. Obviously -- did you order an autopsy?
- 21 A. Yes. Autopsies were conducted on both bodies by
- 22 forensic pathologists at the Medical University of
- 23 South Carolina.
- 24 Q. Okay, sir. So, obviously, they were dead?
- 25 A. Yes, sir.

1 MR. MURDAUGH: Okay, sir. Thank you. Answer any
2 questions these gentlemen may have.

3 MR. FLEMING: Thank you, Mr. Copeland.
4 Appreciate your coming. No questions.

5 MR. MURDAUGH: You may be excused.

6 (WITNESS STEPS DOWN)

7 (TESTIMONY OF CURT COPELAND CONCLUDED)

8 MR. MURDAUGH: Your Honor, the State calls Matt
9 Averill.

10 (WITNESS TAKES STAND)

11 MATTHEW AVERILL, being
12 duly sworn to tell the truth, the whole truth, and
13 nothing but the truth, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MURDAUGH:

16 Q. Mr. Averill, are you employed by the Beaufort
17 County Sheriff's Department as a detective?

18 A. Yes, sir, I am.

19 Q. And were you so employed on January the 2nd, 1999?

20 A. Yes, sir, I was.

21 Q. Were you the lead detective assigned to
22 investigate the deaths of Paul Reischl and James
23 Mitchell Riley?

24 A. Yes, sir.

25 Q. Okay, sir. Did you go out to Coffin Point the

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1 early morning of January the 2nd?

2 A. Yes, I did.

3 Q. What time did you get there, sir?

4 A. Probably somewhere around the hour of 5:00, 5:00
5 o'clock in the morning.

6 Q. Okay, sir. At that time, was the scene secured
7 and cordoned off?

8 A. It was.

9 Q. Okay, sir. Tell us what you found when you got
10 there.

11 A. When I arrived on the scene, I was met by the
12 patrol officers who had already secured the scene.

13 There were a number of Sheriff's Department patrol cars
14 in the area, a number of civilians in the area. They
15 were all kept back.

16 I was given a pretty quick description of what was
17 going -- what I was going to see inside the residence.
18 Shortly about that time, Sergeant Roser also arrived,
19 and we were escorted into the residence by Sergeant
20 Bonito Reyes.

21 Q. Okay, sir. And did you do a forensic investiga-
22 tion on the interior of that trailer?

23 A. We did.

24 Q. And what was the purpose of your doing that
25 investigation?

1 A. Basically, to find out if we could see who did it
2 and what happened.

3 Q. And to collect any evidence ---

4 A. Collect any evidence.

5 Q. --- that might be pertinent?

6 A. Yes, sir.

7 Q. Okay, sir. And did you take into your possession
8 numerous items?

9 A. Yes, sir, we did.

10 Q. And what was the purpose in doing that?

11 A. To see if any of it had any evidentiary value.

12 Q. Okay, sir. Did you look at the bodies?

13 A. Yes, sir, I did.

14 Q. Can you describe for me the wounds to the bodies?

15 A. I can.

16 Q. Please do that.

17 A. The body of Mitchell Riley, which was in the
18 kitchen area, he was laying facedown on the floor, and
19 he had his arms kind of in this kind of position here,
20 above his head. His, his body position, he was right
21 up against the bar. This was the bar here. He was
22 laying up against it, and his knees were maybe two feet
23 away from the -- the fire wall there, which had his
24 shins and feet up the wall. It would give the
25 appearance that he wouldn't have -- he couldn't have

1 fallen in that position ---

2 MR. FLEMING: Object, Your Honor, to the
3 speculation of "would give the appearance."

4 THE COURT: The objection is overruled. You may
5 continue.

6 THE WITNESS: There was a massive -- massive
7 amount of blood in the area, on the floor. His -- he
8 had one wound, if I can remember correctly, that almost
9 looked like it was in the middle of his head, and there
10 was an extreme amount of what looked like skull and
11 brain matter on his right arm as well.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. MURDAUGH:

14 Q. Okay, sir. Did you continue investigating this
15 matter for some length of time, sir?

16 A. Yes, sir, we did.

17 Q. Did you take statements from everybody that you
18 found in the area?

19 A. I didn't, personally. I stayed at the crime scene
20 with, at the time, Corporal Hiers -- who is also an
21 investigator -- and we processed the crime scene until
22 approximately 1:00 o'clock in the afternoon.

23 Q. Did you continue working on this for some length
24 of time thereafter?

25 A. Probably about seventy-two hours straight.

1 Q. Okay, sir. At some point in time, was an arrest
2 made?

3 A. Yes, it was.

4 Q. And who was arrested?

5 A. The first suspect we arrested was West McKinnon.

6 Q. Okay, sir. Who was the second one? Or who else
7 was arrested? Not the order that they were arrested
8 in, but who else?

9 A. The second one we arrested was Tavarus Rogers.
10 Third -- we also arrested Collins Gadsen and his
11 brother, Jonathan Gadsen.

12 Q. Okay, sir. The second body that you -- the other
13 body that you say you observed, ---

14 A. Yes, sir.

15 Q. --- describe that for me.

16 A. That was the body that -- was later found out it
17 was the body of Paul Reischl. He was in a back bedroom
18 which was at the far end of the mobile home. Upon
19 entering in there, the body was not readily visible.
20 The body was underneath a -- the body was laying on the
21 floor on its left side up against dresser drawers that
22 were against the fire wall, and there was a bed with a
23 -- with a bed stand thrown over the body.

24 In order to visually see the body, we had to
25 actually remove the mattress from the bed to get a good

1 look at the body.

2 Q. Okay, sir.

3 A. He had two wounds that I could see. He had a
4 wound that was somewhere in the front, right side of
5 his torso and he also had a wound on the back right
6 side of his torso.

7 Q. Okay, sir. Given the forensic examination of the
8 trailer, did you send a bunch of stuff to SLED?

9 A. Yes, sir, we did.

10 Q. Okay, sir. Did -- anything of evidentiary value,
11 was it found?

12 A. I would probably have to look at the list of the
13 results. As far as anything coming back from
14 Coffin Point, I don't believe so.

15 MR. MURDAUGH: Thank you. Answer any questions
16 that Mr. Fleming may have, or Mr. Kulp.

17 MR. FLEMING: Thank you, Solicitor. May it
18 please the Court, Your Honor?

19 THE COURT: Mr. Fleming.

20 CROSS EXAMINATION

21 BY MR. FLEMING:

22 Q. Good morning, Detective. How are you, sir?

23 A. Good morning. Fine. And yourself?

24 Q. Good. I'm doing well. Thank you.

25 A. Good.

1 Q. To quick recap, since the jury just heard it, I
2 believe you indicated that you arrived around 5:00
3 o'clock at the crime scene?

4 A. I would estimate somewhere in that vicinity, yes,
5 sir.

6 Q. And based on the 911 call and the statements,
7 that's about an hour, roughly, after the shooting
8 happened; right?

9 A. Correct. I wasn't actually contacted by dispatch.
10 I was contacted by Sergeant Roser who had been
11 contacted by dispatch.

12 Q. Okay. And you got -- when you got there, Deputy
13 Reyes, who just testified was there and he had secured
14 the crime scene?

15 A. Yes, sir.

16 Q. And he was assisted by Deputy Bishop and Sergeant
17 Mattox?

18 A. Yes, sir.

19 Q. And they had -- they made sure that nobody came in
20 or out except for the people that had to attend to Mr.
21 Byers, the fellow who got hurt but did not die; right?

22 A. As far as I know, yes, sir.

23 Q. Okay. And they didn't touch or move anything at
24 the scene, as far as you know?

25 A. As far as I know.

1 Q. Okay. And then you took charge as the lead
2 investigator?

3 A. (Affirmative nod).

4 Q. And I think -- as I recall, you and Jody Hiers
5 were the two people most involved in dusting the place
6 for fingerprints and collecting evidence?

7 A. At that time, yes, sir.

8 Q. And then the rest of your team ---

9 A. Later on that evening.

10 Q. Later on. Okay. And what you do is you -- don't
11 you go in and you survey the scene and you take a look,
12 and then you start thinking of most logical places to
13 find fingerprints or any other important evidence?

14 A. Yes, sir.

15 Q. And, in fact, that's exactly what you did?

16 A. Exactly.

17 Q. And you told the Solicitor about the numerous
18 pieces of evidence you collected, and so let me go
19 ahead and -- we've got this stuff and it may be a
20 little bit cumbersome, but, for example, there were a
21 great deal of fingerprint -- I mean, excuse me, beer
22 cans found in the residence; correct?

23 A. Yes, sir.

24 Q. In fact, somewhere upwards of thirty-five or
25 forty?

- 1 A. Sounds about right.
- 2 Q. And these have black dust on them (displaying box
3 of beer cans enclosed in Zip-Loc bags).
- 4 A. Correct.
- 5 Q. And that's the fingerprint dust, isn't it?
- 6 A. Yes, sir.
- 7 Q. Okay. And so each one of these were individually
8 dusted for fingerprints, correct?
- 9 A. Yes, sir.
- 10 Q. By your team?
- 11 A. Yes, sir.
- 12 Q. All right. And they were packaged like they were
13 are now, and like everything else we'll see, and they
14 were sent to SLED?
- 15 A. Correct.
- 16 Q. Okay. And the "SLED", as we're referring to it,
17 is State Law Enforcement Division and their laboratory
18 facility?
- 19 A. Yes, sir, assisting agency.
- 20 Q. Okay. You also -- we heard testimony earlier in
21 the trial that this person named "V", or "B," used the
22 telephone. Do you recall that?
- 23 A. No, sir.
- 24 Q. Okay. One of them had gotten a phone call, and I
25 think the witness said that this "V" witness, or this

1 "B" person, used the telephone. This is the telephone
2 handset, isn't it? (Displaying handset to telephone).

3 A. That's what it looks like, yes, sir.

4 Q. Okay. I'll let you look at it and identify it.

5 A. (Upon review, yes, sir, that's it.

6 Q. Okay. And that's in your chain of evidence bag
7 and in SLED's evidence bag; correct?

8 A. Yes, sir.

9 Q. Okay. And, obviously, the black stuff is the
10 fingerprint powder?

11 A. Yes, sir.

12 Q. All right. Additionally, there has been
13 testimony, if you'll recall, that one of the witnesses
14 said that the people at the party were playing cards?

15 A. Correct.

16 Q. Right. And, in fact, you found two decks of
17 cards; did you not?

18 A. We did.

19 Q. And these are those? (Displaying playing cards)

20 A. Those appear to be them, yes, sir.

21 Q. And, in fact, the black powder on those is the
22 fingerprint dust?

23 A. Yes, sir.

24 Q. And in your investigation of the crime scene you,
25 or a member of your staff, actually dusted the front

1 door ---

2 A. Yes, sir.

3 Q. --- of the trailer? And you lifted a fingerprint
4 from that trailer?

5 A. Correct.

6 Q. Okay. And that fingerprint was sent to SLED,
7 also?

8 A. Yes, sir, it was.

9 Q. And so what you have is, is you have not only the
10 actual physical items but you also have the finger-
11 prints that may or may not have been lifted off of
12 those particular items, too; correct?

13 A. Correct.

14 Q. And what you do is, for instance on the telephone
15 handset, you will identify what appears to be a
16 fingerprint, and you'll make a latent print card;
17 correct?

18 A. If there is a discernable print that we can make
19 out and think it has, you know, enough ridge detail on
20 it to be used for evidence purposes, yes, we will take
21 it up.

22 Q. And so you did one of those latent print cards on
23 the front door?

24 A. Yes, sir.

25 Q. And I believe you did a latent print card off of

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1 the telephone?

2 A. I don't remember.

3 Q. Bear with me.

4 A. Yes, sir.

5 Q. Bear with me.

6 A. Yes, sir.

7 Q. Yes, sir. It's important enough that if you have
8 your notes concerning this, could you review your notes
9 to refresh your recollection and see?

10 A. I might be able to tell by looking at it, ---

11 Q. Absolutely.

12 A. --- as a matter of fact.

13 Q. Here you go, (tenders telephone handset to
14 witness). If I can assist you a little bit, ---

15 A. Sure.

16 Q. --- would you look at SLED fingerprint analysis
17 report at 50.1?

18 A. I don't believe I have that in my notes. If you
19 could show it to me, I could.

20 Q. If I show you this, will this refresh your
21 recollection? 50.1?

22 A. (Upon review), yes, sir.

23 Q. All right. And, so, now you recall that ---

24 A. Yes, I do.

25 Q. --- you lifted a fingerprint from there?

1 A. I do.

2 Q. Now, these items actually were sent to the State
3 Law Enforcement Division ---

4 MR. FLEMING: Actually, let me stop right there.
5 Your Honor, at this time I would move to admit the bulk
6 of the beer cans, two playing cards, and the telephone
7 handset as defense exhibits.

8 MR. MURDAUGH: No objection.

9 THE COURT: Okay.

10 COURT REPORTER: The box of beer cans is marked
11 as Defendant's Exhibit 7.

12 The telephone handset is Exhibit 8

13 The red deck of playing cards is Exhibit 9.

14 The blue deck of playing cards is Exhibit 10.

15 (SO ENTERED AS DEFENDANT'S EXHIBITS 7, 8, 9 & 10)

16 CROSS EXAMINATION CONTINUED

17 BY MR. FLEMING:

18 Q. Now, these items were sent, and Agent -- Special
19 Agent John Black was the person who conducted the
20 fingerprint analysis; correct?

21 A. Yes, sir.

22 Q. Okay. And you've already told the Solicitor, but
23 if I can go back over it again, Tavarus Rogers'
24 fingerprints weren't found on any of the beer cans;
25 were they?

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- 1 A. No, sir, I don't believe so.
- 2 Q. Tavarus Rogers' fingerprints weren't found on any
3 of the playing cards; were they?
- 4 A. No, sir.
- 5 Q. Tavarus Rogers' fingerprints weren't found on that
6 telephone handset; were they?
- 7 A. No, sir.
- 8 Q. Tavarus Rogers' fingerprints weren't found on the
9 front door?
- 10 A. No, sir.
- 11 Q. Those latent lift cards that you or your team
12 lifted from this evidence were not Tavarus Rogers'
13 fingerprints; were they?
- 14 A. Correct.
- 15 Q. Now, you also collected a great deal of evidence
16 mostly -- a lot of it drug related? I mean, for
17 instance, this white powder substance that was tested
18 by Agent Miller ---
- 19 A. Yes, sir.
- 20 Q. --- to be cocaine, obviously?
- 21 A. Yes, sir.
- 22 Q. All right. The ---
- 23 MR. MURDAUGH: Are you introducing that?
- 24 MR. FLEMING: Sir?
- 25 MR. MURDAUGH: Are you introducing that?

1 MR. FLEMING: No.

2 Q. This plate, ---

3 A. Yes, sir. That was ---

4 Q. That plate was found on the kitchen counter,
5 correct?

6 A. On that bar.

7 Q. Right. And in the middle of it was cocaine?

8 A. Yes, sir.

9 Q. All right. So as if to say that the people were
10 sitting down and doing their little snorting on the
11 cocaine at the party, is what it looks like?

12 A. That's where -- that's where the cocaine was
13 found.

14 Q. And I think one of the witnesses referred to this
15 as a marijuana bong (displaying bong).

16 A. That ---

17 Q. Is that a marijuana bong?

18 A. That looks like one to me, sir.

19 Q. Okay. That one was found. All of this marijuana
20 was found (displaying bag of marijuana).

21 A. Those are marijuana seeds.

22 Q. Okay. But it's marijuana, isn't it?

23 A. When it grows up.

24 Q. Okay. So you plant this and it grows in and then
25 you can sell it?

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1 A. Yes, sir. I don't believe you could actually
2 smoke that.

3 Q. But you can smoke its byproduct?

4 A. Yes, you can.

5 Q. Okay. And this is another (displaying bong).

6 Is that another one of those bong things that you smoke
7 marijuana in?

8 A. Yes, sir.

9 Q. Detective, would you look at this chart, this list
10 that I have compiled, and see if that is a fair and
11 accurate list of the physical evidence that you
12 collected at the crime scene?

13 A. Yes, sir, that is.

14 MR. FLEMING: Okay. Any objection, Solicitor?

15 MR. MURDAUGH: None.

16 MR. KNIGHT: Let me look at it.

17 MR. FLEMING: (Tenders exhibit)

18 MR. MURDAUGH: I have no objection to that nor the
19 introduction of any of that evidence, ---

20 MR. FLEMING: Good.

21 MR. MURDAUGH: --- as much as anything else.

22 MR. FLEMING: This is Defense Exhibit 11, Your
23 Honor.

24 (SO ENTERED AS DEFENDANT'S EXHIBIT 11)

25 THE COURT: Okay. No problem. Are you going to

1 give the court reporter everything that you are
2 introducing into evidence?

3 MR. FLEMING: I have already, sir. Yes, sir.

4 THE COURT: Okay. Ms. Garrison, are you clear on
5 what's in evidence there and what's not?

6 COURT REPORTER: Yes, SIR, I am.

7 THE COURT: Okay. Go ahead, then.

8 CROSS EXAMINATION CONTINUED

9 BY MR. FLEMING:

10 Q. Now, all of this other evidence, the evidence that
11 I've listed here in Defense Exhibit 11 was all packaged
12 and sent to SLED.

13 A. (Affirmative nod).

14 Q. And we've already talked about John Black, but
15 they were also tested for trace evidence; isn't that
16 correct?

17 A. Trace?

18 Q. Trace evidence? In other words, trace evidence is
19 things like hair fibers and clothing fibers and blood
20 stains and tissue fibers?

21 A. Correct.

22 Q. All right. And each one of these items were
23 tested for not only fingerprints but also trace
24 evidence?

25 A. As far as I know, yes, sir.

1 Q. That's right. And that's done by the Forensic
2 Trace Division of the SLED Laboratories; correct?

3 A. Yes, sir.

4 Q. All right. And not one piece of trace evidence on
5 any of the evidence that you collected from this crime
6 scene in any way links Tavarus Rogers to the scene of
7 the crime; does it?

8 A. None that I'm aware of.

9 Q. Outside of this trailer -- I think the Solicitor
10 showed you the pictures; did he not?

11 A. No, sir.

12 Q. Just the jury? This evidence here, that the
13 Solicitor introduced, these are pictures of the outside
14 of the trailer; correct?

15 A. Yes, sir.

16 Q. Okay. And there's no concrete? That's all dirt
17 and sand and that kind of stuff; correct?

18 A. Yes, sir, it is.

19 Q. And part of what you do at a crime scene is you go
20 outside the front and you look for footprints and that
21 sort of thing; correct?

22 A. Yes, sir.

23 Q. That's right. And you didn't find Tavarus Rogers'
24 footprints at the crime scene; did you?

25 A. We didn't find any footprints.

1 Q. Okay. Now, additionally, the Solicitor --
2 actually, Curt Copeland, our Coroner, testified that he
3 called for an autopsy on these two men. And you sent
4 Detective Purdy, along with the bodies, to Charleston;
5 did you not?

6 A. Yes, sir.

7 Q. Okay. And one of the purposes was for him to
8 collect evidence from the body and the personal effects
9 of the deceased men; correct?

10 A. Yes, sir.

11 Q. And all of that information, all of that clothing
12 and the personal effects were also sent to SLED;
13 correct?

14 A. Yes, sir, they were.

15 Q. Okay. And they were tested, tested forensically
16 by the laboratory?

17 A. Yes.

18 Q. And there was not one hair fiber, fingerprint,
19 bloodstain at all, connecting Tavarus Rogers to the
20 deceased's personal effects or their clothing; was
21 there?

22 A. No, sir.

23 Q. Now, you indicated that you didn't interview any
24 of the witnesses in this case, but don't you mean just
25 in the first -- in the very beginning? I think the

1 Solicitor asked you if you interviewed any witnesses?

2 A. Correct.

3 Q. Okay. The initial interviews in the case were
4 done by Detective Röser and Detective Campbell;
5 correct?

6 A. Yes, sir.

7 Q. And then after you had finished collecting all of
8 the evidence at the crime scene, you then went back to
9 the Law Enforcement Center; didn't you?

10 A. Yes.

11 Q. And around 1:00 o'clock the afternoon of this
12 event, you did interview Toby Reischl?

13 A. Sure. Yes, we did. I'm pretty sure.

14 Q. Okay. And do you have a copy of your notes of
15 this interview in case you need to refer to them?

16 A. Yes, I do.

17 Q. Okay, sir. I'm going to ask you about Toby
18 Reischl's responses in that interview.

19 A. Okay, sir.

20 Q. The first thing that you did was you read him his
21 Miranda warnings; correct?

22 A. Yes, sir.

23 Q. And you told him that he didn't have to make a
24 statement if he didn't want to?

25 A. Yes, sir.

1 Q. And if he wanted to have a lawyer present, he
2 could?

3 A. Yes, sir.

4 Q. Okay. And one of the things you told him is,
5 'anything you say can and will be used against' him or
6 in a court of law; isn't that correct?

7 A. Yes, sir.

8 Q. That's part of your Miranda warnings to him?

9 A. Yes.

10 Q. He understood those, and he was willing to make a
11 statement to you?

12 A. Yes, he was.

13 Q. Okay. And as you interviewed him, you told him
14 that he needed to be as detailed as possible,
15 obviously?

16 A. Yes, sir.

17 Q. And you began to ask him questions?

18 A. (Affirmative nod).

19 Q. Let's focus first on your questioning him
20 concerning the intruders. He could not identify
21 any of the intruders, could he?

22 A. No, he couldn't.

23 Q. He could not recognize any of their voices?

24 A. No.

25 Q. He had no idea who these intruders were?

1 A. No.

2 Q. Now, you then asked him about -- he informed you
3 that there had been some people at the trailer earlier
4 that day, and you asked him about those people;
5 correct?

6 A. Yes, sir, I did.

7 Q. And when you questioned him about those people, he
8 did not know the names of any of the black males there;
9 did he?

10 A. That's correct.

11 Q. He never ever said the name "Tavarus", did he?

12 A. No, he did not.

13 Q. He never told you that he had been introduced to
14 any of the black males?

15 A. Just bear with me just a second, (reviewing file).

16 Q. Absolutely. Take your time.

17 A. (Upon review), I believe what he had said,
18 Counselor, was that he had never met them before.

19 That's what I have in my notes.

20 Q. Okay.

21 A. I don't have specific information on whether he
22 was introduced to them at that point.

23 Q. I understand. Had he told you that he had been
24 introduced to these people and knew their names, you,
25 absolutely, would have written that down; wouldn't have

1 you?

2 A. Oh, yes, sir.

3 Q. Absolutely, no question?

4 A. Sure, no question.

5 Q. And, therefore, we can conclude that he didn't
6 tell you?

7 A. Correct.

8 Q. That's right. And another thing, he never ever
9 once said that the people earlier that day -- the
10 people at the trailer earlier that day, that anybody
11 had been introduced as "B"?

12 A. During that interview, no.

13 Q. Let's be very clear about this, then. The only
14 reference that he made to anyone named "B" or "V", or
15 "T" or "D" for that matter, was when he described what
16 one of the intruders said to the other?

17 A. Yes, sir.

18 Q. That's right. So part and parcel of what he told
19 you concerning his description of the intruders is that
20 one intruder told the other, "Come on, B!", as in boy?

21 A. Could you repeat that again?

22 Q. The only description -- excuse me. Let me start
23 from the beginning. And that's why I separated this.
24 I'm talking -- when you reference Toby Reischl in any
25 way talking about a person named "B", you're only

1 talking about him describing the intruders; isn't that
2 correct?

3 A. Yes, sir.

4 Q. And the only thing he said was one of the
5 intruders said to the other, "Come on, B!"; isn't that
6 correct?

7 A. Yes, sir.

8 Q. He didn't said, "I know who 'B' was," ---

9 A. No, sir, he didn't.

10 Q. --- anything like that?

11 A. No.

12 Q. He just said that's what he heard?

13 A. Correct.

14 Q. Now, I'm talking now about his descriptions of the
15 people at the trailer earlier that day.

16 A. Okay.

17 Q. He never said that he was introduced that day to
18 anyone named "B"?

19 A. No, not -- no, he didn't say that.

20 Q. At all?

21 A. No.

22 Q. Because he never said he was introduced to anybody
23 at -- any of the black males at the trailer that day?

24 A. What he told me, he -- he had never met them
25 before.

1 Q. And we've already gone through that, and we can
2 conclude, since you didn't write it down, that he
3 didn't tell you?

4 A. Correct.

5 Q. Now, the only name, the only name that Toby
6 Reischl ever told you about was the name Derrick;
7 isn't that the truth?

8 A. Correct.

9 Q. And he distinctly remembered Derrick?

10 A. Yes.

11 Q. Okay. Because Derrick was the guy who went with
12 Paul, his brother, to get cocaine ---

13 A. Correct.

14 Q. --- at The Zone?

15 A. At The Zone.

16 Q. At The Zone. And The Zone is a ---

17 A. Was.

18 Q. --- was a juke joint out on St. Helena Island?

19 A. Yes, sir.

20 Q. All right. And, in fact, what he said was they
21 were partying downtown; they were on their way back to
22 Coffin Point, and they stopped at The Zone to get some
23 drugs?

24 A. He thought.

25 Q. He thought?

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1 A. He stayed outside.

2 Q. That's right. He didn't actually go into the
3 place?

4 A. Correct.

5 Q. Now, he admitted to you that he had been drinking
6 and drugging pretty much for the two days preceding
7 this shooting; right?

8 A. Just -- I don't know about drinking or drugging.
9 He said he had been partying for a couple of days.

10 Q. Okay. Did you in any way attempt to determine his
11 level of intoxication at the time of the shooting?

12 A. To me, he didn't -- I mean, I saw him at the crime
13 scene for about maybe thirty seconds, personally.

14 Q. Uh-huh, (affirmative nod).

15 A. He didn't appear to be intoxicated to me.

16 Q. All right. But you didn't do a drug test or a
17 blood test, or anything like that?

18 A. No, I didn't.

19 Q. Okay. Now, I want to switch gears a little bit
20 and talk about Kristal Wire. She's already testified
21 and ---

22 MR. FLEMING: Where is the lineup?

23 COURT REPORTER: The photo lineups are Exhibit
24 10 through 12.

25 MR. FLEMING: Here they are. Thank you.

CROSS EXAMINATION CONTINUED

1

2

BY MR. FLEMING:

3

Q. Now, Detective Roser was the person who interviewed Kristal Wire. Correct?

4

5

A. Yes, sir.

6

Q. And you didn't actually interview her about what she saw the night of the incident?

7

8

A. That's correct.

9

Q. But you did show her photo lineups. Correct?

10

A. Correct.

11

Q. You showed her within about twenty-four hours after the shooting, you showed her the first lineup; correct?

12

13

14

A. Yes, sir.

15

Q. Okay. And she was unable to identify anybody in that photo lineup as being one of the intruders, correct?

16

17

18

A. That's correct.

19

Q. Nor was she able to identify anybody in that lineup as being present at this party earlier that night?

20

21

22

A. That is correct.

23

Q. And you showed her Lineup Number 2 and asked her the same questions, at this same juncture?

24

25

A. True.

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1 Q. And she was unable to identify anybody in that
2 lineup, also?

3 A. Correct.

4 Q. Okay. And then she went home, and she came back
5 to the Law Enforcement Center on January the 4th;
6 correct?

7 A. I'm not sure of the date. (Upon review of file),
8 yes, January the 4th.

9 Q. And the purpose for her coming back was that you
10 could show her a third lineup?

11 A. Yes, sir.

12 Q. When she came into the Law Enforcement Center --
13 this is a police station, right? For anybody who
14 hasn't been there, this is a police station?

15 A. Yes, sir.

16 Q. Okay. Surrounded by policemen and women?

17 A. Yes, sir.

18 Q. In and out? All the fellows like yourself, well
19 guarded, well armed, ---

20 A. Yes, sir.

21 Q. --- as police should be?

22 A. Sure.

23 Q. It's a safe place?

24 A. I hope so.

25 Q. I do, too. And so she came in and sat with you,

- 1 and you went over the procedures for looking at the
2 lineup as you had done before. Correct?
- 3 A. Yes, sir.
- 4 Q. And you read to her -- and we've already shown the
5 jury, but you read to her the back of what's been
6 marked as State's Exhibit 10. Correct?
- 7 A. Yes, sir, I did.
- 8 Q. She was in a safe and comfortable environment.
9 right?
- 10 A. Yes, sir.
- 11 Q. And you asked her to look at it according to your
12 directions on the back of this lineup?
- 13 A. Yes, I did.
- 14 Q. And she carefully looked at each of the pictures,
15 right?
- 16 A. As far as I could tell, yes.
- 17 Q. And she did not identify anyone in this lineup,
18 period; did she?
- 19 A. Correct.
- 20 Q. She didn't identify anyone as being the intruder?
- 21 A. That's true.
- 22 Q. She didn't identify anyone as being this "V"
23 person?
- 24 A. No.
- 25 Q. She didn't look fearful when she was doing this,

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1 did she? She wasn't ---

2 A. She was uncomfortable.

3 Q. But she wasn't scared? I mean, nobody was busting
4 in the door?

5 A. That's kind of a -- she ---

6 Q. You're right. I won't -- you're right. That's
7 not fair. I apologize. When you were showing her
8 these -- this -- particularly, this lineup, did she
9 ever mention anything about a distinctive nose?

10 A. No, sir.

11 Q. She didn't describe the intruder's facial
12 features; did she?

13 A. I don't recall. I don't believe so.

14 Q. Nor their height or weight?

15 A. No.

16 Q. Nor their hairstyle?

17 A. No, sir.

18 Q. Nor any of the clothes they were wearing?

19 A. No, sir.

20 Q. And she absolutely never told you that she had
21 seen the intruders before, did she?

22 A. No.

23 Q. And she absolutely never told you that the
24 intruders were at the house earlier?

25 A. No.

1 Q. Now, you did not interview Jocelyn Wendel;
2 correct?

3 A. No, I didn't.

4 Q. That was Detective Campbell?

5 A. Correct.

6 Q. And -- but you did show her this third lineup;
7 correct?

8 A. Yes, I did.

9 Q. Okay. And she was unable to identify anyone in
10 this lineup?

11 A. That's correct.

12 Q. When you were showing her this third lineup, she
13 never used the name "Tavarus", did she?

14 A. No, sir.

15 Q. And, in fact, when you arrested Tavarus Rogers,
16 you called all of the families of these victims,
17 correct, and these witnesses?

18 A. Yes, sir.

19 Q. And you said something to the effect, "We've
20 arrested Tavarus Rogers"?

21 A. Something to that effect, yes, sir.

22 Q. And until -- up to that point, she had never used
23 the name "Tavarus Rogers"?

24 A. Not that I can recall, not to me.

25 Q. All right. And, of course, had she said, "The

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1 person who did this is Tavarus Rogers," you would have
2 made a note of that in your notes?

3 A. Oh, yes, sir.

4 Q. That's right. Just one second.

5 A. Yes, sir.

6 Q. Now, you compiled lineup number two, did you not?

7 A. That was kind of a joint effort. I think Sergeant
8 Roser did most of that compilation.

9 Q. Okay. But, as the lead Detective, you're aware of
10 the process by which this was ---

11 A. Oh, absolutely.

12 Q. Okay. And I think you indicated earlier that the
13 person you were interested in this lineup was number
14 five. Correct?

15 A. Yes, sir.

16 Q. Do you know the name of number five?

17 A. I do not.

18 Q. Okay. And you indicated earlier that the reason
19 that number five was in there was that he was a young,
20 black male who lives out in that area?

21 A. Yes, sir.

22 Q. Okay. Now, did you have SLED compare number
23 five's fingerprints to any of this evidence?

24 A. No, I didn't have number five's fingerprints.

25 Q. Okay. Did you ever identify the last name of this

1 person named Derrick?

2 A. No, sir.

3 Q. So then it's safe to assume that you didn't have
4 Derrick's fingerprints compared to any of this
5 evidence?

6 A. Correct. We didn't know who he was.

7 MR. FLEMING: Detective, thank you very much.

8 THE WITNESS: You're welcome.

9 REDIRECT EXAMINATION

10 BY MR. MURDAUGH:

11 Q. Mr. Averill, let me ask you one or two questions.

12 A. Yes, sir.

13 Q. Mr. Fleming talked to you about photo lineups,
14 number one, two and three.

15 A. Correct.

16 Q. And are these those three photo ID lineups?

17 A. Yes, sir, they are.

18 Q. Okay, sir. One of them has been introduced.

19 That's Number 3?

20 A. Yes, sir.

21 Q. Is that a photo lineup?

22 A. No, sir, it's not.

23 Q. Okay, sir. What is it?

24 A. It -- what it is, is Xerox copies of photographs.

25 Q. Okay, sir. And the items that are marked one and

1 two here, are those photo ID lineups?

2 A. Those are what I would consider photo ID lineups.

3 Q. And are these the lineups that were shown to
4 everybody you'all showed them to?

5 A. Yes, sir.

6 MR. MURDAUGH: If Your Honor, please, I would
7 offer one and two as exhibits.

8 THE COURT: Any objection? Mr. Fleming?

9 MR. FLEMING: Without objection, Judge.

10 THE COURT: Okay. Thank you.

11 MR. MURDAUGH: If Your Honor please, the one that
12 is -- where is the envelope that this came out of,
13 Cory?

14 MR. FLEMING: Right on top there.

15 MR. MURDAUGH: I just want to keep the old numbers
16 -- come here.

17 MR. FLEMING: Yes.

18 MR. MURDAUGH: I just want to keep the old numbers
19 the same as the new numbers. This goes with this one?

20 MR. FLEMING: Uh-huh.

21 MR. MURDAUGH: If Your Honor please, I would offer
22 the item that's marked Number 1 as an exhibit, sir.

23 COURT REPORTER: State's Exhibit Number 11.

24 MR. MURDAUGH: And for the purpose of the record,
25 that is the one that was marked in the prior Hearing as

1 State's Number 1 for identification.

2 (SO ENTERED AS STATE'S EXHIBIT 11)

3 REDIRECT EXAMINATION CONTINUED

4 BY MR. MURDAUGH:

5 Q. Okay, sir. I show you another item. Is that the
6 second ---

7 A. Yes, sir, it is.

8 MR. MURDAUGH: Okay, sir. If Your Honor please, I
9 would offer this.

10 COURT REPORTER: State's Exhibit Number 12.

11 (SO ENTERED AS STATE'S EXHIBIT 12)

12 MR. MURDAUGH: And for the record, if Your Honor
13 please, that was the one that was marked State's
14 Exhibit Number 2 for identification at the prior
15 Hearing.

16 REDIRECT EXAMINATION CONTINUED

17 BY MR. MURDAUGH:

18 Q. Showing you Number 1 (State's Exhibit 10), sir,
19 was that shown to a number of people?

20 A. Yes, sir, it was.

21 Q. Was either Tavarus Rogers, West McKinnon or either
22 of the Collins -- Gadsen boys in that one?

23 A. One of them was, yes, sir.

24 Q. Who is that, sir?

25 A. West McKinnon.

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1 Q. Okay, sir. Did anybody that you showed it to
2 identify him?

3 A. No, they didn't.

4 Q. Okay. What about Jocelyn Wendel?

5 A. No, sir.

6 Q. Okay, sir. I show you State's ---

7 A. Let me check on that before I --- just to make
8 sure. (Upon review of file), let me correct that.

9 She did choose or picked photograph number three.

10 Q. Who did that?

11 A. Jocelyn Wendel.

12 Q. Jocelyn Wendel told you that in State's Exhibit
13 Number 11 ---

14 A. That's correct. She chose photograph number
15 three.

16 Q. --- that number three -- and what -- she said
17 what?

18 A. I'd have to look through her statement, what she
19 said.

20 Q. When you showed her this thing, what did you ask
21 her to do?

22 A. I just asked her if she -- I read it off the back
23 here, the instructions back of that, ---

24 Q. Right.

25 A. --- and told her, you know, "Is there anyone in

1 these photographs that you saw the night of the
2 murder?"

3 Q. Okay. And she said what?

4 A. She said, "Yes, right there, photograph number
5 three."

6 Q. Number three. And number three is who?

7 A. West McKinnon.

8 Q. Okay. Is Tavarus Rogers in State's Exhibit Number
9 11?

10 A. No, sir.

11 Q. Okay. I show you State's Exhibit Number 12 and
12 ask you if that was shown to a bunch of people?

13 A. Yes, it was.

14 Q. Is Tavarus Rogers, West McKinnon or either of the
15 Gadsen boys in that?

16 A. No, sir.

17 Q. Did anybody identify anybody as being at the house
18 from this photo ID?

19 A. No, sir.

20 Q. Okay, sir. So there's nobody in here connected
21 with this thing?

22 A. That's correct.

23 Q. The one that you said is a copy of photographs,
24 was it shown?

25 A. Yes, it was.

1 Q. And does it have Tavarus, McKinnon or the Gadsen
2 boys in it?

3 A. Yes, it does.

4 Q. Okay. And which is it?

5 A. Photograph number six.

6 Q. And that's the one they were unable to identify?

7 A. Yes, sir.

8 Q. You were hesitating?

9 A. Because when we showed it to ---

10 MR. FLEMING: Objection, Your Honor.

11 THE COURT: What's your objection?

12 MR. FLEMING: Can we be heard outside the presence
13 of the jury?

14 THE COURT: Ms. Garrison.

15 (SIDEBAR OUTSIDE THE HEARING OF THE JURY)

16 MR. FLEMING: I don't think that he can ask
17 that -- Toby Reischl has
18 never been asked if he could
19 identify Tavarus Rogers; nor
20 did Toby Rogers indicate in
21 testimony that he had
22 identified him, Tavarus
23 Rogers.

24 THE COURT: I'm sorry, you lost me.

25 MR. FLEMING: The witness is going to say --

1 the question is going to be if
2 he could recognize Rogers from
3 ---

4 THE COURT: Tavarus Rogers?

5 MR. FLEMING: Yes, sir. Toby Reischl did
6 not say that in his testimony
7 and, therefore, that would be
8 hearsay.

9 THE COURT: What do you say, Solicitor?

10 MR. MURDAUGH: I think that he opened up the
11 door ---

12 MR. KULP: Not so loud.

13 MR. MURDAUGH: --- when he asked the
14 question that ---

15 THE COURT: I think so. I am going to
16 allow the question.

17 REDIRECT EXAMINATION RESUMED

18 BY MR. MURDAUGH:

19 Q. Showing you Number 3, I think I asked you the
20 question -- or State's Exhibit Number 10, -- I think
21 I asked you the question, was that shown to a number
22 of people?

23 A. Yes, it was.

24 Q. Was it shown either to Toby Reischl, Jocelyn
25 Wendel or Kristal Wire?

1 A. Shown to all three.

2 Q. And did any of them identify Tavarus Rogers in
3 that?

4 A. Toby -- Toby Reischl, on the 4th of January,
5 picked Tavarus Rogers out of photo lineup -- what I
6 would call Number 3 (State's Exhibit 10), as one of the
7 individuals who had been at Paul's house earlier that
8 evening and could not say for sure that he was there
9 the night the incident occurred.

10 Q. Okay. So Toby Reischl says that he was there
11 earlier, but not at the time of the incident?

12 A. He couldn't be sure.

13 Q. Okay. I asked you earlier if you'all collected a
14 pile of evidence?

15 A. Yes, sir, there was a pile.

16 Q. And did you'all do everything that you told Cory
17 you had done about checking it out?

18 A. I did.

19 Q. And I asked you if there was any evidentiary value
20 in it, ---

21 A. Yes, sir.

22 Q. --- and I think you said no.

23 A. Right.

24 Q. I'm showing you -- what happens is when this
25 stuff is taken up, it's sent to SLED who compares

1 fingerprints?

2 A. Among other things, yes, sir.

3 Q. Okay. Showing you an exhibit from -- a report
4 from SLED, I ask you if anybody's fingerprints were
5 identified in that report other than -- on this
6 evidence here that was gathered from the house?

7 A. I don't believe it was.

8 MR. MURDAUGH: Okay, sir. Thank you, sir.

9 THE WITNESS: Yes, sir.

10 MR. FLEMING: One second, Your Honor.

11 THE COURT: Yes, sir.

12 RECROSS EXAMINATION

13 BY MR. FLEMING:

14 Q. Real briefly, you sent fingerprints -- well, first
15 of all, when a person is arrested they are booked and
16 printed.

17 A. Correct.

18 Q. And this fellow you arrested, Collins, and this
19 fellow you arrested, Jonathan?

20 A. I don't know how that process works. I don't know
21 if prints are sent up there. I don't know how that --
22 that has nothing to do with me.

23 Q. Okay. Nonetheless, those fingerprints were also
24 compared to the evidence found at the crime scene?

25 A. I don't know.

1 Q. Could you look at the document that the Solicitor
2 just referred to?

3 MR. MURDAUGH: We will stipulate that it was, if
4 it will shorten things.

5 THE COURT: Well, if it's in evidence, he can
6 publish it.

7 MR. MURDAUGH: It's not in evidence, Your Honor.

8 THE COURT: Oh, okay.

9 MR. MURDAUGH: It's not.

10 THE COURT: Well, if he doesn't know, then, how
11 can he answer that?

12 MR. FLEMING: He's the lead investigator. I know
13 he knows it. And he said he would stipulate, but ---

14 THE COURT: Well, he -- well, if you don't object
15 to it, go ahead. But I ---

16 MR. MURDAUGH: Well, I'm going to object, sir, if
17 we're going to go through the question. I'm willing to
18 stipulate that Tavarus Rogers', West McKinnon's,
19 Jonathan Gadsen's and Collins Gadsen's fingerprints
20 were compared to the stuff on all that junk yonder and
21 they didn't find none.

22 THE COURT: Is that -- that's ---

23 MR. FLEMING: I can't get any better than that,
24 Judge. Thank you.

25 THE COURT: All right, sir. Are you finished with

1 this witness?

2 MR. FLEMING: Yes, sir.

3 THE COURT: You may come down.

4 MR. FLEMING: Thank you, Detective.

5 THE WITNESS: Thank you.

6 (WITNESS STEPS DOWN)

7 (TESTIMONY OF MATTHEW AVERILL CONCLUDED)

8 MR. MURDAUGH: If Your Honor please, at this time
9 we would offer a stipulation -- may I see those two
10 autopsy reports? If you will, would you mark them?

11 COURT REPORTER: State's Exhibits 8 and 9.

12 THE COURT: Okay.

13 MR. MURDAUGH: If Your Honor please, Counsel and
14 I have entered into a stipulation regarding the
15 pathologist's reports. Dr. Kim Collins was the
16 pathologist that performed the autopsy. She is at a
17 Pathology conference. We have stipulated that she
18 autopsied the bodies of Paul Reischl and James Michael
19 Riley -- Mitchell Riley -- which were found at the
20 scene, and that we would use the Case Summary from the
21 autopsy reports to handle her testimony. Is that
22 correct, Counsel?

23 MR. FLEMING: That is correct, sir.

24 MR. MURDAUGH: With that, sir, I have had marked
25 the Case Summary reports, and they are marked as

1 State's Exhibit 8, regarding James Riley, and State's
2 Exhibit 9, regarding Paul Reischl. May I publish them
3 to the jury?

4 THE COURT: Yes, sir.

5 MR. MURDAUGH: May I explain to the jury what
6 this is?

7 THE COURT: Yes, sir, you can. And, now, I wanted
8 to know for myself and for the jury's information, are
9 they stipulated to be true and correct?

10 MR. MURDAUGH: Yes, sir.

11 MR. FLEMING: Yes, sir.

12 THE COURT: Okay. Members of the Jury, when
13 attorneys stipulate something like this, you should
14 accept that matter as having been proven. In other
15 words, that's an agreement that those facts as will be
16 published to you by Solicitor Murdaugh are true and
17 correct for purposes of this trial. You may proceed.

18 MR. MURDAUGH: When an autopsy is performed, a
19 report is sent back by the performing forensic
20 pathologist. This is a portion of that report that I
21 will now read to you.

22 State's Exhibit Number 8 is on James Riley,
23 (reading): "An autopsy was performed on the body of
24 James Riley at the Medical University of South Carolina
25 autopsy room on January 2, 1999, by Drs. Russell L.

1 Uptegrove and Kim A. Collins."

2 Dr. Uptegrove is no longer with the Medical
3 University. He is in Pennsylvania, I think.

4 (Reading: "The autopsy was authorized by the
5 Beaufort County Coroner's Office. Postmortem
6 examination began at 10:00 a.m. and was completed at
7 2:00 p.m. Herbert Duffy was the autopsy technician.

8 Major findings at autopsy included a shotgun blast
9 to the head. Microscopic examination of the liver
10 showed minimal..." -- and you'all are going to have to
11 excuse me because some of these names I can't pronounce
12 too good, but you will have this in the jury room --
13 "showed minimal steatosis. Sections of the lungs
14 showed congestion and an increased number of
15 hemosiderin-laden macrophages. Sections of the
16 thyroid, adrenal, heart, prostate, brain, kidney,
17 spleen, lymph node, thymus and pancreas were
18 unremarkable. Toxicologic analysis of the blood was
19 negative for ethanol. A general urine drug screen was
20 positive for cocaine, caffeine, nicotine and metabolite
21 and marijuana metabolite. Drug quantitation in the
22 blood showed cocaine at 0.190 milligrams per liter and
23 benzoylecgonine at 0.705 milligrams per liter.

24 In light of the historical and autopsy findings,
25 it is the opinion of the prosecutors..." -- that's the

1 pathologists -- "that the decedent, James Riley, died
2 as a result of cerebral laceration due to a shotgun
3 blast to the head. It is further the opinion of the
4 prosecutors that the manner of death best be classified
5 as homicide."

6 State's Exhibit Number 9 is the Case Summary
7 report relating to Paul Reischl. (Reading):

8 "An autopsy was performed on the body of Paul
9 Reischl at the Medical University of South Carolina
10 autopsy room on January 2, 1999. The autopsy was
11 performed" -- it's the same thing as the first
12 paragraph of that.

13 "Major findings at autopsy include two close,
14 penetrating shotgun blasts to the right chest.
15 Multiple lacerations involving the internal viscera
16 were identified.

17 Microscopic examination of the lungs showed
18 hemorrhage. A section of the liver showed mild
19 steatosis. Sections of the coronary arteries showed
20 mild atherosclerosis, intimal thickening and a focal
21 calcification. Sections of the spleen, heart, kidney,
22 pancreas, brain, adrenal, thyroid and prostate were
23 unremarkable.

24 Toxicologic analysis of the blood showed an
25 ethanol level of 116 milligrams per deciliter." --

1 which in breathalyzer terms would be .116.

2 "A general urine drug screen was positive for
3 cocaine, nicotine, nicotine metabolite and marijuana
4 metabolite. Drug quantitation in the blood showed
5 cocaine at 0.132 milligrams per liter and
6 benzoylecgonine at 1.151 milligrams per liter.

7 In light of the historical and autopsy findings,
8 it is the opinion of the prosecutors that the decedent,
9 Paul Reischl, died as a result of cardiac laceration
10 due to close shotgun blasts to the chest. The manner
11 of death is homicide."

12 Your Honor, I call Richard Rivers.

13 THE COURT: Members of the Jury, are you'all
14 okay?

15 BY VARIOUS JURORS: (Affirmative nod).

16 THE COURT: We'll try to get another witness
17 in, then, before we take a break, or two if it's short.

18 MR. MURDAUGH: Mr. Rivers, come put your left hand
19 on the Bible and hold up your right hand, please.

20 (WITNESS TAKES STAND)

21 RICHARD RIVERS, being duly
22 sworn to tell the truth, the whole truth and nothing
23 but the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MURDAUGH:

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1424

- 1 Q. Your name, sir?
- 2 A. Richard Rivers.
- 3 Q. Mr. Rivers, where do you live?
- 4 A. In Beaufort.
- 5 Q. And where do you work?
- 6 A. I'm self-employed right now.
- 7 Q. Okay, sir. What do you do?
- 8 A. I've got a wrecker company.
- 9 Q. Okay, sir. And how long have you been doing that?
- 10 A. Thirteen months.
- 11 Q. Prior to working on your own with your wrecker
- 12 company, where did you work?
- 13 A. Beaufort County Detention Center.
- 14 Q. Okay, sir. And what position did you hold with
- 15 them?
- 16 A. Private First Class, Correction Officer.
- 17 Q. Okay, sir. Calling your attention to January the
- 18 22nd, 1999, do you recall seeing the Defendant, Tavarus
- 19 Rogers, in the Detention Center?
- 20 A. Yes, sir.
- 21 Q. Can you describe to the members of the jury what
- 22 you observed about him?
- 23 A. What I observed the day in question with the
- 24 magazine?
- 25 Q. Yes, sir.

1 MR. KULP: Your Honor, we would renew our
2 prior -- preserve our prior objection.

3 THE COURT: Yes, sir.

4 MR. KULP: Thank you.

5 THE COURT: Your objection is noted.

6 MR. MURDAUGH: Yes, sir.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. MURDAUGH:

9 Q. Tell me where you were working.

10 A. I was working upstairs in the wing control booth.

11 Q. What is the wing control booth?

12 A. It's a booth that controls all the cell doors for
13 that wing, the cell doors and all the entry doors in
14 and out.

15 Q. And is it behind glass?

16 A. Yeah. It's closed in, tinted glass area up
17 abovehead.

18 Q. Okay, sir. Go ahead and tell us what you
19 observed.

20 A. That day I observed Mr. -- the Counselor Barnes,
21 he took -- he came and called for a group of gentlemen,
22 and he pointed them out, individually, in cell numbers
23 for me to open the cells to let them out to go to
24 library. And he -- he called each individual out, and
25 they all came out and headed out the "B" Wing door to

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1 go to the library. Mr. Rogers was the last one and he
2 -- he came out with a magazine in his hand and he went
3 to -- he went to the other unit that was next to them,
4 and he slid a magazine underneath the door. Then he
5 took off and caught up with the other individuals.

6 Q. And what unit was that, sir?

7 A. (Pause)

8 Q. Was it 2-B?

9 A. No. I believe he came out of Bravo 2, if I
10 remember correctly.

11 Q. Okay, sir. And what did he do?

12 A. He just came -- he came out like, you know, with
13 the rest of the group. He came out slaggering towards
14 the end, and he just slid a magazine underneath the
15 door.

16 Q. Okay. What did he slide it under?

17 A. What did he slide the magazine under?

18 Q. Uh-huh, (affirmative nod).

19 A. The other unit's door that was -- they're all like
20 -- it goes Bravo 2, Bravo 3, Bravo 4.

21 Q. Okay.

22 A. --- and I believe he came out of Bravo 2 and that
23 he slid in one of the other doors. I'm -- I'm not for
24 sure which one it was, for sure.

25 Q. Okay, sir. And what did you then do? And what

1 did he do after he slid it in the door?

2 A. He took off and caught up with the rest of the
3 group.

4 Q. Okay. What did you do?

5 A. Called for the Bravo Five officer to come and
6 check underneath the door and see what was slid
7 underneath there.

8 Q. And was that -- did an officer do that?

9 A. Yeah.

10 Q. Was that Kenneth ---

11 A. I got on the radio and Lance Corporal Williams, he
12 was working Bravo Five at that ---

13 Q. That's Kenneth Williams?

14 A. Correct.

15 Q. Okay.

16 A. He was working Bravo Five, and he came over there
17 and I popped the door up for him to go in, and he
18 grabbed the book and he -- he went through the pages,
19 and he pulled out a piece of paper and held it up to
20 the booth window.

21 Q. Did he come over to you?

22 A. No. I was up in the booth.

23 Q. Okay.

24 A. He just held it. When he went -- he went through
25 the pages right there, he held it up to the booth

1 window, and then he went to the phone and called.

2 Q. Do you remember what kind of book it was?

3 A. I believe it was a Sports Illustrated. I'm not
4 for sure.

5 Q. Okay, sir. I show you this item and ask you if
6 you can identify it.

7 A. Yeah, that might be it. I'm -- (pause).

8 Q. But you think it was ---

9 A. I believe it was -- at that time, I believe it was
10 a Sports Illustrated, but I'm not for sure if that's
11 the one or not.

12 Q. Okay. And the note that came out of it, do you --
13 could you identify it?

14 A. Yeah, I believe I can. It's been awhile, but I
15 believe ---

16 Q. I show you an item and ask you if you can identify
17 that?

18 A. I believe that is it. Yeah.

19 Q. Is that the note ---

20 A. Yeah, that's the note.

21 Q. --- that came out of the magazine?

22 A. Yeah, that's the one that was in the magazine.

23 MR. MURDAUGH: If Your Honor please, I would offer
24 this as an exhibit now, sir.

25 MR. KULP: No objection.

1 THE COURT: Okay. It's received into evidence.

2 (SO ENTERED AS STATE'S EXHIBIT 13)

3 MR. MURDAUGH: State's Exhibit Number 13. I have
4 no further questions, if Your Honor please.

5 MR. KULP: No questions of the witness, Your
6 Honor. He may be excused.

7 THE COURT: You're excused. Thank you, sir.

8 THE WITNESS: All right.

9 MR. MURDAUGH: You may be excused, sir. Do you
10 want to take a break now? You had mentioned -- made
11 mention of it.

12 THE COURT: Okay, it may be a good time.

13 MR. MURDAUGH: I'm not asking, but I -- (pause).

14 THE COURT: We'll take a break now, a fifteen
15 minute recess. By the way, have you'all selected a
16 Foreperson yet?

17 BY VARIOUS JURORS: (Negative gesture).

18 THE COURT: Okay. Well, there's no rush.
19 But, anyway, please retire to the jury room, and we'll
20 take a fifteen minute recess at this time.

21 (JURY OUT @ 11:03)

22 (RECESS 11:03 to 11:18)

23 (DEFENDANT NOT PRESENT)

24 (JURY IN @ 11:18)

25 THE COURT: I understand that you have been

1 selected to serve as foreperson?

2 BY JUROR: Yes, sir.

3 THE COURT: And, for the record, your name is?

4 BY FOREMAN: Susan Singleton.

5 THE COURT: Ms. Singleton. Thank you. Okay,

6 are you ready to start?

7 MR. MURDAUGH: The State is, sir.

8 MR. KULP: Your Honor, Mr. Rogers is indisposed.

9 THE COURT: Oh, okay. Wait until he's back. Do
10 you have a time, for scheduling lunch?

11 MR. MURDAUGH: Two more witnesses.

12 THE COURT: So we will be through before lunch
13 with the State's case?

14 MR. MURDAUGH: I would assume so, yes, sir. I
15 would assume so, but I've quit making predictions
16 because I thought that I had a chance to finish
17 yesterday afternoon.

18 THE COURT: Well, my thinking is this. That we
19 -- do you'all have any idea about your case, how long
20 that it is going to take?

21 MR. FLEMING: It won't be long.

22 (DEFENDANT IN @ 11:20)

23 MR. FLEMING: Your Honor, may I get the copy of
24 the Court's exhibit that we handed up -- I don't know
25 if he gave it back to the court reporter -- concerning

1 the information we're talking about now?

2 THE COURT: I don't intentionally have anything.

3 MR. FLEMING: No, sir, I understand that. We just
4 passed it up for you to look at, and I didn't get a
5 copy.

6 THE COURT: What is it?

7 MR. FLEMING: It's the packet -- here it is.
8 That's it.

9 COURT REPORTER: Number 11, the Classification
10 Status report.

11 MR. KULP: Do you want me to go make another copy,
12 Cory?

13 MR. FLEMING: May we make a copy, Judge? Or we
14 can use this, that's fine, to refer to it as long as
15 nobody objects.

16 MR. MURDAUGH: I don't object.

17 THE COURT: I don't know what it is, so I'm
18 not ---

19 MR. KULP: The material that was produced this
20 morning from the jail.

21 THE COURT: Oh. Oh, yeah.

22 MR. KULP: We just want to look it over.

23 THE COURT: Oh, that he was saying he wasn't
24 going to introduce anyway?

25 MR. FLEMING: Yes, sir.

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1 THE COURT: Okay. Mr. Rogers is back with us.
2 Are we now ready to proceed?

3 MR. MURDAUGH: The State is.

4 MR. FLEMING: All right, sir.

5 THE COURT: Thank you.

6 MR. MURDAUGH: The State calls Kenneth -- may we
7 proceed, sir?

8 THE COURT: Yes, sir.

9 MR. MURDAUGH: The State calls Kenneth
10 Williams. Mr. Williams, come around and put your left
11 hand on the Bible and hold up your right hand to be
12 sworn.

13 KENNETH E. WILLIAMS,
14 being duly sworn to tell the truth, the whole truth,
15 and nothing but the truth, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MURDAUGH:

18 Q. Your name, sir?

19 A. Kenneth E. Williams.

20 Q. Mr. Williams, where do you now work?

21 A. Jasper County Detention Center.

22 Q. Okay, sir. And where did you work on the 20th of
23 January, 1999?

24 A. I believe, Bravo Five over in Beaufort County
25 Detention Center.

1 Q. Okay, sir. I ask you if you -- on that date you
2 were working?

3 A. Yes, sir.

4 Q. Okay, sir. Did you have an occasion to see
5 Tavarus Rogers on that day?

6 A. Frequently, sir.

7 Q. Okay, sir. Did you see him -- while you were
8 working, did you receive a radio message to do
9 something?

10 A. Yes, sir.

11 Q. And what did you receive the radio message to do?

12 A. I was called to go over and check Bravo 2, which
13 is another housing unit in that area where I was
14 working at, to retrieve a magazine or something that
15 was slid underneath a door.

16 Q. Okay, sir. And did you go do that?

17 A. Yes, sir, I did.

18 Q. And I show you an item and ask you if you can
19 identify this?

20 A. I don't remember the magazine. I just know it was
21 a magazine, sir.

22 Q. Okay, sir. And when you retrieved the magazine
23 from Bravo 2 ---

24 A. I took it back over to where I was posted at, and
25 I fanned through it and I found the note.

1 Q. Okay, sir. I show you State's Exhibit Number 13
2 and ask you if you can identify that, sir?

3 A. Yes, sir, I recognize it.

4 Q. And what is it?

5 A. It's the note, sir, that was folded up and stuck
6 inside the pages of the magazine.

7 MR. MURDAUGH: Okay, sir. Thank you, sir.

8 BY WITNESS: Yes, sir.

9 THE COURT: Your witness.

10 MR. KULP: I beg the Court's indulgence
11 (confers with Mr. Fleming). Thank you, Your Honor.
12 No questions. The witness can be excused.

13 (WITNESS STEPS DOWN)

14 (TESTIMONY OF KENNETH E. WILLIAMS CONCLUDED)

15 MR. MURDAUGH: You may come down and be excused.
16 Ask Phil Foot to come in, please. Put your left hand
17 on the Bible and hold up your right hand, please, Mr.
18 Foot.

19 (WITNESS TAKES STAND)

20 PHIL FOOTE, being duly
21 sworn to tell the truth, the whole truth, and nothing
22 but the truth, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MURDAUGH:

25 Q. Your name is Phil Foote?

1 A. Yes, sir.

2 Q. Mr. Foote, where do you live?

3 A. I live in Beaufort County.

4 Q. And where do you work?

5 A. At the Beaufort County Detention Center.

6 Q. How long have you worked there, sir?

7 A. 1989.

8 Q. Okay, sir. In what capacity do you work there?

9 A. Right now, I'm the Deputy Director in charge of
10 Operations.

11 Q. Second to Ed Knoch?

12 A. Yes, sir.

13 Q. Okay, sir. On January the 20th, 1999, were you
14 employed by the Beaufort County Detention Center?

15 A. Yes, sir, I was.

16 Q. In what capacity then, sir?

17 A. I was the Deputy Director.

18 Q. Okay, sir. I ask you, at my request did you make
19 a determination as to who was housed in Bravo 2?

20 A. Yes, sir. At that time ---

21 MR. KULP: Note -- I'm sorry. Note our objection,
22 previous objection, to this based upon the arguments
23 this morning about disclosure.

24 THE COURT: Yes, sir.

25 MR. KULP: Thank you, Your Honor.

1 DIRECT EXAMINATION CONTINUED

2 BY MR. MURDAUGH:

3 Q. Go ahead, sir.

4 A. At that time, there was four inmates housed in
5 Bravo 2.

6 Q. And who were they, sir?

7 A. There was a Navares, a West McKinnon, a Darrell
8 Williamson and Andre Lovell.

9 Q. The second one that you named was who?

10 A. West McKinnon.

11 Q. Okay, sir. Did you also make a determination as
12 to who was housed in Bravo 4?

13 A. Yes, sir. There was also four inmates in Bravo 4,
14 and those four inmates were Tommy Best, Tavarus Rogers,
15 Kevin Griffin and Joseph Singleton.

16 MR. MURDAUGH: Thank you, sir. I have no further
17 questions.

18 MR. KULP: No questions, Your Honor. The
19 witness may be excused.

20 THE COURT: You may come down.

21 (WITNESS STEPS DOWN)

22 (TESTIMONY OF PHIL FOOTE CONCLUDED)

23 MR. MURDAUGH: We call John Black to the stand.

24 (WITNESS TAKES STAND)

25 JOHN P. BLACK, being

1 duly sworn to tell the truth, the whole truth, and
2 nothing but the truth, testified as follows:

3 **DIRECT EXAMINATION**

4 **BY MR. MURDAUGH:**

5 Q. Your full name, please, Mr. Black?

6 A. John Phillip Black.

7 Q. Mr. Black, where do you live?

8 A. I live in Chapin up in Lexington County.

9 Q. And where do you work, sir?

10 A. I work for the South Carolina Law Enforcement
11 Division, which is also known as SLED, in Columbia.

12 Q. And what do you do with SLED?

13 A. I'm a Senior Agent assigned to the Latent
14 Fingerprint Crime Scene Department.

15 Q. Okay, sir. In that capacity, what are your
16 duties?

17 A. My official duties include performing fingerprint
18 examinations and comparisons, responding to crime
19 scenes throughout the state at the request of other
20 agencies, recording ink prints from both living and
21 deceased individuals for identification purposes,
22 performing footwear and tire tread examinations and,
23 also, conducting blood stain pattern analyses.

24 Q. Okay, sir. And in regard to the comparison of
25 fingerprints, what schooling have you had, sir?

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1 A. I completed our standard two year in-house
2 training program once I joined the Latent Print
3 Department. That encompasses, basically, every aspect
4 of the signs and fingerprints. I've also attended
5 numerous schools outside of SLED, to include basic and
6 advanced courses offered by the Federal Bureau of
7 Investigation, advanced palm print courses offered by
8 the North Carolina Justice Academy, an Administrative
9 advanced course also taught by the FBI, things of that
10 nature.

11 Q. Okay, sir. Have you ever helped other people
12 learn to be fingerprint analysts?

13 A. Yes, sir. I am recognized as a Provisional
14 Instructor by the Criminal Justice Academy and have
15 lectured on numerous occasions.

16 Q. Okay, sir. I ask -- tell me something about
17 fingerprints. Are all of them different?

18 A. Yes, sir.

19 Q. No two fingerprints are the same?

20 A. That's correct.

21 Q. Okay, sir. And how do you go about comparing
22 fingerprints? By way of example, if you had my
23 fingerprint on this radio and you had a -- how would
24 you go about comparing it?

25 A. In your example, I would have to, first of all,

- 1 get a permanent record of his prints on the radio.
2 His print in that situation would be called a latent
3 print, l-a-t-e-n-t, which is the unknown print. It's
4 a chance impression. I would either have to powder
5 that with black powder and lift it or photograph it.
6 From there, I would compare it to an inked print, or
7 known print, which is a print that is fully recorded by
8 placing a thin film of a black printer's ink on a
9 person's hands and then putting those hands or fingers
10 into contact with a contrasting background such as a
11 fingerprint card or a palm print card. Then I would
12 have to conduct a side-by-side comparison looking at
13 the characteristics within both the latent print,
14 conducting a side-by-side comparison examining both the
15 latent, or unknown, print against the ink with a known
16 print to see if they indeed originated from a common
17 source, i.e., the same person.
18 Q. Okay, sir. How long have you been doing this
19 fingerprint stuff?
20 A. A little over six and a half years.
21 Q. Okay. All with SLED?
22 A. Yes, sir.
23 Q. Okay, sir. I ask you, sir, if you have ever seen
24 State's Exhibit Number 13 which I now hand you?
25 A. Yes, sir.

1 Q. And under what circumstances did you view that
2 document?

3 A. I received this item, State's Exhibit 13, in
4 connection with this case. It was submitted to me at
5 the SLED Laboratory in Columbia, and I recognize my
6 laboratory number, item number, and my initials on this
7 item.

8 Q. And that laboratory number is in the top margin
9 right above -- about the center of the page?

10 A. Yes, sir.

11 Q. Okay, sir. And when you got that, what did you do
12 with it?

13 A. The request was that I process this particular
14 item for fingerprints, and once I did receive that,
15 that's what I -- exactly what I did. I did proceed to
16 process it for fingerprints and, if you'd like, I can
17 explain how I did that.

18 Q. Suffice it to say for right now, sir, did you find
19 any fingerprints on it?

20 A. Yes, sir.

21 Q. Okay, sir. And how many did you find?

22 A. I developed and subsequently had photographed
23 eleven different latent, or unknown, impressions on
24 State's Exhibit 13.

25 Q. Eleven prints?

1 A. Yes, sir.

2 Q. Now, I notice that there are a bunch of little
3 stickers on the -- this thing is in a cellophane thing,
4 and there are a bunch of little stickers on it. What
5 are those, sir?

6 A. These stickers, these gray stickers, are one inch
7 photographic scales which are used to -- used for the
8 photographic documentation of the latent prints. Once
9 I develop them, with this particular technique, these
10 prints will fade over time. I have to place these
11 scales in there so that they can be recorded. The one-
12 inch scale also allows the fingerprints to be recorded
13 in actual one-to-one size where one inch equals one
14 inch, or actual life size.

15 Q. Okay, sir. So that's the place where you found
16 the prints?

17 A. Yes, sir.

18 Q. Okay. And you photographed each one?

19 A. (Affirmative nod).

20 Q. You've got the photographs?

21 A. I do have them.

22 Q. Okay, sir. Did you make a comparison of the
23 prints, the eleven prints that you lifted off of
24 State's Exhibit 13, with anything?

25 A. Yes, sir.

1 Q. And what did you compare it to?

2 A. I compared those latents against four different
3 fingerprint cards.

4 Q. And what four fingerprint cards?

5 A. The first card bore the name Tavarus Lee Rogers;
6 the second one, Jonathan Gadson;
7 the third one, Collins Gadson, and
8 the fourth, West Elmore McKinnon.

9 Q. Okay, sir. And what did the comparison reveal?

10 A. One of the latent impressions was not identified
11 to any of those four. In other words, it was not made
12 by either (sic) of those four individuals whose names
13 appear on the card. One of those latent prints was
14 insufficient to identify or eliminate to anybody.
15 Eight of the impressions, I identified to the card,
16 different impressions on the card, which bears the name
17 "Tavarus Lee Rogers", and one other impression was --
18 basically, could not reach a definitive conclusion
19 because there was not enough of the known or ink print
20 on the card.

21 Q. So you identified eight prints?

22 A. Yes, sir.

23 Q. And the eight prints belong to who?

24 A. They were made by the same person whose ink
25 impressions appear on the card bearing the name

1 "Tavarus Lee Rogers".

2 Q. Okay, sir. Now, the card that you used, was it
3 kept in the care, custody and control of SLED?

4 A. Yes. I did receive this card from ---

5 Q. You have a certified copy?

6 A. Yes, I do have a certified copy which I had made
7 over in the Records Division.

8 Q. Okay. Let me ask you this, sir. I interrupted
9 you in the process of you telling me something. I've
10 done forgot what it was. Do you remember?

11 A. I believe you asked me if that card was in the
12 control of ---

13 Q. Care, custody and control of SLED?

14 A. I did retrieve it from the Records Division at
15 SLED.

16 Q. Okay, sir. And this is the fingerprint -- a copy
17 of the fingerprint card that you used?

18 A. Yes, sir. Again, it bears my laboratory number,
19 item number and initials in the top right corner.

20 MR. MURDAUGH: If Your Honor please, I would offer
21 this for identification purposes.

22 THE COURT: All right, sir.

23 MR. MURDAUGH: For ID, not as an exhibit.

24 (SO ENTERED AS DEFENDANT'S EXHIBIT 14,

25 FOR IDENTIFICATION ONLY)

DIRECT EXAMINATION CONTINUED

BY MR. MURDAUGH:

Q. Now, can you tell me what the orientation of the prints were on this piece of paper?

A. Yes, sir.

Q. And what I'm asking you, sir, is if I held the paper this way, can you tell me -- can you tell me how the hand was -- or the print was in relation to the finger that it came off of?

A. Yes, sir.

MR. MURDAUGH: Okay. May I take him down before the jury to do this?

THE COURT: Yes, sir.

DIRECT EXAMINATION CONTINUED

BY MR. MURDAUGH:

Q. And, Mr. Black, since we don't have a microphone, talk loudly enough so she (Court Reporter) can hear everything you're saying, please, sir.

A. That's never been a problem for me.

Q. What would be the best way for you to explain this to the jury?

A. Just let me hold the document, and I can go from there.

Q. Okay, sir. You've got eight of those little prints on there. Those are the eight that you were

1 able to identify?

2 A. Actually, all eleven are on here but I am actually
3 going to demonstrate the orientation of the eight that
4 I did identify.

5 Q. Okay.

6 A. Referring to my report, the first four identifi-
7 cations that I made were with the number six finger,
8 which is simply the left thumb. The fingers on the
9 card are numbered. Starting from the right thumb to
10 the right little is one, two, three, four, five; and
11 then with the left thumb, six, seven, eight, nine and
12 ten. The first four were identified to the left thumb,
13 and those are all along the left margin of the item,
14 basically, in this orientation (demonstrating).

15 THE COURT: Sir, would you make sure that you
16 show it twice?

17 THE WITNESS: Yes, sir. I will

18 THE COURT: Excellent.

19 THE WITNESS: Basically, in this orientation with
20 the thumb being ---

21 DIRECT EXAMINATION

22 BY MR. MURDAUGH:

23 Q: In other words, put your thumb the way the print
24 would have shown up on the card.

25 A. Fingerprint would be ---

1 Q. I mean the letter.

2 A. Right. The fingerprint would be in the up
3 position on the card, but the orientation on the paper
4 actually would be in this fashion (demonstrating).

5 Q. Okay.

6 A. And it is in this fashion that the first four
7 identifications I made are -- are laid out on this
8 particular piece of paper. All the left thumb
9 identifications I made are on the left margin in
10 basically this orientation. (Demonstrating)

11 Q. Okay, sir.

12 A. The next two, I identified to the right thumb
13 which is the number one finger and it's a similar
14 orientation, just on the opposite side of the page.
15 Now we're on the right-hand margin, and both of the
16 right thumb impressions I identified are laid out in
17 this fashion. (Demonstrating).

18 Lastly, on the back, the final two identifi-
19 cations, I identified the number seven and number eight
20 finger which is the left index and left middle finger,
21 and those are actually oriented in this fashion, on the
22 back of the document, basically, in this fashion right
23 here. (Demonstrating)

24 And that is the orientation of the eight prints
25 that I identified.

1 MR. MURDAUGH: Thank you. You may have a seat
2 back up there.

3 THE WITNESS: Thank you.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. MURDAUGH:

6 Q. Mr. Black, is there any question but that the
7 eight fingerprints you found on State's Exhibit Number
8 12 were the same as the card bearing Tavarus Rogers'
9 name?

10 A. There's no doubt in my mind.

11 MR. MURDAUGH: Thank you, sir. Answer any
12 questions these gentleman may have.

13 MR. KULP: May it please the Court, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. KULP:

17 Q. Agent Black, good morning.

18 A. Good morning, sir.

19 Q. Let me ask you just a few questions, if I may.

20 A. Sure.

21 Q. The arresting agencies such as the Beaufort County
22 jail customarily submit fingerprint cards to SLED such
23 as when -- on occasions like when Tavarus Rogers was
24 arrested in this case?

25 A. That's the normal practice, yes.

1 Q. The timing of fingerprints -- is the science of
2 fingerprints, latent fingerprint identification, such
3 that you can determine and testify to the jury when
4 fingerprints were placed on a document, such as in this
5 particular circumstance?

6 A. No, sir. That's -- that's one fallibility, or the
7 only fallibility that I can think of. There is no
8 scientific way to age a fingerprint.

9 Q. And, therefore, you could not testify as to
10 whether the fingerprints were placed on the document
11 before the writing was placed there, during the
12 writing, or after the writing?

13 A. That would probably have to be done in conjunction
14 with a handwriting examiner, and I don't believe that
15 was done.

16 Q. Okay. Next, you examined some -- and I'm going to
17 identify the items. Did you examine, or have occasion
18 to examine, latent fingerprints taken from items such
19 as beer cans, or did you lift prints from those beer
20 cans yourself?

21 A. Yes, sir.

22 Q. Both?

23 A. Yes.

24 Q. And did you make any comparison between those
25 lifted by others or lifted by you, latent fingerprints

1 from those beer cans, and the known prints of Mr.
2 Rogers?

3 A. I did make the comparisons..

4 Q. You made the comparisons, but you didn't make any
5 findings or identifications?

6 A. None of the prints that he's referring to from the
7 beer cans or any of other items were identified to the
8 card bearing Mr. Rogers' name.

9 Q. Okay. So, for clarity's sake -- and I understand
10 it's a usage -- a term used in your science and area,
11 "comparison" means you took the two and looked --
12 compared the two, and you came up with a conclusion
13 that they were not Mr. Rogers'?

14 A. That's correct.

15 Q. And, also, I think you had the occasion to examine
16 a lift taken from -- or you lifted a latent print from
17 the telephone receiver?

18 A. Yes, sir.

19 Q. Okay. And, as well, you compared those, and your
20 conclusion was that you could not identify that latent
21 fingerprint to the known fingerprints of Mr. Rogers;
22 isn't that correct?

23 A. Yes, sir.

24 MR. KULP: Okay. Beg the Court's indulgence?

25 THE COURT: Yes, sir.

1 MR. KULP: Thank you very much. Thank you.

2 THE WITNESS: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. MURDAUGH:

5 Q. Mr. Black, let me ask you one more question.

6 A. Yes, sir.

7 Q. You examined a whole pile of stuff, all this stuff
8 down here. Were you able to identify any print you
9 found on any of this stuff?

10 A. No, sir.

11 Q. Only the note?

12 A. Yes, sir.

13 Q. But none of this other stuff that came from the
14 house were you able to put a name to it?

15 A. I don't know where it came from, but I did not
16 make any positive identifications in the case other
17 than what I've already testified to.

18 MR. MURDAUGH: Thank you, sir.

19 MR. KULP: No further questions, Your Honor.
20 Thank you.

21 THE COURT: You may come down.

22 THE WITNESS: Thank you.

23 MR. MURDAUGH: And be excused -- may he be
24 excused?

25 MR. KULP: Without objection, Your Honor.

1 THE COURT: You are excused.

2 (TESTIMONY OF JOHN BLACK CONCLUDED)

3 MR. MURDAUGH: And if Your Honor please, may I
4 publish State's Exhibit 13 to the Jury?

5 THE COURT: Yes, sir.

6 MR. MURDAUGH: Ladies and Gentleman, you'all will
7 have this with you in the jury room. It is a piece of
8 evidence, but I'm going to read it to you.

9 "What did you tell Mrs. Wilson (the Public
10 Defender's investigator)? She said our stories
11 are fucked up. I told her that after we left P
12 shit you drop them" -- up in brackets again --
13 "(Cee and Bro) off at C shit and drop me off in
14 Saxonville at luck shit about 1 a.m. or later.
15 Then I called you that morning and you took me to
16 Lady's Island with CAP about 7 or 8 a.m. You
17 gotta fucking holla at me less you done told these
18 crackas you was there at the time of the shit,
19 what? We gotta have our stories "top of the
20 line", unquote. (Flush this shit - rip it up
21 first*) (*Write me back*)."

22 If Your Honor please, I need to double-check
23 that I have introduced all of the evidence, so if you
24 will just give me a ---

25 THE COURT: Well, since you've started that being

1 circulated to the Jury, we can't move until ---

2 MR. MURDAUGH: Okay.

3 THE COURT: --- that's shown to the entire panel,
4 anyway, so take your time.

5 MR. MURDAUGH: Okay. If Your Honor please, I
6 would at this time offer the introduction of State's
7 Exhibits 8 and 9, which are the autopsy reports.

8 MR. KULP: Pursuant to the stipulation, Your
9 Honor, without objection.

10 MR. MURDAUGH: Oh, that's right. And the Sports
11 Illustrated, if Your Honor please.

12 MR. KULP: Subject to our prior exception.

13 MR. MURDAUGH: Okay.

14 THE COURT: I'm sorry?

15 COURT REPORTER: Subject to their objection
16 previously on the record. State's Number 15.

17 MR. MURDAUGH: Thank you. If Your Honor please,
18 the State rests.

19 THE COURT: Okay. The evidence has circulated.
20 Madam Forelady, members of the Jury, there's a matter
21 of law that comes up at this stage of the proceeding
22 that I must take up outside your presence. And maybe
23 we'll have a report as to what time lunch is arriving,
24 and so we'll just see how that -- do you know?

25 THE CLERK: I don't know, Your Honor, but it was
26 ordered about twenty minutes -- thirty minutes ago.

27 THE COURT: Well, hopefully we can go ahead and

1 eat before we come back in here if it's going to be
2 soon enough.

3 But, anyway, please retire to the jury room, and
4 we'll see what the schedule -- the most efficient way
5 for us to proceed from here is.

6 (JURY OUT AT 12:00 NOON)

7 THE COURT: All right. Mr. Kulp?

8 MR. KULP: Yes, Your Honor. At this time, we
9 would renew all our prior Motions. We would assert our
10 objection and renew our exceptions to all inadmissible
11 evidence and the ruling of the Court, respectfully. In
12 particular, Your Honor, although not limited to
13 specifically identifying issues addressing the
14 suppression and indemnification of witnesses Wire and
15 Wendel, the introduction of the jail note, late-added
16 witnesses and the sequestration issue that was
17 addressed by the Court as we raised it.

18 We would move in all evidence that we have
19 attempted to and failed to do so. And we would, at
20 this time, move for a directed verdict on all of the
21 charges set forth in the Indictments which are
22 currently pending against the Defendant and which are
23 the charges made against him in this trial, based upon
24 the standard that applies to a motion of that nature at
25 this juncture inasmuch as we submit that there has been

1 a failure of the evidence in its submission to the Jury
2 of the case on these charges based on the evidence
3 admitted at trial would not be -- would be a violation
4 of the Rule providing for the Defendant's Motion For A
5 Directed Verdict at this time. Thank you.

6 THE COURT: Okay. Well, taking the testimony in
7 the light most favorable to the State, as I'm required
8 to do, I find that there is adequate evidence to go to
9 the Jury on each of the Indictments which is Murder,
10 Kidnaping, Burglary First -- is there an Armed Robbery?

11 MR. KULP: Yes, sir.

12 MR. MURDAUGH: Yes, sir.

13 THE COURT: --- and Armed Robbery. Is that the
14 four?

15 MR. MURDAUGH: Two murders, five kidnapings, an
16 armed robbery and a burglary.

17 THE COURT: Okay, as to each one of them.
18 One thing I noticed during the trial is we really -- it
19 was never announced, and I don't know if the Jury even
20 remembers the thing about possession of a firearm. We
21 never announced that actually had been not proessed. I
22 could do that in my charge. No problem about that.

23 And as to the other motions on evidentiary
24 matters, I think my rulings were correct each time, and
25 your Motions to reconsider my previous rulings are

1 denied. Okay. Anything else?

2 MR. KULP: Nothing at this time, Your Honor.

3 Thank you.

4 THE COURT: Okay. At some time, I would like to
5 go on the record, let the Defendant go on the record --
6 would you like that, also -- as to whether he wishes to
7 testify or does not wish to testify, and I presume that
8 if he has a prior criminal record, those matters have
9 been disclosed and so forth.

10 MR. KULP: I think that's correct. I think we
11 should maybe do that at the beginning of our case when
12 we bring the Jury in.

13 THE COURT: Okay. And how long do you anticipate
14 your case will take?

15 MR. KULP: At this juncture, Your Honor, it would
16 take -- I know the Court needs to know for planning
17 purposes.

18 THE COURT: I'm not trying -- I'm not holding you
19 to it, though. I'm just asking you to give me your
20 present projection.

21 MR. KULP: I would say within an hour.

22 THE COURT: Okay. And you would like to do that
23 after lunch?

24 MR. KULP: Yes, sir, we very much would.

25 THE COURT: Okay. All right. One last thing.

1 MR. KULP: Yes, sir.

2 THE COURT: Ms. Rhodes (Law Clerk) has given each
3 of you the general charge as to the various crimes
4 involved. Have you not?

5 MS. RHODES: Yeah, I did.

6 MR. KULP: Thank you, Your Honor.

7 THE COURT: And I would just call it to your
8 attention -- I won't ask you about it now, but if
9 you've got something but just the -- it doesn't appear
10 that there's much technical need other than just the
11 general outline since that's not really the elements of
12 crime committed, or not really the issue in this case,
13 is -- with identification and other things. And if you
14 have any other matters to take up regarding the charge,
15 we'll take it up after lunch.

16 Well, we'll take it up at the end, but I just
17 wanted you to be able to look through that.

18 MR. KULP: Thank you. Thank you, Your Honor.

19 THE COURT: Anything else we need to do now?

20 MR. KULP: Not at this time, Your Honor.

21 MR. MURDAUGH: No.

22 THE COURT: Okay. We're in recess, then. All
23 right. So assume for planning purpose, assuming we
24 have lunch ready and everything, what would you like,
25 1:30?

1 MR. KULP: Yes, sir, please.

2 THE COURT: Okay. So Court is adjourned until
3 1:30 -- not adjourned, excuse me -- in recess for lunch
4 until 1:30.

5 (DEFENDANT IN @ 2:22 P.M.)

6 (LUNCH RECESS 12:10 TO 2:25 P.M.)

7 THE COURT: Okay. Ready to proceed?

8 MR. MURDAUGH: The State is ready, sir.

9 MR. KULP: The defense is ready, Your Honor.
10 We just wanted to approach about something real quickly
11 at sidebar. We don't need the reporter for this.

12 (SIDEBAR BETWEEN COUNSEL AND JUDGE)

13 THE COURT: Is the Defense ready to proceed?

14 MR. KULP: We are, Your Honor. We had submitted
15 to the Court, through your Clerk, Your Honor, a couple
16 of extra charges. I think that you let the Deputy
17 Solicitor look over those, and I think you have them
18 there before you.

19 THE COURT: I do.

20 MR. KULP: Yes, sir. There are two, Your Honor,
21 that pertain to the Jury's consideration of the
22 credibility or weight of eyewitness identification
23 testimony. One is rather long, and I think that
24 probably could be better considered to be what we know
25 is the Welfare charge. And the other is rather brief,

1 and it just, I think, kind of reminds the Jury that,
2 like any other witness, they can believe all, part,
3 none of any witness' testimony, that the weight of any
4 testimony is theirs and theirs alone to consider.

5 THE COURT: Solicitor, what's your position on
6 that?

7 MR. KNIGHT: Your Honor, the first one, I don't
8 have a problem with. The second one, the long one, I
9 do. I think it's just going to lead the jury to ---

10 THE COURT: Well, it's been my position -- if you
11 don't object, that's fine, but that it -- in State
12 procedure, Circuit Judges are not allowed to comment on
13 the evidence. And I've never -- I have taken the
14 position that I shouldn't talk about one kind of
15 testimony versus another. In other words, I charge the
16 credibility of the witnesses and all, and so -- and
17 then you can argue anything about it. It's just a
18 common sense, factual -- in other words, that's a fact.
19 That's charged on the fact.

20 MR. KNIGHT: Yes, sir.

21 THE COURT: But the short charge, are you telling
22 me you don't have any objection to that?

23 MR. KNIGHT: Well, obviously, I object to it, but
24 I ---

25 THE COURT: You would rather it not be charged?

1 MR. KNIGHT: I'd rather it not be charged, to tell
2 you the truth.

3 THE COURT: All right. Well, I -- I don't -- I
4 think it's charged on the facts, myself.

5 MR. KNIGHT: Yes, sir. And you've reminded me on
6 numerous occasions you will not charge on that one.

7 THE COURT: Do you want to make these Court's
8 exhibits for your ---

9 MR. KULP: Absolutely, Your Honor.

10 THE COURT: Okay.

11 MR. KULP: Yes, sir. We, respectfully, note our
12 exception to the Court's ruling as to any rejected
13 charges.

14 THE COURT: All right. Now, the circumstantial
15 evidence charge that you have given, basically State v.
16 Giffon -- it is a very short charge, and I'm under the
17 impression that that's all you're supposed to charge
18 for circumstantial evidence.

19 MR. KNIGHT: Yes, sir.

20 THE COURT: And yours, I'm sure, must be very
21 close to it. No, it's not.

22 MR. KNIGHT: No, sir.

23 MR. FLEMING: No. It's the old charge.

24 MR. KNIGHT: The old charge.

25 THE COURT: Oh, the old charge?

1 MR. KNIGHT: Yes, sir.

2 MR. KULP: Your Honor, considering the nature of
3 the case, there are some Courts that will still charge
4 that. I didn't know what your perspective was about
5 it, but I would like to at least make the request
6 considering that I have even this year seen a non-
7 Giffron charge, circumstantial, go through. If the
8 Court chooses to reject that, we certainly respect your
9 ruling in that regard but would note our exception to
10 it.

11 THE COURT: Okay.

12 MR. KNIGHT: In the event you don't have that
13 charge, I have *State vs. Giffron*, Your Honor.

14 THE COURT: Okay. Well, I'll make this
15 circumstantial evidence charge requested by you.

16 What about this police possession of photograph?

17 MR. KNIGHT: I would definitely object to that. I
18 mean, I don't know what it is, to tell you the truth.

19 MR. KULP: Well, I think that's ---

20 MR. KNIGHT: I mean, I can't find a citation for
21 it, unless it's in the bottom there and I've missed it.

22 THE COURT: Well, what it says is, (reading):
23 "One of the witnesses at this trial, blank, testified
24 that a view of a photograph of the Defendant was shown
25 to him by the police. Pictures of people are available

1 from many different sources and for many different
2 purposes. The fact that the police were able to get a
3 copy of defendant's pictures does not mean that he
4 committed this or any other crime or that he was a bad
5 person."

6 Of course, the issue was first raised by the
7 Defense, I believe.

8 MR. KNIGHT: Yes, sir.

9 THE COURT: I don't ---

10 MR. KULP: Well ---

11 THE COURT: I understand that -- go ahead.

12 MR. KULP: I was going to say we would strike the
13 language at the end, "or a bad person", but just
14 instruct them that, really, as to any of the
15 individuals contained -- well, that's not entirely
16 relevant. But, I mean, the idea is just to simply
17 (pause) ---

18 THE COURT: Well, now, the State has in no way
19 tried to imply anything about his -- anything -- they
20 have been very circumspect in limiting it to this. In
21 fact, if there's been any broadening in it, it's come
22 more from the Defense. I think you can argue that. I
23 don't see any reason to ---

24 MR. KNIGHT: I don't think you can charge it. I
25 think he can argue it.

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1 THE COURT: He can argue it. I'm going to make
2 that a Court's exhibit, and that will be declined,
3 also.

4 MR. KULP: Thank you, Judge.

5 (SO ENTERED AS STATE'S EXHIBIT 12)

6 THE COURT: Okay. As we had previously discussed,
7 the Defendant, of course, has the right to take the
8 stand and testify but he is not required to. Have
9 you'all discussed that with him?

10 MR. KULP: We have, Your Honor.

11 THE COURT: And has he made the decision as to
12 whether or not he wishes to testify in his own behalf?

13 MR. KULP: He has, Your Honor.

14 THE COURT: And what is that decision?

15 MR. KULP: That decision is that he would choose
16 not to testify at this phase of the proceeding.

17 THE COURT: Okay. All right. Does he -- and, of
18 course, this would -- do you wish me to charge that
19 they may not hold his failure to testify against him in
20 any way? "The fact that the Defendant did not take the
21 stand and testify does not create any...", -- and so
22 froth. "You must not permit this fact to weigh in the
23 slightest against the Defendant nor should this fact
24 enter into the discussions or deliberations of the Jury
25 in any manner."

1 MR. KULP: Yes, sir. I didn't know if you wanted
2 to get that -- have an exchange after ---

3 THE COURT: I'm going to have it with him, too.

4 MR. KULP: Yes, sir.

5 THE COURT: All right. Well, let me ask you so I
6 only have to address it one time, too.

7 MR. KULP: Yes, sir.

8 THE COURT: The second thing is since this is a
9 case where the death penalty is being sought by the
10 State, the Defendant has a right to address the Jury --
11 let me find it here -- and, you know, to speak to the
12 Jury. And have you discussed that with him?

13 MR. KULP: Yes, Your Honor. And we discussed
14 with him his right under the statute to make an unsworn
15 statement to the jury to -- and in that regard, Your
16 Honor, it is his wish to address the jury, and it may
17 very well be the case that he does so briefly but does
18 not speak, as we discussed.

19 THE COURT: In other words, he does not wish to
20 speak to the Jury, but he will -- and I believe Mr.
21 Fleming is going to make an argument, and he would like
22 to bring him forth to present him at reasonably close
23 -- you know, right at the end of the thing, five or ten
24 feet or so from the bar there in front of the jury?

25 MR. KULP: Yes, sir. And if he makes any remarks

1 at all, he will be very, very brief, and he's not --
2 for both planning purposes and for the Court's general
3 information he's not going to engage in a ---

4 THE COURT: All right. Well, let me ask you this,
5 now.

6 MR. KULP: Yes, sir.

7 THE COURT: This is something that occurs to me.
8 I would have thought that if he wanted to address the
9 Jury, that would be before the arguments of the Counsel
10 so that the Solicitor would have an opportunity to ---

11 MR. KULP: I'm sorry. Correction. He will not
12 be addressing them, Your Honor. The issue was just
13 addressed as is defined by going forward with Counsel.
14 I was wrong. He is not going to say anything.

15 THE COURT: Yeah. Because, obviously, the
16 Solicitor should have an opportunity to respond to
17 anything he said.

18 MR. KULP: Yes, sir.

19 THE COURT: And the Solicitor will have already
20 concluded his arguments when Mr. Fleming makes his.

21 MR. KULP: Yes, sir.

22 THE COURT: Isn't that correct?

23 MR. KULP: Yes, sir.

24 THE COURT: And it's my understanding that
25 Solicitor Murdaugh has no objections to him being

1 introduced to the Jury.

2 MR. MURDAUGH: No, sir, I do not.

3 THE COURT: But I would presume, if he's going to
4 make any statement to the Jury, he would have to make
5 it before ---

6 MR. MURDAUGH: Judge, I have not researched that
7 but it would be my opinion that if he were going to
8 make a statement, he would fall in the same order that
9 the Defense attorneys would fall in. I do not think he
10 would have to make it before I talk.

11 THE COURT: Okay.

12 MR. MURDAUGH: I don't -- I don't like to tell you
13 that, sir, but I think that's the law.

14 THE COURT: Well, I didn't want to make a mistake
15 on it. That's something illogical to me, but I'll ---

16 MR. MURDAUGH: It is, but there's a lot about this
17 statute that isn't logical.

18 THE COURT: Let me see it. I've got the statute
19 here. Let me see. Just a second, (review). But,
20 anyway, it doesn't make any difference. So you're not
21 going to require -- you're going to let him go ahead
22 and speak if he wants to.

23 MR. KULP: I'm sorry, Your Honor. I didn't mean
24 to turn my back on the Court. We were just discussing
25 an issue with Mr. Rogers.

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1 THE COURT: Okay. All right. Then if you would,
2 Mr. Rogers, please stand.

3 THE DEFENDANT: (Complies)

4 THE COURT: Mr. Kulp -- you, of course, have been
5 present when I have been talking about your right to
6 take the stand and testify in your own defense?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And have you had adequate time to
9 discuss your decision as to whether or not you wish to
10 testify with your attorneys?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that you have a
13 Constitutional right to testify?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you also understand that you have a
16 statutory right to make an unsworn statement to the
17 Jury?

18 THE DEFENDANT: Yes, sir, I do.

19 THE COURT: And by your decision -- and what is
20 your decision as to whether to testify in your own
21 behalf?

22 THE DEFENDANT: I will not take the stand, Your
23 Honor.

24 THE COURT: You will not?

25 THE DEFENDANT: No, sir.

1 THE COURT: And are you now exercising your
2 Constitutional right to remain silent?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I asked Mr. Kulp if you would like for
5 me to charge the jury that they must not consider your
6 failure to testify during their deliberations in this
7 case, and he advised me that you do wish that charge.
8 Is that correct?

9 THE DEFENDANT: I would like the charge made, yes,
10 sir.

11 THE COURT: Okay. I find that the Defendant is
12 freely, knowingly and voluntarily exercising his right
13 to remain silent; and, in accordance with the
14 Defendant's wishes, I will charge the Jury that they
15 may not hold his failure to testify against him.

16 And as to -- you've also discussed with your
17 attorneys, and are fully aware, that you have the right
18 to make an unsworn statement to the Jury?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you wish to make such a statement?

21 THE DEFENDANT: Not verbally, sir.

22 THE COURT: Not verbally? But, of course, I'm not
23 -- and so, as we've talked about, you do intend to walk
24 down and be introduced to the Jury from a closer
25 position by Mr. Fleming, your attorney; is that right?

1 THE DEFENDANT: Yes, sir.

2 MR. KULP: As you said ---

3 THE COURT: Anything else?

4 MR. KULP: As you said, Your Honor, because
5 certainly one hallmark of this case is identification.
6 The Jury has only been able to see him from this
7 perspective, and his appearance is not a testimonial
8 issue.

9 MR. FLEMING: And so that there is no mis-
10 understanding, Your Honor, we -- we intend in our
11 closing argument to argue concerning his physical
12 appearance. And we don't want to take advantage of
13 anybody, but we will argue his physical appearance.

14 THE COURT: Okay.

15 MR. FLEMING: All right.

16 THE COURT: That's good. That's okay. The
17 Solicitor has no objection to that, as I understand it.

18 MR. MURDAUGH: No, sir.

19 THE COURT: Okay. You can be seated.

20 THE DEFENDANT: Thank you.

21 THE COURT: All right. Did I understand that you
22 had no objections to the charges on the crimes,
23 specifically, the Murder, the Burglary First, the
24 Kidnapping and the Armed Robbery?

25 MR. MURDAUGH: The State does not, Your Honor.

1 MR. KULP: Nor do I, Your Honor. We do not.

2 THE COURT: Okay. Is there any other ---

3 MR. KULP: I have those four that your clerk
4 provided me and we have reviewed those, and we do not.

5 THE COURT: Okay. Is there anything else we need
6 to take up at this time? Are we ready for the Jury?

7 MR. MURDAUGH: The State -- the State is, sir.

8 MR. KULP: Your Honor, for the record, the
9 Defendant rests. The Defense will not offer any
10 testimony.

11 We renew all of our Motions and note our
12 objections. We note our exceptions, respectfully, to
13 your rulings in this case in all manners and in all
14 forms in which we have noted that in the record
15 heretofore, or previously, including our Motion, Your
16 Honor, for a directed verdict, the same argument under
17 the rule, and -- that's it.

18 THE COURT: Well, let me ask you this, just so
19 I'll understand how long we can keep the Jury in here
20 and if we can get through. How long do you anticipate
21 your argument being?

22 MR. FLEMING: If I tell you ten minutes, that
23 means an hour; right? I can't conceive of it being
24 more than about fifteen or twenty minutes.

25 THE COURT: Okay. So we ought to be able to get

1 the arguments and -- all the arguments and the charges
2 in at one time.

3 Officers, during the arguments and the charge, the
4 courtroom doors will be locked. Nobody will be allowed
5 to come in or go out unless there's some sort of an
6 emergency or something.

7 MR. MURDAUGH: Now, if Your Honor please, just for
8 the record ---

9 THE COURT: Excuse me. If anybody feels like
10 they're going to need to leave or anything, now is the
11 time to do it. I just want to tell everybody. Go
12 ahead.

13 MR. MURDAUGH: I told Mr. Kulp I had no problem --
14 even though I think the Rule says you have to rest in
15 the presence of the Jury, we would argue these Motions
16 now as though they were made after he closed in the
17 presence of the Jury.

18 THE COURT: Well, if you want to be absolutely
19 sure, we can bring them in, and you can rest and say
20 that you have reviewed all the previous matters, or
21 something. But I ---

22 MR. KULP: That will be fine, Your Honor.

23 MR. MURDAUGH: I was just trying to keep from
24 having to send them back out, is the reason I'm ---

25 THE COURT: Yeah. That's what we all want to do,

1 too.

2 MR. MURDAUGH: Yes, sir.

3 THE COURT: We're all set for the Jury. So when
4 the Jury comes, I will recognize Mr. Kulp, then, for
5 him to formally rest.

6 THE BAILIFF: Ready?

7 THE COURT: Yeah, go ahead and bring them in.

8 (JURY IN AT 2:42 P.M.)

9 THE BAILIFF: Your Honor, all jurors are present.

10 THE COURT: Thank you, Mr. Dorsey. Hope everyone
11 had a nice lunch. We're ready to keep working. Mr.
12 Kulp?

13 MR. KULP: Yes, Your Honor. The Defense rests,
14 and at this time we would renew all of our Motions
15 previously made and renew our objections and exceptions
16 respectfully taken to the Court's rulings on various
17 issues covered during the process. Thank you.

18 THE COURT: Okay. Ladies and Gentleman, the
19 Defense rests. The stage we're now in, that concludes
20 the evidentiary portion of this trial, of course, being
21 the guilt phase, and we'll now have the final arguments
22 of the attorneys. I will then charge you the law, and
23 then you will retire to begin your deliberations.

24 MR. MURDAUGH: May it please the Court.

25 THE COURT: Mr. Murdaugh.

1 MR. MURDAUGH: Madam Foreman, Ladies and Gentleman
2 of the Jury, I promised you'all it wouldn't take as
3 long as the jury selection did; it almost did but not
4 quite.

5 As I stated to you'all at the very beginning, we
6 are trying Tavarus Rogers for a number of offenses.
7 These are the Indictments. Indictments are of no
8 evidentiary value whatsoever, but merely sort of a
9 "road map" to guide you through the process.

10 He is charged with two counts of Murder, one on
11 Paul Reishl, one on James Mitchell Riley. He is
12 charged with a Burglary, that is, the breaking and the
13 entering of the house without consent of Paul Reishl,
14 with the intent to commit a crime therein. Armed
15 Robbery. Armed Robbery, I don't know whether I even
16 told you'all what it was at the beginning, but Armed
17 Robbery -- and His Honor will charge you this later --
18 is the taking and stealing of the personal property of
19 another through the use of a weapon, while armed with a
20 weapon. And then there are five counts of Kidnapping:
21 one count in which Paul Reishl is listed as the victim,
22 one in which James Mitchell Riley is listed as the
23 victim, one in which Toby Byars (sic) is listed as --
24 Toby Reishl is listed as the victim, one in which
25 Kristal Wire is listed as the victim, and one in which

1 Jocelyn Wendel is listed as the victim.

2 Those are the crimes that you have to consider.
3 I told you at the beginning -- and His Honor will
4 charge you shortly -- that murder is the unlawful
5 killing of another person with malice aforethought.
6 The first part is relatively simple, killing of another
7 person with malice. And what is malice? "Malice" is
8 defined as a term of art, a person with an evil spirit,
9 a person bent on mischief, and you will hear these
10 charges from the Judge during the course of his charge
11 to you. Malice aforethought. What does
12 "aforethought" mean? His Honor will charge you that in
13 the law in South Carolina when you inflict injury upon
14 a person that causes a death, in order to be guilty of
15 murder you have to have it in your mind at the time of
16 the infliction of the injury. In other words, if you
17 do not have it in your mind that you want to kill
18 somebody, it's not murder. But if you have it in your
19 mind -- and it doesn't say that it has to be there an
20 hour ahead of time, or thirty minutes ahead of time, or
21 fifteen minutes ahead of time, or even a minute ahead
22 of time, but it says you have to have formed it in your
23 head that you want to kill somebody when you, by way of
24 example, pull the trigger.

25 Now, Kidnaping is the seizing or confining of a

1 person. He will charge you what all is in big 'ole,
2 all kinds of things, but only those two words in the
3 definition have any import, "seize" or "confine."
4 If, Madam Juror, Mr. Juror, any one of you ladies and
5 gentleman, if I were to take a gun and if I were to
6 make you lie down on the floor and take away from you
7 your freedom to move, I have kidnaped you. It doesn't
8 have to be taking somebody away and trying to get a
9 ransom from them. It only means you have to seize them
10 or confine them for Kidnaping.

11 Really, what this whole trial is about is not
12 whether a murder took place, because it's pretty darn
13 obvious that there were two murders that took place: of
14 Paul Reischl and James Mitchell Riley. The real
15 question in this case is, "Who did it?" And let's
16 look at that just a minute.

17 There's no question but that Tavarus Rogers, West
18 McKinnon, and the two Gadson brothers were present at
19 that house earlier. And how do we know that? The only
20 evidence before you'all that you have is to that
21 effect. You have Jocelyn Wendel telling you, "Yes,
22 they were there. They were introduced to me, as "V".
23 You have Kristal Wire saying, "Yes, they were
24 introduced to me", and you have Toby Reischl saying,
25 "Yes, I saw them earlier. They were there, and they

1 left." And, you know, one of the things that -- that
2 sort of said that -- sort of got me, and I almost
3 missed this during the trial. I asked Mr. Matt
4 Averill, I said, "Were these photo ID's shown to a
5 number of people, and, in particular, number three
6 which has Tavarus Rogers' picture in it?" He said,
7 "Yes." And I said, "Did anybody identify anybody in
8 Photo ID Number 3?" And you'all help me remember what
9 I'm talking about. He said, "No." And I said, "Are
10 you sure?" He said, "Well, Toby Reischl looked at
11 number three and said that number six looked familiar."
12 Do you remember that? That almost got by me. "He
13 looked familiar. I can't identify him for sure."
14 Number six is Tavarus Rogers." Everybody else says
15 that he was introduced as "V".

16 Everybody says that when this thing took place,
17 when the two came back they knocked on the door. John
18 Byars, I think it is, who nobody can find, opened the
19 door, and they shoved him down, beat on him a little
20 bit, went into the other part of the house, told
21 everybody to get on the ground, held them at gunpoint
22 -- West McKinnon held them at gunpoint -- and that
23 Tavarus Rogers, known as "V" -- not known as "Tavarus
24 Rogers" but known as "V" -- then took Paul Reischl and
25 told him, says, "Give me your money!" "Give me the

1 stuff," I think was the verbiage they used. "Give me
2 the stuff." I assume that means cocaine, and I assume
3 that's what they came around to do, is to steal the
4 cocaine from them and any money they could get their
5 hands on. Well, that satisfies Burglary, when you
6 enter without the consent of another person, and when
7 you use a gun to come in, God knows if that ain't
8 without consent, I don't know what it is, and beat the
9 fellow up at the front door. And when you come in
10 there with the intent to take his money and his dope --
11 and please understand, I prosecute people for dope
12 every day. I don't appreciate it and I don't like it
13 and they ought to be admonished for doing that, but the
14 mere fact that you have dope does not give a person the
15 right to take your life. It doesn't give them the
16 right to come and steal from you your money just
17 because you sell dope; and that's what Paul Reischl's
18 brother said, Toby. He said he was a dealer. But it
19 doesn't give another person the right to come in and
20 steal and rob you. It doesn't give you a right to kill
21 them. It doesn't give a person the right to break the
22 law.

23 We know that Tavarus Rogers, known as "V" at that
24 time, came in that house with West McKinnon. We know
25 that he talked to Paul Reischl. Paul Reischl took

1 monies out, and he said, 'This isn't the one I want. I
2 want the bunch, the big bunch of dope.' And he took
3 him into the bedroom, and they had some more arguments.

4

5 Do you remember that testimony? They had some more
6 talk about it, and he said, "Don't do it!" And even
7 West McKinnon, the fellow that was holding the gun on
8 the people, holding them kidnaped in the kitchen, said,
9 "Don't do it, V! Don't do it, V! And then bam-bam,
10 two shots -- turns out they came right, entered the
11 side (indicating marks previously made on his shirt) --
12 from which he died. And then he walks out of the
13 bedroom after having taken the dope, the big bag of
14 dope from him.

15 Well, if you don't like dope so bad that you're
16 going to give people the right to kill, that's fine.
17 I hope you don't have that attitude.

18 But then he goes into the kitchen. James Mitchell
19 Riley is in there. And he says, "Where's Mitch?" Do
20 you remember these words, "Where is Mitch?" Mitch
21 said, "Man, cool it; I'm putting a cigarette out."
22 And he started beating him and kicking him and threw
23 him on the floor. And then what did he do? He shot
24 him in the back of the head, execution style.

25 If anything ever happened, and if you don't like

1 him -- if it doesn't really upset your conscience, if
2 it doesn't upset your conscience that he killed a
3 person that his brother identified as a drug dealer,
4 does it upset your conscience that he executed a person
5 who nobody said was a drug dealer?

6 A lot was made about Kristal Wire called 911, and
7 you'all will have that tape in the jury room with you
8 and listen to it. Said that Kristal Wire said, "I
9 don't know who did it." Well, she didn't know who they
10 were, only they knew him as "V." And listen to the
11 tape. Listen all the way through the tape. Do you
12 know what she tells the 911 operator? Do you'all
13 remember that, when you listen to it? Do you remember
14 the 911 operator saying, "Do you know who they are?"
15 She says, "I don't know their names," and then later
16 says, "V is the one." Do you remember that? Listen to
17 it. You'll have it in your jury room.

18 Everybody -- and they knew not who it was. They
19 didn't know that you were John Doe, or Richard Roe, or
20 what your full names were. They knew them by their
21 nicknames, and they told everybody that they talked to
22 all along the line that it was "V" that did it.

23 Everybody that they talked to, they said it was "V."

24 There's a lot of talk about the photo ID lineups.
25 Well, that's a photo ID lineup (displaying to jury).

1 That's a photo ID lineup, (displaying to jury). But
2 that (indicating exhibit) is not a photo ID lineup.
3 That's a photostatic copy of one.

4 We know that Jocelyn Wendel identified West
5 McKinnon who was with Tavarus Rogers when they went to
6 that trailer that night the second time. We know that
7 Jocelyn Wendel says, "Yes, I identify..." -- whatever
8 number it was. Do you remember Matt Averill telling
9 you'all that?

10 There was nobody in one of them that was related
11 to this thing, so nobody could identify anybody out of
12 that one.

13 So we know it was West McKinnon and we know it was
14 Tavarus Rogers that were there. We know that Jocelyn
15 Wendel and Kristal Wire says that Tavarus Rogers did
16 the killings.

17 Now, we know that West McKinnon, Tavarus Rogers
18 and the two Collins brothers -- Gadson brothers were
19 charged with this murder, because that's what Mr.
20 Averill told you, unobjected to.

21 Then we have the note that you'all had the
22 opportunity to read. If you will recall the testimony
23 of all the officers, Mr. Rivers said, "Yes, I was in a
24 walled-off place, glassed-in place and I saw Tavarus
25 Rogers come out of number two block." I can't remember

1 the numbers, but you'all can help me with that; and if
2 you have any question about what it was, you can always
3 ask the reporter to play it back to you. But my
4 recollection is that he came out of number two, and
5 that he was fourth in line with four people following a
6 counselor, Mr. Barnes; that they saw him run over and
7 stick under the door in cell block 4-B, I think, a
8 magazine. Rivers calls Kenneth Williams, who was the
9 second fellow that testified. Kenneth says he went
10 over there and he found a magazine, which is State's
11 Exhibit 15, and that he took that magazine, walked back
12 over to the window where Rivers was behind, and flipped
13 the pages and out of it State's Exhibit Number 13 fell.
14 You also heard testimony from Phil Foot that 2-B, where
15 Tavarus Rogers came from, was a cell that he had been
16 locked up in. Do you recall what he said about 4-B,
17 who was in 4-B? Bless God, it was West McKinnon, the
18 man that was with them when they killed Paul Reishl and
19 when they killed James Mitchell Riley. In West
20 McKinnon's cell, he slips this note in that magazine,
21 and what does he say in it?

22 (Reading): "What did you tell, Ms. Wilson (the
23 Public Def investigator)? She said our stories..." --
24 and I'm going to paraphrase a little bit now. 'She says
25 our stories are messed up.' (Reading): "I told her

1 that after we left..." -- and I don't understand what
2 -- (reading): "P shit you drop them off (Cee and Bro)
3 off at C shit and drop me off in Saxonville," -- but I
4 know what does impress me, and I think that it may
5 impress you. (Reading): "You gotta f'ing holla at me
6 less you done told these crackas you was there at the
7 time of the shit, what? We gotta have our stories "top
8 of the line." Flush this when you finish reading it"
9 -- well, that ain't what it says. I apologize..
10 (Reading): Flush this shit -- rip it up first. Write me
11 back, man."

12 This is the note that had eight fingerprints from
13 Tavarus Rogers on it. You saw the placement along this
14 thing and this thing, two on this side (displaying
15 Exhibit 13). Do you remember that?

16 I know if I was in prison, for whatever I was in
17 jail for, I wouldn't be talking to the fella that was
18 accused with me, saying 'We've got to get our stories
19 straight, the public defender says our stories are all
20 messed up.' Nor would you, nor would anybody that
21 wasn't guilty of the crime for which they have been
22 accused.

23 You're going to hear an awful lot of argument from
24 the Defense Counsel -- you heard it at the beginning --
25 that the reason they identified Tavarus Rogers was

1 because he is sitting over yonder, that he's the only
2 black male at the table, and that's why they identified
3 him. But explain to me how, if "V" was there, if
4 Tavarus Rogers was there, how Jocelyn Wendel told
5 people immediately that it was "V", that Kristal Wire
6 said it was "V", that Toby Reishl, while he didn't
7 positively identify him, said, "That's looks like the
8 man that had been there earlier." Not at the time of
9 the killing, now. Understand that. But at -- "People
10 that were there earlier, that looks like one of the
11 ones that were there." 911, when they talked to 911,
12 they said, "V did it."

13 You are interested in one thing, and one thing
14 only, and that is the guilt or innocence of Tavarus
15 Rogers on the murder of Paul Reishl, the murder of
16 James Mitchell Riley, the kidnapping of Paul Reishl,
17 the kidnapping of James Mitchell Riley, the kidnapping
18 of Kristal Wire, the kidnapping of Jocelyn Wendel, and
19 the kidnapping of Toby Reishl. You are also concerned
20 about the burglary, breaking into the house of Paul
21 Reishl that night with the intent to commit a crime;
22 and the armed robbery, the stealing of the money and
23 the dope from Paul Reishl. Those things, you have to
24 consider his guilt or his innocence.

25 The testimony is overwhelming that he did, in

1 fact, do the killing; that he broke into the house with
2 the intent to steal the dope; that he stole the dope at
3 gunpoint; that they had guns; they kidnapped them; they
4 arm-robbed them; they burglarized them, and they killed
5 them; and, for this, we and the members of his family
6 ask that you consider the testimony and find him guilty
7 of Murder, both -- two murders, five kidnappings, a
8 burglary, and an armed robbery.

9 Thank you, Ladies and Gentleman.

10 MR. FLEMING: May it please the Court, Your Honor.

11 THE COURT: Mr. Fleming.

12 MR. FLEMING: Solicitor.

13 MR. MURDAUGH: If Your Honor please, before he
14 starts can I say one other -- I promise you I won't be
15 a minute.

16 THE COURT: Go ahead.

17 MR. MURDAUGH: I told you'all, Ladies and
18 Gentleman, in my argument that Tavarus Rogers came out
19 of B-2, and I was -- and put the package under B-4. I
20 was exactly backwards. He came out of B-4 and put the
21 package under B-2, was the testimony. And if there's
22 any question about that, you can play it back from --
23 Phil Foot, I believe it was, is the one that -- and
24 Kenneth Rivers and Richard -- Kenneth Williams and
25 Richard Rivers. But I just wanted to correct that I

1 had told you backwards. Thank you.

2 BY ALTERNATE JUROR: (Coughing).

3 THE COURT: Okay. Are you okay, or do you need to
4 take a break?

5 BY ALTERNATE JUROR: I need to take a break.

6 THE COURT: Okay. Come on down. Does anybody --
7 do you all want to go on, or do you want to just sit
8 there and let her just kind of walk out?

9 BY JURY FOREMAN: We can continue.

10 THE COURT: We'll just let her get a drink of
11 water. I know how that is. It will give you an
12 opportunity to get set up, anyway.

13 MR. FLEMING: That's right. It will work out.

14 MR. MURDAUGH: If Your Honor please, I'm going to
15 turn the Indictments over to you, with your permission.

16 THE COURT: Yes, sir. And while we're waiting,
17 would you just approach here? I want to talk to the
18 attorneys just while we have a minute.

19 (OFF RECORD SIDEBAR CONFERENCE)

20 BY ALTERNATE JUROR: (Returns to jury box),
21 thank you.

22 THE COURT: Okay. Ready to proceed?

23 BY ALTERNATE JUROR: Yes, sir. Thank you.

24 THE COURT: Mr. Fleming?

25 MR. FLEMING: Thank you, Your Honor. There are

1 three significant time periods that the Solicitor has
2 overlooked. Those are very clearly 6:00 P.M., 12:00
3 midnight, and 4:00 A.M. And the Solicitor has
4 overlooked these significant time periods because they
5 provide a hole, a gap, in his explanation of the facts
6 of this case.

7 The Solicitor has also failed to mention to you
8 standard of proof in this case, and the Judge will tell
9 you about the charge and the law. The State must prove
10 every element of every offense beyond a reasonable
11 doubt, including identification.

12 Now, "reasonable doubt" has been defined by our
13 Courts as a doubt that would cause a reasonable person
14 to hesitate to act in their ordinary, everyday affairs.
15 And I think the best explanation I can come up with is
16 -- I don't know if any of you'all are familiar with
17 this, but I have a seven-month-old daughter and I like
18 to jog. My mother, the new grandmother, bought me a
19 jog stroller. Are you'all familiar with those things,
20 three wheels and you go running behind it with children
21 -- put the children in? And the other day, prior to
22 the trial starting, I was out jogging with her -- and
23 my wife gets a little nervous when I do that,
24 obviously. But I came to an intersection and, just
25 like they teach you in grammar school, I looked both