

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Larry B Hyman, Jr , Circuit Court Judge

RECEIVED

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SC Supreme Court

ROGER SYNDELL LEGETTE,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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PAGES 1 – 500

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STATE OF SOUTH CAROLINA

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In The Supreme Court

APPEAL FROM HORRY COUNTY

David H. Maring, Sr., Circuit Court Judge

THE STATE,

RESPONDENT,

V

ROGER LEGETTE,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA) Indictment No 96-GS-26-2809
versus)
ROGER SYNTELL LEGETTE,) TRANSCRIPT OF RECORD
Defendant)

August 4-5, 1997
Conway, South Carolina

B E F O R E

THE HONORABLE DAVID H MARING, SR , Judge,
and a jury

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1 THE COURT Okay, Solicitor

2 MR ROY Thank Your Honor We are here for GS
3 -- or 96-GS-26-2809, The State vs Roger Legette

4 He's indicted for Count 1, murder, Count 2,
5 possession of a weapon during the commission of a violent
6 crime, Count 3, possession of a pistol by a person under
7 the age of twenty-one

8 This has been true billed It's the State's
9 understanding at the time that defense counsel has a
10 motion

11 THE COURT Defense

12 MR GARDNER May Your Honor please, he
13 was evaluated by Dr Tidler with regard to competency
14 and other matters At this time we would request a
15 Blair hearing I believe everybody's ready for
16 that

17 THE COURT All right Let's proceed on that
18 Is that the State ready for that?

19 MR ROY The State's ready, Your Honor

20 THE COURT Okay

21 MR ROY The State would call Dr Tidler to the
22 stand

23 LILLIAN MARIE TIDLER, M D ,
24 BEING DULY SWORN, TESTIFIES AS FOLLOWS

25 THE CLERK (DONNA WILLIAMS) Please state your

1 full name and spell your last name for the record

2 THE WITNESS Lillian Marie Tidler, T-i-d-l-e-r,
3 M D

4 THE COURT We need to do something with that
5 mike Do you know how to adjust it? Okay Well, let's
6 try again Let's see

7 THE WITNESS Testing

8 THE COURT There we go

9 THE WITNESS It seems better

10 MR ROY Thank Your Honor

11 DIRECT EXAMINATION BY MR ROY

12 Q Dr Tidler, where do you live?

13 A I reside in Fort Mill, South Carolina

14 Q And where are you employed?

15 A At the William S Hall Psychiatric Institute in
16 Columbia, South Carolina

17 Q What is your position there?

18 A I am a forensic psychiatrist on staff, and my
19 exact title is Chief of Child and Adolescent Forensic
20 Outpatient Psychiatric Services

21 Q What's the length of time you've been employed
22 in that position?

23 A I have been employed at the William S Hall
24 Psychiatric Institute since 1994 That's where I
25 completed my forensic training, and I've been in my

1 current position since 1995

2 Q Prior to that did you have any other experience
3 in forensic psychology?

4 A Prior to that I practiced as an adult
5 psychiatrist and child and adolescent psychiatrist, but
6 that was -- 1994 was the beginning of my training and work
7 as a forensic psychiatrist

8 Q Now, what is your specific area of expertise?

9 A The areas of adult psychiatry, child and
10 adolescent psychiatry, and forensic psychiatry

11 Q And approximately how many competency
12 evaluations have you performed?

13 A Approximately one hundred

14 Q How many times have you testified in court as an
15 expert in competency?

16 A Approximately twenty-five to thirty

17 MR ROY At this time the State would move Dr
18 Tidler to be qualified as an expert to present forensic
19 testimony for competency in this case

20 THE COURT Any objection?

21 MR GARDNER Your Honor, just a couple of
22 questions, if I may

23 CROSS-EXAMINATION BY MR GARDNER

24 Q Dr Tidler, you've testified approximately
25 twenty-five times What field did you testify in? Was

1 that with adults?

2 A It varies Some of those occasions were with
3 adults, and others were in working with juveniles

4 Q How many average or best guess fifteen-year-olds
5 have you testified about?

6 A I could probably give you a better estimate for
7 adolescents overall I would say approximately a third of
8 the -- my work in terms of testimony has been with
9 adolescents

10 Q What would your definition of adolescents be?

11 A In the range of twelve through seventeen

12 Q Twelve through seventeen, so you would consider
13 someone eighteen a non-adolescent or an adult Is that
14 correct?

15 Q For the -- for the legal purposes, yes

16 Q Well, for your purposes?

17 A That's a zone of transition where juveniles are
18 developing adult characteristics but yet depending on the
19 individual they can still retain many adolescent features
20 in their thinking and in their behavior, so that's more of
21 the transition zone between---

22 Q Tell us as briefly your training as far as
23 dealing with adolescents or young teenagers as opposed to
24 your training for adults

25 A In terms of training and becoming a

1 psychiatrist, I completed medical school at the University
2 of Maryland, and I went on to complete a general adult
3 psychiatry residency training program at the Sheppard and
4 Enoch Pratt Hospital in Baltimore. That program, although
5 it is a general program, it does have child and adolescent
6 experiences involved, such as working on an adolescent in
7 a child inpatient unit and working on an outpatient basis
8 with children and adolescents. That was a three-year
9 program. After I completed that three-year program, I
10 went on to complete a specialized training in the field of
11 child and adolescent psychiatry. That's a two-year
12 fellowship training program. I completed that at the
13 Johns Hopkins University School of Medicine. That entire
14 two-year period is spent dealing exclusively with children
15 and adolescents in terms of practical hands-on experience,
16 lectures, intensive supervision. After completing that
17 child and adolescent psychiatry fellowship program, I took
18 and became a diplomat of the American Board of Psychiatry
19 and Neurology in the areas of adult psychiatry and in the
20 areas of child and adolescent psychiatry. That's the
21 national boards. After -- after that I practiced as a
22 psychiatrist working with adults and children for six
23 months and then exclusively with adolescents in Charlotte
24 on an inpatient board for six months, and then I went on
25 to begin the forensic training fellowship program at

1 William S Hall I go to Department of Juvenile Justice
2 I've been going there since 1994 providing evaluations and
3 treatment to the juveniles on the John G Campus of the
4 Department of Juvenile Justice in Columbia, and that for
5 several years housed the juvenile males in the age range
6 of approximately fourteen through sixteen Now they have
7 a variety of ages, but I've been working on that campus at
8 DJJ for the past three years

9 Q Of those approximately one hundred competency
10 evaluations you've done, could you tell us how many of
11 those were with adolescents?

12 A I would say approximately forty per cent,
13 approximately forty

14 Q And there's no doubt that there is a difference,
15 the way you handle evaluations based on the child's age,
16 somebody fifteen, as opposed to somebody twenty-one or
17 so?

18 A The standards for competency are the same for
19 juveniles and for adults The manner in which the
20 evaluation is conducted, there are some -- some -- many
21 similarities, and there are some differences as well

22 Q Thank you

23 MR GARDNER That's all I have, Your Honor

24 THE COURT Any objection to her qualification?

25 MR GARDNER Your Honor, we'd object to it

RE: EXPERT QUALIFICATION

LILLIAN MARIE TIDLER - DIRECT BY MR ROY

1 based on the -- her qualification as an expert appear to
2 be more towards adults, and she's testified that there are
3 some differences, and we're dealing with a fifteen-year-
4 old

5 THE COURT I find---

6 MR GARDNER In that line we would object

7 THE COURT I find she's qualified

8 MR ROY Thank Your Honor

9 DIRECT EXAMINATION RESUMES BY MR ROY.

10 Q Dr Tidler, did you have occasion to examine the
11 defendant, Roger Legette?

12 A Yes, I have

13 Q Okay On what date did you do that?

14 A I examined Mr Roger Legette in September of
15 1996, and the exact date was September 18th, and then I
16 had another evaluation of Mr Legette on March 11, 1997,
17 and then I evaluated him briefly this morning

18 Q How long was the evaluation on the 23rd? How
19 long did it last time-wise?

20 A On September 23rd the psychiatric interview was
21 approximately two hours

22 Q And where did that take place at?

23 A At the William S Hall Psychiatric Institute
24 in the Forensic Division

25 Q The one on March 11th, how long was that

1 one?

2 A That was a two-hour psychiatric interview as
3 well, and that also occurred at the William S Hall
4 Psychiatric Institute in the Forensic Division

5 Q And you mentioned this morning, how much time
6 did you spend with Mr Legette this morning?

7 A This morning approximately thirty minutes

8 Q Let me direct your attention to what's been
9 marked as State's Exhibit 2 for Identification purposes
10 It is the evaluation on the 23rd of September Is that
11 the evaluation?

12 A Yes

13 Q And in that evaluation what standard or what did
14 you evaluate him for?

15 A On September 18th he was evaluated pursuant to
16 a court order by the Family Court of Horry County, and the
17 court order was requesting a competency evaluation to
18 determine his capacity to stand trial, competency to stand
19 trial

20 Q You just did one prong on that date, competency
21 to stand trial?

22 A Yes, that's correct

23 Q And who was present during that interview?

24 A The social worker, Ms Ann Vickery, was present,
25 as well as myself and Mr Legette

1 Q What type of testing did you use on that day?

2 A On that particular day a psychiatric interview
3 was conducted, and questions were asked regarding specific
4 factual information regarding courtroom procedure In
5 addition, a psychiatric interview was conducted, and
6 psychological testing results were available that had
7 occurred while he was an inpatient at the William S Hall
8 Psychiatric Institute

9 Q With regards to the testing did you perform an
10 IQ test?

11 A I myself did not perform that That was
12 performed by a psychologist, but I have those results
13 available to me, yes

14 Q And what was his IQ?

15 A On the psychological testing of September 17th
16 of 1996 the psychological test that was utilized was the
17 Wisk 3 That's an intelligence test, and his full-scale
18 IQ was 86 His verbal IQ was 84, and his performance IQ
19 was 91

20 Q What range does that place him in?

21 A That range placed him in the low average range
22 of intellectual functioning

23 Q What other information did you use to base your
24 decisions on, besides psychological testing? Did you take
25 any family history?

1 A A family history was obtained from the social
2 worker, Ms Ann Vickery, and she forwarded that
3 information to me. Other tests that were obtained as part
4 of the psychological testing was a childhood depression
5 inventory and another test abbreviated the MACI. Those
6 were other -- composed of the psychological testing.

7 Q Did he show any signs of depression?

8 A Yes. On the childhood depression inventory
9 his total percentile of the depression score was equal
10 to the 97th percentile, and on the Milan Adolescent
11 Clinical Inventory there were clinical elevations in
12 different scales. One of the scales was the depression
13 scale, the anxiety scale, insecurity, and self-
14 devaluation.

15 Q Could those symptoms be related to what he was
16 facing as far as his criminal charges?

17 A Yes, they could have been exacerbated by that.
18 There was some indication that he had some prior low-grade
19 depressive symptoms, but with the elevations in his score
20 at the ninety-seventh percentile, that was believed to be
21 related to the situation that he was facing with the
22 serious legal charges.

23 Q Would that degree of depression affect his
24 competency to stand trial?

25 A In my opinion it did not affect his competency.

1 to stand trial when I evaluated him on September 18th,
2 1996

3 Q During that evaluation did you ask him questions
4 about what personnel would be in the courtroom and what
5 their functions would be in a courtroom?

6 A Yes He was able to state the various roles of
7 the different courtroom officials, including his attorney,
8 the solicitor, the judge, a jury

9 Q Did he understand the charges that he was
10 facing?

11 A He understood at that time that he was chasing
12 -- he was facing the charge of murder

13 Q Did he understand what the consequences could be
14 if he was found guilty of that charge?

15 A Yes, he expressed that he understood that he
16 could face up to twenty to thirty years in prison and that
17 this was a serious charge and that he understood that he
18 could ask his attorney for more information regarding the
19 exact penalties

20 Q Did you come to a conclusion on that day as to
21 whether Mr Legette was competent to stand trial?

22 A Yes In my opinion with a reasonable degree
23 of medical certainty at that time he possessed a factual
24 and rational understanding of the courtroom trial process
25 and exhibited the ability to assist his attorney with

LILLIAN MARIE TIDLER - DIRECT BY MR ROY

1 his defense, if he desired to do that, to a reasonable
2 degree

3 Q After speaking with him today, has your opinion
4 changed with regards to the competency to stand trial?

5 A As of today my opinion remains the same It has
6 not changed In my opinion he continues to possess a
7 factual and rational understanding of the courtroom trial
8 procedures and possesses the ability to assist his
9 attorney with his own defense with a reasonable degree of
10 ability

11 THE COURT Does he understand right from wrong
12 under the McNaghten test?

13 THE WITNESS Yes When I evaluated him under
14 that for that issue on March 11th, 1997, he -- at that
15 time it was my opinion that his mental illness did not
16 impair his ability to understand the moral and legal wrong
17 from moral and legal right, and he was able to recognize
18 the wrongfulness of his alleged actions at the time of the
19 incident

20 DIRECT EXAMINATION RESUMES BY MR ROY

21 Q Dr Tidler, I'm going to hand you what's been
22 marked as State's Exhibit 1 and ask you if you can
23 identify that

24 A Yes This is a report that was prepared after
25 Mr Legette was evaluated on March 11th, 1997

1 Q On that date who was present?

2 A On that date myself, Mr Legette, the social
3 worker was Ms Charlotte Stanley, and there were some
4 doctors who are in the midst of their -- at that time were
5 in the midst of their training as child and adolescent
6 psychiatrists present, two doctors

7 Q And on this date what prongs did you evaluate?

8 A On March 11, 1997, he was evaluated pursuant to
9 the court order from the Horry County Court of General
10 Sessions to assess his criminal responsibility and
11 capacity to conform

12 Q What types of testing did you use on this
13 occasion?

14 A On this occasion a two-hour forensic psychiatric
15 interview was conducted The prior evaluations and
16 testing were reviewed, and an assessment was made

17 Q When you say, "prior evaluations," are you
18 referring to the September 23rd evaluation?

19 A Yes, the September 23rd evaluation, as well as
20 in his record he had past pschoeducational evaluations
21 that had been done by the school district Those were
22 reviewed His school records were reviewed His chart
23 from the William S Hall Psychiatric Institute was
24 reviewed as well

25 Q. Did Mr Legette give you some personal history

LILLIAN MARIE TIDLER - DIRECT BY MR ROY

1 as to uses of marijuana and alcohol?

2 A On March 11th he did report information
3 regarding that, yes

4 Q Did you take that into consideration in making
5 your findings?

6 A Yes, I did

7 Q Did that affect your findings in any way?

8 A He had mentioned that he had become intoxicated
9 with alcohol on the date of the incident and that he had
10 also been smoking marijuana on the day of the incident,
11 however, this was a voluntary intoxication, and in my
12 opinion it did not impair his ability to differentiate
13 right from wrong or understand the wrongfulness of his
14 alleged actions, and the legal statute, my understanding,
15 is that voluntary intoxication is not---

16 MR GARDNER Objection to the law

17 THE COURT Sustained

18 DIRECT EXAMINATION RESUMES BY MR ROY

19 Q Dr Tidler, was he taking any medication at
20 that time?

21 A On March 11th, 1997, he was prescribed two
22 different psychiatric medications, Depacot and Paxil
23 He may also have been on a medication for insomnia I
24 would have to check on that, but he was on Depacot and
25 Paxil

1 Q It's my understanding those are drugs that deal
2 with depression?

3 A Yes

4 Q Would they have any affect on his evaluation on
5 that day?

6 A No On that day they had no detrimental effect

7 Q With regards to his competency to stand trial,
8 what is your finding?

9 A My finding at the present time is that he
10 possesses a factual and rational understanding of the
11 courtroom trial procedure, of the various courtroom
12 officials, and that he has the ability to assist his
13 attorney with his defense

14 Q Okay, and also on that report of March the
15 11th what was your conclusion regarding criminal
16 responsibility?

17 A My conclusion regarding criminal responsibility
18 is that within a reasonable degree of medical certainty
19 that his mental illness that he was experiencing at the
20 time of the incident, dysthymia, alcohol and cannabis
21 intoxication, did not impair his ability to differentiate
22 between legal or moral right from legal or moral wrong and
23 did not impair his ability to understand the wrongfulness
24 of his alleged actions

25 Q Concerning his capacity to conform what was your

1 finding on that date?

2 A My finding is that -- was and remains -- that
3 with a reasonable degree of medical certainty that his
4 mental illness of dysthymia did not impair his ability to
5 conform his conduct to the requirements of the law on the
6 date of the alleged offense

7 Q Dr Tidler, this morning were you handed a
8 waiver evaluation?

9 A Yes, I was

10 Q Did you review that evaluation?

11 A Yes, briefly

12 Q Could you explain to the Court what a waiver
13 evaluation is?

14 A A waiver evaluation is conducted by Department
15 of Juvenile Justice, and it attempts to look at the
16 thorough background history of the individual and looking
17 at reasons for and against their being waived up to adult
18 court, so, for example, the waiver evaluator will look for
19 potential for the individual to be rehabilitated They
20 also evaluate for other risk factors for future offenses,
21 such as if the individual has no remorse, if they have a
22 past history of many different antisocial behaviors
23 Those would be factors that would indicate that the person
24 would have a low likelihood of rehabilitation That is in
25 a nutshell what the waiver evaluation is

1 Q After reading the report did that change your
2 opinion today?

3 A No, it has not

4 Q Dr Tidler, so your findings are, one, that he's
5 competent to stand trial, that he has criminal
6 responsibility and does have the capacity to conform?

7 A That he did have capacity to conform at the time
8 of the alleged offense, yes

9 MR ROY At this point in time the State would
10 move Exhibits 1 and 2 into evidence as competency
11 evaluations performed by Dr Tidler

12 THE COURT Any objection?

13 MR GARDNER No objection to that, but I would
14 want to know if the solicitor intends to introduce the
15 other report that was relied on in the opinion?

16 MR ROY At this point in time the State does
17 not intend to introduce that

18 THE COURT Okay 1 and 2's in evidence without
19 objection

20 THE WITNESS Can I make one correction to one
21 of these? On Axis 2 it has on the September 18th -- on
22 the March 11th report history---

23 THE COURT Which exhibit are you referring to?

24 THE WITNESS Exhibit 1 It's a typographical
25 error that was not noted Instead of "retentive

1 expression,' it should be "written expression " May I
2 correct it? (Makes correction)

3 (State's Exhibit Nos 1 and 2 admitted into evidence)

4 MR ROY No further questions for this witness

5 CROSS-EXAMINATION BY MR GARDNER

6 Q Dr Tidler, you testified that you did a family
7 history review, or you reviewed a family history that was
8 prepared for you as part of your, I guess, assessment?

9 A Yes, that's correct

10 Q Okay Could you tell us a little bit about
11 that? I know the solicitor asked you, but you didn't go
12 into too much about it

13 A History was obtained from Mr Legette himself by
14 myself during the evaluations In addition to that, the
15 social worker, Ms Vickery, had spoken to his mother and
16 obtained a social history

17 Q Would somebody's social history or family
18 history, would that have any bearing on whether or not
19 they're competent to stand trial or any of the other
20 issues that we're here for?

21 A In terms of competency to stand trial we assess
22 to see if the person has a mental illness or defect that's
23 impairing their competency to stand trial It's possible
24 that there's something in their social history that would
25 result in a mental illness or defect

1 Q For example, being dropped on their head at a
2 young age?

3 A That would be a potential example, yes

4 Q And was that covered in your investigation or
5 your report?

6 A In my -- the information that I had available to
7 me, I -- I don't recall that specific information about
8 Mr Legette being dropped on his head though I'd have to
9 double check

10 Q Or some type of head injury?

11 A Yes

12 Q You said that he was in the ninety-seventh
13 percentile as far as depression is concerned Can you
14 explain that to me, what that means?

15 A Yes On the children's depression inventory
16 this is a questionnaire that has a twenty-seven questions,
17 twenty-six or twenty-seven questions, and this test has
18 been given to a wide range of people so that there are
19 some average norm scores that have been devised An
20 average person without -- an average adolescent without
21 depression would have an score perhaps anywhere from zero
22 to fifty per cent When the -- when the percentages
23 become elevated, say, in the seventy, eighty, ninety per
24 cent, it becomes clinically significant That means that
25 that is greater than the average population, and it

1 indicates the presence of a possible disorder

2 Q And ninety-seven, that would be way up there?

3 A Yes That is an extremely elevated level

4 Q But still that wouldn't have anything to do with
5 your opinion on whether or not he's competent to stand
6 trial and knows what's going on here today?

7 A Although depression could potentially impair an
8 individual's competency to stand trial, it does not
9 necessarily do that, and in this particular case even
10 though Mr Legette has experienced depressive symptoms, he
11 still in my opinion retains a factual and rational
12 understanding of the process and still has the ability to
13 assist his attorney in his own defense, so in his case it
14 does not

15 Q In fact, has he indicated to you anything
16 about problems he may have understanding what's going on
17 here or the roles, specifically with regard to his
18 attorney?

19 A One thing that he did mention was that -- that
20 indicated some possible confusion -- was that he stated
21 that he believed that if he were to state some specific
22 information to his attorney, that he may not be able to
23 trust his attorney because he believed his attorney would
24 tell the solicitor, and then he would -- he would then
25 hear it from the solicitor Although he stated this, he

1 also stated that he has been able to provide all the
2 pertinent facts of the incident to his attorney so that,
3 even though he expresses that generalized fear or
4 mistrust, he still is able to understand that this is not
5 the case He has the capacity to understand that, and he
6 has the capacity to work with you

7 Q So that wouldn't change your opinion that
8 he wouldn't have any problems assisting his attorney
9 today?

10 A That does not change my opinion, correct

11 Q And has he expressed any hallucinations or
12 trauma related to the charges?

13 A Yes When I evaluated him in September 23,
14 1996, he qualified for the diagnosis of post-traumatic
15 stress disorder on the psychological testing that had been
16 done On September 17th, 1996, he, the psychologist, also
17 was of the opinion that he was suffering from post-
18 traumatic stress disorder, and part of that post-traumatic
19 stress disorder involved him having some post -- what are
20 referred to as post-traumatic hallucinations of witnessing
21 the shooting

22 Q Any auditory hallucinations?

23 A As of September 18th he had reported
24 occasionally hearing a voice call his name, and that was
25 actually Mach 11th Today he reported that he has not

1 been experiencing any auditory hallucinations, but in the
2 past he had experienced some---

3 Q Can you---

4 A ---brief---

5 Q I'm sorry I didn't mean to interrupt Can you
6 tell me what dysthymia is?

7 A Dysthymia is a psychiatric diagnosis It's a
8 form of mental illness, and dysthymia is a low-grade
9 chronic form of depression The criteria for qualifying
10 for a dysthymic disorder include in children and
11 adolescents that symptoms have been present for at least
12 a one-year period and those symptoms being that on most
13 days the individual has experienced a depressed or
14 irritable mood that persists for the most part It's not
15 brief It's not twenty minutes It's something that
16 sticks with the person

17 Q So for an adult that would be a two-year period,
18 and for an adolescent a one-year period?

19 A That's correct

20 Q So, when the solicitor asked you about his
21 depression that may be related to the charges, the fact
22 that he had dysthymia goes against that In fact, he was
23 suffering from depression prior to this incident?

24 A Yes He was suffering from depressive symptoms
25 prior to this incident

1 Q Okay, and you testified that intoxication from
2 alcohol and impairment from marijuana would not impair his
3 judgment as to right or wrong on the date of the incident
4 Could you elaborate on that for me a little bit?

5 A In terms of intoxication with alcohol or
6 intoxication with marijuana, to -- even when an individual
7 is intoxicated, if they, in fact, are able to deliberately
8 shoot an individual, the level of intoxication usually
9 does not impair their realizing the wrongfulness of their
10 action

11 Q Is that based on the nature of these charges, or
12 was that a general principle that if somebody gets
13 impaired through alcohol or marijuana, it's not going to
14 affect their ability or their judgment to know right from
15 wrong?

16 A That is a general statement, and it is also my
17 opinion in regard to this particular case

18 Q I have nothing further Thank you, Dr Tidler

19 MR ROY No further questions

20 THE COURT You may step down

21 _____
22 MR ROY Your Honor, that would be the State's
23 showing as to competency

24 THE COURT Any -- any testimony from the
25 defense?

1 MR GARDNER No, Your Honor

2 THE COURT Arguments?

3 MR ROY Your Honor, Dr Tidler has expressed
4 on the stand she has examined him three times, once being
5 for competency to stand trial, another being for capacity
6 to conform, as well as for criminal responsibility She
7 examined him again today after those two occasions, and
8 she still finds that he still meets all those criteria and
9 does, in fact, have the competency to stand trial and to
10 conform, and also he does have criminal responsibility,
11 and we believe that we have shown that and would ask the
12 Court to find so

13 THE COURT Defense

14 MR GARDNER May Your Honor please The
15 testimony has been that, although he was impaired or may
16 have been impaired through alcohol or marijuana or both,
17 that that wouldn't affect his judgment Well, I -- I'm
18 not obviously qualified as Dr Tidler is, but I don't see
19 any logic to that argument

20 Low-range functioning IQ, depression in the
21 ninety-seventh percentile, suffering from dysthymia, Your
22 Honor, I've got some concerns about it, especially she's
23 testified that he's indicated to her and expressed to her
24 he has some concerns assisting his attorney for this,
25 which is one of the prongs that we're here for That

1 would be my concerns, and I have problems with his
2 competency

3 THE COURT All right The Court finds beyond
4 a reasonable doubt that the defendant is fit to stand
5 trial He knows right from wrong under the McNaghten
6 test He's able to assist in his own defense and is able
7 to conform his conduct to the law Okay Let me see the
8 attorneys up at the bench

9 (WHEREUPON, A BENCH CONFERENCE IS HELD)

10 THE COURT All right The case having
11 been called for trial, the defendant is to remain in
12 custody

13 (WHEREUPON, RECESS IS TAKEN)

14
15 THE COURT All right Let the record reflect
16 the all members of the jury pool have been -- have left
17 the courtroom All members of the jury pool have left the
18 courtroom Let's have the defendant brought out

19 (WHEREUPON, THE DEFENDANT ENTERS THE COURTROOM)

20 THE COURT All right, Solicitor, I believe you
21 have a matter to put on the record

22 MR ROY That's correct, Your Honor

23 96-GS-26-2809, The State vs. Roger Legette

24 There's three counts on the indictment Count
25 1 being murder, Count 2 being possession of a weapon

1 during the commission of a violent crime, and Count 3
2 being possession of a pistol by a person under the age of
3 twenty-one

4 After speaking with You Honor and with the
5 defense, at this point in time based on those
6 conversations the State will not press or dismiss Count 3,
7 possession of a pistol by a person under the age of
8 twenty-one

9 THE COURT Anything further that we need to put
10 on the record before the jury pool is brought in?

11 MR GARDNER Your Honor, on Friday on Channel
12 15, one of the local news---

13 THE COURT Just keep that door closed please

14 MR GARDNER ---one of the local news channels
15 ran a story at 5 00 and then again at 6 00 that said,
16 among other things, that the State did not anticipate the
17 death penalty on this case It was a rather simple and
18 open and shut case that should be concluded by Thursday,
19 some things along that It did receive some publicity
20 during 1996 It's been up and down in family court and
21 general sessions

22 I would just ask that, when we do the normal
23 qualification or when we're asking the jurors, that we go
24 into that specifically and also specifically ask, Your
25 Honor, if anybody has any relationship to the defendant --

1 I mean, the victim's family, the solicitor's office,
2 anybody in the solicitor's office that's handling, and
3 also, Your Honor, we would move to sequester the witnesses
4 as well

5 THE COURT Any objection to sequestration of
6 witnesses, other than the one witness who will be your --
7 sit with your table at all times---

8 MR ROY The lead inves---

9 THE COURT ---to assist you?

10 MR ROY The lead investigator in the case,
11 Detective Twigg No objection, Your Honor

12 THE COURT Okay That would apply also to any
13 witnesses for the defense

14 MR GARDNER Yes, sir

15 THE COURT Do you have any witnesses for the
16 defense that I need to have the bailiff sequester?

17 MR GARDNER Right now it stands that we may
18 have two professional witnesses and, of course, the
19 client---

20 THE COURT Are they present?

21 MR GARDNER No, sir

22 THE COURT All right Well, they should not be
23 present during the -- during the trial, except when they
24 testify

25 MR GARDNER And the solicitor is aware of --

1 of those witnesses and their -- where's she at? They're
2 out of the building is my understanding

3 THE COURT Okay Anything further before the
4 pool is allowed back into the courtroom?

5 MR ROY Nothing from the State, Your Honor

6 THE COURT Okay I believe we said the strikes
7 were ten and ten Isn't that what we decided? Yeah Ten
8 and ten Okay, and we will -- we will pick -- yeah, we've
9 got enough We'll pick two alternates The strikes will
10 be two and one, two for the defense and one as to each
11 alternate It will be Alternate 1 -- Alternate A and
12 Alternate B Wait a second Apparently the strikes are
13 five and ten, five for the State, ten for the defense
14 I was wrong on that, according to my list

15 MR WILSON We'd have been happy for ten
16 though

17 THE COURT I understand that Okay You can
18 let the members of the jury pool back in

19 MR GARDNER Your Honor, may I approach for one
20 more thing?

21 (WHEREUPON, A BENCH CONFERENCE IS HELD WITHIN THE PRESENCE
22 OF THE JURY VENIRE BUT OUTSIDE THE HEARING OF THE JURY)

23 THE COURT Is the State prepared? Is the State
24 ready to go forward?

25 MR ROY The State's ready to go forward, Your

1 Honor

2 THE COURT. Is defense ready to go forward?

3 MR GARDNER Yes, Your Honor

4 THE COURT Okay Solicitor, call your case

5 MR ROY This is Docket No 96---

6 THE COURT Now, you've got to speak up loud
7 enough for the reporter, the Court, and the jury pool to
8 hear you

9 MR ROY Thank Your Honor This is Docket No
10 96-GS-26-2809, The State of South Carolina vs Roger
11 Legette If you answer by that name, please raise your
12 right hand

13 (WHEREUPON, THE DEFENDANT COMPLIES)

14 MR ROY Roger Legette, you stand indicted for
15 Count 1, murder, Count 2, possession of a weapon during
16 the commission of a violent crime

17 Count 1, murder, states that you, Roger Legette,
18 did in Horry County on or about the 24th day of May, 1996,
19 wilfully, knowingly, intentionally, wickedly, and with
20 malice aforethought kill one Robert Lockhart by means of
21 shooting the victim in the head, that as a result of that
22 said act and from said wounds inflicted upon Robert
23 Lockhart, he did die in Horry County on or about the 24th
24 day of May, 1996

25 As for Count 2, possession of a weapon during

1 the commission of a violent crime, that you, Roger
2 Legette, did in Horry County on or about the 24th day of
3 May, 1996, possess or physically display a weapon during
4 the commission or attempted commission of a violent crime,
5 to wit An Excamb Model GT27 semiautomatic 25-calibre
6 pistol in violation of Code Section 16-23-490 of the Code
7 of Laws of South Carolina, 1996, as Amended

8 What do you say, Roger Legette, as to the felony
9 within you stand indicted?

10 THE DEFENDANT Not guilty

11 MR ROY How should you be tried?

12 THE DEFENDANT By God and country

13 MR ROY These good and lawful jurors seated
14 where -- will pass between you and the State upon the
15 trial of your case If you challenge them or any of them,
16 you shall do so as each is called to the bar to be sworn
17 and before he or she is sworn May God grant you a just
18 deliverance

19 THE COURT All right Listen up, ladies and
20 gentlemen This case has been called for trial As you
21 know by this time, the defendant is charged with the crime
22 of murder in Count 1, and in Count 2 he is charged with
23 possession of a weapon during the commission of a violent
24 crime

25 There are certain questions I need to ask you to

1 be sure you're qualified to serve on this particular trial
2 jury As I told you earlier, we qualify you as members of
3 the jury pool Now, as each case is called for trial by
4 the State of South Carolina, I will qualify you on that
5 particular case, or Judge Floyd will, depending on who the
6 trial judge will be

7 Is there anyone related by blood or marriage or
8 personal friends to the defendant, Roger Legette? If so,
9 please stand

10 (WHEREUPON, THERE IS NO RESPONSE)

11 THE COURT Is there anyone related by blood or
12 marriage or personal friends with the decedent, Robert
13 Lockhart? If so, please stand

14 (WHEREUPON, THERE IS NO RESPONSE)

15 THE COURT Is there anyone who is related by --
16 well, before I ask that, Solicitor, if you would give the
17 jury pool possible witnesses that may be called and if
18 defense will do the same, and then I'll ask those
19 necessary questions

20 MR ROY Thank Your Honor The first -- one of
21 the witnesses to be called -- these are the witnesses to
22 be called Lonnie Gray, Conway, South Carolina, Detective
23 Keith Strickland of the Horry County Police Department,
24 Lieutenant Myron Creel of the Horry County Police
25 Department, Detective Matt Twigg of the Horry County

1 Police Department---

2 A JUROR Are you talking about -- can I ask a
3 question?

4 THE COURT No Wait until I ask the questions

5 A JUROR What I'm asking, personal friends, did
6 you say?

7 THE COURT Of the defendant

8 A JUROR Myron Creel

9 THE COURT No, we haven't -- we haven't reached
10 that point We'll get there shortly

11 MR ROY, Special Agent John Black of the South
12 Carolina Law Enforcement Division, Lieutenant Ira Parnell
13 of the South Carolina Law Enforcement Division, Renee
14 Hardwick of the Horry County 911 Emergency Services,
15 Anthony Haithcock of the Horry County Rescue Squad, Dr
16 Edward L Proctor of the Columbia Grand Strand Medical
17 Center, Dr Lillian Tidler of the William S Hall
18 Psychiatric Institute, Juanita Gray, Conway, South
19 Carolina, Craig Legette, Conway, South Carolina, and
20 George Gray, Conway, South Carolina

21 THE COURT All right, Solicitor, if you would
22 identify yourself and any -- any other members of your
23 staff that may be participating in the trial of this
24 case

25 MR ROY My name is Roger Roy I'm an

1 Assistant Solicitor for the Fifteenth Judicial Circuit
2 This is Ralph Wilson, the Solicitor for the Fifteenth
3 Judicial Circuit

4 THE COURT Okay Okay Defense?

5 MR GARDNER Yes, Your Honor My client, who
6 has already identified himself, Roger Legette We may
7 have Dr Tidler, and we may have Dr Thrasher testify at
8 the appropriate time

9 THE COURT Have you identified yourself to the
10 jury?

11 MR GARDNER My name is Johnny Gardner My
12 office is across the street here in Conway

13 THE COURT Thank you Solicitor, what cab --
14 was there a cab company involved in this?

15 MR ROY That was the Yellow Cab Company

16 THE COURT Yellow Cab Company Okay Ladies
17 and gentlemen, is there anyone related by blood or
18 marriage or personal friends with any of the possible
19 witnesses that may be called during the trial of this
20 case? If so, please stand

21 MR ROY Your Honor, one matter

22 THE COURT All right, sir Give me your name
23 and number

24 A JUROR Walter Moody, No 112

25 THE COURT Walter Moody?

1 A JUROR (WALTER MOODY) The second, yes

2 THE COURT All right Are you -- who are you
3 related to or personal friends of?

4 THE JUROR (WALTER MOODY) I'm friends with Matt
5 Twigg

6 THE COURT Matt Twigg Can you put that aside
7 and give the State and the defendant a fair and impartial
8 trial?

9 THE JUROR (WALTER MOODY) Yes, sir

10 THE COURT I find you qualified Yes, sir
11 Give me your name and number

12 A JUROR No 17, Kenny Brackens

13 THE COURT All right

14 A JUROR (KENNETH BRACKENS) I'm personal
15 friends with Myron Creel

16 THE COURT All right Can you put that aside
17 and give the State and the defense a fair and impartial
18 trial?

19 A JUROR (KENNETH BRACKENS) Yes, sir

20 THE COURT I find you qualified Is there
21 anyone related by blood or marriage or personal friends
22 with either -- any of the attorneys that may be involved
23 in the trial of this case? If so, please stand
24 (WHEREUPON, THERE IS NO RESPONSE)

25 THE COURT Is there any member of the panel who

1 now or in the past has worked for law enforcement? If so,
2 please stand

3 (WHEREUPON, THERE IS NO RESPONSE)

4 THE COURT Is there any member of the panel who
5 has an immediate member of your family who now or in the
6 past has worked for law enforcement? If so, please stand
7 (WHEREUPON, THERE IS NO RESPONSE)

8 THE COURT Is there any member of the panel,
9 because of who the defendant is or because of who a
10 witness happens to be, who feels that he or she cannot
11 give both the State and the defendant a fair and impartial
12 trial? If so, please stand

13 (WHEREUPON, THERE IS NO RESPONSE)

14 THE COURT Is there anyone who now or in the
15 past has been represented by any of the attorneys involved
16 in the trial of this case? If so, please stand
17 (WHEREUPON, THERE IS NO RESPONSE)

18 THE COURT Is there any member of the panel
19 who's been on the other side of a lawsuit involving any of
20 the attorneys who are involved in the trial of this case?
21 If so, please stand

22 (WHEREUPON, THERE IS NO RESPONSE)

23 THE COURT Is there anyone who now or in the
24 past has worked for Yellow Cab Company or a member of your
25 immediate family has worked for the Yellow Cab Company?

1 If so, please stand

2 (WHEREUPON, THERE IS NO RESPONSE)

3 THE COURT Is there any member of the panel
4 who, because of religious, moral, or other reasons, feel
5 that he or she could not follow the law as charged by this
6 Court? If so, please stand

7 (WHEREUPON, THERE IS NO RESPONSE)

8 THE COURT Is there any member of the panel who
9 knows anything about this case, other than what you've
10 heard when the defendant was arraigned moments ago? If
11 so, please stand

12 (WHEREUPON, THERE IS NO RESPONSE)

13 THE COURT Is there any member of the panel who
14 has seen anything in the paper or watched -- heard
15 anything on the radio, watched anything on TV, involving
16 this particular case? If so, please stand

17 (WHEREUPON, THERE IS NO RESPONSE)

18 THE COURT Is there any member of the panel who
19 is conscious or aware of a bias or prejudice in favor of
20 the State or in favor of the defendant? If so, please
21 stand

22 (WHEREUPON, THERE IS NO RESPONSE)

23 THE COURT Is there any member of the panel who
24 knows of any reason why he or she cannot be a fair and
25 impartial juror in the trial of this case? If so, please

1 stand All right, sir Come forward

2

3 (WHEREUPON, THE FOLLOWING TAKES PLACE AT THE BENCH WITH
4 JUROR NO 17, KENNETH BRACKENS, WITHIN THE PRESENCE OF THE
5 JURY BUT OUTSIDE THE HEARING OF THE JURY)

6 THE JUROR As I said before, this is my best
7 time of season If I'm picked on the jury, there's no way
8 I could afford to handle this here because it would take
9 more than normally required I'd lose too much money, and
10 I cannot afford it

11 THE COURT I could keep you here whether you
12 serve on this jury or not We have to pick three or four
13 juries this week

14 THE JUROR I don't know How long before it
15 will be done? As far as the jury, if y'all start now in
16 the trial---

17 THE COURT Oh, well, we'll be through Wednesday
18 morning

19 THE JUROR That won't be too bad

20 THE COURT No, we're not going beyond the week,
21 no, no We will be through with everything, but this case
22 will probably be over by Wednesday morning

23 THE JUROR All right Well, it's a murder
24 case I figured it'd be two or three weeks

25 THE COURT You were worried you'd be -- you'd

1 be in a motel or something

2 THE JUROR Well, that's part of it, too

3 THE COURT I find you qualified

4 THE JUROR All right

5

6 (WHEREUPON, THE FOLLOWING TAKES PLACE IN OPEN COURT)

7 THE COURT Is there any member of the panel who
8 has formed or expressed an opinion as to the guilt of
9 innocence of this defendant? If so, please stand

10 (WHEREUPON, THERE IS NO RESPONSE)

11 THE COURT Any additional questions from the
12 State or defense?

13 MR ROY None from the State, Your Honor

14 MR GARDNER No, Your Honor

15 THE COURT Okay Okay, Madam Clerk, give us a
16 jury

17 THE CLERK (DONNA WILLIAMS) When I call your
18 name, please come and stand up here Mr Prince will be
19 standing over there Please come and stand there and face
20 the back of the courtroom

21 THE COURT The bailiff will show you where to
22 stand

23 THE CLERK (DONNA WILLIAMS) 121, Jane E
24 Powell What says the State?

25 MR ROY Please present the juror

1 THE CLERK (DONNA WILLIAMS) Defense?

2 MR GARDNER Swear the juror, Your Honor

3 THE CLERK (DONNA WILLIAMS) Have a seat in the
4 jury box, please

5 THE COURT All right, Ms Powell, you'll be
6 forelady of the jury

7 THE CLERK (DONNA WILLIAMS) 57, Laverne Greene
8 What says the State?

9 MR ROY Please present this juror

10 THE CLERK (DONNA WILLIAMS) Defense?

11 MR GARDNER Swear the juror, Your Honor

12 THE CLERK (DONNA WILLIAMS) Have a seat in the
13 jury box, please 135, Josephine Schiment
14 What says the State?

15 MR ROY Please present this juror

16 THE CLERK (DONNA WILLIAMS) Defense?

17 MR GARDNER Please excuse this juror, Your
18 Honor

19 THE CLERK (DONNA WILLIAMS) You're excused in
20 this particular case 173, Roger Lamar What says the
21 State?

22 MR ROY Please present this juror

23 THE CLERK (DONNA WILLIAMS) Defense?

24 MR GARDNER Please excuse this juror, Your
25 Honor

1 THE CLERK (DONNA WILLIAMS) You're excused in
2 this particular case 104, Thomas Martin What says the
3 State?

4 MR ROY Please present this juror

5 THE CLERK (DONNA WILLIAMS) Defense?

6 MR GARDNER Please excuse this juror from this
7 particular case, Your Honor

8 THE CLERK (DONNA WILLIAMS) You're excused in
9 this particular case 175, Joyce Berwick What says the
10 State?

11 MR ROY Please present this juror

12 THE CLERK (DONNA WILLIAMS) Defense?

13 MR GARDNER Swear the juror, Your Honor

14 THE CLERK (DONNA WILLIAMS) Have a seat in the
15 jury box, please 167, Edith Johnson What says the
16 State?

17 MR ROY Please present this juror

18 THE CLERK (DONNA WILLIAMS) Defense?

19 MR GARDNER Please excuse this juror from this
20 particular case, Your Honor

21 THE CLERK (DONNA WILLIAMS) You're excused in
22 this particular case 172, Keisha Hough What says the
23 State?

24 MR WILSON What number was that?

25 THE CLERK (DONNA WILLIAMS) 172 What says the

1 State?

2 MR ROY Please excuse this juror

3 THE CLERK (DONNA WILLIAMS) You're excused in
4 this particular case 145, Michael Strickland What says
5 the State?

6 MR ROY Please present this juror

7 THE CLERK (DONNA WILLIAMS) Defense?

8 MR GARDNER Please excuse this juror, Your
9 Honor

10 THE CLERK (DONNA WILLIAMS) You're excused in
11 this particular case 45, Thomas English What says the
12 State?

13 MR ROY Please present this juror

14 THE CLERK (DONNA WILLIAMS) Defense?

15 MR GARDNER Please excuse this juror, Your
16 Honor

17 THE CLERK (DONNA WILLIAMS) You're excused in
18 this particular case No 80, Sandra Jones What says
19 the State?

20 MR ROY Please present this juror

21 THE CLERK (DONNA WILLIAMS) Defense?

22 MR GARDNER Swear the juror, Your Honor

23 THE CLERK (DONNA WILLIAMS) Have a seat in the
24 jury box, please No 12, Terry Bock What says the
25 State?

1 MR ROY Please excuse this juror from the
2 trial of this particular case,

3 THE CLERK (DONNA WILLIAMS) You're excused in
4 this particular case 74, Martha Huff What says the
5 State?

6 MR ROY Please present this juror

7 THE CLERK (DONNA WILLIAMS) Defense?

8 MR GARDNER Your Honor, we'd excuse this juror
9 from this particular case

10 THE CLERK (DONNA WILLIAMS) You're excused in
11 this particular case 18, Richard Bradshaw What says
12 the State?

13 MR ROY Please present this juror

14 THE CLERK (DONNA WILLIAMS) Defense?

15 MR GARDNER Please excuse this juror from this
16 particular case

17 THE CLERK (DONNA WILLIAMS) You're excused in
18 this particular case 114, Kay Moses What says the
19 State?

20 MR ROY Please present this juror

21 THE CLERK (DONNA WILLIAMS) Defense?

22 MR GARDNER Swear the juror, Your Honor

23 THE CLERK (DONNA WILLIAMS) Have a seat in the
24 jury box, please 19, Roger Bryant What says the State?

25 MR ROY Please present this juror

1 THE CLERK (DONNA WILLIAMS) Defense?
2 MR GARDNER Swear the juror, Your Honor
3 THE CLERK (DONNA WILLIAMS) Have a seat in the
4 jury box, please 126, Judith Reed What says the State?
5 MR ROY Please present this juror
6 THE CLERK (DONNA WILLIAMS) Defense?
7 MR GARDNER Swear the juror, Your Honor
8 THE CLERK (DONNA WILLIAMS) Have a seat in the
9 jury box, please 29, Lewis B Cliett What says the
10 State?
11 MR ROY Swear the juror, or present this
12 juror
13 THE CLERK (DONNA WILLIAMS) Defense?
14 MR GARDNER Your Honor, we'd excuse this juror
15 from this particular case
16 THE CLERK (DONNA WILLIAMS) You're excused in
17 this particular case 152, James M Walker What says
18 the State?
19 MR ROY Please present this juror
20 THE CLERK (DONNA WILLIAMS) Defense?
21 MR GARDNER Your Honor, we'd excuse this
22 particular juror
23 THE CLERK (DONNA WILLIAMS) You're excused in
24 this particular case 55---
25 MR WILSON Your Honor, before we go further,

1 can we have strikes?

2 THE COURT Madam Reporter, correct me if I'm
3 wrong, but I see that the defense has exercised ten
4 strikes and the State two Is that your reading?

5 MR GARDNER That's correct Yes, sir

6 THE COURT REPORTER Yes, sir

7 MR WILSON Thank Your Honor

8 THE CLERK (DONNA WILLIAMS) 55, Brett Goodyear
9 What says the State?

10 MR ROY Please present this juror

11 THE CLERK (DONNA WILLIAMS) Defense?

12 MR GARDNER Swear the juror, Your Honor

13 THE CLERK (DONNA WILLIAMS) Have a seat in the
14 jury box, please 17, Kenneth Brackens What says the
15 State?

16 MR ROY Please present this juror

17 THE COURT Do you know the way down here?

18 THE JUROR (KENNETH BRACKENS) Yeah, I know the
19 way down

20 THE CLERK (DONNA WILLIAMS) What says the
21 State?

22 MR ROY Present the juror

23 THE CLERK (DONNA WILLIAMS) Defense?

24 MR GARDNER Your Honor, may we approach?

25 (WHEREUPON, A BENCH CONFERENCE IS HELD WITHIN THE PRESENCE

1 OF THE JURY VENIRE BUT OUTSIDE THE HEARING OF THE JURY
2 VENIRE)

3 MR GARDNER Swear the juror

4 THE CLERK (DONNA WILLIAMS) Have a seat in the
5 jury box, please

6 THE COURT Did the State say seat him?

7 MR ROY Yes, we did, Your Honor

8 THE CLERK (DONNA WILLIAMS) 109, Ruby Meyers
9 What says the State?

10 MR ROY Present the juror

11 THE CLERK (DONNA WILLIAMS) Defense?

12 MR GARDNER Swear the juror, Your Honor

13 THE CLERK (DONNA WILLIAMS) Have a seat in the
14 jury box, please 153; Melanie Wallen What says the
15 State?

16 MR ROY Excuse this juror from the trial of
17 this particular matter

18 THE CLERK (DONNA WILLIAMS) You're excused in
19 this particular case 156, Richard Wasserman

20 MR WILSON What number, Ms. Clerk?

21 THE CLERK (DONNA WILLIAMS) 156 What says the
22 State?

23 MR ROY Please present this juror

24 THE CLERK (DONNA WILLIAMS) Defense?

25 MR GARDNER Swear the juror, Your Honor

1 THE CLERK (DONNA WILLIAMS) Have a seat in the
2 jury box, please 112, Walter Moody What says the
3 State?

4 MR ROY Please present this juror

5 THE CLERK (DONNA WILLIAMS) Defense?

6 MR GARDNER Your Honor, if I may be heard, a
7 similar motion to the last one

8 THE COURT All right We'll put it on the
9 record later

10 MR GARDNER Thank you

11 THE COURT The Court's ruling will be the
12 same

13 MR GARDNER Swear the juror, Your Honor

14 THE CLERK (DONNA WILLIAMS) Have a seat in the
15 jury box, please 154, James Warren

16 THE COURT All right This is an alternate
17 We -- wait a second Wait a second What name did you
18 call?

19 THE CLERK (DONNA WILLIAMS) 154, James Warren

20 THE JUROR I'm 155

21 THE CLERK (DONNA WILLIAMS) What is your name?

22 THE JUROR James Warren

23 THE CLERK (DONNA WILLIAMS) Okay This is
24 James B Warren

25 THE COURT Let's get the address to be sure we

1 have the right one

2 THE CLERK (DONNA WILLIAMS) What is your
3 address, Mr Warren?

4 THE JUROR 3059 Lucas Bay Road

5 THE CLERK (DONNA WILLIAMS) That's correct

6 THE COURT Is this the correct one?

7 THE CLERK (DONNA WILLIAMS) Yes, sir

8 THE COURT Okay

9 THE CLERK (DONNA WILLIAMS) What says the
10 State?

11 MR ROY Please present this juror

12 THE CLERK (DONNA WILLIAMS) Defense?

13 MR GARDNER Please excuse this juror, Your
14 Honor

15 THE COURT All right You understand we're
16 under alternates, A?

17 MR GARDNER Yes, sir

18 THE COURT ---and you have -- two and one are
19 your strikes Okay

20 THE CLERK (DONNA WILLIAMS) 37, Timothy
21 Dellinger What says the State?

22 MR ROY Please excuse this juror from the
23 trial of this particular case

24 THE CLERK (DONNA WILLIAMS) You're excused in
25 this particular case 34, Robert Currall What says the

1 State?

2 MR ROY Please present this juror

3 THE CLERK (DONNA WILLIAMS) Defense?

4 MR GARDNER Your Honor, for accounting
5 purposes, my understanding is that we have -- each party
6 has struck one juror?

7 THE COURT That's what my notes reflect

8 MR WILSON That's correct, Your Honor

9 MR GARDNER We would excuse this juror from
10 this particular case

11 THE CLERK (DONNA WILLIAMS) You're excused in
12 this particular case 46, Patricia Farish What says the
13 State?

14 MR ROY Please present this juror

15 THE CLERK (DONNA WILLIAMS). Defense?

16 MR GARDNER Swear the juror, Your Honor

17 THE CLERK (DONNA WILLIAMS) Have a seat in the
18 jury box, please

19 THE COURT Okay, you will be Alternate A
20 All right Pull Alternate B We go back to two and
21 one

22 THE CLERK (DONNA WILLIAMS) 78, Angela Jones
23 What says the State?

24 MR ROY Please present this juror

25 THE CLERK (DONNA WILLIAMS) Defense?

1 MR GARDNER Swear the juror, Your Honor

2 THE CLERK (DONNA WILLIAMS) Have a seat in the
3 jury box, please

4 THE COURT You will be Alternate B Okay
5 Swear the jury, Madam Clerk The alternates take the
6 oath, also

7 (WHEREUPON, THE JURY IS SWORN BY THE CLERK, DONNA
8 WILLIAMS)

9 THE COURT Okay, Madam Forelady, ladies and
10 gentlemen of the jury, as you know by now, the defendant
11 has been charged Count 1 with the crime of murder and
12 Count 2 with possession of a weapon during the commission
13 of a violent crime, and to this indictment he's pled not
14 guilty That places the burden upon the State of South
15 Carolina to prove him guilty beyond a reasonable doubt for
16 under our law and our Constitution the burden is upon the
17 State to prove him guilty beyond a reasonable doubt of the
18 crime for which he is charged

19 The burden is never upon a defendant in our
20 country to prove himself innocent, but the burden rests
21 upon the State to prove him guilty of the crime for which
22 he is charged beyond a reasonable doubt

23 If the State proves that to your satisfaction
24 beyond a reasonable doubt, then it's your duty under your
25 oath to return a verdict of guilty

1 If the State fails to prove the defendant guilty
2 beyond a reasonable doubt of the crime for which he is
3 charged, it is your duty under your oath to return a
4 — verdict of not guilty

5 Under our law the defendant is clothed with what
6 we call the presumption of innocence, and this presumption
7 continues It continues throughout this trial It
8 continues when you go to the jury room to deliberate on
9 the verdict It continues until the State proves to your
10 satisfaction the guilt of the -- the guilt of the accused
11 of the crime for which he is charged beyond a reasonable
12 doubt

13 Now, Madam Forelady, your duties will commence
14 when the jury goes back to deliberate on the verdict, and
15 that's after all the testimony is in and after closing
16 arguments At that point when you go back to deliberate
17 on the verdict, you will become the presiding trial
18 officer of the trial jury

19 It will be your duty to see that each juror
20 has an opportunity to have their say when you're
21 deliberating on the verdict, and you will fill out the
22 verdict form

23 The verdict must be unanimous All twelve
24 jurors must agree, and you will be furnished with the
25 form, okay, and you'll sign your name as forelady and date

1 it Whatever the verdict of the jury is it must be
2 unanimous

3 Now, Madam Alternates, you'll come and go with
4 the twelve as if you're one of the twelve If something
5 should happen to one of these jurors, Alternate A would
6 replace that If something happens to another one,
7 Alternate B would replace that juror Okay

8 Now, the way we proceed is I make these few
9 brief preliminary remarks Attorneys will normally make
10 opening statements to you Evidence will be presented
11 At the end of all evidence the attorneys will make closing
12 arguments Then I will charge you in full as to the law
13 as it applies in this particular case You will then go
14 back and deliberate on the verdict, take the law as I've
15 charged it, apply it to the facts and evidence as you find
16 it, and come back with a true verdict, a verdict which
17 speaks the truth

18 So, as you see, it's a simple concept You take
19 the law as the Court charges it, apply it to the facts and
20 evidence as you find it, and you reach your verdict,
21 remembering the burden is upon the State to prove the
22 defendant guilty beyond a reasonable doubt

23 Now, I tell you that the attorneys' opening
24 statements and their closing arguments are not evidence
25 Also, this indictment is not evidence Do not consider

1 this indictment as evidence either

2 The indictment simply tells the defendant
3 the crime for which he is charged, so you may say,
4 "Well, Judge, if that's not evidence, what is evidence?"

5 Evidence takes many forms, many forms live
6 testimony from the witness box, if exhibits come into
7 evidence, that's there for your consideration, if the
8 attorneys stipulate as to a fact, that's there for your
9 consideration

10 Now, it would be a violation of your oath as a
11 trial juror to discuss this case with anyone from this
12 point forward, not your spouse, your girlfriend, your
13 boyfriend, your best friend, mama, daddy, nextdoor
14 neighbor, your children

15 It would be a violation of your oath to even
16 discuss this case with your fellow juror here until you go
17 back to deliberate on the verdict At that point you must
18 discuss the case That's why you're there, to deliberate
19 on the verdict, but not until then It would be a
20 violation of your oath to discuss this case even with one
21 another until you -- it's time to deliberate on the
22 verdict

23 Now, this rule goes back in excess of 200 years
24 It's a good rule, and it's time-tested, so please listen
25 to it Do not discuss the case with anyone, not even your

1 fellow juror When you go back to deliberate on the
2 verdict, then you discuss it with your fellow juror
3 That's why you're there

4 It would be a violation of your oath to watch
5 anything on television about this case, read anything in
6 the newspaper about this case, listen to anything on the
7 radio, and I may question you on those points when you
8 come in each day or each afternoon after we break for
9 lunch Do not do it

10 Your verdict must be based on the evidence
11 produced at trial applying the law as charged by the
12 Court, not something you heard or saw or talked or someone
13 told you on the outside It must be based on the evidence
14 produced during the trial of the case That's what our
15 law and our Constitution requires, so listen carefully to
16 that

17 If someone attempts to discuss the case with
18 you, do not participate in that conversation If it
19 persists, you notify one of the bailiffs, one of the
20 clerks, one of the deputies around the courtroom, and
21 they'll notify me, and I will take the necessary steps to
22 take care of that particular problem, okay

23 Do not take any cellular telephones with you
24 in the jury room You can't have your beepers on during
25 the trial of the case, so if you have them, you need to

1 give them to the deputy and pick them up at the end of the
2 day Leave the telephones in your cars because I know
3 when you take a lunch break, you may need to call your
4 spouse or whatever, your business, but you can't have it
5 in the courtroom, and you can't have it in the jury room,
6 so---

7 During the trial of the case, I tell you that
8 notepads and pens or pencils will be available to you
9 during the testimony phase Those will not be available
10 to you during my remarks, during the opening statements,
11 during the closing arguments, nor will they be available
12 to you on the charge as to the law, but during the
13 testimony phase of the trial you will have notepads and
14 pencils or pens

15 I tell you that I do not encourage you to
16 take notes I do not discourage you from taking notes
17 I simply make that available to you should you desire
18 to do so, and those notes will be available to you
19 when you deliberate on the verdict at the end of all
20 testimony, and the clerk has instructions when the case is
21 over to destroy the notes because they're personal to you
22 We will not have anyone reading your notes

23 I find it useful to have hand signals
24 Sometimes you learn from experience, and I've learned in
25 the twenty years I've been on the bench -- July 1 was

1 twenty years -- I can't read your mind, and you can't read
2 mine, so if you can't hear a witness or the lawyer, just
3 raise your hand, and I will ask the witness or the
4 attorney to speak louder

5 If your pen or pencil, you need another one, if
6 you'd just hold it up, and I'll have the bailiff or clerk
7 give you another one, and if you need to take a break for
8 any reason whatsoever, I will not ask you the reason, just
9 hold up two fingers I've been known to hold up two
10 fingers on occasion myself I had a witness the other day
11 who heard this little talk, and she was on the stand
12 testifying, and she turned at me and held up two fingers,
13 and we took a break, so if you need to take a break, just
14 hold up two fingers, and we'll take a break I will not
15 ask you the reason We'll just say, "Need a break "
16 Okay

17 If you have problems with transportation, you
18 call the sheriff, and the sheriff will see that you're
19 transported down here Sometimes your motor blows up, and
20 it's the only car you have or whatever Okay

21 If something terrible should happen, and I hate
22 to mention these things, but I need you to understand it
23 has to be something serious, such as your, you know, your
24 child is ill, or your spouse has a heart attack, something
25 serious, notify the clerk or the sheriff so we'll know

1 where you are because if you're not here, everything stops
2 until we find you, so don't put me in the embarrassment of
3 having the sheriff look for you because we can't proceed
4 until we ascertain where you are and why you're not here,
5 okay, so just call the clerk or the sheriff's office and
6 let them know if something happens

7 If your car breaks down, the deputy will come
8 pick you up If your child is ill or your spouse has
9 serious medical problems, something happens, and, you
10 know, so I believe that's probably all I need to tell you
11 at this time

12 I remind you that at the end of all testimony,
13 after closing arguments, I will charge you in full as to
14 the law as it applies in this particular case

15 At this point I'm going to send you back to the
16 jury room Is that room cleared of all newspapers and so
17 forth and so on? Okay

18 If you need anything like coffee, crackers, soft
19 drinks during the trial when you're in the -- when you're
20 in the jury room, not here in the courtroom, just knock on
21 the door and give the -- tell the bailiff, and the bailiff
22 will take care of that

23 The bailiffs are here to help you and be sure
24 you have plenty of coffee and soft drinks and crackers
25 Beyond that I'm afraid we can't go, but we will take care

1 of that Okay, just knock on the door and let them know,
2 okay

3 All right, so step back -- Mr Bailiff, show
4 them the way to the jury room, and we'll be with you
5 shortly

6 Now, you have to understand we -- the clock we
7 work on in the court system and the clock you work on on
8 the outside works a little different, so shortly probably
9 doesn't mean five or ten minutes It's a little bit
10 longer than that, okay, but I'll have you back out here as
11 quickly as I can to proceed with testimony Thank you

12 Also, Madam Forelady, you need to be in that
13 seat The alternates, you need to be sure you're in those
14 seats when you come back Thank you
15 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
16 JURY)

17 THE COURT Defense, I believe you told me at
18 the bench that you had a Batson motion---

19 MR GARDNER Yes, sir

20 THE COURT ---and I told you it comes too late
21 once the jury is sworn, however, I will allow you to put
22 that on the record

23 MR GARDNER Well, if I may, Your Honor, with
24 regard to the other things that we took up, Juror No 17
25 earlier said that he was real good friends with Myron

1 Creel, a lieutenant that's involved in this case We were
2 out of strikes, and we asked the judge to strike him for
3 cause With regard to Juror No 112---

4 THE COURT He told the Court that he could give
5 both sides a fair and impartial trial, and---

6 MR GARDNER I understand after---

7 THE COURT ---and I believed his statement, and
8 -- but I -- I -- I -- and I denied your motion at the
9 bench

10 MR GARDNER Yes, sir, and also with regard to
11 Juror 112, who said that he was good friends with Matt
12 Twigg, who is the investigating officer for this case for
13 Horry County

14 THE COURT All right

15 MR GARDNER I was under the impression, Your
16 Honor, that---

17 THE COURT The Court's ruling was the same at
18 the bench

19 MR GARDNER Yes, sir ,

20 THE COURT He told the Court---

21 MR GARDNER Right

22 THE COURT ---and I made a finding he could be
23 fair I believed that to be true, and, of course, you
24 knew those two gentlemen were in the pool, and you
25 exercised all ten of your strikes

1 MR GARDNER Yes, sir, and with regard to 172,
2 I was under the impression that we were going to send the
3 jury out before -- before they were sworn We would make
4 a motion for Batson for the record on that and that she
5 was a young African American female, the same race as my
6 client, and I didn't see any other reason for the
7 solicitor striking her

8 THE COURT All right, Solicitor, for the record
9 why did you strike that juror? I -- I remember the juror,
10 in fact, but go ahead

11 MR ROY Your Honor, it was based on her
12 personal appearance in that the way she was dressed She
13 had sunglasses on her head, just didn't look like she
14 would be an attentive juror

15 THE COURT Okay Do you have anything else to
16 present, defense?

17 MR GARDNER No, Your Honor

18 THE COURT All right The Court finds that
19 even the jury had not been sworn, the Court would deny
20 your motion The solicitor has given his reasons I
21 believe them I also viewed that particular juror and was
22 not surprised that the solicitor struck her, and I see no
23 basis that it was done on gender or race Okay Anything
24 further? Are we ready for -- I guess we'd better do these
25 motions before we start in with our testimony

1 MR ROY Just to remind the Court, we have one
2 witness who cannot be here in the morning We need to get
3 to that witness---

4 THE COURT I understand, but I -- I really
5 dōn't see how we can do opening statements I agree
6 We're going to get the two witnesses in, but I do not
7 see how we can do opening statements until I rule on
8 these motions Okay, so let's take care of these motions
9 at this time Defense, I believe you're the moving party

10 MR GARDNER Yes, Your Honor, may Your Honor
11 please Just for the record, Your Honor, there is a
12 statement taken by a -- first of all, I'd move to have the
13 state provide us with any deal, any type of leniency, any
14 agreements with regard to the two individuals who are
15 allegedly in the vehicle at the same time this incident
16 occurred

17 THE COURT Okay, Solicitor, any promises or any
18 deals been cut with these persons who will be testifying,
19 I assume, on behalf of the State or testifying or being
20 called by the State?

21 MR ROY No deals have been made, Your Honor

22 MR GARDNER Your Honor, with regard to one of
23 those individuals, he made a statement that implicated
24 himself, along with everybody else in the car, back in
25 August The solicitor says he's not going to go into

1 that, but for the record we'd ask that that be suppressed
2 because it would be in my opinion under a -- give us a
3 Bruton problem

4 THE COURT Are you going to go into that,
5 Solicitor?

6 MR ROY No, Your Honor The State will not go
7 into that statement

8 THE COURT You must caution your witness not to
9 go into that Do not call -- I don't want your client or
10 your witness not telling the truth That's not what I'm
11 saying You simply avoid that, if that's the State's
12 position, you're not going to go into it

13 MR ROY Yes, Your Honor

14 THE COURT All right

15 MR GARDNER There was some clothing that
16 allegedly was taken from the defendant's home The
17 solicitor has indicated to me that he didn't think he was
18 going to go into that We would ask that that be
19 suppressed It was taken without a warrant but supposedly
20 had consent from the homeowner at the time

21 THE COURT Solicitor, are you going to use
22 that?

23 MR ROY The State will not use that evidence,
24 Your Honor

25 THE COURT All right

1 MR GARDNER Your Honor, we have a motion to
2 elect with regard to the gun charges, which has already
3 been taken care of

4 THE COURT The State's already elected to go
5 with Count 1 and 2 and drop 3

6 MR GARDNER And the others, Your Honor, would
7 be with regard to the photographs, that any photographs be
8 suppressed, in the alternative, any color photographs be
9 suppressed because the prejudicial value would be greater
10 than the probative value I believe we would have to take
11 those up one at a time, and then the other things are the
12 statements that were made, and I guess we'd have to -- I
13 know we're going to do Jackson---

14 THE COURT Well, let's mark those for
15 identification, and let's take that issue up

16 MR ROY Just to be clear, this is a motion for
17 any photos of the body at the scene That is all this---

18 THE COURT Is that -- is that correct?

19 MR GARDNER Yes, Your Honor

20 THE COURT Okay

21 (State's Exhibit No 3 for Identification marked)

22 MR GARDNER Your Honor, the solicitor informs
23 me that he's marking all of the pictures he intends to
24 introduce as exhibits for identification at this point in
25 time

1 He also indicates that State's Exhibit 3 for ID
2 purposes is the only picture with regard to the scene, and
3 we'd ask that that not be used

4 THE COURT All right What's -- what's the
5 relevancy of putting this in? This would be State's
6 Proposed Exhibit 3

7 MR ROY Your Honor, this is to show the
8 position of the body in that he was drug out of the car
9 He was shot in the car, brought out I know robbery isn't
10 being charged here, but it does show the movement of the
11 body It shows the crime scene when some of the witnesses
12 did arrive, and it would not prejudice this defendant in
13 any way There's no blood---

14 THE COURT Well, you want it to prejudice
15 That's why you're introducing it

16 MR ROY Well---

17 THE COURT You mean, unduly, unduly
18 prejudicial---

19 MR ROY ---would not be

20 THE COURT ---overriding the probative value

21 MR ROY That's correct, and there is no blood
22 shown in that picture

23 THE COURT What's your position on that,
24 defense?

25 MR GARDNER Your Honor, it's going to inflame

1 the jury, the nature of it is I know it's not as -- as
2 bloody as some that we've seen Your Honor, we're going
3 to have somebody, I understand, testify, the first person
4 to arrive there We've got all kinds of evidence that
5 goes to why the body was there They're going to be
6 talking about it, the State's witnesses are I don't
7 think it would be -- serve any purpose to have a picture
8 of it

9 THE COURT All right Well, I would -- I would
10 agree with the State on this It corroborates the State's
11 witnesses that -- what you say they will be testifying
12 to

13 MR GARDNER That -- that's my understanding

14 THE COURT It's not gruesome It's not unduly
15 prejudicial It has probative value, and I find that
16 the prejudice does not over-weigh the probative value
17 Okay

18 MR ROY Thank Your Honor

19 MR GARDNER And the other ones have been
20 marked---

21 THE COURT REPORTER Not yet
22 (State's Exhibit Nos 4 through 11 for Identification
23 marked)

24 THE COURT And all those rulings are subject
25 to solicitor authenticating it He's got to authenticate

1 it to get it in, but---

2 MR GARDNER Yes, sir, just for identification

3 THE COURT Also, on those other matters we
4 took up just a moment ago, if you open the door, you
5 understand the State may be allowed to put that stuff
6 into evidence

7 MR GARDNER Oh, yes, sir

8 THE COURT Okay

9 MR GARDNER I understand Talking about the
10 statement in Columbia

11 THE COURT Right, and the -- and the clothes or
12 shirt, whatever it was

13 MR GARDNER Yes, sir I have been handed 4,
14 5, 6, 7, 8, 9, 10, and 11 for ID purposes only We have
15 no objections to those

16 THE COURT Okay

17 MR GARDNER Or we -- our objection does not
18 run to the -- it's not the same objection as to that one
19 We'd have that---

20 THE COURT What objections do you have to
21 these?

22 MR GARDNER None at this time, Your Honor

23 THE COURT Okay All right

24 MR GARDNER So, when it's time to introduce
25 them---

1 THE COURT All right

2 MR GARDNER Your Honor, the only other matters
3 that we would have would be with regard to the 911 tape
4 and the statement given at the -- at the scene if, in
5 fact, there was one, and the statement that was given at
6 J Reuben Long to Detective Twigg

7 THE COURT Well, let's deal with your objection
8 to the 911 tape first What's your objection to that?

9 MR GARDNER Your Honor, if they are able to
10 lay the foundation to get it established in there, we
11 would object to it under -- that it was reduced to a
12 writing, so we would object to it under 19-1-80, that it
13 doesn't fall under any of the business records exceptions,
14 but in the event the Court allows it in, Your Honor, we
15 would ask that it be redacted as to anyone, other than the
16 defendant's testimony I believe there's---

17 THE COURT What statute are you quoting?
18 Something that gives the defendant the right to a copy of
19 it?

20 MR GARDNER Yes, sir

21 THE COURT Have you given the defense a copy of
22 that statement?

23 MR GARDNER I -- I've got a copy of it, Your
24 Honor

25 THE COURT You do?

1 MR GARDNER Yes, sir

2 THE COURT. Well, I mean, what other grounds do
3 you have?

4 MR GARDNER Those would be the only other
5 grounds that we would have, Your Honor

6 THE COURT Well, one ground was not receiving
7 a copy of it You say you've received a copy of it
8 What's the other ground?

9 MR GARDNER Well, that, specifically that he
10 didn't receive a copy of it to sign it, and it's not
11 signed, since it was reduced to a written statement

12 The other ground, Your Honor, is it's not --
13 it's not sufficient under public records It's not a
14 memorandum or report or record or a data compilation

15 THE COURT What is the conversation?

16 MR GARDNER It's a conversation, which is
17 purported by the State to be of my client calling 911 and
18 reporting the incident

19 THE COURT Well, that's -- that's no grounds
20 not to let it in

21 MR GARDNER I understand that, but there is
22 what's purported to be other people at the location that
23 he's calling from that actually get on there---

24 THE COURT How long is this tape?

25 MR GARDNER It's been transcribed to

1 approximately twelve pages

2 THE COURT Well, let -- let me look at the
3 transcript, and let's go through it All right Let's
4 start with the first page and tell me what question and
5 answer that you -- if there's anything on the first
6 page

7 MR GARDNER Starting on the first page, Your
8 Honor, there is a -- someone, according to the transcript,
9 is identified as Juanita, the grandmother

10 THE COURT The grandmother of the defendant?

11 MR GARDNER Yes, sir We'd ask that any,
12 anything on the tape that she says would be redacted from
13 this, if it comes in at all, Your Honor

14 THE COURT Okay What's the State's position
15 about this third party statements on 911?

16 R ROY Your Honor, Ms Juanita Gray is
17 the individual identified on this tape She is the
18 State's witness We will be more than happy to call
19 her and question her about her dealings with the 911
20 call

21 THE COURT Let's do an in -- let's do an in-
22 camera on that to see whether she's going to testify that
23 the defendant was present when this conversation took
24 place as to what she said I believe the rules are if
25 it's defendant says it or it's said in the presence of the

1 defendant that it's admissible because he has the right to
2 take the stand and contradict it Whether he chooses to
3 do so or not, that's his business, but as opposed to
4 hearsay where the defendant is not present, there's no way
5 he can contradict it I believe that's the law Okay
6 We'll do an in-camera with the grandmother as to whether
7 the defendant was present Is she present today?

8 MR ROY It's my understanding she is here
9 today, Your Honor

10 THE COURT All right Let's move on What
11 else do you object to? Let's -- give me specific---

12 MR GARDNER That would be -- with regard to
13 the 911 tape, Your Honor, that would be -- that would be
14 our argument

15 THE COURT Okay Nothing else in here that you
16 object to, other than that, that is, the conversation with
17 the mother that the State says was -- the grandmother the
18 State says was done in the presence of the defendant?

19 MR GARDNER Right Yes, sir, and it's -- it's
20 quite a long conversation with her

21 THE COURT Right

22 MR GARDNER She keeps going on through

23 THE COURT Okay All right Well, we'll do an
24 in-camera on that Call the grandmother

25 MR ROY Juanita Gray She's probably outside

1 of the courtroom

2 THE COURT Well, this is a good opportunity to
3 take a restroom break Let's take about a five-minute
4 break

5 (WHEREUPON, RECESS IS TAKEN)

6

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
8 JURY)

9 THE COURT Okay Your witness

10 MR ROY Thank Your Honor The State would
11 call Juanita Gray to the stand

12 JUANITA GRAY, BEING DULY
13 SWORN, TESTIFIES AS FOLLOWS

14 THE CLERK (DONNA WILLIAMS) Please state your
15 full name and spell your last name for the court

16 THE WITNESS Juanita Gray, G-r-a-y, and I'm
17 unemployed My address is 208 Barkwood Drive, Conway

18 MR ROY Thank you, Your Honor

19 DIRECT EXAMINATION BY MR ROY

20 Q Ms Gray, is the defendant, Roger Legette, your
21 grandson?

22 A Yes

23 Q And on May 24, 1996, was there an incident that
24 took place right outside your residence?

25 A Yeah, down the road from it

JUANITA GRAY - DIRECT BY MR ROY

1 Q On that day were you present when your son,
2 Roger Legette, made a phone call to 911?

3 A Yes

4 Q On that day did you talk with the 911 operator?

5 A No, I didn't

6 Q You did not? Ms Gray, what were you doing when
7 Mr Legette called 911?

8 A What was I doing?

9 Q Yes, ma'am

10 A I was there I was sitting down listening

11 Q So what -- what did your grandson say to the 911
12 operator?

13 A He told them to come out there, a man was shot,
14 and---

15 Q What else did he tell them?

16 A And he told them he had shot him

17 Q Where did he tell them that he had shot the
18 man?

19 A He didn't say whereabouts, I don't think

20 Q Did he say what body part?

21 A No If he did, I didn't hear it

22 Q Who else was present that day?

23 A During the time he came back from the accident?

24 Q When he made the 911 call, yes, ma'am?

25 A Well, just me and Wes, I think

1 Q Who is that other one, ma'am? I didn't
2 understand you

3 A Another man was at the house

4 Q Another man was at the house?

5 A Yeah, an old man He's sick He can't get
6 around

7 Q Did anyone else get on the phone besides your
8 grandson?

9 A Not that I -- not to my knowledge, I don't think
10 so

11 Q Were you present the entire time he was on the
12 phone?

13 A Yeah, I was there

14 Q You heard all of his conversations?

15 A Yeah, I -- I heard him tell them he had -- he
16 had shot somebody, and they asked him was -- was the
17 person dead, and he said he didn't know I heard him say
18 that

19 Q Ms Gray, if you heard your voice on a
20 recording, would you recognize it?

21 A Yeah

22 Q And if I was to play you a tape that contained
23 your voice, would you be able to recognize that?

24 A Yeah I say yeah I -- I'd recognize my voice

25 THE COURT Would you be able to recognize

JUANITA GRAY - DIRECT BY MR ROY

1 the---

2 THE WITNESS But I don't remember getting on
3 the phone

4 THE COURT Okay Would you recognize the voice
5 of Roger Legette if you heard it on tape?

6 THE WITNESS I'm sure I would

7 THE COURT You would? Okay

8 MR ROY Your Honor, we're just waiting on a
9 tape player

10 DIRECT EXAMINATION RESUMES BY MR ROY

11 Q Ms Gray, I'm going to hand you a copy of what
12 is the transcript from this call, and I'm going to ask you
13 to look on page 1 below where it says, "Hello," and ask
14 you to read that and if you recognize that

15 THE COURT Well, let's do this I'm going to
16 send this jury down while we do this to Courtroom 3 We
17 won't -- tell them to take their drink with them if they
18 have a soft drink, and let's do that Before -- before
19 you play it, I may send this jury to the jury room
20 downstairs

21 DIRECT EXAMINATION RESUMES BY MR ROY

22 Q Ms Gray, have you reviewed that part of the
23 statement?

24 A Yeah, I could have said that I don't know

25 Q Your name is Juanita, correct?

JUANITA GRAY - DIRECT BY MR ROY

1 A Yeah

2 Q And Roger Legette is your grandson?

3 A Yeah

4 Q Could you read what the answer to---

5 A This is---

6 Q --- Who is this?"

7 A "This is -- this is my -- this is Juanita My
8 grandson, I believe, I don't -- I believe don't" -- how
9 you got this here -- "don't -- done shot a cabdriver "

10 Q The next question?

11 A "Who shot a cabdriver? My grandson Who? My
12 grandson Is your grandson with you? He, no, he came
13 back home " I don't remember saying that

14 Q Thank you, Ms Gray

15 MR ROY Your Honor, at this point in time we
16 would like to play the tape

17 THE COURT All right Let's -- let's see
18 We'll check and be sure that the jury room downstairs is
19 available Okay All right Let's take the jury down to
20 court -- the jury room off of Courtroom 3, and let's be
21 sure there are no newspapers in there

22 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
23 JURY)

24 THE COURT I'm going to send you down to Jury
25 Room 3, but if you -- if you have a soft drink in your

JUANITA GRAY - DIRECT BY MR ROY

1 hand, take it with you There won't -- there will not be
2 anything down there for you

3 A JUROR Judge, can I make a phone call?

4 THE COURT Yeah You can allow him to make a
5 phone call

6 A JUROR Thank you, sir

7 THE COURT I just want to be sure they're out
8 of sound of this courtroom We'll be with you shortly
9 now We all know about 'shortly' by now

10 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
11 JURY)

12 THE COURT Okay, Solicitor, you can play the
13 tape

14 MR ROY Thank you, Your Honor

15 (WHEREUPON, THE 911 TAPE BEGINS TO PLAY OUTSIDE THE
16 PRESENCE OF THE JURY, AND THE FOLLOWING TAKES PLACE
17 DURING THE PLAYING OF THE TAPE OUTSIDE THE PRESENCE OF
18 THE JURY)

19 THE COURT You need to -- Solicitor, you need
20 to play his statement and see whether she can identify his
21 voice

22 (WHEREUPON, THE 911 TAPE CONTINUES TO PLAY OUTSIDE THE
23 PRESENCE OF THE JURY, AFTER WHICH THE FOLLOWING TAKES
24 PLACE OUTSIDE THE PRESENCE OF THE JURY)

25 DIRECT EXAMINATION RESUMES BY MR ROY

1 Q Ms Gray, is that your voice?

2 A That not my voice

3 Q Ms Gray, who was else -- who else was present
4 on that day while this conversation was taking place?

5 A Well, just me, Roger, and -- and somebody was
6 out there making noise, but that wasn't me

7 Q Ms Gray, were you the only female in the house
8 at that time?

9 A No, sir More people came up while -- while he
10 was on there talking to her, to any of them, 911

11 Q Who else used the telephone or talked on the
12 telephone during the 911 call?

13 A I do not know who because everything, everybody
14 was so upset I don't know who all got on the phone, but
15 that's not my voice on there

16 Q Was Roger present in the house during the entire
17 time that phone call was made?

18 A Yeah

19 Q Was there another lady in that house---

20 A Yeah

21 Q ---named Juanita?

22 A No, but I don't recall getting on the telephone

23 MR ROY Nothing further, Your Honor

24 THE COURT Anything from the State? I mean,
25 defense?

1 MR GARDNER No, Your Honor

2 THE COURT Any further witnesses on this issue?
3 You can step down
4

5 THE COURT All right What's the State's
6 response to the defense motion?

7 MR ROY Your Honor, it's the State's position
8 that the defendant, Roger Legette, according to Ms Gray's
9 testimony, was there present the entire time this phone
10 conversation took place Also, there is background noise
11 where he is talking when there is another female on there,
12 so he was there listening attentively, also a part of the
13 tape, so it's the State's position, since he was present,
14 that this tape is admissible, and later in the tape, Your
15 Honor, Mr Legette also comes back on the phone again and
16 later makes another statement

17 THE COURT But there's no person who has
18 identified that as being the defendant's voice

19 MR ROY The grandmother while on the stand
20 said that

21 THE COURT She said that? All right

22 MR ROY She said she was present the whole
23 time he was on the phone with the 911 operator

24 THE COURT Let's go off the record

25 (OFF THE RECORD)

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY)

3 THE COURT All right What is the defense
4 position?

5 MR GARDNER There is an authentication
6 problem, Your Honor I believe there is an unequivocal
7 question and answer to her, "Is this your voice on the
8 tape?" and she said it was not her voice

9 THE COURT Well, I don't have a problem I
10 can't allow that in because she denies that's her unless
11 the State can produce someone who can identify her
12 voice

13 MR GARDNER And I don't know if -- I
14 understand what the solicitor was referring to, but I
15 didn't actually hear the -- the answer I don't know if
16 she identified the voice of Roger Legette, so if she
17 didn't, we'd still have an authentication---

18 THE COURT She -- she identified it

19 MR GARDNER She did?

20 THE COURT Yeah The Court's ruling would be
21 that the portion where Mr Legette is speaking is
22 admissible The rest of it is not admissible, and you'll
23 have to redact whatever needs to be redacted Okay

24 MR GARDNER Yes, sir

25 THE COURT Now, I don't know how you're going

1 to play the tape, I mean, to the jury

2 MR WILSON We'll just have to control it,
3 and what we'll do, Judge, is go and make a copy from
4 the original and redact the -- that portion that needs
5 to be redacted in the copy, and then we'll play the copy
6 for the jury as opposed to the original, if that's
7 satisfactory

8 THE COURT Now, the defense understands if you
9 open the door---

10 MR GARDNER Yes, sir, I understand

11 THE COURT ---or if defense takes the stand,
12 you may open the door to all of this I'm just putting
13 you on notice

14 MR GARDNER Yes, sir

15 THE COURT Okay Now, what other motions do we
16 have? I believe we had some statements you opposed

17 MR GARDNER Yes, sir, that's correct We need
18 to do a Jackson v Deeno

19 THE COURT All right How many statements do
20 we have?

21 MR ROY We just have one under oath

22 MR GARDNER Okay

23 MR ROY We do not have one at the scene
24 There was not a statement taken He never wrote one, nor
25 was there an oral statement at the scene

1 MR GARDNER Okay

2 THE COURT Okay, so there's only one statement
3 then, as I understand it

4 MR GARDNER That's correct, but I believe we'd
5 -- it would be my position that the State would have to
6 put both, the two individuals, up to do a proper Jackson
7 v Deeno on that

8 THE COURT Well, I mean, you know, I wouldn't
9 advise the State how to prove their case

10 MR GARDNER No What I mean is I thought,
11 going into this, that there was two, actually two
12 statements, but I've been told there's only one statement

13 THE COURT Right That's what the State has
14 told the Court Your witness

15 MR ROY Thank Your Honor The State would
16 call Keith Strickland to the stand

17 KEITH WILLIAM STRICKLAND,
18 BEING DULY SWORN, TESTIFIES AS FOLLOWS

19 THE CLERK (DONNA WILLIAMS) Please state your
20 full name and spell your last name for the court

21 THE WITNESS Keith William Strickland Last
22 name, Strickland, S-t-r-i-c-k-l-a-n-d

23 DIRECT EXAMINATION BY MR ROY

24 Q Officer Strickland, where are you employed?

25 A With the Horry County Police Department

1 Q How long have you been employed there?

2 A For three years

3 Q Okay Did you have occasion to respond to 208
4 Barkwood Drive on May 24, 1996?

5 A Yes, I did

6 Q While you were there, did you -- what were your
7 duties while you were there?

8 A Initially to possibly secure a crime scene,
9 after we had additional units on the scene, to locate
10 witnesses and possible suspects concerning the crime
11 (State's Exhibit Nos 12 for Identification marked)

12 DIRECT EXAMINATION RESUMES BY MR ROY

13 Q I'm going to hand you what's been marked State's
14 Exhibit 12 and ask you if you can identify that

15 A Yes, I can It's a---

16 Q And what is that?

17 A ---a copy of the Miranda warning as used by our
18 department, the Horry County Police Department

19 Q On that evening did you advise Mr Legette of
20 his Miranda warnings?

21 A Yes, I did

22 Q Did you do that orally?

23 A Yes, I did

24 Q Did you do that and make him sign and initial
25 that form?

KEITH WILLIAM STRICKLAND - DIRECT BY MR ROY

1 A Excuse me Yes, I did

2 Q Could you read to me what you told Mr Legette
3 on that evening?

4 A I can "You have the right to remain silent
5 Anything you can -- say can and will be used against you
6 in a court of law "

7 THE COURT Now, everything you say she has to
8 write down, so remember that

9 THE WITNESS "You have the right to talk to a
10 lawyer and have him present with you while you are being
11 questioned If you cannot afford to hire a lawyer, one
12 will be appointed to represent you before any questioning,
13 if you wish one If you desire to make a statement or
14 answer questions, you have the right to stop at any time
15 This is to certify that the above rights have been
16 explained to me, and I understand each one of them "

17 DIRECT EXAMINATION RESUMES BY MR ROY

18 Q Officer Strickland, on that evening did you make
19 those rights known to Mr Legette?

20 A Yes, I did

21 Q And what -- and on that evening did he initial
22 that Miranda form as to each and every one of those
23 rights?

24 A Yes, he did

25 Q How many times did he initial and which

1 statements?

2 A He initialed six times Would you like me to
3 read through this again?

4 Q Read where he did initial

5 A Okay "You have the right to remain silent,"
6 and then an initial "Anything you say can and will be
7 used against you in a court of law," and then initial
8 "You have the right to talk to a lawyer and have him
9 present with you while you're being questioned," and an
10 initial "If you cannot afford to hire a lawyer, one will
11 be appointed to represent you before any questioning if
12 you wish one," and then initial "If you desire to make
13 a statement or answer questions, you have the right to
14 stop at any time," initial "This is to certify that the
15 above rights have been explained to me, and I understand
16 each one of them," initial

17 Q Did you ask if he understood his rights?

18 A Yes, I did

19 Q And did he give you an oral response?

20 A Yes, he did

21 Q And what was that response?

22 A It was in the affirmative, yes, he understood

23 Q Did you sign that sheet?

24 A Yes, I did

25 Q And where did you sign it at?

KEITH WILLIAM STRICKLAND - DIRECT BY MR. ROY

1 A At the very bottom of the sheet where it's
2 listed as witness as to defendant's signature

3 Q Did -- at any time did you promise him anything
4 if he made a statement?

5 A No, I didn't

6 Q Did you make any threats to him?

7 A No, I didn't

8 Q Did you force his statement?

9 A No, I didn't

10 Q Was it -- was it -- did he make a statement to
11 you that evening?

12 A No, he didn't

13 Q Did you coerce him in any way?

14 A No, I didn't

15 Q What time did you read him his rights?

16 A It was approximately thirty minutes after our
17 initial arrival on the scene

18 Q So that would be sometime around ten after
19 eleven?

20 A In that neighborhood, very close to that, yes

21 Q Nothing further of this witness

22 CROSS-EXAMINATION BY MR. GARDNER

23 Q What time was it, Officer Strickland, that you
24 read him this Miranda?

25 A It was very close to thirty minutes after our

1 initial arrival on the scene

2 Q If I may get your -- so, you didn't take a
3 statement from him?

4 A No, sir

5 Q Why was that?

6 A At the time we were trying to secure the crime
7 scene and get additional units there. Once that happened
8 my responsibility at that point changed in locating
9 witnesses and possible suspect.

10 Q So the only time y'all talked about anything was
11 when you told him about this?

12 A Yes

13 Q That he had the right to remain silent?

14 A Yes

15 Q You didn't ask him any questions?

16 A No, sir

17 Q He didn't volunteer information to you?

18 A No, sir

19 Q Okay. Let me ask you this part right here where
20 it says, "I'm willing to make a statement at this time
21 I do not want a lawyer," so on and so forth. How come you
22 didn't have him sign that part?

23 A Mr. Legette, after I went over the initial
24 Miranda rights with him, indicated he didn't want to make
25 a statement at that time.

KEITH WILLIAM STRICKLAND - DIRECT BY MR. ROY

1 Q Did you talk with his parents?

2 A His parents -- when I read Mr. Legette his
3 rights, we were in the kitchen area of his residence, and
4 there was four or five other people present at the time,
5 and I believe one of them was his parents

6 Q Who all was present?

7 A Well, like I said, there was maybe brothers or
8 sisters, maybe family members. I know one of them was
9 either his mother or his grandmother was present during my
10 talk with him

11 Q But you're not sure?

12 A No, sir. There was, like I said, there was---

13 Q Did you do a---

14 A ---four or five---

15 Q Did you do a report based on what your
16 investigation or whatever your role was while you were
17 there?

18 A I believe I did a supplemental report, yes, sir

19 Q Would you have placed that information in there
20 after you purportedly mirandized somebody who was the
21 witnesses to it?

22 A I'm sorry. Could you ask that question again?

23 Q Did you do this supplemental report after you
24 had purportedly mirandized him? Would you have put it in
25 your report who was the witnesses to this Miranda?

1 A Possibly I would have to refer to that
2 supplemental report that I wrote---

3 Q Okay

4 A ---in order to give you an accurate answer

5 Q And were you aware of his age at the time, that
6 he was only fifteen years old?

7 A I knew he was under the age of seventeen I
8 wasn't---

9 Q How did you know that?

10 A I believe it was his mother or his grandmother
11 or somebody was telling me that while we were in the
12 kitchen

13 Q What extra precautions did you take to make sure
14 that this fifteen-year-old understood what you were
15 telling him?

16 A I went over -- I went over his Miranda warnings
17 in the presence of who he was living with at the time, his
18 mother or his grandmother

19 Q But you don't know who that was, his mother or
20 his grandmother?

21 A Right

22 Q You don't know which one it was?

23 A Right

24 Q You don't even know if they could read or write?

25 A No, I didn't ask them that

1 Q And you didn't go over this part about making
2 statements with him?

3 A No, sir

4 Q Okay, and you had taken a statement from him
5 Is that correct??

6 A That's correct

7 Q And you're not sure about the time that you did
8 this, but you think it was probably about thirty minutes
9 after you got there?

10 A Yes, sir

11 Q Okay, and what time did you get there? About
12 10 42?

13 A Again, without having our arrival times that
14 were documented on the police report, I -- I can't give
15 you an accurate answer to that It was---

16 Q Okay

17 A ---a while ago

18 Q And trying to take care of the crime scene, you
19 were there for a while before he was taken to J Reuben
20 Long Tell me again why it was you didn't ask him any
21 questions while he as just sitting there, or were y'all
22 waiting on Detective Twigg to come?

23 A After I had went over the Miranda Warning with
24 him, Mr Legette indicated that he did not wish to make a
25 statement to me

1 Q Okay I'm going to show you this and ask you if
2 you can tell me what that is Can you see it?

3 A Yes, sir It's a supplemental report that
4 appears to have been written by me

5 Q Okay, and back on that report you did earlier,
6 that Miranda form, I noticed you didn't put the time on
7 it Is there any particular reason for that?

8 A No, sir

9 (Defendant's Exhibit No 1 for Identification marked)

10 CROSS-EXAMINATION RESUMES BY MR GARDNER

11 Q I hand you what's been marked Defendant's
12 Exhibit ID No 1 You say this was your report that you
13 did for going out there that day?

14 A Yes, sir

15 Q Okay Would you tell the judge what the last
16 sentence says right here?

17 A "Subject R Legette stated the shotgun was not
18 the gun used "

19 Q Now, "R Legette" would be Roger Legette, the
20 defendant Is that correct?

21 A Yes, sir

22 Q Okay, so you did ask him questions, and you did
23 take information from him while you were there based on
24 your report?

25 A That statement was made by Mr Legette upon my

1 approach to the residence, yes, sir

2 Q Okay, and---

3 THE COURT And what -- what did he tell you?
4 What did he tell you?

5 THE WITNESS That the -- stated that the
6 shotgun was not the gun used That's what he told me

7 THE COURT Was that before you gave him
8 Miranda?

9 THE WITNESS Yes, sir

10 CROSS-EXAMINATION RESUMES BY MR. GARDNER

11 Q How are you sure it was before?

12 A As I stated, Mr. Legette was on the front porch
13 of the residence when I was making my approach to the
14 residence, and he made that statement to me then

15 Q But you made this report after the fact, after
16 everything was done you made this report Is that
17 correct?

18 A What do you mean "everything was done"?

19 Q I mean, you didn't make this out before he
20 was taken to J. Reuben Long You wrote this report out
21 after you had had time to reflect on what you had done
22 and where you had gone and who you had asked the questions
23 to?

24 A That's possible, yes, sir

25 Q I mean, it's possible, lots of things are

1 possible Did it have any -- you didn't write that out
2 before he left It's more probable than not that he had
3 already been taken off, and you sat down and wrote that
4 out?

5 A Yes, sir, it's possible I mean, just, you
6 know, we're talking a while back I can't remember
7 exactly when I did the supplemental

8 Q Okay, but that's the only report you did based
9 on this Is that correct?

10 A Yes, sir

11 Q Okay All right Nowhere on that report do you
12 have anything in there about Mirandizing the child?

13 A That's correct

14 Q And nowhere on that report do you have it where
15 it would indicate that you got the information about a
16 shotgun from him prior to Mirandizing him or even after
17 Mirandizing for that matter?

18 A I'm sorry Could you ask me that question
19 again?

20 Q Nowhere on your report did you write down the
21 sequence of events You didn't write down anything about
22 Mirandizing him, correct?

23 A That's correct

24 Q You didn't write down anything about who was
25 there when you purportedly gave this Miranda to him?

KEITH WILLIAM STRICKLAND - DIRECT BY MR ROY

1 A That's correct

2 Q You didn't write down anything about the fact
3 that you'd gone over that he could remain silent at that
4 time or was willing to -- the second part of your -- the
5 solicitor's ID that says, "I'm going to make a statement
6 at this time"? There's nothing in your report that you
7 went over that with him, and there's nothing on this
8 document that says you went over that with him Is that
9 correct?

10 A That's correct

11 Q So it's likely that you didn't go over that part
12 with him, the willing to make a statement part?

13 A I don't -- I will say it's possible I don't --
14 I don't know how likely it would have been, but I would
15 say---

16 Q It's possible?

17 A ---it's possible

18 Q That you didn't talk to him about taking a
19 statement, and it's possible that you don't know---

20 A Well---

21 Q ---who was there because you didn't put it in
22 your report Is that correct?

23 A When, no, I can't -- just because I didn't put
24 it in my report doesn't mean that Mr Legette did not
25 indicate that he didn't want to make a statement

1 Q What does it mean then if it's not in the
2 report?

3 A I don't know the meaning of it I'm just -- I'm
4 just stating that because it's not notated, Mr Legette --
5 that doesn't mean he did not indicate that he didn't want
6 to make a statement

7 Q Well, your testimony while ago is that it was
8 possible that this part here was not gone over with him,
9 the part "I'm willing to make a statement " It's not
10 initialed It's not signed There's nothing in there in
11 the report about it There's nothing in there where you
12 said you went over it?

13 A There's nothing in the report saying I went over
14 it That's correct

15 Q All right Thank you, sir.

16 MR ROY No further questions, Your Honor

17 THE COURT All right You may step down

18

19 THE COURT Next witness

20 MR ROY The State would call Detective Matt
21 Twigg to the stand

22 MATT TWIGG, BEING DULY
23 SWORN, TESTIFIES AS FOLLOWS

24 DIRECT EXAMINATION BY MR ROY

25 Q Detective Twigg, where are you employed?

1 A With the Horry County Police Department

2 Q And what is your position?

3 A I'm a detective assigned to the Violent Crime
4 Section

5 Q Did you investigate the incident in which we're
6 here today?

7 A Yes, sir, I have

8 Q Did you take a statement from Roger Legette?

9 A Yes, sir, I did

10 Q Where did you take that statement from?

11 A It was the breathalyzer room located within the
12 confines of the J Reuben Long Detention Center

13 Q Did you transfer the defendant to the J Reuben
14 Long---

15 A No, sir

16 Q ---Detention Center?

17 A I did not

18 Q At what time did you take this statement?

19 A Approximately 1 00 I'd have to refer to the
20 notes, but I believe 1 00

21 Q Do you know how long the statement was, the time
22 lapse?

23 A No, sir

24 Q On that statement did you advise him of his
25 rights?

1 4A I advised him of the right not to speak to
2 me and reminded him of the rights that were read to
3 him earlier, but I did not advise him per se of the
4 rights

5 Q You did not specifically advise him of each of
6 his rights under the Miranda warnings?

7 A No, sir I did not go over the Miranda form
8 with him again

9 Q Okay, but you did advise him as to if he wished
10 to make a statement?

11 A I advised him that he had the right not to speak
12 to me I asked him if he understood that, and he stated
13 he did

14 Q What was his response when you said, "Do you
15 want to make a statement?"

16 A He said he wanted to

17 Q Who was present at that time?

18 A Initially it was myself and Roger Legette

19 Q Did anyone else come into the room---

20 A Yes

21 Q ---while you were making---

22 A After the interview started underway, a
23 representative or an agent from the Department of Juvenile
24 Justice, Ms Priscilla Cox, arrived, and then was allowed
25 to enter with us

1 Q Prior to taking the statement did you talk to
2 the defendant about anything?

3 A No, sir, just if he was under the influence of
4 narcotics or alcohol or anything of that nature and if he
5 could read and write, if he understood everything fully,
6 and if he had any questions of me

7 Q Was his mother present?

8 A No, sir

9 Q Did he ask for his mother to be present?

10 A No, he did not

11 Q And did you prove him with any food?

12 A He didn't request any If he had, he would have
13 been provided with---

14 THE COURT Now, what time was this you talked
15 to him?

16 THE WITNESS It was in the morning, Your Honor
17 It was after midnight, I'm assuming, around 1 00 I don't
18 have the paper with me I could get it, if you like

19 DIRECT EXAMINATION RESUMES BY MR ROY

20 Q Did you make him any promises on that day?

21 A No, sir, I did not

22 Q Did you make him any threats?

23 A No, sir, I did not

24 Q Did you coerce him in any way?

25 A No, sir, I did not

1 Q Was he co-operative with you?

2 A Yes, sir, he was

3 Q Did he answer all your questions?

4 A Yes, he did

5 Q At any time during this taped interview did he
6 ask for the tape to be turned off?

7 A No, he did not

8 Q Did he make any requests for you to stop?

9 A No, sir, he didn't

10 Q What was his overall demeanor?

11 A Humble

12 Q Did he seem to be forthright?

13 A Yes, sir

14 Q Where was the defendant placed after he was read
15 his Miranda rights by Officer Strickland?

16 A I can only say that upon my arrival on the scene
17 the defendant was already seated in the backseat of
18 Patrolman Strickland's police car, a marked police car

19 Q And did you -- did you instruct someone to take
20 him to J Reuben Long?

21 A Yes, I did

22 Q Okay, and who was that?

23 A That was Patrolman Charles Oliver of the Horry
24 County Police Department

25 Q Where was he placed, and where did he stay until

1 you did the interview?

2 A Being a juvenile he was separated from the adult
3 population of the Horry -- of the detention center. He
4 was placed within the confines of the breathalyzer room,
5 which is separate from the adult housing.

6 Q And to your knowledge did anybody talk to him
7 prior to your arrival?

8 A No, sir. He -- I believe Charles Oliver stayed
9 with him but did not interview or talk to him about the
10 case, just stayed with him until I arrived.

11 Q Nothing further.

12 (Defendant's Exhibit No. 2 for Identification marked)

13 CROSS-EXAMINATION BY MR. GARDNER

14 Q Detective Twigg, I'm going to hand you what
15 we've marked as Defense Exhibit No. 2 for identification
16 purposes only and ask you if you can identify that for me.

17 A Yes, sir. This is a copy of the transcribed
18 interview that I did with your client.

19 Q Page 1 of it?

20 A Yes, sir, page 1.

21 Q Not the whole interview sheet, by any means?

22 A No, sir, just the beginning.

23 Q Okay. If you would, tell the judge on there
24 what you told Roger about his rights, and start with the
25 time I believe the solicitor asked you the time?

1 A Yes, sir Your Honor, this transcription states
2 that it's May 25, 1996, at 1 30 in the morning The
3 interview is taking place at the J Reuben Long Detention
4 Center My question is, "Roger, how old are you please?"
5 His answer is, "Fifteen coming " "Roger, what is the last
6 grade you completed in school?" and his answer was,
7 "Eighth grade, sir " "Question You can understand and
8 read and write English? Response Yes, sir Question
9 Are you under the influence of any drugs or alcohol or
10 anything at this time? Answer No, sir Question
11 Roger, you understand why we're here? Answer Yes, sir
12 Question Earlier today when you were first picked up you
13 were read a series of rights, but you don't have to talk
14 to us You understand that? Answer Yes, sir Is there
15 any questions regarding your rights to -- about making
16 statements that you want me to answer?" His response is,
17 "No " "Question Okay Keeping these rights in mind, do
18 you want to tell me what happened? Answer Sure Why
19 not?"
20 Q Anything else in your conversation with him out
21 at the jail? Did you talk about rights, any of his
22 constitutional rights or Miranda warnings, other than what
23 you just read to the judge?
24 A No, sir
25 Q Okay, and that was at 1 30 in the morning Do

1 you know at what time that he was read -- what the last
2 witness said he was read out at the crime scene?

3 A I believe he stated his rights were read to him
4 about 11 00

5 Q Okay

6 A 11 15 I'm not sure

7 Q Now, you don't dispute the fact that you didn't
8 go by the Miranda form, and you didn't tell him everything
9 that's contained on the Miranda form?

10 A No, sir

11 Q And you knew that he was fifteen years old?

12 A Yes, sir

13 Q With an eighth-grade education?

14 A That's correct

15 Q Did you take any additional steps to understand,
16 other than what you read into the record, to under -- to
17 make sure that he understood?

18 A None other than leaving it up to him at that
19 point when I asked him if he had any questions of me, and
20 he -- he stated he did not

21 Q Did you attempt to get in touch with his parents
22 prior to doing this interrogation?

23 A No, sir, I did not

24 Q You said someone from the Department of Juvenile
25 Justice came up there and joined afterwards?

1 A Yes, sir

2 Q Joined after this part?

3 A After he was advised of his Mirandas or his
4 right, yes, sir

5 Q When the DJJ person got there, did you go back
6 over the Miranda with him ever again?

7 A No, I did not

8 Q Okay Did you know that Detective Strickland
9 or Officer Strickland did not go over or have him initial
10 or sign the part where he's willing to make a statement?

11 A No, sir, I did not I was only advised upon
12 showing up at the scene by Keith Strickland that he had
13 advised him of his Mirandas

14 Q Nothing further

15 (State's Exhibit No 13 for Identification marked)

16 REDIRECT EXAMINATION BY MR ROY

17 Q I'm going to hand you what's been marked as
18 State's ID Exhibit No 13 and ask you to read the last
19 line on that

20 A Okay The time is 1 40 a m "This concludes
21 the interview "

22 Q So, Detective Twigg, you started at 1 30, and
23 that would be a ten-minute interview?

24 A That's correct

25 Q What was the time that this incident took place?

1 A I'm sorry, sir I'd have to look to be exact
2 I can approximate that it was about eleven, 11 30

3 Q Was it 10 35 when 911 was called?

4 A If it's on the report, yes, sir, it was

5 Q What time did you arrive at the scene?

6 A I'm sorry, sir I should have brought my notes
7 with me I can only say it was about 11 15 when I arrived
8 on the scene It's not in there, sir It's -- thank you,
9 sir I have written in my investigative report I arrived
10 on the scene at approximately 11 15 p m

11 Q And what time was it that you -- you had him
12 transported to J. Reuben Long?

13 A It was well after the crime scene lieutenant
14 arrived and took care of the crime scene It was probably
15 midnight, a little after

16 Q Nothing further.

17 THE COURT You may step down

18 THE WITNESS Thank you, sir

19
20 THE COURT Any further witnesses from the
21 State?

22 MR. ROY None from the State, Your Honor

23 THE COURT Anything from defense?

24 MR. GARDNER If I could have one moment, Your
25 Honor Just argument at the appropriate time, Your Honor

1 THE COURT All right Argument, Solicitor

2 MR ROY Your Honor, we are dealing with a
3 thir- -- or a fifteen-year-old, as you well know He was
4 advised of his rights by Officer Strickland He initialed
5 his rights where he was given the opportunity to At that
6 point in time he said he did not want to make a statement
7 He was then placed into a police car and remained there,
8 then taken to J Reuben Long Upon arriving, Detective
9 Twigg, as you've heard---

10 THE COURT Are you saying -- are you saying
11 that at that point he did not want to make a statement?
12 Did I hear you correctly?

13 MR ROY At that point in time he did not
14 indicate to Officer Strickland that he wanted to make a
15 statement At that point in time he was placed in the car
16 and taken out to J Reuben Long Upon arriving Detective
17 Twigg then asked him if he understood his rights to
18 reaffirm what he was already told He also asked him if
19 he wanted to make a statement now, and his response, as
20 read into the record, was, "Sure Why not?"

21 He also stated, by Detective Twigg, he was not
22 coerced, not threatened If his parents wanted to attend,
23 they would have been able to attend By Detective
24 Strickland, his parents were in his presence, or he
25 thought someone, a guardian, was in his presence when he

1 read him his rights

2 This was for only a short period of time It
3 was a ten-minute interview It was taken shortly after
4 the crime scene was -- Detective Twigg arrived on the
5 crime scene, then transported him It was all concluded
6 by eleven, 11 40 in the morn- -- or 1 40 in the morning

7 Based on that there was no coercion, and we
8 believe the State should be allowed to use his statement

9 MR GARDNER And, Your Honor, please, the law
10 is well settled that when it comes to statements when
11 people are being interrogated by law enforcement when
12 they're in custody anywhere, that has to be knowingly,
13 intelligently, and voluntarily entered into

14 Your Honor, In re Williams, 217 SE 2d 719,
15 sets forth the law with regard to whether or not the
16 confession or statement comes in

17 "Admissibility of such a confession depends not
18 on his age alone but on a combination of that factor with
19 such other circumstances as his intelligence, his
20 education, his experience, and the ability to comprehend
21 the meaning and effect of his statement "

22 I have two contentions, Your Honor One is that
23 it wasn't even -- the way it was given to him was not
24 meaningfully and intelligently giving it to him, so he
25 wouldn't be able to effectively waive it, and the second

1 part of that is, Your Honor, based on his young age at the
2 time it happened, you would have to look at all the
3 circumstances, Your Honor, and I don't think it was
4 intelligently waived

5 What you have, Your Honor, Detective Strickland
6 testifying that it's possible he didn't go over that
7 section in the middle of the solicitor's ID with regard to
8 the Miranda It's possible he didn't go over that, so
9 that's---

10 THE COURT Let me see that Let me see the
11 first page of the statement to the other -- to the second
12 witness Go ahead

13 MR GARDNER Yes, Your Honor It's possible he
14 didn't go over that part with him Nothing in his report
15 that he made, Detective Strickland or Officer Strickland,
16 at the time with regard to even Mirandizing him In fact,
17 there is a statement in there where he says that the
18 defendant told him something about a shotgun, didn't take
19 any precautions to ensure the juvenile understood what he
20 was talking about He knew he was young in age He says
21 that there was some other people there, but he didn't
22 take, write down, who they were and what their
23 relationships were

24 Some approximately two and a half to three hours
25 later Detective Twigg gives him the most cursory warning,

1 and he doesn't even enumerate them He doesn't reiterate
2 it to him, and you've got it right in front of you I
3 think it speaks for itself, Your Honor

4 We'd ask that the statement be suppressed

5 THE COURT Looking at the totality of the
6 circumstances, the Court is not clearly convinced that
7 the minor waived his rights, so I find it inadmissible
8 Okay

9 MR GARDNER Thank you, Your Honor

10 THE COURT Okay What other motions do we
11 have?

12 MR GARDNER I may have one more, Your Honor
13 That's all I have at this time, Your Honor

14 THE COURT Any motions from the State?

15 MR ROY No motions from the State, Your Honor

16 THE COURT All right Let's bring the jury and
17 put them back in the main jury room The court reporter
18 has been instructed to mark that tape, and she will retain
19 possession of it Of course, I guess y'all have to redact
20 it

21 MR ROY We have to redact it, Your Honor

22 THE COURT That's true They have to redact
23 it I think we do need to mark, mark -- we can't mark it
24 Let's mark it, and then we'll mark the tape that goes to
25 the -- the jury listens to, also, after you get it, so

1 that would be two There will be one that's played, and
2 there will be one that will be played to the jury We'll
3 need to mark them separate

4 (State's Exhibit No 14 marked)

5 THE COURT Okay Do we have all the jurors
6 now? All right Let's take a short recess and bring them
7 out and have opening statements and take the one witness

8 MR ROY Thank Your Honor

9 MR GARDNER Thank you, Your Honor
10 (WHEREUPON, RECESS IS TAKEN)

11

12 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
13 JURY)

14 THE COURT Where's the clerk? Oh, there you
15 are As soon as the opening statements are over, you give
16 them the pads As soon as the opening statements are
17 over, you give them the pads Okay Are we ready to
18 bring the jury out?

19 MR ROY State's ready, Your Honor

20 MR GARDNER Defense is ready, Your Honor

21 THE COURT Bring them out

22 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
23 JURY)

24 THE COURT Okay You may proceed

25 MR ROY Thank you, Your Honor Ladies and

1 gentlemen of the jury, my name is Roger Roy As I have
2 previously told you, I'm Assistant Solicitor here in the
3 Fifteenth Judicial Circuit This is Ralph Wilson, our
4 Solicitor, and part of our job is to come into court
5 and prosecute someone that's been accused of a crime,
6 and what that job entails is for us to protect the public
7 from these criminals That public is you as jurors, as
8 well as victims and victims' families, and what we are
9 here today for is for murder, which is the most serious
10 crime that we have in our criminal codes, and murder is
11 defined as the unlawful killing of another with malice
12 aforethought, and that sounds like a bunch of legal words,
13 but all malice simply is is the intent to do something
14 unlawful to harm someone, to cause injury to someone, and
15 what an aforethought is is a premeditation, and that
16 premeditation can happen just like that It's just an
17 intent, and the reason we are here today is that this
18 defendant, Roger Legette, did on May 24, 1996, murder
19 Robert Lockhart

20 This is a senseless crime in that there is no
21 real reason It's about a look That's it Plain and
22 simple About a look

23 The State will present evidence and testimony
24 through the stand, and at the end of that evidence and
25 testimony we're going to ask you to find beyond a

1 reasonable doubt that Roger Legette did commit murder
2 Thank you

3 MR GARDNER May Your Honor please, Mr
4 Solicitor, Madam Forewoman, and members of the jury My
5 name is Johnny Gardner, as I indicated to you earlier, and
6 my office is across the street I practice law here in
7 Conway

8 We're here, as the solicitor stated, for a very
9 serious case, and we picked y'all Some of y'all may have
10 been wondering what we were doing when we picked y'all,
11 but we trust y'all to listen to the evidence and make a
12 good and true verdict at the end of the case

13 Pay attention to what the charge is The judge
14 at the end of the case will tell you what the law is on
15 it

16 For murder you do need to have malice, and we
17 submit to you that the evidence will show and that at the
18 end of the case you will bring back a verdict that there
19 will be no malice in this case

20 Now, the State has the burden of proof, as His
21 Honor explained to you, of each and every element of the
22 crime That's beyond a reasonable doubt The judge will
23 explain to you what that means

24 The judge will tell you -- you may have picked
25 up on it when he asked us who our witnesses were, and I

1 said we may have potential witnesses The reason that
2 being is that no defendant in our country has the burden
3 of proof for anything In fact, they don't have to
4 testify They're cloaked with a cloak of innocence, and
5 that remains with them unless the solicitor's office
6 through competent evidence can chip away at that and
7 persuade you beyond a reasonable doubt each and every
8 element of the crime

9 We submit to you there will be no intent, and
10 you will come back with a verdict that speaks the truth,
11 and we ask you to pay good attention to what's going on
12 We know you will do that, and the defendant, keep in mind,
13 has no burden here and that the State has it, and we ask
14 you to hold them to it Thank you

15 THE COURT Your witness

16 MR ROY Thank Your Honor The State would
17 call Dr Edward Proctor to the stand

18 THE COURT Just have him stay with you until
19 we get these pads out All right, ladies and gentlemen,
20 if you would turn your pad over and on the back of it
21 write your name and your number Now, your number will be
22 like this The forelady is No 1, you're No 2, you're
23 No 3, you're No 4, you're No 5, you're No 6 I don't
24 know how the clerk likes to do it You're No 7, 8, 9,
25 10, 11, 12, 13, and 14, so your name and number, that will

1 help us keep it straight as you come and go during the
2 trial

3 Remember the signals Can't hear, pens out,
4 need to take a break Okay

5 EDWARD LEROY PROCTOR, JR ,
6 BEING DULY SWORN, TESTIFIES AS FOLLOWS

7 THE COURT From this point on you need to keep
8 the same seat as you come and go because that's where your
9 pads will be

10 THE CLERK (DONNA WILLIAMS) State your full
11 name and spell your last name for the court

12 THE WITNESS Edward Leroy Proctor,
13 P-r-o-c-t-o-r, Jr

14 DIRECT EXAMINATION BY MR ROY

15 Q Dr Proctor, could you give us the benefit of
16 your position and educational training?

17 A Yes, sir

18 MR GARDNER Your Honor, we would stipulate to
19 his qualifications as an expert in the field of forensic
20 pathology

21 THE COURT So stipulated

22 DIRECT EXAMINATION RESUMES BY MR ROY

23 Q Dr Proctor, on May 26, 1 996, did you perform
24 an autopsy on Robert Lockhart?

25 A Yes, sir, I did

1 Q Okay, and what -- what did that -- what do you
2 do when you perform an autopsy?

3 A When I am requested to perform a forensic or
4 medical/legal autopsy by the coroner, we do several
5 things First, I get a history from the coroner or
6 investigative authorities Then I perform an external
7 examination on the body Then that is followed by a
8 complete dissection to examine the head and all of the
9 body organs

10 Q And on that date did you perform an external
11 examination of the victim, Robert Lockhart?

12 A Yes, sir, I did

13 Q And what were the results of that examination?

14 A The external examination of Mr Lockhart
15 revealed multiple gunshot wounds of entrance and exit
16 about the head There were three entrance wounds and two
17 distinct exit wounds The entrance wounds were on the
18 right side of the head, one being in the neck area, one
19 just anterior to the right ear, and the other one superior
20 to the ear The exit sites, two on the left side of the
21 head, one was anterior to the left ear, and the other was
22 toward the forward in the midline area

23 Q Excuse me Dr Proctor, I forgot to ask you
24 this, but what is the purpose of an autopsy?

25 A The purpose of the autopsy, a forensic case, is

1 to determine the medical/legal cause of death, what
2 happened to the individual, and can I make any kind of
3 determination as to whether it was natural, suicide,
4 homicide, or not determined

5 Q And also along those lines, what is forensic
6 pathology? What -- what does it mean?

7 A Forensic pathology by definition is the
8 medical/legal investigation of death

9 Q Now, back to the examination, Doctor Around
10 the -- what you determine to be the entrance wound -- was
11 there some sort of what's called stippling, and if you
12 could explain that to the jury?

13 A Yes, sir What he means by stippling is the
14 actual powder that comes out of the end of a gun when it
15 is fired As the bullet leaves the end of the gun, there
16 is hot burning gun powder, as well as the smoke and soot
17 associated with firing the gun Stippling of the skin
18 occurs when the hot gun powder actually hits the skin and
19 burns the skin Residue is the actual smoke and soot that
20 comes out and discolors the skin That can be wiped away,
21 but the stippling actually leaves marks in the skin that
22 you cannot wipe away

23 Q Was stippling discovered on the defen- -- on
24 the decedent?

25 A There was stippling associated with the three

1 entrance wounds on the right side There was an area
2 measuring approximately, I think, an inch and a half --
3 let's see -- there is -- there was surrounding stippling
4 The entrance wound measured about a half a centimeters
5 each with surrounding stippling, which indicates that this
6 gun was fired within a very close range

7 Q Doctor, what are -- what are you referring to
8 there? Is that the autopsy report?

9 A Yes, sir, it is

10 MR ROY If I could get this marked as State's
11 exhibit

12 (State's Exhibit No. 15 for Identification marked)

13 DIRECT EXAMINATION RESUMES BY MR ROY

14 Q When you say, "stippling," how close does a gun
15 have to be in order to cause stippling based on your
16 expert knowledge?

17 A Stippling from a handgun usually occurs at a
18 distance from close contact, which means just against the
19 skin to a distance of approximately twelve to eighteen
20 inches

21 Q Show the jury what you mean by twelve to
22 eighteen inches

23 A Twelve to eighteen inches, a foot to a foot and
24 a half, slightly longer than the distance of a standard
25 ruler that you would put in a notebook

1 Q On your report, paragraph 1 under the external
2 extremities, you cite that there is no powder residue?

3 A There -- there is no powder residue Some
4 weapons put out very little smoke The ammunition uses
5 smokeless powder In those cases you get some stippling,
6 may or may not get the actual blackening powder

7 Q Would that be true in a 25-calibre handgun?

8 A It -- it certainly can

9 Q Also, you described two exit wounds where
10 were the exit wounds?

11 A The exit wounds noted on Mr Lockhart, one was
12 anterior to the left ear, and the other was on the left
13 side towards the forehead area, up higher, somewhere in
14 this area here

15 Q And what -- what does that mean in comparison to
16 where an entrance and an exit wound? Does that give the
17 path of a bullet?

18 A In -- in most cases it gives the path of the
19 bullet Sometimes with multiple gunshot wounds when these
20 bullets hit bone, they can deflect in different
21 directions, so you pretty much have to remove the brain
22 and follow the paths of these projectiles to find out
23 which one went in which direction

24 Q Were you able to determine that in this case?

25 A Yes, sir, I was

1 Q What was your determination?

2 A The wounds anterior to the ear was pretty
3 much a right to left direction wound, and I feel like it
4 was the one that came out anterior to the left ear The
5 more superior wound on the right side, I feel like, was
6 the one that came out in the forehead area, and the wound
7 in the neck did not have an exit wound, and from that
8 wound site up into the brain tissues, we removed a
9 projectile

10 (State's Exhibit No 16 for Identification marked)

11 DIRECT EXAMINATION RESUMES BY MR ROY

12 Q I'm going to hand you what's been marked
13 as State's Exhibit 16 and ask you if you recognize
14 that

15 A Yes, sir, I do

16 Q Okay, and what is that?

17 A This is a tube labeled with the name of Robert
18 Lockhart It contains a projectile, which is an
19 approximate at least twenty-two to approximate twenty-five
20 calibre---

21 Q Does that look like the one you removed from Mr
22 Lockhart's head?

23 A Yes, sir, it does The labeling on the tube is
24 my writing

25 Q And from what part of his head did you remove

1 that?

2 A This projectile was removed from the brain
3 tissues in the left side of Mr Lockhart's head

4 Q Would someone that had three gunshot wounds have
5 been conscious when he arrived or -- or if he was found?

6 Excuse me

7 A It -- three gunshot wounds to the head,
8 depending upon the areas of the brain through which the
9 bullets transverse and the amount of hemorrhage inside the
10 head as a result of those wounds, can certainly determine
11 what level of consciousness there was I don't practice
12 clinical medicine, but in all likelihood, being conscious
13 in the sense that we are here talking, I would not think
14 so

15 Q Which wound of those three caused the death?

16 A All three of the wounds penetrated the brain.
17 All three of the wounds were from a close range with
18 associated concussion and expansion of the tissues Any
19 of these three wounds would have been sufficient to have
20 caused enough brain damage to result in the death

21 Q Again, the angle of the wounds were from left to
22 right?

23 A Right to left

24 Q Right to left?

25 A Yes, sir

1 Q And on the internal examination of the victim
2 did you find any traces of alcohol or drugs?

3 A On the internal examination of Mr Lockhart I --
4 I found no evidence of alcohol and a urine drug screen was
5 negative

6 Q Were there any other significant findings as to
7 Mr Lockhart?

8 A Mr Lockhart had a few findings that you tend to
9 see in men of his age He had emphysema of the lungs,
10 which indicates that he was probably a smoker He had
11 just congestion of his visceral organs, and he had mild
12 hepatic steatosis, which was accumulations of fat in the
13 liver

14 Q Why do you call these symptoms significant?

15 A They are significant in that they are not normal
16 in the sense of normal histologic anatomy

17 Q Could you describe kind of his physical
18 appearance on that day?

19 A He was a thin Caucasian male, appeared to be
20 middle aged, clean shaven, did not appear externally to
21 have any abnormalities that -- that I could notice

22 Q So you'd call him a healthy, what, fifty-eight-
23 year-old male?

24 A Yes, sir

25 Q When you removed the bullet from the skull, who

1 did you then give that to?

2 A This projectile was removed by me, placed in
3 that container and labeled, and given to Officer Twigg of
4 the Horry County Police Department

5 Q And, Dr -- Dr Proctor, what is the official
6 cause of death here?

7 A The official cause of death for Mr Lockhart
8 were the gunshot wounds to the head

9 Q Nothing further

10 A Okay

11 Q Please answer any questions Mr Gardner has

12 CROSS-EXAMINATION BY MR GARDNER

13 Q Dr Proctor, you do a lot of these type
14 autopsies Isn't that correct?

15 A That's correct

16 Q And you do them in other counties, too, or---

17 A. I do autopsies for coroners from several other
18 counties I do most of them there at Myrtle Beach

19 Q And you've probably done a bunch of them?

20 A I have

21 Q Do you have any way of telling how much time was
22 passed between each of the bullets?

23 A No, sir, I do not

24 Q So let me ask you, those wounds inflicted on Mr
25 Lockhart, would they be consistent with someone, based on

1 the angles and everything, getting scared, pulling out a
2 gun, and -- and just firing randomly?

3 A Well, it's certainly possible that someone could
4 be scared and firing a gun It's certainly possible that
5 someone could be pointing it directly at Mr Lockhart
6 The only thing I can say with absolute certainty to you is
7 that the wounds to Mr Lockhart's head were from a very
8 close range I -- I assume anyone could be scared and
9 shoot or point it directly at him and shoot

10 Q And there weren't -- there was no contact You
11 -- I believe -- is that correct?

12 A Each of -- each of these wounds has a degree of
13 stippling about the entrance site with what I described as
14 a small abrasion collar around the entrance site An
15 abrasion collar is actually where the bullet entering the
16 skin abraded the skin A contact wound per se would have
17 very little stippling, and you would see a muzzle imprint,
18 which is actually the imprint of the end of the gun,
19 pressed against the skin

20 Q That wasn't the case here?

21 A That was not the case here

22 Q Okay, and that stippling, that could show up as
23 far as, depending on the type of weapon, as far as
24 eighteen, twenty inches away?

25 A Handguns per se rule of thumb is anywhere from

1 close contact, which is up adjacent to the skin but not
2 pressed hard into the skin, up to a distance of
3 approximately eighteen to twenty inches

4 Q Thank you, Dr Proctor

5 MR ROY We ask that this witness be excused at
6 this time

7 THE COURT Any objection?

8 MR GARDNER No objection, Your Honor

9 THE COURT You may step down Thank you

10 THE WITNESS Thank you, sir

11

12 THE COURT Okay, ladies and gentlemen, I'm
13 going to excuse you for the evening It's grown late
14 Leave your pads face down Madam Clerk, secure the pads
15 for the evening Have you -- I hope you all put your name
16 and number on the back, so you'll be sure and get them
17 back Okay They'll be secured so no one will be able to
18 read your notes

19 I need you to report back to this jury room --
20 jury room here at 9 45 tomorrow Now, that means I need
21 you in the jury room at 9 45, not looking for a place to
22 park, okay Sometimes you have a difficult time finding
23 a place to park during court

24 Madam Clerk, get this, these good jurors, some
25 biscuits tomorrow Get those good ones, the good ones

1 Don't get those cheap ones Get the good ones

2 Okay We'll have some sausage and ham biscuits
3 waiting for you to go with your coffee when you get here,
4 so you need to get here a little bit earlier than 9 45

5 My plans, which sometimes it doesn't happen, is
6 to bring you out at 9 45 for additional testimony Okay
7 Have a good evening If you have anything in the jury
8 room, you need to go get it

9 Do not discuss this case with anyone Do not
10 watch anything on TV, radio, newspapers

11 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
12 JURY)

13 THE COURT Is there anything else we need to
14 take up before we break for the evening?

15 MR ROY Yes, Your Honor The trial has
16 started, and the defendant should remain in custody

17 THE COURT He's in custody, yeah He's in
18 custody

19 MR GARDNER Nothing from the defense, Your
20 Honor

21 THE COURT Okay Let's, please -- I want to
22 bring the jury out at 9 45 -- if you have something you
23 want to take up with me, take it up with me at 9 30
24 tomorrow, not 9 45

25 MR GARDNER Yes, Your Honor

1 THE COURT All right We'll recess until
2 9 45

3 (WHEREUPON, THE TRIAL ADJOURNS FOR THE DAY)
4

5 (WHEREUPON, THE TRIAL RESUMES ON AUGUST 5, 1997, AND THE
6 FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY)

7 THE COURT Okay Motion

8 MR GARDNER Yes, Your Honor May Your Honor
9 please It has been brought to my attention by the
10 solicitor's office that they are going to call some
11 witnesses that are relatives of my client, and there is an
12 allegation that the potential witnesses and my client were
13 involved earlier in the day with a handgun The police
14 were called out there, no crime, no arrest That in my
15 opinion has no relevance to what happened at 10 30 that
16 night We would ask for---

17 THE COURT What time was this they -- they were
18 out there allegedly with guns?

19 MR GARDNER Ten to 12 30 that morning, Your
20 Honor, so approximately ten to twelve hours before the
21 incident

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

23 MR ROY The State's position, Your Honor, is
24 that if he had the gun in his possession, it would go to
25 possession of a handgun that that juvenile was firing that

1 day, and we do believe it is relevant

2 THE COURT I -- I agree with the State Motion
3 denied

4 MR GARDNER Thank Your Honor

5 THE COURT Is the State ready to proceed, or
6 are we waiting for Solicitor Wilson?

7 MR ROY State's ready to proceed, Your Honor

8 THE COURT You're not -- Solicitor Wilson said
9 he needed a few minutes

10 MR ROY The solicitor, he will be back in the
11 courtroom

12 THE COURT Okay Is the State ready?
13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JURY)

15 THE COURT Well, good morning, ladies and
16 gentlemen Sorry we couldn't bring you out I've been
17 here I saw some of you coming up the steps

18 You all have your pads, I assume Everybody has
19 their own pad? Good Good

20 Did you locate a biscuit in there? I'm glad you
21 did I didn't locate one I missed breakfast this
22 morning, too I almost went in there to see if I could
23 borrow one from you I believe there's nothing left but
24 the paper wrappers in there probably No? Okay

25 I think we're ready to proceed, but I need to --

ANTHONY FRANKLIN HAITHCOCK - DIRECT BY MR ROY

1 the clerk's going to poll the jury, and all this means is
2 we -- it's just for the record -- we've got to ascertain
3 that the jurors who were picked yesterday are present in
4 the jury box and in the alternates' seats Okay, Madam
5 Clerk

6 (WHEREUPON, THE JURY IS POLLED BY THE CLERK, DONNA
7 WILLIAMS)

8 THE COURT Was everyone's name called?

9 (WHEREUPON, THE JURY RESPONDS AFFIRMATIVELY)

10 THE COURT Okay Now, I have to also inquire
11 -- remember I instructed you and told you I'd probably
12 inquire about this during the trial of this case -- did
13 anyone listen to anything about this case on the radio,
14 read anything in the newspaper, watch anything on TV?
15 If you did, raise your hand Okay Let the record
16 reflect all responded in the negative Is the State
17 ready?

18 MR ROY The State's ready, Your Honor

19 THE COURT Okay

20 MR ROY The State would call Anthony Haithcock
21 to the stand

22 ANTHONY FRANKLIN HAITHCOCK,
23 BEING DULY SWORN, TESTIFIES AS FOLLOWS

24 THE CLERK (DONNA WILLIAMS) Please state your
25 full name and spell your last name for the court

1 THE WITNESS Anthony Franklin Haithcock Last
2 name's H-a-i-t-h-c-o-c-k

3 DIRECT EXAMINATION BY MR ROY

4 Q Mr Haithcock, where are you employed today?

5 A I'm employed with Midway Fire Department in
6 Pawleys Island

7 Q Were you employed there on May 24, 1996?

8 A Yes, sir

9 Q Okay, and what is your position there?

10 A With Midway I'm a -- a firefighter

11 Q Firefighter On May 24, 1996, did you have
12 occasion to go to 208 Barkwood Drive in Conway?

13 A Yes, sir, representing the Horry County Fire
14 Department

15 Q And when you arrived there, what did you see?

16 A I responded to that address and knocked on the
17 door and asked if they called for EMS, and an elderly
18 lady come to the door and said that a gentleman had been
19 shot down the road, so I responded from there to the
20 incident

21 Q Okay On that day did you view the body?

22 A Yes, sir

23 Q I'm going to show you what has been marked
24 State's Exhibit 3 and ask you if that's what you saw on
25 that day

- 1 A Yes, sir
- 2 Q Okay Did you see the body?
- 3 A Without the sheet
- 4 Q I ask you, if you would, how were his feet on
- 5 that day? Where was the victim's feet at?
- 6 A They were still in the vehicle
- 7 Q And where was the rest of his body lying?
- 8 A Outside of the vehicle
- 9 Q And what condition was it in?
- 10 A Well, I checked his pulse He had no pulse, so
- 11 I presumed he was dead
- 12 Q And is that the only time you touched the body?
- 13 A Yes, sir
- 14 Q Did you notice anything else laying around at
- 15 that time?
- 16 A No, sir
- 17 Q And what did you do next?
- 18 A I went back to my vehicle, called my dispatcher,
- 19 and advised him of the situation I had
- 20 Q Okay How long did you stay on the scene?
- 21 A Around thirty, forty minutes
- 22 Q Okay Who else arrived while you were there?
- 23 A Officer Butler with the Horry County Police
- 24 Department and two or three EMS units
- 25 Q Did you do anything to try and resuscitate t he

1 body?

2 A No, sir

3 Q Was it -- when you arrived, you just assumed he
4 was dead?

5 A Yes, sir

6 Q You didn't touch the body?

7 A Just -- just to check the pulse

8 Q And you didn't move the body?

9 A No, sir

10 Q No further questions

11 CROSS-EXAMINATION BY MR GARDNER

12 Q The solicitor showed you a picture, which I
13 believe is State's Exhibit 3 for Identification That
14 doesn't accurately and truly depict what you saw when you
15 got there Is that correct?

16 A As far as everything was -- looked what I seen,
17 except for the sheet

18 Q Thank you

19 THE COURT You may step down

20 MR ROY No further questions

21

22 MR ROY The State would call Lonnie Gray to
23 the stand

24 LONNIE WESLEY GRAY, BEING
25 DULY SWORN, TESTIFIES AS FOLLOWS

1 THE CLERK (DONNA WILLIAMS) Please state your
2 full name and spell your last name for the court

3 THE WITNESS Lonnie -- Lonnie Wesley Gray,
4 G-r-a-y

5 DIRECT EXAMINATION BY MR ROY

6 Q Mr Gray, where do you live?

7 A 208 Barkwood Drive, Conway

8 Q And who do you -- who do you live with there?

9 A My mother

10 Q Who else? Is that the only -- are you the only
11 two that reside in that home?

12 A No

13 Q Who else lives there?

14 A I have another brother stay there and a friend

15 Q And what -- what's your other brother's name?

16 A James He wasn't staying there at the time

17 Q All right Mr Gray, are you related to the
18 defendant, Roger Legette?

19 A Yes, sir

20 Q And what is your relationship to him?

21 A Nephew

22 Q You're his nephew, or he's your---

23 A He's my nephew

24 Q He's your nephew Mr Gray, you don't want to
25 see him get in any trouble, do you?

1 A No, sir, no one

2 Q You don't want to see anyone get in any trouble,
3 and you -- you're going to do what you can to help the
4 State and help him at the same time, are you not?

5 A Yes, tell the truth

6 Q Let's talk about the incident on May 24, 1996
7 Did you witness that incident?

8 A I didn't witness the incident I was home
9 afterwards

10 Q You were home at 208 Barkwood Drive Were you
11 there when Mr Legette called the cab company?

12 A No, sir

13 Q What time did you arrive home?

14 A I don't remember the time

15 Q Okay Was it prior to the incident then?

16 A Well, I was home when the incident took place
17 I was home

18 Q You were home What were you doing at that
19 time?

20 A I was in bed

21 Q You were in bed Were you asleep?

22 A Yes, sir

23 Q Okay Tell me what happened when Mr Legette
24 got back to the home after the incident took place?

25 A Well, he woke me up

1 Q He woke you up Do you remember what time that
2 was?
3 A No, sir, I don't remember no time
4 Q Okay Do you remember what he told you?
5 A Yes, sir
6 Q And what did he tell you?
7 A Well, he woke me up He was crying, and he said
8 he incidentally shot someone, and he kept saying---
9 Q Okay Who was---
10 A ---he didn't meant to do it
11 Q Did he tell you who he shot?
12 A No, sir
13 Q Okay Did you leave the house at any point in
14 time after he told you that?
15 A Yes
16 Q And what did you do?
17 A I went and seen where the man was
18 Q Okay, and what did you see?
19 A Well, I seed the cab car parked crossway the
20 road I -- I didn't go all the way up to it
21 Q Okay What else did you see?
22 A The doors open
23 Q Did you see a body laying there?
24 A Not from where I -- I didn't see no body
25 Q You saw the cab stopped?

- 1 A Yes
- 2 Q And the door open?
- 3 A Yes
- 4 Q About how far away from the home?
- 5 A I'd say approximately 300 yards
- 6 Q 300? Were you present with the defendant that
- 7 whole time until the police arrived?
- 8 A No, sir
- 9 Q And what else did you do then?
- 10 A I went and told his mother
- 11 Q Were you present when the 911 call was made?
- 12 A No, sir
- 13 Q Where were you at then?
- 14 A I was on the way to tell his mother
- 15 Q So you left the house to go tell his
- 16 mother?
- 17 A Yes
- 18 Q Nothing further Please answer any questions
- 19 Mr Gardner might have
- 20 CROSS-EXAMINATION BY MR GARDNER
- 21 Q Lonnie, I'm not sure I understood you Did
- 22 you say "accidentally" or "incidental" -- it was an accident?
- 23 A Yeah He said he accidentally shot a man
- 24 Q Okay, and he was crying?
- 25 A Yes

1 Q Did you see Craig and George?
2 A At what point?
3 Q At that time, anytime that night?
4 A Yes, sir
5 Q How were they doing?
6 A They was upset
7 Q They was upset? Craig was crying pretty bad,
8 wasn't he?
9 A Yes, sir
10 Q Roger was crying pretty bad?
11 A Yes, sir
12 Q Thank you
13 REDIRECT EXAMINATION BY MR ROY
14 Q Mr Gray, did Mr Legette tell you how many
15 times he accidentally shot the cabdriver?
16 A No, sir
17 Q Nothing further
18 THE COURT You may step down
19
20 THE COURT Next witness
21 MR ROY Your Honor, I'm
22 checking on it to see if a witness is here yet, Your
23 Honor
24 THE COURT Okay
25 MR ROY Ira Parnell please

1 IRA BYRD PARNELL, JR , BEING
2 DULY SWORN, TESTIFIES AS FOLLOWS

3 THE CLERK (DONNA WILLIAMS) Please state your
4 full name and spell your last name for the court

5 THE WITNESS My name is Ira Byrd Parnell, Jr ,
6 P-a-r-n-e-l-l

7 DIRECT EXAMINATION BY MR ROY

8 Q Mr Parnell, where are you employed at?

9 A I am employed by the State Law Enforcement
10 Division, otherwise known as SLED

11 Q And what is your position there?

12 A I'm the supervisor of the Firearm and Tool Mark
13 Identification Laboratory at SLED Headquarters in
14 Columbia

15 Q Do you have a title?

16 A Lieutenant

17 Q Do you mind if I call you Lieutenant?

18 A No, sir

19 Q Lieutenant, if you could, would you give us the
20 benefit of your education and training?

21 A I have a Bachelor's Degree from the University
22 of South Carolina, and during the last portion of my
23 college career I underwent a intensive two-year internship
24 program under three court-qualified firearms examiners at
25 SLED Headquarters There is no specific school that

1 teaches the discipline of firearms identification, so it
2 must be taught on the job or as a -- a tutor/student type
3 of situation I underwent this training at SLED I'm a
4 graduate of the FBI National Academy, our State Criminal
5 Justice Academy Each place I received specialized
6 training in firearms I've also attended numerous other
7 courses involving firearms identification at the FBI
8 National Academy in Quantico, Virginia I'm a member of
9 the Association of Firearm and Tool Mark Examiners, which
10 is an international organization of firearm examiners who
11 meet once a year for one week to receive additional
12 training in the area of firearms identification I've
13 testified approximately 500 times as an expert witness and
14 have been working in firearms for approximately twenty-
15 four years

16 Q Does that testifying include ballistics reports?

17 A Yes, sir

18 MR ROY At this point in time the State would
19 move Mr -- Lieutenant Parnell in as an expert in firearms
20 and ballistics

21 THE COURT Any objection?

22 MR GARDNER No, Your Honor

23 THE COURT I find he's qualified

24 DIRECT EXAMINATION RESUMES BY MR ROY

25 Q Lieutenant Parnell, were you involved with this

1 case; the Roger Legette case?

2 A Yes, sir, I was

3 (State's Exhibit Nos 17 through 25 for Identification
4 marked)

5 DIRECT EXAMINATION RESUMES BY MR ROY

6 Q I'm going to hand you what has been marked
7 as State's Exhibit 17 and ask you if you can identify
8 that

9 A State's Exhibit 17 is sealed under my initials
10 I'm going to open the seal now to check for my individual
11 markings on the evidence Yes, sir State's Exhibit 17
12 bears my case number, specimen number, and initials on
13 it

14 Q Who did you receive that gun from?

15 A Let me check my paperwork please, sir State's
16 Exhibit No 17 was submitted by Myron Creel

17 Q Is he a member of the police department here in
18 Horry County?

19 A Yes, he is

20 Q How did you receive that gun? How was it
21 packaged?

22 A In a sealed container

23 Q - And then what did you do with it after you
24 packaged it back up after you examined it?

25 A When I examined it and completed my examination,

1 I sealed it as I indicated earlier, and it was returned
2 through our evidence channels

3 Q Let me show you what has been marked as State's
4 Exhibit 18 and ask you if you recognize that

5 A Yes, sir, I do State's Exhibit No 18 also has
6 my case number, specimen number, and initials on it

7 Q How was it packaged when you received that?

8 A Along with State's Exhibit 17 in a sealed
9 container from Myron Creel

10 Q And you're sure that is the -- that was what you
11 received?

12 A Yes, sir It's got my initials on the cartridge
13 case

14 Q Let me show you what's been marked as State's
15 Exhibit 19 and ask if you can identify that

16 A Yes, sir The two cartridge cases in State's
17 Exhibit 19 was also received, along with the other items
18 of evidence

19 Q Packaged the same way?

20 A From Myron Creel, yes, sir

21 Q State's Exhibit 20?

22 A State's Exhibit 20 was also received, along with
23 the other evidence It has my initial and specimen number
24 on the base of the bullet, and it was received along with
25 the other evidence

1 Q And from Lieutenant Creel?

2 A Yes, sir

3 Q State's 21?

4 A State's 21 was also received with the rest of
5 the evidence from Myron Creel It's also got my specimen
6 number and initials on the bullet

7 Q Packaged with the other evidence as well?

8 A Yes, sir

9 Q State's Exhibit 22?

10 A State's Exhibit 22 was received with the rest of
11 the evidence It has my case number, specimen number, and
12 initials scribed on the magazine itself

13 Q Again from Myron Creel?

14 A Yes, sir

15 Q State's Exhibit 23?

16 A The items contained in State's Exhibit 23 was
17 also received in the same manner from Myron Creel

18 Q State's 24?

19 A State's Exhibit 24, likewise it has my case
20 number and initials on it

21 Q State's Exhibit 25?

22 A The items contained in State's Exhibit 25 were
23 also received from Lieutenant Creel They also bear my
24 case number, specimen number, and initials

25 Q And finally State's Exhibit 16?

1 A Yes, sir State's Exhibit 16 was also received,
2 and it has my specimen number and initials on it

3 Q Lieutenant Parnell, what's involved in testing
4 a gun for ballistic markings?

5 A In order to determine whether or not a fired
6 bullet or fired cartridge case was fired out of a
7 particular firearm, we would first determine if the
8 firearm is in working condition We do this by visual and
9 mechanical type examination Once we determine that the
10 -- the weapon is functioning properly, then we will
11 determine what type of ammunition is involved in the case
12 We'll go to our stock of ammunition, which we keep for
13 test-firing purposes, and retrieve bullets and/or
14 cartridges that are exactly like the evidence We will
15 test-fire the firearm in question into a big tank of
16 water The reason we use water is that water will slow
17 the bullet down without causing it to expand or distort,
18 and it doesn't take away or add any markings to the -- the
19 test bullets, which we fire ourselves We will then
20 examine the test bullets one with each other, and we do
21 this to determine if each bullet is marked by the gun in
22 the same fashion The markings I'm talking about are
23 microscopic in nature You can see with your naked eye
24 gross characteristics or larger characteristics, but in
25 order to make a positive identification, I use a

1 comparison microscope Now, these markings are placed
2 inside the gun barrel during manufacture They're not a
3 thing that -- that somebody intends to do, but they're put
4 there in a random and individual fashion by the tooling
5 that cuts the inside of the gun barrel to form the
6 rifling The purpose of rifling is to spin and control
7 the bullet during flight It's much like throwing a
8 football If you spiral the football, it goes straight to
9 where you want it to go usually instead of throwing it
10 sideways, and it would float everywhere The same
11 principle applies to a bullet If it's spinning,
12 spiraling, if you will, then it tends to go straighter and
13 is more controllable The rifling or the -- the surfaces
14 inside the gun barrel that grip the bullet as it goes
15 through that barrel mark it, and they -- they put
16 individual markings on that bullet that no other firearm
17 will put there, and no matter if it's the same calibre,
18 the same brand Each individual gun barrel is individual
19 and unique, and by examining microscopically the marks on
20 the bullets that I fired from the gun, then I know that
21 this gun does or does not mark each bullet in the same
22 fashion If the bullet is what we call consistent or if
23 it does mark each bullet in the same way, then I will
24 compare the evidence bullets and/or cartridge cases with
25 the ones that I fired If I find sufficient individual

1 markings that are common to both bullets, in other words,
2 if their bullets from the crime scene are marked in the
3 same fashion as the ones that I fired, then I know that
4 the gun in question is the gun that fired the bullets from
5 the crime scene

6 Q When you're talking about firing bullets, you're
7 not talking about firing the bullets that have been given
8 to you, are you?

9 A I don't understand your question

10 Q You're firing not the bullets that I've shown
11 you, right, just other bullets that you test?

12 A No, I have -- we have our own stock of bullets
13 that we use for test specimens Nothing is done to
14 evidence, other than examining and possibly putting small
15 initials on it

16 Q And let me hand you what's been marked as
17 State's Exhibit 17 and ask you to tell the jury how you
18 tested this gun

19 A This is an Excam 25-calibre semiautomatic
20 pistol, and as I described earlier, upon examining the
21 evidence bullets and cartridge cases and unfired
22 ammunition received in this case, I determined what brand
23 and what calibre and what type bullet construction were
24 involved I then retrieved bullets from our test stock,
25 which is actually a room that has shelves with different

1 calibers of bullets on it I went in and recovered the
2 same kind of bullets that are involved in the case, and
3 I test-fired these bullets in this pistol As I said,
4 I -- I loaded the weapon, fired it into our water tank
5 The bullets lose velocity, go to the bottom of the tank,
6 and wind up in a little cup, much like a sink strainer
7 in the bottom Our tank is approximately nine feet deep,
8 so there's plenty of water to slow the bullet down I
9 pulled them up, and I examined each test bullet with each
10 other test bullet and determined that this firearm marks
11 each test bullet in the same fashion, and I was able to
12 compare the evidence bullets submitted to me with those
13 tests

14 Q I hand you what's been marked as State's Exhibit
15 16 Was that consistent with the test-fired bullets?

16 A The 25-calibre bullet contained in State's
17 Exhibit 16 was, in fact, fired by this pistol and no other
18 firearm

19 Q I hand you what's been marked State's Exhibit 21
20 and ask you the same question Was this fired by Exhibit
21 17?

22 A Yes, sir The fired 25-calibre bullet contained
23 in State's Exhibit 21 was fired by State's Exhibit 17,
24 this pistol, and no other firearm

25 Q State's Exhibit 18?

1 A State's Exhibit 18 is a fired cartridge case
2 We do the same type of examination only it's a little
3 different type of markings Could I hold State's Exhibit
4 17 please, sir? The same examination applies in that I am
5 looking for individual characteristics that are particular
6 to a -- a firearm, in this case State's Exhibit 17
7 Instead of looking at marks on the outside of a bullet,
8 I'm looking at the marks on the back end or the breach end
9 of a cartridge case, and when the gun is fired, what we
10 feel as recoil causes marks that are left right around the
11 firing pin in State's Exhibit 17 and in any other firearm
12 The breach face is the area right inside Like I said,
13 it's right around where the firing pin is, and when the
14 gun is fired, that recoil that we feel stamps or impresses
15 the individual marks left by manufacturing on the back end
16 of each cartridge case that -- that I fired out of State's
17 Exhibit 17 By examining those individual markings, I was
18 able to determine that State's Exhibit 18 was fired by
19 State's Exhibit 17 and no other firearm

20 Q State's Exhibit 19?

21 A Likewise, the two fired 25-calibre cartridge
22 cases contained in State's Exhibit 19 were also examined
23 and compared in the same fashion, and I determined that
24 they were fired by State's Exhibit 17 and no other
25 firearm

1 Q State's Exhibit 23?

2 A State's Exhibit 23 contains one fired bullet and
3 two fired cartridge cases, all of which are 25-calibre and
4 all of which were individually and collectively identified
5 as having been fired out of State's Exhibit 17, this
6 pistol, and no other firearm

7 Q State's Exhibit 24?

8 A State's Exhibit 24 is another fired 25-calibre
9 cartridge case, also identified individually to State's
10 Exhibit 17, this pistol, and no other firearm

11 Q Finally, State's Exhibit 20?

12 A State's Exhibit 20 is another fired 25-calibre
13 bullet It was also identified as having been fired by
14 State's Exhibit 17 and no other firearm

15 Q Did you find State's Exhibit 17 to be in proper
16 working order?

17 A Yes, sir, I did

18 Q Okay When you fire this gun, do you have to
19 pull the trigger each and every time a bullet comes out?

20 A Yes, sir It's what we call a semiautomatic
21 pistol In other words, when the magazine, having
22 cartridges in it, is introduced into the magazine well,
23 the bottom of the grip here, you must pull the slide to
24 the rear and release it, and when you do that, you also
25 leave it in a cocked condition You can either let the

1 hammer down, or you can leave it cocked Any way you have
2 to pull the trigger one time for each round that the gun
3 shoots It -- it is not an automatic It does not shoot
4 or empty itself with one pull of the trigger Each pull
5 of the trigger causes one bullet to be fired

6 Q Is this the magazine that properly fits State's
7 Exhibit 17?

8 A Yes, sir, it is, and this is---

9 Q Okay, and how---

10 A ---State's Exhibit 22

11 Q How many bullets does State's Exhibit 22 hold?

12 A If you have a completely loaded magazine of
13 such as State's Exhibit 22, if you load all the cartridges
14 into that magazine that it will hold, which is seven,
15 and you introduced it into the magazine well into the
16 base of State's Exhibit 17, and you charge one, or you
17 put one into the barrel, you release the hammer, then you
18 can remove the magazine, load another one on top of it,
19 which will again fully load the magazine, for a total of
20 eight rounds It'll hold a maximum of eight rounds If
21 all you do is put a loaded magazine in, it'll hold seven
22 rounds

23 Q And to fire each of those eight rounds, you have
24 to pull the trigger eight times?

25 A That's correct

1 Q Lieutenant Parnell, you have already stated that
2 that's in proper working order, correct?

3 A Yes, sir

4 Q If that gun was to kind of, I guess, tangle up
5 -- is that a word or kind of botch up, a bullet get jammed
6 in it, would that gun fire repeated rounds, or would the
7 trigger then have to be pulled, also?

8 A I'm not sure I follow you, but if -- if I'm not
9 answering your question, please stop me, but if -- if the
10 -- if this firearm were to jam or get hung up, you'd have
11 to manually clear the jam and -- and reinsert the magazine
12 and still pull the trigger one time for each -- each round
13 that's -- that's expected to be fired

14 Q So, the absolute most bullets that could be
15 there in that gun without a magazine is one if it jammed?

16 A Yes, sir. Without a magazine in it, there would
17 -- there could only be one in it

18 Q Okay, and if it kinda' got tangled up or messed
19 up, then you'd have to re-pull the magazine out and take
20 care of the problem and put the magazine back in before it
21 would fire again?

22 A Yes, sir You would at least, at the very
23 least, have to loosen the magazine and pull it down
24 slightly to get it out of the way of the slide in order to
25 clear any jams that might occur

1 Q -- So you have to clear the jam before it'll fire?

2 A That would be my opinion. It didn't -- it
3 didn't jam when I was test-firing it, so I -- I don't know
4 how this particular weapon would---

5 Q How many times -- well, how many times did you
6 test-fire it?

7 A Four, I believe

8 Q And---

9 A That's my practice

10 Q ---was that in rapid succession?

11 A Yes, sir, four pulls of the trigger

12 Q When a cartridge is -- I guess, was it expelled
13 from the gun, or the gun spits out a cartridge, what --
14 what happens to that cartridge? Where does it go?

15 A What he's referring to is when a -- a cartridge
16 is fired, several things happen very quickly. As we
17 talked about earlier, this is a semiautomatic firearm,
18 and by semiautomatic by definition the firearm does
19 everything, except pull the trigger. Once we load it,
20 once we put a magazine in that has more than one cartridge
21 in it, and you charge it or put one into the chamber
22 in the battery or ready-to-be-fired condition, all you
23 have to do is pull the trigger, assuming the firearm is
24 working properly, and this one did while I test-fired it,
25 it automatically or by itself extracts and expels or

1 ejects the fired shell casing from the barrel Now, the
2 magazine is inserted during this process It has a spring
3 in it, which keeps unfired cartridges pushed up toward
4 the top When I pull the trigger, the fired shell casing,
5 which I just shot, is pulled back and kicked out A fresh
6 cartridge is automatically under spring tension in the
7 magazine It's in the ready-to-be-loaded condition
8 When the slide comes back, it's got an extractor or
9 a hook, which pulls the shell casing out It has an
10 ejector, which is a device that sticks out into the way,
11 and it kicks that cartridge case usually out and to the
12 right The unfired shell is sitting right there on
13 top of the magazine ready to be picked up by the slide
14 and put into the battery or ready-to-be-shot position,
15 and this occurs each time it fires until the weapon's
16 empty

17 Q Lieutenant Parnell, if I was to point a gun at
18 your head from this angle and pull the trigger, which way
19 would the bullet eject?

20 A The shell casing would generally go out and to
21 the right, but it depends on the -- the confines of where
22 we are If it were left in a room this size, it would
23 generally go up and to the right, possibly to the rear
24 It would also depend on the angle, you know, that you were
25 holding it If you were holding it this way, it would go

1 straight up If I were holding it more this way, it would
2 go straight down, so, you know, if you were holding it
3 perfectly perpendicular, then generally it would go up and
4 to the right and slightly to the rear

5 Q No further questions Please answer any
6 questions Mr Gardner might have

7 CROSS-EXAMINATION BY MR GARDNER

8 Q Lieutenant Parnell, what type of weapon is that?

9 A It's a 25-calibre semiautomatic pistol

10 Q But, I mean, who manufactures it?

11 A It's made in or put together at least in
12 Florida It's manufactured in Italy and imported by Excam
13 from Hialeah, Florida

14 Q Tanfoglio Giuseppe, is that somewhere---

15 A Yeah That's---

16 Q Is that about---

17 A That's the Italian---

18 Q That's close?

19 A ---manufacturer

20 Q I never heard -- as far as the quality, I've
21 never heard of that type weapon That's not a -- a --
22 would you compare that with a Baretta or something along
23 those lines? What type -- I mean---

24 A It's not quite as good a quality as a Baretta,
25 but it's -- it's not a bad pistol, as far as being

1 reliable and generally made of steel

2 Q What did the solicitor mean when he was asking
3 you about tangled up? Do you have any idea?

4 A I was assuming that he was talking about being
5 jammed or a double feed, which is more than one cartridge
6 trying to be loaded at one time

7 Q You -- you fired the weapon four times Is that
8 right?

9 A Yes, sir

10 Q Was this all in one day or---

11 A Yes, sir, one right behind the other

12 Q Okay Nothing further Thank you

13 THE COURT You may step down Thank you

14 MR ROY We'd ask that this witness be excused

15 MR GARDNER No objection

16 THE COURT You may be excused Thank you

17 THE WITNESS Thank Your Honor

18

19 MR ROY The State would call Renee Hardwick to
20 the stand

21 SHARON RENEE HARDWICK, BEING
22 DULY SWORN, TESTIFIES AS FOLLOWS

23 THE CLERK (DONNA WILLIAMS) Please state your
24 full name and spell your last name for the court

25 THE WITNESS Sharon Renee Hardwick,

1 H-a-r-d-w-i-c-k

2 DIRECT EXAMINATION BY MR ROY

3 Q Ms Hardwick, where are you employed?

4 A With Horry County 911

5 Q And what is your position there?

6 A I am the supervisor for the department

7 Q And what types of functions does your job
8 entail?

9 A Mostly administrative, overseeing the
10 administrative part of the department, and I also
11 take care of handling the tapes of the recordings of
12 the telephone and radio traffic and turning them over
13 to the solicitor's office and other attorneys when
14 subpoenaed

15 Q Okay, and are these public records?

16 A Not during the investigation, no, sir

17 Q On May 24, 1996, was a call made to the 911
18 office from 208 Barkwood Drive?

19 A Yes, sir

20 Q Okay, and how do you know that?

21 A Well, we got a request after the incident
22 occurred to pull the tape, and officers were sent to the
23 call, so we pulled the tape and made a copy of the tape
24 for the Horry County Police Department

25 Q Okay, and do you know who made that request from

1 the Horry County Police Department?

2 A No, sir, I don't recall I know the detective
3 is Matt Twigg, so it would probably have been Matt

4 Q Okay Are these records kept in the normal,
5 ordinary business as records?

6 A Oh, yes, sir

7 Q Okay, and you are in charge of these records?

8 A Yes, sir

9 Q Okay Did Matt Twigg come and retrieve a tape
10 from you?

11 A Yes, sir, he does have a tape, a cassette copy
12 of the tape

13 Q I'm going to hand you what's been marked as
14 State's Exhibit 14 and ask you is this the tape that you
15 gave to Detective Twigg?

16 A Well, it doesn't have a mark on it, but this is
17 the type tape that we make, the copies of the tapes from
18 the reel-to-reel, and give to the detectives

19 Q Does the number on the front have any
20 significance to you?

21 A No, sir

22 Q And what you gave Detective Twigg was a true and
23 accurate copy of your records?

24 A Yes, sir

25 MR ROY Your Honor, could I substitute her

1 original copy for the copy that I have from Detective
2 Twigg at this time?

3 THE COURT That's fine

4 DIRECT EXAMINATION RESUMES BY MR ROY

5 Q Ms Hardwick, if you would---

6 THE COURT There's no objection from the
7 defense?

8 THE WITNESS There's---

9 THE COURT Wait a second

10 MR GARDNER What are we doing now?

11 THE COURT We're substituting a copy I
12 believe that's what we discussed

13 MR GARDNER A copy for the exhibit---

14 THE COURT Right

15 MR GARDNER ---that's for identification?

16 THE COURT I believe we discussed that
17 yesterday

18 MR GARDNER Yes, sir

19 THE COURT Okay It's -- that's -- that's
20 fine No objection from defense as to substitution of a
21 copy His other objections remain

22 (State's Exhibit No. 26 admitted into evidence)

23 MR ROY Nothing further, Your Honor

24 CROSS-EXAMINATION BY MR GARDNER

25 Q This is the tape This is the -- in this box

1 here? The one y'all are talking about?

2 A The large box?

3 Q Yes, ma'am

4 A That's the actual reel-to-reel tape that was
5 recorded on

6 Q The actual reel-to-reel tape, and y'all recorded
7 that down---

8 A To a cassette

9 Q ---brought it down to a cassette tape?

10 A Yes, sir

11 Q Okay, and the cassette tape, you couldn't
12 identify that, and the number on it had no significance to
13 you, I believe is what you testified to, the actual
14 exhibit, the one that was substituted for -- with the big
15 tape? Is that correct?

16 A The number doesn't mean anything to me

17 Q Okay Can you identify the voices that are on
18 that tape? Do you have any personal knowledge who the 911
19 operator was, for example?

20 A I can probably identify it from the voice, yes,
21 sir

22 Q Okay, but right now you don't know who it is?

23 A It's been a long time since I listened to that
24 tape

25 Q I understand

1 A A lot of calls ago

2 Q You said that they're kept in the normal
3 ordinary course of business Could you explain that to me
4 please, what that means?

5 A We have a cabinet that we keep these tapes on
6 for recording, and we change it every night, and when we
7 have an incident that occurs in this county that is going
8 to court or a request from a solicitor's office, an
9 attorney, a detective, whoever, that has a case pending,
10 then most of the time I pull that tape out if I'm made
11 aware of it in time to secure it until we go to court
12 because the law only mandates that I keep these tapes for
13 sixty days otherwise

14 Q Right, so the normal course of business would be
15 to keep the tape for sixty days and then I guess destroy
16 it?

17 A No, sir We would record over it

18 Q Record over it?

19 A Yes, sir

20 Q All right, so that would be the normal course of
21 business, and then on certain types of cases you do
22 something, you make copies of it and provide it to other
23 people?

24 A Correct

25 Q Okay Nothing further

1 MR ROY Nothing further, Your Honor

2 THE COURT Can this witness be excused?

3 MR ROY We ask that this witness be excused

4 THE COURT You may be excused Thank you

5 THE WITNESS Thank you

6

7 THE COURT I'm going to give the jury a recess
8 Okay, ladies and gentlemen, leave your pads face down,
9 step back to the jury room We'll take a break Do not
10 discuss this case Thank you

11 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
12 JURY)

13 THE COURT We're going to take a short break
14 I assume, Solicitor -- Solicitor, I assume that your next
15 witness is going to be the detective to authenticate the
16 tape---

17 MR ROY No, Your Honor, we still have---

18 THE COURT ---or someone to authenticate---

19 MR ROY We still have another chain of custody
20 for another member of the Horry County Police Department

21 THE COURT On the -- on the tape?

22 MR ROY Not on the -- not on the tape

23 THE COURT Okay

24 MR ROY The tape is going to be played later,
25 Your Honor It's -- we have another witness as far as the

1 other evidence goes we also need to do this morning

2 THE COURT Well, you understand the copy is not
3 in evidence to go before -- to be played before the jury
4 until you authenticate it

5 MR ROY That's -- that's correct, Your Honor

6 THE COURT Okay All right All right We'll
7 take a short break

8 (WHEREUPON, RECESS IS TAKEN)

9
10 THE COURT Are we ready to bring the jury
11 out?

12 MR ROY The State's ready, Your Honor

13 THE COURT Is the defense ready?

14 MR GARDNER Defense is ready, Your Honor

15 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
16 JURY)

17 THE COURT Your witness

18 MR ROY The State would call Lieutenant Myron
19 Creel

20 MYRON CREEL, BEING DULY
21 SWORN, TESTIFIES AS FOLLOWS

22 THE CLERK (DONNA WILLIAMS) Please state your
23 full name and spell your last name for the court

24 THE WITNESS Myron Creel, C-r-e-e-l

25 DIRECT EXAMINATION BY MR ROY

1 Q Lieutenant Creel, where are you employed?

2 A With the Horry County Police Department

3 Q And what is your position there?

4 A I'm Watch Commander

5 Q Okay What were you prior to being a watch
6 commander?

7 A Evidence Custodian and Crime Scene Investigator

8 Q How long were you at that position?

9 A Eighteen years

10 Q And what are some of your responsibilities and
11 duties?

12 A To investigate, search for, locate, and
13 preserve, process any and all physical evidence from a
14 particular scene

15 Q Did you have any training in how to do that?

16 A Yes, sir First of all, I'm a graduate of the
17 South Carolina Criminal Justice Academy I've been
18 trained by the South Carolina Law Enforcement Division and
19 Federal Bureau of Investigation at specialized schools for
20 that purpose

21 Q Okay, and what were some of those specialized
22 schools?

23 MR GARDNER Your Honor, we would stipulate
24 that Lieutenant Creel's qualified in crime scene
25 investigations, and I guess that's where we're going with

1 that

2 THE COURT All right So stipulated He's
3 qualified

4 MR ROY Thank Your Honor

5 DIRECT EXAMINATION RESUMES BY MR ROY

6 Q On May 24, 1996, were you involved in the crime
7 scene of the murder at 208 Barkwood Drive?

8 A Yes, sir, I was

9 Q And what was your responsibilities on that
10 evening?

11 A I received the call in the neighborhood of 11 30
12 in the evening and responded to that scene for the purpose
13 of processing it

14 Q Okay What did you do when you arrived?

15 A As is my custom, when I first arrived, I
16 received a briefing from the officers on the scene as to
17 what we had, did a hands-in-my-pockets walk-through to
18 observe Later I photographed the evidence that was there
19 and collected and collected and preserved the evidence
20 available at the scene

21 Q Okay You stated you took photographs at the
22 scene?

23 A Yes, sir, I did

24 Q I'm going to hand you State's Exhibit 4 and ask
25 you if that is a photograph you took

1 A Yes, sir, it is

2 Q And what does that photograph depict?

3 A This photograph depicts the rear seat, driver's
4 side, of the vehicle

5 Q Okay Is that a true and accurate description
6 as it was on that evening as you found it?

7 A Yes, sir, it is

8 MR ROY At this point in time the State would
9 move State's Exhibit 4 into evidence

10 THE COURT Any objection?

11 MR GARDNER No, Your Honor

12 THE COURT It's in evidence

13 (State's Exhibit No 4 admitted into evidence)

14 DIRECT EXAMINATION RESUMES BY MR ROY

15 Q Lieutenant Creel, what was the importance of
16 this picture?

17 A The importance of this picture is located just
18 to the left of center and little below center and is a
19 cartridge casing on the rear floorboard

20 Q And what color is that cartridge casing?

21 A It appears white or grey in this picture, which
22 is its natural color

23 Q Okay Is there anything else in that picture?

24 A A sheet of -- a piece of paper floormatting

25 MR ROY At this point in time I'd like to

1 publish this to the jury

2 THE COURT Publish it It's in evidence

3 DIRECT EXAMINATION RESUMES BY MR ROY

4 Q Now I'm going to hand you what's marked as
5 State's Exhibit 5 and ask you to identify that

6 A This is a photograph taken outside the front
7 passenger side of the automobile It depicts a cartridge
8 casing and a cigarette lighter

9 Q Okay Did you take that photograph?

10 A I did

11 Q And is that a true and accurate description of
12 what was there that evening?

13 A Yes, sir, it is

14 MR ROY At this point in time we would move
15 State's Exhibit 5 into evidence

16 MR GARDNER No objection, Your Honor

17 THE COURT All right It's in evidence You
18 may publish

19 (State's Exhibit No 5 admitted into evidence)

20 THE COURT Ladies and gentlemen of the jury,
21 the way we proceed is when something is published to you,
22 they'll hand it to you, pass it down, and be sure the
23 alternates -- it's probably best to hit the alternates on
24 the first row before you go back to the second row, and
25 the last juror, if you'll just lay it to one side, and

1 we'll take them up during the recess

2 DIRECT EXAMINATION RESUMES BY MR ROY

3 Q Lieutenant Creel, I'm going to hand you what's
4 been marked as State's Exhibit 6 and ask you if you can
5 identify that

6 A Yes, sir, I can

7 Q And what is that?

8 A This is the passenger side front of the vehicle
9 indicating a portion of the windshield and dashboard with
10 a cartridge casing and a projectile lodged in the corner
11 between the windshield and the dashboard

12 Q What condition is the windshield in?

13 A It's cracked

14 Q And what about the driver's side door
15 windshield?

16 A The driver's side door was broken

17 Q Now, is that -- did you take that picture, also?

18 A Yes, sir, I did

19 Q Is that a true and accurate description of the
20 crime scene that night?

21 A Yes, sir, it is

22 MR ROY At this point in time the State would
23 move State's Exhibit 6 into evidence

24 MR GARDNER No objection, Your Honor

25 THE COURT No objection It's in evidence

1 You may publish

2 (State's Exhibit No 6 admitted into evidence)

3 DIRECT EXAMINATION RESUMES BY MR ROY

4 Q I'm going to hand you what's been marked as
5 State's Exhibit 7 and ask you if you can identify that

6 A Yes, sir, I can

7 Q What is that?

8 A This is a photograph taken just to the right of
9 the photograph just published It is the windshield
10 dashboard area of the vehicle and indicates three spent
11 cartridge casings lodged between the dashboard and the
12 windshield

13 Q Did you take that photograph?

14 A I did

15 Q Is that a true and accurate description?

16 A Yes, sir, it is

17 MR ROY The State would move State's Exhibit
18 7 into evidence

19 MR GARDNER No objection, Your Honor

20 THE COURT It's in evidence You may publish
21 (State's Exhibit No 7 admitted into evidence)

22 DIRECT EXAMINATION RESUMES BY MR ROY

23 Q I'm going to hand you what's been marked as
24 State's Exhibit 8 and ask you if you can identify that

25 A No, sir I'm not familiar with this

1 Q You did not take that picture I'm going to
2 hand you what's been marked as State's Exhibit 10 and ask
3 you if you can identify that

4 A Yes, sir, I can

5 Q Okay Is that -- what is -- what is depicted
6 there?

7 A This depicts the front end of the yellow cab
8 It's a front view of the vehicle taken from further away
9 than the other photographs, which have been published

10 Q Is that a true and accurate depiction of the
11 scene that evening?

12 A Yes, sir, it is

13 Q Okay.

14 MR ROY At this point in time the State would
15 move State's Exhibit 10 into evidence

16 MR GARDNER We have no objection, Your Honor

17 THE COURT No objection It's in evidence
18 You may publish

19 (State's Exhibit No 10 admitted into evidence)

20 DIRECT EXAMINATION RESUMES BY MR ROY

21 Q I'm going to hand you what's been marked as
22 State's Exhibit 3 and ask you to identify that

23 A This is a photograph which I took on that
24 evening, and it is a rear overall view of the scene

25 Q Okay Is that a blowup photograph?

1 A Yes, sir. It's an enlargement of the photograph
2 which I took at the scene

3 Q Is that a true and accurate descrip- --
4 depiction of what was located at the scene that evening?

5 A Yes, sir, it is

6 MR ROY At this point in time the State would
7 move State's Exhibit 3 into evidence

8 THE COURT That's the one you've made an
9 objection to?

10 MR GARDNER Yes, sir

11 THE COURT All right The Court's ruling
12 remains the same It's in evidence overruling the
13 objection of the defense You may publish

14 MR ROY Thank you

15 (State's Exhibit No 3 admitted into evidence)

16 DIRECT EXAMINATION RESUMES BY MR ROY

17 Q I'm going to hand you what's been marked State's
18 Exhibit 16 and ask you if you can identify that

19 A Yes, sir, I can

20 Q And what is that?

21 A This is a spent projectile that I received from
22 Detective Twigg to transport to the State Law Enforcement
23 Division Laboratory

24 Q And when you took it to SLED, how was it
25 packaged?

1 A Much as it is now

2 Q Okay Did you bring it back from SLED?

3 A Yes, sir, I did

4 Q And where did you place it then?

5 A It was placed in the evidence locker at the
6 Horry County Police Department

7 Q Who has access to that locker?

8 A At that time only myself and Detective Chestnut

9 Q Okay At any time did you do anything with
10 that, other than place it there?

11 A No, sir

12 MR ROY At this point in time -- excuse me --
13 strike that

14 DIRECT EXAMINATION RESUMES BY MR ROY

15 Q Let me hand you what's been marked State's
16 Exhibit 22 and ask you to identify that

17 A This is a magazine to a 25-calibre automatic
18 pistol, which I transported to the State Law Enforcement
19 Division Laboratory for ballistics examination and
20 returned to the Horry County Police Department in the same
21 manner described before

22 Q Okay You took it and brought it back?

23 A Yes, sir

24 Q Let me hand you what's been marked as State's
25 Exhibit 17 and ask you to identify that

1 A This is a 25-calibre automatic pistol, which I
2 received from Detective Twigg and transported to the State
3 Law Enforcement Division Laboratory in Columbia and
4 subsequently returned it to the evidence locker at the
5 Horry County Police Department

6 Q The same as with the magazine?

7 A Yes, sir

8 Q Okay Was that packaged together in the same
9 package when you took it to SLED, in the same container,
10 not in the same plastic seals?

11 A It would have been in the same container but
12 packaged separately

13 Q Okay I hand you what's been marked as State's
14 Exhibit 25 and ask you if you can identify that

15 A Yes, sir. These are four 25-calibre bullets,
16 full bullets rather than being projectiles or cartridge
17 casings, and were the contents of the magazine

18 Q And did you take those to SLED?

19 A Yes, sir, I did.

20 Q Where did you -- who did you receive those
21 from?

22 A I received them from Detective Twigg and
23 transported them to the State Law Enforcement Division
24 Laboratory for examination and subsequently returned
25 them to the Horry County Police Department's evidence

1 locker

2 Q I hand you what's been marked as State's Exhibit
3 18 and ask you to identify that

4 A This is a spent 25-calibre cartridge casing,
5 which I retrieved from beside the passenger door on the
6 evening in question

7 Q Okay Did you take that to SLED?

8 A Yes, sir, I did

9 Q Did you return that from SLED?

10 A Yes, sir, I did

11 MR ROY At this point in time we'd move this
12 State's exhibit into evidence

13 MR GARDNER No objection, Your Honor

14 MR ROY That's State's 18

15 THE COURT Let's have a side conference
16 (WHEREUPON, A BENCH CONFERENCE IS HELD WITHIN THE PRESENCE
17 OF THE JURY BUT OUTSIDE THE HEARING OF THE JURY)

18 THE COURT That particular exhibit comes in
19 without objection

20 (State's Exhibit No 18 admitted into evidence)

21 DIRECT EXAMINATION RESUMES BY MR ROY

22 Q I'm going to hand you what's marked as State's
23 Exhibit 19 and ask you to identify that

24 A These are two spent 25-calibre cartridge casings
25 that were received -- retrieved from the dashboard of the

1 vehicle

2 Q Who retrieved them from the dashboard?

3 A I did

4 Q And then what did you do with them?

5 A I transported these to the State Law Enforcement
6 Division Laboratory for ballistics examination and
7 returned them to the Horry County Police Department's
8 evidence locker

9 MR ROY At this point in time the State would
10 move Exhibit 19 into evidence

11 THE COURT Any objection from defense?

12 MR GARDNER No, Your Honor

13 THE COURT It's in evidence

14 (State's Exhibit No 19 admitted into evidence)

15 DIRECT EXAMINATION RESUMES BY MR ROY

16 Q I'm going to hand you what's been marked State's
17 Exhibit 20 and ask you if you can identify that

18 A Yes, sir, I can This is a spent projectile
19 that was retrieved from the left rear floorboard depicted
20 in one of the photographs earlier of the vehicle on the
21 evening of May the 25th I retrieved this myself,
22 transported it to the State Law Enforcement Division
23 Laboratory for ballistics examination, and returned it to
24 the Horry County Police Department's evidence locker

25 MR ROY At this point in time the State would

1 move State's Exhibit 20 into evidence

2 THE COURT Any objection?

3 MR GARDNER No, Your Honor

4 THE COURT It's in evidence

5 (State's Exhibit No 20 admitted into evidence)

6 DIRECT EXAMINATION RESUMES BY MR ROY

7 Q I'm going to hand you what's been marked as
8 State's Exhibit 21 and ask you to identify that

9 A This is a spent 25-calibre projectile that was
10 retrieved from the passenger side dashboard of the vehicle
11 on the night in question I retrieved it, transported it to
12 the State Law Enforcement Division Laboratory, and
13 subsequently returned it to the Horry County Police
14 Department labora- -- evidence locker

15 MR ROY The State would move this item into
16 evidence

17 MR GARDNER No objection, Your Honor

18 THE COURT It's in evidence

19 (State's Exhibit No 21 admitted into evidence)

20 DIRECT EXAMINATION RESUMES BY MR ROY

21 Q I hand you what's been marked as State's Exhibit
22 23 and ask you to identify that

23 A State's Exhibit 23 consists of two spent
24 cartridge casings and one spent projectile, which I
25 received -- I retrieved on the night of May 25th from the

1 front passenger floorboard and subsequently transported to
2 the State Law Enforcement Division Laboratory for
3 ballistics examination and returned them to the Horry
4 County Police Department evidence locker

5 MR ROY The State would move State's Exhibit
6 23 into evidence

7 MR GARDNER No objection

8 THE COURT It's in evidence

9 (State's Exhibit No 23 admitted into evidence)

10 DIRECT EXAMINATION RESUMES BY MR ROY

11 Q I hand you what's been marked as State's Exhibit
12 24 and ask you to identify that

13 A State's Exhibit 24 is a spent 25-calibre
14 cartridge casing which was retrieved from the driver's
15 seat of the vehicle on the evening of May 25, 1996 I
16 retrieved it, transported it to SLED for examination, and
17 returned it to the Horry County Police Department's
18 evidence locker

19 MR. ROY The State would move State's Exhibit
20 24 into evidence

21 MR GARDNER No objection, Your Honor

22 THE COURT It is in evidence

23 (State's Exhibit No 24 admitted into evidence)

24 (State's Exhibit No 27 for Identification marked)

25 DIRECT EXAMINATION RESUMES BY MR ROY

1 Q Let me hand you what has been marked State's
2 Exhibit 27 and ask you if you recognize that

3 A Yes, sir, I do

4 Q And what is that?

5 A This is an evidence record generated by me on
6 the evening in question or the following morning
7 indicating that an inventory of items that were recovered
8 from the scene

9 Q Okay, and where were those items recovered
10 from?

11 A From the person of Mr Lockhart and the area
12 around the vehicle

13 Q And was Mr Lockhart the decedent?

14 A Yes, sir, he is

15 Q Okay Was one of the items recovered a
16 pocketknife?

17 A Yes, sir

18 Q And where was that pocketknife found on the
19 decedent?

20 A In his pocket

21 Q What position was it in? Was it in a closed
22 position?

23 A It was in a closed position, yes, sir

24 Q Upon arriving at the scene what was the shape of
25 the car? How was it parked?

1 A The car was angled to the left on the side of
2 the road from center to the side with the driver's door
3 open

4 Q Okay Where was the body positioned?

5 A The body was positioned partially in but mostly
6 out of the driver's side door

7 Q Okay What part was in the car?

8 A The feet

9 Q What was the shape of the driver's side
10 window?

11 A It was broken

12 Q Were there any shell casings located in the
13 backseat of the car?

14 A Not to my recollection, no, sir

15 Q Was the dome light on in the car?

16 A Yes, sir

17 Q Was that because the door was open, or was it on
18 otherwise?

19 A I'm not certain The door was open, which would
20 have had the dome light in the on position

21 Q Okay Did you at any time turn off the dome
22 light?

23 A No, sir

24 Q Did you tow -- were you there when the car was
25 towed?

1 A Yes, sir, I was

2 Q Did you place it into the evidence part at the
3 Horry County Police Department?

4 A Yes, sir

5 Q Okay At that point in time was the dome light
6 on?

7 A No, sir

8 Q No further questions Please answer any
9 questions Mr Gardner may have

10 CROSS-EXAMINATION BY MR GARDNER

11 Q Lieutenant Creel, there were some other things
12 recovered from Mr Lockhart that day, too Do you recall
13 what those were?

14 A A wallet, a set of keys, the contents of the
15 wallet---

16 Q Any money in it?

17 A Yes, sir

18 Q Do you remember how much?

19 A There was a moderate amount of money in the
20 wallet I inventoried that , It came to be a total of
21 \$135 00 in cash

22 Q If you would, Lieutenant Creel, give me an idea,
23 if I can visualize, where you talked about some shell
24 casings and some projectiles all over the car If you
25 could just go through it briefly and tell us where they

1 were at I understand, if I understood you correctly,
2 that some of them were in the windshield or the dashboard
3 area?

4 A Yes, sir

5 Q And you just sort of put it all together for
6 us

7 A If I could take it from left to right from
8 the -- one was located in the seat, the driver's seat
9 An additional three were located in the -- on the
10 dashboard between the dashboard and the windshield, one
11 on the ground outside the passenger's side of the car,
12 and I believe another in the passenger floorboard

13 Q Thank you, sir

14 MR ROY No further questions

15 THE COURT You may step down

16
17 MR ROY The State would call Juanita Gray to
18 the stand Juanita Gray

19 MR GARDNER Your Honor, may we approach?

20 (WHEREUPON, A BENCH CONFERENCE IS HELD WITHIN THE PRESENCE
21 OF THE JURY BUT OUTSIDE THE HEARING OF THE JURY)

22 THE COURT Okay, ladies and gentlemen of
23 the jury, I'm going to ask you to step back to the jury
24 room I have a matter of law to take up with the
25 attorneys Leave your pads face down, and do not discuss

1 the case

2 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
3 JURY)

4 THE COURT You can just stand over by the jury
5 box so we can ascertain what we're going to do here
6 Motion?

7 MR GARDNER Yes, Your Honor We would
8 object to this witness testifying in that yesterday I
9 informed the solicitor that she was in the courtroom
10 and that she was, as I understood it, the solicitor's
11 witness

12 The solicitor informed me that he was not
13 going to call her We have relied on that in preparation
14 and tailoring of our cross-examinations and the strategies
15 in our case, and it would be two-fold one, a surprise
16 to us because we relied on the solicitor telling us she's
17 not going to be called, and, two, it violates the Court's
18 order that all the State's witnesses and the defense
19 witnesses be sequestered out of the courtroom

20 MR WILSON Your Honor, first of all, I -- he
21 says that he was told that, and I don't dispute that The
22 only concern I have about it is this, that she is on the
23 witness list She knew at all times she was on the
24 witness list In fact, she was actually called on
25 yesterday and placed on the stand, knew that she was going

1 to be called, and, Your Honor, she is the grandmother of
2 this defendant, has changed her story from what originally
3 she told the police in her recorded 911 call She's now
4 changed her story She is a very hostile person

5 She now sits in the courtroom We can't watch
6 her every second She knew she was not supposed to
7 be in the courtroom The Court made that very clear on
8 yesterday She knew she was not supposed to be in the
9 courtroom In spite of that and when we turn our backs,
10 she comes in the courtroom Then they use that as a way
11 to keep her from testifying I think that's very unfair
12 to the State, and if that's the case, we're never going to
13 get this case tried because all of these people are
14 family They are all related, and they're obviously very
15 prejudiced in this case and very biased, and we can't stop
16 her from doing things

17 She's also the grandmother of the defendant
18 who's on trial for murder, which would in my opinion
19 give her the right to be here whether she's a witness or
20 not

21 THE COURT Why did you stay in the courtroom
22 when I said all witnesses---

23 JUANITA GRAY Well, Judge, I must didn't
24 understand you yesterday when you said it

25 THE COURT What?

1 JUANITA GRAY I must didn't understand what you
2 had mean yesterday

3 THE COURT Okay Well---

4 JUANITA GRAY Because if I had known it, I --
5 I wouldn't have been down here

6 THE COURT ---I'm going to allow the State to
7 call her Do you have any other witnesses in the
8 courtroom that you're aware of?

9 MR ROY Your Honor, there is one that has
10 testified who is in the courtroom

11 THE COURT Already testified?

12 MR ROY Already testified

13 THE COURT Well, I certainly wouldn't want to
14 put that witness back with the witnesses who haven't
15 testified That would defeat the purpose of sequestering
16 the witnesses Once they testify, I see no problem with
17 them remaining in the courtroom In fact, I don't want
18 them going back

19 MR ROY Your Honor, I was mistaken when I
20 came to the bench and said I thought I saw another one

21 THE COURT Okay All right Well, let's use
22 this opportunity to take a break so we don't have to take
23 another break quickly This witness needs to be
24 sequestered while we're on break until she's called
25 Okay We'll take about a five-minute break

1 (WHEREUPON, RECESS IS TAKEN)

2
3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
4 JURY)

5 THE COURT Are we ready to bring the jury back
6 in? Is the State ready?

7 MR ROY The State's ready, Your Honor

8 THE COURT Is defense ready?

9 MR GARDNER Yes, Your Honor

10 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
11 JURY)

12 THE COURT Your witness

13 MR. ROY Thank Your Honor The State would
14 call Juanita Gray

15 JUANITA GRAY, BEING DULY
16 SWORN, TESTIFIES AS FOLLOWS

17 THE CLERK (DONNA WILLIAMS) Please state your
18 -- state your full name and spell your last name for the
19 court

20 THE WITNESS Juanita -- Juanita G -- Gray,
21 G-r-a-y My address is 208---

22 THE COURT Wait Wait a second The clerk's
23 broke the mike You got it? All right

24 THE WITNESS Juanita G-r-a-y, 208 Barkwood
25 Drive, Conway, and I'm unemployed

1 DIRECT EXAMINATION BY MR ROY

2 Q Ms Gray, how are you today?

3 A All right

4 Q It's not a very pleasant situation here, is it?

5 A Sure ain't

6 Q Is Mr Legette your grandson?

7 A Yes, sir

8 Q And you love him very much, don't you?

9 A Yes, sir

10 Q Would like to help him in any way you can?

11 A Yes, sir

12 Q And you live at 208 Barkwood Drive?

13 A Yeah

14 Q Is that your home?

15 A Yeah

16 Q Were you present there on May 24, 1996?

17 A Yes, sir

18 Q Okay Do you remember what took place on that
19 day?

20 A Yeah

21 Q What happened on that day?

22 A Well, when they first came at the house, I went
23 on I was gone at the store

24 Q Who's -- who's he, ma'am?

25 A Roger and his brother and my other grandson, and

1 when I got back, they had a gun

2 Q What was that?

3 A When I got back from the store, they had a gun

4 Q He had a gun?

5 A And their mothers called the law to come get the
6 gun

7 THE COURT REPORTER Who called the law?

8 THE WITNESS Their mother, and the law came,
9 and they didn't do anything They went back They called
10 again The law came They didn't do anything They
11 called the third time The law came They didn't do
12 anything The fourth time Roger Legette called, and they
13 came, and it was over with

14 DIRECT EXAMINATION RESUMES BY MR ROY

15 Q Did you see Roger with a gun on that day?

16 A Yeah They had guns that day

17 Q And do you remember what that gun looked like?

18 A Really I didn't look at the gun

19 Q You didn't look at the gun?

20 A Huh-uh (negative response)

21 Q Okay Let's move forward to what happened that
22 night Were you at home when this incident took place?

23 A Yes

24 Q What were you doing at that time?

25 A I think I was washing dishes

1 Q Washing dishes? Do you remember what time it
2 was?

3 A No

4 Q You don't remember Do you remember Roger
5 leaving?

6 A Yeah, I remember they left

7 Q Where was he going?

8 A They say they was coming to Conway to his father
9 house

10 Q Okay How was he going to get there?

11 A They had called a taxi

12 Q Is that the Yellow Cab Company?

13 A Yes, sir

14 Q And then he left in the cab?

15 A Yes, sir, they left

16 Q What were you doing right after he left?

17 A I -- I stayed with the -- I don't know what I
18 was doing I couldn't tell you what I was doing

19 Q You have no idea, ma'am?

20 A No

21 Q I understand it's a long time ago

22 A No, I can't tell you what I was doing

23 Q Then what happened when he came back?

24 A He didn't -- when he came back, he didn't say
25 anything to me

1 Q Where did he -- where did he go when he came in
2 the house then?

3 A He went in the room with -- where Lonnie was

4 Q Okay He did what when he went in his room?

5 A He went in Lonnie room

6 Q Went in Lonnie's room?

7 A Uh-huh (affirmative response)

8 Q Okay Lonnie, is Lonnie your nephew?

9 A That's my son

10 Q Your son, okay, and that's Roger's cousin,
11 right?

12 A Right It's his -- it's his nephew

13 Q Okay, and what happened after he left? Did you
14 see what happened after he left Lonnie's room?

15 A No, sir No, sir His brother and his cousin
16 came in there where I was looking at TV

17 Q Okay Well, what was Roger doing?

18 A I don't know I didn't go in the room

19 Q Okay

20 A He were nervous I know he was nervous and
21 scared

22 Q Did Roger come out of the room?

23 A Yeah, later he come out nervous and scared and
24 shaking, and he wasn't nothing like himself

25 Q Okay. Well, what did he do when he came out of

1 the room, ma'am?

2 A He went in another room, and then he come back
3 He just was steady walking and, you know, scared and upset
4 like he was really scared

5 Q Okay When he came out of that room, where did
6 he go?

7 A He just stayed in the -- in the living room just
8 steady walking

9 Q Did he ever get on the phone?

10 A Yeah, later on he got on the phone and called
11 911

12 Q Okay, and were you present when he called 911?

13 A Yeah

14 Q Did you hear what he said to the 911 operator?

15 A Yeah

16 Q What did he tell her?

17 A He said he had accidentally killed a policeman,
18 I understand him to say I mean, he had the opera- --
19 he had -- he had called 911 He said he think he shot a
20 man

21 Q He thinks he shot a man?

22 A I thought that what he said now I ain't---

23 Q You thought that's what he said?

24 A Yeah

25 Q You're not sure though?

1 A No, I ain't sure

2 Q Okay That was a year ago or a little over a
3 year ago?

4 A Yeah

5 Q Right?

6 A Yeah Did he -- did he say where he shot the
7 man?

8 A No

9 Q Did he say where the man was?

10 A Yeah He said that -- he said he was down there
11 by the car, I think, or in the car or something I don't
12 know

13 Q All right He said he's down by the car?

14 A I -- all I understand him saying really is he
15 said, "I shot a man accidentally " That what I thought I
16 heard him say

17 Q That's what you thought you heard him say?

18 A Yeah

19 Q But you're not positive?

20 A No, I'm not positive

21 Q The tape could say something different?

22 A I could I do not know

23 Q Fair enough, ma'am Did you take a look outside
24 as to what---

25 A No, I didn't -- no, I thought to go down there

1 after the policeman came, but that -- the detective told
2 us we couldn't go down there

3 Q Okay You didn't check it out before the police
4 got there then?

5 A Huh-uh (negative response)

6 Q You didn't see the cab?

7 A No

8 Q And what happened when the police arrived?

9 A Roger talked with them I didn't

10 Q Did you give any statements to the police
11 officers?

12 A I don't think I did All he asked me, something
13 about sign a paper where Roger was there when he got
14 there---

15 Q Okay

16 A ---something like that

17 Q How long do you think he was walking from room
18 to room?

19 A I couldn't tell you that either because I ain't
20 had my watch on timing myself

21 Q Well, did it seem like it was five, ten
22 minutes?

23 A I don't know He was walking till the
24 cops got there, so he was steady walking, you know,
25 nervous, up-scared, and like he was losing his mind and

1 stuff

2 Q How many rooms are in the house?

3 A Six with the bath

4 Q Six rooms How many rooms did he go into?

5 A Just two

6 Q Just two, just kept walking back and forth
7 between those two?

8 A Uh-huh (affirmative response)

9 Q How long was he on the phone?

10 A I couldn't tell you that either because I don't
11 know

12 Q Would you tell me -- did you -- did you hear him
13 when he came back after he left the cab?

14 A When he came back from the cab, he went directly
15 in Lonnie room

16 Q Okay You don't -- was he in there for a couple
17 of minutes?

18 A Yeah

19 Q And then he walked out into another room?

20 A Yeah, in there where I was in the living
21 room

22 Q Was he in there for about five or ten minutes?

23 A It could have been longer I couldn't tell
24 you

25 Q So it could have been twenty minutes he was

1 there?

2 A Yeah He was right in that room till the cops
3 got there

4 Q So he was probably walking and pacing around for
5 about twenty or twenty-five minutes then?

6 A Yes, sir

7 MR GARDNER Objection to the leading, Your
8 Honor, and---

9 THE WITNESS I don't know

10 THE COURT Don't lead the witness

11 DIRECT EXAMINATION RESUMES BY MR ROY

12 Q Did you give an estimate of the amount of time?

13 A I sure can't

14 Q Ma'am, you mentioned earlier about the police
15 being called out there three times---

16 A Yeah

17 Q ---during the day? What -- what -- what
18 were your grandson and your grandsons doing on that
19 day?

20 A They weren't doing anything, but, you see,
21 they had the gun, and their mothers, they wouldn't give
22 the gun to their mothers so their mothers called the
23 police, and---

24 Q One -- one -- one of those was Roger Legette?

25 A Yeah, and -- and George Gray, and they couldn't

1 get the guns from them, so they told the law to take them
2 to jail They give them permission to arrest them, but
3 they wouldn't do anything

4 Q Did you hear them shooting the guns?

5 A No, I didn't

6 Q You didn't?

7 A Huh-uh (negative response)

8 Q Didn't see them firing it at all that day?

9 A I don't know, but their mother say they fired
10 it one time -- I don't know -- down the road or some-
11 where

12 Q How many different guns did you see on that
13 day?

14 A To tell you the truth, I ain't seen nary gun
15 I ain't the gun until I seen one gun when the policeman
16 arrived, and Roger had that one and give that one to the
17 policeman

18 Q Okay

19 A That's the onlyest one I seen

20 Q On any of those three occasions did you talk to
21 the police officers?

22 A No, I ain't talked to none

23 Q Did you call on any of those three occasions?

24 A Call? No, I ain't called them nary time They
25 must have called

1 Q What time of day was that again?

2 A I don't know

3 Q Was it in the afternoon or morning?

4 A It must be in the afternoon

5 Q Okay No further questions

6 A I don't know

7 CROSS-EXAMINATION BY MR. GARDNER

8 Q Ms. Gray, you said Roger was nervous, shaking,
9 scared, very upset?

10 A Yes

11 Q Crying?

12 A Yes

13 Q How about the other two boys?

14 A They was, too

15 Q And Craig was crying, too?

16 A Yeah

17 Q And George?

18 A Yeah, all of them

19 Q And he said he thought he may have accidentally
20 shot somebody?

21 A Yes

22 Q Nothing further

23 THE COURT You may step down Thank you

24

25 THE COURT Next witness

1 MR WILSON George Gray
2 GEORGE GRAY, BEING DULY SWORN,
3 TESTIFIES AS FOLLOWS
4 THE CLERK (DONNA WILLIAMS) Please state your full
5 name and spell your last name for the court
6 THE WITNESS George Gray, G-r-a-y
7 DIRECT EXAMINATION BY MR WILSON
8 Q George, how old are you?
9 A Fifteen
10 Q All right, and do you go to school?
11 A No I go when school start back
12 Q All right What grade are you in?
13 A The tenth
14 Q Tenth grade, and can you read?
15 A Uh-huh (affirmative response)
16 Q You need to say yes or no
17 A Yes, sir
18 Q All right, and can you write?
19 A Yes, sir
20 Q Okay Now, George, back in May of last year you
21 were with your cousin, and this is your cousin, right? Roger
22 is your cousin?
23 A Yes, sir
24 Q All right What's y'all's relationship?
25 A We cousins

1 Q Well, I understand that What kind of cousins are
2 you? Nephews?

3 A No

4 Q First cousins, second cousins?

5 A First cousins

6 Q Fifth cousins?

7 A First

8 Q Do you know?

9 A We're first

10 Q Huh?

11 A We're first

12 Q First cousins? Okay, and your mother and his
13 mother are sisters?

14 A Yes, sir

15 Q Okay Now, and you have another cousin, is that
16 right, and his name is Gregg?

17 A Craig

18 Q Craig All right, and was he also your first
19 cousin?

20 A Yes, sir

21 Q And his mother is also your mother's sister?

22 A Yes, sir

23 Q Okay Now, y'all were playing, y'all were together
24 on this day, May 26th, May 24th? Is that right?

25 A Yes, sir

1 Q All right, and how long had y'all been together at
2 your grandma's house?

3 A We been there all day

4 Q All that day, and how did you get up there that
5 day?

6 A We came

7 Q Came from where?

8 A Home, from my mama house

9 Q All right You came from home from your mother's
10 house, and had Craig and Roger stayed with you?

11 A Some They stayed up there sometime at night with
12 me

13 Q No, I'm talking about at your mother's house Had
14 they stayed at your mother's house the night before?

15 A No Roger did, not Craig

16 Q All right, so Roger stayed at your mother's house
17 with you the night before, and then you and Roger and Craig
18 ended up at your grandmother's house the next morning Is
19 that correct?

20 A Craig was already staying down there Me and Roger
21 just came down there

22 Q Okay, so you and Roger went down All right Now,
23 let me ask you, when y'all went down there, did you have a
24 gun?

25 A Yeah

1 Q All right, and where did you get the gun from?

2 A I bought it

3 Q You bought it Do you work anywhere?

4 A I was working in tobacco at the time

5 Q All right, and you took the money from working in
6 tobacco and bought the gun?

7 A Yes, sir

8 Q Let me show you what's marked as State's Exhibit
9 No 17 Take a look at that Is that the gun you bought?

10 A Yeah

11 Q Look at it good now Are you sure that's the gun
12 you bought?

13 A It look at it This it right here

14 Q All right, and -- and you bought the gun How much
15 did you pay for it?

16 A Fifty

17 Q \$50 00 Is that right? And who did you buy it
18 from?

19 THE COURT Wait a second He didn't answer,
20 Solicitor

21 MR WILSON I'm sorry

22 DIRECT EXAMINATION RESUMES BY MR WILSON

23 Q Who did you buy the gun from?

24 A Somebody named Mo

25 Q Mo?

- 1 A Yeah
- 2 Q Somebody named Mo, and where did you find Mo in
3 order to purchase this gun?
- 4 A In Aynor
- 5 Q Okay, in Aynor, so you went to Aynor, found Mo, and
6 you purchased the gun for \$50 00?
- 7 A I ain't went to Aynor and found Mo I was staying
8 at Aynor
- 9 Q All right You were staying at Aynor, and how old
10 are you?
- 11 A Fifteen
- 12 Q Fifteen, and you went and bought a gun for \$50 00
13 What were you buying the gun for?
- 14 A Just to be buying it
- 15 Q Just to be buying it All right, and that day how
16 long did you have the gun before you went up to your
17 grandma's house?
- 18 A Probably for about three or four weeks
- 19 Q All right, so you had it three or four weeks Did
20 you have bullets in it?
- 21 A Yeah, I had bullets
- 22 Q Where did you get the bullets from?
- 23 A I got somebody to bought them
- 24 Q I'm sorry You got them where?
- 25 A I got somebody to buy them for them

1 Q You got somebody to buy them for you Who did you
2 get to buy the bullets for you?

3 A This man

4 Q What's his name?

5 A Huh?

6 Q What's the man's name that you got to buy the
7 bullets for you?

8 A Reggie

9 Q Some man named Reggie What's his last name?

10 A I don't know that

11 Q Don't know his last name How much money did you
12 give Reggie to go buy bullets for you for this gun?

13 A \$10 00

14 Q \$10 00, and he -- how much bullets -- how many
15 bullets did he bring you back?

16 A A box

17 Q A box How many is in that box?

18 A I don't know, probably about fifty

19 Q All right, and how long is this that you're buying
20 these bullets before Mr Lockhart got shot and killed?

21 A I was buying them quite regular when I need them

22 Q I'm sorry You were buying them quite regularly?

23 A Yeah, after I'd shoot all the other ones

24 Q So you bought bullets more than one time?

25 A Yeah

1 Q All right, and so you got this fellow to buy them
2 for you one time Who did you got to buy them for you the
3 next time?

4 A Somebody else

5 Q Somebody else Who was that?

6 A Just another man

7 Q What's his name?

8 A Jack

9 Q Jack who?

10 A I don't know his last name

11 Q Don't know his last name either, and how much money
12 did you give Jack?

13 A \$10 00

14 Q \$10 00, and why did you give Jack \$10 00?

15 A To buy a box of bullets

16 Q To buy a box of bullets, and Jack went and bought
17 you a box of bullets for \$10 00?

18 A Yes, sir

19 Q All right, sir Did you buy any more bullets?

20 A No

21 Q So you bought bullets twice?

22 A Uh-huh (affirmative response)

23 Q And \$10 00 each time?

24 A Uh-huh (affirmative response)

25 Q So how many bullets did you have total?

1 A Probably about a hundred

2 Q Probably about a hundred Now, what did you do
3 with those hundred bullets?

4 A I shot them

5 Q Shot them Did you shoot them by yourself?

6 A When I go in the woods, then I would shoot them

7 Q All right You, so you would take the gun and go
8 in the woods, and you would shoot the gun by yourself?

9 A Yes, sir

10 Q Is that right

11 A Uh-huh (affirmative response)

12 Q Well, what about your cousin over here, Roger? Did
13 you ever get with him and y'all shoot the gun?

14 A About twice That was about it

15 Q All right, so twice before Mr Lockhart got shot or
16 twice including when Mr Lockhart got shot?

17 A Probably before he got shot

18 Q Twice before that, so Roger had used that gun at
19 least on two other occasions prior to---

20 A No, he ain't shot nobody with it

21 Q ---shooting Mr Lockhart?

22 A We was in the woods

23 Q That's not what I asked you What I asked you
24 was did he use the gun or fire the gun twice before Mr
25 Lockhart got shot?

1 A Not that day

2 Q I didn't ask you that

3 A That was before that day

4 Q That's not what I asked you, son What I asked
5 you was did your cousin, Roger Legette, fire the gun on
6 two separate occasions prior to the time Mr Lockhart got
7 shot?

8 A Yes, sir

9 Q All right, and so he knew how to operate that
10 gun, didn't he?

11 A Uh-huh (affirmative response), but I had that
12 day---

13 Q Is there any question---

14 A ---after that day---

15 Q Go ahead

16 A After that day I had took the pin out of it, and
17 it was shot and just went out from my pants

18 Q All right You took the pin out that day?

19 A Uh-huh (affirmative response)

20 Q But let me ask you this Is there any question
21 that Roger Legette didn't know how to use that gun?

22 A He ain't know -- he know how to use it, but he
23 ain't meant to shoot nobody

24 Q I didn't ask you that I asked you was there
25 any question that he didn't know how to use that gun?

1 A No, sir

2 Q He knew how to use it, didn't he?

3 A Yeah, but he ain't meant to shoot nobody

4 Q Now, let me ask you this Let's go now to the
5 evening You're up at your grandma's house, and you're
6 there, and Roger Legette's there, and your cousin Craig is
7 there?

8 A Uh-huh (affirmative response)

9 Q Is that right?

10 A Yes, sir

11 Q And how old is Craig?

12 A Fourteen

13 Q Craig's fourteen You're fifteen, right?

14 A Yes, sir

15 Q And Roger is how old?

16 A Sixteen

17 Q Sixteen, so the three of y'all are there Who's
18 got the gun when you get up to your grandma's house?

19 A I had it, and then my mama -- me and Roger mama
20 seen it, and they had called the police

21 Q All right, and the police---

22 A They had called the police to come get it

23 Q All right

24 A The police came, and then that's when my
25 mama called my probation officer, and my probation officer

1 called the police and told them to come pick me up and
2 take the gun, so when the police came, I asked the police
3 did he want the gun, and he told me no because he ain't
4 had no reason to take it because I ain't drewed it on
5 nobody, and I ain't threatened nobody with it

6 Q The police told you, and you're fifteen years
7 old---

8 A I was fourteen at---

9 Q ---that it was all right for you to have a
10 gun?

11 A I was fourteen at the time

12 A Fourteen, and they told you, you say that they
13 told you it was okay for you to have a gun?

14 A Yeah, he said he couldn't take it because
15 I ain't drewed it on nobody, and I ain't threatened
16 nobody, and my mama called, and they called them four
17 times, but they only came three times

18 Q You showed them this gun? You showed the police
19 this gun?

20 A No, I ain't showed them

21 Q Well, when the police came to you and talked to
22 you, where was the gun?

23 A It was in the woods, but I asked him did he want
24 it, and he told me he ain't wanted it

25 Q So---

1 A If he wanted it, he could have got it

2 Q So when the police came to talk to you, you
3 have put the gun -- you had hid the gun in the woods
4 because you knew that your mama had called the police,
5 didn't you?

6 A Yeah, I know she called the police I had
7 talked to my probation officer when he came---

8 Q And you took---

9 A ---when he called there

10 Q You took the gun and hid it in the woods,
11 right?

12 A Yeah

13 Q And so when the police came, you didn't have the
14 gun, did you?

15 A I ain't had it on me

16 Q All right

17 A But the police said he already had -- he
18 already had a pickup order to pick me up for my probation
19 officer---

20 Q All right, and you were on probation?

21 A ---for having the gun

22 Q What are you on probation for?

23 A I was put on probation for the gun because I got
24 locked up for it

25 Q No, well, you said you told the police officer

1 -- you said that when the police officer came, that your
2 mother called your probation officer?

3 A Yeah, she called my probation officer

4 Q And I'm saying, what were you on probation for
5 at the time, at that time?

6 A Not going to school

7 Q Not going to school All right Now, let me
8 ask you, at some point in time that day the police came
9 back a second time, did they not?

10 A Yeah, they came back the second time

11 Q Because after they left, y'all got the gun Did
12 y'all get the gun again?

13 A Huh-uh (negative response)

14 Q After they left the first time?

15 A No, we ain't got the gun We had left it in the
16 woods I left it in the woods

17 Q So you left it in the woods Well, why did the
18 police come back the second time?

19 A 'Cause my mama and them called them back again
20 They called them four times They only came three out of
21 the four

22 Q All right

23 A They called them four times, but the three times
24 they came they still ain't did nothing

25 Q All right, so they came the second time Where

1 was the gun?

2 A In the woods

3 Q In the woods, so you still didn't have the gun
4 when they came back the second time?

5 A Huh-uh (negative response)

6 Q The police never saw you with the gun, did they?

7 A No

8 Q They never saw you shoot the gun, did they?

9 A They heard it shot because one time when they
10 came, I was in the woods, and I shot it

11 Q All right

12 MR GARDNER Your Honor, we're going to object
13 to the solicitor leading This is his witness

14 MR WILSON He's -- he's correct, and I
15 apologize

16 DIRECT EXAMINATION RESUMES BY MR WILSON

17 Q Let me ask you this Did the police hear you
18 shoot the gun?

19 A Yeah, they heard it shot

20 Q Which time?

21 A The first time they came because the first time
22 they came I was in the woods, and then that's when I came
23 up

24 Q All right, and who was shooting the gun at the
25 time the police came the first time?

1 A Me

2 Q All right, and you told them that you were
3 shooting it?

4 A No, he probably heard it I don't know that he
5 heard it I know he had to hear it because I weren't far
6 from the house

7 Q Well, how did you know he heard you?

8 A He was outside the car He had to hear it You
9 could hear a gun shoot

10 Q How many times did you shoot?

11 A About two

12 Q All right, and you were in the woods shooting?

13 A Uh-huh (affirmative response)

14 Q And he was where?

15 A In the yard

16 Q All right, so he couldn't see you?

17 A No, he couldn't see me

18 Q All right Now, let me ask you this When they
19 came out the third time, you're saying they came out a
20 third time?

21 A Uh-huh (affirmative response)

22 Q Where was the gun then?

23 A In the woods still

24 Q All right, still in the woods, and all those
25 three times you never -- did you ever get the gun and go

1 over and give it to the police?

2 A Huh-uh (negative response) because he said he
3 couldn't take it from me because I ain't threatened nobody
4 with it I ain't drewed it on nobody

5 Q All right, and you're fifteen, and he told you
6 that, right?

7 A I was fourteen at the time

8 Q Fourteen, okay All right Now, let me ask you
9 this After the police leave, what do y'all do with the
10 gun?

11 A I went and got it

12 Q Went and got it Now, three times he'd come out
13 there, and you didn't have it, right?

14 A No I got it after he said he can't take it

15 Q But when he leaves, then you get it again?

16 A Yeah

17 Q All right

18 A Because he said I ain't threatened nobody with
19 it, and I ain't drewed nobody That's why he couldn't
20 take it

21 Q Okay Now, when you get the gun this time, what
22 do you do with it?

23 A I had it in my pocket

24 Q And what do you do?

25 A I ain't do nothing with it

1 Q All right Well, you just walk around with it
2 in your pocket?

3 A Yeah I walk around on the dirt road with it

4 Q All day?

5 A Yeah

6 Q The rest of the day?

7 A Uh-huh (affirmative response)

8 Q Well, let me ask you this Did your mama and
9 your grandmama and them tell you not to be shooting that
10 gun?

11 A Yes, sir

12 Q But you continued to do it anyway, right?

13 A Yes, sir

14 Q Huh?

15 A Yes, sir

16 Q Okay, and your buddy, Roger, he was right there
17 with you, right?

18 A He wasn't with me all the time

19 Q All right, so let me ask you, when you finally
20 -- well, let's go to later on in the afternoon The third
21 time the police came to your house that day, what time was
22 that? Do you know?

23 A Probably about three

24 Q About 3 00, so, and that's the last time he came
25 until Mr Lockhart was dead, right?

1 A Yes, sir

2 Q All right

3 A And then they called them again, and that's the
4 third time, but they ain't came

5 Q All right Well, how many times did he come---

6 A Three

7 Q ---before Mr Lockhart died?

8 A Three

9 Q Three times before Mr Lockhart died?

10 A Yeah

11 Q And then you said they called one time, and he
12 didn't come?

13 A They called four times The fourth time he
14 ain't came

15 Q All right Now, let me ask you, and after the
16 police -- as I understand it, the police left, and you got
17 the gun again?

18 A Yes, sir

19 Q All right When did you give Roger the gun?

20 A That day

21 Q When?

22 A Around about five

23 Q Around about five Why?

24 A Because I just gave it to him to be holding it
25 I got tired of walking around with it in my pocket

1 Q Well, it's your gun, right?

2 A Yes, sir

3 Q And you bought the bullets for it, right?

4 A Yes, sir

5 Q And you paid \$50 00 for it, right?

6 A Yes, sir

7 Q Why give it to Roger?

8 A I give it to him to hold

9 Q All right, and you gave it to him to hold?

10 A Yes, sir

11 Q Why?

12 A Because I ain't want to walk around with it in

13 my pocket no more It was getting heavy, and it already

14 had went off in my pocket one time

15 Q But it hadn't been heavy for three weeks, had

16 it?

17 A No, but the whole three weeks I weren't walking

18 around with it

19 Q All right, but y'all didn't have a plan?

20 A No, we ain't had no plan

21 Q You didn't have a plan?

22 A No

23 Q All right, so, later on who -- whose decision

24 was it to call and get a taxicab?

25 A His daddy had called and told him to catch a

1 taxi out to their house

2 Q All right, and you were going with them?

3 A Yes, sir

4 Q All right, and what time of night is this?

5 A It around about ten something

6 Q All right, so whose daddy calls?

7 A Roger daddy

8 Q Roger daddy calls, and he wants you to get a
9 taxi What time of night? 10 00?

10 A It around about ten something, probably about
11 nine when he called

12 Q All right How much money did---

13 A Probably

14 Q Go ahead Go ahead

15 A I'm finished

16 Q How much money did you have?

17 A I had about \$30 00

18 Q You had \$30 00 How much did Craig have?

19 A Craig had about six

20 Q About \$6 00, and how much money did Roger have?

21 A I don't know

22 Q You don't know Now, had you worked that day?

23 A No, I ain't worked that Friday

24 Q All right, and so, you called a taxi Who
25 called? You?

1 A No, they -- they daddy had called and told him
2 to catch a taxi out there to his house, and after the taxi
3 -- after he called, that's when they had called the taxi

4 Q All right Well, y'all called the taxi How
5 long before the taxi came?

6 A I don't know

7 Q Five minutes, an hour?

8 A I don't know

9 Q You don't know All right Why did you take
10 the gun in the taxicab?

11 A I don't know We was going to take it with
12 us

13 Q Why?

14 A Just to be taking it

15 Q Now, you're going -- you're leaving your
16 grandmama's house where you had the gun in the woods Why
17 would you take the gun in the taxicab with you to go to
18 his daddy's house?

19 A 'Cause

20 Q 'Cause what?

21 A Then my mama and them they was hunting for it in
22 the woods, too That's why I went back and got it

23 THE COURT REPORTER I didn't understand you

24 THE COURT Would you repeat that answer? She
25 didn't get it down

1 THE WITNESS Which one?

2 THE COURT The last one

3 THE WITNESS Oh, 'cause my mama and them they
4 was hunting for it, too

5 DIRECT EXAMINATION RESUMES BY MR WILSON

6 Q Your mama and them were hunting for the gun,
7 too?

8 A Uh-huh (affirmative response)

9 Q At night, 10 00, in the woods?

10 A No, they was hunting for it that day

11 Q Hunting for it that day Well, they wasn't
12 hunting for it at 10 00 that night in the woods, were
13 they?

14 A No

15 Q Okay, so you could have left it in the woods?

16 A Yes, sir

17 Q But you didn't, did you?

18 A Huh-uh (negative response)

19 Q Why not?

20 A Because I ain't wanting to leave it in the
21 woods

22 Q Didn't want to leave it in the woods You
23 wanted to take it with you, right?

24 A Yes, sir

25 Q All right, and you had a reason for wanting to

1 take it with you, didn't you?

2 A No

3 Q No? Now, you live kinda' -- your grandmama
4 lives kinda' down a dirt road?

5 A She live on a dirt road

6 Q On a dirt road, and how far is it from that dirt
7 road, once you come down that dirt road -- there are no
8 street lights on that road, are there?

9 A Huh-uh (negative response)

10 Q All right, and when you come down that dirt
11 road, how far is it back to the highway, 501?

12 A About three minutes

13 Q About how many?

14 A It would take you about three minutes

15 Q About three minutes?

16 A You could walk there in about three minutes

17 Q Okay

18 A And a car wouldn't even take that long

19 Q All right, so about three minutes walking to get
20 back to 501, right?

21 A (No response)

22 Q And there are no street lights on that dirt
23 road?

24 A No Well, it's a store down there

25 Q Okay, and -- and the taxi came down that dark

1 dirt road, right?

2 A Yes, sir

3 Q All right, and now, tell me, when y'all -- when
4 the taxi came, tell me what y'all did

5 A We got in the car

6 Q All right Where were you sitting?

7 A In the back seat

8 Q All right, and -- and where was Craig sitting?

9 A In the back seat

10 Q All right, and who was seated behind the -- the
11 cab driver?

12 A Me

13 Q You, and Craig was seated behind Roger?

14 A Yes, sir

15 Q And Roger was where?

16 A In the front

17 Q In the front passenger seat?

18 A Yes, sir

19 Q Okay Now, once you got in the car, did y'all
20 have any discussion about the gun?

21 A Huh-uh (negative response)

22 Q Nobody ever said anything about it?

23 A No

24 Q All right Well, tell me when -- when the next
25 time something was said about the gun?

1 A Nothing wasn't said, nothing else about the
2 gun

3 Q All right, so tell me what happened once y'all
4 get in the car, and everybody's seated What happens?

5 A We're going down the road, and that's when the
6 man said he had to have his money, and Roger reached in
7 his pocket to get the money, and that's when the gun --
8 when he reached in his pocket, and he pulled out his
9 money, the gun went off

10 Q All right

11 A And that's when he looked like he just panicked
12 Then that's when the car -- after the gun went off, he
13 just panicked, and that's when the car went in park Me
14 and Craig jumped out, and Roger jumped out He checked,
15 and then that's when he checked the man He told us he
16 believed he was dead because he ain't felt no pulse, and
17 so we ran back to the house When we ran back to the
18 house, that's when they called 911

19 Q Okay Let me ask you this You say that Roger
20 pulled out the gun The man asked for the money?

21 A Yeah, and when he pulled out his money, the gun
22 came out with the money, too It came out

23 Q All right

24 A And it went off

25 Q Went off How many times did it go off?

1 A I don't know I was panicked, and I jumped out
2 All of us jumped out

3 Q Well, it went off---

4 A And we ran back home

5 Q How many -- how many bullets did you have in the
6 gun?

7 A I don't know

8 Q Well, did you hear more than one shot or less
9 than one shot?

10 A I heard more than one shot because once you
11 shoot it, it always shoots It shoot all the bullets out
12 of it

13 Q Well, now, is that true? If you fire this gun
14 one time, that all the bullets fire out of it?

15 A If a pin out of it, it will

16 Q If a pin's out of it?

17 A Yeah

18 Q Well, did you put the pin back in after he shot
19 Mr Lockhart?

20 A No, sir

21 Q All right, so it's in the -- whatever condition
22 it was in when Mr Lockhart was shot---

23 A It's in it

24 Q ---it stayed in that condition when the police
25 got it, didn't it?

1 A Yes, sir

2 Q Okay, and now, you had fired that gun, had you
3 not?

4 A Earlier that day

5 Q Yeah, earlier that day, and each time tell me
6 how it worked when you had to fire it, how it worked

7 A When it shoot, it shoot all the bullets out of
8 it

9 Q Every time?

10 A Yes

11 Q Before you took the pin out, too?

12 A Huh-uh (negative response), not before I took
13 the pin out, it didn't

14 Q Well, when did you take the pin out?

15 A I took the pin out that day

16 Q Which day?

17 A That Friday

18 Q All right

19 A 'Cause and then after I took the pin out, that's
20 when I had shot in my pocket

21 Q Well, if there's no pin, how did the gun fire?

22 A A gun can still shoot with a pin

23 Q If you take the firing pin out, you're saying
24 the gun will still fire?

25 A Not the firing pin, that thing down there by the

1 trigger

2 Q What thing?

3 A A little piece I took out of there, and it
4 always shoots

5 Q Show me what you're talking about

6 A It's in the inside

7 Q Show me what you say you took out

8 A If you pull it, it'll come apart

9 Q Hold it Come here

10 A It's supposed to come apart like that there

11 Q Come down here and stand up Stand up

12 MR WILSON Your Honor, do you mind if he
13 stands up?

14 DIRECT EXAMINATION RESUMES BY MR WILSON

15 Q Face the jury Turn around Turn around, son
16 All right Show them exactly what you took out

17 A It's supposed to come apart That whole piece
18 right there come apart

19 Q Well, take it apart Go ahead

20 A Sometimes that piece right there, that whole
21 piece right there, kick out

22 Q All right

23 A This whole top part right there will come off
24 the gun

25 Q Uh-huh (affirmative response)

- 1 A And it came off Somehow it would come off
- 2 Q Well, just show us what you took out of the
- 3 gun
- 4 A A piece from right down here, I took it out
- 5 Q What piece?
- 6 A A piece from right down there by the trigger
- 7 It was up in there
- 8 Q Uh-huh (affirmative response), and you took that
- 9 off?
- 10 A Uh-huh (affirmative response)
- 11 Q All right
- 12 A I took it out
- 13 Q And what did you do with it?
- 14 A I threw it away because I didn't want it back in
- 15 there
- 16 Q Why?
- 17 A Because why am I going to take something out if
- 18 I'm going to put it back in?
- 19 Q Well, why did you take it out is what I'm asking
- 20 you Why didn't you want it in there?
- 21 A I don't know
- 22 Q You don't know? What did you use to take it out
- 23 with?
- 24 A A screwdriver
- 25 Q A screwdriver? Now, tell me -- when Roger took

1 the gun out, tell us how it sounded when he was -- when it
2 was firing?

3 A It sounded like a gunshot

4 Q Well, go ahead and do it for us

5 A I -- I don't know how to make a gun shot

6 Q Well, say, "Pow "

7 A He just---

8 Q Can you say that?

9 A Yeah, I can say, "Pow "

10 Q All right Well, was it, "Pow, pow, pow, pow,
11 pow"?

12 A No, it was going off like it was going off, but
13 he wasn't -- he wasn't squeezing the trigger It just
14 shoot automatic

15 Q How do you know he wasn't squeezing the trigger?

16 A He panicked, man

17 Q You were in the back seat How do you know he
18 wasn't squeezing the trigger?

19 A Because I know he ain't meant to shoot nobody

20 Q Do you know how many times Mr Lockhart was
21 shot?

22 A They say three I don't know

23 Q They say three Do you know how many guns -- do
24 you know how many bullets were fired from that gun?

25 A Huh-uh (negative response)

1 Q Do you know how many were left in the gun?

2 A Huh-uh (negative response)

3 Q Didn't you say that -- that if the gun fired,
4 it had to fire all the bullets? Isn't that what you said?

5 A Yeah

6 Q All right So, if some were left in the clip,
7 then that -- something would be wrong, wouldn't it?

8 A Huh-uh (negative response) Should be because
9 they ain't fired all of them

10 Q Well, but you just told me that it would fire
11 all of them---

12 A It would have fired all of them

13 Q ---because you took the pin out?

14 A And you said if it's---

15 Q Huh?

16 A You said if some bullets was left in the clip,
17 something would be wrong, and I said, "Yeah "

18 Q You said what?

19 A I said, "Yeah "

20 Q You said, "Yeah"? Okay Now, after -- after
21 y'all shot, after Mr Lockhart was shot, y'all drug him
22 out Somebody -- who drug him out of the car?

23 A Roger didn't drag him out He just picked him
24 up and checked his pulse, and then that's when he had just
25 laid him down and ran back to the house Then is when he

1 came and called y'all

2 Q Let me show you what's marked as State's Exhibit

3 No 3 Take a look at that Is that how y'all left him,
4 except for the sheet?

5 A Yeah

6 Q All right

7 A That just how he was

8 Q All right, and so you were there the entire time
9 when he was being shot, were you not?

10 A I was in the cab

11 Q You were in the cab, and after Roger stopped
12 shooting him, who took him outside the cab and put him on
13 the ground?

14 A Roger picked him up, and he -- that's when he
15 checked his pulse, and after he say he believe he dead,
16 that's when we ran back to the house, and then that's when
17 he came and called the police

18 Q Why -- why take him out the cab?

19 A He checked his pulse

20 Q Well, he couldn't check his pulse in the cab?

21 A I don't know He could have, but I guess he
22 just figured to do it like this Do you know what I'm
23 saying?

24 Q So, he's on the ground Does he ever say
25 anything to you, son?

1 A Nope

2 Q Let me ask you this Did Mr Lockhart ever fuss
3 at y'all or threaten you or curse at you or mistreat you
4 in any way?

5 A No, sir

6 Q He never did anything to you, did he?

7 A No, sir

8 Q Now, so you stayed while he checked his pulse,
9 right?

10 A Yes, sir, but I wasn't up there I was at the
11 back of the cab walking -- I was walking backwards

12 Q Okay, so then where do you go after y'all---

13 A I turned around and ran home

14 Q Ran home? Ran home back to your grandma's?

15 A Yes, sir

16 Q Okay, and where did Craig go?

17 A Craig ran All of us ran

18 Q All right, and Roger ran, too?

19 A Yes, sir

20 Q And when y'all got back home, what did you do
21 then?

22 A I went in---

23 Q Did you immediately -- go ahead

24 A I went in the house and sat down

25 Q Went in the house and sat down Well, you

1 didn't call---

2 A No, and then that's when Craig---

3 Q ---you didn't call---

4 A Then that's when Craig told our grandmama He
5 started crying Then that's when Roger was in the room,
6 and then that's when he told our uncle

7 Q All right, so you go---

8 A Then that's when he came out and called the
9 police

10 Q You go in the house, and you sit down?

11 A Uh-huh (affirmative response), and then after
12 they told my grandma, my grandma she didn't believe
13 it, and she asked me, and I said, "Yeah, he ain't lying "

14 Q Well, let me back up, and let's see if I'm
15 following you now When you go in the house, you sit down
16 where?

17 A On the chair

18 Q On the chair where?

19 A In my couch, looking at TV

20 Q On the couch watching TV, okay, and where is --
21 where is Craig?

22 A Craig be setting on the chair

23 Q Sitting on the chair By you?

24 A No, in another chair

25 Q In another chair He was watching TV, too?

1 A Yes, sir

2 Q All right, and where is Roger?

3 A Roger had went in our room -- had went in the
4 room

5 Q Roger went in the room?

6 A Yeah, and he was talking -- I guess he was
7 telling our uncle because our uncle came out Then that's
8 when I had told our grandma Then that's when Craig had
9 started crying, and then he told our grandma Then is
10 when she thought they was lying Then she asked me, and
11 I said, "Yeah, they ain't lying "

12 Q All right How long were y'all in the house
13 before you told your grandma?

14 A We ain't been in the house five minutes before
15 we told her

16 Q All right, so you were in there three or four
17 minutes before you told her?

18 A We told her -- he told her just about right time
19 we got in there We probably been in the house about two
20 minutes

21 Q Well, why -- you said -- didn't I understand you
22 earlier to say that y'all were scared?

23 A We was scared?

24 Q Yeah

25 A I said Craig start crying

1 Q You weren't scared?

2 A No, I wasn't scared

3 Q All right, and Craig, Craig wasn't scared?

4 A He had to have been scared, he started crying

5 Q Well, what about Roger? Was he scared?

6 A Yeah, he been scared because he been walking
7 around the house He was shaking You can tell when a
8 person gets scared because they get nervous

9 Q All right, but you weren't scared?

10 A No, I was just setting down

11 Q All right You were just setting down All
12 right, and so you wait, you say, three or so minutes
13 before you tell your--

14 A No, I said about two minutes

15 Q About two minutes before you told your grandma?

16 A Yeah

17 Q All right, and -- and then after you told your
18 grandma, then what?

19 A He called the police

20 Q All right Well, who called the police?

21 A Roger did

22 Q Did you hear him call the police?

23 A Yeah, I heard him call the police

24 Q What did he tell the police?

25 A He told the police he shot a man

1 Q He told the police he shot a man Now, one
2 thing that -- that I'm a little confused about When --
3 after the shooting was over, was Mr Legette -- was Mr
4 Lockhart still sitting in the car?

5 A After what?

6 Q After the shooting was over?

7 A Yeah, and then that's when we jumped out I
8 jumped out, and I walking back Then that's when Roger
9 came by and checked his pulse, and then that's when he
10 told us he believed he was dead, and we ran all the way
11 back to the house

12 Q Okay, and you pulled -- and you -- and you don't
13 know why y'all pulled him out?

14 A There ain't no y'all because all of us ain't
15 went and touched him

16 Q All right Roger is the only one that touched
17 him?

18 A Yeah, he touched him and checked his pulse

19 Q When those -- when -- when that gun was firing,
20 can you describe it to me, how fast it was going?

21 A Huh-uh (negative response)

22 Q You can't? Well, try

23 A I don't want to try

24 MR GARDNER Your Honor, we'd object because
25 he's already asked this question

1 MR WILSON He never answered it

2 THE WITNESS I did answer your question because
3 you asked me to make a sound one time

4 DIRECT EXAMINATION RESUMES BY MR WILSON

5 Q Well, just tell me how -- how the gun sounded as
6 best you can recall

7 A I don't remember because I wasn't even like
8 thinking about it Do you know what I'm saying? I
9 don't even like thinking about it, so I don't even
10 remember

11 Q I don't have any other questions Thank you

12 CROSS-EXAMINATION BY MR GARDNER

13 Q George, how old are you again?

14 A I'm fifteen

15 Q And Roger is sixteen?

16 A Yes, sir

17 Q But he was fifteen when this happened?

18 A Yes, sir

19 Q Okay No doubt that you're -- it was your gun,
20 and you bought the gun?

21 A Yes, sir

22 Q And, in fact, were on -- did you say -- did you
23 tell the solicitor parole?

24 A No That Saturday after that---

25 Q Probation?

1 A ---I got locked up that Saturday

2 Q What were you telling the solicitor about your
3 probation?

4 A Oh, because my mama, that Friday when she seen
5 the gun, she had called the police, and she had -- she had
6 called my parole officer and told him I had a gun, and
7 then that's when my parole officer say he's going to send
8 the police out there to get the gun, and the police came,
9 but he said he couldn't take it

10 Q Well, now, what were you on parole for?

11 A Not going to school

12 Q Did any criminal charges filed against you for
13 your involvement with the guns during the day, the
14 morning, the afternoon---

15 A The next day I went to jail for the gun

16 Q ---anything in the cab?

17 A I did

18 Q For the gun or for violating parole?

19 A For violating parole and the gun

20 Q Okay Were y'all drinking beer that day?

21 A Yes, sir

22 Q Anything else?

23 A We had smoked some (inaudible)

24 Q Some what?

25 A Some weed

- 1 Q Okay, and this lasted all day?
- 2 A Sir?
- 3 Q This lasted all day?
- 4 A Yes, sir
- 5 Q Okay, and at some point in time Roger's father
- 6 called and said, "Y'all come to my house in Conway"?
- 7 A Yes, sir
- 8 Q Okay Y'all got in the cab What direction did
- 9 the cab go in?
- 10 A He was going back towards -- back towards the
- 11 highway
- 12 Q Not towards Conway?
- 13 A Yeah You go -- it's two ways you go to the
- 14 highway
- 15 Q Did Roger say anything to him about that?
- 16 A No, sir
- 17 Q Once this occurred, you say y'all went back to
- 18 your mother's or grandmother's home?
- 19 A Yes, sir
- 20 Q And Roger told his uncle right away, didn't he?
- 21 A Yes, sir
- 22 Q And then it took a minute or two to tell the
- 23 grandmother?
- 24 A Yes, sir
- 25 Q Then called the police?

1 A Yes, sir

2 Q When Roger was checking the pulse, he didn't do
3 anything else to him, did he?

4 A No, sir

5 Q Didn't try to rob him, take anything out of his
6 pockets?

7 A No, sir

8 Q Checked his pulse, ran down and called 911?

9 A Yes, sir

10 Q The solicitor asked you would the gun be in the
11 same condition when the police took it as it was when you
12 and Roger had it that night How would you be able to --
13 in a position to testify to that?

14 A (Inaudible)

15 THE COURT You have to answer up "Umm"
16 doesn't say anything

17 THE WITNESS No, sir I don't know I guess
18 shoot it I don't know

19 CROSS-EXAMINATION RESUMES BY MR GARDNER

20 Q You didn't see the gun Somebody could have
21 gotten to the gun and changed it?

22 A I don't know I was -- that's what I'm saying
23 I got locked up the next day

24 Q Do you know why Roger called the police?

25 A Sir?

1 Q Do you know why Roger called the police?

2 A Yes, sir

3 Q Why?

4 A I guess because he shot a man I guess -- do
5 you know what I'm saying?

6 Q To come -- to come help, right?

7 A Yes, sir

8 MR GARDNER We have nothing further, Your
9 Honor

10 MR WILSON Just one question

11 REDIRECT EXAMINATION BY MR WILSON

12 Q You say you didn't try to rob him?

13 A No, sir

14 Q Why did you take the gun?

15 A Because I wanted to take it with me, like I told
16 you the first time

17 Q I don't have any other questions

18 THE COURT You may step down

19

20 MR WILSON Craig Legette

21 CRAIG LEE LEGETTE, BEING
22 DULY SWORN, TESTIFIES AS FOLLOWS

23 THE CLERK (DONNA WILLIAMS) Please state your
24 whole -- whole name and spell your last name for the
25 court

1 THE WITNESS Craig Lee Legette

2 THE COURT Now, Mr Legette, you've got to
3 speak up loud enough where the Court can hear you

4 THE WITNESS Craig Legette, Craig Lee Legette
5 DIRECT EXAMINATION BY MR. WILSON

6 Q How old are you, Craig?

7 A Fourteen

8 Q And what's your birthdate?

9 A January 13th

10 Q So you turned fourteen since this happened? You
11 were thirteen when it happened?

12 A Yeah

13 Q All right, and let me ask you Do you go to
14 school?

15 A Yes, sir

16 Q What grade are you in?

17 A Ninth

18 Q You're in ninth grade You can read?

19 A Some things

20 Q All right Can you write?

21 A Some things

22 Q All right Now, let me ask you, back last year
23 when this shooting happened, you were present, right?

24 A Yeah

25 Q All right Now, let's go back to the night

1 before the shooting occurred Where did you spend the
2 night at?

3 A My grandmother's

4 Q Your grandmother's All right, and let me ask
5 you, when is the first time that you saw this gun?

6 A That morning

7 Q Huh?

8 A That morning

9 Q This gun, which is State's Exhibit No 17, when
10 is the first time you saw it?

11 A That morning

12 Q That morning?

13 A Yeah

14 Q The morning before Mr Lockhart was killed that
15 night, right?

16 A Yeah

17 Q All right, and did you ever have the gun?

18 A I ain't never hold that one

19 Q They never let you shoot it?

20 A No, sir

21 Q All right Well, who was shooting the gun?

22 A Both of them

23 THE COURT You have to speak up louder I
24 can't hear you

25 THE WITNESS Both of them

1 MR WILSON Both of them

2 THE COURT Speak in that mike there

3 THE WITNESS Both of them

4 MR WILSON All right

5 DIRECT EXAMINATION RESUMES BY MR WILSON

6 Q Both of them meaning who?

7 A George Gray and Roger Legette

8 THE COURT Wait a second Sit up and get your
9 mouth close to that mike Sit up Sit up All right

10 There we go Put your mouth close to that mike There we
11 go Now, repeat that question, Solicitor

12 MR WILSON All right

13 DIRECT EXAMINATION RESUMES BY MR WILSON

14 Q Who was doing the shooting?

15 A George Gray and Roger Legette

16 Q All right, and where was the shooting happening
17 at?

18 A Down the road in the yard

19 Q From your grandma's house?

20 A Yeah

21 Q All right, and did anyone talk to y'all about
22 shooting that gun?

23 A No, sir

24 Q Nobody fussed at you about it?

25 A Oh, yeah, somebody fussed at them

1 Q Who fussed at them?

2 A My mama fussed at them

3 Q All right Well, did y'all stop?

4 A I weren't with them

5 Q You weren't with them?

6 A No

7 Q So it was just the two of them?

8 A Yeah

9 Q Where were you?

10 A I was at -- with my mama

11 Q You were with your mama? All right, and who was

12 doing the shooting, Roger or -- or---

13 A All both of them

14 Q Both of them All right Now, who decided that

15 y'all were going to go to visit Roger's father?

16 A My father called

17 Q All right Your father called?

18 A Yeah

19 Q All right, and what did he want?

20 A He told us we was to come to his house

21 Q Okay, and what did you do?

22 A We called a taxicab

23 Q All right Who called the taxicab?

24 A I forgot who called it

25 Q Well, did y'all discuss it before you called the

1 taxicab about who was going to pay for the taxicab?

2 A Nobody ain't discussed it They already had the
3 money about the pay

4 Q I'm sorry They what now?

5 A (Inaudible)

6 THE COURT I'm sorry I can't understand it
7 What's your answer?

8 THE WITNESS I say he already had the money

9 THE COURT You didn't have the money

10 THE WITNESS I say he already had the money in
11 his pocket

12 THE COURT Who had the money in his pocket?

13 THE WITNESS Both of them had money

14 MR WILSON All right

15 DIRECT EXAMINATION RESUMES BY MR WILSON

16 Q So both of them had money?

17 A Yeah

18 Q All right How -- how much did they have?

19 A I don't know They had -- I know they had about
20 \$30 00

21 Q All right Did you have any money?

22 A I had about \$7 00

23 Q All right, and so y'all were going to get a
24 taxi, right?

25 A Yeah

1 Q All right, and when the taxi came, did you get
2 in the taxi?

3 A Yes, sir

4 Q All right Who got in first?

5 A I did

6 Q All right Who got in after you?

7 A I don't know

8 Q All right, and where were you sitting in the
9 taxi?

10 A The right-hand side

11 Q Okay, and where was Roger in the taxi?

12 A In the front seat

13 Q In the front seat, and where was---

14 A George?

15 Q ---George?

16 A Left-hand side

17 Q All right Now, tell me what happened Once
18 y'all got in the taxi, what happened?

19 A Well, the man had say he wanted the money
20 straight up

21 Q All right Where were y'all at when he said
22 that?

23 Were y'all parked, or were y'all driving down the road or
24 what?

25 A About to drive down the road

1 Q Y'all were driving down the road, so the car was
2 moving, and he said, "I want my money " Then what?

3 A Yeah, and then Robert about to pay

4 THE COURT I'm sorry You're going to have to
5 speak up Your voice---

6 THE WITNESS I say he was about to pay

7 DIRECT EXAMINATION RESUMES BY MR WILSON

8 Q Who was about to panic?

9 A My brother

10 Q Why? You said he had the money Why was he
11 panicking?

12 A I said he was about to pay him I didn't say
13 nothing about---

14 Q He was about to pay him?

15 A Yeah

16 Q I'm sorry I didn't understand you, so he was
17 about to pay him Then what?

18 A And then that's all Then is when the gun went
19 off

20 Q All right He was about to pay him, and then
21 the gun went off? Where did -- where was the gun?

22 A The gun was in the pocket with the money

23 Q The gun was in the pocket with the money Whose
24 pocket with the money?

25 A My brother

1 Q Well, who is that?

2 A Roger Legette

3 Q Roger Legette?

4 A Yeah

5 Q Had the gun in his pocket with the money Is
6 that what you're saying?

7 A Yeah

8 Q All right Then what happened?

9 A Then the money got stuck to the trigger

10 Q The money got stuck to the trigger?

11 A Yeah

12 Q All right, and then what?

13 A Then that's all happened Then the gun went
14 off, and I jumped out

15 Q Well, the money made the gun go off Is that
16 what you're saying?

17 A I don't know what had made it go off

18 Q All right, so the money was stuck to the
19 trigger?

20 A Yeah

21 Q And then the gun went off?

22 A Uh-huh (affirmative response)

23 Q Then what?

24 A I jumped out

25 Q How many times did the gun go off?

1 A It probably went off a lot of times after I
2 jumped out

3 Q I'm sorry I can't hear you

4 A I can't remember how many times it went off I
5 jumped out

6 Q How many times did you hear it go off is what
7 I'm asking?

8 A One time -- the first shot, I only heard one at
9 first, and then I heard it keep on going on after I jumped
10 out

11 Q Well, that's what I'm asking you You say that
12 you -- you -- how many shots did you hear?

13 A It could have been about seven I don't know

14 Q You could have heard about seven, so you heard
15 the first shot, and then you got out?

16 A Yeah, I jumped out

17 Q All right, and where were you when you heard the
18 other shots?

19 A I was on the road

20 Q You was on the road?

21 A Yeah

22 Q So you heard one shot while you were sitting in
23 the car?

24 A Yeah

25 Q And then when you got out, and you got on the

1 road, you heard some more shots?

2 A I heard more shots as soon as I jumped out I
3 opened the door, and the gun still was going off

4 Q All right, so after you got out, you heard --
5 you heard the gun continue to go off?

6 A Yeah

7 Q Is that what you're saying?

8 A Uh-huh (affirmative response)

9 Q All right, and you don't know how many times?

10 A I don't know how many times

11 Q But more than one?

12 A Yeah

13 Q More than two?

14 A About -- about seven I'd say

15 Q About seven Okay Now, when you got out,
16 where did you go?

17 A I jumped out, and then I stand in the road for
18 a minute, and I meditate and like---

19 THE COURT You did what?

20 THE WITNESS I like meditate and stand there in
21 the road

22 THE COURT You meditated?

23 THE WITNESS Yeah

24 DIRECT EXAMINATION RESUMES BY MR WILSON

25 Q So you got out and stood in the road and

1 meditated?

2 A Yeah

3 Q All right, and Roger was still in the car, and
4 the gun was still going off, and you was meditating?

5 A Roger jumped out and went to check on the man to
6 see if he had a pulse He didn't have no pulse, and he
7 say he dead and went -- ran to the house, and my brother
8 wanted to call the cops He had went in the room first
9 and lay down for a while, and I lay down for a while, and
10 he had called the police

11 Q So y'all laid down first and then called the
12 police?

13 A Yeah

14 Q How long did you lay down before you called the
15 police?

16 A A couple of minutes

17 Q A couple of minutes All right, so you went in
18 the house Y'all laid down for a couple of minutes Then
19 you got back up Then you called the police?

20 A Yes, sir

21 Q All right Now, when -- when the gun was --
22 when the gun was being fired, you got out of the car How
23 long after you got out of the car before Roger got out of
24 the car?

25 A As soon as the brakes hit, he had jumped out

1 Q As soon as what?

2 A As soon as the car had stopped

3 Q As soon as the car stopped, so the car was in
4 motion the whole time?

5 A Oh, yeah When I jumped out, it was in motion

6 Q All right, and then somehow the car stopped?

7 A Yeah

8 Q And then Roger got out?

9 A And he checked on the man

10 Q All right Well, now, let's talk about that
11 for a minute You say he got out and checked on the
12 man?

13 A Yeah

14 Q Mr Lockhart was still in the car, was he not?

15 A No Roger opened the door

16 Q Roger opened the door All right, so Roger was
17 on the passenger side?

18 A Yeah

19 Q In the front, right?

20 A Yeah

21 Q So how did he get around to open the door? How
22 did he get the door of Mr Lockhart open?

23 A He went -- he got out of the car and went on in
24 and checked on his pulse

25 Q All right, so he got out and came around and

1 opened the door?

2 A Yeah

3 Q All right, and how did Mr Lockhart get on the
4 ground?

5 A Roger pulled him out and to see if he had a
6 pulse

7 Q All right Well, he couldn't check his pulse
8 while he was in the car?

9 A He said it was too much blood

10 Q Too much blood All right, so he pulled him out
11 and checked his pulse?

12 A Yeah

13 Q All right Then what? You were still there
14 when that was happening, right?

15 A Oh, yeah

16 Q All right, so you were there the whole time all
17 these shots were being fired?

18 A Uh-huh (affirmative response)

19 Q Describe how the shots sounded to you

20 A I can't tell you all that

21 Q Well, do the best you can for me

22 A They just sound like regular, regular shots

23 Q Well, just kinda' describe it the best you
24 can Was it like pow, pow, pow, pow, pow, or pow, pow,
25 pow? Just kinda' tell me how it sounded the best you

1 can

2 A It sound like boom, boom, boom, boom, boom, just
3 keep on like that

4 Q Sounded like boom, boom, boom, boom?

5 A Yeah

6 Q Okay

7 A Just keep on going

8 Q All right, and now, after Roger had felt the
9 pulse, what did y'all do then?

10 A Ran home

11 Q Ran home, the three of you?

12 A Yeah

13 Q Okay, and then you say you go in the house, and
14 you lay down for a few minutes?

15 A Yeah

16 Q All right, and why do you lay down?

17 A I guess just to -- just to lay down for a while
18 and then call the police

19 Q All right, so you lay down for a little while,
20 and then who calls the police?

21 A My brother

22 Q Which one?

23 A Roger Legette

24 Q Roger Legette calls the police, and were you
25 present when he called the police?

1 A I -- I just left and went and got my mom
2 Q You left, and where does your mom live?
3 A She was to my house
4 Q All right, so you -- how far is that from your
5 grandma's?
6 A Not -- right in Aynor
7 Q I'm sorry
8 A In Aynor
9 Q You had to drive?
10 A Yeah
11 Q All right Who took you?
12 A One of my uncle friends
13 Q All right, and when you left to go get your
14 grand
15 -- when you left to go get your mother, had anybody called
16 the police yet?
17 A Yeah, my brother did
18 Q All right, so after the police were called, then
19 you left to go get your mother?
20 A Yeah
21 Q Is that right?
22 A Yeah
23 Q All right Now, when -- explain to me -- you
24 said that the money was wrapped around the gun?
25 A It wasn't wrapped around It was stuck in the

1 trigger

2 Q All right Show me how that was You say
3 the money was stuck in the trigger Here Take this for
4 me Let's see Hold that Show me how it stuck in the
5 trigger

6 A That part right there

7 Q Come, come down for me Stand right down here
8 in front of the jury All right, and show them how that
9 money was stuck in the trigger

10 A It was sort of like inside there I can't get
11 it in

12 Q I'll hold it for you Go ahead

13 A It was like in that part there

14 Q So the money was in -- inside the trigger like
15 that?

16 A It was -- it was more -- it was different than
17 that I know it was different

18 Q Well, show me That's what I want you to do
19 Show me exactly how it was You saw it I didn't see
20 it

21 A I can't get it exactly right

22 Q Well, do the best you can

23 A It was like stuck under that part instead of
24 that part

25 Q Uh-huh (affirmative response), so you're saying

1 the---

2 A This right here was broke That was kinda'
3 broke

4 Q Kinda' broke?

5 A And loose, kinda' loose

6 Q And -- and -- and it was stuck The money was
7 stuck where?

8 A Like, you know, it was like a little hole to it
9 somewhere

10 Q Huh?

11 A It had like a little hole stuck in that thing or
12 something

13 Q Okay, and -- and how many -- how much money was
14 stuck under there?

15 A I didn't pay attention to how much

16 Q All right

17 THE COURT REPORTER I didn't hear you

18 THE WITNESS I didn't pay attention to how
19 much

20 DIRECT EXAMINATION RESUMES BY MR WILSON

21 Q All right Go ahead and sit down Now, that
22 road, that road where your grandma lives, are there any
23 lights on that road, on that street?

24 A No

25 Q It's a dirt road, isn't it?

1 A Yeah

2 Q All right, and you were in the cab The cab was

3 moving?

4 A Yes, sir

5 Q Right

6 A Yeah

7 Q All right, and how did you see all this? You

8 were in the backseat, and it's -- no lights on the

9 highway How do you see all of this?

10 A He had the lights on the side of the car

11 Q Who turned them on?

12 A He did

13 Q Why?

14 A For us to get the money straight up for him

15 Q All right, so he turned the lights on, and y'all

16 were going down the street Is that what you're saying?

17 A Yeah

18 Q All right, and that's how you saw the -- the

19 money?

20 A Yeah

21 Q All right, and you don't know how much money was

22 stuck in there?

23 A No

24 Q But you're saying something was stuck in there,

25 right?

1 A Yeah, something was stuck

2 Q All right Now, did Mr Lockhart ever do
3 anything to y'all? Did he ever do anything to you or to
4 Roger or to

5 -- to your brother, your other brother, your cousin?

6 A I don't know

7 Q Huh?

8 A He ain't never did nothing wrong to me I don't
9 know as he did nothing wrong to them

10 Q Would you see him do anything wrong to them?

11 A I didn't see him do nothing to me

12 Q Well, that's not what I asked you, son What I
13 asked you was did you see him do anything to any of those
14 other boys in the car?

15 A I ain't seen -- I ain't seen him do nothing to
16 me

17 Q Did you -- did you understand what I asked you?

18 A Yeah, I understand what you asked me

19 Q What did I ask you?

20 A You asked me did he do anything to the rest of
21 them

22 Q All right Did you see him do anything to them
23 is what I asked you

24 A I ain't paid no attention

25 Q Yes or no Did you, or didn't you?

1 A I ain't paid no attention

2 Q You didn't pay that any attention?

3 A No

4 Q Well, you didn't pay that any attention, but you
5 could see dollar bills stuck in the gun?

6 A I don't know what -- I don't know what kind of
7 bill it was

8 Q Did you hear Mr Lockhart say anything?

9 A He was just wanting the money up---

10 Q Other than asking for the money?

11 A ---up front

12 Q Did he say anything, other than that?

13 A I don't know

14 Q After he was shot, did he say anything?

15 A I don't know

16 Q What did y'all do? After he was shot, and y'all
17 were standing around, and you say that your buddy was
18 checking on his pulse, what -- what did y'all discuss?
19 What did y'all say?

20 A We didn't discuss nothing

21 Q Nothing?

22 A We ain't never---

23 Q You didn't say anything to each other?

24 A Huh-uh (negative response)

25 Q Well, let me ask you this Before you came here

1 today to testify, did you talk with Roger and -- and --
2 what's your cousin's name?

3 A George

4 Q George Did you talk to them about what they
5 were going to say and what you were going to say and all
6 that stuff?

7 A No

8 Q You never did?

9 A I ain't never seen my brother because he was in
10 jail

11 Q What about Roger? I'm sorry What about---

12 A He don't stay with me

13 Q --George? Huh?

14 A He don't stay with me

15 Q He doesn't stay with you?

16 A No

17 Q So you haven't seen George any since this thing
18 happened, not one time?

19 A Not but today I seen him

20 Q So this is the first time in over a year that
21 you've seen George?

22 A No, I've seen him since he got out of jail and
23 stuff

24 Q Well, that's what I'm asking you, and after he
25 got out of jail, y'all didn't talk about it?

1 A No, we didn't talk nothing

2 Q For a whole year you've never had any discussion
3 about what happened in that taxi?

4 A No, I---

5 Q Is that what you're saying?

6 A We never talk about it

7 Q You never talked about it?

8 A With nobody

9 Q With nobody Now, after the shooting occurred,
10 what -- what happened to the gun?

11 A He chunked it

12 Q I'm sorry What?

13 A He threw it

14 Q He threw it?

15 A Yeah

16 Q He who?

17 A Roger

18 Q He threw it where?

19 A In the bushes

20 Q In the bushes where?

21 A By my grandma house

22 Q By your grandmother's house All right, and was
23 that before y'all went in the house?

24 A Yeah

25 Q All right, so after the shooting the first thing

1 y'all do, or the first thing he does, is throw the gun
2 into the woods, right?

3 A Yeah

4 Q All right Now, how long do you think you were
5 asleep before you---

6 A We didn't went to sleep We just watched TV

7 Q Well, how long do you think you laid down before
8 you called the police?

9 A Not---

10 Q Ten minutes, fifteen minutes, thirty minutes, an
11 hour, what?

12 A Probably about ten minutes

13 Q All right, so you laid down, you know, for about
14 ten minutes and took a little nap or whatever before you
15 called the police?

16 A Yeah

17 Q All right Okay Let me ask you, when -- when
18 you said when you were showing me just a minute ago that
19 that -- that the -- that this gun had money stuck in it,
20 show us how -- show us how Roger was holding the gun when
21 he was trying to get the money to pay Mr Lockhart Stand
22 right here for me Now, what I want you to do is show the
23 jury and the Court how Roger was holding the gun, and I'll
24 -- I'll sit where Mr Lockhart was sitting, and you be
25 Roger, and you show me exactly how he was holding the gun

1 when he was trying to get the money out, and Mr Lockhart
2 got shot Okay?

3 A He had it by the money part first

4 Q All right

5 A And like he tried to grab it

6 Q Well, go ahead and just show me exactly how it
7 happened

8 A Like that, the money first

9 Q Like, like what?

10 A He had the money first like that

11 Q All right Come down Come down All right

12 A He had it by the money first

13 Q Uh-huh (affirmative response)

14 A And then like he had tried to get it -- tried to
15 get it, and the first bullet went off

16 Q All right, so he had it like this in his hand
17 just like you're holding it now, right?

18 A He had the money first

19 Q Well, the money---

20 A He had to grip to the money

21 Q Listen to my question What I'm asking you
22 is I want you to hold the gun exactly like you say Roger
23 was holding the gun when the gun went off the first time,
24 okay?

25 A He had the money---

1 THE COURT You have to speak up now, so she can
2 -- she's got to write it down

3 THE WITNESS He had the money

4 THE COURT Okay, Solicitor

5 MR WILSON I'm sorry Come down Stand on
6 down right here, son Turn around All right

7 DIRECT EXAMINATION RESUMES BY MR WILSON

8 Q Go ahead, and I'll stand right here just like
9 this

10 A He had the money and had the money and was about
11 to put the money---

12 Q Speak up

13 A He was about to -- he had the money, and the
14 money was stuck, and the gun went off, the first round
15 When I heard the first shot, I jumped out---

16 Q So he had it out in his hand like you're holding
17 it there, and then the money fell out?

18 A He had it like this, like this here

19 Q Well, that's what I want to know How did
20 he---

21 A Like by the money

22 Q Huh?

23 A I told you the money, how he lift it up by
24 the money

25 Q All right

1 A Then he tried to get control over it, and
2 he couldn't take control over it He was shaking too
3 bad

4 Q So he had it pointed down at the seat?

5 A I don't know how he had it pointed

6 Q Well, how---

7 A I only seen the money part

8 Q So you never -- you never saw how he had it
9 pointed, so you don't know?

10 A I don't really know how he had it pointed

11 Q Well, how do you know he was trying to get money
12 out of it if you couldn't see where it was pointed?

13 A I seen the money, but he ain't ever had it
14 pointed at nobody

15 Q. He didn't have it pointed anywhere?

16 A I didn't see it I didn't see him have it
17 pointed

18 Q All right Well, show us how it was Let me
19 show you, give you the money again You show me exactly
20 how it was with the money when you saw him getting it out
21 of his pocket or wherever Here

22 MR GARDNER Your Honor, we're going to object
23 to this We've already done this once

24 MR WILSON No, sir

25 THE COURT Overruled

1 DIRECT EXAMINATION RESUMES BY MR WILSON

2 Q Show us exactly how it was when he was getting
3 it out, and he had the money tied up to it Go ahead

4 A Okay I can't put it in there

5 Q Well, just try it Go ahead

6 A I can't get it in there like that

7 Q All right, so the money was stuck Go ahead and
8 show me now without the money in there Just go ahead and
9 show me the rest of it

10 A It was like that, and he had it by the money,
11 and that's all Then I heard the first bullet, and I
12 jumped out

13 Q Well, where was the gun pointed when he -- when
14 the bullet fired? That's what I want to know

15 A I think he had pointed it at the backseat
16 because the first bullet went next the backseat

17 Q The first bullet went next the backseat?

18 A Yes, sir

19 Q All right Where next the backseat?

20 A Next George

21 Q Next George All right, and where did the
22 second bullet go?

23 A I don't know I jumped out then

24 Q You jumped out then?

25 A Yes, sir

1 Q All right, so you jumped After the first
2 bullet was fired, you jumped out When the second bullet
3 was fired, were you in the car?

4 A No

5 Q You were out of the car by the time the second
6 bullet was fired?

7 A Yeah

8 Q Is that what you're saying?

9 THE COURT You have to speak up so the court
10 reporter can hear you

11 THE WITNESS I say yeah

12 DIRECT EXAMINATION RESUMES BY MR WILSON

13 Q All right You're certain about that now?

14 A Yeah

15 Q Okay That's good enough Thank you so much
16 No more questions

17 CROSS-EXAMINATION BY MR GARDNER

18 Q Craig, you and your brother and your cousin
19 called a cab and got in the cab and started going down the
20 road Is that correct?

21 A Yeah

22 Q You were sitting in the back or the front?

23 A The back

24 Q Who else was in the back?

25 A George

1 Q You started driving down the road Which
2 direction did you go?

3 A Next to the right, I believe

4 Q Say again

5 A We -- when we backed out the yard, and then we
6 was going down the road by the pecan tree by my grandmama
7 house

8 Q Where were you going to? You were going to your
9 father's house?

10 A Yes, sir

11 Q Is that in Conway or Aynor?

12 A Conway

13 Q The cab itself, which direction -- was it headed
14 towards Conway or Aynor?

15 A Next Aynor

16 Q Heading towards Aynor, but you were going to
17 Conway Is that right?

18 A Yeah

19 Q Driving down the road, and the driver, Mr
20 Lockhart, said, "I want to get -- I've got to get the
21 money from you"?

22 A Yeah

23 Q Now, you were telling the solicitor this
24 gun looked different Is this the gun? Is this the
25 gun?

1 A I don't know if it is or not

2 Q What were you saying was different about the gun
3 that night?

4 A What do you mean?

5 Q You -- you pointed up here to the solicitor and
6 said something was different here on the gun

7 A Yeah It was like a piece broke It was like
8 broke This whole part used to come off The whole end
9 used to come off

10 Q How did it get fixed -- fixed back up?

11 A I don't know

12 Q Do you think the police did that?

13 A I don't know who did it It might be

14 Q What else is different about it?

15 A It looked -- it looked more shoddier

16 Q So, the vehicle was moving when y'all were
17 getting the money out Is that correct?

18 A Yeah

19 Q Driving down the road How fast?

20 A Slow, not too fast

21 Q Not too fast? How far had you gone?

22 A To the pecan tree

23 Q About a hundred yards, fifty yards?

24 A Yeah, probably about a hundred yards

25 Q Okay, so a hundred yards, still driving How is

1 it you were able to get out of the car if the car was
2 still moving?

3 A I jumped out

4 Q The car was still moving, and you jumped out?

5 A Uh-huh (affirmative response)

6 Q How far did the car keep going?

7 A It ain't went too much farther

8 Q Did you go back up to the car?

9 A Uh-huh (affirmative response)

10 Q Roger went to Mr Lockhart to check his pulse
11 Is that correct?

12 A Uh-huh (affirmative response)

13 Q He didn't try to rob him or anything, did he?

14 A No, sir

15 Q Didn't stick his hands in his pockets?

16 A Huh-uh (negative response)

17 Q And y'all ran back to your grandma's house?

18 A Uh-huh (affirmative response)

19 Q And isn't it true that Roger told Lonnie Gray as
20 soon as he got in the house what had happened? Do you
21 know who Lonnie Gray is?

22 A Yeah, my uncle

23 Q He told him as soon as he got in there, didn't
24 he?

25 A I ain't -- I ain't went in the room with Roger

1 and Lonnie

2 Q Okay

3 A I went in the front room

4 Q All right Well, you don't have any knowledge
5 that he didn't tell Lonnie Gray as soon as he got there,
6 do you?

7 A I don't have no idea

8 Q And he told his grandma a couple of minutes
9 later Is that correct?

10 A Yeah, uh-huh (affirmative response)

11 Q So he didn't lay down and take a nap?

12 A No, he didn't lay down

13 Q He went back there and---

14 A He laid in the room on the chair, but he ain't
15 never went to sleep

16 Q He told people immediately, and he made the
17 phone call Is that correct?

18 A Yeah, he called them

19 Q What did you think about the car going towards
20 Aynor instead of going to Conway?

21 A I ain't -- it weren't no difference

22 Q Okay You were in the front seat or the
23 backseat?

24 A Backseat

25 Q That's not the gun?

1 A It don't look like it It don't look the same
2 way

3 Q Did you fire the gun that day?

4 A Huh-uh (negative response)

5 Q Did you fire the gun that night?

6 A Huh-uh (negative response)

7 Q Did you fire that gun in that taxicab?

8 A I didn't fire no gun

9 Q You and your brother and your cousin, none of
10 y'all talked about doing anything, other than going to the
11 father's house Is that correct?

12 A No, we ain't talked about nothing

13 Q What were you going to your father's house
14 for?

15 A To stay the night and get some money He say he
16 had to get me some money

17 Q No doubt that Roger called the police
18 immediately and no doubt that he didn't try to rob Mr
19 Lockhart?

20 A No, he didn't try to rob the man

21 Q And there's no doubt there was an accident with
22 the gun going off?

23 A More likely it was a accident

24 Q Is there any doubt in your mind it was an
25 accident?

1 A Yeah, it was an accident

2 Q It was an accident?

3 A Yes, sir

4 Q Nothing further

5 MR WILSON No additional questions, Your
6 Honor

7 THE COURT You may step down You may step
8 down

9
10 THE COURT Okay, ladies and gentlemen, I'm
11 going to send you to lunch Are you ready, Madam Clerk?
12 Swear the bailiffs
13 (WHEREUPON, THE BAILIFFS ARE SWORN BY THE CLERK, DONNA
14 WILLIAMS)

15 THE COURT Okay, Madam Forelady, ladies and
16 gentlemen of the jury, Madam Alternates, as you see, the
17 bailiffs have their -- their oath, which is that you're
18 not to discuss the case, not to talk to -- to anyone about
19 the case You certainly may talk to one another but not
20 about the case, but preferably do not talk to anyone else,
21 other than yourselves and the bailiffs but not about the
22 case, and so they have a duty that they're going to escort
23 you to lunch at the county's expense

24 Leave your pads face down, and the -- we will
25 either have someone in the courtroom to be sure no one

1 bothers your notes, or we'll secure them, one or the
2 other I'll see you after lunch

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
4 JURY)

5 THE COURT How many more witnesses does the
6 State plan to call?

7 MR WILSON Three, three, Your Honor, maybe
8 four at the most

9 THE COURT I assume they will be fairly short

10 MR WILSON Well---

11 MR ROY One of them will be some length, Your
12 Honor

13 THE COURT Okay All right Well, we'll
14 recess for lunch The jury, I find, takes forty-five
15 minutes to eat, have a smoke break, walk around the
16 courthouse twice, and be back in the jury room It's
17 consistently forty-five minutes, so I would expect you to
18 be back in forty-five minutes Okay Thank you We'll
19 recess for forty-five minutes

20 (WHEREUPON, RECESS IS TAKEN)

21

22 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
23 JURY)

24 MR ROY Judge, Solicitor Wilson is having a
25 problem I think his babysitter's car broke down, and

1 he's trying to get her back to the house, but he should be
2 here anytime now, and one other matter we might want to
3 take up before the jury comes out, also, is to how
4 procedurally do you want us to go about introducing and
5 playing the duplicate tape of the 911 call

6 THE COURT Well, you've got to identify the
7 duplicate tape, and I don't believe you have any testimony
8 on that

9 MR ROY Not yet, but identified by the person
10 doing the duplicating?

11 THE COURT Yes

12 MR ROY Okay Do we need to do that in front
13 of the jury or outside of the jury's presence?

14 THE COURT Well, we need to do it in front of
15 the jury, but let's do it outside the presence of the
16 jury I'd rather be over-cautious on this and not have
17 the jury hear something they're not supposed to hear

18 MR ROY Okay If you want, we can take care
19 of that matter now That individual's here

20 THE COURT All right, and one other matter I
21 want you and the defense counsel to think about is based
22 on the testimony so far, I'm -- I understand there's more
23 testimony to come both from the State and maybe from the
24 defense -- but at this point it would seem to me that the
25 defendant would be entitled to a charge on involuntary

1 manslaughter

2 MR. ROY Okay

3 THE COURT The question in my mind is on
4 voluntary, but I -- I mean, I think the testimony is from
5 two or three witnesses that it was an accident

6 MR ROY I understand that

7 THE COURT But, anyway, the two of you think
8 about it, be thinking about it Also, think about the
9 issue of whether if I charge involuntary, I'm mandated by
10 law to charge voluntary My gut feeling is I am not
11 mandated to do so if the testimony is not there to support
12 the charge on manslaughter, voluntary manslaughter Okay
13 Call your witness

14 MR ROY Bill Hussey

15 WILLIAM D HUSSEY, BEING
16 DULY SWORN, TESTIFIES AS FOLLOWS

17 THE COURT REPORTER Give me your name please

18 THE WITNESS William D Hussey, H-u-s-s-e-y

19 DIRECT EXAMINATION BY MR ROY

20 Q Mr Hussey, where are you employed at?

21 A The Fifteenth Judicial Circuit Solicitor's
22 Office

23 Q And what is your position there?

24 A Chief Investigator

25 Q And---

1 (State's Exhibit No 28 for Identification marked)

2 DIRECT EXAMINATION RESUMES BY MR ROY

3 Q Did I hand you a copy of a duplicate tape today?

4 A Yes, you did

5 Q Okay Was that tape a full and accurate -- was
6 it a full tape, and was all of the testimony on it from
7 the 911 call?

8 A Yes, sir

9 Q And did I ask you to duplicate out -- to take
10 out or---

11 A Redact

12 Q ---redact certain portions of that tape?

13 A Yes, sir

14 Q And were those portions of somebody, other than
15 the defendant?

16 A Yes, they were

17 Q And did you do that?

18 A Yes, I did

19 Q Is this that tape?

20 A Yes, sir, it appears to be It is

21 MR ROY At this point in time the State would
22 like to introduce State's Exhibit 28 as a redacted portion
23 of the 911 tape pursuant to Court's instructions from
24 yesterday from an in-camera hearing Mr Gardner has had
25 an opportunity to listen to this We both listened to it

1 together today at lunch

2 THE COURT Have you listened to it, Mr
3 Gardner?

4 MR GARDNER Yes, Your Honor, I listened to it
5 during lunch, and to the best of my understanding it's
6 just of the operator and the defendant speaking There
7 are some pauses in there where they basically erased out
8 the -- anybody else that was talking on there Before it
9 comes in though, we would still maintain from the defense
10 standpoint that there is an authentication issue

11 THE COURT I understand that Well, let me ask
12 -- I understand your -- your initial objection --
13 Objection is continuing, that you object to what's on the
14 tape coming I -- I think the question I have for you is
15 do you stipulate to have this duplicate come into
16 evidence, continue your objection, of course?

17 MR GARDNER Yes, sir We would do that

18 THE COURT I didn't put that properly My --
19 my problem is I don't know what we want the jury to hear
20 about the fact that we've redacted portions of it If
21 we get into that, I'm going to tell the jury that the
22 Court directed it be redacted, taken out, because it
23 was not admissible because it was not alleged comments
24 from the defendant I'd rather not get into all of
25 that, but I -- I mean, I have to -- I can't leave them

1 to wonder if the State of South Carolina on their own
2 erased it

3 MR GARDNER May we approach?

4 (WHEREUPON, A BENCH CONFERENCE IS HELD)

5 THE COURT All right, sir You may step down
6 Stay with us though

7

8 MR ROY Judge, the woman that did the
9 duplicating is at lunch now

10 THE COURT Well, what do you mean lunch? You
11 can bring her on over

12 MR ROY She is not in the building

13 THE COURT Oh

14 MR ROY She's out to lunch

15 THE COURT Oh, out to lunch?

16 MR ROY Yes, sir

17 THE COURT Do you have any other witnesses you
18 can put up out of order?

19 MR ROY I have other witnesses As far as the
20 duplicating goes, this issue, no It's just her and Mr
21 Hussey

22 THE COURT I mean, do you have any other
23 witnesses you can call?

24 MR ROY Yes

25 THE COURT And come back to this later

1 MR ROY Yes, I -- I need to wait until Mr
2 Wilson gets here

3 THE COURT Okay All right Okay Here we
4 go MR WILSON Judge, I apologize I didn't think
5 you were waiting for me

6 THE COURT We got the message that you had
7 trouble with your babysitter's -- had trouble with her
8 car

9 MR WILSON Had a little automobile accident

10 THE COURT Oh, my

11 MR WILSON They're all fine

12 THE COURT. Okay Are you ready to bring the
13 jury out?

14 MR ROY Your Honor, we can proceed with one
15 witness, and then after that we'll probably be, if Ms
16 Snowden is not back from lunch, we'll probably be at a
17 standstill

18 THE COURT Have you ascertained if the
19 grandmother is still around?

20 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
21 JURY)

22 THE COURT Well, I hope you had enough to eat
23 for lunch We need a -- need a new pen over there, Madam
24 Clerk, new pen or pencil Hold it up one more time
25 There we go There we go Need two I hope you had

1 enough to eat I hope you didn't make the mistake I did
2 and go back for that second plate Did you? It makes it
3 tough in the afternoon Did you need another one, too?
4 Are you okay? Okay All right Your witness

5 MR ROY Thank Your Honor The State would
6 call Matt Twigg to the stand

7 MATTHEW SHANE TWIGG, BEING
8 DULY SWORN, TESTIFIES AS FOLLOWS

9 THE CLERK (DONNA WILLIAMS) Please state your
10 full name and spell your last name for the court

11 THE WITNESS My name is Matthew Shane Twigg
12 The spelling of the last name is T-w-i-g-g

13 DIRECT EXAMINATION BY MR ROY

14 Q Detective Twigg, where are you employed at?

15 A With the y County Police Department

16 Q What is your position there?

17 A I'm a detective assigned to the Violent Crime
18 Section of the Investigations Division

19 Q How long have you been a detective?

20 A Four years August of 1993 was when I was
21 promoted

22 Q What did you do before that?

23 A I was a uniformed officer assigned to the
24 Uniform Patrol Division for the Horry County Police, and
25 before that I was with the Myrtle Beach City Police

1 Department

2 Q As an investigator or detective what are some of
3 your job responsibilities?

4 MR GARDNER Your Honor, we would stipulate
5 that he's an experienced detective for homicide or
6 whatever, wherever they're going with it, if that might
7 help

8 THE COURT So stipulated

9 DIRECT EXAMINATION RESUMES BY MR ROY

10 Q Detective Twigg, were you involved in the
11 investigation of the murder of Robert Lockhart on May 24,
12 1996?

13 A Yes, I was

14 Q And were you that lead investigator?

15 A Yes, sir, I am

16 Q Let me show you what's been marked as State's
17 Exhibit 17 and ask you if you recognize that

18 A I do recognize it as the weapon that I
19 recovered

20 Q And where did you recover that weapon from?

21 A The weapon was recovered from a wooded area
22 close to the crime scene or the incident location

23 Q Let me show you what has been marked as State's
24 Exhibit 9 Do you recognize that?

25 A Yes, I do

1 Q Okay, and what is that a picture of?

2 A This is a picture that I took of the general
3 area where the weapon was recovered

4 Q And that's a true and accurate description of
5 that?

6 A Yes, sir, it is

7 MR ROY We'd like to move State's Exhibit 9
8 into evidence

9 MR GARDNER No objection, Your Honor

10 THE COURT It's in evidence

11 (State's Exhibit No 9 admitted into evidence)

12 DIRECT EXAMINATION RESUMES BY MR ROY

13 Q Detective Twigg, on what day did you recover
14 that gun?

15 A It was May 28, 1996

16 Q So it was four days after the murder?

17 A Yes, sir, that's correct

18 Q And why did it take you four days to find the
19 gun?

20 A This weekend or the weekend that this occurred
21 was also Memorial Weekend, Atlantic Beach Biker Weekend
22 I served a double duty that weekend I was assigned to
23 duty in Atlantic Beach Police or Atlantic Beach and the
24 on-call detective The night of the incident several
25 things restricted us from doing a good search of the area,

1 No 1, the terrain, the lighting There was an area that
2 needed to be covered that there was only two of us to do
3 it, so it took us time to get the equipment needed, the
4 people together, and go back

5 Q And who went with you to do this?

6 A At this time it was Detective Tommy Flowers that
7 went with me

8 Q And did you use any apparatus to locate the gun?

9 A Yes, we did We used a metal detector

10 Q I'm going to show you what's been marked as
11 State's Exhibit 11 and ask you if you can identify that

12 A Yes, sir That is my hand holding the weapon
13 while I take a picture of it from where I recovered the
14 weapon

15 MR ROY The State would move State's Exhibit
16 11 into evidence and ask to publish it to the jury

17 MR GARDNER No objection, Your Honor

18 THE COURT It's in evidence

19 (State's Exhibit No 11 admitted into evidence)

20 DIRECT EXAMINATION RESUMES BY MR ROY

21 Q Detective Twigg, after you recovered that gun,
22 who did you then hand it to?

23 A I secured the weapon until I met with Lieutenant
24 Myron Creel I then released the weapon to Myron Creel
25 who then transported it to SLED

1 MR ROY At this point in time the State would
2 move State's Exhibit 17 into evidence

3 THE COURT Any objection?

4 MR GARDNER Your Honor, if I may have one
5 moment

6 No objection, Your Honor

7 THE COURT It's in evidence without objection
8 (State's Exhibit No 17 admitted into evidence)

9 DIRECT EXAMINATION RESUMES BY MR ROY

10 Q And did you continue your search after you found
11 the gun?

12 A Yes, sir A continued revealed a bag, a clear
13 plastic bag, containing live ammunition

14 Q I'm going to hold you or hand you what's been
15 marked State's Exhibit 25 and ask you if you recognize
16 that

17 A Yes, sir That is the ammunition that was found
18 in close proximity to the weapon

19 Q Okay I'm going to hand you what's been
20 marked as State's Exhibit 8 and ask you if you recognize
21 that

22 A Yes, sir This is a picture that I took
23 pointing to this evidence with my left hand while --
24 before obtaining it It was in its original position
25 before I picked it up

1 MR ROY The State would move Exhibit 8 into
2 evidence and ask that it be published to the jury

3 MR GARDNER I'm not quite sure of the
4 foundation I would have to object to the foundation

5 MR ROY The detective has stated that it was
6 his hands He took the picture of where he recovered the
7 bullets

8 MR GARDNER Does that fairly and accurately
9 depict what the, other than your hand, what was there?

10 THE WITNESS Yes, sir The hand was merely to
11 point to the package

12 MR GARDNER We have no objection, Your Honor
13 (State's Exhibit No 8 admitted into evidence)

14 DIRECT EXAMINATION RESUMES BY MR ROY

15 Q Regarding State's Exhibit 25 what did you do
16 after you recovered the bullets, the bag of bullets?

17 A That, of course, was taken into custody by
18 myself and transferred directly to Lieutenant Creel, who
19 again transported that to SLED Headquarters

20 MR ROY At this point in time the State would
21 move Exhibit 25 into evidence

22 MR GARDNER No objection, Your Honor

23 THE COURT It's in evidence without objection
24 (State's Exhibit No 25 admitted into evidence)

25 DIRECT EXAMINATION RESUMES BY MR ROY

1 Q Approximately how far were the bullets from the
2 gun?

3 A Within eight to ten inches of each other

4 Q How far in the woods were they recovered?

5 A Approximately twenty-five yards into the woods
6 from the out -- from where the woods first start in the
7 weeds and approximately twenty-five yards

8 Q Let me show you what's been marked State's
9 Exhibit 22 and ask you if you can identify that

10 A Yes, I can This is the clip that was inside
11 the weapon when the weapon was found

12 Q Okay, and then what did you do with---

13 MR GARDNER Your Honor, may we approach?

14 (WHEREUPON, A BENCH CONFERENCE IS HELD WITHIN THE PRESENCE
15 OF THE JURY BUT OUTSIDE THE HEARING OF THE JURY)

16 DIRECT EXAMINATION RESUMES BY MR ROY

17 Q Detective Twigg, could you then state again
18 where you recovered that item from?

19 A This is a clip that was located inside the
20 weapon when the weapon was recovered by myself

21 Q And then what did you do with that after it was
22 taken out of the gun?

23 A It was transported with the gun---

24 Q It was inside?

25 A ---to -- yes, sir I -- I -- I -- excuse me

1 Once I obtained the weapon I transported that weapon or
2 transferred possession to Myron Creel in the same manner
3 in which I found it

4 MR ROY At this point in time the State would
5 move State's Exhibit 22 into evidence

6 THE COURT Any objection?

7 MR GARDNER No, Your Honor

8 THE COURT No objection It's in evidence
9 (State's Exhibit No 22 admitted into evidence)

10 DIRECT EXAMINATION RESUMES BY MR ROY

11 Q Let me hand you what's been marked State's
12 Exhibit 16 and ask you if you recognize that

13 A Yes, sir This is the spent round of the weapon
14 that I recovered during the autopsy from Dr Proctor at
15 Grand Strand Hospital

16 Q You were present during the autopsy when it was
17 recovered?

18 A Yes, sir, I was

19 MR ROY And at this point in time the State
20 would move State's Exhibit 16 into evidence

21 MR GARDNER No objection

22 THE COURT It's in evidence without objection
23 (State's Exhibit No 16 admitted into evidence)

24 DIRECT EXAMINATION RESUMES BY MR ROY

25 Q Let me hand you what's been marked State's

1 Exhibit 14 and ask you if you can identify that

2 A Yes, I can

3 Q And what is that?

4 A This is the tape that I received from Renee
5 Hardwick who is in charge of 911 communications that I, in
6 turn, transferred to Carolyn Martin, the investigation
7 secretary, for transcription

8 THE COURT That's the 911?

9 THE WITNESS The original, yes, sir

10 THE COURT Okay

11 DIRECT EXAMINATION RESUMES BY MR ROY

12 Q Is that the original or a taped copy of the
13 original?

14 A This is the original cassette which was taped
15 off the reel-to-reel

16 Q Did Ms Hardwick make that known to you when you
17 retrieved that tape from her?

18 A Yes, she did

19 Q Since handing it to Ms Martin, have you
20 listened to the tape?

21 A Parts I did not listen to the entire tape

22 Q What does -- what does Ms Martin do when she's
23 handed that tape?

24 A She assumes care and custody of the tape She
25 then listens to the tape while with headphones in her

1 closed office and transcribes that tape

2 Q And then what does she do with the tape?

3 A She is responsible for the storage of the tape
4 until it is requested again by us for court purposes

5 Q Is it in a secured place?

6 A Yes, sir, it is

7 Q Who has a key to that?

8 A Ms Martin has a key to that

9 Q Prior to turning the tape over to Ms Martin,
10 did you change or alter it in any way?

11 A No, sir, I did not

12 Q Since receiving the tape from Ms Martin, have
13 you changed or altered it in any way?

14 A No, sir, I have not

15 Q So to the best of your knowledge it's still in
16 the same condition it was when you turned it in to her?

17 A Yes, it is

18 Q Nothing further

19 CROSS-EXAMINATION BY MR GARDNER

20 Q Detective Twigg, were you in charge of the
21 what's called crime scene?

22 A. Yes, sir, and -- and no, sir I was in charge
23 up until and only until Myron Creel arrived Then it was
24 released to him

25 Q To Lieutenant Creel whom we heard from earlier?

1 A That's correct, sir

2 Q Okay, and you work for -- is it called Violent
3 Crimes, or is it still called Homicide or what?

4 A It's referred to as the Violent Crime section
5 now

6 Q And not all homicides are murders Is that
7 correct?

8 A That's true

9 Q Nothing further

10 MR ROY Nothing further

11 THE COURT You may step down

12

13 THE COURT Does the State need to take a
14 recess?

15 MR ROY Yes, we do, Your Honor

16 THE COURT Okay, ladies and gentlemen, leave
17 your pads face down and step back to the jury room
18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JURY)

20 THE COURT Solicitor Wilson, before your
21 arrival, I told your assistant solicitor and defense
22 counsel that I -- of course, testimony is not all in, but
23 I'm inclined at this time to charge involuntary
24 manslaughter as a lesser included offense of murder

25 MR WILSON All right, sir

PEGGY SNOWDEN - DIRECT BY MR ROY

1 THE COURT At -- at this point I'm not inclined
2 to charge manslaughter, but we'll have to see when all
3 the testimony's in, so I will have to -- defense, also,
4 you're included in this conversation -- I -- I will have
5 to look, but I think that probably the use of a weapon
6 during the commission of a violent offense, if it was
7 involuntary manslaughter, would not fit It would only
8 fit if it came back with murder Do y'all think that's
9 the case?

10 MR WILSON I think -- I agree

11 MR GARDNER I think you're right, Your Honor

12 THE COURT Okay Well, we'll think about it
13 All right Let's take a -- a recess Let's find the
14 witness

15 MR ROY Thank Your Honor

16 (WHEREUPON, RECESS IS TAKEN)

17

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JURY)

20 THE COURT Your witness

21 MR ROY Peggy Snowden

22 THE COURT All right This is in-camera

23 PEGGY SNOWDEN, BEING DULY
24 SWORN, TESTIFIES AS FOLLOWS

25 THE CLERK (DONNA WILLIAMS) Please state your

PEGGY SNOWDEN - DIRECT BY MR ROY

1 full name and spell your last name for the court

2 THE WITNESS My name is Peggy Snowden,

3 S-n-o-w-d-e-n

4 DIRECT EXAMINATION BY MR ROY

5 Q Peggy, where are you employed at?

6 A With the Horry County Solicitor's Office

7 Q And what is your position?

8 A I'm a legal secretary

9 Q And this morning did I come to you with two
10 tapes? First of all, one is marked State's Exhibit 14,
11 the other is marked State's Exhibit 28

12 A Yes, you did

13 Q Okay Are these those two tapes?

14 A Yes, they are

15 Q Okay, and what did I ask you to do with them?

16 A Just to duplicate one of the tapes onto the
17 other one

18 Q And did you indeed do that?

19 A I did

20 Q Did you alter them in any way?

21 A No, sir

22 Q Are -- to the best of your knowledge are they
23 the same as when you had them in your possession before?

24 A Yes, they are

25 Q Nothing further

PEGGY SNOWDEN - CROSS BY MR GARDNER

1 THE COURT Any questions from defense?

2 CROSS-EXAMINATION BY MR GARDNER

3 Q Ms Snowden, the tape that's labeled Exhibit 14
4 for Identification that -- you received that from whom?

5 A From Mr Roy

6 Q Okay, and you just made a duplicate They are
7 both the same thing?

8 A Yes, sir

9 Q And you -- what's the new -- what's that new
10 exhibit?

11 A No 28

12 Q Nothing further

13 THE COURT Okay You can step down

14

15 THE COURT Next witness

16 MR ROY The State would call Bill Hussey

17 WILLIAM D HUSSEY, HAVING
18 BEEN PREVIOUSLY SWORN, TESTIFIES AS FOLLOWS

19 THE COURT All right You're still under oath
20 DIRECT EXAMINATION BY MR ROY

21 Q Mr Hussey, I'm going to hand you what's been
22 marked as State's Exhibit 28 and ask you if you recognize
23 that

24 A Yes, sir

25 Q Mr Hussey, did I bring that tape to you this

WILLIAM D. HUSSEY - DIRECT BY MR. ROY

1 morning?

2 A Yes, you did

3 Q And what did I ask you to do with it?

4 A You asked me to delete certain portions of the
5 tape that pertain to individuals that you are not
6 interested in having the conversation any longer on the
7 tape

8 Q Did I instruct you as to what spaces on that
9 tape needed to be redacted?

10 A Yes, you did

11 Q And did you then redact that tape?

12 A I recorded over so that the -- that portion of
13 the tape is no longer audible

14 Q So the only thing on the tape then is possible
15 noise and those---

16 A Yes, sir, background noise

17 Q Did you change or alter that tape in any way
18 after you did that?

19 A No, sir

20 Q Who then did you give the tape to?

21 A Yourself

22 Q Nothing further

23 MR. GARDNER No questions of this witness, Your
24 Honor

25 THE COURT All right You may step down

1
2 MR GARDNER For the record, Your Honor, I have
3 listened to the tape

4 THE COURT You have?

5 MR GARDNER Yes, sir

6 THE COURT Will you stipulate then in the
7 presence of the jury that this is just a copy?

8 MR GARDNER Yes, sir, with my other
9 objections

10 THE COURT Your other objections to it coming
11 in at all still continue, and I recognize that

12 MR GARDNER Yes, sir

13 THE COURT Okay All right I think that may
14 solve that problem of the jury being concerned about the
15 Court redacting part of it

16 MR ROY Your Honor, as a matter of procedure
17 how are you -- are you going to instruct the jury as to
18 why it was redacted or what---

19 THE COURT Well, that all depends on whether
20 testimony gets before the jury that it was redacted If
21 it was, then I'll be glad to tell them that

22 MR WILSON Your Honor, could -- could we do
23 something that -- that probably maybe delete this whole
24 problem with redacting this? What we can do, because
25 there are pauses on the tape, is make another copy of the

1 -- of the copied tape, which is what people do, so I can
2 explain it to you, is to -- so we don't have the pauses
3 We can take this tape and -- and---

4 THE COURT All right Defense is going to want
5 to listen to it again, but that's fine It's not that
6 long It's not that long a tape

7 MR WILSON Otherwise, otherwise---

8 MR GARDNER We have no objection to that, Your
9 Honor

10 THE COURT Why don't you go with -- if you're
11 going to do it in the office, go with the solicitor and---

12 MR WILSON All right Otherwise you'd have
13 these long pauses for several minutes

14 THE COURT I -- I have no problem with that if
15 defense has no objection and wants -- will observe it so
16 we don't have a problem with being a duplicate We'll
17 just wait on you We'll just mark that for identification
18 only, the second tape

19 (State's Exhibit No 14A for Identification marked)

20 (WHEREUPON, RECESS IS TAKEN)

21

22 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
23 JURY)

24 THE COURT Are we ready to proceed?

25 MR ROY Yes, Your Honor Just for the record,

1 Mr Gardner, myself, and Mr Wilson were all in a room
2 redacting the tape. We now have a copy we think is
3 workable pending Mr Gardner's rolling objection to the
4 original tape

5 THE COURT All right If I understand defense
6 -- correct me if I'm wrong -- you will stipulate that
7 that's a true duplicate?

8 MR GARDNER Yes, sir

9 THE COURT For the jury, still reserving your
10 objection that you're opposed to it coming in at all

11 MR GARDNER Yes, sir

12 THE COURT And you may say that in the presence
13 of the jury

14 MR GARDNER Yes, sir

15 THE COURT That you're opposed to it coming in
16 at all but that you agree that it's authenticated

17 MR ROY Your Honor, just for a matter of
18 procedure and if, in fact, it is introduced into evidence,
19 at that point in time I just substitute the tape in
20 without the jury knowing it's a substitute tape

21 THE COURT Well, I think they understand it's
22 been substituted so you don't have all these reels

23 MR ROY Okay

24 THE COURT You know, I would call it a
25 substituted tape

1 MR ROY Okay

2 THE COURT Let's bring the jury in
3 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
4 JURY)

5 THE COURT Well, you wondered what happened to
6 us, I know

7 A JUROR Thought you forgot us

8 THE COURT I thought you were going to send me
9 a note and ask me when supper was going to be served back
10 there Your witness

11 MR ROY Thank Your Honor The State would
12 call Carol Martin

13 CAROLYN MARTIN, BEING DULY
14 SWORN, TESTIFIES AS FOLLOWS

15 DIRECT EXAMINATION BY MR ROY

16 Q Ms Martin, if you would, please state your name
17 and spell your last name for the record

18 A Carolyn Martin, M-a-r-t-i-n

19 Q Ms Martin, where are you employed?

20 A Horry County Police, Investigations Division

21 Q And what is your position there?

22 A Senior clerk

23 Q Are you the clerk for Detective Matt Twigg?

24 A Yes, sir

25 (State's Exhibit No 14 for Identification marked)

1 Q I'm going to hand you what's been marked as
2 State's Exhibit 14 and ask you if you can identify that?

3 A Yes, sir, I can

4 Q And what is that?

5 A It's the original tape on the -- the Roger
6 Legette trial

7 Q What did you do when you had this tape in your
8 possession?

9 A I transcribed it

10 Q And what did you do after you transcribed it?

11 A Put it under a lock and key system

12 Q Who has a key to that system?

13 A Just myself The other -- the secretary in the
14 division does have a key, but I don't -- to my knowledge
15 she has not had access to it

16 Q Okay Have you listened to this tape?

17 A Yes, sir

18 Q Has it been changed or altered in any way?

19 A No, sir

20 Q Is it the same as when you had it as when you
21 gave it to Detective Twigg?

22 A Yes, sir

23 MR ROY At this point in time the State would
24 move State's Exhibit 14 into evidence

25 THE COURT Is this the one which the State and

1 defense agreed to have a duplicate?

2 MR ROY That's correct, Your Honor

3 THE COURT Any objection, other than objections
4 made earlier?

5 MR GARDNER Yes, sir Other than that, we
6 would agree that this is a duplicate of the tape or the
7 one that was duplicated later

8 THE COURT Do you have any questions of this
9 witness?

10 MR GARDNER No, Your Honor

11 MR ROY Nothing further, Your Honor

12 THE COURT You may step down Thank you

13

14 THE COURT Next witness

15 MR ROY The State would call Juanita Gray to
16 the stand

17 JUANITA GRAY, HAVING BEEN
18 DULY SWORN, TESTIFIES AS FOLLOWS

19 THE COURT I remind you you're still under
20 oath Did you hear what I said, Ms Gray? I remind you
21 you're still under oath Okay

22 DIRECT EXAMINATION BY MR ROY

23 Q Ms Gray, were you present in the home on May
24 24, 1996, when Roger, your grandson, called 911?

25 A Yeah

1 Q Were you present during that entire
2 conversation?

3 A Yes, I was there

4 Q Did you hear Mr Legette's side of that
5 conversation?

6 A Yeah, I heard him call 911

7 Q I'm going to play for you now a portion of the
8 tape and ask you if you can identify the voice on it
9 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NO 14A IS
10 PLAYED)

11 DIRECT EXAMINATION RESUMES BY MR ROY

12 Q Is that your grandson's voice?

13 A Yes, sir

14 MR ROY At this point in time, Your Honor, the
15 State would like to publish the tape to the jury, the full
16 tape

17 THE COURT All right Any objection to this
18 being an authentic copy of the---

19 MR GARDNER No, Your Honor

20 THE COURT ---copy of the tape?

21 MR GARDNER No, Your Honor

22 THE COURT All right The State -- the defense
23 still objects to the, -- to the tape coming in but does
24 not object to it being authenticated

25 MR GARDNER That's correct

1 THE COURT All right Play it to the jury
2 Ladies and gentlemen, if you have to move around to get
3 closer to the tape to hear it, feel free to get up and
4 do so I find sometimes jurors have to get up and even
5 get around the tape to be able to understand it Feel
6 free to do so

7 (WHEREUPON, STATE'S EXHIBIT NO 14A IS PLAYED TO THE
8 JURY)

9 MR ROY No further questions for this witness

10 MR GARDNER No questions, Your Honor

11 THE COURT You may step down Thank you

12 _____
13 MR ROY At this point in time the State
14 rests

15 THE COURT All right Ladies and gentlemen, by
16 now you know the way to the jury room I'm going to send
17 you back I have a matter of law to take up with the
18 attorneys

19 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
20 JURY)

21 THE COURT Motions

22 MR GARDNER Your Honor, we would move for a
23 directed verdict There has been no evidence for malice,
24 and we would put that on the record at this time

25 THE COURT Denied

1 MR GARDNER I have discussed my client's
2 options with him in great detail, Your Honor, and out of
3 an abundance of caution I would suggest that I put on the
4 record his decision, which would be---

5 THE COURT What is his decision?

6 MR GARDNER ---not to present a defense

7 THE COURT All right, sir Now, before I say
8 anything to you -- well, let me put it this way I don't
9 want you to take anything that I say to you to imply to
10 you that I'm encouraging you to take the stand or that I'm
11 encouraging you not to take the stand I simply have to
12 put on this record the necessary information so that it
13 will be clear to this Court and any other court that you
14 understand your rights, that you've had a chance to talk
15 to your lawyer about this issue about whether you should
16 take the stand or not, and that you've made your choice,
17 whatever it is, free and voluntary and intelligently Do
18 you understand that?

19 THE DEFENDANT Yes, sir

20 THE COURT Okay Now, do you understand that
21 you under the Constitution you have a right to take the
22 stand and testify?

23 THE DEFENDANT Yes, sir

24 THE COURT Do you understand that under the
25 Constitution you have a right not to take the stand and

1 testify? That's your right

2 THE DEFENDANT Yes, sir

3 THE COURT All right Now, have you had
4 enough time to talk to your lawyer about this matter?

5 THE DEFENDANT Yes, sir

6 THE COURT And what is your decision?

7 THE DEFENDANT I do not want to testify

8 THE COURT All right Counsel, do you
9 believe his decision is free, voluntary, intelligently
10 made?

11 MR GARDNER I do, Your Honor

12 THE COURT And have you had an ample
13 opportunity to discuss with him his constitutional rights
14 and the pro's and con's of him taking the stand or not
15 taking the stand?

16 MR GARDNER I -- I have, Your Honor

17 THE COURT Okay All right The Court finds
18 that the defendant has had ample time to talk to his
19 lawyer, that he understands his constitutional right to
20 take the stand or not take the stand, and that he has
21 freely, voluntarily, intelligently made the decision not
22 to take the stand and testify

23 Is the defendant going to offer any other
24 testimony?

25 MR GARDNER No, Your Honor

1 THE COURT Okay As I understand the law then,
2 you would have a right to open and close

3 MR GARDNER Yes, Your Honor

4 THE COURT Do you want to exercise that right?

5 MR GARDNER Yes, Your Honor

6 THE COURT Okay Anything from the defense?
7 Let's take up the pads, Madam Clerk Madam Clerk, let's
8 take up the pads Separate the two alternates' Take up
9 the pads, but take the two alternates' pads and separate
10 them from the twelve because they can't go back to the
11 jury room Yeah

12 MR GARDNER Your Honor, we'll waive opening
13 I'm sorry I misspoke earlier We just -- as I
14 understand it, we get the last closing---

15 THE COURT Okay

16 MR GARDNER ---and that's what we would ask
17 for

18 THE COURT All right That's fine You
19 understand you have both---

20 MR GARDNER Yes, sir

21 THE COURT ---and you're just waiving your---

22 MR GARDNER Yes, sir

23 THE COURT Okay, so you're -- you prefer just
24 to have the last argument?

25 MR GARDNER Yes, sir

1 THE COURT Okay Is the State ready?

2 MR GARDNER Do we need to talk about charges?

3 MR WILSON Are you going to tell us the
4 charges?

5 MR ROY Judge, what are you going to charge to
6 the jury?

7 THE COURT The law

8 MR ROY And exactly what'll that law be?

9 THE COURT Well, let's take up that issue My
10 thoughts are -- and I'll be glad to hear arguments from
11 either side -- my thoughts are, other than the usual, you
12 know, burden of proof and circumstantial evidence, direct
13 evidence, you know, credibility of witnesses, is to charge
14 voluntary intoxication is not a defense whether it be by
15 drugs or alcoholic beverage, charge on murder, which is a
16 pretty standard charge, charge that involuntary
17 manslaughter is a lesser included offense, and charge them
18 the law on involuntary manslaughter as set out in 16-3-60,
19 which basically requires criminal negligence, the King
20 charge, that if there's some question between guilty of
21 one and guilty of the other, that you give the defendant
22 the benefit and find him guilty of the lesser, provided,
23 however, you still must find him guilty beyond a
24 reasonable doubt of all elements of the lesser offense,
25 possession of a firearm during the commission of a violent

1 crime, that murder is a violent crime, that volun- --
2 in -- I may have said, "voluntary," I meant to say
3 involuntary manslaughter, if I did, involuntary
4 manslaughter, that involuntary manslaughter is not a
5 violent crime, if they find him -- do not find him guilty
6 of murder, they would not take up Count 2, possession
7 of a weapon during the commission of a violent act I
8 think other than the boiler plate charge, that's -- that's
9 it

10 MR GARDNER Your Honor, we'd ask for an
11 accident charge

12 THE COURT What's the State's position on that?
13 Let me read you my accident charge If -- if -- I had
14 pulled it out I've been going back and forth whether to
15 -- to do that, and I -- I'm somewhat concerned it may
16 appear to be a shifting of the burden to the defendant to
17 prove an accident, even though we know that can't be the
18 case under our law

19 It says, "Where the death of a human being is
20 the result of an accident or misadventure, in the true
21 meaning of the term, no criminal responsibility attaches
22 to the actions of the defendant If it is shown that the
23 killing was unintentional, that it was done while the
24 defendant was engaged in a lawful enterprise and that it
25 was not the result of criminal negligence, the homicide

1 will be excused as an accident This does not mean the
2 defendant must prove that the homicide occurred by
3 accident or misadventure The burden still rests upon the
4 State to prove beyond a reasonable doubt that death
5 resulted from the criminal negligence," or I should say,
6 "from murder or the criminal negligence by the defendant "
7 That -- that's the charge Does the State object to that
8 charge?

9 MR WILSON Yes, sir Your Honor, the -- the
10 -- one of the -- one of the things is that if the
11 defendant is acting unlawfully at the time, and in this
12 case he's a minor in possession of a firearm, which is
13 clearly unlawful, so just the fact that he had the gun in
14 his possession would in -- in our opinion keep him from
15 having the benefit of an accident

16 THE COURT Well, I -- I would think that would
17 create some kind of presumption, and we all know we have
18 to stay away from presumptions

19 MR WILSON Well, the -- the -- the problem
20 here is all of the testimony in this case is consistent,
21 that he had the weapon, his statement, all the co-
22 defendants, all -- every witness who has testified who had
23 any knowledge about the gun has testified that there's
24 nothing inconsistent in this record with the fact that he
25 had the gun, so there is no presumption necessary because

1 there is no evidence to the contrary There's absolutely
2 no evidence to the contrary Of course, he has no burden
3 obviously, but there is no evidence to the contrary in any
4 form or fashion whatsoever In fact, all the evidence is
5 to the contrary, that, in fact, he did have the gun, and
6 he is a minor

7 THE COURT Well, some of the witnesses, several
8 of the witnesses, testified it was an accident I think
9 -- the Court will charge it at the request of the defense

10 MR GARDNER Thank you, Your Honor

11 THE COURT The State's argument sounds more
12 like a negligence per se theory

13 MR WILSON Sir?

14 THE COURT Negligence per se, negligence as a
15 matter of law---

16 MR WILSON Yes, sir

17 THE COURT ---and I don't think -- I don't
18 think that that would survive a constitutional---

19 MR WILSON Well, Your Honor, obviously not to
20 argue with the Court because the Court's made its ruling,
21 but there are three elements to -- that have -- that has
22 to be present in order for the defendant to take advantage
23 of accident, and one of them is that the defendant must be
24 acting lawfully at the time the event occurs, and
25 obviously he can't be acting lawfully if he's in

1 possession of a weapon because that in and of itself is
2 unlawful for -- for a minor to have, so there would never
3 be a situation where a minor in possession of a weapon,
4 unless it was a shotgun or something, and he was on his
5 own premises perhaps, but -- but I understand the Court's
6 ruling

7 THE COURT Okay

8 MR WILSON Your Honor, one -- one of the
9 things that -- that we would ask you to do is we would
10 like to split arguments and do -- I would like to open on
11 the law, and then he will do the facts I will be very
12 brief, probably not more than seven or eight minutes

13 THE COURT Any objection from defense?

14 MR GARDNER I don't want to be -- I think it
15 should be one, one or the other, Your Honor

16 THE COURT Yeah I think -- I think you need
17 to choose just one of you

18 MR WILSON I'll do it

19 THE COURT Okay Madam Clerk, take up the
20 other pads Just keep the alternate pads separate, those
21 two, because if they go back to the jury room, we've got
22 a problem Are you ready to bring the jury in?

23 MR WILSON Judge, can we have about five
24 minutes before we---

25 THE COURT All right A five-minute break

1 (WHEREUPON, RECESS IS TAKEN)

2

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
4 JURY)

5 THE COURT Just to keep the record straight,
6 14, I think the solicitor might have referred to the tape
7 that played as 14, but actually 14 is the, as I
8 understand, is the duplicate of the original, and it
9 was -- and it's marked for ID only, and 14A is what's
10 in evidence that was played to the jury

11 MR ROY That is correct, Your Honor

12 THE COURT Okay Just to keep the record
13 straight Is the State ready?

14 MR WILSON Yes, Your Honor

15 THE COURT Is defense ready?

16 MR GARDNER Yes, Your Honor

17 THE COURT Bring the jury out

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY)

20 THE COURT Okay, Madam Forelady, ladies and
21 gentlemen, Madam Alternates, the testimony is in The
22 attorneys will now -- will now make their closing
23 arguments I will charge you in full as to the law as it
24 applies in this particular case and send you back to the
25 jury room to deliberate on the verdict

1 MR WILSON Madam Forelady and ladies and
2 gentlemen, you now have heard all the testimony that
3 you're going to hear, and now you will have the
4 opportunity to have what we call the argument of counsel,
5 and that's really not correct because that's a misnomer in
6 the law We certainly would not argue with you What we
7 do is we try and put together the case as we see the facts
8 and try to help you understand what we perceive the facts
9 as being so that you will be in a better position to make
10 your decision

11 Now, I know that on Monday morning when most
12 of you came here, you didn't want to be here, and you
13 could think of a thousand other places that you'd much
14 rather be, and you probably felt that way when you got
15 those summonses in the mailbox and knew that you had
16 to come down here at some point, but let me say to you
17 folks that there's probably no position more important
18 than where you sit because think about it for just a
19 minute If you doesn't do it -- if you don't do it, then
20 who will?

21 Justice is only as good, it's only as
22 strong, as the people who live in the community who
23 make the decisions That's how good it is or how bad it
24 is

25 I think that we're very fortunate in America

1 because we have a system of justice where you don't have
2 to sit idly by and watch some bureaucrat make the
3 decision. You make it. You get to hear the facts. You
4 get to make the decision. You get to decide what happens,
5 and that's rare. It doesn't happen in most countries, so
6 we're fortunate in that regard.

7 It is a very serious responsibility, both
8 serious to the State of South Carolina and to this
9 defendant who is on charge and who is on trial.

10 Now, let me say at the outset that if I say
11 something in regards to the facts in this case that is not
12 consistent with what you heard, then you disregard what I
13 say, and you use your own memory and your own good
14 judgment about what you recall. Sometimes when -- when
15 some witness is testifying, the lawyers will be writing
16 something down, or we will be trying to think of the next
17 question, or we'll be trying to make up our minds about
18 who we're going to call as our next witness, so we may
19 miss some question, or we may miss some response.
20 Certainly no one would intentionally mislead you or say
21 anything that would mislead you, so I ask you to please
22 keep that in mind.

23 Now, this defendant is charged with the offense
24 of murder. This is not capital murder. This is not a
25 death penalty case, so let's understand that is not what

1 we're here about This is not a death penalty case This
2 is a murder trial

3 What is murder? Murder is the unlawful or
4 felonious killing of one person by another with what we
5 call malice aforethought

6 Now, the term murder itself is very simple the
7 killing of one person by another That's fairly simple,
8 but then we added malice

9 What is malice? Malice, ladies and gentlemen,
10 is ill will It's a heart devoid of social
11 responsibility, a heart devoid of social duty, a heart
12 fatally bent on mischief, the kind of mischief that Roger
13 Legette had in his heart on May 24th when he was up and
14 down that road shooting that gun, that kind of mischief,
15 that kind of heart devoid of social responsibility, that
16 kind of heart devoid of social duty, so murder then is the
17 killing of one person by another person with malice

18 Not only that, the fact that a deadly weapon
19 is used in a crime can infer malice That is for you
20 to decide when you consider all of the evidence in this
21 case

22 The other charge, well, in murder are other
23 charges One of those charges is a lesser included crime
24 called involuntary manslaughter

25 Now, involuntary manslaughter, like murder, is

1 the killing of one person by another, but it's through
2 criminal negligence, through some reckless disregard for
3 the safety of another human being in your handling of
4 an -- of a deadly weapon or any object which might cause
5 harm, so we have two things murder and then a lesser
6 included called involuntary, which is a reckless disregard
7 for the safety of another individual We're going to talk
8 about that in great detail in just a little bit

9 His Honor will probably also charge you what we
10 call accident In order for there to be an accident three
11 things must be present I remind you that the defendant
12 is not required to prove anything The burden of proof
13 is always upon the State of South Carolina The defendant
14 has no burden He has no responsibility to prove anything
15 to you That is the burden or the job for the State, but
16 three things must be present in order for there to be an
17 accident

18 One of those things is that the killing must be
19 "un" or not intentional That's the first thing The
20 killing must not be intentional It must be
21 unintentional, one

22 The second thing is the defendant must be acting
23 at the time lawfully, not one or the other, all three
24 The shooting must be unintentional The defendant must be
25 acting lawfully, and, three, the defendant must be using

1 due care in the handling of the weapon, so all three of
2 those things would have to be present for you to find an
3 accident One, the shooting was unintentional, two, the
4 defendant was acting lawfully, and, three, was using due
5 care in the handling of the weapon If you find all three
6 of those things to be present in this case, then it would
7 be an accident

8 Now, let me tell you why it is not an accident,
9 so we get it clear early on We're talking about 10 30
10 p m at night down a long dark dirt road Mr Lockhart
11 got a call to come to a residence, and he went, probably
12 like he's gone so many other times, not knowing that the
13 night, on this particular night, that the three
14 individuals that he was about to pick up had a loaded
15 twenty-five -- twenty-two -- whatever the calibre was
16 -- pistol in their pocket

17 Hell in their heart and a loaded gun You can't
18 get much more dangerous than that

19 They called him He came, but he never left
20 There's no dispute about that, no misunderstanding about
21 that He got a call He came, and he never left

22 Let's talk about what did happen Let's talk
23 about what we know What we know beyond any doubt is
24 that on the night of May 24th he ended up with three
25 bullets in his head, three, not one, not two, but three,

1 in his head, his neck, behind his ear, and in the front
2 of his head, three Accident? Accident? Let's talk
3 about that

4 Remember testimony of the SLED agent because I
5 think that is the most critical testimony in this entire
6 case No matter what anybody says, I think that's the
7 most critical testimony in this case

8 State's Exhibit No 17, what does it say?
9 This gun will not fire -- this gun will not fire unless
10 you do two things pull it back, pull the trigger,
11 and watch this Pull this trigger all day long, nothing
12 happens Cock it, it fires every single time This gun
13 will not fire unless you pull it back and then fire it
14 Somebody had to pull it back, and somebody had to pull
15 the trigger six times That's what they want you to
16 believe is an accident, that the first one was an
17 accident, the second one was an accident, and the third
18 one was an accident, and the fourth one was an accident,
19 and the fifth one was an accident, and the sixth one was
20 an accident until they ran out of bullets, and then there
21 couldn't be no more accidents, but that's the kind of
22 garbage you've got to believe if you want to find that
23 this was an accident That's the kind of insanity that
24 they have asked you to believe in order to find that this
25 was an accident

1 You know something else that's important in this
2 case? Remember his good buddy and cousin, George, who got
3 on the stand and said, 'Oh, yeah, we had that gun I had
4 that thing about three weeks I had me two packs of
5 bullets I had done bought for that gun, and, yeah, we
6 knew how to shoot that gun In fact, Old Roger here
7 he'd been shooting that gun, too We both knowed how to
8 shoot it ' It wasn't no accident He knew how to shoot
9 it, and I asked him again I said, "Did he know how to
10 shoot that gun?" "Oh, yeah, he knew how to shoot it I
11 knew how to shoot it, too " Accident? Involuntary
12 manslaughter?

13 Involuntary manslaughter is reckless disregard
14 for the safety of others, criminal negligence Do you
15 think that that's recklessness to take a gun and point
16 it at a person's head and shoot them three times in the
17 head, to pull the trigger three times and shoot them in
18 the head after cocking that gun back, that that's
19 reckless?

20 Folks, if that ain't murder, the Easter Bunny's
21 coming That is murder That is murder plain, clear, and
22 simple

23 Your know what else lets you know this is
24 murder? Because you know what happened here, don't
25 you? Use your good common sense Just because you're

1 on jury duty you don't leave your good common sense
2 home You know exactly what was happening this night
3 This was a robbery This was a robbery that went sour
4 That's what was going on Is there any doubt about
5 that? This was a robbery attempt, and then they got
6 scared because the blood was flying everywhere You heard
7 one of the fellows up there say, "Man, it was bloody
8 in there " That's why they -- he didn't try to get his
9 pulse when he was in the car because it was bloody in
10 there

11 After the shooting started, they got scared,
12 and they went home, and what did they do? Do they go
13 home -- and think about it for a minute with me, folks
14 -- if this is an accident, if this is some involuntary
15 reckless disregard for safety, what do you do? The first
16 thing you do is you run to the telephone, and you call
17 the police You call an ambulance, get some help for
18 the man who's laying on the ground bleeding to death
19 Is that what they do? Absolutely not What do they
20 do?

21 They go home and get in the bed That's what he
22 said He said, "We went home" -- now these, folks, these
23 are the fellows who's in the car with him, says, "Well,
24 you know what I did I went on home, and I went and got
25 on the chair " I said, "Well, did you go to sleep?"

1 "Well, I didn't go to sleep I was just watching TV So
2 how long did you watch TV? I don't know Several
3 minutes " The other one says, "Ten minutes ' Ten
4 minutes Don't you know that those were precious moments
5 for Mr Lockhart? Don't you know that his lifeblood was
6 running out of him for those ten minutes while they were
7 sitting there watching television? They want you to
8 believe this was an accident They want you to believe
9 this is some kind of criminal negligence

10 You know, remember, they said that the police
11 had been called earlier in the day down there, and the
12 police came three times, I think he said, and the fourth
13 time the police didn't come Now think about it for a
14 minute

15 These fellows, including Old Roger Legette
16 over there, had this gun, and they were shooting so
17 bad that their own parents called the police Now, if
18 that ain't out of control, I don't know what is They're
19 out there with a gun up and down the highway shooting
20 and doing whatever they wanted to do, God only knows, and
21 it's so bad that their mamas, not -- not some neighbor,
22 not some distant relative, not somebody who doesn't know,
23 their mamas get on the telephone and call the police,
24 "Come and get these folks because I can't do nothing with
25 them," but when the police come, what do they do? They

1 take that gun They throw it in the woods "I ain't got
2 no gun' because they're smart enough to know "I'm on
3 probation I'm on parole " Well, he's smart He's been
4 in the system He's smart enough to know the police can't
5 do nothing to him because he ain't got the gun They've
6 got no evidence, but as soon as they leave, what does he
7 do? Right back like a martin to his gourd getting that
8 gun out of them woods

9 Then what does he do after he gets it out?
10 After the police has been there three times, three times,
11 and the police have got plenty of other stuff to do,
12 folks This is Memorial Weekend when they're down there
13 trying to keep all these crazy people over at the beach,
14 and they're having to run back down and forth here after
15 these fellows with this gun Three times they come down
16 there, and three times they put that gun in the woods
17 till the police leave, and as soon as the police leave,
18 as soon as they turn their backs, as soon as they go
19 away, what happens? Mr Legette and his buddies, they
20 go right out in them woods, and they get that gun again,
21 but this time they're up for serious business They're
22 up for serious business They're not listening to their
23 mamas They wouldn't listen to the police, and Mr
24 Lockhart, poor fellow, he was just totally unfortunate
25 because it wouldn't have mattered who came up there

1 that day It wouldn't matter who the taxicab driver
2 was

3 Didn't you hear me ask them, "Well, did the
4 man say anything ugly to you? Did he curse you? Did
5 he mistreat you? Did he call you some ugly name? Any
6 reason whatsoever to shoot him? None The man never
7 said a harmful word to them, nothing, and they just shot
8 him and then left him there lying in the road bleeding to
9 death

10 And let me tell you something else Do you
11 believe for one minute that after Old Roger Legette had
12 done shot him three times, he fired that gun six times
13 inside that car, at least six times, hitting him three
14 times?

15 And do you remember what the doctor said?
16 Remember what Dr Proctor said about the stippling,
17 the powder burns being around it? He said the gun
18 had to be twelve to twenty inches from his face, twelve
19 to twenty inches from his face to leave that stippling,
20 not more than twelve to twenty inches, couldn't have
21 been more than twenty inches That's close, folks

22 Twenty inches, that's probably no more than
23 that long from your face, holding this gun this close to
24 your face and pulling the trigger

25 And you, did you see the attitude of George and

1 -- and -- and what's the other boy's name? Did you see
2 their attitude up there on the stand? Do you think they
3 care that Mr Lockhart is dead? "It was an accident It
4 was an accident That's all "

5 Folks, this county belongs to all of us, and
6 we are all entitled to live here and live in peace
7 We're entitled to go to our homes in peace We're
8 entitled to drive our cars in peace We're entitled to
9 go shopping in peace We're entitled to go in peace
10 wherever we want to go, without the likes of Roger Legette
11 having a loaded -- a fifteen-year-old having a loaded gun
12 in his pocket

13 You know, do you know what else? You heard
14 that 911 tape Now think about it, folks, with me for
15 a minute, and he seemed all upset on the 911 tape You
16 have to remember He's been in the house now He's
17 done told his cousin, according to one of them He's
18 done told his cousin He's done told his grandma, and
19 he's done set down in that chair for several minutes,
20 depending on who you're listening to, before he calls 911
21 when he pretends that "I'm upset," and she's trying to
22 talk, "Calm down here Calm down," but now think about
23 it

24 When he comes home, even by at least when you
25 listen to the other two, what did they say? "Well, he

1 went in a room, and he was a little upset, but he went
2 in a room, and he was talking to his cousin " I said,
3 "Well, did he tell his grandmama immediately? No, he
4 didn't tell her for another two or three minutes, and
5 then he told her later on," and the man's just laying
6 there They go on about their business like nothing
7 happened

8 That's the kind of person Roger Legette is
9 That's the kind of person he is, you know, and that's
10 hard That's a hard thing for some of us to accept and
11 understand, but there are just people out there who have
12 hearts devoid of social duty They have no sense of
13 social duty They have no sense of social responsibility,
14 and that's a hard thing to accept because you want to
15 believe in the good in everybody All of us do There
16 are folks who don't have good in them, and the only
17 thing you can do is separate those people from society,
18 and based on what he did, he needs to be separated from
19 the rest of society Justice demands it Fairness
20 demands it Right demands it

21 I have just got a couple of more things, and
22 then I'm going to sit down If you will remember the
23 testimony of the SLED agent, Officer Ira Parnell, one
24 of the other things that he told you, the gun's in fine
25 working order, and you remember the testimony of George,

1 and he said, "Oh, you know, I took the pin out of it "
2 That's not what Officer Parnell, who is an expert who
3 has twenty-four years and has testified in over 500
4 trials throughout this state and throughout this country,
5 testified to He said, "I fired the gun four separate
6 occasions It was in full and proper working order "
7 There's no pin missing from that gun

8 That's just some story he's concocted to bring
9 in here to you because, you see, if he had taken the pin
10 out, the gun wouldn't work anyway What gun works without
11 a firing pin? You've got to have a firing pin because
12 something's got to strike the bullet to make it go, and if
13 there's no firing pin, nothing happens, and Officer
14 Parnell said, 'I took it to the lab, had bullets similar,
15 put them in the gun and fired the gun four separate times
16 No question about it

17 Those bullets came from that gun, including
18 the bullet that we took out, that the pathologist took
19 out, of the head of Mr. Lockhart All came from that gun
20 and no other gun " No question about that Absolutely
21 nothing in this record inconsistent with that, that every
22 one of those bullets came and were fired from this gun,
23 the same gun that Roger Legette over there had No
24 question about it

25 Now, ladies and gentlemen, I simply ask you that

1 you have no friends to reward, you have no enemies to
2 punish You have but one responsibility, to find a
3 verdict that speaks the truth, and the verdict that
4 speaks the truth in this case is guilty of murder There
5 is no other verdict, no other verdict that does justice
6 There's no other verdict that does fairness, and, you
7 know, the good part in this case is that fairness and
8 justice is the same

9 Fairness and justice is the same for the victim
10 as it is for the defendant It's the same That's the
11 good part about justice It's no different It doesn't
12 change depending on who you are or how rich you are or how
13 poor you are or where you live It's the same

14 The only justice in this case is for you to
15 bring back a verdict of guilty to Count 1, murder, and
16 guilty to Count 2, possession of a weapon in a violent
17 crime That's the only fair and just verdict Thank you
18 so very much for your time

19 MR GARDNER Madam Forelady, ladies and
20 gentlemen of the jury, thank you for your attention
21 to the case I agree with the solicitor on some of
22 the things that he said to you when he started talking
23 here, that this is about justice, and what we say here
24 is not really argument, and it's not really evidence, and
25 if we misspeak, or it doesn't match with what you recall

1 from the witness stand, please go with your own
2 interpretation

3 In fact, one good thing about having twelve
4 people to speak with a verdict of the truth is it may be
5 that between the twelve of you somebody caught something
6 the other one didn't catch, so stick to the guns on what
7 you believe you heard here and what you believe the
8 verdict should be

9 The judge will tell you what the law is Go by
10 that law, and if that's different from what the solicitor
11 said or from what I say, go by the law and what the judge
12 says

13 The decision on who to believe, the verdict to
14 come up with, stick to your individual guns based on your
15 recollections of what you heard and what may be introduced
16 into evidence

17 I started to disagree with the solicitor when he
18 started talking about what had happened with regard to
19 malice for Roger Legette

20 Murder is the felonious killing of a human being
21 accompanied by malice, and malice is a black heart
22 There's nothing black heart about three boys that are in
23 the woods isolated away from anybody else that may be
24 shooting guns or having a gun as long as they haven't done
25 anything violent That in and of itself would not give

1 you malice as to what happened that night

2 The solicitor said that we're asking you to
3 accept this insanity stuff if you believe this was an
4 accident or if you believe that it was a lesser included
5 of murder, that being the involuntary manslaughter Those
6 witnesses were the solicitor's witnesses He put those
7 up Those are his witnesses

8 Y'all remember when we started here yesterday
9 morning I told you that the State had the burden of proof
10 That's beyond a reasonable doubt in each and every element
11 of what the crime charged with The judge will give you
12 the law on that That's still the same

13 I also told you that the defendant was presumed
14 innocent He keeps a cloak that says he's innocent with
15 him unless the solicitor's office, the State, through
16 testimony and evidence can chip away at that and persuade
17 y'all beyond a reasonable doubt of each and every element
18 That's still the same

19 I told you that Roger doesn't have to prove
20 anything, in fact, doesn't have to present a defense,
21 doesn't have to get up and testify, and that's what we've
22 done here today

23 I stood up here and told you from the very
24 beginning that although this is a very serious charge,
25 that the facts would show that it doesn't rise to the

1 level of murder I believe when you go through the
2 testimony and the evidence, you will see that it doesn't
3 rise to the level of murder There is no malice There
4 is no intent

5 The solicitor said that these boys were bad, the
6 ones that testified Well, you've got a fifteen-year-old
7 Roger Legette with no prior criminal record He's now
8 sixteen years old There's no malice there There's no
9 intent

10 The testimony that the solicitor's office put up
11 didn't establish anything about a plan There was no plan
12 to go do a robbery As far as him not having any social
13 bearing or social duty, the testimony was that he ran
14 home He called his uncle or woke his uncle up, Lonnie
15 Gray The solicitor's office put him up here He
16 testified, "He woke me up," and he got his grandmother
17 there, Juanita He called 911 You heard the tape You
18 heard his voice That's social duty

19 Before he left, he check the victim The
20 witnesses on the scene said he checked the victim, and
21 that's social duty He was very upset Everybody that
22 saw him testified shaking, nervous, crying You heard
23 the tape That shows a social duty

24 Now, the judge will charge you on the law
25 Let's go over the witnesses

1 Dr Proctor testified, among other things --
2 'you remember when I cross- -- when I asked him the
3 questions, and it was my turn, I said, You do a lot of
4 these You do them in other counties ' I said, "Are
5 these wounds inflicted on Mr Lockhart, are they
6 consistent with someone that got scared, or a gun just
7 went off, and started shooting?" He said, 'That's
8 possible "

9 Lonnie Gray, the uncle, the solicitor's
10 office put him up to testify, the person that saw
11 Roger right after it happened, and he said it was an
12 accident

13 Juanita Gray, the grandmother, you heard her
14 testify a couple of times, I believe She said it was
15 an accident

16 George Gray, the solicitor put him up He
17 said it was an accident He said, George Gray said,
18 that he, George Gray, is the one that bought the gun,
19 that he, George Gray, took a pin out of the gun that
20 enabled it to fire automatic as opposed to semi-
21 automatic

22 The testimony was not firing pin He did not
23 say he took the firing pin out He took a pin out that
24 enabled it to fire

25 Now, the lieutenant from SLED when he testified,

1 if the gun is loaded, if the gun is loaded, you do not
2 have to cock it back every time to pull the trigger
3 If the gun is loaded, once it's cocked back, and you pull
4 the trigger, you don't have to keep cocking it back like
5 that

6 He said he fired the weapon four times in his
7 test, and I'm talking about the SLED fellow

8 Lieutenant or Detective Twigg in his testimony
9 he recovered the weapon four days after the incident I
10 don't know what happened with that gun during those four
11 days It was in the woods

12 Craig Legette testified accident

13 You heard his voice He got scared The gun
14 went off The testimony from the detectives on the scene,
15 it is consistent with something like that happening
16 because there are other wea- -- bullets all over the car
17 It's not like an intentional act, somebody aiming at
18 somebody, somebody shooting, shooting, shooting You take
19 the evidence as it's presented to you, and the State has
20 that burden of proof

21 Assistant Solicitor Roger Roy got up here in
22 his opening statement and said that this was a senseless
23 killing, and it was all about a look I haven't heard
24 any testimony about a look You've heard the testimony
25 that was presented the people there who saw it, the

1 people who saw him afterwards, the people that the State
2 put up It's consistent with an accident, so if you
3 are in agreement with that, that should be your decision

4 As far as the involuntary manslaughter, there is
5 no malice When you go back there, ask yourself where the
6 malice is formed at

7 There's no robbery You heard the testimony
8 that Mr Lockhart had, among other things, in there -- I
9 think it was \$135 00 cash money, so there was no robbery
10 there

11 There was no intent to go and do anything bad
12 with him There's no evidence of that, and Roger ran back
13 and made the phone call, social duty, tried to help, went
14 and made the call

15 The other two boys, they testified that they --
16 they may have sat down or watched TV or whatever they did,
17 but they testified that Roger went in and got Lonnie
18 Lonnie testified that Roger came in and got him, and they
19 went and got Juanita, the grandmother, and they called
20 911, and you heard what he said on 911

21 There's nothing about hiding the gun or
22 anything He told them the gun was in the -- 'I just got
23 scared It went off The gun's in the woods " He waited
24 right there for them There is no malice There is no
25 malice

1 It's a terrible, terrible unfortunate thing we
2 had happen, but it doesn't rise to the level of murder
3 I told you that when I first got there Throughout the
4 case you've heard the evidence, and it still does not rise
5 to the level of murder Thank you very much

6 THE COURT Ladies and gentlemen of the jury, it
7 now becomes my duty to charge you as to the law as it
8 applies in this particular case As you know by now, the
9 defendant has been charged under Count 1 with murder,
10 under Count 1 with possession of a weapon during the
11 commission of a violent crime

12 To these charges he's pled not guilty, and
13 that places the burden upon the State of South Carolina
14 to prove him guilty beyond a reasonable doubt for under
15 our law a defendant is presumed innocent, and that
16 presumption of innocence continues It continues
17 throughout the trial and continues when you go back to
18 deliberate on the verdict, and it continues until the
19 State should prove to you to your satisfaction beyond a
20 reasonable doubt the guilt of the accused of the crime for
21 which he is charged

22 If the State proves that beyond a reasonable
23 doubt, it's your duty under your oath to return a verdict
24 of guilty If the State fails to prove that, it's your
25 duty to return a verdict of not guilty

1 Now, what is a reasonable doubt? A reasonable
2 doubt is the kind of doubt which would cause a reasonable
3 person to hesitate to act, simply put, a doubt for which
4 a reason can be given

5 The proper manner to weigh the evidence
6 presented during the trial of the case in order to
7 determine if the State has met its burden of proof is
8 through the exercise of your good common sense and
9 judgment

10 You must ask yourself, 'What evidence convinces
11 me that it is true?" It is entirely a mental process In
12 this manner you should weigh the evidence and render a
13 fair, impartial, and just verdict in this case

14 Under our Constitution you, the jury, are the
15 sole judges of the evidence I do not have a right to
16 pass upon the facts or even express an opinion I may have
17 as to the facts Do not take anything I did during the
18 trial of this case to indicate to you that I favor one
19 side over the other because I do not

20 Under our Constitution again I tell you that
21 you are the sole judges of the facts and evidence
22 Of necessity that makes you the sole judges of the
23 credibility or believability of the witnesses and
24 the value or weight to be given their testimony You
25 alone must decide the force, effect, and truth of the

1 testimony

2 In making this decision there are many things
3 you may and should take into consideration, such as the
4 appearance and manner of the witness on the stand,
5 sometimes referred to as the demeanor of the witness,
6 the manner in which a witness testified Was the
7 witness forthright or hesitant? What was the ability of
8 a witness to know the facts about which he or she
9 testified?

10 You should consider the extent of a witness'
11 capacity to perceive, to recollect, about any matter about
12 which he or she testified You should consider the
13 existence or non-existence of a bias, interest, or other
14 motive

15 Did a witness have a cause or reason to be
16 biased in favor of the testimony he or she gave? Was the
17 testimony corroborated or made stronger by other testimony
18 and evidence, or was it made weaker?

19 As jurors you have a right to believe a small
20 portion of a witness' testimony and discard the larger
21 or vice-versa You may believe all of a witness'
22 testimony or none You may believe the testimony of a
23 single witness against that of many witnesses or the other
24 way around

25 All these things you should consider bearing in

1 mind that you must give the defendant the benefit of every
2 reasonable doubt

3 Now, the same Constitution that makes you the
4 sole judges of the facts and evidence makes me as trial
5 judge the sole instructor of the law You should not
6 concern yourself with what you think the law ought to be,
7 might be, could be, but you must take the law as it is
8 charged by the Court, apply it to the facts and evidence
9 as you find it, come back with a true verdict, a verdict
10 which speaks the truth

11 Your verdict must be unanimous All twelve must
12 agree

13 It would be a violation of your oath to base
14 your verdict upon anything but the law and the facts in
15 this case

16 Now, evidence is of two types direct and
17 circumstantial Direct evidence is something that affects
18 the senses I saw, I felt, I heard, I touched, I smelled

19 Circumstantial evidence, which is sometimes
20 referred to as indirect evidence, is evidence which proves
21 a fact from which the existence of another fact may be
22 inferred, simply put, circumstantial evidence requires a
23 mental exercise to get from Point A to Point B

24 By way of illustration only, if you saw a rabbit
25 run into a hollow log, that would be direct evidence, but

1 if you did not see the rabbit run into the hollow log, but
2 you saw rabbit tracks leading into the hollow log, that
3 would be circumstantial or indirect evidence that the
4 rabbit had, in fact, entered the log, so you see the
5 difference One requires a mental exercise to get from
6 Point A to Point B, that is, circumstantial or indirect
7 evidence does

8 Now, regardless of whether the evidence is
9 direct or circumstantial or a combination of the two, the
10 burden is still upon the State to prove its case beyond a
11 reasonable doubt

12 Now, I charge you that under our Constitution
13 the fact that a defendant does not testify on his own
14 behalf cannot and must not be considered against him under
15 any circumstance or in any manner whatsoever

16 The election of a defendant not to take the
17 stand and testify on his own behalf does not create any
18 presumption against him

19 I charge you that you must not permit this
20 factor to weigh in the slightest degree against the
21 defendant

22 In fact, I tell you that under the Constitution
23 and under your oath it would be a violation to even
24 discuss this in your deliberation, the failure of a
25 defendant to take the stand

1 This is his prerogative under our Constitution
2 for it is not -- there is no burden upon him to prove
3 himself innocent. The burden is upon the State to prove
4 him guilty beyond a reasonable doubt.

5 Let's talk about criminal intent. Criminal
6 intent is a necessary element of a crime. Criminal
7 intent is always a matter that must be determined by
8 the jury from the circumstances surrounding the situation.

9 There's no way to prove to a mathematical
10 certainty. There's no way medical science can dissect a
11 person's brain and determine what he had in his mind, so
12 the law says that criminal intent may be inferred from the
13 circumstances shown to have existed.

14 This is how the jury makes the determination
15 of whether or not the elements requiring intent was
16 present because criminal intent is a state of mind. It's
17 a mental state, a conscious wrongdoing, so it's up to
18 you, the jury, to determine what the defendant intended
19 to do based on the circumstances shown to have existed.

20 Of course, the burden is upon the State to prove
21 criminal intent beyond a reasonable doubt.

22 Now, I charge you under our law that voluntary
23 intoxication, whether it's from drinking, using drugs,
24 using weed, is not a defense to a crime.

25 A person who voluntarily renders himself

1 intoxicated is not less responsible or is no less
2 responsible for his acts while in such condition

3 Now, let's talk about the Count 1 in the
4 indictment, which is the charge of murder I will charge
5 you first on murder, and then I'll charge you what in the
6 law is known as a lesser included offense of involuntary
7 manslaughter, so we'll talk about murder first, and then
8 we'll talk about the lesser included offense, which is
9 involuntary manslaughter, and then we'll talk about some
10 other matters of law

11 Murder is the wilful, felonious killing of a
12 human being by another with malice aforethought, and
13 felonious simply means unlawful, so murder is the wilful,
14 felonious killing of a human being by another with -- with
15 malice aforethought, either expressed or implied T h e
16 presence of malice aforethought is a distinguishing
17 characteristic of murder

18 Now, what is malice? Malice is a state of mind
19 characterized by an extreme disregard for human life
20 Malice aforethought may be established where there is an
21 intent to kill without provocation or excuse or an intent
22 to do serious bodily harm or conduct which consciously
23 creates a very high risk of death where the circumstances
24 surrounding the killing demonstrates a malignant heart,
25 void of social duty, bent upon the fatal act

1 Malice aforethought is the presence of malice in
2 the mind of the one doing the killing at any time before
3 the act

4 Malice need not be present in the actor's mind
5 any particular length of time but only some time before
6 the act which killed the deceased

7 Malice suggests wickedness, hatred,
8 determination to do what one knows to be wrong

9 Now, malice may be expressed or implied The
10 words "expressed or implied malice" does not mean
11 different kinds of malice but merely the manner in which
12 the only kind of malice known to the law may be shown to
13 exist, that is to say, either by direct evidence or by
14 inference

15 Let's talk about expressed malice Malice may
16 be expressed by word of mouth, threats of vengeance,
17 preparation to carry out an attack, lying in wait, or
18 other circumstances which show directly and intent to kill
19 was in the mind of the defendant at the time the act for
20 which he is charged was committed

21 Implied malice, let's talk about that at this
22 time I tell you that malice, expressed or implied, is
23 never presumed from the use of a deadly weapon, however,
24 malice may be inferred where a person intentionally kills
25 another with a deadly weapon

1 A deadly weapon is defined as any article,
2 instrument, which when used with the intent to injure
3 another is likely to produce death or great bodily harm

4 A deadly weapon would be something, such as a
5 knife, a firearm, by way of example

6 The implication of malice may also arise from
7 the use of brutal force or conduct

8 If facts are proved beyond a reasonable doubt
9 sufficient to raise an inference of malice in your -- to
10 your satisfaction, this inference would be simply an
11 evidentiary fact to be taken into consideration by you,
12 the jury, along with the other evidence in the case, and
13 you may give it such weight as you determine it should
14 receive

15 In other words, the inference of malice from the
16 use of a deadly weapon is simply an evidentiary fact to be
17 taken into consideration by you, the jury, along with the
18 other evidence in the case and to be given such weight as
19 you, the jury, determine that it should receive

20 If the evidence should show under the
21 circumstances a deadly weapon was used which took the life
22 of another, then you, the jury, would have to determine
23 whether under such circumstances the act was malicious

24 In short, the implication of malice from proof
25 of the use of a deadly weapon is not required, however,

1 this implication is permitted if -- if after considering
2 all of the facts and circumstances in evidence, you
3 conclude beyond a reasonable doubt that such an inference
4 is proper

5 Remember, the State has the burden of proving
6 malice, either expressed or implied, beyond a reasonable
7 doubt

8 Now, let's talk about what is known in the law
9 as a lesser included offense of murder It is called
10 involuntary manslaughter

11 Under our law when there is an indictment for
12 murder, there is also included in that charge the lesser
13 included offense of unlawful homicide, which is known as
14 involuntary manslaughter

15 In manslaughter there is no malice aforethought,
16 and I've just defined what malice aforethought is, which
17 is an important, essential element of murder, but there
18 is no malice aforethought required in involuntary
19 manslaughter, so I'll define involuntary manslaughter to
20 you at this time

21 A person may be convicted of the crime of
22 involuntary manslaughter only upon a showing of criminal
23 negligence With regard to the crime of involuntary
24 manslaughter, criminal negligence is defined as the
25 reckless disregard of the safety of others

1 Now, in order to make out the offense -- I
2 should say in order to prove the offense of involuntary
3 manslaughter, the State must prove beyond a reasonable
4 doubt the following elements that the victim, deceased,
5 died in Horry County and that the defendant did unlawfully
6 and unintentionally kill the victim, deceased, and that
7 the defendant's conduct was criminally negligent, which
8 is defined as the reckless disregard of the safety of
9 others and that the alleged criminal negligence of the
10 defendant was the proximate cause of the death of the
11 victim, and proximate cause is simply the direct cause,
12 the efficient cause, the real cause, without which the
13 death would not have occurred

14 Let me define the term involuntary It's the
15 unintentional killing of another without malice, and I've
16 already told you that criminal negligence is defined as
17 the reckless disregard of the safety of others, and that
18 simply means a conscious failure to exercise due care

19 Recklessness implies the doing of a negligent
20 act knowingly A person is reckless when he knowingly
21 does an act or fails to perform an act which he knows is
22 negligent, a reckless disregard of the safety of others,
23 a conscious disregard for or indifference to the
24 consequence of one's own act, the recklessness

25 Now, I'll charge you as to the law on accident

1 Where the death of a human being is the result of an
2 accident or misadventure in the true meaning of the term,
3 no criminal responsibility attaches to the actions of the
4 defendant, if it is shown that the killing was
5 unintentional, that it was done while the defendant was
6 engaged in a lawful enterprise, and it was not a result of
7 criminal negligence, so, you see, there are three elements
8 in order to be an accident or misadventure, and I tell you
9 this does not mean that the defendant must prove that the
10 homicide occurred by accident or misadventure because the
11 burden is upon the State to prove beyond a reasonable
12 doubt that the death resulted from the criminal negligence
13 of the defendant or was a result of the murder by the
14 defendant

15 Now, so, Count 1 you have murder, you have the
16 lesser included charge of involuntary manslaughter, so
17 when you consider Count 1, I charged you that if you have
18 a reasonable doubt as to whether the defendant is guilty
19 of the crime of murder for which he has been indicted or
20 guilty of the lesser included offense, involuntary
21 manslaughter, it is your duty to resolve that doubt in his
22 favor and find him guilty of the lesser offense,
23 involuntary manslaughter, however, remember, that even as
24 to this lesser offense, the burden of proof is upon the
25 State to prove him guilty of involuntary manslaughter

1 beyond a reasonable doubt before you could find him
2 guilty of the lesser included.

3 Now, let me charge you as to Count 2, which is
4 possession of a weapon or firearm during the commission of
5 a violent crime

6 Our law makes it illegal to possess or display
7 a firearm during the commission of a violent crime

8 I charge you that under our law murder is
9 classified as a violent crime I further charge you that
10 involuntary manslaughter is not classified as a violent
11 crime

12 For you to -- for you to find the defendant
13 guilty of this Count 2, separate offense, that is,
14 possession of a firearm or weapon during the commission of
15 a violent crime, you must first find the defendant guilty
16 of murder Then you must determine whether the State has
17 proved beyond a reasonable doubt that the defendant
18 possessed or displayed a firearm during the commission of
19 murder, and the burden, of course, is upon the State to
20 prove him guilty of that beyond a reasonable doubt A
21 firearm is simply -- it could be a pistol, revolver, gun

22 Now, you've been selected as fair and impartial
23 jurors sworn to impartially try and determine the facts of
24 this case

25 Your verdict must not be based on passion,

1 prejudice, or public opinion but must be based on the
2 evidence and the law As long as you take the evidence
3 as you find it and apply the law as I charge it, you will
4 come back with a true verdict No one will have a right
5 to quarrel with your verdict You will have complied with
6 your duty as a trial juror

7 Now, the verdict form, if I can locate it, the
8 verdict form is two pages The first page deals with
9 Count 1, murder, and the lesser included offense of
10 involuntary manslaughter

11 The second page deals with the possession of a
12 weapon or firearm during the commission of a violent
13 crime You will not take up -- you will not go to page
14 two unless you find the defendant guilty of murder on page
15 one for the reasons that I've stated in my charge Okay

16 Now, Madam Forelady, there's a place for you to
17 sign and date it, whatever the verdict of the jury is As
18 I told the jury, it must be unanimous All twelve must
19 agree

20 It becomes your duty when the deliberation
21 commences, you will be the presiding trial officer of the
22 trial jury to see that each juror has an opportunity to
23 have their say, and if there's a question for the Court
24 when you're deliberating on the verdict, you must write
25 that question out, sign your name as forelady, knock on

1 the door, give the question to the bailiff The bailiff
2 will give me the question I'll bring the entire trial
3 jury back into the courtroom, and if the law allows me to
4 answer the question, I will attempt to do so

5 Now, Alternates, stay with me at this time I'm
6 going to send the twelve jurors back to the jury room- Do
7 not commence deliberation yet I have a matter of law to
8 take up with the attorneys

9 I may have to bring you out and charge you
10 further as to the law If I do not have to do so, I will
11 send the exhibits back, your notes back to you, and you'll
12 be told -- and the verdict form, and you'll be told to
13 commence deliberation Okay, but do not commence
14 deliberation yet Do not discuss the case yet because I
15 may bring you back out and charge you further as to the
16 law as it applies in this case Okay Step back to the
17 jury room

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JURY)

20 THE COURT Okay, Mr Bailiff, we need to take
21 the two alternates out of the sight and sound We'll be
22 with you shortly

23 (WHEREUPON, THE ALTERNATES EXIT THE COURTROOM)

24 THE COURT Any additions or exceptions from the
25 State or defense?

1 MR ROY None from the State, Your Honor

2 MR GARDNER No, Your Honor

3 THE COURT All right Let's review the verdict
4 form, see if we can stipulate as to the verdict form, and
5 let's agree on the exhibits, get them back to the jury so
6 they can commence deliberation I'm going to have the
7 clerk stick her head in the jury room and ask -- I'm going
8 to have the clerk, when we -- when we give them the
9 exhibits, I'm going to have the clerk ask the jury whether
10 -- it will take about an hour to get them supper, if they
11 want us to go ahead and order them supper Okay That
12 way we don't have -- but tell them it will be about an
13 hour, and that way we don't have thirty-two pizzas, and we
14 all have to take them home with us or whatever we need

15 (AT EASE)

16 THE COURT All right Are we in agreement, the
17 State and defense, on the verdict form?

18 MR GARDNER Yes, Your Honor

19 MR ROY The State is in agreement, Your Honor

20 THE COURT Are we in agreement on the exhibits
21 which the clerk has to go back to the jury room?

22 MR GARDNER Yes, Your Honor

23 MR ROY The State is in agreement

24 THE COURT All right Then give them their
25 pads, also We've already taken the two alternate pads

1 away Tell them they can commence deliberation Tell
2 them -- ask them if they want to order supper Tell them
3 it will take an hour once we order to get here, and we
4 need to know All right

5 We'll stand at recess, except I need the two
6 alternates That's right I need my two alternates
7 (WHEREUPON, AT 5 22 P M , THE JURY COMMENCES ITS
8 DELIBERATION)

9
10 (WHEREUPON, THE ALTERNATES ENTER THE COURTROOM, AND THE
11 FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY)

12 THE COURT Okay Let's go on the record
13 Well, Alternates, thank you so much This concludes your
14 duties on this case The jury, the twelve, are in
15 deliberation

16 The good news is that you can go home, but the
17 better news is I need you at 9 45 tomorrow Just take
18 your place where you -- as you did Monday, and we're going
19 to pick another jury tomorrow at 9 45 Don't be late
20 All right Have a good evening

21 (AT EASE)

22 (WHEREUPON, AT 5 35 P M , THE JURY ENTERS THE COURTROOM
23 WITH A QUESTION)

24 THE COURT Question from the jury to the Court
25 Can we hear the 911 tape again or better yet a transcript

1 of 911 tape?

2 There is no transcript, however, we'll be glad
3 to play it for you as many times as you want it played
4 Okay, Solicitor, play it for the jury and feel free to get
5 as close to the stuff as you need, and we might need to
6 move that Yeah, let's move that thing out of the way,
7 Solicitor, that stand

8 MR ROY I'm going to set it on top

9 THE COURT Oh, you're going to set -- okay
10 (WHEREUPON, STATE'S EXHIBIT NO 14A IS PLAYED TO THE
11 JURY)

12 (Court's Exhibit No 1 marked)

13 THE COURT Now, do you want any portion played
14 again, the whole tape, or none of it? Whatever you desire
15 to do is fine

16 (WHEREUPON, THE JURY INDICATES IT DOES NOT DESIRE TO HEAR
17 ANY FURTHER PLAYING OF THE TAPE)

18 THE COURT Okay Step back to the jury
19 room

20 (WHEREUPON, THE JURY RETIRES TO THE JURY ROOM TO CONTINUE
21 ITS DELIBERATION)

22 THE COURT Okay We're in recess
23 (WHEREUPON, RECESS IS TAKEN)

24 _____
25 (WHEREUPON, AT 5 45 P M , THE JURY RETURNS TO OPEN COURT

1 TO REPORT ITS VERDICT)

2 THE COURT Okay, Madam Clerk, you're
3 recognized

4 THE CLERK (DONNA WILLIAMS) Madam Forelady,
5 have you reached a verdict?

6 THE FORELADY Yes, we have

7 THE COURT Publish the verdict, Madam Clerk

8 THE CLERK (DONNA WILLIAMS) This is Indictment
9 No 96-GS-26-2809, State of South Carolina vs Roger
10 Syntell Legette, indicted for Count 1, murder The
11 verdict is guilty

12 Indicted on Count 2, possession of a weapon
13 during the commission of a violent crime, the verdict is
14 guilty

15 Signed Jane E Powell, Foreperson Dated August
16 5, 1997

17 Madam Forelady, ladies and gentlemen of the
18 jury, is this your verdict so say you all?

19 (WHEREUPON, THE JURY RESPONDS AFFIRMATIVELY)

20 THE COURT Do you want the jury polled?

21 MR GARDNER Yes, Your Honor

22 THE COURT Poll the jury, Madam Clerk

23 THE CLERK (DONNA WILLIAMS) When I call your
24 name, please stand and answer the question I'll ask you
25 Jane E Powell, is this your verdict and still your

1 verdict?

2 JUROR JANE E POWELL Yes

3 THE CLERK (DONNA WILLIAMS) Roger B Bryant, is
4 this your verdict and still your verdict?

5 JUROR ROGER B BRYANT Yes

6 THE CLERK (DONNA WILLIAMS) Richard C
7 Wasserman, is this your verdict and still your verdict?

8 JUROR RICHARD C WASSERMAN Yes, ma'am

9 THE CLERK (DONNA WILLIAMS) Walter Moody II, is
10 this your verdict and still your verdict?

11 JUROR WALTER MOODY II Yes, ma'am

12 THE CLERK (DONNA WILLIAMS) Ruby Meyers, is
13 this your verdict and still your verdict?

14 JUROR RUBY MEYERS Yes

15 THE CLERK (DONNA WILLIAMS) Kenneth Brackens,
16 is this your verdict and still your verdict?

17 JUROR KENNETH BRACKENS Yes, ma'am

18 THE CLERK (DONNA WILLIAMS) Laverne Greene, is
19 this your verdict and still your verdict?

20 JUROR LAVERNE GREENE Yes

21 THE CLERK (DONNA WILLIAMS) Joyce Berwick, is
22 this your verdict and still your verdict?

23 JUROR JOYCE BERWICK Yes

24 THE CLERK (DONNA WILLIAMS) Sandra Jones, is
25 this your verdict and still your verdict?

1 JUROR SANDRA JONES Yes

2 THE CLERK (DONNA WILLIAMS) Brett Goodyear, is
3 this your verdict and still your verdict?

4 JUROR BRETT GOODYEAR Yes, ma'am

5 THE CLERK (DONNA WILLIAMS) Judith Reed, is
6 this your verdict and still your verdict? ---

7 JUROR JUDITH REED Yes

8 THE CLERK (DONNA WILLIAMS) Kay Moses, is this
9 your verdict and still your verdict?

10 JUROR KAY MOSES Yes

11 THE COURT Anything further before I excuse the
12 jury? I know you have some motions, but---

13 MR GARDNER Yes, sir, just motions, that's
14 all

15 THE COURT All right Okay, Madam Forelady,
16 ladies and gentlemen of the jury, thank you so much for
17 your service on this case You're excused for the
18 evening, however, tomorrow at 9 45 you need to be back in
19 this courtroom as you were Monday morning with the jury
20 pool The solicitor plans to call a case at 9 45, and we
21 plan to pick another trial jury, okay, so you may be on
22 that jury, too Thank you so much Have a good evening
23 (WHEREUPON, THE JURY EXITS THE COURTROOM)

24 THE COURT Post-trial motions?

25 MR GARDNER Yes, Your Honor We'd move

1 obviously to set aside this verdict and also for a new
2 trial, Your Honor

3 THE COURT Anything further?

4 MR GARDNER That would be all, Your Honor

5 THE COURT Okay Come around Okay Prior
6 record, Solicitor?

7 MR ROY Your Honor, he has no prior record

8 THE COURT Nothing in juvenile court?

9 MR ROY Nothing in juvenile court, Your Honor

10 MR GARDNER Your Honor, you've tried this
11 case You know he's fifteen years old when it occurred
12 He has no prior record I understand that we're limited
13 in what the sentence based on the jury's verdict We'd
14 ask that you be as lenient with him as possible based on
15 his age and the fact that he has no prior record

16 THE COURT All right Let me -- the victim's
17 present -- the victim's family, I should say

18 MR ROY Your Honor, this is the victim's
19 family They are present, and they have indicated to me
20 that no one at this time wishes to address the Court, but
21 they, you know, are of a great loss and just would like
22 the Court to know that

23 THE COURT Okay I'll be glad to hear from the
24 defendant Of course, I know you've talked to your
25 attorney, and he's advised you, I assume, that an appeal

1 may be filed, but---

2 THE DEFENDANT Your Honor, I'm very sorry of
3 what happened to their loved one and stuff, you know, but
4 it truly was an accident, and I would like for you to have
5 mercy on me, sir

6 THE COURT Well, correct me if I'm wrong,
7 Solicitor, defense counsel As I understand the present
8 state of the law at the time this crime was committed, and
9 I want you to correct me if you see it different, that the
10 Court could give thirty years, a minimum of thirty or
11 more, or could give life As I understand it, life means
12 life Is that your understanding, Solicitor?

13 MR WILSON That is correct Life means life

14 THE COURT Is that your understanding, defense?

15 MR GARDNER That's my understanding, Your
16 Honor

17 THE COURT Okay All right It's the
18 sentence of the Court as to the crime of murder that you
19 be committed for life

20 The sentence of the Court as to possession of a
21 weapon during the commission of a violent crime that you
22 be confined for a period of five years, to run concurrent
23 with your life sentence

24 MR WILSON Thank you very much, Your Honor

25 END OF REQUESTED TRANSCRIPT OF RECORD

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

**) IN THE FAMILY COURT
) 15TH JUDICIAL CIRCUIT
) CASE NO: 96-JU-26-623**

STATE OF SOUTH CAROLINA,)

Plaintiff,)

-versus-)

ROGER LEGETTE,)

Defendant)

ORIGINAL

**TRANSCRIPT OF RECORD
(Waiver Hearing - Part 1)**

September 26, 1996
Conway, South Carolina

BEFORE:

The Honorable H T Abbott, III, Judge

APPEARANCES:

Roger Roy, Esquire
Horry County Solicitor's Office
Post Office Box 1276
Conway, South Carolina 29528
ATTORNEY FOR THE PLAINTIFF

Barbara Wilson Pratt, Esquire
Horry County Public Defender
Post Office Box 1666
Conway, South Carolina 29528
ATTORNEY FOR THE DEFENDANT

Kay H Richardson, CVR
COURT REPORTER

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I N D E X**WITNESSES****DIRECT CROSS REDIRECT RECROSS**

Kim Metz

By Solicitor

6

63, 63

By Ms Pratt

33

74

EXHIBITS**NUMBER****DESCRIPTION****ID****EV**

(There were no exhibits marked)

MOTIONS

1 THE COURT The matter before me today is Roger
2 Legette. This is a waiver hearing, is that correct?

3 SOLICITOR Yes, Your Honor

4 THE COURT All right, sir, I'll be glad to hear from you

5 SOLICITOR Your Honor, I believe at this point in time, the
6 defense has some motions to be made

7 THE COURT. Certainly

8 MS PRATT: Your Honor, may it please the Court, at this
9 time, we would respectfully request a continuance in this
10 hearing As the Court is aware, the primary counsel in this case
11 here in Family Court is Mr Johnny Gardner His wife had a baby
12 two days ago and is coming from the hospital today, so he is
13 unavailable today If the Court would not see fit to grant a
14 continuance, we would ask that the Court limit the testimony
15 today to only the testimony of the psychologist because the
16 State has flown her in and allow the remainder of the hearing to
17 be held at a time acceptable both to Mr Gardner and the State.

18 THE COURT Mr Gardner is the lead counsel, I understand,
19 in this matter?

20 MS PRATT: Yes, Your Honor I have been appointed
21 should the matter go to General Sessions, so I have not been
22 particularly actively involved up until this last week because we
23 knew that there might be a problem with his child being born

24 THE COURT And I believe I understand Mr Gardner is the
25 one who normally handles the juvenile matters, is that correct?

1 MS PRATT. Yes, Your Honor, that is true

2 THE COURT Be glad to hear from the State.

3 SOLICITOR The State would oppose the motion for a
4 continuance based on the fact that Ms Pratt is here and can
5 examine the doctor Also, just to get on the record, she has
6 also been here for a detention hearing and one of the other
7 witnesses, she has cross examined However, the State does
8 -- if the Judge does see fit, the State would move forward with
9 half of it today and then half of it at a time convenient for both
10 parties

11 THE COURT Normally, I'm of the opinion that the Court
12 matters take precedence over private family matters, but in the
13 event of getting your wife home from the hospital, I don't think,
14 in light of some of my support staff that I better take that
15 position So, I will grant the continuance as to that portion
16 However, I do believe that we need to go forward with the
17 expert witness' testimony

18 SOLICITOR Thank you, Your Honor

19 MS PRATT Your Honor, in light of that ruling, I would ask
20 that the Court order an expeditious transcript so that when Mr
21 Gardner completes the remainder of this waiver hearing, he will
22 have that at his fingertips If it is not completed by the time of
23 the scheduling of the hearing, we would ask that we be allowed
24 to make a further motion for a continuance that would be
25 considered by the Court at that time.

1 THE COURT Certainly, I would be glad to grant -- Does
2 that pose any problems, Madame Court Reporter?

3 COURT REPORTER (Indicates negatively)

4 MS PRATT Thank you, Your Honor

5 SOLICITOR Your Honor, do you have a copy of the waiver
6 evaluation in your file? I don't believe you do

7 THE COURT I believe all that I have is the consent order
8 for the waiver evaluation

9 SOLICITOR I would like to hand the Judge a copy if the
10 defense counsel has any objections ---

11 THE COURT And I understand, Mr Solicitor, you have a
12 expert witness who you have flown in?

13 SOLICITOR That is correct, Your Honor, and we will be
14 calling her out of turn, of course ---

15 THE COURT Certainly

16 SOLICITOR --- and we just wanted to put that on the
17 record At this point in time, we're ready to proceed

18 THE COURT All right You may call her to the stand

19 SOLICITOR The State would call Kim Metz to the stand

20 THE COURT If you will come around, please, ma'am, and
21 come up and place your left hand on the Bible, raise your right
22 hand

23 **KIM METZ, HAVING BEEN DULY**

24 **SWORN, TESTIFIED AS FOLLOWS:**

25 THE COURT Would you give us your name, please,

1 ma'am?

2 MS METZ Kim Metz

3 THE COURT You might proceed, counsel

4 **DIRECT EXAMINATION OF KIM METZ BY THE SOLICITOR:**

5 **Q:** Spell your last name for the record, please

6 **A:** M-E-T-Z.

7 **Q:** Ms Metz -- do you go by Ms Metz or Dr Metz?

8 **A:** Ms Metz

9 **Q:** Ms Metz, where are you employed at now?

10 **A:** Currently, I'm employed in Ohio at a community mental
11 health center there Prior to that, I was in South Carolina until
12 about a month ago employed with the Department of Juvenile
13 Justice

14 **Q:** Could you give me a brief description of your educational
15 background starting from college and going forward?

16 **A:** Uh-huh (affirmative response) I got my Bachelor's degree
17 from Ohio University in Athens, Ohio and attended graduate
18 school there as well I received my Master's degree and have
19 completed the course work and internship for a doctorate
20 degree

21 **Q:** Your undergraduate degree, what was that in?

22 **A:** Undergraduate in psychology, sorry, and the Mater's was in
23 clinical psychology and the Ph D program is a clinical
24 psychology Ph D program I still have one more meeting left
25 for my dissertation and then I'll have my Ph D , then you can

1 call me Dr Metz

2 **Q:** Very well Have you published or written any types of
3 articles?

4 **A:** I've -- I did a thesis to get my Master's degree and I'm in
5 the middle of a dissertation now but I don't publish extensively
6 now

7 **Q:** Okay Could you give us a little background of your working
8 experience?

9 **A:** Working experience?

10 **Q:** Yes

11 **A:** Most relative for today especially is the work I did at the
12 Department of Juvenile Justice I was the campus psychologist
13 on the John G Richards campus for about a year and a half, did
14 individual therapy, group therapy, some assessment, crisis
15 intervention, that type of thing From there, I started -- from
16 there I moved into the group homes and did similar types of
17 things but for kids in the group homes, and then this past
18 summer, I started -- I worked part-time and did evaluations for
19 the Reception and Evaluation Center, so I completed a good
20 number of psychological assessments for the juveniles coming
21 into the system

22 **Q:** Have you ever testified in court before?

23 **A:** No

24 **Q:** So, this is your first time for a waiver evaluation?

25 **A:** Correct

1 **Q:** Have you had any other types of training besides school or
2 education or work-related?

3 **A:** The conferences I've gone to probably -- several
4 conferences on conduct disordered kids Mostly significant
5 probably is the work I was doing in aggression replacement
6 training I did a -- went to a workshop on that and that's what
7 my dissertation is about, teaching anger management skill,
8 social skills, moral development for kids

9 **SOLICITOR** At this time, the State would like to move her
10 as an expert witness for this waiver evaluation as a
11 psychologist

12 **THE COURT** Be glad to hear from the Defense.

13 **MS PRATT** Ms Metz, in preparation for this particular
14 waiver evaluation, since this is your first one, was anyone
15 working with you?

16 **A:** Yes, I was -- the supervisor that is the chief of -- yeah, chief
17 of community psychology at the Department of Juvenile Justice,
18 so she supervised pretty much my work while I was doing this

19 **MS. PRATT** All right, and assisted you in evaluating the
20 test results and in creating the report that you have forwarded
21 to the Court?

22 **A:** Correct

23 **MS PRATT** How many years would she have been
24 involved with waiver evaluations, do you know?

25 **A:** No, I'm not sure At least five, I would say

1 MS PRATT Thank you We would have no further
2 questions, Your Honor, and would not oppose the qualification

3 THE COURT All right, I'll find her to be qualified as an
4 expert witness

5 SOLICITOR Thank you, Your Honor

6 **BY THE SOLICITOR:**

7 **Q:** Ms Metz, you performed this waiver evaluation on the
8 Defendant here, Roger Legette, is that correct?

9 **A:** Correct

10 **Q:** What were your sources of information that you based this
11 waiver evaluation on?

12 **A:** I spoke with Roger, had a -- two different interviews with
13 him two different times, spoke with his mother and did several
14 different tests with him including an I Q test, an achievement
15 test, some personality measures, the depression inventory and
16 some other paper and pencil measures

17 **Q:** Do you have a copy of the evaluation so you can refer to it?

18 **A:** Yeah, thank you

19 **Q:** Okay I'd like you to, I guess, turn to Page Two of the
20 evaluation which is your first page where it starts "Referral
21 Statement" and in the second paragraph on that page about
22 halfway through where it starts out "Roger understood ", could
23 you read those next three sentences, please?

24 **A:** "Roger understood these limits after they were explained to
25 him and he restated them in his own words Roger exercised

1 his rights knowingly and appropriately without discussing the
2 incident that led to the current charge He noted that his
3 attorney has advised him not to talk to anyone about his offense
4 while at the Detention Center and that he was heeding his
5 advice "

6 **Q:** I'm sorry

7 **A:** Oh, I'm sorry, wrong one?

8 **Q:** There's one other spot above that right after "the Solicitor"
9 where it says "Roger understood ", could you get that part also
10 in the record?

11 **A:** Sure "Roger understood the nature and purpose of the
12 evaluation " Is that where you're looking?

13 **Q:** Yes

14 **A:** "Roger's rights and waiver of rights were read to him His
15 responses to the reading and questioning about his rights
16 indicated that he understood his rights and was capable of
17 waiving them "

18 **Q:** Based on that statement, did you give him hypothetical
19 situations?

20 **A:** I would ask him things -- ask him if there were certain
21 things that he had done, if there was any crime he had
22 committed or whatever, if he would tell those to me whether I
23 would have to tell you all in court today and he understood that,
24 yes, anything he told me would -- I would be able to talk about

25 **Q:** And he didn't question you as to those statements, he

1 understood right away, is that correct?

2 **A:** Right, right, he had -- I think he had been prompted by his
3 own attorney before that and he knew what was going on by
4 the time I got there

5 **Q:** Okay And he did -- as stated earlier, he did exercise his
6 rights knowingly and appropriately?

7 **A:** Right

8 **Q:** If you would, would you turn to the next page and on the
9 second paragraph, the very last sentence, it starts "In
10 general ", would you please read that?

11 **A:** "In general, Roger exhibited fair judgment but his insight
12 was somewhat limited "

13 **Q:** Okay Could you explain what you meant by somewhat
14 limited?

15 **A:** Insight has to do sort of with your understanding of your
16 situation, your understanding of the circumstances He -- Roger
17 understood what he was there for and that he was more limited
18 in kind of dealing with what the circumstances were gonna be,
19 what the outcomes could be. Worried more about, about just
20 being able to get out of jail instead of kind of all the different
21 things that were gonna have to happen in the meantime

22 **Q:** Would it be fair to say he was anxious about his situation?

23 **A:** Yes, he was anxious about his situation

24 **Q:** And uncomfortable and nervous?

25 **A:** He was nervous, he was able to be open and candid with me

1 but he was uncomfortable Sometimes he rambled in what he
2 was saying and sounded a little bit nervous about it

3 **Q:** Would you expect that for any person his age that was
4 charged with this?

5 **A:** Sure, sure

6 **Q:** If you would, please go down with me to the next paragraph
7 and would you start reading where it says Roger denied his past
8 suicidal tendencies and go down to the last of that paragraph
9 " and immature "

10 **A:** "Roger denied past suicidal gestures or ideation but did state
11 that, 'they may as well kill me if they put me in jail cause I ain't
12 got no life in jail ' Conversely, Roger also stated he would not
13 hurt himself because he thinks too much of his body to damage
14 it Psychomotor activity, eye contact and rate of speech were
15 within normal limits Roger's affect during evaluation was
16 somewhat anxious but also rather playful, light and immature "

17 **Q:** Based on his statement "they might as well kill me if they
18 put me in jail cause I ain't got no life in jail," what would you
19 qualify that towards as far as his ---

20 **A:** Well, that in conjunction with everything else that I talked
21 about with Roger indicated to me that he was nervous and
22 anxious and does not want to be in jail I did not get the sense
23 that he was suicidal at this point or anything like that

24 **Q:** But he definitely knows why he's in jail and there's a great
25 possibility that he could remain in jail?

1 **A:** Sure, sure

2 **Q:** Thank you. And also that last sentence where it says
3 "Roger's affect during the evaluation was somewhat limited and
4 anxious but also rather playful, light and immature," is this kind
5 of a normal response for someone of his age?

6 **A:** Yeah, I think he was acting like a fifteen or sixteen-year-old,
7 maybe a little bit younger sometimes but about like somebody
8 his age, yeah

9 **Q:** And immature ---

10 **A:** Actually, he may -- you might've expected him to be a little
11 bit more serious given the circumstances of what he was there
12 for, but in general he's, you know, limited in that he's only
13 sixteen

14 **Q:** So, his immaturity does not mean that he's immature as to
15 a sixteen-year-old ---

16 MS PRATT Your Honor, I'm gonna object to his leading
17 I think she needs to be testifying.

18 THE COURT Sustained, rephrase the question

19 SOLICITOR Thank you, Your Honor

20 **BY THE SOLICITOR:**

21 **Q:** Is this immaturity based on his age or ---

22 **A:** Somewhat As I said earlier, he acted for the most part like
23 a fifteen or sixteen-year-old, so that would be based on average
24 maturity, I suppose At some points he did seem a little bit
25 younger than that

1 **Q:** So, is this the average maturity for a fifteen or sixteen-year-
2 old?

3 **A:** Yes

4 **Q:** Okay If you would, go down to the very next paragraph
5 and about four lines down where it begins "Roger stated ",
6 would you read those next two sentences?

7 **A:** "Roger stated that his family got along well He indicated
8 that he did not have strict rules to follow and that punishment
9 usually consisted of being grounded "

10 **Q:** Based on your interview with his mother, is there any other
11 types of punishment that he was -- you know, other types of
12 punishment that he received for his bad behavior at home?

13 **A:** Oh, he was physically punished at times when he was --
14 when he misbehaved

15 **Q:** Is that like a spanking?

16 **A:** What were her words? He'd gotten a knocking, she said,
17 about a month before

18 **Q:** Did Roger abide by these punishments?

19 **A:** Not often He said that when he was grounded, as soon as
20 Mom would leave the house, he would kind of run out of the
21 house too and Mom seemed to know that that happened She
22 acknowledged that he didn't stay put when he was supposed to

23 **Q:** Speaking with his mother, did you feel that there was a
24 stable home environment?

25 **A:** Things were pretty unstable in Roger's household His

1 father -- his father and mother have had physical altercations in
2 the past, problems in the past His father had been
3 incarcerated several times There was some questions about
4 alcohol use, drug use, that kind of thing So, no, he's from a
5 pretty unstable ---

6 **Q:** Were you able to get any type of understanding as how the
7 physical altercations between his parents affected Roger?

8 **A:** I think they affected him a good bit Roger was pretty
9 resentful towards his father, said that he didn't like his father
10 because of what he did to his mom and because he felt like his
11 dad had -- how did he say it -- he grew up with all that stress is
12 how he said it, I think, and he didn't appreciate that

13 **Q:** Would it be fair to say that Roger didn't abide by his home
14 discipline?

15 **A:** That he did not abide by it?

16 **Q:** Yes.

17 **A:** For the most part, I guess that'd be fair to say I don't know
18 But every time he was grounded he didn't stay home and ---

19 **Q:** Okay

20 **A:** --- it would be possible that he wouldn't abide by it, yes

21 **Q:** Okay Did he tell you where he was living from the time
22 periods of this last year, basically?

23 **A:** At home

24 **Q:** At home? And which house was that? Was that at his
25 grandmother's house?

1 **A:** Oh, he had -- he was at his mother's house, I believe, if I'm
2 remembering correctly. His mother had moved in with her
3 mother after Roger was incarcerated. I think that was the
4 chronology of it

5 **Q:** Okay, but he was living with his mother at the time of the
6 incident, alleged incident?

7 **A:** Yeah, yes

8 **Q:** If you would, would you turn the page and that very first
9 paragraph that continues over, would you read that sentence
10 where it says "Roger stated "?

11 **A:** Uh-huh (affirmative response) "Roger stated that since his
12 own confinement began, his father had been incarcerated but
13 he did not know for what offense "

14 **Q:** What effect does his -- would his -- does his father's
15 incarceration or his past incarceration have with this defendant?

16 **A:** Well, what it does is give Roger a pretty negative role model
17 to follow. He kind of sees the way that his father acts in
18 situations, the way his father responds to things and it's
19 possible that Roger would view those kind of things as okay, as
20 acceptable

21 **Q:** From this does he get an understanding that you are
22 punished for your crimes?

23 **A:** Yes. I don't know how many times his father would have
24 committed a crime and not been punished, but yes, he could
25 see that

1 **Q:** Now, down to that next paragraph where -- after the first
2 sentence, it starts out "He demonstrated ", if you would, would
3 you read from there down to where the ---

4 **A:** Tell me the beginning again

5 **Q:** Where it starts "He demonstrated ", the second sentence
6 in that next paragraph down to where the last part of it ". did
7 not attend school" which is three sentences, I believe

8 **A:** Okay "He demonstrated competence in school by achieving
9 scores in the 90's, however, he also earned scores in the 40's
10 and 50's, missed 40 days of school and was expelled for
11 disciplinary reasons Roger was also held back in the first
12 grade He stated -- He stated that this was due to being
13 expelled from school at that time as well " Continue?

14 **Q:** Yeah, just that next sentence there

15 **A:** "He indicated that he was a bully at that time and that he
16 also did not attend school "

17 **Q:** Okay Based on your testing of Roger, would you say these
18 grades are indicative as to his intelligence?

19 **A:** His intelligence was put more in a low average range so he
20 could probably perform better He could probably perform
21 better than that

22 **Q:** Okay Would his, I guess -- I don't want to say his
23 deficiencies in his scores but would his scores be improved with
24 better attendance in school?

25 **A:** Possibly

1 **Q:** And you stated -- and you've stated that he missed fifty
2 days at school

3 **A:** I said forty days

4 **Q:** Forty, I'm sorry, I'm sorry

5 **A:** Right, and part of that time was because he was expelled

6 **Q:** So, he could do -- it's your opinion that he could do better in
7 school?

8 **A:** Yes

9 **Q:** If you would, go down to the next paragraph and read the
10 very first sentence

11 **A:** "Roger attributed his recent attendance and behavior
12 problems to his friendship with his cousin "

13 **Q:** Does Roger take responsibility -- do you believe Roger takes
14 responsibility for his own actions?

15 **A:** Limited responsibility for his actions He was able to say
16 that yes he'd made some mistakes but he was also eager to say
17 that had it not been for some other people in his life like his
18 cousin that maybe some of the stuff wouldn't have happened
19 But when he was pressed on it, he could say that he messed up,
20 had messed up at school, had done some negative things there
21 but that there were other people that were partly responsible

22 **Q:** So, when pressed he admits it's his own doing?

23 **A:** Right

24 **Q:** Thank you If you would, would you read the very last
25 sentence in that paragraph also

1 **A:** Roger reported that his favorite subject was math and
2 stated the he hoped to graduate and become a nuclear
3 engineer, a doctor or a lawyer

4 **Q:** Are these realistic goals for this juvenile?

5 **A:** Given the background, the educational background he's had
6 so far, probably not

7 **Q:** Does he have the capability to do any of these, do you
8 believe?

9 **A:** Probably low average and like I said, given the background
10 right now, probably not

11 **Q:** How do these -- what do these unrealistic goals represent to
12 you about this defendant?

13 **A:** Some lack of insight into his future, his potential, kind of
14 immature goal setting not knowing -- you know, not being able
15 to gauge what kind of things you should be looking towards

16 **Q:** Is this normal for a fifteen or sixteen-year-old?

17 **A:** Yeah, to some extent I think by fifteen or sixteen,
18 hopefully, most kids would be gauging a little bit better where
19 their strengths lie and what kind of things they'd like to do
20 They're not gonna, you know, be decided at that point but they
21 would probably have a better idea than this, I would think, by
22 that time

23 **Q:** Could this have been boasting on that part?

24 **A:** Possibly.

25 **Q:** Did he boast throughout the interview?

1 **A:** He boasted somewhat throughout the interview I wouldn't
2 say a lot but somewhat throughout the interview, yes

3 **Q:** Tried to color himself better than ---

4 MS PRATT I'm gonna object to the leading again, Your
5 Honor

6 THE COURT Sustained

7 **BY THE SOLICITOR:**

8 **Q:** How did you perceive the boasting to be?

9 **A:** At one point he said, on the testing, something like you're
10 gonna have to start me -- start me at a higher level on this
11 because I'm pretty smart in school, that type of thing

12 **Q:** If you would, would you turn to the next page which is Page
13 Five in your report and read the very first sentence

14 **A:** "Roger acknowledged only occasional use of alcohol but
15 admitted that he and his friends smoked marijuana from time to
16 -- marijuana `from time to time'" -- I'm sorry, "smoked
17 marijuana `from the time we got up until we went to sleep '"

18 **Q:** Okay The use of drugs, does that make it harder to
19 rehabilitate a juvenile?

20 **A:** More difficult, yes

21 **Q:** Would you consider his use of marijuana to be a good
22 judgment?

23 **A:** No

24 **Q:** Do you consider the fact that he used marijuana to be his
25 own doing or influence from others?

1 **A:** Probably a little bit of both I think he was probably
2 influenced by his peers but he made his own decisions also in
3 regards to that

4 **Q:** Thank you If you would, would you go down to the
5 paragraph right before "Psychological Testing and Results" and
6 go up five lines and begin where it says "When pressed "

7 **A:** Uh-huh (affirmative response) "When pressed further, he
8 reluctantly admitted that he made his own choices " You want
9 me to continue all that?

10 **Q:** Yes, please

11 **A:** "When asked about how victims of crime feel, he stated that
12 he knows they feel bad because he's been a victim of crime in
13 the past and he felt bad Further evidence of Roger's
14 remorsefulness may be inferred from information in the incident
15 report which indicates that subsequent to the shooting Roger
16 made the initial call for medical help and cooperated with the
17 police "

18 **Q:** Would this be the ---

19 MS PRATT Again, leading, Your Honor

20 THE COURT Sustained

21 **BY THE SOLICITOR:**

22 **Q:** So, again, when pressed, he showed remorsefulness?

23 **A:** Correct

24 **Q:** An average fifteen or sixteen-year-old, would they show
25 remorsefulness for their actions?

1 **A:** Yes, yes. It depends on the sixteen -- fifteen or sixteen-
2 year-old just like it depends on adults. I mean, you can be an
3 adult and show remorsefulness or not show remorsefulness
4 I'm not sure that that's necessarily an age-related thing.

5 **Q:** Would that be based on his upbringing?

6 **A:** Possibly, partly

7 **Q:** If you would, would you turn to the next page and in the, I
8 guess, the first full paragraph, would you read that paragraph,
9 please, the whole paragraph?

10 **A:** Uh-huh (affirmative response). "On the WISC III" -- the
11 WISC III which is a IQ test -- "Roger obtained a Full Scale IQ of
12 92 which was a composite of a Verbal IQ of 97 and Performance
13 IQ of 87 This suggests that Roger's level of intellectual
14 functioning falls within the average range Although the
15 differences between the verbal and performance scores is not
16 significant, it does appear that Roger performs somewhat better
17 on verbal tasks than on hands-on tasks that require immediate
18 problem solving skills. Roger exhibited a strength in his ability
19 to understand social situations in the abstract but a weakness in
20 deciding what to do" -- I'm sorry -- "but a weakness in deciding
21 what the situations mean or what actions to take when involved
22 in a particular situation He also performed poorly on tasks that
23 required cognitive flexibility "

24 **Q:** Ms Metz, would you like some water?

25 **A:** Yeah Thank, you

CERTIFICATE

I, the undersigned, Jean S Johnson, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record taken in the hearing of the captioned cause, relative to appeal, in the Court of General Sessions for the County of Horry, State of South Carolina, on the 4th and 5th days of August, 1997

I do further certify that I am neither of kin, counsel, nor interest to any party hereto


Court Reporter

WITNESSES

HCPD/Twigg

The State of South Carolina,

County of HORRY

51570

RR

COURT OF GENERAL SESSIONS

C JANUARY TERM 1997

THE STATE

VS

ROGER SYNDELL LEGETTE B/M
208 Barkwood Road
Conway, South Carolina 29526
DOB 8/30/80
SSN

ARREST WARRANT NO

CAWI99612007 (0116 16-03-0010, 0020)

CAWI99612009 (0549 16-23-0490)

CAWI99612208 (0321 16-23-30(e))

DOA 5/24/96

ACTION OF GRAND JURY

16-23-30(e)

DEC 19 1996

Foreman of Grand Jury

John G. Gardner

VERDICT

ATTY JOHNNY GARDNER

Indictment for

COUNT 1 MURDER

COUNT 2 POSSESSION OF WEAPON
DURING COMMISSION OF
VIOLENT CRIME

COUNT 3 POSSESSION OF PISTOL BY
PERSON UNDER THE AGE
OF TWENTY-ONE

RALPH J WILSON, SOLICITOR

PE 1

Foreman of Petit Jury

Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) COUNT 1 MURDER

 COUNT 2 POSSESSION OF WEAPON
 DURING COMMISSION OF
 VIOLENT CRIME

 COUNT 3 POSSESSION OF PISTOL BY
 PERSON UNDER THE AGE OF
 TWENTY-ONE

At a Court of General Sessions, convened on December 19, 1996, the Grand Jurors of Horry County present upon their oath

COUNT ONE MURDER (CDR 0116 16-03-0010, 0020)

That ROGER SYNTELL LEGETTE did in Horry County, on or about the 24th day of May, 1996, wilfully, knowingly, intentionally, wickedly and with malice aforethought, kill one Robert Lockhart by means of shooting the victim in the head, that as a result of said acts and from said wounds inflicted upon Robert Lockhart, he did die in Horry County on or about the 24th day of May, 1996

AND THE GRAND JURORS FURTHER PRESENT UPON THEIR OATH

COUNT TWO POSSESSION OF A WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME (0549 16-23-0490)

That ROGER SYNTELL LEGETTE did in Horry County, on or about the 24th day of May, 1996, possess or visibly display a weapon during the commission or attempted commission of a violent crime, to wit an Excam Model GT27 semi-automatic 25 caliber pistol, in violation of code section 16-23-490, Code of Laws of South Carolina, (1976) as amended

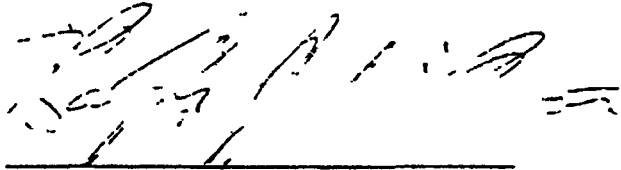
AND THE GRAND JURORS FURTHER PRESENT UPON THEIR OATH

ORIGINAL

COUNT THREE POSSESSION OF A PISTOL BY A PERSON UNDER THE
AGE OF TWENTY ONE (CDR 0321 16-23-30(e))

That ROGER SYNTELL LEGETTE did in Horry County, on or about the 24th day of May, 1996, unlawfully store, keep, possess, or permit another to store, keep, possess a firearm (pistol), described as follows one Excam Model GT27 semi-automatic 25 caliber pistol, and that the Defendant is under the age of twenty one

Against the peace and dignity of the State, and contrary to the statute in such case made and provided



SOLICITOR

1 **Q:** So, Roger has an average IQ?

2 **A:** Correct

3 **Q:** And verbally, he is as an average sixteen-year-old would be,
4 is that correct?

5 **A:** Correct

6 **Q:** Okay Could you explain the -- it says " in the abstract but
7 a weakness in deciding what the situations mean or what
8 actions to take "

9 **A:** On part of the testing, part of the IQ testing, you have to --
10 how do I want to say this here -- you have to sort of give
11 answers about your comprehension of certain situations, what
12 you would do if there was a fire at your neighbor's house, that
13 kind of thing He performed differently on those tasks, a little
14 bit better on those tasks than he did in actually ordering some
15 events, looking at pictures and ordering them in the right order
16 which meant that in a specific situation when he was given
17 pictures of things, he had a little more difficulty putting them in
18 the right order, what you would do when and then ---

19 **Q:** Okay -- I'm sorry

20 **A:** That's okay But being able to just talk about and give an
21 answer, he was able to do that a little bit better

22 **Q:** So, based on his problem-solving situations, does this
23 juvenile know right from wrong in your opinion?

24 **A:** Probably, yes

25 **Q:** If you would, would you go down to the next paragraph and

1 read that also?

2 **A:** "On the PIAT", which is an achievement test, "Roger
3 obtained a grade equivalent of 7 9 in reading comprehension
4 which corresponds to a standard score of 91 This score is
5 below his current grade placement but commensurate with his
6 verbal IQ score On the VMI, Roger achieved a standard score
7 of 95 which corresponds with an age equivalent of 14 years and
8 9 months Results were not suggestive of significant
9 perceptual-motor impairment."

10 **Q:** Based on his school attendance, do you think these scores
11 could improve?

12 **A:** You mean if he attended school more often?

13 **Q:** Yes

14 **A:** Yes, they probably could improve, especially the reading
15 comprehension score.

16 **Q:** And would that change -- if he had attended school, would
17 that have changed the scoring on these tests, is that a fair
18 assumption of what you said? I just want to ---

19 **A:** You mean do I think the scores would've increased had he
20 been in school more?

21 **Q:** Yes

22 **A:** That's hard for me to say because he didn't attend school
23 but I would guess that yeah, they would be better

24 **Q:** Okay, thank you

25 **A:** And that's just not in the last -- attendance in the last year,

1 that would've been attendance for, you know, his whole school
2 career

3 **Q:** Okay Thank you If you would, would you go down to the
4 middle of the next paragraph down six lines and towards the
5 end of that where it starts "He did not score high ", would you
6 read those next two sentences, please?

7 **A:** Uh-huh (affirmative response) "He did not score high on
8 scales that measure egotism and delinquency as one might
9 expect. Rather his profile was more indicative of a depressed
10 and anxious young man "

11 **Q:** Okay Could the pending charges be a cause of this?

12 **A:** Probably not This personality test is trying to measure
13 things that are more stable than just what happened in the last,
14 you know, few months as far as the charge would go

15 **Q:** Would his family stability go to this?

16 **A:** Yes, because that's something more long term that would
17 affect his personality

18 **Q:** Is there a history of depression in this family?

19 **A:** Yes, there is

20 **Q:** What effects would that have on this juvenile?

21 **A:** Well, you know, growing up in household where there's
22 more depressed people around, that's kind of who his role
23 models are He may become more depressed simply by being
24 around people that are more upset The skills, the parenting
25 skills of people that are more depressed may not be as

1 satisfactory as somebody that's not They may have more
2 trouble being able to do discipline and that kind of thing

3 **Q:** Okay If you would, would you read the last sentence, the
4 last two sentences in that same paragraph

5 **A:** The last two sentences?

6 **Q:** Yes, where it begins, "He is likely..."

7 **A:** Oh, yes, I'm sorry "He's likely to be a follower rather than
8 a leader Roger appears to possess little self-esteem and lack
9 self-confidence contrary to the picture he tries to paint of
10 himself "

11 **Q:** Does this affect his judgment?

12 **A:** Yes

13 **Q:** But he -- as you stated before, when pressed he will admit
14 to him being the cause and not others, is that correct?

15 **A:** He will admit that he's made his own decisions, yes

16 **Q:** Okay If you would, would you turn to the next page and
17 would you read that first paragraph under "Level of
18 Sophistication and Maturity "

19 **A:** "In the opinion of the Preadjudicatory Transfer Evaluation
20 Team (consisting of the DJJ Director of Community Psychology
21 and the examiner), Roger is functioning at an average to low
22 average level of sophistication and maturity for his age His IQ
23 scores are in the average range but his overall achievement
24 scores are below grade level His reasoning is somewhat
25 simplistic and he exhibits questionable judgment and limited

1 insight into his situation. His interest and activities are age
2 appropriate. He presented as a follower rather than a leader
3 and appears to identify more with the role of a child than an
4 adult."

5 **Q:** So, he's of average sophistication and maturity for his age?

6 **A:** Correct.

7 **Q:** He's of average intelligence for his age?

8 **A:** Correct.

9 **Q:** And what do you mean when you state that his reasoning is
10 somewhat simplistic?

11 **A:** Let me give you a good example here. Part of looking at
12 reasoning, you look at how they interpret things like a proverb.
13 I asked him about the proverb, people in glass houses shouldn't
14 throw stones, and one way to look at their verbal reasoning is
15 how they interpret that proverb. He said that if you throw
16 stones, you break up -- you break the house instead of really
17 understanding the meaning behind that. So, he's a little more
18 concrete in his reasoning. He wanted to be at school because
19 that's where the girls were, was at school. That was his one
20 reason for wanting to go.

21 **Q:** Is that a statement for a normal fifteen or sixteen-year-old
22 child?

23 **A:** It might be a statement for a normal fifteen or sixteen-year-
24 old child to make to another fifteen or sixteen-year-old child, it's
25 probably not normal for that child to make that kind of

1 statement to somebody that's doing an evaluation on them or to
2 another adult that's trying to assess them That would be more
3 immature, I would think

4 **Q:** When you say he appears to identify more with the role of a
5 child, not an adult, is this because his friends are children?

6 **A:** That would contribute to it

7 **Q:** Okay But he's not say ---

8 MS PRATT I'm gonna object to the leading again, Your
9 Honor

10 THE COURT Rephrase the question I'll sustain the
11 objection

12 MS PRATT Thank you, Your Honor

13 **BY THE SOLICITOR:**

14 **Q:** Would his judgment be any different if he associated with
15 adults?

16 **A:** It's hard for me to say, 'cause he -- I'd have to see him
17 after he's associated with a lot of adults I'm not sure if I can
18 answer that

19 **Q:** If you would, would you turn to the next page and I know
20 this is gonna -- if you'd like some more water, this is going to be
21 a lengthy statement

22 **A:** Okay

23 **Q:** Could you read your -- where it starts with "Juveniles
24 show " you know, the positive factors, read clear down
25 through Number Six, if you wouldn't mind, please

1 **A:** Okay

2 **Q:** "Juveniles who show a preponderance of important positive
3 factors are more likely to be rehabilitated. However, the
4 following negative factors must also be considered. Number
5 one, Roger is charged with the most serious and violent offense.
6 If adjudicated delinquent for this offense, it would indicate a
7 serious lack of concern for the well-being of others. Persons
8 who commit serious antisocial actions are difficult to rehabilitate.
9 Number two, Although Roger has not been charged with it, he
10 does have a history of aggressive and disrespectful behavior at
11 school. Persons who commit acts of violence against others are
12 difficult to rehabilitate. Number three, Roger exhibits
13 depressive symptomatology and has a family history of
14 depression. He may be at risk for becoming mentally ill in the
15 future. Persons who suffer from mental illness are more difficult
16 to rehabilitate. Number four, Roger has a history of marijuana
17 abuse. Individuals who are dependant on illegal drugs are more
18 difficult to rehabilitate. Number five, Roger does not have a
19 realistic -- does not have realistic educational and career plans
20 for his future. Persons who do not have realistic plans for their
21 future are not motivated to change their behavior and are
22 difficult to rehabilitate. And number six, While Roger partially
23 accepts responsibility for his actions, he also strongly feels that
24 his cousin is to blame for many his negative -- of Roger's
25 negative behaviors. Persons who do not accept full

1 responsibility for their behavior or more difficult to rehabilitate "

2 **Q:** Those are six factors and in this report you also list ten
3 factors, you know, that are negative factors or ---

4 **A:** Positive factors

5 **Q:** --- positive, excuse me, within the juvenile system

6 **A:** Correct

7 **Q:** I'm sorry for misspeaking Does the number of factors that
8 are positive in the juvenile system as opposed to the number of
9 positive factors for the adult -- I guess the negative factors ---

10 **A:** Negative factors

11 **Q:** --- does that -- the numbers of the factors mean anything?

12 **A:** Not necessarily, no, just because there's more one way or
13 the other doesn't necessarily mean that things are more
14 positive or more negative in total

15 **Q:** So, there's different weight applied to ---

16 **A:** Correct

17 **Q:** --- each and all sixteen of these factors?

18 **A:** Correct

19 **Q:** Okay Do you know how long Roger would be in the juvenile
20 facility if he stayed in the juvenile system?

21 **A:** Till age seventeen is what I'm ---

22 **Q:** And where would he go from there?

23 **A:** To adult corrections, he would be transferred unless -- the
24 chances of him getting released before that are pretty slim
25 given -- I believe his guidelines would be twenty-four to forty-

1 eight months So, the chances of him getting released before
2 age seventeen would be pretty slim, so he'd be transferred to
3 adult corrections

4 **Q:** Do you think for the purposes -- he is how old now?

5 **A:** I think he's sixteen now He was fifteen and eleven months
6 when I talked to him

7 **Q:** So, from say from this time this case would go to trial and I
8 don't know exactly when but if he stayed in the juvenile system
9 and went to trial then he would be sent to Reception and
10 Evaluation Center which would be a period not to exceed forty-
11 five days, so ---

12 **A:** Right.

13 **Q:** Do we hypothetically say that he'd be possibly at the earliest
14 in jail at about sixteen and four months, would you figure in a
15 eight-month period he can be totally rehabilitated through the
16 juvenile system?

17 **A:** I don't want to speculate to whether or not he would be
18 totally rehabilitated or not because I don't know what would
19 happen in those eight months I think that it's possible. I think
20 that he's not had any opportunity at this point -- he's not had
21 any kind of treatment to say that he can't be rehabilitated He's
22 not been at DJJ in the past and done poorly -- I mean, he's not
23 been there at all

24 **Q:** So, you don't have any past information ---

25 **A:** To look at

1 Q: --- to look to

2 A: Correct

3 Q: So, a fair -- so, it's a fair assumption that it could be or
4 couldn't be, is that ---

5 A: It's a fair assumption that he could be Again, you know,
6 I'm not sure what in eight months he will do -- I don't know
7 what services he's gonna get exactly when he gets there, but
8 it's possible, yes

9 Q: But from the age of seventeen on he will be in an adult
10 correction facility?

11 A: Correct That's if the law doesn't change

12 SOLICITOR One second, please, Your Honor

13 THE COURT: Certainly

14 **BY THE SOLICITOR:**

15 Q: Okay, if you would, turn to Page -- or you're still on Page
16 Eight of your ---

17 A: Uh-huh (affirmative response)

18 Q: If you would, would you read that sentence that starts "It
19 reflects. " and read over to where it ends on the next page

20 A: "It reflects Roger's poor judgment and his willingness to
21 participate in negative actions with peers at the expense of
22 other people's well-being "

23 Q: And that's under the heading of what?

24 A: "Adequate Protection of the Public "

25 Q: And this is based on the charge that this juvenile is facing?

1 **A:** Correct

2 **Q:** Okay, if you would, would you start -- that same page we're
3 on and -- not "his feelings" but the next sentence that starts
4 "Nevertheless. " if you'd read that, please

5 **A:** "Nevertheless, if he is found guilty, he was involved in the
6 taking another's -- he was involved in the taking of another's life
7 and there is a need for concern when considering the prospects
8 for adequate protection of society "

9 **Q:** Would you consider that a strong factor in a waiver
10 evaluation, the fact of what he's charged with as to -- your -- as
11 to your report, basically?

12 **A:** Right. It's -- yeah, and it's a strong factor in general for a
13 waiver as far as my evaluation goes, as far as the part that I do
14 I don't look so much at what the offense is, I'm looking at some
15 other factors and the offense is more for the Court to look at

16 **Q:** Okay No further questions, Your Honor At this time,
17 please answer any questions Ms Pratt would have

18 THE COURT. Cross examination?

19 **CROSS EXAMINATION OF KIM METZ BY MS. PRATT:**

20 **Q:** Ms. Metz, do you need another glass of water?

21 **A:** She got me some, thanks

22 **Q:** Okay. On Page, let's see, Seven, when you start talking
23 about your conclusions of your evaluation, you basically
24 classified Roger as more of a child than an adult, don't you?

25 **A:** Correct

1 **Q:** What kind of things actually feed into your decision that he
2 is more of a child than an adult?

3 **A:** Looking at things like his judgment, his decision-making
4 skills, the insight he has into his, into his situation -- his
5 reasoning is more like an adolescent reason. He appeared to be
6 more of a follower like kids are. He has more the experience of
7 a child. He hasn't -- he doesn't hang out with lots of older
8 people and he isn't -- some kids, even though they're kids, you
9 know, kind of fend for themselves on the street and are out till -
10 - for days at a time and still manage to survive and that's not
11 really what Roger was about -- into at the time

12 **Q:** Your information from the family, does it indicate whether
13 he had ever lived on his own?

14 **A:** I didn't get any indication that he'd ever lived on his own

15 **Q:** Or run away from home?

16 **A:** No

17 **Q:** Live on the streets for any time?

18 **A:** No

19 **Q:** He's never been charged with any prior crimes, has he?

20 **A:** I believe he was charged with a public disturbance that was
21 -- resulted from a fight on a school bus but that was -- that's
22 the only other prior charge he has

23 **Q:** And that would be -- would you characterize that as more of
24 a childlike offense of an adultlike offense?

25 **A:** Fight on a school bus would be a more childlike offense?

1 **Q:** Okay Can you give me some examples perhaps from your
2 experience at John G Richards as to what you would consider
3 more adult type offenses or behaviors in other juveniles you've
4 dealt with

5 **A:** Again, the -- I've talked with kids there that are pretty much
6 are on their own They don't -- they are not at their own home
7 very often, they do run away a lot and they survive just fine
8 running away They're able to, to, I don't know, meet the right
9 people and do the right things that it takes to survive. I don't
10 think that Roger was like that

11 **Q:** If he were put out on the street today, do you think he'd
12 have the skills necessary to survive?

13 **A:** I think he probably has a strong survival instinct, but I don't
14 think that he would survive easily, no

15 **Q:** But his skills, in other words, have to be ---

16 **A:** It wouldn't have been any more easy than any other
17 sixteen-year-old that you would put there, I guess

18 **Q:** Okay A sixteen-year-old perhaps from what we would
19 consider an average or stable environment, is that what you
20 mean?

21 **A:** Any other sixteen-year-old that came from his environment
22 which was more disadvantaged and more unstable, he would do
23 about as well as that child would do.

24 **Q:** In your dealings with other juveniles at John G Richards
25 and in comparison, would you say that Roger was sophisticated

1 in his development or unsophisticated?

2 **A:** I would not say he was sophisticated in his development, no,
3 more unsophisticated

4 **Q:** All right What kind of factors feed into that into why he is
5 unsophisticated? I know the Solicitor talked a lot about the fact
6 that Roger didn't attend school, is that the only factor?

7 **A:** That leads to his unsophistication?

8 **Q:** Uh-huh (affirmative response)

9 **A:** His family environment, his school environment, his -- just
10 his general cognitive abilities, things like judgment and insight
11 and reasoning, of all those feed into him not being that
12 sophisticated

13 **Q:** In fact, there are several factors that have hindered Roger's
14 development into what might be a more goal-directed, well-
15 reasoning fifteen to sixteen-year-old, aren't they?

16 **A:** Uh-huh (affirmative response)

17 **Q:** How did his lack of good role models feed into this particular
18 lack of sophistication?

19 **A:** Well, without good role models, it's just hard to sort of look
20 for your nitch of where you're gonna go in life. He doesn't have
21 anybody really to follow in that respect

22 **Q:** In fact, his parents are sporadically employed might be fair,
23 sporadically incarcerated, on welfare, those kinds of things?

24 **A:** Correct

25 **Q:** Would that affect his ability to have realistic goals?

1 **A:** Have realistic -- yes, ability to have realistic goals, ability to
2 be responsible, yes, that would have an effect on that

3 **Q:** In other words, he hasn't seen those behaviors, so he hasn't
4 learned them?

5 **A:** Correct

6 **Q:** He hasn't learned survival skills from being out on the
7 streets and watching seventeen-year-old drug dealers ---

8 **A:** Other juveniles, correct

9 **Q:** --- has he?

10 **A:** Right

11 **Q:** Okay. In his school records, it would be noted that Roger
12 has been held back in at least two and possibly three grades in
13 primary school. How does that affect ---

14 **A:** Well, it indicates that he was, you know, having poor
15 cognitive development early on. At this point because he is
16 older than his school mates, that could have some negative
17 implications just for a social adjustment that he would be placed
18 in classes with kids much younger, not much younger, couple of
19 years younger than himself

20 **Q:** In fact, in your conclusions, you state that he is more like a
21 fourteen-year-old, isn't that correct?

22 **A:** In my conclusion, I don't think I said fourteen-year-old

23 **Q:** Or perhaps it was on the results of the PIAT on Page Six,
24 the -- the VMI, excuse me, the VMI

25 **A:** Okay, right. The PIAT and the VMI are -- the PIAT is an

1 achievement test, so achievementwise, which is more
2 educational oriented, he was at -- I think around his reading
3 level -- let me get to that point again -- the PIAT was the grade
4 equivalent of seven -- seventh grade about The VMI measures
5 more of his perceptual motor skills and looks for -- screens kind
6 of for neurological development At that point, he looked more
7 like a fourteen-year-old-nine-month child That, that's different
8 than his social adjustment.

9 **Q:** Okay But even there, he is acting ---

10 **A:** He's performing ---

11 **Q:** --- quite less

12 **A:** --- lower than he is

13 **Q:** A least a year less than his actual age

14 **A:** Correct

15 **Q:** And a little over a year less than his educational grade

16 **A:** Right

17 **Q:** Is the fact that he didn't attend school the only reason that
18 those things would be lower?

19 **A:** Probably not, given his background even if he had attended
20 school, things might've been worse but that's hard to say
21 because we haven't seen him, you know, with good school
22 attendance, so, it's hard to say.

23 **Q:** When you say that he didn't have good school attendance,
24 what do you mean by that?

25 **A:** He was expelled from school He was -- he had unexcused

1 absences on his school record.

2 **Q:** Which school records did you review in preparing this?

3 **A:** The ones from this past year

4 **Q:** Just the ninth grade

5 **A:** Right

6 **Q:** Would it surprise you to know that during primary school, he
7 did not exceed the ten absences except for one time?

8 **A:** Would that surprise me? Yes, given some of his reports of
9 elementary school He made it sound as if he was missing
10 school more often than that

11 **Q:** And would that be an example of his boasting?

12 **A:** Yes, could be

13 **Q:** In middle school, his records show sixteen in sixth,
14 seventeen in seventh, and twenty-two in eighth as far as
15 absences

16 **A:** Uh-huh (affirmative response)

17 **Q:** But he did also attend summer school Do you think then
18 that that fits into this picture of a child who chooses not to go to
19 school or how does that affect what's going on for him?

20 **A:** It shows that he starts to deteriorate at about the sixth
21 grade if that's where the absences began I, I'm not sure
22 because I don't have those records in front of me whether he
23 was absent for school then because he was truant, because he
24 was skipping school or if that was due to more behavior
25 problems at school and he was suspended for certain periods of

1 time for, you know, whatever

2 **Q:** In the, in the negative factors that the Solicitor asked you
3 about, you spoke of family history of depression ---

4 **A:** Uh-huh (affirmative response)

5 **Q:** --- causing perhaps a greater difficulty in rehabilitation
6 Would you elaborate on that a little bit, please?

7 **A:** Well, depression is something that is -- has genetic links If
8 mom and dad are depressed, chances are that a child --
9 chances are better that a child will be depressed than if he did
10 not have parents that were clinically depressed So, just given
11 the genetics of it, chances are that Roger may suffer from that
12 in the future, too, and probably -- may suffer from it now as a
13 matter of fact

14 **Q:** The symptoms of depression and the genetic components
15 and physical components of depression are treatable by
16 medication, are they not?

17 **A:** They're treated by medication, they're treated by therapy as
18 well

19 **Q:** So, the fact that he evidences some depression, given his
20 background, at the age of fifteen does not mean that he is
21 therefore slated to be depressed for the rest of his life

22 **A:** Correct, that's correct

23 **Q:** And does not mean that he's gonna be necessarily mentally
24 ill

25 **A:** That's correct

1 **Q:** He is at a greater risk, I believe

2 **A:** That's exactly correct

3 **Q:** Your actual wording of the negative factor is that people
4 who suffer from mental illness are more difficult to rehabilitate
5 Is Roger mentally ill?

6 **A:** Roger, I would -- Roger is probably depressed right now At
7 least -- I don't know right now, when I saw him two months ago
8 when I did the evaluation, I think he was depressed, if that's
9 what you're gonna term mentally ill He's not psychotic, he's
10 not thought-disordered, you know, he doesn't have those kind
11 of problems, no, and has no history of that in his family either

12 **Q:** Normally, is depression considered a mental illness or just a
13 behavioral issue?

14 **A:** I think some would qualify it as a mental illness You know,
15 that's a diagnosis for it

16 **Q:** And the mental illness side of depression is for very serious
17 episodes or long term chronic depression, is it not?

18 **A:** It could be It could be from more acute episodes, also

19 **Q:** When you do an evaluation, children act in different ways
20 towards you, do they not?

21 **A:** Sure

22 **Q:** Do some people of his chronological age act as adults
23 towards you?

24 **A:** Yes

25 **Q:** Roger did not act as an adult towards you, is that correct?

1 **A:** That's correct

2 **Q:** What kind of things indicate to you that in his interaction
3 with you personally in this evaluation that he was acting more
4 as a child, as an unsophisticated immature person rather than
5 an adult?

6 **A:** It's hard to qualify Just -- I guess in the way he spoke to
7 me -- some kids when they come in for evaluations, they speak
8 more like I'm their equal and they feel like I'm more like a peer
9 they're talking to Roger didn't have that about him at all His
10 interactions with other staff that I observed at the detention
11 center were more indicative of him feeling like he was the child,
12 he was the underling, if you will, than he was their equal.

13 **Q:** Okay In regards to some of the personality traits that he
14 showed to you, would you consider his openness, that you
15 mentioned in your report, more of a childlike thing or an adult
16 characteristic?

17 **A:** I think that either can be open He was pretty open during
18 our evaluation and I suppose adults might be a little bit more
19 guarded in this situation given what I was there to do I think
20 children would be a little more open in that sense probably

21 **Q:** You didn't find him to be self-protective did you?

22 **A:** No

23 **Q:** Would an adult be more likely to be self-protective?

24 **A:** Probably, yes

25 **Q:** Okay You stated that he gave overly detailed rambling

1 responses, over elaborated, what did those things indicate to
2 you in regards to his child status?

3 **A:** A little bit of immaturity, I guess Probably even more so
4 that he was anxious and nervous about what was happening

5 **Q:** Did he seem to understand the total picture, the
6 ramifications of what could happen to him?

7 **A:** No In that sense -- that part of his insight, I think, was
8 lacking because he was more concerned with actual getting out
9 of jail instead of all these things that were gonna have to
10 happen in the meantime He was more worried about the sort
11 of final consequence of will I be in jail or will I not be in jail And
12 I think that's more -- that's more childlike to not be able to look
13 at all the -- the means to an end

14 **Q:** Okay In other words, he looked at today rather than the
15 future?

16 **A:** Correct

17 **Q:** You said that his insight was limited and his -- he had
18 questionable judgment. Not necessarily in regards to this
19 alleged incident, but was your assessment based on other
20 incidents that you looked at?

21 **A:** Right, 'cause I -- it was not based on this incident, as a
22 matter of fact It was based in general on how he described
23 himself in other situations, how his mother describes himself --
24 described Roger, so it was not based on this incident

25 **Q:** Faced with a serious and sudden choice, is he capable of

1 making a reasoned decision in a situation? For example, of
2 great fear, would he be able to make a reasonable adult type of
3 choice by weighing the cost-benefit analysis

4 **A:** I don't think he can make a reasonable adult choice He can
5 make a -- probably still make a reasonable choice for a sixteen-
6 year-old He's not gonna reason the same way that you and I
7 would in a situation, no

8 **Q:** So, he might not even consider even the long-term effects?

9 **A:** Correct

10 **Q:** He would consider immediate effects?

11 **A:** That's right

12 **Q:** You said he had a survival instinct, strong survival instinct

13 **A:** Uh-huh (affirmative response)

14 **Q:** So, his choices, would they be guided by that instinct rather
15 than reasoning?

16 **A:** Possibly And he -- I think he really wants to be part of the
17 crowd, part of the group I think that's gonna color his choices
18 a lot more, which is more typical of a child to kind of, you know,
19 look to your peers and see what they're doing and be more like
20 them once you get to be more adult and reason more like an
21 adult, you don't care as much what other people think about
22 your behaviors But he's pretty concerned with how his friends
23 view him

24 **Q:** And that would be more indicative of a immature,
25 unsophisticated kind of child?

1 **A:** It would be more indicative of a child I don't even know if
2 an immature child but just more indicative of a child

3 **Q:** When we're talking about children, we're talking about lack
4 of maturity, aren't we?

5 **A:** Right, right

6 **Q:** Okay, all right Would you say that he lacks the ability to
7 focus and lacks self-discipline?

8 **A:** He -- no, he focused fairly well throughout the testing He
9 was able to keep on task as far as, you know, short-term
10 intellectual skills; he did fine with that

11 **Q:** And actually, he enjoyed the strokes of the achievement,
12 didn't he?

13 **A:** Yes. When he -- you mean when he succeeded? Yes, if he
14 did well on something, he did visibly, you know, feel good about
15 that

16 **Q:** And that visible expression of pleasure, is that more
17 indicative of a child's reaction?

18 **A:** Probably, yes, more indicative of a child

19 **Q:** Kind of like a puppy dog in a sense?

20 **A:** Sure, sure

21 **Q:** You state that Roger is more likely to be a follower, is that
22 true?

23 **A:** Yes

24 **Q:** What makes you think that?

25 **A:** Just his -- his sort of desires, his needs, his expression that

1 he wanted to be part of crowd He's more limited in his insight
2 and his judgment He's not gonna come up with a lot of things
3 on his own His intelligence was average, low average He's
4 not gonna probably think of a whole lot of -- well, think up a
5 whole lot of things on his own But he desperately wants to be
6 with the crowd I honestly think he's gonna follow them

7 **Q:** Given the influence of a more sophisticated, more criminally
8 minded peer, would Roger be a follower in a situation like that?

9 **A:** Yes

10 **Q:** If there was -- as a hypothetical, if it was suggested that
11 there was some kind of conspiracy or premeditation to an act, in
12 your opinion, from your examination of Roger, would he be the
13 leader in the ideas or the follower in the ideas?

14 **A:** I would guess that he would be the follower That would be
15 my guess based on the work that I did with him

16 **Q:** And if he made statements that appeared to be strong or
17 original thoughts, would those more likely be strong and original
18 thoughts or be boasting, given what you know about Roger?

19 **A:** Given what I know, I would guess it was more boasting

20 **Q:** He tried for you to see him more street smart and ---

21 **A:** Be more smart He exaggerated -- he may have been
22 exaggerating things like his behavior in elementary school He
23 may've exaggerated some on his sexual experience Even the -
24 - I think he probably does abuse marijuana, but I'm not sure
25 that he was doing it from the time he woke up till the time he

1 went to sleep as he was saying to me. So, I think he probably
2 exaggerated that, too, which also lends support to his poor
3 judgment that he would -- if those things are indeed
4 exaggerations 'cause I'm guessing they are, that he would tell
5 those things to me given that I'm evaluating them in this
6 manner

7 **Q:** In fact, a person who was self-protected and acting more
8 adult would probably try to minimize ---

9 **A:** Correct, that's right

10 **Q:** --- his illegal and unsavory type of activities

11 **A:** Correct

12 **Q:** And he -- Roger didn't do that?

13 **A:** No, no

14 **Q:** You did personality testing that showed a different side from
15 what he was telling you, didn't you?

16 **A:** Right

17 **Q:** Those tests are used -- have been used for long term in
18 psychological evaluations?

19 **A:** Yes

20 **Q:** You didn't do anything crazy and innovative that hadn't
21 been checked out?

22 **A:** No, no

23 **Q:** In fact, these are the same kind of tests you give in any
24 waiver evaluation?

25 **A:** In any psychological assessment, whether it's a waiver or

1 just a plain old assessment of anybody

2 **Q:** So, you would feel that the results of the testing were valid?

3 **A:** Yes

4 **Q:** And in regards to his actual development, I think you've --
5 let me see which page it is, it'll kind of help you some Page
6 Six, you've written a paragraph -- I'm not gonna have you read
7 it -- the third paragraph down you talk about how he presents
8 as tough but the testing is different. Would you tell the Judge
9 about that?

10 **A:** Well, he presented as -- as I described a tough kid, a
11 smoker, sexually active, just came across more confident in his
12 attitude to me. And I expected when I did the interpretation of
13 the testing, I expected that he would come out -- there's some
14 scales that measure delinquency, scales that measure egotism
15 and I expected those scales would be high for him They
16 weren't The scales that were more elevated were things like
17 depression and anxiety Other children that are depressed and
18 anxious produce similar profiles -- he had a pretty similar profile
19 to those kids.

20 **Q:** This scale of egotism, I have heard it said that criminals
21 consider -- true criminal malicious -- I guess in our legal
22 definition, the evilness of heart that goes along with criminality
23 and criminal intent, that they have an attitude, "I'm okay,
24 everybody else is wrong " Is that what you're talking about in
25 regards to egotism?

1 **A:** That would be part of it yes "I'm okay, everybody else is
2 wrong, I deserve things other people may or may not, I don't
3 really care what they deserve," but more of a looking out for
4 yourself and thinking that you're better than everybody else and
5 that you deserve more

6 **Q:** Have you seen that egotism in other juveniles that you've
7 dealt with in John G Richards?

8 **A:** Yes.

9 **Q:** Strong egotism ratings?

10 **A:** Yeah, not for every single kid over there, but yes

11 **Q:** But you didn't see that in Roger?

12 **A:** No, not in this testing no

13 **Q:** So, from that particular scale, you would be reading that he
14 doesn't have the same motivation for criminality in regards to
15 egotism?

16 **A:** That would be fair to say, I think, yes

17 **Q:** And in regards to his delinquency scale, tell me a little bit
18 about that

19 **A:** Delinquency just has to do with the number of behaviors
20 that you've done that are delinquent Probably in Roger's case,
21 the reason why that scale was lower is because he has not been
22 involved in that many things, just based on the fact that he has
23 only one other charge on his record, there wouldn't be many
24 things for him endorse on that scale That's my guess as to
25 why that scale is lower He's not been involved in as many

1 criminal activities as some of the other kids

2 **Q:** But you didn't base that on his record, you based that on
3 the testing?

4 **A:** Yeah, right But the testing and the record matched in this
5 case, so that's ---

6 **Q:** So, that's a high indication of truthfulness, isn't right?

7 **A:** Correct, that's right

8 **Q:** And that would suggest that he does not have the high level
9 of delinquency or criminality in his inner self?

10 **A:** That's right

11 **Q:** What kind of indicia in outside behaviors, things that he
12 would be involved in, would you expect if he were a
13 sophisticated and mature sixteen-year-old?

14 **A:** What things would he be involved in if he were mature?

15 **Q:** Uh-huh (affirmative response)

16 **A:** He'd probably attend school more regularly, he might have a
17 part-time job, accept responsibility around the house, those
18 type things He would listen to rules, follow the punishments for
19 them

20 **Q:** As far as actual activities, things that he would be involved
21 in that, that say we could check up on, you would expect him to
22 have a part-time job?

23 **A:** Possibly, sure

24 **Q:** Would you expect him to have goals of what he wanted to
25 do with that money?

1 **A:** Yes, as a sixteen-year-old, he probably wouldn't have goals,
2 as to what to do with them, but he might have some ideas of
3 how he wanted to spend his money

4 **Q:** Is it normal for a sixteen-year-old to want to, say, save
5 money to buy a car?

6 **A:** Sure

7 **Q:** Pay his car insurance?

8 **A:** I don't know about that part of it now

9 **Q:** Get a driver's license?

10 **A:** Yes

11 **Q:** Did you see any of those kind of behaviors in him?

12 **A:** Not that I could -- I mean, he didn't have a job He wasn't -
13 - he doesn't seem to be looking for -- to make his future better
14 by saving I don't think he has that sort of long-term
15 forethought

16 **Q:** Would you expect a more emancipated young man to have
17 some involvement in, say, team sports at school or other things
18 that would be directed discipline activities?

19 **A:** Possibly I could see that going either way because a more
20 emancipated sixteen-year-old that is not delinquent, yes, I think
21 they would have a lot of those kind of activities, a lot of those
22 positive affiliations with their peers and he does not, he doesn't
23 seem to have that

24 **Q:** And he doesn't have a high delinquency rating, does he?

25 **A:** That's true, right

1 **Q:** So, if he were a normal sixteen-year-old with that
2 delinquency rating, you'd expect him to be in more of those
3 things?

4 **A:** Right

5 **Q:** And he's not, is he?

6 **A:** Right

7 **Q:** If he were more emancipated, you would have expected him
8 to perhaps to have run away from home?

9 **A:** Right

10 **Q:** Lived on the street, perhaps been placed outside the home
11 through the juvenile system, is that correct?

12 **A:** Right I'm not -- placement sometimes is irrespective of
13 that depending on the situation, but definitely the running away
14 I would've expected some more and the kind of fending for
15 himself on the street I would have expected to see more

16 **Q:** In fact, Roger has always lived with his mamma, hasn't he?

17 **A:** Yes

18 **Q:** Even though mamma has moved him by her own history to
19 you from homes of various female relatives, she has always
20 been his one security or his one parent link?

21 **A:** That's right

22 **Q:** And in fact, Roger doesn't have a positive male role model
23 at all, does he?

24 **A:** No, ma'am

25 **Q:** Do you think that affects his maturity and responsibility?

1 **A:** Yes, not having somebody to model, what to do in
2 situations, what to do in a stress situation, what to do in a habit
3 situation, how to, you know, react to those things He doesn't
4 have anybody to kind of watch and gauge responses, nobody to
5 reference on social situations

6 **Q:** And even with the role model of both of his parents who
7 have been in and out of trouble with both drugs, alcohol and
8 also incarceration, those weren't things that he had gotten into
9 trouble with as far as incarceration or delinquency?

10 **A:** That's true

11 **Q:** Now, he tells you that he was smoking a lot of pot.

12 **A:** Right

13 **Q:** Does he also tell you when he started smoking pot?

14 **A:** He probably did (Reviews report)

15 **Q:** In fact, on the top of Page Five, I think you mentioned it

16 **A:** Oh, after his fifteenth birthday

17 **Q:** When you saw him he was how old?

18 **A:** Fifteen years, eleven months when I saw him

19 **Q:** So, when you saw him, the longest period of time he
20 would've been smoking pot would've been somewhere around
21 ten and a half to eleven months

22 **A:** Not quite a year, right

23 **Q:** In your negative factors, you talk about drug dependency
24 First of all, would eleven months of marijuana use be indicative
25 of a drug dependency?

1 **A:** It could be in a sixteen-year-old, yes

2 **Q:** Would -- is it something that can't be fixed, can't be
3 rehabilitated?

4 **A:** It's not something that can't be fixed, it can be fixed

5 **Q:** Okay

6 **A:** I mean, that is something that you can work on in
7 rehabilitation. It makes it more difficult because you have to
8 kind of start with that problem first but that is something that is
9 possible to work on in therapy and rehabilitation

10 **Q:** What's the youngest age, in your experience at John G
11 Richards, that kids reported smoking pot or doing other drugs?

12 **A:** Ten, eleven, sometimes younger

13 **Q:** So, in a lot of ways, Roger -- for all that he smoked pot for
14 maybe ten and eleven months is a little retarded in his drug
15 development, too, isn't he?

16 **A:** Based on -- compared to that population, yes

17 **Q:** And that population are the delinquent, criminal-based ---

18 **A:** Right

19 **Q:** --- children?

20 **A:** Right

21 **Q:** More adult children, really, aren't they?

22 **A:** Some of them

23 **Q:** Okay. I just want to bounce down the positive factors, I
24 realize the Court can read them for them self, so I won't have
25 you read them, but I would like to kind of hit the levels there

1 You do seem to give a preponderance of possibility of
2 rehabilitation In your opinion, is Roger the kind of child that
3 could be rehabilitated through the juvenile justice system?

4 **A:** Yes, there is not -- as I said earlier, there is nothing to say
5 that he cannot be He has not had a chance to be in therapy or
6 work with counselors or have some positive people in his life, so
7 there is nothing to suggest that he can't be rehabilitated

8 **Q:** And there are several factors that seem to suggest he could
9 be rehabilitated, aren't there?

10 **A:** Yes

11 **Q:** Such as his intellectual ability which is average

12 **A:** Is average, uh-huh (affirmative response)

13 **Q:** Lack of prior record

14 **A:** That's right

15 **Q:** And lack therefore of responsiveness to prior rehabilitation
16 efforts

17 **A:** Right

18 **Q:** Okay He was cooperative with you, wasn't he?

19 **A:** Uh-huh (affirmative response)

20 **Q:** And your information from the incident report suggested
21 that he was cooperative with police?

22 **A:** Correct

23 **Q:** Also, he showed remorse, didn't he?

24 **A:** Uh-huh (affirmative response), yeah

25 **Q:** How strong was the factor of remorse in regards to

1 rehabilitation?

2 **A:** That's a pretty strong one Unless you feel bad about what
3 it is you've done, unless you feel like you've done something
4 bad, then there's not gonna be much motivation for you change
5 your behavior for the future So, you need to feel like things
6 have gone wrong And again, we didn't talk specifically about
7 this offence but about past behaviors even in school He said
8 something like feeling bad about the teachers that he had
9 disrespected that they were to teach him -- they were teaching
10 their heart out, I think is what he said, and all he did was give
11 them grief, and he was feeling bad about that.

12 **Q:** Do you think this was some kind of, I guess, "jailhouse
13 conversion"? We see them in general sessions all the time --
14 -

15 **A:** Yeah

16 **Q:** Is that what Roger was doing?

17 **A:** No, I don't think so Enough of the other stuff wasn't
18 indicative of a jailhouse conversion, so, no, I don't think so I
19 think he was genuinely -- now, I think because he was there he
20 had a chance to finally think more about what he had done, but
21 I think he was genuine and had some real bad feelings about
22 what he had done and felt he wanted to change that

23 **Q:** Okay And that wasn't simply because he was caught but
24 because of the actual things that he had done in the past?

25 **A:** Correct

1 **Q:** Like in what you investigated, skipping and disrespecting ---

2 **A:** Right

3 **Q:** --- the bus violations and so on

4 **A:** Right.

5 **Q:** Okay Is Roger getting some counseling or help up there
6 while he's in Columbia?

7 **A:** My guess is no I don't think there is many resources in the
8 detention center for that type of thing

9 **Q:** So, even now, we're not able to see whether he would
10 respond to your rehabilitative efforts

11 **A:** That's right

12 **Q:** Even though Roger has kind of an unstable and difficult
13 family background, did you see some strengths in this family?

14 **A:** Yes His mom especially -- I didn't get to speak with his
15 dad, but his mom especially seemed very supportive She was
16 sorry that things had gone the way they had for Roger She
17 and his grandmother made a couple of different trips to
18 Columbia from Horry County to see him and visit him which is
19 something we don't get lots of with the kids in jail I think she
20 is limited in what she can do with him She's limited because of
21 her own depression She's limited in her ability to give good
22 discipline and to set good limits, but I think that she tries and
23 that she tries to be supportive

24 **Q:** The Solicitor seemed to suggest that he would only have
25 eight months to be rehabilitated, is that actually accurate?

1 **A:** Well, I think what would happen -- I mean the hope would
2 be that if he started out in juvenile court or in a juvenile facility
3 that he would get eight months worth of rehabilitation, if you
4 want to call it that, or therapy or counseling, and would carry
5 some of that to adult corrections. I don't think that just
6 because you're in adult corrections that you have to be arrested
7 in your development of, you know, morality and all that kind of
8 stuff. But I think probably physically, he's only gonna be at
9 juvenile justice for the eight months, if that's an accurate time
10 frame of when he would get into to. So, hopefully, whatever
11 would start in juvenile facilities, whatever would start there
12 would carry over and be able to continue elsewhere.

13 **Q:** Are you familiar at all with the section of the Department of
14 Corrections that deals with seventeen to twenty-one-year-olds?

15 **A:** No, I'm not, actually. I don't -- I know that there's -- it's
16 different for the youthful offenders than it is for other people,
17 but I don't really know what all they're getting over there.

18 **Q:** If he were able to get counseling and vocational training and
19 the kinds of things that we would expect to see in that, would
20 he then continue to ---

21 **A:** Sure.

22 **Q:** --- rehabilitate?

23 **A:** Sure. And school's a good example. He would not be able
24 to finish school in eight months, you know, to graduate, but if
25 he went to adult corrections and finished up school, went to,

1 you know, whatever classes they had there, then he could
2 definitely, you know, complete his education there That would
3 be one example

4 **Q:** I just have a couple of more things that I wanted to ask
5 you You mentioned in your report that Roger's misbehavior at
6 school might be depression and not "oppositonality", what does
7 that mean?

8 **A:** Some kids misbehave because they -- they just disrespect
9 people, they don't want to conform to the norms of what adults
10 want them to conform to. They're more oppositional Some
11 kids -- one of the symptoms of depression in children is that
12 they are more oppositional They look as though they're
13 misbehaving Sometimes if that's a symptom of depression
14 what it's more likely to be it's sort of his way of maybe getting
15 attention, his way of getting other people to respond to him, his
16 way of not knowing a better way to do things And in a lot of
17 kids -- a lot children that are considered depressed, we see
18 that, what looks like oppositionality and really it's a piece of
19 being depressed

20 **Q:** Would that oppositionality kind of be connected to the
21 egotism and delinquency scores that you ---

22 **A:** Yes, yes

23 **Q:** So, someone who is oppositional would have "I'm okay,
24 everybody else is wrong" and high delinquency level?

25 **A:** That's right, that's right The depression thing -- the

1 symptom of depression being oppositionality is sort of like an
2 adult When an adult is depressed, to describe this better --
3 one of the symptoms of depression is irritability If somebody is
4 depressed they kind of snap your head off, they're short with
5 you, that doesn't necessarily mean that they're bad people or
6 that they dislike you even, it just means that that irritability is
7 just a piece of them being depressed For kids, that irritability
8 can look more like oppositionality, so ---

9 **Q:** Because we don't want them to be irritable with us, we want
10 them to be respectful?

11 **A:** Right, right, exactly

12 **Q:** The last thing I want to touch on really, is this most serious
13 and violent offense issue Our statutes do provide that children
14 charged with murder may remain in the juvenile justice system
15 That is correct, isn't it?

16 **A:** Uh-huh (affirmative response), correct.

17 **Q:** Okay So, the mere fact that he's charged with the murder
18 and may be found delinquent of it does not mean that he should
19 not remain in the Family Court system, does it?

20 **A:** That's right

21 **Q:** In other words, in your view, that wouldn't be the
22 overwhelming factor?

23 **A:** No

24 **Q:** If that were the case, frankly, our legislature would've said
25 all murderers upstairs, that's it, wouldn't they?

1 **A:** That's right

2 **Q:** So, in this situation, the most serious and violent offense
3 issue, still means that he could be treated as a child?

4 **A:** That's right

5 **Q:** How does that kind of offense fit in with him being either a
6 child or an adult? Does it have any correlation?

7 **A:** I don't know I guess I'm not sure that they do People
8 that are adults for instance can hold a job but just because
9 you're a juvenile doesn't mean that you can't also hold a job
10 Adults commit murders but a juvenile can also commit a
11 murder That doesn't necessarily mean that he's all grown up
12 just because a juvenile has a job just like other adults doesn't
13 mean he's all grown up That's one of the indications that he
14 may be but there's a lot more to it than just that one single --
15 there's a lot more to being an adult than one single act and --
16 well, that's ---

17 **Q:** So, the fact that he is alleged to have committed a murder
18 could be an example of some of his more childish behaviors,
19 lack of insight, lack of good judgment, those things ---

20 **A:** It could be

21 **Q:** --- that might indicate you were a child?

22 **A:** They could be, right

23 **Q:** If he were gonna be considered or if -- I don't -- let me
24 change that Juveniles that commit serious crimes that are
25 more adult in their sophistication, would they have the higher

1 level of the egotism and the delinquency scores?

2 **A:** Yes, probably, they would

3 **Q:** And they would more of a, should I say, purposefulness or
4 maliciousness in the behaviors that they have committed?

5 **A:** Yes, they probably would be

6 **Q:** Do you see that in Roger?

7 **A:** No

8 **Q:** So, if he told you speculatively or hypothetically that an
9 incident, even as serious as a murder, happened because of a
10 reaction out of fear, would that surprise you?

11 **A:** No

12 **Q:** Would that be the action of a child or an adult?

13 **A:** Well, it could be either actually I guess it would be more
14 likely to be the action of a child, but I think adults when they're
15 in fearful situations sometimes make bad decisions and do
16 uncharacteristic things as well

17 **Q:** And again then just to conclude, in your -- you have looked
18 at the ten positives and the six negatives -- knowing that the
19 number really doesn't really mean a whole lot ---

20 **A:** Right

21 **Q:** --- it is still your conclusion today that he is more on the
22 level of a child than an adult?

23 **A:** Yes, ma'am

24 **Q:** He is more unsophisticated than sophisticated?

25 **A:** That's right

1 Q: He is more immature than mature?

2 A: More immature if you're gonna use immature as a child I
3 think he's not necessarily a very immature sixteen-year-old
4 He's about average or a little bit under average for a sixteen-
5 year-old He'd not acting ten, you know, that kind of thing but
6 he is not as mature as an adult is, no

7 Q: In your experience, have you seen children younger than
8 him that were far more sophisticated and mature?

9 A: Yes.

10 Q: Were they still treated in the juvenile system?

11 A: Well, that's who I deal with, so, yes, they were

12 Q: But they may not have committed this type of crime, either?

13 A: That's right, that's right.

14 Q: And you do feel that the possibilities for rehabilitation
15 through the juvenile system are strong?

16 A: I think there is a possibility for it, yes

17 Q: Thank you

18 THE COURT Re-direct?

19 SOLICITOR Yes, Your Honor

20 **RE-DIRECT EXAMINATION OF KIM METZ BY THE**

21 **SOLICITOR:**

22 Q: Ms Metz, Ms Pratt ask you about the offense of public
23 disturbance on a school bus would be more childlike or adultlike
24 Do adults normally go to school on a school bus?

25 A: No

1 **Q:** How would you qualify depression? Would you qualify it as a
2 mental illness or a symptom of?

3 **A:** I think -- I mean, depression is a mental illness. It's not a
4 serious mental illness like -- well, it can be, but it's not as
5 serious as things like psychosis and thought disorders that can
6 be qualified as a mental illness.

7 **Q:** But this juvenile just shows symptoms of depression?

8 **A:** That's right.

9 **Q:** Okay. Does this juvenile come from a low income
10 background?

11 **A:** Yes, sir.

12 **Q:** Not a middle class background?

13 **A:** No, sir.

14 **Q:** Do you find in the individuals that you deal with that they
15 come from a low income background or a middle class
16 background?

17 **A:** The majority of the kids that I've dealt with are from more
18 low income backgrounds.

19 **Q:** Do you find that low income background children desire
20 automobiles?

21 **A:** Not as -- probably not as often as a middle class child would,
22 no.

23 **Q:** Is that ---

24 **A:** They do desire -- what can I say here -- they do desire more
25 material things. I'm -- the children that I deal with more --

1 want things like clothes and jewelry and that type of thing

2 **Q:** Because -- would it be fair to say that a middle income child
3 expects parents to be able to afford to give them that whereas a
4 low income child does not ---

5 **A:** That may be fair to say

6 **Q:** And his desire to drive or not to drive, could that be
7 hindered by the fact that he was not sixteen-years-old when
8 you interviewed him?

9 **A:** Could be, and I didn't ask him specifically about driving?

10 **Q:** Okay Could a person's survival instinct as you stated cause
11 him to do things in order to get a lesser punishment?

12 **A:** It could, yes.

13 **Q:** Would the fact that he would be rehabilitated in a juvenile
14 system be a less severe punishment than if he was to go
15 through the adult system?

16 **A:** Would it be a less severe punishment?

17 **Q:** Yes.

18 **A:** Yes, probably

19 **Q:** Based on the fact that he comes from a low-income family,
20 is his sophistication and maturity equal to that of another
21 individual from another low-income family?

22 **A:** Of another sixteen-year-old -- fifteen or sixteen-year-old?

23 **Q:** Yes

24 **A:** Yes

25 **Q:** Would that be because he hasn't been given the benefits

1 that a middle-class child might be given?

2 **A:** That can be partly On some of those -- some of those
3 benefits may just be things that people take for granted,
4 though, like having a male role model around

5 **Q:** Okay You stated that first you'd have to treat his drug use
6 before you could treat his -- other parts of his rehabilitation
7 Could that drug use be treated in eight months?

8 **A:** Yes

9 **Q:** But then again, that would slow down the process?

10 **A:** It depends I mean, I didn't -- in order to see how long a
11 drug problem needed to be treated, you'd need to be a
12 thorough assessment on that kind of thing. I'm not even
13 positive that he's using as much as he says he was using So,
14 he would need a further assessment by somebody else So, I
15 guess I can't really say how long it would take to treat the drug
16 use

17 **Q:** If he was using as much as he said, for example -- based on
18 your experience, could that be treated in an eight-month
19 period?

20 **A:** Yes, I think it could

21 **Q:** About how long of that eight-month period?

22 **A:** I don't really think I can speculate on the amount of time
23 mean it depends on how -- it depends on how often he's getting
24 treatment, if there's -- at DJJ now there is a dorm for kids that
25 have alcohol and drug problems If he'd be placed in that dorm

1 right away and get, you know, daily contacts with all that kind of
2 thing, you know, there would be quicker results with it If it's
3 something that takes -- you know, he's not in that program and
4 it takes longer to get in there, you know, it might take longer
5 It also doesn't mean that just because -- you know, you don't
6 stop all the other work while you're trying to deal with the
7 marijuana use You know, you can do those two things in
8 conjunction

9 **Q:** But it does slow it down, is that correct?

10 **A:** Yes, yes

11 **Q:** The fact that he cooperated with you openly, does that show
12 he has a level of sophistication equal to that of a low-income
13 child?

14 **A:** Yes, most of the kids that I've dealt with in the past
15 cooperate fairly well

16 **Q:** Okay Ms Pratt characterizes behavior or I guess has used
17 the word "retarded" Is Roger retarded?

18 **A:** No

19 **Q:** He is of average intelligence?

20 **A:** Yes

21 **Q:** Would you believe he understands the consequences of his
22 actions?

23 **A:** I believe he understands the consequences of his actions I
24 don't think that he thinks about them very clearly I don't think
25 that he thinks before he acts and I don't think -- right now, I

1 think it's -- at least when I spoke with him about this stuff, he
2 knew what the potential consequences were but just was -- and
3 was only worried about that end, about that consequence He
4 wasn't worried about everything else that was gonna happen

5 **Q:** And most normal, average low-income sixteen-year-olds, do
6 they focus on what's gonna happen, say, a year from now or
7 what's gonna happen within the next week?

8 **A:** Most of them are looking at more short term

9 **Q:** The fact that he has anxious to get out of jail go more
10 towards his, you know, his focus on immediate goals and
11 towards his long-term goals?

12 **A:** I think it goes towards his immediate goals, yeah.

13 **Q:** And most juveniles that are charged with crimes who you
14 have dealt with have an immediate reaction that they want to
15 get out of jail, is that correct?

16 **A:** Probably most, yeah

17 **Q:** It's not a pleasant environment, is it?

18 **A:** That's right

19 **Q:** Ms Pratt brought up, you know, him not being able to live
20 on the streets, but you said he had strong survival instincts?

21 **A:** Uh-huh (affirmative response)

22 **Q:** Do you believe if Roger was pressed in any way to survive
23 he'd be able to survive on the street, if that did happen?

24 **A:** I think if that did happen, that he would be able to survive
25 I don't think he would do it well and I think that he would get in

1 a lot of trouble because he didn't have the skills to do it, in
2 trouble with the law and trouble with -- just socially, he'd have
3 problems with it, but he probably could manage for a short
4 period of time, at least

5 **Q:** Thank you. Does he make reasonable choices for a low-
6 income sixteen-year-old?

7 **A:** He probably makes poorer choices than most kids ---

8 **Q:** Even from ---

9 **A:** --- from that background?

10 **Q:** From that background?

11 **A:** Right

12 **Q:** And when we discuss a child, what is the age range that you
13 consider, you know, what begins the age range of an adult in
14 your mind?

15 **A:** Well, I mean, legal actually -- the age of an adult is
16 eighteen, but there's probably, you know, twenty-year-old,
17 twenty-five-year-olds that aren't acting as an adult I mean, an
18 adult has -- accepts certain amounts of responsibility, they have
19 judgments and decision making skills going for them, they can
20 plan for their future and take the steps necessary to succeed
21 with that plan So, I guess it has more to do with their cognitive
22 and social skills than it does with a particular age, to me

23 **Q:** Talking about this defendant here today, we're talking about
24 him as a child based on his age; is that correct? Is that a fair
25 assumption?

1 **A:** That's why -- that's what you all are talking about, right

2 **Q:** Right, okay Ms Pratt talked about premeditation and him
3 being a follower in the act, based on him being a follower, would
4 he know the consequences even if it was premeditated by
5 another individual?

6 **A:** Would he know the consequences?

7 **Q:** Sure

8 **A:** You're talking about this specific instance?

9 **Q:** For example, like Ms Pratt said, if he was told that they
10 were gonna do something by somebody that was more
11 sophisticated and more criminally knowledgeable that -- you
12 know, would he understand the ---

13 **A:** I think that he would understand the consequence but I
14 don't necessarily know that he would think of the consequences
15 to start with I think he -- that's shooting for more long-term
16 decision making than he's -- or not long-term -- goal setting
17 than he's capable of right now So, I think he would know the
18 consequences but I don't think that he would necessarily dwell
19 on them and think about it, okay, if I did this, I'm gonna have to
20 ---

21 **Q:** But when pressed, as you stated earlier, he would
22 understand ---

23 **A:** He would understand -- I'm not sure who would press him in
24 that situation, but if he were pressed, then yes

25 **Q:** Ms Pratt also pointed out about his being tough and overly

1 confident young man that wanted to make a good impression
2 Somebody in this situation that he's allegedly in, wouldn't they
3 all want to make a good impression upon you?

4 **A:** Yes, but he didn't always make a good impression either
5 He was cordial and friendly and open and that kind of thing but
6 he also made statements about his drug use and his sexual
7 activity and that type of thing that did not put himself in a good
8 light

9 **Q:** But he understood the reason why he was there, is that
10 correct?

11 **A:** Yes

12 **Q:** Does the fact that a juvenile is a runaway normally mean he
13 wants to be emancipated?

14 **A:** No

15 **Q:** No base in your opinion ---

16 **A:** No

17 **Q:** So, running away from home does not necessarily mean
18 that he's sophisticated -- that he's not sophisticated or
19 immature?

20 **A:** That's correct, that's correct

21 **Q:** And the fact that he didn't runaway does not mean that he
22 can't act on his own, is that correct or a fair assumption?

23 **A:** The fact that he didn't run doesn't mean he can't act ---

24 **Q:** Act as his own person or on his own?

25 **A:** That's true

1 **Q:** And again, is he of the average sophistication and maturity
2 of a sixteen-year-old from a low-income background?

3 **A:** Yes

4 SOLICITOR Nothing further, Your Honor

5 THE COURT Re-cross?

6 MS PRATT Just a couple, Your Honor

7 **RE-CROSS EXAMINATION OF KIM METZ BY MS. PRATT:**

8 **Q:** Ms Metz, while a school bus incident might be a child type
9 of thing, would you not expect to see perhaps assault and
10 battery of a high and aggravated nature or drug distribution or
11 something in a sophisticated child?

12 **A:** A sophisticated delinquent child, yes, I would've seen --
13 would've expected to see a longer record and more serious
14 crimes

15 **Q:** All right Did Roger seem to have the desires for clothes
16 and jewelry that you mentioned -- perhaps auto was a bad
17 choice on my part earlier -- but did he seem to have those and
18 take steps towards getting those things?

19 **A:** No, not that I can tell

20 **Q:** In fact, he didn't even take the steps of stealing like severa
21 delinquent children might who ---

22 **A:** That's right

23 **Q:** --- wanted Nikes or whatever

24 **A:** That's right

25 **Q:** In response to the Solicitor's question you said that a

1 person's survival instinct could cause them to do things that
2 would get a less severe punishment Wouldn't that be through
3 them being more self-protective?

4 **A:** Yes, it could be

5 **Q:** And Roger was not self-protective, was he?

6 **A:** That's right, he was not

7 **Q:** In fact, he was open to the point of bearing his sole to the
8 world in a sense to you, wasn't he?

9 **A:** Right

10 **Q:** Okay Roger is not mentally retarded?

11 **A:** No

12 **Q:** Do you consider that some of his developmental stages are
13 retarded -- retarded meaning, I guess, in the sense of slower or
14 less developed than what it should be?

15 **A:** Somewhat slower, yes I -- retarded, I wouldn't use that
16 word retarded because it's not that -- they're not that slow
17 He's -- he functions just a little bit below average but in general
18 he is like a fifteen or sixteen-year-old

19 **Q:** In response to the Solicitor's questions about child/adult you
20 said "Well, child is what you're talking about " What -- for you
21 is -- the word child that you use on Page Seven that says
22 "identify more with the role of a child than an adult", does that
23 have anything to do with chronological age?

24 **A:** It -- in my statement of that, not necessarily, no It has to
25 do with how people interact -- how the child interacts, how he

1 behaves, how he judges, how he reasons That's more what
2 I'm basing my conclusions on, more than an age

3 **Q:** It would be then developmental skills, cognitive social skills,
4 rather than a chronological age number?

5 **A:** Sure

6 **Q:** And even though running away might not mean
7 sophistication, would you expect to see more of the away-from-
8 home behavior from a sophisticated youngster?

9 **A:** Yeah, even if it's not running away, I guess I would've
10 expected to see more out-all-night kind of behavior, those kind
11 of things which mom didn't report

12 **Q:** The out all night and running away would be the delinquent
13 side of the coin, from a non-delinquent side of the coin, you
14 would expect to see jobs, goals, involvement with outside peer
15 groups that would be removing him from the home
16 atmosphere?

17 **A:** Right

18 **Q:** He actually functions more in a home situation than he does
19 outside, doesn't he?

20 **A:** That seems to be the case

21 **Q:** Thank you, very much

22 SOLICITOR. Just one question, Your Honor

23 **RE-DIRECT EXAMINATION OF KIM METZ BY THE**

24 **SOLICITOR:**

25 **Q:** The fact that he didn't have a job, could that be contributed

1 to -- the fact that he did not have a job -- would lack of
2 transportation contributed to him not being able to get a job?

3 **A:** It could

4 **Q:** Nothing further

5 THE COURT You may step down Thank you, ma'am
6 Counsel, I believe in accordance with the ruling that I
7 previously made on the motion to continue, that would conclude
8 the proceedings today In that we had, I think, a morning set
9 aside for the entirety of the waiver hearing, I would anticipate
10 then that the balance of it would not take -- how long?

11 SOLICITOR Your Honor, I anticipated this to run possibly
12 a half hour or an hour into the afternoon session, so I think the
13 balance of it would be close to an hour, an hour and fifteen
14 minutes

15 THE COURT All right If you would check then with the
16 scheduling clerk to see if we can reschedule it sometime the
17 week after next when I'll be back here with that time frame in
18 mind

19 SOLICITOR Your Honor, that based on what the State
20 has, I don't know what ---

21 THE COURT I understand, counsel

22 SOLICITOR --- the Defendant is planning to do

23 MS PRATT Your Honor, if I may ask that in consulting
24 with the scheduling clerk, he also consult with Mr Gardner who
25 is unavailable today

1 THE COURT Certainly, certainly

2 MS PRATT He would have a better idea of how much
3 time we'll be taking

4 THE COURT Perhaps you can get some idea of some
5 possibilities and talk it over with Mr Gardner and then ---

6 SOLICITOR I will do that, Your Honor

7 THE COURT Okay, very good Thank you very much

8 SOLICITOR Thank you, Your Honor

9 MS PRATT Thank you, Your Honor

10 THE COURT Court stands adjourned

11

12 **END OF TRANSCRIPT OF RECORD.**

13

14 **END OF TRANSCRIPT.**

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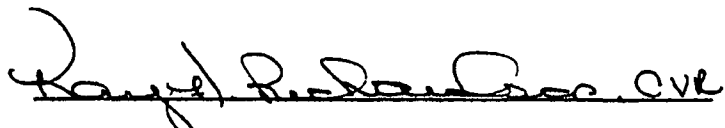
25

CERTIFICATE OF COURT REPORTER

I, the undersigned, Kay H Richardson, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Family Court for Horry County, South Carolina, on the 26th day of September, 1998

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 16TH day of April, 1998



Kay H Richardson, CVR

Certified Verbatim Reporter

Notary in and for the State of
South Carolina

My Commission Expires 2/27/06

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

**} IN THE FAMILY COURT
15TH JUDICIAL CIRCUIT
CASE NO: 96-JU-26-623**

STATE OF SOUTH CAROLINA, }

Plaintiff, }

-versus- }

ROGER LEGETTE, }

Defendant }

ORIGINAL

TRANSCRIPT OF RECORD
(Waiver Hearing - Part 2)

October 9, 1996
Conway, South Carolina

BEFORE:

The Honorable H T Abbott, III, Judge

APPEARANCES:

Roger Roy, Esquire
Horry County Solicitor's Office
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ATTORNEY FOR THE PLAINTIFF

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ATTORNEY FOR THE DEFENDANT

Kay H. Richardson, CVR
COURT REPORTER

I N D E X**WITNESSES****DIRECT CROSS REDIRECT RECROSS**

Det Matthew Twigg

By Solicitor 9, 18

By Mr Gardner 31

Jackson v Denno

By Solicitor 12

By Mr Gardner 15

James T Legette

By Mr Gardner 37

By Solicitor 40

Reverend H B Sherman

By Mr Gardner 42

Annie Mae Legette

By Mr Gardner 45

Wanda Rogers

By Mr Gardner 48

By Solicitor 51

EXHIBITS**NUMBER****DESCRIPTION****ID****EV**

(There were no exhibits marked)

1 SOLICITOR We are here in the interest of Roger Legette,
2 96-JU-26-623, Murder We're here for the purpose of a waiver
3 hearing, the continuation of one. The Juvenile is present with
4 his attorney Mr John Gardner, his mother -- his grandmother is
5 also in the courtroom, and the State is ready to proceed at this
6 point in time It's also the State's understanding the Defense
7 has a couple of motions it would like to ---

8 THE COURT As I recall, this is the one that we took the
9 expert witnesses' testimony

10 SOLICITOR That's correct, Your Honor

11 THE COURT And that Ms Pratt stood in for Mr Gardner
12 at that time?

13 SOLICITOR That's correct, Your Honor

14 THE COURT And since that time, he has been furnished
15 with a transcript of that hearing; is that correct?

16 SOLICITOR That's correct, Your Honor

17 THE COURT. All right, Mr Gardner, be glad to hear from
18 you

19 MR GARDNER May Your Honor please First, Your
20 Honor, we would move for a what I've entitled a Motion to
21 Reveal the Deal My understanding from defending some of
22 these preliminary hearings have been by way of detention
23 hearings that they -- there's an allegation that three individuals
24 were in the car. My information would include that the
25 allegation is, my client, Roger Legette was in the car, George

1 Gray was in the car and Craig Legette was in the car Our
2 motion is to have the State provide us, as we're entitled to, with
3 any agreements that have been made or entered into with the
4 two other people in the car, George Gray and Craig Legette,
5 with any kind of deals whatsoever including deciding not to
6 petition them for their alleged involvement in this case or to
7 delay petitioning them until some point in the future, or if
8 they've reduced the charges or anything with regard to
9 including but not limited to perhaps testifying for the State

10 THE COURT: Be glad to hear from you, Solicitor

11 SOLICITOR Thank you, Your Honor At this time, the
12 State has not made any deals with either one of these two
13 individuals mentioned in this motion We are continuing to
14 investigate whether they are going to be charged or not, but at
15 this point in time there's been no decision made to charge them
16 or not We have -- the State has not talked with them about
17 testifying or any type of deal of testifying or whether they were
18 going to be called to testify

19 THE COURT. Are both of the juveniles?

20 SOLICITOR: Yes, they are, Your Honor

21 THE COURT. So, that would be in yours and Ms Young's
22 area with the Solicitor's Office?

23 SOLICITOR That would be correct, Your Honor

24 THE COURT Mr Gardner?

25 MR GARDNER: Yes, Your Honor, I'd be satisfied with that

1 if I could understand that there's been on agreement to delay
2 petitioning based on this hearing or any other developments
3 involving my client

4 THE COURT That is my understanding, is that not
5 correct, Solicitor?

6 SOLICITOR That's correct There's been no agreement
7 with the other two individuals

8 THE COURT He is representing to me there has been no
9 agreement with them concerning either testifying or delaying
10 any proceedings or anything

11 MR GARDNER And I guess what I may or may not be
12 making real clear, I just want to know in my mind, are they
13 waiting on these other two based on the results of this one?

14 THE COURT I think the motion was to reveal any deals
15 that had been made with them He has represented to me that
16 there has been no such agreements reached with them So, I
17 think that goes to the motion and I believe that aspires any
18 ruling that I would make

19 MR GARDNER Thank you, Your Honor Your Honor, the
20 second motion would be a Motion to Suppress I'm not sure
21 what the State's position on it is; however, they have supplied
22 me for my Brady request and Rule 5 request with some -- a lot
23 of information they have about this case, maybe all of it or a
24 good bit at least, and I'm not complaining about that by any
25 stretch of the imagination In that information they have given

1 me, George Gray, who we discussed earlier in the previous
2 motion, was on parole at the point of this time, is my
3 understanding, and he was violated of the parole, means that
4 he had been released from an institution and on parole and
5 violated parole for some reason, was sent back to the
6 institution, I believe, the day after the incident that this
7 allegation is concerned My information provided to me from
8 the Solicitor's Office is they sent one of their investigators up to
9 the institution where this prisoner, this juvenile prisoner was
10 held and asked him, and basically took a taped statement from
11 him about this allegation. It's basically a confession which
12 involves or implicates the other two people in the car My
13 motion would be that that be suppressed under United States
14 versus Broodman and Prodigy

15 THE COURT Solicitor?

16 SOLICITOR: As you well know, we're here for the purpose
17 of a waiver hearing and in a waiver hearing hearsay can come
18 in As far as this is a statement given by a witness, it's not a
19 co-defendant, which I think distinguishes it from Broodman
20 Also, the fact that we are involved in a waiver hearing and not
21 an adjudication of this, I believe it should be allowed

22 MR GARDNER If I may respond to that, Your Honor

23 THE COURT Yes, sir

24 MR GARDNER Basically, what you have is somebody
25 who was in the car, according to the State who is giving a

1 confession including not on himself but the other two people
2 With regard to hearsay evidence being admissible in a
3 preliminary hearing or a waiver hearing, the reason that the
4 State and the Courts allow that is because the State -- we don't
5 want to put the State to the burden of calling every witness
6 they want to produce. We generally do that by allowing the
7 lead detective to get up and testify about what competent
8 evidence that they can produce at trial. So, even though
9 hearsay is allowed, we don't allow in evidence that would not be
10 competent. It's got to be competent and credible. The
11 statement made by the prisoner up in Columbia who was in the
12 vehicle according to the State when this incident occurred,
13 would not be competent evidence in a trial for this fellow unless
14 they were both being tried together and then there would have
15 to be some formative action. So, it would be improper and it
16 would be highly prejudicial for this client or the other fellow that
17 was in the car, if it was a trial for him. So, although we allow
18 hearsay, we don't throw out all the other rules and all the other
19 laws that we provide. So, I don't believe the hearsay would
20 allow that to come in if it's not proper to begin with. And I
21 believe it's not proper to begin with because we can't have --
22 the Solicitor states that he's not a co-defendant yet, but he's
23 given a confession, as I understand it, which implicates in one
24 way or the other, the other two fellows. That would not be
25 allowed and so even though hearsay is allowed, we still wouldn't

1 let that in at this time

2 THE COURT I am going to reserve any ruling on that
3 particular motion I believe it may be premature at this time
4 However, at such time as that evidence is proffered or moved to
5 be introduced into evidence, you can renew your objection at
6 that time and I will make a ruling

7 MR GARDNER Thank you, Your Honor Thank you,
8 Your Honor

9 SOLICITOR Thank you, Your Honor

10 THE COURT Any additional motions, Mr Gardner?

11 MR. GARDNER Not at this time, Your Honor

12 SOLICITOR Nothing further from the State

13 THE COURT Did I understand that you -- your client's
14 mother was not present, Mr Gardner?

15 MR GARDNER Your Honor, she was present here and
16 was here on time, and we made -- I made some discussion with
17 her and other family members that they had to go pick up
18 another family member and either through my
19 miscommunication with them or their misunderstanding with
20 me, the mother went with them or either she drove the rest of
21 the family members or rode with them or something -- for some
22 reason, she went with them is my understanding The
23 grandmother is here and we're ready to proceed

24 THE COURT All right You do not wish them to delay the
25 hearing until such time as the mother -- you're willing to

1 proceed with ---

2 MR GARDNER We're willing

3 THE COURT All right Very well Thank you, sir

4 Solicitor

5 SOLICITOR Thank you, Your Honor The State would call

6 Detective Matt Twigg to the stand

7 THE COURT Come around and be sworn, please, sir If
8 you'll come up and place your left hand on the Bible, raise your
9 right hand

10 **DETECTIVE MATTHEW**
11 **TWIGG, HAVING BEEN DULY SWORN, TESTIFIED AS**
12 **FOLLOWS:**

13 THE COURT Please be seated Give us your name,
14 please, sir

15 DETECTIVE TWIGG My name is Matthew Twigg

16 THE COURT. You might proceed, counselor

17 SOLICITOR. Thank you

18 **DIRECT EXAMINATION OF DETECTIVE MATTHEW TWIGG**
19 **BY THE SOLICITOR:**

20 Q Detective Twigg, where are you employed?

21 A With the Horry County Police Department

22 Q. And what is your position there?

23 A I'm a detective assigned to the violent crime section

24 Q Okay And how long have you been a detective there at
25 the Horry County Police Department?

1 A I've been a detective since 1993, August of '93

2 Q And did you have, on May 25th, 1996, did you come in
3 contact with the Defendant here?

4 A Yes, I did

5 Q. And what was that a result of?

6 A I was the on-call detective for the violent crime section I
7 was called out in reference to a homicide

8 Q Okay And what did you do after you were called out to the
9 scene of the homicide?

10 A I responded to, I believe it was Barkwood Drive, where a
11 cab was parked down from a residence

12 Q Okay And what did you notice upon arriving?

13 A Upon my arrival, I noticed there was a yellow taxi parked on
14 Barkwood Drive approximately a hundred yards from the
15 residence of the Defendant The cab, the driver's door was
16 open There was a -- the victim was lying partially out of the
17 cab on the ground with his feet inside the cab still

18 Q Okay At that point in time, did any other officers indicate
19 to you as to who the suspect was?

20 A Yes, sir. I was notified that prior to a -- Department issued
21 a response, dispatch told me that they had spoken with the
22 Defendant by telephone or the suspect by telephone and
23 officers were on the scene and had him in custody

24 Q And who was that?

25 A There was several officers Lieutenant Jerry Sarvis, who is

1 a shift supervisor, Patrolman Keith Strickland, Patrolman -- I've
2 forgotten his name -- Charles Oliver, and myself when I arrived
3 Q Okay When you arrived, after inspecting the body in the
4 cab, what did you do next?

5 A Immediately made sure the crime scene was secure, that
6 nobody was let inside or out And I asked for Lieutenant Myron
7 Creel, who is in charge of our crime scenes, to respond I then
8 went to the young man that was in custody And at time, he
9 had already been given his Miranda Warnings by, I believe it
10 was Patrolman Keith Strickland He was very aggressive in
11 wanting to help, the Defendant was He was wanting to show
12 us where the weapon was that was used pointing to the general
13 area of the woods where he had thrown it

14 MR GARDNER Your Honor, at this point, I'd make a
15 motion for a Jackson v Denno hearing before he goes into what
16 the Defendant may've said after he was in custody

17 THE COURT. Solicitor?

18 SOLICITOR I haven't -- Your Honor, we haven't gotten
19 to the part of where the Defendant has given us a statement,
20 testify to -- I mean, he's testifying as to what the Defendant
21 told him not testifying to his statement as to his involvement,
22 that will come later I will introduce portions of his statement
23 So, if you'd like to do the Jackson v Denno hearing now or ---

24 THE COURT Mr Gardner has made ---

25 MR GARDNER Your Honor, I would -- I think it might be

1 appropriate to do it now because I believe the testimony was
2 that the Defendant was very aggressive and was wanting to
3 show us things and tell us things So, if he's gonna start talking
4 about what the Defendant, since he ---

5 THE COURT I think for the purpose of a clear record, go
6 ahead and conduct the Jackson v Denno hearing

7 MR GARDNER. Thank you, Your Honor

8 **JACKSON V. DENNO HEARING**

9 **DIRECT EXAMINATION OF DETECTIVE MATTHEW TWIGG**

10 **BY THE SOLICITOR:**

11 Q Detective Twigg, did you advise the Defendant of his rights?

12 A No, I did not

13 Q. Okay. Who did that?

14 A It was Patrolman Keith Strickland

15 Q Okay And when he advised those -- advised Mr Legette of
16 his rights, did he have him sign any statements at that point in
17 time?

18 A Yes, yes, he did

19 Q Okay. And do you have a copy of that that you can refer
20 to?

21 A Yes, sir, I do.

22 Q Would you read what that sheet of paper says?

23 A Yes, sir, I will It starts out at the top is "State of South
24 Carolina, County of Horry" and then there's a -- it starts and it
25 says "Your rights" and then it states "You have the right to

1 remain silent," after which Roger Legette's initials, "RL" are
2 signed "Anything you say can or will be used you in a court of
3 law" after which the initials "RL" are signed. "You have the right
4 to talk to a lawyer and have him present with you while being
5 questioned," after which, the initials "RL" are signed "If you
6 cannot afford to hire a lawyer, one will be appointed to
7 represent you before questioning if you wish one," after which
8 the initials "RL" are signed "If you desire to make a statement
9 or answer questions, you have the right to stop at any time,"
10 again, the initials "RL" are signed And "This is to certify the
11 above rights have been explained to me and that I understand
12 each one of them," and the name "Roger Legette" is signed
13 Q Okay And the next part which is the waiver of rights, did
14 he sign it at that point in time?
15 A No, he did not
16 Q And who is the witnessing signature on the bottom of that?
17 A Patrolman Keith Strickland
18 Q Okay When you had -- and then after that, you later sent
19 Mr. Legette to the Detention Center, is that correct?
20 A That's correct
21 Q Did you advise him of his rights there?
22 A I did not go into his rights as detailed as the Miranda form
23 that he signed, but what I did was upon first talking to him and
24 explaining to him that the interview would be taped, I asked him
25 his age, I asked him what was the last grade that he completed

1 in high school, I asked him if he could understand and read and
2 write English and then I asked him if he was under the influence
3 of any drugs or alcohol or anything at that time After that I
4 asked him if he understood why he was there and advised him
5 then in question form that earlier that day when he was first
6 picked up, he was read a series of rights and he did not have to
7 talk to us I asked him if he understood that and his response
8 was "Yes, sir." I asked him after that if there was any questions
9 regarding his rights about making statements that he wanted
10 me to answer, his response was "No." I asked him again that
11 keeping those rights in mind did he want to -- "Do you want to
12 tell me what happened?" He stated, "Sure, why not?"

13 Q At any point in time did the Defendant ask for an attorney?

14 A No, sir

15 Q He never asked for his mother?

16 A No, sir.

17 Q Did you provide him with any food, drink or anything?

18 A I did not personally. He was in custody for a little while
19 prior to my arrival, whether they did, I don't know

20 Q Did he request that he wanted any types of food or drinks
21 during the interview?

22 A No, sir

23 Q Do you believe he gave up his rights voluntarily?

24 A Yes, sir, I do

25 Q Did you threaten him in any way?

1 A No, sir, I did not

2 Q Offer any coercion?

3 A No, sir

4 Q Withhold anything from him?

5 A No, sir

6 SOLICITOR: That would be all, Your Honor

7 THE COURT Mr Gardner

8 MR GARDNER: Thank you, Your Honor May it please
9 the Court

10 **JACKSON V. DENNO HEARING**

11 **CROSS EXAMINATION OF DETECTIVE MATTHEW TWIGG**

12 **BY MR. GARDNER:**

13 Q Detective Twigg, do you know why the Defendant didn't
14 sign the Miranda form down at the bottom where it says "I
15 waive my rights" that you testified about earlier?

16 A My understanding was because Patrolman Strickland was
17 not gonna interview him or interrogate him.

18 Q But isn't it a fact that even though your understanding that
19 Strickland was not going to interrogate him that y'all did get
20 information from him which led to recovering other evidence
21 that y'all wish to use in this case?

22 A Yes, sir, if I may respond to that Upon arrival, Patrolman
23 Strickland advised me that he had been Mirandized and I did not
24 ask any further questions of the Patrolman and he did not tell
25 me whether or not he had signed the waiver So, it may've

1 been a misunderstanding on my part, but it wasn't conspiracy
2 on my part to ---

3 Q And we don't -- and I don't mean to insinuate that at all I
4 just want to know if you had a clear understanding of why he
5 didn't sign the waiver and yet he gave y'all information that led
6 to some evidence that y'all wish to use in this case,
7 conversations with the Defendant

8 A Yes, sir I understand your question and, in response, it
9 was never brought up after I was advised he was Mirandized
10 whether or not he had waived

11 Q Let's go down to the Detention Center What time did that
12 interview start? Approximately 1 30 in the morning?

13 A Yes, sir

14 Q You had a fifteen-year-old out at the jail at 1 30 in the
15 morning?

16 A Yes, sir

17 Q Did you ask him if he wanted to see his mother?

18 A No, I did not

19 Q Did you ask him if he wanted to talk to a lawyer before he
20 talked to you?

21 A No, sir, I did not

22 Q Did you ask him if he needed something to eat or if he had
23 eaten all day or anything like that?

24 A No, sir

25 Q Who else was in the room when you interviewed him?

1 A. A Department of Juvenile Justice employee arrived shortly
2 after ---

3 Q Priscilla Cox and she came in after the interview was
4 started, is that correct?

5 A That is correct

6 Q So, she wouldn't have been there when you were talking to
7 him about whatever you talked to him before he started giving
8 his statement?

9 A No, sir

10 Q Okay Thank you Nothing further

11 THE COURT Solicitor?

12 SOLICITOR That would be all from the State on this
13 matter

14 MR GARDNER Your Honor, we'd move to have anything
15 suppressed at the scene up to the Detention Center, any
16 evidence that may've been recovered based on the fact that we
17 don't -- they haven't made a good enough showing in my mind
18 that everything was clear and that he'd waived his rights before
19 he communicated to the police officer when he brought them to
20 evidence that they wish to use in the case

21 THE COURT Solicitor?

22 SOLICITOR Your Honor, this Juvenile was Mirandized and
23 told that he did not -- he had the right to remain silent,
24 anything he said could be used against him in a Court of law
25 and he did initial that paragraph. He understood his rights and

1 then he understood his rights when he got to the Detention
2 Center as Detective Twigg asked him, he says, "Okay, keeping
3 these rights in mind, do you want to tell me what happened?"
4 He said, "Sure, why not?"

5 THE COURT: For the purpose of the waiver hearing, I find
6 that the testimony is admissible and therefore am going to deny
7 the motion.

8 MR GARDNER Thank you, Your Honor

9 SOLICITOR Thank you, Your Honor

10 **CONTINUATION OF DIRECT EXAMINATION OF DETECTIVE**
11 **MATTHEW TWIGG BY THE SOLICITOR:**

12 Q Detective, back to when you got out there and you said the
13 Defendant was aggressive, that's where you left off Can you
14 state what he did as aggressive as trying to help, what did he
15 do to try to help?

16 A He voluntarily showed us an area of the woods that he
17 claimed to have thrown the weapon used in the homicide At
18 that time, Patrolman Strickland and myself attempted to walk
19 into the area and find it, it was dark, we had flashlights, it was
20 very heavily vined After several minutes, five to seven minutes
21 into the area, we thought better of being there that late, that
22 our time would be better spent doing other things in the case
23 We tried, did not find it and decided -- at that point, I made a
24 decision to come back during daylight hours with better
25 equipment to locate the weapon

1 Q Okay And after you made your attempt to locate the
2 weapon that night, what did you do next?

3 A I decided that it was time to go on to the Detention Center
4 because I needed to go and do a gunshot residue kit on his
5 hands I was pressed for time for that, was my impression or
6 my understanding And that I allowed him several -- a brief
7 moment with his mother and relatives that were there in the
8 yard The next thing I knew, it was time for him to go and had

9 him driven to the J Long Detention Center by Patrolman Oliver
10 Q Okay And then after you sent him to J Reuben Long,
11 what else did you do at the crime scene?

12 A Waited for the arrival of Lieutenant Myron Creel Upon his
13 arrival, I released the crime scene to him I went to the
14 residence, I had George Gray and Craig Legette were talking to
15 Patrolman Strickland, asked them -- asked Patrolman Strickland
16 if he had a brief statement from them, their involvement or any
17 information that we could get Then I went inside the residence
18 and understood that -- excuse me, Patrolman Oliver had called
19 me later on the radio and said that Roger Legette had told him
20 that there was a grey sweatshirt or grey t-shirt that he'd worn
21 during the crime was inside the residence So, I went into the
22 house to locate who was in charge of the house, and when I
23 found Juanita Gray, who was the caretaker of the home I had
24 Ms Gray sign a Consent to Search, told her my intentions were
25 to remove the t-shirt that was in Ronnie Gray's room She

1 signed, I went into the room, located the t-shirt and recovered
2 it and then went to the Detention Center

3 Q Okay So, when you arrived at the Detention Center, did
4 you speak to the Juvenile at that point in time?

5 A Yes, sir, that's when I spoke with Roger Legette

6 Q Okay Did you have a copy of the interview, the
7 transcription of the statement you took from Mr Legette?

8 A Yes, sir, I do

9 Q Would you mind opening that at this point?

10 A I'm ready

11 Q If you would, on Page 1, would you read your very last, the
12 very last question and statement about your question and the
13 Defendant's statement into the record, please.

14 A The last question on Page 1 is, "Okay, if you don't mind, I
15 need you to speak up for me, okay? Try to speak clear for the
16 tape " Answer was "Well, me and" -- it's listed unintelligible --
17 "just drinking and fucking around. And then my brother had
18 called my daddy later on in the day and my daddy told us we
19 could come stay the night. So, we was gonna catch us a cab to
20 my daddy's house, so I had called a cab out "

21 Q Okay Where does his father live?

22 A In Huckabee Heights in Conway

23 Q Okay Was that the reason that he gave you for calling the
24 cab, was to go to his father's?

25 A That is correct

1 Q Okay And who was with him in the cab, did he state that?

2 A He stated that it was George Gray and Craig Legette, his
3 brother

4 Q Okay If you would go down to, on Page 2, right below
5 your question, "Okay, you were going to Huckabee Heights," if
6 you would, would you read that answer into the record, please

7 A Yes, sir The answer to that question is "Yeah, so we, we --
8 you know, we got into the car He asked us where we were
9 going" unintelligible "He went on next to Aynor and my brother
10 and my cousin, they told him to stop the car and he wouldn't
11 stop, so my brother started crying and as it was, I was scared
12 and stuff already and I had a gun in my pocket, knowing it was
13 already cocked back and everything "

14 Q Okay If you would, just read the rest of that page, also,
15 the question and answer part of it

16 A I asked the question, "What kind of gun did you have in
17 your pocket?" The answer was, "A 25 automatic, sir "

18 Question, "Where, where did you get this gun?" Answer, "From
19 a crack head, sir " Question, "What crack head? Do you know
20 the name?"

21 Q And just read that first line on the next page

22 A His answer was "Moe, that's what I call him, I call him
23 Moe "

24 Q Okay Go down to where the question, "Okay, please
25 continue, what happened then?" and read that next answer into

1 the record, please

2 A His response was, "So, the cabdriver he acted like he
3 weren't gonna stop or nothing and I was scared So, my
4 brother started crying and I pulled out the gun and I was only
5 gonna shoot him one time, but whenever I pulled the trigger, it
6 just kept on shooting So, I told them to get out and run home,
7 so then I got out the car and went to open the door I was
8 gonna pull him out and help him So, right there he was laying
9 on the ground I just took my gun and I just stood there for a
10 while and then I took off running So, I said -- I went home I
11 laid on the chair for a minute or two and then I woke my uncle
12 up I said, 'Ronald, I just now shot that man,' and he didn't
13 believe me So, I went in there and I told my grandma and
14 nary one of them didn't believe me So, a dude came back in a
15 truck, his name was Peanut Peanut told them that there was a
16 cabdriver in the road bleeding to death and that's when my
17 uncle, he went in and told my momma and them about it and
18 my momma and them rode up there and then I ended up here
19 in J Reuben Long Detention Center "

20 Q If you would, would you turn to Page 5, please And if you
21 wouldn't mind reading into the record your last question and the
22 answer on that page that continues over to the next page

23 A Yes, sir The last question was, "At any time during the
24 cab ride, did the man threaten you or say anything to you that
25 made you feel like you had to shoot him?" Roger's response

1 was, "You know, he just kept on looking at me like I wasn't
2 gonna pay him or something and kept on telling me, well, I
3 have to collect up front And was counting up the money to pay
4 the dude, which I known counting up the whole money, the
5 other time we went to Conway, the cab was \$10 This time it
6 was \$15 And he was taking it the wrong way So, I was
7 getting the money out of my pocket to pay the man, I had my
8 gun in the same pocket, I gave my grandma my money right
9 now and then I was leaving the house and he was, he, he was
10 steady looking at me, just driving looking at me, so and that's
11 whenever my brother and my cousin, they both said, 'Hey, man,
12 stop, we don't want to go, we want to get out,' and then he
13 ain't never stopped, he just kept on riding He didn't say
14 anything" -- excuse me -- "he didn't say nothing to nobody, just
15 looking at me, so my brother started crying and my brother
16 started crying and got scared, you know, and then I got scared.
17 I was -- I had about \$14 in my hand and I -- then I was gonna
18 have to get another dollar, and my gun, I reached the gun and
19 looked at the cabdriver and then I turned my head and I just
20 boom, boom, I just shot him That's just how it was "

21 Q Thank you, Detective What was your -- upon your
22 investigation, what was the positions of the three individuals in
23 the cab?

24 A Roger Legette was seated in the front passenger seat

25 Q Okay Where were the other two? Just -- were they in the

1 backseat?

2 A Both of them were in the backseat, I was trying to ---

3 Q Okay Sorry about that And do you have a copy of the
4 autopsy report or do you know what it stated in the autopsy
5 report as far as, you know, where the victim was shot and how
6 many times?

7 A I don't know that there's a copy in here, there should be
8 but sometimes they're delayed in us getting them If not, know
9 from being at the crime scene, where the shots were, close to
10 where they were.

11 Q Okay Please testify as to that

12 A Give me just one second, please There was three shots
13 one temple, one across the right ear, and then one in the neck

14 Q Were there any other bullets recovered besides those three
15 or were there any other bullet marks, say, in the cab?

16 A There was a spent projectile, let me -- a spent projectile
17 collected from the cab, there was a spent cartridge casing,
18 excuse me, there was two spent casings, one projectile in the
19 passenger front, one spent projectile in the passenger side,
20 three spent cartridge cases from the driver's side, one projectile
21 from the left rear floor, and a spent cartridge case in front of
22 the driver's side

23 Q What type of bullets were these?

24 A 25 caliber automatic

25 Q Okay. What type of gun -- later did you discover the gun?

1 A Yes, sir

2 Q Where was it found?

3 A On the 28th of May, 1996, Detective Tommy Flowers and
4 myself returned to the crime scene We were dressed in snake
5 boats and had a metal detector with us We went back into the
6 area with metal detectors

7 Q Was that the area that the Defendant pointed out to you?

8 A Yes, sir, same area It was off to the -- if facing this house,
9 it was a wooded area to the right of this house After going
10 into the wooded area, we found a weapon along with the small
11 clear plastic bag containing five additional rounds of CCI 25
12 caliber ammunition That was secured at that time and
13 delivered to Lieutenant Creel for delivery to SLED

14 Q Okay Did the Defendant make any statement to you as to
15 what type of weapon he had with him on that night?

16 A He stated it was -- let me double check -- he stated it was a
17 25 caliber

18 Q Okay Now, the 25 caliber gun you collected and you've
19 recovered and the bullets and the casings were also 25 caliber,
20 is that correct?

21 A That is correct, sir

22 Q And did he empty the clip of that gun? How many bullets --
23 did he empty all the bullets out of the clip when he fired it that
24 night?

25 A Just let me double check I -- the only thing I have listed is

1 the weapon and five live rounds that were found

2 Q Is it a possibility that some of the rounds going out the
3 window?

4 A Yes The driver side window was broken

5 Q Okay And on a gun like this, when you pull the trigger
6 once, do all the bullets fire?

7 A No, sir This is a semi-automatic You have to depress the
8 trigger one time for each shot fired

9 Q Okay Did you recover any evidence from the Defendant
10 on the night of the interview off him personally?

11 A Yes I took his clothes I took his jeans, the jeans that he
12 had on

13 Q And what was the reason for taking those?

14 A I took his pants and his belt and -- blood stains, to see if
15 there were any blood stains on his pants that might match up to
16 the victim.

17 Q. Okay. At this point in time, do you have any information
18 about a statement made from anybody else inside the cab?

19 A Yes, I do

20 Q And from who did that -- who made that statement?

21 A It was probably a statement from the Solicitor's Office It
22 was a statement obtained from Guy Osborne, who at that time
23 was acting as a investigator for the Solicitor's Office

24 Q Okay And who did he obtain that statement from?

25 A It was faxed to my office by you, I believe, by your

1 secretary

2 Q Okay And who was the individual he took the statement
3 from?

4 A George Gray

5 Q George Gray Do you have a copy of that statement?

6 A Yes, I do

7 MR GARDNER· May it please the Court, Your Honor,
8 again, I would renew my motion to suppress this evidence
9 based on what we talked about earlier and based on the
10 evidence or testimony supplied today by the State, which as I
11 understand is this is the statement taken by a prisoner who
12 they allege was in the car and it's implicating himself and also
13 the other two people in the car

14 THE COURT Is the party present today, Solicitor?

15 SOLICITOR No, he's not; he's still incarcerated, Your
16 Honor, as far as I know

17 THE COURT. And incarcerated where, sir?

18 SOLICITOR. At the Department of Juvenile Justice

19 THE COURT Well, would he not be available to you?

20 SOLICITOR. At the time of the trial, he would be available
21 if we -- you know, at that point in time he would be, but for the
22 purpose of a waiver hearing, we didn't feel it was necessary to
23 have his statement -- to have him present to make his
24 statement

25 THE COURT Go ahead and state your objection, Mr

1 Gardner

2 MR GARDNER. Yes, Your Honor, may it please the Court,
3 I've been provided with his record, which I won't go into but I
4 would just tell you it's significant and I believe the Solicitor
5 would concede that point. You have somebody who was on
6 parole, who has violated his parole and is up there, you have
7 evidence from what I heard the Detective testify from reading
8 the statement that he could be charged as a principal in this
9 crime and he hasn't been charged, he's just sitting up there
10 Solicitor earlier, that's why I made a motion to reveal the deal,
11 he said that he hasn't cut any deals with this guy. And I'm
12 afraid that at some point in time they're gonna, based on
13 however this hearing goes, indict that person or petition that
14 person, excuse me, and then you're gonna have co-defendants
15 and we're gonna have a hearing here that's decided, possibly in
16 part, based on information provided that a trial would not come
17 in under ---

18 THE COURT Solicitor, who was the statement given to?
19 Was it given to Detective Osborne?

20 SOLICITOR No, it was not, it was given to an
21 investigator -- it was given to a detective -- not to Detective
22 Twigg, it was given to a guy who was an investigator at that
23 time, Guy Osborne. He has since gone back to work with the
24 Horry County Police Department but at that point in time, he
25 was an investigator for, for the State, for the County of Horry

1 THE COURT Detective Osborne was?

2 SOLICITOR Investigator Osborne

3 THE COURT The purpose of your request to have this
4 information made a part of the record, is it to corroborate
5 Detective Twigg's previous testimony?

6 SOLICITOR. It goes to one of the factors set out in Kent
7 based on whether ---

8 THE COURT Which factor is that?

9 SOLICITOR Factor Two, whether it's committed in
10 aggressive, violent, premeditated or willful manner

11 THE COURT I'm going to allow it for that purpose under
12 the mandates of the Kent case but please limit your questions to
13 that in that respect, please, sir So, therefore, I'll overrule the
14 objection

15 SOLICITOR Thank you, Your Honor

16 MR GARDNER Thank you, Your Honor

17 **BY THE SOLICITOR:**

18 Q Do you have a copy of the statement, Detective Twigg?

19 A Yes, sir, I do

20 Q Okay If you would, would you turn to Page 2 and just read
21 the very last question and answer on that page

22 A The very last question is, "Okay, if you would, I want you to
23 speak plainly and slowly and I want you to tell me what
24 occurred on May the 24th I want you to tell me where you were
25 at and who was with you and what kind of discussions you were

1 having " The answer is "Yes, sir On May 24th, me and Roger
2 Legette and Craig Legette and I, myself, George Gray, we was
3 talking about we wanted to go the Beach, but we ain't had no
4 money And then that's when they talked about let's rob a cab
5 Then that's when we called up, we was talking about it and
6 that's when we called up a cab, and when we was talking about
7 the cab, about robbing the cab, and that's when we was talking
8 about we was gonna shoot him And I told him, I said, I ain't
9 gonna shoot him and that's when Rog -- and I said, I ain't
10 gonna shoot him, and Roger said, 'I'll shoot him,' that's when
11 Craig said, 'No, let me shoot him, let he shoot him ' And Roger
12 had a gun already Roger ain't never give the gun to Craig, so
13 the cab didn't ever come. So, we kept calling and finally it
14 came The guy in the cab, the guy in the cab, we was going
15 down the road."

16 Q If you would now, would you turn to Page 7 in that
17 statement, and fifth question down that starts out, "Okay, has
18 anybody ", would you read that down, read that question
19 down to the point on the page prior to the next question that
20 states "Okay, ah "?

21 A Okay The question you're referring to is "Okay, has
22 anybody mentioned that the reason that the cabdriver was
23 dropped because a robbery before now?"

24 Q The answer was "Yes, sir." Question. "Okay, did you guys
25 talked about that?" The answer was, "Yes, sir " The question,

1 "And when did y'all talk about it?" The answer "That night
2 before he got shot, we talked about robbing him "

3 SOLICITOR All right At this point in time, the State has
4 no further questions, Your Honor We'd pass the witness to Mr
5 Gardner

6 MR GARDNER May it please the Court?

7 THE COURT Yes, sir, Mr Gardner

8 **CROSS EXAMINATION OF DETECTIVE MATTHEW TWIGG**

9 **BY MR. GARDNER:**

10 Q Detective Twigg, there's no doubt that the Defendant
11 helped y'all, I believe you used the words he aggressively
12 helped y'all?

13 A Yes, sir

14 Q And there's no doubt that the family helped I believe they
15 signed over permission to search and give you property and
16 whatever you needed to help you in your investigation?

17 A That's correct

18 Q In fact, part of your investigation revealed that my client
19 was the one that called 911; is that correct?

20 A That is correct

21 Q And told them what had happened and where it was at?

22 A Yes, sir

23 Q Did you listen to that 911 tape?

24 A I have a transcript of the tape and I've listened to parts of
25 it

1 Q I have a transcript and I have listened to it The part that
2 you listened was the very beginning of it where the boy calls up
3 and says 911 and starts going into what he told them?

4 A Yes, sir

5 Q If you listened to that tape, would it be your opinion that
6 that was somebody who was scared and didn't know what was
7 going on and sort of out of their head, or would it be on the
8 other side, somebody calm, cool and collected

9 A You're asking me ---

10 Q If you don't remember, don't answer it, but do you
11 remember -- how long ago did you listen to it?

12 A It's been awhile

13 Q Okay

14 A As far as me to speculate on what he was thinking, I
15 couldn't do it

16 Q I just want to know from what, the sound of the voice if you
17 remembered it

18 A No, sir I'd have to listen to it again, sir

19 Q Okay Do you know George Gray?

20 A I know who he is, yes, sir

21 Q He's the fellow up in juvenile prison?

22 A That is correct

23 Q You just read parts of his statement Did you know that he
24 had a substantial juvenile record?

25 A I have not seen his record, no, sir

1 Q Did you know that at the time of this incident he was on
2 parole?

3 A I found out later but did not know at that time

4 Q You know now that he was parole?

5 A Yes, sir Had I known that night, he'd have gone to jail,
6 also

7 Q That's not -- what I'm trying to get at is he is definitely
8 somebody who has been in the system, has been
9 institutionalized, has been paroled out and has violated that
10 parole for something before this incident happened, is that
11 correct?

12 A I understand that to be the truth now, yes, sir

13 Q And I'm not saying anything about that, I'm just talking
14 about this fellow

15 A Yes, sir

16 Q And this fellow that's violated parole for something
17 unrelated to this prior to this happening was there, based on
18 your information, riding in the backseat of the cab or
19 somewhere in the cab, is that correct?

20 A Yes, sir, he was

21 Q Okay This fellow, this prisoner up there, he spoke with
22 Guy Osborne and gave this statement that you read You've
23 been doing this for a little while, you've got some good
24 experience and you've talked to a lot of co-defendants and
25 people that have been targeted for that sort of stuff, hadn't

1 you?

2 A I talk to quite a few people, yes

3 Q And it's not uncommon for one of them that's in prison to
4 point fingers at other people, is it?

5 A Please ask the question again

6 Q In your experience, is not uncommon or is it common, does
7 it happen more often than not, that the guy that's up in prison
8 for whatever reason wants to say yeah they talked about things,
9 they did things when in fact it's the person that's up in prison
10 that actually instigated or may even in fact have done it, has
11 that happened before in your experience?

12 A I've gotten statements from co-defendants who've indicated
13 themselves and others in crimes, yes, sir

14 Q Okay So, isn't it possible that when George Gray said
15 whatever he said that you read from, that he was in fact not
16 telling the truth?

17 A Again, you're asking me to speculate and I don't know if he
18 was telling the truth or not, sir

19 Q I know, but isn't it possible, you can tell me whether or not
20 it's possible if he was lying up there

21 A Well, it's possible he was telling the truth, also Either way,
22 yes, sir

23 Q Okay That's fair We're talking about somebody with a
24 substantial criminal record that is in prison due to his, for
25 whatever reason I can only speculate, trying to improve his

1 position by saying whatever you said that he read into the
2 record earlier, wouldn't that be possible?

3 A A lot of things are possible, sir I could ---

4 Q Thank you, sir

5 THE COURT Anything additional questions, Solicitor?

6 SOLICITOR Nothing more from the State, Your Honor

7 THE COURT You may step down Thank you, sir.

8 DETECTIVE TWIGG Thank you, sir

9 SOLICITOR The State would call Jerry Faulk to the stand

10 THE COURT Mr Faulk

11 MR GARDNER If he's gonna testify to what I think, we
12 might be able to do a stipulation

13 THE COURT Certainly. Before we get to that, is there
14 any reason that Detective Twigg cannot be excused?

15 MR GARDNER None from the Defense

16 SOLICITOR. None from the State, Your Honor

17 THE COURT Detective Twigg, if you want to stay, that's
18 fine, but if you have other business you need to tend you, you
19 may leave

20 DETECTIVE TWIGG I think I'd like to stay, Your Honor

21 THE COURT. That's fine

22 MR GARDNER. Your Honor, we'd stipulate that the
23 Defendant was charged with a disorderly conduct as a result of
24 something that occurred on a school bus at some point in time
25 That case was diverted into the Diversion Program and as a

1 result of this present incident, he has been kicked out of the
2 Diversion Program He has no prior record

3 SOLICITOR No prior record, just pending charges, Your
4 Honor

5 MR GARDNER One simple disorderly conduct

6 THE COURT. So stipulated

7 THE COURT Your Honor, that would be the State's case
8 in this waiver hearing

9 MR GARDNER Your Honor, I'd respectfully request five
10 minutes before we start ---

11 THE COURT Certainly We'll take about a ten-minute
12 break. Court stands adjourned

13 *****OFF THE RECORD*****

14 (On the Record.)

15 THE COURT Yes, sir, Mr Gardner

16 MR GARDNER May it please the Court, Your Honor,
17 we're ready to proceed and I'll call James Legette

18 THE COURT Come around and be sworn, please, sir
19 Come up here and place your left hand on the Bible, please, sir

20 **JAMES T. LEGETTE, HAVING**
21 **BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

22 THE COURT Please be seated Give us your name,
23 please, sir

24 MR JAMES LEGETTE James T Legette

25 THE COURT You might proceed, counselor

1 MR. GARDNER. Thank you, Your Honor

2 **DIRECT EXAMINATION OF JAMES T. LEGETTE BY MR.**

3 **GARDNER:**

4 Q Mr. Legette, where -- are you employed?

5 A Yes

6 Q Where do you work at, sir?

7 A Conbraco Industries

8 Q How long have you worked there?

9 A Seven years

10 Q Seven years. You live here in Horry County, obviously?

11 A Yes

12 Q You are related to Roger?

13 A Yes, I'm his uncle

14 Q You're his uncle. And I'd guess it'd be fair to say you've
15 known him all your life or have you known him -- how long have
16 you known him?

17 A Yes, sir

18 Q What was your reaction when you heard about this
19 incident?

20 A Well, I came home that Friday night, you know, I seen a lot
21 lights down there where -- I have to pass by where they stay at
22 And then Saturday morning, my father told me what happened
23 and I couldn't believe it

24 Q Couldn't believe Roger had done that?

25 A No

1 Q And why did it come as a shock to you?

2 A 'Cause he always been the quiet type

3 Q Quiet type?

4 A He never said much.

5 Q Never said much

6 A We'd use to go out and play ball in the yard and, you know,
7 the other guys would be talking and making fun and he'd just
8 be playing and wouldn't say too much.

9 Q How far do you live away from him?

10 A Probably about four or five miles

11 Q Four or five miles So, would you see them a good bit?

12 A Yes Maybe two times during the week days and Saturday
13 and Sunday, about every weekend

14 Q What would y'all do during this time?

15 A Play ball, go fishing

16 Q Go fishing

17 A Sometimes he'd come help me cut my yard

18 Q And how would you characterize him?

19 A For a child his age, he didn't act -- he acted more quiet, he
20 act like something was bothering him. He didn't never act up
21 like some teenagers do, always want to smoke, drink and party
22 and stuff like that He wasn't that type

23 Q Would he be more of a follower or a leader?

24 A A follower

25 Q A follower. Do you know why we're here today?

1 A Yeah

2 Q In your own words, tell me what your understanding of why
3 we're here today for?

4 A In my words, they said that he shot a taxi cab driver and
5 they're trying to try, try him for an adult as a juvenile

6 Q What do you think should happen?

7 A I don't -- a juvenile, myself, because I don't think he --
8 there's nobody that would just want a life like that

9 Q Let me ask you question, based on your knowing him, do
10 you think -- let's just imagine this event never happened and I
11 wish we could, I've very sorry this happened, but let's just
12 imagine it never happened. He came up to you and said, I think
13 I'm gonna move out on my own and get me a job and just go
14 on and live my life like an adult, do you think he's possibly -- do
15 you think it would be possible for him to do that?

16 A No

17 Q Why is that?

18 A Because it -- I got a son that's kind of slow, and he older
19 than Roger, and I think he much, mind much more of a
20 teenager than Roger is, I mean he slow 'cause he had a
21 accident, but him and Roger, like, you know, they be together,
22 they be to their self, they wouldn't like being out with other
23 guys and stuff

24 Q So, let me ask you another way If this Judge saw fit to
25 keep him in Family Court where he'd have the opportunity to be

1 rehabilitated through the Department of Juvenile Justice
2 System, do you think at some point in time that he would be
3 able to, however long that was, four or five years down the road
4 or whatever, that he would be reached a point where he could
5 become a productive member of society and be rehabilitated?

6 A Yes, yeah

7 Q And on the other side of that coin, if the Judge saw fit to
8 transfer jurisdiction to adult court, what's your feelings about
9 that?

10 A I feel that the young man, really, won't have nothing to live
11 for You know, I don't think he really -- if he was mine, I
12 don't think he really know enough about life and have did
13 anything with his life yet He don't even know what to do with
14 his life

15 Q Please answer any questions that the Solicitor has for you

16 **CROSS EXAMINATION OF JAMES T. LEGETTE BY THE**
17 **SOLICITOR:**

18 Q Mr. Legette, do you have any knowledge of Roger ever
19 having a gun prior to this?

20 A No

21 Q Okay How do you characterize a murder crime, is it a
22 serious crime?

23 A Yes, to a certain extent, yes

24 Q Isn't it the most serious crime we have in the State of
25 South Carolina?

1 A I ---

2 Q. Is there anything worse then murder?

3 A No, I would guess not

4 Q Would you agree with me that a murderer should be the
5 most severe punishment out of any other type of criminal?

6 A No, not really, with the simple reason -- the mind of the
7 person who committed the murder

8 Q Isn't it true that murder is the most serious crime and
9 punishable by the most amount of say jail time or even
10 someone's life, isn't that true?

11 A: That's true by the law

12 Q No further questions

13 THE COURT Redirect?

14 MR GARDNER No, Your Honor

15 THE COURT. You may step down Thank you, sir

16 MR GARDNER Reverend Sherman.

17 THE COURT Come up, please, sir, and place your left
18 hand on the Bible. Raise your right hand

19 **REVEREND H.B. SHERMAN,**
20 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

21 THE COURT Thank you, sir Please be seated Give us
22 name, sir Give us your name

23 REVEREND SHERMAN Reverend H B Sherman

24 THE COURT Thank you, sir You might proceed

25 MR GARDNER Thank you, Your Honor

DIRECT EXAMINATION OF REVEREND H.B. SHERMAN BY
MR. GARDNER:

Q Reverend Sherman, I guess I came assume that you are a pastor somewhere?

A Yes, sir

Q Preacher is what we used to call them when I was growing up Where is that at?

A At Cool Springs.

Q Cool Springs

A Yes

Q Are you related to Mr Legette?

A No, sir

Q Okay Do you know him or his family?

A I don't him personally, he is much younger, but his family, we was raised up together

Q When you say his family, are you talking about his mother and his grandmother ---

A Grandmother, grandmother, I don't much know his -- I know his mother, but I don't her from one of the others

Q How do you know this family?

A By working with them

Q What kind of work with them?

A Baccar [sic] and so on like that

Q Do they come to your church?

A Oh, yeah, they's members there

1 Q How about the young fellows here like Roger and ---

2 A Like I said ---

3 Q --- and some of the other guys that he hangs out with that
4 looks kind of like him?

5 A I don't know, I couldn't tell -- answer that because if he
6 come with his mother and whoever it is with him, I don't know
7 him personal like that

8 Q But you know that they're there

9 A I know the family's there.

10 Q All right Based on what you know about that, how would
11 you characterize this family or even Roger here and the boys
12 that he comes to church with?

13 A Well ---

14 SOLICITOR Your Honor, I'd have to object to this
15 question There's been no foundation as to whether he knows
16 this boy and would be able to characterize him

17 MR GARDNER I just asked him based on what he knows
18 If he says he doesn't know anything and he can't say anything
19 ---

20 THE COURT Rephrase the question then, please, Mr
21 Gardner

22 **BY MR. GARDNER:**

23 Q Based on your knowledge of this -- Roger here through the
24 family through working with them in tobacco or going to church
25 or whatever it is that you know, whatever it is you testified to,

1 based on that information what kind of fellow would you think
2 he is?

3 A Well, as far as the young man, like I said, I don't know
4 anything about him, but it is wrong to do wrong, I know that, it
5 is wrong to do wrong, and the family, they was raised up
6 together right there at Bucksville and works together in tobacco
7 and so on Sister Legette or his grandfather, let me say that,
8 the grandfather, we raised up together

9 Q Do you know why we're here today?

10 A I beg your pardon?

11 Q Do you know what this hearing is all about?

12 A Yes, sir What I heard.

13 Q It's about whether or not Roger gets tried as an adult or a
14 juvenile, do you know what that means?

15 A I don't believe so

16 Q If I told you that if it's tried in Family Court, he would go
17 through the Juvenile Justice system, get some training and be
18 rehabilitated and things of that nature, if he conversely was
19 moved up to adult court, he would possibly, if proven guilty,
20 spend the rest of his life in prison, that's basically what this is
21 about What's your feelings on what should happen to him
22 today?

23 A Well, I say like if it was me and never got into this thing,
24 one thing, I mean, it happens -- one thing happens one time to
25 somebody all the time and if he got into it this time, I believe he

1 reserve [sic] another chance by his parents and things They
2 didn't never thought, I don't reckon, that he would've got into
3 this

4 Q Please answer any questions that the Solicitor might have
5 for you

6 SOLICITOR: No questions, Your Honor

7 THE COURT. You may step down. Thank you, sir

8 MR GARDNER Annie Mae Legette, Your Honor

9 THE COURT Come around and be sworn, please, ma'am
10 If you'll come up and place your left hand on the Bible

11 **ANNIE MAE LEGETTE, HAVING**
12 **BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

13 THE COURT: Please, be seated Can you give us your
14 name, please, ma'am

15 MS LEGETTE Annie Mae Legette

16 THE COURT You might proceed, counselor

17 MR. GARDNER Thank you, Your Honor

18 **DIRECT EXAMINATION OF ANNIE MAE LEGETTE BY MR.**
19 **GARDNER:**

20 Q Ms Legette, are you related to Roger?

21 A: Yes, sir

22 Q How are you related to him?

23 A By his mother.

24 Q Through his mother?

25 A His mother and his grandmother, his grandmother is my

1 daughter She is my granddaughter

2 Q Does that make you ---

3 A. His step -- his great grandmother

4 Q. His great grandmother

5 A But he always call me Momma?

6 Q Why does he always do that?

7 A Because they stay with me all the together You know, her
8 children, they always stayed with me, you know how children is,
9 always stay with me, that's just -- then he start staying, she'd
10 go and he'd stay, and he'd come -- you know, he always called
11 me Momma And I always take him just as my child That's the
12 way it's been

13 Q So, you've -- I didn't mean to cut you off -- so, you've
14 spent a lot of time with him?

15 A Yeah, I spend all -- when Roger was born, he was born, he
16 come in my house

17 Q How would you characterize him, good fellow, a bad fellow?

18 A No, he was a good fellow around me, and I never knowed
19 nothing bad about him You know how many children be, they
20 be -- some of them be fighting and scrapping, but I never knew
21 Roger to fight and scrap, he always walk away We always call
22 that coward, that's the word we would put it in I never know
23 him nothing but a good fellow

24 Q Would you characterize him as more of a follower or more
25 or a leader?

1 A I would say a follower, if it was gonna be anything, I'd say
2 he was a follower

3 Q If he was to move out on his own, say this event never
4 happened, same question I asked someone earlier, if he came
5 to you and said, Momma, I'm tired of school, I want to get a
6 job, I want to be an adult, I want to pay rent, I want to do all
7 these things that adults do, do you think he'd be capable of
8 doing that at this young age?

9 A No I never know him, you know, had a job or try to get no
10 job Now, I ain't never said nothing like that to -- he would be
11 talking about going to school, you know

12 Q No, I'm not saying he did, I just saying suppose that he
13 said I feel like I'm an adult now, I think I can do whatever I
14 need to do to make a living and be a father and pay bills and
15 that kind of stuff Do you think he's smart enough and
16 sophisticated enough to do that kind of stuff?

17 A No, sir

18 Q Thank you Please answer any questions the Solicitor has
19 for you

20 SOLICITOR No questions, Your Honor

21 THE COURT You may stand down, thank you, ma'am

22 MR GARDNER Wanda Rogers, Your Honor

23 THE COURT Come around and be sworn, please, ma'am
24 If you'll come up and place your left hand on the Bible, raise
25 your right hand

**WANDA ROGERS, HAVING
BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

THE COURT Please be seated Give us your name,
please, ma'am

MS ROGERS Wanda Rogers

THE COURT You might proceed, counselor

MR GARDNER Thank you, Your Honor, may it please the
Court

**DIRECT EXAMINATION OF WANDA ROGERS BY MR.
GARDNER:**

Q Ms Rogers, you are Roger's ---

A Mother

Q --- mother, is that correct?

A That's correct

Q And the lady that just testified, you're related to her?

A I'm her granddaughter

Q You're her granddaughter So, Roger is her great
grandson

A Great grandson

Q Okay I got it now Tell me what kind of boy your son is

A Well, Roger is a good boy At times, he got in troubles like
normal children would be, but I never seen him fight I have
another son, he never fight him I never seen him fight anyone
Really, I never seen Roger hurt anybody in his life

Q How did you feel when they told you about this?

1 A Shocked like I'm still am I still don't believe it

2 Q If you had to answer whether or not you thought he was
3 more of a leader or more of a follower, how would you answer
4 that?

5 A I could tell you, he is a follower

6 Q What do you base that on?

7 A Because of anything that usually I know Roger would do,
8 troublewise, he always took after somebody else. He would talk
9 to me about like why I did that, you know, and he would, you
10 know, get upset, you know, he said everybody thought he was a
11 punk or whatever But basically, Roger to himself, he is by
12 himself, he always been by himself

13 Q Now, and I don't want to embarrass you or anything, but
14 would you say that he's a little bit slower than some of the
15 people his age?

16 A Yeah When it come to the teenagers that I've been
17 around, yes His mind is -- tends to be younger than what it is

18 Q If he came up to you and said Mom -- and this is a
19 hypothetical, not that he's did it -- I know he hasn't done this,
20 but if came up to you and said, Mom, I'm gonna get me a job
21 and get me an apartment, whatever, and be an adult and
22 everything, do you think that at his young age, he'd be capable
23 of doing that?

24 A No

25 Q Why do you say that?

1 A Because I raised him and I know what he's capable of at
2 that age and he showed me that he wasn't

3 Q Even though you think he's a little bit slower than people
4 his age or maybe older, as more of a follower, do you think that
5 if he got sent to the Department of Juvenile Justice to be
6 rehabilitated and spent, four or five, however many years they
7 kept him up there, do you think that he would be able to get
8 rehabilitated and become a productive member of society
9 whenever he was released?

10 A Yes, I could say pretty much that everything he done been
11 through since this happened, yeah, pretty well, no I don't
12 think Roger would come out to be no bad person at all

13 Q In fact, he's been up -- locked up every since this
14 happened, hasn't he?

15 A Right

16 Q Have you visited with him any while he's up there?

17 A Yes, I done been at least five or six times

18 Q What do the people tell you that you talk to up at DJJ while
19 you're up there?

20 A All the, most of the guards that I've talked to they say he's
21 a very much respectful child He jump up and do things, you
22 know, he does keep things clean He doesn't talk to people very
23 much, he was a loner They talked to me about that why he be
24 so alone I told them he always been alone like that

25 Q Anything else you want to tell the Judge

1 A Truly, my speaking this morning is that, I don't know what
2 happened that night But I am gonna say this much, there's a
3 lot more that happened that night that anybody could speak on,
4 even Roger himself No, I don't believe he committed that
5 crime, not alone Ain't nobody can't tell me, because I know
6 him

7 Q Well, that's -- without talking about the crime or anything,
8 we're talking about him and I know your feelings for the boy up
9 in Columbia, but without talking about that stuff right now ---

10 A Okay

11 Q Anything else you want to tell the Judge about whether or
12 not you think he should be tried as an adult or tried as a
13 juvenile

14 A Well, if there could be, possible that he could be tried for a
15 juvenile, I would very much appreciate it so he could have
16 another shot at life because he did nothing with his life, nothing
17 I mean, he, he done this, I think he knows how serious it is and
18 I think he know what's going on here and I do know that before
19 you ask that he asked for another shot at life

20 Q Please answer any questions that the Solicitor may have for
21 you

22 **CROSS EXAMINATION OF WANDA ROGERS BY THE**
23 **SOLICITOR:**

24 Q Ms. Rogers, isn't it true you'd do anything to help your son?

25 A Not really I'm gonna tell you this much, when you commit

1 wrong, you pay for wrong, I've found that out If Roger can
2 show me in his heart that he had a mind to go out there and do
3 something wrong, yes, I would've -- I would've been there for
4 him, but he got to stood up for himself and pay for what he
5 done

6 Q Would it be fair to say if someone committed a murder,
7 they should pay for committing that murder?

8 A I'm gonna say ---

9 Q Just hypothetically

10 A It depends

11 Q Okay So, it depends, if someone shoots somebody, they
12 could be punished, the should be punished, they shouldn't be
13 punished?

14 A I'm not gonna say they shouldn't be punished; no, I'm not
15 gonna say that at all

16 Q. Now, if there was a stranger that -- some other individual,
17 didn't even know him, just pulled the trigger and shot him in
18 cold blood, do you think that individual should be punished?

19 A As I say, again, it depends

20 Q What would it depend on?

21 A It depends on -- I, I -- listen, first of all, you asked me a
22 question, I'm just answering it exactly ---

23 Q I understand. I'm just -- what would it depend on?

24 A I'm saying this, we all -- we pay for what we did, but I'm
25 saying accident or -- I didn't live a lot of my life, but he didn't

1 live his life

2 Q Okay

3 A Basically, I would look at it, let's give his age and what's
4 going on

5 Q Okay On that same day of this alleged incident, did you
6 call the police at any point then?

7 A I sure did, yes, I did.

8 Q Why did you call the police?

9 A You want to know why I called?

10 Q Yes

11 A First of all, I never seen my child had no gun, because I'd
12 never owned one From the children's going on that day, I
13 didn't have -- didn't know what was gonna take place, one of
14 them could've got shot playing -- they was playing with the gun

15 Q Who was playing with the gun?

16 A My son but my son didn't have the gun at the time, my
17 nephew had the gun at the time

18 Q So, your son had the gun at that time, too?

19 A Not that time when I called the police that first time, no

20 Q But was he with some boys that had that gun?

21 A He was with my nephew, yes

22 Q Do you know your son to smoke marijuana?

23 A No, I heard about it, I've talked to him about it

24 Q What types of punishment did you give your son growing
25 up?

1 A He didn't get to look at t v , he'd get to stay in the house,
2 and once more he has got spankings, yeah

3 Q Isn't it true he'd sneak out at night after he'd been told to
4 stay in the house?

5 A Rog, once -- okay, once had snuck [sic] out the house

6 Q Isn't it true, Roger has witnessed some violence between
7 you and your ex-husband?

8 A. Roger seen quite a few fights between me and my ex-
9 husband

10 Q Okay Do you think someone that sees something like that
11 would tend to be a little violent himself?

12 A No, no At that time, when Roger seen all that -- I'm just
13 gonna say what he said to me when he seen me beat up, he
14 would look at me, "Why does somebody want to hurt
15 someone?" Quite a few times, other things would happen, not
16 with me with other people, he would ask me why do people hurt
17 people, those were his words No, he doesn't -- Rog, no, he
18 was never violent, he always tried and -- whatever It affect
19 him but it affect him in not in a way to want to hurt somebody

20 Q Do you think your son knows how serious this crime is?

21 A Of course, I do

22 Q Do you think he knows what he did?

23 A To be honest on that, I can't answer that one very fairly. I
24 can't answer that right now

25 Q But he understands the seriousness of this crime, you

1 believe?

2 A I think he know it's serious, I just don't he know quite how
3 serious

4 Q Do you know how serious this crime is?

5 A Yes, I know

6 Q How serious is it?

7 A It's very serious

8 Q Very serious Okay No further questions

9 MR GARDNER Nothing, Your Honor

10 THE COURT You may step down Thank you, ma'am

11 MR GARDNER Your Honor, if I may just have one
12 moment

13 THE COURT Yes, sir

14 MR GARDNER Your Honor, at this time, my client would
15 like to make a statement if the Court would permit it

16 THE COURT Mr Gardner, I certainly do not want him to
17 be deprived of making any statement to the Court, but on the
18 other hand, I certainly would not want to prevent or preclude
19 the Solicitor from having the opportunity to cross examine him if
20 he is going to address the Court

21 MR GARDNER I understand that, Your Honor. If I may
22 just have thirty more seconds

23 THE COURT Yes, sir

24 MR GARDNER We've talked about this issue at great
25 lengths, Your Honor -- I'm sorry I think we just had a meeting

1 of the minds and that would be our showing Thank you

2 THE COURT Very well

3 MR GARDNER We would respect the opportunity for a
4 brief argument if the Court would see fit

5 THE COURT Certainly Do y'all need to take a brief
6 break or are both of you ready at this time

7 MR GARDNER The defense is ready

8 SOLICITOR State's ready

9 THE COURT All right Be glad to hear from you

10 MR GARDNER May it please the Court, Your Honor?

11 THE COURT Yes, sir

12 MR GARDNER This is a very serious case and we don't
13 dispute that Again, I'm sorry it happened and I wish it didn't
14 and I wish I was somewhere else right now There are some
15 factors that the United States Supreme Court has set forth for
16 us and they're basically three factors that the South Carolina
17 folks said that we need to look at We've had waiver hearings
18 for this type, for homicides, these type of charges, not all of
19 them get waived up, some of them do We've had them in this
20 building, in this room right here, where they were waived up
21 and where they weren't waived up We have to look at each
22 case on a case by case basis and what you look at is the child is
23 charged Starting with the factors of Kent, Number One, the
24 seriousness of the alleged offense Well, as -- I agree with the
25 Solicitor, I think we all do, there is no more serious offense than

1 this, but if we look at just the seriousness alone, we wouldn't
2 need the other factors. Anytime we accuse somebody of
3 murder, we would just waive them on up there. In fact, our
4 Legislature, recently, as you're aware of, Your Honor, has
5 revised our transfer statutes and have set sixteen, they've
6 taken the judiciary out of it for this type of crime. So, fifteen
7 and below, they still want somebody with a robe on to look at it.
8 I think we need to strongly at that. If they would've want to
9 carte blanche murder charges to be transferred without looking
10 at the other factors, I don't think the Supreme Court would've
11 said look at these other factors and I don't think the Legislature
12 would've cut it off at fifteen, sixteen. You have a fifteen-year-
13 old boy alleged committing a homicide, he has since changed --
14 turned to sixteen. So, even though it's serious, I think what we
15 need to look at more importantly, Your Honor, is level of
16 sophistication and maturity. South Carolina uses three things in
17 their reports and I know you've read the report, and I'm sorry I
18 was not here for the day when the expert testified on behalf of
19 the State, but the most important one that I see is level of
20 sophistication and maturity. The other two, likelihood of
21 reasonable rehabilitation, and the third one, adequate
22 protection of the public. Adequate protection of the public is
23 gonna be the same for all of our charges because if he is
24 convicted of this in Family Court, he's gonna go up there just
25 like anybody else his age that's convicted of that and he'll be

1 incarcerated and he'll be -- so, the public will be safe from him
2 and he'll get the opportunity to be rehabilitated. The likelihood
3 of reasonable rehabilitation, the factors set forth in the report
4 and the testimony that was provided to y'all the other day, I
5 think it outweighs -- I think that it's very strong that he has a
6 good reasonable likelihood of rehabilitation. I don't want to
7 belabor the point of what the psychologist testified to because I
8 know you saw it first hand, I didn't, I studied the transcript. I
9 have gone through it and -- with Ms. Pratt, talking with her, she
10 talking with the Solicitor, I think the evidence is overwhelming
11 that he is more of a child, that he has a better opportunity to
12 be, in spite of that, rehabilitated, that his level of sophistication
13 and maturity is way below someone even his age. There's been
14 testimony here that he's not to a level of sophistication and
15 maturity -- as I understand that you look at somebody's living,
16 not the type of crime, you don't have to be sophisticated to
17 commit a homicide, you look at this person and you look at his
18 living environment and you look at his lifestyle. Does he hang
19 out with gangs, does he have -- does he -- if he was to go out
20 on the street on his own would he be able to survive. Nobody
21 up here, including the State's witness, psychologist, believes
22 that he could survive on the streets, he doesn't have that level
23 of sophistication and maturity. That is an overwhelming -- that
24 is the strongest point in this case. That's, I think, is what both
25 sides are looking at and he don't have it, Your Honor. But in

1 spite of that, we've got strong evidence, strong evidence that
2 he could be rehabilitated. And I understand the seriousness of
3 the charge, and again I'm sorry about it, but looking at the
4 adequate protection of the public there in place, looking at the
5 reasonableness of likely rehabilitation, the evidence is
6 overwhelming that it's more likely than not that he would -- that
7 he is a good candidate for that. And the evidence is undisputed
8 that his level of sophistication and maturity is below -- beyond
9 or below that of people even his own age. Even the State's
10 witness, the psychologist, testified that. And as policy
11 argument, Your Honor, somebody like this, somebody who is
12 more of a follower than a leader, somebody who doesn't live on
13 his own, somebody who's -- and we've got -- the State's made
14 an allegation that there's three people in there and you've
15 heard testimony from one of them who has got a substantial
16 criminal record, who is implicating -- and the inference I draw
17 from that, Your Honor, is he's trying to do whatever he can do
18 to improve his position if that means talking about some of the
19 other people in the car as well as himself and what took place
20 and what was talked about, I don't think we can -- that's very
21 reliable information. So, I would -- I don't think that helps the
22 State. We've got some strong concerns about that. The
23 ultimate punishment awaits this fellow if you see fit to transfer
24 him and I think we need to look at it closely and look at his level
25 of sophistication and maturity, that's the most important thing,