

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
W. Jeffrey Young, Circuit Court Judge

Case No.: 2011-CP-23-04926

RECEIVED

OCT 30 2013

S.C. Supreme Court

Harold Anthony Trout, ... Appellant,

v.

State of South Carolina, ... Respondent.

APPENDIX VOLUME I

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Counsel for Appellant

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IN THE SUPREME COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Harold Anthony Trout,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-4926

ORDER OF DISMISSAL
GRANTING WHITE V. STATE
BELATED APPEAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS, CLERK
2013 MAR - 4 PM 4:45

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 25, 2011. The Respondent made its return and partial motion to dismiss on March 15, 2012. An evidentiary hearing into the matter was convened on February 13, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and proceeded pro se. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant's trial counsel, Kenneth C. Gibson, Esquire testified at the hearing. The Court had before it a copy of the trial transcript, the records of the State Grand Jury Clerk of Court, the application for post-conviction relief (and subsequent Addendum), and the Respondent's return and partial motion to dismiss.

PROCEDURAL HISTORY

The State Grand Jury indicted the Applicant for official misconduct in office (2009-GS-47-0006, count 1) and attempting to influence a juror by written or oral communication (2009-GS-47-0006, count 2). Kenneth C. Gibson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty of attempting to

influence a juror by written or oral communication. On March 31, 2011, the Honorable D. Garrison Hill sentenced the Applicant to six (6) months imprisonment. A notice of appeal was filed at the South Carolina Court of Appeals, but it was dismissed based on counsel's failure to properly perfect the appeal.

ALLEGATIONS

In his application for post-conviction relief, the Applicant alleges his conviction is unlawful for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to properly perfect the notice of appeal.
2. Prosecutorial/court misconduct:
 - a. "Prosecutor and Judge conspired and engaged in Vindictive Prosecution by threatening too [sic] and allowing the filing of another criminal charge two weeks before the trial."
3. Trial court error:
 - a. Court's violation of the Speedy Trial Law.
 - b. Court's violation of the South Carolina Constitution.
 - c. Court's refusal to accept the Applicant's motion to dismiss under the Speedy Trial Act of 1974.

On September 14, 2011, the Applicant filed an Addendum to his PCR application in which he raised the following issues:

1. "Withholding Evidence of Government Corruption from Greenville Grand Jury and intimidation of Jurors by Chief Justice of Appeals, Judge John Few."
2. "Violation of [the Applicant]'s constitutional rights under Article 1 – the right to regress."
3. "Grand Jury Foreman [sic] David Smith lying to Judge Few about not having any type of relationship with [the Applicant] prior to being picked as Foreman of the Grand Jury."
4. "After it was determined, that Grand Jury Foreman David Smith committed [sic] perjury by lying about having no relationship with [the Applicant], under false statements, due process, and violations of State and Federal laws, Solicitor Bob Ariail and SLED Agent Gene Donahue entered and retrieved private communications from a secured computer located at [the Applicant]'s Office. Still, with no 'Probable Cause' that

[the Applicant] broke any laws of this State or Country, Agent Donahue obtained [the Applicant]'s personal phone records and then with the help of Judge Garrison Hill Confiscated all of [the Applicant]'s Computers and destroyed all Evidence of 'Government Corruption' they found on [the Applicant]'s Computers."

5. "Greenville County Administrator testified at [the Applicant]'s trial on March 29, 2011. Mr. Joe Kernell committed [sic] perjury by stating that In January of 2006, [the Applicant] tried to get him to throw some work to his friend, David Smith."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe the witness who testified at the hearing, and to closely pass upon his credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Partial Motion to Dismiss

At the start of the hearing, counsel for the Respondent argued its partial motion to dismiss. Counsel argued the majority of the issues raised in the PCR application and subsequent addendum were not proper issues for post-conviction relief. This Court finds the Respondent's motion is well-taken.

The Applicant raised the issue of prosecutorial misconduct and vindictive prosecution. This Court finds the Applicant failed to present any evidence to meet his burden of proving this issue. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness). The Applicant raised several issues related to purported errors by the trial judge. This Court finds these issues must be raised on direct appeal, not in post-conviction relief. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885

(1974) (finding post-conviction relief is not a substitute for an appeal); see also Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (holding a post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal). The Applicant raised the issue that perjury allegedly occurred at his trial. This Court finds this is not a cognizable issue under the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-20(a) (2003). Accordingly, all issues – except for those related to trial counsel’s failure to properly file the notice of appeal – are dismissed with prejudice.

Belated appeal

This Court finds the Applicant’s allegation that he was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291, n.1, 342 S.E.2d 60, 60, n.1 (1986) (“Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.”).

Trial counsel admitted that, while he filed a notice of appeal after the Applicant’s trial, he did not order the trial transcript. Trial counsel testified that, as this was a requirement of perfecting the appeal, the matter was dismissed. The Court affirmatively finds the Applicant did

WJG

not knowingly and voluntarily waive his right to a direct appeal. The Court concludes the Applicant is entitled to a belated review of his conviction. The Applicant's lack of a direct appeal can be remedied by a petition for belated review pursuant to White v. State.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

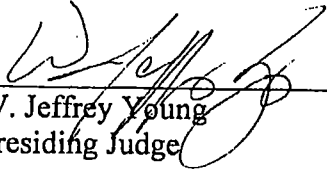
CONCLUSION

Based on all the foregoing, this Court finds and concludes the majority of the issues raised in the PCR application and addendum are not properly brought under the Uniform Post-Conviction Procedure Act. This Court, however, concludes the Applicant is entitled to a belated direct appeal of his criminal conviction pursuant to White v. State.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of a signed copy of this order, the Applicant must file a Notice of Appeal at the South Carolina Supreme Court in order to secure the appropriate appellate review. The Applicant is directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and Rule 243(i), SCACR for the appropriate procedure in securing belated appellate review.

AND IT IS SO ORDERED this 22 day of Feb, 2013.


W. Jeffrey Young
Presiding Judge

Sumter, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-4926

Harold Anthony Trout,)
)
Applicant,)
)
v.)

ORDER

State of South Carolina,)
)
Respondent.)

2013 APR 12 A 10:11

FILED-CLEAR OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

The above-captioned case is a post-conviction relief matter arising from an application filed July 25, 2011. An evidentiary hearing was convened on February 13, 2013 and the final order of dismissal was signed by this Court on February 22, 2013 and filed March 4, 2013.

This matter is back before the Court by way of the Applicant's "(Amended) Motion to Alter or Amend/Reopen the Case and Take Additional Evidence" dated March 14, 2013. The Respondent made its return to this motion on March 22, 2013.

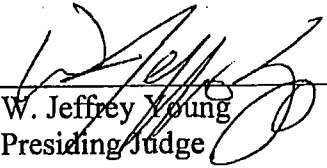
Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and the Respondent's return, this Court is not persuaded to alter or amend the judgment or reopen the record in this case. The Applicant was permitted to present his allegations at the hearing and the State made its partial motion to dismiss. The Applicant proceeded forward with his case and presented testimony related to his allegation that trial counsel was ineffective in failing to properly file a notice of appeal. At the conclusion of the hearing, this Court granted relief in the form of a belated appeal. The final order in this case fully comports with Rule 52(a), SCRCP.



IT IS THEREFORE ORDERED:

1. That the Applicant's motion is denied and dismissed.

AND IT IS SO ORDERED this 8 day of April, 2013.


W. Jeffrey Young
Presiding Judge

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Greenville

Harold Anthony Trout,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE FAMILY COURT FOR THE
SEVENTH JUDICIAL CIRCUIT

13th

C.A. No.: 2011-CP-42-4926

FILED CLERK OF COURT
GREENVILLE, S.C.
JAN 13 2013

2013 MAR 14 P 3:52

**MOTION TO ALTER OR AMEND/
REOPEN THE CASE AND TAKE
ADDITIONAL EVIDENCE**

Pursuant to Rule 59, the Applicant hereby moves this Court to alter or amend its order, and further to reopen the case, take new evidence, and amend its order accordingly.

The Applicant's request for relief in this case arise out of a claim of ineffective assistance of counsel. The Application and Amended Application in this case allege a *prima facie* case for relief which require the Applicant be given an opportunity to submit evidence to support. In this case the Applicant represented himself, without the benefit of counsel either in the drafting of the Application/Amended Application or in the actual hearing in the matter.

Applicant's allegations should be liberally construed. In viewing the Applicant's pleadings it is clear that the Conditional Order of Dismissal fails to address numerous issues that were raised by the Applicant in the pleadings and

which the Applicant sought to offer evidence on at the post conviction hearing.

The Applicant submits that he was not afforded an opportunity to present evidence on certain issues that were adequately pled and properly within the scope of the present post conviction relief action. The Applicant therefore moves to have this Court reopen the judgment and take evidence on those issues. The Applicant further moves to have the Court alter or amend its Order of Dismissal to include a ruling on issues to the extent that it did hear evidence on those issues and, to alter or amend its ruling on the other issues as follows:

The Applicant submits that the Court essentially prevented him from pursuing any issues other than the issue of trial counsel's failure to perfect the Applicant's direct appeal.

The Applicant submits that he was entitled to introduce evidence on the issue of whether or not his trial counsel was ineffective relating to issues of the State's seizing and destruction of critical evidence prior to his trial. In addition to the question of whether counsel should have attempted to move for a dismissal of charges, the Applicant is entitled to show that trial counsel failed to move for suppression of certain evidence where related evidence or portions of evidence were destroyed by the State and could have held exculpatory value. Applicant is further entitled to present evidence as to whether trial counsel was ineffective in

raising the issues or preserving the issues for direct appeal.

The Applicant submits that he was entitled to introduce evidence on the issue of whether or not trial counsel was ineffective relating to the State's intimidation of potential defense witnesses. The Applicant was not afforded the opportunity to present evidence on issue of whether trial counsel properly raised this issue, presented evidence on the issues, and preserved such issue for direct appeal. This issue is properly within the scope of post conviction relief.

The Applicant further submits that he was entitled to introduce evidence on the issue of whether trial counsel was ineffective relating to the suppression of evidence including but not limited to evidence obtained by search warrant in his case. The Applicant was further entitled to raise and obtain a ruling on whether the issue if raised, was properly preserved for appeal by trial counsel.

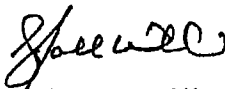
The Applicant further submits that he was entitled to introduce evidence as to the effectiveness of trial counsel to preserve other issues during the trial sufficiently for such issues to be addressed by the appellate courts in this case. As the Applicant has been granted a belated direct appeal he faces the difficulty that he may still not have his issues ruled on by this Court if trial counsel was ineffective in preserving the issues for appeal.

Wherefore, the Applicant submits that he is entitled to have the case

reopened on additional evidence taken regarding the above issues and as to all issues which involve the preservation of error by the trial counsel. That a summary dismissal of the Applicant's allegations prevented the Applicant from the process to which he is entitled.

Based on the foregoing, the Applicant moves to have the Court alter or amend its Order of Dismissal and to reopen the case and allow the Applicant to offer evidence on all of the allegations in his pleadings as well as issue preservation to ensure he is afforded a full and fair opportunity to be heard on appeal.

Respectfully submitted,



J. Falkner Wilkes, 12893
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Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Applicant

March 14, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Harold Anthony Trout,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE FAMILY COURT FOR THE
SEVENTH JUDICIAL CIRCUIT

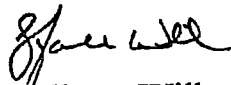
C.A. No.: 2011-CP-42-4926 P 3: 52

CERTIFICATE OF SERVICE
MOTION TO ALTER OR AMEND/
REOPEN THE CASE AND TAKE
ADDITIONAL EVIDENCE

I certify that on the 14th day of March, 2013, I served a copy of the Applicant's Motion, as above captioned, on the Respondent by placing a copy of same in the U.S. Mail, postage prepaid, addressed to counsel of record:

Karen Ratigan
PO Box 11549
Columbia, SC 29211

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile

Counsel for Applicant

March 14, 2013.

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

2013 MAR 15 P 3: 31

23

Harold Anthony Trout,

C.A. No.: 2011-CP-~~42~~-4926

Applicant,

(AMENDED)

vs.

**MOTION TO ALTER OR AMEND/
 REOPEN THE CASE AND TAKE
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The Applicant further submits that he was entitled to introduce evidence on the issue of whether trial counsel was ineffective relating to the suppression of evidence including but not limited to evidence obtained by search warrant in his case. The Applicant was further entitled to raise and obtain a ruling on whether the issue if raised, was properly preserved for appeal by trial counsel.

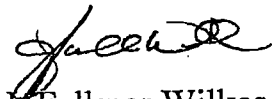
The Applicant further submits that he was entitled to introduce evidence as to the effectiveness of trial counsel to preserve other issues during the trial sufficiently for such issues to be addressed by the appellate courts in this case. As the Applicant has been granted a belated direct appeal he faces the difficulty that he may still not have his issues ruled on by this Court if trial counsel was ineffective in preserving the issues for appeal.

Wherefore, the Applicant submits that he is entitled to have the case

reopened on additional evidence taken regarding the above issues and as to all issues which involve the preservation of error by the trial counsel. That a summary dismissal of the Applicant's allegations prevented the Applicant from the process to which he is entitled.

Based on the foregoing, the Applicant moves to have the Court alter or amend its Order of Dismissal and to reopen the case and allow the Applicant to offer evidence on all of the allegations in his pleadings as well as issue preservation to ensure he is afforded a full and fair opportunity to be heard on appeal.

Respectfully submitted,



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Counsel for Applicant

March 14, 2013.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE THIRTEENTH JUDICIAL CIRCUIT

Harold Anthony Trout, 2013 MAR 15 P 31 C.A. No.: 2011-CP-23-4926

Applicant,

vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE
MOTION TO ALTER OR AMEND/
REOPEN THE CASE AND TAKE
ADDITIONAL EVIDENCE

I certify that on the 14th day of March, 2013, I served a copy of the Applicant's Amended Motion, as above captioned, on the Respondent by placing a copy of same in the U.S. Mail, postage prepaid, addressed to counsel of record:

Karen Ratigan
PO Box 11549
Columbia, SC 29211

Respectfully submitted,



J. Falkner Wilkes, 12893
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Counsel for Applicant

March 14, 2013.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Harold Anthony Trout,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-4926

RETURN TO "(AMENDED) MOTION TO
ALTER OR AMEND/REOPEN THE CASE
AND TAKE ADDITIONAL EVIDENCE"

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL J. HENDERSON
2013 FEB 2 AM 10:19

TO: J. FALKNER WILKES, ESQUIRE, ATTORNEY FOR THE APPLICANT

Respondent, by and through undersigned counsel, making Return to Applicant's "(Amended) Motion to Alter or Amend/Reopen the Case and Take Additional Evidence," would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief (PCR) action filed July 25, 2011.
2. An evidentiary hearing was convened on February 13, 2013 at the Greenville County Courthouse.
3. Applicant proceeded pro se at the hearing. Applicant's trial counsel, Kenneth C. Gibson, Esquire testified.
4. At the start of the hearing, Respondent argued a partial motion to dismiss. Respondent argued: Applicant had not met his burden of proving prosecutorial misconduct, issues relating to alleged perjury were not cognizable PCR issues, and issues relating to alleged trial court errors were properly addressed on direct appeal. This Court granted the partial motion

Copy mailed to

Attorney Wilkes

on 4/2/13

to dismiss.

5. After trial counsel testified, Respondent consented to a belated appeal in this case. This Court issued an order dated February 22, 2013 and filed March 4, 2013 granting both the partial motion to dismiss and the belated appeal.

6. Applicant – through counsel – filed an “(Amended) Motion to Alter or Amend/Reopen the Case and Take Additional Evidence” dated March 14, 2013 (which was received by Respondent on March 18, 2013). Applicant moves this Court to: (a) alter or amend the final order of dismissal to include findings on all issues raised in the pleadings, (b) reopen the record and take evidence on those issues, (c) take additional testimony on issues of ineffective assistance of counsel that were not included in the PCR application or subsequent Addendum.

7. Respondent submits Applicant’s Motion to Alter or Amend Judgment should be denied. Applicant is not requesting either an alteration or amendment to the final order. Rather, Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

8. Respondent submits Applicant’s request to reopen the record must be denied. A PCR applicant is given “one bite at the apple” in the PCR setting, and the PCR evidentiary hearing is the venue for all evidence and arguments to be made to the court. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

9. Respondent submits Applicant’s request to add new issues to his PCR action must be denied. It is abundantly clear that a party cannot raise an issue for the first time in a post-trial

motion. See South Carolina Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("It is well settled that an issue may not be raised for the first time in a post-trial motion."); State v. Hamilton, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999) (holding "it is improper to argue new matter in a motion for reconsideration"). As such, the time to have raised this issue was at the evidentiary hearing. The record is now closed to new evidence and new arguments. This information was known – or should have been known – to Applicant and counsel at the evidentiary hearing and was not raised. Applicant should not be allowed to reopen the record and raise an entirely new issue at this time.

10. Respondent submits the post-conviction relief court fully reviewed and properly ruled upon all issues and that the "(Amended) Motion to Alter or Amend/Reopen the Case and Take Additional Evidence" must be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

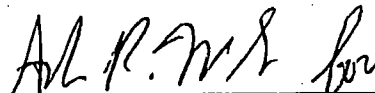
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 22, 2013

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

HAROLD ANTHONY TROUT

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-23-4926

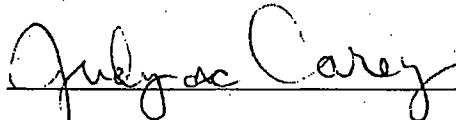
AFFIDAVIT OF SERVICE BY MAIL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. DICKENS
2013 APR 2 AM 10:20

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Motion to Alter or Amend the Order of Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville SC 29601

DATED this 22nd day of March, 2013.


Judy A. C. Carey, Legal Assistant
For Respondent

FORMS 5

STATE OF SOUTH CAROLINA)

County of Greenville)

Harold Anthony (Tony) Trout)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2011-CP-23-04926

APPLICATION FOR
POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSJEN
2011 JUL 25 AM 11:29
2011 JUL 25 AM 11:39

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention

Kirkland Prison, and Perry Correctional Prison, Pelzer, SC

2. Name and location of Court which imposed sentence:

Court of General Sessions in Greenville, SC

3. Name(s) of co-defendant(s) (if any) **NONE**

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: **2009-GS-47-006 Attempting to Influence Juror by Oral or**

Written Communication

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Inmate Trout's counsel failed to order the full transcript and the appeal was Dismissed

(b) The fact that the Mr. Trout refused to plead guilty to the Improper Communication with Juror charge; with the Judge's full consent, the Prosecutor and Judge conspired and engaged in Vindictive Prosecution by threatening too and allowing the filing of another criminal charge two weeks before the trial; (that allegedly occurred 3 years prior to filing date), by these actions, (under the Color of Law and Judicial Misconduct) put both the Prosecutor and Judge in violation of 18 U.S.C. sec. 3161(b).

The court, Judge Hill, must follow his sworn oath and follow the below criminal procedures, as adamantly defined by the:

THE UNITED STATES CONSTITUTION

Article. VI.

Clause 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART II - CRIMINAL PROCEDURE

CHAPTER 208 - SPEEDY TRIAL Sec. 3161 and Sec. 3162.

Sanctions

-STATUTE-

(4) otherwise, if (an attorney for the Government) willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

(C) by imposing on any attorney for the Government a fine of not to exceed \$250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

(E) by filing a report with an appropriate Disciplinary Committee.

In August 2010, Mr. Trout received an ORDER ON DEFENDANT'S MOTION FOR RECONSIDERATION (Filed with the Clerk Aug 23, 2010) stating that Judge Hill rescinded his oral order in denying Mr. Trout's motion to dismiss and that Mr. Trout could present and argue the motion to dismiss at a later hearing. (Exhibit 102)

Mr. Trout's response Letter of Motion to this capricious behavior by the Judge is documented by being filed with the clerk James Parks Dated Sep 7, 2010.

(Exhibit 103)

On March 28, 2011, Mr. Trout's attorney gave the Court the Motion to Dismiss: Superseding indictment for misconduct in office and Attempting to influence a juror by written or oral communication. The motion was filed under the Speedy Trial Law: Chapter 208-Speedy Trial, Sec. 3161 /Sec. 3161b. The Court denied the motion to dismiss.

(Exhibit 104)

- (d) On March 28, 2011, Mr. Trout made the motion before Court to exercise his rights under the SC Constitution: Article 1, Declaration of Rights, Sec. 14, to have compulsory process for obtaining witness in his favor, and to be fully heard in his defense by himself or by his counsel or by both. Judge Hill denied this motion, warning Mr. Trout not to speak.

12. Prior to this application, have you filed with respect to this conviction?

- (a) any petition in a State Court under South Carolina Law. YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions, or applications in this or any other Court? YES

(c) if known, citations of any written opinions or orders entered pursuant to each such disposition: See included letter From Supreme Court (Exhibit 105)

14. Has any ground set forth in (10) been previously presented to this or any other Court, State, or Federal, in any petition, motion, or application which you have filed?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

I. Denial of due process and access to Court, in violation of 5th and 6th amendments

(b) the proceedings in which each ground was raised:

**I. See attached Copy of Lawsuit (6: 10-cv-1297)
(EXHIBIT 106)**

16. if any ground set forth in (10) has not previously been presented to any Court; State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a)

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

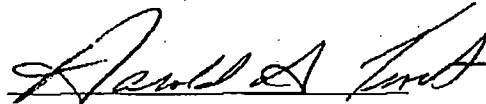
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? **YES**

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF**

I, Harold A. (Tony) Trout hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefore. In support of my application, I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this 25th
day of July 2011

Notary Public

Mark Joseph Elzy, Jr.

My Commission Expires: 3-8-2020

Harold A. (Tony) Trout

vs.

ADDENDUM

CIVIL ACTION COVERSHEET

2011-CP-23-04926

Greenville Circuit Judge Garrison Hill, Attorney
General Henry McMasters, Assistance Attorney
General Creighton Waters, Attorney Ernest Hamilton,
GJ. Clerk James Parks, Solicitor Bob Ariail, Paul
Wickensimer, Former Greenville Grand Juror David
Smith, Sled Agent Gene Donahue, Chief Justice of the
SC Appeals Court, Judge John Few, Greenville County
Administrator, Joe Kernell

Submitted. By: Harold A. (Tony) Trout
Suite A
2300 Standing Springs Rd.
Greenville, SC 29605

SC Bar#: PROPRIO PERSONA
Telephone #: 864-346-4397
Fax#:
Other:
E-mail: TONYTROUT1@AOL.COM

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings and other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

* If Action is Judgment/Settlement do not complete

XXXX JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.

- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts
Constructions (100)
Debt Collection (110)
Employment (120)
General (130)
Breach of Contract (140)
Other (199)

Torts - Professional Malpractice
Dental Malpractice (200)
Legal Malpractice (210)
Medical Malpractice (220)
Previous Notice of Intent Case
2011-CP-23-04926

Notice/ File Mgt. Mal (220)

Other (299)

Assault/Slander/Defamation (300)
Conversion (310)
Motor Vehicle Accident (320)
Premises Liability (330)
Products Liability (340)
Personal Injury (350)
Wrongful Death (360)

Other (399)

Real Property
Claim & Delivery (400)
Condemnation (410)
Foreclosure (420)
Mechanic's Lien (430)
Partition (440)
Possession (450)
Building Code Violation (460)

Other (499)

Inmate Petitions

XXXXX PCR (500)
Habeas Corpus (520)
Habeas Corpus (530)
Other (599)

Judgment/Settlement
Death Settlement (700)
Foreign Judgment (710)
Magistrate's Judgment (720)
Minor Settlement (730)
Transcript Judgment (740)
Lis Pendens (750)
Transfer of Structure
Settlement Payment Rights
Application (760)
Other (799)

Administrative Law/Relief

- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

Appeals

- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm. (991)

Other (999)

Special/Complex/Other
Environmental (600) Pharmaceuticals (630)
Automobile Arb. (610) Unfair Trade Practices (640)
Medical (620) Out-of-State Depositions (650)
Other (699) Motion to Quash Subpoena in
Out-of-County Action (660)
Sexual Predator (510)

Submitting Party Signature:

Harold A. Tony Trout

Date: 8-30-11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Harold A. (Tony) Trout

VS.

Greenville Circuit Judge Garrison Hill,
Attorney General Henry McMasters,
Assistance Attorney General Creighton
Waters, Attorney Ernest Hamilton, GJ Clerk
James Parks, Solicitor Bob Ariail, Paul
Wickensimer, Former Greenville Grand Juror
David Smith, Sled Agent Gene Donahue,
Chief Justice of the SC Appeals Court, Judge
John Few, Greenville County Administrator,
Joe Kernell

ADDENDUM

2011-CP-23-04926

Originally filed 07-25-11

11:29AM

**APPLICATION FOR
POST-CONVICTION RELIEF****INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that your answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: Kirkland Prison and Perry Correctional Prison, Pelzer, SC
2. Name and location of Court which imposed sentence: Court of General Sessions, Greenville SC
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2009-GS-47-006- ATTEMPTING TO INFLUENCE JUROR BY WRITTEN OR ORAL COMMUNICATION
5. Date sentence was Imposed and term. March 31, 2011 Six Months

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Revised 3/2003

- (a) Withholding Evidence of Government Corruption from Greenville Grand Jury and intimidation of Jurors by Chief Justice of Appeals, Judge John Few
- (b) Violation of Mr. Trout's constitutional rights under Article 1-the right to regress
- (c) Grand Jury Foreman David Smith lying to Judge Few about not having any type of relationship with Mr. Trout prior to being picked as the Foreman of the Grand Jury
- (d) After it was determined, that Grand Jury Foreman David Smith committed perjury by lying about having no relationship with Mr. Trout, under false statements, due process, and violations of State and Federal laws, Solicitor Bob Ariail and SLED Agent Gene Donahue entered and retrieved private communications from a secured computer located at Mr. Trout's Office. Still, with no "Probable Cause" that Mr. Trout broke any laws of this State or Country, Agent Donahue obtained Councilman's Trout personal phone records and then with the help of Judge Garrison Hill Confiscated all of Trout's Computers and destroyed all Evidence of "Government Corruption" they found on Mr. Trout's Computers
- (e) Greenville County Administrator testified at Mr. Trout's trial on March 29, 2011. Mr. Joe Kernell committed perjury by stating that In January of 2006, Mr. Trout tried to get him to throw some work to his friend, David Smith.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Exhibit 111
- (b) Exhibit 112
- (c) Exhibit 113
- (d) Exhibit 114
- (e) Exhibit 115

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law?
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

Revised 3/2003

VERIFICATION

SWORN to and subscribed before me this _____
day of _____, 2_____.

My Commission Expires: _____

STATE OF South Carolina
COUNTY OF Greenville

AFFIDAVIT

COMES NOW the Affiant, Harold A. (Tony) Trout, under penalty of Perjury, and sayeth:

On February 28, 2007, Greenville County Councilman Tony Trout gave the Foreman of the Grand Jury 3 sealed envelopes addressed to: (THE GREENVILLE GRAND JURY). The Jury Foreman asks Paul Wickensimer how to proceed with the evidence that had been presented to them. Clerk to Court then took the evidence that was presented to the Grand Jury and Conspired with Judge Miller and Judge Few to withhold the evidence of "Government Corruption" that was submitted from the Public Official, Councilman Tony Trout, to the Grand Jury

On April 17, 2007 By the order of Judge Miller, the three envelopes were all sealed. Due to the criminal actions of Paul Wickensimer, Circuit Judge Miller, and the Chief Justice of the SC Appeals Court, Judge John Few, the Public Official Greenville Councilman Tony Trout again presented evidence to the Grand Jury.

On September 26, 2007, by a court ordered subpoena, Councilman Trout testify before the Grand Jury. At that time, all Jurors voted to investigate the evidence that was presented to them by Councilman Trout.

At the next Grand Jury Meeting:

On October 24, 2007, Judge Few invited and allowed the News Media in the Jury room, while he charged the Jury with their duties and allowing the news to see and record all the jury members

Transcript of meeting with Grand Jury and Media October 24, 2007

Chief Justice of the SC Appeals Court, Judge John Few:

"In fact, this, this Discussion that I am having with you now is a public hearing. There are members of the press in here. Uh, when you ask me to subpoena a witness, I am aware of no mechanism for me to accomplish that task without it becoming public.

The Clerk of Court has to issue the subpoena. *An official act of a publicly elected official, under our law, is not secret. It is publicly available.* When you ask to have a witness subpoenaed, the identity of that witness is available to the public. The dates, on which you meet, uh, I am not aware of any provision under our law that would enable the court to seal from the public the dates on which the Grand Jury meet.

The identity of the Grand Jury is not something that I am aware can be kept secret."

Transcript of meeting with Grand Jury November 5, 2007

Chief Justice of the SC Appeals Court, Judge John Few:

"I'm going to tell you this. I don't want anybody to be alarmed. You will be contacted by a member of the State Law Enforcement Division. That's the second exception to the rule that you may not discuss what went on in here. Well, actually, let me take that back. You may discuss -- I'm not prohibiting you from discussing with a representative of the State Law Enforcement Division the same matters that you just discussed with me. It won't be necessary for you to discuss what happened in the Grand Jury room. All right."

UNIDENTIFIED JUROR: Excuse me, Your Honor, may I ask a question. Why would it be necessary for a member of the South Carolina Law Enforcement to contact him especially if he's done nothing wrong?

Chief Justice of the SC Appeals Court, Judge John Few:

"In -- you know, the justice system works by assigning different roles to different entities. The Grand Jury has a role. I have a role. The Solicitor has a role. The defense attorneys have a role. The petit jury has a role. The clerk's office has a role. Most of the time those roles are carried out independently of each other and it is not necessary to know why each other is doing what they are doing. Some times the different entities learn about what the other players are doing. You just learned about something that is going on in the way of investigating the integrity of the Grand Jury. It is not necessary for you to know why that is going on."

THE FOREPERSON:

I was so concerned about information getting leaked out of here, that I called SLED and asked them some questions about wiretapping. Then I realized that as I walked out of the room here, as I walked in the Solicitor's office back there, the policemen are sitting on one side. And the ladies that process the indictments are sitting right beside them. That's probably how information gets released. Then I thought may be not, may be there's wire tapping going on.

Chief Justice of the SC Appeals Court, Judge John Few:

"Okay. The reason I'm doing what I'm doing is legal. It is not personal. They are not related to any of the subject matter of whatever it is that you all investigated. It simply goes to my role of ensuring that your work stays intact and the process stays intact. That is my reason. You may not reveal anything other than the fact that you're no longer on the Grand Jury."

I swear the foregoing to be true pursuant to 28 U.S.C. sec. 1746

This Date August 30, 2011

Harold A. (Tony) Trout

NOTARY PUBLIC OF SOUTH CAROLINA

Exhibit 111

Right to petition in the United States

And Also In Greenville, SC

The right to petition is protected by the First Amendment in the Bill of Rights.

The right to petition in the United States is guaranteed by the First Amendment to the Constitution, and specifically prohibits Congress from abridging "the right of the people...to petition the Government for a redress of grievances." Although often overlooked in favor of other more famous freedoms and sometimes taken for granted,^[1] many other civil liberties are enforceable against the government only by exercising this basic right, making it a fundamental right in both representative democracies (to protect public participation) and constitutional republics, like the United States.

Historic Roots

The American right of petition is derived from British precedent. In Blackstone's *Commentaries*, first published in 1765, Americans in the Thirteen Colonies read that "the right of petitioning the king, or either house of parliament, for the redress of grievances" was a "right appertaining to every individual."

In 1776, the Declaration of Independence cited King George's perceived failure to redress the grievances listed in colonial petitions, such as the Olive Branch Petition of 1775, as a justification to declare independence:

In every stage of these Oppressions, We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act that may define a Tyrant, is unfit to be the ruler of a free people.

Exhibit 112

Historically, the right can be traced back¹ to English documents such as Magna Carta, which, by its acceptance by the monarchy, implicitly affirmed the right, and the later Bill of Rights 1689, which explicitly declared the "right of the subjects to petition the king".

First use

The first significant exercise and defense of the right to petition within the U.S. was to advocate the end of slavery by petitioning Congress in the mid 1830s, including 130,000 such requests in 1837 and 1838. In 1836, the House of Representatives adopted a gag rule that would table all such anti-slavery petitions. John Quincy Adams and other representatives eventually achieved the repeal of this rule in 1844 on the basis that it was contrary to the right to petition the government.

Scope

While the prohibition of abridgement of the right to petition originally referred only to the federal legislature (the Congress) and courts, the incorporation doctrine later expanded the protection of the right to its current scope, over all state and federal courts and legislatures and the executive branches of the state^[8] and federal governments. The right to petition includes under its umbrella the right to sue the government, and the right of individuals, groups, and possibly corporations to lobby the government.

References

1. Porter, Lori. "Petition - SLAPPs". First Amendment Center.
<http://www.firstamendmentcenter.org/petition/topic.aspx?topic=slapp>.
2. Newton, Adam; Ronald K.L. Collins. "Petition - Overview". First Amendment Center.
<http://www.firstamendmentcenter.org/petition/overview.aspx>.

Exhibit 112

3. "*Blackstone's Commentaries on the Laws of England*". The Avalon Project at Yale Law School.
<http://www.yale.edu/lawweb/avalon/blackstone/bk1ch1.htm>.
3. Quote from the *Declaration of Independence*. Full text available at "The Declaration of Independence: A Transcription". The U.S. National Archives and Records Administration.
http://www.archives.gov/national-archives-experience/charters/declaration_transcript.html.
4. Quote from *Bill of Rights 1689*. Full text available at "English Bill of Rights 1689". The Avalon Project at Yale Law School.
<http://www.yale.edu/lawweb/avalon/england.htm>.
5. Kilman, J. & Costello, G. (Eds). "Analysis and Interpretation of the Constitution, 2002 ed. - First Amendment - Religion and Expression" (PDF). Congressional Research Service.
<http://www.gpoaccess.gov/constitution/pdf2002/019.pdf>.
6. "Struggles over Slavery: The 'Gag' Rule". The U.S. National Archives and Records Administration.
http://www.archives.gov/exhibits/treasures_of_congress/text/page10_text.html.
7. "The Right to Petition". Illinois First Amendment Center.
<http://www.illinoisfirstamendmentcenter.com/petition.php>.
8. Newton, Adam. "Petition - Right to sue". First Amendment Center.
<http://www.firstamendmentcenter.org/petition/topic.aspx?topic=sue>.
9. Corporate Personhood debate
(http://en.wikipedia.org/wiki/Corporate_Personhood_Debate)

TESTIMONY BEFORE JUDGE JOHN FEW October, 2007

JUDGE JOHN FEW: I am just trying to understand what you told me.

DAVID SMITH: His name was William Lindsay.

JUDGE JOHN FEW: You thought that William Lindsay was doing something wrong. What does that have to do with Mr. Trout?

DAVID SMITH: I am going to get to that. I took the issue to Joe Dill. Joe Dill was my County Council. William Lindsay was doing something that I thought was unethical. He said I don't want to do anything about it. He is the one who actually put his name on the planning commission committee. I took the issue to Mr. Trout. Mr. Trout said okay. I will do something about it. He said the only way I will do something with it is if you put your name on the complaint to the state. So, I did that. I also talked with some County Council members. It included Mr. Trout about illegal aliens.

JUDGE JOHN FEW: Okay. Do you --

DAVID SMITH: I know Mr. Sloan. I was the one, Ricardo when he asked to bring something in, he that in here. I'm telling you things that you probably don't even want to know.

JUDGE JOHN FEW: Do you have any other than what you have described; do you have any relationship with Mr. Trout?

DAVID SMITH: Other than politically, No. Other than trying to, what other type of relationship?

JUDGE JOHN FEW: Obviously, I don't know. I am just asking you.

DAVID SMITH: It's not like we go play golf or go fishing or anything like that.

JUDGE JOHN FEW: Well, I am not asking you whether you play golf or go fishing. I am simply asking you whether or not you have any type of relationship with Mr. Trout. Maybe I should make the question a little

more broadly stated. Do you have any type of relationship -- other than what you described to me now; do you have any relationship with any witness who has testified before the Grand Jury?

DAVID SMITH: No.

JUDGE JOHN FEW: That obviously since I know that Mr. Trout testified, that includes Mr. Trout.

DAVID SMITH: No.

JUDGE JOHN FEW: You don't have any type of business relationship.

DAVID SMITH: No, sir.

JUDGE JOHN FEW: Well let me go over a few things with you then. I discussed with the Grand Jury the oath that the Grand Jury took and that that know that. And nobody may know that. If you or any member of the Grand Jury reveals that or reveals anything in regards to what the Grand Jury is doing, you will be in contempt of Court. In addition, if you or any other Grand Jury were not to tell me something that I have instructed you to tell me or if you were to tell me something that is not true, you have violated your oath, you have violated my order you will be in contempt of Court and you will possibly be guilty of perjury. So, that is basically, what was explained to Grand Jury on the 24th. You, okay. Is there anything then that you want to tell me about your situation with Mr. Trout or with counsel or with your having made as you said a big issue out of the roads and that type of thing? Anything else you need to tell me?

David Smith: That is it. I have told you everything.

STATE OF South Carolina
COUNTY OF Greenville

AFFIDAVIT

COMES NOW the Affiant, Harold A. (Tony) Trout, under penalty of
Perjury, and sayeth:

I Harold A. (Tony) Trout first meet David Smith in 2004.

He offered to help me with my campaign, and we became friends. He helped me put out signs and other things to help me are elected.

At that time, I considered him my best friend, and we called each other almost everyday.

Our families went out together; dinning and going to plays at the Warehouse Theater.

We also hired an attorney to help us purchase property in Spartanburg.

He also helped me to understand the Greenville Road Program and this was when I realized just how corrupt the Program was.

I swear the foregoing to be true pursuant to 28 U.S.C. sec. 1746.

This Date August 30, 2011

Harold A. (Tony) Trout

NOTARY PUBLIC OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
)
 IN RE: INVESTIGATION INTO)
 POSSIBLE IMPROPER) AFFIDAVIT OF AGENT GENE DONOHUE
 COMMUNICATIONS) SOUTH CAROLINA LAW ENFORCEMENT
 WITH THE GREENVILLE) DIVISION
 COUNTY GRAND JURY)
)

Comes now Special Agent, Gene Donohue and upon being duly sworn, hereby states under oath the following:

1. That I am employed with the South Carolina Law Enforcement Division, commonly known as SLED.
2. That I have been so employed as a special agent for 9 years.
3. That prior to my employment with SLED, I was employed in law enforcement for approximately 14 years.
4. That on October 25, 2007, I was contacted by Judge John Few regarding possible improper dissemination of information regarding an internal grand jury proceeding occurring with the presently active grand jury for Greenville County, and I began an investigation as requested.
5. As a part of this investigation, I received various e-mails which indicate communications between Mr. Tony Trout and the prior foreman of the grand jury hereinafter referred to as R.S.) which occurred outside the realm of any formal meeting of the grand jury or grand jury subcommittee.
6. I reviewed these e-mails which were sent both from Mr. Trout to R.S. and from R.S. to Mr. Trout.
7. Upon further review of the e-mails, I learned that the body of some of the e-mails reads "for your ears only" as an attempt to keep secret the contents of the communication. The substance of the message is contained in an "attachment" which was named but not included in the copies I reviewed. Affiant believes that the content of these attachments would be stored on the computer used by Mr. Trout to send the message.
8. The review of the emails specifically revealed that an email from Mr. Trout to Beth Padgett dated October 26, 2007, was forwarded by Mr. Smith to R.S. on October 26, 2007 by email. This agent has reason to believe that Mr. David Smith obtained the email from Mr. Trout; thereby establishing a substantial basis to believe that there are contacts between Mr. Smith and Mr. Trout by means of electronic communication. Mr. Smith is a member of the Grand Jury and close personal associate of Mr. Trout hereinafter described.

Certified Copy
 Paul B. W. Williams
 Clerk of Court C.P. & G.S.
 Greenville County, SC
 Dated 12-14-07

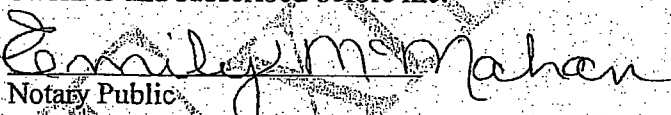
9. I was directed by Judge Few to provide the information to the 13th Circuit Solicitor for further investigation of this matter, which I did.
10. As part of the investigation, I learned that in open court on October 24, 2007, the Greenville County Grand Jury formally requested permission and received authority to form a sub-committee for the purpose of gathering information on various issues to determine if a full grand jury investigation needed to be conducted. Further, my investigation revealed that Mr. John Hansley, Deputy County Administrator was subpoenaed to testify before the grand jury and to produce documents relating to the Greenville County Roads Program.
11. Working in conjunction with the Solicitor's office, I then obtained a court order for the production of the phone records of Mr. Trout to determine if any improper contact had been made between Mr. Trout and any member of the grand jury.
12. Pursuant to that investigation, I reviewed the phone records of Tony Trout, including outgoing and incoming phone numbers, for the months January 1, 2007 through November 7, 2007 obtained as the result of an Order for Production of Records signed by Judge D. Garrison Hill, Court of General Sessions, Greenville County.
13. Contained in these phone records are 190 calls between Tony Trout and Mr. David Smith, a current member of the grand jury, who has now been selected as the new foreman.
14. Affiant further states that these reviewed communications have occurred almost daily during the months of October and the first of November (the phone records only included up until November 7, 2007), and in some instances several communications have occurred in a single day.
15. This information indicates a pattern of on-going communication between Mr. Trout and Mr. Smith outside the realm of any formal meeting of the grand jury or grand jury subcommittee meeting. It is the content of this communication that is unknown at this time.
16. Further investigation has revealed that Mr. Trout and David Smith, the present foreman of the Grand Jury have an extensive history together dating back to 2005 and the matters in which they were both involved at that time are intricately related to the matter being investigated by the Grand Jury Subcommittee, i.e. the Greenville county roads program.
17. This affiant believes that the number of telephone contacts between Mr. Trout and David Smith, the present foreman of the grand jury coupled with the fact that Mr. Trout has communicated with the past foreman by means of email, it is reasonable to believe that Mr. Trout is communicating with David Smith, the present foreman by email and such the need to obtain the computers to determine the content of the communications is vital.
18. Further, the attempts to keep the content of the communication 'secret' further supports this affiant's belief that a review of the content of the communication is essential to this investigation

19. Due to the extent and the duration of these communications, it is believed by this affiant that further investigation is warranted into Mr. Trout's communications with sitting members of the grand jury, to determine if this communication violates Section 16-9-350; Attempting to Influence Juror by written or oral communication; and/or the common law offense of Contempt of Court.
20. In order to fully investigate these communications, this affiant believes it is necessary to seize and search the computers belonging to and being used by Tony Trout and David Smith in order to evaluate the content and extent of the e-mail communication between active grand jury members and Mr. Trout.
21. To the best of my knowledge and belief, Mr. Trout's residence and business are located at the same, which is 107 Silver Ridge Court, Greer, South Carolina, 29651 and it is reasonable to believe that his computers are located at that address, to include a lap top computer provided to him by Greenville County.
22. To the best of my knowledge and belief, Mr. Smith's residence and business are located at the same address, which is 2438 Poole Road, Greer, South Carolina 29651 and it is reasonable to believe that his computer(s) is located at that address.
23. Any delay in obtaining these computers, and thus analyzing the content of these communications, may allow further and unlawful interference with the current grand jury.

Further, the affiant said not.


Gene Donohue
Special Agent SLED

Sworn to and subscribed before me:


Notary Public

This 14 day of December 2007
My Commission Expires: 03-04-15

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

IN RE: INVESTIGATION INTO)
POSSIBLE IMPROPER)
COMMUNICATIONS WITH) ORDER FOR THE SEARCH AND SEIZURE
THE GREENVILLE COUNTY) OF PARTICULAR COMPUTERS
GRAND JURY)

This matter comes before me on an affidavit of SLED agent, Gene Donohue, requesting a court order for the seizure of certain computers. The affidavit sets forth sufficient probable cause to believe that evidence of potential criminal activity may exist on computers sought by the agent, Gene Donohue and that said computers are located at the address of 107 Silver Ridge Court, Greer, South Carolina, 29651.

Therefore, it is hereby ORDERED, that agents with the State Law Enforcement Agency (SLED) are hereby authorized to search the premises of 107 Silver Ridge Court, Greer, South Carolina 29651 and to seize any and all computers owned by or used by Mr. Tony Trout, either desk top, lap top or otherwise, which are located at 107 Silver Ridge Court, Greer, South Carolina, 29651. Furthermore, agents of SLED are hereby authorized to seize any computer within Mr. Trout's immediate possession or vicinity.

Once seized, the agents are hereby authorized to search said computers for any and all communications between Mr. Trout and any member, present or former, of the Greenville County Grand Jury to determine not only the extent of the communications, but also the substance of any communication.

This court order shall not be valid for more than 10 days from the date of the issuance.

A written inventory of all property seized pursuant to this order shall be made to the issuing judge, D. Garrison Hill, within ten days from the date of this order and such inventory is to be signed by the officer executing this order, and a copy of such inventory shall be furnished to the person whose premises are being searched if demand for such copy is made.

A copy of this order shall be delivered to the person in charge of the premises searched to obtain the computers at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable.

So ordered this 14th day of Dec., 2007.

D. Garrison Hill
D. Garrison Hill
Resident Circuit Court Judge

2007 DEC 14 AM 11:51
FILED IN COURT OF COMMON PLEAS
certified copy
D. W. Wiedemann
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 12-14-07

STATE OF South Carolina
COUNTY OF Greenville

AFFIDAVIT

COMES NOW the Affiant, Harold A. (Tony) Trout, under penalty of
Perjury, and sayeth:

On March 29, 2011, Greenville County Administrator testified at Mr. Trout's trial. Mr. Joe Kernell committed perjury by stating that In January of 2006, Mr. Trout tried to get him to throw some work to his friend, David Smith.

I Harold A. (Tony) Trout, Give the Reasons why I would never ask Joe Kernell for such a favor. Or to ever do anything unethical.

February 2005- I publicly accused Kernell of Falsify the cost of the MLK holiday. (.5 million dollars)

April 05, 2005- I investigated why Kernell kept ex-County Administrator on payroll at \$100,000 a year. After his response, I investigated for my self, and found that he was lying about everything. I reported it to Council and told them he was a liar. Then he had to fire the person. (John Brausch)

June 05, 2005- Went public about Kernells budget, and him trying to give Bob Taylors son-in-law a \$20,000 raise.

September 19, 2005- Ask for cost of lawsuits about roads.

October 08, 2005- Paper said I was considering warrant on Kernell for violation of FOI

November 6, 2005- I had to pay \$674.90 out of my own pocket to Joe Kernell to get the information I requested under the FOI. First Councilman ever charged.

Then... I discovered that Administrator Joe Kernell spent over an hour everyday on his county computer surfing the internet for escort services for the purpose of soliciting the women for sex and sending and receiving obscene e-mails from his lover in another state. I gave the full council all the information along with all Law Enforcement.

Now after all of the things he and I went through in 2005, who would believe I would ask him to do anything, much less something unethical.

I swear the foregoing to be true pursuant to 28 U.S.C. sec. 1746

This Date August 30, 2011

Harold A. (Tony) Trout

NOTARY PUBLIC OF SOUTH CAROLINA

22.2012 11:43 AM

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Harold Anthony Trout,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-4926

RETURN AND PARTIAL MOTION TO DISMISS

In response to the post-conviction relief application filed July 25, 2011, the Respondent would show this Court:

I.

The State Grand Jury indicted the Applicant for official misconduct in office (2009-GS-47-0006, count 1) and attempting to influence a juror by written or oral communication (2009-GS-47-0006, count 2). Kenneth C. Gibson, Esquire represented the Applicant. After the State brought the case to trial, the Applicant was found guilty of attempting to influence a juror by written or oral communication. On March 31, 2011, the Honorable D. Garrison Hill sentenced the Applicant to six (6) months imprisonment. A notice of appeal was filed at the South Carolina Court of Appeals, but it was dismissed based on counsel's failure to properly perfect the appeal.

Attached herewith and incorporated herein by reference are the records of the State Grand Jury Clerk of Court regarding the subject conviction and the trial transcript.

II.

In his application for post-conviction relief, the Applicant alleges his conviction is unlawful for the following reasons:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-4926
COUNTY OF GREENVILLE	)	
	)	
Harold Anthony Trout,	)	
	)	
Applicant,	)	
	)	RETURN AND PARTIAL MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

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Attached herewith and incorporated herein by reference are the records of the State Grand Jury Clerk of Court regarding the subject conviction and the trial transcript.

II.

In his application for post-conviction relief, the Applicant alleges his conviction is unlawful for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to properly perfect the notice of appeal.
2. Prosecutorial/court misconduct:
 - a. "Prosecutor and Judge conspired and engaged in Vindictive Prosecution by threatening too [sic] and allowing the filing of another criminal charge two weeks before the trial."
3. Trial court error:
 - a. Court's violation of the Speedy Trial Law.
 - b. Court's violation of the South Carolina Constitution.
 - c. Court's refusal to accept the Applicant's motion to dismiss under the Speedy Trial Act of 1974.

On September 14, 2011, the Applicant filed an Addendum to his application for post-conviction relief in which he raised the following issues:

1. "Withholding Evidence of Government Corruption from Greenville Grand Jury and intimidation of Jurors by Chief Justice of Appeals, Judge John Few."
2. "Violation of [the Applicant]'s constitutional rights under Article 1 – the right to regress."
3. "Grand Jury Foreman [sic] David Smith lying to Judge Few about not having any type of relationship with [the Applicant] prior to being picked as Foreman of the Grand Jury."
4. "After it was determined, that Grand Jury Foreman David Smith committed [sic] perjury by lying about having no relationship with [the Applicant], under false statements, due process, and violations of State and Federal laws, Solicitor Bob Ariail and SLED Agent Gene Donahue entered and retrieved private communications from a secured computer located at [the Applicant]'s Office. Still, with no 'Probable Cause' that [the Applicant] broke any laws of this State or Country, Agent Donahue obtained [the Applicant]'s personal phone records and then with the help of Judge Garrison Hill Confiscated all of [the Applicant]'s Computers and destroyed all Evidence of 'Government Corruption' they found on [the Applicant]'s Computers."
5. "Greenville County Administrator testified at [the Applicant]'s trial on March 29, 2011. Mr. Joe Kernell committed [sic] perjury by stating that In January of 2006, [the Applicant] tried to get him to throw some work to his friend, David Smith."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is

without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland

v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Respondent submits the Applicant has raised several issues regarding trial court error. These issues, however, are not cognizable in a PCR action. Rather, these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised these issues on appeal and the failure to do so has waived these allegations as grounds for relief. The Respondent seeks summary dismissal of these issues.

V.

The Respondent notes the Applicant has raised allegations of prosecutorial misconduct and vindictiveness. The Respondent would argue the Applicant has failed to meet his burden of proving there was any actual vindictiveness in his case. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

VI.

The Respondent notes that, in his Addendum, the Applicant raised allegations of perjury and withholding of evidence. The Court should summarily dismiss these allegations based on

the Applicant's failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal of these allegations.

VII.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VIII.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the Respondent requests: (1) that a hearing be held solely on the issue of ineffective assistance of trial counsel

and (2) that counsel be appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

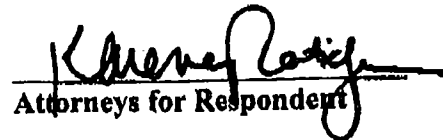
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 15, 2012

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

3 Harold Anthony Trout,)
4 Applicant,) TRANSCRIPT OF RECORD
5 -vs-) 2011-CP-23-04926
6 The State of SC,)
7 Respondent.) February 13, 2013
8 Greenville, South Carolina
9
10

11 B E F O R E:

12 HONORABLE W. JEFFREY YOUNG, JUDGE
13
14

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

16 PRO SE
17 Attorney for the Applicant

18 KAREN C. RATIGAN, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

ORIGINAL

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WITNESSES

PAGE

KENNETH CLIFTON GIBSON

Direct examination by the Applicant

9

1 THE COURT: Yes, ma'am.

2 MS. RATIGAN: Thank Your Honor, may it please the Court.
3 The last case of the afternoon is Harold Anthony Trout vs. the
4 State of South Carolina, the Docket Number is 2011-CP-23-4926.
5 Mr. Trout was indicted by the statewide grand jury for
6 official misconduct in office and attempting to influence a
7 juror by written or oral communication, he was represented on
8 these charges by Mr. Gibson. Case was brought to trial, he
9 was found not guilty of official misconduct in office but he
10 was found guilty of attempting to influence a juror by written
11 or oral communication. On March 31st of 2011, Judge Hill
12 sentenced Mr. Trout to 6 months imprisonment, a notice of
13 appeal was filed at the Court of Appeals but it was dismissed
14 based on counsel's failure to file a -- failure to properly
15 perfect the appeal. Mr. Trout timely filed his application
16 July 25th of 2011. He raises issues of trial court error,
17 prosecutorial misconduct and ineffective assistance of
18 counsel, specifically he alleges Mr. Gibson failed to properly
19 perfect the notice of appeal. Mr. Trout then filed an
20 addendum to his application September 14th of 2011. He raises
21 several other issues that do not involve ineffective
22 assistance of trial counsel, those are all set forth in the
23 State's return and actually the the Court should have the file
24 in front of it as well. I filed a return and partial motion
25 to dismiss on March 15th of 2012. In that motion I argue that

1 the ---

2 THE COURT: You may sit ---

3 MS. RATIGAN: --- only iss ---

4 THE COURT: --- down.

5 THE APPLICANT: Thank you.

6 MS. RATIGAN: --- I argue that the only issue that should
7 be allowed to go forward is the allegation of ineffective
8 assistance of trial counsel about the failure to appeal
9 because that's a proper PCR issue, I then argue that the, uh,
10 there are several issues regarding the trial judge's error
11 that should be dismissed because those are not proper PCR
12 issues, those are in fact appellate issues, I then argue that
13 issues related to prosecutorial misconduct should be dismissed
14 because there has been no proof of the actual vindictiveness
15 which is again necessary to go forward, I then move to dismiss
16 the issues related to perjury and withholding of evidence as
17 not being properly cognizable acknizable under the PCR Act so
18 at this point again the State would make its partial motion to
19 dismiss all of the issues except for the issue raised in the
20 application about the ineffective assistance of counsel for
21 failing to file the appeal.

22 THE COURT: Okay. Mr. Trout, I'll I'll give you an
23 opportunity to respond briefly on her motion.

24 THE APPLICANT: Your Honor, this is all about my
25 constitutional rights ---

1 THE COURT: You understand ---

2 THE APPLICANT: Yes.

3 THE COURT: --- the purpose of a post-conviction relief
4 hearing.

5 THE APPLICANT: I've I've I've read it ---

6 THE COURT: Okay, but I I -- you're here representin',
7 let me remind you, you're here representing yourself ---

8 THE APPLICANT: Yes, sir.

9 THE COURT: --- on a civil matter. This is not a
10 criminal matter, that you're ---

11 THE APPLICANT: Okay.

12 THE COURT: --- here on so, you know, you don't, you
13 don't get an appointed counsel, you're not incarcerated but at
14 this point now this is only really to determine whether or not
15 your Sixth Amendment constitutional right was ---

16 THE APPLICANT: Yes, sir.

17 THE COURT: --- violated because of the ineffectiveness
18 of your counsel and then whether that ineffectiveness would
19 have changed the outcome of the hearing. We're not here to
20 retry the case, ---

21 THE APPLICANT: Right.

22 THE COURT: --- we're not here to bring up other
23 evidentiary o -- issues or errors by Judge Hill, this is only
24 concerning your attorney, do you understand that?

25 THE APPLICANT: Okay, so it --- and in reading the

1 PCR ---

2 THE COURT: Yes.

3 THE APPLICANT: --- and and I've had no nobody to talk
4 to, I just had to read it myself, and it says that, you know,
5 I can file under if it was violations of my constitutional
6 rights ---

7 THE COURT: Yes, sir.

8 THE APPLICANT: --- and and I can prove over two years
9 that I was in viola -- you know, they violated me over and
10 over and over, ---

11 THE COURT: Well we're not here to recei ---

12 THE APPLICANT: Okay.

13 THE COURT: --- that's the pur -- we're not here to redo
14 it specifically, ---

15 THE APPLICANT: Right.

16 THE COURT: --- that could have happened by way of appeal
17 and then you could have gotten a new trial on that. This is
18 under the narrow issue of whether or not your trial counsel
19 was competent and and and properly represented you so that's
20 the only issues we're gonna take up this ---

21 THE APPLICANT: That we can ---

22 THE COURT: --- afternoon ---

23 THE APPLICANT: --- take up today.

24 THE COURT: --- so but we're not gonna -- we'll take the
25 time necessary to go over that particular issue. Now of

1 course there was any -- was there any allegation in the PCR
2 petition of of newly discovered evidence or anything like
3 that?

4 MS. RATIGAN: (Nodded in the negative.)

5 THE COURT: So that issue isn't before us so really we're
6 just here concerning your trial counsel and I can't answer any
7 questions that you have, I'm not here to give you legal
8 advice. You have come into this court on your own to
9 represent yourself, are you ready to proceed?

10 THE APPLICANT: Your Honor, uh, I I do have more
11 evidence. I ---

12 THE COURT: Okay, but you ---

13 THE APPLICANT: --- I ---

14 THE COURT: --- did you put that in your pleadings?

15 THE APPLICANT: I have found more evidence ---

16 THE COURT: No, sir, did you ---

17 THE APPLICANT: Okay.

18 THE COURT: --- put it in your pleadings?

19 THE APPLICANT: I put in there where they stored my
20 evidence when they took my computers.

21 THE COURT: That's a different issue.

22 THE APPLICANT: Okay.

23 THE COURT: There's a, there's a narrow issue for newly
24 discovered evidence but ---

25 THE APPLICANT: Yes, sir.

1 THE COURT: --- but I'm not here to give you legal
2 advice, that I -- but if you wanna present your case for a
3 post-conviction relief which could because of the lack of
4 effectiveness of your trial counsel could grant you a new
5 trial, I'll be willing, I'm ready to go forward on that.

6 THE APPLICANT: Okay, Your Honor, I would like to, you
7 know, on -- it was a time sensitive thing and I would like to
8 go ahead and and just, you know, allo -- you allow me to do my
9 appeal so I can move on up the ladder.

10 THE COURT: Well I've got to hear evidence as to on that
11 so, I mean, if you wanna present your case concerning your
12 trial counsel under the normal post-conviction ---

13 THE APPLICANT: Yes, sir.

14 THE COURT: --- relief, I'll allow you that hearing today
15 but you're representing yourself and but you may go forward
16 and call the witnesses you deem necessary.

17 THE APPLICANT: Okay, uh, well so so the only thing that
18 I can discuss is pertaining to my friend Ken Gibson.

19 THE COURT: If if you're alleging that he was ineffective
20 assistance of counsel then that is what we are going forward
21 on. We're not here to bring up everything. This is a very
22 limited cause of action that you brought concerning ---

23 THE APPLICANT: Yes.

24 THE COURT: --- the effectiveness ---

25 THE APPLICANT: Yes.

1 THE COURT: --- of counsel ---

2 THE APPLICANT: Yes, sir. Yes.

3 THE COURT: --- so if you wanna proceed on that issue,
4 you may do so.

5 THE APPLICANT: Well that's all I have to proceed on
6 then.

7 THE COURT: Okay, then you may call your first witness.

8 THE APPLICANT: Okay, thank you, sir.

9 THE COURT: Yes.

10 THE APPLICANT: Alright, I call Mr. Ken Gibson.

11 THE COURT: Okay, Mr. Gibson, come forward.

12 (Whereupon, the witness came forward.)

13 KENNETH CLIFTON GIBSON, having
14 been first duly sworn, testified as follows:

15 THE CLERK: Please state your full name for the record.

16 THE WITNESS: Kenneth Clifton Gibson.

17 THE COURT: You may proceed.

18 THE APPLICANT: Thank you, sir. Please bear with me.

19 DIRECT EXAMINATION BY THE APPLICANT:

20 Q. Mr. Gibson, ---

21 A. Yes, sir.

22 Q. --- I would never think I'd be standing here before you
23 today. Uh, you represented me at whose request?

24 A. At actually my mother's request, Lottie Gibson, who was
25 your fellow counsel person on Greenville County Counsel.

1 Q. And have -- and and it was kind of a, you know, goin' up
2 against appellant judge was and that's your livelihood and I
3 know that and but you did it anyway.

4 A. I did represent you.

5 Q. Yes, you did. Yes, you did, and and you you is prepared
6 to do it *pro bono* ---

7 A. Yes.

8 Q. --- so and but the only thing was that, you know, you
9 failed to pro -- you know, to properly file the appeal that I
10 asked for and I understand that we -- when I was found guilty,
11 I looked at the tape and I had -- we had only twenty-seven
12 seconds before they grabbed me and took me to detention ---
13 And let me explain. Um, I represented Mr. Trout at trial
14 level. Um, we did not discuss how we were going to -- I had
15 not been retained to handle the appeal on him and we did not
16 have an opportunity to discuss or we did not discuss prior to
17 the conclusion of the trial how we were gonna handle that
18 particular issue. Normally what happens is after a person's
19 been convicted they take 'em down to the holdin' cell and I'll
20 have some chance to talk to him before they transport him,
21 however, when Mr. Trout was on county counsel he had made a
22 number of complaints against the detention center as part of
23 his role as county counsel person and unbeknownst to me they
24 had arranged for him to be basically transported to SCDC
25 immediately so he didn't go to the holdin' cell, he didn't go

1 out. I filed a notice of appeal, there was some issue as to
2 how we were gonna go forward as far as paying for the, um, the
3 the cost of the transcript, based upon that and my inability
4 to talk with him I did not request the transcript in a pr --
5 in a proper time so the the appeal was kicked back on those
6 ba -- on that basis.

7 THE COURT: Okay.

8 THE APPLICANT: And, Your Honor, ---

9 THE COURT: Yes, sir, you may ask him questions.

10 THE APPLICANT: Okay.

11 BY THE APPLICANT:

12 Q And you did a good job.

13 A. Thank you.

14 Q. As a matter of fact, I posted, you know, on on on the Web
15 of how good of your performance was ---

16 A. Thank you.

17 Q. --- and the only thing is is just that, you know, it was
18 a time element there of not, you know, filing in time ---

19 A. Yeah.

20 Q. --- and I understand that, I do, due to the fact of it
21 was gonna cost about three thousand dollars (\$3,000.00) ---

22 A. I didn't know how much it was gonna cost but there there
23 was some ---

24 Q. --- but ---

25 A. --- issue as far as ---

1 Q. --- but I was indigent ---
2 A. Yes.
3 Q. --- and under the law I'm re -- I I can receive that.
4 Uh, you know, you're the best attorney I've ever seen ---
5 A. Thank you but, Tony, I think, I think you've made ---
6 Q. --- and you're ---
7 A. --- your point ---
8 Q. --- the ---
9 A. --- with ---
10 Q. --- and, I me ---
11 A. --- this, alrights.
12 (Laughter.)
13 THE COURT: We're not ha -- we don't have a conversation.
14 They ask a question ---
15 THE APPLICANT: Okay, okay.
16 THE COURT: --- and you lis ---
17 THE APPLICANT: Alright.
18 BY THE APPLICANT:
19 Q. And and that's the only, you know, basis I can go on
20 right now.
21 A. Yeah, and and I think you should be allowed to go forward
22 and file an appeal and address some a the issues that you
23 filed in your PCR and and I'm not tryin' to cut you off, I'm
24 tryin' to help you out. I think we've made that point to the
25 judge and I think he has enough information to rule on that

1 particular issue, you understand? I'm just tryin' to ---

2 Q. Yeah.

3 A. --- and but I appreciate it, okay?

4 THE COURT: Any other ---

5 A. Nothing further.

6 THE COURT: --- question?

7 A. Now you're supposed to say nothin' further and it ---

8 Q. Uh, ---

9 (Laughter.)

10 Q. --- yeah, I'm just tellin' ya. I mean, only thing I had
11 paid him with was a coin collection and that dad's gonna give
12 his son, that I'd give my son and he wouldn't take it.

13 THE COURT: Do you have any further questions for this
14 witness?

15 THE APPLICANT: (No verbal response.)

16 THE COURT: Okay, thank you. Do you have any
17 cross-examination?

18 MS. RATIGAN: I do not, Your Honor.

19 THE COURT: Thank you, you may step down.

20 THE WITNESS: Thank Your Honor.

21 (Whereupon, the witness left the stand.)

22 THE COURT: Alright, Mr. Trout, you may call your next
23 witness.

24 THE APPLICANT: That's it, Your Honor.

25 THE COURT: Okay. Very well.

1 THE APPLICANT: Thank you.

2 THE COURT: Thank you.

3 MS. RATIGAN: Your Honor, we have no witnesses to call
4 but based on Mr. Gibson's testimony which he admits that the
5 appeal was not properly perfected, we have no objection to
6 Your Honor granting a belated appeal in this case. The
7 transcript has already been ordered, it would just the only
8 thing would be Mr. Trout would have to be sure to file the the
9 Order that ---

10 THE COURT: He'll have so many days from now ---

11 MS. RATIGAN: Yes, and ---

12 THE COURT: --- and you ---

13 MS. RATIGAN: --- I'll put ---

14 THE COURT: --- and and the State has no objection to
15 that?

16 MS. RATIGAN: No, Your Honor, and I'll put in the Order
17 usually the last paragraph of the Order I spell out exactly
18 what rules to follow in order to file the appeal but,
19 Mr. Trout, you'll have thirty days from the day that you get
20 the signed Order from the judge.

21 THE APPLICANT: Okay.

22 THE COURT: Alright, state's motion is granted.. Thank
23 you.

24 THE APPLICANT: Thank you, sir.

25 THE COURT: Yes, sir.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on February 13, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 14, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

June 22, 2013

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF STATE GRAND JURY
2009-GS-47-00006

ORIGINAL

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

HAROLD ANTHONY TROUT,
DEFENDANT.

VOLUME I

March 28, 29, 30, and 31, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

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

S. CREIGHTON WATERS, ESQ.
Assistant Attorney General

KENNETH C. GIBSON, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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P R O C E E D I N G S

1
2 THE COURT: We're on the record in the State v.
3 Harold A. Trout, who is present with his attorney,
4 Mr. Gibson. This is a State Grand Jury matter, number
5 2009-GS-47-00006. And we're going to proceed with the
6 jury selection, at this time, in the matter before us.
7 After we select the jury, we'll have any pre-trial motions
8 after the jury is picked.

9 MR. GIBSON: Your Honor, can we hold off on swearing
10 the jury until after the pre-trial motions?

11 THE COURT: That's fine, yes, sir.

12 MR. GIBSON: Thank you, Your Honor.

13 (Pause.)

14 MR. GIBSON: Your Honor, I'm sorry. One more point.

15 THE COURT: All right.

16 MR. GIBSON: We've presented a witness list for the
17 Court that we'd ask that the jury be qualified about.
18 There is one more name that's probably going to come up,
19 and that's a good little bit, and that's Richard Ashmore
20 and Ashmore Bros. Paving. While they are not going to be
21 a witness in the matter, we would request that the Court
22 qualify the jury as to those two parties.

23 THE COURT: Okay. Is there any voir dire,
24 specifically, either side is requesting?

25 MR. WATERS: No, sir, Your Honor.

1 MR. GIBSON: No, Your Honor, other than that issue I
2 just raised.

3 THE COURT: Was it Ashmore Bros. Construction, or
4 Paving, or what is it?

5 MR. GIBSON: It's Ashmore Bros. Paving, Your Honor,
6 and Richard Ashmore.

7 THE COURT: Okay. Let me have your attention just
8 one moment. I want to make sure that the letter I sent
9 out on March 24th -- I know the lawyers received it, but I
10 want to make sure that they have shared the information in
11 the letter with their client or law enforcement agents.
12 And, particularly, I want to make sure that everyone is
13 aware and understands that the letter reminds everyone
14 that only counsel of record shall make arguments or
15 statements to the Court or jury. No party, witness, or
16 law enforcement officer shall address the Court directly.

17 Have you all had an opportunity to discuss that with
18 your respective clients or agents, Mr. Waters?

19 MR. WATERS: Yes, sir, Your Honor.

20 THE COURT: Mr. Gibson?

21 MR. GIBSON: I've discussed it with my client. I
22 think my client has a different position on it, Your
23 Honor. Specifically, he has --

24 THE COURT: This isn't open to debate. Okay.

25 MR. GIBSON: I understand, Your Honor.

1 THE COURT: All right. Thank you.

2 He understands -- he's aware of it?

3 DEFENDANT TROUT: Your Honor, I --

4 THE COURT: You have a lawyer, sir. He speaks for
5 you.

6 DEFENDANT TROUT: You're right.

7 And the South Carolina Constitution, Article 14 says
8 that I have the right to address the Court, just as my
9 attorney does. And if you say I can't do that and
10 that's --

11 THE COURT: You have a lawyer. He speaks for you.
12 Okay. Thank you.

13 DEFENDANT TROUT: I just want to --

14 THE COURT: You can testify when you're sworn, and
15 make whatever statements you wish to make while you're
16 testifying subject to the rules of evidence. But --

17 DEFENDANT TROUT: Thank you.

18 THE COURT: Okay.

19 DEFENDANT TROUT: Thank you, sir.

20 MR. GIBSON: Thank you, Your Honor.

21 (WHEREUPON, the jury panel entered the courtroom.)

22 THE COURT: Good morning, ladies and gentlemen.

23 I'm Gary Hill. I'm one of the circuit judges here in
24 Greenville. And I'm glad to be home this week with y'all
25 for a one-week term of court.

1 The case that we're about to select the jury on is
2 case number 2009-GS-47-00006. It's the State of South
3 Carolina v. Harold Anthony Trout. This is a criminal
4 case. And I'm going to read to you the indictment that
5 has been returned in this case.

6 But, before I do that, I want to emphasize a couple
7 of things to you. First of all, the indictment is not
8 evidence of anything. The mere fact that someone has been
9 indicted doesn't create even a suspicion of guilt. The
10 indictment is simply an allegation. It is merely the
11 formal way the State is able to come into the courtroom
12 and start a case against a citizen, and it let's the
13 citizen know what he's charged with.

14 Mr. Trout has pled not guilty to the indictment, and
15 that puts the burden of proof on the State. Mr. Trout
16 doesn't have any burden of proof whatsoever. He doesn't
17 have to prove himself innocent or prove himself not
18 guilty. He doesn't have to offer any evidence or
19 explanation whatsoever. Instead, under our Constitution
20 and system of justice, the burden of proof is entirely on
21 the State. And Mr. Trout may only be convicted if the
22 jury unanimously finds the State has proven each and every
23 element of the crimes beyond a reasonable doubt.

24 Mr. Trout is presumed innocent. And that presumption
25 of innocence stays with him throughout the trial, and even

1 into your deliberations. And it can only be removed if,
2 and only if, the State convinces you that they have proven
3 each and every element of the crime beyond a reasonable
4 doubt.

5 Now, there are two counts to this indictment. And
6 you, as the jury, ultimately, picked will have to weigh
7 each count separately, and not let your decision on one
8 influence your decision on the other. I'm going to read
9 to you the allegations.

10 Count one is an indictment for official misconduct in
11 office. And it alleges that in Greenville County from on
12 or about sometime in December of 2005, until on or about
13 December 31, 2007, Harold Anthony Trout, a public
14 official, did willfully and intentionally engage in acts
15 of misconduct by committing acts and omissions in the form
16 of malfeasance, misfeasance, and non-feasance in breach of
17 his duties to the public of good faith, honesty, and
18 accountability in his role as a Greenville County
19 councilman. Such acts and omissions including, but not
20 limited to, his conduct, statements, and communications to
21 the Greenville County Administrator and the Greenville
22 County Grand Jury regarding the roads program and other
23 matters, all in violation of the common law of South
24 Carolina. Such conduct involving public corruption and
25 arising out of or in connection with the crime involving

1 public corruption, and such conduct not having been
2 authorized by law.

3 The second count, count two, is an indictment for
4 attempting to influence a juror by written or oral
5 communication. And it alleges that Harold Anthony Trout
6 did in Greenville County during the period of time
7 extended from on or about January 1, 2007, until
8 on or about December 31, 2007, did knowingly and willfully
9 attempt personally, and through third parties, to
10 influence the actions and decisions of members of the
11 Greenville County Grand Jury on issues or matters which
12 were and may have been pending before such jurors and
13 before the Grand Jury of which the jurors were a member by
14 writing or sending written and electronic communications,
15 and by making oral communications relating to such issues
16 or matters, such conduct involving public corruption and
17 arising out of or in connection with a crime involving
18 public corruption, and such conduct not having been
19 authorized by law.

20 So those are the two counts and the allegations of
21 them. And, again, Mr. Trout is presumed innocent. He's
22 pled not guilty. And the burden of proof is entirely upon
23 the State.

24 Now, we must attempt to select a jury that can be
25 fair and impartial in this case, and decide the issues

1 involved with an open mind and without any kind of bias or
2 prejudice. So I'm going to ask a number of questions.
3 And if you need to respond to the question, simply stand
4 up, tell me your juror number, if you know it, and your
5 name, and then you can respond to the question. Some of
6 the questions we may just have you come down here with the
7 court reporter, Ms. Jenkins, in a little more private
8 setting and discuss things.

9 JURY QUALIFICATION

10 THE COURT: But the first thing I need to know is if
11 any of you are related by blood or marriage, or kinned to
12 in any way Mr. Harold Anthony Trout.

13 Mr. Trout, if you could, just stand up so everyone
14 can see you, sir.

15 Thank you.

16 (WHEREUPON, there was no response.)

17 THE COURT: Does anyone have any personal, social, or
18 business relationship with Harold Anthony Trout? If so,
19 please, stand.

20 JUROR #99, JULIA JENKINS: I'm Juror #99, Julia
21 Jenkins.

22 THE COURT: All right. Ms. Jenkins, why don't you
23 come down here, and we'll talk with you.

24 (WHEREUPON, there was a side bar with the Court, the
25 attorneys, and Juror #99, Julia Jenkins.)

1 THE COURT: The court reporter just has got to be
2 able to hear you.

3 JUROR #99, JULIA JENKINS: Okay. I knew -- I have
4 known Mr. Trout through an organization in Greenville that
5 is anonymous, I guess I need to say.

6 THE COURT: What organization?

7 JUROR #99, JULIA JENKINS: It's AA.

8 THE COURT: All right. Would you be able to put that
9 aside and decide the case fairly and impartially according
10 to the law and the evidence?

11 JUROR #99, JULIA JENKINS: You know, I don't think
12 so.

13 THE COURT: Okay. I'm going to excuse you.

14 Thank you.

15 JUROR #99, JULIA JENKINS: Thank you.

16 (WHEREUPON, the side bar was concluded.)

17 THE COURT: All right. I'm going to ask the lawyers
18 who are going to be involved in the trial of this case to
19 introduce themselves to you, and anybody who might be at
20 their table who has not already been introduced.

21 So, yes, sir, Mr. Waters.

22 MR. WATERS: Thank you.

23 I'm Creighton Waters from the South Carolina Attorney
24 General's Office in Columbia.

25 With me is Robert McNair. He's, also, from the AG's

1 Office. And with me, also, is Gene Donohue, who is a SLED
2 agent from up this way. And not in the courtroom, but --
3 excuse me, Your Honor -- coming right now is Joe Jordan,
4 whom I sent on an errand and who should be in here right
5 now. And he's an investigator with our office. There is
6 Joe right there.

7 THE COURT: Thank you.

8 MR. WATERS: Thank you, Judge.

9 THE COURT: Mr. Gibson.

10 MR. GIBSON: Ladies and gentlemen, I'm Ken Gibson. I
11 represent Mr. Trout.

12 THE COURT: All right. Is anyone related by blood or
13 marriage to Mr. Waters, or Mr. Trout[sic], or anyone that
14 they introduced? If so, please, stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: Does anyone have any personal, social, or
17 business relationship with Mr. Waters, or Mr. Trout, or
18 anyone they introduced? If so, please, stand.

19 MR. GIBSON: I think you said "Mr. Trout," Your
20 Honor. I think you meant Mr. Gibson --

21 THE COURT: Mr. Gibson. I'm sorry.

22 Thank you.

23 JUROR #214, MELINDA WILLIAMSON: Can I approach?

24 THE COURT: Yes.

25 Come on up, ma'am.

1 (WHEREUPON, there was a side bar with the Court, the
2 attorneys, and Juror #214, Melinda Williamson.)

3 JUROR #214, MELINDA WILLIAMSON: I'm #214. I'm
4 sorry.

5 I served --

6 THE COURT: She's got to be able to hear you.

7 JUROR #214, MELINDA WILLIAMSON: Okay. I served as
8 an executive assistant at the Greer campus for Greenville
9 Technical College. And I know, at one time, Mr. Trout was
10 on the board at the Greer campus. But I didn't have any
11 dealings with him at all. But I just wanted you to know
12 that there was that business association with him.

13 THE COURT: Do you think you could be fair and
14 impartial in this case?

15 JUROR #214, MELINDA WILLIAMSON: Absolutely.

16 THE COURT: And could you decide the case solely on
17 the evidence and the law?

18 JUROR #214, MELINDA WILLIAMSON: Yes, sir.

19 THE COURT: And you wouldn't let your relationship
20 with Mr. Trout in the past interfere with your ability to
21 be a fair and impartial juror?

22 JUROR #214, MELINDA WILLIAMSON: No.

23 I didn't have any dealings with him.

24 THE COURT: Okay. Thank you.

25 MR. WATERS: Ma'am, what was your number?

1 JUROR #214, MELINDA WILLIAMSON: # 214.

2 (WHEREUPON, the side bar was concluded.)

3 THE COURT: And, just to clarify, is anyone related by
4 blood or marriage, or kinned to in any way, or have any
5 person, social, or business relationship with Mr. Ken
6 Gibson, Mr. Trout's lawyer? If so, please, stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: Has anyone ever been represented by
9 Mr. Gibson, or had a case involving the Attorney General's
10 Office? If so, please, stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Has anyone ever been involved in a case
13 where Mr. Gibson, or Mr. Waters, or Mr. McNair was
14 involved in representing the other side, or on the other
15 side of any dispute that you were involved with? If so,
16 please, stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: All right. I'm going to read to you a
19 list of people who may testify in this case. And I just
20 need you to listen carefully to their names, because I'm
21 going to ask you if you have any connection with them.

22 People who may testify in this case include Edward
23 Paxton; John Few; David Smith; Ricardo Studart,
24 S-T-U-D-A-R-T; Leanda King; Regina McCaskill; Dwight
25 McDaniels; Christel, C-H-R-I-S-T-E-L, Brown; Lashawntae

1 Scott, L-A-S-H-A-W-N-T-A-E; Theresa Kizer; Judith
2 Wortkoetter; Joseph Kernell, K-E-R-N-E-L-L; Paula Gucker,
3 G-U-C-K-E-R; Paul Wickensimer; Judy Olson; Jon Castro,
4 J-O-N; Mark Tollison; Dan Ruck; Lottie Gibson; Xanthene
5 Norris; Willis Meadows; George Nicholson; Charles Gilbert;
6 Betty Murphy; Melissa Pettinato, P-E-T-T-I-N-A-T-O; Jim
7 Dorriety; AJ Hamam, H-A-M-A-M; Jamal Hamam; Billy Tabor,
8 T-A-B-O-R; Joe Jordan; Pete Logan; Bart Cave; Britt Dove;
9 Farand Wasiak, W-A-S-I-A-K; David Givens, G-I-V-E-N-S;
10 Gene Donohue; Tony Pantsari, P-A-N-T-S-A-R-I; Homer "Trae"
11 McAbee; Amanda Simmons; Joe Dorriety; Butch Kirven; Steve
12 Loftis. Those are the people who may testify.

13 MR. WATERS: Judge, I apologize. I need to add one
14 more.

15 THE COURT: Okay.

16 MR. WATERS: It will be Kia, K-I-A, Goins, G-O-I-N-S.
17 I think she was inadvertently excluded from the list.

18 THE COURT: Okay. Thank you.

19 Is anyone related to by blood or marriage, or kinned
20 to any of those potential witnesses? If so, please,
21 stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: Does anyone have any personal, social, or
24 business relationship with any of those potential
25 witnesses? If so, please, stand.

1 UNIDENTIFIED JUROR: Does it list an occupation for
2 David Smith? I think I knows three David Smith's.

3 THE COURT: David Smith, I don't know what his
4 occupation is.

5 UNIDENTIFIED JUROR: Does it say where he's from?

6 MR. WATERS: I believe he's a contractor, Your Honor.

7 THE COURT: Okay.

8 UNIDENTIFIED JUROR: That's not who I'm thinking
9 about.

10 THE COURT: Okay.

11 JUROR #86, RANDAL HARLING: I need to approach.

12 THE COURT: Let me just ask, how many people are
13 going to need to approach on this particular question?

14 (WHEREUPON, several jurors indicated in the
15 affirmative.)

16 THE COURT: Yes, sir. Come on up.

17 (WHEREUPON, there was a side bar with the Court, the
18 attorneys, and Juror #86, Randal Harling.)

19 JUROR #86, RANDAL HARLING: I'm #86, Randy Harling.

20 THE COURT: Good morning.

21 JUROR #86, RANDAL HARLING: I'm just a personal
22 friend of Butch Kirven. I don't know if that matters or
23 not.

24 THE COURT: All right. Well, he may testify. And
25 part of your job, as a juror, is to assess whether he's

1 credible or not in his testimony. And the question I need
2 for you to answer is whether you can do that fairly and
3 impartially, gauge and judge his credibility from his
4 testimony fairly and impartially?

5 JUROR #86, RANDAL HARLING: Yeah, I believe so.

6 THE COURT: And could you do so giving a fair trial
7 to both sides?

8 JUROR #86, RANDAL HARLING: Yes.

9 THE COURT: And could you decide the case solely on
10 the evidence and the law?

11 JUROR #86, RANDAL HARLING: Yes.

12 (WHEREUPON, the side bar was concluded.)

13 THE COURT: Does anyone have any personal, social, or
14 business relationship with Richard Ashmore or Ashmore
15 Bros. Paving Company? If so, please, stand.

16 Okay. Come on up, ma'am.

17 And you, too, sir.

18 (WHEREUPON, there was a side bar with the Court, the
19 attorneys, and potential jurors.)

20 (WHEREUPON, Juror #77, Marian Gilbert, came forward.)

21 THE COURT: Good morning.

22 JUROR #77, MARIAN GILBERT: Ashmore is a first cousin
23 of my mother.

24 THE COURT: Richard Ashmore or just --

25 JUROR #77, MARIAN GILBERT: Well, I know there's a

1 lot of them. There's a Durrant Ashmore.

2 THE COURT: Okay. They're the same company, though,
3 Ashmore Paving?

4 JUROR #77, MARIAN GILBERT: I think it's the same
5 family.

6 THE COURT: All right. I don't know if they're
7 necessarily going to be witnesses in the case. But there
8 may be evidence about them. I don't know.

9 But do you think you could put that aside and decide
10 the case solely on the evidence and the law?

11 JUROR #77, MARIAN GILBERT: Yeah.

12 I mean, I don't know anything about their business,
13 but I just...

14 THE COURT: Do you see them regularly?

15 JUROR #77, MARIAN GILBERT: No, no.

16 It would only be a family reunion, or something like
17 that.

18 THE COURT: All right. Thank you.

19 (WHEREUPON, Juror #77, Marian Gilbert, was seated.)

20 (WHEREUPON, Juror 194, Kolby Vanderbeek, came
21 forward.)

22 JUROR #77, KOLBY VANDERBEEK: I --

23 THE COURT: She's got to be able to hear what you're
24 saying.

25 JUROR #194, KOLBY VANDERBEEK: I worked there for

1 three or four months about three years ago.

2 THE COURT: Are you Mr. Vanderbeek, #194?

3 JUROR #194, KOLBY VANDERBEEK: Yes.

4 THE COURT: You were an employee there?

5 JUROR #194, KOLBY VANDERBEEK: Yeah.

6 THE COURT: Do you think that would effect your
7 ability to be fair and impartial in this case?

8 JUROR #194, KOLBY VANDERBEEK: No.

9 THE COURT: Could you decide the case based solely on
10 the evidence and the law?

11 JUROR #194, KOLBY VANDERBEEK: Absolutely.

12 THE COURT: Thank you, sir.

13 (WHEREUPON, the side bar was concluded.)

14 THE COURT: Ladies and gentlemen, just a few more
15 questions. Has anyone been employed by or had a member of
16 their immediate family be employed by the South Carolina
17 Attorney General's Office, or the Solicitor's Office, or
18 any other prosecutor, or law enforcement agency? If so,
19 please, stand.

20 Yes, sir.

21 JUROR #15, JOSEPH BLAKE: I shadowed at the
22 Greenville County Solicitor's Office about two and a half
23 years ago.

24 THE COURT: And your name, sir?

25 JUROR #15, JOSEPH BLAKE: Joseph Brian Blake.

1 THE COURT: Okay. Thank you.

2 JUROR #15, JOSEPH BLAKE: #15.

3 THE COURT: Thank you for knowing your number.

4 Does anyone know anything about this case or have you
5 read any reports in the newspaper, or seen any media
6 reports about this case whatsoever? If so, please, stand.

7 All right. Well, we're just going to come down one
8 at a time.

9 And starting right here, ma'am, with you.

10 And just -- y'all can keep your seats. And we'll go
11 row by row starting right here on this row, and then until
12 we reach the end of that side. And then we'll switch over
13 to this side.

14 Come on up, ma'am.

15 (WHEREUPON, there was a side bar with the Court, the
16 attorneys, and potential jurors.)

17 (WHEREUPON, Juror #215, Connie Wilson, came forward.)

18 THE COURT: Okay. Ms. Wilson.

19 JUROR #215, CONNIE WILSON: Yes.

20 I've just followed it through the news and newspaper.

21 THE COURT: Oh, okay.

22 JUROR #215, CONNIE WILSON: I've followed it through
23 the news and the newspaper.

24 THE COURT: Have you formed an opinion based on what
25 you've read?

1 JUROR #215, CONNIE WILSON: (Juror #215, Connie
2 Wilson, nodded.)

3 THE COURT: And do you think you could put that
4 opinion aside and be fair and impartial in this case, or
5 would that, in your opinion, effect your ability to be a
6 fair and impartial juror?

7 JUROR #215, CONNIE WILSON: I don't think I could be
8 fair.

9 THE COURT: Okay. I'll excuse you.

10 Thank you.

11 And, please, don't mention anything to any of the
12 other jurors.

13 JUROR #215, CONNIE WILSON: Huh-uh.

14 THE COURT: Thank you, Ms. Wilson.

15 (WHEREUPON, Juror #215, Connie Wilson, was seated.)

16 (WHEREUPON, Juror #164, Shirley Roe, came forward.)

17 THE COURT: Good morning. How are you?

18 JUROR #164, SHIRLEY ROE: Good.

19 Well, of course, I've read about it. And I saw it in
20 today's paper, actually.

21 THE COURT: Okay. Have you formed any opinions about
22 the case?

23 JUROR #164, SHIRLEY ROE: Oh, it's all so crazy,
24 isn't it?

25 THE COURT: Do you feel like you could decide the

1 case solely on the evidence and the law, and not be
2 influenced by what you may have perceived through the
3 media?

4 JUROR #164, SHIRLEY ROE: I don't know that I can.

5 THE COURT: You think you would have difficulty doing
6 that?

7 JUROR #164, SHIRLEY ROE: (Juror #164, Shirley Roe,
8 nodded.)

9 THE COURT: Well, I'm going to excuse you.

10 JUROR #164, SHIRLEY ROE: Okay. Well, I'm 68 anyway,
11 so --

12 THE COURT: No, you're not. We don't believe that.
13 Somebody has already questioned whether you were being
14 truthful. No, I'm just kidding.

15 Thank you.

16 (WHEREUPON, Juror #164, Shirley Roe, was seated.)

17 (WHEREUPON, Juror #119, Holly Ludke, came forward.)

18 THE COURT: You're Ms. Ludke?

19 JUROR #119, HOLLY LUDKE: Yes.

20 THE COURT: Yes, ma'am.

21 JUROR #119, HOLLY LUDKE: I've just read everything
22 in the paper. That's all. Everything in the Greenville
23 News.

24 THE COURT: Have you formed any kind of opinion?

25 JUROR #119, HOLLY LUDKE: I'm sorry.

1 THE COURT: Have you formed any kind of opinion?

2 JUROR #119, HOLLY LUDKE: I don't believe so.

3 THE COURT: Do you think you could decide the case,
4 if you were a juror, based solely on the evidence you
5 heard in this courtroom and the law?

6 JUROR #119, HOLLY LUDKE: I believe I have an open
7 enough mind to do that.

8 THE COURT: Do you think you could put what you've
9 read aside, or would it influence you?

10 JUROR #119, HOLLY LUDKE: I believe that the
11 Greenville Journal probably has its side, and I have my
12 own.

13 THE COURT: So you feel you could be fair and
14 impartial?

15 JUROR #119, HOLLY LUDKE: I believe so.

16 THE COURT: All right. Thank you, ma'am.

17 (WHEREUPON, Juror #119, Holly Ludke, was seated.)

18 (WHEREUPON, Juror #87, Cynthia Kay, came forward.)

19 THE COURT: Good morning.

20 JUROR #87, CYNTHIA KAY: Good morning.

21 I'm #87.

22 THE COURT: #87. Okay.

23 They cut you off there, didn't they?

24 JUROR #87, CYNTHIA KAY: Yeah.

25 THE COURT: Go ahead.

1 JUROR #87, CYNTHIA KAY: I've just seen it on the
2 media. Other than that, I don't know anything.

3 THE COURT: Have you formed any opinion?

4 JUROR #87, CYNTHIA KAY: I think so.

5 THE COURT: Do you think you could be fair and
6 impartial in this case, if you were a juror? Could you
7 put that opinion aside and start over again, based on the
8 evidence you hear in this trial and the law that applies,
9 or do you feel like that's going to be a problem for you?

10 JUROR #87, CYNTHIA KAY: No. I don't think so. I
11 think I could put it aside.

12 THE COURT: You think you could put it aside?

13 JUROR #87, CYNTHIA KAY: (Juror #87, Cynthia Kay,
14 nodded.)

15 THE COURT: You have to say "yes" or "no," so she can
16 get it.

17 JUROR #87, CYNTHIA KAY: Yes.

18 THE COURT: So you've already formed an opinion, but
19 you think you could change that opinion?

20 JUROR #87, CYNTHIA KAY: Well, nobody is guilty until
21 they're proven guilty.

22 THE COURT: Okay.

23 JUROR #87, CYNTHIA KAY: I know everybody has an
24 opinion.

25 THE COURT: But, sometimes, we ask people to do stuff

1 that's real hard --

2 JUROR #87, CYNTHIA KAY: I might not be able to.

3 THE COURT: What?

4 JUROR #87, CYNTHIA KAY: I might not be able to do
5 it.

6 THE COURT: Well, I'm just asking you candidly. Do
7 you think you would be able to --

8 JUROR #87, CYNTHIA KAY: I think I can.

9 THE COURT: If one of your family members were on
10 trial here and somebody had read something in the paper
11 and had formed an opinion that they thought they were
12 guilty, would you want that person on the jury?

13 JUROR #87, CYNTHIA KAY: Yeah.

14 THE COURT: You would? It wouldn't bother you?

15 JUROR #87, CYNTHIA KAY: No.

16 THE COURT: So you feel like you could determine
17 whether he's guilty or not guilty based solely on what you
18 heard during this trial and the law?

19 JUROR #87, CYNTHIA KAY: Yes.

20 THE COURT: Okay. Thank you.

21 (WHEREUPON, Juror #87, Cynthia Kay, was seated.)

22 (WHEREUPON, Juror #170, Emily Seiter, came forward.)

23 THE COURT: Good morning.

24 JUROR #170, EMILY SEITER: #170. My name is Emily
25 Seiter.

1 And I just usually have my TV on WYFF-4 in the
2 evenings cooking dinner. And I have to say just from the
3 uniqueness of his name, I vaguely remember the name. But
4 I can't say that I paid -- I don't sit down and just watch
5 the news every night.

6 But when you asked the question were we familiar, is
7 that what you were wanting to know?

8 THE COURT: Yes. That's exactly what I was wanting
9 to know.

10 Have you formed any kind of opinion?

11 JUROR #170, EMILY SEITER: No. I mean, I can't say
12 that I have. All I can say is that I just recognize the
13 name.

14 THE COURT: Do you think you could decide the case
15 solely on the evidence and the law?

16 JUROR #170, EMILY SEITER: Yes.

17 THE COURT: And do you think you could be fair and
18 impartial to both the State and Mr. Trout?

19 JUROR #170, EMILY SEITER: Yes.

20 THE COURT: Okay. Thank you.

21 Let me ask you a question. Are you related to Vic
22 Seiter?

23 JUROR #170, EMILY SEITER: Who?

24 THE COURT: Vic Seiter.

25 JUROR #170, EMILY SEITER: No.

1 My husband and I are from Arkansas, so. But we might
2 be distant relatives.

3 THE COURT: Okay. Thank you.

4 (WHEREUPON, Juror #170, Emily Seiter, was seated.)

5 (WHEREUPON, Juror #234, Allen Smith, came forward.)

6 THE COURT: Yes, sir.

7 JUROR #234, ALLEN SMITH: I'm #234.

8 THE COURT: Okay. Yes, Mr. Smith.

9 JUROR #234, ALLEN SMITH: I just remember seeing it
10 on the local news. They were trying to interview him as
11 he was leaving somewhere. And he was really upset, not
12 really wanting to talk to the reporters.

13 As far as reading it, I haven't read anything.

14 THE COURT: Was it about this particular case? Do
15 you know?

16 JUROR #234, ALLEN SMITH: Yeah.

17 THE COURT: And do you feel -- have you formed any
18 kind of opinion?

19 JUROR #234, ALLEN SMITH: That was the only -- it was
20 just Channel 7 or Channel 4. They were just trying to ask
21 some questions, and he was angry. That was it.

22 THE COURT: And do you know anything about the merits
23 of the case?

24 JUROR #234, ALLEN SMITH: Not really.

25 THE COURT: Okay. Do you feel that if you were

1 selected as a juror that you could be fair and impartial
2 to both the State and Mr. Trout?

3 JUROR #234, ALLEN SMITH: I think so.

4 THE COURT: Do you feel you could decide the case
5 solely on the evidence and the law?

6 JUROR #234, ALLEN SMITH: I think so.

7 THE COURT: And not letting any previous exposure --

8 JUROR #234, ALLEN SMITH: No.

9 THE COURT: All right. So, just to clarify, would
10 that prior exposure bother you or not bother you?

11 JUROR #234, ALLEN SMITH: I don't think so. I mean,
12 it was just -- you know, that was just maybe -- I maybe
13 saw just the end of it.

14 THE COURT: Okay. Thank you, sir.

15 JUROR #234, ALLEN SMITH: Thank you.

16 (WHEREUPON, Juror #234, Allen Smith, was seated.)

17 (WHEREUPON, Juror #179, Sally Sobolewski, came
18 forward.)

19 THE COURT: Good morning.

20 JUROR #179, SALLY SOBOLEWSKI: Good morning.

21 #179, Sally Sobolewski.

22 THE COURT: Ms. Sobolewski?

23 JUROR #179, SALLY SOBOLEWSKI: Yeah.

24 When I walked into the courtroom, I recognized him.

25 But I didn't know who he was until he stood up. I don't

1 know anything about the case. But I think I've seen him
2 in the newspaper, or on television. He looks familiar to
3 me. But I don't know anything about the case.

4 THE COURT: Have you formed any opinion about --

5 JUROR #179, SALLY SOBOLEWSKI: No.

6 THE COURT: -- him or this case?

7 JUROR #179, SALLY SOBOLEWSKI: No.

8 THE COURT: All right. You could decide the case
9 solely on the evidence and the law?

10 JUROR #179, SALLY SOBOLEWSKI: Yes.

11 THE COURT: And you could be fair and impartial to
12 both he and the State?

13 JUROR #179, SALLY SOBOLEWSKI: I beg your pardon.

14 THE COURT: You could be fair to both the State and
15 Mr. Trout?

16 JUROR #179, SALLY SOBOLEWSKI: Oh, yeah. Sure.

17 THE COURT: Thank you.

18 (WHEREUPON, Juror #179, Sally Sobolewski, was
19 seated.)

20 THE COURT: Anybody else on this side?

21 (WHEREUPON, Juror #214, Melinda Williamson, came
22 forward.)

23 THE COURT: Yes, ma'am.

24 JUROR #214, MELINDA WILLIAMSON: Just, generally,
25 reading the news and listening to newscasts.

1 THE COURT: All right. You had previously told us
2 about a connection on some board that Mr. Trout was on --

3 JUROR #214, MELINDA WILLIAMSON: Uh-huh.

4 THE COURT: -- and the entity you work for.

5 And, Ms. Williamson, have you formed any kind of
6 opinion about the case?

7 JUROR #214, MELINDA WILLIAMSON: No. Just on the
8 news, listening to the news, and stuff like that.

9 THE COURT: And did any of those reports concern the
10 merits of the case?

11 JUROR #214, MELINDA WILLIAMSON: I don't really
12 recall any details about it. I just remember I did hear,
13 and see, and read. But I don't remember any details.

14 THE COURT: Even though you've seen, read, or heard
15 any reports, do you feel you could be fair and impartial?

16 JUROR #214, MELINDA WILLIAMSON: I think so.

17 THE COURT: And you could decide the case solely on
18 the evidence and the law?

19 JUROR #214, MELINDA WILLIAMSON: Yes.

20 THE COURT: Thank you.

21 (WHEREUPON, Juror #214, Melinda Williamson, was
22 seated.)

23 (WHEREUPON, Juror #233, James Slice, came forward.)

24 THE COURT: Yes, sir.

25 JUROR #233, JAMES SLICE: I'm #233.

1 THE COURT: All right.

2 JUROR #233, JAMES SLICE: You asked if we heard
3 anything. I've heard all this on the media and newspapers
4 since 2005, probably.

5 THE COURT: Okay.

6 JUROR #233, JAMES SLICE: It was when he was -- you
7 know, went to prison and all that.

8 THE COURT: Yes, sir.

9 JUROR #233, JAMES SLICE: And, now, he's out.

10 THE COURT: All right. Mr. Slice, do you feel --
11 have you formed any opinion about him?

12 JUROR #233, JAMES SLICE: (Juror #233, James Slice,
13 nodded.)

14 THE COURT: You have?

15 JUROR #233, JAMES SLICE: Yeah.

16 THE COURT: Have you formed any opinion about whether
17 he's guilty or not guilty in this case?

18 JUROR #233, JAMES SLICE: Yeah.

19 THE COURT: Do you feel you could change that opinion
20 based on --

21 JUROR #233, JAMES SLICE: No.

22 THE COURT: Okay. I'm going to excuse you.

23 (WHEREUPON, Juror #233, James Slice, was seated.)

24 THE COURT: Okay. Everybody on this side has come up
25 that needs to. So on my left, starting on the front row

1 over there.

2 (WHEREUPON, Juror #38, Michael Carter, came forward.)

3 THE COURT: Yes, sir.

4 JUROR #38, MICHAEL CARTER: I'm #38, Michael Carter.

5 THE COURT: How are you this morning?

6 JUROR #38, MICHAEL CARTER: I'm doing good.

7 I remember reading, I guess, a couple of years ago
8 when the charges were first brought up. I don't remember
9 a whole lot about it. I just remember some of the
10 accusations. And that was about it.

11 THE COURT: Did you form any kind of opinion?

12 JUROR #38, MICHAEL CARTER: Not really.

13 THE COURT: Do you feel you could -- despite that
14 previous exposure to the media reports, do you feel you
15 could have an open mind in this case?

16 JUROR #38, MICHAEL CARTER: Yes.

17 THE COURT: Do you feel you could be fair and
18 impartial to both Mr. Trout and the State?

19 JUROR #38, MICHAEL CARTER: Yes.

20 THE COURT: Do you feel you could decide the case
21 solely on the evidence and the law?

22 JUROR #38, MICHAEL CARTER: Yes.

23 THE COURT: All right. Thank you, sir.

24 (WHEREUPON, Juror #38, Michael Carter, was seated.)

25 (WHEREUPON, Juror #37, Kayla Carter, came forward.)

1 THE COURT: Good morning.

2 JUROR #37, KAYLA CARTER: #37, Kayla Carter.

3 I just recognize him through the media. And the only
4 reason it caught my eye is because my kids went to
5 Riverside where his did.

6 THE COURT: Okay.

7 JUROR #37, KAYLA CARTER: So, as far as anything that
8 went on about it, I have no idea.

9 THE COURT: Do you feel you could be fair and
10 impartial to both sides in this case?

11 JUROR #37, KAYLA CARTER: Yeah.

12 Because my kids never had his wife as a teacher as
13 far as that goes. And I don't know anything about what
14 he's done, so.

15 THE COURT: You haven't formed any opinion?

16 JUROR #37, KAYLA CARTER: No.

17 THE COURT: Do you feel you could decide the case
18 solely on the evidence and the law?

19 JUROR #37, KAYLA CARTER: Yes.

20 THE COURT: Thank you.

21 (WHEREUPON, Juror #37, Kayla Carter, was seated.)

22 (WHEREUPON, Juror #222, Michael Balchunas, came
23 forward.)

24 THE COURT: Yes, sir.

25 JUROR #222, MICHAEL BALCHUNAS: #222, Michael

1 Balchunas.

2 THE COURT: Yes, sir.

3 JUROR #222, MICHAEL BALCHUNAS: You know, I get the
4 Greenville News, and I watch Channel 4 pretty much all the
5 time. And it was kind of hard not to see -- to hear
6 something about it. In fact, he was in the newspaper this
7 morning on the front page.

8 THE COURT: Have you formed any opinion?

9 JUROR #222, MICHAEL BALCHUNAS: None whatsoever.

10 THE COURT: Do you feel you could decide this case
11 solely on the evidence that you heard during the trial,
12 and the law?

13 JUROR #222, MICHAEL BALCHUNAS: Absolutely.

14 THE COURT: You wouldn't let any previous exposure to
15 a media report influence you?

16 JUROR #222, MICHAEL BALCHUNAS: No.

17 THE COURT: Do you have any hesitancy about that?

18 JUROR #222, MICHAEL BALCHUNAS: No.

19 THE COURT: All right. Thank you.

20 (WHEREUPON, Juror #222, Michael Balchunas, was
21 seated.)

22 (WHEREUPON, Juror #4, Tory Almond, came forward.)

23 THE COURT: Good morning -- or it's afternoon.

24 JUROR #4, TORY ALMOND: Yeah. I'm #4.

25 THE COURT: Mr. Almond?

1 JUROR #4, TORY ALMOND: What exactly do you want to
2 know about what I know?

3 THE COURT: What you've seen or heard.

4 JUROR #4, TORY ALMOND: I watch the news on Channel
5 4. And they've talked about it, and the previous case,
6 and, you know, about -- I mean, I don't know how much
7 detail you --

8 THE COURT: Do you feel like you could -- have you
9 formed any kind of opinion?

10 JUROR #4, TORY ALMOND: Yeah, I have.

11 Just from watching the news reports, I remember
12 thinking they've got quite a bit of evidence against him.

13 THE COURT: Have you formed an opinion as to whether
14 he's guilty or not guilty?

15 JUROR #4, TORY ALMOND: To some extent, yes.

16 THE COURT: Do you feel like you could put that aside
17 and decide whether he's guilty or not guilty from the
18 evidence presented during the trial? And would any
19 previous exposure to the media influence you?

20 JUROR #4, TORY ALMOND: I'm going to say the previous
21 exposure would influence me. I could try to put it aside.

22 THE COURT: Well we don't want you to have to do
23 that.

24 All right. Thank you.

25 (WHEREUPON, Juror #4, Tory Almond, was seated.)

1 THE COURT: Anybody else?

2 (WHEREUPON, Juror #102, Eula Johnson, came forward.)

3 THE COURT: Yes, ma'am.

4 JUROR #102, EULA JOHNSON: My name is Eula Johnson,
5 #102.

6 THE COURT: Yes, ma'am.

7 JUROR #102, EULA JOHNSON: I just -- I seen him on TV
8 just talking about it on TV. And I was thinking in court
9 a while ago --

10 THE COURT: I couldn't hear you.

11 JUROR #102, EULA JOHNSON: I said that my stomach was
12 kind of growling over there. And we made eye contact, and
13 he smiled. And I'm hoping that didn't effect anything
14 with him looking at the jurors.

15 THE COURT: He didn't say anything to you, he just
16 smiled at you?

17 JUROR #102, EULA JOHNSON: Uh-huh.

18 THE COURT: Have you formed an opinion about whether
19 he's guilty or not guilty?

20 JUROR #102, EULA JOHNSON: No.

21 THE COURT: You've seen the media reports, you've
22 seen them on TV?

23 JUROR #102, EULA JOHNSON: Yes, sir.

24 THE COURT: Do you feel you could put that aside and
25 decide the issues in this case based on the evidence --

1 JUROR #102, EULA JOHNSON: Yes, sir. I could put it
2 aside.

3 THE COURT: -- and the law?

4 JUROR #102, EULA JOHNSON: Yes, sir.

5 THE COURT: And you could be fair and impartial to
6 both sides?

7 JUROR #102, EULA JOHNSON: Yes, sir.

8 THE COURT: All right. Thank you, Ms. Johnson.

9 (WHEREUPON, Juror #102, Eula Johnson, was seated.)

10 (WHEREUPON, Juror #46, Lavinia Collins, came
11 forward.)

12 THE COURT: Yes, ma'am.

13 JUROR #46, LAVINIA COLLINS: Juror #46, Lavinia
14 Collins.

15 You'd have to live under a rock not to have heard
16 about this. I mean, I've seen it on the news, in the
17 newspaper.

18 I do know Butch Kirven, not personally. He has
19 property next to mine. I don't live beside of him, but my
20 boys do. I know his family, his mom's family.

21 THE COURT: Who?

22 JUROR #46, LAVINIA COLLINS: Butch Kirven. He's one
23 of the witnesses.

24 But I do know his wife's family. But as far as
25 knowing Butch Kirven, you know, I've see him. I've seen

1 him on TV. And I know what he looks like. But that's
2 about it.

3 THE COURT: Okay. Well, do you feel like you could
4 decide the case fairly and impartially?

5 JUROR #46, LAVINIA COLLINS: Oh, sure, yeah.

6 THE COURT: If Mr. Kirven testifies and if you're a
7 juror, you have to decide, among other things, perhaps, if
8 he is credible --

9 JUROR #46, LAVINIA COLLINS: Right.

10 THE COURT: -- as a witness?

11 JUROR #46, LAVINIA COLLINS: Uh-huh.

12 THE COURT: Do you think you could do that fairly and
13 impartially?

14 JUROR #46, LAVINIA COLLINS: Yes.

15 THE COURT: You wouldn't let your previous connection
16 with him effect your ability to do that?

17 JUROR #46, LAVINIA COLLINS: No.

18 THE COURT: You don't -- as far as reading anything
19 in the paper, or on TV, or on the radio, or hearing
20 anything about Mr. Trout, have you formed any opinion
21 about the case?

22 JUROR #46, LAVINIA COLLINS: No.

23 THE COURT: Do you feel you could decide this case
24 solely on the evidence and the law, and not let any
25 previous media exposure effect you?

1 JUROR #46, LAVINIA COLLINS: Yes, sir.

2 THE COURT: And you could be fair and impartial to
3 the State and to the Defendant, Mr. Trout?

4 JUROR #46, LAVINIA COLLINS: Yes.

5 THE COURT: Okay. Thank you.

6 (WHEREUPON, Juror #46, Lavinia Collins, was seated.)

7 (WHEREUPON, Juror #52, Stephanie Ditch, came
8 forward.)

9 THE COURT: Good morning -- afternoon.

10 JUROR #52, STEPHANIE DITCH: #52, Stephanie Ditch.

11 I saw it on Channel 4. And I saw him being
12 interviewed. But I just wanted to mention that I work at
13 the Greer Library. And a couple of years ago, he came in
14 and looked up some information. I didn't know who he was.
15 But -- and I don't remember the information he was looking
16 for. But, after he left, someone told me who he was. And
17 I thought I should mention that to you.

18 THE COURT: Ms. Ditch, have you formed any opinion --

19 JUROR #52, STEPHANIE DITCH: I saw the interview.
20 But, you know, I mean, it's just from what I saw on TV.

21 THE COURT: Do you think you could decide the case
22 fairly and impartially?

23 JUROR #52, STEPHANIE DITCH: I do.

24 THE COURT: For both the State and the Defendant,
25 Mr. Trout?

1 JUROR #52, STEPHANIE DITCH: Yes.

2 THE COURT: You could put aside any previous exposure
3 you had to him or the media reports about this case --

4 JUROR #52, STEPHANIE DITCH: Yes, I do.

5 THE COURT: -- and decide this case solely on
6 evidence you hear in this courtroom?

7 JUROR #52, STEPHANIE DITCH: Yes.

8 THE COURT: All right. You don't have any hesitancy
9 about that?

10 JUROR #52, STEPHANIE DITCH: No, not at all.

11 THE COURT: Thank you.

12 (WHEREUPON, Juror #52, Stephanie Ditch, was seated.)

13 (WHEREUPON, Juror #54, Edwin Dunham, came forward.)

14 THE COURT: Good afternoon, sir.

15 JUROR #54, EDWIN DUNHAM: This is probably nothing,
16 but I thought I'd bring it up.

17 THE COURT: That's good.

18 JUROR #54, EDWIN DUNHAM: I remember hearing about it
19 on WORE [phonetic], the Russ Castle program. And he was
20 just talking about corruption in our government and
21 everything. I don't remember any details.

22 THE COURT: Okay. Have you formed any opinion about
23 him, or the merits in this case?

24 JUROR #54, EDWIN DUNHAM: No.

25 THE COURT: And you could decide this case based on

1 the evidence and the law, and not let any previous
2 exposure effect your decision?

3 JUROR #54, EDWIN DUNHAM: Absolutely.

4 THE COURT: Could you be fair and impartial to both
5 sides?

6 JUROR #54, EDWIN DUNHAM: Correct.

7 THE COURT: All right. Thank you, sir.

8 (WHEREUPON, Juror #54, Edwin Dunham, was seated.)

9 MR. GIBSON: Your Honor, can I have a moment to talk
10 to my client for a minute, considering all the people that
11 have come up?

12 THE COURT: So I'm excusing Ms. Kay, #87. I'm
13 excusing her. I found her responses not to be credible
14 when she said she could be fair and impartial, and based
15 on her demeanor, and her hesitancy, and body language, and
16 the actual content of her very inconsistent responses, and
17 her evasive responses.

18 All right. Let's see. So let's just make sure we're
19 all on the same page.

20 Who have you got that's not on here anymore?

21 Mr. Slice, Ms. Roe, Mr. Almond.

22 THE CLERK: I've got Ms. Wilson, Mr. Almond.

23 THE COURT: Ms. Kay.

24 THE CLERK: And that's it.

25 THE COURT: That's it.

1 Now, what do you want to do, Ken?

2 MR. GIBSON: I just want to have some time to talk to
3 my client, Your Honor.

4 Are we going to get some of those sheets?

5 THE COURT: No.

6 MR. GIBSON: There were some people that were not
7 very responsive. And since he was not up here, I'd like
8 to discuss those responses with him, so we can determine
9 who he wants on his jury.

10 THE COURT: That's fine.

11 Do y'all have any more voir dire you want me to ask
12 them?

13 MR. WATERS: No, none from me, Your Honor.

14 MR. GIBSON: No, Your Honor.

15 MR. WATERS: You're not considering a venue change at
16 this point?

17 MR. GIBSON: No. Yeah, I'm considering it -- No, I'm
18 not. Okay.

19 THE COURT: Okay. I'll give you about a 15-minute
20 break.

21 Will that give you enough time?

22 MR. GIBSON: Yes, sir, perfect.

23 Thank you.

24 (WHEREUPON, the side bar was concluded.)

25 THE COURT: Okay. Ladies and gentlemen, thank you

1 for your patience.

2 Is anyone aware of any kind of bias or prejudice they
3 may have about anyone involved in this case, or any issue
4 that may arise in this case that you may know about that
5 pertains to this case? If so, please, stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: Is there anyone who is a contributor,
8 whether it's your time or your money, to any organization
9 whose primary purpose is to promote victim's rights or
10 more aggressive law enforcement? If so, please, stand.

11 Yes, sir.

12 JUROR #15, JOSEPH BLAKE: I volunteer at South
13 Carolina Legal Services.

14 THE COURT: Okay. And you're #15?

15 JUROR #15, JOSEPH BLAKE: Yes, sir.

16 THE COURT: Thank you, sir.

17 All right. Ladies and gentlemen, we're going to take
18 about a 15-minute break. Just be back in here at 12:30.
19 We're going to have the jury selection starting promptly
20 at 12:30. It won't take that long. And then we'll let
21 you go for lunch.

22 And those of you who weren't chosen, we'll give you
23 further instructions. But thank you for your cooperation
24 and patience this morning.

25 We'll take a 15-minute recess.

1 Thank you.

2 (WHEREUPON, a break was taken.)

3 THE COURT: Are the parties ready for the jury
4 selection?

5 MR. WATERS: Yes, sir, Your Honor.

6 MR. GIBSON: Yes, Your Honor.

7 THE COURT: All right. Yes, ma'am, Ms. Kelley.

8 THE BAILIFF: Judge, we've done one count, and we'll
9 get a second count in just one second.

10 THE COURT: Oh, okay.

11 THE BAILIFF: I believe we're missing one.

12 THE COURT: That's okay. If somebody is not here,
13 we'll know soon enough.

14 Okay. Go ahead.

15 If your name is called, just stand up where you are.
16 You don't have to come forward. And both sides have a
17 certain number of what are called "strikes."

18 And if you are selected, Ms. Kelley will direct you
19 to come forward, and have a seat in the jury box. And
20 just be sure to bring whatever you have with you to the
21 jury box.

22 Yes, ma'am.

23 JURY SELECTION

24 THE CLERK: Juror #133, Eva Monroe.

25 You may just stand right there.

1 (WHEREUPON, Eva Monroe, a white female, stood.)
2 MR. WATERS: The Court's indulgence one moment.
3 (Pause.)
4 MR. WATERS: Please present this juror.
5 THE CLERK: What says the Defense?
6 MR. GIBSON: Please excuse this juror.
7 THE CLERK: Thank you.
8 You are excused from this case.
9 Juror #20, Bruce Brady.
10 (WHEREUPON, Bruce Brady, a white male, stood.)
11 THE CLERK: What says the State?
12 MR. WATERS: Please excuse this juror.
13 THE CLERK: Thank you.
14 You are excused from this case.
15 Juror #185, Jeffrey Terebessy.
16 (WHEREUPON, Jeffrey Terebessy, a white male, stood.)
17 THE CLERK: What says the State?
18 MR. WATERS: Please present this juror.
19 THE CLERK: What says the Defense?
20 MR. GIBSON: Please excuse this juror.
21 THE CLERK: Thank you.
22 You are excused from this case.
23 Juror #222, Michael Balchunas.
24 (WHEREUPON, Michael Balchunas, a white male, stood.)
25 THE CLERK: What says the State?

1 MR. WATERS: Please present this juror.

2 THE CLERK: What says the Defense?

3 MR. GIBSON: Please seat this juror.

4 THE CLERK: Please have a seat in the jury box.

5 Juror #102, Eula Johnson.

6 (WHEREUPON, Eula Johnson, a black female, stood.)

7 THE CLERK: What says the State?

8 MR. WATERS: Please present this juror.

9 THE CLERK: What says the Defense?

10 MR. GIBSON: Please present this juror.

11 THE CLERK: Please have a seat in the jury box.

12 Juror #119, Holly Ludke.

13 (WHEREUPON, Holly Ludke, a white female, stood.)

14 THE CLERK: What says the State?

15 MR. WATERS: Please present this juror.

16 THE CLERK: What says the Defense?

17 MR. GIBSON: Please seat this juror.

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

19 Juror #52, Stephanie Ditch.

20 (WHEREUPON, Stephanie Ditch, a white female, stood.)

21 THE CLERK: What says the State?

22 MR. WATERS: Please present this juror.

23 THE CLERK: What says the Defense?

24 MR. GIBSON: Please excuse this juror.

25 THE COURT: Thank you.

1 You are excused from this case.
2 Juror #46, Lavinia Collins.
3 (WHEREUPON, Lavinia Collins, a white female, stood.)
4 THE CLERK: What says the State?
5 MR. WATERS: The Court's indulgence one moment.
6 (Pause.)
7 MR. WATERS: Please present this juror.
8 THE CLERK: What says the Defense?
9 MR. GIBSON: Please excuse this juror.
10 THE CLERK: Thank you.
11 You are excused from this case.
12 Juror #105, William Jones.
13 (WHEREUPON, William Jones, a black male, stood.)
14 THE CLERK: What says the State?
15 MR. WATERS: Please present this juror.
16 THE CLERK: What says the Defense?
17 MR. GIBSON: Please present this juror.
18 THE CLERK: Please have a seat in the jury box.
19 Juror #135, Carmen Moran.
20 (WHEREUPON, Carmen Moran, a white female, stood.)
21 THE CLERK: What says the State?
22 MR. WATERS: Please present this juror.
23 THE CLERK: What says the Defense?
24 MR. GIBSON: Please present this juror.
25 THE CLERK: Please have a seat in the jury box.

1 Juror #86, Randal Harling.

2 (WHEREUPON, Randal Harling, a white male, stood.)

3 THE CLERK: What says the State?

4 MR. WATERS: Please present this juror.

5 THE CLERK: What says the Defense?

6 MR. GIBSON: Please excuse this juror.

7 THE CLERK: Thank you.

8 You are excused from this case.

9 Juror #15, Joseph Blake.

10 (WHEREUPON, Joseph Blake, a white male, stood.)

11 THE CLERK: What says the State?

12 MR. WATERS: Please present this juror.

13 THE CLERK: What says the Defense?

14 MR. GIBSON: Please present this juror.

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

16 Juror #177, Shawna Snipes.

17 (WHEREUPON, Shawna Snipes, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. WATERS: The Court's indulgence.

20 (Pause.)

21 MR. WATERS: Please present this juror.

22 THE CLERK: What says the Defense?

23 MR. GIBSON: Please present this juror.

24 THE CLERK: Please have a seat in the jury box.

25 Juror #88, Peter Harrison.

1 (WHEREUPON, Peter Harrison, a white male, stood.)
2 THE CLERK: What says the State?
3 MR. WATERS: Please excuse this juror.
4 THE CLERK: Thank you.
5 You are excused from this case.
6 Juror #14, Deleon Black.
7 (WHEREUPON, Deleon Black, a black male, stood.)
8 THE CLERK: What says the State?
9 MR. WATERS: The Court's indulgence, please.
10 THE COURT: Yes, sir.
11 (Pause.)
12 MR. WATERS: Please excuse this juror.
13 THE CLERK: Thank you.
14 You are excused from this case.
15 Juror #54, Edwin Dunham.
16 (WHEREUPON, Edwin Dunham, a white male, stood.)
17 THE CLERK: What says the State?
18 MR. WATERS: Please excuse this juror.
19 THE CLERK: Thank you.
20 You are excused from this case.
21 Juror #120, Terrie Macklin.
22 (WHEREUPON, Terrie Macklin, a black female, stood.)
23 THE CLERK: What says the State?
24 MR. WATERS: Please present this juror.
25 THE CLERK: What says the Defense?

1 MR. GIBSON: Please present this juror.

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

3 Juror #103, Theo Johnson.

4 (WHEREUPON, Theo Johnson, a black male, stood.)

5 THE CLERK: What says the State?

6 MR. WATERS: Please present this juror.

7 THE CLERK: What says the Defense?

8 MR. GIBSON: Please present this juror.

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

10 Juror #77, Marian Gilbert.

11 (WHEREUPON, Marian Gilbert, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. WATERS: Please present this juror.

14 THE CLERK: What says the Defense?

15 MR. GIBSON: Please present this juror.

16 THE CLERK: Please have a seat in the jury box.

17 Juror #99, Julia Jenkins.

18 (WHEREUPON, Julia Jenkins, a white female, stood.)

19 THE CLERK: What says the State?

20 MR. WATERS: Please excuse this juror.

21 THE CLERK: Thank you.

22 You are excused from this case.

23 Juror #138, Mark Muren.

24 (WHEREUPON, Mark Muren, a white male, stood.)

25 MR. WATERS: Please present this juror.

1 THE CLERK: What says the Defense?
2 MR. GIBSON: Please present this juror.
3 THE CLERK: Please have a seat in the jury box.
4 Juror #64, Wiley Finch.
5 (WHEREUPON, Wiley Finch, a white male, stood.)
6 THE CLERK: What says the State?
7 MR. WATERS: Please present this juror.
8 THE CLERK: What says the Defense?
9 MR. GIBSON: Please present this juror.
10 THE CLERK: Please have a seat in the jury box.
11 THE COURT: All right. We'll have two alternates.
12 The strikes are one for the State, and two for the
13 Defense.
14 MR. WATERS: Thank you, Judge.
15 THE CLERK: Juror #167, Allison Ross.
16 (WHEREUPON, Allison Ross, a white female, stood.)
17 THE CLERK: What says the State?
18 MR. WATERS: Please present this juror.
19 THE CLERK: What says the Defense?
20 MR. GIBSON: The Court's indulgence.
21 THE COURT: All right.
22 (Pause.)
23 MR. GIBSON: Please excuse this juror.
24 THE CLERK: Thank you.
25 You are excused from this case.

1 Juror #172, Craig Sherban.

2 (WHEREUPON, Craig Sherban, a white male, stood.)

3 THE CLERK: What says the State?

4 MR. WATERS: The Court's indulgence.

5 THE COURT: Okay.

6 (Pause.)

7 MR. WATERS: Please present this juror.

8 THE CLERK: What says the Defense?

9 MR. GIBSON: Please present this juror.

10 THE CLERK: Please have a seat in the jury box.

11 Juror #168, William Sanchez.

12 (WHEREUPON, William Sanchez, a white male, stood.)

13 THE CLERK: What says the State?

14 MR. WATERS: Please present this juror.

15 THE CLERK: What says the Defense.

16 MR. GIBSON: Please present this juror.

17 THE CLERK: Please have a seat in the jury box.

18 THE COURT: Any matters related to the selection
19 process, or the composition of the jury from the State?

20 MR. WATERS: None, Your Honor.

21 THE COURT: From the Defense?

22 MR. GIBSON: None from the Defense, Your Honor.

23 THE COURT: All right. I find it complied with all
24 statutory and Constitutional requirements.

25 Ladies and gentlemen, you've been selected to be the

1 jury in the case of the State v. Harold Anthony Trout. It
2 is now 12:45. We have some pre-trial matters we need to
3 take up. And I want to give everybody a chance for a
4 lunch break. So I'm just going to ask that you be back at
5 2:00 in the jury room.

6 Don't talk about this case with anyone. I understand
7 it's natural for you to want to tell people when they ask
8 what you've been doing with your time. But the only thing
9 you can say is that you've been selected for a jury, and
10 don't make any other statement to anyone about it.
11 Certainly, don't talk about the case amongst yourselves.
12 You haven't heard any of the evidence yet. And, please,
13 try to refrain from exposing yourself to any type of media
14 report.

15 Mr. Anderson is going to show you where the jury room
16 is. And just report back there at 2:00. And we,
17 hopefully, will be ready to get underway at 2:00, or
18 shortly thereafter.

19 All right. Thank you for your cooperation.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 12:47 p.m.)

22 THE COURT: All right. Those of you who were not
23 chosen, I've been asked to ask you to return back
24 downstairs. Ms. Olson will give you further instructions.
25 I think there's one more case to be selected.

1 Thank you very much.

2 (WHEREUPON, the remaining jury panel members exited
3 the courtroom.)

4 PRE-TRIAL MOTIONS

5 THE COURT: All right. Let's go ahead and have the
6 pre-trial motions.

7 Mr. Gibson.

8 MR. GIBSON: Thank you, Your Honor.

9 I'd like to start with the written motion that, I
10 believe, has been submitted to the Court. It's,
11 certainly, been filed.

12 THE COURT: Yes.

13 Motion to dismiss?

14 MR. GIBSON: Yes, sir.

15 THE COURT: Okay.

16 MR. GIBSON: Based upon -- what I would do, Your
17 Honor, is incorporate all the arguments within that
18 written motion into the record.

19 THE COURT: Yes, sir.

20 MR. GIBSON: But for argument purposes, Your Honor, I
21 would point out that this motion is a motion to dismiss
22 primarily based upon the speedy trial -- violation of the
23 speedy trial clause of the Constitution, as well as
24 vindictive prosecution.

25 This is a situation where my client has been indicted

1 for, I believe, almost two years now, and the matter is
2 just now proceeding to trial. But when he was first
3 indicted, he sent a motion -- or a request to the Attorney
4 General's Office and to the Court, specifically, asking
5 that the matter be tried as soon as possible. That was
6 roughly, I think, two or three months after he was
7 indicted, and we are still 21 months out. And he's,
8 finally, being tried in this case.

9 In the motion, which spells out these arguments,
10 there is a reference to 18 USC 3161. That is the federal
11 speedy trial act, Your Honor.

12 THE COURT: Yes, sir.

13 MR. GIBSON: And my client was good enough to write
14 this motion out, and I am arguing it on his behalf. But
15 in that act, the speedy trial act, Your Honor, it sets
16 forth certain guidelines, specific guidelines as to when
17 the matter should be tried. It states on the one hand
18 that any matter that is indicted needs to be tried, I
19 believe, within 70 days. If it is not, it violates said
20 act. It, also, states that no matter can be tried 30 days
21 prior to arraignment on a charge. In this particular
22 case, we were arraigned, I think, 15 days ago.

23 So, Your Honor, we're asserting that there are
24 violations of that act in both of those regards.

25 THE COURT: Well, I mean, Mr. Gibson, that's a

1 federal statute that I think courts have uniformly found
2 doesn't apply to the states. This is state court.

3 So how could those time limits possibly apply in that
4 statute's provisions pertaining to this action? Do you
5 have any authority for that?

6 MR. GIBSON: Your Honor, I would refer the Court to
7 the written motion that was submitted on behalf of my
8 client.

9 THE COURT: Okay. Any further argument you wish to
10 make, sir?

11 MR. GIBSON: On that particular issue, no, Your
12 Honor.

13 THE COURT: Yes, sir, Mr. Waters.

14 MR. WATERS: Thank you, Your Honor.

15 I think Your Honor has already hit the nail on the
16 head that that, particular federal statute is a federal
17 criminal procedure statute that applies to trials in
18 federal court, and not in state court.

19 There, clearly, obviously, is a Constitutional speedy
20 trial right, which is determined a little differently. In
21 this particular case, Mr. Trout was indicted on May 13th
22 of 2009. And I inherited this case. Unfortunately, the
23 attorney who had it at the time has suffered a health
24 issue that has made him unavailable to me.

25 But, in any event, my understanding, from looking at

1 the file, is Mr. Trout was originally represented by
2 Mr. Ernest Hamilton. There was the one charge indicted.
3 And there was a plea scheduled for January 4th, 2010, in
4 which Mr. Trout -- I wanted to make sure we didn't have
5 any jurors in here -- in which Mr. Trout was going to
6 plead guilty and receive time concurrent to the federal
7 sentence he was then serving.

8 Mr. Trout, ultimately, decided not to go forward with
9 that. And he then, ultimately, expressed a desire to fire
10 Mr. Hamilton. And that's when I got involved. And I
11 believe we had a telephonic hearing with Your Honor in
12 July of 2010, in which Mr. Trout from the federal
13 penitentiary expressed his desire to fire his counsel.

14 He was given until October 5th of 2010, to find new
15 counsel by this Court once he got out. And we had a
16 hearing after he got out. He did not find new counsel, so
17 we had to schedule a hearing in November, at which point
18 he was appointed Mr. Frank Eppes. Mr. Trout then decided
19 he didn't like Mr. Eppes and fired him. And we had a
20 hearing on January 18th of 2011, in which Mr. Gibson
21 agreed to take over the representation. And here we are
22 in trial some two months later.

23 So I think if you look at the procedural history of
24 this matter, there's, clearly, no speedy trial issue. And
25 there's, certainly, no prejudice to the Defendant. So we

1 would ask that even as a Constitutional matter that it be
2 denied.

3 THE COURT: Thank you.

4 What would the prejudice be, Mr. Gibson?

5 MR. GIBSON: Your Honor, I believe the statutes and
6 the case law say in this type of situation that prejudice
7 is presumed.

8 In his particular case, he has had evidence that has,
9 actually, been destroyed by SLED officers who took
10 computers of his. He had a computer with -- and a backup
11 that had numerous phone conversations and numerous audio
12 conversations between himself and a number of people who
13 were going to be witnesses in this case. In the interim,
14 while he was awaiting trial, the backup and phone messages
15 were destroyed. And he's now in a situation where he's
16 not able to bring those matters to trial.

17 THE COURT: When did he first learn that had
18 occurred?

19 DEFENDANT TROUT: Your Honor --

20 THE COURT: No. Your lawyer is going to have to talk
21 for you.

22 (Pause.)

23 MR. GIBSON: Your Honor, he realized it two or three
24 weeks after they first took his computers. They came in
25 under a warrant and took the computers, returned the

1 computers back to him. And, when they were returned, he
2 tells me that they were, basically, paper weights.

3 THE COURT: Okay.

4 MR. GIBSON: When he would shake them, they would
5 jingle. And when he searched his online backups, those
6 had been deleted as well.

7 THE COURT: And that was -- can you give me some kind
8 of time frame? Are you talking about back in 2008?

9 MR. GIBSON: This is 2007, Your Honor.

10 THE COURT: 2007?

11 MR. GIBSON: Yes, sir.

12 THE COURT: All right. Anything further on that?

13 MR. WATERS: Your Honor, that's the first that I've
14 heard of that in Mr. Trout's multiple motions.

15 What happened is SLED did take the computers. They
16 imaged them, which is they make an exact copy of the hard
17 drive, and then returned them to Mr. Trout. Subsequent to
18 that, the FBI had taken the computers. And Mr. Trout was
19 tried in federal court by whatever information the FBI was
20 able to get off of it as well. So, apparently, the
21 computers were still operational at that time.

22 But I think this is now the first time he's raising
23 that. Beyond that, the prejudice is not determinative.
24 And we, also, have -- Mr. Trout, I believe, bears some --
25 culpability is not the word, but some responsibility in

1 the procedural history of this case, which I don't think
2 is unreasonable and has been moving towards this trial
3 date.

4 Thank you.

5 THE COURT: Thank you, sir.

6 Yes, sir, Mr. Gibson.

7 MR. GIBSON: Nothing further, Your Honor.

8 THE COURT: Okay. Every defendant has a right to a
9 speedy and public trial by impartial jury under the Sixth
10 Amendment and Fourteenth Amendment of the Federal
11 Constitution under Article 1, Section 9 of the South
12 Carolina Constitution. A speedy trial doesn't necessarily
13 mean an immediate trial. It doesn't, certainly, call for
14 undue haste. A speedy trial simply means a trial without
15 unreasonable and unnecessary delay.

16 The purpose of the speedy trial Constitutional
17 provision is to prevent prejudice to a defendant caused by
18 the passage of time, minimize the interferences with the
19 liberty interest of the Defendant, even if he's on bail,
20 and to shorten disruption of life that's caused by arrest
21 and presence of pending criminal charges. And one of the
22 principle reasons for guaranteeing a speedy trial is so a
23 defendant is not required to defend a stale prosecution
24 where evidence has gone stale, or the passage of time has
25 interfered with his ability to present a defense, or to

1 meet the prosecution's evidence.

2 Under the factors of Barker v. Wingo, a 1972 United
3 States Supreme Court case, and as recently as State v.
4 Evans, a Court of Appeals decision from 2009, 386 SC 418,
5 the factors to consider are whether the -- first of all,
6 the length of the delay, the cause of the delay, when and
7 how the Defendant asserted his speedy trial right, and any
8 prejudice to the Defendant. The paramount consideration
9 is a balancing test in which the conduct of the State and
10 the Defendant is weighed. The Defendant has the burden of
11 proof, initially, to show that a substantial delay was
12 caused by the neglect or willfulness of the Prosecution.

13 In this case, although there is no fixed time by
14 which a Defendant must be tried, I find the delay here is
15 not so lengthy as to find presumptive prejudice. I find
16 that there is no concrete specific prejudice that
17 Mr. Trout can allege his delay has caused him. And I find
18 that the reasons for the delay were not willful or somehow
19 interfered with his Constitutional rights.

20 So although there was a delay of some 21 months, I
21 don't find that amounts to an interference or infringement
22 of Mr. Trout's Constitutional right to a speedy trial in
23 the absence of further evidence.

24 Okay. What's the next motion?

25 MR. GIBSON: Your Honor, our next motion is to

1 dismiss based upon vindictive prosecution and violation of
2 due process.

3 THE COURT: All right.

4 MR. GIBSON: For over 20 months, Your Honor, my
5 client was charged with one charge, and that was jury
6 tampering. There was never any indication from Mr. Trout
7 that he was going to plead to anything.

8 During that time frame, there was no charge of
9 misconduct in office, none of that. There is no new
10 information that has been gathered during that time frame
11 which would allow the Prosecutors to say that they did not
12 have the information for a misconduct in office claim.
13 There's none of that. However, Your Honor, a week prior
14 to our last trial, the State Attorney General went and
15 superceded the indictment and charged Mr. Trout with a new
16 count, a more serious count of misconduct in office.

17 Now, prior to going to the Grand Jury and getting
18 that indictment, I got a call from Mr. Waters. And
19 Mr. Waters told me, he said, I'm going to -- he said, I'm
20 going to supercede the indictment. I'm going to charge a
21 count of misconduct in office. If he wants to come to
22 court and plead, he can avoid that. So he was, basically,
23 saying he could come in and he could plead to jury
24 tampering, and we would not charge him with the misconduct
25 in office.

1 Now, Your Honor, it is recognized South Carolina and
2 United States law that it is a due process violation to
3 punish someone for exercising a protected statutory
4 Constitutional right. In this particular case, Mr. Trout
5 is being punished for seeking to go to trial. If he had
6 pled in this case or if he had accepted their offer to
7 plead, he would not be facing this misconduct in office
8 charge.

9 Now, in an e-mail that Mr. Waters sent to you when we
10 were talking about the necessity for a continuance based
11 upon the superceded indictment, he cited a case, a United
12 States case, U.S. v. Goodman. And, in that particular
13 case, it dealt with a situation where an individual was
14 charged with a crime, a misdemeanor crime. And he had
15 indicated at that time that he wanted to negotiate in the
16 plea process.

17 Subsequently, he decided, no, I don't want to try to
18 plead it out. I want to go to trial. The State came
19 out -- or the Government came and they issued a more
20 serious charge. In that particular case, the Supreme
21 Court said, We are not going to apply a presumption of
22 vindictiveness based on this situation. However, it is up
23 to the courts to look at the timing of the new charge, and
24 the circumstances leading up to the charge to determine if
25 vindictiveness is at play.

1 In this particular instance, Your Honor, they had
2 more than enough time to figure out -- if they thought
3 Mr. Trout was guilty of misconduct in office, they had
4 more than enough time to charge him with that crime. But
5 they didn't do it. And if he had pled, they wouldn't have
6 done it.

7 This is a situation, Your Honor, where it's clear
8 that my client is being punished for deciding to go to
9 trial. And that is a violation of the Constitution and a
10 violation of South Carolina v. Fletcher, and a whole host
11 of other South Carolina court cases which deal with
12 vindictive prosecution.

13 THE COURT: All right. Thank you, sir.

14 Yes, sir, Mr. Waters.

15 MR. WATERS: Thank you, Judge.

16 I have never made a plea offer in this case. I
17 called Mr. Gibson and put him on notice, because I knew
18 the time was short, as I expressed to Your Honor in the
19 e-mail back in February. There's never been any formal
20 plea offer made. And I, certainly, never said either
21 plead or I'm going to throw this charge on him. I have
22 always said that I'm always open to hearing anything the
23 Defense wants to say. And I've always been open to that.

24 I explained to Your Honor in the e-mail and I'll
25 reiterate that for the record now. As I stated before, I

1 inherited this case. This case, initially, started when
2 Jennifer Evans was head of State Grand Jury. She, of
3 course, has passed away. The Assistant Attorney General
4 who had the case before that was Rob Bogan. He's the one
5 who, initially, presented the indictment. And he had a
6 health issue that has made him unavailable to me.

7 Again, when I first got into this case, it looked
8 like from the file that Mr. Trout -- they were going to
9 have the one charge, and he was going to plead to it. It
10 was going to be concurrent to the time he was serving, and
11 everything would be done. After that fell apart and given
12 all of my other responsibilities, it wasn't until the past
13 couple of months that I've really started to have been
14 able to dig in this case and go through the 3,500 pages of
15 discovery. It's an extreme amount of discovery, e-mails,
16 documents, and the like. And, as I did so, I came to the
17 conclusion that the misconduct charge was warranted under
18 the facts and the law.

19 Now, as our Supreme Court has stated in State v.
20 Dawkins -- that's 377 S.E.2d 298. And this is what they
21 say, In Goodwin, the Court reasoned that an initial
22 indictment does not define the extent of the legitimate
23 interest in a prosecution. Just as a prosecutor may
24 forego charges in an original indictment to save the time
25 and expense of a trial, a prosecutor may file additional

1 charges if the initial expectation that a defendant would
2 plead guilty to a lesser charge proves unfounded. And it
3 goes on to say that the initial charges filed by a
4 prosecutor should not freeze any further prosecutorial
5 decisions, at least, to charges to which the individual is
6 legitimately subject to prosecution.

7 And I would submit that's precisely what's happened
8 in this case. That's precisely exactly what happened in
9 this case. It looked like it was going to be quick and
10 easy and done with, that didn't happen. The case came to
11 me. I didn't have much of an institutional memory, so I
12 started to dig on it on my own. And I, ultimately, came
13 to the conclusion that these charges were warranted.

14 So I think under the case law -- and I would, also,
15 look at State v. Fletcher as well. And, in there, the
16 Court credited the solicitor's explanation that he,
17 ultimately, did a direct indictment for a more serious
18 crime, because it was precipitated by his review of the
19 file revealing to him that the situation was more violent
20 than just pointing a firearm. Because Fletcher, actually,
21 fired the weapon at the alleged victim. And that's what
22 happened here. With the review of all the file, review of
23 all the evidence once it came to me and I had an
24 opportunity to really dig and go through this extreme
25 amount of information, I made a decision that I thought

1 was justified by the facts.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 Yes, sir, Mr. Gibson.

5 MR. GIBSON: Your Honor, and, certainly, he didn't
6 come out and, specifically, tell me, if you don't plead,
7 we're going to throw this extra charge in. What he did do
8 was is, we're going to throw this extra charge on you,
9 but, if you plead, we won't do it. So it's, essentially,
10 effectively, the exact same thing.

11 Now, Your Honor, he says that he never made a plea
12 offer in this case. Apparently, his office did, because
13 he testified -- or he told you earlier, Your Honor, that
14 it was their expectation he was going to come to court and
15 plead while he was still represented by Ernie -- by
16 Mr. Hamilton in this case.

17 Now, he, also, told you earlier in response to the
18 earlier motion that in July of 2010, he had a conference
19 call and it was clear, that Mr. Trout made it absolutely
20 clear that he was not going to plead. He was looking for
21 a trial.

22 Now, Your Honor, I've been on this case three
23 months -- maybe three months. And, during that time, I've
24 had a chance to go through all of the discovery, and
25 figure out everything that needs to be done as far as the

1 trial is concerned. He's telling you, Your Honor, that
2 from July of 2010, until February of 2011, he could not go
3 through the evidence and figure out what the charge should
4 be. That simply just does not hold water, Your Honor.
5 Given the time frame of when he indicted the case, and
6 given the statements that he made to me prior to seeking
7 that indictment, it is clear that the reason why he has
8 done this is because Mr. Trout has decided to go to trial.

9 MR. WATERS: Your Honor, I -- there must have been
10 some misunderstanding. Because I don't recall ever making
11 any sort of statement of anything of the sort of if you
12 plead, I won't throw this charge on you. I think the most
13 I've ever said is that I'm always open and willing to
14 listen.

15 And with regards to the amount of time that has
16 passed, yes, my first touch -- the first time I touched
17 this file was in June of 2010 -- actually, it was in July,
18 I believe, when we had that telephonic hearing. And, no,
19 sir, at that time, I had not gone through all the
20 discovery and all the rest of it. I apologize for that,
21 but I have an appellate and a trial case load. And, you
22 know, I'll be glad to pull out my calendar and go through
23 everything I've been working on through that time. But it
24 was not until the past few months that I started to dig on
25 this case.

1 The question is vindictiveness. And while you can,
2 certainly, look to the amount of time that has passed, the
3 reality is that's when I got to it, and that's when I made
4 the decision. And I've never conditioned anything -- this
5 charge on Mr. Trout pleading. And, beyond that, there's,
6 also, the issue of that the indictment, you know, has the
7 State Grand Jury jurisdictional statement of public
8 corruption in there. That was not present in the first
9 indictment. There's some question as to whether that was
10 necessary, but I wanted to fix that and have that in there
11 as well.

12 So there's been no vindictiveness. There's been no
13 quid pro quo either. That's not to say that things
14 couldn't have been worked out then and I would not have
15 been receptive to that. But I did not make this an
16 expressed condition, and never have done that.

17 MR. GIBSON: Your Honor, his exact words to me, he
18 called me on a Wednesday and he told me, If you don't let
19 me know by Friday if your client is going to plead to the
20 jury tampering, we are going to go forward with the
21 superseding indictment. We did not let him know. I
22 believe on that Tuesday, he went before the Grand Jury and
23 obtained a superseding indictment.

24 THE COURT: Okay. I understand the issue. Just bear
25 with me one second.

1 Well, as the United States Supreme Court acknowledged
2 in Goodwin, in the course of preparing a case for trial, a
3 prosecutor may, "Uncover additional information that
4 suggests a basis for further prosecution, or he may simply
5 come to realize that that information possessed by the
6 State has a broader significance. At the pre-trial stage,
7 the prosecutor's assessment of the proper context of
8 prosecution may not have crystalized. Also, in plea
9 negotiations, the prosecutor's latitude to threaten a
10 harsher charge to secure a plea agreement advances the
11 interest in avoiding trial shared by the Prosecutor, the
12 Defendant, and the public."

13 The Bordenkircher v. Hayes case, which is, also, a
14 United States Supreme Court case, talks, specifically,
15 about the give and take of plea bargaining and where --
16 and, also, it is well settled that presumptions of
17 vindictiveness ordinarily don't arise in a pre-trial
18 context. I would -- numerous federal circuits following
19 Bordenkircher refused to presume vindictiveness from
20 re-indictment following rejection of a plea offer.

21 Even if that occurred in this case -- citing U.S. v.
22 Sanders, 211 F.3d 711, Second Circuit, 2000; United States
23 v. Oliver, 787 F.2d 124, Third Circuit, 1986; United
24 States v. Williams, 47 F.3d 658, Fourth Circuit, 1995;
25 United States v. Wells, 262 F.3d 455, Fifth Circuit, 2001;

1 United States v. Suarez, 262 F.3d and 4th, Sixth Circuit,
2 2001; United States v. Yarborough, 55 F.3d 208, Seventh
3 Circuit, 1995; United States v. Pemberton, 121 F.3d,
4 Eighth Circuit, 1997, and on down the line. I can't find
5 any federal circuit that has gone to the contrary, which,
6 of course, would be the United States Supreme Court's
7 ruling in Bordenkircher.

8 The Fourth Circuit has said that it would be -- I'll
9 give the exact language they use. The United States v.
10 Wilson case, 262 F.3d 305, from 2001, stating that a
11 prosecutor's pre-trial decisions, "Will rarely, if ever,
12 give rise to a presumption of vindictiveness based on
13 timing." That was reaffirmed as late as March 16th, 2011,
14 in the case of U.S. v. Drummond, 2011 Westlaw 894098.

15 So I don't find any evidence sufficient to grant the
16 motion. So I would have to respectfully deny it.

17 MR. GIBSON: Your Honor, given the Court's
18 explanation of its ruling, I want to make sure the Court
19 understands that there are two things going on in those
20 cases.

21 In the Goodwin case and the line of cases that follow
22 it --

23 THE COURT: Right.

24 MR. GIBSON: -- what the Court was saying in that
25 particular instance is that we don't support a presumptive

1 finding of vindictiveness. We believe that the Court
2 should go and look, specifically, at the facts to
3 determine whether or not there was vindictiveness present.

4 Is the Court making a specific ruling that in this
5 particular instance that there is not evidence of
6 vindictiveness?

7 THE COURT: I'm finding that Mr. Waters' statements,
8 including what he said in the e-mail, which I'll be happy
9 to make a part of the record, do not give rise to a level
10 of vindictiveness. I think that his statements that he
11 had come to a new view of the evidence are credible. I
12 have no reason to doubt that. And in the absence of any
13 other evidence, I don't find any vindictive activity.
14 Again, I'm going back to Bordenkircher, which recognizes
15 the reality of pre-trial negotiations in a criminal case.

16 So what's the next motion?

17 MR. WATERS: Your Honor, if I could for clarity, mark
18 the e-mail as Court's Exhibit No, 1?

19 THE COURT: Sure.

20 MR. GIBSON: No objection, Your Honor.

21 (WHEREUPON, Court's Exhibit No. 1 was marked for
22 identification and admitted into evidence.)

23 THE COURT: What's the next motion, Mr. Gibson, or,
24 Mr. Waters?

25 MR. GIBSON: Your Honor, my next motion deals with --

1 is a motion in limine --

2 THE COURT: Okay.

3 MR. GIBSON: -- regarding some comments or
4 anticipated testimony by County Administrator Joe Kernell.

5 THE COURT: Okay.

6 MR. GIBSON: It is my understanding when we had the
7 arraignment, and from my review of the evidence, and my
8 review of the discovery and everything else, and my review
9 of the Grand Jury minutes, as well, that the basis of this
10 case is a jury tampering charge, that they're contending
11 that Mr. Trout is guilty of jury tampering. And as such
12 that he was a county councilman at the time, and that his
13 actions were unlawful.

14 What the State wants to bring in, among other things,
15 from Mr. Kernell is an allegation by Mr. Kernell that at
16 some point, I believe, in 2006, Mr. Kernell claims that
17 Mr. Trout called him on the telephone and said -- and
18 tried to get work -- road paving work for Mr. David Smith.
19 And his specific allegation is that Mr. Trout told him
20 that if you give Mr. Smith work, I'll do a favor -- if you
21 do me a favor and give him work, I'll do a favor for you.
22 Given what my understanding of the theory is, I don't see
23 how this is relevant in any way whatsoever to this
24 Prosecution.

25 I think that it is, certainly, more prejudicial than

1 probative. And, certainly, Your Honor, our position is
2 that the statement is absolutely false. But even if it
3 were true, I don't see how it has any relevance to this
4 case. And I think it's, certainly, more prejudicial than
5 probative to the extent that it has any relevance to this
6 case.

7 THE COURT: All right. Hold on one second.

8 (Pause.)

9 THE COURT: This is a statement allegedly made by
10 Mr. Trout to Mr. Kernell; correct?

11 MR. GIBSON: Yes, Your Honor.

12 THE COURT: Yes, sir, Mr. Waters.

13 MR. WATERS: Just, initially, obviously, falsity
14 would be an issue for the jury. The misconduct in office
15 charge -- and I'd like to start just a little bit by
16 talking about misconduct in office and its nature.

17 And this is from State v. Hess, 309 S.E.2d 741. And
18 they talk in there about how misconduct in office is --
19 excuse me, which in its versatile nature, it can consist
20 of one act or a series of acts. Going on down, it says,
21 It can be continuous in a nature capable of indictment in
22 a single count, even though such acts were committed on
23 different days and different in their nature, and
24 constitute distinct offenses against the law so long as
25 they cognate to the charge of official misconduct.

1 What we have here is evidence that Mr. Trout made an
2 inappropriate request to Mr. Kernell. And the evidence in
3 this case is going to show that Mr. Trout had a very
4 adversarial relationship with many of the members of the
5 Greenville County staff. And these were sort of the
6 things that fueled the fire and fueled the flame that,
7 ultimately, led to him, essentially, running a Grand Jury
8 from behind the scenes in order to settle some old
9 political scores and pursue his agenda.

10 So it's directly relevant to the official misconduct
11 in office charge. It's part of that continuous series of
12 multiple acts that are still cognizable as one charge.
13 And that's why I think it's -- it would be admissible.

14 THE COURT: I don't understand that now. How is --
15 if the issue is his contact with the Grand Jury, what
16 difference does it make what he told Kernell about
17 something related to county business?

18 MR. WATERS: We're not -- we're talking about the
19 misconduct charge, not just the tampering with the Grand
20 Jury charge.

21 THE COURT: All right. So, now, wait a minute now.

22 MR. WATERS: Yes, sir.

23 THE COURT: You told him during the arraignment that
24 the misconduct charge was limited in scope, didn't you?

25 MR. WATERS: I did.

1 I said it involved his communications with Joseph
2 Kernell and other county staff, particularly, with regards
3 to the roads program.

4 THE COURT: All right.

5 MR. WATERS: And that's really the focus of the
6 misconduct was that he was frustrated by his relationship
7 with the staff. It had gone very adversarial. And so he
8 then used an illegal means to pursue his political end and
9 settle some political scores. And that's directly
10 relevant to that.

11 There's going to be evidence of that relationship
12 between Mr. Trout and Mr. Kernell with Paula Gucker, and
13 some of the other members of the Greenville County staff.
14 And that relationship became very adversarial and very
15 difficult. And, ultimately, Mr. Trout was frustrated in
16 his agenda with regards to the roads program and
17 frustrated to the point where the county council told him,
18 hey, look, you can't investigate by yourself as one. This
19 has to be done as a council as a whole.

20 So this not only goes to the mere fact of that
21 statement, but it goes to, essentially, his motive and his
22 intent that led to this misconduct in office. And,
23 ultimately, he engaged in an illegal activity to drive his
24 political agenda.

25 THE COURT: Mr. Gibson.

1 MR. GIBSON: Your Honor, that statement is
2 determinative of that motive in no way whatsoever. I
3 don't see how a statement where somebody allegedly says,
4 if you give this person work, I'll do you a favor is
5 indicative of a frustrated relationship with county
6 council members.

7 THE COURT: Well, let's see.

8 Mr. Waters, how is that?

9 MR. WATERS: Mr. Trout goes to Mr. Kernell and says,
10 hey, you know -- I'm paraphrasing, obviously -- but throw
11 my buddy some work. Mr. Kernell says, no, I can't do
12 that. It has to go through the bid process. We have to
13 do things the right way. He then notifies the county
14 attorney and notifies some members of council of that
15 conversation, because he thought it was inappropriate.

16 And so that, obviously, caused Mr. Trout some
17 consternation and gave him a motive to go get Mr. Kernell,
18 which there's going to be plenty of evidence of his
19 attempts to do so. Ultimately, at a council meeting,
20 another council member asked Mr. Kernell about that. And
21 it was brought up on the record at the council meeting, at
22 which time Mr. Kernell, upon the request of another
23 councilman, reiterated what had happened.

24 So I think this is directly relevant to the motive.
25 And it's the genesis of what led to -- part of the genesis

1 of what led to the ultimate misconduct in office.

2 THE COURT: Yes, sir, Mr. Gibson.

3 MR. GIBSON: I don't see it, Your Honor. I'm still a
4 little confused as to how that relates to it. But even
5 if -- first off, Your Honor, let's deal with the facts.
6 Mr. Trout was going after Kernell from day one. I mean,
7 from January or April of 2005, he was going after
8 Mr. Kernell. This was long before this statement,
9 supposedly, happened. And Mr. Kernell didn't report or
10 didn't bring the statement out to anybody until several
11 months later.

12 Now, what they're trying to do is try to make this
13 seem like this is some case where Mr. Trout was seeking
14 quid pro quo for a friend of his, or in some way was
15 trying to obtain benefits for one of his constituents and,
16 possibly, I guess, bribe Mr. Kernell in this process. I
17 don't see how this has any relevance whatsoever.

18 And to the extent that it does, Your Honor, let's say
19 that he's right. I mean, let's agree with his logic,
20 which I don't quite follow. Even if it does, Your Honor,
21 it is, certainly, more prejudicial than probative. And I
22 just don't see how it's relevant or admissible.

23 THE COURT: Well, who is David Smith?

24 MR. WATERS: David Smith was Mr. Trout's friend who
25 was on the Grand Jury. And, ultimately, that was -- a lot

1 of the evidence will show there was a lot of contact
2 between the two of them regarding the roads program,
3 regarding Joe Kernell, and that sort of thing.

4 So not only is it evidence of misconduct in office in
5 and of itself, but it shows -- it's part of the catalyst
6 that led to him -- he couldn't get traction with it with
7 county council. He couldn't get traction with it with
8 Mr. Kernell. He was embarrassed by it when Mr. Kernell
9 brought it up. So when he had the opportunity to go
10 behind the scenes and, perhaps, get him indicted by a
11 Grand Jury, he did so.

12 So it's directly --

13 THE COURT: You don't have to prove motive, do you?
14 Why do you need to waste time on that?

15 MR. WATERS: Well, first of all, I think it's
16 indicative of misconduct in and of itself. But, as part
17 of this continuous series, it's the beginning of this
18 series that led to what happened in the end. And just
19 because you don't have to prove motive doesn't mean that
20 it's not relevant evidence, typically, brought in.

21 I mean, juries want to know that kind of evidence.
22 They want to know what was driving this, what was behind
23 it. And that's, certainly, very relevant as to the
24 relationship between these two, and why he was going to
25 get Joseph Kernell and was willing to use an illegal means

1 to do so.

2 THE COURT: So are we going to have to hear about
3 every pothole in the district that wasn't filled in?

4 MR. WATERS: I don't --

5 MR. GIBSON: If they go that route, certainly, Your
6 Honor. With that said, Your Honor, I, also, point out
7 this. He says that this was some attempt to go after
8 Kernell. There was nothing reported in the Grand Jury
9 about Kernell. The roads program wasn't going after
10 Kernell.

11 Now, they subpoenaed Kernell because he was the
12 county administrator. But that wasn't seeking an
13 indictment against Kernell. The detention center didn't
14 have anything to do as far as seeking an indictment
15 against Kernell. The only individual, I think, that he
16 tried to seek an indictment against or wanted an
17 indictment against was Theresa Kizer, who was embezzling
18 funds. So this theory that this is somehow a way of
19 getting back at Kernell just doesn't hold water.

20 Now, in addition to that, Your Honor, the more
21 troubling part about this argument is this, he keeps
22 saying this statement that this is indicative of
23 misconduct in and of itself, which leads me to believe
24 that when we had the arraignment and I was led to believe
25 that the basis of the misconduct in office was the jury

1 tampering, and the jury tampering alone, that that was
2 not, in fact, the case.

3 Now, it looks like now, Your Honor, they're seeking,
4 basically, two crimes. And if that's the case, Your
5 Honor, I'm going to have to ask for a motion to sever.
6 Because what they're trying to do is they're trying to
7 charge and indict -- or prosecute two cases within one
8 indictment.

9 THE COURT: All right. Mr. Waters.

10 MR. WATERS: Your Honor, what I said at the
11 arraignment that we had was -- there was a number of
12 things. Number one, there was a to-wit section in the
13 indictment that refers to his communications with Joe
14 Kernell regarding the roads program, and other county
15 staff regarding the roads program and other matters.

16 The second thing was what I, specifically, stated --

17 THE COURT: Now, wait a minute.

18 MR. WATERS: Yes, sir.

19 THE COURT: It doesn't say anything about other
20 Greenville County staff.

21 MR. WATERS: Well, I apologize.

22 THE COURT: It says communications to the Greenville
23 County Administrator and the Greenville County Grand Jury
24 regarding the roads program and other matters.

25 MR. WATERS: Yes, sir. You're exactly right. I

1 stand corrected.

2 Beyond that -- and this is very crucial -- is the
3 fact that this is a State Grand Jury case. And because of
4 that specialized procedure, the Defendant has the right to
5 review the transcripts. And in the case of State v.
6 Gunn -- I apologize.

7 One moment, Your Honor. I'll get the cite.

8 (Pause.)

9 MR. WATERS: This is 437 S.E.2d 75. And, in there,
10 they say that the indictment was returned by the State
11 Grand Jury under the specialized procedure of Defendant's
12 permitted to review and to reproduce the transcript or the
13 testimony of the witnesses who are here before the Grand
14 Jury. In light of the availability of this evidence to
15 these appellants, we hold that this count of the
16 indictment is not fatally vague or overbroad.

17 Now, of course, there, they are talking about whether
18 an indictment is vague or overbroad, but I think the point
19 is still valid there. And Mr. Gibson had the opportunity
20 to review those indictments. And, in fact, I believe --
21 or that testimony. I believe he did so last week. So
22 he's had a chance to look at all of that. He's had a
23 chance to see the presentation before the State Grand
24 Jury, and to see the State's evidence.

25 And, again, I have to keep going back to two things.

1 Number one is that that statement to Mr. Kernell is
2 substantive misconduct in and of itself. Number two, it's
3 part of this continuous series of acts that, ultimately,
4 led to him pursuing his political agenda by trying to get
5 the Grand Jury to do what he wanted it to do. It provided
6 the motive. And it's part of the catalyst that put that
7 in motion.

8 And then, just in regards to influencing a jury count
9 as well, I think it's the same thing. It's the same
10 thing. He has to have an attempt to influence the Grand
11 Jury. And I think that that sort of thing shows his
12 motive for doing so, which is a necessary thing to show
13 intentional conduct in attempting to influence a Grand
14 Jury. And what better evidence, what better
15 circumstantial evidence of that than to show some
16 animosity between the parties, to show the difficulties
17 they had. And, therefore, he is going to go get them.
18 And I think that that's very much relevant to proving
19 that.

20 THE COURT: Well, I haven't seen the evidence, so
21 it's hard for me to rule on this motion at this time. I
22 haven't seen the transcript of what was presented to the
23 Grand Jury, so I've got no idea how to factor that into my
24 analysis. I just am going to have to hear more about the
25 case before I can make a decision.

1 So I don't want any reference to this statement made
2 to the jury until we've revisited that at a later time.
3 All right.

4 MR. GIBSON: Given his statements, Your Honor, it
5 appears he's, also, seeking a misconduct charge on the
6 basis of this alleged statement. If that statement comes
7 in, I will be seeking a motion to sever these cases.
8 Because they're, clearly, two separate acts. They're not
9 intertwined.

10 MR. WATERS: Your Honor, I'm, again, going back to
11 State v. Hess, 309 S.E.2d 741. It, specifically, talks
12 about misconduct being a very versatile charge. It can be
13 one act or a series of acts. It could be individually
14 charged, but don't have to be for a misconduct charge. I
15 only have one copy. I'll be glad to show it to counsel
16 and hand it up so you can see the passage that I'm talking
17 about, if you'd like to review it.

18 MR. GIBSON: Your Honor, the context that they give
19 for that is, basically, a scheme of things that all relate
20 to the same conduct. I mean, the specific instance that
21 they talk about in this portion that he's presented to me
22 is that the Court upheld a misconduct indictment against
23 the complaint that there was more than one instance of
24 falsifying vouchers. That's not one conduct, but a series
25 of the same conduct. That's not the case here, Your

1 Honor. He's talking about two entirely distinct types of
2 conduct.

3 And in that respect, Your Honor, these cases should
4 be severed and dealt with separately. Because there is a
5 real and distinct probability, Your Honor, that my client
6 will be prejudiced if the jury hears evidence of these two
7 alleged crimes.

8 THE COURT: I understand what you're saying. And I
9 have concerns about how wide ranging the State is
10 attempting to go, based on representations made at the
11 arraignment and the language of the indictment, which, as
12 I understood it, was going to keep the issue in this trial
13 to matters and communications to the administrator and the
14 Grand Jury regarding the roads program.

15 So I do have serious concerns about whether we're
16 going to get into whether Mr. Trout allegedly did
17 something else as a county councilman that didn't have
18 anything to do with the roads program. Yet, now, the
19 State is trying to use that as evidence of misconduct in
20 office. That's what's bothering me right now.

21 MR. WATERS: And, Your Honor, I apologize if I wasn't
22 clear.

23 David Smith, who was the person that Mr. Trout asked
24 for work to go to, he was a contractor who had done some
25 work for the county under some of the -- that's what he

1 did. He did some development. He did some roads, and
2 things like that. And so David Smith, the roads program
3 was very much important to him.

4 So I think it is linked to the roads program. And,
5 in fact, I think David Smith and Tony Trout were seen
6 together before Mr. Trout was elected at meetings
7 regarding the roads program, and other things like that.
8 So that's the link there. It really had to do with
9 Mr. Trout's concern about county money, how it's being
10 spent with regards to contractors who were being hired
11 under the program. And that's what he was asking,
12 essentially, for David Smith, who had some issues with his
13 prior contracts with the county and had been unable to
14 secure any more work from the county. And that's the
15 link, if I didn't explain that before.

16 THE COURT: Well, you know, I only -- the only
17 information I have about this case is what y'all have
18 given me. So I can't anticipate things I don't know
19 about. So I appreciate you making it a little more clear.

20 Yes, sir, Mr. Gibson.

21 MR. GIBSON: It's my understanding that the Court is
22 asking that they not put that information in as of now?

23 THE COURT: Until I hear more about the case and more
24 about the context of it, that's correct.

25 MR. GIBSON: Thank you, Your Honor.

1 THE COURT: All right. What's the next motion?

2 MR. GIBSON: None from the Defense, Your Honor.

3 MR. WATERS: Your Honor, I have one quick thing to
4 put the Court on notice of. I'm sure you're already aware
5 from the witness list, but, obviously, I have subpoenaed
6 Judge Few to testify. And i, obviously, wanted to make
7 the Court aware of that. I don't know that there's
8 necessarily any issues from it, but I wanted to bring that
9 up.

10 Secondly, this case, obviously, relates to an attempt
11 to tamper with the Grand Jury. And, to do that, there's
12 going to have to be some explanation of what the Grand
13 Jury is, and what it does. And, just out of an abundance
14 of caution, there's going to be witnesses who are going to
15 describe that. I'm going to mention that in my opening
16 statement. And that's, obviously, something you,
17 typically, don't talk about in a trial setting. But in
18 this particular trial, it's necessary because it's the
19 heart of that particular charge.

20 So I just wanted to put that out there and make sure
21 we were all on the same page before I went down that road
22 and it caused a ruckus. I think part of that is
23 explaining how the Grand Jury is selected, what they do.
24 And, of course, what they do, they review indictments --
25 primarily, they review indictments for the determination

1 of probable cause. And I think that that evidence has to
2 come out for the jury to understand what the Grand Jury
3 was doing, and why this evidence is significant. I just
4 wanted to raise that. I don't know if the Defense has any
5 concerns or motions about that, or if Your Honor does.
6 But I just wanted to put that out before I went down that
7 path.

8 THE COURT: All right. Anything further?

9 MR. WATERS: Your Honor, the final thing is in
10 regards to the testimony of Mr. Kernell. Mr. Kernell, as
11 you may or may not be aware, he -- Mr. Trout illegally put
12 some spy ware on Mr. Kernell's computer. There was some
13 embarrassing information that was gathered as a result of
14 that. And I don't know if the Defense intends to
15 cross-examine Mr. Kernell on that. But I would assert
16 that that would not be relevant and would, also, violate
17 Rule 403, and be more prejudicial than probative. I think
18 if he does go down that road, though, it would, certainly,
19 open the door to a description of how Mr. Trout obtained
20 that particular information.

21 MR. GIBSON: Your Honor, I think I am duty bound to
22 go into that material. And I think that -- I don't think
23 there's any way I'm going to be able to avoid a
24 description of how Mr. Trout got that information. And so
25 the Court is aware because -- so the Court is aware of

1 what we're talking about, on Mr. Kernell's computer
2 were -- let me back up and give you the full story.

3 Mr. Trout put some spy ware on Mr. Kernell's
4 computer. He thought that he was able to do it. He was
5 not able to do it. As the Court may or may not be aware,
6 he was convicted of a federal crime in relation to that.
7 That spy ware, though, Your Honor, forms -- we believe
8 forms -- the placement of that spy ware on Mr. Kernell's
9 computer forms the basis of a significant part of his bias
10 against Mr. Trout. The types of information that he found
11 out about Mr. Kernell, we believe, forms a sufficient
12 portion of the bias that Mr. Kernell has against
13 Mr. Trout.

14 In addition, Your Honor -- and the specific
15 information is this, Mr. Trout found out that he was on
16 county time, using county resources soliciting
17 prostitutes, engaging in cyber sex, engaging in a whole
18 host of unlawful activities. In addition, Your Honor, he
19 found out that Mr. Kernell was reviewing tapes, audios of
20 Grand Jury proceedings, which are supposed to be secret.

21 Now, this is evidence of that. He has found evidence
22 of Mr. Kernell being involved in multiple crimes. And I
23 understand why Mr. Kernell may want to keep that
24 information out. And I understand why it may be
25 embarrassing to him. But we're not bringing him as a

1 witness. If the State wants to bring him, I don't see how
2 we can be handcuffed to the extent of not being able to
3 explore the full extent of Mr. Kernell's bias against
4 Mr. Trout.

5 Now, in addition to that, Your Honor, I think it,
6 also, goes towards credibility. In regards to the
7 information that was found on his computer regarding his
8 solicitation of prostitution, it's our understanding that
9 he told Butch Kirven that the reason why he was on those
10 sites was because he was investigating an application by
11 an escort agency to do business within the county. Well,
12 based upon the people he contacted, based upon the sites
13 that he went to, based upon the nature of the e-mails that
14 he had where, basically, he was setting up meetings with
15 prostitutes, clearly, Your Honor, that was not the case.

16 So there are two things that if Mr. Kernell takes the
17 stand where we think this is highly relevant, one as to
18 bias and, two, as to his credibility.

19 MR. WATERS: Your Honor, it seems that they want to
20 go into this evidence for bias, but don't want to let me
21 go into this evidence for motive. But all of this stuff,
22 first of all, at worst, is evidence -- and I'm not saying
23 that it, necessarily, is, but it is evidence of
24 solicitation of prostitution. I think the case law is
25 pretty clear that that's not a proper grounds for

1 impeachment. With regards --

2 THE COURT: What case law would that be?

3 MR. WATERS: Your Honor, the Court's indulgence for
4 just a moment.

5 (Pause.)

6 MR. WATERS: I apologize, Your Honor, the Court's
7 indulgence.

8 THE COURT: No. Take your time. I'm just curious.

9 So there's some case out there that says you can't
10 ask a witness about prostitution?

11 MR. WATERS: In United States v. Cox, this is a Fifth
12 Circuit case, 536 F.2d 65, the Court emphatically stated
13 that evidence of illicit sexual activities is totally
14 immaterial to the credibility or character traits involved
15 in most criminal cases. United States v. Walker is
16 another Fifth Circuit case. A conviction for prostitution
17 does not involve dishonesty or false statement, and is not
18 admissible under 609(a).

19 And, Your Honor --

20 THE COURT: Well, that's different. That's Rule 609.

21 MR. WATERS: I understand.

22 He's going under Rule 609(c), I believe, evidence of
23 bias. But I wanted to start with 609(a), that just the
24 mere fact of that conduct is not going to fit under that.
25 So he's going to have to get it in under bias. And I

1 think it just goes too far afield in this particular case
2 to go into detail with regards to that.

3 If he wants to merely ask, did you get some
4 embarrassing information off of my computer or something
5 like that, I think that's fine. But to detail the extent
6 of it, I think would go much too far and would, certainly,
7 lead the jury down an improper road and would be in
8 violation of Rule 403.

9 MR. GIBSON: Your Honor, just to make one thing
10 clear. I don't think that Mr. Kernell has any testimony
11 that's relevant to this case at all. And I'm not
12 intending to call him. It's them who -- it's they who are
13 trying to call him to the stand as a witness.

14 Now, I don't know how the jury appreciates the full
15 extent of the bias without learning exactly the type of
16 material that was uncovered. I mean, it would be
17 different if I was -- you know, if someone broke into my
18 house and they stole my weed eater, you know, that would
19 be totally different than if they stole from in my house
20 and stole my private diary.

21 Do you see what I'm saying, Your Honor?

22 This is -- the jury needs to hear what the
23 information is to understand just how upset Mr. Kernell
24 must be at Mr. Trout.

25 THE COURT: Well, how far do you want to go,

1 Mr. Gibson?

2 I mean, what are you going to ask -- are you seeking
3 to ask about specific details, or sites, or are you
4 content with just asking him if he was accessing
5 pornography on the computer?

6 MR. GIBSON: What I intend to ask him is whether or
7 not he was accessing pornography, and whether or not he
8 was soliciting prostitutes. If he gives me an honest
9 answer, that ends it. If he says he was not, then I
10 reserve the right to be able to cross-examine him as far
11 as credibility on his answer.

12 MR. WATERS: You know, I just don't think that's
13 proper impeachment here. In cross-examination -- I'm not
14 sure where they're going here. If they're going into
15 608(c), I believe it is -- which is pure bias, I think
16 there is, certainly, a 403 limitation with regards to
17 that. And I think that 403 limitation would circumscribe
18 and not let us go down and just try the whole federal
19 trial over again, or try the extent of Mr. Kernell's --
20 what's on the computer. I think it's unduly prejudicial.
21 It's not the heart of the issues here.

22 If the inquiry is circumscribed, I can see that being
23 the case. But I don't see any necessity to be throwing
24 documents around, and pictures, and things of that nature.
25 I think that that's far too unduly prejudicial. And,

1 under 608 (c), under the bias provision, I think the
2 403 -- that's an appropriate limitation of that. We're
3 not talking about methods of proving character, and that
4 sort of thing. Because that's not really what we're
5 talking about here --

6 THE COURT: Well, I think --

7 MR. WATERS: And --

8 THE COURT: Go ahead, sir.

9 MR. WATERS: And, even so, I don't believe that
10 extrinsic evidence would be admissible in that sort of
11 setting.

12 THE COURT: All right. Well, we don't have to reach
13 that issue right now. But the threshold issue is whether
14 Mr. Kernell's counsel should be able to ask him about this
15 to reveal some type of bias or prejudice he may have
16 against Mr. Trout, which I think the jury should be aware
17 of in the limited way Mr. Gibson has stated he intends to
18 pursue it. I do find that that does have probative value,
19 that it does promote Mr. Trout's ability and right to
20 impeach witnesses and to confront the witnesses against
21 him in a meaningful way.

22 I think to not allow it would deprive him of that
23 right, which the Constitution guarantees. And I think the
24 jury should know some of the truth about that. And I
25 don't find that the prejudicial value to the State is such

1 that Rule 403 would require it to be excluded. So that's
2 the ruling.

3 MR. WATERS: Thank you, Judge.

4 And just so I understand, is there a -- just so I
5 understand the nature of the amount that's going to be
6 allowed, because I don't want to interpose an objection
7 and --

8 THE COURT: Right.

9 MR. WATERS: -- if it's contrary to your ruling.

10 THE COURT: Okay. What we'll do is -- just to ensure
11 some deliberate process here, when Mr. Kernell finishes
12 direct examination, we'll take a break.

13 Mr. Gibson, I'll give you the opportunity to,
14 essentially, proffer what you're going to ask him outside
15 the presence of the jury so Mr. Waters will know what's
16 coming and can make any objection he thinks is
17 appropriate. And we can handle it outside the presence of
18 the jury so it can minimize disruption to the trial.

19 Anything further?

20 DEFENDANT TROUT: Your Honor, I --

21 THE COURT: Mr. Trout, I've told you, sir, and you're
22 on notice, your counsel has to speak for you, unless
23 you're sworn and testifying.

24 MR. GIBSON: Thank you, Your Honor.

25 Nothing further.

1 THE COURT: All right. We'll just come back at 2:30
2 and have the opening statements at that time.

3 Thank you.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: Mr. Gibson.

6 MR. GIBSON: Your Honor, my client is not in the
7 courtroom. I've tried to call him a couple of times.

8 THE COURT: Is that not him?

9 MR. WATERS: No. That's Mr. Lanier.

10 MR. GIBSON: I have no idea why he's not here. I'm
11 sure something must have happened. I know he's been
12 looking forward to this for a while.

13 THE COURT: Okay.

14 MR. WATERS: Do You want to give him a few more
15 minutes, or what do you want to do?

16 THE COURT: Yes. We'll give him a few more minutes.

17 MR. GIBSON: Thank you.

18 I'm going to go outside and try to give him another
19 call.

20 (WHEREUPON, a break was taken.)

21 THE COURT: Yes, sir. Mr. Gibson.

22 MR. GIBSON: We're ready to proceed. Your Honor.

23 THE COURT: All right. Now, Mr. Trout --

24 DEFENDANT TROUT: Yes, sir.

25 THE COURT: -- the bond form that you've been

1 continued on under the new indictment states that you do
2 understand and acknowledge that this order acts as a
3 notice of your right to be present at trial, and that the
4 trial will proceed in your absence upon your failure to
5 attend the court.

6 Do you understand that?

7 DEFENDANT TROUT: Right.

8 THE COURT: All right. So we waited on you this
9 time, but we're not going to wait any longer.

10 Do you understand that?

11 DEFENDANT TROUT: (Defendant Trout nodded.)

12 THE COURT: Thank you.

13 DEFENDANT TROUT: Yes, sir.

14 THE COURT: All right. Anything further before we
15 bring the jury in?

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

17 THE COURT: You can bring the jury in.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:55 p.m.)

20 INTRODUCTORY REMARKS

21 THE COURT: Good afternoon, ladies and gentlemen.

22 We're about to start the case of the State v. Harold
23 Anthony Trout. And you've been selected to be the jury in
24 this case. And I want to give you some preliminary
25 instructions before we start the trial. The first thing I

1 want to do is thank you for your service this week. I
2 know you didn't choose voluntarily to come down to the
3 courthouse this morning. And you probably groaned when
4 you got the summons in the mail to appear for jury duty
5 this week.

6 But I know you're here, in part, because you
7 understand that the right to a jury trial is a valuable
8 and fundamental part of our system of justice, and you're
9 making it possible for the parties this week to exercise
10 their Constitutional right to a jury trial, a right that
11 was so important to the founders of our country that they
12 put it not only in our federal and state Constitutions,
13 but in three of the first ten amendments of the Bill of
14 Rights. So thank you for making it a reality for the
15 parties this week.

16 I know you understand you got the summons in the mail
17 because you're either registered to vote, or you're a
18 licensed driver, or you have an identification card issued
19 by the highway department. You may be wondering why you
20 were chosen to serve on this particular jury. Well, the
21 reason is because both sides in this case, both the State
22 and Mr. Trout, believe that you can be fair and impartial,
23 and you can decide this case without any kind of bias, or
24 prejudice, or any preconceived ideas. So that's why you
25 were chosen.

1 Now, you've already met the lawyers in the case. And
2 I've already introduced myself to you. Again, I'm Gary
3 Hill. I'm one of the circuit judges here in Greenville.
4 But there are some other people in the courtroom whose
5 roles are essential to the process. And I want to
6 introduce them to you and, hopefully, demystify the
7 surroundings a little bit.

8 The first person I want to introduce is Hollie
9 Jenkins, who is the court reporter. Circuit Court is a
10 court of record. She's taking down everything that's
11 said. And she does an excellent job. And I'm glad to
12 work with her. And to her right is Jim Parks, who is the
13 Clerk of the State Grand Jury out of Columbia. And he
14 helps with the paperwork related to the case and helps
15 things run smoothly and officially. You saw Renee Kelley
16 help with the jury selection. She's with the Greenville
17 County Clerk of Court's Office. And the bailiffs in this
18 case are Mr. Paul Anderson and Mr. Ben Jenkinson. And
19 they are here for your assistance and convenience while
20 you serve on the jury. You, also, will probably see from
21 time to time my law clerk, Graham Buckner, come in and
22 out. And he helps me with legal research and issues that
23 arise in the case. He's a man of timing. But that's
24 Mr. Buckner's job.

25 Now, I'm going to tell you what your job is in just a

1 moment. But the first thing I want to do before I do that
2 is have you do something that everybody that I've just
3 introduced to you has done and, certainly, I've done and,
4 certainly, the lawyers have done, and that is to take an
5 oath to do your job.

6 So with that, Mr. Parks, if you'll administer the
7 oath.

8 THE CLERK: Please stand to be sworn in.

9 Ladies and gentlemen, if you would, raise your right
10 hand. At the conclusion of this oath, if you agree,
11 please say, "I do."

12 (WHEREUPON, the jury was sworn at approximately
13 3:00 p.m.)

14 THE CLERK: Thank you very much.

15 You may be seated.

16 THE COURT: All right. Thank you.

17 Now, let me tell you about your job. And I want you
18 to know at the outset that in Circuit Court in a General
19 Sessions case such as this, there are always two judges.
20 There is the judge of the law, and that's the job I have,
21 and there's the judge of the facts, and that's your role
22 and your job.

23 As the judge of the law, I have two distinct
24 responsibilities. The first one is to rule on the
25 admissibility of evidence. If during the course of this

1 trial a party objects to evidence -- and, please, don't
2 hold it against the lawyers for objecting. They have a
3 job to do as well, and part of that job is to object to
4 evidence when they think it is improper. That's their
5 ethical obligation. But if someone does object to
6 evidence, I will rule on whether or not it's admissible,
7 that is whether you can consider it. I will sustain the
8 objection if I believe the evidence is improper, and you
9 can't consider it. I will overrule the objection if I
10 think the evidence is proper, and you can consider it.
11 Usually, I can do that right on the spot. Sometimes, we
12 have to have a little meeting up here. And, sometimes, we
13 even have to ask you to go back to the jury room while we
14 hash things out in more detail if things become more
15 complex. But that's my first job is to rule on the
16 admissibility of evidence, according to the law. The job
17 I have as the judge of the law is to give you the law that
18 applies to the facts of this case. And I'll give you that
19 at the end of the case.

20 You are the judges of the facts. And when it comes
21 to the facts, your badge might as well say judge, instead
22 of juror, because you are the exclusive judges of what the
23 facts are under our system of justice. I'm not going to
24 comment on the facts of this case. And, please, don't
25 construe anything I say or do during the course of this

1 trial as making any comment on the facts, because I'm
2 prohibited from doing so and won't do so. You, and you
3 alone, determine what the facts are. And you do that by
4 weighing or evaluating the evidence you hear during the
5 course of this trial.

6 Now, you must confine your decision as to what the
7 facts are to the evidence. And the evidence consists of
8 two sources. The first is the one you're probably most
9 familiar with, and that is sworn witness testimony. The
10 second source of evidence is by way of an exhibit. An
11 exhibit is simply a physical, tangible object. It might
12 be a photograph, or map, some other piece of paper. But
13 you'll know it's an exhibit. And you'll know it's
14 something you can consider when determining the facts,
15 because it will be back in the jury room with you at the
16 end of the case. And it will have a sticker that says
17 exhibit number so and so.

18 At the outset of a criminal case, I need to remind
19 you that a defendant is always presumed to be innocent,
20 and the State must prove guilt beyond a reasonable doubt.
21 Mr. Trout, the Defendant, has no burden of proof. He
22 doesn't have to prove himself innocent or prove himself
23 not guilty. That's entirely a matter for the State.
24 There are two counts in this indictment. And you must
25 consider the evidence separately as to each count.

1 Now, how many of y'all have sat on a jury in a
2 criminal case before?

3 (WHEREUPON, there was no response.)

4 THE COURT: Okay. Well, some of you may know from
5 your own experience a little bit about a criminal trial,
6 but let me just give you a brief summary of how they work.
7 The first thing we're going to hear is the opening
8 statement of the Defense -- I mean, the Prosecution. The
9 opening statement consists of a brief outline or road map
10 of what the charges are going to be, what the evidence is
11 going to show, and what the Attorney General thinks the
12 evidence will be in the case. After that, Mr. Trout will
13 have the opportunity, but not the obligation, to present
14 any evidence he wishes to because, again, he doesn't have
15 to say or do anything during this trial.

16 Then we'll go into the presentation of the evidence.
17 And, again, the State will go first, because they bear the
18 burden of proof. The Defense will have the opportunity to
19 confront that evidence. And then after you've heard the
20 State's presentation of evidence, we will have the
21 Defense's opportunity, but, again, not the obligation, to
22 present evidence. And the State can confront the evidence
23 at that time. Then you'll have the closing arguments of
24 the lawyers where they tell you what they think the
25 evidence showed, or what your verdict should be. Then

1 I'll give you the instructions on the law that applies to
2 the facts of this case. Then the case will be in your
3 hands for a decision and for a verdict.

4 Until we reach that point, ladies and gentlemen,
5 don't talk about this case. Don't discuss it with anyone.
6 You need to shield yourselves from any media coverage in
7 this case. So when you go home, don't turn on the TV, or
8 get on the Internet, or look at the paper, because there
9 is going to be press coverage in the case. And, as you
10 can surmise from the courtroom surroundings, we spent a
11 lot of time this morning trying to find a jury that could
12 be fair and impartial and have an open mind. And we want
13 to keep you that way.

14 So don't talk about the case amongst yourselves, with
15 your spouses, or friends, or anyone. And only until
16 you've heard all the evidence, until you've heard the law
17 you are to apply to the facts, and you've heard the
18 closing arguments of the lawyers will you have the tools
19 you need to do your job. These trials are often like
20 jigsaw puzzles. And the lawyers sometimes have to present
21 them one piece at a time. So keep that in mind. And
22 always keep an open mind throughout this matter.

23 Now, the lawyers in this case are advocates. And
24 they're going to be zealous on behalf of their clients.
25 You and I, ladies and gentlemen, are not advocates. Our

1 job is to be neutral and to be impartial. We don't have
2 any interest in the outcome of this matter. Your job is
3 to determine what the facts are, and apply the law as I
4 give it to you to those facts, and, ultimately, reach a
5 verdict.

6 Now, I've been informed by Mr. Anderson, the bailiff,
7 that some of you want to take notes. And I'm going to,
8 certainly, allow you to do that. But let me give you this
9 cautionary instruction about notes. I take notes. And,
10 of course, I think they're helpful. But, sometimes, my
11 notes are just flat wrong. So don't rely on your notes.
12 And don't let anyone else on the jury try to convince you
13 just because they took notes that their memory is any
14 better than yours. As we all know, notes can be
15 inaccurate.

16 Second of all, one of your jobs, as a juror, as the
17 judge of the facts, is to evaluate and weigh the
18 credibility of all the evidence. So that means for every
19 witness who testifies and every exhibit that's introduced,
20 you have to determine whether it's worthy of belief. So
21 don't get so engrossed in your notes that you don't pay
22 attention to the witnesses while they're on the stand so
23 you will be able to gauge their credibility. And, with
24 that, I'm going to allow you to take notes.

25 And, Mr. Anderson, if you want to go get the pads,

1 and we'll hand those out.

2 Now, I don't know how long this trial is going to
3 take. But no matter how long or short it is -- I've been
4 told it probably will last, at least, two or three days.
5 But no matter how long or short it is, bear in mind that
6 this is an important day in court for these parties. This
7 is their only day in court, and only days that they will
8 have to be in court and be heard, and have you determine
9 the case fairly and impartially.

10 So I want to thank you for your attention to me.

11 At this time, we'll have the opening statements.

12 Mr. Waters.

13 OPENING STATEMENTS

14 MR. WATERS: Thank you, Judge.

15 May it please the Court.

16 The evidence in this case is going to show that the
17 Defendant over there, Tony Trout, illegally attempted to
18 influence the Greenville County Grand Jury, and that he
19 did so to further his own agenda. And that's really what
20 it is in a nutshell.

21 Now, my name -- I've already been introduced to you,
22 I'm Creighton Waters. I'm from the Attorney General's
23 Office in Columbia. With me is Robert Lanier, also, with
24 the AG's Office, and Gene Donohue over there, the SLED
25 agent who investigated this case.

1 And what the evidence is going to show in this trial
2 is that Mr. Trout was elected to the Greenville County
3 Council. He's one of 12 members of the county council.
4 And once he got into office, his relationship with county
5 staff got very adversarial. He had some pet peeve issues.
6 And he wanted information on these pet peeve issues. And
7 he wasn't satisfied with what he got. Nothing the staff
8 did was good enough. And it got to the point that the
9 council had to remind Mr. Trout that his power as a
10 councilman came from the council as a whole. And he
11 didn't have an independent right to investigate by
12 himself, and to do these sorts of things.

13 And this, I believe and I think the evidence will
14 show frustrated Mr. Trout. But then, lo and behold,
15 somebody he knew got on the Greenville County Grand Jury.
16 And the Greenville County Grand Jury is a little
17 different. It's a little different than what y'all are
18 doing here today. The grand jurors, they serve six
19 months, some of them serve a year if they get held over.
20 And they meet, roughly, twice a month, more or less. And
21 their job is to review cases -- their main job is to
22 review cases to determine whether or not there's probable
23 cause, to discern whether the case gets bound over to a
24 trial jury like yourselves.

25 And the evidence is going to show that he started

1 having illegal contact with the members of the Greenville
2 County Grand Jury back and forth. He was bringing up his
3 pet peeve issues. He was bringing up people he had a
4 problem with. And, in this case, you're going to hear
5 from a fair number of witnesses. You're going to hear
6 from people that work in the courthouse. You're going to
7 hear from people that work in council administration.
8 You're going to hear from law enforcement, and you're
9 going to hear from some other folks.

10 And it's important, though, to remember that this
11 isn't like television. It's not going to be a show. The
12 job is not to entertain. And with this being a white
13 collar case, there's not going to be CSI and that sort of
14 thing. This is serious business. And while there may be
15 moments of lefty here or there, that's how we all have to
16 treat this. Because I want Mr. Trout to have a fair
17 trial, and I want the State to have a fair trial.

18 And part of that, of course, as the Judge told you,
19 is making sure that you avoid any outside influence, not
20 looking on the Internet, not watching any news coverage,
21 TV coverage, media, or anything like that. Because it's
22 very important for us to have a fair trial and for
23 Mr. Trout to have a fair trial, that you, as a jury,
24 decide this case only on the evidence that's presented in
25 this courtroom and only in this courtroom without any

1 outside influence. Because that's really one of the most
2 fundamental and most important aspects of a fair justice
3 system.

4 So when all that evidence is in, when all this
5 evidence we're going to present comes in, and any evidence
6 we decide to present comes in, that's going to show that
7 Mr. Trout is guilty beyond a reasonable doubt.

8 Thank you.

9 THE COURT: Thank you, Mr. Waters.

10 Mr. Gibson.

11 MR. GIBSON: Thank you, Your Honor.

12 May it please the Court.

13 Counsel.

14 Ladies and gentlemen of the jury, I'm Ken Gibson and
15 I represent Tony Trout.

16 Mr. Trout grew up here in Judson Mill. He's lived
17 his whole life here. At the age of 21, as soon as he
18 could, he became a police officer. For 20 years, he
19 served the citizens of Mauldin as a police officer for the
20 county. He protected the citizens of Mauldin from crime,
21 protected the citizens of Mauldin from theft. He
22 protected the citizens of Mauldin from violence. After 20
23 years, he left the police force and started his own
24 security company and made that into a success.

25 And he decided there was a need on the county council

1 for someone who would challenge the system that was there.
2 He made a decision that there was a need on county council
3 for someone who would challenge the good ole boy network,
4 stop things from being done as they were, challenge fraud
5 and abuse, challenge waste of taxpayer dollars. So he
6 decided to run for county council. And, in this campaign,
7 he promised to do two things. The first was the MLK, to
8 make Martin Luther King birthday a holiday. The second
9 was to dismantle the good ole boys network. The second
10 was to challenge the fraud and abuse that he had seen.

11 Now, when he got to county council, he saw all kinds
12 of fraud, all kinds of abuse. And he tried to do
13 everything he could within the confines of county council
14 and within the confines of county administration to deal
15 with those problems. He asked the county administrators
16 and he asked the county staff for information. They
17 refused to give it to him. He repeatedly asked them for
18 information again and again. He threatened them with FOIA
19 requests. They still refused to give it to him.

20 Finally, when he got the information, he saw a number
21 of things that he thought were criminal in nature. One of
22 those things was the county roads program. He saw a roads
23 program where for 10 years, virtually, every paving
24 contract in the county had gone to one company. The one
25 company was Ashmore Bros. Paving, which was run by Richard

1 Ashmore, a former county councilman and friend of county
2 council members.

3 He saw a system regarding road contracts where this
4 paving company was over billing the citizens of Greenville
5 County. They would submit an invoice saying they paid for
6 2,500 square feet of paving, which, in fact -- or 2,500
7 length of paving when, in fact, they had only done 1,700
8 or 1,800. And this was repeated over and over and over
9 again. He saw a system where the citizens of Greenville
10 County were paying \$15 more per ton of asphalt than that
11 same company was charging the state and other governmental
12 entities to do the exact same work.

13 Now, Greenville County had a provision in its
14 contract program which would have allowed Greenville
15 County to go back and get refunds from the county council.
16 But, for whatever reason, the administrators in Greenville
17 County refused to do that. When faced with this, he tried
18 to go to the members of county council. They refused to
19 do anything. He went to SLED. They refused to do
20 anything. He went to the FBI. They refused to do
21 anything. He went to the Greenville County Sheriff's
22 Office. They refused to do anything. He even went to the
23 AG's office, the same entity that Mr. Waters works for,
24 and they told him, We can't do anything. We don't have
25 the resources to investigate that. Finally, he found a

1 situation where the only thing that was left for him was
2 to go to a body that was controlled by the people, and
3 that's the Grand Jury.

4 Now, ladies and gentlemen, what you need to
5 understand is the Grand Jury is different from the type of
6 jury that you're on. You're on what's called a petit
7 jury. And your duties are limited to this case. You are
8 required and you are obligated to only consider the
9 evidence that is presented in this courtroom. You do not
10 have investigatory abilities. You cannot go out and if
11 there's some hole in my case or some hole in his, you
12 can't go out and do an investigation and fill it in on
13 your own. You are required to only consider the evidence
14 in this case.

15 The Grand Jury is different. The Grand Jury not only
16 deals with the charges by the Solicitor's Office in
17 deciding whether or not certain cases go to trial, but
18 they, also, have an investigative function. They can go
19 out and if they see public corruption, if they see
20 anything that they think needs their investigation,
21 they're allowed to do it. And that's what they were told.
22 On their first day of service, they were given a handbook
23 which spelled all of that out. And talked about the fact
24 that they can call witnesses, that they can create
25 investigations, that they can do all of these things.

1 Well, Mr. Trout got a packet of information to the
2 Grand Jury in an attempt to request an appearance in front
3 of them. When the members of the Grand Jury saw that
4 packet and they had a chance to consider that packet, they
5 decided that the matters that he set before them were, in
6 fact, things that needed to be investigated. And they
7 voted 18 to nothing to establish an investigatory
8 committee to follow through on that.

9 They then subpoenaed him and had him come to them and
10 talk to them. And he testified before them for two hours.
11 After that, the Grand Jury met again. Ricardo Studart was
12 the foreman of the Grand Jury. He was named the head of
13 the investigatory committee. He called, not Mr. Trout
14 calling him, but he called Mr. Trout and asked for more
15 information.

16 Now, he didn't just call Mr. Trout. He, also, called
17 a couple of people from the current council as well -- or
18 not county council, but from the county administration as
19 well to try to get more information to decide what they
20 wanted to do. And he called them for the purpose of
21 figuring out who else needed to be called in front of the
22 Grand Jury so they could follow through with their
23 investigation.

24 Now, after that phone call -- or during that phone
25 call, Mr. Studart asked for some information. Mr. Trout

1 e-mailed him that information. Eventually, people found
2 out that this is what was going on. They found out that
3 the people of the Grand Jury were proceeding on this issue
4 without the say-so, or without the authorization, or
5 without the control of the Solicitor, and it got shut
6 down.

7 Now, after that happened, there are those who decided
8 that they needed to make an example out of Mr. Trout. And
9 that's why you're here. This is not a case about justice.
10 This is not a case about a crime. This is not a case
11 about protecting the Grand Jury procedure, or protecting
12 justice, or anything like that. This is a hunt for a
13 trophy. This is a hunt for the head of Tony Trout.

14 Now, ladies and gentlemen, you are required to sit
15 back and listen to all the evidence in this case. And you
16 are required to hold the State to their burden, which is
17 they have to prove every element of the crimes they are
18 submitting to you beyond a reasonable doubt. And that's a
19 very difficult burden. And we're going to talk about that
20 later when I get another opportunity to stand before you
21 in closing.

22 But if they don't meet that burden, no matter how you
23 feel about Tony Trout, no matter how you feel about
24 anybody in this courtroom, or anybody who testifies, you
25 are obligated by your oath to acquit him. And I think

1 that is exactly what you'll do at the end of this case.

2 Thank you.

3 THE COURT: Thank you, Mr. Gibson.

4 MR. GIBSON: Thank you, Your Honor.

5 THE COURT: Mr. Waters, you may call your first
6 witness.

7 MR. WATERS: We would call Chief Judge John Few.

8 THE CLERK: Please step forward to be sworn, sir.

9 Place your left hand on the Bible and raise your
10 right hand.

11 WHEREUPON,

12 JOHN FEW,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Please be seated.

15 And state your name.

16 THE WITNESS: My name is John Few.

17 DIRECT EXAMINATION

18 BY MR. WATERS:

19 Q How are you doing today, Judge?

20 A I'm doing well.

21 Q Could you tell the jurors what your current
22 profession and occupation are?

23 A I am a judge. I served here in Greenville as a
24 circuit judge for almost 10 years. And, just a little
25 over a year ago, I was elected by the General Assembly to

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF STATE GRAND JURY
2009-GS-47-00006

STATE OF SOUTH CAROLINA,

vs.

HAROLD ANTHONY TROUT,
DEFENDANT.

PARTIAL TRANSCRIPT
OF RECORD

ORIGINAL

March 28, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

S. CREIGHTON WATERS, ESQ.
Assistant Attorney General

KENNETH C. GIBSON, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness

Page No.

(SW) JOHN FEW:

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All Exhibits were retained by the Clerk of Court for the State Grand Jury.

P R O C E E D I N G S

MR. WATERS: We would call Chief Judge John Few.

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Place your left hand on the Bible and raise your right hand.

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And state your name.

THE WITNESS: My name is John Few..

DIRECT EXAMINATION

BY MR. WATERS:

Q How are you doing today, Judge?

A I'm doing well.

Q Could you tell the jurors what your current profession and occupation are?

A I am a judge. I served here in Greenville as a circuit judge for almost 10 years. And, just a little over a year ago, I was elected by the General Assembly to be the chief judge of the South Carolina Court of Appeals. I started there on February 3rd of 2010. And that's where I work right now.

Q And what is the chief judge of the Court of Appeals? Could you tell us just a little bit about what that is?

1 A The Court of Appeals is a group of nine men and women
2 who hear appeals from cases that are tried here in this
3 courtroom, and cases that are tried in Family Court, and
4 in probate court, and, also, cases that come from the
5 administrative law courts. Basically, every case that is
6 tried in South Carolina that is appealed comes to the
7 Court of Appeals, except for just a narrow category, about
8 six different types of cases, cases like death penalty
9 cases, rate-setting case from the Public Service
10 Commission, cases involving elections, and a few other
11 categories. Every other type of case, when it's appealed,
12 comes to the Court of Appeals.

13 We sit in panels of three. And we read briefs. We
14 read the record that the court reporter is typing up here.
15 And then, in many cases, we will hold oral arguments. And
16 then we will issue an opinion as to which side should
17 prevail in the appeal.

18 Q Okay. And you mentioned your job or your position
19 that you had prior to being, I guess, promoted to the
20 Court of Appeals. What was that?

21 A I sat right up there where Judge Hill sits, not
22 usually in this courtroom, usually up on the third floor.
23 And, of course, we travel around the State. So I held
24 court in about 36 of our 46 counties trying criminal
25 cases, civil cases, and things of that sort.

1 Q Okay. And how long were you a trial judge?

2 A I was a trial judge for just a little more than nine
3 and a half years.

4 Q Okay. Do you remember when you started?

5 A I started on July 1st of 2000.

6 Q Okay. And I imagine you were a lawyer prior to that.
7 Is that fair to --

8 A I practiced law for about 12 years before I started
9 as a trial judge.

10 Q Back in 2007, did you have any particular
11 responsibility as a trial judge above and beyond just the
12 normal responsibilities?

13 A I did. We rotate, among circuit judges, the
14 responsibility of administering the criminal court or the
15 civil court. And I had just come off, I think, a couple
16 of years of being the chief administrative judge on the
17 civil side of this court.

18 And then I became the chief administrative judge on
19 the -- what we call the Court of General Sessions. You've
20 heard that phrase, I'm sure, today. That's the criminal
21 side of the court.

22 Q Okay. And, in 2007, your job was?

23 A In 2007, in addition to my normal duties as a circuit
24 judge, I was the chief administrative judge for the Court
25 of General Sessions for the Thirteenth Circuit, which is

1 Greenville and Pickens County.

2 Q Does that position involve anything with regards to
3 the Grand Jury?

4 A It does. All of the circuit judges have
5 responsibility with regards to the Grand Jury. But the
6 primary responsibility falls to whichever of us is
7 designated, at that time, to be the chief judge for
8 administrative purposes.

9 So, for 2007, I was the chief administrative judge
10 for the Court of General Sessions. And I had the primary
11 responsibility for the Grand Jury.

12 Q Okay. And could you tell us a little bit about what
13 the Grand Jury is, what it does, and how it differs from a
14 petit jury like the jury before you?

15 A The Grand Jury is 18 men and women from Greenville
16 County who sit and hear cases that are presented by
17 usually -- almost exclusively by the Prosecutor, or what
18 we refer to as the Solicitor.

19 And so the Grand Jury would meet and whatever
20 evidence the Solicitor chooses to present, the Grand Jury
21 would hear it. And they only really hear that one side of
22 the story. They do not hear anything from the Defense.
23 And the Grand Jury doesn't decide whether somebody is
24 guilty or not. They simply decide whether or not there is
25 enough evidence that if a jury like you folks were later

1 to believe it, then it could result in a criminal
2 conviction.

3 So if the Grand Jury believes that there is enough
4 evidence to go forward, then the Grand Jury will issue
5 what we call a true bill. A bill of indictment is a piece
6 of paper that you will see during the course of this
7 trial. And the Solicitor's Office will prepare that bill
8 of indictment. And, on the back of it, it would contain
9 the allegations that are being made against a particular
10 defendant.

11 The Grand Jury would have that indictment. And
12 officers usually, sometimes other folks, will come in and
13 testify. And the Grand Jury listens to their testimony
14 and then decides whether or not there is enough evidence
15 that has been presented that the case should go forward.
16 If they find there is enough evidence, they issue a true
17 bill. And then if, for whatever reason, the Grand Jury
18 feels that there is not enough evidence, then they would
19 issue a no bill.

20 In order to issue a true bill, there have to be 12 of
21 the 18 members of the Grand Jury to vote to return a true
22 bill.

23 Q Okay. And you said 12 of the 18. Could you tell us
24 a little bit about how a Grand Jury is selected, and how
25 they serve -- or how long they serve?

1 A The Grand Jury is, initially, selected just like you
2 folks were. There's a random group of people from the
3 driver's license roles, and the voter registration roles,
4 and driver's ID roles that are called in here at the
5 beginning of the year, and randomly a certain number of
6 them are picked. And you go through -- they go through
7 the same questions and answers that, I think, Judge
8 Stilwell asked you folks downstairs this morning.

9 And then once the pool of Grand Jurors is qualified,
10 the clerk will just randomly draw their names. I think in
11 Greenville County, it's done by computer. But, in some
12 other counties, it's still done using one of those
13 gigantic barrels that you can -- that you see on TV
14 sometimes where somebody just reaches in and pulls out a
15 name. But in whatever way they do it, it's a random
16 selection of Grand Jurors.

17 Now, we -- at about this time -- I think it was about
18 the beginning of 2007, we had determined that the Grand
19 Jury was very busy in Greenville County, and that we
20 needed to have them meet twice a month, rather than the
21 normal once a month. And to compensate for the amount of
22 time that that was going to cost the citizens who were
23 called on to serve as Grand Jurors, I mean, we cut their
24 service down to six months from 12 months. There's,
25 actually, a state statute that allows an individual county

1 to make that election.

2 So the Clerk of Court -- and it's Deputy Leanda King
3 and I worked together to get an ordinance prepared that
4 went before county council, and the county council elected
5 to follow that new procedure so that when a Grand Juror
6 was selected, their typical service would just be six
7 months. After the six-month period expires of those 12
8 people who were put on the Grand Jury for that period of
9 time, six of those are randomly selected to be called hold
10 overs, or to stay over for another six months. So you end
11 up with 12 new Grand Jurors at the beginning of each
12 six-month period, and six Grand Jurors who were held over
13 from the previous term.

14 We, also, have about six alternates, so that if
15 somebody is ill or has some type of work-related
16 commitment and can't make a particular meeting, then we
17 would get an alternate to come in and take their place.

18 So, typically, in Greenville, a Grand Juror would
19 serve six months. But about half of those who are
20 selected will end up serving 12 months.

21 Q Okay. Once they are selected, do you -- if you need
22 to get some water, go ahead.

23 A Thank you.

24 Q Once the Grand Jurors are selected -- do they take
25 any sort of oath?

1 A They do.

2 Q And how is that procedure done, just quickly?

3 A Well, the same day that the Grand Jury is selected,
4 then I would get them -- or, actually, it wouldn't always
5 be me. It just so happened that, in 2007, it was me in
6 January. And it was me, again, at the beginning of July,
7 I think. Although something tells me that we didn't,
8 actually, do that in the middle of 2007 until August.

9 But we would get them into a courtroom like this.
10 Usually, we would use the courtroom up on the third floor.
11 It's little bit larger than this. And we would start off
12 by -- well, there's two things that would happen. The
13 Judge would charge the Grand Jury, in other words, just
14 tell them what the law is in relation to their service,
15 tell them what their duties and responsibilities are, and
16 give them an outline of what they can and what they cannot
17 do. That's called the Grand Jury charge.

18 And then the Clerk of Court would administer an oath.
19 And I -- there is no way I could read that oath to you off
20 the top of my head. It's still written in language that
21 probably came across the Atlantic on the Mayflower.

22 MR. WATERS: I'm going to help you out.

23 I'm going to have this marked as State's Exhibit
24 No. 1.

25 I believe this is without objection.

1 MR. GIBSON: Without objection, Your Honor.

2 MR. WATERS: I'd offer it into evidence.

3 THE COURT: All right. It's in evidence..

4 (WHEREUPON, State's Exhibit No. 1 was marked for
5 identification and admitted into evidence.)

6 BY MR. WATERS:

7 Q Does that look like the oath that you were talking
8 about?

9 A It does.

10 Q Okay. Does that oath have anything in there about
11 secrecy?

12 A It does.

13 Q And could you read for us real quick that portion
14 that deals with secrecy?

15 A Well, I will. It says that -- it asks the Grand
16 Jurors to stand and raise their right hands. And then --
17 this is the language, "You, as members of this Grand Jury,
18 shall diligently inquire and true presentment make to all
19 such matters and things that shall be given to you and
20 charged, the State's counsel, your fellow and your own
21 shall well and truly keep secret."

22 Q Okay. When you give the Grand Jury an instruction as
23 to what their duties and obligations are, do you give them
24 any instruction on avoiding outside influence, or anything
25 of that nature?

1 A Yes.

2 Q And did you -- is there some sort of model
3 instruction that you follow, or did you have your own, or
4 how did you do that?

5 A There is a model Grand Jury instruction that is given
6 to each circuit judge. I am not sure who wrote it. It
7 probably was written quite a long time ago. And I
8 customized that charge to some extent to help me convey to
9 the Grand Jurors what I was -- what I believed were the
10 very important parts of the law that govern their
11 services.

12 Q Okay. And, as part of that, did you advise them not
13 to be -- to face any outside influence, or to avoid any
14 outside influence?

15 A Yes. And, off the top of my head -- I would have to,
16 actually, look at the charge in order to know exactly what
17 I said. But, yeah, that -- avoiding outside influence is
18 one of the subjects that the Grand Jury is charged on.

19 Q Given those concerns of secrecy and prohibition
20 against outside influence on the Grand Jurors, is there
21 any security measures that are in place for the Grand Jury
22 when they meet?

23 A Well, the Grand Jury meets here in this courthouse.
24 And, typically, a meeting might start at 9:00, 9:30.
25 Usually, it would be -- I would have a conversation -- a

1 little bit of an informal conversation with the Grand Jury
2 on that first day of their service during a term, and talk
3 to them about what their schedules were.

4 And I like to get started at 9:00. But if there was
5 somebody on the Grand Jury who had a particular scheduling
6 problem so that they were not able to start at 9:00, then
7 we might move it back to 9:30. But then when they would
8 come in, they'd come to the second floor of this building.
9 And they go down -- you go down a long hall that's public.
10 And at the end -- and make a left turn and go just a few
11 more feet and continue on that hall, and there's a room
12 there that we use as the Grand Jury room.

13 And that room is private. And the only people who
14 could get in there would be the Grand Jurors and the
15 officers who were going to be testifying, and, on some
16 occasions, representatives of the Solicitor's Office might
17 be allowed in there. The Clerk of Court or somebody that
18 he designates would go in from time to time to do things,
19 perhaps, like order their lunch, or see if anybody needed
20 anything. But when the actual deliberations were going
21 on, the only people who were in there would be the Grand
22 Jurors.

23 The outside -- on the outside of that room, there
24 was, typically, a bailiff like Mr. Anderson here, who's
25 wearing a red coat, who would be stationed outside of the

1 Grand Jury room. And there are, also, other people who
2 were out there, like I mentioned that police officers go
3 in to testify. So there, usually, are a few police
4 officers who are standing there waiting their turn to go
5 in to testify.

6 So it's a relatively informal security setting.
7 Everybody kind of knows that the Grand Jury meeting is
8 going on. The security officers in the courthouse are
9 aware that -- where it is, and the fact that it's going
10 on. So if there were anything unusual going on at the end
11 of that hallway, then they would know about it. And they
12 would take -- they would deal with it on a case-by-case
13 basis.

14 Q Did you have any sort of a routine practice or
15 standing orders with regards to whether if any sort of
16 issue arose with the sanctity of the Grand Jury room?

17 A I did not. There -- to my knowledge, there never had
18 arisen any concern with any security -- with anybody
19 getting in the Grand Jury room who wasn't supposed to be
20 in there.

21 Q And if any issue did arise, what was to happen?

22 A Well, we never had really covered it in advance. But
23 Mr. Wickensimer and Leanda King run a very efficient
24 office here. And our security in the courthouse is very
25 on top of it. And when something did arise, I was

1 immediately notified that it had arisen.

2 Q And why, in particular, were you notified?

3 A Well, I was notified first because I was the chief
4 judge for administrative purposes for the Court of General
5 Sessions during that period of time. I happened to be in
6 Greenville, rather than traveling somewhere else in the
7 state that week. And I don't recall exactly how I was
8 notified. But I -- somebody would have come up to my
9 office or called my office, and told me what was going on.
10 And I responded.

11 Q Okay. Do you recall any incident in 2007, that was
12 unusual with regards to the security or the sanctity of
13 the Grand Jury room?

14 A I do.

15 Q Could you describe that to the jury?

16 A Well, at some point early in the year, I was -- I
17 think the Grand Juries meetings were, typically, on
18 Tuesday. I was up here -- I would have been up on the
19 third floor, because that's where my office was. And
20 somebody said, There's somebody who wants to get in the
21 Grand Jury room.

22 And, as I recall, I responded that, That's not
23 permissible. And so do not let them in the Grand Jury
24 room. And if you have any problems with any disturbance,
25 then let me know. But, otherwise, just tell them they

1 can't get in the Grand Jury room.

2 And, at that particular time, I did not know who the
3 person was. I don't remember the exact date. But I have
4 reflected on approximately when it was. And it had to
5 have been sometime in mid to late February of 2007.

6 Q 2007?

7 A Yes.

8 Q Okay. Was there any subsequent incidents along those
9 lines?

10 A There was.

11 Q Could you describe that?

12 A There was another incident in which I was told in,
13 basically, the same fashion that there was somebody trying
14 to get into the Grand Jury room.

15 And, at this point, I knew that it was Tony Trout,
16 or, at least, I had been told that it was Tony Trout. And
17 so I, also, knew that Mr. Trout was a member of county
18 council. And I felt that it was duly respectful that I
19 personally go down there and inform Mr. Trout that he was
20 not allowed in the Grand Jury room.

21 Q And do you see Mr. Trout here in the courtroom?

22 A I do.

23 Q And could you point him out?

24 A He's seated over at the defense table next to
25 Mr. Gibson.

1 MR. WATERS: Your Honor, can the record reflect that
2 the Chief Judge has identified the Defendant?

3 BY MR. WATERS:

4 Q Did you have a meeting with Mr. Trout?

5 A I did.

6 Q And who was present at that meeting?

7 A Mr. Wickensimer, and me, and Mr. Trout.

8 Q And who is Mr. Wickensimer?

9 A Mr. Paul Wickensimer, he's our Clerk of Court here in
10 Greenville County. He's seated in the back of the
11 courtroom.

12 Q And can you tell us what happened at that meeting?

13 A It happened very quickly after I had been told that
14 Mr. Trout was down there. As I recall, I left my office
15 up here in this wing of the building on the third floor
16 and walked down to Mr. Wickensimer's office, and briefly
17 stepped in to speak to him.

18 As I recall, Mr. Wickensimer then went down to the
19 Grand Jury room to get Mr. Trout and brought him back to
20 Mr. Wickensimer's office.

21 Q Okay. And what happened next?

22 A They came in. We all shook hands. And I introduced
23 myself to Mr. Trout. At that point, I don't believe that
24 I had ever met him before. And I very quickly, and very
25 briefly, very succinctly explained to Mr. Trout that he

1 would not be allowed into the Grand Jury room. And I
2 explained to him why that was so.

3 Q Okay. And do you recall what you told him?

4 A Well, it was clear, at that point -- and I can't
5 remember if it was because of what I had heard leading up
6 to that incident, or whether it was something that he said
7 to me at that time. But it was clear that he had some
8 suspicion that there had been criminal activity, and he
9 wanted to get into the Grand Jury room to explain what he
10 knew.

11 And I explained to Mr. Trout -- and I went into this
12 meeting with the intention that I was going to make it
13 quick, and concise, and polite. And then I was going to
14 end the meeting. And I was going back to work, and
15 Mr. Trout was going to leave.

16 So I explained to him that if he had any suspicion of
17 criminal activity that he had four options. He could go
18 to a law enforcement officer, he could go to a county
19 magistrate, he could go to the Solicitor, or he could go
20 to the Attorney General. Those were his only four
21 options. And that he did not have the option of going
22 into the Grand Jury room.

23 Q Did y'all discuss attempting to get any letters or
24 anything like that to the Grand Jury, from your
25 recollection?

1 A Not that I recall. At that point in time, I do not
2 believe that there had been any mention of any letters.

3 Q Okay. Did you come to find out about any letters
4 that Mr. Trout was trying to get into the Grand Jury room
5 at a later time?

6 A Yes.

7 Q And can you tell me what happened with regards to
8 those --

9 MR. GIBSON: Your Honor --

10 THE COURT: Yes, sir, Mr. Gibson.

11 MR. GIBSON: Objection. I think it calls for
12 hearsay, Your Honor. Lack of foundation.

13 MR. WATERS: Let me get these marked.

14 I'll show them to him first.

15 MR. GIBSON: The Court's indulgence, Your Honor.

16 THE COURT: Sure.

17 (Pause.)

18 MR. WATERS: I'm going to get these marked quickly as
19 State's Exhibit Nos. 2, 3, and 4.

20 (WHEREUPON, State's Exhibit Nos. 2, 3, and 4 were
21 marked for identification only.)

22 BY MR. WATERS:

23 Q I'm going to show you what's been marked as State's
24 Exhibit Nos. 2, 3, and 4, and see if you recognize those.

25 THE COURT: Well, hold on just a second.

1 Is there still an objection, Mr. Gibson?

2 MR. GIBSON: Your Honor, it's subject to his ability
3 to establish that the witness has knowledge -- what I
4 don't want is him to illicit any hearsay.

5 THE COURT: All right. So you're withdrawing your
6 earlier objection?

7 MR. GIBSON: For now, yes, sir, Your Honor.

8 THE COURT: All right. Yes, sir. Go ahead.

9 BY MR. WATERS:

10 Q Let me see if I can clean this up a little bit. Had
11 you given any instructions to the bailiffs and the staff
12 with regards to if there were any further incidents down
13 in the Grand Jury room?

14 A I don't believe that I had, specifically, given any
15 instructions to anyone in response to what had happened as
16 I described a few minutes ago. But they all knew down in
17 the -- those who worked around the Grand Jury room that no
18 person could go in the Grand Jury room, and that no
19 materials were allowed in the Grand Jury room, unless they
20 had been taken in there by a police officers who was about
21 to testify, or by some representative of the Solicitor.

22 Q Okay. And, in your job as chief administrative
23 judge, if there was any issue that arose down with the
24 Grand Jury, what was supposed to happen?

25 A Well, they -- if at any time anybody in the

1 courthouse has any difficulty that they need assistance
2 with, they contact one of us. And, like I said a few
3 minutes ago, because I was the chief administrative judge
4 for General Sessions at that time, if I was here, then I
5 was, typically, the person that they would contact. If it
6 had been Judge Hill, then it would have been him. It just
7 so happened that I was the person doing the job of chief
8 administrative judge at that time.

9 Q Okay. Do you recognize State's Exhibit Nos. 2, 3,
10 and 4?

11 A I recognize State's Exhibit Nos. 2, 3, and 4. I will
12 answer your question in this way. During the couple of
13 months after these two incidents that I described where
14 Mr. Trout was down there trying to get in the Grand Jury
15 room, letters exactly like this were brought to me and --
16 because someone had tried to get them into the Grand Jury
17 room. And I gave instructions that those letters were not
18 to be allowed into the Grand Jury room. And I retained
19 the letters in my office.

20 Q Okay. And do you recognize these as those particular
21 letters?

22 A They look like the letters that I retained in my
23 office. Now, I did not -- when these letters came to me,
24 they were sealed. They have since been opened. And I
25 never opened them. I left them sealed. But they stayed

1 right there in my office the entire time.

2 Q Did you, subsequently, do anything with those
3 letters? Did you give them to anyone?

4 A I turned them over to Agent Donohue.

5 MR. WATERS: Your Honor, at this time, I would move
6 State's Exhibit Nos. 2, 3, and 4 into evidence.

7 MR. GIBSON: I think they should -- given that the
8 letters were sealed at the time and that now they're
9 opened, I would request that they come in through Agent
10 Donohue. So lack of foundation, Your Honor, is my
11 objection.

12 THE COURT: Overruled.

13 Go ahead.

14 MR. WATERS: Thank you, Judge.

15 (WHEREUPON, State's Exhibit Nos. 2, 3, and 4 were
16 admitted into evidence.)

17 BY MR. WATERS:

18 Q And who exactly is Gene Donohue again?

19 A He's the gentleman in the red tie sitting right over
20 there next to the television camera. He is with the State
21 Law Enforcement Division.

22 Q Otherwise known as?

23 A SLED.

24 Q SLED. Okay. To your knowledge, did the Defendant,
25 Tony Trout, ever testify before the Grand Jury?

1 A He did.

2 Q Okay. And, after that, did you receive any requests
3 or -- from the Grand Jury?

4 A Yes.

5 Q And could you describe those?

6 A As I recall -- I'll back up a just little bit and say
7 that, as I recall, I was informed by members of the Jury
8 that they wanted Tony Trout to come and testify. And so I
9 set that up. And, honestly, as I sit here, I can't
10 remember whether we set that up by subpoena, or we simply
11 just allowed it to happen. But, in whatever way, we
12 allowed Mr. Trout to come and testify before the Grand
13 Jury. That would have been, as I recall, sometime in late
14 September.

15 In early October -- and I remember the dates, because
16 I've been back over some of the documents here in the last
17 few days. On October 4th of 2000 [sic], I was in
18 Columbia. And my law clerk was here in Greenville. She
19 called me. My law clerk called me and said that she had
20 been contacted by the Foreman of the Grand Jury, who had
21 asked that Mr. Kernell be subpoenaed and that -- and they
22 wanted some documents subpoenaed.

23 And so when I got back to Greenville the next day, I
24 set that up by issuing a subpoena. They had given me the
25 date of October the 10th. I did not realize, at that

1 time, that October 10th was not a meeting that was set for
2 the Grand Jury.

3 The Grand Jury doesn't just meet when it wants to.
4 The Grand Jury meets according to an order. And,
5 typically, the Clerk -- actually, the Solicitor would
6 prepare an order that sets the meeting dates for the Grand
7 Jury. The Solicitor would bring that order to me. It's a
8 perfunctory matter. And I would sign the order and really
9 not pay any attention to when the exact dates were.

10 So it just so happened that this particular date was
11 not a scheduled meeting of the Grand Jury. And I didn't
12 know that at the time. So I went ahead and directed the
13 Clerk of Court to prepare a subpoena for Mr. Kernell, and
14 to have it served. And that would have been October the
15 5th of 2007.

16 Q Okay. And was that the end of it, or did anything
17 further happen after that?

18 A That was not the end of it. I believe that it was
19 after I had directed the subpoena to be prepared, I saw
20 the document request and realized that it was going to
21 call for a very large quantity of documents. And, going
22 back to my days when I practiced law, I was able to
23 immediately recognize that nobody was going to be able to
24 put together that quantity of documents in the six days
25 that were remaining between then and the time that the

1 subpoena would have to be honored and the documents
2 produced.

3 I, also, figured out by then that October 10th was
4 not a regular meeting of the Grand Jury date. And so for
5 that reason, plus one other reason, I directed that the
6 subpoena never be served.

7 Now, do you want me to tell you what the other reason
8 was?

9 Q Go ahead.

10 A On October the 4th, when I got a phone call from my
11 law clerk telling me that the Foreman of the Grand Jury
12 had asked to have Mr. Kernell subpoenaed, I directed that
13 she contact the Clerk of Court and ask the Clerk of Court
14 to prepare the subpoena. Before she made the contact with
15 the Clerk of Court, I got a phone call from the Clerk of
16 Court telling -- I think it was, actually, from the Deputy
17 Clerk of Court, Leanda King, telling me that members of
18 the press had called the Clerk's Office asking about the
19 subpoena for Joe Kernell.

20 Now, it didn't take me but a minute to realize that
21 that was impossible. Because the only way that the press
22 could have known about the subpoena, which had not yet
23 been prepared -- in fact, nobody even knew about the
24 subpoena, except for the Foreman of the Grand Jury, and
25 whoever -- whatever other members of the Grand Jury were

1 in that meeting, and me, and my law clerk.

2 The only way that the press could have known about
3 that was if someone who had been in that Grand Jury
4 meeting had leaked the matter to the press. And that, in
5 response to that leak, they called the Clerk's Office and
6 asked for a copy of subpoena. Because I really -- and
7 we've talked about secrecy, and you'll hear a lot about
8 how important secrecy of the Grand Jury is.

9 Because it was immediately apparent to me that there
10 had been a breach in the security of the -- in the secrecy
11 and security of the Grand Jury, I instructed the sheriff's
12 deputies, who had been given the responsibility of serving
13 that subpoena, not to serve the subpoena until I had time
14 to think about what needed to be done.

15 Q Okay. And what did you decide to do? Did you meet
16 with the Grand Jury and discuss any of these issues with
17 them?

18 A Yes. Now -- right now, we're talking about things
19 that are happening on or about October 5th or 6th.

20 Q Right.

21 A We did have a -- the next regularly scheduled meeting
22 of the Grand Jury must have been October 24th. Because
23 that's when I met with the Grand Jury next.

24 Q Okay. And what did you -- did you meet with them in
25 public on the record at that time?

1 A Yes.

2 Q And did you discuss anything with them? Did you make
3 any points to them at that time?

4 A I did. I -- well, I talked to them about secrecy.
5 And I reflected on this oath that I read to you earlier
6 and realized that, perhaps, the oath could be more clear
7 about the requirement of secrecy. And so I made the
8 obligation of secrecy abundantly clear to the Grand Jury
9 at the October 24th meeting.

10 Q Did you take any -- or make any further efforts to
11 reinstate the subpoena, or have a new subpoena issued, or
12 anything like that? Were any efforts given to you to try
13 to get that subpoena back in effect? That wasn't the best
14 question in the world. Do you want me to try again?

15 A I think I understand the question. Yes, the request
16 that the Grand Jurors had to hear from Mr. Kernell, and to
17 look at the documents that they wanted to see remained on
18 the table.

19 And I don't recall exactly what the sequence of
20 events was. But I know that I got a letter from
21 Mr. Kernell explaining that the documents that had been
22 requested would fill approximately 100 bankers boxes. And
23 he asked for permission not to bring those to the
24 courthouse. And, of course, we were very quick to agree
25 to that. Because we don't have a place in the courthouse

1 here to store 100 boxes of documents in the same place
2 where they could be viewed by the Grand Jury.

3 So, as I recall, we asked Mr. Kernell to set up a
4 place in the county council offices over -- or in the
5 offices of the county over at County Square where they
6 could set up those boxes of documents into a secure room.
7 And that when the Grand Jury was ready to do so, they
8 could go over there, and they could look through the
9 documents.

10 Q Okay. Did you, subsequently, have another meeting
11 with the Grand Jury on the record in which you had to
12 address the issues of secrecy?

13 A In early November, I did.

14 Q Okay.

15 A Now, the October 24th meeting was a public meeting on
16 the record that I held up in courtroom #8. The early
17 November meeting -- I have forgotten the individual date.
18 But it was not a public meeting, but it was on the record.

19 Q Okay. And without getting into the -- what was
20 discussed at that public meeting, did you have to take any
21 action at that particular --

22 A Do you mean in the November meeting?

23 Q In the November meeting, yes, sir.

24 A I did.

25 Q And could you tell us what the action was?

1 A Well, I removed the Foreman of the Grand Jury.

2 Q Okay. And what was his name? Do you recall?

3 A Ricardo Studart, I believe was his name. And I
4 apologize to Mr. Studart if I have mispronounced it. But
5 that's, essentially, his name.

6 Q Was there another foreperson elected at that time?

7 A There was.

8 Q And do you recall who that was?

9 A It was David Smith.

10 Q After that meeting, did there ever come a time where
11 you had to take any further action -- unusual action with
12 regards to this particular Grand Jury?

13 A After the November 7th meeting? Or what date was it
14 in November?

15 Q Well, I'll show you --

16 A I'll call it the November meeting, but I have
17 forgotten the individual date.

18 Q It was the 5th. I don't believe there's any
19 objection to telling you --

20 A November the 5th. Okay. We had something come up in
21 December. But I'm not sure of anything else that
22 happened -- well, let me think.

23 No, I can't think of anything else. Maybe there was,
24 but I can't think of anything else that happened in
25 November.

1 Q Okay. What about in December? Did anything come up
2 that required some action on your part?

3 A In December, there was a meeting that was scheduled
4 by the Grand Jury. And the meeting was continued --
5 actually, it was delayed. It would have been the last
6 meeting of the year, and it was delayed. And the meeting,
7 actually, never occurred.

8 I knew about that as it unfolded. I was not the
9 Judge who ordered that the meeting be delayed. That
10 was -- and the reason for that is because I was in
11 Berkeley County holding court and was not able to deal
12 with the situation that arose that day. And Judge Miller,
13 actually, took care of that.

14 MR. WATERS: Your Honor, the Court's indulgence one
15 moment, please.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MR. WATERS: Nothing further, Your Honor.

19 Thank you.

20 THE COURT: Cross-examination.

21 MR. GIBSON: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. GIBSON:

24 Q Judge Few, you are the chief judge of the appellate
25 court -- of the Court of Appeals; is that correct?

1 A That's correct.

2 Q So if I ever have a case that's on appeal in front of
3 the Court of Appeals, I will be before you again; is that
4 correct?

5 A Well, you'll be before me or one of my -- or three of
6 my colleagues.

7 Q And you have promised not to hold this against me; is
8 that correct?

9 A I'm more concerned about what you'll do to me on the
10 basketball court than I am --

11 Q All right. Your Honor, as part of that Grand Jury --

12 MR. GIBSON: Let me show this to Mr. Waters first.

13 BY MR. GIBSON:

14 Q When the Grand Jury comes in, you, also, give them a
15 handbook; is that not correct?

16 A Well, the Clerk does. And I'm not personally
17 involved in that. But the Clerk does give each member of
18 the -- well, I believe that the Clerk gives each member of
19 the Grand Jury a handbook.

20 Q All right. Have you ever seen the handbook?

21 A I have.

22 Q Okay. Is that a copy of the handbook?

23 A It looks like it is. I can't tell you for sure
24 whether it is, but it looks like it.

25 MR. GIBSON: Is there any objection to it being

1 admitted as --

2 MR. WATERS: No objection, Your Honor.

3 THE COURT: It's in evidence.

4 MR. GIBSON: Thank you, Your Honor.

5 Let me get this marked.

6 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
7 identification and admitted into evidence.)

8 BY MR. GIBSON:

9 Q Now, on that handbook -- on this document, on the
10 bottom left corner, there's a designation that's SCA --
11 SCCA 238; is that correct?

12 A Yes, sir.

13 Q Well, what does that mean?

14 A Well, the "SCCA" probably stands for South Carolina
15 Court Administration. So it is a -- as I understand it,
16 it is a form document that is prepared by our
17 administrative arm of the courts in Columbia for
18 distribution to the county Clerk of Court for distribution
19 to the members of the Grand Jury.

20 Q Okay. Now, as part of your charge to the Grand Jury
21 when they first come in, do you explain to them about the
22 two main functions of the Grand Jury?

23 A I do.

24 Q Would you, please, tell the jury what those two --
25 the two main functions are?

1 A All right. I will. Well, the Grand Jury is -- I'll
2 refer to this as the county Grand Jury. Because I think
3 that's kind of what most people refer to the Greenville
4 County Grand Jury as. And it exists in every county.

5 It's part of our Constitution. The State
6 Constitution provides that there will be a county Grand
7 Jury. And there are a couple of statutes that have been
8 enacted by the legislature over the years that relate to
9 the county Grand Jury. But there's really not much
10 statutory or Constitutional guidance. The Grand Jury,
11 basically, operates under principles of what we call the
12 common law.

13 So, in other words, if we go back not simply
14 generations, but back centuries, then we would
15 historically see how Grand Jurors and Grand Juries
16 operated. And that procedure has been handed down over
17 the years in Greenville, and in Charleston, and in other
18 cities around the country going probably all the way back
19 to when the Grand Jury was first conceived in England
20 many, many centuries ago. And from that history has
21 developed two basic tasks that Grand Jurors and Grand
22 Juries perform. The first one is that the Grand Jury
23 would consider bills of indictment, as I explained to you
24 earlier.

25 So if the Solicitor believes that a crime has been

1 committed and wants to present evidence to the Grand Jury
2 either through police officers or whatever, then the Grand
3 Jury would listen to that evidence as an individual case,
4 and then decide whether or not there's sufficient evidence
5 to go forward. And, again, as I explained, if 12 members
6 of the Grand Jury believe that there is sufficient
7 evidence, they would return a true-billed indictment. And
8 then that becomes a criminal case that goes forward and,
9 eventually, would wind up in front of a jury like you
10 folks.

11 But the other thing that Grand Jurors and Grand
12 Juries historically have done is a much less well defined
13 responsibility or opportunity to investigate what's going
14 on in the community. And in the Grand Jury charge that I
15 would give at the beginning of each term and that every
16 judge gives at the beginning of each term in every county
17 in South Carolina, those general responsibilities are
18 explained.

19 And they're explained, basically, that the Grand Jury
20 has the responsibility to kind of look around the
21 community and see what's going on, and to -- and observe
22 the conduct of public officers and see what's going on.
23 And if the Grand Jury believes that criminal conduct has
24 occurred, then the Grand Jury is free to present a bill of
25 indictment as to that conduct.

1 But, in addition to that, the Grand Jury, also, has
2 the responsibility to perform investigations. And, in
3 today's day and age, that hardly ever happens. In fact,
4 the incident that you asked me about -- or, actually, that
5 Mr. Waters asked me about a few minutes ago, when the
6 committee was created here in the fall of 2007, that's the
7 first time that I've ever seen it happen in my work with
8 Grand Juries over the years that I was a circuit judge.

9 But the description of what the Grand Juries
10 responsibility is is very general and really -- I mean,
11 you've got the text. So don't ask me -- you can't ask me
12 to repeat it off the top of my head. But, basically,
13 that's what it is. The Grand Jury has the opportunity and
14 the ability to kind of look around the community and see
15 if they believe anything improper or illegal is going on.

16 Now, at the end of that description of what they can
17 do -- and then we talk about -- I talk to them about the
18 opportunity, if they choose to, that they create a
19 committee. I talked to them about the possibility that if
20 they wanted to, they could hire an expert to help them
21 understand certain types of evidence that they might not
22 have the expertise on, among their members, to understand.

23 But, at the end of all that, I would say, however,
24 the only thing you can do with any of that is to present a
25 bill of indictment. You can't just, generally, say, we

1 don't approve of the way this particular person is doing
2 this particular task. The only thing that the Grand Jury
3 can do at the end of all that investigation is to indict
4 someone for a crime.

5 Q Okay. Now, you talked about the fact that this -- In
6 your memory, at least, that this had not happened, where a
7 Grand Jury had, actually, taken the initiative to create a
8 subcommittee and investigate something; is that correct?

9 A Not in my personal experience. Now, I feel confident
10 that it has happened, perhaps, even during the period of
11 time when I've been involved with the Court system, but I
12 was not personally involved in it.

13 Q But they do have the ability to do that; is that
14 correct?

15 A Yes, sir.

16 Q Now, when Mr. Trout tried to -- you said that
17 Mr. Trout tried to get in the Grand Jury room; is that
18 correct?

19 A That is correct.

20 Q And when he was doing that, in effect, what he was
21 requesting was an appearance in front of the Grand Jury;
22 is that correct? Or is that not correct?

23 A Well, you know, you might be asking me to get into
24 the head of Mr. Trout right there. From my standpoint,
25 what Mr. Trout was doing was trying to do something that

1 was not allowed under the law. And my meeting with
2 Mr. Trout was to explain to him what was and what was not
3 allowed under law.

4 Because even though the Grand Jury has these vague
5 and sort of wide-ranging abilities that I just described a
6 few minutes ago, the operation of the Grand Jury is
7 limited by law. And it was my responsibility to control
8 that and to make sure that the law was followed. And so
9 when I met with Mr. Trout, my goal was not to understand
10 what he was up to. My goal was to make sure the law was
11 followed in the way the Grand Jury was conducted.

12 Q Okay. But citizens do have a right to request an
13 appearance in front of the Grand Jury, do they not?

14 A In the sense that you can stand up by exercising your
15 right to free speech and ask for anything or say anything
16 you want to, yes. But in the sense that you could ever
17 accomplish that, no. It is absolutely forbidden that any
18 private citizen can go before the Grand Jury, unless they
19 are brought there by a Grand Jury subpoena or by the
20 Solicitor.

21 Q Okay. Now, in that -- before we get past that. In
22 this notebook -- or this handbook that's given to the
23 jurors, as far as witnesses are concerned, now, you just
24 said they could only come before the Grand Jury by
25 subpoena. Is that -- that's what you said, right?

1 A Unless they're brought there by the Solicitor.

2 Q But they can, also, come voluntarily. Can they not,
3 also, do that?

4 And before you answer, you might want to look at --

5 A Well, I will. Okay. I will.

6 Thank you.

7 This document that -- can I get this stapled? Don't
8 you want this stapled?

9 Q That would be great.

10 THE COURT: Well, you all might want to staple it,
11 but I'm going to refer to Ms. Jenkins.

12 Do you want to staple it?

13 THE COURT REPORTER: Yes, sir.

14 THE COURT: Okay. That's fine.

15 BY MR. GIBSON:

16 Q There you go, Your Honor.

17 A Thank you.

18 On Page 3 of this document, which is Defendant's
19 Exhibit No. 1, under the section called "Common Terms,"
20 there is a subsection called "Witnesses," that you have
21 pointed me to. And the second sentence of that section
22 says, "The witnesses may appear voluntarily."

23 However, that does not mean that a witness may simply
24 choose to go before the Grand Jury. That witness can come
25 before the Grand Jury only at the request of the Grand

1 Jury, or at the request of the Solicitor.

2 And when this document says that they may appear
3 voluntarily, that means that it is not necessarily
4 always -- it's not always necessary that they be forced
5 under the requirements of law to appear. If a witness
6 says, sure, I'll be happy to come and testify before the
7 Grand Jury. Then, in that sense, they have testified
8 voluntarily and it's not necessary that a subpoena be
9 issued requiring them to come.

10 Q Okay.

11 A But this cannot be read to say that a witness may
12 simply choose to go and testify before the Grand Jury.

13 Q And I'm not trying to say that, Your Honor.

14 As far as requests for an appearance is concerned,
15 have you been -- an appearance before the Grand Jury, can
16 you point to any law statute, regulation code, which says
17 that someone does not have an ability to request an
18 appearance before the Grand Jury?

19 A Just the general principle that governs how Grand
20 Juries operate. And that is that once that Grand Jury
21 gets inside that room, the only people who can be in there
22 when there's, actually, business being conducted are the
23 law enforcement officers or other witnesses who have been
24 asked to come in and testify, or, under certain limited
25 circumstances, the Solicitor or his designee can be in

1 there. But nobody else can ever be in there.

2 And so since nobody else can ever be in there,
3 there's never an opportunity for anybody to request to be
4 in there. Because when the Grand Jury is out in the
5 community, when an individual Grand Juror is at the
6 grocery store, then they're a citizen just like me or just
7 like you. They are not out there walking around
8 Greenville County as a representative of the Grand Jury,
9 so that someone could walk up to them and say, excuse me,
10 Grand Juror, but at your next meeting, would you mind
11 inviting me in so that I can testify? I mean, that could
12 happen, of course, but that's not permitted under law.

13 Now --

14 Q Okay. And --

15 A May I finish my answer?

16 Q I'm sorry.

17 A But to the specific situation that we face here --

18 Q Yes, sir.

19 A -- you've heard me describe on direct these meetings
20 that I had with Mr. Trout -- or the meeting -- the one
21 meeting I had with Mr. Trout in Mr. Wickensimer's office.

22 Q Yes, sir.

23 A And, in that meeting, I expressly explained to
24 Mr. Trout that he could not go in front of the Grand Jury
25 room -- in front of the Grand Jury.

1 And so I don't -- you know, to the extent you were
2 asking me about Mr. Trout and whether or not he could have
3 asked for an opportunity to go before the Grand Jury, no,
4 he could not. Because I had, specifically, instructed him
5 that he could not do that.

6 Q Okay. In rendering that opinion or coming to that
7 belief, did you refer to 16-9-350, which is the statute --
8 jury tampering statute?

9 A Not that I recall.

10 Would you show it to me?

11 Q I sure will. I'll show it to you on the commuter, if
12 that's okay.

13 Oh, Mr. Waters to the rescue.

14 Here you go, Your Honor. Take a look at that. And
15 particularly, please, pay attention to that last sentence
16 in there.

17 A Okay.

18 Q The last sentence in that section says, "Nothing in
19 this section shall be construed to prohibit communication
20 of requests to appear before the Grand Jury"; is that
21 correct?

22 A That's what it says.

23 Q So, clearly, the legislature has contemplated that
24 you should -- that a citizen should be able to communicate
25 a request to appear before the Grand Jury?

1 A Well, I'm going to have to ask for Judge Hill's
2 permission to answer that question. Because you have
3 asked me to say what I think the law is, and that's his
4 job.

5 So if you want me to answer --
6 Judge?

7 MR. GIBSON: I'll withdraw the question.

8 I mean, I think Judge Hill will explain to the jury
9 what the law is at that -- when we get to that point
10 witness.

11 THE WITNESS: Now, if you -- if you're asking me
12 whether or not this means that what I said a minute ago
13 about my instructions to Judge -- to Mr. Trout is wrong,
14 then I'll be happy to answer that.

15 BY MR. GIBSON:

16 Q That's okay. Let me ask you this, have you ever been
17 wrong?

18 A Absolutely.

19 Q Have you ever been wrong in an opinion -- in a legal
20 opinion that you've issued as a judge?

21 A Absolutely.

22 Q And that's happened on more than one occasion; is
23 that not correct?

24 A It happens all the time.

25 Q And when you --

1 A In fact, I was told by the Supreme Court just last
2 week that I had been wrong in this very courtroom about
3 six years ago.

4 Q I think I have that case, Your Honor.

5 And when you rendered those opinions, you were
6 confident at the time that you rendered them that the
7 opinion you gave was right; is that correct?

8 A Right.

9 Q Now, you talked earlier about some provisions
10 regarding secrecy of the Grand Jury, and the fact that the
11 Grand Jury members were required to enter into an oath to
12 uphold those provisions; is that correct?

13 A That's right.

14 Q Now, Mr. Trout, was he on the Grand Jury? He was not
15 on the Grand Jury, was he?

16 A He was not.

17 Q So he did not take that oath that the Grand Jury --
18 the other Grand Jury members --

19 A Obviously, not.

20 Q Okay. Now, there have been three letters that have
21 been entered as exhibits. Do you know for certain whether
22 those are the only letters that Mr. Trout sent?

23 A I do not know for certain. However, understanding
24 the way the Grand Jury is operated here in Greenville
25 County, it is not -- I don't believe it was possible to

1 get a letter into the Grand Jury on the day of its
2 meeting.

3 Now, if there was a -- if there was something given
4 to, an individual Grand Juror, like I mentioned, when a
5 Grand Juror was out at the grocery store or something like
6 that, then, obviously, I would have no knowledge about
7 that. But the way this institution operates in Greenville
8 County, it would not have been possible to get a letter
9 into the Grand Jury while they met here at the courthouse.

10 MR. GIBSON: The Court's indulgence, and yours as
11 well, Your Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 BY MR. GIBSON:

15 Q Now, you talked about the fact that the only thing
16 that the Grand Jury could do in a situation where it saw
17 public corruption was, basically, to enter an indictment;
18 is that correct?

19 A That's correct. And -- yes, that is correct.

20 Q Now, in this particular instance, you said the Grand
21 Jury met on October -- was it November 5th? Is that
22 correct?

23 A That's what y'all just told me was the date.

24 Q Yes, sir. And then they were supposed to meet,
25 again, in December, I think that was your testimony;

1 correct?

2 A There was supposed to be, at least, one meeting in
3 December.

4 Q And that meeting never happened, did it?

5 A That's right.

6 Q And, after that December meeting, this particular
7 Grand Jury, their term expired; isn't that, also, correct?

8 A That's right.

9 Q So the members of that Grand Jury and that
10 investigation, or whatever they were doing at that point,
11 was null?

12 A Well, the new -- the Grand Jury would, of course,
13 have been renewed the next year. There were six hold-over
14 members of the Grand Jury.

15 Q Yes, sir.

16 A There would have been 12 new members added to the
17 Grand Jury. And there would be nothing to prohibit that
18 new Grand Jury for 2008, to renew the investigation that
19 had been conducted during 2007. But it would have been
20 impossible for those 12 members who rotated off of the
21 Grand Jury to have participated in that discussion,
22 because they were no longer members of the Grand Jury.

23 Q Got you. And when that December -- if they were
24 going to issue any kind of indictment, it would have had
25 to have occurred at that December meeting, which was

1 cancelled?

2 A If those 18 members were going to return an
3 indictment, it would had to have been issued at that
4 meeting.

5 MR. GIBSON: Thank you.

6 THE COURT: Redirect?

7 MR. WATERS: Thank you, Judge.

8 Very briefly.

9 REDIRECT EXAMINATION

10 BY MR. WATERS:

11 Q Chief Judge Few, you were asked a little bit about
12 16-9-350. This last thing right there, does that last
13 provision there do anything to authorize the bringing of
14 substantive information to the Grand Jury?

15 A It does not.

16 Q Okay. And what's the second half of that sentence?

17 A Well, the sentence says --

18 Q Or read the whole --

19 A The sentence that I was asked to look at says,
20 "Nothing in this section shall be construed to prohibit
21 the communication of a request to appear before the Grand
22 Jury, or other communication authorized by the Court."

23 Now, of course, someone can communicate a request to
24 appear before the Grand Jury. They can communicate that
25 to the Solicitor. But there's nothing in here that

1 authorizes a member of the public to request of the Grand
2 Jury itself that they be allowed to appear.

3 Q And it, certainly, doesn't authorize giving them
4 substantive information; is that correct?

5 A It does not.

6 MR. GIBSON: Very briefly, Your Honor.

7 MR. WATERS: No. I'm not --

8 MR. GIBSON: Oh, I'm sorry. I thought he was done.
9 I'm sorry.

10 BY MR. WATERS:

11 Q You were asked a little bit about the cancellation
12 of -- or the continuance of the last meeting. Were you
13 trying to impede this Grand Juries investigation?

14 A Of the December meeting?

15 Q Right.

16 A No. As I recall, concerns arose about that meeting
17 because a news reporter had been called and told that they
18 should get to the courthouse quickly, because someone was
19 about to be indicted. And it was apparent that that
20 communication had come from within the Grand Jury. And,
21 as discussions ensued over that morning about what to do,
22 the meeting was not held.

23 Q Okay. And you were just trying to make sure the
24 rules were followed; is that correct?

25 A I was trying -- that is my responsibility with regard

1 to the Grand Jury is to make sure that they operate
2 according to the law.

3 MR. WATERS: Thank you, Judge.

4 MR. GIBSON: Just very briefly, Your Honor.

5 THE COURT: Go ahead.

6 RECROSS-EXAMINATION

7 BY MR. GIBSON:

8 Q He asked you some questions about 16-9-350, and
9 whether or not that prohibited giving substantive
10 information. If someone who you didn't know wanted to
11 have a meeting with you, wouldn't they have to give you
12 some kind of information as to what that meeting was
13 about?

14 MR. WATERS: Your Honor, I'd object to that question.
15 I think that's --

16 THE COURT: On what basis?

17 MR. WATERS: Actually, I withdraw the objection.

18 THE COURT: All right.

19 THE WITNESS: Well, the situation is not comparable.
20 Because a meeting with me is not controlled by statute.
21 It's not controlled by law. If somebody wants to meet
22 with me, they can just call me up and ask me. But the
23 Grand Jury is an institution that is controlled by law.
24 And the only way that someone can institute or initiate a
25 communication with the Grand Jury is within the parameters

1 of the law.

2 And, as I explained to Mr. Trout in the spring of
3 2007, the law does not permit him to bring matters before
4 the Grand Jury. Actually, what the specific context of
5 that statement was is that the law does not permit him to
6 appear before the Grand Jury.

7 BY MR. GIBSON:

8 Q So the answer to my question is "yes"?

9 A Well, perhaps, I need you to repeat the question.

10 Q If someone you didn't know wanted to have a meeting
11 with you, wouldn't they need to provide you some kind of
12 information as to what the meeting would be about?

13 A Not necessarily. I -- this may be getting a little
14 off track, but I have as a -- when I was practicing law
15 and since I have been a judge, I am, to that extent, more
16 so as a judge than I was as a private lawyer, but I'm a
17 participant in the judicial process. And I always made it
18 a commitment that if anybody ever wanted to talk to me or
19 meet with me that, unless I had some personal concern over
20 my safety, I would meet with them. And there would be no
21 questions asked as to why.

22 Q If you were going to issue a subpoena for someone to
23 testify, wouldn't you want to have some kind of
24 information as to what the subpoena was about?

25 A If I was going to issue a subpoena for someone to

1 testify before the Grand Jury.

2 MR. WATERS: Your Honor, I object to relevance at
3 this point.

4 MR. GIBSON: Withdrawn, Your Honor.

5 I think the point is made. I think the jury
6 understands.

7 THE COURT: All right.

8 MR. WATERS: Nothing further.

9 THE COURT: Thank you, sir.

10 You may step down.

11 *****END OF REQUESTED TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

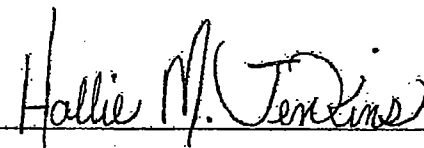
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Partial Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of State Grand Jury for Greenville County, South Carolina, on the 28th day of March, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 26, 2011



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

1 questions asked as to why.

2 Q If you were going to issue a subpoena for someone to
3 testify, wouldn't you want to have some kind of
4 information as to what the subpoena was about?

5 A If I was going to issue a subpoena for someone to
6 testify before the Grand Jury --

7 MR. WATERS: Your Honor, I object to relevance at
8 this point.

9 MR. GIBSON: Withdrawn, Your Honor.

10 I think the point is made. I think the jury
11 understands.

12 THE COURT: All right.

13 MR. WATERS: Nothing further.

14 THE COURT: Thank you, sir.

15 You may step down.

16 All right. Ladies and gentlemen, we're going to take
17 a short recess for about 10 minutes. Don't talk about the
18 case. Continue to keep an open mind. And we'll resume
19 the trial in about 10 minutes.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 4:15 p.m.)

22 THE COURT: We'll take about a 10-minute break.

23 (WHEREUPON, a break was taken.)

24 THE COURT: Anything before we bring the jury back
25 in?

1 MR. WATERS: No, Your Honor.

2 MR. GIBSON: No, Your Honor.

3 THE COURT: Yes, sir. You can bring them in.

4 (WHEREUPON, the jury came into open court at
5 approximately 4:30 p.m.)

6 THE COURT: All right. Yes, sir, Mr. Waters. You
7 may call your next witness.

8 MR. WATERS: Thank you, Judge.

9 We call Leanda King.

10 THE CLERK: Please step forward and be sworn in.

11 Place your left hand on the Bible and raise your
12 right hand.

13 WHEREUPON,

14 LEANDA KING,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Once you're seated, please, state your
17 name, ma'am.

18 THE WITNESS: My name is Leanda King.

19 DIRECT EXAMINATION

20 BY MR. WATERS:

21 Q Ms. King, how are you doing today?

22 A Fine.

23 Thank you.

24 Q Could you tell the jurors what your current
25 occupation is?

1 A I'm the Assistant Clerk of Court for Circuit Court
2 for Greenville County.

3 Q And just quickly, what does that job entail?

4 A Basically, I run the day-to-day operations of the
5 Clerk of Court's Office for the Circuit Court, which is
6 the Court of Common Pleas and General Sessions.

7 Q And remind us real quick again the difference between
8 Common Pleas and --

9 A Civil and criminal.

10 Q And General Sessions is?

11 A Criminal court, and Common Pleas is civil court.

12 Q As part of that job, do you have any involvement in
13 the selection of the grand jurors?

14 A Yes. I oversee the process of how we, actually,
15 choose a grand juror, and any juror process. I kind of
16 oversee the employees that run that on a day-to-day basis.
17 But I'm kind of involved in it, so I'm real familiar with
18 the process.

19 Q We've already heard a little bit about this, but, if
20 you could, just quickly, run down how many grand jurors
21 are selected, how long they serve, and that sort of thing.

22 A Okay. In 2007, they served six months at a time.
23 But what we do is, normally, like at the beginning of the
24 year, we will summons in 100. We'll send out 100 summons
25 to try to get grand jurors to come in. We go through the

1 same process like a regular jury, what we call the petit
2 jury. And when we send out those summons, what we do is
3 we pull a list from our computer.

4 Now, the list that we get for the Grand Jury, that
5 big list, is the same for the petit jury. We get it from
6 the election commission. And we get it every year. It is
7 comprised of voter registration records, driver's license
8 records, and state ID records. And it is loaded in our
9 computer system at the end of every year so that when we
10 pull for the beginning of the year it's a new list that we
11 pull.

12 Q Okay. And let's just back up a little bit. How many
13 grand jurors are there? I'll start from the beginning.

14 A There's 18 grand jurors.

15 Q Okay. And how long do they serve?

16 A They serve -- in 2007, they served six months.

17 Q Do some of them ever serve more than that?

18 A Yes. Six of them will be chosen as a hold over, and
19 they have to serve an additional term.

20 Q So how many new ones come in then?

21 A 12 new ones.

22 Q Is there a reason why we have the six hold overs?

23 A It's tradition. But it's, also, because every grand
24 juror you don't want to be completely new. You want some
25 grand jurors that have experience.

1 Q And once -- you talked a little bit about the random
2 list. Once a pool is identified, how do you contact those
3 jurors?

4 A We send out a summons.

5 MR. WATERS: Let me get this marked as State's
6 Exhibit No. 5.

7 (WHEREUPON, State's Exhibit No. 5 was marked for
8 identification only.)

9 MR. WATERS: And I believe this is without objection.

10 MR. GIBSON: No objection, Your Honor.

11 THE COURT: It's in evidence.

12 (WHEREUPON, State's Exhibit No. 5 was admitted into
13 evidence.)

14 BY MR. WATERS:

15 Q Tell me what that is.

16 A That is a jury summons package that we send out to
17 the jurors.

18 Q And is that one for somebody, or is that just a blank
19 one?

20 A It's a blank one.

21 Q Just a blank one?

22 A Uh-huh.

23 Q But that's exactly like the ones you would send to
24 somebody?

25 A Yes.

1 Q And what's contained in there?

2 A For the Grand Jury, it is contained the actual
3 summons that is on a -- it's a South Carolina Court
4 Administration form. So it contains the summons. It's,
5 also, going to contain a letter that we would send out
6 about -- the information about parking, and things like
7 that, and their service on the Grand Jury. I believe it,
8 also, includes the grand juror information package that we
9 get from Court Administration, also.

10 Q And is that the same document as Defendant's Exhibit
11 No. 1?

12 A That's correct.

13 Q Okay. And what does it say on the front of that
14 letter?

15 A Urgent response required by law. Fill out and return
16 jury information card within three days.

17 Q Okay. And so the jurors have to fill that out and
18 send it back in to you?

19 A Yes.

20 Q What happens if somebody doesn't fill it out?

21 A If we don't receive any information back, what we
22 will do is prepare an affidavit that we send to the
23 Sheriff's Office. And we, actually, get the Sheriff's
24 Office to see if they can contact the juror to see if they
25 can find them.

1 Q The juror information form, do they have to sign it
2 at the bottom?

3 A Yes, they do.

4 Q Once they fill out the information?

5 A That's correct.

6 Q And they're required by law to return it?

7 A That's correct.

8 Q All right. Now, once they return that information
9 form to you, what's the next step of the process once you
10 get them all back?

11 A Then we prepare for the actual term to begin. They
12 are required to come in all at the same time, just like
13 you were this morning. We prepare all the information.
14 We put it together. We make it available to attorneys who
15 are going to be having cases.

16 But, in this instance, we wouldn't do that, because
17 it is the Grand Jury. We would just hold onto the
18 information. Then we prepare the venire. And we have
19 the Judge to come down and do the qualification
20 process.

21 Q Okay. The information forms that the jurors return,
22 do y'all retain those in your records?

23 A Yes, we do.

24 Q And the records of the random selection, does your
25 office retain those?

1 A Yes.

2 Q And, as Deputy Clerk of Court, are you the custodian
3 of those records?

4 A That's correct.

5 Q Are those records kept in the ordinary course of the
6 Clerk's business?

7 A Yes.

8 Q Is it the regular practice of the Clerk to keep those
9 records?

10 A Yes.

11 Q Are those records made at or near the time of the
12 selection process they refer to?

13 A They may be about three weeks before.

14 Q Is the jury selection process part of the regular
15 activities of the Clerk's Office?

16 A Yes. It is our requirement.

17 Q And it's part of the duties that the law requires you
18 to perform?

19 A Yes.

20 Q All right. Do you have any records relating to the
21 selection of the grand jurors in January of 2007?

22 A Yes.

23 Q All right. And I'm going to show you what's been
24 marked as State's Exhibit No. 6 --

25 MR. WATERS: I'd like to have this marked.

1 (WHEREUPON, State's Exhibit No. 6 was marked for
2 identification only.)

3 MR. WATERS: And, Your Honor, I don't want to speak
4 for opposing counsel, but I believe he has kindly
5 consented to using these copies so Ms. King can obtain her
6 originals.

7 MR. GIBSON: I have, Your Honor. No objection.

8 MR. WATERS: I move State's Exhibit No. 6 into
9 evidence.

10 THE COURT: State's Exhibit No. 6 is in evidence.

11 (WHEREUPON, State's Exhibit No. 6 was admitted into
12 evidence.)

13 BY MR. WATERS:

14 Q I'm going to show you State's Exhibit No. 6, and see
15 if you recognize that.

16 A Yes.

17 Q And can you tell me what that is?

18 A That is the jury venire worksheet that we use to
19 prepare the venire.

20 Q And for what time period is this one?

21 A For the Grand Jury that would have begun on January
22 3rd of 2007.

23 Q Okay. And let me ask you this, does that reflect a
24 juror by the name of David Smith?

25 A Yes, Juror #82.

1 Q And how about a juror by the name of Ricardo Studart?

2 A That's Juror #87.

3 MR. WATERS: I'd like to have this marked.

4 (WHEREUPON, State's Exhibit No. 7 was marked for
5 identification only.)

6 BY MR. WATERS:

7 Q I'm going to show you State's Exhibit No. 7, and see
8 if you recognize that.

9 A Yes.

10 Q Okay. And what is that?

11 A That is the juror information form that was returned
12 by Mr. David Smith.

13 MR. WATERS: Your Honor, I'd offer it into evidence,
14 I believe, without objection.

15 MR. GIBSON: No objection, Your Honor.

16 THE COURT: It's in evidence.

17 (WHEREUPON, State's Exhibit No. 7 was admitted into
18 evidence.)

19 BY MR. WATERS:

20 Q Does that reflect an address for Mr. Smith?

21 A Yes, it does.

22 Q And what's the address?

23 A 2438 Poole Road, Greer, South Carolina, 29651.

24 Q Does that reflect phone numbers for Mr. Smith?

25 A Yes, it does.

1 Q Could you read them for us?

2 A Home telephone number: 895-0997. Business telephone
3 number: 979-2435. Spouse's business telephone number:
4 979-0132. Emergency telephone number: 979-0132.

5 MR. WATERS: I'd like to have this marked.

6 (WHEREUPON, State's Exhibit No. 8 was marked for
7 identification only.)

8 BY MR. WATERS:

9 Q I'm going to show you State's Exhibit No. 8, and see
10 if you recognize that?

11 A Yes, I do.

12 Q And what's that?

13 A That's the juror information form that Mr. Studart
14 returned.

15 MR. WATERS: Your Honor, I'd offer this into
16 evidence, I believe, without objection.

17 MR. GIBSON: No objection, Your Honor.

18 THE COURT: It's in evidence.

19 (WHEREUPON, State's Exhibit No. 8 was admitted into
20 evidence.)

21 BY MR. WATERS:

22 Q Does that have the address, and phone number, and all
23 that stuff on it, too, as well?

24 A Yes, it does.

25 Q I'm not going to make you read it.

1 MR. WATERS: I'd like to have this marked.

2 (WHEREUPON, State's Exhibit No. 9 was marked for
3 identification only.)

4 BY MR. WATERS:

5 Q I'm going to show you State's Exhibit No. 9, and see
6 if you recognize that?

7 A Yes, I do.

8 Q Tell me what that is.

9 A That is the list of jurors that were selected
10 randomly from the pool that came in that day to, actually,
11 be chosen as grand jurors.

12 Q And remind us again what time period we're talking
13 about.

14 A January of 2007.

15 Q Was David Smith selected?

16 A Yes, he was.

17 Q Was Ricardo Studart selected?

18 A Yes, he was.

19 MR. WATERS: Your Honor, I believe I haven't moved
20 that one into evidence, but I would at this time, I
21 believe, without objection.

22 MR. GIBSON: Without objection, Your Honor.

23 THE COURT: State's Exhibit No. 9?

24 MR. WATERS: Yes, sir.

25 THE COURT: It's in evidence.

1 (WHEREUPON, State's Exhibit No. 9 was admitted into
2 evidence.)

3 BY MR. WATERS:

4 Q Now, I notice to the back of State's Exhibit No. 9,
5 there's some other documents as well. What are those
6 there?

7 A When a person, actually, appears for jury service, we
8 have them fill out an information form so that we can have
9 their most current information, and, also, as a pay
10 record. Because we pay mileage one way one day, so we
11 find out how many miles they live from the court house.

12 MR. WATERS: I'd like to have this marked.

13 (WHEREUPON, State's Exhibit No. 10 was marked for
14 identification only.)

15 BY MR. WATERS:

16 Q Let's move to the second half of the year. And I
17 want to show you what's been marked as State's Exhibit No.
18 10.

19 I'll show it to counsel first.

20 See if you can tell me what this one is.

21 A That is a list of the hold overs from the first
22 term in 2007. They were to be held over for the second
23 term.

24 Q And quickly, how are they selected again?

25 A Randomly by the computer.

1 Q Okay. And is David Smith on there?

2 A Yes, he is.

3 Q How about Ricardo Studart?

4 A Yes.

5 MR. WATERS: Your Honor, I move that into evidence
6 without objection, I believe.

7 MR. GIBSON: Without objection.

8 THE COURT: It's in evidence.

9 (WHEREUPON, State's Exhibit No. 10 was admitted into
10 evidence.)

11 BY MR. WATERS:

12 Q As part of your job, do you keep track of when the
13 Grand Jury meets?

14 A Yes.

15 Q And how is that determined?

16 A It's determined by order by -- the administrative
17 judge for General Sessions will sign an order setting the
18 dates for when the Grand Jury is supposed to meet.

19 Q Like Judge Few when he was here?

20 A Correct.

21 Q And do you have copies of the orders for 2007?

22 A I do.

23 MR. WATERS: I'd like to have these marked.

24 (WHEREUPON, State's Exhibit Nos. 11 and 12 were
25 marked for identification only.)

1 BY MR. WATERS:

2 Q I'm going to show you State's Exhibit Nos. 11 and 12,
3 and see if you recognize those.

4 A Yes, I do.

5 Q And what are they?

6 A These are the orders that are setting the days that
7 the Grand Jury is supposed to meet.

8 MR. WATERS: Your Honor, I'd move State's Exhibit
9 Nos. 11 and 12 into evidence.

10 MR. GIBSON: Without objection, Your Honor.

11 THE COURT: They're in evidence.

12 (WHEREUPON, State's Exhibit Nos. 11 and 12 were
13 admitted into evidence.)

14 BY MR. WATERS:

15 Q Were there any dates during 2007 that the Grand Jury
16 met that aren't on those orders?

17 A Yes.

18 Q How did you determine that?

19 A From some other orders that Judge Few had signed
20 ordering that the Grand Jury meet.

21 Q And can you run through those that aren't reflected
22 on those two orders?

23 A Yes, just a minute.

24 Let's see. On Wednesday, October the 10th [sic], but
25 it was not an official date. They, also, met or were

1 supposed to meet by order on October 10th of 2007, but
2 that one was cancelled. The order -- I had another order
3 ordering them to meet on October 30th, and then again on
4 November 15th.

5 Q And you said Wednesday, October 10th?

6 A Yes.

7 Q Okay.

8 A Well, it's just October 10th. I'm sorry. It may not
9 be Wednesday.

10 Q All right.

11 A Wednesday, October 3rd, was not an official date, but
12 October 10th was cancelled.

13 Q All right. I got you. Let's start over, because I
14 think we got a little mixed up.

15 A Okay.

16 Q Start from the beginning.

17 A Wednesday, October 3rd, but that was not an official
18 date. Then I had an order setting a date for October 10th
19 that was cancelled. And then we had another date of
20 October 30th, and, again, on November 15th.

21 Q Okay. Thank you.

22 Do you know the Defendant, Tony Trout?

23 A Not personally, but I do know him.

24 Q Have you ever seen him before?

25 A Yes.

1 Q Can you identify him in the courtroom?

2 A Yes.

3 Q Where is he?

4 A He's sitting right over there at the Defense table
5 with Mr. Gibson.

6 Q Okay. Do you recall -- or do you or do you not
7 recall any time when Mr. Trout was outside the Grand Jury
8 room?

9 A Yes, I do. There were the bailiffs and people that
10 came and told me that he was out there trying to get into
11 the Grand Jury room.

12 Q Did you ever come into possession of any letter when
13 that was all going on?

14 A Yes.

15 Q Can you describe how that happened?

16 A I cannot remember how that letter came to me. But it
17 was brought to me that it was brought in by Mr. Trout.
18 And somebody intercepted it and brought it to me.

19 Q You don't remember exactly who it was?

20 A I don't remember who it was.

21 Q Do you have that letter with you?

22 A I do.

23 MR. WATERS: I'd like to have this marked.

24 (WHEREUPON, State's Exhibit No. 13 was marked for
25 identification only.)

1 BY MR. WATERS:

2 Q I see it's a little crumbled up. Did you do that?

3 A No. It came to me that way.

4 MR. WATERS: Your Honor, I'd move State's Exhibit
5 No. 13 in without objection.

6 MR. GIBSON: Without objection, Your Honor.

7 THE COURT: It's in evidence.

8 (WHEREUPON, State's Exhibit No. 13 was admitted into
9 evidence.)

10 BY MR. WATERS:

11 Q Did you come across any note, or communication, or
12 anything to help you determine, roughly, when you might
13 have come into possession of that letter?

14 A Yes. I have an e-mail where we had e-mailed Judge
15 Few with some issues that we were having with some of the
16 grand jurors. And I had, also, e-mailed and asked about
17 what the bailiffs role was outside in the hallway when a
18 member of the public was present. And I had never gotten
19 an answer back.

20 So, during this time, the same thing happened again.
21 And Judge Few, I believe, was out of the circuit. And we
22 e-mailed Judge Hill. And, in that communication, I, also,
23 asked Judge Hill what was --

24 MR. GIBSON: Objection, Your Honor, hearsay.

25 MR. WATERS: I believe she's just saying what she was

1 asking. I'm not asking for any response. She can testify
2 to what she --

3 MR. GIBSON: Relevance.

4 MR. WATERS: Would you like us to approach?

5 THE COURT: Let me see y'all up here real quick.

6 (WHEREUPON, a bench conference was held.)

7 BY MR. WATERS:

8 Q We're just going to go right to the heart of it.
9 What was the date?

10 A April 17th.

11 Q Of what year?

12 A 2007.

13 Q And that was the communication that referred to that
14 when -- roughly, when you got that letter?

15 A Correct.

16 Q All right. Thank you.

17 Was Mr. Trout ever subpoenaed to testify before the
18 Grand Jury?

19 A Yes, he was.

20 MR. WATERS: Let me get this marked real quick.

21 (WHEREUPON, State's Exhibit No. 14 was marked for
22 identification only.)

23 BY MR. WATERS:

24 Q Let me show you State's Exhibit No. 14, and see if
25 you recognize that?

1 A I do.

2 Q What is that?

3 A That is a subpoena to Mr. Tony Trout to appear before
4 the Grand Jury on Wednesday, September 26th.

5 MR. WATERS: Your Honor, I'd offer State's Exhibit
6 No. 14, I believe, without objection.

7 MR. GIBSON: Without objection, Your Honor.

8 THE COURT: It's in evidence.

9 (WHEREUPON, State's Exhibit No. 14 was admitted into
10 evidence.)

11 MR. WATERS: I'd like to have this marked.

12 (WHEREUPON, State's Exhibit No. 15 was marked for
13 identification only.)

14 BY MR. WATERS:

15 Q I'm going to show you State's Exhibit No. 15, and see
16 if you recognize that?

17 A I do.

18 Q What is that?

19 A That is a subpoena to Mr. John Hansley, Deputy County
20 Administrator, to appear before the Grand Jury on Tuesday,
21 November 13th, 2007.

22 MR. WATERS: Your Honor, I'd offer State's Exhibit
23 No. 15, I believe, without objection.

24 MR. GIBSON: Without objection, Your Honor.

25 THE COURT: It's in evidence.

1 (WHEREUPON, State's Exhibit No. 15 was admitted into
2 evidence.)

3 MR. WATERS: I'd like to have this marked.

4 (WHEREUPON, State's Exhibit No. 16 was marked for
5 identification only.)

6 BY MR. WATERS:

7 Q I'm going to show you State's Exhibit No. 16, and see
8 if you recognize that?

9 A Yes, I do.

10 Q And what is that?

11 A That is a subpoena to Mr. John Hansley, Deputy County
12 Administrator, to appear before the Grand Jury on
13 Thursday, November the 15th, at 9:00, in 2007.

14 Q And State's Exhibit Nos. 14, 15, and 16, do they have
15 any sort of seal on them, or something like that?

16 A They're certified copies.

17 Q Is that from your office?

18 A Yes.

19 Q Did you put that seal on there?

20 A Yes.

21 MR. WATERS: I believe that's all the documents I'm
22 going to make you identify, Ms. King.

23 And, with that, I will pass the witness to
24 Mr. Gibson.

25 MR. GIBSON: No questions, Your Honor.

1 THE COURT: All right. Thank you, Ms. King.

2 MR. WATERS: I'm sorry. If I haven't moved State's
3 Exhibit No. 16 into evidence, I'd do so at this time.

4 MR. GIBSON: Without objection, Your Honor.

5 THE COURT: All right.

6 (WHEREUPON, State's Exhibit No. 16 was admitted into
7 evidence.)

8 THE COURT: You may call your next witness.

9 MR. WATERS: Thank you, Judge.

10 At this time, we would call Paul Wickensimer.

11 THE CLERK: Place your left hand on the Bible and
12 raise your right hand.

13 WHEREUPON,

14 PAUL WICKENSIMER,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Please be seated.

17 And after you're seated, state your name.

18 THE WITNESS: Paul Wickensimer.

19 DIRECT EXAMINATION

20 BY MR. WATERS:

21 Q Mr. Wickensimer, how are you doing today?

22 A Fine.

23 MR. GIBSON: Your Honor, I'm sorry. May I have just
24 a moment, please?

25 THE COURT: Sure.

1 (Pause.)

2 MR. GIBSON: Thank you, Your Honor.

3 MR. WATERS: Thank you, Judge.

4 BY MR. WATERS:

5 Q Mr. Wickensimer, could you tell the jury what your
6 current position is?

7 A Sure. I'm the Clerk of Court for Greenville County.

8 Q All right. And can you just, very generally, explain
9 what the Clerk of Court is?

10 A I'm elected by the residents of Greenville County for
11 a four-year term. And I oversee what goes on for Circuit
12 Court, whether it's civil or criminal, as well as Family
13 Court. So we have a staff of about 83 people. And all
14 the papers are filed with us. We work with the court
15 docket, and collect any fees or fines for the court
16 system. So that's all under the responsibility of the
17 Clerk of Court. So we handle all of the day-to-day
18 activities that go on behind the court system.

19 Q And we've heard some testimony about that. But does
20 it, also, include the summoning and the selection of
21 jurors?

22 A Right. The jury selection process is part of our
23 office responsibilities.

24 Q And Ms. King just testified that she worked for you?

25 A Right. She is an employee of the Clerk of Court's

1 Office, and she is the Assistant Clerk of Court.

2 Q And who is Judy Olson?

3 A Judy Olson is our jury coordinator. She's the one
4 that's charged with sending out the jury summons. She
5 works with the jurors on a regular basis and makes sure
6 their questions are answered, takes telephone calls for
7 those called for jury service. She is responsible to make
8 sure that the jurors are paid. She works with the judges
9 in soliciting the correct number of jurors that are needed
10 for cases. And she is an employee of the Clerk of Court's
11 Office. And she reports directly to Ms. King.

12 Q Do you know Tony Trout?

13 A Yes, I do.

14 Q Do you see him in the courtroom?

15 A Yes, I do.

16 Q Can you point him out or identify him?

17 A He is next to Mr. Gibson at the Defense table.

18 Q All right. Did you ever know him in the past?

19 A We had met, I think, originally, I was at the
20 installation ceremony when Mr. Trout was sworn in as a
21 county council member. And I was there that evening. And
22 I think that was the first time that he and I met. We
23 visited briefly afterwards, and I wished him well.

24 Q Any problems or issues?

25 A No. It was a very cordial relationship.

1 Q Did Mr. Trout ever approach you about the Grand Jury
2 any time in 2007?

3 A As I recall, he had been sitting outside of the Grand
4 Jury room where the Grand Jury meets just down the hall
5 from where my office is located. And I went by and
6 visited with him. He indicated he would like to meet with
7 the Grand Jury.

8 Q All right. Did he say anything about a letter?

9 A That came up over the course of the conversation,
10 that he had some information that he wanted to share with
11 the Grand Jury.

12 Q Okay. And what did you tell him?

13 A I told him that I would check with the judge about
14 that to see if that would be permissible.

15 Q And which judge are you talking about?

16 A Judge Few.

17 Q And why would you check with Judge Few at that
18 particular time?

19 A Since he was the chief administrative judge that
20 year, that was the protocol that I would check with him
21 when it came to an issue that pertained to the Grand Jury.

22 Q Any issues that arose with the Grand Jury, he's the
23 one you would go to?

24 A That's correct. Whether it would be that issue or
25 any other issue that would come up with the Grand Jury, he

1 would be the go-to person for that.

2 Q And that was the protocol in place?

3 A That's correct. And it still is with the person that
4 serves in that capacity?

5 Q Did you talk to Judge Few about it?

6 A Yes, I did.

7 Q All right. Don't tell me what y'all said, but you
8 did have a conversation with Judge Few?

9 A I did, yes.

10 Q Did you ever discuss the issue again with Mr. Trout?

11 A Yes. I don't remember exactly how it happened, but
12 we did have a follow-up conversation. And I let him know
13 I had checked with the judge about that and the judge said
14 it would not be permissible.

15 Q Did you ever have a meeting with Mr. Trout on this
16 issue?

17 A Yes, I did.

18 Q And where did the meeting take place?

19 A It took place in my office here at the courthouse.

20 Q And who was present at the time?

21 A Mr. Trout, and Judge Few, and myself.

22 Q And what happened at that meeting?

23 A As I recall, Mr. Trout had requested a meeting with
24 Judge Few to talk about the issue of meeting before the
25 Grand Jury. And so it was a very brief, but cordial

1 conversation. And Judge Few came into the office and we
2 all three stood. And Judge Few relayed to Mr. Trout --

3 MR. GIBSON: Objection hearsay.

4 MR. WATERS: Your Honor, can we approach?

5 THE COURT: Sure.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: All right. The Defense has objected.
8 What is the State's response?

9 MR. WATERS: Your Honor, I'm not offering it for the
10 truth of the matter asserted. It's for the effect on the
11 listener what Mr. Trout was told. And that's an exception
12 to the hearsay rule.

13 THE COURT: Thank you.

14 I overrule the objection.

15 MR. WATERS: Thank you, Judge.

16 MR. GIBSON: Thank you, Your Honor.

17 BY MR. WATERS:

18 Q Can you tell us what happened at the meeting?

19 A Yes, sir. It was a very cordial meeting. And Judge
20 Few came in, Mr. Trout was there. And he -- "he" being
21 Judge Few -- had indicated that it would not be
22 permissible for Mr. Trout to meet with the Grand Jury,
23 that if he had issues that he'd like to take before the
24 Grand Jury that there were other methods, such as law
25 enforcement, the Solicitor, SLED, the Attorney General,

1 other areas that he could pursue in taking an issue he had
2 before the Grand Jury.

3 MR. WATERS: Okay. Thank you, Mr. Wickensimer.

4 Nothing further.

5 THE COURT: Cross-examination.

6 MR. GIBSON: No questions, Your Honor.

7 THE COURT: Thank you, Mr. Wickensimer.

8 THE WITNESS: Thank you, Judge.

9 THE COURT: You may call your next witness.

10 MR. WATERS: The Court's indulgence one moment, Your
11 Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. WATERS: Your Honor, at this time, we would call
15 Mark Tollison.

16 THE CLERK: Mr. Tollison, please, step forward and be
17 sworn in.

18 THE BAILIFF: Mr. Tollison, place your left hand on
19 the Bible and face the Clerk.

20 WHEREUPON,

21 MARK TOLLISON,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Please be seated.

24 And after you've been seated, please, state your
25 name.

1 THE WITNESS: I'm Mark Tollison.

2 DIRECT EXAMINATION

3 BY MR. WATERS:

4 Q How are you doing today, Mr. Tollison?

5 A Great.

6 Q Could you tell the jury what your current position
7 is?

8 A I am the Greenville County attorney. I am employed
9 by county council and help county departments, along with
10 county council with different issues that affect the
11 county from a day-to-day and week-to-week basis.

12 Q Okay. And I assume you had some education to get
13 that job. Would you tell us that real quick?

14 A I did. I had to go to law school to get a law degree
15 to be a practicing lawyer. And, before that, I went to
16 undergrad. And, also, I have a Master's Degree in City
17 Planning, and some experience before I went to law school.

18 Q Okay. Did you have any particular experience during
19 law school relating to county service?

20 A Not necessarily. But my first job right out of law
21 school, I was a law clerk for the Association of Counties.
22 And they hired me after that. And I worked for them for
23 about six years as an attorney helping other counties
24 around the state with different legal issues.

25 Q Okay. And when were you hired as -- hired by

1 Greenville County?

2 A In 1999.

3 Q And what was your position then?

4 A I was assistant county attorney at that time.

5 Q And when did you move up the chain a little bit?

6 A At the beginning of 2004.

7 Q Okay. And that's when you became county attorney?

8 A That's correct.

9 Q I want you to explain a little bit about county
10 government, and its structure, and how it works. Who are
11 the employees of the council? Can you start with that?

12 A Well, the county council has three employees that
13 they hire as a group. And that would be the county
14 administrator, myself as county attorney, and the clerk to
15 county council.

16 Q All right. And who's the county administrator?

17 A Joe Kernell is, currently, the county administrator.

18 Q And the county attorney is you, of course?

19 A Me.

20 Q And then the clerk is who?

21 A Theresa Kizer.

22 Q And, quickly, what does the county administrator do?
23 What's his role?

24 A He's like a chief executive officer for the county.

25 He carries out the policy decisions made by county council

1 as a policy-making body. And he is in charge of county
2 operations. We do have some departments where, under
3 state law, we have elected officials. You just saw one,
4 Mr. Wickensimer, who's elected. He's in charge of the
5 courthouse operations as Clerk of Court. The sheriff is
6 elected countywide in that sense.

7 But most things, public works, animal control,
8 planning and zoning -- I'm going to leave something out,
9 and I don't mean to, but they all fall under the
10 administrator's direct supervision.

11 Q And what about the county clerk, what's her role?

12 A She's here, so I kind of want to be careful about how
13 I characterize her position. But she is, certainly, a
14 recording secretary for county council. She takes care of
15 a lot of issues for county council much like a good
16 administrative assistant would.

17 Q Could you describe a little bit about the nature of
18 the relationship between these employees and county
19 council?

20 A Well, I think the main structure is that the decision
21 as to who serves in those three jobs is a decision that
22 all of county council has to vote on and accept.

23 Q And when they vote, they have to vote to what -- what
24 wins?

25 A Well, if there was a vacancy or they decided to make

1 a change, they would then interview people, and then make
2 a selection, and vote on that.

3 Q Okay. And how many council members are there?

4 A There are 12.

5 Q And what carries the day in a council meeting?

6 A Generally, seven --

7 Q Majority rule?

8 A Majority rule.

9 Q I interrupted you a little bit.

10 A Well, I think I can, certainly, speak to my position
11 and probably administrator a bit as well in the sense that
12 you really have two big clients, one is county council and
13 the legislative process that they go through like a body,
14 like a house or senate in making laws, and making
15 decisions, and making policy decisions. And then there's
16 the county departments, which have needs, and issues, and
17 advice, and direction.

18 So those two are sort of two big hats that are worn,
19 at least, I know that I do, and I'm sure the county
20 administrator does as well.

21 Q What's the nature of the relationship between the
22 county employees and an individual council person, as
23 opposed to council as a whole?

24 A Well, that's a little different. Because under state
25 law, the way the Home Rule Act back in the 70s set up

1 county government, it set it up where you could have
2 different types of county government forms. Greenville
3 County operates under the council administrator form of
4 government, which means the county council hires a county
5 administrator who is -- as I indicated before, runs the
6 county, those departments under him as a chief executive
7 officer.

8 And there's a requirement within the law that county
9 council members should work through the administrator in
10 order to reach out and deal with employee situations under
11 the administrator.

12 Q Does an individual council person have direct
13 authority over a county employee?

14 A No.

15 Q All right. How would they have that authority? In
16 what manner could they exercise that authority?

17 A I think there would be, at least, two ways. One
18 would be to, I think, talk to the county administrator
19 about that situation, and get some feedback. And if there
20 is a situation, go forward from there. And then I think
21 county council could, certainly, elect to direct a county
22 administrator through a vote on a particular direction.

23 Q So --

24 MR. GIBSON: Objection, Your Honor. His entire
25 testimony, at this point, is, basically, giving legal

1 opinions.

2 THE COURT: Are you objecting to a specific question?

3 MR. GIBSON: I'm objecting to the opinion.

4 THE COURT: Well, I would have to overrule that,
5 unless there's been a specific question that you're
6 objecting to.

7 So do you want to rephrase your question, or ask your
8 next question? And we'll see if there is an objection.

9 MR. WATERS: Okay.

10 BY MR. WATERS:

11 Q Do you know Tony Trout?

12 A I do.

13 Q And do you see him in the courtroom?

14 A I do.

15 Q Can you identify him?

16 A Yes. He's sitting next to Mr. Gibson at the Defense
17 table.

18 Q Do you recall when Mr. Trout was elected to county
19 council?

20 A I do.

21 Q Roughly, when was that? Do you remember?

22 A He won and was installed into office on January 1st,
23 2005, I want to say, somewhere thereabouts. Right there
24 after the first of the year.

25 Q And how was your relationship when he first came on

1 board, or how did you first make contact with him?

2 A Well, I think the first time I attempted to contact
3 him is when what I do traditionally, when we have new
4 council members, I write a letter, I write to introduce
5 myself. Because, frequently, they don't know me. Because
6 they've been busy campaigning, and talking to neighbors
7 and communities, and trying to get elected. And I just
8 say, I'm Mark Tollison. I'm county attorney. I would be
9 happy to meet with you to sort of tell you about what we
10 do and the things that are already going on. Because
11 there are things, typically, going on even before you come
12 onto council.

13 So I wrote that letter to him and two other members
14 who were elected and installed then. It was Mr. Butch
15 Kirven and Mr. Jim Burns, also, were elected during that
16 cycle as new members.

17 Q Did you subsequently have any meetings with Mr. Trout
18 or discussions with him?

19 A He never responded to my letter.

20 Q Okay. Did -- at any point, did your relationship
21 with Mr. Trout change?

22 MR. GIBSON: Objection, relevance.

23 MR. WATERS: Would you like for us to approach?

24 THE COURT: Yes, come on up.

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: Okay. Overruled.

2 MR. GIBSON: Thank you, Your Honor.

3 BY MR. WATERS:

4 Q Do you remember the question?

5 A No.

6 Q Did, at any point, your dealings with or your
7 relationship with Mr. Trout start to change?

8 A Well, I, certainly, feel like, at least, from my
9 perspective, I went out of my way to reach out to
10 Mr. Trout, just like I would with all other new council
11 members or any existing council members. But, ultimately,
12 that just didn't seem to have any impact.

13 He -- you know, we tried to fulfill requests as quick
14 as we could. But it was never quick enough and it was
15 never good enough, you know. We'd have Freedom of
16 Information Act -- he eventually resorted to Freedom of
17 Information Act requests, which we filled as we have to
18 under the law. And it just became a deteriorating
19 situation.

20 Q Were there any issues with Mr. Trout's contact with
21 county employees?

22 A We did have an occasion where there was issues where
23 Mr. Trout was trying to circumvent the council policy
24 without working through the county administrator. And
25 that resulted in county council, ultimately, adopting a

1 policy concerning those contacts.

2 Q Okay. Did you ever have any discussions with
3 Mr. Trout about this issue?

4 A I, certainly, did. One time, I remember -- probably,
5 there were more than that. But the one I, certainly,
6 remember was the time when I was really struggling to try
7 to address whatever concerns that Tony had. And I had
8 what I felt was a bit of a heart to heart with him in my
9 office where I tried to explain to him, hey, look, you
10 know, you're one of 12. We're not going to turn this
11 around in 24 hours. There are other issues. There are
12 other people that are making demands and there are things
13 that they need.

14 And so in light of all that, you know, I think that
15 the point I tried to make with him was we've got 12
16 council members. One, we're going to do it, just give us
17 some time to work on it and get it done. But just
18 understand that there's a way to do things. And I,
19 oftentimes, on a lot of the complaints, I'd say, well, why
20 don't you get an ordinance going. I'll help you draft an
21 ordinance. That's the way to do it. That's the way to
22 change policy. That's the way to -- go to your other
23 members of county council and work with them through the
24 legislative process.

25 Q Okay. Did -- was there ever any discussions

1 about Mr. Trout's power to investigate certain
2 things?

3 A Ultimately, we did have an occasion where county
4 council, again, about a year after the policy on the
5 employee direction issue, again, at another council
6 meeting adopted a policy clarifying what was the existing
7 practice, which was only county council can approve
8 official investigations. The individual council members
9 as representatives of the county do not have the ability
10 to investigate, but, yet, county council can investigate.
11 And that would require a vote of council.

12 Q And that was a resolution that was approved by the
13 council?

14 A That was a policy approved by council, I believe, in
15 2007.

16 Q And there was a vote on that?

17 A There was a vote on that.

18 Q And it carried?

19 A It did carry.

20 Q Was there ever a subsequent time that you needed
21 to -- that council addressed that issue?

22 A Not that I recall immediately.

23 MR. WATERS: I'd like to have this marked.

24 (WHEREUPON, State's Exhibit No. 17 was marked for
25 identification only.)

1 BY MR. WATERS:

2 Q I'm going to show you what's been marked as State's
3 Exhibit No. 17 for identification, at this point, and see
4 if you recognize that?

5 A I do.

6 Q And what exactly is that?

7 A This is a council policy that was adopted on August
8 21st, 2007, concerning council members directing county
9 employees, investigations, and the facility access. And
10 county council, as a matter of policy, had this document,
11 took it up, debated it, and passed it.

12 Q And what was the result of it?

13 A Well, the result of it was that it plainly stated
14 that council policy as it related to individual council
15 members not having the authority to direct or give words
16 or instructions to county employees. And it, also,
17 indicated that in compliance with state law and council
18 policy only county council as a whole can authorize and
19 initiate an investigation. Without prior county council
20 approval, individual members of council carry no official
21 authority to conduct investigations.

22 MR. WATERS: Your Honor, at this point, I would move
23 State's Exhibit No. 17 into evidence.

24 MR. GIBSON: Can I see it again, please?

25 MR. WATERS: Yes..

1 MR. GIBSON: Without objection, Your Honor.

2 THE COURT: It's in evidence.

3 (WHEREUPON, State's Exhibit No. 17 was admitted into
4 evidence.)

5 MR. WATERS: I'd like to have this marked.

6 (WHEREUPON, State's Exhibit No. 18 was marked for
7 identification only.)

8 BY MR. WATERS:

9 Q I'm going to show you what's been marked as State's
10 Exhibit No. 18. And I apologize for going out of order.
11 We just did the one that was August '07. What is that
12 document there?

13 A This is the year before. This is in 2006, roughly,
14 about the same time. It appears to be September of 2006.
15 This is a motion. This is from then council member Flynn,
16 who made a motion that was adopted by county council that
17 was about the issue about taking up inordinate amounts of
18 staff time on different projects where we were getting
19 beyond something that was a simple report, or something
20 that could easily be filled to say if you've got a big
21 project, take it to county council, quit overwhelming
22 staff with different reports. I think several members of
23 council were concerned about the amount of time that was
24 being taken up on different requests.

25 Q And both of those were carried by county action; is

1 that correct?

2 A They were.

3 Q And was there an individual whose activities sparked
4 those two motions?

5 A In all honesty, it was Mr. Trout.

6 MR. WATERS: Nothing further, Your Honor.

7 Thank you.

8 THE COURT: Cross-examination.

9 MR. GIBSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. GIBSON:

12 Q All right. You said that in August -- on August
13 21st, 2007, county council adopted a policy requiring the
14 entire council to sign off on an investigation before it
15 could be done; is that correct?

16 A That is correct. I have that policy right here.

17 Q So up until August 21st, 2007, there was no policy;
18 isn't that correct?

19 A There was a state law.

20 Q What was the state law?

21 A The state law is 4-9-660 of the South Carolina Code
22 of Laws. It's part of the council administrator form of
23 government, which I mentioned before that Greenville
24 County is formed under. And it plainly states that
25 neither council, nor its members, can direct individual

1 employees without going to the administrator. And they
2 cannot conduct investigations.

3 Q Can they request information?

4 A Absolutely.

5 Q Okay. So then that would not be a violation of
6 4-9-660?

7 A No, it would not.

8 Q So on the issue of requesting information regarding
9 programs like the roads program, there was no policy in
10 place that would have kept Mr. Trout from requesting
11 information up until August 21st, 2007?

12 A No. He still -- in terms of requesting information
13 and getting requests fulfilled, there were no restriction
14 on that.

15 Q Okay.

16 A And even after the 2007 policy, there was no
17 restriction on that. So if he wanted to make a request
18 for information, it would be fulfilled.

19 Q But he could not conduct an investigation?

20 A He never could, even before 2007.

21 Q What's the difference between conducting an
22 investigation and requesting information?

23 A I think if you're going to indicate that you're
24 conducting an official investigation or that you have
25 investigative authority, then you are then in the process

1 of conducting an investigation. If you're asking for
2 information, you're asking for or requesting documents.
3 That's something council members do all the time. They
4 want information, the staff fulfills it.

5 Q So none of these policies affected the staff
6 responsibility to provide information to Mr. Trout
7 regarding matters that he requested information on; is
8 that correct?

9 A The 2006 policy would have impacted had any county
10 employee decided that what they were being asked for by
11 Mr. Trout was too much, or they wanted council approval on
12 that.

13 Q Okay.

14 A Because if it was a big project and it was taking up
15 a lot of time and diverting it away from keeping up with
16 regular business and doing those things, then there was a
17 concern on county council's part that those things ought
18 to come to council as a matter, and say, this is something
19 we all agree we need to be working on and using staff time
20 for.

21 Q All right. So if there was a matter that
22 Mr. Trout -- after 2006 that he wanted information about
23 and that information was more than a minimal amount of
24 information, or would require more than a minimal amount
25 of time, he would need the approval -- based on this

1 policy, he would need the approval of, at least, seven
2 county council members to go forward?

3 A If he was going to take up a significant amount of
4 staff time, yes. I don't know that that ever happened,
5 though. I don't know that that policy was ever enforced.

6 Q And you said both of these policies were directed at
7 stopping Mr. Trout?

8 A I wouldn't say they were directed at stopping
9 Mr. Trout. I would say that council members were
10 concerned about the impact of things -- I don't want to
11 get after anybody personally in here today. But things
12 that were happening in terms of the interaction of Tony
13 with staff, with county employees, they were simply
14 disruptive to county operations. And so I don't think it
15 was a stop. If there was some legitimate thing that
16 needed to be dealt with, it would be dealt with.

17 Q These policies, what was the vote on these policies?

18 A Can you indulge me for a minute?

19 Q Yes, sir.

20 A On the 2007 policy concerning the directing county
21 employees investigation issue, there was no roll call
22 vote. There was no indication of who voted no. So I
23 would tend to think that was a vast majority vote.
24 That's, typically, an 11-0 vote.

25 Q Okay. So, basically, you don't have the count. So

1 you don't know who voted for it, and you don't know who
2 voted against it?

3 A I was there. I don't recall any opposing voices to
4 the policy in terms of voting. But there was no roll call
5 that I see in the minutes.

6 Q All right. Do you recall if -- you don't recall?

7 A I don't recall the exact vote.

8 Q Okay. How about on the other policy, the --

9 A 2006.

10 Q -- 2006 policy?

11 A This is the policy -- I'm trying to give the
12 administrator the ability to say this is a big project,
13 let me have council telling me I need to be working on
14 this, rather than one member. That vote was during
15 request in motions.

16 And, again, it looks like the question was called,
17 the question of the motion was carried. There was no roll
18 call requested again. It looks like Ms. Lottie Gibson --
19 Council Member Gibson abstained from voting. So I would,
20 again, tend to count that as -- if all members are present
21 akin to an 11-0 vote without a roll call.

22 Q And so, just for the record, Council Member Gibson,
23 do you know if she's related to me?

24 A I do.

25 Q How is she related?

1 A She's your mother.

2 Q Thank you.

3 Now, if the FOIA request he was -- the information he
4 was requesting was by FOIA?

5 A Yes.

6 Q You mentioned 24 hours. Did he ever request anything
7 in 24 hours?

8 A Let me just say this. FOIA is a little different,
9 because there are 15 working days under the Freedom of
10 Information Act. That's a state sunshine law that says
11 that any citizen can write the county and say, hey, I want
12 to see records pertaining to something that you have. And
13 we've got it, we've got to put it together, get it to you,
14 and we charge 10 cents a copy. And we'll produce the
15 report. So that's different. Routine -- staff,
16 typically, at least, from my perspective as county
17 attorney, if a council member asks me to do something, I'm
18 going to respond to that. I'm going to make a great
19 effort. I'm going to go to whatever department I need to.
20 If he asks a department and they ask me about it, I'm
21 going to work with them. We're going to do that.

22 I think what I was more eluding to in terms of my
23 conversation with Tony was a lot of times, Tony would be
24 very impatient about getting things. I don't know
25 why. It seemed to have been impulsive at times. But

1 it --

2 MR. GIBSON: Objection. Move to strike.

3 THE COURT: Overruled.

4 THE WITNESS: But it just, you know, you keep getting
5 peppered with e-mails. So in an effort to kind of say,
6 hey, look, we're going to get it. You've got to give me
7 more time, because there's more demands out there.

8 BY MR. GIBSON:

9 Q Okay.

10 A That was what was I referring to. It was just the 24
11 hours was more of a, hey, if I could turn it around in 24,
12 I would, but I can't always do that.

13 Q Just a term of speech?

14 A Yeah.

15 Q Okay. What was the normal turn around time on -- for
16 his requests? Do you know?

17 A For me -- and, remember, you've got to talk to other
18 county departments.

19 Q Yes, sir.

20 A From my perspective, the ones I was involved with, it
21 was as soon as I could get to it in the mix of everything.
22 And it, generally, got a pretty high priority. I mean,
23 you know, if somebody is -- you know, squeaky wheel gets
24 the grease. I hate to say it, but that's true.

25 Q How long would it normally take?

1 A I couldn't tell you, depending on what it was. If it
2 was something that needed to be drafted, it might take a
3 day or two. If it was something that needed to be
4 researched, it -- maybe we could do it in a day, maybe it
5 might take a week to pull something together.

6 Q So the longest that you recall is a week?

7 A Well, I don't know. I'm just saying -- it could have
8 taken longer. It could have taken a month to do
9 something, if it was something that was substantial
10 enough. That's just the nature of legal work.

11 Q But you don't recall specific dates or times that it
12 took you to fulfill his requests?

13 A The only time I would say that I knew it took an
14 exact amount of time would be the time that he FOIA'd all
15 the e-mails from Theresa Kizer, and Joe Kernell, and John
16 Hansley for a month. And there was a significant amount
17 of work involved in that. That was -- we took every bit
18 as many of the 15 work days we could, because he made it
19 as a FOIA request.

20 Q Okay. And you say "15 working days," so that's
21 really three weeks?

22 A It works out that way.

23 MR. GIBSON: The Court's indulgence just for a
24 second.

25 THE COURT: Yes, sir.

1 (Pause.)

2 MR. GIBSON: Nothing further.

3 Thank you, Your Honor.

4 Thank you, Mr. Tollison.

5 THE WITNESS: Thank you.

6 THE COURT: Hold on a second.

7 MR. WATERS: I'm not done yet.

8 REDIRECT EXAMINATION

9 BY MR. WATERS:

10 Q You were asked about the 2006 and 2007 policies.
11 Prior to those policies being enacted, had you had any
12 discussions with Mr. Trout about the nature of the Home
13 Rule Act, and the lack of power to investigate?

14 A I can't recall any specific conversations. I mean, I
15 think we were -- at least, from my perspective, I was
16 always trying to work with him to get him into the focus
17 of if you want to change a policy, get with county council
18 members and pass an ordinance.

19 Q But these policies didn't just come out of the blue
20 at this point?

21 A No. I, actually, helped draft both of these for the
22 council members that requested them.

23 Q And you were asked about a council person's ability
24 to conduct an investigation, and the difference between
25 getting information and conducting an investigation. To

1 conduct a full fledged investigation, what sort of action
2 needs to take place?

3 A From county council or from a county council member's
4 standpoint? County council has to authorize that action
5 if it's going to be an official investigation.

6 Q Okay. And you were asked about certain times where
7 there was a significant amount of staff time required for
8 some of Mr. Trout's requests. Were y'all still as
9 responsive as you could be to Mr. Trout?

10 A I was up until the point when he was suspended.

11 Q Okay. And you were asked about the 2007 policy. You
12 said you believed it was an 11-0 vote?

13 A Yes.

14 Q Was somebody not present at that one?

15 A On the 2007 policy about the investigative issue,
16 yeah, Mr. Trout was absent that night.

17 Q What about the 2006, was he present?

18 A He was present at that meeting.

19 Q You were asked about some FOIA requests. And you
20 mentioned that the state law allows you to charge a copy
21 fee for the information that's required to be provided; is
22 that correct?

23 A That is correct.

24 Q Did y'all -- when Mr. Trout first gave you a FOIA
25 request, did y'all charge him at that time?

1 A I'd have to think back. But, you know, I know that I
2 tried to discourage Tony from using FOIA, because there's
3 a charge attached to it. And, you know, this stuff can be
4 gotten without having to go through that process.

5 As to whether there was one before or one was
6 charged, I don't know how many there were. I couldn't
7 testify to that.

8 MR. WATERS: Thank you, Mr. Tollison.

9 Nothing further.

10 MR. GIBSON: Very briefly, Your Honor.

11 THE COURT: Yes, sir.

12 RE CROSS-EXAMINATION

13 BY MR. GIBSON:

14 Q So it's your understanding that Mr. Trout was at the
15 2006 -- at the meeting where the 2006 policy was adopted?

16 A Yes, Mr. Gibson. I see him in the minutes as having
17 commented on it in the 2006 action. But I do not have him
18 present at the 2007 meeting.

19 Q And, given your recollection that this was a
20 unanimous vote, then he must have voted for it as well; is
21 that correct?

22 A At the 2006 policy, yes.

23 MR. GIBSON: Thank you.

24 THE COURT: Thank you, Mr. Tollison.

25 All right. Let me talk to the lawyers up here real

1 quick, please.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Ladies and gentlemen, we're going to
4 recess for the evening.

5 Before we do that, I want to just go over a couple of
6 things with you real quickly. You're, obviously, not
7 sequestered as a jury. But it is of paramount importance
8 that you not discuss the case with anyone, as I've told
9 you, including your fellow jurors, friends, family
10 members, and anyone involved in this case. And that
11 includes discussions you might have face-to-face, or by
12 telephone, e-mail, or by text message, or blogs, or
13 whatever form you could imagine. You would be surprised
14 at the number of trials that have been tainted by
15 Facebook. But, please, don't get on Facebook, or any
16 social networking site, or any other networking type of
17 outlet and try to communicate about this case or obtain
18 information about this case.

19 You must, as I told you at the beginning, confine
20 your decision in this case to the evidence. And the
21 evidence consists of sworn witness testimony and exhibits.
22 It would not be in keeping with your oath for you to do
23 any kind of outside investigation. It's human nature to
24 be curious about things you've heard about, and to want to
25 get more information about it. But you've taken an oath

1 to confine your decision to what you hear in this
2 courtroom in the form of testimony and exhibits.

3 As I said, please, do not expose yourself to any type
4 of media reports. Don't read, listen to, or watch news
5 reports about this case. And that includes anything that
6 might be in the paper, or TV, or on the Internet, or on
7 the radio. You must not consider anything you may
8 have read or heard about this case outside the
9 courtroom.

10 Now, if anyone approaches you about this case or
11 tries to contact you by any means -- and I, certainly,
12 don't expect that to happen. But if that were to happen,
13 just notify me or one of the bailiffs, and we can take
14 care of that. The lawyers and parties involved in this
15 case are advised not to have any interaction with you.
16 And if you see them on the sidewalk or somewhere in the
17 courthouse and they're not making eye contact with you or
18 they're avoiding you, they're not being rude. They're
19 just following their instructions. Even innocent
20 interaction can be misconstrued. So, please, don't have
21 any contact with anyone.

22 And I thank you today for your patience and your
23 cooperation with us. And we're going to start back at
24 9:00 in the morning. And just report back to the jury
25 room at that time.

1 It is my intent to have lunch brought in for you
2 tomorrow and throughout the trial, so you don't have to
3 leave the courthouse and so we can proceed as efficiently
4 as possible.

5 So, with that, have a good evening.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 5:35 p.m.)

8 THE COURT: Yes, sir. Anything for the record before
9 we adjourn?

10 MR. GIBSON: No, Your Honor.

11 MR. WATERS: Nothing, Your Honor.

12 THE COURT: Now, Mr. Trout, you're no longer
13 technically on a bond. And I understand you had a family
14 matter that prevented you from being here on time after
15 lunch. And I, certainly, understand that. And I'm not
16 taking you into custody. But, as I told you before, the
17 trial is going to go on whether you're here or not. And
18 just --

19 DEFENDANT TROUT: Yes, sir.

20 THE COURT: And just so you understand.

21 DEFENDANT TROUT: I understand.

22 THE COURT: You can be tried in your absence to a
23 verdict, if you don't appear. And I, certainly, know you
24 will appear, but I need to advise you about that on the
25 record, sir.

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Thank you.

Have a good evening.

(WHEREUPON, the proceedings were concluded at
approximately 5:36 p.m., to be reconvened on
Tuesday, March 29, 2011.)

TUESDAY, MARCH 29, 2011

THE COURT: Okay. Anything before we bring the jury in?

MR. GIBSON: No, Your Honor.

MR. WATERS: No, Judge.

THE COURT: Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 9:08 a.m.)

THE COURT: Good morning, ladies and gentlemen.

We're going to proceed with the testimony in the case.

And, yes, sir, Mr. Waters, you may call your next witness.

MR. WATERS: Thank you, Judge.

We call Trae McBee.

THE CLERK: Please step forward to be sworn in.

THE BAILIFF: Sir, place your left hand on the Bible. Raise your right hand, and face the Clerk, please. WHEREUPON,

HOMER EDWIN MCBEE, III,
after first having been duly sworn, testified as follows:

THE CLERK: Please be seated.

And state your name.

THE WITNESS: My name is Homer Edwin McBee, III. And I go by the nickname, "Trae."

DIRECT EXAMINATION

BY MR. WATERS:

Q Could you tell us what your job is, or your current occupation?

A I'm a special agent with the United States Secret Service working in Washington, D.C., in the cyber intelligence section.

Q And just, generally, what kind of stuff do y'all do in that section, or can you tell us?

A Yes. We investigate cyber crime from the Secret Service perspective. We do a lot of work in the financial frauds, from malware to credit card fraud, and many other different cyber frauds.

Q And you said you're in D.C. now?

A Yes, sir.

Q So you came back down to South Carolina?

A Yes, sir.

Q Are you from here?

A Yes, sir. I'm from Greenville-Spartanburg.

Q Prior to going to D.C., did you work in South Carolina?

A Yes, sir. I was with the Secret Service in the Columbia field office from 2004, until last April. And that's where I worked with the South Carolina Electronic Crimes Task Force. I was at the SLED Computer Crimes

1 Center.

2 Q Before we get to that, was that your only job in law
3 enforcement? Did you go straight to the Secret Service,
4 or did you have one prior to that?

5 A I was a certified public accountant for five years
6 prior to going with the U.S. Secret Service.

7 Q Okay. And tell us a little bit about the task force.
8 You mentioned that. What exactly is that?

9 A The task force is a partnership between federal,
10 state, and local law enforcement. We, also, bring in
11 other academia and different private sector folks to help
12 work to fight cyber crimes and electronic crimes. And we
13 did that here with SLED, and some of the local groups and
14 private industry for those respects.

15 And the law enforcement arm of that, we worked out of
16 the Computer Crimes Center with SLED where we did the
17 forensic imaging, forensic processing for the most part on
18 any computers that were seized in the State of South
19 Carolina.

20 Q Okay. So the feds working with the state, or working
21 together on those sorts of issues; is that fair to say?

22 A Yes, sir.

23 Q Okay. Were you doing that back in 2007?

24 A I was.

25 Q All right, sir. Let me ask you this, explain what

1 imaging a computer is. Can you explain to the jury what
2 that means?

3 A Imaging a computer, in a basic way, is taking a hard
4 drive out of a laptop, a tower, a server or any kind of
5 media, taking that piece of electronic media out and
6 making a duplicate copy of that.

7 Q And have you had experience -- was this the first one
8 you ever did back in 2007, or did you have experience with
9 that?

10 A No. Over the course of the five to six years I was
11 here, I probably did hundreds of images on different media
12 that was seized from around the State.

13 Q And what kind of training did you have to do that
14 sort of thing?

15 A I received basic training at the Federal Law
16 Enforcement Training Center in Glenco, Georgia, for basic
17 computer forensics analysis. And I've, also, received
18 advanced training over the years, to include annual 40
19 hours of competency continuing education.

20 Q And what particular program did you use to do this
21 imaging?

22 A It was a standard at the -- in the lab for the South
23 Carolina Computer Crimes Center to use Encase to do the
24 imaging. If we ever had any issues acquiring an image, we
25 would try different tools or different settings, and

1 different -- we'd try different things to get the image,
2 if we ever had issues with one.

3 Q Okay. Now, you said the image is a -- is it a copy,
4 or is it better than a copy? Is it an exact copy, or how
5 do you know it's an exact copy?

6 A The process we go through -- I can explain the
7 process. The lab set up is individual computer towers
8 used, specifically, for images. They don't access the
9 Internet. They aren't used for anything other than
10 imaging.

11 Q So they're secure?

12 A They're secure just for the imaging process. They're
13 connected to a server, which is, also, not connected to
14 the Internet. And those computers will place the image
15 onto that server for the other agents to do forensics on.

16 To do the image, we use different -- sort of what we
17 call write blockers. We will have hardware write
18 blockers. We have a physical piece of hardware that we
19 connect the suspect hardware to, and that will -- the
20 write blocker functions to not allow me or anyone else to
21 accidentally write anything to the hard drive.

22 At the same time, we, also, would use software write
23 blockers sort of as a fail safe as a backup mechanism,
24 which is just a piece of software on that forensic tower
25 that would, also, not allow you to accidentally or

1 intentionally write anything to a suspect hard drive.
2 And, during that process, we routinely -- when you get the
3 system running, you will, actually, try to put something
4 on that hard drive to make sure that that -- or on a test
5 hard drive to make sure it's not, actually, making those
6 writes to the drive, and your hardware is functioning
7 properly, and your software is functioning properly.
8 That's kind of the physical set up from taking an image.

9 And then, from that point, when you get a suspect
10 hard drive and you have it set up and bring it into what
11 we call the Encase, it's a forensic software tool, and it
12 will begin the imaging process. One of the first things
13 it does is it takes what is called a hash of the hard
14 drive. That hash is a mathematical algorithm that is
15 calculated, specifically, for that hard drive. And, in
16 many terms, it's called sort of like a fingerprint or the
17 DNA of the hard drive. I believe it's like 10 to the 38th
18 power that hash can, actually, match, which is one and 38
19 zeros after it.

20 Q So one and 38 zeros would be the number?

21 A Yes.

22 Q So that's a pretty --

23 A It's a pretty substantial -- it's pretty hard to,
24 actually, think an MD5 that they can accidentally match.

25 Q That's why it's called the DNA, because it's so

1 inclusive; is that correct?

2 A Yes, sir.

3 Q Keep going.

4 A It will, actually, do that MD5 hash of the original
5 suspect drive. And then when it's done with the imaging
6 process, it will verify that hash. It will verify the
7 duplicate copy -- the copies, it will do a hash of that
8 hard drive and those two match. And that's called the
9 verification process to make sure you have -- the copy
10 that you create, the copy you do your forensics on is a
11 match to the original suspect hard drive.

12 Q And that's something that you check at the end of the
13 process; is that correct?

14 A Yes, sir. Once the process is done, that's something
15 that's checked to make sure that those two do match up.

16 Q And so once you're done with that particular process
17 and it matches, essentially, the image is an exact
18 duplicate of the original hard drive down to the last bit;
19 is that fair to say?

20 A Yes, sir.

21 Q Okay. Did you -- and hold on one second.

22 MR. WATERS: I want to show some documents to counsel.
23 I'd like to have these marked.

24 (WHEREUPON, State's Exhibit Nos. 19, 20, 21, 22, 23,
25 and 24 were marked for identification only.)

1 BY MR. WATERS:

2 Q Now, I'm going to show you what's been marked as
3 State's Exhibit Nos. 19 through 24, and see if you
4 recognize those. Just take a minute to look through them.

5 A This is the imaging worksheets, it looks like, from
6 the case involved here.

7 Q And what exactly, just quickly, is the imaging
8 worksheet?

9 A The imaging worksheet is a document completed during
10 the imaging process in which you list out the computer
11 make, model, serial number, the date, and time for the
12 computer itself, the computer hard drive, the additional
13 information about the make and model of the hard drive
14 itself, the forensic tower you're using and, of course,
15 the acquisition and verification hash and information we
16 were just talking about.

17 MR. WATERS: Your Honor, at this time, I would move
18 State's Exhibit Nos. 19 through 25 into evidence.

19 MR. GIBSON: No objection.

20 THE COURT: Is it State's Exhibit No. 25 or State's
21 Exhibit No. 24?

22 THE COURT REPORTER: State's Exhibit No. 24.

23 MR. WATERS: Let me look.

24 It's State's Exhibit No. 24. I apologize, Your
25 Honor.

1 THE COURT: They're in evidence.

2 (WHEREUPON, State's Exhibit Nos. 19, 20, 21, 22, 23,
3 and 24 were admitted into evidence.)

4 BY MR. WATERS:

5 Q What's the date on these imaging worksheets? Let's
6 look at the first one.

7 A The first one is December 14th, 2007.

8 Q What does that date reflect? What does that denote
9 to you?

10 A The date on the top of the worksheet indicates the
11 date that the image process was started.

12 Q And just check through them all. Are they all that
13 same date, or is there any different?

14 A They're all the 14th.

15 Q 12-14-07?

16 A 12-14-07.

17 Q And, on that first item, number one, what happened
18 with that one? Tell us what you found.

19 A Well, it shows that I put a note here to see the
20 notes. And in the note, it says, Unable to read drive
21 using multiple jumper settings.

22 Q And what does that mean?

23 A A hard drive will have what are called little jumpers
24 on it, sort of like multiple pins sticking out of the back
25 of the hard drive with a little connector to join a couple

1 of pins together. It has different settings. One is
2 called a master, and one is called a slave, and one is
3 called cable select. Those are the main ones that are
4 used. If you have two hard drives in a system, one has to
5 be master and one has to be slave, or they can both be
6 cable select. So there's a couple different jumper
7 settings.

8 In some of our imaging process, if you find one on a
9 slave, it may not image properly, because the computer is
10 not recognizing it as a main hard drive. So, many times,
11 we'll move that jumper to the master or to the cable
12 select section. And that's one of the things we list on
13 here, where the jumper originally was and where we might
14 have had to move it to for the forensic tower to recognize
15 the suspect hard drive so it could be imaged.

16 It looks like in this one, we tried a few different
17 things and weren't able to, actually, get our forensic
18 tower to match the hard drive so we could get an image.

19 Q So item one, you couldn't get anything off of it; is
20 that fair to say?

21 A No. It looks like we weren't able to make an image
22 of that hard drive.

23 Q What about item two, were you able to get a match on
24 that one?

25 A Yes, sir. It appears that we were able to make a

1 clean image of that hard drive.

2 Q And you referred, again, to the hash down here on
3 this little section right there, is that the part you're
4 talking about?

5 A Yes, sir. It says, Forensic hash values. And we
6 assure that we have an acquisition hash, we have a
7 verification hash, and then that they both match.

8 Q So the acquisition hash is the initial one from the
9 original hard drive?

10 A Yes, sir.

11 Q And then the verification is the image one. And then
12 it checks to make sure that that number is the same?

13 A Right.

14 Q And that's the DNA, the 10 to 38th power that you
15 were talking about?

16 A Yes, sir.

17 Q So you got a match on number two; is that fair?

18 A Yes, sir.

19 Q And, right here, it says, Network share. What does
20 that represent?

21 A That's the forensic images of the location. When it
22 first started up, it has a couple of blanks here to say
23 make, model, and volume ID. We would image one hard drive
24 to another hard drive. And that's where we put the make,
25 model, and ID of the copy -- the work copy hard drive.

1 As drives have grown expedientially larger over time,
2 we went to using servers to house the -- an evidence
3 server to house the forensic image. And that's what the
4 network share is. When we use the forensic tower to take
5 the image, we copy it directly to that evidence server and
6 place it in a folder for, usually, one of the -- if we
7 know the agent that's going to be getting it, we will
8 place it in a folder for him under that case number.

9 Q And this one says, Givens; is that right?

10 A Yes. It went to Givens under this case number. And
11 it lists out the item number and the hard drive.

12 Q And would that be David Givens?

13 A Yes.

14 Q What's the reason for having the image? Can you give
15 the original back to whoever owns it after you have the
16 image and work off the image? Is that the whole point?

17 A Right. You want to keep in evidence your original
18 copy. And you want your work copy that you're going to be
19 working with to be something you can work on without --
20 just like anything electronic, you don't want to have any
21 issues with it. You don't want it to fail or have any
22 problems while you're trying to work with it. So you want
23 to work on a work copy, and not work on the original.

24 Q And, fundamentally, that was your job here was to
25 make that copy for the other agents who were going to

1 analyze it; is that fair to say?

2 A In this specific case, yes.

3 Q In this specific case. And you've done analyzing
4 yourself as well, too?

5 A Yes, sir.

6 Q But, in this case, your job was just the imaging?

7 A Right.

8 Q Okay. We did number two. Let's go to number four,
9 which is the next one on the list.

10 A Okay.

11 Q What did you find on that one?

12 A This one, also, says to see notes. And, in the notes
13 section, it has, Unable to read -- or to access the system
14 bios to obtain the computer date and time, and that the
15 hard drive appears to be all unallocated space, and that
16 there was one reader.

17 Q And what does that mean, just generally?

18 A One of the things we do is we check the computer date
19 and time to make sure that it matches up with the actual
20 date and time at the time of the image. Sometimes, they
21 do not. Most -- a lot of computers come configured for
22 West Coast time, which is where Microsoft, actually,
23 originates from. And if you don't change that time when
24 you're setting up a computer, you can have a computer here
25 on the East Coast that is still set to the West Coast time

1 zone. And that can throw times and dates off. In some
2 cases, that's a very important piece of evidence. In some
3 cases, it's not.

4 Q Did that have any affect on your ability to get an
5 acquisition hash, a verification and then a perfect match
6 in this case?

7 A Not in this case. I put a note that the drive
8 appears to be all unallocated space in this one. What
9 that means is I couldn't see a file structure to see
10 documents, and settings, and users, and things like that
11 on the computer, to see all the file structure for it. It
12 doesn't mean that there's not anything there. It just
13 could be -- this shows a six gigabyte hard drive, which is
14 a small hard drive for today's standards.

15 It could have been an old hard drive that had
16 crashed. There could have been malware on it. I have no
17 idea. But it could have been something that caused that
18 hard drive to possibly fail, which is why we couldn't boot
19 it up to make the image -- or to access all that file
20 structure.

21 Q Okay.

22 A So -- but during the forensics, it's possible to
23 help -- when you have that work copy to take that work
24 copy and use the software we have to help you view that
25 file structure. And in the imaging process, we don't,

1 typically, go in that direction.

2 Q Got you. Number six, what did you find on that one?

3 A It looks like we made a clean image on that one,

4 also.

5 Q Okay. You managed to get a match?

6 A Yes, sir.

7 Q An acquisition hash, verification hash, a match; is

8 that correct?

9 A Yes, sir, all of those matched.

10 Q The network share on that one, who does it say it

11 went to?

12 A It went to Wasiak, Farand Wasiak.

13 Q And is he a SLED agent?

14 A Yes, sir.

15 Q Let's look at -- let's first go to number eight.

16 What did you find on that one?

17 A It looks like we made another good image on this one.

18 However, again, it says the system bios did not display

19 the computer date and time. Reading that note, it looks

20 like we were able to access the bios, but some computers

21 don't readily display the actual date and time of the

22 computer on there. That would probably be my thoughts for

23 that.

24 We were able to make a clean image, view the file

25 structure. Everything looked good on it. However, we

1 could not identify the date and time for the computer
2 itself.

3 Q But you still had the match of the data on there; is
4 that correct?

5 A Yes, sir.

6 Q And that was to Wasiak as well?

7 A Yes, sir.

8 Q Okay. Now, number seven is a little bit different.
9 Was there an issue with number seven? Was it not in the
10 case file or --

11 A I don't know if it was in the case file. It looks
12 like I started the image. The imaging process can
13 sometimes take, at least, a couple of hours to several
14 days sometimes, depending on the size of the hard drive or
15 any issues with it.

16 It looks like this one, I had, obviously, started. I
17 was able to view the partitions and file structure, which
18 means I was able to see the files on the computer and
19 started the imaging process. But this sheet doesn't --
20 it's not complete. It doesn't show that I completed the
21 hash verification. And it wasn't signed by me.

22 Q Okay. And let me ask you this. In all the time that
23 you've done this, how many images do you think you've
24 done, roughly?

25 A Several hundred. It could be anywhere from 300 to

1 500. It's hard to tell. It's been many years of doing
2 it.

3 Q And you were provided this sheet fairly recently; is
4 that correct?

5 A Yes, sir.

6 Q And we, actually, just found that one. Is that your
7 understanding?

8 A Yes, sir.

9 Q And all those images that you've done, have you ever
10 not had a match?

11 A I've had that happen once. And when I realized that
12 I didn't have a match, I took that hard drive, re-imaged
13 it again, and then it matched at that point.

14 Q Was that in this case, or was that another case?

15 A It was a case prior to this one. Because, at that
16 time, we didn't use the black bag hardware, the write
17 blocker hardware. It was something different. So it had
18 to be a case prior to this one, 2006 or 2007.

19 Q So it wasn't this case?

20 A No, sir.

21 Q That's the only other time in all the images you've
22 done where the software doesn't come back with a match?

23 A Yes, sir.

24 Q And if it had not come back with a match, you would
25 have taken some further --

1 A I would have taken further actions to either image it
2 again or -- basically, notify the agent that we didn't
3 have a good copy.

4 MR. WATERS: Okay. I believe that's about it.
5 Answer any questions that opposing counsel has.

6 MR. GIBSON: No questions.

7 THE COURT: All right. Thank you, Mr. McAbee.
8 You may step down, sir.

9 All right. You may call your next witness.

10 MR. WATERS: Thank you.

11 We would call Britt Dove.

12 THE CLERK: Please step forward to be sworn in, sir.

13 THE BAILIFF: Sir, place your left hand on the Bible
14 and raise your right hand.

15 WHEREUPON,

16 DAVID BRITTON DOVE,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Please be seated.

19 After you're seated, please, state your name.

20 THE WITNESS: My name is David Britton Dove. I go by
21 Britt Dove.

22 DIRECT EXAMINATION

23 BY MR. WATERS:

24 Q Agent Dove, how are you doing today?

25 A Good.

1 Q Tell us what your current job is.

2 A I'm, currently, assigned as a special agent with the
3 South Carolina Law Enforcement Division, the Computer
4 Crimes Center.

5 Q And can you give us just quickly a little bit of your
6 law enforcement history?

7 A Prior to coming to SLED in June of 2008, I was
8 employed with the West Columbia Police Department as a
9 criminal investigator. Prior to joining West Columbia, I
10 was with the Richland County Sheriff's Department as a
11 school resource officer. I've been in law enforcement for
12 a little over 11 years now.

13 Q And you said, now, you're in the Computer Crimes
14 Center?

15 A Yes, sir.

16 Q Did you have any sort of specialized training or
17 anything along those lines to join the Computer Crimes
18 Center?

19 A Yes, sir. Once I was employed with the Computer
20 Crimes Center, I've been to the five-week training course
21 offered by the National Computer Forensic Institute that's
22 associated with the U.S. Secret Service. I've, also, been
23 to training in Encase software, levels one and two. I've,
24 also, been to Access Data software training. I've, also,
25 been trained in cell phone forensics, along with training

1 in undercover chat for Internet predators and file sharing
2 systems regarding the trading of child pornography and
3 other illegal items on the Internet.

4 Q In this particular case, was a request made to you
5 about some missing forensic worksheets?

6 A Yes, sir. I was contacted on Friday, the 25th, by
7 Special Agent McAbee regarding several imaging worksheets
8 that were noticed to be missing from the information he
9 was given. He asked me if I would go and look to see if I
10 still saw them on our forensic network.

11 Our forensic network is set up inside in our offices,
12 our center, where it's only accessible to law enforcement
13 or people that are given access to it in the center.

14 Q Okay. So that's a secure network?

15 A Yes, sir.

16 Q And you said only law enforcement would have access
17 to it?

18 A Yes, sir.

19 Q And is it just all law enforcement, or only certain
20 law enforcement?

21 A Only certain law enforcement. You have to be given a
22 password to be able to get onto that network. Only
23 employees inside the center that have been trained and
24 they're granted that access are allowed to get on the
25 network to look at anything on there.

1 Q So if somebody was going to have some mal intent to
2 get on there and monkey around with stuff in there, it
3 would have to be a dirty cop, essentially, is what you're
4 saying?

5 A It would have to be one of the few employees that
6 work inside the center. Inside the center, we have scan
7 cards that only employees of the center themselves are
8 granted access to get in. Once inside there, you're given
9 a password to get onto the computer system itself, which
10 accesses the network at that point.

11 Q Let's talk first about item seven that Agent McAbee
12 just talked about, and that's State's Exhibit No. 23. Do
13 you recognize that particular document?

14 A Yes, sir.

15 Q All right. Is that -- did you -- tell me how you
16 recognize that document.

17 A When I was contacted to look for that, Agent McAbee
18 asked me to look for the imaging worksheets that were
19 missing. I went and looked on our evidence server, which
20 is called our public network. It's what they titled it.
21 It's a server that's inside the walls of the agency. I
22 looked on --

23 Q Let me stop you right there. You called it a public
24 network. Does that, actually, mean it's public to the
25 public?

1 A No, sir. That network is not connected at all to the
2 Internet. That network is housed within inside our walls
3 of the center. And, also, that's the one you have to be
4 granted a password to get on, so it's limited access.

5 Q So even though it's called public, that doesn't mean
6 that anybody but the selected law enforcement has access
7 to it; is that correct?

8 A Yes, sir, correct.

9 Q All right. Continue on.

10 A I went inside there, looked -- began to look under
11 the imaging worksheet folder that was on that network
12 thinking that would be the place I would find imaging
13 worksheets. I went under Agent McAbee's folder with his
14 name on it. Inside there, I looked for the case number
15 that was associated with it for the imaging worksheet.

16 At that time, after looking in one or two folders,
17 there was a folder called, Awaiting Printing. I looked
18 inside there, and that's where I found this worksheet.

19 Q Did you see a particular name on there on that
20 particular folder? Did it have Trae --

21 A It was inside McAbee folder. And underneath that
22 folder was another folder called, Awaiting to be Printed.

23 Q And that's where you found that document in there?

24 A Yes, sir.

25 MR. WATERS: I would like to have this marked.

1 (WHEREUPON, State's Exhibit No. 25 was marked for
2 identification only.)

3 BY MR. WATERS:

4 Q I'm going to show you State's Exhibit No. 25, which
5 is -- or item -- evidence item number five. Do you
6 recognize that document?

7 A Yes, sir, I do.

8 Q Could you tell us how you recognize it?

9 A This is, also, one of the forensic imaging worksheets
10 that I was asked to locate for item number five. When I
11 began to look and I looked in Special Agent McAbee's
12 folder and I found just the item number seven, I knew he
13 was still looking for item number five.

14 At that time, I knew that there were only several
15 people that were trained and allowed to do the forensic
16 imaging of items. I began to look in their folders.
17 Inside Agent, at the time, Amanda Simmons, I looked inside
18 her folder. And that's where I located item number five.

19 Q All right. So you found an old folder or an archive
20 folder of Amanda Simmons, which is where you found number
21 five?

22 A Yes, sir.

23 Q Who is Amanda Simmons?

24 A She was the lieutenant of the forensic side of the
25 Computer Crimes Center when I began working there.

1 Q So to summarize, for item seven, you found that in an
2 archive folder of Trae's, and for item five, you found
3 that in an archive folder of Amanda Simmons; is that
4 correct?

5 A Yes, sir.

6 Q Did you make any screen shots to show kind of what
7 you did?

8 A Yes, sir, I did.

9 Q Could you --

10 MR. WATERS: Your Honor, at this time, I would move
11 State's Exhibit No. 25 into evidence.

12 MR. GIBSON: No objection, Your Honor.

13 THE COURT: It's in evidence.

14 (WHEREUPON, State's Exhibit No. 25 was admitted into
15 evidence.)

16 (WHEREUPON, State's Exhibit No. 26 was marked for
17 identification only.)

18 BY MR. WATERS:

19 Q I'm going to show you State's Exhibit No. 26. I'm
20 going to see if you can recognize that?

21 A Yes, sir. These are screen shots I made of my
22 desktop of where I found these actual Word documents at.
23 Also, on there, I brought up the time and date properties
24 of my computer itself.

25 And, during the course of this, I went through, right

1 clicked on the individual files or folders to show the
2 properties of each file or folder, which would show the
3 date that they were created inside that folder. I, also,
4 showed the modified date, which is the date it would have
5 been changed and the access date, which would have shown
6 the last date they were, actually, opened.

7 Q And let's talk about item five first. What was the
8 date modified that you found on that one?

9 A Item five, the date modified was 12-17-2007.

10 Q And what does that reflect? What does the date
11 modified reflect?

12 A The date modified is when that file was opened and
13 the size was changed somehow.

14 Q And what about item seven, what was your date
15 modified on that?

16 A Item seven, the date modified on that was 12-16-2007.

17 MR. WATERS: Your Honor, at this time, I would move
18 State's Exhibit No. 26 into evidence.

19 MR. GIBSON: No objection, Your Honor.

20 THE COURT: It's in evidence.

21 (WHEREUPON, State's Exhibit No. 26 was admitted into
22 evidence.)

23 BY MR. WATERS:

24 Q Now, I noticed on this one that for some reason when
25 it printed out, it had a date of last week on it. Do you

1 know why it did that?

2 A Yes, sir. Once we copied it over and printed it out,
3 we realized it -- for some reason, the date completed
4 showed 3-25-2011.

5 Q And, just real quick, we're talking about State's
6 Exhibit No. 25?

7 A State's Exhibit No. 25, yes, sir, for item number
8 five. I went back, and that's one of the things in the
9 screen shots. When I highlighted that date and right
10 clicked on it, you could see where it had update on there.

11 When I opened up the properties of that, it appears
12 to be that it was set up to auto fill in the date of
13 whatever the current date was, so that once the person got
14 through doing the information up top, entering the make,
15 model, and things like that, printed it out, it would
16 automatically populate the bottom as far as the date on it
17 and everything to whatever the current date was.

18 Q So that was the date it got printed out.
19 Essentially, it auto put that in there?

20 A Yes, sir.

21 Q But the date modified on this one was the date you
22 earlier said of 12-17 --

23 A Yes, sir, of the original document in the folder.

24 MR. WATERS: All right. Agent Dove, I believe that
25 is about it.

1 Answer any questions that counsel may have.

2 MR. GIBSON: No questions.

3 THE COURT: All right. Thank you, Mr. Dove.

4 You can step down.

5 You may call your next witness.

6 MR. WATERS: Thank you.

7 At this time, we would call Amanda Simmons.

8 THE CLERK: Ma'am, if you'll, please, step forward to
9 be sworn in.

10 THE BAILIFF: Place your left hand on the Bible and
11 raise your right hand.

12 WHEREUPON,

13 AMANDA FAITH SIMMONS,

14 after first having been duly sworn, testified as follows:

15 THE CLERK: Please be seated.

16 And after you're seated, please, state your name.

17 THE WITNESS: My name is Amanda Faith Simmons.

18 DIRECT EXAMINATION

19 BY MR. WATERS:

20 Q Ms. Simmons, how are you doing today?

21 A Good. You?

22 Q Doing well.

23 Thank you.

24 Could you tell the jury your current occupation?

25 A Currently, I'm an information technology specialist

1 forensic examiner.

2 Q And who are you with?

3 A I'm with the Federal Bureau of Investigations.

4 Q And, before that, did you have a job in law
5 enforcement?

6 A I did. I began my career in 1986 with the Lexington
7 County Sheriff's Office. I worked there from 1986 to 1997
8 with a brief period of -- a brief stint working at the
9 police academy in 1995.

10 After that, I went to SLED, the State Law Enforcement
11 Division, in 1997 in a narcotics capacity. At that time,
12 I worked in narcotics for several years, tech services for
13 several years, and then the Computer Crimes Center for the
14 remainder of my career there.

15 Q And when did you leave the Computer Crimes Center?

16 A I retired in January of 2009.

17 Q So, in 2007, you were working at the SLED Computer
18 Crimes Center; is that correct?

19 A That is correct.

20 Q And did you have a particular position there in 2007?

21 A In 2007, I was a supervisory special agent in charge
22 of the forensics lab in the Computer Crimes Center.

23 Q As far as forensic examination of computers and
24 computer crimes, have you had any specialized training in
25 that regard?

1 A I have. I've attended the National White Collar
2 Crime Center basic and advanced classes. I've attended
3 the Secret Service training up in Linthicum, Maryland, at
4 the Defense Cyber Crime lab. I've attended numerous other
5 classes, Encase classes, forensic tool kit classes, as
6 well as many others, cell phone forensics training and,
7 like I said, many others.

8 Q And you said "Encase." What is Encase?

9 A Encase is a specific software tool that's utilized to
10 conduct forensic examinations on computers and other types
11 of electronic media.

12 Q And you said forensic tool kit or something. Is that
13 what you said?

14 A Forensic tool kit is another forensic tool that's
15 utilized to conduct forensic exams. It's made by a
16 company called Access Data. Encase is made by a company
17 called Guided Software.

18 Q And that one, some people call it FTK?

19 A That is correct.

20 Q All right. As part of that training, did you have
21 training in how to do imaging of computers?

22 A I did.

23 Q And had you done that before you did one in this
24 particular case?

25 A I have done numerous images on numerous computer

1 systems throughout my time at the Computer Crimes Center
2 and otherwise.

3 Q And you heard Trae testify. He pretty much explained
4 the imaging process?

5 A Correct.

6 Q We don't need to do that again, I guess?

7 A I would agree with everything Trae said.

8 Q Did you have any involvement in this particular case?

9 A I did. In this particular case, obviously, I was the
10 supervisor in charge of the lab at this point in time, and
11 review of the imaging worksheets. I was in the chain of
12 custody of these particular computers. And two imaging
13 worksheets were, basically, provided that indicated item
14 number five was imaged.

15 Q All right. That's -- I apologize.

16 MR. WATERS: Let me find something real quick.

17 There we go.

18 All right. Before we get to that, let me get
19 something marked.

20 (WHEREUPON, State's Exhibit No. 27 was marked for
21 identification only.)

22 BY MR. WATERS:

23 Q I'm going to show you what's been marked as State's
24 Exhibit No. 27, and see if you recognize that document.
25 Take a moment to flip through it, if you would.

1 A The first three sheets are chain of custody items
2 that I signed receiving custody of those items. Items one
3 through four on the first sheet, items one through four on
4 the second sheet, later, designated as five through eight
5 from Special Agent Farand Wasiak.

6 Q Okay. So total, one through eight?

7 A Total, one through eight.

8 Q And you received them from who?

9 A Special Agent Farand Wasiak.

10 Q And for what purpose did you receive them?

11 A They were received from Special Agent Wasiak for the
12 purposes of imaging and placing into the evidence control
13 vault after they were completed.

14 Q And you saw Trae testify. Do you know Trae?

15 A Yes, sir, I do.

16 Q And did you know him back in 2007?

17 A I did.

18 Q Did you know him in a professional capacity?

19 A I did.

20 Q And how?

21 A He was assigned to the Computer Crimes Center as the
22 Secret Service -- one of the Secret Service
23 representatives that would be assigned, specifically, to
24 the lab to conduct forensic examinations and forensic
25 imaging of submitted media.

1 Q So you and he worked together at imaging; is that
2 correct?

3 A That's correct.

4 MR. WATERS: Your Honor, at this time, I would move
5 State's Exhibit No. 27 into evidence.

6 MR. GIBSON: Without objection, Your Honor.

7 THE COURT: It's in evidence.

8 (WHEREUPON, State's Exhibit No. 27 was admitted into
9 evidence.)

10 BY MR. WATERS:

11 Q And these latter two sheets, are they pretty much the
12 same thing as far as the chain you were talking about?

13 A The latter sheet that I'm looking at now, obviously,
14 coming from Farand Wasiak to me, he released it to me as
15 documented on the sheet with my signature, and time, and
16 date of 12-14-07.

17 The last sheet is the transfer of custody back to the
18 case agent in this particular case, Gene Donohue, who's
19 present in the courtroom.

20 Q Okay. Let's go back to State's Exhibit No. 25, which
21 is item five. Do you recognize just the general format of
22 that particular document?

23 A I do. This document is the forensic imaging
24 worksheet that was utilized by the Computer Crimes Center
25 when an image was made of a computer or other type of

1 media.

2 Q Okay. And does it have a name at the top?

3 A It does. It has my name, Examiner Amanda Simmons.

4 Q And, in your normal practice and procedure at SLED
5 when you were doing imaging, is that the sort of form that
6 you would fill out when you did that sort of thing?

7 A That is consistent with the forms that we filled out
8 during that period.

9 Q Well, let me ask you this. Do you have any
10 independent recollection of imaging anything in this
11 particular case?

12 A I do not. I was assigned to the lab and began
13 imaging computers in 1998. And this form is consistent
14 with the process that we would do. However, this is a
15 copy of the form that was printed out on March 25th, as
16 Special Agent Britt testified to.

17 Q This is the one we found in your old -- that Britt
18 testified he found in your old folder at the SLED server?

19 A That is correct.

20 Q And so we provided that to you?

21 A That is correct.

22 Q And you don't have an independent recollection of
23 this case, but that's consistent with the kind of thing
24 you would do when you imaged something?

25 A That is consistent with the documentation we would

1 place on this imaging worksheet to further note that --
2 obviously, things such as two hard drives out of one
3 system. One would be marked as a slave, one would be
4 marked as a master. This particular sheet here does
5 document slave. The first sheet documents one of two.
6 The second sheet documents two of two, and both coming
7 from a Gateway computer system with the serial number as
8 noted on the imaging worksheet.

9 Q Okay. And so even though you don't have an
10 independent recollection, assuming that nobody monkeyed
11 with that document that was found on that secure law
12 enforcement server, then that would reflect your work in
13 this case; is that correct?

14 A That would be consistent with the work that would be
15 done on this case.

16 Q Let me ask you this. How many images do you think
17 you've done over the course of your career, roughly?

18 A I began the first imaging processes in 1998, and
19 we're in 2011. I worked in the Computer Crimes Center
20 from early 2000 until I retired and, obviously, did quite
21 a number of them. I would say probably upward of 500 to
22 1,000.

23 Q Okay. And of the times that you did that, was it a
24 usual or an unusual occurrence for you not to have a match
25 or the hashes to come back and not match?

1 A It is very, very, very unusual for it not to match.
2 Probably in the number of hard drives I've imaged, only a
3 handful, maybe two handfuls of images that didn't match.
4 In most of those cases, it was the media that it was
5 copying to that would be failing, not the evidence drive.
6 And so what we would do is we would either make another
7 image of that to verify it does match, or we would
8 document the steps we took in case there was some reason
9 we could not make another image of that.

10 Q So if it didn't match, that would be kind of a big
11 deal and you'd do something about it to try to see if you
12 could fix it or document it; is that fair to say?

13 A Absolutely. At the very least, it should be
14 documented in the imaging worksheet.

15 Q And those forms don't reflect anything like that on
16 them?

17 A They do not. This was a weekend -- over a weekend,
18 Friday afternoon. And, obviously, 12-14, being a Friday,
19 and looking at the other documentation, it looks like it
20 went back to Special Agent Donohue the following -- I
21 guess on 12-19. So it went back a short time later. So
22 it may have been a situation where it was done over the
23 weekend.

24 MR. WATERS: Got you.

25 All right. I believe that's it.

1 Please answer any questions opposing counsel may
2 have.

3 CROSS-EXAMINATION

4 BY MR. GIBSON:

5 Q Ms. Simmons, just very briefly. Is there any
6 independent verification that the hard drives match?

7 A The verification is documented here. It's, also,
8 documented on the original copy on the hard drive.

9 Q And the way that's done is there's a computer program
10 that, basically, looks at it and determines whether or not
11 it matches; is that correct? Is that what I understand?

12 A Encase or FTK will do that.

13 Q But is there a process whereby an agent goes through
14 each of the images and makes sure that they, actually,
15 match?

16 A When you image a computer, that is done.

17 Q Okay. What I'm saying is, does the agent go through
18 all of the files and make sure that the files are
19 identical?

20 A Are you talking about individual files, or are you
21 talking about the bit by bit physical copy hard drive to
22 hard drive?

23 Q I'm talking about individual files.

24 A In an imaging process, we do a hash of the hard drive
25 to hard drive. So there is a forensic process called a

1 hash where the hard drive -- the whole copy of the hard
2 drive is hashed to the whole copy of the hard drive.

3 Q So is that a "yes" or "no"?

4 A As far as the imaging process, no, I did not do that.
5 That's not a typical procedure.

6 Q That's not a typical procedure. Okay. And I just
7 want to be sure, it's not a typical procedure for an agent
8 to go through and check the files themselves and go into
9 the files and make sure the files match?

10 A If the individual file had changed from hard drive to
11 hard drive copy and an individual file within there had
12 changed, then his verification hash would not match while
13 he was conducting his exam.

14 Q And the way that he determines that is through a
15 computer program, but not through individually going
16 through the files and making sure; is that correct?

17 A The computer program looks at the entire hard drive
18 which contains those individual files.

19 MR. GIBSON: Okay. Thank you.

20 THE COURT: Redirect?

21 MR. WATERS: Very briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. WATERS:

24 Q When we were talking about the acquisition hash and
25 the verification hash and then those matching, that's that

1 big 10 to the 38 number that Trae McAbee talked about; is
2 that correct?

3 A It can be -- exactly. It can be an MD5 hash or an
4 SHA hash, different types of hash that are compared.

5 Q And if one number is off on that, it's going to say
6 there's no match?

7 A Exactly.

8 Q Essentially, we're not even talking about like a
9 photocopy where it might be a little lighter or a little
10 darker. We're talking about an exact down to the last one
11 or zero match of the hard drive; is that correct?

12 A That is correct.

13 Q So it's, essentially, another original; is that
14 right?

15 A That is correct.

16 MR. WATERS: Nothing further.

17 Thank you.

18 THE COURT: Recross?

19 MR. GIBSON: No, sir.

20 THE COURT: Thank you, Ms. Simmons.

21 You may call your next witness.

22 MR. WATERS: Judge, may we approach briefly?

23 THE COURT: Sure.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: We're going to take a short recess at

1 this time. Just be back in the courtroom at 10 after
2 10:00.

3 And, ladies and gentlemen, don't talk about the case.
4 Continue to keep an open mind.

5 And we'll resume in about 15 minutes.

6 Thank you.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 9:56 a.m.)

9 THE COURT: We'll be in recess until 10:10.

10 Thank you.

11 (WHEREUPON, a break was taken.)

12 (WHEREUPON, State's Exhibit No. 18 was admitted into
13 evidence by agreement of counsel.)

14 THE COURT: Mr. Waters.

15 MR. WATERS: Judge, we're making process. Mr. Gibson
16 and I were just talking. There's a number of e-mails that
17 I plan to introduce. And we're in the process of going
18 through those. And although it might be a little bit more
19 of a delay right now, it might be more efficient if he can
20 review those and we can address any objections, rather
21 than do it piecemeal one by one.

22 THE COURT: Okay.

23 MR. WATERS: I know it might take a little bit more
24 time now, but I believe it would be more efficient when we
25 get the jury back in.

1 THE COURT: All right. I'll just be right here.

2 (Pause.)

3 THE COURT: Are you all ready for the jury?

4 MR. WATERS: We are almost.

5 (Pause.)

6 THE COURT: Are we ready to bring the jury in?

7 MR. WATERS: I believe so, Your Honor.

8 There are two of these that I believe counsel had a
9 problem with that we might want to go ahead and address
10 now since the jury is not present.

11 THE COURT: Okay.

12 MR. GIBSON: Your Honor, the overall majority of what
13 he wants to put in, I've got no problems with whatsoever.
14 But there are, however, two e-mails that he wants to put
15 in that I don't think are relevant or admissible. One
16 is --

17 And can I show it to him, if you don't mind. And do
18 you want to have it marked for identification purposes?

19 MR. WATERS: As long as I can put it back in my
20 stack.

21 MR. GIBSON: Well, I'll let you look at it.

22 Can I see the other one?

23 MR. WATERS: Let's do them one at a time.

24 MR. GIBSON: But the first one, Your Honor, is,
25 basically, a republication of a letter from a Susan

1 Brenner. Apparently, she works at the University of
2 Dayton School of Law.

3 THE COURT: Okay.

4 MR. GIBSON: And I'll pass it up to the Court so the
5 Court can consider it.

6 THE COURT: Okay.

7 MR. GIBSON: Considering it is a statement of a
8 complete third party, it is absolute hearsay, Your Honor,
9 and should be excluded. And that's my objection to that
10 particular one.

11 Also, Your Honor, it states a legal opinion. And the
12 witness is not here to be questioned or cross-examined
13 about that legal opinion.

14 MR. WATERS: Your Honor, it's kind of the same thing
15 as the effect on the listener. It's not offered for the
16 truth of the matter asserted, but it is offered for effect
17 on the hearer or the recipient in this case, which would
18 be Mr. Trout.

19 MR. GIBSON: Your Honor, as far as I know, there is
20 no evidence how that particular e-mail affected the
21 listener.

22 MR. WATERS: That's what the evidence is.

23 THE COURT: All right. I understand your objection,
24 Mr. Gibson, but I respectfully overrule it.

25 Thank you.

1 MR. GIBSON: Thank you.

2 The second e-mail I have a problem with is an e-mail
3 from Mr. Trout to David Smith. And the only thing it says
4 is it deals with Mr. Trout considering a run against Steve
5 Loftis for sheriff. It has no relevance whatsoever to the
6 matters that are here, that are at issue here, certainly,
7 not jury tampering, misconduct in office, anything like
8 that. My objection is that it is absolutely irrelevant to
9 the issues that are presented to the Court.

10 MR. WATERS: Your Honor, I'll withdraw that one.

11 THE COURT: All right.

12 MR. GIBSON: Thank you, Your Honor.

13 THE COURT: Thank you.

14 Okay. Bring the jury on in.

15 Thank you.

16 MR. WATERS: Your Honor.

17 THE COURT: Yes, sir.

18 MR. WATERS: Your Honor, there are some --

19 THE COURT: He can hold the jury out there.

20 MR. WATERS: There are some e-mails that were on
21 Mr. David Smith's computer that I have shown and, of
22 course, were provided in discovery. I believe Mr. Gibson
23 states he wants to put them in on cross. And I would have
24 an objection to some of those. I think we need to
25 probably address that. He just told me he wanted to put

1 them in on cross.

2 So even though the jury is out there, I don't know if
3 you want to take a break before we get to cross and
4 address it then and go ahead and get started on direct, or
5 do it now.

6 THE COURT: Well --

7 MR. GIBSON: Your Honor --

8 THE COURT: I'm sorry. Go ahead.

9 MR. GIBSON: To give you a full picture. I was given
10 a stack of e-mails that he, initially, had intended to put
11 in. I went through that stack. After I went through the
12 stack, he went through the stack and decided some of the
13 e-mails he did not want to put in.

14 The e-mails are all from David Smith. They all came
15 from his computer. It's my understanding that their
16 theory of this is that David Smith was in on this all
17 along, which makes him an unindicted co-conspirator.

18 So any statements that he gave to Mr. Trout would,
19 certainly, be admissible under the co-conspirator
20 exception -- any statements he gave to Mr. Trout in
21 furtherance of the conspiracy. I think they're absolutely
22 amiss. But I think he was right when he, initially,
23 wanted to put them in that they were admissible and
24 relevant. And I'd, simply, ask that we be allowed to do
25 that.

1 MR. WATERS: When I showed him the stack, these were
2 a stack of ones that I had identified that were in the
3 subject matter. I hadn't necessarily said I was going to
4 put all of these in, so I would point that out. But I'm
5 not sure that there's any proof of a conspiracy at this
6 point.

7 And the Court's indulgence one moment.

8 THE COURT: Well, who's getting ready to testify? I
9 don't know.

10 MR. WATERS: About to testify is Farand Wasiak, who
11 is a SLED computer expert who, actually, ran the program
12 that pulled the e-mails off the images that we just heard
13 testimony about. And, through Mr. Wasiak, I'm going to
14 get into some of the e-mails that were on Mr. Trout's
15 computer.

16 Actually, the e-mails that he's talking about, I
17 believe, were on David Smith's computer. And that --

18 MR. GIBSON: Yes, sir.

19 MR. WATERS: -- would come in through Agent David
20 Givens, who is the agent who examined the images of
21 Mr. Smith's computers.

22 THE COURT: So we don't have to take it up right now.

23 MR. GIBSON: Say it again, Your Honor.

24 THE COURT: We don't have to take it up right now, do
25 we?

1 MR. GIBSON: No, Your Honor.

2 And, actually, I think he may be right on the point
3 that there is no evidence of a conspiracy yet. And it may
4 be -- I don't want to inconvenience Agent Givens, but what
5 I can do is wait until Agent Donohue testifies, bring out
6 the information regarding conspiracy then, and then recall
7 Agent Givens as part of my case in chief, and get them in
8 that way. I think that unnecessarily inconveniences Agent
9 Givens. But if that's the case and that's the route that
10 the Court and counsel thinks we need to go, then I'm,
11 certainly, amenable to that.

12 MR. WATERS: Well, I think probably at this point,
13 like Your Honor said, let's just go ahead and get started
14 with the testimony of Agent Wasiak.

15 THE COURT: Yes. We can take it up after this
16 witness testifies.

17 MR. GIBSON: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (WHEREUPON, the jury came into open court at
20 approximately 10:34 a.m.)

21 THE COURT: Yes, sir. You may call your next
22 witness, Mr. Waters.

23 MR. WATERS: Thank you, Judge.

24 We would call Agent Farand Wasiak.

25 THE CLERK: Please step forward and be sworn in, sir.

1 THE BAILIFF: Sir, please, raise your right hand and
2 place your left hand on the Bible, and face the Clerk.
3 WHEREUPON,

4 FARAND Z. WASIAK,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Please be seated.

7 And after you're seated, state your name.

8 THE WITNESS: My name is Farand Z. Wasiak.

9 DIRECT EXAMINATION

10 BY MR. WATERS:

11 Q Agent Wasiak, how are you doing today?

12 A Fine.

13 Thank you.

14 Q Could you tell us what your present occupation is?

15 A I'm a special agent assigned to the SLED Computer
16 Crimes Center.

17 Q And give us a quick synopsis of your law enforcement
18 experience.

19 A I started in 2000 with the Spartanburg County
20 Sheriff's Office. I worked my way up the ranks from
21 patrol officer to detective. In September of 2005, I came
22 on board with SLED with their Computer Crimes Center. And
23 I've been with them ever since.

24 Q Could you give us -- you said you were with the
25 Computer Crimes Center?

1 A Yes.

2 Q Could you give us any training or -- and your
3 experience in analyzing computers?

4 A Yes. I had training from the National White Collar
5 Crime Center's basic data and recovery course, as well as
6 Guided Software's Encase, beginner, intermediate, and
7 advanced training, as well as forensic tool kit FTK's
8 beginner, intermediate, and, I guess, advanced, a 40-hour
9 course in FTK.

10 Q And how many such examinations do you think you've
11 done over the course of time?

12 A I think -- as of January of 2010, I think I had over
13 about 2,000 exam hours. As far as cases go, it would
14 probably be a couple hundred.

15 Q Okay. And you mentioned FTK. Describe just quickly
16 what that is.

17 A FTK is a software that we use. It can be used for
18 the imaging process. However, we usually use it for the
19 analysis part. What FTK does is, essentially, just
20 creates a data base. It takes the hard drive -- I'm
21 sorry, the image we're working on and, for lack of a
22 better term, categorizes everything so it makes a very
23 searchable data base.

24 So, actually, what we're searching -- if I'm
25 searching for a particular thing, it'll just search it as

1 an organized data base. .

2 Q And what about Encase, is that another one?

3 A Yeah. Encase is another one. It operates a little
4 bit differently than FTK, but it, overall, is the same.
5 It all depends. Forensic tool kit, FTK, is, in my
6 opinion, a little bit better for searching e-mails, web
7 pages, and stuff like that than Encase.

8 Q Let me ask you. Were you involved in acquiring any
9 actual computers in this particular case?

10 A Yes, I was.

11 Q And do you recall when that was?

12 A I believe it was in December of 2007, the 14th, I
13 believe.

14 Q Okay. Give me one second here.

15 I'm going to show you what's been marked as State's
16 Exhibit No. 27, and see if you recognize that.

17 A Yes. That's a SLED standard issued receipt for
18 property. It's pretty much a form we use for any numerous
19 things whenever a SLED Agent or SLED receives property,
20 seizes property, or gains any property. It's pretty much
21 a receipt.

22 Q And does that reflect you on there anywhere?

23 A Yes. These are items that I took into custody, yes.

24 Q Okay. And are there two pages?

25 A Yes.

1 Q Okay. Well, let's talk about the items you took into
2 custody. Did you, actually, physically go along to take
3 these items into custody?

4 A I did, yes.

5 Q And whose house did you go to?

6 A This first location, it looks like -- let me see if I
7 can thumb through. It looks like David Smith's residence,
8 maybe, 2438 Poole Road in Greer.

9 Q Okay. And who went along with you to that location?

10 A Agent Gene Donohue and, I believe, a couple other
11 SLED Agents, but I forgot their -- I don't recall their
12 names at this point.

13 Q Okay. Well, what do you, typically, do, you go in
14 and --

15 A We go in, typically, and what I did in this case is
16 locate any electronic media. It could be anything from
17 computer laptop, thumb drive, disks, whatever have you.
18 We physically locate it. I photograph it before touching
19 it. I may have to -- well, initially, I photograph them
20 as I see them. And I may have to, you know, move
21 something along to get a better view of the back of the
22 computer so I can photograph the serial number, model
23 number.

24 After the photographing, I pretty much -- well, what
25 we, typically, do is just unplug it from the computer end

1 and physically take the computer. Obviously, if it's a
2 disk or a thumb drive, it doesn't need any kind of shut
3 down process or unplugging it from the wall.

4 Q And did you do that in this case?

5 A I did.

6 Q And what did you take from David Smith's residence?

7 A I looked in David Smith's residence. We took a
8 Packard Bell desktop with a serial number of 19011, and it
9 looks that's either an "L" or "C"; a Hewlett Packard
10 desktop with serial number of MXK5110585; another Hewlett
11 Packard laptop with serial number of TW0405313; and then a
12 NEC desktop with a serial value number of 240135.

13 Q Okay. And once you took those, what did you do with
14 them? Did you physically take them into your custody?

15 A Yes. I physically take them into my custody, into my
16 police car and are under my control until I physically
17 turn them into the Computer Crimes Center.

18 Q So you transported those back to Columbia?

19 A Yes. I transported them from Greer to Columbia.

20 Q Were they in a secure location?

21 A Yes, in my locker.

22 Q Were they tampered with, or anything like that?

23 A No, sir.

24 Q Now, if you can flip over to the next page. Would
25 you tell us what that represents? Did you go to anybody

1 else's house and seize any computers?

2 A Yes. We went to the location of 107, it looks like,
3 Silver Ridge Court in Greer, the residence of Tony Trout.

4 Q And was Mr. Trout there?

5 A He was.

6 Q Do you see him in the courtroom?

7 A I do.

8 Q Can you point him out?

9 A He's right there.

10 Q At counsel table?

11 A I'm sorry?

12 Q At counsel table?

13 A Yes. I'm sorry.

14 Q And what did you do when you got to Mr. Trout's
15 residence?

16 A The same procedure. We enter the residence. I
17 located any electronic evidence that needed to be seized,
18 photographed it, unplugged them, disconnected all the
19 cables, and took them into my possession.

20 Q And when you took them into your possession, what did
21 you do with them?

22 A They physically go out with me -- well, physically go
23 out with me to my vehicle where they're secured until,
24 obviously, I transport them back to Columbia.

25 Q And during that time, were they in your custody --

1 A In my custody the whole time.

2 Q A secure location?

3 A Yes.

4 Q Were they tampered with or altered in any way?

5 A No, sir.

6 Q And you took them back to the Computer Crimes Center
7 at that point?

8 A Yes.

9 Q And what did you do with them once they got there?

10 A Once they got there, I turned them into Amanda
11 Simmons. And pretty much -- I turned them over into
12 evidence, which she was acting as evidence custodian. And
13 I pretty much physically handed her each of the items, at
14 which point, she signed them over. And she, I guess you
15 could say, gained possession of the items.

16 Q Okay. And what did you take from Mr. Trout's
17 residence?

18 A We took a Gateway desktop computer with a serial
19 number of 0028198986; and it looks like an E-machine
20 desktop computer, serial number of CCA6110008310; a
21 Gateway desktop computer with a serial number of
22 XSL5341004646; and a Hewlett Packard laptop computer with
23 a serial number of, looks like, CNU622067B.

24 Q So you got four from David Smith, and four from
25 Mr. Trout; is that correct?

1 A Yes.

2 Q And I notice there's some numbers on here, one, two,
3 three, four on the side, and then one, two, three, four.
4 Then it has circled, five, six, seven, eight. Can you
5 explain what those are?

6 A Yes. When we take items into evidence, we always
7 label them, item one, item two, item three, you know,
8 until there's no more items left.

9 When I went to David Smith's house, obviously, we
10 took down items one, two, three, four. Well, when we went
11 to Mr. Trout's residence, I, also, took down items one,
12 two, three, four. However, for evidentiary purposes, in
13 taking it into evidence, we can't have for one case two
14 item ones, two item twos, two item threes.

15 So just for the sake of our own evidence keeping,
16 Tony Trout's item number one became item number five.
17 Tony Trout's item two became item number six, three became
18 seven, and four became eight. And that was just for
19 organizational purposes for our evidence.

20 Q And do those item numbers one through eight
21 correspond with the item numbers on these
22 forensic worksheets that have been entered into
23 evidence?

24 A Yes, they do.

25 Q And that would be State's -- let me get them all

1 straight here. That would be State's Exhibit Nos. 19
2 through 25; is that correct?

3 You can take a look, if you want to.

4 A Yes.

5 MR. WATERS: I would like to have this marked.

6 (WHEREUPON, State's Exhibit No. 28 was marked for
7 identification only.)

8 BY MR. WATERS:

9 Q So the item numbers correspond with the item numbers
10 on here; is that correct?

11 A Correct.

12 Q I'm going to show you what's been marked as State's
13 Exhibit No. 28, and see if you recognize those.

14 A They're the photographs I took upon the seizure of
15 the computers.

16 Q Okay. You personally took those photographs?

17 A I personally took those photographs.

18 Q And those were at the residence of Mr. Trout and
19 Ms. Smith?

20 A Yes.

21 MR. WATERS: Your Honor, at this time, I would move
22 State's Exhibit No. 28 into evidence.

23 THE COURT: Any objection?

24 MR. GIBSON: No objection, Your Honor.

25 THE COURT: It's in evidence.

1 (WHEREUPON, State's Exhibit No. 28 was admitted into
2 evidence.)

3 BY MR. WATERS:

4 Q You testified that when you took the computers back
5 to SLED, you gave them to Ms. Amanda Simmons. Was that
6 for any particular purpose? Were they going to do any
7 process with those computers?

8 A Yes. Lieutenant Simmons was there. Usually, it's
9 standard procedure -- the way we broke down in the
10 Computer Crimes Center, there was an imaging side and a
11 forensic side as far as the analysis. I don't do any
12 imaging. I never have. I was trained to do it, but I've
13 never put it into practice.

14 So whereas Lieutenant Simmons and Special Agent
15 McAbee, they did the imaging. So, essentially, I was just
16 handing it over to Lieutenant Simmons so the imaging
17 process could begin.

18 Q And once they image the computers, what happens with
19 the image that they make and we've heard testimony about?

20 A Once the image is made through a secure network, that
21 image is put into a folder on our network, which would be
22 like my folder, which would just be Wasiak, my last name.
23 And, from there, I could grab that image and begin the
24 analysis.

25 Q And you mentioned it was a secure network. Could you

1 describe that a little bit?

2 A It's a closed network, no Internet access. Nobody
3 outside of the Computer Crimes Center could access it. In
4 fact, the only person putting the image on the folder and
5 myself can acquire it. You need a password to get into
6 that server -- or, I'm sorry, that network.

7 Q All right. Tell me a little bit -- you mentioned
8 FTK. I know you described that, but how -- and you
9 mentioned Encase as well. Did you use a particular
10 forensic software in this case to search for anything?
11 And, if so, what?

12 A Yes. We used the forensic tool kit, FTK.

13 Q And what were you searching for?

14 A I believe the scope of the search -- or what was
15 wanted, particularly, the weight of it was going to be
16 e-mail communications.

17 Q And was there a reason why you chose FTK, instead of
18 some other forensic software?

19 A Yes. Just, in my opinion, FTK does a much better
20 job, a much more organized job collecting e-mails, finding
21 e-mails, what have you. It's more organized and more user
22 friendly.

23 Q All right. And once FTK -- once you run FTK on the
24 hard drive, what does it do? I mean, what does it result
25 in?

1 A It pretty much results in -- for lack of a better
2 term, I guess you could say it creates a data base, a
3 searchable data base. It super organizes everything. So,
4 this way, it will put -- it will organize all the e-mails.

5 So all you have to do if you want to look for
6 e-mails, you just check an e-mail tab and all the e-mails
7 will come up, or all the e-mails that FTK could find. If
8 you want to look for images, you just click on an images
9 tab and all the images on that computer will show up, same
10 thing for movies, web pages, what have you. It just
11 really, really organizes that computer. So it makes it a
12 very easy searchable data base for whatever items you're
13 looking for.

14 Q All right. I'm going to turn the projector on now,
15 and interrogate you with the light in your face.

16 A I'm fine.

17 Q Okay. Hopefully, you can get out of the way. It
18 will take just a second to boot up.

19 All right. As part of your analysis in this case, I
20 see it's got some e-mails up there, and then it has
21 Exported As, and there's a number underneath that. Can
22 you explain what that is?

23 A I'm just -- Exported right here?

24 Q Yeah.

25 A Actually, it's Exported As, and it gives a number of

1 89876HTML. That's just FTK's way of saying we're going
2 to -- it assigns it a number. It's FTK's own internal
3 organizational number is pretty much what it is.

4 Q All right. And, as part of your analysis here, did
5 you go through, at my request, and print off some e-mails
6 from what you found in this particular case?

7 A I did.

8 MR. WATERS: I would like to get this marked.

9 (WHEREUPON, State's Exhibit No. 29 was marked for
10 identification only.)

11 BY MR. WATERS:

12 Q I'm going to show you what's been marked as State's
13 Exhibit No. 29. I'm going to ask you to take a look at
14 that.

15 A Okay.

16 Q And I'm going to put in that number, 44286. Is that
17 the same e-mail right there that comes from your analysis
18 of this particular hard drive?

19 A It is.

20 Q And does that reflect an attachment right there?

21 A Yes. That would be an attachment.

22 Q Okay. I'm going to back it up real quick. And look
23 in here at this path right here, can you see my marker
24 right there?

25 A Right.

1 Q And it seems to be -- what does that represent? Tell
2 me what that represents.

3 MR. GIBSON: Excuse me.

4 THE COURT: Yes.

5 MR. GIBSON: Your Honor, may we approach very
6 quickly?

7 THE COURT: Yes.

8 (WHEREUPON, a bench conference was held.)

9 BY MR. WATERS:

10 Q All right. We're going to move on. I'm sorry about
11 the delay.

12 MR. WATERS: The Court's indulgence one moment, Your
13 Honor.

14 THE COURT: All right.

15 MR. WATERS: I need to reset just a bit.

16 I'm going to get this one marked.

17 (WHEREUPON, State's Exhibit No. 30 was marked for
18 identification only.)

19 BY MR. WATERS:

20 Q I'm showing you State's Exhibit No. 30. Look up at
21 the top there, it looks like a little path is up at the
22 top. Can you tell me what that represents?

23 A Where is says, File K, Agent Wasiak case?

24 Q Right, right.

25 What is that?

1 A That's just an actual -- because this was printed off
2 from my -- or I guess you could say my folder on our
3 network or how we just organize our cases. And this just
4 came from our case management, I guess you could say,
5 folder and my personal cases folder in the closed
6 completed/awaiting trial folder. We just move cases that
7 are active, cases closed, cases suspended. And I just
8 moved the physical case -- well, not the physical case
9 file, but the electronic file to whatever category it goes
10 to as the duration of the case continues.

11 Q Is that one that you personally printed off from your
12 FTK reports from the image that was done?

13 A Yes, it would have been.

14 Q All right. Now, I've gone to the Exported, and just
15 want to take a look at that one. Is that the same e-mail
16 there?

17 A I've got two different ones.

18 Q Looking at the content --

19 A Oh, I'm sorry. Yeah -- yes. The content of it is
20 the same, correct, yes.

21 Q All right. And let me see the exhibit real quick,
22 please.

23 A (Witness complied.)

24 Q All right. I'll hand that back to you. What's the
25 exhibit number on that one?

1 A The exhibit number on this one is 30.

2 MR. WATERS: Your Honor, at this time, I would move
3 State's Exhibit No. 30 into evidence, I believe, without
4 objection.

5 MR. GIBSON: No objection, Your Honor.

6 THE COURT: It's in evidence.

7 (WHEREUPON, State's Exhibit No. 30 was admitted into
8 evidence.)

9 (WHEREUPON, State's Exhibit No. 31 was marked for
10 identification only.)

11 BY MR. WATERS:

12 Q I'm going to show you State's Exhibit No. 31. And
13 give me one second over here with the computer.

14 All right. Take a look at this one, which was
15 exported as 54216, and look at that one. Is that another
16 one that's a printout from an e-mail you got from the
17 image taken from this particular computer?

18 A Yes. The content is the same, yes.

19 Q Okay. And let me ask you this. The ones that you
20 ran the report on, what item numbers did you run a report
21 on?

22 A I did items five, six, seven, and eight.

23 Q And what -- whose computers were those?

24 A I believe those were going to be Tony Trout's.

25 Q Those are Tony Trout's?

1 A Yes.

2 Q So then these e-mails we introduced were e-mails that
3 were found on Tony Trout's computer; is that correct?

4 A Correct.

5 Q And going back and looking at this -- and we got held
6 up and I was going to ask you this before. But do you see
7 you've got this sort of path here, and it looks like it's
8 got an AOL destination. Can you explain what that is
9 right there?

10 A Just from looking at it, it looks like AOL
11 downloaded. Obviously, if you're an AOL customer, you're
12 going to have an AOL on your customer. If you just look
13 down the folder structure of it, it, essentially, comes
14 down to you've got the AOL folder, AOL save, AOL
15 organized, and those are just individual folders. And
16 then it, finally, gets down to the mail you sent. And it
17 was in the mail you sent folder.

18 Q And what, typically, is in the mail you sent? I know
19 the answer seems obvious, but what's usually kept in that
20 folder on a computer?

21 A Mail that has been sent, yeah.

22 Q Okay. Sometimes, you've just got to ask.

23 A Well, essentially, mail that's been sent.

24 Q But, in a computer, that's where you would expect to
25 find --

1 A That would be the default, correct, yeah. That would
2 be under normal circumstances, absolutely.

3 Q Whoever owned that computer, that would be where the
4 mail they've sent would be stored; is that correct?

5 A In all things logical, yes, absolutely.

6 MR. WATERS: At this time, I move State's Exhibit
7 No. 31 into evidence, I believe, without objection.

8 MR. GIBSON: Without objection, Your Honor.

9 THE COURT: It's in evidence.

10 (WHEREUPON, State's Exhibit No. 31 was admitted into
11 evidence.)

12 (WHEREUPON, State's Exhibit No. 32 was marked for
13 identification only.)

14 MR. GIBSON: Your Honor, I had made some objections
15 to a couple -- one e-mail specifically. I just want to
16 make sure -- without having to go through it, I just want
17 to make sure that objection is preserved for the record.

18 THE COURT: Yes, sir.

19 We'll let you amplify on that later. But I
20 understand what your objection is.

21 MR. GIBSON: Thank you, Your Honor.

22 BY MR. WATERS:

23 Q I'm going to show you State's Exhibit No. 32. I'll
24 have you take a look at that one. And, again, does it
25 have the path up at the top showing that that's one you

1 personally printed from the reports that you did?

2 A Correct.

3 Q And is that -- State's Exhibit No. 32 there, is that
4 the same as the e-mail reflected there?

5 A It is.

6 MR. WATERS: All right. I would offer State's
7 Exhibit No. 32 into evidence without objection, I
8 believe -- I mean, subject to objection.

9 MR. GIBSON: Subject to my previous objection.

10 THE COURT: Yes.

11 The previous objection was overruled.

12 (WHEREUPON, State's Exhibit No. 32 was admitted into
13 evidence.)

14 BY MR. WATERS:

15 Q And not to keep reiterating the point, but does it
16 have the same path as the mail you sent that we were
17 talking about before on that one?

18 A Yes, correct.

19 MR. WATERS: I'd like to have this marked.

20 (WHEREUPON, State's Exhibit No. 33 was marked for
21 identification only.)

22 BY MR. WATERS:

23 Q Let me show you State's Exhibit No. 33.

24 Let me see that e-mail again, if you would, please.

25 A (Witness complied.)

1 Q All right. I'll hand that back to you.

2 Does that, also, reflect a path as well? Your path
3 at the top, is that one you personally printed?

4 A Yes.

5 Q Okay. And I apologize, I've got -- it looks like I
6 might have gotten my number mixed up. Give me one second
7 on that.

8 I'll hand that back to you. What's the date on that
9 particular e-mail, if you could tell me?

10 A 4-16-2007.

11 Q All right. And I apologize for the delay. I got the
12 wrong number on there.

13 All right. I'm going to show you that. Is that the
14 one we're talking about?

15 A Yes.

16 MR. WATERS: At this point, I would move State's
17 Exhibit No. 33 into evidence, I believe, without
18 objection.

19 MR. GIBSON: Without objection, Your Honor.

20 THE COURT: Okay. It's in evidence.

21 (WHEREUPON, State's Exhibit No. 33 was admitted into
22 evidence.)

23 BY MR. WATERS:

24 Q And does that one have an attachment that you printed
25 out for us?

1 A It does.

2 Q And it's attached to State's Exhibit No. 33; is that
3 correct?

4 A It is.

5 Q And, looking at that attachment, can you tell me --
6 just, generally, describe what that is?

7 A As far as just being a document?

8 Q Yes, if you could. Just what's the date on it?

9 A The date on the document is February 17, 2011.

10 Q And does it have a -- who is it addressed to?

11 A The Greenville County Grand Jury.

12 Q And does it have a reference?

13 A Yeah, to a Theresa B. Kizer, Clerk of Council,
14 Greenville.

15 Q And does it have just a printed signature name at the
16 bottom?

17 A Yes. It's Tony Trout, Greenville County, Greenville
18 County Council.

19 Q And turn to the next page for me.

20 A (Witness complied.)

21 Q Does it appear to have some figures and some state
22 laws cited, and that sort of thing?

23 A It does.

24 Q Go to the next page. Some more state laws cited?

25 A Correct.

1 Q And does it have -- what's this down at the bottom
2 there?

3 A It's an e-mail signature, typically -- well, it's
4 obviously, used for -- a lot of business e-mails will give
5 your name, title, phone number, and e-mail contact.

6 Q And who's down there at the bottom there?

7 A Tony Trout.

8 Q Can you read the whole thing to us?

9 A Yeah. Tony Trout, Greenville County Council,
10 District 18, 107 Silver Ridge Court, Greer, South
11 Carolina, 29651, phone number: (864) 848-3311, fax:
12 (864) 848-8768, a website www.TonyTrout.com. And it looks
13 like an e-mail address, Tony@TonyTrout.com.

14 Q Go back to the first page for me. And what's the
15 e-mail address of that one that it's to? Can you tell me
16 that?

17 A Smith_13@charter.net.

18 Q I'm about to fall and break my neck.

19 And looking back at the ones we've done, is that who
20 these e-mails are sent to, these others we've put in so
21 far?

22 A Yes. These other ones have the same e-mail
23 address.

24 MR. WATERS: All right. Thank you.

25 I'd like to have this marked.

1 (WHEREUPON, State's Exhibit No. 34 was marked for
2 identification only.)

3 MR. WATERS: Thank you.

4 Mr. Bailiff, you're trying to help me from breaking
5 my neck.

6 Everybody can still see good, though?

7 (WHEREUPON, the jurors indicated in the affirmative.)

8 BY MR. WATERS:

9 Q I'm going to show you State's Exhibit No. 34. Is
10 that, also, one you personally printed off?

11 A It is.

12 Q And I'm going to hit 53783 on this one. Before I do
13 that, is this, also, in the mail you sent directory of
14 Tony Trout's computer?

15 A Yes.

16 Q And it's, also, addressed to this e-mail address
17 right here?

18 A Yes.

19 Q Is that the same e-mail?

20 A It is.

21 MR. WATERS: Your Honor, I would offer that
22 into evidence at this time, I believe, without
23 objection.

24 MR. GIBSON: Without objection, Your Honor.

25 THE COURT: It's in evidence.

1 (WHEREUPON, State's Exhibit No. 34 was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit No. 35 was marked for
4 identification only.)

5 BY MR. WATERS:

6 Q I'm going to show you State's Exhibit No. 35. Is
7 that one that you printed off as well?

8 A It is.

9 Q All right. And, looking here, this one has a little
10 bit of a different path up here. Can you explain that,
11 what Outlook is?

12 A Outlook is just the standard, I guess, e-mail client
13 that comes on most, if not all, Microsoft-based hard
14 drives.

15 Q Okay. And what about the personal folders?

16 A That would just be -- personal folders would just be
17 a folder within, obviously, the Outlook -- oh, what do you
18 call it -- program or e-mail client, so to speak.

19 Q All right. And what is BCC on there?

20 A BCC, that is a blind copy. That's if, you know, you
21 sent an e-mail to somebody, but you, also, want to, well,
22 blind copy another person in there. But the recipient of
23 the e-mail won't know that an individual was copied on the
24 e-mail as well.

25 Q But it still goes to the blind copy people?

1 A It does.

2 Q And what's the e-mail address that's in the blind
3 copy?

4 A It's Smith_13@charter.net, as well as
5 TonyTrout1@aol.com.

6 MR. WATERS: Your Honor, at this time, I would offer
7 State's Exhibit No. 35 into evidence, I believe, without
8 objection.

9 MR. GIBSON: Without objection, Your Honor.

10 THE COURT: It's in evidence.

11 (WHEREUPON, State's Exhibit No. 35 was admitted into
12 evidence.)

13 (WHEREUPON, State's Exhibit No. 36 was marked for
14 identification only.)

15 BY MR. WATERS:

16 Q I'm going to show you State's Exhibit No. 36. Is
17 that one that you printed out there?

18 A It is.

19 Q All right. And up there where, again, at the path,
20 does it have the mail you've sent?

21 A Yes.

22 Q So this was in the mail you sent folder from Tony
23 Trout's computer; is that correct?

24 A Correct.

25 Q And who was the address to?

- 1 A To Smith_13@Charter.net.
- 2 Q And what's the date on that?
- 3 A August 29, 2007.
- 4 Q All right. And I'm going to hit the Exported As
5 button, is that the same e-mail there?
- 6 A Yes.
- 7 Q All right. And that's, also -- the one you hold in
8 your hand is the one you personally printed out from your
9 report; is that correct?
- 10 A Correct.
- 11 Q Could you read that e-mail to us, please?
- 12 A Just the narrative part, I guess, the message body?
- 13 Q Right. You can read off the paper or the screen,
14 whichever is easier for you.
- 15 A Need subpoenas for Helen Forrester, James -- excuse
16 me if I get the names wrong -- Dorriety, Scott Bodiford,
17 Joseph Kernell, Herman Kirven, Theresa Kizer and me,
18 Harold Trout. I talked to Chip. She is supposed to be at
19 his office this morning to sign the papers. Thank you,
20 Tony Trout.
- 21 Q And that's addressed to what e-mail?
- 22 A I'm sorry?
- 23 Q What's the e-mail, again, it's addressed to?
- 24 A The e-mail is addressed to Smith_13@charter.net.
- 25 Q The same one we've been talking about; right?

1 A Yes.

2 MR. WATERS: Your Honor, at this time, I'd move this
3 into evidence, State's Exhibit No. 36.

4 MR. GIBSON: No objection, Your Honor.

5 THE COURT: It's in evidence.

6 (WHEREUPON, State's Exhibit No. 36 was admitted into
7 evidence.)

8 (WHEREUPON, State's Exhibit No. 37 was marked for
9 identification only.)

10 BY MR. WATERS:

11 Q I'm going to show you State's Exhibit No. 37, and ask
12 you if that's one printed off from your report?

13 A It is.

14 Q All right. I wish there was an easier way to do
15 this, but let's go through it again. Do we have a path on
16 there?

17 A It looks, I guess, just like a path in the mail you
18 sent folder.

19 Q And this is from Mr. Trout's computer?

20 A Yes.

21 Q Okay. And who's it addressed to?

22 A Smith_13@Charter.net.

23 Q And what's the date on the e-mail?

24 A It's September 13th, 2007.

25 Q And who's it from?

1 A It's from Tony Trout1.

2 Q All right. And I'm going to click and go to the
3 e-mail. Is that the same e-mail that you have in your
4 hand?

5 A Yes.

6 Q All right. And what's the subject line on that?

7 A The subject line is Kizer.

8 Q And then it appears to cite a legal statute?

9 A It appears to be, yes.

10 MR. WATERS: At this point, I would move State's
11 Exhibit No. 37 into evidence, I believe, without
12 objection.

13 MR. GIBSON: Without objection, Your Honor.

14 THE COURT: It's in evidence.

15 (WHEREUPON, State's Exhibit No. 37 was admitted into
16 evidence.)

17 (WHEREUPON, State's Exhibit No. 38 was marked for
18 identification only.)

19 BY MR. WATERS:

20 Q I'm going to show you State's Exhibit No. 38. Is
21 that one that you personally printed off?

22 A It is.

23 Q All right. Give me one second.

24 All right. Let's do it again. The path, is that,
25 also, in the mail you sent folder of Tony Trout's

1 computer?

2 A It is.

3 Q And the e-mail date on it?

4 A It is October 2nd, 2007.

5 Q And who is it addressed to?

6 A Smith_13@Charter.net.

7 Q And from?

8 A TonyTrout1.

9 Q All right. And is this -- content-wise, is this the
10 same e-mail?

11 A It is.

12 Q All right. And what's the subject line on that?

13 A The subject line is Suspects Grand Jury Info.

14 Q And then it appears to have the name and address of
15 some individuals?

16 A Yes.

17 MR. WATERS: At this time, I would move this exhibit
18 into evidence, State's Exhibit No. 38, I believe, without
19 objection.

20 MR. GIBSON: Without objection.

21 THE COURT: It's in evidence.

22 (WHEREUPON, State's Exhibit No. 38 was admitted into
23 evidence.)

24 (WHEREUPON, State's Exhibit No. 39 was marked for
25 identification only.)

1 BY MR. WATERS:

2 Q Let me ask you this. I'll show you State's Exhibit
3 No. 39. Is that one you printed off?

4 A It is.

5 Q All right. Give me one moment.

6 Same questions. Is that from the mail you sent
7 folder on Tony Trout's computer?

8 A Yes.

9 Q And who is it addressed to? Same address?

10 A Yes.

11 Q Smith_13@Charter.net?

12 A Yes.

13 Q From TonyTrout1?

14 A Yes.

15 Q And the e-mail date is October 7th, 2007?

16 A Yes.

17 Q I'll click on the e-mail. Content-wise, is this the
18 one? Does it appear to be the same thing?

19 A Yes.

20 Q And what's the subject line on that particular
21 e-mail?

22 A The subject line is Should Send to All on Jury.

23 MR. WATERS: All right. At this time, I would move
24 this one into evidence, Your Honor, I believe, without
25 objection.

1 MR. GIBSON: Without objection.

2 THE COURT: It's in evidence.

3 MR. WATERS: It's State's Exhibit No. 39.

4 (WHEREUPON, State's Exhibit No. 39 was admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit No. 40 was marked for
7 identification only.)

8 BY MR. WATERS:

9 Q I'll show you State's Exhibit No. 40. Is that one
10 you printed off?

11 A It is.

12 Q All right. Also, in the mail you sent folder from
13 Tony Trout's computer?

14 A Yes.

15 Q October 10th, 2007, is the date?

16 A Yes.

17 Q To Smith_13@Charter.net from Tony Trout?

18 A Yes.

19 Q All right. Subject line is Grand Jury Subpoenas?

20 A Yes.

21 Q Is the rest of the content the same?

22 A Yes.

23 MR. WATERS: Your Honor, I would offer State's
24 Exhibit No. 40, I believe, without objection.

25 MR. GIBSON: Without objection.

1 THE COURT: It's in evidence.

2 (WHEREUPON, State's Exhibit No. 40 was admitted into
3 evidence.)

4 (WHEREUPON, State's Exhibit No. 41 was marked for
5 identification only.)

6 BY MR. WATERS:

7 Q I'm going to show you State's Exhibit No. 41, is that
8 one you personally printed off?

9 A It is.

10 Q And I notice it's got some handwriting at the top,
11 can you tell me what that is?

12 A Yeah. It's just my notes from where FTK put the
13 e-mail, I guess you could say, when it organized the
14 e-mails and collected the e-mails. When I had FTK collect
15 the e-mails, I put it in on items five and six under the
16 export folder, under folder zero zero zero FTK, subfolder
17 zero zero zero zero zero FTK, and then slash the actual --
18 what FTK assigned it was 3751.html. That's just the
19 organizational way FTK did it.

20 Q And that's your handwriting up at the top?

21 A That is my handwriting, yes.

22 Q And it does refer to the port number that we've been
23 using to bring up the actual e-mail; is that correct?

24 A Correct.

25 Q All right. Let's do this once again. This one has

1 the AOL path to it. Is this the same thing that -- or can
2 you explain that path to me?

3 A Yes. That's just AOL, America Online, version 9.00,
4 and the folder organized, and TonyTrout1, I guess you
5 could say, folder under mail. Under incoming saved mail,
6 that would be message 0210 in the incoming saved mail
7 folder of the AOL 9.0 application.

8 Q On Tony Trout's computer?

9 A Yes.

10 Q All right. And who's that from?

11 A It's going to be from the Ricardo@synesis -- looks
12 like -- international.com.

13 Q And who is it to?

14 A TonyTrout1@aol.com.

15 Q And that would be an e-mail that came into Tony
16 Trout's computer; is that correct?

17 A Correct.

18 Q And I'm going to click on the number. Is the content
19 the same on there as well?

20 A It is.

21 Q And what's the subject line on that one?

22 A Subject line is, RE: How to lose \$1.7 million and no
23 one cares.

24 Q What's the first line at the top there?

25 A In the narrative?

1 Q Right.

2 A I care and believe the rest of the GJ will care, too.
3 Thanks for the info.

4 Q And that would be the part of the message that came
5 in from Ricardo@synesisinternational.com to Tony Trout?

6 A Correct.

7 MR. WATERS: Your Honor, I would offer this into
8 evidence, I believe, without objection, State's Exhibit
9 No. 41.

10 MR. GIBSON: Without objection, Your Honor.

11 THE COURT: It's in evidence.

12 (WHEREUPON, State's Exhibit No. 41 was admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit No. 42 was marked for
15 identification only.)

16 BY MR. WATERS:

17 Q I'm going to show you State's Exhibit No. 42. Is
18 that one you printed off?

19 A It is.

20 Q Same thing, mail you sent folder on Tony Trout's
21 computer?

22 A Yes.

23 Q And from Tony Trout1 to Smith_13@charter.net?

24 A Yes.

25 Q The e-mail date is October 25th, 2007?

1 A Yes.

2 Q All right. I'm going to hit the export button. Is
3 that the same content?

4 A Yes.

5 Q Does that have Mr. Trout's e-mail signature at the
6 bottom?

7 A Yes.

8 MR. WATERS: Your Honor, at this time, I would offer
9 State's Exhibit No. 42 into evidence.

10 MR. GIBSON: Without objection, Your Honor.

11 THE COURT: It's in evidence.

12 (WHEREUPON, State's Exhibit No. 42 was admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit No. 43 was marked for
15 identification only.)

16 BY MR. WATERS:

17 Q I'm going to show you State's Exhibit No. 43, is that
18 one you printed off?

19 A It is.

20 Q All right. We'll do the same dance again. Mail you
21 sent on Tony Trout's computer?

22 A Yes.

23 Q All right. From TonyTrout1 two Smith_13@charter.net?

24 A Yes.

25 Q All right. Date is October of 2007?

1 A Yes.

2 Q Is that the same?

3 A Yes.

4 Q Now, down at the bottom, it has Attachment.

5 what's -- at the end, it says, Judge Few.wma, what's wma?

6 Do you know?

7 A I believe that's going to be a media file extension
8 of some sort, whether it -- it may be an audio or a
9 video-type file.

10 Q All right.

11 A I believe it stands for windows media audio, I
12 believe.

13 MR. WATERS: Your Honor, I would offer State's
14 Exhibit No. 43 into evidence, I believe, without
15 objection.

16 MR. GIBSON: Without objection, Your Honor.

17 THE COURT: It's in evidence.

18 (WHEREUPON, State's Exhibit No. 43 was admitted into
19 evidence.)

20 (WHEREUPON, State's Exhibit No. 44 was marked for
21 identification only.)

22 BY MR. WATERS:

23 Q State's Exhibit No. 44, is that one you printed off?

24 A Yes.

25 Q Okay. This one looks a little different as far as

1 the path. I think we've done one like this. Can you
2 explain that path again?

3 A Yeah. It's the AOL version 9.1. Folder organized
4 under -- it looks like the e-mail address or AOL name of
5 TonyTrout1, and the mail folder and the subfolder incoming
6 saved message -- incoming saved mail.

7 Q So that would be where mail coming into Mr. Trout's
8 computer would normally be saved; is that correct?

9 A Correct.

10 Q All right. And who's that from?

11 A That's from Smith_13@Charter.net.

12 Q All right. I'm going to hit the button, and ask you
13 to see if that's the same content?

14 A Yes.

15 Q All right. And looking down here at the header
16 information, right there where it says from "D.L. Smith,"
17 I'll point it out to you right there.

18 A Yes.

19 Q What does that represent?

20 A That would be -- just D.L. Smith. It would be a name
21 associated with an e-mail address already set. So, for
22 instance, if you got an e-mail from me, it would say it
23 came from FC Wasiak, instead of FCWasiak@SLED.sc.gov.
24 It's just an identifier.

25 Q So that would be the identifier for

1 Smith_13@Charter.net?

2 A Correct. It appears to be, yes, correct.

3 Q All right. Let me have that one back.

4 A (Witness complied.)

5 MR. WATERS: Your Honor, I would put State's Exhibit
6 No. 44 into evidence, I believe, without objection.

7 MR. GIBSON: Without objection, Your Honor.

8 THE COURT: It's in evidence.

9 (WHEREUPON, State's Exhibit No. 44 was admitted into
10 evidence.)

11 (WHEREUPON, State's Exhibit No. 45 was marked for
12 identification only.)

13 BY MR. WATERS:

14 Q State's Exhibit No. 45, is that one you printed off?

15 A It is.

16 Q I can't seem -- I think I must have written the
17 number down incorrectly. But that is one that you
18 personally printed off from your review from the reports
19 you generated from the images from Tony Trout's computer?

20 A Yes.

21 Q And let's see here. Who is it from, and who is it
22 to?

23 A It's from TonyTrout1 to Smith_13@charter.net.

24 Q And what's the -- is there an attachment to that one?

25 A Yes. It appears to be another wma file.

1 Q And can you tell me the name of that attachment?

2 A The name of the attachment, it looks like --

3 Q Just spell it out?

4 A Yeah. That's going to be F-E-W-G-E-N-V-L-N-E-W, and
5 then 10-8-07.

6 Q All right. Is that it right there?

7 A Yes.

8 Q It's not the same e-mail, but that's the name of the
9 attachment you just read out?

10 A Yes.

11 MR. WATERS: Your Honor, at this time, I would offer
12 State's Exhibit No. 45 into evidence, I believe, without
13 objection.

14 MR. GIBSON: Without objection, Your Honor.

15 THE COURT: It's in evidence.

16 (WHEREUPON, State's Exhibit No. 45 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit No. 46 was marked for
19 identification only.)

20 BY MR. WATERS:

21 Q I'll show you State's Exhibit No. 46, is that one you
22 personally printed off?

23 A It is.

24 Q The path on this one looks a little different. Can
25 you tell me about the path on this one?

1 A Yeah. It's going to go on to the Outlook e-mail
2 client, and in the personal folders. It looks to be in
3 the deleted items folder of the Outlook.

4 Q So if something is deleted, still, sometimes, it can
5 be recovered by FTK; is that correct?

6 A Correct. Or in this case, too, it could just be the
7 deleted items folder of Outlook where they deleted it from
8 the inbox, and it went to the deleted items folder.

9 Q All right. And it hasn't been purged?

10 A It hasn't been purged, correct.

11 Q And looking at -- who does it say it's from?

12 A Tony Trout.

13 Q And in looking at BCC -- what does that stand for
14 again?

15 A BCC is blind copy.

16 Q But those recipients still get the e-mail; is that
17 correct?

18 A Correct.

19 Q And I notice it has a number, and a name, and in
20 parenthesis an e-mail address. Can you explain the
21 relationship between those two?

22 A Yeah. Those could just be like, once again, the
23 e-mail identifiers, a shortcut put on like, you know, my
24 name Farand Wasiak for my actual e-mail address.

25 Q So 122 David Smith would be associated with

1 Smith_13@charter.net; is that correct?

2 A Correct.

3 Q And 11 Tony Trout would be associated with
4 TonyTrout@charter.net.

5 A Correct.

6 Q Okay. And give me one second.

7 Does that have an attachment to it as well?

8 A Yes. It says there is an attachment.

9 Q Excuse me. I'm sorry about that. I apologize for
10 the delay, everybody. Give me just one minute.

11 All right. That attachment right there, Verbatim
12 from November 20th, dot, dot, what does that represent?

13 A That's just a Microsoft Word document. It's a
14 document attached, obviously, along with the e-mail.

15 Q So that would be something sent along with the
16 e-mail?

17 A Sent along with the e-mail, yes.

18 Q All right. And if I click on it and bring up this --
19 MR. WATERS: Let me have this marked.

20 (WHEREUPON, State's Exhibit No. 47 was marked for
21 identification only.)

22 BY MR. WATERS:

23 Q This is State's Exhibit No 47. Look at that, is that
24 the same content as the attachment for that e-mail?

25 A Yes.

1 Q Obviously, without reading every word of it, but does
2 it appear to be?

3 A Yes, yes, absolutely.

4 MR. WATERS: Your Honor, at this point, I would offer
5 State's Exhibit Nos. 46 and 47 into evidence.

6 THE COURT: They're in evidence.

7 (WHEREUPON, State's Exhibit Nos. 46 and 47 were
8 admitted into evidence.)

9 BY MR. WATERS:

10 Q I wish I could say we were on the home stretch, but
11 we have a few more to do. Did you print off some other
12 e-mails regarding an address for Ricardo Studart?

13 A I did.

14 Q Do you have those in your possession right now?

15 A I do.

16 Q Could you pull those out for me?

17 A (Witness complied.)

18 Q I'm going to take them from you so I can put them in
19 one at a time.

20 MR. WATERS: I'd like to have this marked.

21 (WHEREUPON, State's Exhibit No. 48 was marked for
22 identification only.)

23 BY MR. WATERS:

24 Q I'm going to show you State's Exhibit 48, is that
25 something you printed off from Mr. Trout's computer?

1 A It is.

2 Q And who is it from?

3 A Ricardo@s-y-n-e-s-i-s-i-n-t-l.com e-mail address.

4 Q Okay. And does -- do you have something handwritten
5 at the top?

6 A I do. I have the number 43665.

7 Q And I notice on all of these that we're about to do,
8 you have the number at the top; is that correct?

9 A Yes.

10 Q And did you write that on there?

11 A I did.

12 Q And for all of these, you wrote that on there?

13 A Yes, I should have.

14 Q And what does that represent again?

15 A That's just the, I guess you could say, indexing
16 number FTK assigned to this particular --

17 Q The export number we've been using throughout your
18 testimony?

19 A Yes.

20 Q What's the number on that one right there?

21 A 43665.

22 Q All right. Is that the same one?

23 A Yes.

24 MR. WATERS: Your Honor, I would offer it into
25 evidence, I believe, without objection, State's Exhibit

1 No. 48.

2 MR. GIBSON: Without objection, Your Honor.

3 THE COURT: It's in evidence.

4 (WHEREUPON, State's Exhibit No. 48 was admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit No. 49 was marked for
7 identification only.)

8 BY MR. WATERS:

9 Q I've got State's Exhibit No. 49, is that one you
10 personally printed off?

11 A It is.

12 Q Did you write an export number at the top?

13 A I did, 436 --

14 Q Hold on. Okay.

15 A 43693.

16 Q All right. Is that the same one?

17 A Yes.

18 Q All right. And I'm sure everybody knows this, but
19 explain to me, it's got a line and then there's another
20 e-mail below that. What's the explanation for that?

21 A It just says right here that the bottom part would
22 be, I guess you could say, a message sent to Ricardo. And
23 then this appears to be the reply to it. It shows the
24 history of the communication.

25 Q So one goes out and then if you reply, a lot of

1 times --

2 A Yeah, it will be on top.

3 Q It will copy the initial?

4 A The initial, or any past communications associated
5 with this e-mail thread, I guess you could say.

6 Q So this one was a reply from
7 Ricardo@synesisinternational to an e-mail that
8 TonyTrout1@aol.com sent; is that correct?

9 A Correct.

10 Q And the subject line there was Pictures?

11 A Yes.

12 Q Okay. Going down to the bottom to the header
13 information, turn over to the next page, if you would.
14 And you've got right there, it says, From Ricardo Studart?

15 A Correct.

16 Q What does that represent?

17 A Once again, that's just the e-mail identifier.

18 Q So that name would be associated with this
19 Ricardo@synesisinternational.com address; is that correct?

20 A Correct.

21 MR. WATERS: Your Honor, at this time, I would offer
22 this one into evidence. It's State's Exhibit No. 49, I
23 believe, without objection.

24 MR. GIBSON: Without objection, Your Honor.

25 THE COURT: It's in evidence.

1 (WHEREUPON, State's Exhibit No. 49 was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit No. 50 was marked for
4 identification only.)

5 BY MR. WATERS:

6 Q This is State's Exhibit No. 50, is that something you
7 printed off?

8 A It is.

9 Q Is that from Mr. Trout's computer, your analysis of
10 it?

11 A Yes.

12 Q Did you write the export number at the top?

13 A I did.

14 Q Can you tell me that number?

15 A 43751.

16 Q All right. Is that the same e-mail?

17 A It is.

18 Q All right. And this is another one that has -- it's
19 a reply to something Mr. Trout sent or that
20 TonyTrout1@aol.com sent; is that correct?

21 A Correct.

22 MR. WATERS: Your Honor, I would offer State's
23 Exhibit No. 50 into evidence at this time, I believe,
24 without objection.

25 MR. GIBSON: Without objection, Your Honor.

1 THE COURT: It's in evidence.

2 (WHEREUPON, State's Exhibit No. 50 was admitted into
3 evidence.)

4 (WHEREUPON, State's Exhibit No. 51 was marked for
5 identification only.)

6 BY MR. WATERS:

7 Q Believe it or not, we're kind of in the home stretch.
8 State's Exhibit No. 51, is that one you printed off?

9 A It is.

10 Q Is that an e-mail from Tony Trout's computer?

11 A It is.

12 Q Did you write the export number at the top?

13 A I did.

14 Q What's the number?

15 A 47279.

16 Q Is that the e-mail that you have right there?

17 A It is, yes.

18 Q All right. And who is that one to?

19 A This one is to RStudart@synesisinternational.com.

20 Q Okay. And could you read what it says about the
21 Grand Jury in that particular text?

22 A Yes. The Grand Jury. Most citizens do not realize
23 that the Grand Jury is the most powerful entity in the
24 United States. No one is above the investigative powers
25 of this judicial body. That's in a quote. It is the duty

1 of the Grand Jury to guard the rights and liberties of the
2 people. It has supervision of the enforcement of law and
3 order and the preservation and protection of the morals
4 and social order, and the care of bringing to light for
5 examination, trial, and punishment of all violence,
6 outrages, and indecencies, Tony.

7 Q Signed Tony?

8 A (Witness nodded.)

9 Q Okay. And then it goes on to talk about a subpoena
10 as well; is that correct?

11 A Correct.

12 MR. WATERS: Your Honor, at this time, I would move
13 State's Exhibit No. 51 into evidence.

14 MR. GIBSON: Without objection, Your Honor.

15 THE COURT: It's in evidence.

16 (WHEREUPON, State's Exhibit No. 51 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit No. 52 was marked for
19 identification only.)

20 BY MR. WATERS:

21 Q I'll show you State's Exhibit No. 52, is that an
22 e-mail you printed off from your analysis of Tony Trout's
23 computer?

24 A It is.

25 Q Did you write an export number at the top?

1 A I did.

2 Q Give me one second and then tell it to me.

3 Go ahead.

4 A 46690.

5 Q All right. Is this the e-mail?

6 A Yes.

7 Q All right. And it reflects that it has an
8 attachment. Can you read what that attachment
9 says?

10 A Yeah. Ashmoredillothers.zip.

11 Q And what's a zip file?

12 A A zip file is usually something if you have a lot of
13 information, you compact it down and make it easier to
14 e-mail or transfer.

15 Q So it compresses --

16 A It compresses it.

17 Q So you can send it out to people easier?

18 A Correct.

19 Q And that would have been an attachment to this
20 particular e-mail; is that correct?

21 A Correct.

22 MR. WATERS: I would offer State's Exhibit No. 52 at
23 this time, I believe, without objection.

24 MR. GIBSON: Without objection, Your Honor.

25 THE COURT: It's in evidence.

1 (WHEREUPON, State's Exhibit No. 52 was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit No. 53 was marked for
4 identification only.)

5 BY MR. WATERS:

6 Q State's Exhibit No. 53 --

7 (WHEREUPON, there was a brief disruption in the
8 courtroom.)

9 THE COURT: All right. Go get his phone, will you,
10 Mr. Anderson?

11 THE BAILIFF: Yes, sir.

12 (Pause.)

13 BY MR. WATERS:

14 Q Is that one you printed off from your review of
15 Mr. Trout's computer?

16 A It is.

17 Q And did you write an export number at the top?

18 A Yes.

19 Q All right. Tell me what that number is.

20 A 43759.

21 Q Is that the e-mail there?

22 A Yes.

23 Q All right. And does it have an attachment to it?

24 A It does.

25 Q Or would have had an attachment to it?

1 A Yes.

2 Q And, again, it has a "wma," which is what?

3 A It would be a media file, more likely, probably a
4 sound file.

5 Q And so that would have been attached to this e-mail
6 when it went to the recipient; correct?

7 A Correct.

8 Q And who is the recipient in this one?

9 A RStudart@synesisinternational.com.

10 Q And was there text along with this attachment in that
11 e-mail?

12 A Your Ears Only, and it's in all capitals.

13 MR. WATERS: Your Honor, at this time, I would offer
14 State's Exhibit No. 53 into evidence.

15 MR. GIBSON: Without objection, Your Honor.

16 THE COURT: It's in evidence.

17 (WHEREUPON, State's Exhibit No. 53 was admitted into
18 evidence.)

19 (WHEREUPON, State's Exhibit No. 54 was marked for
20 identification only.)

21 BY MR. WATERS:

22 Q State's Exhibit No. 54, same song and dance. Is that
23 one you printed off?

24 A It is.

25 Q From Mr. Trout's computer?

1 A Yes.

2 Q And did you write an export number at the top?

3 A Yes.

4 Q All right. And can you tell me what it is?

5 A 46710.

6 Q And is that the e-mail there?

7 A It is.

8 Q And it, also, had a wma attachment with it as well?

9 A Correct.

10 Q And, also, the same thing, Your Ears Only?

11 A Correct.

12 MR. WATERS: Your Honor, at this time, I would offer
13 State's Exhibit No. 54 into evidence.

14 MR. GIBSON: Without objection, Your Honor.

15 THE COURT: It's in evidence.

16 (WHEREUPON, State's Exhibit No. 54 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit No. 55 was marked for
19 identification only.)

20 BY MR. WATERS:

21 Q Here is State's Exhibit No. 55. Is that one you
22 printed off from your review of Tony Trout's computer?

23 A It is.

24 Q Did you write an export number at the top?

25 A I did.

1 Q What's the number?

2 A 43770.

3 Q All right. Is that the e-mail there?

4 A It is.

5 Q All right. And it has a -- what's that http thing up
6 there with a line underneath it?

7 A It appears to be a link to a website.

8 Q And what's the -- what website is it?

9 A WYFF, the news station. It looks to be, perhaps, a
10 news story from the WYFF website.

11 Q Is there a subject line?

12 A Yes, Judge.

13 MR. WATERS: Thank you.

14 I'd offer State's Exhibit No. 55 into evidence at
15 this time.

16 MR. GIBSON: Without objection, Your Honor.

17 THE COURT: It's in evidence.

18 (WHEREUPON, State's Exhibit No. 55 was admitted into
19 evidence.)

20 (WHEREUPON, State's Exhibit No. 56 was marked for
21 identification only.)

22 BY MR. WATERS:

23 Q All right. What exhibit is that? I'm sorry.

24 A It's State's Exhibit No. 56.

25 Q Is that an e-mail that you printed off?

1 A It is.

2 Q Okay. Did you write an export number at the
3 top?

4 A Yes.

5 Q All right. Can you tell me what that number is?

6 A 43781.

7 Q Is that the e-mail there?

8 A It is.

9 Q Does that have an attachment?

10 A It does.

11 Q And read what that attachment says, again, if you
12 would, please.

13 A Paul Few, it looks like a shortcut from Greenville
14 News, 10-08-07.wma.

15 Q And that would be an audio file attached to this
16 e-mail?

17 A More than likely, yes.

18 MR. WATERS: Your Honor, I would offer State's
19 Exhibit No. 56 into evidence, I believe, without
20 objection.

21 MR. GIBSON: Without objection.

22 THE COURT: It's in evidence.

23 (WHEREUPON, State's Exhibit No. 56 was admitted into
24 evidence.)

25 MR. WATERS: Thank you, Judge.

1 And, Your Honor, I believe we're about done, if
2 you'll just give me one second to make sure.

3 THE COURT: All right.

4 (Pause.)

5 MR. WATERS: I'd like to have this marked.

6 (WHEREUPON, State's Exhibit No. 57 was marked for
7 identification only.)

8 BY MR. WATERS:

9 Q Is that an e-mail you printed off from Mr. Trout's
10 computer?

11 A Yes.

12 Q Did you write an export number at the top?

13 A Yes.

14 Q Can you tell me what it is?

15 A 47247.

16 Q All right. That's, also, in the mail you sent path;
17 is that correct?

18 A Yes.

19 Q Is that the e-mail there?

20 A Yes.

21 MR. WATERS: Your Honor, at this time, I would offer
22 State's Exhibit No. 57 into evidence, I believe, without
23 objection.

24 MR. GIBSON: No objection, Your Honor.

25 THE COURT: It's in evidence.

1 (WHEREUPON, State's Exhibit No. 57 was admitted into
2 evidence.)

3 MR. WATERS: Agent Wasiak, I believe that would be
4 it.

5 Please answer any questions that Mr. Gibson has.

6 THE COURT: We're going to take a brief recess.

7 Ladies and gentlemen, I'm going to let you go ahead
8 and order lunch. We'll bring the menus to you in the jury
9 room. Don't discuss the case. And continue to keep an
10 open. We'll take a short recess and let you make that
11 order, and stretch your legs.

12 MR. WATERS: Your Honor, I apologize. One second.

13 THE COURT: Okay. The jury can go on back to the
14 jury room.

15 Thank you.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 11:56 a.m.)

18 THE COURT: What is it you want to do, Mr. Waters?

19 MR. WATERS: I apologize. I thought I had them all
20 in, and then I realized I might not.

21 THE COURT: I'll be glad to let you resume when they
22 come back in.

23 MR. WATERS: That's fine. I didn't know if I was
24 going to try to catch them before they left. I apologize.
25 That's fine.

1 THE COURT: All right. We're going to take a
2 10-minute recess. Be back at 12:10.

3 Thank you.

4 (WHEREUPON, a break was taken.)

5 THE COURT: Anything before I bring the jury back in?
6 Come on back up, sir.

7 Do you need to ask him something else?

8 MR. WATERS: Well, Your Honor, it was that issue that
9 we had with State's Exhibit No. 29, the one that
10 referenced the attorney. And I just didn't know if we
11 wanted to handle that before his direct -- conclusion.

12 THE COURT: All right. Before we do that,
13 Mr. Gibson, you had objected to one e-mail. I believe it
14 was a law professor, or something like that.

15 MR. GIBSON: Yes, Your Honor. It's State's Exhibit
16 No. 32.

17 THE COURT: Right.

18 Do you want to summarize the objection you lodged up
19 here at the bench?

20 MR. GIBSON: Yes, Your Honor.

21 I objected to that particular e-mail on the grounds
22 that it was hearsay. It, also, constituted a legal
23 opinion for which we were unable or would not be able to
24 cross-examine that witness on that legal opinion. I
25 believe the State's response to that was that they were

1 entering it for the purpose of showing the affect on my
2 client or showing his state of mind, something to that
3 effect.

4 However, Your Honor, in this case, there is no
5 evidence presented, and I anticipate no evidence to be
6 presented, that's going to show the affect of that e-mail
7 on my -- the affect of that specific e-mail on my client's
8 state of mind. Given that, Your Honor, I think the e-mail
9 is irrelevant. Also, Your Honor, to the extent that it
10 has any relevance, I think it's more prejudicial than
11 probative.

12 THE COURT: Yes, sir.

13 MR. WATERS: And, Your Honor, as we discussed, it was
14 offered for the affect on the listener, which is an
15 exception to the hearsay rule. And, of course, as far as
16 what he's saying, showing actual affect on the listener,
17 that's what the nature of that evidence is. The jury can
18 infer affect from its mere existence. I believe it's
19 admissible on that basis.

20 THE COURT: I find that it's not hearsay within the
21 meaning of Rule 801(c). It wasn't offered for the truth
22 of the matter asserted. I believe the State's position is
23 correct.

24 I think, Mr. Gibson, you made the objection earlier
25 and restated it when the jury was present, but I wanted to

1 give you the opportunity to put it fully on the record.

2 I, also, find that it is relevant evidence. And its
3 probative value is not substantially outweighed by unfair
4 prejudice or any other consideration in Rule 403.

5 MR. GIBSON: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 Now, as to the attorney-client issue.

8 MR. WATERS: Your Honor, as we discussed up there, I
9 believe he objected because Mr. Trout said that that was
10 an e-mail he sent to his attorney. I think there's a
11 couple of responses to that. Number one is the exception
12 to the attorney-client privilege. But, beyond that, it
13 was, also, he blind copied David Smith on that e-mail.

14 And to address that, though, we would need to quickly
15 put up the testimony of Agent Givens as to him finding
16 that e-mail on David Smith's computer. And, obviously, if
17 he sent that out to another individual, that would, I
18 believe, preclude him from claiming privilege at this
19 point.

20 MR. GIBSON: Your Honor, can I see the e-mail?

21 THE COURT: Sure.

22 MR. WATERS: The Court's indulgence, Your Honor, one
23 moment. I want to show him on the computer.

24 (Pause.)

25 MR. GIBSON: Your Honor, given sufficient proof to

1 counsel that it was copied to a third party, we would
2 withdraw the objection.

3 THE COURT: Okay.

4 MR. GIBSON: Thank you.

5 THE COURT: All right. Anything else before we bring
6 the jury back in?

7 MR. WATERS: I believe that's it, Your Honor.

8 THE COURT: Okay.

9 Yes, sir. You can bring the jury in.

10 (WHEREUPON, the jury came into open court at
11 approximately 12:17 p.m.)

12 THE COURT: Yes, sir, Mr. Waters.

13 MR. WATERS: Thank you, Judge.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. WATERS:

16 Q As we discussed, I've got one more question. I go
17 back to State's Exhibit No. 29. And I believe I showed
18 you that earlier. Is that one that you printed off from
19 Mr. Trout's computer?

20 A Yes.

21 Q All right. And give me one second.

22 And this right there, 44826, this would be in the
23 mail you sent folder that we talked about before?

24 A Correct.

25 Q All right. And is that the e-mail there?

1 A Yes.

2 Q All right. And does it have -- would it have had an
3 attachment to it?

4 A It would have, yes.

5 Q And what would be the file that would be listed
6 there?

7 A PowerPoint, Microsoft PowerPoint.

8 Q And that's the title of it?

9 A It's 2009 comp plan process.

10 Q And dot pps means PowerPoint slide?

11 A Yes.

12 Q And what's PowerPoint, just very quickly?

13 A It's just a fancy way to, obviously, present a
14 project or anything like that. It's just a fancy slide
15 show, pretty much.

16 MR. WATERS: Got you.

17 Your Honor, I'd offer State's Exhibit No. 29 into
18 evidence at this point.

19 MR. GIBSON: Without objection, Your Honor.

20 THE COURT: It's in evidence.

21 (WHEREUPON, State's Exhibit No. 29 was admitted into
22 evidence.)

23 MR. WATERS: With that, Your Honor, the State would
24 pass the witness.

25 THE COURT: All right. Mr. Gibson.

1 MR. GIBSON: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. GIBSON:

4 Q In looking through these e-mails, did you look
5 through all the e-mails on his computer?

6 A Initially, when I did the examination, I did not.

7 Q How did you determine which e-mails you were going to
8 look through and which e-mails you weren't?

9 A I set the software to find any and all e-mails it
10 possibly can. Once it did that, I pretty much just
11 exported or bookmarked all the e-mails to be reviewed
12 later. Initially, I did not do any review of the e-mails.
13 I just made them available for review.

14 Q And that was all the e-mails on the computer?

15 A All the e-mails that FTK could find, correct.

16 Q All right. Then what did you do?

17 A Upon that, which pretty much ended my analysis, I
18 made the -- I generated an FTK report, which works and
19 navigates much like a web page. I put that on a disk and
20 made it available for Agent Donohue to review.

21 Q Okay. Did you subsequently review any of the e-mails
22 on those files?

23 A At a later time, yes.

24 Q How did you determine which e-mails you reviewed?

25 A With conference with Assistant Attorney General

1 Waters.

2 Q So he told you which e-mails he wanted you to review
3 for the purposes of today and your testimony?

4 A Correct.

5 Q And you did not review all of the e-mails on the
6 computer?

7 A I did not, no.

8 Q Did he ask you to review any e-mails between David
9 Smith and Tony Trout in the year 2006?

10 A That, I don't know.' I don't know any specific
11 e-mails as far as check all e-mails for this date range.
12 It was take a look at these e-mails, review these e-mails
13 type thing. It wasn't like review e-mails from a date
14 range.

15 Q Do you know whether or not there were e-mails between
16 David Smith and Tony Trout in the year 2006?

17 A No, I do not know.

18 Q In the e-mails that you were asked to review by
19 Mr. Waters, the limited amount of e-mails you were asked
20 to review, a number of them had attachments?

21 A Okay.

22 Q Were all those attachments available?

23 A I believe, according to my notes, I could not locate
24 some of the attachments.

25 Q Okay. Did you play or show the jury all the

1 attachments that you could locate?

2 A I'm not -- I can't be 100 percent on that one. I
3 just remember some of them I could not locate.

4 Q Okay. Who determined which attachments you would
5 show to the jury and which ones you would not?

6 A That would be probably Assistant Attorney General
7 Waters.

8 MR. GIBSON: Thank you.

9 THE COURT: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. WATERS:

12 Q Those e-mails we put into evidence, there's no doubt
13 they were on Tony Trout's computer; is that correct?

14 A Correct.

15 Q And what I asked you to do is be able to verify of
16 your own independent knowledge that these were e-mails
17 that you gathered as part of your analysis; is that
18 correct?

19 A Correct.

20 Q And I asked you to ensure that these e-mails were,
21 actually, on that computer?

22 A Yes. Those e-mails that we just reviewed were the
23 e-mails that FTK pulled off the computer seized from Tony
24 Trout's house.

25 Q Give me one second. I've got to boot the machine

1 back up.

2 And we'll just use this one because it was the last
3 one as an example. But, right now, this was the last one
4 we looked at. And we clicked there and it has an
5 attachment right there; right?

6 A Correct.

7 Q But there's no link to the attachment, is there?
8 We'll go back to the report itself.

9 A Correct. I don't see any.

10 Q So what that information reflects is there was an
11 attachment to this e-mail, but it doesn't have a link to
12 that particular attachment; is that correct?

13 A Correct.

14 MR. WATERS: Nothing further, Your Honor.

15 Thank you.

16 THE COURT: Any recross, Mr. Gibson?

17 MR. GIBSON: No, Your Honor.

18 THE COURT: All right. Thank you, sir.

19 You may step down.

20 You may call your next witness.

21 MR. WATERS: Thank you, Judge.

22 At this time, we would call Agent David Givens.

23 THE CLERK: Please step forward to be sworn in.

24 THE BAILIFF: Agent, please place your left hand on
25 the Bible and raise your right hand.

1 WHEREUPON,

2 DAVID GIVENS,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Please be seated.

5 And then state your name, please, sir.

6 THE WITNESS: My name is David Givens.

7 DIRECT EXAMINATION

8 BY MR. WATERS:

9 Q Agent, give me one second, and I'll be right there.

10 Okay. Can you tell me your current occupation?

11 A I'm a special agent with the South Carolina Law
12 Enforcement Division. I'm, currently, assigned to the
13 Secret Service field office in Columbia.

14 Q And have you always been with that assignment, or
15 have you had other assignments in your career?

16 A No, sir. For nine years, I was assigned to the
17 Computer Crimes Center in Columbia.

18 Q When did you start there?

19 A In 2001.

20 Q And you moved on, what, this year?

21 A Yeah. I've been at the Secret Service for a year.

22 Q And was that the extent of your law enforcement
23 career?

24 A Yes.

25 Q You started in 2000, you said?

1 A 2001.

2 Q Did you have any sort of training or experience as
3 part of working at the Computer Crimes Center?

4 A During that time, I was trained in the Basic Data
5 Recovery, Advanced Data Recovery, Encase Forensic
6 software, and FTK software, as well as other forensic
7 software.

8 Q Okay. And you mentioned Encase and FTK, are those
9 the same two programs that we've heard from the other
10 agents about? Is that correct?

11 A Essentially, yes.

12 Q Okay. And did you have any involvement in this
13 particular case?

14 A I was involved in this case when it was submitted.
15 Because of the number of items that were being submitted
16 for analysis, we divided the items between myself and
17 Agent Wasiak. It was not uncommon to do that when we had
18 a lot of evidence.

19 Q Okay. And do you recall which item numbers you
20 reviewed in this particular case?

21 A Two and four.

22 Q Okay. And so on these forensic imaging worksheets,
23 State's Exhibit Nos. 20 and 21, those would be the two
24 items that you reviewed in this case; is that correct?

25 A That's correct.

1 Q Can you explain a little bit about how the image
2 comes to you for review? How would you get access to the
3 information?

4 A The image -- after the image is made, it's placed in
5 a folder on the secure server under my name.

6 Q And then what do you do at that point?

7 A I acquire the image with whatever software I'm going
8 to use to make the analysis. In this case, it was FTK.

9 Q All right. And that secure server is the same one
10 we've heard about that only certain law enforcement have
11 access to?

12 A That's correct.

13 Q So there's no possibility of tampering or changing
14 the evidence, or that sort of thing?

15 A That's correct.

16 Q All right. Did you -- were you involved in printing
17 off some e-mails that you found from your review of the
18 items that you examined?

19 A That's correct.

20 Q Okay. And just so we're clear, items two and four,
21 those would be David Smith's computer; is that correct?

22 A I believe so.

23 Q All right. And I'm going to show you State's Exhibit
24 No. 27, and just ask you to look at that and make sure
25 that's your understanding.

1 A According to the receipt for property, items two and
2 four belonged to David Smith.

3 Q Okay. Does it have an address on there?

4 A 2438 Poole Road in Greer, South Carolina.

5 Q Okay. Do you have the e-mails with you today?

6 A Yes, sir.

7 Q All right. Could I see those?

8 A Yes.

9 Q I'm going to take them from you so we can do this
10 whole thing again.

11 A Okay.

12 MR. WATERS: I'd like to have this marked.

13 (WHEREUPON, State's Exhibit No. 58 was marked for
14 identification only.)

15 BY MR. WATERS:

16 Q I'm going to, first, show you State's Exhibit No. 58.
17 I notice it's got some handwriting at the top. Can you
18 tell me what that is? Is that your writing?

19 A That's my writing. It's an index number. It's a
20 five-digit number.

21 Q Is that the export numbers that we've been using with
22 Agent Wasiak's testimony?

23 A That's correct.

24 Q And is that an e-mail -- one of the e-mails from your
25 stack of the ones that you printed off? Is that correct?

1 A That's correct.

2 Q All right. Can you tell me what the number is on
3 that particular one?

4 A 92452.

5 Q Okay. And is that the e-mail there?

6 A That's correct.

7 Q And I notice on here it's got the header information.
8 And it says, From TonyTrout1@aol.com. What does that
9 represent?

10 A That's the route of that e-mail. It came from
11 TonyTrout1@aol.com.

12 Q And it says it went to who?

13 A To Smith_13@charter.net.

14 Q And it says, Received by D.L. Smith. What does that
15 represent?

16 A That would be the recipient of the e-mail.

17 Q So that name and that e-mail address would be the
18 recipient of this e-mail address; is that correct?

19 A Correct.

20 Q And I want to look at that real quick. Remind us,
21 again, what Outlook is.

22 A It is the Microsoft e-mail client.

23 Q Okay. And so this was found in the Outlook directory
24 on David Smith's computer; is that correct?

25 A That's correct.

1 Q From Tony Trout to Smith_13@Charter.net. That's what
2 we have here; correct?

3 A Correct.

4 MR. WATERS: Your Honor, at this time, I would move
5 State's Exhibit No. 58 into evidence.

6 MR. GIBSON: Without objection, Your Honor.

7 THE COURT: It's in evidence.

8 (WHEREUPON, State's Exhibit No. 58 was admitted into
9 evidence.)

10 (WHEREUPON, State's Exhibit No. 59 was marked for
11 identification only.)

12 BY MR. WATERS:

13 Q I'm going to show you State's Exhibit No. 59. Is
14 that one of the e-mails you printed off from David Smith's
15 computer?

16 A Yes, sir.

17 Q Did you put one of the export numbers at the top?

18 A Yes, sir, it's 92453.

19 Q Let me plug that one in. Is this, also, found in the
20 Outlook directory of David Smith's computer?

21 A Yes, sir.

22 Q From Tony Trout to Smith_13@Charter.net?

23 A That's correct.

24 Q All right. Does that appear to be the e-mail there
25 that you have?

1 A Yes, sir.

2 Q Okay. Scrolling down, the same thing, it's got to
3 Smith_13@charter.net received by D.L. 341?

4 A That's correct.

5 MR. WATERS: Your Honor, at this time, I would offer
6 the exhibit into evidence, State's Exhibit No. 59.

7 MR. GIBSON: Without objection, Your Honor.

8 THE COURT: It's in evidence.

9 (WHEREUPON, State's Exhibit No. 59 was admitted into
10 evidence.)

11 (WHEREUPON, State's Exhibit No. 60 was marked for
12 identification only.)

13 BY MR. WATERS:

14 Q Let's see if we can go in high gear with this.
15 State's Exhibit No. 60, is that an e-mail you printed off
16 from David Smith's computer?

17 A Yes.

18 Q And did you put an export number at the top?

19 A 90992.

20 Q All right. That in the -- that path right there, I
21 know most people probably know this, but just for
22 information purposes, the top of the personal folder is
23 inbox. What is, typically, in an inbox?

24 A The folder where messages are received.

25 Q Okay. And this one right here says, To, and it has a

1 number and a name. What is that?

2 A To 122 David Smith from Tony.

3 Q From Tony. I'm going to click on the e-mail. Does
4 that appear to be an e-mail in front of you, or is that
5 the e-mail in front of you?

6 A That's correct.

7 Q All right. I want to look down here. And looking on
8 the header information, if I can get my finger in there,
9 right there, it says, From, and has quotation marks, Tony,
10 and then an e-mail address and then, To, and it has 122
11 David Smith and then an e-mail address. Can you explain
12 what those are real quick?

13 A That is the sender and recipient's name or
14 identifier.

15 Q All right. So you have the name. And then is that
16 the e-mail address associated with that name?

17 A That's correct.

18 Q And this was found in David Smith's computer inbox
19 from Tony Trout to 122 David Smith, Smith_13@charter.net?

20 A Correct.

21 Q That's in his inbox; is that correct?

22 A That's correct.

23 Q All right. And when I say "his," I mean David Smith.

24 A Yes, sir.

25 MR. WATERS: Okay. I would offer State's Exhibit

1 No. 60 into evidence, please.

2 MR. GIBSON: Without objection, Your Honor.

3 THE COURT: It's in evidence.

4 (WHEREUPON, State's Exhibit No. 60 was admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit No. 61 was marked for
7 identification only.)

8 BY MR. WATERS:

9 Q State's Exhibit No. 61, is that one of the e-mails
10 you printed off from David Smith's computer?

11 A Yes, sir.

12 Q Did you put an export number at the top?

13 A 90998.

14 Q Is that the e-mail there?

15 A Yes, sir.

16 MR. WATERS: Your Honor, at this time, I would offer
17 State's Exhibit No. 61 into evidence.

18 MR. GIBSON: Without objection.

19 THE COURT: It's in evidence.

20 (WHEREUPON, State's Exhibit No. 61 was admitted into
21 evidence.)

22 BY MR. WATERS:

23 Q And I know it just went into evidence, but I left off
24 the second part of that page. Does this go at the end of
25 it?

1 A That's correct.

2 MR. WATERS: Your Honor, I'm going to staple this to
3 State's Exhibit No. 61 that I left off before, I believe,
4 without objection.

5 MR. GIBSON: Without objection, Your Honor.

6 (WHEREUPON, State's Exhibit No. 62 was marked for
7 identification only.)

8 BY MR. WATERS:

9 Q State's Exhibit No. 62, is that one of the e-mails
10 that you obtained from David Smith's computer?

11 A Yes, sir.

12 Q Did you put an export number at the top?

13 A I did. It's 91081.

14 Q All right. And this was found in David Smith's
15 inbox; is that correct?

16 A That's correct.

17 Q I'm going to click on the e-mail. Is that the e-mail
18 there?

19 A Yes, sir.

20 Q It appears to have an attachment; is that correct?

21 A That's correct.

22 Q All right. Is that the attachment attached to that
23 e-mail address -- or, excuse me, that printed off e-mail?

24 A Yes, sir.

25 Q All right. I'm going to click on the attachment. Is

1 this it right here?

2 A Yes, it is.

3 MR. WATERS: State's Exhibit No. 62, I offer it into
4 evidence.

5 MR. GIBSON: Without objection, Your Honor.

6 THE COURT: It's in evidence.

7 (WHEREUPON, State's Exhibit No. 62 was admitted into
8 evidence.)

9 (WHEREUPON, State's Exhibit No. 63 was marked for
10 identification only.)

11 BY MR. WATERS:

12 Q State's Exhibit No. 63, is that one of the e-mails
13 that you printed off from David Smith's computer?

14 A That's correct.

15 Q Does it have an attachment with it?

16 A 91173.

17 Q And this was found in the inbox of David Smith's
18 computer?

19 A Yes.

20 Q Is this the e-mail there?

21 A Yes, sir.

22 Q Is that the attachment you got at the end of it?

23 A Yes, sir.

24 MR. WATERS: Your Honor, at this time, I would offer
25 State's Exhibit No. 63 into evidence.