

VOLUME II OFFICE  
RECEIVED

NOV 18 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Calhoun County  
Carmen T. Mullen, Circuit Court Judge

---

WILLIE PELZER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000731

---

A P P E N D I X

---

CARMEN V. GANJEHSANI  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

MEGAN HARRIGAN  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

|                                                                          |      |
|--------------------------------------------------------------------------|------|
| INDEX.....                                                               | i    |
| TRIAL TRANSCRIPT (dated December 1-4, 2009) .....                        | 1    |
| APPLICATION FOR POST-CONVICTION RELIEF .....                             | 964  |
| RETURN .....                                                             | 972  |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated November 1, 2012) ..... | 977  |
| EXHIBITS TO PCR HEARING.....                                             | 1061 |
| ORDER OF DISMISSAL .....                                                 | 1070 |
| CLERK OF COURT RECORDS .....                                             | 1088 |

State v. Pelzer 12/2/09

322

1 gone that night?

2 A I would have went home, sir.

3 Q But did you decide to tell the police the truth?

4 A Yes, sir.

5 Q And did you tell them what you told this jury today?

6 A Yes, sir.

7 Q At 9:31 that night?

8 A Yes, sir.

9 Q And did you tell them who said he killed the truck  
10 driver?

11 A Yes, sir.

12 Q And who told you he killed the truck driver?

13 A The defendant, Willie Pelzer, sir.

14 Q You told the police that after 9:30, Saturday, March  
15 7th?

16 A Yes, sir.

17 Q And after you told the police the truth Saturday night  
18 were you free to go home then?

19 A No, sir.

20 Q Because -- in fact, were you arrested and told you were  
21 going to be arrested for accessory after the fact?

22 A Yes, sir.

23 Q Why did you come clean that Saturday night if you knew  
24 that by telling the truth you were going to get in trouble?

25 A I just decided it was the right thing to do, sir.

1 Q Do you regret telling the police the truth that  
2 Saturday night?

3 A No, sir.

4 Q Even though you ended up getting charged because of  
5 telling them the truth?

6 A I still don't regret it, sir.

7 Q Did you have any contact with the defendant, Willie  
8 Pelzer after 9:31 --

9 A No, sir.

10 Q -- that Saturday night?

11 A No, sir.

12 Q Did you have any contact with Willie Reed that Saturday  
13 night, Sunday morning, Sunday afternoon?

14 A No, sir.

15 Q And since you've been charged with accessory after the  
16 fact, do you now have an attorney, Mr. Glenn Walters --

17 A Yes, sir.

18 Q -- out of Orangeburg, and you're aware that that crime  
19 that you're charged with carries up to 15 years in prison,  
20 right?

21 A Yes, sir.

22 Q Have there been any discussions with Sheriff Summers or  
23 anyone else about you getting a deal for your testimony?

24 A No, sir.

25 Q Have there been any discussions with me or anybody in



State v. Pelzer 12/2/09

324

1 my office about getting any kind of a deal for your  
2 testimony today?

3 A No, sir.

4 Q And did your attorney, Mr. Walters, did he make you  
5 aware that you don't have to testify today?

6 A Yes, sir.

7 Q Why are you testifying before this jury today?

8 A It's just the right thing to do, sir.

9 Q And after you gave your statement to police, in fact,  
10 that next day on Sunday did you continue to cooperate with  
11 the authorities with the Sheriff's Office?

12 A Yes, sir.

13 Q And did you try and help them locate the gun on that  
14 Sunday night?

15 A Yes, sir.

16 Q Did you take them to the trash cans located at State's  
17 Exhibit 55, and the other exhibits --

18 A Yes, sir.

19 Q -- in Charleston? Why were you able to know how to get  
20 to the dumpsters?

21 A Because I drove down there, sir.

22 Q Okay.

23 MR. PASCO: Beg the Court's indulgence.

24 BY MR. PASCO:

25 Q Mr. Haygood, the person who told you he killed the

1 truck driver that Thursday night, March 5, the same person  
2 who told you that you needed to get Willie Reed on board or  
3 there was going to be two dead bodies; do you see him in  
4 this courtroom today?

5 A Yes, sir.

6 Q Point him out for the jury?

7 A The defendant, Willie Pelzer, sir.

8 Q In the red tie and the red shirt?

9 A Yes, sir.

10 Q Answer any questions Mr. Banks has for you.

11 A Yes, sir.

12 THE COURT: Cross exam.

13 MR. BANKS: Thank Your Honor.

14 JIMMY HAYGOOD - CROSS-EXAMINATION

15 BY MR. BANKS:

16 Q Mr. Haygood, you said you'd been in the Navy; is that  
17 right?

18 A Yes, sir.

19 Q How many years?

20 A Three years.

21 Q And they issued you a side arm?

22 A No, sir.

23 Q You weren't issued a weapon at all?

24 A No, sir.

25 Q Were you trained with a weapon?

State v. Pelzer 12/2/09

326

1 A Yes, sir.

2 Q What kind of weapon?

3 A A 9 millimeter and a 12 gauge shotgun, sir.

4 Q And the 9 millimeter is that similar to the .45 caliber  
5 gun that you had?

6 A Not actually -- the 9 millimeter --

7 Q Uses a clip. Did it use a clip?

8 THE COURT: Let him answer.

9 MR. BANKS: All right.

10 A The 9 millimeter had a hammer and a safety on the gun,  
11 sir. It did have the clip but we weren't -- we didn't  
12 insert the clip. The Petty Officer inserted the clip who  
13 was over the training.

14 BY MR. BANKS:

15 Q And you were trained to kill with that gun; is that  
16 right?

17 A No, sir. All we did was shot at targets, sir.

18 Q And those targets were shaped like what?

19 A They was the shape of a shooting target.

20 Q Wasn't a human torso painted on it?

21 A Yes, sir.

22 Q So you were trained to shoot at targets shaped like a  
23 human torso; is that right?

24 A Yes, sir.

25 Q And you don't consider that being trained to kill?

1 A Not actually, sir, because to shoot a sheet is  
2 different from to shoot a man.

3 Q But if you were in the military, don't you expect that  
4 you might be in combat in some fashion?

5 A Not as a machinist mate, sir. I worked in the engine  
6 room.

7 Q All right. Now, you say you don't have a deal with the  
8 solicitor; is that right?

9 A No, sir.

10 Q You don't have a deal with the Sheriff's Office?

11 A No, sir.

12 Q They've never offered you anything?

13 A No, sir.

14 Q But you have been given a few breaks, have you not?

15 A What is that, sir?

16 Q Well, let's see, you went to a bond hearing; correct?

17 A Yes, sir.

18 Q And you were at a bond hearing on the accessory after  
19 the fact; is that correct?

20 A Yes, sir.

21 Q And at that bond hearing did they set you a bond?

22 A They gave me a PR bond.

23 Q They gave you a PR bond?

24 A Yes, sir.

25 Q Did they put a dollar amount on that bond, too?

State v. Pelzer 12/2/09

328

- 1 A \$50,000 if I --
- 2 Q And -- I'm sorry.
- 3 A It was just a surety bond, sir. A personal
- 4 recognizance?
- 5 Q Yeah, it was a PR bond. So you didn't go to jail when
- 6 you got your bond; is that right?
- 7 A No, sir.
- 8 Q Now, was the Sheriff's Office there?
- 9 A No, sir.
- 10 Q Did they oppose that bond; did they say we want him to
- 11 be locked up until he puts up \$50,000?
- 12 A No, sir, they didn't.
- 13 Q Now, did -- do you understand from the Sheriff's Office
- 14 why they did that?
- 15 A Because I cooperated with them, sir.
- 16 Q So you were cooperating with them so they were lenient
- 17 with you; is that what you're saying?
- 18 A I guess so, sir.
- 19 Q All right. Is that the only way they treated you
- 20 leniently so far?
- 21 A Yes, sir.
- 22 Q Okay, let's go -- you reported a gun stolen, correct?
- 23 A Yes, sir.
- 24 Q But that was a lie wasn't it?
- 25 A But technically, sir, it was stolen. I told him he

1 couldn't use it.

2 Q You -- you told him he couldn't use it?

3 A Yes, sir. He asked to borrow it, and I told him no.

4 Q This was at Jimmy Lee Haygood's house, right?

5 A Yes, sir.

6 Q Your father?

7 A Yes, sir.

8 Q You reported a gun stolen, but you also, at the same  
9 time, described a burglary, did you not, that somebody that  
10 you didn't know entered into that house?

11 A Yes, sir.

12 Q Because you didn't say, hey, Willie Pelzer stole my  
13 gun; you didn't say that?

14 A No, sir.

15 Q You said, I don't know, but between a certain time and  
16 a certain time, somebody came in my house and stole my gun?

17 A Yes, sir.

18 Q That really wasn't true was it?

19 A No, sir.

20 Q You invited Willie Pelzer over to your house?

21 A I didn't invite him, sir. He came over to my house --  
22 my father's house was open to any of the family.

23 Q He didn't enter it illegally, then?

24 A No, sir.

25 Q And you say he took the gun, but on the report you said

State v. Pelzer 12/2/09

330

1 you don't know who took the gun?

2 A Yes, sir.

3 Q And that was false wasn't it?

4 A Yes, sir.

5 Q And therefore you filed a false police report, didn't  
6 you?

7 A Yes, sir.

8 Q And that was a lie?

9 A Yes, sir.

10 Q And when you file a false police report, are you aware  
11 that was a crime?

12 A Yes, sir.

13 Q And did the Sheriff's Office charge you with that  
14 crime?

15 A No, sir.

16 Q They didn't issue you a warrant?

17 A No, sir.

18 Q They hadn't -- and because of that -- I mean, they  
19 didn't tell you, okay, we're going to cut you that break?

20 A No, sir. They didn't --

21 Q They just -- I'm sorry?

22 A They didn't tell me that, sir.

23 Q But they haven't charged you with that crime?

24 A Not to my knowledge.

25 Q So that's another way they've treated you leniently,

1 they treated you nicely that way; is that right?

2 A Yes, sir.

3 Q And you're saying there's no deal, you haven't struck a  
4 deal for that, but you've gotten that already?

5 A Yes, sir.

6 Q You appreciate the way they've dealt with you so far.  
7 Does that create an expectation in you that they might treat  
8 you leniently for you being here today and testifying?

9 A I have no expectations, sir.

10 Q You have no expectations as to what they might do after  
11 today?

12 A No, sir.

13 Q None?

14 A No, sir.

15 Q Even the way they've treated you in the past?

16 A In the past?

17 Q That doesn't predict in your mind what they might do  
18 more lenient things to you in the future?

19 A I don't think so, sir.

20 Q How many times do you think you've lied to people,  
21 whether it's family members or police, anyone in relation to  
22 this case?

23 A This case?

24 Q Yes, sir.

25 A I don't know, sir.



State v. Pelzer 12/2/09

332

1 Q I mean, so many you can't count?

2 A Two or three times, sir.

3 Q Two or three?

4 A Yes, sir.

5 Q So when you lied about the burglary, that was just one  
6 lie or did you have to lie in a whole statement of things?

7 A That was just one lie, I said it was a burglary, sir.

8 Q I mean, it broke down pretty specifically in your  
9 statement, did it not?

10 A Say again?

11 Q You gave a statement, didn't you, when the burglary,  
12 stolen gun was reported, correct?

13 A Yes, sir.

14 Q And in that statement, you didn't just tell one lie you  
15 went through a series of details that were each a lie;  
16 correct?

17 A It wasn't really a series of details. I just told them  
18 that the gun was stolen, I didn't know who did it, and it  
19 happened when I thought it might have happened.

20 Q Earlier you said that you live with your mom, but you  
21 keep calling your dad's house your house, and that you  
22 stayed there the night before this event, and, I guess, the  
23 night after because that's where you arrived. Where do you  
24 live?

25 A I live at , sir.

1 Q But you were at that time living at Merrybell?

2 A At that time I was down there visiting my father, yes,  
3 sir.

4 Q But you spent the night before?

5 A Yes, sir.

6 Q And the night after?

7 A Yes, sir.

8 Q And how many nights after that?

9 A After that. I went home that night and I've been down  
10 there like a month later, and I went down there like two  
11 weeks later, but I haven't been down there lately.

12 Q Didn't you give a statement saying that you had been  
13 trying to buy a gun, the whole Virginia license thing and  
14 all. You couldn't buy a gun, you tried, but you couldn't  
15 buy one, right?

16 A I had a military ID, sir.

17 Q Right.

18 A I tried to buy one, but they said I needed a state ID.

19 Q So you went down there that day, I think you indicated  
20 that Mr. Pelzer was with you and Mr. Reed, and y'all went  
21 down there; who was driving?

22 A Willie Reed, sir.

23 Q Whose car?

24 A Willie Reed, sir.

25 Q And did -- Did Willie Pelzer take y'all down there or

State v. Pelzer 12/2/09

334

1 did Willie Reed take y'all down there?

2 A Willie Reed went down there -

3 Q And this was after you had tried to buy a gun?

4 A Yes, sir.

5 Q And so he bought the gun?

6 A Yes, sir.

7 Q And he gave it to you, when?

8 A He gave it to me later on that afternoon, sir.

9 Q That same day. About what time of day did y'all buy  
10 that gun?

11 A I couldn't tell you. It was mid-afternoon, sir.

12 Q Okay, so within an hour or two he had given it to you?

13 A Yes, sir, to keep at my house.

14 Q To keep at your house, but didn't you say a minute ago,  
15 that you were in the process of buying that very gun from  
16 him?

17 A Yeah, I said I wanted to buy the gun from him, sir.

18 Q And so you had possession of it all the time; is that  
19 right?

20 A Yes, sir.

21 Q And you admit that you were wanting to buy it, and he  
22 knew that?

23 A Yes, sir.

24 Q It was your gun, wasn't it?

25 A In a way, sir, yes.

1 Q All right. Let's go to the afternoon of the day of  
2 this crime. Who invited Mr. Pelzer over to the house?

3 A Nobody to my knowledge, sir.

4 Q Okay. He just showed up?

5 A He just came running over.

6 Q He just came -- do you remember what he was wearing?

7 A T-shirt and some sweat pants, short sweat pants.

8 Q And did he have any kind of coat or anything?

9 A No, sir.

10 Q All right. And what kind of footwear was he wearing?

11 A Tennis shoes, sir.

12 Q Because he'd been running?

13 A Yes, sir.

14 Q He wasn't wearing boots?

15 A I can't recall. I don't know -- I don't think so, sir.

16 Q What were you wearing that day?

17 A I can't recall what I was wearing that day, sir.

18 Q Now, how can you recall what he was wearing, but you  
19 can't recall what you were wearing?

20 A Because I switched outfits so many times that day, sir.

21 Q You did?

22 A Yes, sir.

23 Q How often?

24 A I just changed once.

25 Q You said so many times?

State v. Pelzer 12/2/09

336

1 A I changed that morning when I went over to my father's  
2 house, when I woke up that morning. I changed that morning.  
3 I can't remember what I had on. I know I had on my black  
4 coat, and I believe, my black jeans.

5 Q And that was -- when Pelzer got over there that's what  
6 you were wearing?

7 A Yes, sir.

8 Q A black coat and black jeans?

9 A Yes, sir.

10 Q Just a normal t-shirt and something; do you remember  
11 what that was?

12 A It was just a t-shirt.

13 Q Now, you kept clothes over at your dad's house?

14 A I kept three outfits over there because I was only  
15 staying there for three days.

16 Q Okay. And so that was -- that morning you said you put  
17 on the black clothes?

18 A Yes, sir.

19 Q And did you change again later that day?

20 A No, sir.

21 Q Not at all; not again?

22 A No, sir.

23 Q So when you went to Charleston, that's what you were  
24 wearing?

25 A Yes, sir.

1 Q Okay. Do you remember if Willie Reed changed clothes  
2 that day?

3 A No, sir.

4 Q So when he went to Charleston, what he had at your  
5 house, he was wearing in Charleston?

6 A Yes, sir.

7 Q All right. Drinking, right?

8 A Yes, sir.

9 Q That day there was drinking going on?

10 A Yes, sir.

11 Q About how many people were at the house?

12 A Eight, 10.

13 Q Okay, and three of you were Reed, you and Pelzer?

14 A Yes, sir.

15 Q The fourth would be your father?

16 A My father wasn't out there drinking with us, sir.

17 Q Oh, I mean in and around the house; in the yard and in  
18 the house?

19 A Yes, sir.

20 Q Okay. And how many bottles?

21 A There was only one bottle, sir.

22 Q And any marijuana, cocaine, crack?

23 A No, sir.

24 Q Okay. Who was mainly in the house?

25 A Mainly it was just Willie Pelzer in the house. He was

State v. Pelzer 12/2/09

338

1 on the phone, sir.

2 Q And where was your father?

3 A My father was over at my uncle house -- no, I believe  
4 he went to work on somebody car that day. Later on after we  
5 started drinking, sir.

6 Q So he wasn't in the house?

7 A Not at that time, sir.

8 Q All right. And about half-dozen people out in the  
9 yard?

10 A Yes, sir.

11 Q Okay. People coming and going, in and out?

12 A People coming to the yard and leaving out the yard.

13 Q But not in the house?

14 A No, sir.

15 Q There wasn't something to drink inside the house?

16 A We put the bottle inside the house later on.

17 Q But people didn't go in there to get some of that?

18 A Yes, sir.

19 Q So there were people coming and going inside the house?

20 A Yes, sir.

21 Q You keep the gun. Do you keep the gun with you at all  
22 times, like on your person?

23 A No, sir.

24 Q You carry it when you go somewhere?

25 A No, sir.

1 Q You don't carry it in the car?

2 A No, sir.

3 Q Do you have a driver's license?

4 A No, sir.

5 Q You drove to Charleston without a driver's license?

6 A Yes, sir.

7 Q When you had the gun that day, I think you said was it  
8 around 6:00 or so you were out in the backyard?

9 A Yes, sir.

10 Q Of this residence, ?

11 A No, at my uncles residence, which is a house like go  
12 over and right behind my father's house.

13 Q Do you know the address of that one?

14 A No, sir.

15 Q It's across the street and up?

16 A No, sir. It's behind that house, over and behind my  
17 father's house at

18 Q There's a house behind your daddy's house?

19 A Yes, sir.

20 Q And it's your daddy's house?

21 A Yes, sir.

22 Q And what's his name?

23 A Henry Haygood, sir.

24 Q Okay. And you're saying you went behind your uncle's  
25 house to shoot the gun?



State v. Pelzer 12/2/09

340

1 A Yes, sir.

2 Q What kind of distance are we talking about from your  
3 daddy's house?

4 A Fifteen feet, sir, 20 feet.

5 Q No, I mean, where you were firing the gun? You weren't  
6 firing that close to your daddy's house?

7 A Yes, sir, it was behind his house. That family -- my  
8 family houses are very close together in that area, sir.

9 Q Okay. So even you being behind your uncles house  
10 you're still 15 feet from your house, the house you were in?

11 A Fifteen, 20 feet, sir. Twenty-five feet.

12 Q So you fired the .45. What were you shooting at?

13 A I was shooting into the woods, sir.

14 Q Did the cops ever come to check for casings and bullets  
15 and such?

16 A I believe so, sir.

17 Q Did they find anything?

18 A They probably did, sir. They found a couple bullet  
19 shells down there.

20 Q Okay, and when you fired the gun, do you remember about  
21 how many times you fired it?

22 A Two times, sir.

23 Q Just twice?

24 A Yes, sir.

25 Q What was that all about?

- 1 A I was just shooting, feeling how it shot.
- 2 Q Did anybody go out there with you?
- 3 A No, sir.
- 4 Q Anybody see you?
- 5 A They saw me walk back there, sir.
- 6 Q Who; people in the yard?
- 7 A Yes, sir.
- 8 Q But Pelzer was in the house?
- 9 A Yes, sir.
- 10 Q He was on the phone?
- 11 A Yes, sir.
- 12 Q So you don't know if he heard or saw what was going on
- 13 or who did it?
- 14 A He had to hear it, sir. He was in the house.
- 15 Q But did he know who it was?
- 16 A Yes, sir.
- 17 Q How do you know that?
- 18 A I walked out the house with the gun, sir.
- 19 Q So you walked in front of him -- he saw you with the
- 20 gun?
- 21 A Yes, sir.
- 22 Q And you -- you're sure he saw you and he wasn't paying
- 23 more attention to what was going on with the texting - when
- 24 you're text messaging you're looking at a screen? He saw
- 25 you?

State v. Pelzer 12/2/09

342

1 A He saw me when I walked out the house.

2 Q Did he speak to you?

3 A Yes -- no, he didn't speak to me. He just saw me.

4 Q Is that when he asked you to -- if he could borrow it?

5 A No, sir. He asked me that later on that night, sir.

6 Q Later on that night?

7 A Yes, sir.

8 Q So there it was 6:00 or so when you shot the gun. That  
9 only took a few minutes. So before y'all left at whatever,  
10 he'd asked to borrow it, and you said no; right?

11 A Yes, sir.

12 Q When he asked to borrow the gun was anybody else there?

13 A No, sir. Everybody had just went to the car, sir.

14 Q So was that in the house or in the car, he asked you  
15 that?

16 A He asked me that in the house, sir.

17 Q Okay, and the house was empty at that time?

18 A My father was in the bedroom sleep.

19 Q Okay. And so he just asked you to borrow the gun and  
20 you said, no. Then what'd you do with the gun?

21 A I went and put it up, sir.

22 Q So where did you put it?

23 A In the spare bedroom, sir.

24 Q You didn't put it under the couch, under this cushion  
25 in the couch?

1 A No, sir.

2 Q So you -- because he was on the couch most of the day;  
3 is that right?

4 A Yes, sir.

5 Q That would have been kind of foolish to stick it right  
6 there where he was, right?

7 A Yes, sir.

8 Q Did he follow you back there?

9 A No, sir.

10 Q Did he know that's what you were doing?

11 A Everybody knew I put it in the back bedroom, sir.

12 Q Now, hold on, that's a pretty general statement. Does  
13 Willie Pelzer know that you keep that gun under that bed?

14 A Under the bed?

15 Q Well, wherever you keep it?

16 A In that back bedroom, yes, he did know that, sir.

17 Q He knew that?

18 A Yes, sir.

19 Q Then why would have ask you for the gun if he knew  
20 where you kept it and you weren't even in the house most of  
21 the day?

22 A Because it wasn't his property, sir.

23 Q And so he was just doing the right thing by asking?

24 A Yes, sir.

25 Q And so you think he did the wrong thing -- what you're

State v. Pelzer 12/2/09

344

1 telling the Court is then he did the wrong thing and just  
2 took it anyway?

3 A Yes, sir.

4 Q So he did the right thing, but he did the wrong thing  
5 -- Why would he want to do the right thing if he'd just take  
6 it and he would just take it?

7 A I don't know, sir.

8 Q So y'all left the house to take Bryant home?

9 A Yes, sir.

10 Q And it was you and Reed and Bryant?

11 A Yes, sir.

12 Q In whose car?

13 A In Willie Reed's car.

14 Q That's a white Lumina?

15 A Yes, sir.

16 Q And about what time did y'all leave?

17 A We left about 9:45.

18 Q You left about 9:45?

19 A Yes, sir.

20 Q Could it have been later?

21 A 10:00 o'clock?

22 Q Could have been 10:00 o'clock?

23 A That's the latest.

24 Q In fact, the first place y'all went was Brakesfield's  
25 Exxon; correct?

1 A Yes, sir.

2 Q And Brakesfield's closes at what time?

3 A 10:00 o'clock, sir.

4 Q Everybody knows that; right?

5 A Not really, sir.

6 Q Well, you knew that?

7 A No, sir. I just had came back down there, like I said,  
8 sir. I just got back to the state of South Carolina, like,  
9 in January, sir.

10 Q And does Willie Reed know that, that Brakesfield's  
11 closes at 10:00?

12 A I can't tell you what Willie Reed knows, sir.

13 Q That's right. But when you headed to Brakesfield's did  
14 Bryant and Willie Reed know that y'all were heading to  
15 Brakesfield's to get gas?

16 A Well, Willie Reed was the driver, sir.

17 Q Well, all right, and did he know that Brakesfield's  
18 closes at 10:00?

19 A Like I said, I don't know what Willie Reed know.

20 Q All right. So when y'all got to Brakesfield's it was  
21 closed, wasn't it?

22 A It was closing up, sir.

23 Q All right. Does that indicate that it was about 10:00  
24 o'clock?

25 A Yes, sir.

State v. Pelzer 12/2/09

346

1 Q Now, Brakesfield's is right across from where this  
2 young man was killed; is that right?

3 A Yes, sir.

4 Q And when y'all left Brakesfield's y'all pulled out to  
5 the road; is that right?

6 A Yes, sir.

7 Q And when y'all pulled out to the road, what seat were  
8 you in?

9 A I was in the backseat, sir.

10 Q Backseat. I have the habit and I'm wondering if you  
11 have the habit of even if you're not driving of looking  
12 left, looking right, just out of habit. Did you happen to  
13 look left and right?

14 A No, sir.

15 Q All right. When you got to the street, were you  
16 distracted by anything other than -- anything at all?

17 A No, sir.

18 Q Did you happen to glance over and see this truck over  
19 there?

20 A No, sir.

21 Q And this is the truck I'm talking about. Do you think  
22 you would have seen it or you just don't know if it was  
23 there?

24 A Like I say, I wasn't looking for a truck. I wasn't  
25 looking for nothing. I was just looking straight.

1 Q You keep that gun loaded all the time?

2 A Most of the time, sir.

3 Q And your father lets you keep a loaded gun in that  
4 house?

5 A Yes, sir.

6 Q He knows it's loaded?

7 A Yes, sir.

8 Q And he knows you keep it there?

9 A Yes, sir.

10 Q Does he consider it your gun?

11 A He knew who gun it was, but he considered it mine, yes,  
12 sir.

13 Q So you'd given Mr. Pelzer \$20 earlier in the night.  
14 Did he even have an opportunity to spend it anywhere?

15 A I didn't see him spend it, sir.

16 Q I mean, he couldn't go -- he couldn't have spent it at  
17 the house could he?

18 A No, sir.

19 Q Now, he -- after all this had gone down and y'all met  
20 back up, he asked for your help; right?

21 A Yes, sir.

22 Q Was that right before or after he threatened to kill  
23 you?

24 A He didn't threaten to kill me. He told me to go tell  
25 -- get Willie Reed to go along with it or it was going to be



State v. Pelzer 12/2/09

348

1 two dead bodies instead of one. I didn't know who he was  
2 threatening to kill. He just said two dead bodies instead  
3 of one, sir.

4 Q All right. It's your testimony that he asked you to  
5 meet him down at Murph Mill, at a certain time, and Bridal  
6 Wreath; is that right?

7 A Yes, sir.

8 Q But that really doesn't make any sense does it. I  
9 mean, he doesn't live over there?

10 A No, sir, he didn't.

11 Q He lives off of Wash Lane which is across I-26, you  
12 know, a lot closer to your house, right?

13 A Yes, sir.

14 Q Did the police ever come and test that car for tire  
15 prints; do you know?

16 A I don't know, sir.

17 Q Did the police ever take any footwear, any of your  
18 shoes, boots, anything like that to test to see if -- what  
19 the bottoms look like?

20 A No, sir.

21 Q Not even one pair?

22 A Not to my knowledge; no, sir.

23 Q Do you own a glove?

24 A No, sir.

25 Q Do you own two gloves?

1 A No, sir.

2 Q Even like a batting glove?

3 A No, sir.

4 Q Have you ever walked from your house to Brakesfield's?

5 A No, sir.

6 Q Have you ever walked from Willie Reed's house to  
7 Brakesfield's?

8 A No, sir.

9 Q That night, the night y'all invited Willie over or he  
10 came over to your house and you were all doing drinking and  
11 such, other than the time you took the gun out and went and  
12 shot it, was it out and about or it was always in the back  
13 bedroom?

14 A It was out until I went to put it up before I took  
15 Bryant home, sir.

16 Q All right. When you left the house with Bryant and  
17 them, you say Willie Reed was in the house; how many people  
18 were in the yard?

19 A Willie Pelzer was in the house?

20 Q I'm sorry. Willie Pelzer. My bad. Willie Pelzer was  
21 in the house. Who was in the yard?

22 A Just me, Bryant and Willie, sir.

23 Q No. When y'all left did you leave other people in the  
24 yard?

25 A No, sir. Everybody had done gone. It me, Bryant,

State v. Pelzer 12/2/09

350

1 Willie, and Willie Pelzer. Willie Reed and Willie Pelzer at  
2 the house after everybody had done left. Then when me,  
3 Bryant and Willie Reed left it was just Willie Pelzer left,  
4 and my father was sleep in the back bedroom, his bedroom,  
5 sir.

6 Q When you bought gas on the way to Charleston, do you  
7 remember what size bill you gave the clerk?

8 A I gave him two 20s, sir.

9 Q Two 20s. Your trip from would take  
10 approximately how many minutes to get to your first stop to  
11 get gas -- well, Brakesfield's and then gas, that would have  
12 taken about how many, 10 minutes?

13 A Well, sir, we left Merrybell and went to Meyers Lane.

14 Q Wait, you went to Brakesfield's first?

15 A Oh, you're talking about with Bryant?

16 Q Yes.

17 A To get to the Shell station it would take five minutes.

18

19 Q Yeah, but you went to Brakesfield's first?

20 A Ten minutes, then.

21 Q About 10 minutes?

22 A Yes, sir.

23 Q So you went from your house to Brakesfield's and  
24 straight to the Shell on 21 and 22; right?

25 A Yes, sir.

1 Q And then down -- is that Burke Road, yeah, Burke Road,  
2 right?

3 A Down 22 and take that over Majority Road to Kennerly  
4 Road and then --

5 Q So that takes another 15 to 20 minutes to get to --  
6 that's Willie Clay's house, right?

7 A Willie Clay's house?

8 Q Oh, I'm sorry, Bryant's house. I'm sorry. Bryant's  
9 house.

10 A Bryant's house on Shilling Bridge.

11 Q Shilling Bridge. And you came back. How long did you  
12 stay at Bryant's; you just dropped him off?

13 A Just dropped him off.

14 Q Then you came back to your uncles?

15 A I stayed there five to 10 minutes, sir.

16 Q All right. So then you add that and you came back to,  
17 I think you said, Murph Mill. You went to Murph Mill?

18 A I was leaving my uncle's house we went down toward  
19 Murph Mill Road because that's closer towards the house, and  
20 that's when Willie Pelzer called us on Murph Mill by the  
21 white church.

22 Q Right.

23 A Right there in front of 21.

24 Q And that's that call that came in -- let me see -- at  
25 10 -- is that the call that came in at 10:32 or 10:28 -- I'm

State v. Pelzer 12/2/09

352

1 sorry, 10:28 or 10:49?

2 A 10:49, sir.

3 Q That call at 10:49 and you -- and he wanted you to meet  
4 him, you say, at Murph Mill?

5 A He had called that time at 10:49 and told us to meet  
6 him on Murph Mill and the end of Bridal Wreath.

7 Q Did he say he was at that location or that he was going  
8 to be there?

9 A He just told us to meet him there.

10 Q Did he say by when, 10 minutes or --

11 A There wasn't at time limit, sir, that's why I called  
12 him back and asked him where he was.

13 Q And that's the one he didn't answer?

14 A He didn't answer the first time, second time. We was  
15 already there at the house and that's when he had called  
16 back.

17 Q So you were back at Merrybell?

18 A When he called us back when I got back at Merrybell,  
19 yes, sir.

20 Q Didn't he call you a couple of times asking where you  
21 were that night?

22 A Two times when we was on Merrybell. Other than that,  
23 he didn't call me and ask me where we were. I called him.  
24 I wanted to know where he was when he wanted us to meet him  
25 on Murph Mill at the end of Bridal Wreath. But he didn't

1 answer that call. So when we got back to the house he  
2 called and told me to tell Willie Reed to meet him -- to  
3 come pick him up from his house on Merrybell. Willie Reed  
4 didn't go at first, and then he called back again and told  
5 me to put Willie Reed on the phone. And then once Willie  
6 Reed got on the phone he told Willie Reed to pick him up  
7 from his house, again, I guess. And Willie Reed went down  
8 there a little later to pick him up.

9 Q Isn't it true that this version of the story came out,  
10 you're the one who told it; right?

11 A Yes, sir.

12 Q You're the first one that made any mention to the  
13 police about this version of facts, right?

14 A Yes, sir.

15 Q So the police knew at that time that you knew something  
16 about this. How long did it take them to figure out -- to  
17 decide to believe your story and not to believe that you  
18 might have been the actual person?

19 A Well, once my statement was taken, then I was  
20 arrested, then they arrested everybody else, sir.

21 Q So they arrested you right away?

22 A Yes, sir.

23 Q Did they charge you with murder?

24 A They charged me with accessory to murder, after the  
25 fact, sir.

State v. Pelzer 12/2/09

354

1 Q So you being the one to give up some details that  
2 nobody else would know, they didn't charge you with murder  
3 at all?

4 A No, sir.

5 MR. BANKS: One moment, Your Honor.

6 BY MR. BANKS:

7 Q Mr. Haygood, you gave a statement to Tim Stephenson,  
8 he's a deputy; do you remember that?

9 A (No response.)

10 Q That was the one about the missing gun?

11 A Oh, yes, sir.

12 Q And in that statement you said that around 10:00  
13 o'clock your cousin's baby called -- I mean your cousin's  
14 baby's mother called; remember that?

15 A Yes, sir.

16 Q And that's why you might have to leave. And in that  
17 statement you said, I left the gun on the chair in my  
18 father's house. Do you remember that; do you need to see  
19 that?

20 A I remember that, sir.

21 Q Now, just now you told me that you hid it back away in  
22 the back bedroom?

23 A I put it in the back bedroom, yes, sir.

24 Q So were you intentionally lying there, too?

25 A I didn't --

1 Q Or have you got things confused?

2 A -- I didn't intend to put that in there. I was writing  
3 fast, sir.

4 Q You didn't intend to put that in there?

5 A I didn't mean to say I left it on the couch. I meant  
6 to say I put it back in the back bedroom, sir.

7 Q You wrote that yourself; so they didn't write that did  
8 they?

9 A No, sir.

10 Q They didn't misinterpret what you were telling them.  
11 You wrote that specifically and intentionally, didn't you?

12 A Not intentionally, sir.

13 Q I mean, how fast do you write; do you write faster than  
14 you think?

15 A I don't write fast, sir, but at the time I was going --  
16 I was thinking about stuff that was done --

17 Q You were trying --

18 A -- so I was putting it all down.

19 Q You said you were thinking about stuff. Were you  
20 thinking about how best this might fit your future?

21 A No, sir.

22 Q What do you mean you were thinking about stuff?

23 A I was thinking about what all went down that night.  
24 What all he said happen that night and how much trouble I  
25 was in, sir.



State v. Pelzer 12/2/09

356

1 Q Wait, you said you were thinking about what all he said  
2 went down that night. Who's he?

3 A Willie Pelzer, sir.

4 Q You're sure that's not Willie Reed, you're talking  
5 about?

6 A I'm sure that's Willie Pelzer, sir.

7 Q You didn't get together with Willie Reed and cook up  
8 some story here that included Willie Reed's version of what  
9 should be happened with that gun to make it easy for a  
10 burglar or somebody to come in and take it from him?

11 A No, sir.

12 Q There's a big differential there, Mr. Haygood.

13 A That's a mistake, sir.

14 Q There's a lot of difference between leaving it, at  
15 basically, right there in the front den to hiding it in the  
16 back bedroom. Don't you agree?

17 A That was a mistake, sir.

18 Q Now, how long did it take you to write this statement?  
19 It's three pages long; do you remember?

20 A I don't know how long it took me to write, sir.

21 Q Well, I mean, it took some time. I mean, you didn't  
22 just fly though it did you?

23 A No, sir.

24 Q And I mean you hadn't had time to think about this  
25 statement before you wrote it, did you not?

1 A Not actually. After I told him what happened, he said  
2 go ahead and write the statement.

3 Q Well, that means you went through it with the officer  
4 before you wrote it down; correct?

5 A Yes, sir.

6 Q And you went over it in your mind even before that  
7 because you decided to go to the officer and tell him,  
8 right?

9 A I didn't decide to go to the officer and tell. The  
10 officer came and picked me up, so I decided to tell at the  
11 time, after he picked me up.

12 Q Did Willie Reed help you decide to make this story and  
13 tell this story --

14 A No, sir.

15 Q -- tell this version? I'm sorry?

16 A No, sir.

17 Q In this statement you nowhere do you mention Willie  
18 Reed asking for the gun; isn't that correct?

19 A You mean, I mention Willie Pelzer asking for the gun?

20 Q Willie Pelzer. I mean, Willie Pelzer. I apologize.  
21 I've got two Willies on my mind. Willie Pelzer never asked  
22 for this gun --

23 A No, sir, I didn't --

24 Q -- in your statement?

25 A -- include it in there. No, sir.

State v. Pelzer 12/2/09

358

1 Q So when did you decide to or who influenced you to  
2 change your story to include now, Willie asking for the gun?

3 A Nobody influenced me, sir.

4 Q Sir?

5 A Nobody didn't influence me, sir. I also didn't include  
6 the fact that he had told me there was going to be two dead  
7 bodies instead of one in there because I just was -- as I  
8 said, I was just writing it out.

9 Q You were still thinking about that, how many days  
10 later; two days later?

11 A Yes, sir.

12 Q And nothing else?

13 A Yes, sir.

14 Q Not trying to tell the truth; you weren't worried about  
15 telling the truth?

16 A I was telling the truth, sir.

17 Q So what's the -- I beg to differ. You said you left it  
18 on the couch and now you're saying you left it in the back  
19 bedroom?

20 A I said that was a mistake, sir.

21 Q It's a big mistake; don't you agree?

22 A Yes, sir.

23 Q On your statement -- Now, you say that you live at your  
24 mother's house. On this statement you list your address.

25 What address do you list as your address on this statement?

1 A My father's house, sir.

2 Q That's what you list as your home address?

3 A That's what I list as my home address.

4 Q But you told us earlier that you only planned to stay  
5 the weekend, but that's what you list as your address. In  
6 fact, in your statement you called it your home?

7 A Yes, sir. That's where I was raised, sir.

8 Q I'm sorry?

9 A That is where I was raised?

10 Q You don't have the phone calls in front of you, do you?

11 A No, sir.

12 Q All right. I don't want to confuse you. Mr. Haygood,  
13 I'm going to show you State's No. 65, this is those phone  
14 records, and I'll direct your attention down toward the  
15 bottom. I believe you testified about this before. Down  
16 towards the bottom where March 5th -- can you catch March  
17 5th around 11:25 -- no, that's 10:25, I apologize, 10:25.  
18 You see that one?

19 A Where?

20 Q It would be 22:25?

21 A Yes, sir.

22 Q That's a call from Mr. Pelzer; correct?

23 A (No response.)

24 Q That's actually -- that's where he accidentally called  
25 your uncles house, right? That's at 10:25. He called your

State v. Pelzer 12/2/09

360

1     uncle's house -- see that number over on the right-hand  
2     column?

3     A     No, sir, that's me calling my uncle's house.

4     Q     That's you calling, okay. That's right, this is your  
5     phone records. This is you calling, right?

6     A     Yes, sir.

7     Q     What were you calling him for?

8     A     I was just checking on him, sir. I hadn't been over  
9     there in a while?

10    Q     He was there?

11    A     Yes, sir, he was home.

12    Q     You know because you talked to him?

13    A     Yes, sir.

14    Q     Did he tell you how long he had been home?

15    A     No, sir, I didn't ask him how long he'd been home.

16    Q     I think a moment ago you said he was asleep or gone?

17    A     I never said that, sir. I said my father was asleep.

18    Q     Oh, I'm sorry. You right. You said father. That's  
19    right. This is your uncle's house. So he was home?

20    A     Yes, sir.

21    Q     So you checked with your uncle, you weren't checking  
22    into taking a car to Charleston --

23    A     No, sir.

24    Q     At 10:25?

25    A     No, sir.

1 Q You were just checking on him at 10:25 at night for  
2 what reason?

3 A I hadn't seen him that week, sir. I hadn't seen that  
4 day and I was just checking on him to make sure he was okay,  
5 because he usually comes by the house.

6 Q Okay. At 10:28, that's the next call. That's where  
7 you make a call to Haygood, right?

8 A (No response.)

9 Q See that number, . You make a call to Haygood,  
10 right?

11 A Haygood?

12 Q I'm sorry, you made a call to Willie.

13 MR. PASCO: Mr. Banks is --

14 MR. BANKS: I'm sorry.

15 MR. PASCO: He's also reading the record wrong.

16 MR. BANKS: This is Haygood's call to Willie's  
17 cell phone.

18 MR. PASCO: No, sir. No. It is Mr. Pelzer's call  
19 to --

20 MR. BANKS: I'm sorry.

21 MR. PASCO: -- Mr. Haygood's cell phone. Also the  
22 first call -- let me see it -- I think it is Clay Haygood  
23 calling Mr. -- Yeah, it's Clay Haygood calling Jimmy Haygood  
24 at 10:25.

25 MR. BANKS: At 10:25. My bad, Your Honor. I got

State v. Pelzer 12/2/09

362

1 confused as to what records I was looking at. I've got so  
2 many phone records.

3 BY MR. BANKS:

4 Q Let's go back. I don't want to muddy the water, but at  
5 10:25, that's your uncle calling you. You said you were  
6 checking him, but that's him checking on you?

7 A No, he was just calling me, and I just checked on him  
8 when he called me. Well, I checked on him, yes, sir.

9 Q He was checking on you?

10 A Yes, sir.

11 Q The next call, the 10:28 phone call, that's Willie's  
12 cell phone, right?

13 A Yes, sir.

14 Q And he's calling you at 10:28?

15 A Yes, sir.

16 Q And that call -- do you remember what that call was  
17 about or if it was even picked up?

18 A I didn't answer that call, sir.

19 Q That's right. Were you still on the phone with your  
20 uncle?

21 A No, sir, I was at my uncle house at that time, sir.

22 Q So you just didn't answer the call?

23 A Yes, sir.

24 Q At the next one, 10:49, you picked that one up, right?

25 A Yes, sir, that's when I was on Murph Mill, sir.

1 Q You -- but you were already on Murph Mill?

2 A I was on Murph Mill by the church about to turn on 21?

3 Q Uh-huh. (Affirmative response.)

4 A We was about to turn on 21 to go back to Merrybell.

5 Q So you told him that. Did you tell him that?

6 A No, sir, I didn't tell him that. He just told me to  
7 meet him at Murph Mill and at the end of Bridal Wreath.

8 Q But you already happened to be on Murph Mill?

9 A Yes, sir, that was the fastest way back to my house, my  
10 father's house.

11 Q So if -- didn't you say after you left Bryant off you  
12 went by your uncle's house?

13 A Yes, sir.

14 Q If you'd just gone by your uncle's house why is he  
15 calling you at 10:25?

16 A I was going towards my uncle's house at 10:25, that's  
17 when we left Bryant.

18 Q So you hadn't gotten there yet and he just happened to  
19 call you?

20 A Yes, sir.

21 Q Was he expecting you?

22 A He was expecting me to come by?

23 Q Yeah.

24 A Yes, sir, to check on him.

25 Q At 10:25 on Thursday night?



State v. Pelzer 12/2/09

364

1 A Yes, sir.

2 Q So at 10:25 you were at your uncle's house and I think  
3 you said you stayed five to 10 minutes?

4 A Five to 10 minutes, sir.

5 Q So you were -- you were there for the 10:28 call,  
6 that's when Willie called?

7 A Yes, sir.

8 Q And then you left sometime after that. Now, the next  
9 call was 21 minutes after his last -- Willie's last call to  
10 you at 10:28, and if you stayed about five minutes, that  
11 means about 10:30 or 10:35, five to 10 minutes, you'd left  
12 your uncle's house, and he lives off of which road?

13 A He lives off of Meyers Lane.

14 Q And where is that near?

15 A That's near -- it's in between 22 and Murph Mill.

16 Q Right. So it takes -- I mean, it just took a few  
17 minutes to get on Murph Mill from his house, correct?

18 A Yes, sir.

19 Q Maybe, shoot, I don't know, maybe four or five minutes?

20 A Yes, sir.

21 Q So you're already on Murph Mill at the latest 10:35.

22 That's 14 minutes. That's 14 minutes right there.

23 A Well, sir, I wasn't looking at the clock.

24 Q But I mean, this is our clock, isn't it?

25 A No, sir. I wasn't looking at the clock when I arrived

1 at my uncle house and when I left my uncle's house, but I  
2 know it was only five to 10 minutes that I was at my uncle's  
3 house.

4 Q But doesn't this tell you that you were at his house at  
5 10:25, and you were -- you just told us you were at his  
6 house at 10:28?

7 A Actually, sir, at 10:25, as they told you, my phone was  
8 pinging off of a -- says I was in Columbia tower. I was  
9 still in Orangeburg because we had just left Bryant's house.

10

11 Q So now you're saying you were at your uncle's house  
12 even later than that?

13 A Yes, sir. When my uncle called me, we just dropped off  
14 Bryant and we was coming back towards his house. We wasn't  
15 there, yet, though.

16 Q But didn't you say at 10:28 you were at your uncle's  
17 house and that's why you didn't answer the call?

18 A Yes, sir.

19 Q Now, is that wrong or is that right?

20 A I guess it's right, sir. I didn't answer that call.

21 Q I don't see another one where Willie called you and you  
22 didn't pick up, except -- I mean, that's the only time-frame  
23 I've got?

24 A Yes, sir.

25 Q All right. So we've got about 14 minutes that we

State v. Pelzer 12/2/09

366

1 really can't account for between you leaving your uncle's  
2 house at the latest point, according to you, and you getting  
3 the next call from Willie at 11:49; is that right?

4 A Yes, sir.

5 MR. PASCO: 10:49.

6 BY MR. BANKS:

7 Q 10:49, 10:49.

8 MR. BANKS: One moment, Your Honor. One moment,  
9 Your Honor, please.

10 BY MR. BANKS:

11 Q Mr. Haygood, where were you sitting when y'all left the  
12 Exxon station?

13 A Still in the backseat, sir.

14 Q You were still in the backseat?

15 A Yes, sir.

16 Q So you weren't in the passenger seat?

17 A No, sir.

18 Q Are you sure of that?

19 A Yes, sir.

20 Q And who was driving?

21 A Willie Reed, sir.

22 Q When you left the Exxon, that's Brakesfield's?

23 A Yes, sir. It was Willie Reed.

24 Q It was his car, right?

25 A Yes, sir.

1 Q And where was Bryant?

2 A Bryant was in the passenger side, sir.

3 Q Okay.

4 MR. BANKS: No further questions, Your Honor.

5 THE COURT: Redirect?

6 MR. PASCO: Just a few questions.

7 JIMMY HAYGOOD - REDIRECT EXAMINATION

8 BY MR. PASCO:

9 Q Mr. Haygood, Mr. Banks asked you about -- some question  
10 about clothes. What did the defendant have to borrow from  
11 you after 11:15 the night of March 5th when he came back  
12 with Willie Reed?

13 A He borrowed my George H.W. Bush all weather coat?

14 Q That's good. Why did he have to borrow that from you?

15 A Because he didn't have any shirt, he had on just a Wife  
16 Beater and it was cold.

17 Q And just for clarification Mr. Banks kept asking you  
18 over and over again that you were at Willie Clay Haygood's  
19 house at 10:25, in fact, you couldn't have been there;  
20 right?

21 A No, sir.

22 Q When you received -- and I'm showing State's Exhibit 71  
23 -- when your uncle, Willie Clay Haygood called you at 10:25  
24 to get you to come check on him, you're pinging off an  
25 Orangeburg tower aren't you?

State v. Pelzer 12/2/09

368

1 A Yes, sir.

2 Q Because at 10:25, who did you take home?

3 A We took home Bryant, sir.

4 Q And he lives in what county?

5 A Orangeburg County?

6 Q And how long does it take to get from Shillings Bridge  
7 Road to your uncle, Clay's house?

8 A About 30 minutes, sir.

9 Q And like you said, you're not looking at your watch,  
10 you don't know what time you got to his house?

11 A No, sir.

12 Q But you know at 10:25, you're in Orangeburg County?

13 A Yes, sir.

14 Q At 10:49 the defendant calls you?

15 A Yes, sir.

16 Q Wants you to pick him up where?

17 A Murph Mill and the end of Bridal Wreath.

18 Q And was he there when you got there?

19 A No, sir.

20 Q And at 10:56:55, when Jason Rivenburg's being murdered  
21 who do you call?

22 A I called Willie Pelzer, sir.

23 Q And he didn't pick up did he?

24 A No, sir.

25 Q You were calling because he wasn't at Murph Mill?

1 A Yes, sir.

2 MR. PASCO: That's all I have.

3 THE COURT: Recross?

4 JIMMY HAYGOOD - RECROSS EXAMINATION

5 BY MR. BANKS:

6 Q I'll show you State's 71, again. This is a blow-up of  
7 the thing I showed you a minute ago. State's 71, that's  
8 your phone record, there. Can you look down at 3/5 at 11:07  
9 p.m., that's 23:07; do you see that one?

10 A Yes, sir.

11 Q About three from the bottom.

12 A Yes, sir.

13 Q And that's a call from Willie's cell phone, right?

14 A Yes, sir.

15 Q At 11:07. You took that call?

16 A Yes, sir.

17 Q At 11:07 p.m. when he called you did he sound calm?

18 A Say again, sir?

19 Q Did he sound calm?

20 A Did he sound calm?

21 Q Yes, a normal voice?

22 A Yes, sir.

23 Q Do you remember what he said then, like where are you  
24 or something like that?

25 A No, sir, he told me to tell Willie Reed to come pick

State v. Pelzer 12/2/09

370

1 him up from his house, sir.

2 Q Okay, and he didn't sound agitated or scared or  
3 anything like that?

4 A Not at the time, sir, no.

5 Q Okay. Thank you.

6 MR. BANKS: No further question, Your Honor.

7 THE COURT: Thank you, sir. You can step down.  
8 Call your next witness, please.

9 MR. PASCO: Willie Clay Haygood.

10 THE COURT: Come on down this way, please. Come  
11 all the way around over here. If you'll place your left  
12 hand on the Bible and raise your right, please.

13 (WHEREUPON, Willie Clay Haygood was  
14 sworn to tell the truth.)

15 THE COURT: Thank you, sir. Have a seat right  
16 here. Pull the microphone up and speak right into it loudly  
17 and tell us your full name, please.

18 MR. HAYGOOD: Willie Clay Haygood.

19 THE COURT: I can't hear you.

20 MR. HAYGOOD: Willie Clay Haygood.

21 THE COURT: All right. Everybody's got to hear you  
22 all the way in the back back there, Mr. Haygood.

23 MR. HAYGOOD: Willie Clay Haygood.

24 THE COURT: Good. That's better. Thank you, sir.

25 WILLIE CLAY HAYGOOD - DIRECT EXAMINATION

1 BY MR. PASCO:

2 Q Good afternoon, Mr. Haygood, almost good evening?

3 A Hey.

4 Q How are you today? Speak up, now?

5 A I'm fine.

6 Q Okay. Where do you live, Mr. Haygood?

7 A

8 Q And where is that exactly?

9 A Off of Sweetwater Lake.

10 Q And are you related to Jimmy Haygood?

11 A Yes. That's my nephew.

12 Q Your nephew just leaving the courtroom?

13 A Yes.

14 Q His father is your brother?

15 A Yes.

16 Q How long have you lived at Meyers Lane at Sweetwater?

17 A About a year.

18 Q Okay. Did you own a car back in March of 2009, sir?

19 A Yes.

20 Q And what type of car did you own?

21 A A '87 Mercury Cougar.

22 Q And is that the car depicted in State's Exhibit No. 59;  
23 can you see it from here?

24 A That's it.

25 Q That's your car?



State v. Pelzer 12/2/09

372

1 A Yes, sir.

2 Q Mr. Haygood, you're obviously close with your nephew,  
3 Jimmy Haygood?

4 A Yes, I am.

5 Q And would he check on you from time to time?

6 A Yes.

7 Q Would you and do you call him to check on him from time  
8 to time?

9 A Yes.

10 Q All right. Not just from time to time but every day?

11 A Every day.

12 Q I want to ask you some questions about Thursday, March  
13 5, 2009; okay?

14 A Okay.

15 Q Was your phone number back then ?

16 A That's right.

17 Q Okay, and did you call your nephew at 10:25 that  
18 evening?

19 A Yes, I did.

20 Q Did you see your nephew, Jimmy, that evening?

21 A Yes, I did.

22 Q Okay, and was it sometime after that phone call?

23 A Yes, it was.

24 Q And where did you see him?

25 A At my house at

1 Q Okay, and was anyone else with Jimmy at that time.

2 A I didn't see anyone else.

3 Q Okay, just Jimmy?

4 A Just Jimmy.

5 Q Did Jimmy come in the house?

6 A Jimmy came in the house.

7 Q Okay, who drove him there?

8 A Willie, Willie Reed.

9 Q How long did Jimmy stay inside your house,  
10 approximately?

11 A Just long enough to ask me for my car to go see a  
12 girlfriend.

13 Q And that was later in the evening, right?

14 A Yes, that was probably 11:30 or so.

15 Q But at 10:30 when he came by how long did he stay  
16 there?

17 A Well, 10:30, he didn't come by at 10:30. I talked to  
18 him about 10:30, but then he came by and he asked for my car  
19 at the same time.

20 Q That's what I'm saying when he came by at 10:25?

21 A Yes.

22 Q , All right, did you know Willie Pelzer back in March of  
23 2009?

24 A Yes, sir.

25 Q How long have you known him?

State v. Pelzer 12/2/09

374

1 A A long time.

2 Q Had he ever been to your house at Meyers Lane?

3 A Yes.

4 Q And did he know you had a car?

5 A Can you repeat that please?

6 Q Did he know that you had a car?

7 A Yes.

8 Q Okay. Where is Murph Mill in relation to your house?

9 A Murph Mill is right off of Sweetwater Lake.

10 Q So you could take Murph Mill all the way from your  
11 house to Sweetwater?

12 A Right.

13 Q Now, after Jimmy and Willie left your house around  
14 10:30 that night, did you expect to hear from them again?

15 A No.

16 Q But did you hear from them later on that night about  
17 11:30?

18 A Yes.

19 Q And what were you doing when you heard from them  
20 sometime after 11:30 that night?

21 A I was in bed.

22 Q Okay. What did you have to do in the morning that next  
23 Friday?

24 A I had to go to work in the morning. I work at Carolina  
25 Eastman.

1 Q Where do you work, sir?

2 A Carolina Eastman.

3 Q Okay, and what time did you have to be at work that  
4 next morning?

5 A 7:00 o'clock.

6 Q And who all came to your house after Midnight, at that  
7 time?

8 A Well, I didn't see nobody but Jimmy. He came in. I  
9 only seen Jimmy.

10 Q You only saw Jimmy after Midnight. Nobody else came in  
11 the house?

12 A No.

13 Q And what did you give to Jimmy after Midnight that  
14 night?

15 A My car keys.

16 Q Okay, and what was the agreement on letting Jimmy have  
17 your car that night; who was going to have to drive that  
18 night?

19 A He said -- I said Willie Reed was going to drive my  
20 car, was the only way I would let them drive my car because  
21 I knew he had a license and everything.

22 Q Did he agree to put gas in your car, too?

23 A Yes, he did.

24 Q Where did you think Jimmy was going that night with  
25 your car?

State v. Pelzer 12/2/09

376

1 A Well, I think he was going to some girl house, his  
2 girlfriend house.

3 Q Did you have any idea he was going to Charleston?

4 A No, I didn't.

5 Q Would you let them borrow your car if you had know  
6 that?

7 A Yes, I did.

8 Q Would you have let him borrow your car if you had know  
9 -- A Oh, no, no. Oh, no, I wouldn't let them borrow it if I  
10 had known they was going to Charleston.

11 Q Why is that?

12 A Because it's old car and I had to go to work. I  
13 wouldn't let them go that far.

14 Q You wanted to make sure you had your car to go to work,  
15 right?

16 A Right.

17 Q And, in fact, at approximately 1:38 did you call Jimmy  
18 Haygood?

19 A I did, to check on them and see what was going on,  
20 taking them so long?

21 Q To remind him that you needed to get your car back?

22 A That's right.

23 Q Did you get your car back sometime after 4:00 o'clock  
24 that morning?

25 A Yes.

1 Q Did you see how the car was returned or was it just in  
2 your yard; how'd you get your car back?

3 A Well, he brought the keys in and had gas in it. That's  
4 all I looked for.

5 Q Did you see Jimmy Haygood that Friday, March 6th?

6 A Yes.

7 Q Where did you see Jimmy?

8 A He stopped by my house.

9 Q And again, he checked on you every day?

10 A Yes.

11 Q Just like he checked on you the night before?

12 A Yes. He stopped by.

13 Q And in fact when you called him at 10:25 that night,  
14 was it to ask where are you, why didn't you come by here?

15 A Yes.

16 Q And that's why he came by there for a few minutes then?

17 A Yes.

18 Q Did you meet with Investigator Stanley Graham from the  
19 Calhoun County Sheriff's Office on Tuesday March 10th?

20 A Yes.

21 Q And did you cooperate with Detective Graham from the  
22 Sheriff's Office?

23 A Yes. Yes, I did.

24 Q Did you let them take a look at your car?

25 A Yes, I did.

State v. Pelzer 12/2/09

378

1 Q And did you tell them how Jimmy had borrowed your car  
2 that night?

3 A Yes, I did.

4 MR. PASCO: Beg the Court's indulgence.

5 Answer any questions Mr. Banks has for you. I  
6 appreciate you sticking around today, Mr. Haygood.

7 WILLIE CLAY HAYGOOD - CROSS EXAMINATION

8 BY MR. LEIENDECKER:

9 Q Mr. Haygood, I'm Mark Leiendecker, I've got a few  
10 questions. I want to try to understand. You said that you  
11 called your nephew, Jimmy?

12 A Yes.

13 Q Sometime around 10:25 --

14 A Yes.

15 Q -- on Thursday evening?

16 A Yes.

17 Q And you called him because you hadn't seen him all day?

18 A Yes. I -- we just call each other all the time.

19 Q I understand that.

20 A Yes.

21 Q Where I get confused is after you talked to him, did he  
22 stop by just himself?

23 A He was the only one that came in the house. He's the  
24 only one I seen.

25 Q So you said he stopped by after you called him?

1 A Yes.

2 Q And was that right away, minutes after you called him  
3 or a while?

4 A Yeah, I can't really recall.

5 Q You don't remember if he walked in immediately after  
6 you hung up?

7 A Yes, not immediately because it take like 10 minutes to  
8 get to my house.

9 Q Okay. Did he tell you where he was when you talked to  
10 him?

11 A Yes.

12 Q Where?

13 A He was at his father's house.

14 Q So he told you when you talked to him at 10:25 he was  
15 at his daddy's house out on Merrybell?

16 A Uh-huh. (Affirmative response.)

17 Q Okay. And then you say that he called you or came by  
18 around 11:00 or 11:30. Did he call you first or did he just  
19 stop by?

20 A I called him and he came by.

21 Q No, that was at 10:30. See, this is where I get  
22 confused. Maybe I'm not communicating. He came in and saw  
23 you at sometime after the phone call that you called him at  
24 10:30, right?

25 A Yes.



State v. Pelzer 12/2/09

380

1 Q And that was the phone call where he told you he was at  
2 his daddy's house?

3 A Yes. I called him and that was where he was at. I  
4 called him at his father house.

5 Q Didn't you actually call him on his cell phone?

6 A Yes.

7 Q So do you know where he was?

8 A He was at his father's house.

9 Q And how do you know that?

10 A Because I just know he was over there, because you  
11 know, a lot of people they call and say they seen him over  
12 there. So I called over there and he said he was at his  
13 father's house.

14 Q Stay with me. Did he tell you he was at his dad's  
15 house?

16 A Yes.

17 Q And he came by and saw you at that time, 10:30-ish,  
18 10:40?

19 A Maybe. I'm not sure about the exact time. I don't  
20 know.

21 Q But you said it was 10, 15 minutes after?

22 A Yeah.

23 Q Okay. Did you see him again after that?

24 A When he brought my car back?

25 Q When he brought your car back -- when he came at 10:40,

1 did he ask to borrow your car to go to Charleston?

2 A No. He didn't say go to Charleston. He asked to  
3 borrow it --

4 Q He said to go see a girl in Orangeburg; is that right?

5 A He said to go see a girl, his girlfriend, and I assume  
6 it was in Orangeburg.

7 Q Didn't you tell our investigator that he came about  
8 10:00 or 11:00 and stayed about an hour?

9 A No, I didn't tell him he stayed about an hour. I  
10 didn't tell anybody that.

11 Q And that they all came in. That you knew he was there,  
12 Willie Pelzer was there and Willie Reed was there?

13 A No. No.

14 Q Okay. And when you gave him the car, you called him at  
15 1:40, quarter to two, something like that; is that right?

16 A Right.

17 Q And if you were asleep what prompted you to call him?

18 A Because I went to the restroom and I notice my car  
19 wasn't back yet. I had to be to work at 7:00 and I was  
20 getting concerned about getting to work.

21 Q What did he tell you then?

22 A Beg pardon?

23 Q What did your nephew --

24 A He said he was on his way. He was coming.

25 Q From where?

State v. Pelzer 12/2/09

382

1 A He didn't say from where. I didn't ask.

2 Q He said he was on his way to your house?

3 A Right.

4 Q And then your testimony is he didn't actually show up  
5 until sometime around when?

6 A About 4:00.

7 Q And how do you know that?

8 A Because I got up and get my keys.

9 Q He woke you up to give you the keys?

10 A Yes. I met him at the door and got my keys. I went  
11 back to bed.

12 MR. LEIENDECKER: One moment, Your Honor.

13 BY MR. LEIENDECKER:

14 Q Let me clarify this. When he asked your cousin, I mean  
15 your nephew. When your nephew asked to borrow the car  
16 Thursday night --

17 A Right.

18 Q -- you said in your statement to Detective Graham that  
19 you told him he could borrow the car, but you had  
20 conditions, right?

21 A Exactly.

22 Q And that condition was what?

23 A To let Willie Reed drive it.

24 Q And how did you know Willie Reed was available to  
25 drive?

1 A How did I know he could drive? Because he told me he  
2 was out there.

3 Q Your nephew told you that he was out there?

4 A Yes. Right.

5 Q And your nephew -- did you talk to Willie Reed?

6 A Did I talk to Willie Reed? No, I didn't talk to Willie  
7 Reed.

8 Q So you talked to your nephew and what did he promise  
9 you --

10 A What?

11 Q -- about who would drive?

12 A Willie Reed.

13 Q He told you Willie Reed would drive?

14 A Right.

15 Q And why would you want Willie Reed to drive  
16 specifically?

17 A Because I know he has a driver's license.

18 Q And your nephew doesn't?

19 A Right.

20 Q And he told you that he would have Willie Reed drive  
21 and that they were going where?

22 A To the girlfriend house.

23 Q In?

24 A He didn't say where. I just assume it was in  
25 Orangeburg or somewhere close.

State v. Pelzer 12/2/09

384

1 Q All right.

2 MR. LEIENDECKER: Nothing further.

3 THE COURT: Redirect?

4 MR. PASCO: No, Your Honor.

5 Thank you, Mr. Haygood.

6 THE COURT: Thank you, sir, you may step down.

7 Thank you for coming.

8 MR. PASCO: Next witness is Greg Mack.

9 THE COURT: We're going to stop right here. We've  
10 got to take our break.

11 Ladies and gentlemen, we're going to take our break. I  
12 understand whatever we have to eat is back there, and I hope  
13 it's satisfactory. What you see is what you're going to  
14 get, I'm afraid.

15 Mr. Hill, I'm going to appoint you as foreperson of  
16 this jury, and so when y'all finish eating and get ready to  
17 come back out here you knock on the door and tell the  
18 bailiff y'all are ready, and we'll round up and get ready  
19 also.

20 All right, sir. Please do not talk about the case while  
21 you're back there.

22 (Jury out for dinner break at 5:45 p.m.)

23 THE COURT: All right. We'll be at ease, I'm  
24 guessing it will be around 30 minutes.

25 (Court in recess for dinner at 5:45 p.m.)

1 (Court in session after dinner break at 6:17 p.m.)

2 THE COURT: All right. Is state ready?

3 MR. PASCO: Yes, sir.

4 THE COURT: Defense ready?

5 MR. PASCO: Beg the Court's indulgence one moment.

6 We're ready.

7 MR. LEIENDECKER: We're ready.

8 THE COURT: Is the family coming in?

9 MR. SORENSON: They're coming from the Annex now.

10 They will be here in a second.

11 (Pause.)

12 THE COURT: All right, sir, bring the jury in.

13 (Jury in at 6:19 p.m.)

14 THE COURT: All right. All of the jury is in the  
15 courtroom. Counselor, you may call your next witness.

16 MR. PASCO: Thank you, Your Honor.

17 State call Greg Mack.

18 THE COURT: Come on down here, sir. Right around  
19 here. Mr. Mack, if you would put your left hand on the  
20 Bible right there and raise your right.

21 (WHEREUPON, Greg Mack was sworn to  
22 tell the truth.)

23 THE COURT: All right, sir. Have a seat right  
24 there. Pull the microphone right up high in front of your  
25 face, and please speak loudly so everybody can hear you.

State v. Pelzer 12/2/09

386

1 GREG MACK - DIRECT EXAMINATION

2 BY MR. PASCO:

3 Q Good evening, Mr. Mack.

4 A Good evening.

5 Q Okay, you got to speak up louder than that because I  
6 can barely hear you.

7 A Good evening.

8 Q It's better.

9 THE COURT: It's better to stay back from the  
10 microphone and talk louder. That way, it doesn't muffle it.  
11 Play like you were at home and having talk over the children  
12 or something like that, and everybody can hear you then.

13 MR. MACK: Yes, sir.

14 BY MR. PASCO:

15 Q Think you can do that?

16 A I can do that.

17 Q Okay, good. Where do you live, Mr. Mack, and first of  
18 all, thank you for staying all afternoon, this evening.

19 Thank you.

20 Where do you live, Mr. Mack?

21 A In Calhoun County.

22 Q Whereabouts in Calhoun County?

23 A Lavender Lane.

24 Q How long have you lived in Calhoun County?

25 A Since '86.

1 Q And how old are you right now?

2 A Twenty-eight.

3 Q And where did you go to high school?

4 A Calhoun County High.

5 Q And what kind of work do you do?

6 A I'm an electrician.

7 Q And how far do you live from Merrybell Lane?

8 A About a quarter of a mile.

9 Q And you can barely see on this map, but I'm going to  
10 show you State's Exhibit No. 83, and just for the jury --  
11 and they'll get to look at this later -- is Lavender Lane on  
12 this map.

13 A Yeah, there's Lavender Lane.

14 Q And does it show Merrybell right up the road from it?

15 A Yeah.

16 Q And what road would you take to get from Merrybell to  
17 Lavender?

18 A You use Lavender Lane to get to Merrybell Lane.

19 Q Is Lavender out to the frontage road?

20 A Right.

21 Q And if you were going from your house to, say,  
22 Brakesfield's Exxon -

23 A Uh-huh. (Affirmative response.)

24 Q -- and taking the frontage road, Lavender -- you would  
25 actually pass Merrybell?



State v. Pelzer 12/2/09

388

1 A Right.

2 Q Do you know the defendant, Willie Pelzer, sir?

3 A Yes, I know him.

4 Q And how long have you known Mr. Pelzer?

5 A I know him but not extensively. I don't see him a lot,  
6 but I know him.

7 Q Okay. You know him, you've seen him before?

8 A Right.

9 Q You've talked to him before?

10 A Right.

11 Q Did you consider him a friend of yours back in March of  
12 2009?

13 A Well, I'd say we had the same friends, you know.

14 Q And did the defendant have a trailer off of Merrybell?

15 A I believe that -- I don't know if he owned it, but  
16 that's where he stayed.

17 Q Okay. In the past, and is that trailer State's Exhibit  
18 No. 77?

19 A Right.

20 Q Okay. Family's trailer or property?

21 A Right.

22 Q How far, approximately, was the defendant's trailer  
23 from your house on Lavender?

24 A Just about a half-mile.

25 Q How often, if at all, would you and the defendant

1 interact, how often would you see him in February and March  
2 of this year?

3 A Maybe once or twice a week.

4 Q Was your cell phone number back then ?

5 A Yes.

6 Q And what were you doing at approximately 11:00 o'clock  
7 on the night of Thursday, March 5, 2008 (sic).

8 A I was home watching TV.

9 Q Okay. And did you receive a phone call that night at  
10 11:10 p.m.?

11 A Yes, I did.

12 Q In fact, I'm point out State's Exhibit 86, the  
13 defendant, Willie Pelzer's phone records. Did he call you  
14 at 11:10 p.m.?

15 A Yes, he did.

16 Q Tell the jury why he called you, what the purpose of  
17 his call to you was at 11:10 p.m.?

18 A He asked for a ride.

19 Q And where did he want you to come get him?

20 A From Merrybell Lane?

21 Q From his trailer on Merrybell Lane?

22 A Right.

23 Q And what else did he say to you during the course of  
24 the night?

25 A Well, the conversation was short. He asked for a ride.

State v. Pelzer 12/2/09

390

1 He wanted to talk to me. I asked him why and he didn't want  
2 to talk over the phone. So --

3 Q And what did he end up telling you when you kept asking  
4 him why?

5 A Well, later conversation he said he messed up, but he  
6 wasn't going to speak to me on the phone. So --

7 Q And in fact after he called you at 11:10 p.m. asking  
8 you for a ride, did you -- did you want to give him a ride?

9 A Well, I didn't have transportation. I was going to  
10 help find him a ride.

11 Q Would you -- were you even going to go up there with a  
12 ride to give him one? If you could find a ride were you  
13 going to go?

14 A Well, yeah, I guess. I would have.

15 Q And did you actually try to find Mr. Pelzer a ride  
16 after 11:10 p.m.?

17 A Yes, I did.

18 Q And, in fact, did you call him at 11:28 p.m. to talk to  
19 him about whether you could find him a ride?

20 A Right.

21 Q And he called you again at about 11:30 on to about  
22 11:33?

23 A Yes.

24 Q And what, if anything, did Mr. Pelzer tell you as to  
25 why he needed a ride?

1 A There was no conversation as to why he needed a ride.

2 Q You testified a minute ago about he messed up. What  
3 did you mean by that?

4 A I don't know. We never spoke after that?

5 Q And what were his exact words?

6 A He said, I messed up.

7 Q And did you ask him how he messed up?

8 A Yes.

9 Q And what did he say to you?

10 A Nothing. He didn't want to speak on the phone.

11 Q Did he want to talk to you in person?

12 A Right.

13 Q Did he even tell you where he needed a ride to?

14 A No.

15 Q Did you ever agree to go see the defendant?

16 A No, I didn't.

17 Q Did you go see the defendant that night, particularly  
18 after he had told you around 11:30 that he had messed up?

19 A No, I didn't.

20 Q Did you talk to the defendant, Willie Pelzer again  
21 after 11:32, 11:33 that evening?

22 A No, I didn't.

23 Q Did you see him again after talking to him on that  
24 Thursday night; did you see him on Friday, Saturday or  
25 Sunday?

State v. Pelzer 12/2/09

392

1 A I think I saw him on Saturday, I believe.

2 Q Did you talk to him?

3 A No, I didn't.

4 Q Did you try to find out then about how he messed up?

5 A No, I didn't.

6 Q Did you want to find out?

7 A No.

8 Q And the person who called you at 11:10 p.m. saying he  
9 needed you to pick him up, he needed a ride from his trailer  
10 at Merrybell, and the person who later on told you he messed  
11 up, but wouldn't tell you about it over the phone; do you  
12 see him in the courtroom today?

13 A Yes.

14 Q Is it the defendant, Willie Pelzer, with the red shirt  
15 on?

16 A Right.

17 Q Answer any questions defense counsel may have.

18 THE COURT: Cross exam.

19 GREG MACK - CROSS-EXAMINATION

20 BY MR. LEIENDECKER:

21 Q Mr. Mack, my name's Mark Leiendecker. I'm one of Mr.  
22 Pelzer's attorneys. Tell me again, your relationship with  
23 Mr. Pelzer?

24 A We acquaintances.

25 Q Okay. You -- y'all are close enough that you have each

1 other's cell phone numbers?

2 A Right, because I believe I started to get to know him  
3 better after I got him a job where I work.

4 Q As the electrician?

5 A Right.

6 Q And where is that, again?

7 A M&M Electric.

8 Q How long have you known Mr. Pelzer?

9 A You mean personally?

10 Q Yeah, personally; weeks, months, years?

11 A I'd say months.

12 Q Before this incident, it had been months?

13 A Right.

14 Q Because at this point this happened in March. You'd  
15 known him since then, right?

16 A Right.

17 Q And you said that he made a couple phone calls to you  
18 or you called him back, he made a call and you called him  
19 back; is that right?

20 A Uh-huh. (Affirmative response.)

21 Q He called you at about 11:10, the phone records  
22 reflect. And that was a two minute call or so. Does that  
23 sound about right?

24 A I guess so, yeah.

25 Q And during that time he asked you if you could help him

State v. Pelzer 12/2/09

394

1 with a ride?

2 A Right.

3 Q Then I think you told the solicitor you looked around  
4 trying to find a car for him because you didn't have a car,  
5 you called him back and he gave you a cryptic message that  
6 he needed a ride because he messed up, and he didn't want to  
7 talk about it?

8 A No, not in those words.

9 Q I'm paraphrasing. I want you to tell me?

10 A He said he needed a ride. He said he wanted to talk to  
11 me. That was in the first conversation. I asked him what  
12 he wanted to talk about. It was after 11:00 o'clock at  
13 night. He didn't want to talk over the phone.

14 Q Okay.

15 A We didn't never discuss where he needed a ride to.

16 Q He never talked to you about going to see some girls  
17 down in Charleston?

18 A No. I didn't know anything about that.

19 Q And the truth of the matter, to this day, you have no  
20 idea what he was talking about?

21 A No.

22 Q And you're just here to report that he called you and  
23 he said, I messed up.

24 A Right.

25 MR. LEIENDECKER: That's all I have for this

1 witness.

2 THE COURT: Redirect?

3 MR. PASCO: No, sir.

4 Thank you, Mr. Mack.

5 Can he be excused?

6 THE COURT: Yes, sir. You may be excused. Thank  
7 you for coming.

8 Next witness?

9 MR. SORENSON: Ken Whitler.

10 THE COURT: Come on down this way, please, sir.

11 If you will put your left hand on that Bible and raise  
12 your right, please.

13 (WHEREUPON, Ken Whitler was sworn  
14 to tell the truth.)

15 THE COURT: Have a seat. Speak loudly enough for  
16 everybody to hear you. State your full name, sir.

17 MR. WHITLER: My name is Kenneth H. Whitler. The  
18 last name is spelled W-h-i-t-l-e-r.

19 THE COURT: Thank you, sir.

20 All right, counselor.

21 MR. SORENSON: Thank you, Your Honor.

22 KENNETH WHITLER - DIRECT EXAMINATION

23 BY MR. SORENSON:

24 Q Agent Whitler, if you would tell the jury where it is  
25 that you are employed?



State v. Pelzer 12/2/09

396

1 A I'm employed by the South Carolina Law Enforcement  
2 Division, that's commonly known as SLED. I'm in the  
3 forensic services section, which is the laboratory, and I'm  
4 in the firearms, tool mark department.

5 Q Okay, and how long have you worked in that department,  
6 sir?

7 A Since 1997.

8 Q Okay, and may I ask you if you had an opportunity to  
9 testify before in the fields of firearms and ballistics  
10 examinations?

11 A I have testified in well over 200 times in various  
12 state, federal and territorial courts as an expert in  
13 firearms identification.

14 Q Okay.

15 MR. SORENSON: Your Honor at this time we'd offer  
16 Agent Whitler as an expert in the field of firearms  
17 identification?

18 THE COURT: Any voir dire?

19 MR. LEIENDECKER: No, Your Honor. No objection.

20 THE COURT: All right. I find he's qualified in  
21 the field of firearm identification.

22 Ladies and gentlemen, the same as I told you earlier,  
23 he would be allowed to give his opinion about those matters.

24 BY MR. SORENSON:

25 Q Agent Whitler, if I could turn your attention back to

1 March of this year. Did you have an occasion to be called  
2 in on a Saturday afternoon to look at some evidence in a  
3 case here in Calhoun County?

4 A Yes, sir.

5 Q And I'll show you several items. State's Exhibits 40,  
6 43, 44, 45, and 48. I'd ask you to take a look at those  
7 items.

8 A Yes, sir. I've seen these before.

9 Q And were those five of the items that you received that  
10 Saturday afternoon of March 5th of this year?

11 A I assume some of them are. Some of the evidence was  
12 submitted a little later.

13 Q Okay.

14 A Some I looked at that morning.

15 Q And let me show you State's Exhibit No. 46. Do you  
16 remember receiving that item, kind of a test fired cartridge  
17 from a firearm?

18 A Yes, I do.

19 Q Okay. Did you receive that item that day, that  
20 Saturday?

21 A I received them on the 7th, is that was a Saturday.  
22 Yes, sir.

23 Q Yes, sir. That would be Saturday, March 7th. Did you  
24 have an opportunity that afternoon to compare those initial  
25 cartridges that are with the little tin cans with that other

State v. Pelzer 12/2/09

398

1 -- State's Exhibit No. 46?

2 A Yes.

3 Q Okay, and explain to the jury what State's Exhibit No.  
4 46 is?

5 A State's Exhibit No. 46 is a fired 45 auto caliber  
6 cartridge case. It was received in an envelope, which  
7 indicates that the firearm manufacturer, Springfield,  
8 Incorporated, had test fired it at the factory. And took  
9 one of the test fired cartridge cases and put it in with the  
10 gun. This is what several manufacturers do now, they will  
11 test fire a firearm and put a fired cartridge case in the  
12 box with the gun on the theory that you have -- if the gun  
13 is ever lost or stolen or something like that you have the  
14 cartridge case you could compare it against the firearm  
15 later if you ever had to. That's what this indicates that  
16 it came in the envelope indicating the make and model of the  
17 pistol. The caliber and the cartridge case was in it.

18 Q Were you then able to take that cartridge case from  
19 Springfield Armory and compare that cartridge case with  
20 those other five cartridge casings that were recovered at  
21 the scene of our homicide?

22 A Yes.

23 Q Okay. What were the results when you compared that  
24 test fired cartridge to those other five casings?

25 A When I microscopically compared this test cartridge

1 case from Springfield Armory against the submitted cartridge  
2 cases I was able to determine that this cartridge case and  
3 these other cartridge cases were all fired by the same gun.

4 Q All right, then showing you State's Exhibit No. 39,  
5 another cartridge case that was submitted to you at a  
6 slightly later date?

7 A Yes, sir. I received this one on April 6th.

8 Q Okay, and did you then also compare that one to that  
9 test, fired cartridge?

10 A I compared it to the other cartridge cases and they  
11 were all fired by the same gun.

12 Q So those seven, all together, they were all fired by  
13 the same gun?

14 A Yes, sir.

15 Q And what type of guns could have fired those seven  
16 cartridge cases?

17 A Well, according to the information envelope it was a  
18 Springfield Armory XD 45 Model Pistol, a 45 auto caliber,  
19 and it was test fired, it looked like, on July 21, 2008.

20 Q All right. Additionally, Agent Whitler, did you  
21 receive several other items; projectiles and parts of  
22 projectiles and stuff of that nature in your examination?

23 A Yes.

24 Q That's State's 42, 41, 49, 47, and then three from the  
25 autopsy, 50, 51, and 52. I'll give you those. Did you have

State v. Pelzer 12/2/09

400

1 an opportunity to examine those items also, sir?

2 A Yes, I did.

3 Q I guess if you could just kind of pull them out one at  
4 a time and kind of tell the jury briefly what your results  
5 were in your examination of each of those items?

6 A Let's see -- Okay, I'll take them in the order that I  
7 did them in the report.

8 Q Okay.

9 A That might make it a little easier to follow along.

10 Q Yes, sir.

11 A State's Exhibit No. 49 is a lead fragment. It could  
12 come from a bullet core or inside of a jacketed bullet, but  
13 it had no marks of value, because when a bullet goes down  
14 the barrel of -- a jacketed bullet goes down the barrel it's  
15 the copper jacket that comes in contact with the barrel  
16 surface that lead core is inside protecting the barrel by  
17 the copper jacket, so it doesn't pick up any barrel  
18 markings. So if the jacket happens to come off the bullet  
19 when it strikes something then the core will not have any  
20 marks that you can use to identify it back to a gun, and  
21 that's what happened in this case. This is a piece of lead  
22 fragment and there are no marks of value on it.

23 Q And that is -- that's State's Exhibit No. 49, and  
24 that's indicated on the little tin cup that that came from  
25 Marker 3, I believe?

1 A It looks like three. It's got a piece of tape on it  
2 there.

3 Okay, State's Exhibit 42, is a fired bullet jacket  
4 fragment, and -- which is the outer covering of the bullet.  
5 State's Exhibit 50 is a bullet jacket fragment, also. Now,  
6 I was able to compare these to together and determine they  
7 were fired by the same barrel, firearm barrel. So that's  
8 State's Exhibit Nos. 42 and 50 were fired by the same  
9 barrel.

10 Q And that would be -- that's one of the items found at  
11 the scene at Marker 4, and then one of the items that was  
12 made from the autopsy?

13 A Yes.

14 Q State's Exhibit No. 47 is a lead bullet core fragment.  
15 Again, there were no marks of value on it. State's Exhibit  
16 41 is a fired bullet jacket fragment. State's Exhibit 52 is  
17 a lead fragment, and one bullet core fragment, and, again,  
18 these don't have any marks of value on those. And State's  
19 Exhibit 51 is a -- one fired bullet. Now, these bullet  
20 jackets and bullets, I also compared these to the other two  
21 items I previously said were fired by the same barrel.  
22 These have the same rifling characteristics, meaning they  
23 could have been fired by the same firearm barrel that fired  
24 those other two items, however, there wasn't enough  
25 agreement or enough marks to enable me to say they were

State v. Pelzer 12/2/09

402

1 fired by it. There was insufficient agreement for  
2 identification, but they could have been fired by it. They  
3 had the same general class characteristics, meaning the  
4 rifling characteristics were the same dimensions the same  
5 width and things of this nature, but it didn't have enough  
6 individual marks in it due to damage or it just didn't mark  
7 very well. So we had the two items that were fired by the  
8 same barrel and these other two could have been fired by the  
9 barrel that fired those two items.

10 Q Okay. Were you able to, especially as to these State's  
11 Exhibits 42 and 50 that you were able to match to each  
12 other, were you able to generate kind of a list of possible  
13 firearms that could have fired these two items?

14 A Yes, I did.

15 Q All right, and let me -- about 15 or 20 or so -- about  
16 20 different types of firearms or so that are in that list;  
17 is that correct?

18 A It looks like 17.

19 Q Is Springfield Armory the type of weapon that fired the  
20 test fired cartridge that you looked at earlier; is that one  
21 of the weapons that could have fired these two items?

22 A Yes, it is.

23 Q Okay, so in other words these could have come from any  
24 of these shell casings that you examined earlier?

25 A Yes, but we can't put a bullet with this cartridge

1 case, but the pistol that was described on the one cartridge  
2 case, the test cartridge case was on the list as being a  
3 possibility for the rifling characteristics.

4 Q Thank you, Agent Whitler. Please answer any questions  
5 that the defense might have.

6 THE COURT: Cross exam?

7 MR. LEIENDECKER: Thank Your Honor.

8 KENNETH WHITLER - CROSS-EXAMINATION

9 BY MR. LEIENDECKER:

10 Q Agent Whitler, very briefly. The purpose of your  
11 activity in identifying ballistic marks on bullets or  
12 projectiles and on the shell casings is to try to determine  
13 if they were fired from a particular weapon or from the same  
14 weapon; is that correct?

15 A That's correct.

16 Q In this case it wasn't a particular weapon, because you  
17 don't have a weapon to compare them to or test fire them,  
18 right?

19 A That's correct. All we had was the one test fired  
20 cartridge case.

21 Q And so the result of your conclusions is that you  
22 believe that the shell casings were all fired out of the  
23 same gun?

24 A That's correct.

25 Q And you believe two of the jacket fragments were fired



State v. Pelzer 12/2/09

404

1 down the same barrel?

2 A That's correct.

3 Q And those jacket fragments could, in fact, have been  
4 from the same bullet?

5 A Not necessarily.

6 Q But -- not necessarily or they could have?

7 A Well, they could come from two different bullets or  
8 parts of the same bullet.

9 Q Because they're fragments?

10 A Yes.

11 Q Okay. Well, what we don't know if who fired the gun;  
12 we just know that a gun was fired?

13 A Yes, sir.

14 Q And nothing you can do today provides us any evidence  
15 or insight as to who it was that fired the gun?

16 A No, sir. That would be like asking me to look at a car  
17 in the parking lot and say who drove it here today.

18 Q Absolutely.

19 A That would be more of a psychic thing, I guess.

20 Q Good. Thank you.

21 THE COURT: Redirect?

22 MR. SORENSON: No, sir.

23 THE COURT: Thank you, sir. You can step down and  
24 be excused. Thank you for coming down.

25 MR. SORENSON: State calls John Roberts.

1 THE CLERK: Please place your left hand on the  
2 Bible and raise your right hand.

3 (WHEREUPON, John Roberts was sworn  
4 to tell the truth.)

5 THE CLERK: Please state your full name for the  
6 record?

7 MR. ROBERTS: John Gray Dodd Roberts,  
8 R-o-b-e-r-t-s.

9 THE COURT: All right, counsel.

10 JOHN ROBERTS - DIRECT EXAMINATION

11 BY MR. SORENSON:

12 Q Agent Roberts, can you tell the jury where you're  
13 employed?

14 A I work for the South Carolina Law Enforcement Division,  
15 more commonly called SLED in the trace evidence department.

16 Q And if you would tell the jury what the trace evidence  
17 department is?

18 A Trace evidence is the analysis of evidence that you  
19 generally cannot see with your naked eye. In our department  
20 we do gunshot residue, we do bullet hole analysis, which is  
21 the distance from the muzzle of the weapon to the target.  
22 We do paint, fiber, glass, explosives, fire debris, bank dye  
23 packs, duct tape and a few other things that are just  
24 general miscellaneous trace evidence type analysis.

25 Q And specifically focusing on this case is gunshot

State v. Pelzer 12/2/09

406

1 residue analysis. Agent Roberts, how -- first of all, how  
2 long have you worked in the trace department?

3 A I've been with the trace evidence department and with  
4 SLED for about five years.

5 Q And part of your day to day duties is examining gunshot  
6 residue kits submitted by various law enforcement agencies  
7 around the state?

8 A Yes, sir, that's correct.

9 Q All right. Have you had an opportunity to testify  
10 before with regards to your findings in those matters?

11 A Yes, I have.

12 Q And how many times have you testified?

13 A Twenty-seven times.

14 MR. SORENSON: Your Honor, at this time we'd offer  
15 Agent Roberts as an expert in the field of trace analysis. I  
16 guess, specifically, gunshot residue analysis?

17 THE COURT: Any objection?

18 MR. LEIENDECKER: No.

19 THE COURT: I find he's qualified as an expert in  
20 that field, and be allowed to testify as an expert and give  
21 his opinion about those

22 MR. SORENSON: Thank you, Your Honor.

23 BY MR. SORENSON:

24 Q Agent Roberts, if you would tell the jury what gunshot  
25 residue is?

1 A Yes. Gunshot residue is the term that we give to the  
2 particles that are ejected from a firearm when it's fired.  
3 The majority of the particles come out the muzzle of the  
4 weapon. When it's fired you see the big flash and all the  
5 smoke. That's what's we're looking for are the metallic  
6 particles that are located in that smoke. It comes mainly  
7 from the primer of the bullet. The bullet is, you know,  
8 shaped like a bullet, and on the back end of the bullet  
9 there is a silver center piece. That center piece is the  
10 primer. When the gun is fired, when the firing pin or the  
11 hammer strikes that primer and the chemicals in that primer  
12 blow up and they set off the main powder charge which forces  
13 the bullet down the barrel and out the muzzle. The  
14 chemicals that are in that primer are what we look for, and  
15 there's three basic ones that we look for, there's lead and  
16 barium and antimony. We use two different types of sampling  
17 methods to try and find those materials. The first is a set  
18 of particle lifts. When we give out gunshot kits to  
19 agencies all around the state so that they can do these  
20 tests and send them to us. The particle lifts are on  
21 aluminum disks. They are circular with little posts on the  
22 back end of them and they've got carbon tape, and this  
23 carbon tape is double sided and it's sticky. What happens  
24 is you take the one that's labeled right palm and you open  
25 it up and you the stub in one hand and you apply it like a

State v. Pelzer 12/2/09

408

1 sticky tab to the right palm of whoever you're testing for  
2 gunshot residue, you use the fingers and the palm. You put  
3 it back in the case. There's another one labeled right  
4 back, and you do the same thing. You stick it until it runs  
5 out of sticky. There's two more in there and they're  
6 labeled left palm and left back. Left palm and left back.  
7 When they're done doing the particle lifts they do the  
8 swabs. Swabs are just swabs like you'd find at any Walmart  
9 of Target or whatever, and you put a little bit of nitric  
10 acid on it, and there are tubes that are labeled right palm  
11 and right back, left palm, left back to correspond to the  
12 particle lifts. And you just -- you mop up, basically, any  
13 material that's left over from the particle lifts. We run  
14 the swabs first and we look for concentrations of metals; we  
15 look for lead, barium and antimony that are in the primer  
16 when the gun is fired, and based on the threshold and the  
17 levels of those metals we make a conclusion.

18 Q Okay. Let me ask you how -- how can you get those on  
19 those metals that make up gunshot residue, how can you get  
20 those on your hands?

21 A There's three main ways. First way is shooting a  
22 weapon. You shoot a pistol and you're going to get this  
23 material on your hands. The amounts may vary. You shoot a  
24 22 you're not going to get as much on your hands as if you  
25 shoot a 45 or a 50. It just depends on how big the gun is.

1 If you're near the weapon when it goes off -- if I'm  
2 shooting a weapon and somebody is standing say, two feet  
3 away from me and they got their hands up here messing with  
4 something around their face they can get that material on  
5 their hands, as well. If they're a victim and they're  
6 holding their hands up in front of their face, in front of  
7 the gun, they're going to get that material on the palms of  
8 their hands. The other way is to handle a weapon that's  
9 been recently fired. You don't have to shoot it. You can  
10 just pick up a gun that's been fired. Everyday when I pick  
11 up my firearm I'm getting gunshot residue on my hands  
12 because I fired it. And it's going to stay on there.  
13 There's very few ways of cleaning a firearm that will remove  
14 all of the material off of it. Submersing it in water will  
15 remove it, but normal cleaning methods, there's some on  
16 there and I will get it on my hands that way. So firing a  
17 weapon, being near when it goes off, or handling a weapon  
18 that's been fired.

19 Q Okay, and you testified about when you fire a weapon  
20 the caliber of the weapon may have an effect on whether you  
21 get it or how much you may get on you?

22 A It will have an effect on the amount you may get on  
23 you, yes, sir.

24 Q Would the caliber of the weapon also have an effect on  
25 if you were in proximity of a gun that was fired,

1 potentially?

2 A Yes, sir. The bigger the weapon, the further away you  
3 can be and still get materials on your hands.

4 Q And a 45 caliber, I think, is one of the examples that  
5 you would use as a fairly large caliber weapon?

6 A Yes. If anybody's seen a 45, it's a big fat cartridge.  
7 There's a lot of powder and there's a lot of primer behind  
8 that powder. The more primer you have, the more material  
9 that you're going to spread out and the better chance that  
10 you'll have of getting it on your hands.

11 Q Let me ask you, is there any time frame with regards to  
12 how long gunshot residue will stay on your hands?

13 A Yes, sir. At SLED our protocol is six hours for a  
14 living person. We've found that doing normal clerical  
15 duties, you know, typing, shuffling through papers, your  
16 body is going to absorb this material after six hours and we  
17 won't be able to detect the threshold levels that we need to  
18 make a conclusion.

19 Q So if a homicide had occurred on a Thursday evening and  
20 the suspect wasn't apprehended until Saturday night, would  
21 there be any reason for law enforcement to do a gunshot  
22 residue test on that suspect?

23 A No, sir. We wouldn't even analyze that if it had been  
24 taken.

25 Q Now, you made reference to a living person, is that

1 correct?

2 A Yes, sir.

3 Q So if you had a homicide victim that was killed on a  
4 Thursday night and his body was found Saturday morning is it  
5 still probative then to do a gunshot residue kit on that  
6 victim then on that Saturday morning?

7 A It is, because your body stops processing materials  
8 when your heart stops beating. The materials will stay on  
9 someone's hands or on someone's body until it is physically  
10 removed, if they're dead, or wash off.

11 Q We'll turn now specifically to this case, Maj. Roberts.  
12 Did you have an opportunity out at State Law Enforcement  
13 Division to receive a gunshot residue kit that was collected  
14 from this victim in this case, Jason Rivenburg?

15 A Yes, sir, I did.

16 Q Okay, and did that have all the proper samples in it?

17 A Excuse me -- Yes, sir, it did.

18 Q And did you have the opportunity to analysis the -- I  
19 guess there's a swab from both palms and both backs, so  
20 basically four different swabs. Did you analyze all four  
21 swabs?

22 A That is correct. I analyzed all four swabs. Right  
23 palm, right back, left palm, left back.

24 Q And what was the results of the gunshot residue  
25 analysis on those four swabs on Mr. Rivenburg?



1 A On the right palm I found that the quantities of metals  
2 that were there did not indicate the presence of gunshot  
3 residue. On the right back, I found that the quantities of  
4 metals found were consistent with gunshot residue. On the  
5 left palm I found that the quantities of metals that we  
6 found did not indicate the presence of gunshot residue, and  
7 on the left back I found the quantities of metals may be  
8 associated with gunshot residue.

9 Q Okay, so basically on the right palms did not find  
10 gunshot residue on the two palms?

11 A Yes, sir, that's correct, on the two palms.

12 Q On the backs of the two hands you either found either  
13 gunshot residue or, I think you said, metals that may be  
14 associated with gunshot residue?

15 A I found on the right back of the hand I found metals  
16 that were consistent with gunshot residue and on the left  
17 palm -- excuse me -- the left back I found metals that may  
18 be associated with gunshot residue.

19 Q What's the difference between the two of them?

20 A The difference is the quantities. Between a certain  
21 concentration of the metals we call it associated with.  
22 It's associated with gunshot residue. Above that threshold  
23 we call it consistent with. It's more consistent with  
24 something you would find out of a primer.

25 Q So your findings are consistent then of Mr.

1 Rivenburgbeing in close proximity with the back of his hands  
2 kind of in close proximity to a weapon that was fired?

3 A Yes, sir, that's a possibility.

4 Q And if he was found in the cab of a truck, do you have  
5 any opinion as to how close a 45 caliber weapon would have  
6 to have been to him to generate the results that you found  
7 on his hands?

8 A It would have to be fairly close, almost within the  
9 cab.

10 Q Almost within the cab?

11 A Yes, sir.

12 Q So within a matter of --

13 A Feet.

14 Q -- a few feet?

15 A Yes, sir.

16 Q And that obviously would just take one shot to create  
17 -- well, if six shots were fired all it would take would be  
18 one of those shots to be within that range to leave that  
19 gunshot residue present; is that correct?

20 A One shot would do it, but the more shots that are fired  
21 near the items that are tested, the more that would be on  
22 those items.

23 Q Thank you.

24 THE COURT: Cross exam?

25 MR. LEIENDECKER:

State v. Pelzer 12/2/09

414

## 1 JOHN ROBERTS - CROSS-EXAMINATION

2 BY MR. LEIENDECKER:

3 Q Agent Roberts, I'm Mark Leiendecker, one of the  
4 defendant's attorneys, and if I understand your testimony to  
5 us here today it's that gunshot residue is a creation of  
6 three, which are in nature, natural occurring elements, but  
7 they bond together in a unique way when you fire a gun to  
8 make them easier to identify; lead, barium, and --

9 A Antimony.

10 Q -- throw me the last one. Antimony?

11 A Yes, sir.

12 Q And that's what makes gunshot residue unique?

13 A Yes, sir. The combination of the three elements in a  
14 spherical particle makes those unique. Yes, sir.

15 Q And that only happens when you fire a gun?

16 A Yes, sir.

17 Q Now, you also told us that gunshot residue can tell you  
18 some things, according to you, about distance or proximity  
19 based on the caliber of the weapon used, correct?

20 A The amounts can tell us; yes, sir.

21 Q Now, that assumes, doesn't it, that the gunshot residue  
22 was transferred via the muzzle out the front of the gun if  
23 we're talking about proximity. If I want to know how close  
24 I was to you at the time of the firing of a gun and you have  
25 gunshot residue on you, you're going to be getting that

1 gunshot residue out the muzzle of the gun; is that correct?

2 A If you're in front of me; yes, sir.

3 Q Okay. Now, let's take that a bit further. You could  
4 also get that if I was firing a gun at the back of the  
5 courtroom and you were standing beside me; correct?

6 A (No response.)

7 Q You suggested that if your hands were up and you were  
8 beside me --

9 A If I'm beside you when you're shooting?

10 Q -- yes.

11 A Yes, I can get the gunshot residue on me.

12 Q And you can also get the gunshot residue if I go  
13 outside the courthouse, fire the gun, then bring it in and  
14 then drop it in your hand?

15 A That's correct. I could get it from the transfer of  
16 the fired weapon on my hands.

17 Q And it just naturally attracts to or sticks to the  
18 skin? I mean, I don't understand that part of it, but --

19 A It's -- no, the reason we test the hands is because  
20 they are the things that are nearest to weapons when they go  
21 off. It's very easy to remove in general. It's like  
22 removing flour after you cook biscuits. A little bit of  
23 running water or some blood and you're removing the  
24 material.

25 Q You could have tested other -- you could test other

State v. Pelzer 12/2/09

416

1 places on the victim. You could test clothing, you could  
2 test, you know, his temple area, you can test his foot if it  
3 seemed pertinent and it was an area that the gunshot residue  
4 would stick. Is that right?

5 A We just do the hands.

6 Q I'm not asking what you do. I'm asking if you could?

7 A I could test someone's forehead.

8 Q And it could show up there?

9 A However, if they were shot in the forehead it wouldn't  
10 be pertinent.

11 Q I understand, because of the blood --

12 A But we could test someone's skin that was near a weapon  
13 when it went off.

14 Q And so your estimate to me that it had to be close as  
15 near or in the cab for him to get the gunshot residue,  
16 again, going back to that -- assumes a spray of gunshot  
17 residue at the time of the firing of the weapon, correct --  
18 either out the muzzle or sideways out of the gun?

19 A Yes.

20 Q It doesn't assume a thought of it being transferred by  
21 the gun being dropped on the hand of the individual?

22 A No, sir, what I based my opinion on was the quantities  
23 of the metals that I found.

24 Q Okay. And on one hand you found enough quantity to say  
25 a greater chance of it, and on the other one it was present

1 but not as much.

2 A Yes, sir, it was in a lesser concentration.

3 Q And to a degree of reasonable certainty, in your  
4 profession, as you said to the solicitor, do you have an  
5 opinion as to how it got transferred to the hands?

6 A I would say being near the weapon when it went off.

7 Q Is it possible being in contact with the weapon after  
8 it went off?

9 A That's possible, yes, sir.

10 Q So there are likely and possible scenarios?

11 A They are both possible scenarios. Yes, sir.

12 Q Thank you.

13 THE COURT: Redirect?

14 JOHN ROBERTS - REDIRECT EXAMINATION

15 BY MR. SORENSON:

16 Q The second scenario would entail somebody, I mean,  
17 taking and rubbing the firearm on the back of both of his  
18 hands, I guess, would be how it would transfer?

19 A The hands coming in contact with the firearm. Yes,  
20 sir. Rubbing would be one of the ways.

21 Q Thank you, Mr. Roberts.

22 THE COURT: Re-cross?

23 JOHN ROBERTS - RE-CROSS - EXAMINATION

24 BY MR. LEIENDECKER:

25 Q As I understand, when you described it yourself, it

State v. Pelzer 12/2/09

418

1 doesn't have to be rubbed on. You talked about your own  
2 weapon just picking it up and putting it in the holster  
3 after it's been fired would be enough?

4 A It would be on my palms.

5 Q Yes, sir. Thank you.

6 THE COURT: Thank you, sir. You may step down, you  
7 may be excused. Thank you for coming.

8 MR. ROBERTS: Yes, sir.

9 THE COURT: Next witness?

10 MR. SORENSON: Carl Shultz.

11 THE COURT: Come on down this way, please, sir.  
12 Right around here. See that Bible. Place your left hand on  
13 that Bible, raise your right hand.

14 (WHEREUPON, Carl Shultz was sworn  
15 to tell the truth.)

16 THE COURT: Have a seat. State your full name,  
17 spell your last name, please.

18 MR. SHULTZ: Carl Wayne Shultz. S-h-u-l-t-z.

19 CARL SHULTZ - DIRECT EXAMINATION

20 BY MR. SORENSON:

21 Q Sgt. Shultz, if you would, tell the jury where you're  
22 employed?

23 A With the Orangeburg Department of Public Safety.

24 Q And how long have you worked with Public Safety over in  
25 Orangeburg?

1 A I've been back approximately three years. I've been in  
2 law enforcement for 16, and in forensic services for 11.

3 Q Okay. And by forensic services; what are you current  
4 duties over in Orangeburg Public Safety?

5 A I'm a crime scene investigator. I'm in charge of  
6 forensic services. I process scenes, evidence, take  
7 pictures. Basically, it's stuff you see on TV.

8 Q And you've been doing that for the last 11 years?

9 A Yes.

10 Q Last three years in Orangeburg?

11 A Orangeburg.

12 Q And where did you work before that?

13 A Beaufort Police Department.

14 Q Okay, and you live here in Calhoun County?

15 A I do.

16 Q And do you often times assist Calhoun County with stuff  
17 when they might have a crime scene that might need some  
18 assisting of?

19 A I do.

20 Q Okay. And I want to turn your attention, if I could,  
21 back to March 9th of this year. Did you have an opportunity  
22 at that time to assist the Calhoun County Sheriff's Office  
23 in responding out to a scene on Merrybell Lane here in St.  
24 Matthews?

25 A Yes, I did.



State v. Pelzer 12/2/09

420

1 Q Okay, and describe that residence that you went to that  
2 day?

3 A It's a single mobile home off of a dirt road off of --  
4 close proximity to Highway 6.

5 Q Let me show you State's Exhibit No. 77, is that the  
6 trailer that you went to that afternoon?

7 A It is.

8 Q Okay, and specifically, with regards to the back of the  
9 trailer, is there any area back there that you concentrated  
10 your attention behind the trailer?

11 A The driveway circled around the back of the house, to  
12 the backyard that was mostly dirt. There was a large hole  
13 dug, a fire pit, basically.

14 Q I'll show you State's Exhibit No. 78, which I believe  
15 is in evidence already. Is that basically showing where the  
16 fire pit has been dug out?

17 A That's the --

18 Q Is that the fire pit behind the trailer?

19 A It is. That's the fire pit behind the house. That's  
20 the dirt that came out of the hole.

21 Q These are actually photographs that you took that day?

22 A They are.

23 Q Let me show -- I'll ask you to take a look at State's  
24 Exhibits 79 through 82; do you recognize those documents?

25 A Yes. I recognize these as the photographs I took of

1 the charred debris in the fire pit.

2 MR. SORENSON: Your Honor, at this time, we'd  
3 offer 79 through 82 into evidence?

4 MR. LEIENDECKER: No objection.

5 THE COURT: Nos. 79 through 82 admitted without  
6 objection.

7 (State's Exhibit No. 79, photo, was  
8 marked and admitted.)

9 (State's Exhibit No. 80, photo, was  
10 marked and admitted.)

11 (State's Exhibit No. 81, photo, was  
12 marked and admitted.)

13 (State's Exhibit No. 82, photo, was  
14 marked and admitted.)

15 MR. SORENSON: May I have Sgt. Shultz step down,  
16 briefly?

17 THE COURT: Yes, sir.

18 BY MR. SORENSON:

19 Q Come over here and make sure you keep your voice up  
20 nice and loud, all right. When you got back behind that  
21 trailer describe for the jury what you found back there?

22 A Like I said, behind it, this is a large backyard, but  
23 in the backyard there is a hole dug here approximately four  
24 foot by five foot. That's the dirt from the hole. Inside  
25 the hole I found fire debris.

State v. Pelzer 12/2/09

422

1 Q I'll show you State's Exhibit No. 79. Does that show  
2 the debris you found inside that pit that afternoon?

3 A It does.

4 Q And, again, this is on March 9th; is that correct?

5 A It is.

6 Q Okay. Did you have an opportunity to then kind of  
7 further examine the contents of that debris?

8 A I did.

9 Q Let me ask you then, you said you'd been a forensic  
10 investigator for 11 years, now. Have you had an opportunity  
11 during that 11 years to respond to fire scenes before?

12 A Yes. I started my career with public safety and being  
13 public safety we do law enforcement services and fire  
14 suppression services, and just the normal training we have  
15 in fire suppression services. In my early career, I got  
16 into forensics. I have -- I have been to several arson  
17 classes and I -- we go into any fire scene whether it's  
18 criminal or not, and determine how it started.

19 Q Okay, and so therefore have you had some experience at  
20 looking at fire debris before?

21 A Yes, I have.

22 Q Did you have an opportunity that afternoon when you  
23 came upon the debris in that fire pit to kind of sift  
24 through that and see what might have been in it?

25 A I did.

1 Q And what items of evidentiary value did you find within  
2 that fire pit?

3 A Within the main clump of charred debris at the center  
4 of the pit there was some --

5 Q Here's a photograph, if you want.

6 A There's a closer one here. This is after I spread it  
7 out, but in it was some tin cans, looked like typical fire  
8 debris, but in the very center of the large clump  
9 approximately, I don't know, eight inches, there was fabric  
10 or clothing that I found there.

11 Q Okay, what did that appear to be consistent with, I  
12 mean, clothing wise?

13 A Well, clothing wise the small section here had some  
14 white debris on the end of it. It appeared to be consistent  
15 with like a t-shirt type of material. And, again, I didn't  
16 analyze it and I don't know that, but just from my  
17 experience it appeared to be more like an undershirt type.

18 Q Okay, and let me ask you this, obviously all this  
19 material in there was pretty heavily charred?

20 A I was.

21 Q And once you started moving it around, and looking at  
22 it closer, what sort of happened to that material?

23 A It began to fall apart, like ashes in a fireplace if  
24 you move it a lot. It had all started breaking apart.

25 Q And let me show you State's Exhibit No. 82, is that an

State v. Pelzer 12/2/09

424

1 even more close up of it?

2 A That is. Even more closely -- the only section that  
3 was not burned was this very small area in here, but that's  
4 probably two inches by two inches.

5 Q Okay, and in your experience, that appeared to be some  
6 sort of cloth material?

7 A Cloth material, fabric.

8 Q Consistent with a t-shirt?

9 A Yes.

10 Q Thank you, Sergeant.

11 MR. SORENSON: That's be all I have, Your Honor.

12 THE COURT: Cross exam?

13 CARL SHULTZ - CROSS-EXAMINATION

14 BY MR. LEIENDECKER:

15 Q Evening, Sergeant, Mark Leiendecker, one of the  
16 attorneys for the defendant.

17 A Good evening.

18 Q You were called out on the 9th by whom?

19 A Initially, I was called by one of the command staff  
20 officers for Calhoun County. I responded to the Sheriff's  
21 Office and met with Pat Regalis.

22 Q And they asked you to come do what?

23 A To assist in collecting some evidence they found at the  
24 scene, they thought they may have some blood on the door.

25 Q And you came to collect blood on a door at what

1 address?

2 A At the trailer on Merrybell Lane.

3 Q And tell me about that. Where -- what was that  
4 evidence.

5 A That, I did do a field test, a presumptive field test  
6 and it came back negative. So that evidence was not  
7 collected.

8 Q It was not blood?

9 A It was not blood.

10 Q Okay. What else did you do while you were there?

11 A I took a few photographs of the scene and collected the  
12 charred debris.

13 Q Did you find any evidence there of blood or bloody  
14 residue?

15 A There was blood found on clothing that I believe that  
16 Pat Regalis had found, and, again, since it was not our  
17 agency, he handled that stuff, but, again, there was some  
18 blood evidence found.

19 Q You didn't find any blood evidence?

20 A No, no.

21 Q And you said that there was clothing that was removed  
22 that had blood evidence on it?

23 A Yes.

24 Q Did you see the final scientific investigation results  
25 on that?

State v. Pelzer 12/2/09

426

1 A No, I did not, because it was an outside agency.

2 Q So --

3 A That particular item went to that agency. I did not.

4 Q The reason I'm asking is; it looked like blood?

5 A Yes.

6 Q So you don't know what the final results of that was?

7 A I do not.

8 Q Just like it looked like blood on the door, but it  
9 wasn't?

10 A It was not.

11 Q What you did find was a burn pit in the back that had  
12 some debris, as you described that is consistent with a burn  
13 pit?

14 A Yes.

15 Q Can, bottles, those kinds of things?

16 A Typical household trash.

17 Q Everybody throws in a burn pit, they never burn up, but  
18 -- and it had something in the middle that looked like  
19 t-shirt fabric?

20 A Undershirt.

21 Q Undershirt, right. And what did you do with that  
22 evidence?

23 A Placed it into brown paper bags and turned it over to  
24 Pat Regalis.

25 Q And you didn't get those results back?

1 A Again, I did not. It was an outside agency, so the  
2 results would go to Calhoun County Sheriff's Office.

3 Q All right.

4 MR. LEIENDECKER: Nothing further. Thank you.

5 THE COURT: Redirect?

6 MR. SORENSON: No, sir. May he be excused?

7 THE COURT: Yes, sir, you may be excused. Thank  
8 you for coming.

9 Call your next witness, please.

10 MR. PASCO: Det. Stanley Graham.

11 THE COURT: Come on down, please.

12 THE CLERK: Place your left hand on the Bible and  
13 raise your right.

14 (WHEREUPON, Stanley Graham was  
15 sworn to tell the truth.)

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

18 MR. GRAHAM: Stanley Adam Graham.

19 THE COURT: All right, Mr. Pasco.

20 STANLEY GRAHAM - DIRECT EXAMINATION

21 BY MR. PASCO:

22 Q Good evening, detective.

23 A Good evening.

24 Q Where do you work, Det. Graham?

25 A Calhoun County Sheriff's Office.



State v. Pelzer 12/2/09

428

1 Q And how long have you been with the Calhoun County  
2 Sheriff's Office?

3 A Since 2005.

4 Q How long have you been in law enforcement altogether?

5 A Since 2001.

6 Q And what do you do for the Sheriff's Office?

7 A I am the lead investigator for the Calhoun County  
8 Sheriff's Office.

9 Q And what all does being a lead investigator entail at  
10 the Sheriff's Office?

11 A Processing scenes, taking statements, sometimes looking  
12 at evidence.

13 Q Okay, and were these your duties back in March of this  
14 year?

15 A Yes, sir.

16 Q And do you have your report that you need to refresh  
17 your memory?

18 A Yes, sir, I do.

19 Q Okay. You can use that if you need to refresh your  
20 memory today.

21 A Thank you.

22 Q All right. Tell the jury what you were called upon to  
23 do as an investigator on the morning of Saturday, March 7th?

24 A On March 7th, I was contacted by Det. Godwin. He was  
25 actually the investigator on call that weekend, and he

1 informed me we had a truck driver that had been murdered.

2 Q Okay, and where was that?

3 A This was

4 Q Okay. Right here in Calhoun County?

5 A Yes, sir.

6 Q And what did you end up doing?

7 A I actually responded to the scene and met with Det.  
8 Godwin, some other members of the command staff and started  
9 examining the scene.

10 Q Sheriff Summers was there?

11 A Yes, sir, he was.

12 Q And some other deputies of the Sheriff's Office?

13 A Yes, other members of the command staff.

14 Q And did you do at the scene that night or that morning?

15 A That morning after we got there and they informed me  
16 what we had we talked about shell casings that were there.  
17 We walked and looked at those. We walked around the  
18 perimeter of the scene. Look at just the area in general to  
19 see if we could get together and figure out a plan for this  
20 investigation.

21 Q And at some point in the morning while you were there  
22 did you determine what type of shell casings were at the  
23 scene, such as State's Exhibit No. 39; did y'all determine  
24 what type of shell casings those were?

25 A Yes, sir. There were several casings that were visible

State v. Pelzer 12/2/09

430

1 when I arrived. Det. Godwin and the Sheriff and a few  
2 others showed me what they had.

3 Q And what type of weapon could you already tell that  
4 those shell casings came from?

5 A A 45 caliber.

6 Q A 45. Was that relevant to you that morning?

7 A Yes, sir, it was because the day prior, that Friday,  
8 one of my other units was also checking reports that come  
9 into the Sheriff's Office, that day we had a reported stolen  
10 handgun come in from that area and it just happened to be a  
11 45 as well.

12 Q As that was just the day before, as you testified?

13 A Yes, sir.

14 Q Where was that gun allegedly taken from?

15 A

16 Q And how far is Lane from Brakesfield's  
17 where the victim was found that Saturday morning?

18 A A mile, mile and a-half, a relatively short distance.

19 Q And what did you do after determining a 45 was used and  
20 recalling that a 45 was allegedly taken from Merrybell?

21 A About the same time that I arrived on scene, another  
22 deputy that actually took the initial report for the stolen  
23 gun arrived, as well. His name is Deputy Troutman.

24 Q Uh-huh. (Affirmative response.)

25 A As we were discussing this 45 that was stolen, he also

1 remembered there was a shell casing that was still inside  
2 the box at the residence still. He and I went to

3 and Mr. Haygood, Jr. He voluntarily gave us the  
4 casing in the box, which was -- the casing was actually in  
5 the box. We brought it back to the scene and turned it over  
6 to SLED for analysis.

7 Q And Mr. Haygood, Jr., did he cooperate fully with you  
8 that Saturday morning?

9 A Yes, sir, he did.

10 Q Did you tell him that you had discovered a dead body  
11 less than a mile from his -- from ?

12 A Yes, I subsequently -- I believe we did.

13 Q That was subsequently, but not that morning?

14 A No, sir, not at that time.

15 Q All you wanted was the shell casing?

16 A Correct.

17 Q And did you give that shell casing to Ms. Strickland,  
18 who was with SLED at the time?

19 A Yes, sir, we did.

20 Q And what was the purpose of giving her that 45 shell;  
21 as an investigator and lead detective, what did you want to  
22 determine about that 45?

23 A To determine that that shell casing that matched the  
24 shell casings that were on the ground at the scene.

25 Q That they were fired by the same gun as the shell

State v. Pelzer 12/2/09

432

1 casings at the scene?

2 A Yes, sir.

3 Q And did y'all get a determination that day as to  
4 whether those shell casings matched?

5 A Yes, sir, about 2:30 that afternoon, Det. Godwin and I  
6 were at the Sheriff's Office and we received a phone call  
7 back from SLED saying that they did match.

8 Q So, at 2:30 you know that the same gun that was -- at  
9 was the gun that was used to kill Jason  
10 Rivenburg?

11 A Correct.

12 Q So what did you and the Sheriff's Office do next during  
13 that afternoon of Saturday?

14 A We actually prepared a search warrant for  
15 to go back out there to see if there was any additional  
16 evidence that would be found at that location.

17 Q And you prepared the search warrant. Did you go to  
18 that night?

19 A Yes, sir, I did.

20 Q And were the residents at cooperative?

21 A Yes, sir.

22 Q Have any problems with them?

23 A No, sir.

24 Q They let you search it?

25 A Correct.

1 Q All right.

2 MR. PASCO: Beg the Court's indulgence. I can't  
3 ever find anything up here.

4 BY MR. PASCO:

5 Q Did y'all ever take photographs of the search?

6 A Yes, sir, we did.

7 MR. PASCO: I found it.

8 BY MR. PASCO:

9 Q I want to show you State's Exhibit No. 62, 63, 64, 60  
10 and 61. Take a look at those, Det. Graham, and tell me if  
11 you recognize those photographs?

12 A Yes, sir, I do.

13 Q And do those photographs depict the home at  
14 and some of the areas you searched inside the  
15 house?

16 A Yes, sir, they do.

17 Q And they accurately depict what y'all saw that night as  
18 you were executing the search warrant?

19 A Yes, sir.

20 MR. PASCO: Your Honor, I'd ask that State's  
21 Exhibits 60 through 64 be admitted into evidence.

22 MR. BANKS: No objection, Your Honor.

23 THE COURT: Admitted without objection.

24 (State's Exhibit No. 60, photo, was  
25 marked and entered.)

State v. Pelzer 12/2/09

434

1 (State's Exhibit No. 61, photo, was  
2 marked and entered.)

3 (State's Exhibit No. 62, photo, was  
4 marked and entered.)

5 (State's Exhibit No. 63, photo, was  
6 marked and entered.)

7 (State's Exhibit No. 64, photo, was  
8 marked and entered.)

9 BY MR. PASCO:

10 Q And you recovered other ammunition --

11 A Yes, sir, we did.

12 Q -- at the ? And was there also an actual  
13 bullet on the sofa in the livingroom at ?

14 A Yes, sir, there was.

15 Q And y'all took a photograph of that and recovered it?

16 A Yes, sir, we did.

17 Q Did you make contact with Jimmy Haygood, Jr?

18 A Yes, sir, we did?

19 Q That night? Okay. And what was the point in making  
20 contact or the purpose you wanted to make contact with him?

21 A To get further explanation on the report filed the  
22 previous day, and find out about any other things that he  
23 could help us with in this investigation.

24 Q And where was he when you first made contact with him  
25 that afternoon or evening?

1 A Well, actually we made contact with him by cell phone.  
2 His dad gave us his number, and we called him. He was  
3 actually in route back to the house at that time.

4 Q And did he voluntarily come and see you?

5 A Yes, sir.

6 Q Was he under arrest?

7 A No, sir.

8 Q What did you end up doing with Jimmy Haygood, Jr?

9 A We asked him to come with us back to the Sheriff's  
10 Office so we could sit down and conduct an interview. He  
11 voluntarily did that.

12 Q And he volunteered?

13 A Yes, sir.

14 Q Was he under arrest at that time?

15 A No, sir.

16 Q Was he in handcuffs?

17 A No, sir.

18 Q Was he free to leave at any time?

19 A Yes, sir.

20 Q And was he made aware of that?

21 A Yes, sir, he was.

22 Q And what did you do with Jimmy Haygood when you got him  
23 to the Sheriff's Office?

24 A We Mirandized him or I Mirandized him. Asked him to  
25 write a voluntary statement about this handgun that was



State v. Pelzer 12/2/09

436

1 reported previous day, and as we were doing that the other  
2 members of the command staff at the Sheriff's Office were  
3 out in the squad room.

4 Q And State's Exhibit No. 85, that's a copy of the  
5 Miranda you used with Jimmy Haygood?

6 A Yes, sir, it is.

7 Q And at that time, he was not under arrest?

8 A No, sir, he was not.

9 Q Free to leave?

10 A Yes, sir.

11 Q And had he told you he did not want to give you a  
12 statement what would you have done?

13 A Let him leave.

14 Q And did he give you a statement?

15 A Yes, sir, he did.

16 Q You can't tell the jury what he said, because it's  
17 hearsay, but as a result of that statement was he then  
18 placed under arrest at that time?

19 A Yes, he was.

20 Q Did he cooperate fully with you at 9:30 that night?

21 A Yes, sir, he did.

22 Q After you took a statement from Jimmy Haygood, sometime  
23 after 9:30 that night, who were you looking for?

24 A Mr. Reed and Mr. Pelzer, Jr.

25 Q Okay. Did you have any contact with the defendant,

1 Willie Pelzer, Jr., the defendant, that Saturday night?

2 A Later on that night, yes, sir.

3 Q Either later that night or early Sunday morning?

4 A Yes, Sunday morning.

5 Q Was he arrested for murder that Saturday night?

6 A Yes, he was.

7 Q By Det. Godwin?

8 A Yes, sir, he was.

9 Q And brought back to the Sheriff's Office?

10 A Yes, sir, he was.

11 Q Did you meet with Mr. Pelzer at the Sheriff's Office?

12 A Yes, sir, I did.

13 Q Were you aware that when you met with him that Det.  
14 Godwin had read him his rights?

15 A No, sir.

16 Q But whether he did or not, did you go ahead and read  
17 Mr. Pelzer his rights?

18 A Yes, sir, we did.

19 THE COURT: Y'all approach the bench.

20 (Off the record bench conference with counsel and the  
21 Court.)

22 THE COURT: Ladies and gentlemen, how about step  
23 out to the jury room a minute. We need to take up a matter  
24 of law.

25 (Jury out at 7:23 p.m.)

State v. Pelzer 12/2/09

438

1 THE COURT: And don't talk about the case. Tell  
2 them all, please.

3 THE BAILIFF: Yes, sir.

4 THE COURT: Am I to understand that the defendant  
5 made a statement?

6 MR. PASCO: Yes, sir, he gave a statement, a  
7 verbal statement that the defense has.

8 THE COURT: Well, when were we going to do a  
9 Jackson Denno? I asked y'all about this Monday and you said  
10 there were no pre-trial matters. I asked you Tuesday  
11 morning and you said there were no pre-trial matters.

12 MR. BANKS: Your Honor, it was an oversight on my  
13 understanding the statement was non-substantive. I had that  
14 in front of me. It starts out that he doesn't know  
15 anything, and then he just tails into --

16 MR. LEIENDECKER: He denies any involvement.

17 MR. BANKS: Right. He admits he goes to  
18 Charleston, I believe, and other things about the girl.

19 THE COURT: Well, it certainly requires a Jackson  
20 Denno hearing before you can get it in.

21 MR. PASCO: Well, if they want one. If they ask  
22 for a Denno hearing then I would say, yes, sir, let's do it.  
23 I assume they want one.

24 THE COURT: How long is this going to take? How  
25 many witnesses will have to testify in Jackson Denno?

1 MR. PASCO: Well, Det. Godwin took a statement  
2 from him, too.

3 MR. BANKS: He mentions something about officers  
4 out in the squad room or something. Did they overhear that?

5 THE COURT: I can't hear you, Mr. Banks?

6 MR. BANKS: Your Honor, he mentioned something  
7 about the door -- the officers out in the squad room --

8 THE COURT: How many witnesses does the state  
9 indent to call on the Jackson Denno.

10 MR. PASCO: Two.

11 THE COURT: All right. Call them.

12 JACKSON V. DENNO HEARING:

13 MR. PASCO: All right. We can start with --

14 THE COURT: Start with him.

15 MR. PASCO: I'll tell you what, we'll start with  
16 Det. Godwin, because he read him his rights first.

17 Stanley, stay right there.

18 (WHEREUPON, Riley Godwin was sworn  
19 to tell the truth.)

20 THE CLERK: State your full name for the record?

21 MR. GODWIN: Riley Godwin, G-o-d-w-i-n.

22 RILEY GODWIN - DIRECT EXAMINATION

23 BY MR. SORENSON:

24 Q Det. Godwin, on the evening of Saturday, March 7, 2009,  
25 did you have an occasion to respond out to a Wash Lane

State v. Pelzer 12/2/09

440

1 address and place Mr. Pelzer under arrest that evening,  
2 charging him with murder?

3 A Yes, sir, I did.

4 Q Okay, and did you then transport him back to the  
5 Calhoun County Sheriff's Office?

6 A Yes, sir, I did.

7 Q All right, and before you did that and you placed him  
8 under arrest did you advise him of anything at that point in  
9 time?

10 A Yes, sir, I advised him at the point that I placed him  
11 under arrest under the carport that he was under arrest for  
12 murder, and I had a valid warrant for him, and I also read  
13 him his Miranda rights.

14 Q What was that, what rights did you read him?

15 A I told him he had the right to remain silent, that  
16 anything he said could and would be used against him in a  
17 court of law. He had the right to have an attorney present  
18 before he answered any questions that I might have for him.  
19 If he couldn't afford an attorney one would be provided for  
20 him, and then I affirmed of him that he understood those  
21 rights.

22 Q Okay, and that was done at his house, still?

23 A That is affirmative. That was within minutes of  
24 actually placing him in handcuffs.

25 Q Did you then transport him back to the Sheriff's

1 Office?

2 A Well, initially Lt. Regalis went with me to arrest Mr.  
3 Pelzer. He was at the back door -- he was at a different  
4 door. I was at the door and actually was the one that made  
5 contact so Mr. Pelzer came out to me. When Lt. Regalis  
6 came under the carport, I was already placing him into  
7 restraints. Lt. Regalis was also present when I read Mr.  
8 Pelzer his rights.

9 Q And after you did that he indicated he understood you  
10 and you then transported him back to the Sheriff's Office?

11 A Yes, sir.

12 Q And that was in your vehicle?

13 A Yes, sir, in my patrol cruiser.

14 Q And where was Mr. Pelzer seated?

15 A Mr. Pelzer was seated in the rear passenger compartment  
16 of my cruiser in what we call the cage.

17 Q You indicated you told him that he was under arrest for  
18 murder?

19 A That is affirmative, sir.

20 Q And in your patrol vehicle coming back to the Sheriff's  
21 Office did you speak with him at all?

22 A I did.

23 Q Okay, and let me ask you, did you go over his rights  
24 with him any more in the car coming back?

25 A Before I asked him anything, I affirmed with him,

State v. Pelzer 12/2/09

442

1 Willie you understand that I read you your rights, and you  
2 understand your rights, because he had spontaneously uttered  
3 that he didn't know what, you know, what was going on, what  
4 it was all about, he didn't have anything to do with it, and  
5 before asking him any questions I affirmed with him again,  
6 you know, I read you your rights. And that was when I  
7 initiated questions with him.

8 Q Okay. What did you ask him?

9 A Well, I said, if he didn't have anything to do with it;  
10 I said, well, Willie where were you Thursday night about  
11 10:00 o'clock, 10:30; where were you. He replied that he  
12 had gotten home around 10:30 that night. And so I then  
13 asked him, I said, well, who saw you when you got home, who  
14 did you talk with? And he said, my mother. And I then  
15 said, well, if I go talk with you mom, she's going to  
16 confirm that that she saw you when you got home at 10:30,  
17 and he hesitated and after a substantial hesitation he said  
18 he couldn't remember whether it was his mom or his uncle  
19 that had seen him when he got home that night at 10:30.

20 Q Did he indicate to you at any time that night who he  
21 had been with before 10:30 that night?

22 A Initially, just short answers, counselor. Who were you  
23 with, Willie. My boys. No specificity. I would have to  
24 redundantly ask him, tell me, I need names. Who were you  
25 with. And he eventually told me Willie and Jimmy, meaning

1 Willie Reed and Jimmy Haygood, Jr.

2 Q Did you question him any more in the vehicle?

3 A No, I tell you -- we were -- I remember the exact place  
4 we were on the road when all this happened, and things got  
5 quiet for a minute, and I looked in the rear-view mirror --

6 Q We're not going to get into that right now.

7 A Oh, okay.

8 Q You got back to the Sheriff's Office and he got turned  
9 over to Investigator Graham?

10 A Yes, sir, we notified Investigator Graham and Major  
11 Stephenson that we had him in custody and I was on the way  
12 to the office with him.

13 Q Okay. Did there come a time later on that evening when  
14 you saw Mr. Pelzer outside the Sheriff's Office?

15 A Yes, sir.

16 Q Where was he at at that time?

17 A We were standing just outside of Maj. Stephenson's  
18 office, and Mr. Pelzer had requested to be able to smoke a  
19 cigarette and we were fulfilling his request.

20 Q Okay. Was anybody talking with him at that point in  
21 time?

22 A I was standing guard over him. Maj. Stephenson and Lt.  
23 Graham were approximately 20 feet from our location  
24 maintaining a conversation of their own. My understanding  
25 was kind of getting a game plan as to where we were going



State v. Pelzer 12/2/09

444

1 from here. We had been up for a long time and it was late  
2 at night.

3 Q All right. Did you question Mr. Pelzer at all that  
4 time?

5 A Well, when we were standing there and Willie just -- he  
6 blurted out looking at me -- and he and I had known each  
7 other and -- no nice way to say it, Your Honor, so I'll just  
8 say it exactly the way he said it. He said, Man, this is  
9 some bullshit. A fucking white boy gets killed, and you  
10 come and get me. And I immediately knew that the news  
11 broadcast that we had not released any information about  
12 this victim. The Sheriff had released all the information  
13 -- he had not released anything -- And I said, how do you  
14 know it was a white boy, unless you were there. And he  
15 really got defensive then.

16 Q Did you have any further contact, did you talk with him  
17 any further outside there at that point in time?

18 A No, sir. Lt. Graham came over and Maj. Stephenson and  
19 tried to calm the situation down. It was really very  
20 animated. And the best thing for me to do at that time,  
21 because he was very agitated at me. So I recused myself to  
22 let it die down.

23 Q Okay, and let me ask you this, Det. Godwin, when you  
24 initially advised him of his rights at his house when he was  
25 placed under arrest, when you were taking him and

1 transporting him to the Sheriff's Office, and even when you  
2 were outside with him at the Sheriff's Office and kind of  
3 hear that last kind of spontaneous statement by him, did you  
4 at any point in time threaten Mr. Pelzer to get him to talk  
5 with you?

6 A No, sir. I need to give you a little bit of  
7 clarification. The statements made inside the car I had  
8 verbally Mirandized Mr. Pelzer. The statement outside about  
9 the white boy, that came after Mr. Pelzer had already in  
10 writing --

11 Q Yes, sir. I'll get that out through Investigator  
12 Graham.

13 A Yes, sir.

14 Q Did you threaten him in any way?

15 A No, sir.

16 Q Coerce him?

17 A No, sir.

18 Q Promise him anything to get him to talk to you?

19 A No, sir.

20 Q Did he appear to be freely and voluntarily talking to  
21 you at those times?

22 A Yes, sir.

23 Q Appear to understand you?

24 A Yes, sir.

25 Q Coherent?

State v. Pelzer 12/2/09

446

1 A Yes, sir.

2 Q Appear to be under the influence of anything?

3 A No, sir.

4 Q Thank you Det. Godwin. Please answer anything defense  
5 may have.

6 THE COURT: Cross-exam?

7 RILEY GODWIN - CROSS-EXAMINATION

8 BY MR. LEIENDECKER:

9 Q Detective, when you went to pick Mr. Pelzer up, you  
10 went to arrest him; correct?

11 A That is correct, sir.

12 Q And you went to arrest him based on the statements that  
13 had been obtained from Mr. Haygood earlier that evening;  
14 correct?

15 A Well, I went to arrest him because I had a valid  
16 warrant for his arrest. A judge had found we had probable  
17 cause to issue a warrant for his arrest.

18 Q Okay. We can dance semantically about this. Where's  
19 you get that probable cause?

20 A From the --

21 MR. SORENSON: Your Honor, I don't see what that  
22 has to do with the statement. I mean, I understand --  
23 cross-examination when he testifies, but as far as the  
24 voluntariness of the statement --

25 THE COURT: Well, it is at the time -- Let's limit

1 this to voluntariness --

2 MR. LEIENDECKER: Well, I will, Your Honor, but,  
3 first of all, I'm trying to establish -- and I don't mean to  
4 belabor the point, but I'm trying to establish custody and  
5 the purpose that they were arriving there. I asked a simple  
6 question and the detective is the one that took me down this  
7 path. I didn't ask to go down this path.

8 MR. SORENSON: Well, we'll stipulate that he was in  
9 custody at the time any of these statements were made. I  
10 mean, he was clearly in custody. He was under arrest.

11 THE COURT: I think he testified to that. I'll  
12 allow him to answer the question, but we're not going to  
13 take 20 minutes here to examine him except on the matter of  
14 voluntariness.

15 MR. LEIENDECKER: Yes, sir.

16 BY MR. LEIENDECKER:

17 Q And the probable cause was obtained from the statement  
18 you got from Mr. Haygood; correct?

19 A Yes, sir.

20 Q And when you arrived at his house, he answered the  
21 door?

22 A Yes, sir, he did.

23 Q And you placed him under arrest?

24 A Yes, sir.

25 Q You handcuffed him at that point?

State v. Pelzer 12/2/09

448

1 A Yes, sir, behind his back.

2 Q And you patted him down?

3 A Yes, sir.

4 Q And you put him in the back of your car?

5 A Yes, sir, I did.

6 Q Now, you were driving a marked cruiser that night?

7 A No, sir.

8 Q Okay.

9 A I have an unmarked cruiser.

10 Q Okay. Is there a tape is this, an audio tape of this  
11 activity?

12 A No, sir.

13 Q Do you have audio capacity or camera in your car?

14 A I did not in March, but I do now.

15 Q Okay, so you --

16 A At this time I do. Yes, sir.

17 Q -- didn't have the ability in March to do that?

18 A No, sir.

19 Q And you say you read him his Miranda rights. How'd you  
20 do that?

21 A I went up and knocked to the door. Willie came to the  
22 door, and, of course, I knew him and he knew me. And I  
23 called him by his name, and I said, come on our I need to  
24 talk with you. He came under the carport. There was a red  
25 car under the carport. I told him to place his hands on the

1 car that he was under arrest. As I placed him in restrains  
2 I then read him his rights.

3 Q How did you do that; what did you read them off of?

4 A I recited them as I -- the same rights I tell everyone  
5 when I arrest them -- off the top of my head.

6 Q So you gave him his right off the top of your head?

7 A Yes, sir.

8 Q Could you give me those?

9 A I didn't have anything in front of me to read, but I  
10 told him he had the right to remain silent. That anything  
11 he said could and would be used against him in a court of  
12 law. And I also advised him that he had a right to have an  
13 attorney. And I always -- as I told him, you have a right  
14 to have an attorney present with you before you answer any  
15 questions that I might have for you. If you can't afford  
16 one, one will be provided for you. Do you understand these  
17 rights as I have read them to you.

18 Q And let me ask you what the purpose of this form is,  
19 which is Exhibit 85?

20 A That would be when we obtain a waiver of rights.  
21 That's the form we use.

22 Q And it's a statement of Miranda rights?

23 A Yes, sir.

24 Q Do you have another form that you use that has people  
25 initial the Miranda rights when they talk to you?

State v. Pelzer 12/2/09

450

1 A Yes, sir, a statement form. Some of the statement forms  
2 have the waiver of rights included on them.

3 Q Do you have a form that they acknowledge that you read  
4 their Miranda rights and then they can check whether they  
5 want to talk to you or not at the bottom?

6 A Yes, sir, we do.

7 Q Okay. And why is that form used?

8 A Why is?

9 q Why is that form used for the initial that you've read  
10 the Miranda or that they've read it, that they understand  
11 them, and then at the bottom they check, I want to talk to  
12 you or I don't want to talk to you?

13 A Well, they check off and initial each one that they  
14 understand their rights, and they sign that second time  
15 saying they waive those rights. Yes, I want to make a  
16 statement. Yes, I want to talk to you. Yes, I will answer  
17 questions that you have.

18 Q Or they can say they don't want to talk to you?

19 A Correct.

20 Q They want to exercise their rights?

21 A Right. If they were to exercise their rights they  
22 wouldn't sign it a second time.

23 Q I'm just asking why you do that on that paper?

24 A Why do we do that?

25 Q Yes.

1 A To have it better recorded, a better matter of record.

2 Q So that we've certain that what they were told at that  
3 time, and we're certain that they understood it, and we're  
4 certain that they waived it; correct?

5 A I'm assuming so. Yes, sir.

6 Q How long a ride from Mr. Pelzer's house to the Calhoun  
7 Sheriff's Office?

8 A Approximately, 15 minutes.

9 Q Okay.

10 A Tops.

11 Q Any reason you didn't want to follow that office  
12 procedure and sit him down at a table and explain the rights  
13 to him in writing and have him initial them?

14 A Well, in the car as we were coming back to the office,  
15 as I told you, he was under arrest for murder, and, of  
16 course, he had 1,000 questions for me. He was spontaneously  
17 talking in the back seat that he didn't know what I was  
18 talking about, he didn't murder nobody, he didn't kill  
19 nobody. And so the first thing in my mind was if he didn't  
20 have anything to do with it, I wanted to ask him where he  
21 was. Where were you Thursday night. I knew before asking  
22 him that question I wanted to reaffirm that he understood  
23 anything he told me would be used against him and he also  
24 didn't have to talk to me outside the presence of an  
25 attorney?



State v. Pelzer 12/2/09

452

1 Q Could you have taken that form with you and had him  
2 sign it there at Wash Road?

3 A Could it have? Sure. Yes.

4 Q Okay. How do you know he wasn't under the influence of  
5 anything that evening?

6 A I didn't say -- to my knowledge he wasn't.

7 Q Did you ask him?

8 A No, I did not ask him.

9 Q Did you ask him if he'd been drinking?

10 A No, sir.

11 Q Did you ask him if he'd been taking any illegal  
12 narcotics?

13 A No, sir.

14 Q Had he been smoking any marijuana?

15 A No, sir.

16 Q Were you sleep deprived?

17 A Was I sleep deprived?

18 Q Did you ask him was he sleep deprived?

19 A No, sir.

20 Q Did you ask him if there was any reason he didn't or  
21 couldn't understand what he was doing?

22 A I asked him if he understood his rights.

23 MR. LEIENDECKER: One moment, Your Honor.

24 THE COURT: Yes, sir.

25 MR. LEIENDECKER: That's all on cross. Thank you.

1 THE COURT: Redirect?

2 MR. SORENSON: This will be real brief.

3 RILEY GODWIN - REDIRECT EXAMINATION

4 BY MR. SORENSON:

5 Q In your experience, of course, you said you knew Mr.  
6 Pelzer, right?

7 A Yes, sir.

8 Q In your experience did he appear to be under the  
9 influence of anything based on your prior dealings with him?

10 A No, sir.

11 Q Thank you.

12 THE COURT: Recross?

13 RILEY GODWIN - RE-CROSS EXAMINATION

14 BY MR. LEIENDECKER:

15 Q Did you look at his eyes and check them?

16 A Yes, sir. I looked at his eyes, yes, sir.

17 Q And what did you see?

18 A You can tell a lot about a man by his eyes when you're  
19 going to make an arrest. I was concentrating on his eyes  
20 and his body language pretty closely. I was arresting  
21 somebody for murder.

22 Q Bloodshot, dilated, anything like that that you  
23 remember?

24 A No, sir.

25 Q You just don't remember either way?

State v. Pelzer 12/2/09

454

1 A I didn't take my flashlight and shine it or give his  
2 eyes a close examination, but, yes, sir, I maintained -- he  
3 and I maintained eye contact.

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

5 THE COURT: Thank you, sir. You can step down.  
6 Call your next witness.

7 MR. PASCO: Stanley Graham, Your Honor.

8 THE COURT: You're already under oath. Have a  
9 seat.

10 STANLEY GRAHAM - DIRECT EXAMINATION

11 BY MR. PASCO:

12 Q Detective, you met with the defendant right after  
13 Midnight on March 8, 2009?

14 A Yes, sir.

15 Q And that was after Det. Godwin drove the defendant to  
16 the Calhoun County Sheriff's Office?

17 A Yes, sir.

18 Q And you didn't even know whether Det. Godwin had gone  
19 over his right with -- the Miranda rights with the defendant  
20 at that time?

21 A No, sir.

22 Q And in an abundance of caution did you go over the  
23 advice of rights with the defendant that night?

24 A Yes, sir.

25 Q Let me show you what's been marked as State's Exhibit

1 No. 87; do you recognize that?

2 A Yes, sir.

3 Q And what do you recognize that to be?

4 A A wavier of rights, Miranda.

5 Q Is it the exact -- other than it being a copy, is it  
6 the same Miranda advice of rights that you went over with  
7 the defendant, Willie Pelzer on March 8th?

8 A Yes, sir.

9 Q Okay. You can keep that with you. Did you go over  
10 those rights with the defendant, Willie Pelzer?

11 A Yes, sir.

12 Q Go over those rights today for the Judge, just like you  
13 did for Willie Pelzer?

14 A Number one, you have the right to remain silent.  
15 Number two, anything you say can and will be used against  
16 you in a court of law. Number three, you have a right to  
17 talk to a lawyer and have him or her present while you are  
18 being questioned. Number four, if you cannot afford to hire  
19 a lawyer one will be appointed to represent you before any  
20 questioning if you wish. You can decide at any time to  
21 exercise these rights and not answer any questions or make  
22 any statements.

23 Q And you went over those rights right there with the  
24 defendant on March 8th?

25 A Yes, sir.

State v. Pelzer 12/2/09

456

1 Q Just like you did for the judge?

2 A (Nods affirmatively.)

3 Q How long had you known the defendant, Willie Pelzer?

4 A I met him the summer prior to.

5 Q And you had had contact with him before March 8th?

6 A Yes, sir.

7 Q And had talked to him in the past?

8 A Yes, sir.

9 Q On the morning of March 8th, did the defendant, Willie  
10 Pelzer, appear to have any diminished mental capacity  
11 whatsoever?

12 A No, sir.

13 Q Did he understand those rights?

14 A Yes, sir.

15 Q Did you threaten him in any way to get him to give you  
16 a statement?

17 A No, sir.

18 Q Did you coerce him or make him any promises in any way  
19 to give you a statement?

20 A No, sir.

21 Q Did you deny him any comfort such as food or water,  
22 drink --

23 A No.

24 Q -- to make him give you a statement?

25 A No, sir.

1 Q . Was there also a waiver of rights that you went over  
2 with the defendant, Willie Pelzer?

3 A Yes, sir.

4 Q Read that today just like you did for Willie Pelzer?

5 A I have read the above statement of my rights and I  
6 understand each of those rights, and having these rights in  
7 mind, I waive them and willingly make a statement.

8 Q Okay. And did the defendant give you a statement that  
9 night?

10 A Written, no, sir.

11 Q Not a written -- did he give you a verbal statement  
12 that night?

13 A Verbal, yes, sir.

14 Q Were the verbal statements that the defendant gave you  
15 freely and voluntarily given to you by the defendant?

16 A Yes, sir.

17 Q How long have you been a police officer, again?

18 A Since 2001.

19 Q And since 2001 you've come across people under the  
20 influence of alcohol?

21 A Yes, sir.

22 Q Did the defendant appear to be under the influence of  
23 alcohol?

24 A No, sir.

25 Q Have you come across individuals under the influence of

State v. Pelzer 12/2/09

458

1 drugs?

2 A Yes, sir.

3 Q Did the defendant, Willie Pelzer, that morning appear  
4 to be under the influence of drugs?

5 A No, sir.

6 Q And he gave you a statement freely and voluntarily, a  
7 verbal statement?

8 A Yes, sir, he did.

9 Q And tell the Court during the interview what Mr. Pelzer  
10 told you?

11 A Can I refer back to my notes?

12 Q You can look at your notes, and another point I want to  
13 make while you look, you documented in your narrative what  
14 the defendant told you, the verbal statement; correct?

15 A Yes, sir.

16 Q Okay. I think it starts on the bottom of your first  
17 page. It says, during the interview, Mr. Pelzer stated --

18 A Yes, sir. During the interview Mr. Pelzer stated that  
19 he did not kill anyone. He said he did go to Charleston and  
20 meet with a female, but that was it. That he had been  
21 drinking with Mr. Reed and Mr. Haygood, Jr., and they left  
22 and went to take Bryant, which I found out later on was a  
23 relative of Mr. Haygood, back to Orangeburg.

24 Q Okay. What else did he state?

25 A He said he hadn't been to Brakesfield's in a long time,

1 which is what we call the Exxon at 403 -- right there  
2 directly across from

3 Q And after he gave you that brief statement did he want  
4 to take a smoke break?

5 A Yes, sir.

6 Q And did you deny him that right?

7 A No, sir.

8 Q What did you do?

9 A We stopped everything, myself and Maj. Tim Stephenson,  
10 we walked outside with Mr. Pelzer where other members of the  
11 Calhoun County Sheriff's Office were. Maj. Stephenson and I  
12 had a conversation separately. Det. Godwin stayed with Mr.  
13 Pelzer a few feet away from us. We stood out there while he  
14 took a smoke break and we talked.

15 Q And did the defendant make statements in front of Det.  
16 Riley Godwin, in Det. Riley Godwin's presence and custody?

17 A Yes, he did.

18 Q At any point in time while the defendant was outside  
19 did anybody force him to give any kind of statement?

20 A No, sir.

21 Q Did anybody force or coerce him or make him any kind of  
22 promise for his statement?

23 A No, sir.

24 Q Were all the statements given by the defendant, Willie  
25 Pelzer, that early morning, in your presence of his own



State v. Pelzer 12/2/09

460

1 volition and voluntarily given by the defendant?

2 A Yes, sir.

3 MR. PASCO: Beg the Court's indulgence.

4 BY MR. PASCO:

5 Q Thank you, sir. Answer any questions from the defense.

6 THE COURT: Cross-exam.

7 STANLEY GRAHAM - CROSS-EXAMINATION

8 BY MR. LEIENDECKER:

9 Q Detective, may I see the waiver exhibit?

10 A (Passes document to Mr. Leiendecker.)

11 Q Thank you. It's dated at 12:23 in the morning; is that  
12 correct?

13 A Yes, sir.

14 Q And in your notes, I notice, Mr. Pelzer, in speaking to  
15 you told you that a lot of times he doesn't even remember  
16 what he did because he was so high?

17 A Yes, sir.

18 Q Did you ask him if he was high --

19 A I don't recall if we did or not.

20 Q -- that day?

21 A I don't recall if we did or not.

22 Q I'm asking did you?

23 A Did I? No, sir.

24 Q Okay. Did you ask him to write down his statement?

25 A Yes, sir. I think we asked him several times.

1 Q And?

2 A He did not.

3 Q So all we have is what you recorded he said?

4 A Correct.

5 MR. LEIENDECKER: One moment, Your Honor.

6 Thank you.

7 MR. GRAHAM: You're welcome.

8 THE COURT: Redirect?

9 MR. PASCO: No, sir.

10 THE COURT: Any evidence from the defense on the  
11 question of voluntariness?

12 MR. BANKS: We call Willie Pelzer, Your Honor.

13 THE COURT: You want to call him?

14 MR. BANKS: Yes, sir.

15 THE COURT: All right. Come around, Mr. Pelzer.

16 THE CLERK: Place your left hand on the Bible,  
17 raise your right hand.

18 (WHEREUPON, Willie Pelzer was sworn  
19 to tell the truth.)

20 THE CLERK: State your full name for the record,  
21 please.

22 MR. PELZER: Willie Pelzer, III.

23 THE CLERK: Have a seat.

24 THE COURT: All right, Mr. Banks.

25 MR. BANKS: Thank you.

State v. Pelzer 12/2/09

462

WILLIE PELZER -- DIRECT EXAMINATION

1

2

BY MR. BANKS:

3

Q Mr. Pelzer, do you remember the night in question about  
4 your statements?

5

A Yes, sir.

6

Q Now, where were you prior to the Sheriff's Office  
7 arriving at your house?

8

A I was in the restroom in my mother's house.

9

Q Your mother's house?

10

A Yes.

11

Q Is that where you lived?

12

A Yes.

13

Q And what had you been doing in the hours previous to  
14 their arrival?

15

A Smoking and -- I had a couple pints of liquor.

16

Q What kind of smoke?

17

A Smoke marijuana.

18

Q And you do that pretty regularly?

19

A At least every day.

20

Q All right. So how much had you had to drink before  
21 they arrived?

22

A I'd say maybe about two pints and a-half.

23

Q Of what?

24

A B&J.

25

Q What is that?

1 A It's a brandy.

2 Q Okay. Brandy?

3 A Yes, sir.

4 Q And how much marijuana had you smoked prior to their  
5 arrival?

6 A I smoked nothing less than maybe a quarter ounce a day,  
7 so I'd say maybe --

8 Q A day?

9 A Yes.

10 Q So in the few hours prior how much would you say?

11 A I probably had just got finished smoking.

12 Q Okay. So would you consider yourself high at the time  
13 they arrived?

14 A Yes, sir.

15 Q How about intoxicated?

16 A Yes, sir.

17 Q All right. Now, when they arrived who came first?

18 A Mr. Godwin, Riley came in through the garage.

19 Q And when he approached you what did he ask you?

20 A He asked me first to make sure to who I was. He said,  
21 are you Willie Pelzer, let me talk to Willie, because it was  
22 kind of dark on the outside and I guess he wanted to make  
23 sure, because I said, yes, sir, I'm him. He said well come  
24 outside,, and I opened the door, and as soon as I opened the  
25 door he said put your hands on the hood of the car. There

State v. Pelzer 12/2/09

464

1 was a car in the garage. He said I'm under arrest. I said  
2 what am I under arrest for, and he said you under the arrest  
3 for the murder of Jason Rivenburg.

4 Q Okay. And so when he arrested you did he say anything  
5 else?

6 A No, sir.

7 Q All right. Did he promise you anything at that time?

8 A No, sir.

9 Q All right. Having been drinking, smoking marijuana --  
10 did you smoke marijuana in a blunt or how did you smoke it?

11 A I smoke it in a cigar.

12 Q Okay.

13 A You take the tobacco out and replace the tobacco with  
14 marijuana.

15 Q Right. Would that leave a smell on your?

16 A Yes, sir.

17 Q Would that smell like a cigar or would it smell like  
18 marijuana?

19 A It would smell strictly like marijuana.

20 Q Okay, and the drinking, would that leave a smell on  
21 you?

22 A It should.

23 Q All right. And that would smell like old alcohol or  
24 whatever?

25 A Yes, sir.

1 Q All right. And would -- who was home that evening?

2 A My mother, my grandmother, and my uncle.

3 Q Did they -- did they indicate that they smelled those  
4 smells on you at any point?

5 A No. The only person I had contact with right at that  
6 time was my mother, and those are a pretty common thing  
7 since I'm over the age of 18 or 21, you know it's a very  
8 common thing for me to be drinking and smoking every day.  
9 That's known by everybody.

10 Q So she really didn't comment.

11 A No, she wouldn't have said nothing.

12 Q So Mr. Godwin should have been able to smell those  
13 things?

14 A Yes, sir.

15 Q And did he indicate to you at any point that he smelled  
16 those things on you?

17 A Not at all.

18 Q Now, when you drink and smoke do your eyes get a little  
19 cloudy or bloodshot or anything?

20 A I wouldn't get red, but they do get low.

21 Q They get what?

22 A They don't get red, but they get low, but when I drink  
23 they are red.

24 Q Get low?

25 A Yeah, my eyes are smaller than what they would normally

State v. Pelzer 12/2/09

466

1 be.

2 Q Okay. Okay. That's a noticeable thing?

3 A Yes. He would have noticed.

4 Q What happens when you drink and smoke like that, do you  
5 get a little unsteady on your feet?

6 A Yes, sir. The marijuana just slows everything down.  
7 Just slows everything down.

8 Q Because of that did you have any trouble getting into  
9 the cruiser?

10 A Yes. I asked him to place the handcuffs on the front  
11 instead of the back because of the fact.

12 Q Because you were unsteady?

13 A Yes.

14 Q And because of that did he oblige you?

15 A Not right then at that moment, but he waited until I  
16 guess my mother came out the house, because I told him I  
17 didn't want to go to jail without my mother knowing, letting  
18 somebody know. My mother came out, and he wanted me to sign  
19 a piece of paper so he asked me to sign the piece of paper  
20 he took the handcuffs off my back, but he told me no.

21 Q All right. So you rode to the Sheriff's Office --

22 A Yes.

23 Q -- just you and Mr. Godwin?

24 A Yes.

25 Q Did he ask you any questions in there?

1 A He asked me where was I.

2 Q In the car he asked you that?

3 A Yes.

4 Q Had he told you your rights or anything?

5 A Not, right then, sir.

6 Q He didn't read anything?

7 A No, sir.

8 Q But before he started questioning you you said he  
9 didn't read the rights?

10 A No, sir. He just made a couple statements, he just  
11 asked me a couple questions.

12 Q He made a few statements?

13 A He just asked me a couple questions.

14 Q All right. So he asked you a couple questions?

15 A Yes, sir.

16 Q About this crime?

17 A Yes.

18 Q And when did he start reading you the rights part of  
19 this or telling you your rights?

20 A When we was coming down, right before we got to the  
21 intersection of 176 and still on 6, right before we came to  
22 176 to cross over to come back to the Sheriff's Office.

23 Q And so he's already started asking you questions at  
24 that point?

25 A Yes.



State v. Pelzer 12/2/09

468

1 Q Do you remember what those questions were?

2 A He just kept asking me, Willie, where is the gun,  
3 Willie, where is the gun, Willie, where is the gun. If you  
4 didn't do anything -- I just kept repeating I don't know  
5 what you're talking about, I didn't murder nobody. And he  
6 stated if you do know anything just tell me -- and stuff  
7 like that.

8 Q Okay, and so then he decided he'd tell you your rights?

9 A Yes, sir.

10 Q Do you recall if he told them as you understood them  
11 from television?

12 A No, sir. I know the part about the attorney because  
13 that's one thing I didn't want to do is I didn't want to  
14 make a statement by myself.

15 Q You didn't want to?

16 A No, sir.

17 Q You say he left that part out?

18 A To the best of my memory I did not hear that.

19 Q You didn't hear that?

20 A No, sir.

21 Q If you had heard that would that have affected what you  
22 would have said?

23 A Yes, sir.

24 Q And what would you have said in response to you have an  
25 opportunity for an attorney?

1 A I want to see my lawyer.

2 Q And did you have a lawyer?

3 A No, sir. Not at the time.

4 Q At any point did you tell him you wanted a lawyer?

5 A Yes.

6 Q When?

7 A When he just asking me questions, keeps asking me  
8 questions, I kept telling him, you know, I don't know what  
9 you're talking about and things like that. Then I got fed  
10 up with it, and I'm like, well, you know, just take me to  
11 jail. I didn't have a chance -- I said, just take me to  
12 jail. I'll talk to you when I get a lawyer.

13 Q So that was before you even got to the Sheriff's  
14 Office?

15 A Yes.

16 Q And he continued asking you questions?

17 A Yes.

18 Q And then you arrived at the Sheriff's Office?

19 A Yes.

20 Q Who did you see next -- did he continue to ask you  
21 questions after you arrived?

22 A Well, he asked me one question after I met everybody.

23 Q What question was that?

24 A He asked me how did I know what color the victim was.  
25 That's what he asked me.

State v. Pelzer 12/2/09

470

1 Q Okay. Mr. Godwin said that?

2 A Yes, sir.

3 Q Because in the car you had said something about the  
4 color of the victim?

5 A No. I said that once we got there. Once we was  
6 pulling up.

7 Q All right. Who did you talk to next or who talked to  
8 you next?

9 A Mr. Graham, Det. Graham.

10 Q And did he read you your rights?

11 A Yes, he did.

12 Q All right. And in fact he made you do the form and all  
13 that?

14 A He just gave me the paper to sign.

15 Q Okay. Did you have any problem with how Mr. Graham  
16 addressed the situation with the rights form and anything  
17 like that?

18 A No, sir.

19 Q So he made you sign them and you understood them at  
20 that point?

21 A Yes, sir.

22 Q And that one had the attorney thing in there; is that  
23 right?

24 A Yes, sir.

25 Q Did Det. Graham threaten you in any way?

1 A Well, he said, you know, I was kind of irate. I was  
2 upset at the fact of what was going on. He said if I didn't  
3 acknowledge verbally, you know, I wasn't really loud but I  
4 was using curse words.

5 Q Did you get animated?

6 A Yes. But I was still handcuffed. I was still  
7 handcuffed. Q In front?

8 A Yes, sir. I still didn't present danger because I had  
9 my arms --

10 Q It was shackled down?

11 A No, it wasn't shackled around the waist, but I was  
12 handcuffed.

13 Q Okay.

14 A And --

15 Q So his only threat was to calm down or he was going to  
16 have to do something?

17 A Calm down or he'll lay me down.

18 Q But he didn't say if you don't admit to this I'm going  
19 to do anything to you?

20 A No, sir, he didn't.

21 Q So it wasn't tied to any force to admit anything?

22 A No, sir, he didn't threaten me.

23 Q So what did you tell Det. Graham?

24 A I told Det. Graham that I didn't have anything to do  
25 with it. I asked him if I was going home, he said, no, I

State v. Pelzer 12/2/09

472

1 wasn't going home. I said, well, I want to go to jail. Just  
2 take me to jail.

3 Q Did you ask for a lawyer?

4 A Yes, I did. I did ask to speak to a lawyer.

5 Q Det. Graham, should he have been able to smell alcohol  
6 and marijuana on you?

7 A Yes.

8 Q Do you feel he took advantage of you because of your  
9 condition?

10 A I believe so.

11 Q Do you think he should have noticed your ability to  
12 stand and walk straight?

13 A He would have known even if he wasn't, you know, a  
14 detective, I believe he would have known.

15 Q You think he should have seen your eyes kind of --

16 A Yes, sir.

17 Q -- however you said, getting small?

18 A Yes, sir.

19 Q What does that mean, that the lids get down?

20 A Yeah, your eyes get low because you're in a real 'lazy  
21 state, you know, everything just slows completely all the  
22 way down.

23 Q Did you -- were you exposed to any of the other  
24 officers there at the station?

25 A Not -- the closest one was -- Officer Graham and Riley.

1 Q Did Graham ever comment that he smelled anything or  
2 noticed anything unusual about you alcohol or marijuana  
3 related?

4 A He just sat down and he talked to me. That's it.

5 Q Mr. Godwin, Deputy Godwin, you've known him for a  
6 while?

7 A Yes, sir, I ran into him a few times before.

8 Q Right. And Godwin, would he have known you in a more  
9 sober state?

10 A No, sir.

11 MR. BANKS: One moment, Your Honor.

12 Nothing further, Your Honor.

13 THE COURT: All right. Just hold on a minute.

14 I'm going to send this jury home.

15 Mr. Pelzer, you go sit back down with your lawyers  
16 while I bring the jury out, and then we'll get you back up  
17 here and finish this in a minute.

18 MR. PELZER: Yes, sir.

19 (Mr. Pelzer returns to his seat at defense table.)

20 THE COURT: All right, sir, you can bring the jury  
21 in, please.

22 (Jury in at 7:58 p.m.)

23 THE COURT: Ladies and gentlemen, we had a couple  
24 of unexpected legal issues that I'm having to deal with and  
25 we're not through with those. So I'm not going to keep you

State v. Pelzer 12/2/09

474

1 back there any more. I'm going to let you go home for the  
2 night. I'll ask you to be back at 9:30 in the morning. I  
3 remind you not to talk about the case, not to listen to TV,  
4 not to look at the Times and Democrat in the morning. Don't  
5 expose yourself to any news about this case whatsoever. And  
6 be back in the jury room at 9:30 in the morning.

7 Now, we're sending some security officers downstairs to  
8 walk y'all to the cars. I don't know, you might be in 12  
9 different directions. We don't have that many people. You  
10 might have to wait downstairs, but somebody will escort you  
11 to your car, because we don't want any problems out there  
12 tonight.

13 We'll see you at 9:30 in the morning. Thank you very  
14 much for your patience today.

15 Everybody else except the security please remain in the  
16 courtroom.

17 (Jury out for the evening at 7:59 p.m.)

18 COURT REPORTER: You want me to shut the door?

19 THE COURT: Yeah, if they're all gone.

20 (Door between courtroom and jury room is closed.)

21 THE COURT: All right, Mr. Pelzer, would you come  
22 back up here, please.

23 (Mr. Pelzer returns to witness stand.)

24 THE COURT: All right, Mr. Sorenson.

25 MR. SORENSON: May it please the Court, Your

1 Honor.

2 WILLIE PELZER - CROSS-EXAMINATION

3 BY MR. SORENSON:

4 Q Just to make sure I understand this, Mr. Pelzer, it's  
5 your testimony that you'd been smoking marijuana at a  
6 quarter ounce, I think you said?

7 A At least a day. Yes.

8 Q And two and a-half pints of brandy?

9 A Yes, sir.

10 Q Okay, well, I don't care about what you did any other  
11 day, but that night --

12 A Yes.

13 Q -- that Saturday, you had smoked a quarter ounce of  
14 marijuana and drank two and a-half pints of brandy; that's  
15 your testimony?

16 A Yes.

17 Q Okay. My understanding of what you're saying is that  
18 therefore because of that you were too incapacitated or  
19 intoxicated or high to understand what anybody had said to  
20 you; is that correct?

21 A I didn't fully -- I wasn't messed up, messed up, but I  
22 could still operate, but I didn't -- certain things being  
23 said in the rights I didn't hear them. I didn't hear them.

24 Q Let me ask, what you did hear did you understand what  
25 was being explained to you?



State v. Pelzer 12/2/09

476

1 A To the best of my knowledge, yes, I did.

2 Q Because, you know, you gave details about what happened  
3 at your house that night?

4 A Yes.

5 Q The fact that you know Det. Godwin came to your door --

6 A Yes.

7 Q -- knocked, you came out, he handcuffed you, told you  
8 were you being placed under arrest for the murder --

9 A Yes.

10 Q -- you remembered that he told you the victim's name  
11 that night; correct?

12 A Yes.

13 Q So you remembered a lot of very specific details about  
14 something that happened nine months ago; is that correct?

15 A Yes.

16 Q So you couldn't have been that intoxicated that you  
17 didn't remember that stuff happening.

18 A Hindsight is 20/20, sir.

19 Q All right. Let me make sure I get this straight. Your  
20 testimony is that when Det. Godwin was taking you to the  
21 Sheriff's Office that he advised you of some of your rights,  
22 but not all of them; is that correct?

23 A I didn't hear everything. I didn't hear the part about  
24 a lawyer, because I wouldn't have said anything without a  
25 lawyer.

1 Q You heard the part about you have the right to remain  
2 silent --

3 A Yes.

4 Q -- anything you say can and will be used against you in  
5 a court of law?

6 A Yes.

7 Q You remember him advising you of those but you don't  
8 remember him telling you that you have the right to have a  
9 lawyer and if you can't afford one the court will appoint  
10 one for you; you don't remember that?

11 A Yes.

12 Q So you're not saying he didn't advise you of those you  
13 just don't remember that; is that correct?

14 A Exactly.

15 Q All right. Let me ask you this, this wasn't the first  
16 time you'd been through the criminal justice system, is that  
17 right? You've been arrested before?

18 A I never been arrested per se. I've been in an incident  
19 when I was in a car accident and I was taken by the Highway  
20 Patrol, a state trooper, to jail, and I wasn't read my  
21 rights.

22 Q Okay, so you didn't give a statement that time?

23 A No, sir, I was --

24 Q You weren't questioned about that prior incident, your  
25 prior conviction?

State v. Pelzer 12/2/09

478

1 A Say again?

2 Q Your prior conviction that you have, you weren't  
3 questioned about that by law enforcement?

4 A No, sir. No, sir, not even a little bit.

5 Q Okay, but you said that even though initially you said  
6 that you didn't hear him tell you that you had the right to  
7 a lawyer, and that if he had told you would have said that?

8 A I -- what you said about the previous incident, about  
9 me remembering. Yes, I do. In fact, I was -- what happened  
10 was Officer Graham came and picked me up and he read it to  
11 me off a card.

12 Q Okay, that was in the prior incident?

13 A Right.

14 Q So you've been advised of rights prior?

15 A Yes.

16 Q By one of the officers that --

17 A I remember him reading that to me.

18 Q Okay. And, of course, you were advised that you had a  
19 right to have a lawyer, right?

20 A Yes.

21 Q It's your testimony that from initially that Det.  
22 Godwin didn't advise you that you had the right to a lawyer,  
23 because you said if he had you would have said you wanted a  
24 lawyer, right?

25 A That I did remember because I know I would have said I

1 wanted one.

2 Q But then you testified a little bit later in your  
3 direct examination that, in fact, you did tell Det. Godwin  
4 that you wanted a lawyer, right?

5 A No, I didn't tell him that I wanted a lawyer.

6 Q I must have misunderstood that. I thought you said  
7 that you did tell him that you wanted a lawyer?

8 A I told him I wanted to go to jail. I'll talk to you  
9 once I get a lawyer. I didn't say that to Riley, I said  
10 that to Graham.

11 Q Okay, so that was Det. Graham. And then when you got  
12 to the Sheriff's Office, no doubt about it that -- do you  
13 have anything up there with you that -- advise of right --

14 A No, sir.

15 Q Did Stanley take it with him -- I'll go back to that in  
16 a second. You indicated that the only other thing that Det.  
17 Godwin said to you outside about the race of the victim, how  
18 would you know about -- you made a statement about the race  
19 of the victim?

20 A Yes, sir, when I was smoking a cigarette I gave him the  
21 comment.

22 Q So you admit that you made that statement outside?

23 A Yes, sir.

24 Q Okay. Again, let me show you State's No. 87, you  
25 remember Det. Graham going over that with you, right?

State v. Pelzer 12/2/09

480

1 A Yes, on several occasions.

2 Q Okay, and he went over each of those five rights at the  
3 top; correct?

4 A Yes, sir, to the best of my knowledge.

5 Q In fact, that's your signature right there?

6 A Sure is.

7 Q That you waived those rights and were willing to talk  
8 with him. It says right there, I have waived the above  
9 rights and --

10 A Yes.

11 Q -- I understand each of those rights. And you do, you  
12 understand those rights?

13 A Yes.

14 Q And having those rights in mind, I waive them and  
15 willingly make a statement, and you signed that right there,  
16 Willie Pelzer, III; is that correct?

17 A Yes, sir.

18 Q And that was witnessed by Det. Graham, Det. Stanley  
19 Graham?

20 A Yes, sir.

21 Q And that was at 12:00 or 120023, so 12:23 in the  
22 morning or now March 8th; is that correct?

23 A Yes.

24 Q And he didn't threaten you to get you to sign this did  
25 he?

1 A No, he didn't. He just placed it in front of me.

2 Q Okay, it's your testimony, though, that instead of  
3 telling him that you wanted to talk to him that you wanted  
4 to -- you wanted to go to jail and talk to a lawyer before  
5 you talked to him?

6 A Yeah. I said before I give a statement I want to talk  
7 to a lawyer. If I was going to jail, just let me go ahead  
8 and go to jail.

9 Q Now, the statements you've heard both Det. Godwin and  
10 Det. Graham testify about what you allegedly told them,  
11 right, both in the patrol car and at the Sheriff's Office;  
12 you heard them testify, right.

13 A Right. I heard them.

14 Q All right. Did you tell them those things?

15 A Yes.

16 Q All right. So there's no question about that, those  
17 were your statements that you made?

18 A Yes.

19 Q Both to Det. Godwin and to Det. Graham?

20 A That is what I said.

21 MR. SORENSON: That's all I have.

22 THE COURT: Any redirect?

23 MR. BANKS: No, Your Honor.

24 THE COURT: All right, sir, you can step down.

25 MR. PELZER: Yes, sir.

State v. Pelzer 12/2/09

482

1 THE COURT: All right. Argument.

2 I guess this is a motion to suppress so I'll hear from  
3 the defense first and last.

4 MR. LEIENDECKER: Your Honor, Jackson v. Denno,  
5 the burden is that the State must prove by a preponderance  
6 of the evidence that a statement appears to be freely and  
7 voluntarily made. That the defendant knowingly and  
8 intelligently waived his rights and gave a statement while  
9 in custody of police. The question of custody is not an  
10 issue here we have that issue from the beginning. The  
11 question is about the voluntariness and if it was knowingly  
12 and intelligently made. My argument begins with the  
13 statement, whatever those statements are, and I'm not 100  
14 percent certain what they were made in the car on the way  
15 there. There is not substantial demonstrable evidence as to  
16 how the rights were, what they were or how they were read.  
17 That's why we have for years developed systems within this  
18 sheriff's office and every sheriff's office that sets forth  
19 ways that the rights are appropriately and properly given.  
20 The United States Supreme Court protects that, as well as  
21 our Supreme Court. That's why the forms exist and that's  
22 why a lot of officers always used to carry cards, as we've  
23 heard discussed, and they read from those. They didn't from  
24 memory try to quote them as they were driving in their car  
25 and one person remembers it one way and another person

1 remembers it another way. So I believe that any statements  
2 in the car should be suppressed because they've not met that  
3 preponderance or proved that the rights were appropriate,  
4 given to our client therefore allowing him to make a knowing  
5 and intelligent waiver and provide any statement at that  
6 time. As for whatever statements were made, and I understand  
7 the statement outside the police department were made  
8 subsequent to the statements, the waiver signed by Mr.  
9 Pelzer. We certainly, at this point, not going to contest  
10 that. We will just have to deal with the voluntariness of  
11 any such statements in argument before the jury, but I  
12 believe that those statements, at this point, at least by  
13 preponderance of the evidence, have established that the  
14 rights were properly given and our client said that he  
15 didn't understand them, so we're not arguing about any  
16 statements made outside the Sheriff's Office or inside the  
17 Sheriff's Office to Det. Graham. Just the statements that  
18 may have been made in the car.

19 THE COURT: All right. Mr. Sorenson?

20 MR. SORENSON: May it please the Court, Your  
21 Honor.

22 I believe the testimony, Your Honor, looking at it, as  
23 Mr. Leiendecker said, by the preponderance of the evidence,  
24 Det. Godwin testified that on only on one, but two,  
25 occasions he read -- not read, but told, he told Mr. Pelzer



1 his rights. We reiterate them here in court when they  
2 stumbled what those rights were. We went through them two  
3 times, both on direct and cross examination and listed out  
4 all five of those rights as they are found on that form. I  
5 don't think there's any requirement that it be a written  
6 advisement of his rights. He just has to be advised of his  
7 Miranda warnings. You know, if he had waited until he got  
8 back to the Sheriff's Office and Mr. Pelzer had said  
9 something incriminating, then they would be up here going  
10 why didn't you -- you know his rights why didn't you just  
11 told him verbally in the car. So I think he did what he was  
12 supposed to do, and he did it not only once, but twice. He  
13 did it when he initially placed him under arrest at the  
14 house, and then additionally when he got in the car and  
15 verified that he understood. So I think as far as that, we  
16 met our burden by the preponderance of the evidence that he  
17 was advised of his Miranda warnings, and I think also by the  
18 preponderance of the evidence, he waived those Miranda  
19 warnings and talked to Det. Godwin and later Investigator  
20 Graham.

21 THE COURT: All right. Well, there is absolutely  
22 no testimony whatsoever that any threats were made, that any  
23 coercion was pressured against the defendant to make him  
24 make the statements, there's no evidence that he was  
25 promised anything or any hope of reward or anything of that

1 nature. The question simply comes down to whether or not he  
2 was advised and understood the rights he was given before he  
3 made the statements in the automobile, and although the  
4 testimony is somewhat contradictory I find that he was  
5 advised of those rights, that he did understand those  
6 rights, and that he made his statement freely and  
7 voluntarily without any promise or hope of reward or threat,  
8 and that after he was advised of his rights that he  
9 understood his right, and certainly that applies even more  
10 so to the statements made after he was given in writing and  
11 signed that document. I don't find that defendant's  
12 testimony very credible as to the degree of his  
13 intoxication. Not only does that directly contradict the  
14 testimony of each of the officers, but there's been about  
15 four or five people who spent the afternoon, a number of  
16 hours with him prior to and subsequent to the death of the  
17 deceased in this case. Not one of them testified that he  
18 was intoxicated either on direct examination or indirect  
19 examination. There just is no testimony in the record to  
20 support that except his own, which I don't find to be  
21 credible. Neither do I think he would have carried on a  
22 rather extensive texting conversation that he did with the  
23 female in Charleston had he been to such a high degree under  
24 the influence of alcohol or drugs. So I don't put much  
25 credibility in that testimony at all.

State v. Pelzer 12/2/09

486

1 I will deny the motion and find that all the statements  
2 were made freely and voluntarily, and that he was given his  
3 Miranda rights and that he did understand them.

4 Yes, sir?

5 MR. LEIENDECKER: Certainly, Your Honor, not to  
6 quivel or disagree with the Court's decision and certainly I  
7 understand it, but I think for the record, should be pointed  
8 out and made clear that the texting to the female in  
9 Charleston and the individuals who were with him all day was  
10 actually the day before, the 5th leading into the 6th. That  
11 his arrest was that Saturday evening or Sunday two days  
12 later.

13 THE COURT: All right. All right.

14 MR. LEIENDECKER: Just for the matter of the  
15 record.

16 THE COURT: I appreciate you pointing that out. I  
17 stand corrected about that. All right.

18 MR. SORENSON: That is accurate.

19 THE COURT: I understand that. I think, still,  
20 based on the testimony I've heard from the officers and the  
21 defendant my finding of the voluntariness stands in that  
22 regard. All right. Anything else we need to take up, now?  
23 I don't like surprises.

24 MR. LEIENDECKER: No, Your Honor. The defense  
25 apologizes.

State v. Pelzer 12/2/09

487

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: All right. 9:30 in the morning.  
(Court in recess for the evening at 8:35 p.m.)

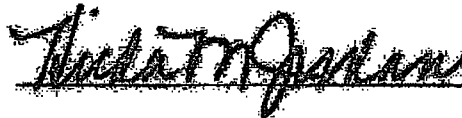
State v. Pelzer 12/2/09

486

CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS, CALHOUN COUNTY, SOUTH CAROLINA, ON THE 2ND DAY OF DECEMBER, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

JANUARY 6, 2011

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF CALHOUN ) FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, )  
) )  
PLAINTIFF, )  
) 09-GS-09-0022  
VS. )  
) )  
WILLIE PELZER, ) VOLUME 3  
) )  
DEFENDANT. )  
) )  
\_\_\_\_\_ )

DECEMBER 1-4, 2009  
ST. MATTHEWS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES C. WILLIAMS, JR., JUDGE AND A JURY

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

DAVID PASCO, ESQUIRE  
DON SORENSON, ESQUIRE  
ATTORNEYS FOR THE STATE

MARK LEIENDECKER, ESQUIRE  
MARTIN BANKS, ESQUIRE  
ATTORNEYS FOR THE DEFENDANT

HILDA M. JORDAN, CVR  
CIRCUIT COURT REPORTER

State v. Pelzer 12/3/09

2

|    |                                                |              |
|----|------------------------------------------------|--------------|
| 1  | TESTIMONY STATE'S CASE:                        |              |
| 2  | Stanley Graham .....continued direct.....      | 12           |
| 3  | Stanley Graham .....cross.....                 | 21           |
| 4  | Stanley Graham .....redirect.....              | 43           |
| 5  | Riley Godwin .....direct.....                  | 46           |
| 6  | Riley Godwin .....cross.....                   | 96           |
| 7  | Riley Godwin .....redirect.....                | 119          |
| 8  | STATE RESTS: .....                             | 124          |
| 9  | DEFENSE MOTION .....                           | 124          |
| 10 | TESTIMONY DEFENSE CASE:                        |              |
| 11 | Carolyn Murph .....direct.....                 | 129          |
| 12 | Carolyn Murph .....cross.....                  | 142          |
| 13 | Carolyn Murph .....redirect.....               | 160          |
| 14 | Carolyn Murph .....recross.....                | 161          |
| 15 | DEFENSE RESTS: .....                           | 162          |
| 16 | STATE'S EXHIBITS:                              |              |
| 17 | <del>State's Exhibit No. 88 .....ID.....</del> | <del>3</del> |
| 18 | State's Exhibit No. 87 .....entered.....       | 13           |
| 19 | State's Exhibit No. 89 .....ID.....            | 63           |
| 20 | State's Exhibit No. 89 .....entered.....       | 64           |
| 21 | State's Exhibit No. 88 .....entered.....       | 85           |
| 22 | Court's Exhibit No. 4 .....                    | 11           |
| 23 | COURT REPORTER CERTIFICATE .....               | 168          |
| 24 |                                                |              |

State v. Pelzer 12/3/09

3

1 (Court in session at 9:30 a.m.)

2 THE COURT: You're still under oath.

3 MR. GRAHAM: Yes, sir.

4 THE COURT: Are y'all ready?

5 MR. BANKS: Judge, I think they're about to put in  
6 some -- cull -- I'll call them culled text messages out of  
7 the great body of text messages that we have from my client.  
8 I believe they are about to put that in either with this  
9 officer or the other officer and there's a great deal of  
10 just extra bad, bad language in there, and we feel like that  
11 ought to be redacted. It just -- you know, thought about  
12 drugs in this trial, but we haven't gone in to this pretty  
13 bad language. There are a couple of specific emails, one --  
14 well --

15 THE COURT: They object to redacting that?

16 MR. BANKS: The F-word and the S-word and some  
17 other words.

18 MR. SORENSON: Well, that's the language he's using  
19 texting back and forth with people. I mean, I don't --  
20 Can I get this marked, Hilda.

21 (State's Exhibit No. 88, was marked for  
22 ID.)

23 MR. SORENSON: This is State's 88. I'll hand this  
24 up to you. I mean, that's basically what we have taken out  
25 of that laundry stack that we intend to introduce through



State v. Pelzer 12/3/09

4

1 Investigator Godwin. I'm not sure what specific --

2 MR. BANKS: Well, Your Honor, about the first 10  
3 pages are fine, approximately, until you get to about 7:23  
4 p.m.

5 MR. SORENSON: Look at the bottom, there's page  
6 numbers.

7 MR. BANKS: Oh, yeah, I didn't see those. Page 7  
8 talks about -- uses the S-word on both of those emails, and  
9 that second one talks about the day before -- I think it's a  
10 little more inflammatory, he actually uses the word murder  
11 in that email. And it's a day before, and I think by the  
12 testimony so far there's no way he could have been planning  
13 the murder on the 4th.

14 THE COURT: All right. I'm looking at Page 7. I  
15 don't see the word you're referring to. I see some other  
16 words.

17 MR. BANKS: Page 7 -- let me --

18 MR. SORENSON: It should be -- because I had to  
19 kind of go back and re-number this, to make this a little  
20 bigger, Your Honor. It's the one that starts at 19:23 at  
21 the top it gives the times. That's Page 7.

22 MR. BANKS: Your Honor, the next page has the  
23 F-word. Page 12 has the S-word.

24 THE COURT: I mean, it's hard for me to figure out  
25 what's going on here at all. I don't know how this is

1 relevant, but I guess -- You said Page 12?

2 MR. BANKS: Yes, sir. Page 29 as well, has the  
3 F-word.

4 THE COURT: I don't see the F-word on Page 12.

5 MR. BANKS: Well, in text you don't spell it all  
6 the way out.

7 THE COURT: I don't even see it abbreviated.

8 THE BANKS: The middle of Page 12 -- I mean, Page  
9 29.

10 THE COURT: Sir?

11 MR. BANKS: Page 12, I think is the S-word.

12 THE COURT: I don't see how it can be redacted  
13 without making it totally meaningless.

14 MR. BANKS: At one point, Your Honor, he actually  
15 gets in, I guess, sort of a texting argument with someone  
16 where the language sort of gets heightened, and more  
17 explicit. And that's after -- that's Page 30.

18 MR. SORENSON: What's the date and time on that?

19 MR. BANKS: You count back from the one that's all  
20 caps, which is on Page 40 -- I think that say's 42. It's  
21 kind of light. Yeah, 42. If you just count back from that  
22 one, that's where they really --

23 MR. SORENSON: His may be numbered a little  
24 different. There were four or five pages taken out and I  
25 went back and renumbered --

State v. Pelzer 12/3/09

6

1 MR. BANKS: So it would be 10:20 -- 10:20.

2 THE COURT: Do what, now?

3 MR. BANKS: There's one at 10:20 that's like a part  
4 of that where they really get in an argument. It doesn't  
5 start there, but that's the crux of it. You can back up  
6 from there, there's probably a dozen -- about a half-dozen  
7 prior to that. Again, you don't have the same page number I  
8 do, so I'm trying to -- the time is 10:12. The time is  
9 10:12, and those start pretty much regularly with the F-word  
10 and the S-word and then all caps.

11 THE COURT: Well, the first page I've got is 17.  
12 The time is 17:43.

13 MR. SORENSON: That's on the day before the  
14 homicide. These start on the Wednesday, March 4th, and  
15 basically go through the day after the murder.

16 THE COURT: So where is the 10:12 you're talking  
17 about; what day is that?

18 MR. SORENSON: The 5th.

19 MR. LEIENDECKER: The 5th.

20 MR. SORENSON: So basically -- 45 minutes before  
21 our homicide.

22 MR. BANKS: Does he have the same pages? Does he  
23 have more pages?

24 MR. SORENSON: No. He's going to have the same  
25 pages as you, I'm just going through -- your numbers --

State v. Pelzer 12/3/09

7

1 THE COURT: I've got March 5th at 4:21 and then  
2 March 5th at 11:43. I don't have any 10:12.

3 MR. SORENSON: No. It's going to be 22:23. 10:23  
4 in the evening. So 22:23, military time.

5 THE COURT: 10:22?

6 MR. SORENSON: 22:23.

7 THE COURT: Oh. Well, what is all this coming in  
8 for anyhow?

9 MR. BANKS: That's my other point, Your Honor, you  
10 know, the day before. I don't see the relevancy of that.

11 THE COURT: If it's just something to show he's  
12 talking nasty, it's not got no business in here.

13 MR. SORENSON: No, sir. That's not the reason why  
14 we're introducing any of it. The text the day before, the  
15 basis of the vast majority of them is to basically show that  
16 he is looking for money. I mean, the context of probably 80  
17 percent of those texts is him asking various different girls  
18 to send him money. That kind of corroborates the fact that  
19 he asked Dana Brown, who testified yesterday, for \$20, also.  
20 He's asking every one of them to send him \$20 by Western  
21 Union. That would be the vast majority of the text from the  
22 day before. Then coming into the day of the homicide, Your  
23 Honor, the basis of those, especially those last little  
24 group that Mr. Banks is talking about, those are all right  
25 within close proximity of our homicide. It goes to show his

State v. Pelzer 12/3/09

8

1 state of mind at that time. It also goes to show that a lot  
2 of it has to do with the times of the text messages that we  
3 submit would be relevant.

4 THE COURT: I don't see how they can be redacted.

5 MR. BANKS: All right. Your Honor, then, we'd  
6 move that you rule that we don't -- that you -- that we're  
7 not having any of the email -- any of the text messages from  
8 before, the day before. In fact, one in particular, it's  
9 19:24:21 -- that's 7:00 o'clock -- 7:20 in the evening. The  
10 murder happened at 11:00 o'clock or so on the 5th. This is,  
11 you know, more than 28 hours prior to the murder.

12 THE COURT: You're talking about March 4th at what  
13 time?

14 MR. BANKS: March 4th at 19:24:21. It mentions a  
15 murder charge. As clearly intended to inflame this jury  
16 with the mention of a murder when there's no way he could  
17 have been planning this murder. The truck was in  
18 Pennsylvania, probably, at that time or Virginia. It also  
19 has an expletive in there, as well.

20 THE COURT: And what are you trying to get that in  
21 to show?

22 MR. SORENSON: Your Honor, that goes -- we're not  
23 alleging that he was planning the day before to kill Jason  
24 Rivenburg, the truck driver. But it does go to show his  
25 state of mind that he was planning to -- to commit an armed

1 robbery. To commit a robbery. He has a text from a girl  
2 saying don't get your -- pardon my French -- shit busted.  
3 Then he responds back that shit can't get busted without me  
4 catching a murder charge.

5 MR. BANKS: Yeah, he --

6 MR. SORENSON: That goes to show his state of  
7 mind, I mean, the day before.

8 MR. BANKS: Your Honor, state of mind the day  
9 before I think is not even appropriate, and he's not charged  
10 with an armed robbery at this point. He's charged with  
11 murder, and if you read the sentence itself, it's actually  
12 counter-intuitive to what they just argued. He says he  
13 can't get arrested. You know why, because he's on  
14 probation, Your Honor. He can't get busted. He's actually  
15 saying that he can't get something like a murder charge.  
16 He's not saying he's planning to murder or an armed robbery.  
17 He's saying quite the opposite, but we don't want it in  
18 because I think it's inflammatory and it will confuse the  
19 jury, as well.

20 THE COURT: Well, I can see why the emails -- I  
21 mean the text messages on March 4th deal with his desire to  
22 get money. The one at 19:23:23, I can read the first five  
23 words. I don't understand what the last part of that says.

24 MR. SORENSON: I think it's trading places, and I  
25 think that must be like of like her signature. That's a

State v. Pelzer 12/3/09

10

1 text message to him, because all of the text messages from  
2 that number, that , every one of those text  
3 messages from her end with that. So it must be like a  
4 signature, basically. That's her screen name or something  
5 from the internet website that they met on. There are two  
6 or three different that have that, but just about every text  
7 message from that phone number ends in that.

8 THE COURT: Well, I don't see where you need  
9 either one of them on that page, the 19:23:33 or the  
10 19:24:21.

11 MR. BANKS: And Your Honor -- don't have --

12 THE COURT: I don't think they contribute anything  
13 to the fact that he was looking for money.

14 MR. SORENSON: Okay.

15 THE COURT: So I'll grant your motion to restrict  
16 those two on that page right there.

17 MR. SORENSON: Yes, sir.

18 THE COURT: Because I don't think they're  
19 probative for what you're trying to show, and they are  
20 certainly prejudicial, and I have no idea in the world what  
21 they mean.

22 MR. SORENSON: All right, so that's page --

23 THE COURT: It's pure speculation what it's  
24 talking about.

25 MR. SORENSON: That's Page 7?

1 THE COURT: That's Page 7.

2 MR. SORENSON: Okay. We'll pull that out of  
3 there.

4 THE COURT: All right. Now, what else  
5 specifically are you objecting to? I can't redact -- I  
6 don't see how it can be redacted. Using those words, as  
7 they're used by many people on many occasions they have  
8 definite meaning, and you take those words out and the  
9 sentence makes no sense whatsoever.

10 MR. BANKS: I understand, Your Honor. I think  
11 that's enough.

12 THE COURT: All right.

13 MR. SORENSON: Do you want to pull that Page 7 out  
14 and mark it as a Court's Exhibit or something?

15 THE COURT: We'll do that.

16 Madam Court Reporter, mark that as Court's Exhibit  
17 whatever.

18 COURT REPORTER: Number four.

19 (Court's Exhibit No. 4, Page 7 text  
20 messages, was marked and entered.)

21 THE COURT: All right. Are you ready for the jury,  
22 now?

23 MR. BANKS: Bring in the jury, please.

24 (Jury in at 9:53 a.m.)

25 THE COURT: All right. Good morning, ladies and



State v. Pelzer 12/3/09

12

1 gentlemen. We had a few matters we had to take care of and  
2 it took longer than I anticipated. We are ready to go at  
3 this time.

4 All right, counsel, you continue your examination of  
5 this witness.

6 MR. PASCO: May it please the Court.

7 THE COURT: Yes, sir.

8 STANLEY GRAHAM - CONTINUED DIRECT EXAMINATION

9 BY MR. PASCO:

10 Q Good morning, Det. Graham.

11 A Good morning.

12 Q Yesterday before we broke you had testified about how  
13 Det. Godwin went to go pick up the defendant, Willie Pelzer;  
14 do you remember that?

15 A Yes, sir.

16 Q Okay. And that was sometime around Midnight or quarter  
17 to Midnight on Saturday, March 7th, that he was picked up?

18 A Yes, sir.

19 Q And you testified you had an opportunity to meet the  
20 defendant, Willie Pelzer, early morning hours right after  
21 Midnight on Sunday, March 8th?

22 A Yes, sir.

23 Q And were you going to attempt to talk to Mr. Pelzer and  
24 take a statement from him?

25 A Yes, sir.

1 Q And before taking any kind of a statement from the  
2 defendant did you go over his rights with him?

3 A Yes, sir, we did.

4 Q And did you use an advice of rights form to assist you  
5 in going over those rights?

6 A Yes, sir, I did.

7 Q Let me show you what's been marked as State's Exhibit  
8 No. 87; do you recognize that?

9 A Yes, sir.

10 Q What do you recognize that to be?

11 A Statement of Miranda and a Waiver of Rights.

12 Q Is it the exact same one, other than it's a copy of it,  
13 but is it the exact same one that you went over with Willie  
14 Pelzer in the early morning hours of Sunday, March 8th?

15 A Yes, sir.

16 Q All right. Hadn't been altered in any way?

17 A No, sir.

18 MR. PASCO: Your Honor, I'd ask that State's  
19 Exhibit be admitted into evidence, that being number 87.

20 MR. BANKS: No objection.

21 THE COURT: Admitted without objection.

22 (State's Exhibit No. 87, was marked  
23 and entered.)

24 BY MR. PASCO:

25 Q And did you go over the rights that were on that advice

State v. Pelzer 12/3/09

14

1 of rights with Willie Pelzer?

2 A Yes, sir.

3 Q If you could, for the jury, go over the right today  
4 just like you did with Willie Pelzer on March 8th?

5 A Number one, you have the right to remain silent.  
6 Number two, anything you say can and will be used against  
7 you in a court of law. Number three, you have the right to  
8 talk to a lawyer and have him present while you're being  
9 questioned. Number four, if you cannot afford to hire a  
10 lawyer one will be appointed to represent you before any  
11 questioning if you wish. Number five, you can decide at any  
12 time to exercise these rights and not answer any questions  
13 or make any statements.

14 Q And those were the extent of the rights that you went  
15 over with the defendant?

16 A Yes, sir.

17 Q And did he understand those rights?

18 A Yes, sir.

19 Q Did he have any -- did he appear, in your opinion, to  
20 have any problems, whatsoever, in understanding those  
21 rights?

22 A No, sir.

23 Q Did he acknowledge to you that he understood each one  
24 of those right?

25 A Yes, sir.

1 Q And did you go over anything else with him that's on  
2 the advice of rights?

3 A A Waiver of Rights.

4 Q And read that for the jury just like you did for Mr.  
5 Pelzer?

6 A I have read the above statement of my rights and I  
7 understand each of those rights, and having these rights in  
8 mind, I waive them and willingly make a statement.

9 Q And did the defendant sign that advice of rights form  
10 saying that he understood his rights?

11 A Yes, he did.

12 Q And stating that he understood that Waiver of Rights?

13 A Yes, sir, he did.

14 Q And did you also sign it, sir.

15 A Yes, I did.

16 Q And what was the time that you went over those rights?

17 A 00:23, which is 12:23.

18 Q 12:23 a.m.?

19 A (Nods head affirmatively.)

20 Q And did the defendant give you some verbal statements  
21 that night, sir?

22 A Yes, sir, he did.

23 Q Okay. Were his statements given freely and  
24 voluntarily?

25 A Yes, sir, they were.

State v. Pelzer 12/3/09

16

1 Q Did you force him to make any statements that night?

2 A No, sir.

3 Q Did anybody from the Sheriff's Office in your presence  
4 force the defendant to make a statement that night?

5 A No, sir.

6 Q Did you deny him any comforts like food or water that  
7 night to make him give you a statement?

8 A No, sir.

9 Q Okay. And did he give you some verbal statements?

10 A Yes, sir.

11 Q Tell the jury what those verbal statements were that he  
12 gave you?

13 A During the interview Mr. Pelzer stated that he did not  
14 know what had happened, but he did not kill anyone. Mr.  
15 Pelzer stated that he did go to Charleston to meet with some  
16 female, but that was it. He continued to state that he had  
17 been drinking with Mr. Reed and Mr. Haygood, Jr. and they

18 had left the residence to take Bryant back to his house. He  
19 further stated that he did not know why this was happening  
20 to him, but he had not been to Bakersfield's in a long time.

21 Q And after he gave you that verbal statement did he want  
22 to go do?

23 A Yes, he did.

24 Q What did he want to go do?

25 A Take a smoke break.

1 Q And did you let him do that?

2 A Yes, sir, we did.

3 Q Okay. And what did you do; where did you take him so  
4 he could take a smoke break?

5 A The interview was being conducted in Maj. Stephenson's  
6 office, so we just stepped outside of the Major's office on  
7 the sidewalk in the back of the Sheriff's Office.

8 Q Okay, and who was the defendant in the custody of when  
9 you let him go take a smoke break?

10 A Det. Godwin.

11 Q Okay, and were you privy to a conversation between Det.  
12 Godwin and the defendant at that time?

13 A Yes, sir, we were all standing around. I was engaged  
14 in a separate conversation with Maj. Stephenson, but we were  
15 not far from Det. Godwin.

16 Q Okay. Did you hear everything that the defendant said  
17 to Det. Godwin?

18 A No, not everything.

19 Q You can only tell the jury what you heard during that  
20 conversation.

21 A Yes, sir.

22 Q What, if anything, did you hear relevant in that  
23 conversation?

24 A Mr. Pelzer stated that he did not do anything and that  
25 sometimes he gets so high that he does not remember

State v. Pelzer 12/3/09

18

1 anything. Mr. Pelzer further stated, that I did not kill no  
2 white man.

3 Q And why was that -- was there any significance to the  
4 fact that he said he did not kill a white man?

5 A Yes, sir, there was.

6 Q And what was that?

7 A We had not disclosed the race of the victim at that  
8 time.

9 Q And did you ever tell the defendant the race of the  
10 victim?

11 A No, sir.

12 Q And as a result of him saying something about not  
13 killing a white man, what did y'all inquire about?

14 A Det. Godwin asked at that time how he knew the victim  
15 was a white man. Mr. Pelzer stated he heard about it on the  
16 news.

17 Q And had any information, to your knowledge, been  
18 disseminated by the Calhoun County Sheriff's Office about  
19 the race of the victim by Saturday night?

20 A Not to my knowledge.

21 Q And was that basically the extent of the defendant's  
22 verbal statements to you that night?

23 A Yes, sir.

24 Q And you documented what you heard on your narrative in  
25 your investigative report used to refresh your memory;

1 correct?

2 A Yes, sir.

3 Q Now, that's Midnight, Sunday, March 8th, did your  
4 investigation continue in this case?

5 A Yes, sir, it did.

6 Q And, in fact, the following day or later that night on  
7 Sunday, March 8th, now going into Monday, March 9th, where  
8 did you end up going?

9 A We wound up going to Charleston, South Carolina.

10 Q And why did you go to Charleston, South Carolina?

11 A We were in search of the gun, the murder weapon.

12 Q Okay, and prior to going down to Charleston, you had  
13 taken statements from Willie Reed?

14 A Yes, sir.

15 Q And statements from Jimmy Haygood, Jr.?

16 A Yes, sir.

17 Q Okay, and you decided to go down to Charleston; who  
18 directed you on where to go and how to get to Charleston.

19 A We started with Mr. Reed.

20 Q Okay, and was he able to find the apartment complex --  
21 were you able to find the apartment complex at that time?

22 A No, sir, we were not.

23 Q And who knew how to get to the apartment complex?

24 A Mr. Haygood.

25 Q And did he show you how to get there?



State v. Pelzer 12/3/09

20

1 A Yes, sir, he did.

2 Q Let me show you what's been marked as State's Exhibit  
3 No. 53, 54, 55, 56, and 57. Do you recognize these  
4 photographs that are already in evidence?

5 A Yes, sir, I do.

6 Q Okay, and what are those photographs of?

7 A These are photos I took that night at Bridgeview  
8 Apartment complex in Charleston.

9 Q When you were trying to locate the gun in the dumpster?

10 A Yes, sir.

11 Q Were you able to locate the gun in the dumpster?

12 A No, sir, we were not.

13 Q And did you learn why you weren't able to locate the  
14 gun; when did they pick the trash up?

15 A They picked the trash up that previous Friday, I think  
16 it was.

17 Q So if the gun was dumped after Midnight, Thursday,  
18 early Friday morning, it would have already been picked up  
19 before Sunday?

20 A Yes, sir.

21 MR. PASCO: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 BY MR. PASCO:

24 Q And going back to the defendant's statement, when you  
25 heard him say something about knowing the victim was white,

1 you testified y'all inquired, you know, how did you know he  
2 was white? How did the defendant act at that time?

3 A He was very upset.

4 Q Thank you. Answer any questions defense has for you.

5 A Yes, sir.

6 THE COURT: Cross-exam.

7 MR. BANKS: Thank you, Your Honor.

8 STANLEY GRAHAM - CROSS-EXAMINATION

9 BY MR. BANKS:

10 Q Det. Graham, how are you?

11 A How are you.

12 Q You said that you gave him, Mr. Pelzer, his right; is  
13 that correct?

14 A Correct.

15 Q And the thing that most surprised you about that was  
16 the fact that he said something about a white man had been  
17 killed; is that right?

18 A Correct.

19 Q And that surprised you because -- how many people knew  
20 that a white man had been killed?

21 A As far as I knew --

22 Q Directly that you knew?

23 A Directly that I knew?

24 Q Yes.

25 A Members of the Calhoun County Sheriff's Office and

State v. Pelzer 12/3/09

22

1 members that were involved directly in the investigation.

2 Q Pretty much all of the Sheriff's Office, at that point,  
3 knew?

4 A Correct.

5 Q Not even just the guys who were out at the scene, but  
6 it got around the office pretty thoroughly; is that what  
7 you're saying?

8 A The guys that were working shift, yes, sir.

9 Q And but y'all found out about the killing how many  
10 hours before this conversation?

11 A That morning at approximately 7:30 -- well, I found out  
12 about 7:30 or so.

13 Q But it was discovered around -- it was discovered  
14 earlier than that, was it not?

15 A Correct.

16 Q And there were half-dozen officers at some point at  
17 your office?

18 A When I arrived there were six or so; yes, sir.

19 Q And so this conversation happened at what time,  
20 approximately?

21 A A little after Midnight.

22 Q Midnight. So, gosh, how many hours is that?

23 A Twelve, 13.

24 Q Okay, and so 13 hours. This is a small community,  
25 isn't it?

1 A True.

2 Q Not very many people --

3 A Yes, sir.

4 Q -- considering other municipalities. Word can get  
5 around, can it not?

6 A Yes, it can.

7 Q Do you know where Willie Pelzer's mother works?

8 A I think she works for the postal service.

9 Q And doesn't she have another part-time job?

10 A I think she works at the Wilco, I'm not sure.

11 Q What is the Wilco?

12 A That is a truck stop. The name of it is Wilco Travel  
13 Plaza, but it's actually a truck stop.

14 Q Okay, and it's on 22 and 21, right there --

15 A It's on Highway 22 right near the interstate.

16 Q Yeah. It's near 21, but on 22?

17 A Correct.

18 Q Now, isn't that a place that the deputies frequent?

19 A Yes, sir, it is.

20 Q And you think that they would have been by there more  
21 than once between the time this hit -- the information among  
22 your department got word that a white man had been killed,  
23 you think between the time that that information got out  
24 that that would have been deputies there at any time during  
25 that day?

State v. Pelzer 12/3/09

24

1 A It's quite possible.

2 Q And if she was working -- you don't know if she was  
3 working at that time, but if she was working there, she  
4 knows pretty much all those deputies doesn't she; she knows  
5 you doesn't she?

6 A I don't think she does.

7 Q She doesn't know you?

8 A No, sir.

9 Q But when the deputies go -- they kind of go get gas,  
10 hang out, get something to eat?

11 A Yes, sir, we check on it quite a bit.

12 Q So word could have gotten to the staff at the truck  
13 stop that way?

14 A Yes, sir, it's possible.

15 Q Okay, and even if she wasn't working it could have  
16 gotten to the staff at the truck stop?

17 A Yes, sir.

18 Q And it is a -- truck -- trucks go there. Big tractor  
19 trailer just like Mr. Rivenburg's?

20 A Yes, sir.

21 Q They go there?

22 A Yes, sir.

23 Q In fact, I think, didn't your investigation uncover  
24 that even before y'all knew anything, even before the  
25 deputies knew anything at all that there was a man missing.

1 They started -- his company, his friends, started calling  
2 around trying to find out where he'd been, and they called  
3 truck stops, didn't they?

4 A I'm not sure.

5 Q You're investigation didn't show that?

6 A I wasn't part of it if it was.

7 Q All right. So you're not aware if they had actually  
8 called this particular truck stop looking for like receipts  
9 or anything that might help track him?

10 A I'm not aware if they did or not.

11 Q You know, you said the deputies knew, pretty much. You  
12 don't know if everybody knew, but pretty much the department  
13 knew?

14 A Right.

15 Q There were some SLED agents that knew. Did people ride  
16 by the scene while y'all were there, because y'all were  
17 there for hours, weren't you?

18 A We were there for a while.

19 Q Did people ride by?

20 A I'm sure they did.

21 Q Did people stop?

22 A I don't remember.

23 Q Did people inquire -- do you know of any inquiries made,  
24 you know, hey, what's going on?

25 A I have no idea.

State v. Pelzer 12/3/09

26

1 Q Okay. And but, you know what, there's at least one  
2 other person that you haven't mentioned that knew that a  
3 white man had been killed?

4 A Okay.

5 Q How about Mr. Haygood. He knew.

6 A Okay.

7 Q I mean, didn't y'all get a statement from Mr. Haygood  
8 prior to your conversation with Mr. Pelzer here?

9 A We did.

10 Q And Mr. Haygood said that a white man had been killed;  
11 isn't that correct?

12 A I'm not sure.

13 Q Oh, you didn't take that statement?

14 A I did. We interviewed Mr. Haygood at the Sheriff's  
15 Office prior to Mr. Pelzer.

16 Q Yeah, and Mr. Haygood didn't say a white man was  
17 killed?

18 A I'm not sure about Mr. Haygood saying that.

19 Q You took the statement, right?

20 A I interviewed Mr. Haygood.

21 Q Do you remember what he told you?

22 A Yes, sir, I do, but it was not about a white man  
23 getting killed.

24 Q It wasn't?

25 A No, sir.

1 Q But he knew about -- You know what, he knew about the  
2 killing before others; didn't he?

3 A Mr. Haygood informed me that he knew who was left at  
4 the house.

5 Q In fact he --

6 A He knew about who was left at the house.

7 Q Who was left at the house?

8 A At

9 Q So at that point, Mr. Haygood hadn't told you about the  
10 killing?

11 A No, sir.

12 Q You arrested Mr. Pelzer without knowing how he was a  
13 suspect?

14 A I did not.

15 Q Did you take the statement -- you did take the  
16 statement from him, Mr. Haygood, did you not?

17 A Yes, I did take a statement from Mr. Haygood.

18 Q If you would, just take a look at that, real quick.

19 A Okay.

20 Q Thank you. The date and time of the statement, is that  
21 before the date and time you talked to Mr. Pelzer?

22 A Yes, sir, it is.

23 Q Okay. And you signed it, right --

24 A I did.

25 Q -- who else was with you when you took that statement?



State v. Pelzer 12/3/09

28

1 A Maj. Tim Stephenson.

2 Q Tim Stephenson. So it indicates -- it's a three page  
3 statement that you took from Mr. Haygood with Stephenson  
4 prior to the arrest of Willie Pelzer.

5 A Correct.

6 Q And he gave you a pretty detailed three pages, did he  
7 not?

8 A Yes, he did.

9 Q And talks about a murder, doesn't it?

10 A Yes, he did.

11 Q Okay. And so my question to you -- we'll go back?

12 A Okay.

13 Q Haygood knew that there was a murder prior to most  
14 anyone else; did he not?

15 A He told Maj. Stephenson that there was a murder.

16 Q Okay. Now, did you test -- I think you -- did you --  
17 were you involved in the testing or collection of any of the  
18 materials from Mr. Pelzer?

19 A No, sir.

20 Q Okay. Were you involved -- did you direct -- you're  
21 the chief investigator, right?

22 A Yes, I am.

23 Q Did you direct anybody from your staff to go and try to  
24 collect any shoe impressions from Mr. Reed or Mr. Haygood?

25 A I did not.

1 Q You didn't think that since Mr. Haygood knew something  
2 about this crime prior to anybody else that maybe he had  
3 some deeper involvement?

4 A I did not.

5 Q Did you ask to test any of his clothes; did you ask any  
6 of your offices to test any of his clothes?

7 A I did not.

8 Q Did you ask any of your officers to check Reed's  
9 clothes?

10 A I did not.

11 Q Check his clothes?

12 A No, sir.

13 Q You know, you knew through your investigation that they  
14 had actually during the approximate time of the murder that  
15 Reed and Haygood were using a white Lumina, didn't you?

16 A Yes, sir.

17 Q Reed's car, not the uncle's car; right?

18 A Yes, sir, I knew that.

19 Q So you knew the car that they were driving during the  
20 time of the murder, correct?

21 A Yes, sir.

22 Q All right. Did you direct any of your staff to go and  
23 try to examine the inside, the tire tracts or the outside of  
24 that car?

25 A No, sir, I did not.

State v. Pelzer 12/3/09

30

1 Q And do you -- have you thought better of that since  
2 then?

3 A Not really.

4 Q Now, you actually talked to Jimmy Lee Haygood and  
5 Willie Reed prior to that statement that we were just  
6 talking about, the one about the murder, didn't you?

7 A (No response.)

8 Q Didn't they report a gun stolen?

9 A Oh, yes, sir.

10 Q And they gave a statement?

11 A Yes, sir.

12 Q And were you party to that statement?

13 A In and out, yes, sir.

14 Q Okay. And so they gave a statement about, what, was it  
15 a stolen gun?

16 A Yes, sir.

17 Q And, in fact, because of what they said about a stolen  
18 gun your department believed them, and they were very  
19 believable that that gun was stolen weren't they?

20 A Yes, sir, they were.

21 Q And not only that, but y'all also wrote it up as a  
22 burglary, did you not?

23 A I believe so.

24 Q And y'all believed a burglary occurred simply on the  
25 testimony or on the information provided to you by Reed and

1 Haygood?

2 A Yes, sir.

3 Q Did anybody corroborate anything they've said to you as  
4 far as the stolen gun?

5 A I -- I --

6 Q When they reported the stolen gun did the uncle say,  
7 yeah, that's right or did anybody else around corroborate  
8 that?

9 A Not at that time, no.

10 Q You did it simply based on their word to you?

11 A Yes, sir, that's right.

12 Q They lied to you didn't they?

13 A Eventually, we did find out that they did lie to us.

14 Q And did that surprise you that they lied to you?

15 A Not really.

16 Q Did it surprise you that you believed them?

17 A Until we can actually investigate we have no choice but  
18 believe it.

19 Q And they filed a false police report, basically, did  
20 they not?

21 A Yes, they did.

22 Q Did y'all charge them with -- that's a crime isn't it?

23 A Yes, it is.

24 Q Did y'all charge them with a crime?

25 A No, sir, we did not.

State v. Pelzer 12/3/09

32

1 Q Why did you choose not to charge them with a crime?

2 A After discussing it we actually felt that the murder  
3 took priority.

4 Q Did you strike a deal with them in some way?

5 A No, sir.

6 Q You -- but you could have charged them with a crime?

7 A Yes, sir.

8 Q You treated them leniently?

9 A Yes, sir.

10 Q you gave them a break, you gave them a break. You --  
11 were you at the bond hearing for Mr. Reed or Mr. Haygood?

12 A I don't think I was at either one of those bond  
13 hearings.

14 Q Was Deputy Godwin?

15 A Yes, I think he was.

16 Q All right. As a result of the bond hearing did they get  
17 put in jail?

18 A I don't know that.

19 Q You don't know?

20 A No, sir.

21 Q In your estimation, how many times did Reed and Haygood  
22 lie to you about this stolen gun; you know, different facts,  
23 different details and all of that?

24 A To me personally, maybe twice --

25 Q Okay.

1 A -- three times.

2 Q And when you talked to them they were together weren't  
3 they, about the stolen gun?

4 A No, sir.

5 Q With your involvement they were apart?

6 A Correct.

7 Q So the person who responded to that --

8 A Was Deputy Troutman.

9 Q Troutman. You know, the statement that Mr. Pelzer gave  
10 you, and he didn't write it down, did you write it down  
11 right as he said it, the statement?

12 A No, sir.

13 Q Okay. So -- so how long did it take you to put that on  
14 paper?

15 A Later that night after I transported Mr. Pelzer.

16 Q So several hours then?

17 A Not several hours.

18 Q Not several house?

19 A Not several hours.

20 Q So you took the statement and immediately took him to  
21 jail?

22 A Yes, sir.

23 Q Processed him?

24 A The jail did.

25 Q And returned?

State v. Pelzer 12/3/09

34

1 A I dropped him off and I returned.

2 Q And the very first thing you did was write it down?

3 A Shortly after that, yes, sir.

4 Q But you started your report, you didn't just write down  
5 what he said, you started from the beginning, did you not?

6 A As we were going through the investigation, I did.

7 Q So it took you some time to get to his part of it, the  
8 statement?

9 A I would say, yes, sir.

10 Q So how long did it take, do you think?

11 A Maybe an hour.

12 Q Do you think you would remember it better at the time  
13 you were basically transcribing it like this lady is doing  
14 here or do you think it would be better memory after you  
15 spent some time doing a lot of things and thinking about a  
16 lot of things?

17 A I'm sure it would be better immediately.

18 Q Okay. And so what you put down was what you recall  
19 from that conversation?

20 A That's correct.

21 Q Do you think it's exact?

22 A It may not be.

23 Q Okay, and it's not word-for-word, because it's not  
24 quoted?

25 A No, sir.

1 Q As far as -- well, he was wrong about one thing, can  
2 you look at what his statement was and tell me from what you  
3 recollect, what you wrote, what he was wrong about in that  
4 statement?

5 A I don't understand what you're asking me?

6 Q Did this crime occur at Brakesfield's?

7 A No, sir.

8 Q Where did it occur?

9 A Across the street from Brakesfield's.

10 Q And what did he say?

11 A Brakesfield's.

12 Q So at the time he thought that it happened at  
13 Brakesfield's?

14 A We call that area Brakesfield's.

15 Q You call that area Brakesfield's?

16 A I do.

17 Q How do you know what he calls that area?

18 A Because he lives there.

19 Q But how do you know that he calls across the street  
20 from Brakesfield's, Brakesfield's? Does it say  
21 Brakesfield's?

22 A It doesn't say anything.

23 Q It used to say Petrol something, some crazy name?

24 A I can't remember.

25 Q But you don't know that he calls across the street from



State v. Pelzer 12/3/09

36

1 Brakesfield's that's labeled Petrol something,

2 Brakesfield's?

3 A Correct.

4 Q Are you even aware that he know -- again, does

5 Brakesfield owns both places or not?

6 A I don't think they do now, sir.

7 Q Yeah. And y'all make mistakes, right. I mean, you're  
8 human?

9 A Sure.

10 Q And, in fact, I don't want to run through a list, but  
11 for instance that last casing that was found, remember --  
12 you weren't involved in the last casing; the shell casing in  
13 the grass?

14 A Yes, sir.

15 Q Okay. I mean, this is your investigation right?

16 A Correct.

17 Q And it took how many days later to get that casing?

18 A I'm not sure exactly how many days it took.

19 Q Isn't that something that y'all should have found  
20 sooner?

21 A Could have. Yes, sir.

22 Q And, again, I'm not going to belabor, y'all make  
23 mistakes just like you can make a mistake in your  
24 recollection of what Mr. Pelzer said?

25 A Yes, sir.

1 Q Are you aware as to whether the Sheriff's Department  
2 opposed the PR bond given to -- by the magistrate to Mr.  
3 Reed and Mr. Haygood?

4 A No, sir, I'm not aware.

5 Q You're not aware if they opposed it or not?

6 A No, sir.

7 Q Okay. You never charged Mr. Pelzer with stealing the  
8 gun that was reported stolen did you?

9 A I did not.

10 Q Never charged him with burglarizing that house, either,  
11 did you?

12 A I did not.

13 Q What time does Brakesfield's close?

14 A Approximately, 10:00.

15 Q And, again, when you say approximately how is it --  
16 they're pretty good at 10:00 o'clock or do you know what  
17 their practice is?

18 A If I remember correctly, the clerks informed me that  
19 they start closing about a quarter til 10:00 and then they  
20 actually close at 10:00.

21 Q And that's pretty common knowledge with you guys,  
22 right?

23 A Yes, sir.

24 Q And it's pretty common knowledge in the whole area,  
25 isn't that right?

State v. Pelzer 12/3/09

38

1 A I would say so.

2 Q Because that's the closest gas station, unless you go  
3 to St. Matthews from this side or 21 on the other side and  
4 up 21 on the other side. I mean, that's pretty much the gas  
5 station in that area?

6 A Yes, sir.

7 Q And the convenience store in that area?

8 A Yes, sir.

9 Q The crime scene -- it's not directly across the street.  
10 It's just a little off to the right if you're facing the  
11 crime scene, it's just a little off to the right from  
12 Brakesfield's; is that right?

13 A Yes, sir.

14 Q Not very far, though?

15 A Correct.

16 Q There's a map here, but you can clearly see, even if  
17 you were standing back at the front door of Brakesfield's you  
18 could clearly see the crime scene from the front of  
19 Brakesfield's?

20 A Yes, sir, you could.

21 Q And you could see -- do you think you could see the  
22 tractor trailer from even the front door of Brakesfield's?

23 A Yes, sir, you could.

24 Q And do you think you could have seen the tractor  
25 trailer that night from even the gas pumps, the outside of

1 the gas pumps that night from Brakesfield's? You were there  
2 in the dark; weren't you?

3 A Yes, sir.

4 Q Could you see the gas pumps from the tractor trailer?

5 A You can.

6 Q Pretty clear?

7 A Yes, sir.

8 Q All right, go back to the stolen gun; whose gun was it?

9 A It was actually Mr. Reed's gun.

10 Q You say that but it was at Mr. Haygood's house right?

11 A Yes, sir.

12 Q And it was reported to you that Mr. Haygood had it all  
13 the time, right?

14 A Right.

15 Q And you still believe that it's Mr. Reed's gun?

16 A Yes, I do.

17 Q Simply because he filled the form out saying that he'd  
18 buy it.

19 A The reason why I believe it was his gun.

20 Q Are you aware of whether Mr. Pelzer has a car to use;  
21 does he have one at his disposal?

22 A I'm not.

23 Q In your investigation did he ever have -- drive a car?

24 A Did he ever drive a car?

25 Q Yeah, in relation to this investigation?

State v. Pelzer 12/3/09

40

1 A Not that I know of.

2 Q Were you involved in the actual removal of clothing and  
3 materials from Pelzer's house?

4 A No, sir.

5 Q Okay. In your investigation I think it came to your  
6 attention that there were some fresh tire tracks?

7 A I heard them discussing it, yes, sir.

8 Q And one of your deputies found fresh tire tracks?

9 A I would say it was Det. Godwin and Maj. Stephenson.

10 Q Okay, and they reported that to you because you're the  
11 chief investigator?

12 A Yes, sir, they did.

13 Q And did you go over and look at them?

14 A No, sir.

15 Q You didn't look at the tire tracks?

16 A No, sir.

17 Q And you're the lead investigator; why didn't you look  
18 at the tire tracks?

19 A Because Maj. Stephenson and Det. Godwin were working on  
20 it.

21 Q Okay, and --

22 MR. BANKS: One moment, Your Honor.

23 THE COURT: Yes, sir.

24 BY MR. BANKS:

25 Q Det. Graham --

1 A Yes, sir.

2 Q -- the first search warrant y'all issued was actually  
3 for Lane; isn't that right?

4 A Yes, sir.

5 Q And who lives there?

6 A Mr. Haygood.

7 Q And you were looking for the evidence of a murder?

8 A Correct.

9 Q You weren't looking for the gun, you were looking for  
10 evidence of a murder?

11 A And the gun.

12 Q And -- well, if you could find the gun, right?

13 A Yeah.

14 Q And, but it was Reed's gun?

15 A Correct.

16 Q You already knew that it was at Haygood's house?

17 A Correct.

18 Q So when y'all got there -- when y'all's department go  
19 there to execute the search warrant y'all took Jimmy Haygood  
20 into custody didn't you?

21 A No, we didn't.

22 Q Did you then later asked him to come down to the  
23 station?

24 A Yes, we did.

25 Q And at that point he was a suspect as a murder; wasn't

State v. Pelzer 12/3/09

42

1 he?

2 A At that point?

3 Q Yeah.

4 A No, sir.

5 Q He wasn't a suspect for a murder?

6 A No, sir.

7 Q And -- but you took him down to the Sheriff's Office to  
8 question him regarding the murder?

9 A Regarding the gun.

10 Q Regarding the gun? But this was in your murder  
11 investigation?

12 A Correct.

13 Q You weren't still trying to figure out who stole the  
14 gun; right?

15 A Correct.

16 Q And it was at that point when he realized that he was  
17 in trouble pretty deep is when his story first came out;  
18 right?

19 A I would say, yes.

20 Q So he was the first -- the first civilian that you know  
21 of, non-deputy, that knew that a murder happened, and he  
22 started telling his version of the facts?

23 A Yes, sir.

24 MR. BANKS: Nothing further, Your Honor.

25 THE COURT: Redirect.

1 MR. PASCO: Thank you, Your Honor.

2 STANLEY GRAHAM - REDIRECT EXAMINATION

3 BY MR. PASCO:

4 Q Det. Stanley (sic) Mr. Banks asked you some questions  
5 about filing a false police report. Which is a much more  
6 serious crime, filing a false police report or accessory  
7 after the fact of murder?

8 A Accessory after the fact of murder.

9 Q And, of course, with a dead body the murder was hour  
10 priority?

11 A Correct.

12 Q When the defendant admitted that he knew that the  
13 victim was white, did you and others from the Sheriff's  
14 Office ask the defendant how he knew that?

15 A Yes, sir, he did.

16 Q Okay, and was that a point of interest to you that he  
17 would know that?

18 A Yes, sir, definitely.

19 Q And at what point in time did the defendant say my  
20 mother told me?

21 A I never heard that statement.

22 Q And what point in time did the defendant say, I learned  
23 it at the Wilco?

24 A I never heard that statement.

25 Q And Mr. -- do you remember Mr. Banks repeatedly asked



State v. Pelzer 12/3/09

44

1 you in this way, didn't Jimmy Haygood tell you in his  
2 statement that he knew the victim was white?

3 A Yes, sir.

4 Q Repeatedly asked you that, and told you while you were  
5 on this stand and told this jury that Jimmy Haygood put in  
6 his statement that the victim was white; do you remember  
7 that?

8 A Yes, sir.

9 Q Here, I'm going to pass up Jimmy Haygood's statement.  
10 I want you to just read it and tell the jury where Jimmy  
11 Haygood said the victim was white?

12 A (Reading.)

13 Q Do you see it?

14 A No, sir.

15 Q It's not in the statement?

16 A No, sir.

17 Q So for somebody to tell this jury that Jimmy Haygood  
18 put that in his statement, that's all a lie, that's a lie.  
19 But even if Jimmy Haygood did know the victim was white, who  
20 did Jimmy Haygood help get rid of the gun the night of the  
21 murder?

22 A Mr. Pelzer.

23 Q Who could have told Jimmy Haygood that?

24 A Mr. Pelzer.

25 Q And Mr. Banks made some very good points that I want to

1 touch on fast. Calhoun County is a small area?

2 A Yes, sir.

3 Q St. Matthews is a small area?

4 A Yes, sir.

5 Q A lot of people that live around the Brakesfield's area  
6 knows that the Exxon closes by 10:00 o'clock.

7 A Yes, sir.

8 Q They also know that people can come off the interstate  
9 and get gas after 10:00 if they have a card?

10 A Yes, sir.

11 Q But after 10:00 o'clock nobody would be in the store to  
12 watch a robbery at the Brakesfield's Exxon would they?

13 A Correct.

14 Q So let me ask you this, as an investigator in Calhoun  
15 County, and people knowing that the Exxon closes at 10:00  
16 o'clock, in fact, where did the defendant, Willie Pelzer  
17 live in relation to the Exxon?

18 A Less than a mile or right at a mile.

19 Q Okay. If someone went to the Exxon at Brakesfield's  
20 between 10:30 and 11:00 o'clock to commit a robbery at the  
21 Exxon could they see the victim's truck across the street?

22 A Yes, sir.

23 Q That's all I have.

24 THE COURT: Recross?

25 MR. BANKS: No, Your Honor.

State v. Pelzer 12/3/09

46

1 THE COURT: Thank you, sir, you may step down.

2 Call your next witness, please.

3 MR. SORENSON: State calls Detective Riley Godwin.

4 THE COURT: Come around, please, sir.

5 Place your left hand on the Bible, raise your right.

6 (WHEREUPON, Riley Godwin was sworn  
7 to tell the truth.)

8 THE COURT: Thank you. Take a seat and state your  
9 full name, please.

10 MR. GODWIN: Riley Godwin, G-o-d-w-i-n.

11 RILEY GODWIN - DIRECT EXAMINATION

12 BY MR. SORENSON:

13 Q Good morning, Det. Godwin.

14 A Good morning.

15 Q Can you tell the jury where you're employed?

16 A I'm employed by the Calhoun County Sheriff's Office.

17 Q And how long have you been with Calhoun County?

18 A I began my career with Calhoun County in 2002.

19 Q Okay, and what are your current duties with the Calhoun  
20 County Sheriff's Office?

21 A My current duties; I'm an investigator with the  
22 Sheriff's Office. My title is detective and I hold the rank  
23 of Sergeant.

24 Q And you work with Det. Graham that just testified?

25 A Correct, sir.

1 Q Let me just ask you, with regards to the investigation  
2 into the murder of Jason Rivenburg, who was assigned by your  
3 agency as the lead investigator in that matter?

4 A That would be me, sir.

5 Q Did Det. Graham assist you in that follow up  
6 investigation?

7 A Yes, sir. Det. Graham, he is the Lieutenant over the  
8 Sheriff's Office, so he is my direct supervisor and we  
9 alternate weeks of call.

10 Q Got you. I want to turn your attention, if I could,  
11 sir, to the morning of March 7th of this year. Were you  
12 notified that morning about Mr. Rivenburg's body being found  
13 at the abandoned gas station out at Exit 136?

14 A Yes, sir. I received a call from our dispatch, as I  
15 was the investigator on call, saying that we had a deceased  
16 person found at an abandoned gas station at  
17 , and I was requested.

18 Q And about what time were you notified about that, sir?

19 A I believe it was around 5:00 o'clock, sir.

20 Q At 5:00 a.m.?

21 A Yes, sir.

22 Q Was it light out yet or was it still dark?

23 A No, it was still very much dark.

24 Q And did you respond out there that morning to the  
25 scene?

State v. Pelzer 12/3/09

48

1 A Yes, sir, I did.

2 Q Okay, if you would just kind of describe when you got  
3 on the scene that morning, kind of what was going on when  
4 you got there that morning, sir?

5 A When I arrived on the scene just behind Sheriff  
6 Summers. We both live in Cameron, we followed each other. I  
7 was met on the scene by the command staff, Maj. Stephenson,  
8 Sgt. Headden, who had recently discovered the crime. I was  
9 also met on the scene by the coroner, who was already there,  
10 and a Calhoun County EMS Unit.

11 Q Now, let me ask you, did you do an initial walk though  
12 just to kind of assess what the situation was when you got  
13 there?

14 A That is correct. Initially, myself and Sheriff's  
15 Summers approached the tractor trailer, after talking with  
16 Sgt. Headden and being briefed as to what he had seen when  
17 he got there. Sheriff Summers and myself approached on the  
18 passenger side of the truck and I looked in, after opening  
19 the door and observed the deceased lying in the floorboard  
20 of the truck. And observed a cell phone lying on the floor;  
21 that sort of things.

22 Q Okay, you indicated he was on the floorboard of the  
23 truck?

24 A Yes, sir, he was lying on his right side in between the  
25 two seats of the truck.

1 Q And did you, in any way, at that point in time, move  
2 Mr. Rivenburg?

3 A No, sir. No, sir.

4 Q Just one second -- I'm showing you State's Exhibit No.  
5 5, so the position that he's in in that exhibit there --

6 A Yes, sir.

7 Q -- that is the position that he was in when you arrived  
8 there that morning?

9 A That is a representation of him when I observed him.  
10 Yes, sir.

11 Q Okay. Are you aware of anybody at the Sheriff's Office  
12 prior to you opening the passenger door and looking -- had  
13 anybody else been inside that truck prior to that?

14 A No, sir. Sgt. Headden made it clear that he had looked  
15 in through the window and observed a body.

16 Q All right. And at that time did you observe anything  
17 as far as blood inside the vehicle?

18 A Yes, sir, there was a large amount of blood on the  
19 passenger seat which was the side I was going in through.  
20 There was a large amount of blood spattered within the  
21 interior of the truck on the windshield. That sort of  
22 thing.

23 Q And Mr. Rivenburg, when you looked in that passenger  
24 side of that door, was Mr. Rivenburg's head at that time  
25 over that pool of blood on the seat?

State v. Pelzer 12/3/09

50

1 A No, sir. It -- he was actually as I say, actually, his  
2 head would have been below the two seats but there was a  
3 large amount of blood on that passenger seat.

4 Q Now, at that point in time, obviously you had to  
5 realize you had something more than just an accident death  
6 or a natural death out there?

7 A Yes, sir.

8 Q What did you do with regards to that scene out there at  
9 that time?

10 A Well, after we had determined that it was foul play  
11 involved, we then secured the scene with crime tape and set  
12 up a good perimeter. I immediately began to make a crime  
13 scene log of everybody that was on scene, and I believe Maj.  
14 Stephenson notified South Carolina Law Enforcement Division  
15 to sent a crime scene investigator to assist us.

16 Q And that was Agent Strickland that testified Tuesday  
17 afternoon -- I'm sorry, yesterday morning?

18 A Yes. I believe she arrived around 7:00 a.m.

19 Q At some point in time did y'all learn from Det. Graham  
20 that morning out there of or Lt. Graham about the stolen  
21 gun, the burglary and stolen gun report from Merrybell Lane  
22 that had been filed the day before?

23 A Yes, sir. I actually, as I say, I was the one that  
24 received the initial call from dispatch. Once on the scene  
25 an incident of this nature we call in everybody that we can

State v. Pelzer 12/3/09.

51

1 call in to help us work. So I called Stanley, Det. Graham,  
2 and told him what I had and initially all I knew was I had a  
3 subject who had died from gunshot wound from what appeared  
4 to be a large caliber weapon, looking at the shell casings  
5 on the ground. Det. Graham made known to me while we were on  
6 the phone that he had signed off on a report from the day  
7 before where a 45 caliber handgun was reported stolen off of  
8 Merrybell Lane, which I knew was less than a mile or  
9 approximately a mile from the incident location.

10 Q Okay, did you do anything at that point in time -- were  
11 you able to determine, did you observe any shell casings on  
12 the ground out there around the truck?

13 A Yes, sir. After I got off the phone with Det. Graham,  
14 I was speaking with Maj. Stephenson telling him about  
15 Stanley and I's conversation and Maj. Stephenson and I  
16 re-entered the crime scene and walked to the closest shell  
17 casing on the ground with us. He used an ink pen to pick up  
18 one of the shell casings so we could read the head stamp,  
19 and we observed that it was a 45 caliber shell casing on the  
20 ground.

21 Q Did you then instruct anybody to go do anything with  
22 regards to that report the day before?

23 A Yes, sir. Shortly thereafter Det. Graham arrived on  
24 the scene. He arrived on the scene about the same time as  
25 Deputy Troutman, who was reporting for work that morning.



State v. Pelzer 12/3/09

52

1 He arrived on scene as well, and the two of them -- well, as  
2 Deputy Troutman got there, we discussed -- Deputy Troutman  
3 made known to us that he remembered seeing a test fired  
4 shell casing in that box that the gun was kept in the day  
5 before when he took the initial incident report of the gun  
6 being stolen. So Det. Graham and Deputy Troutman then went  
7 back to to attempt to retrieve that shell  
8 casing, which they did.

9 Q And that was brought back to the scene?

10 A Yes, sir. It was brought back to the scene and turned  
11 over to Agent Strickland.

12 Q All right. Let me ask you, at the time that you  
13 arrived out there that morning, did y'all know who Mr.  
14 Rivenburg was that was inside that truck; did you know who  
15 he was at that time?

16 A When dispatch called me that morning, they informed me  
17 that they thought it was a gentlemen who had been reported  
18 form New York -- I didn't now for sure, but  
19 circumstantially, yes, I thought it was his and then we  
20 positively identified Mr. Rivenburg about 9:45 that morning.

21 Q You were involved in that being done, also?

22 A Yes, sir.

23 Q All right. Let me ask you, you made reference to the  
24 fact that the victim's phone was recovered on the floorboard  
25 of the vehicle?

1 A Yes, sir, it was in the passenger floorboard.

2 Q Okay, and what condition was that phone in when it was  
3 recovered?

4 A The phone was a flip phone, so the phone was lying in  
5 the floor with the face of it open. It had sustained -- it  
6 had damage to it, to the screen, which you would look on the  
7 screen, the LCD screen to be able to see what number you're  
8 dialing. It had damage that I thought was consistent with a  
9 gunshot.

10 Q Let me show you this State's Exhibit No. 28, is that  
11 the condition that it phone was in at that time?

12 A Yes, sir. That's the phone.

13 Q So the damage is up here to the screen are up top?

14 A Yes, sir, and you can see the blood splatter as well.

15 Q About where my finger is pointed up there?

16 A Yes, sir.

17 Q Now, were you able to tell out there that morning  
18 whether that phone was still operable?

19 A Well, I know the phone -- it kept beeping, like a  
20 missed call or a reminder beep as it lay there on the floor.  
21 It didn't actually ring, but it was beeping like it had a  
22 missed call. But it was making some noise but I didn't pick  
23 it up and try to use it so I don't know if you could still  
24 make a call or not.

25 Q Got you. Did it appear to be damaged where it would

State v. Pelzer 12/3/09

54

1 probably be pretty difficult to see anything on the screen

2 --

3 A Yes, sir.

4 Q -- as far as the screen area?

5 A Yes, sir.

6 Q Okay. As part of your investigation, Det. Godwin, or  
7 Sgt. Godwin, did you -- obviously, that phone was recovered?

8 A Yes, sir.

9 Q Did you also then learn that the phone number that the  
10 victim -- on the victim's phone?

11 A Yes, sir. Later that morning, I learned of the  
12 victim's cell phone -- what the number to his phone was,  
13 that a detective in New York, Investigator Armlin.

14 Q As a result of that did you get his phone records?

15 A Yes, sir.

16 Q Okay. This is just a page of it. Page 66, is that the  
17 page that kind of reflects the time around that Thursday  
18 night, March 5th?

19 A Yes, sir. That is -- that shows the call that  
20 corroborate Mr. Dubin's --

21 Q That's what I was going to ask you, do you recall Jerry  
22 Dubin's testimony about being on the phone with the victim  
23 that night around 10:45 or so?

24 A Yes, sir.

25 Q Is that call shown on the victim's cell phone records?

1 A Yes, sir.

2 Q What time did it show a call from Mr. Dubin to the  
3 victim that evening?

4 A It shows the call was placed at 22:43, which would have  
5 been 10:43 p.m. and 33 seconds.

6 Q Okay, and what is the duration of that call at 10:43?

7 A 'Um --

8 Q If you go all the way to the far right column is the  
9 duration?

10 A It's 21.85 minutes.

11 Q So almost 22 minutes?

12 A Yes, sir, just under 22 minutes.

13 Q Okay, so that's going to put that call terminating  
14 around 11:05 or so in the evening?

15 A That would be correct, sir.

16 Q Let me ask you, do you recall Mr. Dubin's testimony  
17 about that phone conversation with Mr. Rivenburg?

18 A Yes, I do.

19 Q Do you recall how long he indicated to this jury that  
20 he was on the phone, still connected on the phone after he  
21 heard the altercation and the gunshots?

22 A Yes, sir. I believe it was for a period of  
23 approximately five minutes or so he remained on line trying  
24 to make contact with Mr. Rivenburg.

25 Q So the call terminated, according to the records, at

State v. Pelzer 12/3/09

56

1 11:05, that would put the altercation and the shooting  
2 somewhere around 11:00 o'clock in the evening?

3 A 11:00 o'clock or just a few minutes prior.

4 Q Now, you learned that later on that afternoon that  
5 Agent Whitler out at State Law Enforcement Division had  
6 match that test shell casing that had been obtained from Mr.  
7 Haygood's house to the shell casings that were recovered at  
8 the scene?

9 A Yes, sir, I did.

10 Q And as a result of that what did y'all then do,  
11 obviously, that incident report that was filed that day  
12 before became a lot more relevant to this incident; is that  
13 correct?

14 A Yes, sir, very much.

15 Q And what did y'all then do as a result of learning  
16 that, that afternoon?

17 A As a result of once we learned that the weapon that was  
18 reported stolen fired all the shell casings, I believe Det.  
19 Graham initiated contact with Willie Reed, because he was  
20 the registered owner of the gun. And we started, myself and  
21 Lt. Regalis, started a search warrant for  
22 which was the incident location the gun was reported stolen  
23 from.

24 Q Okay. Were you aware of whether Mr. Reed came in  
25 voluntarily and gave a statement that afternoon, that

1 Saturday afternoon?

2 A Yes, sir, he did.

3 Q And, of course, that's the statement he testified about  
4 or basically he just stuck to the same story as the day  
5 before, that the gun was stolen; is that correct?

6 A Yes, sir, he did.

7 Q All right, and what happened to him after he gave that  
8 statement that Saturday afternoon?

9 A He returned to -- he left the Sheriff's Office.

10 Q So he wasn't arrested at that time?

11 A No, sir.

12 Q And then, you said you went about preparing a search  
13 warrant for ?

14 A Yes, sir.

15 Q Which is Mr. Jimmy --

16 A Haygood's house.

17 Q Father's house; is that correct?

18 A Right.

19 Q And was that search warrant executed at that house?

20 A Yes, sir, it was.

21 Q And when was that done?

22 A I don't remember exactly the time, but I'm going to say  
23 it was somewhere around 7:00 or 8:00 o'clock that Saturday  
24 night.

25 Q So early evening that Saturday night?

State v. Pelzer 12/3/09

58

1 A Yes, sir.

2 Q All right, that's now March 7th, I guess, we're talking  
3 about?

4 A Yes, sir, this is still Saturday.

5 Q All right, I believe your testimony about the -- the  
6 pictures already in evidence, about the -- y'all obviously  
7 didn't find the gun, right?

8 A No, sir, we did not.

9 Q Did recover a bullet that was in the couch?

10 A Yes, sir, we did.

11 Q I believe -- was there also a box of bullets that was  
12 recovered back in one of the back rooms?

13 A Yes, sir, in one of the back bedrooms I located a box  
14 of ammunition that contained 30 unfired shells in it.

15 Q Now, was Mr. Haygood there at that time?

16 A Mr. Haygood was not at -- Mr. Haygood's father was  
17 there.

18 Q I'm sorry. Yeah.

19 A But Mr. Haygood, Jr., no, sir, he was not present when  
20 we executed the search warrant.

21 Q Okay. Did there come a time that he showed up there at  
22 his father's house.

23 A Yes, sir. We obtained a contact number from his  
24 father, and Det. Graham actually spoke with him on the phone  
25 and he told us then, he said, I'm on the way to the house

1 right now. Just wait on me. I'll be there in a minute.

2 Q Okay, and at that point in time was he placed under  
3 arrest?

4 A No, he was not.

5 Q And did he ultimately come down to the Sheriff's Office  
6 and talk to you and give a further statement?

7 A Yes, he did.

8 Q Let me ask you, when he was at the Sheriff's Office  
9 here, was he under arrest at that point in time?

10 A No, sir.

11 Q He ultimately gave a statement that we've heard several  
12 witnesses talk about, at that point in time, basically  
13 admitting that the gun wasn't stolen from his house like  
14 they had reported the day before?

15 A Yes, sir.

16 Q What happened at that point in time once he gave that  
17 information to y'all?

18 A Once he gave the -- once he gave the information or  
19 told the truth he was arrested for being an accessory after  
20 the fact of murder. And he was transported to jail.

21 Q Let me ask you, if he had come in and done the same  
22 thing Willie Reed had done earlier that day, come in and  
23 said, you know, what we told Deputy Troutman the day before,  
24 you know, the gun was stolen, don't know who did it. Would  
25 he -- what would have happened to him that night?



State v. Pelzer 12/3/09

60

1 A He would have gone home.

2 Q As a result of that statement that night, that Saturday  
3 night at 9:30 or so that was taken from Jimmy Haygood, after  
4 that, who were you then looking for?

5 A After the statement of Mr. Haygood, I then turned my  
6 attention to locating Willie Pelzer, III.

7 Q Did you, in fact, get a warrant at that time, was a  
8 warrant for the murder of Jason Rivenburg obtained for Mr.  
9 Pelzer that evening?

10 A Yes, sir, I obtained a warrant, I believe, about 10:00  
11 o'clock that night.

12 Q Let me ask you, where did y'all -- with that warrant in  
13 hand, where did y'all go and attempt to find Mr. Pelzer that  
14 evening?

15 A The first place I went looking for Mr. Pelzer was I  
16 knew he had a residence at . . . . . Myself and  
17 Lt. Regalis went there first. We did not find him there. I  
18 knew the area where his mother, Ms. Murph, where she stayed  
19 off of Wash Lane. There are several houses back in there  
20 that the family owns, so I went to the first house, and a  
21 relative then pointed me to the correct house. So I then  
22 went to Miss Carolyn Murph's house around 11:45 that night.

23 Q Okay.

24 MR. SORENSON: Can I have him step down, Your  
25 Honor.

1 THE COURT: Yes.

2 (Witness steps down from witness stand.)

3 BY MR. SORENSON:

4 Q This is State's Exhibit No. 83, if you would, kind of  
5 show the relation that you're talking about here. Could you  
6 point out --

7 A Okay. This right here is the -- Interstate 26 and  
8 Highway 6. So this is the actual murder scene where Mr.  
9 Rivenburg's body was found. Just down -- down Lavender Lane  
10 and then on Merrybell, that you've heard us refer to many  
11 times, would be approximately along here.  
12 That would be where Mr. Pelzer had a home of his own. Just  
13 down Merrybell Lane, right here, two tenths of a mile,  
14 approximately, is , which is the home of  
15 Mr. Jimmy Haygood, Sr., and where Mr. Jimmy Haygood, Jr.  
16 stays. This is Highway 21. Just north of that up Highway  
17 21 is Wash Lane, and right here on Wash Lane is where I took  
18 Mr. Pelzer into custody that night. It's all within  
19 approximately a mile and a-half of here, and it's  
20 approximately one mile from Mr. Haygood's house to the  
21 scene, as well.

22 Q Okay. Let me ask you one other thing. The jury heard  
23 testimony from Mr. Haygood and Mr. Reed yesterday about the  
24 intersection of Bridal Wreath and Murph Mill Road. Point to  
25 the jury where that is on here?

State v. Pelzer 12/3/09

62

1 A This is Bridal Wreath Road right here, and this is  
2 Highway 6, and this is Murph Mill Road. And Bridal Wreath  
3 Road is just a little cut through road from Murph Mill to  
4 Highway 6.

5 Q Okay, and so Bridal Wreath essentially connects Murph  
6 Mill Road to Highway 6, and then Highway 6 is Caw Caw  
7 Highway?

8 A That is correct.

9 Q That is the road where the gas station where Mr.  
10 Rivenburg was found; is that correct?

11 A Right. And the gas station is right here, and this is  
12 Bridal Wreath Road. It's less than half-a-mile from here to  
13 where you get to Bridal Wreath.

14 Q A mile or two from there to there?

15 A Yes, sir.

16 Q Let me ask you, that intersection of Bridal Wreath and  
17 Murph Mill, I see a road that kind of comes across. Is that  
18 a four-way intersection or does that kind of dead-end into  
19 Murph Mill?

20 A You can see this is what we would commonly refer to as  
21 a key intersection. The road, Bridal Wreath dead ends into  
22 Murph Mill Road. You have to go left or right.

23 Q Well, let me ask you that intersection then where  
24 Bridal Wreath dead-ends into Murph Mill, what located there?

25 A It's rural, woods, couple houses within a hundred yards

1 of any direction of the intersection, but there's no gas  
2 station or business.

3 Q No businesses at all out in that area?

4 A No, sir.

5 Q No gas stations or anything out there?

6 A No.

7 Q So let me ask you, if you took the dead-end into Murph  
8 Mill and took a right you'd hit I-26?

9 A Well, there's no exit to I-26, but there's no exit to  
10 I-26. It's an overpass.

11 Q That just passes over I-26, but you can't get on the  
12 Interstate?

13 A No.

14 Q Okay, one other thing you kind of touch on while you're  
15 down here.

16 Hilda, if I could get this marked.

17 COURT REPORTER: No. 89 for ID.

18 (State's Exhibit No. 89, aerial  
19 photo, was marked for ID.)

20 BY MR. SORENSON:

21 Q Is that kind of an aerial blowup of the immediate area  
22 around the crime scene and also Merrybell Lane?

23 A Yes, sir.

24 MR. SORENSON: Your Honor, at this time, we'd offer  
25 State's 89 into evidence.

State v. Pelzer 12/3/09

64

1 MR. BANKS: No objection, Your Honor.

2 THE COURT: Admitted without objection.

3 (State's Exhibit No. 89, aerial  
4 photo, was marked and entered.)

5 BY MR. SORENSON:

6 Q You had indicated a second ago the approximate distance  
7 between the abandoned gas station and one of the addresses  
8 on Merrybell Lane was about a mile?

9 A Yes, sir.

10 Q If you could, now, I need you to get the jury  
11 orientated with what's in 89, also.

12 A Sure. This is just a little bigger blowup, but this is  
13 what is commonly referred to as Bakersfield's Exxon. This  
14 across the road is what we call Brakesfield's BP, but it was  
15 abandoned at the time. Mr. Rivenburg's truck was parked  
16 right here in this parking lot. So that kind of gives you  
17 some orientation. This is Interstate 26, and this is  
18 traveling east towards Charleston, Columbia. If you come  
19 from the gas station cross over the overpass, this is  
20 Lavender Lane, which is a little frontage road. You come  
21 down the frontage road, this is the intersection of  
22 Merrybell Lane and Lavender, and right down Merrybell Lane  
23 is what you see this mobile home right here is  
24 Lane, which is a property owned by Miss Carolyn Murph that  
25 Willie Pelzer stayed at.

1 Q That's -- State's Exhibit No. 77, that's that mobile  
2 home?

3 A That is.

4 Q Where the burn pile was found in the back yard?

5 A Yes, sir, it is.

6 Q Okay. All right. Let me ask you, Det. Godwin, did you  
7 have an opportunity to go out there to that area and  
8 actually see how long it would take you to walk from Mr.  
9 Haygood's house --

10 A Yes, sir.

11 Q -- further down on Merrybell there to the incident  
12 location?

13 A Yes. Again, this is Merrybell Lane, this is , this  
14 is the house of Mr. Pelzer. Mr. Haygood's house, the map's  
15 cut off and you can't quite see it, but it's two tenths of a  
16 mile from his house down to Mr. Haygood's house. I, myself,  
17 along with Sgt. Headden actually walked by the road from the  
18 incident location here -- I traveled walking just a normal  
19 pace, down Highway 6, down Lavender Lane, and down past Mr.  
20 Pelzer's house and I walked to and we  
21 measured it, and it was exactly one mile, give or take on  
22 the odometer on the car.

23 Q How long did it take?

24 A It took me just under 20 minutes. I believe it was 19,  
25 but just under 20 minutes to walk it.

State v. Pelzer 12/3/09

66

1 Q Did you also have an opportunity to -- how big are you  
2 Det. Godwin?

3 A I'm six foot 2 inches in height and give or take 185  
4 pounds.

5 Q Are you fairly similar build to Mr. Pelzer?

6 A Yes, sir. About the same stride.

7 Q Did you have an opportunity then to see how long it  
8 would take you to run from this trailer at  
9 between that location and the incident location?

10 A Yes, sir I did. The same day after I had walked from  
11 here to here, Sgt. Headden picked me up and took me the two  
12 tenths of a mile back down the road and dropped me off and  
13 then timed me, and I jogged. I jogged from here, the same  
14 way I had come in, all the way back to the murder scene, and  
15 it took me six minutes. Almost killed me, but it took me  
16 six minutes.

17 Q Thank you, Detective.

18 (Witness returns to witness stand.)

19 Q All right, kind of get back to where we left off. So  
20 you indicated that at 11:45 or so you had gone looking for  
21 Mr. Pelzer, had gone by -- I think you had already  
22 testified, you had already gone by Merrybell Lane?

23 A Yes, sir.

24 Q And obviously, he was not there?

25 A No, sir, he was not.

1 Q Anything collected at that time out of that residence?

2 A No, sir.

3 Q Let me ask you, did you see any weapons while you were  
4 inside that residence?

5 A No, sir. I observed a shotgun that was dismantled,  
6 non-functional in one of the closets.

7 Q An inoperable shotgun in one of the closets?

8 A Yes, sir.

9 Q All right. Now, you said you got to where you  
10 ultimately learned which house on Wash Lane was Mr. Pelzer's  
11 mother's home?

12 A Yes, sir.

13 Q Did you go by that residence?

14 A Yes, sir, I did. Myself and I had another officer with  
15 me. He went around to one side of the house to guard the  
16 back door, so to speak. I approached under the carport and  
17 knocked on the door, and Mr. Pelzer came to the door, and I  
18 recognized him. We knew each other. I asked him to come  
19 outside that I needed to speak with him. And he came out  
20 under the carport. I then informed him that I had a warrant  
21 for his arrest. There was a car under the carport, and I  
22 asked him to place his hands on the hood of the car, and  
23 then took him into custody and informed him that he was  
24 under arrest for the murder of Jason Rivenburg.

25 Q Okay. So you had an arrest warrant at that time for



State v. Pelzer 12/3/09

68

1 him?

2 A Yes, I did.

3 Q Okay, and did you read that warrant to him when you  
4 placed him under arrest?

5 A I don't believe, I don't recall reading it to him right  
6 there on the spot.

7 Q Okay. Would it have been at some point in time read to  
8 him that evening?

9 A Oh, yes, sir.

10 Q Well, let me ask you, that warrant obviously has a body  
11 in it where it has basically some of the facts alleged in  
12 it?

13 A Yes, sir.

14 Q Anywhere in that warrant, does it indicate what Mr.  
15 Rivenburg's race is?

16 A Oh, no, sir.

17 Q So he was taken, he was placed under arrest at that  
18 point in time; right?

19 A Yes, sir, he was.

20 Q And what, if anything, did you inform him of when you  
21 placed him under arrest out there at his mother's house on  
22 Wash Lane?

23 A Well, I immediately placed him in handcuffs, and Lt.  
24 Regalis had come around the house then, because I had told  
25 him I had made contact, and I informed Mr. Pelzer, verbally

1 read him his rights or recited him his rights, as I do  
2 anyone that I arrest.

3 Q What did you recite to him or what did you tell him?

4 A I told him that he had the right to remain silent.  
5 That anything that he said could and would be used against  
6 him in a court of law. I also advised him that he had the  
7 right to speak with an attorney and have an attorney present  
8 for any questions that I might have for him, and also if he  
9 couldn't afford an attorney that one would be provided for  
10 him, and I asked him did he understand his rights as I had  
11 read them to him.

12 Q And did he indicate that he understood them?

13 A Yes, sir, he did.

14 Q Okay.. Let me ask you, did you have an opportunity to  
15 observe him, at that point in time, while you were placing  
16 him under arrest?

17 A Yes, sir.

18 Q Did he appear to be under the influence of anything, at  
19 that point in time?

20 A No, sir.

21 Q Did he appear to understand what you were telling him?

22 A Most definitely.

23 Q Was he then placed in your patrol car or how did he get  
24 back to the house from the Sheriff's Office?

25 A Yes, sir. I transported Mr. Pelzer back to the

State v. Pelzer 12/3/09

70

1 Sheriff's Office traveling down Highway 6.

2 Q And did you have any opportunity to talk with him at  
3 all while you were driving him back to the Sheriff's Office?

4 A Yes, sir. Mr. Pelzer was seated in my car, as most of  
5 our cars at the Sheriff's Office have, a cage, we call it.

6 A partition between the driver of the car and where the  
7 prisoner would ride and has a sliding window that was open  
8 so we could converse. And, yes, I did have conversation  
9 with him on the way back.

10 Q Okay, did you advise him any further about his Miranda  
11 warnings or his rights?

12 A Yes, sir. Mr. Pelzer was saying over and over that he  
13 didn't know what this was about, that he didn't kill  
14 anybody. He didn't have anything to do with this, I don't  
15 understand what's going on. So the first thing I wanted to  
16 ask him was where were you Thursday night. So I made sure  
17 that he knew, again, I affirmed it, I read him his right,  
18 and he understood his rights and so that I then asked him,  
19 after he said, yes, I understand my right. I went, where  
20 were you Thursday night at 10:00 o'clock or 11:00, Willie?

21 Q Did he response to that, at all?

22 A Well, short answers. Not a whole lot of detail. I  
23 said, where were you Thursday night Willie, and he said,  
24 with my boys. So I then asked him, well, I need a little  
25 more detail than that. Who are your boys? And he eventually

1 told me after some hesitation, Jimmy Haygood and Willie  
2 Reed.

3 Q Did he tell you how long he had been with them that  
4 evening or anything of that nature, time-wise?

5 A I remember asking him, well, what time did you get home  
6 Thursday night, what time did you get home Thursday night,  
7 and he said 10:30. And I said, okay, did you talk with  
8 anyone when you got home, did anyone see you when you got  
9 home? And he said, yes, that his mother had. And so I then  
10 asked him, I said, if I go talk to your mom, then she'll be  
11 able to tell me yeah, he was home at 10:30 Thursday night, I  
12 saw him. And he then hesitated, and then said I don't  
13 remember if it was my mom or my uncle, but one of them saw  
14 me when I got home.

15 Q All right. Did you have any further questioning of him  
16 or talking with him inside the vehicle there before you got  
17 back to the Sheriff's Office?

18 A That was pretty much the extent of our conversation. I  
19 observed in my rear-view mirror that Mr. Pelzer was  
20 attempting to use his cell phone. When I had taken him into  
21 custody and he had on a pair of sweat pants and a t-shirt,  
22 so I just basically patted him down to make sure he didn't  
23 have anything to hurt me. Of course he was handcuffed. He  
24 had a cell phone in his pocket and he got his cell phone out  
25 and was trying to use it. So I pulled over and took his

State v. Pelzer 12/3/09

72

1 cell phone from him.

2 Q I'm showing you State's Exhibit No. 76. Is that the  
3 phone that you took from him in the car that day?

4 A Yes, sir, I believe it is.

5 Q I'm going to let you look at it, maybe that will help  
6 you.

7 A It was a Blackberry. Yes, sir.

8 Q All right, now, I'm going to come back to that in a  
9 second, Detective. All right. Did you get back to the  
10 Sheriff's Office with him?

11 A Yes, sir, I did.

12 Q All right, and let me ask you, did you, at that point  
13 in time, were you involved in further questioning him at all  
14 at the Sheriff's Office?

15 A Well, when we got back to the Sheriff's Office I turned  
16 him over to Maj. Stephenson and Det. Graham, and they went  
17 inside Maj. Stephenson's office to see if he was going to  
18 make a statement. They were talking with him, and I was  
19 just standing outside on the sidewalk. And actually, during  
20 that time I had went back to my car and retrieved Mr.  
21 Pelzer's cell phone, and I knew that the next day one of the  
22 first things I was going to have to do was get a search  
23 warrant for his phone records. So I placed a test call from  
24 Mr. Pelzer's phone to my phone, because I didn't know what  
25 his number was, and I called his phone and got the number

1 and was making notes of that, and I was also trying to see  
2 who it was that he was trying to call, because I was  
3 interested in who he was trying to call in the car with me  
4 on the way back to the Sheriff's Office after he was  
5 arrested.

6 Q Okay. While we're on that, let me show you State's  
7 Exhibit No. 68. Are those Mr. Pelzer's cell phone records?

8 A Uh-huh. (Affirmative response.)

9 Q What was the cell phone number that you obtained when  
10 you called yourself from his cell phone?

11 A It was .

12 Q In fact, when you got those cell phone records you were  
13 able to go back on there and find that call where you placed  
14 that call to your cell phone?

15 A Yes, sir.

16 Q What's your cell phone number, sir.

17 A My cell phone number is .

18 Q So here at 12:11:011 -- so 12:11 in the morning,  
19 Sunday, March 8th is the call from his phone to 533.8316; is  
20 that correct?

21 A Yes, sir.

22 Q All right. And you've indicated that you'd seen him  
23 attempting to make a cell phone call in the back of your  
24 patrol car before that?

25 A That is correct.

State v. Pelzer 12/3/09

74

1 Q And were you able to then go back and also see two  
2 calls that were made during the period of time or at least  
3 were attempted to be placed during that period of time when  
4 he was in your patrol car?

5 A Yes, sir. There were actually two calls that he was  
6 trying to make.

7 Q Hold on one second.

8 A Yes, sir.

9 Q I'm not sure we've got that page enlarged or not. It's  
10 not. You can go ahead.

11 A There were two calls that Mr. Pelzer made from the back  
12 of my car, and -- the first call that he attempted to make  
13 was a 585 area code number. Throughout my investigation  
14 I've never actually be able to establish who owned that  
15 number, but I do know that that 585 is a Rochester, New York  
16 area code. The other call was to Willie Reed's house.  
17 Willie Reed didn't have a cell phone. He tried to call  
18 Willie Reed's house.

19 Q That was the 874 number, I believe?

20 A Yes, sir. That's

21 Q Okay. Now, you said you could see he was messing with  
22 the phone. Were you able to tell from the back seat whether  
23 he actually talked to anybody back there?

24 A No, sir, I don't think he got to talk with anyone.

25 Q Let me ask you this, Sgt. Godwin, did you have any

1 further contact with Mr. Reed that night into the early  
2 morning hours of Sunday at the Sheriff's Office?

3 A With Mr. Reed?

4 Q I'm sorry, Mr. Pelzer.

5 A Mr. Pelzer. Yes, sir. Mr. Pelzer, again, as I said,  
6 had gone into Maj. Stephenson's office with Det. Graham, and  
7 I actually walked in the office after I had gotten the  
8 numbers off of the phone, and Mr. Pelzer had requested to be  
9 able to smoke a cigarette.

10 Q Okay, and was he allowed to do that?

11 A Yes. He was -- I actually led Mr. Pelzer outside of  
12 the office and we were standing on the sidewalk. Maj.  
13 Stephenson was there as well as Det. Graham. They were kind  
14 of engaged in a conversation of their own, because they were  
15 doing most of the talking. I had done my part. So I was  
16 just guarding Mr. Pelzer while he was smoking a cigarette,  
17 and they were, I think, kind of strategizing what they were  
18 going to do next.

19 Q Okay, did Mr. Pelzer make any comments to you out there  
20 on the sidewalk when he was smoking a cigarette?

21 A Yes, sir, he did.

22 Q All right. Tell the jury what he said.

23 A Do you want me to quote it exactly as he said it?

24 Q Yes, sir. What you heard him say that morning.

25 A Yes, sir. Well, while Mr. Pelzer and myself were



State v. Pelzer 12/3/09

76

1 standing on the sidewalk and he was smoking a cigarette,  
2 Willis said, man, this is some bullshit. A fucking white  
3 boy gets killed and y'all come and get me. So my immediate  
4 response to that was, Willie, how do you know the guy was  
5 black (sic) unless you were there. And, he said he had  
6 heard it off of the news. And I said, we didn't release  
7 that information to the news, and he just went ballistic.

8 Q All right. And let me ask you this, had you said  
9 anything in your conversations in the car or out there on  
10 the scene about the race of the victim?

11 A No, sir.

12 Q Had he been shown any photographs from the crime scene  
13 that may have depicted the victim's race --

14 A No, sir.

15 Q -- or anything of that nature?

16 A No, sir.

17 Q All right. Let me kind of back up. When you had him  
18 in the car transporting him back to the Sheriff's Office and  
19 even when you were outside with him, did you, at any time,  
20 threaten him to get him to talk to y'all or anything like  
21 that?

22 A No, sir.

23 Q Withhold any comforts from him?

24 A No, sir.

25 Q In fact, when he wanted to smoke a cigarette he was

1 allowed to do that?

2 A Yes, sir, he was.

3 Q Did he, at any point in time, indicate that he didn't  
4 want to talk to y'all?

5 A No, sir.

6 Q Did he indicate to you that he wanted a lawyer and  
7 didn't want to talk until he talked to a lawyer?

8 A No, sir.

9 Q If he had done that with you in the car what would you  
10 have done?

11 A I would have -- I wouldn't have asked him anymore  
12 questions.

13 Q And turned him over to Lt. Graham and Maj. Stephenson  
14 for them to further question him?

15 A I would have made it well known to them that Mr. Pelzer  
16 has asked for a lawyer in my presence so that that was off  
17 limits.

18 Q Let me ask you, when he made that comment about the  
19 victim's race out there, who else was around him?

20 A Well, Det. Graham was there and also Maj. Stephenson.  
21 We were the only three -- I think the only three left at the  
22 office that night. I was standing, of course, right by Mr.  
23 Pelzer while he was smoking the cigarette. I would say Maj.  
24 Stephenson and Det. Graham were just far enough away from us  
25 so that we couldn't hear what they were talking about.

State v. Pelzer 12/3/09

78

1 Q Okay. Close enough that they would have heard, I mean,  
2 you know, when he --

3 A Yeah, because it went from a normal voice tone to very  
4 animated. It got very loud.

5 Q Now, Mr. Pelzer was ultimately placed under arrest that  
6 night; he wasn't let go?

7 A No. He was transported to jail by Det. Graham.

8 Q All right. Now, the following day, that Sunday, March  
9 8th, Willie Reed was brought back into the Sheriff's Office?

10 A Yes, sir. Willie Reed and his father came to the  
11 Sheriff's Office. I think it was somewhere around 2:00  
12 o'clock Sunday afternoon.

13 Q Did he voluntarily come down there?

14 A Yes, sir, he did.

15 Q Was he informed when he got there that he wasn't going  
16 home?

17 A Yes, sir, he was.

18 Q All right, and did he ultimately give a second  
19 statement at that point in time?

20 A Yes, sir, he did.

21 Q And as a result of that, did y'all ultimately, as Lt.  
22 Graham testified, did y'all end up then going down to  
23 Charleston for something?

24 A Yes, sir.

25 Q What was the reason y'all went down to Charleston?

1 A Well, we had learned from both Mr. Haygood and Mr. Reed  
2 independent of each other that the murder weapon, we  
3 thought, was thrown in a dumpster in an apartment complex in  
4 Charleston. We had -- Mr. Haygood was in jail. Mr. Reed  
5 was in front of us. So we decided to take Mr. Reed, since he  
6 was the one that was there and he agreed to try and help us  
7 find this apartment complex and the dumpster down in  
8 Charleston so we could hopefully recover the murder weapon.

9 Q All right. Now, let me ask you this, was Mr. Reed able  
10 to get y'all to a specific apartment complex in Charleston?

11 A No, sir. We looked everywhere, but no, we could not  
12 find the specific apartment complex.

13 Q Okay. Did y'all ultimately get Mr. Haygood out of the  
14 Orangeburg/Calhoun Detention Center and bring him down there  
15 to Charleston?

16 A Yes, sir, while we were still in Charleston, and it was  
17 a group of us. We called back to the jail in Orangeburg and  
18 actually got to talk to Mr. Haygood on the phone and asked  
19 him, if I come back and get you tonight will you come back  
20 down here with me and help me find this apartment complex.  
21 And that was done because there was no need for everyone to  
22 come up and go back. So he agreed, so I took Mr. Reed back  
23 to the jail in Orangeburg, or took him to jail in Orangeburg  
24 and booked him in, and picked Mr. Haygood up and returned  
25 back to Charleston.

State v. Pelzer 12/3/09

80

1 Q All right, and was he ultimately able to get you to an  
2 apartment complex?

3 A Yes, sir. We had actually been searching about three  
4 miles too close. We had to go about three miles closer  
5 towards Charleston, but, yeah, he took us relatively easy to  
6 the Bridgeview Apartment complex.

7 Q And that's what's depicted in State's 53?

8 A Yes, sir.

9 Q And these other pictures, 54 through 57, depict the  
10 dumpster that you -- that y'all searched?

11 A Oh, yes.

12 Q And as Lt. Graham had indicated did y'all ultimately  
13 find out after the fact that in between Thursday night and  
14 Sunday night when y'all were there that those dumpsters had  
15 been emptied in between?

16 A Yes, sir. We didn't find that information out until  
17 Fennel Container Company (sp) had opened that following  
18 Monday morning, but we learned the dumpster had been  
19 serviced.

20 Q Did you find out if it was possible to go check a  
21 landfill, possibly to go see if the gun could be located?

22 A Yes, sir. We did do some checking on that, but it was  
23 like a needle in a haystack.

24 Q I assume it was a landfill that services all of --

25 A Yes, sir.

1 Q -- at least all of the low county, I guess?

2 A Yes, sir.

3 Q Let me ask you, at the time that Jimmy Haygood got you  
4 to this Bridgeview Apartments did y'all know who Dana Brown  
5 was at that point in time?

6 A No.

7 Q Had either Jimmy Haygood or Willie Reed given you the  
8 name of Dana Brown?

9 A No. Just a female that Pelzer knew at the apartment  
10 complex that he was on the phone with.

11 Q Okay. So did y'all ultimately then, kind of after the  
12 fact, have to go and locate Dana Brown?

13 A Yes, sir.

14 Q And did you find her through Willie Reed, I mean, did  
15 they tell you how to find her or how to get in touch with  
16 her?

17 A No, sir. I was able to, once I had subpoenaed Mr.  
18 Pelzer's cell phone records, then I was able to go back and  
19 corroborate the dates and phone numbers and go back to Ms.  
20 Brown. I learned her identity myself through talking with  
21 her on the phone.

22 Q Let me ask you, going back now to Mr. Pelzer's phone.  
23 Did you have an opportunity, as you indicated, to, first of  
24 all, subpoena his cell phone records?

25 A Yes, sir, I did.

State v. Pelzer 12/3/09

82

1 Q Did you also have an opportunity to kind of look  
2 through his phone and his contacts in his phone?

3 A Yes, sir, I did.

4 Q All right. Let me just ask you a couple of things.  
5 Did you find Gregory Mack that testified late yesterday  
6 afternoon; did you find Gregory Mack listed as a contact in  
7 Mr. Pelzer's phone?

8 A Yes, sir, I did.

9 Q Okay. And Mr. Mack, that phone number that he  
10 testified about, that's what was listed in Mr. Pelzer's  
11 phone as Mr. Mack's contact?

12 A Yes, sir, it is.

13 Q Was Dana Brown, as you testified, the girl from  
14 Charleston, did you find under Dana, her listing as one of  
15 his contacts in his phone?

16 A Yes, sir, I did.

17 Q How about the -- How about Jimmy Haygood, Jr. who  
18 testified?

19 A Yes, sir, he number was listed as a contact on the  
20 phone.

21 Q Let me ask you, as to Mr. Haygood, did he have more  
22 than one number listed -- you know, I guess if you have  
23 contacts listed in your cell phone you could have you know a  
24 work number, a home number, a mobile number. You can have  
25 multiple numbers for one contact?

1 A Yes, sir.

2 Q Okay, and did Mr. Haygood have more than one number  
3 listed under his contact?

4 A Yes, sir, he did.. He had two.

5 Q And what was, when you pulled it up, what was the first  
6 number that came up?

7 A The first number that came up was a I believe a 534 in  
8 Orangeburg number, a land line number, and the second number  
9 was a cell number or what I knew then -- a , Jimmy  
10 Haygood's cell phone number.

11 Q So that first number and I believe Mr. Haygood  
12 testified yesterday that , that that's his mother's  
13 house; is that correct?

14 A That's his mother's house in Orangeburg.

15 Q All right, then the 1, that's what he testified  
16 was his cell phone number?

17 A That's Jimmy Haygood's cell phone number; yes, sir.

18 Q Just so I understand. When you pull up his contact,  
19 when you hit the first one that would highlight would be the  
20 mother's home number; is that correct?

21 A That is correct, sir.

22 Q Obviously, we have the cell phone records from Mr.  
23 Pelzer in evidence already. Let me show you what's been  
24 marked as State's Exhibit No. 88, and ask you if you  
25 recognize that document?



State v. Pelzer 12/3/09

84

1 A These are -- I believe these are -- Are these Mr.  
2 Pelzer's?

3 Q The text messages that you got were Mr. Pelzer's text  
4 messages; is that correct?

5 A That is correct, sir.

6 Q And let me ask you, initially, when you did the search  
7 warrant for Mr. Pelzer's cell phone records and text records  
8 -- I'll show you State's Exhibit No. 69. Is this the text  
9 message documents that you received?

10 A Oh. Yes, sir.

11 Q Okay, and that's a two-sided, that's a pretty large  
12 stack?

13 A Yes, sir.

14 Q And that's from the period of March 4th through March  
15 9th, the day before and leading up to a day or so after the  
16 homicide?

17 A Yes, sir.

18 Q All right. And is this a kind of a redacted portion of  
19 the relevant ones out of this?

20 A A smaller version. Yes, sir.

21 MR. SORENSON: Your Honor, at this time we'd offer  
22 State's Exhibit No. 88 into evidence?

23 THE COURT: Any objection?

24 MR. BANKS: No objection.

25 THE COURT: Admitted without objection.

1 (State's Exhibit No. 88, redacted  
2 cell phone records, was marked and entered.)

3 MR. SORENSON: That's Pages 1 through 72, Your  
4 Honor, but it's actually 71 pages.

5 THE COURT: All right.

6 MR. SORENSON: There is no Page 7.

7 BY MR. SORENSON:

8 Q Now, let me ask you this, did you also get Jimmy  
9 Haygood's cell phone records?

10 A Yes, sir, I did.

11 Q What was the purpose of doing that?

12 A Well, I wanted to corroborate as much as I could the  
13 story that I had been told about the events. So I wanted to  
14 document on Jimmy Haygood's cell phone number that Willie  
15 Pelzer had called him, and, of course, I could see from Mr.  
16 Pelzer's cell phone records that that call had taken place  
17 as well, but the most important thing I wanted to verify  
18 through Jimmy Haygood's cell phone records was that if Jimmy  
19 was telling me the truth about where he was at 10:28 that  
20 night in taking his cousin Bryant Haygood home, then he  
21 should have been pinging off of a different cell tower than  
22 the one right here in St. Matthews in which the records did  
23 show that he was pinging off of a tower, I believe it's 52.

24 Q Tower 50.

25 A 50. I'm sorry. Yes, sir.

State v. Pelzer 12/3/09

86

1 Q Okay. That's actually that 10:25 call when he received  
2 a call from his uncle?

3 A Yes, sir, that's right.

4 Q When you received these records did that corroborate  
5 what he had told you?

6 A Yes, sir. That told me that his phone was pinging off  
7 of that tower at that time.

8 Q Okay. And the guy from Verizon Wireless testified the  
9 other day about the location of that cell tower 50?

10 A Yes, sir.

11 Q Being on in Orangeburg; is that  
12 correct?

13 A That is correct, sir.

14 Q All right. Let me ask you, are you aware of where  
15 Jimmy's cousin, Bryant Haygood, that they had taken home off  
16 of Shillings Bridge Road, are you aware of where that  
17 location is?

18 A Mr. Haygood, Bryant Haygood lived off of Main Trail,  
19 which runs off of Shillings Bridge Road, over in Orangeburg  
20 County.

21 Q Okay, and did -- were you able to verify the  
22 identification of that as to whether that's  
23 in close proximity to that Shillings Bridge and Main Trail?

24 A Yes, sir, looking on a map, a cell site map,  
25 , as we say, as the way the crow flies, is

1 approximately four miles to the southeast of Mr. Haygood's  
2 residence, which is farther into Orangeburg County.

3 Q Okay, and that -- from Merrybell Lane in St. Matthews  
4 to Shillings Bridge Road, about how far of a drive is that?

5 A I would say it's probably about a 15 mile drive.  
6 Driving conditions could take you anywhere from maybe 20  
7 minutes to as much as 35 minutes.

8 Q As you have heard about after they picked up Willie  
9 Clay Haygood's Mercury Cougar, that they went and got gas at  
10 the --

11 A Yes, sir.

12 Q -- at the gas station the intersection of 21 and 22; is  
13 that correct?

14 A Yes, sir. It's Easy Shop 22.

15 Q Were you able to corroborate that that they had  
16 actually stopped and gotten gas there that night?

17 A That is correct, counselor. We pulled the surveillance  
18 video from the gas station and the surveillance video showed  
19 Mr. Willie Clay Haygood's car pulling up. It showed Mr.  
20 Jimmy Haygood Jr. getting out of the car, going in and  
21 giving the clerk what appeared to be money. He walks back  
22 outside, pumps some gas, comes back inside and looks like  
23 the clerk gives him back some change. And it was all in the  
24 time frame in which he said it was going to be.

25 Q All right. Change topics here for a second. I've only

State v. Pelzer 12/3/09

88

1 go a few more things, Det. Godwin. Do you recall the  
2 pathologist's testimony yesterday about some Hardee's  
3 receipts that were in the victim's breast pocket of his  
4 flannel shirt he was wearing?

5 A Yes, sir, I do.

6 Q Did you have an opportunity to kind of review those  
7 receipts?

8 A Yes, sir, I did.

9 Q Okay, and were they kind of blood soaked, part of the  
10 receipts?

11 A Yes, sir, they were.

12 Q Through your investigation were you able to determine  
13 where those fast food receipts were from?

14 A Yes, sir, those receipts were from a Hardee's located  
15 off of Interstate 77 up in the Charlotte, North Carolina  
16 area.

17 Q And there were two different receipts?

18 A Yes, sir, there were two different receipts?

19 Q From the same Hardees?

20 A Yes, sir, from the same Hardees, that's correct.

21 Q And did they indicate when the latest of those two  
22 receipts, when that purchase was made?

23 A Yes, sir. I believe it was just moments prior to 8:00  
24 o'clock, like seven -- it showed the last time he went to  
25 the counter and bought something was like 7:53 --

1 Q 7:58?

2 A 7:58 or somewhere just before 8:00.

3 Q And let me ask you, did those two show what purchases  
4 were made also, and how he purchased them as far as what  
5 kind of bills were used?

6 A Yes, sir.

7 Q Okay. And I'll give you a copy of the receipts. Will  
8 that help kind of refresh your memory as to the amounts?

9 A Yes, sir.

10 Q What is the first purchase that is made, or the amount  
11 of the first purchase. These are all food items at Hardees?

12 A Yes, sir, these are all food items, and it shows the  
13 first purchase was for \$6.28.

14 Q Okay, and what did Mr. Rivenburg use to pay for that  
15 \$6.28 purchase?

16 A It shows he gave the clerk \$20 and he received \$13.07  
17 in change.

18 Q Okay, and the second purchase, the one right before  
19 8:00 o'clock in the evening?

20 A Just before 8:00 o'clock it shows he made another  
21 purchase for \$3.59 and he paid with \$10.

22 Q Okay, and he would have received?

23 A And he received in change \$3 -- I'm sorry, \$6.10 is  
24 what he received in change?

25 Q Initially, \$13. He took a ten out of that. So he

State v. Pelzer 12/3/09

90

1 would have three singles left out of that initial change,  
2 right?

3 A Yes, sir.

4 Q And he got \$6 back in change the second time; is that  
5 correct?

6 A Yes, sir.

7 Q Should be \$9 in bills?

8 A Eight, \$9 in bills.

9 Q Let me ask you, you were one the scene when Mr.  
10 Rivenburg's body was removed from the cab of the tractor  
11 trailer?

12 A Yes, sir, I was.

13 Q And do you recall Agent Strickland's testimony  
14 yesterday morning about the coroner removing some money out  
15 of his right pocket, pants pocket?

16 A Yes, sir, I personally observed the coroner removed  
17 some paper money from Mr. Rivenburg's right front pocket on  
18 his jeans.

19 Q And do you remember, she testified it was \$70; is that  
20 what you recollect?

21 A It was \$70 and some coins.

22 Q Okay.

23 A If I remember correctly it was a \$50 and a \$20.

24 Q Okay, I want to ask you specifically were there any  
25 singles?

1 A No.

2 Q Any one dollar bills?

3 A No, there were no dollar bills found in his right front  
4 pocket.

5 Q Okay. Through the course of your investigation, were  
6 any one dollar bills found anywhere inside that truck?

7 A No, there were not.

8 Q Any bills at all found up in that right front breast  
9 pocket where those receipts were found?

10 A No, there was no money found there, either.

11 Q Have you had an opportunity, sir, just in the course of  
12 your either duties or even pleasure to have driven from St.  
13 Matthews to Charlotte before?

14 A Many times.

15 Q And about how long a drive is it from Charlotte, North  
16 Carolina to St. Matthews?

17 A From my experience in a regular car as well as driving  
18 a tractor trailer it -- approximately minimum an hour and  
19 a-half.

20 Q So his last purchase was right around 8:00 o'clock,  
21 means the earliest he would have been in St. Matthews at  
22 that rest stop, at that abandoned gas station would be --

23 A 9:30.

24 Q -- 9:30. Let me ask you, was there any Hardees debris  
25 found in the cab, I mean, any wrappers or bags or anything



State v. Pelzer 12/3/09

92

1 of that nature?

2 A I do not recall. I do not recall seeing anything like  
3 that in the truck.

4 Q Lastly, are you familiar with -- you work here in  
5 Calhoun County, do you live here in Calhoun County?

6 A Yes, sir.

7 Q Are you familiar with that area around where the victim  
8 was found?

9 A Yes, sir.

10 Q And you're familiar -- obviously, there's an abandoned  
11 gas station, and across the street was an open gas station;  
12 is that correct?

13 A That's correct.

14 Q And how long ago, the abandoned gas station where the  
15 victim's truck was found, how long ago did that business  
16 close?

17 A I don't know exactly how long. But what was  
18 Brakesfield's BP had been closed down for at least a couple  
19 years, probably.

20 Q A couple of years. So that was closed for a couple of  
21 years?

22 A Yes, sir.

23 Q And that used to be a Brakesfield's BP at one point in  
24 time?

25 A Yes, sir. Mr. Brakesfield owned the Exxon station and

1 he also owned the BP station across the road. For whatever  
2 reason he closed down the BP station and continued to  
3 operate in the Exxon.

4 Q And this is the Exxon down there, right?

5 A That is correct.

6 Q Not directly across, but down here, right?

7 A Not directly.

8 Q That's an abandoned building, also, is that correct?

9 A That was at one time Mr. Brakesfield had a tire service  
10 center doing tire repair for big trucks and that sort of  
11 stuff. So it's an abandoned garage.

12 Q Okay. It was abandoned back in March this year, right?

13 A Yes, sir.

14 Q Now, this Exxon station is just kind of catty-cornered  
15 down here?

16 A Yes.

17 Q It was opened back in March of 2009; correct?

18 A That is correct.

19 Q And what time at night does that business close?

20 A The clerks there like to be walking out of the door,  
21 closed, headed home at 10:00 o'clock.

22 Q As a result of that do they start kind of closing  
23 things down, like counting the drawers and stuff prior to  
24 10:00 o'clock?

25 A Yes, sir.

State v. Pelzer 12/3/09

94

1 Q So are there evenings when if you show up there with  
2 cash to pay for gas at a few minutes before 10:00 you're not  
3 getting gas?

4 A No, sir.

5 Q How about after 10:00 o'clock, if I was traveling on  
6 the Interstate and I pulled off there, is that gas station  
7 lit up at 11:00 o'clock at night?

8 A They have lights under the gas pumps, under the awning,  
9 and yes, you could purchase gas.

10 Q If I had a credit card I could pay for my gas at the  
11 pump?

12 A Yes, sir.

13 Q Now, if I did that at 10:30, 11:00 o'clock at night,  
14 are there going to be any employees inside that business?

15 A No, sir.

16 Q Are there going to be any employees anywhere, I mean,  
17 there's no other businesses that are open at that time, are  
18 there?

19 A No, sir, that's the only business there.

20 Q Let me ask you, you heard Mr. Haygood and Mr. Reed  
21 testify about -- also I guess Mr. Bryant Haygood, about  
22 attempting to stop by that Exxon the night, that Thursday  
23 night around 10:00 o'clock or so?

24 A Yes, sir.

25 Q Were you able to verify that through the employees that

1 they did come by there that night and weren't able to buy  
2 gas because they were closed?

3 A Yes, sir. We talked with them, corroborated with the  
4 clerk that they had come by there that night just before  
5 10:00. Actually got out of the car and started walking  
6 towards the window, and she waved them off and said, nope,  
7 I'm closed.

8 MR. SORENSON: That would be all I would be all I  
9 would have, Your Honor. Thank you.

10 THE COURT: All right. Let's take a little break  
11 right now.

12 Ladies and gentlemen, we'll take our morning break at  
13 this time. Please retire to your jury room. Please do not  
14 discuss the case.

15 (Jury out at 11:34 a.m.)

16 THE COURT: Mr. Godwin you can step down. Do not  
17 discuss your testimony with anybody.

18 MR. GODWIN: Yes, sir.

19 THE COURT: We will be at ease for about 10 to 15  
20 minutes.

21 (Court in recess for morning break at 10:35 a.m.)

22 (Court in session after break at 11:57 a.m.)

23 (Jury in at 11:57 a.m.)

24 THE COURT: All right, we have our jury, you may  
25 cross-examine the witness.

State v. Pelzer 12/3/09

96

1 MR. BANKS: Thank Your Honor

2 RILEY GODWIN - CROSS-EXAMINATION

3 BY MR. BANKS:

4 Q Deputy Godwin, how are you?

5 A Fine, sir. And you?

6 Q Good. In the course of your investigation you had sent  
7 some blood to SLED; is that right?

8 A Sent some blood to SLED, yes, sir.

9 Q And is that the report that SLED sent back to you?

10 A Yes, sir, it is.

11 Q And in that report it indicates that certain materials  
12 were tested, those materials were all from the scene of the  
13 crime or Willie Pelzer; is that right?

14 A They were -- give me just one second. Mostly from the  
15 victim, Mr. Rivenburg, but yes, sir.

16 Q I'm sorry, Mr. Godwin?

17 A Most of this was from the victim, Mr. Rivenburg, yes,  
18 sir.

19 Q Right, and --

20 A Some of it was from Willie Pelzer.

21 Q And it indicates jeans, those came from Mr. Rivenburg,  
22 I'm sorry, Mr. Pelzer?

23 A Yes, sir. There were a pair of jeans that were  
24 submitted to SLED that came from Mr. Pelzer's house.

25 Q And what did the test indicate about those jeans when

1 it came back to you?

2 A It indicated that there was blood on them.

3 Q And did it say whose blood?

4 A No, sir, it did not. It says see DNA analysis.

5 Q I'm sorry?

6 A I need to read a little farther. The blood was  
7 positively identified --

8 THE COURT: All right. You're too close to the  
9 mic.

10 A The only blood that was positively identified,  
11 according to my reading of this report was Jason  
12 Rivenburg's.

13 BY MR. BANKS:

14 Q Right. So there was no blood from Willie Pelzer that  
15 was connected to the scene of the crime; is that right?

16 A No, sir, not to my knowledge.,

17 MR. BANKS: One moment, Your Honor.

18 BY MR. BANKS:

19 Q And on Willie's blue jeans that were tested --

20 A Yes, sir.

21 Q -- did any of Rivenburg's blood appear on Willie's blue  
22 jeans?

23 A Not on that particular pair --

24 Q All right.

25 A -- on none of his clothes.

State v. Pelzer 12/3/09

98

1 Q Yeah.

2 A That was submitted for testing, no.

3 Q So you never associated -- it was a bloody crime scene,  
4 was it not?

5 A Yes. It was relatively -- I would say it was bloody.

6 Q And -- but at no point, any of that blood did you  
7 connect to Willie Pelzer's possessions, clothing or  
8 anything?

9 A No, we did not.

10 Q All right. In the course of your investigation, you --  
11 in fact, you're the lead investigator; correct?

12 A Yes, sir.

13 Q And I think during the course of your investigation;  
14 one of your deputies reported to you that there were tire  
15 tracks, fresh tire tracks, and fresh footprints; is that  
16 right?

17 A Not exactly. I was the one that discovered the tire  
18 tracks --

19 Q Okay.

20 A -- and the footprints.

21 Q Okay, and I believe that in one of your notes or  
22 reports, it says those tire tracks were found to be leading  
23 to the scene?

24 A No, sir, not in any report of mine. No, sir.

25 Q Could it have been in somebody else's notes or report?

1 A I believe --

2 Q Stephenson's?

3 A -- I believe Investigator Armlin's report he noted  
4 through a conversation, I believe, with Maj. Stephenson said  
5 they'd seen some -- that we'd found -- or made note that we  
6 had found some tire tracks that may have been related.

7 Q And were they fresh when you looked at them?

8 A They were in sand. They looked fresh.

9 Q And there were footprints, as well?

10 A Oh, yes, sir. Most definitely.

11 Q And in the course of your investigation did Willie  
12 Pelzer have access to a car at any point during this time?

13 A Well, I know Mr. Pelzer along with the two -- Mr. Reed  
14 and Mr. Haygood had a car that they went to Charleston in.

15 Q But did he independent of them have the use of a car?

16 A Not to my knowledge.

17 Q All right. And these footprints, did y'all do a casing  
18 of the footprints and test them against all the footwear  
19 that you acquired from Mr. Pelzer?

20 A No, sir. They were eliminated from having anything to  
21 do with our actual murder and crime scene there that  
22 morning.

23 Q Well, you did take a lot of footwear from Mr. Pelzer;  
24 did you not?

25 A Yes, sir.



State v. Pelzer 12/3/09

100

1 Q And you tested that footwear?

2 A We took that footwear to look for DNA or maybe the  
3 victim's blood. We didn't take that footwear to like  
4 compare the sole or a footwear impression because we had no  
5 footwear impressions at the scene.

6 Q And what about glass; you tested glass, too?

7 A Yes, sir.

8 Q Any connection with glass, DNA or anything you just  
9 mentioned to Willie Pelzer?

10 A No. We did not find anything. No.

11 Q Nothing connecting Willie Pelzer to the scene?

12 A In that regard, no, sir.

13 Q You tested the scene, you found some partial prints,  
14 but nothing to connect Willie Pelzer to the scene,  
15 fingerprint-wise?

16 A Fingerprint-wise?

17 Q Right.

18 A Um -- Agent Strickland -- she performed -- yeah, she  
19 performed --

20 Q Right.

21 A -- she searched the truck for fingerprints. Yes, sir.

22 Q And reported to you -- if you had a fingerprint of  
23 Willie Pelzer --

24 A We found no prints on the truck whatsoever that were of  
25 any evidentiary value.

1 Q And gunshot residue, any gunshot residue that connects  
2 Willie Pelzer to the scene?

3 A Any gunshot residue --

4 Q On Willie Pelzer, on his clothes or at his house?

5 A No, sir.

6 Q Okay. In fact, you were interested in these tire  
7 tracks because you were trying to find a means to get to the  
8 scene of a crime and a means to get away from the scene of a  
9 crime, didn't you; that's why you sort of expected that?

10 A I -- I didn't report to the crime scene expecting to  
11 find anything. I simply --

12 Q But when you saw it was important because --

13 A I thought it warranted further investigation; yes, sir.

14 Q Okay. Because it was reasonable to believe that a  
15 vehicle might have been used in a crime such as this?

16 A Is it possible for a vehicle to have been used? Yes.  
17 I wasn't there when the crime was committed, so I don't know  
18 whether a vehicle was used or not. I didn't know at that  
19 time whether one had been used or not. Would it be  
20 possible? Yes.

21 Q It would have been easier to commit the crime with a  
22 vehicle wouldn't it?

23 A I wouldn't know, sir.

24 Q Easier to get away?

25 A If that's your opinion. I don't know.

State v. Pelzer 12/3/09

102

1 Q Would it be easier -- I'm not going to go there. Would  
2 it be easier to get away than walk away?

3 A I see your -- yes, sir, it would be easier to get away  
4 in a vehicle. I would think that would be easier than on  
5 foot.

6 Q Now, I think earlier you indicated it might take  
7 between 20 and 35 minutes to get from Shillings Bridge Road,  
8 the scene where they dropped someone off; is that right?

9 A I would say that's an approximation according to  
10 driving conditions and how fast one may drive.

11 Q Well, the conditions at this night was just darkness.  
12 I mean, there wasn't snow on the ground or ice or anything  
13 like that, right?

14 A No, sir.

15 Q So wouldn't it be closer to 20 -- I mean, there aren't  
16 any traffic jams between there and Shilling Bridge Road is  
17 there?

18 A Shouldn't have been.

19 Q Have you ever seen a traffic jam on that route?

20 A No, sir.

21 Q So would be closer that evening to 20 than it would to  
22 35?

23 A I would say yes.

24 Q All right. And could it have been less than 20?

25 A I assume one possibly could make it in less than 20

1 minutes, driving at such a speed. Yes.

2 Q And you said it was about 20 miles. Could it be less  
3 than 20 miles?

4 A Yes, sir.

5 Q Do you know exactly how far it is?

6 A I do not know exactly how far it is. No, sir.

7 Q Could it be less than 17 miles?

8 A I don't know, Mr. Banks.

9 Q Okay. You also said that you ran. I believe you said  
10 you ran the distance from -- was it , correct  
11 me if I'm wrong, to the scene; is that right?

12 A That is correct, sir.

13 Q And you also walked it?

14 A Yes, sir. I walked it first and then ran back.

15 Q You walked from Merrybell to the scene of the crime?

16 A No, sir. I parked my patrol car at the incident  
17 location, the scene of the murder, at ,  
18 and I walked from there to Mr. Haygood's house, which is  
19 past Mr. Pelzer's house on Merrybell Lane.

20 Q Okay. So you walked from the scene to Merrybell --

21 A That is --

22 Q -- and you ran back?

23 A Yes, sir. I ran from -- I walked to Mr. Haygood's  
24 house, and then I ran from Mr. Pelzer's house, which was  
25 two-tenth of a mile closer to the incident location. I ran

State v. Pelzer 12/3/09

104

1 from there back to Brakesfield's or jogged.

2 Q Now, you said that Mr. Pelzer's house -- what address  
3 are you talking about?

4 A At

5 Q That's where he lived at the time?

6 A That is property that -- that is a residence that Mr.  
7 Pelzer is sometimes seen at.

8 Q Was there even power at that residence?

9 A No, sir, there was no power.

10 Q Did he have a bed and food and those kinds of things at  
11 that residence?

12 A There was a bed, but there was no food.

13 Q Did he have a change of clothes, you know, a closet  
14 full of clothes or anything like that?

15 A Yes, sir. There was a large amount of clothes inside  
16 the house?

17 Q And you say he lived there?

18 A He lived there from time to time or he had previously  
19 lived there.

20 Q Didn't he also live at Wash Lane?

21 A Yes, sir, that's where I took him into custody.

22 Q And in fact that's the only -- that's where you took  
23 him into custody?

24 A That's correct, sir.

25 Q Isn't that the only place that he had power?

1 A Well, I find it reasonable that he wasn't staying at  
2 because he didn't have power, that's why he  
3 was staying at his mom.

4 Q That's right, and he also had food at Wash Lane, as  
5 well?

6 A I would assume.

7 Q Did you ever walk or run the distance from Wash Lane  
8 where he lived with his mother to the scene?

9 A No, sir, I did not.

10 Q Did you ever walk or run the distance from the scene to  
11 Wash Lane where he lived with his mother?

12 A No, sir.

13 Q Your investigation revealed that he actually was at his  
14 mother's that evening. Didn't you say earlier that either  
15 his mother or his uncle saw him; from his own statement?

16 A My investigation through the course of the  
17 investigation that he was at the night of  
18 the murder.

19 Q Earlier in the night?

20 A Earlier in the night. Yes, sir.

21 Q In fact, hours before the murder; correct?

22 A A couple hours before. Yes, sir.

23 Q And did your investigation reveal that he went home --

24 A Yes, he did make the statement to me that he was at  
25 home at 10:30 the night of the murder.

State v. Pelzer 12/3/09

106

1 Q And when he said that did he mean or did he mean  
2 Wash Lane?

3 A He -- I assumed he meant Wash Lane.

4 Q And you heard testimony, from I believe it was Mr.  
5 Haygood that said that -- he said that my client had gone  
6 down onto the interstate and back , and then to the scene.  
7 That's what Mr. Haygood indicted; right?

8 A I recall his testimony, yes, sir.

9 Q Did you ever run or walk that route?

10 A No, sir.

11 Q Did you ever run or walk that route from Merrybell or  
12 Wash Lane?

13 A Did I run that route off of --

14 Q Yeah.

15 A -- no, sir. I took the roadway.

16 Q Okay. Now, he said he cut under the interstate?

17 A Uh-huh. (Affirmative response.)

18 Q Isn't Wash Lane more of a direct line with the scene  
19 than Merrybell? Merrybell is down and over and Wash Lane  
20 goes straight down 6 towards Bull's Swamp or whatever; isn't  
21 that right?

22 A Pretty much. Wash Lane is at the inter -- just off the  
23 intersection of 172 and Highway 6 and --

24 Q Right.

25 A -- of course, Highway 6 ran in front of the murder

1 scene.

2 Q That's what I was going to say.

3 A Yeah.

4 Q Wash Lane is actually, what, about two miles?

5 A No.

6 Q It's further than Merrybell?

7 A Just by a little.

8 Q And did you ever measure that distance?

9 A No, sir.

10 Q In fact, you can't even see Wash Lane on this map, can  
11 you?

12 A No, sir, not on that map, you can't see Wash Lane. You  
13 can't even see on that map.

14 Q Now, you also testified about a phone call made earlier  
15 that even between him and Haygood, I believe, from your  
16 patrol car, he attempted two phone calls?

17 A Yes, sir. He attempted to call Willie Reed.

18 Q I'm sorry, you're right. He attempted to call Mr.  
19 Reed. Was that the first call or the second?

20 A I believe Mr. Reed was the first call.

21 Q You don't know what he was going to say to Mr. Reed do  
22 you?

23 A I have no idea.

24 Q You just know he was trying to call Mr. Reed?

25 A Yes, sir.



State v. Pelzer 12/3/09

108

1 Q The second call he made was to some New York number,  
2 you said?

3 A It was a number that had the area code -- I was never  
4 able to link that phone to anyone, but it was a Rochester,  
5 New York area code.

6 Q Now, isn't -- is it the reason you couldn't find the  
7 person's phone number -- isn't it easier to find a phone  
8 number whether it's on the internet or through a directory  
9 service, if it's a land-line; isn't that easier than finding  
10 somebody's --

11 A Oh, absolutely.

12 Q And did that -- the fact that you couldn't find out who  
13 was responsible for that phone number, doesn't that indicate  
14 to you that that's most likely a cell phone number?

15 A I would -- I would say it could have been a cell phone  
16 number. The number had been disconnected.

17 Q It had been disconnected? All right, and so you don't  
18 know what Mr. Pelzer was going to say to whoever that was?

19 A No, sir, I do not.

20 Q And you don't even know who what was?

21 A No, sir, I do not.

22 Q And you're not even sure where that person might be;  
23 they could have been in St. Matthews, if it was a cell  
24 phone?

25 A If it was a cell phone, yes, sir, that's possible.

1 Q Were you present at the bond hearing when Mr. Haygood  
2 was given a bond?

3 A I performed the bond hearing on Mr. Reed, Mr. Haygood,  
4 and Mr. Pelzer.

5 Q Okay, and they differed a little bit, did they not?

6 A Yes, sir. We had Mr. Pelzer's bond hearing first  
7 because he was charged with murder --

8 Q Sure.

9 A -- and he had a first appearance.

10 Q He couldn't get a bond?

11 A Couldn't get a bond, that's correct.

12 Q The second bond hearing was which one?

13 A We had Mr. Reed and Mr. Haygood's bond hearing  
14 simultaneously, at the same time.

15 Q Okay. And I think Mr. Haygood, he didn't get arrested,  
16 well, he got arrested, but he got to go home and Mr. Reed  
17 went to jail and then you had their bond hearing?

18 A No, sir. They both went straight to jail.

19 Q Okay. All right, so when you had their bond --

20 A Uh-huh. (Affirmative response.)

21 Q -- did you make a recommendation to the magistrate?

22 A No, sir.

23 Q Did you -- so you didn't recommend that they go to  
24 jail; you didn't recommend a high bond?

25 A No, sir, they were already in jail. I had transported

State v. Pelzer 12/3/09

110

1 from the jail to the judge's office.

2 Q You didn't make a recommendation that they remain in  
3 jail under a high bond?

4 A No, sir.

5 Q You didn't make a recommendation that they get a  
6 personal recognisance bond?

7 A No, sir, I did not.

8 Q You never promised them a PR bond?

9 A No, sir.

10 Q So you just stood there and said nothing?

11 A No, sir. I -- the judge asked me did I have a bond  
12 recommendation, I responded as I normally do, Judge, we'll  
13 let the Court decide.

14 Q Did they have attorneys present?

15 A No.

16 Q Okay. Did anybody speak on their behalf?

17 A You know, counselor, I'm quite certain that Mr. Reed's  
18 father probably would have been at the bond hearing, but I  
19 don't specifically remember whether he spoke or not.

20 Q Okay. And so you don't recall anybody speaking  
21 positively about letting these guys off on a PR bond?

22 A I don't recall that day whether anybody said anything  
23 positive or negative about that. No, sir.

24 Q And even before the actual hearing itself, did you meet  
25 with the magistrate and tell them you'd like to cut these

1 guys a break?

2 A No, sir, I did not.

3 Q So the magistrate just decided on his own that it was a  
4 PR?

5 A As --

6 Q Without any input from either side?

7 A Yes, sir.

8 Q All right. How many lies do you think Willie Reed and  
9 Mr. Haygood told you guys about this stolen gun; every  
10 detail?

11 A Well, I really couldn't testify to that Mr. Banks,  
12 because most of the interviewing was done by Det. Graham,  
13 not really me.

14 Q All right. So they never lied directly to you?

15 A No, sir.

16 Q As a result of this investigation did you go out to  
17 that house?

18 A Which house?

19 Q Who -- to collect the gun?

20 A Did I collect --

21 Q The casing and case?

22 A Did I collect it?

23 Q Yeah.

24 A No, sir, I was on the scene of the murder.

25 Q All right.

State v. Pelzer 12/3/09

112

1 A Det. Graham, and Deputy Troutman went to  
2 and retrieved the test fired shell casing and the case.

3 Q So you stayed at the murder scene the whole time?

4 A Yes, sir. I didn't leave the murder scene, I think,  
5 until around 11:40 a.m. that morning.

6 Q Again, to summarize, you don't have anything from the  
7 scene of the crime. The only thing you've got is the  
8 testimony of two guys to link Mr. Pelzer to the crime,  
9 itself, directly?

10 A Directly linking him, yes, sir.

11 Q You don't have any physical evidence?

12 A Well, his cell phone records, the tower he was pinging  
13 off of put him in the general area, he lived in the general  
14 area.

15 Q But the scene, you've got --

16 A No. I've got no physical evidence to link Mr. Pelzer  
17 to the scene.

18 Q Were you party to the conversation -- I heard some talk  
19 about somebody being outside when some people were  
20 interviewing Haygood and/or Reed. Did you overhear any of  
21 the interview with Haygood or Reed?

22 A Mr. Haygood was being interviewed by Det. Graham --

23 Q Right.

24 A -- in the rear of the Sheriff's Office. I, myself,  
25 along with other units of the Sheriff's Office that were

1 assisting us at that time we had started assembling people  
2 -- I'm sorry -- we had just concluded the search warrant at  
3 Mr. Haygood's house. He had come back to the Sheriff's  
4 Office. Det. Graham was interviewing him. I never heard  
5 any of their conversation.

6 Q All right. That was which one?

7 A That was Mr. Haygood. I didn't overhear any of their  
8 conversation. I didn't overhear any of Willie Reed's  
9 conversation --

10 Q Neither one.

11 A -- the first conversation with Det. Graham, either.

12 Q Okay. Now, when you were talking to my client, and he  
13 gave you, I guess, a verbal statement. You said he got  
14 rather animated; is that right?

15 A Yes, sir, he was pretty angry.

16 Q Wouldn't you be angry too if somebody had accused you  
17 falsely of killing someone?

18 A I suppose if someone had falsely accused me of killing  
19 someone I may react in -- I don't know how I would react,  
20 but I guess that would be a possibility.

21 Q All right. And when you were talking to him, he said  
22 the comment about the white guy?

23 A That's correct, sir.

24 Q At that point, in your investigation, you being the  
25 lead investigator, at that point in your investigation

State v. Pelzer 12/3/09

114

1 there's only one other person outside the department that  
2 you definitely knew that knew someone had been killed and  
3 that was Mr. Haygood; isn't that right?

4 A I didn't follow you, Mr. Banks.

5 Q Was that too long?

6 A Ask me again?

7 Q When the department arrived at the scene, it got out  
8 pretty much to the whole department that you guys, that all  
9 you guys knew this man had died; correct?

10 A Well, I think to say the whole department is kind of  
11 painting with a wide brush, I mean --

12 Q Everybody --

13 A -- everybody that was there knew.

14 Q -- that was there?

15 A That was working.

16 Q And as the hours went on people came and went changing  
17 shifts at the Sheriff's Department, right?

18 A Pretty much we -- nobody went home. Everybody was there  
19 was there until the end.

20 Q All right, and it was hours and hours later until you  
21 talked to Mr. Haygood, correct?

22 A (No response.)

23 Q That y'all talked with him?

24 A I didn't talk with Mr. Haygood.

25 Q Until your department talked to Mr. Haygood?

1 A My -- Det. Graham talked with Mr. Haygood somewhere  
2 around 9:30 10:00 o'clock that same Saturday night.

3 Q And we're talking about first thing in the morning to  
4 nine-something that night?

5 A Yes.

6 Q In fact, wasn't even light out when y'all arrived at  
7 the scene?

8 A No, sir, it was not light when we arrived at the scene  
9 of the murder.

10 Q Okay. So you can't say that everybody in the Sheriff's  
11 Department knew but more than -- are you aware that more  
12 than the people at the scene knew at the Sheriff's  
13 Department?

14 A No, sir, I'm not aware whether anybody outside that  
15 scene knew.

16 Q Okay. Are you aware of where Ms. Pelzer has a  
17 part-time job?

18 A I was not aware until I heard Det. Graham testify she  
19 --

20 Q Okay, well, if you don't know.

21 A I'd say I didn't know.

22 Q Okay, but you're aware that the Wilco Hess is a place  
23 that deputies come and go quite a bit?

24 A Yes, sir.

25 Q And it would be reasonable to believe that they came



State v. Pelzer 12/3/09

116

1 and went to that same spot that day?

2 A I --

3 Q Wilco Hess?

4 A I wasn't there, so I wouldn't know. But I guess you  
5 could assume perhaps somebody would have stopped by the  
6 Wilco.

7 Q And during the course of your investigation you  
8 determined that the trucking company that Mr. Rivenburg  
9 worked for was trying to find him even before y'all found  
10 him; is that right?

11 A In -- I understood that they -- Det. Armlin from New  
12 York --

13 Q Uh-huh. (Affirmative response.)

14 A -- and said they had an overdue truck, gave them a  
15 description and asked them to check the immediate area  
16 around Cartwright Road, and, of course, the Wilco is right  
17 by Cartwright Road.

18 Q Yeah.

19 A And I think a deputy did go out and ride the parking  
20 lot and reported back to dispatch that no red Peter Built  
21 truck in the parking lot with Vanderveer Trucking (sp) on  
22 the side.

23 Q Do you know which deputy that was?

24 A I do not recall.

25 Q Okay, and you said wouldn't it be reasonable to check

1 with that Wilco Hess being a truck stop.

2 A He did check. He rode around the back.

3 Q I mean, do you know if in your investigation that he  
4 went in and talked to those people?

5 A No, sir, I do not.

6 Q Would it be reasonable to assume he did?

7 A I wouldn't know, Mr. Banks.

8 Q You said you saw the phone beeping. Mr. Rivenburg's  
9 phone was beeping. Did -- have you ever used that model of  
10 phone?

11 A No, sir.

12 Q Do you know what sounds it makes to indicate what, you  
13 know, voice mail, lost call, whatever?

14 A No, sir, I do not.

15 Q Okay. So you don't know if that beep was for any  
16 particular purpose, it could have been a beep that indicated  
17 it wasn't operating correctly?

18 A Could have been.

19 Q When you first picked up my client to take him to the  
20 station, you'd already informed him he was under arrest for  
21 murder; is that right?

22 A Yes, sir.

23 Q And did you ask him any questions prior to you actually  
24 reciting some rights to him?

25 A No, sir.

State v. Pelzer 12/3/09

118

1 Q Okay. And the first question you remember asking him  
2 was where's the gun?

3 A No, sir.

4 Q Okay. What was the first question you asked him?

5 A Willie if you didn't have anything to do with this  
6 where were you Thursday night around 11:00 o'clock?

7 Q And that was a couple of nights before -- did he  
8 indicate to you he was at Wash Lane with his mother and or  
9 uncle?

10 A He indicated to me that he had been with his boys --

11 Q That was earlier, right?

12 A Yes, but eventually the ending of the conversation was  
13 that he indicated that he got home to Wash Lane or I assumed  
14 it was Wash Lane that night at 10:30.

15 Q All right, and you also indicated you've actually  
16 driven tractor trailers from Charlotte to -- I don't know if  
17 you've ever stopped at this particular place directly from  
18 Charlotte, the scene of the crime, and you indicated it  
19 would take about an hour and a-half?

20 A I would say that's an approximate time. It would take  
21 you a minimum of an hour and a-half.

22 Q And depending on driving conditions. We're talking  
23 about Charlotte here, so --

24 A Yes, sir.

25 Q -- there could be driving conditions associated with

1 Charlotte, easily, could there not?

2 A Yes, sir.

3 Q And are you familiar with the exact location of these  
4 Hardees that you found the receipts from?

5 A It's I-77 -- off of -- I believe it's off of I-77 in  
6 Charlotte, but the exact address of the restaurant, no, sir,  
7 I do not.

8 Q Could it be north of Charlotte, could it be?

9 A Could be.

10 Q And that would add a considerable amount of time if it  
11 was north of Charlotte, because Charlotte is a big city?

12 A I guess it would depend on how far or how much time,  
13 but yes, sir.

14 Q And you said a minimum of an hour and a-half, could it  
15 take two hours?

16 A I assume it could.

17 Q All right. It could take even longer, depending on  
18 where it was and driving conditions, couldn't it?

19 A That's correct, sir.

20 MR. BANKS: One moment, Your Honor.

21 Nothing further, Your Honor.

22 THE COURT: Redirect?

23 MR. SORENSON: Real briefly, Your Honor.

24 RILEY GODWIN - REDIRECT EXAMINATION

25 BY MR. SORENSON:

State v. Pelzer 12/3/09

120

1 Q Going back to touch on one of the first things Mr.  
2 Banks asked you about Det. Godwin, about some tire tracks  
3 and some footwear impressions out there at the scene?

4 A Yes, sir.

5 Q And you indicated that you were actually the person  
6 that found what he was talking about?

7 A Yes, sir, I was.

8 Q Well, describe for the jury where that was located at?

9 A Yes. Can I come down and use the map?

10 MR. SORENSON: Is that okay, Your Honor?

11 THE COURT: Yes.

12 (Witness leaves witness stand.)

13 BY MR. SORENSON:

14 Q This map here?

15 A Yes, this will do. All right, again, this is the --  
16 this is the scene where Mr. Rivenburg's truck was found at  
17 this abandoned gas station parking lot, actually right here.  
18 And if you look closely, and I'll walk this down so you can  
19 all see it, there's -- see this little driveway? There's  
20 this little dirt driveway that goes through the woods. See  
21 that little driveway. It leads back to a pond back here and  
22 a field. This is probably, I'd say approximately 50 yards,  
23 150 from the corner of the pavement, at least that far from  
24 the corner of the pavement where Mr. Rivenburg's truck was  
25 parked to this little dirt road. So once we started

1 collecting the evidence around, we expanded our search area  
2 as we always do. Did the guy go this way, so we were  
3 looking, and we kept expanding our search area, and  
4 eventually I found this little dirt road and I saw some tire  
5 tracks on it. Well, right about here on this little dirt  
6 road is a metal gate. The same kind of metal gate that you  
7 see at a cow pasture to keep livestock in. It has two  
8 posts, a chain and a lock. The road is sandy on both sides  
9 of the road is dense woods. Leaves and no sign of footwear  
10 impressions. On that road in that sand you could see what  
11 appears to be consistent with tennis shoe tracks and some  
12 tire tracks. And after taking a full examination of it, and  
13 what our interpretation of it was a car pulled and stopped  
14 right at the gate. There were footwear impressions where  
15 someone had gotten out of the car, it would have been on the  
16 left side of the road --

17 MR. BANKS: Your Honor, objection. Speculation.

18 THE COURT: He's talking about what he saw.

19 MR. BANKS: No, he's speculating on what happened.

20 THE COURT: Well, I'll let him testify about what  
21 he saw, what he observed and then we'll talk about any  
22 conclusions, if he tries to draw conclusions with that.

23 A There were footwear impressions on the left side of the  
24 dirt road that walked to the right side of the road at the  
25 gate, where there was a post with a chain and a lock. There

State v. Pelzer 12/3/09

122

1 were tracks that went from that post back to the left side  
2 of the road and then there were tire tracks that obviously  
3 had gone into the gate, and there were tire tracks that came  
4 back out of the gate and stopped, pretty much in the same  
5 place, except this time the tire tracks were on the other  
6 side of the road, and the tire tracks, the footwear  
7 impressions went from that left side of the road back to the  
8 gate where the post and the lock and the chain was and  
9 tracks went right back to where they were, as if somebody  
10 got back in their vehicle and left.

11 Q So you were aware what that property beyond that gate  
12 back there was used for?

13 A You can see there's an area here where there's a pond  
14 and a field and a little access road that goes back to it.  
15 You know, hunting could be one thing that someone does back  
16 there.

17 Q Okay, are you a hunter?

18 A Yes, sir.

19 Q All right. Right around the beginning of March of 2009,  
20 was there any particular season getting ready to start back  
21 there?

22 A Well, turkey season would have been coming in on March  
23 15th in Calhoun County. I believe it was the 7th of March,  
24 this Saturday. So this was the Saturday before the opening  
25 of turkey season.

1 Q You can have a seat, Det. Godwin.

2 (Witness returns to witness stand.)

3 Q Were you able to then to essentially exclude anything  
4 you found back there as having any relevance to your crime  
5 scene?

6 A Yes, sir, we felt after looking at it that that didn't  
7 have any relevance to our investigation into the homicide.

8 Q And the only other thing I wanted to ask you about was  
9 Mr. Banks had asked you about whether there was any gunshot  
10 residue that connected Mr. Pelzer to this incident, and you  
11 heard the testimony yesterday with the jury, but when he was  
12 arrested Saturday night March 7th, why didn't you swab his  
13 hands for gunshot residue?

14 A It had been at least 48 hours since the murder had been  
15 committed. If Mr. Pelzer had any gunshot residue on his  
16 hands at the time of the murder it certainly wouldn't have  
17 been present on the night he was arrested.

18 Q In fact, if you had swabbed it, and submitted it to  
19 SLED would they even have examined it?

20 A If it's older than six to eight hours they won't even  
21 examine it.

22 Q That would be all I have.

23 THE COURT: Recross?

24 MR. BANKS: Nothing, Your Honor.

25 THE COURT: Thank you, sir, you may step down.



State v. Pelzer 12/3/09

124

1           You may call your next witness.

2           MR. PASCO: Your Honor, the state rests.

3           THE COURT: All right, ladies and gentlemen, the  
4 state has rested. That means this is all the testimony and  
5 evidence they are going to offer at this time. This is a  
6 good time for us to take our lunch break. We'll start back  
7 at 2:00 o'clock. Please be back in the jury room at 2:00  
8 o'clock. Please do not talk about the case.

9           Everybody else remain in the courtroom until the jury  
10 leaves the courthouse.

11          (Jury out for lunch at 12:32 p.m.)

12          THE COURT: Any motions?

13          MR. BANKS: Your Honor, we'd move at this time for  
14 a directed verdict. Taking in light most favorable to the  
15 state they have not met their burden. You've got no  
16 physical evidence tying my client directly to the crime. I  
17 think you've listened to all the testimony and you've got so  
18 many conflicting stories about times and dates and where  
19 guns were even from the main witnesses. You've got things  
20 that indicate that those two clients are -- I mean, those  
21 two other principles are likely culpable and we'd ask that  
22 you find that they have not met their burden and grant us a  
23 directed verdict.

24          THE COURT: All right. I disagree. I think the  
25 evidence to make it a jury question. There's direct

1 evidence that the defendant admitted to at least one person  
2 that he had committed the crime, plus all of the other  
3 circumstantial evidence, so I will deny that motion.

4 Mr. Pelzer, will you stand, please. Mr. Pelzer the  
5 state has finished putting up it's case.

6 MR. PELZER: Yes, sir.

7 THE COURT: When we come back after lunch you will  
8 have a right to testify if you want to testify.

9 Does he have any convictions that you think could be  
10 used against him, Mr. Pasco?

11 MR. PASCO: Yes, sir.

12 THE COURT: What are they?

13 MR. PASCO: In November of 2008, he was convicted  
14 of grand larceny of more than \$1,000, that, of course, is a  
15 crime of dishonesty, Your Honor, and we'd ask to be able to  
16 impeach him on that crime.

17 THE COURT: Do you want to be heard on that?

18 MR. BANKS: No, Your Honor.

19 THE COURT: All right. I find that the probative  
20 value of that would substantially outweighed any prejudice  
21 because of the nature of the crime and I will allow that to  
22 be used. In other words, if you take the stand and testify,  
23 Mr. Pelzer, the state could bring out or you could bring out  
24 that you do have a conviction for grand larceny. There  
25 couldn't be any discussion about the facts and circumstances

State v. Pelzer 12/3/09

126

1 of that conviction since it does exist. So you have a right  
2 to testify. You also have a right not to testify. That is  
3 your constitutional right. You cannot be forced to testify.

4 MR. PELZER: Yes, sir.

5 THE COURT: If you choose not to testify, I will  
6 tell the jury that is the exercise of a constitutional right  
7 and that they cannot consider that against you in any way  
8 whatsoever. I will ask that the jury not even discuss that  
9 when they begin their deliberations.

10 Do you understand your right to testify?

11 MR. PELZER: I do, sir.

12 THE COURT: And do you understand your right not to  
13 testify?

14 MR. PELZER: Yes, sir.

15 THE COURT: Now, you'll have an opportunity over  
16 the lunch hour to discuss those rights with your attorneys.  
17 You would certainly listen to what advice they might give  
18 you or anybody else you might want to talk to, but the final  
19 decision as to whether or not you testify should be your  
20 decision and not your attorneys decision or anybody else's  
21 decision. Do you understand that?

22 MR. PELZER: Yes, sir.

23 THE COURT: All right. That's fine. You may be  
24 seated.

25 Anything else before we recess?

State v. Pelzer 12/3/09

127

1 MR. PASCO: No, sir.

2 THE COURT: From the defense?

3 MR. BANKS: No, Your Honor.

4 THE COURT: All right. Let me see the lawyers in  
5 chambers one minute. We will be in recess until 2:00  
6 o'clock.

7 (Court in recess for lunch at 12:36 p.m.)

8 (Court in session at 2:05 p.m.)

9 THE COURT: Is the state ready to proceed?

10 MR. PASCO: Yes, Your Honor.

11 THE COURT: Defense ready to proceed?

12 MR. BANKS: Yes, Your Honor.

13 THE COURT: All right.

14 Mr. Pelzer, have you had an opportunity to discuss with  
15 your attorneys whether or not you would testify?

16 MR. PELZER: Yes, sir.

17 THE COURT: And have you reached a decision?

18 MR. PELZER: Yes, sir, I have.

19 THE COURT: What is your decision?

20 MR. PELZER: I won't be testifying, sir.

21 THE COURT: You do want to testify?

22 MR. PELZER: I will not be testifying.

23 THE COURT: Oh, you will not testify.

24 MR. PELZER: Yes, sir.

25 THE COURT: Now, is that your decision?

State v. Pelzer 12/3/09

128

1 MR. PELZER: Yes, sir.

2 THE COURT: Has anybody pressured you into making  
3 that decision?

4 MR. PELZER: I was well advised. I was well  
5 advised, sir.

6 THE COURT: But that's your decision.

7 MR. PELZER: Yes, sir.

8 THE COURT: And you're comfortable with that?

9 MR. PELZER: Very.

10 THE COURT: All right. Fine. I find he's chosen  
11 to exercise his right to remain silent. Of course, I will  
12 instruct the jury appropriately at the proper time.

13 Now, do you have some other witnesses you intend to  
14 call?

15 MR. BANKS: Yes, Your Honor.

16 THE COURT: All right. Are you ready?

17 MR. BANKS: Yes, Your Honor.

18 THE COURT: All right. Bring in the jury.

19 (Jury in at 2:11 p.m.)

20 THE COURT: All right. We have all of our jury.  
21 Mr. Banks, you may call your witness.

22 MR. BANKS: Thank Your Honor. Your Honor, we call  
23 Carolyn Murph to the stand.

24 THE COURT: Come around here Ms. Murph. Come  
25 around right this way, please, ma'am.

1 THE CLERK: Please place your left hand on the  
2 Bible and raise your right hand.

3 (WHEREUPON, Carolyn Murph was sworn  
4 to tell the truth.)

5 THE CLERK: State your full name for the record.

6 MS. MURPH: My name is Carolyn Murph.

7 THE COURT: Have a seat, Ms. Murph.

8 CAROLYN MURPH - DIRECT EXAMINATION

9 BY MR. BANKS:

10 Q Ms. Murph, you're the mother of Willie Pelzer; is that  
11 right?

12 A Yes, sir.

13 Q All right. I want you to speak up right into that  
14 microphone, please.

15 A Yes, sir.

16 Q And do you -- how old are you?

17 A Fifty-nine.

18 Q I understand you're a little nervous. Take a deep  
19 breath and try to calm yourself down.

20 Where do you live?

21 A I live at , St. Matthews.

22 Q So you live on Wash Lane?

23 A Yes, sir.

24 Q Who lives there with you?

25 A My mother and two brothers.

State v. Pelzer 12/3/09

130

- 1 Q Your mother and your two brothers?
- 2 A Uh-huh. (Affirmative response.)
- 3 Q And does anyone else live there?
- 4 A No -- Willie.
- 5 Q Willie lives there?
- 6 A Yeah.
- 7 Q How long as Willie lived at that residence?
- 8 A About two years.
- 9 Q Did you say about two or three?
- 10 A I think about -- I think about two years.
- 11 Q Two years. So -- and when you say he lived there, does
- 12 that mean he came home every night?
- 13 A Yes, sir.
- 14 Q And does that mean he kept clothes there?
- 15 A Yes, sir.
- 16 Q And ate there?
- 17 A Yes, sir.
- 18 Q Did he take all of his meals or most of his meals
- 19 there?
- 20 A Most of his meals were there.
- 21 Q All right. Does he have a residence anywhere else?
- 22 A Not that the time.
- 23 Q So back in March of '09, he wasn't maintaining a
- 24 residence anywhere else?
- 25 A No, sir.

1 Q Before March of '09, had he spent any time, spent the  
2 night at any time that wasn't some residence that wasn't  
3 some friend of his, somewhere else?

4 A No, sir.

5 Q So are you familiar with the address  
6 Lane?

7 A Yes, sir.

8 Q What do you know about ?

9 A It's a mobile home I bought some time ago.

10 Q Several years ago?

11 A Yes.

12 Q So you own that mobile home?

13 A Yes, sir.

14 Q Did you own it back in March of '09?

15 A Yes, sir.

16 Q Was there power to that mobile home?

17 A No, sir.

18 Q So there weren't any working refrigerators or anything  
19 else in that home?

20 A No, sir.

21 Q Did Willie live at that home?

22 A No, sir.

23 Q You, Ms. Pelzer, you -- where do you work?

24 A I work at the US Post Office in Orangeburg full-time  
25 and I work at the Wilco Hess Travel Plaza on Burke Road



State v. Pelzer 12/3/09

132

1 part-time.

2 Q You work at the Wilco Hess Travel Plaza?

3 A Yes, sir.

4 Q And where did you say that was?

5 A On Burke Road.

6 Q Burke Road. Is that the one on Highway 22?

7 A Yes.

8 Q And it's near Highway 21; is that right?

9 A Yes, it is.

10 Q Now, you work part-time there; is that right?

11 A Yes, sir.

12 Q Did you work there on the evening hours of March 5th?

13 A Yes, sir.

14 Q All right. Did you work any time on the 6th?

15 A Yes, sir.

16 Q Did you work any time on the 7th of March?

17 A Yes, sir.

18 Q Okay. But you work full-time -- about how many hours  
19 were you putting in a week?

20 A About 20 hours.

21 Q Okay. So that was divided up on -- was that just  
22 weekends or how was that?

23 A No, I work various days during the week, like 3:00 to  
24 11:00, 3:00 to 9:00.

25 Q So usually you go in at 3:00?

1 A Yes, sir.

2 Q And are you sure you worked those particular days?

3 A Yes, sir.

4 Q Now, during your shift, you said you'd work 3:00 to  
5 11:00, 3:00 to 9:00?

6 A Yes, sir.

7 Q That's seven or eight hours, six, seven or eight hours?

8 A Yes, sir.

9 Q Is that right?

10 A Yes, sir.

11 Q During your shift, can you remember one shift where at  
12 least one deputy sheriff did not come by there?

13 A No, sir.

14 Q So the deputy sheriff's from Calhoun County, do they  
15 frequent that place?

16 A Yes, sir.

17 Q They come by to check on you guys?

18 A Yes, sir.

19 Q And during the 5th, do you specifically remember anyone  
20 coming in?

21 A No, sir.

22 Q But are you certain that the deputy came?

23 A They're always in and out, deputies and highway  
24 patrolmen.

25 Q And when they come in do they chat with you?

State v. Pelzer 12/3/09

134

1 A Sometimes.

2 Q Okay. And if there's any big news of any kind, do they  
3 tend to tell you what's going on?

4 A No, sir.

5 Q Okay, so they don't gossip or tell you their business?

6 A No, sir.

7 Q Okay, so when you arrived at work on the 7th, that  
8 would be the last of those three days I mentioned, was there  
9 any talk -- it's a truck stop, right?

10 A Yes, sir.

11 Q Was there any talk about a missing truck driver?

12 A Yes, sir.

13 Q All right. Tell me what you remember being asked,  
14 don't tell me what they said, but tell me what you remember  
15 being asked about --

16 A Is that a Thursday or a Friday?

17 Q I have to check my calendar to make sure, but I believe  
18 the 7th is a Saturday, isn't it?

19 A Oh. Saturday. Well, I know they couldn't find the guy  
20 Friday. But I came to work, I came in early, I came about  
21 2:30 that day, 2:30 that afternoon, and they were in there  
22 talking.

23 Q Who, you're talking about co-workers or deputies?

24 A Workers.

25 Q Okay.

1 A There weren't any deputies in there at all. When I  
2 came to work they were talking about that this white guy,  
3 this trucker got killed. And --

4 Q Did they say who it was; do you remember if they gave a  
5 name or a location?

6 A They said at Brakesfield, got killed at Brakesfield.  
7 That they had pulled the truck in there -- somebody said  
8 when they was coming by they was taking the body out of the  
9 truck and --

10 Q So somebody rode by and saw it, saw them pulling the  
11 body out?

12 A They were talking -- I don't know, they were just  
13 talking. This was all -- they was just talking, and the  
14 night before that.

15 Q All right. So you had heard that there was a white  
16 trucker that had been killed?

17 A Yes.

18 Q Now, when did you -- do you remember when you relayed  
19 that information to Mr. Pelzer, your son?

20 A I called him I think about 3:30.

21 Q On that same day?

22 A Yes.

23 Q The same day you heard the information you happened --  
24 did you call your son for any particular reason?

25 A I was upset about it, when it happened.

State v. Pelzer 12/3/09

136

1 Q Okay, why did you call him?

2 A He is my son, I always talk to him.

3 Q All right. Were you -- I mean, it was a trucker. Were  
4 you scared for your own safety?

5 A No, sir.

6 Q I mean, you worked at the truck stop, I mean, you  
7 weren't thinking there was a guy there --

8 A No, sir.

9 Q Okay. Now, you -- the night that they said this thing  
10 occurred, I believe you said -- did you happen to see your  
11 son the night that this thing occurred?

12 A Yes, sir.

13 Q Okay. Now, do you remember approximately what time he  
14 came home that night and where he had been and where he was  
15 coming from?

16 A Yes. He came home about 10:15 that night. And I  
17 remember that. I got off of work at 9:30. I got home at  
18 9:30, I got off at 9:00. I got home at 9:30. I had to  
19 count my drawer out, so that's why it took me so long to get  
20 home. And I decided, I said, well, I'm going to stay up.  
21 I'm going to bed at 10:00 o'clock. And it's a habit of mine  
22 to read 15 minutes before I go to bed. I sat and I read and  
23 when the 15 minutes was up, I turned my lights out and as  
24 soon as I laid down he came tapping on the window.

25 Q So that's how you know it was about 10:15?

1 A Yes, sir..

2 Q Now, when he tapped on the window what did you do?

3 A I got up and I let him in, and I fussed at him for a  
4 while.

5 Q You fussed at him. Why were you fussing at him?

6 A I felt like it was later than what it was. You know,  
7 my body felt that. He know that we have to go to work. He  
8 should have been home. I tried to get him to be home at a  
9 certain time.

10 Q So when he came home what was he there to do?

11 A Well, he came in and went in the kitchen and started  
12 fixing him something to eat. Fixing leftovers.

13 Q And you stayed with him and continued to fuss at him or  
14 did you go to bed?

15 A I fussed at him a little bit, and in the back there's a  
16 bathroom, I want in there and he was fixing his food, and I  
17 was arguing with myself whether to continue with him. But  
18 then, is aid, well, at least he's home early.

19 Q What time was it, or do you know what time it was when  
20 you last saw your son that night?

21 A It was a quarter of 11:00.

22 Q And how do you know that?

23 A Well, when I walked through the kitchen, in the den  
24 there's a digital clock there.

25 Q Speak up. I didn't hear you.

State v. Pelzer 12/3/09

138

1 A There's a digital clock in the next room that we used  
2 to tell time and I glanced at it before I went back to bed.

3 Q What kind of clock is it?

4 A It's a digital.

5 Q How big are the numbers on that clock?

6 A The numbers are about three -- it's about three --

7 Q Show me -- yeah, with your fingers.

8 A (Indicating.)

9 Q And that's how big the numbers are?

10 A Yes.

11 Q And are you certain you looked at it that night?

12 A Yes, sir.

13 Q And that clock, does it run fast?

14 A It -- with my cell phone the time is about right.

15 Q So you think it's pretty well timed with your cell  
16 phone?

17 A Yes.

18 Q So is your cell phone time ever wrong?

19 A No.

20 Q So when you walked in -- the last thing you did before  
21 you walked in your bedroom was look at that clock?

22 A Yes, sir.

23 Q And it said what?

24 A 10:45.

25 Q Okay, and when -- do you remember what your son was

1 wearing when he came home that night?

2 A I can't.

3 Q Okay. When you said when you went into your bedroom,  
4 you said he was still there, right?

5 A Yes, sir.

6 Q So at 10:45 you know he was still there?

7 A Yes, sir.

8 Q So you went in your bedroom. Did you hear him leave,  
9 did he immediately leave?

10 A No, sir. I still heard some noise but when he left I  
11 can't say.

12 Q You say you still heard some noise; what kind of noise  
13 did you hear?

14 A Pans.

15 Q Pans?

16 A Pots.

17 Q Why did you hear these pans, do you think?

18 A He was fixing himself something to eat when I went  
19 through.

20 Q Okay, and when you left him he wasn't finished fixing  
21 something to eat?

22 A He was eating, so I assume. The kitchen was clean when  
23 I got up the next morning.

24 Q The kitchen was clean when you got up the next morning?

25 A Yes, sir.



State v. Pelzer 12/3/09

140

1 Q So you think those noises were also putting away pans  
2 and dishes?

3 A Probably.

4 Q But you never actually heard him leave the house?

5 A (Shakes head negatively.)

6 Q Okay. Do you -- he's your son, correct?

7 A Yes, sir.

8 Q Do you provide things other than meals for him?

9 A Yes, sir.

10 Q What do you provide for him?

11 A I try to give him some money so he'll have something  
12 while he's looking for a job.

13 Q Okay. He was looking for a job at the time?

14 A Yes, sir.

15 Q All right. How much money would you typically give him  
16 and how often?

17 A Normally, I give him \$75 a week.

18 Q You give him \$75 a week?

19 A Normally.

20 Q Normally. Sometimes more?

21 A Sometimes less.

22 Q Sometimes less. Do you remember if you had given him  
23 \$75 in recent days?

24 A He'd been home the first time he stayed -- he had been  
25 staying home. He wasn't going anywhere, and he didn't ask

1 for anything, and I was just glad he was staying home.

2 Q Okay, and you provide food for him as well?

3 A Yes, sir.

4 Q What else do you provide for him?

5 A A place to stay?

6 Q I've heard a lot of talk about the cell phone. Who  
7 pays for that?

8 A Oh, I bought the cell phone for him.

9 Q Who pays for the service?

10 A I do.

11 Q Okay, so he doesn't have that expense either?

12 A No, sir.

13 Q Now, so you actually can't say what time he left your  
14 house?

15 A No, I cannot.

16 Q But you're certain it was after 10:45?

17 A Yes, sir.

18 Q All right. Did you happen to see him again later that  
19 night?

20 A That morning when he came in.

21 Q Okay. Any idea what time that was?

22 A It was between 4:00 and 4:30.

23 Q Okay.

24 MR. BANKS: One moment, Your Honor.

25 BY MR. BANKS:

State v. Pelzer 12/3/09

142

1 Q Ms. Murph, a couple more questions. Are you familiar  
2 with your son's wardrobe?

3 A Yes, sir.

4 Q In fact, who bought most of that wardrobe?

5 A Yes, sir.

6 Q I said, who bought most of that?

7 A Oh, I did.

8 Q Does he have an extensive wardrobe?

9 A Limited.

10 Q And when we say wardrobe, I don't just mean dress  
11 clothes, I mean all of his clothes?

12 A Yes, sir.

13 Q And are you very familiar with his wardrobe?

14 A Yes, sir.

15 Q Is he missing any pants or shirts other than what the  
16 Sheriff's Department took from your house?

17 A I looked through his things. I haven't noticed  
18 anything missing.

19 Q Okay.

20 MR. BANKS: No further questions, Your Honor.

21 THE COURT: Cross exam?

22 MR. SORENSON: Please the Court?

23 THE COURT: Yes, sir.

24 CAROLYN MURPH - CROSS-EXAMINATION

25 BY MR. SORENSON:

1 Q Good afternoon, Ms. Murph.

2 A Good afternoon.

3 Q My name is Don Sorenson. I'm with the Solicitor's  
4 Office, and I just have a few questions for you, okay?

5 A All right.

6 Q The trailer that you testified that you had bought  
7 several years ago over on Merrybell?

8 A Yes, sir.

9 Q At , that's the trailer there; is that  
10 correct?

11 A Yes, sir.

12 Q Now, do you go over to that trailer very often?

13 A No, sir.

14 Q Okay. Do you have any idea -- have you ever seen this  
15 burn pile in the backyard?

16 A No, sir.

17 Q So you've not idea when that pit was dug or who dug it  
18 or who may have burned any of those items in that?

19 A No, sir.

20 Q Now, back in March of 2009, I believe you told Mr.  
21 Banks, your son, Mr. Pelzer wasn't working at that time?

22 A Yes, sir.

23 Q And you were giving him about \$75 a week or so?

24 A Yes, sir.

25 Q Is that correct? And you basically provided him a

State v. Pelzer 12/3/09

144

1 place to stay, food, shelter, a cell phone. This is his  
2 phone right, this Blackberry?

3 A Yes, sir.

4 Q So he didn't really have any expenses back then, did  
5 he?

6 A No, he did not.

7 Q He didn't have a car did he?

8 A No, sir.

9 Q Now, back in March of this year were you familiar with  
10 your son's friends, the people he hung around with?

11 A Yes, sir.

12 Q Did you know Willie Reed?

13 A Yes, sir.

14 Q Did you know Jimmy Haygood, Jr?

15 A I know Jimmy. I was not aware that Jimmy was in the  
16 area.

17 Q Okay. You knew that Jimmy had gone off to the Navy  
18 earlier?

19 A I know when he came home.

20 Q Okay.

21 A I thought he was in Orangeburg.

22 Q So you knew that his mom lived in Orangeburg and his  
23 dad lived over on Merrybell?

24 A Yes, sir.

25 Q Okay. But your son, back in March of 2009, was friends

1 with both Mr. Reed and Mr. Haygood; is that correct?

2 A Yes, sir.

3 Q They had known each other since they were kids?

4 A Right.

5 Q And do you know your son's cell phone number?

6 A No.

7 Q Okay. There's no doubt that was his phone that they  
8 took off of him the night that he was arrested, the phone  
9 that he would have had with him on a day-to-day basis?

10 A Yes, sir.

11 Q And could he get and send text messages on that phone,  
12 also?

13 A Yes, sir.

14 Q You had testified, ma'am, that -- let me ask you -- go  
15 back to this trailer. You said that you bought this trailer  
16 several years earlier?

17 A Yes, sir.

18 Q But you said that you hadn't been to it in a while?

19 A Right.

20 Q Doesn't have electricity or anything turned on to it?

21 A No, sir.

22 Q Okay. Did Mr. Pelzer ever live at this trailer?

23 A Yes, sir.

24 Q Okay. When was that?

25 A When he was 17 years old.

State v. Pelzer 12/3/09

146

1 Q Okay, so three or four years ago?

2 A Six years.

3 Q Six years. Has anybody lived in there since then?

4 A No, sir.

5 Q So any personal items that would have been left over in  
6 that trailer would have been his?

7 A Well, I lived there for a while, when he was 17, I  
8 lived there for a while with him.

9 Q Okay.

10 A And -- the trailer. I lived with him when he was 17,  
11 when he turned 18, I left.

12 Q Okay. Did he still have a key and access to go in  
13 there if he wanted to?

14 A The door wouldn't work.

15 Q Okay. So anybody pretty much could go in there?

16 A Yes, sir.

17 Q And you said that back in March of this year you were  
18 working a full-time job, you were basically working two  
19 jobs?

20 A Yes, sir.

21 Q You were working a full-time job at the Postal Service  
22 in Orangeburg, and you were also working about 20 hours a  
23 week at the Wilco Hess Travel Plaza, right; which is a gas  
24 station convenience store. Got RVs attached to it?

25 A Yes, sir.

1 Q And a truck stop?

2 A Yes.

3 Q And Mr. Banks asked you if you worked on March 5, March  
4 6th, March 7th, and you said you worked all three of those  
5 days; right?

6 A Yes, sir.

7 Q Do you know what days or what hours you worked those  
8 days?

9 A I know that Thursday I worked from 3:00 to 9:00.

10 Q And Thursday is the 5th?

11 A Yes.

12 Q Have you gone back and like looked at -- that's nine  
13 months ago. Is that something you've gone back and looked  
14 at your schedule or do you just remember it?

15 A I remember. How I remember that is I was late to work  
16 the next day.

17 Q Okay. So on the 5th you said you worked from 3:00 to  
18 9:00, you said that Thursday?

19 A Yes.

20 Q Okay. And how about that Friday the 6th?

21 A I worked from 3:00 to 11:00.

22 Q From 3:00 to 11:00. Okay, and then what about on the  
23 7th?

24 A I worked from 3:00 to 11:00.

25 Q 3:00 to 11:00?



State v. Pelzer 12/3/09

148

1 A Yes, sir.

2 Q Okay. All right. I guess we'll start with the 5th  
3 first. That is the night that you said you got home at  
4 about 9:30; right?

5 A Yes, sir.

6 Q And your son, you got to bed at 10:00 o'clock. Said it  
7 was your habit that you read for 15 minutes and you heard a  
8 tap on the window or something --

9 A Yes, sir.

10 Q -- and it was your son?

11 A Yes, sir.

12 Q Let me ask you, I mean, he was living with you at that  
13 time, correct?

14 A Yes, sir.

15 Q Did he not have a key to the house?

16 A No, sir.

17 Q Did you know where he had been?

18 A No, sir.

19 Q Okay, so you hadn't touched base with him earlier in  
20 the day to find out where he was or what he was doing?

21 A No, sir.

22 Q All right. You let him in and you started fussing at  
23 him; is that right?

24 A Yes, sir.

25 Q And what was it that you were fussing at him about?

1 A Him coming in at that time of night.

2 Q So that was late for him to be coming in?

3 A Not really, but it felt that way to me. Because I  
4 always tell him to be home by 11:00 o'clock because we have  
5 to go to work. I didn't give him a key, so I will know when  
6 he come in.

7 Q Okay. So you told him he had to be home by 11:00  
8 o'clock?

9 A Yes.

10 Q And so he got home at 10:15 and then you fussed at him  
11 for being late?

12 A Yes.

13 Q He's supposed to be home at 11:00. He got home 45  
14 minutes early and you were fussing at him?

15 A Uh-huh. (Affirmative response.)

16 Q Let me ask you, I assume while you were fussing at him  
17 you wanted to have his attention; is that correct?

18 A I wanted to.

19 Q And so when you were fussing at him -- did you pretty  
20 much start fussing at him when you got up to let him in the  
21 house at 10:15?

22 A Yes, sir.

23 Q Until you went back to bed at 10:45?

24 A Not continually.

25 Q Okay. Were you pretty much in his presence that whole

State v. Pelzer 12/3/09

150

1 time?

2 A Pretty much.

3 Q You said that he had gone into the kitchen and was  
4 fixing some food or leftovers or something like that?

5 A Leftovers.

6 Q And was he doing anything else during that period of  
7 time?

8 A I didn't notice.

9 Q All right.

10 A I did not notice.

11 Q Obviously, since you were fussing at him, I imagine he  
12 wouldn't have been talking on his cell phone at that period  
13 of time. I mean, that would have been pretty disrespectful  
14 if you're fussing at your son who've you've basically given  
15 a place to stay and he's in the process of chatting away on  
16 his cell phone or texting away on his cell phone; is that  
17 correct?

18 A Sometime he does that.

19 Q Did he that night?

20 A I don't know. I don't know. He usually have the --  
21 blue tooth.

22 Q Okay. You said you don't remember what he was wearing  
23 that night, right. Would he wear sweat pants sometimes?

24 A Sometimes.

25 Q Did he wear t-shirts?

1 A Sometimes.

2 Q And Mr. Banks had asked you about his clothing, kind of  
3 an inventory of his clothing. Do you know all of the items  
4 of clothing that your son owns?

5 A Basically, yes.

6 Q How many pairs of sweat pants does he have?

7 A Three.

8 Q Three pairs.

9 A Yes.

10 Q What colors are they?

11 A He got a pair of gray ones. Red, and I think -- it  
12 must be two pair of gray.

13 Q Two pair. And how many pair of jeans does he have?

14 A I don't really know. I think about -- I'm trying to  
15 think. Picturing his clothes. I guess about four pairs of  
16 jeans.

17 Q About four pairs of jeans. And how many shirt, how  
18 many t-shirts does he have?

19 A I have to do this by the way I know his clothes --

20 Q I understand.

21 A Okay. Two t-shirts there.

22 Q Just two. Does he have other more dressy shirts, like  
23 Polo shirts and button down shirts?

24 A Yeah.

25 Q How many of those does he have?

State v. Pelzer 12/3/09

152

1 A Dress shirts, gray, gold, and black, maroon shirt.  
2 That's all that I can think of.

3 Q What?

4 A That's all I can think is those three, right now,  
5 color-wise right now. He might have two or three more.

6 Q Does he have like basketball jerseys or football  
7 jerseys or things like that that he might wear, also?

8 A A white pull-over jacket. One heavy coat. Couple --  
9 two sweats shirts that he wear.

10 Q I mean, I -- obviously, I mean, I understand you're  
11 doing your best to try to go back and picture what you can  
12 see in your son's room in his closet or his drawer or  
13 whatever. If a t-shirt was missing from your son's wardrobe  
14 there is no way you would know that was missing; is that  
15 correct?

16 A You're right.

17 Q I mean, that's just reasonable. I don't think there's  
18 a parent out there that would know what their -- how old is  
19 our son?

20 A Twenty-three, now.

21 Q Twenty-three-year-old son had a t-shirt missing out of  
22 his closet. Nobody is faulting you for that, ma'am. Let me  
23 ask you, though, you testified that on Thursday, March 5th,  
24 that you got home at 9:30, your son got home at 10:15. What  
25 time did he get home the day before, that Tuesday, March

1 4th?

2 A He didn't. This is the thing. He didn't leave the  
3 house.

4 Q So he was home all day that day before?

5 A Yeah, he was home all day that Sunday, Monday, Tuesday,  
6 and Wednesday.

7 Q Okay, now, did you work that Sunday, Monday, Tuesday or  
8 Wednesday at either job?

9 A Yes, I work at the post office.

10 Q And did you work at the Wilco Travel Plaza either  
11 Sunday, Monday, Tuesday or Wednesday?

12 A I'm pretty sure I did Sunday.

13 Q So your testimony is that Sunday, Monday, Tuesday and  
14 Wednesday he was home when you got home from work at the  
15 post office?

16 A Yes.

17 Q Okay. How about -- let's kind of fast forward a little  
18 bit to that night. And you're sure he was home those three  
19 prior days?

20 A Yes, sir.

21 Q And you testified that you don't recall what he was  
22 wearing that night; is that correct, the night of the 5th,  
23 that Thursday night?

24 A I remember -- the thing is I can't remember what he was  
25 wearing when he came home. I think -- that when he came

State v. Pelzer 12/3/09

154

1 home he had on a blue jacket with something written on the  
2 back in white.

3 Q Have you ever told anybody this before or is this  
4 something that you are just remembering nine months later;  
5 did you tell anybody else this before?

6 A No.

7 Q Have you ever -- let me ask you this, Ms. Murph, when's  
8 the first time that somebody sat down and asked you about  
9 what you recall happening back on March 5th of this year?

10 A Well, when it happened, after they picked him up I  
11 didn't know what to think, I didn't know what to do. And  
12 people just kept calling me, saying stuff, just staying  
13 stuff, and I didn't -- when they picked him up they didn't  
14 say what day this happened on.

15 Q When's the first -- well, let me ask you, when's the  
16 first time you told somebody that you remembered the events  
17 you have spoken about to this jury about on March 5th?

18 A On that Monday.

19 Q That following Monday?

20 A That following Monday.

21 Q Okay. Now, it's your testimony that you went back to  
22 bed at 10:45; is that correct?

23 A Yes, sir.

24 Q And he was in the kitchen still when you went to bed?

25 A Yes, sir.

1 Q And you said you heard some rustling around in the  
2 house for a little while after you went back to bed?

3 A Yes, sir.

4 Q And then you fell asleep?

5 A Yes, sir.

6 Q Let me ask you; back in March who else was staying at  
7 the house?

8 A My mom and my brother.

9 Q Now, did your mother, which would be his grandmother,  
10 right?

11 A Right.

12 Q And your brother, you said?

13 A Only one brother was home that night.

14 Q Okay. And so his uncle?

15 A Yes.

16 Q That would be Mr. Pelzer's grandmother and his uncle.  
17 Did either one of them see him that evening?

18 A No.

19 Q Okay, so you were the only one that dealt with him at  
20 all?

21 A Yes, sir.

22 Q They didn't come out to find out what all the fussing  
23 was about when you were fussing at him?

24 A No, they're used to it.

25 Q They're used to it? All right. Your testimony is that



State v. Pelzer 12/3/09

156

1 he ultimately got back home between 4:00 and 4:30 in the  
2 morning?

3 A Yes, sir.

4 Q Did he have to knock on the window to get you to let  
5 him in again?

6 A Yes, sir.

7 Q Okay.

8 A That's what I mean, he had left.

9 Q Okay. And I can imagine that if you fussed at him at  
10 10:15 for being 45 minutes earlier than he was supposed to  
11 be, what did you do to him at 4:00 o'clock in the morning?

12 A I let him in the garage at that time, the back door. I  
13 let him in the garage and his room is right -- the door  
14 right there. When I started he went in his room and closed  
15 the door. And it was almost time for me to get up.

16 Q Was he upset acting?

17 A He was tired.

18 Q Tired. Did he tell you where he had been?

19 A No.

20 Q Tell you who he had been with?

21 A No.

22 Q Did you ask him where he'd been, did you say, what on  
23 earth are you thinking?

24 A No, not then. I called him later after I left for  
25 work.

1 Q Okay. So you called him later on. Did you ever find  
2 out later where he had been that night?

3 A No.

4 Q Let me ask you this, I mean, obviously, back in March  
5 of 2009, he had a place to stay, right?

6 A Yes.

7 Q He had some place where he could sleep every night;  
8 your house?

9 A Yes, sir.

10 Q Is there any reason he would have needed some place  
11 else to stay that Thursday night?

12 A No, sir, not that I know of.

13 Q Any reason you know of that he would have needed to  
14 stay down in Charleston until the following night?

15 A No.

16 Q Were you expecting him to be home on Friday?

17 A Yes.

18 Q I mean, when you woke up on Friday morning, where were  
19 you expecting Willie Pelzer to be?

20 A Right there in the house.

21 Q I've just got a couple more things, Ms. Murph. You had  
22 testified -- I got a little confused. It was probably me  
23 that was confused, but you worked that Friday, right, March  
24 6th?

25 A Yes.

State v. Pelzer 12/3/09

158

1 Q And did you learn when you went in to work that day at  
2 the Wilco Hess station that a truck driver was missing?

3 A Yes, sir.

4 Q Okay. Now, when was it you heard people talking. I  
5 think you said you heard people talking inside the gas  
6 station about a white trucker being found over by  
7 Brakesfield's?

8 A That was Saturday.

9 Q That was Saturday?

10 A I got there about 2:30.

11 Q Okay, you got in about 2:30 on Saturday?

12 A I was early.

13 Q Huh?

14 A I just was early. I was to report to work at 3:00.

15 Q And your testimony is that you heard people talking  
16 about that right after you got to work?

17 A Yes, sir.

18 Q And that you called your son?

19 A Not right away, but I did call him.

20 Q When did you call him?

21 A I think about an hour or so later.

22 Q I think you testified on direct it was about 3:30?

23 A Yes, it would be about 3:30.

24 Q And did you get through to him?

25 A Yes, sir.

1 Q And I assume that it's your testimony, I'm not sure if  
2 Mr. Banks asked you, but you had told him about a white  
3 truck driver being killed over at Brakesfield's?

4 A Yes, sir.

5 Q And that's what you told your son at that point in  
6 time?

7 A Yes, sir.

8 Q Any particular reason why you felt you had to call your  
9 son and tell him about that?

10 A I care about people.

11 Q I can't hear you.

12 A I care about people.

13 Q Yes, ma'am.

14 A And well, that Friday, somebody had called looking for  
15 -- they just told me the truck, and we were busy at the  
16 time, and whoever called, I couldn't hear him, so the  
17 trucker register -- there's one register in between us this  
18 particular night, but I was by the phone. So I told the  
19 gentleman that called to talk to the guy -- talk to the guy  
20 on the diesel register and he could probably give him more  
21 information, and I passed the call on to him. And so that's  
22 why I asked, did they locate the guy. They said no, that  
23 was it. Nobody said nothing about it. And Friday, Friday  
24 night, and that Saturday they said his wife had called  
25 later.

State v. Pelzer 12/3/09

160

1 Q Okay, my question, Ms. Murph, why you felt the need to  
2 call and tell your son about that information?

3 A No.

4 Q Okay.

5 MR. SORENSON: Beg the Court's indulgence.

6 That'd be all I have. Thank you, Ms. Murph.

7 THE COURT: Redirect?

8 MR. BANKS: One moment, Your Honor.

9 CAROLYN MURPH - REDIRECT EXAMINATION

10 BY MR. BANKS:

11 Q Ms. Pelzer (sic) you said that you made a call to your  
12 son about the truck driver, the white guy that was killed?

13 A Yes, sir.

14 Q I'm going to show you -- this isn't your phone bill,  
15 this is your phone record. Just -- can you identify your  
16 phone number on this -- you need your glasses or not?

17 A No.

18 Q You said it was late in the afternoon on the 7th, when  
19 you called, right?

20 A Yes.

21 Q Is that your -- do you see your phone number there;  
22 what's your cell phone number?

23 A

24 Q And do you see it right there?

25 A Yes, sir.

1 Q And what time do you see on that record that that call  
2 was made?

3 A 15:36.

4 Q So that's 3:36?

5 A Yes, sir.

6 Q And what day?

7 A The 7th.

8 Q Is that approximately the day and time -- I mean, is  
9 that the day and time that you say you made that call to  
10 your son?

11 A Yes, sir.

12 MR. BANKS: Nothing further, Your Honor.

13 THE COURT: Recross.

14 MR. SORENSON: Just beg the Court's indulgence one  
15 second.

16 CAROLYN MURPH - RECROSS EXAMINATION

17 BY MR. SORENSON:

18 Q I want to make sure I'm looking at the right line,  
19 ma'am. Your cell number is ?

20 A Yes, sir.

21 Q And you spoke to him that afternoon for about a minute  
22 or a minute and a-half; does that sound about right?

23 A Yes, sir.

24 Q Thank you.

25 THE COURT: Thank you, ma'am. You may step down.

State v. Pelzer 12/3/09

162

1 Call your next witness, please.

2 MR. BANKS: Defense rests, Your Honor.

3 THE COURT: Anything in reply?

4 MR. SORENSON: No, Your Honor.

5 THE COURT: All right, ladies and gentlemen, you  
6 have heard all of the testimony and the evidence that you're  
7 going to hear in this case. It remains now for the  
8 attorneys to make their closing arguments to you, then I  
9 will charge you on the law and then you will begin your  
10 deliberations. It will take about two and a-half or three  
11 hours to make the closing arguments and my charge to you on  
12 the law. It's now 10 minutes to 3:00.

13 Mr. Hill, I appointed you as foreperson of the jury.  
14 So what I want you to do is take the jury back there, and  
15 y'all talk about the schedule, because I'll let you set the  
16 schedule for the rest of this trial. We'll stay here --  
17 we'll quit right now and come back in the morning and do all  
18 of that and start off fresh in the morning, if that's what  
19 you want to do, or we'll have the closing arguments and  
20 charge and stay here as long as you want to stay tonight.  
21 If you want to start your deliberations we can order your  
22 supper. If you want to hear the closing arguments and  
23 charge and then go home and come back in the morning, I'll  
24 do whatever you want to do. So I want you to go back and  
25 talk to the jury about that and soon as y'all make a

State v. Pelzer 12/3/09

163

1 determination as to how long y'all want to stay today. You  
2 knock on the door and tell the bailiff and I'll probably  
3 bring you back out and report to me individually and then  
4 we'll decide how we're going to proceed. All right, sir.

5 All right. Please retire to the jury room. Please do  
6 not talk about the case.

7 (Jury out at 2:52 p.m.)

8 THE COURT: Any motions?

9 MR. BANKS: Yes, Your Honor, just renew our  
10 motions for directed verdict.

11 THE COURT: All right, sir, I will deny the motion  
12 on the same grounds I stated previously. I think the  
13 evidence in the record makes it clearly a jury question. So  
14 I will let the jury decide the case.

15 Now, I don't know what the jury is going to decide what  
16 they want to do. You heard what I told them.

17 MR. BANKS: Yes, sir.

18 THE COURT: Is there anything else we need to take  
19 up, because if they come back and say they're ready for the  
20 closing, then we're going to get started right immediately  
21 with that.

22 Anything else from the state?

23 MR. PASCO: No, sir. We'll start setting up as  
24 soon as they come back.

25 THE COURT: Start setting up and get whatever of



State v. Pelzer 12/3/09

164

1 your exhibits you need so we'll be ready to roll if they  
2 jury decides they want to keep moving. I'll let you know as  
3 soon as I hear from the jury.

4 (Court in recess at 2:53 p.m.)

5 (Court in session at 3:16 p.m.)

6 THE COURT: They want to recess and start back at  
7 9:30 in the morning.

8 Bring the jury in, please.

9 (Jury in at 3:16 p.m.)

10 THE COURT: All right, Mr. Foreman, and ladies and  
11 gentlemen, after conferring with the foreman, who has  
12 conferred with the jurors, and I've conferred with the  
13 attorneys, I think we've all decided that we will just  
14 recess for this afternoon and start back at 9:30 in the  
15 morning. I really think that's the best decision. We were  
16 all here late last night, and I think it's best we all go  
17 home and get a good nights rest. We will come back at 9:30  
18 in the morning and we will start then.

19 So please remember do not talk about the case. Do not  
20 read the newspaper. That's very important. Do not look at  
21 the TV news. Don't talk about the case with anybody. No  
22 matter how you might want to, don't. And I'll see you in  
23 the morning at 9:30.

24 Thank you very much. You are excused. Everybody else  
25 remain in the courtroom please until the jury leaves the.

1 courthouse.

2 (Jury out for the evening at 3:17 p.m.)

3 THE COURT: All right. On the request to charge  
4 the state had a request?

5 MR. PASCO: Yes, Your Honor, we ask for involuntary  
6 intoxication, or voluntary intoxication charge. There was  
7 some testimony, Det. Graham testified that defendant made a  
8 statement to him that sometimes he gets so high that he  
9 doesn't remember anything. So we would ask for that charge?

10 THE COURT: What's the defense position?

11 MR. BANKS: Your Honor, we'd object. He never  
12 said that in at any relation to this case, that night, or in  
13 statements to anyone. That was a general statement made  
14 about times in the past and we object.

15 THE COURT: Well, he said it. I think the evidence  
16 -- that evidence entitles the state to that charge. So I  
17 will give the jury that charge.

18 Any other request from the state?

19 MR. PASCO: No, sir.

20 THE COURT: From the defense?

21 MR. BANKS: No, Your Honor.

22 THE COURT: Of course, if you have any other  
23 charge you can tell me in the morning, but let's be ready to  
24 roll at 9:30.

25 All right, solicitor, do you know if we have anything

State v. Pelzer 12/3/09

166

1 else this afternoon outside of this case.

2 MR. PASCO: No, sir.

3 THE COURT: We do not.

4 Court's in recess until 9:30 in the morning.

5 MR. PASCO: Thank Your Honor.

6 (Court in recess for the evening at 3:19 p.m.)

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

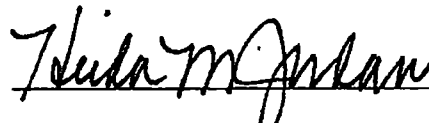
State v. Pelzer 12/3/09

167

## CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS, CALHOUN COUNTY, SOUTH CAROLINA, ON THE 3RD DAY OF DECEMBER, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

A handwritten signature in cursive script, reading "Hilda M. Jordan", is written over a horizontal line.

HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

JANUARY 7, 2011

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF CALHOUN ) FIRST JUDICIAL CIRCUIT

[illegible]

DECEMBER 1-4, 2009  
ST. MATTHEWS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES C. WILLIAMS, JR., JUDGE AND A JURY

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

DAVID PASCO, ESQUIRE  
DON SORENSON, ESQUIRE  
ATTORNEYS FOR THE STATE

MARK LEIENDECKER, ESQUIRE  
MARTIN BANKS, ESQUIRE  
ATTORNEYS FOR THE DEFENDANT

HILDA M. JORDAN, CVR  
CIRCUIT COURT REPORTER

|    |                                    |     |
|----|------------------------------------|-----|
| 1  | CLOSING STATE .....                | 5   |
| 2  | CLOSING DEFENSE .....              | 12  |
| 3  | CLOSING STATE .....                | 46  |
| 4  | JURY CHARGE .....                  | 85  |
| 5  | VERDICT .....                      | 101 |
| 6  | SENTENCE .....                     | 126 |
| 7  | COURT REPORTER CERTIFICATION ..... | 129 |
| 8  |                                    |     |
| 9  |                                    |     |
| 10 |                                    |     |
| 11 |                                    |     |
| 12 |                                    |     |
| 13 |                                    |     |
| 14 |                                    |     |
| 15 |                                    |     |
| 16 |                                    |     |
| 17 |                                    |     |
| 18 |                                    |     |
| 19 |                                    |     |
| 20 |                                    |     |
| 21 |                                    |     |
| 22 |                                    |     |
| 23 |                                    |     |
| 24 |                                    |     |

State v. Pelzer 12/4/09

3

1

2

(Court in session at 9:35 a.m.)

3

4

THE COURT: All right. Anything from the state before we bring in the jury?

5

MR. PASCO: No, Your Honor.

6

THE COURT: From the defense?

7

MR. BANKS: No, Your Honor.

8

9

10

11

12

13

MR. LEIENDECKER: Your Honor, as we discussed in chambers, in preparing to review the evidence and actually having -- the defense would request an alibi instruction to the jury because of the evidence as presented could be construed by the jury to provide Mr. Pelzer with a time alibi as to his place or location at the time of the murder.

14

THE COURT: What's the state's position?

15

MR. PASCO: No objection, Your Honor.

16

17

18

THE COURT: All right. I'll charge alibi. I'll charge confession and charge murder. The rest of my charge you are all familiar with.

19

You're going to open and close?

20

21

MR. PASCO: Yes, sir, and the voluntary intoxication, you said that yesterday?

22

THE COURT: I've got that.

23

MR. PASCO: Okay.

24

THE COURT: Yes, sir, I've got that right here.

25

All right. Bring the jury.

State v. Pelzer 12/4/09

4

1 (Jury in at 9:39 a.m.)

2 THE COURT: Good morning, ladies and gentlemen.  
3 As I told you, it remains now for the attorneys to make  
4 their closing arguments to you and then I'll charge you on  
5 the law and you can begin your deliberations.

6 Now, what the attorneys tell you in these arguments is  
7 not evidence. Evidence is that testimony which comes from  
8 witnesses who have been placed under oath and they sit here  
9 in this witness stand and they testify. Evidence is the  
10 exhibits which you will have with you in the jury room when  
11 you begin your deliberations.

12 But what the attorneys tell you is important. They  
13 have a good grasp of this case, they have a good working  
14 knowledge of the facts of the case because they've been  
15 involved in the case for a long time, and they also know the  
16 law, and so please give them your attention as they address  
17 you at this time.

18 The state will have an opportunity to speak first, and  
19 the defense will speak and the state can respond to the  
20 defense statement. That's how we will proceed.

21 I don't know how long they will run. As I told you all  
22 Monday, we try not to waste any time, but we don't rush  
23 anybody either. This is a very important case for  
24 everybody, so please understand that and be patient. If we  
25 need a break after the state finishes and the defense, I'll



State v. Pelzer 12/4/09

5

1 look at you and we'll take a break if we need to and come  
2 back and finish at that time.

3 All right, Mr. Pasco, you may proceed.

4 MR. PASCO: May it please the Court?

5 THE COURT: Yes, sir.

6 STATE CLOSING:

7 MR. PASCO: Mr. Foreman, ladies and gentlemen of  
8 the jury, good morning.

9 I want to start off by thanking each and every one of  
10 you for your service this week. It's often said that jury  
11 duty is the most important service you can perform for your  
12 country. I certainly concur with that. You have gone above  
13 and beyond the call of your duty this week by working late  
14 and being as attentive as you have. The most important duty  
15 you can perform for your country, and again, I certainly  
16 concur with that.

17 Your service is important not only to the defendant,  
18 but to the state of South Carolina. It's important to Jason  
19 Rivenburg's family. And it's important because we all have  
20 our jobs to do in this courtroom. It's the state's job,  
21 under the code of ethics, to be ministers of justice. It's  
22 the defense's job to represent his client zealously. It's  
23 the Judge's job to administer the law, and it's your job,  
24 most important of all, to render a verdict. Whether your  
25 verdict is guilty or not guilty. As long as it's speaks the

1 truth no one will every be able to question it.

2 If you recall the most important thing you've done up  
3 to now is that you took an oath. You took an oath  
4 administered to you by the Clerk of Court, Kenny Hasty,  
5 administered to you on Tuesday that you would put aside any  
6 bias or prejudice that you have either against the state of  
7 South Carolina or the defendant and base your verdict, your  
8 true verdict on just two things; the evidence and the law.  
9 Not on assertions, not on fiction, but on the evidence and  
10 the law.

11 What I'm going to do is I'm going to take no more than  
12 about 10 more minutes of your time, and I'm going to talk to  
13 you about some of the law in this case. Then I'm going to  
14 sit down, and defense counsel is going to present a closing  
15 argument, and then I'm going to get one more opportunity to  
16 come up here and talk to you about the facts.

17 As I talk to you about the law let me give you one  
18 caveat, which is, if I ever say anything that contradicts  
19 the law that Judge Williams tells you, you take the law  
20 according to the judge, not the law according to Pasco,  
21 because just like you are the sole triers of the facts in  
22 this case, he is the sole trier of the law.

23 As we all know by now, the defendant is charged with  
24 murder, and while murder is the most heinous crime that a  
25 person can commit, it has probably the shortest and simplest

State v. Pelzer 12/4/09

7

1 definition of any crime on our books. Murder is defined as  
2 the unlawful killing of another with malice aforethought,  
3 either expressed or implied. That's it. The unlawful  
4 killing of another with malice aforethought.

5 Premeditation is not an element of murder. That word  
6 came up during the course of the trial, it is not an element  
7 of murder, although I submit, we have premeditation here,  
8 because there was the premeditation to commit a robbery, but  
9 premeditation is not an element of murder.

10 Because to prove murder all you have to establish is  
11 malice. And malice has a number of definitions and it can  
12 be a number of different things. Malice is reckless  
13 disregard for the welfare of another. Or it's a depraved  
14 heart bent on mischief. It's conduct that signifies a  
15 conscious effort of creating a high risk or risk of serious  
16 bodily injury to another. Malice has no time limit. It can  
17 happen in the blink of an eye, the snap of a finger. It can  
18 happen with the pulling of the trigger one time, much less  
19 six.

20 As I told you, malice can either be expressed or  
21 implied. And examples of expressed malice would be lying in  
22 wait for the victim, watching the victim as he's on the  
23 telephone. The mere use of a deadly weapon is evidence of  
24 malice. The intent to commit a robbery by itself is  
25 evidence of malice. Firing a gun one time by itself is

1 evidence of malice, much less two, three, and up to six  
2 times.

3 That's murder. The unlawful killing of another with  
4 malice aforethought. And let's get one thing perfectly  
5 straight right now, there is absolutely no doubt whatsoever,  
6 that on March 5th, 2009, Jason Rivenburg was murdered.  
7 None, no doubt whatsoever.

8 The issue for you is simple. Are you firmly convinced  
9 that Willie Pelzer is guilty. That's it. A very simple  
10 issue.

11 And when determining a defendant's guilt you look at  
12 the evidence, and there are two types of evidence both of  
13 which exist in this case and both are equal under the law.  
14 There's direct evidence and circumstantial evidence.

15 Direct evidence is evidence that a witness sees, hears,  
16 smells, touches. Willie Reed's testimony: I saw the  
17 defendant burning something at his trailer at  
18 That's direct evidence.

19 Jimmy Haygood's testimony: The defendant told me he  
20 killed a truck driver. That's something he heard.

21 Circumstantial evidence is evidence where you can infer  
22 something from the circumstances of an event. It's a chain  
23 of events that prove the existence of a fact.

24 Examples -- just one example of circumstantial evidence  
25 in this case would be the fact that the shell casings at the

State v. Pelzer 12/4/09

9

1 scene were fired by the same gun that was in Jimmy Haygood's  
2 house the night that Willie Pelzer took it. The same 45  
3 caliber pistol. And other examples that I'll talk about  
4 later on my closing on the facts.

5 The Judge is going to tell you that you and you alone  
6 assess the credibility of the witnesses. You can believe  
7 none, some or all of what a witness told you. When you  
8 assess the credibility of the witnesses, all I ask is that  
9 you use your everyday life experiences. You know when  
10 somebody is lying, you know when somebody is mistaken, you  
11 know when somebody is telling the truth. You've got jobs,  
12 you deal with people every day, you've had children. The 12  
13 of you know when somebody is telling the truth.

14 Some other factors that you can consider in determining  
15 the credibility of witnesses is what was the witnesses  
16 demeanor on the witness stand. Was the witness hesitant or  
17 was the witness forthright. Was the witnesses testimony  
18 consistent with the other evidence that's in the case. Was  
19 the witnesses testimony corroborated by other evidence in  
20 the case, and does the witness have a reason to be biased or  
21 be prejudiced. Does that person have a reason to lie to  
22 protect somebody. As I said, those are just some of the  
23 important factors that you can use to determine the  
24 credibility of the witnesses. The most important factor is  
25 your own common life experiences.

1           Now, the defense in this case, has decided to put up  
2           what's called an alibi defense. Alibi is just a fancy word,  
3           it means, elsewhere. It's the defense's way of saying,  
4           there's no way he could have committed this crime because he  
5           didn't even have the opportunity to do it. And once the  
6           defense puts up an alibi, it's subject to scrutiny just like  
7           anything else. The state of South Carolina, we always have  
8           the burden of proof, but once the defense puts up witnesses,  
9           once they put up a defense it's subject to scrutiny and your  
10          credibility test just like anything else.

11          And the bottom line is, again, if you're firmly  
12          convinced that the defendant is guilty you must find him  
13          guilty. And let me tell you something else that's not in  
14          evidence. Voluntary intoxication is not a defense to a  
15          crime. Getting drunk or getting high on drugs is never a  
16          defense to a crime in South Carolina or anywhere else.

17          Now, it may be evidence as to why somebody did that or  
18          why somebody committed a crime, but it is never a defense to  
19          a crime.

20          And the last legal phrase I want to talk you y'all  
21          about is proof beyond a reasonable doubt. I want to tell  
22          you that the state of South Carolina absolutely relishes the  
23          opportunity to come into this courtroom after nine months  
24          and prove that the defendant, Willie Pelzer, murdered Jason  
25          Rivenburg. To prove it beyond a reasonable doubt.

State v. Pelzer 12/4/09

11

1           The standard of proof is certainly not some impossible  
2 standard, because people are convicted and acquitted in this  
3 country each and every day. Rather the phrase means exactly  
4 what it says. It's not proof beyond any doubt. It's not  
5 proof beyond any possible doubt, it's proof beyond any  
6 reasonable doubt.

7           Simple fact of the matter is we have doubts about  
8 everything in this world. Some may doubt whether the earth  
9 revolves around the sun, but you have to ask yourself is it  
10 reasonable. And in essence what the Judge is going to tell  
11 you that what proof beyond a reasonable doubt is if after  
12 you look at all the evidence, not once piece of the  
13 evidence, but after you look at everything that's in front  
14 of you, if you are firmly convinced, just firmly convinced  
15 of the defendant's guilt, you must find him guilty, and I  
16 submit the evidence in this case leaves you much, much more  
17 than firmly convinced.

18           In closing, I want to thank you for your attention.  
19 I'm sure you're going to give Mr. Leiendecker the same  
20 attention that you have given to me. The only thing I would  
21 ask is that during his closing argument, you keep an open  
22 mind, and give me one more opportunity to come up here and  
23 talk to you about the facts in this case.

24           Thank you.

25           THE COURT: Thank you, sir.

1 Mr. Leiendecker?

2 DEFENSE CLOSE:

3 MR. LEIENDECKER: Ladies and gentlemen of the  
4 jury, my name is Mark Leiendecker. I've been watching you  
5 all this week and I want to tell you on behalf of the  
6 defense and the defendant thank you for your service. Just  
7 as the solicitor has already told you, the criminal justice  
8 system in our country and our state doesn't work without the  
9 12 of you, the 14 of you, actually, being willing to come  
10 away from your lives for an extended period of time to sit  
11 quietly and attentively and to listen to the evidence  
12 presented by the state in the cross-examination of that  
13 evidence by the defense.

14 We've now reached a point in the trial, as has already  
15 been described, where we're going to turn the work over to  
16 y'all that we've been doing this week, but now we're going  
17 to place it on your shoulders, and I just want this  
18 opportunity to briefly discuss -- and whenever I say that,  
19 my wife says, oh, gosh, that means he's going to go on and  
20 on. But I'm going to try to briefly discuss with you the  
21 evidence that we looked at over the last three, three and  
22 a-half days, and the reason I want to do that is not because  
23 I'm trying to supplant a fact that's already in your head,  
24 but I'm just trying to get it to look at it from the  
25 perspective of whether the state has met their burden of



State v. Pelzer 12/4/09

13

1 proof today, as the solicitor has already discussed. That  
2 burden of proof being that the murder that was committed on  
3 the 5th of March 2009, was committed by our client, Willie  
4 Pelzer, and that you are convinced of that beyond a  
5 reasonable doubt.

6 Not that you are pretty sure it happened, not that it's  
7 more likely than not that Willie Pelzer committed the crime,  
8 not that it's probable that Willie Pelzer committed the  
9 crime, not that you're pretty sure Willie Pelzer committed  
10 the crime, but that when you walk out of that jury room your  
11 decision is that if you convict the client that I represent  
12 that you are convinced he committed that crime, beyond a  
13 reasonable doubt.

14 Now, the solicitor has described his definition of that  
15 and it's supported by the United States Supreme Court. Our  
16 Supreme Court in the state of South Carolina has said for  
17 years a very simple definition. A reasonable doubt is the  
18 doubt that causes you or me to hesitate to act in our most  
19 important decisions or functions. To hesitate to act. Not  
20 to fail to act. Not to ultimately do whatever we were  
21 hesitant about, but the mere hesitation means that in our  
22 mind we have created a reasonable doubt.

23 I'm not sure about the effects of television on  
24 children as they grow. I'm not sure about the effects of  
25 television on the dumbing down of America. I'm not sure

1 about any of that, but what I am sure of is that there is  
2 such a glut of lawyer and cop shows on TV that we all are  
3 exposed to an ideal of how our justice system works that is  
4 completely different than what you've seen here today.  
5 Completely different. What we are dealing with here today  
6 is reality. It's not fantasy. It's not, as the solicitor  
7 described earlier, something that's scripted out and the  
8 writer knows the end so he gets to that end by whatever  
9 means.

10 What we're dealing with today is the fact that people,  
11 when they're placed on trial have absolutely no  
12 responsibility. All the responsibility rests with the  
13 state. Solicitor Pasco genuinely is willing to accept that  
14 responsibility, but it is a heavy responsibility and a  
15 burden, because he must prove that our client is guilty of  
16 the murder of Jason Rivenburg beyond a reasonable doubt.  
17 And as the Judge has instructed to you, as he will instruct  
18 you again, this table has the responsibility of proving to  
19 you nothing.

20 The responsibility of the defense is to question and  
21 examine the evidence that is presented by the state. Now,  
22 that doesn't mean the defense can't present evidence, and we  
23 did, but we have no responsibility because why? We do not  
24 have to prove Willie Pelzer innocent. That's a phrase you  
25 hear all the time. It drives me crazy. You hear attorneys

State v. Pelzer 12/4/09

15

1 say that after trial, my client's been proven innocent. No  
2 he hasn't, because that's not the way our system works.  
3 That's an unfair system. No one has to prove their  
4 innocence. The state has to prove them guilty, and that's  
5 why the solicitor told you your verdict will be guilty or  
6 not guilty. Meaning, the state proved it or the state did  
7 not prove it.

8 What I submit to you today is we've looked at this  
9 evidence, and as you take it back and look at it, there's a  
10 whole bunch of circumstantial evidence and the state has  
11 determined that it points this way. But I have doubts. I  
12 want you to hear about those doubts. I want you to think  
13 about those reasonable doubts when you go into your jury  
14 room.

15 One thing that was initially established and was right  
16 out front with the state's first witness was that Jason  
17 Rivenburg had arrived in the state of South Carolina on the  
18 5th of March, 2009, and that sometime in the 9:15 hour, he  
19 called his friend, Jerry, Jerry Dubin, and spoke to him a  
20 very short time, if you remember, because Jerry was doing  
21 something else and got a call from home, and Jerry said,  
22 I'll call you back. And Jerry did call him back. Jerry  
23 tried to call him back about 10:20, and the phone records  
24 reflect he actually called him back about 10:43, and you'll  
25 have those records in with you. You'll have an opportunity

1 to see and to check those phone records. In fact, it's  
2 State's Exhibit No. 66. And it's going to be easy to find  
3 because somebody has already put little asterisks on it and  
4 highlighted it for you, but it shows that the call happened  
5 at 22:43. Military time always gives me fits. I have to  
6 write it out. That's 10:00 o'clock, I'm pretty sure, 10:43.  
7 He called him at 22:43.

8 Now, that's significant because that probably helps us  
9 establish time that this shooting occurred. And probably it  
10 very close to establish the time that Jason Rivenburg was  
11 murdered, because you'll see in those records at 10:43, a  
12 time period of 1,3011 seconds because cell phones count in  
13 seconds, the phone was operable. If you do the math and  
14 we've already heard testimony to that effect, that's 21.85  
15 minutes, almost 22 minutes, which carries us to 11:05.

16 Now, I'm not as firmly convinced as to when the exact  
17 time of the killing occurred. Not as convinced as the state  
18 is going to tell you they are. I'm not as convinced because  
19 Jerry Dubin says he called him 10:20. He actually called  
20 him at 10:43. That makes sense, because as we've already  
21 discussed, we're not looking at our watch all the time. We  
22 just know approximate times, and even more so when you're  
23 doing something and you're asked to sit -- did you play this  
24 game when you were a kid, part of you did. You're at your  
25 friend's, and you're going to win the birthday party prize

State v. Pelzer 12/4/09

17

1 if you can be the one that sits in your chair closest to 60  
2 seconds, and everybody sits there and in your head you count  
3 the minutes. And people are jumping up and down at  
4 different times because it's hard in your mind to determine  
5 how long a minute is, or three minutes, or five minutes is,  
6 and that's what Jerry says, I think the phone was dead for  
7 about five minutes. I don't know if that's five minutes, 10  
8 minutes, 3 minutes, but it was no one on the phone talking  
9 for a period of time.

10 Now, he suggests that he heard things, not voices or  
11 anything else, just rustling or breathing. I don't know  
12 whether he did or not. You've seen pictures of the cell  
13 phone. For some reason the cell phone is not in evidence,  
14 but you've seen pictures of the cell phone. It was damaged.  
15 And I don't know how operable it is or it isn't. Clearly it  
16 was still making beeping sounds, but no one testified if it  
17 turns on and works. I don't know if it does or doesn't.  
18 What I do know is that establishes an approximate time of  
19 the murder. Somewhere between the time he got on the phone,  
20 and he talked to him for a while, so I don't think it  
21 happened at 10:43, and 11:05 when the call by record,  
22 disconnected. That's actual evidence, direct evidence.

23 Then we heard from Investigator Armlin from the police  
24 station up in Schoharie, New York, where they all live. And  
25 he told us that he was able to get the phone records when

1 South Carolina wasn't, and he was able to locate the towers,  
2 which gave Calhoun County a place to look, a general place  
3 to look anyway. Around the tower that pings off of  
4 Cartwright Road.

5 Now, a whole bunch of the cell phones in this end of  
6 the county ping off of the tower on Cartwright Road. In  
7 fact, I think we heard Riley Godwin tell us that when he  
8 measured the tower 50, from the distance from the house of  
9 Mr. Bryant Haygood, it's about four miles away, and we know  
10 that when they dropped Bryant off they were pinging off a  
11 tower that's four or five miles away from that location, so  
12 it's not, you don't have to be in a close proximity to that  
13 tower to be working. And that's why they couldn't find him.  
14 They went to truck stops and other places and they couldn't  
15 find him.

16 But we eventually heard from Sgt. Headden of the  
17 Calhoun County Sheriff's Office that he responded to a call  
18 very early on Saturday morning. A call from a concerned  
19 citizen that there was a truck that had been sitting across  
20 from Brakesfield's at the old Brakesfield BP, as people call  
21 it, and it had been there a couple of days and the dome  
22 light was on. And that's when we found out what happened,  
23 and that's when Riley and Investigator Graham and Renee  
24 Strickland from SLED and Sheriff's Summers got a call. They  
25 were all there to start the investigation of this crime.

State v. Pelzer 12/4/09

19

1 Renee Strickland came in there and she sat on that  
2 witness stand and she told us all the things she looked for.  
3 The crime scene documentor, basically. She marked where  
4 shell casings were. She did measurements back and forth.  
5 She looked at the truck for fingerprints. She told us she  
6 dusted it in and out, and because of moisture and other  
7 reasons couldn't come up with any discernable fingerprints.  
8 She took other things, we know. She took gunshot residue  
9 swabs, she took blood and other things that were all taken  
10 back to SLED along with the shell casings and all this  
11 forensic stuff for analysis.

12 And again, y'all, it's not TV, because it didn't answer  
13 the question. The only question it definitely answered for  
14 us was that the gun -- the gun that was -- and I'm going to  
15 say was owned by two guys, because I still don't really know  
16 who owned this gun. The gun that was owned by Willie Reed,  
17 Jr., and Jimmy Haygood, also a junior maybe, I'm not sure,  
18 was most likely and probably the gun that committed this  
19 murder.

20 And Mr. Walton from Verizon came and he told us a  
21 little bit about how to judge these towers.

22 And then a bunch of experts came towards the end to  
23 tell us how they analyzed the evidence, and what do we get  
24 from that? We got that that gun was the gun that committed  
25 the murder.

1           We didn't get any evidence of who committed the murder,  
2           did we, from those experts, I mean Martin and I asked them,  
3           and not one of them said -- In fact, Mr. Whitler, who is a  
4           funny guy, told me that would be like him being a psychic,  
5           you know, to match the bullets to a person. And I wasn't  
6           trying to be funny, I was just trying to make the point that  
7           this doesn't tell us who committed the murder, does it.

8           The same thing from John Roberts about the gunshot  
9           residue on the hands, because he found some gunshot residue  
10          on the back of the hands.

11          Now, y'all will have to remember this better than I do.  
12          There was more on the left hand and less on the right or  
13          vice-versa, but he found some on both hands. And  
14          interestingly enough he said that meant that if it came out  
15          of the muzzle that it had to be fairly close proximity, a  
16          few feet, up to or near the cab or in the cab. I think  
17          that's what he said.

18          Now, you have to balance that with the state's other  
19          expert, Dr. Panella, who was the medical examiner at  
20          Newberry, who said that in his multiple years of experience  
21          in jurisdictions all the way from Michigan, Pennsylvania, to  
22          the federal courts to South Carolina that he also looks for  
23          things that give him ideas about distance and those things  
24          are evidence of gunpowder, and other things, remember? And  
25          he told us that he could say that the shooting wasn't within



State v. Pelzer 12/4/09

21

1 five to six feet, it had to be further back, because there's  
2 wasn't blood on the wound or the clothes that he noticed.

3 Sometimes experts seem unreconcilable, but in your mind  
4 they can at times be reconciled because we heard from Mr.  
5 Roberts that there's more than one way to get gunshot  
6 residue. Out the muzzle, standing beside, or -- touching  
7 the weapon. And it wasn't rubbing the weapon, as Mr.  
8 Sorenson like to describe, he said that it was touching.  
9 The weapon touching.

10 So I suggest to you, I'm not sure how the gunshot  
11 residue got there, but one very probable way that it got  
12 there is whoever committed this murder went in that truck  
13 cab, went in this truck cab, and when they got in that truck  
14 cab, they moved the body of Jason Rivenburg. I mean, it  
15 seems pretty clear from the evidence that happened. His  
16 t-shirt was pulled and torn. There was a belt loop that was  
17 off of his jeans that one of the pictures shows, because if  
18 they were there to rob him they would have -- been looking  
19 for some money, and they picked him up and they moved him  
20 around. I don't know what happened. The gun could have  
21 easily fallen at that time or been placed somewhere that he  
22 came in contact with it, after he's already been shot. That  
23 reconciles those things for me. It makes sense for me, but  
24 you've got to decide for yourselves.

25 But the experts don't really solve this case, if they

1 did the state wouldn't have put on any more evidence. In  
2 fact, they created as many questions as anything else. Like  
3 I say, they established the gun. That's all they  
4 established.

5 Calhoun County sent a copy of a pair of my client's  
6 blue jeans that they thought might help solve the case  
7 because they had blood on them, somewhere. It wasn't clear  
8 in the testimony, where, but they cut that out, they sent  
9 it, they tested it, it was blood. They tested it against  
10 the standard, the victim, Jason Rivenburg, and it was not  
11 his blood. They didn't have any other standards. They  
12 don't know if it was my client's when he cut his hand  
13 working around the house or whatever, but it wasn't Jason  
14 Rivenburg's blood. Again, we kept asking the question: Do  
15 you have some physical evidence. Some physical evidence  
16 that puts our client there. That puts our client in contact  
17 with Jason Rivenburg. Even SLED is unable to generate that  
18 evidence. They're not able to provide it.

19 So it comes down to what does the state's case really  
20 determines. What is it really based on. I think it's based  
21 on the testimony of two persons, Mr. Reed and Mr. Haygood,  
22 who were intimately involved in the details of what happened  
23 the night of March 5, 2009. Two gentlemen who owned and had  
24 the gun that killed Jason Rivenburg. Two gentlemen who  
25 before the police even knew there was a murder, maybe even

State v. Pelzer 12/4/09

23

1 before most of the police in Calhoun County Sheriff's Office  
2 even knew there was a missing person, filed a false report  
3 with the Calhoun County Sheriff stating that the gun, the  
4 gun that had killed Jason Rivenburg, had been stolen, had  
5 been stolen out of the house at

6 I got four kids. My kids will tell me stories or tell  
7 me something and when you catch them in a lie or something  
8 false, they will try to explain to you well, it wasn't  
9 exactly like I said, but what I was saying was close or  
10 whatever. Ladies and gentlemen, a lie is a lie. And these  
11 two gentlemen want you to believe that they told that lie  
12 and didn't mention Willie Pelzer because they were trying to  
13 protect Willie Pelzer. These two gentlemen will tell you  
14 that they didn't have the gun that night even over the  
15 testimony of the cousin, Bryant Haygood, who said I thought  
16 it was Jimmy's gun because Jimmy always had the gun. I saw  
17 Jimmy carrying the gun. I saw Jimmy in cars with the gun.  
18 I saw Jimmy with the gun on his person. I thought it was  
19 Jimmy's gun because Jimmy always had the gun.

20 I think I know why they called and reported that gun  
21 missing. I think they were afraid that gun was going to be  
22 tied to a murder. I think they were afraid that gun was  
23 going to be tied to Jason Rivenburg's murder. And I'm not  
24 as convinced as the state that they knew that because they  
25 were told that. I think it's equally possible that they

1 knew that because they did that. I think the time line that  
2 the state argues to you about my client having an  
3 opportunity to be there more likely points to the fact that  
4 those two gentlemen had a probable opportunity to be there.  
5 I think those are the only two people we know along with  
6 Bryant Haygood, who had an opportunity to even know that  
7 Jason Rivenburg was at the truck -- was with his truck  
8 stopped at Brakesfield, across from the Exxon station  
9 because they were at the Exxon station right about 10:00  
10 o'clock. I think they had the gun in their waistband at  
11 that time, because Jimmy, the first time he told a lie, told  
12 us that someone stole the gun from his house. Then he tried  
13 to explain that away like my kids saying, well, we only told  
14 the police somebody stole it because Willie took it.  
15 Baloney. They took it because of the phone, and with all  
16 apologies to Riley, I think the phone records reflect, if  
17 you believe anything that these guys had to say, that when  
18 they received a call from the uncle that was about 10 to 12  
19 minutes after they had been at the Shell station down on 21,  
20 22, getting gas. And you'll have Mr. Haygood's records to  
21 check that, but you'll see that in that time frame after  
22 10:00 o'clock that he would have been at a gas station and  
23 he's still pinging off of tower 97. He's having a couple  
24 minute conversation with someone. I don't know who, but  
25 when you check the records you'll see he's having a

State v. Pelzer 12/4/09

25

1 conversation with somebody, and just 10, 12 minutes later  
2 his uncle is calling him at a time when he says, I'm on my  
3 way back from Orangeburg, and it's confirmed he's pinging  
4 off of tower 50 in Orangeburg. So on a given night on a  
5 given night, at a given time, and a given speed, these guys  
6 might not have been paying attention to the speed laws.  
7 They got there in about 10 or 12 minutes. They had a talk.  
8 They'd been to Brakesfield's. They had the opportunity to  
9 know there was a truck there. Even by their own testimony  
10 they weren't smart enough to put Willie Pelzer anywhere near  
11 Brakesfield's. They weren't able to reason that what we  
12 need to do is also say that Willie knew there was a truck  
13 there, because it's hard to create a perfect lie.

14 Now, observe people on the witness stand, the solicitor  
15 told you. You can tell if they're lying or not. You can  
16 tell based on what they say and how they act if they're  
17 lying. You can tell if their stories are consistent or if  
18 they have differences. You can tell. You can tell.

19 I'm not as convinced of that, because the Calhoun  
20 County Sheriff's Office couldn't tell. At least a deputy  
21 and the chief investigator couldn't tell that initially when  
22 these boys said that gun was stolen and that somebody broke  
23 into the house to steal it, that they were lying. In fact,  
24 they readily believed it.

25 And then, let's look at some of the other.

1 inconsistencies about that. Well, when they finally got  
2 caught more in the box, and they started saying, well,  
3 Willie did it. Willie made a statement made us take him to  
4 Charleston to get rid of the gun. Willie told us he did it.  
5 Willie, Willie, Willie. When they got in that box from the  
6 witness stand Jimmy Haygood told us that he went back and  
7 took that gun from where I put it in the back bedroom. He  
8 took it. He took it from there. I don't know how he knew  
9 where I kept it or hid it under, but he took it from back  
10 there. Why? Because the story, even in 2009, is evolving.  
11 Because in March of 2009, he said it was on the couch. It  
12 was on the couch or the chair. I sat it on the couch or the  
13 chair. And he said, I don't remember saying that. I didn't  
14 mean to say that. And then ultimately, he said, that's not  
15 what I meant, I was writing too fast. Come on, ladies and  
16 gentlemen. I'm writing too fast, therefore I wrote I left  
17 it on a chair instead of I put it away in the bedroom. I'm  
18 not sure what speed writing has to do with that. What I  
19 call that mistake is a lie.

20 You have these exhibits; 64, 63, 62, 61. You have  
21 these to review in the jury room. You have these pictures  
22 of the execution of a search warrant at on  
23 Saturday the 6th. You have pictures of a bullet laying on  
24 the couch.

25 I know why he told them he put the gun on the couch

State v. Pelzer 12/4/09

27

1 then, and now he says he put it in the bedroom, because at  
2 the time the box it was in suggested it was on the couch  
3 because there was a bullet. Today it doesn't serve it's  
4 purpose quite as well, he moves it to the bedroom. He never  
5 said anything about Willie Pelzer and neither did Mr. Willie  
6 Reed, because the first theory was, let's tell them the gun  
7 was stolen. Let's tell them the gun was stolen. But what  
8 happened? That wasn't a really, really good idea because  
9 there was that test fired cartridge in the box.

10 Now, these guys weren't smart enough to even know about  
11 that, but Calhoun County was. SLED was. And they took the  
12 bullets for the purpose of matching them up.

13 Oh, crap. They took the bullet. Not only did they  
14 take the bullet on Saturday, but then they came back  
15 Saturday afternoon, early evening with a search warrant for  
16 . Oh, crap. Our story is falling apart.  
17 Jimmy Haygood's story is falling apart. They're searching  
18 my daddy's house, because they think we had something to do  
19 with this. I better tell them somebody else had something  
20 to do with it.

21 Interesting, isn't it that he wasn't at the house when  
22 the search warrant was executed. He got the call, then he  
23 arrived at the house. We don't know how long -- we don't  
24 know if he went to see Mr. Reed first. We don't know any of  
25 that. They never asked him that. They never asked Mr. Reed

1 that. And he tells his story, and he gets arrested. And  
2 the next morning they have Mr. Reed come in and they arrest  
3 him. They tell him we know, we know what happened, and then  
4 he tells his story, that we went to Charleston.

5 Well, they did go to Charleston, and their story is  
6 crumbling around them, and the only person that fits the  
7 fall now is Willie Pelzer, and even though they're friends,  
8 better him than me, brother. Better him than me.

9 And the same sheriff's agency that believed the lie  
10 about the gun was ready and willing to immediately take the  
11 word of the same person who had lied to them about the gun  
12 as to what really happened about the murder.

13 Well, you lie to me once, lie to me twice, he certainly  
14 won't lie to me three times, will he? What's mama's old  
15 saying; lie to me once, shame on you. Lie to me twice and I  
16 believe you, shame on me.

17 The problem with the investigation was and is and  
18 continues to be today that it didn't become an all out  
19 search for the truth. It became a tunneled, lasered vision  
20 of there's our suspect with the fact that we just got a  
21 statement from a guy who lied to us yesterday -- two days --  
22 yesterday, I guess, about the gun and that liar told me now  
23 that this guy did it. So guess what? Am I going to  
24 investigate any more at this point. No. I'm going to go  
25 get a murderer and I'm going to arrest him right then, and



State v. Pelzer 12/4/09

29

1 then after I arrest him I'm going to go get as much as I can  
2 to prove that he did it. I'm going to get text messages,  
3 State's Exhibit 84. I'm going to get phone records, State's  
4 Exhibit 68, and I'm going to try to show that this theory of  
5 mine is accurate. That he did it. I'm going to take his  
6 clothes. I'm going to take shoes. I'm going to have them  
7 sent and checked to see if there's any evidence of any glass  
8 or anything from the scene. If there's any blood from the  
9 scene. I'm going to get all that from Willie Pelzer.

10 God. At that point -- I'm sorry, ladies and gentlemen,  
11 I got three suspects. I got the guy who bought the gun. I  
12 got the guy who holds the gun, who both have already lied to  
13 me about the gun. And I got the guy that they went to  
14 Charleston with the night of the murder in the early morning  
15 hours. And if I want shoes from one guy, and I want  
16 clothing from one guy, if I want to take blood or DNA or  
17 anything else from that guy, I want it from all three of  
18 those guys, and if we had done that I don't know what we'd  
19 have heard from the expert from SLED, but I sure would have  
20 liked to have known. I don't know if we had a match on some  
21 blood that was taken in sample from the victim, Jason  
22 Rivenburg, but I sure would like to know.

23 And you know what that is, folks? That's reasonable  
24 doubt. That's reasonable doubt. Because the scientific  
25 evidence doesn't point to Pelzer. And scientific evidence

1 as to the other two is lost. We'll never get it.

2 When they got there at the scene on the 6th, they  
3 searched all around. We heard them testify about their  
4 searching. We heard them testify about the places they  
5 went. We heard them testify about the things they looked  
6 for. We heard them tell us about the places they went. We  
7 heard them tell us about the things they looked for. We  
8 heard the tell us about all of that. We had them show us  
9 pictures, pictures of the cell phone that we didn't actually  
10 get in evidence. We just get a picture of it. I'm not sure  
11 why. We have them show us yellow tags in State's Exhibit  
12 No. 21, and we have them tell us these are places we found  
13 shell casings. Where we found the things that we found.

14 We had pictures of the truck and where it was sitting.  
15 Look how close it was out to the street. Look how close it  
16 was. The cruiser is right here and it's not back in the  
17 woods, it's up in front of the pumps and it's clear on one  
18 side where the grassy burm is right beside it.

19 And then, interestingly enough after we did all that  
20 work and all that stuff into the grassy area all the way  
21 back towards the trees and we found those shell casings days  
22 later we find another shell casing, further out. And guess  
23 what, closer towards that road, that Det. Riley Godwin is  
24 certain had nothing to do with the crime. In the grass and  
25 it's from the same gun, too. It's from the same gun, too.

State v. Pelzer 12/4/09

31

1 Red stickers, you think I could find them, but I have a  
2 hard time -- State's 89, a lovely aerial photograph of the  
3 area. I'm going to take these off, because I don't want  
4 y'all to take my idea, but I'll put these on when I was  
5 looking at the picture, but here at this blue tab is where  
6 the truck was sitting. And not only was it sitting --  
7 here's the pumps. It was sitting in front of the pumps on  
8 this side up against the grass. It was sitting right here  
9 on this pavement. Clearly visible from right across here.  
10 Clearly visible from right across here at the Exxon station  
11 at 10:00 o'clock at night, and we were told by deputies who  
12 were out there in the dark, including I think Investigator  
13 Godwin that yeah, you could see it, you could see across  
14 there easily.

15 Here, we have the dirt road that Investigator Godwin  
16 testified about, right there. Remember it ran back to a  
17 pond. Riley was convinced that that dealt with people  
18 getting out, opening the gate and people going through. I'm  
19 sure that that might be possible. I'm also sure that it  
20 might not be possible. I'm also sure that it might not be  
21 right. Maybe there were footprints of people that went in  
22 there and maybe there were other footprints. He didn't case  
23 the footprints. He didn't ask to have the footprints cast  
24 and that's putting a resin base down that goes in and gives  
25 you an impression left that said what the bottom of a

State v. Pelzer 12/4/09

32

1 tennis shoe looks like, and what's the reason for that? You  
2 can match it against footwear. Footwear you take from that  
3 suspect or what you take from the other two suspects.

4 There were tire tracks there. Now, that clearly  
5 doesn't fit the state's theory of the case, because we know  
6 Willie Pelzer didn't have a car, and I suggest to you that's  
7 why we didn't cast those tires, and that's why we didn't try  
8 to match them against a white Lumina that was being driven  
9 that night that was right across the street at 10:00  
10 o'clock, 45 minutes before someone could have come right  
11 back and parked right here and gone through these woods to  
12 stalk, rob and kill the truck driver Jason Rivenburg.

13 That doesn't fit the theory of the case. We've got it  
14 locked in. We don't have anything else, but we've got it  
15 locked in. We've got it locked in.

16 And down here is the trailer and down here, further  
17 down is . That will become more evidence  
18 of the proximity when we start looking at the bigger map,  
19 the Calhoun County map, but it's on the other side of the  
20 interstate. There's no way from here or from here you know  
21 what's going on up here. No way. You only know if you go  
22 up there what's going on up there.

23 You don't plan and go to some place to rob, as they  
24 suggest Mr. Pelzer did if you don't know if there's anything  
25 there to rob.

State v. Pelzer 12/4/09

33

1           The state briefly discussed yesterday and I'm sure they  
2       may well argue today -- there's a vacant Exxon station,  
3       well, let's go rob that. Well, that's not -- that's  
4       burglary. They have absolutely no reason to suspect or  
5       believe that Mr. Pelzer was headed that way. I mean,  
6       physical evidence to show that he was headed that way. They  
7       don't have anything to demonstrate that he was there, but it  
8       fits their theory of the case.

9           Let's look at No. 83. This is the bigger or greater  
10      area map of what would be the, I guess, the northern western  
11      section of Calhoun County. There's St. Matthews. Here's  
12      where the events of this story take place. Here's Merrybell  
13      Lane. And we were told by Riley that from there to there  
14      took him about 20, 25 minutes, 20, 25 minutes if he walked  
15      and about six or seven minutes, if he ran, but it nearly  
16      killed him, I think was what he said. I think he was  
17      kidding, I suspect.

18           Here is where our client lives, Wash Lane. Here is  
19      where our client's mother verifies that he was home between  
20      about 10:15 and about 10:45. Somewhere in that range. Here  
21      is where the state is going to want to say she's the mother,  
22      she will do what she can to protect her son. It's possible.  
23      If she would do what she can to protect her son, then I  
24      suggest to you he'd have been here until 11:00 o'clock.  
25      He'd have been here until she was certain that it wouldn't

1 fit the state's theory. I don't think that with him there  
2 until 10:45 fits the state's theory, because this distance  
3 at 20 to 25 minutes, walking, six, seven minutes running.  
4 This distance substantially farther. There's a scale down  
5 here. I challenge you to take it out. I've done it. Less  
6 than a mile here. Over two and a quarter miles here. Don't  
7 take my word for it. Check.

8 But what we do know is, or at least what we think we  
9 know is three individuals left and went to the  
10 crime scene at 10:00 o'clock, and when they couldn't get gas  
11 there and when they had every opportunity to see the truck  
12 stopped, alone across the street, across from a gas station  
13 that they knew in a matter of 15 minutes was going to be  
14 vacant.

15 They went down here to the Shell station. Remember  
16 they said just off 21, and Burke, and 22. Right down here  
17 they went to the Shell station. And then from there they  
18 went on to Orangeburg, took Bryant home. The trip, again,  
19 phone records suggest took about 10, 12 minutes.

20 And then they say they came back and stopped at the  
21 uncles, and he's right here and y'all have gotta find these  
22 yourselves, because I've got to take these tabs off, but  
23 it's just too small for my old eyes.

24 Back to the uncles house. Then they start with some  
25 theoretical discussions about what Mr. Pelzer called them

State v. Pelzer 12/4/09

35

1 about. What Mr. Pelzer wanted from them. And all of a  
2 sudden Mr. Pelzer wants them to pick him up right here.  
3 Bridal Wreath and Murph Mill. It's not closer to the crime  
4 scene than this. So I'm not sure why it would be there.  
5 And in point of fact, we know for certain, at least from  
6 their testimony and it seems not to be contradicted that  
7 ultimately they do meet here. And that there are at least a  
8 couple of phone calls from my client that says, meet me  
9 here, meet me here, and they're not. And they eventually  
10 meet him there.

11 If he had committed that crime this is a much easier  
12 place to go back to. This makes no sense unless, unless  
13 you're coming from the uncles house and you're headed this  
14 way to what? That's the natural way to get to the uncle's  
15 house to where? Brakesfield's.

16 I'm not from Calhoun County. Are you guys shocked by  
17 that. But I'm getting to know Calhoun County, and if I'm  
18 here that seems like not only the easiest way, but the best  
19 way to get right up there. That road's dark, nobody can see  
20 you. 10:45 at night. But we don't know, because once those  
21 lying young men told us they knew who committed the murder  
22 we didn't look any further. We didn't investigate it any  
23 further. We started pulling text messages and phone records  
24 and everything else because what we wanted to do was  
25 establish that what they said about Pelzer is true, not that

1 what they said about the murder was true, not that what they  
2 said about the gun was true, but that Pelzer did it.

3 You'll find phone records, you'll find text messages,  
4 you'll find them contained in a couple of packets. You'll  
5 find Mr. Haygood's records in State's 65. You'll find our  
6 client's records in State's 84, which is the excerpts of the  
7 text messages. Only the ones that are relevant to the dates  
8 and times in question, and his phone records in 68.

9 You'll find, when you look at Mr. Haygood's phone  
10 records, as I discussed, you'll find the things related to  
11 the phone call from the gas station or near the station  
12 because he's still pinging off 97, to the phone call he gets  
13 from his uncle just a little while later, which demonstrates  
14 that the time is much shorter than described. Part of their  
15 discussion is they stopped by the uncles house and I don't  
16 know any reason to disbelieve that, but for the uncle, I  
17 mean. The uncle was a little confusing to me. It might be  
18 just me, but he said the boys stopped once, he said they  
19 didn't stay a awhile, he said they did stay a while, he said  
20 he saw one of them, he said he saw all of them. They don't  
21 know, but none of this seems to match up.

22 What doesn't match up for me is Mr. Haygood says that  
23 he received a phone call from his uncle, and that phone call  
24 was at 10:25, and that he then received a phone call from  
25 Willie Pelzer and the suggestion was that that phone call



State v. Pelzer 12/4/09

37

1 was missed at 10:28. Now, he said, I missed the phone call  
2 because I was in my uncles house, despite the fact that it  
3 only takes about 12 minutes, I'm not certain it takes three  
4 minutes. If he's in Orangeburg when he gets the call at  
5 10:25, I don't think he's in his uncle's house at 10:28.  
6 But I am willing to concede that he missed the call or he  
7 didn't get the call. He said it was only 25 seconds, seems  
8 like they could have talked, but if he says he missed it  
9 then, I why would we think he lying.

10 We then know that he does get a call that he says he  
11 took at 10:49, and he says that call was meet us at Murph  
12 Mill and Bridal Wreath, whatever, sorry, forgot the name.  
13 And I tell you that doesn't make any sense. And I think I  
14 know why he says it, because that's where they were, that's  
15 where they were heading. Doesn't make any sense, for  
16 multiple reasons, not the least of which makes no sense  
17 coming from the scene of the crime, and second of all, makes  
18 no sense since where Mr. Pelzer actually was when they  
19 ultimately get together, was back down at Merrybell Lane,  
20 probably at at their house, wondering where they were.  
21 And then there's a whole bunch of hay that's going to be  
22 made about a call from Mr. Haygood at 10:56:55 to Mr. Pelzer  
23 that goes unanswered. Although it's a 13 second call as  
24 well. Now, Mr. Haygood can not hear a call and miss it,  
25 that was 25 seconds in length, at least the connect time and

1 it don't make any difference. Problem, that's not a  
2 problem.

3 Mr. Pelzer, however, doesn't hear a call, if you  
4 recall, the same general areas that was only connected 13  
5 seconds, and it's a problem. And it's a problem because  
6 it's in such proximity to the time of the murder. Well,  
7 that's rare for this theory, but we didn't investigate the  
8 other theory that these two guys committed the murder and  
9 they were trying to figure out where Willie was and they  
10 needed to go to Charleston. And there are two of them, so  
11 certainly one guy can be talking on the phone while the  
12 other guy is using a gun or the other guy is sneaking up on  
13 an unsuspecting truck driver. No problem.

14 Defendant's Exhibit 1, diagram draw by Renee  
15 Strickland. When you get back there look at the fact that  
16 the -- significantly shorter than the others. Remember she  
17 said if there was something there and the bullet kicked out  
18 it could have stopped it from rolling or ejecting back.  
19 Remember when she said there wasn't anything there that  
20 would have stopped it. Remember when she said, oh, yeah, if  
21 there'd been another person they could have stopped it. If  
22 someone had been standing beside that could have blocked it.  
23 It's just another theory, y'all. It's not just another  
24 theory, it's reasonable doubt. We don't know the answer  
25 because we never looked for that answer.

State v. Pelzer 12/4/09

39

1           If you go to my client phone records and his text  
2 records, you'll find that he's kind of -- he's kind of a  
3 cad. He's not the guy I'd want my daughter dating because  
4 he's carrying on text messages with two, three, or four  
5 different women at any given time. How he keeps it  
6 straight, I don't know, but look at the text messages. And  
7 he's hitting them all up. He wants them all to give him  
8 some money. He wants them all to give him some sugah, (sp)  
9 he wants -- whatever that means. He wants them all to meet  
10 him at hotel rooms. And he's doing all that all the time.  
11 He's doing all that while he's with his friends. He's doing  
12 all that while he's with his mom. He's doing all that all  
13 the time. I mean, I'm sorry. I make my daughter put her  
14 phone down or she'd be doing it too, because it's just the  
15 generation, and how they can do it, I have no idea. When I  
16 text message, it's worse than hunting and pecking on my  
17 computer. I might as well just pick up the phone and call  
18 you, because it's going to take me a longer time to put it  
19 in and send it to you in text. But not these kids. I mean,  
20 it's a way of life for them. It's going to be an entire  
21 generation that has some sort of carpal thumb disease from  
22 these texts.

23           But he's doing it all the time. If you check it, he's  
24 doing it all the time right up to and around and through the  
25 time in question. He's fighting with one girl. She's

State v. Pelzer 12/4/09

40

1 trying to call him. He's not taking her calls. She's got  
2 some crazy phone -- exchange. 541 or 941-something. I  
3 don't know, 540. You'll find that on the phone records.  
4 He's texting her, he's fighting with her. She's calling  
5 him, he's not picking up. He picks up for 25 seconds one  
6 time and then he doesn't pick up again. All of this  
7 intermixed with what's going on with Mr. Haygood, but Mr.  
8 Haygood's records they're not intermixed with anything.  
9 There's one other call, but other than that, it's his uncle  
10 and it's Pelzer. Who wasn't busy when this was going on?  
11 It doesn't fit the theory of the case so we didn't check it.

12 I don't expect you to come out of this trial thinking  
13 that Willie Pelzer is a great guy. That's not what we're  
14 here to examine. What we're here to examine is is he the  
15 guy. Is he guilty of this murder, and do the facts  
16 demonstrate that he is guilty of this murder beyond a  
17 reasonable doubt. Or do the fact suggest that there's a  
18 whole bunch of doors left open, a whole bunch of questions  
19 left unanswered. A whole bunch of things we don't know  
20 about the two men who started this with a lie. About the  
21 two men who perpetuated that lie until a search warrant was  
22 issued. About the two men who all of a sudden, became  
23 believable, because they gave us Willie Pelzer. Two men who  
24 they never checked, we never followed up, we never got any  
25 forensics from, who we never even looked at their car. Two

State v. Pelzer 12/4/09

41

1 men who said they went to Charleston with Willie Pelzer, who  
2 said they went there because he wanted to get rid of a gun.  
3 A gun that these guys loved so much that they just went  
4 along with it. A gun that Haygood tells us he told -- he  
5 told Pelzer, throw it away.

6 I don't know if the gun got thrown away in Charleston.  
7 What I do know is that if you check my client's phone  
8 records all the way back to the 4th, he was trying to hook  
9 up with Dana Brown. He was trying to hook up with her for a  
10 whole number of reasons. Give me some money, give me some  
11 sugah, get a hotel. He was trying to hook up with her and  
12 bring a friend or friends. You got a friend for my friend.  
13 It's all in there. Yet, they want to say that they jumped  
14 in a car and went to Charleston to get rid of the gun, a gun  
15 that they didn't know that they needed to get rid of. That  
16 trip had already been discussed days before. I don't know.  
17 Why? Because it fits their theory.

18 And the detectives, you know. Well, Pelzer said it was  
19 a white guy. Pelzer said he heard that on the news. Pelzer  
20 said he heard it on the news or he said he heard the news.  
21 It was a white guy. Because we know him mama told him it  
22 was a white guy, because it was all over the truck stop.  
23 Gossip is that way. You just can't stop it.

24 You know how else he might have known. I mean, state's  
25 theory is because he did it, yet they're equally willing to

1 say Haygood knew what happened including the cell phone and  
2 everything else because he heard it from Pelzer. Well,  
3 guess what, it works the same way, y'all. Pelzer knew  
4 because he heard it from Haygood. There is no way that  
5 Pelzer thought he was going to be in this spot because if he  
6 hadn't been there he knew there wasn't going to be any  
7 evidence that he'd been there. There wasn't going to be any  
8 fingerprints or DNA or anything else to tie him to the scene  
9 of the crime. There wasn't going to be any blood on his  
10 clothes to tie him to the scene of the crime. There wasn't  
11 going to be anything.

12 Now, he burned a t-shirt. I don't know if he did or he  
13 didn't, but if you'll look at what was burned in that fire  
14 pit, it's a ribbed shirt that looks a whole lot to me like a  
15 tank top, kind of ribbing that you get on the tank top  
16 undershirts that men wear. The same kind of shirt they say  
17 he was wearing that night, not the pull-over t-shirt that  
18 they want to suggest he would have burnt for some reason.  
19 And if he burnt that, if he burnt a t-shirt, because he got  
20 blood on a t-shirt, then why didn't he burn sweat pants that  
21 he was still wearing. How could he have gotten blood on his  
22 t-shirt and not gotten blood on his sweat pants that they  
23 say he was wearing. That doesn't make any sense. That  
24 doesn't make any sense because they -- because they --

25 He probably knew information, too. Maybe they told him

State v. Pelzer 12/4/09

43

1 or maybe he just knew what was on the street, just knew the  
2 news that was out there. But unfortunately, ladies and  
3 gentlemen, it's all reasonable doubt. And that's what it  
4 turns on. It doesn't turn on the horror of what happened,  
5 because it's awful. It doesn't turn on anything  
6 emotionally. What it turns on, what it turns on is can the  
7 state prove that Willie Pelzer did this beyond a reasonable  
8 doubt. Or did they miss their opportunity to prove that Mr.  
9 Haygood and Mr. Reed did this. The men with the car, the  
10 men with the transportation, the men that could get there.  
11 Yeah, they said Willie Pelzer because they'd gone to  
12 Charleston with Willie Pelzer. But that has been talked  
13 about days before. That had been talked about days before.

14 Yeah, Willie Pelzer missed a call and he must have  
15 missed that call because he was shooting the truck driver,  
16 or his phone didn't ring or he just didn't hear it. It's  
17 happened to all of us, even when we're right -- we receive a  
18 call one minute and the next minute we miss a call. I don't  
19 understand how cell phones work. I just know that they  
20 don't always work.

21 But that theory fits, not the theory that Haygood could  
22 say he wanted to meet him here because his car was on that  
23 road, he and Reed were on that road, and if someone saw them  
24 that's a good place for them to have been. Doesn't fit the  
25 theory that if there's two of them one of them could have

1 been on the phone any time, even during the commission of  
2 the crime, even just before or just after the commission of  
3 the crime. It doesn't fit the theory that my client chased  
4 them back and forth like crazy talking to a number of people  
5 in and around before and after. He's so desperate to get to  
6 Charleston that he calls these boys on two or three  
7 occasions. Where are you, come meet me. Where are you,  
8 come meet me. I theorize the first call was, where are you,  
9 I'm on Merrybell Lane. You're not here. It wasn't meet me  
10 on, you know, some crazy street, Murph Mill on the corner in  
11 the middle of nowhere.

12 He's so desperate, that after two calls and he doesn't  
13 get any response from them, and they're not there yet. He's  
14 calling another guy. What is is Murphy -- the last  
15 gentleman that we heard from who said, I didn't have a car,  
16 either, but I could call around and see if I could get a  
17 ride for him. I didn't have a car, either, but I called --  
18 and then after that when he wasn't getting a quick enough  
19 response back his buddies, he called them again, and they're  
20 there. And this after telling this lie about the stolen  
21 gun, and after not coming clean until a search warrant is  
22 ultimately served they come up with these theories.

23 Nowhere in the statement that is given to the police,  
24 the sheriff's office or anybody else does Bryant Haygood say  
25 that Pelzer threatened to kill somebody and there'd be a



State v. Pelzer 12/4/09

45

1 second body. But on the witness stand, because now it fits  
2 the story better it comes out. On the witness stand it was  
3 better that I put the gun away than I left it on my daddy's  
4 couch.

5 I agree. Use your common sense. Just as the solicitor  
6 says. I agree. You've got to examine the witnesses. I  
7 agree. You can believe some or a part of what the witnesses  
8 say. You can believe all of one witness or none of one  
9 witness. I believe that's how we judge people. But I do  
10 not believe that we can look at them and tell if they're  
11 lying. I do not believe that we can listen to what they say  
12 and know that they're lying. I believe that you have to  
13 check the facts and you have to check the circumstances, you  
14 have to check the motivation, you have to check the reasons  
15 that they would lie and protecting their own skin is one of  
16 the best reasons that someone would lie, because the sheriff  
17 couldn't tell they were lying.

18 I suggest to you that we've reached the point where  
19 everything has added up that we've got more than reasonable  
20 doubt and nowhere near beyond a reasonable doubt.

21 I thank you so much for your patience, and as my wife  
22 would make me say, I apologize that I was more than just a  
23 little long, but it's really important.

24 THE COURT: Thank you, sir.

25 Let's take a few minutes, ladies and gentlemen.

State v. Pelzer 12/4/09

46

1 Mr. Hill, let me know when y'all are ready to come  
2 back. Please do not talk about the case.  
3 (Jury out for break at 11:02 a.m.)

4 THE COURT: All right. We'll be in recess about 10  
5 minutes.)

6 (Court in recess for break at 11:02 a.m.)

7 (Court in session after break at 11:16 a.m.)

8 THE COURT: Thank you very much. You may be  
9 seated.

10 All right. We've got everybody. Bring in the jury  
11 (Jury in at 11:16 a.m.)

12 THE COURT: All right. We have all of our jurors  
13 present.

14 Mr. Pasco?

15 MR. PASCO: May it please the Court?

16 THE COURT: Yes, sir.

17 STATE CLOSE:

18 MR. PASCO: Malice, a malignant heart, a person  
19 void of social responsibility. That is the definition of  
20 the defendant, Willie Pelzer on the night of Thursday, March  
21 5th. That was the definition of that man right there, the  
22 defendant, Willie Pelzer, when he took a 45 caliber handgun  
23 to commit a robbery that turned into a murder. That was the  
24 definition of the defendant, Willie Pelzer when he  
25 approached a truck driver in our county to support his

State v. Pelzer 12/4/09

47

1 family, who was trying to make a living for his family in  
2 our county, and he stuck two bullets inside of his head. 35  
3 year old Jason Rivenburg didn't stand a chance that night,  
4 because that man right there has no value for human life.  
5 None. Jason Rivenburg, a husband, a son, a father to those  
6 people over there lost his life for \$7. That's what Jason  
7 Rivenburg's life was worth to the defendant. And it's up to  
8 you, the 12 citizens of Calhoun County to hold Willie Pelzer  
9 accountable for this horrendous act. I know you'll do it,  
10 because how is there any doubt, much less reasonable doubt  
11 that the defendant, Willie Pelzer is guilty of murdering  
12 Jason Rivenburg. The only credible evidence in this case,  
13 all the credible evidence in this case leads directly to his  
14 guilt. To find the defendant not guilty, I submit you would  
15 have to disregard every piece of evidence in this case, but  
16 I know you will not do that, because I know that you will  
17 uphold the oath that Kenny Hasty gave you on Tuesday.

18 Ladies and gentlemen, there's an old expression: Facts  
19 are stubborn things. Facts are stubborn things. In just a  
20 little bit I'm going to talk to you about the stubborn facts  
21 of guilt in this case, but the first thing I want to do is I  
22 want to put some things to rest. I want to put some things  
23 to rest, and first and foremost, the state of South Carolina  
24 we have the sole burden of proof. The defense didn't have  
25 to say a word. They didn't have to call a witness, they

1 didn't have to ask one question, but once they do start  
2 throwing out assertions, once they do put up witnesses, it's  
3 subject to scrutiny just like anything else.

4 First and foremost with regards to that, assertions,  
5 things we say at attorneys, questions we ask are not  
6 evidence. Thank goodness it is not evidence. The only  
7 thing you can consider for your verdict is what you find  
8 credible from that witness stand and what you get to take  
9 back with you, and before I forget with regards to what you  
10 get to take back with you, there are going to be some things  
11 that you've heard about that you don't get to take back with  
12 you, like reports, statements that witnesses give you. It's  
13 not the defense's fault, it's not the state's fault, it's  
14 not the Judge's fault. It's just the rules. You don't get  
15 to have those things. Jurors will sometime want to know,  
16 well, why didn't we have something. Those are just the  
17 rules.

18 You base your verdict on what you found in front of you  
19 on the witness stand and what you get to take back with you.  
20 You heard the witnesses testify, that's why you don't get to  
21 take back reports and don't get statements sometimes.

22 But the defense doesn't want you to base your verdict  
23 on the evidence. They want you to base your verdict on  
24 assertions. Assertions like, well, there's no fingerprints.  
25 Reasonable doubt. There's no fingerprints on the scene. Or

State v. Pelzer 12/4/09

49

1 better yet, or better yet, this proves that Willie Reed had  
2 to do it because years ago he played baseball and he would  
3 have had access to baseball gloves three or four years ago.  
4 Are you kidding me? Are you kidding me?

5 And I'm not going to say that Willie Pelzer didn't wear  
6 gloves on March 5th, but I doubt it, because if Willie  
7 Pelzer had worn gloves he'd have burnt those just like he  
8 burned his shirt. He didn't wear gloves that night.

9 And you heard from the expert, Agent Strickland, she  
10 told you that it is not uncommon not to find fingerprints at  
11 a crime scene. This is not TV. This is not CSI. Just  
12 because you touch something does not mean that you leave  
13 fingerprints with sufficient ridge detail that they can lift  
14 and compare.

15 And what else do we know? They don't even have Jason  
16 Rivenburg's prints. That proves to you how you don't find  
17 prints at a crime scene. Is there any reasonable doubt that  
18 Jason Rivenburg was in that truck. No. Not having  
19 something is not a reasonable doubt.

20 The next assertion that they threw out there. The tire  
21 impressions and the shoe impressions. The tire track --  
22 that there were tire tracks and shoe impressions at the  
23 scene. Originally they were trying to say that they were  
24 behind the crime scene, and, of course we found out that's  
25 not true. That's not true at all. In fact, there are no

1 tire tracks or shoe impressions at the scene relevant to  
2 this case or anywhere even near the scene.

3 That proves that all the defense is trying to do is  
4 throw assertions out at you, trying to make them stick,  
5 trying to make you buy something was when Mr. Leiendecker  
6 got up here and said, you know why they didn't take those  
7 tire impressions, they didn't take pictures of them, because  
8 they were focused on my client. They were focused on my  
9 client that night or that morning. They were focused on my  
10 client the morning they found those impressions. At 7:00  
11 o'clock, 8:00 o'clock, 9:00 o'clock, 10:00 o'clock in the  
12 morning they didn't even have Willie Pelzer's name. That is  
13 a misrepresentation. That's not true. They were focused on  
14 the client. They didn't take pictures of the tire  
15 impressions because they weren't relevant to this case.  
16 Renee Strickland told you there were no tire impressions at  
17 the scene. Det. Godwin told you that the tire impressions  
18 were on private property with the shoe impressions going to  
19 a fence that's locked, where you would open the fence. The  
20 tire impressions and shoe impressions go beyond the fence  
21 and -- where you would lock it and then keep going. It's  
22 private property nowhere near the scene. That's a  
23 misrepresentation trying to get you to take a bite.

24 There were other misrepresentation, I submit, that I  
25 wrote down during his closing argument. He said, why is it

State v. Pelzer 12/4/09

51

1 a big deal that at 10:28 Jimmy Haygood, he's got a missed  
2 call, but they make a big deal that Willie Pelzer has a  
3 missed call at 10:56. Well, I'm going to explain it in more  
4 detail later, but first of all, get this out -- I wrote it  
5 down. The call that Jimmy Haygood missed from the defendant  
6 at 10:28, is indeed a missed call. But it did not go  
7 straight to voice mail. Jimmy just did not pick it up. It  
8 did not go straight to voice mail, plus 10:28 is not the  
9 time of the murder. We know the murder happened between  
10 10:25 and 11:00. The defendant, Willie Pelzer's call at  
11 10:57 from the defendant is not a missed call, ladies and  
12 gentlemen, it went straight to voice mail. As I will  
13 explain later it's because Pelzer's got his phone off at the  
14 time of the murder. It's because Pelzer had his phone off  
15 prior to the murder when he was stalking and lying in wait  
16 for Jason Rivenburg. Haygood's comes on. Pelzer's phone is  
17 off. That's why it's a big deal, and it was proven from the  
18 phone records.

19 They said that Willie Pelzer he would have know --  
20 they said Willie Pelzer would have also known that the  
21 victim was white because Jimmy Haygood would have known that  
22 he was white and Jimmy would have told Pelzer that. Do you  
23 remember that in his closing argument? Well, why didn't the  
24 defendant tell the police that on March 7th, because it's  
25 not true. Just like the repeated misrepresentations tried

1 to throw at you when Det. Graham was on the witness stand,  
2 repeatedly tried to get Det. Graham to say that Jimmy  
3 Haygood told me that the victim was white on the night of  
4 Saturday, March 7th, and it's not true. Jimmy Haygood never  
5 said that. You didn't get to learn that until redirect.  
6 Throwing everything they can. Misrepresentations,  
7 assertions, and falsehoods to get you to buy into something.  
8 Don't do it. Don't do it.

9 The defense during the course of the trial, they tried  
10 to imply that Jimmy Haygood and Willie Reed cleaned Clay  
11 Haygood's car because it was involved in the crime. They  
12 cleaned it. Doesn't it look like it was washed. This car  
13 was washed wasn't it. State's Exhibit No. 74, in evidence  
14 and other photographs of Clay Haygood's car; does it look  
15 clean to you? Another false assertion thrown out by the  
16 defense. The defense repeatedly said during Jimmy Haygood's  
17 testimony and again during the closing arguments, you told  
18 police on March 7th, that the gun was on the couch that  
19 night, that you didn't put it in the back room. And that's  
20 a big deal isn't it. That's a big deal isn't it? No, it's  
21 not. Jimmy Haygood, to his credit, he had the statement,  
22 he's read the statement. And he wanted to tell the truth,  
23 and he told you, that's wrong, that was a mistake. I did  
24 put it on the sofa or the chair near the sofa during most of  
25 the night on that Thursday, but then I got it and put it



State v. Pelzer 12/4/09

53

1 back in my room. And if Jimmy Haygood is going to set  
2 Willie Pelzer up, just go along with what you said in your  
3 first statement on March 7th. It makes it even easier for  
4 the defendant to get access to the 45 caliber pistol if it's  
5 just sitting in the living room. It's not a big deal.

6 The defense makes a big deal about whose gun it was.  
7 Willie Reed or Jimmy Haygood's. Well, they told you the  
8 same thing they told the police on March 6th, March 7th, and  
9 March 8th. Willie Reed doesn't have a prior record. Not  
10 convicted of a crime. Willie Reed is above the age of 18,  
11 he can purchase a gun. Jimmy Haygood could have purchased a  
12 gun except for one thing. He didn't have a state of South  
13 Carolina ID because he'd just gotten out of the Navy. Both  
14 of them wanted to buy a gun. Willie Reed went ahead and  
15 bought the gun. The problem is Willie Reed's parents won't  
16 let him have a gun at the house. So it's kept at Jimmy  
17 Haygood's house, and Jimmy Haygood told you, you heard that  
18 testimony. He treated that gun just as much as if it was  
19 his as Willie Reed's. He fired the gun. He kept the gun at  
20 his house. He's the one that called the police on Friday to  
21 tell them the gun was missing from his home, but that Willie  
22 Reed had purchased the gun. Technically, the gun was in  
23 Willie Reed's name. They told the truth about that. And  
24 they told you the truth. Then there was the assertion that  
25 Jimmy -- and this assertion really borderlines on absurdity

1 if not being offensive, that Jimmy Haygood, you were in the  
2 Navy and they trained you how to kill a person with a  
3 pistol, didn't they. They trained you with targets, you  
4 would know how to kill a person with a pistol. That  
5 assertion really shouldn't even be addressed, but if  
6 anything I guess it proves that Jimmy Haygood couldn't have  
7 done it, because the victim was shot at six times, but he  
8 was hit only twice. But again, it just shows the  
9 desperation that the defense is going through in this case,  
10 because the evidence is overwhelming. Overwhelming.

11 The defense said, well, they couldn't find any blood on  
12 anything. That there was no blood on any pants or shoes.  
13 Well, Renee Strickland -- well, that's not surprising.  
14 Renee Strickland told you there wasn't much blood spattered  
15 in the truck. Most of the shots, if not all of them were  
16 from some distance. And we all know that a killer didn't  
17 open the door after killing Jason Rivenburg, he just reached  
18 in threw the window, grabbed Jason, broke his pocket and was  
19 pulling him and taking his money out of his pocket. You  
20 wouldn't get any blood on your pants, on your shoes. You  
21 might get some on your shirt. You know, we don't reward  
22 criminal defendant's for destroying evidence, which is what  
23 Willie Pelzer was doing.

24 They said in the closing argument and during the course  
25 of the trial that the police never searched Jimmy Haygood

State v. Pelzer 12/4/09

55

1 and Willie Reed. That's not true. The first time they went  
2 to search, to look for evidence of any murder, whether it  
3 was blood evidence, any evidence of the murder was Jimmy  
4 Haygood's house at , his dad's house on the  
5 night of Saturday right after the murder. The police did go  
6 to Willie Reed's house, you've heard that, and searched his  
7 house, too, and both of those households cooperated in the  
8 search. That is absolutely not true.

9 You also heard, when they took their statements, Jimmy  
10 Haygood and Willie Reed, that the police didn't just say  
11 well, that's a wrap, we've got our case. They continued to  
12 investigate their case. They continued -- Jimmy Haygood  
13 kept telling the police about all these phone calls that  
14 were made to and from around the time of the murder. Police  
15 just didn't take him at his words. They got the phone  
16 records, and low and behold, they corroborate Jimmy Haygood  
17 to a tee and proved the defendant's guilt not just beyond a  
18 reasonable doubt, but beyond any doubt whatsoever. They  
19 told the police how they went to Charleston, and how the  
20 defendant directed them on how to get to Charleston. And  
21 that they went there because the defendant knew a girl at  
22 those apartments, but they didn't even see the girl. Did  
23 the police just take them at their word, no. The police  
24 went to the apartment complex and they even tried to locate  
25 to see if there really was a girl at that apartment complex

1 and low and behold, Dana Brown lives there, and we'll talk  
2 about her in just a minute.

3 Willie Reed told the police on Sunday, after he was  
4 arrested that the defendant was burning something in his  
5 backyard at , he was burning something when I  
6 went to go pick him up, and the police go to ,  
7 which is basically according to the defendant's mother,  
8 basically an abandoned trailer, there's no reason to be  
9 there. None whatsoever. And what do they find right after  
10 Willie Reed tells them that, a burn pit. Or a pit, and  
11 what's in the pit, burned cloth. You heard from the expert  
12 crime scene investigator consistent with a t-shirt.

13 And Willie Reed is going to lie and set up Willie  
14 Pelzer. Just said when I got to I saw the  
15 defendant actually take the shirt off, light it, and put it  
16 in the pit, and make sure that the shirt burned completely.  
17 He didn't do that because that wouldn't be truthful. He  
18 told us that when he got there something was burning. Low  
19 and behold a shirt was burning in the defendant's backyard.

20 He mentioned in his closing argument about how the  
21 victim had the GSR, gunshot residue, on just the back of his  
22 hands, a very small amount. First of all, I don't see  
23 really how it's relevant how it's a close range or the shot  
24 was from far away, but I'll tell you exactly how he got the  
25 gunshot residue. He got it because at least two of those

State v. Pelzer 12/4/09

57

1 shots were close range. At least two of them, because that  
2 would have been six shots. Jerry Dubin heard two, because it  
3 was close enough to the window. I submit the two head  
4 shots. Malice.

5 And then there's the defense case. They call one  
6 witness, Ms. Murph, the defendant's mother. And Ms. Murph  
7 says that she knows the defendant was home between 10:15 and  
8 10:45 that Thursday night. Interestingly, she said that two  
9 other people also live in the house with them. They can't  
10 attest to that. Two other people can't attest to that. She  
11 said the defendant was home between 10:15 and 10:45. She  
12 remembered first he knocked at the window and on direct  
13 examination she said she remembered it because she fussed at  
14 him because he was getting home late, but then on  
15 cross-examination she said she always wants to make sure --  
16 she told him come home at 11:00. I don't want you home  
17 after 11:00. Well, it makes absolutely no sense that she's  
18 fussing at him if he's 45 minutes early, and then says later  
19 on at 4:15 in the morning when he's knocking on the window,  
20 she's not fussing at him. It just doesn't make any sense.  
21 And more importantly, ladies and gentlemen, she can't be  
22 fussing at him or he's certainly not listening at 10:15,  
23 because she said she looked at her clock and it was exactly  
24 10:15. The defendant is making a phone call at exactly  
25 10:15. The defendant then received an eight second phone

1 call at 10:16 and 54 seconds. The defendant makes four  
2 calls after that one, between 10:19 and 10:23, not to  
3 mention he makes a couple of texts in between that time,  
4 too. He wasn't being fussed at because he wasn't there.

5 I believe Ms. Murph is obviously mistaken. She's  
6 obviously mistaken, which is understandable, because as has  
7 been brought out your memory is a whole lot better back on  
8 March 6th, 7th, and 8th, and it is nine months later. She  
9 never gave a statement to law enforcement or any written  
10 statement to anybody about the events of Thursday night  
11 March 5th. Obviously mistaken. Phone records prove it, her  
12 testimony proves it. She talked about how on direct  
13 examination, oh, he wasn't missing any clothes, because I  
14 know his wardrobe. I know every piece of clothing he owns.  
15 Does that make sense. But more importantly you saw the  
16 hesitation on her cross-examination when she could recount  
17 all the clothes the defendant has.

18 The defense case, and this is the best part, their own  
19 case proves the defendant's guilt. It helps prove the  
20 defendant's guilt, because what else did we learn from Ms.  
21 Murph? Nobody's stayed in the trailer for years. Nobody's  
22 been there. There's no power to it. There's no reason for  
23 the defendant, Willie Pelzer to be there at 11:10 p.m.,  
24 actually 11:07 p.m. asking Jimmy Haygood and Willie Reed to  
25 come pick him up, and also at 11:10 p.m. when the defendant

State v. Pelzer 12/4/09

59

1 called, Greg Mack, someone defense didn't want to talk about  
2 too much in their closing. Why is he at his house at an  
3 abandoned trailer burning clothes in his backyard at 11:10  
4 p.m. and calling Greg Mack, who lives down the street and  
5 saying I messed up. Proof beyond a reasonable doubt.  
6 There's no reason for him to be at that trailer unless he  
7 wants to burn clothes less than a half mile cutting across  
8 the highway from where he killed Jason Rivenburg.

9 The other thing we learned from Ms. Murph, there is no  
10 reason that the defendant can't stay and sleep at his house  
11 on that Thursday night, March 5th, and on the morning of  
12 March 6th into Friday. But what is the defendant doing?  
13 He's going to Charleston. Not because he wants to, but  
14 because he has to, because when Dana Brown at 2:01 a.m.,  
15 when he tells her he needs to stay until tomorrow evening,  
16 which would technically be Saturday evening, because it's  
17 now Friday morning, that he needs to stay until Saturday  
18 evening, and Dana Brown says, no, you can just stay for a  
19 couple of hours, and you'll have these text messages.  
20 What's the defendant's response to her? That ain't good  
21 enough. I need to chill until I can get word from my  
22 brother tomorrow. He has to go to Charleston. He's  
23 panicked. He's just murdered somebody.

24 Ladies and gentlemen, the defendant's case helps prove  
25 his guilt, and all these assertions are nothing more than

1 attempts to divert your attention away from the facts of  
2 this case. Attempts to divert your attention away from the  
3 truth. And the truth is what we need to concentrate on in  
4 this courtroom. The Judge is not going to tell you to  
5 concentrate on assertions. He's going to tell you to  
6 concentrate on the evidence and the law, and the truth is  
7 who told the witnesses that he killed a truck driver, Willie  
8 Pelzer. Who had the opportunity to kill Jason Rivenburg?  
9 Willie Pelzer. Who had the motive to kill Jason Rivenburg?  
10 Willie Pelzer. Who was begging for money the night of the  
11 murder? Willie Pelzer. Who's actions and conduct before  
12 the murder of Jason Rivenburg prove his guilt? Willie  
13 Pelzer. Willie Pelzer. Who's actions at time of the murder  
14 prove his guilt? Willie Pelzer. Who is not texting and has  
15 calls go straight to voice mail at the time of the murder?  
16 Willie Pelzer. Who was burning cloth in his backyard after  
17 the murder? Willie Pelzer. Who calls Greg Mack and says he  
18 messed up and he's looking for a ride right after the  
19 murder? He needs a car. Willie Pelzer. Who flees St.  
20 Matthews after the murder? Willie Pelzer. Who tries to  
21 stay in Charleston with Dana Brown right after the murder?  
22 Willie Pelzer. Who asked Dana Brown the next day to lie for  
23 him and be an alibi for this murder. He tells her anybody  
24 asks where I was Thursday night, please tell them I was with  
25 you. Okay. You'll see the text. Okay, I got your back.



State v. Pelzer 12/4/09

61

1 Willie Pelzer. Who knew the victim's race just hours after  
2 the body was discovered? Willie Pelzer. Who had the malice  
3 in his heart to commit this murder? Willie Pelzer. Who  
4 murdered Jason Rivenburg? Willie Pelzer. That's the truth.  
5 Facts are stubborn things.

6 And the Judge is going to tell you that the state of  
7 South Carolina does not have to prove the defendant's guilt  
8 beyond any and all certainty. We don't have to do that, but  
9 if there's ever a case where the defendant's guilt is proven  
10 beyond any and all certainty, it's this one.

11 Now, let's concentrate on stubborn facts of guilt. The  
12 things that you need to concentrate on. First, the  
13 testimony of Dr. Panella. The testimony of Jerry Dubin,  
14 Investigator Armlin. We know that Jason Rivenburg died from  
15 gunshot wounds, two gunshot wounds. One to the left  
16 temporal scalp and one to the left forehead, left side of  
17 the head.

18 We also know that he was murdered, sometime, probably  
19 between 10:55 p.m. and 11:00 p.m. How do we know that,  
20 Jason parks at the gas station sometime late that Thursday.  
21 We know it's late because he's still ordering food in  
22 Charlotte at 8:00 o'clock that night.

23 So he gets to St. Matthews, parks at the old  
24 Brakesfield's abandoned gas station. Jerry Dubin starts  
25 talking to the victim at 10:43. He told y'all that he

1 talked about 15 minutes. That would put it at about 10:43  
2 to about 10:58, 15 minutes. Also corroborated by the fact  
3 that he said he stayed on the phone after the phone dropped  
4 for at least five minutes. But at about 10:58, he hears,  
5 Oh, my God. The phone drops and then later on he hears two  
6 loud noises and he didn't know if it was tires blown or  
7 gunshots. We now know it was gunshots. That would put the  
8 murder at 10:58. Guess whose call's are going straight to  
9 voice mail at 10:57? Willie Pelzer. And guess who was  
10 making a phone call at 10:57? Jimmy Haygood. So at the  
11 time of the murder Jimmy Haygood is using his phone, but the  
12 defendant, his phone is off.

13 Another thing that was brought out during Jerry Dubin's  
14 cross-examination was that Jerry said that after the gun --  
15 or after the gunshot -- the loud noises, the two noises, he  
16 started to hear rustling and breathing. That's the  
17 defendant's breathing, ladies and gentlemen. That's the  
18 defendant pulling the victim by his pocket right here.  
19 That's the defendant ripping his shirt and taking that  
20 money. But no talking, no whispering whatsoever. One  
21 person committed this murder. Willie Pelzer.

22 You heard Renee Strickland and Ken Whitler. We know  
23 that the murder weapon is the same one the defendant had  
24 access to on the night of March 5th, the night of the  
25 murder, the 45 caliber handgun in Jimmy Haygood's house.

State v. Pelzer 12/4/09

63

1 We also know it's the same gun the defendant took to  
2 Charleston. It's the same gun that he threw in the trash.

3 And you heard from Willie Reed and Jimmy Haygood. And  
4 they told you that Willie Pelzer killed the truck driver.  
5 And make no mistake about it, they did not tell the police  
6 the truth when they reported that gun stolen that Friday  
7 morning at 10:00 o'clock, sometime after 10:00 o'clock, just  
8 hours after getting back from Charleston. They also were  
9 guilty of a crime when they took the defendant to Charleston  
10 to try to hide and to get rid of that gun. They were  
11 dishonest, they made a huge mistake and now they will have  
12 to pay for it. They have been charged with a crime. But  
13 there's one thing you do have to say about Willie Reed and  
14 Jimmy Haygood. You've heard their testimony, they are under  
15 no legal obligation to testify. They cannot be made to  
16 testify by me because they have charges against them. But  
17 they put their hands on that Bible, took an oath, pointed at  
18 their childhood friend and told you in a courtroom under  
19 oath, that's the man that murdered Jason Rivenburg. They  
20 had the guts to get on that witness stand and tell you that.  
21 You've got to give that to them, and they were under no  
22 legal obligation to testify, and there were absolutely no  
23 deals whatsoever for their testimony. None. Zero. It  
24 wouldn't be fair to you if they had any deals. It wouldn't  
25 be fair to Jason's family if I had given them any deals to

1 testify.

2 And what did they tell the police? The same thing that  
3 they told you. The same thing that they told you. Willie  
4 Reed, as soon as he was arrested on Sunday he told the  
5 police the truth. And he even gave them the information  
6 about the defendant burning something behind the trailer,  
7 and that's why the police went to the trailer. Jimmy  
8 Haygood, he told the police the truth on Saturday night, and  
9 this is important. On Saturday night when he was under  
10 arrest Det. Graham told you this, and Jimmy Haygood knew  
11 this and told you this as well, that if Jimmy Haygood had  
12 refused to talk to the police that Saturday night he would  
13 have walked home. If Jimmy Haygood had just stuck by the  
14 same story that the gun was just stolen from my house and I  
15 don't know who took it, and he would have walked home. But  
16 he knew that by telling the truth that he was going to be  
17 arrested and that Saturday night the guilt got to him. He  
18 told y'all he knew he had to do the right thing. He told  
19 the police how Willie Pelzer murdered Jason Rivenburg, and  
20 the defense gets up here and tries to imply -- well, the  
21 defendant would have known that Jimmy Haygood killed Jason  
22 Rivenburg, and that's how the defendant would have known he  
23 was white. That is absolute fabrication or if that's true,  
24 the defendant who was also charged with murder, charged with  
25 murder later that night isn't yelling from the mountain

State v. Pelzer 12/4/09

65

1 tops, I didn't do it, Jimmy Haygood did it. Does that make  
2 any sense. If you've been charged with the murder and you  
3 know that Jimmy Haygood and Willie Reed did it, that you  
4 wouldn't be yelling, I did do it, they did it. Instead he's  
5 yelling, all this over a fucking white boy. Malice. Proof  
6 beyond a reasonable doubt.

7 Willie Reed and Jimmy Haygood took that stand and  
8 pointed to that man and testified. They told you the truth.  
9 They told you that they went and picked up Bryant Haygood  
10 and they went to County Line store. They came back to

11 sometime that Thursday afternoon. They told you  
12 the truth about the area of , about that area.  
13 About who hangs out there, that there are a lot of drugs  
14 there. That's there's crack cocaine there. They admitted  
15 that they hung out there, didn't do drugs. They also said  
16 what the defendant did there -- and we'll get into what the  
17 defendant did in a little while.

18 But they told you about the area. They told you they  
19 were drinking liquor. They told you the defendant, Willie  
20 Pelzer, showed up sometime after 4:00 p.m. that afternoon.  
21 And how is that corroborated, ladies and gentlemen -- you're  
22 going to have State's Exhibit No. 88, and when you read the  
23 defendant's text messages sometime about 4:03 p.m. The  
24 defendant tells some girls, I'm going for a run and I'll get  
25 back with you after I get to my destination. And he gets to

1 the destination at about the exact same time that Jimmy  
2 Haygood told you the defendant got to sometime  
3 about quarter to five.

4 State's Exhibit 88, I want to point out, that's just  
5 some of the defendant's text. Also, you aren't going to  
6 have these back with you, but you got to see them for  
7 demonstrative purposes. State's Exhibits 66, the volume,  
8 the sheer volume of how often the defendant text between  
9 3/4, March 4th and up to his arrest on March 7th. He lived  
10 on that phone. Lived on it.

11 Jimmy Haygood told you that when the defendant got  
12 there he gave him \$20. So around 4:30 that afternoon the  
13 defendant has got \$20. They tell you that he was drinking  
14 liquor. He tell you the defendant went in the living room  
15 and spent most of the night on his cell phone. That between  
16 sometime around 8:45 to 9:00 o'clock, and hour before, Jimmy  
17 and Willie Reed take Bryant Haygood home. Guess who's  
18 asking for a gun? The defendant, Willie Pelzer. Willie  
19 Pelzer. And how did we know that that's true that he was  
20 asking for a gun around 8:45 that night? How do we know  
21 that? Because not more than a half an hour before Jimmy --  
22 before the defendant starts begging Jimmy Haygood for his  
23 gun, when the defendant has run out of opportunities to get  
24 money from girls, which I'll talk about in a minute.

25 At 8:18, the defendant tells Dana Brown, at 8:18, I

State v. Pelzer 12/4/09

67

1 want to take something from a nigga and come down there with  
2 my brother. That cool with you, got a home-girl he can hook  
3 up with? Going to take something from another person, and  
4 Dana Brown told you, I wasn't born yesterday. I knew that he  
5 meant he was going to go rob somebody.

6 Two and a-half hours, two hours and 45 minutes; that's  
7 all Jason Rivenburg had left in this world, because at 8:18,  
8 the defendant decided that the way he was going to make  
9 money was he was going to go out and commit a robbery.  
10 Proof beyond a reasonable doubt. That's a confession.

11 He told us they took Bryant home at 9:45 to 10:00  
12 o'clock. That they went to get some gas at Brakesfield's,  
13 that they didn't see the truck there, either they weren't  
14 paying attention or Jason wasn't there yet, because he was  
15 still in route from Charlotte. But again, they're going to  
16 lie about it again, now? Why even tell the police back then  
17 and tell y'all now that they even went to the Brakesfield's  
18 to get gas. Why put yourself near the scene about an hour  
19 before it happened, because it's true. And if you're going  
20 to set the defendant up, why don't you just say, yeah, the  
21 defendant asked us for a ride and we dropped him off at the  
22 Exxon, he stayed there.

23 He told you that after they took Bryant home, after  
24 they took Bryant home, it takes at least 20 minutes to get  
25 from that Exxon and then to get gas at the Shell station,

1 because the Exxon was closing up, quarter to 10:00. Lady  
2 told them, closing up. Only way you can get gas is through  
3 the pumps. So if you're going to commit a robbery after  
4 10:00 o'clock at the Exxon there aren't going to be any  
5 witnesses in the store to watch it. But they leave and they  
6 go to the Shell station to get gas. Take Bryant home, takes  
7 about a good 20 minutes. And he says, my Uncle Clay calls.  
8 He told the police that. My Uncle Willie Clay called me,  
9 and so because of that I went to go visit Willie Clay. And  
10 did the police just say, yeah, we believe you? No. They  
11 got the phone records. They got the phone records, and low  
12 and behold, guess who's corroborated? Jimmy Haygood,  
13 because at 10:25 he gets a phone call from his uncle, Clay  
14 Haygood, Willie Clay Haygood.

15 And you heard from Aaron Walton. I know at the time  
16 when Aaron Walton was testifying you probably didn't know  
17 the significance of it, but now you do, because at 10:25,  
18 Jimmy Haygood and Willie Pelzer, (sic) who they want you to  
19 say is trying to go plan for a murder, because that's when  
20 this murder was being planned, and that's when this victim  
21 started getting to be cased and watched, at 10:25, there in  
22 Orangeburg, just like they said they would be, because he's  
23 pinging of an Orangeburg tower when he's talking to his  
24 uncle, Willie Clay Haygood.

25 It is offensive to come into a courtroom and point the



State v. Pelzer 12/4/09

69

1 finger at somebody when there's no evidence that they  
2 committed a crime. Offensive. But they got on that witness  
3 stand and they answered those questions and they told you  
4 Willie Pelzer did it. Go in here -- they made a mistake, a  
5 bad mistake and they will pay for it, but that took guts,  
6 and they are corroborated by the phone records, they're  
7 corroborated by the witnesses like Dana Brown, Clay Haygood  
8 and others.

9 He told you that about the time they left Clay  
10 Haygood's house the defendant called him. He got a phone  
11 call from the defendant at 10 -- guess what; at 10:49 the  
12 defendant calls Jimmy Haygood. Jimmy Haygood told you the  
13 reason the defendant calls is because he wanted us to meet  
14 him at Bridal Wreath and Murph Mill. Again, Jimmy Haygood  
15 is going to lie? How does that fit into the grand scheme of  
16 setting up Willie Pelzer, telling the police that? How does  
17 that in the grand scene or conspiracy to convict Willie  
18 Pelzer back on March 6th, when he's giving that statement to  
19 the police? He told the police that and he told you that  
20 because it's true. He said that when he and Willie Reed got  
21 to Bridal Wreath and the defendant wasn't there. So he told  
22 the police I called the defendant and I got his voice mail.  
23 Police get the phone records because they want to make sure  
24 Jimmy Haygood is telling the truth. Sure enough, at 10:56  
25 and 55 seconds, when Jason Rivenburg is about to be

State v. Pelzer 12/4/09

70

1 murdered, Jimmy Haygood is calling the defendant and it goes  
2 straight to the defendant's voice mail because the  
3 defendant's phone is cut off.

4       The defendant told you that -- excuse me. Willie  
5 Pelzer - Willie Reed and Jimmy Haygood told you that they  
6 went back to                      and that they got a phone call  
7 from the defendant. The defendant said I need for y'all to  
8 pick me up at my trailer, at the trailer at  
9 right down the street from Jimmy's dad. Phone records  
10 corroborate that. They told you that the defendant called  
11 again. Told the police that, because they didn't go down  
12 there, yet. Hurry up. Put Willie Reed on the phone.  
13 Willie Reed goes down there. Corroborated by the 11:13 call  
14 on the phone records. Willie Reed told you that when he got  
15 to that trailer he was directed to go to the back of the  
16 trailer. That the defendant told him that on the phone; come  
17 to the back. He drove to the back, stopped the car. The  
18 defendant took the gun, put it on the hood of the car,  
19 walked up to him, without the shirt on that he had on  
20 earlier. Now, he just has on what he called a Wife Beater,  
21 one of those white, cut-off shirts. Have I been shot. How  
22 do you make that up, and why would you make that up if  
23 you're Willie Reed. Have I been shot? Well, why is the  
24 defendant asking that? Well, because he had blood on this  
25 other shirt. And he was burning that shirt. He told him he

State v. Pelzer 12/4/09

71

1 hadn't been shot, and then the defendant Willie Reed, (sic)  
2 told him he killed a man, and they started arguing. Willie  
3 Reed took the defendant back to . Willie Reed  
4 didn't want any part of this. The defendant pulled Jimmy  
5 Haygood aside and he said, you better get that guy -- you  
6 better get Reed on board or there's going to be two dead  
7 bodies instead of one. Willie Reed didn't even know about  
8 that conversation. Two dead bodies instead of one. They  
9 make some phone calls. And yet Jimmy Haygood isn't going to  
10 drive him to Charleston. So they get Willie Clay Haygood to  
11 allow them to use his car to go to Charleston, but the  
12 problem with Willie Reed is Clay Haygood had some demands at  
13 the house. Only Willie Reed drives my car. You've got to  
14 get gas. And I've got to have the car back in the morning.  
15 Clay Haygood thought they were just going to Orangeburg to  
16 see some girls.

17 They left Clay Haygood's, got some gas at the Shell  
18 station and Willie Reed said, I'm not driving. He got in  
19 the back seat, and Jimmy Haygood drove. The defendant was  
20 in the front passenger seat and he directed Jimmy Haygood on  
21 where to drive, and they drove down to Charleston  
22 corroborated by the phone records you'll see that both  
23 phones now when there are phone calls are pinging off of  
24 Charleston towers as they're on the way down to Charleston.  
25 You'll see the text messages with the defendant constantly

1     texting Dana Brown, telling her he needs to stay there more  
2     than a couple hours. Constantly telling her that he wants  
3     some marijuana, some bud. They get down to Charleston, and  
4     the girl is not there. Jimmy Haygood and Willie Reed told  
5     the police that. Dana Brown told the police that after they  
6     found her days, weeks later.

7             The plan was to leave the defendant there and them to  
8     come back. We know that they had to come back because Clay  
9     Haygood had to have his car to go to work at 6:00 o'clock in  
10    the morning, but unfortunately the defendant -- the girl  
11    never came out, so the defendant comes back with them, he  
12    drove them back home to St. Matthews after throwing the gun  
13    away in the dumpster, because Jimmy Haygood told him you're  
14    not getting back in this car with that gun. He threw the  
15    car in the dumpster (sic). They came back to St. Matthews,  
16    the defendant drops himself off at Wash Lane. Willie Reed  
17    and Jimmy Haygood went back and got Willie Reed's car and  
18    then went back home until 10:00 o'clock in the morning when  
19    they decided they needed to report that gun missing. And as  
20    bad a mistake that was, had they not made that error in  
21    judgment about lying about the gun missing this case would  
22    never have been solved. If Jimmy Haygood had not told the  
23    police the truth, on March 6, 2007, this case would never  
24    have been solved. Their testimony by itself with nothing  
25    else convicts the defendant beyond a reasonable doubt.

State v. Pelzer 12/4/09

73

1 Jimmy Haygood and Willie Reed's testimony by itself. But  
2 what makes this case not just beyond a reasonable doubt, but  
3 beyond any doubt whatsoever, is the unbelievable amount of  
4 corroboration in this case.

5 I'm just going to go through it quickly because I've  
6 already touched on a lot of it, but the corroboration of  
7 Willie Reed and Jimmy Haygood's testimony. Bryant Haygood's  
8 testimony, that the defendant was at later that  
9 afternoon. That Willie Reed and Jimmy Haygood took him home  
10 later that night. The 10:25 tower I was telling you about,  
11 pinging off of -- Jimmy Haygood's phone pinging off the  
12 Orangeburg tower. Willie Clay Haygood's testimony about how  
13 he had called Jimmy later that night, just like he told  
14 police, because he wanted to see him. And Jimmy came by,  
15 and the fact that they came and borrowed his car in the  
16 early morning hours and that he needed that car returned  
17 because he had to go to work. They're corroborated by the  
18 10:49 call the defendant makes to Jimmy Haygood's phone.  
19 They're corroborated by the fact that at 10:56 and 55  
20 seconds p.m. Jimmy Haygood calls the defendant's voice mail  
21 -- phone at the time of the murder and it goes straight to  
22 voice mail and they are corroborated by the 11:07 p.m. call  
23 the defendant makes to Jimmy Haygood.

24 How else do they corroborate? They are corroborated by  
25 the testimony of Greg Mack. Greg Mack testified -- and Greg

1 Mack is corroborated by the phone records that at 11:10 p.m.  
2 right after the defendant has called Jimmy and Willie Reed  
3 and they haven't shown up, and the defendant is in a panic,  
4 he calls Greg Mack, and he tells Greg Mack that he needs a  
5 ride, and he needs a car, bring the car to  
6 right down the street from you, Greg Mack. Come on, bring  
7 me a car. Why? I messed up. I messed up. What did you  
8 do? I can't tell you over the phone. I messed up. Greg  
9 Mack, older than Willie Reed and Jimmy Haygood. He doesn't  
10 go up there. He ends up not finding a ride and he didn't  
11 even take the time -- he was smart enough not to walk up to  
12 and find out what was going on. I messed up.  
13 I need a ride.

14 The defendant is in a panic. He continues to make  
15 phone calls. Not only does he call Jimmy's cell phone at  
16 11:13, but I submit you heard about the defendant's cell  
17 phone, the first number that comes up is -- on the  
18 defendant's cell phone, Willie Pelzer's cell phone, is Jimmy  
19 Haygood's mother's number. You have to scroll down to  
20 Jimmy's cell, you can see it on the phone records.  
21 Accidentally calls Jimmy's home number, hung up and called  
22 Jimmy's cell number. That's because he's in a panic.

23 Beg the Court's indulgence.

24 Sorry, ladies and gentlemen.

25 They are also corroborated by the 11:13 call when the

State v. Pelzer 12/4/09

75

1 defendant calls Jimmy Haygood, they're corroborated by the  
2 Bridgeview apartments, Village Apartments when the police go  
3 down there. They find Dana Brown and they are corroborated  
4 by the fact that there's burned cloth at the defendant's  
5 trailer on Sunday. There was one interesting thing I saw  
6 yesterday when I was looking at these photographs, again,  
7 because they tried to make the assertion that, well, people  
8 burn trash in the pit, so maybe it was just part of the  
9 trash that was burned in the pit. Take a look at State's  
10 79. See all the trash that is around the t-shirt. There's  
11 all kinds of trash and debris around the t-shirt that wasn't  
12 burned. Some of it you can tell had been there for a long  
13 time, because there's all kinds of dirt over it. Why wasn't  
14 that trash burned, too, because there was only one thing  
15 that Willie Pelzer had to burn that night and that was his  
16 t-shirt, which is State's Exhibit 82.

17 Who had the opportunity and the motive to murder?  
18 Willie Pelzer. It was a 20 minute walk from  
19 and less than a six minute run, much less than a six minute  
20 run back to , which is actually before or  
21 closer to the frontage road than Jimmy Haygood's house.  
22 Who's begging for \$20 all night and he never gets it? The  
23 defendant Willie Pelzer. And again, you're going to have  
24 the text messages, State's Exhibit 88. And you're going to  
25 see that during the course of the night on March 5th, the

1 night of the murder the defendant is not just begging Dana  
2 Brown for money, all night long, as you heard on the witness  
3 stand, but two other girls and he gets mad at them when they  
4 can't come up with any money.

5 And I'm going to read you the text other than Dana  
6 Brown, with the two other girls. The one with girl with the  
7 area code of 540 actually starts on March 4th. He asks her,  
8 Sorry, Babe, Let me ask you something. She asks, What? You  
9 going to send me some money today. She asks, How much.  
10 \$20. So what you say. What's he need \$20 for. She asks,  
11 How you going to get it. He says, Western Union. Just \$20?  
12 His response, yeah, \$20. You going to send it. She says,  
13 Yeah, I'll try and go to the store later. She never sends  
14 it. She never sends it. How do we know that because on the  
15 very next day, the next night -- the next day on March 5th  
16 at 2:39 p.m. he texts the 540 girl again. Babe, you going  
17 to send me that \$20 today. She says, I'm going to try. At  
18 3:14 he texts her again. I don't want to make you mad or  
19 aggravate you, but you think you're going to be able to send  
20 it? He needs \$20. He needs it bad. She says, Yeah, I'm  
21 going to try. At 5:33 he texts her again. I had need for  
22 what I asked for. She answered, I'm going to try. He asks,  
23 When? He then tells her the Western Union closes at 9:00  
24 o'clock. He's desperate for \$20. He's already gotten  
25 whatever he could get from the \$20 Jimmy Haygood gave him at



State v. Pelzer 12/4/09

77

1 4:30, now at 5:30 he needs another \$20. At 6:57, he asks  
2 her again, Are you going to make it happen? I need to know.  
3 She says at 7:05, I hear you. Then she starts blowing him  
4 off. She doesn't respond to his texts and his calls. So he  
5 says, That's a no, right? That's a no, right? Then he asks  
6 her at 7:46, What's happened with you. And at 7:48.

7 Remember that time, 7:48 p.m. he says: Wow, you ain't  
8 answer for me now. That's messed up, but I know what it is.  
9 At 7:48 he knows he's not getting any money from 540.

10 That wasn't the only girl at the exact same time he was  
11 trying to beg for money. Begging from 540, begging from  
12 Dana Brown. Dana Brown tells him: \$20 is going to cost me  
13 \$35 and I don't have \$35 for Western Union.

14 The other girl that he's trying to beg for money starts  
15 at 6:40 p.m. You know what I love about this, this girl, at  
16 916 area code, you learn from her texts she's on her way to  
17 Mexico on a bus trip and he's begging her for money. First  
18 she asks him where is he at. He says the track. She says  
19 what are you doing at the track house, which is obviously

20 . Then at 6:42 p.m. he asks the girl with the area  
21 code 916, that he needs to ask her for a favor -- excuse me  
22 at -- at 6:54 she asks him, what's up. At 6:56 and 10  
23 seconds he says, I want you let me hold something when you  
24 touch down. She asks him at 7:02, what? He asks her again  
25 at 7:02, are you going to let me hold something. He tells

1 her to send him something Western Union. And you'll read  
2 the text messages, she tells him no. In fact, she says,  
3 wow, are you seriously asking me for some money? And he  
4 says, not if you don't want to give it up. She tells him  
5 she's now at a bus station in Phoenix. There are phone  
6 conversations with her. She blows him off and doesn't give  
7 him any money. In fact, at one point at 8:11 p.m. the last  
8 time he talks about money with 916 girl is at 8:11 p.m. He  
9 says, -- she says, I don't know what you're talking about.  
10 I know you ain't mad at me because I ain't sending you no  
11 money. Don't tell me that's what it is.

12 At quarter to eight, he's given up on the 510 girl.  
13 8:11 he knows he's not getting any money from 916. 8:15, he  
14 knows he's not getting any money from Dana Brown. 8:16, he  
15 tells Dana Brown, he's going to take something from somebody  
16 and come down to Charleston. He needs money, he's not  
17 getting it, and by 8:15 he's decided he's going to commit an  
18 armed robbery.

19 Jimmy Haygood and Willie Reed corroborate by the text  
20 of the defendant at 10:06 and 10:32 that I'm going to talk  
21 about in just a minute. The fact that the defendant doesn't  
22 send another text after 10:32 p.m. until 11:12 p.m. Again,  
23 I'm going to touch that in a minute. How the defendant's  
24 phone is off between 10:32 and 10:49 p.m. leading up to the  
25 murder. And the calls are going to voice mail at the time

State v. Pelzer 12/4/09

79

1 of the murder. They are corroborated by the defendant's  
2 conduct during the course of the murder, such as the voice  
3 mail. They're corroborated by the defendant's conduct right  
4 after the murder, burning the shirt, going to Dana Brown's  
5 house, to Charleston and getting rid of the gun, and they're  
6 corroborated by the defendant's statement to the police.

7 I promise you I'm almost done.

8 The defendant gives two different versions to the  
9 police when he's arrested on Saturday night. When he's  
10 arrested by Sgt. Godwin, by Det. Godwin, he tells him in the  
11 patrol car that he was hanging out with his boys, Willie  
12 Reed and Jimmy Haygood, and that he went home at 10:32. He  
13 didn't say anything about going down to Charleston. Nothing  
14 at all. Then he gives a statement to Det. Graham, and he  
15 admits that yes, he was with Willie Reed and Jimmy Haygood  
16 earlier that night, but that he was in Charleston, with a  
17 girl from Charleston later that night. He also tells Det.  
18 Graham, sometimes I get so high that I don't remember  
19 anything. Well, you remind Willie Pelzer what he did on the  
20 night of March 5th, if he doesn't remember. You remind him.  
21 That's your job.

22 And malice, ladies and gentlemen, how could there be  
23 any doubt the defendant is capable of murder and he had  
24 malice in his heart. When Det. Godwin is just talking to  
25 him out smoking a cigarette and this man in State's Exhibit

1 8, Jason Rivenburg has been murdered, and when asked about  
2 it, what's the defendant's comment? A fucking white boy  
3 gets killed and y'all come to me.

4 A father, a husband, a son. How is there any doubt  
5 that that man has malice in his heart, that he doesn't care  
6 about human life. That a human life isn't even worth \$7 to  
7 him. How can anybody make that comment other than a  
8 murderer?

9 The defendant murdered Jason Rivenburg. I'm going to  
10 tell you exactly how he did it. I'm going to tell you  
11 exactly why he did it. He was craving for drugs that night.  
12 He needed money. He needed \$20. By 8:15 he knew that he  
13 wasn't going to get any money at 8:16 he decides he's going  
14 to rob somebody. By 8:45 he asks Jimmy Haygood repeatedly,  
15 let me have your gun. Jimmy Haygood says no. The defendant  
16 knows that the Brakesfield's Exxon closes no later than  
17 10:00 o'clock, but that cars still go to the Brakesfield's  
18 Exxon to pump gas if you have a card. Easy prey for  
19 somebody to rob. At 10:06 p.m., at 10:06 p.m. the defendant  
20 texts one of his girlfriends and he tells her at 10:06, I  
21 got to do something real quick, at 10:06 and 53 seconds.  
22 He's going to go get the gun. He goes and gets the gun and  
23 he starts walking down Merrybell. Dana Brown has left him a  
24 voice mail during that time, you'll see from the phone  
25 records. The defendant attempts to go and check his voice

State v. Pelzer 12/4/09

81

1 mail. Accidentally calls the wrong number. He calls the  
2 same number he sent the last text to at 10:06, which is the  
3 515 girl, area code 515. He thinks he's about to listen to  
4 his voice mail. He's breathing on the phone. She's on the  
5 other end. He realizes it isn't voice mail and he hangs up,  
6 and immediately calls his voice mail. How do we know? He's  
7 breathing on the phone and it was a mistake? She sends him  
8 a text. Why are you breathing on the phone. And starts  
9 arguing with him about his actions and how weird that was  
10 that he was breathing on the phone and not saying anything.

11 He walks down Merrybell. It's dark outside, obviously,  
12 at 10:20 at night. He can't text that well so he only makes  
13 two texts between 10:06 and 10:32 p.m. Two texts and a few  
14 phone calls. 10:28, he tries calling Jimmy Haygood, Jimmy  
15 doesn't pick up. At 10:32 p.m., at 10:32 p.m. texts a girl,  
16 don't text me until I text you, okay. Don't text back. At  
17 10:32. Why is that important? Because you've heard that it  
18 takes about 20 minutes to walk to the Exxon at most, and if  
19 the defendant left at 10:12, what time would it be? 10:32.  
20 He's already at the Exxon at 10:32 and he's looking for  
21 prey. And what did the defendant do with his cell phone at  
22 10:32? He turned it off. How do we know he turned it off?  
23 Because the girl continued to text him and Aaron Walton told  
24 you about the message arrival time and the final disposition  
25 times. Take a look at the text messages as the defendant is

State v. Pelzer 12/4/09

82

1 getting them. At 10:22:34 and after that. He gets at least  
2 three texts at 10:34, 10:36, and 10:40, but his phone is not  
3 picking them up, because his phone is off. It's not until  
4 he turns his phone back on at 10:49 that those texts come to  
5 his phone.

6 Why did he then turn his phone on at 10:49? Because  
7 he's seen Jason Rivenburg. Jason is on the phone talking to  
8 his best friend, Jerry Dubin. He sees him on the phone.  
9 And he sees an easy prey, and at 10:49, who did the  
10 defendant call? Jimmy Haygood, and he said you and Willie  
11 Reed pick me up at Murph Mill and Bridal Wreath. And I  
12 could not figure out why, because like I said, it makes no  
13 sense. Why would you lie about that. The defendant told me  
14 to pick him up there. Because, ladies and gentlemen, with  
15 the victim's truck parked right here, -- right here, the  
16 defendant is going to come up behind Jason Rivenburg, rob  
17 him, after he robs him he doesn't want to run across the  
18 truck and back home to the direction of his home. He wants  
19 to run the opposite way of his home, which is where Bridal  
20 Wreath is. And guess what Bridal Wreath hits? Murph Mill  
21 Road. That's why at 10:49, his plan, after seeing Jason on  
22 the phone, was rob him and run to Murph Mill Road and get  
23 somebody to pick me up there. But those plans changed. At  
24 10:49 when he gets off the phone with Jimmy Haygood, he  
25 again turns he phone off, and calls to the defendant's phone

State v. Pelzer 12/4/09

83

1 go straight to voice mail, including a call from Jimmy  
2 Haygood, where are you? Because at 10:57 p.m. the defendant  
3 approaches Jason Rivenburg. Jason Rivenburg says, Oh, my  
4 God. The defendant is holding up a gun. Jason Rivenburg's  
5 phone drops to the ground. Jason Rivenburg has been  
6 polishing gauges, and you'll see those in the pictures. He  
7 lifts those gauges up, the defendant reacts to it, panics,  
8 sees something coming up in the air that's shiny and he  
9 starts firing shots into the truck. He fires six shots in  
10 all. One, two or none of the first four shots hit the  
11 victim, but at one point we know the defendant walks right  
12 up to that truck and within three, four, five feet shoots  
13 Jason Rivenburg. He's struck in the temple, left temple,  
14 and left forehead. Two shots that Jerry Dubin heard over  
15 the phone. The victim immediately goes down, starts to  
16 slouch down. The defendant reaches in through the open  
17 window of the truck. He's in a hurry, because he's by  
18 himself. It was supposed to be a robbery, not murder. He's  
19 in a hurry. He's just reaching, grabbing the victim by the  
20 shirt, pulling, rips his pocket. Takes what's in his  
21 pocket, which is a measly \$7. He's in a hurry. He runs  
22 across the truck and the heads home to . He  
23 gets there within four or five minutes, and sure enough by  
24 11:07 p.m. he's calling his friends to come pick me up.  
25 11:10 p.m. Greg Mack, I messed up, give me a ride. 11:13,

1 he's called Willie Reed and Jimmy Haygood and now they're  
2 involved in it. And when Willie Pelzer, when he recruited  
3 his friends to help him out and get rid of that gun, when he  
4 burned his shirt, when he went to Charleston and threw the  
5 gun away, when he got with Dana Brown and had her agree the  
6 next day on the phone to be his alibi witness, he thought he  
7 got away with murder. You prove him wrong. Prove him  
8 wrong.

9 In closing, I want to thank you for your tremendous  
10 attention. I know I've been very, very long-winded with  
11 this closing, but there is a lot of evidence, a lot of  
12 evidence to go over. A mountain of evidence against this  
13 defendant.

14 I have never had to serve as a juror before. And  
15 because of my job I'm not allowed to be a juror, and I  
16 cannot imagine what it is like to have to sit there and keep  
17 your mouth shut the entire time, but the irony is, very soon  
18 you're going to have the most powerful voice and you will  
19 deliver the most important message in this courtroom, and  
20 with one word you can let the citizens of Calhoun County  
21 know what Willie Pelzer has been held accountable for the  
22 murder of Jason Rivenburg. And with one word you can let  
23 the defendant, Willie Pelzer, know that a person's life is  
24 worth a whole lot more than \$7, and that one word is guilty.

25 On behalf of the state of South Carolina, as your



State v. Pelzer 12/4/09

85

1 solicitor for Calhoun County I respectfully ask that you  
2 bring justice for the murder of their son, husband, and  
3 father. I respectfully ask that you find the defendant,  
4 Willie Pelzer guilty of murder.

5 THE COURT: Thank you, sir.

6 COURT'S CHARGE:

7 Ladies and gentlemen, as you know the state has charged  
8 Mr. Pelzer in this indictment with the crime of murder. You  
9 will have this indictment with you in the jury room. This  
10 indictment is not evidence, as I told you earlier, this  
11 indictment is simply a document that is drawn up to advise  
12 the defendant of the charges he's facing so he can prepare a  
13 proper defense. To the charges contained in that indictment  
14 he has pled not guilty. That places the burden of proving  
15 him guilty on the state of South Carolina. A person charged  
16 with committing an offense is never required to prove  
17 himself innocent. It is a vital and important rule of law  
18 that a person charged with a crime no matter how serious  
19 that crime is must always be presumed innocent until his  
20 guilt had been proven to you beyond a reasonable doubt, for  
21 it is your duty, ladies and gentlemen, if not so convinced  
22 to find him not guilty. But by the same token, it is your  
23 duty, if you are so convinced, to find him guilty. Ladies  
24 and gentlemen, if the state's burden is to prove him guilty  
25 beyond a reasonable doubt after he is presumed to be not

1 guilty, then what do we mean by beyond a reasonable doubt.  
2 Well, some of you might have served as jurors in a civil  
3 case. You would have been told that it is only necessary to  
4 prove that a fact is more likely than not, true. Well, in a  
5 criminal case the state's burden is greater than that.  
6 Proof beyond a reasonable doubt is proof that leaves you  
7 firmly convinced of the defendant's guilt. There are very  
8 few things in this world that we know with absolute  
9 certainty, and in criminal cases the law does not require  
10 proof that overcomes every possible doubt. If based on your  
11 consideration of the evidence you are firmly convinced the  
12 defendant is guilty, then you must find him guilty. If  
13 based on your consideration of all of the evidence, you  
14 think there is a real possibility that he is not guilty then  
15 you must give him the benefit of that reasonable doubt and  
16 find him not guilty.

17 Now, ladies and gentlemen, I told you earlier this week  
18 that you are the judges of the facts in the case. You must  
19 determine what the truth is, and you are the only ones that  
20 can judge the facts in this case and determine that truth.

21 Now, to do that you have to determine the credibility  
22 or the believability of the witnesses who've testified in  
23 this case, and you're the only ones who can make that  
24 determination. In judging the credibility you should take  
25 into consideration a number of things. The demeanor, the

State v. Pelzer 12/4/09

87

1 manner of testifying. Was the witness forthright or was the  
2 witness hesitant in their testimony. Did the witness have  
3 reason to be biased or prejudiced in their testimony. Was  
4 their testimony contradicted on one hand or was it  
5 corroborated and supported on the other hand. What was the  
6 witnesses opportunity for observation and knowledge about  
7 the matters in which they've testified. How reasonable was  
8 the witnesses testimony. Especially when you consider that  
9 in the light of other evidence which you choose to believe.

10 You don't determine credibility by counting witnesses.  
11 You can believe one witness against many or many against  
12 one. You can believe all of a witnesses testimony or none  
13 of a witnesses testimony or part of a witnesses testimony,  
14 just determined by your evaluation of that person's  
15 credibility. You should consider all of these things, and  
16 ladies and gentlemen, remember you must give the benefit of  
17 any reasonable doubt to the defendant in the case.

18 Now, ladies and gentlemen, there's been some testimony  
19 about statements made by the defendant in this case, and you  
20 must determine, ladies and gentlemen, first, whether those  
21 statements were made by the defendant, and then you must  
22 determine that they were made freely and voluntarily without  
23 any threat, promise, coercion and then, ladies and  
24 gentlemen, if you determine that they were freely and  
25 voluntarily made you must determine what weight, if any, to

1 give those statements made by the defendant. If you  
2 determine that they were not made freely and voluntarily you  
3 would not consider them at all, and in determining whether  
4 the defendant made those statement freely and voluntarily,  
5 you should consider both the characteristics of the accused  
6 and the circumstances under which these statements were  
7 made. We call that the totality of the circumstances. You  
8 would consider the age or the youth of the defendant at the  
9 time these statements were alleged to have been made, his  
10 education, his mental ability, his IQ, his background, his  
11 environment, and also, ladies and gentlemen, the advice to  
12 the accused of his constitutional rights, including, but not  
13 limited to the procedural safe-guards known as the Miranda  
14 Warnings concerning his right to remain silent, that his  
15 statement could be used against him in a court of law. His  
16 right to have a lawyer present and if he could not afford a  
17 lawyer, his right to have an attorney appointed to represent  
18 him, and the fact that he could stop making a statement at  
19 any time he chose, and any other factors which you consider  
20 in the making of these statements. So you must carefully  
21 look at all of these circumstances. First to determine that  
22 he made the statements and secondly to determine that he  
23 made the statements freely and voluntarily of his own free  
24 will uninfluenced by any promise of reward or any threat or  
25 anything of that nature, and then, ladies and gentlemen,

State v. Pelzer 12/4/09

89

1 only after concluding those things, and the state must prove  
2 that the statement was made and that it was made freely and  
3 voluntarily. The state must prove those beyond a reasonable  
4 doubt, then you would give the statement such weight you  
5 think they deserve.

6 Now, ladies and gentlemen, there are two types of  
7 evidence from which you can determine the truth or the facts  
8 of the matters in a case. One is by direct evidence, and  
9 the other is by indirect or circumstantial evidence. By  
10 direct evidence, we mean the testimony of persons who have  
11 perceived its existence by one of our five senses. Something  
12 they've seen or heard or felt or tasted or smelled and then  
13 come into court and testified of their own first-hand  
14 knowledge and experience that that fact does or does not  
15 exist.

16 Now, by indirect or circumstantial evidence we mean the  
17 testimony of surrounding facts from which you may or may not  
18 conclude that another fact has been proven. In Orangeburg  
19 County, the courtroom does not have any windows and so you  
20 can't see what's going on outside, but when -- the jury room  
21 does have windows and I tell the jury, ladies and gentlemen  
22 if you go back in your jury room in a few minutes, even  
23 though the sun might be shining and it might be bright, if  
24 you see water on the window sill and water on the glass and  
25 maybe some water on the sidewalk or running down the street,

1 you'll say, gosh, it rained. Well, you made that conclusion  
2 by the use of circumstantial evidence. You didn't see it  
3 rain or hear it or feel it, but you saw other things that  
4 might make you conclude that it rained. You use  
5 circumstantial evidence. We do that all day long every day,  
6 but we just don't call it by that name.

7 On a particular contested issue you might have some  
8 direct and some circumstantial evidence or the combination  
9 on that particular fact. But with regard to both direct and  
10 circumstantial evidence it must be such as to prove the  
11 guilt of the defendant beyond a reasonable doubt. The law  
12 does not make any distinction between the weight or the  
13 value to be given to either direct or circumstantial  
14 evidence, nor is a greater degree of certainty required of  
15 circumstantial evidence than direct evidence. You should  
16 consider all of the evidence in the case and after weighing  
17 all the evidence in the case and you are not convinced of  
18 the guilt of the defendant beyond a reasonable doubt, then  
19 you must find him not guilty. By the same token, if after  
20 weighing all of the evidence in the case, if you are  
21 convinced of his guilt beyond a reasonable doubt then you  
22 must find him guilty.

23 Now, ladies and gentlemen, as I told you earlier this  
24 week, and I tell you again, that I am the judge of the law  
25 in the case, and I am the only judge of the law in the case,

State v. Pelzer 12/4/09

91

1 and if what I tell you the law is does not agree with what  
2 you thought the law was, even if it does not agree with what  
3 you think the law ought to be, you must put aside your  
4 opinion of the law, accept the law as I give it to you,  
5 apply that to the facts that you find them to be in order to  
6 reach your verdict in this case.

7 Ladies and gentlemen, the defendant is charged with the  
8 crime of murder. And so I want to define what that means in  
9 the eyes of the law. Murder may be defined as the willful,  
10 felonious killing of a human being by a human being with  
11 malice aforethought. That malice being either expressed  
12 malice or implied malice.

13 Ladies and gentlemen, willful means intentional or  
14 voluntary. It means conscious or knowing as opposed to  
15 accidental or involuntary. Felonious simply means unlawful  
16 or without justification or excuse. And, of course, killing  
17 of a human being means taking that human being's life. It  
18 must be with malice aforethought.

19 Ladies and gentlemen, malice is an essential element to  
20 the crime of murder. Malice is a term of art, a technical  
21 term, importing wickedness and excluding just cause or legal  
22 excuse. Malice in any form, whether it arises from hatred,  
23 ill will or otherwise is still malice. Malice springs from  
24 a depravity, from a heart devoid of social duty and fatally  
25 bend on mischief. Malice must be aforethought. The law

1 does not require that malice should exist for any particular  
2 time before the commission of the act, but malice must exist  
3 in the mind of the accused just before and at the time of  
4 the commission of the act. There must be a combination of  
5 the previous evil intent and the act producing the result.

6 Ladies and gentlemen, malice aforethought may either be  
7 expressed or implied. These words, expressed or implied do  
8 not mean different kinds of malice, but merely the manner in  
9 which the only kind of malice known to the law may be shown  
10 to exist. That is either by direct evidence or by necessary  
11 inference from the facts and circumstances which are proven.

12 Expressed malice is shown when one by word of mouth  
13 expresses his hatred or ill will for another or his intent  
14 to do an act or where the state shows that he made  
15 preparations beforehand to do the deed, which was later  
16 accomplished. Lying in wait for a person or any acts of  
17 preparation going to show that the deed was within his mind  
18 was expressed malice. Even though expressed malice is  
19 proven by direct evidence, it may be inferred, ladies and  
20 gentlemen, from the facts and circumstances which are  
21 proved. Malice may be inferred from the willful deliberate  
22 and intentional doing of an unlawful act without just cause  
23 or legal excuse. In other words, in its general  
24 signification malice means the doing of a wrongful act  
25 without justification or legal excuse. It may be inferred



1 from conduct showing a total disregard for human life. The  
2 inference of malice may arise when the deed is done with a  
3 deadly weapon which is some weapon when used to injure  
4 another is calculated to produce death or serious bodily  
5 harm. Malice does not necessarily impart ill will toward  
6 the individual injured, but signifies, rather, a general  
7 malignant recklessness of the lives and safety of others, a  
8 condition of mind which shows a heart devoid of social duty  
9 and fatally bent on mischief. It is the wrongful intent to  
10 injure another and indicates a wicked or depraved spirit  
11 intent on doing wrong. So if fact are proven beyond a  
12 reasonable doubt sufficient to raise an inference of malice  
13 to your satisfaction, this interest would simply be an  
14 evidentiary fact to be considered by you and taken into  
15 consideration along with the other evidence in the case, and  
16 you may give it such weight as you should -- as you deem it  
17 should receive.

18 So ladies and gentlemen, to repeat the definition of  
19 murder. Murder is the willful, Felonious killing of a human  
20 being by a human being with malice aforethought, that malice  
21 being either expressed malice or implied malice.

22 Now, ladies and gentlemen, voluntary intoxication is  
23 never an excuse for or a defense to a crime. A person who  
24 voluntarily renders himself intoxicated by the use of  
25 alcohol or drugs or a combination thereof is no less

1 responsible for his acts while in such a condition. If one  
2 voluntarily drinks intoxicating liquors or wine or beer or  
3 is under the influence of drugs and becomes intoxicated to  
4 whatever degree, and if while in that condition commits an  
5 act which would be a crime if it had been committed by a  
6 sober person the fact of drunkenness would not relieve the  
7 intoxicated person from responsibility.

8 Ladies and gentlemen, there has been testimony in this  
9 case about an alibi of the defendant. In other words,  
10 testimony that would indicate that the defendant was not  
11 present at the scene of the crime at the time it was  
12 committed, but he was elsewhere and had nothing to do with  
13 it. There is no burden upon the defendant to prove his  
14 alibi. The burden is upon the state to prove that he was  
15 actually present at the scene of the crime and that he  
16 actually committed this crime and he was not elsewhere. The  
17 state must prove this allegation as all other allegations  
18 are required to be proven by evidence beyond a reasonable  
19 doubt. Of course, if you have a reasonable doubt as to  
20 whether the defendant was present, then you must resolve  
21 that doubt in favor of the defendant and find him not  
22 guilty.

23 Ladies and gentlemen, because the defendant, in a  
24 criminal trial, is presumed to be innocent, as I told you,  
25 the law never imposes upon the defendant the burden or the

State v. Pelzer 12/4/09

95

1 duty of testifying. The defendant in a criminal trial has  
2 the absolute right under the constitution of the United  
3 States and the state of South Carolina not to take the  
4 witness stand and testify. The exercise by a defendant of  
5 this right not to testify must not be considered by you in  
6 any way against the defendant, and should play no role  
7 whatsoever in your discussions or your deliberations. No  
8 inference of any kind may be drawn from his exercise of his  
9 constitutional right not to testify. I would request that  
10 you not even discuss that fact when you begin your  
11 deliberations.

12 Now, ladies and gentlemen, nothing that I've said or  
13 done during the course of this trial nor during these  
14 instructions has been in any way intended to express or  
15 suggest a view of this case or an opinion about the facts of  
16 the case or the weight of the evidence or the credibility of  
17 the witnesses or what your verdict should be, and if  
18 anything that I've said or done should indicate to you that  
19 I have such an opinion, please disregard that. These  
20 matters are entirely for your determination. You have been  
21 selected as a fair and impartial juror and you've sworn to  
22 impartially try and determine the facts of this case, and  
23 when you comply with your oath to do so then no one will  
24 have a right to criticize your verdict and you will have  
25 fully discharged your duty as jurors. You are to decide

1 this case according to the testimony that you've heard from  
2 the sworn witnesses that you've heard along with the other  
3 evidence that was introduced and my instructions to you on  
4 the law. You must decide the issues in the case without  
5 bias and without prejudice to any party. You cannot allow  
6 yourself to be governed by passion, by unfair sympathy, by  
7 prejudice for or against any person, by public opinion or  
8 any other arbitrary factor. Both the state and the  
9 defendant has a right to expect that each of you will  
10 carefully and impartially consider all of the evidence that  
11 you have heard in this case, and that you will follow my  
12 instructions to you on the law in reaching your verdict.

13 Now, Mr. Hill, I appointed you as foreperson of the  
14 jury. That means that you would preside as the jury begins  
15 it's deliberation. You will see that everyone has an  
16 opportunity to speak that wants to be heard without  
17 everybody trying to talk all at one time.

18 When the jury has reached a unanimous verdict and all  
19 12 of you must agree before any verdict can be reported from  
20 this jury, it would be your duty to report that verdict on  
21 behalf of the entire jury.

22 Now, there are only two possible verdicts in this case.  
23 And there's no significance whatsoever in the order in which  
24 I explain these two verdicts to you. If you have to explain  
25 two things you have to do one before the other.

State v. Pelzer 12/4/09

97

1           If you find the state has proven the evidence of  
2 murder, as I have outlined it to you, beyond a reasonable  
3 doubt, then your verdict would be guilty. If you find that  
4 the state has failed to prove the elements of murder as I  
5 have outlined to you beyond a reasonable doubt, then your  
6 verdict would be not guilty.

7           As I said, all 12 of you must agree before any verdict  
8 can be appoint or reported. Now, you will have the  
9 indictment and on this side is a brief description of the  
10 crime charged. On the other side in this bottom corner down  
11 here you will see a little block that says, verdict, and  
12 there are several lines under that. And then a place for you  
13 to sign as foreperson of the petit jury. You simply write  
14 the word guilty or the word not guilty. Whatever is the  
15 unanimous determination of this jury. You sign your name,  
16 you write today's date, which is December 4, 2009, and when  
17 you sign your name you've indicated that this is the  
18 unanimous verdict of the entire jury.

19           If you have any questions that come up during your  
20 deliberations, please write them down. The bailiff will see  
21 that you have a pad and a pencil back there. Write them  
22 down, knock on the door, say, I've got a question for the  
23 judge. He'll bring me that question and I'll take whatever  
24 action I need to take under the circumstances. If we have  
25 any smokers, if the smokers need to go out, knock on the

1 door, tell the bailiff the smokers need a break. He will  
2 take you outside where you can smoke and come back in. Now,  
3 if the smokers leave the rest of you have to stop your  
4 deliberations. You cannot deliberate unless all 12 of you  
5 are there in the jury room.

6 When you have reached a verdict, if you would simply  
7 knock on the door, tell the bailiff we've reached a verdict.  
8 Do not give him the verdict, tell him what the verdict is,  
9 you don't give him the indictment or the verdict form. You  
10 simply tell him you've reached a verdict. He will notify  
11 me, we'll get everybody back together in the courtroom, he  
12 will bring you in and you will pass up the verdict form in  
13 the courtroom.

14 In just a second I'm going to ask you to retire to your  
15 jury room, but I'm going to ask you not to discuss the case,  
16 not yet. I must discuss my charge to you, my instructions  
17 to you, with the attorneys. Sometimes I make a mistake.  
18 Sometimes I don't tell you everything I need to tell you,  
19 sometimes I just say something wrong. I assure you they  
20 have been listening very carefully while I've instructed  
21 you. If I have made some error I will bring you back out in  
22 just a few minutes and correct that error. If I don't need  
23 to do that, we will gather up the exhibits. There are quite  
24 a number of exhibits here, as you know. We'll have to  
25 gather up all the exhibits and I'll send the exhibits in to

State v. Pelzer 12/4/09

99

1 you with the indictment. So at the time you get the  
2 exhibits and the indictment you can begin your deliberation,  
3 but not until that time, please.

4 Now, I've taken the liberty of ordering some food. It  
5 should be here -- they've gone to pick it up now. You don't  
6 have to wait on the food. You begin your deliberations once  
7 I send you in the indictment and the exhibits, and when the  
8 food gets here we'll knock on the door and interrupt you and  
9 bring the food in, and you can handle that however you want  
10 to.

11 Please retire to your jury room at this time, but  
12 please do not discuss the case until you receive the  
13 exhibits and the indictment form. For right now, I'm going  
14 to let the two alternates go in the jury room for right now,  
15 but do not discuss the case at all.

16 (Jury out at 12:43 p.m.)

17 THE COURT: Any exceptions from the state?

18 MR. PASCO: No, Your Honor.

19 THE COURT: From the defense?

20 MR. LEIENDECKER: No, Your Honor.

21 THE COURT: All right. How many exhibits do we  
22 have.

23 COURT REPORTER: We have 89, minus six that don't  
24 go back.

25 THE COURT: All right, come up and help the clerk

State v. Pelzer 12/4/09

100

1 gather up all these exhibits. Be sure we've got all of  
2 them.

3 Please bring the alternates back out, please, sir.  
4 (Alternates return to courtroom at 12:44 p.m.)

5 THE COURT: I'm going to excuse you at this time.  
6 If you want to hang around, when the lunch gets here we'll  
7 be glad to feed you. You're free to talk about the case now  
8 if you want to talk about it, but I would say wait until  
9 this trial is over, completely. Don't go out right now and  
10 start talking about it, but if you don't want to talk about  
11 it you don't have to. If somebody tries to get you to talk  
12 about it, and you make it clear you don't want to discuss  
13 it, let us know and we'll deal with that appropriately.

14 Thank you very much for your service. You'll be  
15 getting a little check in the mail. Don't make any big  
16 plans for Christmas until you get it, okay.

17 Thank you very much.

18 (Alternates exit courtroom at 12:45 p.m.)

19 (Evidence to jury at 12:50 p.m.)

20 THE COURT: We're in recess until we hear from the  
21 jury.

22 (Court in recess at 12:50 p.m. to await jury verdict.)

23 (Court in session for verdict at 5:25 p.m.)

24 THE COURT: Thank you, please be seated.

25 Ladies and gentlemen, I understand the jury has reached



State v. Pelzer 12/4/09

101

1 a verdict.

2 We will not tolerate any type of emotional outburst  
3 when the verdict is announced. If you don't think you can  
4 control yourself I will ask you to step outside the door and  
5 somebody can inform you what the verdict is.

6 All right. Is the state ready for the verdict?

7 MR. PASCO: Yes, Your Honor.

8 THE COURT: Is defense ready?

9 MR. LEIENDECKER: Yes, Your Honor.

10 THE COURT: All right. Bring in the jury.

11 (Jury in with verdict at 5:29 p.m.)

12 THE COURT: All the jury is present.

13 Mr. Foreman, I understand the jury has reached a  
14 verdict?

15 MR. FOREMAN: Yes, sir.

16 THE COURT: Would you pass it to the bailiff.

17 (Verdict is passed up.)

18 THE COURT: All right, the verdict is in the  
19 proper form.

20 Mr. Clerk, you may publish the verdict.

21 THE CLERK: In the case of state of South Carolina  
22 verses Willie Pelzer, indictment number 2009-GS-09-00022,  
23 for the charge of murder, the jury has found you guilty.

24 THE COURT: Any request to poll the jury?

25 MR. LEIENDECKER: Yes, Your Honor. Please poll

1 the jury.

2 THE COURT: All right. Ladies and gentlemen, I'm  
3 going to ask each of you two questions. The first one is:  
4 Was this your verdict. The second question is: Is this  
5 still your verdict. And you just answer those questions  
6 appropriately.

7 Mr. Foreman, was this your verdict?

8 THE FOREMAN: Yes, sir.

9 THE COURT: Is it still your verdict?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Sir, is this your verdict?

12 JUROR: Yes.

13 THE COURT: Is it still your verdict?

14 JUROR: Yes.

15 THE COURT: Ma'am, is this your verdict?

16 JUROR: Yes.

17 THE COURT: Is it still your verdict?

18 JUROR: Yes.

19 THE COURT: Sir, is this your verdict?

20 JUROR: Yes.

21 THE COURT: Is it still your verdict?

22 JUROR: Yes.

23 THE COURT: Ma'am, is this your verdict?

24 JUROR: Yes.

25 THE COURT: Is it still your verdict?

State v. Pelzer 12/4/09

103

1 JUROR: Yes.

2 THE COURT: Ma'am, is this your verdict?

3 JUROR: Yes.

4 THE COURT: Is this still your verdict?

5 JUROR: Yes.

6 THE COURT: Ma'ma, is this your verdict?

7 JUROR: Yes.

8 THE COURT: Is it still your verdict?

9 JUROR: Yes.

10 THE COURT: Sir, is this your verdict?

11 JUROR: Yes.

12 THE COURT: Is it still your verdict?

13 JUROR: Yes.

14 THE COURT: Sir, is this your verdict?

15 JUROR: Yes.

16 THE COURT: Is it still your verdict?

17 JUROR: Yes.

18 THE COURT: Ma'am, is this your verdict?

19 JUROR: Yes.

20 THE COURT: Is it still your verdict?

21 JUROR: Yes.

22 THE COURT: Ma'am, is this your verdict?

23 JUROR: Yes.

24 THE COURT: Is it still your verdict?

25 JUROR: Yes.

1 THE COURT: Ma'am, is this your verdict?

2 JUROR: Yes.

3 THE COURT: Is it still your verdict?

4 JUROR: Yes.

5 THE COURT: The jury has been polled. All 12  
6 answered in the affirmative. The verdict stands.

7 Now, ladies and gentlemen, that concludes your services  
8 on this case. In a few minutes you'll be excused and if you  
9 want to talk about the case you are welcome to talk about it  
10 now with anybody you want to, but you don't have to talk  
11 about it, and if someone persists in trying to get you to  
12 discuss your verdict or your service on this jury once you  
13 make it clear to them that you don't want to discuss it,  
14 please report that back to the Clerk of Court's office, and  
15 we'll deal with that person appropriately. You're not  
16 subject to any harassment whatsoever for having served on  
17 this jury.

18 We're going to wrap up these proceedings pretty quickly  
19 so I will ask you to just remain where you are for right  
20 now.

21 All right, any motions.

22 MR. BANKS: Your Honor, we move for a new trial,  
23 based on the fact that the jury's verdict is not represent  
24 the evidence and the testimony presented in this courtroom,  
25 and we'd ask for a new trial.

State v. Pelzer 12/4/09

105

1 THE COURT: All right, sir. I deny that motion.

2 I think it's a good verdict. The jury has sat here  
3 since Tuesday morning, they have listened very carefully.  
4 There have observed the witnesses in this case, as I have.  
5 They have heard the testimony, they've observed the  
6 credibility, the demeanor of the witnesses on the stand, and  
7 I have absolutely no qualm with the verdict. I agree with  
8 it completely and totally. I think it's absolutely a proper  
9 verdict. I think any other verdict would have been a wrong  
10 verdict in this particular case. The evidence is simply  
11 overwhelming. There's just absolutely too much evidence  
12 there. There's no way in the world these two witnesses  
13 could have concocted the story they did, and their story was  
14 completely corroborated by physical evidence and electronic  
15 evidence from those telephone records. I think it is a very  
16 proper verdict. I will not take the usurp the verdict from  
17 the jury. I respect the verdict completely.

18 All right. I'll need the sentence sheet, and then I'll  
19 be glad to hear from anybody else that wants to be heard:

20 MR. PASCO: Yes, sir. While you're filling out  
21 the sentence sheet, I'll talk to the family.

22 THE COURT: I'll hear from anybody on the behalf  
23 of the defendant.

24 (Pause.)

25 MR. LEIENDECKER: Your Honor, just while we're

State v. Pelzer 12/4/09

106

1 waiting -- he's got shackles and belly chains, can he --

2 THE COURT: No, sir. Keep him seated right here  
3 until we finish.

4 MR. LEIENDECKER: Yes, sir.

5 THE COURT: All right. Does anyone else want to  
6 be heard?

7 MR. PASCO: Beg the Court's indulgence. The wife  
8 of Jason ran outside, real fast. She had to get something  
9 real fast, and all the family members wish to be heard, Your  
10 Honor.

11 THE COURT: All right.

12 MR. PASCO: The defendant does have a prior record.  
13 The November grand larceny conviction where he got probation  
14 just before this murder occurred. So he was out on  
15 probation for grand larceny of more than \$1,000.

16 THE COURT: All right.

17 May I have your name, please?

18 MS. RIVENBURG: My name is Marjorie Rivenburg, and  
19 I am Jason's aunt, and my husband, Jason's uncle, and his  
20 grandmother were unable to attend due to failing health  
21 acacerbated by this senseless murder.

22 I want to thank you for allowing us to speak. I am  
23 sorry of our emotions. And I thought that the worst day of  
24 our life was in May of 1981, when Jason's dad passed away.  
25 He passed away from ill health, but by far, March 5th of

State v. Pelzer 12/4/09

107

1 this year has surpassed all of our emotions. This was the  
2 most terrible day for our family because of this useless act  
3 of violence. I would like to lay a little synopsis of  
4 Jason. As a child, he was caring, affectionate, funny  
5 little guy. On a gloomy day he brought a ray of sunshine  
6 into your life. A typical teen, however, being brought up  
7 in a rural community where hunting is generally accepted and  
8 used to put food on our tables. Jason did not participate.  
9 He didn't want to hurt animals and he did not want any part  
10 of guns.

11 As an adult his compassion, love, and humor, really  
12 began to shine even brighter, always available to help in  
13 any way at any time. A hard working loveable guy. As his  
14 uncle's, my husband's, health failed Jason was always there  
15 for us, only a phone call away.

16 Jason was a special young man with a lot of  
17 relationships, one of which was his grandmother. She is in  
18 her third bout of cancer, and at 96 and a-half she was  
19 devastated by the horrific crime. The love he showed for  
20 his grandmother was above and beyond what you would expect.  
21 On his wedding day, he came and got his grandmother with a  
22 limousine, and he had her dance with him. Such a gem he  
23 was.

24 Jason and my husband had a mutual admiration and  
25 respect for each other. Jason and Phil built our shop with

1 24 foot trusses. I don't know how they did it, but they did  
2 it by themselves. As a child he always talked to Phil. He  
3 asked about how he could take care of his mom and his sister  
4 in his home when his dad passed away. He knew he would need  
5 help at the age of seven. Jason looked to Phil for approval  
6 and help with his decisions. He had Phil check the pitch on  
7 the roof and the blueprints of his new home, which he only  
8 had the privilege of having for one month. I'm not sure if  
9 you've ever had a useless crime like this in your family,  
10 but for us, the devastation has left our hearts heavy  
11 laden. My brother-in-law, Jason's dad died when Jason was  
12 seven years old. I already told you that. Sorry for the  
13 repetition. Jason's pride for Joshua and the impending  
14 arrival of his twins would make the buttons pop off anyone's  
15 shirt. He loved his wife, Hope, and Joshua so much. He  
16 definitely did not want to leave his children without a dad,  
17 and that was his words. So for this senseless act to take  
18 away his dreams and impede us from seeing him shine as a  
19 great citizen and father, grandson, nephew, brother, husband  
20 and son, just isn't fair. I can't begin to tell you how  
21 important a part of our life Jason was. The deep emotions  
22 of hurt, still in us and I'm sure will go on for the rest of  
23 our lives. We hope you will put the light out of the  
24 defendant's life like he has taken our light away. Please  
25 consider our loss and the inadequacy we feel. I do realize



State v. Pelzer 12/4/09

109

1 I am selfish, but, gosh, we miss Jason and we want you to  
2 understand the need to take the defendant and never let him  
3 walk the streets again. And we hope that you will consider  
4 life without the possibility of parole.

5 In conclusion, I would like to add that the people of  
6 South Carolina have been so wonderful to us and we are so  
7 appreciative and thank you, and their kindness and care and  
8 compassion that was shown to our family, and thank you very  
9 much for this time.

10 THE COURT: Thank you, ma'am.

11 Yes, ma'am, your name, please?

12 MS. RIVENBURG: My name is Dawn (inaudible). I'm  
13 Jason's mother.

14 THE COURT: Yes, ma'am.

15 MS. RIVENBURG: Your Honor, I'm Jason's  
16 Rivenburg's mother, and I can't begin to describe how it  
17 feels to lose a child, especially to a cold and senseless  
18 murder. Jason was just entering the prime of his life and  
19 had much to offer to his family and friends and to society  
20 in general. Jason was seven when his father passed, and  
21 Jason and his sister became my whole life and my whole  
22 reason for living. So when Mr. Pelzer took Jason's life he  
23 took half of my life with him. He not only was my son, he  
24 was my friend, he was my strongest supporter. Jason was  
25 always there for me. I wake up every morning and cry,

State v. Pelzer 12/4/09

110

1 because I know I will never see or talk to Jason again. I  
2 learned a lot from Jason and in the many ways he was my  
3 strength because I knew he would always be there when I  
4 needed anything. He was a good son. Now, he's been taken  
5 from me and there's no closure because there's no reason.  
6 There was no accident, he wasn't sick, he wasn't in a fight.  
7 He's just gone because Mr. Pelzer felt like it. He didn't  
8 even take time to ask Jason for money. If he had, Jason  
9 would have given it to him. He would give anything.

10 I used to pray every morning and every night for God to  
11 keep my children and their spouses and children safe,  
12 because they traveled just like everybody else. At Jason's  
13 funeral the minister said God watches over all of us. But  
14 sometimes people get by, they even get past God. Now, I ask  
15 myself everyday what kind of person can even defy God and  
16 why Jason. How can a person like that deserve to be alive.

17 Jason's grandmother can't accept that Jason, her only  
18 grandson is gone. She talks about him like he's here. I  
19 have to watch her buying birthday cards, anniversary cards  
20 for him and Hope. She even cooks dinner thinking he's going  
21 to be there, then she has to get upset because Jason is not  
22 there. She wants to know where he is, why he's not coming.  
23 Unfortunately, my mother, Jason's grandmother, is going to  
24 go to her grave wondering why Jason never came to see her  
25 again. Now, here we are today, nine months later. I still

State v. Pelzer 12/4/09

111

1 have no closure. Still have can't go see my grandchildren  
2 because Jason is not there and should be. I want to go to  
3 the grave, but seldom do, because it's so wrong. Jason  
4 should be going to my grave instead. If I could do that, if  
5 I could change with Jason I would do it in a heartbeat. I  
6 rarely go to -- I rarely go out because I don't want to  
7 answer to the people why. I don't have a reason why. I  
8 keep -- what was taken from me without a chance to say  
9 goodbye. I'd love for a chance to comfort him like mother's  
10 comfort their children. I just would like to have the peace  
11 of knowing my grandchildren will never have to go through  
12 this like we're going through today.

13 Every day when Mr. Pelzer wakes up, I want him to see  
14 and remember Jason won't. Every time he takes a breath I  
15 want him to remember that Jason can't. And every time he  
16 sees the sunshine, remember that Jason doesn't. Every time  
17 he hears music, remember Jason can't. And every time that  
18 he sees a family member remember that Jason will never see  
19 his family again, including his babies.

20 So, Your Honor, I ask that you please give Mr. Pelzer  
21 life without parole in memory of Jason. I feel that if you  
22 sentence Mr. Pelzer to life without parole he's getting a  
23 more fair deal. That's more than he gave Jason. He won't  
24 be taken needlessly from his family, like Jason was. With  
25 all due respect to Jason and his family, we won't have to

1 worry about Jason's small children ever having to deal with  
2 this again.

3 We want to thank you for your time.

4 THE COURT: Thank you, ma'am.

5 Yes, ma'am.

6 MS. RIVENBURG: I'm Hope Rivenburg, Jason's wife.  
7 Jason was full of life. He had goals and dreams. When we  
8 had our two-year-old son he held him for the first time and  
9 in that instant they had a loving bond. They were not only  
10 father and son, they were playmates and friends. If you saw  
11 Jason outside you saw Josh. They would talk to each other  
12 on the phone. They had a true loving bond. When we moved  
13 in our home February 5th, Jason built the steps and made  
14 sure there was a railing down for our kids to hang onto.  
15 Jason and Josh would play in the playroom for hours.  
16 Jason's friends said in the last two years they got to see  
17 the real Jason, the loving, caring man that will always be a  
18 wonderful father and husband. Our kids and home were the  
19 most important things to him. If you would have asked Jason  
20 for the money I'm 95 percent sure he would have given you  
21 the money and walked away. Sorry -- When he found out I was  
22 pregnant with twins he was so happy. He was setting up the  
23 rooms, getting things ready. He already had such a love for  
24 Logan and Hezekiah. This week this selfish act took place  
25 we had a housewarming party planned for that weekend. He

State v. Pelzer 12/4/09

113

1 was learning to bake. He wanted to be like his dad, during  
2 the winter to pass along some of his childhood to our kids.  
3 Now the only thing that will be passed on is they both will  
4 raised without their father. When we got the news of this  
5 selfish action I had told Josh that daddy is with the moon,  
6 because Jason and Josh would go out at night and look at it.  
7 Josh is still looking for his daddy and always will. He  
8 misses Jason as much as the adults, but doesn't understand,  
9 just like us. Every day I get up because I have to, and I  
10 sit there wondering what Jay would be doing today. I put  
11 our kids to bed and I wish he was there with me.

12 I miss Jason very much and love him very much. I have  
13 never had so much hurt and anger in my life like I do know,  
14 because of the actions -- I want to hear him change upstairs  
15 and I don't hear anything. I was married to the most  
16 wonderful guy that God ever gave us here with me. Now, our  
17 kids will know their father through friends and family. Not  
18 personally like it should be. Hezikah and Logan will never  
19 get to feel their father's love surround them or his gentle  
20 touch or hear his silly laugh or see his goofy attitude. He  
21 enjoyed life. He was fully of love, humor, sincerity,  
22 generosity, and kindness.

23 Jason has a 96 year old grandmother that has buried two  
24 husbands and three children and now one grandchild. How do  
25 you think she feels about all this. He has hurt hundreds of

1 people by his actions. Sorry -- And the only thing that I  
2 can find any peace is all of this is that Jason is now  
3 personally getting to know his own father, and that, not  
4 even Pelzer can I take away. Can I read two cards that  
5 Jason had wrote me.

6 THE COURT: Yes, ma'am.

7 MS. RIVENBURG: One is this is just because I can  
8 and because I want to thank you for making me the happiest  
9 I've been in a long time. Love, Jason. Two my love, with  
10 my love. Since like my job takes me away from you. This is  
11 just a small way to show my love. Love, Jason.

12 Thank you.

13 UNIDENTIFIED FAMILY MEMBER: I'm Jason's  
14 father-in-law.

15 THE COURT: Yes, sir.

16 UNIDENTIFIED FAMILY MEMBER: I've sat in this  
17 courtroom all week and listened to details about how and why  
18 our son-in-law, Jason was taken from a family that truly  
19 loved him unconditionally. He was a wonderful person,  
20 husband, father, son-in-law, brother-in-law and friend.  
21 We're now left to only pass on and keep his memory alive for  
22 his three children, two of which he will never have a chance  
23 to meet, hold or tell him how much he loved them, and the  
24 other one speaks about his daddy every day. Josh only has a  
25 few memories which I pray he will always remember. Jason

State v. Pelzer 12/4/09

115

1 only wanted to be loved and to love his family, and by  
2 trying to make sure his family was provided for. You and  
3 with your selfish act you destroyed so many lives. If you  
4 had asked Jason for what you were after I'm sure he would  
5 have given it, given you what you wanted so he could return  
6 safely to his family. Whatever your punishment is it will  
7 never be enough for what you have taken away from all the  
8 people who truly loved him. He was a great person.

9 The only comfort I can find now that is that he will  
10 get a chance to know his father, but he will missed by all  
11 who loved here.

12 Our daughter at age 29 becomes a widow and a single  
13 mother of three beautiful children because of your selfish  
14 and malicious act. You have taken a fantastic person out of  
15 our lives that was loved by everyone, and we are not left to  
16 fill a huge void in our lives.

17 Jason, we love you and miss you and we are so proud of  
18 you and even if your life is cut short, your children will  
19 know how great you were.

20 THE COURT: Thank you, sir.

21 Yes, ma'am.

22 MS. KEMPTON: My name is Camilla Kempton, I'm  
23 Jason's sister.

24 THE COURT: All right.

25 MS. KEMPTON: Your Honor, as I have pondered this

1 statement over the past weeks I've struggled with what to  
2 say. I've come to the realization that there can be no real  
3 justice in this case. You can't bring back my brother, nor  
4 can you make the defendant truly regret his actions. What  
5 this thoughtless individual has taken from my family and  
6 from me can never be restored. For \$7 he has taken the  
7 innocence of my children and my brother's children. They  
8 now live with the knowledge that there are bad men in this  
9 world who shoot good people. People who you love for no  
10 reason.

11 For \$7 he has taken from me the laughter that my  
12 brother used to bring to my life. Jason would send me  
13 emails almost daily. They were silly, ridiculous and  
14 generally somewhat inappropriate, but that was my brother.  
15 If something was funny to Jason he shared it. He never took  
16 anything or anyone too seriously, especially me. I need  
17 that in my life, but now through this senseless act of this  
18 one individual Jason's sense of irreverent humor is lost to me  
19 forever.

20 In order for justice to truly be carried out Mr. Pelzer  
21 would have to lose a brother, a child, a grandchild, a  
22 spouse, a friend and a parent, along with his future. Jason  
23 was all of these things, some of which he was just beginning  
24 to realize himself.

25 My brother had a future full of love and hope and



State v. Pelzer 12/4/09

117

1 dreams waiting for him. No matter how long Mr. Pelzer  
2 spends in jail he cannot repay his debt to society or his  
3 debt to this family. I hope \$7 was worth it to him.

4 That being said, I do not want to be the one to merely  
5 spit superlatives and epitaphs despite the fact that I know  
6 Jason is rolling his eyes at me right now and calling me a  
7 geek, I have decided to share a poem that has given me  
8 comfort and guidance through all of this. It's Sonnet 89 by  
9 Pablo Neruda.

10 When I die I want your hands on my eyes. I want the  
11 light and the wheat of your beloved hands to pass their  
12 freshness over me once more: I want to feel the softness  
13 that changed my destiny. I want you live while I wait for  
14 you, asleep, I want your ears to still hear the wind, I want  
15 you to sniff the sea's aroma that we loved together. to  
16 continue to walk on the sand we walked on. I want what I  
17 love to continue to live, and you whom I love and sang above  
18 everything else to continue to flourish, full flowered: So  
19 that you can reach everything my love direct you to, so that  
20 my shadow can travel along in your hair, so that everything  
21 can learn the reason for my song.

22 I want Mr. Pelzer to know that although he has brought  
23 me sadness, which he can never understand, and has caused  
24 me, in some of my darker moments, which I'm not proud to  
25 say, I've imagined myself strangling the life out of him.

1 He has not won. He has not ended my brother's song.  
2 Jason's death has touched so many lives and Jason's love has  
3 brought awareness to a serious issue in this country. Your  
4 decision, Your Honor, in this case is going to become part  
5 of Jason's song.

6 I hope that when you make your decision you treat Mr.  
7 Pelzer with respect and consideration, the same respect with  
8 which he treated my brother, and with the same respect and  
9 consideration with which he has treated this family by  
10 forcing us to relive our grief in this tragedy during this  
11 trial.

12 While there can be no true justice the way that we  
13 choose to live our lives will be Jason's legacy. I am  
14 thankful that Jason has children to carry on his song. I  
15 now make more conscious effort to remember Jason's wit and  
16 look for the humor in things as part of Jason's song. This  
17 is Jason's song. The love we have as a family, the kindness  
18 we have been shown by so many people in this community whom  
19 we have never met, or whom we have just met.

20 So no matter what your decision, Your Honor, and  
21 although Mr. Pelzer has ended my brother's life, he cannot  
22 end Jason's song. The bad guys just don't get to win this  
23 one. I tell my children that Jason does and we do, because  
24 we continue on.

25 Thank you.

State v. Pelzer 12/4/09

119

1 THE COURT: Thank you.

2 MR. PASCO: Your Honor, I have two letters from  
3 two of Jason's cousins to pass up to the Court.

4 (Letters passed up.)

5 THE COURT: All right.

6 (Court reading to himself.)

7 MR. PASCO: Your Honor, very briefly, if I could  
8 address the Court. First thing I want to do is thank the  
9 jury for its verdict. In my 16 years as a prosecutor I've  
10 never had a more attentive and more conscientious jury, and  
11 I want to thank them for their verdict. Thank you.

12 Second, I need to commend the Calhoun County Sheriff's  
13 Office. They did, as Your Honor saw, during the course of  
14 this trial, they did a tremendous job in the course of this  
15 investigation, every one of them involved, particularly the  
16 lead investigator, Det. Godwin. Great job investigating  
17 this case.

18 And finally, Your Honor, with regards to the defendant,  
19 Mr. Pelzer, everybody who works in this courthouse, law  
20 enforcement, courthouse staff, my staff, probably everyone  
21 knows that Your Honor is probably one of the most fair judge  
22 and fair sentencer -- fairest judge when it comes to  
23 sentencing in the state, and that's why no matter what you  
24 sentence Mr. Pelzer to, I can promise you this, I'm going to  
25 respect it and everybody in this courthouse is going to

1 respect it, because they know your reputation as a  
2 tremendous judge, but I would ask, Your Honor, to strongly  
3 consider sentencing the defendant to life without parole for  
4 a number of reasons. Number one, for murdering Jason  
5 Rivenburg, and heading to Charleston just a couple of hours  
6 after murdering him; one of his main priorities to buy pot  
7 or do get marijuana and do drugs. But he's not accepted  
8 responsibility at all for the murder of Jason Rivenburg.  
9 Second, I'd ask that you consider giving him life, because  
10 if you give him anything less than that, it's going to give  
11 that defendant hope, and he's shown he doesn't deserve hope,  
12 and perhaps most importantly, Your Honor, Jason Rivenburg  
13 has three children without a father. I take that personally  
14 because I have three children. He has three children now  
15 who won't have a father. Two who were born after he died.  
16 Those children, Your Honor, are going to grow up, if this  
17 defendant doesn't get life, those children are going to grow  
18 up wondering about the day their dad's killer gets out. You  
19 sentence that man to 50 years, even, those children are  
20 going to be my age, knowing that that man's going to get  
21 out. I don't think that's fair to the children.

22 But, again, we will respect any sentence you give,  
23 because -- and I mean this, I mean it sincerely, you're --  
24 and everybody in the courtroom, and I know the Sheriff's  
25 will echo this, you are one of the best, if not the best,

State v. Pelzer. 12/4/09

121

1 judges in this state. So I will respect any decision on  
2 sentencing you give.

3 Thank you, sir.

4 THE COURT: Thank you.

5 All right. Mr. Banks, Mr. Leiendecker, I'll hear  
6 anybody that wants to speak on behalf of the defendant.

7 MR. BANKS: Thank you, Your Honor. Your Honor,  
8 this is Willie Pelzer. I've represented him one time  
9 before. He's got a grand larceny charge that he's currently  
10 on probation for. He's 23 years old. You've gotten to know  
11 some about him, I guess I'm here to fill in some of the  
12 blanks that you haven't heard through the course of this  
13 trial, and I'm sorry about my voice, but I'm a little under  
14 the weather.

15 Your Honor, my client has military training. He was in  
16 the military serving his country. His father, interestingly  
17 enough, used to be a Calhoun County Deputy. Actually, I met  
18 his father well before I knew Willie. Willie actually was a  
19 pretty good student in high school. And one of his interest  
20 in high school was he played chess. I think he is the first  
21 client I ever had who played chess. That's one thing that  
22 always interested me about Willie is he's actually a pretty  
23 smart guy. Obviously, you've heard that he got involved in  
24 drugs and alcohol, and, again, basically he's from a broken  
25 home. His mother, you've gotten to know her a little bit

1 during this trial. She is a rock. She is a good woman. She  
2 wouldn't lie for him for anything, but she is here to  
3 support her son through thick and thin and this is about as  
4 thin as it gets.

5 Your Honor, in contract to his father who was a deputy  
6 sheriff, has never been a part of his life. In fact, his  
7 father has at least one substance abuse problem that I'm  
8 aware of and that would be alcohol. He never supported this  
9 family, and because of that Willie has lacked a father  
10 figure, and Willie's kind of been left to fend for himself  
11 except for the support of his mother.

12 And, again, at age 23, he finds himself here in front  
13 of you today. He has expressed to us at counsel table that  
14 he would like to speak to you. I'm not sure if he's even  
15 capable of at this point or if he's changed his mind.

16 Your Honor, that's all I have. And Ms. Murph might  
17 speak for him.

18 Do you want to say anything to the Judge, Ms. Murph?

19 THE COURT: Yes, ma'am. I'll be glad to hear from  
20 you if you'd like to speak.

21 MS. MURPH: I know that it is said that any mother  
22 would lie for her son. Never. I've always told him, you  
23 can never get me to lie for anything. I've never lied for  
24 him. I love him. He's my son. I always love him, but I  
25 would never lie. I'd never lie for him.

State v. Pelzer 12/4/09

123

1 THE COURT: Thank you, ma'am.

2 MR. PELZER: This the hardest -- this the hardest  
3 conversation I ever had in my life. First off, I was  
4 informed that I would not be able to speak to the family,  
5 only directly to you, Your Honor. And right now while the  
6 family present I would like to apologize for putting them  
7 through this, you know, forcing them to sit through all this  
8 stuff again. I want the family to know, as well as you,  
9 Your Honor, that I know God, and I ask that his will be  
10 done. You know, I didn't deserve a second chance. I didn't  
11 deserve another chance, but I just felt that through my own  
12 selfish reasons that I deserved a chance, and that's the  
13 reason why I didn't take the plea, because I figured I'd  
14 have a chance. I admit what I did was wrong. I admit to  
15 it, and I hurt a lot of people in this situation and I hurt  
16 my family just as well as the Rivenburg's family. And I'd  
17 like to let the family know, you know, I mean, I know it's  
18 no consolation or anything, I pray for them all the time.  
19 If there's anything else they know, I just want them to know  
20 right now, me, that it wasn't over drugs. Nothing like what  
21 the solicitor. It wasn't. It was senseless. It wasn't  
22 nothing I was raised to do. I apologize for hurting the  
23 family, mother, because I'm an only child and I can't -- I  
24 can never imagine my mama having to live with -- that's  
25 another reason why, you know, I chose to put them through

State v. Pelzer 12/4/09

124

1 the trial and it was all -- and I was selfish. I was. That  
2 paper that she read on -- Miss Hope and the twins. And he  
3 had a son. I would like to say congratulations, and I know  
4 this is going to be kind of tough for me, but I pray for  
5 them all the time. I just ask that they don't hate me. I  
6 just ask God to give them the peace that passes all  
7 understanding. And I know it don't mean nothing by asking  
8 that they don't hate me, because God didn't give us hate,  
9 you know, and it's not -- I'm really at a loss for words,  
10 Your Honor, and I've got -- I've got a four-year-old  
11 daughter. I got a lot of family behind me. I now see that  
12 I have no friends. I just ask that one day you let me come  
13 home. With a long time, for me -- I don't deserve the mercy  
14 of this Court, I just ask that you let me go home one day, I  
15 mean, I don't know what to say but I'm sorry, and I'm sorry  
16 for the worries of this town. I was selfish, I admit that.  
17 I should never have put the family though -- I was well  
18 aware of my actions. I just ask you to let me go home just  
19 one day.

20 MR. LEIENDECKER: Your Honor, I can only say that  
21 in all my years of practice before Your Honor that it's  
22 never been this Court's practice nor has it ever been  
23 appropriate for a Court to severely punish someone because  
24 they exercise their constitutional right to a trial. I  
25 agree with the Court. I agree with the evidence as



State v. Pelzer 12/4/09

125

1 presented. I agree with the jury, and I thank them for  
2 their service. I know that, as the solicitor said, they  
3 were as observant as any jury in my years of practice that  
4 I've ever argued a case in front of. I know they had a lot  
5 to go through, a lot of evidence to review. I certainly at  
6 this point, for one of the first times in my practice, also,  
7 have been party to representing a client who although never  
8 to this point doing anything other than maintaining his  
9 innocence stands before the Court admitting his  
10 transgressions and his sins and asking the Court for mercy.  
11 I would ask the Court as well, understanding that even the  
12 number of years sentences available in our state are harsh  
13 and severe sentences that will take from this man his life  
14 from his age to well beyond my age. I would ask the Court  
15 to consider giving him that opportunity to get his life  
16 straight. To work on college and other things while he's in  
17 the penitentiary, and give him some hope that if he does  
18 reform himself he will be able to get out of prison.

19 Thank you, Your Honor.

20 THE COURT: I'd like to commend the Sheriff's  
21 Office and what they did in this case. They were very well  
22 prepared. The Solicitor's Office who presented the case,  
23 the defense who put up an admirable defense. I think you  
24 did an excellent job, however, the evidence was simply too  
25 great.

1 I tried, Mr. Pelzer, to find some reason to show mercy  
2 for you. I can't. If there was ever an innocent victim it  
3 was Mr. Rivenburg. Never have I seen a case where a life  
4 was taken without any reason whatsoever, without any  
5 justification whatsoever. I regret that I can't find in my  
6 heart any reason to show you any mercy in this case.

7 MR. PELZER: I don't deserve it, Your Honor.

8 THE COURT: Indictment Number 2009-GS-09-00022,  
9 the State verses Willie Pelzer, III, charged with murder.  
10 The sentence of the Court is that you be committed to the  
11 State Department of Corrections for the balance of your  
12 natural life without possibility of parole.

13 May God have mercy on you, sir.

14 MR. PELZER: Yes, sir.

15 THE COURT: Terminate the probation, case.

16 Let me express my sympathy to the family of Mr.  
17 Rivenburg. I regret every time you hear the name the words  
18 South Carolina and Calhoun County you'll have to think about  
19 the tragic death of your loved one. I can't do anything  
20 about that. I think you found out there are a lot of good  
21 people in this community.

22 To the jury, I know your job was not easy. Regardless  
23 of the evidence is it never easy to find a person guilty and  
24 you knew that whatever your verdict was the sentence was  
25 going to be severe in this case. You did your job, and as I

State v. Pelzer 12/4/09

127

1 said, I agree with your verdict. I do not see how it was  
2 possible for y'all to have found any other verdict than you  
3 did. You've done your job. I've done mine. If you think my  
4 sentence is too severe, I respect that, but that's my job.  
5 You are not responsible for my sentence. You do not leave  
6 here tonight feeling guilty whatsoever about the sentence  
7 that I imposed on the defendant. That is a matter of law,  
8 as I told you earlier this week so many time, you are the  
9 judges of the facts and I'm the judge of the law. I have  
10 done what I think is proper in the case just as you have  
11 done what you had to do in the case. So do not feel that  
12 you are responsible in any way whatsoever for the sentence  
13 that this young man received. It was a particularly  
14 difficult trial. I appreciate your patience. You have been  
15 very patient. It seems like two weeks ago, Tuesday, in what  
16 we've done in four days, but we have. I've never had a jury  
17 that I did not see a single one of you napping. And that's  
18 unusual, especially the long hours that we put in. So I  
19 appreciate your service.

20 Now, we have a lot of law enforcement here to escort  
21 you to your vehicles. You'll be getting a little check in  
22 the mail. Don't spend it until you get it. You will not  
23 get very much financial compensation for your service on  
24 this jury. You will get the thanks of the people of Calhoun  
25 County for serving and allowing us to administer justice in

1 this fashion.

2 With that you are free to leave. Please follow the  
3 bailiff out, and he'll see that you have escorts to your  
4 cars.

5 Everybody please remain in the courtroom until the jury  
6 has had an opportunity to leave the courthouse.

7 (Jury out at 6:22 p.m.)

8 Anything else from the state?

9 MR. PASCO: No, Your Honor.

10 THE COURT: From the defense?

11 MR. LEIENDECKER: No, Your Honor.

12 THE COURT: Court is adjourned.

13 (This proceeding was concluded at 6:22 p.m.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

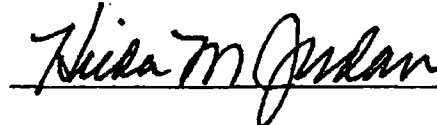
State v. Pelzer 12/4/09

129

## CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS, CALHOUN COUNTY, SOUTH CAROLINA, ON THE 4TH DAY OF DECEMBER, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

JANUARY 8, 2011

## FORM 5

STATE OF SOUTH CAROLINA )

County of Calhoun )

IN THE COURT OF COMMON PLEAS

2010-CP-09-00189

Willie Pelzer III 338263 )

Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR )

POST-CONVICTION RELIEF )

INSTRUCTIONS B 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 LEE Correctional Institution
2. Name and location of Court which imposed sentence Calhoun County of General Sessions, St. Matthews, S.C. 29135
3. Name(s) of co-defendant(s) (if any) Willie Ried Jr, and Jimmy Lee Haygood Jr
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) # 09-GS-09000 22

ATTEST TRUE COPY

K. Hasty  
KENNETH HASTY  
CLERK OF COURT  
CALHOUN COUNTY

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) December 4<sup>th</sup> 2009
- (b) Life without the possibility of parole
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty XXXX
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) My attorney didn't request ~~and~~ an appeal on my behalf after being notified that I did want to appeal the verdict.

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failing to file an appeal after being asked to. (see attac
- (b) See Attachment 1-B
- (c) See Attachment 1-C
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (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? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_



iv. \_\_\_\_\_

(c) the disposition thereof:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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?

NO

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

(a) which grounds have been presented:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

300 ~~vacated sentence~~ / OVER TIAN SENTENCE.

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of Calhoun )

VERIFICATION

I, Willie Pelzer, III, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Willie Pelzer, III  
300 ~~Willie Pelzer, III~~

SWORN to and subscribed before me this 23 day of July 2010.

Debra J. Smith (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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

I, Willie Peltzer III, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. 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.

Willie Peltzer III  
Applicant

SWORN or affirmed to and subscribed before me this

23 day of July, 2010.

[Signature]  
Notary Public

My Commission Expires:

11-4-2015

- 1 Counsel was ineffective for failing to file a direct appeal where applicant clearly stated that he wanted to appeal jury's verdict.
- 2 Counsel was ineffective for failing to request the charge murder manslaughter.
- 3 Counsel was ineffective for failing to call witness to testify applicant's behalf.
- 4 Counsel was ineffective for failing to investigate witnesses

This applicant requests that this Honorable Court appoint  
counsel to represent him in this matter. See Rule 71.1(d) of the  
South Carolina Rules of Civil Procedure.

ate: \_\_\_\_\_

Respectfully submitted  
Mr. Willie Pelzer III #3382  
~~Willie Pelzer~~  
L.C.I. Chesterfield North  
990 Wisacky Hwy.  
Bishopville, S.C. 29010  
Applicant.

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                                    |
|                          | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF CALHOUN        | ) |                                    |
|                          | ) |                                    |
|                          | ) | 2010-CP-09-0189                    |
|                          | ) |                                    |
| Willie Pelzer, #338263,  | ) |                                    |
|                          | ) |                                    |
| Applicant,               | ) |                                    |
|                          | ) |                                    |
| v.                       | ) | RETURN                             |
|                          | ) | (Appointment of Counsel Requested) |
| State of South Carolina, | ) |                                    |
|                          | ) |                                    |
| Respondent.              | ) |                                    |
|                          | ) |                                    |

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 4, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. The Applicant was indicted at for Murder (2009-GS-09-0022). Mark Leiendecker, Esquire, and Martin Banks, Esquire, represented him. On December 1-4, 2009, Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr. Applicant was found guilty, and on December 4, 2009, Applicant was sentenced to life imprisonment. No appeal was taken.

Attached herewith and incorporated herein are the records of the Calhoun County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. Failed to file direct appeal.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

#### V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

*[Signatures on next page.]*



Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By: Mary S. Williams  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Feb. 4, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

WILLIE PELZER, 338263.

Applicant.

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-09-00189

AFFIDAVIT OF SERVICE BY MAIL

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Michael H. Quinn, Jr., Esquire**  
**Ellis Lawhorne & Sims, PA**  
**Post Office Box 2285**  
**Columbia, SC 29201**

DATED this 7th day of February, 2011

Lauren Meara  
 Lauren Meara, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA      COURT OF COMMON PLEAS  
COUNTY OF CALHOUN              2010-CP-09-00189

WILLIE PELZER, )  
Applicant, ) TRANSCRIPT OF RECORD  
-vs- ) November 1, 2012  
STATE OF SOUTH CAROLINA, )  
Respondent. ) St. George, South Carolina

B E F O R E:

The Honorable Carmen T. Mullen, Judge.

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

Tara Shurling, Esquire  
Attorney for the Applicant

Megan Harrigan, Esquire  
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR  
Circuit Court Reporter

|    |                  |        |       |          |         |
|----|------------------|--------|-------|----------|---------|
| 1  | I N D E X        |        |       |          |         |
| 2  | WITNESS          | DIRECT | CROSS | REDIRECT | RECROSS |
| 3  | MARTIN BANKS     | 7      | 27    | 35       | 43      |
| 4  | WILLIE PELZER    | 45     | 64    | --       | --      |
| 5  | MARK LEIENDECKER | 73     | 78    | --       | --      |
| 6  |                  |        |       |          |         |
| 7  |                  |        |       |          |         |
| 8  |                  |        |       |          |         |
| 9  |                  |        |       |          |         |
| 10 |                  |        |       |          |         |
| 11 |                  |        |       |          |         |
| 12 |                  |        |       |          |         |
| 13 |                  |        |       |          |         |
| 14 |                  |        |       |          |         |
| 15 |                  |        |       |          |         |
| 16 |                  |        |       |          |         |
| 17 |                  |        |       |          |         |
| 18 |                  |        |       |          |         |
| 19 |                  |        |       |          |         |
| 20 |                  |        |       |          |         |
| 21 |                  |        |       |          |         |
| 22 |                  |        |       |          |         |
| 23 |                  |        |       |          |         |
| 24 |                  |        |       |          |         |
| 25 |                  |        |       |          |         |

1 (November 1, 2012.)

2 MS. HARRIGAN: This is William Pelzer, III  
3 vs. the State of South Carolina, docket number  
4 2010-CP-09-00189. Applicant was indicted during the  
5 April 2009 term of the Calhoun County Grand Jury for  
6 murder. Mark Leiendecker and Martin Banks represented  
7 the Applicant. On November 4, 2009, Applicant proceeded  
8 to a jury trial in front of the Honorable James C.  
9 Williams, Jr.

10 Applicant was found guilty as indicted, and  
11 on December 4, 2009, Judge Williams sentenced him to life  
12 imprisonment. Applicant did not appeal his conviction or  
13 sentence. On August 4, 2010, Applicant filed a timely  
14 application for post-conviction relief alleging that  
15 counsel was ineffective for the following reasons:  
16 Failing to file a direct appeal on Applicant's behalf,  
17 failing to request a jury trial on manslaughter, failing  
18 to call witnesses to testify on Applicant's behalf, and  
19 failing to investigate witnesses.

20 The State made its return on February 14,  
21 2012, and Applicant is represented in this action by Tara  
22 Shurling, and Ms. Shurling has notified the State ahead  
23 of time that she wishes to proceed on the following  
24 additional allegations: Counsel was ineffective for  
25 allowing witness Willy Reed to read part of a gun

1 agreement into the record; counsel was ineffective for  
2 offering into evidence through cross-examination of  
3 witnesses that the trailer Applicant had previously lived  
4 in was without electricity; counsel was ineffective for  
5 calling Applicant's mother as a witness and thereby  
6 forfeiting final agreement; counsel was ineffective if  
7 Applicant had been represented by Martin Banks on a prior  
8 grand larceny charge and did not have faith in his  
9 abilities as a lawyer and wished for him to be relieved  
10 as counsel; counsel was ineffective for urging Applicant  
11 to address the Court during his sentencing hearing.

12 Those are the grounds, and the State has  
13 noticed this.

14 MS. SHURLING: Thank you, Your Honor.

15 In addition to the allegations that have just  
16 been cited by the State, and Respondent may have  
17 mentioned this, but I didn't catch it, Mr. Pelzer is, of  
18 course, alleging his right to direct appeal following  
19 conviction and sentence --

20 MS. HARRIGAN: -- as was stated in his  
21 original application.

22 MS. SHURLING: Thank you very much. And, in  
23 addition, Your Honor, I will freely admit that just  
24 immediately prior to this proceeding, I advised counsel  
25 for the Respondent and Your Honor that on the way down

1 here, I had obviously been thinking over this case, and  
2 it had occurred to me that a fairly recent case, the case  
3 of the State vs. Gracely may have application in this  
4 case. I have reviewed the record with regard to what was  
5 done in terms of prosecution of codefendants Reed and  
6 Haygood. They both alleged involvement that would be  
7 characterized as accessory and was, indeed charged as  
8 accessory after the fact, whereas my client, of course,  
9 was charged with murder.

10 It would be the Applicant's position that on  
11 the facts of this case, based on multiple statements that  
12 were given and some admissions with regard to having lied  
13 about incidents in this case, that defense counsel could  
14 have impeached them with the fact that under at least one  
15 scenario that it would have been possible for him to have  
16 been charged as a principal under the theory of  
17 accomplice liability, that rather being benefitted with a  
18 charge of accessory after the fact that they could have  
19 been charged with being guilty of murder as an accessory  
20 under the hand of one -- pardon me, under the theory of  
21 accomplice liability and that for that reason, given the  
22 fact that the State had elected not to charge them with  
23 murder, that defense counsel should have sought to  
24 cross-examine them as to whether or not they were aware  
25 that they could have potentially been charged with

1 murder.

2                   They hadn't been, and what their  
3 understanding of what the penalties would have been if  
4 they, like the defendant, had been charged with murder,  
5 and that would be it, Your Honor.

6                   MS. HARRIGAN: And as with the last case, the  
7 State would object that we were just put on notice of  
8 this, and if Your Honor would allow the amendment that we  
9 be given time to submit additional memoranda or whatnot  
10 in regards to this case.

11                   THE COURT: Absolutely, Ms. Harrigan.

12                   MS. SHURLING: And as Your Honor knows, as we  
13 discussed before the hearing began, I readily admitted  
14 that I had just basically developed this issue and  
15 asserted to the Court that I thought as a matter of  
16 equity the State would be entitled to time to do a bench  
17 brief or a proposed order, whatever format Your Honor  
18 would like to see the issues addressed in.

19                   Your Honor, at this time we would call  
20 defense counsel Mr. Martin Banks, please.

21                   MARTIN BANKS,

22                   having been first duly sworn,  
23 was examined and testified as follows:

24                   DIRECT EXAMINATION

25 BY MS. SHURLING:



1       Q. Mr. Banks, could you state your full name for the  
2 record, please.

3       A. Martin Rast Banks.

4       Q. And do you recall representing Willie Pelzer back  
5 in December of 2009?

6       A. Yes.

7       Q. Would it be fair to say that the lion's share of  
8 the evidence against your client came in the form of  
9 accomplice testimony?

10               MS. HARRIGAN: Objection. Leading.

11               MS. SHURLING: I mean, codefendant testimony?

12               THE COURT: We're going to let her lead to an  
13 extent, but obviously don't put words in his mouth, Ms.  
14 Shurling. Go ahead. He can answer the question.

15 BY MS. SHURLING:

16       Q. Mr. Banks, can you please summarize for us what  
17 the State's evidence against your client was.

18       A. They had the two accomplices that detailed their  
19 connection with him throughout the night. They had a  
20 ream of paper text messages that my client had -- they  
21 had printed from his text messages for the three prior  
22 days and they had -- we had some alibi. They had crime  
23 scene; they had ballistics; they had the gun; they had --  
24 I mean, it was a pretty complete case.

25       Q. Let's start one thing at a time. The gun that was

1 used in this case belonged to whom?

2 A. One of the two accomplices.

3 Q. And wasn't there some differentiation between who  
4 the legal owner was and who possessed the gun?

5 A. Yes, there was.

6 Q. There was, in fact --

7 MS. SHURLING: Your Honor, this is leading  
8 somewhat, but it's all in the record. I'm just trying to  
9 avoid being here all day.

10 BY MS. SHURLING:

11 Q. The evidence as developed at trial actually  
12 revealed that one of them had purchased the gun and the  
13 other one was the primary possessor of the weapon; is  
14 that correct?

15 A. That's right, that's right.

16 Q. And so when you say they had the gun, they had  
17 ballistic evidence tying the gun owned by one of the  
18 codefendants to the shooting?

19 A. That's right.

20 Q. And then they had the testimony of one of the  
21 codefendants asserting that your client had taken the gun  
22 without permission.

23 A. That's right.

24 Q. And, of course --

25 A. And disposed of it.

1 Q. And disposed of it. Again, all of that being in  
2 the form of codefendant testimony.

3 A. Right.

4 Q. The plethora of e-mails that you have mentioned --

5 A. Text messages.

6 Q. Text messages, rather, that were discussed at  
7 length during this trial, did your client admit this  
8 murder in any of those text messages?

9 A. No. In fact, he actually -- one of them that I  
10 kept out had the comment about catching a murder charge,  
11 and I kept that one out, but that was prior to these  
12 events, but it -- they were trying to get it in for  
13 prejudicial reasons, and I kept that one out.

14 Q. Okay. So the only text message that made  
15 reference to a murder was one that was actually sent  
16 between your client and someone else, I believe it was a  
17 woman named Ms. Brown?

18 A. Yeah, yeah.

19 Q. Before the deceased in this case was killed.

20 A. Sure.

21 Q. Okay. So toward what purpose were the text  
22 messages introduced by the State?

23 A. Well, the one that I recall was there were so many  
24 of them, almost constantly, every few minutes, except for  
25 times when he would presumably be asleep, I mean,

1 throughout the day, throughout the night, constant,  
2 constant. One of the longest gaps, and maybe the  
3 longest, as I recall, in any text message, was the time  
4 frame in which the events, these events that he was  
5 convicted of, occurred, and it was only about a 20 minute  
6 or so span of time.

7 Q. Okay.

8 A. And they put that in to show that he had his phone  
9 off or was busy with something else.

10 Q. What was the relationship between the two  
11 codefendants in this case?

12 A. You mean were they relatives, is that what you're  
13 asking?

14 Q. How did they know one another? How well did they  
15 know one another?

16 A. Well, I didn't get too well into their  
17 relationship, but they were friends. They hung out  
18 together.

19 Q. Okay. And isn't it true that the testimony in  
20 this case indicated that they had known each other for  
21 quite some time?

22 A. Yeah, yeah.

23 Q. Grew up together?

24 A. Sure.

25 Q. Okay. And how long did the codefendant

1 indicate -- pardon me, the codefendant who supposedly  
2 issued the excited utterance about, "My cuz just shot  
3 somebody," how long did he know your client, according to  
4 your testimony?

5 A. I can't recall.

6 Q. If I refresh your recollection, the record  
7 indicates they'd known each other for about a month,  
8 would that surprise you?

9 A. If that's what the record states.

10 Q. So you got two codefendants that have known each  
11 other well for a very long time, and your guy was kind of  
12 the odd man out.

13 A. That's your -- that's your words.

14 Q. In terms of he --

15 MS. HARRIGAN: Your Honor, the State would  
16 object. I think that's a mischaracterization of the  
17 record. All three codefendants had grown up in this area  
18 and known each other for a while. One codefendant had  
19 left to join the Navy and had recently returned in the  
20 past few months, but they all grew up in this town. Is  
21 that is a correct characterization of the record?

22 THE WITNESS: That's true.

23 THE COURT: Thank you.

24 MS. SHURLING: A moment's indulgence, Your  
25 Honor. I'll give you the page.

1                   Your Honor, I'll move on and provide the  
2 Court the page cite to the reference I was making in a  
3 moment.

4 BY MS. SHURLING:

5       Q. But do you recall during the course of this trial  
6 if it became an issue who owned the gun and how they came  
7 to acquire the gun?

8       A. Sure, sure, yes.

9       Q. And do you recall cross-examining that codefendant  
10 about the circumstances surrounding his purchase of the  
11 weapon?

12      A. Yes.

13      Q. During your cross-examination of Reed, you  
14 questioned him about giving the gun to Haygood almost  
15 immediately after he purchased it, do you recall that?

16      A. Yeah, in general, yes.

17               MS. SHURLING: And, Your Honor, my notes  
18 indicate this is immediately in the beginning of cross on  
19 pages 162, going forward from there.

20 BY MS. SHURLING:

21      Q. And my question is, if you look at page 169 in the  
22 volume containing the testimony of Reed, you have Reed  
23 read portions of the firearm transfer certificate,  
24 specifically underlining the fact that Reed gave a false  
25 answer to the question that he was buying it for his own

1 use and not planning on giving it to anybody else. Do  
2 you recall that?

3 A. I do.

4 Q. And how well was Reed able to read that -- that  
5 was almost a tongue twister. How well did it appear  
6 Mr. Reed was able to read the document in question?

7 A. Well enough. I mean, I don't remember it being  
8 problematic.

9 Q. Well, at the point when you had him read the  
10 portion of the document in question, he had already  
11 admitted lying on the form that he filled out when he  
12 purchased the weapon, right?

13 A. Right.

14 Q. And so what would have been the point in having  
15 him publish the portion of the docket -- the portion of  
16 the document that included the lie he'd already admitted  
17 making?

18 A. I was trying to hammer home that lie, that you  
19 actually didn't just lie, you signed something and agreed  
20 that you wouldn't do that. I was hammering it home.

21 Q. Okay. Did it occur to you that if Mr. Reed was  
22 unable to -- his last name is unfortunate -- if Mr. Reed  
23 was unable to read the document, clearly in the presence  
24 of the jury, that it might undermine the benefit you had  
25 gotten from him admitting to the lie to begin with?

1 A. No.

2 Q. Weren't you concerned that if he appeared to be  
3 having a difficult time reading the document that the  
4 jury might excuse his lie as possibly being a product of  
5 his misunderstanding the document?

6 A. No.

7 Q. Okay. At some point in the trial, there actually  
8 came a point where you introduced, or solicited,  
9 testimony concerning the fact that the power was off at  
10 your client's trailer. Do you recall that?

11 A. Yes.

12 MS. SHURLING: And, Your Honor, that's again  
13 on page 178 and is later mentioned again on page 216 of  
14 the testimony.

15 BY MS. SHURLING:

16 Q. Why did you elicit that particular line of  
17 testimony?

18 A. I was trying to help establish that he lived at  
19 his mother's house to help fortify his alibi.

20 Q. Did you consider that in highlighting for the jury  
21 the fact that the power supply had been cut off at his  
22 home that you might create in the mind of the jury the  
23 suggestion that he might be desperate for money?

24 A. I might as equally, since my theory was he was  
25 living with his mother, he wouldn't be desperate for



1 money, I thought I had a better chance of soliciting  
2 empathy, if anything.

3 Q. Did you represent Mr. Pelzer at any time prior to  
4 this murder charge?

5 A. Actually, let me follow up on that, because the  
6 testimony was that his mother paid for his cell phone,  
7 you know. There was no poor issue here. He was well  
8 taken care of, and he had a cell phone he could afford.

9 I'm sorry. Now, what was your question?

10 Q. Did you represent Mr. Pelzer on a previous date on  
11 different charges?

12 A. You know, I have no recollection of that. I heard  
13 you say it earlier, and if I did, it would have had to  
14 have been a Calhoun County case, and I think you said it  
15 was a grand larceny.

16 I have no recollection, unless it was a juvie  
17 case, and that would have been before -- I guess, by his  
18 age, before 2002, but I don't have any recollection of  
19 that. Has he got a conviction on a grand larceny in  
20 Calhoun County since 2002?

21 Q. There is a charge from November 2008.

22 A. From what county?

23 Q. Calhoun County.

24 A. If I did, I have no recollection of that, and if I  
25 did, and the reason I don't recall it, is because it

1 never became an issue during trial.

2 Q. I understand. Do you recall when I was at your  
3 office last week --

4 A. I do.

5 Q. -- to review your file?

6 A. Yes, and we tried at the time to find the rap  
7 sheet. I never could find the rap sheet.

8 Q. And do you recall your secretary telling me that  
9 she had been able to locate him on the computer?

10 A. No. I wasn't there then. She's never told me  
11 that.

12 MS. SHURLING: Your Honor, I would proffer as  
13 an officer of the Court that she told me that she was  
14 able to locate him on the computer as a previous client,  
15 and she gave me a date, which upon close examination I  
16 realized was his date of birth.

17 MS. HARRIGAN: The State would object. She's  
18 testifying.

19 THE COURT: Okay. Sustained.

20 MS. SHURLING: Thank you.

21 THE WITNESS: But I will say that if I did,  
22 the point would be that it never became an issue in the  
23 trial. Apparently I did a good enough job for him, and  
24 he never thought that was, as you said earlier, he had no  
25 confidence in me.

1 BY MS. SHURLING:

2 Q. I understand. Let me rephrase my question here.

3 Do you recall a point in time prior to the trial  
4 of this case when Mr. Pelzer indicated to you that he  
5 would like you to be relieved and get another lawyer?

6 A. No.

7 Q. Did Mr. Pelzer ever indicate to you that he did  
8 not have confidence in you as an attorney because of the  
9 way you had mishandled, in his view, a previous charge  
10 for him?

11 A. No.

12 Q. So any assertion that he would make that you  
13 declined to seek to be relieved on that ground would be  
14 untrue?

15 A. I have absolutely no recollection of him ever  
16 having a problem with me representing him in that trial,  
17 or in any previous arrangement.

18 Q. Now, this was a long trial, wasn't it?

19 A. Yes, it was.

20 Q. And would it be fair, in your estimation, to say  
21 that the case against your client rested largely on the  
22 testimony of the codefendants?

23 A. Yeah -- well, mostly, yes, mostly.

24 Q. Was their credibility a central issue in this  
25 trial?

1       A.   Surely.

2       Q.   They were both charged with accessory after the  
3 fact?

4       A.   Right.

5       Q.   And yet, as we've discussed, there was evidence  
6 that the gun that was used in this case originated on the  
7 unique facts of this case, interestingly, with both of  
8 them. One of them was the legal owner and one of them  
9 was the possessor, if you will.

10      A.   Right, right, correct.

11      Q.   Okay. According to the trial transcript, both of  
12 these people were charged with accessory after the fact,  
13 correct?

14      A.   Sure, that's right.

15      Q.   And the record of the cross-examination of each of  
16 these people, Mr. Jimmie Haygood and Mr. Reed, will  
17 indicate that you questioned them about other potential  
18 benefits they may have gotten in exchange for their  
19 testimony, if one of them had some other minor charges  
20 that were still pending and so forth, correct?

21      A.   Uh-huh, yes.

22      Q.   Could the State, in light of the facts as they  
23 were developed at trial, or the facts as they were made  
24 known to you in discovery, have charged either or both of  
25 them for murder?

1       A. I suppose so. They could have charged him with,  
2       you know, misprison of a felony. They could have charged  
3       him with anything they wanted to that would fit these  
4       facts.

5       Q. Well, under a theory of accomplice liability or  
6       the hand of one being the hand of all, were the facts in  
7       this case susceptible of a theory that could have brought  
8       them in the fold as a principal as opposed to an  
9       accessory after the fact?

10      A. True.

11      Q. So would it not have been a potential benefit that  
12      you would have wanted to highlight to this jury that the  
13      State had not chosen to charge them as principals, but,  
14      rather, had gifted them, if you will, with a charge of  
15      accessory after the fact?

16      A. I'll tell you this: If I didn't mention that  
17      specifically, and I probably didn't, I think if a jury  
18      who sat through four days of trial, they can come to  
19      their own conclusions about what they could have been  
20      charged with, and, obviously, they might have been deeper  
21      involved, they didn't believe it, so they convicted him.

22      Q. I understand. So you believe that the evidence  
23      was such that the jury could have concluded on their own  
24      that these guys could have been part of whole deal,  
25      basically?

1       A.   Sure, sure.

2       Q.   Okay.  But unless you questioned them about it and  
3   questioned them about what their sentencing exposure  
4   would have been if they had been charged with murder, how  
5   did this jury know that murder carries a sentence of 30  
6   years to life, day for day?

7       A.   I don't know what the jury might have known or  
8   might have speculated.

9       Q.   If you had questioned them about the fact that  
10   they could have potentially been charged with murder and  
11   were not, could you not then have delved into what their  
12   sentencing exposure would have been if they had been  
13   charged with murder?

14      A.   I suppose so.

15      Q.   And under existing South Carolina case law, that  
16   would have entitled you to make the jury aware of both  
17   the minimums --

18      A.   Right.

19      Q.   -- and maximums that they would have been exposed  
20   to?

21      A.   Uh-huh.

22      Q.   Would that not have been a powerful thing, to let  
23   the jury know in terms of demonstrating their motive  
24   for -- their potential motive for bias or downright pro  
25   varication?

1       A. It might have, sure.

2       Q. Is there any reason you might not have gotten into  
3 that?

4       A. No, no particular reason.

5       Q. How about an appeal? Did you think about filing  
6 an appeal for him?

7       A. Yeah. I thought about it, and, in fact, most  
8 cases -- this case stands alone in my 20 years. I think  
9 almost every other trial that I've had I believe I've  
10 filed an appeal in, and usually the defendant asks for  
11 that.

12             In this one, the thing that just turns this whole  
13 thing on its head was at sentencing, it turned it into a  
14 guilty plea. His sentencing turned it into a guilty  
15 plea. Even though it wasn't really a guilty plea, the  
16 tenor of it became a guilty plea because of the way he  
17 broke down and just utterly and completely confessed.

18             And you kind of walk out of that, and it was  
19 just -- I've never been involved in something as  
20 emotional as that. Ten minutes, in any courtroom,  
21 defendant choking back tears and just truly sorry for  
22 what he'd done, so you walk out of a situation like that,  
23 really having lived through a guilty plea, even though  
24 you went through four days of a trial. It was an  
25 incredible moment, and so that is sort of where I left

1 it.

2 Q. Okay.

3 A. Do I wish I filed an appeal? Yes, but he never  
4 asked me to, and I thought that is where he was, mentally  
5 and emotionally. He'd come to terms with it and didn't  
6 want an appeal.

7 Q. I understand.

8 A. I didn't see an issue for appeal, at any rate.

9 Q. And I know Her Honor well enough to know she'll  
10 read that portion of the transcript, but when you say it  
11 became a guilty plea, in actuality he broke down and said  
12 he was very sorry for hurting the family, for putting  
13 them through a trial, for --

14 A. He admitted it.

15 Q. Well, we'll let the record speak for itself in  
16 that regard, but that was after he had been found guilty  
17 by a jury.

18 A. Sure.

19 Q. By the way, did you know he was going to address  
20 the Court in that manner when he did it?

21 A. No. In fact, in the moments prior -- when the  
22 sentence came down and in the moments between the actual  
23 verdict and sentencing, he leaned over to me and asked  
24 me -- no.

25 He told me he was going to speak to the judge, and



1 I said, No, you're not. What are you going to say?

2 And he said he was going to deny the whole thing  
3 and deny -- you know, and maintain his innocence and  
4 tell -- you know, and blame it on those guys or whatever,  
5 and I said, No, you're not. Do not say that. That will  
6 not work in your favor. Just leave it alone.

7 And then the next thing I know, he's doing quite  
8 the opposite.

9 Q. You've said if you had it to do over again you  
10 wished you would have filed an appeal.

11 A. Yeah, I think so, because I think that's the only  
12 thing you have to hang your hat on today, quite frankly.

13 Q. Well, he got a life sentence.

14 A. He did.

15 Q. So he didn't have anything to lose by appealing.

16 A. That's true, and that is the only reason he filed  
17 because I really don't see an issue for appeal.

18 Q. And are you familiar with our Supreme Court's  
19 edict In Re: An anonymous member of the bar that places  
20 the burden on counsel to preserve the right to appeal?

21 A. Sure, sure.

22 Q. Even if the client hasn't expressly asked that you  
23 do so.

24 A. Sure.

25 Q. Okay. Thank you very much.

1 MS. SHURLING: May I have one moment, Your  
2 Honor?

3 THE COURT: You may.

4 BY MS. SHURLING:

5 Q. Mr. Banks, going back just for a minute to the  
6 question of whether you had the necessary relationship  
7 with your client to develop this case for trial, did he  
8 discuss with you the actual facts in this case or was it  
9 always his -- let me rephrase that.

10 Was it always his position that he had an alibi  
11 and that he was not involved in this in any way, shape,  
12 or form or fashion?

13 A. Yes. In fact, the eve of trial, he asked me, kind  
14 of heartfelt, do I believe him, and I said, I believe  
15 you.

16 Q. Did you ever discuss with him the fact that the  
17 codefendants were, by their statements, making it out to  
18 be that he was the cold blooded murderer and they were  
19 the accessories and did you ever encourage him to tell  
20 you whether or not there might be any basis for arguing  
21 that those roles were, in fact, reversed, that he was the  
22 accessory?

23 A. Repeat that for me, please.

24 Q. Did you ever talk with him about -- or encourage  
25 him to discuss with you if there was anything at all that