**VOL. II OF III**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
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S.C. Supreme Court

Appeal from Abbeville County

R. Lawton McIntosh, Circuit Court Judge

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SHONDRAY LAMONT MARTIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213701

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# A P P E N D I X

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A I absolutely have no idea how they structure their report. I'm not trying to be evasive, but I have no, again I don't work in that department, I would not even want to hedge a guess as to what anything on that is, on there means or what it is.

Q Let me ask you this. How long have you been with SLED?

A Well, almost 13, 14 years.

Q Okay. Well, why would somebody go to all the trouble of taking all this DNA analysis and all that and not comparing it to any analysis of any of the defendant's --

MR. JONES: Objection, Your Honor, that is asking for pure speculation, he is asking for pure speculation from this witness, to ask why would somebody go to all the trouble to prepare this report. I mean, he said he didn't prepare the report, he can't testify as to what is contained in the report, he wouldn't venture testifying as to what's contained in the report, and now he wants to ask him, well, why did they prepare it.

MR. McLAIN: Your Honor, I'm not asking him what's in the report, I'm asking him why all this laboratory results would be taken and never applied to anything.

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THE COURT: Cross-examination has wide latitude but the witness can only answer if he knows the answer.

MR. McLAIN: Yes, sir.

THE WITNESS: And would you state your question again, I'll see if any part of it I can answer.

MR. McLAIN: Yes, sir, okay.

BY MR. McLAIN:

Q I'm not trying, it's not a tricky question.

A I'm not trying to be evasive, it's just if I can't answer something, I'm latent print, crime scene, not DNA.

Q I understand. I understand, but this is a one, two, this is a five page South Carolina Law Enforcement Forensic Services lab report.

MR. JONES: Is he testifying and publishing again, Judge? I object. He's to ask the witness questions.

THE COURT: Stop the voluntary remarks, counsel.

MR. McLAIN: I'm sorry.

BY MR. McLAIN:

Q What is that?

A Again, it's identified as a Department of

Forensic Science DNA analyst report.
Q Okay.
A I can tell you what department it's from and it's on our letterhead.
Q Uh-huh.
A And it's addressed to, you know, to the Chief Deputy there. I have no idea what's in that report.
Q Right, but do you know what they're used for?
A What the reports are used for?
Q Yes, sir.
A Yes, sir. The reports are used for many things. DNA, they do parental determinations. If it's related to a criminal offense, it's a genetic testing of blood. Other than that, I couldn't tell you what goes on in that department because really I don't know. I'm versed in how to collect DNA. Other than the analysis of DNA, what can destroy DNA, those sorts of things, other than that, I'm not versed in the analysis of DNA.
Q Okay. And, so, you don't have any idea why this is not used by SLED?
A Sir, I would not know what a typical report looks like, whether it contains five pages or fifty pages.

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Q But my question is, my question is this. Do you know why this DNA analysis report was never used to apply to the DNA of the alleged defendant?
A I don't know if it was applied to use in this case because I don't do DNA. Again, I'm not trying to be argumentive. I don't know if it was applied to this case.
Q If it were, wouldn't the DNA analyst be here today to testify?
A Sir, again that would depend on who you subpoenaed and who the prosecution subpoenaed to be here.
Q I don't represent the prosecution, correct?
A No, sir, you represent the defense.
Q Okay. When you got there you could tell from your expertise approximately where this deceased was shot?
A I can tell you where blood letting appeared to have occurred. That means where the start of the incident, in my opinion, had started and where the victim came to rest.
Q Okay. And at the risk of being repetitive, I'm sorry.
A Yes.
Q Can you show us where the blood letting, just

starting right there with the blood trail, where the blood letting appeared to begin?
A It appeared to begin roughly area three.
Q Okay.
A It went across the road, in the ditch.
Q Uh-huh.
A Back across the road.
Q Uh-huh.
A And approximately a quarter of the way up the drive.
Q Uh-huh.
A So, you're talking another 50 yards up the driveway on the left-hand side. Again, you had two spots or areas where there was blood pooling, and then where the blood trail stopped.
Q And then this is kind of an elevation here around five or six, as far as the ground?
A Yes, sir. This is actually a sloped hill, so you are standing down here, and again it's depicted in the photographs. You can see there is a slight elevation over the roadway, over the driveway, correct.
Q Okay. And you were told that those other, these exhibits were right around three, all of them?

A Roughly around that area.
Q Okay. Including those glasses?
A The best of my recollection, that is where I was told they came from.
Q Okay.
A Again, I could not testify to actually where they came from, just what I remember being told.
Q And you were also told the book bag was right there?
A In that general vicinity. Again --
Q Around three?
A Yes, sir, in the general vicinity at the beginning of the driveway those items were found.
Q And were you given a list of the guests at the party?
A No, sir.
Q Do you know whether our not there were any children present there?
A I have no idea as to how many people was there, who was there, and if I just remember correctly, it was a boxing match that night, that's the only thing I remember, and I don't know if it was Tyson, I don't know, Tyson wasn't fighting back then, I don't remember who it was, but I don't remember other than a boxing match, I believe.

Q Do you know what ever happened to Mr. Sutton's shirt?
A Yes, I know what happened to it. It went to SLED. After it went to SLED, what happened to it, as far as analysis, I don't know, but I know what happened to it after I had hands on it. It was held in a safe, controlled environment in case it was ever needed, or determined to be needed.
Q Was there any guns found at the scene?
A No, sir. I walked the edge of those woods as well as asked the local law enforcement to have persons walk the edge of the woods and the ditch. There was no weapon, to my knowledge, at least the night I was there, that was found, that was linked or associated with the alleged crime.
Q No weapon at all?
A No weapon that was to be associated with this crime, correct.
Q Was it ever determined whose eyeglasses those were, to your knowledge?
A No, I couldn't tell you. I have no idea.
MR. McLAIN: That's all I have, Your Honor, thank you.
THE COURT: Redirect examination?
MR. JONES: None, Your Honor. We would ask

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the agent be excused, please.

MR. McLAIN: No objection.

THE COURT: Thank you. You may be excused, sir, or you may stay with us if you wish.

THE WITNESS: Thank you, sir, I think I'll leave.

THE COURT: Yes, sir.

(Witness excused).

MR. JONES: He's got to drive back to Columbia, Judge.

THE COURT: Yes, sir.

THE WITNESS: Thank you.

THE COURT: Ladies and gentlemen, we have discussed prior to your coming out after the luncheon period that we would let you go early this afternoon because we have some additional matters of law to discuss. That is the concurrence of both sides, correct?

MR. JONES: It is with the State, Your Honor.

MR. McLAIN: Yes, sir.

THE COURT: Do not discuss the case by, between and among yourselves nor with any other person under any circumstances.

Now, here again the Court is very aware of the normal curiosity that people show toward things

of this nature. You may be put under some pressure by a child or someone who is innocent of mind and meaning to tell them what this case is about but under all circumstances you must refrain from any comment about the case, what it involves or what the subject matter is or anything about it unless a verdict has been rendered. At that time you are free to discuss it or not discuss it, as you have already been told.

Do not discuss the case at all by, between and among yourselves nor with any other person. If any person asks you about the case or inquires in any way, whatever the inquiry may be, you must tell them that you are a juror and you are not permitted to discuss the case.

Now, if that person persists and keeps on asking questions after you have made them aware that you are a juror that's highly improper, wrong and illegal and you should use every means and measures at your disposal, whatever they may be, to discover the identity of any such person or persons and report it to one of the bailiffs at the door or to the Court Clerk who sits immediately in front of the Court quietly and without alarming anyone else of the incident and the Court will deal with that

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and investigate it properly and it will be looked into seriously, quickly and with effectiveness.

If there were to be any media coverage such as newspaper, television or radio of this trial it's your personal responsibility to ignore such newspaper, radio or television report or information as soon as you realize that what you are seeing, reading or hearing has to do with this trial, as it's your oath to well and truly try this case upon the law and evidence presented in this courtroom in front of you during the course of the trial and upon nothing else whatsoever.

Have a pleasant evening and be back in your jury room at 9:30 in the morning. Everyone else remain seated. The jurors are excused.

(The jury was excused from the courtroom at 4:23 p.m.).

THE COURT: We will take a short recess at this time as requested by defense counsel. When we return we will commence a Jackson versus Deno hearing and the State will open on that matter with whatever information that it brings, and then we will get into it in that fashion.

MR. JONES: Thank you, Judge.

THE COURT: Anything, anybody want to speak

for the record before we take the recess?

MR. JONES: How much time does defense think they need? I have about 4:25 now, 4:25, what time should we expect to reconvene to address this Jackson v. Deno hearing?

THE COURT: How long do you need?

MR. McLAIN: Judge, I'm going to need about 30 minutes.

THE COURT: 30 minutes?

MR. McLAIN: Yes, sir.

MR. McLAIN: Or at least 20.

THE COURT: Start back at 4:50.

MR. McLAIN: Thank you, sir.

THE COURT: We're in recess.

(Recessed at 4:25 and reconvened at 5:05 p.m.).

THE COURT: The record is open. This is the State of South Carolina versus Shondra Lamont Martin, indictment number 2002-192.

Solicitor Jones?

MR. JONES: If it please the Court, Your Honor, we call Earl Gilliam to the stand.

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EARL GILLIAM,

after being first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q State your name for the record.

A Earl Gilliam.

Q Where do you work?

A United States Secret Service.

Q Where were you working on July, I'm sorry, on October 18, 2001?

A With the United States Secret Service.

Q Okay. Did you have an occasion to sit down with a man named Shondra Martin toward the end of discussing with him some matters on that day?

A Yes, sir, I did.

Q And do you recall whether or not you were with him in a room somewhere?

A Yes, sir. We were at the Spartanburg Public Safety -- are you referring to the first interview or the second one?

Q I'm referring to an interview that took place on 10/18/2001.

A Yes, sir. We were at the Spartanburg Public Safety Department, one of their offices.

Q Okay. And do you recall the size of the

office?
A It was an interview room size, maybe 10 by 12, 10 by 10.
Q And when he was in your company who was there with you? Anybody?
A It was other agents. It was Mario Lijoi of the Drug Enforcement Administration, it was a Public Safety officer and another Secret Service agent, Jonathan Bryant.
Q Okay. And did you have an occasion to explain to Mr. Martin, Shondra Martin, that you wanted to make him aware of his Miranda rights?
A Yes, sir, I did.
Q Prior to doing that did you have an opportunity to observe him for any length of time to determine whether or not he appeared to be alert and normal acting?
A Yes, sir. He appeared to be alert, I had no problems with him at all. I had advised him of his Miranda rights via a Miranda rights card I keep in my wallet.
Q Do you have it with you today?
A Yes, sir. We always keep them in our credentials.
Q Would you provide it and explain to the judge

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what procedure you went, you went through to advise him of his Miranda rights?

A Yes, sir. I have here an advisement of Miranda rights card, and this card is issued through the Federal Law Enforcement Training Center, the legal division. On the front side it has in English the Miranda rights, and on the back side it has it in Spanish, and we are instructed in training to read this card to the person verbatim and ask the questions that are at the end of the Miranda card.

Q All right. If you would, read verbatim the questions asked of Shondra Martin on that date and just go back through, if you can for the judge, everything that you did with regard to reading him his Miranda warnings on October 18th, 2001, with Shondra Martin.

A Actually I administered the warnings and then went into the waiver. And the waiver states do you understand your rights, and it states are you willing to waive these rights and talk to me.

Mr. Martin responded that he was okay with talking with us.

Q What I'm going to ask you to do, Agent Gilliam, I want you to go back through and read

exactly, I don't want you to tell me you administered the warnings, I want you to read for the Court, the judge, the warnings that you read to him.

A Yes, sir. It states, "You have the right to remain silent. Anything you say can be used against you in court. You have the right to consult with an attorney and have him present during questions. If you cannot afford an attorney, one will be appointed to represent you prior to any questions. Do you understand your rights? Are you willing to waive these rights and talk to me?"

Mr. Martin responded that he was okay with talking with us, then he stated that he wanted his attorney present, so at that time we concluded and we contacted his attorney Mr. Miller.

Q Did you, I want to ask you again, did you tell him, "You have a right to consult with an attorney and to have them present during questioning"?

A I read from this card verbatim, yes, sir.

Q Did you tell him, "If you cannot afford an attorney one will be appointed to represent you prior to any questioning"?

A As is stated on the card, yes, sir.
Q Did you ask him if he understood his rights?
A Yes, sir.
Q What did he say?
A He understood, he acknowledged that he understood, and after he acknowledged he understood and he was willing to talk he asked for his attorney, and so we contacted his attorney Mr. Miller, who did respond.

MR. JONES: Your Honor, I made a copy of that card that he just read from. I would like to offer it as a court's exhibit, the copy of the card.

MR. McLAIN: That's without objection.

THE COURT: Without objection, then, it will be marked as State's Exhibit Number --

MR. JONES: Court's exhibit.

THE COURT: Court's exhibit during this in-camera hearing, I'm sorry, thank you.

(Court's Exhibit Number 2 was marked).

BY MR. JONES:
Q How long would you say you were in the room with Mr. Shondra Martin leading up to the time and place when he said he wanted to talk to his lawyer?
A Just the time for him to be escorted in by whomever brought him there, brought him actually

into the room, the time for me to read the Miranda card, the few minutes it took to figure out how to contact his attorney and find out where he was. We left the room and Mario Lijoi, somebody with the office of Public Safety contacted Mr. Miller. I guess maybe 15 minutes or so. I'm not sure.

Q During that 15 minutes or so, describe for the Court his general demeanor as you perceived it.

A He seemed to be coherent and he understood everything that was going on. He understood well enough to where he asked for his attorney.

Q During that time, during that 15 minute period, approximately 15 minute period, did anybody in your presence suggest to him any form of intimidation or coercion for him to talk to you or to be with you?

A No, sir.

Q Was there any representation made by anybody in that room that you could perceive as being threatening?

A No, sir.

Q Were there any remarks or any statements made, any overtures made by anybody in the room with you that you would perceive to have been promising him some favor or reward if he would talk

with you?
A Everything was just, it was a relaxed atmosphere, Mr. Martin asked for his attorney, we didn't have a problem with that, we got the attorney there, there were no problems at all.
Q All right. Again, I believe you testified that he, in your opinion, understood the rights that you read to him?
A Yes, sir.
Q And understood that he had a right to a lawyer if he wanted one?
A Yes, sir. He exercised that right.
Q He asked to speak to his lawyer?
A Yes, sir.
Q Now, did his lawyer come to where you were?
A Yes, sir, he did respond.
Q All right. And were you there with Shondra Martin when his lawyer got there?
A Yes, sir. We were there in the building, the attorney arrived, he went back and he stayed in the room with Mr. Martin for about an hour or so, he then came out of the room and advised us that everything was okay, that Mr. Martin would talk with us without any problems, and so we went in and Mario Lijoi talked to Mr. Martin, made sure that he

understood his rights and everything and, "Are you willing to still talk with us," so on and so forth. He stated yes, and one of the officers for Public Safety started asking him questions about some of the things that they had questions about. After they concluded, other law enforcement was brought in to ask questions as they conducted their investigations as well.

Q Now, did Mr. Martin at any point in time meet privately with his lawyer while you were there?

A Yes, he met with him for over an hour, approximately.

Q Privately?

A Yes. They were in a closed room, the same interview room we had been in. We all left the room and left them there to themselves.

Q All right. And then you were asked to come into that room and join them?

A Mr. Miller came out of the room and advised us that he had talked with Mr. Martin, that he was okay with talking with us, there was no problems, something to that effect.

Q Mr. Miller was Mr. Martin's lawyer?

A Yes, sir.

Q Okay. And he came out and said what?

A That it was okay to talk with Mr. Martin, he was okay with talking with us, he would talk with us.

Q Was there any discussion about a proffer agreement between you and Mr. Miller or you and Mr. Martin?

A They did state that Martin had some concerns about the proffer and the fact that he had not signed it, and so Mario Lijoi contacted the U.S. Attorney's office in Greenville, who faxed a copy of the proffer agreement and Mr. Miller got that copy signed by Mr. Martin. I wasn't in the room to actually see it but he did get the copy, he came out, he had the copy, stated that everything was signed, everything was good to go, that we could talk with him.

MR. JONES: Your Honor, we would offer at this time a copy of a proffer agreement as a court's exhibit, that appears to be signed by Shondray Martin and Ed Miller.

Q Can you verify that is the proffer agreement, a photocopy of the proffer agreement that was mentioned during the discussions that you had with Shondra Martin and lawyer Ed Miller?

A Yes, sir, this is the proffer agreement and

it does have the signatures of Shondra Martin and what appears to be Ed Miller.

THE COURT: Any objection.

MR. McLAIN: No objection.

THE COURT: Let it be marked as a Court's exhibit.

(Court Exhibit Number 3 was marked).

BY MR. JONES:

Q All right, tell us again to the best of your recollection what happened between you and Shondra Martin and the judge when the three of you, after the judge had met with Shondra Martin privately, what do you recall being said to you by Shondra Martin's lawyer Ed Miller?

THE COURT: During this question, when you say judge, you mean lawyer?

MR. JONES: Yes, sir. I apologize, Your Honor.

THE COURT: Would you rephrase the question for the witness?

MR. JONES: Yes, sir.

BY MR. JONES:

Q Tell us what you recall being said, if anything, between you and the lawyer for Shondra Martin, Ed Miller, after Shondra Martin and Ed

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Miller had come into your company after their private meeting.

A He came out of the room, he had a green bag hanging off his shoulder, he was in a good mood, he talked in general, he didn't just go to one particular person, all of us were standing there, outside the office there. Public Safety has two parts, there is an interview room in one corner that's closed off, and then there is an open room and it has tables. Most of us were sitting at those tables talking, waiting for them to finish talking, whatever they were talking about. I came out, he had his bag swung over his shoulder, he told us that he had talked with him, everything was good to go, he was willing to cooperate and talk with us and tell us whatever we wanted to know.

Q And what, if anything, did the lawyer Ed Miller do next?

A He left.

Q He left?

A Yes.

Q And what did Shondra Martin do or what did you do or say to him or what did he say to you at that point?

A Once we were back in the room to start the

interviews Mario Lijoi did the talking to Mr. Martin and assured that he was okay with talking with us and cooperating.

Q Were you present during that time?

A Yes, sir, I was in the room.

Q Did you hear what was said to Shondra Martin by Lijoi or what was said to Lijoi by Shondra Martin?

A Mr. Martin seemed to be relieved. He stated that he wanted to talk with us about it and whatever we needed to talk about, he would be glad to talk about, something to that effect. We sat down and we began the interviews.

Q So, this was within an hour or so of when you had advised him of his Miranda warnings?

A Yes, sir.

Q Did you advise him of his Miranda warnings again before you talked with him?

A No, sir, we did not go back into reviewing, myself and Mario Lijoi were there for the initial Miranda warnings and we stayed in the room to keep continuity as far as the Miranda rights having been advised.

Q So, it was your opinion he understood he had a right to have his lawyer there, his lawyer came

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and talked to him, his lawyer left, and Ed said, "He's ready to talk to you," and then Mr. Shondra Martin did in fact sit down and talk with you?

A Yes, sir, he sat down and talked with us, no problems at all.

Q And at that point in time, in the room with you and Mario Lijoi was one of the first people that he talked with about any incident, was Steve Gambrell of the State Law Enforcement Division, Agent Steve Gambrell?

A Yes, sir. It started out, I think, with Doug Hartwell with Public Safety asking him some questions about stuff that they had going on or something to that effect. Myself and Jonathan Bryant, Doug Hartwell and Mario Lijoi were in there, they only took a few minutes, then that's when Mr. Gambrell came in and started his interview.

Q All right. Was it your opinion, then, that Shondra Martin had knowingly and intelligently waived his rights under Miranda and was talking with you voluntarily?

A Yes, sir.

Q After a knowing and intelligent waiver of his rights?

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A Yes, sir.

MR. JONES: Answer any questions this lawyer has for you, please.

THE WITNESS: Yes, sir.

MR. McLAIN: May it please the Court.

THE COURT: Yes, sir, Mr. McClain.

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CROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q When you were questioning Mr. Martin, that was in relation to, in relation to what?

A Sir?

Q When you were questioning Mr. Martin, that was in relation to what, federal charges?

A There was a series of charges, yes, sir, it was federal, state charges, different things.

Q Okay. Well, it started out with state charges, did it not, I mean federal charges, did it not?

A Yes, sir. I was actually investigating Mr. Martin for counterfeiting commercial checks.

Q Okay. So, actually you were going to interview him about federal charges?

A You mean on the 18th?

Q Yes, sir.

A On the 18th it was about the many things he had started talking to us about when we previously interviewed him. We didn't have enough intelligence or understanding of what other law enforcement entities had going on in their areas to be able to intelligently interview him, so we concluded the interview that day and rescheduled

interviews and had different entities come in and talk to him about their matters. So, it was state and federal.

Q Okay. Let's back up, okay, let's start at the beginning, okay?

A Okay.

Q When you first came to interview Mr. Martin, or interrogate, debrief, interview, we're back to interrogate, I think now, Mr. Martin it was about federal charges?

A On which date, sir?

Q The original date that you talked with Mr. Martin it involved federal charges with his federal lawyer Mr. Miller?

A Sir, we were there to talk to your client in reference to a bevy of things he was involved in.

Q Right.

A It was state and federal charges, I answered like I answered the first time.

Q You are telling me that your original interview involved these charges?

A The interview that you're referring to, I'm thinking it's around the 10th of October?

Q Right.

A We talked to Mr. Martin, it was on a proffer

that was agreed to by Miss Jean Howard, who is the Assistant U.S. Attorney, and by his attorney Mr. Miller.

Q Right.

A We went there and we talked with him. It was myself, another Secret Service agent by the name of Jeff Booth, a Public Safety officer and Mario Lijoi. He was there to disclose wholeheartedly all of the things that he had been involved in, and as we talked to him we found out that he was involved in --

Q Wait, let me back up a second, I'm sorry. Okay, you were there at the beginning, right, to ask him about federal charges?

A I was there to talk to him about both on the 10th, sir.

Q You didn't know about the second charges until it started to come out, did you, about any state charges?

A Sir, we were there to talk to him about everything that he was involved in, whether we knew it or didn't know it.

Q You were not aware of them, any of the charges with which he is charged with right now at his initial interview, were you?

A Which charge? I don't understand.
Q At his initial interview -- do you know what he's on trial for here today?
A Of course.
Q Okay. Did you know about those charges, did you know about those, or alleged charges when you initially interviewed Mr. Martin?
A Sir, I didn't know that he had actually been involved in a robbery, per se. I knew he had been involved in several different incidents, state and federal, including different robberies that were being investigated, but I didn't know what the outcomes of the robberies were other than the fact they might have gotten money or items from someone. I didn't know anything about them having shot someone or potentially shot someone.
Q Well, is it normal for a federal agent to investigate somebody for state charges?
A It's normal for a federal agent following a proffer agreement being signed to find out any information that might be delivered to other agencies to carry out their duties.
Q All right. When you first met Mr. Martin, the first time you met Mr. Martin was his attorney present?

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A You mean during the course of --
Q Your initial interview, before the 18th of October?
A On the 10th his attorney was not there, no, sir.
Q Okay, his attorney was not there. Did you make contact with his attorney then?
A His attorney had been talking with the Assistant United States Attorney Jean Howard.
Q Uh-huh.
A And the two of them had came to the conclusion that he would be interviewed by DEA, U. S. Secret Service and any other law enforcement entity that wanted information from him as per the proffer agreement.
Q And a proffer agreement was signed?
A I don't know all the circumstances surrounding the proffer agreement because the U. S. Attorney's office and defense attorneys all are attorneys and they try to work together to get their cases adjudicated and, so, in some instances I have known that they would come to a verbal agreement, "Here is the proffer, it might not have been signed but your agents can go ahead and talk to this person," or however. But we were

instructed by the U. S. Attorney's office it had been cleared, that she had talked with the attorney and that we could go ahead and talk with him. So, on the 10th we interviewed him and when he talked about stuff that we weren't abreast of we concluded the interview and rescheduled.

Q Okay. Now let me ask you again, okay? When you initially got involved in any federal charges involving Mr. Martin you were there to ask him questions about what, federal counterfeiting?

A You mean on the 10th?

Q Yes.

MR. JONES: Actually, Your Honor, it was the 11th, October 11th.

Q I'm sorry, the 11th. We're one day off.

THE COURT: The 11th.

Q On October 11th you with, I take it, Miss Howard, Jean Howard's permission and with the permission of his attorney, met with Mr. Martin?

A I met with him on the 11th.

Q Who was present, you and who else?

A Myself, DEA.

Q Uh-huh.

A Spartanburg Public Safety Department.

Q Uh-huh.

A And there was another Secret Service agent.
Q An who was the other Secret Service agent?
A Jeff Booth.
Q And specifically, specifically at that time what charges were you there to talk to him about?
A Sir, as I have told you several times before, I was there to talk to him in reference to any incidents that he might have been involved in, whether it was counterfeiting, drugs, shootings, whatever the case may have been, anything, sir, it's a proffer.
Q Okay. So, you were there to talk to him about any federal or state charges, is that your testimony?
A Yes, sir. Yes, it is.
Q Okay. You weren't there just to talk to him about federal charges?
A Sir, I was there to talk to him about anything that he was involved in. It was a proffer agreement.
Q Right.
A If he had told me anything at all that may have led to another investigation, as per a proffer, we relay it to whomever.
Q Okay. And did you Mirandize him at that

time?
A Yes, sir, I did, I always do. Whether custodial or noncustodial, I read Miranda rights.
Q And those discussions and the debriefings or interviews or interrogations, whatever you had with Mr. Martin, involved plea negotiations, didn't they?
A Sir, I don't know. I don't know all the circumstances surrounding it.
Q I mean, it involved a proffer agreement in federal court, it would have to involve a plea agreement?
A I assume so, and I give you that answer, sir, because I wasn't there to talk to Miss Howard or Mr. Miller to find out what exactly they were doing in relation to Mr. Martin. I do the investigations, nine times out of ten I don't even appear in court for my own arraignment.
Q Okay. Well, Mr. Martin didn't want to sign, he didn't want to talk to you all at all until that proffer agreement letter was signed?
A I don't know that, sir. All I was told was that he was ready to be interviewed on the 10th and that's when I responded, or the 11th, excuse me.
Q Okay, on the 11th?

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A Yes, sir.
Q Okay. And a proffer agreement, to your knowledge, and there has been one entered into evidence as a court's exhibit, a proffer agreement was indeed entered into by the federal government --
A Yes, sir.
Q -- and Mr. Martin --
A Yes, sir.
Q -- and his attorney, is that correct?
A That's correct.
Q Okay. Now, you say you went back, I believe, on the 18th?
A Yes, sir.
Q Okay. And what brought that about on the 18th?
A The initial interview that was done on the 11th where he talked about things that we weren't aware of.
Q Let me stop you right there, okay? Let me just stop you right there, okay? So, the answer to my first question was you were not aware of any state charges at the initial interview of Mr. Martin, were you?
A Sir, I have answered that question several

times. I told you that I did not know what all Mr. Martin had done. When he started telling us all the stuff he had been involved in, or things he might have been involved in, we couldn't intelligently determine whether or not he was telling us the truth or not so we had to get the people there that would know, the local authorities for the jurisdictions that were affected.

Q Okay. Now let me ask you for a simple yes or no and then qualify your answer. Let me ask the question again for the record, without trying to be smart or anything else, okay, with all due respect.

A Uh-huh.

Q Okay. At your initial interview with Mr. Martin you were there to ask him about federal charges?

A As I have told you, again, sir, I was there to talk to him about everything he was involved in, any knowledge of anything that he was involved in.

Q Okay.

A That is my answer.

Q Okay. But you were not -- give me the answer to this again.

A Okay.

Q Okay?

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A Okay.
Q Okay. When you went to the initial interview you were aware of only federal charges or potential federal charges, you were not aware of any state charges or potential state charges, were you?
A No, sir. The only thing I knew about was the counterfeit checks and the drug situation that he had going and there were other things that might have been going on but we only found out that day and that is when we concluded the interview and rescheduled for other law enforcement to talk to him.
Q Okay. And then you went back on the 18th, right?
A Yes, sir.
Q Okay. That proffer agreement was with the federal government --
A Yes, sir.
Q -- granting him immunity for anything he told you all, right, was entered on October the 18th, 2001, and it's been made an exhibit by the Solicitor. Is that correct?
A I don't know exactly how the proffer reads out, I only read a part of it, but if that's the statement, then, that was entered in evidence,

that's the paperwork we are referring to, yes, sir.
Q Okay. Now, when you went back to talk to him on the 18th who was there?
A On the 18th, during the interview, after his attorney left?
Q Uh-huh.
A It was myself, Mario Lijoi, Jonathan Bryant of the Secret Service and there was a Public Safety officer.
Q And where was Mr. Miller?
A He had left. He left. After he talked with his client and he came out and stated it was okay for us to talk to him, he was willing to talk with us, he left.
Q He just left?
A Yes, sir.
Q Okay. Did you make Mr. Miller aware that you wanted to talk to Mr. Martin about any state, specific state charges?
A Sir, I think Mr. Miller understands that a proffer covers any and everything that a client might be involved in.
Q That's not my question, sir. My question was --
A I didn't talk to Mr. Miller and tell him

anything, myself, I didn't.
Q Okay.
A But like I was saying, the paperwork there, I'm sure Mr. Miller had to have understood, because he signed it.
Q Okay. But what I'm saying is this. When that proffer, when you went back to talk to him, meaning my client --
A Uh-huh.
Q -- on the 18th of October, 2001, did you make or are you aware that anyone made Mr. Miller aware that you wanted to talk to him about certain specific state charges?
A From what I understood, sir, Mr. Miller knew we were there to talk about Shondra Martin on any state or federal mishaps he might have had going for him, anything.
Q On what did you base that?
A A proffer agreement allows a person to tell you any and all that they are involved in. That's the basis of it.
Q If that is correct, the flip side of that 45 record is a proffer agreement would give him immunity for anything he told you.
A Sir, I don't know what it would do, I'm not

the attorney.
Q Well, he didn't have the benefit of the attorney when you all started lining up state agencies to testify, did he?
A His attorney is the one that allowed us to talk to him. He asked for his attorney after I game him Miranda and we complied. We got his attorney there, we sat there and waited for him to respond, and then we sat there and waited until his attorney consulted with him, and then afterwards his attorney said it was okay to talk with him, so we talked with him.
Q After his attorney left, thinking that you all were going to talk to him only about federal charges, you started lining up state agencies to come testify, I mean to come talk to him, is that right?
A Sir, I don't know what his attorney thought.
Q I didn't ask what his attorney thought.
A What is your question, then, sir?
Q My question is this. Once again, after his attorney left is when you all started lining up state agents to come in and talk to him about state charges while he thought he had complete immunity and had a proffer letter signed, is that correct?

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A Sir, the state agents were already there, they weren't lined up. Mr. Miller saw the law enforcement officers there, he saw them. We didn't line anybody up after he left. The people were already there ready to talk to Shondra Martin, he came in, Mr. Miller did, he saw the law enforcement. So, no one lined up anything after he left, everyone was already there, was in place.

Q Did Mr. Miller, did anybody from the federal government make Mr. Miller aware that they wanted to talk to him about any state murder or federal, I'm sorry, any state murder or robbery charges?

A Mr. Miller -- sir, I really can't answer that question. I have tried to answer it before and you cut me off.

Q I just want a simple yes or no. That's an easy yes or no and you can qualify your answer all you want to but I'm going to keep asking the question, if I have to go past midnight.

The question is, my question is, did anybody make Mr. Miller aware that you all were going to ask him about any state murder or robbery charges, before he left?

A Sir, I did not talk to Mr. Miller directly other than to say hello, how are you doing. Mr.

Miller went in and talked with his client. A proffer is common knowledge, it is done all the time in the federal system, Mr. Miller operated in the federal system, I have had other cases where he was the defense attorney on other clients. Mr. Miller knew exactly what a proffer was because he operated in the federal system on a daily basis. I didn't ask him anything.

Q Well --

A Or tell him anything, I didn't talk with him.

Q You didn't talk to him at all?

A No, sir, I didn't. I spoke with Mr. Miller, how are you doing, things of that nature.

Q How are you doing, your client is charged with federal charges, how you doing, good-bye, now let's talk about some state robberies and murders. Is that how it went?

A Sir, Mr. Miller knew his client had been charged with federal charges because he had been representing him.

Q Sure, he did.

A As far as potential state charges, Mr. Miller would know that if a person talks to you about things as far as a, with a proffer agreement, he would know exactly how it operates because he does

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it on a daily basis.
Q Right. Well, I have done a lot of federal court stuff myself.
A Then you know how it works.
Q I know exactly how it works, okay? And my question again to you is this, okay?
A Uh-huh.
Q Before your interview on the 18th did anybody make Mr. Miller aware that his client -- hang on, let me ask my question.
A Okay.
Q Okay. Did anybody make Mr. Miller aware, from the federal government, any of you make Mr. Miller aware that you all were going to ask him anything about any specific alleged state crime?
A Sir, I would not know that, and the reason I would not know that is because we don't know what a person has done outside of the federal realm until we talk to them within the proffer. It is up to Mr. Miller to debrief his client and find out what all he may have done before he allows us to talk to them. They were in the room for over an hour, I assumed that was taking place.
Q You assume what is taking place?
A He was debriefing his client and talking to

him about what he may or may not have done. I assumed, with them being in the room for over an hour or so, they had had their conversation and that he felt it was okay for his client to talk with us.

Q Okay.

A He came out and as his attorney told us it was okay to talk to his client and we proceeded to do so.

Q Okay. Also involved in the federal system is the fact that anytime you have a proffer agreement, anything that is told to you by a defendant involves plea negotiations, does it not?

A I would think so, yes, sir.

Q And in this case it did, did it not?

A Sir, I was not the U. S. Attorney that dealt with that. I didn't deal with it.

Q Well --

A I did not deal with it.

Q Do you know that Mr. Martin, as a result of his discussions with you and with a deal with the federal government entered into a proffer agreement and a plea?

A I don't understand your question. I mean, of course, I mean, he entered, he pled guilty, he

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didn't go to a trial.
Q Exactly. That's the answer.
A So, what's the point? I don't understand.
Q The point is that when he was being debriefed by you and any other agents, for that matter --
A Uh-huh.
Q -- it was pursuant to a federal proffer letter of immunity for him to enter --
A Sir --
Q Hey, I'm asking the questions.
A Finish, you are doing compound questions, I can't keep up with what you're doing because you are asking me two or three questions at one time.
Q Okay. Well, let's put it this way. Here we go, okay? Here is my question again, okay?
A One at a time.
Q One at a time.
A Thank you.
Q Okay. When that proffer agreement was entered into --
A I got that part. Go ahead.
Q That involved federal plea negotiations?
A Yes, sir, it would have.
Q And in fact it was to grant him immunity for anything that it told you all?

A If that's how it's spelled out, yes, sir, okay.
Q Well, that was the impression that was given to Mr. Martin.
A Sir, I didn't advise Mr. Martin on anything, his attorney did.
Q Okay. You didn't advise him of anything?
A No, I didn't advise him on his proffer, on this proffer that you're talking about.
Q Okay. What did you advise him on, anything?
A His Miranda rights.
Q Okay. When did you do that?
A Before we started to interview him.
Q Was that before Mr. Miller left, or after?
A Before Mr. Miller even came onto the scene.
Q Was Mr. Miller there when you asked him his Miranda rights?
A No.
Q I'm sorry, gave him him his Miranda rights?
A No, sir.
Q He was not there?
A No, sir.
Q Did you say, "Mr. Miller, we want to ask your client about certain state charges"?
A As I have answered before --

MR. JONES: Your Honor, he has asked him that ten times, and he's answered ten times.

THE COURT: It has been asked and answered. The objection is the question has been asked and answered. You may ask it one more time.

MR. McLAIN: Okay.

BY MR. McLAIN:

Q Well, let me rephrase this and maybe we will cut to the quick, okay? The purpose of your -- was the purpose, or one of the purposes of your interview or interviews, particularly the one on the 18th of October, 2001, the purpose of that was pursuant to a proffer agreement?

A Yes, sir.

Q For certain plea negotiations between the prosecution and the defense in the federal case?

A I don't understand that part, say it again for me.

Q Okay. Was the purpose, did your discussions with Mr. Martin, did those discussions with Mr. Martin involve plea negotiations or the purposes of plea negotiations, rather, in federal court?

A That's what a proffer agreement is for. Your client had been apprehended on drug violations and counterfeit commercial securities violations, and

as a result his attorney and the Assistant U. S. attorney did this proffer agreement for him to inform us of any other matters that he was involved in or that he may have knowledge about.

Q Okay. It wasn't to inform you about the matters with which he had been charged in federal court?

A As per the proffer agreement, it covers any and all knowledge of any types of crimes, from what I understand.

Q Well, then, that would grant him immunity from any crimes today, would it not?

A Sir, I couldn't go into that part of the, as per the agreement, however it is spelled out, that is what is there, that is between the United States Attorney's office and Mr. Miller's office.

Q Let me ask you this. Have you ever interviewed any defendant that involved a proffer agreement that did not also involve plea negotiations?

A I have interviewed several people with proffers intact, yes, sir, I have.

Q But they all involved, the purposes of those proffer agreements and their telling you what they know, involves plea negotiations?

A If that's outlined in the proffer agreements, then, yes, sir, if that's how it's outlined. The reason I say that, sir, because I don't know every in and out of a proffer. However it's spelled out in there, sir, that's between the U. S. Attorney's office and Mr. Miller's office.

Q Okay.

A That's what they sit down and do. We're fact finders, we go out and we ask the questions as we're directed.

Q A defendant does not enter into a proffer agreement -- you tell me if you agree with this or not. Does a defendant, to the best of your knowledge and belief and experience, does a defendant who does not intend to plead guilty enter into a proffer agreement?

A I wouldn't know that, sir. I don't know what they --

Q Have you ever seen that?

A Not that I remember.

Q Okay. So, the purpose of the proffer agreement was to grant him immunity for any discussions that he had with you all pursuant to that agreement?

MR. JONES: Your Honor, I might be able to

help here if I could please interject. He can answer the question but let me interject, I can read you the purpose of the proffer agreement, it's stated in the proffer agreements itself.

THE COURT: Yes, sir.

MR. JONES: Yes, sir.

THE WITNESS: And that's what I'm referring to, however it's outlined in that proffer agreement, sir, I don't know the ins and outs, that's between the U. S. Attorney's office and Mr. Miller's office.

BY MR. McLAIN:

Q Okay. But was Mr. Miller made aware --

A Sir, like I told you before, I didn't talk with Mr. Miller, I spoke with him, how you doing.

Q Okay. Did you make Mr. Martin aware of whether or not he had any immunity for anything he told you for state charges?

A That is for Mr. Miller to do, sir, Mr. Miller talked to him for over an hour.

Q Did you wait for Mr. Miller to leave before you started questioning him?

A Mr. Miller came out of the room, he spoke his goodbyes to everyone, he left. I mean, it's not like we were sitting back crouching and waiting for

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him to leave, to go in and talk with him. We're the one that called him in the first place at his direction.

Q To talk to him about counterfeiting and drug charges?

A Sir, like I said before, we were there to talk to him about anything he had knowledge of, anything.

Q Okay. Were you there when, when certain federal agents attempted to talk to my client again in Atlanta?

A No, sir, I wasn't.

Q And he said he wanted an attorney present because he thought he had been tricked the first time?

A No, sir, I was not there, I don't know anything about that.

Q Okay. Do you know who took this, these notes right here, it says memorandum of interview?

A Let me, can I hold it?

Q Yes, sure.

A It's got right here the SLED case number, so I guess it would be the South Carolina Law Enforcement Division, I would assume. I don't know that.

Q Okay. Well, was SLED there when you talked to him?
A There were several different law enforcement agencies, as I have told you before. Mr. Gambrell did come into the room and he did start an interview, he interviewed Mr. Martin.
Q Was Mr. Gambrell -- was Mr. Miller aware that Mr. Gambrell was there?
A As I have told you before, Mr. Miller was aware that there were several different law enforcement agencies there, and as a matter of fact I remember seeing Mr. Miller talking with Tony Dewarti, a former DEA agent, now a SLED agent, so he knew that SLED had to be there if they knew each other as well as I thought they knew each other, because they spoke to one another.
Q I know Tony Dewarti myself.
A Okay.
Q Was he a DEA agent at this time, or a SLED agent?
A I think he was a SLED agent, I'm pretty sure he was. He has been retired for awhile.
Q Okay. Did Mr. Miller see or talk to Mr. Gambrell?
A Not that I'm aware of. Like I said, there

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were several different law enforcement officers and entities in there.
Q Uh-huh.
A Mr. Miller came into the office, he knew we were all law enforcement sitting back there.
Q Uh-huh.
A It's a big open room, he walks in the door, it's just like walking into this room here, you see everybody sitting there.
Q Okay. And it was your testimony that Mr. Martin did not want to talk to you all until that proffer letter was signed?
A He wanted to sign this agreement and he wanted to have his lawyer present to talk with him, and we stoped the interview, we got his lawyer there, we got the letter there, his lawyer left, we talked to him, that's it.
Q So, Mr. Martin was no doubt under the impression that he had imunity for anything he told you?
A I don't know what he thought, sir, that's between him and his attorney.
Q Okay. Well, what did you think?
A I'm not -- I don't speculate on these cases, whatever, I do as I'm instructed, I read Miranda

rights, I went there, the interviews were conducted, that's it.

Q Okay. The truth is that you went there to talk to him about federal charges and after, and after the proffer letter was signed, some things about the state, you started to ask about state charges, didn't you?

A Sir, I have answered that question for you earlier. I told you we were there to talk to him about anything that he had knowledge of, anything at all.

Q When did you ask him -- did you ask him about any of these state charges?

A On what, which date are you talking about now, again?

Q Anytime did you ask him?

A Well --

Q Hang on, let me ask the question. Did you ask him anything about these state charges, okay, after that proffer agreement was signed?

A Sir, I did not ask him a thing because I didn't have the knowledge of what was going on as far as these investigations. That's why the other law enforcement was there. They did the questioning.

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Q Okay.
A Okay? Now, if I had anything for Mr. Martin, I would have asked him about probably a counterfeit check or something to that effect.
Q All right.
A But I didn't ask him anything about the state charges, that's why we had the state officials there, they did the asking.
Q Okay. So, you had -- so, the answer to my question is you didn't ask him anything until after that letter was signed?
A We had to wait for Mr. Miller to get to talk with him and sign the letter before anybody could ask him anything.
Q Right.
A So, anything we asked him, it was only after he talked to Mr. Miller and signed his proffer agreement.
Q Right. So, he wasn't asked anything until after Mr. Miller arrived and the proffer agreement was signed?
A Sir, I don't understand exactly what you're asking me, because things were asked of him like, "Do you want to talk to us?"
Q I'm talking --

A "Are you willing?" Questions were asked, and so I don't want you to come back and ask me a question later, "You asked him this kind of question," you know, so things were asked of him, okay?
Q Okay.
A But whatever was asked of him led up to him saying, "I want my attorney present and I want to sign this letter," so we honored his wishes and we got the people there.
Q Right.
A And the letter.
Q But my question is, were any, to your knowledge, was he asked about any of these state charges before his attorney got there or before that proffer letter was signed?
A Sir, your client asked for his lawyer, all questions ceased, nobody asked him a thing until Mr. Miller got there and talked to him. He did not want to talk, he made that clear.
Q Okay. The proffer letter was signed and then you all began to question him?
A Once the proffer letter was signed, his attorney consulted with him.
Q And left?

A He left and we talked to him.
Q Okay. But the letter was signed, too, at that time?
A The letter was signed. I didn't actually take the letter and look at it, I wasn't in the room when he signed it.
Q But you knew it was signed?
A The letter was signed, yes, sir.
Q Because you wouldn't ask him any questions until then?
A His lawyer told us everything was okay, everything was good to go, we took that at face value.
Q The letter was signed, as far as you know, before anything was asked?
A Yes, sir.
Q Okay. And the purpose of all of these interviews was pursuant to a federal plea negotiation between Miss Howard and Mr. Miller?
A Yes.
MR. McLAIN: Thank you, sir
THE COURT: Redirect, Solicitor?

REDIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q The original interview that you had with Shondra Martin, it could have been on the 10th of October, or the 11th?

A Yes, sir.

Q 10th or 11th of October?

A Yes.

MR. JONES: All right, thank you. Nothing further.

THE COURT: Thank you, sir, come down.

(Witness excused).

THE COURT: Mr. Gilliam, would you stay with us, please?

THE WITNESS: Yes, sir.

THE COURT: We may need you and may not. You can stay in the courtroom if you wish or you can go relax if you want to. You have testified.

While you were conferencing, Mr. Gilliam was instructed by the Court to stay because he may, he may or may not be needed for further questioning.

MR. JONES: Yes. Mario Lijoi, please.

MARIO LIJOI,

after being first duly sworn testified as follows:

THE CLERK: Okay. If you don't mind, if you will have a seat and state your name and maybe spell it for the record.

THE WITNESS: My name is Special Agent Mario Lijoi, last name is spelled L-i-j-o-i.

DIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q Mr. Lijoi, where do you work?

A I work with the Drug Enforcement Administration in Atlanta, Georgia.

Q DEA?

A That's correct, sir.

Q And where were you working on October the 18th of 2001?

A I still worked out of the Atlanta DEA office but we had done a deployment, we had done some work out in the Spartanburg, South Carolina area.

Q Did you have occasion to be in a conference room, interview room with this defendant here, Shondra Martin, and Earl Gilliam and others on that day?

A Yes, sir, I did.

Q And were you present when Earl Gilliam read

Miranda warnings to Shondra Martin?
A Yes, sir, I was.
Q What do you recall happening when Agent Gilliam had concluded Mirandizing Shondra Martin?
A Agent Gilliam used his little Secret Service card, read it to him and then asked him if he understood what he had read to him, and he acknowledged that he had.
Q And what was said or done at that point in time?
A This was on the 18th, correct?
Q Yes, sir.
A After he had --
THE COURT: Excuse me. This was the first interview?
Q This is the 18th, second interview.
THE COURT: 18th, second interview, excuse me.
A The 18th, second interview, after he acknowledged understanding it he said, "I want to talk to my lawyer."
Q And what did you guys do at that point in time?
A We immediately stopped the interview, said okay. I walked out of the room and I called his

attorney on my cell phone and proceeded to tell him that his client was asking for his presence.

Q Prior to your doing that how much time had you spent in the presence of Shondra Martin, approximately?

A Probably about five minutes. We had walked in, sat him down and said, you know, we're just going to talk with you a little bit today about kind of where we left off from the last interview, and then before we started any questions or so, we went right to the Miranda. Immediately after the Miranda we stopped and called his attorney.

Q But you had a chance for at least five to ten minutes to observe his demeanor?

A Yes, while he was getting situated and making sure he was comfortable.

Q What was his demeanor?

A He was calm, didn't seem anxious, didn't seem nervous at all. He seemed like he was ready to get down to business.

Q Did he seem to be aware and conscious of what was going on?

A He certainly did.

Q Do you notice he's smiling now?

A I noticed that. I don't know why.

Q Was he smiling at the time that you were in the room with him? Did he appear to be as comfortable, as confident as, as engaging and as humored at that time as he appears to be now?
A He was looking at some significant issues, so he was concerned, obviously, but he was certainly not hesitant in talking with us.
Q Did he appear, as far as you were concerned, to understand the Miranda warnings and rights that he was advised of?
A He had to have been. I mean, he said, "I want to talk to my attorney about a proffer letter," and I said okay, so --
Q And you called his lawyer?
A That's correct.
Q And what did you -- was he asked any questions between that time and the point his lawyer got there?
A No. I walked out of the room, I think we left Agent Gilliam there as just the security for the defendant in that room so he wasn't left totally alone, I made the phone call and I explained to his attorney what the situation was, and everybody stayed clear with the exception of the only security required, you know, for his

presence.
Q Okay. All right, and do you recall his lawyer arriving, Mr. Miller?
A That is correct. During the course of the conversation with Mr. Miller I said, "Where are you at?" He said, "Well, luckily I'm not too far from the area." I said, "Well, he's not going to continue, he wants to talk with you, I recommend you come over," and I said, "We'll wait for you." And Mr. Miller appeared, I don't know what the length of time was, probably 15, 20 minutes later he showed up.
Q All right. Had you in the meantime attempted to obtain a copy of a proffer agreement?
A No. I had called the, I had called the U. S. Attorney's office but that was after Mr. Miller said, "I don't have a copy of the proffer with me," and we tried to work out to see if we could get it faxed to us at that location.
Q And did you do that?
A That is correct.
Q I want to hand you Court's Exhibit Number 3 and ask you what's depicted on the front page there?
A This is a fax transmission copy from the

United States Attorney's office, violent organized crime, drug enforcement task force, Greenville, South Carolina.

Q And who is it faxed to?

A It is faxed to me, Mario, meaning Special Agent Mario Lijoi.

Q On what day?

A 18th of October.

Q What year?

A Of 2001.

Q And what is the subject?

A Underneath subject it says comments, Shondra Martin.

Q All right. I would like for you to read what is stated on the front page there.

A On the front page it says the heading, October 18, 2001, Edward W. Miller, Esquire, Post Office Box 10386, Greenville, South Carolina, 29603, reference, Shondra Martin. Then it continues and says, "Dear Mr. Miller. The following constitutes the proffer agreement between the attorneys for the government and Shondra Martin here and after referred to as the client." And then it goes into the proffer agreement in bold letters.

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Q All right.
A Continue?
Q Yes.
A "The purpose of the client making a proffer is to provide the government with an opportunity to assess the value, extent and truthfulness of the client's information about the criminal liability of client and others." It continues and says in bold letters, "This is not a cooperation agreement. Client has agreed to provide the government with statements and information and to respond to questions so that the government may evaluate the client's statements and other information in making prosecutive decisions. By receiving a client's proffer, the government does not agree to make a motion for downward departure on a client's behalf or to enter into a cooperation agreement, plea limit imunity or non prosecution agreements. The government makes no representation about the likelihood of any such agreement will be reached in connection with the proffer."
Continue?
Q Yes.
A The next paragraph states, "By signing this proffer agreement the client agrees to be fully

truthful and forthright with the United States Attorney's office for the District of South Carolina and federal law enforcement agents in their investigation of all unlawful activities to include but not limited to truthful and complete debriefings with no misstatements or material omissions of facts of client's knowledge concerning all unlawful activities. Also the client understands that the client must fully disclose and provide truthful information to government, including any books, papers, documents or any other items of evidentiary value to the investigation. Client must also testify fully and truthfully before any grand jurors and any trials and other proceedings if called upon to do so by the government, subject to prosecution for perjury for not testifying truthfully. Client's failure to be fully truthful and forthright at any stage will at the sole election of the government cause the obligations of the government within this agreement to become null and void.

Further, it is expressly agreed that if the obligations of the government within this agreement become null and void due to the lack of truthfulness on the client's part, first," bullet

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one, "the government may file any and all charges known to the government in the appropriate district and, two, the government may use for any purpose any and all statements made and other information provided by client in the prosecution of client on any charges, including perjury. Client accepts this provision, being fully advised that under federal criminal paragraph 11, Charlie, 6, and federal --" I can barely, I don't know that, it's --

Q Federal Rules of Evidence?

A "Federal Rules of Evidence, 14, statements made by client pursuant to this agreement would not ordinarily be admissible in any criminal proceedings, including perjury and making false statements, unless the statements were made under oath on the record in the presence of counsel. Client agrees to submit to polygraph examinations by any qualified polygraph examiner should the client be requested to do so. Failure to pass to the satisfaction of the government any polygraph examination administered pursuant to this agreement constitutes a breach of the agreement and the government may use for any purpose any statements made and other information provided by the client

in the prosecution of client on any charges."

Q I want to ask you to read the last paragraph on page four of this document, Court Exhibit Number 3.

A This?

Q Yes, the last paragraph.

A The last paragraph states, "Client is hereby informed and understands that this agreement does not extend to any statements or other information involving any homicides or other crimes of extreme violence. Any statements made or other information provided by the client during a proffer regarding any homicides or other extreme acts of violence may be used against the client in any criminal proceedings which may be undertaken by any authorities."

Q Go ahead and continue to read the next paragraph.

Q All right, sir. And did you, at the time that you were there with Shondra Martin and with Earl Gilliam and with Lawyer Miller, did you happen to look, have an opportunity to see whether or not this agreement was signed by Shondra Martin and Attorney Miller?

A The way it actually occurred is I gave the

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blank, I gave a blank document to his attorney, his attorney walked into the room with Shondra Martin, we walked out, left them in there for some period of time for them to discuss it. At the time that the door opened his attorney approached us and I saw that he had a paper of some sort in his hand, I did not view the document. When we went back in to talk to Shondra I asked him specifically are we okay to proceed, and he concurred. I said did you sign your agreement, and he concurred.

Q Who?

A Shondra Martin.

Q All right. And Court Exhibit Number 3, on the last page, page 5, is it signed?

A It is signed twice. It is actually signed three times, one by the U. S. Attorney Jean Howard, with her assistant initialing over by her signature, one by Shondra Martin underneath the client, and one by Attorney Ed Miller.

Q Do you recall, do you have an estimate as to the amount of time Attorney Miller spent with Shondra Martin alone while you were there?

A I believe we started talking with Shondra about 1:25 or 1:30 in the afternoon, and then after reading him his rights we stopped. I don't believe

we proceeded again until almost 3:15, 3:30.

Q And again, after Ed Miller left and you sat down with Shondra did you go over his Miranda rights with him again?

A No. There was no need to.

Q Why not?

A Well, we had already given him his Mirandization, his attorney had already provided counsel to him, I had asked him if he was okay, and we just began.

Q You asked Shondra Martin if he was okay?

A That's correct.

Q Did you ask him if he was okay with talking to you?

A I said, "Are we all right to continue?" He was concerned about, his biggest concern was that he had not signed the proffer agreement.

Q So, you asked him if he was okay to continue?

A That's correct.

Q And you did continue?

A Yes, we did.

MR. JONES: Answer any questions this lawyer has for you, please.

MR. McLAIN: May it please the Court, Your Honor.

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THE COURT: Yes, sir, Mr. McClain.

CROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q You didn't ReMirandize him after Mr. Miller left?

A That's correct.

Q Okay. And, so, you asked him about these state charges without Mirandizing him after Mr. Miller left, correct?

A That's correct.

Q And could you show me -- well, first of all let me ask you this. Would you agree with me that your discussions with Mr. Martin involved settlement of federal charges, potential federal charges against him in federal court?

A My discussions with Mr. Martin was a carry-over of a debriefing that we had initiated on the 10th of October.

Q Okay, great. Now answer my question, please. Would you agree with me that your discussions with Mr. Martin involved settlement negotiations involving a federal plea in federal court to federal charges?

A They were not setlement or negotiations. This was just an opportunity for a client to approach the government and --

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Q -- work out a deal?
A Well, no, this is not contingent on a deal being made, this is just a client approaching the government and saying, "I need to talk to somebody."
Q A client approaching the government and saying, "I need to talk to somebody?" Have you ever had anybody try a case in federal court who signed a proffer agreement?
A Yes, I believe I have.
Q And what did they do, reject the plea?
A They withdraw the plea at the last minute.
Q At the last minute?
A That's correct.
Q Okay. And can you show me in here where Mr. Martin waived any rights pursuant to Rule 14 of the South Carolina State Rules of Civil Procedure?
A I don't know what that rule is.
Q Okay. Well, does it mention Rule 14 in there, South Carolina Rules of Civil Procedure?
A It does not mention anything about South Carolina at all.
Q Does it say anything there that he's waiving anything, about any inadmissibility of settlement negotiations?

A The only thing it mentions in here, he has to be truthful with us on any and all matters we asked him.

Q And he was?

A Well, that's why we were there, to try to validate that stuff, yes.

Q Then why are we here today trying him on these charges, if he's got immunity from those charges? That was what he thought, wasn't it?

A I don't know what was in his mind at the time. I mean, my responsibility as an agent for the federal government is to ask questions and try to assess that individual's truthfulness.

Q Now, when you talk to a potential federal defendant or a federal defendant with a proffer agreement and an attorney and a district attorney prosecuting, like Jean Howard and Mr. Miller, now Judge Miller, when you talk to somebody about what that person has knowledge, about what that person has knowledge of, that is for the purpose of a plea negotiation, is it not?

A Not necessarily so. In fact, before we even got to this point I was actually surprised to hear from Miss Jeanie Howard, Assistant U. S. Attorney, that Shondra even wanted to approach and discuss

anything with law enforcement. So, it had been arranged through the U. S. Attorney's office and his attorney before I even got in the picture.

Q Right. But what was the purpose of the arrangement?

A To see if Shondra Martin had anything truthful or of value to contribute to my other investigations.

Q And what was the federal government to give him in exchange for that?

A There was no guarantee of anything being given in exchange for that.

Q No immunity?

A It was just an opportunity for him to speak to us.

Q He was just going to speak to you all and tell you all everything he knew, with no immunity, no proffer, no anything?

A This was a proffer agreement. He was going to talk to us about his other criminal entities that he had been working. Now, me in good faith, I would not, or we would not go and prosecute him if he said, "I had, you know, five kilos of cocaine at my house," we would not prosecute him for the five kilos of cocaine because he rightfully so came

forward and said, "Hey, you know, by the way, you forgot something."

Q Well, he rightfully so came forward and told you he was truthful with everything, was he not?

A Well --

Q To the best of your knowledge?

A In here it stipulates it's crimes of violence. When I initially started talking with him I thought I was only going to get into narcotics. Narcotics and crimes of violence are different.

Q If crimes of violence came up why didn't you say, "Oops, I better stop, call his attorney and ReMirandize him"?

A It was, in speaking with him, we were into narcotics. We had no idea he was fixing to go down that road, so to speak.

Q Why didn't you stop, if you knew the proffer agreement, if it had exemption for violent crimes, aren't you under an obligation as a federal officer to notify his attorney and ReMirandize him?

A I hadn't seen the proffer agreement. My only conversation was is it all right to go talk with this defendant, that was the limits of my knowledge of that agreement.

Q The truth is he got suckered on this one, didn't he?
A I disagree with that comment.
Q I expect you do.
MR. JONES: Is that a question, Your Honor?
MR. McLAIN: Yes, it is.
MR. JONES: Put it in the form of a question.
BY MR. McLAIN:
Q Would a normal person expect that?
A Expect what, sir?
Q Expect this to be, for you to continue asking him state questions and to be a sucker plea, would a normal person expect that?
A A normal person, especially if he is under counsel, would read that document and understand it where if he had questions regarding that document, he would ask those questions.
Q Okay. And he could have asked those questions had he been notified, had his attorney been notified that, "Hey, during the course of these federal questions and this federal investigation there have been some state things to come up, we better stop right now, go call Mr. Miller and ReMirandize him"?
A His attorney was notified before we got into

any such conversation.
Q But you didn't ReMirandize him, did you?
A We Mirandized him at first, given the conversation we were going to have. Once he said, "I want to talk to my attorney," we provided him the ability to see his attorney.
Q Right, but when the state, when you were talking to him about the federal charges and the state matters came up did you stop and say stop right there and ReMirandize him?
A No. We had already Mirandized him.
Q You just kept on getting information?
A Correct. We had given him his opportunity for counsel. I don't know what was in the defendant's mind. Certainly he had spoken with his attorney as to any concerns he had regarding that document or any information he was going to provide.
Q His attorney wasn't there, was not present there to advise him, was he?
A Yes, he was there.
Q He was there? I thought the testimony was that Mr. Miller got up and left?
A Correct, but he was there, he had the opportunity to talk to his attorney, yes.

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Q Okay. But he didn't have the opportunity to talk to him when the state stuff came up because you didn't notify Mr. Miller, did you?
A Mr. Miller was notified when the defendant wanted to talk to him.
Q Yes, but when the State's matters came up you all did not stop and call up Mr. Miller, did you?
A No. It was a progression of the interview that we had been doing.
Q Right. So, you just kept on interviewing him, you didn't stop and say, "Oops, there are some charges other than federal charges, we better call up his attorney and get permission to talk to him and ReMirandize him"?
A No, I did not do that. I continued the conversation.
MR. McLAIN: Thank you.

REDIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q Agent Lijoi, were you present on October the 10th when you were interviewing Shondra Martin prior to the October 18th interview, of 2001?

A Yes, I was.

Q And at that time did Shondra Martin begin to discuss with you during that interview some incident involving robbery and shooting of individuals?

A What had happened is, it had been a long day, I think we started that interview approximately 1:00 o'clock, and as he went through his entire narcotics history, alleged dealings everybody, including the defendant, was getting tired. At the end of the briefing, so to speak, is when he started talking about some other issues regarding robberies and things of that nature, so we were, he was flat tired and we were tired, so we discontinued the interview because we had no knowledge of those crimes.

Q But did he indicate to you he had knowledge of those crimes on October the 10th?

A He indicated he had knowledge of those crimes and others, that we needed a second debriefing,

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based on my assessment,

Q Robberies?

A Yes.

Q Did he mention shootings?

A Yes.

Q And did he mention Anderson County?

A Yes.

Q Did he mention Spartanburg County?

A I don't recall if he mentioned Spartanburg but that was our central focus, and I can review my notes for further clarity, further clarification but we were focused on Greenville, Spartanburg and Anderson.

Q But he began talking to you about robberies and shootings he was involved in, that he had knowledge of on October 10th?

A That's correct.

MR. McLAIN: I have to object to that because I think that's leading.

A That is correct.

MR. McLAIN: Do you want to rule on my objection?

THE COURT: The objection is overruled. Continue but try not to lead the witness.

Q All right. Towards the end of that interview

what did Shondra Martin discuss with you, if anything, concerning robberies and shootings?

A Mr. Martin had discussed that him and another individual that he had been with, an individual by the name of Chrstopher Landrum, had been involved in robberies and he also mentioned there was an individual they had tried to rob where he thought was Anderson County, where there was a shooting, he said it was a muscular built individual that had been shot, and that's when the interview tapered off, that is why, based on my decisions where we were at, I said, "We probably need to talk with him again but we don't, I don't have this level of expertise because I'm not from that area."

Q All right. So you concluded that interview?

A That's correct.

Q And you arranged for another one to take place eight days later?

A It was -- we had a task force agent there with us who was from the area and he had been in the interview and I said, "We need a second interview, whoever you think may need to be there for that, contact whomever, but I know we're going to need some more time to draw out a few more items."

MARIO LIJOI - REDIRECT EXAMINATION

Q And did you indicate to Shondra Martin at that time you were going to get back with him to discuss the shootings and the robberies?
A I told him we were going to discuss more issues, yes.
Q Those issues?
A Yes, because that's where we had finished off.
Q And you got back with him to discuss those issues --
A On the 18th.
Q -- on the 18th and that's when he wanted to talk to his lawyer?
A That's correct, because when we first sat him down I said, "Hey, Shondra, what we're looking to do is kind of carry over from last time what you were, where we left off at and discuss those in greater detail."
Q And that's when he said, "I want to talk to my lawyer"?
A That is when we read him Miranda. He wanted to talk to his lawyer and we called Mr. Miller.
Q So, based on the conversation you had had with this defendant Shondra Martin, when he talked with his lawyer, Shondra Martin knew, when he

talked to Mr. Miller, that you wanted to talk to him about robberies and shootings?

A He should have known that we were going to continue those details, yes, from the first interview where we left off on the robberies and shootings, we were looking for more detail on that as well as his other narcotics activities.

Q And he spent some time with his lawyer and he talked to his lawyer, then he came back and sat down and began talking with you and Agent Gambrell from the Abbeville County, from SLED?

A Actually it was, it was detectives, narcotics, Spartanburg, Doug Hartwell is how we opened up, we talked about his Ford Excursion, and after that piece was complete is when Gambrell came in from SLED.

MR. JONES: Could we have one moment, Your Honor?

THE COURT: Yes, sir, take your time.

MR. JONES: Your Honor, what we're wanting to do at this point in time is offer a portion of a document that addresses the, from a documentary standpoint, the meeting that he had with Shondra Martin on October 10th of 2001 as a court exhibit for the record.

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MR. McLAIN: I'm going to object to that until this hearing is over.

THE COURT: Are you aware of it, have you read it, Mr. McLain?

MR. McLAIN: If it's the same document, I think -- I'm still going to have to object to that document until the Court rules on this hearing.

THE COURT: On what ground does the defense object to the proffered document?

MR. McLAIN: Well, Your Honor, that's exactly what Mr. Jones wants to get in the record, is what we're all here about to keep out of the record.

THE COURT: Well, this is an in-camera hearing, of course.

MR. McLAIN: Yes, sir.

THE COURT: So, how can the Court make a ruling on the issue of a statement contrary to the interest of the defendant, whatever it may have been, without knowing all the details involved?

MR. McLAIN: Well, I don't think it contains all the details. It's just two paragraphs, parts of a statement.

MR. JONES: Your Honor, if I could --

THE COURT: If it doesn't contain all the details, that's not the important point. If it

contains any detail is important.

MR. McLAIN: I still have to raise the objection for the record, Your Honor.

THE COURT: Well, did the court hear you say that it does contain details?

MR. McLAIN: Sir?

THE COURT: Does it contain details with which we're concerned here?

MR. McLAIN: It concerns some of those.

THE COURT: Then the objection is overruled.

MR. McLAIN: Yes, but not all of them.

BY MR. JONES:

Q Agent Lijoi, I would like to hand you this document and ask you if you recognize it?

A Yes, I do.

Q What is it?

A This is the, this is the DEA report, called a DEA 6, and it is a report of the interview that was conducted on the 10th of October, 2001. It's entitled interview of Shondra Martin on 10/10/01, in Spartanburg, South Carolina.

Q I would like for you to reference page, item 39 of that investigative report and read that for the Court, please.

A This says, "Lijoi, Gilliam, asked Martin for

details of other home invasions or homicides he had knowledge of. Martin estimated he committed five robberies overall. Martin and Landrum robbed someone of 16 ounces of powdered cocaine, some scales and $600 in Anderson, South Carolina during the summer of 2001. Martin also recalled being with Landrum during another robbery when a muscular black male was shot multiple times in Anderson, South Carolina. Martin recalled another robbery when himself, Lyles and Landrum broke into a residence believed to be Terry Bobo, however it was the wrong residence."

MR. JONES: Your Honor, for the record, we would offer this as evidence of the information that Agent Lijoi had on October 10th, 2001, and evidence of knowledge that the defendant had of information he had provided to the government on that occasion prior to meeting with his attorney on October 18th.

THE COURT: The objection is noted, the document will be introduced into evidence as a Court's exhibit.

MR. JONES: Court's exhibit.

MR. McLAIN: That one page?

THE COURT: That one page, if it is all that

is material, it doesn't matter, the rest of it apparently may be material to what he may have pled guilty to or some other crime but that's the only part the Court is interested in, unless you can point out something else material, Solicitor.

MR. McLAIN: I was just asking the Solicitor if that is the only page, Your Honor.

THE COURT: That's the only part for which you are really seeking to introduce that document?

MR. JONES: Yes, sir.

THE COURT: All right.

THE COURT: Does that satisfy you?

MR. McLAIN: Yes, sir.

THE COURT: Your objection is noted, overruled.

(Court Exhibit Number 4 was marked).

MR. JONES: No further questions, Your Honor.

THE COURT: Mr. McClain?

MR. McLAIN: Thank you. Just one or two.

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RECROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q I think you said that when you all got tired after the first meeting, correct --

A Correct.

Q -- that you assumed that you were going to discuss some state crimes because that's where you all left off and everyone was tired. Is that correct?

A We were at a point where we were going to go down another road and due to everyone being tired, no use in going down that road and not being fresh when you do that.

Q Right. So, that's when you stopped?

A That's correct.

Q Okay. And then you got -- and then in fact Mr. Martin said he was willing to stop at that same point?

A That's correct.

Q And later on when you started back up on the 18th he wanted to see, before he would talk to you all at all he wanted a proffer agreement signed by his attorney and the district attorney, Jean Howard, he wanted that proffer agreement signed to protect him with immunity for anything he told you,

correct?
A He knew that there was a proffer agreement but he would not be satisfied until he saw it signed with signatures.
Q Between his attorney, correct?
A Between himself, his attorney and the government, correct.
Q And the government, right?
A Correct.
Q And he relied on the government to grant him immunity for anything he told you all?
A I don't know, I can't speak for what was in his mind at the time.
Q Okay.
A It was an understanding between the federal government's attorney and his attorney as to a proffer agreement to give him an opportunity to speak with us and provide us with information that we were to validate.
Q Well, let me ask you this. Would it make any sense at all for Mr. Martin or anybody else to tell you anything for which he did not know, for which he did not know that he did not have immunity?
MR. JONES: That calls for speculation on the witness' part, Would it make any sense for him to

tell you anything."

THE COURT: All right. The objection is sustained but rephrase the question.

MR. McLAIN: Yes, sir.

THE COURT: It's a rather compound question.

MR. McLAIN: Thank you, Your Honor.

BY MR. McLAIN:

Q Would Mr. Martin have told you this about any state crimes had he not thought he had immunity for what he told you?

A At the beginning of the first interview he was told that, "You have to be completely forthright in anything that we ask you, and we'll ask you stuff that we know to validate what is true and we'll ask you stuff we don't know, just to, just to see." He knew going into it we were going to ask questions and we expected him to be honest. We didn't limit it to what geographical area, whether it be state or federal, we just kept rolling with the conversation.

Q Well, that is kind of damned if you do and damned if you don't, isn't it?

A How is that?

Q Well, "If you don't tell us the truth, then there is no, then the federal plea is off, and if

you do tell us the truth we're going to try you for murder"?
A This was not a plea, this was not a plea agreement there, this was a proffer agreement.
Q That was a proffer agreement concerning a plea in federal court as a result of settlement negotiation, wasn't it?
A That document states there is no guarantee of a plea coming at all, that is a separate document and is called a proffer agreement.
Q What that proffer agreement is, is precisely for settlement negotiations resulting in a plea, is it not?
A A proffer agreement is an opportunity for a particular individual to be honest and open with the government in the hopes that there will be further continuation of working out something.
Q Precisely. So, a proffer agreement is based on settlement negotiations, is it not?
A A proffer agreement stands on itself. It is just a discussion between a defendant and the government to see what he has to say.
Q But the purpose of a proffer agreement, does it involve settlement negotiations?
A It's just one document where someone wants to

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come and talk to us. That's all it is.
Q Okay. So, you are telling me that the proffer, that the purpose of a proffer agreement is, if I have committed, is for me to say I'm going to come on up here and admit to you, sign this proffer agreement right here saying that I have immunity, now electrocute me?
A No. The purpose of a proffer agreement is if you have been involved in selling narcotics, if you only tell us about the first kilo you sold and we hear from another individual that you sold five, then I have a disparity between you coming forward with us in forthrightness and there is a discrepancy and we will terminate any discussion because you have not been forthright.
Q Precisely. Based on the representations made by you to Mr. Martin, he was forthright?
A Which representations made by him?
Q About the representations made to you, by you, that he had to tell you everything he knew and be forthright. In fact, that proffer agreement, like probably every one I have seen in federal court, provides for a provision for polygraph examination to see if you're forthright, does it not?

A I believe we touched on that when we read it, yes.
Q Okay. So, the purpose of a proffer agreement is based on settlement negotiations, is it not?
A I don't interpret it that way. I interpret it as a separate event to give somebody the opportunity to come clean with us and see where they're at.
Q Well, why does somebody come clean with you to see where they're at?
A I can't speak for folks. I mean, a lot of people are concerned that we have a bigger investigation than we may have and they want to just say, "I'm tired of living with the guilt," and I have had defendants come to me and say, "I just cannot take this anymore," and they want to unburden themselves and they will tell us as much as they can to try to relieve their own burden.
Q After they have signed a proffer agreement?
A Not necessarily.
Q Not necessarily? Okay. But in this case that proffer agreement involved settlement negotiations between Mr. Miller and Jean Howard, didn't it?
A I don't know what their negotiations were. I

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cannot even --
Q But there were negotiations going on at the time?
A I'm sure Miss Howard and his attorney probably spoke on the phone because if they had not I would have never spoken with him on the 10th.
Q Right, but they involved settlement negotiation, didn't they?
A I have no idea. I was not part of that conversation. I was merely told by Miss Howard, "Mr. Martin would like an opportunity to speak with you," and I said give me the date, and that's where I got involved with it.
Q And when during the second interview when Mr. Miller came, now Judge Miller, came to talk with you did you say, "At the end of the last interview some possible state charges have come out as a result of the first interview," before that proffer letter was signed?
A I told Mr. Miller that, "Your client wants to talk to you, I'm not sure what it's about," and that was the extent of it, and then --
Q So, you misled Mr. Miller, because you said, "I'm not sure what it's about," so you duped Judge Miller, too?

A I have no idea what this defendant wanted to talk to his attorney about. I'm not in his mind, so I can't speak to that, but his client should know what he wanted to talk to his attorney about, or he would not have asked for him, in my mind.
Q Does it make any sense to you for somebody to sign a proffer letter and tell them everything you know and and enter into a guilty plea in federal court and then think he's going to be turned around and prosecuted for murder and armed robbery and conspiracy and on and on and on, does that make sense to you?
A There is no association that a proffer leads to a guilty plea, or a plea agreement, for that matter.
Q Is it your testimony that all you told Judge Miller before that proffer letter was signed and you let him leave was there may be some new things?
A I said this is a continuation of the first interview on the 10th.
Q And the first interview on the 10th involved counterfeiting and federal drugs trafficking, didn't it?
A That is correct.
MR. McLAIN: Thank you.

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THE COURT: Anything further?

MR. JONES: No, Your Honor.

THE COURT: Thank you. Come down, sir. Stay with us, please.

(Witness excused).

THE COURT: Another witness?

MR. JONES: No, Your Honor.

THE COURT: We'll take a recess and counsel will come into chambers, please.

MR. McLAIN: Thank you, Judge.

(Recessed at 6:40 p.m. and resumed at 7:00 p.m.).

THE COURT: We're opening the record in the matter of the State of South Carolina versus Shondra Lamont Martin, indictment 2002-192.

The record will show that the Court had, during the break, that we had a conference off the record in chambers with counsel for the defense and counsel for the State and counsel for Attorney Miller, Mr. Paschal, who just left, and we talked about certain procedural aspects of this case and what we should do. It was decided that we would go forward and complete as much as possible, it is a little after 7:00 o'clock in the evening on March 17th, 2004, so far as possible so that these

officers would not have to return, keeping in mind that they may be required to return and hopefully they won't get too far away until we decide what your client, Mr. McLain, wants to do and whether or not Attorney Miller will or will not be here. There may be some possibility of a reply to whatever may come out in this thing.

So, that having been said, is that, did we generally discuss procedure, and the Court made no rulings, heard no additional facts, and we talked about some of the legal ramifications of what may happen if certain things are testified to and who may or may not be able to testify, want to testify, but the Court made no rulings but generally discussed it. Do you agree with that as a general statement of what we talked about, Solicitor?

MR. JONES: I do, Your Honor.

THE COURT: Is that a general accuracy?

MR. McLAIN: Certainly it is.

THE COURT: Mr. Paschal, was that generally accurate, sir?

MR. PASCHAL: Yes, sir, Your Honor.

THE COURT: Very well. Thank you all, gentleman. Call your next witness, please. Solicitor.

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MR. JONES: Call Agent Gambrell to the stand.

STEVE GAMBRELL,

after being first duly sworn testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q State your name for the record.

A Steve Gambrell.

Q Who do you work for?

A South Carolina Law Enforcement Division, commonly known as SLED.

Q Were you working with them on October 18th, 2001?

A Yes, sir, I was.

Q Did you have a chance on that date to interview Shondra Martin?

A Yes, I did.

Q Was the purpose of that interview to see if he had any information about an attempted robbery and shooting in Abbeville County?

A Yes, sir, it was.

Q Were you working with Abbeville County authorities with regard to a shooting wherein Adarryl McCoppin had died and he had been shot at 96 A-Frame Road in Abbeville County?

A Yes, sir.

Q And had you gone to -- where were you when

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you talked to Shondra Martin?
A Spartanburg City Narcotics office.
Q And do you recall being there and being in a room with him?
A Yes, sir.
Q Who was in the room with you?
A Agent Earl Gilliam, Agent Mario Lijoi with the DEA, there was a Spartanburg, Doug Harrell, I believe, with the Spartanburg City, and maybe Lieutenant Lamb may have been in the room as well.
Q All right. When you went in the room did you proceed to read Miranda warnings, Miranda rights and warnings to Shondra Martin?
A Yes, sir. I took them out of my pocket and was going to read them and I was advised that he had already been advised of his rights.
Q Okay. And did you have a chance to introduce yourself to Shondra Martin and talk to him and speak to him?
A Yes, sir, I did.
Q Did he respond back to you?
A Yes, sir, he did.
Q Did you tell him who you were?
A Yes, sir.
Q Did you tell him why you were there and what

you wanted to talk to him about?
A Yes.
Q What did you tell him you wanted to talk to him about?
A I wanted to talk to him about a shooting that occurred in Abbeville County and the death of Darryl McCoppin.
Q Did he agree to talk to you about it?
A Yes, sir, he did.
Q Did he at any point in time from that point until the time you left him say anything to you about not being prosecuted for it?
A No, sir.
Q Did he tell you he had immunity for the things he was telling you?
A No, sir.
Q Did he make sure you understood that you weren't going to charge him with this?
A Sir?
Q Did he tell you that he understood you weren't supposed to charge him with the information he was giving you?
A That wasn't discussed.
Q Did any of that come up?
A No.

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Q Well, did you specifically ask him questions?
A Yes, sir.
Q You asked him questions about what?
A We both did, myself and Detective Alford both asked him questions about the shooting of Darryl McCoppin.
Q Okay.
A I called him Darryl.
Q As questions were being asked and as information was being gained did you making notes of the things that Shondra Martin was telling you?
A Yes, sir, I did.
Q All right. During the course of make those notes and getting this information did you ask him if he would allow you to write out a written statement for him to sign?
A At the beginning I asked him about a written statement and he said he would not sign anything written.
Q Okay. So, he told you he wasn't going to sign anything?
A Yes, sir.
Q So, you made the decision about the way and the manner in which the information he was giving you would be documented and would be authenticated?

A That's correct. However, he did provide a strip map that he drew and which he signed his name to.
Q Did you insist on him signing a written statement?
A No, sir.
Q Did you insist on him doing anything or saying anything that he didn't volunteer to you and offer to do?
A No, sir.
Q I want to hand you this document and ask you if you recognize it?
A Yes, sir. This is the drawing that he made in the room as we were talking to him.
Q And what is it of?
A It is of, showing where the driveway is in relationship to Heavy D's residence, the culdesac, the lake and where the motorcycle was parked and where the vehicle was parked.
Q Who wrote that word motorcycle there?
A Shondra.
Q Who wrote the word car there?
A Shondra.
Q And he was drawing this out as he was telling you where he went and what he did in Abbeville

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County?
A Yes, sir.
Q What's the signature at the bottom?
A Shondra Martin, 4:20 p.m. on 10/18/01.
MR. JONES: Your Honor, we offer this as a court's exhibit at this time.
MR. McLAIN: No objection.
THE COURT: It will be marked Exhibit Number next for the Court.
(Court Exhibit Number 6 was marked).
BY MR. JONES:
Q Again, you made notes of the things that he was telling you while you were there, is that correct?
A That's correct.
Q And once you left his presence did you take those notes and have them typed up into typed notes to represent the substance of the oral statement that Shondra Martin had given you on that date at that time?
A Yes, sir. The typed notes I submitted to you is the notes that I typed myself from my handwritten notes, memorandum of interview I typed, all the grammatical and spelling errors included.
Q All right. Read it to us please.

A Beginning memorandum of interview, SLED case number 34-010107, the date is Thursday, 10/18/91, it should be '01. The time is 3:37 p.m. and it's reference to an interview with Shondra Martin.

It states, "On the above date and time an interview was conducted with Martin at the Spartanburg City narcotics office. Prior to interview Martin was allowed to consult with his attorney. Mr. Martin's attorney came out of the interview room and informed officers Martin would answer any questions the officers had. Upon entering the room and beginning the interview agents were advised that Martin had been advised of his rights. Martin was then asked about the shooting of Daryl McCoppin that occurred in Abbeville County. Martin stated on the day this happened that he was with Chris Landrum and they had gotten with Rosalind Brown and that she had pointed out where Heavy D stayed. Martin stated that he was driving and when they rode by the house and Brown pointed it out and that they went back to Anderson and dropped Rosalind Brown out. Martin stated that they were in his Ford Excursion which is white in color. Martin stated that he and Landrum went back later, which was the second time,

STEVE GAMBRELL - DIRECT

and rode to the dead-end, turned around and came back past the driveway to D's house and stopped. Martin stated that this was the same house pointed out to them by Brown. Martin stated that there were a lot of people at the house and that Chris Landrum had a nine millimeter handgun with him and that the gun belonged to him. Martin stated that he also had a handgun and it was a nine millimeter also, did not state what brand or model, only stated it was not a pistol. Martin stated that when they first passed the driveway, that when you get to the dead-end you could see water. He was speaking about Heavy D's house. Martin stated that he drove past the driveway, headed out, pulled just past the driveway and parked the white Excursion and that he and Landrum got out and walked up into the woods to see what was going on at the residence. Martin stated that there was a lot of activity around the house and that cars were pulling up to the house and then leaving and there was a lot of people in the yard. Martin stated that they continued to watch from the woods for awhile. Martin stated that a motorcycle stopped near the Excursion with its headlights on and that a big guy walked toward the Excursion and was

looking in it. Martin described the guy as putting his hand up to the windows and looking inside. Martin stated they walked toward the Excursion and Chris Landrum asked the big guy you're messing with my Jeep? Martin stated Chris walked on over toward to big guy and said, these were his words, don't be fucking with my Jeep. Martin stated by this time that he had walked to the driver's side of the vehicle, opened the door and was putting the gun up that he had. Martin stated that when he was getting into the Excursion that he heard scuffling on the ground at the back of the Excursion. Martin stated that he heard a gunshot, a pause and then two more shots. Martin stated that Landrum jumped in the vehicle on the passenger side and they left and drove back toward Anderson. Martin stated that in route to Anderson they met a marked police car on the road. Martin stated that the backpack that was found at the scene with the initials on it belonged to his son. Martin again confirmed that Landrum was armed with a nine millimeter auto and that he had given Landrum the gun. Martin stated there were too many people at the house when they got there to do anything, meaning to rob anybody, that that is why they were in the woods looking and

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decided to leave."
Q Did you provide Solicitor Woolston with a supplemental statement concerning what he told you on that day, that was not included in your notes, involving a license plate?
A I did.
Q And what information did Shondra Martin provide you?
A As we were leaving the interview room I turned around and asked Shondra if he made any change, what happened to the tag, plate, and he said they took them off before they left, indicating doing this.
Q What off?
A The tag, tag, the border.
Q Before they left where?
A The scene.
Q Once you had concluded, had taken this statement, again, was there any mention made by anybody about immunity from prosecution for the information he had given?
A None whatsoever, no, sir, none whatsoever.
MR. JONES: Answer any questions Mr. McLain has for you.
MR. McLAIN: May it please the Court.

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THE COURT: The witness is with you.

MR. McLAIN: Thank you.

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CROSS-EXAMINATION

QUESTIONS BY MR. McLAIN:

Q How are you today, this evening, sir?

A All right.

Q You were told, sir, that my client had been Mirandized?

A Yes, sir.

Q Okay. And, so, you assumed that that was the case?

A I assumed it was the case but the attorney said we could do, could talk to him, too.

Q But you didn't Mirandize him?

A No, sir.

Q And you did not witness anyone else's Mirandizing him, did you?

A No, sir, I did not.

Q Okay. And was this before or after Mr. Martin signed the federal proffer letter, and his attorney? Do you know?

A I don't have any idea when it was signed.

Q Okay. And do you know if this was before or after Mr. Martin entered a guilty plea in federal court?

A I have no idea.

Q Okay. And do you know of your own personal

knowledge whether or not Mr. Martin withdrew a plea --

A No.

Q -- in federal court --

A No.

Q -- before or after this statement was signed?

A No, sir.

Q Okay. Now, when Mr. Martin told you this, this was at the same time, at the same time that these other, to which these other federal agents testified?

A Yes, sir.

Q This was the same interview?

A Same interview, yes, sir.

Q How many folks were there to interview him, from different agencies, if you recall?

A Secret Service, DEA, Spartanburg City, of course I was with the agents from Abbeville and SLED. I don't know about any others.

Q Okay. Did anybody tell Mr. Miller, Attorney Miller, that anyone was going to question Mr. Martin about any state crimes?

A I was introduced to Mr. Miller by Special Agent Tony Dewarti, who talked to him before I walked up. I don't have any idea what was

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discussed.
Q And do you know how much time Mr. Miller spent with his client?
A No, sir, I don't but we spent a considerable amount of time waiting until he got there. I'm not sure exactly how long he stayed in the room.
Q Was he --
A But I saw Mr. Miller in the room conferring with his client.
Q I'm sorry, was it an in and out thing?
A No, he actually spent some time in there talking to him.
Q Did you all make, to the best of your knowledge and belief, did anyone or did you witness anyone making Mr. Miller aware of the fact that you were going to be asking him about state, not federal charges, meaning asking Mr. Martin about state charges and not federal charges?
A No, sir, but he knew I wasn't a federal agent. I told him I was a SLED agent.
Q Okay. But did anybody tell him that he would not be, would not have any immunity for any of these other state charges if he told you about them?
A No one in my presence ever said anything,

nothing was said about immunity.

Q Okay. You were here -- were you here when these other agents testified?

A No, sir. I was outside.

Q Have you seen the proffer letter that was signed in federal court?

A Have I seen it, no, sir.

Q Okay. Do you know that there was a proffer letter signed in federal court granting Mr. Martin immunity for everything he told anyone, with the language of any exceptions therein?

A I didn't think a proffer letter was -- any of the proffer letters I have read, I didn't think it granted immunity.

Q On October 22, 2002, did you go to see Mr. Martin at the United States prison in Atlanta, Georgia?

A Yes, I did.

Q Okay. I believe Sheriff Charles Goodwin, Detective David Alford, Special Agent Steve Gambrell?

A Yes, sir.

Q And Special Agent Tony Dewarti interviewed, someone I have known for a long time, interviewed Shondra Martin at the United States prison in

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Atlanta, Georgia?
A That's correct.
Q And there was a memorandum prepared for the case file at that time. Are you aware of that?
A Yes, sir.
Q Do you know who prepared that?
A If I my see it, I think I can answer the question.
Q Sure.
A I believe Detective Alford typed this particular one because that looks, that looks more like the computer at the Sheriff's office.
Q Okay. Well, he did, Detective Alford did prepare that, he's sitting right there with the Solicitor and Deputy Solicitor.
A Okay.
Q And that accurately names the people who were present at the time, is that correct, sir?
A That's right.
Q Okay. That's a short memorandum, let's read that into the record, if you don't mind.
A Okay. "On October 22, 2002, Sheriff Charles Goodwin, Detective David Alford, Special Agent Steve Gambrell and Special Agent Tony Dewarti interviewed Shondra Martin at the United States

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prison in Atlanta. Martin was advised that officers were there to speak with him concerning a letter that he had written Detective Alford. He acknowledged that he had written a letter, and Martin was then advised of his Miranda rights. At that time he stated he should speak with an attorney first. He was then told by Goodwin that one of the reasons they were there was to make sure he had not been threatened or coerced into writing the letter. He stated he had not been but he felt he had been tricked by officers in the past concerning the charges he was serving time for and wanted to talk to a lawyer before answering any questions. At that time the interview was terminated."

MR. McLAIN: I would like to mark that as an exhibit, Court's exhibit.

MR. JONES: No objection, Your Honor.

MR. JONES: Court's Exhibit Number 7. Do you want me to hand this exhibit up to the bench?

THE COURT: Just leave it with the others. They will all be considered.

(Court's Exhibit Number 7 was marked).

THE COURT: Mr. McLain.

MR. McLAIN: Yes, sir, thank you.

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BY MR. McLAIN:

Q That says he felt he had been tricked by officers in the past, correct?

A Yes, sir.

Q Okay. Do you think that Mr. Martin would have given you this statement dated, or alleged oral statement that you typed up and the map on Thursday, October 18th -- it says '91, but that's 2001?

A It's 2001, that's a typo.

Q I'm not a good typist either, I understand. Okay, that should read 2001?

A That's correct.

Q Okay. Do you think that Mr. Martin was under the impression that he had immunity for anything that he told you at the time of this interview?

A I don't think so. I think he intelligently and knowingly gave us the information.

Q Well, do you think he intelligently and knowingly gave you the information thinking that he was going to be subsequently prosecuted for it?

A I think he was relieved when he talked to us.

Q Right, but do you think that he thought that he was going to be subsequently prosecuted by giving you, for giving you this information?

A I can't answer as to what he thought. I don't know.
Q Okay. Well, did anybody make him aware that he could be prosecuted for it?
A If we -- no, we didn't tell him, no, huh-uh.
Q Okay. And, so, you all didn't, you all led him to believe he wouldn't be prosecuted for it?
A No.
Q You didn't?
A No, sir.
Q Why would he give it to you, the information to you if he didn't think he had immunity?
A I have no idea other than to clear his conscience.
Q Okay. And then later he told you that he was tricked into giving this information?
A Yes, sir.
Q Okay. And if he were tricked into giving you this information it wouldn't be voluntary, would it?
A At the particular time it was voluntary.
Q But watch my question. If he were tricked, if he were duped into giving you this information it would not be voluntary, would it?
A He volunteered it. If you obtained it, if

you obtain it by trick, is that your question?
Q Right. My question is, would it be a really knowing and voluntary statement if he were tricked into giving it to law enforcement?
A That would be an issue that's what we're here for, I guess, today, for the judge and jury.
Q Right, but would it be voluntary?
A He volunteered the statement, is all --
Q If he were tricked into it and duped into it, would it truly be a voluntary statement?
A He didn't have to do it, it was voluntary.
Q Right, but if he were tricked or duped into it, would it be voluntary or would that be coercion?
A It wouldn't be coercion, he wasn't coerced.
Q If he were duped or tricked into giving a statement --
MR. JONES: Your Honor, he has answered the question four times.
MR. McLAIN: I hadn't asked it --
MR. JONES: He has answered the question four times, Your Honor, I object. He's badgering the witness.
THE COURT: Objection sustained.
MR. McLAIN: All I want is a simple yes or

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no.

THE COURT: The record will show the last several questions were asked and answered with counsel not more than three or four feet from his face, from the witness's face and the witness answered the questions.

MR. McLAIN: Okay.

BY MR. McLAIN:

Q Is a statement given by a defendant -- how long have you been in law enforcement?

A Thirty years.

Q Is a statement given by a defendant who is led to believe something other than what is true by law enforcement a voluntary statement?

MR. JONES: Your Honor, our courts have ruled, the United States Supreme Court has ruled they can tell a suspect a lie in order to get them to voluntarily confess to a crime. They can tell them they know they did it, they can tell them they have somebody that is telling them they did it. They can use any information they so choose to as long as they don't coerce him or make a promise of reward to him. Our Supreme Court has ruled on that. He is asking him a legal question this man doesn't have knowledge of anyway, and apparently,

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apparently the lawyer is not following the law. They can trick him into confessing in their voluntary confessions as long as they don't coerce him or promise him reward.

MR. McLAIN: Your Honor --

THE COURT: You may be heard but the question calls for the witness to make a legal conclusion.

MR. McLAIN: But he's an officer of the law and I would take it --

THE COURT: He's not an attorney.

MR. McLAIN: With 30 years experience he should be trained in that, I would think.

THE COURT: He's not an attorney, counsel. You are asking him for a legal conclusion.

BY MR. McLAIN:

Q Do you consider trickery coercion?

A No, sir.

Q You don't think that's coercion?

A No, sir.

Q Did you at anytime in Atlanta Mirandize Mr. Martin?

A He was Mirandized.

Q Who did that?

A I believe I did.

Q Okay. Was it the same card the agents use?

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A Yes, sir.
Q You use the exact same card?
A Standard card.
Q It was at that time he said, "I've been tricked, I'm not going to tell you anything else"?
A Yes, sir.
Q Was he already serving a sentence in Atlanta then?
A Yes, sir, he was already in custody.
Q In federal custody?
A In federal custody.
Q All right. Was he in federal custody when you interviewed him and he allegedly made this drawing?
A I understand he was brought up to the Spartanburg County Jail, I don't know who had the responsibility for him.
Q Well, Greenville won't let federal prisoners be housed in Greenville, will they?
A The only holding facility I know of is Anderson.
Q Anderson, Spartanburg?
A Okay.
Q He was in Spartanburg at the time?
A Spartanburg.

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Q And he was in custody at the time?
A Yes, sir.
Q And Mr. Miller was not present?
A He was present and left.
Q He was present, he left. Had he been Mirandized before, or after Mr. Miller left?
A I don't know. All I was told, he had been Mirandized.
Q Who told you that?
A I believe Mr. Gilliam with the Secret Service.
Q He said, "He has been Mirandized"?
A Yes, sir.
Q When did you start to ask him questions, before or after Mr. Miller left?
A Mr. Miller had already left and then we went into the room.
Q So, you all waited until his attorney left and you all started asking him questions about state charges?
A We didn't wait for him to leave. Mr. Miller chose to leave and we began our interviews.
Q Okay. But your interviews -- let me rephrase my question. Your interviews began after Mr. Miller left?

A That's correct.
Q Okay. And that's when you started to interview Mr. Martin about any state charges, after his attorney left?
A There wasn't any state charges at that time, he hadn't been charged by the State.
Q About any matters relating to state charges, you began those interviews after his attorney left?
A That's correct.
Q To the best of your knowledge did anybody make Mr. Miller aware that you all were going to ask him about, meaning Mr. Martin, any potential state charges, before Mr. Miller left?
A I don't know what conversation took place before I was introduced.
Q Okay. Did anybody make, to the best of your knowledge, did anybody make Mr. Martin aware that he did or did not have immunity for anything that he told you all about any potential state charges while he was in federal custody?
A No immunity was ever discussed.
Q Immunity was never discussed?
A No, sir.
Q Do you believe, do you believe that Mr. Martin thought that he had immunity for anything

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that he told you?
A I don't know what he believed. I believe he wanted to cooperate and give us and tell us the truth, is what I believe.
Q And as a result, now he is being prosecuted after he was told to tell the whole truth by the feds, is that correct?
A That's right.
Q And you don't consider that coercion?
A No, sir.
Q And you don't consider that duress?
A No, sir.
Q But it is deception, isn't it? Is it deception?
A We didn't deceive anybody.
MR. McLAIN: Thank you.
MR. JONES: I don't have any other questions, Judge.
THE COURT: Thank you. Come down, please, sir.
MR. McLAIN: Thank you, sir.
(Witness excused).
THE COURT: Are there any other witnesses with regard to the Jackson v. Deno matter?
MR. JONES: No, Your Honor.

THE COURT: We'll recess. It would be good if we had the jury come back at 10:00 because there may be some things to discuss earlier but we will -- do you have another witness ready at 9:30?

MR. JONES: Yes, sir, Your Honor, I can. I have a couple SLED agents and a doctor. I've got, based on the way witnesses have gone, you know, probably a couple hours worth of testimony tomorrow morning.

MR. McLAIN: Judge, may I bring a matter, just a matter to the Court's attention and the Solicitor's attention?

THE COURT: Yes, sir.

MR. McLAIN: Okay. As Your Honor is aware, I have three children, younger children, two in Christian schools, and my youngest, my younger little girl is six and she went from Faith Christian Academy to Shannon Forest and wants to go back to Faith, so we might be just a little bit delayed tomorrow morning because I have to go re-enroll her back there in Faith Christian Academy, and if we could have until 10:00 o'clock, just 30 extra minutes is all I ask so I can get that done.

THE COURT: All right. We'll do that and,

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madam clerk, the Court will offer you the assistance of my law clerk to contact as many jurors as we can to be here at 10:00, and those that come early we will be sure they have plenty of refreshments and they are told before they go in that we'll start at 10:00 rather than at 9:30, because we are recessing here, by the time we get out of here it's probably going to be nearly 8:00 o'clock.

MR. McLAIN: And, Judge, we'll try to be here earlier, we'll do our best to be here before 10:00.

THE COURT: That's all right. We will try to contact as many jurors as possible and not inconvenience them and be ready to go at 10:00 in the morning and we'll finish those and then, the gentleman who have testified in the Jackson v. Deno hearing, Agent Gilliam and Agent Lijoi and Agent Gambrell, would you please leave with the Solicitor's office your cell phone numbers so that if needed, you may know how to get in touch with them, but we may need to get further into, I don't know that we can get further into it, but there may be other and additional things that either you, Agent Gambrell, whom I'm looking at, or the two other witnesses may be needed for, contingent upon,

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I can't imagine it, but on the other hand, it's not outside the realm of possibility that they may throw more light on this.

MR. JONES: We've got to have them here tomorrow, they've got to be here at 9:30.

MR. GAMBRELL: I plan to be here anyway.

THE COURT: Very well.

MR. PASCHAL: May I approach the Court?

THE COURT: Mr. Pat Paschal of the Greenville Bar is speaking. Do you want to speak on the record?

MR. PASCHAL: I was trying to get the schedule.

THE COURT: Very well. The record is closed.

(Recessed at 7:36 p.m.).

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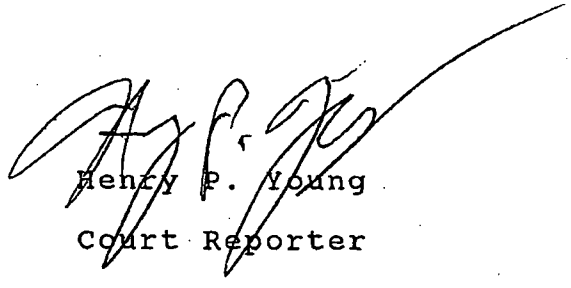
I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Abbeville County, South Carolina, on the 17th day of March, 2003.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 8, 2004



Henry P. Young
Court Reporter

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STATE OF SOUTH CAROLINA

2002-GS-01-192

COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA,

-vs-

SHONDRA LAMONT MARTIN,
CHRISTOPHER FRANK LANDRUM,
and ROSALIND RENEE BROWN,

Defendants.

March 18, 2004

B E F O R E:

HONORABLE WYATT T. SAUNDERS, JR.

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

W. TOWNES JONES, IV
TIMOTHY W. WOOLSTON
Attorneys for the State

W. BENJAMIN McLAIN
Attorney for the Defendant Shondra Martin

Henry P. Young
Court Reporter

VOLUME IV of VI
March 18, 2004

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(Reconvened at 11:25 a.m.).

THE COURT: The record is open. This is State of South Carolina versus Shondra Lamont Martin, indictment 2002-192.

Is there anything from the State before the jurors are shown in?

MR. JONES: Nothing from the State, Your Honor.

MR. McLAIN: Nothing, Your Honor.

THE COURT: Is there anything from the State?

MR. JONES: No, Your Honor, I apologize.

THE COURT: Very well. I thought you were conferencing about something.

MR. JONES: No, sir.

THE COURT: Show the jury in, please.

(The jury returned at 11:26 a.m.).

THE COURT: All the jurors are present, the forelady and the alternates are properly seated. The matter lies with the State. Call your next witness, please, Solicitor.

MR. WOOLSTON: The state calls Dr. Woodard at this time.

THE COURT: Dr. Woodard.

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BRETT WOODARD,

after being first duly sworn testified as follows:

THE COURT: You may examine, Mr. Woolston.

MR. WOOLSTON: Thank you, Your Honor.

DIRECT EXAMINATION

QUESTIONS BY MR. WOOLSTON:

Q Good morning, Dr. Woodard.

A Good morning.

Q Dr. Woodard, could you inform the jury of what you do as a professional pathologist?

A I'm a medical doctor and one of the jobs that I do as a pathologist, I examine people at the request of the coroner of Abbeville County to determine the cause of their death and the manner of their death and what the mechanism by which they die was, and to collect any evidence or documentation that would be necessary to support that.

Q Very well, sir. Dr. Woodard, how long, sir, have you been professionally here in the community working as a forensic pathologist prior to coming to court today?

A I have been in Anderson for 22 years and before, before I was at Anderson I was at Duke University Medical Center and worked in Durham

County, North Carolina.

Q Yes, sir. Just in a general range of numbers, approximately how many times have you been qualified as an expert here in the State of South Carolina, here in our courts testifying as an expert in the field of forensic pathology in situations where you have performed an autopsy?

MR. McLAIN: Excuse me, Your Honor, I'm sorry. I don't mean to interrupt Mr. Woolston but I will stipulate his expertise. He doesn't have to go through and qualify him.

MR. WOOLSTON: I would like to ask that one question.

THE COURT: Very well.

A 100 to 200 times.

Q Very well, sir.

A Here in South Carolina.

MR. WOOLSTON: The State would move to have Dr. Woodard acknowledged as an expert in the field of forensic pathology.

THE COURT: Upon remarks by counsel that the stipulation has been entered into, the parties agree that this witness is an expert in the field of forensic pathology.

Continue direct examination.

MR. WOOLSTON: Thank you, Judge.

Q Dr. Woodard, did you perform an autopsy on Adarryl McCoppin?

A Yes, I did.

Q Toriano Adarryl McCoppin?

A Yes.

Q Dr. Woodard, when did you perform that autopsy in this case?

A The autopsy was performed July 29, 2001, at approximately 10:00 a.m. in the morning.

Q And I trust you have information within your reach that Mr. McCoppin did expire, did die that very same morning?

A Yes, he had died earlier that morning at the Anderson Area Medical Center.

Q Very well. Do you remember that autopsy?

A I have records of it, yes, sir.

Q Does that fully complement your recollection and refresh your recollection fully?

A Yes, it does.

Q Could you step by step in your own way and words inform the jury of your autopsy, what your observations were, what your findings were and what the medical proximate cause of his death was?

A The deceased's, when we do a forensic

autopsy we usually evaluate the individual and the clothing that they were wearing at the time they died, but the deceased's clothing was not available for us to evaluate. The deceased had two gunshot wounds. One of these wounds, both of the wounds were in the left leg. One of the wounds entered the back of the left leg at the calf area, about seven inches above the bottom of his bare foot, and it passed through the muscle of the calf and then exited 15 inches above the sole of his foot. It tore muscle and small blood vessels but did not hit any bones and did not hit any major arteries.

The second wound was seen three feet, or 36 inches above the sole of the foot and it entered the lateral anterior thigh, sort of at the bottom of where your pants pocket might be in a pair of pants. It passed through the structures of the thigh and during its passage it tore the femoral artery and the femoral vein, these are the major blood vessels that take blood from and to the leg, and then passed out at the muscular and soft issues on the back inside of the thigh, what we call the medial, toward the center of the thigh. It was going in a slightly downhill direction, it dropped six inches in its path through the leg, so it came

from 36 inches at entry to 30 inches on exit, where the gunshot wound in the calf came from 7 inches on entry, to 15 inches, so it was going uphill relative to the body.

There were several small cut and scratch wounds on the body. The right hand demonstrated cuts that ran on the third and fifth fingers. There was a superficial cut over the palm of the right hand, on the third finger, excuse me, on the palmar surface of the right hand, on the third finger, that ran down the length of the third finger. Then there was a superficial cut on the palmar surface near, between the fourth and fifth finger, it was slightly V shaped, followed by a small cut at the base of the fifth finger.

There was a pointed injury or superficial stab to the top of the foot and there was a bruise with a superficial scratch on the left elbow. There was dirt and scraping over the palms of the hands but the knuckle surfaces of the right hand demonstrated what we call abrasions or scrapes, and those scrapes were seen on the knuckle surface that involved the third and fourth digits, which would be the two center fingers of the right hand.

There was nonspecific dirt debris on the skin

and on the elbows as well as the palms of the hand.

The wound to his leg which tore the femoral artery resulted in hemorrhage or blood loss and it was this wound to the femoral artery that was the cause of his death.

Q Yes, sir. Could you stand, Doctor, where you are just for one moment? Could you show the jury again where the bullet came in at that was the cause of death?

A It came in about three feet from the sole of his foot, his bare foot, entered the leg on the outside, it went down, dropping about six inches or half a foot and came out in the back portion of the leg. It did not enter or hit the opposite leg.

Q Thank you, Doctor. Were you able to definitively determine that those two injuries were, specific injuries to the femoral artery and to the lower end of the foot, were gunshot wounds?

A Yes, they were.

Q Were those consistent with, say, a nine millimeter type weapon?

A They were in a general size and character that a nine millimeter weapon would produce.

Q Very well, sir. And I trust as a forensic pathologist that's part of being a forensic

pathologist, is being able to make those expert judgments?

A That's correct.

Q Dr. Woodard, in reviewing your report did you also make some professional assessments about the most probable distance that the party discharging the firearm would have been relative to Toriano Adarryl McCoppin when he suffered these shots onto him?

A When a gun is discharged, not only does the bullet come out the end of the gun, but unburned powder that's in the shell comes out and then congealed or partially burned larger pieces of powder and fine metal debris come out the end of the gun. These travel different distances. Obviously the bullet can travel the fartherest, the majority of the energy is put on the bullet. The fine powder is like a fine dust and it travels a very short distance, it tends to travel six inches or less. The larger particles can travel farther.

With a handgun they usually travel somewhere between 6 to 12 inches away from the end of the barrel of the handgun but they can travel with certain ammunition and certain guns even farther than that, out to 18 inches. None of these

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features were observed but, again, if he had intervening clothing it could have blocked these features and it would absorb those features and it wouldn't be passed on. We can tell, I can tell that the gun was not held tightly or very loosely against the skin, less than half an inch away, but beyond that, then the gun could be out to the range of fire of the gun.

Q Very well, sir. With respect to the references you made to injuries on the, I think you said the palm side of Mr. McCoppin's hands, if I could direct you --

A Yes, his right hand.

Q If I could direct your attention back to that, and while directing your attention back to that portion of your testimony I would like to hand up to you two exhibits that have previously been admitted into evidence, State's Exhibits 12 and 11, and I will put those both, Doctor, in your control and you may open those, if you would, to look at the blade pattern on that, on both of those knives.

A All right.

Q Doctor, would these knives, these two specific knives or either one of these two knives, based upon your forensic examination, did you see

evidence on the right palm of Mr. McCoppin that was consistent with the use of a knife of this characteristic to cause the injuries that you have referenced on your report and your testimony today?

A Yes. The knife injuries to the hand could be made by either of those two knives and in fact the V shape injury that was at the bottom of the fingers on the palm, that type of injury is often seen with a metal sheafed knife versus like a hunting knife because of that little recess right there at the end of the knife.

Q Yes, sir. If I were to, and I'm going to inform you, since you are an expert witness and are empowered to render an opinion, that the testimony that has been submitted to this jury earlier this week was that there was no finding of blood, per se, on the blade of either of those two knives, and I ask you, based on that established fact in the case, it's been testified to, could those knives have been used, either one of those been used to project the injury that you found that is consistent with the use of those, without there being a determination later that there was blood found on those knives?

A Well, eliminating things like it rained and

washed the blood away or situations like that, when it cuts, when a cut is initially made and the knife is withdrawn through the cut on a person or an animal you don't bleed until after the cut's completed. With stab wounds it's much more common to find blood on a knife because the knife cuts into the hole, then it's held in the hole, but with a cut across the surface of the body, after you pull the knife across the body tissues then you bleed. So, no, the fact that there was no blood on the knife would not indicate to me that that was not the knife.

Q Very well, sir. And would it also be true that one could, if one wanted to, volitionally remove any potential residual blood that could be on it? That could also be manually done, couldn't it?

A Easily by wiping it on your clothing.

Q Very well, sir. Now, Dr. Woodard, you had also referenced, if you need to reference back to your report feel free to do so, on which hand did you see some evidence of injury to the knuckle area on the body of Toriano McCoppin?

A It was his right hand, the center two knuckles, the third and the fourth fingers.

Q And do you have any informed medical basis upon which to tell us whether that would be consistent with Mr. McCoppin, prior to meeting his death that evening, being in some sort of situation where he may have had to either defend himself or come into contact with another human being by punching or --

A It would suggest that some sort of hand blow was struck by that hand and it would be consistent with that hand striking another individual.

Q Could that well be consistent in one's effort to defend themselves of life and limb?

MR. McLAIN: I'm going to have to object to that. That's a little bit leading.

Q I'll rephrase it. Could that siutation on the knuckle be consistent with a person defending themselves?

MR. McLAIN: I still have to object, Your Honor. That assumes that someone was defending themselves. That makes a speculative assumption.

THE COURT: Sustained. Rephrase the question again.

Q When a person exhibits that sort of injury to their knuckles at an autopsy commenced shortly after the time of death, from a fresh injury, do

you, is that, could that injury result from someone striking a blow in defense of their person?

MR. McLAIN: Same objection.

THE COURT: Sustained. Rephrase the question, please.

Q How can one incur such an injury?

A Most often they are offensive but they can be defensive.

Q Very well, sir, thank you. Now, Dr. Woodard, with respect to the overall injuries that you have described thus far and the location of these injuries, particularly the gunshot wounds, would you share with us a probable scenario as to which shot may well have occurred first and how that could have resulted in the angles of these gunshots going into Mr. McCoppin being different, as you described they were? I think you first testified about the shot into the femoral artery was slightly downward on a certain angle and the other shot which also entered lower was more upward, I believe you said?

A That's correct. The gunshot that goes into the upper leg went down, dropped relatively to the height of the gentleman, went down six inches. If both the shooter and the victim were in an upright

position, that would be consistent with how that type of wound is usually produced.

The leg wound going up could be due to either the victim leaving the site where he was initially shot and going up a grade away from where he was shot so that now the victim is higher than the perpetrator, or as the leg lifts at the knee, the foot comes up and down, even if the leg is relatively flattened and the shot would be across what would look like a surface that was parallel to the ground, it would make in the body the appearance that the wound was going upward, but the gun remains consistently on line when the victim is shot from his outer left side.

Q Based on what you described there, is a probable scenario that would be fair to assert on your part as an expert witness, that Toriano McCoppin may well have been shot initially in the femoral artery and by virtue of that injury buckled and then was shot again while down? Is that possible?

THE COURT: Wait just a minute, please.

MR. McLAIN: Objection, Your Honor, leading, speculative.

MR. WOOLSTON: Judge, my position would be

that --

THE COURT: To the leading, the objection is sustained. The expert witness is allowed to make opinions based upon his experience, knowledge and education. Rephrase the question.

BY MR. WOOLSTON:

Q Could you give us your best assessment of how these shots would have occurred relative to how Mr. McCoppin's body would have been formed up if this shot to the femoral artery occurred first?

A If the shot to the femoral artery occurred first, then the shot to the calf either occurred when he had fallen to the ground and the leg was in more of an outstretched way, or as he fled or moved away from the scene and his leg bent in an upright position, if you will, flipped up like that so that it becomes flatter compared to the ground surface.

Q So, either one of those are medically probable scenerios?

A That's correct.

Q Very well, sir. Now, Dr. Woodard, without belaboring this, with regard to the femoral artery, would you advise us and tell us if that is a major vessel in the human body?

A Yes. It's one of the major branches off your

main artery, the aorta, and is larger than the arteries that go to your brain, certainly larger than the arteries that go to your heart, your coronary arteries, much larger than the arteries that go to your kidneys. It's larger than the arteries that go to your arms. The legs take far more of each heartbeat than the arms. The brain and the heart and the viscera, while they take most of the heartbeat, or each amount of blood that's pushed out of the heart, that leg is probably taking somewhere between seven to ten percent when it's not working. If it's working, somebody is walking, it could take even more walking or running.

Q Obviously you do autopsies based on the presentation of the human body and you have to deal with it as it comes to you. In a situation such as this where a man is, according to your report, within the range of, you say, well, 300 pounds, was it?

A He was 300 pounds or more.

Q Yes, sir. In a general sense, Dr. Woodard, a 300 pound man, when he, in his latter twenties, 26, 28 years old, I believe 28 years old, is suffering a gunshot wound to the femoral artery, does a

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person suffering under those circumstances, are they more apt to be more in peril because of the size of the human being, given the role that the femoral artery plays based on a human body of that size?

A Well, in a person of this size and character who is significantly overweight, isn't in top physical condition, gunshot wounds to people who are not in top physical condition are far more serious than they would be to someone like a soldier who is in top physical condition. But given his obesity and his general poor physical condition, yes, he's far more likely to suffer worse from this injury than somebody who was a trained athlete.

Q And would you regard a gunshot wound to a femoral artery on a person of that size and condition to be an extremely grave injury?

A To anyone I would consider it to be an extremely grave injury.

Q And in closing out my questions, having said that, what was your determination as to the proximate cause of this man's death?

A The gunshot wound to his leg.

Q And do you say that with familiarity as to

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the general information that you have been provided regarding the time of the shooting relative to his arrival at the Anderson Area Medical Center and do you say that with some appreciation for that?

A Yes, I do.

Q Those times?

A Yes, I do.

Q And I think you have reviewed those records prior to coming today?

A Yes, I did.

Q Including the hospital records at Anderson Area Medical Center?

A Yes, I did.

MR. WOOLSTON: One moment, please, Doctor. Thank you. Respectfully, Judge, I believe we have completed our direct.

THE COURT: Cross-examination, Mr. McClain.

MR. McLAIN: May it please the Court, Your Honor.

THE COURT: Mr. McLain.

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CROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q Doctor, I'm Ben McLain, I represent Mr. Shondra Martin, this is my wife Gay assisting. We have talked earlier?

A Right, you called me, or I called you at your request.

Q After I subpoenaed you?

A That's correct.

Q Now, you were asked about what shape the deceased was in. Have you seen this picture, State's Exhibit 17?

A No, I haven't seen that picture.

Q Okay. Do you know that the deceased, Mr. McCoppin, had been a semipro football player and was a volunteer fireman?

A I believe I knew he was a volunteer fireman but I didn't know about his football career.

Q Okay. Let me ask you something about the gunshot wound and your testimony on direct examination. Could it be that Mr. McCoppin was struggling with someone when he was shot?

A Absolutely, it could be.

Q Okay. And could it be that -- what makes you think that?

A Because of the injuries to the knuckle surfaces on the right hand and the cut injuries to the palm of the right hand.
Q Okay. Were the injuries, the knife injuries were all to the right hand?
A That's correct.
Q The knuckles, the abrasions to the knuckles were on the left hand?
A No, they were on the right land.
Q They were both on the right hand?
A That's correct.
Q Okay. And were you able in fact to determine which shot occurred first?
A No. You can't look at the two shots and see that they occurred first unless there are certain unique situations where you can tell the order of shots but in this type of injury you cannot tell.
Q Yes, sir. And, I'm sorry, excuse me, he had abrasions to his knuckles. How many cuts, I'm sorry, on his hand?
A He had basically three cuts to the palm of his right hand, one along the bottom or the palmar surface of his third finger, one right at the very base of the little finger, of the fifth finger, and then in between the fourth and fifth fingers, on

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the palmar, a little notch shape, a little V shape.
Q In fact, these wounds were highly consistent with an altercation occurring?
A Grasping a blade of a knife, yes, sir.
Q Striking somebody, perhaps?
A No, they wouldn't be associated with striking. Striking crushes tissue. These were sharp force injuries or cuts, but the knuckle surface would be consistent with him striking someone.
Q Okay. And could it be that he was struggling on the ground during these gunshots occurring?
A He could have been.
Q And I didn't quite understand, I didn't quite understand your direct testimony about the gunpowder. I know that gunpowder at close range of course will stain some clothing or --
A A gun blast, when you shoot a gun, obviously the bullet comes out. The powder comes out, which is very fine, and then pieces of partially burned powder, metal debris from the primers and metal debris from what we call the fouling of the bullet as it goes down the barrel and it's actually caught in the little ridges that are in the barrel, all those things are thrown out. They go different

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distances. If we put intervening clothing between the person and the end of the gun it can catch those features. Those features were not present on his calf nor on his groin, on his upper thigh wound, and so all I can say is that the gun wasn't held, you know, within a small portion of an inch, up to tightly against his skin at the time it was discharged, but he could be shot from any other distance that the gun is capable of shooting someone.

Q Could you tell by the size of the hole that the, the holes that the bullets made, at what distance?

A No. The hole, the size of the hole is related --

Q To the caliber of the gun?

A The caliber of the gun, that's right.

Q Okay. And, so, it could be that he was shot at point blank close range?

A Well, no, it wasn't, the gun wasn't essentially on his body at the time it was shot but it could have been within an inch, it could have been two or three feet, it could have been as far away as the gun shoots.

Q So, it could have been that the gun was fired

in a close-up altercation?
A It could have been.
Q Which would be consistent with the knife wounds to the hand and the abrasions to the knuckles?
A That's correct.
Q And the angle of the bullet?
A Certainly the angle of the upper bullet would be consistent with that.
Q And was the other bullet, not the one to the femoral artery, but the other gunshot wound, was that, I think it was at the top of the foot or the ankle?
A It came in on the outside, again, seven inches above the bottom of his foot, that would be about where I'm holding my hand on my legs, and then it rose eight inches and came out the back medial portion of his calf muscle. Again, this bullet didn't enter his other leg and cause an injury to his other leg.
Q So, if you just hold your leg like that, the bullet would have come from this way and exited this way?
A That's correct. This bullet came from this way and exited this way, while this bullet exited

on the inside of the leg, coming from the outside of the leg.

Q Okay. So, it could very well have been fired from the ground, or somebody lying flat on the ground?

A Yes, that's a possibility.

Q It's a probability, isn't it, Doctor?

A Well, it's a possibility.

Q Well, it came from, the bullet came up from the bottom?

A It came from a shooter to the victim's left, with the bullet coming in an upward direction.

Q Like this?

A Yes.

Q From an upward angle?

A That's correct.

Q And did that one exit?

A Yes, both bullets exited.

Q Okay.

MR. McLAIN: The Court's indulgence, Your Honor.

THE COURT: Take your time.

MR. McLAIN: Thank you, sir.

BY MR. McLAIN:

Q Did you say there was a stab wound to the

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foot?
A There was a small point, like the very tip of a point of a knife hit the top of the foot, it was the right foot, it was a puncture cut with a little bit of superficial blood. It was one-sixteenth of an inch, which, you know, just like the very tip of a knife, an open knife dropping.
Q Going through a leather shoe?
A Going through a leather shoe. Again, I don't know what this gentleman had on at the time.
Q And I believe you said that the deceased's hand wounds were from a knife, in reference to the knife --
A The right hand.
Q That those were more often offensive than defensive?
A No, I said the knuckle injuries on the surface were more often offensive, the wounds on the palm of the hand are more often defensive from somebody grabbing at a knife that someone --
Q With their hand up?
A Well, yes, usually they grab at the blade to try and control the knife.
Q Okay. And was this consistent with a slicing, or a stab?

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A It was consistent with a cut injury, a slicing, a pulling of the knife across a surface.
Q As though he had thrown up his hand?
A He could have thrown his hand up, he could have pulled his hand back, it could have been a combination of the knife moving and his hand moving.
Q And could you tell which occurred first, the knife wound, or the brasions to the knuckle?
A No, there is no way to tell.
Q They occurred approximately the same time?
A Yes.
Q And the cuts were on the third and fifth fingers, right?
A The cut was on his third finger, at the base of his fifth finger, and then there was a little notch or V shaped cut here on the, right below on the fifth finger, sort of between the fourth and fifth fingers.
Q That was not a fatal wound?
A No.
Q And the stab to the foot was not a fatal wound?
A No. It barely counted.
Q And the other, the lower gunshot wound was

not a fatal wound?
A No.
Q Okay. Now, are you familiar with a phrase the golden hour?
A Yes.
Q Can you tell us what the golden hour is?
A It's a term that emergency medical physicians, surgeons like to use to talk about the time period when somebody is hemorrhaging before they develop irreversible shock. If our blood pressure goes down low enough our body, which is oxygen requiring, can't supply the tissues of the body with oxygen and so we build up what we call an oxygen deficit within the tissues and that expresses itself by building up of body acids. The body acids build up and that causes the chemicals that we're made of to be destroyed and they can't be repaired, so the internal organs are irreversibly damaged, even if you can keep, restore the blood pressure and keep the heart beating.
Q Now, I think present at this autopsy, Dr. Woodard, were Mr. Charles Bozeman, the assistant corroner?
A He is the Anderson County Assistant Corroner, not the Abbeville County Coroner.

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Q Okay, I'm sorry. Let me see, I have, and you tell me for the sake of brevity --
A Yes, what it's saying is that it's split there, the Assistant Coroner is Ronnie Ashley and Assistant Coroner Sam Ferguson.
Q So, you have yourself there?
A And Mr. Bozeman.
Q And Mr. Bozeman, Mr. Ashley --
A Mr. Ashley and Mr. Sam Ferguson.
Q And also Dr. Foster, I believe?
A He came in after we started the autopsy. Actually he came in at the very end. Because of the ordering and how you do an autopsy, the last thing we examined was the leg.
Q And I believe Dr. Foster was the gentleman, the doctor who actually performed the surgery, that tried to save this man's life?
A That's my understanding also.
Q Have you seen his notes?
A Yes, I have read them.
Q Okay. Let me refer you to, it says history and physical by Dr. Foster, and do you see this line right here?
A Uh-huh.
Q Would you publish that into the record?

BRETT WOODARD - CROSS

A What is --
Q Where it says history of present illness.
A The last two sentences of the history of present illness, first paragraph, "What was striking was this gentleman arrived in florid shock, was unresponsive but yet he did not have any external bleeding. It was certainly felt that he could have bled himself into this degree of hypotension in the field but he had no ongoing bleeding upon arrival initially. However, after his blood pressure had been restored he began to bleed briskly from the entrance wound in the medial aspect of the left thigh."
Q Okay. And you have read that before?
A Yes, sir.
Q And in reviewing your notes and expressing your opinion today?
A Yes, sir.
Q Okay. Could you explain that? I'm sorry. First let me ask you this. Would one's, assuming that the victim had been, had received the wound that he had received, could his having been detained on the side of the road by the Highway Patrol for some time have contributed to the cause of his death?

A Well, clearly the longer he is kept from emergency and definitive medical care, the more likely he is to die, to develop irreversible shock, he's going to bleed more from the gunshot wound. So, anything that delayed him getting to definitive medical care would be a negative for his outcome.

Q All right. It could cause him in fact to miss the golden hour, couldn't it?

A Yes, he could be busy doing something else and miss the golden hour.

Q If he were detained by the Highway Patrol for some time on the side of the road --

A That certainly would qualify as something that kept him from definitive medical care.

Q -- and did not receive any medical care whatsoever while he was detained, that would be a big factor, wouldn't it?

A It would be a contributing factor.

Q What would needed to have been done to keep this gentleman alive long enough to get to the hospital, what would be the first thing that you would do?

A Apply a tourniquet and a pressure dressing to the wound.

Q Apply pressure to that femoral wound?

A Uh-huh.
Q And that would give him more time because essentially the pressure decreases the bleeding?
A The pressure decreases the bleeding and --
Q A tourniquet stops it?
A A tourniquet could literally stop the bleeding and a leg without blood for an hour is not in jeopardy of being lost, the leg itself.
Q And are you familiar with in Abbeville?
A No.
Q Okay.
A I might have been on it today with the blockage of Highway 28, I'm not sure.
Q Well, you know where the Abbeville Hospital is?
A Yes.
Q Okay. And had this gentleman been taken there or even to the Anderson Hospital immediately after his wound --
A I didn't hear the question, I'm sorry.
Q Had this gentlemen been taken to that hospital or even to the Anderson Hospital immediately after these wounds were received, what's the first thing that would have been done

surgically to stop that bleeding?
A They would have tourniqueted the leg and cut the blood flow off to the leg.
Q Put a clamp?
A Well, once they surgically do it they would clamp the artery and eventually they would put the artery back together.
Q But have you looked at the ER notes to see what time he arrived?
A I can't say that I memorized it but it was around 1:22.
Q Do you want to look through these, minus mine and my wife's stickies there?
A We can save some time if you show me.
Q I would like to know what time he arrived there. Wouldn't that be that?
A This is the, this is what they did to him once they get hold of him.
Q That's the adult trauma flow sheet?
A Yes, sir. He arrived at 1:25, according to the ER record, nurse's notes, with no blood pressure.
Q He had no blood pressure when he arrived?
A That's right. And she don't record a pulse until 1:35, almost nine minutes later.

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Q And that is when they were working on him trying to get him, keep him alive?
A Right. They were giving him fluids and other such things.
Q And in fact if you review those records, he did not really begin to bleed again from those wounds until he was given transfusions. Is that correct?
A That's -- yes. Again, that is what Dr. Foster said in his note.
MR. McLAIN: The Court's indulgence, Your Honor, I want to let him briefly review these notes.
Q Do you have that report?
A I have my report, yes.
Q Thank you. Just a few more. Referring to your own postmortem report, under comments --
A All right.
Q Okay. Right here it says, and correct me if I'm wrong, he was found in shock by the ambulance attendant?
A That's correct.
Q Okay. And then he was rushed for emergency surgery but ultimately expired, correct?
A Correct.

Q And when did he expire?
A Around 3:00 something in the morning. Again I would have to refer to your records.
Q Okay, I'm sorry. I will take my notes --
A 5:49 in the morning.
Q Do you of your own personal knowledge, do you know how long this gentleman was detained on the side of the road by the Highway Patrol?
A No, I don't have those facts with me.
Q Could it be, in your professional opinion, had he arrived at the hospital some 30 to 60 minutes earlier could his life have been saved?
A It's very likely that his life could have been saved if he arrived earlier.
Q Even within 30 to 60 minutes?
A Well, within 30 minutes, yes, it would be very likely.
Q So, if the Highway Patrol had detained this gentleman for approximately 30 minutes on the side of the road, that would cause him to bleed to death, wouldn't it?
A No. The gunshot wound would cause him to bleed to death.
Q But he could have been saved within the golden hour, had it not been for his being detained

for some 30 minutes?
A Clearly his opportunity to survive was better if no one detained him for 30 minutes and the sooner that he received definitive first-aid on an order of definitive medical care.
Q In fact, in all probability he would have been saved, is that correct?
A This would be a wound that one would expect survival from.
Q Had he gone straight to the hospital?
A Correct.
Q And if somebody had taken a towel and applied pressure on the wound?
A It would take a little more than that but yes, if pressure had been applied that would buy him additional time.
Q If somebody detained him and opened the door and let him roll out on the ground would that contribute to the cause of his death?
A Certainly detaining him from definitive medical care would be a contributing factor.
Q And were his wounds on his hand, I'm sorry, were the wounds on his hand consistent with slicing, for lack of a better term, perhaps, or cuts from one knife, or two?

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A There would be no way to tell if it was one knife or two. At least one knife but it could be two separate knives. There would be no way to tell.

Q It could be three?

A It could be three.

Q It could be one?

A Could be one.

Q It could be ten?

A I doubt it's ten.

Q But it could be?

A It's theoretically possible.

Q Theoretically possible, so there is no way really to tell how many knives were involved in this struggle, were there?

A At least one.

Q It had to be at least one?

A That's correct.

Q And what's the probability of two knives being used and no blood being left on the blade?

A With that particular cut that he sustained I think it's more likely than not that there would be no blood left on the knife because the deepest cut was near the fifth finger and at the base of the fifth finger, and again you don't bleed until the

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knife is drawn across the tissues. So, if either the hand is removed quickly from the knife or the knife is drawn quickly away from the hand, attempting to grasp at it, in either case when a knife wound is made by that knife it's very likely it has no blood on it.

Q How about the stab on the foot?

A Again, it just barely got just enough that we were able to tell it was even there.

Q But it would be more likely to leave blood on a knife from a stab wound than from a cut?

A A significant stab wound. This was, while you would have to call it a stab wound because of its small size and character, it was barely a stab wound, it just barely got through the skin.

Q And based on the slicing to the right hand of the victim --

A Right.

Q -- it would be highly unlikely that there would be two knives used to cut one man's hand, wouldn't it?

A I would think that there would only be one knife, that would be the more likely scenerio.

Q And could you tell which occurred first, the knife or the gun wound?

A Only that he still had good blood pressure when the knife wound occurred because there was bleeding into the issues around the area of the knife wound.

Q Apparently the knuckles and the knife wound occurred before the gunshot?

A His blood pressure didn't fall until sometime after the gunshot wound you talked about.

MR. McLAIN: The Court's indulgence, Your Honor.

That's all I have, Your Honor.

THE COURT: Redirect?

MR. WOOLSTON: One moment, please, Judge.

THE COURT: Take your time.

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REDIRECT EXAMINATION.

QUESTIONS BY MR. WOOLSTON:

Q Dr. Woodard, in closing, did I understand you to testify in your testimony that the proximate cause of this man's death was his being shot in the femoral artery?

A That's correct.

MR. WOOLSTON: Thank you.

MR. McLAIN: One question, Your Honor.

RECROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q And the proximate cause of this man's death was massive bleeding thereafter?

A That would be the mechanism but it's not the cause. The cause was that he had a hole in his femoral artery from a gunshot wound.

Q Which with proper medical attention would not have been fatal?

A A very likely survivable wound, yes, sir.

MR. McLAIN: Thank you.

THE COURT: Thank you very much. Come down, Doctor.

THE COURT: Madam Clerk, you had a question on the records for the doctor?

THE CLERK: Okay. If you would give us your full name, please?

THE WITNESS: Brett, B-r-e-t-t, Woodard, W-o-o-d-a-r-d.

THE CLERK: Do you have a middle?

THE WITNESS: H.

THE CLERK: Okay.

THE COURT: Any objection to this witness being excused?

MR. JONES: No, sir, we ask he be allowed to

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leave.

MR. McLAIN: We ask he be allowed to leave.

THE COURT: Thank you, Doctor.

(Witness excused).

THE COURT: We will take just a short recess, I believe you have another witness for the State?

MR. JONES: Your Honor, if I could approach the bench?

THE COURT: Yes.

(Unrecorded bench conference).

THE COURT: Madam Forelady and ladies and gentlemen of the jury, thank you for your patience. We have been involved with some legal issues and we have some additional legal issues. We may and probably will have some more testimony for you but that's not known one way or the other. The Court is not advised on these matters but we have to take up some matters outside your presence, so we're going to excuse you, as you know, sometimes we excuse you early because we have things to do and there is no need for you just to sit in the jury room, so we're going to excuse you now until 2:00 o'clock.

Do not discuss this case with anyone at anytime under any circumstances, not even by,

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between or among yourselves. If anyone attempts to discuss the case with you tell that person or persons that you are a juror and it is not proper for you to discuss the case with them. If any person or persons persists in attempting to discuss the case with you after you tell them that you are a juror, that would be suspicious and improper, wrong and illegal and you should use every means available to you to identify any such person or persons and report it privately and promptly to the bailiff at the door or to the Court Clerk that sits immediately in front of the Court, and the Court will investigate and deal with the circumstance of that.

If there were to be any media coverage of the trial, such as newspaper, television or radio, you are on your oath to immediately disregard completely and absolutely anything that you may see, hear or read concerning this trial, if any does come across your senses.

With that having been said, please have a pleasant lunch and be back in the jury room at 2:00 o'clock. Everyone else remain seated. The jurors are excused.

(The jury was excused from the courtroom

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at 12:25 p.m.).

THE COURT: Anything for the record at this time? We're going to take a short break. I understand that we have some matters to discuss. Is that correct, Solicitor?

MR. JONES: Yes, Your Honor.

THE COURT: Would everybody just use this opportunity to make a comfort stop, walk around, relax a few minutes. We're only going to be in recess about six or seven minutes, say 25 till.

(Recessed at 12:26 and reconvened at 2:30 p.m.).

THE COURT: Is the State ready?

MR. JONES: Yes, Your Honor.

THE COURT: Is the defense ready?

MR. McLAIN: Yes, sir.

THE COURT: Anything for the record from either quarter before the jurors come out?

MR. JONES: Nothing from the State, Your Honor.

THE COURT: We're on the record in the State versus Shondra Lamont Martin, 2002-192. Show the jurors in, please, Mr. Busby.

(The jury returned at 2:32 p.m.).

THE COURT: All the jurors are present, with

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the forelady and the alternates properly seated.

The matter lies with the State. Call your next witness, please.

MR. JONES: Call Agent Gambrell, Steve Gambrell to the stand, please.

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STEVE GAMBRELL,

after being first duly sworn testified as follows:

THE COURT: You may examine.

DIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q Please state your name for the record.

A Steve Gambrell.

Q Where do you work?

A South Carolina Law Enforcement Division, otherwise known as SLED.

Q Were you working with SLED back on July 29th of 2001?

A Yes, sir, I was.

Q And did you have an occasion to assist the Abbeville County Sheriff's Department with an investigation into the homicide of one Adarryl McCoppin?

A I did.

Q In doing so did you have an occasion to run a check through the South Carolina Department of Motor Vehicles to determine how many Ford Excursions there were in the state of South Carolina, white Ford Excursions there were?

A Yes, sir, I did.

Q And did you determine that there were

approximately 40 white Ford Excursions in the state of South Carolina?

A It was in the county of Anderson.

Q In the county of Anderson?

A Yes, sir.

Q Approximately 40 white Excursions?

A Yes, sir.

Q All right. And did you subsequently, and I want to hand you this document, in running with the Department of Motor Vehicles a search for a white Ford Excursion in Anderson County, come across a document that, come across that document?

A Yes, sir, I did.

Q And what is that?

A That's a Department of Motor Vehicles tag registration that was accessed through the DMV computer.

Q On what date was it accessed?

A July the 30th at 11:00 o'clock.

Q What year?

A 2001.

Q And what's the tag number?

A The tag number is 568MBJ.

Q I want to hand you State's Exhibit Number 2 and ask you if you recognize what's depicted in

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that photograph?
A It's a white Ford Excursion with a tag number the same as on the sheet.
Q Can you read the tag number?
A Yes, sir, you can.
Q State's Exhibit Number 2, who is that tag registered to?
A Shondra Martin and the address was [redacted] Drive, Anderson, South Carolina.
Q It was registered to Shondra Martin on that day?
A Yes, sir.
Q July 30th, 2001?
A Yes, sir.
Q When would that tag expire?
A It's an alternate tag year, so it would have expired the next June.
Q You mentioned there were 40 Excursion hits that came up in Anderson County.
A That's correct.
Q How many of those were white Excursions?
A The initial printout didn't give color and we determined through our investigation there were at least three of them were white by going out and visually looking at each one of those vehicles, and

that's how we determined which ones were white and which ones were not.

Q Okay. So, they weren't all white, of the 40 in Anderson County, there were three you determined were white?

A Yes, sir.

Q Is this one of them that is depicted in this photograph?

A Yes, sir, it is.

MR. JONES: Answer any questions this attorney has.

MR. McLAIN: If it please the Court, Your Honor.

THE COURT: Mr. McLain.

MR. McLAIN: Yes, sir.

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CROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q Do you prefer to be called investigator or officer or --

A Whatever you prefer.

Q Okay, how about Investigator Gambrell?

A That's fine.

Q Okay. How many white Excursions are there in the state of South Carolina?

A I have no idea.

Q How many white Excursions are there in Spartanburg County?

A I have no idea.

Q Do you know where the co-defendant is from, where his residence was?

A Originally from Spartanburg.

Q Okay. And do you know whose -- you said that registration, that's a license plate that came back to Shondra Martin, correct?

A Yes, sir, that's correct.

Q Did you check the title to see whose name that particular automobile was titled in?

A The tax records indicate it belonged to him, plus the DMV records indicate it belonged to him at this address.

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Q Okay. Did you check to see if it were rented from Vic Bailey Ford or someplace like that?
A No, sir it doesn't indicate it is.
Q Okay. And did you check for white Expeditions?
A No, sir.
Q Okay. How about white Explorers?
A No, sir.
Q Okay. And have you ever had a case before where somebody removed the license tag?
A License tag?
Q Yes.
A Yes, sir.
Q And put it on another vehicle?
A Yes, sir.
Q Like a license tag border? It's easy to remove a license tag, especially when you remove a license tag border around it, isn't it?
A Yes, sir.
Q How long did this investigation last?
A This particular investigation?
Q Of this particular trial, involving this particular trial, how long did the State's investigation last from beginning to end?
A From the date the incident occurred, all the

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way up until the time trial starts, it never ends.
Q Okay. Well, when did you all, how long did you all investigate this before you brought charges against my client?
A The charges were brought -- I'm not sure when the warrants were signed, I have no idea.
Q Where was Mr. Landrum, where did he live at the time you made this license check? Did he live in Anderson County or did he live in Spartanburg County?
A Did who?
Q Mr. Christopher Landrum, sir, where did he live, Anderson County or Spartanburg County, at the time you ran that?
A I don't know where he was living at this time.
Q Okay. And did you know where my client was living at that time, physically living?
A Yes, sir.
Q Where was he physically living?
A Camellia Drive.
Q Right there at that residence?
A Yes, sir.
Q And you are absolutely sure of that?
A Yes, sir. I talked to him there.

Q Okay. And you don't know whether he and Mr. Landrum swapped residences or anything?
A No, sir.
Q Or whether he swapped residences with anybody else either?
A No.
Q Okay. And do you know his wife's name?
A She identified herself as Shawn.
Q Shondre?
A I don't remember the name but at some point I remember --
Q Well, Shondre and Shondra, does that strike a cord?
A No, it's not even similar.
Q Not --
A Was it Shawn? I'm not sure.
Q So, you're not sure? You're not sure?
A No, sir. I would have to look back through the file and see.
Q And that is one sheet of how many you ran?
A Out of --
Q That you all produced, that the State produced in discovery, that sheet, that paper in your hand where you ran different license plates and serial numbers or whatever and this, that and

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the other, that's one sheet out of how many?
A This was one out of, there were approximately 40 on the initial sheet.
Q Okay, 40, and can you tell me why you zeroed in on Anderson County?
A Just a starting place.
Q Just happened to be a starting place? Why didn't you zero in on Spartanburg County?
A The scene was so close to Anderson County, we used that as a reference point as a starting place to start looking for vehicles.
Q How about Abbeville County, that's where the scene was, the crime occurred, or alleged crime, did you run any there?
A I don't believe the tax offices at that time could give us what we asked for.
Q Okay.
A But there is something about Anderson County has got a top rated computer system and they can spit out anything.
Q Okay. Spit out anything?
A Uh-huh.
Q Okay. Spit out anything you need. Is that correct?
A Just about, yes, sir.

Q Okay, sir. And you didn't check for Excursions, you didn't check for -- I mean, what did you check for, Expeditions?
A Checked for Excursions.
Q You checked for Excursions?
A Yes, sir.
Q And did you check for Expeditions?
A No, sir.
Q And did you check for Explorers?
A No, sir.
MR. McLAIN: That's all I have. Thank you.
THE COURT: Any redirect?
MR. JONES: No, Your Honor.
THE COURT: Thank you. Come down, sir.
(Witness excused).
MR. JONES: Your Honor, I would like to introduce this document that he has here.
THE COURT: How says the defense?
MR. McLAIN: Without objection, Your Honor, I've seen it.
THE COURT: Without objection it's marked and becomes part of the evidence in the State's case.
(State's Exhibit Number 18 was marked and received in evidence).
MR. JONES: Your Honor, we also at this time

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would like to move to introduce a 911 tape that was played before the jury earlier in the week, although it's been labeled and technically introduced, I don't think I moved to have it introduced on the record, so we would like to do that at this time.

MR. McLAIN: I have no objection to that, and Your Honor, while we're, I'm sorry, while we're in that, about exhibits, I think that I put five, I talked with the court reporter, I think I put five photographs instead of four, and it was marked as an Exhibit 5. I referred to it as four pictures and it was five pictures, it's already been introduced, if there is any objection.

THE COURT: All right. The record will show that the parties have agreed that the 911 tape is part of the states "Evidence in the case. The record will further show that counsel for the defense, Mr. McLain, I don't know whether the Solicitor was within hearing distance, but he made the Court aware that there were five rather than four photographs and inadvertently that one that he's holding in his hand was not made a part of the record, because he only thought four. It was stuck to the back of number four, Your Honor.

THE COURT: Any objection to that coming in?

MR. JONES: No, Your Honor.

THE COURT: That will be admitted, hand it to the court reporter. He needs to make a note.

MR. McLAIN: Thank you, Judge.

(Defendant's Exhibit 8 was marked and received in evidence).

MR. JONES: Your Honor, at this time we have a matter that we need to take up outside the presence of the jury. I don't want to release the jury because we do have witnesses to move forward with. We have a matter we have to take up outside the presence of the jury.

THE COURT: Yes, sir. Ladies and gentlemen, as you heard, we have a matter we must take up outside your presence. You have already been instructed that this is not an unusual occurrence. It's unusual in fact that a request of this nature has not been made until now, because these requests are rather common and you should not hold it against anybody who makes such request to take a matter up outside your presence, because we have to decide matters of evidentiary questions and/or procedure before going forward at times, so this gives you a time to take a rest, visit with each

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other, have some refreshments or whatever. Do not talk about the case by, between or among yourselves at all under any circumstances while you retire to the jury room.

Retire to the jury room, Madam Forelady and ladies and gentlemen.

(The jury was excused from the courtroom at 2:48 p.m.).

THE COURT: Mr. Jones?

MR. JONES: Your Honor, if it meets with your approval, I would like to ask the Court to resume our Jackson v. Deno hearing that we were in the middle of last night and we concluded around 8:00 o'clock and I believe at that time Mr. McLain suggested to you that he would meet with his client today, this morning, and determine whether or not he was going to take the stand to provide any information to the Court as it relates to the admissibility of statements, and I would ask that the Court consider resuming that hearing at this point in time.

THE COURT: It is considered resumed. Does the State have any further matters to offer with regard to the admission of any statement?

MR. JONES: Not from a factual standpoint,

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Your Honor. We stand ready to argue legal argument.

THE COURT: Very well. Mr. McLain?

MR. McLAIN: Yes, sir, may it please the Court. Your Honor, for the record, as Your Honor knows, we have subpoenaed Miss Jean Howard with the U. S. District Attorney's office, and attorney Ned Miller, and they are not present here today. However, I understand that Attorney Ned Miller's attorney is present.

THE COURT: The record will show that Mr. Pasohal is representing Attorney Miller and he is present here and he's listening to these proceedings, he's right behind you as you're speaking now, counsel.

MR. McLAIN: Yes, sir.

THE COURT: He can see and hear everything that is going on.

MR. McLAIN: Yes, sir.

THE COURT: Depending upon what you wish to do, then he will make such judgments as he needs to make with regard to his client and the Court will make such rulings as may be necessary with regard to his client.

MR. McLAIN: Thank you, Your Honor. Your

Honor, my client does not want to take the stand until then Attorney Miller and Miss Howard are here.

THE COURT: Are you saying and are you assuring the Court that your client assures you that he will testify in this evidentiary hearing?

MR. McLAIN: The Court's indulgence, Your Honor.

THE COURT: All right, take your time.

MR. McLAIN: Thank you, Your Honor. Your Honor, if we could have five minutes, four or five minutes.

THE COURT: It's six minutes until 3:00, you have until 3:00 o'clock.

MR. McLAIN: Thank you, Your Honor.

(Recessed at 2:54 and reconvened at 3:00 p.m).

THE COURT: The record is open. This is State of South Carolina versus Shondra Lamont Martin, indictment 2002-192, and the record was closed momentarily, almost seven minutes ago for Mr. McLain to talk with the defendant Martin in private.

MR. McLAIN: Yes, Sir, we're going to call Mr. Martin to the stand.

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THE COURT: Just come on around, Mr. Martin, and be sworn, please, sir.

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SHONDRA LAMONT MARTIN,
after being first duly sworn testified as follows:

MR. McLAIN: May it please the Court, Your Honor?

THE COURT: Mr. McLain.

MR. McLAIN: Yes, sir.

DIRECT EXAMINATION

QUESTIONS BY MR. McLAIN:

Q Will you state your full name for the record, please?

A Shondra Martin, Shondra Lamont Martin.

Q Okay. Mr. Martin, you were here yesterday when you heard several agents, several federal and state agents testify concerning your statement.

MR. JONES: Beg the Court's indulgence, I'm trying to get Deputy Johnson's attention. Bring Lijoi, Gilliam and Gambrell in here, please.

THE COURT: Hold a minute.

MR. JONES: You all come on in and have a seat.

THE COURT: Continue examination of the defendant.

BY MR. McLAIN:

Q Mr. Martin?

A Yes, sir.

Q Do you remember when you first met with agents concerning certain federal charges?
A Yes, sir.
Q Okay. And at that time you met in Spartanburg with federal agents?
A Yes, sir?
Q Okay. And to the best of your knowledge and belief was the purpose of that to discuss federal charges?
A Yes, sir.
Q Okay. And were you Mirandized prior to your discussing federal charges?
A Yes, sir, and let me say this. Can I go back to the beginning of this?
Q Yes. If anything occurred prior to that date of the initial interview, tell me.
A Right.
Q Tell the Court.
A I just want to go back to the beginning.
Q Okay.
A Okay, when these guys come to the home --
Q When you say these guys, you mean these agents?
A Mr. Gilliam, and what did you say his name was, what is his name right here?

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MR. LIJOI: I'm Special Agent Lijoi.

A Lijoi.

Q Uh-huh.

A When they come to the residence, ATF, Secret Service and DEA and Spartanburg Police, and they came and they told me, asked me, telling me I'm charged with something, drugs or something I done, and I said hold on, I don't understand what you're talking about, because it's been my activities with drugs was back a year and a half or more, that's why I was like what's going on.

And so he said, "This ain't something you did yesterday or a year ago," whatever, I mean, and then one of the ATF guys called me, says, "You want to talk to us, anything you want to say to us, you ain't got to go nowhere, you can stay here, you ain't even got to go to jail, do you want to do some work for us?" I said, "Look, what you mean, I don't known what you come here for." And so he said, "Well, okay, you don't want to talk to me, all right."

So, they carry me back in the home, I was on the porch, sorry about that, I was on the porch and they carried me back in and then he later, I seen one of the officers go talk to my wife and I seen

him coming out of her room and he handcuffed her. I'm like what's wrong, what's she done, you know, I'm just stunned, I don't know what's going on.

And they started talking about federal checks, drug conspiracy, all this stuff, so we get to this place where they take all the people and they put them in this certain place, I don't remember. So, Mr. Gilliam got beside me, he said, "Martin, you don't want to talk to us, you don't want to work with us, you know, we can make things work for you, you know."

I said, "Look, I can't tell you nothing, I don't know what you're talking about, I don't know nothing." And so he said, "Well, you're going to go to jail for a long time, you're not going to see your kids." He asked me, prior to this, my father got caught up, sorry, with some check charges, checks or something, and he talked to me in the car about asking me to, certain things about checks. But anyhow, he told me I would never see my kids. He asked me how old they was, how many I have, I gave them that. He said, "You will never see them graduate or anything."

So, whenever this federal stuff come up, they get me there, take my wife in, take me in, they

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give me, they gave me an attorney, I didn't have money for an attorney, so they had to appoint me an attorney, so when they appointed me an attorney, Mr. Ned Miller, he comes to the Spartanburg County Detention Center. He says, he showed me a page, with co-defendants, black marks, lined all down and a couple paragraphs, black lines.

Q Don't tell us what he necessarily said.

A Okay.

Q Tell us what he showed you.

A He just showed me that, right, I'm saying what is this, you know, my co-defendant? He said, "Look --"

Q Don't necessarily tell us what your attorney told you at the time. Just tell us what you were led to believe.

A I mean, why not? I mean, I feel like this would be important to say.

Q Okay. Well, without waiving any attorney-client privilege --

THE COURT: Well, counsel, your client, in all due respect to him, he can't have it both ways.

MR. McLAIN: Yes, sir.

THE COURT: He can either say what he believed or if he wants to say what his attorney

said, then he can say that. But assuming, that is assuming that you have instructed him as to where he's going with his testimony.

MR. McLAIN: Right. Well, I have instructed him not to say what his attorney said, but what he was led to believe.

THE COURT: Pose the question.

BY MR. McLAIN:

Q What were you led to believe, let me re-ask that.

A What he led me to believe, if I worked with them I won't be doing much amount of time as he told me, he said things might be

Q Don't say what he told you, just what you were led to believe.

A Right, I was led to believe I was going to, like I said --

Q That you were going to strike a deal?

A Right.

Q Okay. And that was in October, I believe?

A October the 2nd, 2001. Well, that was the time they picked me up. With the attorney --

Q October 10th, right around there, or the 11th?

A No, I can't really recall that because I know

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October 10th I think I had a debriefing with some of the authorities but I don't think that was the same day.

Q Okay. Did you have any debriefing with any authorities before the first one to which they testified?

A No.

Q Okay. Let's go to the debriefing part.

A Okay.

Q Okay. That day --

A Uh-huh.

Q -- when you had your first debriefing, okay, in Spartanburg, which I think was about October 10th, okay, when you had the debriefing?

A Uh-huh.

Q Was it your understanding that that debriefing was to have to do with federal charges?

A Absolutely.

Q Okay. And did they Mirandize you before your, and what I mean by that, did they give you your Miranda rights before they asked you those questions about the federal charges?

A Yes, before I come in there I said, "Look, I want a proffer agreement, I want my attorney present." They said, "Look, you got that, you

ain't got nothing to worry about, we talked with your attorney," said, "Look, you're covered, all you have to do is, if you work with us," he said, "you are looking at 20 years if not." He said, "We are going to cut that down," he say life in prison, then say 20, he say, "If you work with us we'll give you five years," he said, "You probably don't even have to do five years."

So, we begin, I said, "Look, I need my lawyer," I said, "I don't know, I don't trust that." I say, "That's just something you saying, I just don't know." Then he didn't, he didn't tell me to sign no Miranda, nothing.

Q Did he read the Miranda warnings, though, to you off a card?

A I don't recall him reading nothing. I recall him, I recall him --

Q Who is him?

A Mr. Gilliam.

Q Okay.

A Mr. Gilliam or one of them, Mr. Gilliam or Mario, or what did you call him, what is his name? Excuse me, sir, but I'm sorry.

MR. LIJOI: Special Agent Mario Lijoi.

Q Lijoi.

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A One of them.
Q Okay.
A And, so, I wanted a proffer letter. He said, "You got that." So, they started questioning me about my federal charges.
Q Okay. Let me ask you something. You said you wanted a proffer letter?
A Right.
Q And your attorney?
A And my attorney.
Q And your attorney came?
A No, sir, no, sir.
Q He did not?
A No attorney.
Q No attorney?
A At all.
Q Okay. Did he come to the jail and talk to you before the proffer letter?
A Well, he came to the jail and talked to me, he said --
Q Don't fell us what he said.
A I'm just saying he came to the jail.
Q He came to the jail?
A Uh-huh.
Q And a proffer letter was signed then?

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A No, sir.
Q A proffer letter was not signed then?
A No, sir.
Q Okay. What happened then? Did your attorney leave?
A Well, if you are talking about the 10th?
Q Yes. Give us the sequence of events, Shondra, Mr. Martin, give us the sequence of events on the 10th of October, that's what I want to know, in chronological order.
A You are just talking about the 10th right now?
Q Right, right now.
A The 10th, which I stated earlier they asked me, "Well, do you want to go on and talk to us and enfonce Miranda rights or whatever," if they read it, I don't recall that, but I ain't signed no Miranda rights or nothing like that, and we got to talking about the federal stuff. Then out of the blue one of them guys asked me about a guy that --
Q Okay. Hang on a second.
A One of the officers --
Q Was your proffer letter signed prior to the time that you are talking about now?
A It wasn't no proffer letter at all, at all.

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Q At the time?
A Nothing like that.
Q Then what happened?
A Then what happened, we went on, we was just talking, and he asked me about some guy named Kim, some Kim guy. The whole time he was talking about he's supposed to have a big murder or all this stuff. I told him as far as the things I knew, he said, when I told him, of course, what I knew, he said, "You're lying, you're going to spend the rest of your life in jail, in prison, you're not never going to get out." I said, "Look, what do you want me to do, tell you a lie?" I said, "Do you want me to start lying to you?" He said, "No, I don't want you to tell no lie." He said, "I want you to tell me what happened."

So, I had already told him the truth, so I'm like, he threatened me, they scammed me, everybody, voices over here, voices over there, voices everywhere, yah, yah, yah, just drill me. And so I'm saying well, if I don't tell him a lie he threaten me with this, you know, and then he talking about if I do cooperate they going to, instead of life and 20 years, they going to give me five years and all this kind of stuff, I say well,

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I might as well tell them a lie.
Q Was your lawyer present at the time?
A No, sir.
Q Had he been to see you prior to that time?
A The first time he seen me.
Q Was this October 10th, I'm talking about October 10th, the day of October 10th, that interview, the attorney, was he there?
A No, sir.
Q Had a proffer letter been signed, to the best of your knowledge?
A No, sir, I know for a fact it hadn't, it wasn't signed that day. It was not, I ain't saying, the proffer letter that they claim that I signed or what they got, which what I see don't look like what I seen, it looks something different, now, look something different now, but it wasn't on that day, it wasn't on that 10th.
Q Okay.
A He started asking me about state stuff, I mean, you know.
Q This is on the 10th he started to ask you about some state stuff?
A Yes, he brought up something about this guy I told you, Kim, he brought up some stuff about some

state.

Q You told him you didn't know anything?

A No, this is what happened. I told him as much as I had known about it, I told him certain things, hearsay, that's all, a bunch of hearsay I told him, and then it led to just more hearsay, stuff that had been, I been hearing through the grapevine on the streets, so I'm collecting all this stuff up to try to get myself out of some trouble because they telling me if I don't tell them, you know, they going to do this and do that to me, so I say well, you know, I'm scared, they're drilling me, this and that, you know what I mean, so, you know, and they offered me a deal and stuff like that so I said okay, why not lie, tell them lies and try to get out of this.

Q Okay.

A A bunch of hearsay.

Q Had you been Mirandized at that time, had anybody read you that you had a right to remain silent and all that at that time?

A It may or may not, I don't really, I don't really recall that. I know I recall them letting me see a lot of pieces of paper with companies that I was using to make the counterfeit checks, the

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names that was on them, they told me to sign that but it wasn't no Miranda, no paper, nothing like that.

Q Okay. Was there any, did they tell you that you had the right to remain silent, if you didn't, anything would be used against you, what you heard the agent read off his card?

A I really can't remember that. I don't, I can't recall nothing like that.

Q Okay.

A I can't recall.

Q Did you have an attorney present at that time?

A No, sir.

Q Okay. Did you have an attorney present at anytime during that interview?

A No, sir.

Q Okay. Now, they asked you about the federal charges at that time. Is that correct?

A Correct.

Q And then at the end of the day they started to ask you about some state charges and you all decided to quit there and resume later?

A Well, I don't --

Q Or what?

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A I don't know if they call it quit, I don't know what they call it, they call it quit but they was talking about they, after they got finished with the federal stuff they asked me about some state stuff and --

Q Did they ReMirandize you --

A No, sir.

Q -- before they asked you about the state stuff?

A No, no.

Q Did you have an attorney present?

A No, sir.

Q Did they give you the right to call an attorney?

A No, sir.

Q Okay. So, then what happened? Did you all discuss any of the state charges, any of these state charges at that time?

A Yes, yes, at that time.

Q Yes?

A At that time these charges that's right now they accusing me of?

Q Yes.

A This right here, right, that is why I say, a whole bunch of hearsay come up, like I said, I was

scared, they talked about doing stuff, this and that, things I collected in the jail and on the street, I put them all together to try to get myself out of trouble, the trouble that they got me doing twelve and a half years for that I shouldn't really be doing time for that but, yes, they scared me into that, you know what I'm saying, my mind was so out of it, I don't know.

Q But you didn't have anybody present, any legal counsel present at the time?

A No, sir.

Q That was on the 10th of October?

A I got to say the 10th. I got paperwork and stuff.

Q Well, if the paperwork shows --

A I got paperwork, all kind of stuff.

Q Now, the next time they talked to you, was that on the 18th of October?

A Maybe, maybe.

Q On or about the 18th?

A Maybe.

Q Was that when the proffer letter was signed?

A Maybe, maybe.

Q Okay. They resumed your debriefing or interrogating or interviewing you at that time, is

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that correct?
A Yes. Mr. Gilliam came over to Spartanburg, Spartanburg Jail, picked me up and brought me.
Q Detention Center?
A Detention center, brought me to someplace, they got a little interrogation room or something like that, they brought me over there and they say, "Well, we got some state guys here and we want you to tell them what you told us." I say, "Listen --"
Q Hang on one second. When they brought you over there to ask you those questions did you have an attorney present?
A No, sir.
Q Had you talked with your attorney before then?
A Yes. He came in.
Q He came in?
A He came.
Q Don't tell us what he said, just tell us what he did.
A Okay. He came in Spartanburg, right.
Q Uh-huh.
A He was asking me about my, my debriefing with these guys.
Q Don't tell us what he said. Go ahead, he was

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asking about the debriefing with these guys. Okay, then what? Did he leave?

A Yes, he just left, but I think --

Q He asked you what they had asked? Did he ask --

A That's right. He asked me what they had asked me. I said, "Well, we talked about the federal case and then they started bringing up some old state stuff, something about some, some stuff happened --"

Q That is what you said?

A No.

Q That's what you said?

A That is what I tell him.

Q And then Mr. Miller left?

A No, Mr. Miller said, "Well --"

Q Don't tell us what he said, okay? Don't tell us what he said because we don't want to waive any kind of privilege. Have you got me?

A Okay.

Q What were you led to believe as a result?

A Believe that whatever I say can't be used against me, I'm going to be, get immunity for anything goes, for aiding, abetting, all this stuff they talking about, said I don't have nothing to

worry about, I ain't going to be charged with nothing.

Q And that included state or federal charges?

A Anything I told them.

Q Then what happened? Did Mr. Miller leave?

A At Spartanburg?

Q Yes.

A Me and Mr. Miller didn't have that conversation.

Q That was at Spartanburg, I'm talking about the interrogation on the 18th.

A On the 18th I told them I didn't want to talk to nobody until I have an attorney present. They called the attorney, the attorney came.

Q Then you had your discussion with Mr. Miller?

A Right.

Q And you were led to believe that you would have full immunity for everything that you would say?

A Absolutely. Who would make a statement like that and implicate himself in all this kind of stuff without being rewarded?

Q Obviously. And then Mr. Miller left?

A He said, "Look I ain't --"

Q Don't tell us what he said, okay? Then what

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happened? Mr. Miller left?
A Mr. Miller left.
Q Okay. Then were you ReMirandized?
A No, sir.
Q Did anybody give you your Miranda warnings on the day of the 18th?
A No, sir. They said, "We want to talk to you about some previous conversations."
Q Okay. Now, you wouldn't talk to them until Mr. Miller came, right, and signed, and this proffer letter was signed, or a proffer letter was signed?
A A proffer letter. I don't recall seeing this.
Q But you wouldn't talk to them until then, right?
A Exactly.
Q And then a proffer letter was signed, correct?
A Uh-huh.
Q And after you had talked with your attorney and he left, right, did they give you any Miranda warnings then?
A No, sir.
Q Okay. Did they tell you that you had full,

when I say full, I mean these agents, did these agents tell you that you had full immunity?

A Absolutely.

Q For everything that you told them?

A Absolutely.

Q Okay. And that was only after a proffer letter was signed?

A Yes, sir.

Q Look this over for a second, please, sir. Let me take the facsimile sheet off it. Look that over, please. Okay? That's already been made, an exact same letter with the fax transmission sheet has been made Court's Exhibit Number 3 by the State.

A Uh-huh.

Q Okay. Did you sign that proffer agreement?

A I believe I signed, I believe I signed a proffer agreement but it's something in there they must have added, they must have took it out when I signed it or they just added it on, I don't, I don't --

Q Did you read the thing before you signed it?

A The attorney was present with me, he was saying all kind of stuff.

Q Don't tell me what he was saying. Let me

just ask you this.

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

Q You didn't read it?

A No, I didn't.

Q It was just kind of sign here, sign here?

A Yes, sign here, sign this, sir.

Q Okay. And at that time you thought that you had absolute immunity for anything you told the authorities?

A Of course, of course, man.

Q Well, it wouldn't make sense to believe anything else, would it?

A Oh, no.

Q Okay. Now, when you talked to them on the 18th you were not ReMirandized before you talked to them, were you?

A No.

Q Okay. And you relied on them, on their promise of immunity, is that correct?

A Absolutely.

Q Okay. And you were led to believe that you would have absolute immunity for anything you told them, is that correct?

A Sure.

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Q Okay. And was your entering into that proffer agreement part of settlement negotiations in your entering a plea in federal court to federal charges?

A Can you just be a little bit more specific with that?

Q Okay. When you were talking to these folks, okay?

A Uh-huh.

Q When that proffer letter was signed or a proffer letter was signed, correct, okay? Was that in conjunction with trying to reach a deal with the government and some kind of settlement in negotiating a plea?

A About anything that I told them?

Q Right, but was that, anything you told them and your signing this proffer letter, was that in conjunction with your trying to work out a deal with the government?

A Yes, yes, oh, yes. What I'm saying is this. When I was, what I was talking about, everything that they was asking me, all it was hearsay that I was believed, they led me to believe that no matter what happened I am going to get immunity, nothing going to happen to me, I'm going to get less time

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than what they was threatening me with, I'm going to get five years, maybe even lesser, Mr. Gilliam, and this guy here, and, yes, this is what happened, this is everything that happened.

Q And you had no attorney present at the time?

A No, not on the 10th.

Q And you had not been Mirandized on these state charges, you all just started discussing that?

A Let me say, like I say, again, I do not recall the first time me, I don't recall nobody Mirandizing me, reading me no rights, I don't recall that, I don't recall that.

Q You know whether or not an attorney was present when they were asking you these questions?

A Oh, I know for a fact he wasn't the first time.

Q Okay.

A And he wasn't there the second time, he just came and talked to me, blah, blah, blah, sign here and here, okay? I said look, "Sit here with me." He said, "I can't, this hadn't got nothing to do with me." I said, "Well --"

Q Okay. Well, so, you signed a proffer letter on October 18th of '91?

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A I guess that's what you call it.
Q Now, let me ask you about this. This says memorandum of interview which was prepared by Investigator Gambrell. Is that your statement or did somebody else prepare that?
A No, sir, I don't even have to read no more of this, I don't remember, I don't know, this is not my statement at all, I don't know where this come from, maybe somebody prepared this, whatever, I don't --
Q Okay. Just read a little bit of that for me, okay?
A Okay.
Q Okay? Were you actually asked any of those things right there? Do you remember? Did Investigator Gambrell ask you any of that stuff? And let me preface that by saying were you asked this information during a verbal interview?
A Was I asked this information for a burglary interview?
Q Were you asked these questions verbally?
A Let me read it.
Q Go ahead and read, we want to make sure we get things right. Investigator Gambrell did ask you about the things in here, didn't he?

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A Well, some of these things I recall, some of the things I don't know where they come from, where they come from.

Q But some of these things you do recall at that time, that Investigator Gambrell asked you about these at that time, right?

A Right.

Q And you prepared -- did you prepare that handwritten drawing right there and sign it?

A I don't recall writing anything. I don't recall drawing nothing.

Q Did you sign it there?

A I don't recall that either. I don't recall it. I can't --

Q You can't say either way, or do you know?

A Yes, I just don't know, I can't recall writing, signing it.

Q You do recall being asked some of these questions?

A You see, the questions they was asking me, I remember some of these questions they were asking me. Some of these questions in here, I don't recall these questions.

Q You mean some of these answers?

A Some of these answers, I don't understand

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where they come from.

Q Some of these you recall and some you don't?

A According to, I remember the statement that I had made, the hearsay I told them, things I heard, I remember some of that stuff I said, you know, you know what I mean, I really don't remember, because the truth don't need, have to be remembered, you remember the truth but when, when you just come up with something, you know, just come up with something it's kind of hard to remember that, but I don't --

Q Were you scared at the time?

A Was I, yes, I was kind of scared, they telling me they going to take me away, I will never see daylight again, you know what I mean, for the things they accusing me of, things they, oh, man, put me in, all kind of stuff.

Q Were they accusing you of and putting you in things in which you were not involved?

A Yes, yes.

Q Now I'm going to show you a Court Exhibit Number 7. That is in reference to October 22nd, 2002.

A Uh-huh.

Q That is when Sheriff Charles Goodwin,

Detective David Alford, Special Agent Steve Gambrell and Special Agent Tony Dewarti interviewed you at the United States Prison in Atlanta.

A Yes.

Q It says you were advised the officers were there to speak with you concerning a letter you had written to Alford about your Miranda rights. "At that time he stated that he felt he should speak with an attorney first. He was then told by Goodwin that one of the reasons we were there was to make sure that he had not been threatened or coerced into writing the letter. He stated he had not been coerced but he felt he had been tricked by officers in the past concerning the charges he was serving time for and wanted to talk to a lawyer before answering any questions. At that time the interview was terminated."

A Correct.

Q When they went back down to Atlanta, that was after you were sentenced, wasn't it?

A Right.

Q Okay.

A It's been, it was another time before that they come to Spartanburg and wanted to ask me to write a statement and stuff. I said, "Look --"

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Q At what time was that, before you entered, or after you entered the plea, when they came back to Spartanburg, was that after the 18th of October?
A No, that was before the 18th of October.
Q That was not the October 11th interview, or do you recall?
A All I know, it was one interview with, the first interview with the ATF, not the ATF, DEA, Secret Service, Spartanburg local police and some more. And the second one was, I don't know, the second one could have been the 18th and the third one could have been when the SLED agent and David, David, this guy David, what is his, David Alford, he came to Spartanburg, three other guys came to Spartanburg again asking me if I want to write some statements, talk about something, and I say, "Look, huh-uh."
Q You were incarcerated in Spartanburg at that time?
A Right.
Q Okay. Did you have an attorney present at that time?
A No.
Q Did they give you any Miranda rights at that time?

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A No. We didn't discuss nothing.
Q Had you entered a plea at that time?
A No, I ain't entered no plea or nothing. Plea, what plea?
Q Federal court, had you entered a plea in federal court at that time?
A No.
Q Okay. And later on you entered a plea in federal court?
A Right, after I, I filed, I objected to the whole PSI, I filed objection to that, because I was told that I was going to get a Rule 35, 5(k)(1), and you know, to come back --
Q A Rule 35 downward departure for cooperation?
A Right. And 5(k)(1), then to have me come back and testify.
Q Uh-huh.
A The only thing I could think of testifying is this matter here.
Q Uh-huh.
A But I tell, I tell them, I say, he tell me, no, he came and talked to me, he say, "What are you doing?" First I wrote him up to the bar association.
Q Wait a minute. We don't want to know

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anything about that or anything about what your attorney told you or anything else, okay? You do not want to mention anything about what your attorney told you, okay? I want to know about what the agents told you, okay? Have you got me?

A Well, nothing but the only thing they tell me, they wanted to talk about some stuff and wanted me to write statements and I say, "Well, I need an attorney, need to have an attorney present," and I really, the real reason why I didn't want to go along with that, because I knew how I had been locked up unjustly, you know, and then me being scared because what they telling me they going to do to me and, you know, and lying about some stuff I heard about a person and, you know, I felt like that's wrong. So I said, "No, I'm not going to do this," you know what I mean, I said, "I ain't got to return one unkind act for another, you know, I done heard some things about this person supposed to be did all kind of stuff to me and this and that."

Q This person, that person?

A You know, because I said, "It still ain't right," so I said, "No, I'm not going to do that, I ain't never seen this guy did nothing, so I can't

do that."

Q So, this was a third interview in Spartanburg, or do you recall?

A Well, I know it was four in all.

Q Okay. Four in all?

A Four in all.

Q Counting Atlanta?

A Counting Atlanta.

Q Okay. And the three prior ones were in Spartanburg?

A Well, yes, it was in Spartanburg but it was Spartanburg County --

Q They were taken in Spartanburg?

A Spartanburg County Detention Center and another place in Spartanburg.

Q Okay. So, at the three prior ones did you have an attorney present?

A No, sir, no, sir.

Q Were you Mirandized --

A No, sir.

Q -- about any state charges whatsoever?

A No, sir.

Q Were you told by these, any of these agents over here that you had absolute immunity for anything you told them?

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A Yes, sir.
Q And did you rely on them?
A Yes, sir.
Q Okay. And were you under coercion at the time?
A Coercion, I mean, what you mean?
Q Did you feel as though you had to tell them something?
A Yes, sir.
Q True or not?
A True or not, whatever, I had to tell them something.
Q Because they were telling you they were going to put you in jail for the rest of your life, is that correct?
A Yes, sir.
Q Okay. Now, when you were having these interviews in Spartanburg was that prior to your entering a plea in federal court?
A You see, at the time I really just don't really understand that, I just know I was --
Q What I'm saying is, when these interviews took place, Shondra, okay, Mr. Martin?
A Uh-huh.
Q When these interviews took place, when the

federal agents came and talked with you, and the state agents, when they took place, did they take place prior to the time that you went and pled guilty to certain charges in federal court?

A When I pled guilty to federal charges, are you saying did these statements take place --

Q These interviews, when they came and talked to you, was that before you pled guilty?

A Yes, that was before.

Q That was before you pled guilty?

A Right.

Q Right?

A Right.

Q Okay. What you objected to was the PSI?

A Yes, and also I objected to the PSI because of these, they claim this, and they going to give me this Rule 35, 5(k)(1), then when I was at trial I had told the judge, I say, "Your Honor, well, this attorney here, he promised me I would get a Rule 35 and 5(k)(1)," and the judge looked over at Mrs. Jean Howard, "Jean Howard, you want to tell me about this?" She said, "Yes, I do, Your Honor, but he got a lot more work, he got some other stuff to do," or something like that, and I didn't understand, you know. Okay?

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Q Okay. So, you went ahead and pled in front of the Honorable Ross Anderson, Jr., is that correct, you pled guilty?
A Uh-huh.
Q Okay. You checked into the penitentiary later in federal prison, correct?
A Correct.
Q Okay. Were you interviewed anytime between the time that you pled and the time that you checked in?
A In Atlanta?
Q Yes. Did they come to talk to you any other time between the time that you pled guilty and the time that you reported for prison?
A Yes, one time, when I was, when I received the sentence, when I pled guilty, I left the county jail, Anderson County, went to Atlanta and then later on --
Q They came down and talked to you?
A -- they came down and they wanted to, like the papers you just showed me, the same thing.
Q Okay. They wanted to ask you more and you said no?
A Yes, I said no.
Q Because you had been tricked, you felt you

had been tricked the first time?
A Not only that, knowing, not only that, but knowing that I told, what I was telling them was all a bunch of hearsay, you know, and then I was, I mean, I couldn't say that I seen Mr. Landrum or whoever he, if him and some other person went there or whatever, you know what I mean, but I heard a lot of stuff, I heard a lot of stuff.
Q What you were telling them was what you heard on the street, trying to give them information?
A Yes.
Q To get your head out of a noose?
A That's right.
Q And you were not Mirandized before all these interviews?
A I can't -- I don't think so. I don't remember nobody saying -- I know one time I remember them asking me do I want, "You have a right to remain silent and," blah, blah, blah, but I never would, I say, "Look, I need an attorney." I never would sign anything, talk to them about nothing, I said -- well, they just left me, no attorney present, I said, "No, I can't talk, I can't talk."
Q Was that before the proffer letter was

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signed, or a proffer letter was signed?
A More than likely, yes. I just, I can't, I don't remember everything but I remember some things and I can just tell you as much as I remember.
Q That's all this honorable court wants you to do, is tell the truth and tell --
MR. JONES: Judge, let's don't have this. Ask the question.
Q Tell him what you remember, okay?
A Uh-huh.
MR. McLAIN: The Court's indulgence, Your Honor.
Q The first time you talked to them was about October 10th?
A I believe. Yes, October the 10th.
Q October the 10th. And did you see a proffer letter prior to October 18th, the day of a proffer letter signed by you?
A I know I seen something but that, I don't, it don't look like that.
Q Okay.
A As far as I can remember, it don't look nothing like that, and then all them pages they got in there, I don't know where they come from.

Q Did you draw that for Mr. Gambrell?
A I don't recall drawing nothing. I don't recall signing nothing. I don't recall it. I can't remember that.
Q Can you say yes or no?
A Well --
MR. JONES: He's answered the question, Judge, he says he can't recall.
THE COURT: It's been asked and answered, counsel.
MR. McLAIN: I'm just trying to get to the heart of it, Your Honor.
THE COURT: All right.
MR. McLAIN: If he can recall. I'm talking about of his own recollection.
THE COURT: Ask him if he can or can't.
BY MR. McLAIN:
Q Okay. Can you or can you not recall drawing that diagram or schematic drawing or whatever of --
A No. The only time I recall a pen in my hand, when he tell me to sign this paper, Mr. Ned Miller. Other than that, I don't recall.
Q Okay. When you signed -- you do recall signing a proffer letter?
A Yes.

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Q A proffer letter?
A A proffer letter.
Q When you did, did you read the whole proffer letter?
A I didn't read any of it.
Q Or did they just turn to the back page and, "Sign here"?
A I can't say if it was turned to a back page, whether there was one or two pieces of paper, I don't recall, no, almost what you got right here, three, four, five, six maybe sheets of paper.
Q Uh-huh.
A No, I don't know, it wasn't nothing like that. It was just, if I was to hold it up up like this and let it go, it was just, you know, it wasn't like that, that's something that somebody making up. That's all a frame game.
Q Okay. Would you have given any information about any state charges, whether you knew about them or involved in them or not, would you have given any information about any state charges had you not thought and been led to believe that you had immunity for anything you said?
A No, no, ain't no way in the world I would give any information to anyone, knowing that,

without knowing that I don't have to worry about nothing that I say, anything that I say can't and would not be used against me, I'm going to be in immunity, I'm going to get all this favor, you know what I mean, no, no, but --

Q You objected to the PSI, presentence --

A Yes. It was a plot.

Q Stuff in there you didn't think --

MR. JONES: Every one of the last five questions have been asked at least twice by this lawyer of this witness prior to this point in time. I mean --

THE COURT: Counsel, the Solicitor has a point. Try and either cover new matter --

MR. McLAIN: Yes, sir.

THE COURT: -- or conclude your examination.

MR. McLAIN: Yes, sir.

BY MR. McLAIN:

Q Did you receive a Rule 35 departure?

A I was told --

Q Did you receive it?

A Huh-uh.

Q Any other kind of departure?

A No, sir.

Q And you received a federal sentence at that

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time of 151 months?
A Yes.
Q Is that correct?
A Right.
Q And you gave these statements -- well, do you recall some of those in the memorandum?

MR. JONES: Asked and answered, asked and answered twice. He asked him about that memorandum twice, he had him read the entire thing, he asked, "Did you make any of these statements?" He said, "I remember some of these things." He has asked and answered twice. This is just delaying, Judge, I object, improper.

THE COURT: Counsel, you have asked that question, it's been asked and it's been answered.

Q Do you recall any other interviews with any other authorities, state or federal, other than that to which you have testified?
A No, sir.

MR. McLAIN: That's all I have of this witness, Your Honor.

THE COURT: Solicitor, before you begin your direct, it is anticipated that there could be other witnesses and there may be reply, some witnesses could be taken out of order, and the Court is not

aware, but it's suggested that we release the jury from the jury room for a little while, maybe until, maybe an hour or almost an hour. What do you think about that?

MR. JONES: I think that's a good idea, Judge.

THE COURT: All right. Mr. Martin, go on back over there, please, sir, and just have a seat so everything will kind of look like it did. And, Mr. McLain, if you will be seated just a moment, please.

MR. McLAIN: Yes, sir.

THE COURT: Ask the jury out.

MR. McLAIN: Judge, let me make sure I didn't leave something over here that the jury could see.

THE COURT: Thank you.

MR. McLAIN: Thank you. I just wanted to make sure I put all the exhibits back.

(The jury returned at 3:55 p.m.).

THE COURT: Madam Forelady and ladies and gentlemen of the jury, the business of the court is taking some time, and rather than keep you in the jury room we're going to release you until 5:00 o'clock. Now, we want to try to complete this case this week, we want to do it tomorrow if we can, so

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we have some additional matters to take up outside your presence and rather than you wait in the jury room, you are going to be released and you may wait in the jury room if you wish but you will probably be there for an hour. If you want to go downstairs, go outside, walk around, go have a refreshment, do whatever you please, come back and the bailiffs at the door, if we're not ready they will tell you about when we will need you after 5:00 o'clock. We're going to release you from now until 5:00 o'clock.

Do not discuss the case by, between and among yourselves nor with any other person. If anybody attempts to discuss the case with you tell them you are a juror and you may not discuss it with them. If anybody persists in discussing the case with you after you tell them that you are a juror that would be highly improper and illegal and you should use every means and measure at your disposal to identify such person or persons and report it to one of the bailiffs or to the Court Clerk without sharing that with anyone else.

If there were to be any media coverage such as newspaper, television or radio of this trial, as soon as you realize what you're hearing, seeing or

reading has to do with this trial you are on your oath to absolutely disregard it completely and decide this case only and exclusively upon the evidence that is presented in front of you within the walls of this courtroom.

Thank you very much. You are excused to return at 5:00 o'clock. Everybody else remain seated.

(The jury was excused from the courtroom at 3:56 p.m.).

THE COURT: Anybody need a short break?

MR. JONES: I don't, Judge, I'm ready to go.

THE COURT: Anyone of the prospective witnesses need a short break? Anyone?

The matter is with you, Solicitor. Come on back up, Mr. Martin.

THE COURT: Mr. Martin, you have been sworn and you remain under oath to tell the truth. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Thank you, sir. This witness is with you, Solicitor.

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CROSS EXAMINATION

QUESTIONS BY MR. JONES:

Q I want to talk to you about October 18th in Spartanburg when Agent Gilliam was with you, along with Agent Lijoi, before you asked for your lawyer to come over there and talk to you. Do you remember that day?

A Yes, sir.

Q Agent Gilliam was in the room with you, is that right?

A Yes, sir.

Q And Agent Lijoi was in the room with you, is that right?

A Yes, sir.

Q Was anybody else in the room with you?

A Yes. The room was full of them.

Q Okay, room full of them. And Agent Gilliam told you that he wanted to talk to you about your involvement in crimes, didn't he?

A He stated he wanted to talk to me, talk about things we already talking about.

Q Things you were already talking about, your involvement in crimes and crimes that you knew about?

A Well, he was talking about things that I say,

that I told him about, was a bunch of hearsay, yes.
Q You knew that you were in that room with Agent Gilliam and Agent Lijoi and all those other agents to discuss crimes that you had knowledge of, didn't you?
A Right.
Q That's why you were there?
A Right.
Q You knew that, didn't you?
A Right.
Q And Agent Gilliam took out a card and read you your Miranda rights, didn't he?
A I don't recall that.
Q You don't recall it?
A I don't recall it.
Q You don't recall Agent Gilliam, and I'm referring to State's Exhibit Number 2, telling you, "Listen, you have the right to remain silent. Anything you say can be used against you in court. You have the right to consult with an attorney and to have him present during questioning. If you cannot afford an attorney one will be appointed to represent you prior to any questioning. Now, do you understand these rights?"
A Uh-huh.

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Q You told him yes, didn't you?
A Yes, I understand the rights.
Q "And are you willing to waive these rights and talk to me now," and you said, "No, I want to talk to my lawyer," didn't you?
A Well, if he said that, if that's what led up to me saying yes, I need my lawyer, anytime he asked me anything, they wanted to talk to me about anything, I said I need to have my lawyer present.
Q That is what I want to ask.
A What I'm saying, I don't recall, I'm not saying he didn't, I'm saying I don't recall.
Q You're not saying he didn't?
A I'm not saying he didn't, I'm saying I don't recall.
Q I want to ask you. You did tell him you wanted to talk to your lawyer, didn't you?
A That's right.
Q Okay. Why did you tell him you wanted to talk to your lawyer?
A Because of all this proffer letter, all this immunity.
Q Excuse me. Why did you tell him you wanted to talk to your lawyer?
A Because --

MR. MCLAIN: I think he answered that.
A I just told you that.
Q Why?
A This immunity, all this good stuff they was telling me in writing.
Q So, you wanted to see the proffer agreement?
A Amen.
Q Is that why you wanted to talk to your lawyer?
A Right.
Q You wanted to see the proffer agreement?
A Right. I didn't want to see it, I wanted to sign the proffer agreement.
Q What proffer agreement?
A The one that he claimed that, the one he got now and the one that is supposed to, I guess the one that supposed to mean, from reading when I get the discovery, this proffer agreement, oh, it's not, now it's brand new.
Q You wanted to see your lawyer so that you could sign the proffer agreement, is that why you wanted to see your lawyer?
A Uh-huh.
Q Is that why?
A Yes, sir.

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Q Is that the only reason you wanted to see him?
A And to have him present with me.
Q Have him present with you?
A For questioning.
Q During questioning?
A Right.
Q So, you wanted your lawyer there when they were talking to you?
A Sure.
Q And he came there?
A Sure.
Q He came there?
A Right.
Q And what did you and your lawyer do?
A He said, "Look, they going to talk, they going to do this and all this and that for you."
Q Okay. You and your lawyer went back into a room, didn't you?
A No, we was already in a room. They left.
Q They left the room and the lawyer came in the room?
A Uh-huh.
Q Did he have the proffer agreement with him?
A He had a piece of paper.

Q One piece of paper?
A May may have been one or two.
Q Was it one or was it two?
A I don't know.
Q One piece of paper or two pieces of paper?
A It wasn't no book.
Q I'm asking you one piece of paper or two pieces of paper?
A I can't recall. Well, I know it wasn't no four or five sheets of paper because he just, he just, it was one, it was a piece of paper, I don't even think he had nothing stapled, I think he just had a piece of paper here and he might have had another piece of paper, I don't know whether if it was related to this proffer agreement or not, but he had a piece of paper and he told me, "Look, sign, they going to give you immunity, you going to be all right, you ain't going to spend no time."

MR. McLAIN: Your Honor, I'm going to have to object on his behalf. I don't want him testifying, I'm sorry, I don't want him testifying to anything he told his lawyer or his lawyer told him.

MR. JONES: And I didn't ask him anything he told his lawyer yet.

Q What I want to ask you is did your lawyer

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bring the proffer agreement?
A The attorney didn't bring nothing, he said, "Well --"
MR. McLAIN: Don't say what your attorney said.
A No, the attorney didn't bring anything. He grabbed his head, he said oh, went out there and was pacing the room, like he was kind of confused, like he didn't know. I mean, he been in this line of work for I guess a while, he should know, but he was acting confused and holding his head, walking, pacing the floor.
Q You're not responding to my question. I want to ask you --
MR. JONES: Your Honor, again, can you --
THE COURT: listen to the question and just answer it, then you can explain your answer.
Q Did your lawyer show you the proffer agreement?
A He showed me a piece of paper saying, stating this is a proffer agreement.
Q One piece of paper?
A One piece of paper and he had another piece of paper in his hand, I don't know what that was, but he had me sign one of them.

Q And I hand you the last page of State's Court Exhibit Number 3 and ask you if that's your signature on there where it says, "I agree and accept the terms of this agreement."
Q I don't know.
Q Does it look like your signature?
A Pretty close.
Q All right. Does it look like the piece of paper you signed, that your lawyer said sign here?
A I don't know. I don't think it looks like that piece of paper.
Q Is it the same color as the piece of paper you signed? You signed a white piece of paper?
A White and black. All typed paper is white and black but I don't remember --
Q Well, it wasn't a yellow piece of paper, was it? You have seen yellow pieces of paper and pink pieces of paper, haven't you?
A Sure.
Q Okay. Was the piece of paper you signed white with black type on it?
A Some kind of, must have been white with some outlining, lines, green or magic markers or some kind of --
Q Let me ask you this. This is in fact the

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document you signed, isn't it?
A Like I say, this stuff that you got right here --
Q Uh-huh.
A -- I can't really tell because, this is what I'm saying, the attorney had, if the attorney --
Q Let me ask you the question, let me ask you the question.
MR. McLAIN: Your Honor, would you let him answer the last question first?
MR. JONES: He's not answering the questions. I'm going to ask the question again.
THE COURT: Ask the question.
MR. JONES: The question, yes or no, yes or no.
MR. McLAIN: Well, that is what I said when I was asking questions, was yes or no, but --
THE COURT: The objection is sustained, however we will have another question, the witness will answer yes or no and then he may explain his answer.
THE WITNESS: No, I don't recall that paper.
BY MR. JONES:
Q The witness states the signature, he doesn't recall the signature on page five of State's

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Exhibit Court Number 3, doesn't recall signing it, can't tell if that's his signature and doesn't believe, does not recall that this is a copy of the agreement that you signed. Is that correct?

A I know I signed a proffer agreement.

Q A proffer agreement?

A Right.

Q Okay. Because you wanted the proffer agreement there, didn't you?

A Sure.

Q Right. And you signed it, right?

A Right.

Q Right. And you read it, right?

A I didn't read it.

Q You didn't read it?

A No.

Q And you didn't know, you didn't know that in the proffer agreement you signed that there was language in there that the client is hereby informed and understands that the agreement does not extend to any statement or other information involving homicides or other crimes of extreme violence?

A Oh, no.

Q You didn't know that?

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A No.
Q You didn't know that?
A No. Would you have signed something like that?
Q You didn't know that, did you?
A No.
Q Okay.

MR. McLAIN: He's been asked that three times and answered it three times. I object to asking it again. What's good for the goose is good for the gander.

MR. JONES: All right, fine, Judge, I'll accept that and I will ask you to instruct the witness not to ask me questions while he's on the witness stand, that I'm asking the questions and I'm not going to tolerate him asking me questions while he's on the witness stand, Your Honor.

THE COURT: All right. Answer questions and don't ask them, Mr. Witness.

THE WITNESS: Yes, sir, Your Honor. Can you restate --

BY MR. JONES:

Q You said earlier, testifying, that you wanted your lawyer to come down there, that you stopped the questioning after your Miranda warnings were

read to you and that you wanted your lawyer down there because you wanted to see that the proffer agreement was signed and you wanted your lawyer to be there with you during questioning?

A Correct.

Q You testified that you signed the proffer agreement, okay?

A Uh-huh.

Q And now your lawyer left. Correct?

A I asked him to stay.

Q You asked him to stay but he said, "No, I'm leaving"?

A He said, "No, this is not, this don't have anything to do with me, I'm gone."

Q Okay. And, so, you continued to talk to these officers about crimes that you had been involved in and gave them statements to questions that they were asking you?

A Yes. The only thing, yes, this is the way, what was said earlier was said over again, I don't know that I was able to repeat everything word for word because I, as I said, this is all a bunch of hearsay, you know, but whatever that was told to them, they must have took that and put it all together or whatever and, I don't know, twist facts

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or all kind of stuff in there, because, you know, it's just a bunch of baloney, man.

Q You knew that you had already told them statements about state crimes and your knowledge of them before the 18th, didn't you?

A Correct.

Q You knew that, didn't you?

A Uh-huh.

Q And you knew they were going to ask you about your knowledge of state crimes, state crimes on October 18th when they were talking to you, didn't you?

A Uh-huh, sure.

Q And the reason that you told them about your knowledge, your knowledge of the shooting and killing of Adarryl McCoppin, the reason you told them about that is because you knew that they already were on the trail because of comments that you had mentioned to them earlier and you knew that this was your chance to get your side of the story in before they got to the other people involved in it, like Rosalind Brown and your co-defendant, the reason you talked to them is because you wanted to make sure they understood that you didn't shoot anybody, that you didn't mean to rob anybody, that

you didn't have anything to do with it and you really didn't know what happened, you didn't know what happened but Chris Landrum could have shot somebody but you just drove away, that's the reason you talked to them and told them that, to protect yourself from being charged and to protect yourself early on as being the information giver and the one who was providing the State with a basis for prosecuting Chris Landrum, didn't you, that's the reason you told them that, isn't it?

A No, sir.

MR. McLAIN: Your Honor, I object to that. I think that was about 10 or 15 questions at one time, multiple questions, and he was not given time to answer any of them.

MR. JONES: I'll repeat the question, Judge, in a shorter fashion.

THE COURT: The witness answered it.

THE WITNESS: Can you repeat those one at a time?

THE COURT: All right.

BY MR. JONES:

Q The reason you told them, the reason you told them on October 18th about your involvement in Adarryl McCoppin's death was to protect yourself as

much as you could before they got to other witnesses and got the information about the crime from them, didn't you?

A Can I say something?

Q Answer the question.

THE COURT: Answer the question.

A Yes, I told them about things that I heard but can I say --

MR. McLAIN: Sure, you can qualify it.

Q The question is --

A Sure, I talked --

Q The reason you told them --

MR. McLAIN: Your Honor, can he qualify his answer? Let him finish his answer.

THE COURT: Answer the question.

A I said yes, sir.

Q To protect yourself, correct, to protect yourself as much as you could, correct?

A No, not to protect myself.

Q The reason you answered the question about your knowledge of Adarryl McCoppin's murder was to protect yourself in that crime as much as you possibly could as soon as you could, wasn't it, that's the reason you told them, wasn't it?

A No, not to protect myself, no. I told, I

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said this because they, I said this was a bunch of hearsay, they telling me this, I'm trying to give them as much information as I can to get out of trouble, and in my mind I'm contemplating on things I've heard, so I'm putting everything together trying to place this man there, knowing that me and this man was friends, he's staying in my home in Anderson, I'm staying in Spartanburg, this man, we're friends, he used my car, I used his car, and I'm putting all this stuff together, things missing, another person said this and that about this guy, and this, "You need to watch who you let use your vehicle," and all this kind of stuff, police coming to my house asking questions about some old stuff that me nor my wife don't know nothing about, and when I talk to these people I'm telling them about something in Anderson, I don't know nothing about no Abbeville, I don't know nothing about no Iva, I don't know nothing about these places.

Q You're saying your lawyer left because they wanted to talk to you about charges that he wasn't involved in and responsible for, correct?

A Lawyer, yes.

Q All right. So, you knew that they were going

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to talk to you about charges that your lawyer wasn't involved in, right?

A But he said I got immunity, he said, "You ain't got to worry about nothing," that anything I say --

MR. McLAIN: Your Honor --

A Because --

MR. McLAIN: Your Honor. Don't say anything about what your lawyer said?

A Sorry, sorry.

Q So, you told your lawyer, when you were talking to him, you told your lawyer, "Hey, I'm going to tell them about some stuff, some state charges, I've got some information about some state charges that I need to tell them about involving a dadgummed murder," you told them that, didn't you?

A Yes, I told them. Like I said, I was thinking about some stuff I heard, I was telling these people some stuff.

Q Right.

A Like I told you earlier, that I'm telling these authorities, this was a promise to me, everything, so I'm telling them as much as I remember, that I heard, I'm telling them all this stuff in order to get out of some trouble.

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Q You told your lawyer you had information for these officers about state crimes involving murder, didn't you?

MR. McLAIN: I object to that. He's asking questions about what he told his lawyer.

THE COURT: Sustained.

Q I want to show you State's Exhibit Number 6 and ask you, on State's Exhibit Number 6, a diagram purporting to show a motorcycle, a driveway, whether or not that's your signature, and dated 4:20, 10/18/01?

A As I said, I don't recall writing this, and as I said, I do not recall signing anything other than this proffer agreement.

Q Is that your signature?

A Well, I write my name S-h-o-n-d-r-a-y.

Q Is that your signature? Is that your signature?

A Don't this look different from the piece of paper he has? Is this a copy of the piece of paper he got?

MR. JONES: Your Honor, I don't know that that's responsive to my question. I'll ask him again.

THE COURT: Defense counsel, hand him the

copy you have.

MR. McLAIN: Which one, Your Honor?

THE COURT: The drawing.

MR. JONES: Court's Exhibit Number 6.

MR. McLAIN: Schematic drawing?

MR. JONES: Yes.

THE COURT: Thank you.

MR. McLAIN: Thank you, sir.

THE COURT: Continue cross-examination.

THE WITNESS: I just don't recall that.

BY MR. JONES:

Q All right. What I'm asking you is, on Court's Exhibit Number 6 is that your signature, that right there that says Shondra Martin, yes or no?

A That handwriting, both of those handwritings look the same, identical. I mean, I don't recall signing anything, sir.

Q And you say you sign your name S-h-o-n-d-r-a-y, or d-r-y?

A d-r-a-y.

Q d-r-a-y? Okay, here is a proffer agreement. Whoever signed that, how did they spell Shondra Martin?

A They spelled it, it looks like it could have

been --
Q How is it spelled there?
A S-h-o-n-d-r-a.
Q d-r-a?
A Something like a U.
Q How did you spell your name on the proffer agreement that you signed, d-r-a or d-r-a-y?
A Most of the time I spell my name d-r-a-y.
Q d-r-a-y?
A Most of the time I spell my name d-r-a-y. All the time I spell my name d-r-a-y.
Q Uh-huh.
A Have you got any mail that I, that you done took and used, envelopes?
Q Why did you want your lawyer to stay there with you during questioning?
A Why?
Q Yes.
A Because maybe -- okay, I been telling these people everything, all this stuff, trying to get myself out of trouble, just telling them stuff, like I say, hearsay stuff, you know what I mean?
Q Uh-huh.
A So, I want my attorney to be there present because of, you know, you hear rumors how they do,

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it ain't no rumor to me now, I know it's a fact they do all kind of trick knowledge, all kind of stuff they do.

Q And when your lawyer left he told you he didn't represent you and didn't have anything to do with the state charges?

MR. McLAIN: I object, I object to what his lawyer told him.

Q When he left you had an understanding --

MR. McLAIN: I object, Your Honor.

MR. JONES: I withdraw the question, Judge, I withdraw the question, not about what the lawyer said.

Q When your lawyer left you had an understanding that you wouldn't be prosecuted, you are saying, for anything that you said?

A Absolutely, because I wouldn't have been talking about nothing if I knowed that everything, whatever I said, that I wouldn't be charged with anything, I be getting full immunity for anything, and they promised me all this --

Q I'm not talking about what they promised you. You had an understanding after you met with your lawyer?

A And that's the same understanding I had with

my attorney.
Q That's what I'm saying.
A That's the same understanding I had with my attorney.
Q So, you knew at the same time if you wanted him back to talk to you when you were talking to them you could stop and call him back and he would come back down there, you didn't have to talk to them at all, did you?
A No, I didn't really know too much about any of this.
Q Well, you had already called him down there one time and said you are not going to talk to them until you see your lawyer, and they stopped, didn't they?
A Well, the first time I asked them to speak to my lawyer they said, "You ain't got to worry about your lawyer, everything is okay, we done talked to your lawyer, everything is set up, you don't have to worry about anything." The second time they came and I said, "Look, can I have my lawyer present, can I get the proffer agreement signed, you know what I'm saying, like kind of like what I want, full coverage on my own self, you know, instead of you just saying I got that."

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Q You knew you could call and have your lawyer come back down there, didn't you, you knew you could have your lawyer come back down there, didn't you?

A No, I didn't know that. If I did, I would have, I would have, "Look, you shouldn't even leave, if you my attorney, why leave me? Why leave a sheep, you know, in a gang of wolves, why leave me out there, these men drilling me, "Yah, yah, yah, yes, you did that."

Q According to you, because you had full immunity?

A Yes, but still he should have, he still should have been there, I feel like he still should have been there.

Q Of course you told your lawyer you were going to tell them the truth, didn't you?

MR. McLAIN: Your Honor, I object again to what he told his lawyer or his lawyer told him.

THE COURT: Sustained.

Q You testified in court here you didn't tell them the truth?

A I told them hearsay.

Q Hearsay?

A That's right. For example, can I explain

about hearsay? All right, okay? I been in Greenwood County Detention Center for almost nine months. All right, okay, people talk about Mr. Townes Jones, no offense to you, right?

MR. JONES: Your Honor, this is not responsive to my question.

THE WITNESS: I can't demonstrate --

THE COURT: Only in response to the question. If you're responding to the previous question, you may speak, otherwise let him ask another question and then you can talk about that.

THE WITNESS: Repeat the question again, please.

BY MR. JONES:

Q You wanted to tell these officers the truth, didn't you?

A Yes, uh-huh.

Q What's so funny about that?

A Nothing, nothing, because I'm just, I'm just looking at you, ain't nothing funny, I'm not trying to make no, I'm not trying to be no arrogant or nothing like that, I'm just, I'm just, I know you're up here and I'm down here, it's nothing, no offense to you, Mr. Jones.

Q And I'm not taking any, I'm not taking any,

believe me, this is a work and a job.
A And, you know --
Q All I want to ask you is, you were going to tell them the truth?
A True.
Q Right?
A Uh-huh.
Q Okay. And you did tell them the truth?
A Well, I don't know if it's the truth or not. I just told them, I told them what I was thinking, what I heard.
Q Did you tell them that you were there when somebody over in Anderson County got shot?
A Yes, I implicated myself in that so that would make me look like he do know what he talking about, yes, I shore did.
Q So, you lied to them by implicating yourself in it? You really weren't implicated in it, is what you are saying?
A No, huh-uh.
Q So, you weren't telling them the truth?
A I'm saying what I told them was hearsay, all this was hearsay. If I was, if I was involved in something, I got an Excursion, this is a big truck, you cannot miss it, you know, why, when the officer

come to my home, why would I have the Excursion there, why do I not just try to get rid of it, why did I not flee and run, why am I sitting here, you know, knowing that, oh, if I done killed somebody they going to come to me, they going to come to me and be questioning me about this, that, blah, blah, blah, I done killed somebody, I'm in a big old Excursion, how can anybody go and rob somebody in an Excursion and expect to get away without being seen or, I mean, an Excursion, I mean, somebody going to go, whatever you call it, nighttime and rob somebody, wouldn't you take a little bitty car that is quick to get away, or would they be, I mean, why would they take a big old truck like that? Man, I don't understand this, I don't understand.

Q So, what you're telling me is basically you told them whatever you thought they wanted to hear?

A I told them what, like I said, I told you the things I was hearing on the streets, you know what I mean?

Q You told them things you thought would help you out?

A Exactly.

Q Okay. And, so, what you were doing the whole

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time basically was looking out for you, trying to figure out what you could do to get yourself in a better position, right?

A Exactly.

Q And none of these men, none of these men, these officers you talked to, Agent Gilliam, Agent Lijoi, Agent Gambrell, told you that if you talked to them it was going to help you out and you would be in a better position and you wouldn't be prosecuted for any of this, did they?

A Yes, they told me.

Q Which one told you?

A Both of them.

Q Which one?

A Both. Gilliam and, what is his name, Mario?

Q Lijoi.

A Lijoi, that's right.

Q They told you you wouldn't be prosecuted for the information you gave them about the Anderson shooting?

A They told me I ain't got to worry about nothing I say to them, about anything I say to them, they say I ain't got to worry about nothing, "We're going to take care of you, you're not going to be in jail for long, you going to be out, you

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going to be with your family," and all this, they was promising me everything.

Q So --

A That's what they do.

Q And you believed them?

A Exactly.

Q So, why did you need to talk to your lawyer?

A Because I needed it in writing. I kept expressing that to them the whole time.

Q Needed what in writing?

A I wanted this, what you call a proffer agreement saying I have immunity for any statements, anything that I, anything that I say, no matter if I'm involved, not involved, it say anything.

Q So, they brought it to you in writing?

A They didn't bring me anything.

Q You said you needed it in writing, you wanted your lawyer because you needed your proffer agreement in writing. Did you just say that? I said why wouldn't you talk to them if they told you, "Nothing you tell us is going to be used against you, don't worry about it, we've got you protected," I said why did you need your lawyer, you said, "I needed their promises in writing,"

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that is what you said, isn't it?
A Yes. I feel like if the attorney was there and he just showed me, "This is a proffer agreement, this is what you did, this is the thing for you, you don't have to worry about none of these charges, just tell them everything you know," and that's it.
Q And did they bring it to you in writing?
A Well, Mr. Ned, he showed me a paper, a couple papers, a paper or two and I say, "Okay, this is the proffer agreement, yah, yah, yah." I don't know nothing about the law, I have a ninth grade education, I don't know what I'm supposed to read or anything, I'm just going by him, thinking I'm just trusting my attorney, that's what I was doing, but seems that he was just, he was just --
Q How long did you stay in the room with your lawyer, how long?
A Long enough -- well, let me see. Probably no more than 10, 15 minutes.
Q 15 minutes?
A Probably wasn't even that, I don't even think it was 15 minutes. That is even too long. Might have been five minutes, because we was just talking.

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Q Five minutes?
A Yes, might have been five minutes.
Q Five minutes?
A I don't know what he's talking about. I know he don't sit with me.
Q All right. I'm going to ask you something. Do you see that second hand up there on that clock, it's fixing to hit six.
A All right.
Q All right. It's fixing to hit three, I think.
A Yes, the second hand.
Q How long does it take for you to sign your name? About that long?
A About two.
Q About like that?
A About a second.
Q Okay. Then the judge signs his name. That takes you about 15 seconds, and you all are back there for another, you are saying about four and a half minutes?
A Yes, because he was explaining this, is what he was doing, he was explaining to me I got --
MR. McLAIN: Don't say anything about what your lawyer told you but you can allude to what

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your understanding is.
A Yes. My understanding was I was, my understanding was, "you got immunity, you ain't got to worry about nothing you say to these authorities, you don't have to worry about no charges being brought up against you or anything," so that took maybe five, no more than six or something minutes. Then he say, "Well, all you have to do is just sign the proffer agreement."
Q All right. You knew you had a right to remain silent, didn't you, you knew you had a right to remain silent, didn't you, you knew that?
A When?
Q Anytime during talking with police officers, or anybody, for that matter, other than being on the witness stand, you knew you had a right to remain silent, didn't you?
A Well, I always heard, you know, you got a right to remain silent but I didn't know it as far as the law is concerned, because I ain't never really been in no trouble like this and I ain't really, you know --
Q I'm asking you on October 18th, when Mario Lijoi met with you --
A Oh, yes, okay.

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Q -- you knew you had a right to remain silent, didn't you?
A Exactly.
Q All right. And you knew that anything you said could be used against you in court, used for you in court, didn't you?
A Used for me in court?
Q Used for or against you in court, didn't you?
A Well, according to what he say, yes, I knew that I had a right to remain silent and all this and that, but that's why I say look, proffer agreement, attorney, that way I wouldn't have to worry about anything I say to be used against me.
Q I'm going to get to the proffer agreement.
A Yes, I know, yes, yes.
Q You knew?
A Yes, yes.
Q You knew that anything you said could be used again you, didn't you?
A Yes, yes, yes.
Q And you knew that you had a right to consult with a lawyer and to have them present during any questioning, didn't you?
A Yes.
Q You knew that, didn't you?

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A Yes.
Q Because they told you that, didn't they, and they had asked you if you understood that, didn't they?
A And that's why I said, asked for my attorney.
Q You knew if you couldn't afford an attorney one would be appointed to you to represent you prior to any questioning, didn't you?
A Yes.
Q Because one had been appointed to you?
A Yes.
Q He was appointed to you.
A Right.
Q You knew that?
A Uh-huh.
Q You knew you had a right to have them there with you, didn't you?
A Yes.
Q During questioning, didn't you?
A Uh-huh.
Q You knew you had those rights?
A Yes.
Q And when he left and you sat down with them you knew he didn't represent you on the state charges, didn't you, you knew he didn't represent

you on the state charges, didn't you, you knew it, didn't you?
A No. I thought he was going to be my, when I first spoke to him he said, "I'm going to stay --"
MR. McLAIN: Don't say what he said.
A I was under the impression he was my attorney and I was under the impression that no matter what I say, state or federal, that I get immunity.
Q You knew he didn't represent you on the charges that you are were fixing to tell them about in Anderson County, didn't you?
MR. McLAIN: Your Honor, that has been asked and answered and he said no.
THE COURT: Overruled.
Q You knew he didn't represent you on those Anderson charges, didn't you, you knew that, didn't you, you knew he didn't, didn't you, didn't you?
A I knew that he wasn't representing me on these Anderson charges.
Q On those Anderson charges, right, and you talked to them about it anyway because you wanted to get the best position with regard to those charges that you possibly could with them, didn't you?
MR. McLAIN: Your Honor --

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A You trying to confuse me. I knew? I don't understand.

MR. McLAIN: Your Honor, if I may be heard, I think that when he responded to Mr. Jones' question the last time he said, when he said, "Did you know," I think Mr. Jones said, the Solicitor said, "You knew that you were not being represented by Mr. Miller on these Anderson charges, didn't you," and his response was, "I knew?" He answered that question with a question, so I would ask that the Solicitor at this time ask that question again as to whether or not he knew that Mr. Miller was representing him in reference to these charges.

MR. JONES: I'll ask it again, Your Honor, I will be happy to.

Q Mr. Ed Miller, the lawyer, was there. He was leaving, he was leaving you there. You were about to talk to some officers on the Anderson shooting and when you talked to them about those you knew that Mr. Miller, the federally appointed attorney, the public defender, was not going to represent you on matters involving that crime, didn't you, you knew that?

A Not really, I didn't know that he wasn't going to represent me, not really, no. I thought

maybe he was going to be my attorney because he said, "Tell them everything you know."

MR. McLAIN: Don't say what he told you.

A Okay. Well, I didn't really know, I thought, I didn't really know, I thought maybe, okay, Ned going to represent me. I mean, he tell me --

Q Okay. You answered the question. You thought he was going to represent you on those charges, right?

A I ready didn't know.

Q You thought he was, okay, and you went ahead and talked to them about those charges because you wanted to put yourself in as good a position, as for as that investigation was concerned, as you possibly could, didn't you?

A Exactly.

Q Okay.

MR. JONES: No further questions, Judge.

THE COURT: Mr. McLain?

MR. McLAIN: Yes.

MR. JONES: The answer was exactly, I think the record ought to reflect.

THE WITNESS: Could I --

MR. McLAIN: Excuse us just a minute. Unless it's to qualify your answer to his last question --

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THE WITNESS: You see, he keep crossing me up. I don't know whether he saying this or saying that. I might be saying yes to something I should be saying no, I might be saying no to something --

THE COURT: Mr. Witness --

THE WITNESS: I really don't feel comfortable being up here.

THE COURT: Wait just a minute. That's well appreciated but --

THE WITNESS: He just crossing me up.

THE COURT: Wait until a question is asked before you speak. That's the ruling of the Court.

MR. McLAIN: Your Honor, if I may, for the record.

THE COURT: Okay.

MR. McLAIN: Without waiving any attorney-client privilege and for the purposes of matching signatures only, there are some letters that I happen to believe copies of them were filed with the Court by Mr. Martin, and I will ask Miss King to pull those from the file to compare the signature on those letters to the signature on this proffer agreement.

THE COURT: How says the State?

MR. JONES: Your Honor, I don't -- is this an

attempt to try to prove that he did not sign this document? Is that what this is for?

THE COURT: Is that what you intend to do, Mr. McLain?

MR. McLAIN: Your Honor, I can't tell until I look to see what those signatures are. The names are spelled differently and I'm going to ask him about that, if he signs the same way everytime, or different ways. I can't answer that question until I see.

MR. JONES: Your Honor, first of all the State's position is we're not going to be able to to rise to any credible level of proof without a qualified handwriting expert, if his effort is an attempt to disprove that the court's exhibit referred to as Court's Exhibit, I believe Number 2, a proffer agreement, maybe Number 3.

THE COURT: What's the number?

MR. McLAIN: This is my copy.

MR. JONES: Court's Exhibit --

MR. JONES: I don't have any objection to him making court's exhibits any document.

THE COURT: There it is.

MR. JONES: Yes, sir. Court's Exhibit Number 3.

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THE COURT: Yes, sir.

MR. JONES: Your Honor, I would like to put on the record that the original of this proffer agreement is with Your Honor and this is a copy that we labeled Court's Exhibit Number 3.

THE COURT: The original is with the Court?

MR. JONES: Lawyer Miller. Judge, the State's position is the witness did not deny or confirm that this was his signature. He says he doesn't know.

MR. McLAIN: Let me just ask it, I'll try to rephrase it.

MR. JONES: So, I don't know why you're trying to prove it's not his signature, you know, other than the fact it's on there and it's his name and it's a proffer agreement and is signed by Lawyer Miller as well. You know, I just don't understand where we're going here, I can't understand, I am -- he's outdone me with this effort, I can't understand where he's going with this.

MR. McLAIN: Well, Your Honor, he answered, I think he answered in response to one of Mr. Jones' questions that he signed his name with a Y, and there were some letters written to the Court, every

letter I have seen he signed his name with a Y. The proffer agreement is spelled, and let me see, this schematic drawing is signed with an A, and I'm trying to clear that up because Mr. Jones asked him about that.

THE COURT: It's overruled. The Court will not engage in a handwriting analysis nor allow any self-serving documents.

MR. McLAIN: Yes, sir.

THE COURT: Anything in this court's file was after he was a target of criminal investigation and/or after he signed that agreement. The agreements stands and speaks for itself.

MR. McLAIN: Let me ask him this, Judge.

THE COURT: Yes, sir.

MR. McLAIN: If I may.

THE COURT: Yes, sir.

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REDIRECT EXAMINATION

QUESTIONS BY MR. McLAIN:

Q When you sign your name, spell your first name for the Court for this record how you sign your name, just spell the letters.

A S-h-o-n-d-r-a-y, Shondray.

Q Shondray?

A Shondray Martin.

Q Okay. And when the proffer agreement was signed did you know whether there were any exceptions in that proffer agreement?

A What you mean?

Q That there were any exceptions to any immunity?

A What you mean, like clauses or something?

Q Yes, did you know that?

A No.

Q That you had no immunity for certain things and immunity for others?

A No, sir. If that was the case --

Q What was your understanding?

A My understanding is I had immunity for anything that I was involved with, anything I know about, anything.

Q And was your understanding, willingness and

voluntariness based on on that understanding?
A Willing?
Q Yes.
A Well, I was kind of like --
Q Listen to my question.
A No, I was forced into it, to me, seemed like I was forced into it out of fear.
Q Right, but you signed, to your understanding, you signed that based on your understanding, and your willingness to sign it was based on your understanding that you had full immunity, correct?
A Correct.
Q With no exceptions?
A None whatsoever.

MR. McLAIN: The Court's indulgence, Your Honor.

That's all I have, Your Honor. I wanted to make sure I didn't leave an exhibit.

THE COURT: Anything further from the State?

MR. JONES: No.

THE COURT: You may come down.

THE WITNESS: May I keep the cup?

THE COURT: Yes, sir.

THE WITNESS: Thank you.

(Witness excused).

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THE COURT: Any other witnesses?

MR. McLAIN: Your Honor, my client wants Attorney Miller here, and Miss Jean Howard.

THE COURT: How says the State?

MR. JONES: Well, Your Honor, I don't believe that there has been any record established that would make Miss Howard's testimony relevant.

THE COURT: Let's stop there. How is -- the only thing he said about Miss Howard --

MR. McLAIN: I'm sorry, sir, I didn't hear you.

THE COURT: The only thing he said about Jean Howard was that she had promised a downward departure. How is that relevant to this Jackson v. Deno hearing?

MR. McLAIN: Well, Your Honor, I think this whole thing of the relevancy is going to go to whether or not he voluntarily gave the statement, whether he understood or misunderstood what he was giving, whether it went to settlement negotiations in a federal plea, whether or not these negotiations merged with the plea.

THE COURT: Would that be answered by Attorney Miller? I mean, the only time he ever mentioned Attorney Howard, U. S. Assistant Attorney

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Howard was when he said that he turned to her during the sentencing and indicated that she had promised a downward departure. That has nothing to do with anything that he may have previously said to law enforcement officers. That's the record.

MR. McLAIN: Of course she could testify as to what conditions was contained in the original proffer agreement.

THE COURT: That's in evidence, or if Attorney Miller comes he can either confirm or deny that that is the proffer agreement.

MR. McLAIN: Well --

THE COURT: Do you agree with that?

MR. McLAIN: Well, in most instances, Judge, I would. The problem we have in this one, we have unsigned proffer agreements floating around, I understand Miss Howard had an unsigned copy, finally we were able to obtain a signed copy. I have received several copies of proffer agreements.

MR. JONES: Your Honor --

MR. McLAIN: This is the only one that has all the signatures, has signatures and everything on every place.

THE COURT: Very well. Yes, sir, Solicitor.

MR. JONES: Well, you know, that's not

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accurate, I mean, it's accurate but it's still, it's not material. We have a signed proffer agreement, the original is in the possession of Attorney Miller, all right, and that is the, I mean, Miss Howard doesn't have any other agreements, and any unsigned copies were in an effort to notify Mr. Martin's lawyer as early as possible what we believed the proffer agreement contains before Attorney Miller was able to locate the original, which was done, but once the original was located it was turned over to them.

So, there is not really an issue of unsigned, different ones floating around, as he termed it. What we did was, we secured what we believed was an exact copy of the one that Attorney Miller had in his possession but was unable to locate immediately at that time. So, as quick as we could we attempted to locate one that we thought would represent the same agreement without signatures on it to provide to them so they could review it and have knowledge of what we believed the original signed proffer agreement would contain.

MR. McLAIN: I think that was a joint effort on behalf of the defense as well as the prosecution, to obtain signed copies.

THE COURT: Did the unsigned copy that was obtained during discovery in any way deviate from the signed copy that has been put in evidence as a court's exhibit?

MR. McLAIN: From what I have just read, no, sir.

MR. JONES: An honest answer is no, sir.

THE COURT: Well, the Court fails to see the real advantage or materiality of Attorney Howard's, Assistant U. S. Attorney Howard's appearing to testify, when she was not involved in any interrogation and she may not have been involved in anything having to do with Attorney Miller's contact with Mr. Paschal's client. Mr. Paschal, you may want to speak to the record, sir, you can come on up.

MR. McLAIN: Your Honor, may I address that one? Before he speaks to the record, may I address what you, the statement you last said?

THE COURT: Yes, sir.

MR. McLAIN: I think Mr. Martin also said that at the time he was entering into the plea she told, meaning Miss Howard, of course, Mr. Martin that, quote, he still had more to do, unquote, so that may go, as far as I know, to their

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understanding, or his understanding, or her understanding. I don't know what their understanding was.

THE COURT: It's well taken and the Court will not engage in any argumentive exchanges --

MR. McLAIN: Yes.

THE COURT: -- but point out to you that of necessity was subsequent to anything that he may have said against his interest during this period of time prior to her making such a remark and therefore the Court fails to see the materiality or relevance of it.

MR. McLAIN: It could be in his interest, too.

THE COURT: How?

MR. McLAIN: Well, if he had more to do, it could mean a Rule 35 departure.

THE COURT: But how does that have any relevance to what he said or did not say to these officers?

MR. McLAIN: It would go to voluntariness, understanding, under the understanding of the agreement, the voluntariness of the agreement, his willingness in entering into the agreement, all the factors under Jackson, under that case, under

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Jackson v. Deno, I mean, it goes to all of them.

THE COURT: All right. The Court will take it into consideration and rule momentarily. Mr. Paschal, do you have remarks or comments, sir?

MR. PASCHAL: Yes, I do, Your Honor, if it please the Court. Your Honor, I represent, excuse me, Judge Miller, I would like to make a motion to quash the subpoena in this case.

THE COURT: Speaking is Mr. Paschal, attorney from the Greenville Bar who represents Judge Edward Miller, known as Ed Miller, who then at the time in question was a practicing attorney in the upstate with his offices located in Greenville. Is that a correct statement?

MR. PASCHAL: Yes, it is, Your Honor, and he is now, I think the Court can take judicial notice he is a Circuit Court judge --

THE COURT: Yes, sir.

MR. PASCHAL: -- out of the 13th Circuit right now. Your Honor, let me preface this by two matters that Judge Miller instructed me to say. First, in making this motion to quash the subpoena he wants the Court to know he has no side he is trying to favor or punish in this case. We are making this motion not favoring one side or

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penalizing the other side. Also His Honor has related to me, I am making this as a special appearance, he has the utmost respect for Your Honor, for this Court and he will do whatever this Court tells him to do.

Your Honor, having said all of that, I make this motion as a matter of law. Let me also preface it by saying, Your Honor, in making a motion to quash a subpoena against a sitting judge in South Carolina, I submit to this Court you don't have a whole lot of guidance. The only guidance that you have basically is the rules of judicial ethics, Rule 501, which prohibits a judge from being called as a character witness.

I will talk about that in just a second, Your Honor. The other matter is the case of Weston versus Catoe, I have a copy for Mr. McLain also, and let me tell you that case. I can tell you this, that dealt with the subpoenaing of a judge that sat on the trial, which is a bit different in this case. The Weston case stated, Your Honor, a judge that presided at a hearing could not be called short of a showing, and that showing had to be two prongs. One is a critical need for the judge as a witness and the second prong is that

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there was no substitute or other means of getting the testimony other than calling that judge.

Now, Your Honor, despite the fact that there is no guidance in this case for calling a judge that did not preside at a hearing, in this case one as a lawyer, it is still within the discretionary function of the Court in the course of the trial that this Court has authority to quash the subpoena, and the support for that is Rule 501, and in the commentary of Rule 501, the judicial history and rule making process of enacting 501 is that once we call a judge it's a different matter in that you cannot call a judge without unbalancing the fact finding or the fact finder's function because of the due or undue credibility that a judge would get just because he's a judge. If a judge is called by one of the adversaries to testify, then that gives that adversary an unfair advantage, that is why Rule 501 prohibits us from calling a judge as a character witness.

The second thing is, what the Judge Weston case showed is a similar thought about calling the presiding judge, that it is going to disrupt the fairness of the hearing by giving one side the advantage of calling a sitting judge and putting

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the other side to a disadvantage in cross-examining a sitting judge.

And, so, as a result, Your Honor, the test I think is that at a minimum there has to be some showing of need and some showing that this is, I don't think it raises, rises to the level of being critical as it was in Judge Weston's case because Judge Miller was not the presiding judge, but there still has to be some showing of need and some showing that they can't get this type testimony except by calling this particular judge.

And this is a function, this type of a test is not necessary for this case, but to preserve the entire system, that we don't get where we're calling judges for strategic reasons, calling judges as witnesses, because it could somehow, as I said before, just disrupt and unbalance the system.

Now, in this case, Your Honor, and again Judge Miller is not picking favorites or trying to penalize either party that may call him, but in this case the party that has subpoenaed him is the defendant, who has not waived his privilege, his attorney-client privilege, so if Judge Miller is called all he could testify about are those facts that are public facts, and those facts are facts of

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record, and as a result those facts of record can be presented to this Court without calling that judge as a witness.

So, under that test, under the test I submit to the Court that should be used, being candid, the Weston case did deal with the presiding judge, I don't think that test is met, I think some showing has to be made in this case, and on that basis, Your Honor, we make this motion to quash the subpoena in this case.

Judge, I will hand up both those cases and I also have a copy of Rule 501.

THE COURT: Thank you, Mr. Paschal.

MR. PASCHAL: Thank you, Your Honor.

THE COURT: Does the State wish to be heard, or do you wish to yield to the party calling the witness --

MR. JONES: Yield to the person calling.

THE COURT: -- now Judge but then Attorney Miller, and we will refer to him as Attorney Miller because that is the capacity in which we are discussing him. We're not discussing him as a judge, although the motion is made by Mr. Paschal as his attorney as now judge, he was not a sitting judge at the time in question, so the record will

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always refer to him and even if we have at times referred to him as Judge Miller, he is Attorney Miller so far as these proceedings are concerned.

Now we'll hear from you with regard to the motion to quash.

MR. McLAIN: Yes, sir. Your Honor.

THE COURT: Mr. McLain.

MR. McLAIN: With all due respect to Attorney Miller, I think that his presence is needed to answer the questions that have been, that have arisen from the testimony, the conflicting testimony presented by the agents and presented by that of the defendant, first as to whether or not he was indeed Mirandized, what the defendant's understanding was, that he had full immunity. It goes to the willingness of his statements, it goes to the willingness of the statement, it goes to the voluntariness of the statement, it goes to his understanding of the statement, and there is conflict either way, and I guess we'll have to refer to him as attorney throughout because he was of course acting in his function as an attorney at that time, and this case is not on point.

In this case the judge, as Mr. Paschal himself pointed out, in this case, the Weston case,

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the judge attempted to be called as a witness was the actual presiding judge in the trial. He was not called as an attorney, but the purposes of what he did, for purposes of what he did as an attorney. And my client, they are saying, the agents are saying that everybody knew everything that was going on, everybody was properly Mirandized. There were only two meetings. Now there is a question of how many meetings there were with my client, and that's the first I have heard of that, whether or not Mr. Miller, Attorney Miller even knew about these other meetings, how long he was there, what my client's understanding was. It goes to all the factors.

THE COURT: Thank you, Mr. McLain. How says the State?

MR. JONES: Well, Your Honor, my understanding of what we're attempting to do is to present evidence, the State initially, to establish proof under the law that this person who is currently charged with a crime and gave a statement concerning that crime was advised of his Miranda warnings prior to giving the statement and that he understood them and that he fully appreciated them and that he wasn't threatened by anybody or given

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promises by anybody that caused him to make those statements but, rather, did so freely and voluntarily and intelligently.

Now, the State presented witnesses who testified that they gave him his Miranda warnings, that he appeared to understand each and every one of them, and that at the conclusion of reciting them to him and giving them to him he asked for his attorney and said that he wanted to see his attorney. He specifically said, "I want to make sure that proffer agreement that I signed, that I was agreeing to was signed." He wanted to make sure that he had a signed proffer agreement.

So, he had asked for two things, his lawyer and in order to make sure he had the proffer agreement signed, so they called his lawyer, his lawyer came and apparently his lawyer and he talked for awhile.

Now, my understanding was that Mr. Martin, this defendant, attempted to preserve, as he testified in this Jackson v. Deno hearing, his attorney-client privilege with Lawyer Miller, that he attempted to preserve, that he did not want to waive his attorney-client privilege that he had with Lawyer Miller as he testified in this Jackson

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v. Deno hearing. But nevertheless, he wanted to testify to you about what he was thinking and what he did and what, how he felt and whether he was read his Miranda warnings and whether he understood them and whether he proceeded voluntarily or whether he was actually proceeding under some misguided impression and that whatever he was saying would not be held and used against him.

And as he testified, again I will return to the SLED agents that testified, he talked to his lawyer and his lawyer left and he returned to them. They testified to you that they didn't have any discussions with his lawyer about the issues that they were going to question him about, that his lawyer did not discuss with them other than to say he's good to go, he's with you now. His lawyer did not give them a copy of the plea agreement, he took it with him, and they proceeded to question Mr. Martin.

It is the State's position, after cross-examining Mr. Martin, that he will maintain his position as stated from the witness stand regardless of what Lawyer Miller might testify to. He has stated to you that, quite frankly, Judge, he stated that he did not sign a proffer agreement

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that contained a clause that would allow the State to prosecute him for any information that he gave concerning homicides or violent crimes. He said that he did not do that, that he did not sign a proffer agreement that contained that kind of language.

He stated that the only thing he signed was something that would allow him not to be prosecuted for anything that he did. We have provided a document that is purported to have been signed by Shondra Martin and Ed Miller that says otherwise, Judge, so you have before you testimony and evidence that is conflicting, it's as conflicted as it could be. He says he didn't sign it, we say he did. He says whatever he signed didn't contain a clause that would allow the State to prosecute him for violent crimes, we say he did. We say he had knowledge of that, we say that he knew that in fact he was going to be able to be prosecuted for those and that he knew he would be able to be prosecuted for those.

Beg the Court's indulgence one minute.

THE COURT: Take your time, counsel.

MR. JONES: Judge, I guess one issue is, you know, and I guess it sounds a little bit silly for

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me to ask this question, but is there any need to have Lawyer Miller here if he's not going to waive his attorney-client privilege?

THE COURT: The Court finds he has waived it.

MR. JONES: All right.

THE COURT: The Court finds he has waived it, and not to interrupt your argument, Solicitor, because of things that were testified to by him. He said that, he said things that would allow any person who heard his words to infer exactly what he said, that he was led to believe by his attorney that he had full immunity from anything he would say.

MR. JONES: Yes, sir. All right, in that --

THE COURT: Wait a minute, please, I'm sorry.

MR. JONES: Yes.

THE COURT: He said that his attorney told him sign here, sign here. He said his attorney said sign here. He said that he asked the attorney to, "Stay with me," and he said, "I can't, this ain't got anything to do with me." He said the only time, quote, "The only time I recall signing anything is when he said sign here," referring to Attorney Miller. He said, that is, the defendant said that Attorney Miller said, "They're going to

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do this and that for you," and with regard to immunity, the defendant said that he had the, quote, same understanding I had with my attorney, end of quote. He further said that the interview with his attorney, Attorney Miller, took a period of time, about five to six minutes.

The Court finds that he has clearly waived his attorney-client privilege and brought into question the representation on these things. Now, this is not foreclosing additional argument but it is suggested that the motion to quash is denied, that Attorney Miller be questioned and limited to the scope of his representation of this defendant, his advice to this defendant with regard to immunity, if any, based upon the proffer agreement, if it is authentic.

Three, the authenticity of the proffer agreement and the question of whether it was signed by this defendant.

Four, the defendant's knowledge of the content of the proffer agreement.

And five, the defendant's voluntariness in entering into discussions with the officials after Attorney Miller left.

MR. McLAIN: Your Honor, I'm sorry, I was

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writing those down. Could you go back down through those again?

THE COURT: Number one, the scope of Attorney Miller's representation, what he represented him for.

MR. McLAIN: Yes, sir.

THE COURT: Number two, his advice to the defendant regarding his immunity from criminal prosecution.

Number three, the authenticity of the proffer agreement and the signatures thereon.

Number four, the defendant's knowledge of the contents of the proffer agreement.

And number five, the defendant's voluntariness in entering into discussions with the officials concerning other crimes after Attorney Miller left.

MR. McLAIN: Limited to those five things, correct, Your Honor?

THE COURT: Unless you think of something else that he, that you feel he could throw light on without invading unnecessarily into things that have not been touched on by your client, Mr. McLain.

MR. McLAIN: If I may, Your Honor.

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THE COURT: Take your time.

MR. McLAIN: If I may have one second.

THE COURT: Yes, sir.

MR. McLAIN: Your Honor, the only other element I can think of, the only other thing it might touch upon, if I may, might be what Judge Miller's knowledge and understanding was of the scope of that proffer agreement. I'm sorry, Attorney Miller, excuse me.

MR. JONES: That's number two, Judge, advice to the defendant regarding immunity.

THE COURT: It would be covered, it would be thought, by number two.

MR. McLAIN: That's fine. That's fine.

MR. JONES: In that regard, Your Honor, we would ask that you instruct Attorney Miller to bring, if he has it, the original copy of the proffer agreement, I believe he does.

THE COURT: Mr. Paschal, will you so instruct your client?

MR. PASCHAL: Yes, sir, I will be happy to. When do you want him here, Your Honor?

THE COURT: It looks like in the morning at his convenience, as early as possible.

MR. PASCHAL: If I could go call right now?

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THE COURT: We won't talk about anything about Attorney Miller but the Court will rule upon the subpoena for attorney Jean Howard. The Court takes into consideration that your client testified that she promised him a downward departure and he questioned her about that at the time of sentencing and at the time of sentencing she, according to him, spoke of things to be done in the future. He said that she said, that Mr. Martin, when testifying, testified that Attorney Howard said then, "You've got more to do in the future," quote, "You've got more to do in the future." Further, the Court finds that she was not involved in the questioning or she was not present at that time, she would have no material or relevant knowledge concerning any interrogation and/or questioning of Mr. Martin on the 18th of October, or on the 10th, for that matter, but particularly and especially on the 18th, other than signing the proffer agreement and having it faxed over to Spartanburg. Whether she, whether she knew or didn't know that it would be or not signed, it would be signed or not signed by Attorney Miller or his client is of no bearing on this issue of whether he voluntarily talked with these officers.

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MR. McLAIN: May I be heard on that?

THE COURT: You may.

MR. McLAIN: May it please the Court, Your Honor, just to the record, obviously, as Your Honor is aware, having done federal practice as well as an attorney, what she was saying, what is done presently when she says he has more to do, what is done in the future has retroactive bearing on whether it's been done in the past or in the present, what is done in the future under a Rule 35 departure has bearing on the present sentence, which depends on negotiations prior to the sentencing, and therefore her presence would bear relevance on his voluntariness in entering into all this.

THE COURT: The Court needs to hear from the State on the point because her interest is limited to any counterfeit or unauthentic documentation of a bank note nature and/or drug investigation. Her interest did not go to any state charges, there is no question in this judge's mind that she was not interested in that, she did not negotiate with this defendant concerning those things, and had probably, now, this is an assumption but it doesn't make any difference one way or the other, she

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probably had no idea that these agents were going to question him about other things. Her business was to get the proffer agreement to the place where the defendant was going to meet with his attorney limited to federal matters, not state matters. So, the Court would find that her subpoena should be quashed and the court does that on its own motion.

Now we'll take a short recess. Is there any need for us to have other witnesses at this time for this jury?

MR. JONES: No, Your Honor, it's not.

THE COURT: What time do you want them back?

MR. JONES: Judge, whenever, you know.

THE COURT: We've got Judge Miller to deal with. What did he report?

MR. PASCHAL: Excuse me, Your Honor, I couldn't get through. I know he had a, he was in trial, I will have to find out and let you know in the morning, I'm not sure.

MR. PASCHAL: Your Honor, I will talk to him tonight, I just couldn't get him, it was after 5:00, I just couldn't get his offices.

MR. JONES: Your Honor, I may have another witness that I could go forward with in the morning and kind of, you know, speed things up a little bit

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if you want to start at 9:30, I think I could probably go ahead with that.

THE COURT: Let's do that. Let's start at 9:30 in the morning. Anybody want to speak to the record about anything right now?

THE DEFENDANT: Your Honor --

THE COURT: Well, now, you better talk to your lawyer before you say anything. Mr. Busby, ask all the jurors in, excuse me, Mr. Simpson, I didn't see you, sir, ask all the jurors to come in and, Mr. Simpson, just have them sit on the back row back here, we're going to release them but I want to tell them all something.

(The jury returned to the courtroom at 5:15 p.m.).

THE COURT: The record is open. Ladies and gentlemen of the jury, you were asked to sit there simply to keep you from being inconvenienced to come here to be told this. We are going to release you until in the morning at 9:30. We have been constantly working since you left. The Court extends on behalf of all parties and the Court itself its gratitude for your understanding but we have more to do, and in the course of human affairs, particularly those involved with court

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activities, we simply don't know how long things will take. We do the best that we can. We are going to release you now until 9:30 in the morning when you will report to the jury room.

Do not talk with anybody about this case, do not speak about it by, between and among yourselves. If anyone attempts to talk with you about it immediately tell that person that you are a juror and you are not permitted to talk about this case, even if it is a close relative or friend.

If after you alert someone that you are a juror, if any person or persons persists or continues to try to talk with you about this case that would be highly improper, wrong and illegal and you should use any means that you have to identify that person or persons and report it to the bailiff at the door or to the Court Clerk and don't share that knowledge with anyone else and the Court will have that investigated and dealt with immediately and with effectiveness.

If there were to be any newspaper, any media coverage such as newspaper, radio or television of this trial, it's your responsibility on your oath to try this case, to well and truly try this case

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on the law and evidence presented during the course of the trial and upon nothing else whatsoever, so immediately upon realizing that what you are seeing, reading or hearing has to do with this trial it's your oath to disregard that completely and absolutely, not look at it any further, not read it, not hear it any more and put it out of your mind and out of your considerations absolutely and thoroughly.

Please keep those cautions and precautions in mind and be back there the jury room at 9:30. Everyone else remain seated, the jury is excused.

(The jury was excused from the courtroom at 5:18 p.m.).

THE COURT: Is there anything further for the record from the State at this time?

MR. JONES: Your Honor, only that I have been able to gather up a little bit of law as it relates to Miranda and I wanted to provide that to the Court as soon as I have copies of it. I will do it first thing in the morning.

THE COURT: It would be appreciated. If you have it, we'll see if we can get a copy this afternoon.

MR. JONES: Yes, sir, we'll try to do that.

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THE COURT: Thank you very much for that. Anything, Mr. McLain?

MR. McLAIN: No, sir, not today.

THE COURT: Thank you. We're in recess until 9:30. Mr. Paschal, I need to see you.

(Recessed at 5:20 p.m.).

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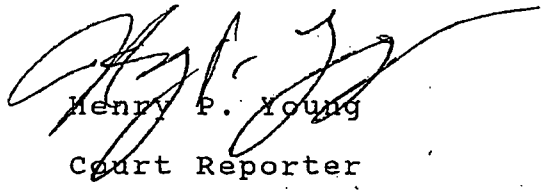
I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Abbeville County, South Carolina, on the 18th day of March, 2004.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 8, 2004



Henry P. Young
Court Reporter

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STATE OF SOUTH CAROLINA

2002-GS-01-192

COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA, )
)
)
-vs- )
)
)
SHONDRA LAMONT MARTIN, )
CHRISTOPHER FRANK LANDRUM, )
and ROSALIND RENEE BROWN, )
)
Defendants. )

B E F O R E:

HONORABLE WYATT T. SAUNDERS, JR.

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

W. TOWNES JONES, IV
TIMOTHY W. WOOLSTON
Attorneys for the State

W. BENJAMIN McCLAIN
Attorney for the Defendant Shondra Martin

Henry P. Young
Court Reporter

VOLUME V OF VI
March 19, 2004

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(Reconvened at 12:56 p.m.).

THE COURT: The record is open. This is State of South Carolina versus Shondra Lamont Martin, indictment 2002-192. The record will show for some time there have been negotiations between the State and the defendant. The Court is not aware of the terms of the negotiations at all but the Court is aware that negotiations have been going on and has permitted those negotiations to go on for considerable period of time at the expense of the jury of twelve people and two alternates who have been patiently waiting. They will be shown in, please. Where are they?

THE CLERK: Judge, they are in the conference room.

THE COURT: All right. Now, do not speak, of course, to the jury, sir, but tell the bailiff.

DEPUTY SHERIFF: I will let the bailiff know.

THE COURT: Yes, sir, let the bailiff know. Mr. Simpson, they can sit on the back back there, rather than come all the way up here.

(The jury returned to the courtroom at 12:58 p.m.).

THE COURT: Ladies and gentlemen of the jury, Madam Forelady, there is no way the Court can

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express its gratitude for your patience or explain the intricate matters of work that have been going on while you have been so patient. We are going to excuse you now until 2:30. Do not discuss the case by, between and among yourselves nor with any other person. Do not allow anyone to talk with you. If anyone attempts to talk with you, tell them that you are a juror and you are not permitted to talk with them about this case. If anyone persists in attempting to talk with you after you alert them that you are a juror that would be improper, wrong and illegal and you should use every measure at your disposal to identify such person or persons and report that to one of the bailiffs at the door or to the Court Clerk, who sits immediately in front of the Court, without sharing that with anyone, and that circumstance and situation will be investigated and dealt with immediately and with effectiveness.

If there were to be any media coverage of the trial such as newspaper, radio or television it's your duty to disabuse yourself and disregard any such things that you may see, hear or read absolutely and completely, as it is your oath to decide the case only and exclusively upon the

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evidence that's presented during the course of the trial within the walls of this courtroom.

Do not talk about the case at all, you are excused until 2:30. Be in the jury room at 2:30. Thank you.

(The jury was excused from the courtroom at 1:02 p.m.).

THE COURT: Mr. Kaufman, you will remain, please, and you will approach.

MR. KAUFMAN: Yes, sir.

THE COURT: You can just stand right there, thank you. Mr. Kaufman, Mr. Kevin Kaufman, a juror, do you remember your juror number?

MR. KAUFMAN: 94.

THE COURT: Number 94, came to the Court and asked to be excused from jury service based upon a conscientiously held beliefs that were of a religious nature. The Court then excused him from jury service and told him he would be required to remain here during the course of the trial when the jury was present in the building, the trial jury, that he would be expected to be here.

He wrote an undated letter that was received by this judge on yesterday which offers to do community service rather than to sit through the

trial. He indicates that he does not expect preferential treatment and he feels that, to quote, "My time seemed so inconsequential, I like efficiency, I would rather do some type of community service that at least does somebody some good. I know my doing this is only fair to the jury who are also required to serve. In reality, it is more than fair. Their chances of being required to serve was less than 20 percent, mine was 100 percent. Nonetheless, I propose to fulfill my obligation and maintain a good attitude about it."

And he indicates that a mutual friend of his and mine whom we both know had told him that my policy is to require service in cases like his.

Mr. Kaufman, the Court appreciates your letter and your offer to do community service. The Court disagrees that your chances of service were 100 percent, as you may never ever be called to do jury service again in your life. You understand that?

MR. KAUFMAN: I do.

THE COURT: So, everybody's chances are minute and when compared to the venire, perhaps your situation caused you to be here when the jury

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is here. The Court feels that in your case and every case of conscientiously held beliefs if you never ever have been in a situation to observe a trial, it can only benefit you as a citizen of this country who benefits from all the protections, liberties and freedoms of this country, to be here and observe this trial. The Court appreciates your letter but you will be expected to remain here when the jury is here.

MR. KAUFMAN: I'll do that.

THE COURT: It was only fair you be responded to. Do you understand? Do you have any questions?

MR. KAUFMAN: No. I wouldn't mind talking to you further, maybe in private sometime at your convenience.

THE COURT: After the trial, perhaps, but --

MR. KAUFMAN: Anytime.

THE COURT: The Court wanted to tell you this on the record, show you the courtesy of responding to you, but it would not be proper for us to discuss this while this trial is in progress except in public on the record.

MR. KAUFMAN: Yes, sir.

THE COURT: Thank you, sir. You are excused until 2:30.

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MR. KAUFMAN: Thank you.

THE COURT: We are in recess until 2:30 p.m.

(Recessed at 1:09 p.m.).

(Reconvened at 3:23 p.m.).

THE COURT: We'll open the record, please. This is the State of South Carolina versus Shondra Lamont Martin, indictment 2002-192. Will you bring the jury in, please, Mr. Manning?

BAILIFF: All right. Do you want the jury in the jury box?

THE COURT: Yes.

(The jury returned to the courtroom at 3:25 p.m.).

THE COURT: Madam Forelady and ladies and gentlemen of the jury, there is no way to explain to you the complexities and the delicate circumstances that confront any two parties, or three parties sometimes, and the Court when a trial is ongoing. There are things which we wish we could share with you but we're unable to do that, that have caused you to, you feel, being imposed upon by not working and hearing evidence presented to you, but those things are absolutely unavoidable and you may rest assured that were there any possibility that we could be presenting evidence at

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anytime we would be doing that, but because of things absolutely beyond the control of either party or the Court we're not able to do that and we will, what we are proposing is this, that you leave if you want, you can stay if you wish but you can't stay in the courtroom, but that you come back at 5:15. We have some things to do to put on the record and our plan is to complete the State's case in chief this evening, we expect that will happen at about 7:00 o'clock, that the State will rest it's case.

Now, what we're asking is that you go back in the jury room and decide if at 7:00 o'clock or as soon thereafter as we finish you want us to have something for you to eat, because some of you will go home and have to fix something to eat, or your families will have already eaten, and we want to make it as convenient for you because you have been understanding and polite in doing your jobs, and if you want us to order something for you and have it for you so you can take it home and not have to bother with your evening meal, we want to do that, so we're going to ask you to go into the jury room, Madam Forelady, ladies and gentlemen, and discuss whether you want us to have something for you to

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eat when you leave here, and then that's when the State will rest its case.

Now, we will come back in the morning. As you were told, sometimes, not often, but on occasion we work on Saturdays. We will be working tomorrow and the defense may or may not put up any evidence. The defendant has the absolute constitutional right to remain silent and his silence cannot be held against him at any time in any way, not even when you are deliberating your verdict in the jury room. They may present a defense, that is completely up to the defense and the defendant to decide. We don't know that. But if they were to decide to do that, we'll hear that in the morning. Then you will hear final arguments of both sides and you will hear the Court address you with regard to the law and then you will have the case for deliberation.

The main thing that we wanted to tell you is that we will have to excuse you from now until 5:15 and then we're going to give you some testimony and then we will rest the State's case as soon as we can, and then we will begin with the defendant's case in the morning and the defendant's case will be complete as soon as we can complete it so as not

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to inconvenience you any more. Then we will present final arguments from both sides and the Court will charge you.

Now, the thing for you to do is to decide whether you want us to have something ready for you to take home to eat. Don't talk about the case. Go in the jury room right there behind you and you all talk about what you want to do. Everybody, if some of you want to eat and some of you don't, then just give us the number and then we'll sent Madam Clerk in there and she will talk to you about what you might want but we will leave it to you as a body. There might be four of you that want food, the others don't, whatever. However, we want to do something nice for you because you have been nice to us.

So, retire to the jury room, do not discuss the case, and make a decision about your food.

(The jury was excused from the courtroom at 3:30 p.m.).

THE COURT: The record is closed.

MR. McLAIN: Judge, may we approach the bench just a second?

THE COURT: Yes, sir. The Clerk and I were discussing the meal order.

(Unrecorded bench conference).

THE COURT: Open the record, please. In indictment 2002-192, the State versus Shondra Lamont Martin.

Is there any objection from either side to the Clerk's going in and clarifying the Court's request that they let us know if they want to eat and, if so, what they want to eat and telling them again that we expect to be able to leave here about 7:00 to 7:15?

MR. McLAIN: No objection, Your Honor.

THE COURT: Any objection, Solicitor?

MR. JONES: Your Honor, as long as our fine Clerk is willing to walk in that room by herself, that's her business.

THE COURT: Madam Clerk, they are all yours.

(The jury returned to the courtroom at 3:50 p.m.).

THE COURT: You can just line up against the wall, that's all right. Stop about there, Madam Forelady.

Thank you very much, each and all of you. It is necessary before you leave to instruct you that you are not to discuss the case by, between and among yourselves or any other person, do not allow

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anyone to speak to you. If anyone attempts to, tell them you are a juror and you are not permitted to speak with them. If anyone persists in trying to talk to you after you identify yourself as a juror, it would be highly wrong and illegal. You should use every means available to you to obtain the identity of such person or persons and report it to the bailiff at the door or to the Court Clerk, who sits immediately in front of the Court, without sharing it with anyone and that will be investigated and dealt with immediately and with dispatch.

If there were to be any media coverage such as newspaper, television, radio, please do not listen to it, look at it or read it with any intelligence. Disabuse yourself of it immediately when you realize that what it concerns is this trial, as you are on your oath to well and truly try the case on the evidence and law presented in this courtroom and upon nothing else whatsoever.

Thank you, and I thank you Clerk. Return at 5:30, thank you very much, and you will return to the outside room out there.

(The jury was excused from the courtroom at 3:52 p.m.).

THE COURT: Anything from the State?

MR. JONES: No, Your Honor.

THE COURT: Thank you. Anything from the defense?

MR. McLAIN: No, Your Honor.

THE COURT: Thank you. We are in recess.

(Recessed at 3:53 p.m.).

(Reconvened at 4:35 p.m.).

THE COURT: The record is open, State of South Carolina versus Shondra Lamont Martin, indictment 2002-192.

We are resumming a Jackson v. Deno hearing. Is there anything from the defendant with regard to the Jackson v. Deno hearing? He had concluded his testimony, Mr. McLain. Do you wish to call any additional witnesses with regard to that matter?

MR. McLAIN: May it please the Court, Your Honor, that's all from the defendant, Your Honor.

THE COURT: Thank you.

MR. McLAIN: Thank you, sir.

THE COURT: Will there be reply from the State?

MR. JONES: Your Honor, I would like a five minute recess to make that decision, please.

THE COURT: Yes, sir, you may have it. We're

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in recess.

(Recessed at 4:37 p.m.).

(Reconvened at 4:40 p.m.).

THE COURT: This is the State versus Shondra Lamont Martin, indictment 2002-192. Solicitor, will there be reply?

MR. JONES: Your Honor, the State does intend to call reply in the form of Attorney Miller.

THE COURT: Attorney Miller, if you will come up, the clerk will administer the oath.

EDWARD W. MILLER

after being first duly sworn testified as follows:

THE CLERK: If you will, state your name for the record.

THE WITNESS: All right. Edward W. Miller and I go by Ned.

THE CLERK: You may be seated.

THE COURT: The record will show this is reply by the State in a Jackson v. Deno hearing which was commenced, in which the State put up several witnesses, two, maybe three witnesses, three witnesses, the defendant testified in his own behalf, and the State is now replying to the testimony of the defendant with regard to a statement against his interest allegedly made by him.

This witness is with you, Solicitor.

MR. JONES: If it please the Court, Your Honor.

DIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q My understanding is you go by Ned but if you don't mind I will refer to you as Mr. Miller during this proceeding.

A That will be fine, thank you, Solicitor.

Q All right. Mr. Miller, I want to ask you if you recall having occasion to have represented a Mr. Shondra, S-h-o-n-d-r-a, Martin on federal charges on or about the 18th of October, 2001?

A Yes, sir. I was appointed by Magistrate, Federal Magistrate Cato to represent him in a federal drug case which was indictment number 01-386, on October 3rd, 2001.

Q And what was your understanding of the scope of your representation of Mr. Martin at that time?

A I was to represent him in appointment through final disposition in the federal District Court.

Q And did you have an understanding of the charges that you represented him on? Again, was it simply those contained in that indictment you mentioned?

A Yes, sir. If you would like, I will find the indictment. It was a conspiracy indictment involving a large amount of crack cocaine and cocaine. Also a counterfeit, I guess there were two charges I was appointed on, there was a counterfeit indictment as well, counterfeiting indictment as well.

Q No, sir, I don't need the indictment. What I would like to ask you about is, though, do you

recall sometime during the afternoon hours of October the 18th, 2001, receiving a call, a contact from federal authorities, federal agents asking you to come to the Spartanburg County Detention Center in an effort to meet with Mr. Martin for the purpose of reviewing a proffer agreement that the U. S. Attorney's office had discussed with you and your client sometime previous to that?

A I do, and if you would like I can give the background on that. It is a little more, it's not quite that simple. I will be happy to explain that if you like.

Q Yes, sir, I would like you to explain it.

A I was appointed on, as I said, October 3rd and I met with Mr. Martin at the Spartanburg County Detention Center on that day, and at that time -- first may I ask has he waived his attorney-client privilege?

THE COURT: The Court has determined that it is waived.

A Okay.

MR. McLAIN: As to five grounds, I believe.

THE COURT: As the Court has outlined the areas in which it has been waived, or stated another way, the areas in which, about which

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questions may be asked, and those are, again for the record, the scope of your representation of the defendant in this trial at that time, the advice that you may or may not have given him concerning immunity from any charges, including state charges. The third thing is the authenticity of the proffer agreement. The fourth thing is his knowledge of the contents of the proffer agreement. And the fifth thing is his voluntariness in entering into discussions with officials concerning any other crimes, including any other federal or state crimes after you may or may not have left the place where he was. Those are the areas that you will be asked about.

A Okay. Well, if I overstep the bounds while I'm giving the background just please stop me. I will tell you that I met with him originally on October 3rd, 2001, at the Spartanburg Law Enforcement Center. I took my original interview notes from him. He flatly denied involvement in either of the two federal indictments. He was being held without bond at that time. He wanted a bond, so we had a bond hearing set in federal court in front of Magistrate Catoe, or they call it a detention hearing in the federal system, on October

5th. I met with him again that morning. I met also with the Assistant United States Attorney and Agent Lijoi with the Drug Enforcement Agency.

And in my original meeting with Mr. Martin he did not want to speak with the officials on that morning. He wanted to meet with law enforcement because he thought it would help him get a lower bond. At that meeting, at that bond or detention hearing that morning an agreement was made, and I inform all my clients and I informed Mr. Martin at that time that what they would be willing to do would be to set a bond at $250,000 and they would provide a proffer letter and then meet with them sometime after that. Depending on what information he provided to them in the meetings, then there might be more discussion about a reduction in the bond, just depending on how they felt his cooperation was.

And, so, subsequent to that I received a copy of a proffer letter on October 9th. Then on October 18th, and I will, I was not present when they met with Mr. Martin the first time. They met with him, my understanding was he wasn't, I tried to get him to tell me what he was going to tell them and he told me he did not, he wouldn't tell,

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he told me that he wasn't involved in it and that's what he was going to tell them. I said, "If you are going to tell them that, this is going nowhere," but he would never tell me what it was he was going to say and I thought if he wasn't, then I wouldn't go to his meeting.

Q I believe you're referring to a meeting that took place on October 10th, 2001, about eight days prior to the date on the 18th that you attended a meeting that Agent Lijoi and Secret Service Agent Gilliam and other law enforcement personnel were present at at the Spartanburg Detention Center?

A I think that's correct. On October 18th I went to Spartanburg, to the Detention Center, again not knowing that a second meeting was going to occur. I met with Mr. Martin that day at the Detention Center, I had several clients at the Detention Center. I met with him first, spent a good bit of time with him talking about his prior meeting and then I started meeting with other clients.

And then I went, and apparently, I don't know what happened to him afterwards, but sometime after that I got a phone call from the Assistant U.S. Attorney telling me that they had Mr. Martin, they

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being the authorities, had him at a location where they were interviewing him and he wanted to talk to me. I had not known that this meeting was going to occur, I didn't anticipate it, and I don't remember what else I was doing that day but I had other things to do. But I went to the meeting, it was in downtown Spartanburg, it was in the basement of a building in downtown Spartanburg.

I can tell you I walked down there and Agent Lijoi was there and I don't know how many law enforcement officers were there. I know that Sergeant Doug Hartwell from the Spartanburg Public Safety Department was there, Lieutenant Sandy Templeton from South Carolina Law Enforcement Division was there, I remember some agents from Abbeville were there, I remember some law enforcement officials from Greenville County were there, I remember Agent Gilliam was there, and Mr. Martin was in a room and wanted to talk to me, so I came over there and talked to him.

Q I would like to hand you a court's exhibit, Court Exhibit Number 3. It's a fax transmission to Mario and it was faxed to Mario on 10/18/01.

A Right.

Q And we believe that it is a copy of a proffer

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agreement that was faxed to the location where you were on the 18th at the time that you met with Mr. Martin at his request, that you interrupted your interviews and your other meetings and went to meet with him at his request, and I would like to ask you about this agreement and ask you if you have the original of the court's exhibit, the original of the copy?

A I have the original and I've got it right here. That is a correct statement, it did come, for some reason I don't believe I had my file with me at that meeting and so they faxed another proffer letter over, and you do have a copy of that and I have the original.

Q Okay, sir. Do you recall whether or not you discussed the contents of this proffer agreement with Mr. Martin on that occasion at that time?

A Yes, sir, I did. I went through it in full. I may, I don't have, let me say this, I don't have a clear specific recollection of everything that occurred. He was, he asked a lot of questions, he wanted to know a lot of things. I went through this in detail, I may well have read this to him word for word, he understood everything that was in there.

Q Do you recall whether or not there is a provision in this proffer agreement that basically says that if you discuss, in other words -- if you would, turn to page four.

A All right.

Q Actually it would be at the bottom of the next to last page of the proffer agreement, the bottom of the next to last page of the proffer agreement.

A Yes, sir.

Q The last paragraph says client is hereby informed and understands that this agreement does not extend to any statements or other information involving any homicides or other crimes of extreme violence. Any statements made or other information provided by client in the proffer regarding any homicides or other extreme acts of violence may be used against client in any criminal proceedings which may be undertaken by any authorities.

A Yes, sir.

Q Do you recall whether or not in going over the proffer agreement and answering the questions that Mr. Martin had about anything that day, that this particular section of this proffer agreement was gone over with him?

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A I feel certain that it was. I don't have specific memory of it. I will tell you this. When I came in there it was a little bit -- well, there were a lot of police officers down there and that was the first time that I understood that there was mention of homicides involved with my client. I had asked him to tell me what he was going to tell these officers, and there was absolutely no indication, I mean anywhere, that this was going to come up. So, it was quite, I wouldn't say unsettling but it was brand new to me that this, that they were going to talk about murders.

Now, I understood he had already, in his first meeting had already mentioned this with respect to some other gentleman, that he knew about other offenses and I think that he was trying to give the authorities help in other cases that would help him in this case, which is how the federal system works. You get a reduction in sentence for providing substantial assistance in other matters, and so that's, I believe, how it came up. We did discuss what he was going to say but apparently what he told me he was going to say is different from what he ended up saying, so he was never forthright with me about what his involvement was.

Q Do you recall whether or not he signed this proffer agreement?
A He signed it with me.
Q And did it contain more than one page?
A Oh, yes, sir. If you would like, I will be happy to give you this original if I could get a copy of it. I have, I have absolutely no qualms about that.
MR. JONES: Your Honor, I think we ought to take Mr. Miller up on that and make the original our court's exhibit in the event there is any effort to contest the authority of the signature on the original and provide Attorney Miller with a copy for his records and just make the original a copy for this --
THE COURT: Any objection, Mr. McLain?
MR. McLAIN: No objection to that, Your Honor.
THE COURT: The original will be marked and a copy will be supplied the witness. It will be introduced and make the original 3-A and make a copy for the witness.
(Court Exhibit 3-A was marked).
THE WITNESS: And -- I'm sorry.
BY MR. JONES:

Q Well, go ahead.
A Well, I was just going to say we discussed this, I had to leave, and I wish, I don't know where it was I had to go, but I told him that if he got uncomfortable with the questioning, for him to stop, and they had my cell phone number and they could have called me, to have them contact me, he could quit at anytime in the middle of this. And so I never heard another word about it until, I tell you this, I started getting correspondence from him later.
Q And at this particular meeting when you went in the room and all the officers were there, could you give us an estimate of the amount of time that you spent with him alone?
A Well, we, Officer Lijoi, we were in a separate room, in a small room off of a larger room, and there was no pressure on either one of us to end that meeting and so I couldn't tell you. We went through the proffer agreement, we went through, talked about everything else. He was more, he wanted to know about getting bond and he wanted to get out of jail. I said, "Look, there are no promises here about what is going to happen," and I just, I explained to him that they

have, he had agreed, I believe, to take a polygraph test and I explained to him that those things are generally accurate and that he shouldn't tell any lies, if there is anything that, you know, he needed to tell me, to tell me then so I would know if there were problems. We could have stopped the meeting right then but --

Q Yes, sir. Would you say that 15 to 30 minutes would be a fair guesstimate?

A Yes, sir.

Q And when you left he knew you were leaving and he didn't try to get you to stay there?

A No. I told him I was leaving and if he didn't want to talk to them that he didn't have to do it then. It was my understanding, my impression that it was his desire to make this statement and I didn't see any, and I didn't see any force applied or any threats or coercion. I think he viewed it as an opportunity to help himself.

Q All right, sir.

A Okay.

Q Would you, were you available to explain to him any facet of the proffer agreement at that time that he wanted to know about? In other words, do you feel he had an adequate intelligent knowledge

of the proffer agreement, what it stood for and what it meant?

MR. McLAIN: I have to object to that, Your Honor. I think it's leading and that it's speculative.

A I don't know about his state of mind --

THE COURT: Wait just a minute, Mr. Miller.

MR. JONES: Let me rephrase the question.

THE COURT: The objection is sustained. Rephrase the question.

BY MR. JONES:

Q You mentioned earlier you believe that you sat with him and read the entire proffer agreement to him?

A Yes, sir, that would be my standard practice with proffer agreements with my client in federal court.

Q And during the course of going over it with him would it have been for the purpose of determining if there was anything about it he didn't understand?

A Yes, sir. I wanted to make sure he knew what was, what he was doing.

Q Do you recall whether during that meeting there was any part of the proffer agreement he

didn't understand?

A I don't recall, and I don't think, if he had expressed doubt about something to me, that we would have talked about it at that time because, I mean, I'm down there in the basement of this building with my client and a number of law enforcement officers and I told him, "Look, you know, if you're uncomfortable with this we can stop, we don't have to do this, you do not have to make a statement," and I have not seen this statement, I don't have a copy of it -- while I may have asked for it, I have never received it, so I don't know exactly what it is he said, but what I understood he was going to say would not have implicated him in homicide, that is what he told me.

Q And that's my next question. Based on your review of the documents, of the proffer agreement and your discussion with him did you make it clear to him that the proffer agreement did not cover homicides or violent crimes?

A I'm quite sure I did, that's kind of a major, that's a standard phrase in these proffer agreements and so I feel certain that I would have done that. If you asked me if I have specific

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recollection, I don't.

Q So, based on your knowledge of the proffer agreement generally and based on your recollection of your meeting with him you would not have advised him to go ahead and discuss with them homicides or violent crimes in your absence, would you?

A No, sir.

MR. McLAIN: I have to object. Again it's leading.

THE COURT: All right, sustained. Rephrase the question.

Q Did you advise him about what issues he could discuss with the people he was going to meet with that would be covered under the proffer agreement?

A Yes, sir. I explained -- you have to understand that he never told me that he was involved in any of this until after this was over, and somewhere in this file I've got notes of a meeting I had with him after this in which he said, well, yes, he did have some small involvement. Up to that point he had denied totally any involvement in the indictment he was charged with, and didn't claim, would not claim responsibility for his, for the actions that he was charged with and subsequently convicted of.

And, so, at the time this meeting occurred I just thought it was a fruitless meeting. He was pretty, he's pretty convincing, I thought he was, I believed him. I had spent a good bit of time with him talking about the importance of being forthright and truthful in these federal cases because with the way that the sentencing guidelines work they reward people who are forthright and truthful and remorseful and accept responsibility. And after explaining that to him in quite, in a lot of detail he still did not admit any involvement in these matters, in criminal matters up to that point.

Q All right, sir. And did you ever represent to him that this was an immunity agreement, that this agreement, the signing of this document by you and him would give him immunity to anything he discussed with these people?

MR. McLAIN: I have the same objection, leading.

THE COURT: Overruled.

A Well, I think the document speaks for itself and it does in certain respects, with respect to information of other offenses except for those specifically enumerated in there, it is a chance

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for him to clean his breast and to kind of get it all out without receiving punishment for making that admission.

Now, of course the exceptions include if they already knew about it, that is a whole separate issue, but with respect to homicide or violent crimes, they are specifically excepted from that agreement and if I had known he was going to make a confession, if that's what it is, to homicides I wouldn't have left, I would have told him not to talk.

MR. JONES: Thank you.

THE WITNESS: All right.

MR. McLAIN: May it please the Court, Your Honor.

THE COURT: Mr. McLain.

CROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q For the purposes of the record, of course, I will refer to you as Mr. Miller, if that is all right, Judge?

A Yes, sir.

Q Now, the scope of your representation involved federal crimes with which my client was charged, is that correct?

A Yes, sir, that's correct.

Q And you would agree with me, would you not, Mr. Miller, that the federal crimes with which my client was charged involving those of which, for which he was, excuse me, for which he was interviewed, were also, also involved certain state charges, did they not?

A Well, if you want me to find the indictment I will see if I can. There were two indictments. One was for bringing in large quantities of cocaine from California and the other one was for counterfeiting, making counterfeit checks on his computer. That's what I was acquainted with.

Q Those were the indictments but the actual interviews, were you present actually at the interviews themselves?

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A No, sir. I didn't think he was going to say anything. He's pretty convincing, he had me convinced, okay, he's not involved in it, he wants to talk if he knows something that will help him out, but he never made an admission to me and I explained to him adnauseam that they were really good at this and that they had a lot of information, they believed he was the, he was the lead man on the indictment and they believed that he was the ring leader of this conspiracy, and he absolutely totally refused to claim any responsibility in these cases.

Q Okay. But when he -- so, you weren't there when he was interviewed, so you don't know whether or not the federal crimes with which he was charged also involved state charges?

A Well, I presume he could have been charged in state court for the same thing.

Q I mean, the same, exactly the same charges with which he was charged in federal court may have also involved some alleged state crimes, am I correct?

A Yes. I just don't think the State had charged him.

Q Okay. But the interviews that were made by

the feds, or by the federal agents, the interviews themselves, have you seen the interviews or their notes from the interviews?

A I don't know if I have or not. I suspect somewhere in here I've got them but --

Q Okay. Well, some of these interviews with which I have been provided in discovery, some are typed up, they have the charges the questions are involved in, or part of statements given involving federal crimes themselves. Were you aware of that?

A I don't understand.

Q Okay. Let me try to be a little more specific, if I may. Okay, here are reports of investigations.

A Okay.

Q Mr. Miller, here are reports of investigations by federal agents.

A All right.

Q And in those report of investigation by these federal agents is the admission, are the mention of certain alleged facts upon which these state charges are based?

A Okay.

Q Would you agree with me that's a fair statement? Do you want to look that over?

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A Let me look at it real briefly.
Q Sure.
MR. JONES: Your Honor, could we ask if they would let us know what these documents are he is handing up? We may have copies of them, we would like to look at them if we do.
MR. McLAIN: Excuse me a second. These are what you provided me in discovery, containing statements you are trying to get into evidence.
Q These are the ones that are dated October 18th, 2001.
A That's the date it's prepared.
Q Right. Date prepared, and these involve the interviews themselves by special Agent Lijoi?
A Yes.
Q Approved by Michael E. Blackwood, group supervisor?
A Okay.
Q Okay. And here it says on 10/18/2001 Special Agent Mario Lijoi, U. S. Secret Service, and Special Agent Earl Gilliam, et cetera, met with Shondra Martin at the Spartanburg Public Safety narcotics office to discuss the activity of Martin's narcotics distribution enterprise, correct?

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A Yes, that's what it says.
Q Okay. And on page two, thank you, on page two of four, in paragraph, in that same document --
A Yes.
Q It has synopsis and then it has details, one, two, and of course this is numbering the paragraphs, three, which goes over to page two of four, four, and then you get to five and six.
A Okay.
Q Correct?
A Yes.
Q Okay. Would you just briefly review five and six?
A All right. Okay.
Q Thank you.
A All right.
Q Now, paragraphs five and six involve those charges with which my client is charged in these state cases.
A Okay.
Q Okay. Would you agree with me that those paragraphs five and six are part of these federal interview sheets?
A Well, they are, it's on the DEA interview form, so, yes.

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Q U. S. Department of Justice Report of Investigation?
A Right.
Q So, was that within the scope of your representation of Mr. Martin?
A No, I didn't represent him on those.
Q Okay. Would you --
A The interview was within the scope of my representation, is that what you mean?
Q Yes, sir.
A That was during the period of time and the purpose was to discuss the narcotics distribution.
Q Okay. But during the same period of time these state charges, or these state allegations came up?
A Okay.
Q So, would you agree with me that both the state and the federal charges, according to these interview sheets at least, are intertwined?
A Well, I guess it depends on how you look at it.
Q Related?
A They apparently talked to him about these two homicides during that meeting, during that interview in his drug conspiracy.

Q Okay. And it says up here in the synopsis that the purpose was to discuss the activities of Martin's narcotics distribution enterprise?
A Correct.
Q It doesn't mention anything about the purposes to discuss homicides or alleged homicides or any state crimes or anything like that, does it?
A Correct.
Q So, part of these interview sheets that were done by the federal authorities, part of these interview sheets contain the information relating to these charges?
A It's written down in there, it sure is.
Q So, would you agree with me that that is correct?
A Yes, that they talked about it during the interview with him.
Q Right, during the interview about federal crimes?
A Yes.
Q Now, do you recall, Mr. Miller, how many interviews Mr. Martin had with the federal authorities, or for that matter, any authorities?
A Well, I believe that that was the second and last interview.

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Q That was the second one?
A Yes.
Q Okay. Do you recall the one on October 10th?
A Well, I was not present at that hearing, at that interview.
Q When were you retained or appointed, I'm sorry?
A October 3rd.
Q Okay. You were appointed on October the 3rd?
A Correct.
Q Okay. When did you have your first conference with your client?
A October 3rd.
Q The day you were appointed?
A I filed discovery motions October 3rd.
Q That same day?
A Yes, sir.
Q Okay. And was a proffer letter entered into on October 3rd?
A No, sir. We signed it on October 18th.
Q Okay.
A Let me say this. I have, with respect to that, the Assistant U. S. Attorney in this case, Miss Howard and I have a good relationship, she told me that she would send a proffer letter that

would be the standard federal proffer letter, and not once, not ever in my 20 plus years in practicing criminal defense in federal court had they ever not followed through with something like that, so I trusted them.

Q So, you did not -- Mr. Martin trusted them too, correct?

A Implicitly, I guess, yes.

Q Okay. During this interview on October 10th, 2001, there was no proffer letter in place, is that correct?

A Not that I'm aware of. I had not signed one.

Q Okay. You met with him on October 3rd for the first time in Spartanburg?

A Spartanburg County Law Enforcement Center.

Q And how long did your meeting last?

A Let me see. I am guessing around an hour, an hour, over an hour, about an hour and ten minutes or something like that.

Q Okay. That was the conference, that did not include the travel, correct?

A Right, separate travel, and then I guess I filed the motions and that sort of thing.

Q So, you met with him on October 3rd for about an hour in Spartanburg?

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A Yes.
Q Okay. And during that time what was the, what was your discussion with him, what did it involve?
A Okay. At that time I had the indictment, I went over the indictment with him.
Q Yes, sir.
A We went through, got his personal background information, he was 28 at the time, he lived in Anderson, he went through the ninth grade at Carver Junior High School, he got his GED at Cornerstone Baptist Church, he worked, had worked at Pete's Cleaning Service in Anderson, he was married and had four children ages 11, 8, 6 and 4, been together with her for 12 years and married for seven. He told me he had a prior criminal history of a 1990 possession of crack conviction, a 1992 assault and battery with intent to kill conviction in which he got a fine, this is what he told me. He told me he had been living in Spartanburg all his life with his wife, and in January, 2001, he moved to Anderson with his wife and four children and he would return, he would return to Spartanburg to visit his mother and friends. He denies involvement with five kilograms of cocaine. He

said he moved to Anderson because the rent in Spartanburg was too high and he said his sister lived in Anderson and he didn't have a car and she could, I presume, take him around. He says both his car and his wife's car had been repossessed. He told me that to emphasize the fact there is no way he could be involved in five kilograms of cocaine because he didn't have, somebody who was would have a lot of money. He says, he says that he ran a liquor house on Masachusettes Avenue in Spartanburg to make money. He says no crack was allowed. He says some people would get drunk and started shooting guns and he voluntarily closed the liquor house. And he said he bought an Excursion with his wife in April of 2001 at Vic Bailey Ford in Spartanburg and he said that was what tipped the government off and why they think he was the kingpin.

He admitted he had a drug problem with heroin and cocaine. He says he does not mess with crack, he says he does not know who the co-defendants are, he says the DEA picked him up at his wife's house in Anderson at 11:00 a.m. on October 2nd, '01.

And with respect to the counterfeiting case, he said he knows people who did this, two black

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males, Jeffrey Jeeter is the co-defendant. He says he thinks Jeeter is the snitch. He says Michael Smith, co-defendant, is also involved in this case and pointing the finger at him, meaning Martin.

He said he did not run the scheme, he claims that some unknown person, a black female ran the scheme. He overheard Michael Smith taking, talking about the black female. He says that his father was married to Michael Smith's sister, he has known him all his life, he had access to a computer when he and his family stayed in Spartanburg, he says he did not have a printer. He says he did not make any counterfeit checks.

Q Okay. That was from your very first interview with him?

A Correct.

Q Those are your notes from the very first interview?

A Correct.

Q Okay. Then you saw him again on October?

A I saw him on the fifth at a detention hearing.

Q That was in front of Magistrate Catoe?

A Magistrate Catoe. He continued to deny his involvement in the drug conspiracy and the

counterfeiting.

Q Okay. And did he have bond set?

A $250,000. They were convinced that he was the kingpin of this major heroin, or cocaine distribution ring.

Q Okay. How many co-defendants did he have on that?

A There were probably about, I'm thinking half a dozen or something like that.

Q Okay. Now, when you first met with him did you discuss any, or give him any advice regarding immunity?

A Well, what I told him, I told everybody in federal court, that I represented in federal court, that with the new, or they are not new anymore, but with the sentencing guidelines, that the government makes a lot of their cases through the testimony of co-defendants, they have a lot of historical information, they make a lot of their indictments through historical information.

Q What we call a dry conspiracy, am I correct?

A I guess that would be one way to put it.

Q Okay.

A And I told him what they thought his role was. He absolutely denied it but I told him,

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"Look, you know, other people, these co-defendants more than likely are hearing the same thing and a person who gets in there first and can turn the indictment and basically roll on the co-defendants is going to get the most help from the government in their sentence."

Q Generally in federal court that's the way it goes, the first one with his or her hat in the ring gets the biggest plum?

A That's correct.

Q And did you ever tell him that he had immunity for anything that he told the federal agents?

A No, sir.

Q Did you hear any federal agents tell him that he had immunity for what he told them?

A No, sir. I spoke primarily with Agent Lijoi about this and I don't specifically remember the conversations but it was, I mean, it's standard operating procedure in federal court, it doesn't change from case to case.

Q All right. Now, were you there at anytime when he was Mirandized by any federal or state agency during the scope of your representation?

A Honestly I don't remember. I don't know. I

feel sure that they did and I may -- well, I don't want to guess so I will just say I don't remember.

Q Were you there when they Mirandized him?

A Again, I don't remember but I was there. They went out of their way to get me there to talk to him because he wanted to talk to me.

Q And that was on what date?

A The 18th.

Q Okay. What about the 10th, do you know whether or not he was properly Mirandized on the 10th?

A No, sir, I don't have any knowledge of that.

Q Okay. Do you know whether or not the defendant, Shondra Martin, was granted immunity by the federal government for anything that he told them involved in this investigation?

A Well, they didn't charge him with any more crimes. He entered a plea of guilty and I was, I don't remember specifically what the original, what kind of credit I had for him or what kind of negotiations I was involved in but at one, at some point he was transferred to the Anderson Law Enforcement Center and he began filing pro se motions to withdraw his guilty plea, to have me relieved, and subsequent to the entry of the plea,

awaiting sentencing, they did a presentence report. I believe he filed --

Q PSI?

A I think he filed a bunch of pro se objections to the presentence report. This was all in front of District Court Judge G. Ross Anderson, Jr.

Q I'm sure Judge Anderson appreciated that.

A He did not take it lightly that this defendant was, who had done, who had helped himself up to that point was now, excuse my expression, shooting himself in the foot.

Q Okay. Now, did he at anytime reject his plea?

A Well, he made a pro se --

A Or withdraw it?

A He made a motion to withdraw it and --

Q Was that motion granted?

A No, sir. They are very thorough in federal court in their pleas, and I will tell you this. When some of the other co-defendants pled Judge Anderson questioned them about Mr. Martin's role in this offenses and pretty much locked down their testimony, and I didn't know any of this was going on until I got a package of material from the District Court Clerk that included this transcript

and all my client's pro se motions in which he complained about my services.

Q He was still your client at the time?

A Yes, sir.

Q Okay. And --

A Here is that transcript.

Q Was the defendant, do you know whether or not the defendant's voluntariness in entering into that plea involved those discussions that are in those interview sheets?

A I'm not sure I follow that.

Q Okay. Do you know whether or not Mr. Martin's voluntary plea involved the discussions in those interview sheets which I just showed you?

A Oh, he didn't plead to any homicides in federal court, if that's what you're asking me.

Q No, I'm just asking you do you know if his voluntariness in entering into those federal pleas or into the federal plea or pleas involved the information contained in those interview sheets taken by the federal government?

A Well, I would say his plea was freely and voluntarily and intelligently entered into. From what I understand, there has been no appeal, that there has been no reversal of that. I understand

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from Mr. Martin, he told me this morning, or earlier this afternoon, that he had filed some sort of action against me which I take to be a 2255 action in federal court in which he made all kind of, he told me, allegations that I lied to him and tricked him and so forth, and which apparently was summarily disposed of by the District Court because I was never informed of it. They did not even ask me to submit an affidavit.

Q That's the equivalent of post conviction relief here in the state court?

A That's correct.

Q And was Mr. Martin granted immunity, as far as your personal knowledge is concerned, was Mr. Martin granted immunity for what he told the federal agents as contained in those interview sheets?

A Not with respect to the homicides. They were specifically exempted in writing and signed by Mr. Martin.

Q Okay.

A In my presence, I saw him, he signed it with my pen.

Q Okay. And did you all just turn to the third page and sign it, or what?

A No, we went through it, and it's generally my practice, I can't say that I remember this specifically, my practice is in those situations that I read the proffer letter with my client, and Mr. Martin was becoming a problem client, so I was usually extra careful with those types of persons.

Q Okay. Do you know whether or not Mr. Martin was actually given a polygraph test by the federal government?

A No, sir, I have no idea.

Q Okay. And how long did your interview, the interview, I think you told us the last time it lasted about an hour on October 10th?

A No, sir.

Q That was October 18th?

A Yes.

Q Let me get that straight.

A Let's see here. I met with him October 3rd for an hour, I met with him October 5th at the federal courthouse in Greenville, I met with him October 18th for an hour over in, at the Spartanburg LEC, and that was before, before the meetings with the federal, with the federal agents. I did not know that they intended to meet with him at that time. I was over there to see other

clients and met with him to discuss things.

Q Let me stop you right there, if I may, Mr. Miller.

A Okay.

Q Let's go to the October 10th interview with the feds. You don't have any notation of whether they talked with him on October 10th?

A At the detention hearing Mr. Martin wanted to talk with the feds, that was a 180 degree shift, excuse me, the federal agents. That was a 180 degree shift from where we were on October 3rd. He wanted, and I asked him, I said okay, I talked to Agent Lijoi, I talked to Miss Howard, the A.U.S.A., they said, "Yes, we'll met with him, what is he going to say?"

I went back to him and asked him what he was going to say. He did not change his story, he said he was not involved. He did not tell me he was involved in this until after October 18th, and then his admissions of involvement in that matter were not, he still tried to limit his culpability. I guess there is no attorney-client privilege with respect to that since he pled guilty to it in open court.

Q Okay. Now, on October the 10th, 2001, if

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there were an interview with him, you weren't present there?

A I was not present at an October 10th interview.

Q Were you aware there was one?

A I knew they were going to interview him.

Q Okay. Do you know whether or not he was properly Mirandized?

A No, sir, I don't, but my experience with the federal agencies is that they cross all their t's, they dot all their i's.

Q But you don't know of your own personal knowledge he was properly Mirandized?

A No, sir.

MR. JONES: That is the third time he asked this witness that question, Judge, the second time this go around.

THE COURT: Counsel, refrain from repetition, please.

MR. McLAIN: I wanted to know from his own personal knowledge.

A I didn't know about it. If you ask me a hundred times, that's not going to change.

Q But I don't know if I asked you this or not, I'm sorry, did you even know the interview was

going to take place?
A They told me that they would interview him. I did not know when or where, and I'm pretty sure I probably asked Mr. Martin if he wanted me there, and I never heard, I never heard about it, so I presume he didn't want me there. The fact that he called me up the second time and asked me to be there is indicative to me that if he wanted me there at the first one he would have called me then.
Q Okay. Do you know what was discussed at the first interview?
A No, sir. I wasn't there, so I don't have any personal knowledge of that.
Q Okay. Do you know -- so, you don't know whether or not any state allegations or allegations of state crimes came out at that time?
A My understanding is when I met with him again, this is not when I met with him, I don't think he told me this at the, when I met with him before the interview on the 18th, when I met with him on the 18th before his interview I don't think he told me about homicides.
Q Okay.
A He was, in my opinion, looking back at it, he

was trying to play both sides against the middle. He was not telling me everything he told the agents and he certainly didn't tell me everything he knew about this case or any other case. Now, I believe in my subsequent discussions with him I made it plain I did not represent him in state court.

Q When did you have those discussions with him that you made it plain you did not represent him in state court?

A Well, I would have, in all my other meetings with him, if he asked, I was appointed on this case in federal court to handle these federal indictments. I don't know if I wrote down I told him I didn't represent him in state court or not. I'm sure I probably didn't, so I couldn't tell you.

Q So, would Mr. Martin be led to believe that he would have immunity for anything that he told the federal government agents or federal agents?

A No, sir. Mr. Martin was told the proffer agreement speaks for itself.

Q What about before then, before the proffer agreement was signed?

A Well, we would have, I would have explained to him then that, and this is standard since I had had the discussion with Jean Howard and she said

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she would get me a proffer letter, I suspect, and I don't have independent recollection of this but I am --

Q That's standard procedure?

A Standard procedure is that I would explain to him that if you go to these interviews with them about this offense it will limit your liability with respect to this offense.

Q Right. But you have to, don't they also tell you that you have to tell them everything you know or you lose your immunity?

A Absolutely. You have to be completely honest and truthful or the terms of the proffer agreements are null and void, you have to obey laws and do all that stuff.

Q And, so, if he had not told them anything or everything or something that he knew about any state crimes, had he been asked, he would lose his federal immunity, wouldn't he?

A Unless he -- well, he could have stopped the interview at anytime.

Q Did he know, to your knowledge, do you know whether or not he knew that he could stop the interview at anytime?

A Well, I will tell you this, Mr. McLain. When

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I went down in the basement of that building there were a lot of agents down there, law enforcement agencies. He was alone in the room.

Q Were you surprised?

A Yes, I was very surprised. I didn't know the meeting was going to take place. I didn't know who was there.

Q You just got a call?

A I got a call from Jean Howard and they were requesting that I go, that my client was being interviewed again, which I took as a good sign, that apparently he was coming forward, he was going to help himself, he wouldn't get the hammer dropped on him in federal court. So, I went over there and, yes, it was surprising to see that many agents down there. He was in this room, I went in and sat down and talked to him, he was frightened, and I, and I don't, you know, if you want specifics of what I told him, I don't remember specifically but we would have discussed that he did not have to talk about anything, he could stop at anytime. I told him I could not stay and if he wanted to cut the interview off then they would have cut it off. They follow the rules and they would have stopped.

Q Okay. Did you -- you told him that you could

not stay?
A Correct.
Q Okay. How long were you at that interview on the 18th, then?
A With the agents?
Q Yes, sir.
A I don't have a specific recollection. I believe, I think an estimate of 15 to 30 minutes would be accurate.
Q Okay. So, did Mr. Martin have knowledge that he could stop it at anytime?
A Well, I don't think I could have explained it to him in much more plain language. I can't talk about what he, about his state of mind. I found him to be competent, I found him to be quite, this sounds a little derogatory, I found him to be cunning, have a lot of savvy and to be manipulative.
Q But you found him to also be frightened at that time?
A He was a little frightened down there, yes.
Q And when you got down there, usually when you have an interview with federal agents it's just federal agents down there, correct?
A No. I mean, quite often federal task forces

have local law enforcement involved with them, quite often.

Q But they are acting as agents for the federal government?

A Yes, I guess so.

Q But in this case --

A Actually that's not true. They will make the case, then they take the case to the federal government.

Q Right. But in this case when you went down to meet with him it was a little extraordinary?

A Well, I don't know if extraordinary is the right word but it was different. We were meeting in Spartanburg --

Q You mean out of the ordinary?

A It was a little bit out of the ordinary.

Q Because there were so many state agents lined up, were you surprised to see it?

A Yes. I knew the ones from, I can't remember, I knew a couple guys from Greenville, I think, and I think there were a couple sheriff's deputies from Abbeville and -- I don't remember. Agent Lijoi, I'm sure probably has it in his notes.

Q Did you ask the agents from Abbeville and other places, Anderson, what they were doing there?

A Yes, I went around and introduced myself, I remember, to all the agents, trying to find out what was going on. They said that they, and I talked with Shondra about it, they were investigating homicides which Shondra Martin told me he was trying to help them with because it related to somebody else.

Q Okay. And did it relate to the federal investigation?

A I think that this, I guess it depends on how, it was a federal conspiracy charge, so the limits of that involved drug related charges, but he wasn't charged with homicide or any crimes of violence in his indictment.

Q Right. But the interviews involved drug related charges?

A Well, that's how it started out.

Q Right. And then these alleged state charges came out during these federal interviews?

A Well, I don't know that. You will have to ask the agents or your client.

Q Okay. And were these interviews before the plea was entered?

A Oh, yes. Do you want to know when he pled guilty?

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Q Please, for the record.
A Okay. He pled guilty in Anderson, South Carolina on November 28th, 2001.
Q Okay.
A He was sentenced -- do you want his sentence?
Q Yes, sir, please.
A Sentenced on April 17th in Anderson, of 2002. We did a lot of, there was a lot of back and forth because of his pro se motions between the time of the guilty plea and the time of sentencing.
Q Okay. And these interviews that were taking place by these various agents, those were in reference to plea negotiations that you and Miss Howard were having about what plea he would enter?
A I don't think she was, I don't think she was involved in any investigation of the homicide. Now, let me tell you in my 25 years of practicing law, that if someone who's charged with a crime is willing to discuss a homicide, law enforcement is very, very much interested in talking to them, so apparently Mr. Martin dangled a carrot which law enforcement pursued. Does that make sense?
Q Right. Did they let you know that, about that, that they were going to discuss homicides with him, ahead of time?

A Well, I don't know that they brought it up. I mean, I don't know who brought it up, I wasn't there. I just know that when I came down there, I think that's the first I heard of this homicide stuff and Shondra said he was going to, just to use slang, he's going to pin it on somebody else so he could get credit for it in his federal sentence, and what he did and did not do in the interview, I have no idea because I told him I couldn't stay, if he didn't want to go on we would stop. They are so interested in talking to him with that many agents there, he could have, we could have called the shots on that, we could have stopped and come back later. They would have come back and talked to him.

Q Why didn't you tell him, "Stop, I cannot be present with you, the proffer agreement does not cover any homicides, do not talk with them, stop until I can be with you and go over this with you"?

A I don't know if I did that or if I didn't do it. I don't remember.

Q Okay. And would you agree with me or disagree with me that anything that he told them, be it true or untrue, merged with his federal plea?

A Would I agree with that?

Q Yes.
A No, I don't think so.
Q Why?
A Separate offenses, he wasn't granted immunity. I can't --
Q They were before his plea, weren't they?
A The homicide?
Q No, the interview.
A Yes.
Q And did you, do you think that Mr. Martin would have told them of anything about any knowledge or alleged knowledge he had of any alleged state crimes had he not thought he had immunity for them?
A I tell you, as I told you, he is cunning, he is manipulative, I have no idea what he would have thought. I don't know how much, I don't think he's, he's a little bit too cunning for his own good and I think that he, I have no idea what he's trying to do, he wouldn't tell me the truth and then I got it by bits and pieces. He told me little bits here and there and all the while complaining that I had sold him out, and I explained to him, I was very forthright, with all my clients, "Tell me what it is you, tell me your

story, it's attorney-client privileged and I won't tell it to anybody," and he would not, he told me he wasn't involved.

Q Okay. And do you know whether or not, assuming that he was Mirandized, just assuming that the federal agents Mirandized him before the interview --

A I assume they did, yes.

Q Assuming that for the record, that he was Mirandized concerning the federal charges, do you know whether or not, or were you present when he was Mirandized for any alleged state charges that came out during the federal interview?

A I wasn't present, so I have no idea.

Q So, you weren't present there either?

A Are we talking about something else?

Q No, the same interview.

A No. As I told the Solicitor, I don't remember, I don't remember, they could have done it and they night not have, and I would think that, because I didn't, I don't believe I had my file with me when I got there, and so Agent, I don't know if I left it in the car or what happened, Agent Lijoi or any of those agents that took notes probably would be able to tell you when that

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occurred.
Q Okay. Well, let me ask you this, Judge, I'm sorry, Mr. Miller. Let me ask you this. Have you, as a general rule you are talking about your general procedure?
A Yes.
Q If you had a client, and I'm sure you have had clients in federal court who were Mirandized about the federal charges?
A Sure.
Q And then certain state charges, particularly those that may or may not be covered by a proffer agreement, were discussed or asked about by federal agents. Would it be proper or improper, would it be improper not to ReMirandize them concerning the state charges?
A You're asking me as an attorney here on the witness stand?
Q Yes.
A I think that's a legal conclusion that the Court will have to make.
Q Okay. And did you, as a general procedure, if they began to do that did you require them to ReMirandize them concerning any state charges, particularly those that are not covered allegedly

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by a proffer agreement?

A Well, to be perfectly frank, I don't think that situation ever came up because most of my clients were, would open up with me and tell me what it was they were going to talk about and, so, I don't remember that situation ever coming up, so I'm not sure.

Q Okay. Suppose Mr. Martin had told you that, "Well, I'm going to discuss some state homicides"?

MR. JONES: Your Honor, suppose he had told him? We're outside the scope of the five areas that you said we could examine him about.

MR. McLAIN: Okay, withdraw the question.

THE COURT: Very well. Try to stay within the scope.

MR. McLAIN: I'm trying, Judge.

THE COURT: Move along, please.

MR. McLAIN: Yes, sir.

BY MR. McLAIN:

Q Okay. When it came to your attention that this defendant Shondra Martin was or had been discussing potential homicides or homicide, potentially discussing homicides with the federal authorities, did you ask that he be ReMirandized then?

A I don't think I heard that he was doing that between the time, I don't think there was a subsequent interview after I heard about that.
Q So, is it a fair statement to say that his discussion with any state or other authorities about any alleged homicides occurred prior to your knowledge of those, of the same, that they were being discussed?
A I think that, I think the reason he called, they called me up and asked me to come over was because he had begun to talk about them and he wanted to ask me about it, I think.
Q So, they had already begun asking him about state homicides before they called you?
A Mr. McLain, I don't really, I don't really remember, to be perfectly honest about it, I don't remember, so I don't want to say something that --
Q Why did they want you all of a sudden, call up and all of a sudden want you to come over there?
A Because Shondra wanted to talk to me.
Q Okay. So, it was Shondra who called you over there?
A Well, I guess he initiated --
Q -- the call?
A Yes.

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Q Okay. He initiated the call and do you know whether or not state homicides had been discussed in those interviews prior to your being notified?
A I don't know what all was discussed. The subject must have been broached because I remember talking to Shondra about it and he said, I mean, he denied being involved in the homicides, he knew about them, he said, and he could give information which would help him out in reducing the sentence and get acceptance of responsibility in his own drug conspiracy case, which by the way he had not admitted to being involved in at that time.
Q But apparently those homicides were being discussed by the federal agents with Mr. Martin prior to your knowledge that they were being discussed, because they had already been broached?
A Yes. I don't know, I think maybe Mr. Martin brought it up, I don't know. He just wasn't forthright with me. It's very difficult to deal with a client who is dishonest with you. I mean, so far from the truth, I should say.
Q Do you know if he discussed any alleged state homicides or other such state charges with the federal government agents after you left?
MR. JONES: Your Honor, again he's outside

the scope of the questions that you defined that we were able to ask. It's not, he's talking about, "Do you know what they talked about with him after you left?"

MR. McLAIN: Your Honor, I believe the fifth thing you named yesterday was the defendant's voluntariness in entering into any discussions of crimes after Mr. Miller left.

THE COURT: It's thought that the question has been asked and answered more than twice. However, you may pose the question again.

MR. McLAIN: I'm talking about, perhaps I'm talking about different interviews.

BY MR. McLAIN:

Q Which interview are we talking about, the last one on the 18th?

A That's the one I'm on.

Q Okay. And do you, my question, I guess, do you know that they continued to discuss homicides after you left that day?

A I do not know that.

Q Okay.

A I presume that they did.

Q Okay.

MR. McLAIN: The Court's indulgence, Your

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Honor.

Q Mr. Martin, concerning his immunity and your advice regarding that immunity, do you know whether or not you told him that he would receive a Rule 35 departure for anything he told the federal government?

A I can pretty much, I don't specifically remember but I can pretty much unequivocally tell you he would not get a Rule 35 downward departure because of his conduct after the guilty plea.

Q Because of filing all this pro se stuff?

A Changing his story and all the different things that he has done. He changed his story so many times I couldn't count it.

Q Okay. But that was after the guilty plea?

A Between guilty plea and sentencing, but I mean, changing his story the whole time I knew him. First he wasn't involved, didn't know anything about it, didn't own a computer with a printer.

Q But later on he entered into that plea?

A Yes. They had him cold, I'll tell you that.

Q How did they change, how did he change his story between the guilty plea and the sentencing hearing?

A He flipflopped back and forth and began to

say, I think that's probably when he started saying I forced him to do it and casting blame anywhere other than himself.

Q And I believe earlier you testified that Shondra, or Mr. Martin, told you that he was going to tell the agents about his knowledge of some alleged state homicide?

A Yes, that he knew about it, wasn't involved in it, he was going to give it, serve somebody else up on a silver platter.

Q Okay. And --

A Those are my words, he didn't say that.

Q Okay. And when he told you that did you, did you give him any advice regarding his immunity in reference to those alleged homicides about which he was going to give the federal government information?

A Well, I would say this, that based on what he told me, his involvement in these homicides at that time, he didn't need immunity because he wasn't, he wasn't involved, he was not, he did not have any culpability in those homicides. However, I went over the proffer letter with him, which prohibited immunity for those offenses.

Q Did you advise him in reference to that

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immunity that he should give the federal government no information regarding any homicides in which he may be involved and not just have knowledge of?

A Well, I don't remember specifically what I told him but I'm sure I would have said, "Look, if you're involved in these homicides you don't, we need to stop right now."

Q Did in fact he even know he could stop at anytime?

A I don't know what he knew. I know what he was told and I think he was smart enough to know what that meant.

Q Does it make sense, Mr. Miller, that he would give the federal government any information regarding any homicides that he thought that he did not have anything to do with?

A I can't speak to what he would do because in some of my notes, in some of the letters that he sent me he talked about how he wanted to make a clean breast of it and just get it all off his chest, so I don't know what he's motivated by. I think he's motivated trying to help himself. As I said, he's manipulative and cunning.

Q So, you tell me if this is a correct or incorrect statement, if you agree or disagree with

me, then, that he gave, that Mr. Martin gave whatever information he gave based upon the advice that he would have immunity for that information which he gave to the federal government?

A No. Homicide and violent crimes were specifically exempted, there was no agreement for immunity outside the proffer letter.

Q When you got there on October 18th and you couldn't stay but about 15 minutes --

A 15 to 30.

Q 15 to 30 minutes and you had to leave?

A Yes.

Q Okay. How many state agents were lined up, I mean, how many, and when I say that --

MR. JONES: He's answered this question. The witness testified there were a large number of agents, people there, he didn't know how many, he has answered it two or three times, he has commented on it two or three times earlier and he said there were 15 or 20 in there, he has answered the question earlier.

Q Let me ask about this, then. Excuse me one second. Do you know whether or not the federal agents offered, orally offered Mr. Martin full immunity for any charges, orally?

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A I never heard that.
Q Okay. Let me let you look at this document right here --
A All right.
Q -- Mr. Miller, along with this attachment. This was attached to it, I believe.
A Okay.
Q Okay? I'm sorry, that's -- take a look at that.
A Okay.
Q Would you take a look at the attachment to it. I believe that was attached to it.
A Okay.
Q Okay, thank you. Have you ever seen those documents before today?
A No, sir.
Q Do you know whose memorandum of interview that is?
A Unless it's on there, I don't.
Q Okay. And do you know whether or not this was voluntarily given by Mr. Martin?
A Well, as I said, when I left he knew, I told him he could stop at any time and have them call me if he had more questions. That's all I knew.
Q Do you know when it was given?

A No, I don't have any idea when that was given. I have never seen it, I have never heard the contents of what's in there before.
Q You have never seen that drawing before that was attached to it?
A No, sir, I don't remember ever seeing that.
Q Okay. And do you know how Shondra signs his name. I mean how how he spells his first name?
A I'm not sure if there is a Y on it or -- we just have to look at the proffer agreement. I'm not sure if he signs a Y on there, I don't know. I can tell you on the proffer agreement it does not have a Y and I don't think he signs his name --
Q Do you have any of those letters in there where he signed his name with a Y?
A Here is a letter I received on January 12th of 2002 signed Shondray Martin with a Y.

Here is a letter I received February 20th, 2002, it's not signed but he's got his address at the top, it's got a Y.

Here is one dated February 19th, 2002, with his name at the top and signed without a Y.

The letters that he, I received from Judge G. Ross Anderson, Jr., copies of some of his letters and motions, this is a letter from the defendant to

the District Court dated December 28th, 2001, signed without a Y.

He's got some motions for, pro se motions for relief signed without a Y. So, apparently it was interchangeable for him, apparently.

Q Okay. And you don't know who prepared that drawing either?

A I have never seen it before.

MR. JONES: That's the third time he has asked him that question, Judge, the third time. It's just --

THE COURT: Please do not be repetitive, and move along with this cross-examination, counsel.

MR. McLAIN: Thank you, Your Honor.

BY MR. McLAIN:

Q Do you know if Mr. Martin, as part of his immunity granted, gave any written statements to the federal government?

A If he did, I haven't seen them. I don't know. That's generally not the way the federal government works, they generally interview and then --

Q Type up their own notes?

A -- type up their notes, they take notes as the interview proceeds and prepare their documents.

Q So, all total, how many interviews did you attend when Mr. Martin was being interviewed by these federal and/or state agents?
A One.
Q You attended one?
A Yes.
Q And that was on the 18th?
A Yes.
Q Were there any interviews after the 18th?
A I don't believe so, unless we had a meeting at the federal courthouse.
Q At the hearing?
A At hearings and things but I don't think we did.
Q Well, you would generally meet with your client before the hearing, wouldn't you?
A Oh, yes. He was in custody, I would go up and see him. He just started complaining, he wanted to get out of jail.
Q He wanted to get out of jail based upon promises of immunity --
A You know --
Q -- for what he told these agents?
A He wanted to get out of jail, and I tell you this, the federal government wasn't coy about it,

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they said, "We think he's the ringleader, he's a bad guy, he's got his bond."

Q Well, they think that pretty much --

A That was initially, and then he wanted to help himself in the sentence.

Q That's generally, in federal court that's generally the way it goes anyway, isn't it, that they think everybody is a bad guy and --

MR. JONES: Your Honor, this is outside the scope of the examination.

THE COURT: Sustained.

MR. McLAIN: The Court's indulgence, Your Honor.

BY MR. McLAIN:

Q Do you recall, do you recall at Mr. Martin's plea hearing or plea, I'm sorry, or sentencing hearing, whether or not Miss Howard stated that Mr. Martin still had more work to do?

A I don't remember that. I just don't remember that. She could have, she could not, I don't have a clue.

Q Was anything said about his immunity at the sentencing hearing or at his plea?

A What immunity are you talking about?

Q Any immunity, federal or state.

A Well, I know at sentencing I tried to, Mr. Martin made himself, I should say Judge Anderson became very aware of Mr. Martin between the plea and the sentencing. It made my job a lot harder to try and get him as low a sentence as possible because of his, his independent actions.

Q During your representation of him --

A During my representation --

Q -- did you --

A -- nothing would have pleased me better than to have been relieved as his attorney.

Q Did you make that motion?

A No, sir. I generally don't ever desert a client. He didn't want me and Judge Anderson wasn't going to cut me loose.

Q And did you --

A And we had, I had a back and forth relationship with Mr. Martin.

Q You anticipated my next question. Did you discuss his pro se activities, as they might affect his immunity, with him?

A Well, I don't know what immunity you're talking about. I had some very frank discussions with Mr. Martin about his pro se activities and how they impacted my ability to help him in trying to

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get a reduced sentence for him.

Q In your representation of him?

A Yes, sir. At the Anderson County Detention Center we had some, he wanted to file objections to the presentence investigation report, then he didn't want to, then I think he did it on his own and he wanted me to withdraw them. This was all after he filed all these other pro se motions about, in which he said some unkind things about his attorney and moved to withdraw his guilty plea. It was back and forth. He was, again, trying to manipulate the system to his benefit and it ended up hurting him.

Q Okay. Did he, did he voluntarily enter a guilty plea, or did the Honorable G. Ross Anderson, Jr., disallow his motion?

A He voluntarily entered a guilty plea, then he filed a pro se motion to withdraw. Judge G. Ross Anderson in the meantime, while all that was pending, took guilty pleas from co-defendants, and there is transcripts in here in which he nailed down Mr. Martin's involvement in the matter and then at some point subsequent to that I think Mr. Martin withdrew his motion to withdraw his guilty plea. He was back and forth, he was all over the

map.
Q That was before sentencing?
A Yes, sir.
Q Were there any motions regarding his guilty plea and your representation or anything after the sentencing?
A What?
Q Were there any motions made, pro se motions made by Mr. Martin?
A I don't know. Mr. Martin didn't copy me on his pro se motions. He was doing things I had no clue he was doing.
Q I'm talking about to your knowledge were there any after the plea?
A From what he told me today, he filed a 2255, I never got any copies of that. I don't know if he filed any other motions. I never got copies of anything.
Q There never was a 2255 hearing?
A No, sir, and they didn't even ask me for an affidavit. And normally when a judge feels there might be an issue he asks at least for an affidavit from the attorney, and I never knew that Shondra filed that.
Q Had that been filed, would there normally be

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an order of some type issued?
A Well --
MR. JONES: Your Honor, he is outside the scope.
THE COURT: Sustained.
Q Miss Howard was not actually present --
MR. JONES: Asked -- go ahead.
MR. McLAIN: I just wanted to make sure Miss Howard wasn't there.
BY MR. McLAIN:
Q Miss Howard was not at any of these interviews, was she?
A No, sir. Well, I can't say that. She wasn't at the second one while I was there. That's all I know.
Q Did you ever see any of these agents Mirandize him at any of these interviews whatsoever?
MR. JONES: He has asked that question, Judge.
THE COURT: Sustained.
A I would ask Agent Lijoi. I don't know. He didn't do it in my presence but I trust his word on it.
MR. McLAIN: I think that's all I have.

THE COURT: Anything further, Solicitor?

MR. JONES: No, Your Honor.

THE COURT: Thank you very much.

THE WITNESS: Yes, sir, Your Honor, happy to do it.

(Witness excused).

THE COURT: Anything else in reply?

MR. JONES: No, Your Honor.

THE COURT: The Court has carefully considered all the evidence which has been offered both by the State and the defendant during this Jackson versus Deno hearing to consider whether any statement made by the defendant contrary to his interests is admissible into the record. The Court is convinced beyond any reasonable doubt and finds that before any statement that could be construed as a confession or statement against his interest was obtained from the defendant the defendant was fully advised of his rights under the Fifth and Sixth Amendments of the Constitution of the United States and the defendant was advised of the constitutional safeguards required by Miranda versus Arizona; that specifically he was advised prior to any interrogation at anytime that he had the right to remain silent and that he was advised

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prior to any interrogation at anytime that he had, that if he waived his right to remain silent and made any statement, made a statement, that such statement could and would be used against him in a court of law; that he was also advised prior to any interrogation at anytime that he had a right to employ or select an attorney of his own choice and that if he did not have the money, funds or resources to employ an attorney, that the Court would appoint and provide an attorney for him if he desired and without cost or expense to him and that he had the right to have his attorney present with him at all times during all interviews and interrogations.

Specifically with regard to those things, Court's Exhibit Number 2 was read to the defendant Shondra Lamont Martin at all times or during the October 10th and October 18th interrogations as aforesaid, and that he was advised prior to any interrogation that he had the right to consult with his attorney before such interrogation, and based upon the testimony of the witness who just testified, Mr. Miller, who represented the defendant at the time, his attorney was aware that he was going to have the October 10th meeting and

the defendant at that time, the client of Mr. Miller, denied any involvement in anything and was aware of his right to have Mr. Miller there and went forward with the meeting with the federal agents notwithstanding the ability to have his attorney there, and the Court finds that he had such warnings and safeguards afforded him as have been pronounced into the record and indicated on Court Exhibit Number 2.

Further, at the meeting that took place on the 18th of October of 2001, that Mr. Martin understood the proffer agreement and the exceptions to it and that he was not immune from any prosecution for any homicides or crimes of extreme violence and that he was told by his attorney that he should stop talking if he became uncomfortable at anytime, and the officers and agents were provided the cell phone number, apparently the same number that Attorney Miller had been contacted by to come there, but his own attorney told him that he could stop talking at anytime during his interrogation.

The Court finds that he was advised, therefore, prior to any interrogation that he had the right to interrupt and terminate the

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interrogation and that he could, if he desired his attorney to be present, he could have his attorney present, because his attorney just testified to that, and the Court finds that was credible testimony and finds such beyond a reasonable doubt.

The witness Miller knew that the defendant's statements regarding any homicides, shootings, robberies or otherwise during any interview with federal agents and any other agents, and he stated he was aware there may be state agents there, he identified one, Sandy Templeton, he introduced himself to all, and given the time frame between then and now, it's understandable he can't remember, but he knew that the defendant's statement with regard to any homicides during the interview with the federal agents and other agents was to get a better deal on federal charges that were then pending against him, so it was fair play to continue questioning him by state or federal agents concerning any homicides, shootings or crimes of extreme violence.

The Court finds beyond a reasonable doubt that the defendant knowingly and intelligently waived his rights under the Fifth and Sixth Amendment of the Constitution of the United States

and his constitutional safeguards as required by Miranda and that the alleged incriminating statement, if it were to be found so by the jury, was obtained from the defendant and given by him freely and voluntarily without any duress being asserted against him, without any coercion, without any undue influence, without any reward or promise of reward or hope of reward, without any promise of leniency, without any threats of injury and without any compulsion or inducement or enticement of any kind and that said alleged incriminating statement, if any, if it were to be found by the jury to be so, was the voluntary product of the free and unconstrained will of the defendant Shondra Lamont Martin.

The Court finds all the foregoing conclusions beyond a reasonable doubt and therefore finds that the incriminating statement is admissible into evidence in this trial.

We'll take a short recess, show the jurors, just let the jurors stay there, we're going to take a short recess.

Mr. Paschal, Mr. Miller, if the Court could see you all just briefly before you leave on your trip back to Greenville, and if anybody wants to

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take up anything in chambers, we'll be in chambers just briefly. We will not discuss this case. When the jurors come back in the State's ready to present evidence?

MR. JONES: Yes, Your Honor.

THE COURT: All right. Be in recess, please.

(Recessed at 6:25 p.m.).

(Reconvened at 6:37 p.m.).

THE COURT: The record is open. The State of South Carolina versus Shondra Lamont Martin, indictment 2002-192. The matter remains with the State.

The Court would add one thing to the findings concerning the statement made prior to the short recess, that the proffer agreement did not grant immunity from homicides or crimes of extreme violence, whether such crime or crimes were or were not connected with any federal charges or federal investigation. That is an addendum to the aforementioned findings.

Call your next witness. Let's have the jury in.

BAILIFF: In the box?

THE COURT: Yes, sir.

(The jury returned to the courtroom

at 6:39 p.m.).

THE COURT: All jurors are present, with the foreman and alternates properly seated. The matter lies with the State. Call your next witness, Solicitor.

MR. JONES: If it please the Court, the State calls Earl Gilliam.

EARL GILLIAM,

after being first duly sworn testified as follows:

THE CLERK: Will you please state your full name for the record?

THE WITNESS: Earl Gilliam.

DIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q Mr. Gilliam, are you a law enforcement officer?

A Yes, I am.

Q Were you a law enforcement officer on October the 18th, 2001?

A Yes, sir, I was.

Q Were you working in the State of South Carolina?

A Yes, sir.

Q Did you have occasion to meet with the defendant in this case?

A Yes, sir.

Q Shondra Martin?

A Yes, sir.

Q On or about October 18th, 2001?

A Yes, sir, I did.

Q Were the two of you in a room together?

A Yes, sir.

Q Were there other people in the room with you?
A Yes, sir.
Q Was one of them a law enforcement officer named Lijoi?
A Yes, sir.
Q And did another law enforcement officer come into the room, Officer Gambrell with the State Law Enforcement Division?
A Yes, sir.
Q Before Agent Gambrell with the State Law Enforcement Division came into that room did you have occasion to read to Shondra Martin his Miranda warnings?
A Yes, sir, I did.
Q How did you read to him his Miranda warnings?
A Verbatim from a Miranda card.
Q I want to hand you Court's Exhibit Number 2 and ask you if you recognize what's copied on that exhibit?
A Yes, sir, it's a copy of my Miranda rights card.
Q Would you please read to this jury everything that you read to Shondra Martin on October 18th, 2001, and tell them everything that you said to him at the time you read to him from that card and tell

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them everything he said to you, if anything, during the course of your reading him his Miranda rights?

A Yes, sir. I stated, "You have the right to remain silent. Anything you say can be used against you in court. You have the right to consult with an attorney and to have him present during questioning. If you cannot afford an attorney one will be appointed to represent you prior to any questioning. Do you understand your rights? Are you willing to waive these rights and talk to me?"

Mr. Martin acknowledged he understood his rights and that he was willing to go forward and he then asked for his attorney.

Q He asked for his lawyer?

A Yes, sir.

Q Did you contact his lawyer?

A Mario Lijoi contacted his lawyer.

Q Did his lawyer come to where you were?

A Yes, sir, he did.

Q Did you allow Mr. Martin and his lawyer to meet alone in the room that you were in?

A Yes, sir. We left the room and they stayed there.

Q All right. About how long, if you recall,

did Martin and his lawyer meet in that room while you were not in there?

A More than an hour there.

Q During that period of time were you with the officers that were in the building that you were in?

A Yes, sir, I was.

Q Did the lawyer come out of the room?

A Yes, sir, he did.

Q Did you as a result of his leaving go back into the room to meet with Mr. Martin?

A Yes, sir, myself and Mario Lijoi, yes, sir.

Q And did the lawyer leave the room and the building at that time?

A Yes, sir, he left the building.

Q And did you go into the room at the instruction of the lawyer?

A Yes, sir, we did.

Q When you went back into the room did you ask Mr. Martin if he was ready to talk with you?

MR. McLAIN: Your Honor, I'm sorry, I don't mind a little bit of leading but, I mean, this whole line of questioning is leading. I know that we want to get on with the show but, you know, waltzing somebody around the courtroom is not

EARL GILLIAM - DIRECT

allowed, so I'm going to object to the leading.

MR. JONES: Your Honor, I'll rephrase that last question.

THE COURT: Yes, sir.

BY MR. JONES:

Q What, if anything, did Mr. Martin say to you when you re-entered the room?

A Mario Lijoi asked Mr. Martin if he was okay with talking to us, and Martin said something to the effect, "Yes, I'm willing to talk, I'm ready to talk."

Q What would you have done if Mr. Martin had indicated he didn't want to talk to you?

MR. McLAIN: Objection. Objection. That's speculation, what he would have done.

THE COURT: Overruled.

Q What would you have done if Mr. Martin indicated he did not want to talk to you?

A We would have stopped the interview.

Q Shortly after Lijoi asked him if he wanted to talk, while you were in the room did you invite in SLED Agent David Gambrell?

A Yes.

Q Steve Gambrell, I mean?

A Gambrell did come in.

Q All right. You invited him in?
A Yes, sir.
Q Did Mr. Gambrell attempt to read Mr. Martin his Miranda warnings?
A He started and we advised him, sir, that we had advised him of his Miranda rights and we remained there for continuity, and that's --
Q Did Mr. Gambrell, SLED Agent Gambrell begin to talk to Mr. Martin about some matters in your presence?
A Yes, sir.
Q During the course of their conversation did you observe Mr. Martin draw anything or do anything with a pen and paper?
A Yes, sir.
Q What did you observe?
A He drew a road type map to a residence on a note pad piece of paper.
Q And what color was the paper?
A Yellow sheet of paper, yellow note pad.
Q I want to hand you Court's Exhibit Number 6 and ask you if you have ever seen that before?
A Yes, sir, this is the map that Mr. Martin drew.
Q Is anything written on that map?

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A It has Mr. Martin's signature and the date that we interviewed him.
Q Does it have the time on there?
A It also has the time.
Q What's the time?
A It appears to be around 4:00, looks like 4:00 o'clock, it was 4:00 o'clock or --
Q What's the date?
A October 18th, 2001.
Q Whose signature is on there?
A Mr. Shondra Martin.
Q Is there any other writing legible for you to read on there?
A Yes, sir. It has the words right off to the side where it appears to be the side of the road, it has motorcycle written and has what appears to be a motorcycle that is drawn, and then it has looks like lake down at the end of the road.

MR. JONES: Your Honor, we would offer Court's Exhibit Number 6 into evidence at this time.

THE COURT: How says the defense?

MR. McLAIN: That's without objection.

THE COURT: Very well, it will be marked and it will become part of the State's evidence in the

case.

(State's Exhibit Number 19 was marked and received in evidence)

BY MR. JONES:

Q I want to ask you, Mr. Gilliam, anytime, anytime you were in the presence of Shondra Martin did you attempt to intimidate him, harass him, threaten him or coerce him?

A No, sir, I didn't.

Q Did you treat him with the same professional approach that you are manifesting from the witness stand today?

A Yes, sir, I like to think so.

Q Was your tone of voice the same as it is today?

A Yes, sir.

Q Was your mannerisms as you conducted yourself the same as it was today?

A Yes, sir.

Q Did you at anytime raise your voice with him during the course of time you were with him?

A No, sir.

Q Did anybody in your presence, in your presence in the room when you were with Mr. Martin ever raise their voice or intimidate or coerce him

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while they were there?
A No, sir.
Q Was anybody during the course of that time loud or boisterous with him?
A No, sir.
Q Are you certain about that?
A Certain.
Q Were you there to watch and observe and ensure that that didn't happen?
A That is correct, sir.
Q When Mr. Steve Gambrell from SLED walked into the room while you were in there with this defendant Mr. Shondra Martin did he or you try to promise him anything for talking to Mr. Gambrell while you were there?
A No, sir, we didn't.
Q Did you try to tell him that you would give him any reward if he talked to Mr. Gambrell?
A No, sir, we didn't.
Q In your opinion did he understand the Miranda warnings that you gave to him?
A Yes, sir.
MR. McLAIN: Objection. That calls for his opinion, speculation. He doesn't know how he felt.
THE COURT: Well --

MR. JONES: I'll rephrase the question, Judge.

THE COURT: All right.

BY MR. JONES:

Q Tell the jury what you observed about Mr. Martin when you read him the Miranda warnings. What did you observe about him?

A He appeared somewhat nervous. He immediately stated he wanted his attorney. When he stated he wanted his attorney it was clear to me he understood exactly what we were asking, and he took one of the warnings to heart and actually put it into effect, because he asked for an attorney.

Q And after he talked to his attorney and came back to you how would you describe his demeanor around you, his general conversation with you and his general demeanor?

MR. MCLAIN: I have to object. He said after his attorney came back to you. I don't think that that's been established. I thought he said his attorney left the building.

THE COURT: Restate the question.

Q After Mr. Martin met with his lawyer and Mr. Martin returned to your company without his lawyer, how would you describe Mr. Martin's presence and

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demeanor around you, how would you describe his demeanor, his attitude, his awareness, consciousness and relationship with you at that time?

A He appeared relaxed and ready to talk with us.

Q And did he talk with you?

A Yes, sir, he did.

Q And at anytime thereafter did he express an unwillingness to talk with you?

A No, sir, he did not.

Q Did he at anytime during the reading of the Miranda warnings tell you he didn't understand them or that he didn't understand what you were telling him?

A No, sir, he did not.

Q During any of the questioning that took place between you and him in your presence with Agent Steve Gambrell after Gambrell began talking to him and during the time that Gambrell had him draw this diagram did he ask to speak to his lawyer again?

A No, sir, he did not.

Q How long would you guesstimate that you were there and that Mr. Gambrell was there talking to this defendant?

A Maybe 40 minutes or so. I'm not quite sure about the exact time or the amount of time that we were in there with him as far as Mr. Gambrell having conducted his interview.

Q Well, would it be between a half hour and an hour?

A Approximately 40 minutes or so.

Q 40 minutes or so?

A Yes, sir.

Q All right. And Gambrell then left and you stayed?

A Yes, sir.

Q All right. Was Mr. Mario Lijoi also there with you and Gambrell during the course of the interview Gambrell had with Martin?

A Yes, sir.

MR. JONES: Answer any questions this lawyer has for you, please.

THE WITNESS: Yes, sir.

MR. McLAIN: May it please the Court, Your Honor.

THE COURT: Mr. McLain.

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CROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q This drawing, it says 4:10 or 4:20 or something like that?

A It has a time down at the bottom on the left.

Q Is that a.m. or p.m.?

A It would be p.m.

Q P.M.?

A Yes, sir.

Q Okay. And his attorney, I mean his lawyer left the building?

A Yes, sir, he did.

Q Okay. So, Mr. Martin -- that person was not I, was it?

A Sir?

Q That was not me, was it, it was not I?

A No, sir, you were not the attorney, no, sir.

Q Okay. And his lawyer, how long was his lawyer there?

A Approximately an hour or so.

Q Okay. And were you there talking with his lawyer or was Mr. Martin there talking with his lawyer, or who was talking with his lawyer, you or Mr. Martin?

A Mr. Martin was talking with his lawyer in a

closed room.
Q In a closed room?
A Yes, sir.
Q And then his lawyer came out and left?
A Yes, sir, he eventually left, yes.
Q Okay. Did you talk with his lawyer?
A Just spoke to him as in how are you doing, in passing, that type thing.
Q Hey, how you doing?
A Something of that nature, yes, sir.
Q Okay. And then as soon as his lawyer left you all started talking to Mr. Martin, or Mr. Martin started talking with you all?
A We went in the room and we, yes, we talked to Mr. Martin.
Q Okay. So, let me see, just let me see if I get this sequence of events right, okay?
A Yes, sir.
Q First of all Mr. Martin is there talking with you all, right?
A He is there --
Q First of all he's there?
A Yes, sir.
Q Physically present?
A Yes, sir.

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Q With no attorney present?
A Correct.
Q Okay. And was that drawing made before or after the attorney, I'm sorry, lawyer got there?
A It was after his attorney left, sir.
Q Okay. So, first of all he comes in, he talks with his lawyer and his lawyer splits, leaves the building?
A Yes, sir.
Q Okay. And then with no attorney or anything else he decides he's going to talk with you all?
A After his attorney left, yes, sir.
Q Okay. And in fact he freely and voluntarily, according to you, gave you all this information?
A Yes, sir, he made that drawing.
Q Okay. He drew this drawing for you all, didn't he?
A Yes, sir.
Q Okay. And along with that drawing was this memorandum of an interview, right?
A Let me take a look.
Q Sure.
A This appears to be a memorandum that someone else would have prepared, this is nothing I prepared myself.

Q Okay. Well, was that prepared by, was that prepared at the same time?
A No, sir, I wouldn't think so.
Q Well, this is dated 10/18/2001, isn't it?
A Yes, sir.
Q And this is dated 10/18, it says '91 but that's a typographical error, that should be 2001, is that correct?
A I would assume so, sir.
Q Okay. And that says 3:37 p.m.?
A Yes, sir. That is a typewritten document there. To me, a person would have to have a computer in hand to actually do that, so it appears to me that the agent in question that prepared that document would have taken notes and then prepared that document.
Q Right. So, in other words, this is a memorandum that would have been prepared, right?
A Yes, sir.
Q By an agent?
A Yes, sir. That agent will be better equipped to answer questions on it, yes, sir.
Q Okay. That would be a statement, or really memorandum, that is not a confession, is it?
MR. JONES: Your Honor, he is asking to

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characterize the document. This witness has said he didn't even prepare the document. The question, he said he didn't prepare the document.

MR. McLAIN: I thought that --

THE COURT: The objection is sustained.

MR. JONES: Yes, sir.

MR. McLAIN: Well, Your Honor, if I may be heard, I thought that the person who prepared this memorandum was present at the same time that this drawing was made.

THE COURT: You can ask this witness.

BY MR. McLAIN:

Q Was he?

A Ask your question, sir.

Q Was the person who prepared this memorandum, who typed this memorandum out, was this person present when this drawing was made?

A Let me see if there is a name on there, sir.

Q Sure.

A Okay, sir, I don't see a name on it, so I can't say for sure, since I didn't prepare the document.

Q All right. But it's dated about the same time and about the same period of time, isn't it?

A Yes, sir.

Q And how long did you, were you with Mr. Martin?
A For the duration of the interviews.
Q Okay. And he didn't hold back anything on you all, did he?
A I --
Q Let me rephrase my question, okay? He freely gave you all that, didn't he?
A Yes, sir.
Q You didn't have to force him to do that, did you?
A No, sir.
Q Do you know how he spells his name?
A No, sir, I don't.
Q You don't know whether he spells it with or without a Y?
A No, sir, I don't.
Q Well, it would be better for me to refer to the actual exhibit. Thank you, I couldn't read my Xerox copy of it.

What does that say right there? Can you tell me?
A A word is spelled looks like c-o, I don't know if it's c-o-y or c-o-p, it could be either of the two.

keeping track of that. It was his privilege to have his attorney and we don't interfere with that.

Q Did his attorney subsequently come out of the room?

A Yes, he did.

Q And what did his attorney tell you with regard to Mr. Martin?

A He said that Mr. Martin was ready to go.

Q Ready to go where?

A I assumed that it meant Mr. Martin was ready to continue our discussion.

Q Okay. And did you advise his attorney that you were going to go back and talk with Mr. Martin about these things?

A I said okay, and then I walked back into the room.

Q Into the room?

A Yes.

Q And did you and Agent Gilliam then ask Mr. Gambrell to come in and join you?

A Yes, we did. I first asked Mr. Martin whether or not he was okay and ready to continue or if he needed any further services from his attorney, he said, "I'm ready to continue the discussion."

Q Had anybody in your presence during any period you were in the presence of Mr. Martin used loud voices with him?
A No.
Q Did anybody try to threaten him that some harm would come to him if he didn't talk with you and cooperate with you?
A Absolutely not.
Q Did anybody suggest to him he shouldn't talk to his lawyer or he didn't need to talk to his lawyer?
A No. Mr. Martin asked to speak to his attorney and we provided the ability for him to speak with him.
Q But at any point in time while you were with him did anybody suggest to him that he didn't need to talk to his lawyer?
A No.
Q Was it made clear to him that if he wanted his lawyer at anytime that you talked to him you would get his lawyer there for him?
A Mr. Martin would know that because when he initially asked for it we called the attorney and he showed up, so he would have seen by our actions that was more than accessible to him.

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Q Well, how would you describe Mr. Martin's interaction with you at that point in time when his lawyer left and you went back in the room with him?
A Mr. Martin was very cordial, he was anxious to get started, everybody handled themselves very professionally, and we continued our discussion.
Q Did you feel that he was there willingly?
A Yes.
MR. McLAIN: Your Honor, I don't mind leading a little bit but again it's just leading question after leading question after leading question.
THE COURT: Do not lead the witness. Continue.
BY MR. JONES:
Q When Mr. Steve Gambrell came into the room did he begin talking with Mr. Martin?
A Yes, he did.
Q Did he make an effort to advise Mr. Martin of his rights?
A I don't recall whether he did or not. I was taking some notes and making some adjustments to my notes, so I was more of in the room kind of getting myself reorganized for some other things.
Q Well, were you there when Mr. Steve Gambrell was talking with Mr. Martin?

A Yes, I was.
Q Did Mr. Gambrell have a typewriter, was he typing notes while he was there?
A Mr. Gambrell was taking handwritten notes. To my knowledge, I was the only one there with a laptop computer.
Q You had a laptop?
A Yes, sir.
Q Gambrell was typing notes, I mean was using a pen to write notes?
A Some kind of pencil or pen, I'm not sure what device he used but yes, he was taking notes by hand as opposed to me taking notes via a laptop.
Q How long would you say Mr. Gambrell, Steve Gambrell met with the defendant Shondra Martin?
A I would estimate between 45 minutes to an hour.
Q During the interview with Mr. Gambrell did he at anytime indicate he wanted to stop talking?
A No, he did not.
Q Did you observe him make a drawing while he was in there with Mr. Gambrell?
A I observed Mr. Martin receive a piece of paper and he was drawing something out, although I wasn't from a vantage point where I was looking

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exactly. I could tell he was drawing some curves and some lines but I was kind of unfamiliar as to what he was actually attempting to draw but he was making a drawing, yes.

MR. JONES: Answer any questions this lawyer has for you.

MR. McLAIN: May it please the Court.

THE COURT: Mr. McLain.

CROSS EXAMINATION

Q Was Christopher Landrum there?
A No.
Q Mr. Landrum was not there?
A No, he was not.
Q And did you ever interview Mr. Landrum?
A No, I never have.
Q You never have?
A Never have.
MR. McLAIN: The court's indulgence?
Q Was Miss Rosalind Brown there?
A No, she was not.
Q Did Mr. Martin mention Miss Brown or Mr. Landrum to you at that interview?
A Yes, he did.
Q Well, what did he tell you about Miss Brown and Mr. Landrum?
A During this point of the conversation we had with Mr. Martin it was Mr. Alford was actually asking him most of the questions. They were discussing a topic that I was not that familiar with so I was just taking cursory notes, so if something rang a bell, or I may have mentioned it in a brief cursory note but I wasn't really paying attention to these, any specific details because I

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was unfamiliar with the topic area.

MR. JONES: Your Honor, if he wants to ask him about what he recalls, I think that Mr. Lijoi ought to be entitled to have his notes with him and be able to review them, if he wants to ask him what he remembers about what his client, this defendant, Mr. Martin said during the course of the interview.

THE COURT: Are you going to follow this line of questioning any further?

MR. McLAIN: Just one or two questions, if he wants to refer to his notes.

THE COURT: He's entitled to have his notes.

THE WITNESS: If I may refer to my notes, Your Honor?

THE COURT: Yes, sir.

BY MR. McLAIN:

Q Let me make sure we're on the same page. We are. Paragraph five right there. SLED Agent Steve Gambrell was there, right?

A That is correct.

Q And you?

A Yes.

Q And Abbeville County Sheriff's officer Detective David Alford?

A That is correct.

Q Okay. And did Mr. --

MR. JONES: Your Honor, I'm going to ask at this point in time that if he's going to refer to people there, that's fine, but let's keep it with the people there.

MR. McLAIN: That's fine, that's all I'm going to do.

BY MR. McLAIN:

Q And I think it says, what does it say that, it says among other details, referring to paragraph five of your notes, what does it say, starts among other details?

A Would you like me to read this?

Q Sure.

A "Among other details, Martin related that Rosalind Brown knew McCoppin and told Landrum that McCoppin would be an easy target. Brown participated by showing Chris Landrum and Martin McCoppin's residence as well as an entry and exit route. Martin admitted to driving Landrum to McCoppin's residence and said Landrum carried a nine millimeter in a book bag with him. Martin also admitted to removing a license tag border from his Ford Excursion while at the scene after the shooting. After asking him specific questions,

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Agent Gambrell and Detective Alford exited the interview."

Q It says Landrum carried a nine millimeter and a book bag with him, doesn't it?

A That's what it states, yes.

Q And Mr. Gambrell, or Officer Gambrell or whatever, Mr. Gambrell, I guess, he was there, too?

A Yes.

Q Okay. And those are the notes -- do you know if these were the notes that he typed up?

A I have never seen his notes. I do not know what his notes look like.

Q Well, that's not Mr. Martin's handwriting, is it?

A I don't know. That's a typewritten report I have never seen.

Q You have never seen this?

A No.

Q Okay. And where was Mr. Martin's lawyer?

A I do not know where Mr. Martin's lawyer was. Once he exited, I did not keep track of his whereabouts.

Q Well, did he just come by and say howdy and exit the scene, left?

A Mr. Martin specifically asked to talk with

his lawyer, his lawyer arrived, they discussed behind closed doors and then he left.

Q He said adios --

MR. JONES: Your Honor, he cut him off, he's not letting him answer the question.

MR. McLAIN: This is cross-examination.

THE COURT: The witness is trying to answer your question.

BY MR. McLAIN:

Q Okay, go ahead.

A No, his attorney did not say adios. His attorney exited the door, if you will, and I went into the room and asked Mr. Martin whether he wanted to continue, if he was satisfied with whatever him and his attorney had discussed.

Q Okay. And based on that, with no attorney present, the three of you all began to work on Mr. Martin as far as asking him about things, right?

A Define the work, when you say work.

Q Well, in your line of work, asking him questions?

A Correct, we were asking Mr. Martin questions.

Q And he voluntarily answered those questions, didn't he?

A Yes, he did.

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Q And provided you all with information concerning Mr. Landrum, didn't he?
A He provided us with information --
Q Listen to my question. You can qualify the answer but my question was, he provided you with information about Mr. Landrum, didn't he?
A He mentioned Mr. Landrum, yes.
Q He provided you with information about Mr. Landrum, didn't he?
A Yes.
Q And he provided you with information about Miss Rosalind Brown, didn't he?
A Yes.
Q And he did it with no attorney present, didn't he?
A Yes.
Q And you didn't start asking any questions until after his lawyer left, did you?
A It would have been improper for me to ask him questions when he wanted to see his attorney.
Q Yes, it is kind of improper to ask him questions when he doesn't have one there, isn't it?
A Is that a question?
Q Yes, it is.
A We Mirandized Mr. Martin prior to the

interview.

Q Uh-huh. And he told you what, he told you what he knew about Mr. Landrum and about Miss Brown, didn't he?

A He told us that, with additional information, yes.

MR. McLAIN: Okay, thank you.

THE COURT: Anything further?

MR. JONES: Nothing further, Your Honor.

THE COURT: Thank you, sir. Come down.

(Witness excused).

THE COURT: Call your next witness.

MR. JONES: Steve Gambrell.

THE COURT: You may stay with us, Mr. Witness, if you wish.

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STEVE GAMBRELL,

after being first duly sworn testified on follows:

THE COURT: You may examine.

DIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q Would you state your name for the record?

A Steve Gambrell.

Q And where do you work?

A South Carolina Law Enforcement Division, otherwise known as SLED.

Q How long have you been working with SLED?

A With SLED, only for the last five years.

Q Prior to that did you work in law enforcement?

A 25 years, Anderson County.

Q Anderson County?

A Yes, sir.

Q And on October 18th of 2001 were you working with SLED?

A Yes, sir, I was.

Q Were you assigned to assist the Abbeville County Sheriff's Department in the investigation of the death of Adarryl McCoppin?

A Yes, sir, I was.

Q And you were to assist the Sheriff's

Department in the capacity as a SLED agent?
A Yes, sir.
Q All right. When were you first assigned to do that?
A Approximately a week after the incident occurred.
Q Did you have an occasion to meet with this man right here, Mr. Shondra Martin?
A Yes, sir, I did.
Q And did you meet with him along with some other law enforcement officers that were present?
A Yes, sir.
Q Was officer Earl Gilliam present?
A He was present.
Q Was officer Mario Lijoi present?
A Yes, sir, he was present.
Q Was there a representative of the Abbeville Sheriff's Department present?
A Yes, sir, there was.
Q Who was that?
A Lieutenant Alford.
Q Did you have an opportunity to talk to this defendant about your investigation into the death of a Adarryl McCoppin?
A I did.

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Q And did you, did you have an opportunity to observe his demeanor when you talked to him?
A Yes, sir, I did.
Q What was it?
A He was calm, he greeted us cordial, kind of reserved.
Q How long would you say you met with him?
A We were probably in the room probably for maybe an hour.
Q During that time did you at anytime promise him some reward where you would help him out or do something for him if he talked to you?
A No, sir.
Q Did you at anytime or anybody in your presence try to coerce him or intimidate him into talking to you?
A No, sir.
Q Did you ask him if he had any involvement in the death of Adarryl McCoppin?
A Yes, sir.
Q Did you take notes of what he told you?
A I did.
Q Did you have them, did you type them up into a typed statement?
A Yes, sir, I typed them myself.

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Q I hand you this document, piece of paper and ask you if you recognize it?
A Yes, sir, I do.
Q What is it?
A It's a memorandum of interview that I prepared for the case file.
Q All right. And what does it contain?
A It contains the information that Shondra Martin provided to us on 10/18 of 2001.
Q Okay. Did you type it up?
A I typed it, yes, sir.
Q What's on the top of it?
A The top, very first line says memorandum of interview.
Q What's the second line say?
A The second line is the SLED case number, the third line is the date, which was 10/18, and it should reflect 01, it has 91, it's a typographical error.
Q You put 91 up there?
A Yes, sir.
Q And it's 01?
A Yes, sir.
Q Would you like to change it now?
A I would.

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MR. McLAIN: That's without objection, Your Honor. I know it's a typo.

THE COURT: Yes, sir, very well. The witness is changing it to the date he says he wrote it.

BY MR. JONES:

Q Is it a fair and accurate synopsis of what this defendant told you during that hour that you were with him?

A Yes, sir, it is.

Q Did you attempt to get him to write out what he was telling you?

A Yes, sir.

Q Would he do that?

A No, sir.

Q Did you attempt to get him to write out what he was telling you and to sign it?

A Yes, sir.

Q Would he do that?

A No, he would not.

Q But you took notes?

A Yes, sir, I did.

Q I would like for you to publish, read those notes to the jury about what --

MR. JONES: First of all, Your Honor, I would like to enter it into evidence, it's been

identified.

MR. McLAIN: That's without objection.

THE COURT: Very well, it will be marked as State's Exhibit Number next.

(State's Exhibit Number 20 was marked and received in evidence).

BY MR. JONES:

Q Please read to this jury the notes that you took.

A Beginning with the first paragraph, "On the above date and time the interview was conducted with Martin at the Spartanburg City Narcotics office. Prior to the interview Martin was allowed to consult with his attorney. Martin's attorney came out of the interview room and informed officers that Martin would answer any questions that the officers had. Upon beginning the interview, agents were advised that Martin had been advised of his rights. Martin was then asked about the shooting of Adarryl McCoppin that occurred in Abbeville County. Martin told us that on the day that this happened that he was with Chris Landrum and they had gotten with Rosalind Brown and that she had pointed out where Heavy D stayed. Martin stated that he was driving and that they rode by

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the house and Brown pointed it out and that they went back to Anderson and dropped Rosalind Brown out. Martin stated that they were in his Ford Excursion which is white in color. Martin stated that he and Landrum went back, which was the second time, and rode to the dead-end, turned around and came back past the driveway to Heavy D's house and stopped. Martin stated that this was the same house pointed out to them by Rosalind Brown. Martin stated there were a lot of people at the house and that Chris Landrum had a nine millimeter handgun with him and that the gun belonged to him, meaning Martin."

Q Belonged to Martin?

A Yes, sir.

Q Okay.

A "Martin stated that he also had a handgun and it was a nine millimeter also but he did not state what brand or model, only said it was an auto pistol. Martin stated when they first passed the driveway, that when you get to the dead-end you could see water, talking about Heavy D's house. Martin stated that he drove past the driveway, headed out, pulled just past the driveway and parked the white Excursion and that he and Landrum

got out and walked up into the woods to see what was going on at the residence. Martin stated there were a lot of activity around the house and that there were cars pulling up to the house and then leaving and there was a lot of people in the yard. Martin stated that they continued to watch from the woods for awhile. Martin told us that a motorcycle stopped near the Excursion with its headlights on and that a big guy walked toward the Excursion and was looking in it. Martin described the big guy as putting his hand up to the windows and looking inside. Martin stated they walked toward the Excursion and Chris Landrum asked the big guy, you messing with my Jeep? Martin stated that Chris walked on over toward the big guy," and these are his words.

Q You don't have to use the exact words.

MR. McLAIN: I want the exact words.

THE COURT: All right. Read it verbatim.

MR. McLAIN: If we're going to do it, let's do it.

A "Martin stated that Chris walked over toward the big guy and said don't be fucking with my Jeep. Martin stated that by this time that he had walked to the driver's side of the vehicle, opened the

door and was putting the gun that he had up. Martin stated that he was getting in the Excursion, that he hears scuffling on the ground at the back of the Excursion. Martin said he heard a gunshot, a pause, and then two more shots. Martin stated that Landrum jumped in the vehicle on the passenger side and that they left and drove back toward Anderson. He stated that enroute back to Anderson they met a marked police car on the road. Martin stated that the backpack that was found at the scene with the initials in it belonged to his son. Martin confirmed that Landrum was armed with a nine millimeter and that he had given Landrum the gun. Martin stated that there were too many people at the house when they got there to do anything, meaning to rob anybody, that that is why they were in the woods looking and decided to leave."

Q Did Martin tell you anything about the license plate while you were there with him?

A At the conclusion of the interview, as we were walking out I turned around and asked about the license plate border, and he indicated that he, that it was removed before leaving the scene, doing this.

Q But you didn't include that in your notes?

A No, sir.
Q While you were making these notes did you ask Mr. Martin to draw a diagram for you?
A Yes, sir, I did.
Q I hand you State's Evidence Number 19 and ask you if you recognize what that is?
A Yes, sir, I recognize it.
Q What is it?
A It's a piece of paper from a notebook and he drew for us the location of the house, what the area looked like, how they came in, where they were parked. He made, wrote these labels on there himself labeling the motorcycle, the cul-de-sac at the end, where the water was, the house, and he also signed it and dated it.
Q All right. Is that where he signed it and dated it, right here?
A Yes, sir.
Q Now, is there a word written on here in this area right here?
A Yes, sir.
Q Who wrote that word?
A Shondra.
Q What is that word?
A It looks like cop.

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Q Why would he write cop on there?
MR. McLAIN: Objection, calls for speculation.
THE COURT: Unless he knows.
A I don't know.
Q You mentioned in your statement he told you about meeting --
MR. McLAIN: Your Honor, I object.
THE COURT: He said I don't know.
Q Who wrote the word motorcycle on this document?
A Shondra.
Q Why did he write motorcycle on this document?
A To indicate to us where the motorcycle was parked when they came back to the vehicle.
Q He was indicating to you on this document where the motorcycle was parked when they came back, to when they came back to his vehicle?
A Yes, sir.
Q Where does he write car on this document?
A Right here. This is the driveway that he told us went up to the house and this is where they parked.
Q Did you have any diagrams like this there, when you met with him, to show him?

A No, sir, I did not.
Q Did you in any way indicate to him what you knew about and what you knew about the layout of ?
A No, sir.
Q Did you ask him to draw this diagram for you?
A Yes, sir, he drew it.
Q Why did you want him to draw the diagram that he drew you?
A To ensure that he was there, that he knew what he was talking about.
Q All right. I want you to step down here. Where is he saying this car was on this?
THE COURT: You have to step back, Mr. Witness, so everybody can see. We don't have a pointer.
A Both on the diagram and here he indicated that the vehicle was parked here, and he labeled it car.
Q On this diagram he labeled it car?
A Yes, sir.
Q He pointed out where his vehicle was parked. Where on this diagram would that be?
A Right here past the driveway, which he indicated that that was the driveway.

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Q All right. Let me ask you to take this and present it to the jury and show them where he said the driveway was on his diagram.

A This is what he indicated was the driveway, this is where he indicated his vehicle was parked.

Q Take that and show that to each member of the jury.

A The driveway here, the vehicle, the Excursion was parked here.

This is the driveway, the vehicle was parked here.

Okay?

MR. JONES: Answer any questions the lawyer has for you, please.

MR. McLAIN: May it please the Court, Your Honor.

THE COURT: Yes, sir.

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CROSS EXAMINATION

QUESTIONS BY MR. McLAIN:

Q Do you like to be called officer, investigator?

A Whatever you prefer, sir.

Q What do you prefer? You might not like my preference, no offense.

A Investigator is fine.

Q Okay. How come, I wonder how come, as you were walking out of that room, why all of a sudden did you turn around and ask somebody about a license plate border?

A There was one supposed to be on the back of the vehicle.

Q Okay. One supposed to be on the back of the vehicle? Did you find a license plate border?

A No, sir.

Q Did you find a handgun at that scene, any kind of handgun?

A At the scene?

Q Yes.

A No, sir.

Q Did you find Mr. Martin's handgun at the scene?

A No, sir.

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STEVE GAMBRELL - CROSS

Q However, you did find Mr. Christopher Landrum's eyeglasses at that scene, didn't you?
A Yes, sir.
Q And you found them right about the exact spot where the deceased was shot, didn't you? Didn't you?
A I didn't find them, I wasn't there when they were found, I didn't go to the scene.
Q What is your understanding?
A They were found at the scene.
Q Okay. Were they found right about the number three right there where he was shot?
A If that's what's labeled as eyeglasses, yes, sir.
Q Okay. You found Mr. Christopher's eyeglasses there, Landrum's eyeglasses there, he wears these wire rimmed glasses, State's Exhibit Number 14, you found them just about the same spot where he was shot, didn't you? Do you know?
A If that's where the shooting occurred, yes, sir.
Q If that's where it occurred, okay. Do you know where these were found?
A They were found close by the driveway.
Q Close by the driveway, okay. Do you know

where these shell casings were found?
A They were found close by the driveway.
Q Okay.
A The book bag, too.
Q Where was the book bag found?
A Close by.
Q Close by?
A I understand it was found close by, that's where it was recovered.
Q Okay. Well, it wasn't too close by, was it, wasn't it thrown over in the grass somewhere?
A It was near the scene.
Q It wasn't quite as near the scene of the deceased as these were, though, were they, because these were right there, weren't they?
A Yes, sir.
Q And where does Mr. Landrum live, what county, at the time what county did he live in?
A He was living in Anderson.
Q Okay. He was originally living in Spartanburg, wasn't he?
A All indications were he was living on Camellia in Anderson.
Q You didn't know he was from Gaffney, or Spartanburg County?

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A He had an address of Spartanburg as well.
Q Okay, I figured that, okay. And Mr. Martin here, he voluntarily told you all that he knew about this, didn't he?
A Yes, sir.
Q Okay. And in fact he had a lawyer come talk to him and then a lawyer leave and then you all started to talk to him with all the agents there, right?
A Yes, sir.
Q Okay. And let me refer you right here to your own memorandum and I note that, I'm not a very good typist myself, that's not 1991, it's 2001?
A There are several typos.
Q That's okay, it's legible. Okay, you show me in there where it says, anywhere in there where it says where Mr. Martin shot anybody.
A He didn't, he was blaming it all on Chris Landrum.
Q Blaming it all on Chris Landrum? Well, you typed up the memo, didn't you?
A Yes, sir.
Q Okay. And that's how long -- how long did you interview him?
A We were in the room probably an hour.

Q Okay. Well, he told you everything he knew about it, didn't he?
A That's what he said, that's all he knew.
Q You typed it up, you're relying on it today as State's evidence, aren't you?
A Yes, sir.
Q Okay. Well, do you think what's in there is true?
A I only put down what he said.
Q Okay. Well, do you think that that is true or not?
A As to his truthfulness, I cannot tell you. It's what he told us.
Q Well, he voluntarily told you?
A That's correct.
Q Okay. And again, do you have anywhere in there where he says he shot anybody?
A No, sir, he didn't say he shot anybody.
Q Okay. In fact he said, I believe he said that as he was getting back in his Excursion he heard scuffling on the ground at the back and then he heard a gunshot, a pause and then two more, and that Christopher Landrum jumped in the vehicle and then he drove off?
A That's correct.

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Q And got out of there because he was scared, I reckon, huh?
A I would be, too.
Q So would I. And it says right there on the very last page, the very last page, and you typed this up yourself, didn't you?
A Yes, sir.
Q It says Martin stated that there were too many people at the house when they got there to do anything, and you put in parenthesis, meaning to rob anybody, parenthesis close, and that's, well, another typo, I'm sorry, that's why they were in the woods looking and decided to leave.
A That's right.
Q And it also says in here it was Miss Rosalind Brown that took them down there?
A Yes, sir.
Q It doesn't say anywhere in here that Mr. Martin even knew Heavy D, does it?
A No, sir.
Q It doesn't say in here it was his idea to go down there, does it?
A No, sir.
Q It just says he was driving his Excursion, heard those shots, Christopher Landrum jumped in

the car?
A And furnished the guns.
Q Okay. Well, did you find any guns?
A No, sir.
Q It doesn't say he furnished the guns, it says he gave a gun --
A Uh-huh.
Q -- to Mr. Landrum, right?
A That's correct.
Q Does it say when he gave it to him?
A No, sir.
Q Look at it, tell me.
A He was talking about going there, said Chris Landrum had a nine millimeter and the gun belonged to him, meaning Martin, and he stated he had one.
Q Okay. But it doesn't say when he gave it to him, does it?
A He just said, "I gave it to him."
Q Okay. It doesn't say that he gave it to him that night, it doesn't say that he gave it to him that day?
A It doesn't list a timeframe, no, sir, he just said he furnished the gun.
Q No, he didn't say he furnished him a gun. It says he gave him a gun. Right?

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A Gave, furnished.
Q Well, what does your interview say?
A Gave him a gun.
Q Gave him a gun. He didn't say whether he gave it to him for a Christmas present, didn't say whether he gave it to him that night. You have no way of knowing when he gave him the gun, do you?
A No, sir.
Q Okay. You all combed that area for a gun, didn't you, or do you know?
A I wasn't there. I only got involved a week after.
Q Okay. You got there a week after. You didn't go to the crime scene?
A I didn't go to the crime scene, no, sir.
Q So, you don't know anything about that?
A No, sir.
Q You are familiar with Heavy D, though, aren't you?
A I am.
Q Did you know him before all this?
A Yes, sir.
Q You knew he was a big time crack pusher, didn't you?
A Yes, sir, he's a drug dealer.

Q Well, same things, drug dealer?
A Yes, sir.
Q Okay. How many times, to your knowledge, has he been caught dealing crack cocaine?
A I have no idea.
Q How many times has he been robbed down there prior to this?
A I know of one other.
Q When was that?
A I don't remember when it occurred but I remember it occurring.
Q Well, Rosalind knew him prior to that time, didn't she?
A Yes, sir.
Q Did she take somebody down there then, prior to that, the prior robbery?
A I know nothing about that case.
Q And what time, do you know what time this shooting incident took place?
A I know what I was told.
Q Well --
A It was sometime after midnight.
Q Sometime after midnight?
A After or around about midnight.
Q Okay. Why would somebody be down on a rural

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road after midnight at a known big time drug dealer's house on a motorcycle, past midnight, in the morning?

MR. JONES: Your Honor, he is asking him to speculate on a matter that he has no knowledge of and he is also asking him to try to think like a criminal thinks, and it's not fair to ask him that. I object to the question.

THE COURT: The objection is sustained unless the witness says he knows why a person was there on a motorcycle after 12:00 o'clock midnight.

Q Would you go down there after 12:00 o'clock midnight to Heavy D's house, to a party?

A Not to a party, no, sir.

Q You might go down there, though, to bust somebody, wouldn't you?

A Yes, sir.

Q Did Heavy D carry a gun?

A I don't recall anybody indicating he ever carried a gun.

Q No rifles or anything like that?

A No, sir.

Q No handgun?

A No, sir.

Q Do you know why SLED would --

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MR. McLAIN: Excuse me, Judge, I have to sit sometimes.

THE COURT: You may be seated while you question the witness.

MR. McLAIN: I apologize.

BY MR. McLAIN:

Q Why would SLED take Heavy D's shirt? You work for SLED, don't you?

MR. JONES: He's asking him to speculate on something somebody else did. I object to it.

THE COURT: The objection is sustained unless the witness knows the answer.

Q You work for SLED, don't you?

A Yes, sir, I do.

Q Okay. And you all gather evidence at a scene, don't you?

A We have forensic technicians, that's their duty, to come and take care of crime scenes. Field agents do not work the scenes.

Q And those forensic experts come and gather relevant evidence, don't they?

A Yes, sir.

Q And those gun casings right there have never been matched up with any gun, have they?

A I wouldn't have knowledge of that. That

would be up to the examiners to say.
Q How long did this investigation last?
A Typically in any investigation such as this it goes from the date the incident happens, all the way up until trial time. I mean, it's never ending, if something comes up, all the way through.
Q And Mr. Martin's assistance is what helped you solve this investigation, wasn't it?
A His -- beg pardon?
Q Mr. Martin's assistance and telling you what he knew about this aided your investigation?
A It was an aid in the investigation, in a lengthy investigation, yes, sir.
Q Has Mr. Landrum aided you in the investigation at this time?
MR. JONES: At what time is he talking about?
Q At the time this diagram was made, this interview, this memorandum was prepared had Mr. Landrum aided you in this investigation?
A No.
Q Has Rosalind Brown aided you in this investigation?
A Yes.
Q Okay.
MR. JONES: At the time of this interview?

Q At the time of this interview.
A The interview?
MR. JONES: 10/18/01.
A Oh, no, not at the time of this interview.
Q No?
A No.
Q All right. The man who aided you in this investigation and gave you this diagram and allowed you to interview him, or his lawyer allowed you to interview him is the man that aided you in your investigation, wasn't he?
A He gave us information in the investigation.
Q In fact, it was the information which he gave you which helped you crack the case?
A It assisted in bringing it to a close.
Q Well, it was instrumental, wasn't it?
A It was a factor.
Q A factor, an instrumental factor, wasn't it?
A Yes, sir.
Q It was the main factor, wasn't it, a main factor?
A A main factor, probably.
Q Probably? This drawing that he gave you and this interview right here that he gave you was not the decisive factor in cracking this case, for you?

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A It was a factor in assisting in solving this case.

MR. JONES: Your Honor, that was intentional, and I object.

THE COURT: Wait just a minute, I didn't hear the objection.

MR. JONES: I object to him laughing and attempting to laugh and jest at answers that were given by witnesses in this trial, during the course of this examination.

THE COURT: That's sustained.

BY MR. McLAIN:

Q Let me ask you again, this will be my last question, okay? Absent the information which that gentleman seated right there, my client, provided you, you may not have even solved this case, would you?

A That's hard to say because the investigation was still ongoing and we don't know what direction it may have taken.

Q Until you got this information from my client?

A We got the information from your client.

Q Right. And that was the main decisive factor that helped you in your investigation?

A One of the factors.
Q But the main one, wasn't it?
A I wouldn't say it was the main one.
Q Oh, it wasn't? But would you say it was a main one?
A A main factor.
MR. McLAIN: Thank you.

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REDIRECT EXAMINATION

QUESTIONS BY MR. JONES:

Q Just for clarification purposes, when you talked to Shondra Martin on October 18th, 2001, you nor nobody else involved in this investigation had talked to Rosalind Brown about this homicide, had you?

A No, sir, at that point, no, sir.

Q All right. On 10/18, when you talked to him about this, you nor anybody else in this investigation had talked to Chris Landrum about this Adarryl McCoppin homicide, had you?

A No, sir.

MR. JONES: No further questions, Judge.

MR. McLAIN: No further questions of this gentleman.

THE COURT: Thank you very much. Come down, please, sir.

THE WITNESS: Yes, sir.

(Witness excused).

THE COURT: Counsel will approach briefly, please.

(Unrecorded bench conference).

THE COURT: Madam Forelady, ladies and gentlemen of the jury, we will recess, of course,

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at this time. Please do not discuss the case by, between and among yourselves nor with any other person under any circumstances. If anyone attempts to discuss the case with you it's your responsibility to advise such person or persons that you are a juror and you may not discuss this case with them. If anyone persists in discussing the case with you after you tell them that you are a juror that would be improper, wrong and illegal and you should identify that person in any way possible that you can gain their identity and report that incident to the bailiff at the door or to the Court Clerk who sits before the Court and that will be investigated and dealt with immediately.

If there were to be any media coverage of the trial, such as newspaper, television or radio, it is your responsibility to disabuse your mind completely of whatever you see, hear or read absolutely completely because you are on your oath to decide the case only and exclusively upon the evidence that's presented during the course of the trial and upon nothing else whatsoever.

Please have a pleasant evening, we will have to work tomorrow and we feel that we will complete

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the case tomorrow, of course, but we are coming into session, we will ask you to meet in the jury room outside at 10:00. Some of you no doubt have plans tomorrow and you may have to make some arrangements this evening or in the morning, so we won't start in the morning until 10:00 a.m.

Everyone else remain seated, the jurors will be in the room outside at 10:00 o'clock.

BAILIFF: Judge, we have their food out here.

THE COURT: Yes, your food, ladies and gentlemen, is right outside the door, the bailiffs will assist you.

(The jury was excused from the courtroom at 7:55 p.m.).

THE COURT: Anything from the State? Take your time in conference. Anything for the record?

MR. JONES: Judge --

THE COURT: Take your time. We'll have order.

MR. JONES: Yes, Your Honor, I apologize.

THE COURT: Take your time, now, if you need to conference about anything you want to place on the record.

MR. McLAIN: Sir, I'm sorry.

THE COURT: The question will come to you in

a moment if you wish to place anything on the record. The Court is asking for additional comments.

MR. JONES: No, Your Honor.

THE COURT: Thank you. Mr. McLain?

MR. McLAIN: I'm sorry, Your Honor, I was conferring with my client. You said were there any additional comments?

THE COURT: Do you have anything you wish to place on the record before the record is closed for the evening?

MR. McLAIN: No, sir, and I understand the State has not rested its case yet.

THE COURT: The case was not rested by the State in its case in chief and we will return to that in the morning.

MR. McLAIN: All right. So, I will reserve any motions until tomorrow.

THE COURT: Yes, sir.

MR. McLAIN: Thank you, sir.

THE COURT: Very well. Now, the Court will be here in chambers at 9:30. In the event you have any requests for charge to review, it would be appreciated if we could get them so that they can be reviewed at or about that time, or as soon as

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possible. The jury will be here at 10:00 and it's hoped that we will be able to get them out and the State rest and we will send them on out in the front room while you make such motions. It's not thought that such motions are generally time consuming, but we will consider that before we decide where to put them, where we're going to put them.

MR. McLAIN: Yes, sir.

THE COURT: Then we will pass the case to the defense and we'll move along.

MR. McLAIN: Yes, sir.

THE COURT: Any questions, comments at all?

MR. JONES: No, Your Honor.

THE COURT: Hearing none, we will come back into session at 10:00 a.m.

MR. McLAIN: Thank you, sir.

(Recessed at 8:02 p.m.)

STATE OF SOUTH CAROLINA

2002-GS-01-192

COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA, )
)
)
-vs- )
)
)
SHONDRA LAMONT MARTIN, )
CHRISTOPHER FRANK LANDRUM, )
and ROSALIND RENEE BROWN, )
)
Defendants. )

March 20, 2004

B E F O R E:

HONORABLE WYATT T. SAUNDERS, JR.

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

W. TOWNES JONES, IV
TIMOTHY W. WOOLSTON
Attorneys for the State

W. BENJAMIN McLAIN
Attorney for the Defendant Shondra Martin

Henry P. Young
Court Reporter

VOLUME VI of VI
March 20, 2004

(Reconvened at 11:40 a.m).

THE COURT: The record is open, state of South Carolina versus Shondra Lamont Martin, indictment 2002-192.

The matter lies with the State. The jurors are not here. Do you want to get the jury in or do you have something for the record without their being here?

MR. JONES: For the record, Your Honor, the State rests.

THE COURT: Well, would you do that, then, when the jury comes in?

MR. JONES: I will do it again when the jury comes in, yes.

THE COURT: Then, we will turn to the defense.

MR. McLAIN: Yes, sir, we will have to take the jury right back out, of course.

THE COURT: That'll be all right.

MR. McLAIN: Yes, sir.

THE COURT: Ask the jury in. Are they out there?

THE CLERK: Yes, sir.

(Jury returned to the courtroom at 11:41 a.m.).

THE COURT: All the jurors are present, with the foreman and the alternate properly seated.

The matter lies with the State. Call your next witness.

MR. JONES: Your Honor, the State has presented all the witnesses that it will present in its case in chief and would have no further witnesses in its case in chief at this time.

THE COURT: That is the case in chief of the State, ladies and gentlemen.

Will there be motions?

MR. McLAIN: Yes, sir, there shall, there will be.

THE COURT: Counsel will approach, please.

MR. McLAIN: Yes, sir.

(Unrecorded bench conference).

THE COURT: Ladies and gentlemen, I have a matter of law to take up outside your presence. Do not discuss the case by, between and among yourselves. This will be very brief. Retire to the jury room behind you.

(Jury excused from the courtroom at 11:44 a.m.).

THE COURT: The record will show that we had a conference here at the bench and counsel for the

defense has indicated that the defense does not intend to call any witnesses. Is that what you will say when the jurors come back out?

MR. McLAIN: That's correct, Your Honor. The defense rests its case likewise and we reserved our right to make motions.

THE COURT: Yes, sir.

MR. McLAIN: To expedite the case.

THE COURT: Mr. Martin, please stand, if you will. Raise your right hand. Do you swear or affirm that what you are about to say will be the truth, the whole truth and nothing but the truth, so help you God?

THE DEFENDANT: I don't mean no disrespect to you, to the Court. According to my beliefs I do not swear.

THE COURT: You can affirm. Do you affirm?

THE DEFENDANT: What?

THE COURT: Do you affirm that you will tell the truth?

THE DEFENDANT: Yes.

THE COURT: Very well, thank you. Just put your hand down and relax and remain standing. You have a right to testify in your on defense. The Constitution of this state and of the United States

gives you a right to remain silent. If you wish to testify in your own defense that is your right, you may do that, but you also have equal right, a protected right to remain silent.

Now, have you talked with your attorney about the possibility of your testifying?

THE DEFENDANT: Not really but I would like to ask you, I have questions to ask him, I don't know why he won't answer the questions, I think it's important in this case, he won't never do it, and I'm, look, I mean, I don't know what to do. It just seem like, I don't know, it just seem like he doing something. This ain't fair, it seems like what he's doing --

THE COURT: The Court is --

THE DEFENDANT: He ain't telling these people exactly what I'm saying to him, he ain't asking the co-defendant or these officers, they say the wrong things about me, he ain't asking none of these questions, I don't know.

THE COURT: Mr. Martin, the Court is not asking you whether you are pleased with the questions of your attorney or not pleased with the questions of your attorney. The Court is asking you if you are aware that you have a right to

testify in your own behalf?

THE DEFENDANT: Yes, sir.

THE COURT: And if you are aware that you have the right to remain silent?

THE DEFENDANT: Yes, sir.

THE COURT: Now, which do you wish to do?

THE DEFENDANT: Do I have the right to, I have to make my decision now or can I just --

THE COURT: You have to make your decision now.

THE DEFENDANT: Well, I maybe want to get on the stand and just let the jurors know what's going on because all of this stuff is a bunch of hearsay and he ain't explaining this to nobody.

THE COURT: Well --

THE DEFENDANT: Something I heard.

THE COURT: Let the Court advise you of this, now. Were you to testify, which is your right to do, then you will be subject to be cross-examined by the State --

THE DEFENDANT: I understand.

THE COURT: -- upon everything and all things, including your criminal history, if any. The Court is not aware of anything, if any exists, all that will be brought out. Now, if you elect

not to testify the Court will tell the jury that they cannot hold your silence against you because that's your absolute right to remain silent. The Court will tell the jurors that they cannot hold your silence against you in any way at anytime, not even when they are deliberating your guilt or your innocence in the jury room in secret, they cannot even discuss the fact that you remain silent and you did not testify and they can't hold it against you.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: So, it's up to you as to what you wish to to, knowing that if you wish not to testify the jurors will be told that that's your right and they can't hold it against you.

THE DEFENDANT: I wish to get up on the stand and explain that I am innocent of this charge that I'm accused of.

MR. McLAIN: Judge, if I may be heard?

THE COURT: Yes, sir.

MR. McLAIN: Okay. We have had this discussion before. I need about five minutes, I guess, to talk to him again, may it please the Court. I don't mean to drag this out any more but

I think I've got to explain to him the ramifications of taking the stand.

THE COURT: You will be limited to those five minutes.

MR. McLAIN: Thank you, Judge.

(Recessed at 11:50 a.m.).

(Reconvened at 12:04 p.m.).

THE COURT: We will open the record in the matter of State versus Shondra Lamont Martin, 2002-192.

Mr. Martin, you will please stand and you remain under oath.

The Court has asked you whether you wish to testify or whether you wish to exercise your right to remain silent, understanding that if you were to exercise your right to remain silent the Court will instruct the jurors that they cannot hold your silence against you in any way at anytime, not even when they are deliberating your innocence or guilt in the jury room in secret.

Do you wish to testify or not testify?

THE DEFENDANT: I think I do.

THE COURT: It's your right. Then, you will put up evidence?

MR. McLAIN: Sir?

THE COURT: Then, you will call a witness or more witnesses?

MR. McLAIN: I would like to make a motion.

THE COURT: Okay. Just be seated, Mr. Martin, please, sir.

We will hear your motion.

MR. McLAIN: Yes. If my, without waiving any attorney-client privilege, if he takes the stand I'm making a motion to be relieved as counsel.

THE COURT: If he exercises his right to testify, whether or not he does, your motion is going to be denied. Whether now or later, the motion to be relieved is denied.

MR. McLAIN: Well, I was told yesterday that he was not going to take the stand.

THE COURT: It's his right.

MR. McLAIN: I understand.

THE COURT: This is his right. Will there be any motions? The State has rested.

MR. McLAIN: Yes, sir.

THE COURT: We'll hear your motions.

MR. McLAIN: Yes, sir. May it please the Court, I would make two motions, a motion to dismiss and a motion for a directed verdict on several charges. One is on the robbery. There has

been no testimony of any robberies occurring, no elements.

One is also on murder. There is no malice aforethought either expressed or implied.

As far as conspiracy, I do not think that the testimony that has been presented supports the elements of conspiracy and so I would make a motion to dismiss the charges against the defendant and for directed verdict on those charges.

THE COURT: How says the State?

MR. JONES: Your Honor, as to the conspiracy to commit armed robbery, there is testimony from Rosalind Brown that they discussed committing a robbery with her, that she drove with them to show them the location of the address where the robbery was to be committed, that they tried to get her to assist in the actual commission of the robbery and she declined, so they drove her off.

There is evidence in the statement admitted of Shondra Martin that they were armed with weapons during the course of their return to the location of the intended robbery, that they discussed and took steps towards accomplishing that robbery by parking the vehicle in a getaway fashion and surveying the residence of from the

wooded area. So, there is evidence in the record of a conspiracy to commit armed robbery.

As to the murder charge, there is evidence that the victim died as a result of a gunshot wound and there is circumstantial evidence that the guns were in the hands of the defendant and co-defendant, so the malice that would be necessary for a murder charge to go forward is the implied malice through the use of a deadly weapon in commission of the murder.

In addition to malice, the jury might find in viewing the totality of the circumstances of the crime, that being conspiracy to commit armed robbery, of course again of the possession of a weapon during the commission of a violent crime from the statement of Shondra Martin and from the nature of the death of Adarryl McCoppin, in that he died from gunshot wounds.

Judge, as to the count of attempted armed robbery, the State would at this point in time concede that the evidence presented as to that count did not rise to the level of establishing a substantial step towards making an attempt of an armed robbery and asks the Court to withdraw submitting that count, any charge related to it to

the jury.

THE COURT: Thank you, Solicitor. The motion to eliminate Count Two, attempted armed robbery, is granted with the concurrence of the State. The balance of the motions are denied.

Anything further from the defense?

MR. McLAIN: Nothing.

THE COURT: Ask the jury in, please.

(The jury returned to the courtroom at 12:10 p.m.).

THE COURT: All the jurors are present, with the forelady and the alternate properly seated.

Ladies and gentlemen, the State rested its case in chief. We turn to the defense. Call your first witness.

MR. McLAIN: Your Honor, we call Shondra Martin.

THE COURT: Come around, please, and be sworn.

THE CLERK: Raise your right hand, put your left hand on the Bible. The evidence you shall give the Court and jury shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes, ma'am.

THE COURT: This witness is with you, counsel.

MR. McLAIN: Yes, may it please the Court, Your Honor.

THE COURT: Mr. McLain.

MR. McLAIN: Yes, sir.

SHONDRA LAMONT MARTIN,

having been first duly sworn testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY MR. McLAIN:

Q Would you state your full name for the record please?

A Shondra Lamont Martin. S-h-o-n-d-r-a-y, first name.

Q Okay. You always spell your name with a Y, is that correct?

A Yes, sir.

Q And where are you from, Mr. Martin?

A From Spartanburg. I moved to Anderson.

Q Okay. And you are married?

A Yes, sir.

Q What is your wife's name?

A Shonna Martin.

Q Would you spell that for us?

A S-h-o-n-n-a.

Q Do you have any children?
A Yes, sir.
Q How many?
A I have four by my wife and I have two outside my wife.
Q Okay. You have six children in all?
A Yes, sir.
Q Okay. You're incarcerated right now, is that correct?
A Yes, sir.
Q And for what reason are you incarcerated?
A For federal charges, federal counterfeiting and federal drug trafficking.
Q Okay. And you are serving a sentence right now for those, are you not, and what are those, what sentence are you serving right now?
A Twelve and a half years.
Q Okay. Now. Where were you living when you were charged with this offense?
A I was in Anderson, on Gray Hall Road, Gray Hall Road Anderson.
Q Okay.
A I was --
Q I'm sorry. Was this after you were charged with the federal charges, had you already been

charged federally when you were charged with this crime, these crimes?

A No, sir.

Q Okay. And you were charged when you were living in Anderson?

A Yes, sir. Excuse me, can I go back to the --

Q Yes.

A Did I have my federal charge before this?

Q Yes.

A Right, yes, they was accusing me of this federal charge before this, right.

Q Okay. So, you had federal charges pending?

A Correct.

Q Before you were charged with these state charges, is that correct?

A Correct.

Q Okay. And had you actually entered any kind of plea or anything to the federal charges when you were charged with this?

A Right, yes, sir.

Q Okay. You had already pled guilty to that?

A No, sir. I was, it was like what you call a proffer agreement where you sign, you gets immunity for all charges and nothing you say can and will be used against you in a court of law and all that,

you ain't got to worry about no other charges in the indictment and outside the indictment, what they was telling me.

Q Okay. So, in other words, what you're telling me is before you entered into your plea, is that correct, meaning your federal plea?

A Correct.

Q Okay. Before you entered into your federal plea, as the usual practice, you were indeed questioned by federal agents?

A And state agents.

Q And state agents?

A Correct.

Q Okay. Now, when you were first questioned -- when were you first questioned about those charges?

A I think it was October the 10th of 2001, Federal Agent Gilliam telling me, saying to me, "Well, you're going to do life in prison, you know, but if you tell us something we'll give you five years, maybe you won't have to do five years." And we got to beginning to talk about the federal charges and then they asked me about some state stuff, and it went on, it went on, and I said, "Look, I told you the truth." He said, "No, you're lying to me," he said, "You're going to jail for

the rest of your life." I said, "What you want me to do, you want me to tell you a lie?" He said, "No, I don't want you to tell me a lie."

So, when he said that, knowing that I had already told him the truth from what I heard, he said, he led me to believe well, if I didn't tell him more he going to lock me up, I'm never going to get out, so I said, "Well, I ain't go no other choice but to tell them a lie now," because I'm scared, everybody in there, I got like four or five or better drilling me -- excuse me, sir.

Q Okay. Let me stop and ask you this, okay? You were arrested and brought over to where?

A Spartanburg.

Q Okay. And you were questioned at that time by whom?

A Sir, I can't remember all their names, of the authorities that was present but I know it was, I know one was Gilliam and another guy sitting, the guy standing up, just sitting, fixing to sit down, I can't recall his name, but him and about three or four more with him.

Q Okay. And they wanted to question you about federal charges?

A Federal charges and then they asked me about

state, some state stuff that was, rumors was going around in the town about some state stuff.

Q Uh-huh.

A And I tell them what I heard.

Q Okay. And did you have an attorney present at the time?

A No, sir.

Q Okay.

A No, sir.

Q Did you tell them that you wanted an attorney?

A Yes, sir.

Q Now, this was on what date?

A On the 10th. I told them I wanted an attorney, they said, "Look, we --" I got, I told them I want an attorney and the proffer agreement and they said, "Well, you got that," he say, "You don't have to worry," he say everything okay, he said, you know, "Just talk to us and tell us everything." I said, "No, I can't trust that," I said, "I need proper proffer agreement."

Q Let's stop so the jury will know what a proffer agreement is.

A A proffer agreement is like when you assist the government with anything they, no matter what

it is, that you get, you won't, it won't be used against you in a court of law, everything you say, no matter what, you know, you getting full immunity, no charges or nothing be brought up against you, so that's what I was being told and I was believing that's what was going on.

Q Okay. That was on October the 3rd?

A No, I think that was on the 10th.

Q The 10th of October, what year?

A 2001.

Q Okay. And, so, you had federal agents that wanted to talk to you about the federal charges?

A Correct.

Q And then state agents were there?

A No.

Q No state agents then?

A No. I know there was an officer worked for the local Spartanburg Police Department was present but no, no state agents, no state agents was present other than that.

Q Did you tell them you wanted an attorney present?

A Correct.

Q Okay. And did you tell them -- okay. Did they indeed appoint you a federal public defender

since you were indigent?
A Correct, they appointed me a federal attorney, correct.
Q And who was that federal public defender?
A Mr. Ned Miller.
Q Okay.
A Excuse me.
Q Did they ask you any other, did they ask -- what did they ask you about at that October 3rd -- when did you first get an attorney?
A I really can't say. I can't recall the exact date but I know it was like maybe five or six days.
Q Later?
A After they arrested me.
Q Okay. Did you have an attorney appointed when they talked to you on October the 10th?
A Correct.
Q Okay. And what did he do? Was he present at the questioning?
A No, sir.
Q What did he do?
A I don't know. I ain't seen him.
Q I mean, on that day did he come in and see you?
A No, sir.

Q Did he come in and see these folks, any of the agents, did you see him there at anytime?
A I didn't see him at all.
Q Okay. And did they ask you about federal things?
A Federal and state.
Q They asked you about federal and state --
A Correct.
Q -- at that time?
A Correct.
Q Do you know whether or not there was a proffer agreement intact at that time?
A No. I was, they told me, told me I got everything, "Nothing to worry about, we talked to your attorney, everything is okay," that's what they told me.
Q Okay. They told you that you had absolute immunity for anything that you told them?
A Anything. Anything. Why would you say something if, you know, no protection on yourself, I mean, I don't understand.
Q So, at first you had federal agents there, correct?
A Right.
Q Then state people started lining up at that

time?
A No, sir.
Q There wasn't at that time?
A No, sir.
Q When did you first get to meet with your attorney?
A I can't recall the date when I first met with Mr. Ned Miller but I know it was like maybe a week after I had got arraigned, I can't remember the date, may have been four or five days, a week maybe, I just can't remember.
Q So, that was after you met with the agents the first time, is that correct?
MR. JONES: Your Honor, he said he couldn't remember. He's leading him now. He said then that was after. He's trying to tell him when it was.
MR. McLAIN: I will rephrase the question, I withdraw it and will rephrase the question.
THE COURT: Objection sustained. Don't lead the witness.
MR. McLAIN: Okay.
BY MR. McLAIN:
Q Was your, or was not your attorney present at that October 7th interview, October 10th?
A No, sir.

Q Had you met any attorney at that time on your behalf?
A Before then, yes, sir.
Q Okay. Was that the same public defender?
A Yes, sir.
Q Okay. Do you know whether or not he was notified to be there at that October 7th --
A No, I don't, no, sir.
Q You didn't see him there at all?
A I don't know if he was notified. You asked me did I know whether he was notified to be there.
Q Uh-huh.
A I hadn't never seen him and I didn't know he was supposed to been coming.
Q Did you ask for an attorney to be there?
A True. They asked me for an attorney, yes, I didn't have no funds, so they had to give me an attorney.
Q Yes, but I'm saying did you have an attorney physically there?
A No, sir. No, sir.
Q Okay. Do you know whether or not one had been appointed for you to be physically there at that time?
A I can't say, I don't know whether --

appointed by me or --
Q By the Court, the federal public defender Mr. Miller, was Mr. Miller, had he been appointed prior to that October 10th interview?
A That I don't know, no, I don't know, I didn't know, he just showed up, said, "I represent you."
Q Did he show up at that interview?
A Did he show up, no, sir.
Q Okay. So, you were questioned there without an attorney present, or with an attorney present?
A Without an attorney present, sir.
Q Okay. Now let's go back to, or not back to, let's go forward, okay? When did you meet with any agents, state or federal, again?
A I think that might have been October 18th, the same year, 2001.
Q Okay. Where were you then?
A Spartanburg. We left the Spartanburg County Detention Center, went to the Spartanburg, like Kinko's, like a building, in the bottom of something like that.
Q Kinko's Printing?
A Kinko's Printing. I know it was connected to that building.
Q Okay. What did the federal agents tell you?

A Well, when I first got there they said, "I said what's going on?" They said -- well, first of all Mr. Gilliam come and picked me up and he was saying, he was talking about --

Q When you say Mr. Gilliam, you mean that nice gentleman right there raising his hand?

A Yes, sir, that gentleman right there.

Q Okay.

A He comes and picks me up and he said, we got, we got in the car, we was talking, he said, he said something about, "You don't have to worry about nothing, everything going to be all right with you, just some people here," he said just, he said, "They want the same thing you told us," he said, "Repeat it." So, we went on, we got there, got down into the room and I said, "Listen, hold on," I said, "Can I have an attorney, please," you know, because --

Q Because they had told you you had the right to have an attorney present?

A I don't recall.

Q Did they tell you?

A I don't recall them saying I had the right to have an attorney.

Q Were you scared?

A Sure. I ain't really been in no trouble, done no time or nothing, yes, I'm scared, I'm real scared.
Q Okay. So, you asked for an attorney?
A Yes, sir.
Q Okay. As a result did you receive an attorney?
A Yes. Later they had called.
Q Did they stop -- let me ask you this. Did they stop questioning you when you asked for an attorney?
A Did they stop questioning me when I asked for an attorney?
Q Yes.
A Well, I don't think we got to no question in that, no questioning, we didn't get to none of that. They had some, like a laptop, something like this here, the guy was saying stuff that I had done already said to them, and I said, "Well, you call the attorney, have the attorney present before, before anything so we can," the proffer agreement they said I had, I said, "Can you get it so we can sign it and everything," and so they called Mr. Ned Miller, they called him up.
Q Okay. And did Mr. Miller come?

A Yes, sir.
Q Okay. And then when he got there you all had a conference for how long?
A No more than five, seven minutes, ten at the most, but I doubt even ten. It couldn't have been, because he had a couple, one sheet of paper here and another sheet of paper here and he was reading something, saying, "You get this immunity, you ain't got to worry about nothing, anything you say to these local cops, these police officers, you get immunity for anything you say, can't nothing be used against you, you going to be out of jail no more than," he said, "five years but you will be out quicker than that," you know, and I say, and he say sign here, you know, he say.

But the paper, the proffer agreement they showed me, that they put in the paperwork doesn't even look like this proffer agreement that I'm supposed to have signed, and I'm like what's going on. When I get it back it's got like instead of two sheets, he had one sheet I signed, and instead of, and he had another sheet in his hand, whether that went with that or not, I can't recall that, but --
Q Okay, go ahead.

A But he had, when I get a proffer agreement from whoever it had like one, two, three, four, five, maybe six, seven pages, I'm like what is all this.

Q And let me see that court's exhibit, if I may, the proffer agreement, Mr. Court Reporter, if I may.

MR. McLAIN: The Court's indulgence, Your Honor.

Q Take a look at court Exhibit Number 3 that's been marked. First is the fax transmission sheet?

A Uh-huh.

Q To the gentleman there in the blue blazer that just stood up. Okay?

A Uh-huh.

Q It's in reference to you, is it not?

A What do you mean, it's in reference to me?

Q Yes, it says comment, Shondra Martin.

A That's my name.

Q But that's what it says?

A Yes.

Q Okay. And it's dated October the 18th, 2001, is that correct?

A Yes, sir.

Q Okay. And that's when this interview or

debriefling or whatever they want to call it took place, is that correct?

A Yes, sir.

Q Okay. Mr. Miller came in and stayed with you how long?

A Maybe five, six to seven minutes, ten at the most but I don't think it was ten.

Q Okay. Were you given time to read this proffer agreement?

A No, sir, I didn't read the proffer agreement. He just, he just had one sheet of paper and he was reading something, "Look, you got full immunity, you don't have to worry about nothing happening to you, just sign here, got to go, I got something to do in Spartanburg," and fleed. I said, "Hold up. Shouldn't you stay with me?" He said, "No, I can't stay with you, I got to go," and he just got gone, I mean.

Q Did he give you this last page right there to sign?

A I don't recall that. It wasn't no last page. How can he give me a last page when he don't have but one.

Q What did he give you to sign?

A He gave me one sheet of paper and I just

signed. He said, "Sign here, you got immunity for everything, you don't have that to worry about, nothing you say be held against you," and everything like that, so he had another piece of paper and whether it was connected to that paper, I don't know, and he just fleed. I said, "Hold up, you need to stay here with me," and he just, "I can't, I got to go," and he left.

Q Okay. And this proffer agreement right here gives you full immunity, at least this proffer agreement right here gives you full immunity for anything you told them, is that correct?

A From what I signed and for what I was told, he led me to believe whatever I say can't be used against me.

Q Okay.

A Right.

Q And that was in reference to a federal investigation?

A Right.

Q Okay.

A Well, any charge.

Q Right.

A Right.

Q Right, but you were told that you would be

given immunity for any charges?
A Right.
Q Okay.
MR. McLAIN: Let's make that an exhibit, please.
MR. JONES: It's a court's exhibit, Your Honor.
THE COURT: You want to make it a defense exhibit?
MR. McLAIN: Yes, sir.
THE COURT: It will become a defense exhibit.
MR. JONES: That is the original, is it not, Your Honor?
THE COURT: Yes, sir, that should be the original.
MR. McLAIN: That's Court's Exhibit Number 3.
MR. JONES: The original is 3-A, Your Honor, we would like the original introduced, 3-A.
MR. McLAIN: That's fine, I would prefer the original.
MR. JONES: Then introduce the original.
MR. McLAIN: Where is it? Is it over here? It's right here. That's Defendant's Exhibit Number 9 now, as well as Court's Exhibit 3-A.
(Defendant's Exhibit 9 was marked

and received in evidence).

BY MR. McLAIN:

Q Okay. In this proffer agreement it says, I believe, in so many words that you are granted immunity as long as you tell them everything you know?

A Correct, about anything.

Q And what does it say right there?

A "Client agrees to submit to polygraph examination by any qualified polygraph examiner should client be requested to do so. Fail to --"

Q Failure?

A "Failure to pass to the satisfaction of the government any polygraph examination administered pursuant to this agreement constitutes a breach of the agreement and the government may use for any purpose any statements made and other information provided by client in the prosecution of client on any charges."

Q Okay. And your immunity was based upon you being totally truthful?

A Well, that's why they give immunity, I guess, if you tell them everything, but like I was telling, like when he told me, when I was telling him the truth --

MR. JONES: Unresponsive to the question, Your Honor.

THE COURT: Sustained. Restate the question.

Q Okay. This says -- let's just do that. Read this into the record.

A "Provided client is truthful as described above, remaining terms of the agreement are as follows."

Q Okay. Number one, read that into the record.

A "No statement made or other information provided by client during this proffer or this discussion will be used against client in any criminal or civil case except as provided herein."

Q Okay. Now let me refer you to page four, the second to the last paragraph. What does it say?

A "The obligations of and restrictions on the government within this agreement are expressively contingent upon client's obeying --"

Q Abiding?

A "Abiding by federal and state laws and complying with the terms and conditions of any bond."

Q Executed?

A "Executed in this case. Therefore, client's violation of federal and state law or of the

provisions of any bond executed in this case constitutes a breach of this agreement and upon such violation the government may use for any purpose any and all statements made and other information provided by client in the prosecution of client on any charges."

Q Okay. Now read the next paragraph for us, too, be fair, read it.

A "Client is hereby informed and understands that this agreement does not extend to any statements or other information involving any homicides or other crimes of extreme violence. Any statements made or other information provided by client during the proffer regarding any homicides or other extreme acts of violence may be used against client in any criminal proceeding which may be undertaken by any authorities." Keep on?

Q Yes.

A "To the extent the government is entitled under this agreement to offer in evidence any statements made or other information provided by client or leads obtained therefrom, client shall assert, not claim --"

Q No claim?

A "No claim," excuse me, "under the United

States Constitution against Statute Rule 11(E)(6) of the Federal Rules of Criminal Procedure, Rule 14 of the Federal Rules of Evidence or any other federal rules that such statement made or other information provided or any leads therefrom should be suppressed."

Q Okay.

A Do you want me to read the last sentence?

Q That's okay.

A Are you sure?

Q Yes. Now look at this agreement. Does this look like the agreement that you --

A No, sir.

Q Okay. How many pages did you sign?

A One paper, one piece of paper.

Q You signed one piece of paper?

A Right. And it was just two pieces total. I don't know whether the other one was, went along with that or not.

Q Okay. I'm going to publish that to the jury. Okay, now, as a result of your agreement with the federal government were you truthful with them?

A Well, like I said earlier, I told him the truth about things that I heard. Then he wanted me to, then he said, "Well --"

Q Who is he?
A What's -- Lijoi, Officer Lijoi, DEA, he said, "Look, you're lying to me, you're never going to get out, you're never getting out again," you know, "now tell me what went on." I said, "I told you the truth. What you want me to do, tell you a lie?" He said, "No, I don't want you to tell me a lie, I want you tell me the truth."

In my mind I'm saying to myself, I done already told him the truth, now he threatening me, saying he going to lock me up, so I'm scared, so I say everything I done heard I'm going to tell him. So, I just started telling him stuff I heard.

Q Now, when you say you started telling stuff that you heard --
A Correct.
Q -- that meant stuff that involved you or didn't involve you?
A Correct. Well --
Q Hearsay?
A No. See, when I was telling him stuff --
Q Uh-huh.
A -- and he was like, "Well, was you with him," and this and that, and in my mind I say well, if I don't stay I'm with him, then it's like, you know,

I don't know nothing. So, I felt like I had to say that in order to make him do something, you know, and so it just come out, I just made that statement, now knowing I shouldn't have made that statement because of they threatening me, telling me all this and telling me all that, so everything I'm thinking about, everything that's going on, in my mind I'm saying to myself, I say, you know, well, they going to lock me up, I say everything that I done heard from the streets, heard from Mrs. Landrum, heard from Mrs. -- what's the other name?

Q Rosalind Brown?

A Everything that I'm hearing, I'm putting this stuff together, I'm saying if he did that, you know, I say well, okay, I'm going to give him this to get out of trouble. And --

Q And they promised you that?

A Correct, correct, they promised me everything, they're saying, "You do five years, you won't even have to do no five years."

Q "Just give us all the information you have"?

A Right. And I wrote a letter later, after that wrote a letter saying look, you know, me being locked up, by people locking me up for stuff I didn't, they told all kind of lies on me, I felt

like it was unfair for Mr. Landrum, which I didn't know whether he done this or not, and who he say he was with or who she say, whatever happened, I -- excuse me, can you hear me?

Q Yes.

A Okay. So, whether he, whatever happened, you know, I just put myself there in order to get them to think that I was there with this guy or whatever, if he did this, and so I wrote this letter because I felt bad because I didn't know whether he was guilty of this or not, you know.

Q Meaning Mr. Landrum?

A Right. I was just trying to get, you know, I was feeling bad for what I had done because I didn't really know, I wasn't present, so how can I say this about that guy, so I wrote his attorney saying look, sorry, please forgive me for that.

Q Take a look at that, Mr. Martin.

A Okay. Do you want me to read it?

Q First take a look and identify it for us.

A Uh-huh, yes, I've seen this before.

Q Is that a copy of the letter that you're talking, referring to, to which you're referring?

A Uh-huh.

Q In fact, that is written to?

A Mr. David B. Alford.
Q Alford?
A Alford, uh-huh.
Q In Abbeville South Carolina?
A Correct, sir.
Q And you wrote that from the Atlanta, Georgia United States Penitentiary, to him?
A That's where it come from, yes, sir, Atlanta.
Q Okay. Did you sign it?
A Yes, sir, I signed it.
Q Okay. Did you write it or did somebody write it, did you dictate it to somebody to write for you, or did you actually write it?
A This is my handwriting, I wrote this letter.
Q Okay. So, that's a copy of the letter you wrote?
A Correct.
MR. McLAIN: Let me mark that as an exhibit.
THE WITNESS: You don't want me to read it?
MR. McLAIN: Let's mark it first.
THE COURT: Let the State see it. You can mark it for identification.
MR. McLAIN: The State's seen it.
MR. JONES: Your Honor, we have the original and we do not object to its introduction.

THE COURT: Very well.

MR. McLAIN: I have no objection to putting in the original with the envelope. Let's mark that as one exhibit, please, sir.

THE COURT: Staple the envelope onto the letter.

(Defendant's Exhibit Number 10 was marked and received in evidence).

BY MR. McLAIN:

Q Again, would you publish that exhibit to the jury, please?

A "To whom it may concern. I said something about Chris Landrum on October 10th, 2001, and the only reason I said it was because I was scared. The detectives had me thinking I was going to get a life sentence. Because now after consulting with honest advise people --

Q Various people?

A "Various people," excuse me, "and doing some serious soul searching myself I decided to come clean and tell the truth, and the truth is that the things that I said wasn't true, so you have an innocent man in your custody and I can't no longer live with the lie that I told and now I realize that it was not right on my behalf nor was it fair

to him because, like I said, I was scared and looking for a way out of the trouble that I was in but now I know firsthand how it feels to be taken away from your family and friends unjustly, so I can't go on with this lie. I have sent a copy of this letter to Mr. Landrum's attorney and hope that it will bring relief to his now troubled situation so that he can go on with his life. If I have to go to court about this matter I won't have any choice but to tell the truth, no matter the cost, so I hope this letter clears this up before it goes any further. Thank you for your time. Sincerely, Shondra Martin."

MR. MCLAIN: Okay. Let me publish that to the jury, hand that to the jury, please.

Q Can you tell us what you meant by the content of that letter?

A Because what I meant by that, I meant by that, well, I wasn't present with him, I didn't see him do nothing, so I couldn't say that he did anything. That was the content of that letter and I'm sorry, because everybody in my conspiracy was telling all kind of stuff on me, telling a bunch of lies and then when I see, well, look --

MR. JONES: Objection, Your Honor.

THE COURT: Hold it. Yes, sir.

MR. JONES: Unresponsive to the question.

THE COURT: Sustained. Pose the question, the witness will answer the question.

Q Okay. Try to be brief and tell us what you meant by your statement in that letter, Shondra.

A Meaning I was wrong for saying that I was with him, we went and did anything, when I knowed that I wasn't with him and we didn't go do anything.

Q Okay. Did you tell them, in fact did you give them a statement or statements that you did do some things?

A Yes.

Q That you and Mr. Landrum did do some things or Mr. Landrum did some things?

A I told them me and Landrum did some things and Landrum did some things, all kind of stuff. I probably told them just about anything. I'm telling you, I was scared, ain't been in no trouble or nothing, didn't know what was going on, and knowing, man, I'm just scared, I'm just scared and they're telling, oh, they just drilling me, got voices here, voice there, voice there, all around the room, it's like all around me, everybody is