

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Spartanburg County
The Honorable Brooks P. Goldsmith, Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2013-001284

Circuit Court Case No. 2010-CP-42-4049

NATHANIEL TEAMER,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

**APPENDIX
VOLUME 3 of 3**

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David Michael Proctor
Cross-examination by Mr. Schultz

1 Q Okay. Nevertheless, you did tell the police officers
2 about what happened that night, correct?

3 A Yes.

4 Q Okay. And you talked to Officer Hurst.

5 A Gardner was the only name I remember, but I might have
6 talked to a Hurst also. There were so many detectives,
7 investigators, sketch artists. You know, there were a lot.

8 Q Now, Officer Hurst talked to you the day after this
9 incident. And when he talked to you you told him that the
10 suspect was picked up on Bree Street, correct?

11 A I can't remember the name of the street. No. I took
12 them to the house. The house they put up on the overhead
13 projector was the house.

14 Q But yet at the same time, but yet just a day after
15 this, you told the officers that you were picked up or the
16 suspect was picked up on Bree Street, correct?

17 A I don't know. That house, the house -- do you know
18 the name of the street the house was on? If it was Bree
19 Street, then it was Bree Street. If it wasn't, then it
20 wasn't.

21 Q So you are not sure is what you're saying.

22 A I'm only sure of the house. The name of the street,
23 I'm not sure.

24 Q What I am saying is, it could have been Bree Street or
25 Wofford Street.

David Michael Proctor
Cross-examination by Mr. Schultz

1 MR. BARNETTE: I'm going to object at this time. I
2 think he's asked and answered the question.

3 THE COURT: Sustained.

4 Q Answer the question.

5 A What was your question again?

6 THE COURT: I sustained the objection.

7 MR. SCHULTZ: I'm sorry, Your Honor. Beg the Court's
8 patience, Your Honor.

9 (Pause.)

10 Q Isn't it true that drugs were found in your car?

11 A I'm not sure. It wouldn't surprise me with the guy in
12 the back, you know, whoever shot us, whether he had them,
13 you know, whether Tony, yeah. It wouldn't surprise me. No
14 one told me that they were though.

15 MR. SCHULTZ: Beg the Court's patience again.

16 (Pause.)

17 MR. SCHULTZ: No further questions, Your Honor.

18 MR. BARNETTE: No further questions of this witness,
19 Your Honor.

20 THE COURT: You may step down.

21 MR. BARNETTE: Your Honor, we would like to call
22 Investigator Hawes to the stand, please.

23 May we approach for one second, Your Honor?

24 THE COURT: Yeah.

25 (Bench conference held off the record in the presence

Richard Wayne Hawes, Jr.
Direct examination by Mr. Barnette

1 of the jury but out of the hearing of the jury.)

2 RICHARD WAYNE HAWES, JR.,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BARNETTE

5 Q If you would, sir, please state your full name for the
6 record.

7 A Richard Wayne Hawes, Jr.

8 Q And, sir, back in February of 2006 where did you work
9 at, sir?

10 A City of Spartanburg Public Safety Department.

11 Q And what was your position there, sir?

12 A Criminal investigator.

13 Q And was part of your duties being a sketch artist for
14 the department?

15 A Yes, sir.

16 Q And is that something you do -- I don't know if it's a
17 hobby or second career or something else.

18 A I do it as a hobby, and I also do contract work for
19 the Federal Bureau of Investigations.

20 Q What kind of training did you receive concerning being
21 a sketch artist?

22 A Well, I got my basic certification in 2004 through
23 Stewart Parks Forensics in Cataldo, Idaho. I took two
24 advanced courses and became certified with the
25 International Association for Identification through

Richard Wayne Hawes, Jr.
Direct examination by Mr. Barnette

1 Stewart Parks.

2 In addition to that I've taken advance courses through
3 the United States Secret Service and through the Federal
4 Bureau of Investigations.

5 Q Back on February the 2nd of 2006 was you part of the
6 team that worked on the investigation of the shooting
7 involving Tony Hunter, as well as Mike Proctor?

8 A Yes, I was.

9 Q And did you talk to Mr. Proctor about the individual
10 he saw that night?

11 A Yes, I did.

12 Q And tell the jury a little bit of what you do when you
13 do a sketch, sir.

14 A Basically when I do an initial interview with a
15 witness, I kind of feel for the basic features of the face
16 from the witness by suggesting shapes, sizes, so forth.

17 Once I have a basic idea of what I'm going to be
18 looking at I show photographic references of facial
19 features to the witness. They pick out which ones fit
20 closest to the individual that they're trying to describe
21 to me. I go ahead and sketch it out and put eyes and noses
22 and ears and all together.

23 Once I have the basic photograph or the basic drawing
24 done I'll work with the witness. They'll tell me where I
25 need to change things, make things bigger, smaller,

Richard Wayne Hawes, Jr.
Direct examination by Mr. Barnette

1 different shading, facial hair, stuff like that.

2 Once the drawing is done to the best of the witness'
3 recollection, we go ahead and rate it on a scale of one to
4 ten as to how close it is to the actual individual that
5 they have described to me.

6 Q And did you do that with Mr. Proctor?

7 A Yes, sir.

8 Q And did you develop a sketch or a drawing based on
9 what he told you?

10 A I did.

11 Q And did you make any suggestions or anything about the
12 person or the features or anything to him?

13 A No, I did not.

14 Q Let me show you what's been marked or is in State's
15 Exhibit No. 88. Is that the drawing that you did?

16 A Yes, it is.

17 Q And was that based off what he told you?

18 A Yes, it is.

19 MR. BARNETTE: Your Honor, I've already published this
20 to the jury, so I'm not going to publish it to them again.

21 Q And obviously that's used as an investigative tool.

22 A Yes, sir.

23 Q And have you done other cases like this?

24 A I have.

25 Q And have y'all used that as an investigative tool

Richard Wayne Hawes, Jr.
Cross-examination by Mr. Schultz

1 also?

2 A Yes, we have.

3 MR. BARNETTE: One moment, Your Honor, please.

4 Q Please answer any questions that Mr. Schultz may have
5 for you.

6 CROSS-EXAMINATION

7 BY MR. SCHULTZ

8 Q What is your position again, sir?

9 A I am no longer with the Spartanburg Public Safety
10 Department.

11 Q Okay. Where do you work now?

12 A For Lowe's.

13 Q For Lowe's?

14 A Yes, sir.

15 Q What is your position there?

16 A I'm an organized retail theft investigator and a loss
17 prevention manager.

18 Q Okay. Where do you work?

19 A I am currently based out of the East Spartanburg
20 store. I travel the district -- Asheville, Charlotte,
21 Columbia -- doing organized retail theft investigation.

22 Q And you testified today that based on the scale of one
23 to ten, how did Mr. Proctor feel about it?

24 A He rated it as an eight.

25 Q As an eight.

Richard Wayne Hawes, Jr.
Redirect examination by Mr. Barnette

1 A Yes, sir.

2 Q So he was not completely sure of your composite
3 drawing, correct?

4 A No.

5 Q No.

6 A I can quote something that he said to me in reference
7 to the drawing. He said --

8 Q I didn't ask that.

9 A Okay.

10 MR. SCHULTZ: Beg the Court's patience, Your Honor.

11 (Pause.)

12 MR. SCHULTZ: That's all I have, Your Honor. Thank
13 you.

14 REDIRECT EXAMINATION

15 BY MR. BARNETTE

16 Q Just one question to follow up on that.

17 And this was obviously turned over to law enforcement
18 and law enforcement agencies, is that right?

19 A Yes, sir.

20 MR. BARNETTE: Thank you, Your Honor. That's all the
21 questions I have.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 MR. BARNETTE: Your Honor, I would like to call
25 Captain Jones to the stand.

Mike Jones

Direct examination by Mr. Barnette

1 MIKE JONES, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, state your full name for the
5 record.

6 A Captain Mike Jones.

7 Q And where do you work at, sir?

8 A The Spartanburg jail.

9 Q And what's your position there, sir?

10 A It's a captain.

11 Q And how long have you been there, sir?

12 A Since 1984.

13 Q And is one of duties maintaining the records or I. D.
14 records over at the jail?

15 A Yes, sir.

16 Q In this case let me show you what's been marked as
17 State's Exhibit No. 89. Is this a picture that appears to
18 be from the arrest of the defendant?

19 A Yes, sir.

20 Q And was that -- that photograph come from y'all's
21 records, sir?

22 A Yes, sir.

23 MR. BARNETTE: Your Honor, I'd like to enter State's
24 Exhibit No. 89 into evidence at this time.

25 MR. SCHULTZ: No objection.

J. C. Steadman
Direct examination by Mr. Barnette

1 THE COURT: It is admitted.

2 (Photograph marked State's Exhibit No. 89.)

3 MR. BARNETTE: Your Honor, I would like to publish it
4 to the jury at this time.

5 THE COURT: You may.

6 Q Is this the photo that we entered into evidence that
7 came from y'all's records, sir?

8 A Yes.

9 MR. BARNETTE: Thank you, Your Honor.

10 Q Please answer any -- thank you, sir. Please answer
11 any questions Mr. Schultz may have for you, sir.

12 MR. SCHULTZ: I have nothing for this witness.

13 THE COURT: You may step down.

14 MR. BARNETTE: I would ask this witness be excused,
15 Your Honor.

16 THE COURT: You may.

17 (Whereupon, the witness was excused.)

18 MR. BARNETTE: Your Honor, I would like to call
19 Investigator Steadman to the stand.

20 J. C. STEADMAN, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE

23 Q If you would, sir, please state your full name for the
24 record?

25 A J. C. Steadman.

J. C. Steadman

Direct examination by Mr. Barnette

1 Q Where do you work at, sir?

2 A Spartanburg Public Safety.

3 Q And what's your position there, sir?

4 A I'm a criminal investigator.

5 Q And how long have you been there, sir?

6 A Sixteen years.

7 Q Back on February the 2nd of 2006 was you part of the
8 team that investigated the murder and ABWIK in this case?

9 A Yes, I was.

10 Q And was you called to the scene?

11 A Yes, I was.

12 Q If you would, tell the jury about that, sir.

13 A I was notified to respond to Theodosia and Chester for
14 a homicide. And I responded to that location and was
15 directed to start going door to door trying to find out any
16 leads or any witnesses that may have seen something.

17 I was also directed to go to a house where one of the
18 subjects that had been shot had ran to. And that's where
19 the police were dispatched to.

20 Q And is that in the city of Spartanburg?

21 A Yes, it is.

22 Q And was this location also in the county of
23 Spartanburg?

24 A It is.

25 Q After that happened, what happened next, sir?

J. C. Steadman

Direct examination by Mr. Barnette

1 A We continued to look for witnesses. We then regrouped
2 back at the police department. A phone had been recovered
3 out of the Toyota truck that was down the embankment. And
4 I believe it was relayed to me that that was the phone that
5 belonged to Michael.

6 Q Is that State's Exhibit No. 8, is that the phone that
7 y'all located outside the Toyota 4Runner?

8 A Yes, it is.

9 Q And once you recovered that phone, what did you do
10 with it?

11 A We were told that Mr. Hunter had used the phone to
12 call someone prior to the shooting. So we checked the
13 phone to see what numbers were dialed from this phone.

14 Q Okay. And what number did you find? What numbers did
15 you find that were dialed on the phone?

16 A There was two recent calls made from the phone. One
17 was (864)921-████ and the other was (864)415-████

18 Q If you would, could you write down the 921 number,
19 please, on this sheet of paper? And what area code was
20 that, sir?

21 (Pause.)

22 A 864.

23 Q And if you would write down, was that the phone number
24 that was located on Michael Proctor's phone?

25 A Yes, yes, it is.

J. C. Steadman
Direct examination by Mr. Barnette

1 Q If you can, just write down that or write some
2 identification if that was the number that was on the
3 phone.

4 (Pause.)

5 A Do you want me to put my name on it?

6 Q You can, sir, if you would like.

7 MR. BARNETTE: Your Honor, I would like to mark
8 this -- place this into evidence. I marked it as State's
9 Exhibit No. 97 for I. D. at this time.

10 MR. SCHULTZ: No objection.

11 THE COURT: It is admitted.

12 MR. BARNETTE: Thank you, Your Honor.

13 (Paper with phone number marked State's Exhibit No.
14 97.)

15 MR. BARNETTE: May I publish to the jury, Your Honor?

16 THE COURT: You may.

17 Q If I understand right, sir, this was the cell number
18 that was located on the phone of Michael Proctor.

19 A Correct.

20 Q And that was one of the previous phone calls that was
21 made.

22 A That was one of the recent calls made on that phone.

23 Q And it came from this phone right here, the one you
24 found that was Michael Proctor's phone.

25 A That's the phone I was told that they recovered out of

J. C. Steadman
Direct examination by Mr. Barnette

1 the Toyota that was wrecked in the woods.

2 Q What else did you do after that, sir?

3 A On -- I attempted to dial the number that was located,
4 and it come up busy. I called the other number that was
5 located in the phone and it -- I got a voice mail that said
6 you've reached Wayne with Wireless Dimensions. Those were
7 the only two numbers that we found that had recently been
8 called.

9 Q So you found out the other number, the 415 number, was
10 actually a phone company, or wireless.

11 A A phone company, correct.

12 Q And later on did y'all find who the 921 number, [REDACTED]
13 belonged to?

14 A Yes.

15 MR. SCHULTZ: Your Honor, I'm going to object to this.
16 I'm not sure if he's testifying of personal knowledge or
17 not.

18 A I obtained the search warrant for that telephone
19 number.

20 Q That's my next question. How did you? Did you obtain
21 information on that telephone?

22 A I executed a search warrant for that telephone number
23 with Singular Wireless.

24 Q And was this cell phone later found?

25 A Yes. I was told it was.

J. C. Steadman
Direct examination by Mr. Barnette

1 Q I'll let somebody else tell about that. And who
2 did -- it led to this phone being in whose possession, sir?

3 A Whose possession was the phone found to be in?

4 Q Yes, sir. In other words, discovered was using the
5 phone.

6 MR. SCHULTZ: Your Honor, I'm going to object to this
7 again.

8 THE COURT: Sustained.

9 Q What did you do after that, sir?

10 A Well, we began investigating the theft of a gun that
11 was reported about around the time of the shooting. And we
12 spoke with a young lady named Amy Hunter who had reported
13 her firearm stolen.

14 Q And what kind of firearm was it, sir?

15 A It was a 9mm Taurus, I believe.

16 Q And did you verify where this weapon was purchased
17 from?

18 A Yes. She, she told us that she had purchased it from
19 EZ Money Pawn Shop.

20 Q And did y'all go to the pawn shop and locate that
21 receipt, sir?

22 A Yes, we did.

23 Q And who had access, access to that gun? Where was
24 that gun stolen from?

25 A It was out of her vehicle.

J. C. Steadman
Direct examination by Mr. Barnette

1 MR. SCHULTZ: Your Honor, again, objection. I'm not
2 sure.

3 THE COURT: Sustained.

4 Q Afterwards was it found that 9mm was used?

5 A Yes.

6 Q And was those shell casings and that evidence sent to
7 SLED at a later time?

8 A Yes, they were.

9 Q And afterwards did y'all execute a search warrant on a
10 location of [REDACTED] Drive?

11 A Yes, we did.

12 Q And whose residence was that?

13 A That was the residence of Charlie Teamer.

14 Q And when you executed the search warrant, who went
15 with you to execute the search?

16 A Investigator Gardner, Investigator Forrester. I
17 believe Investigator Boyd.

18 Q And what did y'all find? What? Did y'all find any
19 latex gloves there, sir?

20 A Yes. We found a box of white latex gloves.

21 MR. SCHULTZ: Objection, Your Honor. Leading. I hate
22 to do this, but this is too leading.

23 THE COURT: Overruled.

24 MR. BARNETTE: Thank you, Your Honor.

25 Q Let me show you what's been marked as State's Exhibits

J. C. Steadman
Direct examination by Mr. Barnette

1 73 and 74. Do those pictures fairly represent what y'all
2 saw in the residence?

3 A Yes, they do.

4 MR. BARNETTE: Your Honor, I would like to enter
5 State's Exhibits 73 and 74 into evidence at this time.

6 MR. SCHULTZ: Just for clarification purposes, were
7 these taken by the witness?

8 MR. BARNETTE: No, sir. Officer Gardner is going to
9 testify next to that.

10 MR. SCHULTZ: No objection.

11 (Photographs marked State's Exhibits Nos. 73 and 74.)

12 MR. BARNETTE: Your Honor, permission to publish these
13 to the jury, Your Honor.

14 THE COURT: You may.

15 Q Let me show you State's Exhibit No. 73. And who else
16 lived with Charlie Teamer at that location, sir?

17 A I believe his mother and the father or stepfather.
18 I'm not sure of the relation.

19 Q And was this the box of latex gloves that was
20 collected from his home?

21 A Yes, it is.

22 Q And is State's Exhibit 74 just a close-up picture of
23 that box?

24 A Yes, it is.

25 Q Later on was there a search warrant executed on a [REDACTED]

J. C. Steadman
Direct examination by Mr. Barnette

1 [REDACTED] location?

2 A There was. But I wasn't present for a search warrant
3 executed at that address.

4 Q And did Investigator Gardner collect the latex gloves?

5 MR. SCHULTZ: Your Honor, objection.

6 THE COURT: Overruled.

7 A He did collect them. I photographed the items that
8 were collected.

9 MR. BARNETTE: One moment, Your Honor, please.

10 Q And was there a phone records executed on the 921-[REDACTED]
11 number?

12 A Was there a search warrant executed on that?

13 Q For that information from that phone company?

14 A Yes, there was.

15 Q And was there also a search warrant executed for
16 Mr. Proctor's cell phone, the 357 number?

17 A I believe there was, but I'm not sure who executed it.
18 I may have done the return on it. I'm not sure. I would
19 have to see that before I could say.

20 Q Later on, the [REDACTED] Street, who lived at
21 that location, sir?

22 A I believe that was the home of Osia Feaster.

23 Q Okay. Let me show you State's Exhibit No. 69. Was
24 that the home of Ms. Feaster at [REDACTED] Street?

25 A Yes, it is.

J. C. Steadman
Cross-examination by Mr. Schultz

1 Q And who is Osia Feaster in relationship to Mr. Teamer?

2 MR. SCHULTZ: Objection, Your Honor. I'm not sure
3 he's testifying from his personal knowledge.

4 THE COURT: Sustained.

5 Q So this location is [REDACTED] Street.

6 A That's the number on the picture, yes, sir.

7 Q Please answer any questions Mr. Schultz may have for
8 you, sir. Thank you.

9 CROSS-EXAMINATION

10 BY MR. SCHULTZ

11 Q Now, as part of your investigation you found
12 Mr. Proctor's phone, correct?

13 A That's what the forensic investigator found, I
14 believe, in the Toyota.

15 Q Were there any other numbers other than 921-[REDACTED] on
16 there?

17 A 415-[REDACTED] was also found.

18 Q 415-[REDACTED]

19 A Those were the two most recent calls. I'm not sure if
20 there was more, but those were the last couple of numbers
21 called, dialed from that phone.

22 Q But there were other phone numbers called, correct?

23 A I don't remember, but I know that those were the last
24 couple called. I'm not sure how many number were totally
25 on there.

J. C. Steadman
Cross-examination by Mr. Schultz

1 Q But there were a lot of numbers, correct?

2 A I don't know. I don't remember.

3 Q You don't know or you don't remember?

4 A I don't remember.

5 Q Wouldn't you find that during the investigation of
6 this crime an important thing to do, to look at other
7 numbers?

8 A Mr. Proctor had told investigators that Mr. Hunter --

9 Q No. I asked you a question. It's yes or no.
10 Wouldn't you find it important to look at other numbers?
11 Correct?

12 MR. BARNETTE: I think he has a chance to explain his
13 answer.

14 THE COURT: He does. Answer yes or no. And you can
15 explain it if you need to.

16 A It is important, and that's why a search warrant was
17 obtained for that phone number for those records, to look
18 at all of the numbers dialed. But at the time Mr. Proctor
19 had told us that Mr. Hunter had used his phone to call the
20 person who shot them. So those were the numbers we were
21 interested in, the last couple of numbers dialed.

22 Q So 415-████ did you ever follow up with that?

23 A The only thing I got from that was the Wayne with
24 Wireless Dimension.

25 Q Did you ever meet Wayne from Wireless Dimension?

J. C. Steadman
Cross-examination by Mr. Schultz

1 A No, I didn't.

2 Q Did you send any officers out to meet with this Wayne
3 from Wireless Dimensions?

4 A I didn't, no.

5 Q Did you ever send a subpoena out to look for the 415
6 number?

7 A I didn't, no.

8 Q Okay. So you just, you just assumed that it was going
9 to be 921, correct? And that's the only subpoena you sent
10 out, even though according to your testimony that there
11 were other numbers found on that phone that you did not
12 investigate, correct?

13 A I didn't, no. It wasn't my -- I wasn't the lead
14 investigator. This was the numbers that I was following up
15 on. I did other search warrants on other numbers.

16 Q You did other search warrants on other numbers.

17 A Correct.

18 Q Okay. But, nevertheless, you didn't do it on the 415
19 number, correct?

20 A I don't think I did, no.

21 Q You don't know.

22 A If I did it would be in the book. And I would have to
23 look and see if I actually did one on that.

24 Q Okay. Where is your book?

25 A There's a copy there, and the other one is with the

J. C. Steadman
Cross-examination by Mr. Schultz

1 lead investigator.

2 Q All right. Did you want to look at that book before
3 you go on?

4 A If you want me to.

5 Q That will be excellent.

6 (Pause.)

7 A I don't see where one was done, a search warrant on
8 that number.

9 Q What are you talking about, what number? Are you
10 talking about the 415- [REDACTED] number?

11 A Correct.

12 Q But that could have been an important lead, correct?

13 A I believe it was checked out, but I'm not sure who
14 checked it out.

15 Q But it was, it wasn't you, correct?

16 A It wasn't me.

17 Q Okay. Nevertheless, you think that this could have
18 been an important lead in the case.

19 A It could have been, I guess. But it come back to
20 Wireless Dimension.

21 Q All right. But yet there was another person on the
22 answering machine on that phone, correct?

23 A Yes.

24 Q Okay. And a human voice, correct?

25 A Yes.

J. C. Steadman
Cross-examination by Mr. Schultz

1 Q Okay. Now, you said there were numbers before that,
2 correct, that were called to Mr. Proctor's phone?

3 A There may have been. I'm not sure of those numbers.

4 Q Okay. But were there numbers there?

5 A I don't know.

6 Q You don't know. Okay. But, nevertheless, you looked
7 at the phone, correct?

8 A Correct.

9 Q Okay. So your testimony to the Court is that there
10 were two numbers there for sure. But you don't know if
11 there were other numbers there.

12 A I didn't write those numbers down. The numbers I was
13 concerned with was the most recently called numbers.

14 Q So there were numbers. You just didn't write them
15 down.

16 A I don't know.

17 Q But you just said there were numbers.

18 A I'm sure there was, but I don't know. I don't know
19 what they were.

20 MR. BARNETTE: Your Honor, I'm going to object at this
21 time. This has been asked and answered.

22 THE COURT: Sustained.

23 MR. SCHULTZ: Beg the Court's patience.

24 (Pause.)

25 MR. SCHULTZ: That's all I have for this witness, Your

J. C. Steadman
Redirect examination by Mr. Barnette

1 Honor.

2 MR. BARNETTE: Just a few on.

3 REDIRECT EXAMINATION

4 BY MR. BARNETTE

5 Q Let me show you, sir, what's been marked as State's
6 Exhibits 30, 32, 33, 34 and 36. Can you tell us what those
7 are, sir?

8 A All of these are search warrants.

9 Q And was those for phone records, sir?

10 A Yes. All of them is for telephone records.

11 Q Let me show these to Mr. Schultz.

12 (Pause.)

13 MR. SCHULTZ: No objection, Your Honor.

14 THE COURT: Let me see y'all just a minute.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 Q Let me show you State's Exhibit No. 32. Was this the
18 records that you asked to obtain concerning the 921-
19 number?

20 A Yes, they are.

21 Q And the -- and also I'm looking at a search warrant
22 and records, also look at 357- or

23 A 357-

24 Q Yes, sir. Did you also obtain those records?

25 A I did. I did the return on it from the records that

J. C. Steadman

Redirect examination by Mr. Barnette

1 were returned from the phone company for that number.

2 Q And the reason why you was interested in those two
3 numbers that Mr. Schultz asked you about, and the two you
4 mentioned, did you receive information that these phone
5 calls were made right before the shooting occurred?

6 A Yes, yes, sir.

7 Q And was that the reason why you was interested in
8 those phone numbers instead of the other phone numbers?

9 A That's correct.

10 MR. BARNETTE: One moment, Your Honor.

11 Q Please, answer any other questions Mr. Schultz may
12 have.

13 MR. SCHULTZ: Nothing else, Your Honor.

14 THE COURT: You may step down.

15 Ladies and gentlemen, we're going to break for the
16 evening, and so let me remind you of the caution I have
17 given you previously.

18 Do not discuss the case with anybody at all in any
19 fashion whatsoever, including your fellow jurors. Do not
20 permit yourselves to be exposed to any type of media
21 coverage that might relate to the case. No television, no
22 radio, no newspaper. Do not conduct any research on your
23 own. No internet research, no visiting purported crime
24 scenes, no independent investigation or research.

25 Again, you have to base your decision on what you see

1 and hear in the courtroom. You can't supplement that with
2 outside information or research.

3 Okay. With that, have a good evening. Please report
4 back to your jury room at 9:30 in the morning, 9:30 in the
5 morning.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Court is in recess until 9:30 in the
9 morning.

10 END OF PROCEEDINGS JANUARY 14, 2008

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1 (Proceedings January 15, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters to address before
5 the jury is brought in?

6 MR. BARNETTE: Your Honor, I have State's Exhibit 79.
7 I showed it to Mr. Schultz. I have it in the D. V. D.
8 player. There's other things on it. We've got it
9 hopefully to the point where it will play, where the part
10 we want. So I just wanted to let the Court know about that
11 ahead of time.

12 THE COURT: This is a video?

13 MR. BARNETTE: It will be a video. We won't show it
14 until the second witness. We have one witness before him.
15 It will be Officer St. Louis. It's where he tried to
16 initiate a traffic stop on the defendant on the early
17 morning hours of February 3rd of 2006.

18 THE COURT: All right. And it's admitted without
19 objection?

20 MR. SCHULTZ: Your Honor, I plan on objecting to that,
21 to the introduction of the video, at the proper time.

22 THE COURT: Oh, okay.

23 MR. BARNETTE: I just wanted to let you know where it
24 was, Your Honor, because I do have it marked to the
25 specific point there. And I'll the officer testify to lay

1 the foundation for it. If you need for me to pull it out,
2 I'll put it out.

3 THE COURT: Let's address that. If you're going to
4 object to it, let's address that now.

5 MR. SCHULTZ: Your Honor, I believe that this is a
6 past conviction that is, I believe, more prejudicial than
7 probative. I'm not sure what this is meant to prove.

8 THE COURT: Well, now, you're not introducing any
9 evidence of a conviction. You're introducing evidence of
10 simply trying to apprehend the defendant as I understand.

11 MR. BARNETTE: Exactly. He's initiating a traffic
12 stop. He follows him, you know, calls in the BOLO when
13 following. Then another officer takes it up later with the
14 county. The county -- you know, he wrecks, and he gets
15 captured at the scene there. The officer I. D.'d him
16 there. I've told them not to mention anything about any
17 prior convictions in this case.

18 THE COURT: Okay.

19 MR. SCHULTZ: Again, Your Honor, I believe this is,
20 this is too prejudicial. I don't think the probative
21 nature of it tends to prove any facts more relevant or less
22 relevant than anything else in this case. I'm not sure if
23 this is part of the res gestae, and that's my objection.

24 THE COURT: All right. I overrule the objection.

25 All right. Bring the jury in.

1 MR. BARNETTE: Thank you, Your Honor.

2 MR. SCHULTZ: Your Honor, just one more thing. I'd
3 like to renew my motion for sequestration of all witnesses
4 for the state and for the defense.

5 THE COURT: Well, you don't have to renew it. I've
6 already ordered it. Have you got witnesses in here?

7 MR. SCHULTZ: Yes, I do, Your Honor. I have some.

8 THE COURT: Well, I mean, all witnesses have to be
9 sequestered. I've already ordered that.

10 MR. SCHULTZ: That's fine, Your Honor. That's all I
11 have.

12 THE COURT: All right. Bring the jury in, please.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: Good morning, ladies and gentlemen.

16 As you know, when he recessed yesterday the state was
17 in the midst of their presentation of evidence, and so we
18 will continue with that presentation this morning.

19 Mr. Stalvey.

20 MR. STAVLEY: Thank you, Your Honor.

21 The state would call Investigator Gardner of the
22 Spartanburg Public Safety Department.

23

24

25

James Gardner
Direct examination by Mr. Stalvey

1 JAMES GARDNER, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. STALVEY

4 Q Investigator, if you could, please give your full name
5 for the record.

6 A My name is James Gardner.

7 Q And who do you work for?

8 A I'm an investigator with the city of Spartanburg, the
9 Public Safety Department.

10 Q And how long have you worked for the Spartanburg
11 Public Safety Department?

12 A Just over ten years now.

13 Q And what are your duties there as an investigator?

14 A I primarily handle burglaries, property crimes. But
15 of course the department size, major crimes, we all pitch
16 in and help out together.

17 Q Okay. And do you as part of your duties, do you
18 participate in the execution of search warrants?

19 A Yes, sir, I do.

20 Q And did you participate in the execution of a search
21 warrant back in 2006 at [REDACTED] Road?

22 A Yes, sir, I did.

23 Q And could you describe to this jury what your role was
24 in that search warrant?

25 A Well, I actually, I executed the search warrant.

James Gardner
Direct examination by Mr. Stalvey

1 Procedure requires whoever seeks the warrant, someone
2 separate has to actually carry it out and conduct it once
3 we get to the location and find the property that we need
4 to seize. And so I executed the warrant. I explained it
5 to the residents that was there, Ms. Teamer and her -- I
6 believe it was her husband or man that lived there.

7 Once we located the items that we wanted to take in as
8 evidence, I personally seized the property, made notations
9 as to where we got it from and then did what we call a
10 return. We list it on the back page of the warrant and
11 leave a copy with the people at the house or leave it at
12 the place we do the search warrant if there's nobody
13 actually there.

14 Q And what day did you execute that search warrant?

15 A I believe it was the 9th of February approximately
16 7:20 p.m. in the evening.

17 Q 2006?

18 A Yes, sir, 2006.

19 MR. STAVLEY: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 Q Investigator, I show you what's marked as State's 98
22 and 99.

23 A Yes, sir.

24 Q Do you recognize those items?

25 A I do.

James Gardner
Cross-examination by Mr. Schultz

1 Q If you could, tell the jury what those are.

2 A The first item is a blue latex glove. It was found
3 within the room of which we were told was Mr. Teamer's
4 bedroom located there inside the house.

5 And then the second item was a box of white latex
6 gloves. It was actually found in the laundry room there in
7 the interior of the house.

8 Q And you recovered both of those items as a result of
9 this search warrant?

10 A Yes, sir, I did. I notated them.

11 Q Excuse me.

12 MR. STALVEY: Your Honor, at this time I move to enter
13 what's marked as State's 98 and 99 into evidence.

14 MR. SCHULTZ: Without objection.

15 THE COURT: They are admitted.

16 (Box of gloves marked State's Exhibit No. 98; blue
17 glove marked State's Exhibit No. 99.)

18 MR. STAVLEY: Beg the Court's indulgence.

19 (Pause.)

20 Q Please answer any questions Mr. Schultz may have for
21 you.

22 A Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. SCHULTZ

25 Q Investigator Gardner, you executed that search warrant

James Gardner
Cross-examination by Mr. Schultz

1 on February the 9th of 2006?

2 A Yes, sir, February 9th of 2006 at 7:20 p.m.

3 Q And what address was that?

4 A [REDACTED] Circle.

5 Q Now, when you executed that search warrant did you go
6 into any other rooms?

7 A Yes, sir. We searched the entire house.

8 Q Searched the entire house. And did you find any
9 clothes or anything?

10 A Let's see. Yes, sir, we did.

11 Q And what clothes did you find?

12 A Says here I recovered one pair of black jeans, one
13 black long-sleeve t-shirt, one camo jacket, one pair of
14 camo pants all found in the laundry basket in Charlie's
15 room, which was back over here to the left.

16 Q Did you ever test these?

17 A I personally did not. I just collected it and placed
18 it into evidence. What procedures happened after that, I
19 don't test the clothing.

20 Q All right.

21 A I'm not qualified.

22 Q Referring back to these gloves, referring to State's
23 Exhibit 98, you found this where? What room did you find
24 that in?

25 A The laundry room.

James Gardner
Cross-examination by Mr. Schultz.

1 Q Was any reason given for, for having these?

2 A I have no idea what they were using gloves for in the
3 laundry room. We just determined that gloves may be of
4 interest, may be of particular evidentiary reason to seize
5 them, simply because I believe, I believe there was a
6 question of gloves being used in the incident, in the
7 assault.

8 Q But, nevertheless, people have gloves in their houses
9 from time to time, correct?

10 A Well, I'm sure they do. I mean, my wife keeps gloves.
11 Well, not latex gloves, but she keeps cleaning gloves.

12 Q Keeps cleaning gloves to clean, right?

13 A To clean.

14 Q Okay. And latex gloves like that could be used to
15 maybe take out the trash, correct?

16 A I don't know. The only places I've seen gloves like
17 that is what we use at the police department and what --
18 you know, at the hospitals. So I, you know --

19 Q But these are readily available in any store, correct?

20 A I don't know where you go buy them. I don't know
21 where we get ours at. To me they're usually used with the
22 departments or institutional usage.

23 Q Referring back to this glove right here, was this
24 tested or anything?

25 A If it was, sir, I'm not aware. Like I said, I don't

James Gardner
Cross-examination by Mr. Schultz

1 do testing. I can seize stuff and document stuff, but I
2 don't actually test stuff.

3 Q All right.

4 MR. SCHULTZ: Beg the Court's patience.

5 (Pause.)

6 Q Did you have any other involvement in this case?

7 A The night that it occurred I responded directly to the
8 hospital where Mr. Proctor was being treated.

9 Q Okay. Did you interview Mr. Proctor?

10 A I did.

11 Q All right. And in your interview he said that he
12 picked a suspect off Wofford Street, correct?

13 A I'd have to actually see my statement that we
14 collected.

15 Q All right.

16 A But he did pick him up. I can't say that it was
17 Wofford Street.

18 MR. SCHULTZ: To refresh the witness' memory, Your
19 Honor.

20 Q What does that say right there?

21 A Somewhere off Wofford Street. It was somewhere in
22 that neighborhood over there. The vicinity that he was
23 trying to give, we were just trying to pinpoint a location
24 to start, to start a search for maybe.

25 Q Now, when you interviewed Mr. Proctor did he give you

James Gardner
Cross-examination by Mr. Schultz

1 any other information as far as drug abuse?

2 A Such as?

3 Q Drug abuse.

4 A No, sir. He himself didn't give me any information
5 about it. He, he, he wasn't very forthcoming with drug
6 usage that night.

7 Q Okay.

8 A He had been shot quite a few times.

9 Q Referring to your report right here, could you read
10 that underlined part right there?

11 A Okay. That was talking about his parents though. You
12 asked me about him. His parents told me he had used drugs.

13 Q That line right there says he used both powder cocaine
14 and heroine, correct?

15 A His parents though. You didn't ask me.

16 MR. STAVLEY: Objection, Your Honor. It's hearsay,
17 Your Honor.

18 THE COURT: Well, let me see y'all just a minute.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 THE COURT: I sustain the objection.

22 Q Referring to your report again.

23 A Yes, sir.

24 Q Did you read this, this right there?

25 A "They all did some coke while at Whispering Pines --

James Gardner
Cross-examination by Mr. Schultz

1 Michael, Tony and Rick -- before taking Rick home."

2 Q So Mr. Proctor did admit to drug use, correct?

3 A Not initially. That's what I was saying when you
4 first asked me. He wasn't very forthcoming with it. The
5 next day when I went to reinterview him and I explained to
6 him the situation as to what we had discovered and all, he
7 did admit to being in the company of others and partaking
8 of drugs.

9 Q Did -- now, Mr. Proctor stated that he also remembered
10 nothing and that he remembered while at the house waiting
11 for the police he noticed a dark in color late model Honda
12 Civic creeping along the shooting -- the street where the
13 shooting took place, correct?

14 A You said first he remembered nothing?

15 Q No. I'm referring to your report right here.
16 "Mr. Proctor stated that he remembered while at the house."

17 MR. STAVLEY: Your Honor, I'd object to the form of
18 the question. He hasn't asked a question, I mean.

19 THE COURT: All right. Put it in the form of a
20 question.

21 Q Did you say or did you -- did Mr. Proctor say to you
22 -- "Mr. Proctor stated that he remembered while at the
23 house waiting for the police he noticed a dark in color
24 late-model Honda Civic creeping along the street where the
25 shooting took place."

James Gardner
Redirect examination by Mr. Stalvey

1 A Yes, sir, the next day when I reinterviewed him.

2 Q Yes or no?

3 A Oh, yeah. He said he saw a car.

4 Q All right.

5 A Can I add something about the gloves you asked me
6 awhile ago?

7 Q No. That's fine.

8 A Okay.

9 MR. STAVLEY: Your Honor, he did ask him.

10 MR. SCHULTZ: I'm not sure.

11 THE COURT: Is that an objection?

12 MR. STAVLEY: Withdrawn, Your Honor.

13 MR. SCHULTZ: That's all I have of this witness.

14 REDIRECT EXAMINATION

15 BY MR. STALVEY

16 Q Investigator, Mr. Schultz just asked you or had asked
17 you during his cross-examination about gloves.

18 A Yes, sir. When I was rereading it here -- you have to
19 understand this is back in the early part of 2006. And I
20 apologize for not being as clear on these. But the gloves
21 themselves, the reason why they were seized and taken,
22 whenever I first arrived at the emergency room, Mr. Proctor
23 had been shot several times. We didn't know if he was
24 going to make it through or if he was going to, you know,
25 decease right there on the emergency room table.

James Gardner
Recross-examination by Mr. Schultz

1 So I was trying to get as many details from him as I
2 could about what had just happened to him. And so one of
3 the things he stated was when he picked up this gentleman
4 somewhere in the neighborhood, he really wasn't sure of the
5 area, that he was directed to go to where the incident
6 actually took place.

7 But he said when he, when he heard the first shot or,
8 you know, realized that the passenger had been shot, when
9 he turned to look he noticed the suspect wearing these
10 white plastic gloves. And that was vivid in his mind at
11 the time he was sitting there on that emergency room table.

12 So naturally I, you know, made a highlight of that
13 because we figured whoever was the suspect that did this
14 shooting thought enough to, you know, use plastic gloves
15 during the commission.

16 So whenever we found the gloves, they were of interest
17 to us. And that's why we took them, not simply because
18 people use plastic gloves in cleaning. There was a
19 specific reason. We were looking for gloves, and we found
20 both within the confines of the home.

21 Q Thank you, sir.

22 MR. SCHULTZ: Just one on recross, Your Honor.

23 RECROSS-EXAMINATION

24 BY MR. SCHULTZ

25 Q When you interviewed Mr. Proctor --

James Gardner
Redirect examination by Mr. Stalvey

1 A Excuse me?

2 Q When you interviewed Mr. Proctor --

3 A Yes, sir.

4 Q -- you said that he really wasn't sure of the area
5 that they picked the suspect up, correct? You just said in
6 your testimony. Is it yes or no?

7 A I think -- well, I don't think he was exact on the
8 location that particular night.

9 The next day when I reinterviewed him after he has had
10 time to, one, recover a little bit and get his senses back
11 to him, then he was a little more specific on the
12 directions and location.

13 The way he explained it to me that night, you know,
14 after being shot six or seven times or however many times
15 it was, he picked up somebody and that person directed them
16 which way to go, turn left here, go right there, you know,
17 around the corner. The next thing you know they wound up
18 on Chester Street. So where they actually started at, I
19 could not determine that particular night.

20 Q That's fine. That's all I have.

21 REDIRECT EXAMINATION

22 BY MR. STALVEY

23 Q Investigator, do you know whether Mr. Proctor took the
24 police to where he picked the suspect up?

25 A I believe he, once he was able to go there, I believe

Timothy Allen St. Louis, Jr.
Direct examination by Mr. Barnette

1 they went back. I was not --

2 MR. SCHULTZ: Your Honor, he's not testifying to
3 personal knowledge, I believe.

4 THE COURT: Sustained.

5 MR. STAVLEY: No further questions, Your Honor. We
6 would ask that this witness be excused.

7 THE COURT: You may step down.

8 (Whereupon, the witness was excused.)

9 MR. BARNETTE: I would like to call officer St. Louis
10 to the stand, Your Honor.

11 TIMOTHY ALLEN ST. LOUIS, JR.,
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BARNETTE

14 MR. SCHULTZ: Your Honor, before we begin, I object to
15 this witness' testimony or proposed witness' testimony.
16 Again, I would like to renew my objection.

17 THE COURT: Let me see y'all just a minute.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: Overrule the objection.

21 Q If you would, sir, state your full name for the
22 record.

23 A Timothy Allen St. Louis, Jr.

24 Q And where do you work at, sir?

25 A Spartanburg County.

Timothy Allen St. Louis, Jr.
Direct examination by Mr. Barnette

1 Q And how long have you worked at Spartanburg County,
2 sir?

3 A About a year and a half now.

4 Q Before that where did you work at, sir?

5 A Spartanburg Public Safety Department.

6 Q And how long did you work for them, sir?

7 A Four years.

8 Q And what was your position with them, sir?

9 A Senior patrol officer.

10 Q Back on February -- well, the night of February the
11 2nd and early morning hours of February the 3rd of 2006,
12 where was you working then, sir?

13 A I'd just left the police department to go to my area,
14 which was Westgate. And I was on John B. White going
15 towards the Westgate area.

16 Q And which department was you working for then, sir?

17 A The Spartanburg Public Safety Department.

18 Q If you would, tell the jury about what you did that
19 night, sir.

20 A I was going on John B. White towards Westgate, and I
21 was in the lane closest to the median. And as I got to
22 where the Li'L Cricket is on John B. White a blue Chevy
23 Caprice with tag number 849 UPU pulled out of the parking
24 lot towards Westgate and came all the way out in front of
25 me. I had to stop to keep from hitting the vehicle. The

Timothy Allen St. Louis, Jr.
Direct examination by Mr. Barnette

1 vehicle had no lights on.

2 And I stayed behind the vehicle probably figuring it
3 was going to be a D. U. I. He turned down Elliott Street,
4 which is just past the Li'L Cricket. And I turned down
5 behind him. I cut my in-car video on to record his driving
6 because he started weaving a little bit, and in the center
7 lane.

8 We made a right onto Overbrook Circle. And at that
9 time I observed him toss what looked like a beer can out
10 the window. I went ahead and initiated my blue lights and
11 sirens. He did not stop. He went to Crescent Avenue and
12 made a right on Crescent Avenue back towards John B. White.

13 And at that time I had to terminate my pursuit by our
14 department's policy. And I gave a BOLO out to dispatch for
15 that car. I only seen one person in the vehicle and
16 proceeded to give the BOLO in hopes that somebody else
17 could catch him.

18 Q Let me show you a map real quick, sir.

19 (Pause.)

20 MR. BARNETTE: Your Honor, I would like to enter
21 State's Exhibit No. 1 into evidence at this time, as well
22 as State's Exhibit 1-A.

23 MR. SCHULTZ: No objection to the maps, Your Honor.

24 THE COURT: They are admitted.

25 (Maps marked State's Exhibit No. 1 and 1-A.)

Timothy Allen St. Louis, Jr.
Direct examination by Mr. Barnette

1 MR. BARNETTE: May I publish these to the jury, Your
2 Honor?

3 THE COURT: You may.

4 Q If you would, sir, just step down for a second.

5 (Whereupon, the witness left the stand.)

6 Q If you would, sir, come over here and show
7 approximately where you were when you made the -- when you
8 started making the traffic stop, sir, using this as John B.
9 White Boulevard, Reidville Road, right there?

10 A Okay.

11 Q And you can use this pen to point, sir.

12 A Okay. All right. Right in here is the Li'L Cricket.
13 That's where he pulled out from. We went down John B.
14 White. And this is Elliott Street. He made a right onto
15 Elliott Street and then a right onto Overbrook Circle which
16 comes back out -- I actually came down this way and came
17 back out towards Joan B. White here. Right here is where
18 he turned onto Crescent, and back to John B. White. And
19 that's where I terminated my pursuit, right in here.

20 Q And you did turn on your blue lights and siren?

21 A Yes, I did.

22 Q And he would not stop?

23 A No, sir.

24 Q And how many people was in the car, again?

25 A The only one I saw was one.

Timothy Allen St. Louis, Jr.
Direct examination by Mr. Barnette

1 Q And what was the license plate number again?

2 A It was 849 UPU.

3 Q And who did that car come back registered to?

4 A Came back to a Osia -- I'm not quite sure how to
5 pronounce it. It was O-S-I-A Feaster.

6 Q Osia Feaster.

7 A Osia.

8 (Whereupon, the witness returned to the stand.)

9 Q And did you have a copy of the video in this case
10 also, sir?

11 A Yes, sir. It was turned into evidence as well.

12 Q State's Exhibit 79, have you viewed this video or this
13 C. D. or D. V. D., sir?

14 A Yes, I have.

15 Q Is that a fair representation of what happened that
16 night?

17 A It is.

18 MR. BARNETTE: Your Honor, at this time I would like
19 to play or enter the D. V. D., State's Exhibit 79, into
20 evidence at this time.

21 MR. SCHULTZ: Your Honor, I would object to the
22 introduction of this tape. I believe the time that is on
23 this happened not in close proximity to the crimes that the
24 state alleged that we are trying Mr. Teamer on. So I
25 believe this is totally irrelevant to the murder and the

Timothy Allen St. Louis, Jr.
Direct examination by Mr. Barnette

1 assault and battery with intent to kill.

2 THE COURT: Overrule the objection.

3 (Videotape marked State's Exhibit No. 79.)

4 Q What day and what time did your pursuit approximately
5 start, sir?

6 A Again, on February 3rd of 2006 at approximately
7 12:57 a.m.

8 MR. BARNETTE: Your Honor, permission to publish the
9 video to the jury at this time.

10 THE COURT: You may.

11 (Whereupon, the D. V. D. was played for the jury.)

12 Q Are your blue lights on, sir?

13 A Yes, no, they aren't.

14 (Whereupon, the D. V. D. was played for the jury.)

15 Q Did you terminate your pursuit at this time, sir?

16 A I did.

17 Q And could you see him as he went up Reidville Road or
18 had he already went up the road?

19 A He'd already made the corner in front of the airport
20 or Ammons Road by the time I made my turn.

21 Q Okay. And you made a BOLO out at that time.

22 A I did.

23 Q And what's a BOLO? Can you tell the jury what a BOLO
24 is?

25 A What it is, it's a be-on-the-lookout. It impacts all

Timothy Allen St. Louis, Jr.
Direct examination by Mr. Barnette

1 of the agencies to look for that vehicle for whatever
2 purpose we need it for. In this case it was a failure to
3 stop for blue lights and possible D. U. I.

4 Q And you called the license plate number out?

5 A I did.

6 Q And you also found out later who owned that vehicle.

7 A I did.

8 Q Which was Osia Feaster.

9 A Osia Feaster, yes, sir.

10 MR. BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Please answer any questions Mr. Schultz may have for
13 you.

14 MR. SCHULTZ: I have no questions for this witness.

15 THE COURT: You may step down.

16 MR. BARNETTE: We would like to call Officer Evett to
17 the stand, Your Honor.

18 We would ask for this witness to be excused, Your
19 Honor.

20 THE COURT: He may be.

21 (Whereupon, the witness was excused.)

22 THE COURT: The next one is David Evett.

23 MR. BARNETTE: Yes, sir.

24

25

David Michael Evett
Direct examination by Mr. Barnette

1 DAVID MICHAEL EVETT, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, state your full name for the
5 record, please.

6 A I am sorry? Say that again.

7 Q Could you state your full name for the record?

8 A Yes. David Michael Evett.

9 Q And where did you work at, sir?

10 A Spartanburg County Sheriff's Office.

11 Q And how long have you worked there, sir?

12 A For about three and a half years now.

13 MR. SCHULTZ: Your Honor, before this witness
14 testifies further I have a matter of law that I would like
15 for the Court to take up.

16 THE COURT: All right. Let me see y'all up here.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 Q Officer Evett, back on February the 3rd of 2006, was
20 you on patrol in the early morning hours?

21 A Yes, sir, I was.

22 Q And did you receive a BOLO through the radio
23 concerning a car?

24 A Yes, sir.

25 Q And what kind -- what was the license plate of that

David Michael Evett
Direct examination by Mr. Barnette

1 BOLO?

2 A I believe it was 649 UPU on that vehicle.

3 Q And once you received that BOLO, was you on the
4 lookout for a car looking like that or for that license
5 plated?

6 A Well, generally, yes. Once we receive a BOLO from the
7 Spartanburg Communications, then there was a BOLO given
8 from the city of Spartanburg. And I was out in the county
9 not far away from that area. So I was on the lookout for
10 anything matching that description and tag.

11 Q Did you see a car that matched that description?

12 A I did, sir.

13 Q If you would, tell the jury what you saw.

14 A I was traveling along North Blackstock Road between
15 Hayne Street and 29. And I was heading towards the Ingles
16 that way down there.

17 And a vehicle matching that description came towards
18 me, towards Hayne Street along North Blackstock. And it
19 passed me -- I passed it going in the opposite direction.

20 I turned around and got behind the vehicle at the stop
21 light at Hayne and North Blackstock. And when I saw the
22 license plate I realized it was the vehicle from the BOLO.

23 Q And what happened then, sir?

24 A The vehicle took a -- well, I informed Spartanburg
25 Communications that I was behind the BOLO vehicle. By the

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1 time I got on the radio and put all of that out, the light
2 had turned green. The vehicle went across the railroad
3 tracks to the left along North Blackstock towards Mount
4 Zion Road.

5 Q And was he heading toward the city or away from the
6 city, sir?

7 A Away from the city, sir.

8 Q And what was he doing with his lights during this
9 time?

10 A About the time we got near Fairforest Middle School, I
11 would say probably quarter to a half a mile up North
12 Blackstock, I was right behind him. And he turned off his
13 headlights and accelerated at a high rate of speed.

14 Q Did you turn on your blue lights at certain points at
15 this time?

16 A I don't recall turning on my blue lights there, no. I
17 informed Spartanburg Communications that I was following at
18 a safe speed because there's not a lot of light in that
19 area. And if I stayed up close to him, he would keep
20 accelerating. And so I backed off, and he slowed down.
21 And it's completely unsafe driving with no headlights on in
22 a dark area, especially at a high rate of speed.

23 Q If you would, tell the jury what happened there.

24 A The vehicle got out ahead of me. I lost sight of it
25 going up over where North Blackstock goes over, up the hill

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1 over on 85.

2 MR. SCHULTZ: Your Honor, again I would object. I'm
3 not sure. May we approach?

4 THE COURT: Yes.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 Q About how far did y'all go before the defendant
8 finally came to a stop?

9 A From?

10 Q From when you initially saw him to the point where, on
11 Mount Zion Road.

12 A We traveled -- I don't know the exact distance. I
13 would say probably I guess about three miles.

14 Q And if you would, during that time would he speed up
15 and slow down?

16 A Yes.

17 Q And what would he do? Would you describe that to the
18 jury, please?

19 A I don't understand, I mean.

20 Q As you was approaching him, what would he do during
21 this time?

22 A When I, when I, when I would get close to him in my
23 patrol car he would speed up with his headlights off. And
24 then I'd back off and he would slow down to a safer speed.

25 Q And this continued up to Mount Zion Road?

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1 A Yes, sir.

2 Q And if you would, tell the jury what happened when you
3 got on Mount Zion Road.

4 A When we got on Mount Zion Road, there's absolutely no
5 lights out there whatsoever. So I was following probably,
6 I guess, about 200 yards behind the vehicle. And I
7 followed the vehicle, because every time he hit his brakes
8 I'd see the red lights. It's extremely dark out there.
9 Red lights and taillights.

10 And when he come to where Hope Road turns off Mount
11 Zion, there's a corner that goes around to the right. And
12 I didn't see the vehicle any more. So I just continued
13 along Mount Zion.

14 Once I got around the corner and up the slight hill I
15 saw another vehicle traveling towards my direction with the
16 headlights on. And I could not see the blue Caprice any
17 more. And then I saw a shower of sparks about 200 yards
18 ahead of me. That's when I realized that there was an
19 accident. And I informed Spartanburg Communications of the
20 accident.

21 Q What did you do then, sir, after that?

22 A I proceeded along. I sped up and got up to the
23 accident location as I was going by the other vehicle, and
24 it flipped around. I saw the driver moving. And I
25 continued on and put my spotlight on the blue Caprice, the

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1 BOLO, and pulled up behind that.

2 Q And what happened then, sir?

3 A I observed, I observed the defendant move from the
4 driver's side of the vehicle to the passenger side and out
5 the window. And he came around the back of the car. I
6 jumped out of my car and told him to get on the ground and
7 put his hands behind his back, and he did.

8 Q And who was -- do you see that gentleman that was
9 driving that car?

10 A I do, sir.

11 Q And who is it?

12 A Mr. Teamer, the defendant, here, sir.

13 Q Okay. Can you describe what he's wearing, sir?

14 A Describe what he's wearing now?

15 Q Yes, sir.

16 A Light brown shirt, white undershirt and light brown
17 pants.

18 Q And did you place him into detention? Did you hold
19 him in custody at that point?

20 A I did. I placed handcuffs on him and put him in the
21 back of my patrol vehicle.

22 Q And later on was he, was he put into custody and held
23 afterwards, taken in custody by other officers?

24 A Yes, sir. I called the highway patrol to come out and
25 work the accident, and I transported Mr. Teamer to

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1 Spartanburg Regional Medical Center for the highway patrol.

2 And at that point they took custody of Mr. Teamer.

3 Q Then so Mr. Teamer is the one that came out of the
4 blue Caprice?

5 A Yes, sir.

6 Q And that was the BOLO that you were following.

7 A Yes, sir.

8 MR. BARNETTE: One moment, Your Honor, please.

9 (Pause.)

10 Q Please answer any questions Mr. Schultz may have for
11 you.

12 MR. BARNETTE: Although, Your Honor, just one more
13 thing if I could. State's Exhibit No. 1-A has already been
14 put into evidence. May I publish that to the jury, Your
15 Honor?

16 THE COURT: You may.

17 Q On this map -- if you would, sir, step down for a
18 second.

19 (Whereupon, the witness left the stand.)

20 Q Look at this map. This is 29 right here, as well as
21 showing Reidville Road here. Can you show the jury where
22 Mount Zion Road is, sir, using this?

23 A Right there. It is there. Mount Zion Road is right
24 up here. Mount Zion where it comes off North Blackstock is
25 here.

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1 Q And was he going out on Mount Zion Road away from the
2 city?

3 A Yes, sir. He was traveling along this way.

4 Q Where did you start? Where did you first see him on
5 the BOLO, or approximately where you saw him?

6 A Approximately where I first saw him, sir, was right in
7 this area right here.

8 Q Thank you sir. Please answer any questions
9 Mr. Schultz has for you.

10 (Whereupon, the witness returned to the stand.)

11 MR. SCHULTZ: I have nothing for this witness.

12 THE COURT: You may step down.

13 MR. BARNETTE: We would ask this witness be excused,
14 Your Honor.

15 THE COURT: He may be.

16 (Whereupon, the witness was excused.)

17 MR. BARNETTE: I would like to call Investigator Ed
18 Guthro to the stand, Your Honor.

19 EDGAR VICTOR GUTHRO, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BARNETTE

22 Q If you would, sir, please state your full name for the
23 record.

24 A Edgar Victor Guthro.

25 Q And where do you work at, sir?

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1 A Spartanburg Department of Public Safety.

2 Q And how long have you worked for them, sir?

3 A A little over 19 years.

4 Q And what positions have you held with the Department
5 of Public Safety, sir?

6 A I worked as a patrol officer; I worked on our complex
7 unit, worked eight years. Well, actually ten now. But
8 I've been doing, well, forensics for the last couple of
9 years and worked as a regular investigator for eight years
10 prior to that.

11 Q And in this case was you asked to process two
12 different cars?

13 A Yes, sir, I was.

14 Q Was you asked to process the one at the crime scene?

15 A I was.

16 Q And was you also --

17 THE COURT: Excuse me just a minute.

18 Let's try to rearrange that microphone. When you
19 breathe out you're blowing into the microphone.

20 MR. BARNETTE: Thank you, Your Honor.

21 Q Did you also process a blue Caprice?

22 A I did.

23 Q Okay. And going first to the blue Caprice, where did
24 you process that, sir?

25 A In the city's impound lot.

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Direct examination by Mr. Barnette

1 Q And during that time --

2 MR. BARNETTE: Excuse me one second, Your Honor.

3 (Pause.)

4 Q When you didn't -- what did you do, an inventory
5 search on that vehicle?

6 A I did.

7 Q And in the process of that search did you locate a
8 cell phone underneath the driver's seat?

9 A Yes, sir.

10 MR. SCHULTZ: Objection, Your Honor, as previously
11 noted.

12 THE COURT: Overruled.

13 Q Did you locate a cell phone in that car?

14 A Yes, sir, I did under the front driver's seat.

15 Q And what type of cell phone was it, sir?

16 A I believe it was a Nokia, but let me look and make
17 sure.

18 (Pause.)

19 A Yes, sir, it was a Nokia cell phone.

20 Q And on that cell phone once y'all located it and
21 everything, did y'all look to see what phone number that
22 cell phone was?

23 A Yes, sir.

24 Q What was the number of that cell phone?

25 A 921-██████

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1 Q If you would, sir, write down the phone number that
2 cell phone had that you located underneath the driver's
3 seat. And if you would, write where you located that on
4 there, sir, if you would.

5 (Pause.)

6 Q And let me also show you State's Exhibit 31. Is that
7 the cell phone that you located, sir?

8 A Yes, sir.

9 MR. BARNETTE: Your Honor, I would like to enter
10 State's Exhibit 31 and 100 into evidence at this time.

11 MR. SCHULTZ: Your Honor, I do have objections to the
12 introduction of the cell phone as previously noted.

13 THE COURT: All right. No objection to 100. You
14 object to 31?

15 MR. SCHULTZ: I also object to 100 as well, Your
16 Honor.

17 THE COURT: All right. Overrule the objection.

18 (Nokia cell phone marked State's Exhibit No. 31; paper
19 with phone number marked State's Exhibit No. 100.)

20 MR. BARNETTE: Thank you, Your Honor.

21 I would like to publish these to the jury at this
22 time.

23 THE COURT: You may.

24 Q Showing State's No. 100. This is a phone number of
25 the cell phone you found underneath the driver's seat.

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1 A Yes, sir.

2 Q And publishing State's Exhibit No. 31, this is the
3 cell phone that you found underneath the driver's seat.

4 A Yes, sir.

5 Q And what was the license plate, the tag of the car
6 that you found the cell phone in?

7 A 849, looks like, EPU.

8 Q And was that the car -- was that OSHA Feaster's? Did
9 you find out the owner was Osia Feaster later?

10 A Yes, sir.

11 Q And was this the same car that the defendant was found
12 in that you later found out?

13 A Yes, sir.

14 Q Going back to February 2nd, 2006, was you called to
15 the crime scene where the murder occurred, and ABWIK?

16 A Yes, sir, I was.

17 Q And did you process that crime scene?

18 A Yes, sir, I did.

19 Q And where was that located, again?

20 A At the intersection of Chester and Theodosia. The
21 vehicle had run off the road down in the woods.

22 Q Let me let you look through these items. Let me take
23 this a little bit slow. Let me show you what's been marked
24 as State's Exhibit No. 5 and State's Exhibit No. 6. Let me
25 show you what's been marked State's Exhibit No. 3 for I. D.

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1 purposes. Could you tell us what that is, sir?

2 A This is the clothing that was worn by James Antonio
3 Hunter.

4 Q Talk a little bit louder.

5 THE COURT: Please use the microphone.

6 A This is the clothing that was worn by James Antonio
7 Hunter.

8 MR. BARNETTE: Your Honor, I would like to enter
9 State's Exhibit No. 3 into evidence at this time.

10 MR. SCHULTZ: No objection, Your Honor.

11 THE COURT: It is admitted.

12 (Pair of blue jeans marked State's Exhibit No. 3.)

13 Q Let me show you State's Exhibit 41 through 44. Was
14 these swabs taken from Mr. Proctor's vehicle, a silver 1997
15 Toyota 4Runner? I believe they're numbers V20 and V19 and
16 V17 on your list.

17 A Yes, sir, they were.

18 MR. BARNETTE: Your Honor, I would like to enter
19 State's Exhibits 4.1 and 4.4 into evidence at this time.

20 MR. SCHULTZ: I would like to see it opened.

21 THE COURT: Okay. No objection, at this time. They
22 are admitted.

23 MR. BARNETTE: 4.1 through 4.4.

24 (Swabs marked State's Exhibits Nos. 4.1 through 4.4.)

25 Q Let me show you what's been marked as State's Exhibit

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1 No. 5. This is the headliner above the passenger seat of
2 the Toyota 4Runner. I believe that's V18 on your list.

3 A Yes, sir, that's correct. That's what it is.

4 MR. BARNETTE: Your Honor, I'd like to enter this into
5 evidence at this time.

6 MR. SCHULTZ: No objection at this time.

7 THE COURT: It is admitted.

8 (Cutting from headliner marked State's Exhibit No. 5.)

9 Q I'd like to show you what's been marked as State's
10 Exhibit No. 6, a piece of plastic containing a white powder
11 substance from front passenger board of the 4Runner.

12 A Yes, sir.

13 MR. BARNETTE: Your Honor, I would like to enter this
14 into evidence at this time.

15 MR. SCHULTZ: No objection.

16 THE COURT: It is admitted.

17 (Piece of plastic marked State's Exhibit No. 6.)

18 Q Let me show you what's been marked as State's No. 11.
19 Is this the bullet that was recovered from Tony Hunter at
20 the autopsy?

21 A Yes, sir, it is.

22 Q And was that recovered by Dr. Wren?

23 A That's correct.

24 Q And was you also at the autopsy, sir?

25 A Yes, sir, I was.

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1 Q And was this given to you?

2 A Yes, sir.

3 MR. BARNETTE: Your Honor, I would like to mark
4 State's Exhibit 11 and enter it into evidence at this time.

5 MR. SCHULTZ: Without objection at this time.

6 THE COURT: It is admitted.

7 (Bullet marked State's Exhibit No. 11.)

8 Q Let me show you what's been marked as State's Exhibit
9 No. 9. Is this a cutting from the driver's seat of
10 Mr. Parker's vehicle? I believe V16 on your list.

11 A Yes, sir, it is.

12 Q And let me show you what's been marked State's Exhibit
13 No. 10. Is that a cutting from the front passenger seat of
14 Mr. Proctor's vehicle, V12 on your list?

15 A Yes, sir, it is.

16 MR. BARNETTE: Your Honor, I would like to enter these
17 two things into evidence at this time.

18 MR. SCHULTZ: Without objection.

19 THE COURT: Nine and 10 are admitted.

20 (Cuttings marked State's Exhibits Nos. 9 and 10.)

21 Q Let me show you what's been marked as State's Exhibit
22 No. 12. I believe this is a Wolf 9mm shell casing found in
23 the rear floorboard behind the front passenger seat. Is
24 that correct, sir?

25 A Yes, sir, it is.

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1 Q Let me show you what's been marked as State's Exhibit
2 No. 14. Is that a Wolf 9mm shell casing found beside the
3 front passenger seat of the front passenger-floorboard
4 side?

5 A Yes, sir, it is.

6 Q Let me show you what's been marked as State's Exhibit
7 No. 15. Is that a Wolf 9mm shell casing found underneath
8 the driver's seat?

9 A Yes, sir, it is.

10 Q Let me show you what's been marked as State's Exhibit
11 No. 16. Is that a Wolf 9mm shell casing found underneath
12 the front passenger seat?

13 A Yes, sir.

14 Q Let me show you what's been marked as State's Exhibit
15 No. 17. Is that a Wolf 9mm shell casing found in the front
16 passenger floorboard?

17 A Yes, sir, it is.

18 Q Let me show you No. 18. Is this a Winchester 9mm
19 shell casing found under the floor mat in the front
20 passenger floorboard? I believe that's V23 on your list.

21 A Twenty-three?

22 Q Yes, sir.

23 A Yes, sir, it is.

24 Q Let me show you State's Exhibit No. 20. Is this a
25 fired bullet collected from the front passenger door bullet

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1 hole?

2 A Yes, sir, it is.

3 Q Let me show you State's Exhibit No. 21. Are these
4 bullet jacket fragments found in the driver's-side
5 floorboard? I believe that's V31 on your list. And a
6 fired bullet jacket fragment found on the driver's side
7 floorboard.

8 A Yes, sir, it is.

9 Q Let me show you what's been marked as State's
10 Exhibit 22, a lead fragment found in the driver's side
11 floorboard. State's Exhibit 22. Is that where that was
12 found, sir, and collected by you?

13 A Yes, it is.

14 Q I'm sorry. Let me show you what's been marked as
15 State's Exhibit 23. Is this the bullet fragments collected
16 from the driver's side door? I believe it's one fragment
17 and three lead fragments.

18 A Yes, sir.

19 Q Let me show you what's been marked as State's Exhibit
20 No. 13. Is this a Wolf 9mm shell casing found in the front
21 passenger floorboard? It's going to be V7 on your sheet.

22 A Yes, sir, it is.

23 MR. BARNETTE: Your Honor, I would like to enter these
24 items into evidence at this time.

25 MR. SCHULTZ: Without objection.

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1 THE COURT: Exhibits 12, 13, 14, 15, 16, 17, 18, 20,
2 21, 22 and 23 are admitted.

3 (Wolf 9mm shell casing marked State's Exhibit No. 12;
4 Wolf 9mm shell casing State's Exhibit No. 13; Wolf 9mm
5 shell casing marked State's Exhibit No. 14; Wolf 9mm shell
6 casing marked State's Exhibit No. 15; Wolf 9mm shell casing
7 marked State's Exhibit No. 16; Wolf 9mm shell casing marked
8 State's Exhibit No. 17; Winchester 9mm shell casing marked
9 State's Exhibit No. 18; fired bullet marked State's Exhibit
10 No. 20; bullet jacket marked State's Exhibit No. 21; lead
11 fragment marked State's Exhibit No. 22; bullet fragments
12 marked State's Exhibit No. 23.)

13 MR. BARNETTE: Your Honor, did we miss No. 19?

14 THE COURT: You did.

15 Q Let me show you what's been marked as State's Exhibit
16 No. 19. Is that a fired bullet found underneath the floor
17 mat in the floor -- front passenger floorboard?

18 A Yes, sir, it is.

19 MR. BARNETTE: Your Honor, I would like to move that
20 into evidence at this time.

21 MR. SCHULTZ: No objection.

22 THE COURT: It is admitted.

23 (Fired bullet marked State's Exhibit No. 19.)

24 Q Let me show you what's been marked as State's Exhibit
25 No. 24. Is this a cigarette butt, sir? And if you need to

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1 open that, sir, you can.

2 A Yes, sir, it is.

3 Q And where was that found at, sir?

4 A In the front passenger floorboard. And that's going
5 to be out of the Chevy Caprice.

6 Q Let me show you State's Exhibit No. 25. What is that,
7 sir?

8 A This will be a cigarette butt collected from the rear
9 seat of the '97 Toyota.

10 Q Was that later sent to SLED for D. N. A. testing?

11 A Yes, sir, it was.

12 Q Sir, State's Exhibit No. 26, was that a styrofoam cup
13 that was found in the Toyota?

14 A Yes, sir. It is.

15 Q And where was that found at, sir?

16 A In the rear seat beside the cigarette butt.

17 Q Let me show you what's been marked as State's
18 Exhibit 27. Was these the buccal swabs from Nathan Teamer?

19 A Yes, sir. It is.

20 Q And those was collected from him, is that right?

21 A That's correct.

22 Q State's Exhibit No. 28, are these the mouth or the
23 buccal swabs from David Proctor or David Michael Proctor?

24 A Yes, sir, it is.

25 Q Let me show you State's Exhibit No. 2. Was that

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1 the -- at the autopsy? Did Dr. Wren gather a blood
2 standard from the victim in this case, Tony Hunter?

3 A Yes, sir.

4 Q Was that it, sir?

5 A Yes, sir.

6 Q Let me show you what's State's Exhibit 35. Was that a
7 cigarette packet that was found in Mr. Proctor's vehicle?

8 A Yes, sir.

9 MR. BARNETTE: Your Honor, at this time I'd like to
10 enter these items into evidence at this time.

11 MR. SCHULTZ: Your Honor, I have no objection to two.
12 Your Honor, I do have an objection to 24. Relevancy.

13 THE COURT: Well, let me see y'all just a minute.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 MR. BARNETTE: One second, Your Honor. Let me check
17 on that just to make sure I pulled it correctly.

18 (Pause.)

19 MR. BARNETTE: Yes, sir. No. 25 was the one that
20 would be.

21 THE COURT: All right. Two is admitted. I sustain
22 the objection to 24 on the grounds of relevance.

23 (Blood standard marked State's Exhibit No. 2.)

24 MR. BARNETTE: We move 25 to go into evidence, Your
25 Honor.

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1 MR. SCHULTZ: Twenty-five I had an objection to, Your
2 Honor, as far as relevancy goes.

3 THE COURT: You object on the grounds of relevance on
4 25?

5 MR. SCHULTZ: I do, Your Honor.

6 THE COURT: Mark it for identification subject to it
7 being connected up and therefore relevant.

8 MR. BARNETTE: Yes, sir.

9 MR. SCHULTZ: Your Honor, I object to 26. I'm not
10 sure of the relevance of this.

11 MR. BARNETTE: Twenty-six, Your Honor, was the cup.

12 THE COURT: Cup?

13 MR. BARNETTE: Styrofoam cup. There was no D. N. A.
14 gathered from that, Your Honor, so.

15 THE COURT: Sustain the objection.

16 MR. BARNETTE: It was found at the scene.

17 MR. SCHULTZ: May we approach with 27 and 28?

18 THE COURT: Yes.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 MR. BARNETTE: No. 27, Your Honor, I have a few more
22 questions on to lay the foundation. That's the buccal swab
23 from Mr. Teamer.

24 Q Did you collect that buccal swab from Mr. Teamer, sir?

25 A Yes, sir.

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1 Q Is that your signature where you collected that from
2 him?

3 A Yes, sir.

4 Q And was that placed into evidence?

5 A Correct.

6 Q And was that later sent to SLED?

7 A It was.

8 MR. BARNETTE: Your Honor, I would move that into
9 evidence at this time.

10 MR. SCHULTZ: Your Honor, I would like to have the
11 SLED expert testify to it.

12 THE COURT: All right. Mark it for identification
13 subject to it being connected and therefore relevant.

14 Q And this would also have been sealed once you took the
15 buccal swab, is that correct?

16 A The buccal swab would have been placed into that
17 cardboard carton and placed into the evidence bag and
18 submitted like that.

19 Q Yes, sir. And that would have been taken later by
20 evidence down to SLED.

21 A Correct.

22 MR. SCHULTZ: Same objection to 28, Your Honor. I'd
23 like the SLED expert to testify to that.

24 THE COURT: Mark it for identification subject to it
25 being connected and therefore relevant.

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1 MR. SCHULTZ: Your Honor, again, I don't understand
2 the relevance to the cigarette package.

3 MR. BARNETTE: Your Honor, it was found in the
4 vehicle. We would just submit it as an exhibit to the
5 investigation to have in all the evidence, all of these
6 items.

7 THE COURT: Is it, is it related to 25?

8 MR. BARNETTE: No, sir, it's not.

9 THE COURT: I sustain the objection.

10 MR. BARNETTE: Thank you, Your Honor. If I understood
11 correctly, 35 was sustained, Your Honor.

12 THE COURT: Thirty-five is out; 26 is out; and 24 is
13 out.

14 MR. BARNETTE: No. 2 is in. Is that right, Your
15 Honor?

16 THE COURT: No. 2 is in without objection; 25, 27 and
17 28 are marked for identification subject to not being
18 connected and therefore relevant.

19 Q Let me show you what's been marked as State's Exhibit
20 No. 8. Did you find --

21 MR. SCHULTZ: What number was that again?

22 MR. BARNETTE: State's Exhibit No. 8. It's already
23 into evidence.

24 Q Was that a cell phone that you found in Mr. Proctor's
25 car?

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1 A Yes, sir.

2 Q And did Investigator Steadman take that phone and look
3 at the phone number and so forth?

4 A Yes.

5 Q And he checked on that.

6 MR. SCHULTZ: Your Honor, he's not testifying to
7 personal knowledge. Objection. I'm sorry.

8 MR. BARNETTE: I'll rephrase the question, Your Honor.

9 THE COURT: Okay.

10 Q Who later obtained that phone after you recovered the
11 phone?

12 A Investigators took it to obtain the phone records and
13 information from the phone once they obtained that.

14 Q Let me show you State's Exhibits 62, 63, 64, 76, 68,
15 66, 65, 67, 61, 37, 38, 41, 42, 43, 44, 45, 46, 47, 48, 49,
16 50, 51, 54, 55, 56, 57, 58, 59, 60. If you would, take a
17 look at those, sir, and see if those fairly represent what
18 you saw or what through your processing the vehicle show.

19 A These are photographs that I took at the scene, as
20 well as during the processing of the vehicle at city hall.

21 Q Thank you.

22 MR. BARNETTE: Your Honor, I would like to move these
23 into evidence at this time.

24 MR. SCHULTZ: Your Honor, at this time I do not have
25 an objection to 37 and 38. However I do have objections to

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1 41, 42 and 43. I believe they are too prejudicial and
2 probative. May I approach?

3 THE COURT: Yes.

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 THE COURT: I sustain the objection to 41, 42 and 43.

7 MR. SCHULTZ: Your Honor, no objection to 44, no
8 objection to 45. I do have an objection as far as
9 relevance and prejudicial nature of 46.

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 THE COURT: Sustain the objection to 46.

13 MR. SCHULTZ: Your Honor, I believe 47 is irrelevant.
14 Objection to 47.

15 MR. BARNETTE: Your Honor --

16 MR. SCHULTZ: Forty-eight and 49 I believe are too
17 prejudicial and probative. May we approach?

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: Forty-seven, 48 and 49 are admitted over
21 objection.

22 (Photographs marked State's Exhibits Nos. 37, 38, 44,
23 45, 47, 48 and 49.)

24 MR. SCHULTZ: Your Honor, I have no objection to 50.
25 I'm concerned about the relevance of 51, so I would have an

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1 objection to that. Fifty-four I think is relevant.

2 THE COURT: Overrule the objection to 51.

3 (Photographs marked State's Exhibit No. 50 and 51.)

4 MR. SCHULTZ: As previously noted, I object to 55. No
5 objection to --

6 THE COURT: Wait just a minute. Let me see 55.

7 MR. BARNETTE: May I approach, Your Honor?

8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)

10 THE COURT: Overrule the objection to 55.

11 (Photograph marked State's Exhibit No. 55.)

12 THE COURT: I understand there is no objection to 54.

13 MR. SCHULTZ: No, Your Honor.

14 (Photograph marked State's Exhibit No. 54.)

15 THE COURT: Fifty-five is admitted.

16 MR. SCHULTZ: Fifty-six I have no objection to.

17 THE COURT: Fifty-six is admitted.

18 (Photograph marked State's Exhibit No. 56.)

19 MR. SCHULTZ: Fifty-seven I think is merely a
20 closer-up of another picture that I think is all right.

21 THE COURT: Fifty-seven is admitted.

22 (Photograph marked State's Exhibit No. 57.)

23 MR. SCHULTZ: Fifty-eight and 59 I have no objection
24 to, and I'm not sure of the relevance of 60.

25 THE COURT: All right. Fifty-eight and 59 are

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1 admitted.

2 (Photographs marked State's Exhibits Nos. 58 and 59.)

3 MR. BARNETTE: Sixty, Your Honor, is where one of the
4 bullet fragments were found.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 THE COURT: Overrule your objection to 60.

8 (Photograph marked State's Exhibit No. 60.)

9 MR. SCHULTZ: Your Honor, I have no objection to 61,
10 62, 63, 64, 65, 66, 67 or 68. But 76 I believe is too
11 prejudicial.

12 THE COURT: All right. Sixty-one through 69 inclusive
13 are admitted.

14 (Photographs marked State's Exhibits Nos. 61 through
15 68. State's Exhibit No. 69 was previously admitted into
16 evidence.)

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Overrule the objection to 76.

20 (Photograph marked State's Exhibit No. 76.)

21 MR. BARNETTE: Your Honor, I would like to publish
22 these to the jury.

23 THE COURT: You may.

24 Q If you would, step down, sir, for a second.

25 (Whereupon, the witness left the stand.)

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1 Q Showing you what's been marked as State's Exhibit No.
2 37.

3 MR. BARNETTE: Your Honor, I'll just have him through
4 all of this to get to this point, but to show the jury.

5 Q Can you tell the jury what that is, sir?

6 A That's a photograph showing the rear of the victim's
7 vehicle after it had run off the road, off Theodosia down
8 to what starts out as a little bit of a brushy field and
9 then turns into pretty dense vegetation down where the car
10 was at, and also showing the rain and the fog that was
11 occurring at that time.

12 Q State's Exhibit No. 38. So it was raining that night
13 also?

14 A Yes, it was.

15 Q And State's Exhibit No. 38, can you tell the jury what
16 that is?

17 A Just a closer-up view walking down the hill and taking
18 the photograph.

19 Q And showing you State's Exhibit No. 44. What is this
20 a picture of, sir?

21 A That's at a picture of the passenger side, the front
22 of the vehicle, the passenger side, as well as the driver's
23 seat, center console.

24 Q Showing you State's Exhibit No. 45. What is that a
25 picture of, sir?

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1 A It's a photograph of the driver's side of the vehicle.

2 Q Showing you State's Exhibit No. 47. What is this a
3 picture of, sir?

4 A Again, that's the driver's side of the victim's
5 vehicle. Just the headlights were still on.

6 Q The headlights were still on when y'all got there.

7 A Yes, sir.

8 Q State's Exhibit No. 48, what is this a picture of,
9 sir?

10 A It's a photograph of the rear seat of the vehicle
11 showing a cigarette butt, and the white thing is a piece of
12 styrofoam cup.

13 Q Was this cigarette later sent to SLED for analysis?

14 A Yes, sir.

15 Q And it was collected by you.

16 A That's correct.

17 Q State's Exhibit No. 49, what is that, sir?

18 A That's just a closer-up photograph of the cigarette
19 butt and a piece of the styrofoam cup which also had some
20 blood on it.

21 Q Okay. And this was the cigarette that was sent for D.
22 N. A. testing.

23 A Yes, sir. It was.

24 Q Let me show you State's Exhibit No. 50. What is that,
25 sir?

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1 A That's a photograph taken in the impound lot, which is
2 kind of hard to see. But that's the little placards that
3 you see on there are -- they have numbers. And that's the
4 location of a fingerprint that was lifted.

5 Q So you did attempt to get fingerprints from the
6 vehicle.

7 A Yes, sir.

8 Q And do you always get quality fingerprints when you
9 try to check for fingerprints?

10 A No, sir, not always. In fact, this vehicle sat in the
11 rain for several hours, so the odds of getting fingerprints
12 were slim.

13 Q Okay. And did y'all get any fingerprints off this
14 vehicle?

15 A Not off the exterior. We did get some that were
16 submitted. I don't know what the results were but --

17 THE COURT: All right. Y'all are going to have to
18 speak up a little bit and don't turn your face away from
19 the court reporter.

20 MR. BARNETTE: Yes, sir.

21 Q Now, if I would just touch that right there, does that
22 mean I automatically leave fingerprints on that?

23 A No, sir, it doesn't.

24 Q Is there factors that affect the way you leave
25 fingerprints?

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1 A There are. It just depends on the amount of oil and
2 secretions from your hands and whether or not you recently
3 wiped them on something.

4 THE COURT: Mr. Guthro --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- don't turn your face away from the
7 court reporter. Just look towards the screen and she can
8 see you and the jury can hear you.

9 A Also the surface pack itself that's been touched can
10 affect whether or not you leave a fingerprint on it.

11 Q And of course weather too will affect that also.

12 A Yes, sir.

13 Q And if I move my hand like this, what have I just done
14 to the fingerprint?

15 A You have most likely smeared the print and made it
16 potentially unusable.

17 Q So it's hard to get usable prints in most
18 circumstances.

19 A Often.

20 Q And especially with weather being a factor too.

21 A Yes, sir.

22 Q But you did attempt to try to get some of the outside
23 of the vehicle.

24 A Yes, sir, the entire vehicle.

25 Q Let me show you State's Exhibit No. 51. What is this

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1 a picture of, sir?

2 A It's a photograph of the front floorboard of the
3 vehicle showing several items that were collected,
4 including that money. The white object you see was a small
5 baggy containing what later was determined to be cocaine.
6 There's a shell casing that you can see. It's kinda hard,
7 to the left.

8 Q If you will, point to this.

9 A Over here.

10 Q Use this to point.

11 A Thank you. This is a shell casing. This cell phone
12 that was collected that was mentioned earlier was just
13 setting up there on the witness stand.

14 Q And is this the leg of Mr. Hunter we see here?

15 A Yes, sir, it is.

16 Q Let me show you State's Exhibit No. 54. What is this,
17 sir?

18 A That's that same shell casing that I have now marked
19 with the evidence placard for identification throughout
20 this process.

21 Q Okay. State's Exhibit No. 55, is this another
22 photograph of the cigarette in the back seat?

23 A Yes, sir. It's a photograph of that same cigarette
24 now marked with the evidence placard so it can be
25 identified through the course of this.

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1 Q And where was that again, sir?

2 A That's in the rear seat of the victim's vehicle.

3 Q And that was sent to SLED.

4 A Yes, sir, it was.

5 Q Let me show you State's Exhibit No. 56. What is this,
6 sir?

7 A That's the front floorboard, again, now with other
8 items having been marked with the placards on Item No. 6
9 and 5, was the money, the white bag, cell phone. And I
10 can't see what that placard -- might have been a seven.
11 There wasn't enough room in there. I'd have to look at my
12 report. But those are the placards that are used to
13 identify those items of evidence later on.

14 Q Let me show you State's Exhibit No. 57. What is this,
15 sir, a picture of?

16 A Same situation. Judging by this photograph without
17 looking at my report, No. 8 was probably this bottle. No.
18 9 is most likely this phone.

19 Q And that's the phone that you collected and showed.

20 A Yes, sir.

21 Q If you would, show me State's Exhibit No. 58. What is
22 that, sir?

23 A This is a shell casing right here which has been
24 identified as placard, as item No. 10, beside the seat.

25 Q Let me show you State's Exhibit No. 59. What is that,

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1 sir?

2 A V12. The numbers, because I'm having to reuse numbers
3 and I'm processing the photographs, the two vehicles, I use
4 a V to indicate these items are coming from the vehicle as
5 it's actually being processed at city hall. V12 looks like
6 a cutting which would have been from the passenger front
7 seat where I would have cut an area out of this to be
8 submitted for D. N. A. analysis.

9 Q Let me show you State's Exhibit No. 60.

10 A V19 is a swab. I believe that's the dash. I need to
11 look at my report to see where that's from.

12 Q Well, you can, or you can look off that sheet, sir.

13 A Okay.

14 Q It will be No. 60..

15 A Sixty?

16 Q Yes, sir.

17 A Okay. This is a photograph of an area that was cut
18 from the driver's-side door and identified as V19.

19 Q Let me show you State's Exhibit 61. What is that,
20 sir?

21 A V20 was where a swab of blood was collected, and
22 that's just where that, where it was located. Which one is
23 it on here?

24 Q Sixty-one.

25 A Okay. Passenger-side door where the swab of blood was

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1 collected.

2 Q Let me show you State's Exhibit 62.

3 A That's V18, cutting was taken from that area which is,
4 would have been the headliner above the passenger seat in
5 the front of the vehicle.

6 Q Let me show you State's Exhibit 63.

7 A V17. A swab was collected, and that's the back of the
8 passenger-side front-seat headrest, back side of that.

9 Q Let me show you State's Exhibit No. 64.

10 A That V11 is a swab of the dash.

11 Q Let me show you State's Exhibit 65. What is that,
12 sir?

13 A This is a shell casing and a fired projectile, being
14 the bullet that had actually already been fired laying
15 in -- I need my report.

16 Q Let me do State's Exhibit 66. What is this, sir?

17 A I've taken the panels off the front doors to show the
18 corresponding holes and projectiles when possible, and the
19 angles that they were, that they were fired back. All of
20 the bullet holes in the front doors were fired from the
21 rear angling forward.

22 Q Let me show you State's Exhibit 67. Can you tell us
23 what that is, sir?

24 A Right here is a bullet hole after the inside door
25 panel had been removed to actually see the metal and try to

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1 recover what I could of these projectiles. And that's the
2 bullet hole identified as V21 in the driver's door.

3 Q Let me show you what's been marked as State's Exhibit
4 68. Can you tell us what that is, sir?

5 A That's where a Wolf 9mm shell casing was found under
6 the driver's seat.

7 Q And let me show you what State's Exhibit No. 76 is.
8 If you would, tell the jury what that is, sir.

9 A That is a photograph of the, I think it's 1995 Chevy
10 Caprice, the one that was, was being driven by Mr. Teamer.

11 Q Is that the one where you recovered the cell phone
12 from?

13 A Yes, sir, it is.

14 Q And where was it found, again?

15 A Under the driver's seat.

16 Q And that was a Nokia phone, State's Exhibit No. 31.

17 A That's correct.

18 Q Thank you, sir.

19 (Whereupon, the witness returned to the stand.)

20 Q Later on did y'all receive additional information
21 about a 9mm?

22 A Yes.

23 Q And I guess based off the solicitor's office request,
24 did you go back to the crime scene?

25 A Yes, sir, I did.

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1 Q And who went with you to that crime scene?

2 A Several investigators, including Sergeant Sutton. It
3 was on 9/21/07. Investigator Jay Steadman, Investigator
4 Heather Forrester, Sergeant James Sutton, returned, along
5 with myself, to the incident location to look for that
6 weapon.

7 Q And did you -- was a weapon found there?

8 A Yes, sir. It was.

9 Q Who actually located the weapon?

10 A Sergeant Sutton.

11 Q And who actually -- once y'all found the weapon did
12 y'all collect the weapon?

13 A Yes, sir. I photographed it and marked it with a
14 placard and collected it. The hammer was still back and
15 the slide was forward, which would indicate that the weapon
16 still had a round in the chamber and in the magazine.

17 Q And did you gather that evidence?

18 A Yes, sir, I did.

19 Q Let me show you what's been marked as State's Exhibit
20 95. If you would examine, is that the gun that y'all found
21 at the crime scene?

22 A Yes, sir, it is.

23 Q And was those items the bullets and things that were
24 found in it?

25 A They were inside the weapon. I had attempted to

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1 unload it myself. The weapon was rusted shut. I couldn't
2 get the magazine to release. And so I just made it safe by
3 using flex ties so the hammer could not travel forward, and
4 submitted it to SLED.

5 MR. BARNETTE: Your Honor, I would like to move
6 State's Exhibit No. 95 into evidence at this time.

7 MR. SCHULTZ: Without objection.

8 THE COURT: It is admitted.

9 MR. BARNETTE: Thank you, Your Honor.

10 (9mm pistol marked State's Exhibit No. 95.)

11 Q Let me show you what's been marked as State's Exhibit
12 90, 91 and 92 and 93. Do these pictures fairly represent
13 what you saw that day?

14 A Yes, sir, they do. And I took the photographs.

15 Q And how far was these found from -- how far was this
16 pistol found from where the car was?

17 A Approximately 43 feet, I think. Let me look. It
18 might have been 46.

19 Q If you want to look at your notes, you can while I'm
20 doing this.

21 MR. BARNETTE: Your Honor, I would like to move
22 State's Exhibit 90 through 93 into evidence at this time.

23 A 43 feet.

24 MR. SCHULTZ: No objection.

25 THE COURT: They are admitted.

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1 (Photographs marked State's Exhibits Nos. 90 through
2 93.)

3 MR. BARNETTE: Your Honor, permission to publish these
4 items to the jury at this time.

5 THE COURT: You may.

6 Q I'm showing you State's Exhibit No. 90. Can you tell
7 the jury what that describes, sir, or what that shows?

8 A That is the grip section of the weapon sticking out
9 from under the leaves. It also has an after-market rubber
10 grip on the grip that I later removed to get the serial
11 number.

12 Q And State's Exhibit No. 91, what does that picture
13 describe, sir?

14 A It is a -- well, it's another photograph of the grip
15 showing that the magazine is still inserted in the weapon.

16 Q State's Exhibit No. 92, what does this show, sir?

17 A That is a photograph of Sergeant Sutton pointing a
18 stick, and to where that weapon is actually located. And I
19 had took that photograph with the house in the background
20 to have some sort of reference.

21 Q So that's where he found it, where he's pointing the
22 stick to.

23 A Yes, sir.

24 Q And State's Exhibit No. 93, what is that, sir?

25 A That's a photograph of the overall whole weapon that I

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1 laid on top of the evidence bag and took it before we left
2 the scene.

3 Q Was that the way it was when you found it before you
4 removed it?

5 A Yes, sir.

6 Q And was the hammer back?

7 A Yes, sir.

8 Q And was there a round in the magazine as far as you
9 could tell?

10 A With a semiautomatic if the hammer is back and the
11 slide is forward, unless there's been some kind of major
12 malfunction, it's still going to be loaded, yes, sir.

13 Q I'm showing you State's Exhibit No. 95. Is this the
14 actual pistol that was recovered, sir?

15 A Yes, sir, it is.

16 Q And did you look at the serial number on this weapon?

17 A I did.

18 Q What was the serial number, sir?

19 A The serial number was 312-66797. In my incident
20 report I had typed it as a six, but it is a seven on the
21 weapon and on the evidence container that it's in.

22 Q If you would, write that serial number down on this
23 sheet of paper and where that serial number goes to. Well,
24 don't worry about that, sir. We might be able to do it
25 easier this way. Showing you State's Exhibit No. 95. Is

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1 that the serial number on the gun, sir?

2 A Yes, sir, it is.

3 Q And what's the serial number again?

4 A 312-66797.

5 Q And was this later taken by investigators, this
6 number, and looked into?

7 A Yes, sir. I actually had it done after -- I had to
8 remove those grips to find the serial number, and then had
9 it ran. And it came back as having been reported stolen.

10 Q And who reported it stolen, sir?

11 A It's reported stolen on --

12 MR. SCHULTZ: Your Honor, I believe he is not
13 testifying to personal knowledge.

14 THE COURT: Do you object?

15 MR. SCHULTZ: That's an objection, Your Honor.

16 THE COURT: Sustained.

17 Q These items, sir, these are the items -- was that the
18 handgrip that you took off the weapon?

19 A Yes, sir, it is.

20 Q Is this a magazine that was --

21 A Yes, sir.

22 Q -- from the weapon? And was these some of the bullets
23 that was located in the weapon?

24 A I never actually got to see the bullets, but, yes,
25 sir.

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1 Q Did you also attend the autopsy for Mr. Hunter, the
2 victim?

3 A Yes, sir, I did.

4 Q And showing you State's Exhibits 85, 84, 83 and 82.
5 Do those pictures fairly represent what you saw and took
6 pictures of at the autopsy?

7 A Yes, sir, they do.

8 Q Is that the serial number also, sir?

9 A Yes.

10 (Serial number marked State's Exhibit No. 101 for
11 Identification.)

12 MR. BARNETTE: Your Honor, I would like to move these
13 items into evidence at this time.

14 MR. SCHULTZ: Your Honor, no objection to 85. I do
15 have an objection to 82, 83, 84 as being too prejudicial.

16 THE COURT: Let me see them.

17 MR. SCHULTZ: 101, I am going to reserve my objection
18 for that. I do have an objection to this, 101.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 THE COURT: All right. Eighty-five is admitted; 101
22 is admitted; 82 and 83 are excluded; and 84 is excluded.

23 (Photograph marked State's Exhibit No. 85; serial
24 number marked State's Exhibit No. 101.)

25 MR. BARNETTE: Thank you, Your Honor.

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Direct examination by Mr. Barnette

1 May I publish State's Exhibit No. 85, sir?

2 THE COURT: You may.

3 Q If you would, tell the jury what this is, sir.

4 A That is the bullet removed from the victim at autopsy
5 by Dr. Wren.

6 Q Let me show you what's been marked and entered in as
7 State's Exhibit 101. What is that, sir?

8 A That's the serial number from the weapon that I just
9 wrote down.

10 MR. BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Looking at -- when you looked at the blue Caprice and
13 everything, and when y'all looked at the owner, did you
14 have an address for the owner too?

15 MR. SCHULTZ: Your Honor, objection.

16 MR. BARNETTE: I believe he can testify, Your Honor,
17 if he looked to see if there was any records concerning
18 that.

19 THE COURT: Well, overrule the objection.

20 A I don't have any knowledge of that. I know who it
21 belonged to simply because I was told by investigators.

22 Q Thank you, sir. Please answer any questions
23 Mr. Schultz has.

24 THE COURT: We are going to take a short break before
25 we do that.

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Cross-examination by Mr. Schultz

1 Ladies and gentlemen, we're going to take a short
2 break. I'll ask you to please go to your jury room. Don't
3 talk about the case. I'll bring you back in a few minutes.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Mr. Guthro, you can step down. You may
7 not discuss your testimony during the recess.

8 Court is in recess for 15 minutes.

9 (Whereupon, a recess was taken.)

10 THE COURT: All right. Mr. Guthro, if you will, come
11 back and resume your place on the stand, please, sir.

12 Bring the jury in.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Ladies and gentlemen, as you
16 know, the witness' direct examination had been concluded
17 when we took the break. So we're now going to proceed with
18 cross-examination by defense counsel.

19 MR. SCHULTZ: Thank you, Your Honor. May it please
20 the Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. SCHULTZ

24 Q Investigator Guthro, you arrived at this crime scene
25 on February 2nd of 2006, correct?

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Cross-examination by Mr. Schultz

1 A Yes, sir.

2 Q Okay. And during the course of this investigation you
3 saw that there was a car there, correct?

4 A That's correct.

5 Q Okay. What type of car was that?

6 A According to my incident report it's a '97 Toyota
7 4Runner.

8 Q '97 Toyota 4Runner. Did you memorize the exact
9 location of that car when you came back 18 months later?

10 A There are a set of large rocks down there in with some
11 trees growing up beside it. The front end of that vehicle
12 was up against those trees. So, yes, sir, I know where the
13 car was.

14 Q So you know where the car was. Okay. Now, going back
15 to the night this happened here, did you search the ground
16 around the car?

17 A Yes, sir, I did.

18 Q Okay. And what did you find, if anything?

19 A There was a Tom Petty C. D. cover laying on the ground
20 on the hill leading down to the vehicle in the path that
21 was ripped out by the vehicle. There were two blue latex
22 gloves on the ground prior to reaching the vehicle. It was
23 determined that those had been removed by Officer Watts in
24 order to go down the hill. I observed a pair of white
25 latex gloves that appeared to have blood on them located

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Cross-examination by Mr. Schultz

1 near the vehicle. And that is it on the, on the exterior
2 of the vehicle.

3 Q All right. Referring back to the white latex gloves,
4 did you ever test those?

5 A I submitted those to SLED.

6 Q You submitted those to SLED. Do you know what SLED
7 did with them?

8 A No, sir. I don't know what the results of their
9 examination was.

10 Q Now, you've worked crime scenes like this before,
11 correct?

12 A I've worked homicides before.

13 Q Okay. Now, when a crime like this occurs, what radius
14 around the scene of the crime do you search?

15 A There is not a particular radius. You just kind of go
16 where the evidence leads you. There is not a designated
17 circumference.

18 Q But you'd say maybe around 50 feet around the car
19 would be fair?

20 A I wouldn't put a number on it. In this case what was
21 done was the area going through this vegetation was ripped
22 out by the vehicle as it traveled down that hill.

23 The area immediately around the vehicle where you
24 could actually see to search the path that the vehicle tore
25 going down the hill through the vegetation was searched.

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1 It's extremely dense, and it was also raining and dark. So
2 you couldn't see very far.

3 Q All right. I understand that, but, nevertheless, you
4 could have come back the next day when it was light outside
5 and you could have searched, correct?

6 A That was done, just not by me.

7 Q That was done. Was anything revealed at that time?

8 A That was done by investigators while I was processing
9 the vehicle, and to my knowledge they didn't find anything.

10 Q To your knowledge they didn't find anything.

11 A That's correct.

12 Q Do you know the radius of that search?

13 A No, sir, I don't.

14 Q Okay. But yet you conducted a fairly small search on
15 February the 2nd, and then you came back. And then you did
16 not investigate the day after, nor did you investigate the
17 month after, correct, for any additional --

18 A If I went back to that scene, I was not back at that
19 scene from the night that I had worked the initial scene
20 until we went back a considerable amount of time later and
21 recovered that weapon.

22 Q Considerable amount of time later. Do you know in
23 between February the 2nd of 2006 until September the
24 21st of 2006, do you know if any searches were done of that
25 area around that?

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Cross-examination by Mr. Schultz

1 A I know that investigators went back during the
2 daylight hours so that they could -- when they could see
3 and look that area over looking for any further evidence.

4 Q To your information, again, nothing was found,
5 correct?

6 A That's correct.

7 Q Now, you performed a search on a blue Caprice,
8 correct?

9 A Yes, I did.

10 Q Where did you perform that search?

11 A At Spartanburg city's impound lot.

12 Q All right. Were you aware that there were further
13 searches done to that car?

14 A Prior to my looking into that car, yes.

15 Q Yes. And to your knowledge, what did those searches
16 reveal?

17 A In one they recovered a cell phone and in another I
18 think they recovered a rag and a jacket.

19 Q Okay. Do you remember when those searches were done?

20 A No, sir. I wasn't involved in neither one of those.

21 Q All right.

22 MR. BARNETTE: Your Honor, I would object at this
23 point. That would be hearsay if he's asking him if he
24 doesn't know. He wasn't involved in those others searches.

25 THE COURT: Are you asking him about things he knows

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Cross-examination by Mr. Schultz

1 of his own personal knowledge?

2 MR. SCHULTZ: I plan on doing that, yes, Your Honor.

3 THE COURT: Okay.

4 Q Nevertheless, you knew that there were searches done
5 prior to the search that you had conducted on it
6 previously, correct?

7 A Yes, sir.

8 Q Okay. And you also knew that there was a phone found
9 according to what I just asked you, correct?

10 A During one of those first searches?

11 Q The first search.

12 A Yes.

13 Q There was a phone found. Do you know the number to
14 that phone?

15 A No, sir, I don't.

16 Q Did you ever send that phone off?

17 A No, sir.

18 Q Do you know if that phone was ever sent off?

19 A I do not.

20 Q So you don't know if that phone was ever sent off to
21 SLED for any kind of testing.

22 A No, sir, I don't.

23 Q You don't know the phone number of that.

24 A No, sir, I don't.

25 Q Now, these first two searches of the Caprice, they

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 were done on the search warrant, right?

2 A Yes, they were.

3 Q And when you went back on February the 22nd of 2006,
4 you didn't have a search warrant, correct?

5 A That's correct.

6 Q That's against policy, correct?

7 A Correct.

8 MR. BARNETTE: Your Honor, I'm going to object at this
9 point. I mean, this is a matter of law that was dealt with
10 earlier, dealt with earlier.

11 THE COURT: Sustained.

12 Q And when you searched on February the 22nd, what did
13 you find?

14 A The cell phone.

15 Q And that's the only thing you found, correct?

16 A It's not that that's the only thing I found. It's the
17 first thing I found, at which time I stopped.

18 Q And you stopped after finding that cell phone,
19 correct?

20 A That's correct.

21 Q All right. And then you went again to the Caprice,
22 correct?

23 A Talking about at a later date with the search warrant?

24 Q You went again to the Caprice and you searched again,
25 correct?

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 A Yes.

2 Q What did you find that time?

3 A I would have to have it to read it off.

4 THE COURT: Be careful not to blow into that
5 microphone, please.

6 THE WITNESS: I'm sorry.

7 MR. SCHULTZ: Your Honor, I would beg the Court's
8 patience.

9 THE COURT: Yes.

10 (Pause.)

11 Q Investigator Guthro, I'm going to hand you the return
12 on the search warrant. I'd like for you to read this.

13 A "This search warrant was executed by me on 3/2 of
14 2006. Recovered from the car at that time was one cold red
15 Mountain Dew bottle, one Newport cigarette butt, one bag of
16 green leafy substance, one Wal-Mart pill receipt, one
17 disposable camera box, one pair of sunglasses, one knife,
18 one Minute Main orange juice bottle, four cigarette butts
19 from the driver's floor, one hand rolled cigar, five
20 flyers. Six swabs were collected. A handprint was
21 collected from the exterior of the vehicle, and a palm
22 print from the rearview mirror. Nothing else taken."

23 Q That was your second search, correct?

24 A Mine, yes.

25 Q Now, in these two searches did you find any traces of

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 blood?

2 A I don't believe so. I don't recall, but I don't think
3 so.

4 Q Now, going back to the Toyota 4Runner, let me refer
5 you to --

6 MR. SCHULTZ: Beg the Court's patience, Your Honor.

7 (Pause.)

8 Q Referring back to State's Exhibit 56, do you see the
9 No. 9 marker right there?

10 A Either a nine or a six.

11 Q All right. What is right next to that?

12 A It is a bag of cocaine.

13 Q Okay. And this was found in the Toyota 4Runner,
14 correct?

15 A Yes.

16 Q So based upon your investigation would you conclude
17 that the people in the car that night were either using or
18 dealing drugs? Would that be a good assumption to make?

19 A There were definitely drugs in the car.

20 Q All right. Were there any other drugs found in the
21 car?

22 A In the center console there was a syringe which
23 contained a liquid which I had tested which was heroine.

24 Q So besides the heroine and the cocaine, were any other
25 drugs found in the car?

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 A I don't believe so.

2 Q Okay. But, nevertheless, cocaine and heroine are
3 pretty serious drugs, correct?

4 A Yes.

5 Q Now, referring to the car itself, we've heard
6 testimony that the suspect had to enter the car at some
7 point, correct?

8 A Yes.

9 Q Okay. And his entry there, he would have had at least
10 maybe one fingerprint, correct?

11 A Possibly, but not necessarily.

12 Q All right. What about the passenger side of the car?
13 Did you swab that for fingerprints?

14 A Passenger side?

15 Q Passenger side of the car.

16 A I didn't swab it for fingerprints. I dusted the
17 entire vehicle for prints.

18 Q Dusted the entire vehicle. Did you dust the interior?

19 A Parts of it. All of the parts of it that would
20 possibly be a fingerprint on them, I dusted, yes, sir.

21 Q What parts did you -- did you not swab?

22 A Clock. You asked me what parts did I not dust? The
23 clock. I didn't dust anything that had a surface that
24 couldn't maintain a print obviously.

25 Q What about the outside of the car?

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 A I dusted it for prints.

2 Q And were any prints revealed?

3 A There were several prints lifted, and they were
4 submitted for AFIS examination.

5 Q Do you know what happened to those prints?

6 A I don't know those results.

7 Q Okay. Did you swab the handle of the door?

8 A I don't recall. Let me look.

9 Q You may refer back to your notes.

10 (Pause.)

11 A I do not believe I swabbed the doorknob or doorhandle
12 if that's what you're asking me.

13 Q All right.

14 MR. SCHULTZ: Again, I beg the Court's patience, Your
15 Honor.

16 (Pause.)

17 Q Now, referring back to this, do you know what this is?

18 A It's a photograph of the rear seat of the victim's
19 vehicle.

20 Q Rear seat of the victim's vehicle. All right. And
21 obviously that's blood, correct?

22 A Yes.

23 Q Okay. And according to the investigation that the
24 city and the county did on this case, the shooter had to be
25 sitting somewhere in the back, correct?

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 A Yes.

2 Q All right. And the shooter, whoever that was, his
3 clothes had to have some fair amount of trace blood on it,
4 correct?

5 A Potentially.

6 Q Potentially?

7 A Potentially.

8 Q So you're telling this jury that it's not a
9 possibility that whoever was seated back there did not get
10 blood on their clothes?

11 A That blood would appear to be a transfer stain which
12 would imply that whoever sat there had blood on him. But,
13 yeah, it would be entirely possible to be back there and
14 not get blood on you. In this case this person did.

15 Q But it still would be possible, correct?

16 A It would be possible, yes.

17 Q For the suspect, whoever that was, to have blood on --

18 A Yes.

19 Q -- his clothes.

20 A Yes.

21 Q Now, referring back to the gun, Officer, could you
22 again read that serial number again? You can look on there
23 if you want.

24 A I can look on there, but I can't make out that, the
25 one number.

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 Q You can't make out the one number. What number is
2 that?

3 A The one that's the first one after the dash mark.

4 Q The first one after the dash mark, correct, that
5 number?

6 A Yes.

7 Q Okay. You're not sure what that number is.

8 A I have it written here. So I'm assuming I can see it
9 clearly on the weapon. And the number I have written down
10 is 312-66797.

11 Q But yet even though anybody looking at the gun could
12 not know, could obviously determine that it was 312, dash,
13 but anybody with common sense would not know that that
14 number, first number after the dashes --

15 A Looking at it from there, I would not say.

16 Q But yet you felt it important to include that in your
17 report. You just filled in the six, correct?

18 A I didn't just fill it in. Apparently, I can see it on
19 the weapon, either whether it's with a magnifying glass or
20 what.

21 Q All right. Now, when you recovered that gun, after
22 how many months between the actual crime and the recovery
23 of the gun was that?

24 A The gun was recovered on 9/21/07.

25 Q 9/21/07. And, again, the actual crime happened on

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 February the 2nd of 2006, correct?

2 A That's correct.

3 Q Now, how many months is that?

4 A Over a year.

5 Q Over a year. Okay. More than a year later you
6 recovered that gun, correct?

7 A Correct.

8 Q Now, did you send that gun to SLED?

9 A Yes.

10 Q Did you do any fingerprint analysis on it?

11 A No, I did not. The gun had laid out for over a year.

12 The only place where there potentially was going to be
13 fingerprints was on the magazine, which I could not get out
14 of the weapon, because it would have been sheltered from
15 the weather.

16 I couldn't get it out of the weapon, so I made the
17 weapon safe and sent it to SLED where they could remove
18 that and test it for fingerprints or any D. N. A.

19 Q All right. Now, going back to the month after the
20 crime, according to your knowledge, that you or anybody
21 else did not go out there and look for this, correct?

22 A I previously stated I know that they made a trip back
23 out there to search that area during daylight hours while I
24 was in the process of processing the vehicle. What, if
25 anything, they found, I don't know.

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 Q Yet nothing was found.

2 Now, Investigator, you also had a return of the search
3 warrant on February the 2nd of 2006, correct?

4 MR. SCHULTZ: Permission to approach him, Your Honor?

5 THE COURT: Yes.

6 Q Is this your signature right there?

7 A It is.

8 Q All right. Can you tell me what you found in that
9 car? This is the Toyota 4Runner, correct?

10 A I don't have the rest of the warrant here in front of
11 me, so I would have to look at what was collected to see if
12 I could determine which vehicle it was from.

13 Q This is the affidavit and the search warrant itself
14 for the Toyota 4Runner. You can just read the return.

15 A "Four swabs, ten print cards, a Diet Coke can," which
16 had apparently been made into a crack pipe because I have
17 that written. "One syringe, four 9mm shell casings, two
18 fired bullets, fragments of other styrofoam, a piece of a
19 styrofoam cup, eight cuttings from the seat, one black
20 wallet with no money in it, one Walgreen's receipt for the
21 syringe or a syringe, and one open pack of Newport
22 cigarettes," and that's it.

23 Q All right. Previously I asked you were there any
24 other drugs found in the car, and you said no, correct?

25 A No. I said there was heroine.

Edgar Victor Guthro
Cross-examination by Mr. Schultz

- 1 Q There was heroine. And what else?
- 2 A There was heroine and cocaine.
- 3 Q And according to that search warrant, what else was
- 4 there? What other drugs were?
- 5 A Are you referencing the crack pipe?
- 6 Q Yes, I am.
- 7 A That's not a drug. It's a crack pipe. It's used for
- 8 drugs.
- 9 Q Used for drugs. Correct. Okay.
- 10 MR. SCHULTZ: Beg the Court's patience again.
- 11 (Pause.)
- 12 Q Again, referring back to these drugs, was anything
- 13 ever submitted to the state law enforcement division?
- 14 A On the drugs? I believe that stuff was tested by
- 15 Spartanburg County's lab.
- 16 Q Do you know wether it was also there?
- 17 A Yes. It was determined to be cocaine in the bag. It
- 18 was determined to be heroine in the syringe.
- 19 Q Were any D. N. A. or fingerprints lifted from that?
- 20 A No.
- 21 Q Okay. So nothing from the crack pipe?
- 22 A No.
- 23 Q The cocaine baggy?
- 24 A I may have processed the crack pipe. I don't recall.
- 25 But nothing from the cocaine baggy and nothing from the

Edgar Victor Guthro
Redirect examination by Mr. Barnette

1 syringe. And if I did process the crack pipe, to the best
2 of my knowledge there was no prints on it.

3 MR. SCHULTZ: Nothing further for this witness.

4 MR. BARNETTE: A few on redirect, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BARNETTE

7 Q Going back to the blue Caprice that was being driven
8 by the defendant, you said there was a green leafy
9 substance found in there.

10 A Yes, sir. There was.

11 Q And what was that, sir?

12 A I can't recall if that was tested, but it smelled like
13 marijuana. I know that much.

14 Q And talking about the fingerprints and so forth, is
15 Lou Mathis a person of AFIS with y'all's system?

16 A Yes, she is.

17 MR. BARNETTE: May I approach?

18 Q Does she do reports and so forth on the fingerprints?

19 A I'm sorry? I couldn't hear you.

20 Q Does she do the -- she does the fingerprints and looks
21 at them and everything and submits a report?

22 A Yes, sir. We submit them to her and she puts them
23 into the AFIS system.

24 MR. SCHULTZ: Your Honor, I'm not sure what piece of
25 paper the solicitor is referring to.

Edgar Victor Guthro
Redirect examination by Mr. Barnette

1 MR. BARNETTE: Again, Your Honor, I will hand it to
2 the defense attorney. He has copies of this.

3 May I approach the witness again, Your Honor?

4 THE COURT: Yes.

5 Q And does Lou Mathis and Investigator Jones do AFIS
6 reports for y'all or examine fingerprints for y'all?

7 A Yes.

8 Q And did they do it in this case?

9 A This is a report by Lou Mathis on the prints that were
10 submitted to her.

11 Q And on the report, what did they find?

12 A The, on this first one, most of them were of
13 insufficient quality for AFIS submission. One was of
14 sufficient quality and was submitted and came back with
15 negative results. Didn't match anybody. And two partial
16 palm prints, and which they did show, were submitted and
17 came back matching Tenitia -- if that's how you say that --
18 Feaster.

19 Q Osia Feaster.

20 A Feaster.

21 Q So most of them was insufficient quality from the,
22 from both cars, I guess.

23 A That's correct.

24 Q And there was one that was of sufficient quality but
25 didn't match anybody.

Edgar Victor Guthro
Redirect examination by Mr. Barnette

1 A That's right.

2 Q So that could have been anybody, or, I mean, whoever
3 would have been in those vehicles, could have been
4 anybody's fingerprints that had been in those vehicles
5 before.

6 A That's correct.

7 Q And I guess the one from the blue Caprice, those palm
8 prints matched Osia Feaster?

9 A Yeah, that's right. I was looking at the middle name.

10 Q And so those fingerprints and palm prints and
11 everything was examined.

12 A Yes.

13 Q And Mr. Schultz asked you about the clothing. Can
14 people change their clothes?

15 A Yes, sir.

16 Q And approximately what time did the murder take place,
17 the attempt, assault with -- and battery with intent to
18 kill?

19 MR. SCHULTZ: Objection, Your Honor. I'm not sure
20 he's testifying from personal knowledge.

21 Q Or when did you arrive on the scene?

22 A I arrived on the scene at 9:46 p.m.

23 Q And later on the defendant was apprehended after
24 midnight.

25 A Yes, sir.

Edgar Victor Guthro
Redirect examination by Mr. Barnette

1 Q Would he have time to change his clothes?

2 A Yes, sir.

3 MR. BARNETTE: Your Honor, I am going to publish
4 State's Exhibit No. 1, which is the map.

5 Q If you would, sir, come down and point out where the
6 murder took place.

7 (Whereupon, the witness left the stand.)

8 A I can't read.

9 Q You might want to look on this. Right there is the
10 murder scene.

11 A Right. Apparently the vehicle had been traveling this
12 direction going straight down the embankment right here,
13 but that's the intersection.

14 Q Where is Overbrook Circle at?

15 MR. SCHULTZ: Your Honor, relevancy.

16 THE COURT: Overruled.

17 A Right here.

18 Q Okay. Is that where the defendant lived, on Overbrook
19 Circle?

20 A Yes.

21 Q How far is that away from Chester or Theodosia drive?

22 MR. SCHULTZ: Your Honor, I'm not sure the officer can
23 testify as to this.

24 THE COURT: Well, we're going to find out in a minute.
25 If he knows, he'll testify to it. If he doesn't, he'll say

Edgar Victor Guthro
Recross-examination by Mr. Schultz

1 he doesn't know.

2 A There is the murder scene right there. Right here is
3 Overbrook Circle where the defendant lives. And maybe
4 roughly a half mile. It's not very far.

5 Q Thank you, sir.

6 (Whereupon, the witness returned to the stand.)

7 Q And obviously you don't know if he changed his clothes
8 within that period of time or not.

9 A No, sir. I do not.

10 Q Please answer any questions Mr. Schultz may have for
11 you.

12 RECROSS-EXAMINATION

13 BY MR. SCHULTZ

14 Q Now, you were aware that a search warrant was also
15 issued at [REDACTED], correct?

16 A I believe that it was. I know that I was executing
17 one on South Center. I believe that is where they executed
18 another one at roughly the same time.

19 Q And to your recollection was any bloody clothes found
20 there?

21 A Not to my knowledge.

22 Q Thank you. That's all I have.

23 THE COURT: You may step down.

24 MR. BARNETTE: Your Honor, we would ask for this
25 witness be to be excused.

1 THE COURT: He can be.

2 (Whereupon, the witness was excused.)

3 MR. BARNETTE: Mr. McKinney is our next witness, Your
4 Honor.

5 THE COURT: All right. Well, we'll break now. That
6 will take some time. So we'll break now for lunch, and
7 we'll resume this afternoon at 2:00 o'clock.

8 Keep in mind my caution given you previously. No
9 discussions about the case; no exposure to any type of
10 media coverage; no independent investigation or research.

11 Do have a good lunch. Please report back to your jury
12 room at 2:00 o'clock this afternoon, 2:00 o'clock this
13 afternoon.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Court is in recess until 2:00 o'clock.

17 (Whereupon, a recess was taken.)

18 (White latex glove with blood marked State's Exhibit
19 No. 102 for Identification.)

20 THE COURT: All right. Bring the jury in, please,
21 sir.

22 MR. SCHULTZ: Your Honor, I have one thing. I
23 apologize. Your Honor, I have one thing I would like to
24 take up.

25 I believe from my information the next witness is

1 going to be Kelvin McKinney, and this is a witness that is
2 going to testify to some things.

3 He gave a video-taped statement to Investigator Porter
4 with the city. And during the course of this, my
5 cross-examination of him, I want to try and put into
6 evidence the video-taped testimony. And I think it will be
7 relevant. And I believe that he will contradict himself
8 several times from his cross-examination and on his
9 video-taped testimony which was given at the end of last
10 year. So I would just like a pretrial ruling on that or
11 pre, you know, ruling on that.

12 MR. BARNETTE: Your Honor, I would object at this
13 point. Obviously, there was a written statement that was
14 taken at the same time. That's been provided to
15 Mr. Schultz. He can ask him questions off the written
16 statement, I think. That will cover anything he needs to
17 do. And, obviously, he has to lay a foundation before he
18 plays any video tape of any statement being taken. So I
19 would object to it at this point.

20 THE COURT: Well, I think extrinsic evidence of a
21 prior inconsistent statement is not admissible unless the
22 witness denies having made the statement.

23 In other words, you can ask him if he told officer
24 whoever previously something that contradicts his testimony
25 today. If he says, yeah, I told him that, that's the end

1 of it. I mean, you don't have to prove it. If he denies
2 it, then you have a right to establish it.

3 MR. SCHULTZ: So just to make sure, if I ask him a
4 question and say did you say this, and he goes, well, no, I
5 didn't say that, then I can show him the video about that
6 to impeach his credibility?

7 THE COURT: What I'm saying is you can -- when he gets
8 through testifying you can ask him on cross-examination if
9 he made a particular statement which you believe
10 contradicts his testimony today.

11 If he admits to having made that prior inconsistent
12 statement, then that's the end of it. If he denies having
13 made that statement, in other words, he says, no, I didn't
14 tell officer whoever that, then if you have evidence that
15 he did, you can introduce it to establish that
16 inconsistency.

17 MR. SCHULTZ: That's all I'm asking, Your Honor.
18 Thank you.

19 THE COURT: Okay. Bring the jury in.

20 Now, let me ask you this. Solicitor, you said there
21 is a written statement. Is it the same as the video-taped
22 statement, or are those two different statements?

23 MR. BARNETTE: Yes, sir. The one that he's talking
24 about at the city, and I think you're familiar with it --
25 the city does the video-taping -- then they'll go back and

Edgar Victor Guthro
Direct examination by Mr. Barnette

1 do a written statement with him. So it should be very
2 similar.

3 THE COURT: All right.

4 MR. SCHULTZ: Actually for clarification, there's two
5 written statements that Mr. McKinney gave. Various details
6 differ from time to time. I don't know how many
7 statements.

8 THE COURT: Well, you'll be able to examine him on
9 that.

10 MR. SCHULTZ: That's fine. Thank you, Your Honor.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: Good afternoon, ladies and gentlemen.

14 We are going to continue with the state's presentation
15 of evidence.

16 Mr. Barnette.

17 MR. BARNETTE: Thank you, Your Honor. I'd like to
18 briefly call Investigator Guthro back to the stand briefly.

19 THE COURT: You're still under oath.

20 EDGAR VICTOR GUTHRO, having
21 been previously duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE

23 Q Sir, let me show you what's been marked as State's
24 Exhibit 102. If you would, take a look at that and tell us
25 what that is, sir.

Edgar Victor Guthro
Cross-examination by Mr. Schultz

1 A Those are the bloody white latex gloves that I
2 collected from around near the vehicle.

3 Q That was collected at the crime scene outside?

4 A Yes, sir.

5 Q And was these collected by you?

6 A Yes.

7 Q And were they sent to evidence?

8 A Yes.

9 Q And was these later sent to SLED for analysis?

10 A Yes.

11 MR. BARNETTE: Your Honor, I'd like to enter State's
12 Exhibit 102 into evidence at this time.

13 MR. SCHULTZ: No objection, Your Honor.

14 THE COURT: It is admitted.

15 (White latex glove with blood marked State's Exhibit
16 No. 102.)

17 Q Thank you, sir. Please answer any questions
18 Mr. Schultz may have for you.

19 MR. SCHULTZ: Briefly, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SCHULTZ

22 Q Investigator Guthro, where did you find these gloves?

23 A On the ground near the vehicle.

24 Q On the ground near the vehicle.

25 All right. And did you know or did you attempt to

Kelvin McKinney
Direct examination by Mr. Barnette

1 find out whether they were E. M. S. gloves left by E. M. S.
2 workers?

3 A I didn't contact any of them. I assume that they may
4 have been because they were properly removed when the
5 person took them off. They were rolled inside of each
6 other.

7 Q So they were probably E. M. S. gloves according to
8 you.

9 A Very likely.

10 Q Thank you. That's all I have.

11 MR. BARNETTE: No further questions of this witness,
12 Your Honor.

13 THE COURT: You may step down.

14 MR. BARNETTE: Your Honor, I would like to call Kelvin
15 McKinney to the stand, please.

16 KELVIN MCKINNEY, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q Mr. McKinney, if you would, state your full name for
20 the record, please.

21 A Kelvin McKinney.

22 Q If you would, scoot up a little bit closer to it so we
23 can hear you. Would you say that again, sir?

24 A Kelvin McKinney.

25 Q And, if you would, talk as loud as you can so the

Kelvin McKinney
Direct examination by Mr. Barnette

1 person in the back of the jury can hear you.

2 Sir, where did you live at on February 2nd, or where
3 was you -- did you -- where is your original home town at,
4 sir?

5 A Spartanburg.

6 Q And do you know the defendant in this case?

7 A Yeah.

8 Q And what, what nickname do you know him by?

9 A Little C.

10 Q And what's his real name?

11 A Nathaniel Teamer.

12 Q Do you see him in the courtroom here today?

13 A Yeah.

14 Q Where is he at, sir? Could you describe what he is
15 wearing?

16 A Brown shirt and khaki pants.

17 Q And prior to -- how long have you known Mr. Teamer?

18 A Ever since about elementary school.

19 Q And where did y'all go to elementary school at?

20 A Park Hills.

21 Q And have y'all grown up together?

22 A Yes, sir.

23 Q Going back to January the 14th of 2006, was you with
24 Mr. Teamer that day?

25 A Yes, sir.

Kelvin McKinney
Direct examination by Mr. Barnette

1 Q And that day, who else was with y'all?

2 A Tony, Tony Hunter.

3 Q Tony Hunter was there. And what is your nicknack?

4 A Snow.

5 Q And did Tony have a nickname also?

6 A Yeah.

7 Q What was his nickname?

8 A Scare.

9 Q And so you and Mr. Teamer and Little C and Tony was
10 together that day. Where did y'all go to?

11 A I don't know what street it was. Some, some little
12 house on a little back road. I don't know.

13 Q You have to talk louder so the court reporter can hear
14 you. Okay?

15 A I say I don't know where the house was. It's on the
16 street. I don't know the name of it.

17 Q Was it here in Spartanburg?

18 A Yeah.

19 Q And, if you would, tell the jury what happened when
20 y'all went over to that place.

21 A Well, we parked the car. We parked the car. We was
22 waiting on some dude. The dude finally pulled up, and Tony
23 got out of the car and hollered at the dude. The other
24 dude whose house it was, and the other dude went and
25 hollered at the one that was in the truck.

Kelvin McKinney
Direct examination by Mr. Barnette

1 THE COURT: Excuse me. You're going to have to repeat
2 that. You have to articulate, speak, you know, so we can
3 understand what you're saying.

4 Q Speak up so the jury can hear you and everybody else
5 can hear you. Okay?

6 A We got to the house. The dude in the truck pulled up,
7 and then the dude's house it was went to the truck and
8 hollered at the dude inside the truck.

9 We was sitting in the car, and Tony got out of the car
10 and went and got, went and talked to the dude. And when he
11 got out of the car, out of the truck, went and talked to
12 him. And that's when Teamer got out of the car and went to
13 the truck. And the dude tried to pull off. That's when
14 the shots was fired.

15 Q And who fired the shots?

16 A Teamer -- Teamer.

17 Q And who was he shooting at?

18 A The guy in the truck.

19 Q Who told you how to get -- who was driving y'all's
20 car?

21 A Me.

22 Q Who told you how to get there?

23 A Tony.

24 Q And when this fellow, these other dudes, started
25 driving away, who started shooting?

Kelvin McKinney
Direct examination by Mr. Barnette

- 1 A Teamer.
- 2 Q And how many times did he shoot?
- 3 A I don't really know.
- 4 Q What happened after that?
- 5 A Him and Tony got in the car, and I pulled off. And we
- 6 dropped him off, dropped Teamer off. And then we went back
- 7 to Whispering Pines -- me and Tony.
- 8 Q Did you also know Tony Hunter?
- 9 A Yeah.
- 10 Q How long had you known him?
- 11 A A couple of years.
- 12 Q Was he friends of y'all's too?
- 13 A Yeah.
- 14 Q After that there was there an investigation started
- 15 into the shooting?
- 16 A Yeah.
- 17 Q And did Investigator Bryant ever approach you from the
- 18 sheriff's department?
- 19 A Yes, sir.
- 20 Q Just wait one second.
- 21 (Pause.)
- 22 Q Did Investigator Bryant or Jason Bryant from the
- 23 sheriff's department start investigating the case?
- 24 A Yeah.
- 25 Q Did he come around and start talking to witnesses?

Kelvin McKinney
Direct examination by Mr. Barnette

- 1 A Talking about did he ever talk to me's any?
- 2 Q Did he ever get the chance to talk to you?
- 3 A Yeah. After I got arrest.
- 4 Q But before that did you ever talk to him?
- 5 A Naw.
- 6 Q Did you find out later that Tony had talked to him?
- 7 A Well, I knowed that Tony had called the house. He
- 8 wanted to know my real name. But I don't know who he was
- 9 with then.
- 10 Q And did you tell Little C this, or Mr. Teamer?
- 11 A Yeah.
- 12 Q Did he want to know if Tony had talked to anybody?
- 13 A Yeah.
- 14 Q Later on was you afraid you was going to get arrested?
- 15 A Yeah.
- 16 Q What did you do?
- 17 A I left.
- 18 Q And where did you go to, sir?
- 19 A Michigan.
- 20 Q And who did you go live with in Michigan?
- 21 A Aunt.
- 22 Q What's her name?
- 23 A Louise Day.
- 24 Q And --
- 25 THE COURT: Can you repeat that, please?

Kelvin McKinney
Direct examination by Mr. Barnette

1 THE WITNESS: The name?

2 THE COURT: Everything. Yeah, her name.

3 THE WITNESS: Louise.

4 THE COURT: Can you speak up and use that microphone?

5 THE WITNESS: Louise Day.

6 THE COURT: Louise Day? Thank you.

7 Q And whose phone number is (313)814- [REDACTED]

8 A That was the house number.

9 Q For who?

10 A My aunt's house number.

11 Q Up in Michigan? And that's where you were staying at?

12 A Yeah.

13 Q Later on was you arrested for this, the event that
14 occurred on January the 14th of 2006?

15 A Yes.

16 Q And was you brought back to South Carolina?

17 A Yeah.

18 Q When was that, sir?

19 A December the 2nd.

20 Q December the 2nd of what year?

21 A November the 2nd.

22 Q Oh, November the 2nd. I'm sorry. November the 2nd of
23 what year?

24 A '06.

25 Q And when you was brought back to Spartanburg, did

Kelvin McKinney
Direct examination by Mr. Barnette

1 investigators talk to you then?

2 A Yeah.

3 Q Prior to that did you see Mr. Teamer in the jail?

4 A Yeah, I seen him.

5 Q And where did you see him at, sir?

6 A Pod six.

7 Q Which pod, again?

8 A Six.

9 Q One of the pods at the jail, six. And tell the jury.

10 Did he talk to you about this case?

11 A Yeah.

12 Q What did he tell you about it?

13 A Told me that Tony and a white dude named --

14 MR. SCHULTZ: Objection, Your Honor. Hearsay.

15 THE COURT: Overruled.

16 Q Again, sir, what did Mr. Teamer tell you?

17 A He told me him and Tony and white dude came and picked

18 him up from over at girl's house, over at girl's house, and

19 he got in the car. They rode off. They rode off East Main

20 Street. When they got onto the little side street and

21 about to stop at the stop sign, that's when he shot Tony.

22 And he shot the white dude. The white dude jumped out of

23 the car. The car kept going with him and Tony in the car.

24 And he jumped out.

25 Q Did he say what happened to his gun?

Kelvin McKinney
Direct examination by Mr. Barnette

- 1 A Dropped it.
- 2 Q Could he find it or did he lose it?
- 3 A Said he lost it.
- 4 Q Why would he tell you this? Why would he tell you
- 5 about what happened to Tony Hunter?
- 6 A We just in the room talking, and I had asked him.
- 7 Q Do you have a relationship with Tony's sister?
- 8 A Yes.
- 9 Q And who is she?
- 10 A Dawn Hunter.
- 11 THE COURT: Repeat the name, please.
- 12 THE WITNESS: Dawn Hunter.
- 13 Q And how many kids do y'all have together?
- 14 A Two.
- 15 Q Is Dawn in the courtroom here today?
- 16 A Yeah.
- 17 Q Is she the lady in the blue and the white and purple
- 18 stripes?
- 19 A Yeah.
- 20 Q After Mr. Teamer told you this did you tell
- 21 investigators about what he told you?
- 22 A Yeah.
- 23 Q And did you talk to the city investigators?
- 24 A Yeah.
- 25 Q And did you talk to Investigator Bryant?

Kelvin McKinney
Direct examination by Mr. Barnette

1 A Yeah.

2 Q And did you also tell Investigator Bryant about the
3 ABWIK or the event on January the 14th?

4 A Yeah.

5 Q Did you tell him what happened that day too?

6 A Yeah.

7 Q And did you find out Tony Hunter had also told him
8 about that day?

9 A Yeah.

10 Q Did Mr. Teamer tell you that he shot and killed Tony
11 Hunter?

12 A Yeah.

13 Q Did he say he shot and killed, not shot and killed,
14 but did he shoot the white guy?

15 A Yeah.

16 Q Did he know who the white guy was?

17 A Naw.

18 Q Did he say he had ever seen him before or anything
19 like that?

20 A Ain't never heard him talk about had he ever seen him
21 before.

22 Q Let me ask you. What was one of the cell phones that
23 you called Mr. Teamer at? What cell phone number?

24 A 921- [REDACTED]

25 Q So this is one of the cell phone numbers you would

Kelvin McKinney
Cross-examination by Mr. Schultz

1 call him at. And did you call him there often?

2 A A couple of times.

3 Q And would he call you on that number too? Would he
4 call you from that number too?

5 A I think so.

6 MR. BARNETTE: One moment, Your Honor, please.

7 MR. SCHULTZ: Your Honor, I didn't get that. What was
8 the response to that question?

9 THE COURT: Repeat your last answer, please.

10 THE WITNESS: I said I think so.

11 Q Please answer any questions Mr. Schultz may have for
12 you, sir.

13 CROSS-EXAMINATION

14 BY MR. SCHULTZ

15 Q Kelvin -- is it?

16 A Yeah.

17 Q Do you feel bad today giving false information about
18 Charlie here?

19 A Naw. I ain't gave no false information.

20 Q Did you go up to Michigan around this time that the
21 killing happened?

22 A I was already in Michigan when the killing happened.

23 Q All right. Now, you were up in Michigan to avoid your
24 parole, weren't you?

25 A Yes, sir.

Kelvin McKinney
Cross-examination by Mr. Schultz

- 1 Q Okay. What were you on parole for?
- 2 A Assault and battery of a high and aggravated nature,
3 unlawful carrying of a pistol.
- 4 Q Unlawful carrying a pistol. Okay. So you left the
5 state of South Carolina and went up hundreds of miles away
6 to hide out from people, right?
- 7 A What did you say, now?
- 8 Q You were hiding out from the authorities, weren't you?
- 9 A Yeah.
- 10 Q So you lied. You were trying to get away with
11 something, weren't you?
- 12 A I was -- I ran because I was on parole, and Tony
13 Hunter had asked me what was my real name. That's why I
14 left.
- 15 Q What do you mean, your real name?
- 16 A My government name.
- 17 Q Your government name. What do you mean by that?
- 18 A My first and last name.
- 19 Q Why would Tony Hunter ask you about your government
20 name?
- 21 A I don't know.
- 22 Q You don't know. Okay. Did you know Tony gave a
23 statement about you?
- 24 A Yeah.
- 25 Q Okay. Did that make you mad?

Kelvin McKinney
Cross-examination by Mr. Schultz

1 A Naw.

2 Q You've got to speak up. Did that make you mad?

3 A No.

4 Q No, it didn't? So you want this jury to believe that,
5 that Tony pointing you out in a statement did not make you
6 upset.

7 A I didn't know nothing about the statements. I went to
8 my preliminary.

9 Q What time was your preliminary?

10 A The preliminary was after I got caught.

11 Q After you got caught.

12 A Yeah.

13 Q You didn't know anything about that statement, right,
14 until your preliminary hearing?

15 A Yeah.

16 Q And when was your preliminary hearing?

17 A I don't know the month.

18 Q All right. Was it in late 2006?

19 A Yeah.

20 Q So you knew nothing about a statement until then,
21 right? Okay. You knew nothing about Tony Hunter's
22 statement, correct?

23 A The only thing I knew that he had called and asked for
24 my real name. I didn't know for sure if he wrote the
25 statement or not until I went to my preliminary hearing.

Kelvin McKinney
Cross-examination by Mr. Schultz

1 Q Okay. Now, you talked to Investigator Porter, I
2 believe, right?

3 A Yeah.

4 Q About this. And this was on December the 28th of
5 2006, correct?

6 A I know it was in December. I don't know what date it
7 was though.

8 Q Okay. And you said a lot of things on this
9 video-taped statement that is not included on your actual
10 statement.

11 MR. BARNETTE: Your Honor, I'm going to object at this
12 point. This is a matter -- if he wants to ask him
13 questions, he can use it to impeach him or whatever but --

14 THE COURT: Well, I understand. Overruled.

15 Go ahead.

16 Q Isn't it true on your video-taped statement that you
17 said that you may have thought that some white boys may
18 have shot Tony, right?

19 A No.

20 Q You never said that on your statement, video-taped
21 statement?

22 A No.

23 Q All right. Also, on your video-taped statement you
24 had a -- Investigator Porter showed you a composite. Do
25 you remember that?

Kelvin McKinney
Cross-examination by Mr. Schultz

1 A Yeah.

2 Q Referring to State's Exhibit 88, this composite right
3 here. You leaned over the table and said, "That's not me,
4 is it?" Did you say that?

5 A Naw. He asked me who was it.

6 Q But you said, "That's not me, is it?"

7 A He asked was it me. I said naw.

8 Q So you never said, "That ain't me, is it?"

9 A Naw.

10 Q You never said that. Okay. Also according to your
11 video-taped statement you said you never talked to Charlie
12 after February the 2nd of 2006, right?

13 A After? Not on the phone. I never talked to him after
14 this but --

15 Q Talked to him on the phone, talked to him in person.
16 You said you never talked to him after February the 2nd of
17 2006, correct? Do you remember that in your -- in your
18 statement talking to Investigator Porter? Do you remember
19 that?

20 A He asked me have I ever talked to him on the phone. I
21 said naw.

22 Q Okay. And what you're telling the jury right now is
23 that the next time you talked to Charlie was in November of
24 2006 --

25 A Yeah.

Kelvin McKinney
Cross-examination by Mr. Schultz

1 Q -- at the Spartanburg County Jail.

2 Now, explain to members of the jury where you were at
3 when Charlie supposedly told you about this.

4 A I was in pod six in my room.

5 Q In your room. You mean your holding cell, right?

6 A Yeah.

7 Q Okay. So I guess things are pretty lax there at the
8 jail that anybody can just walk in and out of the holding
9 cells?

10 A Naw. My door was open.

11 Q Your door was open. Okay. And this was your cell,
12 right?

13 A Yeah.

14 Q Okay. So then you want this jury to believe that in a
15 holding cell like this that anybody can just walk in and
16 just say whatever they want?

17 A You can.

18 Q You can. Okay. All right. What, what side of the
19 pod were you at?

20 A Intake side.

21 Q The intake side. Explain to the jury what the intake
22 side is.

23 A As far as where they put you on the intake side when
24 you first get to the jail.

25 Q Okay. And Charlie was held in pod six too, right?

Kelvin McKinney
Cross-examination by Mr. Schultz

1 A Yeah.

2 Q Okay. What side was Charlie on?

3 A He was on the other side.

4 Q The other side. Okay. Well, what side was that?

5 A Evidence side.

6 Q Evidence side.

7 All right. Now, on your video-taped statement you
8 also said that maybe you were hollering back and forth
9 between Charlie there in pod six, right? Okay. So a lot
10 of people must have heard this, right?

11 A Not that, not, not their conversation.

12 Q Okay. But, again, just Charlie walked into your cell
13 and just divulged all of this information, right?

14 A Yeah. We was sitting there talking.

15 Q And according to your video-taped statement, you never
16 asked him why.

17 A Naw.

18 Q Wouldn't that be a, sort of a, reasonable question to
19 ask somebody after hearing him say that?

20 A Naw.

21 Q Huh? What?

22 A No.

23 Q No? That's not a reasonable question to ask? So your
24 testimony is today, is that Charlie just felt bad and
25 wanted to tell you.

Kelvin McKinney
Cross-examination by Mr. Schultz

1 A I guess so.

2 Q You guess so. Okay. You guess so, or you're not
3 sure? What is it?

4 A When he came into the room I told him that they
5 suspected that he was on murder, victim, and me and him
6 started talking about it.

7 Q Okay. Now, how many days did that happen after you
8 got picked up after running from the authorities and you
9 got finally got picked up? How many days did this
10 supposedly happen?

11 A What? What supposedly happened?

12 Q When Charlie supposedly came into your room and talked
13 to you.

14 A One time.

15 Q When you were picked up. When were you picked up?

16 A December, I mean, November the 2nd.

17 Q November the 2nd. Okay. When did Charlie supposedly
18 come and talk to you?

19 A After November the 2nd. I don't know what, what date
20 it was.

21 Q You didn't know. But it was pretty close to the time
22 that you had got thrown back in jail, right?

23 A Yeah.

24 Q Okay. So your immediate first reaction is like how
25 can I get out of jail.

Kelvin McKinney
Cross-examination by Mr. Schultz

- 1 A Naw.
- 2 Q No? You don't want to get out of jail?
- 3 A Yeah, I want to get out of jail.
- 4 Q Yeah, right. And the easiest way to do it is to sell
5 your homeboy, isn't it?
- 6 A No.
- 7 Q Yeah?
- 8 A I said no.
- 9 Q No. All right. Now, in your video-taped statement
10 you said that nobody else was in the car that night, right?
- 11 A Naw. I ain't said that.
- 12 Q You didn't say that?
- 13 A Naw.
- 14 Q Okay. And when they asked you that question you said
15 Charlie didn't say. That's a pretty important detail at
16 first.
- 17 A Didn't say what?
- 18 Q Didn't say that anybody was in the car. Said it was
19 just one person.
- 20 A Talking about the car we was in, the car we was in?
- 21 Q No.
- 22 A The car, the truck?
- 23 Q The Toyota 4Runner.
- 24 A It was him, Tony. Tony was in the passenger seat.
25 The white dude was driving. He was in the back seat.

Kelvin McKinney
Cross-examination by Mr. Schultz

1 Q But at first you told the cops there that there was
2 nobody else there.

3 A Naw.

4 Q No? Okay.

5 MR. SCHULTZ: Your Honor, at this point I'd like to
6 admit Mr. McKinney's statement here into -- his video-taped
7 statement.

8 THE COURT: Let me see y'all just a minute.

9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)

11 MR. SCHULTZ: Thank you, Your Honor.

12 Q Now, you and Charlie go back a long way, right?

13 A No.

14 Q Since kindergarten, right? Kelvin, do you know a guy
15 named Keith Letmon?

16 A Yeah.

17 Q All right. You and him in the Spartanburg County Jail
18 together?

19 A Yeah.

20 Q Okay. Did you ever admit anything to him recently?

21 A Naw.

22 Q No? Okay. Did you ever admit to him to be involved
23 in this crime?

24 A Naw.

25 Q Did you ever admit to shooting Tony?

Kelvin McKinney
Cross-examination by Mr. Schultz

1 A No.

2 Q Never admitted that to Keith Letmon, right?

3 A No.

4 Q Now, on your video-taped statement at the end of the
5 police officer investigating you, isn't it true that you
6 said, "Now, what can you do for me?"

7 A Yeah.

8 Q Okay. And what did they do for you?

9 A Nut'n.

10 Q What did the cops do for you?

11 A They didn't do nothing.

12 Q They didn't do nothing. But you wanted their help,
13 right?

14 A Yeah.

15 Q So you were kind of disappointed that you told this
16 lie up and then the cops didn't help you, right? You were
17 disappointed by that, weren't you?

18 A Naw.

19 Q No, you weren't? Okay. So you want the ladies and
20 gentlemen of the jury to believe that you weren't
21 disappointed that you weren't getting help? I mean, you
22 have all of these pending charges, right?

23 A I've just got one pending charge.

24 Q You've got one pending charge. What's that?

25 A Assault and battery with intent to kill.

Kelvin McKinney
Cross-examination by Mr. Schultz

1 Q How much time does that hold? That carries a lot of
2 time, doesn't it? Thirty years, I think, right?

3 A Naw.

4 Q No? How much time do you think it carries?

5 A Twenty.

6 Q Twenty. All right. Nevertheless 20 or 30 years,
7 that's a lot of time, isn't it? And you did whatever you
8 had to do.

9 MR. BARNETTE: Your Honor, I'm going to object to
10 this.

11 He knows the law. He don't have to try to mislead a
12 witness on sentence or anything like that.

13 THE COURT: Well, I think the witness got it right.

14 Q Back in 2000 you were also convicted of assault and
15 battery of a high and aggravated nature, right?

16 A Yeah.

17 Q Okay. And unlawful carrying of weapon, right? Okay.
18 And that's what you were on parole for. And that's why you
19 were hiding out, correct?

20 A Yeah.

21 Q All right.

22 MR. SCHULTZ: Beg the Court's patience, Your Honor.

23 (Pause.)

24 MR. SCHULTZ: Your Honor, that's all I have right now.
25 Could we approach?

Kelvin McKinney
Cross-examination by Mr. Schultz

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 THE COURT: All right. Ladies and gentlemen, I've got
4 one matter I'm going to need to address. So I'll ask you
5 to please go to your jury room.

6 Don't discuss the case. I'll bring you back as soon
7 as we have concluded with that issue.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: All right. Mr. Schultz, now, you need to
11 get the video and refer to certain portions?

12 MR. SCHULTZ: Yeah.

13 MR. BARNETTE: I have the C. D. I assume he has one,
14 but I've got one if he needs it.

15 THE COURT: Okay.

16 MR. SCHULTZ: Yeah. The only reason I need the
17 state's is because my C. D. is rather scratched.

18 THE COURT: I don't care if you use it.

19 MR. SCHULTZ: That's fine.

20 (Pause.)

21 (Whereupon, the C. D. was played for the Court.)

22 MR. SCHULTZ: Your Honor, could we approach, please?

23 THE COURT: Sure.

24 (Bench conference held off the record.)

25 THE COURT: All right. Bring the jury back, please.

Kelvin McKinney
Cross-examination by Mr. Schultz

1 MR. BARNETTE: Your Honor, do we need to mark this as
2 an exhibit?

3 THE COURT: We can. It doesn't have to be right now.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: All right. Mr. Schultz.

7 MR. SCHULTZ: Thank you, Your Honor. May it please
8 the Court.

9 BY MR. SCHULTZ

10 Q Kelvin, I'm going to show you a statement here.

11 THE COURT: Let me ask. Mr. Schultz, now, you've got
12 a video tape that you're proposing to show the jury, or at
13 least just some portions of it?

14 MR. SCHULTZ: Yes, sir.

15 THE COURT: Do you want to mark that one, or are you
16 going to mark yours?

17 MR. BARNETTE: Your Honor, we'll let them mark that.
18 Don't take it out because it's at the right location right
19 now.

20 THE COURT: I understand. Okay.

21 MR. SCHULTZ: I actually have to bring this all the
22 way back.

23 (C. D. marked Defendant's Exhibit No. 1.)

24 (Whereupon, the C. D. was played for the jury.)

25 MR. BARNETTE: Your Honor, I thought we was going to

Kelvin McKinney
Cross-examination by Mr. Schultz

1 play --

2 THE COURT: Are these the selections?

3 MR. SCHULTZ: Your Honor, this one, one more minute.

4 There is one selection that's coming up.

5 THE COURT: Well, turn that off. Let me see y'all.

6 MR. SCHULTZ: That's about it for that one.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 (Whereupon, the C. D. was played for the jury.)

10 MR. SCHULTZ: Your Honor, if I could rewind very
11 briefly.

12 THE COURT: Yes.

13 (Whereupon, the C. D. was played for the jury.)

14 MR. SCHULTZ: Your Honor, could we approach briefly?

15 THE COURT: Yeah.

16 (Bench conference held off the record in the presence
17 of the jury but out of the hearing of the jury.)

18 (Whereupon, the C. D. was played for the jury.)

19 MR. SCHULTZ: That's all I have, Your Honor.

20 THE COURT: Okay. Have you got any other examination?

21 MR. SCHULTZ: Just briefly, Your Honor.

22 BY MR. SCHULTZ

23 Q Now, you were pretty sure, Kelvin, that that 621
24 number got cut off?

25 A Yeah.

Kelvin McKinney
Redirect examination by Mr. Barnette

1 Q So you never called anybody on that number, correct?

2 A Probably. I tried to call again when I was up there.

3 MR. SCHULTZ: Beg the Court's patience, Your Honor.

4 THE COURT: Yes, sir.

5 (Pause.)

6 MR. SCHULTZ: That's all I have at this time, Your
7 Honor.

8 THE COURT: Mr. Barnette.

9 REDIRECT EXAMINATION

10 BY MR. BARNETTE

11 Q As a matter of fact, the 921 number is a prepaid phone
12 number, isn't it? Is that 921 a prepaid phone that Charlie
13 used?

14 A Yeah.

15 Q And who is Amy Hunter -- the tape that Mr. Schultz
16 showed you? Do you know Amy Hunter?

17 A Yeah, I know Amy Hunter.

18 THE COURT: Speak up, please.

19 Q Okay. And --

20 A Yeah, I know her.

21 Q Okay. And how do you know her, sir?

22 A We used to go down to her house.

23 Q As a matter of fact, Little C used to go down to her
24 house, didn't she, didn't he?

25 A Yeah.

Kelvin McKinney
Redirect examination by Mr. Barnette

1 Q And who is Carlos?

2 A That's one of our homeboys.

3 Q That's right. Little C hangs out with Carlos, doesn't
4 he?

5 A Yeah.

6 Q Didn't they tell Amy Hunter to report her gun stolen?

7 A Yeah.

8 Q And her gun was a 9mm, wasn't it?

9 A Yeah.

10 Q And talking about these charges, have you been in jail
11 ever since you came back on November 2nd of 2006?

12 A Yeah.

13 Q Have you been promised anything other than to tell the
14 judge that you've cooperated in this murder case?

15 A I haven't been promised nothing.

16 Q Have you been promised a sentence in this case?

17 A Who?

18 Q You. Have you been promised any kind of sentence?

19 A Naw.

20 Q Do you realize that it carries up to zero to 20 years?
21 Do you understand that?

22 A Yeah.

23 Q And it will be up to the judge to determine what your
24 sentence is.

25 A Uh-huh.

Dawn Patrice Hunter
Direct examination by Mr. Barnette

1 Q As a matter of fact, when you was talking to the
2 police, wasn't one of the concerns you had is if you gave a
3 statement you'd wind up like Tony?

4 A (Grunt.)

5 Q If you gave a statement against Mr. Teamer, you'd wind
6 up like Tony. Isn't that one of the things you talked to
7 the police about?

8 A Yeah.

9 Q Isn't that one of the fears that you had?

10 A Yeah.

11 Q And you wear dreadlocks, is that right?

12 A Yeah.

13 Q Thank you, sir.

14 THE COURT: You may step down.

15 MR. BARNETTE: I would like to call Dawn Hunter to the
16 stand, please.

17 DAWN PATRICE HUNTER, having
18 been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BARNETTE

20 Q If you would, ma'am, state your name for the record,
21 please.

22 A Dawn Patrice Hunter.

23 Q And, Ms. Hunter, where do you live at ma'am? What
24 city do you live in, ma'am?

25 A Spartanburg.

Dawn Patrice Hunter
Direct examination by Mr. Barnette

- 1 Q And do you know Kelvin McKinney, the gentleman that
2 just testified?
3 A Yes, sir.
4 Q How do you know him?
5 A He is my children's father.
6 Q How long have you known him, ma'am?
7 A About ten years.
8 Q Okay. Who is Tony Hunter?
9 A My oldest brother.
10 Q And obviously you've known him all of your life.
11 A Yes, sir.
12 Q Was Mr. McKinney living with you at the time right
13 before your brother got killed?
14 A Yeah.
15 Q Did he leave Spartanburg?
16 A Yes.
17 Q And why did he leave Spartanburg, ma'am?
18 A Because of a shooting that happened with him and
19 Little C.
20 Q And was Tony there also?
21 A Yes, sir.
22 Q After the shooting on January the 14th did you see
23 Mr. Teamer or Little C?
24 A Yes, sir.
25 Q If you would, tell the jury about that.

Dawn Patrice Hunter
Direct examination by Mr. Barnette

1 A Me and my friendgirl, Tiffany Otera, was in
2 Kingsington Manor, and we seen Little C and one of his
3 other homeboys named --

4 MR. SCHULTZ: Your Honor, objection. This is -- Your
5 Honor, permission to approach?

6 THE COURT: Yes.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 THE COURT: Okay.

10 Q If you would, ma'am, the shooting you're talking about
11 is the January the 14th of 2006 shooting?

12 A Yes.

13 Q If you would, continue on from there, ma'am.

14 A We seen Little C and one of his homeboys named G One.
15 They came in a house that me and Tiffany was in and --

16 THE COURT: Excuse me. Could you repeat that name,
17 please? And please --

18 THE WITNESS: Little C and G One. I don't know his
19 real name.

20 THE COURT: G One?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay.

23 A They came in the house where we was at, because at the
24 time we were friends. He asked me have I talked to my --
25 have I talked to Snow, Kelvin McKinney. And I told him

Dawn Patrice Hunter
Direct examination by Mr. Barnette

1 yes. He asked me where my brother was at. I told him he
2 was at home but he was fixing to go out of town with his
3 job.

4 MR. SCHULTZ: Your Honor, again, I would like to
5 object to this. I don't understand the relevancy. And
6 this is all hearsay.

7 THE COURT: All right. Overrule the objection.

8 Q Please continue, ma'am.

9 A When he asked me where my brother was at, he started
10 pacing back and forth across the floor like something was
11 wrong with him. And he said he got to bring his homeboy
12 back.

13 Q Did he have a weapon with him?

14 A Yes, sir.

15 Q What kind of gun did he have?

16 A A nine.

17 Q What do you mean by a nine? Is that a 9mm?

18 A 9mm, yes, sir.

19 Q Okay. Did he have anything else with him that you saw
20 in his hands?

21 A Latex gloves.

22 Q What kind of latex gloves did he have?

23 A I can't remember if they were blue or white.

24 Q Did he carry those with him?

25 A Yes, sir.

Dawn Patrice Hunter
Direct examination by Mr. Barnette

- 1 Q Later on did Kelvin McKinney leave Spartanburg?
- 2 A Yes.
- 3 Q And when did he leave Spartanburg, ma'am?
- 4 A It was January, like the beginning part.
- 5 Q Okay.
- 6 A I don't know the date.
- 7 Q And when he left, where did he go to, ma'am?
- 8 A Detroit.
- 9 Q Where at? Where did he -- who did he stay with in
- 10 Detroit?
- 11 A His aunt.
- 12 Q Did you call and talk to him there?
- 13 A Yes.
- 14 Q And had you ever talked to Mr. Teamer or Little C on
- 15 his cell phone?
- 16 A Yes.
- 17 Q And what was the number that you would call him at to
- 18 talk to him?
- 19 A 921- [REDACTED]
- 20 Q And did you, did you find out later that your brother
- 21 Tony had talked to the sheriff's department?
- 22 A Yes.
- 23 Q And did he tell what happened back on January 14th?
- 24 A The only thing I know is he called my house, and I
- 25 answered the phone. And he asked me what was Snow's real

Dawn Patrice Hunter
Direct examination by Mr. Barnette

1 name. And I kind of figured something was wrong then.

2 Q And did Mr. McKinney or Snow, did he find out that you
3 had this conversation with your brother?

4 A Yeah, because he was laying right beside me.

5 Q And did he get upset?

6 A No.

7 Q Did he decide -- what was another reason that he had
8 to leave?

9 A I guess he thought the police going to come looking
10 for him.

11 MR. BARNETTE: One moment, Your Honor, please.

12 (Pause.)

13 Q Who was Little C or Charlie Teamer dating at the time?

14 MR. SCHULTZ: Your Honor, objection to relevancy.

15 MR. BARNETTE: Your Honor, I'll connect it.

16 THE COURT: Overruled.

17 A Osia.

18 Q Osia who?

19 A I don't know her last name.

20 Q Did you remember where she lived at?

21 A Yes, sir.

22 Q Okay. And would you ever pick up Little C there?

23 A I dropped him and my kids' daddy off over there a lot
24 of times.

25 Q Would you recognize that house if I showed it to you?

Dawn Patrice Hunter
Cross-examination by Mr. Schultz

1 A Yes.

2 Q Let me show you State's Exhibit 69. Is this the house
3 that you would drop him off at?

4 A Yes, sir.

5 Q Is that where Mr. Teamer's girlfriend lived at?

6 A Yes.

7 MR. BARNETTE: Your Honor, permission to publish
8 State's Exhibit 69.

9 THE COURT: You may.

10 Q And this was the house that you dropped him off at?

11 A Yes, sir.

12 MR. BARNETTE: One moment, Your Honor, please.

13 (Pause.)

14 Q Please answer any questions Mr. Schultz may have for
15 you, ma'am.

16 CROSS-EXAMINATION

17 BY MR. SCHULTZ

18 Q What is your name, again?

19 A Dawn Hunter.

20 Q Dawn Hunter.

21 Okay. Now, how long have you known Charlie?

22 A How long? For a while.

23 Q Okay. Do you know how long Tony knew Charlie?

24 A No, not really.

25 Q Okay. But they were, they were friends, right?

Dawn Patrice Hunter
Cross-examination by Mr. Schultz

1 A Yeah.

2 Q Okay. So they would go places together, right?

3 A No.

4 Q No?

5 A They ain't never went nowhere together except for the
6 day when the shooting occurred, January the 14th.

7 Q So Tony and Charlie never hung out together
8 whatsoever?

9 A No.

10 Q Okay. Now, you are aware that Charlie had other
11 phones, correct?

12 A No.

13 Q Okay. Now, when you contacted -- you said that you
14 contacted Charlie on the 921 number.

15 A Yes.

16 Q Okay. All right. Did you, were you aware that number
17 was cut off?

18 A What, it was cut off?

19 Q Wasn't functional, could not get in touch with it,
20 correct?

21 MR. BARNETTE: Your Honor, I am going to --

22 A I talked to him every time I called him on that
23 number.

24 MR. SCHULTZ: Your Honor, could we approach briefly?

25 THE COURT: Yes.

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 MR. SCHULTZ: That's all I have for this witness, Your
4 Honor.

5 THE COURT: Okay. Anything else?

6 MR. BARNETTE: Nothing else, Your Honor. Thank you.

7 THE COURT: Step down.

8 All right. Ladies and gentlemen, I've got one issue
9 to address before we go further.

10 I'll ask you to please go to your jury room. Don't
11 talk about the case. I'll bring you back in a few minutes.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: All right. Mr. Schultz.

15 MR. SCHULTZ: Thank you, Your Honor. May it please
16 the Court.

17 What Dawn Hunter just testified to, I think, revolves
18 around prior bad acts, Your Honor, that I think the defense
19 has been blindsided by it.

20 I think that Ms. Hunter testified to the fact that she
21 saw Charlie around with a 9mm is way too prejudicial. And
22 I think that the gloves coming in too is prejudicial too.

23 I believe I made some objections at that. I was
24 overruled, and I understand that. But being that the jury
25 heard that, it doesn't have any relevance I believe to the

1 actual commission of the crime. So I believe that this
2 does not go to a mistake or identity or any of the other
3 many exceptions there, I believe Rule 609.

4 THE COURT: Well, let me be sure I understand.

5 You're concerned that you think it's inappropriate for
6 the state to introduce evidence that the defendant prior to
7 the commission of these crimes was in the possession of a
8 9mm pistol and latex type gloves --

9 MR. SCHULTZ: Yes, I do.

10 THE COURT: -- that the witnesses testified were
11 similar to those used in these crimes?

12 MR. SCHULTZ: Yes, I do, Your Honor. And not only
13 that, but adding to the fact that she said something about
14 that Charlie asked about Tony or something like that.

15 I don't think that goes to any kind of motive. I
16 think -- I don't think the jury should have heard that at
17 all. I think that's too prejudicial. And it doesn't go
18 into motive or identity or any of the factual allegations
19 contained in this.

20 THE COURT: All right. Mr. Barnette.

21 MR. BARNETTE: Your Honor, the first thing, I don't
22 know where we're getting prior bad acts at, because,
23 obviously, he testified that he had a 9mm and testified
24 that he had latex gloves available to him. Those are
25 things that was used in the crime other people's testified

1 to, Mr. Proctor and so forth.

2 The other issue, Your Honor, is talking about this
3 ABWIK or whatever, that's the motive for this situation.
4 You've got -- Mr. Tony Hunter was a witness to it.

5 I've got Investigator Bryant ready to call next where
6 he did the sheriff's department investigation into this
7 ABWIK situation where he talked to Tony Hunter and got a
8 statement from him and got information which he proceeded
9 on to his investigation and asked to talk to these other
10 individuals.

11 No question in our minds, is that that was the motive
12 in this case. And the reason why we're bringing it up is
13 showing that obviously Mr. Teamer had a motive to kill.

14 There's also another thing that's going to come out
15 too. In the cell phone records you'll see up here shortly
16 soon after the murder was allegedly, occurred, he calls the
17 313 number in Michigan to get ahold -- obviously called at
18 the location that Mr. McKinney's there.

19 There was a 9-second phone call. I don't know if it
20 was a voice mail or if it never was answered. I mean, it
21 was obviously answered, but it might have been voice mail.
22 But obviously this is the motive for this, what we allege
23 is the motive in this case and producing that evidence in
24 this case also.

25 MR. SCHULTZ: Your Honor, if I may.

1 I believe carrying around a pistol and displaying it
2 flagrantly, I believe would arise to a prior bad act. And
3 I don't believe that between the murder and the ABWIK this
4 is a closely situated series of events. I just don't see
5 the connection between this.

6 I think it obviously is too prejudicial for the jury
7 to hear this. And I covered this in pretrial. I believe
8 that no prior bad acts were going to be brought up. And I
9 believe that having the jury hear this would, I think, be
10 grounds for a mistrial, I believe, Your Honor.

11 THE COURT: Well, I understand there was a motion to
12 disclose any prior bad acts that might be introduced as
13 evidence in the case.

14 But the fact that the defendant -- evidence tending to
15 establish that he was in possession of a 9mm pistol, as
16 well as white latex gloves, whether that's a bad act or
17 not, it's relevant in this case.

18 I mean, clearly possession of those items in a short
19 period of time prior to the commission of these crimes is
20 relevant to whether or not Mr. Teamer was the perpetrator
21 of these offenses. I mean, that's, I mean, it makes it
22 more likely the fact that it's true, that is that he was in
23 possession of a weapon, that he was in possession of latex
24 gloves. I think that's clearly relevant in the case.

25 Now, what other bad acts are we referring to?

1 MR. SCHULTZ: That's the only bad act that I can see
2 from that testimony.

3 THE COURT: Is possession of the pistol? Possession
4 of a pistol and possession of latex gloves?

5 MR. SCHULTZ: Possession of a pistol. Not possession
6 of the latex gloves, Your Honor.

7 THE COURT: Sir?

8 MR. SCHULTZ: Possession of the pistol. I think
9 that's a prior bad act that, like I said before, has not
10 been --

11 THE COURT: Okay. So that's the extent of your
12 concern, is the fact that there's been testimony that he
13 was previously in possession of a 9mm pistol --

14 MR. BARNETTE: Yes, and he has --

15 THE COURT: -- which, as I understand, is the same
16 type used in this case. Is that true?

17 MR. BARNETTE: That's correct, Your Honor. As a
18 matter of fact, we introduced it into evidence.

19 THE COURT: Okay. Well, whether that's a bad act or
20 not, I think it's clearly relevant in this case.

21 Now, I know you've objected to it. But whether or not
22 you did, it's clearly relevant, whether or not he was in
23 possession of a pistol similar to the one used in this case
24 prior, within a reasonable period of time prior to these,
25 this event occurring. So clearly I would allow that as

1 evidence.

2 MR. BARNETTE: And, Your Honor, another thing. All of
3 this information was provided in discovery -- Ms. Hunter's
4 statement. They had all of this information then, as well
5 as Kelvin's couple of statements, video tape.

6 THE COURT: Well, I don't think Mr. Schultz is saying
7 he's surprised by the existence of the evidence.

8 MR. BARNETTE: I understand.

9 THE COURT: He -- I think he's concerned and surprised
10 that it was introduced, because he understood that there
11 was going to be no bad-act evidence introduced.

12 But I think there must have been some confusion on
13 whether, whether you were considering that to be a bad act
14 or some other crimes being bad acts. But clearly
15 possession of a pistol by the defendant within close
16 proximity to the date that these events occurred is
17 relevant. So I would admit it based upon it being
18 relevant.

19 Let's take about ten minutes.

20 Let me see y'all just a minute.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Are we ready for the jury?

23 MR. BARNETTE: The state is ready, Your Honor.

24 MR. SCHULTZ: The defense is ready, Your Honor.

25 THE COURT: Okay. Bring them in.

Jason Bryant
Direct examination by Mr. Barnette

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: All right. Mr. Barnette.

4 MR. BARNETTE: Your Honor, I would like to call
5 Investigator Bryant from the sheriff's department next.

6 JASON BRYANT, having been
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. BARNETTE

9 Q If you would, sir, state your full name for the
10 record, please.

11 A Yes, sir. I'm Jason Bryant with the Spartanburg
12 County Sheriff's Office.

13 Q And how long have you been with the sheriff's
14 department, sir?

15 A I've been with the sheriff's office since 1996.

16 Q And what position do you hold there, sir?

17 A I'm a violent crimes investigator.

18 Q Back on January the 14th of 2006 did you investigate
19 an ABWIK which the defendant and some other folks was
20 involved with?

21 A That is correct, sir.

22 Q And where was that located at, sir?

23 A That was at [REDACTED] in Arcadia.

24 Q Is that right outside the city limits?

25 A Yes, sir. It's just directly right outside the city

Jason Bryant
Direct examination by Mr. Barnette

1 limits.

2 Q How far is that from the north side of Spartanburg
3 city?

4 A Not far at all.

5 Q And when you was called to investigate this case, who
6 did you develop as a suspect in this case?

7 A Mr. Teamer.

8 Q Okay. And who else was involved with him?

9 A Mr. McKinney. And Mr. McKinney was also charged.

10 Q Was there also another suspect that was involved in
11 the case also?

12 A Yes, sir.

13 Q And what was his name?

14 A And he was --

15 THE WITNESS: Excuse me, Your Honor. Let me refer to
16 my notes.

17 A James Antonio Hunter.

18 Q Tony Hunter?

19 A Yes, sir.

20 Q And who, who was the person that was shot?

21 A That was a Teru Smith.

22 Q Did they call the sheriff's department about the
23 shooting?

24 A That is correct.

25 Q And through your investigation did you obtain a

Jason Bryant
Direct examination by Mr. Barnette

1 statement from Tony Hunter?

2 A Yes, sir, I did.

3 Q And in that statement did you develop the other
4 suspects from that statement?

5 A Yes, sir, I did.

6 Q And did you try to contact Mr. McKinney and Mr. Teamer
7 about this?

8 A I did. At first I had tried to contact Mr. McKinney
9 due to the fact that Mr. Hunter had only the nickname of
10 the other individual.

11 Q And what's the nickname of the other individual?

12 A Beanie.

13 Q And did he -- and did you find Mr. McKinney later?

14 A No, sir. He had -- was apprehended sometime later on.

15 Q Was he apprehended in another state?

16 A Absolutely.

17 Q And was that state Michigan?

18 A Yes, sir.

19 Q And a couple of weeks later did you find out that Tony
20 Hunter had been killed?

21 A I had.

22 Q And was he given a copy of his statement?

23 A He was.

24 Q Thank you.

25 MR. BARNETTE: One moment, Your Honor, please.

Jason Bryant
Cross-examination by Mr. Schultz

1 (Pause.)

2 Q Please answer any questions Mr. Schultz may have for
3 you.

4 CROSS-EXAMINATION

5 BY MR. SCHULTZ

6 Q Investigator Bryant, did you take a statement from
7 James Antonio Hunter?

8 A I did, sir.

9 Q All right. I'm going to present this statement here.
10 You've got a copy?

11 A I've got a copy of it.

12 Q All right. That was done on January 19th, 2006?

13 A That's correct.

14 Q Okay. Now, Mr. Hunter -- is it anywhere in that
15 statement where he implicates anybody?

16 A He had listed an individual that was later named as
17 McKinney who was later identified Teamer.

18 Q He implicates McKinney, correct?

19 A As originally Snow.

20 Q Snow?

21 A Yes.

22 Q Is there anywhere that he implicates Teamer?

23 A He only knew the nickname of the other individual.

24 Q But --

25 A He does not name Teamer per se, word for word, in his

James Howard Sutton
Direct examination by Mr. Stalvey

1 statement.

2 Q But he never mentions Charlie Teamer as Little C,
3 correct?

4 A Not in his statement, no, sir.

5 Q But he does mention Snow, correct?

6 A Correct.

7 Q And who was Snow?

8 A That was McKinney -- Kelvin McKinney.

9 Q So the only time that Mr. Hunter mentioned anybody in
10 connection with this crime is Snow who is -- Mr. McKinney
11 whose nickname is Snow, correct?

12 A Correct.

13 MR. SCHULTZ: Beg the Court's patience, Your Honor.

14 (Pause.)

15 MR. SCHULTZ: That's all I have, Your Honor.

16 MR. BARNETTE: That's all we would ask of this
17 witness.

18 THE COURT: You may step down.

19 MR. BARNETTE: Your Honor, the state is going to call
20 James Sutton next.

21 JAMES HOWARD SUTTON, having
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. STALVEY

24 Q Investigator Sutton, could you please give your full
25 name for the record?

James Howard Sutton
Direct examination by Mr. Stalvey

1 A James Howard Sutton.

2 Q And who are you employed by?

3 A Spartanburg Public Safety.

4 Q And what are your duties with the Spartanburg Public
5 Safety Department?

6 A I'm currently assigned as a liaison between the
7 solicitor's office and the city.

8 Q And were you involved in the investigation of the case
9 against Charles Nathaniel Teamer?

10 A To a certain degree, yes.

11 Q And could you describe to the jury what your
12 involvement was?

13 A As a liaison I help get together the case file to
14 present to the Court. Also, when officers have to be in
15 court, I ask them to come and set that up.

16 In this particular case I spoke with the solicitor's
17 office in reference to doing a search at the incident scene
18 again after some information came from one of the -- I
19 believe it was a statement from McKinney.

20 During that statement they mentioned that they threw
21 the gun down. So the solicitor's office wanted us to go
22 down and check one more time and see if we could find it.

23 Q And where did you go?

24 A We went down to the incident location at Theodosia and
25 Chester.

James Howard Sutton
Cross-examination by Mr. Schultz

1 Q Investigator Sutton, if you will, take a look at
2 what's marked as or what's in evidence as State's 95. Can
3 you tell the jury what that is?

4 A Yes. That's the weapon that was at the crime scene.

5 Q And you recovered that weapon?

6 A Well, actually we initially went down. Investigator
7 Forrester and Investigator Steadman and also Investigator
8 Guthro came down a little bit later than we did. But what
9 I did was when we went to search for the weapon itself,
10 when I was looking through the woods I came across it.
11 Once I located it I called Investigator Guthro. He came
12 and recovered the weapon. I did not recover it, but
13 Investigator Guthro did.

14 Q But you went out there based on the information you
15 received from Mr. McKinney, correct?

16 A That's correct. At the request of the solicitor's
17 office we went back to look at the area one more time.

18 Q Please answer any questions Mr. Schultz may have for
19 you.

20 CROSS-EXAMINATION

21 BY MR. SCHULTZ

22 Q Officer Sutton, what date did you go out and look at
23 this?

24 A I believe it was, I initially went September 20th, I
25 believe. And then I went back -- well, actually went and

James Howard Sutton
Cross-examination by Mr. Schultz

1 spoke to Captain Hardy in reference to the solicitor's
2 office request. And he took me to that location. And
3 since I hadn't been to the crime scene before, he gave me a
4 general area of where we needed to look when we went to try
5 and find the weapon. So then I went back on the 21st, and
6 that's when I located the weapon.

7 Q So you went to the site on the 20th and 21st?

8 A Correct.

9 Q Is that your testimony? On the 20th, did you find
10 anything there?

11 A No, sir. I didn't search at that point in time.

12 Q Okay. All right. But on the 21st you found this gun,
13 correct?

14 A Yes, sir. That's correct.

15 Q Now, were you aware of any searches prior to this?

16 A I knew that investigations, of course, was called to
17 the scene the night of the incident. And it is normal for
18 us to go ahead and search that area.

19 Q Okay. But yet at the same time this -- this crime
20 happened February 2nd of 2006, correct?

21 A That's correct.

22 Q Okay. And in that time no gun was ever recovered,
23 correct?

24 A No, sir. That's why they had us go back out and look
25 for it.

James Howard Sutton
Cross-examination by Mr. Schultz

1 Q Wouldn't you think that as an investigator with a lot
2 of experience, you think that's rather odd, right?

3 A We continue investigating the case throughout until it
4 comes to trial. So sometimes we continue to go to
5 different crime scenes, whatever the case may be, to locate
6 more evidence.

7 Q Were you aware that the remaining officers that night
8 that that happened, that nobody found anything?

9 A Yes, sir. I realize no one found anything.

10 Q Okay. Now, were you aware that there were no other
11 searches done at this point?

12 A I'm not aware other than when I went back out there.

13 Q Okay. So you went back out there after approximately
14 18 months and found this gun --

15 A Correct.

16 Q -- there. Were you aware of any other prior daytime
17 searches?

18 A I'm not personally aware of it, no, sir.

19 Q Okay. Do you believe that the gun could have been put
20 there by anybody?

21 A I believe the gun was there when I found it. Somebody
22 had to put it there.

23 Q Somebody had to put it there. Correct? But what I'm
24 getting at is that that gun could have been put there by
25 anybody between February 2nd of 2006 and September 20th,

James Howard Sutton
Redirect examination by Mr. Stalvey

1 21st of 2007, correct?

2 A All I can tell you is what I found at that time.

3 Q Okay.

4 MR. SCHULTZ: Beg the Court's patience, Your Honor.

5 (Pause.)

6 MR. SCHULTZ: That's all I have, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. STAVLEY

9 Q Investigator Sutton, when you went out and
10 recovered --

11 MR. STAVLEY: May I approach the witness, Your Honor?

12 Q When you found that gun did it appear that it had been
13 out there for quite a while?

14 A Yes, sir. As a matter of fact, I had when I initially
15 walked up on the gun, all I could see was -- I don't know
16 if you noticed, but it has like an added handgrip to it.
17 You could see the very top part of that. I had to actually
18 take a stick and rake some leaves off to make sure what it
19 was.

20 Q So it --

21 A It caught my eye, but I couldn't tell immediately that
22 it was a weapon. I had to rake the leaves off of it so I
23 could see.

24 Q Please answer any questions Mr. Schultz may have for
25 you.

Amy Ruth Hunter
Direct examination by Mr. Barnette

1 MR. SCHULTZ: Nothing on recross, Your Honor.

2 THE COURT: Step down.

3 MR. STAVLEY: May this witness be excused, Your Honor?

4 THE COURT: He may.

5 (Whereupon, the witness was excused.)

6 MR. BARNETTE: Your Honor, I would like to call Amy
7 Hunter to the stand.

8 AMY RUTH HUNTER, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BARNETTE

11 Q Yes, ma'am. If you would, give me your full name for
12 the record, please.

13 A Amy Ruth Hunter.

14 Q And, Ms. Hunter, what city do you live in, ma'am?

15 A Spartanburg, South Carolina.

16 Q Back on February the 2nd of 2006, where did you live
17 at, ma'am?

18 A Spartanburg Terrace, [REDACTED].

19 Q If you would, just move a little bit closer to the
20 mike to make sure everybody can hear you.

21 Okay. Prior to that had you purchased a pistol?

22 A Yes. I did.

23 Q And what kind of pistol was it, ma'am?

24 A A 9mm Ruger.

25 Q Let me show you what's been marked as State's

Amy Ruth Hunter
Direct examination by Mr. Barnette

- 1 Exhibit 95. If you would, take a look at that weapon. Do
2 you recognize that pistol?
- 3 A Yes, sir.
- 4 Q And what pistol -- whose pistol is that?
- 5 A It's mine.
- 6 Q And did you purchase that pistol?
- 7 A Yes, I did.
- 8 Q Where did you purchase it at, ma'am?
- 9 A EZ Pawn.
- 10 Q EZ Pawn Shop?
- 11 A Yes, sir.
- 12 Q Is that here in town?
- 13 A Yes, sir.
- 14 Q Where did you keep that pistol at, ma'am?
- 15 A It was in my glove compartment of my car.
- 16 Q And do you know Charlie Charles Teamer?
- 17 A Yes, I do.
- 18 Q What's his nickname?
- 19 A Little C.
- 20 Q Do you know a Carlos Fuller?
- 21 A Yes. I did.
- 22 Q Okay. How well? Did they used to come over to your
23 house?
- 24 A Yes.
- 25 Q Did they come to your house often?

Amy Ruth Hunter
Direct examination by Mr. Barnette

- 1 A Yes.
- 2 Q Were they homeboys or friends?
- 3 A Yes.
- 4 Q Did they ever use your car?
- 5 A Yes.
- 6 Q And did they have access to your car?
- 7 A Yes.
- 8 Q And did -- on February 2nd of 2006 did you discover
- 9 something about your pistol, about the 9mm?
- 10 A Yes. It was missing.
- 11 Q And what did you do once you found it was missing?
- 12 A I reported it stolen.
- 13 Q Okay. And did you call the city police?
- 14 A Yes.
- 15 Q Have you seen that gun until right now? I mean, today
- 16 is the first time you've seen that gun since you reported
- 17 it stolen?
- 18 A Yes.
- 19 Q You don't know who took the gun?
- 20 A No, I don't know who took it.
- 21 Q But, obviously, Charlie Teamer and Carlos, did they
- 22 use your car previous to that night?
- 23 A Yeah. Not that day. But, yes, they have rode it.
- 24 Q Did -- what was your phone -- what was your home
- 25 number at that time, ma'am?

Amy Ruth Hunter
Direct examination by Mr. Barnette

1 A I don't remember.

2 Q Okay. Wasn't it 597- [REDACTED]

3 A Yeah, that sounds --

4 Q What's that, ma'am?

5 A That sounds to be --

6 MR. SCHULTZ: Objection, Your Honor. Leading.

7 MR. BARNETTE: I apologize. I'll ask the question
8 again.

9 THE COURT: Please ask the question again.

10 And, ma'am, let me ask you to please use that
11 microphone or speak loud so we can all hear what you have
12 to say.

13 THE WITNESS: Yes, sir.

14 Q What's your cell phone number?

15 A My cell phone number?

16 Q Yes, ma'am.

17 A I have no clue.

18 Q Okay. What was the 597- [REDACTED] number?

19 A That was the home number.

20 Q Was that your home number at the time?

21 A Yeah. That sounds familiar.

22 Q And what was Carlo's phone number or cell phone?

23 A 706- [REDACTED]

24 Q 706. If you would, ma'am, write down his cell phone
25 number if you would.

Amy Ruth Hunter
Direct examination by Mr. Barnette

1 (Pause.)

2 Q And did he used to call and talk to you, ma'am?

3 A Yes, sir, he did.

4 Q And if you would, write down whose number that was if
5 you would.

6 MR. BARNETTE: Your Honor, I would like to enter
7 State's Exhibit No. 103 into evidence at this time.

8 MR. SCHULTZ: No objection.

9 THE COURT: It's admitted.

10 (Paper with phone number marked State's Exhibit No.
11 103.)

12 Q And, ma'am, this was Carlos Fuller's number?

13 A Yes.

14 Q And as soon as you found your gun was gone did you
15 call the police?

16 A Uh-huh.

17 MR. BARNETTE: One moment, Your Honor, please.

18 (Pause.)

19 Q When you purchased the gun from the pawn shop did you
20 buy ammunition for that?

21 A Yes.

22 Q And do you remember what type of ammunition you
23 bought?

24 A I can't remember. It's been so long I don't remember.

25 Q Did you buy that at EZ Pawn shop?

Amy Ruth Hunter
Cross-examination by Mr. Schultz

1 A Yes.

2 Q And did you keep the gun loaded or keep those bullets
3 with it?

4 A Yes. Well, the bullets were in my apartment, and they
5 got missing.

6 Q So the bullets was gone too?

7 A Yes. I told about it already.

8 Q And did also -- did Carlos, as well as Little C, Mr.
9 Teamer, did they also come in your house?

10 A Yes.

11 Q And they've been in your house a lot?

12 A Yes.

13 Q Please answer any questions Mr. Schultz may have for
14 you, ma'am.

15 CROSS-EXAMINATION

16 BY MR. SCHULTZ

17 Q Ms. Hunter, according to your statement that you gave
18 to the investigators a man named Carlos Fuller drove your
19 car.

20 A Yes.

21 Q Okay. Do you know if Carlos and Kelvin McKinney know
22 each other?

23 A Who?

24 Q Kelvin Kinney.

25 A Calvin? I don't know a -- I don't know who that is.

Amy Ruth Hunter
Cross-examination by Mr. Schultz

1 Q Okay. All right. Now, Carlos Fuller drove your car
2 on 1/27 according to your statement, right? That's
3 January the 27th.

4 A I can't remember the dates but --

5 Q All right. Let me refresh your memory of your
6 statement here. 1/27, correct?

7 A Yes.

8 Q All right. You can keep that there.

9 A Okay.

10 Q And that was a Friday, correct?

11 A Yes.

12 Q Okay. And was the handgun missing then?

13 A Not to my knowledge, no.

14 Q Okay. And also according to your statement Carlos
15 Fuller was driving your car on 1/28, correct?

16 A Yes.

17 Q Okay. And that was on Saturday, correct?

18 A Yes.

19 Q All right. And was the handgun missing at that point?

20 A Not to my knowledge.

21 Q All right. And also according to your statement on
22 January 29th of 2006, Carlos again was driving your car,
23 correct?

24 A Yes.

25 Q Okay. And y'all just keep your gun -- where do you

Amy Ruth Hunter
Cross-examination by Mr. Schultz

1 usually keep your gun?

2 A In my glove compartment.

3 Q In your glove compartment of your car.

4 A Yes.

5 Q Okay. Now, according to your statement, again, sorry
6 to be repetitive, but on January the 31st of 2006 Carlos
7 Fuller also drove your car, correct?

8 A Yes.

9 Q And this is a frequent occurrence, correct?

10 A Yes.

11 Q Okay. All right. And he also drove it on
12 February the 2nd of 2006, correct?

13 A If I said in that statement, then I'm guessing yes.

14 Q All right. It is in the statement.

15 All right. And at that point you said the gun was
16 gone from your glove compartment, correct?

17 A I don't know the exact dates.

18 Q Okay. But it could have been anywhere prior to
19 February the 2nd, correct?

20 A Maybe. I have no clue because I don't remember dates.

21 Q All right.

22 A I just know that night it was missing when I went to
23 look, so.

24 Q But a lot of people had access to your car, correct?

25 A Yeah, correct.

Amy Ruth Hunter
Cross-examination by Mr. Schultz

1 Q Okay. What other people had access to your car?

2 A Me, Carlos and my mama.

3 Q Okay.

4 A And I never locked the doors, so.

5 Q Did you call Carlos Fuller to see if he had your gun?

6 A No, I did not.

7 Q And you also noticed your ammunition was missing too
8 according to your statement, correct?

9 A Yes.

10 Q Okay. Did you ever keep the gun anywhere else, inside
11 your house or anything?

12 A No, just I had it in the glove compartment.

13 Q Okay. All right. Now, isn't it a fact a 9mm is a
14 pretty popular form of handgun? Correct?

15 A Yes.

16 Q Do a lot of your friends have 9mm's?

17 A No.

18 Q Okay. But you do know people that do have 9mm's.

19 A Yes.

20 Q And this one final question. In your statement that
21 you gave to the police, Mr. Teamer is never mentioned in
22 your statement, correct?

23 A No.

24 MR. SCHULTZ: That's all I have for this witness, Your
25 Honor.

Amy Ruth Hunter
Redirect examination by Mr. Barnette
Recross-examination by Mr. Schultz

1 REDIRECT EXAMINATION

2 BY MR. BARNETTE

3 Q So to follow up to Mr. Schultz's question, Carlos
4 Fuller drove your car February 2nd, that day.

5 A Whatever date that is on that paper, because, like I
6 say, I don't remember dates it's been so long. But if I
7 said it on that day I did my statement, then yes.

8 Q And Carlos and Little C was homeboys. They hung out
9 together all of the time.

10 A Yes.

11 Q And just showing you the statement and to follow up to
12 Mr. Schultz's question, that statement was taken on
13 February the 3rd of 2006.

14 A Well, I didn't read it. I didn't. He said 2nd. So,
15 like I say, I don't know dates.

16 Q I'm not saying -- when was the statement given?

17 A I have no clue.

18 Q What was the date they put on it?

19 A Oh, they got 3rd on it.

20 Q Thank you, ma'am.

21 MR. SCHULTZ: Your Honor, just one on recross.

22 THE COURT: Just a minute.

23 RECROSS-EXAMINATION

24 BY MR. SCHULTZ

25 Q Was Snow ever at your house?

Laura Brown
Direct examination by Mr. Stalvey

1 A Yeah, he was there.

2 MR. BARNETTE: Your Honor, I'm going to object.

3 That's outside the redirect, Your Honor.

4 MR. SCHULTZ: Thank you, Your Honor. That's all the
5 questions I have.

6 THE COURT: You may step down.

7 MR. BARNETTE: Your Honor, we would ask the witness be
8 excused.

9 THE COURT: She may be.

10 (Whereupon, the witness was excused.)

11 MR. STAVLEY: Your Honor, the state would call Laura
12 Brown to the stand.

13 LAURA BROWN, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. STALVEY

16 Q Ms. Brown, if you could, please, give your full name
17 for the record.

18 A Laura McKinnon Brown.

19 Q And where do you work?

20 A EZ Money Pawn Shop.

21 Q And how long have you worked there?

22 A Seven years.

23 Q And what do you do there at EZ Pawn Shop?

24 A We sell and pawn merchandise. And we used to sell
25 guns.

Laura Brown

Direct examination by Mr. Stalvey

1 Q Okay. When -- do you no longer sell guns?

2 A No. Within a year we haven't sold guns.

3 Q Okay. Ma'am, when you did sell guns did you keep
4 records of those sales?

5 A Yes.

6 Q I'm going to show you what's marked as State's 7. Do
7 you recognize that?

8 A Yes.

9 Q Can you tell the jury what that is?

10 A Yeah. That's our sales receipt for a gun.

11 Q And what does that record reflect?

12 A It shows we sold on 12/1/05 to Amy Ruth Hunter. We
13 sold a 9mm pistol to her.

14 Q And that's a record of that sale?

15 A Yes, sir.

16 MR. STALVEY: Your Honor, at this time I move to enter
17 what's marked as State's 7.

18 MR. SCHULTZ: No objection, Your Honor.

19 THE COURT: It's admitted.

20 (EZ Pawn sales ticket marked State's Exhibit No. 7.)

21 MR. STAVLEY: Your Honor, permission to publish to the
22 jury.

23 THE COURT: You may.

24 Q Ms. Brown, if you could, I just want you to come over
25 here. And, well, can you read that from there?

Laura Brown
Direct examination by Mr. Stalvey

1 A Yes.

2 Q What's the -- where does that reflect the serial
3 number on that gun?

4 A Starts with the 312-667. I can't read the last two
5 numbers -- 97.

6 Q Okay. And if you could, use this pointer and point
7 out where it says that, please.

8 A Right there.

9 Q That's the serial number?

10 A Yes.

11 Q And are you familiar with what kind of ammunition
12 that's used with that pistol?

13 A Yes, 9mm ammo. We usually sell Wolf.

14 Q That's the manufacturer?

15 A Yes.

16 Q Please answer any questions Mr. Schultz may have for
17 you.

18 MR. SCHULTZ: No questions for this witness, Your
19 Honor.

20 THE COURT: You may step down. Thank you.

21 MR. STAVLEY: Your Honor, we would ask that this
22 witness be excused.

23 THE COURT: She may be.

24 (Whereupon, the witness was excused.)

25 MR. BARNETTE: We would like to call Mr. Hanks, to the

David Randolph Hanks
Direct examination by Mr. Barnette

1 stand, Your Honor.

2 DAVID RANDOLPH HANKS, having
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BARNETTE

5 Q If you would, sir, state your full name for the
6 record, please.

7 A David Randolph Hanks.

8 Q And where do you work at, sir?

9 A I work for AT&T Mobility.

10 Q And what's your position there, sir?

11 A I am the regional sales operations manager and
12 custodian of records.

13 Q So one of your duties is being custodian of the
14 records for AT&T.

15 A Yes, sir.

16 Q And did y'all receive a request for phone records
17 concerning a phone number 921-██████

18 A Yes, sir.

19 Q Let me show you what's been marked as 32-A. Was this
20 a document that y'all produced in request of that?

21 A Yes, sir.

22 Q And does those verify the records that was from that
23 telephone, the call that was made to and from that phone
24 number?

25 A Yes, sir, it does.

David Randolph Hanks
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, at this time I would like
2 to introduce 32-A into evidence at this time.

3 MR. SCHULTZ: Without objection.

4 THE COURT: It is admitted.

5 (Phone records marked State's Exhibit No. 32-A.)

6 MR. BARNETTE: Your Honor, at this time I would like
7 to publish this to the jury, Your Honor.

8 THE COURT: You may.

9 Q If you would, sir, please, step down for a second.

10 (Whereupon, the witness left the stand.)

11 Q I believe you have a copy of this record with you, is
12 that correct?

13 A Yes, sir.

14 Q Sir, was this a prepaid phone?

15 A Yes, sir, it is.

16 Q So it was a prepaid phone. Let me just show the jury
17 right here on the top. You have call type, service type,
18 call date, time, call location, city called, state, calling
19 number, number called and the call duration. Is that
20 listed on the top?

21 A Yes, sir.

22 Q Okay. The calling number, what does that mean, sir?

23 A The calling number is the number that placed the phone
24 call.

25 Q And what's the number called?

David Randolph Hanks
Direct examination by Mr. Barnette

- 1 A That is the number that the call is placed to.
- 2 Q And what does call duration mean?
- 3 A That's the length that the call was had.
- 4 Q And how is that measured?
- 5 A In seconds.
- 6 Q And over here, the call date and time, what does that
- 7 tell, sir?
- 8 A That tells us the date and the time the call
- 9 originated.
- 10 Q And take you down here for the jury to see it at the
- 11 same time.
- 12 Was there a call placed to, I believe it's, 357- [REDACTED]
- 13 area code (864)357- [REDACTED] You can refer to your notes if
- 14 you need to.
- 15 A Placed to?
- 16 Q Can you tell me the date and the time?
- 17 A Repeat the question, please.
- 18 Q The number, was the number or did the number, did the
- 19 number, a number from 357- [REDACTED] call the 921- [REDACTED] number?
- 20 A Yes, sir, on February the 2nd at 1959 hours.
- 21 Q Was this the first call right here that I'm pointing
- 22 at?
- 23 A That's correct.
- 24 Q And that phone call was made from the 357- [REDACTED] number?
- 25 A Correct.

David Randolph Hanks
Direct examination by Mr. Barnette

1 Q To the 921- [REDACTED]

2 A Correct.

3 Q And that was 61 seconds long?

4 A Correct.

5 Q Was there three more calls made after that, or four
6 more attempts, I should say, or three more calls?

7 A That's correct.

8 Q What times was those numbers called?

9 A At 8:30, looks like 8:31, 8:32 and 8:34.

10 Q So it's these numbers right here at this location.

11 A Yes, sir.

12 Q We go over here. Now, the first call, that was made
13 from that number to that number.

14 A Correct.

15 Q It was zero seconds. What probably happened in that
16 situation?

17 A The phone did not pick up and it call forwarded to the
18 voice-mail platform.

19 Q And is this what this means right here?

20 A That's correct.

21 Q So it was a direct call. But when voice mail picked
22 up, it went to this number right here, which is the voice
23 mail number.

24 A Correct.

25 Q And how long did that call last?

David Randolph Hanks
Direct examination by Mr. Barnette

- 1 A Nine seconds.
- 2 Q Now, did they call again after that two more times?
- 3 A They did, yes, sir.
- 4 Q And what number did -- how many more -- what times did
- 5 they call those last two phone calls?
- 6 A At 8:32 for 25 seconds and 8:34 for 11 seconds.
- 7 Q Okay. This is in military time, is that right?
- 8 A That is correct.
- 9 Q So when you're saying 2034, it's 8:34 p.m.
- 10 A Yes, sir.
- 11 Q And also in your records, did he make a phone call to
- 12 (864)237- [REDACTED]
- 13 A That is correct.
- 14 Q And what date and time was that?
- 15 A That was February the 2nd at 8:35 p.m.
- 16 Q And how long did that call last?
- 17 A Thirty-three seconds.
- 18 Q Did he also make a call to 542- [REDACTED]
- 19 A He received a call.
- 20 Q Oh, received a call from there. I'm sorry. Did he
- 21 receive a call from 542- [REDACTED]
- 22 A That's correct.
- 23 Q What was the date of that?
- 24 A February the 2nd.
- 25 Q At what time?

David Randolph Hanks
Direct examination by Mr. Barnette

- 1 A At 8:45 p.m.
- 2 Q And how long did that call last?
- 3 A Five seconds.
- 4 Q Okay. And did he make a phone call to a (313)814- [REDACTED]
- 5 number?
- 6 A Yes, he did.
- 7 Q And what time of the day did he make that call?
- 8 A It was February the 2nd at 8:55.
- 9 Q 8:55 p.m.
- 10 A Yes, sir.
- 11 Q And that was the state of Michigan.
- 12 A That's correct.
- 13 Q And that's the (313)814- [REDACTED]
- 14 A That is correct.
- 15 Q And how many seconds is that call?
- 16 A Nine seconds.
- 17 Q Thank you, sir. Please have a seat back up here. I
- 18 apologize.
- 19 (Whereupon, the witness returned to the stand.)
- 20 Q And these phone records are maintained on everybody,
- 21 is that --
- 22 A That's correct.
- 23 Q And I think you said earlier this is a prepaid phone.
- 24 A Yes, sir. It is.
- 25 Q Thank you. If you would, answer any questions

David Randolph Hanks
Cross-examination by Mr. Schultz

1 Mr. Schultz may have for you.

2 MR. SCHULTZ: Just a few.

3 CROSS-EXAMINATION

4 BY MR. SCHULTZ

5 Q Looking at your -- these phone records, especially
6 around 2045, sir, if you may refer to those, these are all
7 measured in seconds, correct?

8 A That's correct.

9 Q All right. Now, these are fairly short phone calls
10 around that time, within maybe three or four minutes before
11 or after 8:45, which is 2045.

12 A I'm sorry? What?

13 Q These are fairly short phone calls.

14 A Yes, sir.

15 Q Okay. Because they last -- you see these things
16 lasting seconds, correct?

17 A Correct.

18 Q Okay. All right. Could complicated directions be
19 given in that amount of time?

20 MR. BARNETTE: I'm going to object, Your Honor. That
21 asks for a conclusion that he don't have any facts to base
22 that off of.

23 THE COURT: Sustained.

24 Q But all of these phone calls, they were of short
25 duration, correct?

David Randolph Hanks
Redirect examination by Mr. Barnette

1 A Yes, sir.

2 Q All right.

3 MR. SCHULTZ: That's all I have.

4 MR. BARNETTE: Just one followup, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BARNETTE

7 Q One of the phone calls, the one made at 7:59 p.m. on
8 February the 2nd, that was 61 seconds long, is that right?

9 A Sixty-one seconds, yes, sir.

10 Q Thank you.

11 MR. BARNETTE: That's all the questions I have, Your
12 Honor.

13 THE COURT: You may step down.

14 MR. BARNETTE: Your Honor, we would call Jeff Ferguson
15 as the next witness.

16 JEFFREY WILLIAM FERGUSON,
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q If you would, sir, state your full name for the
20 record.

21 A Jeffrey William Ferguson.

22 Q And where do you work at, sir?

23 A I work for Sprint-Nextel.

24 Q And what's your position there, sir?

25 A I'm a supervisor of subpoena compliance and work as

Jeffrey William Ferguson
Direct examination by Mr. Barnette

1 custodian of records.

2 Q So part of your job as custodian of records is on the
3 phone records.

4 A That's correct.

5 Q And did y'all receive a request from the -- a request
6 for phone records on two different phone numbers, sir?

7 A That is correct.

8 MR. BARNETTE: One moment, Your Honor, please.

9 (Pause.)

10 Q Let me show you what's been marked as State's
11 Exhibit 30-A and State's Exhibit 33-A. Are these copies of
12 phone records concerning those two phone numbers we asked
13 you about?

14 A Yes, they are.

15 Q State's Exhibit No. 30-A, was that for the number
16 357- [REDACTED]

17 A [REDACTED] that is correct, yes.

18 Q And then 33-1-A, is that (864)237- [REDACTED]

19 A That is correct, yes.

20 MR. BARNETTE: Your Honor, I would like to enter these
21 two items into evidence at this time.

22 MR. SCHULTZ: No objection.

23 THE COURT: Those are 32-A and 33-A?

24 MR. BARNETTE: No. That's 30-A and 33-A, Your Honor.

25 THE COURT: Excuse me. 30-A and 33-A. Okay.

Jeffrey William Ferguson
Direct examination by Mr. Barnette

1 MR. BARNETTE: Yes, sir.

2 (Phone records marked State's Exhibits Nos. 30-A and
3 33-A.)

4 MR. BARNETTE: Your Honor, permission to publish these
5 to the jury.

6 THE COURT: You may.

7 Q If you would, sir, please come down.

8 (Whereupon, the witness left the stand.)

9 Q Okay. On 33 -- (864)356- [REDACTED] (sic), whose phone was
10 that or subscriber information that was, sir?

11 A Let's see. That would belong to a Suzanne Proctor.

12 Q Suzanne Proctor?

13 A That's correct.

14 Q And if you would, sir, take a look here in this here.

15 And if you would, is this the calling numbers and the
16 number called that's listed up at the top?

17 A That's correct, yes, sir.

18 Q And go ahead. I'm sorry.

19 A Well, I just said the first column is the calling
20 number, the number that initiated the call. And the second
21 column is the called number, the number essentially that
22 received the call.

23 Q And what's this one right here, sir?

24 A That is the dialed digits which is actually just what
25 was physically punched into the phone, into the handset

Jeffrey William Ferguson
Direct examination by Mr. Barnette

1 itself.

2 Q Okay. And this number -- and this number right here,
3 what's that, sir?

4 A The start date, which is the starting date and time of
5 the origination of each call.

6 Q And what is this here, sir?

7 A The, essentially the, termination date and time of
8 each call.

9 Q Okay. And this number here, what is that, sir?

10 A It's the duration, the length of time in seconds of
11 each call.

12 Q And let me show you looking on this list and so forth,
13 was a call, a number that was called by the 357-[REDACTED]
14 number. Did it call a 921-[REDACTED] number?

15 A That is correct, yes.

16 Q And when did it call, sir?

17 A It looks like it called it three separate times, the
18 first at 20 hours and 31 minutes, so essentially 8:31 on
19 the 2nd of February. And then again at, in that same
20 minute, actually just about 30 seconds or 40 seconds later.
21 And then the third call was two minutes after that at 20
22 hours and 33 minutes on the 2nd of February.

23 Q And then did it make a call earlier also?

24 A Yes. I'm sorry. They did. Looks like 7:59.

25 Q And this is military time, is that right?

Jeffrey William Ferguson
Direct examination by Mr. Barnette

1 A That's correct.

2 Q So made the call at 7:59 p.m. on February the 2nd.

3 A That is correct, yes.

4 Q To this number. And they also made that call three
5 more times.

6 A That's correct, yes, sir.

7 Q And, like you say, the 357- [REDACTED] number is --

8 MR. BARNETTE: I'm going to publish State's Exhibit
9 No. 96, Your Honor.

10 Q That was listed to a Mr. Proctor, is that right?

11 A That is correct.

12 Q If you would, please, have a seat, sir.

13 (Whereupon, the witness returned to the stand.)

14 Q Let me show you what's been marked as 33-A. What's
15 the phone number these records are for, sir?

16 A These records belong to phone number (864)237- [REDACTED]

17 Q And that's also a Nextel telephone.

18 A That is correct, yes.

19 Q You can have a seat there.

20 MR. BARNETTE: May I publish these to the jury also,
21 Your Honor?

22 THE COURT: Yes, sir.

23 Q You may have to come down for this. Come down here if
24 you would.

25 (Whereupon, the witness left the stand.)

Jeffrey William Ferguson .
Direct examination by Mr. Barnette

1 Q And I don't know if the jury is going to be able to
2 see these or not. Was the number (864)921-██████ called?

3 And you may want to look on this right here, sir.

4 A Yes, it was.

5 Q How many times was it called?

6 A Looks like on this page just the two times.

7 Q Okay. And what times was this? What dates and times
8 were those phone calls made?

9 A Looks like the first one around 8:00. I believe it's
10 8:33 p.m. And the second one at 8:40 p.m.

11 Q Was that on February the 2nd?

12 A Yes, it was; yes, it was.

13 Q Okay. And those calls, was those calls inbound or
14 outbound?

15 A They appear to be. It appears they were both inbound.

16 Q So they were coming from the 921-██████ number into the
17 237-██████

18 A That is correct, yes.

19 Q So they were actually being called, this phone was.

20 A That is correct.

21 Q If you would, please, have a seat.

22 (Whereupon, the witness returned to the stand.)

23 Q Please answer any questions Mr. Schultz may have for
24 you, sir.

25 MR. SCHULTZ: Barry, could you put that back up there,

Jeffrey William Ferguson
Cross-examination by Mr. Schultz

1 sir?

2 MR. BARNETTE: Yes, sir. Do you want both of them, or
3 just one?

4 MR. SCHULTZ: The one that you just had.

5 CROSS-EXAMINATION

6 BY MR. SCHULTZ

7 Q Now, there were some other phone calls made that night
8 that were inbound and outbond, correct?

9 A That's correct, yes, sir.

10 Q Okay. And according to this duration, the duration of
11 the two underlined, underhighlighted, can you read that?

12 A I can't really tell from that.

13 MR. BARNETTE: You may want to come up here and look
14 on the sheet.

15 Q Just read out to the jury how long that duration is.

16 A It appears to be maybe seven, which would be in
17 seconds. And that is maybe zero.

18 Q That's a zero, correct?

19 A That's what it appears to be.

20 Q So that phone call, this bottom phone call right
21 there, did not last any time, correct?

22 A As best I can tell that's what it appears.

23 Q And the first highlighted phone call there above that
24 only lasted seven seconds, correct?

25 A That's correct.

George Edward Nicholson
Direct examination by Mr. Barnette

1 Q And it is your testimony today that there was other
2 phone calls made as well.

3 A I'm sorry. What was that, sir, your question?

4 Q There were other phone calls made that night, all of
5 very short duration, all under -- all under a minute,
6 correct?

7 A Correct.

8 Q Do you want to look at the duration?

9 A Yes. Looks like there were some other calls that were
10 less than a minute.

11 Q And they were all short phone calls, correct?

12 A Yes, sir.

13 Q That's all I have.

14 MR. BARNETTE: No further questions of this witness,
15 Your Honor. We would ask he be excused.

16 THE COURT: You may step down.

17 (Whereupon, the witness was excused.)

18 MR. BARNETTE: I would like to call George Nicholson
19 to the stand, Your Honor, next.

20 GEORGE EDWARD NICHOLSON,
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE :

23 Q Mr. Nicholson, if you would, state your full name for
24 the record, please.

25 A George Edward Nicholson.

George Edward Nicholson
Direct examination by Mr. Barnette

1 Q Where do you work at, sir?

2 A AT&T in Columbia, South Carolina.

3 Q And what is your position with them, sir?

4 A I am the asset protection area manager for South
5 Carolina.

6 Q And is part of your duties to testify as custodian of
7 the records?

8 A It is.

9 Q And before AT&T became what it is was it BellSouth?

10 A Yes, sir, it was.

11 Q And did you work for BellSouth at that time?

12 A I did.

13 Q Back on February the 2nd of 2006 was BellSouth in
14 existence at that time?

15 A Yes, sir.

16 Q Before it got, I guess, incorporated into AT&T, right?

17 A It was.

18 Q And did you receive requests for phone records
19 concerning two different phone numbers?

20 A Yes, sir, I did.

21 Q Okay. Was one of those phone numbers 542-██████

22 A Yes, sir, it was.

23 Q And that's on State's Exhibit No. 34-A. And was the
24 other one 597-██████

25 A Yes, sir, it was.

George Edward Nicholson
Direct examination by Mr. Barnette

1 Q And that's 36-A. Do those appear to be the records,
2 sir?

3 A Yes, sir.

4 MR. BARNETTE: Your Honor, I'd like to move these into
5 evidence at this time.

6 MR. SCHULTZ: No objection, Your Honor.

7 THE COURT: They are admitted.

8 (Phone records marked State's Exhibit No. 34-A; phone
9 records marked State's Exhibit No. 36-A.)

10 Q If you would, sir, on 33 -- 34-A, the number, what was
11 that phone number again for that one?

12 A (864) 542- [REDACTED]

13 Q And whose residence is that, sir?

14 A First name is Plummie and last name is Feaster.

15 Q Could you give us the address?

16 A Service address is [REDACTED] Street,
17 Spartanburg.

18 Q Okay. If you would, just step down, sir.

19 MR. BARNETTE: I would like to publish this to the
20 jury, Your Honor.

21 THE COURT: You may.

22 (Whereupon, the witness left the stand.)

23 Q So this phone number went to this residence, Plummie
24 Feaster, at [REDACTED] Street in Spartanburg, South
25 Carolina.

George Edward Nicholson
Direct examination by Mr. Barnette

1 A That's correct.

2 Q In these records going back to February 2nd of 2006 --
3 and you reviewed these records, is that right, sir?

4 A Yes, I have.

5 Q Did you locate a number 921- [REDACTED] that was called on
6 that record?

7 A Yes, sir. This is the first time I've seen it on this
8 page. Yes, sir.

9 Q Again, what time -- and over here, is this the call
10 date and call time?

11 A Correct. On that call date, to the left of the call
12 date is a call number just showing the sequence that's on
13 the front pages here, but then the call time.

14 Q And somebody -- or that number called, 542- [REDACTED]
15 called 921- [REDACTED]

16 A Correct.

17 Q And that was earlier that day. What time was that,
18 sir?

19 A Oh, that was at this time here. It says 1527, which
20 is military time, which would be 3:27 p.m.

21 Q And was that number called again later that day, or
22 was that number called from another page at about 8:45,
23 call number 252?

24 A That's correct. And this was military time. Again,
25 that says 2045, which would be 8:45 p.m.

George Edward Nicholson
Direct examination by Mr. Barnette

1 Q So somebody from 542-█████ called 921-█████

2 A That's correct.

3 Q And looking on the other record that says 597, the
4 number is 597-█████

5 A That's correct.

6 Q Okay. And that was A. D. Hunter's phone number?

7 A It is.

8 Q Listed back then.

9 Going to the call numbers 118, 119 and 120 if you
10 would, sir. Did she call a 706-█████ number?

11 A She did.

12 Q And what time did she call that number, and what day?

13 A 2055, which was 8:55 p.m.

14 Q Okay. And did she call 9-1-1 shortly after that?

15 A She did.

16 Q And where was that, sir?

17 A What time?

18 Q What time? Let me put this out a little bit. Okay.

19 Sir, I'm sorry.

20 A In fact the call --

21 MR. SCHULTZ: Your Honor, may we approach?

22 THE COURT: Yes.

23 (Bench conference held off the record in the presence
24 of the jury but out of the hearing of the jury.)

25 MR. BARNETTE: Thank you, Your Honor.

George Edward Nicholson
Cross-examination by Mr. Schultz

1 Q Going back to this, sir, so 9-1-1 was called at?

2 A 8:57 p.m.

3 Q And then was the 706- [REDACTED] number called again?

4 A It was the next call on the list.

5 Q And what time was that call?

6 A 8:58 p.m.

7 Q Going back to the first time, 706- [REDACTED] how long did
8 that phone call last?

9 A One minute, 16.6 seconds.

10 Q And how long did the phone call last to 9-1-1?

11 A Forty-four seconds.

12 Q And how long did the next phone call last?

13 A Forty-one and a half seconds.

14 Q Thank you, sir. Please have a seat.

15 (Whereupon, the witness returned to the stand.)

16 Q Please answer any questions Mr. Schultz would have for
17 you, sir.

18 CROSS-EXAMINATION

19 BY MR. SCHULTZ

20 Q Do you ever see 921- [REDACTED] on there?

21 A Say that again, sir.

22 Q Do you see 921- [REDACTED] on there?

23 A I'm looking at it sideways. You need to give me a
24 call line number on the far left.

25 Q I can present this to you.

George Edward Nicholson
Cross-examination by Mr. Schultz

1 A Okay. Which one are you looking for?

2 Q 921-████ from number 100.

3 A Okay. I do not see it, sir.

4 Q Okay. So it's your testimony today that there was,
5 there were no 921-████ numbers either incoming or outgoing,
6 correct?

7 A Not that's on the list, no.

8 MR. SCHULTZ: That's all I have.

9 MR. BARNETTE: No further questions.

10 We ask this witness be excused.

11 THE COURT: You can step down.

12 (Whereupon, the witness was excused.)

13 MR. BARNETTE: May we approach, Your Honor?

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 THE COURT: All right. Ladies and gentlemen, we're
17 going to recess for the afternoon.

18 Remember to keep and follow my caution previously
19 given. Don't talk about the case with anybody; don't
20 conduct any research or do your own investigation; don't
21 permit yourselves to be exposed to any type of media
22 coverage relating to the trial.

23 Do have a good evening. Please report back to your
24 jury room at 9:30 in the morning, 9:30 in the morning.

25 (The following takes place outside the presence of the

1 jury.)

2 THE COURT: Court is in recess until 9:30 in the
3 morning.

4 END OF PROCEEDINGS JANUARY 15, 2008

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George David Reeves
Direct examination by Mr. Barnette

1 (Proceedings January 16, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

5 MR. BARNETTE: The state is ready.

6 MR. SCHULTZ: The defense is ready, Your Honor.

7 THE COURT: Okay. Bring them in.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good morning, ladies and gentlemen.

11 We are going to continue with the state's presentation
12 of evidence.

13 Mr. Barnette.

14 MR. BARNETTE: Thank you, Your Honor. May it please
15 the Court, I would like to call David Reeves to the stand,
16 please.

17 GEORGE DAVID REEVES, having
18 been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BARNETTE

20 Q If you would, sir, please state your name for the
21 record.

22 A My name is George David Reeves.

23 Q Where do you work at, sir?

24 A I work property and evidence technician at the
25 Spartanburg Public Safety Department.

George David Reeves
Direct examination by Mr. Barnette

1 Q How long have you been there, sir?

2 A Six years.

3 Q And what are part of your duties, sir?

4 A It is to receive evidence, is to take evidence to be
5 analyzed, to bring evidence back into the evidence room, to
6 control the chain of custody and to safeguard the evidence.

7 Q And we've had a lot of evidence entered in this
8 case -- the bullets, everything that Ed Guthro gathered
9 during his processing and so forth. Was all of those items
10 entered into y'all's evidence and property?

11 A Yes, they were.

12 Q And were they maintained by you as well as Mr. Beech?

13 A Yes.

14 Q And were they transported? And they were secured, or
15 I mean sealed, when they was entered into y'all's evidence.

16 A That is correct.

17 Q And were they all transported down to the state law
18 enforcement division?

19 A Yes, they were.

20 Q And once they get to the state law enforcement
21 division, are those items opened at that point and then
22 resealed in these plastic bags?

23 A Yes, they are. And then we have to initial and date
24 it also.

25 Q And then once they're sealed in y'all's presence and

George David Reeves
Cross-examination by Mr. Schultz
Redirect examination by Mr. Barnette

1 placed into a locked -- or to a locker to be picked up by
2 lab technicians.

3 A That is correct.

4 Q And they're sealed once y'all leave.

5 A Yes.

6 Q Was that done with all of this evidence?

7 A Yes, it was.

8 Q Please answer any questions Mr. Schultz might ask you.

9 CROSS-EXAMINATION

10 BY MR. SCHULTZ

11 Q Now, did you go to the crime scene that night?

12 A No, I do not. I stay strictly in the property and
13 evidence controlled room.

14 Q All right. And as part of your duties in the property
15 and evidence control room, did you test any of the evidence
16 in this case?

17 A The only thing I tested was the marijuana that was
18 presented in the case.

19 Q Thank you. That's all I have.

20 MR. BARNETTE: Just one followup to that, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BARNETTE

23 Q You tested the marijuana. Was it marijuana?

24 A Yes, it was.

25 Q Thank you.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 MR. BARNETTE: That's all the questions I have.

2 THE COURT: You may step down.

3 MR. BARNETTE: Your Honor I would like to call Ken
4 Whitler as the next witness, Your Honor.

5 KENNETH H. WHITLER, having
6 been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BARNETTE

8 Q If you would, sir, state your full name for the
9 record, please.

10 A My name is Kenneth H. Whitler, spelled W-H-I-T-L-E-R.

11 Q And where do you work at, sir?

12 A At the South Carolina Law Enforcement Division.

13 That's also known as SLED.

14 Q And what is your position there, sir?

15 A I'm a firearms and toolmark examiner.

16 Q And how long have you worked for SLED, sir?

17 A Since 1997.

18 Q Is analyzing firearms and ballistics or bullets, is
19 that part of your job, sir?

20 A Yes.

21 Q And what kind of training have you received in that,
22 sir?

23 A The -- I've received on-the-job training because there
24 is no college to go to to get a degree in firearms
25 identification. You have to learn it from other qualified

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 examiners.

2 I received my training while I was working for the F.
3 B. I. laboratory. It's approximately a 2-year training
4 period where you work with qualified examiners on cases.
5 You do independent study. You do work that they give you
6 to test you.

7 And when they feel you're ready at the end of the
8 training period, they give you a series of three tests that
9 you have to successfully complete. And if you do that,
10 then you are certified to be a firearms toolmark examiner
11 for the F. B. I. laboratory.

12 I successfully completed that training in 1991 and
13 became a qualified examiner. In 1997 I retired from the F.
14 B. I. laboratory or the F. B. I. and came to work for SLED
15 doing basically the same job, just a shorter commute.

16 Q And how many times have you been qualified before as a
17 firearms examiner, sir?

18 A Almost 200 times in various state, federal and
19 territorial courts.

20 MR. BARNETTE: Your Honor, I would move the witness as
21 an expert in firearms and ballistics, Your Honor.

22 MR. SCHULTZ: No objection, Your Honor.

23 THE COURT: He is so qualified.

24 Q Sir, was you submitted several items in this case
25 including the 9mm pistol in this case?

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 A Yes, I was.

2 Q And if you would, look at State's Exhibit No. 95. I
3 believe that's the box in front of you. And take a look
4 and see if you analyzed that gun, sir.

5 A Yes, I did.

6 Q And prior to this -- I believe prior to you getting
7 the pistol -- had you done some analysis on some bullets
8 and shell casings that was received by SLED and by your
9 office?

10 A Yes.

11 Q And obviously those was received before you got the
12 firearm.

13 A That's correct.

14 Q And once you received the firearm did you compare
15 these shell casings and bullets to the firearm?

16 A Yes, I did.

17 Q If you would, tell the jury about that, sir.

18 A I test fired the submitted pistol, this 9mm pistol,
19 and took the test-fired cartridge cases and microscopically
20 compared them to the submitted bullets and cartridge cases
21 that had been previously submitted and which was sent back
22 to be cross-examined in. Do you want me to tell them the
23 results?

24 Q Yes, sir. Go ahead. Please do. And then we will
25 show.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 A What was submitted or resubmitted was one fired -- two
2 fired bullets, a fired bullet fragment, a bullet jack
3 fragment, two lead fragments and a metal fragment and
4 another fired bullet jacket fragment, one lead fragment.

5 I compared all of those, excuse me, and seven 9mm
6 cartridge cases that were fired. I test, like I said, I
7 test fired the pistol and compared the test cartridge cases
8 and bullets to the submitted bullets and cartridge cases
9 and determined that bullets and bullet fragments, with the
10 exception of one, were all fired by this gun.

11 The remaining bullet jacket fragment didn't have
12 sufficient agreement on the marks, and it could have been
13 fired by this gun or another gun with similar rifling
14 characteristics, but it just wasn't enough identifying
15 marks for me to be able to say it was fired by that
16 particular pistol.

17 Q So if I understand right, all, everything but one,
18 there's no question that it was fired by this gun.

19 A And, like I said, that bullet jacket fragment could
20 have been fired by this gun or something with similar
21 rifling. It just didn't have enough that enables us to say
22 with certainty that it was fired by that gun and not
23 another one.

24 Q And let me show you what's been marked as State's
25 Exhibit No. 77. Is this a copy of your report, sir?

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 A Yes. Actually it's three reports. They are all the
2 same as what I submitted --

3 Q Yes, sir.

4 A -- on the issue.

5 MR. BARNETTE: Your Honor, I would like to submit
6 State's Exhibit 77 into evidence at this time.

7 MR. SCHULTZ: No objection, Your Honor.

8 THE COURT: It's admitted.

9 (Copy of report marked State's Exhibit No. 77.)

10 MR. BARNETTE: May I publish this to the jury, Your
11 Honor?

12 THE COURT: You may.

13 Q Making sure the jury understands, Agent Whitler,
14 basically you received the bullets and everything before
15 you received the gun.

16 A That's correct.

17 Q So you did an analysis on these bullets and casings
18 first.

19 A Yes, sir.

20 Q And then later on, I believe some period afterwards,
21 you received the gun.

22 A That's correct.

23 Q And the shell casings and everything, what make were
24 they?

25 A They had Wolf and Winchester head stamps.

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 Q So Wolf was on the head stamp on the shell casings
2 that are on there.

3 A Yes.

4 Q Showing, I believe, page six of your report. Can you
5 see that, sir, or do you need to step down?

6 A Yes, I can. Well, I can read from mine, yes.

7 Q If you would, explain to the jury what this says, sir.

8 THE COURT: Be careful of the microphone please. That
9 noise is the microphone.

10 THE WITNESS: Oh, okay.

11 A This report, first of all, lists the evidence. That's
12 where it says items of evidence. And it shows that item 11
13 was a fired bullet. Items 12 through 18 are seven fired
14 cartridge cases. Item 19 was a fired bullet. Item 20 was
15 a fired bullet jacket fragment. Item 21 was a fired bullet
16 jacket fragment, two lead fragments and one metal fragment.
17 Item 24 was a fired bullet jacket fragment and one lead
18 fragment.

19 And in the results, I said when I previously examined
20 just this evidence before we got the gun, I said the item
21 11 and 19 fired bullets, the item 20 fired bullet fragment
22 and the item 24 fired bullet jacket fragment submitted and
23 the 0602 --

24 THE COURT: Excuse me. Just a minute. Can you slow
25 down a little bit? The court reporter is having a

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 difficult understanding you and taking all of that down
2 because you're going kind of fast.

3 THE WITNESS: Okay, sir.

4 THE COURT: I realize you're familiar with that
5 document, but nobody else is.

6 A Were identified as having been fired by the same
7 firearm barrel.

8 The item 21 bullet jacket fragment was inconclusive
9 with these other items. That means that there wasn't
10 sufficient agreement of the marks for me to say they were
11 all fired by the same gun barrel. That could have been.
12 It could have been, but it just wasn't sufficient
13 agreement.

14 In addition, the item 11 -- the items 11 through 18
15 fired cartridge cases were identified as having been fired
16 by the same firearm. So basically those items plus the
17 cartridge cases -- excuse me. The bullet jackets and
18 bullets were fired by one barrel with the exception of that
19 one fragment. The fired cartridge cases were fired by the
20 same firearm.

21 The one item, 21 bullet jacket fragment, as I said
22 you, have to have a certain amount of agreement in order to
23 say it was fired by the same or fired by a particular gun.
24 And this particular fragment just didn't have enough
25 agreement. So it could have been fired by the same barrel

Kenneth H. Whitler
Direct examination by Mr. Barnette

1 or not.

2 Once we got the pistol in, these items were compared
3 to the test bullets and cartridge cases from that gun. And
4 that's when I'll skip down. Said they were microscopically
5 compared to the above specimens, and those items listed
6 above, and it was concluded that items 20 through -- 11
7 through 20 and 24 bullet jacket fragments were fired by
8 that, excuse me, item 46, pistol.

9 Comparisons of the item 21 bullet jacket fragment test
10 bullets fired by the item 46 pistol were inconclusive.

11 Q So item 46 (sic) is obviously this pistol that's in
12 the box.

13 A Yes.

14 Q And when you received this pistol, what kind of shape
15 was it in, sir?

16 A It was in a sealed container.

17 Q And it was sealed and opened by you, is that right?

18 A Pardon?

19 Q You received this contained and you opened it and
20 looked at the weapon.

21 A Yes.

22 Q When you looked at the weapon, what kind of shape was
23 the weapon in, the pistol?

24 A When I received it it was very rusty. I had to oil it
25 and clean it to restore it to firing condition.

Kenneth H. Whitler
Cross-examination by Mr. Schultz

1 Q So it appeared to have been in the weather or been out
2 when you saw it, or obviously not taken care of.

3 A It had a lot of rust on it, yes.

4 Q And what did you find inside the gun once you loosened
5 it up and oiled it up? Did you find any bullets in the gun
6 itself?

7 A There were three unfired cartridges. One was in the
8 chamber and two were in the magazine.

9 Q And are they also in the box with the gun, sir?

10 A Yes, they are.

11 MR. BARNETTE: One moment, Your Honor, please.

12 (Pause.)

13 Q And if I understood your testimony correctly, some of
14 this ammunition is Wolf ammunition.

15 A Yes.

16 Q Okay. Thank you. Please answer any questions that
17 Mr. Schultz may have for you. Thank you.

18 CROSS-EXAMINATION

19 BY MR. SCHULTZ

20 Q Briefly. Wolf ammunition is a very popular brand,
21 correct?

22 A Yes, it is.

23 Q In fact, it's one of the most popular brands for small
24 firearms in the United States, correct?

25 A I wouldn't say it's the most popular but it's --

Kenneth H. Whitler
Cross-examination by Mr. Schultz

1 there's a lot of it around, yes.

2 Q All right. Now, when you received this handgun, you
3 stated on your firearms report dated November the 27th of
4 2007 if you want to refer to that --

5 A Yes, sir.

6 Q You stated in the -- in the results there for item 46,
7 you stated when received in the SLED lab item 46 was
8 extremely rusted and not in working order. And item 46 is
9 a Ruger 9mm pistol, correct?

10 A That's correct.

11 Q And what do you mean by not in working order?

12 A It means it wouldn't fire.

13 Q It wouldn't fire. And looking at the rust -- and your
14 testimony today concerned it was in bad, poor condition and
15 that it was rusted, correct?

16 A That's correct.

17 Q Okay. Now, I'll get back to that a little later, but
18 you also received bullet jacket fragments, correct?

19 A That's correct.

20 Q And were you able to test these?

21 A Yes. But they are not, they were not identifiable to
22 anything.

23 Q So these could have been for another gun.

24 A Yes, they could. But there's no way to tell.

25 Q In fact, all fragments that you found or that you

Kenneth H. Whitler
Cross-examination by Mr. Schultz

1 received at SLED could have been from another gun, correct?

2 A There's the possibility, yes.

3 Q Okay. But there's a possibility.

4 A If you can't identify it, if you can't put the bullet
5 back together and you can't identify a piece to a
6 particular gun barrel, it could always -- you've got that
7 possibility.

8 Some of these were lead fragments which are the inside
9 of the bullet. When the bullet strikes, it breaks up. So
10 you actually have the inside of the bullet pieces of that
11 floating around. You'll never identify that to any gun
12 because there are no marks on it.

13 Q And how many bullet jacket fragments did you receive
14 at SLED?

15 A Well, as it showed before, we received two lead --
16 well, item 21 was a bullet jacket fragment and two lead
17 fragments and a metal fragment. And then item 24 was one
18 lead fragment and one bullet jacket fragment.

19 I was able to identify the bullet jacket fragment to
20 the gun. So we have a lead fragment there.

21 Q All right. Now going back to this, referring to
22 State's Exhibit 77, again, I'm referring to a firearms
23 report of November the 27th of 2007, correct?

24 A All right, sir.

25 Q All right. Now, under the firearms department, the

Kenneth H. Whitler
Cross-examination by Mr. Schultz

1 first part of this one I'm pointing to right now, sir, on
2 the overhead --

3 A All right, sir.

4 Q All right. Says SLED lab L0712175.

5 A That's correct.

6 Q Said the case number, the incident date. What does
7 the "V" stand for?

8 A Victim.

9 Q And the victim was James Hunter, and the other victim
10 was David Proctor, correct?

11 A That's correct.

12 Q And what does "S" stand for?

13 A Subject.

14 Q Subject. Okay. And that says Nathaniel Teamer. And
15 what is the other subject on there?

16 A Leon Franklin.

17 Q Do you know who Leon Franklin is?

18 A I have no idea.

19 Q Is he a subject in this?

20 A That's what the contributor lists them as.

21 This information is so that when we issue a report
22 they can put it in the correct file. And we give them all
23 the information that they give us -- their case number,
24 their subject victim, date of incident -- so it helps them
25 put it back in or put it in their correct file.

Kenneth H. Whitler
Cross-examination by Mr. Schultz

1 Q Now, this crime happened February 2nd of 2006,
2 correct?

3 A I assume so, yes.

4 Q And this date of the firearms report is November 27th
5 of 2007, correct?

6 A That's correct.

7 Q And that's almost approximately about two years after
8 the occurrence of the crime.

9 A Yes, sir.

10 Q And according to this firearms report, Leon Franklin
11 was still a suspect, correct?

12 A Yes.

13 Q He was a suspect of the investigation.

14 A I don't know. We have -- when evidence is submitted,
15 it is put on an evidence intake form.

16 The department or the sheriff's office lists the
17 particular subject victim, their case number, who to
18 contact and this type of information. It's put into the
19 system. That will stay and be generated on each subsequent
20 report.

21 I have no independent knowledge of who the suspect is,
22 the victim. That's the information they give us. If
23 they -- sometimes victims, subjects, change. They don't
24 tell us. It doesn't get changed in the system. So I have
25 no way of knowing who is a suspect at any particular time,

Kenneth H. Whitler
Cross-examination by Mr. Schultz

1 or when or where.

2 MR. SCHULTZ: Beg the Court's patience, Your Honor.

3 Q To your information when it prints found none --

4 A I have no indication, no knowledge of that.

5 Q Well, you don't do that, correct?

6 A That's correct.

7 Q You do all other kinds of analysis other than
8 fingerprint analysis.

9 A I just do firearms, which is bullets and cartridge
10 cases and firearms, yes.

11 Q And just a follow-up question to that. You don't do
12 any D. N. A., correct?

13 A That's correct.

14 Q Now, the rust associated with this firearm, where was
15 the rust in the firearm itself? What parts of the gun?

16 A It was all over.

17 Q It was all over.

18 A Yes.

19 Q Okay. Wouldn't you say that that's a poor quality
20 gun?

21 A No. It just depends on where it was placed. You
22 could take a very high quality gun and put it, leave it out
23 in the elements and it would rust it up very quickly.

24 Q Is a Ruger a high quality or a low quality gun?

25 A It's generally considered a very good quality firearm.

Kenneth H. Whitler
Cross-examination by Mr. Schultz

1 Q But, nevertheless, according to the testimony that
2 we've heard in the last couple of days, is that it was out
3 there for approximately 18 months, correct?

4 A I assume so, yes.

5 Q Okay. And you had no problems validating the accuracy
6 of your report for a gun that was out there in the elements
7 and rusted and by your own admission not in good working
8 order.

9 A The reason it wasn't in working order, it was because
10 of the rust. It doesn't take a lot of it to keep a gun
11 from functioning.

12 A pistol has to move freely. And if you bind it up by
13 rusting or dirt or any of these type of things, the gun
14 will not operate properly.

15 Once you clean the dirt or the rust off, in many cases
16 they will operate. And what we're looking at is on the
17 breach face and then the barrel. And in many cases those
18 are somewhat protected from the elements unless somebody
19 puts something down in the barrel. And we're still able to
20 get the marks on it.

21 Q For those of us unfamiliar with firearms, you just
22 said the breach face.

23 A That's correct.

24 Q And what is the breach face?

25 A That's the back of the -- where the cartridge case

Kenneth H. Whitler
Redirect examination by Mr. Barnette

1 head is resting when the slide closes. It's this area
2 right back here. When this closes, it's on the back of the
3 cartridge case. So this area right here is right in
4 contact with it.

5 Q And could you point out to the jury what parts of the
6 firearm are rusted?

7 A Like I said, I didn't make notes of exactly what
8 areas. It was rusted all over. So I cleaned off wherever
9 the rust needed to be cleaned.

10 MR. SCHULTZ: That's all I have.

11 MR. BARNETTE: Just a couple on followup, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. BARNETTE

14 Q Agent Whitler, the rust that you saw on the gun, would
15 that be consistent with being out in the weather for 18
16 months?

17 A Yes, sir, or exposed to something that's wet and let
18 it rust.

19 Q And also this gun has a serial number too, is that
20 right?

21 A That's correct.

22 Q And what was that serial number again, sir?

23 A 31266797.

24 Q And that's on your report also, is that right?

25 A Yes. I also would like to point out this barrel is

Rhonda Fields
Direct examination by Mr. Barnette

1 stainless steel. It also resists rust.

2 Q So the barrel itself would resist rust.

3 A More than a regular steel barrel would.

4 Q And just so on page two of the report or whatever, is
5 this the serial number you found on the gun, sir?

6 A Yes, yes, sir, that's correct.

7 Q Thank you, sir. Please answer any other questions
8 Mr. Schultz may have for you.

9 MR. SCHULTZ: None on recross, Your Honor.

10 THE COURT: You may step down.

11 MR. BARNETTE: I would like to call Rhonda Fields
12 next, Your Honor.

13 And we would ask for this witness to be excused.

14 THE COURT: He may be.

15 (Whereupon, the witness was excused.)

16 RHONDA FIELDS, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q If you would, ma'am, please state your full name for
20 the record.

21 A Rhonda Fields.

22 Q And where do you work at, ma'am?

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

25 Q And what's your position there, ma'am?

Rhonda Fields

Direct examination by Mr. Barnette

1 A I'm a forensic D. N. A. analyst.

2 Q And how long have you worked at SLED, ma'am?

3 A Approximately eight, nine years.

4 Q Would you give the jury a little bit about your
5 educational background and training?

6 A I received my bachelor of science degree in
7 biochemistry from Clemson University. I went, underwent,
8 extensive in-house training in the area of forensic D. N.
9 A. serology analysis. I also received graduate credit in
10 population statistics from the University of South
11 Carolina. I attend numerous workshops to keep me up to
12 date on changes in D. N. A. technology.

13 Q And when you do that in-house training, what kind of
14 in-house training do you do?

15 A We are given training samples initially to make sure
16 that we know how to handle samples without contaminating or
17 to ensure that we can develop a correct profile.

18 Then we are, then we are given case work samples. Or
19 we actually watch our trainers do several cases before
20 allowing us to start handling samples ourselves, and we
21 only have supervised, then we do supervised case work for,
22 I guess, however long it takes for your trainer to feel
23 comfortable that you're able to handle the samples
24 majority -- on your own. And then, and then at the end of
25 your training session you're giving, you're given a

Rhonda Fields
Cross-examination by Mr. Schultz

1 competency test and a proficiency test to make sure that
2 you, like I say, you can develop a correct profile from
3 known, from samples of a known profiler.

4 Q How many cases have you worked on by yourself?

5 A Approximately, I would say, 200.

6 Q And how many times have you been qualified in court,
7 ma'am?

8 A About ten.

9 Q And is that in D. N. A. analysis and so forth?

10 A It is, yes.

11 MR. BARNETTE: Your Honor, I'd move her as an expert
12 at this time in D. N. A. analysis.

13 MR. SCHULTZ: Your Honor, if I could ask a couple of
14 questions of the witness.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 BY MR. SCHULTZ

18 Q You said after you received your B. S. in biochemistry
19 from Clemson, you said you received some forensic training.

20 A I, I, I received undergraduate training in the area of
21 population genetics.

22 Q Molecular genetics?

23 A Population statistics. I'm sorry. Statistics. I'm
24 sorry.

25 Q And you received your forensic training where?

Rhonda Fields
Redirect examination by Mr. Barnette

1 A At, at SLED. It was in-house training.

2 MR. SCHULTZ: That's all I have, Your Honor.

3 THE COURT: Any objection to her qualifications?

4 MR. SCHULTZ: No objection.

5 THE COURT: She is so qualified.

6 REDIRECT EXAMINATION

7 BY MR. BARNETTE

8 Q Ma'am, did you receive some items in this case to do
9 analysis on in this case?

10 A I did, yes.

11 Q And did you receive -- and let me show you a copy of
12 your report, State's Exhibit No. 78. If you would, please,
13 see if that is a copy of your report.

14 A It is.

15 Q And the items that you received contained in this
16 report, were they sealed once you received them?

17 A They were, yes.

18 Q Had they been tampered with or anything of that
19 nature?

20 A No. They had not.

21 Q Was you the individual that opened them?

22 A I'm sorry?

23 Q Was you the individual that opened them and tested
24 them?

25 A Yes, I was.

Rhonda Fields
Redirect examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, at this time I would like
2 to move State's Exhibit 78 into evidence at this time.

3 MR. SCHULTZ: No objection, Your Honor.

4 THE COURT: It's admitted.

5 (Copy of report marked State's Exhibit No. 78.)

6 Q If you would, ma'am, please come down, and we'll
7 describe this to the jury.

8 MR. BARNETTE: May I publish this to the jury, Your
9 Honor?

10 THE COURT: You may.

11 (Whereupon, the witness left the stand.)

12 Q If you would, talk loud enough so the court reporter
13 can hear you too. Turn this way so she can hear you.

14 If you would, tell the jury what items you did
15 receive, ma'am.

16 A Everything listed on this report, items submitted.
17 Item numbers to the left-hand side are item numbers that
18 are given to those particular items once they're submitted
19 at SLED. And then there's a description of each of those
20 items to the right of the item numbers. And under the
21 results section, this is the item number duplicated
22 followed by the result for that item.

23 Q And the items that you received, you received a blood
24 standard from Mr. Hunter.

25 A I did.

Rhonda Fields
Redirect examination by Mr. Barnette

1 Q And what was that used for, ma'am?

2 A Blood -- well, we can either accept the blood or
3 buccal swab or saliva samples from, from individuals
4 involved in the case. It could be the victim, the suspect
5 or just whoever investigators think may have been involved
6 in the case.

7 We develop a D. N. A. profile from known persons to
8 see, to, we develop their profile, and then we develop
9 profiles also from the evidence. And then we look at the
10 D. N. A. profile developed from the evidence and from the
11 standards to see if we can make a match or an exclusion
12 based off of these profiles.

13 Q And these are several items that were submitted by the
14 investigators from the car, inside the car, is that right?

15 A That's correct, yes.

16 Q And these are some items that was also received from
17 the crime scene and from the car.

18 A Right. The top part is just a continuation of the
19 first page. And the items listed, there's a new section
20 midway down.

21 The items analyzed these -- the items listed above
22 weren't necessarily -- D. N. A. analysis wasn't necessarily
23 performed on them. Sometimes like if we -- if there's no
24 reason to believe there may be skin cells on there, if
25 there wasn't blood present, we may not take it on for D. N.

Rhonda Fields

Redirect examination by Mr. Barnette

1 A. analysis.

2 MR. SCHULTZ: Your Honor, I'm sorry to interrupt. For
3 clarification purposes, she said there was no D. N. A.
4 tested on the above items. I'm not sure what she's
5 referring to.

6 A No. I said -- I'm sorry. I will clarify.

7 Sometimes all of the items submitted in a case do not
8 go to D. N. A. testing. We have to have some reason to
9 believe there may be a D. N. A. developed from those items.
10 So although you may see items listed in the upper part of
11 the report, they may not be mentioned any more in the
12 latter part of the report.

13 So items listed in the D. N. A. analysis, items
14 analyzed section, all of those items were taken on to D. N.
15 A. analysis. So that's just a listing of all of the items
16 that D. N. A. analysis was performed on.

17 Q Now, look specifically at the cigarette butt, No. 25.
18 Did you do an analysis on that?

19 A I did.

20 Q Did you have buccal swabs from Nathan Teamer, the
21 defendant in this case?

22 A I did.

23 Q Did you do an analysis between those two items?

24 A I did.

25 Q Looking at the results, would you tell us, I guess --

Rhonda Fields
Redirect examination by Mr. Barnette

1 would that be the third paragraph it lists?

2 A It is.

3 Q And if you would, tell the jury about that, please.

4 A Okay. The D. N. A. profile developed from Item 25 was
5 a mixture. That means more than one individual contributed
6 to the D. N. A. profile for that item.

7 Typically when you have a mixture, sometimes one
8 contributor is more predominant than the other contributor.
9 Such is the case with this item. There is a major and a
10 minor contributor.

11 The major contributor matched Nathaniel Teamer. And
12 the probability of randomly selecting an unrelated
13 individual matching this item is approximately one in
14 62 billion.

15 And the minor contributor was so minor that no
16 definite conclusion could be drawn from the minor
17 contributor.

18 Q So there's no question that Nathan Teamer's D. N. A.
19 was on the cigarette.

20 A That's correct.

21 Q And how many people are in the world, ma'am?

22 A About 6 billion.

23 Q So one out of 62 billion is --

24 A About ten times the earth's population.

25 Q And the other items that you tested that we have here,

Rhonda Fields

Redirect examination by Mr. Barnette

1 whose profile did that mostly match?

2 A The James Hunter. And the probability of randomly
3 selecting an unrelated individual matching that profile is
4 one in 395 trillion.

5 Q And that was the items that was listed up here. And
6 of course that was the swabs and everything they did, the
7 cuttings and so forth, they took from inside the car.

8 A That's correct, yes.

9 Q And those items came back to match. Well, you also
10 said blood was indicated.

11 A Right. There was blood detected on those particular
12 items.

13 Q And that would have been his blood.

14 A Right.

15 Q Same thing here from the blood indicated and so forth.
16 That would be matched up to Mr. Hunter?

17 A That's correct, yes.

18 Q And of course you have got D. N. A. results off the
19 cigarette butt.

20 A Right.

21 Q And that was matched up to Mr. Teamer as a major
22 contributor to that.

23 A That's correct.

24 Q Please have a seat.

25 (Whereupon, the witness returned to the stand.)

Rhonda Fields
Redirect examination by Mr. Barnette

1 Q And just to let the jury know, these are the items
2 that you did an analysis on. I'll let you look through
3 those real quick, ma'am.

4 A Okay. These are the items I did an analysis on.

5 Q Let me show you Item 25. Was this a cigarette in Item
6 25 that we're talking about in your D. N. A. report if you
7 get a chance to look at it, ma'am?

8 A It is. I can tell by the --

9 Q By your markings on it?

10 A Right. Exactly.

11 Q If you would, ma'am, look at the evidence description
12 and read that to the jury, please.

13 A The evidence description is a cigarette butt, pieces
14 of styrofoam cup with possible blood on it.

15 Q So that's the description they had for it, is that
16 right?

17 A That's correct.

18 Q Where was it found at, ma'am?

19 A In a '97 Toyota. I guess 5T3GM849V001148, I guess is
20 the VIN number maybe.

21 MR. BARNETTE: Your Honor, can I publish this to the
22 jury, this part of it?

23 THE COURT: What number?

24 MR. BARNETTE: State's Exhibit No. 25, and enter this
25 into evidence at this time.

Rhonda Fields
Redirect examination by Mr. Barnette

1 THE COURT: Any objection?

2 MR. SCHULTZ: No objection.

3 THE COURT: It's admitted.

4 (Cigarette marked State's Exhibit No. 25.)

5 Q And this was the information that you just read to the
6 jury, is that right, ma'am?

7 A That's correct, yes.

8 Q And if you would, look at State's Exhibit No. 27, I
9 believe, ma'am.

10 A Okay.

11 Q Is that the buccal swab on Mr. Teamer that you
12 received?

13 A It is.

14 MR. BARNETTE: Your Honor, I would move this into
15 evidence at this time.

16 MR. SCHULTZ: No objection, Your Honor.

17 THE COURT: It is admitted.

18 (Buccal swabs marked State's Exhibit No. 27.)

19 MR. BARNETTE: May I publish this to the jury, Your
20 Honor?

21 THE COURT: You may.

22 MR. BARNETTE: I don't know if y'all can see that.

23 Q Is that the swab -- inside of that, is that the swab
24 you received that was taken from Nathan Teamer?

25 A It is, yes.

Rhonda Fields
Cross-examination by Mr. Schultz

1 Q And this swab, the D. N. A. of this swab, matched the
2 cigarette.

3 A It did.

4 Q And it matched it one to 62 billion.

5 A That's correct.

6 MR. BARNETTE: One moment, Your Honor, please.

7 (Pause.)

8 Q Please answer any questions Mr. Schultz has for you.

9 Thank you.

10 CROSS-EXAMINATION

11 BY MR. SCHULTZ

12 Q Ms. Fields -- is it?

13 A Yes, sir.

14 Q Now, you performed a D. N. A. analysis on July the
15 5th of 2007, correct?

16 A May I refer to my notes, please? May I refer to my
17 notes?

18 MR. SCHULTZ: Does she have this?

19 MR. BARNETTE: She should have that.

20 A Right. The report was issued on July the 5th, that's
21 correct.

22 Q Referring to State's Exhibit 78 where I'm pointing
23 right there, "V" stands for what?

24 A The victim.

25 Q And how many victims were there in this case?

Rhonda Fields
Cross-examination by Mr. Schultz

1 A Looks like there were two listed.

2 Q What are the victims' names?

3 A Looks like it's James Hunter and David Proctor.

4 Q And "S" stands for what?

5 A Suspect.

6 Q Suspect. And who are the suspects in this case?

7 A Nathaniel Teamer and Leon Franklin.

8 Q Did you get in any swabs from Leon Franklin
9 whatsoever?

10 A I did not.

11 Q Any evidence whatsoever from Leon Franklin?

12 A I did not, no.

13 Q So no evidence of Leon Franklin's involvement in this
14 crime was ever submitted to your office, correct?

15 A That's correct.

16 Q The only thing that was done was Nathaniel Teamer.

17 A That's correct.

18 Q Do you know why that was up there?

19 A Why the suspect?

20 Q Leon Franklin was up there.

21 A I do not know. That was just -- his name was on
22 our -- we receive the paperwork from log-in department, our
23 log-in department. And Leon Franklin was just on our
24 log-in paperwork.

25 Q And referring to 4.1, that's a blood standard from

Rhonda Fields
Cross-examination by Mr. Schultz

1 James Hunter. That was all of his D. N. A., correct?

2 A That's correct, yes.

3 Q Okay. That wasn't a mixture or anything, correct?

4 A That's right. That's a standard. So you wouldn't
5 expect a mixture.

6 Q Could you explain the difference between a standard
7 and a mixture to the jury?

8 A I'm sorry?

9 Q Standard D. N. A. and a mixture of D. N. A.

10 A Okay. A standard is a known, is a, a D. N. A. from a
11 known source. So whenever, that D. N. -- the blood or
12 either a buccal swab is collected from a known source, it's
13 submitted to the D. N. A. lab. So when I develop the
14 profile we will know who that D. N. A. profile belongs to.

15 A mixture is we usually find them in the evidence.
16 And evidence is typically unknown until, I guess, either a
17 comparison can be done between the evidence and any known
18 samples that were submitted.

19 So, and so, in the evidence, in the evidence you can
20 sometimes expect to find mixtures because of two people
21 have handled that piece of evidence, then you would get
22 both their profiles on that piece of evidence.

23 Q Now, let's get into a little bit about how you age D.
24 N. A. Okay?

25 A Okay.

Rhonda Fields
Cross-examination by Mr. Schultz

1 Q If I, for instance, eat a candy bar, okay --

2 A Uh-huh.

3 Q -- and I don't finish the whole thing, okay, and I
4 have it in my mouth and I eat it, okay, and I throw the
5 rest of it, you know, in the garbage or something like that
6 or on the floor, so a piece of the candy bar is still
7 there.

8 A Right.

9 Q Okay. Will my D. N. A. be on that?

10 A It would have been expected to be able to get a D. N.
11 A. profile from that, yes.

12 Q And why is my D. N. A. on there?

13 A Because you came into contact with it. You can get D.
14 N. A. from skin cells that sluff off in your mouth and in
15 your saliva. So whenever you eat something, you would
16 expect to find the D. N. A. profile from the person who ate
17 that particular item.

18 Q Okay. So, for instance, going back to my analogy of
19 the candy bar, if I eat a candy bar maybe like last week
20 and I leave it somewhere in the courthouse and I throw it
21 down, okay, and later someone analyzes it, say, at your
22 office, okay, could you tell the age of that?

23 A We cannot, no.

24 Q Okay. So this candy bar in my analogy could have been
25 from last week or maybe a year ago, correct?

Rhonda Fields
Cross-examination by Mr. Schultz

1 A That's correct, yes.

2 Q It could have been two years ago.

3 A That's correct.

4 Q Could have been three years ago.

5 A Yes, could be.

6 Q The question is there's no valid information that you
7 can do to age D. N. A. evidence, correct?

8 A That's correct.

9 Q All right. Now, referring to item 4.1 in State's
10 Exhibit 78, that's a swab from the dash. Okay. There was
11 blood indicated, correct?

12 A That's correct.

13 Q And according to your D. N. A. results, was
14 Mr. Teamer's blood found there?

15 A It was not.

16 Q All right. Referring back to item 4.2, that's a swab
17 from the rear passenger-side-door opening. And that was
18 blood indicated, correct?

19 A That's correct.

20 Q And did you find Mr. Teamer's blood?

21 A I did not.

22 Q All right. And I suppose you know what my next
23 question is going to be.

24 A Right.

25 Q 4.3, swab from inside driver's door, blood indicated.

Rhonda Fields
Cross-examination by Mr. Schultz

- 1 Was Mr. Teamer's blood on there?
- 2 A No, it was not.
- 3 Q Referring to item 4.4, swab from back of passenger
- 4 headrest. Was there blood indicated?
- 5 A Yes, there was.
- 6 Q Okay. Was there Mr. Teamer's blood?
- 7 A No. It was not.
- 8 Q Concerning item five, cutting from the headliner,
- 9 blood was indicated, correct?
- 10 A That's correct.
- 11 Q And was Mr. Teamer's blood there?
- 12 A No, it was not.
- 13 Q Referring to item number seven, from the back seat
- 14 body, was there blood indicated?
- 15 A Yes, there was.
- 16 Q And Mr. Teamer's blood was not found there, correct?
- 17 A It was not.
- 18 Q And No. 8, 9 and 10, that's a cutting from the back
- 19 seat, cutting from the driver's seat and cutting from the
- 20 front passenger seat, and there was blood indicated,
- 21 correct?
- 22 A That's correct.
- 23 Q And Mr. Teamer's blood was never found there, correct?
- 24 A It was not.
- 25 Q Now, you analyzed some other things, latex gloves

Rhonda Fields
Cross-examination by Mr. Schultz

1 inside, referring to items 23.1 and 23.2, latex gloves

2 inside and latex gloves, blood, outside. All right.

3 A Sure.

4 Q Okay. And you said on 23.2 right there that there was
5 blood indicated, correct?

6 A That's correct.

7 Q Does Mr. Teamer's blood match up to that?

8 A It did not.

9 Q Okay. Does Mr. Hunter's blood match up to that?

10 A Yes, it does.

11 Q Okay. Now, often you receive latex gloves, correct?

12 A Not often.

13 Q Often you receive latex gloves as a part of a crime
14 scene, correct?

15 A Actually we don't very often, but we do.

16 Q Okay. When you do, latex gloves are often used in E.
17 M. S., when E. M. S. responds to the scene, correct?

18 A They are, yes.

19 Q Okay. And would it be fair to say that these latex
20 gloves could have come from E. M. S. workers when they
21 responded to the scene? Would that be a reasonable
22 assumption to make?

23 A Could be, yes.

24 Q Okay. So that's a possibility, correct?

25 A That is a possibility, yes.

Rhonda Fields
Cross-examination by Mr. Schultz

1 Q It's a very good possibility, correct?

2 A Uh-huh.

3 Q Okay. Referring to Item 26.1, styrofoam cup, skin
4 cells, okay, meaning you had D. N. A. results for that,
5 correct?

6 A That's right.

7 Q All right. Was Mr. Teamer's found on that?

8 A 26.1?

9 Q Yes, ma'am.

10 A Actually, I couldn't, I didn't develop a D. N. A.
11 profile from that. I attempted it but there was, there was
12 no results.

13 Q All right. Now, that styrofoam cup, do you know where
14 that was found?

15 A I, I don't know where that was found.

16 Q Okay. But you know where the cigarette butt --

17 A All I know it was in the car, yeah.

18 Q The styrofoam cup was found in the car, correct?

19 A I'm assuming so. It was in that same -- it was in the
20 same envelope with the cigarette, where the description
21 said it was found, in the Toyota, '97 Toyota.

22 Q Okay. Going back to item 25, pointing right there,
23 could you explain what a mixture means?

24 A A mixture. Whenever two people come in contact with
25 an item, both may leave their D. N. A. on it from out of

Rhonda Fields
Cross-examination by Mr. Schultz

1 their -- some source of D. N. A. on that particular item.

2 So when we develop a D. N. A. profile from that item you'll

3 see two D. N. A. profiles, sometimes one, one contributor

4 is more predominantly than the other.

5 Q All right. In this mixture, can you break that down
6 as far as percentage-wise what, what Mr. Teamer contributed
7 to this?

8 A It's difficult to do that really, to say how much more
9 he contributed than the other.

10 Q So it could have been maybe one percent.

11 A No. It wouldn't have been one percent. Like I said,
12 he was the major contributor, so.

13 Q So if he was the major contributor you would think
14 that he would be a majority of maybe 52 percent, correct,
15 at the very least?

16 A It's more than that because we can, we can tell from
17 the, our graphical printout. I guess the, like I say, the
18 major contributor pretty much -- especially in this case,
19 the minor contributor was so minor that I couldn't even
20 make a determination of who the minor contributor was. It
21 was, it was, like I said, a very minor component.

22 So if it's, two contributors 50-50, you expect to see
23 about the same levels of both contributors here. So one
24 wouldn't be to the point of drop-out and the other to the
25 point of you couldn't make a match to it. So it would be

Rhonda Fields
Cross-examination by Mr. Schultz

1 50-50.

2 Q Now, you referred to a graph in your testimony just
3 now. Do you have that graph today?

4 A I do.

5 Q Could we see that?

6 A Sure. I'm sorry. This would be the graph, the
7 printout. We actually call these electropherograms.

8 MR. SCHULTZ: For identification purposes, I'd like to
9 put this up on the screen.

10 MR. BARNETTE: Your Honor, may I see it first?

11 (Pause.)

12 MR. BARNETTE: Your Honor, I have no objection if he
13 wants to enter it into evidence.

14 MR. SCHULTZ: I would like to enter it into evidence.
15 I believe this is my first evidence, Defense Exhibit 1.

16 THE COURT: Okay.

17 (Graph marked Defendant's Exhibit No. 2.)

18 Q Ma'am, referring to this right here, the identifier
19 right there, could you explain what an identifier means?

20 A Their father is --

21 Q The identifier. Excuse me.

22 A The kit we use to analyze these samples --

23 MR. SCHULTZ: Permission to publish this to the jury?

24 THE COURT: You may.

25 Q Now, looking at the numbers up here -- 11, 129, 14,

Rhonda Fields
Cross-examination by Mr. Schultz

1 153, 29, 178 -- what numbers do they indicate?

2 A These are -- I'm going to have to go back to the
3 explanation of D. N. A.

4 Whenever to get your D. N. A. profile, you get half of
5 your D. N. A. profile from your mom and half from your
6 father. So in the area of D. N. A. that we're interested
7 in, well, let's say 99.5 percent of our D. N. A. is the
8 same. That's what makes us human. And this other .5 is
9 where we vary.

10 And these are the areas of your D. N. A. that we're
11 interested in. So you being said that you get half of your
12 D. N. A. from your mother and half from your father, we are
13 interested whenever we -- whenever we're looking at sites
14 on your whole D. N. A. molecule we look --

15 THE COURT: Please be careful of that microphone.
16 That funny noise is you rubbing up against it.

17 THE WITNESS: Oh, I'm sorry, I'm sorry.

18 A We have repeat sections of, in your D. N. A. profile.
19 And we basically look to see in the top, the number right
20 above the 11-14, I think it's D8, that is the location
21 we're looking at. And in that location we're looking for
22 how many repeats from your mother you got and how many
23 repeats from your father you got.

24 So this particular person had 11 repeats on one
25 section of their D. N. A. and 14 repeats on the other

Rhonda Fields
Cross-examination by Mr. Schultz

1 section of their D. N. A.

2 And the next, on the next location, there's 29 repeats
3 to that particular location, and so on and so forth.

4 Q All right. Now, if we put this whole thing up here,
5 okay, now, there are four distinct samples on here,
6 correct?

7 A Four samples?

8 Q Yes. If I'm reading this right, there's one, two,
9 three, four; or is this all the same sample?

10 A It's all the same sample.

11 Q All the same sample. And what sample is that?

12 A It's Item 25.

13 Q Item 25. All right. Now, looking at this, is there
14 anywhere on here where Mr. Hunter's D. N. A. is compared?

15 A Actually, across all of those locations it would be
16 compared.

17 Q Okay. Is there anywhere on here where Leon Franklin's
18 D. N. A. is compared?

19 A No, there is not.

20 Q Leon Franklin was a suspect in this case, correct?

21 A Right. But I did not have his D. N. A. profile.

22 Q You didn't have his D. N. A. All right. All you had
23 was Mr. Teamer's D. N. A., correct?

24 A That's correct.

25 Q Even though Mr. Leon Franklin was a suspect in this

Rhonda Fields
Cross-examination by Mr. Schultz

1 case.

2 A That's correct.

3 Q And he was a suspect on the date of this report.

4 A That's correct.

5 Q July 5th of 2007.

6 A Yes.

7 Q All right. The next month you also did a SLED
8 analysis of D. N. A., correct?

9 A That's correct.

10 Q On August 30th of 2007.

11 A That's correct, yes.

12 Q All right.

13 MR. SCHULTZ: Your Honor, I would like to enter this
14 into evidence.

15 MR. BARNETTE: Your Honor, I have no objection, but we
16 may want to approach the Court about this.

17 THE COURT: Okay.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: Is that exhibit withdrawn?

21 MR. SCHULTZ: Your Honor, I'm not putting that into
22 evidence.

23 Beg the Court's patience, Your Honor.

24 THE COURT: Okay.

25 (Pause.)

Rhonda Fields

Redirect examination by Mr. Barnette

1 MR. SCHULTZ: That's all I have, Your Honor.

2 MR. BARNETTE: Just a couple on redirect, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BARNETTE

5 Q The first thing, the blood that was being talked
6 about, ma'am, who did all of that blood come back to?

7 A You mean from the car?

8 Q Yes, ma'am.

9 A It came back to James Hunter.

10 Q And when you're talking about suspects, they just
11 submit, that the first time you get the report, like when
12 you get the samples from the car and so forth, that's
13 submitted with that information.

14 A It is, yes.

15 Q You don't know where that comes from or what basis it
16 is.

17 A I do not know.

18 Q And do you have Exhibit 26 there, ma'am?

19 THE COURT: It is not going to be there.

20 MR. BARNETTE: I understand.

21 Q Let me show you State's Exhibit 48. Are those
22 consistent with the two items that you saw the analysis on
23 in this case?

24 A The only thing I would have received is this piece of
25 styrofoam shown here, as well as the cigarette butt. And I

Rhonda Fields
Recross-examination by Mr. Schultz

1 may have gotten cuttings or something from the -- our swabs
2 from these red stains in here. I don't know. All I would
3 have received is the swab, but I did receive the cigarette
4 butt and that styrofoam piece.

5 Q Yes, ma'am.

6 MR. BARNETTE: Your Honor, I'd like to publish State's
7 Exhibit 48. It's been entered into evidence already.

8 Q So these are the two items that you received, the
9 cigarette butt, as well as the piece of styrofoam cup.

10 A Right. That's correct.

11 Q And the cigarettes, the D. N. A., you found
12 Mr. Teamer's D. N. A. on.

13 A Let me make sure. Yes.

14 Q And those are items you analyzed, No. 25.

15 A Right.

16 Q Thank you. Please answer any questions Mr. Schultz
17 may have for you.

18 RECROSS-EXAMINATION

19 BY MR. SCHULTZ

20 Q Referring back to State's Exhibit 48, again, this is a
21 follow-up question. That right there is the cigarette
22 butt?

23 A That's correct.

24 Q That right there is the styrofoam?

25 A That's correct, yes.

Rhonda Fields
Recross-examination by Mr. Schultz

1 Q And that styrofoam was tested.

2 A It was.

3 Q And what did that test reveal?

4 A It matched James Hunter.

5 Q All right.

6 MR. SCHULTZ: That's all I have, Your Honor.

7 MR. BARNETTE: We ask this witness be excused, Your
8 Honor.

9 THE COURT: You may be. Thank you.

10 (Whereupon, the witness was excused.)

11 MR. BARNETTE: Your Honor, may we approach the bench?

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 THE COURT: All right. Ladies and gentlemen, I have
15 got one matter I'll need to address before we can go
16 further.

17 So I'll ask you to please go to your jury room. And
18 we'll bring you back shortly.

19 (The following takes place outside the presence of the
20 jury.)

21 MR. BARNETTE: Your Honor, I do have a motion to --
22 it's based on third-party guilt in this situation.

23 I know Mr. Schultz has mentioned twice I think the
24 individual, Mr. Franklin, on the reports. There's
25 obviously no evidence other than his name on the report.

1 So I believe under third-party guilt that he should
2 not be -- unless he's got something else to connect the
3 dots concerning Mr. Franklin.

4 I know these items were submitted to SLED and made of
5 their report, but I'd obviously make a motion in limine
6 concerning that.

7 MR. SCHULTZ: Your Honor, if I may. The evidence
8 that, the discovery that, the state provided me, I think I
9 do have the right to get into the fact that Leon Franklin
10 was as a suspect in this case and --

11 THE COURT: What would be the relevance of that?

12 MR. SCHULTZ: Well, the discovery that was handed to
13 me from the state, I believe, and --

14 THE COURT: Well, I expect they've handed you a lot of
15 things that's not admissible into evidence.

16 What if there was a document that somebody prepared
17 that said you were a suspect in the case? Do you think
18 that could be introduced in this case before the jury?

19 MR. SCHULTZ: Your Honor, no, I don't believe that.
20 But at the same time --

21 THE COURT: Well, what's the difference?

22 MR. SCHULTZ: Yes, I see, I see the Court's point,
23 Your Honor.

24 But the fact of the matter remains that Leon Franklin,
25 you know, was a suspect in this case. And the D. N. A.

1 analysis was provided to me, to my office. And I believe I
2 have a question -- to direct a question to any potential
3 witness on that fact, because it's on the paper here.

4 I mean, I just presented it. I mean, I don't think
5 I'm going to -- I'm not going to connect any dots to it. I
6 just wanted to --

7 THE COURT: Well, if you're not going to connect any
8 dots, then it's not admissible. It's not relevant.

9 You understand the, the principle of third-party
10 guilt. And when and when -- when that evidence can be
11 introduced and when it cannot be.

12 Now, do you have any evidence that you're going to
13 present in this case through your own presentation or
14 through cross-examination that would indicate that
15 Mr. Franklin is the person who committed these crimes?

16 MR. SCHULTZ: No, Your Honor.

17 THE COURT: All right. Then I sustain the objection
18 to the introduction of that type of evidence.

19 MR. BARNETTE: Your Honor, one second. I need to
20 check one thing real quick.

21 Do you have a cell phone in this courtroom?

22 UNIDENTIFIED WITNESS: Yes, sir.

23 MR. BARNETTE: And you've been taking pictures in
24 here?

25 THE WITNESS: Uh-uh.

Dr. John David Wren
Direct examination by Mr. Barnette

1 MR. BARNETTE: Well, first of all, you're not supposed
2 to have a cell phone in here.

3 THE COURT: Take her into custody, please. You don't
4 have to handcuff her. Just take her back. I need to talk
5 with her later. Just take her in a room and keep her
6 secluded.

7 MR. BARNETTE: Thank you, Your Honor. That was a
8 matter I needed to check on. Somebody just gave me that
9 information.

10 THE COURT: Okay. Anything else we need to address?

11 MR. BARNETTE: Your Honor, I just need to check to see
12 if Dr. Wren is here.

13 (Pause.)

14 MR. BARNETTE: We're ready, Your Honor, to proceed.

15 THE COURT: All right. Bring the jury back, please.

16 MR. SCHULTZ: Your Honor, may we approach?

17 (Bench conference held off the record.)

18 (The following takes place in the presence of the
19 jury.)

20 MR. BARNETTE: Your Honor, I would like to call
21 Dr. Wren to the stand, please.

22 DR. JOHN DAVID WREN, having
23 been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BARNETTE

25 Q Doctor, if you would, state your full name for the

Dr. John David Wren
Direct examination by Mr. Barnette

1 record, please.

2 A John David Wren.

3 Q Where do you work at, sir?

4 A I'm a pathologist at Spartanburg Regional Medical
5 Center.

6 Q And how long have you been a pathologist, sir?

7 A I started my residency in February of 1979. I came to
8 work as a -- out of residency in Spartanburg on October the
9 18th, 1982.

10 Q And could you tell the jury about your college
11 education, sir, your education in medical school?

12 A Well, I have a bachelor's degree, a master's degree
13 and a doctor of philosophy degree in chemical engineering
14 from Clemson. I have an M. D. degree from the Medical
15 University of South Carolina.

16 I did a combined anatomic and clinical pathology
17 residency at the medical university, finishing early
18 because I obtained credit toward my residency for research
19 that I did prior to and at the medical university.

20 While I was at the medical university I was chief
21 resident of both of the services, both anatomic pathology
22 and clinical pathology.

23 Also, while I was there I was the assistant medical
24 examiner of Charleston County from July of 1980 until
25 January of 1983. And as such I investigated cases in the

Dr. John David Wren
Direct examination by Mr. Barnette

1 field. I also did forensic autopsies one weekend a month
2 at the medical university from autopsies that were sent
3 from all over the state at that time because there were
4 only two other forensic pathologists in the state other
5 than at the medical university.

6 I passed my anatomic and clinical pathology boards on
7 the first attempt. And I've been recertified in anatomic
8 and clinical pathology. I was qualified to take the boards
9 in forensic pathology, but I never seemed to get around to
10 taking them. So I'm not board certified, but I have been
11 qualified as an expert in forensic pathology in multiple
12 counties in this state. I can name most of them but not
13 all, I don't think.

14 Q How many autopsies have you performed, Doctor?

15 A Probably about 3,000 by now over the years.

16 Q And how many times have you been qualified in state
17 court?

18 A Between 100 and 150 times.

19 MR. BARNETTE: Your Honor, I would move him as an
20 expert in forensic pathology at this time.

21 MR. SCHULTZ: No objection.

22 THE COURT: He is so qualified.

23 Q Sir, did you perform an autopsy on James Antonio
24 Hunter?

25 A Yes, I did. I performed an autopsy on a black male

Dr. John David Wren
Direct examination by Mr. Barnette

1 identified as James Antonio Hunter in the Spartanburg
2 Regional Medical Center Autopsy Room on February the 3rd of
3 2006 beginning at approximately 1:55 p.m.

4 Q Can you tell the jury about your findings in that
5 case?

6 A Well, basically he had three gunshot wounds to the
7 body. One was a grazing gunshot wound to the right side of
8 the head that only passed through the scalp.

9 He also had two gunshot wounds posteriorly, one almost
10 in the midline back of the head called the occiput region.
11 That gunshot wound was associated with a palpable
12 copperjacketed lead bullet that I found just beneath the
13 skin in the nostril.

14 The other one was to the neck and went through the
15 neck and passed out of the chin. That bullet was not
16 recovered. Neither the one grazing gunshot wound nor the
17 one that was through and through was recovered by me.

18 Q If you would, if you can show on me, where was the
19 gunshot wounds on Mr. Hunter if you can show on me here? I
20 will just turn my back to you if you want.

21 (Whereupon, the witness left the stand.)

22 A The gunshot wound -- that I numbered these
23 arbitrarily, not indicating any order of infliction. But
24 gunshot wound number one was in the right frontal parietal
25 region over on the side of his head. It was one and a half

Dr. John David Wren
Direct examination by Mr. Barnette

1 inches from the top of his head and three and a quarter
2 inches to the right of midline. It was a grazing wound.
3 It was 2.3 inches long by 41 hundredths of an inch wide
4 within the scalp. And it did not penetrate the bone.

5 The gunshot wound that I indicated as number two was
6 in the left occiput region approximately this location,
7 8.75 inches from the top of the head and one and a quarter
8 inches to the -- I'm sorry -- 6.25 inches from the top of
9 the head and three-quarters of an inch to the left of
10 midline.

11 That wound was round, measured 34 one-hundredths of an
12 inch in diameter, and it had an abrasion border. And
13 looking at the wound, the abrasion border is described as
14 if it were on a clock. So from 11:00 o'clock around to
15 4:00 o'clock there was an abrasion border that shows that
16 the bullet was -- that it started entering the skin at that
17 location first. And that abrasion was very -- measured a
18 tenth of an inch in width at its maximum point.

19 Now, associated with that gunshot wound was a gunshot
20 wound number four, which appeared in the left jaw near the
21 chin. It was nine and a half inches from the top of the
22 head and one and three quarter inches to the left of
23 midline. It was irregular in shape. It measured a half of
24 an inch by two-fifths -- I mean, yeah, two-fifths of an
25 inch in overall dimensions.

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1 And by probing, that gunshot wound communicated with
2 gunshot wound number two that I previously described. So
3 that bullet appeared to be moving downward, slightly medial
4 to lateral and back to front. That bullet was not
5 recovered.

6 Now, the final wound was indicated by gunshot wound
7 number three, and it was in the, excuse me, right lower
8 neck region eight and three quarter inches from the top of
9 the head and one and a quarter inch to right of midline.

10 That wound was 31 hundredths of an inch in diameter
11 with a slight abrasion from 6:00 o'clock right at the
12 bottom over toward 7:30 o'clock. I didn't measure that
13 width, but that bullet passed forward and was palpable in
14 the right nostril just beneath the skin in the nostril
15 region.

16 I recovered a copperjacketed lead bullet from that
17 area. It had visible lines and grooves. It measured 65
18 one-hundredths of an inch in length and 35 one-hundredths
19 of an inch in diameter at the base. And the base was
20 slightly distorted. I labeled that bullet with a
21 narrative, No. 3, Greek letter delta. And I forwarded it
22 to Officer Edgar Guthro of the Spartanburg City Police
23 Department.

24 I described that path of that bullet as upward almost
25 in a sagittal plane, meaning the sagittal plane is a

Dr. John David Wren
Direct examination by Mr. Barnette

1 straight line from superior to inferior that runs straight
2 through the body. It was almost sagittally, meaning that.
3 And it didn't enter the cranial vault, but it did pass
4 through the sinuses, the maxillary sinuses, on the right
5 side of the head.

6 Q And, Doctor, If I understand your testimony correctly,
7 did these go from -- was he shot from behind going forward
8 with the bullets?

9 A Yes. The --

10 (Whereupon, the witness returned to the stand.)

11 A The bullet that passed through the neck was definitely
12 from behind. The one in the back of the head of course was
13 definitely from behind. And most probably the one in the
14 right side was from behind as he either turned his head or
15 recoil caused him to turn his head when the last bullet or
16 the first -- one bullet was fired. You can't tell which
17 order they were inflicted, but, nevertheless, it was
18 probably from the back, although I can't say for sure.

19 Q And you collected the bullet, I believe, which is, I
20 think, State's Exhibit No. 11.

21 Let me show you what's been entered into evidence as
22 State's Exhibit No. 11. If you would, take a look at that,
23 Doctor. Do you have a knife? You may have to --

24 A This is the printout of -- that we printout for all
25 autopsies. It's got James Hunter written on it.

Dr. John David Wren
Direct examination by Mr. Barnette

1 In my handwriting FA03, I mean 06033, which is an
2 autopsy number, labeled nose. And the date was 2/3/06. I
3 recovered it at 3:25 p.m., and I signed it. And this
4 bullet matches the description of the bullet that I
5 described, although I can't see the marking exactly through
6 this. Yeah, I can see part of the marking. So this is the
7 bullet I removed.

8 MR. BARNETTE: Your Honor, if I might could get some
9 scissors just to cut that open with.

10 (Pause.)

11 MR. BARNETTE: May I approach the witness with a
12 knife, Your Honor?

13 A Better wait and let me make sure.

14 THE COURT: You have got one more bag.

15 THE WITNESS: I think it's sealed too. It can be.

16 A Yes. This bullet is labeled three and the Greek
17 letter delta. It's slightly distorted at the base, and it
18 is consistent with that I removed.

19 MR. BARNETTE: Thank you, Your Honor. I would like to
20 publish State's Exhibit No. 11 to the jury at this time,
21 Your Honor.

22 THE COURT: You may. Thank you, sir.

23 MR. SCHULTZ: Your Honor, that's already been entered
24 as an exhibit?

25 MR. BARNETTE: It has.

Dr. John David Wren
Direct examination by Mr. Barnette

1 THE COURT: Yes.

2 Q And, sir, is this the bullet you recovered from
3 Mr. Hunter?

4 A Yes.

5 Q And, sir, was these bullets fired within close range
6 of Mr. Hunter?

7 A One cannot tell for sure unless there is evidence that
8 they were. Gunshots are classified as contact. That's
9 loose contact or tight contact, depending on the signs one
10 sees on the wound.

11 And then there's close range, which is usually with a
12 handgun, usually within ten inches, sometimes up to 12,
13 sometimes a shorter range. And then there's distant.

14 If there is any clothing or hair or anything in the
15 way, one sometimes can't tell that one is intermediate
16 range, but, or close range. But, nevertheless, neither of
17 these wounds appeared to be contact.

18 I can't tell for sure whether they were close range or
19 distant because the signs that are usually shown, that
20 being tattooing of the skin with burning powder or soot
21 deposition, was interfered with by the hair and the
22 clothing that he had.

23 Now, if he had had white clothing on, I might could
24 have gotten an indication. But the clothing was not white,
25 so I can't tell. But it was definitely not contact.

Dr. John David Wren
Direct examination by Mr. Barnette

1 Q Sir, did the -- did Mr. Hunter die from these gunshot
2 wounds?

3 A Yes. I assigned the cause of death as exsanguination,
4 meaning that he bled to death as a result of multiple
5 gunshot wounds to the head.

6 Q Thank you. Please answer any questions Mr. Schultz
7 may have for you.

8 MR. SCHULTZ: No questions for this witness.

9 THE COURT: Thank you. You may step down.

10 MR. BARNETTE: We would ask the witness be excused,
11 Your Honor.

12 THE COURT: You may be.

13 (Whereupon, the witness was excused.)

14 MR. BARNETTE: Your Honor, the state would rest at
15 this time.

16 THE COURT: Ladies and gentlemen, that is all of the
17 testimony or other evidence to be offered by the state, at
18 least in their case in chief.

19 Before we can go any further I've got some matters
20 I'll need to address with the lawyers. So we'll address
21 those, and you'll take a short break, and we'll bring you
22 back to continue with the trial of the case.

23 Keep in mind you're still not to discuss the case in
24 any fashion.

25 (The following takes place outside the presence of the

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1 jury.)

2 THE COURT: All right. Any motions or other matters
3 to address?

4 MR. SCHULTZ: Yes, from the defense, Your Honor.

5 I would like at this time to move for a motion, a
6 directed verdict. I believe that the state has not proven
7 their case as a matter of law.

8 Your Honor, I believe that the case law is pretty
9 clear on this, is that if the -- the state has not produced
10 sufficient identity of Mr. Teamer there at the scene of the
11 crime. No, no evidence was offered to put him in the back
12 of the car. No eye witness was there to put him in the
13 back of the car.

14 There is some evidence pertaining to incriminating
15 him, but I believe that is just merely circumstantial.
16 Other is no direct evidence linking him to the crime, Your
17 Honor.

18 I believe the cases, the case law is very clear on
19 this, that as a matter of law this case should not go to
20 the jury and the Court should grant a verdict of not guilty
21 at this time.

22 THE COURT: Mr. Barnette.

23 MR. BARNETTE: Your Honor, I think in the light most
24 favorable to the state there's ample evidence in this case.

25 You have a diagram from the victim that survived in

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1 this. If you look at the diagram and then the picture that
2 was taken from the jail, no question those were definitely
3 a likeness in that.

4 We have D. N. A. that matches up with him being
5 back -- in the cigarette in the back seat of the car.
6 We've connect the cell phone and the cell phone numbers
7 back to Mr. Teamer. He obviously had possession of that
8 cell phone, and that cell phone was used to 92 -- 921-
9 number -- was used to call Mr. Proctor's cell phone or was
10 called by Mr. Proctor's cell phone minutes before this
11 murder occurred.

12 We also have where the gun has been matched back to
13 him. Obviously, he had access to that gun. That 9mm has
14 been used in the murder of this case.

15 We also matched back where Mr. Proctor picked up the
16 defendant in front of his girlfriend's house. We have that
17 as Exhibit 69.

18 We also have where he had latex gloves. We have
19 testimony that he had access to latex gloves in his house.
20 Obviously, the search warrant. Mr. Proctor testified he
21 had latex gloves on. Also, we had Dawn Hunter testify that
22 he had latex gloves and the 9mm in his possession prior to
23 this.

24 We have a motive showing that the defendant was
25 obviously involved with the shooting involving the victim,

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1 Tony Hunter, as well as Kelvin McKinney, where he
2 basically -- Kelvin McKinney has come and testified that he
3 was told what the defendant did.

4 Obviously, the motive was that Tony Hunter did give a
5 statement to the Spartanburg County Sheriff's Department
6 between -- on January the 19th of 2006. Our submission
7 would be that the defendant found out about that.

8 Obviously, when his homeboy come back, one of the
9 reasons why Mr. McKelvey left was a parole violation, as
10 well as this crime, the first crime, the ABWIK that
11 occurred.

12 There was even a phone call to Michigan within minutes
13 of this shooting, obviously him trying to call
14 Mr. McKelvey's (sic) aunt's house in Michigan in this case.
15 So I submit there's plenty of evidence in this case and
16 would ask it be submitted to the jury.

17 THE COURT: Any reply?

18 MR. SCHULTZ: No reply, Your Honor.

19 THE COURT: Well, there is substantial circumstantial
20 evidence in the record of this case tending to establish
21 the defendant's commission of these crimes.

22 There's also a statement made by or testified to by
23 Mr. McKinney that the defendant admitted and confessed to
24 the commission of the crimes. And so there is more than
25 substantial evidence if believed by the jury that would

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1 establish the defendant has committed these offenses. And
2 so your motion for a direct verdict is denied.

3 MR. SCHULTZ: Yes, sir, Your Honor.

4 THE COURT: Anything else we need to address?

5 MR. BARNETTE: Nothing from the state, Your Honor.

6 MR. SCHULTZ: Your Honor, I have a couple of witnesses
7 for my case in chief.

8 I would request just a small 20-minute recess in order
9 for me to get everything in order and then come back.
10 That's my only request.

11 THE COURT: All right. We'll take 20 minutes, and
12 then we'll continue.

13 MR. SCHULTZ: Thank you, Your Honor.

14 (Whereupon, a recess was taken.)

15 MR. SCHULTZ: Your Honor, if I could get the witness.

16 THE COURT: Okay.

17 MR. SCHULTZ: Your Honor, the defense would like to
18 start putting up their case but --

19 MR. BARNETTE: Your Honor, I think at the pretrial --
20 we had a bench conference before the defense presents their
21 case. And I'm making a third-party-guilt motion concerning
22 any testimony that Keith Letmon would make in this case
23 based off the bench conference we had with Your Honor just
24 a minute ago.

25 THE COURT: All right. Mr. Schultz, you're going to

Keith Letmon (In-camera)
Direct examination by Mr. Schultz

1 proffer the testimony. And it does relate to third-party
2 guilt?

3 MR. SCHULTZ: Your Honor, for the purpose of this, I
4 believe it closely relates to a prior inconsistent
5 statement. That's what I'm putting up the witness for.

6 THE COURT: Well, is it a prior inconsistent statement
7 that's collateral to the issues in this case or directly
8 related to the issues in this case?

9 MR. SCHULTZ: I think it's directly related to the
10 issues in this case.

11 THE COURT: All right. Well, in that case, it sounds
12 like to me it's evidence of third-party guilt. In any
13 event, we'll go ahead and proffer the testimony.

14 MR. SCHULTZ: Thank you, Your Honor. The defense
15 would call Keith Letmon.

16 KEITH LETMON, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. SCHULTZ

19 MR. SCHULTZ: May it please the Court.

20 THE COURT: Yes.

21 Q State your record for the name -- state your name for
22 the record.

23 A My name is Keith Letmon.

24 Q Mr. Letmon, how old are you?

25 A Thirty-three -- 33 years old.

Keith Letmon (In-camera)
Direct examination by Mr. Schultz

1 Q Do you know a person named Charlie Teamer?

2 A Yes, sir.

3 Q And where is he today?

4 A Right over here.

5 Q Could you describe what he's wearing?

6 A Black shirt, brown khakis and brown suit.

7 THE COURT: Please use that microphone. That's what
8 that thing is there for.

9 A A black, black, black dress shirt and brown khakis and
10 a black suit.

11 Q How long have you known Mr. Teamer?

12 A For years and years.

13 Q Okay. Do you also know a person named Kelvin
14 McKinney?

15 A Yes, sir.

16 Q How long have you known Mr. McKinney?

17 A For years.

18 Q Years. And Mr. Teamer and Mr. McKinney were friends
19 of yours, correct?

20 A Yes, sir.

21 Q All right. Did y'all grow up in the same area
22 together?

23 A Yes, sir.

24 Q All right. Now, were you in the Spartanburg County
25 Detention Facility last year sometime?

Keith Letmon (In-camera)
Direct examination by Mr. Schultz

1 A Yes, sir.

2 Q All right. And what, what pod were you in?

3 A Pod four.

4 Q Pod four. And did you have occasion to talk to

5 Mr. McKinney?

6 A Yes, sir. We was cellmates.

7 Q You were cellmates, correct?

8 A Uh-huh.

9 Q Okay. And did Mr. McKinney tell you anything about
10 what happened on the night of February the 2nd of 2006?

11 A Yes, yes, sir.

12 Q If so, what did he tell you?

13 THE COURT: Use the microphone, please.

14 Q You can lean up.

15 A He said that he needed to get rid of a witness to a
16 prior, prior engagement that he had..

17 Q What witness was this?

18 A Someone named Scary Tony.

19 THE COURT REPORTER: What?

20 THE WITNESS: Scary Tony.

21 A That's, that's the name I know him by. Scary Tony.

22 THE COURT REPORTER: Tony?

23 THE WITNESS: Scary Tony. That's the full name, Scary
24 Tony.

25 THE COURT: Scary Tony?

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 THE WITNESS: Yeah.

2 Q And what do you mean by getting rid of?

3 A He had to eliminate a witness that can identify him in
4 a prior, prior incident.

5 Q And what, if anything -- did he talk to you about the
6 prior incident?

7 A Yes. He was in the process of committing a robbery.
8 He had to shoot somebody.

9 Q Who had to shoot someone?

10 A Kelvin.

11 Q And you're saying that Tony was there?

12 A He said that was the one who can identify him.

13 Q Okay. And it's your testimony today that Kelvin was
14 the shooter?

15 A Yes.

16 MR. SCHULTZ: That's all I have for the proffer, Your
17 Honor.

18 MR. BARNETTE: Your Honor, there's a few questions I
19 would like to ask.

20 THE COURT: Okay.

21 CROSS-EXAMINATION

22 BY MR. BARNETTE

23 Q Kelvin McKinney told you this?

24 A Yes, sir.

25 Q And when did he tell you this, again?

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 A Around, I say it was October, October. That he told
2 me as soon as I got -- I had to have a warrant. So we
3 talked about the warrant. And he started explaining to me
4 how --

5 THE COURT: Use the microphone, please.

6 Q Use the microphone, please.

7 A Well, he was explaining to me how I probably could
8 help myself out of my situation.

9 Q Okay. But this is October 9th, this past year?

10 A Uh-huh.

11 Q October of 2007.

12 A Yes, sir.

13 Q And he said he had to eliminate a witness named Scary
14 Tony?

15 A Yes, sir.

16 Q And he had to have that person killed?

17 A Basically.

18 Q And that he was going to have him killed?

19 A Yeah. He told me that.

20 Q And is this October 9th that he told you this
21 conversation?

22 A Uh-huh.

23 Q Okay. And where was you at, again?

24 A Spartanburg County Detention Center.

25 Q And what was you in for at that time?

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 A I had assault and battery of a high and aggravated
2 nature, kidnapping and C. D. V.

3 Q Are those charges still pending?

4 A Yes, sir.

5 Q Who represents you on those charges, sir?

6 A I don't have a public defender or nothing.

7 Q And where did he tell you this story?

8 A In pod four, pod four on lock-house. We was locked
9 down two or three hours a day. We didn't come out but one
10 hour to use the telephone or take a shower. So we was
11 basically confined to the cell 23 hours a day.

12 Q Well, let me ask you a question. You're in lockdown,
13 right? When you go out, you can't have contact with other
14 inmates, right?

15 A Inmates in the same pod. We come out, we come out.
16 They put the rest of the pod up. And who is on lockup, we
17 have the whole ter that's on lockup. One whole side of the
18 dorm is on lockup. So we all come out at one time. Me
19 and, me and, me and Kelvin was in the same cell together.

20 Q How many other people was in that cell with you?

21 A One other person.

22 Q And how long was y'all in that cell together?

23 A I stayed from October 7th to October 31st.

24 Q How long was you in that cell with Kelvin McKinney?

25 A The whole, the whole period of time, the whole, whole

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 stay there.

2 Q And you said he was locked down 23 hours a day.

3 A Yes, sir.

4 Q And he was out one hour.

5 A Yes, sir.

6 Q When is the first time you told anybody about this
7 story?

8 A Basically, I, I talked to an individual around
9 December about the story, but I didn't give no names and no
10 names, no names of who or what. I just explaining the
11 scenario to them.

12 Me personally, if you want to know the truth, I, I
13 really didn't, didn't want to come up here and do, do none
14 of this either. This is everything I stand for, coming to
15 court and testifying on somebody, and just making it clear,
16 but both of these are my homeboys. Do you understand what
17 I'm saying? But one of them is going to go to jail and one
18 is already in jail probable, probable, probably for a long
19 time. One won't go to jail because he killed his, killed
20 his, killed his kid's uncle, you know what I'm saying, so
21 you don't know how to explain that to the family.

22 I'm in a bind by knowing this situation, by knowing
23 this situation. How do I, how do I live with myself
24 knowing I could have helped one of my homeboys and hurt the
25 other one? Do you understand what I'm saying?

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 Q So who did you tell first about this?

2 A I told a friend.

3 Q Who is your friend?

4 A Call him J Dog.

5 Q Who is that?

6 A J Dog. I don't know his name. I don't know his real
7 name. J Dog.

8 THE COURT: Use that microphone. I don't want to have
9 to say again.

10 A I don't know his real name. I know his street name.

11 Q What's his street name again?

12 A J Dog.

13 Q Why did you tell him this?

14 A We, we all go together. I'm trying to figure out
15 whether it true or what. Know what I'm saying? Like I
16 say, this is weighing on me, so how I know, what he said.

17 Q How long have you known G Dog guy?

18 A G Dog? J Dog. Knowed him about seven or eight.

19 Q And he's one of your homeboys?

20 A He's a younger, younger generation. That's why I
21 really don't know his, his full name.

22 Q Well, who else did you tell about this?

23 A I notified Tim's mother so, so, so if, if I needed to
24 be called to testify or, or, or to help him out anyway
25 possible. That's what I told.

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 Q Well, you would help Teamer out under any
2 circumstances, wouldn't you, help him any way possible?

3 A No. If I'm not mistaken, he's, he's convicted of
4 another charge concerning some family members of mine. So
5 I ain't, I ain't never helped nobody that's done wrong.

6 Q Which family members of yours that he did wrong to?

7 A That's supposedly. That's the Grays I have a, I have
8 a child by.

9 Q Wait a second. Could you repeat that last part again?
10 The court reporter --

11 THE COURT: Don't lean away from the microphone. You
12 need to get closer to it.

13 A I say I have a son by Natalie Gray.

14 THE COURT REPORTER: By who?

15 THE WITNESS: Natalie Gray.

16 Q So your position is he's innocent of all of these
17 charges then. You said supposedly.

18 A I don't know about the charges. I, I, I can't, I
19 can't say what he did on charges. I said that's that what
20 he's been convicted of.

21 Q You said you knew Charlie Teamer all of your life.

22 A My whole life. He's younger than me. Him and my
23 brother grewed up together. That's how I got to him.

24 THE COURT: Mr. Barnette, let me ask you to come over
25 this way so he won't turn his head away from the court

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 reporter.

2 MR. BARNETTE: Yeah. I apologize, Your Honor.

3 Q So you knew Charlie Teamer all of your life then, or
4 all of his life.

5 A Basically, most of his adult life, teenage life.

6 Q So have you ever talked to him about this situation?

7 A No. I ain't had a chance to. He has been
8 incarcerated or I've been incarcerated or I've been at home
9 and no contact. We haven't had contact with each other.

10 Q By the way, what's your date of birth and social
11 security number?

12 A 7/9/74.

13 Q 7/9/74. And what's your social number?

14 A [REDACTED].

15 Q So you never talked to Mr. Teamer about where he was
16 that day. Do you even know when this happened?

17 A The exact date, no, no, the exact date, no.

18 Q Did he say why -- wasn't Charlie Teamer with them that
19 day that Tony Hunter -- when the shooting occurred?

20 A Who he said was in the car was him, Scary Tony,
21 somebody named Pete. That's what he tells me. I don't, I
22 don't know.

23 Q Have you seen his statement?

24 A No.

25 Q Has anybody shown you the statement that Kelvin

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 McKinney made?

2 A No.

3 Q You're swearing under oath that's the case.

4 A That's what I know.

5 Q Tell us what else he told you.

6 A Else he told me. He, he told, he told me about the
7 prior arrangement as far, as far as the robbery that took
8 place, why he had to shoot the dude. That's what he tells
9 me.

10 Q So Kelvin McKinney shot him.

11 A Yes, sir. That's what he says.

12 Q So why did Tony Hunter tell the police that Little C
13 was the shooter?

14 A I have no knowledge of that.

15 Q Your testimony is October the 9th of 2007.

16 A Yes, sir.

17 Q And how do you remember that date so well, sir?

18 A Like I say, the previous day I had got a add-on
19 warrant, so for the kidnapping. So he started explaining
20 to me how I probably could help myself in what he calls the
21 help-yourself program.

22 Q Well, what did he tell you about the help-yourself
23 program?

24 A Rat on somebody else. He say that's why he ain't been
25 charged with a murder, because he put it off on somebody

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 else.

2 Q Did you know he was in Michigan at the time?

3 A Michigan at the time of the murder?

4 Q Yes.

5 A I didn't know he was in Michigan. I know he left and
6 went to Michigan behind the murder. But as far as knowing
7 when he went and what days this here occurred, no. I'm
8 just going by what he told me.

9 Q Did you know he was arrested later in Michigan?

10 A Yeah. But he told me he was arrested in Michigan.

11 Q He told you all about Michigan.

12 A He told me that's where he got arrested at, yes.

13 Q He told you when he went to Michigan and who he stayed
14 with in Michigan and all of that.

15 A He basically said he stayed with his aunt.

16 Q Has anybody talked to you about this case, about
17 what's been testified in court?

18 A No, no. I'm under home detention. You can check the
19 phone records. I don't have a cell phone. I have to be in
20 the house from 12:00 to 5:00.

21 Q Okay. So you're on a home detention program?

22 A Yeah.

23 Q What kind of home detention?

24 A I've got G. P. S. monitoring.

25 Q So we can check everywhere you've been.

Keith Letmon (In-camera)
Cross-examination by Mr. Barnette

1 A Everywhere I've been.

2 Q When did you come and talk to Mr. Teamer's lawyer?

3 A I seen him yesterday, the first time he came and
4 talked to me. The investigator came out and talked to me
5 out at Woodruff.

6 Q Where do you live at, sir?

7 A Woodruff, South Carolina.

8 Q And an investigator came and talked to you?

9 A Yes, sir.

10 Q When was that?

11 A Friday, last Thursday or Friday.

12 Q Last Thursday or Friday?

13 A Yeah.

14 Q How did he know to get to your house?

15 A Say when I talked to him over the telephone I
16 explained to him where I stayed at.

17 Q Did you call them?

18 A Yes.

19 Q Why did you call them?

20 A I wanted to know what's going on.

21 Q Who told you to call them?

22 A Basically Teamer's mother told me I needed to get in
23 touch with them, if I had information to come forward with
24 it.

25 MR. BARNETTE: One moment, Your Honor, please.

1 (Pause.)

2 MR. BARNETTE: Your Honor, I don't know if I need to
3 get into the record now. I guess that's another time we
4 can deal with outside the presence of the juror. Do you
5 want me to just ask him about his record now for
6 impeachment?

7 THE COURT: No. That's not necessary now.

8 MR. BARNETTE: Thank you, Your Honor.

9 MR. SCHULTZ: Nothing on redirect.

10 THE COURT: Okay. Step down, Mr. Letmon.

11 MR. SCHULTZ: Your Honor, would you like to have him
12 outside the courtroom?

13 THE COURT: Well, yeah. He's sequestered, unless
14 y'all are going to need to be heard. Anybody want to be
15 heard?

16 MR. BARNETTE: No, sir. I still think it's
17 third-party-guilt evidence, but I understand under the
18 rules and so forth what it can be used for.

19 THE COURT: Well, yeah. I think it's clear. I mean,
20 you know, it might be an inconsistent statement, but it's
21 also third-party-guilt evidence. But clearly he's saying
22 that the person who has testified that someone else
23 committed the crime admitted to committing it. So it's
24 relevant.

25 All right. Are we ready for the jury now?

Osia Feaster

Direct examination by Mr. Schultz

1 MR. BARNETTE: Your Honor, there's some on the
2 impeachment issues, I don't know if I need to bring that to
3 the Court's attention or just ask the questions once he
4 gets called as a witness.

5 THE COURT: What's the issue?

6 MR. BARNETTE: I don't know.

7 THE COURT: Any crime that appears more than a year as
8 far as dishonesty?

9 MR. BARNETTE: Yes, sir, there's a couple. And I
10 don't know whether the time limit applies or not.

11 (Bench conference held off the record.)

12 THE COURT: All right. Are we ready for the jury now?
13 Bring them in.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Ladies and gentlemen, as you know, the
17 state has rested in their presentation. So we are now
18 going to proceed with any to be offered by the defense.

19 MR. SCHULTZ: Thank you, Your Honor. May it please
20 the Court.

21 The defense would call Osia Feaster to the stand.

22 OSIA FEASTER, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. SCHULTZ

25 Q Please state your name for the record.

Osia Feaster
Direct examination by Mr. Schultz

- 1 A Osia Feaster.
- 2 Q All right. Ms. Feaster, how old are you?
- 3 A Twenty-two.
- 4 Q Twenty-two?
- 5 THE COURT: Speak up, please.
- 6 Q You need to lean into that microphone, ma'am.
- 7 Where do you live?
- 8 A [REDACTED] Street.
- 9 Q And that's here in Spartanburg?
- 10 A Yes.
- 11 Q Do you know the defendant in this case?
- 12 A Yes.
- 13 Q And that's Mr. Teamer?
- 14 A Yes.
- 15 Q Charlie Teamer?
- 16 A Yes.
- 17 Q How long have you been knowing him for?
- 18 A Now two years.
- 19 Q All right. Did you have a relationship with
- 20 Mr. Teamer?
- 21 A Yes.
- 22 Q What kind of relationship did you have?
- 23 A He was my boyfriend.
- 24 Q Okay. Now, on February the 2nd of 2006 did you see
- 25 Mr. Teamer?

Osia Feaster
Cross-examination by Mr. Barnette

- 1 A Yes.
- 2 Q And you do dance practice?
- 3 A Yes.
- 4 Q You're a dancer?
- 5 A Yes.
- 6 Q Okay. You were at dance practice that night, correct?
- 7 A Yes.
- 8 Q What time did you get home?
- 9 A Around 8:15.
- 10 Q And was Mr. Teamer at your home at that time?
- 11 A Yes.
- 12 Q Was Mr. Teamer there until 9:00 o'clock that night?
- 13 A Yes.
- 14 Q At your home?
- 15 A Yeah.
- 16 Q And you're positive.
- 17 A Yeah.
- 18 Q You're sure of it.
- 19 A Yeah.
- 20 MR. SCHULTZ: That's all I have on my direct, Your
- 21 Honor.
- 22 MR. BARNETTE: May it please the Court, Your Honor.
- 23 CROSS-EXAMINATION
- 24 BY MR. BARNETTE
- 25 Q What was your address again, Ms. Feaster?

Osia Feaster
Cross-examination by Mr. Barnette

1 A [REDACTED] Street.

2 Q And let me show you State's Exhibit 69. Whose house
3 is that?

4 A That's my house.

5 Q Okay. That's where you and your mother live.

6 A Right.

7 Q And your mother's name is Coley Feaster?

8 A No. That's my grandmother.

9 Q Okay. What's your mom's name?

10 A Daisy Feaster.

11 Q So y'all live there at this residence.

12 MR. BARNETTE: Permission to publish State's
13 Exhibit 69.

14 THE COURT: You may.

15 Q So this is the house that y'all stay at.

16 A Right.

17 Q This is the house that -- did Mr. Teamer come and
18 visit you often at this house?

19 A Yes.

20 Q Your testimony is that at 8:15, is when you got home.

21 A Yeah.

22 Q How do you know it was 8:15?

23 A I mean, I'm not exactly sure it was 8:15, but it
24 wasn't 8:30.

25 Q And you're saying Charlie Teamer was with you the

Osia Feaster
Cross-examination by Mr. Barnette

1 whole time?

2 A Yeah.

3 Q He never left the house.

4 A He was outside but --

5 Q As a matter of fact, what is your cell phone number?

6 A I don't have a phone right now.

7 Q Was 237-██████ your cell phone number?

8 A Yeah.

9 Q And wasn't y'all's home number 542-██████

10 A Yes.

11 Q And Charlie Teamer's cell phone number, one of them,

12 was 921-██████

13 A I don't know. I wasn't --

14 Q Well, why did he call you at 8:30 and again at 8:40 if
15 he was inside the house with you?

16 MR. SCHULTZ: Your Honor, objection. She stated that
17 she doesn't know the phone number was 921.

18 THE COURT: Overruled.

19 Q Do you want me to repeat the question, ma'am?

20 A No. It wasn't unusual for him to call if he was
21 outside if he called from that number. He called from
22 different numbers, but I don't know the number.

23 Q Why would somebody from y'all's home at 542-██████ call
24 921-██████ which is Mr. Teamer's phone at 8:45?

25 A If he called me, I called him back, if that was the

Osia Feaster
Cross-examination by Mr. Barnette

1 number he called me from.

2 Q If he was outside why didn't you just go outside and
3 talk to him?

4 A Because he called me when he was outside, and so I
5 called him back. It wasn't unusual.

6 Q But the truth was he wasn't inside the house the whole
7 time. Was he?

8 A No.

9 Q And later on, did he drive your car later?

10 A Yeah.

11 Q And your car was the 1985 Caprice.

12 MR. SCHULTZ: Your Honor, this is going outside the
13 scope of my direct, I believe.

14 THE COURT: Overruled.

15 Q He drove your vehicle, is that right?

16 A Right.

17 Q Was that involved in a wreck later?

18 A Yes.

19 Q Was he the driver of that car?

20 A I guess. I wasn't in there.

21 Q But he did, he did leave your house driving, driving
22 your car.

23 A Right.

24 Q Do you remember the license plate number that was on
25 that car?

Osia Feaster
Redirect examination by Mr. Schultz

1 A No.

2 Q But that was a blue Caprice, 1985?

3 A Right.

4 MR. BARNETTE: One moment, Your Honor, please.

5 (Pause.)

6 Q So you said he called from multiple numbers. So he
7 had more than one cell phone that he called from.

8 A Yeah. He called from different numbers.

9 Q Why?

10 A I don't know.

11 MR. BARNETTE: Thank you, Your Honor. That's all the
12 questions I have.

13 REDIRECT EXAMINATION

14 BY MR. SCHULTZ

15 Q Now, when Mr. Barnette asked you about whether or not
16 he was outside or inside, you said that he wasn't inside
17 all the time in your house, correct?

18 A Right.

19 Q But he was in the general vicinity of the house from
20 8:15 to 9:00 o'clock, correct?

21 A Yeah, but he was in and out though.

22 Q He was in and out.

23 A Yeah.

24 Q Right. But he stayed within, you know, the general
25 area of your house, right?

Osia Feaster
Recross-examination by Mr. Barnette

1 A Yes.

2 Q Okay. And you saw him there all the time, right?

3 MR. BARNETTE: Objection, Your Honor. I think he's
4 leading the witness now.

5 THE COURT: Don't lead her.

6 Q But your testimony is today that he was there at your
7 house, correct?

8 A Right.

9 MR. SCHULTZ: That's all I have, Your Honor.

10 MR. BARNETTE: Just one on followup, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. BARNETTE

13 Q Basically, Ms. Feaster, when he went outside, you
14 wasn't watching him the whole time. So you don't know
15 where he went or what he did.

16 A No.

17 MR. BARNETTE: Thank you, Your Honor.

18 THE COURT: You may step down.

19 MR. SCHULTZ: Your Honor, the defense at this time
20 would call Keith Letmon.

21 Your Honor, permission to approach?

22 THE COURT: Yes.

23 (Bench conference held off the record in the presence
24 of the jury but out of the hearing of the jury.)

25 MR. SCHULTZ: As I said previously, the defense would

Keith Letmon
Direct examination by Mr. Schultz

1 call Keith Letmon to the stand.

2 KEITH LETMON, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. SCHULTZ

5 Q Could you state your name for the record, sir?

6 A My name is Keith Letmon.

7 Q All right. Mr. Letmon, I'm going to ask you some
8 questions and the solicitor is going to ask you some
9 questions. But make sure you don't lean back in there, and
10 just answer my questions and, you know, it usually should
11 be a simple yes, sir and no, sir. All right. Just make
12 sure you're not leaning so the ladies and gentlemen of the
13 jury can see and hear you. Okay?

14 A Yes, sir.

15 Q Do you know the defendant, Charlie Teamer, in this
16 case?

17 A Yes, sir.

18 Q Okay. Do you know someone else named Kelvin McKinney?

19 A Yes, sir.

20 Q All right. And Charlie Teamer and Kelvin McKinney,
21 they are friends of yours?

22 A Yes, sir.

23 Q Okay. How long have you known both of them for?

24 A Quite some time. We grew up in the same neighborhood.

25 Q Have you had an occasion to talk to Mr. McKinney

Keith Letmon
Direct examination by Mr. Schultz

1 recently?

2 A Recently, no, not recently, not since October,
3 October.

4 Q Where did you see Mr. McKinney in October?

5 A Up at the Spartanburg County Detention Facility.

6 Q All right. Where were you in the Spartanburg County
7 Detention Facility?

8 A Pod four. Me and McKinney was cellmates.

9 Q So you were in the same cell together, correct?

10 A Yes, sir.

11 Q And you spent a lot of time talking, correct?

12 A Yes, sir. We talk now 23 hours a day.

13 Q What did Mr. McKinney say to you about a shooting
14 that, that took place involving Tony Hunter?

15 A Basically that he had to eliminate a witness due to a
16 prior, a prior, a prior robbery that took place, and that
17 he did it basically.

18 Q So it's your testimony today that Kelvin McKinney told
19 you that he did the shooting.

20 A Yes, sir.

21 Q Why did he tell you this?

22 A Like I said, I had, I had, I had got a warrant for
23 assault, not assault, kidnapping. And he told me like if I
24 would help myself. Basically, we got to talking, and he
25 was explaining to me that he didn't, he didn't want to go

Keith Letmon
Direct examination by Mr. Schultz

1 to jail because he didn't want to have to explain to his
2 kids that he killed his uncle, killed their uncle, you
3 know.

4 Q What is Mr. McKinney's relationship to Dawn Hunter?

5 A Don Hunter?

6 Q Dawn Hunter.

7 A I don't know, I don't know by name Don Hunter.

8 Q Did Mr. McKinney indicate why he shot Tony?

9 A Because Tony could identify him in a robbery that took
10 place weeks before.

11 Q Was Mr. McKinney aware that there was a statement
12 written by him -- Tony -- implicating himself?

13 A He basically said that he knowed that Tony was the
14 only one implicated, because I guess he was going through
15 Tony to set the, set the transaction up for how the robbery
16 took place.

17 Q And that was the robbery that happened in January,
18 correct?

19 A Yes, sir.

20 Q What did Kelvin say about that robbery?

21 A That basically when they got there he walked, he
22 walked to the truck, tried to get the dude to open the
23 truck. And the dude wouldn't open to the truck, and so he
24 left out. He started shooting, he started shooting, and I
25 guess that's when he took off with it and left.

Keith Letmon

Direct examination by Mr. Schultz

1 Q And who did the shooting?

2 A Kelvin McKinney, call him Snow.

3 Q Snow?

4 A Yeah. That's all I know him by, Snow.

5 Q All right. And was the only -- and Kelvin said to you
6 that the only person that could I. D. him was Tony?

7 A Yes, sir.

8 Q Has anybody paid you for your testimony today?

9 A No, sir.

10 Q Okay.

11 A No, sir.

12 Q Were you offered anything, benefit for this testimony?

13 A No, sir.

14 Q Then why are you doing this?

15 A Basically, basically to be honest with you, both,
16 both, both friends of mine. Both individuals are friends
17 of mine.

18 Q Clarify that.

19 A Kelvin McKinney and Nathaniel Teamer both are friends
20 of mine.

21 Q All right.

22 A So it's, it's weighing, it's weighing on me to decide
23 what I should do, you know.

24 Q But, again, why are you doing this, again?

25 A To get it off my conscience.

Keith Letmon
Direct examination by Mr. Schultz

1 Q Sir, are you doing it because you --

2 MR. BARNETTE: Objection, Your Honor. He's leading
3 the witness.

4 THE COURT: Sustained.

5 MR. SCHULTZ: I would like to expand on that a little
6 bit.

7 A How would I feel that I know I got a friend that could
8 lose his life behind something I know he didn't commit and
9 I know another friend did it. So I'm, I'm in a situation,
10 it's like you tell or you don't tell. So I'm going to feel
11 bad regardless, regardless of what's going on. And I, I, I
12 want to say it's hell for the family, I'm not here to try
13 to defend any claim for some child thing he did it but I
14 know he didn't do it by, by Kelvin's words. Those are
15 Kelvin's words. So I asked. Me personally I wasn't there
16 to see what took place. I'm going by what Kelvin's told
17 me.

18 Q But it's clear.

19 A Kelvin told me. He told me.

20 Q Okay. It's clear that Kelvin told, told you that he
21 shot Tony Hunter.

22 A Yes, sir.

23 MR. SCHULTZ: That's all I have on my direct.

24 MR. BARNETTE: May it please the Court, Your Honor.

25 THE COURT: Mr. Barnette.

Keith Letmon
Cross-examination by Mr. Barnette

1 CROSS-EXAMINATION

2 BY MR. BARNETTE

3 Q Who is Dawn Hunter?

4 A I don't know Don Hunter.

5 Q You don't know Dawn Hunter, do you?

6 A Not by, not by that name.

7 Q But you are, you're such good friends with Kelvin
8 McKinney you don't know who Dawn Hunter is.

9 A Unless that's his nickname.

10 MR. SCHULTZ: Your Honor, objection. Asked and
11 answered.

12 THE COURT: Overruled.

13 Q You just testified you are such good friends with
14 Kelvin McKinney --

15 A Yes, sir.

16 Q -- but you don't know who Dawn Hunter is?

17 A Unless he's talking about his baby's mother. We call
18 her piget.

19 THE COURT: Repeat that answer, please.

20 A Said unless he's talking about the baby's mother, and
21 we call her piget. So I don't. I don't know the real name
22 if you have nickname on the streets.

23 Q Okay. Now, when did this conversation supposedly take
24 place?

25 A October the 9th.

Keith Letmon
Cross-examination by Mr. Barnette

1 Q October the 9th. In pod four?

2 A Yes, sir.

3 Q And then after that what did you do with this
4 information?

5 A I, I, I contemplated for a while and decided. I, I, I
6 went over it with a, with a friend of mine and I gave them
7 a scenario. But I never did give them the names or
8 whatever. I told him to put hisself in my situation, what
9 would he do. And I just, I, I, I just been debating on
10 what I should do for me, now.

11 Q Did you ever go talk to law enforcement?

12 A No, sir.

13 Q You didn't go tell the police about it, did you?

14 A No, sir.

15 Q Did you call the solicitor's office to tell them?

16 A No, sir.

17 Q When is the first time you told somebody about it?

18 A It had to be December when I told them I discussed it
19 with a friend.

20 Q Who is your friend?

21 THE COURT: Use the microphone, please.

22 Q Who is this friend? Excuse me.

23 A J Dove.

24 Q Who was it?

25 A J Dove.

Keith Letmon
Cross-examination by Mr. Barnette

1 Q J Dove. Who's that?

2 A A friend of mine.

3 Q Where does he live at?

4 A Right now basically on the streets.

5 Q So you don't even know where this friend of yours,
6 where he lives at or anything.

7 A Not right now. I told you I'm previously on home
8 detention. So I don't know where he is.

9 Q And you've known Mr. Teamer how long?

10 A Basically, be rough estimate, more than ten or 15
11 years.

12 Q You consider him one of your homeboys?

13 A A friend of mine, yes, sir.

14 Q As a matter of fact, isn't it a code with you and him
15 and people like him that you don't tell on each other?

16 MR. SCHULTZ: Your Honor, this is calling for
17 speculation. I'm not sure where Mr. Barnette is going with
18 this.

19 THE COURT: Overruled.

20 Q Mr. McKinney broke the code, didn't he?

21 A He lied.

22 THE COURT: Let me see y'all just a minute.

23 (Bench conference held off the record in the presence
24 of the jury but out of the hearing of the jury.)

25 Q And you want this jury to believe that you're telling

Keith Letmon
Cross-examination by Mr. Barnette

1 the truth today.

2 A I am telling the truth. I, I have no reason to lie.

3 Q What was you in jail for?

4 A Criminal domestic violence, assault and battery and
5 kidnapping.

6 Q And you know all about robberies, don't you?

7 A Yeah.

8 Q Back in 1994 was you convicted of possession with
9 intent to distribute?

10 A Yes, sir.

11 Q Was you convicted of escape in 1995?

12 A Yes, sir.

13 Q Was you convicted of giving false information in 1996?

14 A What?

15 Q Giving false information to the police.

16 A I did give them the wrong name, yeah.

17 Q And you was convicted of common-law robbery in 1999.

18 A Yes, sir.

19 Q You was convicted of three counts of common-law
20 robbery in 1999.

21 A Yes, sir.

22 Q You was convicted of assault and battery of a high and
23 aggravated nature in 2002.

24 A Yes, sir.

25 Q You was convicted of another common-law robbery in

Keith Letmon
Cross-examination by Mr. Barnette

1 2002.

2 A That's concerning from 1999.

3 Q Okay. Was you convicted of assault and battery of a
4 high and aggravated nature?

5 A Assault and battery of a high and aggravated nature,
6 no. I went to court about that.

7 Q Okay. But was you convicted of that, sir?

8 A I never went to court about that. They charged me
9 with strong arm robbery.

10 Q Okay. So it's your testimony now is, and I'll be glad
11 to show you the rap sheet --

12 A I said convicted for. I never said went to court for.
13 That's a random, help. I don't recall it.

14 Q So you say it was all that one incident, the three
15 common-law robberies all involved with that.

16 A Basically.

17 Q Okay. And was it true in 2004 you was convicted of
18 another common-law robbery?

19 A 2004?

20 Q Yes, sir.

21 A That's stemming from probation violations from the
22 original charge.

23 MR. SCHULTZ: Your Honor, he keeps reading his
24 probation violations or parole violations.

25 MR. BARNETTE: I apologize, Your Honor. That's what

Keith Letmon
Cross-examination by Mr. Barnette

- 1 it shows on the rap sheet.
- 2 Q But you're admitting to being convicted of three
- 3 common-law robberies.
- 4 A Yes, sir.
- 5 Q Possession with intent to distribute drugs.
- 6 A Yes, sir.
- 7 Q Escape.
- 8 A Yes, sir.
- 9 Q Failure to stop for a blue light.
- 10 A Yes, sir.
- 11 Q Giving false information.
- 12 A Yes, sir.
- 13 Q And you want this jury to believe that Kelvin McKinney
- 14 told you that he was the shooter in this case.
- 15 A The only thing I can do is tell the truth of what I
- 16 know.
- 17 Q But you wasn't there that day.
- 18 A No, sir.
- 19 Q I'm assuming you wasn't there that day.
- 20 A No, sir.
- 21 Q Where was you back on February 2nd of 2006?
- 22 A Woodruff, South Carolina.
- 23 Q Where at?
- 24 A Woodruff, South Carolina.
- 25 Q You was in Woodruff.

Keith Letmon
Redirect examination by Mr. Schultz

1 A Yeah.

2 Q So you wasn't even in the city of Spartanburg.

3 A No, sir.

4 Q And you've knowed Mr. Teamer most of his adult life.

5 A Yes, sir.

6 Q And you'd like to help him, wouldn't you, in this
7 case?

8 A If the shoe was on the other foot, it'd be the same
9 way.

10 MR. BARNETTE: No further questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SCHULTZ

13 Q Just to clarify, what is the reason you are doing
14 this?

15 A To get this off my conscience.

16 Q Could you speak up a little bit?

17 A To get this off my conscience, you know.

18 Q And you're not benefited by this whatsoever other than
19 your conscience, correct?

20 A I'm not bothered by it because, like I said, I never
21 knew, I never knew the victims or the victim's family or so
22 forth. So I really understand what they're going through,
23 because I lost a sister due to circumstances similar, but
24 not the same instance. So I know what the family's going
25 through.

Keith Letmon

Redirect examination by Mr. Schultz

1 So to be able to know who actually killed, killed that
2 dude, that's something they don't know yet. I would not
3 like for another man to go to jail for something he didn't
4 do just because he has quote, unquote, reputation. You
5 know, reputation sometimes super, supersedes us by the way
6 individuals look at us. Do you understand what I am
7 saying?

8 MR. SCHULTZ: That's all I have, Your Honor.

9 THE COURT: You may step down.
10 Anything else?

11 MR. SCHULTZ: That's the defense's showing in this
12 case.

13 THE COURT: Any reply?

14 MR. BARNETTE: Your Honor, there is one matter I need
15 to check on before we answer that question to the Court.

16 THE COURT: Okay.

17 MR. SCHULTZ: Your Honor, could we approach briefly?

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: All right. Ladies and gentlemen, we are
21 going to recess at this time for lunch.

22 Remember, don't talk about the case, don't conduct any
23 research.

24 Please report back to your jury room at 1:30, at
25 1:30 this afternoon. Have a good lunch. We will see you

1 at 1:30.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Mr. Schultz, have you talked with
5 Mr. Teamer about his right to testify or not?

6 MR. SCHULTZ: I have, Your Honor.

7 THE COURT: Has he indicated to you what he wants to
8 do?

9 MR. SCHULTZ: Yes, he has.

10 THE COURT: And what did he tell you?

11 MR. SCHULTZ: He tells me at this time he does not
12 want to testify.

13 THE COURT: All right. Mr. Teamer, you heard what
14 your lawyer just told me.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand when you're charged with
17 a crime you have an absolute right to remain silent? You
18 also have a right to testify if you want to. It's your
19 decision. Nobody can make it for you. Only you can make
20 it.

21 Do you understand you do have a right to remain silent
22 if you wish to?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand you have a right to take
25 the stand if you want to?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you and Mr. Schultz discussed the
3 advantages and disadvantages of testifying, as well as not
4 testifying?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you appreciate what those
7 advantages and disadvantages are?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you had time to think about your
10 decision about whether or not you'll testify?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And have you made a decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What is that decision?

15 THE DEFENDANT: To remain silent, sir.

16 THE COURT: All right. And has anybody forced you
17 into that decision?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you understand you can't change it
20 later? If you want to testify, now is the only chance
21 you'll have.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: But you're comfortable with the decision
24 you've made?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And nobody has pressured you into that
2 decision?

3 THE DEFENDANT: No, sir.

4 THE COURT: You can be seated.

5 MR. SCHULTZ: Thank you, Your Honor.

6 THE COURT: All right. Anything else before we recess
7 for lunch?

8 MR. BARNETTE: Not from the state, Your Honor.

9 MR. SCHULTZ: Not from the defense.

10 THE COURT: All right. Court is in recess until 1:30.
11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Any matters we need to address
13 before the jury is brought in?

14 MR. BARNETTE: Your Honor, I was thinking about on
15 jury charges, and I'm anticipating the argument based off
16 what the defense has presented. But I'm thinking maybe the
17 hand-of-one-hand-of-all may appropriate, depending on their
18 defense. And I know basically putting up Mr. McKinney did
19 it, trying to argue that they tried to take care of Tony
20 Hunter together in that situation.

21 THE COURT: I don't think this is a -- I don't think
22 this is a hand-of-one-hand-of-all. The theory of the
23 state's case is not accomplice liability.

24 MR. BARNETTE: No, it's not. I understand.

25 THE COURT: And the evidence presented, either this

Motion

1 defendant did it or somebody else did it.

2 MR. BARNETTE: Yes, sir.

3 THE COURT: All right. Any other jury instruction
4 requests?

5 MR. SCHULTZ: Your Honor, the only other jury
6 instruction request that I would give would be -- I'm not
7 sure if the Court has any third-party-guilt instructions.

8 THE COURT: Third-party guilt?

9 MR. SCHULTZ: Yes, sir.

10 THE COURT: No, sir.

11 MR. SCHULTZ: Yes, sir. My only other motion is to
12 renew my motion for a directed verdict at this time.

13 THE COURT: All right. That motion is denied.

14 All right. Bring the jury in, please, sir.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: All right. Any other reply evidence to be
18 offered by the state?

19 MR. BARNETTE: None from the state, Your Honor.

20 THE COURT: Ladies and gentlemen, that's all of the
21 evidence that's going to be presented in the trial of this
22 case; and therefore what remains to be done are the
23 lawyers' final summations, after which I'll instruct you on
24 the law. And then you'll begin your jury deliberations.

25 So please give the lawyers your attention now as they

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1 give you their final summations.

2 Mr. Schultz.

3 MR. SCHULTZ: Thank you very much, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, sir.

6 MR. SCHULTZ: Ladies and gentlemen, it's finally at
7 the end. I know the last couple of days have been
8 difficult on you. But I watched you very intently during
9 the course of this trial. And I've seen everybody pay
10 attention, and I appreciate that. And I know Charlie
11 appreciates that too.

12 Some witnesses were speaking the truth; some witnesses
13 were lying. Some were cops; some had personal knowledge of
14 the crime itself. And you listened very closely to what
15 was going on. And, again, I thank you.

16 In my opening I talked to you about what reasonable
17 doubt means, and that's what this case is all about, and
18 how you cannot convict somebody if you believe that the
19 state has failed to meet its burden of proof.

20 And, ladies and gentlemen, this is exactly what
21 happened in this case. They have not met their burden of
22 proof, ladies and gentlemen. Now you'll hear from me why.

23 Now, let's start at the very beginning. Monday you
24 heard the first responding officer to the scene. That was
25 Officer Watts.

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1 And he testified that he arrived at 8:49 that night,
2 February 2nd of 2006. And he was with a couple of more
3 officers. He testified to that fact, that Officer Hern was
4 there, Officer Hardy was there, and then more officers
5 started coming. And then you heard from them too.
6 Investigator Sutton was there; Investigator Gardner was
7 there; Guthro was there. You heard from all of these
8 people.

9 Police were crawling all over the area at this point.
10 A perimeter was set around the crime scene. It was roped
11 off with crime scene yellow tape.

12 And officers spent more than two hours there that
13 night. You've heard them testify to this fact. And within
14 40 feet, according to the officer's testimony, you've heard
15 them testify to this fact, within 40 feet there was a
16 weapon found on the ground, but somehow they didn't find
17 it. They didn't find it the next day. They could have
18 come back there the next day. Nor did they find it in the
19 next month. They could have found it right then and there.
20 It was 40 feet from the car that night.

21 Had the cops done their job properly they could have
22 found that gun with a little bit of investigation, a little
23 bit of effort in those early days of February of 2006. If
24 they would have found the gun they could have tested it
25 then for fingerprints, for D. N. A., busted the case open

Closing arguments

1 within the month. But they waited and waited and waited
2 some more. So now we're here in 2008, almost two years to
3 the date that this happened. And this gun is basically
4 useless now in solving this crime forensically.

5 Then you heard from Mr. Proctor. He was the white
6 gentleman that testified here. You heard Mr. Proctor
7 testify that he got picked up on the north side of town.
8 He wasn't sure where he was.

9 He was on drugs that night. It's clear. He said that
10 in his direct testimony. It could have been he could have
11 been picked up on Bree Street. He could have been picked
12 up on Wofford Street. He wasn't really sure where he was
13 picked up that night. It was dark; it was night,
14 nighttime.

15 But the most important thing I want you to remember
16 about Mr. Proctor's testimony is that he could have stood
17 up here, right here, and picked Mr. Teamer out, yet he
18 didn't do that. He didn't do it, because he never did. He
19 never did during the whole investigation of this case.
20 Never did it.

21 And just on that fact alone you cannot convict
22 somebody. No identity. You cannot convict somebody.
23 That's a reasonable doubt right there.

24 Even when events were fresh in Mr. Proctor's mind he
25 gave inconsistent statements as to where he was picked up.

Closing arguments

1 But even when I pressed him on my cross-examination he said
2 it could have been Bree Street, could have been Wofford
3 Street, could have been anywhere. He wasn't sure, ladies
4 and gentlemen. That's enough reasonable doubt right there
5 to acquit Charlie.

6 Mr. Proctor is an unreliable witness because he
7 testified to that, to the fact that he couldn't see
8 anything because it was night. And not only that, as I
9 said before, he was doing drugs that night. He was getting
10 high all night long.

11 That's what you heard in his direct testimony. You
12 heard him admit that he was high. You heard him admit that
13 he was doing drugs. In the state's direct testimony he
14 admitted that. And, once again, don't forget that he was
15 the only one in the car that night that could point out
16 anybody, and yet he refused.

17 Now, something else interested me in Mr. Proctor's
18 testimony. He said that Tony Hunter was receiving
19 directions to the suspect's house or home. And yesterday,
20 like yesterday, you heard representatives from the phone
21 company testify, come in here and talk to you.

22 And what did the representatives of the phone company
23 say? They said that all of those calls were made, were all
24 of very short duration, less than 60 seconds, a minute.

25 Now, when I give people directions to somewhere like

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1 my house or whatever, it takes at the very least more than
2 a minute. I think we all can agree with that. But yet the
3 state would have you believe that both of them were getting
4 directions to the place where they picked the suspect up.

5 Instead, what you get are very small phone calls back
6 and forth as you can clearly see in the phone company
7 records. And please take these phone company records back
8 with you in the jury deliberation room. Look at them.
9 Please look at them and study them. And look at all of the
10 numbers that are around that phone that night, okay, Mr.
11 Proctor's phone, all the phone records that were submitted
12 in this case.

13 And remember the state did not follow these leads,
14 okay, these other phone calls that were made. You should
15 hold them accountable for what they did not do, what they
16 did not do. And what they didn't do is prove their case
17 beyond a reasonable doubt. They did not do it. They did
18 not carry their burden.

19 Now, you heard Officer Guthro testify that he took
20 pictures of the inside of the car. Those pictures are all
21 in evidence. I want you to look at those too, okay. Okay.
22 You saw all of those pictures. Go back to the jury
23 deliberation room with those. Take a look at these
24 pictures again and study them.

25 There is blood all over the place. The shooter,

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1 whoever that was, must have had some trace of blood on him
2 from Mr. Hunter. This is where we go, because over the
3 course of the last couple of days you've heard various
4 pieces of the puzzle.

5 Okay. Now, the state is trying to attempt to put this
6 puzzle together. What we're trying to say is that the
7 puzzle is still incomplete.

8 The state would have presented evidence of this to you
9 if any blood was found from Mr. Hunter anywhere around
10 Mr. Teamer. No such blood was found.

11 Where was the blood? They did a search warrant on
12 Mr. Teamer's house. The state would have you believe that
13 Charlie later went home that night and got rid of those
14 clothes.

15 And yet you heard the investigator on this case. In
16 fact, you heard from several investigators on this case.
17 And when they asked to get a search warrant for [REDACTED]
18 [REDACTED], and that's Charlie's home, they found nothing.
19 Did they find any bloody clothes? No. Did they find
20 traces of blood? No. Nothing. You can't convict a man
21 for that.

22 What else did they find? Well, latex hospital gloves.
23 So what? You heard Guthro on the stand testify that gloves
24 found at the scene of the crime were E. M. S. workers. If
25 that's how they are trying to Charlie to this crime, that,

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1 that connection is detainless at their best. Nonsensical,
2 comical at the worst.

3 You also heard Officer Guthro talk about fingerprints.
4 This is very important too. He tried to take fingerprints
5 on the outside of the car. He tried to take fingerprints
6 on the inside of the car. He was unsuccessful every time.
7 So again, what we're left with, no fingerprints, nothing.

8 Ladies and gentlemen, like I said to you in my opening
9 statement, this is not crime scene investigation on C. B.
10 S. and this is not C. S. I. On C. S. I. they have piles
11 and piles of forensic evidence. And that's fiction.
12 That's an hour-long T. V. show.

13 Well, today, this, ladies and gentlemen, this is
14 reality. You should demand more from the state in this
15 case. You should demand more from the state.

16 If you go back there and say, well, I guess he's
17 guilty, that is not justice. That's not anywhere
18 approaching justice.

19 Look at the lack of forensic evidence in this case.
20 Realize that you shouldn't vote to convict before you
21 realize the lack of forensic evidence in this case.

22 Look at the gun. It was found almost two years after
23 this crime happened. Two years. Okay. It was all rusty.
24 You heard the SLED expert testify today. He tested that
25 gun. It wasn't in working order. It was all rusted. No

Closing arguments

1 fingerprints were on it; no D. N. A. was on it. They
2 didn't test it.

3 Now, you also heard Officer Gardner testify. Not only
4 did he testify to Mr. Proctor's drinking. He also
5 testified to the fact that Mr. Proctor remembered a Honda
6 Civic crept along the street where the shooting took
7 place? Was there a be-on-the-lookout, BOLO, for a Honda
8 Civic in the area of the issue? No. Was that lead
9 followed up, one of the several hundred leads that the
10 police could have had in this case? No.

11 Now, Amy Ruth Hunter's testimony is another thing I
12 want to discuss. It's clear that she bought and owned a
13 gun. But there's a big conflict who had access to that gun
14 in the first place.

15 You heard testimony from her yesterday that Carlos
16 Fuller had access to Amy Ruth Hunter's car all throughout
17 the week prior to the murder. Ms. Hunter wasn't sure when
18 it was stolen. The very last question I asked her -- you
19 may remember this yesterday -- I asked her was Kelvin
20 McKinney over at your house. She answered yes; she
21 answered yes.

22 Simple fact of the matter is that anybody over the
23 course of the week leading up to this crime could have had
24 access to the gun, anybody, because she didn't know who had
25 it.

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1 Remember, ladies and gentlemen, I don't have to prove
2 anything. The defense does not have to prove anything. I
3 don't have a burden of proof like the state does. That's
4 the state's job. We're not building a case. We're
5 pointing out the holes in the case. Those holes are called
6 reasonable doubt.

7 Ladies and gentlemen, this was a fishing expedition
8 for the most part. And they caught no fish.

9 Investigator Steadman testified that he continued to
10 look for witnesses and then got his hands on Michael
11 Proctor's phone. I asked him on cross if there were any
12 other numbers on the phone, and he said, well, yes, there
13 were. I asked him if he followed up on these numbers, and
14 he said no.

15 In fact, Monday this happened. And he was standing up
16 there going through his, excuse me, he was going through
17 his notebook trying to remember what phone numbers there
18 were. He couldn't find it. He's not interested. Didn't
19 follow up on any of the leads.

20 There was a 415 number on Mr. Proctor's phone. Who
21 was that? Somebody else? Who was it? They don't know.
22 And if they don't know, you don't know. You shouldn't know
23 either.

24 You even saw the phone records of Mr. Proctor's phone.
25 There are tons and tons of numbers that night. Nobody ever

Closing arguments

1 followed up on anything. Police officers that investigate
2 the crimes made their minds early on that this is going to
3 be about one person, about Charlie Teamer. And they never
4 let anything stand in their way. Well, you now are
5 standing in their way.

6 You heard Investigator Guthro testify as to gathering
7 of evidence and taking of pictures. I asked him if he
8 searched the ground around the area, and he stated he did.
9 He did a thorough search of the area. You heard him admit
10 that on the stand. Found nothing, not a weapon, not
11 anything.

12 Now, knowing a murder happened that night on
13 February the 2nd of 2006, it's cloudy and raining, wouldn't
14 you come back to the crime scene and go through it again
15 and see if you missed anything? That's the sort of work
16 that you expect from our police, but yet no such work was
17 done in this case.

18 They could have come back the next day. According to
19 Officer Sutton, he was hid in the foliage and still took
20 them less, less than an hour to find the gun. Then when
21 they actually did find it, not one month after the
22 shooting, not two months after the shooting but almost two
23 years after the shooting, by that time it had rusted. It
24 had decomposed to the point that no D. N. A. was found on
25 it, no fingerprints were found on it.

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1 What the officers should have done was go out there
2 the next day and look in the daylight for something, and
3 yet they paid this case no more attention than just an
4 average run-of-the-mill case. Because of this carelessness
5 an innocent man's life is on the line today. It's hanging
6 in the balance.

7 I asked Officer Guthro about the drugs found in the
8 car. At first he didn't remember what drugs were found in
9 the car, and I pressed him. And then he revealed what he
10 knew, what was found in the car. A syringe was found
11 containing heroine, white powder that was cocaine and a
12 crack pipe. All of this is -- all consistent with what Mr.
13 Proctor was saying that night, because in his direct
14 testimony he specifically said we were getting high and
15 doing drugs.

16 Ladies and gentlemen, there were plenty of people that
17 could have testified to what happened that night but
18 didn't, plenty of police officers that you've heard that
19 worked the scene, plenty of investigators. The state never
20 put them up.

21 What do they have to hide? Is it the fact that
22 they're afraid that I'll bring up facts, more facts, more
23 leads that they did not follow, more suspects that they
24 didn't interview or subjects that they did not interrogate?

25 From day one this investigation was about Charlie

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1 Teamer. That's it. Which brings me back to the issue of
2 the cell phone itself. 921. Was that number ever
3 registered to Charlie? We never heard any evidence that it
4 was. Some people said, oh, they recognized it. They're
5 not sure.

6 Even Kelvin McKinney in his video-taped statement said
7 that Charlie didn't have that phone turned on. He never
8 tried to contact him because he knew that that phone was
9 off.

10 MR. BARNETTE: Your Honor, I'm going to object at this
11 time. I don't think that's facts in evidence at this time.

12 THE COURT: Be sure you confine your argument to the
13 facts in evidence or reasonable inferences.

14 MR. SCHULTZ: Which leads me to another interesting
15 point in this case. Consider for the fact that you must
16 believe that this cold-blooded murderer, whoever he was,
17 had the intelligence not to put on gloves before the
18 shooting, you would have to assume that this wouldn't hold
19 any gunpowder residue that would end up on the suspect's
20 hand. Pretty cold and calculating guy, wouldn't you say,
21 who had the wherewithal to put gloves on before the
22 shooting?

23 The state would have you believe that there were two
24 Charlie Teamers that night. According to the testimony,
25 Officer St. Louis and Officer Evett by calling attention to

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1 himself by throwing beer cans out a window of the car, and
2 now the other side of town in the same neighborhood this
3 all happened.

4 Let's look at a map here. You've heard Officer St.
5 Louis testify to the fact that Charlie was around there
6 somewhere in his car. Okay. Crime happened right there.
7 Is that what a cold-blooded killer is going to do, I'm
8 going to go back to the scene of the crime and call
9 attention to myself? Doesn't make sense. And that's
10 another reasonable doubt right there.

11 Let's talk about the alibi witnesses, the alibi
12 witness. You heard one alibi witness today. She had no
13 reason to lie. She came here out of her free will, free
14 accord.

15 She saw Charlie that night at the time these terrible
16 crimes were committed. They had a relationship. She had a
17 relation to Charlie. She knew him before. He would have
18 no other reason to go over there in the first place if he
19 didn't know Osia Feaster. She had no reason to lie. She
20 did not benefit by being here. She was paid no money to be
21 here.

22 The reason why she was here is that it was the right
23 thing to do. It's the right thing to do. She did not want
24 to see an innocent man convicted of something that he did
25 not do. They did the right thing today and you should do

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1 the right thing today too.

2 You also heard from Kelvin McKinney. If you remember
3 him, he came in in an orange jumpsuit with shackles on
4 coming from the jail. He is the man that had everything to
5 gain from testifying yesterday. You heard his record.

6 You heard Keith Letmon's record too. You know that he
7 said he was a wanted man. He ran from authorities. Mr.
8 McKinney is a man that does what he has to do just to stay
9 alive and get out of prison as soon as possible. And if
10 that means making lies about his homeboy, then so be it.
11 If that means coming into court and testifying and pointing
12 people out in court, then so be it.

13 He's been in and out of prison all of his life. He
14 may get out pretty soon for telling lies on his friend, his
15 homeboy, a friend that he went all the way back to
16 kindergarten with.

17 What Kelvin was trying to do in telling this story is
18 to get away with something. This is a man who is the exact
19 opposite of Osia Feaster and Keith Letmon.

20 Kelvin McKinney had everything to gain by his
21 testimony yesterday. Keith Letmon who is the last witness
22 that you just heard, and Osia Feaster, had nothing to gain
23 by this testimony, but yet they did it. And that shows a
24 lot. And that shows it motivates people. Kelvin was just
25 thinking what can you do for me, what can you do for me.

Closing arguments :

1 It just doesn't make sense for Charlie to kill anybody
2 that night. And I asked the investigator that took Tony's
3 statement. I said, Investigator, was Mr. Teamer mentioned
4 in the statement. He said no. This is Tony's statement.
5 I said, Investigator, is Mr. McKinney mentioned in this
6 statement? You know what he said? He said yes. Snow, or
7 that's Mr. McKinney's nickname. He was mentioned in the
8 statement. Snow is McKinney.

9 Now, when I was in law school my teachers told me that
10 all we need to commit a murder is the motive, means and
11 opportunity. Well, for Charlie there was no motive. For
12 McKinney there was a motive. He's out to shut somebody up,
13 and he did it that day.

14 There were no means for Charlie. There was no
15 opportunity because Charlie is at Feaster's house.

16 Let me get into a little bit of the D. N. A. Now, we
17 all know that a cigarette was found in the car, back seat
18 of the car. And you've heard me talk about my example that
19 I use was a candy bar. If I drop a candy bar somewhere in
20 the courthouse, you know, it stays there for a couple of
21 weeks. They find it, you know. Mr. Schultz had a candy
22 bar here, we're not sure time you had that candy bar.
23 Okay. Could have been two weeks ago, could have been two
24 months ago, could have been two years ago. D. N. A. Don't
25 confuse D. N. A. with age. You can't do that. A cigarette

Closing arguments

1 is not worth a man's life.

2 Now, you heard testimony that Tony and Charlie knew
3 each other. Okay. Cigarette could have been put in
4 anywhere there.

5 Don't go back into the jury room and guess that he's
6 sort of guilty or he's guilty of doing something. I beg
7 you. Please don't just assume where there's smoke there's
8 fire. Don't just assume that.

9 Go over all the evidence sitting there at your
10 disposal. Go over all the pictures, all the documents.
11 Please, go over the D. N. A. reports one last time, and
12 don't try and play detective yourself. That's not your
13 job. That was the state's job, and they didn't do a very
14 good job.

15 If you have a question don't just assume an answer.
16 If the state has not answered that question, that's
17 reasonable doubt right there.

18 Now, you heard from Feaster. You heard from Keith
19 Letmon, our last witness. Feaster and Letmon. These are
20 witnesses that have no reason to lie, no reason to make up
21 their testimony. They're here because their conscience
22 doesn't want to see an innocent man go down for something
23 he did not do.

24 Osia said Charlie was at her house that night 8:15 to
25 9:00 o'clock. This squares with what Keith Letmon said.

Closing arguments

1 And, again, he has no reason to lie. Tony gave a statement
2 on Kelvin, not Teamer, not Charlie. That's what happened.
3 It wasn't any other way around. That's why Tony asked for
4 Kelvin's real name when he called.

5 So, ladies and gentlemen, what are we left with? What
6 are we left with at the end of the day? You know, the old
7 expression is when all is said and done a heck of a lot
8 more is said than done. And this was true in this case.

9 What are we left with? An eye witness, no identity,
10 their gun, no fingerprints, a weapon, no D. N. A., a
11 jailhouse snitch, a killing, no motive, leads not followed,
12 investigations not made. Sloppy police work and a
13 jailhouse snitch is not enough evidence to convict a man of
14 this most heinous crime.

15 Ladies and gentlemen, sometimes in doing trials it's
16 exhausting work, and you all are exhausted. I know that.
17 I'm excused too. Lawyers stand up here and go on and on
18 and talk. That's what lawyers are paid to do.

19 There may have been some points in the trial when you
20 were frustrated with to what connected everything together.
21 And I understand it. I'm frustrated too with what the
22 state did or did not do with this case. They did not meet
23 their burden of proof.

24 There are holes in the state's case that you can drive
25 a Mack truck through. Those holes are called reasonable

Closing arguments

1 doubt. Reasonable doubt is what this case is all about,
2 ladies and gentlemen. There is reasonable doubt
3 everywhere.

4 Now, I just summarized the case for you, all the
5 important facts. Now the judge is going to instruct you in
6 a few minutes. Go back to the jury room and do the right
7 thing. And I know that there at the end there will be no
8 doubt in your mind that you should acquit Charlie on all of
9 these charges. Thank you.

10 MR. BARNETTE: May it please the Court, Your Honor.

11 THE COURT: Mr. Barnette.

12 MR. BARNETTE: Many things I disagree with what
13 Mr. Schultz said, but one of the main things I disagree
14 with, you're the fact-finders. You look at the credibility
15 of the witnesses. You look at the evidence and decide what
16 the facts are in this case. That is your job to go through
17 it.

18 And what I'm going to do is, please remember the
19 evidence the way you heard it in the courtroom today, how
20 it was presented through the witnesses and everything, not
21 through summations or whatever. You decide what those
22 facts are.

23 What I'm going to do is go through some of the strong
24 points that I think that you need to look at. There's a
25 lot of evidence here, and I apologize for that, but I think

Closing arguments

1 you need to have that evidence in order to make a decision
2 when you go back into that jury room.

3 Talking about the defense witnesses. Ms. Feaster
4 really can't tell you anything. She said, well, he was at
5 my house, he went outside, I don't know where he went.

6 There's phone calls going back and forth, 8:33, 8:40.
7 And we'll go through these times, go through a chart. When
8 she's, when he's calling her or calling her cell phone,
9 that 237 number, then she tries to call or somebody from
10 her house tries to call him at 8:45 and can't get ahold of
11 him. Hear voice mail or whatever it may be. She really
12 doesn't tell you anything about where Mr. Teamer was that
13 night.

14 That was her house that Michael Proctor went to. You
15 saw the picture. You saw him I. D. it. Then he talked
16 about Mr. Letmon. And I think the most important thing he
17 said was right at the end. He said if the shoe was on the
18 other foot, he'd do the same thing for me, take care of his
19 homeboy. Mr. McKinney just broke the tape. We don't tell
20 on each other. So he's coming to take care of Mr. Teamer.

21 Let's talk about Mr. Proctor. Mr. Proctor is about as
22 honest of a witness as you'll ever see. He admitted things
23 that I believe people don't want to admit to. Says I was
24 using drugs that night, that's when I was seeking drugs.
25 He was at a place he probably shouldn't have been, ladies

Closing arguments

1 and gentlemen. We all know that. And he was with Tony
2 Hunter trying to seek those drugs.

3 Talking about cell phones, this is Mr. Proctor's cell
4 phone. This is the one that Tony Hunter found right at his
5 feet. If you go through the pictures in the car, this cell
6 phone is Mike Proctor's cell phone, or actually in his
7 mom's name.

8 There is no question minutes before the shooting
9 occurred that this 921 that was found in the car that the
10 defendant was driving as he is driving away from the police
11 officers trying to evade them was found in the
12 driver's-side seat of that car. It was in the possession
13 of that gentleman right there.

14 Ms. Feaster even admitted that he took her car. And
15 the police found him in that car as he tried to get out of
16 it after his wreck.

17 He goes to the house, and you'll have that picture,
18 and I showed it to you before. This is the house that he
19 picked up the defendant at, Mr. Teamer. That's Osia
20 Feaster's house, which is the girlfriend of Mr. Teamer.

21 They're driving through and they're telling him where
22 to go. And he says one time I looked back. He said I see
23 latex gloves, which made him nervous obviously. He said
24 why has that guy got latex gloves on. And suddenly he goes
25 down, and Tony Hunter is shot.

Closing arguments

1 MR. SCHULTZ: Your Honor, I couldn't hear what Mr.
2 Barnette was saying there.

3 MR. BARNETTE: Tony Hunter was shot, shot in the back.
4 And you saw Dr. Wren point where the bullets was, three of
5 them. Here, here, and then one grazed his head. All come
6 from a backward direction.

7 Michael Proctor was shot four times. And he showed
8 you two of them. Of course in the arm, you see the one in
9 his jaw, and the other. I think one hit his leg, I
10 believe, and one went through his shoulder up here.

11 The interesting thing if you look at the reports, how
12 many shell casings is found? And you'll have these reports
13 back with you. And this is State's Exhibit 77. Seven
14 fired cartridge casings, three in Mr. Hunter and four in
15 Mr. Proctor.

16 I think there's a lot of testimony about the length
17 and fragments and everything, but obviously they can't be
18 identified because they're inside the copperjacketed
19 bullet. When that bullet disintegrates when it hits metal
20 or whatever, obviously, it's going to spray, and that's
21 what we're talking about.

22 And you saw the lights was still on in the vehicle
23 when the police got there. You saw when they did the
24 search warrants. E. M. S. probably, the gloves at the
25 scene, that was probably E. M. S. because I think the

Closing arguments

1 officer, Guthro, said they was rolled out properly, looked
2 like that. So they was probably E. M. S. gloves.

3 But the ones at Mr. Teamer's house at [REDACTED]
4 Drive was a white box in the Teamers' house. And I submit
5 to you I know there's people uses for medical reasons or
6 whatever, but you don't have these things just laying
7 around in everybody's house. Some people do it for medical
8 reasons. And they took pictures where they found those
9 white gloves.

10 They also found a blue glove in his thing. I don't
11 know if it has anything to do with it, because he did
12 testify it was white gloves.

13 But the one thing that I thought Michael Teamer, I
14 mean, Michael Proctor, I apologize, was very key about. He
15 said he had never seen this guy before. This guy had never
16 been in his car before. If he knew Mr. Teamer, he would
17 have picked him out or knew him. He didn't know him. That
18 man had never been in his car before.

19 The one thing that's the key, he gave a description to
20 the police artist, because he had never seen this man
21 before. He told you. He said I saw him, you know, I can
22 describe him, I can't tell you who he is.

23 So what you're going to have, you're going to have
24 this drawing, State's Exhibit 88, and you're going to have
25 a picture of Mr. Teamer.

Closing arguments

1 I submit to you, ladies and gentlemen, that's pretty
2 close of the man that shot Michael Proctor that night and
3 killed Tony Hunter.. He had never seen him that night. He
4 had never been in his car. That's the man. That man right
5 there was the shooter in the back seat.

6 Mr. Teamer has provided an alibi defense saying he
7 wasn't there that night. Well, how do you explain? You
8 can talk about aging cases and all of this and that.

9 Evidence will stay there, the gun that was talked
10 about. And you'll have the picture of the rusted gun and
11 you'll have the gun back there where you can look at it,
12 State's Exhibit 93. And you'll have that.

13 That gun sat out there until the police was told about
14 it to go back out and look, and they looked again and found
15 it right at the scene, evidence, state's exhibit.

16 But going back to the D. N. A. And Mr. Schultz says
17 no D. N. A. It's the most telling thing in this case. The
18 cigarette that was found in the back seat of Michael
19 Proctor's vehicle, and you will have these pictures back
20 with you, ladies and gentlemen, beside the styrofoam cup
21 that had James Hunter's blood on it, Mr. Teamer's D. N. A.
22 is on that cigarette.

23 And you will see. And you'll have this report back
24 with you. It matches one in 62 billion, ten times the
25 world's population. Mr. Teamer was at some point with that

Closing arguments

1 cigarette in the back seat of that car.

2 Let me talk a little bit about the gun. This gun was
3 used to shoot those two men that night, no question. You
4 heard Kim Whitler testify about it.

5 One of the bullets was inconclusive, or one of the
6 casings that has been torn, he couldn't tell. He says it
7 could be consistent, may or may not have been fired by this
8 gun, but all of the rest of them definitely came from it.
9 And all of the shell casings, all seven of them, was fired
10 by this gun.

11 What we did was we went back and looked at the serial
12 number of the gun -- and you'll have this back -- and
13 tracked it down. And by coincidence his report stolen
14 (sic). At 8:57 p.m., I'm sorry, 8:57 p.m. by Amy Hunter, a
15 person that knew Charlie Teamer. Charlie Teamer had been
16 to her, drove her car in her car with Carlos Fuller, in her
17 apartment where her ammunition was.

18 She purchased this gun from EZ Pawn Shop. We've got
19 the receipt for you. You'll have that back with you too.
20 And the serial number matches. It matches the pistol.

21 Obviously, he had access to the car. Carlos Fuller
22 even drove her car on February the 2nd. Mr. Schultz was
23 asking questions going back through her statement with her.

24 Obviously, Mr. Teamer got that weapon and he decided
25 to use it that night. He definitely had a motive. Tony

Closing arguments

1 Hunter had talked to the police on January the 19th.

2 Investigator Bryant went out looking for these other
3 two, for these other individuals. They knew that they were
4 looking for them. And they decided we got to eliminate
5 that witness.

6 I submit to you Mr. Teamer did it for him and Kelvin
7 McKinney. And the reason why I submit he did it for both
8 of them? Why did Charlie Teamer call a Michigan number?
9 And you've got the phone records, and you'll have those
10 back with you, ladies and gentlemen. And what I've tried
11 to do is to have the witnesses write down the numbers as we
12 go so you can follow through with it. I know it's going to
13 be a lot to follow.

14 As you go through, on February 2nd of 2006 at
15 8:55 p.m. Charlie Teamer at 921-█████ called (313)814-█████
16 It was nine seconds. He probably didn't get anybody. He
17 left a voice mail says I don't know.

18 But why would he call? Why would he call Michigan if
19 Kelvin McKinney wasn't? I submit to you he did it for both
20 of them because he didn't want -- Tony Hunter had broke the
21 code. He had talked to the police.

22 Just showing you as exhibits, and you'll have all the
23 bullet casings and everything back there, and you'll even
24 have the actual bullet that was matched back to the gun
25 taken by Dr. Wren that was found in the nostril of Tony

Closing arguments

1 Hunter, of James Tony Hunter.

2 This is just a brief summary, and you'll have these
3 phone records there. But Mr. Proctor's cell phone called
4 the cell phone Mr. Teamer was at 7:59, 8:31 -- 8:31, 8:33.

5 MR. SCHULTZ: Your Honor, I am not sure if this has
6 been entered into evidence.

7 MR. BARNETTE: I'm using this as a description, Your
8 Honor.

9 THE COURT: It's not in evidence. He's using it as a
10 demonstrative of the evidence.

11 MR. BARNETTE: Teamer's cell phone called. Actually
12 this is four phone calls. One of them is voice mail, or
13 the 01 went to the voice mail at the different number.

14 He also called Osia Feaster's number. He received a
15 phone call from Osia Feaster calls. Osia Feaster called
16 two times, called Teamer's cell phone at 8:33 and 8:40.
17 Tony Feaster tried to call Teamer's cell phone at 8:45 on
18 February the 2nd. And also Amy Hunter called Carlos Fuller
19 and called 9-1-1 and then called him back.

20 I'm not going through all of this with you, but I want
21 to make sure I get all of the evidence to you. This is an
22 important case. This is an important case to the families
23 that's been involved in this situation, for both Tony
24 Hunter as well as Mike Proctor.

25 The 9mm pistol was found at the scene of the crime

Closing arguments

1 late. Better late than never. It was used to kill Tony
2 Hunter. It matched the bullet from the head of Tony Hunter
3 and the serial number matched the 9mm bought by Amy Hunter.

4 Carlos Teamer and, I mean, Teamer and Carlos Fuller
5 both had access to it. Both of them was homeboys, good
6 friends. Fuller drove the car as late as February the 2nd,
7 to show you the pawn receipt.

8 Dawn Hunter also saw the defendant with a 9mm when she
9 was, when she was asked about her brother, Tony Hunter.
10 Kelvin McKinney told the solicitor I was going to be
11 interviewing him about the pistol. So he went back to the
12 crime scene and found it, and he found it. And you can
13 look at the pictures and whatever. It didn't look like it
14 had been moved for a long time. Had dirt and leaves with
15 it. And obviously it had been rusted, so rusted, he picked
16 it up at the scene. And it had to be oiled by, by Ken
17 Whitler.

18 Also, another thing. The hammer was pulled back and
19 the bullets was still inside the 9mm when they found it.
20 So it was still ready to fire.

21 Talking about the 9mm bullets and the shell casings,
22 all the shell casings were made by Wolf or a similar
23 manufacturer. Wolf is the only thing they sold at EZ Pawn
24 Shop. I understand it may be a common name, but it's not
25 the only name.

Closing arguments

1 She testified she kept the bullets in the apartment,
2 obviously because Fuller and the defendant had access to
3 it. There was seven casings, seven shots. All was fired
4 by the 9mm. One was inconsistent with it. Couldn't tell
5 if it was for sure if it was or it wasn't.

6 Look at the drawing of the defendant. Like I said,
7 Mike Proctor had never seen this person, gave this
8 description to him. And, like I said, we just compared the
9 photograph to the drawing. The drawing doesn't match
10 Kelvin McKinney.

11 You got to remember Mike Proctor was an eye witness to
12 this. I know the defense says there's no witnesses to it.
13 Especially in their opening they mentioned that. There is
14 one. Mike Proctor.

15 He was there, and he testified truthfully, ladies and
16 gentlemen. He told you what he saw. He told officers what
17 he saw. And the drawing doesn't match Kelvin McKinney,
18 plus he has dreadlocks as you saw in the video that was
19 shown, as well as you see it here today.

20 There's only one person in the back seat. All shots
21 came from the back for Mike Proctor, Investigator Guthro,
22 as well as Dr. Wren.

23 Let's talk a little bit about the cell phone. Like I
24 say, the key cell phone is the 921- [REDACTED] which is found in
25 the possession of the car that was wrecked by the

Closing arguments

1 defendant, Mr. Teamer. The defendant was driving his
2 girlfriend's car. This cell phone was found in the
3 driver's seat. And that was the number. Investigator
4 Guthro told you once they checked it they found out that
5 was the number.

6 It was collected after the defendant wrecked Osia
7 Feaster's, which is his girlfriend's, car on Mount Zion
8 Road while being pursued by Deputy Evett.

9 That's another thing. Was he driving towards town or
10 was he driving away? He lives on Overbrook Drive. He was
11 found within, and you'll have the maps back there with you.

12 Like I say, you remember the testimony the way you
13 hear it. But if I remember it correctly, he said he saw
14 him in a Li'L Cricket in this area. Well, here's [REDACTED] k
15 [REDACTED], where he lived at. And he drove through here this
16 way and went back out this way and drove over to Mount Zion
17 Road where finally he wrecked out here.

18 Tony Hunter called the defendant from Mike Proctor's
19 phone at 7:59, 8:31, 8:32 and 8:34 on February 2nd trying
20 to see where to pick him up and where to meet at. The
21 defendant on this cell phone called Osia Feaster's cell
22 phone at 8:33 and 8:40 on February the 2nd.

23 Then somebody from Osia Feaster's called. And like
24 Osia Feaster said, if he had called me, I would have tried
25 to call him back. So then she looked on the phone and said

Closing arguments

1 I need to try to call him back, or somebody did. Called
2 him at 8:45 p.m. And nothing really picked up on it.

3 921-██████ is a prepaid phone. Mr. Hanes from AT&T told
4 us, said we just don't have anything to do with it, he's
5 not even from here, not even around. Says it was a prepaid
6 phone.

7 Kelvin McKinney testified the cell phone of the
8 defendant was a prepaid phone.

9 Dawn Hunter and Kelvin McKinney both testified they
10 called the defendant on this phone, at this phone number.
11 Like I said, if anything, we just talked a little bit ago.
12 At 8:55 he calls a Michigan phone number, the defendant
13 does, at (313)814-██████ the phone number of Kelvin
14 McKinney's aunt in Michigan.

15 Talking about the motive, the defendant, Kelvin
16 McKinney, told how he was involved in a shooting back in
17 Arcadia back in June, January the 14th.

18 He gave a statement, Tony Hunter did, to Investigator
19 Bryant. The defendant McKinney named suspects, and start
20 looking into it. You heard that from Investigator Bryant.

21 Kelvin McKinney goes to Michigan. The defendant tells
22 Dawn Hunter he wants his homeboy back home. When the
23 defendant tells Dawn Hunter he wants his homeboy back home,
24 he asked where Tony Hunter is. He also has a 9mm along
25 with him with latex gloves.

Closing arguments

1 Mike Proctor saw the defendant in the back seat. And
2 one other thing too. Remember when he was on the operating
3 table, didn't know if he was going to live, Mr. Schultz
4 asked Investigator Gardner. He said what, he said he
5 mentioned to me the latex gloves.

6 Here's a man on his, on the operating table. One of
7 the things he remembers is latex gloves. And he also told
8 him about that after being shot four times. Investigator
9 Gardner didn't know if he was going to live or die at that
10 time, and neither did Mr. Proctor. Had a box of latex
11 gloves at [REDACTED] Drive, the Teamer house.

12 Mr. Proctor later showed law enforcement where he
13 picked up the defendant. You saw how much he did it. He
14 kept, Mr. Schultz kept, asking time and time again. He
15 said that's the house that I picked him up at. Phone
16 records show the Feasters live there. You heard from Osia
17 Feaster that they lived there.

18 Talking about the D. N. A., 62 billion to one. It was
19 found in the back seat of Mike Proctor's Toyota 4Runner.
20 Never seen him before and never been in his vehicle before
21 or he would haven't told you he was. Shots were fired in
22 the back seat of the vehicle. You saw that.

23 The defendant's witnesses testify that he wasn't at
24 the scene of the crime. Both of their witnesses,
25 Ms. Feaster in particular, said he wasn't at the scene of

Closing arguments

1 the crime. D. N. A. showed that he was in the back seat of
2 Michael Proctor's vehicle.

3 We're talking about murder and assault and battery
4 with intent to kill, ladies and gentlemen. When we're
5 talking about that, you'll be hearing what they call
6 malice. Malice can happen that quick if somebody with an
7 evil thought to do mischief, to do some evil in the charge.

8 It can be planned out. It can be something that
9 happens on the spur of the moment. There is no measurable
10 amount of time. To have a murder or assault and battery
11 with intent to kill you have to have that malice.

12 We have showed you a motive. We didn't have to show
13 you a motive. That's not needed for malice. Malice is
14 just -- it don't even need to be planned. It's just that
15 evil thought or that doing of it, is what creates that or
16 creates that malice.

17 Malice can be inferred from the use of a deadly
18 weapon, a pistol, any kind of deadly weapon of that nature.
19 And I submit to you a 9mm is definitely a deadly weapon.

20 What I would like for you to do, ladies and gentlemen,
21 you've heard the evidence in this case. You'll have this
22 back with you to examine. But you are the fact-finders.
23 They keep saying there's holes in the evidence.

24 But there's, ladies and gentlemen, this is a fact this
25 ain't fiction. This happened here in Spartanburg County on

Closing arguments

1 February the 2nd of 2006. One man died and another man
2 almost did.

3 The man responsible for it all the evidence points to.
4 Like I said, we've been through it. All the evidence
5 points to one man. And if you look at it, if you look at
6 every piece of evidence, it points to one man, and that man
7 sitting right over there, the man that murdered Tony
8 Hunter, the man that shot Michael Proctor four times and
9 almost killed him that night.

10 What I am going to ask you to do, ladies and
11 gentlemen, is return a verdict of guilty on both counts.
12 This isn't a who-done-it.

13 You have solid forensic evidence. The defense says we
14 have none. We have massive amounts of it between the cell
15 phones, the D. N. A., the gun, everything else that
16 connects the dots, the drawing. You have had more forensic
17 stuff in this case than you can ever imagine, the artists
18 being used, D. N. A., ballistics, all of that. And it
19 comes down to one conclusion.

20 Please return a verdict of guilty on both counts for
21 these families and for the county of Spartanburg. Thank
22 you very much.

23 MR. SCHULTZ: Your Honor, could the solicitor --

24 MR. BARNETTE: I will.

25 THE COURT: Does any juror need to take a short break

Jury charge

1 before I instruct you on the law?

2 (No response.)

3 THE COURT: Okay. All right. Ladies and gentlemen,
4 you of course have heard and seen all the evidence in the
5 case, and you've now heard the final summations of the
6 lawyers. And therefore it's now my obligation to instruct
7 you on the law that's applicable in this case. And then
8 you'll be asked to go back and begin with your
9 deliberations. And through that process you'll examine the
10 evidence, decide the facts, apply the law and arrive at a
11 fair and just decision in the case.

12 It is your exclusive duty to determine what the facts
13 are, and you do that through your own common sense
14 examination and evaluation of all of the testimony and
15 evidence received during the trial of this case. And you
16 12 jurors alone will decide what weight, value and effect
17 to give to any particular testimony or other evidence in
18 the case.

19 Your sole objective is to simply reach the truth in
20 the matter, and by doing that you will have fulfilled your
21 obligations as jurors, and that is to simply give both the
22 state and the defendant a fair and impartial trial.

23 Now, in this case, as you know, the state has charged
24 the defendant through two separate indictments with two
25 crimes that they allege arose out of one particular event

Jury charge

1 or occurrence.

2 They allege back on February the 2nd of 2006 that the
3 defendant, Nathaniel Charles Teamer, did here in
4 Spartanburg County commit the crime of murder in that he
5 did with malice aforethought kill one James Antonio Hunter
6 by shooting him with a gun and that Mr. Hunter died as a
7 proximate result of that gunshot wound.

8 They also allege in a separate indictment that
9 Mr. Teamer did on February the 2nd of 2006, and again with
10 malice aforethought, commit an assault and battery upon one
11 David Proctor by shooting him with a gun with the intent to
12 kill Mr. Proctor.

13 Now, those are allegations contained in the
14 indictments. As I told you at the outset of the trial, the
15 indictments are not evidence in the case. They're not
16 proof of anything.

17 The indictments simply set forth the allegations
18 supporting a charge. The indictments set forth that charge
19 that the state has brought against the defendant. The
20 state has the burden of proving those allegations and each
21 of those charges to your satisfaction beyond a reasonable
22 doubt.

23 The defendant in this case has entered a plea of not
24 guilty, and, as I told you, that plea of not guilty has
25 therefore placed upon the state the burden of proving his

Jury charge

1 guilt beyond a reasonable doubt.

2 A burden is never upon a defendant or a person accused
3 of a crime to prove that they are not guilty or to prove
4 that they are innocent because in many cases that might not
5 be possible. The burden is always upon the state because
6 they bring the charge to establish that person's guilt
7 beyond a reasonable doubt.

8 Now, you are instructed that it is a vital, important
9 and cardinal rule of law that every defendant in a criminal
10 trial, and it doesn't matter how serious the offense might
11 be, that person is always presumed under the law to be
12 innocent of those charges. And that presumption of
13 innocence remains with any defendant, as it does with
14 Mr. Teamer, from the time that he was placed under arrest
15 and throughout the course of the criminal process and even
16 throughout the course of the actual trial in this case.

17 And, as I told you, that presumption of innocence will
18 be with him as you go back to begin your deliberations.
19 And it will be with him in that jury room, and it will
20 remain with him forever unless you 12 jurors determine that
21 he's no longer entitled to that presumption of innocence.
22 That is after you've carefully considered all the evidence
23 in the case, from that evidence you've decided what you
24 believe to be the true facts that relate to this matter,
25 and after deciding those facts you apply the law that I

Jury charge

1 will have provided you, if you 12 jurors unanimously
2 determine that his guilt has been proven beyond a
3 reasonable doubt, then he would no longer be entitled to
4 that presumption of innocence. But it's only if, unless
5 and until you 12 jurors are satisfied of his guilt beyond a
6 reasonable doubt that that presumption of innocence would
7 no longer be applicable.

8 Now, while the state does have the burden of proving
9 the defendant's guilt beyond a reasonable doubt, that
10 doesn't mean that they have to prove his guilt beyond all
11 doubt or beyond any possible doubt. But it does require
12 the state to prove his guilt to your satisfaction beyond a
13 reasonable doubt.

14 The term reasonable doubt should be given its plain
15 and ordinary meaning. A reasonable doubt is the kind of
16 doubt that would cause a reasonable person to hesitate to
17 act upon the information provided. And a defendant in a
18 criminal trial is entitled to any reasonable doubt that
19 arises from the evidence or lack of evidence in a case.

20 If upon any factual issue essential to a finding of a
21 verdict of guilty you have some reasonable doubt as to how
22 that issue should be resolved, it would be your duty to
23 resolve that reasonable doubt in favor of the defendant.
24 And therefore if upon your consideration of the whole case
25 as it relates to either of the charges if you have a

Jury charge

1 reasonable doubt as to whether or not he's been proven
2 guilty, you have to resolve that doubt in his favor and
3 return a verdict of not guilty.

4 And, on the other hand, after you've carefully
5 considered all of the evidence in the case and decided the
6 facts and applied the law, if you have no reasonable doubt
7 as to his guilt, then of course it would be your
8 corresponding duty to convict the defendant or to find him
9 guilty of any crime you find he has been proven guilty of
10 beyond a reasonable doubt.

11 Now, the same law that provides that you are the
12 judges of the facts also provides that I am the judge of
13 the law. That simply means that nobody is going to tell
14 you how to arrive at your determination of fact in this
15 case.

16 You do that, as I've stated, through the exercise of
17 good judgment and common sense conscientiously applied to
18 the testimony and the evidence in the case.

19 You must however under your oath as a juror accept the
20 law as I provide it to you as being the law that is
21 applicable in this particular case. In other words, you're
22 not to concern yourself with what you thought the law was
23 before you came to serve as a juror this week or what you
24 think the law ought to be.

25 You must under your oath simply accept the law as I

Jury charge

1 provide it to you as being the law that is applicable in
2 this case. And then you simply take that law and you apply
3 it to the facts as you 12 jurors determine those facts to
4 be based upon your examination of the evidence.

5 Now, as I've told you, you are the sole judges of the
6 facts in this case. And you are therefore necessarily the
7 sole judges of the credibility or the believability of each
8 witness that has testified during the trial of this case.

9 You will determine what weight, value and effect to
10 give to any particular witness' testimony or even portions
11 of that testimony. And there are a number of factors which
12 you should consider in arriving at your assessment as to a
13 particular witness' credibility, and I'm going to list
14 those factors for you.

15 But you may consider the demeanor of the witness, that
16 is how did the witness appear to you when the witness
17 testified from that witness stand. Was the witness
18 straightforward in responding to questions, or was the
19 witness hesitant or evasive in responding to questions that
20 were asked of that particular witness? Simply put, did the
21 witness appear to you to be telling the truth and to have
22 knowledge of the facts to which that witness has testified?

23 You may also consider whether or not the testimony of
24 a witness is consistent, or is it inconsistent with that
25 witness' own testimony or with other statements made by

Jury charge

1 that witness, or is it consistent or inconsistent with
2 other witnesses' testimony or other evidence received
3 during the trial of the case?

4 You may also consider how a particular witness came to
5 know the facts to which that witness has testified. That
6 is what was that particular witness' opportunity and
7 ability to perceive the existence of those facts to which
8 that witness has testified by having previously used his or
9 her senses. And then what is that witness' ability to be
10 able to come into court and to accurately recollect to you
11 as to what they have previously seen or heard, or felt for
12 that that matter?

13 You may also consider any bias or prejudice or
14 interest that a witness might have in the case. In other
15 words, do you find some reason that a particular witness
16 would come into court and would testify one way or another
17 to help or to hurt one side or the other. And you may
18 consider any interest that a witness might have in the
19 outcome of the case if you determine that a witness does
20 have such an interest and you find that that interest would
21 bear upon that particular witness' credibility.

22 And you may also consider whether or not the testimony
23 of a witness is strengthened, or is it weakened by other
24 testimony or other evidence in the case?

25 Now, during the trial of this case you heard some

Jury charge

1 evidence introduced when a witness testified regarding that
2 witness having prior convictions for certain types of
3 criminal offenses.

4 Now, ordinarily evidence of criminal convictions is
5 not admissible in the trial of a case because it's not
6 relevant to anything. But under the law where a particular
7 witness has certain types of convictions for certain types
8 of offenses, then evidence of those convictions may be
9 introduced when that witness testifies. And the purpose of
10 that evidence is to shed perhaps some light on the
11 credibility or the veracity of that particular witness.

12 So where such evidence has been introduced, if you
13 find that evidence to be probative on the issue of the
14 credibility or the veracity of that particular witness,
15 then you may consider it for that purpose. You may if you
16 think it's probative. You don't have to if you think it's
17 not probative, but that is the sole purpose for which that
18 type of evidence is introduced, is solely for you to take
19 into consideration in your assessment as to a particular
20 witness' credibility or believability.

21 Now, because you are the sole judges of the facts and
22 you are the sole judges of the credibility of each witness,
23 you are permitted to believe as much or as little of what a
24 witness has testified to as you deem is appropriate.

25 Therefore you may believe everything that a witness

Jury charge

1 testified to. You may choose to believe none of it. You
2 may believe some portion of a witness' testimony and reject
3 some other portion of that same witness' testimony.

4 In a given case you could believe one witness as
5 opposed to several, or several as opposed to one. But
6 whatever your good judgment and common sense tells you is
7 the most believable and credible testimony is the testimony
8 you should accept. And you should reject any testimony
9 that you find not to be credible or believable. Again,
10 your sole objective is to simply reach the truth in the
11 matter, and by doing that you will have fulfilled your
12 obligations as jurors.

13 Now, while there are various forms of evidence such as
14 testimony, such as photographs, documents and other types
15 of physical exhibits, there are really only two types of
16 evidence. Either one or both of those types of evidence
17 may be used to prove any fact in issue. And they may be
18 considered separately or in conjunction with one another.
19 But the two types of evidence are direct evidence and
20 circumstantial evidence.

21 Now, direct evidence is the testimony of a person who
22 testifies from actual knowledge of a fact. It is the
23 testimony of a person who has perceived the existence of
24 some fact by means of his or her senses, and then they come
25 into court and they testify as to what they have previously

Jury charge

1 perceived.

2 Circumstantial evidence, on the other hand, is the
3 proof of some other fact or set of facts which taken either
4 singly or collectively may prove the existence of a fact in
5 question as a necessary consequence, that is through an
6 inference.

7 And an inference is simply a deduction of fact which
8 may logically and reasonably be drawn from the proof of
9 some other fact or set of facts. In other words, it's not
10 a fact proven by the direct testimony of a witness based
11 upon that witness' personal perception, but it is a
12 conclusion which might reasonably be drawn from the proof
13 of other facts.

14 In other words, you may infer that a particular event
15 occurred or that a particular fact exists based upon the
16 proof of sufficient factual circumstances which would
17 reasonably warrant your arriving at such a conclusion.

18 Now, the law makes absolutely no distinction between
19 the weight or the value to be given to direct evidence as
20 opposed to circumstantial evidence. Nor is a greater
21 degree of certainty required of circumstantial evidence as
22 opposed to direct evidence.

23 Whatever the type of evidence used to prove any fact
24 in question, you should consider all of the evidence
25 presented in the trial of the case. And after carefully

Jury charge

1 considering all of that evidence in your minds, if you are
2 not convinced of the guilt of the defendant beyond a
3 reasonable doubt, then you must resolve that doubt in his
4 favor and return a verdict of not guilty.

5 Now, as you are aware, the defendant is charged with
6 two separate and distinct offenses. You'll be called upon
7 to render two separate and distinction verdicts on the
8 separate indictments.

9 One indictment charges the defendant with the crime of
10 murder; the other charges the defendant with the crime of
11 assault and battery with intent to kill. I'm going to
12 instruct you on the law as it relates to the crime of
13 murder first, and then I'll instruct you on the law as it
14 relates to the crime of assault and battery with intent to
15 kill.

16 Understand that both crimes require the state to prove
17 malice beyond a reasonable doubt. So I'm not going to
18 define that for you twice. I'll define it for you when I
19 instruct you on the law as it relates to the crime of
20 murder.

21 But the definition of malice aforethought is
22 applicable to both charges. So the state as to prove
23 malice aforethought on both charges, murder and assault and
24 battery with intent to kill.

25 Now, murder is defined in the law as the killing of a

Jury charge

1 person with malice aforethought either expressed or
2 implied. So in order for you to find the defendant guilty
3 of the crime of murder it would be necessary that the
4 evidence in this case has established to your satisfaction
5 beyond a reasonable doubt that the defendant did commit
6 some act or acts which proximately caused the death of
7 another person and that that killing was done with malice
8 aforethought. Malice aforethought is an essential element
9 of the crime of murder.

10 Now, while the evidence in the case may prove a
11 specific intent to kill in the case of a person charged
12 with murder, it is not necessary that the state prove a
13 specific intent to kill in order to prove the crime of
14 murder. It is however required that the state prove a
15 killing done with malice aforethought.

16 So what is malice aforethought? Well, malice is a
17 term connoting an ill will and an intent to do harm. It is
18 a technical term importing wickedness and excluding just
19 cause or legal excuse.

20 Malice may be likewise defined as the state of mind
21 which indicates a formed purpose and design to do a
22 wrongful act under circumstances that exclude any legal
23 right to do that act.

24 Now, the words expressed or implied malice do not mean
25 different kinds of malice but merely the manner in which

Jury charge

1 malice may be shown to have existed, that is by proof
2 through direct evidence or proof by circumstantial evidence
3 from which you could reasonably infer the existence of
4 malice.

5 Malice may be expressed as where it is shown that
6 there was an expressed threat to kill or where there is a
7 lying in wait or where the circumstances show directly that
8 an intent to kill was entertained by the killer.

9 Malice may be inferred, though no expressed intent to
10 kill is proven by direct evidence, where the facts and the
11 circumstances which have been proven by the evidence in the
12 case satisfy you beyond a reasonable doubt that malice was
13 present in the mind of the defendant at the time any
14 killing took place.

15 The existence of malice may be inferred from the
16 circumstances shown to have existed at the time of the
17 event, and you are permitted to infer the existence of the
18 element of malice from proof of an unlawful and an
19 intentional killing of another person without justification
20 or legal excuse.

21 You are permitted to infer the existence of malice
22 from proof of a wrongful intent to injure another person
23 through the infliction of serious bodily harm indicative of
24 a wicked or depraved spirit. You may infer the existence
25 of malice from proof of the intentional use of a deadly

Jury charge

1 weapon.

2 You may infer the existence of the element of malice
3 from the intentional commission of an act which is
4 inherently dangerous to human life. You may infer the
5 existence of malice from proof of the commission of
6 reckless acts which are inherently dangerous to human life
7 and which are done so recklessly as to manifest a depravity
8 of mind signifying an extreme disregard for or an extreme
9 indifference to human life.

10 Malice as an essential element of the crime of murder
11 may be described as the state of a person's mind signifying
12 a general malignant recklessness and extreme disregard for
13 or indifference to human life.

14 Now, even if the facts proven in the case are
15 sufficient to raise an inference of malice, such an
16 inference would simply be an evidentiary fact to be taken
17 into consideration by you 12 jurors along with all the
18 evidence received during the trial of the case. And you
19 may give such reasonable inferences or permissible
20 inferences such weight, if any, that you determine they
21 should receive, if any.

22 Simply stated, you are permitted to infer the
23 existence of malice from the proof of any one or more of
24 those circumstances that I have just described, as well as
25 from any other evidence in the case reasonably tending to

Jury charge

1 prove that fact. But you are in no way required to make
2 such an inference unless you determine that that inference
3 is reasonable based upon your consideration of all of the
4 evidence.

5 Now, the state is required to prove malice, just as it
6 must prove any other essential element of the offense, and
7 it is for you 12 jurors to determine whether or not the
8 element of malice has been established in this case beyond
9 a reasonable doubt.

10 It's also essential that there exist not only malice
11 accompanying a killing, but that malice must also be
12 aforethought. Now, the law does not require that malice
13 must exist for any appreciable length of time before the
14 commission of an act which proximately causes the death of
15 another. Indeed, it may be conceived at the very moment
16 that the fatal act is committed.

17 It is sufficient in the law so long as the state
18 proves beyond a reasonable doubt both the existence of
19 malice and the commission of an act or acts by the
20 defendant which proximately caused the death of another.

21 Now, while the state must prove beyond a reasonable
22 doubt that a killing occurred accompanied by the element of
23 malice aforethought, it is not necessary that the state
24 prove any motive for the killing, although there may be
25 evidence introduced relating to that fact.

Jury charge

1 Now, the defendant in this case in a separate
2 indictment is also charged with the crime of assault and
3 battery with intent to kill. I'm going to define for you
4 the term assault; I'll define for you the term battery; and
5 then assault and battery with intent to kill.

6 An assault is defined in the law as the unlawful
7 attempt to do violence or injury to the person of another
8 where the person committing the assault has the present
9 ability to complete that attempt by way of a battery.

10 A battery is defined as the unlawful and intentional
11 touching or striking of the person of another by the person
12 committing the assault or by any object put in motion by
13 that person. A battery is the completion of an act doing
14 violence or injury to the person of another without just
15 cause or legal excuse.

16 An assault and battery with intent to kill is defined
17 as an unlawful act or acts of a violent nature towards the
18 person of another constituting an assault and battery, the
19 natural tendency of which is to cause death or result in
20 serious bodily harm, and the unlawful acts constituting the
21 assault and battery is accompanied with malice aforethought
22 either expressed or implied.

23 Now, as I have told you, the term malice aforethought
24 has previously been defined for you in the instruction on
25 murder. And that same definition applies to the charge of

Jury charge

1 assault and battery with intent to kill.

2 A criminal intent is also a necessary element of any
3 crime that has to be proven beyond a reasonable doubt. And
4 in the case of an assault and battery with intent to kill,
5 while a specific intent to kill may be established by the
6 evidence in the case, it is not necessary that a specific
7 intent to kill on the part of the defendant be proven in
8 order for the defendant to be found guilty of assault and
9 battery with intent to kill.

10 There must however be proven beyond a reasonable doubt
11 that the defendant maintained at least a general criminal
12 intent in order for the offense of assault and battery with
13 intent to kill to be established. And a criminal intent is
14 defined as a state of mind that operates jointly with an
15 act in the commission of a crime. A criminal intent is a
16 mental state of conscious wrongdoing in contrast to an act
17 which is committed accidentally or inadvertently.

18 Therefore in order for the defendant to be found
19 guilty of the crime of assault and battery with intent to
20 kill it would be necessary that the state has proven beyond
21 a reasonable doubt that the defendant committed an assault
22 and battery, the natural tendency of which is to cause
23 death or result in serious bodily harm, and that assault
24 and battery was accompanied with malice aforethought.

25 Now, in this case the defendant has raised what is

Jury charge

1 referred to in the law as the defense of alibi. And an
2 alibi means that the defendant was at another specified
3 place at the time that the crime alleged in the indictments
4 was committed and therefore it was not possible for the
5 defendant to have committed the crime that he is accused of
6 committing because he was not present at the scene when
7 that crime was committed.

8 Now, while a defendant may present evidence of an
9 alibi, there is no burden upon the defendant to prove that
10 alibi by any standard. The burden is on the state to prove
11 beyond a reasonable doubt that the defendant was actually
12 present at the place where the crime was committed and that
13 he actually committed it and therefore was not some place
14 else.

15 In other words, because the state has the burden of
16 proving the defendant's guilt beyond a reasonable doubt,
17 such a burden would necessarily require that the state
18 prove beyond a reasonable doubt that the defendant was not
19 somewhere else but that he was at the scene of the crime
20 and did, in fact, commit that crime.

21 Now, as I have told you, and I emphasize to you, that
22 the fact that a defendant does not testify during the trial
23 of a criminal case is not a circumstance which you may
24 consider in any way whatsoever during your deliberations or
25 in your determination as to whether or not his guilt has

Jury charge

1 been proven beyond a reasonable doubt. You may not permit
2 such a fact to weigh in the slightest degree against a
3 defendant.

4 As I have stated, the burden is always upon the state
5 because they brought the charge to prove the defendant's
6 guilt beyond a reasonable doubt. The burden is never upon
7 a defendant to prove that he is not guilty or to prove that
8 he is innocent. And therefore you are not to draw any
9 inference nor reach any conclusion from the fact that a
10 defendant does not testify during the trial of a case, nor
11 may such a fact even be discussed by the jurors as you are
12 engaged in your deliberations in the jury room. And, as
13 I've stated, that may not weigh in the slightest degree nor
14 enter into your determination as to whether or not his
15 guilt has been proven beyond a reasonable doubt.

16 I'm not concerned with what your decisions are, but,
17 as I've told you, your verdicts have to be unanimous. All
18 12 of you must be in agreement before any verdict may be
19 returned to the court.

20 Now, Madam Forelady, in addition to all the evidence
21 that's been introduced, you're going to have these
22 indictments in the jury room. As I told you, they are not
23 evidence in the case, but they will serve as the verdict
24 forms.

25 You'll see on the back of each indictment in the lower

Jury charge

1 left-hand corner the word verdict. And it's going to be
2 beneath that word that you'll indicate the jury's unanimous
3 decision.

4 Now, with respect to each of the indictments, there
5 are two possible verdict forms. If the state has proven
6 the crime alleged in the indictment to your satisfaction
7 beyond a reasonable doubt, then the verdict form would be
8 guilty. If the state has failed to prove any one or more
9 of the essential elements necessary to establishing that
10 particular crime beyond a reasonable doubt, then the
11 verdict form would be not guilty.

12 So whatever the verdict is, guilty or not guilty,
13 Madam Forelady, I'll ask that you indicate that decision in
14 the space provided. You'll also need to sign your name
15 beneath that as the foreperson and place the appropriate
16 date on the form.

17 I don't know if we have any smokers on the jury. I
18 won't take a poll. But if you -- somebody raised their
19 hand anyway. Good for you. I've got two.

20 Anyway, the point is you can smoke during jury
21 deliberations, but you cannot smoke in the jury room. So
22 if you want to smoke, let the bailiff know. They'll take
23 you outside into the cold weather and you can smoke
24 outside. But you cannot smoke in the jury room.

25 You are instructed that if any juror is absent for any

Jury charge

1 authorized purpose, then the deliberations have to stop.
2 The deliberations may only resume and be engaged in when
3 all 12 jurors are present.

4 During your deliberations if you ever have a question
5 of fact or a question about the evidence in the case or a
6 question about whether there is some other evidence that
7 can be provided, all of the evidence that you're going to
8 receive in this case has been received. No more evidence
9 can be introduced now that you're going back to begin your
10 deliberations. So don't ask about any additional items of
11 evidence should something come up during deliberations,
12 because even if it existed you couldn't get it. You have
13 all the evidence you're going to receive.

14 If you have a question about some testimony and you
15 can't resolve it among yourselves and you think listening
16 to a witness' testimony in whole or in part can answer that
17 question for you, I can bring you back to have testimony of
18 a witness replayed in whole or in part.

19 I don't have transcripts. I can't send you back a
20 transcript of a witness' testimony. But I can bring you
21 back to the courtroom, and we'll try to replay that
22 testimony in only part if that's all you need, or all of it
23 if that's what you want to hear. So if you need to hear
24 testimony, let us know, and we'll make those arrangements.

25 If you ever have a question about the law that's

Jury charge

1 applicable in the case, I can always answer those
2 questions. So if you need an additional instruction, you
3 need an additional explanation, you need a clarification of
4 the law that you are to apply, I can always provide that
5 clarification or additional explanation. So if you have
6 such a question, let me know, and I will respond to it.

7 Madam Forelady, if you or your fellow jurors have any
8 difficulty that you need to relate to me, just write it on
9 a piece of paper, provide it to the bailiff, and I'll
10 respond to it accordingly.

11 I think that's everything. All right. I'm going to
12 ask all of the jurors to go back.

13 I'm going to ask the two alternates to stay, but you
14 won't be in the same jury room with the primary 12.
15 They'll, the bailiff, will put you in a separate jury room,
16 and y'all can sit back there and talk all you want to.
17 Don't talk about the case. You can't discuss the case.

18 The 12 primary jurors of course will have to discuss
19 the case when you begin deliberations, but don't do that
20 until I send you word to do so.

21 I've some matters now I'll need to address with the
22 lawyers. If I don't need to bring you back for any reason,
23 I'll send word by way of the bailiff that you can begin
24 deliberations. In that event the bailiff will bring to the
25 jury room all of the exhibits which have been introduced.

Jury charge

1 And to you, Madam Forelady, he'll also bring the
2 indictments which will serve as the verdict form.

3 So I'll ask the 12 primary jurors to go back to the
4 jury room you have been occupying. Do not begin
5 deliberations until I send you word to do so.

6 The two alternate jurors will go to a separate jury
7 room. Okay.

8 (Whereupon, the jury retired to deliberate at
9 3:06 p.m.)

10 THE COURT: Are there any exceptions taken to the
11 instruction or requests for additions to the instruction by
12 the state?

13 MR. BARNETTE: None from the state, Your Honor.

14 THE COURT: By the defendant?

15 MR. SCHULTZ: None from the defense, Your Honor.

16 THE COURT: Let me ask y'all to verify the exhibits
17 before they go back.

18 (Pause.)

19 THE COURT: All right. All of the exhibits are
20 accounted for?

21 MR. BARNETTE: Yes, sir, from the state.

22 THE COURT: All right. Send them back and tell the
23 jury to begin deliberations and notify us when they have
24 concluded.

25 (Whereupon, the exhibits were submitted to the jury at

Verdict

1 3:25 p.m.)

2 THE COURT: We will be at ease while the jury is
3 deliberating.

4 (Whereupon, a recess was taken.)

5 THE COURT: All right. I'm told the jury has reached
6 a verdict. Are we ready to receive it?

7 MR. BARNETTE: The state is ready, Your Honor.

8 MR. SCHULTZ: The defense is ready, Your Honor.

9 THE COURT: Okay. Bring them in.

10 (Whereupon, the jury returned to the courtroom at
11 5:03 p.m. to report its verdict.)

12 THE COURT: Madam Forelady, have you and your fellow
13 jurors reached a unanimous decision on each of the separate
14 indictments?

15 THE FOREPERSON: We have, Your Honor.

16 THE COURT: Did you indicate those decisions on the
17 back as requested?

18 THE FOREPERSON: Yes, Your Honor.

19 THE COURT: Did you sign your name as the foreperson?

20 THE FOREPERSON: Yes, Your Honor.

21 THE COURT: And date it?

22 THE FOREPERSON: Yes, sir.

23 THE COURT: If you will, please hand those up by way
24 of the bailiff.

25 All right. You may publish the verdicts.

Verdict

1 THE CLERK: In the State of South Carolina, County of
2 Spartanburg, the Court of General Sessions, grand (sic)
3 jury of Spartanburg County for the defense (sic) of murder,
4 the verdict of guilty, signed by the foreperson January the
5 1st, January 16th of 2008.

6 Indictment No. 2007-GS-42-1407, State of South
7 Carolina, County of Spartanburg, Indictment No.
8 2007-GS-42-1408, in the General Sessions Court, the State
9 vs. Nathaniel Charles Teamer, indicted for assault and
10 battery with intent to kill, the verdict of guilty, signed
11 by the foreperson January 16th of 2008.

12 Ladies and gentlemen of the jury, if this is your
13 verdict and still your verdict, if so please raise your
14 right hand.

15 (Whereupon, all jurors responded in the affirmative.)

16 THE COURT: All right. Does the defendant wish to
17 have the jury polled?

18 MR. SCHULTZ: We do, Your Honor.

19 THE COURT: All right. Poll the jury, please, ma'am.

20 THE CLERK: Ladies and gentlemen of the jury, I will
21 pose a question, after which I will ask you to stand
22 individually in response to my question, the question being
23 is this your verdict and still your verdict.

24 I will call each juror by their name and number, and
25 at that time you will stand.

Verdict

1 Ricky L. Cromer, Juror No. 39, is this your verdict
2 and still your verdict?

3 THE JUROR: It is.

4 THE CLERK: You may be seated.

5 Juror No. 70, Daniel Greer, is this your verdict and
6 still your verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Juror No. 18, Ronald Brogden.

9 THE JUROR: Yes.

10 THE CLERK: Juror No. 152, Sharon Pittman.

11 THE JUROR: Yes.

12 THE CLERK: Juror No. 96, Julie Mize.

13 THE JUROR: Yes, it is.

14 THE CLERK: Juror No. 73, Clayton Hall.

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 130, Johnny Riddle.

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Juror No. 25, Douglas C. Cannon.

19 THE COURT: Yes, ma'am.

20 THE CLERK: Juror No. 136, Donald W. Smith.

21 THE JUROR: Yes, it is.

22 THE CLERK: Juror No. 3, Steven Ball.

23 THE JUROR: Yes, it is.

24 THE CLERK: Juror No. 112, Tammy Morgan.

25 THE JUROR: Yes, ma'am.

Motion and sentence

1 THE CLERK: Juror No. 71, Tamika Greer.

2 THE JUROR: Yes.

3 THE COURT: All right, sir. Any other matters we need
4 to address with the jury present?

5 MR. BARNETTE: None from the state, Your Honor.

6 MR. SCHULTZ: None from the defense, Your Honor.

7 (Whereupon, the trial jury was excused.)

8 THE COURT: All right. Any matters that need to be
9 addressed prior to the imposition of sentence?

10 MR. SCHULTZ: Your Honor, at this time I would like to
11 move for a new trial based upon all the evidence that was
12 admitted over my objections, all motions that were denied
13 and overruled.

14 THE COURT: All right. That motion is denied.

15 MR. SCHULTZ: Your Honor, the defense has one more
16 thing that he would like to take up, and that is regarding
17 the notice of life sentence pursuant to Section 17-25-45.

18 Your Honor, the state served Mr. Teamer and myself
19 with notice. That notice was filed on December 18th of
20 last year.

21 Your Honor, the defense would contend that all of
22 these charges, specifically the one that Mr. Teamer was
23 convicted of today and also the one that Mr. Teamer was
24 convicted of back in September, are the results of one
25 continuous crime spree.

1 I don't believe -- the defense would contend that the
2 notice of life sentence pursuant to Section 17-25-45 is not
3 applicable. And I believe there's some case law that backs
4 me up on this -- State vs. Woody. That's a 2004 Supreme
5 Court case, South Carolina Supreme Court case.

6 It says that it's well established that two prior
7 convictions for -- in this case it was armed robbery. In
8 State vs. Woody it was armed robbery, "stem from a single
9 criminal incident." And that the 2-strikes law is not at
10 those -- recidivous status is premised solely upon acts
11 which occurred in time so closely connected in point in
12 time that they may be considered as one offense.

13 Your Honor, if the evidence is to be believed in this
14 case, the crime happened that we just tried this case on
15 around 8:45 on February the 2nd. And the last case, last
16 charge that Mr. Teamer was convicted of, was a felony D. U.
17 I. And that terminated around, I would say, 1:00 o'clock
18 the next morning. So we're talking in the span of three to
19 four hours. So I believe the life-without-parole statute,
20 17-25-45, is inapplicable in this case.

21 THE COURT: I don't have the notice. Have you got the
22 notice?

23 MR. BARNETTE: No, sir. I can get you a copy of it,
24 sir.

25 THE COURT: Get me a copy of it. Have you got it?

1 MR. SCHULTZ: This is my notice, Your Honor.

2 THE COURT: Okay.

3 MR. BARNETTE: And, Your Honor, I'll be glad to
4 explain why the notice was filed.

5 THE COURT: All right. Mr. Barnette.

6 MR. BARNETTE: Your Honor, two reasons. One, he does
7 have some other pending charges. He has an ABWIK charge
8 from January the 14th of 2006 and he also has a criminal
9 sexual conduct, as well a kidnapping charge, from 2005.

10 We served notice for all of these charges plus this
11 one here today. And when this trial was severed from
12 there, and the way I read the case law too, maybe just to
13 make sure I understand it correctly, is that most of the
14 case they talk about is like armed robberies that's
15 committed by the individual back to back.

16 These are different crimes totally. This murder and
17 ABWIK was Tony Hunter and Mike Proctor which had no
18 relationship to the other two crimes.

19 This one happened around between 8:30 to 8:45 p.m. on
20 February the 2nd. The home invasion and the burglary first
21 which he was convicted of is September the 1st. That
22 occurred around 11:00 o'clock that evening. It involved
23 the Grays. It had no relation between the first couple of
24 victims of that crime.

25 Then from 11:00 o'clock until the 1:00 o'clock crime,

1 which was the felony D. U. I. and failure to stop, had no
2 relationship to the other two, obviously, other than him
3 being chased and that the phone was found in that car.

4 Of course the two we're talking about is the 8:00 and
5 11:00 o'clock one because that's the one that creates the
6 situation of two strikes. And we thought because obviously
7 they're not related in that sense, because they're not
8 dealing with the same type of crime, and then the other
9 thing was too he had the other crimes that clearly was not
10 on that date that he would qualify under the 2-strikes
11 rule, Your Honor.

12 THE COURT: All right. Let me be sure I understand.
13 The burglary first and the felony driving under the
14 influence was at what time that day?

15 MR. BARNETTE: The burglary first, Your Honor, was at
16 11:00 o'clock that evening.

17 THE COURT: Right.

18 MR. BARNETTE: And the felony D. U. I. was
19 approximately 1:00 or 1:30 p.m. the next -- or a.m. Excuse
20 me. 1:00 or 1:30 a.m.

21 THE COURT: This incident was 8:45 or whatever,
22 earlier in the evening.

23 MR. BARNETTE: Yes, sir. They happened within a
24 five-to-six-hour period of each other.

25 THE COURT: Well, let me see that case, Mr. Schultz.

1 MR. SCHULTZ: Your Honor, I don't have the case. I
2 have some certain quotes from the case, Your Honor. Your
3 Honor, I can get the case.

4 THE COURT: Well, give me the case cite.

5 MR. SCHULTZ: The case cite is State vs. Gordon, Your
6 Honor.

7 THE COURT: That's the latest one?

8 (Bench conference held off the record.)

9 THE COURT: All right. There are no other qualifying
10 offenses or convictions he has other than the ones that
11 occurred on the same day?

12 MR. BARNETTE: Yes, sir. That's the only one he has
13 at this point.

14 THE COURT: All right. Well, as I read the cases,
15 I've read Gordon and Woody. And as I read the cases, it
16 appears to me that this would fall under that similar facts
17 as in those cases, and that would be that the recidivous
18 statute is not applicable in the case where offenses occur
19 so close in time as to be treated as one, even though
20 they're unconnected, the purpose of the recidivous statute
21 being that someone has committed a crime and then suffered
22 a punishment, been incarcerated and then released and then
23 continues to commit crime.

24 It appears to me that the purpose of that
25 life-without-parole statute under that, under these cases,

Sentence

1 is to discourage that or prevent that as opposed to someone
2 committing crimes all in one day. Even though they're not
3 connected, they haven't yet been incarcerated.

4 Do you want to address that?

5 MR. BARNETTE: No, sir. I'll respect the Court's
6 ruling in this situation.

7 THE COURT: Well, if you read Woody and Gordon any
8 differently, you need to tell me.

9 MR. BARNETTE: No, sir. I understand where the Court
10 is coming from. And, like I said, I don't know. I realize
11 that's the only cases that we have to guide us. And I know
12 our fact situation is a little bit different. And the
13 reason why is obviously just to make sure we had everything
14 covered.

15 THE COURT: Sure. I understand. All right. Well,
16 I'm not going to apply 17-25-45.

17 MR. SCHULTZ: Yes, sir, Your Honor. Thank you.

18 THE COURT: All right. Anything else prior to the
19 imposition of sentence?

20 MR. BARNETTE: Your Honor, I did hand the sentencing
21 sheets to Mr. Schultz. I don't know if they're finished or
22 not.

23 MR. SCHULTZ: Mr. Teamer indicated that he did not
24 wish to sign these.

25 THE COURT: Okay.

Sentence

1 MR. BARNETTE: May I approach the bench, Your Honor?

2 THE COURT: Sure. All right. Any further
3 presentation on behalf of the state?

4 MR. BARNETTE: Your Honor, if I could check just real
5 quickly.

6 THE COURT: Okay.

7 MR. BARNETTE: Your Honor, the victim's family trusts
8 the Court's judgment in this situation. We do have a prior
9 record if you'd like for us to read that to you, Your
10 Honor.

11 THE COURT: Yeah. Tell me about.

12 MR. BARNETTE: Mr. Stalvey is going to read that to
13 you.

14 MR. STAVLEY: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 MR. STAVLEY: In 2000, assault with intent to kill;
17 2002, possession with intent to distribute marijuana and
18 possession of a pistol under 21; also in 2002 conviction
19 for assault of a high and aggravated nature, actually two
20 convictions for that; another unlawful possession of a
21 pistol by a person under 21; discharging a firearm into a
22 dwelling; assault and battery of a high and aggravated
23 nature. And then in September of 2007, burglary first
24 degree, felony D. U. I. and failure to stop. That's his
25 prior record, Your Honor.

Sentence

1 THE COURT: All right. Mr. Schultz, does your client
2 agree with that record as being accurate?

3 MR. SCHULTZ: I believe he does, Your Honor.

4 THE COURT: Okay. Anything further on behalf of the
5 defendant?

6 MR. SCHULTZ: No, sir, Your Honor.

7 THE COURT: Mr. Teamer, do you wish to tell me
8 anything prior to the imposition of sentence?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. On Indictment 2007-1407,
11 that's the indictment for murder, wherein you have been
12 found guilty by a jury of that offense, the Sentence of the
13 Court is you, Nathaniel Charles Teamer, be confined to the
14 South Carolina Department of Corrections for the period of
15 your natural life. That sentence is consecutive to any
16 other sentence imposed today or previously imposed.

17 Indictment 2007-1408, assault and battery with intent
18 to kill, Sentence of the Court is you, Nathaniel Charles
19 Teamer, be confined to the South Carolina Department of
20 Corrections for a period of 20 years. That sentence is
21 consecutive to any other sentence imposed today or
22 previously imposed.

23 Now, Mr. Teamer, you have a right to appeal the
24 verdicts of the jury and the Sentence of the Court. You
25 must file any notice of your intention to appeal those

Sentence

1 decisions within ten days of today's date.

2 MR. SCHULTZ: That is our intention, Your Honor.

3 THE COURT: Okay.

4 END OF REQUESTED TRANSCRIPT OF RECORD

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Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 14th, 15th and 16th days of January 2008.

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

July 25, 2008



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Nathaniel Teamer, #285309,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-4049

ORDER GRANTING APPLICATION
FOR POST CONVICTION RELIEF

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I. PROCEDURAL HISTORY

A. Post Conviction Relief Procedural History

This matter comes before the Court by way of an Application for Post Conviction Relief (PCR) filed in Spartanburg County on August 2, 2010. On February 16, 2011, the State submitted a Return. On May 17, 2011, Applicant, through counsel, filed a Motion for Discovery in Post Conviction Relief. A Motion Hearing was held on June 15, 2011 at the Spartanburg County Courthouse in front of the Honorable Roger L. Couch.

Applicant was present and represented by Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire. Respondent was represented by Suzanne H. White, Assistant Attorney General. On July 6, 2011, an Order Authorizing Discovery was entered.

On October 8, 2012, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief, which added the following specific allegations to his original allegation of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel for failure to prepare with Applicant by going over the discovery materials and fully discussing trial strategy; failure to investigate the witnesses and evidence put forth by the State.
2. Ineffective assistance of trial counsel for failure to make a pre-trial motion regarding the t-shirt worn by the murder victim's family in the courtroom. Failure to request to have the jury questioned regarding their exposure to it.

3. Ineffective assistance of trial counsel for making a motion to sever which allowed the State to stream line the case against Applicant, eliminated defenses and allowed evidence from charges in 1st trial to be used against Applicant in 2nd trial. Ineffective assistance of counsel for failure to be prepared to proceed after motion to sever was granted and to properly preserve the issue for appellate review.
4. Ineffective assistance of trial counsel for failure to discuss the letters admitted into evidence with Applicant prior to trial. Ineffective assistance of trial counsel for providing false information to the court regarding the recipient of the letters, stipulating to the authenticity of the letters, making an untimely objection regarding the recipient and/or foundation for the letters. Ineffective assistance of trial counsel for failure to use the letters to explore the defense regarding the underlying DSS case.
5. Ineffective assistance of trial counsel regarding the phone call evidence introduced and relied upon by the State at trial, specifically:
 - a. Failure to effectively raise a pre-trial argument regarding the logistics of Applicant accessing the phone at the jail.
 - b. Failure to obtain records and/or testimony regarding Applicant's location and access to the phone at the jail.
 - c. Failure to object to the introduction of the call records at trial.
 - d. Failure to object to Erica Gray's identification of Applicant's voice.
 - e. Failure to have a clear strategy regarding redactions and/or the use of the entire phone conversations.
6. Ineffective assistance of trial counsel for failure to properly cross-examine the victims that testified and present Applicant's defense regarding the underlying DSS case.
7. Ineffective assistance of trial counsel regarding the handling of the testimony and evidence elicited from law enforcement witnesses, specifically:
 - a. Failure to object to the introduction of the video evidence.
 - b. Failure to file a motion and/or object concerning the destruction of the beer can, which was taken into evidence.
 - c. Failure to properly address the testimony and/or evidence regarding Applicant's usage of his headlights.
 - d. Failure to object to opinion testimony offered by law enforcement.

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J. MOORE

8. Ineffective assistance of trial counsel for failure to address Applicant's filed Motion to Dismiss the Felony DUI charge. Failure to raise all viable defenses to the Felony DUI charge.
9. Ineffective assistance of trial counsel for failure to effectively argue for introduction of the victim's (James Young) toxicology results. Failure to utilize the testimony of James Young to further expose inconsistencies in the testimony of the law enforcement officers.
10. Ineffective assistance of trial counsel for failure to advise Applicant regarding the introduction and use of the drug evidence. Failure to make objections: 1) regarding the searches of the Chevy Caprice that resulted in the location of the drug evidence, 2) regarding chain of custody, and 3) regarding the use of an uncharged "bad act."
11. Ineffective assistance of trial counsel for failure to make a directed verdict motion on the burglary and armed robbery charges.
12. Ineffective assistance of trial counsel for failure to properly prepare and utilize Applicant's alibi witnesses.
13. Ineffective assistance of trial counsel for failure to object to the State's closing argument, i.e. bolstering.
14. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal, including but not limited to pre-trial motions, trial objections and rulings on Applicant's evidence.
15. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

An evidentiary hearing into the matter was held on October 29, 2012 at the

Spartanburg County Courthouse in front of the Honorable Brooks P. Goldsmith.

Applicant was present at the hearing and was represented by Tricia A. Blanchette,

Esquire, and Jeremy Thompson, Esquire. The State was represented by Suzanne H.

White, Assistant Attorney General. At the beginning of the hearing, counsel added the following amendment, which was not opposed by the State:

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1. Trial counsel failed to object to the trial judge's statements to the jury that "your sole objective is to simply reach the truth of the matter" and "simply give both the state and the defendant a fair and impartial trial."

During the hearing, Applicant testified on his own behalf. Applicant's counsel also called Latoya McCravy and Joshua Shultz, Esquire to the stand. Applicant's counsel introduced twenty exhibits. The parties agreed that the trial transcript from State v. Nathaniel Teamer, Docket No.: 2007-GS-42-1407 & 1408 would be incorporated in the record and provided to the Court and a map of the area in question would be provided for the Court's reference. This Court was also provided a copy of the Application, the Respondent's Return, Applicant's Amendment, the records of the Spartanburg County Clerk of Court concerning the subject conviction, the trial transcript, and Applicant's records from the South Carolina Department of Corrections.

At the close of the hearing, the Honorable Brooks P. Goldsmith, took the matter under advisement. Thereafter, the Honorable Brooks P. Goldsmith requested that Applicant's counsel submit a proposed Order, from which this Order follows.

B. General Sessions Procedural History

The Applicant is presently confined in the South Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During the May 2006 term of the Spartanburg County Grand Jury, Applicant was indicted for Burglary, First Degree (Indictment No.: 2006-GS-42-1719), Armed Robbery (2006-GS-42-1720), Felony Driving Under the Influence, Great Bodily Injury (2006-GS-42-1732), and Failure to Stop (2006-GS-42-1733). On September 12, 2007, a jury trial was conducted in Spartanburg County in front of the Honorable J. Derham Cole. Applicant was represented by Joshua Schultz, Esquire. The jury returned a verdict of not guilty on

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the Armed Robbery charge and guilty on the remaining charges. On February 2, 2007, the Honorable J. Derham Cole sentenced Applicant to confinement for concurrent terms of thirty (30) years for Burglary, fifteen (15) years for Felony DUI, and ten (10) years for Failure to Stop.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Katherine H. Hudgins, South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Teamer, Op. No. 2010-UP-117 (S.C. Ct. App. filed February 11, 2010). The Remittitur was issued on July 13, 2010. .

II. APPLICABLE LAW

In a PCR action, the "burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

For Applicant to meet his burden of proof and prevail on his allegations of ineffective assistance of trial counsel, the two-prong test applicable to such a claim must be met. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2065 (1984). The first prong analyzes whether counsel failed to render reasonably effective assistance under the prevailing professional norms. Id. The second prong places the burden on Applicant to show that but for counsel's deficient performance the outcome would have been different. Id. The second prong is known as the "prejudice" requirement. This requirement is met if counsel's actions or inactions resulted in prejudice to Applicant. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 539 (1995).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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This Court has had the opportunity to review the entire record and has heard the testimony and arguments as presented at the hearing. This Court has also had the opportunity to observe each witness and pass upon his or her credibility. This Court has weighed the testimony accordingly. This Court finds the testimony of the evidentiary hearing witnesses to be credible. Set forth below are the relevant findings of fact and conclusions of law on each issue raised by Applicant as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Trial Counsel

1. Ineffective assistance of trial counsel for failure to prepare with Applicant by going over the discovery materials and fully discussing trial strategy; failure to investigate the witnesses and evidence put forth by the State.

At the evidentiary hearing, Applicant admitted that he reviewed the discovery materials with counsel prior to trial, and trial counsel agreed. Trial counsel explained that he utilized a private investigator. Trial counsel explained that the defense and/or strategy regarding the DUI charge was that the Applicant was not materially impaired based upon his Blood Alcohol Content and testimony from an officer that Applicant was not driving erratically. Counsel testified that the defense and/or strategy on the charges relating to the Grays' residence was to focus on the inconsistent statements given by the victims and the fact that they failed to identify the Applicant in their initial statements. Counsel also testified that he had numerous meetings with the Applicant, received a great deal of correspondence from the Applicant, and had many conversations via telephone with the Applicant.

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court of South Carolina reversed the lower court and granted PCR relief when counsel failed to

conduct a reasonable investigation. The Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts of the case. Lounds, 380 S.C. at 460, 670 S.E.2d at 649, See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). This Court finds that trial counsel met with Applicant numerous times, fully reviewed the discovery, and utilized an investigator to interview witnesses and other matters.

Strickland set the standard for evaluating counsel's performance. The courts do not presume ineffective assistance of counsel from a lack of criminal trial experience. Yohey v. Collins, 985 F.2d 222 (5th Cir. 1993); United States v. Pitino, 887 F.2d 42, 48 (4th Cir. 1989). As the Fifth Circuit Court of Appeals noted:

Whether the defendant has been afforded his right to counsel depends on whether the attorney is reasonably likely to render and does render reasonably effective assistance, not on whether counsel has an extensive background in criminal defense work.

United States v. Lewis, 786 F.2d 1278, 1281 (5th Cir. 1986).

Although Counsel testified that he had previously tried only one armed robbery and burglary case prior to the Applicant's case, this Court finds that trial counsel was not deficient because he prepared for trial by going over the discovery materials with the Applicant, fully discussing trial strategy and investigating the witnesses and evidence put forth by the State. Therefore, this claim must fail on the first prong of the Strickland analysis.

2. Ineffective assistance of trial counsel for failure to make a pre-trial motion regarding the t-shirt worn by the murder victim's family in the courtroom. Failure to request to have the jury questioned regarding their exposure to it.

At the evidentiary hearing, Applicant called Latoya McCravy to the stand. Ms. McCravy recalled seeing a victim's family member in hallway outside the courtroom wearing a t-shirt with images related to Applicant's charge for murder.¹ Ms. McCravy was unsure if the t-shirt was seen by the jury members, but she did see the family member in the courtroom when the jury was present.

While on the stand, Applicant explained that trial counsel failed to bring the issue involving the inflammatory and prejudicial t-shirt to the trial court's attention. When asked, trial counsel could not recall the t-shirt and conceded that he did not make a motion regarding it because he said it was never brought to his attention.

This Court finds that it would require conjecture to find that trial counsel was ineffective for failing to make a pre-trial motion regarding the t-shirt and/or have the jury questioned regarding it. Clearly, Ms. McCravy nor the Applicant could affirm that the jury actually was exposed to the t-shirt and this Court is hesitant to rely upon conjecture. Therefore, this claim must fail under the first prong of the Strickland analysis.

3. Ineffective assistance of trial counsel for making a motion to sever, which allowed the State to stream line the case against Applicant, eliminated defenses and allowed evidence from charges in first trial to be used against Applicant in the second trial. Ineffective assistance of counsel for failure to be prepared to proceed after motion to sever was granted and to properly preserve the issue for appellate review.

At the beginning of Applicant's trial, counsel made a motion to sever the indictments on the basis that the indictments stemmed from three separate incidents.

Burglary Transcript p. 11. The trial court held that the murder and burglary charges may

¹ When the case was called for trial, Applicant was also going to trial on charges for murder and assault and battery with intent to kill (Indictment No.: 2007-GS-42-1407 & 1408). After a successful severance motion by defense counsel, the charges for murder and assault and battery with intent to kill were severed from the

not be tried together, but the DUI and traffic offenses could be tried with either charge. Burglary Transcript p. 28. Following the court's ruling, trial counsel asked for more time to prepare, and the court granted a continuance until the next morning. Burglary Transcript p. 43.

Throughout the course of his lengthy evidentiary hearing testimony, Applicant repeatedly addressed his allegation that counsel was ineffective for making a motion to sever, which allowed the State to stream line the case, eliminated defenses and allowed evidence from charges in first trial to be used against him in at his second trial. Applicant went through the timeline of events and explained that it was detrimental to his defense when the State did not have to reconcile all the events that he supposedly took part in the night in question. Applicant referenced counsel's closing argument regarding "two Charlies" and explained how the severance impaired that argument. Burglary Transcript p. 421. Additionally, Applicant relied upon the murder transcript and explained how the DUI and traffic offenses were used against him at the subsequent murder trial. Applicant also addressed counsel's request for a continuance and alleged that counsel was ineffective when he was not prepared to proceed after his motion to sever was granted. Finally, Applicant explained that the severance issue was raised on direct appeal, but counsel failed to obtain a ruling on his argument that the charges stemmed from three separate incidents and should be tried as such, which resulted in limiting how the issue was addressed on direct appeal.

Trial counsel testified that he made the motion to sever because he believed the prejudice of trying all charges together was greater to the Applicant because the jury

remaining charges and tried on January 14-16, 2008. A copy of the transcript from that trial was incorporated in the record before this Court at the evidentiary hearing.

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could assume that if Applicant committed one of the alleged charges then he committed all of the charges. So Counsel testified he made the strategic decision to make the motion to sever. Counsel also testified that he was fully aware that the State was planning to introduce the Felony DUI and Failure to Stop charges at the murder trial. He testified that he anticipated the State would elect to try the murder first, so he prepared for that possibility, which included his scripted opening argument; however, he was also aware that the burglary could be tried first. He recalled that he was fully prepared to proceed to trial on any of the charges, but wanted the continuance to rewrite his opening argument.

Upon review of the trial transcripts, the appellate records, and the testimony at the evidentiary hearing, this Court finds that trial counsel was not ineffective for requesting and obtaining a severance. This Court is not convinced that Applicant would have received a more favorable outcome if all the charges were tried together.

Additionally, this Court finds that trial counsel provided an adequate and reasonable explanation for his continuance request. Furthermore, this Court cannot find that trial counsel was ineffective in his preservation of the issue for appellate review. Clearly, the issue was raised and ruled upon by the Court of Appeals and no prejudice was suffered by how trial counsel preserved the issue. Therefore, this claim must fail under both prongs of the Strickland analysis.

4. Ineffective assistance of trial counsel for failure to discuss the letters admitted into evidence with Applicant prior to trial. Ineffective assistance of trial counsel for providing false information to the court regarding the recipient of the letters, stipulating to the authenticity of the letters, making an untimely objection regarding the recipient and/or foundation for the letters. Ineffective

assistance of trial counsel for failure to use the letters to explore the defense regarding the underlying DSS case.

During pretrial motions, counsel argued that the letters the State planned to introduce were more prejudicial than probative and while they could be considered relevant, the letters would lead to a confusion of the issues. Burglary Transcript p. 32, Ins. 2-17. Trial counsel informed the court that the letters were written by Applicant and turned over to law enforcement by Erica Gray. Burglary Transcript p. 33, Ins. 5-6, 16-17. When directly asked by the court, trial counsel stated that the recipient of the letters provided them to police. Burglary Transcript p. 33, Ins. 21-23. The State explained that the letters established motive regarding Donald Martin. Burglary Transcript p. 34, Ins. 19-25. The State affirmed that the recipient planned to introduce the letters and lay the proper foundation. Burglary Transcript p. 36, Ins. 11-23. Thereafter, the trial court ruled that selected portions of the letters would be admitted over defense counsel's objection. Burglary Transcript p. 96, Ins. 22-23.

While on the stand at trial, Erica Gray identified Applicant's handwriting in the letters and acknowledged that the letters were written to her sister Chrissy (A.K.A. Natalie) and teenage daughter Iesha, who was living with Chrissy at the time. Burglary Transcript pp. 152-3. After which, defense counsel entered a contemporaneous objection since the letters were written to two people that had not testified. Burglary Transcript p. 153, ln. 7. The objection was overruled. Burglary Transcript p. 153, ln. 14.

At the evidentiary hearing, Applicant testified that trial counsel failed to review the letters or discovery related to the letters with him prior to trial. Applicant's Exhibit #1. Counsel testified that he did discuss the letters delivered to the police from Erica Gray with the Applicant, but he did not recall the timing of his receipt of those letters

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from the State and their discussion and he did not recall reviewing them with Applicant in person. As a result of his alleged lack of preparation, Applicant explained that counsel provided false information to the court regarding the recipient of the letters and made an untimely objection after realizing that he was incorrect about the recipient of the letters. When asked, trial counsel acknowledged that Erica Gray was not the initial recipient of the letters ; however, Erica was the person that had obtained the letters and turned them over to the State. Trial counsel further explained that he did not believe that he could have kept the letters out, because the State had Natalie (Chrissy) listed as a potential State witness and could easily have called her to resolve the issue.

Despite counsel's failure to provide the court with accurate information regarding the recipient during his pretrial motion, this Court finds that trial counsel's failure does not amount to a deficiency that affected the outcome of Applicant's trial. This Court is not aware of any chain of custody issues related to the letters that could have been raised. Furthermore, this Court agrees with trial counsel and finds that even if counsel would have provided the trial court with the names of the actual recipients of the letters, the State could have called the actual recipients and cured the problem. Therefore, this claim must fail under the second prong of the Strickland analysis.

Throughout the course of his testimony, Applicant alleged that trial counsel was ineffective for failing to utilize his defense involving an underlying DSS case with the Gray family. Applicant identified and counsel admitted police reports and DSS documents that Applicant relied upon to support his claim. Applicant's Exhibit #7-8. Applicant explained that he was related to the Gray family and a family feud resulted from a DSS case involving Iesha Gray. Additionally, Applicant explained that the

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information regarding the DSS case could have been utilized to demonstrate motive on the part of the Gray family for implicating Applicant in the crimes at issue. Applicant indicated that it was his understanding that counsel was going to address the DSS case as part of his defense at trial and that the letters could have been an avenue in which to do so. Applicant pointed out that trial counsel attempted to ask Donald Martin about DSS hearings involving Iesha, but the court sustained the State's objection. Burglary Transcript p. 185.

Counsel testified that he was aware of the issues with the Grays and the DSS matter and discussed them with the Applicant. When asked, trial counsel acknowledged that he did not make a pretrial motion regarding an attempt to enter any DSS report or make an argument to the court regarding the report's relevancy. However, Counsel testified that he did try to cross-examine the Grays on the issue and surmised that while he believed the evidence may have been relevant, he thought that it was questionable if they would have been admissible. He admitted that he did not attempt to tie the letters to the DSS issue and it probably would have shown bias on the part of the Grays, that information regarding Donald Martin and Iesha was in one of the letters that the jury was able to review..

Based upon the transcript, evidentiary hearing testimony and exhibits, this Court finds that trial counsel was not ineffective for his handling of the DSS evidence and possible motive defense as is alleged in this issue relating to the letters and issue #6 below. This Court finds that trial counsel attempted to explore the matter with Donald Martin and the State's objection was sustained. This Court finds that Applicant has failed to show what further effort on the part of trial counsel could have done to affect the



outcome of his trial. Therefore, this claim, as it relates to the letters and as stated in issue #6 below, must fail under the Strickland analysis.

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5. Ineffective assistance of trial counsel regarding the phone call evidence introduced and relied upon by the State at trial.

During pretrial motions, trial counsel argued that the phone call evidence should not be admitted under the same logic as the letters – relevancy, prejudice, and potential confusion for the jury. Burglary Transcript p. 37. He asked that the calls be introduced in their entirety if the court ruled the phone calls were admissible. Burglary Transcript p. 37. The court held that the phone call evidence was relevant and admissible. Burglary Transcript p. 40, Ins. 15-16.

By way of his amendment and at the evidentiary hearing, Applicant alleged that trial counsel was ineffective regarding the phone call evidence since he failed to effectively raise a pre-trial argument regarding the logistics of Applicant accessing the phone at the jail, failed to obtain records and/or testimony regarding Applicant's location and access to the phone at the jail, failed to object to the introduction of the call records trial, failed to object to Erica Gray's identification of Applicant's voice, and failed to have a clear strategy regarding redactions and/or the use of the entire phone conversations. In support of his allegations, Applicant explained that he attempted to obtain records regarding his pod location and rotation time from the jail to show that he could not have made the calls in question, but the records were no longer available. Exhibit #3. He explained that counsel failed to go over the phone calls with him and obtain the information from the jail that could have been used in a pre-trial motion or in his cross-examination of Captain Jones.

Counsel testified that he reviewed the phone calls alleged to have been made by the Applicant while in the Detention Center. As it relates to Applicant's Exhibit 2,

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Counsel stated that his private investigator had made notes regarding the information received about the Applicant making phone calls and they were not able to determine if the Applicant was able to make calls. When asked, counsel admitted that he did not review the phone calls with Applicant since he got them from the State right before trial. Counsel also stood by his request for no redactions to the phone calls because he stated that the conversations were hard to understand and he thought that the jury had just as difficult a time of trying to understand what was being said. Counsel testified that he did not think that the calls either harmed or helped the case.

Based upon the transcript, evidentiary hearing testimony and exhibits, this Court finds that trial counsel was not ineffective as was alleged by Applicant. The Applicant failed to meet his burden of proof in establishing that had Counsel done any additional investigation or made any additional motions, that the outcome of either the pre-trial hearing or trial would have been different. "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). . . Additionally, this Court finds that Counsel cross-examined the State's witnesses regarding the phone calls and Applicant has failed to show how counsel's performance amounted to ineffective assistance.

Therefore, this claim must fail under the first prong of the Strickland analysis.

6. Ineffective assistance of trial counsel for failure to properly cross-examine the victims that testified and present Applicant's defense regarding the underlying DSS case.

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As to the portion of Applicant's allegation regarding the underlying DSS case, this Court finds that this claim must fail as is fully discussed in issue #4 above. This Court also finds that Applicant's claim that trial counsel should have more fully cross-examined the witnesses from the residence regarding their statements must fail since the record reflects that counsel conducted cross-examination on the statements. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not present any testimony showing the witnesses' answers at trial would have been different

Despite counsel's admission that he was familiar with, but lacked experience in admitting prior inconsistent statements, this Court finds that counsel adequately cross-examined the witnesses on their prior inconsistent statements.

However, this Court does find that trial counsel rendered ineffective assistance when he failed to ask Erica Gray, a lead witness for the burglary and armed robbery charges, about her prior conviction for impeachment purposes. During cross-examination of Erica Gray, trial counsel asked her if she had a criminal record. In response, Erica Gray volunteered information about a drug charge from "about the year '97." Burglary Transcript p. 143. At the evidentiary hearing, Counsel testified that he reviewed Erica Gray's NCIC report and although it indicated both the drug charge and the false

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information charge, the report failed to indicate any disposition on the false information charge, so he did not think he could use it at trial.

While on the stand, Applicant identified and counsel introduced the case history for State of South Carolina v. Erica Gray, Case: E138187. Applicant's Exhibit #6. This Court finds that the certified true copy of the case history reflects that an arrest warrant was issued for Erica Gray following her testimony at a preliminary hearing on July 7, 1994 wherein she admitted that "she lied" to police concerning a reported shooting and burglary at her home. The case history further reflects that Erica Gray was found guilty following a bench trial on January 12, 1995.

The general rule on impeaching a witness's credibility is that a witness, other than the accused, may be impeached with a prior conviction that carries a sentence of more than one year. Rule 609(a)(1), SCRE. Crimes involving dishonesty or false statement may be admitted for impeachment purposes regardless of the punishment. Rule 609(a)(2). However, Rule 609(b), SCRE, contains a time limit that establishes a presumption against the admissibility of remote convictions, i.e., those more than ten years old for impeachment unless the trial court expressly finds the probative value of the conviction "substantially outweighs" its prejudicial effect. State v. Johnson, 363 S.C. 53, 569 S.E.2d 520 (2005).

The South Carolina Supreme Court has held that a trial judge must conduct a balancing test to determine whether remote convictions are admissible under Rule 609(b), SCRE. State v. Colf, 337 S.C. 622, 626, 525 S.E.2d 246, 248 (2000). When considering whether to admit prior convictions, a trial judge should consider the following factors:

- (1) The impeachment value of the prior crime;

- (2) The point in time of the conviction and the witness's subsequent history;
- (3) The similarity of the past crime and the charged crime;
- (4) The importance of the defendant's testimony; and
- (5) The centrality of the credibility issue.

Id. at 627, 525 S.E.2d at 248. After the trial court conducts the balancing test, the judge must make a determination and articulate, on the record, the specific reasons for his ruling. Id. Specifically, the trial judge must articulate why the probative value of the conviction outweighs its prejudicial effect. State v. Johnson, 363 S.C. 53, 59-60, 609 S.E.2d 520 (2005). As it has been recognized that these factors are not exclusive, it must be noted that Colf involved the impeachment of a defendant, so some of these factors would need to be adjusted by the trial court in examining this conviction involving a non-defendant. See State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012).

Here, trial counsel did not provide notice to the State nor did he attempt to impeach Erica Gray with her prior conviction for giving false information to law enforcement. Counsel admitted that he recalled seeing a false information charge on her criminal history, but since the report did not indicate a disposition of the charge, he did not believe it could be used for impeachment purposes at trial. As a result of counsel's failure to act, the trial court did not conduct a balancing test to determine if the conviction, which fell just outside the ten-year time limit, could be admitted for impeachment purposes. Based upon record and the above stated balancing test, this Court finds that the false information conviction was likely admissible as it was highly probative to Applicant's defense that Erica Gray was not trustworthy.

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Looking to the Colf factors, this Court finds that the first factor, the impeachment value of the prior crime, weighs in favor of admissibility because the prior conviction is a "crime of dishonesty or untruthfulness that directly impact[s] the witness's veracity." State v. Black, supra, 400 S.C. at 21, 732 S.E.2d at 886. The second factor, the point in time of the conviction and the witness's subsequent history, also weighs in favor of admissibility because Erica Gray had been convicted of, and impeached with, a prior conviction that fell within the ten-year time limit. Cf. Id. ("[T]here is no evidence the witness has been convicted of any additional crimes since his release from confinement some fourteen years prior to trial"). The third factor, the similarity of the past crime and the charged crime, "is of no consequence here" because Erica Gray was not the defendant in this case. Id. The fourth and fifth factors, the importance of the witness's testimony and the centrality of the credibility issue, weigh heavily in favor of admissibility as Erica Gray's testimony was one of the most damaging aspects of the State's case. Since Applicant did not take the stand, his entire defense hinged on counsel's ability to effectively cross-examine the State's witnesses and, particularly, the credibility of Erica Gray. Not only did the State rely upon Erica Gray's testimony identifying Applicant as the perpetrator of the home invasion, but the State also used her to identify Applicant's handwriting and voice.. Accordingly, this Court finds that the probative value of the false information conviction substantially outweighed its prejudicial effect, and that defense counsel's performance was deficient in failing to utilize impeach Erica Gray with this conviction at trial.

Furthermore, for many of the same reasons, this Court finds that defense counsel's failure to impeach Erica Gray with the false information conviction prejudiced

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Applicant. Erica Gray was an important witness against Applicant. As discussed above, evidence that she had been convicted of a crime of dishonesty would have directly reduced her credibility and would have bolstered the Applicant's defense that he did not commit the burglary. As a result, this Court finds that trial counsel's error was prejudicial to Applicant because impeachment of Erica Gray with this conviction would have directly affected the outcome of the trial.

7. Ineffective assistance of trial counsel regarding the handling of the testimony and evidence elicited from law enforcement witnesses.

At trial, Corporal Darity of the South Carolina Highway Patrol, testified that he responded to the accident involving a blue Caprice and Chevy truck. He confirmed that the blue Caprice was driven by Applicant and the Chevy truck was driven by James Young. Burglary Transcript p. 257. He concluded that the accident was caused by Applicant crossing the center line. Burglary Transcript p. 258, Ins. 1-5. During cross-examination, he made the following admissions: 1) He did not note the cause of the accident in his report; 2) His report made no mention of Applicant crossing the center line; 3) No measurement or reconstruction was conducted at the scene; 4) The information regarding the center line came from the observations of another deputy. Burglary Transcript, pp. 262-3, 265-6, 270.

Officer St. Louis testified that he began following the blue Caprice when it pulled out in front of him with no lights. Burglary Transcript p. 314. He turned on his video and saw the driver throw out a beer can. Burglary Transcript p. 314. He initiated his blue lights, the driver drove through a stop sign, and he had to stop his pursuit and issue a BOLO ("be on the lookout") per policy. Burglary Transcript pp. 314-5. The video was

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admitted and played without objection. Burglary Transcript p. 316. On cross-examination, he explained that the beer can was taken into evidence but later destroyed. Burglary Transcript pp. 322-23.

Officer Evett testified that he received the BOLO, saw the Caprice and began pursuing it. Burglary Transcript p. 331. He recalled that the lights were off and the Caprice was speeding, which was very unsafe. Burglary Transcript pp. 332-2. He explained how he followed the vehicle without his blue lights on. Burglary Transcript p. 334. He recalled seeing another set of headlights and a shower of sparks. Burglary Transcript p. 336. He concluded that the accident was Applicant's fault since he was driving without his headlights, but he could not see if he crossed the center line. Burglary p. 340, Ins. 16-25. He admitted that he failed to turn on his in car camera and it was error. Burglary Transcript pp. 356-7. On cross-examination, he admitted that Applicant was following the rules of the road, except for no headlights, and was not driving erratically. Burglary Transcript p. 348-9. He also admitted that Applicant never left the roadway nor did he swerve or drift. Burglary Transcript p. 358, Ins. 1-14.

By way of his amendment and at the evidentiary hearing, Applicant alleged that trial counsel was ineffective when he failed to object to the introduction of the video evidence from the traffic charges, failed to file a motion and/or object concerning the destruction of the beer can, failed to properly address the testimony and/or evidence regarding Applicant's usage of his headlights, and failed to object to opinion testimony offered by law enforcement. Specifically, Applicant testified that counsel should have reviewed Corporal Darity's report with him and objected to his opinion testimony that Applicant caused the accident by crossing the center line and Officer Evett's opinion

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testimony that Applicant caused the accident by driving without his headlights.

Applicant identified and counsel introduced an evidence form, which indicated the beer can was destroyed before trial, and Applicant explained counsel did not review it with him or make a pretrial motion regarding the destruction of it. Applicant's Exhibit #16.

In response, trial counsel testified that he only received one video from law enforcement and he did not make a motion or address the absence of a video from Officer Evett. He agreed that the evidence form indicated the beer can was destroyed and that he did not make a motion regarding the destruction of it. Regarding the cause of the accident, he explained that it was normal procedure to utilize the MAIT team or some type of expert in accident reconstruction. When asked about the officers' testimony, he readily admitted that he did not make a motion or objection regarding their opinion testimony despite it being opinion testimony on an ultimate issue in the case. He also agreed that Corporal Darity's conclusion regarding the cause was based upon hearsay and subject to an objection. However, Counsel also testified that he was able, on cross-examination of the officers, to have them acknowledge that the Applicant's car was not driving erratically, was obeying green and red lights, Burglary Transcript p. 343-4, 348-9; 358. Counsel also cross-examined Officer Evett and was able to have him acknowledge that he did not know who caused the accident, but only knew findings from later on.

Burglary Transcript p. 351

This Court finds that Applicant has raised a number of cognizable issues about how trial counsel handled the testimony and evidence elicited from law enforcement in this case. Also, counsel readily admitted his failure to make several objections raised by Applicant. Nevertheless, this Court must examine the record as a whole in determining if

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counsel was ineffective and Applicant was prejudiced as a result. Due to counsel's cross-examination of the law enforcement officers, which addressed a number of the issues raised by Applicant, this Court cannot find that trial counsel was ineffective. Again, as noted earlier, the nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d at 1321; United States v. Rodriguez, 53 F.3d at 1449. This Court finds that the Applicant failed to meet his burden of proving that had Counsel made different decisions regarding questions or objections, that the testimony and trial outcome would have been different. Therefore, this Court finds that this claim must fail under the first prong of the Strickland analysis.

8. Ineffective assistance of trial counsel for failure to address Applicant's filed Motion to Dismiss the Felony DUI charge. Failure to raise all viable defenses to the Felony DUI charge.

As noted in the discussion of Issue #7 above, Officer Evett testified at trial that he forgot to turn on the on-board camera prior to initiating the pursuit of Applicant.

Burglary Transcript pp. 356-357. At the evidentiary hearing, Applicant testified that he believed that counsel should have moved to dismiss Applicant's Felony DUI charge because of Officer Evett's failure to videotape his conduct at the incident site pursuant to S.C. Code Ann. §56-5-2953. Counsel testified at the evidentiary hearing that he defended many DUI cases in his practice and that, in retrospect, he believes that he should have made a motion to dismiss the charge for the lack of a videotape. Counsel, however, testified that the law pertaining to §56-5-2953 was unclear at the time of the trial, and there are exceptions to the rule that requires a videotape or Affidavit when there are Felony DUI charges as a result of an accident.

This Court finds that counsel was ineffective with regard to this issue. Officer Evett clearly failed to satisfy the requirements of §56-5-2953 because he did not record Applicant's conduct at the incident site. S.C. Code Ann. §56-5-2953(A)(1)(a)(i) (mandating that the video recording must "not begin later than the activation of the officer's blue lights"); see also S.C. Code Ann. §56-5-2953(A)(1)(a)(iii) (requiring that the video recording "include ... a probable cause determination in that the person violated §56-5-2945"). Furthermore, there is no "forgetting to turn on the camera" exception which would save Officer Evett's violation of the statute. See S.C. Code Ann. §56-5-2953(B) (listing a number of possible exceptions, that, if applicable, would not require dismissal of a Felony DUI charge). Therefore, §56-5-2953 mandates dismissal of the Felony DUI charge in this case.

Counsel was deficient for failing to move to dismiss the Felony DUI charge. Counsel's explanation for not making such a motion was that the law was unsettled with regard to a violation of §56-5-2953. While the failure to recognize a potential challenge with regard to an unsettled issue of law does not excuse a defense attorney's failure to raise such a challenge,² the law was settled at the time of Applicant's trial. In City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007), decided three months prior to Applicant's Felony DUI trial, the Supreme Court unequivocally held that "dismissal of [a] charge is an appropriate remedy provided by §56-5-2953 where a violation of subsection (A) is not mitigated by subsection (B) exceptions." Id. at 17, 646 S.E.2d at 881. Although this was a Felony DUI case involving an accident and there might have

² See, e.g., Berry v. State, 381 S.C. 630, 675 S.E.2d 425 (2009) (finding that the PCR applicant was denied the effective assistance of counsel when defense counsel failed to consider whether or not a prior conviction for possession of drug paraphernalia could be used to enhance a drug manufacturing charge, even though the issue was one of first impression for the Supreme Court).

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been an exception for failure to videotape, the law requires that an affidavit be filed by the officer explaining the exception, which was not done in this case. The law was clear when Applicant was tried for Felony DUI: failure to comply with §56-5-2953 required dismissal of the charges.³

Finally, defense counsel's conduct prejudiced Applicant. If defense counsel had moved to dismiss the Felony DUI charge, it is likely that it would have been dismissed. There can be no clearer example of prejudice resulting from a defense attorney's deficient conduct. Accordingly, this Court grants relief with regard to this claim.

9. Ineffective assistance of trial counsel for failure to effectively argue for introduction of the victim's (James Young) toxicology results. Failure to utilize the testimony of James Young to further expose inconsistencies in the testimony of the law enforcement officers.

During trial, counsel made a motion to introduce evidence of the accident victim's intoxication on the night of the accident and cross-examine him about it. Burglary Transcript p. 308. The State objected because the victim had been charged with and found not guilty of DUI. Burglary Transcript p. 308-9. In response, the court questioned how it was relevant when James Young (victim) was found not guilty of DUI and

³ The Supreme Court has also recently noted that the law was clear in this regard:

Although this is the specific question presented, we believe there is a more fundamental question to consider in analyzing §56-5-2953: if the Legislature imposes a statutory obligation on the State to create evidence and provides a sanction for inexcusable noncompliance, does the State's failure to do so necessarily warrant a *per se* dismissal of the accused's case?

Up until this point, our appellate courts have affirmatively answered this question when a law enforcement agency inexcusably failed to videotape a DUI arrest with an *existing* video camera.

Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 344-345, 713 S.E.2d 278, 284 (2011) (emphasis in original).

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whether Counsel had any evidence that the victim had neglected some duty or violated some statute that would have indicated that he contributed to the accident Burglary Transcript p. 309. Trial counsel explained that the only evidence he planned to use was the toxicology report that reported a level below the legal limit and he did not have any other evidence. Burglary Transcript pp. 310-11. Thereafter, the trial court sustained the State's objection finding that the prejudicial value would outweigh any probative value of that evidence. Burglary Transcript p. 311.

While on the stand, James Young testified that before impact he saw lights coming at him. Burglary Transcript p. 360, Ins. 11-17. He also explained that the car turned into him and he saw blue lights upon impact. Burglary Transcript p. 360, Ins. 11-17.

At the evidentiary hearing, Applicant contrasted the testimony of the law enforcement officers, detailed above, with the testimony of James Young and explained that counsel should have further questioned James Young to emphasize the inconsistencies in the testimony regarding his use of headlights and the officer's use of blue lights. He also identified and introduced a copy of the medical records of James Young that showed that he tested positive for cocaine. Applicant's Exhibit #14. Applicant questioned why counsel did not use the medical records in his argument to court.

When trial counsel took the stand, he agreed that the medical records showed that James Young was positive for cocaine. Counsel testified that questioning Young about the cocaine in his system could have been a good argument but for the fact that Young

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was found not guilty on the DUI. He also stated that it would be difficult, if not impossible, to impeach with a not guilty disposition.

This Court finds that trial counsel moved to admit the toxicology results of James Young and to question him about his DUI charge, but the trial court sustained the State's objection. Even though trial counsel did not utilize the medical records admitted at the evidentiary hearing, this Court finds that Applicant claim simply boils down to an assertion that trial counsel should have performed better, not that his performance was ineffective. Additionally, this Court finds that trial counsel provided a valid reason for employing his strategy in attempting to admit the records and question James Young. See Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002) (Finding that counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness and such strategy is measured under an objective standard of reasonableness). This Court further finds this reasoning is also applicable to Applicant's claim that counsel should have further exposed the inconsistencies in the testimony of James Young and the law enforcement officers. Questioning a witness during cross-examination in a way that requires one witness to attack another witness's credibility improper. State v. Benning, 338 S.C. 59, 63, 524 S.E.2d 852, 855 (Ct. App. 1999). Trial counsel cannot pit one witness against another and the jury heard the inconsistent testimony. Therefore, this Court finds that counsel's strategy did not fall below an objective standard of reasonableness, and this claim must fail under the first prong of the Strickland analysis.

10. Ineffective assistance of trial counsel for failure to advise Applicant regarding the introduction and use of the drug evidence. Failure to make objections: 1) regarding the searches of the Chevy Caprice that resulted in the location of the

drug evidence, 2) regarding chain of custody, and 3) regarding the use of an uncharged “bad act.”

At trial, Officer Edgar Guthro testified about processing the Chevy Caprice and locating a bag of suspected marijuana on the passenger floor board. Burglary Transcript pp. 368-9. George Reeves, evidence custodian, testified that he tested the substance, which was positive for marijuana, and it weighed 4.24 grams. Burglary Transcript p. 373.

Referencing the transcript from his murder trial and several exhibits, Applicant explained that trial counsel moved to suppress a cell phone at the murder trial that was located during an "inventory" search that was the basis for the search warrant executed during the search that yielded the drug evidence. Murder Transcript pp. 44-52, Applicant's Exhibit #17. Applicant questioned why counsel did not make a similar motion to suppress at the burglary trial. Additionally, Applicant questioned why counsel failed to require the State to establish the complete chain of custody or make an objection that the marijuana was the equivalent of an uncharged "bad act."

Trial counsel readily admitted that he did not object to the admission of the drug evidence based upon failure to establish chain of custody or as a prior bad act; however, he did testify that he thought about making the prior bad act argument just as he did at the subsequent trial, concluded that it was one of the least of his concerns.

Here, Applicant was not charged in connection with the marijuana, and this Court finds that Applicant has failed to show how he was prejudiced as a result of its admission. Additionally, this Court finds that Applicant has failed to show how the suppression of the drug evidence would have affected the outcome of his trial. Despite counsel's

admission that he should have made a motion, this Court finds that this claim must fail as this Court does not find that the Applicant failed to meet his burden of proof of establishing that this affected the outcome of Applicant's trial.

A handwritten signature or set of initials, possibly "J. Smith", written in dark ink in the bottom right corner of the page.

11. Ineffective assistance of trial counsel for failure to make a directed verdict motion on the burglary and armed robbery charges.

As is reflected in the record, trial counsel made a directed verdict motion at the close of the State's case. In making his argument, counsel first made a motion for directed verdict on all charges, but ultimately did not make an argument on the burglary or armed robbery charge, but focused on the felony DUI charge and failure to stop charge. Burglary Transcript p. 375, Ins 14-15. At the conclusion of his argument, the trial court specifically asked: "No motions on the burglary indictment or the armed robbery indictment?" Burglary Transcript 379, Ins. 20-21. In response, counsel stated: "No, no Your Honor." Burglary Transcript p. 379, ln. 22.

At the evidentiary hearing, trial counsel explained that he thought that his strongest argument on directed verdict was on the DUI charge, but he was clearly wrong due to the jury's finding of not guilty on the armed robbery charge. Due to the jury's not guilty verdict, this Court cannot find that counsel was ineffective or that Applicant was prejudiced as a result of counsel's failure to make a directed verdict on the armed robbery charge. Clearly, the jury cured any prejudice suffered by counsel's failure to move for a directed verdict on the armed robbery charge.

Regarding the burglary charge, this Court finds that trial counsel provided ineffective assistance when he failed to argue a motion for directed verdict on the burglary charge. This Court finds that a directed verdict motion was appropriate because evidence indicated that there was consent to enter the residence in question.

During cross-examination, Donald Martin testified that on the night of the burglary, when someone knocked on his door and he asked who it was, the person responded with "Murda." Martin testified that he knew the Applicant as "Murda," so he

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cracked the door, at which time the Applicant pushed the door open while holding a shotgun. Burglary Transcript p. 175-6; 179-180; 185. Martin testified that pplicant was "supposed to been my peoples" so he opened the door for him. Burglary pp. 185-6. When asked he further explained that he "chilled" with Applicant at the residence every day. He stated: "We be around each other every day. He come to see me every day." Burglary Transcript p. 186, lns. 13-14.

Clearly, counsel elicited testimony to establish that Applicant had consent to enter, yet he failed to make the appropriate directed verdict motion. Even after being asked by the trial court, counsel unexplainably failed to make any argument on Applicant's behalf. This Court finds that trial counsel's failure to make a directed verdict motion on the basis of evidence of consent can only be classified as ineffective assistance of counsel.

Furthermore, this Court finds that Applicant was prejudiced as a result of counsel's ineffective assistance. The trial court must grant a motion for directed verdict of acquittal when the State fails to produce any evidence of the crime charged. State v. Parris, 363 S.C. 477, 481, 611 S.E.2d 501, 502 (2005). In pertinent part, S.C. Code Ann. § 16-11-310(3)(a) (2003) provides: "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and ... the entering or remaining occurs in the nighttime." The statute goes on to define entering without consent in part as, "[t]o enter a building without the consent of the person in lawful possession." Id.

Under the directed verdict standard and the applicable statutory law, this Court finds that the outcome of Applicant's trial was affected by counsel's failure to make a

directed verdict motion as it is reasonable to conclude that such a motion would have been granted due to the fact that there was evidence that established consent to enter the residence in question. Therefore, Applicant must be granted a new trial.

12. Ineffective assistance of trial counsel for failure to properly prepare and utilize Applicant's alibi witnesses.

At trial, counsel called Osia and Daisy Feaster as witnesses for the defense.

While on the stand at the evidentiary hearing, Applicant highlighted their testimony and explained that counsel failed to properly prepare and utilize both witnesses. He also explained that Osia Feaster was asked to identify his voice on the jail calls and handwriting in the letters during cross-examination. Burglary Transcript pp. 392-4.

When asked, trial counsel acknowledged that the alibi witnesses were not good witnesses for the defense because they left holes in the timeline, but it was not due to any lack of preparation. He also acknowledged that the State conducted an effective cross-examination of each witness.

This Court finds that trial counsel called the alibi witnesses and he could not control the testimony of the witnesses. This Court also finds that trial counsel did object to the State's cross-examination of Osia Feaster, and the trial court overruled his objection. Therefore, this Court finds that Applicant has failed to meet his burden of proof in establishing that Counsel was deficient as it relates to the preparation and utilization of the alibi witnesses. Therefore, this claim must fail under the first prong of the Strickland analysis.

13. Ineffective assistance of trial counsel for failure to object to the State's closing argument, i.e. bolstering.

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At the evidentiary hearing, Applicant alleged that trial counsel failed to object when the State bolstered the credibility of their witnesses during closing argument. In support of his claim, Applicant referenced the following portion of the argument: "They say the truth comes from the mouths of babies. I had to put a nine year old girl up. It pained me to do that. But you needed to know the truth from that night. And she told you who woke her up and who did this to her." Burglary Transcript p. 429, lns. 7-9. He also referenced the following additional portion: "Like I said, truth comes from the mouth of babies." Burglary Transcript p. 436, ln. 3.

A prosecutor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness. Elmer v. Maryland, 353 Md. 1, 724 A.2d 625 (Md. Ct. App. 1999). Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony. See State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001) Vouching occurs when a prosecutor implies he has facts that are not before the jury for their consideration. Missouri v. Wolfe, 13 S.W.3d 248 (Mo. 2000).

Based upon the review of the transcript and applicable case law, this Court finds that the Applicant's allegation lacks merit, as the State did not improperly vouch for or bolster the veracity of their witness in closing argument.. Therefore, trial counsel cannot be found ineffective when he failed to enter a contemporaneous objection to comments that do not amount to vouching or bolstering. As a result, this claim must fail under the first prong of the Strickland analysis.

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14. Ineffective assistance of counsel for failure to object to the trial court's statements to the jury that "your sole objective is to simply reach the truth of the matter" and "simply give both the State and the defendant a fair and impartial trial" during the jury instructions.

By way of a verbal amendment at the evidentiary hearing and through his testimony, Applicant alleged that trial counsel rendered ineffective assistance of counsel when he failed to object to the trial court's statements to the jury that "your sole objective is to simply reach the truth of the matter" and "simply give both the State and the defendant a fair and impartial trial" on the basis of impermissible burden shifting, which affected his right to a fair trial. Burglary Transcript p. 437. This Court agrees. If counsel had properly objected the question before the appellate court would have been whether the instruction as a whole properly conveyed the law to the jury and whether it was reasonably likely that the jury acted in contravention of the reasonable doubt standard. State v. Aleksey, 342 S.C. 20, 29, 538 S.E.2d 248, 252-3 (2000) (Finding reversal not required when the trial court's improper instructions were given in the context of witness credibility and not reasonable doubt). Due to counsel's failure to enter a contemporaneous objection the jury charge was not reviewed by the appellate court.

In State v. Daniels, Op. No. 27180, S.C. Sup. Ct. filed October 10, 2012 (Davis Adv. Sh. No. 36 at 41)], the South Carolina Supreme Court addressed the usage of similar language contained in the trial court's instructions to the jury. After finding the issue was not properly preserved for appellate review, Justice Pleicones concluded:

[W]e instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is "just" or "fair" to all parties. Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the "all parties involved" in a criminal case may well extend beyond the

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defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.

[Davis Adv. Sh. No. 36 at 44.]

In a concurring opinion, Chief Justice Toal strongly warned the judiciary as follows:

Judicial instructions to the jury in a criminal case that "whatever verdict you reach will represent truth and justice for all parties," that "we must see to it that the trial is fair and the verdict is just" and that you and I are "in it together," may seem at first blush to be simply harmless phrases intended to put the jury at ease and portray the judge as a "regular guy." However, the constitutional framework governing criminal trials is a highly technical body of law developed by the United States Supreme Court and by state courts operating under the Supreme Court's guidance. It is inappropriate to jeopardize the constitutionality of a trial by instructing the jury in this way.

It is critical that jurors understand the proper application of the reasonable doubt standard. That standard does not charge the jury with ensuring justice for all of the parties. Justice Pleicones correctly notes that this language could result in jurors substituting concepts of justice or fairness for the State's constitutional duty to prove guilt beyond a reasonable doubt. Thus, I join the Justice Pleicones's admonition to the trial court to restrict his jury instructions to matters of law, and refrain from issuing instructions which run the risk of depriving defendants of their right to a fair trial.

[Davis Adv. Sh. No. 36 at 52.]

Although the Daniels case was not available at the time of trial, this Court finds that trial counsel's failure to object to the charges later found improper in Daniels was deficient conduct. See generally Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008) (finding defense counsel's failure to object to an unconstitutional jury instruction deficient conduct). Moreover, this Court finds that this failure prejudiced Applicant. While the trial court did provide correct instructions on reasonable doubt, the improper charges "did no more than contradict the [proper] instruction." Francis v. Franklin, 471 U.S. 307, 322 (1985). "Language that merely contradicts and does not explain a

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constitutionally infirm instruction will not suffice to absolve the infirmity.” *Id.* Stated differently, this Court “has no way of knowing which of the two irreconcilable instructions the jurors applied in reaching their verdict.” *Id.* It is just as likely that the jury decided to give “the State ... a fair and impartial trial,” Murder Transcript p. 454, that the jury gave the defendant his constitutional “right to a fair trial.” *Daniels, supra*, Davis Adv. Sh. No. 36 at 52. Consequently, this Court concludes that there is a reasonable likelihood that the jury did as it was instructed and relieved the State of its burden of proof. Defense counsel’s failure to object to the offending charges constitutes ineffective assistance of counsel. Accordingly, Applicant is entitled to a new trial on this issue.⁴

15. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal, including but not limited to pre-trial motions, trial objections and rulings on Applicant’s evidence.

This Court finds that the Applicant has failed to offer any testimony or evidence that would establish that appellate counsel’s performance was deficient under prevailing professional norms and that he was prejudiced as a result of such deficient performance. To prevail on his claim of ineffective assistance of appellate counsel, the Applicant must establish that there is a reasonable probability that the result of the proceeding would have been different, the conviction and sentence would have been overturned, if appellate counsel raised the issues alleged by the Applicant. *See Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). This Court has reviewed the entire record and finds that

⁴ This Court notes that the Supreme Court did not grant the petitioner in *Daniels* a new trial. However, the Supreme Court’s opinion found that the issue was not preserved for review and did not reach the issue of whether a new trial was warranted based on the inclusion of the improper charges. Furthermore, the concurring opinion, which found the issue preserved, spent most of its opinion arguing that the error was harmless because it found that the evidence against Daniels was overwhelming. Contrastingly, the evidence against Applicant is not overwhelming and there are no preservation issues in this case. Therefore, this Court believes that relief is warranted whereas it was not in *Daniels*.

Applicant has failed to show that the result of the proceeding would have different if appellate counsel would have raised all issues preserved by trial counsel. Therefore, this Court does not find that appellate counsel was deficient.

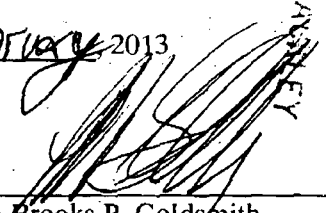
V. CONCLUSION

Based upon the foregoing, this Court orders that the Application for Post Conviction Relief is hereby granted. This Court further finds that no other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his specific allegations of ineffective assistance of trial counsel detailed above;
2. That Applicant has not met his burden of proof as to his allegation of ineffective assistance of appellate counsel;
3. That the Application for Post Conviction Relief be granted and his conviction be vacated and granted a new trial;

AND IT IS SO ORDERED this 8 day of February 2013



 Honorable Brooks P. Goldsmith
 Circuit Court Judge


 _____, South Carolina

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 M. J. C. BLANKENHORN

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Nathaniel Charles Teamer, #285309,	)	2010-CP-42-4049
	)	
Applicant,	)	
	)	
v.	)	MOTION TO ALTER OR AMEND
	)	THE ORDER GRANTING RELIEF
State of South Carolina,	)	PURSUANT TO RULE 59(e)
	)	
Respondent.	)	

Respondent, by and through undersigned counsel, making its Motion to Alter or Amend, pursuant to Rule 59(e), SCRCP, would respectfully show unto this Court:

1. The matter is before the Court by way of the Applicant's application for post-conviction relief.
2. An evidentiary hearing was convened on October 29, 2012, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Suzanne H. White of the South Carolina Attorney General's Office.
3. After the evidentiary hearing, the post-conviction relief court issued an order dated February 8, 2013, and served on February 11, 2013, granting the Applicant's application for post-conviction relief.
4. Respondent moves this Court to reconsider the final order due to the following:
 - a. The State asks this Court reverse its earlier decision and deny post-conviction relief where the Applicant failed to meet the Strickland standards and where Counsel's conduct fell within the realm of reasonable representation, specifically in relation to the following:
 - i. Respondent submits that the Court's finding that Counsel was ineffective for failing to ask Erica Gray about her prior conviction from 1994 was in error as the Applicant failed to meet his required burden of proof of establishing the requisite prejudice.

Counsel testified that he did have Erica Gray's criminal record, which indicated an arrest for the false information to police charge, but also indicated no disposition, so he did not believe that it was available for impeachment purposes.

Although Erica Gray was an important witness for the State, who identified both Applicant's voice and handwriting, there were three additional witnesses who testified to the night of the burglary and identified the Applicant as the person who entered the home and held them at gun point.

Mary Gray – Erica Gray and Donald Martin's mother, testified that the Applicant (known to them as Little Charlie) knocked on the door, entered the home, and held a gun to her. (Tr. p. 156, lines 18-24). Mary Gray testified that she could identify Applicant because he had been in her home earlier that evening and she had known him his whole life. (Tr. p. 157-8).

Donald Martin testified that the Applicant identified himself as "Murda," so Donald opened the door, but then Applicant entered the home with a big shotgun. (Tr. p. 175-6).

Finally, Javanica [REDACTED] Erica Gray's daughter, testified that she was asleep when she felt someone grab her hair and she saw a man holding a gun on her. Javanica identified the Applicant as the person who was holding them at gun point and testified that she could identify him that night because of his voice. (Tr. p. 202-3).

The South Carolina Court of Appeals will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or

contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case, in determining harmless error regarding any issue of witness credibility. State v. McLeod, 362 S.C. 73, 83, 606 S.E.2d 215, 220 (Ct. App. 2004).

Although Erica was an important witness, her testimony placing Applicant at the scene of the burglary was cumulative to three other witnesses, as was her identification of the Applicant by his voice. Applicant's girlfriend identified his voice on the phone calls as well.

Therefore, Respondent argues that even if Counsel was deficient for failing to attempt to impeach Erica Gray with her 1994 conviction, Applicant failed to meet his burden of proof of establishing that the outcome of the trial would have changed had Counsel raised that conviction in light of Erica's cumulative testimony to other witnesses.

- ii. Respondent submits that the Court's finding that Counsel was ineffective for failing to argue for a directed verdict motion on the burglary charge is based upon an error of law.

On appeal from the denial of a directed verdict, an appellate court must review the evidence in the light most favorable to the State. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). A defendant is entitled to a directed verdict when the State fails to produce and evidence of the offense charged. Id. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. Id.

Applicant failed to provide testimony or evidence to show that had Counsel made an argument for directed verdict on the burglary charge, that the trial court would have granted the motion. In fact, Respondent argues that it is clear based upon established case law that the trial court would have denied the motions had they been made.

First, the evidence is viewed in the light most favorable to the State and although the Court finds that there was evidence of consent, there was also evidence that the Applicant used his relationship with the Grays to enter the home with the purpose of committing a felony inside. The phrase "enters a building without consent" is defined as "to enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession. State v. Dixon, 337 S.C. 455, 459, 523 S.E.2d 784, 786 (Ct. App. 1999). As in Dixon, the evidence in this case indicates that the Applicant gave his name to Donald Martin, with the knowledge that because he had been in their home many times previously, he would be allowed into the home freely again, but this time with the intent to commit a felony once inside.

Second, if the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, **the case must go to the jury.** State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)(citing State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993)(emphasis added).

Therefore, Respondent argues that even if Counsel was deficient for failing to argue for a directed verdict motion on the burglary charge, the trial court would have denied the motion based upon the fact that there was direct evidence and substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001).

- iii. Respondent submits that the Court's finding that Counsel was ineffective for failing to move to dismiss the charge for Felony DUI based upon the officer's failure to record the accident and arrest was in error as the Applicant failed to meet his required burden of establishing the requisite prejudice.

The law, which was current at the time of the Applicant's trial:

Further, in circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based upon the totality of the circumstances

S.C. Code Ann. §56-5-2953(B) (2003) (amended by 2008 Act No. 201, § 11, eff February 10, 2009).

At the time of Applicant's trial, the case law in existence focused on the fact that the statute provided for the totality of the circumstances to be considered and that if valid reasons for the Department's failure to comply with the statute existed, then dismissal of the charges were not required. S.C. Dept. of Motor Vehicles v. Nelson, 364 S.C. 514, 524, 613 S.E.2d 544, 549-50 (Ct. App. 2005) (holding that failure to comply with videotaping requirements did not preclude Department of Motor Vehicles from suspending motorist's license for refusal to submit to breath test).

Several months following Applicant's trial, The Supreme Court of South Carolina dismissed a DUI charge for the City of Rock Hill's failure to comply with the videotaping requirement of the statute; however, they noted that "under § 56-5-2953, a violation of the statute, with no mention of prejudice, may result in dismissal of the charges. The statute provides, 'Failure by the arresting officer to produce the videotapes required by this section **is not alone a ground for dismissal** of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 **if** [exceptions apply] ...' (emphasis added). Conversely, failure to produce videotapes would be a ground for dismissal if no exceptions apply." City of Rock Hill v. Suchenski, 374 S.C. 12, 16, 646 S.E.2d 879, 881 (2007).

As indicated by the case law in existence at the time of Applicant's trial, the statute was similar, but the courts appeared to give the benefit of the doubt to the officers. In testimony at Applicant's trial, the officer who was the first to arrive at the accident, David Evett, testified that he had never had a camera in his car before the couple of week prior to the accident and it was not operating properly. (Burglary Tr. p. 356-7).

Respondent submits that the Applicant failed to meet his burden of proof of establishing that had Counsel moved to dismiss the Felony DUI charge based upon the lack of a videotape, that the motion would have been granted or that it would have affected the outcome of the trial.

- iv. Respondent submits that the Court's finding that Counsel was ineffective for failing to object to the trial court's jury charge is based upon an error of law.

Although the Applicant presented the Daniels case to support his

argument that Counsel was ineffective for failing to object to the jury charge, Daniels was not decided until October 12, 2012, more than six years after Applicant's trial. State v. Daniels, 27180, 2012 WL 4801526 (S.C. Oct. 10, 2012)

The first two statements Applicant argued that Counsel should have objected to were made at the very beginning of the jury charge, prior to an extensive charge related to reasonable doubt and the State's burden of proof. In fact, the words reasonable doubt and phrases indicating that the State had the burden of proof and the defendant had the presumption of innocence, were used more than twenty times following this brief introduction. (Tr. p. 437, lines 11-13; 20-24).

The final statement that the Applicant takes issue with was made in reference to witness credibility. (Tr. p. 445, lines 24-25).

On appeal, the appellate court must consider instructions as a whole, and "if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." State v. Daniels, 27180, 2012 WL 4801526 (S.C. Oct. 10, 2012)(citing State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000)).

In particular, as it relates to the jury instruction that was given regarding witness credibility, Aleskey held that reversal was not "required when the trial court's improper instructions were given in the context of witness credibility and not reasonable doubt." Aleksey, 343 S.C. at 29, 538 S.E.2d at 252-53.

Respondent first submits that this case was decided in 2012, which was more than six years following the trial of Applicant on these charges. Therefore, Counsel was acting in a reasonable manner

when he did not object to those particular jury charge statements. Furthermore, even if this case had been decided prior to Applicant's trial, Respondent argues that based upon the ruling in Daniels, when reviewed as a whole, the appellate courts would NOT have found it necessary to reverse Applicant's conviction.

5. The State requests a hearing to fully argue the 59(e) motion and address each of the raised issues before this Court.

Respectfully submitted,

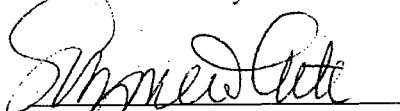
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for Respondent
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

February 21, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	DOCKET NO.: 2010-CP-42-4049
Nathaniel Teamer, #285309,	)	
Applicant,	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	PURSUANT TO RULE 59(e), SCRCP
Respondent.	)	

COMES NOW Applicant, through his undersigned counsel, and moves before the Honorable Brooks P. Goldsmith to dismiss the State's Motion to Alter or Amend the Order Granting Application for Post Conviction Relief signed on February 8, 2013, which was filed on February 11, 2013. Undersigned counsel received a copy of the State's Motion to Alter or Amend on February 22, 2013 and Jeremy A. Thompson, Esquire, Applicant's counsel of record, received a copy of the Motion on February 25, 2013.

This matter comes before the Court by way of an Application for Post Conviction Relief filed on August 2, 2010. The State submitted a Return on February 16, 2011. An evidentiary hearing was conducted on October 29, 2012 at the Spartanburg County Courthouse in front of the Brooks P. Goldsmith. Applicant was present and was represented by Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire. Respondent was represented by Suzanne H. White, Assistant Attorney General.

Applicant respectfully submits the following grounds in support of the instant Motion:

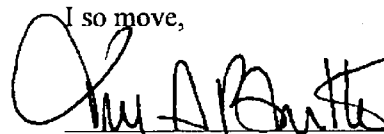
In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post conviction relief judge must make specific

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findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. If such is not done, a party may move under Rule 59(e), SCRCP, for the post conviction relief judge to make specific findings of fact and conclusions of law on each issue raised at the evidentiary hearing. Here, the State has made a Motion to Alter or Amend under Rule 59(e), SCRCP, but the State is asking this Court to reconsider, not alter or amend, the Order. Applicant submits that the State has not filed a Motion Pursuant to Rule 59(a), SCRCP, asking for a rehearing, but the State is essentially asking this Court for a rehearing and entry of a new Order under the guise of a Motion to Alter or Amend. Therefore, Applicant submits that the Motion is improper and should be denied.

Furthermore, the State is not asking for an alteration or amendment to the Order, but is asking this Court to rescind the Order and deny Post Conviction Relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (Noting that the proper use of a Rule 59(e) Motion is to preserve issues raised but not ruled upon by the trial court.) Since the State has failed to raise any issues properly raised and not ruled upon by the Court, Applicant requests that the Motion be dismissed.

I so move,



Tricia A. Blanchette
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M. HOPE BLACKLEY

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SPARTANBURG COUNTY

March 1, 2013
Columbia, SC

1 STATE OF SOUTH CAROLINA

2 -----x

3 NATHANIEL TEAMER,

4 Plaintiff,

5 Case No.

6 -against-

2010-DR-42-4049

7 STATE OF SOUTH CAROLINA,

2010-DR-42-4181

8

9 Defendant.

10 -----x

11 April 18, 2013.

12 Winnsboro, S.C.

13

14 B E F O R E:

15 HONORABLE BROOKS P. GOLDSMITH

16

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

18 SUZANNE WHITE, Esquire

19 Attorney for the State

20

21 DAVIDA MATHIS, Esquire

22 Attorney for the Defendant

23

24 Aileen Butler

25 Official Court Reporter

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NO EXHIBITS MARKED

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1 THE COURT: Now, Nathaniel Teamer versus
2 State of South Carolina, 2010-CP-42-4049.

3 THE COURT: Miss White, your motion.

4 MS. WHITE: Thank you, Your Honor.

5 Your Honor, I did make additional copies of
6 your Order granting post conviction relief, the
7 State's motion and applicant's response.

8 Would you like those copies?

9 THE COURT: No, I am fine.

10 MS. WHITE: Okay. Then Your Honor, we will
11 start with the State filed a motion pursuant to
12 Rule 59(e) arguing that the Orders, and I will
13 say Orders at this point because we are going to
14 argue each of them although separately,
15 granting post conviction relief should be
16 reconsidered and the rulings and conclusions of
17 law should be altered or amended to reflect
18 current case law that we feel is controlling on
19 these issues. And just to note, Your Honor, just
20 for the record that Ben Aflin (phonetics) from
21 our office is with us, as well as Ashley Wilson.
22 So they are present with me today in the
23 courtroom.

24 In regards to the overall argument, Your
25 Honor, in the standard proposed post conviction

1 relief obviously Strickland holds that there must
2 be deficiency. There also must be prejudice and
3 in looking at each of these issues that ruling
4 must be made on each of them. There must be
5 deficiency and there must be prejudice enough
6 that it would call someone to question the
7 outcome of the trial based on each individual
8 issue.

9 There is no cumulative error in PCR in
10 South Carolina so the issues of whether or not
11 all of these combined caused prejudice can not be
12 looked at, but rather each individual issue. And
13 in reference to -- I am going to start with the
14 2010-4049 case which was the first trial in
15 ~~September 2007 and that was a trial of the~~
16 charges of Burglary 1st degree, armed robbery,
17 felony DUI and failure to stop. And Your Honor I
18 will note that I might have to stop for an
19 occasional cough because of some things.

20 The first issue that we would submit should
21 be altered or amended in this situation is the
22 finding that counsel was ineffective for failing
23 to ask Erica Grey about her prior conviction of
24 false information to police. In that situation,
25 Your Honor, Erica Grey was a witness who

1 identified Mr. Teamer by voice and also by
2 handwriting. However, her testimony was also
3 cumulative. Her brother, Mr. Martin, her mother,
4 and her nine-year old daughter additionally
5 identified Mr. Teamer by voice as the perpetrator
6 of the burglary 1st degree. So in this
7 situation, Your Honor, we feel that counsel with
8 his testimony at the trial or at the hearing
9 stating that he did see there was a charge of
10 filing a false information or giving false
11 information to police in 1994. He did note that
12 it was over ten years, but he also said that on
13 the NCIC report there was no disposition. So at
14 the time he didn't feel that he could ask her
15 ~~about that for impeachment purposes but rather he~~
16 did ask her about the felony conviction for drugs
17 that was on the record.

18 In the grand scheme of the testimony of that
19 trial, the cumulative nature of her testimony in
20 regards to identification, her voice and the fact
21 that she had been impeached by a prior charge,
22 the State would submit that it was err to find
23 that counsel was ineffective for failing to ask
24 her to impeach. While there may have been
25 deficiency the prejudice prong has not been meant

1 and there is not sufficient question as to the
2 outcome of that one issue.

3 In regards to the directed verdict motion
4 on the burglary charge -- and Your Honor I do
5 have several cases. I have given copies to
6 opposing counsel and I don't know if Your Honor
7 would like them one at a time, or in a large
8 group or as I mention them to support?

9 THE COURT: You can give them in a group if
10 you have them in a group.

11 MS. WHITE: I do. And I do have them -- I
12 will take my little sticky notes, but I did have
13 them grouped by paper clip per issue to try and
14 keep them in order a little bit. Here.

15 ~~(Whereupon, documents were handed to the~~
16 ~~Court.)~~

17 MS. WHITE: Referencing the burglary
18 directed verdict Your Honor, State v Pinckney,
19 case number 339 S.C. 346. It is a 2000 case.
20 The State would argue that it is directly on
21 point. The findings in the Order find that
22 counsel was ineffective for failing to make a
23 motion on directed verdict because there was
24 evidence of consent. The ruling for directed
25 verdict it must go to the jury if there is

1 evidence on any evidence that the State
2 produces that can support their charges and in
3 this situation although there may have been
4 evidence of consent, Your Honor, we would argue
5 that it would have been improper to grant a
6 directed verdict because there was also evidence
7 that the consent was given because of trickery,
8 misrepresentation which would go to the weight of
9 the evidence which is a question for the jury.
10 So we would argue that based on that, and I think
11 Pinckney speaks directly to that, that even
12 though there might not have been specific
13 evidence at the time he entered his actions once
14 he enters the house can also show intent to
15 ~~commit a crime, but it also says the Court is~~
16 actually concerned with the existence or non-
17 existence of evidence. Not the weight. And if
18 the State presents any evidence which can
19 reasonably tend to prove the guilt or from which
20 the guilt can be fairly and logically deduced the
21 case must go to the jury.

22 So the State would argue that even if
23 counsel was deficient for failing to make a
24 motion for a directed verdict, the directed
25 verdict would have been denied and the case still

1 would have gone to jury so the outcome would not
2 have been affected and therefore the prejudice
3 prong has not been met.

4 THE COURT: Okay.

5 MS. WHITE: Your Honor, the third issue for
6 this case was that counsel was ineffective for
7 failing to move for a dismissal on the felony DUI
8 charge based upon the failure to record the
9 accident and arrest.

10 The State would also argue that counsel or
11 that the applicant failed to meet his burden in
12 this case.

13 Counsel acknowledged that in his practice
14 today he does handle DUI's and looking back he
15 ~~said he probably should have made a motion.~~

16 However being that the cases -- and I do have the
17 cases City of Rock Hill versus Suchenski, State
18 v Brannon and State v Manning, paper clipped
19 together are there, Your Honor. It shows how the
20 progression of the cases, case law from that
21 time, City of Rock Hill was the only case that
22 had actually been decided at that point. But as
23 they continue to say in the statute there is
24 three exceptions to whether or not a video tape
25 needs to be produced. Two of those exceptions

1 require for an affidavit to be completed. The
2 third exception is for in circumstances that
3 a failure to dismiss is not mandatory and it can
4 be the failure to comply with a video reporting
5 can be excused in circumstances including but not
6 limited to road blocks, traffic accident
7 investigations. And Your Honor we would note
8 that in this case the officer was following the
9 car. Heard sparks. Saw the sparks. Heard the
10 wreck. Arrived on the scene. He testified, and
11 I do have I believe a couple of pages of testimony
12 attached from David Michael Evit (phonetics)
13 testified that when he got there the first
14 vehicle he checked the first gentlemen for
15 injuries. And that's page 337 of the burglary
16 first transcript. That he noticed the guy was
17 injured but not there was not a lot of blood
18 present. He went to the other vehicle. As he
19 drove to the other vehicle he noticed the driver
20 was climbing out of the window of the passenger
21 side. The driver ran. So he called foot pursuit
22 and as he yelled at him he got on the ground. He
23 was immediately cuffed and placed in the back of
24 the car. At that point Your Honor there is no
25 feasible way to have a video. There were no

1 breath tests done. There were no field sobriety
2 tests done.

3 His blood was taken at the hospital. The
4 applicant was actually immediately removed after
5 the accident was investigated to the hospital
6 and was arrested subsequently.

7 So again the State would argue that even if
8 counsel was deficient for failing to make a
9 motion to dismiss for failure to have a video
10 tape, that based on the case law and the
11 statutory law at the time it would not have been
12 an automatic dismissal based upon the fact that
13 this was a traffic investigation, there were
14 injuries, and applicant was immediately arrested
15 following.

16 THE COURT: Okay.

17 MS. WHITE: Finally, Your Honor, on that
18 case and this is the same issue I believe that is
19 in both of the cases is that counsel was
20 ineffective for failing to object to the trial
21 Court's jury charge based upon the State v
22 Daniels case. And Your Honor I have included
23 cases that I believe are directly on point
24 stating that again that finding is based upon an
25 err of law, State v Aleksey, Gilmore v State and

1 Gibson v State. Gibson and Gilmore both
2 represent that counsel can not be found
3 ineffective based on a failure to be clairvoyant.
4 There is no -- in this situation the Daniel's
5 case I believe that was provided, it is not retro
6 active. It is not a - - it was not found
7 unconstitutional. In fact it appears to merely,
8 based on the language from the concurring opinion
9 state that it is a strong suggestion to the trial
10 Court that they not use the language for fear
11 that it can cause confusion.

12 However, it also states that you also have
13 to look at the charge as a whole. And if the
14 charge as a whole with a reasonable doubt
15 ~~instruction and other charges counteract that~~
16 then that is sufficient. So I think the State v
17 Daniel's case itself notes that that is not an
18 absolute rule or that it is actually something
19 that should be applied retroactively.

20 State v Aleksy in fact particularly says
21 instruction telling the jury that its single
22 objection and that is to seek the truth,
23 did not violent the defendant's due process
24 rights. They said it might be disfavored. It
25 runs the risk of causing problems but based on

1 the fact this is not been found. There is no
2 cases that has been found to find ineffective
3 assistance of counsel or reverse a case based on
4 that jury charge. That counsel can not be found
5 ineffective because there is no prejudice and
6 also because the case referenced by the applicant
7 was more than five years following this trial.
8 And again, counsel can not be found in effective
9 for failing to be clairvoyant or determining
10 what the law might be or might change and again
11 we would still submit that still is not a
12 sufficient, I guess, change in the law. It is
13 not a change of the law at all. It is just
14 merely again the Supreme Court recommending to
15 the trial courts not to use that.

16 And I think Your Honor that is all on those
17 issues for that case.

18 THE COURT: Why don't we let Miss Blanchette
19 address those issues before we move to the next
20 case.

21 MS. WHITE: Certainly Your Honor.

22 MS. BLANCHETTE: Thank you, Your Honor. May
23 it please the Court.

24 Tricia Blanchette here on the behalf of
25 Nathaniel Teamer. Also joining me is Jeremy

1 Thompson. If this Court would not mind there are
2 two issues specifically that Mr. Thompson
3 prepared the proposed Order which was signed. So
4 if he could address those two arguments and I
5 will address all the other arguments.

6 THE COURT: Okay.

7 MS. BLANCHETTE: Your Honor, first in
8 response I just have some general responses for
9 the State's motion that would apply to both
10 cases.

11 As is stated in our written motion here the
12 State has filed a Rule 59 (e) motion. That
13 motion provides and requests that the Court alter
14 or amend the Order. We would submit what the
15 State is actually asking this Court to do is
16 reconsider or set aside this Court's judgement
17 and I would like to remind you, with all due
18 respect, that you made your decision
19 approximately 20 days after hearing two full days
20 on these cases. It was made after a full review
21 of the transcripts and based upon a majority of
22 the cases cited in the State's motion. So
23 therefore based upon the State's motion under
24 59(e) I would ask that this Court not second
25 guess or reconsider the judgements that are

1 already in place.

2 We also would submit that a 59(a) would be
3 proper if the State is asking for additional
4 information or a form of a rehearing or for a new
5 judgement in this case and that was not filed.
6 All the issues that I heard the State address so
7 far are issues that are proper for an appeal. It
8 is asking this Court to reconsider or change its
9 decision and we would just ask that you stand by
10 your original decision in this case.

11 Furthermore, you gave the State an
12 opportunity to file objections and concerns after
13 the proposed Order was submitted. In going back
14 to State version Marlin -- I am sorry, Marlin
15 ~~versus State which is one of our leading cases on~~
16 59(e) it actually says in that case that after
17 counsel prepares a proposed Order the opposing
18 counsel should call any omissions or issues to
19 the Court's attention prior to the issuance of
20 the Order. And you gave the State the
21 opportunity to do that and none of these
22 arguments that are being presented today were
23 presented at that time.

24 So I just ask that the Court take all those
25 issues into consideration when looking at both of

1 those motions.

2 THE COURT: All right.

3 MS. BLANCHETTE: Turning specifically to
4 what I like to refer to the burglary, the first
5 case or the 4049 as far as the docket number
6 goes.

7 The first issue the State addressed was
8 Erica Grey and the failure to impeach her. Once
9 again Your Honor you heard all the testimony
10 and it was lengthy testimony. My memory serves
11 me a little bit differently in my notes as to
12 what whether Mr. Schultz said on that issue, but
13 would I defer to the Court on that. And if the
14 transcript is needed I would be happy to look
15 into getting that also. But Erica Grey as it
16 states on page two of the State's motion was an
17 important witness for the State. The State
18 concedes that. So I don't know how she could be
19 merely cumulative. Yes, the letters were
20 introduced through her and the handwriting was
21 identified by her and the State has already
22 acknowledged that. So I will not go into that
23 issue.

24 Two things that aren't mentioned though by
25 the State is she established intent of motive

1 when she explained that Mr. Teamer had seen her
2 counting a tax refund earlier that day and that
3 is on page 121 through 122 of the transcript.
4 She also went into another kind of secondary
5 motive or the issue why her brother Donald would
6 be the focus of this is because Mr. Teamer was
7 supposedly upset with Donald regarding an issue
8 where he had been messing with Iesha (phonetics)
9 who is a younger family member and there was this
10 family court issue. Only Erica Grey testified
11 about that. So the Court has reviewed the
12 transcript and has heard the testimony and the
13 State concedes she is an important witness
14 and it is out position an important witness can
15 not be a cumulative witness. Also the records
16 show that she was not merely cumulative to Mary
17 Grey or to Donald Martin. And upon review of
18 their testimony it is very different from what
19 Erica Grey did. She was the star witness. She
20 wasn't just an important witness.

21 Turning to the second issue regarding the
22 directed verdict motion. I have had the
23 opportunity to review the Dixon case and I was
24 just handed a copy of the Pinckney case and I
25 would like to respond to both of those briefly.

1 In the Pinckney case it is very distinguishable
2 from the instant case. There the suspect knew
3 that the victim was deaf and would give him the
4 opportunity to come in the house and write a
5 note. And so he was able to gain entry along
6 with co-defendants because he knew he would have
7 the moment in time where he could come in the
8 house and write a note to the deaf victim. We
9 would argue that on the facts this is very
10 distinguishable. Here Donald Martin testified on
11 page 185 through 186, he opened the door to the
12 defendant because he was his peoples. That is
13 not an issue of trickery such as was in the
14 Dixon case where the suspect used the ability to
15 ~~come into the house and write a note to the deaf~~
16 individual to gain access.

17 In my brief review of the Pinckney case I
18 would have to disagree with the State. There it
19 appears that the issue was whether or not the
20 individual had the intent to commit a crime
21 therein. And the case actually says respondent's
22 actions after he entered the house or some
23 evidence of respondent's intent to commit a crime
24 therein. They weren't looking at his actions to
25 determine if entry was consensual, which is the

1 issue here. So we would submit that both
2 Pinckney and Dixon on the facts are
3 distinguishable and are controlling in the
4 instant case.

5 Furthermore on that issue we submit that the
6 Court made a well reasoned decision based upon
7 solid case law and we would ask that the Court
8 not second guess that at this point.

9 Your Honor, I would skip over the DUI
10 issue very briefly because Mr. Thompson is going
11 to respond to that and jump to the Daniel's issue
12 if you don't mind.

13 In reading the Order granting post
14 conviction relief and in preparing the Order for
15 Your Honor, I do not see where that issue was

16 granted on a change in the law. Daniels is just
17 merely a clarification of the law that was in
18 place at the time when Mr. Teamer went to
19 trial. Aleksey, which the State has referred to
20 and has provided this Court a copy of was in
21 place at the time that Mr. Teamer went to trial.
22 Aleksey is heavily relied upon in Daniel's. So
23 we would submit that Daniel's isn't the basis of
24 this Courts decision in granting relief on this
25 issue. It is Daniel's and all the cases that

1 came before it such as Aleksey.

2 We would also submit that even in the
3 State's motion they admit that curative
4 instruction was given at a time when reasonable
5 doubt was discussed and credibility. Aleksey
6 says if it just goes to credibility it isn't
7 prejudicial error. But the State concedes in
8 their motion that isn't the case here. It
9 wasn't just given the charge that I would
10 say is prohibited under Daniels wasn't just given
11 in the credibility of the section of the
12 charge but it was also given as the State's
13 indicates in their motion in the reasonable doubt
14 section of the charge.

15 ~~I will turn it over to co-counsel to address~~
16 the DUI issue and I will be happy to rap all this
17 up.

18 THE COURT: All right. Thank you.

19 MR. THOMPSON: If it please the Court, Your
20 Honor.

21 THE COURT: Yes.

22 MR. THOMPSON: Again for the record my name
23 is Jeremy Thompson.

24 I just have a couple of brief responses to
25 the DUI argument. First I would note that the

1 argument presented here today is not presented in
2 59(e) motion. 59(e) motion primarily argues that
3 at the time of the trial the law regarding
4 section 56-5-2953 was unsettled and specifically
5 argues that Suchenski had not been decided
6 as of the time of the trial. On page six of the
7 motion it says several months following the
8 applicant's trial the Supreme Court of South
9 Carolina the dismissed the DUI charge in
10 Suchenski. That is the argument that
11 Suchenski would -- the defense attorney would
12 not have been able to be clairvoyant and
13 understand the change in the law because the case
14 law in existence at the time of the trial the
15 statute was similar but the courts appear to give
16 the benefit of the doubt to the officers.
17 That is the motion. That has changed
18 obviously, I presume Miss White realized that
19 she was actually wrong on the timelines.
20 Suchenski was actually decided prior to the trial
21 but we would contend that, you know, she is
22 filing a 59(e) to ask for reconsideration and not
23 even -- until we get here today, not even getting
24 the argument correct as to what she wants to
25 argue.

1 Dealing with the -- so, we would obviously
2 argue for the reason stated in the motion. It
3 should be denied. The motion says Suchenski had
4 not been decided as of the time of the trial and
5 it obviously had been.

6 In terms of whether or not -- I guess
7 whether or not any of the applicable exceptions
8 apply, which I believe is the argument here
9 today, we would submit that the Order is proper.
10 The testimony which is included with the cases
11 that I believe Miss White handed up, basically
12 show that the officer forgot to turn the video
13 camera on. This is not a case of going to
14 investigate a traffic accident or anything like
15 that. ~~The officer had been following Mr. Teamer~~
16 according to his own testimony for a lengthy
17 period of time. Had turned his blue lights on
18 and off. James Boyd testified when the
19 accident occurred he saw blue lights. So the
20 lights are on when he got there. There was
21 no reason that the video camera should not have
22 been activated. Should not have been turned on
23 as soon as those blue lights were activated.
24 There is not an exception under the statute for
25 simply forgetting to turn it on. And that's what

1 we got. So I believe that under any standard
2 prior to Suchenski or after Suchenski after all
3 these other case that the felony DUI charge would
4 have been dismissed in this case and the Order is
5 proper.

6 THE COURT: Thank you.

7 MS. BLANCHETTE: Just to briefly summarize
8 Your Honor.

9 One other issue that has been brought up and
10 I think it may have been argued as to both
11 Orders. The State presented some argument
12 regarding cumulative effect or cumulative
13 prejudice. I don't see where that is in Your
14 Honor's Orders. In both Orders. I believe each
15 ~~issue was decided on its own merit. There were~~
16 no findings as far as I can see regarding
17 cumulative prejudice. But it is true that is
18 an undecided issue in this State. We don't have
19 a clear decision on that in the State of South
20 Carolina at this time.

21 I would also -- there is a case I would like
22 to hand up just based upon the change in some of
23 the arguments today. I have a copy of Cole
24 versus State. That's a PCR case where Mr. Cole
25 was granted relief due to some unreasonable

1 search and seizure issues. In there the South
2 Carolina Supreme Court found that the State's
3 argument that they attempted to raise for the
4 first time in a motion to reconsider regarding
5 standing wasn't proper because you can't raise an
6 issue for the first time or raise an argument for
7 the first time in a motion to reconsider. It
8 sites to a line of cases for that.

9 Once again I went through the timeline how
10 this Court gave the State an opportunity to
11 respond to the proposed Orders and we would say
12 that today is not the proper time to be raising
13 these and most importantly new arguments can not
14 be raised at this time pursuant to Coal. So I
15 would like to had up a copy of that.

16 THE COURT: All right.

17 MS. BLANCHETTE: I do not have a copy for
18 the State. I apologize. I can give her the
19 cite.

20 THE COURT: Thank you, ma'am.

21 MS. BLANCHETTE: And Your Honor, unless you
22 have any questions I don't have anything further
23 on this first case.

24 THE COURT: No questions. Miss White.

25 MS. WHITE: And Your Honor just briefly. In

1 response the State has also included numerous
2 cases in regards to 59(e).. The most telling I
3 think is the Elam versus South Carolina DOT when
4 it says it is proper to seek a rule 59 motion,
5 excuse me, 59(e), since they have noted I filed
6 59(e) and not (a). It does note in the case law
7 it is proper to view that 59(e) motion. Not only
8 is it a vehicle to request the trial court to
9 alter or amend, but also a vehicle to seek
10 reconsideration of issues and arguments.

11 It also states that a motion has been
12 viewed as a motion for reconsideration despite
13 the absence of those words in the rule. A party
14 may wish to file a motion when they believe the
15 Court has misunderstood, failed to fully consider
16 or failed to rule on an argument or issue and the
17 party must file it if an issue has been raised
18 but not ruled upon in order to preserve for
19 appeal.

20 So although applicant's argument is that
21 we improperly filed a 59(e) I think the case law
22 is well settled that we filed a proper motion for
23 the Court to reconsider its ruling, alter or
24 amend the Order to reflect that the applicant
25 failed to meet its burden of proof as to those

1 issues.

2 In regards to a -- and I will reference it
3 as a bait and switch argument I guess, since the
4 applicant kind of made that argument that I put
5 one argument in my motion and then suddenly
6 sprung new arguments upon them. I believe the
7 argument is that the applicant failed to meet his
8 burden of proof across the board. Whether or not
9 there is case law to support within the ten days
10 that was found compared to the time that we had
11 to file -- excuse me, to prepare for this hearing
12 does not change the fact that the case law
13 existed at the time and was present.

14 Briefly Your Honor, just to touch based on
15 the issues, I do think that the applicant's
16 counsel may have I misunderstood the State's
17 reference to the Pinckney case not looking at it
18 for basis of the fact of the trickery, more so
19 the fact that the burglary directed verdict,
20 if there is any evidence to support a directed
21 -- the lack of a directed verdict. That is what
22 we are looking at and the fact that it should be
23 sent to the jury.

24 We would also reference the actual jury
25 charge given by the judge in this where he states

1 entering without consent can mean to enter
2 without consent of the owner person or to enter a
3 dwelling by using deception, trickery or
4 misrepresentation and whereas they would argue
5 that is not true I would argue that giving
6 your name and then entering with a shot gun with
7 the intent to rob is by using misrepresentation.
8 And I believe Your Honor again in regards to the
9 Aleksey, the fact is that was the case law at the
10 time and again there is still been no case even
11 no cases continued and draw judges continue to
12 use that jury charge that has been reversed base
13 on that. So, this case would be the first in the
14 State to find that that was a reversible error
15 whether counsel was ineffective for failing to
16 object to that.

17 THE COURT: All right.

18 MS. WHITE: At this point Your Honor we will
19 turn to the 2010-4181, Your Honor, the first
20 issue in this one was that the Court found that
21 counsel was ineffective for failing to move for a
22 continuance upon learning that the alibi witness
23 Miss Elaine Feaster was sick and not able to
24 testify.

25 The State would note that obviously Miss

1 Feaster at the PCR hearing noted she was present.
2 for the first two days of this trial and became
3 sick mid-trial. There were only three days of
4 the trial. So first for the applicant to meet
5 its burden of proof in establishing prejudice
6 he would not only have to show that counsel had
7 he made a motion for continuance, the continuance
8 motion would have been granted and the fact that
9 a continuance motion mid-trial after two days
10 of testimony and right near the close of the
11 State's case I think the fact that that is when
12 the motion would have been made is highly
13 unlikely to argue that the trial Court would have
14 granted that motion. Specifically, in regards to
15 an alibi the State would reference the Walker v
16 State case and I believe I also have -- I just
17 want to make sure I am accurate in referencing
18 which cases -- Walker I think is the one that I
19 got on that one. That is regarding the standard
20 for determining an alibi witness and whether or
21 not counsel was ineffective. Glover v State
22 as well Your Honor. For an alibi -- for someone
23 to qualify as an alibi witness their testimony
24 has to be that it is physically impossible for
25 the applicant to have actually committed the

1 crime. Not that he was somewhere else at the
2 time the crime was committed. Not that he was
3 somewhere else ten minutes before, twenty minutes
4 after. It has to be that it was physically
5 impossible for him to be present to commit the
6 crime.

7 The State argues that based upon that, based
8 upon Miss Feaster's testimony at the burglary
9 trial and her testimony at the PCR hearing it
10 would be an error to find or conclude that her
11 testimony qualified as alibi. She consistently
12 testified that she believed the applicant was
13 there or the applicant was at her house around
14 eight and then she left prior to nine. There was
15 ~~even one point in the testimony that she said she~~
16 left at eight thirty or nine to go look at TV's
17 with her cousin at the Walmart.

18 Now, Your Honor, the crime was committed at
19 approximately eight forty-five. Her home was
20 within one to two miles of the crime scene and
21 the victim claimed that he picked the applicant
22 up at Miss Feaster's home, traveled the one to
23 two miles and was shot. I don't believe the
24 testimony that he was at the home prior to nine,
25 she left at eight thirty or nine, or some time

1 before nine, establishes testimony sufficient to
2 provide them an alibi. And in that point Your
3 Honor, we would argue that based upon the Walker
4 case counsel can not be found ineffective for
5 failing to make a motion for continuance mid-
6 trial to ask for this woman to testify when she
7 could not even qualify as an alibi witness. We
8 would also note that Osta (phonetics) Feaster,
9 the daughter of Miss Feaster who was the
10 girlfriend at the time of the incident of the
11 appellant, she testified that she was with the
12 applicant from eight o'clock until maybe eleven
13 that night. But she also again as they did at
14 the burglary trial testified, as the phone
15 records indicate, she called him from her home
16 phone to his cell phone. The explanation is oh,
17 he was outside of the home at that point,
18 therefore they called each other on the phone.
19 So again, there was no alibi established
20 sufficiently to find that counsel was ineffective
21 based on that point.

22 The second issue in this case, Your Honor,
23 is that counsel was ineffective for failing to
24 provide the Court with a third party guilt charge
25 and we would argue that again, this is a finding

1 that should be reconsidered and amended to
2 represent that the applicant failed to meet its
3 burden of proof as both the Order and the case
4 law establishes there is no established third
5 party guilt charge for a Court to offer during a
6 jury trial.

7 Counsel made the motion and got the third
8 party guilt evidence before the jury. The Court
9 offered the proper -- the law at the time which
10 is the jury charge for reasonable doubt and we
11 would argue at this point any third party guilt
12 instruction, number one, was not provided at the
13 hearing. Any suggestion as to what should have
14 been provided was provided in the Order, but not
15 argued at the hearing. And at this point the
16 case law that they provided is out of
17 Connecticut. It is not controlling for this
18 State, Your Honor.

19 Furthermore, that is a case again that was
20 decided more than one year after the trial on
21 these charges. And finally Your Honor, I think
22 that the third issue has already been argued. We
23 would rely on our prior argument that is that
24 counsel was again ineffective for failing to
25 object to the trial Court jury instruction. And

1 just one final note, Your Honor, I would note
2 that when you requested proposed Orders and I was
3 asked to provide objections or any statements
4 about that, I did state in writing, copying
5 counsel and Your Honor, that I would not -- I
6 would offer suggestions for wording or factual,
7 but I wanted to reserve my right to file a 59(e)
8 Motion for Reconsideration and did not want this
9 to affect our ability to do that.

10 THE COURT: That is my recollection.

11 MS. WHITE: Thank you, Your Honor. And the
12 State would rest at this time.

13 MS. BLANCHETTE: Thank you, Your Honor.
14 Turning to the second case, I can be pretty brief
15 ~~here because I believe every case she just cited~~
16 to is in this Court's Order.

17 As to the alibi, the cases relied upon in
18 the Order are Glover and Walker and those are the
19 two cases that the State just argued this Court
20 needs to apply. It has already been done and it
21 has already been signed by Your Honor as well
22 reasoned and accurate and proper Order in this
23 case. So, I don't see how those cases would
24 cause this Court to reconsider his decision when
25 those cases are the basis for the decision that

1 we are in here about today.

2 Just some specifics on the alibi issue. As
3 stated in the written motion on page three.
4 We would dispute the fact that the State
5 concludes that Mrs. Feaster testified at the PCR
6 that she saw the applicant around eight p.m.. My
7 notes actually indicate eight thirty p.m., but we
8 refer to the Court's memory as to her testimony
9 at the PCR hearing.

10 THE COURT: All right.

11 MS. BLANCHETTE: Also the State has cited to
12 her testimony from the other trial where she goes
13 through the timeline in which she saw Mr. Teamer.

14 Regarding the Walker decision. Just going
15 back to the Walker decision very briefly, in the
16 decision it says the PCR Court must consider the
17 testimony as a whole. Taken as true and
18 credible and view it in a light most favorable to
19 the PCR applicant. And again the Walker decision
20 is essentially the feature decision on the alibi
21 issue. But Walker is distinguishable from this
22 case because Walker did not get relief because
23 his girlfriend, who was his alibi witness, who
24 the PCR Court found to be the basis for granting
25 relief couldn't even say if they had been broken

1 up or together at that point. When asked
2 directly by the Court at the PCR was he with you
3 that night. She couldn't even say, well, we may
4 have broken up sometime in the spring, so I don't
5 know if we were dating and that isn't the case
6 here. The PCR judge was reversed in Walker
7 because that testimony was weak, if anything.
8 She couldn't even say if they were dating let
9 alone if they together and that is clearly
10 distinguishable from Mrs. Feaster's testimony.
11 Yes, she was confused but this Court found her to
12 be credibility despite that, and I believe that
13 the State is making these arguments today because
14 they know that credibility findings are rarely
15 disturbed on appeal. So, this is their last

16 chance to attack the credibility of Mrs.
17 Feaster.

18 Turning to the second argument regarding the
19 third party guilt instruction I again defer to my
20 co-counsel, Mr. Thompson.

21 THE COURT: Mr. Thompson.

22 MR. THOMPSON: Thank you, Your Honor. I
23 will try to be brief with regard to this issue.
24 Basically as I see it the State's argument
25 boils down to three points. No charge was given

1 at the PCR hearing. There is no proof that the
2 charge would have been given I guess because it
3 is an unsettled issue and that Arroyo would not
4 control.

5 With regard to the fact there was no proper
6 charge at the PCR hearing, I have a couple of
7 responses to that. First off, the issue of --
8 the issue whether or not a third party guilt
9 instruction should have been given was covered
10 extensively at the hearing both through the
11 testimony, I believe with Mr. King. I believe he
12 testified that it should have been given.
13 Through the testimony of the defense attorney,
14 plus the closing arguments by the attorneys
15 in the case. You know, if there was a proposed
16 charge this isn't a criminal case. A criminal
17 case which is why defense counsel was ineffective
18 in the case, criminal case you actually got to
19 hand up a proposed charge. That is not a
20 requirement in PCR cases. I don't know of any
21 case where the Supreme Court has held that you
22 have to provide a proposed charge at the time of
23 the hearing in order to meet your burden of
24 proof.

25 We alleged that this should have been

1 given. Your Honor agreed with that and basically
2 found the substance of the charge that should
3 have been given is the same as essentially should
4 have been charged in Arroyo or something similar
5 along those lines. So we don't think there is
6 anything improper there.

7 In terms of whether or not the charge would
8 have been given again that issue was covered in
9 the Order and addressed fully in the Order. Even
10 though I do not have a case that I can hand up
11 that says defense counsel was ineffective for
12 failing to request a third party guilt
13 instruction there is certainly plenty of cases
14 dealing with a defense attorney's failure to
15 ~~request charges on defenses and that is what we~~
16 are talking about here. There is no difference
17 here between requesting a defense of alibi or
18 accident or self defense. It is a defense. He
19 should have requested the charge and this isn't
20 some novel issue that nobody had thought of. He
21 asked about it. The defense attorney asked
22 about it at trial. Asked the trial judge do you
23 have a third party guilt instruction. Judge says
24 no and he just doesn't do anything about it. We
25 are not asking him to be clairvoyant. It should

1 have been given. He should have had something
2 to hand up to the judge when he made that
3 request.

4 Finally, with regard to Arroyo. First off,
5 I would note in the 59(e) motion again Miss White
6 stated here today, Arroyo was quote, almost
7 decided one year following applicant's trial
8 on these charges. It was not. Arroyo was was
9 deciding in December of 2007. Mr. Teamer was
10 tried for murder, the week of January 14th
11 through 16th, 2008. So you Arroyo was in
12 existence even if it had just been a few weeks by
13 the time of trial. So defense counsel probably
14 should have been able to find something pretty
15 easily on that search. ~~Certainly the most~~
16 recent cases come up first, so he should have had
17 no problem finding Arroyo when he was getting
18 ready for the hearing. But in any event, I don't
19 believe that the Order finds that Arroyo was
20 controlling.

21 I think Your Honor understands and knows a
22 decision from the Supreme Court of Connecticut is
23 not binding on a South Carolina judge. I think
24 it finds it persuasive and there is a difference
25 between being persuasive and controlling and for

1 all those reasons we submit the Order is proper
2 and should not be altered or amended.

3 THE COURT: Thank you, Mr. Thompson.

4 MS. BLANCHETTE: Very briefly, Your Honor.

5 THE COURT: Sure.

6 MS. BLANCHETTE: Just jumping back to the
7 alibi issue, I just wanted to also point out and
8 Your Honor has a copy of the Order that was
9 signed, that there also was a finding that Miss
10 Feaster was able to identify the other homes on
11 Brie street that could have possibly been
12 identified by the victim. And that goes into the
13 timeline issue that the State presented
14 because those homes were so close in proximity
15 to hers. So that was another factor on which
16 this Court made a decision in this Order.

17 Very briefly, on the Daniel's issue. The
18 last issue. I believe the State's argument is
19 today no other Court has granted relief in PCR on
20 that issue so this Court should not.

21 Your Honor, if that were the case I wouldn't
22 have a job. We need to continually to fight for
23 there to be new cases and new decisions and it is
24 not an argument that the case law doesn't support
25 this Court granting it, is that this Court

1 would be the first and I believe that the case
2 law already cited to in the Order and the case is
3 cited to in the Daniel's decision which this
4 Court rely upon support granting the relief on
5 this issue. So I would just bring that to the
6 Court's attention.

7 Beyond that we have nothing further unless
8 the Court has any questions or anything they like
9 from us.

10 THE COURT: No questions. Thank you, Miss
11 Blanchette.

12 MS. WHITE: Your Honor, if I could just
13 briefly, the State would maybe dispute that there
14 is a finding of credibility from Miss Feaster in
15 the Order. The Order does state that the Court
16 finds that she does qualify as an alibi. There
17 is no statement that says she's credible. That
18 was actually removed in the process of amending
19 the Order prior to the final signature and I
20 think, obviously I would be speculating, but I
21 think the fact that she completely denied or as
22 it says was confused about testifying at the
23 prior trial, extremely adamant and in fact
24 questioned the veracity of that transcript
25 accusing of someone of lying and her name was in

1 there does support the finding of no credibility.
2 Again, I think that what the arguments of the
3 applicant's counsel boils down to is a great deal
4 of speculation in requiring this Court to find
5 that counsel should have argued for a charge.
6 The charge would have been granted and therefore
7 the outcome of the trial would have changed had
8 this third party guilt charge been granted and
9 given. I think the testimony -- I think that it
10 is a case that although they would I am sure
11 differ, overwhelming guilt in this situation.
12 Phone records were provided. A sketch was
13 provided which, if Your Honor had seen -- and
14 Your Honor did have it in the record in fact --
15 is almost identical to some photos or a visual of
16 the applicant.

17 The victim also took the police to the home
18 in which he picked the applicant up at and there
19 was a DNA match. A cigarette in the car of a
20 victim in which he's stated he never met him
21 before.

22 So, I think in this situation finding that
23 these factors individually would have impacted
24 the outcome of the trial, is failing to meet the
25 prejudice prong. I think it is requiring a great

1 deal of speculation to think that that would have
2 happened, Your Honor.

3 So, we would just ask that you reconsider
4 your decision and amend the Order to reflect that
5 counsel failed, or the applicant failed, to meet
6 his burden on these issue.

7 THE COURT: Thank you, Miss White.

8 MS. BLANCHETTE: May I very briefly, Your
9 Honor.

10 I forgot one request and I am glad she
11 mentioned it about taking that portion out of the
12 Order. We would ask that the State -- the judge,
13 Your Honor, revert back to the original proposed
14 Orders. I would submit that those were much
15 ~~stronger Orders as far as the appeal is~~

16 concerned. As Miss White has indicated, she cut
17 a portion out of there regarding credibility and
18 so with that argument that she made I would ask
19 that this Court, if anything, in reconsidering
20 anything, reconsider signing the original
21 proposed Order before the charges were made by
22 the State. If you can follow all those
23 reconsiders.

24 THE COURT: I think I did.

25 MS. WHITE: And Your Honor, I do have to

1 make one note on that. In the cases that is I
2 passed up regarding 59(e) there are also several
3 cases about jurisdiction. The State would note
4 the applicant failed to make a motion to
5 reconsider that you signed the changed Order.
6 After ten days if there is no motion made on
7 those issues the Court lacks the jurisdiction. So
8 we would just rest on that argument.

9 THE COURT: I understand. All right. I
10 will look over the Order and my notes and the
11 cases that have been handed up today. I hope to
12 get a decision to you in the next ten days. Take
13 it under advisement.

14 Thank you so much.

15 (End of transcript.)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh 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 in the captioned case, in the Circuit Court for Fairfield County, South Carolina, on the 18th day of April, 2013.

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

July 6, 2013

Aileen Butler

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Nathaniel Teamer, #285309,)
 Applicant,)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS

CASE NO: 2010-CP-42-4049

ORDER

This matter comes before the Court upon Respondent's Motion to Reconsider the Court's Order, filed February 8, 2013, that granted Applicant's Application for Post Conviction Relief.

After considering the arguments set for in memoranda submitted by each party's counsel, this Court finds there is no basis for granting the motion, and therefore, denies Respondent's motion.

IT IS ORDERED, ADJUDGED AND DECREED that the Respondent's Motion to Reconsider the Court's Order is denied.

IT IS SO ORDERED.



Brooks P. Goldsmith, Judge

Winnsboro, South Carolina
 May 6, 2013

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 MAY 10 PM 12:04
 M. HOPE BLACKLEY