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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable G.D. Morgan, Jr., Circuit Court Judge

CLARENCE W. JENKINS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002211

APPENDIX

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1 A I seen her one other time before at Wal-Mart, but I
2 never met her.

3 Q Thirteen days after Grace moved in with y'all, you
4 and Grace and Clarence and was it your little
5 brother?

6 A It wasn't even 13 days. It was like three.

7 Q How about August the 18th, August the 18th was the
8 traffic stop?

9 A Okay.

10 Q So that's 13?

11 A Okay.

12 Q Okay. August 18th, there was a traffic stop out on
13 385. Clarence was driving and he didn't have a
14 driver's license. In fact, he had prior charges of
15 driving without a license, driving without a license,
16 going to jail, going to jail. Couldn't stay out of
17 jail for driving under suspension, could he?

18 A He only went one time when we were together.

19 Q All right. So they pull Clarence over and they
20 arrest Clarence?

21 A Yes.

22 Q They arrest you for bad check you've written?

23 A (The witness nods.)

24 Q They arrested -- it is your brother?

25 A It's my brother.

1 Q All right. They arrested him for failure to come to
2 court on some kind of charges, right?

3 A Yes.

4 Q And were y'all in your momma's car?

5 A Yes, sir.

6 Q And that car that belonged to your mom was then
7 turned over to Grace?

8 A It had to be, she was the only one left.

9 Q Because everybody else was under arrest?

10 A (The witness nods.)

11 Q That same day Grace and your momma came and picked
12 you up at the jail, right?

13 A Yes, sir.

14 Q Because they turned you loose?

15 A Yes, sir.

16 Q But they didn't turn Clarence loose?

17 A (The witness shook her head.)

18 Q He got 90 days in prison, right?

19 A Yes. He got sentenced to more than that, but he did
20 90 days, yes.

21 Q So he goes down the road for 90 days and you and
22 Grace go back to Lulu Lane?

23 A Yes.

24 Q And when you went back to Lulu Lane, you and Grace
25 got to talking and knowing each other a little better

1 and became intimate?

2 A Yes, sir.

3 Q Did you not?

4 A Yes, sir.

5 Q And you were very happy?

6 A Yes.

7 Q It was the best of times for Carmen Jenkins, wasn't
8 it?

9 A If you say so.

10 Q All right.

11 A It wasn't the best of times.

12 Q It was the best of times, wasn't it?

13 A No, not really. We struggled a lot.

14 Q You had a job at Sports Authority. Grace was staying
15 home with her children and your baby. Everything was
16 kind of nice for you, wasn't it?

17 A I mean, if you consider almost getting your power cut
18 off and the water cut off. If you consider that
19 nice.

20 Q I understand the day-to-day stuff. I'm just saying
21 you were happy with Grace, weren't you?

22 A Yes, sir.

23 Q Okay. And during the 90 days that Clarence was done
24 the road, you actually fell in love with Grace?

25 A Yes.

1 Q And you and Grace talked about your love for each
2 other?

3 A And for Clarence.

4 Q And for Clarence?

5 A (The witness nods.)

6 Q In fact, you got word to him about the relationship
7 you had with Grace?

8 A We constantly wrote letters.

9 Q You wrote letters and you told Clarence you had
10 fallen in love with Grace?

11 A Yes.

12 Q And that's why when he came home, December the 1st,
13 he wrote out these vows, that's why? He knew how you
14 felt about Grace, didn't he?

15 A Yes.

16 Q You didn't hide it?

17 A (The witness shook her head.)

18 Q Move to Tindal, that's the location of the trailer
19 involved in this case. You moved to Tindal in
20 February of '08?

21 A Yes, sir.

22 Q You got moved over there and, unfortunately, there
23 was a Family Court case involving Grace's children?

24 A Yes.

25 Q And the Family Court judge said got to have your own

1 place, right?

2 A I assume so. I didn't stay in the courtroom.

3 Q Well, that's what Grace told you?

4 A Yes.

5 Q Okay. And Grace got to talking to you about needing
6 to leave?

7 A Yes.

8 Q And that wasn't something that made you happy?

9 A I would leave to get me children back, also.

10 Q I understand that. And that's a respectable thing.
11 But you loved this woman and you didn't want her to
12 leave?

13 A No, I didn't.

14 Q Okay. She finally -- well, in fact, she stayed over
15 there at Tindal for two, three -- three or four weeks
16 after the Family Court ordered her to find a place.
17 She still stayed with all for three or four weeks?

18 A Yes.

19 Q Finally, left on March 15th. And when she left out,
20 you ran over behind her, followed her down the
21 street, ran over behind her wanting to get the ring
22 back. And you told her you wanted her to stay. You
23 wanted her to come back, didn't you?

24 A Yes, I said I wanted her to stay.

25 Q All right. You were heartbroken?

1 A I was upset, not heartbroken.

2 Q You were upset?

3 A Yes.

4 Q You called her -- after that, you called her on the
5 telephone and asked her to come back, didn't you?

6 A No, I never spoke -- I've never spoken with Grace
7 since the day she left.

8 Q All right. Then let me do it this way. If Grace had
9 said that you had called her, is she just in error?
10 You don't make any phone calls to her?

11 A We didn't know she was.

12 Q Okay. Now, after that -- and your youngest child had
13 been born on the 5th?

14 A Third.

15 Q The 3rd?

16 A Yes, sir.

17 Q Melissa Jenkins.

18 A Yes, sir.

19 Q Date of birth March 5th of '08?

20 A I was not in a good state of mind when we were
21 arrested and that's what I told the police, that's
22 what I believed the date was. But her birth
23 certificate does say the 3rd.

24 Q All right. Well, those two children from about
25 mid-March until about the first week of April were

1 spending most of their time over a Janese's house,
2 weren't they?

3 A Yes, sir.

4 Q She was taking care of your children for you?

5 A Yes, sir.

6 Q She was taking care of your children, Clarence's
7 sister was taking care of your children while y'all
8 were writing these letters?

9 A Yes, sir.

10 Q She was taking care of your children while y'all were
11 mailing these letters trying to get Grace Davis to
12 come back; wasn't she?

13 A Yes.

14 Q The van out in front of Tindal, that blue van was
15 register in your name?

16 A Yes.

17 Q The Tindal lease on that trailer is in your name?

18 A Yes.

19 Q The computer service subscription that y'all used
20 there at Tindal is in your name?

21 A I don't believe so. I believe that's in Grace's
22 name. I think the cable service was in Grace's name.

23 Q So if something was taken out of the trash can that
24 had your name on it about that computer service, that
25 just wouldn't be right?

1 A I mean, there was a lot of things in both of our
2 names. There was things in my name and Grace's name.

3 Q Okay. So a lot of stuff in your name, a lot of stuff
4 in Grace's name. Grace is gone?

5 A Yes, sir.

6 Q Carmen, State's Exhibit 159 is the surveillance tape
7 for Andover Apartments parking lot. I'm going to
8 show you as a demonstrative aid some still photos
9 that we have lifted off of that type. Instead of
10 putting that tape in and mashing these buttons, I
11 just got me some copies, okay?

12 A Yes, sir.

13 Q Okay. The automobile there that that person is
14 walking towards belongs to who?

15 A I belongs to Grace's aunt.

16 Q Pardon me?

17 A Grace's aunt.

18 Q All right. Grace's aunt. This is Grace's aunt's
19 car. Because Grace's aunt lives at Andover
20 Apartments.

21 A Yes, sir.

22 Q Do you remember the number?

23 A No, sir.

24 Q You knew the number well enough to throw that bag up
25 there; didn't you?

1 A I knew the location of it. I didn't know the number
2 of the apartment.

3 Q All right. Can you see this thing?

4 A Yes, sir.

5 Q Who's that person there carrying that bag?

6 A That is me.

7 Q That's you. You have gone to Grace's aunt's car?

8 A Yes, sir.

9 Q You knew that car?

10 A I had been there before.

11 Q You know the apartment?

12 A Yes, sir.

13 Q And you're putting the note under the windshield
14 wiper?

15 A Yes.

16 Q The note that you wrote?

17 A That Clarence wrote.

18 Q You say Clarence wrote the note?

19 A Yes, sir.

20 Q Did he have any trouble with the spelling?

21 A No, sir.

22 Q And the last picture that I'll show you is this one.
23 This one shows that same car, that same figure
24 walking across the parking lot and that same bag in
25 her hand; doesn't it?

1 A Yes, sir.

2 Q That's you?

3 A Yes, sir.

4 Q And that's right before you threw that bag over on
5 that porch?

6 A Yes, sir.

7 Q See a blue van in that picture?

8 A He's on the street.

9 Q He's up on the street somewhere? He's out of sight?
10 He's out of camera view, right?

11 A Yes, sir.

12 Q You're right in the spotlight, but Clarence is just
13 right over here somewhere?

14 A Yes, sir.

15 Q Later on that morning, April 7th, Monday, April the
16 7th, you testified to the prosecutor here that
17 Clarence had to go to work?

18 A He wanted to go, yes.

19 Q I mean, he had a job. He had a job with Randall Pool
20 Services. Randall Pool Services is located in
21 Easley, South Carolina?

22 A Yes.

23 Q So what you did is you drove Clarence to work?

24 A I went with him that whole day. I sat out in the
25 parking lot in front of the pool service.

1 Q So you drove to Easley?

2 A Yes, sir.

3 Q And do you remember whether Clarence worked nine
4 hours that day? Do you remember it being a long
5 time?

6 A I sat out there for a very long time.

7 Q It was a full day?

8 A Yes, sir.

9 Q And your testimony is that you sat in the blue van in
10 your name and waited the whole day while Clarence was
11 working?

12 A Yes, sir.

13 Q And the car had gas in it, didn't it?

14 A Yes.

15 Q It had air in the tires?

16 A Yes, sir.

17 Q It had a battery that would crank it, didn't it?

18 A Yes, sir.

19 Q You sat in that parking lot for nine hours while your
20 husband was off working?

21 A Yes.

22 Q How many hours after you threw that bag on that porch
23 were you sitting in that parking lot over there at
24 that pool place? How long was it?

25 A How many hours after?

1 Q If that happened in the early morning hours, what
2 time did you take him to the pool service place?

3 A We left Labor Finders at probably 8:00, 8:30 maybe.

4 Q In the morning?

5 A Yes, sir.

6 Q So it was soon after. Now, on the afternoon of the
7 8th, that was the next day, you were over in Easley
8 nine hours and come back home. The next day, a
9 little after 4:00, there was a knock at your door. A
10 you open the door and the police are there?

11 A Yes, sir.

12 Q They ask you about Clarence and you said Clarence is
13 not here? That's what you told the police?

14 A Yes.

15 Q But the testimony to the prosecutor, you said
16 Clarence really was there, but he was hiding?

17 A (The witness nods.)

18 Q Right?

19 A Yes, sir.

20 Q Okay. Then after telling the police he wasn't there,
21 you told the police that you had your children that
22 you had to take over to their aunt's house?

23 A Yes.

24 Q You didn't have the children, Carmen?

25 A Yes, I did.

1 Q You had one child in little baby carrier?

2 A No, I had both children.

3 Q You're saying both of those children were with you?

4 A I took both of those children to her house.

5 Q And when the police -- you told the police you'd have
6 to come down to the law enforcement center in about
7 an hour?

8 A Yes.

9 Q That you needed to take the children somewhere?

10 A (The witness nods.)

11 Q And that Clarence was not home?

12 A No.

13 Q You then, according to your testimony, cleaned up
14 everything, went to the dumpster three times. I'm
15 going to show you a couple of photos to make sure the
16 jury has got perspective on this location. You don't
17 need to turn then down that much. Maybe you do. No,
18 I think it's going to be good. Okay. All right.
19 Now, hang on a minute here, Carmen. This is the road
20 that your trailer is on?

21 A Yes, sir.

22 Q And this trailer right here, the fourth trailer up is
23 the trailer you lived in?

24 A I believe so.

25 Q Now, when you say you went to the dumpster three,

1 this is the dumpster down here on the end, right?

2 A Yes.

3 Q Right here?

4 A Yes.

5 Q This photo -- the trailer that there on the right
6 side of that photo -- and I'm sorry, I didn't
7 indicate the exhibit, I'm sorry. This one's No. 29.
8 That trailer that's on the far right-hand side?

9 A Yes.

10 Q That's your trailer?

11 A Yes, sir.

12 Q That's the trailer that was in your name?

13 A Yes, sir.

14 Q And that blue van that's backed in there is your van?

15 A Yes, sir.

16 Q And if you look way down at the end down there, you
17 can barely see that dumpster down there. You see it?

18 A Yes, sir.

19 Q Is that the dumpster you walked to three times after
20 the police left?

21 A Yes, sir.

22 Q State's Exhibit 34, that's from the other angle, is
23 that dumpster we're talking about?

24 A Yes, sir.

25 Q All right. While that's going on, you didn't know

1 that the police were watching your every move?

2 A I did not know that.

3 Q You did not know that. You moved the grill off the
4 porch back in. You went out and you did that plug
5 thing on your car that kept your battery, right?

6 A Yes, sir.

7 Q Went back in, came back out with one baby carrier?

8 A I had both girls with me.

9 Q Well, I'm just -- this is what I've heard. You come
10 out and you put the baby carrier in the van and you
11 drive away. Not one single sign of Clarence. He's
12 nowhere. You went and dropped children off, got with
13 Janese. Y'all ended down at the law enforcement
14 center about 6:20 that afternoon?

15 A Yes.

16 Q And an officer, Mr. Flavell here, Officer Flavell,
17 you met him?

18 A Yes, sir.

19 Q And he asked you -- because you told them you be down
20 about 5:00. He asked you where you been. And you
21 said I had to take Clarence to work, right?

22 A Yes.

23 Q Well, you told them when he was on your porch that
24 Clarence wasn't there. So, I mean, apparently, you
25 just got no idea of where the truth is in all of

1 that. Clarence was not at that trailer, Carmen?

2 A He was there.

3 Q That trailer was under surveillance. They followed
4 you. They went back down there and got in that
5 dumpster. Nobody every saw the first sign of
6 Clarence?

7 A He told me while I was gone that he had climbed under
8 the trailer.

9 Q Okay. So you're now saying that Clarence told you he
10 was hiding under the trailer for hours?

11 A Yes, sir.

12 Q Officer Flavell, he confronts you about these lies
13 you're telling because they're following you. They
14 know you not taking anybody anywhere. He asked you
15 if you if knew Mekole Harris, you told him no. He
16 showed a picture of her. You said you didn't know
17 her. This was the same Mekole Harris that you pled
18 guilty to killing the day before. He asked you if
19 you knew anything about this investigation, don't
20 know nothing about it. You're lying to him; weren't
21 you?

22 A I was then, yes.

23 Q Huh?

24 A I was then, yes.

25 Q You're lying then. They asked you about Grace Davis

1 and you said you had a love affair with her, you
2 missed her and you wanted her back. You told the
3 police that, didn't you?

4 A Yes.

5 Q You wanted Grace back. They asked you if you were
6 afraid of Clarence and you said no?

7 A I actually just shook my head.

8 Q You what?

9 A I shook my head.

10 Q Which way did you shake?

11 A To indicate no.

12 Q No. They asked you. You're at the police station.
13 You're sitting in the police department. You're
14 being questioned by a police officer and he ask you
15 if you're afraid of Clarence, no. He asked you if
16 Clarence was making you do something you didn't want
17 to do and you said no.

18 Carmen, got just few more questions for you.
19 You were arrested on April the 10th, two days after
20 the interview with Officer Flavell. And when they
21 took you into custody, as you had the right to do,
22 you said you wanted to have lawyer and remain silent
23 or whatever, right?

24 A Nobody ever spoke with me that day.

25 Q Oh, that's right, that's right, that was on 8th.

1 That was that first day when you told them you wanted
2 a lawyer. Right?

3 A Yes.

4 Q So when they arrested you, they didn't ask you any
5 questions?

6 A No.

7 Q Okay. You maintained your silence and you began your
8 four-year hitch at the Greenville County jail?

9 A Yes.

10 Q And Mr. Wilkins asked you about the recovery of the
11 remains of Mekole Harris's body up there off State
12 Park Road?

13 A Yes, sir.

14 Q And you said to him, I got to feeling bad about the
15 family of Mekole Harris and I wanted to do what was
16 right; isn't that what you said?

17 A I said I felt they needed to know.

18 Q Well, let me fill in some blanks for you. You sat in
19 that jail for 17 months before one word was said
20 about the remains of Mekole. During those 17 months,
21 you watched the State's case against you develop
22 before your very eyes. You attended a preliminary
23 hearing and you heard the testimony?

24 A Never had a preliminary hearing.

25 Q You never had a preliminary hearing?

1 A No, sir.

2 Q You met with your lawyer and without going,
3 obviously, into those discussion, don't want to do
4 that, but you had discussions with him about the case
5 against you; didn't you?

6 A Yes, sir.

7 Q And you made a deal, you made a deal. I'll show you
8 where I burned that body if you'll pull that death
9 penalty notice. You had been served with a death
10 penalty notice in December of 2008; hadn't you?

11 A Yes.

12 Q And September of '09, you made a deal with the
13 prosecutor. I'll show you the rest of Mekole
14 Harris's body if you'll take that death penalty
15 notice away. I want a reward for it; isn't that
16 right?

17 A In those words, I assume so, yes.

18 Q You got that reward. And then you started working on
19 your second deal. I'll give the police a statement
20 if they won't use that statement against me, right?
21 You remember that? Solicitor Wilkins asked you about
22 that agreement y'all signed, right?

23 A Yes.

24 Q You signed an agreement on March the 9th, 2011. Let
25 me get my months straight. That's 35 months after

1 your arrest and 18 months after you had taken them to
2 the body?

3 A (The witness nods.)

4 Q So you signed this agreement?

5 A (The witness nods.)

6 Q I'll give you this, you give me that, right?

7 A Yes.

8 Q And you got rewarded for it. You got your deal. And
9 the third deal you made, Ms. Jenkins, was in this
10 courtroom in front of this Court two weeks ago.
11 March the 27th of '12, you stood in this court and
12 you plea guilty to murder?

13 A (The witness nods.)

14 Q You got 50 years in the penitentiary. The Judge
15 asked you when you pled guilty, he asked you, did
16 anybody promise you anything or force you to plead
17 guilty? No, Your Honor. Nobody promised me nothing.
18 But Mr. Wilkins, on direct, asked you if you knew
19 that the prosecutor in this case is going to file a
20 request that your sentence be reduced after
21 Clarence's trial. And you said that you had no idea
22 what your sentence might end up being, right?

23 A Yes, sir.

24 Q And you don't?

25 A No.

1 Q You don't have any idea how good a deal you're
2 making, do you?

3 A No, sir.

4 Q You wanted Grace back, Carmen, didn't you?

5 A Yes.

6 Q You told Grace Davis that you wanted Clarence out of
7 picture; didn't you?

8 A No.

9 Q Okay. Now, let me just preference it. Grace Davis
10 has testified, so we've heard her. Do you deny then
11 that you told Grace Davis, this lover, that you
12 wanted Clarence out of the picture? Do you deny
13 making that statement?

14 A I remember telling her that I wanted us to be
15 together, me and her to be together, but I didn't
16 stay we would dispose of him.

17 Q So what you said was, Grace I want me and you to be
18 together?

19 A (The witness nods.)

20 Q Just two people?

21 A (The witness nods.)

22 Q Not three people?

23 A He was very threatening to us.

24 Q Right. And you would do anything to get Grace back;
25 wouldn't you?

1 A No.

2 MR. MAULDIN: Nothing further, Your Honor.

3 THE COURT: All right.

4 Redirect.

5 MR. WILKINS: Brief redirect, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WILKINS:

8 Q Mr. Mauldin just talked to you about a proffer
9 agreement where your words were protected. What were
10 the conditions of that proffer agreement?

11 A That I tell the truth here.

12 Q Mr. Mauldin talked about a motion that the prosecutor
13 promised to file to reduce your sentence. What are
14 the conditions for us to file that motion?

15 A For me to tell the truth here.

16 MR. WILKINS: No further questions, Your Honor.

17 MR. MAULDIN: I got one, please.

18 THE COURT: All right.

19 MR. MAULDIN: May it please the Court.

20 RE CROSS-EXAMINATION

21 BY MR. MAULDIN:

22 Q What were the conditions, the conditions, Carmen, are
23 the better you do, the better you get; isn't that
24 true?

25 A No.

1 Q Substantial assistance to the government; isn't that
2 what it is?

3 A I believe that what the law book reads, I'm not sure.

4 Q And depending upon how well you testify is how good
5 you're going to do; isn't that right?

6 A I don't believe so.

7 Q You don't believe so?

8 A I believe that I need to tell the truth here.

9 Q Ms. Jenkins, you're a smart woman.

10 MR. MAULDIN: Nothing further.

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

12 MR. WILKINS: One quick question.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. WILKINS:

15 Q Who determines your reduction?

16 A The Judge.

17 THE COURT: All right. Thank you. You can
18 stand down. Thank you, very much.

19 All right. Ladies and gentlemen of the jury,
20 let's just take a short recess. And please don't discuss
21 the case. We'll be right back with you. Thank you.

22 (WHEREUPON, the jury left open court at
23 approximately 2:18 p.m.)

24 THE COURT: All right. Anything before we take
25 a short break?

1 MR. WILKINS: No, sir.

2 THE COURT: Okay. Take about 10 minutes.

3 (WHEREUPON, a short break was taken.)

4 THE COURT: Who's next?

5 MR. WILKINS: Brandi Bolt.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:35 p.m.)

8 THE COURT: All right, Mr. Wilkins.

9 MR. WILKINS: The State calls Brandi Bolt.

10 THE CLERK: Ms. Bolt, please place your left
11 hand on the Bible and raise your right.

12 BRANDI BOLT, after being duly sworn, testified
13 as follows:

14 THE CLERK: Thank you. You may be seated.
15 Would you state your name for the record.

16 THE WITNESS: Brandy Nichole Bolt.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. WILKINS:

20 Q Brandi, what do you do for a living?

21 A I'm a bartender.

22 Q Now, back in 2008, do you remember where you were
23 living?

24 A Tindal Road.

25 Q I'm going to show you what's State's Exhibit 27. Can

1 you see that?

2 A Uh-huh.

3 Q Do you recognize that photo?

4 A Yes, sir.

5 Q What is that?

6 A That the trailer park, Tindal Road trailer park.

7 Q And this is where you were living back in 2008?

8 A Uh-huh.

9 Q Can you show on there about where your residence was?

10 A It's very end where the white car is.

11 Q So that would be right there?

12 A Yes, sir.

13 Q Make sure you speak up into the microphone so the
14 jury can hear you.

15 A Okay.

16 Q Now, back in 2008 -- let me ask you this, did you
17 ever know Clarence and Carmen Jenkins?

18 A No.

19 Q Did you ever meet them?

20 A No.

21 Q Spend any time with them?

22 A No.

23 Q Back in April of 2008, do you remember anything
24 unusual that happened at the trailer?

25 A Yes, sir.

1 Q Can you tell us about that?

2 A We were hanging out -- there's a house up at the top
3 of the hill. We were hanging out there. And when we
4 were walking back to our house, it looked like their
5 trailer was on fire.

6 Q Do you remember about what time that was?

7 A I'm not sure, but it was late.

8 Q Was daytime or nighttime?

9 A Nighttime.

10 Q So where were you in regards to that photo right
11 there?

12 A I was coming down the trailer that sits back, I was
13 coming down that road right there.

14 Q From there, were you able to see the other trailers?

15 A You could see like the tree line and that's it. Once
16 you get further down, you can see the trailers, the
17 front of the trailers.

18 Q What did you see?

19 A It just looked like it was on fire. It was like
20 orange.

21 Q At that point, point did you know whose trailer it
22 was?

23 A No.

24 Q And you saw that, what did you do next?

25 A I walked to my house. And we had to go get

1 cigarettes, so I got in my car and I drove down the
2 road that goes down beside the trailers and --

3 Q Now, let me show you what's State's Exhibit 29. Is
4 that the road you were driving down?

5 A Yes, sir.

6 Q So where were are you coming from?

7 A The very end trailer.

8 Q Now, when you got to your trailer, did you smell
9 anything?

10 A It smelled funny.

11 Q Did you anything particular because of that?

12 A We had our windows open because it was, so we closed
13 to our windows because it had our house smelling
14 really funky.

15 Q So you said you left the trailer?

16 A Uh-huh. I left to go cigarettes. And I was coming
17 down this road and there's a speed bump that's kind
18 of in the front of their house, so you had to slow
19 down.

20 Q Okay.

21 A And I noticed that Clarence was standing outside with
22 a grill and he was feeding the flames.

23 Q When you said Clarence, who do you mean?

24 A The black guy.

25 Q Do you see him in this courtroom today? Would you be

1 able to recognize him?

2 A No.

3 Q Can you show us on that photo what trailer it was?

4 A It was the blue one.

5 Q Is it -- is this the one you're referring to right
6 here?

7 A Yes, sir.

8 Q Okay. So you were driving down the street, what
9 happened?

10 A I noticed that he was standing out there and I asked
11 him -- you know, concerned citizen, I asked him, I
12 was just wanting to make sure your house wasn't on
13 fire. And he said, no, ma'am, we're just having a
14 cookout.

15 Q Was your window down as you were talking to him?

16 A Uh-huh.

17 Q What did you see on the porch?

18 A It was the grill and there was like a pole that was
19 right there on kind of that side of the porch and he
20 was feeding the flames with lighter fluid.

21 Q Do you remember what month this occurred in April?

22 A What month it occurred in April?

23 Q I'm sorry, it's been a long day. What month in 2008
24 this was?

25 A I sure don't.

1 Q You said you had to stop, is there a speed bump on
2 that road?

3 A Uh-huh.

4 Q Can you point that out?

5 A You see where the van is at the end of that trailer,
6 it's right there at it.

7 Q And describe the flame that you saw that was on the
8 porch?

9 A It was huge. It was bigger than what a cookout
10 usually looks like.

11 (WHEREUPON, State's Exhibit No. 44 was marked
12 for identification only.)

13 BY MR. WILKINS:

14 Q Now, I'm going to show you what's marked as State's
15 Exhibit 44 for identification purposes only. Is
16 that -- State's 44, what is that?

17 A That's the grill that was that on the front porch.

18 Q That's the one you saw on the front porch?

19 A Uh-huh.

20 Q Now, after you left -- after you drove up, you had a
21 conversation with the individual that was out there?

22 A Yes, sir.

23 Q What did you say?

24 A I just asked them if -- I said, I wanted to make sure
25 that his house wasn't on fire. He said, No, ma'am,

1 we're just having a cookout.

2 Q What did you do after that?

3 A I drove off.

4 Q Now, the next day, did anything happen that you
5 remembered?

6 A I just remember waking up and seeing people in the
7 dumpsters.

8 Q When you say people, who do you mean?

9 A I guess investigations, police officers.

10 Q Law enforcement?

11 A Uh-huh.

12 MR. WILKINS: Please answer any questions
13 Defense counsel may have.

14 MS. ROSS: I've got no questions. Thank you.

15 THE COURT: All right. Thank you, ma'am. You
16 may stand down.

17 MR. WILKINS: May she be excused, Your Honor?

18 THE COURT: Any objection.

19 MS. ROSS: No objection.

20 THE COURT: All right. She's released.

21 MR. WILKINS: Your Honor, the State calls
22 Lieutenant Mike Petersen to the stand.

23 THE CLERK: Please place your left hand on the
24 Bible, raise your right.

25 MIKE PETERSEN, after being duly sworn, testified

1 as follows:

2 THE CLERK: Thank you. You may be seated.

3 Please state your name for the record.

4 THE WITNESS: Michael Petersen.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. WILKINS:

8 Q Officer Petersen -- Lieutenant Petersen.

9 A That's fine.

10 Q You've previously testified in this trial, haven't
11 you?

12 A Yes, I did.

13 Q And you've previously been qualified as an expert in
14 crime scene investigation and processing of evidence?

15 A Yes.

16 Q Did you have the occasion to go to 105 Tindal Road as
17 part of your investigation?

18 A Yes, I did.

19 Q What was the reason that you went there?

20 A We were informed that a search warrant was being
21 obtained to do a search on those premises.

22 Q Who all went out there with you?

23 A It was myself and Sergeant Dar Shaw and Sergeant Ron
24 Lendway, who were two sergeants that work in my
25 division.

1 Q What was the purpose of you going out there?

2 A Again, was to provide a forensic search on that
3 mobile home for any evidence that might be useful in
4 this trial.

5 Q I'm going to show you State's Exhibit 27. Can you
6 show us on there the trailer that you went to?

7 A Yes, it is the sixth one from the left.

8 Q You've got a laser pointer there if you'd like to use
9 that.

10 A That one right there.

11 Q I'm going to show you State's Exhibit 28, what is
12 that?

13 A That is, actually, one of our photographs that we
14 took of the front door along with the 1995 Ford van
15 at Lot 16.

16 Q And is that in Greenville County?

17 A Yes, it is.

18 Q Now, as part of your investigation, did you prepare a
19 diagram of the trailer?

20 A Yes, I did.

21 Q Okay. Can you see that okay?

22 A Yes.

23 Q Did you prepare that? That's State's Exhibit 103?

24 A Yes, I did prepare that, a much smaller version.

25 Q All right. Now, when you go to process a potential

1 crime scene, tell this jury what y'all do.

2 A Well, when we arrived at this location after learning
3 that the search warrant had been obtained, one of the
4 very first things we do is to document that crime
5 scene -- or that location by photographs and video.
6 Myself and Sergeant Ron Lendway, we, actually, began
7 taking photographs of the outside of the location,
8 the front, the back, sides of it, the general area.
9 Sergeant Shaw provided videotaping of the scene.
10 Once we complete that overall for the outside, we
11 start moving inside of the trailer. And again,
12 before anything is touched or moved, we always
13 document the entire scene with both still images and
14 with videotape prior to doing any type of collection
15 or search of evidence.

16 Q Did you process Tindal Road?

17 A Yes, we did.

18 Q Now, as you walked in the residence, what was your
19 first initial observation?

20 A Well, it was very sparsely furnished. There was not
21 a lot of furniture in there. It was rather dirty and
22 unkept. There was trash and bits of paper throughout
23 the mobile home. Clothes seemed to be thrown
24 everywhere. There was what appeared to be old food
25 on the countertops, some of it in pots and some of it

1 in plates and kind of progressed through the house.
2 All in all, it was just a very messy place.

3 Q So as y'all are attacking the processing of a
4 residence of such, how do you begin?

5 A Well, one of the first things once we get in is we
6 document it. While we're documenting, we're actually
7 doing a walk-through and trying to see what there is
8 and how we're going to divide up the
9 responsibilities, how we're going to overlap our
10 searches so that we don't miss anything.

11 In this particular case, we find one way in and
12 one way out. There was no -- there was a back door,
13 but there was no stairway or anyway to access that
14 door.

15 Q Where was the first place you started, do you
16 remember?

17 A We walked right inside the front door and just right
18 inside the front door to the right, there was a grill
19 sitting right in there.

20 (WHEREUPON, State's Exhibit No. 45 was marked
21 for identification only.)

22 BY MR. WILKINS:

23 Q I'm going to show you State's Exhibit Nos. 44 and 45.
24 Do you recognize State's 44 and 45?

25 A Yes, I do. Those are two of the photographs that we

1 had taken of the grill.

2 Q Are they true and accurate representations of those
3 items at the time?

4 A Oh, yes.

5 MR. WILKINS: Your Honor, State moves 44 and 45
6 into evidence.

7 MR. MCDUGAL: Without objection.

8 THE COURT: Okay.

9 (WHEREUPON, State's Exhibit Nos. 44 & 45 were
10 admitted into evidence.)

11 BY MR. WILKINS:

12 Q Show you State's 44. Tell the jury what that is.

13 A We're, actually, as you enter the door in the living
14 room area and that's the grill sitting against the
15 wall just as you enter the door that you see on the
16 right there.

17 Q Did y'all take the lid off of it and look inside?

18 A Yes, we did.

19 Q Let me show you what's State's 45? What is that?

20 A This was the inside of the grill as we have found it.
21 There was nothing inside the grill except for ashes.
22 We also located what appeared to be melted plastic as
23 well as what appeared to be a finger from a fabric
24 glove.

25 Q Did y'all do any further processing?

1 A We collected everything that was within the grill.
2 The fabric finger of the glove as well as the melted
3 plastic.

4 Q After the grill, where did you go?

5 A From that point, we would start within the first
6 location there, which would be the living room. So
7 we just photographed the living room and then we
8 began to search for items within there.

9 Q All right. I'm going to show you what's State's
10 Exhibit 46.

11 (WHEREUPON, State's Exhibit No. 46 was marked
12 for identification only.)

13 BY MR. WILKINS:

14 Q I ask you to take a look at State's 46?

15 A Yes. That is the sofa that was inside the living
16 room of the mobile home.

17 Q Is that a true and accurate representation at the
18 time you took the picture?

19 A Yes, it is.

20 MR. WILKINS: Move State's 46 into evidence?

21 MR. MCDUGAL: Without objection, Your Honor.

22 THE COURT: Okay.

23 (WHEREUPON, State's Exhibit No. 46 was admitted
24 into evidence.)
25

1 BY MR. WILKINS:

2 Q All right. Tell the juror about this area of the
3 residence that you processed.

4 A This sofa, it had some clothing on top of it. I
5 think there was a black jacket on it. Lots of paper
6 around it and beneath it. We searched the cushions,
7 behind it and under it. And from underneath the
8 couch, I did locate a handwritten note.

9 Q I'm going to show you what's State's Exhibits 167 and
10 47 marked for identification purposes.

11 (WHEREUPON, State's Exhibit Nos. 47 & 167 were
12 marked for identification only.)

13 BY MR. WILKINS:

14 Q Showing you State's Exhibits 47 and 167.

15 A Yes, those are photographs that I had taken.

16 Q Are they true and accurate representations?

17 A Yes, they are.

18 THE COURT: Wait a minute. Are you moving them
19 in?

20 MR. WILKINS: State moves 167 and 47 in.

21 MR. MCDUGAL: Without objection, Your Honor.

22 THE WITNESS: Okay.

23 (WHEREUPON, State's Exhibit Nos. 47 & 167 were
24 admitted into evidence.)
25

1 BY MR. WILKINS:

2 Q There's the couch again.

3 A That is the photograph and I have annotated that with
4 the number that I assigned to it when it was
5 collected, which was MP20. MP, being my initials,
6 and then my 20th piece of evidence. The arrow points
7 to the underneath side of the couch, which is where I
8 located the note.

9 Q I'm going to show you State's Exhibit 167. Is that
10 the note that you found?

11 A Yes, that is the note that was found, after, it was
12 collected and prior to us doing any kind of
13 processing in our crime scene office.

14 (WHEREUPON, State's Exhibit No. 130 was marked
15 for identification only.)

16 BY MR. WILKINS:

17 Q I'm going to show you State's Exhibit 130 for
18 identification purposes. Do you recognize State's
19 Exhibit 130?

20 A Yes, I do. This is the handwritten note.

21 Q Okay. What did you do with the handwritten note
22 after you collected it?

23 A After the note was collected and after we had
24 completely finished with the scene, all the evidence
25 was transported, including this item, was transported

1 back to our office where it was stored until we could
2 actually process it for latent fingerprints. It was
3 processed for latent fingerprints by Sergeant Shaw,
4 who was one of my partners at the scene. And he
5 then, after processing it, did obtain a positive
6 result and that was sent to our latent division or
7 further analysis.

8 Q Were you able to lift a latent point off the note?

9 A The note was actually processed with a chemical,
10 which is used on porous material, such as paper. A
11 print was developed and it was photographed via our
12 image enhancement system, which is a computerized
13 system we use to photograph latent prints. It was
14 then sent over to our latent division where they did
15 the comparison.

16 (WHEREUPON, State's Exhibit No. 136 was marked
17 for identification only.)

18 BY MR. WILKINS:

19 Q Let me show you State's Exhibit 136 -- let me go back
20 to State's Exhibit 130 that you previously
21 identified. Can you identify that for us again?

22 A Yes, this is the handwritten note that I brought to
23 the crime scene office and Sergeant Dar Shaw actually
24 processed.

25 MR. WILKINS: Your Honor, State moves Exhibit

1 130 into evidence, the handwritten note.

2 MR. MCDUGAL: Without objection.

3 (WHEREUPON, State's Exhibit No. 130 was admitted
4 into evidence.)

5 BY MR. WILKINS:

6 Q Now, I'm going to show you State's Exhibit 136 for
7 identification purposes only.

8 A This is the latent print card that was filled out
9 after the latent print was obtained.

10 Q And once you obtain a latent print, what do you do
11 with them?

12 A Again, those prints are forwarded to out latent
13 fingerprint division and they will do the comparison
14 on any latent prints that we send them.

15 Q Did you forward that one to latent print for
16 comparison?

17 A Yes.

18 Q So from the living room processing, where did you go
19 after that?

20 A Went back towards the rear bedroom area and began
21 processing that area.

22 Q Did you find anything?

23 A Yes. Several items.

24 (WHEREUPON, State's Exhibit Nos. 48 - 50 & 161
25 were marked for identification only.)

1 BY MR. WILKINS:

2 Q I'm going to show you what's State's Exhibits 48, 49,
3 50 and 161. I'm going to show you State's Exhibit
4 48, can you identify that?

5 A Yes, this is an annotated photograph that was taken
6 of a metal clipboard that was located in the floor
7 between the bed and the computer desk in the rear
8 bedroom.

9 Q Is that true and accurate copy?

10 A Yes, it is.

11 Q I show you State's Exhibit 49?

12 A That is a photograph of the same metal clipboard once
13 we got it back to our office.

14 Q State's Exhibit 50?

15 A Another photograph at our office, this time showing
16 the metal clipboard open with the contents exposed.

17 Q True and accurate copy?

18 A Yes.

19 Q And State's 161?

20 A And that is a photograph of one of notes that was
21 within the metal clipboard.

22 MR. WILKINS: Your Honor, State moves Exhibits
23 48, 49, 50 and 161 into evidence.

24 MR. MCDUGAL: Without objection.

25 THE COURT: All right.

1 (WHEREUPON, State's Exhibit Nos. 48-50 & 161
2 were admitted into evidence.)

3 BY MR. WILKINS:

4 Q That is State's Exhibit 48, Lieutenant Petersen. Can
5 you tell the jury what that is?

6 A Yes, sir, within the circle, it's very difficult to
7 see, is a metal clipboard approximately an inch and a
8 half, two inches thick that was between several other
9 items on the floor of the rear bedroom.

10 Q State's Exhibit 49?

11 A That is the same item that was located in the rear
12 bedroom, but in our office prior to opening it up.

13 Q State's Exhibit 50?

14 A That was the contents that we saw in the clipboard
15 before we started to really go through it.

16 Q And State's Exhibit 161?

17 A That is a copy of a note that was very similar to the
18 ones that we had already collected at Cleveland
19 Street and Rose Avenue.

20 Q And what, if anything, did you do with the metal
21 clipboard?

22 A The metal clipboard, again, was taken to our office
23 and Sergeant Dar Shaw, actually, did the processing
24 on that metal clipboard. He, actually, just used a
25 black powder, normally, what you may see a forensic

1 person use in the field. Just simply used the black
2 carbon powder.

3 (WHEREUPON, State's Exhibit No. 137 was marked
4 for identification only.)

5 BY MR. WILKINS:

6 Q I'm going to show you State's Exhibit 137. Do you
7 recognize State's Exhibit 137?

8 A Yes, I do, that is the clipboard.

9 Q Is this the clipboard you collected from the
10 residence?

11 A Yes, sir.

12 MR. WILKINS: Your Honor, State moves State's
13 Exhibit 137 into evidence?

14 MR. MCDUGAL: Without objection.

15 THE COURT: Okay.

16 (WHEREUPON, State's Exhibit No. 137 was admitted
17 into evidence.)

18 BY MR. WILKINS:

19 Q I take you back to State's Exhibit 161, the contents
20 of the clipboard?

21 A There were several pieces of paper in there, but the
22 most noteworthy was there appeared to be multiple
23 copies of this same type note, some with a smaller
24 font, some with a larger front.

25

1 (WHEREUPON, State's Exhibit No. 127 was marked
2 for identification only.)

3 BY MR. WILKINS:

4 Q I'm going to show you State's Exhibit No. Do you
5 recognize State's Exhibit 127?

6 A Yes. Those are copies of the notes that were
7 observed in the clipboard.

8 Q Are those the actual notes that were in the
9 clipboard?

10 A Yes.

11 MR. WILKINS: Your Honor, the State moves
12 Exhibit 127 into evidence.

13 MR. MCDUGAL: We object to the admission of
14 those documents, Your Honor. Should we approach?

15 THE COURT: Yeah, come on up.

16 (WHEREUPON, a bench conference was held in the
17 presence of the jury but out of the hearing of
18 the jury.)

19 THE COURT: Okay. In evidence.

20 (WHEREUPON, State's Exhibit No. 127 was admitted
21 into evidence.)

22 BY MR. WILKINS:

23 Q Now, you were processing the main bedroom; is that
24 correct, Lieutenant Petersen?

25 A Yes, sir.

1 Q What made you call that the main bedroom?

2 A Actually, it was really the only bedroom in the
3 house. I mean, it did have a bed in it. It had
4 items in it that you might normally find in a
5 bedroom. The other bedroom, the middle bedroom,
6 looked like a crib mattress laying on the floor. The
7 front bedroom, there was no bed. It looked like
8 there had been a disassembled crib laying in there,
9 but it was laying across some clothing and other
10 artifacts were stored in that room.

11 Q Just again, once you collected the clipboard, what
12 did you do with it?

13 A We actually took that back to our office where it was
14 stored until we were able to process it for latent
15 prints.

16 (WHEREUPON, State's Exhibit No. 128 was marked
17 for identification only.)

18 BY MR. WILKINS:

19 Q Now, I'm going to show you what's State's Exhibit 128
20 for identification purpose.

21 A Okay. That is the actual two pieces of an envelope
22 with an address on it for Judon Burnside and a copy
23 that was made of it.

24 Q Now, these two pieces are difficult to read?

25 A Yes.

1 Q Why is that?

2 A They were actually processed with ninhydrin and
3 sometimes the ninhydrin will have an adverse reaction
4 to inks or writing implements that are used on paper.

5 Q Where did you retrieve these documents?

6 A This was in the rear bedroom on the floor just inside
7 the doorway.

8 MR. WILKINS: Your Honor, State moves Exhibit
9 128 into evidence.

10 MR. MCDUGAL: No objection.

11 (WHEREUPON, State's Exhibit No. 128 was admitted
12 into evidence.)

13 BY MR. WILKINS:

14 Q Did you process Exhibit 128 for fingerprints?

15 A That item was processed for fingerprints as we were
16 going through most of this evidence. Sergeant Dar
17 Shaw and myself were some processing. I believe that
18 is one that I may have processed, but there were no
19 results obtained from it.

20 Q After that piece of evidence, what did you do?

21 A I, again, secured that evidence, got it back to the
22 office. I continued to search for other items within
23 the bedroom.

24 Q Do you remember what else you found?

25 A Found another note.

1 (WHEREUPON, State's Exhibit No. 129 was marked
2 for identification only.)

3 BY MR. WILKINS:

4 Q I'm going to show you what's State's Exhibit 129. Do
5 you recognize State's Exhibit 129?

6 A Yes, this is a note that was found in the same area
7 as the two pieces of envelope just inside the doorway
8 of the rear bedroom.

9 Q Is this the exact piece of paper that you retrieved?

10 A Yes, sir.

11 MR. WILKINS: Your Honor, State moves Exhibit
12 129 into evidence?

13 MR. MCDUGAL: Objection on the same grounds.

14 THE COURT: Same grounds? Same ruling. Thank
15 very much.

16 (WHEREUPON, State's Exhibit No. 129 was admitted
17 into evidence.)

18 BY MR. WILKINS:

19 Q Showing you State's Exhibit 129.

20 A Yes, that is the note that was found on the floor
21 just inside the rear bedroom, and was taken back to
22 our office and processed for latent prints with
23 negative results.

24 Q After the rear bedroom, where did you go from there?

25 A Starting moving up towards the other end of the

1 house. And went into the front bedroom area.

2 Q What did you find in the front bedroom area?

3 A As I got into the bedroom, there was a lot of junk,
4 clothing, baby crib, there was a shopping bag that
5 had a garbage liner box inside of it that was full of
6 what appeared to be remnants of wallpaper and
7 molding.

8 Q All right. I'm going to show you a number of photos
9 here. Lieutenant Petersen, I'm showing you State's
10 51, 52, 54, 55, 56, 57, 58, 163, 60, 61, 62 and 63.

11 (WHEREUPON, State's Exhibit Nos. 51, 52, 54-58,
12 60-63 & 163 were marked for identification
13 only.)

14 BY MR. WILKINS:

15 Q Lieutenant Petersen, I'm going to show you these
16 photos. Look through and tell me if you recognize
17 them or not.

18 A Yes, I do.

19 Q Are all those photos true and accurate
20 representations of the day y'all were processing the
21 Tindal Road residence?

22 A Yes, it is.

23 MR. WILKINS: Your Honor, State moves 51, 52,
24 54, 55, 56, 57, 58, 163, 60, 61, 62 and 63.

25 MR. MCDUGAL: No objection to the photographs,

1 Your Honor.

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

3 (WHEREUPON, State's Exhibit Nos. 51, 52, 54-58,
4 60-63 & 163 were admitted into evidence.)

5 BY MR. WILKINS:

6 Q All right. You were in the front bedroom; is that
7 correct, Lieutenant Petersen?

8 A Yes, sir.

9 Q Let me show you State's Exhibit 51.

10 A This is a photograph from the doorway entrance into
11 the front bedroom. Again, just piles of stuff,
12 clothing, the crib, a box, which is annotated on
13 there that appeared to have some remnants in it from
14 wallpaper and things of that nature.

15 Q Did you stay in the front bedroom or were you
16 processing the bathroom as well?

17 A Well, also, went into the bathroom area.

18 Q Show you State's Exhibit 52.

19 A This is stepping into the adjacent bathroom. This
20 particular shot is looking at a shower stall. And
21 what we have is what appears to be red paint has been
22 sprayed on the wall behind the glass door that is
23 open on the shower stall. It appears to be red paint
24 sprayed in the shower. It also appears that
25 something has been burnt inside the shower. There

1 happens to be matches laying just in front of the
2 shower, small match sticks.

3 Q You referred to what's in the yellow circle?

4 A Yes, that was my item MP24, which I labeled, which
5 was the shopping bag with the box containing the
6 wallpaper.

7 (WHEREUPON, State's Exhibit No. 59 was marked
8 for identification only.)

9 BY MR. WILKINS:

10 Q Show you State's Exhibit 59.

11 A This is a photograph of the outside wall, back wall,
12 a small window. And you can see that there is what
13 appears to be red paint sprayed up on the wall. And
14 it looks like wallpaper is missing from the wall as
15 well as some small strips of vertical molding.

16 Q State's 55?

17 A This is looking down towards the floor in front of
18 the shower. There are burnt match sticks on the
19 floor. It also looks as though the carpet has been
20 scorched by some type of fire or heat process.

21 Q Fifty-six?

22 A Again, just another view of the front of the shower
23 stall with the wallpaper on the left side. And then
24 as you get towards the base of the shower, match
25 sticks laying in front of the shower. And it's

1 difficult to see, but you can see some charring
2 inside the shower.

3 Q Fifty-seven?

4 A Again, match sticks. And it's a little bit better
5 image of the charred carpet that was next to the wall
6 there.

7 Q Fifty-eight?

8 A This is a view looking down to the shower drain.
9 Just to the front left and the upper left of the
10 shower appears to be some -- just some solid black
11 areas, looks like something has been burnt.

12 Q State's 60?

13 A This is the toilet that is also in that bath area,
14 which is -- going into that bath area is going to be
15 just to your left.

16 Q State's 61?

17 A Inside it toilet appeared to be a small section of
18 wallpaper and what appears to be one of the staples
19 that are consistent in the manufacture of mobile
20 homes.

21 Q State's 62?

22 A This was a spoon that was lying on top of the toilet
23 tank and appeared to have some type of white granular
24 substance in this spoon itself.

25 Q And State's 163?

1 A This was the sink, also, in that same bathroom. And
2 laying atop the counter was a bottle of starter fluid
3 and a knife. There's a battery there, which was
4 located there next to the sink.

5 Q Now, I'm going to refer you back to State's Exhibit
6 52. And you said there remnants in that box. After
7 looking at those others photos, what do you mean?

8 A They appeared to be small sections of wallpaper and
9 just vertical strips of molding that are normally
10 seen in mobile homes that had been placed into that
11 box and the box closed and placed into a bag.

12 Q So after you took these photos, what did you do next?

13 A After the photos were collected, this items as well
14 as the rest of your items, we transported that back
15 to our office.

16 Q And what do they do there?

17 A For that particular item, we searched that box, the
18 contents of the box. The remnants that were inside
19 the box as well as the little sections of molding,
20 we, actually, sprayed a chemical called leucocrystal
21 violet or LCV, which can act as a presumptive test
22 for blood.

23 Q What were your findings?

24 A I did not receive any type of results from the
25 wallpaper itself, but on the small sections of

3 Q After you did that processing back at the lab, what
4 did you do?

5 A Once we were completely through with the incident
6 location, we gathered all our evidence up, took it
7 back to office, did our processing. It was all, at
8 that point, packaged and sent to our property and
9 evidence division.

10 Q After that, did you process the van?

11 A Yes, we -- actually, as we were doing the outside
12 photos, when we arrived on scene, we took photographs
13 of the van exterior. And we were going to have it
14 towed to our processing bay where we could take a
15 closer look at it. We, actually, sealed it on scene
16 and had it transported back to our facility so that
17 we could process that thoroughly.

18 Q Did you process the van?

19 || A Yes, I did.

20 Q Did you take photographs of it?

21 | A I did.

22 Q I'm going to show you a number of photos here.

23 (WHEREUPON, State's Exhibit No. 64-70 & 38 were
24 marked for identification only.)

25

1 BY MR. WILKINS:

2 Q I'm going to show you State's 64, 65, 66, 67, 38, 68,
3 69, 70. I want you take a look at those exhibits.

4 A Those are my photos.

5 Q Are they of the Tindal Road residence?

6 A They are of the van at Tindal Road.

7 Q Are they a true and accurate of the day in which you
8 processing?

9 A Yes, it is.

10 MR. WILKINS: State moves 64, 65, 66, 67, 38,
11 68, 69 and 70 into evidence, Your Honor.

12 MR. MCDOUGAL: Without objection.

13 THE COURT: Okay.

14 (WHEREUPON, State's Exhibit Nos. 64-70 & 38 were
15 admitted into evidence.)

16 BY MR. WILKINS:

17 Q State's Exhibit 64?

18 A There was a photograph taken of the van sitting in
19 our processing bay. The doors are still sealed on
20 it. They were, actually, by Sergeant Dar Shaw out on
21 scene. I'm just doing overall photography here to
22 show the condition of the van.

23 Q State's Exhibit 65?

24 A Just another photograph showing the rear side of the
25 van and the tag that was located on it.

1 Q State's Exhibit 66?

2 A This was the passenger side door. Once I opened it
3 up, there were four black garbage bags with the blue
4 draw straps in the door pocket of the passenger door.

5 Q Is that what you're referring to in the middle of the
6 picture there?

7 A Yes. Right there.

8 Q Show you State's Exhibit 67?

9 A And that's just a close-up shot showing the same
10 bags.

11 Q Show you State's Exhibit 38?

12 A That is looking through the rear entrance or the back
13 door of the van showing just assorted items, gas can,
14 battery, hard hat.

15 Q Show you State's Exhibit 68?

16 A This is the side door of the van on the passenger
17 side. And it's showing a lot of stuff that was just
18 piled up behind the seats. Right there behind the
19 passenger seat, I noted as MP31, which was a pair of
20 latex gloves.

21 Q State's Exhibit 69?

22 A Again, that's just a closer shot showing the same
23 latex gloves as well as the trash and other items
24 within the back area of the van, including a Clorox
25 bottle.

1 Q Show you State's Exhibit 70?

2 A That is the close-up shot of a pair of used latex
3 gloves behind the passenger seat.

4 Q Now, as to the glove here, what did you do with it?

5 A After closer inspection of the glove, there appeared
6 to be some discoloration on it. And I did a phenol
7 saline test on the gloves, which is a presumptive
8 test for blood.

9 Q And --

10 A I did get positive results for blood.

11 Q Did you collect that glove?

12 A Yes. Actually, it's two gloves, both were collected.

13 Q Once you collected them, what did you do?

14 A Once they were collected out of there, I, actually,
15 did the phenol saline test, which is a swab. And the
16 reaction would be an immediate very dark pink color
17 that would come out on the swab. And I got that.

18 Q I'm going to show you State's Exhibit 131.

19 (WHEREUPON, State's Exhibit No. 131 was marked
20 for identification only.)

21 BY MR. WILKINS:

22 Q I ask you to take a look at State's Exhibit 131 and
23 see if you can identify that?

24 A This is my handwriting with the case number and my
25 description of a pair of latex gloves with suspected

1 blood.

2 Q Is that the glove that you collected from the back of
3 the van?

4 A Yes, it is.

5 MR. WILKINS: Your Honor, State moves Exhibit
6 131 into evidence.

7 MR. MCDUGAL: Without objection.

8 (WHEREUPON, State's Exhibit No. 131 was admitted
9 into evidence.)

10 BY MR. WILKINS:

11 Q Now, you said that you took a swab of the glove; is
12 that correct?

13 A Yes.

14 Q Explain to the jury how you do that.

15 A Once I had a positive result with the phenol saline
16 swab, I took another swab, which is -- it's called an
17 integra swab. It's incapsulated in a sheet that
18 protects the cotton tip of that swab. I put a little
19 bit of distilled water on it and just swabbed the
20 area of the glove and slide the sheet back over it.
21 It's ventilated so that it dries. And once it's
22 dried, we, actually, take that and place it into
23 property and evidence where it can be further
24 analyzed.

25 Q And where do you send it to be analyzed?

1 A That would, actually -- we would not send that. That
2 would be up to the agency to send it, but most of
3 that blood evidence would be sent to SLED.

4 Q All right. I'm going to show you State's Exhibit
5 132.

6 (WHEREUPON, State's Exhibit No. 132 was marked
7 for identification only.)

8 BY MR. WILKINS:

9 Q Do you recognize that?

10 A Yes. This is one of the swabs that was collected
11 from the latex gloves. It's my writing.

12 MR. WILKINS: Your Honor, State moves Exhibit
13 132 into evidence.

14 MR. MCDUGAL: Without objection.

15 THE COURT: Okay.

16 (WHEREUPON, State's Exhibit No. 132 was admitted
17 into evidence.)

18 BY MR. WILKINS:

19 Q After you processed the van, did you ever get
20 involved in the recovery of remains of Mekole Harris?

21 A Yes, I did.

22 Q Tell us how you got involved.

23 A We were notified by Detective Flavell from the
24 Greenville Police Department that some remains were
25 thought to have been discovered off of Altamont Road

1 in Greenville.

2 Q Do you remember when this was?

3 A This was September the 10th, 2009.

4 Q So about how many months after you processed this
5 scene?

6 A I believe about 17 months.

7 Q And how did you organize law enforcement who went out
8 there to process the potential scene?

9 A When we were called to respond, because the two
10 sergeants I previously mentioned were so involved
11 with this, the same two accompanied me and we
12 responded to the Altamont Drive location. And once
13 there, we met with Greenville City detectives that
14 were already on scene. Dr. Michael Ward, the medical
15 examiner for Greenville County was also there. And
16 we took a look at what was there. They had already
17 put in place some white flag markers for things that
18 had already been located. Due to the amount of
19 daylight that was left, because it was late
20 afternoon, we decided that before we really get
21 aggressive into processing that area, we would wait
22 until the next day. So they had an officer sit on it
23 all night long. Then the next morning, we regrouped
24 and then began to identify and place placards on all
25 of the discovered items that we found in that area.

1 Q I'm going to show you some more photos --

2 MR. MCDUGAL: Your Honor, may we approach?

3 THE COURT: Yeah.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury but out of the hearing of
6 the jury.)

7 THE COURT: All right. Madam Forelady, ladies
8 and gentlemen of the jury, we're going to try to -- let's
9 take a break. We're going to try to streamline a little
10 bit. Y'all don't talk about the case. We'll get back
11 with you very shortly. Okay.

12 (WHEREUPON, the jury left open court at
13 approximately 3:40 p.m.)

14 THE COURT: Okay. We'll just be at ease. Y'all
15 go ahead and do your work.

16 (WHEREUPON, a short break was taken.)

17 (WHEREUPON, State's Exhibit Nos. 71-86 were
18 marked for identification only.)

19 THE COURT: So y'all good? Everything agreed
20 to, I guess?

21 MR. WILKINS: We're working in that direction,
22 Your Honor.

23 THE COURT: Okay. Still working.

24 MR. WILKINS: We're ready to continue with
25 Lieutenant Petersen. We were trying to get the other two

1 forensics sped up.

2 MR. MCDUGAL: He had quite a large number of
3 exhibits going in.

4 THE COURT: Okay. Now, before we go any
5 further, we've had two bench conferences. And I
6 appreciate that from Defense counsel and prosecutor to
7 voice the Defense counsel's objections to, I believe it
8 was No. 127, which I allowed in over the objection of
9 Defense counsel and I told them at the bench conference I
10 would give him an opportunity to voice his objection at
11 the next break.

12 So, Mr. McDougal, on the record, you want to --

13 MR. MCDUGAL: Yes, Your Honor. Thank you. We
14 are trying to locate the --

15 THE COURT: It was the letters inside the
16 clipboard.

17 MR. MCDUGAL: May it please the Court. Your
18 Honor, for Defense, the State's Exhibit 127 that was
19 offered into evidence is a collection of typewritten
20 notes, which are similar, but not identical to notes that
21 will have been responded to by prior witnesses. Our
22 objection is not to the actual paper that was located by
23 the officer, but rather the words on them, that they are
24 hearsay, they are out-of-court statements being offered
25 for the truth. There is also no foundation with respect

1 to the words communicated in that Lieutenant Petersen
2 found a paper, but cannot sponsor or provide a foundation
3 for the words that were communicated in the paper. That's
4 State's Exhibit 127.

5 THE COURT: Okay. Do you remember the other
6 one?

7 MR. MCDOUGAL: The other one from yesterday?

8 THE COURT: Yes. And I will take responsibility
9 for not allowing counsel an opportunity to voice the
10 objection we had at a bench conference. So please do that
11 now.

12 MR. MCDOUGAL: Your Honor, the other exhibits
13 which we objected and renew our objection is State's
14 Exhibit 126, that is what appears to be a rental lease
15 purchase agreement retrieved by the officers from -- I
16 believe the testimony was from the dumpster at Tindal
17 Road. The objection to this document we would renew is
18 that is contains extensive content that the officers
19 cannot sponsor and could not respond to.

20 THE COURT: Okay. Thank you very much.

21 Y'all ready to bring the jury back?

22 MR. WILKINS: Yes, sir.

23 (WHEREUPON, the jury came into open court at
24 approximately 4:00 p.m.)

25 THE COURT: All right. Mr. Wilkins.

1 MR. WILKINS: Thank you, Your Honor. May it
2 please the Court?

3 THE COURT: Yes, sir.

4 BY MR. WILKINS:

5 Q Lieutenant Petersen, we were discussing how you and a
6 number of law enforcement officers were going out to
7 Altamont Road?

8 A Correct.

9 Q And what was the purpose of y'all going out there?

10 A It was the recovery of skeletal remains and
11 collection of other items of evidence.

12 Q I'm going to show you State's Exhibit 71.

13 MR. WILKINS: And, Your Honor, the Defense has
14 stipulated to the authenticity of these photos and so the
15 State would then move pursuant to the stipulation we have
16 with the Defense, State's Exhibits 71, 72, 73, 74, 75, 76,
17 77, 78, 79, 80, 81, 82, 83, 84, 85 and 86.

18 THE COURT: Okay. In without objection by
19 stipulation of counsel; is that correct?

20 MR. MCDOUGAL: Yes, sir, Your Honor.

21 THE COURT: Okay.

22 (WHEREUPON, State's Exhibit Nos. 71-86 were
23 admitted into evidence.)

24 BY MR. WILKINS:

25 Q I'm going to show you these photos briefly. Tell the

1 jury what they are just briefly.

2 A These are photographs as well as diagrams of the
3 recovery of skeletal remains and the collection of
4 evidence from Altamont Road in Greenville.

5 Q Now, as a demonstrative, did you put those photos in
6 a PowerPoint presentation?

7 A Yes, I did.

8 Q Would you step down here and present that to the
9 juror?

10 A What this is is a bird's eye view, basically, taken
11 from a Bing map from the computer. Don't know when
12 this was actually taken, but for purposes of being
13 able to explain what we were doing and where these
14 items were found, it was put into a PowerPoint. And
15 it's not working. I've labeled the roads. This,
16 actually, occurred about 350 feet up Altamont Road.
17 You see Poinsett Highway and Old Buncombe Road just
18 north of Furman. Upon taking a turn onto Altamont
19 Road, an area, a clearing right there was our area of
20 interest. That was the area that we were looking at.
21 You notice that --

22 We can go ahead to the next one?

23 Towards the center there, you will see a
24 concrete building. And we kind of used this as a
25 point of where we could run measurements from. But

1 most of the items that we found were within the
2 highlighted yellow area. As you come into the area,
3 you can see Altamont Road behind the trees. Just
4 where it starts to clear in the field area is an
5 access road and a metal gate. It runs back towards
6 that wood line. And about 200, 220 feet down that
7 wood line was kind of our main area of interest. The
8 diagram that was actually prepared for this shows
9 that concrete building and how we drew our baseline
10 measurements from the corner of that building.

11 All of the numbers in there represent items of
12 evidence that we collected. It goes from an area
13 right up in the lower left, starting with one, it
14 kind of spreads out from that point. It kind of
15 works in that direction, flowing in a
16 northeastern-type manner.

17 Human bones that were found are located in red.
18 And what we did is we went through and placed those
19 marker in areas that were of interest to us,
20 especially the skeletal remains. We marked those and
21 a doctor, an anthropologist from Clemson University,
22 came up and assisted us. And we visited each one of
23 these and she confirmed they were human bones as we
24 went through each one.

25 From that point, this area highlighted in blue,

1 that tended to be the primary focus area. In this
2 area right here, we discovered what appeared to be
3 some items that were charred. There were some
4 discoloration to the ground. There seemed to be a
5 lot of artifacts that were strong in this area. That
6 was kind of our concentrated area and where we began
7 our collection.

8 Some of the things that we found were pieces of
9 fabric. We found pieces of wood. We found metal
10 tubing. We found hinges with metal tubing. We found
11 charred items. We found remnants, pieces of black
12 trash bags with blue draw straps, which appeared to
13 be shredded. And as we understood that at some point
14 in time in the past someone had come through and
15 bush-hogged the area and pretty much obliterated a
16 lot of that stuff. But there's a piece of fabric
17 that was found in that location, a close-up of that.
18 We have a plaid, blue-colored fabric. This was a
19 charred piece, looks like a wood veneer, or some type
20 of wooden item. But again, it was charred. And that
21 was in that same blue-shaded area that we found.

22 This is the remnants of what appeared to be the
23 black trash bags with the blue draw straps. Again,
24 another shot of that. Close-up of the blue draw
25 strap. This was one of those -- item No. 2, which

1 was several different items. But it was the metal
2 tubing that was found and some fabric found. There
3 was, also, some hinges that were found there. Again,
4 another shot of the metal tubes. Again, this was
5 another area of metal tubes and really displayed
6 hinges. And what it appeared to be was some type of
7 child's crib or portable bassinet that we were
8 finding. That's a close-up shot of the hinge.

9 This was a photograph of that same item once we
10 got it back to the office. And you can see how it
11 resembles a collapsable frame. We found a lot of
12 very small artifacts, from buttons from what appeared
13 to be a pair of jeans, other little metal objects
14 and, also, what appeared to be a tag. I think we
15 have a close-up shot of that tag. And, although it's
16 very difficult to read, the tag does say Samsonite.
17 And I think that's all I've got.

18 Q Lieutenant, you can return to the witness stand.
19 Now, Lieutenant Petersen, y'all collect some human
20 bones out there, correct?

21 A Yes, we did.

22 Q Can you tell us how many?

23 A We had 16 different items that were consisting of
24 human bone. The actual count of human bones and
25 fragments, I think we had up to about 55, 60 pieces

1 of bone.

2 Q And once y'all collected those bones, do you know
3 where they were sent?

4 A Actually, once we collected them with the
5 anthropologist there as well as another of our
6 pathologist, Dr. Fulcher, we laid them out on a table
7 so they could inventory those bones. Once we
8 collected those and they were inventoried, they were
9 actually placed in the custody of Dr. Fulcher, who
10 took them to the Greenville County morgue.

11 MR. WILKINS: Your Honor, at this point, I would
12 like to read in a stipulation between the State and the
13 Defense.

14 THE COURT: Okay.

15 MR. WILKINS: This is State's Exhibit 160, which
16 has been agreed do by stipulation.

17 (WHEREUPON, State's Exhibit No. 160 was marked
18 for identification and received into evidence.)

19 THE COURT: All right.

20 MR. WILKINS: Lieutenant Petersen, if you'd
21 answer any questions the Defense counsel may have.

22 MR. MCDUGAL: One moment, Your Honor.

23 THE COURT: Yes, sir.

24 MR. MCDUGAL: I apologize to the Court.

25 THE COURT: That's all right.

CROSS-EXAMINATION

1
2 BY MR. MCDUGAL:

3 Q Thank you for your patience, Lieutenant Petersen. I
4 just have a couple of questions for you. You
5 described the scene you found when you entered the
6 trailer and did your search through as outlined in
7 the diagram, you recall that testimony?

8 A Yes, sir.

9 Q Okay. And let me characterize your testimony and see
10 if you agree with it. It was a terrible mess, the
11 whole trailer?

12 A Yes, it was.

13 Q It was trash strewn everywhere?

14 A Yes.

15 Q It hadn't been cleaned in who knows how long. There
16 were things piled up piles that made no sense at all
17 just based upon the photographs. Clothes, pieces of
18 cardboard and plastic bags just thrown everywhere.
19 Is that a fair summary of what you said?

20 A Yeah, it was a mess.

21 Q And we, humans, leave traces of ourselves everywhere?
22 That's your profession, right?

23 A Yes.

24 Q We leave -- as we walk through a room as we live in a
25 place, we leave all kinds of things behind. Our DNA,

1 right?

2 A Right.

3 Q We leave fibers?

4 A Yes.

5 Q We leave blood sometimes, depending upon what we've
6 been doing? We leave all kinds of bodily fluids. We
7 leave a trail wherever we go; is that correct?

8 A Yes.

9 Q And when someone lives in a particular place, even
10 for a relatively short period of time, they're
11 leaving traces of themselves, whether that be blood,
12 DNA, fibers, fingerprints, where they are; do you
13 agree with that?

14 A Yes.

15 Q All right. You brought a search dog -- you didn't
16 testify to this, but your report reflects you brought
17 a search dog into the trailer; is that right?

18 A Yes.

19 Q A cadaver search dog that's trained to search for
20 human remains. And I think the dog's name is Ice; is
21 that right?

22 A I believe so, yes.

23 Q And that dog found no human remains in the trailer;
24 is that correct?

25 A No.

1 Q I'm going to show you, Lieutenant Petersen, a
2 photograph that is State's Exhibit 62 in evidence,
3 and ask you to please have a look at that? Tell me
4 what that is.

5 A That appears to be the spoon that was on top of the
6 toilet tank.

7 Q All right. I think you testified there was some
8 white granular residue on the spoon; is that correct?

9 A Appeared to be, yes.

10 Q You never tested that residue for what it is?

11 A I did not.

12 Q To your knowledge, no one has; is that right?

13 A To my knowledge.

14 Q So sitting here today, we have no idea what that
15 white granular residue is?

16 A No, we don't.

17 Q And you're a police officer in longstanding. You
18 would agree with me that spoons with white granular
19 residue are often found in places which narcotics
20 have been used; would you agree with that?

21 A They could.

22 Q The next exhibit I'm going to ask you to have a look
23 at, Lieutenant, is State's Exhibit 70. Do you recall
24 that?

25 A Yes, I do.

1 Q I think your testimony was that that's a photograph
2 of some gloves that you found in the van?

3 A Right.

4 Q Okay. And you recall and your investigation
5 reflected that that van was registered in the name of
6 Carmen Jenkins; you're aware of that?

7 A I believe so.

8 Q You processed the van, I'll represent that to you
9 that's what the evidence is. Now, I think your
10 testimony was that when you processed those gloves,
11 you did a test for, phenol saline test for apparent
12 blood; is that right?

13 A That's correct.

14 Q But you did not test those gloves for fingerprints;
15 is that correct?

16 A No, we did not.

17 Q You would agree with that the FBI has a protocol that
18 specifically is for nonporous plastic gloves for
19 testing for fingerprints?

20 A There are procedures, yes.

21 Q You didn't use any of those procedures?

22 A We did not.

23 Q So if there are fingerprints in those gloves today,
24 we have an idea?

25 A If there are fingerprints in there, probably not.

1 Q Because you don't test for it?

2 A We didn't test for it.

3 Q Okay. So who may or may not have had those gloves on
4 their hand is entirely unknown?

5 A I do not know.

6 Q Okay. Finally, Lieutenant, Altamont Road, I think
7 this last part of your testimony was to describe that
8 part of the field and air as the photograph reflects
9 where the debris field where the human remains was
10 found. Is that a fair description of what you
11 testified to?

12 A Yes.

13 Q Would you agree with me that where the debris field
14 began to appear was about 350 feet from Altamont
15 Road?

16 A I don't think it was quiet that far back.

17 Q Less than 350 feet?

18 A Yes.

19 Q So maybe about a football field, give or take?

20 A Possibly.

21 Q And that distance, you would agree with me, for a
22 person of average build carrying a load would not be
23 that great a distance, would it? You can walk 100
24 yards in 15, 20, 30 seconds?

25 A Possibly.

1 Q Not a great dance?

2 A Okay.

3 MR. MCDUGAL: May I have a moment, Your Honor?

4 THE COURT: Uh-huh.

5 MR. MCDUGAL: Nothing further, Your Honor.

6 Thank you, Lieutenant.

7 THE COURT: Any redirect examination?

8 MR. WILKINS: No, sir, Your Honor.

9 THE COURT: All right. Thank you. You may
10 stand down.

11 MR. WILKINS: Can the witness be excused, Your
12 Honor?

13 MR. MCDUGAL: No objection.

14 THE COURT: All right. Thank you, sir. You're
15 released.

16 MR. CAMPBELL: Your Honor, the State's next
17 witness is going to be Sergeant Dar Shaw.

18 THE CLERK: Please come forward to be sworn in.
19 Please place your left hand on the Bible and raise your
20 right.

21 DAR SHAW, after being duly sworn, testified as
22 follows:

23 THE CLERK: Thank you. You may be seated.

24 MR. CAMPBELL: Your Honor, by agreement of the
25 parties, the following exhibits may be moved into evidence

1 without objection, which is State's 28, 87, 89, 88, 134,
2 90, 91, 56, 92, 93, 94, 135, 130, 136, 137, 138, 139, 140,
3 141, 142 and 143.

4 (WHEREUPON, State's Exhibit No. 136 was admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit Nos. 87-89, 134,
7 90-94, 135, 138-142 were marked for
8 identification and received into evidence.)

9 (WHEREUPON, State's Exhibit Nos. 56, 130 & 143
10 were marked and received in prior testimony.)

11 THE COURT: In without objection.

12 THE CLERK: Mr. Shaw, would you please state
13 your full name for the record.

14 THE WITNESS: Darwin Shaw, S-H-A-W.

15 DIRECT EXAMINATION

16 BY MR. CAMPBELL:

17 Q Sergeant Shaw, where are you employed?

18 A The Department of Public Safety, forensic division,
19 Greenville County.

20 Q How long you been in law enforcement?

21 A July will be 35 years.

22 Q What's your capacity there?

23 A I'm a sergeant with the forensic division.

24 Q What specialized training and background do you have
25 for your job?

1 A I was an investigator for 14 years. I attended
2 numerous schools related to homicide investigation,
3 crime scene investigation, collection and
4 preservation of evidence, fingerprint processing.
5 Also, since I've been with Greenville County, I've
6 attended also schools dealing with homicide
7 investigations, reconstruction, fingerprint
8 processing, forensic footwear impressions and other
9 schools that are related to my job.

10 MR. MCDUGAL: Your Honor, anticipating that
11 Counsel is going to offer this witness as an expert, if he
12 can identify the nature of his expertise, we may be able
13 to stipulate to that.

14 MR. CAMPBELL: Crime scene investigation,
15 evidence collection and preservation and crime scene
16 analysis.

17 MR. MCDUGAL: Substantially, the same as
18 Lieutenant Petersen?

19 MR. CAMPBELL: Yes.

20 MR. MCDUGAL: No objection.

21 THE COURT: Okay.

22 MR. CAMPBELL: For the record, he's offered as
23 an expert.

24 BY MR. CAMPBELL:

25 Q Back in 2008, did you have occasion to go to the

1 residence of 105 Tindal Road, Lot 16 in Greenville?

2 A I did.

3 Q And why did you go there?

4 A I was there to assist Lieutenant Petersen and
5 Sergeant Lendway with processing a scene.

6 Q Okay. What did you do when you arrived?

7 A I, basically, began taking -- doing video. I did a
8 video of the scene. As the scene was being
9 photographed, I did the video tape.

10 Q Okay.

11 MR. CAMPBELL: Beg the Court's indulgence, Your
12 Honor.

13 BY MR. CAMPBELL:

14 Q I'd like to show you State's 28. Do you recognize
15 that photo?

16 A Yes, sir, I do.

17 Q Is that the trailer you went to in April of 2008?

18 A It is.

19 Q Okay. All right. And also, State's diagram of the
20 trailer here, which is 103, does that fairly and
21 accurately represent the layout of the trailer as you
22 found it that day?

23 A Yes, sir, it is.

24 Q Okay. Did you assist in processing the residence?

25 A Yes, sir, I did.

1 Q And I'd like to draw your attention to a few items.
2 I show you State's 87, 88 and 89. Do you recognize
3 those?

4 A Yes, sir, I do.

5 Q Do those photos accurately depict the scene as you
6 found it?

7 A They do.

8 Q Okay. I'll put them up here so we can take a look at
9 them. Please describe what we're looking at here for
10 the jury.

11 A DS-3, there are Smith & Wesson handcuffs and DS-4 was
12 a special police badge.

13 Q This is 88?

14 A That is just a larger photograph of DS-3.

15 Q And 89.

16 A That, again, is just a larger picture of the
17 officer's badge.

18 Q I'd like to show you State's 134. If you'd look in
19 that bag and tell me if you recognize those items?

20 A Yes, sir, I do.

21 Q Okay. Let's take a look at these. Show them to the
22 jury. What are these I'm holding up right here?

23 A Those are Smith & Wesson handcuffs.

24 Q And what's this item here?

25 A It says officer's badge.

1 Q Okay. Now, where did you collect these items?

2 A That were in this rear bedroom. There was a
3 television on the stand. DS-3, DS is for my
4 initials. The handcuffs were right in front of the
5 TV and the special officer's badge was right next to
6 the television.

7 Q What did you do once you collected them, if anything?

8 A They were collected by myself, put into empty bags
9 and nothing further was done with the badge.
10 However, I did do additional processing later on of
11 the handcuffs.

12 Q What did you process the handcuffs for?

13 A They were swabbed for possible DNA.

14 Q What did you do with that swab?

15 A It was put into property and evidence.

16 Q Okay. Now, let's go to State's 90. What are we
17 looking at here?

18 A That is a bleach bottle.

19 Q Okay. And 91?

20 A That's also a bleach bottle. There were
21 considered -- both DS-21, there was a quantity of
22 two, but they were in the same area.

23 Q Okay. Were you involved in the processing of any
24 other areas of the trailer?

25 A Yes, I was.

1 Q What other areas did you process?

2 A I assisted with looking for potential evidence in a
3 bathroom, which would be back in this area of the
4 trailer.

5 Q Okay. Is that what's indicated on the diagram as the
6 front bathroom?

7 A That's correct.

8 Q Okay. Were there any particular areas of focus when
9 you processed that bathroom?

10 A The -- you're looking for any type of potential
11 evidence that may be related to the case. While
12 looking at the scene, there was some areas that were,
13 I guess, of interest, wallpaper had been torn off.
14 There were areas that had been painted with red paint
15 inside of the shower stall. There was red paint
16 there. Some type of fire had been started. There
17 was burned debris in the bottom of the shower stall.
18 So with that, looking at that was not normal, I made
19 the decision to collect the P-trap from under the
20 shower as well as the sink.

21 Q What is a P-trap?

22 A P-trap, technically, is going to be plastic, some
23 metal. It's at the lower portion of the drain. It's
24 either in the shape of a U or a sideways P. The
25 purpose of it is to measure as water goes through the

1 drain, it goes through this trap and exits farther
2 down into the septic, into the lines. There's always
3 water that's maintained in this P-trap which prevents
4 gases from backing up and getting back up into room.

5 Q Let's look at State's 92. What's that?

6 A That is just the drain, the top part of the drain for
7 the shower.

8 Q Okay. And then 93?

9 A That's actually a photograph of the -- it would be
10 the left side of the shower. This room is a bedroom.
11 This area over here is where the bathroom is at, and
12 the shower is just around the corner. What I did was
13 took a cover off of the wall to gain access to where
14 the drain was at under the shower.

15 Q Okay. What about State's 94?

16 A That is a closer photograph. This area here is the
17 bottom of the drain under the shower. The P-trap has
18 already been taken off.

19 Q So what did you do with this area?

20 A I took a reciprocating saw and cut the P-trap out
21 from underneath the area of the shower. And the
22 contents in the P-trap, water and other debris, I
23 took an arson can and dumped the contents of the
24 P-trap into the arson can, collected the P-trap as
25 one item and the contents as a separate item.

1 Q And what did you do -- State's 135, is that the
2 P-trap you're talking about?

3 A Yes, sir, that would be.

4 Q Okay. So we've got a P-trap taken out of the shower.
5 We've got contents in the can of the P-trap. What do
6 you do next?

7 A They were both packaged and placed into property and
8 evidence.

9 Q Did you process anything further in this house?

10 A There were several -- the entire house was -- when
11 you're talking processed, that means as far as
12 collection of other evidence, yes, I was involved
13 with doing that.

14 Q Okay. There's been some testimony as to letters that
15 were found in the house. Did you locate any letters
16 in the house and process any of those?

17 A Processed, but did not collect.

18 Q Okay. Okay. Well, let go on down to State's 137,
19 this metal clipboard.

20 A Yes, sir.

21 Q Did you process this item?

22 A Yes, I did.

23 Q How did you process it?

24 A With black powder and a fingerprint brush.

25 Q Were you able to get any results from your process?

1 A Yes, I did.

2 Q Let me show you 138, 139, 140, 141, 142 and 143. Are
3 those the results of your process?

4 A Yes, sir, they are.

5 Q Okay. Did you lift those prints?

6 A Yes, I did.

7 Q What did you do with these prints after you took them
8 from the clipboard?

9 A After I lifted the prints from the clipboard, they
10 were put on pieces of cardboard. I wrote a
11 description on the front of the card indicating where
12 the latents were lifted from. I also photographed
13 the clipboard to show where the prints were at. They
14 were then placed into a secured box and later picked
15 up by the latent division for examination.

16 Q Okay. I'm going to show you State's 130, which was
17 found in the residence, have you -- were you involved
18 in the processing of that item?

19 A Yes, sir, I was.

20 Q Okay. What did you do to process that item?

21 A I made a photocopy of this letter first. Then I used
22 ninhydrin, it's a chemical, dipped it in ninhydrin,
23 allowed it to dry. Once it dried, used a steam iron
24 to bring -- with the heat and humidity to bring any
25 ridge detail that might be on the paper. Once I got

1 ridge detail to appear, I photographed the print on
2 the image enhancement system and it was then
3 forwarded to our latent division.

4 Q I show you State's 136. What's that?

5 MR. CAMPBELL: This has already been identified
6 by Lieutenant Petersen, for the record.

7 THE WITNESS: This is a -- apparently, it's a
8 copy of the print that I lifted from MP-23.

9 BY MR. CAMPBELL:

10 Q Okay. So once you lifted that print, you said you
11 forwarded it to latents?

12 A That's correct.

13 MR. CAMPBELL: All right. Please answer any
14 questions the Defense has for you.

15 CROSS-EXAMINATION

16 BY MR. MCDOUGAL:

17 Q Sergeant Shaw, my name is Mark McDougal. We haven't
18 met before, have we?

19 A No, sir.

20 Q I'm one of the lawyers here representing Clarence
21 Jenkins. I need to ask you about just one exhibit.
22 You have testified as an expert in crime scene
23 investigation and processing; is that correct?

24 A Yes, sir.

25 Q Now, you wear plastic gloves when you conduct a crime

1 scene processing; is that correct?

2 A Latex, yes, sir.

3 Q That's for a variety of reasons so your fingerprints
4 don't get onto particular objects?

5 A That's correct.

6 Q So your DNA is not transferred?

7 A That's correct.

8 Q So any fibers that may adhere to your hand will not
9 be transferred to any piece of evidence; is that
10 correct?

11 A That's correct.

12 Q And one of the pieces of evidence you testified to
13 are these Smith & Wesson handcuffs, which are made of
14 some kind of metal, I'm assuming, steel or something
15 like that. Do you remember that?

16 A Yes, sir.

17 Q You would agree with me, as an expert, that metal
18 like this, whether it's stainless steel or some kind
19 of aluminum alloy, is a nonporous surface; is that
20 correct?

21 A That's correct.

22 Q And that there are a variety of ways of testing
23 nonporous surfaces for fingerprints or ridge detail?

24 A Yes, sir.

25 Q Now, you did not test these handcuffs for

1 fingerprints; did you?

2 A No, sir, I didn't.

3 Q And the fact that I'm holding them in my hand would
4 indicate that right now, my fingerprints are probably
5 on those handcuffs?

6 A Potentially, yes, sir.

7 Q And Mr. Campbell, who's been handling them, his
8 latent fingerprints are probably on those handcuffs?

9 A The potential is there, yes, sir.

10 Q Potential is, certainly, there. And an accepted
11 method of testing a nonporous surface would be black
12 powder, right?

13 A I would fuel them first with super glue and then
14 powder them.

15 Q But you didn't do that?

16 A No, sir.

17 Q Same thing, ash gray powder, didn't do that?

18 A No, sir.

19 Q Another accepted way is cyanoculate fueling; didn't
20 do that?

21 A That's correct.

22 Q You didn't do it, that's correct?

23 A I did not.

24 Q You could you a laser alternative light source, you
25 didn't do that either?

1 A No, sir.

2 Q Okay. So, in truth, you have no idea who may have
3 used the handcuffs or for what?

4 A That's correct.

5 Q And you, also, as a police officer are aware that --
6 or maybe you're not, but I'll ask you, that there are
7 stores all over America that sell this stuff, police
8 badges, handcuffs, all that kind of thing. You've
9 heard that before?

10 A Yes, sir.

11 Q And I'm guessing, you can agree with me or not, there
12 are probably many more sets of handcuffs in private
13 hands than there are in law enforcement hands. There
14 are a lot of them around?

15 A Yes, sir.

16 Q And people use them for all kinds of strange things?

17 A Okay.

18 Q You wouldn't disagree with that?

19 A I wouldn't disagree with that.

20 MR. MCDOUGAL: Have a moment, Your Honor?

21 THE COURT: Yep.

22 MR. MCDOUGAL: Nothing further for this witness,
23 Your Honor.

24 THE COURT: Redirect?

25 MR. CAMPBELL: No, Your Honor.

1 THE COURT: All right, let me talk to the two
2 lawyers up here.

3 (WHEREUPON, a bench conference was held in the
4 presence of the jury but out of the hearing of
5 the jury.)

6 THE COURT: Can we cut him loose?

7 MR. WILKINS: Please, Your Honor.

8 MR. MCDOUGAL: No objection.

9 THE COURT: Okay. You're released. Thank you.

10 MR. CAMPBELL: Your Honor, the State's next
11 witness is Ron Lendway.

12 THE CLERK: Mr. Lendway, please come forward and
13 be sworn. Please place your left hand on the Bible and
14 raise your right.

15 RON LENDWAY, after being duly sworn, testified
16 as follows:

17 THE CLERK: Thank you. You may be seated.
18 Would you please state your full name for the record.

19 THE WITNESS: Ronald David Lendway.

20 DIRECT EXAMINATION

21 BY MR. CAMPBELL:

22 Q Mr. Lendway, where are you employed?

23 A Greenville County forensics in the crime scene unit.

24 Q And what's your position there?

25 A I'm a sergeant.

1 Q How long you been there?

2 A I've been with the crime scene unit for approximately
3 11 years.

4 Q Okay. And do you have substantial experience and
5 training for your position?

6 A Yes, I do.

7 MR. MCDOUGAL: Your Honor, the Defense would
8 stipulate to the sergeant's expertise in crime scene
9 processing.

10 THE COURT: Okay. Is that what you're offering
11 him for?

12 MR. CAMPBELL: Yes, sir. For the record, it
13 would be evidence collection, preservation and processing.

14 MR. MCDOUGAL: No objection.

15 BY MR. CAMPBELL:

16 Q Did you have occasion back in 2008 to go to 105
17 Tindal Road, Lot 16?

18 A Yes, I did.

19 Q Who did you go there with?

20 A I went there with Lieutenant Petersen and Sergeant
21 Shaw.

22 Q Why did you go there?

23 A We got called out there in reference to a death
24 investigation. And they were -- they were obtaining
25 to search warrant to search the residence.

1 Q Okay. Let me show you State's 28. Is that the
2 residence you're referring to?

3 A Yes, it is.

4 Q Okay. Now, when you got there, what did you do?

5 A When I got there, we took some brief information and
6 I started with some exterior photographs, as did
7 Lieutenant Petersen, while Sergeant Shaw started with
8 the video. All this was on the exterior around the
9 trailer park and closer in towards the Lot 16.

10 Q Okay. Were you involved in processing the interior
11 of the trailer?

12 A Yes, I was.

13 MR. CAMPBELL: Your Honor, by agreement of the
14 parties, the following State's Exhibits will be moved in
15 without objection, State's 103, 95, 144, 145, 146, 147,
16 53, 148, 59, 149, 150, 151, 152, 96, 97, 98, 99, 153, 100,
17 101 and 154.

18 MR. MCDUGAL: We agreed to stipulate, Your
19 Honor.

20 (WHEREUPON, State's Exhibit Nos. 59 & 103,
21 having been marked in previous testimony, were
22 received into evidence.)

23 (WHEREUPON, State's Exhibit Nos. 53, 95-101 &
24 144-154 were marked for identification and
25 received into evidence.)

1 BY MR. CLARK:

2 Q Okay. Sergeant Lendway, let's point you to State's
3 103. Is that a diagram of the trailer that you
4 searched and processed?

5 A Yes, it is.

6 Q I'd like to start with State's 95. Do you recognize
7 that item?

8 A Yes, I do.

9 Q And State's 144.

10 A Yes.

11 Q Okay. Tell us what these two items are, please.

12 A These two items, this is a handwritten note that I
13 found at the residence, and that's just a photograph
14 of the same note.

15 Q Okay. Where did you find this note?

16 A The note that I found, it was located in this rear
17 bedroom right here. It was located on the bedroom
18 floor. And there was a lot of items in that bedroom.
19 There was a lot of clutter on and around the bedding
20 area, around the bed and around the computer desk.
21 And I couldn't see everything in the room that was on
22 the floor. The note right here was, actually,
23 located on the floor with items on top of it.

24 Q Okay. Did you collect that item?

25 A Yes, I did.

1 Q Did you process that item?

2 A Yes, I did.

3 Q Let me show you State's 146, 147 and 145. Tell us
4 what those are, please?

5 A These are fingerprints that I was able to obtain off
6 that note.

7 Q Okay. How did you process the note?

8 A At the office, once I got back to the office, it was
9 four days -- approximately four days later, I was
10 able to process that note using a chemical we call
11 ninhydrin. I was able to get these prints to come up
12 off of the paper.

13 Q What did you do with those prints after you obtained
14 them?

15 A Once I was able to obtain the prints, they were
16 captured on a picture on an image enhancement system
17 that we have in our office. And I was able to send
18 those images along with the latent print cards that I
19 filled out to our latents division.

20 Q Okay. All right. Now, let's move to State's 53.
21 Tell us what that is, please.

22 A That's -- the item circled is a can of spray pain
23 that was also in the residence.

24 Q I'm showing you State's 148, what is that?

25 A This is a package with the spray can that I had

1 filled out, put some evidence tape on it and
2 initialed it.

3 Q Where did you locate that spray paint can?

4 A The spray paint can was located on the other end of
5 the trailer. There's a front bedroom here and
6 there's a closet in the upper right-hand corner. And
7 inside the closet, there was one shelf. It was
8 located on top of that shelf inside this closet. And
9 it was more towards the left side of the shelf.

10 Q Did you collect that item?

11 A Yes, I did.

12 Q Did you process it?

13 A Yes, I did.

14 Q How did you process it?

15 A Once again, once at the office, I used cyanaculate,
16 which is a super glue fuming we use. We put the item
17 in a tank and we heat some super glue up, which then
18 fumes and it will adhere to any possible prints that
19 may be on the can. Once I got the item out of the
20 chamber, I used some side lighting to it to see if I
21 could see some additional ridge detail. I then
22 processed it again with some latent print powder and
23 was not able to obtain any prints on the can.

24 Q So you fumed it, put a light on it and put powder on
25 it?

1 A That's correct.

2 Q Did you get any results?

3 A No, I did not.

4 Q I'm going to show you State's 59. What are we
5 looking at here?

6 A This is in the bathroom. Looking at this diagram
7 again, this is the bathroom that was located right
8 here. It was near the closet and it was right up in
9 this section.

10 Q Okay. Show you State's 149, if you can identify that
11 for us?

12 A This is also one of the items I collected. It's an
13 empty starter fluid can that I collected from that
14 same bathroom.

15 Q Did you process that starter fluid can?

16 A Yes, I did.

17 Q How did you process it?

18 A Again, I put the starter fluid can inside our fuming
19 chamber. I fumed it with super glue. Took it out
20 and used some side lighting on it as well. I put
21 some latent print powder on it. And I was able to
22 obtain some prints off the starter fluid can.

23 Q I show you State's 150, 151 and 152. What are those?

24 A These are the fingerprints that I did lift off the
25 starter fluid can.

1 Q What did you do with those fingerprints once you
2 lifted them?

3 A Once I obtained them on the starter fluid can, I then
4 used some tape that we have that comes in six-inch
5 sections. I put the tape on there. We press down on
6 there. Once we see a latent print on there after
7 using the powder, we put the tape on it. We bear
8 down just a little bit and we pull it off easy and we
9 put it on the back side of one of our latent print
10 cards. Once it's on the back side, we flip it over
11 and we fill out all the information that's on the
12 opposite side, which is the case information, where
13 we obtained the prints from and, also, draw a little
14 diagram of the actual item. And then we have a
15 description of where that item was, where we were
16 able to get it from. Again, it has the date on
17 there. It has my name on there and, also, has the
18 case number associated with it.

19 Q Did you process anything further in the bathroom?

20 A Did I process anything further?

21 Q Yeah, did you continue to search the bathroom for
22 anything else?

23 A I did.

24 Q What else did you find in the bathroom?

25 A I also noticed there appeared to be a small amount of

1 blood spatter in that bathroom.

2 Q Okay. Going to show you State's 96. What are we
3 looking at here?

4 A The two circled areas, those are two areas that I
5 observed suspected blood on the wall.

6 Q And 97?

7 A That is the -- that marked A right there where it's
8 got the marked tape, that's one of the areas that I
9 did take a swab of suspected blood off that wall.

10 Q This is 98?

11 A Right. That's just is close-up of that previous
12 photograph.

13 Q And 100?

14 A And that's the one below A, that is just to the right
15 of the mirror that was in the bathroom.

16 Q And 101?

17 A That's a close-up of that previous photograph right
18 next to the mirror.

19 Q So once you noticed this on the wall, what did you do
20 next?

21 A Once I noticed it, I took some photographs. Then
22 Sergeant Shaw, he was actually -- he tested one of
23 the areas to test for the presence of blood, which
24 indicated that it was positive for blood. At that
25 time, I took the swabs from those areas.

1 Q From which areas?

2 A From the RLA -- what I marked as RLA and RLB.

3 Q That's what we're looking at here in State's 96?

4 A That's right.

5 Q Let me show you State's 153, what is that?

6 A This is item RLA, this is the item that I packaged
7 and put in this container right here.

8 Q What is that item?

9 A It's the swab of suspected blood that was up there on
10 the wall. That's the RLA circled on the top side.

11 Q And you took that swab?

12 A Yes, I did.

13 Q And you made that package?

14 A I made this package here.

15 Q What did you do with it after you packaged it?

16 A After I packaged it, I sealed the ends with evidence
17 tape. I then initialed both ends. And I write the
18 description, the item number, where I've located it
19 from, the case number, the date, the time that I
20 collected and my name on it. Once I do that, I
21 submit it to property and evidence.

22 Q Okay. Let me show you State's 154. Would you tell
23 us what that is, please?

24 A This is items RLB, which is the lower one next to the
25 mirror that was on the wall. It's a swab of

1 suspected blood that I did take off of the wall.
2 And, again, I packaged it in one of these boxes and
3 sealed both ends, writing all the case information,
4 the item description and my name on it.

5 Q What did you do with it after you packaged it?

6 A Once I had it packaged, I brought it to the property
7 and evidence section.

8 MR. CAMPBELL: Please answer any of the
9 Defense's questions, Sergeant.

10 CROSS-EXAMINATION

11 BY MR. MCDOUGAL:

12 Q Good afternoon, Sergeant Lendway. My name is Mark
13 McDougal and I'm a lawyer here representing the
14 Defendant, Clarence Jenkins. I have just a couple of
15 questions for you. The first relates to the
16 photographs that Mr. Campbell just showed you of
17 suspected blood. Now, how long have you been an
18 expert or crime scene professional?

19 A I've been in the crime scene unit for 11 years.

20 Q And during that time, you have, I would suspect,
21 isolated or identified maybe thousands of suspected
22 blood spot or splatter?

23 A I don't know if I can put the blood spots into a
24 number just because of the varying degrees. You
25 might go somewhere that have very few and some that

1 may be very bloody scenes.

2 Q But a lot?

3 A Right.

4 Q I mean, part of your business is walking into a room,
5 looking around and saying that might be blood?

6 A Correct.

7 Q And sometimes when it's tested, it turns out to be
8 blood and sometimes when it's tested, it turns out
9 not to be blood, it turns out to be something else?

10 A Which test are you referring to?

11 Q Any test. When you walk into a room just looking
12 around and you spot a spot here, a spot there and a
13 spot there and you do just as you described, you
14 isolate them and you take a swab?

15 A We --

16 Q Let me ask my question first. Sometimes those swabs
17 turn out when they're tested to be blood and other
18 times they turn out not to be blood. Do you agree
19 with that?

20 A Yes.

21 Q I just want to show you a photograph. And we've seen
22 this several times. Can you see it from where you're
23 sitting, sir?

24 A Yes.

25 Q I don't think Mr. Campbell asked you about that knife

1 there, that steak knife. Do you see that?

2 A Yes, I do.

3 Q It's correct, isn't it, that you processed that knife
4 as part of your crime scene investigation?

5 A I was not the one that collected the knife.

6 Q Are you familiar with how it was collected and
7 processed?

8 A I know who collected it, I'm not sure of the
9 processes they used right offhand.

10 Q What processes would you use as an expert if you came
11 upon a knife like that at a crime scene that you were
12 processing?

13 A When I saw the knife on there, what I did notice was
14 there was a white powdery substance on the very tip
15 of it. I didn't see anything on the knife that would
16 indicate possible blood.

17 Q That's not my question. Let me repeat my question.
18 If you came upon a knife like that at a crime scene,
19 and you were present for this one, and you saw that,
20 recognizing what kind of crime you're investigating,
21 what tests would you perform on that knife?

22 A It would probably depend on the type of crime I was
23 there for.

24 Q In this instance, you're investigating a possible
25 homicide, right, what test would you perform on that

1 knife.

2 A If I saw what I thought was possible blood, I would
3 use a phenol saline test on it.

4 Q Do you know if phenol saline was applied to that
5 knife?

6 A I'm not sure. I wasn't the one that collected it.

7 Q You were one of the investigating officers. Would
8 the crime scene investigation report refresh your
9 recollection with regard to that?

10 A Sure.

11 Q I've highlighted DS-16 for you, Sergeant. Does that
12 refresh your recollection with regard to whether
13 phenol saline was applied to the knife?

14 A That's right, Sergeant Shaw was the one that
15 collected it.

16 Q And it's correct that no blood was found?

17 A That's right.

18 Q Let me hand this back to you. Do you recall what
19 tests were performed on this knife for latent
20 fingerprints?

21 A If latent processing was conducted on there?

22 Q Yes.

23 A That, I'm not sure.

24 Q Okay. As an expert, if you came upon that knife,
25 what processes would you use to detect latent

1 fingerprints?

2 A If I was the one collecting the knife?

3 Q Yes, sir.

4 A If I was the one collecting the knife and I saw the
5 possible presence of blood, I would conduct a phenol
6 saline test on it.

7 Q For latent fingerprints, what tests would you
8 perform?

9 A I would fume the knife and also process it for latent
10 prints.

11 Q Do you know if that was done here?

12 A I'm not sure.

13 Q Would the crime scene investigation report refresh
14 your recollection?

15 A Sure. Again, I wasn't the one to collect it.

16 Q While you're looking at that, Sergeant, it's true
17 that your initials appear at the bottom of each page
18 as one of the reporting officers; is that correct?

19 A That's right.

20 Q And having looked at the crime scene report that
21 you've initialed, is your recollection refreshed with
22 regard to whether that steak knife, that
23 black-handled knife was processed for latent
24 fingerprints?

25 A Sergeant Shaw processed it, yes.

1 Q With what results?

2 A With negative result.

3 Q So we've seen that knife repeatedly in the
4 photographs and, based upon your testimony, there was
5 no sign of blood on it and no fingerprints on it; is
6 that correct?

7 A That's right.

8 MR. MCDOUGAL: May I have a moment, Your Honor?

9 THE COURT: Yes, sir.

10 MR. MCDOUGAL: No other questions. Thank you,
11 Sergeant.

12 THE COURT: Any redirect?

13 MR. CAMPBELL: No, Your Honor.

14 THE COURT: Okay. Can we release this officer?

15 MR. CAMPBELL: Yes, sir, Your Honor.

16 MR. MCDOUGAL: No objection, Your Honor.

17 THE COURT: All right. Thank you, sir. You're
18 released from subpoena.

19 All right. Madam Forelady, ladies and gentlemen
20 of the jury, it's been a good long day. I think now is
21 probably a good time to stop for the evening. And again,
22 I think y'all know what I'm going to tell you. It gets
23 more and more important. The closer -- the farther we get
24 into it, the closer we get to when you all are going to
25 deliberate and resolve this dispute. So don't let

1 anything infect your deliberations from outside of this
2 courtroom.

3 Y'all have a pleasant evening and I just ask you
4 to be back about 9:15. We'll see you at 9:15. Thank you.

5 (WHEREUPON, the jury left open court at
6 approximately 5:15 p.m.)

7 THE COURT: Anything before we break for the
8 evening?

9 MS. RATIGAN: Nothing from the State, Your
10 Honor.

11 MR. MAULDIN: Nothing from the Defense, Your
12 Honor.

13 THE COURT: Okay. See y'all at 9:15.

14 (WHEREUPON, the proceedings were concluded for
15 the day to be reconvened on April 12, 2012.)
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1 April 12, 2012

2 THE COURT: Is everybody ready?

3 MR. WILKINS: State's ready, Your Honor.

4 MR. MCDOUGAL: Your Honor, the Defense is ready.

5 If I may just make a note, we will continue to renew our
6 objection with regard to fingerprint testimony. I don't
7 want to vocalize that in front of the jury, but when the
8 Court will give us an opportunity, I would like that to
9 put that on the record.

10 THE COURT: Okay. Well, we probably need to
11 make a contemporaneous objection and we'll discuss it.

12 MR. MCDOUGAL: I'll do that, Your Honor.

13 THE COURT: Okay.

14 (WHEREUPON, the jury came into open court at
15 approximately 9:20 a.m.)

16 THE COURT: Good morning, ladies and gentlemen.
17 I hope you had a pleasant evening. We are ready to
18 proceed.

19 Mr. Wilkins.

20 MR. WILKINS: Your Honor, the State calls Rene
21 Sherbert.

22 THE CLERK: Ms. Sherbert, please come forward to
23 be sworn. Please place your left hand on the Bible and
24 raise your right.

25 RENEE SHERBERT, after being duly sworn,

1 testified as follows:

2 THE CLERK: Thank you. You may be seated.
3 Please state your name for the record.

4 THE WITNESS: Renee Foster Sherbert.

5 DIRECT EXAMINATION

6 BY MR. WILKINS:

7 Q Ms. Sherbert, with whom are you employed?

8 A I am currently a private contractor with Ron Smith &
9 Associates, Incorporated.

10 Q Have you ever worked for law enforcement?

11 A Yes, sir, I spent 27 years in law enforcement, 25 of
12 which were with Greenville County. The last 13
13 years, I worked with the Greenville County Department
14 of Public Safety forensic division.

15 Q What did you do for the forensic division?

16 A The last nine of the 13 years, I was assigned to the
17 latent print section as a latent fingerprint examiner
18 and a sergeant.

19 Q As a latent fingerprint examiner, what specifically
20 do you do?

21 A As a latent fingerprint examiner, I received latent
22 print cases that were submitted to the latent print
23 section from our own crime scene unit as they process
24 crime scenes, and from other law enforcement agencies
25 in and around Greenville County.

1 Q And would you make comparisons of latent prints to
2 known prints?

3 A Yes, sir, that's one of the things that we do when we
4 receive cases is to examine the cases to determine
5 comparability and then compare them in there were
6 prints to compare them to.

7 Q About how many comparisons do you think you made
8 during your law enforcement career?

9 A Literally hundreds of thousands of fingerprint
10 comparisons.

11 MR. MCDUGAL: Your Honor, if the State is
12 offering this witness as an expert, we'll stipulate to her
13 qualifications.

14 MR. WILKINS: We would offer to have her
15 qualified as an expert in fingerprint identification and
16 comparison.

17 MR. MCDUGAL: Without objection.

18 THE COURT: All right.

19 BY MR. WILKINS:

20 Q When you worked for the forensic division, who was
21 your supervisor?

22 A My supervisor, immediate supervisor was Captain
23 Jackie Kellet.

24 Q I'm going to show you what's State's Exhibit 42 and
25 43.

1 (WHEREUPON, State's Exhibit Nos. 42 & 43 were
2 marked for identification only.)

3 BY MR. WILKINS:

4 Q Do you recognize State's Exhibit 42?

5 A Yes, sir, I do. These are -- one is a fingerprint
6 card and it's labeled as belonging to Carmen, either
7 a D or an O, Jenkins. It has my initials in the top
8 right-hand corner. The other card is a right palm
9 print and it's labeled as belonging to Carmen D.
10 Jenkins. It has my initials, also, in the top
11 right-hand corner. And the third card is an inked
12 palm print, right palm, excuse me, and it's labeled
13 as belonging to Carmen Jenkins. And it also has my
14 initials in the top right-hand corner.

15 Q Are those kept in your custody and control?

16 A These cards, once they're utilized in a case are kept
17 in a case jacket or case file and stored in a secured
18 area, yes, sir.

19 Q And do you know who rolled those prints?

20 A As far as the fingerprint card goes, it has a block
21 on the back, says official taking fingerprints, and
22 it has the initials HMP, as in poppa. So I couldn't
23 tell you who that is.

24 Q Would that be somebody from the division?

25 A It would be someone assigned to the ID unit, which

1 is -- it used to be under the forensic division, but
2 currently -- and at this time, it was. Currently,
3 it's under the detention facility. And then this
4 card here is what we call live scan card. It's not
5 inked, it's scanned on glass. And it does have -- it
6 has the initials AW as the person taking the prints.
7 And I would remember that as being Andy Wannick of
8 the forensic division ID section. And then the third
9 card, the inked right palm has the initials that the
10 fingerprint card did, HMP, and I don't recall who
11 that is.

12 Q Now, are those rolled fingerprints -- are those
13 referred to as master fingerprint cards commonly?

14 A When we have these, these are master fingerprint
15 cards and these with palms are palm print cards.

16 Q Are those kept in the ordinary course of business of
17 the law enforcement center?

18 A Yes, and they're maintained by the forensic division.

19 Q And under your supervision?

20 A Yes, in the case jacket and filed away, yes, sir.

21 MR. WILKINS: Your Honor, the State would move
22 State's Exhibit 42 into evidence.

23 MR. MCDUGAL: No objection to the known print
24 card.

25

1 (WHEREUPON, State's Exhibit No. 42 was admitted
2 into evidence.)

3 BY MR. WILKINS:

4 Q And State's Exhibit 43?

5 A Okay. What I have here are three cards. The first
6 being labeled master fingerprint card. It is also
7 labeled as belonging to Clarence William Jenkins, Jr.
8 It's what's called a master fingerprint card, 10
9 print card. It has all the fingers here. Right-hand
10 corner is my initials. The next card is a left palm
11 print card for the left palm. And it's labeled as
12 belonging to Clarence William Jenkins, Jr. And,
13 again, has my initials in the top right-hand corner.
14 The other card is a right palm print card and it's
15 labeled as belonging to Clarence William Jenkins, Jr.
16 And it has my initials in the top right-hand corner.

17 Q Are those kept under your control and supervision?

18 A Yes, sir, they are.

19 Q Are they true and accurate representations of
20 fingerprints of Clarence Jenkins?

21 A They're labeled as belonging to Clarence William
22 Jenkins on all three cards, yes, sir. I dropped the
23 paperclip.

24 MR. WILKINS: Your Honor, State moves Exhibit 43
25 into evidence.

1 MR. MCDUGAL: No objection.

2 (WHEREUPON, State's Exhibit No. 43 was admitted
3 into evidence.)

4 BY MR. WILKINS:

5 Q Now, I'm going to show you State's Exhibit 40 and 41,
6 which have already been admitted into evidence. Just
7 identify those and tell the jury what those are.

8 THE COURT: If you would identify the exhibit as
9 you're examining it.

10 THE WITNESS: I'm sorry, sir?

11 THE COURT: Identify the exhibit as you discuss
12 it.

13 THE WITNESS: This exhibit is marked as Exhibit
14 40, and these look like -- these are deceased prints. The
15 first card, which has my initials in the top right-hand
16 corner is labeled Mekole Michelle Harris. And it's the
17 right hand, which we number 135, and it's taped on the
18 card here, the strip. And then the second card that's
19 part of that same exhibit, 40, is also labeled Mekole
20 Michelle Harris. And it has the left fingers rolled on
21 this card. We have one that's the right and one that's
22 the left.

23 BY MR. WILKINS:

24 Q And what about Exhibit 41?

25 A Exhibit 41 is a master fingerprint card with all 10

1 fingers rolled. And it's labeled as belonging to
2 Mekole Michelle Harris and it has my initials in the
3 top right-hand corner.

4 Q Okay. So were you ever involved in the comparison of
5 prints, latent prints for identification purposes of
6 Carmen Jenkins, Mekole Harris and Clarence Jenkins?

7 A Yes, sir, I was.

8 Q I'm going to show you what's marked as State's
9 Exhibit 105. This is State's Exhibit 105. I'm going
10 to ask you if you recognize that and if you did
11 anything with it?

12 A Okay. State Exhibit's 105 is a latent fingerprint
13 lift card. And it's labeled on the with the case
14 number and date that was submitted by Lieutenant
15 Petersen. And it has what we call a thumbnail image
16 attached to the back of it. I do recognize it. It's
17 marked with my initials and the date of April 8th,
18 2008. And it's identified by me as being identified
19 as the No. 2, which is the right index finger of
20 Mekole Harris.

21 Q Now, how did it look when you received it from
22 Lieutenant Petersen?

23 A How did this look?

24 Q Uh-huh.

25 A It didn't have my initials and it had information on

1 it.

2 Q What did you do with that latent fingerprint?

3 A Well, first, I examined it, did an analysis process.
4 Then I compared it to known fingerprints of Mekole
5 Harris.

6 Q How did you do your comparison? Tell the jury how
7 you would physically do the comparison.

8 A Okay. When we receive latent prints -- a latent
9 print in the fingerprint community is referred to as
10 an unknown print. And latent prints, typically,
11 can't be seen with the naked eye and have to be
12 processed in order to made visible. And when we
13 receive prints that are submitted to us from either
14 our own crime scene or other units in and our
15 Greenville County, we first analyze the prints to
16 determine their comparability, meaning is there
17 sufficient detail there for comparison purposes. If
18 not, then there's no point in comparing them.

19 So once that analysis phase is completed and
20 it's determined they are suitable for comparison,
21 then they're compared to known prints if known prints
22 are available. And in this process, I compared the
23 unknown, which was the digital image that was
24 submitted to our office, compared that to the known
25 print of Mekole Harris. And in doing so, I

1 determined that this print was individualized or
2 identified to her No. 2 right index finger of Mekole
3 Harris.

4 MR. MCDUGAL: Your Honor, at this point, the
5 Defense would interpose an objection for the reasons --

6 THE COURT: All right. We'll discuss that at a
7 later time. Thank you.

8 (WHEREUPON, State's Exhibit No. 106 was marked
9 for identification only.)

10 BY MR. WILKINS:

11 Q Ms. Sherbert, I'm going show you State's Exhibit 106,
12 and ask you if you recognize State's 106?

13 A Yes, sir, I do. State Exhibit 106 is a scanned copy
14 of a note that was submitted to the latent print
15 division, to my section for analysis and comparison.
16 It's marked with my initials in two different places
17 on the note. And it bears a fingerprint image in the
18 bottom right-hand corner.

19 Q Now, is that the -- the inked image, is that the same
20 thing that's in State's Exhibit 105?

21 A Yes, it is. This is a scanned copy of the whole --
22 the note that I received. And this thumbnail image
23 is the digital image that was captured -- that crime
24 scene would capture at their station with their
25 camera and save that digital image and forward the

1 digital image to me or my section for comparison, for
2 analysis.

3 Q All right.

4 A So the thumbnail, the picture of this was taken from
5 the print on this piece of paper.

6 MR. WILKINS: Your Honor, the State moves
7 Exhibits 105 and 106 into evidence.

8 MR. MCDUGAL: We renew our objection, Your
9 Honor.

10 THE COURT: All right. You don't need to do it
11 on each one, I think it will be continuing.

12 MR. MCDUGAL: Thank you, Your Honor.

13 (WHEREUPON, State's Exhibit Nos. 105 & 106 were
14 admitted into evidence.)

15 MR. WILKINS: Overruled?

16 THE COURT: Yes.

17 BY MR. WILKINS:

18 Q Now, did you notice anything -- now, again, tell this
19 jury where this print of Mekole Harris came from?

20 A Okay. This thumbnail image that's attached to the
21 latent print card, this is submitted to our office at
22 the time that latent prints and other evidentiary
23 items are submitted. I received the actual note and
24 the digital image on a disk. That way, I could save
25 it, compare it, print this thumbnail off and attach

1 it to this. This, again, the thumbnail image, the
2 digit image of the fingerprint is a photograph,
3 basically, of the print that is visible on the note.
4 And then once I receive this as well, I scan this to
5 save the whole thing so you can see the whole
6 picture. And then this is a close-up or a thumbnail
7 image of that print that is the bottom right-hand
8 corner.

9 The thing that stood out to me about this print
10 that is somewhat unique is that, basically, when --
11 typically, when you touch items, you know, you just
12 touch. And if you look back on the master
13 fingerprint cards, there's 10 blocks, five for the
14 right hand and five for the left hand. And the way
15 that we record the friction ridge skin, the lines on
16 the fingers, the detail, the way that we record those
17 is by rolling them, basically, from side to side on
18 each finger from what we call the nail bed to record
19 all that friction ridge skin, because it's not on the
20 upper side, it's only the under side. So we roll
21 those so that you hopefully capture all the friction
22 ridge detail that's there in the last digit of the
23 finger. So they looked square when you roll them.
24 And then at the bottom of the fingerprint card, you
25 see what we call plain or simultaneously impressions

1 or slaps, we sometimes call them, where we have the
2 individual lay four fingers down in the left block
3 and then put the thumb separately. And then do the
4 same thing with the right hand, the thumb and the
5 four fingers together. This also helps in ensuring
6 that the fingers were not rolled out of sequence,
7 that they're going in the right order. Because you
8 can look down at the plain slaps and you can see,
9 okay, index, little, ring, like that because it's
10 very hard to lay them down wrong when they're
11 attached to your hand like that. So when you look at
12 the slaps, you see rounded, much more narrow and not
13 squared.

14 The thing that stood out to me about this print
15 is that it's more squared like what the rolled ink
16 prints look like on a fingerprint card. And that's
17 unusual to see that in case work because, typically,
18 you look -- you know how your fingers are rounded at
19 the top, when you touch a surface, you don't roll
20 generally in just average touching. And so that was
21 kind of unique to see what looked like a rolled
22 fingerprint on an item of evidence like that because
23 that's typically what I see on a fingerprint card.

24 Q I'm going to show you State's 104, which has already
25 been admitted into evidence. Do you recognize that?

1 A State Exhibit 104 is marked with my initials in two
2 different places. It is a -- it is the original item
3 from which I made the scanned copy. And like I said,
4 it has my initials in two different places and has
5 where I identified and marked that the visible
6 friction ridge skin that I could see was identified
7 as belonging to the No. 2 right index finger of
8 Mekole Harris.

9 Q Do you know where that piece of evidence was
10 retrieved from?

11 A All I know is what was on the information submitted
12 to me. It says it's from the front side of a note
13 collected at Andover Apartments and is marked as item
14 MP1.

15 Q All right. I'm going to show you what's been marked
16 as State's Exhibit 150, 151 and 152.

17 A Starting first with Exhibit 150, on the one side --
18 this is a latent lift card. It's marked with the
19 case number and it is listed as latent print from
20 side of empty premium quality charcoal starter fluid
21 bottle from front bathroom countertop submitted by
22 Sergeant Lendway of the crime scene unit. On the
23 back side is a tape lift of a fingerprint. And
24 beneath this area, I have marked this with
25 information where I identified the latent lift, the

1 unknown print previously as the No. 8, which would be
2 the letter middle finger of Clarence Jenkins. And,
3 again, my initials are there as well as on that.

4 State's Exhibit 151, on the written side, again,
5 of the latent lift card, this is listed as being from
6 side of empty premium quality charcoal starter fluid
7 bottle from front bathroom countertop. And, again,
8 submitted by Sergeant Lendway. And on the other side
9 is a tape lift of an unknown print previously. And
10 it was identified by me as the No. 6, which would be
11 the left thumb of Clarence Jenkins. Again, my
12 initials and the date that I identified that.

13 State's Exhibit 152, on the written side is
14 listed as being lifted from the side of empty premium
15 quality charcoal starter fluid bottle from front
16 bathroom countertop. Evidence item RL10 and note,
17 processed at crime scene office on 4/14/08 by
18 Sergeant Lendway. And on the other side is the tape
19 lift with the latent print. And that was identified
20 by me as being the No. 3, which would be the right
21 middle finger of Clarence Jenkins. Again, my
22 initials and the date that I identified it.

23 Q I'm going to ask you to take a look at State's
24 Exhibit 149, which has already been admitted into
25 evidence.

1 A This is labeled -- State's Exhibit 149 is labeled as
2 item RL10 empty premium quality starter fluid bottle
3 from front bathroom countertop.

4 Q These prints right there are off that exhibit right
5 there?

6 A Those prints are listed as being off of item RL10.

7 Q And tell the jury again how you made the comparison
8 from the list that came off Exhibit 149 and who you
9 matched them to.

10 A Those latent lifts that I compared that I just
11 described were, again, analyzed to determine
12 suitability for comparison, sufficient detail was
13 available in each of those prints. So then they were
14 compared to known prints that were available in this
15 case. And in doing the comparison process and
16 evaluation, I determined that those three prints that
17 I just described were identified as belonging to
18 Clarence Jenkins.

19 Q I'm going to show you what's marked as State's
20 Exhibit 145, 146 and 147 as well as State's 144.

21 A You want me to start with this one?

22 Q That would be great.

23 A State's Exhibit 144 is a lined piece of notebook
24 paper with handwriting. It also bears my initials in
25 the top right-hand corner. And I've placed my

1 initials at the bottom as well. This item is marked
2 as item RL1 and then a letter A in parentheses. And
3 on the front side where the handwriting is -- it
4 doesn't look like there's any handwriting on the
5 back. On the front side where the handwriting is on
6 the notebook paper, down towards the bottom, I have
7 identified a print there and marked it as the right
8 palm or hypothenar area, and this would be the right
9 palm, the hypothenar area here, as Carmen Jenkins.
10 And my initials, as I stated previously, and the date
11 that I identified that print.

12 State's Exhibit 145 is labeled as handwritten
13 note on white notebook paper lined from rear bedroom
14 floor and in brackets marked evidence item RL1,
15 parentheses A. And then the note processed at crime
16 scene office on 4/14/08. And this was submitted by
17 Sergeant Lendway. On the other side is a thumbnail
18 like I described earlier. This was a digital
19 photograph of the image on the item of paper that's
20 submitted to us for examination. And I have
21 identified the fingerprint image in this thumbnail as
22 being the No. 1, which is the right thumb, of Carmen
23 Jenkins. And this has my initials and the date I
24 identified it as well.

25 State Exhibit 146, is listed as being lifted

1 from handwritten note on white notebook paper, lined,
2 from rear bedroom floor. And that's listed as
3 evidence item RL1, parentheses A, and processed at
4 the crime scene office on 4/14/08, submitted by
5 Sergeant Lendway. And attached again is a thumbnail
6 with digital image of the print that was visible.
7 And that print is listed as being identified by me as
8 the No. 1, right thumb, of Carmen Jenkins, my
9 initials and the date of identification.

10 State's Exhibit 147 is listed as being lifted --
11 or being from the handwritten note on white notebook
12 paper lined from rear bedroom floor. Evidence item
13 RL1, parentheses A, processed at crime scene office
14 on 4/14/08 by Sergeant Lendway. And, again, the
15 thumbnail attached to it, which is a digital image of
16 the print. And I have identified that as the right
17 palm or hypothenar area of Carmen Jenkins, my
18 initials and the date of identification.

19 MR. WILKINS: Your Honor, State moves Exhibits
20 145, 146 and 147 into evidence.

21 MR. MCDOUGAL: Same objection.

22 (WHEREUPON, State's Exhibit Nos. 145, 146 and
23 147 were previously admitted into evidence.)

24 BY MR. WILKINS:

25 Q All right. I'm going to show you State's Exhibit

1 138, 139, 140, 141, 142, 143 and 137. I'm going to
2 start with Exhibit 137, which has already been
3 admitted into evidence. Tell us that is you
4 recognize that and tell the jury what you did with
5 it?

6 A State's Exhibit 137 is marked as item MP15, metal
7 clipboard and box containing assorted papers. I did
8 not physically do anything with this items.

9 Q I'm going to show you State Exhibits 138 through 143?

10 A Okay. State's Exhibit 138 is listed as a latent
11 lifted from inside of metal clipboard, the bottom
12 left corner, item MP15. And there's also a drawing,
13 diagram on this same side with an arrow indicating
14 where the lift was from. And it's labeled lid
15 interior and then bottom. This was submitted by
16 Sergeant Shaw. Only the other side is a tape lift
17 with fingerprint images. I identified two
18 fingerprints in this latent lift. They were
19 identified as being the No. 7, which is the left
20 index finger, and No. 8, the left middle finger of
21 Clarence Jenkins. I have my initials and the date
22 identified.

23 State's Exhibit 139 is latent lifted from
24 underside of top lid to metal clipboard, MP15, again,
25 with a diagram and an X marking a spot, submitted by

1 Sergeant Shaw. On the other side is the fingerprint
2 lift tape and image. I identified the fingerprint
3 image as being the No. imagine, which is the right
4 little or pinky finger of Clarence Jenkins. My
5 initials are here and the date identified.

6 State's Exhibit 140, latent lifted from
7 underside of top lid to metal clipboard, MP15, and a
8 diagram of the clipboard and an X marking a spot.
9 Again, submitted by Sergeant Shaw. Latent lift tape
10 with image. I identified the fingerprint as a latent
11 lift as being the No. 1, which is the right thumb, of
12 Clarence Jenkins. This is marked with my initials
13 and the date I identified it.

14 State's Exhibit 141, latent lifted from
15 underside of top lid to metal clipboard, MP15.
16 Again, a diagram with an X marking a spot, submitted
17 by Sergeant Shaw. On the other side is the latent
18 lift tape. I identified the fingerprint in the lift
19 as being the No. 1, again, right thumb, of Clarence
20 Jenkins. This is marked with my initials and the
21 date I identified it.

22 State's Exhibit 142, latent lifted from exterior
23 side of lid to compartment inside of the clipboard,
24 MP15. There is a diagram of the clipboard with an X
25 and a circle. And this was submitted by Sergeant

1 Shaw. On the other side is a latent lift tape. And
2 the fingerprint in the latent lift is identified as
3 the No. 1, right thumb, of Clarence Jenkins. It has
4 my initials and the date I identified it.

5 State's Exhibit 143, latent lifted from exterior
6 side of lid to compartment inside of metal clipboard,
7 MP15. Again, a diagram of the clipboard with an X
8 and a circle and submitted by Sergeant Shaw. On the
9 other side, the latent lift tape. And the
10 fingerprint, the latent image was identified as being
11 the No. 8, which is the left middle finger of Carmen
12 Jenkins. And it has my initials and the date that I
13 identified it.

14 MR. WILKINS: Your Honor, State moves Exhibits
15 138, 139, 140, 141, 142, 143 into evidence.

16 MR. MCDUGAL: Same objection, Your Honor.

17 THE COURT: Same ruling.

18 (WHEREUPON, State's Exhibit Nos. 138 through 143
19 were previously admitted into evidence.)

20 BY MR. WILKINS:

21 Q Now, Ms. Sherbert, I'm going to show you what's
22 State's Exhibit 136. Actually, I'm going to start
23 with State's Exhibit 130, which has already been
24 admitted into evidence. Did you do anything with
25 that exhibit?

1 A State's Exhibit 130 is a sheet of lined, what looks
2 like notebook paper, it's folded up in here. Without
3 unfolding it, I don't know what's in the part that I
4 can't see, but I can tell what I can see through the
5 bag. It has an item No. DSL1. And then an area
6 where I marked the right palm hypothenar of Clarence
7 Jenkins, my initials and the date that I identified
8 it. And that's on the visible part there.

9 Q I'm going to show you what's State Exhibit 136?

10 A State Exhibit 136 is latent lifted from front side of
11 a handwritten note that starts out, Hi, my name is
12 Mekole. This note was found under the couch in the
13 living room, collected as MP20. This was submitted
14 by Sergeant Shaw. Attached to the other side is a
15 thumbnail where a digital photograph was taken of the
16 image when it was visible. And I wrote on this right
17 palm, hypothenar, identified that as belonging to
18 Clarence Jenkins. It has my initials and the date
19 that I identified it.

20 Q Now, when you say right palm, explain to the jury how
21 someone gets their right palm onto a piece of paper.

22 A The right palm and the part that I identified
23 specifically is a hypothenar, which is this region of
24 the palm here, the edge, blade, sometimes people call
25 it that. And anytime that the raised portions of

1 skin that I mentioned earlier has sweat pores located
2 on it, anytime that area comes in contact with
3 various surfaces, the image can be transferred on
4 there. And depending on how you touch something can
5 dictate how that image will appear. If you put your
6 full palm down, then you may very well be able to
7 detect the entire palm. If you put just the heel of
8 the palm or just the thumb side, then you pick that
9 up, or the right side.

10 This hypothenar region is also commonly referred
11 to in the fingerprint community as a writer's palm.
12 Because if you put your hands down, you don't just
13 come in contact -- or that part doesn't just come in
14 contact. If you lay your hand down like I'm doing
15 right now, like if you were writing something, maybe,
16 then that's why they call it the writer's palm
17 because that's the only part of the palm that comes
18 in contact with the surface.

19 Q So if somebody was writing on State's Exhibit 130,
20 the piece of paper, could they leave their palm print
21 on there?

22 MR. MCDOUGAL: Objection, Your Honor, calls for
23 speculation.

24 THE COURT: Well, she's been qualified as an
25 expert, so over your objection, I'm going to let her

1 answer that.

2 THE WITNESS: I'm sorry, would you restate the
3 question?

4 BY MR. WILKINS:

5 Q If somebody was writing on a piece of paper like
6 State's Exhibit 130, and they were writing words out,
7 could they leave their palm on the piece of paper?

8 A If their palm came in contact with the paper -- if
9 any person's palm came in contact with paper while
10 writing, which, typically, when I write, I do touch
11 the surface I'm writing on, then you could very well
12 transfer that friction ridge skin detail onto the
13 surface.

14 Q Okay. Briefly, Ms. Sherbert, I'm going to take you
15 back to State's Exhibit 104 and 106, which have
16 already been admitted into evidence. You testified
17 that 106 is a copy of 104. Can you explain why you
18 can see a latent print on the copy 106 a lot better
19 than you can on the original 104?

20 A Yes, sir.

21 Q Okay.

22 A This is the scanned copy that I made. And the reason
23 that I made it was because at the time I received the
24 evidence, the fingerprint was visible just like you
25 see it here, that's why I scanned it. And it's

1 marked with my initials. And that was, basically,
2 capture it is so that you could see it the way that I
3 saw it and to record that detail. The actual item
4 that it was copied from, the reason that we do that
5 is because, generally, the process that's used in the
6 coloration that I saw of the fingerprint image was
7 this purple pink and that indicates to me that it was
8 more than likely processed ninhydrin, which is a
9 chemical for developing prints on porous surfaces.
10 And we know, historically, that ninhydrin, there's no
11 fixative to it, no setting, so it dissipates. The
12 visible print dissipates over a period of time. And
13 in order to preserve that, we capture that digitally
14 by scanning, you know, whatever means. And in this
15 case, we had the thumbnail that you saw on the print
16 lift card I did earlier, it was captured as is then,
17 and then the whole item was scanned to capture it so
18 that you can see that that was visible. However,
19 now, it is -- well, you can see like a pinkish-purple
20 area there, but you can't see the detail like you can
21 in the scanned image or the single thumbnail digital
22 image. But it is done to preserve the view at the
23 time the examiner sees it.

24 MR. WILKINS: Your Honor, just to cover my
25 tracks, the State moved Exhibits 105, 106, 136, 138, 139,

1 140, 141, 142, 143, 145, 146, 147, 105, 106, 150, 151 and
2 152.

3 THE COURT: I think they have all been ruled on,
4 I believe.

5 MR. WILKINS: Okay. Thank you, Your Honor.

6 Ms. Sherbert, please answer any questions that
7 Defense counsel may have for you.

8 THE WITNESS: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. MCDOUGAL:

11 Q Good morning, Ms. Sherbert. My name is Mark McDougal
12 and I'm a lawyer here representing Defendant Clarence
13 Jenkins.

14 A Good morning.

15 Q Good morning. I've just got a few questions for you
16 to follow up on some of the things you discussed with
17 Mr. Wilkins. Now, you are testifying here as an
18 expert in fingerprint examination; is that right?

19 A Yes, sir.

20 Q Done it for a long time?

21 A Yes, sir.

22 Q And you would agree with me that fingerprint
23 examination is, to a large degree, about identifying
24 ridge detail, anybody can look at their fingers and
25 see they have ridge detail, identifying the ridge

1 detail on one set of prints to another; do you agree
2 with that?

3 A It's about comparing ridge detail in one print --
4 from an unknown print to a known print.

5 Q So you agree with my characterization?

6 A Yes, sir.

7 Q Okay. And you would agree with me that a critical
8 tool that fingerprint examiners like yourself use is
9 points of comparison. And I'm a layman in this, but
10 I'll describe it as best I can. A point of
11 comparison is a detail on friction ridge that is
12 similar from one print, a known print, to a latent or
13 unknown print; do you agree with that?

14 A Yes, sir.

15 Q And when you're comparing two prints, you count up
16 the number of points of comparison until you reach a
17 level of satisfaction. I have a sufficient number of
18 known points compared to my latent to reach a
19 conclusion that these prints are identical. Is that
20 about right?

21 A Yes, sir.

22 Q Okay. And if I understand correctly, in your
23 department or department you used to work in, if you
24 could find 12 points of comparison, that would be
25 sufficient for you to reach that conclusion; is that

1 right?

2 A Can you clarify a little more for me or can I clarify
3 about points?

4 Q Please, describe points.

5 A Okay. Thank you. Points on a fingerprint ridge can
6 be an end ridge, you know, where it's running along
7 and, all of a sudden, it stops, or you can look at
8 the other way, that it starts, or where it
9 bifurcates, which is splitting into two, like a fork.
10 One ridge going along and then, all of a sudden, it
11 becomes two forks or a dot. Other points that
12 fingerprint examiners look at are the detail on the
13 ridges themselves. Like the pores and how the pores
14 are situated. Those are points. The thickness of
15 the ridge or any unique characteristics of the ridge
16 itself. Like a gouge in the ridge, a bulge in the
17 ridge, you know, funny, unusual little markings,
18 things like that. The structure of the ridges
19 themselves, the pores and the edges. Those are all
20 the totality of the print.

21 Q Getting back to my question now you've explained what
22 points of comparison are, you have to achieve a
23 specific number before you're satisfied that you have
24 a match; is that correct?

25 A You have to have to sufficiency, yes, sir.

1 Q Moving along, if I'm about right, just give me a yes
2 or no without restating the question and we'll get
3 this done quicker. So how many points of comparison
4 in your practice, when you were with the department,
5 did you have to achieve before you would be satisfied
6 that there was a match?

7 A Our agency -- I didn't have a set number, but our
8 agency typically had like a 12 point. And that's,
9 again, totality of points.

10 Q Is that what you used in examining these exhibits
11 you've seen here today?

12 A Is that the standard?

13 Q No. Is that what you used when was examined the
14 exhibits that you've testified here to today? What
15 standard did you use?

16 A The sufficiency standard.

17 Q And was that 12?

18 A I couldn't tell you the exact number for each
19 individual print because there can literally be
20 hundreds of points on any fingerprint detail.

21 Q I'm going to ask you questions, ma'am, that are
22 designed to just get a yes or no so we can move this
23 along. You're welcome to explain after that, but I
24 need you to answer my question.

25 A Okay.

1 Q Now, if you have a sufficient number to points, if I
2 understand you correctly, you're saying that's kind
3 of up to you. The 12 is not a magic number. Is
4 that, essentially, what you said?

5 A There is no magic number.

6 Q And you didn't have a standard that you applied? You
7 did not look for 12 on all these prints?

8 A No, sir, I did not.

9 Q And you would agree with me that one or two points of
10 comparison are not enough?

11 A Generally, that are not enough, that's correct.

12 Q And 50 is way plenty? You have 50 points of
13 comparison --

14 A Fifty points of comparison in agreement would be more
15 than sufficient.

16 Q Okay. Sifting here today, you've testified to by my
17 count about 14 comparisons. Now, I may be off one or
18 two, but a goodly number. When you were doing your
19 work, did you make any notes?

20 A No, sir, I did not write any notes.

21 Q When you were comparing the prints, did you keep
22 track of how many points of comparison you have?

23 A Yes. As I'm comparing, it's a mental process of
24 counting and looking and identifying points of
25 comparison, yes, sir.

1 Q And, again, if the answer is yes, please just give me
2 that answer.

3 A I'm sorry. Yes, sir.

4 Q So if I understand you correctly, you made no notes
5 at all, you just remember as you look at the points
6 of comparison?

7 A Yes, sir, as I looked at each one.

8 Q Did you count on your fingers?

9 A No, sir.

10 Q Did you keep a tally sheet?

11 A No, sir.

12 Q Did you mark comparable prints enlargements, where
13 you found points of comparison?

14 A No, sir, not that I recall.

15 Q So you just sat there and you kind of looked at one
16 print, looked at another, went through whatever
17 mental process you thought appropriate and said it's
18 a match. Is that about right?

19 A Yes, sir.

20 Q Let me ask you about some specific testimony,
21 Ms. Sherbert. I'm going to hand you what you have
22 testified about, State's Exhibit 106, which has been
23 identified as the note found at the Andover Street
24 apartment. Do you remember your testimony about that
25 note?

1 A Yes, sir.

2 Q Okay. And I wrote down what you said. And I'm
3 paraphrasing, but I think I got it about right. You
4 characterized that print, you identified that as
5 Mekole Harris; is that right?

6 A Yes, sir, it is identified as Mekole Harris.

7 Q And you said in some detail that the print looked
8 like it had been rolled. And that was very unusual
9 that you had a rolled fingerprint on a document like
10 that. Do you remember that testimony?

11 A Yes, sir, I do.

12 Q Did I summarize it correctly?

13 A Yes, sir.

14 Q Did you write a report about your examination of that
15 document?

16 A I wrote a report about the match of the print on this
17 document.

18 Q And that was a very unusual situation to see
19 something that apparently had just been handled, but
20 looked like it a rolled print, right?

21 A Yes, sir.

22 Q But you didn't put that in your report, did you?

23 A No, sir.

24 Q It wasn't important then, but it's important enough
25 now to testify about; is that right?

1 A It's important in both aspects, but the way our
2 fingerprint match reports are designed, we,
3 basically, just state the match, the identification,
4 the number, who it is identified to. That's just the
5 template, basically, of the matched record.

6 Q Please listen to my question. The testimony you had
7 here about the remarkable aspect of that print never
8 was in your report, was it?

9 A No, sir, it was not in the match report.

10 Q Or any other report?

11 A No, sir.

12 Q Okay. It is not written down anywhere in the record
13 of this case, is it?

14 A No, sir, because I can describe it.

15 Q No, sir, I just want -- to your knowledge, is it
16 recorded anywhere in the record of this case? It's
17 not in your report? It's nowhere as far as you know?

18 A Just in my testimony here today.

19 Q But it's not in a written record or report, is it?

20 A No, sir.

21 Q Please take a look at that again. And I'm going to
22 ask you a question that relates to your professional
23 background. Are you familiar with the scientific
24 working group on friction ridge analysis study and
25 technology?

1 A Yes, sir.

2 Q Are you a member of that?

3 A It's not an association.

4 Q Well, do you anticipate in their activities?

5 A Through the International Association for

6 Identification, yes.

7 Q And you recognize them as an authority group in
8 friction ridge analysis?

9 A They publish suggestions and standards for the latent
10 print community.

11 Q That's what they do. Please answer my question. Do
12 you recognize them as an authoritative group in
13 friction ridge analysis?

14 A I don't know if I would say I recognize them as an
15 authoritative group.

16 Q You know who they are?

17 A I know who they are and they do publish findings and
18 suggestions.

19 Q Okay. Here's one of the findings and suggestions
20 they publish. I'm going to read you the definition
21 and I want to know whether you agree with it or not.

22 A Okay.

23 Q You have, in the course of your career, found
24 inconclusive prints; is that right?

25 A That's correct, I have.

1 Q Okay. And inconclusive is defined as a determination
2 by an examiner that there is neither sufficient
3 agreement to individualize nor sufficient
4 disagreement to include?

5 A That's correct.

6 Q Okay. You agree with that definition?

7 A Yes, I do.

8 Q Now, in the document you have in front of you, you
9 testified about the finding of Mekole Harris's
10 fingerprint. But Mr. Wilkins didn't ask you about an
11 inclusive print you found on that document, did he?

12 A Not that I recall, he did not.

13 Q Do you recall finding an inconclusive print on that
14 document?

15 A No, sir, I don't.

16 MR. MCDOUGAL: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes, sir.

19 BY MR. MCDOUGAL:

20 Q I'm going to show you a copy of your report and see
21 if that refreshes your recollection.

22 A Is the top one the only one you wanted me to look at?

23 Q No, ma'am, please look at the whole report.

24 A Okay. Thank you. Okay.

25 Q Do you recognize that those are materials that back

1 up your report as work product that you prepared at
2 the time you examined that document?

3 A Yes, sir.

4 Q Isn't it correct that in addition to finding the
5 print of Mekole Harris, you found an inconclusive,
6 which according to this definition, may be Carmen
7 Jenkins and may not be Carmen Jenkins; is that right?

8 A It is inconclusive as to who it belongs to, that's
9 correct.

10 Q No, no, no, it was inclusive with regard to Carmen
11 Jenkins; is that correct? Isn't that what your report
12 says?

13 A That's a photocopy from the back of the latent print
14 envelope.

15 Q Right.

16 A And it's marked inconclusive, Carmen Jenkins, and my
17 initials and the date. It's not from this piece of
18 paper -- or it could be from this piece of paper.
19 Let me -- there's a thumbnail image you have a copy
20 of there and there's no marking from myself. And it
21 has the same case number as the latent envelope.

22 Q And you recognize that as your handwriting with
23 regard to inconclusive with regard to Carmen Jenkins?

24 A Yes, sir, on the back of the latent envelope, yes,
25 sir, that is mine.

1 Q And there's another note there, isn't it?

2 A Above it?

3 Q It says negative for Clarence Jenkins?

4 A That's correct.

5 Q So if I understand your file correct, you found
6 Mekole Harris's print on that note, you found an
7 inconclusive print that was inconclusive with respect
8 to Carmen Jenkins, which means maybe yes, maybe no
9 for Carmen Jenkins, and you found no print for Carmen
10 Jenkins; is that correct?

11 A I don't know what this is from. All I have is the
12 back side. And I don't know what -- see, there were
13 multiple print envelopes submitted in this case, so I
14 can't sit here and tell you for sure what this is
15 from, other than it looks like it's a copy from the
16 back of the latent print envelope, but I don't know
17 which one we're specifically talking about.

18 Q This wasn't published to the jury, but I will
19 represent to you and the Court that was provided to
20 us in discovery with your report.

21 A But I have several envelopes. I'm just saying if I
22 knew what was on the other side, I could tell you for
23 sure.

24 MR. MCDOUGAL: May I approach, Your Honor?

25 THE COURT: Yes, sir.

1 THE WITNESS: Do you know which one?

2 BY MR. MCDOUGAL:

3 Q This came from your file, ma'am, so whatever order
4 it's in is the order which it was produced?

5 A Okay.

6 Q Please hang onto that for a moment.

7 A Okay.

8 Q I'm going to ask you to have a look at State's
9 Exhibit 144, which has been identified in testimony
10 as a handwritten note found in a rear bedroom of the
11 105 Tindal Road trailer.

12 A Okay. State's Exhibit 144?

13 Q State's Exhibit 44, right, you testified about that a
14 few minutes ago?

15 A Yes, sir.

16 Q Now, you testified that you identified Carmen
17 Jenkins' fingerprints on there; is that right?

18 A Yes, sir, on the front side on the written side of
19 this piece of paper --

20 Q Ma'am, just did you identify Carmen Jenkins'
21 fingerprints on that piece of paper?

22 A Carmen's finger and palm.

23 Q Okay. What you didn't testify about is you found
24 negative prints for Clarence Jenkins; isn't that
25 right?

1 A Well, I don't have Clarence Jenkins on here, so, no.

2 MR. MCDOUGAL: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. MCDOUGAL:

5 Q Did you prepare a report in connection with your
6 examination of that document?

7 A I prepared a match report on this, yes, sir.

8 Q Is that a copy of the report?

9 A You said this note was from the rear bedroom floor?

10 Q Yes, ma'am.

11 A Okay.

12 Q Is that your report?

13 A This is my report, yes, sir.

14 Q Please look at the third page of that report.

15 A Okay.

16 Q Is that your handwriting?

17 A Across the top is my handwriting and this is my
18 handwriting.

19 Q Is that your handwriting on the fourth page?

20 A And on the back, yes, sir, this is my handwriting.

21 Q And that says negative for Clarence Jenkins, doesn't
22 it?

23 A That's correct, it says negative Clarence Jenkins and
24 my initials.

25 Q So you found on that document and you testified to

1 Carmen Jenkins' fingerprints being there, but no
2 Clarence Jenkins; is that right?

3 A That's correct.

4 Q Now, there were three other items that you testified
5 you identified prints on. For the benefit of the
6 jury and everyone else, I'm just going to identify
7 what they are. This is State's Exhibit 149, and it's
8 been identified -- we haven't opened it, but it's
9 been identified as a can of lighter fluid. You
10 testified about finding latent prints on that; is
11 that right?

12 A I was submitted latent prints from it.

13 Q And you identified the latent prints from it as
14 Clarence Jenkins, right?

15 A Yes, sir.

16 Q And State's Exhibit --

17 A I think it's on the clipboard itself.

18 Q State Exhibit 137, metal clipboard you identified
19 finding Clarence Jenkins' latent prints on there; is
20 that right?

21 A I believe I did.

22 Q And your testimony was that the metal clipboard came
23 from the trailer on Tindal Road, right?

24 A I read off where the latent lift said it came from.

25 Q If the answer is yes, we can just save time.

1 A There's so many pieces of evidence, I don't recall
2 exactly where it came from.

3 Q Why don't you go back to your report if you're having
4 trouble remembering. Do you recall testifying about
5 this?

6 A About the prints, yes, sir.

7 Q And you recall testifying about the lighter fluid?

8 A Yes, sir.

9 Q And you recall that that was found in the trailer at
10 Tindal Road where Clarence Jenkins lived?

11 A I don't recall that right off, no, sir.

12 Q Would you like to see your report?

13 A Sure.

14 MR. MCDOUGAL: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. MCDOUGAL:

17 Q Does that refresh your recollection?

18 A According to the report, the incident location was
19 listed as 105 Tindal Road, Lot 16. Is that what
20 you're asking?

21 Q Does that refresh your memory?

22 A Yes, sir.

23 Q My question is simple, this metal box was found at
24 105 Tindal Road where Clarence Jenkins lives, right?

25 A I don't know where Clarence Jenkins lives.

1 Q It came from 105 Tindal Road?

2 A Yes, sir.

3 Q And your memory is now refreshed that this lighter
4 fluid came from 105 Tindal Road?

5 A That's correct.

6 Q You're good with both of those?

7 A Yes, sir.

8 Q You also testified with respect to State's Exhibit
9 130, a note, which the testimony has reflected begins
10 with, My name is Mekole, and was found in their
11 residence at 105 Tindal Road. Do you remember your
12 testimony about that?

13 A Yes, sir.

14 Q So that was also found at 105 Tindal Road; is that
15 right?

16 A Yes, sir.

17 Q Okay. So these three items, which are the bulk of
18 your testimony, which reflect Clarence Jenkins'
19 fingerprints all came from 105 Tindal Road?

20 A That is my understanding, yes, sir.

21 Q Okay. Now, you, I suspect like all of us, live in a
22 house or apartment, right?

23 A Yes, sir.

24 Q If I were to go to your house today with black
25 powder, white ask powder, laser tank, I could

1 probably find thousands of your fingerprints in your
2 home, couldn't I?

3 A Yes, sir.

4 Q So it's not unusual when you take objects from
5 someone's home to find their fingerprints on them, is
6 it?

7 A That's correct.

8 MR. MCDOUGAL: Nothing further, Your Honor.

9 THE COURT: Redirect?

10 MR. WILKINS: One moment, Your Honor. I need to
11 look at a piece of evidence.

12 THE WITNESS: There's some evidence up here,
13 too.

14 MR. WILKINS: No further questions, Your Honor.

15 THE COURT: All right. Thank you, ma'am. You
16 may stand down.

17 May she be released?

18 MR. MCDOUGAL: No objection, Your Honor.

19 THE COURT: All right.

20 Mr. Wilkins, any objection?

21 MR. WILKINS: No objection, Your Honor.

22 THE COURT: Thank you, ma'am. You're released
23 from subpoena.

24 THE WITNESS: Thank you.

25 MR. WILKINS: The State calls Collis Flavell.

1 THE CLERK: Officer Flavell, if you would come
2 forward and be sworn.

3 COLLIS FLAVELL, after being duly sworn,
4 testified as follows:

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

7 THE WITNESS: Collis Flavell.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. WILKINS:

11 Q Detective Flavell, with whom are you employed?

12 A With the Greenville City Police Department.

13 Q What do you do for the Greenville City Police
14 Department?

15 A I'm an investigator in the violent crimes unit.

16 Q How long have you been with the Greenville City
17 Police Department?

18 A Two months shy of 20 years.

19 Q And what do you do everyday?

20 A I investigate violent crimes that come to us through
21 our uniform patrol division.

22 Q Back in 2008, did you have the occasion to go to
23 Andover Apartments?

24 A Yes, I did.

25 Q All right. Tell us about your arrival there and what

1 you did?

2 A I received a call from uniform patrol on the basis
3 that a suspicious package that contained possible
4 body parts. Our crimes against persons unit was
5 notified and we responded to the scene and started
6 the investigation.

7 Q Did you recover any human remains there?

8 A Yes, we did.

9 Q What did you recover?

10 A A human hand and a human foot.

11 Q And what did you do with those items?

12 A The items then were collected by the medical examiner
13 coroner's office and taken to the to morgue.

14 Q Did you go to the morgue as well?

15 A I did later.

16 Q All right. What did you do at the morgue?

17 A I received samples from one of the hands and one of
18 the feet and transported those samples to our
19 property and evidence section and placed them in the
20 evidence room.

21 Q Did you ever take a swab of DNA of the hands and
22 feet?

23 A That was completed by the medical examiner, that's
24 what I collected from him.

25 Q Let me show you State's Exhibit 156 and 157 marked

1 for identification.

2 (WHEREUPON, State's Exhibit Nos. 156 & 157 were
3 marked for identification only.)

4 BY MR. WILKINS:

5 Q I show you State's Exhibit 156. Do you recognize
6 that?

7 A I do.

8 Q How do you recognize it?

9 A The items shows my handwriting sealing this item with
10 an item No. CF3, which is my initials, that I
11 collected from the medical examiner's office.

12 Q What did you do with that exhibit?

13 A When I originally collected it, I placed it in our
14 evidence room. And I later transported this item as
15 well as that to our State Law Enforcement Division in
16 Columbia to the DNA lab.

17 Q Okay. I'm going to show you State Exhibit 157?

18 A This is a swab, a known sample, that I collected form
19 the medical examiner's office, sealed it as well,
20 placed it in property and evidence and later,
21 transported it to Columbia to the DNA lab.

22 Q Did you have an occasion to take any other items down
23 to the SLED DNA lab?

24 A Yes, I did.

25 Q All right. I'm going to show you what's State's

1 Exhibit 135. Do you recognize that?

2 A I do.

3 Q Can you tell us what it is?

4 A This is the P-trap that was removed from the shower
5 at 105 Tindal Road by our forensic division. I
6 signed this evidence out of property and evidence and
7 transported it to SLED to the DNA lab -- or,
8 actually, processing where they process evidence for
9 DNA.

10 Q I'm going to show you State's Exhibit 131.

11 A This is a pair of latex gloves recovered from the
12 van. I, as well, transported this item down to SED
13 to the DNA lab.

14 Q State's Exhibit 132?

15 A This is a swab from the latex gloves that was
16 transported to the DNA lab.

17 Q Exhibit 153?

18 A This is item RLA, swab from the wall and ceiling that
19 was transported as well to SLED.

20 Q And you transported it?

21 A Yes, sir.

22 Q And State Exhibit 154?

23 A Item marked RLB, swap near medicine cabinet and it's
24 a swab collected by our forensic division that was
25 transported as well to SLED.

1 Q So did you transport all these pieces of evidence
2 down to SLED?

3 A I did.

4 Q State's Exhibit 131?

5 A I don't know that that actually went to the SLED. I
6 think this swab went to SLED. I need to see the P &
7 E sheet on that item.

8 Q I show you State's Exhibit 132?

9 A That the swab from the latex gloves. That did go to
10 SLED.

11 Q Thank you for that, Detective Flavell. Now, just
12 briefly, are Andover Apartments in Greenville County?

13 A Yes.

14 Q Tindal Road is in Greenville County?

15 A Yes, it is.

16 MR. WILKINS: Please answer any questions
17 Defense counsel may have.

18 CROSS-EXAMINATION

19 BY MR. MCDOUGAL:

20 Q Good morning, Detective?

21 A Good morning.

22 Q My name is Mark McDougal and I represent the
23 Defendant, Clarence Jenkins. And you and I have met
24 before?

25 A Yes.

1 Q You were the lead investigator in this case; is that
2 right?

3 A That's correct.

4 Q Tell me, if you would, please, tell the jury what
5 your general function is as lead investigator.

6 A Basically, the case was assigned to me from the date
7 that we recovered the remains. And I investigate the
8 case along with other detectives in our unit.

9 Q And part of your job is to assign -- in addition to
10 as you testified in direct, assuring that the
11 evidence is delivered to the laboratories and so
12 forth, the other detective involved, they report to
13 you?

14 A That's correct.

15 Q And if you get lead, you'll give it to them, if you
16 don't handle it yourself, and they'll go up and
17 handle it and report back?

18 A That's correct.

19 Q As part of that job, they prepare reports and you
20 review them all as they come in; is that right?

21 A Correct.

22 Q I'm going to ask you about one piece of evidence I
23 don't think you delivered to SLED that has been
24 previously marked and admitted as Exhibit 112. I'll
25 ask if you recognize that.

1 A I do.

2 Q Do you recognize that as one of the letters -- and
3 let me, you've been in the courtroom throughout the
4 trial?

5 A That's correct.

6 Q Do you recognize that as the envelope and the letter
7 that was mailed to Marvin Poole?

8 A Correct.

9 Q Okay. And it's correct, isn't it, that U.S. Postal
10 Service reported in the course of your investigation
11 that the postmark on that was affixed between 1530
12 and 1600 hours on March 31st, that would be between
13 3:30 and 4:00 p.m. on March 31st; is that right?

14 A Yes, sir.

15 Q Thank you, Detective.

16 MR. MCDUGAL: May I have a moment, Your Honor?

17 THE COURT: Yes, sir.

18 MR. MCDUGAL: Thank you, Detective, nothing
19 else.

20 THE COURT: Any redirect?

21 MR. WILKINS: No redirect, Your Honor.

22 THE COURT: Thank you, sir. You may stand down.

23 Is everybody okay?

24 THE BAILIFF: Your Honor, this gentleman is
25 having a problem with his back.

1 THE COURT: All right. Well, let's take a short
2 morning break then.

3 Is there anything we can do for you, sir? Are
4 you okay?

5 JUROR: I'm doing the best I can.

6 THE COURT: Okay.

7 (WHEREUPON, the jury left open court at
8 approximately 10:45 a.m.)

9 THE COURT: All right. For the record, one of
10 the alternate jurors has an issue -- he has a bad back.
11 So that's what that exchange was about. Juror No. 119.
12 So I would -- we'll try to make an inquiry and see how
13 serious this is.

14 Let me talk to the lawyers up here.

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: Would the parties consent to
17 allowing me, my law clerk and the bailiffs to discuss this
18 with this juror in the back hall, find out how bad his
19 back problem is?

20 MR. MAULDIN: Out of the presence of the rest of
21 the jurors?

22 THE COURT: Yeah, without anybody else present.

23 MR. MAULDIN: No objection.

24 MR. WILKINS: State does not object.

25 (WHEREUPON, a short break was taken.)

1 (WHEREUPON, the jury came into open court at
2 approximately 11:00 a.m.)

3 THE COURT: Mr. Wilkins.

4 MR. WILKINS: State calls Dr. Michael Ward.

5 THE CLERK: Dr. Ward, please come forward to be
6 sworn.

7 MICHAEL WARD, after being duly sworn, testified
8 as follows:

9 THE CLERK: Thank you. Please be seated. Would
10 you please state your name for the record.

11 THE WITNESS: Michael Eugene Ward.

12 DIRECT EXAMINATION

13 BY MR. WILKINS:

14 Q Dr. Ward, with whom are you employed?

15 A I'm employed by Pathology Associates of Greenville
16 and by the County of Greenville as the chief medical
17 examiner.

18 Q What do you do?

19 A My job duties are to investigate deaths that occur in
20 Greenville County to determine cause and manner of
21 death.

22 Q So do you perform autopsies?

23 A I do.

24 Q Back in 2008, did you ever have the occasion to
25 receive some severed hands and feet?

1 A Yes, I did.

2 Q Do you remember what you did with those hands and
3 feet when you received them?

4 A Yes, I do.

5 Q Can you tell the jury what you did?

6 A The hands and feet were handled as per our protocol.
7 An external examination was performed with
8 photographs taken. Specimens were taken for
9 toxicology. Specimens were taken for microscopic
10 examinations to look at underneath the microscope and
11 a DNA was produced from what blood and fluid we could
12 get from these specimens.

13 Q I'm going to show you what's been marked as State's
14 156 and 157.

15 BY MR. WILKINS:

16 Q I first show you State's 156 marked for
17 identification. Do you recognize that?

18 A State's Exhibit 156 is an envelope which contains
19 another coined envelope, which is labeled 808156,
20 which is the unique autopsy number given to the hands
21 and feet, with the date of April 7th, 2008, and my
22 initials.

23 Q And did you take the blood sample from those hands
24 and feet?

25 A Yes, I did.

1 Q Once you took the blood sample from those hands and
2 feet, what did you do with them?

3 A There were allowed to, sealed in this specific
4 container here and placed in the file. When
5 requested by law enforcement, they are then presented
6 or turned over to law enforcement and a P & E sheet
7 is generated, which is here.

8 Q I'm going to show you State's Exhibit 157 as well.

9 A State's Exhibit 157. Again, contains a separate coin
10 envelope labeled with the unique autopsy number
11 808156, April 7th, 2008, and my initials. Again,
12 coming from this specific case.

13 Q And did you take a blood swap from those hands and
14 feet?

15 A Yes, I did.

16 Q What did you do with them?

17 A Each of those specimens were placed in the file and
18 turned over to Detective Flavell, Collis Flavell.

19 MR. WILKINS: Please answer any questions
20 Defense counsel may have.

21 CROSS-EXAMINATION

22 BY MR. MCDOUGAL:

23 Q Good morning, Doctor. My name is Mark McDougal and
24 I'm representing Clarence Jenkins, the Defendant in
25 this case. We haven't met before, have we?

1 A No, sir, I don't believe so.

2 Q I just have a couple questions for you. You did
3 perform the autopsy, as you just testified, on the
4 severed hands and feet, the remains that you were
5 given; is that correct?

6 A That is correct.

7 Q And you prepared an autopsy report; is that correct?

8 A I generated a report. It's not the traditional
9 autopsy report.

10 Q And that's, in part, because of the nature of the
11 remains that were found?

12 A That's correct.

13 Q And shortly after the served hands and feet were
14 discovered, you performed one analysis. And then
15 later, when the skeletal remains were recovered, you
16 extended on that analysis; is that right?

17 A I examined the hands and feet in April of 2008. My
18 partner, Dr. Fulcher, in my absence, did the
19 examination on the skeletal remains that were
20 recovered.

21 Q Okay. So the answer is yes?

22 A An examination was performed on the skeletal remains
23 18 months later, yes.

24 Q And that led you to amend your findings; is that
25 correct?

1 A That is correct.

2 Q What were your findings?

3 A It was the opinion of Dr. Fulcher and I that the
4 cause of death was homicidal violence and the manner
5 of death was homicide.

6 Q But you couldn't be more specific than that?

7 A We could not.

8 Q And that's because of the nature of the remains?

9 A The nature of the remains, yes.

10 Q And you have performed many, many autopsies on
11 victims of violence?

12 A Yes.

13 Q And if you have more extensive remains, you can be
14 more specific, gunfire, knives, strangulation. You
15 couldn't do that here, could you?

16 A That is correct, we could not.

17 Q But you did find one thing in the autopsy that I want
18 to ask you about. And that is in the toxicology
19 report of the remains that you did have, you found
20 both cocaine and cocaine metabolite; is that right?

21 A That is correct.

22 Q Now, I'm a layman here, so tell me if I get this
23 about right. Cocaine is what we all think of as
24 apparent cocaine. And cocaine metabolite is a
25 substance that a body transforms cocaine after it's

1 been in the system for a little while; is that right?

2 A That is correct.

3 Q Okay. Are you familiar with the Journal of Medicine?

4 A Yes, sir.

5 Q You would agree with, that's an authoritative
6 journal, right?

7 A It is a peer reviewed journal of medicine, yes.

8 Q If you were in the course of your medical practice
9 looking for a place where studies might be published
10 that you think about in your practice, the Journal of
11 Medicine would be one of those places?

12 A It would, yes.

13 Q Are you familiar with a study called cardiovascular
14 complications of cocaine use?

15 A I have read many articles regarding the
16 cardiovascular complications of cocaine. Whether I
17 have read that particular one, I'm not sure.

18 Q Tell me if you agree with this, please. The risk of
19 acute myocardial infarction is increased by a factor
20 of 24 during the 60 minutes after the use of cocaine
21 in persons who are otherwise at relatively low risk.
22 The occurrence of myocardial infarction after cocaine
23 use is unrelated to the amount ingested, the route of
24 administration and the frequency of use. Does that
25 sound about right to you?

1 A The general premise is absolutely correct. The
2 percentage, I don't know if I can agree with that or
3 not. But yes, I would say that anyone who uses
4 cocaine is at risk for myocardial infarction or even
5 sudden death without being able to demonstrate a
6 myocardial infarction.

7 Q And a myocardial infarction is a heart attack, right?

8 A That is correct.

9 Q Often fatal?

10 A Yes.

11 Q Very serious?

12 A Yes.

13 Q Okay. And the presence of cocaine and cocaine
14 metabolite would suggest a relatively recent
15 ingestion of cocaine because if cocaine had been in
16 the system for a long time, you would have found just
17 metabolite; is that right?

18 A That is correct.

19 Q So it's a reasonable conclusion that this individual
20 whose autopsy you performed had ingested cocaine
21 relatively close in time to the time of death.

22 A Within a few hours, yes.

23 MR. PERKINS: One moment, Your Honor.

24 THE COURT: Yes.

25 MR. MCDUGAL: Nothing further, Your Honor.

1 Thank you, Doctor.

2 THE COURT: Any redirect?

3 MR. WILKINS: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. WILKINS:

6 Q Dr. Ward, you testified there was cocaine and cocaine
7 metabolite and something --

8 A That's it.

9 Q Was there anything else found in the victim's
10 toxicology report?

11 A Yes, this toxicology was performed on tissues that
12 were -- basically, muscle from beneath the skin and
13 around the bones of the foot. There was cocaine,
14 cocaine metabolite, diphenhydramine, which is
15 Benadryl, and Tylenol.

16 MR. WILKINS: That's all I have, Your Honor.

17 THE COURT: Anything else?

18 MR. MCDOUGAL: No recross, Your Honor.

19 THE COURT: May we excuse Dr. Ward?

20 MR. MCDOUGAL: Yes, sir.

21 THE COURT: Yes, sir, you're excused.

22 MR. WILKINS: Your Honor, the State calls Verona
23 Gibson.

24 THE CLERK: Ms. Gibson, please come forward to
25 be sworn in. Please place your left hand on the Bible and

1 raise your right.

2 VERONA GIBSON, after being duly sworn, testified
3 as follows:

4 THE CLERK: Thank you. You may be seated.
5 Please state your name for the record.

6 THE WITNESS: Verona Gibson.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. WILKINS:

10 Q Ms. Gibson, with whom are you employed?

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

13 Q And what do you do for SLED?

14 A I'm a forensic evidence technician. I process the
15 larger pieces of evidence that come in for the DNA
16 department.

17 Q How long have you been employed with them?

18 A Approximately four years.

19 Q What specific duties do you have?

20 A We look for body fluids on the larger pieces of
21 evidence that come in or skin cells when we
22 collecting for ownership of the DNA.

23 Q Do you have any specific training or education?

24 A I have an Associates Degree from Tri-County Technical
25 College and an Associates Degree from Greenville

1 Technical College in public safety with a certificate
2 in criminology. I also had intensive training
3 in-house at SLED under court-recognized experts in
4 evidence processing.

5 MR. WILKINS: Your Honor, we'd offer her as an
6 expert in forensic evidence processing.

7 MR. MCDUGAL: May we approach, Your Honor?

8 THE COURT: Yeah.

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury but out of the hearing of
11 the jury.)

12 MR. MCDUGAL: Without objection.

13 THE COURT: Okay.

14 BY MR. WILKINS:

15 Q Ms. Gibson, I'm going to show you what's already been
16 admitted into evidence as State's Exhibit 135. If
17 you could take a look at that and tell the jury what
18 it is?

19 A This is the -- it's our item 28.1, the trap from the
20 shower.

21 Q Do you know what residence that came from?

22 A I do not, no, sir.

23 Q How is that that you know what it is?

24 A My initials, our item number, our lab number and the
25 date are on the bag and on the paper on which I

1 processed it. And my initials, the item number and
2 the lab number are on the actual item.

3 Q Can you tell this jury what, if anything, you did
4 with that item?

5 A I swabbed the -- can I show it?

6 Q Sure.

7 A I swabbed inside the beginnings of each side of the
8 trap.

9 Q What did you swab the inside of the trap with?

10 A It almost like a Q-tip, it's just a long wooden stick
11 with like a Q-tip top on it that's sterile. We wet
12 it with water, sterile water, and we swab in there
13 and do a chemical test for the presence of blood.

14 Q I want to show you State's Exhibit 158 marked for
15 identification purposes.

16 (WHEREUPON, State's Exhibit No. 158 was marked
17 for identification only.)

18 BY MR. WILKINS:

19 Q I ask you if you recognize that? You can open it up
20 as well.

21 A Yes, sir. This is the swab that I collected from the
22 short side of the P-trap -- or the -- I'm sorry, the
23 shower trap that I forwarded to the DNA department.

24 Q Is that the DNA department at SLED?

25 A Yes, sir.

1 MR. WILKINS: Please answer any questions
2 Defense counsel may have.

3 MR. MCDUGAL: No questions, Your Honor.

4 THE COURT: May we release this witness?

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

6 MR. MCDUGAL: No objection.

7 THE COURT: Thank you, ma'am. You're released.

8 MR. WILKINS: Your Honor, the State calls Robin
9 Taylor.

10 THE COURT: All right.

11 THE CLERK: Ms. Taylor, please come forward to
12 be sworn. Place your left hand on the Bible and raise
13 your right.

14 ROBIN TAYLOR, after being duly sworn, testified
15 as follows:

16 THE CLERK: Thank you. You may be seated.
17 Please state your name for the record.

18 THE WITNESS: My name is Robin A. Taylor.

19 DIRECT EXAMINATION

20 BY MR. WILKINS:

21 Q Ms. Taylor, with whom where are you employed?

22 A I work for South Carolina Law Enforcement Division.

23 Q How long have you been there?

24 A This past March was 22 years.

25 Q What do you do with SLED?

1 A I currently am the lieutenant over the DNA analysis
2 department, which includes evidence processing
3 section. I've worked in the DNA and serology
4 laboratory my entire career at SLED.

5 Q What does the DNA lab do?

6 A Well, our primary function is to receive evidence
7 from submitting agencies across the state and also
8 receive known standards for people involved in. And
9 we'll do DNA analysis on both the evidence and the
10 known standards, make a comparison and determine
11 whether or not there is a match. We report our
12 findings in a written report and sometimes, like
13 today, in a court of law.

14 Q Now, how many employees do you have working in the
15 DNA lab in SLED?

16 A Well, currently, I think we're around 20, 22
17 employees.

18 Q Do you supervise it?

19 A I do.

20 Q How long have you been working in the DNA lab?

21 A My entire career. I came in as a serologist for the
22 first few years, and then cross-trained as a DNA
23 analyst sometime in early to mid-90's. And I've been
24 doing DNA ever since until about '07, I was promoted
25 to a team leader position within the lab and took a

1 reduced case load, that's a first line supervisory
2 position. And then in '08, I was promoted to
3 lieutenant and I now supervise the entire DNA lab.

4 MR. MCDUGAL: Your Honor, if this witness is
5 being offered as an expert in DNA analysis, the Defense
6 has no objection to that.

7 MR. WILKINS: I offering her in serology and DNA
8 testing and analysis.

9 THE COURT: All right.

10 MR. MCDUGAL: No objection.

11 THE COURT: Okay.

12 BY MR. WILKINS:

13 Q So tell the jury a little bit about DNA.

14 A Well, DNA is a chemical found in all the nucleated
15 cells in your body. And it conveys the genetic
16 information from one generation to the next. You get
17 half of your DNA from your mother and half of your
18 DNA from your father. No people's DNA is exactly
19 alike, except in the case of identical twins. With
20 that said, though, much of our DNA from person to
21 person is the same because it's what makes us human.
22 It's what makes up walk upright and have two eyes and
23 two ears. However, in forensics, we target certain
24 areas of the DNA that aren't known to code for
25 anything at this time. But they're highly variable

1 from person to person.

2 Q Now, were you given the occasion to do some DNA
3 analysis versus Clarence Jenkins?

4 A Yes, I did.

5 BY MR. WILKINS:

6 Q I'm going to show you what's State's Exhibit 156, and
7 ask you to take a look at that.

8 A This is our item, SLED item No. 32. You can see
9 where I printed out a label from our computer system
10 noting the case number and the item number and those
11 are my initials. This is a -- was reported to me a
12 swab from a hand. It was identified to me as being
13 the hand of Mekole Harris, an identification was made
14 through fingerprints.

15 Q All right. And I'm going to show you what's State
16 Exhibit 157.

17 A This is SLED item No. 33, again, same as before, it's
18 been labeled with our case number and the item number
19 and my initials. And this was identified to me as a
20 sample from the foot.

21 Q Do you know whose foot?

22 A Well, since the hand was identified as that of Mekole
23 Harris through fingerprint identification, I used the
24 swab from the hand as a known standard and compared
25 the swab from the foot to the hand. And the DNA

1 profile developed from item 33 did match item No. 32,
2 which items 33 did match items number 32 which was
3 the swab from the hand. And the probability of
4 randomly selecting an unrelated individual who could
5 have that, who could have contributed that same
6 profile is 1 in 720 quadrillion. So the foot matched
7 the swab from the hand.

8 Q Tell the jury how you went about making that
9 analysis. What do you do?

10 A Well, I took a sample from the swab. And, basically,
11 you just put it in a small tube, add some chemicals,
12 incubate it for a little bit and there -- we have a
13 -- we call it a robot. It's a machine that does of
14 the extraction and washes for us. And I get a nice
15 clean pure sample of DNA. The next step is finding
16 how much I have. So that, again, is done by a
17 machine after the setup. That takes a few hours to
18 do, couple hours to do. Then after that, I take a
19 very specific amount of the DNA and add certain
20 ingredients to it. And what I want to do at this
21 point is prepare to replicate that DNA. So I had the
22 basic things that are needed to do that and put it in
23 another machine. A few hours later, I take it out
24 and put it on the final step, the genetic analyzer,
25 where when it's done, I have a profile that doesn't

1 look like much of anything until we apply certain
2 computer programs that meant to do this and get the
3 final product, the profile itself. And do that for
4 both of these samples and compare them.

5 Q And when you compared those -- you compared the
6 known, which is State's Exhibit 156, to State's
7 Exhibit 157, what were your results?

8 A Well, as I said before, the DNA profile on my report
9 just looks like a series of numbers. And the actual
10 basic information, the electropherogram that we look
11 is peaks. These peaks are assigned numbers by these
12 computer programs. And you just look at all of these
13 locations one by one, and do they look the same. And
14 in this instance, it was not a difficult comparison
15 at all. They were single source. There was no
16 mixture involved, nothing like that. So it was just
17 a matter of making that comparison across the entire
18 profile. And the results, again, were a profile with
19 a probability of 1 in 720, what did I say billion --
20 no, quadrillion, I'm sorry.

21 Q Ms. Taylor, do you know how many people are on the
22 earth right now?

23 A I think we've tripped over to seven billion right now.

24 MR. WILKINS: Your Honor, State moves exhibit
25 156 and 157 into evidence.

1 MR. MCDUGAL: Approach for a moment, Your Honor
2 year.

3 THE COURT: Yes.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury but out of the hearing of
6 the jury.)

7 MR. WILKINS: Your Honor, are those moved in?

8 THE COURT: Yes, they are. Subject to my
9 ruling.

10 (WHEREUPON, State's Exhibit Nos. 156 & 157 were
11 admitted into evidence.)

12 BY MR. WILKINS:

13 Q All right. Now, I'm going to show you what's State's
14 Exhibit 153, ask you to identify that and tell the
15 jury how you know what that is?

16 A State's Exhibit 153 is SLED item No. 1. And I know,
17 once again, because there's a case label affixed with
18 the item number and my initials. This was presented
19 to me as a swab from a wall near ceiling in bathroom.

20 Q Okay. And did you make any analysis regarding that
21 piece of evidence?

22 A I did. I took this piece of evidence and did the
23 same process I spoke of earlier. I generated a
24 profile from this item and compared it to the known
25 sample from the hand we spoke about earlier. And

1 again, it was a full profile and was a match with a
2 probability of 1 in 720 quadrillion.

3 Q Going to whom?

4 A It matched Mekole Harris.

5 Q I'm going to show you State's Exhibit 154.

6 A State's Exhibit 154 is our SLED item No. 2. Again,
7 identified the same as the previous item. And, also,
8 I generated a full profile when I did analysis on
9 this item. Again, it had the same statistic matching
10 Mekole Harris with a probability, again, of randomly
11 selecting someone else who could match that as 1 in
12 720 quadrillion.

13 Q Would you tell the jury where that item came from?

14 A It was presented to me as being a swab from a wall
15 right of the medicine cabinet in the bathroom.

16 MR. WILKINS: Your Honor, the State moves
17 Exhibits 153 and 154 into evidence.

18 MR. MCDUGAL: We have on objection, Your Honor.

19 THE COURT: Same ruling. They're in.

20 (WHEREUPON, State's Exhibit Nos. 153 and 154
21 were previously admitted into evidence.)

22 BY MR. WILKINS:

23 Q Now, I'm going to show you State's Exhibit 132 and
24 ask you to identify that?

25 A This was presented as swab from latex gloves. It was

1 SLED Item No. 24. It's my understanding they were
2 from the floor of a van. And this was, again, our
3 item No. number 4. And it, also, after analysis on
4 it, I obtained a full DNA profile, once again, with a
5 probability of one in 720 quadrillion. It also
6 matched Mekole Harris.

7 MR. WILKINS: Your Honor, the State moves
8 Exhibit 132 into evidence.

9 THE COURT: Same ruling.

10 MR. MCDUGAL: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 (WHEREUPON, State's Exhibit No. 132 was
13 previously admitted into evidence.)

14 BY MR. WILKINS:

15 Q Now, I'm going to show you State's Exhibit 158.

16 A This is a swab collected from the trap from the
17 shower. It's SLED item 28.1.1, this was collected by
18 Verona Gibson. And she processed the trap from the
19 shower as previously testified to and she forwarded
20 the swab to me. And I did do analysis on this item.
21 Now, the profile from items -- this item was not a
22 full profile, it was partial, but it did match Mekole
23 Harris. The probability of randomly selected an
24 unrelated individual who could have contributed the
25 partial DNA profile that I had was approximately 1 in

1 870 billion. It is less than the other statistic
2 because I don't have as much information.

3 MR. WILKINS: Your Honor, State moves Exhibit
4 158 into evidence.

5 THE COURT: Same ruling.

6 MR. MCDOUGAL: Same objection.

7 THE COURT: Yes, sir.

8 (WHEREUPON, State's Exhibit No. 158 was admitted
9 into evidence.)

10 BY MR. WILKINS:

11 Q Ms. Taylor, what we have is we have -- according to
12 your results, we have Mekole Harris' blood on the
13 ceiling, on the wall near the medicine cabinet, on a
14 latex glove and the P-trap from the shower drain?

15 A That's correct.

16 MR. WILKINS: Please answer any questions
17 Defense counsel may have.

18 CROSS-EXAMINATION

19 BY MR. MCDOUGAL:

20 Q Good morning, Ms. Taylor. My name is Mark McDougal
21 and I'm one of the lawyers here representing the
22 Defendant, Clarence Jenkins. Let me just ask you a
23 few questions about DNA and you tell me if you agree
24 with it or no. We human beings are messy creatures
25 with respect to DNA in that we tend to leave

1 everywhere; is that about right?

2 A Somewhat, yes.

3 Q If I walk up and shake hands with you -- I won't do
4 that, but if I were to walk up and shake hands with
5 you, the chance of your DNA getting on my hands and
6 my DNA getting on your hands is pretty high?

7 A That possibility does exist, yes.

8 Q And if you spend a lot of time, even over a space of
9 a couple days in a given place, you can leave your
10 DNA around, can't you?

11 A Yes, sir, min some places you would.

12 Q Take a sip out of a cup of water, your DNA is very
13 likely going to be in that cup?

14 A Yes, sir.

15 Q If you sit and eat a meal and you put your hands
16 down, it's likely that some of your DNA is going to
17 get on that table?

18 A There some circumstances that make that more probable
19 than others, but, yes, that's certainly --

20 Q I won't belabor it. My general premise is we tend to
21 leave our DNA everywhere, true?

22 A Generally.

23 Q That's how you make your DNA because people bring DNA
24 to you and you match it up, so you have to agree with
25 it?

1 A Yes.

2 Q Okay. Now, in this case, you testified that Mekole
3 Harris's DNA, the swab that you understood -- I know
4 you didn't do the extraction, but the swab that was
5 taken from the remains, the DNA matching that DNA was
6 found in the shower trap, right?

7 A Yes, actually, there was blood indicated as well. I
8 neglected to report that in my previous testimony,
9 but I did do a presumptive test for blood. Blood was
10 indicated and then I got a full profile -- or a
11 partial profile, I believe, for the trap.

12 Q And the trap in a shower is placed where anyone using
13 that shower DNA is likely going to end up, right?

14 A Well, I would assume.

15 Q Okay.

16 A Potentially, yes.

17 Q Ever have guest in your home?

18 A Yes.

19 Q Okay. They stay overnight and they use your shower,
20 the chances of doing an analysis of that shower trap
21 and finding that guest's DNA are pretty reasonable?

22 A Actually, they're not all that great. To be honest,
23 with wet conditions with water running, I wouldn't
24 generally expect to find much, if any, especially a
25 full profile of DNA in a shower trap.

1 Q But my question was you couldn't, couldn't you?

2 A The potential does exist, yes.

3 Q Sure. And in finding that DNA in the trap, what that
4 would mean was that person was there, right?

5 A Yes. To the degree that you have enough information
6 the attribute it to them.

7 Q Okay. All right. I've got a guest over the weekend.
8 I analyze what's in the shower trap, hair, whatever
9 it is, skin cells. And I come up and I match that
10 DNA to your guest. What I know when I've done that
11 is that your guest was there?

12 A If you get a full profile, yes.

13 Q Which you testified you did, right?

14 A Yes, from blood in the shower trap.

15 Q Okay. But your guest has been in that shower? DNA is
16 in the shower trap --

17 A Yes, but what I'm trying to --

18 Q No, no, just answer my question. If I find your
19 guest's DNA in your shower trap, can I reach the
20 conclusion that your guest has been there?

21 A If you find the DNA, yes.

22 Q So when you find DNA in a shower trap, what you know
23 is that the person has been there. You don't know
24 what they were doing, do you?

25 A Right.

1 Q You don't?

2 A I don't. I know there's DNA --

3 Q Let me ask my question. If I ask you a question that
4 calls for a yes or no, that's fine, and if you want
5 to explain afterwards, we'll give you an opportunity
6 to do so. So if you find DNA in a trap and your
7 guest has been there, you don't know how long they've
8 been there, do you?

9 A No.

10 Q You don't know what they've been doing?

11 A No.

12 Q And you don't know whether they've been there more
13 than once?

14 A That's correct.

15 Q All you know is that they've been there?

16 A That's correct.

17 Q Okay. Now, you've been involved in crime scene
18 forensic work for much of your career; is that right?

19 A Yes, I've actually worked crime scenes.

20 Q But I mean in the sense of performing forensic tests,
21 that's your business, right, DNA, in particular?

22 A Yes, for 22 years.

23 Q You would agree with me, I think, that habitual
24 narcotic users can sometimes -- they bleed in the
25 course of using narcotics; is that right?

1 A I really don't know that. I'm not involved to that
2 degree, so no, I can't answer that.

3 MR. MCDOUGAL: One moment, Your Honor.

4 THE COURT: Yeah.

5 MR. MCDOUGAL: Nothing further from this
6 witness, Your Honor.

7 THE COURT: Any redirect?

8 MR. WILKINS: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. WILKINS:

11 Q We just went through four different sets of DNA. Was
12 blood indicated on each one of those separate sets of
13 DNA that you just testified to?

14 A Yes, it was. And I apologize for not bringing that
15 up earlier, but yes, blood was indicated for each of
16 the items that we discussed.

17 MR. WILKINS: Thank you.

18 No further questions, Your Honor.

19 MR. MCDOUGAL: No recross.

20 THE COURT: Thank you, ma'am. You may stand
21 down and you are released from subpoena.

22 THE WITNESS: Thank you.

23 MR. WILKINS: Your Honor, the State rest.

24 THE COURT: All right.

25 Madam Forelady, ladies and gentlemen of the

1 jury, this is one of those times we need to discuss some
2 legal issues out of your presence. It's also afternoon.
3 So let's break for lunch. And we're closing in on it.
4 It's going to be your case to talk about and resolve soon.
5 Don't know when exactly. But we're getting closer to that
6 point. So please do remember what I've told you and do
7 not discuss this case. You've come this far, keep on
8 trucking, as they say. Y'all have a nice lunch. 1:30.
9 All right. Thank you.

10 (WHEREUPON, the jury left open court at
11 approximately 12:05 p.m.)

12 THE COURT: Motions? One of my favorite jurists
13 used to say motions, we don't need no motions in this
14 case, but I'll be happy to entertain what you've got.

15 Before we do that, Mr. McDougal and Mr. Wilkins
16 had a bench conference and we had some discussion,
17 which -- with respect to objections by the defense as to
18 admission of some of these items.

19 Mr. McDougal, I'll give you an opportunity place
20 that on the record.

21 MR. MCDUGAL: Thank you, Your Honor. The
22 Defense would renew its objections to all of the DNA
23 testimony for the following reasons. The record reflects
24 extensive objections to the fingerprint evidence, the
25 nature of the testimony and this witness testifying that

1 her only source for recognizing the DNA of the victim,
2 Mekole Harris, was the fingerprint evidence, so we would
3 contend that that fingerprint evidence is inadmissible
4 because -- I'm sorry, the DNA testimony is inadmissible
5 because of the finger is admissible.

6 THE COURT: And I have overruled that objection.

7 Mr. Mauldin, I saw her you rising to make a
8 motion.

9 MR. MAULDIN: Your Honor, we move to -- for a
10 directed verdict as to the murder and the kidnapping. The
11 evidence that's been presented, perhaps, has raised
12 suspicion, particularly as to kidnapping, there's no
13 evidence. In fact, their witness, Carmen Jenkins said
14 that Mekole Harris, apparently, had come to that
15 residence, apparently, voluntarily. She didn't appear to
16 be under any force. And in another part of her testimony,
17 Ms. Jenkins said that she was in the rear of the house and
18 Mekole was in the front of the house and as far as she was
19 aware, could have left if she wanted to. So I do want to
20 put on the record the motion for directed verdict, both as
21 to murder and the kidnapping, raising mere suspicion of
22 guilt is not sufficient under our law and the evidence
23 most favorable to the State simply doesn't reach the level
24 to allow this case to go forward.

25 THE COURT: All right. Well, I'm going to

1 respectfully deny both of those motions with respect to
2 both charges.

3 Mr. Jenkins, if you would, ask you to raise your
4 right hand for me.

5 CLARENCE JENKINS, after being duly sworn,
6 testified as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q You can put your hand down. I want to inform you
10 that because you are charged with a crime in this
11 state and this country, you have an absolute
12 constitutional right to testify in your own defense.
13 You have an equal absolute constitutional right not
14 to testify and it cannot be held against you. And if
15 that is your decision, then I will give a charge to
16 the jury if your attorneys want me to that they
17 cannot consider that in any way with respect to guilt
18 or innocence in the case. There are a lot of issues
19 that go into the decision as to whether or not you're
20 going to testify. And those quite often involve
21 strategy, the consistency with the theory of your
22 defense. All those issues that your very experienced
23 and highly qualified defense team will and -- I'm
24 sure have and will discuss with you. Do you
25 understand what I'm telling you?

1 A Yes, sir.

2 Q I'm not going to require you to tell me at this time
3 if you are going to take the witness stand and
4 testify. But when we come back after lunch, I will
5 need to know. Do you understand that?

6 A Yes, sir.

7 THE COURT: All right. And I would ask members
8 of the Defense of the attorneys, have you spoken with Mr.
9 Jenkins about his right to testify?

10 MS. ROSS: Yes, we have.

11 THE COURT: Okay. And have you had enough time
12 to discuss that?

13 MS. ROSS: Yes.

14 THE COURT: All right. Have you discussed trial
15 strategy with him?

16 MS. ROSS: We have.

17 THE COURT: Okay. And all the other factors
18 that you deem important in this matter?

19 MS. ROSS: We have.

20 THE COURT: All right.

21 Mr. Jenkins, do you have any questions of the
22 Court that you would like to ask with respect to your
23 right to testify or not testify?

24 THE DEFENDANT: No, sir.
25

1 THE COURT: Okay. You believe you fully
2 understand it?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Well, think about it over
5 lunch and talk to your lawyers. You can be seated.

6 Anything else we need to do before we break?

7 MR. WILKINS: Nothing from the State, Your
8 Honor.

9 MR. MAULDIN: Nothing from the Defense, Your
10 Honor.

11 THE COURT: Okay. Well, this might be an
12 opportune time to talk about what you all consider what
13 you might request as juror charges in this case.

14 Let me just tell you kind of what I have. Of
15 course, the usual general charge, duty of the judge and
16 jury, the arrest indictment, not evidence, multiple
17 charges, that they all have to be considered on their own,
18 credibility of the witnesses. And then if you request it
19 and if it becomes appropriate, failure of defendant to
20 testify. Would also have for your consideration, the
21 prior record of a witness who has testified, the hand of
22 one is the hand of all, charge on expert witnesses, and
23 depending -- and, actually, the -- well, I had prior
24 record of defendant limited for impeachment, but I'm not
25 sure that that's appropriate. I'll have to think about

1 that because it didn't really come out as impeachment.

2 MR. MAULDIN: The -- well, let me take it one
3 step at a time. There is no prior offenses with regard to
4 Mr. Jenkins that would be relevant for impeachment, even
5 if he takes the witness stand, that I know of. So you can
6 take that off the table.

7 MR. WILKINS: That's correct.

8 MR. MAULDIN: I was thinking about the other
9 witnesses, I think that, perhaps, references during
10 testimony to offenses and so forth have been made and we
11 can argue whether or not that goes to their credibility,
12 but I don't think the jury instruction is necessary, Your
13 Honor.

14 MR. WILKINS: I agree.

15 THE COURT: Okay. Do you want hand of one?

16 MR. WILKINS: State does, Your Honor.

17 MR. MAULDIN: We object to that, Your Honor.

18 THE COURT: Well, I think there's some evidence
19 there that would require it.

20 MS. ROSS: These are very rough. I'm just going
21 to hand these up for a Court Exhibit.

22 THE COURT: All right.

23 MS. ROSS: There's one, No. 8, one is not
24 responsible for a murder committed by a co-conspirator
25 unless that offense was a natural cause and consequence of

1 the agreed upon act. If you charge the hand of one, then
2 I think that would be relevant as is mere presence charge.

3 THE COURT: Well, let me see. I believe -- let
4 me just look at this real quick.

5 MS. ROSS: We forcefully request No. 10, the
6 State v. Edwards, the circumstantial evidence charge.

7 THE COURT: Yeah, I had that. I don't know what
8 I did that. I had direct and circumstantial.

9 (WHEREUPON, Court's Exhibit No. 4 was marked for
10 identification and received into evidence.)

11 MS. ROSS: We would just argue that Edwards is
12 more appropriate case law than Grippon for that jury
13 instruction.

14 MR. MAULDIN: And, Your Honor, in regard -- and
15 right now, I can't remember the name of the recent case
16 that dealt with the analysis of circumstantial evidence in
17 the South Carolina Supreme Court. I apologize for not
18 having it. But it renews the ongoing debate, if you will,
19 about the appropriateness of the Edwards charge versus the
20 Grippon charge.

21 THE COURT: All right. Well, the reason I
22 haven't mentioned it because I haven't gotten through.

23 MR. WILKINS: You want to give us 30 minutes
24 to --

25 THE COURT: Oh, yeah, we'll talk about this when

1 we come back. I'm just kind of throwing it out on the
2 table. I don't know when it's going to become appropriate
3 to make the final decision.

4 Of course, presumption of innocence, reasonable
5 doubt. I did have direct and circumstantial evidence and
6 then, of course, murder and kidnapping.

7 MR. WILKINS: Reasonable doubt firmly convinced
8 or what's your reasonable doubt?

9 THE COURT: It's reasonable -- cause of doubt --
10 kind of doubt that would cause a reasonable person to
11 hesitate.

12 MR. WILKINS: That's fine.

13 THE COURT: All right.

14 MS. ROSS: Just request No. 5, that's the second
15 part of my request, that's from another case. The second
16 sentence in request No. 5, I should have omitted, that
17 doesn't need to be in there. It's not relevant to this
18 case.

19 THE COURT: Well, the only one that really jumps
20 is your circumstantial evidence requests.

21 Okay. All right. See y'all back here an hour
22 and 15 minutes. Maybe if y'all come back you'll have
23 enough time to -- 1:30.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: All right. Has Mr. Jenkins made a

1 decision?

2 MS. ROSS: Yes.

3 THE COURT: Mr. Jenkins, you're still under
4 oath. Have you made a decision about whether or not you
5 will testify in the case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What is your decision?

8 THE DEFENDANT: I will not testify, sir.

9 THE COURT: Okay. And do you have any questions
10 you need to ask either me or your attorneys about that
11 decision?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Have you had enough time
14 to discuss it with them?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. And is this your free and
17 voluntary choice?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Anybody force you to do it?

20 THE DEFENDANT: No, sir.

21 THE COURT: Okay. All right. Please be seated.
22 Do you all want a charge on the failure to
23 testify?

24 MS. ROSS: Yes, Your Honor.

25 THE COURT: All right. What else?

1 MS. STROM: Your Honor, you know I couldn't stay
2 quiet the whole time. It's not my nature.

3 THE COURT: I've been impressed.

4 MS. STROM: But I do take issue with the
5 Defense's request to charge.

6 THE COURT: The circumstantial evidence?

7 MS. STROM: Yes, sir, specifically --

8 THE COURT: State vs. Cherry clears that up.

9 MS. STROM: Yes, sir, thank you. And, Your
10 Honor, as to their request No. 1, 2, 3, 4, I mean, that's
11 covered in your general charge. I don't think it has to
12 be reiterated again.

13 THE COURT: Yeah. All that is in my charge.

14 MS. STROM: My understanding was --

15 THE COURT: Five is.

16 MS. STROM: -- it was withdrawn I thought
17 because of the self defense, but you don't go into
18 innocent until proven guilty. I think No. 6, the burden
19 of proof, you always cover that, that would be in your
20 general charge. 8, I do not believe 8 applies in this
21 case. Your Honor, what this case is about is aiding,
22 abetting and assisting, hand of one. It's not a
23 co-conspirator. And that charge is conspiracy, so I would
24 submit that is not a proper charge in this case.

25 THE COURT: Okay.

1 MS. STROM: Number 9, mere presence, I think
2 that is --

3 THE COURT: It's in my hand of one, hand of all.

4 MS. STROM: Then, of course, the circumstantial
5 evidence, Cherry case. You use Grippon.

6 MR. MAULDIN: Your Honor, one thing --

7 THE COURT: You're in here. I wasn't sure where
8 you were, Mr. Mauldin.

9 MR. MAULDIN: I'm not real sure either, Judge.
10 You say on Defendant's failure to testify, that language
11 is not -- you don't actually say fail to testify, do you?

12 THE COURT: Let see. Don't see failure in
13 there. That's just my title for it.

14 MR. MAULDIN: Thank you, Judge.

15 THE COURT: Anything else?

16 Y'all want to rest or are you going to present
17 any evidence?

18 MR. MAULDIN: We're going to propose that when
19 the jury comes in that you address us and I'll just advise
20 that we rest. We haven't put any exhibits into evidence,
21 therefore, we assume we have closing.

22 MR. WILKINS: That's correct.

23 THE COURT: That's correct. I noticed how
24 careful you were about that.

25 Do y'all want to look at the proposed verdict

1 form?

2 Ms. Ross, did you give a copy to the court
3 reporter of your request to charge?

4 MS. ROSS: No, but I can.

5 THE COURT: All right. You got one, because I
6 can give her mine?

7 And that would be a Court's Exhibit.

8 (WHEREUPON, Court's Exhibit No. 5 was marked for
9 identification and received into evidence.)

10 THE COURT: All right.

11 (WHEREUPON, the jury came into open court at
12 approximately 1:47 p.m.)

13 THE COURT: Ladies and gentlemen, welcome back.
14 I hope you all had a pleasant lunch. We are ready to
15 proceed.

16 Mr. Mauldin.

17 MR. MAULDIN: Yes, Your Honor. The Defense
18 rest, Your Honor.

19 THE COURT: All right. Thank you, very much.

20 All right. Madam Forelady, ladies and gentlemen
21 of the jury, you remember on Monday when I gave you the
22 procedural road map of the trial so you'd know kind of
23 where we were, the first part were the opening statements,
24 the second part was the presentation of testimony and the
25 evidence. So we have completed the first two parts. All

1 of the testimony, all of the evidence is now in, so we're
2 finished with that second part. And we are about to move
3 into the third part of the trial, which are the closing
4 arguments from the attorneys where they advocate their
5 positions. You all have paid very, very close attention
6 throughout the course of the trial up to this point and I
7 ask you to continue to do through the arguments of these
8 fine attorneys.

9 MR. WILKINS: May it please the Court.

10 THE COURT: Yes, sir.

11 CLOSING STATEMENT

12 MR. WILKINS: I want to make a quick confession.
13 When I spoke to you in my opening statement a couple days
14 ago, I told you something that wasn't exactly true. I
15 told you that this case was about cold callous and
16 calculated murder. I was a little bit wrong. This case a
17 about Mekole Harris. She was a daughter, family member,
18 human being.

19 The Defense also told you in there opening
20 statement a couple of things. They also told you that
21 Clarence Jenkins had a fourth grade education. Well, as
22 Your Honor has already told you, opening statements are
23 not evidence. And there's no evidence in this trial that
24 Clarence Jenkins has a fourth grade education. The only
25 evidence in this trial is that he went to Greenville High

1 School. That's all you're here to consider. But I can
2 tell you this, he can read and write.

3 The Defense also talked about a medical
4 condition that Mekole Harris may have had. There's no
5 evidence, no medical evidence in this trial that Mekole
6 Harris had any such medical condition. Mekole Harris was
7 a daughter, a family member, a human being.

8 Now, this is my chance to talk to you about the
9 facts in this case. And I talked in my opening statement
10 a lot about CSI and about TV. Now, as you've seen over
11 the last couple of days, you're now starting to realize
12 that what happened here in this courtroom isn't
13 necessarily what happens on TV. We don't investigate, get
14 evidence, solve, try an individual in a day. And you also
15 see how, often times, cumbersome it can be to get in, I
16 don't know, over a 100 photos, over 60 or 70 other
17 exhibits, computer information, DNA evidence, latent
18 information, various aspects of direct testimony. You can
19 see how the process that we have to go in and mark things,
20 show them, authenticate them, lay foundations and ask that
21 they be moved into evidence. You see all that. Isn't
22 exactly how it is on TV, is it?

23 But this is my opportunity to lay the case out
24 as I see it. This is my opportunity to lay it out from my
25 perspective and prove to you that the State has met its

1 burden and we've proven to you over the last couple of
2 days that Carmen Jenkins and Clarence Jenkins kidnapped
3 and murdered Mekole Harris. So that's what I'm going to
4 try to do over the next little bit.

5 So I'm going to start with a little bit of
6 background. And I've got a PowerPoint up here that I'm
7 going to be talking from, so you can look up there and
8 read sort of the points that I may hit on as I'm going.
9 If you like, you can just sit back and relax and listen as
10 well.

11 Now, we had Carmen Jenkins come and testify and
12 it was a long day. She was on the stand for about two and
13 a half hours on direct examination and an hour under
14 cross-examination. But she met Clarence back in '06. She
15 had gone off to Spartanburg Methodist College, tried to
16 get educated a little bit. She had to come home to help
17 take care of her mom. So she came back and that's when
18 she met Clarence Jenkins. And that's when this story sort
19 of begins, back in '06. They begin a relationship, Carmen
20 gets pregnant and they decide to get married. And they
21 married December of 2007 -- I mean, 2006. And in March,
22 their first child was born in 2007. And they have sort of
23 a normal life. They're living together. They're raising
24 a child. They're trying to work and trying to make a
25 living, trying to pay the power bill, pay rent, whatever

1 it is. They're doing what they can to survive.

2 In August of 2007, that's when the real story
3 begins. That's when things change in their sort of normal
4 daily average lives that they were living here in
5 Greenville County. They separated for a moment in time
6 and Clarence finds another woman. He finds Grace David.
7 And Grace Davis had been living with a guy named Willie
8 Davis and she left. She left him with her three kids. Sh
9 went away. She went to a woman's shelter. And while
10 she's at that woman's shelter, who did she happen to meet?
11 She meets Clarence Jenkins' sister, Janese. And you'll
12 hear Janese a little bit about this story. That's how she
13 meets Clarence. And Clarence woos her. And they begin to
14 talk, as you heard Grace Davis say. They began to talk
15 and talk and their relationship gets a little more
16 intimate and they do become intimate.

17 And Clarence then was able to reconnect with his
18 current wife, Carmen, who he had briefly separated from.
19 And when he does, he is able to bring Grace Davis into the
20 relationship and Carmen is okay with it. And their
21 relationship evolves into sort of a three-way
22 relationship. You have a husband, wife and third party
23 and they're engaging in this united relationship. Only
24 for a short period of time are they actually together. If
25 you remember, they were living in the Welcome area on Lulu

1 Lane. Remember those dates? There's a ton of dates, a
2 ton of places and a ton of information. But that rings a
3 bell.

4 And it wasn't 13 days -- I believe Defense
5 counsel cross-examined Carmen Jenkins, says it was 13 days
6 later, everybody gets pulled over at a car stop and
7 everybody is arrested, except Grace Davis. Carmen is,
8 basically, a revolving door. She's got some bad checks.
9 She goes down, signs a warrant, goes home. Clarence is
10 not so lucky. So in August, Clarence has to go do a
11 little time down at the LEC. And I think it was over 90
12 days, so he has to, actually, go down to the South
13 Carolina Department of Corrections, so it wasn't here in
14 Greenville. And it's just Carmen and Grace.

15 Carmen and Grace living on Lulu Lane unites and
16 they become intimate. And they fall in love with each
17 other. And they start to have a relationship like any
18 other married couple would have. One goes to work, one
19 stays home with the kids they're living. But they're
20 having contact with Clarence during this time. They're
21 writing letters to each other. Carmen testified that they
22 were getting letters that Clarence let them know that
23 people were watching, he was keeping up with them. And
24 they let him know that their relationship had become
25 intimate.

1 So Clarence comes on home about December of '07,
2 and they decide they want to get them a new place. And
3 they decide they need to find some money to get them a new
4 place. And before they do that, move over to Tindal Road,
5 they actually bond. They bond so much that Clarence
6 writes down their covenants to each other. So much that
7 each one of them inserts their name and then signs it.
8 Actually, all three sign it. One for Grace, one more
9 Carmen, one for Clarence. They're now a threesome. Not
10 fully united in a church in front of witnesses, with a
11 South Carolina marriage certificate, but to themselves.
12 They are now united according to this piece of paper.
13 They were brought here together under God, who promised to
14 love and cherish each other is what these letters say.
15 You'll get a chance to read these. So they're now a
16 couple, they're now together.

17 So they need some money to get to a new place
18 for them and the kids. So they go and visit Grace's
19 daddy, Willie Davis, and Grace's dad's bossman, Eric
20 Harris. Eric Harris, who worked at the car wash. And
21 there was testimony that he sort of kept over Willie
22 Davis' money. I'm guessing, but you can come up with your
23 own conclusions, that was so he wouldn't spend it all in
24 one place. So they went there to talk to Eric Harris, all
25 three of them. Said can I some money. He said no. Went

1 to Willie Davis, to his house, because they knew where
2 Willie Davis lived. Can I have some money? No. So
3 Carmen was able to get a little money and they're able to
4 go to Tindal Road.

5 So they're now moving into Tindal Road. And
6 you've seen Tindal Road and you've seen the trailer so
7 much, you probably never want to think about Tindal Road
8 ever again. That's Tindal Road right there. They move
9 into Tindal Road and they're living again. Kids are
10 living in the middle bedroom and the front bedroom. All
11 there of them stay in the rear bedroom. They even get
12 some rings. Grace has a ring and Carmen has a ring,
13 further uniting their relationship.

14 Grace has an unfortunate situation. DSS says,
15 you know, this is not a proper place for children and
16 we're going to intervene ourselves in your business and
17 we're going to take your kids away. So where do they go?
18 They go to live with her aunt. Aunt Sue Pearl. I love
19 Aunt Pearl. She's a magnanimous witness that testified up
20 there. You can't get her to stop talking if you wanted
21 to. Kids go see Aunt Pearl. Well, you can imagine, as
22 any mother would feel, that was not easy for Grace Davis.
23 So she made a decision. She made a decision to leave
24 Tindal Road Easter Day, Easter Sunday.

25 So Grace decides to leave Tindal Road. And we

1 heard a lot of testimony about her exit. Her leaving
2 their covenant. Breaking their covenant. So she leaves
3 on Easter Sunday. She tells Carmen either the day before
4 or that morning, it's unclear, that I'm leaving. They
5 have a discussion leaving. Carmen testifies that she
6 left. She told her she loved her. Grace told her that
7 I'm coming back. I've got to get my kids back. I've got
8 to go. And she walks out the door. Clarence says go get
9 those rings. Grace still has that ring. So Grace has
10 gone far enough where Carmen has to get in the car and
11 drive to get her. And they have another conversation
12 about her leaving.

13 And before, I just remembered, as Grace is
14 leaving the residence, she comes back. Clarence calls her
15 back, if you remember Grace Davis' testimony. Calls her
16 back to the house. And he's standing the doorway with a
17 machete. Now, we heard Carmen talk about a machete later
18 on this story. And he was standing there with a machete
19 and says, I can't even kill you or I ain't going to even
20 kill you. They have an exchange and that's when Grace
21 leaves. Then Carmen goes after her later to get the rings
22 and comes back.

23 So the covenant now has been broken. Things
24 have changed. We're in a new era. Carmen and Clarence
25 are now without the third party. They're alone. So what

1 happens? Well, we know that Marquise, that's Grace's
2 oldest son, testified that Clarence called him looking for
3 Grace. Well, they don't know exactly where Grace is
4 because she won't return their phone calls. They know
5 they've been to her daddy's house. They know they've been
6 to Aunt Sue Pearl's house on Andover. And they know
7 they've been to her momma's house on Rose Avenue. That's
8 Ms. Judon Burnside's house.

9 So what do they do? Clarence is looking for
10 her, calls Marquise looking for Grace. On March 24th, a
11 Yahoo email address is opened up. And we had the Yahoo
12 business records brought into evidence. And an email
13 account, evans.john06@yahoo.com was created. Now, we know
14 that's an important email address because it's on a bunch
15 of letters that y'all heard about. So they open up an
16 email address at the library and the story begins. They
17 want Grace back. They want her to come back to adhere to
18 these right here.

19 So the next part of the story is we have
20 Clarence and Carmen going to the library on March 31st.
21 We see them on video going in around 5:49, and Carmen's
22 library card used the access to the computer for 50
23 minutes and Clarence's library card used the access to the
24 computer for 48 minutes. And they used computers 19 and
25 20, which are next to each other. And they leave about

1 6:48 per the video. And Carmen says they mailed some
2 letters. Well, we know three people who got threatening
3 letter and we know the postmarks on them is March 31st.
4 We know Willie Poole, we know Sue Pearl Bostic and we know
5 Judon Burnside received letters.

6 Now, we didn't know about those letters until
7 April 2nd when the police was called, but they were mailed
8 on March 31st. Got the postmark date on the envelope.
9 And it was letters that talked about Willie owing \$10,000,
10 the organization, you know too much, there's an
11 organization, it's your responsibility. You must come
12 become to that organization. And Carmen talked about that
13 organization. She said that's Clarence's words. He
14 talked about that. Now, she believed it to be fictitious,
15 but that's what he talked about. She also said that she
16 helped him write those letters. They wrote them together.
17 They wrote those letters and they concocted this scheme
18 together. So they're together on the 31st and they mailed
19 the letters on the 31st.

20 Now, today, there was a little bit of testimony
21 about how the letter to Willie Poole, Grace's daddy, the
22 postmark on it was between 3:30 and 4:00. And they didn't
23 go to the library until 5:45. We know that there are tons
24 of letters. This was found in this metal case at their
25 house. Copies and copies and copies of letters that are

1 similar, if not exact, to the ones that were sent out on
2 that March 31st day. We have a draft of that letter, this
3 is your final letter. Willie came to us and gave us
4 information on you and your children. He gave me your
5 social security card. That's got Carmen Jenkins'
6 fingerprints all over it. So there's letters coming and
7 going like nobody's business. I bet there's 10 here. And
8 they're different fonts, they're different words on them,
9 some are big. Maybe they mail a letter prior to going to
10 the library. Do some more letters and mail some more
11 letters. I don't know. But I know that mailed them on
12 the 31st. To me, that's all that really matters.

13 So they leave the library, and we go to
14 April 1st. So the scheme is in place. They're mad.
15 Grace had left. They got the idea we're going to send
16 threatening letters. we need an email address. They set
17 up the email address. We send the letters in the mail and
18 we'll use the library to print them off. We mail them
19 from the downtown post office, blue box in front of the
20 Greenville News.

21 Well, before anybody knows about these
22 threatening letters and before Judon Burnside and Sue
23 Pearl Bostic have received them, Vivian Young sees
24 Clarence, not Carmen, Clarence and Mekole together at the
25 Labor Finders. Carmen is not at the Labor Finders.

1 Clarence is at the Labor Finders. What's Clarence doing?
2 He was looking for somebody to complete his scheme is what
3 he's doing.

4 April 2nd, the case gets interesting. The
5 letters are discovered and police are notified. So now we
6 have threatening letters that have been sent through the
7 mail to two individuals that we know of at that time. And
8 so Amber Allen, y'all remember, responds to Sue Pearl's
9 house at Andover Apartments and receives the threatening
10 letter. While talking to her, she says, you know, my
11 sister got one, too. They had talked to each other after
12 they had received them. So she went to Judon Burnside's
13 house, where she was living at that time. She wasn't
14 living at Rose Avenue at that time, she had moved, but
15 carried her phone number with her. And got a similar
16 letter there. So police now have the letter, they're
17 looking at it trying to figure out what is this
18 threatening letter all about.

19 This is important. The next day, April 3rd,
20 Clarence was going to the library. And if you remember,
21 Carmen testified that I told Clarence not to be checking
22 the email at the house because Carmen knew a little bit
23 about computers. So Clarence goes to the library. And
24 what does he check? We have a video of him going in the
25 library at 6:44 p.m. The email address that's used in the

1 threatening letters to respond -- to be responded to, I
2 assume, by Grace or her family members is checked at 6:51.
3 I would say Clarence checked the email. He knew about the
4 email. He knew about the letters and he knew about the
5 scheme. So he checks the email and leaves about the same
6 time. Now, if you go back and look at the exact time on
7 these things, they're a couple of minutes off. But I
8 would submit we've got video from in front of the library
9 and we've got a different set of video cameras inside the
10 library and you've got Yahoo, who is using Greenwich mean
11 time, which is some place in England in the middle of the
12 earth, supposedly, to coordinate all these things. But
13 they're within minutes of each other.

14 So it was Clarence who was checking to see if
15 anybody had responded. Why was he there on April 3rd?
16 Because April 4th is the deadline. Please respond by
17 April 4th. So I want to know if somebody's responded so I
18 can figure out where Grace is. No one's responded. We
19 have no response -- no evidence in this record of any
20 response from anybody at that time. So the plan must be
21 continued. The threatening letters aren't enough.

22 So what do we do? We go to April 4th, Friday.
23 Between 4:00 and 5:00, Vivian Young sees Mekole and
24 Clarence at the Labor Finders. He sees -- he sees -- she
25 knows Mekole and she sees Clarence talking to Mekole. She

1 also sees her boyfriend in there talking to somebody, so
2 she wants to go in there and figure out what's going on
3 because she's a little scared her boyfriend is going to
4 talk to another girl. Mekole was up there hanging out and
5 she knows Mekole. So she goes inside the Labor Finders.
6 Who does she see? She sees Clarence Jenkins and Mekole
7 Harris going in the bathroom right there. And she said
8 what do you think they're doing in there? She said, Well,
9 I don't know, but must be going in there to do drugs, I
10 guess, I don't know. But I saw them going into that
11 bathroom. That's last time Mekole was seen at Labor
12 Fingers.

13 So what does Clarence do? Has to keep with his
14 scheme. Clarence tells her I'm a police officer.
15 Clarence tells her you're under arrest. Now, we know
16 Mekole Harris, we have testimony that she had drugs on
17 her. We've even had testimony that she may have engaged
18 in prostitution and those types of things. Those are
19 personal choices that she had made. So Clarence Jenkins
20 inveigles her. That's a big fancy word. He tells her
21 things that aren't true to convince her to come with him.
22 That's kidnapping.

23 So he gets her in the van and takes her back to
24 Tindal Road. And on the way, according to Carmen, he
25 calls Carmen and says hey, I'm bringing somebody back.

1 Get that room over there cleaned out for me, please. And,
2 of course, she does. So Mekole is now back at Tindal
3 Road. It's Friday afternoon, it's getting dark. She's
4 there. Carmen sees her come in. They go in the back
5 bedroom. Her clothes are off and she's handcuffed when
6 Carmen sees her. Well, that's not inveigle, that's not
7 making misrepresentations, that's about brutal force.
8 She's not free to go.

9 Now, she still thinks Clarence is a police
10 officer. And he tells her that she's under arrest for
11 prostitution and drugs because she has drug paraphernalia
12 on her. Carmen said there was drug paraphernalia. She
13 didn't see her using drugs, but she saw that she had them.
14 And she thinks she's involved in some sort of police
15 investigation.

16 While there that Friday night, they get on their
17 home computer and they try to get a credit card in her
18 name. Put her name there, their phone number, their
19 address. And they apply to SunTrust for a credit card.
20 Might as well get some money out of it.

21 So they're trying to figure out what they're
22 going to do. It's Friday night. She's there. Of course,
23 they just handcuff her to a chair. She puts her clothes
24 back on. She comes back into the living room right there,
25 sitting in a wooden chair and handcuffed to it, thinking

1 she's under arrest. That she needs to help with an
2 investigation. That's what Clarence told her. She needs
3 to help with an investigation or she's going to jail.

4 So what do they do? They say okay, the next
5 part of the plan is we need to send a threatening phone
6 call to the places where we think Grace is because this
7 other stuff isn't working. This letter that we sent
8 hasn't worked. Nobody has responded to our email. That's
9 not working. So let's get a person to call over there and
10 make threatening phone calls. And so Carmen and Clarence
11 sit down and come up with a script together. Here's what
12 they came up with, Hi, my name is Mekole. I'm Willie's
13 girlfriend. I'm sorry for calling this late, but I had
14 to. Willie owes some people a lot of money and he wants
15 to trade Grace, her boyfriend, Marquise, and some other
16 girl Grace was with.

17 Who's palm print is on that letter right there?
18 Clarence Jenkins. And you heard the fingerprint talk
19 about it's this part of your hand right here. You can
20 write and that's what you leave. So he's writing a
21 letter. He's writing a letter this Friday night about
22 what they're going to have Mekole Harris talk to on the
23 phone. They know what they're going to do.

24 And again, email is checked at --
25 evans.john60@yahoo is checked at 105 Tindal Road at about

1 10:20 that night. It's the 4th. It's the deadline
2 pursuant to the letters. See if anybody responded. Okay.
3 We got plan C. Let's go make a threatening phone call.
4 So we know that 12:00 and 1:00 that night, Clarence,
5 Carmen and Mekole leave. They leave in a van and they go
6 to a pay phone. Now, Carmen says that she stands outside
7 the van and Clarence and Mekole go to the pay phone and
8 use the phone. We know that Judon Burnside got a phone
9 call. You heard it. Something about Willie \$10,000,
10 Willie's writing letters and someone is going to get
11 killed. And we know the Marquise answers the phone
12 initially and he ran to Aunt Pearl to say somebody's on
13 the phone talking about Willie. Aunt Pearl didn't get
14 much of the phone call. I think she testified that she
15 could hear somebody crying. So they go and Mekole tries
16 to read this script at the pay phone. They don't use
17 their own phone. They knew better because they had caller
18 ID. And both of those individuals testified that it came
19 up as a pay phone. So it's late. They come on home.

20 Saturday, April 5th. Mekole Harris still at the
21 trailer. Carmen testified that she's handcuffed to the
22 chair and they all go to bed. During that day, sort of a
23 bland day, they watch movies. And Clarence's sister
24 actually comes over. Carmen testified they put Mekole
25 back over here in that front bedroom, so she remained

1 silent. Now, remember, she still thinks this is part of a
2 police investigation and when she went to make this phone
3 call, it was part of a police investigation and sting
4 operation, I imagine, and I imagine she believed it.
5 They're sitting around watching movies. Mekole is sitting
6 there. Between 2:00 and 5:00, Carmen goes to Checkers and
7 returns. She is now with her husband, kidnapped Mekole
8 Harris. Mekole Harris has been handcuffed and spent the
9 night and she leaves and goes to Checkers. Carmen Jenkins
10 could have kept driving. She could have gone to the LEC.
11 She could have stopped the first police officer she saw.
12 She didn't. She didn't. She's doing a 50-year sentence
13 right now.

14 So she comes back with some food and they eat.
15 This is Saturday night. And we have up here -- you know,
16 Rick Floyd learns that the IP address that was used is at
17 105 Tindal Road. We know they didn't check the computer
18 Saturday. They checked it Friday. So they go to sleep
19 Saturday night. Carmen and Clarence in the rear bedroom,
20 back here. Mekole out in the living room handcuffed.
21 Clarence wakes up and tells Carmen, you know what you got
22 to do. And Carmen had testified earlier that he had put
23 her in the shower and put a knife to her throat and said,
24 Why don't I kill you? You better do what I tell you to
25 do. Carmen had a chance to leave and she didn't take it.

1 So Clarence tells Carmen, Get out there. I want
2 you to go strangle Mekole with a cable cord that was left
3 over when we moved in this trailer. He said, Don't worry,
4 I'm going set her up for it. She enters the room. Mekole
5 is tied down, handcuffed down, legs down, feet are tied to
6 the chair. Carmen comes up behind her, puts the cable
7 cord around her neck and tried to strangle her. Carmen
8 testified she was fighting too much. I do it. I'm not
9 strong enough. Clarence says, Give it to me. So he ties
10 Mekole down in that chair, her head is back, she's tied
11 down and he puts a bag over her head and suffocates her
12 until she stops moving. Now, Mekole is no longer with us.
13 But the plan had not yet been executed. There's further
14 work to do.

15 Clarence cuts the cord and they both carry the
16 body into the shower right there in the front bedroom.
17 They put her in the shower, close the bathroom door and
18 they take off. They drive to the Dollar Tree. They drive
19 to the Family Dollar in the van. According to Carmen,
20 Clarence buys serrated blade, bleach, trash bags and spray
21 paint. I'll refer you to the pictures of the bathroom
22 sprayed for cover up.

23 But they got to go to the library. That darn
24 library. Because they need to print out some more notes.
25 Because they have a plan. They go to the library. We

1 know that Clarence and Carmen are together now. Now,
2 again, from Friday in the afternoon, when Clarence is seen
3 with Mekole, nobody sees Clarence until Sunday, April 6th
4 when they're together going to the library. They enter
5 the library and you see Clarence typing on the computer
6 with gloves. Now, Carmen said he likes to wear these
7 gloves. He wears them all the time. I said, Why does he
8 wear them? I don't know. But he's wearing gloves. They
9 check their email. Email evans.john60 is checked. And
10 they leave at 3:25. And they leave with those notes. The
11 small notes that were left at Andover Apartments and Rose
12 Avenue.

13 So they return to the house after shopping,
14 after going to the library and Mekole Harris' body is
15 sitting in the shower. Clarence puts Mekole's feet in the
16 suitcase. He used snips is the word Carmen Jenkins used.
17 Snips. He severs the toes. Tries to cut through the
18 ankle with a machete, according to her. Now, Grace Davis
19 saw him with a machete. And we have blood spatter in a
20 two places. Now, we know they did a huge cleanup of this
21 scene. Sheetrock is torn all over the bathroom. Spray
22 paint is done all in the bathroom, on the sides. Fires
23 are lit in the shower. Major cleanup going on. Bleach
24 everywhere. Those two pieces of Mekole Harris' blood that
25 are found by forensics. One is by a cabinet, sort of eye

1 level, and one is almost up on the ceiling. That's the
2 one up on the ceiling right there. That's the light.
3 That's the top of the ceiling right there. The other one
4 is about cabinet length.

5 How did blood get way up there? If you use a
6 machete, you strike, when you go back, what happens to the
7 blood when you raise back? It shoots up. Of course, they
8 cleaned up. And Carmen testified that that didn't work
9 real well, so he uses a serrated knife to cut the feet and
10 he used the snips to snip through the cartilage and
11 tendons. Carmen, again, not minimizing herself says, I
12 participated. He told me to do one and I did it. I tried
13 and I wasn't strong enough to ship through the tendons and
14 the ligaments and bone, so he put his hands around mine so
15 that it would snip. They take the body parts and they put
16 them in milk jugs with bleach and ammonia and put them in
17 the freezer. So now they've got a bloody mess in their
18 bathroom.

19 They've got what they need for their plan to be
20 executed in the freezer and they've got to get rid of
21 remains. So what do they do? They take a grown body and
22 put it in a baby carriage, a pack and play. Forensics
23 found these at Altamont Road with all the remains. That's
24 a pack and play hinge and that's a pack and play. If you
25 have kids, you know what a pack and play. I'm almost a

1 pack and play expert. That's a pack and play. They take
2 her body and they put it in there. They take the trash
3 bags. They take the suitcase. Remember the little thing
4 with Samsonite on there? Everything else that they had
5 and they throw it in there and they carry it out to the
6 van. I asked Carmen, I said, Now, that's pretty heavy,
7 isn't it? She said, Yeah. I said, How did y'all carry
8 it? She said, We both picked it up and backed the van up
9 to the porch right there and put in the van. Could you
10 have done that by yourself? She said, No, I could not
11 have done that by myself.

12 So they take the body and they drive around and
13 they're looking for a place to get rid of it. And they
14 do, they find an abandoned lot up on Altamont Road. And
15 they go in there and carry it out. Carmen said they put
16 gasoline and lighter fluid on it and set it on fire.
17 That's the back of their van after the police officers got
18 it. There's the gas can right there. And they take off.
19 And it's pretty late by now.

20 So they go on, they grab what they need from the
21 freezer. And before they do, they roll a print on the
22 letter. Now, I can't for the life of me give you an
23 explanation -- I can maybe give 10 explanations why they
24 wanted to put Mekole Harris' print on that letter. But
25 they did. And the fingerprint expert testified that this

1 was a unique print because it looked like it had been
2 rolled. And I can't remember which one it was. It's on
3 the fingerprint card if you want to go look at it. When
4 you touch something, you just touch it and leave a
5 fingerprint. But this one was rolled. They head over to
6 Andover Apartments, which they had been to visit Grace's
7 aunt and her kids, and Carmen is dropped off by Clarence
8 and they go and deliver the note. We've got video of it.
9 We've got video of it. We've got video of Carmen walking
10 down, going to the car and putting the letter right where
11 Sue Pearl said it was. And Sue Pearl is on the second
12 floor, she throws it in front of Sue Pearl's front door.
13 Carmen's not minimizing her activity.

14 They go to Rose Avenue and they do the same
15 thing. Drop it in the mailbox, throw it on the porch
16 because that's where they believed at that time that Judon
17 Burnside, Grace's momma, lived. She didn't live there
18 anymore, but they didn't know that. So, of course, the
19 next morning, Sue Pearl calls the police and then they get
20 notice that they might want to go to Rose Avenue as well
21 and check that out. And the investigation begins. We now
22 have severed body parts in the investigation. And all
23 that starts coming in. The April 2nd letter now comes
24 because they're similar letters, to which investigators
25 are scrambling. They're trying to get everything together

1 and figure out what's going on here.

2 So Conroy, Lendway and Garrison go to Tindal
3 Road. They figure out that Grace Davis was living with
4 the Jenkins, so they go out there. And they ride by and
5 no car is there. They come back and they see Carmen and
6 Clarence getting out together. So they watch from
7 Glenmore Avenue, remember that overhead, it's kind of
8 behind. It sits up looking down. Officer Garrison says
9 he sees a male come out with a grill and there's big flame
10 coming out of the grill. Well, we know they had a grill
11 because here's the grill we found at their house.
12 Garrison sees that. And, of course, forensic testified
13 that it looked like it was charred plastic and gunk in
14 there. It didn't look like they had been cooking
15 hamburgers and hot dogs on this thing, according to
16 forensics.

17 And, of course, we have Brandi Bolt. She
18 doesn't even know who Clarence Jenkins is. She drives
19 by -- well, she walking out from her house and there's
20 this terrible smell. First thing, she sees a flame and
21 thinks a trailer is on fire and then she smells a terrible
22 smell. They close the window in their trailer it's so
23 bad. Then she says I'm going to get some cigarettes, so
24 I'm going to drive by. And she stops and talks to
25 Clarence. And she said he's out there with lighter fluid

1 and a big flame. She says hey, is everything okay. And
2 he says, No, just having a barbecue. We know that's not
3 true. He lied to her. That's what she saw. She's got
4 nothing vested in this case.

5 Now, Carmen says that Clarence was out there
6 burning their clothes and their shoes in the grill. Had
7 no idea detectives were up there watching him. So the
8 investigation continues. Detective Flavell and Garrison
9 decide let's just go talk to them. Let's see what we can
10 find. And they talk to Carmen. Carmen has just
11 kidnapped, murdered, dismembered body parts the day
12 before. She's talking to law enforcement now. Imagine
13 the anxiety she's going through, I assume. That's for you
14 to decide. And she says Clarence isn't home. Now, she
15 testified he really was home. She lied. And they watch
16 her. She said I'll come down to the law enforcement
17 center. And they watch her. She leaves, goes to
18 Clarence's sister's house, gets in the car with her, takes
19 the kids over there. Drives back down to the -- goes to
20 the law enforcement center and talks to the police. Now,
21 she testified Clarence is inside getting rid of evidence
22 in the bathroom. Spoon, knife, lighter fluid.

23 Now, we know this lighter fluid has Clarence's
24 fingerprints on it. We know this spoon and this knife
25 were in there. The defense was right, that white granular

1 substance was not tested. But what did Carmen say
2 Clarence was doing? He was using it to pick blood spatter
3 out of the sheetrock. And that's what the result of it
4 was. It's a cleanup, that's all it was. It's a cleanup.
5 They ripped sheetrock out and spray painted it trying to
6 cover up everything they could.

7 So while they're interviewing Carmen, Garrison
8 and Flavell go back and they do the trash. I don't know
9 how they drew the short straw and do the trash pull, but
10 somebody had to do it, so they did it. And they go there
11 and they pull and they find bleach bottles, they're down
12 here. You probably don't want to handle those, but
13 they're just bleach bottles. And they find a Color Time
14 receipt. This is interesting enough, it's just a Color
15 Time receipt that was in the trash. And it shows that
16 they had a computer. It's just a document that says they
17 had a computer. They rented it. It's in the name of
18 Carmen Major and Grace Davis, up here who's the renters.
19 You look at the renter down here and the signature. And
20 I'm looking at the signature on the --

21 MR. MAULDIN: Your Honor, can we approach one
22 moment?

23 THE COURT: All right.

24 (WHEREUPON, a bench conference was held in the
25 presence of the jury but out of the hearing of

1 the jury.)

2 THE COURT: Yes, sir.

3 MR. MAULDIN: Your Honor, we do want the record
4 to reflect a strenuous objection right now in this record.
5 I'll be glad to share it with you after Mr. Wilkins is
6 finished or right now in front of this jury if you wish
7 for me to.

8 THE COURT: Well, state your objection.

9 MR. MAULDIN: I think it's inappropriate for the
10 jury to be present during the expression of this
11 particular grounds for an objection. I'm trying to be as
12 convenient as I can be.

13 THE COURT: All right. We'll wait until the
14 conclusion.

15 MR. WILKINS: Signatures. Use your common
16 sense, that's all I'm asking you to do. Use your common
17 sense. There's no experts here on handwriting. I'm not
18 offering any experts on handwriting. I'm not telling you
19 these have been compared. They haven't. I'm showing you
20 two pieces of evidence. Use your common sense.

21 MR. MAULDIN: Renew the objection, Your Honor,
22 and make a motion.

23 THE COURT: All right.

24 MR. WILKINS: So they come back, Clarence has
25 been in there cleaning up, cleaning up the crime scene.

1 The search warrant is executed and forensics do what
2 they're going to do. You've heard from forensics and
3 you've heard what we got out of the house. And I, again,
4 mention, the Hi, my name is Mekole letter and Clarence's
5 fingerprints on it. The lighter fluid with his prints on
6 it. The metal clipboard with his prints on it. His
7 prints on the inside of it. Carmen's is on the outside.
8 All these letters in it. Don't know what they are. They
9 also process the van. They find a latex glove in the van.
10 So what does that tell us? That the Jenkins had latex
11 gloves, we know that. And we know that on that glove was
12 Mekole Harris' blood. We know that Mekole Harris' blood
13 is found in two spots in the bathroom. One way up on the
14 ceiling, as I mentioned before. We also know that Mekole
15 Harris' blood is found in a P-trap, that's the drain. Not
16 her DNA, her blood.

17 You heard from Dr. Ward and you heard him talk
18 about the presence of cocaine in Mekole Harris' system.
19 She also had the presence of Benadryl and Tylenol.
20 Remember, Carmen, she testified that he chopped some up in
21 some ice cream and fed it to her.

22 Carmen then waits 18 months and she gives
23 information about the location of the body. Now, I can't
24 control when someone's heart gets right. Defense
25 attorneys said she saw the case building before her eyes,

1 maybe she did. And she gave information about the
2 location of Mekole Harris' body. So a search ensued. And
3 you heard Lieutenant Petersen talk about the search, the
4 search of the location. And he came up here and did a
5 PowerPoint. You saw that. You've seen all the photos.
6 And they recovered bones. And they recovered all the
7 charred pieces of evidence, black trash bags with blue
8 draw strings. You've seen a lot of pictures of those in
9 the van out there. All the garbage bags that Carmen took
10 to the dump that day while she was under surveillance were
11 black trash bags with blue draw strings. But she told
12 them where it was. And she got benefit from it.

13 She then came and talked to law enforcement.
14 And she did so under protection. She talked about do we
15 protect your word. Yes. A little agreement we had, you
16 can tell me what you did and I'm not going to use your
17 words against you. I asked her what was the condition of
18 that agreement. She said I have to tell the truth.

19 She then came and pled guilty. She stood in
20 this courtroom and plea guilty to murder. Fessed up.
21 Said she did it. But it wasn't just her. It was her and
22 Clarence Jenkins. And she got 50 years. 50 years. And
23 the deal was she substantially assist the government and
24 they would file a motion to reduce her sentence.
25 Nothing's free in this world. And I asked her who decides

1 what your sentence is going to be? She said the judge.

2 And that's what brought us all together for the
3 last couple of days. This is not a one-woman crime. And
4 you don't have to be educated to be mean. And that's
5 exactly what Carmen and Clarence Jenkins did. They
6 kidnapped Mekole Harris, they convinced her under fraud
7 that they were police. They brought her back, kept her
8 there for two days, had her handcuffed the majority of the
9 time. It's hard to leave when you're handcuffed. It's
10 also hard to leave when you think you're under the control
11 of the police, too. All that's kidnapping. All that is
12 under the definition of kidnapping. You're going to get
13 the law from the judge. I'm not going to go into the law.
14 But that's inveigle and that's keeping without authority
15 of law to go where you want to go. They killed her. They
16 dismembered her. And they used her body for their own
17 selfish purposes. To reunite this covenant that they
18 agreed to earlier. That's what they used her for. Mekole
19 Harris is a daughter, is a family member, is a human
20 being. Thank you.

21 THE COURT: All right. Ladies and gentlemen,
22 we're going to just take a short break. Please do not
23 begin discussion of the case at this time.

24 (WHEREUPON, the jury left open court at
25 approximately 2:38 p.m.)

1 THE COURT: All right, Mr. Mauldin.

2 MR. MAULDIN: Your Honor, the record will
3 reflect that -- and I am always reluctant to interrupt
4 either an opening statement or a closing argument, but I
5 felt compelled under this particular circumstance. And I
6 did interrupt and objected to the State using -- and I can
7 actually make reference to the exhibits, Your Honor. The
8 exhibits that were being used were the rental lease
9 purchase agreement, which is State's Exhibit No. 126. It
10 has signatures at the bottom. Then the other exhibit,
11 State's Exhibit No. 111, which are the vows documents that
12 were handwritten. And the State took the two documents
13 and held them up together like I'm doing with the Court,
14 both being displayed to the juror. And I asked to
15 approach. I advised the Court at the time we had the
16 bench conference that the State was specifically
17 challenging the jurors to literally go into handwriting
18 analysis as though they were handwriting experts and that
19 that was absolutely improper argument. You cannot
20 challenge the jurors to then become handwriting experts
21 when he had every opportunity he could possibly want -- he
22 called numerous witnesses in this case.

23 After we left the bench conference, the State,
24 once again -- and I will describe it for the record, faced
25 the jurors with the two exhibits, demonstrated to them

1 what he wanted them to compare. And at the same time,
2 saying that he did not have a handwriting expert, but,
3 essentially, was challenging them to become handwriting
4 experts. That is absolutely -- and to have done that
5 after we had the bench conversation when I had reluctantly
6 objected to that method of argument, it's astounding.

7 At that point, I renewed my objection and
8 expressed to the Court that I wanted a motion on the
9 record. That motion, of course, is for a mistrial or a
10 curative instruction of some sort or combination or
11 whatever. But what makes it so bad, Judge, is that once I
12 explained to the Court and the solicitor at the bench what
13 our objection was, for the solicitor then to just go ahead
14 and do it any way compounds the problem. And it makes our
15 motion worthwhile.

16 THE COURT: All right. I'm not going to grant a
17 mistrial. I'm not opposed to a curative instruction to
18 the effect that closing arguments of attorneys are not
19 evidence. What else would you want me to include in the
20 curative instruction?

21 MR. MAULDIN: Well, what makes it impossible,
22 literally and practically impossible in the real world is
23 that when you bring this jury out and tell them not to
24 compare signatures as though they were handwriting
25 experts, I mean, that they should not do that, that that

1 is not the proper role for jurors, to become experts, that
2 leads to them doing that very thing. So I don't know what
3 the solution is.

4 THE COURT: Well, I'm certainly not going to
5 tell them not to look at the evidence and analyze the
6 evidence, that's their job. But they're not experts. So
7 if you would -- I mean, I'm happy to tell them that the
8 arguments of counsel are not evidence and shouldn't be
9 considered as such.

10 MR. MAULDIN: The problem is that the arguments
11 of counsel have included instructions to this jury to
12 violate their role in the disposition of this matter. And
13 that is to literally become experts in handwriting.

14 THE COURT: I disagree with you in that
15 characterization, Mr. Mauldin. That is, certainly, your
16 take on it, but it is the job of the jury to look at the
17 evidence and decide which evidence convinces the jury that
18 it's true. That's their job. They need to look at all of
19 it. So -- and I would be -- I dare say that the jurors
20 would do that on their own anyway. So I'm going -- if you
21 can think of a curative instruction, I'll be happy to
22 listen to it. I will give any -- the instruction I've
23 said, plus something -- if you got something that you
24 think would be a proposed instruction that appears to be
25 appropriate, I'm happy to do that, or I'll say nothing.

1 We'll take seven minutes.

2 MR. MAULDIN: Yeah, just a couple.

3 THE COURT: Yeah, seven minutes and y'all think
4 about it.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: I'm not going to give any kind of
7 charge. I don't find what he did was improper. I can't
8 think how many DUI trials I've handled, watched or been a
9 judge -- I can't think of one I've been a judge in, where
10 you introduce the property and evidence sheet of your
11 client and say to the jury, look at his signature, is that
12 the signature of a drunk man. That happens all the time.
13 You have an identification case, a grainy photograph off a
14 video camera and the State or the defense ask the jury to
15 look at the picture and look at the person and say is that
16 the person. And I don't find this to be any different.
17 They can certainly use their common sense. They're not
18 experts and he's not asking them to be experts. So based
19 on that reason, I decline to give any kind of curative
20 instruction. If you've got one, I'll be happy to read it
21 and to look at it, but I don't find it was inappropriate.

22 Has the State seen it?

23 MR. WILKINS: No, sir, Your Honor. We would
24 object to any curative instruction. I would object to it.

25 THE COURT: It's well written, but based on my

1 rulings, I decline to read it. We'll make it a Court's
2 Exhibit and part of the record.

3 MR. MAULDIN: Yes, sir, Your Honor, we do want
4 it as a Court's Exhibit. And I don't know whether we need
5 to have a copy of it or not.

6 (WHEREUPON, Court's Exhibit No. 6 was marked for
7 identification and received into evidence.)

8 THE COURT: Okay. Let's get them.

9 (WHEREUPON, the jury came into open court at
10 approximately 3:02 p.m.)

11 THE COURT: Mr. Mauldin.

12 MR. MAULDIN: May it please the Court?

13 THE COURT: Yes, sir.

14 CLOSING STATEMENT

15 MR. MAULDIN: Madam Foreman and members of the
16 jury, Carmen Jenkins killed Mekole Harris. She came in
17 this very courtroom two weeks ago and pled guilty to
18 killing Mekole Harris. She killed her, but there is so
19 much more to this tragedy. And that's what we've seen
20 unfold in this courtroom. Carmen loved Grace Davis. She
21 was heartbroken when Grace left the living arrangement
22 that they had. She was devastated that her efforts to get
23 Carmen to come back were failing and she would do anything
24 she could to get Grace back.

25 Mr. McDougal mentioned to you in the opening

1 statement that this was an intersection of four lives.
2 More accurately, I guess, is a collision of four lives.
3 We spoke about that intersection in the opening statement
4 and have done everything we could with every witness on
5 this witness stand to give you every piece of information.
6 We have attempted to fulfill our pledge to you that this
7 case would be fully tried. Clarence, Carmen, Grace and
8 Mekole. There's one thing I will agree with the
9 prosecutor on and that is Mekole should not be lost in the
10 complexity of case. It was a horrible thing. It was a
11 sad thing. And we don't do anything to disrespect Mekole
12 as a human being in this case. This case has to be tried.
13 Sometimes case that are tried are ugly. But our efforts
14 are with great respect for her. She lost her life and she
15 didn't deserve it.

16 You've heard a lot of evidence in this case
17 about relationships. And some of what you've heard is
18 simply hard to imagine. You know, you and I, perhaps,
19 form our relationships on things like trust and commitment
20 and dedication and protection. These are natural things
21 that people have in relationships, whether it's with a
22 friend, a spouse, a loved one, a child. This case is
23 filled with relationships based on intimidation,
24 separation, strangeness, bizarre conduct, those crazy
25 letters and notes and behavior. And when the normal

1 everyday person tries to analyze it, it gets a little bit
2 crazy. It is beyond comprehension. But there is one
3 thing that stands out more than anything else. Carmen
4 Jenkins was highly motivated to get back what she had lost
5 and was willing to go to any extreme to do it. That's
6 pretty obvious.

7 I'm going to take one minute or two to talk to
8 you a little bit what about the judge, Judge Miller, will
9 instruct you on some of the legal principles in this case.
10 I won't take but a minute. He'll tell you that the burden
11 on the government in a case like this is proof beyond a
12 reasonable doubt. And that's a little bit hard definition
13 to try to put your hands on, so give you some ideas about
14 it. The Judge will tell you it's a doubt, it's the level
15 that leaves you hesitant to act. That's reasonable doubt.
16 If it leaves a reasonable person in a condition where
17 they're hesitant to depend upon it and hesitant to act
18 upon it, then that would be a reasonable doubt.

19 I like to say it's a doubt which you can have a
20 reason for having. It's not an imaginary doubt, not a
21 whimsical, dreamed-up doubt about something. It's a doubt
22 that you can say. I doubt that Clarence Jenkins is guilty
23 of these charges. And the reason for my doubt is blank,
24 whatever. That's a reasonable doubt. If you find
25 yourself saying I'm not sure about the proof in this case

1 and the reason I'm not sure is whatever. Because there
2 are a thousand reasons in this case to be doubtful. If
3 those doubts make you hesitant to act, then that's what a
4 reasonable doubt is.

5 Why do we have such a high standard? Why is it
6 such a high bar that the government has to overcome? The
7 reason is because we're talking about an individual's
8 freedom or a person's freedom when you come into criminal
9 court. This is not a car wreck. This is not a contract
10 dispute. This is not a business problem. This is a
11 criminal case. And every citizen in our country is
12 entitled to the protection of that burden from the
13 government. With all the government's resources, all
14 these parades of witnesses that you've seen coming in and
15 out all over the place, analyzing the stuff, if after all
16 that, they can't convince you of a person's guilt beyond a
17 reasonable doubt that I've defined for you, it's because
18 they got it wrong. It's because it didn't happen the way
19 they want you to believe. And it's because they took the
20 wrong course. The government's case must always be
21 challenged. It must always be contested. And that's what
22 preserves the integrity of our entire system. That's
23 exactly what every citizen on the street is entitled to.
24 If the government intends to take a person's freedom, they
25 better have their case. Because I'm going to challenge

1 it.

2 The other principle I have mentioned is
3 presumption of innocence. A person is always presumed
4 innocent. And the Judge is going to tell you what the
5 legal definition of a person being presumed innocent.
6 They have a cloak of innocence around them. He'll define
7 it for you. And if I say something wrong from him, then
8 it's his word, not mine. But what it basically means in
9 street talk is that nobody ought to have to come into a
10 courtroom and try to prove they didn't do something. If
11 the government wants to put them away, the government's
12 got to prove it. And that's the way it should be.

13 Mr. McDougal and Susannah Ross and I represent
14 Clarence. And we have been up and down on our feet and
15 questioning every witness and challenging every piece of
16 evidence. We have a duty -- no, I rephrase, we have a
17 responsibility to not only Clarence or anybody else that's
18 ever seated at the table facing the government, but we
19 have a duty to you as jurors. There are a thousand places
20 that you'd rather be than here and I know it. We owe it
21 to you to fully challenge everyone they call and
22 everything they say so when you get in that jury room, you
23 can fully challenge your responsibility. And I'm proud of
24 it.

25 Now, I'll give you an example, just one example.

1 There's hundreds of them. But the resistance of the
2 witnesses to be responsive to the questions. I mean, Mr.
3 McDougal was asking the simplest questions. They were
4 doing everything they can to figure out how to try not to
5 answer them. And you ought to be wanting them to answer
6 them. The example happened this morning when the
7 fingerprint lady was on the witness stand. And they had
8 that note, the note that the State said that Mekole
9 Harris' fingerprint had been rolled onto. And the
10 questions were simple. Wasn't there another print that
11 wasn't up to standards for match, but it was a partial?
12 It was -- they looked at one and said this is the
13 victim's, Mekole Harris, print. But they looked at
14 others, too. And the State doesn't want you to hear about
15 that. But Mr. McDougal asked the witness and the witness
16 still doesn't want to tell you. She's looking at her own
17 report, she's looking at her own report saying, you know,
18 I don't know if this is right, you know, is that my
19 handwriting and so forth. That is bologna. It just makes
20 me mad. Because what she ended up saying on that
21 particular note, yes, Mekole's prints were on that note.
22 No, Clarence Jenkins' prints were nowhere on that note.
23 And Carmen's, apparently, were analyzed, but they weren't
24 enough to be a match.

25 The prosecutor said they rolled a print, they

1 this, they that, they this, they that. He puts a
2 PowerPoint up there and says Clarence did this, Clarence
3 did that. Clarence checked email from the house.
4 Clarence did that. You can replace Clarence's name with
5 Carmen's name every single place. Every single place.
6 And she's the one that pled guilty. They don't want you
7 to know it.

8 And then, finally, if you're concerned about the
9 way we represented Clarence, if it was aggravating to see
10 us get up -- and I know it is. But if you're concerned
11 that we did challenge every witness, blame me, blame us,
12 but don't hold it against our client.

13 Now, let's look at the evidence. By the way,
14 the evidence I want to talk to you about is the evidence
15 from the courtroom and not the evidence off the PowerPoint
16 that can be replaced on the computer with a C for C,
17 Carmen for Clarence. I don't have a PowerPoint. I want
18 you to remember what you heard from the witness stand
19 because that's where the testimony came from.

20 Clarence and Carmen got together. Carmen got
21 pregnant, they got married. But it was in those early
22 stages, it was a rocky marriage. She'd go home to her
23 momma, he'd go home to his momma. They, basically, were
24 young. This was four years, five years, six years ago.
25 And the nature of their relationship changed in August of

1 '07. Carmen was living with her baby and Clarence's baby
2 over at Carmen's house. And Clarence's sister had met
3 Grace. And Clarence's sister introduced Grace to
4 Clarence. And then he introduced Grace to his wife,
5 Carmen. And the three of them decided to go to Lulu Lane
6 and live together. How do I know that? Because Carmen
7 testified that they began living together as a group of
8 three the day she met Grace. This wasn't something that
9 developed over a period of time or a few weeks or
10 whatever, it was the same day. They agreed to go to Lulu
11 Lane. A couple weeks past, they get stopped by the
12 police. Clarence doesn't know how to stay out of jail for
13 driving. He's DUS, driving under suspension, driving
14 under suspension, driving under suspension, all the time.
15 So away he goes to jail for 90 days. Grace and Carmen are
16 at Lulu Lane.

17 And I asked Carmen -- I'm going to need to watch
18 this. I've got to pay attention. I asked Carmen about
19 the nature of the relationship after Clarence went to
20 jail. And I used the term it was the best of times. And
21 she said, Well, not the best of times. We had problems
22 keeping our power turned on and all that. Well, that's
23 true. I mean, that kind of comes with the territory.
24 Everybody has power they need to keep turned on. But in
25 the sense it was the best of times for Carmen. She was

1 working. She had gotten a job at Sports Authority. Grace
2 was staying home with her three children and taking care
3 of Carmen's baby. Clarence and Carmen were communicating
4 by mail. Clarence sent down to the penitentiary. And
5 Carmen told Clarence during that 90-day sentence that she
6 had fallen for Grace and developed this relationship with
7 Grace. That they had become more than just simply what we
8 have might call roommates. She had a job. She had a
9 babysitter. And she had a lover. And that's why I asked
10 her if it wasn't pretty much the best of times. It
11 sounded like a pretty good time.

12 When Clarence finished serving his time, Grace
13 and Carmen drove down to the bus station and picked him
14 up. He already knew about the relationship, so they came
15 home and they wrote out these vows. I mean, it's made
16 into something extraordinary. And it is bizarre. I'm not
17 going to tell you it isn't bizarre. But we've got a guy
18 getting out of jail and his wife -- I don't know whether
19 you call it committed or not, but his wife has stated to
20 her husband that she's in love with this woman. So
21 Clarence says well, let's just do these vows. Let's just
22 have these between all three of us. Sounds like a
23 sensible thing to him. Sounds like a sensible thing to
24 them, too.

25 Mid-February -- and they then move to Tindal.

1 And that was from a period of August of '07 around to
2 February of '08 when they move to Tindal. Then another
3 month before DSS took Grace's children. Grace was going
4 to have to get out of that relationship that she had with
5 these two other adults, didn't feel like it was
6 appropriate for the children to be in there. And, you
7 know, I'm not going to argue with that. That's what I was
8 talking about a minute ago about our sense of a natural
9 relationship. That is a little strange. I don't know.
10 But DSS felt it wasn't right.

11 So Grace leaves on March 16th and goes back to
12 her family. And Carmen admitted that she was very upset
13 about it. I used the term heartbroken and devastated.
14 And she said I was upset, I was very upset. She didn't
15 want her to go. She went down the street, followed her
16 down the street. Took the ring back. Didn't want her to
17 go. And I tell you, you know, we got an early sense right
18 there when Grace was testifying. Grace told you, Grace
19 told you that after that, Carmen called her and tried to
20 talk her into coming back. That's what Grace testified
21 to. Carmen didn't hear that testimony. So when Carmen
22 came in and I asked her if she called Grace, she said no.
23 Little red flag kind of popped up. You know, this is an
24 important seat in every courtroom. That's where people
25 sit when they're sworn to tell you the truth. She denied

1 it from the witness stand. And, interestingly enough, I
2 wish I had this on tape, Mr. Wilkins PowerPoint had on it
3 Carmen called Grace. His own witness said she didn't. He
4 don't want you to know she's lying like a rug.

5 I tell you what else Grace told that I think is
6 important as to why you take these statements into
7 consideration. She said -- and get the context here.
8 This interview was taken by Ms. Allen, Amber Allen. I
9 think she was about the second or third witness on Monday.
10 I think she was a patrol deputy. Now, she's working for
11 somebody else. Can't remember. But she testified she was
12 investigating on April the 2nd those letters. She went
13 over the Burnside lady and was talking to the Burnside
14 lady about those letters. And the Burnside lady told her
15 that Willie was Grace's ex-husband and all that stuff. So
16 they call Grace. Ms. Allen called Grace. And Grace said
17 in that interview on April the 7th -- and this was before
18 Mekole Harris and before Tindal Road became a horrific
19 scene. Grace told Ms. Allen that there was no evidence of
20 any violence in that house. And she lived there now for
21 months. No evidence of any violence. No violence.

22 You know, Grace also shared with us something
23 else I think is clearly noteworthy. She said that Carmen
24 told her that she wanted Clarence out of the picture.
25 Clarence told her -- or Carmen told her that Carmen wanted

1 Clarence out of the picture. That's what Grace said.
2 Carmen comes in here and I asked -- I used the exact same
3 terms with her. Because I didn't want any mistakes. And
4 she said, I didn't say that. I didn't say that. I said I
5 just wanted it to be the two of us. Come on. She wanted
6 Clarence out of the picture. She wanted Grace back.
7 Grace was the one she wanted. And that correlates with
8 this entire case. All these crazy notes.

9 And while I'm on those notes. Sending notes to
10 relatives of Grace, that's who these notes went to.
11 That's who the severed body parts went to. They all went
12 to Grace's relatives. It wasn't \$10,000 amongst the whole
13 bunch of them. There wasn't no money. This wasn't about
14 money. That little old note that they showed that said
15 something about how Willie wanted to trade Grace, Grace
16 and something, trade me Grace for anything and we've got a
17 deal. This was all about getting Grace back. The whole
18 thing was. And Mekole Harris was swept away.

19 During the time that this was -- that late two
20 weeks of March after Grace left, over into the first week
21 of April, Clarence was actually, working. He had a job.
22 Labor Finders. He'd go down to Labor Finders and they
23 assigned him working at a pool company over in Easley.
24 You heard that testimony. And in his connection with
25 Labor Finders, he befriends Mekole Harris. And that

1 occurred after the first letters had been signed. Nobody
2 was responding to them. They're not getting Grace back.
3 Grace ain't coming back to Carmen like Carmen wants. In
4 the meantime, they keep checking the emails. Clarence
5 brings Mekole Harris to Tindal Road. And Mekole Harris
6 had a difficult life. I mean, she, essentially -- there
7 were times when she was homeless, apparently. There was
8 use of drugs. There's been reference to drug addiction
9 and so forth. And I ask the question, I ask the question,
10 I'll take responsibility for it. I asked Carmen if she
11 was aware of any infectious disease, anything that Mekole
12 might have had. And she said she was not. So I'll take
13 responsibility for asking a question that the prosecutor
14 wants to be so accusatory about. What Mekole was not was
15 a substitute for Grace and she never could have been one.
16 She was completely different. She couldn't be a
17 replacement for what Carmen had lost and so desperately
18 wanted to get back.

19 And this is a crazy scenario. I understand
20 that. But we've got to step out of, I guess what we might
21 even call our normal world and step into this to make sure
22 the right thing happens. Clarence was not in that trailer
23 when Mekole was killed. And whether or not the drugs that
24 were in her system at the time she died contributed to her
25 death, I don't know. But you're entitled to -- you're --

1 you think they're going to ask the pathologist about what
2 they found in her system? Not one single question. Why
3 not? Why don't they ask the questions? They want us to
4 have to ask the questions. And I'm proud of it. I'll ask
5 it every time. I don't know whether the drugs played a
6 part. I don't know whether Carmen killed her in a rage.
7 But I am sure of one thing, Carmen had a motive. You
8 remember the prosecutor told you in opening statement that
9 motive is not a necessary element. They don't have to
10 prove what's called a motive. And that's true. You don't
11 have to prove it. But I guarantee you one thing, it sure
12 does provide an answer to the question why. The natural
13 curiosity to wonder why this happened. Who had the motive
14 and who had the opportunity? Carmen had the motive.
15 Carmen had the reason. And she had the determination to
16 do it.

17 On April the 5th, would have been Saturday
18 morning of that fateful evening. There were two phone
19 calls made to Grace Davis' relatives. And you heard the
20 testimony about the phone calls. The female voice on
21 those calls. Carmen says that was Mekole's voice. There
22 were only two females in the van at that point, that was
23 Carmen and Mekole. But Carmen lied about so many other
24 things, I don't know what to believe. I don't know what
25 you need to believe. But sometime in that range -- that

1 time range Mekole was killed in the trailer.

2 The next thing that happens, the next thing that
3 happens that's documented not by the PowerPoint of the
4 prosecutor, but by the evidence out of witnesses' mouths,
5 Carmen comes out of the van -- I mean, comes out of the
6 trailer, gets in the van and drives off to Checkers to
7 pick up some food. And I don't know, it's beyond
8 comprehension. You go down the street -- what's the
9 matter with the police department? If what she told you
10 is true, how far is Checkers from the law? I mean, if
11 what she described to you was true, why didn't she do
12 something? The reason she didn't is because it's not
13 true. It's not true. And there's a reason to believe.
14 I've got a reason for having doubt about this case.

15 Now, about 4:00 in the morning on Monday, Carmen
16 Jenkins walked across the parking lot of Andover
17 Apartments. She walked over to a car that she knew was
18 Grace's aunt. She put a note that she wrote under the
19 windshield or rain wiper and put that note on that car.
20 And then she turned and walked to Apartment 504 and threw
21 Mekole Harris' hand and foot on that porch. Clarence
22 Jenkins is nowhere to be seen. She says oh, he's up the
23 street. He dropped me off. He's up the street. What is
24 it about this case that Clarence is always out of sight
25 somewhere? He's hiding. He's up the street. He's down

1 the street. He's behind the bushes.

2 On Tuesday -- now, that was Monday, Monday
3 morning. On Tuesday, the police knock on her door about
4 4:00 in the afternoon. And they tell her they want to
5 talk to her and Clarence and she says, Well, Clarence is
6 not home. True. That was true. The police go up the
7 street and start watching those trips to the dumpster.
8 Rolling the grill into the trailer. Go out there and lift
9 the hood and unhook the thing that keeps the battery
10 charged. Comes back out with the baby carrier. If he was
11 there, if he was there, why doesn't she just leave the
12 baby? She takes the baby because he's not there. No sign
13 of Clarence.

14 At 6:20, two hours later, she shows up at the
15 law enforcement center. And Collis Flavell says, Where
16 have you been? I had to take Clarence to work. Well, of
17 course, they went ahead and shared with her at that point
18 they knew that was a lie. So this has gotten off to a
19 real quick start. She was lying on day one. To make it
20 even more believable, she then got on this witness stand
21 in this courtroom under oath and lied to you. Clarence
22 was hiding. She goes on to say -- they got this picture
23 of Mekole Harris, I don't know her. That was a lie. Of
24 course, at this point, you know, I guess, we can be kind
25 of sensible. I guess I've got a good reason to lie about

1 that. But she's lying just the same. Liar. Asked her if
2 she knew anything about what had happened to Mekole and
3 knew anything about Mekole. Nope, don't know nothing
4 about all that. And you know while they had her in their
5 room there talking to her, they asked her a little bit
6 about Grace Davis. You know the letters, that's how they
7 connected up when they went out there in the first place.
8 They asked her about Grace. And she said that she had a
9 relationship with Grace and that she loved Grace and that
10 she wanted Grace back. She told the police that. They
11 asked her if Clarence was forcing her to do anything, her
12 husband, Clarence, forcing her to do anything? No. Are
13 you afraid of your husband? No. She's at the police
14 station with the police. Eye to eye. But she comes in
15 here and says he made me do this, he made me do that. He
16 made me do this. Our relationship changed. He was
17 forceful. He forced me to do this. He made me do that.
18 Pile of complete garbage.

19 During those first few days of April, Carmen
20 left the house to get food, Carmen picks up Clarence from
21 work at the Labor Finders place, Carmen went to the
22 library, Carmen went to library desk, Carmen went shopping
23 at the Dollar Tree and the Family Dollar, and not a single
24 word, not a peep about all that that has now unfolded.
25 Not a word. She's either an ice woman or a liar.

1 Perhaps, both.

2 The prosecution now has told you that Clarence
3 Jenkins was the mastermind of all this. That's he's the
4 bad guy and was the one giving everybody instructions and
5 making everybody do everything and everybody was doing
6 everything he said and all that. The State says Clarence.
7 Now, the prosecutor complains about that fourth grade
8 education. And the only thing in the record was Carmen
9 saying Clarence said something about Greenville High
10 School. Well, she had to do his spelling for him. She
11 had to teach him how to use a computer. You know, I don't
12 know. I don't know. But you know, he's got very little
13 education. And with no record of any violence whatsoever
14 from anybody. Otherwise, you'd know about it by now. The
15 State says it's Clarence, not Carmen. Carmen is a high
16 school graduate, goes to college on a scholarship,
17 business administration major, helps Clarence, teaches
18 Clarence how to do this, teaches Clarence how to do that.
19 It's not Clarence -- I mean, it's not Carmen, it's
20 Clarence is what the State says. The State says it's
21 Clarence. He can't stay out of jail for driving under
22 suspension, for heaven sakes. Not Carmen, who signed the
23 lease to the trailer, who drives a car registered to her,
24 who has the computer service in her name. It's not her.
25 She's not the mastermind in all this. It's Clarence. He

1 don't know how to spell, but he can do all this. He can
2 put all this together. He can mastermind such a plot
3 extortion and murder. The State says it's Clarence, who
4 witness after witness after witness said no sign of
5 Clarence. We don't see Clarence. Any sign of Clarence.
6 Anybody seen Clarence? Not Carmen. Who somehow has the
7 capability of popping up everywhere. The parking lot at
8 Andover Apartments, the windshield of Grace's aunt's car,
9 the Rose Avenue front porch and mailbox, the dumpster, the
10 grill and the law enforcement center. Carmen is the star
11 of the show. Let there be no mistake about it. The same
12 person who masterminded this horrible crime against Mekole
13 Harris, comes into this courtroom in the final stages of
14 masterminding her way out of what she has pled guilty to.
15 She masterminds the case. And then she masterminds her
16 own fate of how she's going to get out in the most
17 extraordinary reversal of -- you could not write a book as
18 extraordinary as this. She has masterminded a deal with
19 the government. And I'm just going to take a few more
20 minutes.

21 Your Honor, I appreciate your patience.

22 I'm just going to take a few more minutes. I
23 want to describe to you what the government has decided to
24 do about Carmen Jenkins. She gets arrested on April the
25 10th. She sits in the law enforcement center, down there

1 in jail. She has a lawyer to represent her. They review
2 the evidence, look at the information, same stuff that's
3 been provided, copies of reports and stuff. And here's
4 what she said. Because when I asked her the question, she
5 said I didn't say that. I didn't say that information. I
6 provided the information to my lawyer to take to
7 prosecutor. And that's when I called her a smart woman.
8 She's got her a buffer. She sends her lawyer to the
9 prosecutor. Says, what's in it for me if I show you where
10 we burned the body? What's in it more me if I show you
11 where I burned the body off of State Park Road? What's in
12 it for me? And they say well, I tell you what we'll do,
13 we'll drop the death penalty for this case. We'll take
14 the death penalty off the table if you show us where you
15 took that body. So she does. She made a deal and she got
16 her reward. And that was September of '09. 18, 17 months
17 after she had been arrested. That's 17 months before that
18 happened.

19 The second deal was she said I'll sign an
20 agreement with the prosecutor to tell them what I know if
21 they tell me they won't use it against me. That's the
22 deal. That's the terms. They thought about it a while
23 and they signed that deal on March the 9th of 2011. You
24 tell us -- you give us a statement and we won't use that
25 statement against you. And six months later, in

1 September, she gave them her written statement. For six
2 months, they composed this witness statement after they
3 signed a deal with her. This is a smart woman. She's has
4 masterminded a scam, folks.

5 And then the third deal was two weeks ago when
6 she comes in here and pleads guilty to murder. She stood
7 in front of that judge and the judge said are you pleading
8 guilty because you are guilty? Yes, sir, I'm pleading
9 guilty because I am guilty. Has anybody promised you
10 anything to get you to plead guilty? No. No? The
11 prosecutor in this case, in this case now - you're serving
12 as a juror and when you write your verdict and go home,
13 your duties are over. Sometime in the future, near
14 future, this prosecutor is going to come into court and
15 ask this judge to reduce her sentence. No idea, no idea
16 what she's going to get. You do good enough, substantial
17 assistance was the term, you provide substantial assistant
18 and we'll cut your sentence. The better you do, the
19 better you get. And the prosecutor, when he was
20 commenting on that a minute ago, was just kind of
21 shrugging his shoulders. Where is the sense of
22 responsibility here? Shrugging his shoulders to that scam
23 that she's pulling on the system. Make no mistake about
24 it, Carmen Jenkins deserves her scholarship to Spartanburg
25 Methodist. She's is a smart woman.

1 What's left -- we don't know what's going to
2 happen when they have this hearing when you've gone home
3 and I've gone home. But it's the ultimately closing of a
4 deal. We'll reduce your sentence. The court -- or the
5 government has relied upon Carmen in this case. They've
6 got a high mountain of this is a match, this is a match,
7 fingerprints that came out of a person's own house and all
8 that stuff. They've got a lot of stuff, I understand all
9 that. We acknowledge all that. I mean, you live there.
10 On and off, back and forth to momma's house. But they
11 rest their case on the testimony of a co-defendant.
12 That's what they've got. That's what this whole thing
13 boils down to. That's what this case really is. That's
14 what it boils down to. The State is relying upon the
15 testimony of Carmen Jenkins. He did this. He did that.
16 He did this. He did that.

17 What kind of method is that to try to figure out
18 what the truth is? It's a method that's filled with
19 poisoned deals and hopes of reward, folks. It's a method
20 that if you had to define do I doubt that Clarence Jenkins
21 committed these crimes and do I have a reason for doubting
22 it. That's a buffet of reasons. You hear all the time,
23 folks, about exonerations and innocent people that are
24 convicted. You hear about it all on the national news and
25 all that. Those cases arise out of uncertainty.

1 Something was uncertain. What makes us confident in our
2 system is a certain sense or level of certainty. And yet,
3 as I stand and make these final statements to you, we
4 still don't know what the deal is with Carmen. This is
5 extraordinary. What's going to happen?

6 The State says well, why in the world would she
7 lie? Why would she lie? She's already pled guilty. But
8 her sentence is lingering. Why would she lie? I'll give
9 you 50 reasons why she would like. That's the number of
10 years the judge sentenced her already. That's what she's
11 got at stake in this case. Basically, the rest of her
12 life relies upon what they can do for her. How in the
13 world -- jury duty is a difficult thing because they bring
14 you in here, you're supposed to all of a sudden become
15 experts to figure out what the truth is. How do we decide
16 what the truth is? And what I'm going to suggest you to
17 do is what you would do -- if you've got children, and
18 they're going he hit me, no, he hit me, he hit me. You
19 try to figure out who's telling the truth. You do it all
20 the time in your common everyday life. And I'm going to
21 ask you to use that same common sense in trying to decide
22 who's telling the truth. Who is the liar?

23 The little things usually are what display the
24 liars or something that's untrue. They've got the big
25 stuff pretty much straight. They know that's the

1 important stuff. You know, I've got to make sure I've got
2 that straight. It's the little things that all of a
3 sudden they get slipped up on. If Clarence had been at
4 that trailer that first morning, she wouldn't have had to
5 take the baby anyway. Or Clarence would have gone with
6 her to his own momma's house. If Clarence had been hiding
7 in the trailer, she wouldn't have to take the baby
8 anywhere. Yet she tells the police an hour later, I had
9 to take Clarence to work.

10 The prosecutor mentioned to you this particular
11 situation. And I am not going to sit down without
12 referring to it. Because the prosecutor's statements,
13 just like mine, are not coming from the witness stand. He
14 can't just get up here and make up stuff. And that's
15 exactly what he did and I'm going to call him on it.
16 Here's what he said to you. He said that this letter,
17 right here, No. 112, this letter to Marvin Poole was
18 postmarked March 31st. And his witness came in and
19 testified and Mark McDougal on cross-examination -- he had
20 his own witness up there and didn't ask this question.
21 Mark McDougal asked Collis Flavell, didn't the postal
22 service tell y'all that that letter went out between 3:30
23 and 4:00 in the afternoon. Isn't that what the bar code
24 right across here -- they can do a bar code scan and tell
25 you exactly what time that was processed. And Collis said

1 yeah, that's what they told us. Whoa, well, what in the
2 world are we going to do? Because, folks, here's what
3 Carmen said. Here's what Carmen said. Their star
4 witness. 3/31/08, March 31st, '08, 5:49 p.m. in the
5 afternoon, Carmen comes into the library, followed by
6 Clarence behind her. And she describes to y'all in great
7 detail on direct examination from the prosecutor how they
8 went in there and they typed up the letters and they
9 printed them. They've got a printer there, so they can
10 print off a bunch of copies. You remember that testimony.
11 And she said they left and went to Bi-Lo and bought
12 envelopes. Do you remember her saying that? And then
13 they went home and they took addresses off of a thing that
14 they had written down off of that boy's cell phone. Do
15 you remember that? They wrote all the addresses down and
16 they addressed the envelopes they had bought from Bi-Lo
17 after they left the library. Do you remember her saying
18 that? That's their witness. And Mark asked Flavell if
19 that bar code showed that letter was sent out before that
20 video was even possible.

21 What did the prosecutor say to you today? You
22 know what he said, he said well, you know, I guess maybe
23 they had gone out earlier that day and mailed some and
24 then they were going to make some more. He's not a
25 witness. He can't testify. She's lying. She's lying

1 like a rug. And we have her. We had her caught like a
2 fish. I'm not going to stand there and allow the
3 prosecutor to try to argue facts not in the record.

4 She lied at the front door, she lied to the
5 police at the law enforcement center over and over again.
6 But you know what really tops it off is that she took this
7 witness stand in front of 12 responsible citizens of this
8 community, looked in your face and lied to you. How many
9 lies does she get? How many lies is she entitled to?
10 When are we going to call a halt to it? The State says
11 well, wait a minute, you're talking about deals and lies.
12 I mean, come on now, just take those out and just believe
13 the rest. Believe the rest of the case. And, you know,
14 what I thought when I heard that. I said, you know, I had
15 an Uncle George who used to love beef stew. He lived up
16 here in Greenville and I lived down in Ware Shoals and
17 we'd come up here and visit. And he always ate beef stew.
18 It didn't matter what restaurant, he always wanted beef
19 stew, beef stew, beef stew. And I thought about this
20 scenario, the fact that we take out a few of the stuff and
21 keep some of the other stuff. I thought about what if
22 Uncle George got a bowl of beef stew in a restaurant and
23 tasted it and it tasted bad. And the waitress come over
24 and he'd say there's something wrong. Well, if you pick
25 the corn out, I think it might be the okra or the beans.

1 No, that ain't the way you do it. It all goes back to the
2 kitchen. That stew gets thrown out. You don't put the
3 witness on the witness stand and hope that you can pick
4 out when she's telling the truth and pick out when she's
5 telling a lie. You're not picking out okra and corn,
6 folks. You throw it all out.

7 Final comments. I know that comes a little late
8 to you. Clarence is not charged with helping Carmen
9 dismember the body of Mekole. Clarence is not charged or
10 being on trial for helping her dispose of Mekole Harris'
11 body. All the stuff about how heavy this was. He is not
12 charged with that. That's not what he's charged with.
13 He's not charged with extortion or trying to get \$10,000
14 from somebody or mail fraud. He's not charged with any of
15 that. He's charged with killing Mekole Harris. He's
16 charged with kidnapping and killing Mekole Harris. That's
17 the only verdicts that you're going to be writing. Guilty
18 or not guilty. Another way of saying it's proven or not
19 proven.

20 I want you to listen to what Judge Miller
21 instructs you about the law. And you're going to decide
22 what to believe and what not to believe. And you're going
23 to write a verdict based on what he tells you the law is.
24 I want you to follow his instructions. I want you to look
25 at everything in this case, what the evidence really is.

1 And we ask that you return verdicts of not guilty. Thank
2 you.

3 JURY CHARGE

4 THE COURT: All right. Ladies and gentlemen,
5 let's stand up and stretch for just a second.

6 Ladies and gentlemen of the jury, during the
7 trial, you have certain duties to perform. And as the
8 trial judge, it is my responsibility to preside over the
9 trial of the case and rule on the admissibility of the
10 evidence that's offered during the trial. It is also my
11 duty to charge you the law applicable to the case and it
12 is your duty as jurors to accept and apply the law as I
13 now state it to you. As I told you in my opening
14 comments, if you think you have any idea as to what the
15 law is or what the law should be and it disagrees with
16 what I now tell you the law is, you have sworn an oath to
17 set aside your own ideas and apply the law precisely as I
18 state it to you.

19 I would also remind you that in every case tried
20 in this court before a jury, the jury is the sole and
21 exclusive judge of the facts. And a trial judge cannot
22 comment on or make any statement about the facts in a
23 case. So please do not think by anything I may have said
24 or done throughout the course of the trial that I have an
25 opinion about the facts. You are the sole judges of the

1 facts. I, again, instruct you that the fact that this
2 Defendant was arrested, charged and indicted in the case
3 is not evidence of guilty. Nor does it create any
4 presumption or inference of guilt. These documents are
5 simply the formal written instruments which contain the
6 charges made against the Defendant. And they serve as the
7 formal documents by which the case is processed and
8 brought into this court for resolution.

9 Now, there are two indictments in this case and
10 they charge two separate offenses against Clarence
11 Jenkins. And the first one is for murder. And the second
12 indictment is for kidnapping. Each indictment charges a
13 separate and distinct offense. And you, the jury, must
14 decide each indictment separately on the evidence and on
15 the law applicable to it, uninfluenced by your decision as
16 to any other indictment. And this Defendant may be
17 convicted or he may be acquitted on any or all of the
18 offenses charged. And you will be asked to write a
19 separate verdict of guilty or not guilty for each
20 indictment. In other words, each indictment must stand on
21 its own merit.

22 Now, necessarily, you must determine the
23 credibility or believability of the witnesses who have
24 testified in the case. And it becomes your duty as jurors
25 to evaluate the evidence and determine which evidence

1 convinces you that it is true. And in determining the
2 believability of the witnesses, you may believe one
3 witness over several or several over one. You may believe
4 a part of the testimony of a witness and reject the
5 remaining part. You may believe the testimony of a
6 witness in its entirety or reject that testimony in its
7 entirety. And you may consider whether the witness has an
8 interest in the result of the trial, whether the witness
9 is prejudice towards either the State or the Defendant,
10 the opportunity for the witness to have seen the matters
11 and things about which the witness has testified, and the
12 way the witness acts on the witness stand or what we call
13 a witness' demeanor.

14 Now, the rules of evidence ordinarily do not
15 permit witnesses to testify to opinions or conclusions.
16 An exception to this rule exists for witnesses we call
17 expert witnesses. And a witness, who by education and
18 experience has become expert in some art, science or
19 profession may give an opinion as to the subject that the
20 witness has been qualified as is expert in and may also
21 give the reasons for that opinion. And you should
22 consider any expert opinion given by a witness and, like
23 all of the other evidence, give it the weight that you
24 think it deserves.

25 Now, I instruct you and I emphasize that the

1 fact that the Defendant did not testify is not a factor to
2 be considered by you in any way in your deliberations on
3 the question of the guilt or innocence of the Defendant.
4 It must not be considered by you in any manner whatsoever.
5 Every citizen has the constitutional right to remain
6 silent. And the assertion of this right must not be
7 considered by you in your deliberations. I repeat, under
8 your oath, you are to draw no conclusion whatsoever from
9 the fact that the Defendant in this case did not testify.
10 The fact that this Defendant did not testify should not
11 even be discussed in your jury room. The burden of proof
12 always remain on the State and a defendant is never
13 required to prove their innocence.

14 Now, Clarence Jenkins has pled not guilty to
15 these indictments. And that plea puts the burden on the
16 State to provide the Defendant guilty. A person charged
17 with committing a criminal offense in South Carolina is
18 never required to prove themselves innocent. And I charge
19 you that it is a cardinal and an important rule of the law
20 that a defendant in a criminal trial will always be
21 presumed to be innocent of the crime for which an
22 indictment has issued unless and until guilt has been
23 proven by evidence satisfying you of guilt beyond a
24 reasonable doubt.

25 Now, reasonable doubt is the kind of doubt which

1 would cause a reasonable person to hesitate to act. And
2 reasonable doubt may arise from the evidence which is in
3 the case or from the lack or absence of evidence in the
4 case. And you, the jury, must determine whether or not
5 reasonable doubt exists as to the guilt of this Defendant.
6 The State has the burden of proving each and every element
7 of a crime beyond a reasonable doubt. And any reasonable
8 doubt that you may have in your deliberations should be
9 resolved in favor of the Defendant.

10 Now, there are two types of evidence which are
11 generally presented during a trial. And they are known as
12 direct evidence and circumstantial evidence. Direct
13 evidence is the testimony of a person who claims to have
14 actual knowledge of a fact, such as an eye witness. It is
15 evidence which immediately establishes the main fact
16 sought to be proven. Circumstantial evidence is proof of
17 a chain of facts and circumstances indicating the
18 existence of the main fact. It is evidence which
19 immediately establishes collateral facts from which the
20 main fact may be inferred. Circumstantial evidence is
21 based on inference and not on personal knowledge or
22 observation. The law makes absolutely no distinction
23 between the weight or value to be given to either direct
24 or circumstantial evidence. Nor is a greater degree of
25 certainty required of circumstantial evidence than of

1 direct evidence. You should weigh all of the evidence in
2 the case. After weighing all of the evidence, if you are
3 not convinced of the guilt of the Defendant beyond a
4 reasonable doubt, then you should find the Defendant not
5 guilty.

6 Now, if a crime is committed by two or more
7 people who are acting together in committing a crime, the
8 act of one is the act of all. A person who joins with
9 another to accomplish an illegal purpose is criminally
10 responsible for everything done by the other person which
11 occurs as a natural consequence of the acts done in
12 carrying out the common plan and purpose. For example,
13 two people can be guilty of killing another person when
14 only one of the two had a gun, there was only one bullet
15 and only one of the two fired the shot that caused the
16 death. If two or more people are acting together,
17 assisting each other in committing the offense, the act of
18 one is the act of all, or as it sometimes said, the hand
19 of one is the hand of all.

20 Now, prior knowledge that a crime is going to be
21 committed without more is not sufficient to make a person
22 guilty of that crime. Mere knowledge that another person
23 is going to commit a crime, even if the defendant is
24 present when the crime is committed is not sufficient to
25 convict the Defendant as a principle. Guilt as a

1 principle is shown by actual or constructive presence at
2 the scene as a result of the prior arrangement.
3 Therefore, a finding of a prior arranged plan or common
4 scheme is necessary for a finding of guilt as a principle.
5 And the State must prove beyond a reasonable doubt by
6 competent evidence the theory of the hand of one is the
7 hand of all.

8 A principle in a crime is one who either
9 actually commits the crime or who is present aiding,
10 abetting or assisting in committing the crime. When a
11 person does an act in the presence of and with the
12 assistance of another, the act is done by both. Where two
13 or more acting with a common plan or intent are present at
14 the commission of a crime, it does not matter who actually
15 commits the crime, all are guilty. The hand of one is the
16 hand of all.

17 Present at the commission of a crime means to be
18 sufficiently near to aid and abet and assist in the
19 commission of a crime. However, mere presence at the
20 scene of a crime is not sufficient to convict one as a
21 principle on the theory of aiding and abetting.

22 Intent is also a necessary element. For there
23 must have been a common design or intent to commit the
24 crime and the crime must have been committed pursuant
25 thereto with the person aiding and abetting by some overt

1 act. Intent means intending the result which actually
2 occurs, not accidentally or involuntarily. Intent may be
3 shown by acts and conduct of the Defendant and other
4 circumstances from which you, the jury may naturally and
5 reasonably infer intent. And the State must prove these
6 elements beyond a reasonable doubt.

7 The Defendant is charged with murder. And the
8 State must prove beyond a reasonable doubt that the
9 Defendant killed another person with malice aforethought.
10 Malice is hatred, ill will or hostility towards another
11 person. It is the intentional doing of a wrongful act
12 without just cause or excuse and with an intent to inflict
13 an injury or under circumstances that the law will infer
14 an evil intent.

15 Malice aforethought does not require that malice
16 exists for any particular length of time before the act is
17 committed. But malice must exist in the mind of the
18 Defendant just before and at the time the act is
19 committed. Therefore, there must be a combination of the
20 previous evil intent and the act. Malice aforethought may
21 be expressed or inferred. And these terms expressed and
22 inferred do not mean different kinds of malice, but merely
23 the manner in which malice may be shown to exist. That is
24 either by direct evidence or by inference from the facts
25 and circumstances which have been proven. Expressed

1 malice is shown when a person speaks words which express
2 hatred or ill will for another or when the person prepared
3 beforehand to do the act which was later accomplished.

4 Malice may be inferred from conduct showing a total
5 disregard for human life. If facts are proved beyond a
6 reasonable doubt sufficient to raise an inference of
7 malice to your satisfaction, this inference would simply
8 be an evidentiary fact to be considered by you along with
9 the other evidence in the case and you may give it the
10 weight that you decide it should receive.

11 The Defendant is also charged with kidnapping.
12 And the State must prove beyond a reasonable doubt that
13 this Defendant knowingly and unlawfully seized, confined
14 inveigled, decoyed, kidnapped, abducted or carried away
15 another person without authority of law. To do a thing
16 unlawfully is to do it willfully against the law.
17 Knowingly means with knowledge, consciously, not
18 accidentally. Seized means to take hold of suddenly or
19 forcefully. Confine means to limit, restrict or enclose
20 within bounds, imprison or shut or keep in. Inveigle
21 means to lure, entice or lead astray by false
22 representations, promises or other deceitful means. Decoy
23 means to lure by or as if by decoy. A decoy is something
24 to entice a person into a trap. Kidnap is to remove a
25 person against their will by unlawful force or by fraud.

1 Abduct means to carry off secretly or by force for an
2 illegal purpose. Carry away means to remove.

3 The State does not have to prove that the
4 Defendant did all of these things, instead if you find
5 beyond a reasonable doubt that the Defendant did any of
6 these things, you made find the Defendant guilty of
7 kidnapping. And something done without authority of law
8 is something which the law does not sanction, permit,
9 allow, condone or provide justification for. And the
10 kidnapping does not have to be for any personal or
11 monetary gain or any illegal purpose, but may be for any
12 reason whatsoever.

13 Now, ladies and gentlemen, and Madam Forelady,
14 there are two indictments. And as I have told you, each
15 indictment must stand or fall on its on merit and must
16 be -- your decision must be based on the law as I have
17 given it to you. But on each indictment, there are two
18 possible verdicts which you may render. And there's no
19 importance in the order in which I state them, one has got
20 to be said first and one second. And the two possible
21 verdicts as to murder are guilty and not guilty, and as to
22 the kidnapping, they are guilty or not guilty.

23 Now, ladies and gentleman, I want to tell you
24 that all 12 of you must agree on your verdict. Your
25 verdict must be unanimous. And your verdict cannot be

1 based on sympathy, passion, prejudice, emotion or any
2 other consideration that is not in evidence in this case.
3 You have no friends to reward, you have no enemies to
4 punish.

5 Now, Madam Forelady, I'm going to excuse you all
6 back to your jury room now to begin the fifth part of the
7 trial, which are your deliberations. I will ask you not
8 to begin your deliberations just yet. I need to go over
9 my charge on the law with the attorneys to make sure that
10 I did not misstate something or omit something. When the
11 evidence comes back to you with this verdict form, which I
12 will ask you -- I think it's self-explanatory. You
13 indicate what your verdicts are and please sign it. When
14 this comes back, you all may begin your deliberations. So
15 at this time, ladies and gentlemen, I will excuse you back
16 to your jury room with the exception of Ms. Henson. I
17 have to ask you to remain.

18 (WHEREUPON, the jury left open court at
19 approximately 4:20 p.m.)

20 THE COURT: Ms. Henson, this is always the most
21 difficult part of a trial for me because I have made you
22 sit up here all week. You are just as qualified as each
23 of those 12 persons who left. You've paid just as good
24 attention, but I can't let you go back there. The law
25 only allows 12. I want to thank for your service. You're

1 welcome to stay or leave, whatever you'd like to do. I
2 hope it's been a good experience for you. And I thank you
3 very much.

4 MS. WILLIAMS: Your Honor?

5 THE COURT: Yes.

6 MR. WILSON: May we approach?

7 THE COURT: Yeah.

8 (WHEREUPON, a bench conference was held.)

9 THE COURT: Ms. Henson, we were talking about
10 maybe keeping you around just for the heck of it. No,
11 we're not going to do that. The law says that you're not
12 allowed to go back and deliberate, so you're free to go or
13 stay, whatever you'd like. I'll also tell you you're free
14 to talk about the case with anybody you want to, but
15 you're also free not to talk about it. So if someone
16 approaches you and bothers you -- if you do not want to
17 talk about it and they persist, just please let us know,
18 the clerk's office know who that person is and I'll fix
19 that because I will not have a juror intimidated or
20 harassed. Okay. Thank you very much for your service,
21 ma'am. You're free for the week. Thank you very much.

22 (WHEREUPON, the alternate juror was excused.)

23 THE COURT: All right. Any exception or
24 objection to the charge other than the requests by the
25 defense previously denied?

1 MR. WILKINS: None from the State.

2 MR. MAULDIN: Your Honor, the circumstantial
3 evidence, obviously, we didn't object, but we do take
4 exception to that. We take exception to the hand of one
5 and, particularly, where it was connected the aiding and
6 abetting charge. So we do take exception to the hand of
7 one, the hand of all and the following aiding and abetting
8 instruction. And then the third one, Your Honor, was
9 something -- and it's been an eternity since I've tried a
10 kidnapping case, but here what happened was you were
11 defining the different types, if you will, of kidnapping.

12 THE COURT: No, I was defining the terms.

13 MR. MAULDIN: Yeah, the different terms. And
14 what you said was the State does not have to prove all of
15 these things. If you find the Defendant did any of these
16 things, you may find him guilty. Well --

17 THE COURT: I said instead, if you find beyond a
18 reasonable doubt that the Defendant did any of these
19 things, you may find the Defendant guilty.

20 MR. MAULDIN: And that part of the kidnapping
21 jury instruction, we believe, is error. So I want to make
22 sure the record -- it's only as to the kidnapping and only
23 as to the portion of the charge that talks about how
24 they -- after you define the terms and you said the State
25 does not have to prove all of these things. If you find

1 the Defendant did any of these things beyond a reasonable
2 doubt, you can find him guilty. Well, I take exception to
3 that language, Your Honor.

4 THE COURT: Okay. I have a sneaky suspicion
5 that this charge will be approved by the Supreme Court.

6 MR. MAULDIN: With all due respect, Your Honor.

7 THE COURT: All right. Thank you.

8 All right. Be at ease.

9 (WHEREUPON, an off-the-record discussion was
10 held and State's Exhibit Nos. 14, 20, 21, 23,
11 26, 36, 39, 133, 155 and 164 were withdrawn and
12 not made a part of the record.)

13 (WHEREUPON, the jury began deliberations at
14 approximately 4:45 p.m.)

15 (WHEREUPON, the Court was in recess awaiting a
16 verdict.)

17 THE COURT: Okay. I asked the bailiffs to
18 inquire of the jury if they wanted to order dinner, that
19 it would take an hour. And the response was it would be a
20 long time before they reach a decision. So I think what
21 I'm going to do is bring them out and -- or I just need to
22 inquire if they want to come back tomorrow. Go home now
23 and come back tomorrow. So I'm asking your thoughts on
24 that.

25 MR. MAULDIN: Well, Judge, I mean, just to save

1 the county money. I mean, instead of us ordering them
2 food, let's let them go eat their own food. But that's
3 completely up to you.

4 THE COURT: Well, does the State have any
5 position?

6 MR. WILKINS: I would prefer you to inquire and
7 you just make a judgment call on that.

8 THE COURT: All right. Let's bring them out and
9 see if we can get a feel if there's a light.

10 (WHEREUPON, the jury came into open court at
11 approximately 6:15 p.m.)

12 THE COURT: All right. Ladies and gentlemen of
13 the jury, I was going to bring you out before I got your
14 question. And I understand that you all need -- it will
15 be a long deliberation is what I understand. And what
16 would like to offer to you all and get your input. You
17 don't have to tell me now. I'd like to you to get a
18 chance to go back and talk about. We can order, and happy
19 to do it, and we'll stay just as late tonight as you want
20 to stay. Or if you'd rather, I can let y'all go home now
21 and come back in the morning. And so it's a little -- you
22 know, it's nerve racking for me because you're down to 12.
23 And all 12 of you have to be back and you can't talk about
24 it with anybody outside of the jury room. So we're happy
25 to go get a meal for you and we'll stay just as late as

1 you want to or you all -- if you all decide it will be
2 better to come back tomorrow, just whatever -- I would
3 like for you all to talk about that before I do anything
4 else. Okay.

5 But the questions are number one, define the
6 elements of murder, number two, explanation and
7 clarification of two people being charged with the same
8 crimes and what do you have to prove with respect to each
9 defendant when more than one was involved.

10 So at this time, if you all will retire, talk
11 about what you'd like to do. Then just signal to them and
12 let us know. Thank you, very much.

13 (WHEREUPON, the jury left open court at
14 approximately 6:18 p.m.)

15 (WHEREUPON, Court's Exhibit No. 7 was marked for
16 identification and received into evidence.)

17 THE COURT: All right. We'll just be at ease
18 until we get some response.

19 (WHEREUPON, a short break was taken.)

20 THE COURT: We've got some lawyers on this jury.
21 They want to stay. So with respect to their -- go ahead
22 and let them get their orders done and then let me know
23 and we'll figure out what we're doing to do. I guess,
24 I'll guess I'll just recharge them on hand of one and
25 murder subject to your objection.

1 MR. MAULDIN: The objection we've got is as to
2 the hand of one and half of all connected aiding and
3 abetting instruction. We objected to it the first time
4 before you charged them. We renewed our objection after
5 the charge and we, certainly, would renew it now to a
6 recharge on that element.

7 THE COURT: I don't remember the one before.

8 MR. MAULDIN: Well, the one when we had the
9 charge objection, we said we objected to the hand of one,
10 hand of all instruction.

11 THE COURT: Well, now that I've read it, you've
12 gotten more specific.

13 MR. MAULDIN: Yes, sir.

14 THE COURT: Okay. The other thing we can do is
15 make a copy and send it back to them.

16 MR. WILKINS: Your Honor, the State request that
17 we send an entire copy of the charge back with the jury.

18 THE COURT: Well, they haven't asked for that.
19 I'm not going to do that at this time.

20 MR. MAULDIN: You're considering sending
21 something back?

22 THE COURT: If they ask for it, I'll send it to
23 them.

24 MR. MAULDIN: Well --

25 THE COURT: If I do send something back, I'll

1 send the whole charge.

2 MR. MAULDIN: Yeah. And we object, certainly,
3 to any portion. But on the other hand, we object to the
4 whole charge being sent back as well. We don't want them
5 to be given that choice, that option.

6 THE COURT: Okay.

7 Just got another note from the jury. All it
8 says is copy of jury charges.

9 Yes, sir.

10 MR. MAULDIN: You want me to respond to that?

11 THE COURT: I know what it's going to be.

12 MR. MAULDIN: We object to any portion or all of
13 the jury instructions being provided to the juror.

14 THE COURT: On what basis?

15 MR. MAULDIN: The jury, what they've done, Your
16 Honor, is that they have submitted a prior request for
17 certain things to be instructed to them. If you now send
18 back your entire jury instructions, they're going to go to
19 the portion of the jury instruction that they're asking
20 the question about. That means that they could end up
21 disregarding something else in the instructions that they
22 haven't asked about. So I believe that it is a dangerous
23 practice when a jury ask for a specific portion of the
24 instructions to then give them all the instructions.
25 That's not a good practice in my --

1 THE COURT: I think it's a better practice.

2 MR. MAULDIN: Well, they had a question and now
3 they have modified -- or, I guess, they modified the
4 question asking for everything.

5 THE COURT: Asking for a copy of the jury charge
6 so they can look at it and go through it.

7 MR. MAULDIN: All right. One moment. By
8 sending -- if you reinstruct them on what they asked
9 questions about and we've made our objections to those
10 portions, if you, as an alternative, simply give them the
11 instructions, then what that creates the danger of is one
12 of the jurors essentially becoming almost a jury room
13 judge or jury room lawyer regarding your instructions.

14 THE COURT: Well, they want to send 12 copies
15 back.

16 MR. MAULDIN: They all heard it. They've all
17 heard the same thing. And to provide them with a written
18 instruction creates a potential imbalance as to the role
19 of those jurors. So I'm going to object to it.

20 THE COURT: Okay. We'll send 12 copies back.
21 It's going to take me a few minutes to get a clean copy.

22 (WHEREUPON, Court's Exhibit Nos. 8 & 9 were
23 marked for identification and received into
24 evidence.)

25 THE COURT: We've got 13 of them. One of them

1 is a Court's Exhibit.

2 THE COURT: All right, Mr. Lynch, over Defense
3 objection.

4 You want to look at them.

5 MR. MAULDIN: No. You're just going to have him
6 take them in there. And we do have an objection to it,
7 Your Honor.

8 THE COURT: All right. We'll be at ease.

9 MR. MAULDIN: So you're just going to give us a
10 call? Give us a call?

11 THE WITNESS: Yeah, I'll get you.

12 (WHEREUPON, Court was in recess awaiting a
13 verdict.)

14 THE COURT: We have a note. April 12th, 2012 at
15 20:47. Your Honor, we have deliberated and are unable to
16 reach a unanimous verdict. Please advise. Thank you,
17 Donna Bailey. P.S., we have reached a unanimous decision
18 on one charge. Donna Bailey.

19 So it's only been three hours and 10 minutes.
20 Anybody want dynamite? It's only good one time.

21 MR. MAULDIN: One moment. Your Honor, the
22 Defense does have a suggestion. I don't know if you want
23 to hear from the State or.

24 THE COURT: Well, they're sitting over there
25 silent, so I'll hear from you.

1 MR. MAULDIN: We suggest, Your Honor -- what I
2 understand now is they are deadlocked on one of the
3 indictments and they have a verdict on the other
4 indictment?

5 THE COURT: That's what the note says, yes, sir.

6 MR. MAULDIN: Then my suggestion is you declare
7 a mistrial on the deadlocked indictment and take the
8 verdict on the other indictment. And just see where we
9 are. I mean, it may very well be, quite frankly, that
10 that would resolve the problem. The overall problem could
11 be resolved by that course. But, of course, there's
12 some -- I don't know which way this is going.

13 MR. WILKINS: Neither do we.

14 THE COURT: That's why jury deliberations are
15 private.

16 Let me talk to you two.

17 (WHEREUPON, a bench conference was held.)

18 THE COURT: We had a bench conference and
19 discussion with the attorneys. This has been a four-day
20 trial. It's late. I'm going to send them home tonight.
21 We're going to put the verdict form in a sealed envelope
22 so that no one can look at it. No one. And keep it with
23 the evidence. Bring them back tomorrow and let them
24 deliberate some more. No Allen charge or anything
25 tonight.

1 MR. WILKINS: Are you going to Allen charge them
2 tomorrow or are you going --

3 THE COURT: We'll wait and see how they do.
4 We'll bring them back and let them commence deliberating
5 and see where they are tomorrow morning.

6 MR. WILKINS: After conferring with Ms. Strom,
7 the problem we have with that is, they stated they were
8 deadlocked. And if you send them back in the morning,
9 they have to come out a second time saying they're
10 deadlocked in order to get the Allen charge. So bring
11 them back in the morning, give them the Allen charge and
12 send them back.

13 MR. MAULDIN: Well --

14 MR. WILKINS: As if we took a break and we
15 resumed right at this moment.

16 THE COURT: Hang on one minute.

17 MR. MAULDIN: I want to make sure I know what
18 I'm agreeing --

19 THE COURT: Well, it's not an agreement. We
20 just bring them back in the morning and put them -- I'm
21 not going to Allen charge them right off the bat. Just
22 ask them to come back and recommence their deliberations
23 in the morning. After a good night's sleep, it's amazing
24 how people will feel. If they tell us again tomorrow they
25 can't reach a verdict, then we'll Allen charge and see

1 what happens. Okay.

2 MR. WILKINS: Your --

3 THE COURT: You're saying if they say twice
4 they're deadlocked, it's over?

5 MR. WILKINS: Yes, sir.

6 MS. STROM: I'll have to research in the
7 morning.

8 THE COURT: Okay, before they begin their
9 deliberations.

10 MR. WILKINS: Yes, sir.

11 MS. STROM: Yes, sir.

12 THE COURT: You know what she's saying, right?
13 If they say twice they're deadlocked, it's over, mistrial.
14 So, basically, what -- and I believe that's right. I'm
15 just not sure if it's after -- well, how the Allen charge
16 fits in all that, we'll do that research, too. But bring
17 them back, before they start deliberating, if it's
18 appropriate, we'll give them that Allen charge so they
19 understand what's going on, and let them commence.

20 MR. MAULDIN: And --

21 THE COURT: And if they hang up again, it's
22 definitely over.

23 MR. MAULDIN: At this point, Your Honor, I
24 certainly would oppose that process. My recommendation is
25 that we allow them to come back -- and I don't even think

1 it's necessary that we come back into the courtroom. In
2 other words --

3 THE COURT: You're not understanding. The jury
4 comes out and says once they're deadlocked. And then,
5 normally, you give them an Allen charge. They come back a
6 second time deadlocked, it's a mistrial. So the research
7 that we have to do is find out they said their deadlocked,
8 we're not giving them the Allen charge. If they commence
9 tomorrow and come back and say they're deadlocked, we need
10 to know if that is a mistrial or if they can get an Allen
11 charge at that point. That's pretty easy research to do,
12 I think. But I can't remember.

13 MR. MAULDIN: So what they're going to do is
14 we're going to gather them at 9 o'clock and then we're
15 going to make a determination and bring them in and tell
16 him --

17 THE COURT: I tell them to be here at 9:15.
18 Y'all be up here about 9:00. We'll make a determination
19 at that time if an Allen charge is appropriate or we can
20 let them go without an Allen charge. We'll have to figure
21 it out.

22 We'll have a good night's sleep, too.

23 MR. MAULDIN: You're going to bring them in?

24 THE COURT: Yeah.

25

1 (WHEREUPON, the jury came into open court at
2 approximately 9:10 p.m.)

3 THE COURT: Ladies and gentlemen, thank you,
4 very much. I have your note. It's been a long trial,
5 four days. Y'all have been deliberating a little bit over
6 three hours. It's late. And I know what you've said in
7 your note, that you have a verdict on one charge and where
8 you are on the other. But at this hour, I -- well, here's
9 what we're going to do. I'm going to dismiss you for the
10 night. I'm going to ask you to be back tomorrow at 9:15
11 in the jury room. Do not begin your deliberations at that
12 point, okay. And I will -- we will give you -- I'll
13 either -- at some point, I'll give you further
14 instructions.

15 One thing, Madam Forelady, I do need you to do
16 is to take the verdict form that you have because I don't
17 want anyone to know what the verdict is. I'm going to
18 give you this envelope and I'll just write verdict form.
19 It's got one of these -- you pull it off and seal it.
20 We'll keep it locked up with the evidence. No one will
21 know where you are. And then tomorrow, we'll give it back
22 to you with the evidence.

23 And let me just tell y'all, it's hard work. And
24 we all, everyone, all the citizens in the State appreciate
25 what you're doing even though they don't know you're doing

1 it for them. But it's hard work. It's a huge
2 responsibility and a great honor and great privilege to do
3 what you're doing. I so admire you for this. What we
4 want you to do is go home, get a good night's sleep. You
5 cannot talk about this or do research or anything. Don't
6 let -- we've come this far, let's don't let anything
7 affect it.

8 I ask you to be back at 9:15. Don't start
9 deliberating. And then well take it from there in the
10 morning. But a good night's sleep will probably help
11 everybody. Okay. So thank you very much. And I believe
12 the deputies will escort you out over to the parking
13 garage. But before you go, if you will, put the verdict
14 form in that envelope and seal it and -- let me just write
15 on there State vs. Jenkins just so we know.

16 All right. Thank you all very much. We'll see
17 you in the morning. Have a good night's sleep.

18 (WHEREUPON, the jury left open court at
19 approximately 9:13 p.m.)

20 (WHEREUPON, Court's Exhibit No. 10 was marked
21 for identification and received into evidence.)

22 THE COURT: Could there be anything else to talk
23 about?

24 Yes, Mr. Mauldin.

25 MR. MAULDIN: I want to make sure now -- because

1 I think we're doing the right thing with sealing that
2 verdict, whatever it is.

3 THE COURT: Yeah.

4 MR. MAULDIN: But when they come back and begin,
5 we've got to instruct the foreman that that verdict is to
6 be unsealed and it's back on the table. In other words --
7 otherwise -- in other words --

8 THE COURT: Mr. Mauldin, I am going to tell that
9 jury how -- they have got their instructions. And I'm not
10 going to tell them -- give them any direction about --
11 unless I have to give them an Allen charge. I'm not going
12 to tell them they can reconsider that. That would be so
13 inappropriate I can't even --

14 MR. MAULDIN: And it's not that it's being
15 reconsidered, what I don't want this action by you to do,
16 which I think is correct to put it in an envelope and hold
17 it, they should not interpret that as meaning that's now
18 it with regard to whatever it was because it isn't.

19 THE COURT: Well, okay.

20 MR. MAULDIN: Thank you, Judge.

21 THE COURT: All right. Have a good night. See
22 you back about 9:00.

23 Did you find anything?

24 MS. STROM: I think we got a little something,
25 Judge.

1 MR. MAULDIN: Are we still on the record?

2 COURT REPORTER: Yes.

3 (WHEREUPON, the proceedings were concluded for
4 the day to be reconvened on April 13, 2012.)

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1 April 13, 2012

2 THE COURT: All right. Couple things.

3 Ms. Strom, I want to thank you for halting the
4 process last night. Everybody was tired, it was late.
5 And 14-7-1330 is the appropriate code section which deals
6 with a deadlocked jury. Number of cases. One of the --
7 I'm always look forward -- I would always rely on a
8 decision penned by now Justice Kittridge, but penned by
9 Judge Kittridge who was on the Court of Appeals. State V.
10 Robinson, 600 S.E.2nd 100, footnote 7, discusses mistrial
11 with a deadlocked jury. Statute reads in pertinent part:
12 If the jury returns a second time without having an agreed
13 upon verdict, it shall not be sent out again without its
14 own consent unless it shall ask from the Court some
15 further explanation of law. At the second indication of
16 deadlock, court's typically inquire as to whether more
17 deliberations would be beneficial to the jury. And the
18 issue of consent is determined from the jury's response.
19 When a jury is twice deadlocked, the trial judge shall
20 diplomatically discuss with the jury whether further
21 deliberations could be beneficial. The jury's consent to
22 resume or discontinue deliberations if determined either
23 expressly or impliedly by its response to the trial
24 judge's comments.

25 I think that clears that up. I will give them

1 an Allen charge this morning so that they understand the
2 import of their deliberations.

3 Any comment from anybody?

4 MR. WILKINS: State agrees with that, Your
5 Honor.

6 MR. MAULDIN: And we object to a Allen charge,
7 Your Honor, just for the record.

8 THE COURT: Well, whether I give them an Allen
9 charge or not, two times deadlocked pretty much ends the
10 case.

11 MR. MAULDIN: Yes, sir.

12 THE COURT: So I'm going to let them know the
13 consequences of their inability to decide. I'm not going
14 to coerce them in any way, but they need to be informed.

15 Another thing that concerns me is that I
16 understand on the radio today, it was reported that the
17 jury had found a verdicts on kidnapping and were
18 deadlocked on the murder. Now, I will report to you that
19 that verdict form is sealed and it was under the Court
20 lock and key all night. So I don't know where that
21 comment came from. But if somebody in this courtroom has
22 violated this order, the gag order, there will be
23 consequences. So just keep that will in mind.

24 All right. Are they all here?

25 THE BAILIFF: Yes, sir.

1 THE COURT: Okay.

2 It wasn't on the radio, it was on TV.

3 (WHEREUPON, the jury came into open court at
4 approximately 9:22 a.m.)

5 THE COURT: Okay. Ladies and gentlemen, welcome
6 back. I hope y'all had a pleasant evening. I hope y'all
7 got a good night's sleep. Yeah, me, too. It's amazing.
8 I remember I played -- used to be a YMCA basketball league
9 and I'd go play. And they had 10:00 games and you think
10 oh, you'd be worn out. You'd go home and be too excited
11 to go to sleep, too much on your mind. But in any event,
12 a night's rest is always helpful. You see a fresh brisk
13 day like today is always a great thing.

14 I want to tell you, ladies and gentlemen, you've
15 stated that you have been unable to reach a verdict in the
16 case on this one charge. I don't know what it is. And as
17 I instructed you earlier, the verdict of the jury must be
18 unanimous. And when a matter is in dispute, it isn't
19 always easy for even two people to agree. So when 12
20 people must agree, it becomes even more difficult. And in
21 most cases, absolute certainty cannot be reached or
22 expected. However, you, the jury, have a duty to make
23 every reasonable effort to reach a unanimous verdict. In
24 doing this, you should consult with one another, express
25 your own views, and listen to the opinions of your fellow

1 jurors, tell each other how you feel and why you feel that
2 way, discuss your difference with open minds. And
3 although the verdict of the jury must be unanimous, every
4 one of you has the right to your own opinion. The verdict
5 you agree to must be your own verdict, the result of your
6 own convictions, and you should not give up your firmly
7 held beliefs merely to be in agreement with your fellow
8 jurors. The majority should consider the minority's
9 position and the minority should consider the majority's
10 position. And you should carefully consider and respect
11 the opinion's of each other and reevaluate your position
12 for reasonableness, correctness and impartiality. You
13 must lay aside all outside matters and reexamine the
14 questions before you based on the law and the evidence in
15 this case.

16 If you do not agree with a verdict in this
17 case -- if you all can't agree on a unanimous verdict in
18 this case, I must declare the mistrial. In that case,
19 should that happen, it does not mean that anybody wins.
20 It just means that at some future time, I will try this
21 case with some other jury sitting where you now sit. The
22 same participants will come and the same lawyers will ask,
23 basically, the same questions and get, basically, the same
24 answers and we will go through the whole process again.

25 Now, I will tell you that you were selected in

1 the same manner and from the same source as any future
2 jury will be. And there is no reason for me to suppose
3 that the case will ever be submitted to 12 more
4 intelligent, impartial and conscientious and competent
5 jurors than you. Or that more or clearer evidence will be
6 produced on side or the other. I, therefore, will ask you
7 to return to your deliberations with the hope that you can
8 arrive at a verdict within a reasonable time.

9 All right. Thank you. We will deliver the
10 evidence to you and y'all begin your deliberations again.

11 Madam Forelady, no one has seen the verdict
12 form. So you may unseal it and proceed.

13 All right. Thank you.

14 (WHEREUPON, the jury left open court at
15 approximately 9:27 a.m.)

16 THE COURT: All right.

17 MR. MAULDIN: Your Honor, just renew the
18 objection for the record.

19 THE COURT: Same ruling.

20 MR. WILKINS: No objection from the State, Your
21 Honor.

22 (WHEREUPON, the Court was in recess awaiting a
23 verdict.)

24 (WHEREUPON, the jury resumed deliberations at
25 9:28 a.m.)

1 THE COURT: This has been a long case, hard
2 fought, a lot of emotion and I want no outburst when this
3 verdict is announced. Failure to abide by that could
4 result in sanctions.

5 Okay. Let's get them.

6 (WHEREUPON, the jury came into open court at
7 approximately 10:45 a.m.)

8 THE COURT: All right. Madam Forelady, I
9 understand you've reached a verdict?

10 MADAM FORELADY: We have.

11 THE COURT: Would you please hand it to the
12 bailiff?

13 All right. Madam Clerk, would you please
14 publish the verdict?

15 VERDICT

16 THE CLERK: Yes, sir, Your Honor. Your Honor,
17 this is case number 2008-GS-323-8409 and 2011-GS-23-7258A.
18 As to indictment 2008-GS-23-8409, Clarence William
19 Jenkins, the charge of murder, we, the jury, find the
20 Defendant guilty. As to indictment 2011-GS-23-7258A, the
21 charge of kidnapping, we, the jury, find the Defendant
22 guilty. I certify this decision was the unanimous
23 decision of the jury, Donna Bailey, Foreperson.

24 If this is your verdict, please raise your right
25 hand.

1 (WHEREUPON, all members of the jury raised their
2 right hand.)

3 THE COURT: All right. Anything further from
4 the jury from the State?

5 MR. WILKINS: Nothing from the State, Your
6 Honor.

7 THE COURT: From the Defense?

8 MR. MAULDIN: No, Your Honor.

9 THE COURT: All right.

10 Madam Forelady, ladies and gentlemen of the
11 jury, when you signed on to be a citizen, I don't guess
12 you figured you'd have this much work to do for your
13 county, country, your state. It's tough being a juror and
14 it is a great privilege and a great responsibility. And
15 you performed a great service for your community. I hope
16 you're proud of your service. And I want to thank you
17 wholeheartedly for all of your hard work. You've been an
18 outstanding jury.

19 Now, I will tell you that you're free to talk
20 about it with whomever you like or not talk about it. And
21 if someone bothers you about it, if you tell someone you
22 don't want to talk about it with them and they persist,
23 please let our Clerk of Court know and I will take care of
24 that person who bothers you. Okay. We will not have you
25 being harassed or intimidated in any way.

1 So thank you for your service. Here it is
2 Friday, 10:45, and I get to cut you loose for the whole
3 rest of the week. Thank you very much. I think if you
4 will -- I think we will have some letters for your work.
5 If you'll be in the jury room, we'll get them to you.
6 Thank you again.

7 Ms. Bailey, I would ask you to sign the
8 indictments for us if you would, please, ma'am.

9 (WHEREUPON, the jury left open court and was
10 excused at approximately 10:47 a.m.)

11 THE COURT: Okay. Mr. Jenkins, come on around.
12 All right, Mr. Mauldin.

13 MR. MAULDIN: Your Honor, we certainly want the
14 record to reflect that we renew our previously --

15 THE COURT: I'm sorry, we should have done the
16 motions first.

17 MR. MAULDIN: We renew the previous motions that
18 we brought to the Court's attention at the appropriate
19 time. We request that the Court set aside the verdicts
20 and enter a judgment notwithstanding those verdicts of
21 acquittal. And we are now prepared for sentencing.

22 THE COURT: Okay. I'm going to deny your
23 motions. I will say that this case was hard fought and
24 think all the issues have been preserved. And this jury
25 worked really hard. And I'm rarely do I upset the work of

1 a jury.

2 MR. MAULDIN: And Your Honor, I commend the
3 State for a very hard fought case. A well-tried case, I
4 believe on all sides. I want to express my appreciation
5 to the support of Mr. McDougal lended to us pro bono from
6 his firm, and Susannah Ross, who has served on this case
7 for four years with me. And I do want the record to show
8 how much I appreciate their support from the defender
9 office.

10 THE COURT: Well, I commend Mr. McDougal and his
11 associates for their hard work and wish we had more like
12 him.

13 MR. MAULDIN: Thank you, Judge.

14 THE COURT: Mr. Wilkins, anything from the State
15 with respect to the sentence?

16 MR. WILKINS: Nothing regarding the sentence. I
17 appreciate Mr. Mauldin trying this case. It was the first
18 one for Mr. Mauldin and I.

19 It was a pleasure, Mr. Mauldin. You did a great
20 job.

21 THE COURT: Anything from the victim?

22 MR. WILKINS: Yes, the victim would like to
23 speak --

24 THE COURT: Victim's family. Okay.

25 VICTIM'S SISTER: I just like to say that my

1 sister was a -- she was very, very friendly person. She
2 was kind to people on the street as well as her family.
3 She trusted Clarence and Carmen Jenkins. And they lured
4 her to their house, murdered her, dismembered her body and
5 then they took her body to a place they thought no one
6 would find it and burned her body. And we feel that
7 because of the senseless murder to my sister that we also
8 lost my mother who grieved herself to death because she
9 felt if she could have gotten to my sister before Clarence
10 and Carmen murdered, that she would still be alive today.
11 we ask that Clarence get live. Thank you.

12 THE COURT: All right. Thank you very much,
13 ma'am.

14 All right. Mr. Mauldin.

15 MR. MAULDIN: Nothing further from the Defense,
16 Your Honor.

17 THE COURT: Anything you want to tell me, Mr.
18 Jenkins?

19 MR. MAULDIN: Your Honor, I will leave it to the
20 client to speak if he wishes. I have suggested that he
21 not.

22 THE COURT: Well, Mr. Jenkins, now is your time.
23 If you've got something you want to tell me with respect
24 to your sentence, now is your change.

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: There's nothing you want to tell me?
2 It's got to be your choice. This is between you and me.
3 You don't have to if you don't want to, but I'm telling
4 you this is your only chance.

5 THE DEFENDANT: Your Honor, in respects to the
6 Court and everything, I know I haven't understood
7 everything about the law and everything that's been going
8 on, but like I've told Susannah and Mauldin, my defense
9 team, and I've even tried to tell everyone, I did not -- I
10 did not kill anybody, Your Honor. And I put that on
11 everything. I am a firm believer in God and Jesus. I did
12 not kill or kidnap anybody. I would not do that. And my
13 mother raised me not to do that. And I know it is a
14 senseless and harmful crime that has been committed. I'm
15 not saying that I'm completely innocent. I know that I
16 took a part in the crime. But in the killing, I did not
17 take a part in no killing. I was not there when Mekole
18 was killed. God knows that I was not there when Mekole
19 was killed. I was not cruel to anybody, period, Your
20 Honor. And I was hoping and praying and trusting in my
21 defense team to prove that, but, obviously, they was
22 unable to. But I promise you and Mekole's family and
23 everybody that I did not take no part in her killing or
24 her kidnapping. I did know Mekole.

25 THE COURT: What was your part?

1 THE DEFENDANT: I did help get rid of Mekole.
2 And I told my defense team that. I was honest with them
3 and I even told them that I would tell the Solicitor my
4 part. My part was I helped clean up the mess and I helped
5 get rid of Mekole. But I did not kill Mekole in no way,
6 shape or fashion. I never killed anybody in my life and I
7 will never kill anybody in my life.

8 THE COURT: So where were you when she was
9 killed?

10 THE DEFENDANT: I was with my kids, my
11 daughters.

12 THE COURT: Where?

13 THE DEFENDANT: At my mother's house. And the
14 Defense knows that. I was back and forth from my mother's
15 house to Carmen's house. Even see in the pictures and
16 Carmen stated in her testimony that I left her one time
17 because of how she used to keep the place.

18 The reason why I left Carmen before is because
19 I've never been in a dirty place. My mother raised me not
20 to be in a dirty place. And I have OCD. I don't like
21 bacteria. I don't like germs. And you can even talk to
22 the people in the jail that I'm in now, Lieutenant Groves,
23 Lieutenant Smith, all these lieutenants and sergeants know
24 because they allow me to clean while I'm over there.
25 These people know me that I've been incarcerated for the

1 past four years. I'm not telling these people that. They
2 know me. They sit and they watch me. They know how I am.
3 Everybody who knows me on the streets knows how I am. I'm
4 not going to sit up here and make up something that's not
5 true.

6 THE COURT: How old are you?

7 THE DEFENDANT: I'm 28, sir.

8 THE COURT: Twenty-eight. So when you came
9 back, what was the -- what was in the -- what did you find
10 when you came back to Tindal Road?

11 THE DEFENDANT: When I came to Tindal Road, I
12 found Mekole there. Mekole was in the back room and
13 Carmen told me everything that went on.

14 THE COURT: Which was what?

15 THE DEFENDANT: Which was Mekole came looking
16 for me because I knew Mekole from Labor Finders. Me and
17 Mekole used to smoke together. And me and Mekole used to
18 have dinner together outside of Labor Finders and so
19 forth. I even brought Mekole to the trailer before.
20 Mekole came looking for me there a few times. She told --
21 Carmen told me that Mekole came there looking for me and
22 she was upset because me and Carmen had got into an
23 argument about how I forced Grace to leave on March the
24 16h. Because I had also left on March 16th and went over
25 to my mother's house because Carmen cussed me out about

1 forcing Grace to leave. So ever since March 16th, I was
2 over at my mother's house, going back and forth to my
3 mother's house to Carmen's house.

4 THE COURT: So when you came back, what did you
5 find?

6 THE DEFENDANT: I found Mekole in the bathroom
7 already dead. And I was scared, I didn't know what to do.
8 Because I've never seen a body before. And I helped her
9 cover everything up. I mean, I didn't know what else to
10 do. I mean, I had -- I had drugs at the place. I mean, I
11 didn't know what else to do. I mean, there's no excuse
12 for me helping her. I'm not trying to make an excuse.
13 It's just that I didn't know what else to do. I mean --

14 THE COURT: What about -- this just flies in the
15 face of physical evidence, Mr. Jenkins. The DVD's of you
16 and Carmen Jenkins going to the library --

17 THE DEFENDANT: No, Your Honor, I --

18 THE COURT: -- all of the notes that were
19 written.

20 THE DEFENDANT: I'm not saying that I didn't --
21 I did not say that I didn't go to the library, Your Honor.
22 I didn't say any of that stuff. What I'm telling you,
23 Your Honor, is that I did not kill Mekole and I did not
24 kidnap her.

25 SENTENCING

1 THE COURT: I'm going to sentence you to life in
2 prison. Good luck. All right.

3 (WHEREUPON, the proceedings were concluded.)
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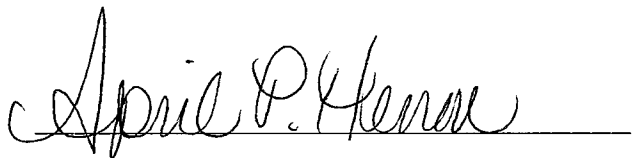
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9-13th days of April, 2012.

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

August 3, 2012



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE WILLIAMS JENKINS,

APPELLANT

Appellate Case No. 2012-211588

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court's refusal to charge the jury pursuant to the traditional circumstantial evidence definition and explanation as provided in State v. Edwards violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury regarding how to evaluate circumstantial evidence.

II. The trial court erred in failing to strike the testimony of a prosecution witness, or in the alternative grant a mistrial, where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

III. The trial court erred in failing to grant a lengthy recess to permit Appellant to engage the services of an expert to review materials that where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

STATEMENT OF THE CASE

On November 18, 2008, a Greenville County Grand Jury indicted Appellant for murder and kidnapping. Indictments. The matter proceeded to trial before the Honorable Edward W. Miller and a jury on April 9-13, 2012. Walt Wilkins, Betty Strom, and George Campbell represented the state. John Mauldin, Susannah Ross, Mark McDougal, Conner Mullin, Katherine Creely, and Katherine Williams represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 309, lines 16-23. Judge Miller sentenced Appellant to life in prison on the murder charge. R. 314, lines 1-2; sentence sheet.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF THE FACTS

On April 7, 2008, the police officers responded to two calls about threatening letters and suspicious packages at two separate locations. Upon arrival at the scenes, the police discovered two trash bags, each containing a severed human foot and severed human hand, and letters. R. 42, line 7 – R. 46, line 23; R. 47, lines 3-15; R. 50, line 5 – R. 53, lines 13; R. 54, lines 7-15. Approximately one week before, one of the responding officers had responded to one of the locations for a suspicious letter. R. 26, lines 3-14. That letter referred to people named “Grace” and “Willie.” R. 26, line 23 – R. 27, line 13. The homeowner at one of the locations informed the police that “Grace” in the letter may refer to Grace Davis. R. 31, lines 21-23

Davis testified that she met Appellant and his wife, Carmen Jenkins, in August of 2007. She began an intimate relationship with Appellant and the three moved in together. Shortly thereafter, Appellant went to jail for driving under suspension. While he was in jail, Davis and Carmen began an intimate relationship and fell in love. When Appellant was released from jail, the three entered an intimate covenant, which required the reciting and signing of a covenant and the exchange of rings. R. 111, line 5 – R. 115, line 10; R. 120, lines 20-25; R. 122, lines 2-24; R. 123, line 22 – R. 124, line 24; R. 125, line 5 – R. 126, line 13. When Appellant returned from jail, Carmen confided in Davis that she was in love with her and did not want Appellant involved in their relationship. R. 139, line 17 – R. 140, line 6.

At some point, Davis’ kids were removed from the home due to the living arrangements. In order to get her kids back, Davis moved out on March 16, 2008. Davis testified that Carmen was very upset about her living. R. 127, line 8 – R. 130, line 1.

Carmen testified pursuant to a plea agreement. Carmen pled guilty to murder and received a fifty-year sentence. Pursuant to her agreement, if she testified on behalf of the prosecution against Appellant, then the prosecutor would seek a sentence reduction on her behalf. R. 160.

Carmen testified similarly to Davis regarding how the three became involved in a romantic relationship and of her love for Davis. R. 163, line 2 – R. 170, line 15. She also explained the circumstances under which Davis left the relationship. R. 170, lines 18-25; R. 176, line 16 – R. 177, line 14. Carmen claimed Appellant decided to write letters to entice Davis to return to the relationship. She admitted that she had to assist Appellant with the letters because he could not spell and did not use a computer well. She testified they mailed approximately seven letters. R. 177, line 15 – R. 185, line 23.

According to Carmen, in early April 2008, Appellant called her to say he was bringing someone home. He arrived with Mekole Harris. R. 188, line 21 – R. 189, line 8. Carmen testified that she next saw Harris in a bedroom with Appellant and Harris was naked and in handcuffs. Appellant purportedly claimed he and Carmen were police officers and were going to arrest Harris for prostitution and possession of crack unless she cooperated with them. Harris agreed to do anything to keep from going to jail again. R. 190, lines 10 - 21.

Appellant wrote out a script for Harris to read over the phone. Appellant dialed the numbers for Davis' mother and aunt and forced Harris to say the script into the phone. R. 190, line 23 – R. 194, line 17. Although Harris was handcuffed while at the Jenkins' home, Carmen testified she could have left as long as she carried the chair with her because Carmen and Appellant did not stay in the same room with her. R. 199, lines 16-23.

On the following Sunday morning, Appellant allegedly told Carmen to kill Harris. Carmen testified that she attempted to do so with a cord around Harris' neck, but was unable to do so. Appellant then took the cord and killed Harris. R. 201, line 22 – R. 203, line 17. Appellant and Carmen dismembered Harris' body. The two kept her feet and hands in the freezer and wrapped the remaining body parts in trash bags and placed her in a child's play pen. They placed the body in a wooded area, poured gasoline and starter fluid on the body. Carmen set the body afire. R. 206, line 19 – R. 209, line 11.¹ Upon their arrive at home, they removed the body pieces from the freezer and placed one hand, one foot, and one set of toes in each of two bags. R. 209, lines 13-18. They drove to Davis' aunt's house where Carmen left a letter on the aunt's car and the bag of body parts on the porch. Next, they drove to Davis' mother's house where Carmen left the letter in the mailbox and the bag of body parts on the porch. R. 210, line 8 – R. 212, line 18.

Police rolled fingerprint impressions from the severed hands. R. 46, line 24 – R. 47, line 2; R. 55, lines 11-20. A latent fingerprint examiner input the rolled impressions into the computer system, which indicated multiple possible matches. The examiner reviewed the initial returned possible match and concluded the two were indeed a match. The computer system then provided the examiner with the identity of the owner of the fingerprint – Mekole Harris. R. 79, line 14 – R. 82, line 17.

¹ Almost two years after her arrest, Carmen informed the police of the location of Harris' remains in exchange for the prosecutor rescinding the notice of intent to seek death. R. 218, line 25 – R. 219, line 23.

ARGUMENT

I. The trial court's refusal to charge the jury pursuant to the traditional circumstantial evidence definition and explanation as provided in *State v. Edwards* violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury regarding how to evaluate circumstantial evidence.

Relevant facts

At the conclusion of the case, Appellant requested multiple jury instructions. R. 272, lines 20-21; Court's #4. Among the instructions requested was a charge regarding circumstantial evidence. Specifically, Appellant requested:

When the state relies on circumstantial evidence, you may not convict a defendant unless every circumstance relied on by the state is proven beyond a reasonable doubt, and all of the circumstances so proven are consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that the circumstances create a probability, even if it is a strong one. If, assuming the circumstances are true, there is a reasonable hypothesis which does not include the guilt of the accused the proof has failed.

Appellant cited State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989) to support his request for the specific circumstantial evidence charge. Court's #4 (Request #10); R. 273, lines 5-6; R. 273, lines 11-20. The prosecutor objected to Appellant's request. R. 275, lines 4-7. The judge ruled: "State vs. Cherry² clears that up." R. 275, line 8.

Concerning direct and circumstantial evidence, the judge charged the jury as follows:

Now, there are two types of evidence which are generally presented during a trial. And they are known as direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual

² 361 S.C. 588, 606 S.E.2d 475 (2004).

knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact sought to be proven. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of the main fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, then you should find the Defendant not guilty.

R. 281, line 10 – R. 282, line 5. At the conclusion of the jury instructions, Appellant renewed his exception to the instruction concerning circumstantial evidence. R. 289, lines 2-4.

The jury began deliberations at 4:45 p.m. on April 12, 2012. R. 290, lines 13-14. By 6:15 p.m., the jury sent a note with two questions. R. 291, lines 10-11; R. 292, lines 5-9. At 8:47 p.m., the jury sent a note expressing its inability to arrive at unanimous verdicts: “we have deliberated and are unable to reach a unanimous verdict. ... P.S. we have reached a unanimous decision on one charge.” R. 296, lines 14-18; Court’s Exhibit #9. The judge decided to send the jurors home for the evening. R. 300, lines 17-21. The jurors left at 9:13 p.m. R. 302, lines 18-19.

The jurors returned to court at 9:22 a.m. on April 13, 2012. R. 306, lines 3-4. At that time, the judge instructed the jurors pursuant to Allen v. United States, 164 U.S. 492 (1896). R. 306, line 5 – R. 308, line 8. The jury resumed deliberations at 9:28 a.m. R. 308, lines 24-25. Just over an hour later, at 10:45 a.m., the jury returned guilty verdicts. R. 309, lines 6-10.

Discussion

Our Supreme Court approved the circumstantial evidence charge requested by Appellant in 1955 in State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955). In 1989, the Court explained the instruction found in Littlejohn was the appropriate instruction for juries when the state relied upon circumstantial evidence to prove its case. State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989). Subsequently, the Court held a jury instruction omitting the “reasonable hypothesis” phrase, as a whole, adequately conveyed the level of proof required to find a defendant guilty. State v. Grippon, 327 S.C. 79, 82-83, 489 S.E.2d 462, 463 (1997). The Court’s holding was based upon the trial court repeatedly charging the jury that the state had the burden to prove the defendant guilty beyond a reasonable doubt and properly defining reasonable doubt. Id. at 83, 489 S.E.2d at 463-464. Although the Court decided the dispositive issue in the case, the Grippon Court went on to recommend another jury instruction. Specifically, the Court recommended:

There are two types of evidence which are generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

Id. at 83-84, 489 S.E.2d at 464.

Chief Justice Finney and then-Justice Toal concurred in the result, but wrote separately to explain trial judge should not abandon South Carolina’s traditional jury charge found in Edwards. The concurrence explained the majority posited no “reasoned rejection

of the longstanding rule.” Looking to other jurisdictions, the concurrence explained that the Edwards language emphasized the need for careful reasoning, provided “sharpened clarity” to the meaning of reasonable doubt, and explained necessary information for jurors to accurately analyze circumstantial evidence. The concurrence concluded:

This Court should retain the Edwards charge because juries need more detailed information about the relation of circumstantial evidence to determination of guilt than the majority’s suggested instruction provides. The question is not whether circumstantial evidence carries the same probative weight as direct evidence; of course it does. Rather, the question is the proper means for evaluating circumstantial and how trial courts may best help juries understand their responsibilities.

Grippon, 327 S.C. at 84-88, 489 S.E.2d at 464-467 (J. Toal concurring).

In 2004, the Court revisited the circumstantial evidence charge. The Court held the language recommended in “Grippon is the sole remaining charge to be utilized by the courts of this state in instructing juries in cases relying, in whole or in part, on circumstantial evidence.” State v. Cherry, 361 S.C. 588, 597, 606 S.E.2d 475, 480 (2004). In their dissent, Chief Justice Toal and Acting Justice Lloyd, explained that although circumstantial and direct evidence are equally valid and convincing, circumstantial evidence, by definition, establishes collateral facts from which main facts may be inferred. Thus, a juror’s evaluation of circumstantial evidence requires the juror to connect collateral facts in order to reach a conclusion, which is not a process required when evaluating direct evidence. Id. at 603, 606 S.E.2d at 483 (C.J. Toal, dissenting). Rather than creating confusion or changing the standard for examining circumstantial evidence, the traditional charge “clarifies the jury’s responsibility to evaluate circumstantial evidence carefully and gives jurors more detailed information about the relation of circumstantial evidence to the determination of guilt.” Id. In fact, the lack of instruction for jurors concerning how to evaluate

circumstantial evidence may result in jurors “reach[ing] illogical conclusions based on emotion or intuition instead of a rational, deliberative process.” Id. at 604, 606 S.E.2d at 483.

The Court, in evaluating a directed verdict motion, recognized the utility of the traditional charge when examining and analyzing circumstantial evidence. State v. Hernandez, 382 S.C. 620, 626 n. 2, 677 S.E.2d 603, 606 n. 2 (2009). After quoting the traditional circumstantial evidence charge and noting the abandonment of the charge, the Court explained “it nonetheless illustrates the lack of evidence against [Hernandez, Guerrero, and Avila-Arjona].” Id.

Two years later in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the South Carolina Supreme Court provided a more detailed explanation of how the traditional charge guides the evaluation and analysis of circumstantial evidence in relation to the role of a juror in finding the facts and determining guilt or innocence. The Court acknowledged its abandonment of the traditional circumstantial evidence charge, but noted “the definition illustrates the lack of evidence against [Odems].” Id. at 590, 720 S.E.2d at 52. The Court provided further insight on this issue in footnote four:

However, the evaluation of circumstantial evidence requires the connection of collateral facts in order to reach a conclusion, and this process is not required when evaluating direct evidence. Thus, the traditional circumstantial evidence definition provides more detailed information about the relation of circumstantial evidence to the determination of guilt. The definition does not, however, change the standard evaluating evidence: every circumstance must be proved beyond a reasonable doubt.

Id. at 591 n.4, 720 S.E.2d at 53 n.4 (internal citations omitted).

Without question, a proper evaluation of circumstantial evidence requires connection of collateral facts to reach a conclusion, which is not required for evaluating direct evidence. According to our Supreme Court, the traditional circumstantial evidence language informs jurors regarding how to analyze circumstantial evidence – inferring main facts by making connections among collateral facts. The trial judge’s refusal to charge the jury pursuant to the traditional circumstantial evidence charge announced in Edwards, supra, violated Appellant’s right to require the prosecution to prove his guilt beyond a reasonable doubt.

II. The trial court erred in failing to strike the testimony of a prosecution witness, or in the alternative grant a mistrial, where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

Relevant facts

During a pretrial motion hearing regarding the testimony of an expert witness concerning latent fingerprint examination, Appellant explained to the court that he had received only conclusory statements contained within reports from the prosecution. The reports essentially stated that "fingerprint examination was done and that it was verified by Captain Kellet." R. 2, lines 18-22. The one-page reports provided no information to allow Appellant to understand the type of examination done. R. 2, lines 22-25. The prosecution explained "our latent experts, they don't do a lengthy report stating, specifically, what ridge matches what ridge." Instead, the report only indicates whether the unknown print matches a known print. R. 3, lines 21-24. The prosecutor further explained he "triple checked. There's no reports other than the conclusory statements that were given to defense counsel that these knowns match these prints." R. 4, lines 7-10. When Appellant requested copies of the prints that were consulted in making the verification, the prosecutor explained the fingerprint cards would be available that day. He further stated "If they want to get their own expert while we're trying the case or something, I'm not sure, but they're read and available, all the latents are." R. 4, line 17 – R. 4, line 4. The prosecutor assured the court he would check "to see if there's any notes" relating to the fingerprint analysis. R. 6, lines 19-21.

In light of Appellant's objections to the expert's testimony, the court conducted an in camera hearing. Jackie Kellet, employed by the Greenville Department of Public Safety forensic division, testified she entered the unknown print from the severed hand into the Automated Fingerprint Identification System (AFIS). The computer system provided her with a list of potential matches. Kellet printed the card of the person AFIS said the unknown belonged to and used a magnifying glass to visually examining the points to verify the result. R. 61, lines 19-20; R. 65, line 15-12; R. 68, lines 1-11. Kellet testified she made no notes while making the comparison. R. 65, lines 13-25; R. 71, lines 10-13. Other than issuing a report, Kellet made no record of her work. R. 72, lines 1-24.

Kellet then testified before the jury. On direct examination, her testimony tracked her in camera testimony. R. 77, line 8 –R. 84, line 25. On cross-examination, Kellet testified that on a typical day, a latent print examiner may “do 500 to 1000 comparisons a day, easy.” R. 86, lines 17-25. She reiterated she made no notes of her comparisons. R. 87, lines 1-3. Appellant then realized Kellet had a file in her hand and asked to examine its contents, which the judge permitted. R. 87, lines 8-11. Upon review of the file, Appellant realized at least three documents had not been produced in discovery – “an AFIS report or a screen shot, an automated fingerprint identification worksheet and what looks to be a latent handprint.” R. 88, lines 9-17.

The trial judge explained he was “disturbed that the state ha[d] not produced these documents after all the lengthy hearings and discussions.” R. 89, lines 6-11. Appellant reviewed the materials quickly and explained it appeared to be “a series of points of comparison on the screen shot ... [with] at least, two impressions that one looks to be identified, one looks to be the latent.” Appellant informed the judge that having the

materials would have provided him an opportunity to “raise some questions for cross-examination to support our objection.” R. 89, lines 12-20. The prosecutor claimed that after Appellant “filed motions regarding the fingerprint analysis, point by point analysis [he] called Captain Kellet and conferred with her regarding what she had in her file.” Thereafter, he told Appellant “there may be some AFIS stuff in there, that’s all I know.” He further claimed Appellant “didn’t want it.” R. 89, line 23 – R. 90, line 11. The judge ordered a ten-minute break. R. 90, lines 15-17.

After the break, Appellant explained that the AFIS report provided at least sixteen respondents, or possible matches, with associated scores. Kellet’s testimony indicated she found a match with the first respondent. According to the undisclosed document, the first respondent had a score of 5595 and the second respondent had a score of 5415. Therefore, the second respondent was very close in score to the first. Appellant explained “[h]ad we had this and had we been able to work with an expert in identifying the actual proximity of number one and number two and even number three, we could have, I think much more effectively cross-examined this witness.” R. 90, line 22 – R. 91, line 22. Appellant further expressed the difficulty of trying to show prejudice based upon the prosecution’s failure to produce the document within a short amount of time, especially when the document relates to scientific expert testimony. Appellant moved to strike the testimony of Kellet or grant a mistrial. R. 92, line 1 – R. 94, line 25.

In response, the prosecutor countered

we didn’t focus on anything regarding AFIS because we were [not] introducing anything regarding AFIS and it wasn’t evidence of anything. It was an investigative tool used to get them a potential comparison. So it wasn’t something that we even imagined would be anything that they would want. Given the fact, they knew it was run through AFIS.

R. 95, lines 18-24. He further argued Appellant was not prejudiced by the failure to disclose. Specifically he said “the only thing on there that they didn’t have access to was a list of 20 people that the computer program had a report on. If they wanted the report on those folks, they could have asked for it.” R. 96, lines 1-6.

The trial judge expressed his concern that the prosecutor previously claimed in prior discovery conference that he had “given them everything” and “that [was] not the case.” The judge further expressed that Appellant had found “a touch point, which has potential for prejudice.” He admonished the prosecutor “even though the prosecution may have not [found] a document to be relevant, you have a different mindset than the defense. So it is important to produce all of the documents.” R. 96, lines 7-18.³ The judge also demonstrated concern for Appellant’s predicament in being asked to articulate prejudice as a result of the prosecutor’s failure to disclose “on the spot.” R. 96, lines 19-21. Nevertheless, the judge found the failure to disclose did not rise to the level of requiring striking of the testimony or the granting of a mistrial. R. 97, lines 1-10. The undisclosed documents were made a court’s exhibit. R. 99, line 14 – R. 100, line 24; Court’s Exhibit #3.

Discussion

Rule 5(a)(1)(c) of the South Carolina Rules of Criminal Procedure provides

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

³ The judge later explained that the prosecutor does not have the “mindset” of the defense and may not view the same documents with the same level of importance as the defense as a result. He further stated that if Appellant had the documents, they may have been able to hire an expert to dispute Kellet’s finding. R. 97, line 19 – R. 98, line 7.

The Court of Appeals remarked that “[t]he requirements of Rule 5 ... are judicially created discovery mechanisms for use in criminal proceedings.” State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998). When a trial judge determines the prosecution violated Rule 5, the judge may fashion the proper remedy. The Rule itself explains that if a party failed to comply with the rule, the court “may prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.” Rule 5(d)(2), SCRCrimP. The Kennerly Court explained the definition of “material” as used in Rule 5 is the same as the definition used in the context of violations and obligations pursuant to Brady v. Maryland, 373 U.S. 83 (1963). Kennerly, 331 S.C. 453, 503 S.E.2d at 220. Thus, evidence is material for purposes of Rule 5 “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” United States v. Bagley, 473 U.S. 667, 682 (1985).

As explained by the Court of Appeals, the goal of Rule 5 is to ensure a criminal defendant’s right to a fair trial. Further, the role of a prosecutor is to be a minister of justice, not the representative of an ordinary party. As the representative of the sovereign, the prosecutor’s interest in a criminal prosecution is not to win, but to see that justice is done. Kennerly, 331 S.C. 454, 503 S.E.2d at 220.

The prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative ... of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor’s private deliberations, as the chosen forum for ascertaining the truth about criminal accusations.

Riddle v. Ozmint, 369 S.C. 39, 46, 631 S.E.2d 70, 74 (2006). Similarly, the Rules of Professional Conduct impose certain duties upon prosecutors. Specifically, the Rules

require a prosecutor “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilty of the accused or mitigates the offense.” Rule 3.8(e), SCACR. The special duties imposed upon prosecutors are due to the prosecutor’s “responsibility of a minister of justice and not simply that of an advocate.” Thus, the prosecutor has “specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.” Rule 3.8, cmt. 1, SCACR.

“The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution’s possession that may be favorable to the accused and material to guilt or punishment.” Hyman v. State, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012) (citing Brady, supra). “[A] showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted in the defendant’s acquittal.” Kyles v. Whitley, 514 U.S. 419, 434 (1995). It is enough that it undermines confidence in the verdict. Id. at 435.

Brady requires that prosecutors fully disclose to the accused all exculpatory evidence in their possession. United States Supreme Court decisions have elaborated the Brady obligations to include (1) the duty to disclose impeachment evidence, (2) favorable evidence in the absence of a request by the accused, and (3) evidence in the possession of persons or organizations. See Giglio v. United States, 405 U.S. 150 (1972); United States v. Agurs, 427 U.S. 97 (1976); Kyles, supra. Material must be disclosed “when prejudice to the accused ensures . . . [and where] the nondisclosure [is] so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.” Strickler v. Greene, 527 U.S. 263, 281-82 (1999).

The trial judge erred in failing to strike Kellet's testimony or grant a mistrial based upon the prosecution's withholding of material evidence. As explained by trial counsel and admitted by the prosecution, the prosecutor failed to disclose at least three documents contained within the fingerprint examiner's file. Those three documents included one showing the possible matches returned via AFIS. This evidence was necessary to impeach Kellet concerning her failure to examine more than one respondent print, the quality of the prints produced, and the likelihood that other respondent prints possessed the same unique identifying characteristics as the latent print. Additionally, given an opportunity, Appellant may have obtained an expert to challenge Kellet's finding altogether based upon the AFIS results.

III. The trial court erred in failing to grant a lengthy recess to permit Appellant to engage the services of an expert to review materials that where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

Relevant facts

Appellant incorporates by reference the relevant facts discussed in Issue II, supra. After the judge denied Appellant's request to strike Kellet's testimony or in the alternative grant a mistrial, Appellant requested the court delay the trial to permit Appellant to engage the services of an expert to examine the undisclosed records. R. 98, lines 10-23. The judge denied the request stating, "you can have those examined and you can pursue that without delaying the trial." He acknowledged that Kellet testified she only examined the first respondent, and Appellant may be able to present an expert to "attack the credibility" of Kellet by testifying "it's a better practice to examine the top two or three," and that such "might be of some benefit." R. 98, line 25 – R. 99, line 13.

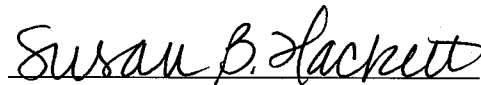
Discussion

Appellant incorporates by reference the law and analysis presented in Issue II, supra. At a minimum, the court should have granted Appellant a long recess or short continuance in order to acquire the assistance of an expert qualified to evaluate the withheld information. The court's failure to do so violated Appellant's right to a fair trial and due process of law.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentence and remand the matter for a new trial.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in dark ink and is positioned above the printed name and title.

Susan B. Hackett
Appellate Defender

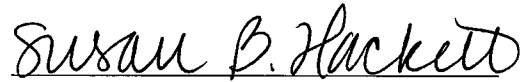
ATTORNEY FOR APPELLANT

This 21st day of October, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 21, 2013

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in dark ink and is positioned above the printed name and title.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

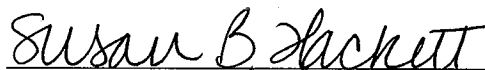
V.

CLARENCE WILLIAMS JENKINS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of October, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

The State,

Respondent,

v.

Clarence Williams Jenkins,

Appellant.

Appellate Case No. 2012-211588

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

The trial court's refusal to charge the jury pursuant to the traditional circumstantial evidence definition and explanation as provided in State v. Edwards violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury regarding how to evaluate circumstantial evidence.

II.

The trial court erred in failing to strike the testimony of a prosecution witness, or in the alternative grant a mistrial, where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

III.

The trial court erred in failing to grant a lengthy recess to permit Appellant to engage the services of an expert to review materials where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL**I.**

Whether the trial judge erred by denying Applicant's request to charge the *Edwards* "reasonable hypothesis" language in the circumstantial evidence charge where the Supreme Court of South Carolina has found the *Edwards* language is confusing to a jury and directed that it should not be used.

II.

Whether the trial judge abused his discretion in denying Appellant's motion for mistrial, or in the alternative, striking the State's fingerprint expert's testimony, or declining to allow additional time for study of the three sheets of paper in the expert's file that were not copied and provided to the defense, when the information was not material to guilt, innocence or impeachment but reflected, in addition to the victim's prints and information which was already known, possibilities from a computer database (AFIS) the State's fingerprint expert was provided but did not utilize in identifying the victim. [Appellant's Issues II and III].

STATEMENT OF THE CASE

The Greenville County grand jury indicted Appellant, Clarence Jenkins, in November 2008 for the murder of Mekole Harris. (R. p. 317). On December 23, 2008, the State filed a Notice of Intent to Seek the Death Penalty. (R. p. 329). In September 2011, the Greenville County grand jury also indicted Petitioner for the kidnapping of Ms. Harris, the murder victim. (R. p. 319). On March 27, 2012, the State filed a withdrawal of the notice of intent to seek the death penalty. (R. p. 330).

A jury trial was held April 9-13, 2012, before the Honorable Edward W. Miller. Solicitor Walt Wilkins, with Assistant Solicitors Betty Strom and George Campbell, represented the State. Public Defender John Mauldin and Susannah Ross, Esq., along with volunteers from the Washington D.C. law firm of Akin Gump, Mark McDougal, Esq., Conner Mullin, Esq., Katherine Creely, Esq., and Karen¹ Williams, Esq., represented Appellant. The jury convicted Appellant as charged. (R. p. 309, lines 16-22). The judge sentenced Appellant to life imprisonment for the murder. (R. p. 314, line 1). The judge, pursuant to state law, did not sentence Appellant on the kidnapping conviction in light of the sentence for murder. See S.C. Code § 16-3-910 (must be imprisoned for a period not to exceed thirty years *unless sentenced for murder as provided in Section 16-3-20*) (emphasis added). See also *State v. Vazsquez*, 364 S.C. 293, 302, 613 S.E.2d 359, 363 (2005), *abrogated on other grounds by State v. Evans*, 371 S.C. 27, 637 S.E.2d 313

¹ The cover sheet on the transcript reflects a typographical and/or scrivener's error listing Ms. Williams as "Katherine." Ms. Williams stated her first name was "Karen". (R. p. 2, lines 17-18).

(2006) (“Generally, when a defendant is convicted for murder any sentence for the kidnapping of the victim would be vacated.”).²

This appeal follows.

² The conviction, though, still stands. *See State v. Perry*, 278 S.C. 490, 495-496, 299 S.E.2d 324, 327 (1983) (“we vacate the life imprisonment sentence for kidnapping because of the statutory provision. The statute does not mandate a vacation of the kidnapping conviction. It merely provides that either the life imprisonment sentence or the death penalty sentence required in a murder conviction shall be sufficient punishment.”).

RESPONDENT'S STATEMENT OF FACTS

The jury convicted Appellant of the murder Mekole Harris. The evidence at trial established that Appellant, with wife Carmen Jenkins, together killed Ms. Harris. Appellant and Carmen Jenkins then severed Ms. Harris' hands, feet, and fingers, and delivered those body parts to the homes of Sue Bostic and Judon Burnside as part of a scheme to gain the return of Grace Davis who had joined the Jenkins' intimate relationship. The following evidence places the events and scheme in some context.

On April 7, 2008, officers responded to a report of the receipt of a threatening letter and a garbage bag with unknown contents. Upon opening the bag, officers discovered a hand, foot, and severed toes. (R. p. 11, lines 12-24; p. 14, lines 13-23).

Sue Bostic had discovered the letter on her car windshield, and the bag next to her apartment door. She called the police. (R. p. 12, line 20 – p. 13, line 2; p. 17, line 12 – p. 18, line 18). Ms. Bostic had received another letter the week before. That letter was addressed to Grace Davis, indicated a demand for \$10,000, that someone was “in trouble,” that someone “had lost the protection of an organization” and that “if they didn't comply with the letter, ... bad things would happen to them.” (R. p. 16, lines 6-13; p. 26, lines 6-12). Ms. Bostic's sister, Judon Burnside, had also received a strange letter demanding money, (R. p. 36, lines 9-24), and a bag was deposited at her home, as well. The bag at Ms. Burnside's home similarly contained body parts. (R. p. 50, line 23 – p. 54, line 15).

Further, both Ms. Bostic and Ms. Burnside received strange telephone calls to their homes prior to receipt of the body parts. Ms. Burnside testified that “some girl said that I know who writing the letter. Then she said, I got to go, I believe he done followed

me.” (R. p. 37, lines 9-24). The girl also referenced “Willie Davis.” (R. p. 21, lines 13-18). Ms. Bostic testified she understood “some woman was crying and going on” during the call to her home. (R. p. 19, line 23 – p. 20, line 21). Marquise “Meko” Burnside was in Ms. Bostic’s home when the call came in. He testified the woman was “saying that somebody about to get killed. Saying that Willie Davis was involved.” (R. p. 38, lines 5-10).

The common thread in these events is Grace Davis. Ms. Davis is Ms. Burnside’s daughter, Ms. Bostic’s neice, and Marquise’s mother. (R. p. 15, lines 12-22; p. 35, lines 10-11). Ms. Davis had been married to Willie Davis. (R. p. 110, line 25 – p. 111, line 1). Ms. Davis’ family was aware that Ms. Davis had been involved with Appellant and his wife, Carmen Jenkins. The family did not approve. (R. p. 22, lines 16-25; p. 35, lines 7-25; p. 172, lines 9-24).

Ms. Davis explained the relationship at trial. She testified that she became involved with Appellant in August 2007 after she had left her husband. (R. p. 111, line 5 – p. 112, line 22). Ms. Davis eventually met Carmen, and the three began an intimate relationship, exchanged vows and signed an “intimate covenant” to formalize their relationship. (R. p. 126, lines 7-13). They lived together with the Jenkins’ children and the Davis children. (R. p. 120, lines 1-25; p. 163, line 15 – p. 164, line 8).

In late February 2008, DSS removed Ms. Davis’ children, placing them in Ms. Bostic’s home. (R. p. 127, lines 17-24; p. 175, lines 3-10). On March 15, 2008, in an attempt to get her children back, Ms. Davis left the home. (R. p. 128, line 2 – p. 129, line 15). Ms. Davis testified that as she left, Appellant appeared with a machete in hand, but ultimately stated he could not kill her. (R. p. 130, line 3 – p. 131, line 3). Carmen

Jenkins was also upset about her leaving, but Ms. Jenkins testified she understood the need to regain custody of the children. (R. p. 129, lines 9-11; p. 176, line 18 – p. 177, line 14).

Ms. Davis further testified that, during the time she was with the Jenkins, she and the Jenkins sought money from her father, Marvin Poole, and her father's money manager, Eric Harris. (R. p. 115, line 2 – p. 117, line 10; p. 141, lines 11-14). In April 2008, Mr. Poole also received a threatening letter addressed to Ms. Davis and containing a demand for \$10,000. (R. p. 141, line 15 – p. 146, line 5).

Appellant's wife, Carmen Jenkins, pled guilty to Ms. Harris' murder prior to Appellant's trial. (R. p. 160, lines 2-7). As part of her agreement, and in hopes of reducing her fifty (50) year sentence, she testified at his trial. (R. p. 160, line 13 – p. 161, line 25). Ms. Jenkins testified that Appellant was upset with Ms. Davis leaving, and began a plan to force her back. The plan included letters to Ms. Davis's family. (R. p. 177, line 16 – p. 179, line 6). Ms. Jenkins further testified that Appellant brought Ms. Harris to the home on April 4th or 5th. Appellant took Ms. Harris into a room separate from Ms. Jenkins. When he called Ms. Jenkins' to come into the room, Ms. Jenkins entered the room and found Ms. Harris naked and handcuffed. Appellant advised Ms. Harris "that she's under arrest for prostitution and possession of crack." (R. p. 188, line 24 – p. 190, line 18). Ms. Harris agreed to help them in order to avoid possible incarceration. (R. p. 190, lines 18-24). Ms. Jenkins testified that Appellant wrote a "script for her to read over the phone to Grace's family members." (R. p. 190, line 24 – p. 191, line 1). One of the "scripts" recovered from the home read, "Hi, my name is Mekole. I'm Willie's girlfriend," and goes on to discuss money. (R. p. 191, line 23 – p.

192, line 20). Ms. Jenkins testified that Appellant later ordered her to kill Ms. Harris. She testified that she attempted to choke Ms. Harris, but lacked sufficient strength. Appellant helped and eventually placed a bag over Ms. Harris' head. (R. p. 201, line 23 – p. 203, line 6). The Jenkins then took Ms. Harris' body into a bathroom at the home. Appellant used a variety of tools, including a machete, to begin to sever the hands, feet, and toes, storing them in containers. (R. p. 203, line 19 – p. 204, line 1; p. 206, line 19 – p. 208, line 9). Those severed parts Ms. Jenkins delivered to Ms. Bostic's home and Ms. Burnside's home, with letters, at Appellant's direction. (R. p. 209, line 13 – p. 212, line 18). The torso and remaining body parts were disposed of separately in remote area. Ms. Jenkins testified that she and Appellant packaged the remains, drove to the remote area in their van, and Ms. Jenkins set fire to the remains. (R. p. 208, line 8 – p. 209, line 10).

Investigators took fingerprints and DNA samples from the severed hands in an attempt to identify the victim. (See R. p. 47, lines 1-2; p. 79, line 16 – p. 80, line 3). The prints were matched to known prints of Mekole Michelle Harris. (R. p. 82, line 9 – p. 84, line 19). DNA samples from the hands, then identified as Ms. Harris' hands, were matched to samples from the feet, samples from the bathroom in Appellant's home, and samples from a glove in Appellant's van. (R. p. 266, line 8 – p. 267, line 7; p. 268, line 16 – p. 271, line 15). The investigation also revealed that an online credit application from April 4, 2008 in Mekole Harris' name was declined on April 9, 2008. All correspondence for the event, though addressed to Ms. Harris, reflected the Jenkins' home address, phone number, and e-mail. (R. p. 147, line 3 – p. 149, line 24; p. 150, line 15 – p. 153, line 25). The employment was listed as "Labor Finders." (R. p. 152, lines 23-25).

Vivian Young provided transportation for her boyfriend to his job at Labor Finders. She testified she saw Appellant with Ms. Harris, whom she knew previously from school and from being around Simpsonville, in April 2008 at Labor Finders. On April 1, 2008, Ms. Harris was sitting on Appellant's lap outside Labor Finders. On April 3, 2008, Ms. Young saw Appellant with Ms. Harris in a bathroom at Labor Finders. Ms. Young testified that she never saw Ms. Harris again. (R. p. 102, line 23 – p. 109, line 21).

Ms. Jenkins, in exchange for dropping the notice of intent to seek the death penalty against her, eventually guided the officers to the remote area where she set fire to the remains at Appellant's direction. (R. p. 209, lines 6-10; p. 219, lines 7-23). Officers recovered a number of burned artifacts and human bones. (R. p. 260, line 17 – p. 263, line 3).

At sentencing, Appellant denied killing Ms. Harris, and stated he was simply guilty of helping his wife, Carmen Jenkins, clean up and dispose of the body. (R. p. 310, line 5 – p. 313, line 24).

As stated above, the trial judge, having heard all the evidence, sentenced Appellant to life in prison. (R. p. 314, lines 1-2).

ARGUMENT

I.

The trial judge did not err in declining Applicant's request to charge the outdated reasonable hypothesis language in the circumstantial evidence charge where the Supreme Court of South Carolina has found such language to be confusing and directed it should not be used. The trial judge properly charged the correct and current circumstantial evidence charge approved of in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), which the Supreme Court of South Carolina found to be the sole appropriate charge in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). There is no error.

Relevant Facts:

Applicant submitted the following request to charge:

Request No. 10:

When the state relies on circumstantial evidence, you may not convict a defendant unless every circumstance relied on by the state is proven beyond a reasonable doubt, and all of the circumstances so proven are consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that the circumstances create a probability, even if it is a strong one. If, assuming the circumstances are true, there is a reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989).

(R. p. 326).

Defense counsel "forcefully request[ed]" the charge, and argued "the recent case that dealt with the analysis of circumstantial evidence in the South Carolina Supreme Court ... renews the ongoing debate, if you will, about the appropriateness of the Edward charge versus the Grippon charge." (R. p. 273, lines 5-20).

The State objected to the request. (R. p. 275, lines 4-7). The trial judge declined to charge the language stating, "State v. Cherry clears that up." (R. p. 275, line 8). The trial judge instructed the jury as follows:

Now, there are two types of evidence which are generally presented during a trial. And they are known as direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eye witness. It is evidence which immediately establishes the main fact sought to be proven. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of the main fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, then you should find the Defendant not guilty.

(R. p. 281, line 10 – p. 282, line 5).³

After the judge's charge to the jury, defense counsel "took exception" to the requested language not being included. (R. p. 288, line 23– p. 289, line 4).

On appeal, Appellant argues in light of recent decisions in the Supreme Court of South Carolina referencing the *Edwards* language, particularly *State v. Hernandez*, 382 S.C. 620, 626 n. 2, 677 S.E.2d 603, 606 n.2 (2009) and *State v. Odems*, 395 S.C. 582, 720

³ See *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997). The language almost precisely follows the approved instruction in *Grippon*:

There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

327 S.C. at 83-84, 489 S.E.2d at 464.

S.E.2d 48 (2011), the *Grippon* charge is no longer sufficient. (FBOA, p. 13).⁴ He argues the failure to give the charge “violated [his] right to require the prosecution to prove his guilt beyond a reasonable doubt.” (FBOA, p. 13).

Discussion:

As an initial matter, the allegation that the charge given offended a constitutional right is not preserved for review. Defense counsel requested the charge based on state law and argued the particular language requested was sanctioned by a change in state law. Counsel did not argue that the charge given was constitutionally infirm. Having failed to make the constitutional argument to the trial judge, the issue is procedurally barred from review. *See State v. McWee*, 322 S.C. 387, 391, 472 S.E.2d 235, 238 (1996) (“this issue is not preserved for review because at trial, appellant never cited any constitutional basis for his request”). *See also State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 - 694 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”). Even so, as a matter of state law, there is no error. Appellant is not entitled to any relief.

“[T]he trial court is required to charge only the current and correct law of South Carolina.” *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011), *quoting Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). In *State v. Cherry*, 361 S.C. 588, 601-602, 606 S.E.2d 475, 482 (2004), the Supreme Court of South Carolina held “that the recommended language in *Grippon* is the sole and exclusive

⁴ A similar challenge to the charge is pending (as of the initial briefing in this case) in this Court in *State v. Leonard Goodwin*, Appellate Case No. 2011-193507 and *State v. Fred Madden*, Appellate Case No. 2011-199606.

charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction.” The Supreme Court of South Carolina has recently again approved that charge in *State v. Logan*, Opinion No. 27296 (S.C. Sup. Ct. filed August 14, 2013) (Shearouse Adv.Sh. No. 36 at 27). Moreover, the Court addressed the very argument Appellant raises here, *i.e.* that their recent cases referencing the *Edwards* charge signaled disapproval of the *Grippon* charge. The Court rejected that argument.

The Court found its recent cases referencing the *Edwards* language did not address the jury instructions given. Rather, those cases – including the *Hernandez* and *Odems* cases upon which Appellant relies – made reference to the *Edwards* language in context of the judge considering a directed verdict motion. In short, none of the recent Supreme Court cases citing the *Edwards* language addressed the *Grippon* jury charge at all. *Logan*, (Shearouse Adv. Sh. No. 36 at 34-35). Thus, it is now settled that neither of the cases cited by Appellant announced a retreat from the *Grippon* charge.

Simply, both *Hernandez* and *Odems* were cases regarding the presence or absence of sufficient evidence to send the case to the jury, not the sufficiency or clarity of a charge to the jury. *See Logan*, (Shearouse Adv. Sh. No. 36 at 34 and n. 7). *See also State v. Hernandez*, 382 S.C. at 625 n.2, 677 S.E.2d at 605-606 n.2 (“Although in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) the Court abandoned this charge and held that it may confuse the jury by leading it to believe that the standard for measuring circumstantial evidence is different from that for measuring direct evidence, it nonetheless *illustrates the lack of evidence* against Petitioners.”) (emphasis added); *Odems*, 395 S.C. at 590, 720 S.E.2d at 52 (“Despite the Court’s abandonment of the use of this particular definition as a jury charge in *State v. Cherry*, the definition *illustrates*

the lack of evidence against Petitioner.”) (emphasis added). The evaluation of evidence for a directed verdict motion is not the same as the jury’s evaluation of evidence in determining whether the State had met its burden of proof beyond a reasonable doubt. The “**trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.**” *State v. Cherry*, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis in original). See also *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 453 (1984) (“The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict and a corresponding duty is imposed on this Court.”). Critically, there is no mention in either *Hernandez* or *Odems* of the sufficiency of the *Grippon* charge. Thus, like the challenge in *Logan*, the instant challenge fails for the same reasons.

Further, at the time of trial, the relevant precedent dictated that only the *Grippon* charge be used. *Cherry*, *supra*. That charge does not include the “reasonable hypothesis language” requested here. (See R. p. 326 [Request to Charge No. 10]). The “reasonable hypothesis language” charge from *Edwards* was specifically rejected in *Cherry* and the Supreme Court of South Carolina directed that the charge no longer be used. *Id.* Indeed, the Court in *Cherry*, consistent with *Holland v. United States*, 348 U.S. 121 (1954), found the “reasonable hypothesis” instruction merely served to confuse juries.⁵ *Cherry*, 361 S.C. at 601-602, 606 S.E.2d at 482.

⁵ In *Holland v. United States*, the United States Supreme Court, when considering a complaint that the trial judge failed to charge when “the Government’s evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt,” acknowledged that some jurisdictions allowed the charge, but concluded that “the better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect.” 348 U.S. at 139-140. Given that the Supreme Court disapproves of the

The Court in *Logan* reaffirmed both the correctness of the *Grippon* charge and its earlier disapproval of the “reasonable hypothesis” language in rejecting the suggestion that *Cherry* had been implicitly overruled. *Logan*, (Shearouse Adv. Sh.No. 36 at 35) (“the trial court did not err in providing a circumstantial evidence charge consistent with *Grippon*.”). The language remains disfavored. *Logan*, (Shearouse Adv.Sh. No. 36 at 39) (“requiring a jury to inquire as to whether there is any other reasonable explanation other than the defendant’s guilt comes perilously close to shifting the burden of proof from the State to the defendant.”).

However, Respondent notes that the Supreme Court of South Carolina has now provided (while this case was pending on appeal) that an alternate charge may be given:

There are two types of evidence which are generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant’s behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

language, Appellant’s constitutional argument, if it could be heard, would find no support in federal authority. However, the argument is procedurally barred.

Logan, (Shearouse Adv. Sh. No. 36 at 41).⁶

But again, it is an alternate charge. The charge is not designated the sole charge available nor even mandatory, though a trial judge should use the above charge when requested by the defendant. (Shearouse Adv. Sh. No. 36 at 40 and 41) (“we modify *Grippon* and *Cherry* to allow the additional language”). In sum, though the Court in *Logan* allowed for an alternate charge, the Court did not find the *Grippon* charge incorrect.

Moreover, the *Logan* charge is specifically tailored to a case relying upon circumstantial evidence. (Shearouse Adv.Sh. No. 36 at 41) (“to the extent the State relies on circumstantial evidence, all of the evidence must be consistent with each other, and when taken together, point conclusively to the guilty of the accused.”) (emphasis added). Clearly the *Logan* charge is most applicable in cases where circumstantial evidence is center stage. *Id.* This is not such a case. To the contrary, the co-defendant, Appellant’s wife Carmen Jenkins, testified in detail to Appellant’s direct involvement. The impact of the circumstantial evidence is not as keen in such a case. See, for example, *State v. Salisbury*, 343 S.C. 520, 525, 541 S.E.2d 247, 249 (2001) (“the direct evidence in this case is sufficient to establish the elements of the crime and the identity of the perpetrator such that the trial court did not abuse its discretion in refusing a circumstantial evidence

⁶ In concurring in the result, Justice Kittredge, with Justice Pleicones, would adhere strictly to the *Grippon* charge, finding:

All of the federal courts and the vast majority of state courts have adopted *Holland*. The reasoning and rationale for following *Holland* was persuasively set forth by this Court in *Cherry*, and I see no basis for rejecting *Holland* and overruling *Grippon* and *Cherry*.

Logan, (Shearouse Adv.Sh. No. 36 at 43).

charge”). Moreover, the jury was thoroughly and adequately charged on reasonable doubt:

... reasonable doubt is the kind of doubt which would cause a reasonable person to hesitate to act. And reasonable doubt may arise from the evidence which is in the case or from the lack or absence of evidence in the case. And you, the jury, must determine whether or not reasonable doubt exists as to the guilty of this Defendant. The State has the burden of proving each and every element of a crime beyond a reasonable doubt. And any reasonable doubt that you may have in your deliberations should be resolved in favor of the Defendant.

(R. p. 280, line 25 – p. 281, line 9).⁷

Further, reasonable doubt was specifically tied to the weighing all the evidence – circumstantial and direct – in language immediately following the circumstantial evidence charge:

... You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, then you should find the Defendant not guilty.

(R. p. 282, lines 2-5).

Thus, the jury was given the correct and proper law. Similarly, the Court found in *Logan* that the judge “clearly instructed the jury regarding the reasonable doubt burden of proof,” [t]hus, any conceivable error was harmless beyond a reasonable doubt. *Logan*, at n. 8. Based on the *Gripton* charge and the reasonable doubt instructions given in Appellant’s trial, Respondent submits it is the same here. If there could be any finding of error, such error could only be harmless.

⁷ Appellant does not contest the correctness of the reasonable doubt charge. Even so, Respondent notes the definition used is well recognized as correct. See *State v. Needs*, 333 S.C. 134, 155 n. 12, 508 S.E.2d 857, 868 b, 12 (1998). See also *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001) (describing the same definition as “a correct statement of South Carolina law.”).

However, the trial judge did not err. The trial judge gave the jury a current and correct charge on circumstantial evidence as approved by our Supreme Court. He did not err in declining to give the disfavored “reasonable hypothesis” language as found in *Edwards*. This Court should affirm the ruling of the lower court.

II.

The trial judge did not abuse his discretion in denying Appellant's motion for a mistrial, or in the alternative, striking the State's fingerprint expert's testimony for failure to provide paper copies of three sheets of paper in the expert's file that were not material to guilt, innocence or impeachment. The trial judge likewise did not abuse his discretion in denying Appellant's motion for a continuance to further examine those three sheets or request expert review where the identification at issue was the identification of the victim, and the materials at issue reflected AFIS possibilities that the fingerprint expert did not utilize after having personally matched the first possibility on the variable listing.

[Appellant's Issues II and II].

Relevant Facts:

Investigating officers used fingerprints from the severed hands to aid in the identification of the victim. (See R. p. 47, lines 1-2; p. 79, line 16 – p. 80, line 3). The prints were matched to known prints of Mekole Michelle Harris. (R. p. 82, line 9 – p. 84, line 19). DNA samples from the hands, then identified as Ms. Harris' hands, were matched to samples from the feet, samples from the bathroom in Appellant's home, and samples from a glove in Appellant's van. (R. p. 266, line 8 – p. 267, line 7; p. 268, line 16 – p. 271, line 15). Further, Carmen Jenkins testified the individual she and Appellant killed and subsequently dismembered in their bathroom was Mekole Harris. (R. p. 189, lines 7 – p. 192, line 20; p. 201, line 22 – p. 204, line 3; p. 206, line 19 – p. 208, line 13; p. 226, line 4 – p. 229, line 23). Appellant's challenge on appeal goes to the initial identification of the victim by the fingerprint impressions from her severed hands.

During pre-trial, defense counsel asserted they had received only a one page fingerprint report. Counsel complained they did not know if the expert(s) "simply used a computerized program to identify matches," but, if so, "we can't cross-examine AFIS, or a computer program." (R. p. 2, line 17 – p. 3, line 17).

The Solicitor noted their fingerprint experts “don’t do a lengthy report stating, specifically what ridge matches what ridge,” rather, they only report a match. (R. p. 3, lines 21-24). The Solicitor also noted that the experts would, of course, be available for cross-examination. (R. p. 3, lines 24-25). He further noted that “these witnesses have been available for four years” for the defense to contact, but, at any rate, he had “tripled checked” and found “[t]here’s no reports other than the conclusory statements that were given to defense counsel that these knowns match these prints.” (R. p. 4, lines 1-10).

Defense counsel again argued the one page report was “inadequate to cross-examine the witnesses,” and requested the witnesses “bring any copies of the prints that they consulted in making their verification....” (R. p. 4, lines 17-21).

The Solicitor additionally stated the “fingerprint cards that have been in latent up until this morning,” would be introduced in the trial and provided to the defense “[i]f they want to get their own expert while we are trying this case....” (R. p. 4, line 22 – p. 5, line 4). The trial judge, at that point, deemed the issue settled, with defense counsel receiving what was requested. (R. p. 5, lines 5-18). However, defense counsel pressed further and clarified that they were seeking notes of the comparison to ensure a computer generated program was not used as a program could not be cross-examined. (R. p. 5, line 21 – p. 7, line 17). The defense further argued the fingerprint match led to the identity of the victim, the identification accepted for purposes of the DNA matches, all of which should be suppressed if the print identification is suppressed. (R. p. 8, line 1 – p. 9, line 22).

The Solicitor responded that the fingerprint expert did an examination and declared a match. The Solicitor added that the defense could cross-examine the expert, Jackie Kellet. (R. p. 9, line 24 – p. 10, line 3).

On the second day of trial, just prior to the State's fingerprint expert being called to testify, the defense requested the trial judge "determine the admissibility" *in camera* before the jury returned to the courtroom. Upon the judge's request for clarification, defense counsel asserted Appellant did not wish to review the witness's qualifications, but to determine her trial testimony. Defense counsel stated: "We have no notes, no discovery at all other than the report." (R. p. 60, line 4 – p. 61, line 5). The solicitor noted that "the report is the result[.]" (R. p. 61, lines 6-7). The judge allowed *in camera* examination.

Jackie S. Kellet, Captain of the Forensic Division, Greenville County Department of Public Safety, testified that she "used the AFIS, which is Automated Fingerprint Identification System ... a computerized database maintained by" SLED, as a "tool ... to search unknown prints or latent prints against a known database." (R. p. 64, lines 15-22). The captain explained the database simply "sends back a list," as many as is requested, in this case twenty-five, and a fingerprint examiner must determine if there is a match. (R. p. 64, line 15 – p. 65, line 5). Captain Kellet testified, at that point, "it's a mental observation that I use. We don't write anything down ... its going to be the same whether I do it two years ago or last month or today. Those points are still there in those prints." (R. p. 65, lines 17-22). Having prints from all ten fingers to compare, Captain Kellet testified that she identified the prints as belong to Mekole Michelle Harris. (R. p. 65, line 23 – p. 67, line 19). She testified that AFIS did not match the prints, but merely

provided her a pool of samples to draw from – only an examiner can declare a match. (R. p. 68, lines 14-24).

The defense objected to the testimony pursuant to Rule 703, South Carolina Rules of Evidence. (R. p. 74, lines 19-20). Defense counsel argued that the rule allows for the disclosure of the “facts or data in a particular case upon which an expert bases his opinion or inferences,” and, since there were no notes to disclose, the witness should not be allowed to testify. (R. p. 74, line 21 – p. 75, line 5). The trial judge declined to exclude the testimony recognizing the defense’s ability to cross-examine and impeach the witness, and argue those points to the jury. (R. p. 75, lines 6-14).

The State offered Captain Kellet as an expert in fingerprint analysis. The defense had no objection to her qualification. (R. p. 78, lines 3-7). She testified the prints from the severed hands matched the known prints of Mekole Michelle Harris. (R. p. 82, lines 9-17). On cross-examination, defense counsel asked how many of the twenty-five AFIS possible matches that she reviewed, to which the captain responded just one, as that one matched. (R. p. 85, line 22 – p. 86, line 1). She confirmed to defense counsel that she did not keep notes of her comparisons. (R. p. 87, lines 1-3). Defense counsel noted that the witness had a file with her and asked if the defense could examine the file before the witness was excused. (R. p. 87, lines 8-10). The trial judge sent the jury out. (R. p. 87, lines 20-25). At defense counsel’s request, the trial judge also sent the witness out, subject to recall. (R. p. 88, lines 3-8).

Defense counsel argued there had been a “serious breach” in discovery, as the file contained three sheets that were not disclosed. When asked about potential prejudice, defense counsel responded “had we had this in hand and had an opportunity to look at it,

and, perhaps, raise some questions for cross-examination to support our objection” but they did not have such opportunity. (R. p. 89, lines 12-20). The Solicitor advised the Court:

Mr. Mauldin filed motions regarding the fingerprint analysis, point by point analysis. I called Captain Kellet and conferred with her regarding what she had in her file. And I told Mr. Mauldin there may be some AFIS stuff in there, that’s all I know. He said he didn’t want it. So we had this conversation. And it’s been available in latents for four years now. And all it is is - - what she just described is how she ran the fingerprints through AFIS and they got a list of 20 people to check. So it’s not going to be introduced. And we never knew anything about it until he filed a motion making an issue with it. And I talked to Mr. Mauldin about it. I said you can have anything you want. I’m trying to track down everything we’ve got.

(R. p. 89, line 23 – p. 90, line 11).

Mr. Mauldin acknowledged speaking with the solicitor, and having the “one page that they had provided us.” (R. p. 90, lines 12-14). The trial judge immediately thereafter took a “10-minute break,” to allow for review of the documents and argument on prejudice. (R. p. 90, lines 15-17).

When the proceedings resumed, Defense counsel complained that had they had the AFIS results they may have been better prepared for cross-examination, and further stated:

And here’s why it’s so important in the context of the case, Your Honor. As we laid out in our previous motion, this fingerprint evidence is the heart of the forensic case. They’re only able to identify these remains as a result of these fingerprints. If they couldn’t do this, they wouldn’t have DNA, they wouldn’t have serology, they wouldn’t have anything. Our job is to challenge that evidence. And you can’t challenge that evidence if we don’t have information like this, which we’ve asked for repeatedly.

(R. p. 91, lines 7-22).

Counsel also complained that since they did not know what was not disclosed beforehand, “we can’t be prepared to establish legitimate prejudice for it on the spot....” (R. p. 92, lines 22-23). Counsel ultimately moved to either strike the testimony or for the trial judge to grant a mistrial. (R. p. 94, lines 23-25).

The Solicitor asserted that the defense was aware of the process for “four years,” specifically, they knew “there was an AFIS run. They have the report on that.” (R. p. 95, lines 1-10). The only thing they did not have was the list of people for potential comparison, which they could have asked for. (R. p. 96, lines 3-6).

The trial judge noted that in multiple discovery conferences prior to trial in this matter, he was informed the State had given the defense “everything,” and expressed that “it is important to produce all of the documents.” (R. p. 96, lines 7-17).⁸ He also noted that defense counsel had a point about arguing “prejudice on the spot without having an opportunity to mull it over and examine it.” (R. p. 96, lines 19-21). The judge then considered the fact the expert testified that she did not use the remaining AFIS suggestions; rather, “she only examined one, and found the match.” (R. p. 96, lines 21 – 25). The judge denied the requested relief:

⁸ The trial judge also “cautioned the Solicitor’s office that beginning now, that they make sure that every single document in your position [sic] or in law enforcement’s possession has been produced. Because if this is a pattern, then some form of deterrence has to come into play.” (R. p. 97, lines 4-9). The Solicitor duly noted the caution. Further, the Solicitor advised the trial judge of his pre-trial attempts to gather all necessary materials, and his intent to avoid any impropriety by revisiting the issue with his staff: “just so you know, on two separate occasions, we sent letters to every law enforcement witness, please, give us everything that you have in your file. And I will certainly review our policies with my office to make sure that this does not become a pattern. It’s important to me as an officer of the court and as a longstanding prosecutor as well.” (R. p. 97, lines 11-18). Respondent notes there was no allegation of a pattern. Respondent further notes that defense counsel, in making the motion, stated he was “not claiming any bad faith here. This is not a bad faith question on the part of either side.” (R. p. 92, lines 18-19).

... even though there is this failure to disclose, I don't find that this failure to disclose rises to the level which would necessitate striking the testimony or the more onerous remedy of a mistrial.

(R. p. 96, line 25 – p. 97, line 4).

After the ruling, defense counsel requested, as alternate relief, “a delay in trial until we can have an opportunity to have an expert examine these records and determine whether or not it's appropriate that he testify to the invalid dependency on that particular report.” (R. p. 98, lines 19-23). The Court likewise declined to delay finding “you can pursue that without delaying the trial.” (R. p. 98, line 24 – p. 99, line 1). The trial judge again noted the witness “testified she only examined one, the top one, it was a match. There's been no question about that in her testimony.” (R. p. 99, lines 4-6). The judge further reasoned “the significance of having someone else talk about maybe it's a better practice to examine the top two or top three as an attempt to attack the credibility of this witness or the Greenville County forensic division might be of some benefit, but I don't think it undermines the reliability of the testimony that's been presented or the findings of Captain Kellet.” (R. p. 99, lines 7-13).

The documents at issue are three pages from Captain Kellet's file, which were copied and marked as Court's Exhibit 3 – a one page computer screen shot of the AFIS results, a worksheet showing one item with the name and general information for Mekole Michelle Harris, and copy of a print with similar information handwritten on the copy. (R. p. 99, lines 12-24; p. 321 [Court Exhibit 3]).

On appeal, Appellant submits the trial judge erred in not striking the testimony or granting the mistrial. (FBOA, p. 20). He argues the evidence was material as to impeach of Captain Kellet on a “failure to examine more than one respondent print, the quality of

the prints produced, and the likelihood that other respondent prints possessed the same unique identifying characteristics as the latent print.” (FBOA, p. 20). Appellant also asserts that the failure to timely disclose the documents failed to provide an opportunity for counsel to retain and/or consult with a fingerprint expert “to challenge Kellet’s finding altogether based upon the AFIS results.” (FBOA, p. 20).

Discussion:

The trial judge found that the Solicitor’s office failed to disclose the three pages from Captain Kellet’s file. However, the trial judge found those documents were not material. Therefore, no violation of substance occurred. The trial judge’s ruling should be affirmed as it is supported by the facts of record and relevant precedent.

Rule 5(a)(D), SCRCrimP, provides, in relevant part, that upon request, “the prosecution shall permit the defendant to inspect and copy ... scientific tests ... or copies thereof ... which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.” The definition of “material” in Rule 5 has been found to be the same as in the *Brady*⁹ line of cases. *State v. Moses*, 390 S.C. 502, 516, 702 S.E.2d 395, 402 (Ct.App. 2010). “Evidence is material ‘only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’” *State v. Frazier*, 394 S.C. 213, 223-224, 715 S.E.2d 650, 655 (Ct.App. 2011) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)). The inquiry is not whether a different result would have obtained, but whether there is “a probability sufficient to undermine confidence in the outcome” of the proceedings. *Id.* Reversal may only be granted on a Rule 5 violation upon a showing of

⁹ *Brady v. Maryland*, 373 U.S. 83 (1963).

prejudice. *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999) (citing *State v. Trotter*, 317 S.C. 411, 453 S.E.2d 905 (Ct. App. 1995), *aff'd in result* 322 S.C. 537, 473 S.E.2d 452 (1996)). Where the trial record supports the trial judge's decision, the reviewing appellate court should affirm. See *State v. Davis*, 309 S.C. 56, 63, 419 S.E.2d 820, 825 (Ct.App. 1992) ("Sanctions for noncompliance with disclosure rules are within the discretion of the trial judge and will not be disturbed absent an abuse of discretion.").

The critical facts are these: 1) the defense knew before trial that the fingerprint expert utilized AFIS to generate a pool of possible matches and, specifically, that the expert had "some AFIS stuff" in addition to the disclosed report, (R. p. 89, line 23 – p. 90, line 11); 2) the defense, before trial, declined production and/or copies of the "AFIS stuff," 3) AFIS does not match any print to any person for identification but is merely an investigative tool to select possible matches for comparison; 4) the AFIS possibilities at issue here, other than the first suggestion which was matched by actual comparison, were not evaluated or relied upon; and 5) the identification at issue is for the victim, whose identity was established by other evidence. In short, based on the record in this particular case, there was no basis for finding the documents at issue material or that the failure to disclose was prejudicial.¹⁰

¹⁰ There is, in fact, questionable basis for finding a failure to disclose as the defense was aware before trial of the use of the AFIS database and an offer was made for the inspection of those documents; however, the trial judge found a failure but no prejudice. Therefore, this matter may be affirmed on the lack of prejudice alone. See *State v. Hughes*, 336 S.C. 585, 593, 521 S.E.2d 500, 504 (1999) (reviewing Rule 5 issue, "We need not determine here whether the report in question is exempt since we agree with the trial judge's ruling that appellant has shown no prejudice from the failure to disclose."). Further, though a *Brady* issue was not specifically raised below, because the materiality test is the same, any such issue would be without merit. *Id.*, n.4.

Clearly the defense was aware there was an AFIS run. Such information formed the basis for their pre-trial motions, and there is evidence in the record that the Solicitor specifically advised defense counsel of the AFIS materials. (R. p. 89, line 23 – p. 90, line 11). Even so, the AFIS materials were inconsequential in this setting.

The trial judge correctly found that the match opinion at issue was based on personal comparison. Captain Kellet did not rely on a match generated by a computer system. (R. p. 81, lines 9-15; p. 83, line 8 – p. 84, line 19). Moreover, Captain Kellet specifically testified that AFIS does not match prints. (R. p. 64, line 23 – p. 65, line 5; p. 68, lines 14-15). Given these facts, there could only be limited (if any) impeachment value from the AFIS document and print.

At the heart of the disclosure prejudice analysis is “whether the appellant’s right to a fair trial has been impaired.” *State v. Proctor*, 358 S.C. 417, 423, 595 S.E.2d 476 (2004) (quoting *State v. Taylor*, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998)). See also *United States v. Agurs*, 427 U.S. 97, 108 (1976) (“the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant’s right to a fair trial”). The trial judge correctly noted the minimal value – perhaps impeachment concerning records, but not a challenge to the method or match of identification. Given the minimal value, if any, the failure to obtain paper copies could not have impaired the defense. See *Proctor*, 358 S.C. at 423-424, 595 S.E.2d at 479-480 (finding nondisclosure of DNA lab proficiency tests results was not material where information goes to proficiency only, and, even if probability estimate was reduced, the number would still be decidedly inclusive of defendant’s profile). See also *Gilday v. Callahan*, 59 F.3d 257, 272 (1st Cir. 1995) (finding “no remediable *Brady*

violation” where “the evidence here taken cumulatively sheds no new light on the crime or petitioner’s involvement in it.”); *United States v. Glaze*, 643 F.2d 549, 552 (8th Cir. 1981) (failure to disclose unrecorded inconclusive field test for drugs did not offend appellant’s rights or prejudice his defense where formal testing results reported and disclosed).

Further, it should not be lost that the prints at issue are *the victim’s prints*. There was no contest to the victim’s identity. Further still, there was evidence in the record independent of the prints establishing the victim’s identity – not the least of which was Carmen Jenkins’ testimony specifically identifying the victim. (See generally R. p. 189, lines 7-15). Further, the DNA testing corroborated Carmen Jenkins’ description of the dismemberment and disposal of the body by linking the body parts and the blood in the home. Further still, Vivian Young, who knew Ms. Harris from the Simpsonville area, testified she saw Ms. Harris with Appellant at Labor Finders on April 1, 2008 and April 3, 2008, before the dismembered body parts were delivered on April 7, 2008. (R. p. 103, lines 4-16; p. 104, lines 2-14; p. 106, line 7 – p. 109, line 21; p. 11, lines 12-24). Even with the total discounting of the fingerprints match, identity of the victim was well established. *Compare State v. Feldman*, 604 A.2d 242 (N.J.Super.L. 1992) (AFIS relevant as basis for identification and discoverable where AFIS operator determines if candidate’s fingerprints match, and may be evidence related to *misidentification of defendant*).¹¹

¹¹ In *State v. Feldman*, not only did the state court focus on the right to present evidence of third party guilt under their state law in considering the necessity of disclosure, the court also noted that the process at issue involved an “AFIS operator” who did a visual inspection of the prints before selecting the possible matches. 604 A.2d at

At any rate, the record well supports that the defense was aware that the fingerprint evidence would be introduced and had ample time to obtain their own expert, whether to challenge the match to victim's prints or the lack of notes.¹² See generally *Fullwood v. Lee*, 290 F.3d 663, 686 (4th Cir. 2002) ("information that is not merely available to the defendant but is actually known by the defendant would fall outside of the *Brady* rule."). Moreover, the defense specifically knew, before trial, that the AFIS database was used in the initial process. This alone shows the lack of materiality for purposes of this inquiry. *Id.* See also *State v. Garris*, 394 S.C. 336, 347, 714 S.E.2d 888, 894 (Ct.App. 2011) (finding "the omission of Santiago's photos was not material because nothing indicates Garris was unaware of the extent of Santiago's injuries."). But critically, and as decided by the trial judge, the AFIS documents and prints that were not copied and provided to the defense simply did not go to any impeachment or defense. See *Boyd v. State*, 910 So.2d 167, 179 -180 (Fla. 2005) ("A list of potential matches, with no actual matches, was not material to Boyd's defense."); *Marshall v. Hedgepeth*, 2012 WL 1292493, *13 (E.D. Cal. 2012) (finding that AFIS is "a computerized system" and matches are made by expert comparison of prints to prints, not a computer generated match. Further, the court found: "No federal court, let alone the Supreme Court, has ever held that, in the context of the confrontation clause, it was necessary to introduce

244. This process would appear to be different than the purely computer generated list of possibilities which is the case here.

¹² Again, the defense never contested Captain Kellet's qualification as an expert, and, in fact, had no objection to her being qualified as an expert at trial. (R. p. 77, line 24 – p. 78, line 7). Further, Appellant admitted at sentencing that he knew the victim was Mekole Harris. (R. p. 312, lines 15-20). He challenged who had killed Ms. Harris, not the fact Ms. Harris was the victim. (R. p. 313, lines 6-24). Thus, identity should not have been an issue. Respondent submits the value of a competing expert is not readily discernible on this record.

testimony concerning the method of using AFIS.”). Merely showing three pieces of paper were available does not establish materiality, or, for that matter, a violation of the duty to disclose. *See United States v. Agurs*, 427 U.S. at 106-108 (“there is, of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor” and “the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant’s right to a fair trial”); *Moore v. Illinois*, 408 U.S. 786, 795 (1972) (declining to find a *Brady* violation on information concerning an early lead where eyewitnesses were later found and provided identification: “We know of no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case.”). Additionally, the lack of materiality and prejudice correctly guided the trial judge’s decision regarding relief.

Rule (5)(d)(2), SCRCrimP provides for a variety of appropriate remedies concerning a failure to comply with the discovery dictates:

... the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. ...

The trial court also has discretion to declare a mistrial. *State v. Garris*, 394 S.C. at 345, 714 S.E.2d at 893. It is well established, however, that the court should fully exhaust other methods before declaring a mistrial. *Id. See also State v. Frazier*, 394 S.C. 213, 223, 715 S.E.2d 650, 655 (Ct.App. 2011) (“mistrial should not be granted unless absolutely necessary”). A defendant seeking such radical relief “must show error and resulting prejudice to receive a mistrial.” *Id. (citing State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999)).

Here, the trial judge, in light of the limited impeach value (if any) of the information, fashioned an appropriate measure of relief in allowing the defense to receive paper copies of the three pages and taking a brief break to allow counsel an opportunity to review and consider what, if any, prejudice may be argued. *See State v. Newell*, 303 S.C. 471, 476, 401 S.E.2d 420, 423- 424 (Ct.App. 1991) (“the trial judge did not abuse his discretion in not suppressing the statement for failure to respond” where “[t]he sanction the trial judge chose ... recessing the trial and affording Newell’s counsel an opportunity to interview the officer to whom Newell allegedly made the incriminating oral statements, was an appropriate sanction under the circumstances.”) (citing *State v. Patterson*, 290 S.C. 523, 351 S.E.2d 853 (1986), *cert. dismissed, sub nom. Patterson v. South Carolina*, 482 U.S. 902, 107 S.Ct. 2490, 96 L.Ed.2d 382 (1987)). The three pages, (available for this Court’s review at R. pp. 321-323), did not require longer to adequately consider. In short, the defense’s argument was constrained by the limited value of the documents, not the limited time for review. Further, Appellant’s argument that time was necessary to obtain an expert is contradicted by other actions of the defense. As noted above, the defense knew that the prints had been identified, and no expert was presented to challenge the identification. (See R. p. 98, lines 10-23). It seems illogical that an expert would not be warranted for attacking the actual match, but would be necessary to establish that other prints came close, or that the report was insufficient.¹³

¹³ Of course, whether the report was sufficient could have been challenged by a defense expert (assuming such an expert would disagree with the sufficiency of the report) without the AFIS listing, worksheet with the victim’s general information, or the copy of the print card. Respondent notes, however, that the second fingerprint expert who testified at trial also testified she similarly did not take notes. (See R. p. 264, line 16 – p. 265, line 19). At any rate, the fact the assertion of the possibility of impeachment *based on the sufficiency of the disclosed report* was the focus of the defense request for

Even so, as demonstrated above, defense counsel not only had the capability to cross-examine Captain Kellet on the use of AFIS, defense counsel *did* cross-examine Captain Kellet on the use of AFIS, and specifically, on the failure to compare the other prints for possible matches. (R. p. 85, line 5 – p. 87, line 7). There is no basis for finding prejudice and ordering a mistrial. *See State v. Frazier*, 394 S.C. at 223, 715 S.E.2d at 655 (“no prejudice to be remedied by a mistrial because both the State and Frazier elicited the favorable testimony from” the witness). Further, and again as shown above, there is no prejudice because the fingerprints at issue go to the identification process for the victim and Appellant did not challenge the identity of the victim. In fact, defense counsel liberally questioned Carmen Jenkins on her interaction not just with “a victim,” but specifically with Ms. Harris. (See R. p. 227, line 17 – p. 229, line 23; p. 231, lines 16-18). Simply, in context of this record, Appellant has failed to show prejudice sufficient to warrant a mistrial. *See State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct.App. 1993) (“omission must be evaluated in context of the entire record. If there is no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial.”) (*quoting United States v. Agurs*, 427 U.S. at 112-113).

In sum, the information at issue could not have been surprising in that the defense was admittedly aware of the use of the computer database well before trial. While these three pages going to the initial leads in the investigation were not copied and supplied to the defense before trial, the listing of possibilities generated in an effort to begin the

additional time after receipt of the AFIS listing supports that further delay was unnecessary as *the existence of the report was known well before trial*. (See R. p. 98, lines 19-23, defense argument after disclosure and review: “we’re asking for a delay in the trial until we can have an opportunity to have an expert examine these records and determine whether or not its appropriate that he testify to the invalid dependency on that particular report.”).

process of identifying the victim by fingerprints simply does not go to any impeachment or defense. Thus, the trial judge did not abuse his discretion in denying the request for mistrial, or alternatively, striking the fingerprint expert's testimony, based on the failure to disclose, or in denying the request for further delay to examine the three pages of limited scope and marginal value. This Court should affirm the ruling of the lower court.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

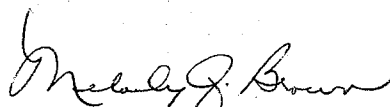
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ATTORNEYS FOR RESPONDENT

October 15, 2013.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

The State,

Respondent,

v.

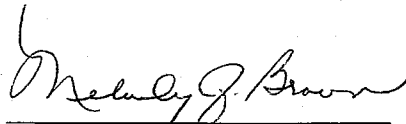
Clarence Williams Jenkins,

Appellant.

Appellate Case No. 2012-211588

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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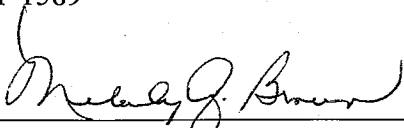
Appellate Case No. 2012-211588

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Final Brief of Respondent* and *Certificate of Compliance* on Appellant by depositing two copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

Susan B. Hackett, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

This 15th day of October, 2013.


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE WILLIAMS JENKINS,

APPELLANT

APPELLATE CASE NO. 2012-211588

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Appellant's initial brief raised three meritorious issues on appeal requiring reversal of Appellant's convictions and sentence. In his reply, Appellant addresses only the first issue raised in his initial brief and first issue addressed in Respondent's initial brief. However, Appellant's reply to one issue only should not be construed as waiver or abandonment of the other two issues. Rather, Respondent's brief requires a response only to the first issue.

The trial court's refusal to charge the jury pursuant to the traditional circumstantial evidence definition and explanation as provided in *State v. Edwards* violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury regarding how to evaluate circumstantial evidence.

In his initial brief, Appellant argued the trial judge erred in refusing to charge the jury pursuant to the traditional circumstantial evidence definition as requested. On August 14, 2013, the South Carolina Supreme Court addressed the circumstantial evidence charge as given in criminal cases in South Carolina. In *State v. Logan*, Op. No. 27296 (S.C. Sup. Ct. filed Aug. 14, 2013), the Court "revisited [its] past discussions regarding the circumstantial evidence charge, and articulate[d] for the benefit of the bench and bar a circumstantial evidence charge reflecting the proper balance between the state's burden and the jury's responsibility." As the Court explained, the purpose of a clear jury instruction concerning analyzing circumstantial evidence is paramount. Id. Although direct and circumstantial evidence may carry the same weight, "a jury cannot accurately analyze these two types of evidence using identical approaches." Id.

Specifically, circumstantial evidence, unlike direct evidence, “requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded.” Id. Thus, “[a]nalysis of circumstantial evidence is plainly a more intellectual process.” Id. In light of the differing analysis required when examining direct versus circumstantial evidence, the Court provided a proper jury instruction for trial courts to use. Important for Appellant’s case, the instruction directs jurors that “to the extent the state relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.” The instruction also provided that “[i]f these circumstances merely portray the defendant’s behavior as suspicious, the proof has failed.” Id.

Although the Court held that a trial judge may instruct the jury as to circumstantial evidence as provided in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997) and State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2005), the Court held that a trial judge may not rely exclusively on that charge over a defendant’s objection. Id.

Respondent argued Appellant should not benefit from the Court’s Logan decision because the case was decided while Appellant’s case was pending on appeal and because the Logan charge “is most applicable in cases where circumstantial evidence is center stage.” IBOR at 16. As an initial matter, Appellant benefits from the Logan ruling as his case was pending on direct review and the issue was preserved for review. See State v. Belcher, 385 S.C. 597, 612-613, 685 S.E.2d 802, 810 (2009)(citing Griffith v. Kentucky, 479 U.S. 314, 328 (1987)(“hold[ing] that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases ... pending on direct review or not yet final), Harris v. State, 543 S.E.2d 716, 717-718 (2001)(reversing a murder conviction and overruling

precedent that had approved inference of intent to kill from use of a deadly weapon and applying the new rule “to all cases in the ‘pipeline’ – i.e., cases which are pending in direct review or not yet final”)).

Second, clear, cogent, and concise instructions directing the jury on how to analyze the circumstantial evidence before it was necessary in Appellant’s case. Respondent argued that because Appellant’s co-defendant testified concerning Appellant’s direct involvement, the charge informing a jury of how to evaluate properly circumstantial evidence was not required. To the contrary, the testimony of Appellant’s co-defendant provided a greater impetus for the judge to instruct the jury concerning evaluating circumstantial evidence. Quite obviously, the state’s evidence pointed to the co-defendant’s guilt in the murder and kidnaping of Harris. It was the co-defendant who had prepared letters to the family of their ex-girlfriend and delivered the portions of Harris’ body to family members of their ex-girlfriend in an effort to intimidate her. In fact, much of the state’s the evidence pointed to the co-defendant’s guilt to the exclusion of Appellant. Further, the co-defendant testified against Appellant pursuant to a plea agreement in which she received a fifty-year sentence, rather than the death penalty, with the promise that the prosecutor would seek a reduction in her sentence if she continued to cooperate.

Despite the co-defendant’s testimony, the jury struggled with its verdict. On the first day of deliberations, the jury was out for over four hours. During that time, the jury expressed its inability to reach a unanimous decision. R. 290, lines 13-14; R. 291, lines 10-11; R. 292, lines 5-9; R. 296, lines 14-18; Court’s Exhibit #9; R. 302, lines 18-19. The following day, the judge instructed the jurors pursuant to Allen v. United States, 164 U.S. 492 (1896). R. 306, line 5 – R. 308, line 8. The jury resumed deliberations at 9:28 a.m. R.

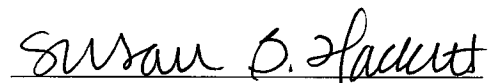
308, lines 24-25. Just over an hour later, at 10:45 a.m., the jury returned guilty verdicts. R.
309, lines 6-10.

Not only does Appellant benefit from Logan, supra, as a matter of law, but the jury instruction concerning how a jury must evaluate circumstantial evidence was necessary in Appellant's trial due to the nature of the evidence presented by the prosecution. The evidence chiefly related to the guilt of Appellant's co-defendant. It was the co-defendant's testimony alone that connected Appellant to the murder and kidnapping.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentence and remand the matter for a new trial.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT.

This 21st day of October, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville CountyEdward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

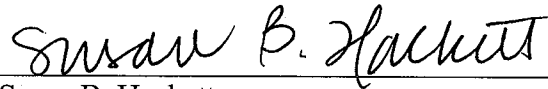
CLARENCE WILLIAMS JENKINS,

APPELLANT

APPELLATE CASE NO. 2012-211588

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of August, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022 .

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Clarence Williams Jenkins, Appellant.

Appellate Case No. 2012-211588

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Opinion No. 5232
Heard May 6, 2014 – Filed May 21, 2014

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Senior
Assistant Attorney General Melody Jane Brown, all of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

GEATHERS, J.: Appellant Clarence Williams Jenkins seeks review of his conviction for kidnapping and murder. Appellant argues the trial court refused to provide the jury with the circumstantial evidence instruction quoted in *State v.*

*Edwards*¹ violated his right to require the prosecution to prove his guilt beyond a reasonable doubt. Appellant also challenges the trial court's failure to strike the testimony of the State's fingerprint expert, or, in the alternative, to grant a mistrial, arguing the prosecution withheld evidence material to the testimony in question. We affirm.

FACTS/PROCEDURAL HISTORY

On the morning of April 7, 2008, Sue Bostic discovered a garbage bag with unknown contents sitting on her front porch and a threatening note under the windshield wiper of her automobile.² Bostic contacted the Greenville City Police Department, and Officer Scott Odom responded to the call. Officer Amber Allen also arrived at the scene and spoke with Bostic while Officer Odom took the garbage bag to the back of his vehicle to inspect the bag's contents. Officer Odom discovered a severed human foot and hand and several severed toes. Officer Michael Petersen, who was employed with the forensic division of the Greenville County Department of Public Safety, then arrived to assist in processing the crime scene and collecting the evidence. Officers Allen and Petersen were informed that a similar note and garbage bag containing severed body parts had been left at the residence of Judon Burnside. They later proceeded to this residence to collect the evidence.

Officer Petersen took the garbage bags and their contents to the morgue and rolled fingerprint impressions from the severed hands. Captain Jackie Kellet, of the forensic division of the Greenville County Department of Public Safety, examined the fingerprints processed by Officer Petersen and matched them to fingerprints on file for Mekole Harris (Victim).

On April 10, 2008, police arrested Appellant and his wife, Carmen Jenkins (Wife), for the murder of Victim. On November 18, 2008, the Greenville County Grand Jury indicted Appellant for murder. In December 2008, the State filed a Notice of Intent to Seek the Death Penalty against Appellant and Wife. In September 2009,

¹ 298 S.C. 272, 274–76, 379 S.E.2d 888, 889 (1989), *abrogated by State v. Cherry*, 361 S.C. 588, 595–606, 606 S.E.2d 475, 478–82 (2004).

² The facts of this case are horrific; however, it is necessary to discuss them to give context to Appellant's arguments regarding circumstantial evidence and to explain the relevance of Appellant's arguments regarding the fingerprint identification of the victim.

Wife advised investigators of the location of Victim's remains in exchange for the State's withdrawal of its Notice of Intent to Seek the Death Penalty against Wife.

On March 9, 2011, Wife entered into a plea agreement with the State, requiring her truthful testimony in Appellant's trial in exchange for the State's subsequent request for a reduction in Wife's sentence. On September 13, 2011, the Grand Jury indicted Appellant for the kidnapping of Victim. On March 27, 2012, Wife pled guilty to the murder of Victim and was sentenced to fifty years of imprisonment. On this same day, the State withdrew its Notice of Intent to Seek the Death Penalty against Appellant.

Appellant's trial took place on April 9 through 13, 2012. Captain Kellet, who had matched the fingerprints from the severed hands to Victim's fingerprints, was qualified as an expert in fingerprint analysis, and she explained the process she went through in identifying Victim's fingerprints. The first step was entering the unknown fingerprints into the Automated Fingerprint Identification System (AFIS), a computerized database maintained by the South Carolina Law Enforcement Division (SLED). She explained that AFIS "sends back a list of respondents," and in this case "we ask for the top 25 people." Here, Victim's "State ID number"³ was the first number on the list of respondents. Captain Kellet then pulled a fingerprint card for Victim from her agency's records and visually compared, point by point, Victim's prints to the unknown prints. Once she determined the known and unknown fingerprints matched, she felt no need to examine any other fingerprints from the AFIS list of respondents.

The State also presented the testimony of Wife, who testified about Appellant's alleged plan to intimidate a former housemate, Grace Davis, into returning to their home and continuing to live with them. According to Wife, during the time Davis lived with Appellant and Wife, Davis developed an intimate relationship with both of them. Eventually, the Department of Social Services removed Davis's children from the home and notified her that she could not regain custody of her children as long as she was living with Appellant and Wife. Therefore, Davis left the home. A few days later, Appellant told Wife that Davis "needed to come back to [their] relationship because she was a partner in [their] relationship" and "she knew too much about the organization that he was in." Appellant also told Wife "the [organization] was a very secretive organization and she had never heard about this organization until that day.

³ The State ID number "is assigned to you by SLED if you've ever been fingerprinted."

Appellant began executing his plan to intimidate Davis by mailing threatening letters to her and to members of her family. Next, on the evening of Friday, April 4, 2008, Appellant brought home Victim, a prostitute, and handcuffed her to a bed. Appellant told Victim that he and Wife were police officers and that Victim was "under arrest for prostitution and possession of crack." Appellant also told Victim that the only way she would get out of those charges was for her to help Appellant and Wife with a "case." The "case" Appellant referenced was his plan to intimidate Davis into returning to their home.

After Victim agreed to cooperate, Appellant removed the handcuffs. Appellant wrote out a script for Victim to read over a telephone to members of Davis's family. Appellant then handcuffed Victim again and gave the script to her to memorize. Sometime around midnight, Appellant, Wife, and Victim went to a pay telephone at a nearby gasoline station, and Appellant dialed the telephone numbers for Davis's mother, Judon Burnside, and Davis's aunt, Sue Bostic. During each telephone call, Victim recited the material from the script written by Appellant. Appellant and Wife then took Victim back to their home, and Appellant handcuffed Victim to a chair for the remainder of the day on Saturday.

On Saturday night, Appellant crushed up "some Tylenol PM and some other sleeping medicine," mixed it into some ice cream, and gave it to Victim. However, Victim only ate a small amount of the ice cream. On the next day, Sunday, April 6, 2008, Appellant ordered Wife to kill Victim, who was still handcuffed to the chair. Wife attempted to strangle Victim with a cable cord, but as Victim struggled against Wife, Wife lost control of the cord. Appellant then tied the cord to the back of the chair, placed a plastic bag over Victim's head, and suffocated her.

Appellant and Wife took Victim's body to the bathroom and placed her body in the shower. Later that day, Appellant dismembered Victim's body, forcing Wife to participate, and placed the dismembered parts in the couple's freezer. Appellant and Wife disposed of Victim's body near a golf course on Paris Mountain and returned to their residence, where Appellant placed the dismembered parts into two separate garbage bags.

After midnight, Appellant and Wife went to Bostic's apartment. Appellant "dropped [Wife] off right at the entrance of the apartments" Wife took one of the garbage bags and threw it onto Bostic's front porch. Wife then left a threatening letter on the windshield of Bostic's car. Next, Appellant drove Wife to

Burnside's residence. Wife placed a second threatening letter in Burnside's mailbox and placed the second garbage bag on Burnside's front porch.

Robin Taylor, a SLED employee, also testified at Appellant's trial. Taylor described the DNA analysis she performed on a swab from the severed hand. Taylor matched the DNA from this swab to the DNA from swabs of blood collected from (1) a wall near the ceiling in a bathroom at Appellant's residence; (2) a wall on the right side of the medicine cabinet in Appellant's bathroom; (3) a latex glove found on the floor of Wife's van; and (4) the p-trap of the shower drain in Appellant's bathroom.⁴

The jurors deliberated for over four hours. The foreperson then sent a note to the trial court indicating the jurors were unable to reach a unanimous decision on one of the charges against Appellant. The trial court sent the members of the jury home for the night. The next morning, the trial court provided the jury with an *Allen* instruction before they resumed their deliberations.⁵ A little over one hour later, the jury returned a verdict of guilty on both charges against Appellant. The trial court sentenced Appellant to life in prison. This appeal followed.

ISSUES ON APPEAL

1. Did the trial court's refusal to provide the jury with the circumstantial evidence instruction quoted in *State v. Edwards* violate Appellant's right to require the prosecution to prove his guilt beyond a reasonable doubt?
2. Did the trial court err in failing to strike the testimony of Captain Kellet, the State's fingerprint expert, or, in the alternative, to grant a mistrial, where Appellant's counsel did not receive a copy of Captain Kellet's file prior to trial?
3. Did the trial court err in declining to grant Appellant enough recess time to hire an expert to review Captain Kellet's file?

STANDARD OF REVIEW

The record does not indicate when the swabs were taken from Appellant's bathroom and Wife's van.

⁴ See *Allen v. United States*, 154 U.S. 421, 517 (1894) (holding no error in jury instruction admonishing jurors to give due deference to the opinions of their fellow jurors).

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. *Id.*

LAW/ANALYSIS

I. Jury Instruction

Appellant maintains the trial court's rejection of his proposed circumstantial evidence instruction, based on the instruction approved in *State v. Edwards*,⁶ violated his right to require the prosecution to prove his guilt beyond a reasonable doubt. Appellant argues the instruction given confused the jury regarding how to evaluate circumstantial evidence. We find no reversible error.⁷

"In reviewing jury charges for error, this Court considers the trial court's jury charge as a whole and in light of the evidence and issues presented at trial." *State v. Logan*, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013) (citation omitted). "A jury charge is correct if, when read as a whole, the charge adequately covers the law. *Id.* at 90-91, 747 S.E.2d at 448. "A jury charge that is substantially correct and covers the law does not require reversal." *Id.* (citation and quotation marks omitted). "Jury instructions should be considered as a whole, and if as a whole,

⁶ 298 S.C. 272, 274–76, 379 S.E.2d 888, 889 (1989), *abrogated by State v. Cherry*, 361 S.C. 588, 595–606, 606 S.E.2d 475, 478–82 (2004).

⁷ The State asserts Appellant failed to preserve his argument that the trial court's circumstantial evidence instruction violated a constitutional right. The State argues trial counsel's request to provide the jury with the *Edwards* instruction was based on state law rather than constitutional law. Given the constitutional foundation on which our state's circumstantial evidence jurisprudence is based, it is likely that trial counsel's reference to recent case law developments sufficiently apprised the trial court of the constitutional component of his request for the *Edwards* instruction. Further, any doubt concerning whether Appellant's "reasonable doubt" argument was preserved for review should be resolved in favor of finding the argument preserved. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 285 (2012) (recognizing "it may be good practice for [the appellate court] to reach the merits of an issue when error preservation is doubtful"); *id.* at 333, 730 S.E.2d at 287 (Toal, C.J., concurring) ("[W]here the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.").

they are free from error, any isolated portions which may be misleading do not constitute reversible error." *Id.* at 94 n.8, 747 S.E.2d at 449 n.8. (citation omitted). "Generally, the trial judge is required to charge only the current and correct law of South Carolina." *State v. Brown*, 362 S.C. 258, 261, 607 S.E.2d 93, 95 (Ct. App. 2004). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Id.* at 262, 607 S.E.2d at 95.

In *Edwards*, our supreme court quoted the circumstantial evidence standard "to be charged for use by the jury in its deliberation." 298 S.C. at 275, 379 S.E.2d at 889.

Under this test, the jury may not convict unless:

every circumstance relied upon by the State be proven beyond a reasonable doubt; and . . . all of the circumstances so proven be consistent with each other and taken together, *point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis*. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

Id. (emphasis added) (quoting *State v. Littlejohn*, 228 S.C. 324, 328, 89 S.E.2d 924, 926 (1955)). However, in *State v. Grippon*, the court recommended that once a proper reasonable doubt instruction is given, the following instruction be given:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law value to be given to either direct or circumstantial evidence. Now is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After

weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997).

In *State v. Cherry*, 361 S.C. 588, 597, 606 S.E.2d 475, 480 (2004), our supreme court held that in cases relying, in whole or in part, on circumstantial evidence, South Carolina courts **must** use the jury charge recommended in *Grippon*. *Cherry* also eliminated the "reasonable hypothesis" language found in the *Edwards* instruction. *Cherry*, 361 S.C. at 601, 606 S.E.2d at 482 ("[T]he reasonable hypothesis charge merely serves to confuse juries by leading them to believe that the standard for measuring circumstantial evidence is different than that for measuring direct evidence when, in fact, it is not."). Notably, other language from the *Edwards* instruction was recently reaffirmed, slightly modified, and recommended in future jury instructions. See *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013) ("[T]o the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused *beyond a reasonable doubt*. . . . *If these circumstances merely portray the defendant's behavior as suspicious*, the proof has failed.") (emphases added).

In *Logan*, the court set forth the following instruction to be given to the jury, in addition to a proper reasonable doubt instruction, when so requested by a defendant:

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, *all of the circumstances must be consistent with each other*, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. *If*

these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. at 99, 747 S.E.2d at 452 (emphases added). The court hastened to add: "This holding does not prevent the trial court from issuing the circumstantial evidence charge provided in *Grippon* and *Cherry*. However, trial courts may not exclusively rely on that charge over a defendant's objection." *Id.* at 100, 747 S.E.2d at 452-53. Nonetheless, the *Logan* court ultimately concluded any error in the trial court's jury instructions was harmless beyond a reasonable doubt because the trial court "clearly instructed the jury regarding the reasonable doubt burden of proof" and its jury instruction, "as a whole, properly conveyed the applicable law." *Logan*, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8. (citations omitted).

In the instant case, the trial court gave the following jury instruction on circumstantial evidence:

Now, there are two types of evidence which are generally presented during a trial. And they are known as direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eye witness [sic]. It is evidence which immediately establishes the main fact sought to be proven. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of the main fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. It is the duty of the jury to weigh the evidence between the weight or value to be given to either direct or circumstantial evidence. It is the duty of the jury to determine the certainty required of circumstantial evidence than of direct evidence. *You should weigh all of the evidence in*

the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, then you should find the Defendant not guilty.

(emphasis added). This instruction is virtually identical to the *Grippon* instruction. 327 S.C. at 83–84, 489 S.E.2d at 464.

The State argues that at the time of Appellant's trial, the "relevant precedent dictated that only the *Grippon* charge be used." The State points out that the *Logan* opinion was published while the appeal in this case was pending. In response, Appellant maintains that *Logan* applies retroactively to his trial, citing *State v. Belcher*, 385 S.C. 597, 612–13, 685 S.E.2d 802, 810 (2009) and *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987), for the proposition that a new rule for the conduct of criminal prosecutions must be applied retroactively to all cases pending on direct review or not yet final. We agree that *Griffith* requires the application of *Logan* to cases pending on appeal at the time the *Logan* opinion was published. Nevertheless, this court is constrained to affirm the trial court's denial of Appellant's request to give the *Edwards* instruction for two reasons.

First, Appellant's proposed instruction contains the following language: "[Y]ou may not convict a defendant unless . . . all of the circumstances . . . taken together, point conclusively to the guilt of the accused *to the exclusion of every other reasonable hypothesis*." Our supreme court has cautioned against using this language in jury instructions. See *Logan*, 405 S.C. at 98, 747 S.E.2d at 451–52 ("[R]equiring a jury to inquire as to whether there is any other reasonable explanation other than the defendant's guilt comes perilously close to shifting the burden of proof from the State to the defendant." (citation omitted)).

Second, any error in the omission of certain language from the *Logan* instruction was harmless beyond a reasonable doubt because the trial court's instruction, as a whole, properly conveyed the applicable law. The trial court provided the following instruction as to the State's burden of proof:

Now, Clarence Jenkins has pled not guilty to these indictments. And that plea puts the burden on the State to provide [sic] the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove themselves innocent. And I charge you that it is a cardinal and important rule of the

law that a defendant in a criminal trial will always be presumed to be innocent of the crime for which an indictment has been issued unless and until guilt has been proven by evidence satisfying you of guilt beyond a reasonable doubt.

Now, reasonable doubt is the kind of doubt which would cause a reasonable person to hesitate to act. And reasonable doubt may arise from the evidence which is in the case or from the lack or absence of evidence in the case. And you, the jury, must determine whether or not reasonable doubt exists as to the guilt of this Defendant. The State has the burden of proving each and every element of a crime beyond a reasonable doubt. And any reasonable doubt that you may have in your deliberations should be resolved in favor of the Defendant.

We find this reasonable doubt instruction to be a correct statement of the law. *See State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001) (holding a jury instruction explaining, "A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act" was "a correct statement of South Carolina law."). Further, the trial court's instruction on circumstantial evidence immediately followed the reasonable doubt instruction. As our supreme court ultimately concluded in *Logan*, we conclude the trial court's instructions in the present case, as a whole, properly conveyed the applicable law. *See Logan*, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8 ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." (citation omitted)); *id.* (concluding any error in the trial court's jury instructions was harmless because the trial court "clearly instructed the jury regarding the reasonable doubt burden of proof" and its jury instruction, "as a whole, properly conveyed the applicable law." (citations omitted)). Therefore, we affirm the denial of Appellant's request to provide the *Edwards* instruction.

II. Withholding of Evidence

The State's failure to produce Captain Kellet's file documenting her identification of Michael George Jones, along with the State's failure to produce the State's file of criminal

Procedure.⁸ Appellant argues this alleged Rule 5 violation compromised his ability to fully impeach the credibility of Captain Kellet's testimony, and, thus, the trial court should have stricken her testimony or granted a mistrial. We disagree.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Tennant*, 383 S.C. 245, 254, 678 S.E.2d 812, 816 (Ct. App. 2009), *modified on other grounds*, 394 S.C. 5, 21, 714 S.E.2d 297, 305 (2011) (citation and quotation marks omitted). Likewise, "[t]he granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court[,] and its ruling will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627–28 (2000) (citation omitted). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Tennant*, 383 S.C. at 254, 678 S.E.2d at 816 (citation and quotation marks omitted).

To warrant either a mistrial or reversal based on an evidentiary ruling, the complaining party must prove both the error of the ruling and the resulting prejudice. *Id.* at 254, 678 S.E.2d at 816–17 (as to the admission or exclusion of evidence); *Harris*, 340 S.C. at 63, 530 S.E.2d at 628 (as to a mistrial). "To prove prejudice, the complaining party must show there is a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof." *Tennant*, 383 S.C. at 254, 678 S.E.2d at 817 (citation and quotation marks omitted).

The record shows that for approximately four years prior to trial, Appellant's defense team was aware that fingerprints from the severed hands had been run through AFIS. Thus, the defense team was also aware of the possible existence of

⁸ Rule 5(a)(1)(C), SCRCrimP states:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

AFIS-related documents. Yet, nothing in the record indicates that defense counsel attempted to interview Captain Kellet or review any AFIS-related documents prior to trial. In any event, Appellant did not contest Victim's identity at trial—defense counsel referenced Victim's name several times while cross-examining Wife. Therefore, we find the trial court's failure to grant the requested relief did not result in any unfair prejudice to Appellant. *See State v. Sweet*, 342 S.C. 342, 348, 536 S.E.2d 91, 94 (Ct. App. 2000) ("A criminal defendant is entitled to a fair trial, not a perfect one.").

Based on the foregoing, the trial court properly declined to strike Captain Kellet's testimony or declare a mistrial. *See Tennant*, 383 S.C. at 254, 678 S.E.2d at 816 ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (citation and quotation marks omitted)); *Harris*, 340 S.C. at 63, 530 S.E.2d at 627–28 ("The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court[,] and its ruling will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." (citation omitted)).

III. Lengthy Recess

Alternatively, Appellant argues the trial court should have granted him a long recess or short continuance to obtain the assistance of an expert qualified to evaluate the documents in Captain Kellet's file. We disagree.

Because the defense team was aware of Captain Kellet's fingerprint analysis and the possible existence of AFIS-related documents for years prior to trial, the trial court properly declined to grant any further delay in the trial. *See State v. Patterson*, 367 S.C. 219, 230, 625 S.E.2d 239, 245 (Ct. App. 2006) ("The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion.").

CONCLUSION

Accordingly, Appellant's convictions are

SECRET and CONFIDENTIAL

The Supreme Court of South Carolina

The State, Respondent,

v.

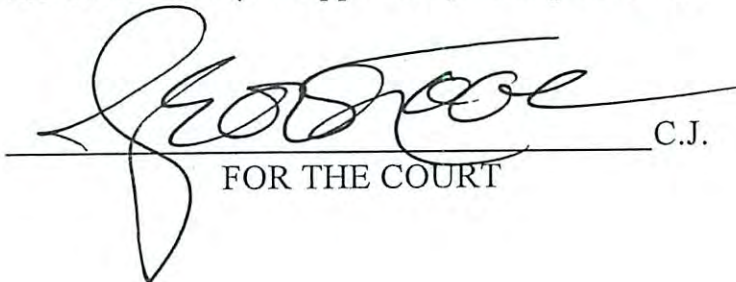
Clarence William Jenkins, Petitioner.

Appellate Case No. 2014-002046

Lower Court Case No. 2014-002046

ORDER

Petitioner seeks a writ of certiorari to review the decision of the Court of Appeals in *State v. Jenkins*, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014). The petition is denied.


C.J.
FOR THE COURT

Columbia, South Carolina

February 4, 2015

cc:

The Honorable Jenny Kitchings

The Honorable Paul B. Wickensimer

Susan Barber Hackett, Esquire

Melody Jane Brown, Esquire



FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GreenvilleClarence W. Jenkins #323856
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-23-2015 APR 26 29
FED-CLERK COURT
GREENVILLE, S.C.
JUL B. MOORE, CLERK

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention B.R.C.I. 4460 Broad River Rd. Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Greenville County Courthouse
3. Name(s) of co-defendant(s) (if any) Carmon M. Jenkins
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-23-8409 MURDER
 - (b) 2011-GS-23-7258A Kidnapping
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 13, 2012 Life
 - (b) April 13, 2012

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals _____
- ii. Court of Appeals "Rehearing" _____
- iii. Supreme Court _____
- (b) the result in each such Court to which you appealed:
- i. denied _____
- ii. denied _____
- iii. denied _____
- (c) the date of each such result:
- i. May 21, 2014 _____
- ii. August 25, 2014 _____
- iii. February 4, 2015 _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel.
 (b) Due Process Violation.
 (c) Prosecutorial Misconduct, Brady Violation.

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

- (a) Please, See Attachments
 (b) Please, See Attachments
 (c) Please, See Attachments

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

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

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

Yes

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

- (a) which grounds have been presented:

- i. PROSECUTORIAL MISCONDUCT "part one of"
- ii. _____
- iii. _____

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

- i. DIRECT APPEAL
- ii. _____
- iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. John Mauldin

ii. John Mauldin

iii. Susan B. Hackett

(b) the proceedings at which each such attorney represented you:

i. TRIAL

ii. Sentencing

iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

Reversal of Conviction and Sentence, Vacate Sentence, or Time served

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Chas. W. Shiner Jr.

SWORN to and subscribed before me this 18th
day of March, 2015.

Susan H. Dye (L.S.)
Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2016

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

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

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

Chen W. [Signature]
Applicant

SWORN or affirmed to and subscribed before me this
18th day of March, 2015.

Susan H. Inye
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

Attachments # (11)P.C.R. Issues

- 11.) State concisely and in the same order the facts which support each of the grounds set out in (10):
- A.) Counsel failed to adequately investigate all discovery evidence and materials of the allege crime.
 - B.) Counsel failed to motion for dismissal of an untimely indictment.
 - C.) Counsel failed to produce Exculpatory evidence.
 - D.) Counsel failed to conduct pre-trial Research.
 - E.) Counsel failed to motion for dismissal, demurrer, or to quash the indictment concerning defects apparent on the face thereof, According to Title 17....

P.C.R. Issues

- F.) Defendant was not properly served with a valid indictment.
- G.) Counsel failed to investigate, to locate, or interview witnesses concerning the case.
- H.) Counsel failed to subject the prosecution's case to meaningful adversarial testing.
- I.) Counsel failed to investigate the alleged crime.
- J.) Counsel failed to prepare for trial.
- K.) Counsel failed to proffer supporting evidence in the defendant's defense.
- L.) Counsel failed to hire an expert concerning the actual cause of death, and/or question the actual cause of death. (2)

P.C.R. ISSUES

- M.) Counsel failed to obtain an expert on drug use and it's complications.
- N.) Counsel failed to subpoena important witnesses concerning the case.
- O.) Opening Argument and Closing Argument Ineffectiveness
- P.) Counsel Failed To Fulfill Promise To The Jury.
- Q.) Counsel Failed To Offer up a defense in this case Alibi or other wise.
- R.) Prosecution failed to disclose all of Brady Material.

On the 18th day of March, 2015

Susan H. Frye

My Commission Expires

March 5, 2018

(3)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2015-CP-23-2629
COUNTY OF GREENVILLE	)	
	)	
Clarence Williams Jenkins,	)	
S.C.D.C. No. 323856,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed April 20, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2008 term of General Sessions for murder (2008-GS-23-8409) and at the September 2011 term for kidnapping (2011-GS-23-7258A). John I. Mauldin, Esquire and Susannah C. Ross, Esquire represented the Applicant.¹

After the State called the case to trial, the Applicant was found guilty. On April 13, 2012, the Honorable Edward W. Miller sentenced the Applicant to life imprisonment for murder. Pursuant to S.C. Code Ann. § 16-3-910, Judge Miller did not impose sentence for kidnapping.

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett,

¹ Mark McDougal, Esquire, Katherine Creely, Esquire, and Karen Williams, Esquire also represented the Applicant pro bono.

Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence on May 21, 2014. State v. Jenkins, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on February 4, 2015. The Remittitur was sent on February 17, 2015.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failed to adequately investigate all discovery evidence and materials.
 - b. Failed to move for dismissal of untimely indictment.
 - c. Failed to produce exculpatory evidence.
 - d. Failed to conduct pre-trial research.
 - e. Failed to move for "dismissal, demurrer, or to quash the indictment concerning defects apparent on the face therefore, according to Title 17."
 - f. Failed to investigate, locate, or interview witnesses.
 - g. Failed to subject the state's case to meaningful adversarial testing.
 - h. Failed to investigate the crime.
 - i. Failed to prepare for trial.
 - j. Failed to proffer supporting evidence.
 - k. Failed to hire an expert concerning the cause of death.
 - l. Failed to hire an expert on drug use and its complications.
 - m. Failed to subpoena important witnesses.
 - n. Ineffective opening and closing argument.
 - o. Failed to fulfill promise to the jury.
 - p. Failed to offer a defense.
2. Due process violation.
3. Prosecutorial misconduct, Brady violation.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A

reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

September 2, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2015-CP-23-2629
	)	
CLARENCE WILLIAMS JENKINS, 323856	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

**Clarence Williams Jenkins, 323856
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210**

DATED this 2nd day of September, 2015.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

CLARENCE JENKINS #323856,
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-23-02629

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

2015 MAY 29 PM 4:12
BY: [illegible] COURT CLERK

The application is being brought pursuant to South Carolina Code of Laws Sec 17-27-10 et seq. and should be considered along with the original application filed on April 20, 2015.

1. The applicant is presently being held as an inmate at Broad River Correctional Institute.
2. On or about April 13, 2012 Applicant was convicted of the following charges:
 - a. Murder (2008-GS-23-8409)
 - b. Kidnapping (2011-GS-23-7258A)
3. He was sentenced to life in prison for murder and the court did not impose sentence for kidnapping.
4. This was a trial.
5. The applicant filed a notice of appeal and Remittitur was sent on February 17, 2015.
6. The applicant filed his original post conviction relief application in a timely manner.
7. The applicant has filed no action in federal court challenging his convictions.
8. Greenville County Public Defenders John Mauldin and Susannah Ross represented the applicant on these charges, along with Mark MacDougall.
9. In this application the applicant seeks an order vacating his conviction and remand for a new trial. In the alternative applicant ask the court to vacate his sentence and remanding him for re-sentencing.

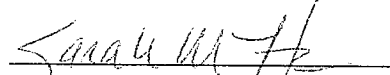
10. The applicant is amending his post conviction relief petition to include the following allegations:

- a. Ineffective Assistance of Counsel
- b. Due Process Violation, Fourteenth Amendment, U.S. Constitution and Article I Section 15 South Carolina Constitution

11. The applicant alleges that he was denied effective assistance of counsel and due process on both the above charges and submits the following facts to support his allegation:

- a. The Applicant submitted alibi witnesses to defense counsel including the following parties: James Gibbs, Shaneka Robinson. That both of these parties were available to testify at the trial and that neither were called.
- b. That defense counsel failed to introduce exculpatory evidence including that the area where body parts were discovered had recently been run over by a lawn mower.
- c. That defense counsel in their statement to the jury indicated that the applicant was untrustworthy.
- d. That defense counsel failed to call Ronnie Mitchell or Lakesha Cunningham to testify that they had seen the victim during the time she was allegedly held captive.
- e. That the defense failed to call Detective Lindler regarding her report that documents those statements.
- f. That the defense failed to effectively use Rebecca Kay Bales to impeach the co-defendant's timeline and story.
- g. That the defense failed to use the victim's drug history, the presence of drugs in her system, and the co-defendant's history of lying to attack the cause of death and the defendant's level of participation in this crime.
- h. The defense failed to make a motion to quash the indictment for murder for lack of specificity as no manner of death was alleged on the indictment.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Sarah M. Henry", is written over a horizontal line.

Sarah M. Henry, SC Bar #77907

406 Pettigru St.

Greenville, SC 29601

478-8324/232-9555 (fax)

sarah@sarahmhenrylaw.com

Attorney for Applicant

May 28, 2019

PROOF OF SERVICE

ON THIS DATE, a copy of this document, Amended Application for Post Conviction Relief, was served by email upon counsel for the State of South Carolina at the following address:

S.C. Attorney General's Office

Alan Wilson (Attorney General)

Taylor Smith (Assistant Attorney General)

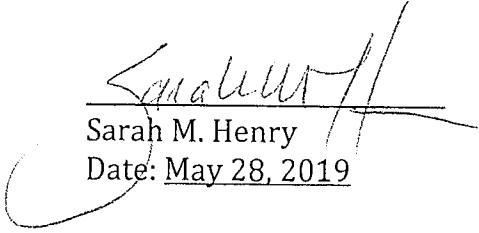
Office of the Attorney General

PO box 11549

Columbia SC 29211

Telephone: (803) 734-3737

TSmith@scag.gov



Sarah M. Henry

Date: May 28, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

CLARENCE JENKINS #323856,
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-23-02629

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

23 JAN 23 PM 4:32
Paul Wickensler CDD 301.30

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2. On or about April 13, 2012 Applicant was convicted of the following charges:
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- b. Due Process Violation, Fourteenth Amendment, U.S. Constitution and Article I Section 15 South Carolina Constitution

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- a. The Applicant submitted alibi witnesses to defense counsel including the following parties: Jamese Gibbs, Mrs. Jenkins, Shanek Robinson. That both of these parties were available to testify at the trial and that neither were called.
- b. That defense counsel in their statement to the jury indicated that the applicant was untrustworthy.
- c. That defense counsel failed to call Ronnie Mitchell and/or Lakesha Cunningham to testify that they had seen the victim during the time she was allegedly held captive.
- d. That the defense failed to effectively use Rebecca Kay Bales to impeach the co-defendant's timeline and story.
- e. That the defense failed to use the victim's drug history, the presence of drugs in her system, and the co-defendant's history of lying to attack the cause of death and the defendant's level of participation in this crime.
- f. The defense failed to make a motion to quash the indictment for murder for lack of specificity as no manner of death was alleged on the indictment, indictment being based on hearsay testimony before the grand jury, and number of indictments during that grand jury term.

Respectfully Submitted,

s/Sarah Henry
 Sarah M. Henry, SC Bar #77907
 406 Pettigru St.
 Greenville, SC 29601
 478-8324/232-9555 (fax)
sarah@sarahmhenrylaw.com
 Attorney for Applicant

January 23, 2023

PROOF OF SERVICE

ON THIS DATE, a copy of this document, Amended Application for Post Conviction Relief, was served by email upon counsel for the State of South Carolina at the following address:

S.C. Attorney General's Office

Alan Wilson (Attorney General)

Taylor Smith (Assistant Attorney General)

Office of the Attorney General

PO box 11549

Columbia SC 29211

Telephone: (803) 734-3737

TSmith@scag.gov

s/Sarah Henry

Sarah M. Henry

Date: January 23, 2023

1
2 STATE OF SOUTH CAROLINA

3 COUNTY OF GREENVILLE

COURT OF COMMON PLEAS

4
5 CLARENCE W. JENKINS,)

2015-CP-23-2629

6 APPLICANT,)

7 VS)

JANUARY 30-31, 2023

8 STATE OF SOUTH CAROLINA,)

9 RESPONDENT.)

TRANSCRIPT OF RECORD

10
11 B E F O R E:

12 THE HONORABLE G.D MORGAN, JUDGE

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

14 Sarah Henry, Esquire
15 Attorney for the
16 Applicant

17 Taylor Smith, Esquire
18 Attorney for the
Respondent/State

19 Susan W. Hudgins, CVR
20 Official Court Reporter
21
22
23
24
25

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1 **JANUARY 30, 2023**

2 THE COURT: All right. We're ready to
3 proceed. We're here in the matter of the PCR
4 application of Clarence W. Jenkins.

5 Is the State ready to proceed?

6 MR. SMITH: That's correct, Your Honor.

7 THE COURT: All right. Applicant ready
8 to proceed?

9 MS. HENRY: Yes, Your Honor.

10 THE COURT: All right. Any matters we
11 need to take up before we hear the evidence?

12 MS. HENRY: Yes, sir. I think we've
13 got two.

14 MR. SMITH: At least two.

15 MS. HENRY: At least two, Your Honor.

16 THE COURT: All right. I'll hear from
17 you.

18 MS. HENRY: Do you want me to go ahead
19 and start? Your Honor, I needed to -- I wanted --
20 I'm asking the Court permission to verbally amend
21 the application for post-conviction relief action.
22 I've already talked to the State about my
23 amendments, I believe, last week. As far as I'm
24 aware, there's no objection. If I could read those
25 into the record.

1 THE COURT: Yeah, that'll be fine.

2 MS. HENRY: Thank you. This is number
3 11 in my application. I'm amending 11A to add that
4 the applicant submitted alibi witnesses to defense
5 counsel including the following parties: Jamese
6 Gibbs, Mrs. Jenkins, Shanek Robinson, and the
7 defendant. That all of these parties were
8 available to testify at the trial and that none of
9 them were called. Further, that these witnesses
10 would have been able to impeach Carman Jenkins'
11 testimony at trial.

12 I have no amendments to B, C, or D.
13 We're withdrawing E, that the defense failed to use
14 the victim's drug history and the presence of drugs
15 in her system and the codefendant's history of
16 lying to attack the cause of death and the
17 defendant's level of participation in this crime.
18 That allegation is withdrawn.

19 And then I am amending 11F which
20 currently reads: The defense failed to make a
21 motion to quash the indictment for murder for lack
22 of specificity as no manner of death was alleged on
23 the indictment, the indictment being based on
24 hearsay testimony before the grand jury.

25 I am withdrawing the third allegation,

1 that the number of indictments during that grand
2 jury term were objectionable. And we are adding,
3 or asking to, to include that the failure to object
4 to the change of the date the morning of the trial
5 on the indictment the date the crime occurred from
6 the date determined to be accurate by the
7 Greenville County Grand Jury.

8 THE COURT: All right. Run that one by
9 me. You said 11F. Is that what you said?

10 MS. HENRY: Yes, sir, that last one was
11 11F.

12 THE COURT: Okay. And the third,
13 you're withdrawing the third...

14 MS. HENRY: Yes, the third
15 allegation --

16 THE COURT: The third allegation?

17 MS. HENRY: -- starting with number of
18 indictments during the grand jury term.

19 THE COURT: All right. And adding?

20 MS. HENRY: That the defense team
21 failed to object to the modification of the date.
22 I believe in the original indictment that went
23 through the grand jury, the date was April 10th.
24 And that's what was approved by the grand jury.
25 And it was modified on the solicitor's motion the

1 morning of trial to April 6th with no objection
2 from the defense.

3 THE COURT: All right. Any objection
4 to the amendments to the application from the
5 State?

6 MR. SMITH: No, Your Honor.

7 THE COURT: All right. The amendments
8 will be granted.

9 MS. HENRY: Thank you, Your Honor.

10 THE COURT: All right. Next?

11 MR. SMITH: Yes. May it please the
12 Court. Mr. Jenkins was indicted in November 2008
13 for the kidnapping and murder of Mekole Harris. At
14 some point thereafter, the State served Mr. Jenkins
15 with notice that it was seeking the death penalty
16 upon his conviction.

17 He was eventually tried before a jury
18 in Greenville County in April of 2012. By that
19 time, the State had withdrawn its death penalty
20 notice. Judge Edward Miller was the presiding
21 judge at trial.

22 At least three criminal defense lawyers
23 represented Mr. Jenkins with the principal three
24 being John Mauldin, Susannah Ross, and Mark
25 MacDougall. At the conclusion of the trial, the

1 jury found Mr. Jenkins guilty as indicted. Judge
2 Miller sentenced him to prison for life for murder
3 and did not issue a sentence for kidnapping in
4 accordance with state law.

5 The South Carolina Court of Appeals
6 affirmed on the three different arguments raised on
7 appeal, and the South Carolina Court of Appeals
8 denied Mr. Jenkins' petition for a writ of
9 certiorari. Since then Mr. Jenkins has filed his
10 application, and I understand the issues we're
11 moving forward on today.

12 Your Honor, just as a housekeeping,
13 because Mr. Jenkins is seeking post-conviction
14 relief, it's the State's position that if he were
15 successful today that he potentially could face the
16 death penalty again if he were retried. And with
17 that in mind, I'd ask Your Honor to question
18 Mr. Jenkins to make sure that he understands that
19 and that he's willing to go forward with that
20 despite that possibility.

21 THE COURT: All right. Mr. Jenkins, if
22 you would please stand.

23 (The Applicant stood.)

24 THE COURT: Now, you were convicted of
25 these charges, and you were sentenced to life in

1 prison. Do you understand that as part of that --
2 or prior to trial that the death penalty was
3 withdrawn, and the case proceeded and you were
4 sentenced to life in prison. Do you understand
5 that?

6 THE APPLICANT: Yes, sir.

7 THE COURT: Do you understand that if
8 you prevail here today, if I grant your application
9 for post-conviction relief, it goes back, and the
10 death penalty is potentially back on the table. Do
11 you understand that?

12 THE APPLICANT: Yes, sir.

13 THE COURT: Having understood that, do
14 you want to proceed today with your PCR hearing?

15 THE APPLICANT: Yes, sir.

16 THE COURT: All right.

17 Anything else from the State?

18 MR. SMITH: Yes, Your Honor. May I
19 confer with Ms. Henry for a second?

20 THE COURT: Yes.

21 (Off-the-record conference.)

22 MR. SMITH: Your Honor, I'd ask that
23 the witnesses be sequestered, anyone who plans to
24 testify or may testify.

25 THE COURT: All right. Any objection

1 from the Applicant?

2 MS. HENRY: No, Your Honor.

3 THE COURT: All right. We'll sequester
4 the witnesses. And y'all know who they are, so
5 I'll leave that up to y'all to make sure those
6 people are sequestered.

7 UNKNOWN FEMALE: Can we sit in the same
8 room out there?

9 THE COURT: Yes.

10 Any objection that they sit out there?

11 MS. HENRY: No, Your Honor.

12 THE COURT: All right. Anything else
13 from the State?

14 MR. SMITH: Your Honor, may we approach
15 the bench?

16 THE COURT: Yeah.

17 (A bench conference was held off the
18 record.)

19 THE COURT: All right. I'll turn it
20 over to the Applicant, Ms. Henry.

21 MS. HENRY: Thank you, Your Honor. We
22 call Ronnie Mitchell.

23 LAVERNE RONNIE MITCHELL,

24 being first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. HENRY:

2 Q. Mr. Mitchell, thank you for being here.
3 So, Mr. Mitchell, can you tell us what you're doing
4 for work right now?

5 A. I work at Rogers Group. I do work for
6 the state.

7 THE REPORTER: Okay. I'm sorry. I
8 didn't --

9 THE WITNESS: I work for Rogers Group
10 in Greenville. We do road work for the state of
11 South Carolina.

12 BY MS. HENRY:

13 Q. So you do road work for the state?

14 A. Yes, ma'am.

15 Q. All right. Mr. Mitchell, can you tell
16 us where you're living right now?

17 A. I stay at 208 Brunswick Avenue in North
18 Greenville, South Carolina, in Cherrydale.

19 Q. And then your date of birth?

20 A. 10/8/63.

21 Q. Okay. I'm going to take you back to
22 2008. Where were you living in 2008?

23 A. The Shady Rest Motel.

24 Q. Can you -- is that -- was that near the
25 HotSpot?

1 A. Yeah, it's near the Hot Spot on
2 Alexander Street.

3 Q. Okay. Were you living by yourself?

4 A. No. With my girlfriend, Lakeisha
5 Cunningham.

6 Q. All right. And then can you tell me
7 where your house was in relation to HotSpot?

8 A. It's right there behind HotSpot.

9 Q. Can you walk to the HotSpot?

10 A. Yeah. They got a little alley cut
11 through there you can walk through.

12 Q. You do? Okay. So a decent amount of
13 traffic back there?

14 A. Yes.

15 Q. Okay. All right. Did you have an
16 opportunity to talk to the police on April 7th of
17 2008?

18 A. Yes. They asked me if I know Mekole.
19 I told them I seen her at the store on a Friday
20 afternoon about 5:30 after I got off work. That's
21 the last time I seen her.

22 Q. Okay. So let me back up. That's great
23 information. So you knew Mekole Harris?

24 A. Yeah. I met her through my girlfriend.

25 Q. All right. Were you close to her?

1 A. No.

2 Q. But you recognized her?

3 A. Yes.

4 Q. Okay. How did you recognize her?

5 A. Because I seen her -- my girlfriend
6 introduced me to her, and I was at the store on a
7 Friday afternoon. She rode through there on her
8 bicycle.

9 Q. Okay. So she was on a bicycle?

10 A. Yes.

11 Q. All right. And then how do you know
12 what time it was?

13 A. I get off work about 5:15. I go down
14 to the store about 5:30 to cash my checks.

15 Q. Okay. And then so what you told the
16 police on April 7, 2008, you still feel like that's
17 accurate?

18 A. Yes.

19 Q. And you still remember it yourself?

20 A. Yes. That's the last time I seen her,
21 yes.

22 Q. All right. I don't have any other
23 questions.

24 THE COURT: All right. Cross?

25 CROSS EXAMINATION

1 BY MR. SMITH:

2 Q. Mr. Mitchell, what is your full name?

3 A. Laverne Ronnie Mitchell.

4 Q. Okay. Do you have any connection to
5 Mr. Jenkins? Do you know Mr. Jenkins?

6 A. I don't know him at all, sir. I don't
7 know nothing about that man.

8 Q. Okay. How long did you live over on
9 Tindal Road?

10 A. Maybe about three or four years, and
11 then they shut the trailer park down for some
12 reason.

13 Q. Okay. What was the date range when you
14 lived at Tindal Road?

15 A. It's so long ago. The county closed it
16 down for some reason. I don't know how long ago
17 that was. I was staying at Tindal Road.

18 Q. When?

19 A. I don't know the exact year when they
20 closed it down, sir.

21 Q. You testified you remembered something
22 that happened in 2008, but you don't remember --

23 A. I don't know the year they closed the
24 trailer park down. They didn't give nobody time.
25 They just told us -- gave us 30 days to get out.

1 Q. Well, when did you move to Tindal Road?

2 A. Tindal Road? I can't -- way before --
3 about three years before that happened. I don't
4 remember the exact date.

5 Q. So you remember April 7th, 2008, but
6 not something more recent?

7 A. I got a copy of the paper I got from
8 the officer right here, sir. I don't know nothing
9 else about this case.

10 Q. Well, I'm not asking you about the
11 case. I'm asking you where you lived.

12 A. I stayed on Tindal Road. I moved from
13 Tindal Road to Shady Rest Apartments.

14 Q. Okay. How long ago did you live at
15 Tindal Road?

16 A. I'm talking about 10 or 15 years ago
17 probably. I don't know the exact year.

18 Q. Ten or fifteen?

19 A. Yes, sir.

20 Q. Okay. So that would have been, could
21 have been as recently as 2013. Could have been
22 2010.

23 A. Yeah, somewhere around there. I don't
24 know exactly the year, sir.

25 Q. All right. But that's possible it

1 could have been 2009, 2010?

2 A. It's possible.

3 Q. Okay. When did you live in Bluffton?

4 A. I was born and raised in Bluffton.

5 Q. Okay. All right. How many times did
6 you see Mekole Harris?

7 A. How many times I seen her when?

8 Q. Ever.

9 A. I would probably see her about once a
10 week or twice a week. When I go down there, she be
11 riding her bicycle through the neighborhood.

12 Q. Okay. So it was kind of a regular
13 thing to see her?

14 A. Yeah. I never had no conversation or
15 nothing with her.

16 Q. Okay. Would you say probably that was
17 sort of like a routine thing to see her?

18 A. Yes.

19 Q. All right. Did you go near Labor
20 Finders much back then?

21 A. Yes, sir.

22 Q. Okay. Why did you go around there?

23 A. That was daily work before I got my
24 permanent job, sir.

25 Q. Okay. So you were working with Labor

1 Finders?

2 A. Yes.

3 Q. Okay. While you were working at Labor
4 Finders, did you ever get around Mr. Jenkins?

5 A. No, sir. I don't even know him, sir.
6 That's the first time I seen him was this morning,
7 sir.

8 Q. How many people work at Labor Finders
9 --

10 A. It varied on a daily basis. It might
11 be a 50; it might be 100 people up there. You
12 never know.

13 Q. Did you ever see people at Labor
14 Finders that worked there all the time and you sort
15 of recognized their face or get used to seeing them
16 there?

17 A. I know a couple people there.

18 Q. Okay. How did you hear about
19 Mr. Jenkins' pending post-conviction relief case?

20 A. An attorney contacted me.

21 Q. So let me ask you this. Didn't you
22 plead guilty back on March 14, 2016, of possession
23 with intent to distribute cocaine base first
24 offense?

25 A. Yes.

1 Q. Is that a yes?

2 A. Yes.

3 Q. Okay. And that was here in Greenville
4 County. Right?

5 A. Yes.

6 Q. All right. And you did three years for
7 that?

8 A. Eighteen months.

9 Q. Okay. But it was a three-year
10 sentence?

11 A. Yes.

12 Q. Did you live in Bluffton back in 2006?

13 A. I go back to see my family. I don't
14 live in Bluffton no more.

15 Q. All right. You used to though?

16 A. Yes. I was born and raised in
17 Bluffton.

18 Q. One moment, please. Let me ask you
19 about your work schedule. Did you always get off
20 of work at -- what time did you say you got off
21 work at?

22 A. Sometimes we get off at 5:00. It's
23 mostly between 5:00 and 5:30 every day.

24 Q. Okay. What days of the week did you
25 work?

1 A. We worked five days a week.

2 Q. Was it Monday through Friday every way?

3 A. Yes, Monday through Friday.

4 Q. Okay. Did you ever get off of work
5 before 5 o'clock?

6 A. It might be sometimes.

7 Q. Sometimes?

8 A. But mostly it be about 5:00 or 5:30
9 every day.

10 Q. Okay. How far was Labor Finders from
11 your work?

12 A. My work? Labor Finders liable to send
13 you any place. They might send you from Greenville
14 to Anderson. It varies on a day-to-day basis.

15 Q. So where was it that you saw Mekole
16 Harris?

17 A. At the store, the HotSpot on Short
18 Street I went and cashed my check.

19 Q. And what date was that again?

20 A. It was on a Friday.

21 Q. Do you know the date?

22 A. I think about April 3rd or 4th. I
23 think that's Friday's date.

24 Q. So it was a Friday?

25 A. Yes, sir.

1 Q. How far was HotSpot from your work?

2 A. From my work?

3 Q. From your work?

4 A. I was working at Marietta Supplies.

5 When we leave there, we go straight down there. I
6 drive to work.

7 Q. All right. So say you got off of work
8 at 5 o'clock. How long would it take you to get
9 back to the HotSpot?

10 A. About 20 minutes because we were
11 working in Travelers Rest that day.

12 Q. Okay.

13 A. At the corner in Travelers Rest.

14 Q. Okay. So you said you last saw Mekole
15 Harris on Friday April 5th?

16 A. I did not say -- no. I said April 3rd
17 or 4th was the date, sir. About 5:30.

18 Q. And you're sure it was a Friday?

19 A. Yes, sir.

20 Q. All right. No more questions.

21 THE COURT: Any redirect?

22 MS. HENRY: No, your Honor.

23 THE COURT: All right. You may step
24 down.

25 All right. Next witness.

1 MS. HENRY: The Applicant calls -- we
2 call Clarence Jenkins.

3 CLARENCE JENKINS,
4 being first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. HENRY:

7 Q. Clarence, can you tell us where you're
8 currently living?

9 A. Broad River Correctional Institution,
10 4460 Broad River Road, Columbia, South Carolina.

11 THE REPORTER: Can you pull up to the
12 microphone, please?

13 THE WITNESS: Yes, ma'am.

14 THE REPORTER: Thank you.

15 BY MS. HENRY:

16 Q. Clarence, tell us what you're in prison
17 for.

18 A. Murder and kidnapping.

19 Q. And those allegations or those charges,
20 those are from April 2008?

21 A. Yes, ma'am.

22 Q. All right. So, Clarence, I want you --
23 did you testify at your original trial?

24 A. No, ma'am.

25 Q. So I'm going to -- I'm going to walk

1 you through -- I want you to walk the Court through
2 the testimony or some of the testimony that you
3 would have given at the trial. And I want you to
4 just start with describing your relationship with
5 Carman to the Court.

6 A. I had met Carman back in 2007. I was
7 staying with my mom. We had just moved from
8 Sherwood Lane which is Piedmont Manor, to Roper
9 Station. And I actually just got dumped by my
10 youngest son's mother. So we moved over there to
11 Roper Station the early part of 2007. My mother
12 met Carman and her mom way before I did. I was
13 doing little side jobs, underneath the table jobs,
14 going in and out of town and hustling on the side.
15 So I really wasn't there that much. Then one night
16 I came in from town and seen my mother downstairs
17 because we lived right above them. She told me to
18 come in. That's when I met Carman and her mom.
19 And, honestly, I really didn't want to have a
20 conversation right then. I had just gotten into
21 town. And during that time in my life the only
22 thing I was really focused on is drinking and
23 getting high. I really wasn't focused on anything
24 else.

25 Q. How old were you at the time?

1 A. 2007, I think I was maybe 23 or 24.

2 Q. So what year did you meet Carman?

3 A. It was the early part of 2007.

4 Q. 2007?

5 A. Yes, ma'am.

6 Q. Okay.

7 A. So my mom introduced me to Carman and
8 her mom. Carman was laid out on the couch with
9 some boy shorts and a tank top, which is really
10 probably the only reason I stayed. But we end up
11 talking, and that's when I found out a lot about
12 Carman and her mom. Carman's mom is a Methodist.
13 She's really a religious -- strong in her religion.
14 Carman is adopted, but Carman was mostly into
15 females than males.

16 Q. And that was something that you knew
17 going into that relationship with Carman?

18 A. Well, it wasn't actually supposed to be
19 a relationship. It was just supposed to be a
20 little fun here and there. That was it. But she
21 ended up getting pregnant. The deal was her mom
22 was always trying to push her onto guys, you know,
23 get her -- let them meet up, let her meet a good
24 guy and so forth like that. And my mom always
25 wanted me to meet somebody, stop being in the

1 streets, stop doing the stuff I was doing. Plus,
2 like I said, I had just got dumped by my youngest
3 son's mother and already had an older son by a
4 different female. So my mama was trying to get me
5 to straighten up during that time. So with the
6 pressure going on both sides, me and Carman started
7 just basically talking every once in a while
8 whenever I came through. Me and Carman came to an
9 agreement that I would tell her mom that me and her
10 was dating, and she can go off and get with whoever
11 she deals with and we just mess around every so
12 forth.

13 Q. And did Carman take you up on that?

14 A. Well, first she said let me -- let her
15 think about it. I said about maybe a few days
16 later after I left and came back in -- she was
17 like, yeah. So I was like, cool. It really wasn't
18 that much of a big deal because, like I said,
19 during that time of my life, I was just drinking
20 and smoking and messing around. I really wasn't --
21 I wasn't a good father. I wasn't a good man. I
22 was just in the street.

23 Q. But you and Carman got married. Right?

24 A. Yeah. We started messing around the
25 early part of 2007. June we found out she was

1 pregnant. And her mom and my mom made -- yeah, we
2 got married December of 2007. They set up for us
3 to go to this lady's house. She was a notary
4 public. We went to her house one night and got
5 married.

6 MR. SMITH: Your Honor, I'm sorry to
7 interrupt. I forgot that Mr. MacDougall is on
8 virtual courtroom. And the witnesses are
9 sequestered. But I assume he can actually hear
10 Mr. Jenkins' testimony. That's not something I
11 thought of until this moment. But I just wanted to
12 make it --

13 THE COURT: I understand he cannot
14 hear.

15 MR. SMITH: Okay. Thank you.

16 BY MS. HENRY:

17 Q. And, Clarence, I just want to clarify
18 this. So you had two children with Carman Jenkins?

19 A. I have two daughters, yes, ma'am.

20 Q. Okay. And did you and Carman start
21 seeing each other in 2006?

22 A. No. We started messing around in 2007.

23 Q. When did you have your first -- when is
24 your daughter's birthday?

25 A. My youngest girl was a month before,

1 March 25th. That was 2008 before I got locked up.

2 Q. Right. So we're looking at the end of
3 March for your youngest daughter?

4 A. Yeah, and my oldest was March 5th. So
5 yeah, I think it might have been 2006.

6 Q. All right. So you married Carman
7 sometime in --

8 A. December.

9 Q. -- December?

10 A. It was in December.

11 Q. Okay. So you married Carman in
12 December. You guys stay in a relationship. Were
13 you and Carman living together?

14 A. We didn't start living together until
15 after we got married. That was one of the things
16 that Carman and I just had to find us a place so
17 she could move in so we could be together.

18 Q. Okay. Where did you live with Carman?

19 A. We lived in Boiling Springs, a trailer
20 in Boiling Springs. We lived in 209 Lulu Lane. We
21 lived off Tindal Road. We lived a few places and
22 moved around a lot.

23 Q. How long did you live at Tindal Lane?
24 Or Tindal Road?

25 A. I didn't stay there that much because

1 during that time, honestly, me and Carman were just
2 basically fed up with each other. I would get
3 tired -- like we were staying at Lulu Lane. I'd
4 get sick and tired of her not cleaning up or just
5 get sick and tired of her. And I would kick her
6 out, and she'll go back to her mom's. Once we
7 moved over there to Tindal Road which was her
8 trailer, I would just get up and leave and go to my
9 mom's, so I really wasn't there that much.

10 Q. Okay. And this is at Tindal Road?

11 A. Yeah, Tindal Road.

12 Q. Okay. When did you live at Tindal
13 Road? When did you guys get the Tindal Road
14 location?

15 A. I'm not sure exactly when, but I know
16 we was at Tindal Road in 2008.

17 Q. All right. And you don't know how long
18 you had been there?

19 A. Like I said, I really wasn't -- I
20 really wasn't -- I was leaving off back and forth,
21 so I'm really not quite sure. As a matter of fact,
22 I wasn't even there the day when she signed the
23 lease.

24 Q. Is your name on the lease?

25 A. No.

1 Q. Is there anything else that you want to
2 tell the Court about your history with Carman?
3 Just your history.

4 A. Well, like I said, me and Carman, we
5 kind of actually got forced into a relationship.
6 She wasn't happy with me. I wasn't really happy
7 with her. It started out just to be nothing, and
8 she ended up getting pregnant. And like I say, my
9 mom, she was like: You've already got two kids by
10 two different women. You've got to man up and do
11 something. And her mom, she's a really religious
12 person, so she wasn't trying to go for that.

13 But mostly Carman really wasn't
14 interested in being with a man. She was mostly
15 interested in being with a female. In her entire
16 life, she's only been, not counting me, two men in
17 her life out of all the relationships she's been in
18 from college to dating around and when she played
19 basketball, band. So, I mean, it was just
20 something that really shouldn't have happened.

21 Q. Can you describe your relationship with
22 Grace Davis?

23 A. This is actually -- actually this is
24 when I stayed over there at 209 Lulu Lane. I had
25 kicked Carman out. I got fed up with her told her

1 to go back to her mom's house. Anytime we split
2 up, I would just basically try to find somebody
3 else. And then our parents, they would talk to us
4 and get us back together. But this time I kicked
5 her out and told her to go back to her mom's. She
6 took her daughter and went back to her mom's house,
7 and I was just doing me.

8 And one night I went over to my
9 sister's house, and I seen Grace over there. We
10 just started talking, had a few drinks. Went back
11 to my trailer and messed around. Once again, it
12 was just supposed to be something just messing
13 around with. It wasn't supposed to be nothing
14 serious or nothing like that.

15 Q. Okay. So you and Grace Davis became
16 physically intimate the night you met her?

17 A. Yeah.

18 Q. And did that intimacy continue?

19 A. Yeah. Carman found out that I had
20 messed around with her, and she was still trying to
21 prevent her mom from being able to say I told you
22 so in our relationship and trying to get back
23 together. And I was being childish, so I started
24 just throwing Grace in her face and just basically
25 trying to get her mom to be mad and not like me so

1 I could move on and she would move on. So that's
2 basically how Carman found out about me and Grace.

3 Q. All right. So this is the summer of
4 2007?

5 A. Yeah.

6 Q. Does that sound right?

7 A. Yeah.

8 Q. Okay. So summer of 2007, you're
9 married to Carman?

10 A. Yeah.

11 Q. Is Carman pregnant at this point?

12 A. Yeah.

13 Q. And then you have another daughter with
14 Carman.

15 A. Yeah.

16 Q. So you meet Grace, and you start a
17 sexual relationship with her?

18 A. Yes, ma'am.

19 Q. Okay. And then shortly after you began
20 that relationship, does Grace move in with you and
21 Carman?

22 A. Yeah. I had picked Grace up, and like
23 I say, I was trying to just throw it in her mom's
24 face. So I picked Grace up, and I took her over to
25 her mom's house while they were having Sunday

1 dinner. It didn't turn out too well, but --

2 THE COURT: Mr. Jenkins, if you'll
3 speak a little bit into that microphone.

4 THE WITNESS: I'm sorry. I picked her
5 up and took her over to her mom's house and had
6 Sunday dinner. Didn't work out too well, but we
7 stayed there a little longer than we expected
8 because Grace was staying in the shelter at this
9 time. So she was like, she's got to get back. So
10 I wasn't going to take her back, so she had called
11 my sister to come pick her up. My sister took her
12 back. By the time she made it to the shelter, it
13 was closed.

14 Q. So Grace came and lived with you after
15 she was unable to get into a shelter?

16 A. Yeah.

17 Q. Okay. After Grace came to live with
18 you, was Carman also living with you?

19 A. Yes, ma'am. Carman came back actually
20 the same night. She told her mom that she's coming
21 back with us saying -- she packed her stuff up with
22 our daughter and came back to the house. Me and
23 her had a discussion. I was like: Look, if you're
24 going to come back, you've got to do something
25 different. I mean, like she's never cleaned at

1 all. So that was one of the criteria for her to
2 come back, that she would start cleaning up or
3 doing something.

4 Q. Okay. So after you meet Grace, who all
5 is in the house?

6 A. At this time, it's me, Carman, Grace,
7 my daughter and Grace's kids, I believe.

8 Q. How many kids did Grace have?

9 A. Three.

10 Q. What were the sleeping arrangements?
11 Where was everybody in this trailer?

12 A. Me, Carman, and Grace slept in the
13 master bedroom with my daughter, and the other
14 three, Grace's daughter and two sons slept at the
15 end in the other bedroom.

16 Q. And then shortly after you all moved in
17 together, were you arrested?

18 A. Yes, ma'am. I was arrested for driving
19 under suspension. And I think it was either -- it
20 was one of the ones that you couldn't pay out. It
21 was a mandatory sentence, so I got locked up and
22 did 90 days in the Department of Corrections.

23 Q. Okay. And when you came out of the
24 Department of Corrections, did you move back in to
25 Tindal Road?

1 A. Yes, ma'am. During the time that I was
2 locked up, Carman and Grace used to write me to let
3 me know what's going on. Grace told me that her
4 and Carman started a relationship and that Carman
5 wanted all three of us to be together. Because
6 even though we were sleeping in the same bed, it
7 wasn't a threesome. I would just -- I'll mess with
8 her, I'll mess with Carman or go off and sleep with
9 somebody else.

10 Q. So you guys had an open relationship?

11 A. To me, it was.

12 Q. Okay. And were Carman and Grace also
13 together intimately?

14 A. Yes.

15 Q. Okay. And how long did that go on?

16 A. That went on actually the whole time I
17 was actually incarcerated. At first when they
18 wrote me and told me that they was together and
19 they wanted all three of us together, I was mad
20 about it because that was not the plan. The plan
21 was just to have fun and keep it moving, but after
22 being locked up for a month and a half and them
23 writing me about all the good details of this and
24 that, I said, all right. Whatever. I accepted it.

25 Q. Okay. So when you got out, you lived

1 with Grace and Carman and their -- and your
2 children and Grace's children at Tindal Road?

3 A. Yeah.

4 Q. When did you move out?

5 A. I actually moved out March the 16th,
6 the same day that Grace left. The reason for that
7 was when I got out, the three of us, we messed
8 around. And Grace was telling me that Carman was
9 in love with her and this and that. So I asked
10 Carman -- I was like: Are you in love with her?
11 She was like: Yeah, she's in love with me. She's
12 the love of my life. I was like: Okay. Well, if
13 you want me, you're trying to be with her, now just
14 get on through. She was like: Yeah, I don't want
15 to be with you no more. So I was like: Okay.
16 Cool.

17 Q. When you moved out, where did you go?

18 A. I went to my mom's house.

19 Q. Where was your mom living at the time?

20 A. 110 Cornelia Street.

21 Q. Okay. What's your mom's name?

22 A. Myrtle Gibbs.

23 Q. Who else was living in the house?

24 A. James Gibbs and my nieces and nephew.

25 Q. How many nieces and nephews?

1 A. Three nieces and one nephew.

2 Q. And where were your children?

3 A. Mine was with Carman.

4 Q. Who was with Carman?

5 A. My daughter -- my daughters was with --
6 my daughters was with Carman for three days after I
7 moved out because instead of going straight over
8 there to my mom's house, I had to do some other
9 things. Then after three days, I came back and
10 picked my daughters up, and me and my daughters was
11 at 110 Cornelius Street.

12 Q. Okay. So you left on March 16, 2008?

13 A. Yeah.

14 Q. And then you went back on March 19,
15 2008, and picked up the girls?

16 A. Yeah.

17 Q. And you brought -- did you bring them
18 back with you to...

19 A. 110 Cornelia Street.

20 Q. ... 110 Cornelia Street? And did you
21 leave the girls there?

22 A. Yeah.

23 Q. Were you staying there?

24 A. Off and on, yeah.

25 Q. Where were you staying during the off?

1 A. It was during this time to support my
2 habit, I would actually cook for about three -- say
3 about six people. And when you cook for them, they
4 would --

5 Q. Explain to the Court what cooking is.

6 A. I'm sorry. Cooking is when you turn
7 cocaine into crack. And I came up around a lot of
8 the old cats that actually taught me how to stretch
9 it or make it better. You put two grams of baking
10 soda on an ounce of crack and actually make it
11 better than anybody else. So then you put seven on
12 there and stretch it. But the better the quality
13 is, the better your customers will come back. And
14 since I was a smoker, I can test it for myself and
15 just tweak it if I needed to.

16 I had a few people that didn't have too
17 much quality. They got this substance called
18 blowup. When you put that on there, it just
19 absorbs the water around the cocaine and makes it
20 even bigger. The quality is not that good, but you
21 can -- the person who is selling it can make more
22 than they would from just the baking soda or
23 nothing at all.

24 Q. Very detailed. So you were making
25 drugs?

1 A. Yeah.

2 Q. Okay. And where were you doing that?

3 A. I was actually doing that at Carman's
4 trailer.

5 Q. So you were cooking drugs occasionally
6 at Carman's trailer?

7 A. Yeah, when she wasn't there.

8 Q. All right. And you were living with
9 your mother and your sister?

10 A. That's right.

11 Q. And you had your girls with you?

12 A. That's right.

13 Q. At your mother and your sister's house?

14 A. Yes.

15 Q. Okay. And you had moved out as of
16 March 13th?

17 A. No. I moved out March 16th, the same
18 day Grace left because me and Carman got into a big
19 argument about it, and she ended up taking off in
20 the van and going after Grace. And I was like,
21 whatever, man. I just grabbed some stuff and took
22 off. That's actually one of the main reasons why I
23 ended up leaving my daughters there because I was
24 mad, and I just wanted to go get high and get
25 something to drink. So I went off and got high for

1 a couple of days. Came back and picked up the kids
2 and left, just left a note.

3 Q. Describe Carman's reaction to Grace
4 leaving.

5 A. I was in the living room while they
6 were talking in the back bedroom. And I heard
7 Carman screaming at Grace talking about: You're
8 not going to leave. What you think you're doing?
9 And they ended up coming into the living room, and
10 I'm just --

11 MR. SMITH: Objection to hearsay, Your
12 Honor.

13 MS. HENRY: Your Honor, he hasn't
14 testified to them saying anything.

15 THE COURT: I don't think -- they
16 haven't said anything yet.

17 MS. HENRY: He heard screaming. So far
18 that's where we are.

19 THE COURT: Overruled.

20 THE WITNESS: So they ended up coming
21 in the room just arguing. And eventually they
22 calmed it down, hugged. Carman went to the back
23 bedroom wiping her face, and Grace came over there,
24 spoke with me about her leaving. I said all right.

25 Q. Did Grace leave after that?

1 A. Yeah.

2 Q. Then what did Carman do?

3 A. Came out there yelling and going on,
4 arguing with me talking about I should have did
5 this and --

6 Q. Wait a minute. We don't want to know
7 what Carman said, just what you observed Carman
8 doing and what her demeanor was.

9 A. She was angry, crying, and just upset.
10 And the fact that I guess I really didn't care at
11 the time made her even more mad. She ended up
12 jumping in the van and said she was going after
13 Grace.

14 Q. Okay. So by April of 2008, are you and
15 Carman still living together?

16 A. I come there off and on, but, no, we're
17 not living together.

18 Q. Okay. Before we start to talk about
19 what you remember about the events of that first
20 weekend of April in 2008, I want you to talk to us
21 about Mekole Harris and your relationship with her.

22 A. I first met Mekole back in 2005. I was
23 at one of my associate's house up there in
24 Donaldson Center. We used to sell out of a trailer
25 up in there. And Mekole had came through with

1 somebody who was having a little party up there,
2 just getting out and drinking. This was like the
3 early part of 2007. She came up there to get
4 something from him, but he was high and drunk, so I
5 ended up giving her something. I gave her some
6 drugs. She left. And I found out later on that
7 she actually got a possession of paraphernalia or
8 drugs or something like that that she had actually
9 got from me.

10 Q. Clarence, let me pause you just to make
11 sure I understand what you're saying. So is this
12 interaction where you either sold or gave Mekole
13 drugs, is that the first time that you met her?

14 A. Yeah, that was the first time I met
15 her.

16 Q. Okay. So you were saying that was in
17 early 2007?

18 A. No. Early 2005.

19 Q. 2005?

20 A. It was like around January 1st, 2005.

21 Q. Okay. So after that first meeting with
22 Ms. Harris, what was your relationship like after
23 that? When's the next time you saw her?

24 A. I seen her maybe a couple of weeks
25 later. Come to find out, she knew a lot of the

1 same people that I used to go and speak with and
2 get high with. So I used to see her pretty
3 frequently.

4 Q. So at the beginning of 2008, January,
5 February, and March, how often did you see
6 Ms. Harris, and what was your relationship with her
7 at that time?

8 A. I used to see her almost every day up
9 there at Labor Finders. She actually helped me out
10 a lot because when I first moved over there, Labor
11 Finders -- too many people didn't really want to
12 deal with me. I guess how my demeanor or whatever
13 like that.

14 Q. When you say deal with you, what do you
15 mean?

16 A. They was -- well, she would basically
17 bring customers to me. I would give her whatever
18 she wanted. She will bring customers to me because
19 she used to deal in that area over there at Labor
20 Finders. She knew the area. I didn't. I had just
21 got over there. And she was basically a lifesaver
22 because nobody really wouldn't too much deal with
23 me because I wasn't used to being over there at
24 Rutherford Road.

25 Q. Are you talking about drugs?

1 A. Yeah.

2 Q. Okay. So what did Mekole do for you?
3 What did Ms. Harris do for you?

4 A. She would -- whenever I was up there at
5 Labor Finders, she would hold it for me, or the
6 guys that she used to talk to, she would bring them
7 up there to buy from me. Whenever the guys get off
8 work, they would cash their checks and want
9 something to smoke, want something to drink.

10 Q. Okay. So Mekole was your connection
11 there?

12 A. Yes, ma'am.

13 Q. Did you also have an intimate
14 relationship with Ms. Harris?

15 A. Yes, ma'am.

16 Q. And how long did you have that
17 relationship with her?

18 A. I mean, we was just -- Mekole was
19 really kind of like my smoke partner up there at
20 Rutherford Road, up there at Labor Finders. I can
21 just sit up there and just chill with her smoking.
22 It wasn't nothing serious. I mean, I could just be
23 myself around her. I mean, I didn't have to worry
24 about nothing. I was just able to sit and chill
25 and smoke and drink with her.

1 Q. All right. Now, that we've kind of
2 establish the players in this, I want to take you
3 back to, let's say, the evening of or late at night
4 on April 3, 2008. Okay. Do you remember -- this
5 would be Thursday. Do you remember whether or not
6 you worked at the Ingles? What you were doing?

7 A. I worked at the Ingles in Easley
8 cleaning, I think, either the refrigerators or just
9 clean out the Ingles. It was a cleanup job from
10 10:00 PM till about 3:00 or 4:00 that morning.

11 Q. And were you by yourself doing that?

12 A. No. At first I would -- I probably
13 went there maybe one time by myself, but Carman
14 started working over there and coming up there with
15 me.

16 Q. So on Thursday, April the 3rd, were you
17 up there at Ingles with Carman?

18 A. It was either that Thursday or that
19 Friday, either one or both of them days. I'm not
20 exactly quite sure exactly. But most of the
21 time -- anytime I went to Labor Finders, Carman --
22 for the most part, Carman was with me at the time.
23 If I was to say so, I would say, yeah, she was with
24 me that Thursday. As a matter of fact, yeah, she
25 was with me that Thursday because as soon as we got

1 off and went to Labor Finders -- she was -- yeah,
2 she was with me that Thursday.

3 Q. Clarence, at that time, you had just
4 gotten out of jail not too long ago for the driving
5 under suspension. Were you driving at all?

6 A. No.

7 Q. Did you have a car?

8 A. No.

9 Q. Okay. Who was your transportation?

10 A. Carman.

11 Q. Were you also getting transportation
12 from your sister and your mom?

13 A. Yeah, my sister would come pick me up.
14 But if Carman didn't drop me off, I started
15 walking. To be honest with you, me going to the
16 Department of Corrections was actually my first
17 time ever being in the penitentiary. I used to get
18 little speeding tickets, but that was just in the
19 county jail. That actually scared the living crap
20 out of me, so much so that I actually quit my last
21 job which I was going around selling vacuum
22 cleaners before I started working at Labor Finders.
23 And I had found out from one of the workers there
24 that they'll potentially call the cops on you if
25 you're driving around the neighborhood. And I

1 ended up getting another driving under suspension
2 charge before we even moved to Tindal Road, so I
3 had a -- pretty much a bench warrant on me, so I
4 wasn't driving anymore period. I wasn't trying to
5 be nowhere where the police might get called.

6 Q. All right. Let me bring you back to
7 Thursday, April 3rd. You guys had -- according to
8 you, you and Carman had just finished cleaning the
9 Ingles. Did you guys go back to Labor Finders?

10 A. Yeah, we went back to Labor Finders as
11 soon as we got off. I'd say we worked from about
12 10:00 till about 3:00 or 4:00 that morning. You
13 wait around to get your check, go cash your check
14 and mostly leave.

15 Q. What did you do that morning?

16 A. That morning, I stayed around for a
17 little bit longer because I was waiting for Mekole
18 to come around so we could get our smoke on. Then
19 I was going to give her some stuff to hold for me
20 and take off.

21 Q. Okay. Was she there?

22 A. That Thursday, yeah, she was there.

23 Q. Okay. What did you do? So did you
24 smoke up with her?

25 A. Yeah. Carman was supposed to just

1 leave, but she ended up staying around and ended up
2 getting into a disagreement with Mekole which it
3 wasn't the first time. She ended up getting in a
4 disagreement with her that night, so we took a few
5 shots, and I just jumped in the van and we left.

6 Q. Okay. So you jumped in the van with
7 who? Carman?

8 A. With Carman.

9 Q. Where did you go?

10 A. Went back to -- wait a minute. That
11 was Friday morning. Okay. I know Friday morning
12 when we got off around 4:30, about 3:30 or 4:00 --
13 let me make sure I got this right. We worked
14 Thursday and got off -- went to work Thursday
15 around 10 o'clock. And I'm sorry. It's been over
16 15 years now.

17 Q. That's okay, Clarence. Take your time.

18 A. So Thursday went to work about
19 10 o'clock, got off around 3:00 or 4:00. Okay. We
20 went back to Labor Finders. That Friday, Mekole
21 wasn't there that morning.

22 Q. So when you and Carman first came back
23 from working at Ingles, this would be around
24 4 o'clock in the morning?

25 A. Yeah.

1 Q. You went to Labor Finders.

2 A. Yeah.

3 Q. And was Mekole there?

4 A. No, Mekole wasn't there that morning.

5 Q. Okay. What did you do?

6 A. I had to go back to Carman's place
7 because, first of all, when we left work that
8 night, I actually forgot my bag with me. Which
9 when I say bag, I mean drugs and stuff like that.
10 Just a few things to smoke or whatever that day.
11 So when I did get off and go back to Labor Finders,
12 get our check, Mekole wasn't there. I ended up
13 going back to Carman's place, picked my bag up.
14 Then she took me to my sister's place which is on
15 110 Cornelia Street. I went over there and talked
16 to my sister and told her I was going to come back
17 over there and spend time with her, my mom and the
18 kids. You know, I wasn't feeling good around that
19 time.

20 Q. Okay. What time did you go to your
21 mom's house?

22 A. It was probably -- it was just around
23 like maybe about 8:00 or 8:30. Somewhere around
24 there. I'm not quite sure exactly what time, but I
25 know it was early that morning.

1 Q. Okay. So --

2 A. And Carman --

3 Q. So now we're Friday morning?

4 A. Yeah, Friday morning.

5 Q. We're at 8:00 AM.

6 A. I was over there for a little bit.

7 Q. Over where? Where were you?

8 A. 110 Cornelia Street.

9 Q. Who is there when you got home?

10 A. My mother, my sister, Boo, and Tunu

11 (phonetic), my other sister, Nunu (phonetic).

12 Tunu. Sorry. Tunu. Jameese and Tunu was there.

13 Q. So Jameese was there?

14 A. Yeah, Jameese was there.

15 Q. All right. So Jameese was there. What

16 did you do when you got there?

17 A. Went in there and kissed my mom. Not

18 really trying to get too close, just give her a

19 little peck and go because I used to try to hide

20 the smoking and drinking from my family. I don't

21 really know if that worked, but I tried. I kissed

22 my mom, told my sister that I'll be back and spend

23 the weekend with them. And just left.

24 Q. Okay. So you left. What time did you

25 leave?

1 A. I probably wasn't there no more than
2 like maybe 15 or 20 minutes.

3 Q. All right. Where did you go?

4 A. Back -- she dropped me back off at
5 Labor Finders.

6 Q. What did you do at Labor Finders?

7 A. Once I got back to Labor Finders,
8 Mekole was there, so I just chilled up there with
9 Mekole most of the day. Made a few sales, smoked
10 some and just chilled out up there. Chilled out up
11 there for the most part. I think it was about -- I
12 can't remember exactly. We each had to leave.
13 Well, I actually had to leave out of Labor Finders,
14 I can't remember exactly why I had to leave. No.
15 I'm sorry. I didn't have to leave. Mekole left
16 out the back from -- because she was in the back
17 smoking. And the lighter didn't work, so she
18 actually had to go out and find a lighter. Came
19 back and finished smoking. I ended up leaving
20 Labor Finders around like 4:30 or 5 o'clock walking
21 toward 110 Cornelia Street.

22 Q. Okay. So you left Labor Finders around
23 4:30 or 5:00?

24 A. Yeah.

25 Q. On Friday?

1 A. Yeah.

2 Q. And that's April 4th?

3 A. Yeah.

4 Q. And then you went back to your mom's
5 house?

6 A. Yeah.

7 Q. Your mom and James's house?

8 A. Yeah.

9 Q. Okay. What happened after that? Did
10 you stay there -- were you there the rest of the
11 night?

12 A. Yeah. It probably took me a little
13 longer than it probably should have from walking.
14 But once I got there, I probably got there maybe
15 like 6:00 or 6:30, somewhere around there. Stayed
16 there all night. Got up that Saturday morning.
17 Spent time with my mom and nieces and nephews and
18 my sister. Sunday I stayed there with them all
19 morning. Carman came over that afternoon.

20 Q. And this is on Sunday?

21 A. Yeah, this is on Sunday. She's been
22 calling me all weekend, but I was ignoring her
23 phone calls. So that Sunday afternoon, she came
24 over, and we got into an argument. She wanted me
25 to come back to the trailer to talk to me about

1 something. But instead, we ended up getting to the
2 law library. Not law library, but the library.

3 Q. Okay. Why did you go to the library?

4 A. Well, back in the early part of March,
5 one of my associates had put me on about this --
6 it's a creeper thing. It's one of a white-collar
7 crime. Basically, all you do is you set up an
8 email in a site like Craigslist or some dating app,
9 put a female's profile on there, a young female's
10 profile, and trying to basically lure in a
11 pedophile or something like that and trick them
12 into giving you money or something like that.

13 Q. Okay. So why was Carman with you if
14 you were setting up this creep site?

15 A. Well, because I didn't actually know
16 how. I knew how to set up an email address, but I
17 didn't know how to link everything up together.
18 Carman told me that she actually knew someone to
19 help me out, but she never actually got around to
20 it. I probably checked -- every time I checked it,
21 it was just nothing there. So then she used to get
22 mad at me for checking it.

23 Q. So how long were you at the library?

24 A. I wasn't even at the library that long.
25 Maybe -- I was probably gone for maybe an hour at

1 the most.

2 Q. Okay. Then what did you do after the
3 library?

4 A. Headed right back to 110 Cornelia
5 Street.

6 Q. All right. So you know that there is
7 video of you that was presented at your trial of
8 you being at the library with Carman. Right?

9 A. Yeah.

10 Q. And so it's your testimony that the
11 reason that you were there was to check on this
12 creeping John website or this creeping John
13 situation?

14 A. That's what initially -- yeah, that's
15 what it initially was supposed to be.

16 Q. And there's no -- did you have a
17 website or anything else to present to them.

18 A. I mean, I can tell you the whole
19 details how it worked, how it was supposed to work.
20 But as far as actually having a website itself, no.

21 Q. And you think that's because Carman
22 never sat it up?

23 A. Yeah. She -- Carman was never the
24 utmost truthful person. She would always try to
25 hide things from me or get mad or do something

1 vindictive. Like I said, me and her, we didn't
2 have nowhere near even a good relationship, so I
3 mean...

4 Q. So what did you do after the library?

5 A. Basically, we argued all the way back
6 to my sister's house. She stayed there for a few
7 minutes, telling me that she needed to talk to me.
8 I needed to come to the trailer. That it's
9 important that she needed to talk to me.

10 Q. Did you go back to the trailer?

11 A. No.

12 Q. What do you do instead?

13 A. I stayed at my sister's house. I got
14 out of the van, slammed the door and walked off
15 into my sister's house and stayed all night.

16 Q. So you were at your sister's house the
17 entire night of Sunday?

18 A. Yeah.

19 Q. And that is April 6, 2008?

20 A. Yeah.

21 Q. Okay. What do you do in the morning on
22 April 7th?

23 A. Monday morning, I got up. Took me a
24 shower, got myself together and walked to Labor
25 Finders and just smoked on my way there. Labor

1 Finders, I'm not -- I don't actually smoke inside
2 the house. If I wanted to smoke or anything like
3 that, I would actually have to leave and walk up
4 the street.

5 Q. Did you have somewhere specific to be
6 through Labor Finders?

7 A. Yeah. I had this ticket to work at
8 this pool service place at 8:30.

9 Q. Was Carman -- where was Carman?

10 A. When I got to Labor Finders, Carman was
11 already there sitting in the parking lot in the
12 van.

13 Q. Did you talk to her?

14 A. At first, no. I just walked right past
15 the van, went in there, got my ticket. Then she
16 got out of the van and came in, telling me that we
17 needed to talk or whatever like this.

18 MR. SMITH: Objection, hearsay.

19 THE COURT: Sustained.

20 BY MS. HENRY:

21 Q. Try not to repeat anything that Carman
22 told you. We're just interested in your
23 observations.

24 A. All right. She got out of the van and
25 came in upset. And so to make a long story short,

1 she wasn't going nowhere until we talked, so she
2 ended up staying up there at Labor Finders till it
3 was time for me to go to the site. She drove me to
4 the site. Literally stayed out in the parking lot
5 while I worked. Got off of work to go back to
6 Labor Finders. I'm trying to tell her that: Hey,
7 look. We can talk later on. I've been working at
8 this pool place. It's hot out there. I'm just
9 trying to smoke something, get something to drink
10 and just relax. She wasn't trying to go nowhere at
11 all.

12 Q. What did you think the conversation was
13 going to be about?

14 A. Well, a little while before then, she
15 came to her trailer, and she caught me and Mekole
16 smoking and drugs all up on the table and stuff.
17 It was a big situation about that. They got into a
18 little pushing match or whatever like that. So I
19 figured that she found the little bags and stuff I
20 had stashed in the back bedroom or in the safe
21 because I had quite a few things over there at her
22 trailer.

23 Q. Okay. So you thought she was going to
24 be mad at you for keeping drugs at the trailer?

25 A. Yeah, because that was the situation

1 before.

2 Q. Okay. Did you eventually go back to
3 the trailer with Carman on Monday?

4 A. Later on that night. Carman would not
5 leave.

6 Q. Would not leave where?

7 A. Labor Finders. I mean, she just
8 wouldn't go nowhere. I was sitting there trying to
9 get my smoke on. I was looking for Mekole, my
10 smoke partner. I stayed up there for about almost
11 maybe an hour and a half looking for Mekole
12 because, I mean, that was on Monday. Like I told
13 you before, Mekole used to help me out a lot. She
14 actually never missed a Monday's appointment unless
15 she had some specific something she was going to
16 do. So I waited up there for maybe an hour and a
17 half. She never showed up, so I had phoned her to
18 take me around to certain places so I can re up on
19 a few things and the few people that I dealt with
20 that I cooked for. Pick up some stuff and then bag
21 up to cook later on.

22 Q. So Carman waited at Labor Finders until
23 you were done?

24 A. Yes.

25 Q. Is that right? And then Carman really

1 wanted to talk?

2 A. Yeah.

3 Q. So you're testifying that she ended up
4 driving you around to pick up drugs. And then
5 where did you go?

6 A. Later on that night I'd say about maybe
7 9:30, 9:40, somewhere around there, we finally made
8 it back over to her trailer. We pulled up at the
9 trailer. She got out the passenger side. I mean,
10 not the passenger side. She got out the driver's
11 side seat, and I'm sitting in the passenger side.
12 I'm sitting there just smoking and drinking, and
13 she's telling me I need to come inside the trailer.
14 We get into another argument and whatever like
15 that. So eventually, I end up getting out of the
16 van and coming inside the trailer.

17 Q. Okay. What happens when you get inside
18 the trailer?

19 A. Actually, as soon as I walked through
20 the door, she lays in on me, going on and on about
21 Grace and about Mekole, about the drugs, about how
22 can I have the stuff here knowing that our
23 daughters can be here, and a whole bunch of stuff.
24 This went on and on and on.

25 MR. SMITH: Objection to hearsay again,

1 Your Honor.

2 THE COURT: Sustained.

3 THE WITNESS: Sorry. To make a --

4 BY MS. HENRY:

5 Q. What do you do next after you go inside
6 the trailer?

7 A. She -- I can't say what she said, but
8 she basically points me to the back, makes a
9 comment and points toward the back, so I end up
10 going to the back. As soon as I walked through the
11 back bedroom, I look and I see Mekole stretched out
12 over on the floor on a pile of clothes wrapped up.
13 Looked like she was wrapped up. So I'm just
14 staring for a second, and then I started figuring
15 it out. I'm like: Yo, what is this? She's just
16 standing right there just looking at me. You know
17 what I'm saying? So, I mean, I don't know if
18 anybody's ever been high before, but that was
19 almost an instantaneous sober. So I'm just
20 freaking out. So I go over. I pulled the sheet
21 back. And it is. It's Mekole, and she has a
22 20 milliliter syringe gauge in her neck. There was
23 a white spoon with cocaine on it laid beside her on
24 the cover, and she had a gash on her forehead. It
25 looked like -- it was so bad that she looked like

1 she had been -- like there was a hole like she had
2 been shot or something like that. She had white --
3 a white substance around her mouth like she had
4 been foaming at the mouth or something like that.
5 So I'm just freaking out and trying to find out
6 what's going on, and she's just sitting there just
7 looking at me.

8 Q. Who's looking at you?

9 A. Carman.

10 Q. What do you do next, Clarence?

11 A. I literally -- I take off to the living
12 room because the only thing that was going through
13 my mind is basically I don't -- we didn't know what
14 to do. I'm literally -- don't know what to do. So
15 I'm just trying to grab everything I have there.
16 I'm reaching underneath the couch, trying to grab
17 everything I had and get everything out of the
18 safe. Trying to back up, trying to just get on
19 through. So I grabbed the grill. I took it
20 outside. I'm trying to, whatever papers I have
21 with people's names on it or the correct formula
22 that I used for different peoples, I'm trying to
23 burn everything in the grill and just get on
24 through.

25 One of the individuals that I was

1 supposed to meet early that day at Donaldson
2 Center, he ended up showing up later on, maybe
3 around 10 or 11 o'clock. And I'm bagging
4 everything up, throwing it outside. He comes up.
5 I stopped him at the door. And he was like: Yo,
6 what's wrong? And I couldn't say nothing. I'm
7 just like: Look, I've got to go. I've got to go.
8 So he was like: All right. Hold on.

9 While I'm still in the house, a vehicle
10 had pulled up for a second while he's standing
11 outside. And I'm freaking out even more, but it
12 just pulls off. So I come outside like: Yo,
13 what's going on? I was like: It's nothing. So we
14 take off because he had parked down there toward
15 the entrance. So I leave off with him.

16 And me and Carman, we had conversations
17 between that I can't -- you say I can't say what
18 she said. But we're going back and forth during
19 the whole process.

20 So I end up taking off. I spent a
21 couple days with him and another individual just
22 trying to get my mind right and getting high and
23 just -- just trying to get my mind right.

24 She's steady calling my phone. She --
25 well, we had -- we ended up having a conversation,

1 and I ended up going back over there. And this was
2 actually Wednesday, Wednesday night. I'm going
3 back over there, and Mekole is still in the back.
4 Me and her end up getting into it again, and she
5 basically pointed some things out. And I felt like
6 basically I didn't have no choice but to help her
7 cover up what happened.

8 Q. Why did you feel you didn't have a
9 choice? What were you worried that would come out?

10 A. Like I said, the first time I went to
11 prison for that night, it literally scared the crap
12 out of me. I had a lot of stuff at her trailer,
13 and she knew about everything I had. I had one
14 legal gun, but I had, like, three other guns.

15 Q. So you were worried that -- were you
16 worried that Mekole would report you for having
17 guns and drugs? Not Mekole. I apologize.

18 A. It wasn't --

19 Q. Carman.

20 A. It's not something I was worried about.
21 It's something that -- it was expressed.

22 Q. Okay. So that was the threat?

23 A. Yeah.

24 Q. So what did you do?

25 A. She told me that -- well, she

1 basically -- basically, she knew everything. She
2 used to work for this architect company, so she
3 knew everything about Greenville. That was another
4 thing that I found interesting about her. She took
5 me places in Greenville that I didn't even know
6 about. So she basically was like: Help me do
7 this, help me do that. So I did. She knew of a
8 place where she drove us there. It was a gate
9 right in front of it. Didn't have a lock on it or
10 nothing. She pulled right up to the gate. I
11 jumped out. I opened up the gate. She drove
12 around in. Backed all the way up to the -- like a
13 dark spot like -- maybe like -- I don't know -- 15
14 or 20 feet, maybe a little more than that. I
15 helped her carry Mekole out of the back of the van.
16 Placed her on the ground beside my daughter's
17 playpen. And I took off and jumped in the van and
18 started smoking. She poured gas on top of it, lit
19 Mekole on fire and jumped in the van and we drove
20 off. Headed back to her trailer.

21 Q. What did you do next?

22 A. I end up staying there the rest of that
23 night. Then she explained a lot of details of what
24 -- from what she told me what happened, what led up
25 to the reason, and this and that.

1 Q. Did you stay at the trailer?

2 A. Yeah, I did.

3 Q. You stayed at the trailer after you
4 guys, the two of you, took the body out to Paris
5 Mountain?

6 A. Yes.

7 Q. What do you -- so you stayed there on
8 Wednesday. On Thursday what do you do when you
9 wake up?

10 A. I didn't sleep that night. I stayed up
11 pacing back and forth just getting high. Thursday
12 morning I got -- Thursday morning I told her --
13 basically, I was like -- I mean, honestly, I
14 couldn't do it. You know?

15 Q. You couldn't do what? What are you
16 talking about, Clarence? What do you mean?

17 A. I wanted to get as far away from that
18 whole situation as possible. She wanted to stay
19 there and was still bent on keeping that place.
20 But I wanted to get as far away from it as
21 possible. And it got to the point where I was
22 like: You know what? I don't care about what
23 happens. I'm just -- mentally I couldn't deal with
24 it. I just couldn't deal with it.

25 So I took off walking. I walked to my

1 mom's place at 110 Cornelia Street. A few minutes
2 after I got there, Carman pulled up in the van. I
3 was getting the kids -- I was getting the kids
4 because I was honestly thinking about just getting
5 as far away from that situation as possible. I had
6 a plan of going to Asheville, North Carolina. I
7 used to stay up there in the apartments with my
8 oldest son's mother, Heather. So I was just
9 thinking of some place, any place, to go, but we
10 ended up going back to the trailer talking some
11 more.

12 And the next thing I know, I get a
13 knock on the door. I'm freaking out. I'm like:
14 What's going on? She was like: Just stay back
15 here in the bedroom. She goes to the door. Says:
16 The police is out there. So I go hide. They come
17 in, and they find me. We get arrested.

18 MR. SMITH: Your Honor, it's now
19 12 o'clock. It's the time that Mr. MacDougall said
20 he had to leave for another appointment. I don't
21 want to interrupt, but I want to make sure we
22 address that before we reach that exact time we had
23 discussed previously about possibly looking at
24 Mr. MacDougall could testify a little bit later
25 this afternoon or perhaps on some other day this

1 week. Is that something we can discuss with him
2 now?

3 THE COURT: Yeah. Refresh my memory.
4 So he's got something this afternoon?

5 MR. SMITH: He told me he had to leave
6 at 12:00 for a client meeting. But then I believe
7 that he could come back from -- I wrote it down
8 somewhere. But somewhere in the range of 1:00 to
9 1:45 or something like that. And then he has to be
10 gone afterwards because he has a lecture tonight
11 about a law school somewhere.

12 THE COURT: Okay. So what's your
13 proposal?

14 MR. SMITH: I think it's possible that
15 we could fit him in in that 1:00 to 2:00 timeframe
16 if I can get him to confirm that that still works.
17 And if not, I can discuss with him maybe doing some
18 other day this week. Maybe in the morning or
19 sometime before Thursday.

20 THE COURT: All right. Ms. Henry?

21 MS. HENRY: Either of those is fine.
22 Thursday is, again, like I told the Court during
23 the conference, it's tough for me. But I can
24 certainly make it work on Tuesday or Wednesday if
25 he needs to come back. A lot of it depends on the

1 Court. Are we pushing through? Are we going to
2 finish Mr. Jenkins' testimony, and then we'll have
3 lunch after my last two witnesses and we deal with
4 Mr. MacDougall?

5 THE COURT: My thinking was to finish
6 with Mr. Jenkins here.

7 MS. HENRY: I'm also happy to have the
8 state put Mr. MacDougall up out of order if they
9 want to before I rest, but I still have two more
10 witnesses after Mr. Jenkins.

11 THE COURT: All right. Mr. Smith, if
12 we could get -- it's 12:00 now. As I told you,
13 I've got a hearing in another matter that I have to
14 handle at 2 o'clock. I anticipate it at the latest
15 would go to 2:30. Probably less than that, but
16 estimated to be about a 30-minute hearing that I
17 have to hear.

18 I'm really going to need more help from
19 y'all more than me making this decision because I
20 don't know what the time, what logistics are for
21 your -- what potential time for witnesses.

22 MS. HENRY: I don't think my -- Mr.
23 Jenkins is about to wrap up for us. I don't know.
24 I don't think -- my other two witnesses will not
25 take as long, but I don't know what the State's

1 cross is going to look like. And that will be the
2 close of my case, Your Honor.

3 MR. SMITH: I think if we take a lunch,
4 then we probably won't have time to get to
5 Mr. MacDougall today. So with that being the case,
6 maybe I could talk to him about joining us again by
7 WebEx one day this week.

8 THE COURT: And Ms. Henry can't do it
9 Thursday, so it would need to be either Tuesday or
10 Wednesday.

11 MR. SMITH: Okay.

12 THE COURT: And I think at the bench
13 you told me that you anticipate it being somewhere
14 around 45 minutes or so. And I'm not holding you
15 to that, but generally 45 minutes to an hour with
16 Mr. MacDougall?

17 MR. SMITH: I think it would be less
18 than an hour. I think an hour is probably the high
19 end there.

20 MS. HENRY: Unless something changes,
21 Your Honor, or I hear different testimony from the
22 other defense counsel, I don't have a lot of
23 questions for Mr. MacDougall.

24 THE COURT: All right. And as I said,
25 trying to get him in at 1:00 to 1:30 today is going

1 to be difficult because we need to take lunch for
2 everybody. And I've got that hearing at 2:00 that
3 I have to handle. So I think probably the best
4 thing to do is just fit Mr. MacDougall in Tuesday
5 or Wednesday. We've got the hearing that follows
6 this one. It is set for three days, so I believe
7 we can fit Mr. MacDougall in 45 minutes to an hour
8 somewhere either tomorrow or Wednesday. So I think
9 that's what we'll do is let's finish here with
10 Mr. Jenkins and take our lunch. And we'll have
11 Mr. MacDougall, we'll put him in at some point.
12 All right?

13 MS. HENRY: Yes, sir.

14 MR. SMITH: Your Honor, may I have just
15 a moment to call him and --

16 THE COURT: I was getting ready to say,
17 yeah, let him know. Text him or call him.
18 Whatever you need. Are you going to call him?

19 MR. SMITH: I will, Your Honor.

20 THE COURT: All right. Why don't we
21 just take a short restroom break then, and I'll
22 give you an opportunity. You need about five
23 minutes? Five minutes or ten minutes?

24 MR. SMITH: That will be fine.

25 THE COURT: Let's do that.

1 (A recess transpired.)

2 THE COURT: All right. We're ready to
3 resume.

4 MS. HENRY: Thank you, Your Honor.

5 BY MS. HENRY:

6 Q. And you know, Clarence, you're still
7 under oath. So Clarence, when we left off, I think
8 that you had ended with you ultimately being
9 arrested along with Carman.

10 A. Yes, ma'am.

11 Q. Okay. I want to take you back a little
12 bit. At the very beginning, you talked about your
13 relationship with Carman. One of the things that
14 Carman testified to at the original trial is that
15 you were the violent one. You were the scary one.
16 You were the intimidating one. You were the
17 controlling one. Is any of that accurate?

18 A. No, ma'am.

19 Q. Who was the violent one in the
20 relationship between you and Carman?

21 A. Actually, it was Carman.

22 Q. Can you give us an example?

23 A. Yeah. One night I came back from
24 working down in Greenville, here in Greenville, and
25 I was drunk and all. I ended up telling her

1 something real disrespectful, and she hauled off
2 and used one of my gloves to punch me in the eye
3 and actually knocked me out. I actually had to go
4 to the hospital about that.

5 Q. Did you have any visible injuries from
6 that attack?

7 A. Yeah. My eye was closed shut. I
8 literally could not see.

9 Q. All right. And any other times that
10 Carman was violent with you?

11 A. Yeah. In the early part of our
12 relationship, like I say, we would always argue,
13 fuss, and fight. One of the first times that I had
14 told her I was going to leave her, she had grabbed
15 a little knife out of the kitchen and stood in
16 front of the door and told me if I leave, she was
17 going to cut me. So I just --

18 MR. SMITH: Objection to hearsay.

19 THE COURT: Sustained.

20 THE WITNESS: So I just looked at her
21 and just walked to the door, grabbed the handle,
22 and she cut me on my arm. I've actually still got
23 the cut. And maybe -- I don't now -- a little
24 while later after that, we went through it again.
25 I'm telling her I'm leaving and I'm taking the kids

1 this time. And she ended up cutting me again on my
2 right arm.

3 Q. Okay. So Carman has punched you in the
4 face?

5 A. Yeah.

6 Q. She's cut you at least twice with a
7 knife?

8 A. Yeah.

9 Q. Clarence, how far did you go in school?

10 A. Elementary school. I never made it to
11 middle School. I didn't get my GED until after I
12 got imprisoned.

13 Q. Okay. And then how far did Carman go
14 in school?

15 A. Carman, she had a scholarship to go to
16 Spartanburg Methodist College. She took business
17 administration.

18 Q. So Carman is really smart?

19 A. Yeah. That was actually one of the
20 things I admired about her.

21 Q. And some of Carman's testimony included
22 testimony that you had changed and that you had
23 become very controlling. And I'm referring to
24 Carman's direct testimony at page 406. That she
25 wasn't allowed to go anywhere, she wasn't allowed

1 to talk with her mother even on the phone. That
2 you were always monitoring her even during her
3 visits with her mother. Is that accurate?

4 A. No, ma'am.

5 Q. Carman also testified on page 407 that
6 you became very angry with her and threatened her
7 frequently. Is that accurate?

8 A. No, ma'am.

9 Q. And that Carman is afraid of you?

10 A. No, ma'am.

11 Q. In the relationship between you and
12 Carman, who was the controlling one?

13 A. That would be Carman. I was -- I
14 honestly didn't really care what was going on and
15 anything like that. If she wanted to do something,
16 she did it. It wasn't a big deal.

17 Q. Carman went on to testify during the
18 original trial -- and this is page 417 and 418 of
19 the transcript -- that you were very controlling to
20 both her and Grace, that you were very abusive, and
21 they were not allowed to go anywhere. Is any of
22 that true?

23 A. I never stopped anybody from going
24 anywhere. I probably did cuss a lot. Like I said,
25 me and Carman did not get along. We just had two

1 kids to together. That's about it. And I mean, I
2 probably did cuss them and disrespect them a lot,
3 but I was never threatening or anything like that.

4 Q. Okay. So did you verbally threaten
5 either her or Grace?

6 A. No.

7 Q. Okay. And then Carman went on to
8 testify on page 418 that the reason she stayed was
9 mostly fear that kept her at the house with you.
10 Do you feel like you gave Carman or Grace -- I
11 mean, do you feel like -- did you threaten Carman
12 or Grace to the point that they would have been
13 afraid?

14 A. No. Carman wasn't afraid of me.
15 Honestly, I don't think Carman was afraid of
16 anybody. She had asked us to do whatever she
17 wanted. She actually even stole my 40-cal, the
18 only thing that I had and got caught with it by the
19 police that took it from her after her mom took her
20 car back.

21 Q. All right. Carman also testified --
22 and this is page 483 -- that you and she had never
23 lived apart other than a brief time in August of
24 2007. Essentially, she testified that you had not
25 moved in with your mother in March and April of

1 2008. Is that accurate?

2 A. No.

3 Q. So you were not living with Carman in
4 2008?

5 A. No.

6 Q. In March or April of 2008?

7 A. No.

8 Q. Okay. And you were, in fact, living
9 with your sister and your mother at that time?

10 A. Yeah.

11 Q. So that testimony from Carman was not
12 true?

13 A. That's correct.

14 Q. Okay. Let's see. Did you ever tell
15 Carman that you went to Greenville High School and
16 completed it?

17 A. No.

18 Q. Carman testified -- and this is the
19 transcript pages 480 through 481 -- that you had
20 told her you went to Greenville High School and
21 that was her understanding of your education level.
22 Is that true?

23 A. No.

24 Q. Carman also testified -- and this is
25 page 496 through 497 of the transcript -- that the

1 children were with her during part of this time. I
2 believe that she claims that they were with her a
3 portion of Tuesday and Wednesday. That would be
4 April 8th and 9th. Is that true?

5 A. She had one of our daughters. Not the
6 other one. Just one.

7 Q. Okay. So Carman did have one of the
8 children with her?

9 A. Yes.

10 Q. And so if she testified that she had
11 both of the children with her when the police came
12 the first time, that would not be true?

13 A. That's a no.

14 Q. Okay. And then Carman also testified
15 that you were at the house with her when the police
16 came by at first, the first time. Is that true?

17 A. No.

18 Q. So that would be another lie. Carman
19 also testified generally -- this is the majority of
20 her testimony -- that you were with her from
21 Thursday evening at the Ingles all the way through
22 until at you, at the very least, went to work at
23 Labor Finders on Monday. That you were with her at
24 the house and that you did not leave the house
25 unless it was with her during that entire period.

1 Is that true?

2 A. No, it's not.

3 Q. And if you had testified, would you
4 have been able to refute or impeach that testimony
5 from her?

6 A. Yes, ma'am.

7 Q. I'm going to ask you a couple more
8 follow-up questions, Clarence. And then just to
9 clarify this, you've testified already that Carman
10 was the one that was upset over Grace leaving?

11 A. Yeah.

12 Q. Okay. And then -- go ahead.

13 A. After I did that little 90 days in the
14 Department of Corrections and came back, it was
15 like Carman was a totally different person. She
16 was in love with Grace, so, I mean, she literally
17 wanted to be with her.

18 Q. Okay. So when Grace left, it was
19 Carman that chased after her?

20 A. Yes.

21 Q. And it was Carman that was upset that
22 Grace left?

23 A. Yes, ma'am.

24 Q. And it was Carman that wanted -- that
25 asked Grace to come back?

1 A. Yes, ma'am.

2 Q. And I also just want to confirm that it
3 was, in fact, that the trailer was, in fact, in
4 Carman's name?

5 A. Yes.

6 Q. And it was Carman's trailer?

7 A. Yes.

8 Q. And Carman was living in it by herself?

9 A. Yes.

10 Q. At the time that this occurred?

11 A. Yes, ma'am.

12 Q. It was also -- I also want to confirm
13 with you that you did not have a car.

14 A. No, I didn't.

15 Q. And then did Carman have a car?

16 A. Yes, ma'am.

17 Q. All right. And then it's also your
18 testimony that Carman knew, that it was Carman that
19 was familiar with Paris Mountain?

20 A. Yes, ma'am.

21 Q. And it was Carman that found the spot
22 where you eventually left Mekole?

23 A. Yes, ma'am.

24 Q. It's also your testimony that you were
25 not -- that you did not kidnap Mekole?

1 A. No.

2 Q. And then you didn't kill Mekole?

3 A. No, ma'am.

4 Q. Did you participate in her death?

5 A. No, ma'am.

6 Q. Now, based on your testimony, did you
7 participate in hiding and disposing of her body?

8 A. Yes, ma'am.

9 Q. And you're admitting to that?

10 A. Yes, ma'am.

11 Q. All right. When you were working with
12 the defense team -- and that would be Susannah
13 Ross, Mark MacDougall and John Mauldin. Are those
14 all of your defense attorneys?

15 A. Yes, ma'am.

16 Q. Did you provide them with a list or
17 information about court witnesses?

18 A. Yes, ma'am.

19 Q. Was your sister, Jameese Gibbs, one of
20 those witnesses?

21 A. Yes, ma'am.

22 Q. Did you want -- did you ask the members
23 of your defense team to interview Jameese?

24 A. Yes, ma'am.

25 Q. And Jameese is your sister. Correct?

1 A. Yes, ma'am.

2 Q. So why did you want the defense team to
3 interview Ms. Gibbs?

4 A. So that they actually -- so it could
5 actually come out exactly what happened that
6 weekend.

7 Q. Okay. Did you feel like Ms. Gibbs
8 would be able to provide them with information
9 about your whereabouts that weekend?

10 A. Yes, ma'am.

11 Q. Did you feel like what she said would
12 support your version of events?

13 A. Yes, ma'am.

14 Q. Did you also give Shanek Robinson's
15 name --

16 A. Yes, ma'am.

17 Q. -- to your defense team? Tell the
18 Court who Shanek is.

19 A. Shanek is my next to biggest sister.

20 Q. Okay. And did you also feel like
21 Ms. Robinson could provide similar information to
22 your defense team?

23 A. Yes, ma'am.

24 Q. Do you know if both of them were
25 interviewed by your defense team?

1 A. I don't think they were.

2 Q. You don't think they were interviewed?

3 A. No, ma'am.

4 Q. Was the information that your attorneys
5 got from -- so your attorneys never discussed any
6 information that they obtained from either one of
7 them with you?

8 A. No, ma'am.

9 Q. Was it your understanding that they
10 were going to be called as witnesses?

11 A. Yes, ma'am.

12 Q. It was? So you knew --

13 A. They were -- they wasn't actually in
14 the courtroom of the trial, every day on the court;
15 they actually left because they was actually
16 supposed to testify.

17 Q. Okay. So it was your understanding
18 from your conversations with your defense team that
19 they would be testifying at your trial?

20 A. Yes, ma'am.

21 Q. Okay. And were they there?

22 A. Yes, ma'am.

23 Q. So they were at the trial?

24 A. Yes, ma'am.

25 Q. Did your defense team call them as

1 witnesses?

2 A. No, ma'am.

3 Q. No? Did you -- did any of your
4 attorneys ever discuss with you why they weren't
5 called?

6 A. No, ma'am.

7 Q. Were you part of that discussion?

8 A. No.

9 Q. Okay. So they were left off, and it's
10 your testimony that the defense team didn't explain
11 why and did not ask for your buy-in on the decision
12 to not have them testify?

13 A. That's correct.

14 Q. Did you want them to testify?

15 A. Yes, ma'am.

16 Q. And, Mr. Jenkins, you've chosen to
17 testify today?

18 A. Yes, ma'am.

19 Q. And I do want to ask you why you
20 decided not to testify at your original hearing.

21 A. The reason why didn't testify at my
22 original hearing was because my attorneys, they
23 stated that with a whole bunch of people saying
24 this, seeing my case on TV, and trying to get out
25 on my case that it wouldn't be in my best interest

1 if I testified.

2 Q. You had had -- there had been a lot of
3 publicity around your case. Is that accurate?

4 A. Yes, ma'am.

5 Q. And you had also -- had you also had
6 issues with people taking -- did you have your
7 discovery or portions of your discovery with you in
8 the jail?

9 A. Yes, ma'am.

10 Q. Okay. Had you ever had any issues with
11 people taking pieces of that --

12 A. Yes, ma'am.

13 Q. -- or reading it?

14 A. Yes, ma'am.

15 Q. Did you report those to the jail
16 personnel?

17 A. Yes, ma'am.

18 Q. Did you report those to your defense
19 team?

20 A. Yes, ma'am.

21 Q. Did you feel -- well -- so you reported
22 the incidents to the defense team and to the jail
23 personnel?

24 A. Yes, ma'am.

25 Q. When you talked to your defense team

1 about the decision not to have you testify because
2 of potential jailhouse snitches, did you discuss
3 the fact that you had reported and had
4 documentation of people taking your discovery?

5 A. Yes, ma'am.

6 Q. Okay. And even with that information,
7 even with that information out there, did you feel
8 like the fact that you reported the theft of the
9 discovery -- did you feel like that would be enough
10 to impeach them --

11 A. Yes, ma'am.

12 Q. -- if they testified?

13 A. Yes, ma'am.

14 Q. Did you agree with the decision not to
15 testify at the time?

16 A. I didn't agree with it, but I accepted
17 it. I just trusted that they knew what they were
18 talking about.

19 Q. Did you feel like -- do you feel that
20 you should have testified?

21 A. Yes, ma'am.

22 Q. Are there any -- let me just check
23 here. As part of the defense's opening statement,
24 one of your defense counsel, Mark MacDougall, told
25 the jury: He's unconventional in the sense that

1 he's given to fantastical stories. You know people
2 like that, and Mr. Jenkins is one of those people.
3 You'll hear about some of those stories. And
4 that's one of the times we urge you to keep your
5 common sense close by judging what he says. That
6 is page 81 of the transcript, the original trial
7 transcript.

8 Mr. Jenkins, during the opening
9 statement, by the time of the opening statement,
10 had you discussed your right to testify or whether
11 or not you would testify yet with the Court?

12 A. No, ma'am.

13 Q. So you had not -- had you fully made
14 the decision about whether or not you would
15 testify?

16 A. No, ma'am.

17 Q. So as part of Mr. MacDougall's opening
18 statement, he intimates that you're a bit of a
19 liar?

20 A. Yes, ma'am.

21 Q. Did that at all affect your decision
22 later to testify or not testify?

23 A. Yes, ma'am.

24 Q. Did you feel like him intimating that
25 you told fantastical stories at the opening of the

1 trial would made it difficult for you to be taken
2 seriously during your testimony?

3 A. Yes, ma'am.

4 Q. Or you believed?

5 A. Yes, ma'am.

6 Q. Is that something that you discussed
7 with your counsel as being part of your defense?

8 A. No, ma'am.

9 Q. And would you have agreed to
10 Mr. MacDougall saying that?

11 A. No, ma'am.

12 Q. All right. Is there anything else that
13 you want to talk to the Court or you want the Court
14 to know about any of this related to your PCR?

15 A. The issues concerning my -- basically
16 the issues concerning my indictment, the fact that
17 as soon as the solicitor's office said they rest,
18 my defense team said they rest which was -- which
19 actually played another part in me accepting what
20 they say not to testify because as soon the
21 solicitor made a closing argument, he brought up
22 everything that the police for the most part -- he
23 made references to the things that my defense team
24 stated in their opening argument and that the fact
25 that they didn't put any evidence into it, so he

1 basically said it was like the defense team said
2 this, this, and that, but the record doesn't show
3 any of that. There's no evidence into that.

4 Q. So you feel -- okay. Let me walk you
5 through that. So you want the Court to be aware,
6 right -- and let me phrase this correctly. During
7 the opening statement, you felt like the defense --
8 during your defense team's opening statement, you
9 feel like they made promises to the jury about what
10 they were going to prove?

11 A. Yes, ma'am.

12 Q. What promises specifically do you feel
13 like were important as part of the opening
14 statement?

15 A. They spoke about a lot of the evidence
16 concerning educational-wise and things that they
17 were supposed to produce inside the -- in the trial
18 that they never fulfilled.

19 Q. Okay. And you feel like this was
20 remarked upon by the, that this was used against
21 you as part of the closing by the State?

22 A. Yes, ma'am.

23 Q. Okay. And you feel like that was
24 effective with the jury?

25 A. Yes, ma'am.

1 Q. And do you feel like that would have
2 been combated by your defense team putting you up
3 as a witness?

4 A. Putting me up as a witness, putting my
5 other witnesses up to testify. Even doing pretrial
6 research concerning the indictment, how the
7 indictment didn't give me the ability to even try
8 to come up with a defense in the case because from
9 which it didn't state all the essential elements of
10 the crime that had been charged. There's a --
11 there's a lot that played a part that I believe
12 that would have had an different outcome if it
13 wasn't for the errors that my attorney made,
14 especially concerning that the jury sent back an
15 exhibit stating that they already didn't believe my
16 codefendant. And I think they stated verbatim that
17 she's a prepared witness, only speaks the truth
18 sometimes. If my attorney would have -- could have
19 made to testify, my witnesses, or any evidence,
20 it's a reasonable possibility that the outcome of
21 the trial could have been different.

22 Q. Okay. Clarence, we intend to get into
23 the indictment issue with the attorneys. Yes,
24 absolutely. Okay. Clarence, is there anything
25 else you want to tell the Court?

1 A. Yeah. Just briefly. First of all, I
2 want to apologize for my memory. I mean, it has
3 been 15 years, and I was heavily on alcohol and
4 drugs back then. So I'm not -- I'm not asking
5 about that.

6 Q. Okay. No further questions.

7 THE COURT: All right. Cross?

8 CROSS EXAMINATION

9 BY MR. SMITH:

10 Q. Mr. Jenkins, you testified about being
11 at a family member's house from certain dates in
12 April. Whose house are you talking about? Because
13 you said your mother's house and your sister's
14 house. Whose house is it?

15 A. It was my sister's house. It's 110
16 Cornelia Street. That's my sister's house, and my
17 mother lived with my sister and her kids.

18 Q. Okay. So when you use those, you're
19 saying your sister's house or your mother's house,
20 you're referring to the same place. Is that right?

21 A. Yes, sir.

22 Q. And you talked about being over there
23 on certain dates. And I want to make sure that I
24 understand. So you testified that you worked at
25 Ingles on April the 3rd, and then you testified

1 that it could have been April the 4th or both.

2 You're weren't sure. Right?

3 A. No. I'm saying that April 3rd at
4 Ingles in Easley, we went to work -- I was assigned
5 the job through Labor Finders to work at Ingles in
6 Easley to clean up on April 3rd. We went to work
7 at 10:00 PM, got off around 3:00 or 4:00 that
8 morning. That was April 3rd.

9 Q. Okay. And so you talked about also
10 being at Labor Finders on April the 3rd. Right?
11 You were at Labor Finders on April the 3rd?

12 A. That's what I was just -- that was
13 the...

14 Q. So you said that was April the 3rd.
15 Were you there on April the 3rd?

16 A. Yeah, Thursday, April the 3rd, I went
17 to Labor Finders, got our job at 10:00 PM that
18 night at Ingles in Easley cleaning up. Got off at
19 3:00 or 4:00 Friday morning, April 4th.

20 Q. So you were working at Ingles after you
21 had been smoking crack at Labor Finders?

22 A. Yeah. It doesn't impair you. It just
23 relaxes you.

24 Q. Okay. Were you smoking a lot of crack
25 at the time during that week?