

VOLUME I OF II
STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

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S.C. Supreme Court

JOHN PORTEE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000732

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS

)

06-GS-40-7437 - 7439

State of South Carolina

)

)

vs.

)

)

TRANSCRIPT OF RECORD
(Trial)

John H. Portee, Jr.,

)

)

Defendant.

)

January 12 - 15, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JUDGE

APPEARANCES:

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Monday, January 12, 2008

THE COURT: All right. Anything else out of the ordinary?

MR. MEADORS: No, sir. The State's ready, Your Honor.

MR. STRICKLER: The defense is ready, sir. I just ask, if I could, please, to file copies of my requested voir dire --

THE COURT: You've got it.

MR. STRICKLER: -- with the Clerk of Court. I'll give a copy to Madam court reporter, ask her to make it a Court's Exhibit, may it please the Court. Thank you.

(WHEREUPON, Court's Exhibit No. 1 is marked for identification.)

THE COURT: All right now. Just procedurally, if several people have come up, I want to ask them to come up for various reasons like if you've been the victim of a violent crime or so forth. When they come up right there by Ms. Williams, I ask them a few questions, but you all are not prohibited from asking questions. I just look at you. I don't say though every time, Mr. Meadors or Mr. Strickler, would you like to ask something further? I just generally ask when did it happen, where did it happen, how long ago

1 was it, can you be fair and impartial and so forth.
2 So if you want to ask them with specificity, you can.

3 **MR. STRICKLER:** Thank you, sir.

4 **MR. MEADORS:** Judge, looking at the -- if I may,
5 if it please Your Honor, looking at number 6 on the
6 jury list, number 228 jury number, we looked it over
7 and that person was excused. And I think defense
8 counsel had it also. So I doubt they'll be on here.
9 But just for Your Honor's --

10 **THE COURT:** Okay. And who is my clerk?

11 Ms. Pendergrass?

12 **THE CLERK:** It is.

13 **THE COURT:** I'm just looking at the back of your
14 head. All right. Call them up. And, Mr. Strickler,
15 you have no problem with Mr. Portee standing and
16 facing the panel?

17 **MR. STRICKLER:** No, sir. Not at all.

18 (Pause)

19 **THE COURT:** Mr. Meadors, Mr. Strickler, Ms. Ali
20 will be here.

21 **MR. MEADORS:** I'm sorry, sir?

22 **THE COURT:** Juror number 6 that you referred to
23 will be here.

24 **MR. MEADORS:** Well, I think they were excused
25 this morning.

1 **THE CLERK:** It was Coomb. They made a mistake
2 on the numbers. It was Coomb that was dismissed.

3 **MR. STRICKLER:** Yes, sir. We had the same
4 information ourselves. That's fine.

5 **THE COURT:** Well, they excused somebody named
6 Coomb apparently. Coomb and Pou sound somewhat alike
7 to very various people. So they struck the wrong
8 one. Ms. Pou will be here.

9 (Pause)

10 **THE BAILIFF:** The jury is all present, Your
11 Honor.

12 **THE COURT:** Okay. Solicitor Meadors, are you
13 about to call the case for trial?

14 **MR. MEADORS:** If it pleases Your Honor.

15 **THE COURT:** Sure.

16 **MR. MEADORS:** Your Honor, at this time The State
17 of South Carolina would call The State vs. John Henry
18 Portee, 2006-GS-40-7437, a Richland County true
19 billed indictment for murder; and also State of South
20 Carolina vs. John Henry Portee, 2006-GS-40-7438.
21 Excuse me. 7439, an indictment for armed robbery.

22 **THE COURT:** I think there's one more, Mr.
23 Meadors. Is there not?

24 **MR. MEADORS:** Judge, I don't have my glasses
25 with me. I'm sorry. It's 2006-GS-40-7438,

1 indictment for murder.

2 **THE COURT:** Okay, jurors. My name is Ernest
3 Kinard. I am one of your resident judges. I live
4 over in Camden, but actually I'm the longest serving
5 active circuit judge by about five years. Just
6 something to say. They don't pay me any more money
7 to do that. Judge Barber qualified you this morning.

8 Right now we're going to select a jury for the
9 trial of a criminal case. I don't really know
10 ~~anything about the case.~~ I think you may understand
11 that. The solicitor right before you came in handed
12 me three documents. They allege the commission of
13 three crimes by John Henry Portee. Now, Mr. Portee
14 is presumed innocent of all charges. There is
15 absolutely no burden on his part to prove that he is
16 not guilty. The documents that the solicitor handed
17 me allege that Mr. Portee committed two murders and
18 an armed robbery back at a certain time, back in --

19 **MR. MEADORS:** September 3rd.

20 **THE COURT:** -- September the 3rd of '06, in
21 Richland County. The people were -- the decedents
22 were employees of Wendy's at in
23 Columbia, South Carolina. The attorneys tell me that
24 Mr. Portee was also at the time an employee of
25 Wendy's.

1 Now, the documents that the solicitor handed me
2 are called indictments. They create no inference of
3 guilt against Mr. Portee. As I mentioned, he is
4 presumed innocent of all charges. One indictment
5 alleges that on that date of September the 3rd of '06
6 Mr. Portee killed Latora Bolton by shooting her with
7 some type weapon. It does not tell me on the
8 indictment.

9 Another indictment alleges that on that same
10 date Mr. Portee killed one Carlaus Johnson by a
11 gunshot wound. And the final indictment alleges that
12 on that particular date Mr. Portee committed the
13 crime of armed robbery, armed robbery being stealing
14 property of another person from a person's presence
15 while armed with a dead weapon.

16 Those are the three charges. Mr. Portee as I
17 mentioned is presumed innocent of all charges. He is
18 present. I would just ask if he would just stand and
19 face the panel. Jurors, does he look familiar?
20 Anybody kin to him, ever go to school with him, work
21 with him, know him at all? If so, please stand. All
22 right. Thanks, Mr. Portee. You can have a seat.

23 Now, jurors, the entity that prosecutes cases
24 for the State is the Fifth Circuit Solicitor's Office
25 unless they are recused for some reason. So deputy

1 solicitors or associate solicitors are going to
2 prosecute the case. I would ask if they would tell
3 us who they are.

4 **MR. MEADORS:** If I please Your Honor, my name
5 is John Meadors. I am the Deputy solicitor for the
6 Fifth Judicial Circuit.

7 **MS. MCDUFFIE:** My name is Joanna McDuffie. I am
8 an Assistant Solicitor for the Fifth Judicial
9 Circuit.

10 **THE COURT:** All right, jurors. Do any of you
11 all have any connection either direct or indirect
12 with either of these two solicitors, go to church
13 with them, service clubs with them, know them at all?
14 Just stand. Any time you stand you need to first
15 tell us who you are and then how this question
16 applies to you.

17 **JUROR:** My name is Todd Wrenn. I go to church
18 with John Meadors. And I've had some dealings on
19 another case with Ms. McDuffie.

20 **THE COURT:** Bottom line, can you be fair and
21 impartial?

22 **JUROR:** Yes, I can.

23 **THE COURT:** All right. Thanks. Now, Mr. Portee
24 is represented by counsel. They will introduce
25 themselves, Mr. Strickler first I assume.

1 **MR. STRICKLER:** I'm Doug Strickler. I am the
2 Circuit Public Defender for this Fifth Judicial
3 Circuit.

4 **MS. THOMAS:** My name is Ashley Thomas. I'm a
5 deputy public defender with the Fifth Judicial
6 Circuit.

7 **THE COURT:** Jurors, either of those attorneys
8 had any connection with you direct or indirect? Are
9 you related to them, know them at all, had any
10 dealings with them? Okay.

11 Now, jurors, as you understand without my even
12 explaining to you, murder is a serious charge. Armed
13 robbery is a serious charge. Murder and armed
14 robbery are both classified as crimes of violence.

15 I'm just going to run over a few standard
16 questions where if a question applies to you, I just
17 ask you to stand out there. Then I will get into
18 some abstract questions with specificity though. And
19 if one of those questions applies to you, I'll ask
20 you to come up and we will question you a little
21 further at the side bar. That's right in front of
22 the court reporter, Ms. Williams, here.

23 Now, first, jurors, if you or an immediate
24 family member -- now, any time I'm talking about
25 immediate family members, I'm speaking up, down and

1 across. I'm talking about parents, children,
2 brothers and sisters. I am not interested in a third
3 cousin twice removed. All right. Immediate family
4 member. An immediate family member of course would
5 also include the spouse of like a brother or a sister
6 or a child, you know, a husband of a child of yours,
7 something like that. That also is immediate family.

8 So if you or an immediate family member
9 currently or in the past have been employed by law
10 enforcement at any level, I would ask for you to
11 stand. And that would cover anything from the FBI to
12 SLED to Forest Acres police officers to a wildlife
13 officer; anyone who has the power to arrest someone
14 or incarcerate someone. Yes.

15 **JUROR:** My brother-in-law is with the transport
16 police.

17 **THE COURT:** All right. Now, first you always
18 need to tell us who you are, and after you have given
19 us information, if you can be fair and impartial,
20 just have a seat. Yes, sir. Do it again.

21 **JUROR:** Luke Watson. My brother-in-law is with
22 the state transport police. And, yes, I can.

23 **THE COURT:** Okay.

24 **JUROR:** Nancy Harrell. My brother works with
25 Forest Acres Police Department. And I can be

1 impartial.

2 **THE COURT:** Thanks.

3 **JUROR:** Connie Mylette. My daughter is a
4 special investigator with Homeland Security. I think
5 I can be impartial.

6 **THE COURT:** Okay.

7 **JUROR:** Pierre Pinson. My brother-in-law is a
8 Richland County deputy. I can be impartial.

9 **THE COURT:** Okay.

10 **JUROR:** Madison Fludd. My brother-in-law is a
11 deputy. Yes.

12 **THE COURT:** Okay. Now, jurors, you all
13 understand. I didn't name them all. We would be
14 talking about Highway Patrolman, you know, anybody
15 that has the power of arrest. Now, jurors, if you or
16 an immediate family member currently or in the past
17 have been employed by any institution that houses
18 individuals accused of the commission of crimes, such
19 as the penitentiary or the jail, I need for you to
20 stand.

21 **JUROR:** Lashane Lykes. I work with the Alvin S.
22 Glenn Detention Center. The last date of my actual
23 employment was 2005.

24 **THE COURT:** Okay. Thanks. Jurors, if you or an
25 immediate family member currently or in the past are

1 or have been employed by any individual or entity
2 that prosecutes people accused of committing crimes,
3 such as a solicitor's office in general, the Fifth
4 Solicitor's Office in particular; but, jurors,
5 district attorneys prosecute cases. Some county
6 attorneys prosecute cases. Jag Corp and the service
7 prosecutes service people accused of violating
8 service rules; I need for you to stand.

9 Jurors, if you or an immediate family member
10 currently or in the past have been employed by any
11 individual or entity that represents individuals
12 accused of the commission of a crime, that would
13 public defender corporations or a public defender;
14 or, jurors, a private attorney that represents
15 individuals accused and does criminal defense work,
16 if you'd please stand.

17 And, jurors, if you or an immediate family
18 member, while not directly employed by law
19 enforcement, currently or in the past have ever
20 occupied what I call a quasi law enforcement
21 position, which would be like a security guard, a
22 night watchman or, believe it or not, somebody that
23 walks through a box door like a Wal-Mart looking for
24 shoplifters.

25 Jurors, I briefly alluded to the fact that this

1 occurred at Wendy's out on They tell
2 me the address actually was If
3 you have ever been employed by Wendy's, any Wendy's;
4 it does not have to be that particular Wendy's, the
5 attorneys would like to know.

6 Jurors, if you have ever owned any financial
7 interest in Wendy's or any subsidiary of Wendy's,
8 that means like a stockholder, the attorneys would
9 like to know.

10 Jurors, if you have ever had a financial
11 interest or any business dealings with something
12 called Tarheel Capital Corporation, which I don't
13 know what it is, but it could easily be an entity
14 that owns the Wendy's out on the
15 attorneys would like to know.

16 Jurors, if you have frequented, that means if
17 you have gone in the Wendy's out at

18 around the period from June of '06 through
19 September of '06, if you would please tell us.

20 **JUROR:** I'm Steven Karr. I live in that area,
21 sir. So I obviously go by there from time to time.

22 **THE COURT:** Okay. Thanks. Jurors, if you
23 belong to or contribute to any organization that
24 takes a position on crime in society; it can be
25 either way; it could be something like MADD, Mothers

1 Against Drunk Driving. Most of these entities go by
2 initials. CAVE, CADRE, SADD. If you don't know what
3 it is, you don't belong to it or contribute to it.
4 All right. So, belong to any organization that takes
5 a position on crime. Yes, sir.

6 **JUROR:** Your Honor, my name is John Durst. Your
7 Honor, I've just come off of serving on the council
8 on the Lexington/Richland Council on Drug Abuse
9 appointed by Richland County.

10 **THE COURT:** Okay. Thanks. Now, jurors I'm
11 going to come back to you with some more questions.
12 But first I'm going to go over the potential witness
13 list. Now, I don't want you panicking, but here is
14 the situation. I just conferred briefly with the
15 attorneys involved. If we don't have any problems,
16 we anticipate finishing the case Friday. Is that
17 fair, Mr. Meadors?

18 **MR. MEADORS:** Yes, sir.

19 **THE COURT:** Is that fair, Mr. Strickler?

20 **MR. STRICKLER:** Yes, sir.

21 **THE COURT:** We could possibly finish it late
22 Thursday, but we don't know that. So we're going to
23 finish early today, because after the jury is
24 selected you're going to get to go home if you're on
25 that jury because I'm going to go over the case, go

1 over the evidence and so forth, just try to
2 streamline it a little bit so we don't have any
3 delays during the trial objecting to a photograph or
4 the outline of the Wendy's, whatever. So all that
5 will run smooth. But we'll do all that today to
6 speed up the trial, and then in the morning we'll
7 start calling witnesses.

8 But, jurors, don't get on this jury and then
9 tell me at 4:00 tomorrow you've got to go pick up a
10 child or something. You know, I'm sorry. If that's
11 going to be a problem, you don't need to be on the
12 jury because then we'll have to go to Sunday on the
13 case. All right. It's too late once you get on the
14 jury to say, oh, I forgot. I've got to have a root
15 canal Wednesday morning. It's been scheduled for two
16 years and the tooth is killing me. You know, tell me
17 before you get on the jury.

18 But here is a list of potential witnesses. Are
19 any of the witnesses present at this time,
20 Mr. Solicitor or Mr. Strickler?

21 **MR. MEADORS:** Your Honor, a few. Yes, sir.

22 **THE COURT:** All right. All I have, as you can
23 see, are bare names. A lot of people have the same
24 names. If I read out a name and you know someone
25 with that name or are related to such a person, that

1 would be directly or indirectly, as I say, by blood
2 or marriage, okay; if you are connected, direct or
3 indirect, or know anyone whose name I call out as a
4 potential witness, that's not necessary for
5 disqualification, but the attorneys would like to
6 know. So you would stand if you hear a name that
7 you're familiar with. The attorneys can tell us if
8 the person you know or are related to is the
9 potential witness. Okay.

10 I'm just going to pause after each name. Just
11 stand if you've got some connection with a potential
12 witness. And this does not mean all these people are
13 going to testify. If they're not on the list,
14 chances are they won't testify. All right.

15 Franklin Michael Brown. Stephanie Crumpton.
16 Mohammed Furquan. Demetrius Gallman. Mike Godwin.
17 Chaz Hunter. Heather Hunter. Stacy Hunter. Francis
18 James. Ivy Johnson. Otis Johnson. Kelly Jones.
19 Damon Nesmith, Kneesmith (phonetic). Moesha Outin or
20 Ootin (phonetic), O-U-T-I-N. Jahquetta Owens.
21 Marion Portee. Timothy Robinson, David Theames or
22 Tames (phonetic), spelled T-H-E-A-M-E-S. Patrice
23 Trapp. Aisha Williams, spelled A-I-S-H-A. Ed
24 Dabkowski who is or was employed with ATF. Tell me
25 what that is. ATF.

1 **MR. STRICKLER:** Alcohol, Tobacco and Firearms.

2 **THE COURT:** All right. You know, we know.

3 Jurors might not. Ron Abrams employed by RCSD.

4 **MS. MCDUFFIE:** The Richland County Sheriff's
5 Department.

6 **THE COURT:** Gray Amick, Richland County
7 Sheriff's Department. An M. --

8 **JUROR:** Your Honor, Tim McCauseland. I play
9 hockey with Gray Amick.

10 **THE COURT:** All right. If he testifies, can you
11 be fair and impartial?

12 **JUROR:** I could still be fair and impartial.

13 **THE COURT:** Okay. M. Blackmore, Richland County
14 Sheriff's Department. I don't have his or her first
15 name, but an Investigator Boland with the Richland
16 County Sheriff's Department will testify.

17 **MR. MEADORS:** Your Honor, that would be Hal. We
18 apologize. Hal Boland.

19 **THE COURT:** Charles Earles, a former employee of
20 RCSD. Deputy Bradley, RCSD, no first name. David
21 Collins, Richland County Sheriff's Department. Joy
22 Delatorre, Richland County Sheriff's Department.
23 Anna Elsey, Richland County Sheriff's Department.
24 Tena Goff, Richland County Sheriff's Department.
25 William Cedarstaff, Richland County Sheriff's

1 Department. Curtis Burnett, Richland County
2 Sheriff's Department.

3 We've got them set up now, attorneys. That's
4 for the first two weeks. No. It won't take that
5 long. Investigator Faust. I don't have that
6 person's name either who is also employed now,
7 formerly with Richland County Sheriff's Department.
8 And Investigator Goff, the same thing. I don't have
9 a name.

10 Investigator Gonzales, also RCSD. Deputy David
11 Lucas, RCSD. Investigator Don McRae, RCSD. Sergeant
12 McRoberts, RCSD, no first name. Robert Oates, RCSD.
13 Bill Mann, RCSD. Stan Richards, RCSD. Captain Stan
14 Smith, RCSD. And Investigator Talkish, RCSD.
15 Investigator Willoughby, RCSD.

16 Holly Siniard, SLED. John Roberts, SLED.
17 Jeannie Shull, ASGDC. Dr. Stan Kessler. Someone
18 from Cingular who is a keeper of records or can
19 identify phone records I assume. Joe Powell from
20 SLED. Lisa McReynolds from SLED. Amy Stevens, SLED.
21 Nicky Parrott, SLED. Karonda Williams, SLED.

22 Jurors, that's almost all the potential
23 witnesses. I also have perhaps Carlos Jacobs, Mike
24 Morris, Ivy Johnson.

25 Jurors, if anybody knew or was connected direct

1 or indirect with the two victims, Carlaus Johnson or
2 Latora Bolton, certainly we would need for you to
3 stand.

4 Jurors, on the next series of questions, I'm
5 going to ask them and then ask you to come up. I
6 don't want you to stand up and answer right there.
7 We need you to come up and stand right over here.

8 So, jurors, if you or an immediate family member or a
9 real close friend of yours has ever been the victim
10 of what you perceive to be a violent crime, whether
11 it's classified as a violent crime or not; I mean,
12 you know murder, armed robbery, assault and battery
13 with intent to kill, some burglaries are crimes of
14 violence, but other things you might view as a crime
15 of violence, just some forms of criminal domestic
16 violence; you know, whatever. If somebody accused a
17 teacher of spanking a child too much, you might think
18 that's a crime of violence.

19 Whatever you think is a crime of violence, if
20 you or an immediate family member has ever been the
21 victim or the alleged victim of a crime of violence,
22 we'll need for you to come up and we're just going to
23 question you about it a little bit.

24 The other side of that, jurors, if you or to
25 your knowledge an immediately family member or a real

1 close personal friend has ever been accused of
2 committing a violent crime, whether they were
3 convicted or pled guilty or not, the attorneys
4 certainly would like to know.

5 And of course when I'm speaking of crimes of
6 violence, you might as well include, while sometimes
7 it's not crimes of violence, but I need for you to
8 come up. Just sit down right now. If you've ever
9 been the victim of a theft of any type, it could be
10 an armed robbery, it could be just somebody, you
11 know, took something out of your car that you left on
12 the seat with the door open, the attorneys would like
13 to know.

14 Or if any property of yours has ever been
15 entered and somebody took something that was yours or
16 belonged to your household, the attorneys would like
17 to know.

18 So if anybody needs to answer any of those
19 questions, I need for you to come up one at a time.
20 We'll talk about it over here at the side bar. Hold
21 it, bailiffs. Yeah, you all line them up over there.
22 All right. Send them to me one at a time.

23 All right, jurors. Included in that -- I just
24 wanted to see how long the line was -- if there is
25 anything in the nature of the charge that would keep

1 you from being a fair and impartial juror, and that
2 charge being murder or armed robbery; or, jurors, if
3 you have a real reason why you think you couldn't
4 serve on this jury, such as I mentioned, you've got
5 scheduled dental surgery in the morning or something,
6 you get in that line also.

7 Or if you can't be fair and impartial for any
8 reason, like if you've heard anything about the case
9 the attorneys would would like to know. This the
10 attorneys tell me occurred at a time when there were
11 a series of alleged homicides in Richland County and
12 there was a good bit of news coverage on it. If you
13 recall seeing anything on the air about it, just get
14 in line and we'll question you about it. All right?
15 Okay.

16 **THE BAILIFF:** Nicole M. Abole, juror number 2.

17 (Whereupon, the following side bar conference is
18 held).

19 **JUROR:** I have a best friend in Charleston who
20 was the victim of an armed robbery and sexual
21 assault.

22 **THE COURT:** Okay. Did you all hear that?

23 **MR. MEADORS:** No, sir. Excuse me.

24 **JUROR:** I have a best friend of ten years in
25 Charleston who was the victim of an armed robbery and

1 sexual assault.

2 **THE COURT:** Can you be fair and impartial?

3 **JUROR:** (Nods head affirmatively)

4 **THE BAILIFF:** And Rebecca Sims, juror number
5 255.

6 (Whereupon, the following side bar conference is
7 held)

8 **THE COURT:** Okay. Just step up. We're not
9 going to intimidate you.

10 **JUROR:** Oh, okay. My nephew was killed in a
11 shootout in June 2008. But I can be fair and
12 impartial.

13 **THE COURT:** Okay.

14 **THE BAILIFF:** John Durst, juror number 88.

15 (Whereupon, the following side bar conference is
16 held)

17 **JUROR:** I do remember the news coverage, but
18 that's not why I'm here. My house was broken into,
19 but also my stepson was a victim of the Chuck
20 Sullivan, a case you may remember who was a sexual
21 predator. He's doing nine years. And each time
22 Chuck comes up for possible parole, my wife and I
23 along with the Fifth Circuit Solicitor's Office goes
24 down to object to that. So, in answer to your
25 questions, that's why I'm coming forward.

1 **THE COURT:** All right. Do you want to ask him
2 anything else, Mr. Strickler?

3 **MR. STRICKLER:** I didn't hear all of that.

4 **THE COURT:** The bottom line is he opposes
5 someone when he comes up for parole.

6 **MR. STRICKLER:** I understand.

7 **JUROR:** It was Chuck Sullivan who had abused my
8 stepson several times.

9 **THE COURT:** Okay. Thank you.

10 **THE BAILIFF:** Luke Watson, juror number 286.

11 (Whereupon, the following side bar conference is
12 held)

13 **JUROR:** I've just been robbed a few times, had a
14 motorcycle stolen in about '91.

15 **THE COURT:** That irritated you I'm sure.

16 **JUROR:** A good bit. Because it was my only
17 wheels. I had a home broken into in the late
18 nineties while there. And I'm a property owner. I
19 have eight properties and manage about 20 more. And
20 it's not unusual to have stuff stolen in that
21 process.

22 **THE COURT:** All right.

23 **THE BAILIFF:** Pierre Pinson, juror number 222.

24 (Whereupon, the following side bar conference is
25 held)

1 **JUROR:** Somebody broke a window out of my car,
2 but it's been several years ago. They smacked the
3 back window out and stole a check.

4 **THE COURT:** Okay. Thanks.

5 **THE BAILIFF:** Connie Millette, juror number 190.
6 (Whereupon, the following side bar conference is
7 held)

8 **JUROR:** My husband and I were victims of a
9 robbery. I don't think that would interfere with my
10 being fair. We were staying at a hotel and some
11 people broke into our car outside during the night,
12 ran off with a bunch of stuff.

13 **THE COURT:** How long ago was it?

14 **JUROR:** It was a year.

15 **THE COURT:** Okay. Thanks.

16 **THE BAILIFF:** Kennedy Daniels, juror number 75.
17 (Whereupon, the following side bar conference is
18 held)

19 **JUROR:** How you doing, sir? I was incarcerated
20 with the defendant and we had an altercation when we
21 was incarcerated.

22 **MR. MEADORS:** I couldn't hear.

23 **THE COURT:** Well, we're going to dismiss him.
24 He said he was incarcerated with the defendant and he
25 got in an argument with him while he was

1 incarcerated.

2 **MR. MEADORS:** I have no objection to him
3 staying, Judge.

4 **THE COURT:** Go have a seat back there. Don't
5 tell anybody though about that.

6 **THE BAILIFF:** Tiffanie Branham, juror number 39.
7 (Whereupon, the following side bar conference is
8 held)

9 **JUROR:** Hi. My mother was a victim of domestic
10 violence. So ...

11 **THE COURT:** All right. Thanks.

12 **JUROR:** Thank you.

13 **THE BAILIFF:** Juror number 95, Madison Fludd.
14 (Whereupon, the following side bar conference is
15 held)

16 **THE COURT:** Right up here, Mr. Fludd.

17 **JUROR:** Okay. Well, I do landscaping, right.
18 And someone broke into my shed and took a lot of my
19 tools.

20 **THE COURT:** Took some of your stuff?

21 **JUROR:** A whole lot of my stuff. And slashed my
22 tires on my truck.

23 **THE COURT:** That irritated you I'm sure.

24 **JUROR:** Well, it did.

25 **THE COURT:** Can you be fair and impartial?

1 **JUROR:** Yeah. Yeah.

2 **THE COURT:** Okay. Thanks.

3 **THE BAILIFF:** Juror number 51, Precious Cannon.

4 (Whereupon, the following side bar conference is
5 held)

6 **JUROR:** Hi there. I'm Precious Cannon. My
7 house was broken into about two years ago. My
8 husband shotguns he hunts with was stolen.

9 **THE COURT:** Okay. Thank you.

10 **THE BAILIFF:** Juror number 6, Dalya Ali.

11 (Whereupon, the following side bar conference is
12 held)

13 **JUROR:** My brother was killed about three years
14 ago.

15 **THE COURT:** Okay. Was it a confrontational
16 situation?

17 **JUROR:** Yes. It was a home invasion.

18 **THE COURT:** All right. Thank you.

19 **JUROR:** You're welcome.

20 **THE BAILIFF:** Juror number 76, Jamine Dantzler.

21 (Whereupon, the following side bar conference is
22 held)

23 **JUROR:** Hey. I was victimized and raped.

24 **THE COURT:** How long ago was that this happened?

25 **JUROR:** Maybe 15 or so more years.

1 **THE COURT:** 15 years ago?

2 **JUROR:** Mm-hmm (affirmative).

3 **THE COURT:** Okay. You didn't hear her?

4 **MR. MEADORS:** I'm sorry. I apologize.

5 **THE COURT:** She was the victim of rape 15 years
6 ago.

7 **MR. MEADORS:** Oh. I'm sorry.

8 **JUROR:** Juror number 124, Henry L. Holley.

9 (Whereupon, the following side bar conference is
10 held)

11 **JUROR:** How you all doing? Yes, sir. About ten
12 months ago I had someone who I was working with,
13 actually someone went under my carport and stole my
14 little trailer and my riding lawnmower. And I also
15 heard facts about the case being presented over the
16 news and the newspaper.

17 **THE COURT:** All right. Can you set all that
18 aside and be fair and impartial?

19 **JUROR:** Yes, sir, I can.

20 **THE COURT:** You sure?

21 **JUROR:** Yes, sir.

22 **THE COURT:** Okay. Thanks.

23 **THE BAILIFF:** Juror number 21, Dominique
24 Barrett.

25 (Whereupon, the following side bar conference is

1 held)

2 **JUROR:** Hi. Just break-in's to my cars, stereo
3 theft, stuff like that.

4 **THE COURT:** Okay.

5 **JUROR:** I can be fair.

6 **THE COURT:** Okay.

7 **THE BAILIFF:** Juror number 60, Betty Chiles.

8 (Whereupon, the following side bar conference is
9 held)

10 **JUROR:** I have a nephew and he is constantly in
11 jail for something bad every time. Murder. And
12 while he's in jail, he's always fighting police,
13 guards and everybody. In our first trial I read a
14 lot about that on the news.

15 **THE COURT:** Well, the bottom line is if you can
16 set it aside and be fair and impartial, fine. If you
17 think you're going to believe what you heard on the
18 news, you can just tell me you can't be and you don't
19 have to serve on this jury. But I can't read your
20 mind. That's all.

21 **JUROR:** I don't know.

22 **THE COURT:** Well, then we'd better knock you off
23 of it. All right.

24 **JUROR:** Okay.

25 **THE BAILIFF:** Juror number 120, Zachary Hannah.

1 (Whereupon, the following side bar conference is
2 held)

3 **JUROR:** How you doing?

4 **THE COURT:** Pretty good.

5 **JUROR:** I saw it. When it first happened I saw
6 it on WIS. But I didn't know who the accused of it
7 'til yesterday when it aired that the trial was
8 beginning today.

9 **THE COURT:** Can you be fair and impartial?

10 **JUROR:** Yes.

11 **THE COURT:** All right. Thank you.

12 **THE BAILIFF:** And juror number 65, Terry O.
13 Corbin.

14 (Whereupon, the following side bar conference is
15 held)

16 **JUROR:** How you doing? I was riding home that
17 day when this happened from my church, and I looked
18 over there across the street. Plus, I know someone
19 that has been murdered.

20 **THE COURT:** The bottom line is, can you be fair
21 and impartial?

22 **JUROR:** Well, --

23 **THE COURT:** If you can't, all you have to do is
24 tell us.

25 **JUROR:** I feel that I wouldn't want to serve on

1 this jury.

2 **THE COURT:** All right. We won't put you on.
3 All right. Did you all hear what he said?

4 **MR. MEADORS:** No. But if he's not on, I trust
5 your judgment.

6 **THE COURT:** He says he lives that way and he
7 rode by there and saw the cop cars and stopped to see
8 what was happening.

9 **THE BAILIFF:** Juror number 47, Bonnie Burgess.

10 (Whereupon, the following side bar conference is
11 held)

12 **JUROR:** Judge, I don't know if this has any
13 relevance, whether it's relevant or not. But I don't
14 believe in capital punishment. Since this is a
15 murder trial, I don't know.

16 **THE COURT:** What about jurors? Sometimes we
17 string them up.

18 **JUROR:** Jurors? No. No. I couldn't. I
19 couldn't do that myself.

20 **THE COURT:** Well, this is not a capital case.

21 **JUROR:** Okay. I just wanted to be sure.

22 **THE COURT:** But if you were on a jury now, you'd
23 have to decide whether he's guilty or not guilty.

24 **JUROR:** Oh, yeah.

25 **THE COURT:** You could do that?

1 **JUROR:** I could do that. But I couldn't put
2 somebody to death. I couldn't do that. That's not
3 what I could do.

4 **THE COURT:** Well, fine.

5 **JUROR:** Thank you.

6 **THE COURT:** All right. Anything else you all
7 want on this?

8 **MR. MEADORS:** Can you just give us just a minute
9 to look at the list before you call them up?

10 **THE COURT:** Sure. But is there anything else
11 you all want to ask?

12 **MR. MEADORS:** Yeah. 174, he said he didn't
13 realize who it was until today?

14 **MR. STRICKLER:** Right.

15 **THE COURT:** He just saw it on the news when it
16 came on and then today he saw they were going to pick
17 the jury.

18 **MR. STRICKLER:** He saw it on the news at the
19 time and then he saw it again today.

20 **MR. MEADORS:** He didn't say he knew who the
21 person was?

22 **THE COURT:** No. He said he didn't know anybody.
23 You all take your time.

24 **MR. MEADORS:** Just a few minutes.

25 **THE COURT:** I mean, if there's anything else you

1 want me to ask them, now is the time.

2 **MR. STRICKLER:** Let me go take a quick look at
3 my list.

4 **THE COURT:** Okay.

5 (Whereupon, the side bars conferences are
6 concluded)

7 **THE COURT:** All right, jurors. I know you all
8 have watched TV and you read these things about
9 picking three weeks to pick a jury. It's just going
10 to take us a few minutes. All right. But what
11 happens is both the State and the defense get to
12 excuse certain jurors for reasons or no reasons.

13 But anyway, in looking over the information that
14 they have on you all to see, in just a few minutes
15 Ms. Pendergrass is going to call your names out one
16 at a time. When she calls your name all you have to
17 do is stand up. You don't have to say anything.
18 Then they will look at you. And the State will
19 either -- I hate to say it this way -- accept you or
20 reject you. And if they accept you, the defense has
21 the same option. And if they both don't excuse you,
22 just have a seat.

23 And when we get 12 jurors -- plus, you have a
24 seat whether you are accepted or not -- when we get
25 12 jurors and two alternates, we'll call those 14 up

1 at one time. It just speeds it up a little. Some
2 judges let you come up, stand at the microphone.
3 It's kind of embarrassing I always thought if they
4 say excuse the juror. You kind of have to hang your
5 head and walk back. If you're out there, you can
6 just sit down in a hurry. All right. Whenever you
7 all are ready, just let me know. No rush.

8 (Pause)

9 **THE COURT:** He was just warming up my coffee in
10 the microwave. He wasn't putting anything in it.

11 (Pause)

12 **MR. STRICKLER:** We're ready, Your Honor.

13 **THE COURT:** State ready?

14 **MR. MEADORS:** Yes, sir.

15 **THE COURT:** Defense ready?

16 **MR. STRICKLER:** Yes, sir.

17 **THE COURT:** All right, Ms. Pendergrass.

18 **THE CLERK:** Juror number 290, Sharon White.

19 (Black female)

20 **THE CLERK:** What says the State?

21 **MR. MEADORS:** Please present Ms. White.

22 **THE CLERK:** What says the defense?

23 **MR. STRICKLER:** Please swear Mrs. White.

24 **THE CLERK:** Juror number 190, Connie Millette.

25 (White female)

1 **THE CLERK:** What says the State?

2 **MR. MEADORS:** Please present Ms. Millette.

3 **THE CLERK:** What says the defense?

4 **MR. STRICKLER:** Please excuse Ms. Millette from
5 the trial of this case.

6 **THE CLERK:** Juror number 23, Herbert Bendillo.

7 (White male)

8 **THE CLERK:** What says the State?

9 **MR. MEADORS:** Please present Mr. Bendillo.

10 **THE CLERK:** What says the defense?

11 **MR. STRICKLER:** Please swear Mr. Bendillo.

12 **THE CLERK:** Juror number 2, Nicole Abole.

13 (White female)

14 **THE CLERK:** What says the State?

15 **MR. MEADORS:** Please present Mrs. Abole.

16 **THE CLERK:** What says the defense?

17 **MR. STRICKLER:** Please excuse Ms. Abole from the
18 trial of this case.

19 **THE CLERK:** Juror number 28, Marc Bishop.

20 (White male)

21 **THE CLERK:** What says the State?

22 **MR. MEADORS:** Please present Mr. Bishop.

23 **THE CLERK:** What says the defense?

24 **MR. STRICKLER:** Please swear Mr. Bishop.

25 **THE CLERK:** Juror number 228, Amber Pou.

1 (Black female)

2 **THE CLERK:** What says the State?

3 **MR. MEADORS:** Please present Ms. Pou.

4 **THE CLERK:** What says the defense?

5 **MR. STRICKLER:** Please swear her.

6 **THE CLERK:** Juror number 300, Todd Wrenn.

7 (White male)

8 **THE CLERK:** What says the State?

9 **MR. MEADORS:** Please present Mr. Wrenn.

10 **THE CLERK:** What says the defense?

11 **MR. STRICKLER:** Please excuse Mr. Wrenn from the

12 trial of this case.

13 **THE CLERK:** Juror number 56, Walter Carter.

14 (White male)

15 **THE CLERK:** What says the State?

16 **MR. MEADORS:** Please present Mr. Carter.

17 **THE CLERK:** What says the defense?

18 **MR. STRICKLER:** Please excuse Mr. Carter from

19 the trial of this case.

20 **THE CLERK:** Juror number 6, Dalya Ali.

21 (Black female)

22 **THE CLERK:** What says the State?

23 **MR. MEADORS:** Please present Ms. Ali.

24 **THE CLERK:** What says the defense?

25 **MR. STRICKLER:** Please excuse Ms. Ali from the

1 trial of this case.

2 **THE CLERK:** Juror number 211, Tracy Osborne.

3 (Black female)

4 **THE CLERK:** What says the State?

5 **MR. MEADORS:** Please present Ms. Osborne.

6 **THE CLERK:** What says the defense?

7 **MR. STRICKLER:** Please swear Ms. Osborne.

8 **THE CLERK:** Juror number 183, Timothy

9 McCauseland.

10 (White male).

11 **THE CLERK:** What says the State?

12 **MR. MEADORS:** Please present Mr. McCauseland.

13 **THE CLERK:** What says the defense?

14 **MR. STRICKLER:** Please excuse Mr. McCauseland

15 from the trial of this case.

16 **THE CLERK:** Juror number 66, Robert Corley.

17 (White male)

18 **THE CLERK:** What says the State?

19 **MR. MEADORS:** Please present Mr. Corley.

20 **THE CLERK:** What says the defense?

21 **MR. STRICKLER:** Please swear Mr. Corley.

22 **THE CLERK:** Juror number 299, Erica Woolridge.

23 (Black female)

24 **THE CLERK:** What says the State?

25 **MR. MEADORS:** Please excuse Ms. Woolridge.

1 **THE CLERK:** Juror number 304, Marcus Robinson.
2 (Black male).

3 **THE CLERK:** What says the State?

4 **MR. MEADORS:** Please excuse Mr. Robinson.

5 **THE CLERK:** Juror number 231, Jaun Quzack.
6 (Black female)

7 **THE CLERK:** What says the State?

8 **MR. MEADORS:** Please present Ms. Quzack.

9 **THE CLERK:** What says the defense?

10 **MR. STRICKLER:** Please swear Ms. Quzack.

11 **THE CLERK:** Juror number 21, Dominique Barrett.
12 (White female)

13 **THE CLERK:** What says the State?

14 **MR. MEADORS:** Please present Ms. Barrett.

15 **THE CLERK:** What says the defense?

16 **MR. STRICKLER:** Please excuse Ms. Barrett from
17 the trial of this case.

18 **THE CLERK:** Juror number 294, Belton Wilson.
19 (Black male)

20 **THE CLERK:** What says the State?

21 **MR. MEADORS:** Please present Mr. Wilson.

22 **THE CLERK:** What says the defense?

23 **MR. STRICKLER:** Please excuse Mr. Wilson from
24 the trial of this case.

25 **THE CLERK:** Juror number 302, Steven Karr.

1 (White male)

2 **THE CLERK:** What says the State?

3 **MR. MEADORS:** Please present Mr. Karr.

4 **THE CLERK:** What says the defense?

5 **MR. STRICKLER:** Please excuse Mr. Karr from the
6 trial of this case.

7 **THE CLERK:** Juror number 42, Benjamin Brown.

8 (Black male)

9 **THE CLERK:** What says the State?

10 **MR. MEADORS:** Please present Mr. Brown.

11 **THE CLERK:** What says the defense?

12 **MR. STRICKLER:** Please swear Mr. Brown.

13 **THE CLERK:** Juror number 256, Michael Sipos.

14 (White male)

15 **THE CLERK:** What says the State?

16 **MR. MEADORS:** Please present Mr. Sipos.

17 **THE CLERK:** What says the defense?

18 **MR. STRICKLER:** Please swear Mr. Sipos.

19 **THE CLERK:** Juror number 91, Brittany Felder.

20 (Black female)

21 **THE CLERK:** What says the State?

22 **MR. MEADORS:** Please excuse Ms. Felder.

23 **THE CLERK:** Juror number 208, Robin Olds.

24 (White male)

25 **THE CLERK:** What says the State?

1 **MR. MEADORS:** Please present Mr. Olds.

2 **THE CLERK:** What says the defense?

3 **MR. STRICKLER:** Please swear Mr. Olds.

4 **THE CLERK:** Juror number 286, Luke Watson.

5 (White male)

6 **THE CLERK:** What says the State?

7 **MR. MEADORS:** Please present Mr. Watson.

8 **THE CLERK:** What says the defense?

9 **MR. STRICKLER:** Please swear Mr. Watson.

10 **THE CLERK:** Juror number 88, John Durst.

11 (White male)

12 **THE CLERK:** What says the State?

13 **MR. MEADORS:** Please present Mr. Durst.

14 **THE CLERK:** What says the defense?

15 **MR. STRICKLER:** Please excuse Mr. Durst--from the
16 trial of this case.

17 **JUROR:** Juror number 159, Missy Kelly.

18 (Black female)

19 **THE CLERK:** What says the State?

20 **MR. MEADORS:** Please excuse Ms. Kelly.

21 **THE CLERK:** Juror number 120, Zachary Hannah.

22 (Black male)

23 **THE CLERK:** What says the State?

24 **MR. MEADORS:** Please present Mr. Hannah.

25 **THE CLERK:** Does defense challenge for cause?

1 **MR. STRICKLER:** No, ma'am. Please swear
2 Mr. Hannah.

3 **THE COURT:** Two alternates. Is that enough, Mr.
4 Meadors?

5 **MR. MEADORS:** Yes, sir.

6 **THE COURT:** Mr. Strickler?

7 **MR. STRICKLER:** I believe that's all we can
8 select, Judge.

9 **THE COURT:** Well, okay.

10 **THE CLERK:** Juror number 51, Precious Cannon.
11 (Black female)

12 **THE CLERK:** What says the State?

13 **MR. MEADORS:** Please present Ms. Cannon.

14 **THE CLERK:** What says the defense?

15 **MR. STRICKLER:** Please excuse Ms. Cannon from
16 the trial of the case.

17 **THE CLERK:** Juror number 111, Quency Grant.
18 (Black male)

19 **THE CLERK:** What says the State?

20 **MR. MEADORS:** Please present Mr. Grant.

21 **THE CLERK:** What says the defense?

22 **MR. STRICKLER:** Please swear Mr. Grant.

23 **JUROR:** Juror number 176, Lashane Lykes.
24 (Black female)

25 **THE CLERK:** What says the State?

1 **MR. MEADORS:** Please present Ms. Lykes.

2 **THE CLERK:** What says the defense?

3 **MR. STRICKLER:** Please swear Ms. Lykes.

4 **THE COURT:** Okay. Do the attorneys need to take
5 up anything concerning the strikes before we call
6 them up?

7 **MR. MEADORS:** Nothing from the State.

8 **MR. STRICKLER:** Beg the Court's indulgence one
9 moment, please, sir.

10 **THE COURT:** All right.

11 (Pause)

12 **MR. STRICKLER:** No, sir. Thank you.

13 **THE COURT:** All right. Let's call them up.

14 **THE CLERK:** Juror number 290, Sharon white.

15 **THE COURT:** Tell them what to do.

16 **THE CLERK:** Please come forward bringing any
17 personal items that you may have with you to the jury
18 box. Juror number 23, Herbert Bendillo. Juror
19 number 28, Marc Bishop. Juror number 228, Hannah
20 Pou. Juror number 211, Tracy Osborne. Juror number
21 66, Robert Corley. Juror number 231, Jaun Quzack.
22 Juror number 42, Benjamin Brown. Juror number 256,
23 Michael Sipos. Juror number 208, Ronin Olds. Juror
24 number 286, Luke Watson. Juror number 120, Zachary
25 Hannah. Juror June 111, Quency Grant. And juror

1 number 176, Lashane Lykes.

2 **THE COURT:** Ms. Pendergrass.

3 **THE CLERK:** Yes, sir.

4 **THE COURT:** What about our jurors that were not
5 selected?

6 **THE CLERK:** They need to report back downstairs
7 for further instructions.

8 **THE COURT:** Really? You can't just let them go
9 for the day?

10 **THE CLERK:** Better not.

11 **THE COURT:** All right, jurors. I was going to
12 let you all go for the day but hard-nosed Jackie
13 Pendergrass says you all have got to go back
14 downstairs. So you can quietly leave. And don't
15 clap for not getting on the jury now. Just kind of
16 ease out.

17 Okay, jurors. We're going to start in the
18 morning at 9:30. But I need you all here at 9:25.
19 When you come in in the morning the bailiffs will
20 show you where to report and how to get there, elect
21 somebody, a foreperson. Don't get your hopes up.
22 The foreman is not going to get paid a penny more
23 than anybody else. All right. Just somebody has to
24 preside. It can be anybody except the two
25 alternates. They are the ones at the back.

1 Now, jurors, you know, we're in a high media
2 world. You're going to have to decide this case
3 based on what transpires in this courtroom only. So
4 don't look at any TV programs about it, not that
5 there's going to be anything on there. But in
6 addition, you can do really nice things with
7 computers now. If I'm on vacation -- I can't, but I
8 just ask one of my law clerks or secretaries to look
9 at the obituaries for about a week, see if anybody I
10 knew died. They can just pull them up.

11 So don't be looking for any old articles or in
12 any newspapers concerning the allegations about this
13 case or any old newscasts concerning this case. You
14 have to decide the case based on what's in here.

15 Plus, do not talk to anybody about the case.
16 Don't call your best friend and say, you'll never
17 guess which case I got on. You know. It's not a
18 wreck case. No, you can't. That's between us. All
19 right? I mean, you have to tell your spouse you're
20 on a murder case. You don't have to tell them what
21 kind, you know.

22 Now, here is the thing. To finish the case
23 we've got to be streamlined and so forth. But both
24 the State and the defense is entitled to fully
25 examine everybody that testifies. And sometimes

1 witnesses take the stand and they don't say just what
2 they told before they got on there. So anyway
3 sometimes you think a witness will take five minutes;
4 it takes 30 minutes. It's sometimes the other way
5 around. But the bottom line, we can't control it
6 right by the clock; in other words, this witness is
7 going to be five minutes, this one is ten minutes and
8 what have you. We've got lots of witnesses who are
9 going to testify. So we won't necessarily quit at
10 like 3:00 tomorrow. We'll try not to keep you beyond
11 6:00. Is that fair, Mr. Strickler?

12 **MR. STRICKLER:** Yes, sir.

13 **MR. MEADORS:** Yes, sir.

14 **THE COURT:** It may be 6:05 because you don't
15 want to stop a witness in mid sentence, you know, and
16 say, hold it, it's 6:00. But it will be around that
17 time, just to make sure we finish by Friday. Not
18 that we have to. But I don't get paid double time
19 for working on Saturday. You all probably don't
20 either.

21 So it's a serious case. They're entitled to put
22 all their evidence in, with due deliberations by you
23 jurors. So don't speculate on the case. We'll put
24 it up and down as quick as we can, but we're not
25 going to rush it. So just plan on working 'til like

1 6 every day except today.

2 So, see you all in the morning by 9:30. At 9:30
3 you come in, elect a foreperson, give you a chance to
4 meet everybody. As soon you do that we'll start
5 right at 9:30 because we will have all the evidence I
6 think marked and so forth. So there won't be any
7 delay about letting me see that, I object to that,
8 that's not the sketch I said would come in, that's
9 not the pictures. All that will be out there
10 smoothly. So have a good night. Watch the traffic
11 out there. See you in the morning at 9:30.

12 (Jury out at 2:50 p.m.)

13 **THE COURT:** Now, see in the media age, they take
14 away all the fun. Like I couldn't tell that guy,
15 wait a minute; we don't take jurors over 6-4. He'd
16 send a letter to the editor.

17 **MR. MEADORS:** Those days would be gone, Your
18 Honor.

19 **THE COURT:** Those days are gone. Yeah. You all
20 need five or six minutes?

21 **MR. MEADORS:** If we could break until 3, I'd
22 appreciate it, just to get some coffee.

23 **THE COURT:** All right. Be back at 3.

24 (Whereupon, a break is taken)

25 **MS. MCDUFFIE:** Sorry, Your Honor. Mr. Meadors

1 is on his way.

2 **MR. MEADORS:** Hey, Judge. I had to get all of
3 our victims. So I apologize, Judge.

4 **THE COURT:** All right. What about simple
5 things? Are you going to have sketches or photos or
6 something?

7 **MR. MEADORS:** Yes, sir. Ms. McDuffie who is
8 very organized has got them all separated here. I
9 know I have the first witness here that we could look
10 at when we adjourn. And I think most of them are
11 noncontroversial. Besides that, I think this
12 afternoon we could pretty much go through, with an
13 exception here or there, most all of them.

14 Judge, we've got pictures of the outside of
15 Wendy's and the inside. We're going to narrow it
16 down to show what door they went to, what door they
17 checked. There are very few I think, Your Honor,
18 that we're not going to be able to agree on. There
19 are some pictures of the two bodies inside. I guess
20 Your Honor will have to decide which, if any, of
21 those. We'd like to at least show one to just give a
22 view. But again, you'll probably have to decide
23 that. Beyond that, I don't think they're that
24 controversial.

25 **MR. STRICKLER:** And beyond photos of the bodies,

1 I'm sure if things go as they usually go, I can raise
2 cumulative objections to others. I don't care.

3 *THE COURT:* All right. I've got you.

4 *MR. STRICKLER:* And the bodies we need to talk
5 about.

6 *THE COURT:* Well, we just need Ms. Williams to
7 pre-mark them. That's all. Because then we don't
8 have to delay the trial while she's putting stickers
9 on it.

10 *MR. MEADORS:* And Ms. McDuffie, they have done
11 that before, and I think they're prepared to do that.

12 *THE COURT:* So what is it I really need to hear,
13 if anything? Mr. Strickler has something he wants to
14 hear.

15 *MR. STRICKLER:* May it please the Court, Your
16 Honor. If I could do through just a brief laundry
17 list.

18 *THE COURT:* All right.

19 *MR. STRICKLER:* At this point in time I need of
20 course to renew my previously made discovery motions
21 in this case.

22 *THE COURT:* All right. Rule 5 motions, that's
23 still the rule?

24 *MR. STRICKLER:* Yes, sir.

25 *THE COURT:* Rule 5. Mr. Meadors, Mr. Strickler

1 says he has made all encompassing, well thought out
2 Rule 5 motions and he would like to make sure that
3 nothing is going to be sprung on him during the
4 trial. He has been given everything that you all
5 have?

6 **MR. MEADORS:** Ms. McDuffie is in charge, Your
7 Honor.

8 **THE COURT:** All right. Ms. McDuffie.

9 **MS. MCDUFFIE:** Your Honor, we have given the
10 defense everything in our possession, unless Mr.
11 Strickler has specific items that he knows about that
12 we have not turned over.

13 **MR. STRICKLER:** Which I'll be happy to turn to
14 now that I've dealt with the general. Your Honor, as
15 to specific discovery in this matter, there are
16 numerous DNA samples that were taken in this case
17 from the scene and from property recovered away from
18 the scene, ending up with a comparison of the sample
19 provided by Mr. Portee, among others.

20 I received early on a DNA report on the results
21 of the testing on the samples. That's prior to them
22 having a sample from Mr. Portee. The sample from Mr.
23 Portee was taken in September of this year. I filed
24 a specific DNA request, a specific discovery request
25 relating to DNA, in or on October 7th asking for a

1 whole laundry list of material.

2 I additionally expressed to the court before
3 Judge Childs on October 20th my desire to have not
4 just the report but the lab notes, bench notes
5 associated with the testing in case there are any
6 results. We still at that point in time didn't have
7 the results from the testing done on Mr. Portee. In
8 case the results came back associated with him, any
9 expert I have would be to able to review the bench
10 notes to give an opinion as to the quality of the
11 testing.

12 I was provided the bench notes January 7th,
13 2009, which is I believe Wednesday afternoon of last
14 week, after I got with Ms. McDuffie either Monday or
15 Tuesday and said, yes, indeed, I still need those.

16 Now, what I am still missing -- I'm sorry. I
17 just need to lay some background for you, Judge.
18 What I'm still missing is -- I don't know whether
19 you -- I'm sure you have seen DNA reports. There is
20 a table at the end that summarizes the findings.
21 There is a table of that nature on the initial DNA
22 report issued in this case. There is no such table
23 associated with the additional report that was issued
24 relating to the testing done on Mr. Portee's sample.
25 If there is such a table, I need that table. Ms.

1 McDuffie knows what I'm talking about.

2 **THE COURT:** All right. Joanna McDuffie, what is
3 it you're trying to hide from Mr. Strickler
4 concerning DNA results?

5 **MS. MCDUFFIE:** Absolutely nothing, Your Honor.
6 The table that he is speaking to was provided to him
7 on the first report. The report given to me by the
8 DNA analyst, Gray Amick, did not contain a table on
9 the second report. I do not know if Mr. Amick has
10 generated one. I asked him for his entire file which
11 I did turn over to Mr. Strickler on Wednesday.

12 **THE COURT:** So there is no second page on the
13 last report you gave him, no summary?

14 **MS. MCDUFFIE:** To my knowledge there is no
15 table. We can call and check on that, Your Honor.
16 But to my knowledge, one has not been generated.

17 **MR. STRICKLER:** So I would ask for that. And if
18 it hasn't been generated, it hasn't been generated.
19 I understand that. Additionally, however, I have had
20 the chance, not without the benefit of a DNA expert,
21 but I have had a chance to review the conclusions and
22 findings of the testing done on a known sample of Mr.
23 Portee. And I now need -- and this I asked for in my
24 specific DNA discovery motion October 7th. I now
25 need a copy of the protocol employed by SLED for

1 their DNA testing so I can make hide nor hair of, or
2 I can try to draw some conclusions as to the results
3 that Mr. Amick came up with.

4 Now, I am sure it exists in electronic format.
5 And they could just shoot it my way. I just need to
6 be able to try to understand how he arrived at the
7 conclusions he arrived at, and I need that document
8 to do that.

9 **MR. MEADORS:** SLED doesn't have any involvement
10 in this case.

11 **MR. STRICKLER:** If I said SLED, I'm sorry.
12 Richland County.

13 **MR. MEADORS:** Okay.

14 **MR. STRICKLER:** My bad. Richland County does
15 have protocol. I don't know if --

16 **THE COURT:** All right. Ms. McDuffie, if
17 Richland County has a protocol which they about have
18 to have because you wouldn't know what the results do
19 without that, have them e-mail it, fax it to Mr.
20 Strickler.

21 **MS. MCDUFFIE:** Yes, sir, Your Honor.

22 **MR. STRICKLER:** Thank you.

23 **THE COURT:** By 3:30. No. By in the morning.

24 **MR. STRICKLER:** One thing I don't think I have
25 to deal with, but I just want to throw it out there;

1 I received I believe at some point last week a
2 statement from one Ronald Martin allegedly
3 implicating or relating to some conversations he
4 alleged to have had with Mr. Portee. I did not see
5 him on the State's witness list. So I take it that
6 you are not calling Ronald Martin.

7 **THE COURT:** There is no Martin on the list.

8 **MR. MEADORS:** Your Honor, if he would be called
9 in reply, we'd certainly ask you to ask the jury if
10 they knew him or if anybody is related to them. But
11 that was clearly an oversight.

12 **THE COURT:** All right. Martin is a potential
13 reply witness but will not be presented in the
14 State's case in chief.

15 ~~**MR. STRICKLER:** Thank you, sir. One -- and I~~
16 misspoke myself. One matter when we were discussing
17 photos. I don't know what the State intends to
18 introduce. There is a photograph of a rental car
19 that Mr. Portee's girlfriend had rented which he's
20 alleged to have ridden to the scene in. And there
21 are a number of photographs of it, several of which
22 show what appears to be a gunshot to the front
23 windshield of the car.

24 So at whatever time, I'm going to move to
25 suppress introduction of that photograph unless the

1 State has some information they can supply me and the
2 Court, more importantly the Court, as to how that
3 relates to this case. Because if it does, I don't
4 see it, and it is prejudicial.

5 **MR. MEADORS:** The only way it relates it might
6 corroborate a witness's testimony of how the gunshot
7 got there. And that could be corroborative evidence
8 of that. But before we brought that out, I would
9 bring it before Your Honor.

10 **THE COURT:** All right. Picture of former
11 girlfriend's I guess vehicle will not be --

12 **MR. MEADORS:** Current girlfriend, mother of two
13 of his children who I believe the facts will show
14 took him to Wendy's that morning and then took him,
15 gave him a ride back.

16 **THE COURT:** All right.

17 **MR. STRICKLER:** All right, sir. Thank you.
18 I've dealt with this prior to jury selection. This
19 was one of the issues I was worried we'd have to deal
20 with prior to jury selection. I just want to make
21 sure we're straight on the record.

22 At the time of the bond setting in this case,
23 one of the families of one of the victims, or the
24 families of one of the victims showed up in court,
25 several members of whom were wearing t-shirts with

1 pictures of the victim on it. And evidently Mr.
2 Meadors went and checked with them. None of them
3 were wearing that today. It's my understanding that
4 he's -- and correct me if I'm wrong -- he's indicated
5 they should not wear something like that.

6 **MR. MEADORS:** No question. I was trying to do
7 all that at the break, didn't have time. Our folks
8 will, victim advocates will call them all again
9 tonight and make sure they don't do that.

10 **THE COURT:** All right. Nobody comes in the
11 courtroom with a t-shirt with a picture of the victim
12 on it. I don't want any pictures; no family members
13 backing Mr. Portee coming in with his picture on it.

14 **MR. STRICKLER:** Thank you, sir. Okay. Now, I
15 just raise this at this point. It's really
16 premature. But there are a large number or a
17 substantial body of audiotapes made of telephone
18 conversations from the jail who is alleged to be Mr.
19 Portee from the jail. I assume -- I don't know --
20 the State intends to introduce some or all of those.
21 If the State can identify for me those portions that
22 they want to introduce, I will be able to identify
23 whether I have any basis to object to their
24 introduction.

25 **THE COURT:** All right.

1 **MR. MEADORS:** We have no problem with that. I
2 think we've narrowed it down to just two or three,
3 which we have provided them with a copy of all the
4 calls. And I think that I'll be able to do that, if
5 not this afternoon, by in the morning, in plenty of
6 time before we use them. No question about it.

7 **MR. STRICKLER:** That's okay. I'm just trying to
8 smooth things out.

9 **THE COURT:** All right. The State will identify
10 with specificity any recordings prior to trying to
11 admit the whole recording any portions of the
12 recordings they intend to present.

13 **MR. STRICKLER:** Okay. I'm just about done,
14 Judge.

15 **THE COURT:** All right.

16 **MR. STRICKLER:** Fairly standard. We'd ask the
17 State to provide us prior to their testimony and
18 hopefully more than two minutes prior to their
19 testimony, rap sheets on any lay witnesses who are
20 going to testify.

21 **THE COURT:** All right.

22 **MR. MEADORS:** Yes, sir. Ms. Outen will have
23 those this afternoon and she'll have them on his desk
24 first thing in the morning. I don't think the first
25 couple have one, but we'll doublecheck that and make

1 sure he has that, try to have them to him this
2 afternoon if we can.

3 **MR. STRICKLER:** Just two or three other issues,
4 Judge. There is a witness on your list named Otis
5 Johnson who has signed a proffer with the federal
6 government who would testify -- well, testify about
7 some alleged interaction he had with Mr. Portee on
8 the evening of the incident. We've gotten a copy of
9 the proffer. That we dealt with back in the hearing
10 in front of Judge Childs October 20th. I just ask
11 from the State further at this point in time, any
12 details relating to any promises made on the part of
13 the State in relation to Mr. Johnson's testimony.

14 **MR. MEADORS:** Your Honor, I have made none. I
15 haven't met the man yet, quite frankly. I haven't
16 seen the proffer yet. I wasn't in here when they had
17 the hearing they had. But obviously, as I have with
18 all my witnesses in preparing with Mr. Strickler,
19 I'll ask him on the stand if we call him, do you
20 expect us to put in a word with you and you'll
21 hopefully get a downward departure. I always bring
22 that out, and I'm assuming that's what will happen.
23 Other than that, I have not promised him anything.
24 Or I haven't promised him anything.

25 **THE COURT:** Well, that's not quite it. You need

1 to cover it with him before he gets on the stand
2 because Mr. Strickler needs to know in advance.

3 **MR. MEADORS:** Right. But I haven't met with
4 him, so I can't tell him yet.

5 **THE COURT:** I understand. But once you meet
6 with him, you tell Mr. Strickler any deals that have
7 been cut with him.

8 **MR. MEADORS:** And I'm not going to offer him a
9 deal. I think the standard of the Feds, it's my
10 understanding if we use him, he'll hopefully get a
11 downward departure. That's what he's hoped for. And
12 I'm going to ask him what he hopes for. And that's
13 all I've ever done.

14 **THE COURT:** All right.

15 **MR. STRICKLER:** Thank you. In relation to that,
16 the proffer itself, a fairly standard federal proffer
17 agreement, refers to requiring Mr. Johnson to submit
18 to a polygraph on the information he provides. I
19 would here and now object to any mention of polygraph
20 on his part and would move for a mistrial if that is
21 mentioned during the course of his testimony.

22 **MR. MEADORS:** Your Honor, unless something crazy
23 came up where they wanted it to come in, I certainly
24 wouldn't do that.

25 **THE COURT:** Well, you need to caution Johnson,

1 whoever it is, not to say, not only is this right; I
2 took a polygraph.

3 **MR. STRICKLER:** Thank you. And, lastly, in
4 relation to Mr. Johnson, in the statement he has, to
5 the extent I can read it, he references a prior
6 incident; it's on the second page of the statement,
7 between Mr. Portee and I believe one Andrew Goins
8 involving a weapon. If the State intends to go into
9 anything involving -- and why they would, I don't
10 know, because I can't see the relevance at all; often
11 I miss these things. If they intend to go into that,
12 we submit that's Lyle testimony and we need to have a
13 hearing in that regard.

14 **MR. MEADORS:** We understand. I certainly would
15 ask Your Honor to hear it outside first.

16 **THE COURT:** All right. But let's try not to
17 have a lot of hearings where we have to send the jury
18 out. I mean, do them at lunchtime or something.

19 **MR. STRICKLER:** All right, Judge. Just as I
20 think we discussed this back in chambers, if the
21 State intends to introduce the testimony or alleged
22 testimony of Mr. Portee at the time he was detained
23 by I believe Investigator Boland, then I'd ask for a
24 Jackson v. Denno hearing.

25 **THE COURT:** You can get one.

1 **MR. STRICKLER:** Thank you, sir.

2 **MR. MEADORS:** We might could do that the last
3 thing today, Judge. I've got a couple of other
4 things I want to go over.

5 **THE COURT:** All right.

6 **MR. STRICKLER:** And the last thing I have is we
7 had filed a Brady motion that was subject to the
8 hearing October 20th before Judge Childs relating to
9 Heather Hunter whose girlfriend, mother of his
10 children of Mr. Portee who is alleged to have taken
11 Mr. Portee to the scene of the incident on the date
12 of the incident. And she has given to our knowledge
13 three written statements to the State on this.

14 And the Brady motion asks for the substance of
15 any additional statements she's given. This was
16 based on the fact that we knew she had been
17 interviewed. At that point in time we knew she had
18 been interviewed by Mr. Meadors. And Brady relates
19 to any, not only exculpatory but impeachment matters.

20 Suffice it to say, I'll just characterize her
21 three written statements as being inconsistent with
22 each other. I would presume that her statement to
23 Mr. Meadors might also be inconsistent. However, I
24 renew the Brady motion as it specifically relates to
25 Ms. Hunter because I am informed and believe that Mr.

1 Meadors has met with her again, perhaps as recently
2 as last week, very recently in preparation for the
3 trial. And the impression I got from speaking with
4 her attorney is that Ms. Hunter was not particularly
5 testifying the way Mr. Meadors expected her to. And
6 so I expect that there is yet again another different
7 statement from her. I would like the contents of
8 that.

9 **THE COURT:** Okay. You got it.

10 **MR. MEADORS:** Judge, this stems from a hearing a
11 few months ago. And I guess that's what you're
12 talking about. You're saying Mr. Tarr has talked to
13 her since last week? Or that was from the prior
14 hearing I think that you said he talked to her.
15 Before we had the hearing? I think he had talked to
16 Ms. Fielding.

17 **MR. STRICKLER:** Right.

18 **MR. MEADORS:** I think that's what you're --
19 you're not talking about the last week. It's since
20 then that he's talked with her.

21 **THE COURT:** If Ms. Hunter has talked to you at
22 all and varied from any of the previous three
23 statements, Mr. Strickler wants to know what it was
24 and how she varied from any of the other statements.
25 That's all.

1 **MR. MEADORS:** Yes, sir. That's what I'm trying
2 to clarify. He said last week. But I don't think
3 his attorney talked to him since last week. Judge,
4 it's almost impossible. And I told them this last
5 time. She gave three statements. I go down. We go
6 over her statements. Where are you from? Where did
7 you go to school? I've done the same thing 20 years.
8 You know, anybody can do it.

9 And then I said, tell me what happened. Well,
10 at this point -- and I've told them this last time --
11 she says like when he goes to the Wendy's to go
12 inside the second time. He goes first. He comes
13 back. He says, wait a minute; I want to go back in
14 there. She is going to say then, well, I didn't
15 actually see him go in. And then it's stuff like
16 that.

17 Was that in her statement? No. And I think
18 that's the substance of what Mr. Tarr when I talked
19 to him last time after a hearing, that's why I was
20 trying to reference it, Mr. Tarr said -- I didn't
21 tell him it varied materially at all. I didn't tell
22 him that. So he told me something different.

23 **THE COURT:** Well, did she give a different
24 written statement?

25 **MR. MEADORS:** No. Sir. I'm just orally

1 preparing her to testify, I think is what they're
2 talking about. She's represented by an attorney.
3 And the only thing I can think of was she may say,
4 well, I didn't actually see him go in or where he
5 went. It's that type of stuff.

6 I would be on the phone with them every time
7 interviewing somebody if you're doing that, Judge.
8 Didn't give another written statement. She is what
9 she is. She's going to testify. They've got the
10 three statements. She is represented by her
11 attorney.

12 **THE COURT:** All right. But you can't question
13 her about anything she's told you when you questioned
14 her unless you tell him about. That's all. As long
15 as you questioned her about the three statements that
16 she's given before and --

17 **MR. MEADORS:** I'm going to --

18 **THE COURT:** And if she told you something that's
19 different, Mr. Strickler needs to know it. What you
20 said is all you can recall is at this time she says
21 she didn't actually see him go in the place.

22 **MR. MEADORS:** Yes, sir. Judge, I mean, that's
23 kind of, it's like they've got two kids together.
24 Okay. You're talking to somebody who is going to be
25 testifying against him. I mean, in the real world,

1 she is going to -- I said, well, did you see him go
2 in? Well, I didn't actually see him go in. It's
3 that kind of thing. And she may say something
4 tomorrow she's never told me. I can't be held
5 accountable for that.

6 **THE COURT:** Maybe not. But she did tell you
7 that. So he now knows that.

8 **MR. MEADORS:** And I told him that before.
9 Beyond that, in preparation, every word-for-word that
10 may be different from the statement? I don't think
11 they're asking that.

12 **THE COURT:** No. Just any inconsistencies,
13 material. The color of the hair, I mean, that
14 wouldn't have anything to do with it.

15 **MR. MEADORS:** No, sir.

16 **THE COURT:** All right.

17 **MR. MEADORS:** You know, there's a statement,
18 Judge. There's something about the money. She said,
19 where did you get the money from? He said, from
20 Wendy's. Then she may say, well, I don't know if it
21 was from a paycheck previously or this time. She's
22 trying to down -- I mean, I'm going to put her on the
23 stand. And she is what she is. And I don't mean
24 that bad. I mean, that's ...

25 Judge, will you -- and we made a mistake. I

1 don't want the record to reflect it, but I'll say it.
2 We just left Ronald Lance Martin off. And since we
3 did make a mistake, would you ask the jury tomorrow
4 if somebody has known him or is related? We haven't
5 started yet. I've had it done before. If you'd just
6 say does anybody know or related and can you be fair
7 and impartial.

8 **THE COURT:** I'm sorry. I don't hear what you're
9 saying.

10 **MR. MEADORS:** Can you call out Ronald Lance
11 Martin as an extra witness to these jurors and see if
12 anybody knows him and see if they can be fair and
13 impartial since we haven't even started yet?

14 **THE COURT:** Sure. Ronald Martin?

15 **MR. MEADORS:** Ronald Lance Martin. Yes, sir.
16 Thank you.

17 **MR. STRICKLER:** Your Honor, may it please the
18 Court. Of course I'll object. That's what I raised.

19 **THE COURT:** That's right. He raised that. You
20 can't call him in your case in chief.

21 **MR. MEADORS:** Well, Judge, I've been
22 re-thinking. Why can't I? If you asked them and we
23 haven't even started yet? I'm asking you to re-call
24 him. I made a mistake. He should have been on
25 there. I'm respectfully asking you to call him out.

1 And if somebody knows him, fine. If they don't know
2 him, fine. Since we haven't even started the trial.

3 **THE COURT:** All right. If anybody knows him,
4 we'll send everybody else out and talk to them. If
5 they can't be fair and impartial, we've got those
6 jurors qualified. We can pick another one.

7 **MR. MEADORS:** Thank you.

8 **MR. STRICKLER:** Just note my objection, Your
9 Honor.

10 **THE COURT:** I know.

11 **MR. STRICKLER:** "No good deed goes unpunished."
12 Your Honor, one further piece of specific discovery
13 which I may have missed in relation to the DNA again.
14 I believe that the Sheriff's Department submitted the
15 questioned samples to SLED. I see no letter
16 regarding a CODIS hit related to Mr. Portee.

17 **THE COURT:** A what?

18 **MR. STRICKLER:** CODIS. C-O-D-I-S. That's their
19 database on DNA profiles. I see a reference to them
20 being sent in to be compared. And if I could ask the
21 State to go ahead and find out. I don't see anything
22 in the discovery I've been provided. There may not
23 be one. But if there is one, I'd like to know about
24 it.

25 **THE COURT:** All right. If a CODIS exists, Mr.

1 Strickler wants to see it.

2 **MS. MCDUFFIE:** Yes, sir, Your Honor.

3 **THE COURT:** No. He's entitled to see it, not
4 that he wants to.

5 **MS. MCDUFFIE:** We'll check on that, Your Honor.

6 **MR. STRICKLER:** That's all I have, sir.

7 **THE COURT:** All right.

8 **MR. MEADORS:** Beg the Court's indulgence. Your
9 Honor, Ms. McDuffie is prepared to call Sergeant
10 David McRoberts just to go over that statement. I
11 think that's the only thing we need to do this
12 afternoon.

13 **THE COURT:** Which statement?

14 **MR. MEADORS:** The statement that Mr. Strickler
15 was referring to. He'd like to have a hearing on it
16 if we're attempting to offer it.

17 **MS. MCDUFFIE:** The statement of the defendant,
18 Your Honor.

19 **MR. MEADORS:** He is arrested at Hawthorne
20 Avenue.

21 **THE COURT:** As I understood it, he says, I
22 didn't do anything. So why are you --

23 **MR. MEADORS:** Well, if we could proffer it, it
24 won't take but a second.

25 **THE COURT:** I'm here. I'm waiting. I'm just

1 saying I didn't think he objected to it.

2 **MR. MEADORS:** Well, he may not have. I thought
3 he did a minute ago.

4 **MR. STRICKLER:** I think we need a hearing on it.

5 **THE COURT:** All right. We'll listen to it.

6 **MS. MCDUFFIE:** Your Honor, the State calls
7 Investigator Dave McRoberts.

8 WILLIAM D. MCROBERTS, after being duly sworn,
9 testifies as follows:

10 **THE CLERK:** Please have a seat. State your full
11 name for the record.

12 **THE WITNESS:** Investigator William David
13 McRoberts.

14 DIRECT EXAMINATION

15 **BY MS. MCDUFFIE**

16 **Q** Investigator McRoberts, where are you employed?

17 **A** At the Richland County Sheriff's Department.

18 **Q** And what are your duties with the Richland County
19 Sheriff's Department?

20 **A** I'm a supervisor in the investigative division.

21 **Q** And were those your duties on September the 3rd,
22 2006?

23 **A** Yes, ma'am.

24 **Q** On September the 3rd of 2006, did you have a chance
25 to come in contact with the defendant, John Portee?

1 A Yes, ma'am.

2 | Q Can you please tell the Court about that?

3 A We went to to try to make
4 contact with him after the incident occurred that
5 morning. We had met with the units at the nearby
6 region to brief them on the situation. We went over
7 there. And we had units at the back of the house and
8 then we went down the main street.

9 And as we came down the main street we saw a
10 subject take off running into the woods. He was
11 apprehended on one street over. Deputy Jernigan
12 brought him over to the front of the house on
13 Hawthorne. And as Deputy Jernigan was putting him
14 into the car, I walked up, and Mr. Portee was asking
15 what he was being arrested for.

16 Q And was the defendant in custody at the time?

17 **A** Yes. He was handcuffed.

18 Q And the defendant then said what to you?

19 **A** He was asking what he was being arrested for, what
20 was going on. And I --

21 Q And what was your response to that?

22 **A** I said, "You know why we want to talk to you. You
23 know why you're being stopped."

24 Q And what, if anything, did the defendant say in
25 response to that statement?

- 1 A Let me look back here in my notes. He makes a
2 comment like that he went to Wendy's that morning and
3 that he knocked on the door and nobody came to the
4 door.
- 5 Q Did he tell you what time he got to Wendy's that
6 morning?
- 7 A No. I didn't ask him that.
- 8 Q Did you ask him any question?
- 9 A No.
- 10 Q He volunteered the information?
- 11 A Yes.
- 12 Q And please again tell the Court what he volunteered
13 to you?
- 14 A He made a comment that he went to work that morning
15 and got dropped off, knocked on the door, nobody came
16 to the door so he left.
- 17 Q Did you question ask him any -- did you ask him any
18 further questions at that point?
- 19 A No, ma'am.
- 20 Q What did you then do?
- 21 A He was then put into the marked parole unit and taken
22 to our headquarters on
- 23 Q And what, if anything, happened after that?
- 24 A By that point more facts were brought -- I mean, we
25 found out a little bit more. We had talked to a

1 couple of witnesses at the scene. And at that point
2 we had enough to charge him -- I mean, we had enough,
3 a little bit more evidence to ask him about. And I
4 Mirandized him, asked him if he wanted to give a
5 statement and he said no.

6 Q And I'm going to refer you to your notes under the
7 heading of 5 p.m. If you can tell the Court exactly
8 what he said to you? It's in the middle of that long
9 paragraph.

10 A Are you talking about when I initially made contact
11 with him?

12 Q Yes, sir. I asked you if he told you a specific time
13 that he arrived at Wendy's.

14 A Oh, I'm sorry. He did. He said that he was dropped
15 off around 7:45 a.m. He knocked on the door and no
16 one let him in so he left.

17 Q And you did not ask him any further questions?

18 A No.

19 Q And, in fact, did you even ask him a question to
20 elicit this response?

21 A No.

22 Q Why did he tell you this? In response to what did he
23 tell you this?

24 A I guess being handcuffed.

25 Q If you could read for the Court your notes. "They

1 brought him back" -- starting with "They brought him
2 back to

3 A "They brought him back to At
4 this point he was asking what was going on. I told
5 him he knew why we needed to talk to him. He said he
6 heard something about what happened at the Wendy's
7 where he worked today but he had nothing to do it.
8 John Portee stated he was dropped off at work at the
9 Wendy's this morning around 7:45 a.m. He knocked on
10 the door and no one let him in so he left. There was
11 no more questioning at this point in time."

12 Q He was then transported back to your headquarters?

13 A Yes.

14 Q And you did not question him in order to elicit these
15 responses?

16 A No, ma'am.

17 Q And the person that you spoke to at
18 on September the 3rd of 2006, do you see that
19 individual in the courtroom today?

20 A Yes.

21 Q Can you please identify him for the Court?

22 A Mr. John Portee sitting in the middle there.

23 MS. MCDUFFIE: Your Honor, please let the record
24 reflect he has identified the defendant. No further
25 questions.

1 **THE COURT:** Okay.

2 CROSS EXAMINATION

3 **BY MR. STRICKLER**

4 **Q** All right, Mr. McRoberts. How many individuals with
5 the Sheriff's Department were involved in the
6 incident on Hawthorne Avenue at the point in time
7 when Mr. Portee was arrested? Uniformed and
8 investigators. _____

9 **A** Uniformed and non-uniformed, probably seven or eight,
10 if I'm not mistaken.

11 **Q** You, Investigator Gonzales, McRae and Boland?

12 **A** Yes, sir.

13 **Q** You're all investigators, correct?

14 **A** Yes, sir.

15 **Q** All right. And then you refer to marked units which
16 were deployed surrounding the area, correct?

17 **A** Yes, sir. I sent them to the back streets just in
18 case.

19 **Q** You went there to arrest John Portee?

20 **A** We went there to question him. Yes, sir.

21 **Q** Well, and indeed, he was stopped by one of the marked
22 units, if I understand it correctly, a block or two
23 away from the residence. Is that correct?

24 **A** It was a street that ran right behind the residence.

25 **Q** All right.

1 A When he took off running we put out a clothing
2 description of the man who took off running. And
3 literally within minutes he ran into one of the
4 marked units stationed back in the back.

5 Q Who asked him if he could accompany the officer back
6 to his house?

7 A I don't know what the deputy said to him.

8 Q Okay. When he was brought back to his house, was he
9 handcuffed?

10 A Yes, sir.

11 Q Okay. And he was taken to a patrol car. Is that
12 correct?

13 A Yes, sir. He was transported from wherever they made
14 contact with him when he came out of the woods. They
15 brought him back to his girlfriend's residence.

16 Q They brought him back to the patrol car, or did they
17 walk him back a short distance?

18 A I'm pretty sure he was in a patrol car. They drove
19 him around. They wouldn't have walked him back.

20 Q Okay. And was he -- when you had contact with him,
21 was he still in that patrol car, or had he been
22 transferred to your vehicle?

23 A He hadn't been transferred to my car yet. I think it
24 was in the process of when they got back to the
25 house, they had gotten him out of the patrol car. Or

1 he was either getting out or was still sitting in the
2 car. I'm not sure. He wasn't in my car.

3 Q So what caused you to interact with Mr. Portee?

4 A I wanted to make sure for one thing it was Mr.
5 Portee, and I wanted to ask him where he was at that
6 morning.

7 Q Okay. And you did not Mirandize him at that point in
8 time?

9 A No. No, sir. I didn't get a chance to. He was
10 steady wanting to know why he was in handcuffs. He
11 was asking what was going on.

12 Q Okay. Because we're arresting you for a double
13 homicide and armed robbery and I need to tell you the
14 following things?

15 A That's not what I told him. That's not what I told
16 him. I said, "You know why we want to talk to you."

17 Q Right. Okay. That's really all I have. Thank you,
18 Your Honor.

19 REDIRECT EXAMINATION

20 **BY MS. MCDUFFIE**

21 Q At any point in time did you question the defendant?

22 A No, ma'am. Not at the house on Hawthorne.

23 Q And the defendant volunteered these statements to
24 you?

25 A Yes, ma'am.

1 **MR. STRICKLER:** This is asked and answered, Your
2 Honor.

3 **THE COURT:** Yes, it is.

4 **MS. MCDUFFIE:** Nothing further, Your Honor.

5 **THE COURT:** You can bounce right now down if you
6 like.

7 **THE WITNESS:** Sir?

8 **THE COURT:** You can get down if you like.

9 **THE WITNESS:** Oh.

10 **THE COURT:** So what do you all want me to do?
11 Mr. Strickler, what is it you want me to do, if
12 anything?

13 **MR. STRICKLER:** Suppress the statement, Judge.
14 I just submit that it's not exactly what they claim
15 it is and that it is -- I'm going to not find the
16 correct word to phrase this correctly.

17 **THE COURT:** Well, he was clearly in custody
18 because he had cuffs on.

19 **MR. STRICKLER:** Clearly in custody.

20 **THE COURT:** The officer said he didn't question
21 him at all. And the statement is harmless from the
22 State's viewpoint I guess, unless you all know
23 something I don't know. You don't need the statement
24 at all.

25 **MR. MEADORS:** Well, can I just --

1 **THE COURT:** I'm listening.

2 **MR. MEADORS:** Oh, yes, sir. I guess the
3 officer's testimony is what it is. You know, he said
4 they brought him back to Hawthorne. Clearly he's in
5 custody. That's not an issue here.

6 **THE COURT:** Yeah.

7 **MR. MEADORS:** But the issue at this point he was
8 asking him what was going on, he being the defendant.
9 So obviously those words imply he initiated it....What
10 was going on? The officer says, well, you know why
11 we need to talk to you. Then the defendant says,
12 well, I heard-about something that happened at
13 Wendy's earlier, at the Wendy's where he worked, but
14 he had nothing to do with it. He stated, yeah, I was
15 dropped off that morning around 7:45, knocked on the
16 door and no one let me in. Then there was no more
17 questions. Our position is he volunteered that.
18 There are a couple of witnesses, Your Honor. One
19 witness he said he called in. Another witness he
20 said --

21 **THE COURT:** All right. That can come in for
22 what it's worth. The officer testified that he did
23 not question him at all. He just responded to the
24 questions. He was Mirandized later before
25 questioning and actually went. So I don't see --

1 **MR. STRICKLER:** Thank you, sir. I understand.
2 I am not going to argue with you. I just want to
3 make my position clear. My position is that "you
4 know why we want you" initiates the questioning. And
5 just as my last question to him is, "you know why we
6 want you", but before I talk with you I need to tell
7 you the following, is what should have been done.
8 That's all. That's my submission, Your Honor. He
9 should have been Mirandized.

10 **THE COURT:** I understand. But that's not
11 enough --

12 **MR. STRICKLER:** Thank you, sir.

13 **THE COURT:** -- it doesn't sound like to me.
14 Because he responded he knew why they were wanted to
15 question him. But he didn't question him. If he had
16 asked one follow-up question, I would suppress it.
17 Anything else I can help you all with?

18 **MR. MEADORS:** No, sir, Judge. I think that's
19 it. Except as we get rolling tomorrow, well, I think
20 we covered everything else in chambers. I mean,
21 there is a prior incident between Ms. Latora Bolton
22 and the defendant where there are allegations that he
23 had threatened her. I think that is what it is.
24 It's not to a police officer. And we can just go
25 from there. Other than that, I don't see any issues.

1 **THE COURT:** All right.

2 **MR. MEADORS:** Ms. McDuffie apparently has one.

3 **MS. MCDUFFIE:** Your Honor, just in the interest
4 of time, there is a video that we have provided to
5 the defense which the crime scene officers made of
6 the crime scene. If Mr. Strickler objects to
7 anything on the video, we were going to offer it in
8 the interest of time to show the Court now instead of
9 having to set the equipment up and excuse the jury
10 and things of that nature. I do not know if Mr.
11 Strickler had any objections to that though, Your
12 Honor.

13 **THE COURT:** What is it? A one-minute video of
14 the scene or something?

15 **MS. MCDUFFIE:** No, sir, Your Honor. It is a
16 15-minute video of the scene. Mr. Strickler does
17 have a copy of it, Your Honor.

18 **MR. STRICKLER:** In addition to all the
19 photographs that I don't have a problem with?

20 **MR. MEADORS:** We'll talk.

21 **THE COURT:** One way or the other. You can show
22 the video. You can show all the photos. You're not
23 going to be able to triple whammy them just on the
24 location.

25 **MR. STRICKLER:** The term "gilding the lilly"

1 comes to mind.

2 **MR. MEADORS:** Can you think of anything else?
3 Judge, if they don't mind staying around for a
4 minute, we'll go ahead and just pre-mark.

5 **THE COURT:** Yeah. How long do you plan on
6 making opening statements? Not that it matters.

7 **MR. MEADORS:** I'm not doing it. So Ms.
8 McDuffie.

9 **THE COURT:** Oh, no. She'll pass out on me.

10 **MS. MCDUFFIE:** I'll be brief, Your Honor.

11 **THE COURT:** All right. Well, Mr. Strickler will
12 be normal or -----

13 **MS. THOMAS:** We'll be brief, Your Honor.

14 **THE COURT:** All right. Well, you all need to be
15 here before 9:30, you know, ready to go. -----

16 **MR. MEADORS:** We will.

17 **THE COURT:** Ms. Pendergrass, are you still
18 there?

19 **THE CLERK:** I am.

20 **THE COURT:** The jury has not been sworn, as you
21 know. So in the morning you will hand me back the
22 indictments and swear the jury in.

23 **THE CLERK:** Yes, Your Honor.

24 **THE COURT:** Job jeopardy now if you don't do it
25 in that order.

1 **THE CLERK:** Oh.

2 **THE COURT:** Okay. See you all in the morning.

3 **MR. MEADORS:** Thank you, Your Honor.

4 (Whereupon, the proceedings are concluded for
5 the day, to be reconvened tomorrow morning)

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Tuesday, January 13, 2009

THE COURT: We're still waiting on one juror.

So when the juror gets here I'll just come in. You all just come get me. We'll get back to work.

(Whereupon, a break is taken)

THE COURT: The last juror came in. Mr.

Meadors, what was the exact name of that undisclosed witness? Martin something?

MR. MEADORS: Ronald Lance Martin.

THE COURT: One of the jurors indicated that he was a diabetic and he needed to have food periodically. So we just said just munch if you need to but do it as quiet as you can so the other jurors won't be raising their hands wanting a creme demint parfait or something. All right. You all ready?

MR. MEADORS: The State's ready.

MR. STRICKLER: Your Honor, prior to proceeding, I noticed that we have been graced by the presence of the media in the courtroom.

THE COURT: They are here, it looks like.

MR. STRICKLER: And, Your Honor, just referencing Supreme Court Rule 605 regarding the requirements of the media presence. First of all, I object to their presence here on all the bases that one might imagine; specifically, that it enhances the

1 atmosphere in the courtroom to the detriment of Mr.
2 Portee, that it adds a heightened sense of awareness
3 not to the trial but what's going on here to the
4 jurors, whether they're -- I know they won't be
5 highlighted on the cameras, whether or not they're
6 highlighted or not. And I just submit that it
7 deprives him of his right to a fair trial under the
8 state and federal Constitutions.

9 **THE COURT:** All right.

10 **MR. STRICKLER:** Beyond that, 605(f) provides
11 provisions governing media coverage. And I don't
12 know whether Your Honor requires notification or not,
13 whether or not they've complied with that.

14 **THE COURT:** They sent something in this morning.
15 It's per-forma as far as I'm concerned. I mean, we
16 tape half the things here, including civil trials.
17 It used to be a big deal. It's not a big deal to me.
18 I will certainly caution the jurors that they won't
19 be on the cameras. If you are offended by them
20 having several over there, they can all work off one
21 line I'm sure.

22 **MR. STRICKLER:** I don't find two any more
23 offensive than one, Your Honor.

24 **THE COURT:** That's all right. Just out of idle
25 curiosity; historically, I do not mention penalties

1 at all. But since one of the potential jurors when
2 she came up and she was opposed to the death penalty,
3 should I instruct the jury that this is not a death
4 penalty, it's a murder case but not a death penalty
5 case, or just ignore it? I normally don't say
6 anything about it.

7 **MR. STRICKLER:** And she was not seated. I would
8 not say anything about it. I would ask that you not
9 say anything about it.

10 **THE COURT:** That's fine. I'm willing to do it.

11 **MR. STRICKLER:** Yes, sir.

12 **THE COURT:** I'm only going to do it if you all
13 both want to do it.

14 **MR. MEADORS:** I have no problem with you doing
15 it or not doing it.

16 **THE COURT:** Both of you have to agree. Because
17 normally we don't tell them about it at all. But
18 since somebody expressed a concern about it ...

19 **MR. STRICKLER:** Thank you, sir.

20 **THE COURT:** All right. And I am advised that
21 the jury has elected one Herb Bendillo as the
22 foreperson. Ms. Pendergrass, are you down there?

23 **THE CLERK:** I am.

24 **THE COURT:** Where are the indictments?

25 **THE CLERK:** Right here.

1 **THE COURT:** Okay. Thank you. Everybody ready?

2 **MR. MEADORS:** Yes, sir.

3 **MR. STRICKLER:** Yes, sir.

4 **THE COURT:** We'll bring them in, make opening
5 statements, take a short break. Fair?

6 **MR. MEADORS:** Yes, sir.

7 (Jury in at 9:35 a.m.)

8 **THE BAILIFF:** The jury is seated, Your Honor.

9 **THE COURT:** Okay. Jurors, you recall yesterday
10 I questioned you about any relationship that you have
11 had with 40 plus potential witnesses and I explained
12 to you don't panic, probably all 40 won't testify.
13 But those were the listed witnesses. One name was
14 left off of the list, may testify or may not. The
15 name is Ronald Lance Martin. That's all I know. If
16 any of you all know someone with that name or are
17 related to someone with that name, live in the
18 neighborhood with someone with that name, you need to
19 tell us now. All right. The jury seems to be
20 unacquainted with Ronald Lance Martin. So,
21 Ms. Pendergrass, if you would do your duty.

22 **THE CLERK:** Mr. Foreman, ladies and gentlemen of
23 the jury, please stand and raise your right hands to
24 be sworn.

25 (Whereupon, the jury is sworn)

1 **THE CLERK:** You may be seated.

2 **THE COURT:** Okay, jurors. We're going to get
3 right into the trial. I'm just going to give you the
4 briefest overview and then the attorney for the
5 State, the solicitor, and then the defense counsel
6 will make brief opening statements to you. Then
7 we'll take a short break.

8 But, I mean, the opening statements are not
9 going to go on and on. They'll be to the point. You
10 won't be in here that long. Then after that we'll
11 take a break every hour and 20 minutes to hour and 45
12 minutes. If someone needs a break earlier, you know,
13 you just need to raise your hand. But you can't just
14 stop a witness in mid sentence unless somebody needs
15 to. That's why I can't say we'll break every hour
16 and 15 minutes or so forth.

17 As I briefly explained to you yesterday, the
18 State calls three cases against John Henry Portee.
19 And they've presented me with three documents. These
20 documents are called indictments. They just contain
21 allegations. They set forth the charges against Mr.
22 Portee. Mr. Portee of course is presumed innocent of
23 all charges, has absolutely no burden on his part to
24 prove that he is not guilty of anything. The State
25 keeps the burden of proof throughout, and that burden

1 of proof is they must convince 12 jurors unanimously
2 beyond a reasonable doubt that Mr. Portee committed a
3 crime or crimes embraced within these indictments.

4 The indictments allege three crimes that
5 occurred on the same date, that date being September
6 the 3rd of 2006. And it occurred I told you
7 yesterday at a Wendy's out on

8 Mr. Portee is charged with killing by shooting
9 one Carlaus Johnson in one indictment, charged with
10 murder, by killing one Latora Bolton by shooting that
11 person on the same date, and is finally charged on
12 that date with armed robbery in that the State
13 alleges that he took property from the presence of
14 one of the decedents while armed with a deadly
15 weapon.

16 Now, Mr. Foreman, you of course preside over
17 deliberations and act as spokesperson for the jury.
18 However, your vote counts no more than any juror's.
19 It's just that somebody has to preside once
20 deliberations commence and someone has to sign the
21 verdict form. There will be three verdict forms,
22 guilty or not guilty, nothing, or guilty. The order
23 in which they'll be typed on the verdict form at the
24 conclusion of the trial will have no bearing. The
25 order in which I said that has no bearing. I think

1 you understand that. Two forms: Not guilty, guilty;
2 guilty or not guilty.

3 Now, ultimately you need to pay attention
4 because we're not going to finish the trial today.
5 You've heard the witness list. And having presided
6 over many trials; in fact, as I told you, being the
7 senior active judge by about five years, oftentimes
8 we start trials and somebody gets a call, a child
9 gets sick at school; whatever, and a juror has to be
10 excused. Or actually somebody catches the flu or
11 something, and we want you out of here if that
12 happens. Okay. So, alternates, you need to pay
13 attention because we don't know at what point you
14 might be elevated to a regular juror's spot.

15 Now, jurors, the State having brought the
16 charges against Mr. Portee who again is presumed
17 innocent and has no burden to prove he is not guilty,
18 must convince you, the 12 of you, beyond a reasonable
19 doubt that he committed the crime charged in the
20 indictment. Again the indictments just contain
21 allegations.

22 We'll start with the simplest charge, armed
23 robbery. All three charges actually are very serious
24 charges. They're classified as violent crimes, as I
25 basically explained to you yesterday. Armed robbery

1 is the highest form of larceny which you would
2 consider to be stealing. Larceny is taking property
3 from someone, non-consensual, with the intent of
4 converting it to your use; in other words, stealing
5 the property. If somebody takes something of yours,
6 they've stole it, larceny in its simplest form.

7 Robbery would be where someone takes something
8 from your presence with force or intimidation. And
9 armed robbery is when someone takes property from
10 you. And in this case the State alleges that money
11 was taken. And when the person takes property and
12 attempts to convert it to their use, never gives it
13 back to their rightful owner, steal the property, the
14 person who does the taking is armed with a deadly
15 weapon, such as a knife, a handgun, a shotgun,
16 anything that can cause great bodily harm to someone.

17 So, in order to obtain a conviction for armed
18 robbery the State must convince you 12 jurors that
19 Mr. Portee stole property from that Wendy's in the
20 presence of an employee or employees there while he
21 was armed with a deadly weapon. If they don't do
22 that, if they don't convince you beyond a reasonable
23 doubt, he is not guilty.

24 The other two indictments allege that murder
25 occurred. Murder is the unlawful killing of one

1 human being by another human being with malice
2 aforethought, either implied or inferred. Now,
3 jurors, at the conclusion of the trial I will
4 instruct you in some detail, more detail on the
5 elements that constitute the crime of murder. But
6 the bottom line is killing somebody with malice
7 aforethought, either express, inferred or implied.

8 Now, the State since they have the burden of
9 proof go forward and put up evidence. Evidence
10 consists, jurors, of testimony that will come from
11 the stand. In A civil trial oftentimes we use
12 depositions. That's where someone's statement is
13 given outside of court. And in lieu of coming to
14 court, they're sworn and testify and so forth. The
15 depositions are read. But in criminal trials any
16 witness's testimony, generally speaking, will be from
17 the stand. There will not be any depositions used.

18 So evidence will be presented through sworn
19 testimony and also certain exhibits. And I think
20 they mentioned -- again, I don't really know a thing
21 about the trial. I didn't even know, just being a
22 road warrior, which case was going to be called until
23 I came here yesterday. All right.

24 So I don't know anything about the facts
25 surrounding the case other than what the allegations

1 are. And the attorneys handed me up some questions
2 to ask you all so I could kind of get a rough idea,
3 like you have, about what the trial was about.

4 An attorney did indicate that there might be a
5 videotape shooting of the scene, might not. Might
6 just use photographs. But anyway, documents might be
7 introduced like sketches and stuff like that.

8 Now, when individuals testify, you jurors
9 evaluate that testimony. You're not required to
10 believe anything anybody says. It's entirely up to
11 you jurors. You use your common sense in evaluating
12 testimony. You take into account the opportunity the
13 witness had to see or hear what the witness testified
14 to, any interest or bias that a witness had in the
15 outcome of the proceedings and just really anything
16 you would use in evaluating whether someone in your
17 day-to-day affairs was leveling with you. After you
18 have decided which testimony is believable, the
19 relative weight that you attribute to the believable
20 testimony is entirely up to you jurors.

21 In addition, jurors, if documents like
22 photographs and things are introduced, you can weigh
23 those documents and decide how much credibility to
24 place to them also. You decide the case based upon
25 the totality of the evidence presented or not

1 presented during the trial. At the conclusion of the
2 trial I will instruct you in some detail on what
3 tests you use to evaluate testimony and the various
4 elements that constitute a trial.

5 Now, jurors, you had a couple of questions. I
6 did not confer with counsel on them. But here is the
7 way I do. So, can we take notes? Here is what I
8 say. Certainly you can take notes. But you can't
9 take the notes home. All right. You can't take them
10 back to the jury room when there are breaks. You can
11 take them in here. When you start deliberating you
12 can't take them back at that point, but you can
13 review whatever you have in there.

14 And the reason that I don't let you take them
15 back is because, you know, you all start a discussion
16 about what it says and you say, I've got it written
17 right here. Well, you've got it written right there
18 but it might not be exactly what the witness
19 testified to. So we use the collective recollection
20 of all the jurors at that point. But oftentimes it
21 helps paying attention if you take notes. I've got
22 no objection to you taking notes. You can review
23 them any time before you leave the courtroom, but you
24 have to leave them in here.

25 At the conclusion of each day you can pass them

1 to the bailiff. The bailiff won't read them. Trust
2 me; they will not read your notes. And we'll give
3 them back to you the next day if you want them.
4 That's question one.

5 Question two: Can we take drinks into the
6 courtroom? Sometimes. I try not to have everybody
7 over there sipping. But, you know, if you really
8 need them, we'll let you do that. And then the
9 person that needs the insulin pump, sure. Bring that
10 into the courtroom.

11 As I mentioned, we'll take a break every hour
12 and 15 minutes, hour and 45. Do not discuss the case
13 as the trial is progressing because you won't have
14 the whole picture. We'll start off with a witness,
15 two witnesses, three witnesses. You wait until all
16 the evidence is in before you discuss it.

17 Now, jurors, I don't know whether you noticed or
18 not, but there are cameras in the courtroom. But
19 don't worry. You all are not going to be on TV or
20 anything. They're supposed to be unobtrusive. The
21 fact that cameras are here does not indicate any
22 heightened sense that you might have to find a
23 defendant guilty or not guilty. It's just media has
24 some interest in it.

25 I don't know what cases the media has interest

1 in. They came yesterday. I just set some bonds on
2 some things. And, you know, they had some interest
3 in that. So, oftentimes the media is here. And I
4 quit telling my bride I would be on, 46 years I would
5 be on TV because they put it on TV unless something
6 more important comes up. It's kind of like filler
7 space for them sometimes.

8 So they are here. Just ignore them. Okay.
9 They're not taking your picture and so forth. And
10 they will not say anything. Can I get a better view
11 or something, because then they're out of here.
12 Because we just let them be in here as long as they
13 are unobtrusive and so forth.

14 So this is how the trial will proceed. The
15 State makes a brief opening statement. Now, the
16 opening statements will not be evidence. I think you
17 understand that. The State is just going to outline
18 through one of the attorneys from the Solicitor's
19 Office their position and might say what they think
20 will be presented in a nutshell form. It might not
21 happen like they say once the witnesses testify.

22 Then the defense will be offered an opportunity
23 to make an opening statement. Probably will. I
24 haven't checked with them. Because the defendant
25 does not have to prove he's not guilty. He doesn't

1 even have to make an opening statement if he doesn't
2 want. Okay, State. You all ready?

3 **MS. MCDUFFIE:** Yes, Your Honor. \$1,600. \$1600.
4 On Sunday, September the 3rd of 2006, the defendant,
5 John Portee, decided that the lives of 29-year-old
6 Latora Bolton and 53-year-old Carlaus Johnson were
7 worth \$1,600.

8 The defendant along with the victims,
9 Ms. Johnson and Ms. Bolton, worked at Wendy's.
10 Shortly after 8:00 in the morning on Sunday,
11 September the 3rd, the defendant went to work.
12 However, ladies and gentlemen, he did not intend to
13 work that day. He went there armed with a .45
14 caliber semi-automatic handgun.

15 He went into the back office where Latora and
16 Carlaus were and shot Carlaus once in the face.
17 Latora did not even have time to react. She did not
18 even have time to get up from the desk that she was
19 sitting at where she was doing the morning accounting
20 as Carlaus' body fell to the ground before the
21 defendant pulled the trigger again and shot her in
22 the head. Latora's body slumped out of the chair and
23 landed on top of Carlaus'.

24 That day the defendant left Wendy's with \$1600
25 and he left the bodies of Latora and Carlaus lying in

1 the back office of the Wendy's in front of an open
2 and recently emptied safe. \$1600, \$1600, the price
3 of the lives of Latora Bolton and Carlaus Johnson.

4 My name is Joanna McDuffie, and I along with
5 Deputy Solicitor John Meadors represent The State of
6 South Carolina for the Fifth Judicial Circuit. It is
7 our job to prosecute all crimes that occur in
8 Richland and Kershaw Counties. As a result of the
9 defendant's actions on September the 3rd of 2006, he
10 is charged with two counts of murder and armed
11 robbery.

12 South Carolina law defines murder as the
13 unlawful killing of another with malice aforethought.
14 Malice is a legal term of art. What it basically
15 means is an evilness, a wickedness, a heart devoid of
16 social duty fatally bent on mischief.

17 Malice can be expressed. An example of
18 expressed malice would be pointing a gun at someone
19 and saying, I'm going to kill you, and then pulling
20 the trigger. Or malice can be implied. It can be
21 implied from the use of a deadly weapon; like in this
22 case, a handgun.

23 Ladies and gentlemen, I submit to you that when
24 the defendant walked into the back office at Wendy's
25 with a handgun and pulled the trigger shooting two

1 unarmed, innocent victims, that is malice.

2 Armed robbery is defined under South Carolina
3 law as the taking of goods or property from the
4 person or presence of another without consent with
5 the intent to deprive them of that property while
6 armed with a deadly weapon.

7 Ladies and gentlemen, I submit to you that what
8 the defendant did in the back office of Wendy's on
9 September the 3rd, 2006 is armed robbery.

10 The State has the burden of proof in every
11 criminal prosecution. We have to prove that the
12 defendant committed the crimes that we allege he did
13 beyond a reasonable doubt. Ladies and gentlemen, we
14 welcome that burden.

15 Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the defendant's guilt.
17 It's not absolute certainty of guilt. And we are not
18 required to overcome every possible doubt. If at the
19 conclusion of this case you are firmly convinced of
20 the defendant's guilt, then you must find him guilty.

21 Now, Judge Kinard is the judge of the law in
22 this case. If I or opposing counsel says something
23 that contradicts what the judge says, please take the
24 law as the judge gives it. However, just as Judge
25 Kinard is the judge of the law, you ladies and

1 gentlemen are the judges and triers of fact.
2 Individually and collectively it will be up to you to
3 determine if the defendant committed the crimes that
4 we, The State, allege he did. You determine the
5 defendant's guilt by analyzing the evidence presented
6 in this case.

7 That evidence will come mainly in two forms.
8 The first will be physical exhibits introduced as
9 evidence during the trial. The second will be
10 testimony from the witnesses on the witness stand
11 given under oath.

12 Ladies and gentlemen, during the course of this
13 trial you will hear from Patrice Trapp. Patrice was
14 the manager of the Wendy's. She was not scheduled to
15 work that Sunday. In fact, she was out to lunch with
16 her children when she received a call telling her
17 that the store had never opened.

18 She went to the Wendy's on She
19 didn't have her store keys with her. She wasn't
20 planning to go there that day. And when she got
21 there all the doors were locked. She got one of the
22 employees at the Hess Station nextdoor to help her
23 pry the drive-thru window open. She and her -- she
24 had her two small children with her, and they inched
25 one of her children up and put him through the

1 drive-thru window for him to come around and unlock
2 one of the doors.

3 Patrice will tell you what happened when she
4 walked into the Wendy's, when she walked into the
5 back office how she screamed when she saw the bodies
6 of Latora Bolton and Carlaus Johnson laying on the
7 floor.

8 You will hear from several other employees of
9 the Wendy's who were scheduled to work that day who
10 went there at 10 and 11:00 that morning for their
11 scheduled shift and who couldn't get in. You will
12 also hear how the defendant called some of these
13 employees telling some that he went in and didn't get
14 an answer at the door, telling others that he never
15 went to work that day at all.

16 You will hear from witnesses who saw the
17 defendant later that afternoon. You will hear from
18 Heather Hunter. Heather is the girlfriend of the
19 defendant. And they have two children together.
20 Because of Heather's involvement in this incident,
21 she is charged with misprisonment of a felony which
22 basically means neglect in reporting a crime.

23 Heather will tell you how on Sunday, September
24 the 3rd, the defendant arrived at her house on
25 Hawthorne Avenue around 5:30 in the morning and how

1 around 8:00 that morning she took him to work.
2 She'll tell you how they pulled up at Wendy's, how
3 the defendant got out of the car and came back a
4 moment later and told her to hold on. She'll tell
5 you how she then, after the defendant left the car
6 again, heard two loud noises coming from Wendy's and
7 how the defendant then returned to the car and they
8 left.

9 She'll tell you how when they got back to her
10 house at Hawthorne Avenue the defendant took her car
11 and when he came back he was wearing different
12 clothes.

13 You will hear from Heather's son, Chaz. Chaz
14 was 15 years old at the time of the incident. Chaz
15 will tell you how he along with his mother picked the
16 defendant up at an individual named Mike Brown's
17 house sometime in the early morning hours of Sunday,
18 September the 3rd, 2006.

19 He will tell you how when they picked the
20 defendant up they went back to their house at
21 Hawthorne Avenue. He will tell you that a short time
22 after that he saw the defendant coming from across
23 the street with a green bag in his hand. A short
24 time after that he saw the police coming and he saw
25 the defendant, and the defendant noticed that the

1 police were pulling into their neighborhood or to
2 their house. He then saw the defendant go into the
3 woods behind their house with the green bag.

4 Ladies and gentlemen, you will hear from Mike
5 Brown whose house the defendant was at around 5:00
6 that evening and whose house Heather and Chaz picked
7 him up from. Michael will tell you that he saw the
8 defendant with the green bag and the defendant opened
9 that green bag and showed him a gun.

10 You will hear from officers of the Richland
11 County Sheriff's Department who will detail their
12 investigation for you. They will tell you that when
13 they learned that there were three people scheduled
14 to work that morning, the two victims, Latora Bolton
15 and Carlaus Johnson, the third person being the
16 defendant, they went to look for him.

17 When they pulled up to his house on Hawthorne
18 Avenue, they saw him carrying something in his hand
19 and run into the woods behind the house. The
20 officers apprehended him one street over. However,
21 when they apprehended him he had nothing in his
22 hands.

23 K-9 officers with the Richland County Sheriff's
24 Department came out and tracked through the woods to
25 a green bag in the woods. When officers opened that

1 green bag they found the defendant's photo ID and a
2 .45 caliber semi-automatic handgun.

3 You will hear from David Collins who is the
4 firearms analyst at the Richland County Sheriff's
5 Department. He will tell you how the gun that was
6 found in the bag in the woods with the defendant's
7 photo ID, the same bag that Chaz saw the defendant
8 carrying, the same bag that the police saw the
9 defendant carrying, matched the shell casings
10 recovered at the Wendy's and matched the bullets
11 removed from the victims' bodies during their
12 autopsy.

13 Finally, ladies and gentlemen, you will hear
14 from Dr. Stan Kessler. Dr. Kessler is the
15 pathologist who performed the autopsy on the victim.
16 He will describe to you the injuries that were
17 inflicted upon the victims and how they ultimately
18 died from the gunshot wounds.

19 Ladies and gentlemen, it is up to you to
20 determine the truth. And that is what we are all
21 here for today. That is why I ask of you, after
22 viewing all the evidence, listening to all the
23 testimony and applying the law to that evidence and
24 testimony as given by the judge to return a verdict
25 against the defendant of guilty for two counts of

1 murder and one count of armed robbery. Thank you.

2 MS. THOMAS: What happened on September 3rd,
3 2006 was a tragedy, and I'm not going to stand here
4 and tell you that it wasn't. Two women lost their
5 lives, and their families and their friends and their
6 co-workers were all in shock. It was up to the
7 police to solve this crime. And they came and within
8 an hour of discovering the bodies they had zeroed in
9 on Mr. Portee and they never once looked back.

10 My name is Ashley Thomas. Along with my
11 co-counsel, Doug Strickler, I am honored to represent
12 Mr. Portee.

13 A human body produces a lot of individualized
14 what is known with law enforcement as forensic
15 evidence. Now, this could be fingerprints. It could
16 be palm prints. It can be DNA from when our hair
17 falls out, or from our blood. Our clothes leave
18 behind fibers everywhere we go. Our shoes leave
19 behind footprints.

20 You will hear that they did investigate and they
21 did try to find these fingerprints. They tried to
22 find DNA linking John Portee to the Wendy's
23 restaurant that morning. And they did not find
24 anything. They went on September 3rd looking for
25 fingerprints and DNA. They even came back the next

1 day looking. And they didn't find anything. You
2 will hear that they found a gun and they also looked
3 for fingerprints on that gun. They tested it for DNA
4 and they didn't find anything.

5 They also executed a number of search warrants
6 and performed a number of searches in this case with
7 John Portee's mom's house, his girlfriend's house,
8 his girlfriend's car, the car that they said that he
9 had been in for most of that day. They gathered
10 clothes. They gathered aprons. They gathered hats.
11 They gathered shoes, things that belonged to John
12 Portee. And they tested those items specifically
13 looking for evidence of the victims' blood on those
14 clothes. And they didn't find anything, not even the
15 tiniest drop on those clothes.

16 In this day and age it's hard, you know, to go
17 through life without leaving evidence of yourself
18 behind. And law enforcement has the tools and the
19 ability to gather this evidence and to analyze it and
20 to interpret it. And in this case they didn't come
21 up with anything.

22 You will also hear that dogs were used in this
23 case. These canines are trained specifically for law
24 enforcement to aid them in their investigations.
25 They track guns. They track drugs. They track

1 bombs. They also track people and items that people
2 have taken.

3 One of these dogs was brought up to the Wendy's
4 restaurant that morning and it led its handler on a
5 track from the Wendy's restaurant, through the
6 parking lot, through a wood line, over a creek into a
7 parking lot behind the Wendy's restaurant. And then
8 at some point the dog indicated to its handler that
9 the track stopped.

10 And at that point there were three interesting
11 things. There was a puddle of water, there was an
12 oil stain, and there were skid marks. Somebody made
13 that track. And I want you to ask yourselves who
14 made that track and where is that person now.

15 The solicitor stated that roughly \$1600 was
16 taken from the safe at the Wendy's restaurant.
17 Again, when they executed the search warrants, when
18 they searched the car, they searched his girlfriend's
19 house, they searched his mother's house, they didn't
20 find anything. When he was arrested he had a little
21 over \$200 on him. But they couldn't find \$1600, the
22 money they say was taken from the Wendy's restaurant.
23 So where is that money?

24 You will also hear from Heather Hunter. Heather
25 Hunter at the time of this incident was John's on

1 again/off again girlfriend. She was the mother of
2 one of his children at the time. She was pregnant
3 with a second child. She also had several children
4 of her own.

5 When the police came to talk to John, they came
6 to her house. She was there with her children. And
7 they were asking her questions. They wanted her to
8 provide explanations for things. Then they started
9 asking her children questions. And like any mother,
10 she didn't want her children to be exposed to this.
11 She wanted to protect her children.

12 And she told the police under oath, swearing to
13 tell the truth, the whole truth, and nothing but the
14 truth what happened that day. Then she gave another
15 statement swearing to tell the truth, the whole
16 truth, and nothing but the truth. And then she gave
17 a third statement swearing to tell the truth, the
18 whole truth, and nothing but the truth; the problem
19 being that each statement was different. Her story
20 changed as time went on.

21 I suspect that when she is called to testify
22 here before you this week she'll probably give an
23 entirely different story. I am not sure. I don't
24 know what she's going to say. But I would ask you
25 to ask yourselves if somebody who is consistently

1 inconsistent can be trusted.

2 You each just recently took an oath swearing
3 that you at the end of this case after hearing all
4 the evidence would render a true verdict. Now, there
5 will be 12 of you deliberating at the end of this
6 week or at the end of this trial. And the 12 of you
7 are going to be charged to come up with a verdict
8 unanimously. Each one of you individually took that
9 oath.

10 And each one of you have to give your verdict
11 based on what you believe from the witnesses, what
12 they testify to, as to the physical evidence that you
13 will be exposed to. And it doesn't matter what the
14 person next to you is thinking. It doesn't matter
15 what the person behind you is thinking. It doesn't
16 matter what the person in front of you is thinking.
17 All that matters is what you individually think. And
18 that is what you swore to here today.

19 Now, Mr. Portee sits there an innocent man. He
20 is presumed innocent under our law through our
21 criminal justice system. And that is one of the most
22 important rights that we all have as citizens of this
23 country.

24 Another -- he is also given the benefit of the
25 doubt here. And that is to protect us individually

1 as citizens. It's not to protect the government.
2 It's to protect us. And this is a right he has
3 sitting there before you. And he has maintained his
4 innocence from the very beginning.

5 I believe that after you hear all the evidence
6 there will be a doubt in your mind, and I urge you
7 all to find Mr. Portee innocent of these charges.
8 Thank you.

9 **THE COURT:** Okay, jurors. As I explained to
10 you, I don't know anything about the case. The
11 opening statements is my first real view of what may
12 or may not be presented during the trial. I need to
13 cover a couple of things with you. One apparently is
14 someone, one or more individuals are going to testify
15 who are experts. I explained to you that you will
16 pass upon the credibility or believability of
17 witnesses who testify.

18 Jurors, a lay person, that's you and me or
19 anybody that's not an expert, is limited in civil or
20 criminal trials in giving opinions. You can only
21 give opinions on matters of common knowledge. Like
22 you could say that car was going too fast. I mean,
23 that's just a guess, but your powers of observation
24 are about as good as anybody's.

25 When an individual is offered as an expert, and

1 I'm telling you this now so I don't have to tell it
2 while the person is on the stand; and there may be
3 more than one, an expert is entitled to give opinions
4 within their field of expertise. You are not bound,
5 jurors, to accept any opinion given by an expert. Of
6 course you should consider the underlying facts on
7 what your expert bases his or her opinion and the
8 training and education an expert has.

9 I'm required, or we judges are required to
10 qualify many people as experts during trials. For
11 instance, in a case involving electricity, I might be
12 able to qualify an electrician. They've got the
13 training and so forth. But if it got into the theory
14 of electricity, maybe the electrician knows more than
15 if you plug an electric saw in it works and if you
16 don't it doesn't. But they'd have to demonstrate
17 that they knew something about the theory of
18 electricity. So probably if you got into theory of
19 electricity it would require an electrical engineer.

20 We don't vouch for the individual once they're
21 qualified as an expert. All that the person has to
22 demonstrate to the Court is that through education,
23 work experience or a combination of those factors an
24 individual has acquired more knowledge in a
25 particular field than you or I have.

1 Now, as I stated, you're not bound to accept any
2 opinions given by an expert. But you cannot accept
3 any expert's opinion unless the opinion is given to a
4 reasonable degree of certainty in the field in which
5 the expert is qualified. And just because I qualify
6 somebody as an expert, if they say 'I think or it
7 could be', that's not to a reasonable degree of
8 specificity.

9 Now, as the trial progresses, jurors, I don't
10 say things like 'he is not testifying to a reasonable
11 degree of specificity.' You know, you have to listen
12 to all of that. I don't comment on the testimony,
13 generally speaking.

14 In addition, jurors, evidence consists of two
15 types. They're on the same footing. You have direct
16 evidence and indirect evidence. Indirect evidence is
17 what you would hear referred to as circumstantial
18 evidence. The law makes no differentiation between
19 the two the types of evidence as to the weight you
20 attribute to them.

21 Direct evidence is where an individual testifies
22 to something he or she has observed through their
23 senses. Like if a person came in and says it's
24 raining outside, that would be direct evidence. It
25 might not be true. But that's direct evidence.

1 Circumstantial evidence is where you jurors take a
2 proven fact or facts and from that you infer the
3 existence of other facts. Any inference you make has
4 to be reasonable.

5 For instance, if you and a neighbor was sitting
6 there on your porch and it rained and the yard was
7 muddy and an animal went by and you said the cat ran
8 by and the neighborhood said it was a dog, you'd say,
9 well, we'll just walk out and look at the tracks.
10 You know. Tracks sometimes are better --
11 circumstantial evidence can be better than eye
12 witness things. So the law makes no differentiation
13 between that.

14 In addition, I didn't tell you all this to start
15 with. You know this is a serious trial. All right.
16 If at some point you think that the solicitor,
17 defense attorneys and I, you know, aren't taking it
18 seriously, we are taking it seriously. Here is the
19 difference between you all and us.

20 I have an over 20-year relationship with Mr.
21 Meadors and Mr. Strickler and we have been around a
22 long time. We have tried lots of cases, you know.
23 This, however, is the defendant's day in court. He's
24 not here all the time. So it's not my intent to
25 belittle the proceedings at all, you know, or to have

1 any levity to take away from the case being serious.
2 But if I say something to Mr. Meadors or Mr.
3 Strickler that you think, you know, I'm favoring one
4 or the other, that's not so. We just have actually
5 been in this courthouse for over 20 years together.
6 So we won't intend anything by it. Okay?

7 And you do understand I don't know anything
8 about the case. I've tried to make that clear to
9 you. So don't look to me for guidance of which
10 witnesses you can believe or what weight you should
11 attribute to it.

12 I may make some rulings as the trial progresses.
13 I'm not trying to influence the trial by my rulings.
14 It's kind of like, we've already marked all the
15 exhibits I think in and there won't be any contest
16 about those. But occasionally someone says something
17 and one of the attorneys might say that's hearsay,
18 that's leading or something. Once somebody objects,
19 I have to rule. It's just like refereeing a
20 basketball game. If it looks like a foul, I say you
21 fouled. I might be wrong but they're stuck with it.
22 Okay.

23 So don't take any inferences on how the judge
24 feels the case would come out based upon any rulings
25 because I might sustain three straight by Mr.

1 Strickler. I might overrule him three times. He
2 hasn't even objected yet. But, you know, if somebody
3 objects, I mean, I'm the only one here. I have to
4 rule. I can't duck under here. So I rule. I might
5 not be right. But they live with it. They know I'm
6 going to try to be right.

7 So as promised, and only because I promised you,
8 we'll take a break at this point. Then we'll get the
9 witnesses lined up. But don't talk about the case
10 during this or any breaks. But if you would ease
11 out. Breaks always, since we've got 14 of you, will
12 be 15 minutes, no longer. All right.

13 (Jury out at 10:20 a.m.)

14 **THE COURT:** Okay. Mr. Meadors, Ms. Thomas, not
15 that it matters, but what kind of rough schedule do
16 you have witness-wise? How long are they going to
17 take so I can kind of have in the back of my mind
18 when we take the next break?

19 **MR. MEADORS:** Yes, sir.

20 **THE COURT:** I recognize you can't totally
21 anticipate how long cross examination will take.

22 **MR. MEADORS:** Judge, basically we've got the
23 Wendy's employees that we're ready to start going
24 with. They're in our office. So I know we have at
25 least one, two, three, four, five. We could do a

1 couple, three, and take a break and do the rest.

2 **THE COURT:** Just figure we'll take a break every
3 hour and a half, give or take, a few minutes and
4 we'll go from there.

5 **MR. MEADORS:** We've checked all the rap sheets
6 and I'm informed the first six or seven witnesses,
7 those are the only two. We'll doublecheck that. I
8 think Mr. Strickler and I can work it out. If not,
9 we'll call Your Honor's attention to it.

10 **THE COURT:** All right. We're at ease for 15
11 minutes. But we'll be ready to crank it back up in
12 15.

13 **MR. MEADORS:** Yes, sir.

14 (WHEREUPON, Court's Exhibit No. 2 is marked for
15 identification.)

16 (Whereupon, a break is taken)

17 (WHEREUPON, State's Exhibit No. 1 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 2 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 3 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 4 is marked for
24 identification.)

25

1 (WHEREUPON, State's Exhibit No. 5 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 6 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 7 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 8 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 9 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 10 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 11 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 12 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 13 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 14 is marked for
20 identification.)

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22 identification.)

23 (WHEREUPON, State's Exhibit No. 64 is marked for
24 identification.)

25 **THE COURT:** At ease.

1 **MR. MEADORS:** Your Honor, we've got the next
2 several witnesses right outside.

3 **THE COURT:** All right. Mr. Strickler.

4 **MR. STRICKLER:** Yes, sir.

5 **THE COURT:** There was no motion in front of me,
6 so I didn't make any ruling on sequestration. It
7 doesn't matter to me. I don't know about the case or
8 what. That's up to you. I'll be happy to do it if
9 you want.

10 **MR. STRICKLER:** I have not made a motion for
11 sequestration.

12 **THE COURT:** I know. Well, I don't do it unless
13 you want it.

14 **MR. STRICKLER:** Yes, sir.

15 **MR. MEADORS:** Your Honor, beg the Court's
16 indulgence. We may make one.

17 (Pause)

18 **MR. MEADORS:** Your Honor, we'd move for
19 sequestration.

20 **THE COURT:** All right. That's fine.
21 Reciprocity on it.

22 **MR. STRICKLER:** Now, he has placed my client's
23 mother on his witness list.

24 **MR. MEADORS:** I'll waive that. I'll waive that.

25 **THE COURT:** He'll waive that.

1 **MR. STRICKLER:** Then I don't have an objection.

2 **MR. MEADORS:** I wouldn't do that to somebody's
3 mama. Any other potential witnesses, if you'll
4 please just step outside.

5 **THE COURT:** All right, Mr. Meadors. Are we
6 ready?

7 **MR. MEADORS:** Yes, sir.

8 (Jury in at 10:35 a.m.)

9 **THE BAILIFF:** The jury is seated, Your Honor.

10 **THE COURT:** You may proceed.

11 **MR. MEADORS:** If it pleases Your Honor?

12 **THE COURT:** Sure.

13 **MR. MEADORS:** Your Honor, The State of South
14 Carolina would call Ms. Patrice Trapp.

15 **THE COURT:** All right.

16 PATRICE Y. TRAPP, after being duly sworn,
17 testifies as follows:

18 **THE CLERK:** Please have a seat. State your full
19 name for the record.

20 **THE BAILIFF:** State your full name.

21 **THE WITNESS:** Patrice Yvonne Trapp.

22 DIRECT EXAMINATION

23 **BY MR. MEADORS**

24 **Q** Good morning, Ms. Trapp.

25 **A** Good morning.

- 1 Q Will you please -- and if you will, speak loud enough
2 so all these ladies and gentlemen can hear you.
3 Okay?
- 4 A Yes, sir.
- 5 Q Will you please tell the ladies and gentlemen of this
6 jury about Patrice Trapp? Where are you from?
- 7 A I am from Greenwood, South Carolina.
- 8 Q And were you born and raised in Greenwood?
- 9 A Yes, sir.
- 10 Q Where did you go to school?
- 11 A Greenwood High School.
- 12 Q And what did you do after that, Ms. Trapp?
- 13 A After high school I came to the University of South
14 Carolina here in Columbia.
- 15 Q And what did you study there?
- 16 A I have a bachelor's degree in retail management.
- 17 Q And when did you finish the University of South
18 Carolina?
- 19 A In 1988 during the summer.
- 20 Q And your degree was in what, ma'am?
- 21 A Retail management.
- 22 Q What did you do after that?
- 23 A I took a job as an assistant manager at the Stewart's
24 Culverne Store in Woodhill Mall.
- 25 Q How long were you at Stewart's?

1 **A** About a little over a year.

2 **Q** What did you do after that?

3 **A** After that I moved back to Greenwood, South Carolina,
4 and took on an assistant manager's job for Pizza Hut.

5 **Q** And how long did you stay with Pizza Hut? And did
6 you work at different Pizza Huts?

7 **A** Yes, I did. I was there for about maybe two years or
8 more, and then I became pregnant with my first child.
9 So after having the baby I didn't work for a while.
10 And we moved to Greenville, South Carolina, where I
11 cared for my child for a while. And then I went to
12 work for Taco Bell there for about six months.

13 **Q** In Greenville?

14 **A** In Greenville, South Carolina.

15 **Q** And what did you do after that?

16 **A** After that we moved back to Columbia, South Carolina,
17 and I took on a job with the Pizza Hut over on Sunset
18 Boulevard in West Columbia.

19 **Q** And did you stay with Pizza Hut a while?

20 **A** I was at that location for about a year. Then they
21 moved me to the Beltline location, and I stayed there
22 for approximately two years or a little more. Then I
23 moved to the St. Andrews Road location and stayed
24 there about a year. Then I left the Pizza Hut
25 Corporation and went to the Wendy's Corporation.

1 Q Okay. And what year did you start with Wendy's?

2 A It was approximately '96 I think.

3 Q And --

4 A I think it was about '96.

5 Q -- what Wendy's? Where did you start?

6 A I started out on the St. Andrews Road location. I
7 was there for about a year. Then I got promoted to
8 general manager and I worked for the Cayce location.
9 Then I managed there for a year. And then I went to
10 the Assembly Street location and I stayed there for
11 about two years. Then I left the Wendy's Corporation
12 and when to the Aldi Corporation which is a grocery
13 store chain.

14 Q And did you end up coming back to Wendy's?

15 A Yes. After about two years with Aldi I came back to
16 the Wendy's Corporation, and that's when I was
17 general manager for the location.

18 Q And specifically, or as best you can remember, when
19 did you go to the location?

20 A It was the latter part of June of '06.

21 Q 2006?

22 A (Nods head affirmatively).

23 Q And your position at the Two Notch Wendy's -- and
24 that's in Richland County, isn't it?

25 A Yes, sir.

1 Q Your position there in June of 2006 was what?

2 A General manager.

3 Q All right. Tell these folks, what does it mean to be
4 a general manager of a Wendy's, in this case the
5 Wendy's on Two Notch?

6 A You're responsible for hiring, firing and day-to-day
7 operations. You're responsible for scheduling all of
8 the ordering of the product, any customer complaints,
9 employee complaints. Just basically you're in charge
10 of the whole restaurant on a day-to-day basis.

11 Q And this field has been your whole life, correct?

12 A Yes.

13 Q Now, specifically going to the reason we're all here,
14 Ms. Trapp, the weekend of December (sic) I guess 2nd,
15 3rd and 4th of '06. Do you remember that weekend,
16 Labor Day weekend?

17 A Yes, sir.

18 Q And were you scheduled? Were you working that
19 weekend?

20 A No, sir. I had that Saturday and Sunday off.

21 Q You're the general manager. You kind of run things?

22 A Yes, sir.

23 Q How many other managers did you have then?

24 A At that time I had two other managers, two assistant
25 managers.

1 Q And would a manager always be at the store?

2 A Yes. A manager had to be present at the store at all
3 times.

4 Q Who were your other managers in September of '06?

5 A Moesha Outin and Latora Bolton.

6 Q Moesha Outin and Latora Bolton?

7 A Yes, sir.

8 Q And go back in your mind. Or if you can remember,
9 who was working that weekend? Or who was supposed to
10 work? And let me ask you specifically on September
11 3rd, 2006, who was supposed to open up Wendy's?

12 A Latora Bolton.

13 Q And you're the GM?

14 A Yes, sir.

15 Q And is there something that lets people know in
16 advance who is working?

17 A Yes, sir. We have a computerized schedule that we
18 use.

19 Q And I want to show you what's marked State's 52 and
20 ask you if you recognize this, and does it relate to
21 what we're talking about right now? If you'll just
22 say that?

23 A Yes, sir.

24 Q Okay.

25 MR. MEADORS: Your Honor, at this time I'd offer

1 State's 52.

2 MS. THOMAS: No objection, Your Honor.

3 THE COURT: Okay.

4 (WHEREUPON, State's Exhibit No. 52 is admitted
5 into evidence.)

6 MR. MEADORS: May I approach, Your Honor?

7 THE COURT: Sure.

8 Q Ms. Trapp, this is what's been entered now as State's
9 52. What is this?

10 A This is the schedule from August 27th through
11 September -- I mean through August 6th.

12 Q August 27th, right? Created August 27th?

13 A August 27th for the week of August 6th.

14 Q All right. August 27th, '06, correct?

15 A Right.

16 Q Okay. And would that then go forward if it's created
17 for that week?

18 A Yes.

19 Q Okay. Into the next week?

20 A Yes, sir.

21 Q All right. And actually does it have on here today
22 is Monday, August 28th; Tuesday, August 29th;
23 Wednesday, August 3rd. And my question is, does it
24 have Sunday, September 3rd, '06, on here?

25 A Yes, sir.

- 1 Q Now, who had been scheduled to work that day?
- 2 A As far as employees?
- 3 Q Yes, ma'am. I'm sorry.
- 4 A Carlaus Johnson was an opener. John Portee was an
- 5 opener. Stephanie Crumpton was coming in as a
- 6 cashier. Jahquetta was coming in. And I'm not
- 7 really sure who else.
- 8 Q Can you look on the schedule here and does it show
- 9 who was supposed to open on September 3rd, 2006?
- 10 A Yes, sir.
- 11 Q Specifically, Latora Bolton, does it have her opening
- 12 on September 3rd, 2006?
- 13 A Yes, sir. She is scheduled from 8 to 4.
- 14 Q What time if you're opening do you open?
- 15 A The store opens at 11, but someone is there at 8
- 16 because we have to do prep.
- 17 Q And you mentioned someone named Carlaus Johnson?
- 18 A Yes, sir.
- 19 Q And looking at the document that's 52, do you have
- 20 her on here listed on September 3rd, that Sunday, as
- 21 whether or not she's supposed to be in there that
- 22 morning?
- 23 A Yes, sir. She was scheduled at 8:00.
- 24 Q And looking on page 2 of this State's 52, is there
- 25 another person on here that's scheduled to be there

1 at 8:00?

2 A Yes, sir.

3 Q Who is that?

4 A John Portee.

5 Q Okay. So three people were scheduled to be there on
6 September 3rd, 2006 to open up?

7 A Yes, sir.

8 Q And these other folks you mentioned a minute ago,
9 Crumpton or whoever, were they supposed to come in
10 later that day?

11 A Yes. They usually would come in maybe around 10:45
12 or right at 11 because that's what time we opened.

13 Q And the last time I'll ask you probably, when you're
14 opening up the store, what time as general manager
15 did you expect folks? The folks that were opening
16 up, what time were they supposed to be there?

17 A 8:00.

18 Q What are you doing that Sunday? You weren't working?

19 A No, sir.

20 Q What were you doing?

21 A I went to church that morning with my sons. We left
22 church and we decided to go out to eat lunch. We
23 went to a Chinese buffet on Devine Street right in
24 the Gamecock Bi-Lo shopping center. And we were
25 sitting there eating our lunch.

1 Q And what, if anything, happened?

2 A At about 1:24, between 1:24 and 1:26 p.m. I received
3 a call on my cellphone from a manager at the
4 Wildewood Wendy's location. Her name is K. K. She
5 said that Mike is looking for you because your store
6 is not open. Your employees are at the Hess Station.
7 And during the course of the call Mike beeped in and
8 he said, "Your store is not opened. You need to get
9 over there and see what's going on."

10 Q So you had another manager from another Wendy's call
11 you and then this Mike fellow calls you?

12 A Yes.

13 Q And who is Mike?

14 A Mike at the time was my district manager.

15 Q Was his last name Goodwin?

16 A Godwin.

17 Q You're with your kids. As a result of those phone
18 calls, what do you do?

19 A We finish up and we get in the car and we head over
20 towards the restaurant. And I took my cellphone and
21 I called Latora's house.

22 Q Latora Bolton?

23 A Yes. And her daughter answered. And I said, "Hi.
24 How are you?" She said, "Fine."

25 Q As a result of that phone call, were you informed

1 that she went to work that day?

2 **A** Yes. She said, "My mom's at work." And I said,
3 "Okay." So I hang up. And I proceeded to call
4 Moesha but I didn't get an answer. So I proceeded on
5 to the store.

6 **Q** Who was with you?

7 **A** My two sons.

8 **Q** You arrive at Wendy's on September 3rd, 2006?

9 **A** Yes, sir.

10 **Q** And what happened when you got there?

11 **A** I noticed Latora's car was parked towards the front
12 door which usually is how they park because they have
13 to go out and take deposits to the bank. So they
14 really don't park in parking spaces. They're not
15 required to.

16 **Q** Let me show you what's marked State's 22. Does that
17 relate to what you're talking about?

18 **A** Yes, sir.

19 **MR. MEADORS:** Your Honor, I believe State's 22
20 without objection.

21 **MS. THOMAS:** No objection.

22 **THE COURT:** All right.

23 (WHEREUPON, State's Exhibit No. 22 is admitted
24 into evidence.)

25 **MR. MEADORS:** If I can approach again, Your

1 Honor.

2 **THE COURT:** Sure.

3 Q You arrive and you see this vehicle?

4 A Yes, sir.

5 Q Whose vehicle is that?

6 A That's Latora Bolton's vehicle.

7 Q Now, is it parked in a parking place?

8 A No, sir.

9 Q And had you seen it parked there before?

10 A Yes, sir.

11 Q Was it her habit to park there?

12 A Yes, sir.

13 Q Tell the jury why?

14 A Because we have to take deposits to the bank between
15 certain times because our safe is on a time lock.

16 And once the time lock opens, for safety reasons, she
17 just comes out to get in her car to go to the bank.

18 Q Would this car be moved before the restaurant opened?

19 A Yes. It would have to be in a parking space.

20 Q You see Latora's car there. What do you do next, if
21 anything?

22 A I walk towards the car and I saw a note on the
23 windshield that I didn't touch. It was from
24 Jahquetta. So after I read the note I proceeded to
25 the front door to pull on it to see if it was open,

1 and it was locked.

2 Q And you say you proceeded to the front door?

3 A Yes, sir.

4 Q That's the front door of Wendy's?

5 A Yes, sir.

6 Q Showing you what's State's No. 3, do you recognize
7 that?

8 A Yes, sir. That's the front door.

9 MR. MEADORS: Your Honor, I think all these are
10 without objection.

11 THE COURT: They've been agreed to.

12 (WHEREUPON, State's Exhibit No. 3 is admitted
13 into evidence.)

14 Q You checked this door first?

15 A Yes, sir.

16 Q Was it open?

17 A No, sir.

18 Q Did you have your keys?

19 A No, sir.

20 Q Where were your keys?

21 A My keys were home because I was off. So I really
22 don't take my work keys when I'm off.

23 Q Now, you mentioned a minute ago that you went to this
24 car and you saw a note?

25 A Yes, sir.

1 Q And did you look at the note?

2 A Yes, sir.

3 Q Is that the note?

4 A Yes, sir.

5 Q And whose name is on there?

6 A Jahquetta Owens.

7 Q Did you leave the note on the car?

8 A Yes, sir. I didn't take it off.

9 MR. MEADORS: Your Honor, we'd offer State's --
10 it's State's 57.

11 MS. THOMAS: Without objection, Your Honor.

12 THE COURT: Okay.

13 (WHEREUPON, State's Exhibit No. 57 is admitted
14 into evidence.)

15 Q What do you do, if anything, after you check the
16 front door?

17 A I went around to the side of the building to the
18 drive-thru window to pull on it to see if it was
19 opened.

20 Q Is there another door besides before you get to the
21 drive-thru window?

22 A Yes, sir. But it's -- you can't open it from the
23 outside. It's like a panic bar door. It's an
24 emergency door. So I didn't really --

25 Q Is that what's State's 9?

1 **A** I didn't try to pull on it because you can't open it
2 from the outside. You only can open it from the
3 inside. So I just passed by it and went to the
4 drive-thru window.

5 **MR. MEADORS:** And, Your Honor, State's 9.

6 **THE COURT:** All right.

7 (WHEREUPON, State's Exhibit No. 9 is admitted
8 into evidence.)

9 **Q** And on State's 20, you said you passed by that. Then
10 you went to the drive-thru. Is that depicted on
11 State's 20?

12 **A** Yes, sir. I went to the drive-thru window and I
13 pulled on it and it was locked as well.

14 **MR. MEADORS:** State's 20, Your Honor.

15 **THE COURT:** Okay.

16 (WHEREUPON, State's Exhibit No. 20 is admitted
17 into evidence.)

18 **Q** When you pulled on it and it was locked, did you have
19 occasion to look into it?

20 **A** Yes. I did look into the window. The
21 three-compartment sink where we wash dishes, it was
22 running over on the floor. Water was continually
23 running. And I could see the salad bar items at the
24 prep table.

25 **Q** Okay. Let me stop you there. State's 5 and State's

1 21, does that depict the windows, the drive-thru
2 windows?

3 **A** Yes, sir.

4 **MR. MEADORS:** Your Honor, 5 and 21 without
5 objection.

6 **THE COURT:** Okay.

7 (WHEREUPON, State's Exhibit No. 5 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 21 is admitted
10 into evidence.)

11 **Q** And then you said you looked inside and you saw what?

12 **A** The three-compartment sink where we wash dishes, the
13 water was spilling over on the floor.

14 **Q** All right. And showing you what's State's 6, is that
15 depicted in there?

16 **A** Yes, sir.

17 **Q** Where was the water going?

18 **A** It was right here and it was coming out on the floor.

19 **Q** And you could see that?

20 **A** Yes, sir.

21 **MR. MEADORS:** State's 6, Your Honor.

22 **THE COURT:** All right.

23 (WHEREUPON, State's Exhibit No. 6 is admitted
24 into evidence.)

25 **Q** You said something about salad?

1 **A** Yes, sir.

2 **Q** Tell me again about the salad?

3 **A** The salad items have to be prepped every morning. So
4 I saw the cart pulled out and I saw the lettuce.

5 **Q** This is State's 7.

6 **A** Yes, sir.

7 **Q** Tell me, does that show what you're talking about?

8 **A** Yes, sir.

9 **Q** Tell us, you saw the carton of lettuce. What did
10 that mean to you?

11 **A** That someone was prepping lettuce for that morning.
12 Because we don't ever keep everything overnight. It
13 has to be prepped freshly every day. So someone was
14 in the preparation of preparing lettuce.

15 **Q** And based on your experience and working there, this
16 had to be done that morning?

17 **A** Every morning.

18 **Q** Is the place cleaned at night when you leave?

19 **A** Every night.

20 **Q** How much -- I mean, you're the general manager. How
21 much salad would you make for that day?

22 **A** Usually it would be like they would start prepping a
23 case of lettuce. And during their prep the opening
24 manager would go in and generate a prep report to let
25 them know exactly how much, if that case would be

1 enough or if they needed to do more.

2 Q And what would the manager base that on?

3 A She would go in the computer and it would be from
4 prior weeks' sales. And she would generate them in
5 the computer and print it up.

6 Q Okay. For the sake of argument, if this is
7 Ms. Carlaus Johnson and Ms. Latora Bolton there, who
8 would have been going back trying to figure out how
9 much salad to make?

10 A Latora Bolton.

11 Q And who would have been making the salad there?

12 A Ms. Carlaus Johnson.

13 Q In State's 7, State's 8 and State's 9, does that all
14 depict different views of the salad?

15 A Yes, sir.

16 MR. MEADORS: Your Honor, we'd offer State's 7,
17 8 and 9.

18 THE COURT: All right.

19 (WHEREUPON, State's Exhibit No. 7 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 8 is admitted
22 into evidence.)

23 (State's Exhibit No. 9 previously entered into evidence)

24 Q Now, State's 10, what is that?

25 A A pot of coffee.

1 Q Explain, did you see this that day, State's 10?

2 A Yes, sir.

3 Q Would that pot of coffee have been there the night
4 before?

5 A No, sir.

6 Q All right. Between Ms. Bolton and Ms. Johnson, who
7 liked coffee?

8 A Ms. Johnson.

9 Q And was it her habit to make coffee?

10 A Yes, sir. Every morning.

11 Q And does it appear that coffee had been made and
12 somebody had some coffee that morning?

13 A Yes, sir.

14 **MR. MEADORS:** State's 10, Your Honor.

15 **THE COURT:** Okay.

16 (WHEREUPON, State's Exhibit No. 10 is admitted
17 into evidence.)

18 Q You've now seen and made these observations at the
19 drive-thru. What did you do next, Ms. Trapp?

20 A I went around to the back door and I proceeded to
21 beat on the back door and call Latora's name. I just
22 kept calling.

23 Q Did you --

24 A And I didn't get an answer.

25 Q I didn't mean to interrupt you. I'm sorry.

1 **A** That's okay.

2 **Q** Did you know if there was anybody else in there at
3 that time?

4 **A** No, I did not.

5 **Q** Would you know if anybody was in there actually at
6 that time?

7 **A** No, I did not.

8 **Q** So you bang on the back door. Did you get anybody to
9 respond?

10 **A** No.

11 **Q** And I'm going to show you just two from the outside,
12 a distance and close up of that back door. State's
13 63 and State's 62, is that what you're talking about?

14 **A** Yes, sir.

15 **MR. MEADORS:** 62 and 63, Your Honor.

16 **THE COURT:** All right.

17 (WHEREUPON, State's Exhibit No. 62 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 63 is admitted
20 into evidence.)

21 **Q** Now, the back door of the Wendy's, tell the ladies
22 and gentlemen about that. What's that right there?

23 **A** That's where we could look through. When someone
24 knocked on the back door that needed to get in, there
25 was a flap you could lift up and you could look

1 through it to see who was at the back door.

2 Q And on State's 64, do you recognize that?

3 A Yes, sir.

4 Q What is State's 64?

5 A That's the inside of the back door with the flap on
6 it where you lift up and look out to see who is
7 outside.

8 Q And you're the general manager?

9 A Yes, sir.

10 Q What, if anything, do you tell your employees about
11 letting anybody in that back door?

12 A No one is to enter the back door unless it's an
13 employee that's working that morning. After a
14 certain time, which is 10 a.m., no one enters the
15 back door. Everybody has to come through the front
16 door.

17 Q And prior to that, when you open up in the morning,
18 do employees come in the back door?

19 A Yes, sir.

20 Q And it wasn't an employ at the back door, based on
21 your instructions, were your employees supposed to
22 let anybody else in?

23 A No, sir.

24 Q That was your rule, wasn't it?

25 A Yes, sir.

1 Q Why didn't you open the back door?

2 A Because of security reasons.

3 Q Okay. And I'm sorry. You didn't have your keys that
4 day?

5 A No. I didn't have any keys. So I couldn't open any
6 of the doors.

7 Q Showing you State's 61, what did you do after you
8 knocked on the back door and nobody came?

9 A I went around to that side door right there.

10 Q Yes, ma'am.

11 A And just pulled on it just to see if it was unlocked.
12 And it was locked as well.

13 Q The front door, side door, drive-thru, back door,
14 other side door; all locked?

15 A Yes, sir.

16 Q What did you do after that, if anything?

17 A I walked back around the back of the building to the
18 drive-thru window. And by that time the Hess
19 manager, Mr. Raoul, had came over. And he said that
20 several employees had been to his establishment
21 trying to get in but they couldn't get in and that he
22 saw Latora go in but he didn't see her come out. So
23 I looked in my trunk to see if I had a lug wrench or
24 something because I wanted to get the window open
25 because my keys were in Eastover and I knew it would

1 take about an hour for me to go home and come back
2 and I didn't want to wait that long because Latora
3 had been complaining of chest pains a couple of days
4 before and I thought maybe she was in there sick. So
5 I asked him if he had a crowbar and he said yes. So
6 he went and he brought me the crowbar. But he was
7 afraid that Wendy's would hold him liable if he broke
8 the window. So myself and my 15-year-old son
9 proceeded to pop the window open.

10 Q For the court reporter's sake, this gentleman's name
11 was what?

12 A Raoul.

13 Q Raoul?

14 A Yes, sir.

15 Q At the Hess Station?

16 A Yes, sir.

17 Q So then you borrowed his crowbar and you come -- who
18 actually pries open -- and it's in here. I think the
19 jury will remember it. It's that drive-thru window?

20 A Yes, sir.

21 Q What's depicted in State's 20?

22 A Yes, sir.

23 Q Okay. Did you pry it open?

24 A Me and my 15-year-old son.

25 Q And what happened after that?

- 1 **A** After we got the window open, I was going to go
2 through the window but I couldn't fit through it. So
3 my 12-year-old son at the time was real small. So we
4 lifted him up and we told him -- I told him
5 specifically, I said, "Go in and run all the way
6 around and unlock the side door, the push bar door so
7 I can get in."
- 8 **Q** One second, ma'am. State's 14, did he run around and
9 unlock that push side door?
- 10 **A** Yes.
- 11 **Q** And did he do what you told him to?
- 12 **A** Yes, sir.
- 13 **Q** I'm going to take you through this and then have you
14 explain what you saw. Okay?
- 15 **A** Yes, sir.
- 16 **Q** But you come inside. And State's 13 depicts that,
17 right?
- 18 **A** Yes, sir.
- 19 **Q** And State's 11, is that you going on into Wendy's?
- 20 **A** Yes, sir.
- 21 **Q** The direction you went?
- 22 **A** Yes, sir.
- 23 **Q** Do all Wendy's look pretty much alike inside?
- 24 **A** Yes, sir.
- 25 **Q** And then you headed around to go to the side in

1 State's 15?

2 A Yes, sir.

3 Q Right? That's where your bathrooms are. You go down
4 the bathroom hall?

5 A Yes, sir.

6 Q Then State's 17, what do you do as you head down the
7 hall?

8 A That's called our front line. And Raoul was behind
9 me coming down the front line. And I was being
10 myself, saying, "Latora, where are you? Why is this
11 store not opened? What are you all doing? What's
12 going on?"

13 Q You didn't know what had happened at all at this
14 point?

15 A No. And I was just being myself because they know
16 that's how I would react if I came in and it wasn't
17 open. I was like, "What's going on? Why are you all
18 not open? What are you all doing?" I was just
19 talking because I thought she could hear me.

20 Q State's 12, do you head on back toward through the
21 drive-thru window on the inside?

22 A Yes, sir.

23 Q And that's the way you're walking, right? Saying
24 this kind of stuff, right?

25 A Yes, sir.

1 Q Does State's 10 -- State's 16, Ms. Trapp, after you
2 passed by the drive-thru window, do you head on back
3 to the store?

4 A Yes, sir.

5 Q These pictures are basically showing how you went
6 through Wendy's, right?

7 A Yes, sir.

8 Q And this is another shot of that, State's 18?

9 A Yes, sir.

10 Q Okay. And then on State's 19, does it lead back to
11 an office which leads to an office?

12 A Yes, sir.

13 Q And on State's 19, did you end up coming up to this
14 doorway?

15 A Yes, sir.

16 Q And does that office lead to another office?

17 A Yes, sir.

18 Q I just said that. I'm sorry. All right. Did you go
19 in this part of it?

20 A Yes, sir.

21 Q Now, I want you to tell these ladies and gentlemen --
22 I'm not going to show you a picture -- tell these
23 ladies and gentlemen what you saw in the best way you
24 can remember?

25 A Once I came down the hall and I was talking, asking

1 them what was going on, why the store wasn't open, I
2 went around the corner and I went to the training
3 room which is the room for the office. And I looked
4 in and I -- I froze. I stopped.

5 In the chair, Latora was sitting in the chair.
6 Her head was against the wall and it was kind of
7 down. And there was a body crouched on the floor
8 behind her. And blood was everywhere. And I
9 screamed and I ran for help because I wanted somebody
10 to help them real quick. And Raoul, he didn't come.
11 He -- I ran him over trying to get from back there.
12 And we tried to get the 911 called and Raoul called
13 911.

14 Q You saw what you saw.

15 MR. STRICKLER: Your Honor, may we approach?

16 THE COURT: Yeah. But if anybody can't stay
17 under control now, they'll have to leave the
18 courtroom. I recognize it's traumatic for everybody.
19 Is that what you wanted, Mr. Strickler?

20 MR. STRICKLER: Yes, sir.

21 A Her head was --

22 THE COURT: All right. If any of them do
23 anything, just show them out. Because they will say
24 they are under control. But, you know, they're okay
25 at this point. Go ahead.

1 Q Thank you, Your Honor. Ms. Trapp, you saw two
2 bodies?

3 A Yes, I did.

4 Q You then leave?

5 A Yes, sir.

6 Q And you run outside?

7 A I ran to my kids. They were at the door.

8 Q And you've never worked in retail since, have you?

9 A No, sir. I suffer from post traumatic stress
10 disorder.

11 Q You get outside --

12 MS. THOMAS: Objection, Your Honor.

13 THE COURT: Well, --

14 MS. THOMAS: Relevance.

15 THE COURT: That's all right. Go ahead. She
16 may or may not. But go ahead.

17 Q You get outside, Ms. Trapp. What do you do?

18 A I don't really go out that much because of fear.

19 Q I'm sorry, ma'am. When you went outside the Wendy's.

20 A Oh. Outside that day?

21 Q Yes, ma'am.

22 A We waited for the firemen and they came. And I had
23 to go back in because they thought the bodies were in
24 the bathroom. I had to lead them back to the bodies,
25 and then I went back out. And they began to question

1 me about what happened. And they said they found two
2 bodies. And I told them, no, it should be three.

3 Q Why did you tell them there should be three?

4 A Because there was three people on the schedule.

5 Q Three people on the schedule?

6 A Yeah.

7 Q Only two bodies?

8 A Only two. They asked me who was the third person.

9 And I told them it should have been John Portee.

10 Q Was John Portee there?

11 A No, sir.

12 Q And did you give them a statement?

13 A Yes, sir.

14 Q Them being the law enforcement?

15 A Yes, sir.

16 Q Are you okay?

17 A Yes, sir.

18 Q Ms. Trapp, how long had Ms. Bolton worked at Wendy's?

19 A I think it was a little over two years. She was
20 there when I got there.

21 Q And Ms. Carlaus Johnson, how long had she worked
22 there? Do you know?

23 A I don't know. She'd been around for a while.

24 Everybody called her Mama C.

25 Q Mama C. And Defendant John Portee, how long had he

1 been there?

2 **A** He was there when I got there as well. He was over
3 at the Beltline unit from my understanding and then
4 he came to the Two Notch location.

5 **Q** Had Latora Bolton also been at the Beltline? Do you
6 know?

7 **A** I'm not sure.

8 **Q** Now, Ms. Trapp, I think you said it earlier. As part
9 of one of your duties of being the general manager,
10 you kind of handle disputes if they come up between
11 employees?

12 **A** Yes, sir.

13 **Q** Is that fair to say?

14 **A** Yes, sir.

15 **Q** And the Friday before this August 25th of 2006, had
16 there been a dispute between the defendant, John
17 Portee, and Ms. Latora Bolton?

18 **A** They had a dispute a week before the incident
19 happened. I got a telephone call from Latora. She
20 was upset and she was almost out of breath.

21 **MS. THOMAS:** Your Honor, may we approach?

22 **THE COURT:** All right.

23 (Whereupon, a bench conference is had)

24 **Q** You're on the phone with Latora Bolton?

25 **A** Yes, sir.

1 Q A week before this?

2 A Yes, sir.

3 Q I think you said was she out of breath?

4 A She was.

5 Q Or describe her demeanor?

6 A She was upset.

7 Q Tell the jury what she said?

8 A She said that her and John was having an altercation
9 because he didn't want to go to drive-thru
10 sandwiches. He had questioned her about why someone
11 else couldn't do it. And it became into a back and
12 forth thing and they were back and forth at each
13 other and that he had threatened to have someone come
14 and get her to do harm to her and she felt threatened
15 and she didn't want to be around him. And she was so
16 upset that 'til I asked to speak to another employee
17 which I knew that was kind of calm and level headed.
18 So he came to the phone and I asked him what was
19 going on and he described --

20 Q As a result of that --

21 THE COURT: I sustain that.

22 Q I'm not going into what he said. But did you ask
23 this employee to kind of calm things down?

24 A Yes, he did. And he did exactly what I asked him to
25 do. And he put Latora back on the phone and she was

1 still, you know, going on. She did not -- she did
 2 not exempt herself from saying that she didn't say
 3 harsh words. They both were saying harsh words to
 4 each other. She said but she took what he said as a
 5 threat. And I got the other employee back on the
 6 phone and I asked him did he, you know, get --
 7 Q Did he calm the situation down?
 8 A Yeah. And get everything taken care of. And he said
 9 yes. Because I was on my way up there. Then he
 10 said, no, there's no need for you to come.
 11 Q And as a result of this other employee, you asked him
 12 to call them down, he told you he had. So you ended
 13 up not going over there?
 14 A Right.
 15 Q And you've said that he said she threatened him. But
 16 did she say whether or not it wasn't a threat, it was
 17 a promise?
 18 A Yes. She said, "He said, 'this is not a threat, this
 19 is a promise.'
 20 Q "It's not a threat, it's a promise"?
 21 A Yes.
 22 Q As a result of that, did you have a meeting the
 23 Friday before this incident with the defendant, John
 24 Portee, and Latora Bolton?
 25 A Yes, I did.

1 Q Actually complaints made to corporate?

2 A Yes.

3 Q I guess you'd call it?

4 A Yes.

5 Q And you met with them Friday?

6 A Yes.

7 Q Before this incident?

8 A Yes.

9 Q And as your duties and being a good GM, you tried to
10 put this to bed, correct?

11 A Yes.

12 Q And did you think that Friday things had worked out?

13 A Yes, sir.

14 Q After that meeting, when was defendant Portee
15 scheduled to work?

16 A He was actually out that Saturday and he was supposed
17 to return that Sunday.

18 Q And the schedule had been made?

19 A Yes.

20 Q And did he ask to work any other time?

21 A He had asked if he could work that Saturday and I
22 told him no. I said, "Most employees be begging for
23 Saturday off. Why you want to work?" I was like,
24 "No. Just take your Saturday off." And he did.

25 Q Had he ever asked to work Saturday before?

1 **A** Not really. Everybody would like to have weekend
2 off. They don't really specify weekend days they
3 want to work. They'll tell you they want to work
4 during the week but not weekends.

5 **MR. MEADORS:** Beg the Court's indulgence.

6 **THE COURT:** Okay.

7 **Q** Is John Portee in the courtroom? Is John Portee in
8 the courtroom?

9 **A** I haven't looked around.

10 **Q** Well, would you look around and tell me if he is,
11 please?

12 **A** Yes, sir.

13 **Q** And that's the same John Portee that was working at
14 Wendy's in September of 2006?

15 **A** Yes, sir.

16 **Q** ~~Is that the same John Portee that was on State's~~
17 Exhibit 52 that was supposed to be in there at 8:00
18 that morning to help open up?

19 **A** Yes, sir.

20 **MR. MEADORS:** We'd ask the record reflect she's
21 identified the defendant, John Portee.

22 **THE COURT:** All right.

23 **Q** Thank you, Ms. Trapp. That's all I have.

24 CROSS EXAMINATION

25 **BY MS. THOMAS**

1 Q Good morning, Ms. Trapp.

2 A Good morning.

3 Q How are you today?

4 A Well. And you?

5 Q I understand that you're probably really upset.

6 These women were your friends, and I apologize for
7 having to go through this. So I'm not going to walk
8 you back through that.

9 A Yes, ma'am.

10 Q But I did want to ask you a couple of questions about
11 the altercation, the situation between John and
12 Latora.

13 A Yes, ma'am.

14 Q You didn't actually see anything that happened?

15 A No, ma'am. I was off that day.

16 Q You were off that day. What is the general procedure
17 for when an employee has a complaint against another
18 employee?

19 A Usually if it's too -- if it's a manager and an
20 employee, they usually make their grievances to the
21 general manager and then I refer them to the district
22 manager. Because a lot of times if it's between a
23 manager and an employee, you don't want to show bias.
24 So you relay it to the district manager. Which I
25 did.

1 Q And the district manager's name?

2 A Mike Godwin.

3 Q When you were describing your duties, you described
4 that your duty is to hire and to fire and to
5 generally maintain the store?

6 A Yes, ma'am.

7 Q So I guess what I'm saying is, based on what you're
8 telling me, if it was between two just employees, it
9 would have been something that you handled?

10 A Yes, ma'am.

11 Q But because it was between a manager and an employee,
12 you didn't want to seem biased?

13 A Right. Well, it's really the procedure for us to
14 report it to the district manager because it involves
15 a manager.

16 Q You would have had the authority to fire somebody
17 though, wouldn't you?

18 A Yes. Well, they changed the rules.

19 Q On September 3rd of 2006, or in that general area,
20 before you --

21 A Before that we had to send in requests for people to
22 be terminated and we had to send in what evidence
23 that leads up to that termination. Just for example,
24 if the policy was if they were late three times, then
25 they could be terminated. But we had to have those

1 three documentations sent into the human resources
2 before they could be terminated. I just couldn't
3 walk in and say you're terminated for three days.

4 Q And that applies to any employee?

5 A Yes.

6 Q Okay. The meeting that you had with Latora and John
7 on September 1st, was Mike Godwin present for that?

8 A No, he wasn't.

9 Q And you guys were talking to try to resolve the
10 situation?

11 A Yes. We went in the office and we talked. We were
12 talking about the situation. And we were trying to,
13 you know, come to some common ground where they both
14 could work together without having any altercations.
15 And I let him talk and then I let her talk and then I
16 talked and I thought everything was fine.

17 Q You thought everything had been resolved?

18 A Yes, ma'am.

19 Q Between John and Latora?

20 A Yes, ma'am.

21 Q Do you know if at that point Mike Godwin had spoken
22 with either John or Latora?

23 A Yes, ma'am. He had spoken with John. I'm not sure
24 what day, but they had a meeting in our dining area.
25 And he had also spoken with Latora.

1 Q And that was before September 1st?

2 A Yes, ma'am.

3 Q When you spoke with them, do you know what, if
4 anything, came of that meeting?

5 A The only thing that I can remember is he had to write
6 both of them up for, I think it was the conduct
7 towards each other.

8 Q John was written up?

9 A And.

10 Q And Latora was written up?

11 A Yeah.

12 Q So both of them were at fault for the incident?

13 A Yeah. He said that both of them should be written up
14 because she participated.

15 Q Okay. And she had said to you I think you said that
16 she used some harsh words, the way she put it?

17 A Yeah. They were back and forth.

18 MS. THOMAS: Beg the Court's indulgence. No
19 further questions.

20 REDIRECT EXAMINATION

21 BY MR. MEADORS

22 Q He didn't follow directions; she didn't handle it
23 quite the way a manager should have in talking with
24 him?

25 A Yes, sir.

1 Q Is that basically it?

2 A Yes, sir.

3 Q That you. That's all.

4 THE COURT: You can step down.

5 MR. MEADORS: Your Honor, we'd ask the witness
6 be excused.

7 THE COURT: If the witness would like to go, she
8 can.

9 MS. MCDUFFIE: May it please the Court, Your
10 Honor.

11 THE COURT: All right.

12 MS. MCDUFFIE: The State calls Moesha Outin.

13 THE COURT: Jurors, most of the witnesses are
14 sequestered. That's a pretty big word. It just
15 means they're not in the courtroom listening while
16 somebody else testifies. They're just standing in
17 the hallway.

18 MOESHA OUTIN, after being duly sworn, testifies
19 as follows:

20 THE CLERK: Please have a seat. State your full
21 name for the record.

22 THE COURT: Jurors, it's going to be a hard
23 trial and it's just hard to remember everything. So
24 when something occurs, it's easier for me to say it.
25 You notice the solicitor put in exhibits and I was

1 not counting. Don't worry. I'm not going to give
2 you a quiz before lunch. But like 3, 4, 5, 61,
3 they're not going to necessarily be admitted
4 subsequently. And they marked all the photographs
5 and things but they might not put them all in. So
6 when you start deliberating you might say we're
7 missing exhibit whatever, 18, 19. You know, it would
8 not have been introduced into evidence because they
9 think they've put in enough pictures at that point.
10 But they might have them all in. I don't know.

11 **THE BAILIFF:** State your full name.

12 **THE COURT:** Okay. You may proceed.

13 **THE WITNESS:** Moesha Outin.

14 DIRECT EXAMINATION

15 **BY MS. MCDUFFIE**

16 **Q** Ms. Outin, where are you currently employed?

17 **A** Department of Mental Health Fitness Center.

18 **Q** And what do you do at the Department of Mental
19 Health?

20 **A** Assist in training and rehabilitating, assist in
21 their daily programs, assist in bathing.

22 **Q** And how long have you been with the Department of
23 Mental Health?

24 **A** Two and a half years.

25 **Q** When did you start working at the Department of

1 Mental Health?

2 A October the 1st, 2006.

3 Q And before that where did you work?

4 A Wendy's.

5 Q And which Wendy's did you work at?

6 A On

7 Q And how long did you work at Wendy's?

8 A Five and a half years.

9 Q And when did you leave Wendy's to go to the
10 Department?

11 A Actually September the 3rd, 2006.

12 Q And in 2006, while you were working at Wendy's, what
13 was your job description?

14 A Assistant manager.

15 Q And how long had you been the assistant manager?

16 A Oh. Probably about four and a half years.

17 Q And what were your duties as the assistant manager?

18 A Hiring, firing, scheduling, running a shift, making
19 deposits, crew training.

20 Q And were you the only assistant manager, or were
21 there others at the Two Notch Wendy's?

22 A There was one other assistant manager.

23 Q And who was that?

24 A Latora Bolton.

25 Q And you two shared those duties you just described?

1 A Yes, we did.

2 Q And was it Wendy's policy that one manager always had
3 to be at the store?

4 A Yes, it was.

5 Q Who did the scheduling for the Two Notch Wendy's?

6 A I did.

7 Q Are you aware of who was scheduled to work on Sunday,
8 September the 3rd, 2006?

9 A I can recall some names.

10 Q Please tell the jury what you remember?

11 A That opening schedule was with -- Latora Bolton was
12 the manager scheduled. At 8:00 John Portee was
13 scheduled. Also Ms. Carlaus Johnson. And I believe
14 Stephanie Crumpton was scheduled at 10:00. And I
15 believe Jahquetta. I'm not sure of her time.

16 Q And when you made the original schedule, was that who
17 you scheduled to work that day?

18 A I think for Francis it was Carlaus' place. It was
19 actually Francis James but they switched schedules.

20 Q So Carlaus had switched with Francis to be there to
21 work that morning?

22 A Yeah. Because it was Francis' birthday.

23 Q And if someone was to call in sick, who would they
24 call?

25 A They would normally call the manager that's on duty

1 for that day.

2 Q And if they couldn't get them, who would they then
3 call?

4 A That's the only person they'd call.

5 Q As the manager, was one of your duties to open the
6 store?

7 A Yeah.

8 Q And to lock up at night?

9 A Mm-hmm (affirmative).

10 Q Who had keys to the Wendy's on

11 A Myself, Latora Bolton, and Patrice.

12 Q And if you were working before the store opened,
13 would all doors be locked?

14 A Yeah.

15 Q And when would unlock the doors?

16 A At -- well, that Sunday, actually at 11:00.

17 Q The week before this incident occurred, were you
18 working that week?

19 A Yes, I was.

20 Q Did you have a chance to see Latora Bolton?

21 A Yes, I did.

22 Q Please describe for the jury what you observed when
23 you saw Latora Bolton?

24 A Which time?

25 Q The --

1 **A** I saw her numbers of times.

2 **Q** I'm sorry. Let me rephrase the question. Did you
3 happen to see her the Wednesday or Thursday prior to
4 this incident?

5 **A** Both days.

6 **Q** What, if anything, stood out? Or what, if anything,
7 do you remember about seeing her?

8 **A** That Wednesday she was very upset. Her and John had
9 got into it. When I came --

10 **MS. THOMAS:** Objection, Your Honor. May we
11 approach?

12 **THE COURT:** Yeah. Jurors, I hate to keep
13 running them up. But, see, I don't know where
14 anything is going.

15 (Whereupon, a bench conference is had)

16 **Q** When you saw Latora, please describe her physical
17 condition?

18 **A** When I saw her that Wednesday, she was very upset and
19 she was in the dining room crying.

20 **Q** As a manager, did you have access to the safe?

21 **A** Yes, I did.

22 **Q** And please describe for the jury how you would open
23 the safe?

24 **A** You have to put a key in. It's not a -- it wasn't
25 actually a key but like a circle on it that you would

1 put in. And you would have to put in your code. And
2 most of us had four-digit codes. And it opened. You
3 can open the safe any time during the day. But we
4 had an additional safe with the deposits in it that
5 you couldn't open until 9:00 a.m. And you can do it
6 also like between 9 and 10 and then again 4 to 5 in
7 the afternoon.

8 Q So there was a main safe and then there was a
9 secondary safe?

10 A Yes, there was.

11 Q And the secondary safe you could only open when?

12 A It was -- the secondary safe you only could open
13 between the hours of 9 and 10:00 a.m. and the
14 afternoon between 4 and 5. So can you only do it
15 twice a day.

16 Q So on Sunday morning the proceeds from Saturday would
17 be in the secondary safe?

18 A Yes, they will be.

19 Q And what would be in the main safe?

20 A The main safe would be quarters, nickels, dimes and
21 pennies and change, like 1's and 5's, maybe \$800 to
22 the most on weekends, or 1,000.

23 Q The money that you would use to operate during the
24 day?

25 A Yes, ma'am.

1 Q Beg the Court's indulgence. No further questions,
2 Your Honor.

3 CROSS EXAMINATION

4 BY MS. THOMAS

5 Q Good morning, Ms. Outin.

6 A Good morning.

7 Q You stated that either you or Latora were always at
8 work?

9 A Yes, ma'am.

10 Q So you didn't ever work with Latora, did you?

11 A Yeah. She asked was I always a manager there. There
12 was always a manager there, but sometimes we would
13 overlap.

14 Q How much overlap would there be?

15 A Maybe once a week, twice a week.

16 Q Like a shift change kind of thing?

17 A Yeah.

18 Q Okay. You never saw John and Latora get into any
19 argument, did you?

20 A Actually see them get in an argument? No, I didn't.

21 Q Okay. Beg the Court's indulgence. No further
22 questions.

23 MR. MEADORS: Stephanie Crumpton.

24 THE COURT: Step down.

25 MR. MEADORS: We'd ask this witness be excused.

1 **THE COURT:** They're all free to go when they
2 finish unless someone wants to keep them.

3 **MR. STRICKLER:** No, sir. I don't have any
4 objection to any of them leaving.

5 **MR. MEADORS:** May we approach on another matter,
6 just purely procedural?

7 **THE COURT:** All right.

8 (Whereupon, a bench conference is had)

9 STEPHANIE CRUMPTON, after being duly sworn,
10 testifies as follows:

11 **THE CLERK:** Please have a seat. State your full
12 name for the record.

13 **THE WITNESS:** My name is Stephanie Crumpton.

14 DIRECT EXAMINATION

15 **BY MR. MEADORS**

16 **Q** Hey. Good morning.

17 **A** Good morning.

18 **Q** Can you tell these people about you, Ms. Crumpton?
19 Do you mind? And if you don't mind, just speak in
20 here. Are you a little nervous?

21 **A** Yes. Very.

22 **Q** That's all right. Tell the folks where you're from?

23 **A** I'm from Columbia, South Carolina.

24 **Q** Where did you go to school?

25 **A** I went to school at Irmo High and Brooklyn Cayce

- 1 High.
- 2 Q When did you get out of high school?
- 3 A In '05.
- 4 Q What did you do after that?
- 5 A I went to work at Wendy's, which I stayed there for
- 6 about a year and a half up until ...
- 7 Q This?
- 8 A Up until the murders happened.
- 9 Q And did you work at the Wendy's on Two Notch?
- 10 A Yes.
- 11 Q And were you already out of high school, or were you
- 12 working at Wendy's when you were in high school, too?
- 13 A I was already out.
- 14 Q And is that the first place you worked after high
- 15 school?
- 16 A Correct.
- 17 Q What was your job at Wendy's on Two Notch, Ms.
- 18 Crumpton?
- 19 A I was a cashier and a sandwich maker.
- 20 Q Did you like the job?
- 21 A Yes. I had some bad days; but, yes.
- 22 Q And did Ms. Latora Bolton work there?
- 23 A Yes. She was a manager.
- 24 Q Ms. Carlaus Johnson?
- 25 A Yes. Another employee.

- 1 Q Did you have a nickname for her?
- 2 A Ms. C.
- 3 Q Okay. And was the defendant, John Portee, there?
- 4 A Yes.
- 5 Q And Ms. Trapp?
- 6 A Yes.
- 7 Q Did she eventually come, the general manager?
- 8 A Yes.
- 9 Q Now, Ms. Crumpton, where are you working now?
- 10 A At UPS warehouse.
- 11 Q How long have you been there?
- 12 A Ever since -- about two years.
- 13 Q Since September of '06?
- 14 A Right.
- 15 Q When this happened in September of '06, were you
- 16 working or supposed to work that day?
- 17 A Yes.
- 18 Q And what time were you supposed to come in?
- 19 A Around 10:00 a.m.
- 20 Q Tell the jury what you did that morning?
- 21 A When I arrived at work, I seen Ms. Latora's car
- 22 parked up front. So I went to ring the doorbell, but
- 23 no one never came. So I looked through the
- 24 drive-thru window to see if I seen anyone, and I
- 25 didn't see anyone. The water was running. I seen

1 that there was lettuce on the floor. So I assumed
2 that something happened, but I was thinking maybe she
3 had to go somewhere for her kids. Because I know if
4 it was something with her kids that she would leave
5 or something. But I didn't know where anyone was.
6 So I waited around for a little while. I went to
7 Hess and talked to the guy, waited a little longer.
8 Jahquetta came. So I ended up leaving and going
9 home. And then --

10 Q How did you get there that morning on September 3rd?

11 A I drove.

12 Q Had you gotten a new car?

13 A Yeah. I had just got my new car. And actually I
14 asked to open but they wouldn't allow me to open for
15 that morning. So I just came a little earlier than
16 what my start time was just to see if I could still
17 help. But of course no one never came to the door.
18 So I waited. Jahquetta came.

19 Q And you said you got there about 10?

20 A A little before 10.

21 Q And you say Jahquetta. Am I pronouncing her name
22 right? Jahquetta?

23 A Mm-hmm (affirmative).

24 Q What's her last name?

25 A I'm not sure.

1 Q Is it fair to say -- I don't think it's a dispute --
2 it's Owens. But you know her as Jahquetta?

3 A Right.

4 Q She got there?

5 A Mm-hmm (affirmative).

6 Q Did she stay there for a while while you were there?
7 Or what happened?

8 A Well, actually she stayed and I left. Like when she
9 got there, I stayed about 20 more minutes and then I
10 left. And she said she was going to wait to see if
11 somebody else comes.

12 Q Did you go back home?

13 A Yes.

14 Q Did you go back up to Wendy's that day, Ms. Crumpton?

15 A Yes.

16 Q What time?

17 A Maybe sometime in the afternoon, because the police
18 and everybody was already up there.

19 Q Now, the week prior to this, were you present when
20 there was a verbal altercation between the defendant,
21 John Portee, and Ms. Latora Bolton?

22 A Yes.

23 Q You were actually working that day?

24 A Yes.

25 Q And what was your job?

1 A I was the cashier up front.

2 Q And I don't think I need to show people. We all know
3 where the cashier is at Wendy's. You're right up
4 front, right?

5 A Right.

6 Q All right. And what was Mr. Portee's job that day?

7 A He was my sandwich maker for up front.

8 Q And what happened between Ms. Bolton and John Portee,
9 if anything?

10 A Ms. Latora told him to go to the drive-thru
11 sandwiches. And John was complaining about he had
12 been working hard up front all day, which he was, and
13 that he didn't feel like he should go to drive-thru
14 and make their sandwiches when there's other people
15 getting paid more than him. And he basically didn't
16 feel that it was right. And she was telling him if
17 he didn't like it he can clock out and go home. And
18 they kind of like was saying words back and forth to
19 each other like. And she was just like, I don't want
20 to talk about it no more. If you don't like it, you
21 can just go home. And they got into an argument that
22 way.

23 Q And did you hear the defendant threaten Ms. Bolton,
24 Latora Bolton?

25 A A little later he was like that he'll get somebody to

1 come up and beat her behind or whatever. And she was
2 basically like, go get them and go get them. And she
3 went out in the dining room and started smoking a
4 cigarette and she started crying and stuff. And I'm
5 not actually sure what was said at that point, but
6 they exchanged some more words. And he was like that
7 he would kill her, it wasn't a threat, it was a
8 promise.

9 **Q** He'll kill her, it wasn't a threat, it's a promise?

10 **A** Right.

11 **Q** And she was crying?

12 **A** Right. And then his ride came to get him and he just
13 got in the car and left.

14 **Q** And the person that told Ms. Latora Bolton that he'd
15 kill her and it's not a threat, it's a promise, is
16 that person in this courtroom?

17 **A** Yes.

18 **Q** Would you please point him out? Is that Mr. John
19 Portee?

20 **A** Yes. That's Mr. John Portee.

21 **MR. MEADORS:** We'd ask the record to so reflect.

22 **THE COURT:** All right.

23 **MR. MEADORS:** That's all. Thank you.

24 **MR. STRICKLER:** May it please the Court, sir.

25 **THE COURT:** Sure.

CROSS EXAMINATION

BY MR. STRICKLER

Q Good morning, Ms. Crumpton.

A Good morning.

Q My name is Doug Strickler. I'm one of the attorneys representing Mr. Portee. I have a few questions for you. All right?

A (Nods head affirmatively).

Q Now, when was this altercation you saw between John Portee and Ms. Bolton? When did that happen?

A Through the week. I'm not sure if it was on a Wednesday or a Thursday, like what particular day; but I know it was in the middle of the week, the week before she died.

Q And she died on September 3rd, right?

A Right.

Q Now, Wendy's investigated this incident itself, correct?

A Correct.

Q I'm sorry?

A Correct.

Q Correct? True? Right?

A Yes.

Q You spoke with someone with Wendy's who investigated the incident, right?

1 **A** I believe. Like as far as the owners and -- I mean,
2 I'm not sure who you are talking about when you say
3 investigators.

4 **Q** You don't remember giving a written statement to an
5 investigator from Wendy's?

6 **A** I remember giving a statement. I'm not sure who I
7 gave it to, if he was an investigator, if he was the
8 owner. I'm not sure who actually took my statement.

9 **Q** Let me rephrase my question then, Madam. You don't
10 remember giving a written statement to someone
11 associated with Wendy's?

12 **A** Yes, I do.

13 **Q** Okay. Let me show you this document and ask if you
14 recognize it?

15 **A** Yes, I do.

16 **Q** Okay.

17 **MR. MEADORS:** Your Honor, we have no objection
18 if he's offering that.

19 **MR. STRICKLER:** If I'm going to offer it, I'll
20 offer it, Your Honor.

21 **THE COURT:** You've got it.

22 **MR. STRICKLER:** Thank you, sir.

23 **Q** So the incident was on -- excuse me. Sunday,
24 September 3rd, is when Ms. Bolton was killed. Right?

25 **A** Correct.

1 Q That's when you came to work. You described it,
2 right? So the previous Sunday would have been
3 August 27th, right?

4 A I'm not sure. I mean, I don't have a calendar in
5 front of me.

6 Q All right. Well, Saturday, September 2nd?

7 THE COURT: All right. Just tell her that's
8 when it was. She's just not counting. You know,
9 she's not a professional witness.

10 MR. STRICKLER: All right, sir.

11 Q When was it that you sat down with whoever it was
12 from Wendy's and gave them this statement?

13 A I don't remember if I gave the statement when we had
14 our whole meeting, like all the employees and I wrote
15 my statement; or if it was that particular day on the
16 3rd or if it was the week before it happened. I just
17 don't actually remember when I wrote the statement.
18 This is three years ago. I don't have a date on
19 there. I don't remember.

20 Q Now, the time you gave the statement was prior to the
21 incident on September 3rd, right, that what you wrote
22 down right there?

23 A Mm-hmm (affirmative).

24 Q Right?

25 A (Nods head affirmatively).

1 Q And what you wrote down right there indicates you saw
2 some words exchanged, right?

3 A Correct.

4 Q Okay. And let me just direct your attention to the
5 last sentence in that statement. Okay?

6 A Mm-hmm (affirmative).

7 Q All right. I didn't hear John threaten. Right?

8 A I see it. You can go ahead.

9 Q Right? I didn't hear him threaten her. But I heard
10 her say he did. Heard her say he did, right?

11 A Right.

12 Q So, within days of the incident, this whatever this
13 argument was between the two of them at the store
14 prior to September 3rd when Wendy's was investigating
15 the argument, you told them you never heard him
16 threaten her, right?

17 A And the reason why --

18 Q Ma'am, you can explain later. Right? You never
19 heard -- you said you never heard him threaten her,
20 correct?

21 A That's what I wrote on the paper.

22 Q Right?

23 MR. MEADORS: Your Honor, I think objection.
24 She wanted to explain.

25 THE COURT: Well, he's going to let her. He

1 said he would. First she has to answer the question.

2 **MR. STRICKLER:** Thank you, sir.

3 **Q** If you need to explain, ma'am?

4 **A** Do you want me to explain that?

5 **Q** I don't care if you explain it. If you need to
6 explain it, that's fine.

7 **A** At the time they were arguing, I didn't put in the
8 statement that he threatened her because we all felt
9 like he was working too hard and certain things. So
10 I never thought that he would end up killing her, you
11 know, like going to kill her or anything. I didn't____
12 put that in the statement because I didn't feel like
13 at the time I needed to put that in there, that he
14 threatened her. I just didn't feel -- I wasn't
15 trying to get him in any trouble. But, yeah, when
16 you do kill two people, yeah, it's necessary to say
17 what was really said.

18 **Q** Was the person employed with Wendy's threatening you
19 if you didn't cover up for John?

20 **A** What person?

21 **Q** Whoever you gave the statement to, ma'am.

22 **A** No.

23 **Q** No. So you elected to be untruthful at that point in
24 time?

25 **A** No.

1 Q No?

2 A (Shakes head negatively).

3 Q You told -- you didn't tell them. You wrote it down
4 yourself. This is your writing?

5 A Yes, sir. The thing with the statement, I don't
6 remember exactly when I wrote the statement. I'm
7 thinking it was before he even killed them, before
8 any of that happened. We wrote a statement when he
9 first started threatening her. That's what I'm
10 trying to say. Now, what other statement after they
11 were killed, I am not -- I'm not sure if I wrote the
12 statement after they were dead or before, but I
13 believe it was before because I wouldn't have put in
14 the letter that I heard that they was -- he was going
15 to kill them. I would have just told the truth.

16 Q Ma'am, but you didn't answer my question.

17 A Can you tell me when I wrote the statement since
18 you're -- I mean, do you have that information, when
19 the statement was?

20 Q Well, you've indicated that you gave it to someone
21 associated with Wendy's.

22 A Okay. I understand that.

23 Q You've already testified that you gave it prior to
24 September 3rd, Madam. Okay? That's your testimony?

25 A Which meaning before September the 3rd?

1 Q Right.

2 A Which meaning I didn't think that he would kill her;
3 which meaning, yeah, I'm going tell the truth.

4 Q Ma'am?

5 A Because he murdered two people. Yes, I'm going to
6 tell the truth...

7 Q No, no, no, no, no. My question to you, which we're
8 going to come back to until you answer it is, so you
9 elected to not tell the truth at that point in time
10 when you gave this written statement? You decided to
11 lie then?

12 A Yeah. Because at that point in time it wasn't two
13 people dead. And I did like John as a person. He
14 wasn't just a bad person like that. He came to work.
15 He did his job. Everybody laughed and joked. Just
16 like him and Ms. C, they laughed and joked on a
17 regular basis. And I never thought he would kill
18 her. And if I would have been there, I would have
19 been dead, too.

20 **THE COURT:** All right, jurors. She doesn't know
21 who killed anybody or whether she would have been if
22 she was there. So just ignore that and go ahead.

23 Q So I'm back to asking you now, ma'am, when it was
24 that you happened to share a shift with both John and
25 Ms. Bolton?

1 **A** The first day that they got into the argument I was
2 there.

3 **Q** When was that?

4 **A** I'm not particularly sure which date. I don't know.
5 I don't remember. I'm -- I don't remember what day
6 it was. I remember it was through the week. I
7 remember that Friday, the last day that they got in
8 the argument I was not at work the very last time.
9 But the first day that they got into the argument I
10 was there. I remember how it started. I remember
11 what was said. I was there. Other than that, I
12 don't know what to tell you.

13 **Q** If you were to learn that the investigation was
14 started due to a complaint made by Mr. Portee,
15 August 25th, the preceding week, that that
16 investigation was started at that point in time, when
17 would you have heard the argument? Maybe on the 25th
18 or 24th?

19 **A** What day was the 25th? What day? A Monday? A
20 Tuesday? What day was it on? I'm asking you.

21 **Q** I'm asking you.

22 **THE COURT:** She says --

23 **A** Okay. I don't remember.

24 **THE COURT:** She says she doesn't know.

25 **A** I didn't know. I said a Wednesday or a Thursday. I

1 mean, I didn't work that Friday. I can't tell you.
2 My memory is not that good.

3 Q I understand. Your Honor, nothing.

4 MR. MEADORS: No further questions. Thank you.

5 THE COURT: You can step down. All right,
6 jurors. Fifteen. Don't talk about the case.

7 (Jury out at 11:50 a.m.)

8 THE COURT: All right. We're at ease.

9 MR. MEADORS: Judge, just for planning purposes,
10 what time are you going to break for lunch?

11 THE COURT: Well, obviously 1:00 or 5 after 1.

12 MR. MEADORS: That's fine. I just wanted to
13 know.

14 (Whereupon, a break is taken)

15 (WHEREUPON, State's Exhibit No. 65 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 66 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 67 is marked for
20 identification.)

21 THE COURT: All right, Ms. McDuffie. How many
22 more do you have before lunch?

23 MS. MCDUFFIE: Your Honor, two.

24 MR. MEADORS: No. Three.

25 MS. MCDUFFIE: Your Honor, we have two

1 incredibly short witnesses and one that may be a few
2 more minutes.

3 **THE COURT:** Just try to break it down at 1,
4 1:05, Ms. McDuffie.

5 **MS. MCDUFFIE:** Absolutely, Your Honor.

6 **THE COURT:** Ms. Thomas, are you and Mr.
7 Strickler ready?

8 **MR. STRICKLER:** Yes, sir.

9 **MS. MCDUFFIE:** Your Honor, before we bring the
10 jury back in, when Mr. Meadors was directing Patrice
11 Trapp, he called out No. 9 twice with the exhibits.
12 It was actually No. 4. Just so that the record is
13 clear.

14 **MR. MEADORS:** It would be a scrivener's error.

15 **MR. STRICKLER:** It made it up on that table
16 without objection.

17 **MR. MEADORS:** I apologize for that to everybody.

18 (WHEREUPON, State's Exhibit No. 4 is admitted
19 into evidence.)

20 (Jury in at 12:03 p.m.)

21 **THE BAILIFF:** The jury is seated, Your Honor.

22 **THE COURT:** Okay. State, you may proceed.

23 **MR. MEADORS:** If it pleases Your Honor, the
24 State would now call Jahquetta Owens.

25 JAHQUETTA OWENS, after being duly sworn,

1 testifies as follows:

2 **THE CLERK:** Please have a seat up here, ma'am.
3 Speak into that microphone. State your full name for
4 the record.

5 **THE WITNESS:** Jahquetta Owens,
6 J-A-H-Q-U-E-T-T-A.

7 **COURT REPORTER:** Thank you.

8 DIRECT EXAMINATION

9 **BY MR. MEADORS**

10 **Q** Good morning, Ms. Owens.

11 **A** Good morning.

12 **Q** You're a little nervous, aren't you?

13 **A** (Nods head affirmatively).

14 **Q** And you'll have to say yes or something.

15 **A** Yes.

16 **Q** You're shaking, aren't you?

17 **A** (Nods head affirmatively).

18 **Q** Just relax and tell these people about you. Okay?

19 Where are you born? Where were you born?

20 **A** Columbia, South Carolina.

21 **Q** Where did you go to school?

22 **A** Juliana High school.

23 **Q** What year did you get out?

24 **A** 2007.

25 **Q** And what did you do after that?

- 1 A Went to college.
- 2 Q Where did you go to college?
- 3 A South Carolina State University.
- 4 Q Ma'am, and where are you right now?
- 5 A At South Carolina State University.
- 6 Q And tell these ladies and gentlemen of this jury,
- 7 what are you studying?
- 8 A Accounting.
- 9 Q And what do you want to do?
- 10 A Go to graduate school and further my education.
- 11 Q Do you want to be a CPA?
- 12 A Yes, I do.
- 13 Q Now, go back in time a minute just to when you were
- 14 in high school. Okay?
- 15 A Uh-huh (affirmative).
- 16 Q Did you have a relative working at Wendy's?
- 17 A Yes, I did.
- 18 Q Who was that?
- 19 A My brother.
- 20 Q Okay. What Wendy's did he work at?
- 21 A The Wendy's on Two Notch.
- 22 Q What was his job there?
- 23 A He was the GM over the store.
- 24 Q And did you want to work at Wendy's?
- 25 A Yes, I did.

1 Q And your brother worked there. Did you get a job at
2 Wendy's?

3 A Yes, I did.

4 Q And when was that?

5 A That was November 2004.

6 Q And how old were you then?

7 A I was 16.

8 Q And what was your job when you worked at Wendy's?

9 A I was a cashier. And I progressed. I learned how to
10 do many other positions around the store.

11 Q And you liked working at Wendy's, didn't you?

12 A Yes, I did.

13 Q And you even got an award when you first started
14 working there, didn't you?

15 A Uh-huh (affirmative).

16 Q Tell them about that?

17 A I got Employee of the Month. And we had a Christmas
18 party and they was giving out awards, and I received
19 Smiles are Free.

20 Q Smiles are Free?

21 A Yes.

22 Q That's true, isn't it?

23 A Yes.

24 Q Now, did you work during school, too, during high
25 school?

1 A Yes, I did.

2 Q And during the summers when you were in high school,
3 did you work there?

4 A Yes.

5 Q And during the summer of 2006, were you working at
6 Wendy's, Ms. Owens?

7 A Yes, sir.

8 Q Were you working at Wendy's --

9 A Yes.

10 Q -- leading up to what we're talking at?

11 A Yes.

12 Q All right. And as you progressed through high
13 school, did they want you to do more there?

14 A Yes.

15 Q But were you able to?

16 A No.

17 Q Tell us why not.

18 A Because of my age and because I was in school.

19 Q But you still did a lot there, didn't you?

20 A Yes.

21 Q You're familiar with all the positions?

22 A Uh-huh (affirmative).

23 Q They can count on you to do it?

24 A Yeah.

25 Q Now, tell these folks about, did you know Ms. Latora

1 Bolton?

2 A Yes, I did.

3 Q And was she one of the managers?

4 A Yes. She was one of our the assistant managers.

5 Q And Ms. Trapp?

6 A Yes.

7 Q Was she the GM?

8 A She was the GM.

9 Q And what about Ms. Carlaus Johnson?

10 A Yes. She was an employee.

11 Q And what did you call Ms. Carlaus Johnson?

12 A Mama C.

13 Q Why did you call her that?

14 A Because she resembled my mother. She resembled my
15 mother and they was from the same birth place. They
16 looked like identical twins. And she reminded me so
17 much of my mother.

18 Q Now, in September of '06 -- and again, if I said it,
19 I'm sorry. But in your life -- are you okay?

20 A (Nods head affirmatively).

21 Q In your life were you fixing to -- where were you in
22 school? Like August, September of '06?

23 A I was at Juliana High School I believe. Yeah.

24 Q And when did you meet John Portee, the defendant?

25 A I'm not really sure of the date. I just know I met

1 him through Wendy's.

2 Q And you all became friends, didn't you?

3 A Yes.

4 Q That's one reason it's tough, isn't it?

5 A Yeah.

6 Q Now, let's go back with me. All right?

7 A Uh-huh (affirmative).

8 Q It's Labor Day weekend?

9 A Yes.

10 Q I haven't brought the calendar out yet, but it's
11 State's 40. Do you recognize this as a
12 September 2006 calendar, Jahquetta? I mean, that's
13 what it says. September 2006?

14 A Yes, I do.

15 Q And would that Sunday have been the 3rd?

16 A Yes, it is.

17 MR. MEADORS: Your Honor, we'd offer State's 40
18 without objection.

19 THE COURT: All right.

20 (WHEREUPON, State's Exhibit No. 40 is admitted,
21 into evidence.)

22 Q Now, the 2nd of September 2006, --

23 A Uh-huh (affirmative).

24 Q -- did you go to a ballgame or something that day?

25 A Well, I wanted to go to The Classics. It was The

1 Palmetto Classics. But we did not go because a lot
2 of shooting and stuff that was going on over the
3 recent years. So --
4 Q But, I mean, for time reference, The Palmetto
5 Classics was the day before?
6 A Yeah. Yeah.
7 Q So you ended up not going?
8 A Yeah.
9 Q And were you scheduled to work the 3rd of September?
10 A Yes, I was.
11 Q Okay. What time were you supposed to come in?
12 A I'm not really sure. I just know I was -- I arrived
13 late.
14 Q You weren't scheduled to open?
15 A No. I wasn't.
16 Q But you were scheduled to work later in the day?
17 A Yeah.
18 Q Can you tell these folks what time you arrived?
19 A Eleven.
20 Q How did you get there?
21 A My sister.
22 Q And did she drop you off?
23 A Yes, she did.
24 Q All right. Tell these folks, you're at Wendy's now
25 on September 3rd; what did you do when you got there?

1 A When I got there I did the usual procedure. I went
2 to the -- I went to the back door usually, because
3 when employees come, that's what they do if the other
4 door is not open on the side. But when I went to the
5 back door --

6 Q When you do that usually, would somebody let you in?

7 A Yeah.

8 Q All right. So you went back to the back door there,
9 and what did you do?

10 A I was knocking on it. I was knocking on it for a
11 long time. Nobody never came. So I went around to
12 the front door and knocked on that door. Nobody
13 never came. So I went to the drive-thru window and I
14 knocked on the window no one ever came. And then I
15 saw the water flowing into the sink, like
16 overrunning. And I really couldn't figure what was
17 going on, but I knew Wendy's was supposed to be open
18 by then.

19 Q And what did you do after that?

20 A That's when Raoul or the guy from the Hess Station
21 nextdoor, he came over there. He said he believed
22 something was wrong, too, because he saw Latora
23 arrive at 5:30 but she never came back out. She
24 usually parks her car on the side. And the car was
25 still there on the side instead of the parking lot.

1 Q This fellow at Hess, you all know him. Would he eat
2 over there?

3 A Yes.

4 Q With you all?

5 A Yes.

6 Q Okay.. So after talking with him, what did you do?

7 A After talking with him, well, he said that I should
8 call the police if I think something is wrong.
9 Because Stephanie Crumpton was there also. And I was
10 like, well, I was like I don't want to think anything
11 negative. I was like maybe they're in the bathroom
12 or had to do to another store to get some products.
13 So I was like I'm just going to leave a note with my
14 name and number stating I was here and what time and
15 put it on Latora's car.

16 Q Did you want her to know you had been there like you
17 were supposed to be?

18 A Yes, I did.

19 Q And it's already entered State's 57 I think. Is that
20 the note you left?

21 A Yes, it is.

22 Q What's that say?

23 A It says: "Call me, (803)466-2438.

24 Q Whose number was that?

25 A That's my old cellphone number.

1 Q All right.

2 A "Jahquetta Owens was here, waited 40 minutes, then
3 left."

4 Q So you're letting your manager know you came, did
5 what you're supposed to do, and you left?

6 A Uh-huh (affirmative).

7 Q And you said your sister brought you I think?

8 A Uh-huh (affirmative).

9 Q How did you leave Wendy's after you left that note?

10 A I had called a cab.

11 Q Okay. And where did you go, if anywhere?

12 A I went to my house.

~~13 Q Here in Columbia?~~

14 A Yes.

15 Q Okay. Between 12 and 1, did you hear from John
16 Portee?

17 A Yes, I did.

18 Q Tell the ladies and gentlemen about that?

19 A John Portee called me between 12 and 1 and he asked
20 what was going on at Wendy's. And I said I didn't
21 know. And I had wondered why he asked me this. He
22 said because his cousin saw police cars and an
23 ambulance at the Wendy's. And he was like, "Okay.
24 Well, I'm call you back."

25 Q And any doubt in your mind that was Portee, John

1 Portee on the phone?

2 A No. That was John Portee.

3 Q After that did you hear from anybody else that was
4 affiliated with Wendy's?

5 A Yes. Aisha Williams called me. And she was like,
6 "Jahquetta, I believe something is wrong at Wendy's.
7 There is police cars and ambulance." And she was
8 like, "Well, I'm coming to get you." So she came and
9 got me and I went up to Wendy's.

10 Q And that was after John Portee called you?

11 A After John Portee called.

12 Q And do you know what time you arrived at Wendy's?

13 A It was between 1 and 2. Well, no. I got to Wendy's
14 like around 12 something. It was 12, between 12 and
15 1 I would say.

16 Q You're not sure what time you got there?

17 A Yes.

18 Q Were the police and everybody -- let me just ask you
19 this. Were there police and firemen already there
20 when you got there?

21 A Yes.

22 Q So you would have had to have come after they got
23 there?

24 A Yes.

25 Q Okay. All right. As a result of all that, you find

1 out that two people were dead?

2 A Yes.

3 Q After that now, Ms. Owens, did the defendant call you
4 again?

5 A Yes. He called me again. And he --

6 Q What did he say to you then?

7 A He said to me that he was -- he had just gotten back
8 from Georgia because his baby's mother's daughter was
9 sick. And I asked -- because all the other employees
10 was up there as well as myself, I asked why wasn't he
11 up there. And he said that he was supposed to work
12 but when he called all the phone was doing was
13 ringing.

14 Q He was supposed to work but when he called?

15 A Yes.

16 Q So did he tell you he called?

17 A He said he called.

18 Q Okay. He said he didn't go up there?

19 A He didn't say he went up there.

20 Q And the phone was ringing?

21 A The phone was just ringing.

22 Q Now, did you ever see the defendant with a bag, a
23 green bag?

24 A Yes.

25 Q Tell the jury what you know about that bag?

1 **A** Well, he brought the bag with him to work every day
2 and would put it on the shelf. When he leave he
3 would take it.

4 **Q** Kind of with him most of the time you saw him?

5 **A** Most of the time when you saw him he had his bag.

6 **Q** Beg the Court's indulgence. Ms. Owens, thank you for
7 your testimony. Is the person that called you
8 between 12 and 1 and said his cousin had told him
9 something was going on at the Wendy's, is that person
10 in the courtroom?

11 **A** Yes.

12 **Q** And the person who called you and told you he'd just
13 gotten back from Georgia and he called Wendy's and
14 didn't go in that day, is that the same person?

15 **A** Yes.

16 **Q** Is that the defendant, John Portee?

17 **A** Yes.

18 **Q** Thank you, Ms. Owens. That's all.

19 CROSS EXAMINATION

20 **BY MS. THOMAS**

21 **Q** Good afternoon. You said that you went to the
22 Wendy's at 11:00 that morning?

23 **A** Yes.

24 **Q** And that you stayed for about 40 minutes?

25 **A** Yes.

1 Q And you called a cab and you went home?

2 A Yes.

3 Q How far away from the Wendy's do you live?

4 A I stay -- Wendy's is on Two Notch. I stay off of
5 Decker. It's right there, not even five minutes.

6 Q So how long did it take you to get home?

7 A Probably only five minutes; five, ten minutes, not
8 long.

9 Q How long had you been home when you received a call
10 from John?

11 A I am not sure.

12 Q Okay. Do you know how long you were home before you
13 received a call from Aisha?

14 A I'm not sure.

15 Q You testified that you got a call from John around

16 ~~12?~~

17 A Mm-hmm (affirmative).

18 Q To 1:00?

19 A Mm-hmm (affirmative).

20 Q How much time after you spoke to John did you arrive
21 at the Wendy's?

22 A I think I spoke to him probably like 15 to 20
23 minutes.

24 Q Okay. Are you positive about these times?

25 A No. It's been two years since the incident, so I

1 really can't recall.

2 Q It's been over two years ago. Okay. So these are
3 just kind of rough estimates?

4 A Yes.

5 Q Based on what you remember?

6 A Yes.

7 Q Okay. And you gave law enforcement two different
8 statements, correct?

9 A Yes, I did.

10 Q They spoke to you on September 3rd?

11 A Uh-huh (affirmative).

12 Q Where were you when you gave that statement?

13 A September the 3rd, I was at the Sheriff's Department
14 on Two Notch I believe.

15 Q So you went from the Wendy's restaurant to the
16 Sheriff's Department?

17 A Yes.

18 Q And you gave a statement?

19 A Mm-hmm (affirmative).

20 Q And then you gave another statement two days later?

21 A Yes.

22 Q Where were you when you gave that statement?

23 A They came to my house.

24 Q They came to your house?

25 A Yes.

1 Q Did they take you back to the Sheriff's Department?

2 A No, they did not.

3 Q They took the statement at your house?

4 A Yes.

5 Q Okay. Now, your second statement is significantly
6 longer than your first statement?

7 A Yes.

8 Q Your first statement was about a page. Your second
9 statement was four pages. And I imagine that between
10 the time you gave the first statement and the time
11 you gave the second statement a lot had happened. A
12 lot of people were talking about what was going on at
13 the Wendy's restaurant?

14 A I have no idea.

15 Q These are your co-workers, right?

16 A Yes. But I didn't talk to anyone. I was in
17 distress. I didn't want to go to counseling. I was
18 just -- I couldn't do nothing. I couldn't sleep. I
19 couldn't eat. I didn't want to talk to anybody.

20 Q But two days after the incident you came up with a
21 lot more things than you came up with on
22 September 3rd to tell the police?

23 A It was because the police only asked -- the first
24 time they did the statement, they asked vague
25 questions. They didn't ask into details. The second

1 time they came, it was an investigator. Because I
2 knew him personally, they wanted to know every single
3 thing then. They asked me in more detail.

4 Q So you didn't necessarily volunteer this information.
5 It was based on the questions that they were asking
6 you?

7 A Yes.

8 Q And they were asking very specific questions?

9 A Yes.

10 Q What was your relationship with John Portee?

11 A We had became close. People considered us boyfriend
12 and girlfriend, I guess you could say. Boyfriend and
13 girlfriend.

14 Q Would you have considered yourself boyfriend and
15 girlfriend?

16 A Yeah. I had drawn close to him.

17 Q Okay. When you arrived at the Wendy's restaurant and
18 you looked through the drive-thru window --

19 A Mm-hmm (affirmative).

20 Q -- you said you saw water running over the edge?

21 A Yes.

22 Q Did that strike you as strange?

23 A Yes, it did.

24 Q Had anything like that ever happened before?

25 A No. Usually somebody would catch it. It was the

1 sink where we wash the dishes. There was a second
2 pile of water and then it was overflowing. So
3 obviously it was left unattended I assumed.

4 Q Generally speaking, did people go to fill up the sink
5 and they just kind of walked away and take care of
6 other things and wait for the sink to fill up?

7 A Yes.

8 Q Is that what you thought was going on?

9 A Yes.

10 Q Even though 40 minutes went by?

11 A I kind of knew there was something wrong, but I
12 couldn't really pinpoint it. So I just assumed maybe
13 they were in the bathroom or went to another store.

14 Q So you just went home?

15 A Yes.

16 Q Okay.

17 MR. MEADORS: Very briefly. Can I approach?

18 REDIRECT EXAMINATION

19 BY MR. MEADORS

20 Q Just a few quick questions. She asked you about your
21 statement?

22 A Uh-huh (affirmative).

23 Q Is that you right there?

24 A Yes, it is.

25 Q And that's on September 3rd at that's 17:24, but I

1 think that's 5:24?

2 A Yes.

3 Q And that's a typed statement, right?

4 A Uh-huh (affirmative).

5 Q And she has asked you, you didn't go into much
6 detail. But did you put all in there about going to
7 Wendy's and seeing Raoul and going to the back door
8 and seeing the water coming out and waiting 40
9 minutes? Did you put all that in that statement?

10 A Yes, I did.

11 Q And Stephanie Crumpton being there?

12 A Yes.

13 Q And arriving at you 11? Arriving at 11?

14 A Yes.

15 Q Okay. Leaving the note?

16 A Yes, I did.

17 Q Did you put all that in that first statement?

18 A Uh-huh (affirmative).

19 Q Then a few days later they come back. And it's a
20 handwritten statement, correct?

21 A Yes.

22 Q Is that you?

23 A Yes, it is.

24 Q And she asked you about you're not sure of the times.
25 But on September 5th, 2006, did you put in there that

1 John called me between 12 and 1?

2 A Yes.

3 Q On September 3rd?

4 A Yes.

5 Q And in here about the cousin calling him?

6 A Yes.

7 Q About him just getting back from Georgia?

8 A Yes.

9 Q And about him calling, not going there?

10 A Yes.

11 Q And about the green book bag?

12 A Yes.

13 Q And him always bringing it to Wendy's?

14 A Yes.

15 Q Thank you. That's all.

16 THE COURT: You can step down.

17 MS. MCDUFFIE: The State would call Kelly Jones.

18 KELLY JONES, after being duly sworn, testifies
19 as follows:

20 THE CLERK: Please have a seat. State your full
21 name for the record.

22 THE WITNESS: Hi. My name is Kelly Jones.

23 DIRECT EXAMINATION

24 BY MS. MCDUFFIE

25 Q Ms. Jones, where are you currently employed?

- 1 **A** Wendy's on Beltline.
- 2 **Q** And where were you employed in September of 2006?
- 3 **A** 2006 -- okay. Wendy's on Beltline September the 3rd.
- 4 But September the 4th I was going to be at the Two
- 5 Notch store.
- 6 **Q** But you never actually made it to the Two Notch
- 7 store?
- 8 **A** No. I never made it to that store.
- 9 **Q** So you were working at the Wendy's on Beltline?
- 10 **A** Yes, ma'am.
- 11 **Q** And how long have you been with Wendy's?
- 12 **A** Eighteen years.
- 13 **Q** And you were going to transfer to the Two Notch
- 14 store?
- 15 **A** Yes, ma'am.
- 16 **Q** Did you have the occasion to call the Two Notch store
- 17 on Sunday, September the 3rd, 2006?
- 18 **A** Yes. I called at 8:15 to get my schedule from
- 19 Ms. Patrice Trapp.
- 20 **Q** When were you supposed to be starting work there?
- 21 **A** That Monday, on Memorial Day. I mean Labor Day.
- 22 **Q** September the 4th?
- 23 **A** September 4th, yes.
- 24 **Q** So you called around 8:15 for what purpose?
- 25 **A** To get my schedule.

1 Q And did you speak with anyone?

2 A Yes. I spoke with Latora.

3 Q And did she give you your schedule?

4 A Yes.

5 Q And you hung up the phone?

6 A No, not right then. When I called, she is like,
7 "Wendy's Two Notch." And I spoke with her. She was
8 like, "Hey. How you doing?" I was like, "This is
9 Kelly." And we talked about my schedule. She was
10 like, "Well, on Monday you're going to be working 9
11 to 4. Tuesday through Friday you're going to be
12 working 7 to 3." And she was like, "I'm glad you're
13 ~~coming over here.~~ We're going to make service time."
14 And Ms. Carlaus was in the background, and she was
15 like, "Tell Kelly I said hey. I can't wait until she
16 comes over here and, you know, we do our thing on
17 service time."

18 Q And did you call the Wendy's on Two Notch store back
19 again later that morning?

20 A Yes.

21 Q Do you remember about what time it was?

22 A Between 8:40 to 8:43.

23 Q And why did you call the store back again?

24 A Because I was calling back for Patrice to give her my
25 cellphone number to give me a call because I realized

1 that Monday was going to be a holiday. And I was
2 going to ask her can I take a personal day instead of
3 coming that Monday, just work that Tuesday.

4 **Q** And when you called the store back at 8:40, did
5 anyone answer the phone?

6 **A** No.

7 **Q** Did you ever speak to anyone again at the Two Notch
8 Wendy's?

9 **A** No.

10 **MS. MCDUFFIE:** No further questions from this
11 witness, Your Honor.

12 **MS. THOMAS:** I have no questions, Your Honor.

13 **THE COURT:** They don't have any questions.
14 You've been at Wendy's how long?

15 **THE WITNESS:** Eighteen years.

16 **THE COURT:** If I wanted the best value for my
17 dollar, what would I get? A combo or just buy
18 something individually? All right. You can step
19 down.

20 **MS. MCDUFFIE:** May it please the Court, Your
21 Honor.

22 **THE COURT:** Okay.

23 **MS. MCDUFFIE:** The State would call Deputy
24 Blackmore.

25 **THE COURT:** All right.

1 MICHAEL BLACKMORE, after being duly sworn,
2 testifies as follows:

3 **THE CLERK:** Please have a seat. State your full
4 name.

5 **THE WITNESS:** Deputy Michael Blackmore.

6 DIRECT EXAMINATION

7 **BY MS. MCDUFFIE**

8 **Q** Deputy Blackmore, where are you currently employed?

9 **A** Richland County Sheriff's Department.

10 **Q** And what are your duties with the Richland County
11 Sheriff's Department?

12 **A** Now? Right now I work on the drug suppression team.

13 **Q** And were you employed with the Sheriff's Department
14 in September of 2006?

15 **A** I was.

16 **Q** And what were your duties in September of 2006?

17 **A** I was a road deputy in Region Two which is
18 Parklane, Decker area; pretty much answer any calls
19 for service, patrol the area.

20 **Q** And were you working on the morning of September or
21 the afternoon of September the 3rd, 2006?

22 **A** Yes, ma'am.

23 **Q** Did you have an occasion to respond to
24

25 **A** I did.

1 Q And is that in Richland County?

2 A It is.

3 Q And why did you respond to

4 A Dispatch gave out a call that there was a lady at
5 Wendy's. She got a -- they stated over the radio
6 that she had received a call. The store hadn't
7 opened. She had gotten there. And pretty much they
8 didn't know any more. They said EMS and fire
9 department were in route.

10 Q And what time were you dispatched to Wendy's?

11 A I was dispatched at 2:05 in the afternoon.

12 Q P.M.? And what time did you arrive there?

13 A 2:07.

14 Q And what is the first thing you did when you arrived
15 at Wendy's?

16 A When I pulled into the parking lot, fire department
17 and EMS were already there. I got out of my vehicle,
18 walked up, walked inside. And as soon as I walked
19 inside to find out what was going on, because like I
20 said dispatch couldn't tell me really exactly what
21 was going on, walked in there; and that's when the
22 fire department and EMS took me to the back, showed
23 me in the back office, and I saw two bodies laying
24 there.

25 Q And what was the condition of the victims when you

1 arrived?

2 A They were -- they were -- they were pretty -- I
3 thought they were dead. I couldn't say for sure.
4 I'm not a medical.

5 Q And did you learn from EMS or fire department their
6 condition?

7 A Yes. They stated that they were dead.

8 Q And after you went through the Wendy's, what did you
9 then do?

10 A I then came back out, got on my radio, called for
11 investigators. At that same time I got out my crime
12 scene tape, roped off the whole entire parking lot,
13 the whole area, and got out a crime scene log and
14 started writing down every single person's name who
15 had stepped foot on the property.

16 Q And why do you put up crime scene tape?

17 A So that nobody who is not involved with the case can
18 enter so no evidence can be destroyed or tampered
19 with or anything like that.

20 Q I'm going show you what's been marked as State's 65,
21 66 and 67. Do you recognize those?

22 A I do.

23 MS. MCDUFFIE: Your Honor, at this time we'd
24 offer State's 65, 66 and 67.

25 MS. THOMAS: Without objection.

1 (WHEREUPON, State's Exhibit No. 65 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 66 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 67 is admitted
6 into evidence.)

7 Q Can you please hold them up for the jury and describe
8 for them what is in each photo? And call the number
9 out, please.

10 A Okay. The first one is No. 66. It's the front part
11 of Wendy's right along and it's where
12 I placed crime scene tape out in front of the
13 building. No. 65 is going to be the side of the
14 building where the drive-thru is and that's where I
15 put crime scene tape along the side. And No. 67 is
16 going to be the other side. Well, actually, I think
17 it's part of that picture. It's from a different
18 angle. It's where the crime scene tape was up also
19 blocking off the parking lot and the building.

20 Q And while you were there, was the crime scene
21 secured?

22 A It was.

23 Q Please tell the jury what that means. Who was
24 allowed to enter the scene?

25 A The only people allowed to enter the scene were at

1 first fire and EMS because they're dealing with the
2 victims. The investigators, crime scene
3 investigators who come on the scene to take photos,
4 collect evidence. And the coroner once they showed
5 up to come in there and do what they have to do,
6 collecting the bodies.

7 Q And when you arrived at 2:07 until you departed the
8 crime scene, was it secured?

9 A Yes, it was.

10 Q And when you departed the crime scene, did you turn
11 it over to another person to continue to secure it?

12 A I did.

13 Q The entire time you were there the crime scene was
14 secured?

15 A Yes, it was.

16 MS. MCDUFFIE: No further questions, Your Honor.

17 CROSS EXAMINATION

18 BY MS. THOMAS

19 Q Deputy Blackmore?

20 A Yes.

21 Q You received the call at 2:05?

22 A Yes, ma'am.

23 Q And you were there within two minutes?

24 A Yes, ma'am.

25 Q And I assume after you got there other officers

1 started showing up?

2 **A** Another officer showed up on the scene, yes.

3 **Q** Okay. And part of your responsibility is the crime
4 scene log?

5 **A** Yes.

6 **MS. THOMAS:** If I may approach, Your Honor?

7 **THE COURT:** Okay.

8 **Q** I'd just like you to take a look at that and let me
9 know if that looks like the crime scene log?

10 **A** Mm-hmm (affirmative).

11 **Q** You have your own copy in your notes. But just
12 looking through here briefly, you were in charge of
13 this, right?

14 **A** Yes.

15 **Q** So every time somebody came to the scene, you would
16 write their name down, write down what time they
17 arrived?

18 **A** Mm-hmm (affirmative).

19 **Q** Okay. I have here the first person is Laura Socks
20 with EMS?

21 **A** Okay. I don't have a copy in front of me. So --

22 **Q** Okay. You have various people showing up. EMS,
23 Investigator Oates. You have the time written down.
24 A lot of these people, it doesn't have the time they
25 arrived or the time that they left.

1 A Okay.

2 Q So I guess there would be no way of knowing when they
3 arrived and when they left and entered the crime
4 scene itself?

5 A If it's not written down there, no.

6 Q Okay. And part of the purpose of this log is to make
7 sure that the crime scene remains secure, right?

8 A Make sure only people --

9 Q Everybody is documented?

10 A Mm-hmm (affirmative).

11 Q Everybody that comes --

12 A Make sure every person who comes and enters the crime
13 scene is documented, yes.

14 Q Now, do you enter some of these people in after the
15 fact once you remember that they were there?

16 A Well, when I first got there, EMS and fire were
17 already on the scene. So I had to get their name
18 after the fact they were in there.

19 Q Right.

20 A Because I wasn't there when they arrived.

21 Q But on the fourth page it has Patrice Trapp and her
22 children?

23 A Mm-hmm (affirmative).

24 Q They were obviously there, based on the testimony,
25 first?

1 **A** Mm-hmm (affirmative).

2 **Q** But they're on the fourth page here. It doesn't say
3 anything about their time or when they came, when
4 they left?

5 **A** That's because of the fact that when I arrived there,
6 fire and EMS were there. And I know they're there
7 for a short time, then have to leave. So I made sure
8 I got all their names so they could be documented
9 while they were there. Then after the fact, I was
10 able to go back and get Ms. Trapp who was already on
11 the scene and hadn't had to leave. But I wanted to
12 get everybody who was going to leave, like I stated,
13 fire and EMS. That's why they're on the first four
14 pages because I wanted to make sure I got them before
15 they left.

16 **Q** Do you remember when Investigator Boland arrived?

17 **A** I can't tell you.

18 **Q** Do you remember when Investigator Gonzales arrived?

19 **A** No. I don't know times. No.

20 **MS. THOMAS:** Nothing further.

21 REDIRECT EXAMINATION

22 **BY MS. MCDUFFIE**

23 **Q** You were the first deputy on scene?

24 **A** Yes.

25 **Q** And what time did you arrive?

1 **A** 2:07.

2 **Q** I show you your crime scene log. EMS and the fire
3 department were there before you?

4 **A** Yes.

5 **Q** And what time did you note that EMS arrived on the
6 scene?

7 **A** 2:00.

8 **Q** And when you arrived EMS and the first department was
9 there?

10 **A** Yes, ma'am.

11 **Q** And EMS arrived at 2 p.m.?

12 **A** Yes.

13 **MS. MCDUFFIE:** Nothing further, Your Honor.

14 **THE COURT:** You can step down.

15 **MR. MEADORS:** Can we approach?

16 **THE COURT:** All right.

17 (Whereupon, a bench conference is had)

18 **THE COURT:** Jurors, we're going to break for
19 lunch. Be back at five minutes 'til 2. Don't talk
20 about the case.

21 (Jury out at 12:35 p.m.)

22 **THE COURT:** All right. Mr. Meadors, what's the
23 tentative afternoon plan? Not that it matters.

24 **MR. MEADORS:** Your Honor, I think the record
25 will reflect we're efficiently moving through. The

1 witnesses this afternoon, the next one is Mr. Oates,
2 Investigator Oates, who is a crime -- he'll probably
3 with the lengthiest law enforcement, quite frankly.

4 **THE COURT:** All right.

5 **MR. MEADORS:** After that, Your Honor, we're
6 going to decide over lunch. We may have the other
7 Wendy's employees. And where we go from there, we'll
8 have two or three other witnesses available. I mean,
9 we'll get through the afternoon without question.

10 **THE COURT:** As long as we're finished by 6:09,
11 give or take two minutes.

12 **MR. MEADORS:** Well, if I could approach on
13 another matter, just on that real quickly.

14 **THE COURT:** We can finish early. I'm just
15 saying we don't want to keep them waiting.

16 (Whereupon, a bench conference is had)

17 **THE COURT:** All right. We are at ease.

18 (Whereupon, a lunch break is taken).

19 (WHEREUPON, State's Exhibit No. 68 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 69 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 70 is marked for
24 identification.)
25

1 (WHEREUPON, State's Exhibit No. 71 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 72 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 73 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 74 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 75 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 76 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 77 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 78 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 79 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 80 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 81 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 82 is marked for
24 identification.)

25

1 (WHEREUPON, State's Exhibit No. 83 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 84 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 85 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 86 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 87 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 88 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 89 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 90 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 91 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 92 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 93 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 94 is marked for
24 identification.)

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1 (WHEREUPON, State's Exhibit No. 95 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 96 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 97 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 98 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 99 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 100 is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 101 is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 102 is marked
16 for identification.)

17 (WHEREUPON, State's Exhibit No. 103 is marked
18 for identification.)

19 **THE COURT:** Okay. Everybody ready?

20 **MS. MCDUFFIE:** Your Honor, before we call the
21 next witness, there are some photographs that we
22 intend to introduce with the witness that I believe
23 the defense has some objections to.

24 **THE COURT:** All right.

25 **MR. STRICKLER:** Yes, sir.

1 **THE COURT:** What kind of objections, Mr.
2 Strickler? What?

3 **MR. STRICKLER:** Well, Your Honor, we agreed on,
4 as I told you yesterday, just to let everything in
5 unless we're talking about dead bodies.

6 **THE COURT:** All right.

7 **MR. STRICKLER:** And we have actually agreed to
8 let in some of those.

9 **THE COURT:** Okay.

10 **MR. STRICKLER:** It's just when we get to the
11 point of introducing multiple copies of some of
12 those, it's a duplicative objection.

13 **THE COURT:** Well, multiple copies can't come in.

14 **MR. STRICKLER:** Well, I present you --

15 **THE COURT:** Being the oldest circuit judge, here
16 is how I operate. Forget about the rules of
17 evidence. I look at it. If I get chill bumps, it
18 doesn't come in. If I look at it and it doesn't
19 upset me, it won't upset the jury.

20 **MR. MEADORS:** Your Honor has always used that
21 standard I remember.

22 **MS. MCDUFFIE:** Your Honor, and -- never mind.
23 I'm sorry. Go ahead..

24 **MR. STRICKLER:** My objection really is to the
25 cumulative nature of these. There are many of them

1 coming in that have blood in them. And I can see the
2 reason for them. It's just cumulative nature. This
3 is State's 33 and I believe 28.

4 **THE COURT:** You all can put in a couple of them.

5 **MR. MEADORS:** Judge, I reply with yeah. None of
6 these are in.

7 **THE COURT:** If one of them is necessary for an
8 examiner to testify to and you don't have another
9 one, they can use that one. Which I don't know. But
10 we can send them out if they've got somebody that is
11 going to identify them.

12 **MR. STRICKLER:** 34, 35 and 38, Judge.

13 **THE COURT:** All right. You object to 26 and 33
14 or just one of them?

15 **MR. STRICKLER:** Just one of them.

16 **THE COURT:** You all put either one of these in
17 you want to.

18 **MR. MEADORS:** Judge, I guess the one, instead of
19 that, we just wanted a picture which I don't think is
20 in that shows --

21 **MS. MCDUFFIE:** Picture 34.

22 **MR. MEADORS:** 34 just shows how the bodies were.

23 **THE COURT:** They're entitled to show how the
24 bodies were.

25 **MR. MEADORS:** These are three roughly of the

1 same. I'd like all three, but we understand.

2 **THE COURT:** One.

3 **MR. MEADORS:** 34.

4 **THE COURT:** All right. One of these. One of
5 those three.

6 **MR. MEADORS:** Thank you, sir.

7 **MS. MCDUFFIE:** Thank you, Your Honor.

8 **THE COURT:** Okay. Anything else? _____

9 **MR. STRICKLER:** Nothing as to the photographs.

10 The only other thing is, Your Honor, when they
11 brought Mr. Portee up today, evidently the decision
12 has been made over the lunch break to shackle him. I
13 have yet to find out a reason for that decision.
14 He's been sitting here for a day and a half with no
15 problems that I've been aware of.

16 **THE COURT:** All right. Well, how can I help
17 you?

18 **MR. STRICKLER:** I would like the shackles
19 removed.

20 **THE COURT:** Well, the shackles are unobtrusive
21 and can't be seen.

22 **MR. STRICKLER:** And that's not the basis. I
23 agree with Your Honor. That is not the basis for my
24 complaint. The complaint is that it acts as a -- I'm
25 not the biggest psychological guy around, but it

1 psychologically impairs his ability to participate
2 fully in his trial. It's an attempt to intimidate
3 him in the trial of this case when there's been no
4 actions on his part which -- and if there had been,
5 I'd love to hear about them. There have been no
6 actions on his part that I'm aware of to indicate
7 there is any need to treat him differently than some
8 other person going to trial in this courtroom.

9 **THE COURT:** I know. But it seems harmless if
10 the jury can't see it. He can live with that
11 psychological trauma because he has been preparing
12 for this for a couple of years. Anything else?

13 **MR. STRICKLER:** That's it, Judge. Thank you.

14 **THE COURT:** All right. I mean, I'm not
15 suggesting it's not uncomfortable.

16 **MR. STRICKLER:** Yes, sir.

17 **THE COURT:** It would rather not be ...

18 **MR. STRICKLER:** The defense is ready, sir.

19 **THE COURT:** Okay.

20 (Jury in at 2:15 p.m.)

21 **THE BAILIFF:** The jury is seated, Your Honor.,

22 **THE COURT:** Okay, jurors. I appreciate you all
23 getting back on time. We've been in here. We were
24 just eliminating some of the evidence that was going
25 to come in, cumulative photographs and stuff, to

1 speed it up a little bit. Okay. Proceed.

2 MS. MCDUFFIE: The State calls Investigator
3 Robert Oates.

4 ROBERT OATES, after being duly sworn, testifies
5 as follows:

6 THE CLERK: Please have a seat. State your full
7 name for the record.

8 THE WITNESS: I am Robert Oates.

9 DIRECT EXAMINATION

10 BY MS. MCDUFFIE

11 Q Investigator Oates, where are you employed?

12 A Richland County Sheriff's Department.

13 Q And what are your duties with the Richland County
14 Sheriff's Department?

15 A I am currently a crime scene investigator.

16 Q And were those your duties in September of 2006?

17 A Yes, they were.

18 Q Please tell the jury a little bit about your
19 background and training in the field of crime scene?

20 A Okay. My background and training in crime scene
21 investigation begins with, I have some
22 certifications. The first one is basic fingerprint
23 identification. The second one is basic palm print
24 identification. The third one here is blood pattern
25 analysis; the second one, advanced blood pattern

1 analysis. The next one, crime scene reconstruction,
2 basic forensic photography, advanced forensic
3 photography and fundamentals of crime scene
4 investigation and evidence collection.

5 Q And how long have you been a crime scene
6 investigator?

7 A Four years.

8 Q And have you ever been qualified as an expert witness
9 in the field of crime scene in courts of this
10 jurisdiction and South Carolina?

11 A Yes, I have.

12 MS. MCDUFFIE: Your Honor, at this time we would
13 offer Investigator Oates as an expert in general
14 crime scene investigation.

15 MS. THOMAS: Without objection, Your Honor.

16 THE COURT: Okay. Well, actually he just said
17 he was done. But I assume he's taken some courses in
18 it and so forth. He didn't just watch CSI, but he
19 took some courses.

20 MS. MCDUFFIE: Yes, Your Honor. The titles of
21 the courses he just named.

22 THE COURT: All right. You can proceed.

23 Q Investigator Oates, did you have the chance to
24 respond to the Wendy's at on
25 September the 3rd of 2006?

1 A Yes, I did.

2 Q And what was that in reference to?

3 A In reference to employees inside the business. Or
4 the business was closed. It should have been opened.
5 And to investigate that.

6 Q And when you arrived; who, if anyone, was already on
7 the scene?

8 ~~A There was a deputy on the scene. Deputy Blackmore~~
9 was on the scene. And the scene was already secured.

10 Q And when you first arrived at the crime scene, what
11 is the first thing you would normally like to do?

12 A The first thing I do is make contact with the
13 officers over the crime scene log, check that, see if
14 it was begun prior to my arrival and then get basic
15 information about the scene and so forth. Then I
16 like to do a walk through of the crime scene before I
17 do anything just to get a visual look to see what I
18 have, what I've got, possible evidence, identify
19 possible evidence in the case prior to doing any
20 processing.

21 Q And after you do your initial walk through, what do
22 you then do?

23 A After the initial walk through I then return to my
24 crime scene vehicle and retrieve my digital camera,
25 take photographs of the scene prior to any

1 collection.

2 Q And why do you do that?

3 A To make sure that we can show how the scene looked
4 prior to anything being disturbed basically.

5 Q After you photograph the scene, what do you then do
6 next?

7 A We then go back in, return back in and mark each
8 piece of evidence. And then we take more photographs
9 of the same evidence.

10 Q And after you photograph and mark evidence, what do
11 you then do?

12 A We then collect each piece of evidence, document it
13 on the outside container or envelope, the type of
14 evidence, where it's located at, where we collected
15 it from, and the evidence number or tag that we put
16 on it.

17 Q Investigator Bouknight (sic), did you have a chance
18 to look at a series of photos earlier today?

19 A Yes, I did.

20 Q And were those photos that you took of the Wendy's on
21 September the 3rd, 2006?

22 A Yes, they are.

23 Q And are they a fair and accurate depiction of what
24 you observed that day?

25 A Yes, they are.

1 **MS. MCDUFFIE:** Your Honor, at this time the
2 State would offer photos State's Exhibits 23 through
3 25, 27 through 34, 36, 37, 68 through 94 and 97
4 through 103.

5 **THE COURT:** All right. And Mr. Strickler has
6 looked at these I take it?

7 **MS. THOMAS:** We have reviewed them in addition
8 to the other ones that we decided on. Without
9 objection.

10 **THE COURT:** Okay. Evidence.

11 (WHEREUPON, State's Exhibit No. 23 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 24 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 25 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 27 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 28 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 29 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 30 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 31 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 32 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 33 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 34 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 36 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 37 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 68 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 69 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 70 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 71 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 72 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 73 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 74 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 75 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 76 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 77 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 78 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 79 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 80 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 81 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 82 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 83 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 84 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 85 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 86 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 87 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 88 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 89 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 90 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 91 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 92 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 93 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 94 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 97 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 98 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 99 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 100 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 101 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 102 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 103 is admitted
8 into evidence.)

9 Q Investigator Oates, when you arrived at the location
10 on Wendy's on Two Notch, what did --

11 THE COURT: Just one second. Jurors, I haven't
12 looked at all the photos. There are a limited number
13 in there that show blood and so forth. But they're
14 being introduced to show the position of the bodies
15 and so forth, not to shock you or traumatize you or
16 anything. Okay? So I don't believe any of them are
17 what we would call in the vernacular really gory, but
18 it does show blood and so forth. So, okay. Go
19 ahead.

20 Q Investigator Oates, when you arrived at the Wendy's
21 that day, what is the first thing that you noticed or
22 the first thing that you did once you arrived there?

23 A I made contact with the deputy, looked at the crime
24 scene log, and actually identified which entranceway,
25 which door they used for an entryway. So I

1 identified that so I could make entry.

2 Q And which doors did you learn had been entered?

3 A Okay. I first learned that prior to my arrival in
4 order for the owners to get inside the business that
5 a left side drive-thru window had been opened.

6 Q And I'm going show you State's Exhibit No. 69. If
7 you could show that to the jury and explain what it
8 is?

9 A Yes. This is the -- excuse me. This is a close-up
10 shot of the drive-thru window here. It's got a --
11 this is actually the damage right here. And actually
12 to open up the door to get in for the lock, it slides
13 back and forth. They just dropped the window.

14 Q And what did you then do?

15 A Okay. I then entered the business myself to kind of
16 see what we had, see what I had, look for possible
17 evidence. When I walked in the business, the lights
18 were off. The business was closed. The front lobby
19 area as I entered, and went back in the back behind
20 the counter where the stoves, basically all the
21 equipment is. The door was already opened, walked
22 through there. And that's when I walked around the
23 right side of the corner of their back office. Back
24 in a rear office is where I found two victims in the
25 office.

1 Q And I'm going to back you up and have you walk the
2 jury through what you observed. Please tell the jury
3 what is in State's Exhibits 71, 72, and 73?

4 A This is the -- from door number two we call it, what
5 we did was, another investigator, Investigator Mann,
6 went around the exterior of the business and numbered
7 each door, each entrance door with a number so we
8 could do that in order to assist us. And the door
9 that I entered, that front left door into the lobby
10 where EMS and fire units, was door number two. It is
11 marked number 2.

12 And after I entered that door, this is the lobby
13 I was talking about. The lights are off. It's dark.
14 And when you walk straight in, you see that right
15 there. Here is just another shot of that going
16 towards the front -- yes -- going towards the front
17 counter, the sales counter where you walk up and
18 order your meal there. That's all these are. Here
19 is a photograph here of the front counter area.

20 Q Did you then go back into the kitchen and begin to
21 collect evidence?

22 A Yes.

23 Q And have you prior to -- earlier today you had an
24 opportunity to view the evidence that you collected?

25 A Yes.

1 Q Is this the evidence that you collected?

2 A Yes, it is.

3 Q Is it the evidence that is depicted in these photos?

4 A Yes.

5 MS. MCDUFFIE: Your Honor, at this time we'd
6 offer State's 45 and 51, 53, 55, 56, 58, 59 and 60.

7 THE COURT: I don't have a clue as to what they
8 are. If Mr. Strickler has been over it and he has no
9 objection, they come in.

10 MR. STRICKLER: Beg the Court's indulgence one
11 moment, Your Honor.

12 THE COURT: Okay.

13 MR. MEADORS: Your Honor, I think we've gotten
14 them resolved. There are some that some other
15 witnesses are going to tie up. So it might be for ID
16 on those. And there's some that are going to be --

17 MS. MCDUFFIE: Your Honor, at this point in time
18 we'd offer them for ID only.

19 MR. MEADORS: I have no objection to them being
20 marked for ID.

21 THE COURT: All right.

22 Q When you first entered the kitchen area or the non
23 public area of the Wendy's --

24 THE COURT: Ms. McDuffie.

25 MS. MCDUFFIE: Yes, sir.

1 **THE COURT:** Not to give you a heart attack. You
2 know, when the judge says something, the lawyers say
3 ahhh. I just noticed when the investigator was
4 testifying he said this picture shows. If you would
5 make sure he identifies with specificity the picture
6 on Exhibits 43 or 61 or whatever just for record
7 purposes.

8 **MS. MCDUFFIE:** Yes, sir, Your Honor.

9 **THE COURT:** Okay.

10 **Q** Investigator Oates, when you first went into the
11 kitchen area of the Wendy's, what, if anything, did
12 you observe?

13 **A** Okay. I observed that there was an empty cash
14 drawer, till drawer sitting atop the drive-thru
15 counter. As you walk in behind the stoves, when you
16 turn to the right, it's right back on your left.
17 That's where the actual drive-thru window was. I saw
18 an empty one there. I also identified one --

19 **Q** Investigator Oates, I'm sorry. If I could stop you
20 right there. I'm going to show you what's been
21 marked as State's Exhibit No. 60. Do you recognize
22 this?

23 **A** Yes.

24 **Q** And is that the evidence you collected?

25 **A** Yes, it is.

1 Q Is this the evidence that you also tested at a later
2 date?

3 A Yes, it is.

4 Q You personally tested this evidence?

5 A Yes, I did.

6 MS. MCDUFFIE: Your Honor, at this time we would
7 offer State's Exhibit 60.

8 THE COURT: All right.

9 (WHEREUPON, State's Exhibit No. 60 is admitted
10 into evidence.)

11 Q Investigator Oates, if you could please show the jury
12 the contents of State's Exhibit 60?

13 A This is the till drawer that was sitting atop the
14 drive-thru sales counter on the inside back stove or
15 the back kitchen area. And it was sitting atop and
16 it was empty. It didn't have anything inside of it.
17 That's why I collected it.

18 Q And did you have a chance to process that cash drawer
19 for evidence at a later time?

20 A Yes, I did.

21 Q Please describe to the jury how you processed that?

22 A Okay. I transported this till drawer back to our
23 crime lab. Inside our crime lab we have a cyano
24 chamber, cyanoacrylate. It's a chemical like
25 superglue. You've seen that on TV. It's a

1 superglue. And what I do is, it runs on humidity.
2 Okay. We use liquid cyanoacrylate in a liquid form.
3 Okay. I place that inside the machine. It's a self
4 contained type of apparatus and it runs off of
5 barometric pressure also.

6 So basically I put the -- in a little tray I put
7 the cyanoacrylate on a heater, a little heating pod
8 basically, a heating plate. And it has a humidifier
9 on the side of it. And I placed the tray inside of
10 container, okay, self controlled container. It
11 basically does inner checks to make sure that it's
12 running properly. I set the actual barometric
13 pressure. And then it basically runs for 15 minutes
14 at, say, 80 percent or 80 percent humidity.

15 And what happens is that liquid cyanoacrylate
16 turns into a gas and basically adheres itself to --
17 if there's any fingerprints, oils on that object, it
18 basically adheres itself to it like superglue. And
19 if there is any fingerprints on this object, it will
20 basically show itself. It will show up where you'll
21 be able to see them.

22 Q And were you able to lift any fingerprints off of
23 that cash drawer?

24 A No, I was not.

25 Q Describe for the jury how one leaves their

1 fingerprints or what surfaces fingerprints adhere to
2 better than others?

3 A They adhere to smooth surfaces instead of porous or
4 rough surfaces. That's the best; glass, metal. You
5 could even leave it on stone, rock that's smooth,
6 like a cement block that's a smooth surface. That's
7 the best surface for a print if you get one. But not
8 rocky or very porous with a lot of holes.

9 Q And if more than one person touches the same object,
10 what would then happen?

11 A Basically you'll have a double transfer or print over
12 print we call it. You could have multiple
13 fingerprints over the same print. So --

14 Q And are you able to identify the prints at that point
15 if you have multiple prints? ...

16 A It's hard to do because you have so many different
17 ridge details, so many different points.

18 Q Thank you, Investigator Oates. After you collected
19 the cash drawer, did you have an opportunity to view
20 a computer machine that the employees clocked in at?

21 A Yes. Mm-hmm (affirmative).

22 Q And please describe that for the jury?

23 A There is basically the cash register area, basically
24 the employees, to my knowledge, I learned when they
25 have to come to work or enter work, they have to

1 punch their identification into this machine or like
2 a cash register there, the times when they come to
3 work. That's what I was told.

4 Q State's Exhibit 90, can you please tell the jury what
5 that is a photo of?

6 A That's a photograph of the printer and behind the
7 front counter that has the receipts. Also this is
8 slips that they would use or would generate.

9 Q I show you what's been marked for ID as State's
10 Exhibit 53. Do you recognize that, and did you
11 collect that evidence?

12 A Yes.

13 MS. MCDUFFIE: Your Honor, at this time we would
14 offer State's Exhibit 53.

15 THE COURT: Okay.

16 (WHEREUPON, State's Exhibit No. 53 is admitted
17 into evidence.)

18 Q Investigator, can you please tell the jury, what is
19 State's Exhibit 53?

20 A This is a cash register receipt showing the --
21 there's a name, time, and there's an employee number
22 that identifies the certain employee when they time
23 or clock in.

24 Q And which employee clocked in on that receipt?

25 A It's just Johnson.

1 Q Carlaus Johnson?

2 A Yes.

3 Q And what time does it show that she clocked in?

4 A I believe it says here 8:05.

5 Q And does it show a date?

6 A I'm sure it does. September 3rd, '06.

7 Q Thank you. Investigator Oates, after you collected
8 that, what did you then do?

9 A I then further searched. I went around the back
10 interior kitchen toward the drive-thru window. And
11 that's where I located -- after locating the till
12 drawer and collecting it, there were several used or
13 plastic gloves on the floor around the drive-thru
14 area.

15 Q State's Exhibits 78 and 80, if you could please call
16 the number out and hold them up to the jury and
17 describe for them what is in those photos?

18 A This is Exhibit 78. And this is a mid range
19 photograph of the area, basically the drive-thru
20 area, back kitchen. And let's see. On the bottom,
21 on the ground right there on the floor -- excuse
22 me -- under the counter where the cups are there is a
23 glove there. And there's also another glove. Excuse
24 me. D. That's my fault. Evidence marked D is a
25 glove that's on the ground there. I don't know if

1 you can see that well or not.

2 And also evidence marked number C is another
3 glove, and that's on the side of a work station area
4 there. And as you can see above here, in the far
5 left corner, there is an actual pack or three packs
6 of gloves they're supposed to use I guess for
7 preparing food. Those are the type gloves that they
8 wear. And also over here is the till drawer that I
9 located, and that's how it was when I found it.

10 Exhibit 80, this is a close-up shot or close
11 range shot of evidence marker D which is one of the
12 clear plastic gloves that was on the floor underneath
13 the table at the drive-thru.

14 Q And, Investigator Oates, I'm going to show you
15 State's Exhibits 47 and 48. Are those the gloves
16 depicted in those photos? Are those the gloves
17 depicted in the photos?

18 A Yes.

19 **MS. MCDUFFIE:** Your Honor, at this time we'd
20 offer State's 47 and 48.

21 **THE COURT:** Okay.

22 (WHEREUPON, State's Exhibit No. 47 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 48 is admitted
25 into evidence.)

1 Q After you collected the rubber gloves, what did you
2 then do?

3 A Okay. After collecting the rubber gloves, I then
4 basically -- there were observed, I observed after
5 that point, walking into a rear break room area,
6 there was a spent or fired shell casing that was
7 laying on the rear break room floor.

8 Q I show you State's Exhibit 94. Can you describe for
9 the jury what's in State's 94?

10 A That basically is where the -- in the back of the
11 break room, that is a cup that's over the top of the
12 fired shell casing. That was done by our responding
13 deputies in order to keep it in its position, since
14 EMS and the fire department had been back there, in
15 order to keep it from being kicked or moved.

16 Q State's Exhibit 75?

17 A Okay. That is a mid range photograph of the actual
18 fired shell casing in the break room floor.

19 Q State's Exhibit 95.

20 A Okay. We've gone back now and put an evidence marker
21 on that fired shell casing. And it is evidence
22 marked B. And that's mid range with evidence marked.

23 Q And in the distance, what room would this be?

24 A That is the office, the rear office.

25 Q And what is depicted in this photo?

1 **A** Well, one of the victims is slumped over on her right
2 side in a chair.

3 **MS. MCDUFFIE:** Your Honor, permission to publish
4 to the jury.

5 **THE COURT:** All right.

6 **Q** State's Exhibit 96.

7 **A** Okay. That is -- inside the office, after looking
8 further, we found another fired shell casing. It was
9 just on the inside of the left side wall of the rear
10 office.

11 **Q** And that's depicted with what letter?

12 **A** The letter A. We used the letter A to mark that or
13 to identify that shell casing.

14 **Q** And State's Exhibit 98, is that a closer picture of
15 that?

16 **A** Yes. It's a closer range photograph between the two
17 shoes.

18 **Q** Where was the shell casing found in proximity to the
19 victims' bodies?

20 **A** Basically beside them. It's a small office.

21 **Q** I show you what's been marked as State's 42 and 43.
22 Are those the shell casings you collected?

23 **A** Yes, they are.

24 **MS. MCDUFFIE:** Your Honor, at this time we'd
25 offer State's Exhibits 42 and 43.

1 **THE COURT:** Okay.

2 (WHEREUPON, State's Exhibit No. 42 is admitted
3 into evidence.)

4 (WHEREUPON, State's Exhibit No. 43 is admitted
5 into evidence.)

6 **Q** Can you please open one of those up and show the
7 shell casing to the jury?

8 (Witness complies)

9 **Q** And are you aware of what caliber that shell casing
10 is?

11 **A** Yes.

12 **Q** Please tell the jury what caliber it is?

13 **A** It is a Winchester brand .45 auto cartridge.

14 **Q** I show you State's Exhibit 34. Could you please
15 describe for the jury what's depicted in State's
16 Exhibit 34?

17 **A** Okay. That is a victim, we called victim number 1,
18 Bolton, who is sitting in a chair in the rear office
19 on her -- slumped over on her right side.

20 **Q** And who whose legs are these?

21 **A** That is going to be victim number 2's legs,
22 Ms. Johnson.

23 **Q** Ms. Johnson's body is under Ms. Bolton's?

24 **A** Up under it, yes. Underneath.

25 **Q** And after the coroner removed Ms. Bolton's body, did

1 you have the opportunity to photograph Ms. Johnson's
2 body?

3 **A** Yes.

4 **Q** Will you please describe for the jury what is in
5 State's Exhibit 25?

6 **A** That is Ms. Johnson, victim number two, who is laying
7 on the rear office floor on her right side, on her
8 shoulder.

9 **Q** And State's 34 shows ...?

10 **A** Shows Ms. Bolton, number 1, on top of Ms. Johnson,
11 number two, in the rear office.

12 **MS. MCDUFFIE:** Your Honor, permission to publish
13 to the jury.

14 **THE COURT:** Okay.

15 **Q** What is that depicted in those photos that the
16 victims are laying in front of or near?

17 **A** It's the rear office desk and with some change
18 drawers or till drawers with change inside of them.

19 **Q** And is the safe also under the desk?

20 **A** Yes, it is. In the far right.

21 **Q** Please describe for the jury what's in State's 23?

22 **A** Okay. This is after both victims have been removed
23 from the rear office. And this is a photograph.
24 It's kind of dark. It's a photograph of the safe
25 with the door open. That's how I found the safe.

1 The door was open just like this, with blood stains
2 and pooling of blood on the floor.

3 Q And State's Exhibit 28, can you describe that for the
4 jury, please?

5 A This is actually with the victims still inside the
6 office. And this is a closer range photograph of the
7 safe and its contents on the inside in the rear
8 office.

9 Q State's Exhibit 93, please tell the jury what that
10 depicts?

11 A This is another close range shot. It's kind of dark.
12 What you're seeing up top is a secondary safe, a
13 secondary safe. And I took a photograph of that mid
14 range. And also till drawers and a drawer area under
15 the bottom of the safe, the main part of the safe.
16 And it's got rolled coins inside of it still.

17 Q I show you what's been marked as State's Exhibit 39.
18 Do you recognize this?

19 A Yes.

20 Q Is this a diagram of the Wendy's that you produced?

21 A Yes, it is.

22 MS. MCDUFFIE: Your Honor, at this time we'd
23 offer State's Exhibits 39.

24 THE COURT: I take it it's not quite to scale.

25 MS. MCDUFFIE: No, sir, Your Honor, it's not.

1 **THE COURT:** Okay. That can come in.

2 (WHEREUPON, State's Exhibit No. 39 is admitted
3 into evidence.)

4 **Q** Investigator Oates, if I could have you step down for
5 a minute.

6 **A** Yes.

7 **Q** Please orient the jury as to where the entrance is,
8 the exits are and the location of the victims'

9 bodies?

10 **A** Okay. This here, as you go past the
11 store, the front entrance or the front dining area
12 here to the Wendy's, there is a door up front, like
13 an emergency door, and then there's door number two
14 on the left side. This is the door we entered right
15 here. Everybody entered through and exited through
16 this area here. As you walk through, basically
17 you're walking into the dining area, and this is
18 where you go through to basically place your order.
19 Another cabinet over here for condiments basically.
20 Basically if you walk around this area here going
21 toward here, these are the bathrooms here, male and
22 female bathrooms.

23 And there is a back door here that gives you
24 access into the rear kitchen. I went through here.
25 This door was open. And then basically, like I said,

1 you can walk straight through. Then you take a right
2 here. You have stoves here, other types of
3 equipment, and then you have your drive-thru area
4 right here. And this is where some of the gloves
5 were marked and the till drawer.

6 Now, it's kind of hard to see right here. It's
7 a rough field sketch. It is -- basically you have
8 the break room that comes in here, and then you have
9 the office which is back in the back.

10 Q And that is where you found --

11 A Yes.

12 Q -- both the body of Latora Bolton and Carlaus
13 Johnson?

14 A Right. That's where both victims were found, in that
15 rear office right here.

16 Q And can you show the jury where the shell casings
17 were found?

18 A Okay. Evidence marked A, the first fired Winchester
19 .45 auto, was found inside the office on the
20 left-hand corner wall. As soon as you walk in, on
21 your left side, you look down, and that's where the
22 fired shell casing was, inbetween two black shoes.
23 And then back in the -- as you enter into the break
24 room, before you get to the rear office is where you
25 find evidence number B, the second fired Winchester

1 .45 caliber.

2 Q Thank you, Investigator Oates.

3 A Mm-hmm (affirmative).

4 Q Investigator, we've shown the jury pictures of the
5 safe. Can you please describe the safe to the jury?

6 A Okay. Basically --

7 Q I'll give you State's Exhibit 91.

8 A Thank you. Basically it's a metal safe. That's just
9 located of course in the rear office underneath a
10 left side work desk in the far right corner of that.
11 On the bottom is where the safe was located. It's a
12 metal safe, of course has one door which gives you
13 total access. It's a metal door of course, like most
14 of your safes do. And on the inside near the top is
15 where there's a secondary safe at.

16 And so at the bottom basically is where they put
17 till drawers basically for the next day and so on and
18 so forth. And inside the secondary safe basically is
19 where money is kept in the money bags so they can
20 drop it. Basically if they don't have time or what
21 have you, they can put it in the secondary safe, the
22 money will be safe, and it's timed. So that's what
23 the safe looks like and the operations of it.

24 Q When you arrived at Wendy's that day, did you find
25 any money in the safe, in the primary safe?

1 **A** The only money I found was rolled coins. That was
2 it.

3 **Q** Did you find any paper currency in the main safe?

4 **A** I did not.

5 **Q** Did you with the assistance of the district manager
6 access the secondary safe?

7 **A** Yes. We sure did.

8 **Q** And did you find the previous day's deposits in the
9 secondary safe?

10 **A** I did.

11 **Q** And how do you access that safe?

12 **A** Well, with the assistance of the GM, I had to
13 basically -- there was a telephone conversation with
14 their main corporate headquarters. Basically the
15 person on the phone there was telling the GM,
16 basically telling me what to push, a series of
17 numbers and codes in order to bypass -- since it's a
18 timed safe, in order to bypass that requirement. And
19 I think only the GM or the person that's at the main
20 office has that ability.

21 **Q** So you had to bypass the time lock feature on the
22 secondary safe?

23 **A** Right.

24 **Q** And the money that you obtained from the secondary
25 safe, did you return that to Wendy's?

1 A Yes, I did.

2 Q And do you recall approximately how much money was in
3 the secondary safe?

4 A Well, I didn't totally add it up. I only -- a chain
5 of custody form -- when I basically transferred the
6 money from myself to the general manager, I basically
7 wrote down what each bag contained, how much.
8 Basically it was sealed. I didn't unseal the bags.
9 They were already sealed and they had the amount
10 written on the outside. So I basically --

11 Q The total of the three bags was approximately \$5,000?

12 A Yes. At least \$5,000. At least.

13 Q And there was no paper currency in the primary safe
14 that was opened?

15 A No.

16 Q Did you do any swabbing or testing for DNA in the
17 Wendy's?

18 A Yes. I sure did.

19 Q Please tell the jury what you swabbed or tried to
20 collect DNA evidence from?

21 A Okay. On the initial call when I was there -- let me
22 see here. Hold on a second. Okay. I apologize. I
23 used a sterile cotton swab with distilled water on
24 the rear office doorknob. Even though the door was
25 open, I still used a sterile cotton swab and I used

1 distilled water with that to get the cotton tip moist
2 and then swabbed the doorknob handle to collect
3 possible DNA if it had been opened by somebody else.

4 Q After you collected the swab, what did you then do
5 with it?

6 A I then marked -- after putting the sterile cotton
7 swab in a carton, wooden carton -- I mean, a paper
8 carton -- then basically placed it into a yellow
9 six-by-nine envelope and placed it with me so it
10 would not be out of my possession basically.

11 Q And did you then turn that in for further processing?

12 A Yes, I did. I transported it back to the lab.

13 Q Did you also have the opportunity to collect or be
14 present when an employee file was collected from the
15 office?

16 A Yes.

17 Q I show you State's Exhibit 59. Is that the object or
18 the file that you took custody of?

19 A Yes, it is.

20 **MS. MCDUFFIE:** Your Honor, at this time we'd
21 offer State's Exhibit 59.

22 **THE COURT:** 59. Okay.

23 (WHEREUPON, State's Exhibit No. 59 is admitted
24 into evidence.)

25 Q Investigator Oates, the objects you collected and did

1 fingerprint analysis on, were you able to lift any
2 identifiable fingerprints?

3 A No, I wasn't.

4 Q After you left the crime scene that day, was the
5 crime scene secured?

6 A Yes, it was.

7 Q Did you go back the following day?

8 A Yes, I did.

9 Q Did you obtain more DNA swabs?

10 A Yes, I did.

11 Q Please tell the jury what you attempted to collect
12 DNA off of on September the 4th?

13 A I returned back into the rear office area where the
14 safe was located and used another sterile cotton swab
15 with distilled water to swab the money safe handle.
16 And also I took a sample or collected a sample of the
17 pooled blood that was up under the safe right there
18 where the victims had been located.

19 Q And did you then turn those swabs in for further
20 processing?

21 A Yes, I did.

22 Q And did you do any further fingerprint analysis or
23 trying to lift more fingerprints?

24 A I did. I went back into the break room area and
25 using a magnetic powder on the break room table, the

1 office, a desk top. Also I used black powder also on
2 the hot water heater cover. And there were four wall
3 fiberglass clear paper holders inside the office
4 itself above where the victims were located. And I
5 also processed that with no prints.

6 Q You were not able to lift any prints?

7 A No, ma'am.

8 Q And, Investigator Oates, if an individual wore
9 gloves, would they leave fingerprints?

10 A It depends on what type of glove.

11 Q Latex gloves?

12 A Latex gloves, it is possible with Latex gloves.

13 Q It is possible to leave prints or it's not possible
14 to leave prints?

15 A It is possible to leave latex prints.

16 Q How likely is it to leave prints if an individual is
17 wearing Latex gloves?

18 A It would really depend on the moisture inside of the
19 glove. If the glove gets really wet, especially it's
20 a thin Latex glove, between the sweat and between all
21 that, the mixture, and being the glove is so thin
22 that it could leave a print. But all those variables
23 would have to be in place before that would happen.
24 That doesn't happen all the time.

25 Q In your training and experience, is it more or less

1 likely that you would be able to lift prints if an
2 individual was wearing Latex gloves?

3 **A** Less likely.

4 **MS. MCDUFFIE:** Beg the Court's indulgence.

5 **A** It would be very unlikely.

6 **THE COURT:** Okay.

7 **MS. MCDUFFIE:** No further questions at this
8 time, Your Honor.

9 **MR. STRICKLER:** May it please the Court, sir.

10 CROSS EXAMINATION

11 **BY MR. STRICKLER**

12 **Q** Just a couple of questions, Investigator. How are
13 you doing?

14 **A** Fine. How are you, sir?

15 **Q** Just fine, sir.

16 **A** Good.

17 **Q** I'd have to dig through all these pictures, but I
18 could probably -- now, you were not the only crime
19 scene investigator to respond to the scene, correct?

20 **A** That's correct.

21 **Q** Do you happen to remember who else responded from
22 your unit?

23 **A** Yes. Investigator Bill Mann, then Sergeant Anna
24 Clemens, and I believe Stan Richards if I recollect.

25 **Q** Okay.

1 A Yes, sir.

2 Q And they were assisting you or operating
3 independently of you?

4 A Assisting.

5 Q Assisting you?

6 A Yes.

7 Q So you were the lead crime scene investigator at that
8 point?

9 A Yes, sir.

10 Q I mean, any time you have a number of people involved
11 in processing a scene or working a scene, it's good
12 to have someone designated as a lead just to help
13 coordinate everything, right?

14 A Right. When I say that, I say that I am lead, but
15 also have brass that is there also that has rank over
16 me. So, I mean, we go back and forth.

17 Q Yeah. I believe you testified that you'd been
18 trained in the area of blood spatter analysis?

19 A Yes, sir.

20 Q Can you tell us what blood spatter is?

21 A Basically it's when -- basically it's the science of
22 having to analyze blood. When you go into a scene,
23 there's different ways that blood -- that you can
24 interpret blood, how blood is developed and how you
25 can read it. It's basically a science of looking at

1 certain stains, identifying those stains, what type
2 they are, how they were made.. And you're able to
3 determine sequences of events basically of those when
4 you see those stains. It's how to interpret stains.
5 Basically what blood spatter analysis is, how to
6 interpret stains.

7 Q And blood spatter can be characterized as high
8 velocity, medium velocity, low velocity?

9 A Yes, sir.

10 Q That is one of the ways you can characterize a
11 particular blood spatter, right?

12 A Yes, sir.

13 Q And high velocity blood spatter is commonly
14 associated with gunshot wounds?

15 A Yes, sir.

16 Q And the characteristics of high velocity blood
17 spatter, small particles of blood? Correct?

18 A At least less than one millimeter in size. Yes, sir.

19 Q In fact, showing you what's marked as State's 99
20 right here --

21 A Yes, sir.

22 Q -- it's a picture of coins with some small particles
23 of blood on them?

24 A Yes. Small blood stains. Yes.

25 Q Would you characterize those as high velocity

1 spatters? I know there's not a scale next to them,
2 but they're sitting on some coins.

3 **A** Basically small stains there. Could be. I'd have to
4 see more of it. Yeah.

5 **Q** Okay. And what's marked as State's Exhibit 103, the
6 interior of the safe showing the rolled coins, --

7 **A** Yes, sir.

8 **Q** -- you can see on the rolled coins examples of small
9 blood spatters?

10 **A** It appears to be small blood stains. Yes, sir.

11 **Q** Consistent with what would be a high velocity blood
12 spatter?

13 **A** It's a small stain, yes.

14 **Q** Okay. Again, State's 100, on the roll of dimes?

15 **A** Yes, sir. Small blood stains. Yes, sir.

16 **Q** Okay. Now, in looking at blood spatter, when a
17 bullet strikes a person, okay, what direction does
18 the spatter go?

19 **A** I would say forward. You would get forward spatter
20 and get backwards spatter. Yes, sir.

21 **Q** Forward and backward?

22 **A** That's right. Yes, sir.

23 **Q** I don't know if it's the right term. Is there a term
24 called blowback? I'm not sure if that's the correct
25 term.

1 A That's one term that's used. Yes, sir.

2 Q What does that term describe?

3 A It describes after the bullet or the projectile has
4 hit the skin, basically entering the skin, there is
5 back spatter from that initial entrance --

6 Q Okay.

7 A -- that would basically fall backwards from that.

8 Q So, for example, if I was struck here, blowback would
9 describe blood coming out this direction as a result
10 of the impact?

11 A Impact, yes.

12 Q Correct?

13 A Mm-hmm (affirmative).

14 Q And once again, we're talking about high velocity
15 blood spatter such as we've just been looking at
16 here, right?

17 A Yes. Spatter. Yes.

18 Q As opposed to blood coming from here from the wound?

19 A Right. From impact, yes.

20 Q That would not be high velocity. But you have --
21 blowback would be blood coming out in this
22 direction --

23 A Right.

24 Q -- from the impact of the bullet striking the person,
25 right?

1 **A** Right. Right. The skin. Yes.

2 **Q** Are you acquainted with what procedures were
3 conducted by the other people, the CSI people who
4 were on the scene, or are you just acquainted with
5 what you did at the scene?

6 **A** I'm basically acquainted with what I just did at the
7 scene. Yes.

8 **Q** When you photographed the Latex gloves and collected
9 the Latex gloves, did you observe any blood on those
10 gloves?

11 **A** I did not.

12 **Q** Have you any knowledge as to whether or not there was
13 any money in that cash drawer earlier, what's marked
14 as State's 60, earlier in the day prior to the
15 incident?

16 **A** The only knowledge I have is that normally there is
17 money for the till, till money basically.

18 **Q** If it gets put in there?

19 **A** Right. If it's put in there. Nobody from Wendy's
20 called me and told me it was in there. I mean, I
21 just --

22 **Q** You collected it because it was empty and it could
23 have had money in it, right?

24 **A** Right. Mm-hmm (affirmative).

25 **Q** All right. Thank you very much, sir. That's all I

1 have.

2 **MS. MCDUFFIE:** Nothing further, Your Honor.

3 **THE COURT:** You can step down, sir.

4 **MS. MCDUFFIE:** The State calls Mike Godwin.

5 **THE COURT:** Okay.

6 MIKE GODWIN, after being duly sworn, testifies
7 as follows:

8 **THE CLERK:** Please have a seat. State your full
9 name for the record.

10 **THE WITNESS:** Mike Godwin.

11 DIRECT EXAMINATION

12 **BY MS. MCDUFFIE**

13 **Q** Mr. Godwin, where were you employed in September of
14 2006?

15 **A** With Tarheel Capital, a franchisee of the Wendy's
16 here in Columbia.

17 **Q** And what were your duties with Tarheel Capital?

18 **A** I was a district manager/multiunit supervisor with
19 six stores.

20 **Q** Six Wendy's stores?

21 **A** Yes, ma'am.

22 **Q** And was the Wendy's at part of
23 your responsibility?

24 **A** Yes, ma'am.

25 **Q** Please describe for the jury your duties as the

1 district manager?

2 A Hire, train, supervise, do inspections, audits,
3 ensure the operations of the restaurant were
4 operating correctly.

5 Q And who was in charge of the day-to-day operations of
6 the store?

7 A Each restaurant had a general manager and anywhere
8 from two to three, possibly four, assistant managers.

9 Q And you supervised the general manager as part of
10 your duties?

11 A I supervised the entire staff, but typically I would
12 work through the general manager of the restaurant.

13 Q I'm going to bring you back to the incident we're
14 here for. In late August of 2006 did you have the
15 occasion to speak with the defendant, John Portee,
16 and also Latora Bolton?

17 A Could you repeat that for me, please?

18 Q In late August of 2006 did you have the occasion to
19 speak with the defendant and also Latora Bolton?

20 A Yes, I did.

21 Q And what was that in reference to?

22 A I had received a customer complaint hotline, which
23 also secondary was a phone number that an employee
24 could call in and complain if they had a complaint.

25 Q And who called in to that number?

1 **A** Well, I get a report, a faxed or an emailed report.
2 And it said that the employee, John Portee, had
3 called and claims --

4 **MR. STRICKLER:** I'll object. Hearsay.

5 **MS. MCDUFFIE:** I'll rephrase the question, Your
6 Honor.

7 **Q** As a result of the information you learned, what did
8 you do?

9 **A** I went and interviewed with both John Portee and Ms.
10 Bolton, the assistant manager in that restaurant,
11 separately and then together.

12 **Q** And based on your interviews with them; what, if any,
13 action did you take?

14 **A** I documented both of them separately. I documented
15 the general manager for a cash violation that
16 occurred where she had asked another employee to run
17 company business; specifically, take a deposit to the
18 bank for her, which was against company policy; and
19 for improper language. I had also documented Mr.
20 Portee for inappropriate language as well as
21 insubordination.

22 **Q** And on September the 3rd of 2006 did you learn that
23 the Wendy's on had not opened that
24 day?

25 **A** Yes, ma'am, I did.

1 Q And who did you learn that from, or how did you find
2 that out?

3 A I received a phone call from the store that I had.
4 There's two stores, or there were at the time, on Two
5 Notch, one at Brickyard which was about eight miles
6 up the road. The manager at that particular
7 restaurant called me and said that the little gas
8 station that was nextdoor to the other Two Notch
9 restaurant, the 7300, was not open and that the
10 manager's car was in the parking lot.

11 Q And based on that phone call, what did you then do?

12 A I called my general manager of that particular
13 restaurant and asked her if she'd talked with her
14 store that day. She said she had not. I asked her
15 if she was close by her store. She said yes. I
16 said, "Well, will you please go by there because I
17 can't get anybody to answer the phone there and just
18 check on your store for me and let me know what you
19 find out."

20 Q Did she later -- please don't tell the jury what she
21 told you. But did she later call you back?

22 A She did call me back.

23 Q And based on that; what, if any, action did you take?

24 A On her phone call back to me?

25 Q Yes, sir.

1 **A** I immediately got in my car and headed for the store.

2 **Q** And do you remember approximately what time you
3 arrived at the Wendy's?

4 **A** 2:30.

5 **Q** And about how far away from the Wendy's do you live?

6 **A** 30 to 45 minutes.

7 **Q** Did you have the opportunity to go into the store to
8 help the investigators open the secondary safe?

9 **A** I did. I got there at 2:30. And I think it was
10 around 4:30. I wasn't allowed on the property until
11 they were done with their investigation. At the
12 point in time when they needed somebody to be able to
13 help them access the safe, that's when I had access
14 to the building.

15 **Q** And at the Wendy's on Two Notch, the safe actually --
16 when you open the door, there is the main component
17 and then there is a secondary safe?

18 **A** Yes, ma'am. There is a -- it's a dual door safe.
19 You have to open the main door which opens with a
20 combination in order to access the inner door which
21 operates off of a time delay with a key.

22 **Q** And what is typically kept in the -- when you open
23 the first door in the main compartment of the safe?

24 **A** Usually you keep your store bank. You have your
25 rolled coin. You'll have your store operating funds,

1 the cash drawers that you may use to operate daily
2 operations.

3 Q And typically, how much cash would be left in there?

4 A Anywhere from 600 to \$1,000 usually.

5 Q And what is contained in the secondary safe?

6 A That's a drop safe that is used typically for a
7 manager in the evening to, and/or on weekends, put
8 their deposit they would normally on a weekday go to
9 the bank.

10 Q And this incident occurred on a Sunday?

11 A Yes, ma'am.

12 Q And so there were deposits from Friday and Saturday
13 in the secondary component?

14 A Correct.

15 Q And at a later point in time that money was released
16 to you that was recovered out of the --

17 A Yes, ma'am, it was.

18 Q And did you have a chance to reconcile the books or
19 do the accounting for that store?

20 A I did. But it wasn't until the Monday after.

21 Q And how much, if any, money did you determine was
22 missing from the store?

23 A It was two years ago. But it was approximately
24 \$6,000. I'm sorry. That's how much money was in the
25 safe. There was approximately 1600 that was missing

1 from the store.

2 Q That was missing from the store. Beg the Court's
3 indulgence. Mr. Godwin, when did the Wendy's on Two
4 Notch Road close for good?

5 A We never reopened the store.

6 Q No further questions.

7 CROSS EXAMINATION

8 **BY MR. STRICKLER**

9 Q Good afternoon, Mr. Godwin. My name is Doug
10 Strickler. I'm one of the attorneys here
11 representing Mr. Portee.

12 A Good afternoon.

13 Q Just a couple of things. You investigated the
14 hotline call, correct?

15 A Investigated the what?

16 Q The hotline call.

17 A Correct.

18 Q And the hotline call was initiated by John Portee,
19 correct?

20 A Correct.

21 Q And it was initiated on -- the call date was
22 August 25th, 2006, relating to an incident he claimed
23 occurred on August 24th, correct?

24 A Correct.

25 Q Okay. Thank you. That's all I have.

1 **MS. MCDUFFIE:** Nothing further, Your Honor.

2 **THE COURT:** You can step down.

3 **MR. MEADORS:** Can we approach?

4 **THE COURT:** All right.

5 (Whereupon, a bench conference is had)

6 **THE COURT:** All right, jurors. Don't talk about
7 it. Just ease out. All the witnesses aren't
8 standing right there ready to come in. That's all.
9 Just take a little break.

10 (Jury out at 3:12 p.m.)

11 **MR. MEADORS:** If you please, Your Honor. The
12 next witness, Heather Hunter, has approximately --
13 they have the rap sheet -- I think roughly 15
14 fraudulent checks.

15 **MR. STRICKLER:** Fifteen bad checks.

16 **MR. MEADORS:** They appear to be on the same
17 court date of 2-1-05 I think. And besides, that is
18 the current charge that she's on here, misprisonment
19 of a felon. And then other than that --

20 (Pause - conferring)

21 **MR. MEADORS:** -- I think we're okay.

22 **THE COURT:** So what is it you all want me to do
23 with it?

24 **MR. MEADORS:** Nothing.

25 **THE COURT:** You all take care of it.

1 **MR. STRICKLER:** I believe I'm going to be able
2 to do -- he's probably going to take care of it
3 himself.

4 **MR. MEADORS:** Right.

5 **MR. STRICKLER:** But if he doesn't, I would
6 propose to go ahead and impeach her on bad checks
7 convictions and probably go into her pending charge.
8 Not probably. Go into her pending charge relating to
9 this incident.

10 **THE COURT:** See if any deal has been cut with
11 her.

12 **MR. MEADORS:** Sure.

13 **MR. STRICKLER:** Yes, sir.

14 (Pause - conferring)

15 **MR. MEADORS:** There's an out-of-state
16 shoplifting I'm unclear on.

17 **THE COURT:** Well, that won't come in if you
18 can't prove it.

19 **MR. MEADORS:** If we decide --

20 **THE COURT:** Any time we send the jury out,
21 there's 14 of them; it will take at least 14 minutes.
22 We're at ease.

23 **MR. MEADORS:** Thank you, sir. So does that mean
24 be back in here at 3:30?

25 **THE COURT:** You've got it.

1 **MR. MEADORS:** 3:30.

2 (Whereupon, a break is taken)

3 (WHEREUPON, State's Exhibit No. 104 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 105 is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 106 is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 107 is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 108 is marked
12 for identification.)

13 **THE COURT:** All right. Solicitors, you all
14 about ready?

15 **MR. MEADORS:** The State is ready, Your Honor.

16 **THE COURT:** What about the defense?

17 **MR. STRICKLER:** The defense is ready, sir.

18 **MR. MEADORS:** Our witness is just I think right
19 outside.

20 **THE COURT:** You going to call the witness in?

21 **MR. MEADORS:** Yes, sir.

22 **THE COURT:** Mr. Dye. Attorneys, do you all want
23 me to tell them about criminal records before or when
24 it comes up?

25 **MR. MEADORS:** I'd rather you do it later. I'd

1 prefer that.

2 **MR. STRICKLER:** Later is fine with me, Your
3 Honor.

4 **THE COURT:** Once it comes up, that's when I do
5 it because I have to at that point.

6 **MR. STRICKLER:** Yes, sir.

7 **THE COURT:** If it comes up.

8 **MR. STRICKLER:** Yes, sir.

9 **THE COURT:** All right.

10 (Jury in at 3:30 p.m.)

11 **THE BAILIFF:** The jury is seated, Your Honor.

12 **THE COURT:** The jury is. Okay. Solicitor's
13 office, you can proceed.

14 **MR. MEADORS:** If it pleases the Court, the State
15 would call now Heather Hunter.

16 **HEATHER D. HUNTER,** after being duly sworn,
17 testifies as follows:

18 **THE CLERK:** Please have a seat. State your full
19 name for the record.

20 **THE WITNESS:** Heather Deas Hunter.

21 **DIRECT EXAMINATION**

22 **BY MR. MEADORS**

23 **Q** Good afternoon, Ms. Hunter.

24 **A** Good afternoon.

25 **Q** Now, if you'll just speak in here, please, ma'am,

1 just so this lady can take everything down and these
2 ladies and gentlemen can hear you. I am going to
3 start out, if you don't mind, just asking about you.
4 Can you tell these folks where you're from, please?

5 A I'm from New Jersey.

6 Q New Jersey?

7 A Yes, sir.

8 Q And born there?

9 A Born there.

10 Q Raised there the first part of your life?

11 A Raised there.

12 Q Went to school there initially?

13 A Yes, sir.

14 Q Do you mind telling them where you went to school?

15 A I went to school in Kauzerstrau in West Germany where
16 I graduated high school.

17 Q And why were you there?

18 A My parents were in the military.

19 Q And prior to going to Germany, did you also go to
20 school in New Jersey some?

21 A Yes, sir.

22 Q And when did you go to Germany? Do you remember,
23 Ms. Hunter?

24 A Yes. I went to Germany in 1986 to 1991.

25 Q '86 to '91?

1 A Yes, sir.

2 Q And when you got back from Germany or your family
3 did, where did you all live?

4 A We lived in Augusta. Well, I went back to New
5 Jersey.

6 Q How old were you then?

7 A Nineteen.

8 Q What did you -- did you go try to start a career or
9 do something?

10 A Yes, sir. I started out in cosmetology.

11 Q Did you go to school for that?

12 A Yes, sir.

13 Q And then after that schooling, what did you do?

14 A I began having a family.

15 Q Did you work some in the cosmetology field?

16 A Yes, I did. I worked in the cosmetology field and
17 worked also at a hospital in New Jersey.

18 Q And did you say then you started raising a family?

19 A Yes, sir.

20 Q And were you married at some point in that time of
21 your life?

22 A Yes, sir.

23 Q And did you eventually come down south to Augusta?

24 A Yes, sir.

25 Q And when was that?

1 A I moved into Augusta in 1997.

2 Q And how many children did you have then?

3 A I had three.

4 Q I'm sorry?

5 A I had three children.

6 Q Okay. And why did you come to Augusta?

7 A I wanted a different life. I left my husband.

8 Q Okay. You started anew kind of?

9 A New life.

10 Q And what did you do in Augusta, Ms. Hunter?

11 A I did hair, and also I went to school for a dental
12 hygienist.

13 Q Was anybody in the Army then?

14 A My parents were still in the Army.

15 Q Okay. Where were they stationed then when you came
16 to Augusta?

17 A Fort Gordon, Georgia.

18 Q And then there was a time in your life I think when
19 your mama died?

20 A My mother passed in March of 2002.

21 Q I'm sorry for that. You and I have talked about
22 that.

23 A And when she passed, that's when I moved to Columbia.

24 Q And when you moved to Columbia, why Columbia?

25 A I just picked a place. I was so hurt when I lost my

1 mother, I just picked a place to go.

2 Q Had you been to Columbia before?

3 A No. I've rode through it.

4 Q Is it fair to say it's the biggest place near Augusta
5 maybe?

6 A Yes.

7 Q So you come to Columbia in what year?

8 A 2003.

9 Q And 3?

10 A (Nods head affirmatively).

11 Q And if you don't mind speaking up just a little bit,
12 I'd appreciate it.

13 A 2003.

14 Q Thank you. Where did you decide to live? Where did
15 you live in 2003?

16 A When I first moved here in 2003, I lived off of
17 Beltline Boulevard.

18 Q Do you remember the specific --

19 A Crescent Manor, Harrington Place Apartments.

20 Q Crescent Manor?

21 A Yes, sir.

22 Q And when you moved to Crescent Manor with your
23 family, is that where you met the defendant, John
24 Portee?

25 A Yes, sir.

1 Q The first time when you moved to Columbia in 2003?

2 A Yes, sir.

3 Q Now, when you got to Columbia, you told us about your
4 cosmetology, and I think you said some other things,
5 your hair and worked. Did you also do some other
6 line of work when you got here? If so, what was
7 that?

8 A Oh, yes, sir. I started substitute teaching.

9 Q In what District?

10 A Richland District One.

11 Q And how long did you do that for, Ms. Hunter?

12 A I've been doing that since '03 up until the present.

13 Q Up until when?

14 A The present.

15 Q So you're still doing that some?

16 A Yes, sir.

17 Q And where do you reside? And where did you reside
18 when this happened in September of 2006?

19 A I resided at Columbia, South
20 Carolina. And that's still my present address.

21 Q You still live there now?

22 A Yes, sir.

23 Q And tell the folks, how many children do you have?

24 A I have six.

25 Q And how old are they?

- 1 **A** 17, 15 and a half, 14, nine-and-a-half, four, and two
2 years old.
- 3 **Q** And do you all all stay at Hawthorne?
- 4 **A** Yes, sir.
- 5 **Q** Now, are your last two children -- who is the father
6 of the last two children?
- 7 **A** John Portee.
- 8 **Q** And in September of 2006, were you pregnant?
- 9 **A** Yes, sir.
- 10 **Q** And how far along were you?
- 11 **A** About seven and a half months.
- 12 **Q** And that's with your last child that Defendant
13 Portee, John Portee, was the father, correct?
- 14 **A** Yes.
- 15 **Q** I'm going to take you right to Labor Day weekend
16 September 2006, Ms. Hunter.
- 17 **A** Okay.
- 18 **Q** This is what's State's 40. Do you recognize it as a
19 September 2006 calendar?
- 20 **A** Yes, sir.
- 21 **Q** And if this -- would you dispute -- I apologize --
22 that that Sunday was September 3rd?
- 23 **A** No, I don't.
- 24 **Q** Labor Day weekend?
- 25 **A** Yes, sir.

- 1 Q Okay.. Did you have an occasion that weekend to see
2 John Portee?
- 3 A Yes, sir.
- 4 Q Can you tell them, when did you first see him that
5 weekend, if you remember?
- 6 A That Friday.
- 7 Q All right.
- 8 A When I picked him for from work.
- 9 Q I'm sorry, ma'am?
- 10 A On that Friday when I picked him up from work.
- 11 Q And that was my next question. He was working where?
- 12 A At Wendy's.
- 13 Q So you picked him up Friday, September 1st, from
14 Wendy's?
- 15 A Yes, sir.
- 16 Q And had he had a meeting there with maybe one of the
17 managers or something?
- 18 A Yes, sir.
- 19 Q And whose car were you in?
- 20 A I had rented a car.
- 21 Q After you left there, where did you all go?
- 22 A We went to my home, to our home.
- 23 Q And the next day, Saturday, did he take your car?
- 24 A Yes, sir. He had it.
- 25 Q And Saturday night did he spend the night at the

1 Hawthorne residence?

2 A He was in and out.

3 Q More in than out or more out than in?

4 A I couldn't really tell you.

5 Q Okay. Well, let's go right to September 3rd, that

6 morning of 2006, that Sunday. Did you have an

7 occasion to see him that morning?

8 A Yes, sir. When he came, it was about 5:30 a.m.

9 Q Comes to the house at 5:30?

10 A Yes, sir.

11 Q And did he have to work at Wendy's that day?

12 A Yes, sir.

13 Q What, if anything -- did he ask you to take him to

14 Wendy's?

15 A He did.

16 Q And after he got there at 5:30, did he lay down for a

17 while?

18 A Yes, sir, he did.

19 Q Then after that did you take him to Wendy's?

20 A Yes, sir.

21 Q And whose car were you in?

22 A Our Rent-A-Car.

23 Q And had he come to your house that morning with his

24 Wendy's uniform on?

25 A No, sir. Well, he had on a dark shirt and dark

1 pants.

2 Q And do they wear dark shirts and pants when they work
3 at Wendy's?

4 A I know it was dark pants. It was like a t-shirt.

5 Q And sometime around 8:00 did you all leave to go to
6 Wendy's?

7 A It was after.

8 Q And who was driving?

9 A John was.

10 Q John Portee?

11 A Yes, sir.

12 Q And you go from Hawthorne to Wendy's on Two Notch?

13 A Yes, sir.

14 Q And when you get to Wendy's on Two Notch, where did
15 the defendant park your rental car?

16 A To the rear.

17 Q To the rear of Wendy's?

18 A Yes, sir.

19 Q We're back right now at the rear of Wendy's in your
20 rental car?

21 A Yes, sir.

22 Q What does the defendant do?

23 A He -- he got out to go to the place of business and
24 he knocked on the door. And once he knocked on the
25 door, I really didn't pay him any attention because I

1 was looking for my cigarettes and my lighter in the
2 projection of the seat.

3 Q In the what of the seat?

4 A In the projection of the seat.

5 Q I'm sorry.

6 A And he came back out. He said, "Hold up a minute"
7 when he came back out.

8 Q He said, "Hold up a minute"?

9 A Yes, sir. And he sat in the driver's side. And he
10 said he didn't get any answer to the door. And then
11 after that, you know, he sat for a while. He went
12 back. Where he went I don't know.

13 Q Did he go back toward the Wendy's, Ms. Hunter?

14 A I would guess he did.

15 Q He didn't go in front of you, did he?

16 A I'm not -- I don't know where he went.

17 Q What happened after that?

18 A After that is -- well, I heard noise. And --

19 Q How many noises did you hear?

20 A Two. And shortly after John came back and we drove
21 off back to my home.

22 Q And then did you ask him about the noises and what
23 they were?

24 A Yes, sir. But I didn't --

25 Q Well, did he answer you?

1 A No, sir.

2 Q You then go back to your house at Hawthorne?

3 A Yes, sir.

4 Q And when you get back to your house at Hawthorne,
5 what does John Portee do then, if anything?

6 A Well, he knew I was going to go visit my Godfather
7 because he had had a heart attack and, you know, I
8 had planned to go away for that weekend. But I
9 wasn't feeling good because I was pregnant. And so
10 he said he was going to go get cigarettes and, you
11 know, fill up the gas for the car, he'd be back. He
12 left.

13 Q How long before he came back, Ms. Hunter?

14 A Maybe 25, 30 minutes, sir.

15 Q And when he got back, did he have the same clothes on
16 that he had before, or had he changed?

17 A He had -- he changed.

18 Q He changed his clothes, didn't he?

19 A Yes, sir.

20 Q And when he got back to your Hawthorne address, what
21 did you all do, if anything?

22 A We had cleaned -- we cleaned the house. Me, him and
23 my kids we did pick up the house, and then we left
24 and we went to Georgia.

25 Q And you do keep a clean house, don't you, ma'am?

1 A Yes, sir.

2 Q When you say you went to Georgia, who went to
3 Georgia?

4 A Me, John, my two oldest boys and me and John's baby
5 boy.

6 Q And you said you had planned to go to Georgia?

7 A Oh, yes.

8 Q And actually --

9 A To visit my friend and also check on my Godfather.

10 Q Well, when you got to Georgia, did you do that?

11 A Yes, sir.

12 Q I mean, you went and saw those folks?

13 A Yes, sir.

14 Q And when you got there, what was John Portee doing
15 when you got there? Did he stay in the car when you
16 first got to these folks? Or describe his actions.

17 A He just said he was a little tired. He stayed in the
18 car. And then finally I got him. He came. He sat
19 on the porch with me and my kids and my Godbrother.
20 Because my Godbrothers, they weren't there. And I,
21 you know, was led to believe by my Godbrother that
22 they were there, but they weren't home at the time.
23 And he sat on the porch for a while. And just, the
24 mood was just -- he didn't act like he really wanted
25 to be there. So we came home.

1 Q And you came home back to Columbia?

2 A Yes, sir.

3 Q Back to Hawthorne?

4 A Yes, sir.

5 Q When you got back to Hawthorne -- and that's you and
6 your family?

7 A Yes, sir.

8 Q And who was with you? Was Chaz with you?

9 A Chaz was with me.

10 Q Chaz Hunter is your boy?

11 A My son, my old oldest son.

12 Q And which one of your other sons went?

13 A Stacy.

14 Q Stacy. And how many of the other children went?

15 A My baby boy, our baby boy, John.

16 Q So you all get back to Hawthorne Avenue, all of you
17 in your car. And then what happens? When you get
18 back, what do you do? What do you all do? What does
19 the defendant do?

20 A He had left for a minute. He left for a while. He
21 came back. When he came back, that's when he asked
22 me to take them to his home boy's house.

23 Q And did you know who he was talking about?

24 A Yes, sir.

25 Q Does that person have initials or a name?

1 A M.B.

2 Q M.B.?

3 A Yes, sir.

4 Q Is it Mike Brown?

5 A Yes, sir.

6 Q And had you been there before, Ms. Hunter?

7 A Yes, sir.

8 Q What part of the city is it?

9 A It's by the lower part of Hyde Park.

10 Q The lower part of Hyde Park?

11 A Yes, sir.

12 Q And so you dropped the defendant, John Portee, off at

13 MB's house, Mike Brown's house?

14 A Yes, sir.

15 Q What, if anything, had he asked you to do or run any

16 errands for him, if any?

17 A He did. He had asked me to get him a pack of

18 cigarettes and a phone card.

19 Q A lighter?

20 A And a lighter.

21 Q And did he give you some money to do that?

22 A Yes, sir. He did. He gave me \$20.

23 Q And I forgot. But on the way back from Atlanta -- I

24 say Atlanta. Strike that, please. I'm sorry. On

25 the way back from Augusta, did you notice any money

1 in his wallet?

2 A Yes, sir. He had a cellphone and money in his -- it
3 wasn't in his wallet. It was in his pocket.

4 Q And you asked him about that, didn't you?

5 A Yes, I did.

6 Q You asked him where he got the money?

7 A Yes, sir.

8 Q And what, if any -- did he tell you whether or not he
9 had gotten it from maybe another woman?

10 A Yes, sir.

11 Q Maybe at a bank or something?

12 A Yeah. He said he got it from his lady friend at the
13 bank.

14 Q Did that make you mad?

15 A I was mad. Yes, sir.

16 Q Well, did he tell you after that where he got it
17 from?

18 A Then he said Wendy's.

19 Q He said he got it from Wendy's?

20 A Yes, sir.

21 Q Did he tell you whether or not he was tired of being
22 broke?

23 A I mean, he has. Yes, sir.

24 Q I mean, did he tell you on the way back from Augusta
25 I'm tired of being broke?

1 A Yes, sir.

2 Q And I got the money from Wendy's?

3 A Yes, sir.

4 Q After you dropped him off at MB's or Mr. Brown's
5 house -- this is not easy, is it, Ms. Hunter?

6 A No, sir.

7 Q After you dropped him off at Mike Brown's house, did
8 you run those errands?

9 A Yes, sir, I did.

10 Q And did you subsequently come back and pick him up,
11 pick John Portee up at Mike Brown's house?

12 A Yes, sir, I did.

13 Q And did you all then go somewhere else?

14 A Well, before I had picked him up, me and my kids, we
15 had went on -- after we had left Georgia, we had went
16 on -- they had a special at Champs for some socks.
17 It was almost getting close to food time.

18 Q A special for some socks at Champs?

19 A Yes, sir.

20 Q Is that like a coupon or something?

21 A Yes, sir.

22 Q Okay.

23 A And so I had looked in the maternity store and I had
24 bought I think like two pairs of socks when me and my
25 kids left, came back, went back to my house. And I

1 had went to go get a coupon for Hollywood Video.

2 **COURT REPORTER:** For what? I'm sorry. I didn't
3 hear.

4 **Q** A coupon for Hollywood Video?

5 **A** Yes, sir. And by this time he had called me, said he
6 was ready. I had picked him up from MB's house.

7 **Q** You picked John Portee up?

8 **A** Yes, sir.

9 **Q** From MB's house?

10 **A** Yes, sir. And then we had rode to the video store.

11 **Q** Y'all all went to the video store after that?

12 **A** Yes, sir.

13 **Q** Okay.

14 **A** And then we were home.

15 **Q** Back to Hawthorne?

16 **A** Yes. And I went inside the house, you know, to cook
17 so we could watch the movies.

18 **Q** Say that first part again?

19 **A** We all came in the house. I went to the room to
20 change my clothes so I could cook and just chill out
21 watching movies.

22 **Q** Did John Portee go inside when you got home?

23 **A** Yes, sir.

24 **Q** You changed clothes. You were going to watch movies?

25 **A** Mm-hmm (affirmative).

1 Q How long after that when the police arrived?

2 A I'm not sure. My son had told me that the police
3 were outside. At first I didn't think for my home.
4 I just thought it was for my neighbors. They had
5 recently been down the street earlier that morning.

6 Q So Chaz and Stacy, your sons, were outside when you
7 all came home, correct?

8 A They were inside. Then they were outside. Yes, sir.

9 Q And let me show you a picture. Beg the Court's
10 indulgence.

11 THE COURT: Okay.

12 Q That's marked State's 108. If I can approach, Your
13 Honor?

14 THE COURT: Sure.

15 Q You said your house at Hawthorne, if we look in
16 State's 108, do you recognize that; and is that the
17 house where you stay with your family at Hawthorne?

18 A Yes, sir.

19 Q And is this where you all, Defendant John Portee,
20 your family came back after you got back from Georgia
21 and then after you dropped him off at MB's, picked
22 him up at MB's, went to Hollywood Video, this is
23 where you were talking about you all came back home,
24 right?

25 A Yes, sir.

1 **MR. MEADORS:** Your Honor, State's 108.

2 (WHEREUPON, State's Exhibit No. 108 is admitted
3 into evidence.)

4 **Q** Now, at some point after you all got home the police
5 did get there, correct?

6 **A** Yes, sir.

7 **Q** And I believe they talked to Chaz, correct?

8 **A** They had my boys on a corner of the porch and they
9 were talking to my boys. My son, Stacy, was allowed
10 to come back in the house. And that's when he had
11 told me the police were outside. And I came outside.
12 And --

13 **Q** You said your boys, they were on the porch. When you
14 say the porch, do you mean up here? Is that your
15 porch?

16 **A** Yes, sir.

17 **Q** Now, Mr. Tarr, will you stand up? Is this David Tarr
18 right here? That's your attorney, correct?

19 **A** Yes, sir.

20 **Q** Thank you. Now, when this first all happened,
21 Ms. Hunter, --

22 **A** Yes, sir.

23 **Q** -- and on September 3rd of 2006 you initially talked
24 to this fellow right here, McRoberts. Right?

25 **A** Yes, sir.

1 Q Sergeant McRoberts. And you initially told him on
2 September 3rd, 2006 -- or did you tell him -- beg the
3 Court's indulgence. You just didn't tell him the
4 truth in the first statement, did you?

5 A No. No, sir.

6 Q And then you gave him a second statement, didn't you,
7 Ms. Hunter?

8 A Yes, sir.

9 Q Actually in your first statement you said you dropped
10 John off at work and then you just left, right?

11 A Yes, sir.

12 Q And then you see him sometime later, right?

13 A Yes, sir.

14 Q And then your second statement on September 3rd, is
15 it just fair to say you told him everything you just
16 said except about the noises and the money and the
17 way he acted after you left Wendy's? Is that fair to
18 say?

19 A Yes, sir.

20 Q You just left those three things out. And then the
21 third statement on September 6th you basically said
22 what you just said in your second statement; but you
23 said, well, I did hear two noises, I saw the money
24 and how he was acting afterwards. Is that a fair
25 summary?

1 A Yes, sir.

2 Q And that he said the money came from Wendy's?

3 A Yes, sir.

4 Q He's the father of one of your children at the time
5 and one of them that was in your womb?

6 A Yes, sir.

7 Q And did you want to tell him on to start with? Did
8 you want to tell all those facts that you finally
9 told?

10 A I'm saying it was the truth, sir.

11 Q Were you scared?

12 A Very much so.

13 Q I believe at some point, too, there were some other
14 letters that you all had written back and forth. Did
15 you turn those over to Sergeant McRoberts also?

16 A Yes, sir.

17 Q And gave a statement talking about that and turning
18 the letters over, correct?

19 A Yes, sir.

20 Q And because you didn't give all that information to
21 start with, I mean, you have been charged with like
22 misprisonment of a felony, haven't you?

23 A Yes, sir.

24 Q And that's why you've got Mr. Tarr here?

25 A Yes, sir.

- 1 Q And I've been communicating with Mr. Tarr, correct?
- 2 A Yes, sir.
- 3 Q And you. Right?
- 4 A Yes, sir.
- 5 Q I've talked to you. I've talked to Mr. Tarr?
- 6 A Yes, sir.
- 7 Q And you've allowed me and Ms. Joanna to come out to
- 8 your home?
- 9 A Yes, sir.
- 10 Q With your lawyer's permission?
- 11 A Yes, sir.
- 12 Q And you've discussed this case with me, haven't you?
- 13 A Yes, sir.
- 14 Q And told me what happened?
- 15 A Yes, sir.
- 16 Q And that's what you put in your third statement,
- 17 correct?
- 18 A Yes, sir.
- 19 Q And that was back in September of '06, that two on
- 20 the 3rd and then one just a few days later, correct?
- 21 A Yes, sir.
- 22 Q And you don't like being here, do you?
- 23 A Not at all.
- 24 Q You don't want to be here?
- 25 A No.

- 1 Q You're under subpoena to be here?
- 2 A Yes, sir.
- 3 Q Now, you're charged, right?
- 4 A Yes, sir.
- 5 Q It carries up to ten years?
- 6 A Yes, sir.
- 7 Q I know Mr. Tarr has told you that.
- 8 A Yes, sir.
- 9 Q Mr. Tarr asked you and have I asked you to just
10 cooperate and tell the truth?
- 11 A Yes, sir.
- 12 Q As you say in that statement you gave September 6th,
13 is that basically your testimony?
- 14 A Yes, it is.
- 15 Q Of 2006. And let's just let -- you want to be home
16 with your children, don't you?
- 17 A Oh, yeah.
- 18 Q But here today under oath you have admitted that you
19 withheld that information to start with and you
20 understand why you're charged, don't you?
- 21 A Yes, sir.
- 22 Q And you're admitting that you're guilty here under
23 oath today for that, for not telling them everything?
- 24 A Yes, sir.
- 25 Q I mean, you are. I don't mean it bad. But you're

1 admitting to that crime today under oath in front of
2 everybody?

3 A Yes, sir.

4 Q And I told you I'd be fair with you, didn't I?

5 A Yes, sir.

6 Q I don't know if it will be asked or not, but I want
7 to -- have you got -- beg the Court's indulgence. A
8 couple of things. Did the defendant have a green bag
9 that he got from North Carolina?

10 A Yes, sir.

11 Q That he carried?

12 A Yes, sir.

13 Q Who did he get that from?

14 A His brother.

15 Q And one or both of us are allowed to ask you, so I'm
16 going to ask you. February 5th of 2005, I think, on
17 that court date, were you either found guilty or pled
18 guilty to numerous fraudulent checks?

19 A Yes, sir.

20 Q I haven't got it with me. It might have been 15?

21 A Yes, sir.

22 Q Did you pay all that money back?

23 A Yes, I did.

24 Q That was back in 2005?

25 A 2004.

1 Q It may have been the court date, 5?

2 A 2005. Yes, sir.

3 Q Okay. This may be tough, but I've got to ask you.

4 The person you took to Wendy's and he went somewhere
5 and came back and then he said hold on and went
6 somewhere else and the person that after he left you
7 heard two noises and the person that came back and
8 then got in your car and the person that you asked
9 what were those noises about and the person who
10 didn't respond to you and the person who said that
11 money came from Wendy's finally and I'm tired of
12 being broke and the person you dropped off at MB's
13 house and the person you picked back up from MB's
14 house and the person who then -- did he leave when
15 the police came? Did he walk off?

16 A When we got home he told me he was going up to
17 Lakeside to his grandfather's house.

18 Q He didn't ask to borrow your car?

19 A No.

20 Q But is the person who did all that, is he in the
21 courtroom?

22 A Yes, sir.

23 Q Is it Defendant John Portee?

24 A Yes, sir.

25 MR. MEADORS: We'd ask the record so reflect.

1 **THE COURT:** All right.

2 **MR. MEADORS:** That's all we have. Thank you.

3 **THE COURT:** Jurors, as I explained to you, I
4 basically don't know what's going to transpire until
5 it transpires. You know, the attorneys have talked
6 to everybody and so forth. Any time a witness takes
7 the stand, I explain to you that eventually you're
8 going to pass upon the credibility or believability
9 of what witnesses say.

10 With certain exceptions, which we aren't
11 concerned with, any time you testify it's permissible
12 to bring out that an individual has a prior criminal
13 record. Okay? If it's brought out, if it's in the
14 rules to bring it out, some can't come in; that's not
15 to tell you the witness is not leveling with you.
16 That's just another thing you put into the equation
17 when you are evaluating the testimony of any witness.
18 There may be other witnesses who testify that have
19 criminal records. And if you take the stand, they
20 can ask you about a prior criminal record. All
21 right. Mr. Strickler.

22 **MR. STRICKLER:** Thank you, Your Honor. May it
23 please the Court.

24 **THE COURT:** Sure.

25 CROSS EXAMINATION

1 **BY MR. STRICKLER**

2 **Q** Good afternoon, Ms. Hunter.

3 **A** Good afternoon.

4 **Q** You have, if I heard your testimony correctly, six
5 children at this point?

6 **A** Yes, sir.

7 **Q** Correct? Are all of them still living with you?

8 **A** Yes, sir.

9 **Q** Okay. And you love your kids, right?

10 **A** Very much.

11 **Q** Okay. Now, you have given to the police four written
12 statements regarding this incident, correct?

13 **A** Three, sir.

14 **Q** I'm sorry?

15 **A** Three.

16 **Q** You also gave them a written statement?

17 **A** You're right. You're right. Four.

18 **Q** Four?

19 **A** Yes, sir.

20 **Q** Now, I guess what? A couple of them were taken on
21 the 3rd of September and one was taken on the 6th.
22 Is that right?

23 **A** Yes, sir.

24 **Q** Okay. And one was taken later in October I believe.
25 Right?

- 1 **A** Yes, sir.
- 2 **Q** Okay. Now, where were you located when you gave the
3 first statement that you gave to the police
4 department on September 3rd, 2006?
- 5 **A** At the Richland County police department.
- 6 **Q** At the Sheriff's Department?
- 7 **A** Yes, sir.
- 8 **Q** Okay. You were being questioned by the police?
- 9 **A** Yes, sir.
- 10 **Q** Did you have any lawyer with you at that time?
- 11 **A** No, sir.
- 12 **Q** Roughly, I know you weren't looking at your watch or
13 anything like, but about what time did you get up to
14 the police station, the Sheriff's Department?
- 15 **A** I'm not sure, sir.
- 16 **Q** Okay. And how long did you speak with the Sheriff's
17 Department?
- 18 **A** It had to be a good six hours, six to seven hours.
- 19 **Q** Six or seven hours?
- 20 **A** Yes, sir.
- 21 **Q** That's the time it took to do the two statements that
22 you gave that day?
- 23 **A** Yes, sir.
- 24 **Q** Okay. A good six or seven hours. And who were you
25 speaking with at the Sheriff's Department?

- 1 A Officer Talkish and --
- 2 Q I'm sorry?
- 3 A A Mr. Talkish.
- 4 Q Okay.
- 5 A And --
- 6 Q Another one?
- 7 A My mind just went blank. I can't even remember his
- 8 name. Mr. McRoberts.
- 9 Q McRoberts?
- 10 A Yes, sir.
- 11 Q And those were the people you were speaking with for
- 12 the entire period of time?
- 13 A Yes, sir.
- 14 Q Anyone else come in and out to speak with you also?
- 15 A Yes, sir.
- 16 Q Do you remember who that might have been?
- 17 A No. Several police officers.
- 18 Q Several others?
- 19 A Yes, sir.
- 20 Q And can you describe for us what feelings -- first of
- 21 all, you're at the Sheriff's Department, in a little
- 22 room in the Sheriff's Department?
- 23 A In the cubicle.
- 24 Q In a cubicle?
- 25 A Yes, sir.

1 Q Back in the investigations division?

2 A Yes, sir.

3 Q You're not out in the lobby talking with people in
4 the lobby about this?

5 A No, sir.

6 Q And you've got one officer or two officers in there
7 with you pretty much at all times?

8 A Yes, sir.

9 Q Okay. Maybe one goes out and another one comes in?

10 A Yes, sir.

11 Q Maybe one of them asks you some questions and then
12 another one asks you some other questions?

13 A Yes, sir.

14 Q Okay. And your first statement that you gave --
15 okay. Beg the Court's indulgence, Your Honor?

16 **THE COURT:** Sure.

17 Q At 8:54 in the evening on September 3rd, it wasn't at
18 all like what you've testified to here today,
19 correct?

20 A I'm sorry. Say that again?

21 Q The first statement that you gave on September 3rd,
22 2006, --

23 A Yes, sir.

24 Q -- you didn't hear any noises, right?

25 A No, sir.

1 Q Okay. You didn't talk about seeing any money, right?

2 A No, sir.

3 Q You didn't talk about most of what you've talked
4 about here today, right?

5 A Right.

6 Q You talked about taking him to the store, about him
7 going in, not being able to go in?

8 A We talked about that.

9 Q Driving off?

10 A Yes, sir.

11 Q Right? And you told them about going to Georgia I
12 think?

13 A Right.

14 Q And that statement was given at 8:54 on the 3rd. The
15 second statement, because Mr. Meadors just said
16 towards the end of the time he was talking with you
17 and he just said and then a second statement you told
18 them a little bit more?

19 A Yes, sir.

20 Q And then the second statement you told them a little
21 bit more?

22 A Yes, sir.

23 Q And that's basically what you're testifying to today.
24 That is the gist that you told him, right?

25 A Yes, sir.

1 Q And your second statement was given at 11:55 in the
2 evening, the first one at 8:54, the second one three
3 hours later. What did they have to say to you for
4 those three hours while you're sitting back in the
5 room?

6 A Pretty much just kept questioning me, asking me
7 stuff. And I was very upset. They'll just give me a
8 chance because I was pregnant to, you know, get
9 myself together.

10 Q Did they talk with you about your children?

11 A Yes, sir.

12 Q Talk with you about when you wanted to be able to see
13 your children?

14 A Yes, sir.

15 Q And they kept at you for three hours before you gave
16 the second statement. Is that right?

17 A Yes, sir.

18 Q From 8:54 to 11:55 in the evening, right?

19 A Yes, sir.

20 Q You didn't have a lawyer with you then, right?

21 A No, sir.

22 Q And then evidently they talked with you again on
23 September 6th. Is that up at the Sheriff's
24 Department also?

25 A Yes, sir.

- 1 Q Okay. How long did they speak with you for that day?
- 2 A Could you repeat that again?
- 3 Q How long did they speak with you again that day?
- 4 A Possibly a couple of hours.
- 5 Q A couple hours? Did they scare you up?
- 6 A Was I scared?
- 7 Q On the 3rd when they spoke with you, did they scare
- 8 you up on the 3rd when they were speaking with you?
- 9 A Yes.
- 10 Q They did, didn't they?
- 11 A I was intimidated. I was scared. Yes, sir.
- 12 Q Scared again on the 6th?
- 13 A Yes. I've been scared throughout the whole thing.
- 14 Q Now, you indicated you'd spoken with Mr. Meadors.
- 15 And on how many occasions have you spoken with Mr.
- 16 Meadors?
- 17 A About twice.
- 18 Q Twice?
- 19 A Yes, sir.
- 20 Q When did you speak with him, the best you can
- 21 remember?
- 22 A A couple of months ago and then last week.
- 23 Q Now, you are -- how long did you speak with Mr.
- 24 Meadors, if you can remember? I know a couple of
- 25 months ago we didn't have a stopwatch on or anything

1 like that. If you can remember, how long did you

2 speak with Mr. Meadors a couple of months ago?

3 A Two or three hours. Two, two and a half.

4 Q Two and a half hours?

5 A Yes, sir.

6 Q He didn't pop by your house and sit down in your
7 living room and talk with you. You came up here to
8 the courthouse to speak with him up here?

9 A Yes, sir.

10 Q Who else was around then?

11 A The first time?

12 Q Mm-hmm (affirmative). Yes, ma'am.

13 A McRoberts, Mr. Meadors, myself, Ms. Joanna.

14 Q Your attorney?

15 A Yes, sir.

16 Q Okay. And you indicated you spoke with him again a
17 couple of weeks ago I believe you said?

18 A Last week.

19 Q Last week?

20 A Yes, sir.

21 Q And that again was up in his office?

22 A Yes, sir.

23 Q And how long did that conversation take?

24 A About the same time.

25 Q A couple, three hours?

1 A Probably like two, two hours.

2 Q Now, it would be fair to say that what you've
3 testified to here today differs substantially from
4 that statement you gave September 3rd, correct?

5 A Yes, sir.

6 Q Even a difference from the second statement you gave
7 September 3st, right?

8 A Yes, sir.

9 Q And you are charged with misprisonment of a felony.
10 As Mr. Meadors said, it carries up to ten years,
11 right?

12 A Yes, sir.

13 Q Who has control over what happens to you in the
14 future?

15 A Jesus.

16 Q I'm sorry?

17 A The Lord.

18 Q How about who has control over what happens to your
19 charges? Maybe Mr. Meadors?

20 A Yes, sir.

21 Q No maybe about it?

22 A Excuse me?

23 Q No maybe about it, right?

24 A Yes, sir.

25 Q Okay. Who has control over whether or not you get to

1 spend time with your six children over the next ten
2 years or whether you get to spend time at the Camille
3 Griffeth Correctional Center for the next however
4 long? That would be Mr. Meadors, right?

5 **A** Yes, sir.

6 **Q** Now, you wrote John a letter October 27th, 2008,
7 didn't you?

8 **A** Possibly. Yes, sir.

9 **MR. MEADORS:** Your Honor, I have no objection to
10 that if he's going to offer that. But if he's going
11 to publish it without offering it I object. But I
12 think if he's going to talk about it --

13 **MR. STRICKLER:** First I need to see if she can
14 identify it.

15 **A** Yes, sir. That's my handwriting.

16 (Mr. Strickler showing witness different pages)

17 **A** Yes, sir. Yes, sir. Yes, sir.

18 **MR. STRICKLER:** Okay. I intend to question her,
19 Your Honor; isn't it true in that letter that you
20 indicate that you never saw John go inside Wendy's?

21 **MR. MEADORS:** Your Honor, I'm going to object.
22 If he wants to offer that letter, he can't go through
23 and now edit. I've been through this with him
24 before.

25 **THE COURT:** Actually it would be better to

1 introduce it. But he's the lawyer on this. He can
2 do that, and then you can publish the whole rest of
3 it if you want to.

4 **MR. MEADORS:** Can we approach? I don't think he
5 can have his cake and eat it, too.

6 **THE COURT:** He can. He can ask about
7 inconsistent statements. I know you've got your
8 little evidence book there but the judge has got a
9 bigger book.

10 (Whereupon, a bench conference is had)

11 **Q** Isn't it true that when you wrote Johnson the 27th
12 you indicated that you'd felt intimidated at the
13 Sheriff's Department?

14 **A** Yes, sir.

15 **Q** That you were coerced at the Sheriff's Department?

16 **A** Some things. Yes, sir.

17 **MR. MEADORS:** Your Honor, objection. He's
18 questioning her off a document not in evidence,
19 number one. Under the rules I'm now entitled to a
20 copy of it to look at it.

21 **THE COURT:** You are.

22 **MR. MEADORS:** And I'd like to look at it. I've
23 never seen it, first of all. And we'd ask the Court
24 to get me a copy.

25 **THE COURT:** You'll get your copy.

1 **MR. MEADORS:** And beyond that, Your Honor, I
2 don't think he can publish it in there.

3 **THE COURT:** Well, hold it a second. The bottom
4 line, jurors, like I told you, I don't know anything
5 about the case. I assumed that's one of those
6 statements she wrote out. It turns out it's a letter
7 she allegedly wrote to the defendant which Mr.
8 Meadors says he has not seen. So just take a break.
9 We'll get him a copy of it and then we'll talk about
10 it. All right.

11 **MR. MEADORS:** Thank you, Your Honor.

12 **THE COURT:** Don't talk about the case, jurors.
13 Just step out. The letter may or may not come in. I
14 haven't seen it.

15 (Jury out at 4:20 p.m.)

16 **MR. MEADORS:** Can I have somebody make a copy
17 real quick?

18 **MR. STRICKLER:** That's where Ms. Pringle is
19 going right now.

20 **THE COURT:** Okay. See, I don't even know what
21 you all are doing, obviously. But if she wrote a
22 letter to him, you can ask her about any inconsistent
23 statements she made.

24 **MR. STRICKLER:** And that's what I'm trying to
25 do.

1 **THE COURT:** If that's what you are trying to do.

2 **MR. STRICKLER:** That's what I'm trying to do.

3 **THE COURT:** He needs that copy of it. He then
4 can question her about anything else in there. But
5 he doesn't know at this point what it is.

6 **MR. STRICKLER:** Okay.

7 **THE COURT:** There you go. He may be able to
8 move, put the whole thing in after he's looked at it.
9 But that's not in front of us at this point.

10 **MR. STRICKLER:** Yes, sir. Yes, sir. And of
11 course it hasn't been supplied to him because it's
12 not part of my case in chief. It's impeachment
13 evidence.

14 **THE COURT:** You've got it.

15 **MR. STRICKLER:** And, you know, my understanding
16 of the rule is extrinsic evidence, which would be
17 admission of a document itself of a prior
18 inconsistent statement by a witness, is not
19 admissible unless you've been advised of the
20 substance of it, which is what I'm trying to do.

21 **THE COURT:** I understand on the one hand. But
22 on the other hand, the solicitor is entitled to look
23 at what you're trying to question her about.

24 **MR. STRICKLER:** No question about that. I think
25 he's probably entitled to look at it after I question

1 her about it. But they're making a copy right now.

2 **THE COURT:** I understand. So we are at ease.
3 After he has looked at it just tell somebody to come
4 get me. He may not even have any further objections
5 if you're just going to ask her one or two things
6 about it.

7 **MR. STRICKLER:** Yes, sir.

8 (Whereupon, a break is taken)

9 (WHEREUPON, State's Exhibit No. 109 is marked
10 for identification.)

11 **THE COURT:** All right. Everybody straight?

12 **MR. MEADORS:** Judge, just for the record, I just
13 need to get this on the record. When he was crossing
14 Ms. Hunter he said he had a five-page statement.
15 First he handed me two and then he said he wasn't
16 going to hand me the others. Then he handed me two.
17 He said it's four pages, not five. But he did say
18 five. If there are two different documents, and I'm
19 assuming this is all that he had when he talked to
20 Ms. Hunter --

21 **THE COURT:** Two different letters? I don't
22 know.

23 **MR. STRICKLER:** Well, I don't know what I said.
24 If I said five I misspoke. There are four pages of
25 the document I had.

1 **THE COURT:** Okay. Four pages.

2 **MR. STRICKLER:** There are actually --

3 **THE COURT:** Mr. Strickler is not hiding
4 anything.

5 **MR. STRICKLER:** Actually I think there are
6 actually three separate letters.

7 **THE COURT:** All right, sir.

8 **MR. STRICKLER:** Which is why I supplied him with
9 the two because that's all I really intended to go
10 into. But since he didn't like that, I gave him the
11 other two pages.

12 **MR. MEADORS:** On the back, I see something
13 written on the back. It's just not on the back of my
14 copy, and I don't know what that is.

15 **MR. STRICKLER:** Oh. "I hope you and the Lord
16 will forgive me."

17 **MR. MEADORS:** Bless you.

18 **MR. STRICKLER:** It's what's written on the back.

19 **MR. MEADORS:** I just didn't have a copy of that.
20 I just saw it. Judge, first of all, it's not an
21 inconsistent statement. She testified she didn't
22 know where he went to the back on her testimony.

23 **THE COURT:** He can ask her if she wrote that
24 statement. It has to be inconsistent with one of the
25 four versions.

1 **MR. MEADORS:** And it hasn't been. I mean, he
2 asked her on the stand. She said, I don't know where
3 he went to the back. So this isn't inconsistent with
4 that. She testified that yes, she felt harassed.
5 Well, that's in here. So that's not a prior
6 inconsistent statement.

7 **THE COURT:** He can ask her about it.

8 **MR. MEADORS:** But, Judge, it's not a prior
9 inconsistent statement if she's already testified to
10 it.

11 **THE COURT:** He's on cross examination. He can
12 emphasize a part that she felt, if she did,
13 threatened or intimidated.

14 **MR. MEADORS:** But he cannot -- respectfully, I'm
15 hoping he cannot read the whole document, - introduce
16 it without introducing it.

17 **THE COURT:** No. He is not going to read it.
18 Plus, you can't make him introduce it if you only
19 want to ask a part of it because he might not want to
20 present any evidence. If he introduced it, then he
21 waives his right to close. Mr. Strickler has been
22 around, man. He's not going to enter any evidence.

23 **MR. MEADORS:** Yes, sir. We've been through this
24 before. Mr. Strickler will, respectfully, try to get
25 stuff in evidence without it being in evidence; and I

1 just don't think you can do that.

2 **THE COURT:** Well, he can ask her about the
3 letter because that is yet another statement.
4 Whether it's consistent or inconsistent, now that you
5 have it, you can ask her about anything in there that
6 you would like.

7 **MR. MEADORS:** We're going to be here a while.
8 I've got some other stuff, Judge.

9 **THE COURT:** I know. Anything else?

10 **MR. STRICKLER:** Not from me, Judge.

11 **THE COURT:** Okay. Now, Mr. Meadors, of course
12 the judge is prepared to stay here as long as
13 necessary. If you have a meeting, we can break this
14 witness and take her back up in the morning.

15 **MR. MEADORS:** The preacher can go. Whatever you
16 want to do, Judge.

17 **THE COURT:** Whatever you want to do. The judge
18 gets the big bucks, so it doesn't matter to him.

19 (Jury in at 4:45 p.m.)

20 **THE BAILIFF:** The jurors are all seated.

21 **THE COURT:** Okay. You may proceed.

22 **MR. STRICKLER:** Thank you, sir. May it please
23 the Court.

24 **THE COURT:** Now, jurors, apparently, not knowing
25 anything about it of course, she wrote some letters

1 to the defendant. Now everybody has looked at them.
2 He can question her about them. Whether any
3 statements in there are consistent or inconsistent
4 are for you to decide. Go ahead.

5 **MR. STRICKLER:** Thank you, sir.

6 **Q** Ms. Hunter, I was talking with you about a letter
7 that you said you took a look at, said you wrote
8 October 27th, 2008 to Mr. Portee. Isn't it true that
9 at that time you told him "I never heard any noise"?

10 **A** When? In October 2008? I'm sorry. Are you asking
11 me is that true, that I told him I never heard a
12 noise?

13 **Q** Isn't it true that in the letter, you've indicated it
14 was in your handwriting you wrote him dated
15 October 27th, 2008, you told him "I never heard any
16 noise"?

17 **A** Yes, sir.

18 **Q** Isn't it true you told him "I just know you knocked
19 and didn't get no answer and you came back and sat in
20 the car"?

21 **A** Yes, sir.

22 **Q** Isn't it true you wrote him "I had no knowledge of
23 anything or of seeing nothing"?

24 **A** Yes, sir.

25 **Q** Now, how many different versions of the events of

1 that evening have you told?

2 **A** Four.

3 **Q** Four?

4 **A** Yes, sir.

5 **Q** Plus, whatever you may have written to John Portee,
6 correct?

7 **A** Yes, sir.

8 **Q** But four formal statements, right?

9 **A** Yes, sir.

10 **Q** Okay. And now you've testified here today, right?

11 **A** Yes, sir.

12 **Q** And on each of those four formal statements you have
13 sworn to tell the truth, correct?

14 **A** Yes, sir.

15 **Q** I mean, that's part of the statement process. You
16 signed that you swore to tell the truth, right?

17 **A** Yes, sir.

18 **Q** Okay. And in here today you have sworn to tell the
19 truth, correct?

20 **A** Yes, sir.

21 **Q** All right. Thank you, ma'am.

22 **MR. MEADORS:** Beg the Court's indulgence.

23 **THE COURT:** Sure.

24 (Pause)

25 REDIRECT EXAMINATION

1 BY MR. MEADORS

2 Q Do you remember telling Ivy, a lady named Ivy, that
3 the police hadn't bothered you?

4 A Yeah. I didn't go into a whole lot of detail. But,
5 yeah. Yes, sir.

6 Q And that they hadn't been mean to you and that they
7 hadn't threatened you with your kids?

8 A Yes, sir.

9 Q And the police didn't threaten you?

10 A Not outright threaten. No, sir.

11 Q And I've been with you these several times?

12 A Yes, sir.

13 Q You invited me in your home. Have I ever threatened
14 you?

15 A No, sir.

16 Q Have I treated you like a lady?

17 A Yes, sir.

18 Q That's the truth, isn't it?

19 A Yes, sir.

20 Q And you've treated me with kindness?

21 A Yes, sir.

22 Q Did you ever feel intimidated around me?

23 A Around you?

24 Q Yes, ma'am.

25 A The first time I met you. Yes, sir.

1 Q And then we got to know each other. Do you feel
2 intimidated about me?

3 A No, sir.

4 Q Are you intimidated because I am the deputy
5 solicitor?

6 A No.

7 Q And after we met -- why did you feel intimidated when
8 I first met you, Heather?

9 A Because I was trying to explain to you my own
10 statements instead of like the way they wrote it
11 down. They wrote it -- it was like, to me, they
12 wrote it in their words, the way they wanted to
13 express it, and that wasn't my words.

14 Q Okay. And what are your words now? And we talked
15 and we went over that, right?

16 A Yes, sir.

17 Q And what is the truth? I mean, did you go there with
18 him that morning?

19 A Yes, sir.

20 Q And did he go back to the door, go back toward the
21 Wendy's the first time?

22 A Yes, sir.

23 Q And did he come back to the car?

24 A Yes, sir.

25 Q And then did he say hold on, and he goes back again?

1 **A** Yes, sir. After sitting for a while and then he
2 went. Yes, sir.

3 **Q** And then after that did you hear two loud noises?

4 **A** Yes, sir.

5 **Q** I mean, you really did, didn't you?

6 **A** Yes, sir.

7 **Q** I mean, I didn't make you say that?

8 **MR. STRICKLER:** Your Honor, I'll object to the
9 loading at this point.

10 **THE COURT:** Yeah. He is leading a little bit.

11 **Q** I thought the rules -- I mean, so that is the truth?

12 **A** Yes, sir.

13 **Q** And I didn't make you say that?

14 **A** No, sir.

15 **Q** I didn't intimidate you to say that?

16 **A** No, sir.

17 **Q** Well, since our first meeting -- and I didn't know I
18 intimidated you. That's surprising. You invited me
19 to your house after that?

20 **A** Yes, sir.

21 **Q** Introduced me to your kids?

22 **A** Yes, sir.

23 **Q** I didn't ever say anything about your family, did I?

24 **A** No, sir.

25 **Q** And, as a matter of fact, I'm a deputy solicitor.

1 I'm a prosecutor. That's the executive branch. And
2 Mr. Strickler said my life is in your hands. Well,
3 that's not really true, is it? A judge is going to
4 decide what happens to you, right?

5 A Yes, sir.

6 Q I don't have control over sentencing. That's nothing
7 of me, is it? I'm not a judge, am I?

8 A Sir, I don't know because I've never been in trouble
9 before. So I don't know.

10 Q And you're not intimidated right now, are you?

11 A No, sir.

12 Q And on September 6th, 2006 when you gave this
13 statement where you told everything basically you are
14 telling us now, right?

15 A Yes, sir.

16 Q Had you ever met me?

17 A No, sir.

18 Q Had I ever been to your house?

19 A No, sir.

20 Q Had I ever talked to Chaz or Stacy?

21 A No, sir.

22 Q And what you testified to was what you put in here
23 September 6th, isn't it?

24 A Yes, sir.

25 Q And on October 9th, 2006 the defendant said, "I'll

1 have some mother-fucker beat your ass", didn't he, on
2 a phone call?

3 **A** Not to me. He has never told me that.

4 **MR. STRICKLER:** I will object, Your Honor. We
5 have a matter we need to take up.

6 **THE COURT:** All right. He didn't go into that.

7 **MR. MEADORS:** Sir?

8 **THE COURT:** He didn't go into that. You're on
9 redirect.

10 **MR. MEADORS:** Yes, sir. He's talking about
11 prior intimidation.

12 **THE COURT:** He's talking about what he went
13 into. He didn't go into that.

14 **Q** Have you ever been threatened by the defendant?

15 **A** No, sir. Oh, no.

16 **MR. MEADORS:** Your Honor, can we approach? Or
17 do we need to take a matter up?

18 **THE COURT:** We're not sending the jury out.
19 Come on up here.

20 (Whereupon, a bench conference is had)

21 **Q** A few other questions. And getting back, he did go
22 over this some, that third statement on
23 September 6th. Do you mind if I get close to you?

24 **A** No, sir.

25 **Q** Is that you down there?

1 **A** Yes, sir.

2 **Q** All right. You put your name down there?

3 **A** Yes, sir.

4 **Q** Did you tell them where you lived and your date of
5 birth?

6 **A** Yes, sir.

7 **Q** You talked about him coming there at 5:30 in the
8 morning?

9 **A** Yes, sir.

10 **Q** You talked about him taking a nap?

11 **MR. STRICKLER:** And I object.

12 **Q** Did you talk about --

13 **THE COURT:** Hold it. Hold it. Hold it. Hold
14 it. Hold it. Mr. Strickler objects because, you
15 know, you're leading. Ask her questions if you want
16 to. You can't just do that.

17 **Q** Did you put in your statement -- I don't know whether
18 you did or not -- did you put in your statement when
19 he got up that morning?

20 **A** What do you mean?

21 **Q** After he got to your house you've testified he laid
22 down. Did you put in there after that when you all
23 went to Wendy's?

24 **A** Yes, sir. I mean, the police asked me to guess the
25 time.

1 Q And did you do that?

2 A Yes, sir.

3 Q And did you put in here about hearing the noises on
4 the September 6th statement? That's all I'm asking.

5 A No.

6 Q You didn't put in here "I heard the noises. I heard
7 it twice"?

8 A Yes, sir.

9 Q That's September 6th?

10 A Yes, sir.

11 Q And you testified you did hear the noises, didn't
12 you?

13 A Yes, sir.

14 Q You heard the noises?

15 A Yes, sir.

16 Q That's all.

17 THE COURT: Mr. Strickler, anything else?

18 MR. STRICKLER: No, sir. Thank you.

19 THE COURT: You can step down.

20 MR. MEADORS: Chaz Hunter.

21 CHAZ HUNTER, after being duly sworn, testifies
22 as follows:

23 THE CLERK: Please have a seat. State your full
24 name for the record.

25 THE BAILIFF: State your full name. State your

1 name.

2 **THE WITNESS:** My name is Chaz Hunter.

3 DIRECT EXAMINATION

4 **BY MR. MEADORS**

5 **Q** Good afternoon, Chaz. Would you please make sure you
6 speak in here so this madam court reporter and these
7 ladies and gentlemen can hear you, please, sir?

8 **A** Yes, sir.

9 **Q** You need to pull up. Chaz, tell these folks about
10 Chaz Hunter, about you. Who are you? Where are you
11 from? Where were you born?

12 **A** My name is Chaz Hunter. I'm from Longbridge, New
13 Jersey, and I attend school at Eau Clair High School.

14 **Q** What grade are you in, Chaz?

15 **A** Eleventh grade.

16 **Q** What are you studying in school?

17 **A** Basically everything.

18 **Q** Do you have any particular subjects you like?

19 **A** Yes. History.

20 **Q** What do you want to do with your life, Chaz?

21 **A** I plan on going in the armed forces.

22 **Q** You going to want to go to college?

23 **A** No, sir.

24 **Q** What branch do you want to go in?

25 **A** Navy.

- 1 Q Now, your mama is Ms. Heather Hunter?
- 2 A Yes, sir.
- 3 Q And how many brothers and sisters do you have?
- 4 A Five.
- 5 Q And in that hierarchy, where are you? Are you top or
- 6 bottom? I mean, I know you're not the bottom. But
- 7 are you the oldest?
- 8 A Yes, sir.
- 9 Q And your other brother is who?
- 10 A Stacy.
- 11 Q And then who are your other siblings?
- 12 A My sister, Ria; my sister, Armadi; my brother,
- 13 Kierie; my brother, Cantrell.
- 14 Q Where do you all live now?
- 15 A At
- 16 Q You've been there for a while?
- 17 A Yes, sir.
- 18 Q You know the person that's on trial, John Portee?
- 19 A Yes, sir.
- 20 Q How do you know him?
- 21 A He used to date my mother.
- 22 Q Okay. Now on Labor Day of 2006, this weekend,
- 23 September 3rd, do you remember that weekend?
- 24 A Yes, sir.
- 25 Q Can you remember that Sunday of Labor Day weekend,

1 what, if anything, you all did, you all being your
2 family?

3 A Yes, sir.

4 Q Can you tell these folks about that?

5 A We went to Georgia to go see my little sister and my
6 mother's Godparents.

7 Q And when you say we, who all went?

8 A Me, my mother, my brothers, my sister. Well, my
9 brother and John Portee.

10 Q And who did you go see in Georgia?

11 A My sister and my mother's Godparents.

12 Q And when got back from Georgia -- and whose car were
13 you in?

14 A We were in a Rent-A-Car.

15 Q Who had rented it?

16 A My mother.

17 Q When you got back from Georgia -- I say you all --
18 where did all y'all go?

19 A Home.

20 Q To Hawthorne?

21 A Yes, sir.

22 Q Now, prior to that, waking that up morning, this was
23 a Sunday?

24 A Yes, sir.

25 Q Did you see John Portee that morning?

1 A No, sir.

2 Q Did you kind of sleep late that morning?

3 A Yes, sir.

4 Q All right. So the first time you see him is prior to

5 going to Georgia?

6 A Yes, sir.

7 Q And you get back from Georgia. You go to Hawthorne?

8 A Yes, sir.

9 Q Your residence?

10 A Yes, sir.

11 Q What happens then?

12 A Then we took John to his friend's house.

13 Q You took John Portee to his friend's house. Do you

14 remember that friend?

15 A Yes, sir.

16 Q What's his name?

17 A MB.

18 Q He goes by MB?

19 A Yes, sir.

20 Q Is that how you know him?

21 A Yes, sir.

22 Q Do you know where he lived, Chaz?

23 A Yes, sir.

24 Q Can you tell them? I'm sorry.

25 A Down the street from Bi-Lo off North Main.

1 Q So who dropped him off there? You? Your mom? Who
2 else?

3 A Me and my mother and my brother.

4 Q And what happened after that? Where did you all go?

5 A We went to go pick up John a lighter and a phone
6 card.

7 Q Do you remember where you went?

8 A No, sir. I know we went to the store and got it.
9 That's all I know.

10 Q And what did you do after going to the store?

11 A After we went to the store we took it back to him.
12 And then we went on another errand to get some socks.

13 Q Take the lighter back to him, then go on another
14 errand to get some socks?

15 A Yes, sir.

16 Q Do you remember where you went?

17 A The mall.

18 Q Okay. And you got the socks?

19 A Yes, sir.

20 Q Okay. What did you do after that, Chaz?

21 A Took it back to John. No. We went and picked John
22 up and went home.

23 Q Okay. And what was John Portee wearing then?

24 A When we went home he was wearing an orange shirt,
25 dark blue jeans.

- 1 Q Had he changed from the time you had seen him before?
- 2 A Yes.
- 3 Q When you go back to 47 -- what's your address?
- 4 A
- 5 Q And showing you what's State's 108 I believe, is that
- 6 it?
- 7 A Yes, sir.
- 8 Q Do you remember what time of day it was?
- 9 A Sometime around 3.
- 10 Q When you get back to Hawthorne?
- 11 A Yes, sir.
- 12 Q And what happens when you get back to Hawthorne? You
- 13 picked John Portee up from his friend's house?
- 14 A Mm-hmm (affirmative).
- 15 Q Then you come back?
- 16 A Yes, sir.
- 17 Q And I'm asking you when you get to Hawthorne, what
- 18 time did you get back from Georgia?
- 19 A What time did we get back from Georgia? I don't know
- 20 really know, sir, what time we got back from Georgia.
- 21 Q You come back from Georgia, take him over to MB's
- 22 house. You run those errands, come pick him up.
- 23 Then you come back to Hawthorne?
- 24 A Yes, sir.
- 25 Q When you get back to Hawthorne, you being you, John

1 Portee, your mama and your other brother, --

2 A Yes, sir.

3 Q -- what happened when you got back to Hawthorne
4 Avenue, if anything?

5 A When we got back to Hawthorne Avenue, me and my
6 brother, we stayed on the porch. My mom went in the
7 house.

8 Q You and your brother stayed on the porch and your mom
9 went where?

10 A In the house.

11 MR. MEADORS: If I can approach, Your Honor?

12 THE COURT: Okay.

13 Q State's 108, show this jury, Mr. Hunter, where you
14 were?

15 A Right there. _____

16 Q Right there. Up on the porch?

17 A Yes, sir.

18 Q And what, if anything, did you observe after that?

19 A I observed that John went across the street to the
20 woods and when he came out he had a bag.

21 Q Went across the street to the woods and when he came
22 out he had a bag?

23 A Yes, sir.

24 MR. MEADORS: Beg the Court's indulgence. I
25 just lost something.

1 **THE COURT:** All right.

2 **Q** Looking at State's 107 and State's 106, do you
3 recognize that?

4 **A** Yes, sir.

5 **Q** And does that show across from your yard?

6 **A** Yes, sir.

7 **Q** Across from Hawthorne?

8 **A** Yes, sir.

9 **Q** And is that where you observed the defendant go and
10 come back with a bag?

11 **A** Yes, sir.

12 **Q** And can you show me on 107 where he went?

13 **A** Right here.

14 **Q** He goes in without a bag, comes out with a bag?

15 **A** Yes, sir.

16 **Q** And you're up on the porch at that point?

17 **A** Yes, sir.

18 **Q** Where, if anywhere, does the defendant go with that
19 bag when he crosses back Hawthorne?

20 **A** He went to the house and used the bathroom.

21 **MR. MEADORS:** And, Your Honor, I don't know if I
22 said it. If I didn't, I apologize. 106 and 107.

23 (WHEREUPON, State's Exhibit No. 106 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 107 is admitted
2 into evidence.)

3 Q You're still on the porch?

4 A Yes, sir.

5 Q Does John Portee come out of the house?

6 A Yes, sir.

7 Q With the bag?

8 A Yes, sir.

9 Q Where, if anywhere, does he go when he comes out of
10 the house?

11 A To the car.

12 Q And looking back on State's 108, Mr. Hunter, where
13 was the car parked?

14 A Right here in the driveway.

15 Q Okay. And you're up where?

16 A On the porch.

17 Q Is your brother with you?

18 A Yes, sir.

19 Q You said John Portee comes out of the house. Where
20 does he go, if anywhere?

21 A To the car.

22 Q What, if anything, happened after that?

23 A After that the police came down the street.

24 Q And this gentleman right here, did you end up seeing
25 him?

- 1 **A** Yes, sir.
- 2 **Q** Sergeant McRoberts?
- 3 **A** Yes, sir.
- 4 **Q** And at that point when you saw Sergeant McRoberts,
5 what did John Portee do?
- 6 **A** He walked to the back of the house.
- 7 **Q** And showing you what's marked State's 105, do you
8 recognize that?
- 9 **A** Yes, sir.
- 10 **Q** And is that where the defendant walked?
- 11 **A** Yes, sir.
- 12 **Q** Is that towards, what you just said, towards the back
13 of your house?
- 14 **A** Yes, sir.
- 15 **Q** And back in the back of that house, State's 104, is
16 that behind your house?
- 17 **A** Yes, sir.
- 18 **Q** And is that the direction John Portee walked?
- 19 **A** Yes, sir.
- 20 **Q** And your testimony, you said he had the bag with him?
- 21 **A** Yes, sir.
- 22 **Q** I mean, you saw him leave with the bag?
- 23 **A** Yes, sir.
- 24 **Q** Was he wearing anything? Did he do anything with a
25 hat or anything as he was leaving?

- 1 **A** No, sir. He dropped his head.
- 2 **Q** He dropped his head and walked off?
- 3 **A** Yes, sir.
- 4 **Q** When the police came?
- 5 **A** Yes, sir.
- 6 **Q** And, Mr. Hunter, did you tell the police what you had
7 observed and what you just told this jury?
- 8 **A** Yes, sir.
- 9 **Q** And you told them that on September 3rd, that same
10 day?
- 11 **A** Yes, sir.
- 12 **Q** And is that you, Chaz, right there?
- 13 **A** Yes, sir.
- 14 **Q** All right. The first, second, third statement (sic)?
15 Three pages?
- 16 **A** Yes, sir.
- 17 **Q** And is the person you saw go across Hawthorne without
18 a bag and come back with a bag and the person you saw
19 leave the house with a bag toward the back of the
20 house when the police came, is that person in the
21 courtroom?
- 22 **A** Yes, sir.
- 23 **Q** Is it Defendant John Portee?
- 24 **A** Yes, sir.
- 25 **Q** And looking at what's State's 107 -- 109; I

1 apologize -- Mr. Hunter, does that appear to be the
2 bag that you saw the defendant with?

3 A Yes, sir.

4 Q Yes, sir?

5 A Yes, sir.

6 MR. MEADORS: Your Honor, we'd offer State's
7 109.

8 MR. STRICKLER: Chain, Your Honor, on that.

9 THE COURT: You've got to connect it up.

10 MR. MEADORS: 109 for identification. That's
11 fine.

12 MR. STRICKLER: Without objection for that
13 purpose, Your Honor.

14 MR. MEADORS: Begging Your Honor's indulgence.

15 Q I know I showed you. This is 104. This may be a
16 little closer up of the backyard. But is that the
17 backyard? I can't remember if I showed you that or
18 not.

19 A Yes, sir.

20 MR. MEADORS: That's 104, Your Honor. And I
21 think I already offered 105 and 108. But for the
22 record, if I haven't, I do now. One second, please.

23 (WHEREUPON, State's Exhibit No. 104 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 105 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 108 is admitted
4 into evidence.)

5 MR. MEADORS: Thank you.

6 MR. STRICKLER: May it please the Court, sir.

7 THE COURT: Sure, Mr. Strickler.

8 CROSS EXAMINATION

9 BY MR. STRICKLER

10 Q Good afternoon.

11 A Good afternoon.

12 Q Mr. Hunter, --

13 A How you doing?

14 Q -- my name is Doug Strickler. I'm one of the
15 attorneys representing John.

16 A Yes, sir.

17 Q I really just have a couple of questions. It will
18 all depend on whether or not I can find the pictures
19 I need. Okay. This is State's 108 here. That's the
20 house on Hawthorne, right?

21 A Yes, sir.

22 Q Okay. And this photograph depicts the porch that you
23 and your brother were on, correct?

24 A Yes, sir.

25 Q And I believe Mr. Meadors just showed you 105 and

1 State's 104?

2 A Yes, sir.

3 Q Those are the back of the house?

4 A Yes, sir.

5 Q Is that correct? Okay. To the side of the house, to
6 the side of your home?

7 A Yes, sir.

8 Q That is shown on State's 108?

9 A Yes, sir.

10 Q You have got a brick house on this side of it?

11 A Right. Yes, sir.

12 Q I can tell it looks like another wood frame house on
13 this side of it, correct?

14 A Yes, sir.

15 Q Okay. Thank you very much.

16 THE COURT: You can step down. Mr. Strickler,
17 will you come up?

18 MR. STRICKLER: Oh, sorry.

19 THE COURT: Okay, jurors. I just told them to
20 speed it up so they'd finish way before 6. So watch
21 traffic out there. Don't talk about the case. Don't
22 read any reports about it. Don't call your neighbor
23 and ask them what they think. Just show back up in
24 the morning at 9:20. We'll get started at least by
25 9:25. See you then.

1 (Jury out at 5:15 p.m.)

2 **THE COURT:** All right. Mr. Meadors, just out of
3 curiosity, how many of these remaining 36 witnesses
4 do you think you're going to call? It doesn't
5 matter.

6 **MR. MEADORS:** No, sir. Let me -- I'm about to
7 give you an accurate list actually. Co-counsel
8 sitting here is saying 15, 15, 15. I checked and
9 she's exactly right. 15. But they are not long at
10 all. It will just be tying up some chains and all
11 since we had to do these for ID. So if we don't
12 finish tomorrow, I think we can finish by Thursday
13 morning.

14 **THE COURT:** That's fine. It's no question about
15 when we finish. It's just we need to have a rope.

16 **MR. MEADORS:** The longest witnesses have come
17 and gone. I'll just say that for the record.

18 **THE COURT:** Anything I can help you all with.
19 Ms. Pendergrass, are you still down there?

20 **THE CLERK:** I am.

21 **THE COURT:** Here are the indictments. Do not
22 lose them.

23 **THE CLERK:** Yes.

24 **THE COURT:** All right. We are at ease until in
25 the morning.

1 (Whereupon, the proceedings are concluded for
2 the day, to be reconvened tomorrow morning)
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1 Wednesday, January 14, 2009

2 (WHEREUPON, State's Exhibit No. 110 is marked
3 for identification.)

4 (WHEREUPON, State's Exhibit No. 111 is marked
5 for identification.)

6 (WHEREUPON, State's Exhibit No. 112 is marked
7 for identification.)

8 (WHEREUPON, State's Exhibit No. 113 is marked
9 for identification.)

10 **THE COURT:** Okay. The last juror just came
11 wandering in. The State ready?

12 **MR. MEADORS:** Yes, sir.

13 **THE COURT:** Defense ready?

14 **MR. STRICKLER:** Yes, sir.

15 **MR. MEADORS:** He'll be here in 30 seconds.

16 **THE COURT:** Okay. Bring them in.

17 (Jury in at 9:32 a.m.)

18 **THE BAILIFF:** The jury is all present, Your
19 Honor.

20 **THE COURT:** Okay. You may proceed.

21 **MR. MEADORS:** Demetrius Gallman.

22 DEMETRIUS GALLMAN, after being duly sworn,
23 testifies as follows:

24 **THE CLERK:** Please have a seat. State your full
25 name for the record.

1 **THE WITNESS:** Demetrius Gallman.

2 DIRECT EXAMINATION

3 **BY MR. MEADORS**

4 Q Good morning, Mr. Gallman.

5 A How you doing?

6 Q Fine. How you doing?

7 A All right.

8 Q Would you let these ladies and gentlemen know about
9 you? Where are you from?

10 A Where I'm from?

11 Q Yes, sir. Born and --

12 A As in -- Columbia, South Carolina.

13 Q Where did you go to school, Mr. Gallman?

14 A C. A. Johnson.

15 Q When did you get out of C. A. Johnson?

16 A '95.

17 Q What did you do after that?

18 A I worked at KFC and then I went in the military.

19 Q And how long were you in the military?

20 A About a year.

21 Q Mr. Gallman, when you got out of the military, what
22 did you do?

23 A I went back to KFC, left KFC and went to Wendy's.

24 Q And how long were you at Wendy's?

25 A Five years.

- 1 Q And where are you working now?
- 2 A KFC.
- 3 Q Which one?
- 4 A Taylor Street.
- 5 Q Taylor? If I'm heading down -- is it near the
- 6 hospital?
- 7 A By Benedict College.
- 8 Q The one right there?
- 9 A Yes, sir.
- 10 Q And what's your position there?
- 11 A Restaurant manager.
- 12 Q And how long have you been doing that?
- 13 A A year.
- 14 Q Do you know John Portee?
- 15 A Yes, sir.
- 16 Q How long have you known him?
- 17 A Basically all of my life.
- 18 Q And you know him from Columbia obviously?
- 19 A Yes, sir.
- 20 Q And back in 2006 where were you working?
- 21 A Lizard's Thicket.
- 22 Q And what was your position there, Mr. Gallman?
- 23 A Prep cook.
- 24 Q Prep cook?
- 25 A Yes, sir.

1 Q And getting right to it, on the weekend of Labor Day
2 weekend of 2006, Mr. Gallman, specifically; you see
3 that's September 2006, sir?

4 A Yes, sir.

5 Q That Sunday, the 3rd of 2006, September the 3rd,
6 2006, did you have an occasion or did you hear from
7 John Portee?

8 A Yes, sir.

9 Q Did you talk to him that day?

10 A Yes, sir.

11 Q Can you tell the ladies and gentlemen of the jury
12 about that?

13 A I was at work, got sick, left work, got a phone call
14 from one of the victim's cousins saying something had
15 happened at the store with her cousin. And I seen
16 where John had called me, too. So after I talked to
17 him I called John back. John, I asked him what
18 happened at the store. He said he went to work,
19 nobody answered the door. So he called his mom. His
20 mama told him to call the police. But he said, no,
21 mom, I ain't calling no police. That's when him and
22 his girlfriend went and got in the car and went to
23 Georgia. That was his alibi.

24 Q Did he use the word alibi?

25 A Yes, sir.

1 Q Did that strike you as unusual?

2 A Kind of.

3 Q And is there any doubt who that voice was on the
4 phone?

5 A No, sir.

6 Q And you said he said his mom told him to call the
7 police but he didn't call the police?

8 A Right.

9 Q And do you know Moesha?

10 A Moesha Outin.

11 Q Do you know her from Wendy's?

12 A Yes, sir.

13 Q And at some point did you talk to her also?

14 A Yes, sir.

15 Q Without saying what, did she tell you she had had a
16 conversation with Jahquetta Owens?

17 MR. STRICKLER: Your Honor.

18 THE COURT: I sustain that.

19 MR. MEADORS: I wasn't going to say what she
20 said.

21 THE COURT: If he had a conversation, he can
22 answer that.

23 Q That's all. I'm not asking you -- did you talk to
24 her and have a conversation with her?

25 A Yes, sir.

1 Q Is that the John Portee you grew up with and who told
2 you that he went to Georgia and that was his alibi?

3 A Yes, sir.

4 Q Under our rules, if you take the stand, if you have a
5 conviction of certain things, one or both sides are
6 allowed to ask you about it. That's just the rules.
7 If you take the stand, if you've got a record, it
8 comes out. And October 31st of 2006, did you plead
9 guilty to possession of cocaine and get seven days
10 time served?

11 A Yes, sir.

12 Q Thank you. That's all.

13 CROSS EXAMINATION

14 **BY MS. THOMAS**

15 Q Good morning, Mr. Gallman.

16 A Good morning.

17 Q My name is Ashley Thomas. I am Mr. Portee's lawyer,
18 one of them. You know -- you knew Ms. Latora Bolton,
19 correct?

20 A Yes, ma'am.

21 Q You knew her family?

22 A Yes, ma'am.

23 Q In fact, you were at her sister's house on September
24 3rd, 2006?

25 A Yes, ma'am.

1 Q Do you know where John was when he called you?

2 A No. I don't know where he was at.

3 Q Okay. Do you remember what time that was?

4 A No. I don't remember what time.

5 Q Okay. Did you know Ms. Carlaus Johnson?

6 A Yes, ma'am.

7 Q How did you know her?

8 A From Wendy's.

9 Q What was your relationship with Ms. Bolton's sister?

10 A What's my relationship? I don't have a relationship.
11 She is a friend.

12 MS. THOMAS: Beg the Court's indulgence. No
13 further questions.

14 THE COURT: Is that it? You can step down.

15 MR. MEADORS: Thank you, Your Honor. If he can
16 be excused.

17 MS. MCDUFFIE: If it pleases the Court, the
18 State calls Deputy Jernigan.

19 THE COURT: Okay.

20 GREG JERNIGAN, after being duly sworn, testifies
21 as follows:

22 THE CLERK: Please have a seat. State your full
23 name for the record.

24 THE WITNESS: My name is Greg Jernigan.

25 DIRECT EXAMINATION

1 **BY MS. MCDUFFIE**

2 **Q** Deputy Jernigan, where are you currently employed?

3 **A** At the Richland County Sheriff's Department.

4 **Q** And what are your duties with the Richland County
5 Sheriff's Department?

6 **A** Patrol the areas between Monticello Road and the
7 Fairfield Road area.

8 **Q** And the Richland County Sheriff's Department has the
9 county broken up into regions?

10 **A** That is correct.

11 **Q** And what region is that?

12 **A** Region Three.

13 **Q** And were these your duties on September the 3rd of
14 2006?

15 **A** Yes, ma'am, they were.

16 **Q** On September the 3rd, 2006, did you have the occasion
17 to go to or the surrounding
18 area?

19 **A** Yes, ma'am, I did.

20 **Q** And why did you go there?

21 **A** We had received some information that the defendant,
22 John Portee, was going to be in the area or at that
23 location. And so several officers were sent into the
24 area with a photograph of him that was generated just
25 to look for him, see if we could locate him.

1 Q And where exactly were you stationed, or what area
2 were you?

3 A On Lakeside Avenue. Patrolled up and down from
4 Lakeside Avenue, from Monticello all the way to the
5 dead end of it.

6 Q And where is Lakeside Avenue in relation to Hawthorne
7 Avenue?

8 A It runs directly off of it.

9 Q So they intersect?

10 A Correct.

11 Q Did you come in contact with John Portee on September
12 the 3rd of 2006?

13 A Yes, ma'am, I did.

14 Q And where was that?

15 A He was walking down Lakeside Avenue towards
16 Monticello Road.

17 Q And how did you -- or did you recognize him, or how
18 did you know it was John Portee?

19 A I recognized him first of all by that photograph that
20 we had a copy of. He looked just like the
21 photograph, as well as we'd been given some
22 information that he was possibly wearing an orange
23 shirt on that day. And he was the only person
24 walking down the road. And I saw him, recognized him
25 from the photograph, saw the shirt and stopped him.

1 Q So when you recognized him from the photograph and
2 saw the shirt, what did you then do?

3 A I pulled over, got out of the car. And I made a
4 statement to him. I said, "Are you John?" And he
5 said, "Yes." I said, "John Portee?" He said, "Yes."
6 And at that point I took him into custody.

7 Q And after you took him into custody, what did you
8 then do?

9 A I took him into custody and just told him simply that
10 there were some investigators that want to speak to
11 him. I put him directly in the back of the car and
12 transported him around the corner to 4417 Hawthorne
13 and turned him over to Investigator McRoberts.

14 Q How long did it take you to get him to Hawthorne
15 Avenue?

16 A Probably less than a minute.

17 Q The person that you stopped on Lakeside Avenue on
18 September the 3rd of 2006, do you see him in the
19 courtroom today?

20 A Yes, ma'am, I do.

21 Q If you would please identify him for the court?

22 A That's John Portee, the defendant.

23 Q Thank you. No further questions from this witness.

24 **THE COURT:** Any cross exam?

25 **MR. STRICKLER:** Beg the Court's indulgence, Your

1 Honor, one moment.

2 **THE COURT:** Sure.

3 **MR. STRICKLER:** No, sir. Thank you.

4 **THE COURT:** You can step down.

5 **MS. MCDUFFIE:** If it pleases the Court, the
6 State calls Deputy Lucas.

7 **THE COURT:** Okay.

8 DAVID LUCAS, after being duly sworn, testifies
9 as follows:

10 **THE CLERK:** Please have a seat. State your full
11 name for the record.

12 **THE WITNESS:** David Lucas.

13 DIRECT EXAMINATION

14 **BY MS. MCDUFFIE**

15 **Q** Deputy Lucas, where are you currently employed?

16 **A** Richland County Sheriff's Department.

17 **Q** And what are your duties with the Richland County
18 Sheriff's Department?

19 **A** Now I work Region Two area which is
20 Fontaine outbound to Clemson Road.

21 **Q** And in September of 2006 what were your duties with
22 the Richland County Sheriff's Department?

23 **A** I was in the Sheriff's Department K-9 team.

24 **Q** And as a member of the K-9 team, what were your
25 duties or responsibilities?

- 1 **A** Primarily would be for narcotics and tracking and
2 assisting line units or investigators.
- 3 **Q** And as a member of the K-9 team, you had a dog that
4 you worked with?
- 5 **A** Correct.
- 6 **Q** And what was the dog's name?
- 7 **A** E-Man.
- 8 **Q** And were you and E-Man on duty the night of September
9 the 3rd, 2006?
- 10 **A** Yes, ma'am.
- 11 **Q** Did you have the occasion to respond to
12
- 13 **A** Yes, ma'am.
- 14 **Q** And that's in Richland County?
- 15 **A** Yes, ma'am.
- 16 **Q** And what was that in reference to?
- 17 **A** I was called by an investigator to come back out to
18 run a track where they had told me a suspect had run
19 and to do an evidence search.
- 20 **Q** And can you please describe for the jury how you run
21 a track?
- 22 **A** First of all, you get the dog out of the car. The
23 dog, you let him use the restroom. And you go back
24 to the area where the person is going to be cordoned
25 off by deputies that are already on the scene. You

1 start, give the dog their tracking command. Each one
2 is different. They have different languages they
3 understand. I gave my dog the tracking command and
4 he started to track. Basically it's air scent
5 footsteps and articles is what they can pick up. If
6 you cut your grass, fresh-cut grass, like when you
7 step like that, that's exactly what the dog smells,
8 things like that. And that's what I was called out
9 to run the dog to do.

10 Q And please tell the jury a little bit about the
11 training that you and E-Man went through together?

12 A E-Man was my third dog. I went through approximately
13 four months of tracking and narcotics searches before
14 we certified.

15 Q And how often would you two train together?

16 A At least two times a week.

17 Q And how long would you train together those training
18 sessions?

19 A It can run from eight to ten hours a day, each day,
20 ma'am.

21 Q And about how many tracks did you and E-Man run?

22 A In the hundreds.

23 Q And on September the 3rd of 2006, were you given
24 information about the approximate area in which the
25 suspect was last seen?

1 A Yes, ma'am.

2 Q And how did you begin your track, or what was the
3 first thing you did?

4 A I made contact with Investigator Gonzales and he
5 showed me about where the area was, where it was
6 cordoned off where they said the suspect had run.

7 Q And what did you then do?

8 A The dog went ahead -- well, like I said, I gave the
9 tracking command, got a real hard pull, and we
10 started tracking.

11 Q And what does the hard pull indicate to you?

12 A That he has got a good human scent track.

13 Q And what, if anything, happened after you started
14 tracking?

15 A We started tracking behind the house. And the nose
16 is down on the ground, extremely hard pull. About
17 maybe 30 feet into the wood line he pulled real quick
18 off to the left. And there was a green bag, a Nike
19 bag.

20 Q I show you State's 111. Do you recognize that?

21 A Yes, ma'am.

22 Q And is that a fair and accurate depiction of the
23 woods behind

24 A Yes, ma'am.

25 MS. MCDUFFIE: Your Honor, at this time we'd

1 offer 111.

2 **THE COURT:** Okay.

3 (WHEREUPON, State's Exhibit No. 111 is admitted
4 into evidence.)

5 **Q** Please show the jury the photo and describe for them
6 where you and E-Man started your track?

7 **A** This is going to be the backyard. Approximately in
8 this area is where I start. We go and take a wide
9 swipe with the dog. Excuse me. It's not exactly
10 pinpointing when we got the area. And the dog starts
11 in this area here and then got inside the track right
12 around here, if I remember correctly.

13 **Q** And State's Exhibit 112, do you recognize that?

14 **A** Yes, ma'am.

15 **MS. MCDUFFIE:** Your Honor, at this time we'd
16 offer State's 112.

17 **THE COURT:** Okay.

18 (WHEREUPON, State's Exhibit No. 112 is admitted
19 into evidence.)

20 **Q** Please show the jury State's 112 and describe for
21 them what it is?

22 **A** This is where the dog pulled off to the left. This
23 is the green bag that I was describing earlier the
24 dog pulled straight to.

25 **MS. MCDUFFIE:** Your Honor, permission to publish

1 this to the jury.

2 **THE COURT:** You can do it.

3 **Q** After the dog tracked to the green bag; what, if
4 anything, did you do after that?

5 **A** Investigator Gonzalez was behind me, immediately
6 stopped right there. And he looked inside the bag.
7 If I remember correctly, there was a Wendy's uniform
8 and a large caliber handgun, .45 caliber.

9 **Q** And when you left the scene that night, was the bag
10 secured by Investigator Gonzales?

11 **A** Yes, ma'am.

12 **Q** Beg the Court's indulgence. I show you what's been
13 marked as State's Exhibit 109. Do you recognize
14 that?

15 **A** Yes, ma'am.

16 **Q** The green bag you found on the night of September the
17 3rd, 2006?

18 **A** Yes, ma'am.

19 **MS. MCDUFFIE:** Your Honor, at this time we'd
20 offer State's Exhibit 109.

21 **THE COURT:** Okay.

22 (WHEREUPON, State's Exhibit No. 109 is admitted
23 into evidence.)

24 **THE COURT:** You got any other questions for him?

25 **MS. MCDUFFIE:** No. No further questions, Your

1 Honor.

2 CROSS EXAMINATION

3 **BY MS. THOMAS**

4 Q Good morning, Deputy Lucas.

5 A Good morning.

6 Q You arrived at Hawthorne Avenue at 8:10?

7 A Approximately.

8 Q And you left about 25 minutes later?

9 A Approximately.

10 Q About 8:30?

11 A About that.

12 Q Do you know approximately how far into the wood line
13 that was?

14 A It should be just behind the house. Not very far.

15 Q Was there any sort of path pre-existing in the woods?

16 A I don't recall.

17 Q You said it was yourself and your dog and
18 Investigator Gonzales?

19 A Correct.

20 Q And when you left after discovering the bag at 8:30,
21 did Investigator Gonzales stay behind in the woods?

22 A Correct.

23 Q With the bag?

24 A Correct.

25 Q And then you left the scene?

1 **A** Correct.

2 **Q** And your testimony was that the bag was 30 feet into
3 the wood line?

4 **A** 20 to 30 feet approximately. It wasn't very far in
5 the wood line.

6 **Q** Is that from the beginning of the wood line into the
7 wood line or from the back of the house?

8 **A** From where we started the track.

9 **Q** Thank you. No further questions.

10 **THE COURT:** Anything else?

11 **MS. MCDUFFIE:** Nothing further, Your Honor.

12 **THE COURT:** Officer, you know, I might have
13 missed it. The animal that you have, is it a
14 Chihuahua, a bloodhound, a Saint Bernard or what?

15 **THE WITNESS:** Belgian Malinois.

16 **THE COURT:** What size is that type animal?

17 **THE WITNESS:** About 85 to 95 pounds.

18 **THE COURT:** About how high?

19 **THE WITNESS:** Just a little bit shorter than
20 like a full Shepherd. It's like a short haired
21 Shepherd.

22 **THE COURT:** I've got you. Just curious. I have
23 to show the jury I'm not working crossword puzzles.
24 Okay.

25 **MS. MCDUFFIE:** If it pleases the Court, the

1 State calls Investigator Gonzales.

2 WILLIAM GONZALES, after being duly sworn,
3 testifies as follows:

4 THE CLERK: Please have a seat. State your full
5 name for the record.

6 THE WITNESS: William Gonzales.

7 DIRECT EXAMINATION

8 BY MS. MCDUFFIE

9 Q Investigator Gonzales, where are you currently
10 employed?

11 A Richland County Sheriff's Department.

12 Q And what are your duties with the Richland County
13 Sheriff's Department?

14 A Excuse me, ma'am?

15 Q What are your duties with the Richland County
16 Sheriff's Department?

17 A I'm a criminal investigator with the major crime
18 unit.

19 Q And on the evening of September the 3rd, 2006, did
20 you have occasion to respond to

21

22 A That's correct.

23 Q And why was that?

24 A We were looking for an individual that was involved
25 in a double homicide that just happened.

1 Q And did you have a physical description of the person
2 you were looking for?

3 A That's correct. We had a photograph of the
4 individual that we were looking for.

5 Q And how did you get to Hawthorne Avenue that evening?

6 A I was riding with Sergeant McRoberts. We drove up to
7 the house, parked in front of the house.

8 Q And when you pulled up in front of the house; what,
9 if anything, happened?

10 A As we pulled up in front of the house, I was paying
11 attention to the numbers. I was in the front
12 passenger's seat. And I was able to see this house
13 kind of like on top of the hill. It looked like that
14 was the house we were looking for. And as soon as we
15 started pulling up in front of the house, I was able
16 to observe a black male with an orange shirt, some
17 short blue jeans and carrying, holding a bag, what
18 looked like a bag. He was standing at the front,
19 left front, at the front left side of the house. I
20 made eye contact with him. He made eye contact with
21 us. And as soon as he knew basically who we were, he
22 took off running.

23 Q In which direction did he run?

24 A He ran towards the back of the house.

25 Q And what, if anything, did you do?

1 **A** Ma'am?

2 **Q** What, if anything, did you do?

3 **A** I informed Sergeant McRoberts that there was somebody
4 standing on the left side of the house that took off
5 running.

6 **Q** And did you get out of the car and pursue him?

7 **A** I got out of the car, ran to the side of the house
8 towards the back. I didn't see nobody at that point.
9 There's some wood lines back there. So I kind of
10 like hanged around in the back because we still had
11 to go inside the house just to verify whether Mr. --
12 the individual that we were looking for was inside
13 the house.

14 **Q** And a short time later was John Portee brought back
15 to

16 **A** That's correct. We put out the description of an
17 individual that left running from the house. A short
18 time later a unit was able to make contact with him.

19 **Q** And when he was brought back to Hawthorne Avenue, was
20 he carrying anything or did he have any other
21 possessions with him?

22 **A** No, ma'am.

23 **Q** And based on that, what did you then do?

24 **A** I informed Sergeant McRoberts. We decided to call
25 the K-9 unit in and run the track in case he dropped

1 what he was carrying.

2 Q And did you observe or were you with the K-9 unit
3 when they ran the track?

4 A That's correct.

5 Q And what, if anything, did you find as the track was
6 being run?

7 A As we were running the track in the wood lines, I'll
8 say maybe somewhere between 20 to 25 feet we found a
9 bag that was laying right there maybe about a foot
10 off a little path.

11 Q And I'm going to show you State's Exhibit 112. Is
12 that the bag that you found on the path?

13 A That's correct.

14 Q And what, if anything, did you then do?

15 A I opened the bag. And as soon as I opened the bag, I
16 was able to see a large caliber weapon, some
17 documents, an ID. I immediately informed Sergeant
18 McRoberts of our findings, and he informed me to
19 stand by the bag until we get a lab unit to go out
20 there and process and recover the bag.

21 Q I show you State's Exhibit 113. Do you recognize
22 this?

23 A That's correct.

24 Q And is it in substantially the same condition as when
25 you found it on September the 3rd of 2006?

1 **A** Can I look at it again, ma'am?

2 **MR. MEADORS:** That's correct.

3 **MS. MCDUFFIE:** Your Honor, at this time we'd
4 offer State's 113.

5 **MS. THOMAS:** Without objection.

6 **THE COURT:** All right. Just mark it as a
7 Court's Exhibit though. I usually don't let anything
8 that comes in I let go back to the jury room. I
9 usually don't let weapons go back unless the jury
10 sends out a note. So they can look at it, show it to
11 them.

12 (WHEREUPON, State's Exhibit No. 113 is admitted
13 into evidence.)

14 **Q** If you will please take the weapon out of the box and
15 please show it to the jury. Before you do that,
16 Investigator Gonzales, is that weapon properly
17 secured?

18 **A** Yes, ma'am.

19 **Q** Is it able to be fired at this point?

20 **A** No, ma'am.

21 **Q** Please show the weapon to the jury and tell them
22 where you found it?

23 **A** This weapon was found inside the bag, the green bag
24 that was found in the wood line.

25 **Q** And if you turn the gun around, was that writing on

1 it when you found it?

2 A No, ma'am.

3 Q If you could show it to the jury?

4 A Oh. I'm sorry.

5 Q Would that have been placed on there by Richland
6 County?

7 A That's correct.

8 Q And are you aware of what caliber that weapon is?

9 A At the moment I didn't. It was a large caliber
10 weapon, bigger than ours.

11 Q And in the bag you said you noticed some other
12 documentation?

13 A That's correct, ma'am.

14 Q Did you have a chance to go through it, or did you
15 wait for crime scene?

16 A You want me to put it back in the box?

17 Q That's fine. Thank you.

18 A I just glanced inside and I was able to see kind of
19 like an ID card.

20 Q I show you State's 110. Do you recognize that?

21 A That's correct, ma'am.

22 Q And is that what you observed on the night of
23 September 3rd, 2006?

24 A That's correct.

25 **MS. MCDUFFIE:** Your Honor, at this time we'd

1 offer State's 110.

2 **THE COURT:** 110 comes in.

3 (WHEREUPON, State's Exhibit No. 110 is admitted
4 into evidence.)

5 **Q** Investigator Gonzales, what's depicted in State's
6 Exhibit 110?

7 **A** Ma'am?

8 **Q** What's depicted in this photograph?

9 **A** The green bag.

10 **Q** And this is after you had opened it?

11 **A** That's correct.

12 **Q** And State's Exhibit 109, you said you saw an ID?

13 **A** That's correct.

14 **Q** Contained in State's Exhibit 109, do you recognize
15 this?

16 **A** Yes, ma'am.

17 **Q** Is this the ID you saw that evening?

18 **A** That's correct.

19 **Q** And whose name and information was on this ID?

20 **A** John Portee.

21 **Q** And whose photo is that?

22 **A** John Portee.

23 **Q** After you opened the bag and saw the weapon and the
24 ID; what, if anything, did you then do?

25 **A** I left the bag intact where it was sitting at. And,

1 like I said, I notified Sergeant McRoberts. He
2 informed me to stand by until the lab unit arrived on
3 the scene to recover it.

4 Q And did you wait on the scene for the lab unit?

5 A That's correct.

6 Q During that time did anyone tamper with the bag or
7 its contents?

8 A No, ma'am.

9 Q And did you turn that evidence over to your crime
10 scene investigators?

11 A That's correct.

12 MS. MCDUFFIE: Beg the Court's indulgence.

13 THE COURT: Okay.

14 MS. MCDUFFIE: Nothing further, Your Honor.

15 CROSS EXAMINATION

16 BY MS. THOMAS

17 Q Good morning, Investigator Gonzales.

18 A How you doing, ma'am?

19 Q What time were you at the Wendy's restaurant that
20 day?

21 A Excuse me?

22 Q What time were you at the Wendy's restaurant that
23 day?

24 A What time -- I could barely hear you. I'm sorry.

25 Q What time were you at the Wendy's restaurant on

1 September 3rd, 2006?

2 A It was the afternoon. I'd say about maybe 4 or 5:00.

3 Q And you arrived at Hawthorne Avenue at 7 p.m.?

4 A Approximately.

5 Q With other deputies?

6 A That's correct. Myself, Sergeant McRoberts,
7 Investigator Boland, Investigator McRae, and several
8 other deputies from that region.

9 Q The K-9 deputy arrived around 8:10 and left around
10 8:30, correct?

11 A I'm not sure about the time, ma'am.

12 Q Okay. I believe Deputy Lucas just testified to that.
13 How long were you out in the woods?

14 A A pretty long time.

15 Q You turned the scene over to Sergeant Clemens,
16 correct?

17 A That's correct.

18 Q And I believe it was about an hour, wasn't it?

19 A You could say I got ate up by the mosquitoes. I was
20 there for a while.

21 Q And you were the only one out there in the woods?

22 A That's correct. Once the bag was found.

23 MS. THOMAS: No further questions.

24 MS. MCDUFFIE: Nothing further, Your Honor.

25 THE COURT: You can step down.

1 **THE WITNESS:** Thank you, sir.

2 **MS. MCDUFFIE:** Your Honor, may we approach?

3 **THE COURT:** Okay.

4 (Whereupon, a bench conference is had)

5 **THE COURT:** Jurors, as you know, we have plenty
6 of witnesses but they're not all standing there. The
7 next witness is not quite here yet. So just take a
8 break. They've moved a lot faster than they thought
9 it would move. So don't talk about the case. Just
10 ease out. It might be longer than 15 minutes, but as
11 soon as the witness gets here we'll start back.

12 (Jury out at 10:05 a.m.)

13 **MR. MEADORS:** We just went through four
14 witnesses in 30 minutes. I just didn't think it
15 would be that quick. So I appreciate you giving us a
16 little time.

17 **THE COURT:** No problemo. Just let us know when
18 everybody comes back in.

19 (Whereupon, a break is taken)

20 (WHEREUPON, State's Exhibit No. 114 is marked
21 for identification.)

22 (WHEREUPON, State's Exhibit No. 115 is marked
23 for identification.)

24 (WHEREUPON, State's Exhibit No. 116 is marked
25 for identification.)

1 (WHEREUPON, State's Exhibit No. 117 is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 118 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 119 is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 120 is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 121 is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 122 is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 123 is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 124 is marked
16 for identification.)

17 (WHEREUPON, State's Exhibit No. 125 is marked
18 for identification.)

19 (WHEREUPON, State's Exhibit No. 126 is marked
20 for identification.)

21 (WHEREUPON, State's Exhibit No. 127 is marked
22 for identification.)

23 (WHEREUPON, State's Exhibit No. 128 is marked
24 for identification.)

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

3 (WHEREUPON, State's Exhibit No. 130 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 131 is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 132 is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 133 is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 134 is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 135 is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 136 is marked
16 for identification.)

17 (WHEREUPON, State's Exhibit No. 137 is marked
18 for identification.)

19 (WHEREUPON, State's Exhibit No. 138 is marked
20 for identification.)

21 **THE COURT:** You ready to roll?

22 **MR. MEADORS:** We've got at least four lined up.

23 **MR. STRICKLER:** Your Honor, I have at matter.

24 **THE COURT:** What would that be?

25 **MR. STRICKLER:** Evidently whenever I left the

1 courtroom when we took the last break, a family
2 member or someone in the audience, part of the
3 audience communicated to Mr. Portee, and my
4 understanding is the statement was made that "I hope
5 you rot in hell."

6 **THE COURT:** All right.

7 **MR. STRICKLER:** That's what Mr. Portee says. I
8 believe that's what his mother heard. It's caused
9 considerable consternation. My understanding is the
10 deputy has addressed the courtroom in general. I
11 have not observed any kind of outbreak in behavior on
12 the part of the people here who are here on the part
13 of Mr. Portee.

14 **THE COURT:** Okay. This is the United states of
15 America. We have open courtrooms unless we close it.
16 Anybody is entitled to watch the proceedings.
17 However, there will be no communication with anybody
18 involved in the case. You all are not participants
19 in the case. In addition, there'll be no motions, no
20 gesticulating, no statements. If anybody makes a
21 motion, I'm just going to tell the deputy to take
22 them out. Plus, since I've told you, that's
23 instantaneous contempt of court. You don't even get
24 a hearing on it. Just take them straight to jail,
25 let them out sometime between 6 and 8 tonight. All

1 right. Anything else?

2 **MR. MEADORS:** No, sir.

3 **THE COURT:** And I'm not threatening anybody;
4 that's just a promise. A promise made, debt unpaid.
5 So just waive your hand at somebody and see what
6 happens. Bring them in.

7 **MR. STRICKLER:** Thank you, sir.

8 (Jury in at 10:37 a.m.)

9 **THE BAILIFF:** The jury is all present, Your
10 Honor.

11 **THE COURT:** All right, jurors. We're ready to
12 roll. And I understand we have the next four
13 witnesses in the courtroom or right around here. So
14 there won't be any more delays like that. You may
15 proceed.

16 **MR. MEADORS:** May it please the Court. Your
17 Honor, at this time The State of South Carolina would
18 call Lieutenant Anna Elsey.

19 ANNA ELSEY, after being duly sworn, testifies as
20 follows:

21 **THE CLERK:** Please have a seat. State your full
22 name for the record.

23 **THE WITNESS:** Anna Elsey.

24 DIRECT EXAMINATION

25 **BY MR. MEADORS**

1 Q Good morning, Lieutenant.

2 A Good morning.

3 Q Would you please -- you're Lieutenant Anna Elsey?

4 A That's correct.

5 Q And where are you employed?

6 A The Richland County Sheriff's Department.

7 Q How long have you been with the Sheriff's Department?

8 A Since July of 1996.

9 Q Can you tell these folks a little -- I do it with
10 every witness -- a little bit about yourself, where
11 you're from, where you went to school and
12 particularly your education and training in the field
13 of expertise I'm going to offer you today?

14 A Yes, sir. I'm from Columbia and I graduated from the
15 College of Charleston with a Bachelor of Science in
16 biology and psychology and received my Master's
17 through the University of Florida in forensic DNA and
18 serology. I started with the Department in July of
19 '96. I attended the South Carolina Criminal Justice
20 Academy and then worked as a uniformed patrol officer
21 for a little over two years, at which time I was
22 promoted to the lab and have been in that unit ever
23 since.

24 Since being with the lab I have attended
25 numerous courses relating to crime scene

1 investigation and fingerprint development and
2 comparison. Some of those courses are blood pattern
3 analysis, crime scene reconstruction, ID Tech,
4 advanced palm print identification, basic
5 fingerprint, footwear and tire track examination,
6 chemical developments of latent print, advanced blood
7 pattern analysis, forensic aspects of investigations,
8 forensic ridgeology, complex latent print examination.
9 And I have been certified through the International
10 Association for Identification as a crime scene
11 investigator.

12 Q And your role at the Sheriff's Department now is
13 what? Or your position? You're a lieutenant?

14 A I supervise the crime scene latent print section.
15 It's mainly administrative. It's a lot of scheduling
16 and ordering supplies, implementing and writing
17 policies and procedures. And in addition to that I'm
18 available for call and I'm part of the supervisor on
19 call rotation to respond to any major scenes.

20 Q It used to be we sent to SLED, but now the Sheriff's
21 Department here in Richland County has its own lab,
22 correct?

23 A Yes, sir.

24 Q How many crime scenes have you been to, Lieutenant?

25 A Hundreds.

1 **MR. MEADORS:** Your Honor, at this time we'd
2 offer Lieutenant Anna Elsey as an expert in the field
3 of crime scene division, to include fingerprints.

4 **MR. STRICKLER:** I have no voir dire for the
5 Lieutenant, Your Honor.

6 **A** Okay. She can testify as an expert.

7 **Q** Lieutenant, back in September of 2006, obviously you
8 were at the Sheriff's Department. Did you have an
9 occasion to get involved in this case?

10 **A** I did.

11 **Q** And specifically -- I think everybody is familiar
12 with the different locations at this point -- but
13 where did you go to first, and how did you get
14 involved in this?

15 **A** I was notified by Investigator Oates on the telephone
16 and responded to the Wendy's at.

17 **Q** Once you got there what did you observe and what did
18 you do?

19 **A** The crime scene was already marked off. There were
20 units outside. I made contact with Investigator
21 Oates and Investigator Mann upon my arrival, and they
22 did a walk through of the scene with me.

23 **Q** And were the bodies still there?

24 **A** They were.

25 **Q** Of Ms. Bolton and Ms. Johnson?

1 A Yes, sir.

2 Q And why do you do a walk through?

3 A So that I can be updated as to what they have done up
4 to this point, what possibly what needs to be done
5 from this point on and to basically be there and
6 assist them in anything that they need to continue
7 processing.

8 Q And did you and/or Oates or any of the others,
9 somebody photograph the scene?

10 A Yes.

11 Q All right. And videoed it?

12 A Yeah. Investigator Oates and Investigator Mann.

13 Q What did you do after that?

14 A After assisting them a little bit with documentation
15 I went outside and started an exterior search looking
16 through dumpsters and the perimeter of the
17 restaurant. In addition to that I made contact with
18 one of the K-9 units that ran a track prior to my
19 arrival and walked that track with him, photographing
20 the track and where it stopped.

21 Q Now, the scene inside Wendy's was processed?

22 A Yes, sir.

23 Q Is this -- I mean, you've been around -- and I mean
24 that in the nicest way -- law enforcement wise. Is
25 it like TV?

1 **A** No, sir, it's not.

2 **Q** As far as finding fingerprints and DNA?

3 **A** No, sir.

4 **Q** And is it unusual not to find fingerprints?

5 **A** No, sir.

6 **Q** Just explain that generally to the ladies and
7 gentlemen?

8 **A** Okay. If you look at the palm of your hand you'll
9 see there's lines on your hands. And when we talk
10 about fingerprints and getting fingerprints and being
11 able to do that for identification, what we're
12 talking about is those lines from your fingers
13 transferring to a particular surface. And if you
14 think about one of the stamps that maybe little kids
15 use, they put it in ink and then transfer it to a
16 piece of paper, it's sort of like that. But it's not
17 that's easy to transfer. Sometimes with those stamps
18 you might have too much ink and you can't really see
19 the fingerprint or there's not enough ink and the
20 fingerprint is not there. In this case if there's
21 not enough sweat, oils on the hands to make that
22 transfer, you're not going to have fingerprints.

23 If the texture of the surface is rough, it's
24 very unlikely you're going to have fingerprints. If
25 your hands are in motion, you're not going to have

1 the fingerprints that are going to be identifiable.
2 Or if there's some type of barrier between your hand
3 and that surface, you're not going to have it. Such
4 as a glove, it's going to prevent you from having
5 that transfer of fingerprints.

6 Q You went outside?

7 A I did.

8 Q And did you go on the roof?

9 A I did.

10 Q And why did you do that?

11 A We actually called the fire department out there. At
12 this point we really just did not know what we were
13 looking for, what we were working with. So we wanted
14 to get up on the roof, make sure there wasn't any
15 other point of entry, make sure there wasn't anything
16 of any evidentiary value to this case. So we did
17 that and did not locate anything up there.

18 Q No way to get in and out on the roof?

19 A Correct.

20 Q And nothing of evidentiary value found there?

21 A No, sir.

22 Q Did you check the dumpsters?

23 A We did.

24 Q Okay. And was anything found there --

25 A No, sir.

1 Q -- of in your opinion evidentiary value?

2 A No, sir.

3 Q And then I think you mentioned a dog at Wendy's. Was
4 a dog brought to Wendy's?

5 A Prior to my arrival they ran a K-9 track.

6 Q And as a result of that, did you see anything at that
7 point after the dog had left Wendy's?

8 A Well, we walked the track. And it ended up in a
9 parking lot behind a business on O'Neal Court.
10 Again, not really knowing what's pertinent, what's
11 going to be related to the case, photographed the
12 area from the Wendy's to that parking lot. It
13 actually went across a creek area, a creek bed;
14 photographed all of that and located a couple of
15 things in the parking lot, a couple of cigarette
16 butts, a few stains and I believe a napkin. So all
17 of that was photographed and collected.

18 Q Photographed, collected, and then you sent that to --
19 or what did you do with that?

20 A Then it was submitted into our evidence to be
21 forwarded for possible DNA.

22 Q And at this point you're just showing up at Wendy's
23 and trying to see what's what, see if you can get a
24 lead; just anything, correct?

25 A Yes, sir.

1 Q Because you don't know what's going on, right?

2 A Not at this point.

3 Q And the stain you mentioned, what was that?

4 A On the pavement?

5 Q Yes.

6 A I wasn't sure. It looked like it could possibly be
7 an oil stain. At that time I didn't know. So we
8 took a swab of the stain.

9 Q What else did you do at Wendy's?

10 A That's about it. That's about all I did as far as
11 processing the scene. When I returned to Wendy's I
12 got notified that there was a vehicle that they
13 needed to have entered into our secured forensic
14 garage at headquarters. So I left the Wendy's and
15 went to headquarters to enter that car into the
16 garage.

17 Q Do you know what type car that?

18 A It was a Dodge Stratus.

19 Q And do you know whose car that was?

20 A No, sir.

21 Q And you took that car where or made sure it was
22 secure where?

23 A In our forensic garage at our main headquarters.

24 Q What do you do after that?

25 A I was contacted by the telephone by Investigator

1 McRae. He stated that they located a green bag that
2 they needed me to come and collect. I then left
3 headquarters and went to Hawthorne, 4417 Hawthorne,
4 made contact out front with Investigator McRae. And
5 he told me that Investigator Gonzales was in the
6 wooded area behind that residence with a green bag.
7 So I made contact with him. I photographed the bag,
8 took an approximate measurement from the back of the
9 house to where the bag was located, and then I
10 collected the bag.

11 Q How far from the back of the house to where the bag
12 was?

13 A It was approximately 92 feet, 6 inches.

14 Q Had you ever been back there before?

15 A No, sir.

16 Q And when you got back there to the back, was
17 Investigator Gonzales there?

18 A He was.

19 Q And so at that point it's the two of you back in the
20 woods?

21 A Yes, sir.

22 Q And when you got there, where was the bag?

23 A It was on the ground in a wooded area.

24 Q What did you do?

25 A I photographed it.

1 Q And why did you photograph it?

2 A To document where it was when I arrived.

3 Q Is that so you can come in here and show these folks
4 and tell them this is where I found it and this is
5 what condition it was in?

6 A Yes, sir. That's one reason.

7 Q And I'm going to show you State's 110. Do you
8 recognize that?

9 A Yes, sir. That's a photograph of the bag in the
10 woods.

11 Q And 112, is that also the bag?

12 A Yes, sir.

13 Q You got something at this point that's potentially of
14 evidentiary value, right?

15 A Yes, sir.

16 Q Potentially. What do you do with it? Do you want to
17 look inside and document what's in there?

18 A Yes. I actually collected it from the scene and then
19 took it back to our headquarters at
20 into our lab.

21 Q And showing you what's 109, is this it?

22 A Yes, sir.

23 Q That's in that picture and that's what you saw that
24 night and collected, correct?

25 A Yes, sir.

1 Q And what did you do with it, Lieutenant?

2 A I brought it back to headquarters and photographed
3 all of the contents and the green bag once I was back
4 in the secure lab.

5 Q Well, let's go through those contents if we can and
6 tell the jury what you did when you were collecting
7 them or what you collected and what, if anything, you
8 did with each of the items?

9 A That particular night I located a Hi-Point weapon
10 with serial number 336675. I processed that weapon
11 and two shell casings for fingerprints and DNA.

12 Q Okay. And I'm going to show you what's State's 113.
13 Is this the Hi-Point that you processed?

14 A Yes, sir.

15 Q And what are you looking at right there?

16 A The serial number.

17 Q Okay. And when you say you processed it, explain to
18 them, what do you mean?

19 A Well, I first process it for fingerprints. Again, I
20 used a -- when we talk about fingerprints, a lot of
21 times we're talking about latent prints and initially
22 they're not visible. So we use some type of process
23 to make those prints visible. In this particular
24 instance I used cyanoacrylate which is a big term for
25 superglue and black powder to try to develop any

1 prints on the weapon. I did not develop any
2 identifiable prints. Then I swabbed the weapon for
3 DNA.

4 Q And the fact that you didn't find any fingerprints,
5 were you surprised on this weapon?

6 A No, sir. With this type of -- again, with that type
7 of surface on the gun and the way that it's handled,
8 it's not uncommon for us not to find fingerprints on
9 a weapon.

10 Q What do you mean by the type of surface?

11 A Well, it's rough. This area right here is relatively
12 rough and this right here has a texture on it. So
13 those fingerprints are not going to transfer like
14 they would, say, on a piece of glass where you would
15 have a nice transfer.

16 Q If someone were wearing a glove or some other article
17 on their hand when they fired it, would that also be
18 more likely there wouldn't be prints, also?

19 A Yes.

20 MR. STRICKLER: Your Honor, I'm going to object
21 as to the leading at this point.

22 THE COURT: All right. He will stop. Go ahead.

23 Q Where was that gun found?

24 A It was in the green bag that I collected from
25 Hawthorne.

1 Q It was inside the bag?

2 A Yes, sir.

3 Q And I think you -- or did you say you swabbed for
4 DNA?

5 A I did.

6 Q And what do you do with those swabs?

7 A I would then package them and submit them to our
8 evidence room and they would then be transferred to
9 the DNA section to do their analysis.

10 Q And I think you also said a minute ago something
11 about some shell casings?

12 A Yes, sir.

13 Q Looking at State's 120, can you tell me what that is?

14 A These are the swabs from .45 shell casings that were
15 marker A and B. They were collected from the scene
16 by Investigator Oates, transferred to Investigator
17 Collins who was there with me when I did the
18 processing.

19 Q So those went from Oates to Collins and then you were
20 there processing them?

21 A Yes, sir.

22 MR. MEADORS: Your Honor, State's 120.

23 THE COURT: Okay.

24 (WHEREUPON, State's Exhibit No. 120 is admitted
25 into evidence.)

1 Q State's 118, can you tell us, does that relate to
2 something you just testified to a minute ago?

3 A Yes, sir. These are the swabs that I collected from
4 the weapon that evening prior to turning the weapon
5 over to Investigator Collins. Again, these swabs
6 would have been submitted to our evidence section and
7 sent to DNA.

8 MR. MEADORS: State's 118, Your Honor.

9 THE COURT: Okay.

10 (WHEREUPON, State's Exhibit No. 118 is admitted
11 into evidence.)

12 Q Everybody may know it. But when you say swab, what
13 do you mean?

14 A We take a sterile cotton swab and use distilled water
15 and just rub the swab across the surface to try to
16 get any potential DNA.

17 Q What else did you find in the bag?

18 A There was a Polaroid picture, a Johnson's Food
19 Service ID badge, a black BIC lighter, a blue BIC
20 lighter, a deodorant top, a cellphone charger, an
21 electric razor, a plastic Footlocker bag, a small
22 clear plastic bag, eleven Southern Gentleman cards,
23 four pennies, two quarters, one dime, one nickel, a
24 bottle labeled Kenneth Cole, a brown paper bag, a
25 small piece of Velcro, and several items of

1 paperwork, a receipt and some pay stubs, a social
2 security statement, an envelope.

3 Q I'm going to show you what's marked as State's 115.
4 Can you tell me what that is?

5 A Yes. This is the paperwork that I got from the bag.
6 It's a small receipt, a Zesto Forest Drive pay stub,
7 a Tarheel Capital pay stub with some handwriting on
8 it, a Social Security statement, an envelope from the
9 Social Security statement and a Tarheel Capital pay
10 stub.

11 Q And these came from that bag?

12 A Yes, sir.

13 MR. MEADORS: Your Honor, State's 115.

14 THE COURT: Okay.

15 (WHEREUPON, State's Exhibit No. 115 is admitted
16 into evidence.)

17 Q 121, do you recognize that, and does it relate to
18 your testimony, please?

19 A These are some additional items from the bag. A blue
20 rag, a White Sox blue and gray, size large Hanes
21 underwear, and a gray and black t-shirt, size XXL.

22 MR. MEADORS: That's 121, Your Honor.

23 THE COURT: You've got it.

24 (WHEREUPON, State's Exhibit No. 121 is admitted
25 into evidence.)

1 Q Now, will you open -- I've opened it. But take those
2 out, please, 115. Now, what does this document
3 contain in 115?

4 A That's a Social Security statement with the name John
5 H. Portee, Jr.

6 Q John H. Portee, Jr. And where did that come from?

7 A The green bag that was collected from Hawthorne.

8 Q What other documentation do you have in there?

9 A This a Tarheel Capital Corporation payroll stub with
10 some handwriting on it.

11 Q Does it have anybody's name on that?

12 A Yes. John H. Portee.

13 Q Do you have any other documentation or any paperwork
14 contained in 115 that came from the bag?

15 A This is another statement with the name John Portee.

16 Q And what corporation is that from, if any?

17 A The Tarheel Capital Corporation. And a Zesto Forest
18 Drive with the name of John Portee on it. And then
19 an envelope and a receipt.

20 Q Can you read that receipt?

21 A No, sir.

22 Q Do you need any gloves?

23 A Yes, sir.

24 Q Would you like some gloves?

25 A Yes, please.

1 Q Is that your practice to wear gloves when you handle
2 evidence?

3 A Yes, sir.

4 Q I'm going to show you 109 again if you don't mind me
5 approaching you. You've described some of the
6 things. Can you look through here and tell the jury
7 what else is in here?

8 A There's a plastic Footlocker bag, a brown bag, paper
9 bag, a razor and a charger I believe, two lighters, a
10 deodorant top, a small bottle labeled Kenneth Cole,
11 Southern Gentleman cards. There's some change, coin
12 change, and then a Johnson Food Service badge with a
13 photograph and the name of John Portee.

14 Q And all of those items came out of State's 109, that
15 green bag?

16 A If the green bag is 109; yes, sir.

17 Q And that's a Johnson Food Service?

18 A Yes, sir.

19 Q And whose picture is on there?

20 A It's the name John Portee. It appears so, to be John
21 Portee from the photograph.

22 Q Now, Lieutenant, you got the bag. You documented
23 what was in there. What did you do with the
24 evidence, if anything?

25 A Once all of this, all the items in the bag were

1 processed for fingerprints and swabbed for DNA, all
2 of the swabs were submitted to our evidence room and
3 all the items are packaged and received into the
4 evidence room also.

5 Q And we have to go through them this way. But I'm
6 going to show you State's 119. And can you
7 specifically and for the record tell what you swabbed
8 and tell if that's contained in 119?

9 A Yes, sir. It's a swab from Johnson Food Service
10 badge, a swab from Polaroid picture, a swab from a
11 blue BIC lighter, a swab from a black BIC lighter, a
12 swab from the bottle label Kenneth Cole, a swab from
13 a deodorant top, a swab from a razor, a swab from a
14 cellphone charger, swab from a piece of black Velcro,
15 a swab from a clear plastic baggy, swab from a
16 Footlocker bag, and a trace hair collected from the
17 green bag.

18 MR. MEADORS: 119.

19 (WHEREUPON, State's Exhibit No. 119 is admitted
20 into evidence.)

21 Q State's 116, can you tell us what this is, and does
22 it relate to your testimony?

23 A A swab from the green bag, a swab near the handles
24 and the zipper, a swab from pennies marked 1 through
25 4, swabs from quarters marked 1 and 2, a swab from a

1 dime, a swab from a nickel, a swab from the brown
2 paper bag, and a swab from 11 separate Southern
3 Gentleman cards.

4 **MR. MEADORS:** For the record, that's 116, Your
5 Honor.

6 (WHEREUPON, State's Exhibit No. 116 is admitted
7 into evidence.)

8 **Q** And 114, does that also relate to your testimony and
9 that bag, Lieutenant?

10 **A** Yes. This is a swab from a small receipt from the
11 green bag, a swab from a Zesto's pay stub from the
12 green/black bag, a swab from Tarheel pay stub with
13 handwriting from the green bag, a swab from a Social
14 Security statement from the green bag, a swab from
15 Social Security statement envelope from the green
16 bag, and a swab from the Tarheel Capital pay stub
17 from the green bag.

18 **Q** Tell me that number again. I'm sorry. Please?

19 **A** 114.

20 **MR. MEADORS:** 114 for the record, Your Honor.
21 Can we approach?

22 **THE COURT:** Okay.

23 (WHEREUPON, State's Exhibit No. 114 is admitted
24 into evidence.)

25 (Whereupon, a bench conference is had)

1 Q On the first part of your report, your analysis
2 report, you've also documented that there was a
3 Polaroid picture, correct?

4 A Yes, sir.

5 Q All right. And just, is it fair to say that also is
6 a picture of the defendant, John Portee, in that
7 Polaroid, correct?

8 A I've been advised it was.

9 Q Okay. You got these items out. You swabbed them.
10 And why are you doing that?

11 A For any potential DNA that might be on the items.

12 Q And that's what you do?

13 A Yes, sir.

14 Q And what do you do with all these swabs?

15 A They are all packaged and submitted to our evidence
16 room and then transferred to DNA for analysis.

17 Q Somebody else in your department is going to come
18 later on and tell us what, if anything, they found,
19 correct?

20 A Correct.

21 Q Beg the Court's indulgence. When you were at
22 Hawthorne, you've said you went in the back. Did you
23 go across the street of Hawthorne also? Did you find
24 any --

25 A A couple of days later we searched the area across

1 the street from that residence for any potential
2 other evidence that might be located.

3 Q Did you collect anything?

4 A We collected gloves and shoes that were taken back to
5 the laboratory. They were examined in the lab and
6 then submitted to evidence.

7 Q And did you do an examination on them?

8 A Yes. I did.

9 Q Explain that, please?

10 A That was on September the 5th, and we used an
11 alternate light source to see if there was any
12 potential blood on any of the items. We did not
13 detect any. The items were submitted into evidence
14 for any potential further evidentiary value.

15 Q State's 123 and State's 125, does that depict what
16 you just talked about across the road of Hawthorne?
17 And take your time. I didn't mean to . . .

18 A Yes, sir.

19 MR. MEADORS: 123 and 125 without objection,
20 Your Honor.

21 THE COURT: Okay.

22 (WHEREUPON, State's Exhibit No. 123 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 125 is admitted
25 into evidence.)

1 Q Beg the Court's indulgence. All right. You talked
2 about the shell casings. Did you test those to try
3 to find fingerprints?

4 A Yes, I did.

5 Q Were you able to find any?

6 A No, sir.

7 Q And don't we in our business have latent and known
8 and unknown prints?

9 A Yes, sir.

10 Q And you tested and you couldn't find any?

11 A There were no identifiable prints on the shell
12 casings, no.

13 Q What does that mean?

14 A Identifiable?

15 Q Yes.

16 A When we're talking -- again, when I was talking about
17 that transfer of the fingerprint onto a particular
18 item, there has to be enough of those
19 characteristics' overall orientation in that
20 fingerprint available for us to be able to do a
21 comparison to what we call a known individual, to be
22 able to say that particular individual left that
23 particular fingerprint on that item. We're able to
24 identify the person that left that fingerprint on
25 that item.

1 Q And of all the -- you didn't find any identifiable
2 fingerprints at all, correct?

3 A I did not.

4 MR. MEADORS: That's all. Thank you.

5 MR. STRICKLER: May it please the Court, Your
6 Honor.

7 THE COURT: Sure.

8 CROSS EXAMINATION

9 BY MR. STRICKLER

10 Q Good morning, Ms. Elsey.

11 A Good morning.

12 Q My name is Doug Strickler. I'm one of the attorneys
13 representing Mr. Portee. You are the supervisor for
14 the crime scene investigation unit?

15 A I am.

16 Q You take over from Zane?

17 A He was the previous lieutenant. That's correct.

18 Q When did you get promoted to that position?

19 A August of 2007.

20 Q I just saw Zane a few days ago and he mentioned he
21 wasn't doing that any more. Just a few things I'd
22 like to review with you at this time. You indicate
23 that in addition to the work that you did inside
24 Wendy's on September 3rd you also worked the
25 exterior. Specifically you worked and documented a

1 track that a K-9 unit had followed, correct?

2 A That's correct.

3 Q And by documenting that, you would have documented it
4 the same way you document the crime scene itself;
5 take pictures of it, correct?

6 A Took photographs. That's correct.

7 Q Any idea how many photographs you took?

8 A I don't.

9 Q Roughly?

10 A I don't know. I can count them if you'd like.

11 Q I won't ask you to count them. Can you describe for
12 the jury where the track originated?

13 A It's my understanding -- again the track was run
14 prior to my arrival. It's my understanding it
15 originated somewhere behind the Wendy's or close to
16 that location.

17 Q And then went through the parking lot of Wendy's as I
18 understand it?

19 A It went through -- it was actually behind businesses
20 located beside Wendy's, went a little ways behind
21 those businesses and then crossed across a creek.

22 Q Across a creek. And terminated in a parking lot
23 behind some businesses across the street?

24 A Correct. Behind some businesses off of O'Neal Court.

25 Q And if I understand your testimony, that's where you

1 took -- that parking lot is where you collected I
2 believe you said some cigarette butts and maybe a
3 napkin and took some samples of a substance off the
4 roadway?

5 **A** Correct. I collected four cigarette butts, collected
6 swabs from two separate stains and collected a white
7 napkin.

8 **Q** And you documented those. You documented the
9 location of the cigarette butts, you documented the
10 location of the stains just as you did inside the
11 scene itself by photographing them in place, correct?

12 **A** Correct. I actually did not photograph the other
13 scene but the other officers would have photographed
14 it and documented that.

15 **Q** And do you have an estimate as to the distance on
16 that track that you documented that ended up in the
17 parking lot there?

18 **A** I don't know how long the track was.

19 **Q** Long enough to go through the parking lot of Wendy's,
20 cross a creek?

21 **A** It went behind some businesses beside the Wendy's
22 across the creek, and on the other side of the creek
23 was the parking lot.

24 **Q** And you indicate that a Stratus was taken into
25 custody. I don't know about taken into custody. It

1 was transported to the Sheriff's Department. And
2 didn't you take an oil sample from that automobile at
3 a later point?

4 **A** I did, later.

5 **Q** And the potential with that would possibly be to
6 compare it with the samples that you had collected at
7 the parking lot when you ran the track, correct?

8 **A** I think that that was a possibility at the time.

9 **Q** No such comparison was done as I understand it,
10 right? To your knowledge?

11 **A** Not that I know of.

12 **Q** Now, you indicate that when you returned to Hawthorne
13 Avenue a few days later you looked in the woods. I
14 believe it's the woods across the street from the
15 Hawthorne Avenue address. Is that correct?

16 **A** We conducted a daytime search across the street and
17 behind the residence again.

18 **Q** Okay. And that's when you recovered the gloves and
19 the shoes that you've testified about, correct?

20 **A** That's correct.

21 **Q** Those were recovered from across the street or behind
22 the address?

23 **A** They were recovered across the street from
24

25 **Q** And you've got a couple of pictures in there. You

1 indicated that your work with those items consisted
2 of processing them with an alternate light source?

3 A Correct.

4 Q Alternate light source? What? A black light?

5 A We actually used our crime lights. And there is five
6 different lights consisting of different wavelengths
7 and we used those to examine those.

8 Q With negative results, correct?

9 A There was no blood indicated. No, sir.

10 Q Will you please describe for the jury what is
11 luminol?

12 A Yes. Luminol is a -- some people refer to it as a
13 presumptive blood test. It's a test that we use.
14 It's a chemical that we spray on a surface or item to
15 determine if blood that we can't detect visually
16 might be present.

17 Q Okay. That is also one of the things available for
18 use in the repertoire that you have available during
19 an investigation, correct?

20 A Do we use luminol, yes.

21 Q Correct?

22 A Yes.

23 Q The Sheriff's Department has used luminol?

24 A Yes, we do.

25 Q Can you tell me what size the gloves are that you

1 took pictures of?

2 A No, sir.

3 Q No? Can you tell me what size the shoes are that you
4 took pictures of? And I'm referring to the gloves
5 and shoes from that search you did the day after?

6 A They were a size 10.

7 Q Size 10? And when you -- I'm sorry I'm jumping
8 around a little bit. Dropping back to September 3rd,
9 when you did your work on the exterior of the Wendy's
10 on that date, how did you -- how were you informed of
11 where the track had started, the K-9 track had
12 started and where it went?

13 A I actually had one of the K-9 officers, Deputy
14 Newman, respond back to the scene and walk the track
15 with me.

16 Q Okay. So you just didn't find your way to it. You
17 had one of the officers direct you as to how the
18 track went, correct?

19 A That's correct.

20 Q Thank you very much.

21 MR. MEADORS: Just briefly, directly to what he
22 ...

23 REDIRECT EXAMINATION

24 BY MR. MEADORS

25 Q Mr. Strickler was asking you about those items.

1 State's 117, what is that?

2 **A** This is the items that I collected from the parking
3 lot. Do you want me to list them?

4 **Q** That's fine. Yes.

5 **A** Cigarette butt, marker A; cigarette butt, marker B;
6 cigarette butt, marker C, cigarette butt, marker D, a
7 swab from marker E, a swab from marker F which are
8 two stains from the pavement and a white napkin.

9 **MR. MEADORS:** That's State's 117, Your Honor.

10 (WHEREUPON, State's Exhibit No. 117 is admitted
11 into evidence.)

12 **Q** And you sent this on to the lab?

13 **A** Yes, sir.

14 **Q** And State's 138?

15 **A** This is the oil sample I collected from the silver
16 Dodge Stratus.

17 **MR. MEADORS:** State's 138, Your Honor.

18 **THE COURT:** Okay.

19 (WHEREUPON, State's Exhibit No. 138 is admitted
20 into evidence.)

21 **Q** And Mr. Strickler was asking you about the shoes I:
22 Think and the gloves. And this is State's 133. Do
23 you recognize those?

24 **A** These are the gloves and the black shoes.

25 **MR. MEADORS:** 133, Your Honor.

1 **THE COURT:** All right.

2 (WHEREUPON, State's Exhibit No. 133 is admitted
3 into evidence.)

4 **Q** Now, you said you walked the track at Wendy's. Do
5 you know that the dog handler and all that get there
6 after the police had gotten there? Do you know?

7 **A** No, sir. All that was prior to my arrival.

8 **Q** All that was prior to your arrival but after your
9 fellow officers had gotten there, correct?

10 **A** Yes.

11 **Q** And do you know how many people had come and gone
12 from Wendy's since these two folks were murdered or
13 before that or after that?

14 **A** No, sir.

15 **Q** Do you know how many animals had come and gone?

16 **A** No, sir.

17 **Q** And when you got and followed this track with these
18 cigarette butts and oil stain, you didn't know if
19 that was related or not to this case, did you?

20 **A** I did not.

21 **Q** Was there a gun there?

22 **A** No, sir.

23 **Q** Was there an ID with the name John Portee there?

24 **A** No, sir.

25 **MR. MEADORS:** Apparently the gloves are 131 and

1 the shoes are 132. I apologize. Thank you for that.
2 That's all we have.

3 **MR. STRICKLER:** No, sir. Nothing further.

4 **THE COURT:** You can step down.

5 **MS. MCDUFFIE:** If it pleases the Court. The
6 State calls Investigator Bouknight.

7 **THE COURT:** All right.

8 **HAROLD BOUKNIGHT,** after being duly sworn,
9 testifies as follows:

10 **THE CLERK:** Please have a seat. State your full
11 name for the record.

12 **THE WITNESS:** Harold Bouknight.

13 **DIRECT EXAMINATION**

14 **BY MS. MCDUFFIE**

15 **Q** Investigator Bouknight, where are you currently
16 employed?

17 **A** With the Richland County Sheriff's Department.

18 **Q** And what are your duties with the Richland County
19 Sheriff's Department?

20 **A** I'm a senior crime scene analyst.

21 **Q** Please describe for the jury what that entails?

22 **A** As a senior crime scene analyst my main function is
23 the documentation, process and collection and
24 preservation of evidence. I also serve as the
25 supervisor on call rotation for our crime scene and

1 assist the sergeant and lieutenant in supervising the
2 other officers in our crime scene unit and responding
3 to autopsies, processing vehicles, things like that.

4 Q And were these your duties in September of 2006?

5 A No, ma'am. At that time I was just a crime scene
6 analyst.

7 Q And what were your duties then?

8 A The same basic thing, responding to crime scenes for
9 the preservation, documentation and processing of
10 evidence.

11 Q On September the 4th of 2006, did you have the
12 occasion to attend the autopsies of Latora Bolton and
13 Carlaus Johnson?

14 A Yes, ma'am, I did.

15 Q And where were those autopsies conducted?

16 A At the Richland Memorial morgue.

17 Q And who performed the autopsy on the two victims?

18 A Dr. Stan Kessler.

19 Q And what was your role or why did you attend the
20 autopsies?

21 A We go to autopsies to -- if there's any evidence
22 discovered at the autopsy so that we can take custody
23 of it and bring it back to our lab and turn it over
24 to people for processing and to take known exemplars
25 from the victims, such as fingerprints and things

1 like that, to use to eliminate prints or any other
2 DNA evidence we may find at a scene.

3 **Q** I show you State's 134 and 135. Is that the
4 identification of the individuals whose autopsy you
5 attended?

6 **A** Yes, ma'am, it is.

7 **MS. MCDUFFIE:** Your Honor, at this time we'd
8 offer 134 and 135.

9 **MS. THOMAS:** Without objection.

10 **THE COURT:** All right.

11 (WHEREUPON, State's Exhibit No. 134 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 135 is admitted
14 into evidence.)

15 **Q** Investigator Bouknight, what, if anything, did you
16 observe or collect at the autopsies of Latora Bolton
17 and Carlaus Johnson?

18 **A** I observed the victims at their locations. Their
19 hands were bagged with paper bags.

20 **Q** Let me stop you right there. Why were their hands
21 bagged?

22 **A** People's hands are bagged before going and being
23 transported to the morgue so that any trace evidence
24 that may be located on there is preserved and doesn't
25 fall off or become lost or contaminated.

1 Q And when a weapon is known to have been used in an
2 incident, are their hands bagged also to do a gunshot
3 residue test?

4 A Yes, ma'am. Any time that there is a shooting
5 victim, a gunshot residue test is collected.

6 Q And please explain to the jury what a gun shot
7 residue, what it looks for and how the test is
8 administered?

9 A Gunshot residue collection kits are prepackaged from
10 manufacturers. There are two different methods
11 inside each kit. One is sticky tabs and the other
12 are swabs. The sticky tabs are just what you would
13 think they are. They're each labeled for the left
14 back, left palm, right back or right palm. And you
15 press them along the appropriate area and seal them
16 back, put them in the bag. And then you have swab
17 cartons for the swabs that are also labeled for left
18 back, left palm, right back, right palm. And they're
19 moistened with a nitric acid solution, swabbed on the
20 appropriate area and sealed into the vials. And
21 they're were forwarded for gunshot residue analysis.

22 Q I show you State's 127. Are these the gun shot kits
23 you collected from Latora Bolton and Carlaus Johnson?

24 A Yes, ma'am.

25 MS. MCDUFFIE: Your Honor, we'd offer 127.

1 **THE COURT:** Okay.

2 (WHEREUPON, State's Exhibit No. 127 is admitted
3 into evidence.)

4 **Q** And after you collect those kits, to whom do you
5 submit them for analysis?

6 **A** I turn them into our evidence technician, and they're
7 forwarded to SLED, State Law Enforcement Division,
8 for analysis.

9 **Q** At the autopsy did you collect any other evidence?

10 **A** Yes, ma'am. Projectiles were located in the victims
11 on x-ray. They were removed by Dr. Kessler and
12 custody was transferred to me.

13 **Q** I show you State's 136, 137 and 130. Do you
14 recognize these?

15 **A** Yes, ma'am, I do.

16 **MS. MCDUFFIE:** Your Honor, we'd offer 136, 137
17 and 130.

18 **THE COURT:** Okay.

19 (WHEREUPON, State's Exhibit No. 130 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 136 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 137 is admitted
24 into evidence.)

25 **Q** Please tell the jury what is contained in State's

1 Exhibit 130?

2 **A** These are the two projectiles that I collected from
3 the victims, I collected from Dr. Kessler who removed
4 them from the victims. They are marked in individual
5 envelopes. And the name of the victim that they came
6 from is written on the envelopes.

7 **Q** And is that what is depicted in State's 136 and 137?

8 **A** Yes, ma'am.

9 **MS. MCDUFFIE:** Your Honor, permission to publish
10 to the jury.

11 **THE COURT:** Okay.

12 **Q** How many projectiles were removed from each victim?

13 **A** It was one from each victim.

14 **Q** And after you collected those projectiles, whom did
15 you turn them into?

16 **A** They were turned into evidence to be forwarded for
17 firearms analysis.

18 **Q** Also on September the 4th of 2006, did you have the
19 occasion to go to the Wendy's on

20 **A** Yes, ma'am. I did go back there.

21 **Q** And why?

22 **A** I went back with Investigator Oates to do a follow-up
23 search, see if there was anything else that might be
24 of evidentiary value there.

25 **Q** And did you find anything you thought could be of

1 evidentiary value?

2 **A** I saw a spot on a printer for receipts at the front
3 counter, thought it could or could not be blood. I
4 photographed it with and without a scale and took a
5 swab of it.

6 **Q** I show you State's 128. Is that the swab you
7 collected?

8 **A** Yes, ma'am.

9 **MS. MCDUFFIE:** Your Honor, at this time we'd
10 offer 128.

11 **THE COURT:** 121 comes in.

12 **MS. MCDUFFIE:** It's 128.

13 **Q** Is that right, Investigator Bouknight?

14 **A** 128. Yes, ma'am.

15 (WHEREUPON, State's Exhibit No. 128 is admitted
16 into evidence.)

17 **Q** And did you also have the opportunity to process a
18 vehicle in this case?

19 **A** Yes, ma'am.

20 **Q** And what make and model vehicle was that?

21 **A** It was a 1992 Dodge Stratus.

22 **Q** And where was that vehicle located when you processed
23 it?

24 **A** In our forensic garage.

25 **Q** And was that vehicle secured?

1 **A** Yes, ma'am.

2 **Q** Did you find anything of evidentiary value in the
3 vehicle?

4 **A** No, ma'am.

5 **MS. MCDUFFIE:** Beg the Court's indulgence.

6 Nothing further, Your Honor.

7 CROSS EXAMINATION

8 **BY MS. THOMAS**

9 **Q** Just briefly. When you processed the '92 Dodge
10 Stratus, --

11 **A** Yes, ma'am.

12 **Q** -- how did you process that?

13 **A** With luminol.

14 **Q** And that is to detect --

15 **A** As lieutenant Elsey explained earlier, it's to detect
16 the presence of blood.

17 **Q** Thank you. Nothing further.

18 **MS. MCDUFFIE:** Nothing further from the State,
19 Your Honor.

20 **THE COURT:** You can step down.

21 **MS. MCDUFFIE:** At this time the State would call
22 Investigator Stan Richards.

23 **THE COURT:** Okay.

24 STAN RICHARDS, after being duly sworn, testifies
25 as follows:

1 **THE CLERK:** Please have a seat. State your full
2 name for the record.

3 **MR. STRICKLER:** Your Honor, may we approach?

4 **THE COURT:** You can.

5 **MR. STRICKLER:** Thank you.

6 (Whereupon, a bench conference is had)

7 **THE COURT:** Jurors, we're just going to take a
8 break. Don't talk about the case. Proceed out.

9 (Jury out at 11:32 a.m.)

10 **THE COURT:** Okay. We are at ease.

11 **MR. STRICKLER:** Thank you, sir.

12 (Whereupon, a break is taken)

13 (WHEREUPON, State's Exhibit No. 139 is marked
14 for identification.)

15 **THE COURT:** Okay. State ready to roll?

16 **MS. MCDUFFIE:** The State's ready, Your Honor.

17 **THE COURT:** What about the defense?

18 **MR. STRICKLER:** Yes, sir.

19 **THE COURT:** Let's bring them in. The jury. You
20 have one more witness before lunch? It does not
21 matter.

22 **MR. MEADORS:** Two.

23 **MS. MCDUFFIE:** Three.

24 **MR. MEADORS:** Who is the third?

25 **THE COURT:** They go to lunch at 1.

1 (Jury in at 11:47 a.m.)

2 **THE BAILIFF:** The jury is all present, Your
3 Honor.

4 **THE COURT:** Okay. You may proceed.

5 DIRECT EXAMINATION

6 **BY MS. MCDUFFIE**

7 **Q** Investigator Richards, where are you currently
8 employed?

9 **A** With the Richland County Sheriff's Department crime
10 scene unit.

11 **Q** And what are your duties with the crime scene unit?

12 **A** I am currently the sergeant of the crime scene unit.
13 I oversee the operations of eight crime scene
14 investigators, to include a latent print section.

15 **Q** And will you please tell the jury a little bit about
16 your background, training and education in the field
17 of crime scene education?

18 **A** Yes. My education includes a criminal justice degree
19 from Saint Leo University at Saint Leo, Florida. I
20 have attended Waylon Baptist University at Fort
21 Wainwright, Alaska, in the field of sociology. Some
22 of the disciplines that I have been trained in
23 include blood pattern analysis, DNA procedures, crime
24 scene photography, latent print verification, palm
25 print verification, forensic questioned documents,

1 crime scene techniques, complete -- or complex;
2 excuse me -- latent print examination, latent
3 processing, shoe and tire wear examinations, forensic
4 shooting reconstruction, comparison and examination
5 of footwear impressions. And I've attended DNA
6 overview seminars, forensic pathology seminars and
7 forensic anthropology seminars. I also have been
8 certified as a crime scene investigator and a
9 footwear examiner through the International
10 Association for Identification.

11 **MS. MCDUFFIE:** Your Honor, at this time we would
12 offer Investigator Richards as an expert in crime
13 scene investigation.

14 **MS. THOMAS:** No objection.

15 **THE COURT:** Including footwear? All right.

16 **Q** Investigator Richards, did you have the occasion to
17 respond to on September the 5th
18 of 2006?

19 **A** I did. I responded with Lieutenant Elsey to that
20 address.

21 **Q** And please describe for the jury what you did at that
22 location?

23 **A** I assisted Lieutenant Elsey in an area search of the
24 wooded area opposite 4417 Hawthorne and behind that
25 residence as well.

1 Q And please tell the jury what, if anything, you found
2 at that location?

3 A We found two black shoes and two black gloves in the
4 wooded area across from 4417 Hawthorne. They were
5 marked, photographed and collected at that time by
6 Lieutenant Elsey.

7 Q I show you State's 133 and 132. Is this what you
8 collected?

9 A Yes. Those appear to be the items that were
10 collected by Lieutenant Elsey.

11 Q Did you also search those areas with a metal
12 detector?

13 A Yes, I did.

14 Q What were your results?

15 A I found nothing of any evidentiary value using the
16 metal detector at that time.

17 Q Did you have a chance to further process the shoes
18 and gloves?

19 A Along with Lieutenant Elsey I assisted in processing
20 the two black shoes and the two black gloves that
21 were collected from that scene looking for possible
22 blood.

23 Q And what were your results?

24 A Using an alternate light source, it was negative for
25 blood.

1 Q I show you what's been marked as State's Exhibit 139
2 for ID. Do you recognize these items?

3 A Yes, I do.

4 Q Also on September the 5th, were you given some
5 clothing items to further process?

6 A Yes. I received the box that you just showed me
7 which was properly sealed from our evidence room.
8 They contained a black cloth baseball cap, a black
9 tank top, a pair of black denim shorts, a black
10 leather belt, one orange t-shirt, one burgundy
11 washcloth and one pair of black Nike sneakers and one
12 pair of ankle socks which all was collected and
13 entered into our evidence which was documented by
14 Sergeant McRoberts.

15 Q What testing did you do on these items?

16 A I along with Sergeant -- or excuse me -- Lieutenant
17 Elsey looked at these items, all using an alternate
18 light source checking for possible blood.

19 Q And what, if any, results did you find?

20 A I found that on all the items I deemed it negative
21 for any possible blood, except for the bottom of the
22 right Nike shoe. I found two spots, which I tested
23 it at that time using a presumptive test for blood
24 which is phenylphaline. However, the two spots on
25 the bottom of the right Nike shoe tested negative for

1 blood.

2 Additionally, I found or observed three spots on
3 the top of the right Nike shoe. I circled those
4 spots, marking those 1, 2 and 3. I tested spots
5 number 1 and 3 also with phenylphaline, presumptive
6 test for blood, which I could not determine if in
7 fact it was blood. It was inconclusive. Those two
8 swabs along with the swabs from the number 2 spot was
9 all taken and submitted to our evidence room and
10 later submitted to the DNA lab.

11 **Q** I show you what's been marked as State's 129 and 131.
12 Are these the items you were just speaking of?

13 **A** Yes. This indicates the three spots on the right,
14 top of the right Nike shoe that was marked 1, 2 and 3
15 where the swabs were taken from.

16 **MS. MCDUFFIE:** Your Honor, at this time we'd
17 offer 129 and 131.

18 **THE COURT:** All right.

19 (WHEREUPON, State's Exhibit No. 129 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 131 is admitted
22 into evidence.)

23 **Q** Please describe for the jury what's depicted in
24 State's 131?

25 **A** That is a pair of black Nike shoes. If you can see,

1 on the right shoe top there is three white markers,
2 circular markers. Those are the spots that I
3 indicate as 1, 2 and 3 where I took the swabs where
4 it could have possibly been blood.

5 Q And your results were what again?

6 A My results of spot numbers 1 and 3 which I swabbed
7 and conducted a presumptive test using phenylphaline
8 was inconclusive. Phenylphaline is a reactor, a
9 chemical reaction to the hemoglobin in blood. What
10 happens when the reaction takes place and oxidation
11 of the swab takes place, it will become a pinkish
12 color on the swab. It was very, very faint; and I
13 could not conclude at that time that it was actually
14 blood. That's why they were sent on to the DNA lab.

15 MS. MCDUFFIE: Beg the Court's indulgence.

16 THE COURT: Okay.

17 MS. MCDUFFIE: Nothing further, Your Honor.

18 THE COURT: All right.

19 CROSS EXAMINATION

20 BY MS. THOMAS

21 Q There were three spots altogether that you tested?

22 A There was five spots altogether, and four of them
23 were tested.

24 Q Okay. But there is the three markers, and you tested
25 each one of those?

1 **A** There was three spots on the top of the right shoe.
2 Two of those were tested by me with presumptive tests
3 for blood. But all three were swabbed and the swabs
4 were sent to the DNA lab.

5 **Q** Okay. And you did not get any positive results for
6 blood?

7 **A** Markers number 1 and number 3 were inconclusive, is
8 my determination.

9 **Q** And then they were sent to DNA?

10 **A** Yes.

11 **Q** Okay. Thank you. One more thing. The two on the
12 bottom of the shoe, those were negative for blood?

13 **A** They were negative for the presumptive test for
14 blood, yes.

15 **MS. THOMAS:** No further questions.

16 **MS. MCDUFFIE:** Nothing further, Your Honor.

17 **THE COURT:** You can step down.

18 **MS. MCDUFFIE:** If it pleases the Court, the
19 State calls Gray Amick.

20 **THE COURT:** Okay.

21 GRAY AMICK, after being duly sworn, testifies as
22 follows:

23 **THE CLERK:** Please have a seat. State your full
24 name for the record.

25 **THE WITNESS:** My name is Gray Amick.

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DIRECT EXAMINATION

BY MS. MCDUFFIE

Q Investigator Amick, where are you currently employed?

A At the Richland County Sheriff's Department.

Q And what are your duties with the Richland County Sheriff's Department?

A Currently I am the DNA technical leader at the Richland County Sheriff's Department running the DNA laboratory.

Q Please tell the jury your background, education and training in the field of DNA?

A I have a Bachelor of Science in biology in 1989 and a Ph.D in biochemistry in 1993 from the University of South Carolina. From there I was hired by the South Carolina Law Enforcement Division as a toxicologist. I worked there for 11 years, six and a half in the DNA laboratory, was trained by the court qualified experts at SLED in the fields of forensic serology, forensic DNA analysis, participated in method validation and authoring of protocol there.

In 2004 I was hired by the Sheriff at Richland County to start up a DNA laboratory there. And I did so in 2004, wrote the protocols, validated the methods, began testing in late 2004 at Richland County. I participate in continuing education in the

1 fields of forensic DNA and forensic serology
2 annually.

3 **MS. MCDUFFIE:** Your Honor, at this time we would
4 offer Investigator Amick as an expert in the field of
5 DNA.

6 **MR. STRICKLER:** I have no voir dire for
7 Mr. Amick.

8 **THE COURT:** Okay. We will qualify him in DNA
9 analysis and so forth.

10 **Q** And, Investigator Amick, did you have a chance to
11 process numerous items in this case?

12 **A** I did.

13 **Q** Do you have a copy of your report?

14 **A** I do.

15 **Q** About how many items did you process in this case?

16 **A** Do you want me to count them?

17 **Q** No. It's safe to say it was dozens of items that
18 were submitted to you?

19 **A** Yes. Dozens.

20 **Q** Please tell the jury how you test for DNA?

21 **A** Basically what we do is receive evidence from crime
22 scenes, coroners, other agencies potentially; and we
23 attempt to develop a DNA profile from those items.
24 Since DNA is unique to every individual except
25 identical twins, I will use that as basically a

1 molecular fingerprint. If we get a profile from
2 those evidence items, we will attempt to compare them
3 to any standards submitted in the case, whether they
4 be victims or suspects. And then we'll author our
5 reports based on the conclusions.

6 Q Please tell the jury what conclusions you formed as a
7 result of analyzing the evidence submitted to you?

8 A In this case?

9 Q Yes.

10 A In this case, from the items I tested, several I got
11 no DNA profile from. And that means there wasn't
12 enough DNA there. Item 13 which was a I termed it
13 Wendy's hat, it's like a baseball cap, the DNA
14 profile developed from item 13 matched, matches John
15 Portee which is the standard submitted in this case.
16 And based on the genetic results obtained, the
17 frequency of seeing this profile in the Caucasian
18 population is approximately 1 in 6.9 trillion and in
19 the African-American population approximately 1 in 2
20 trillion.

21 Q So 1 in 2 trillion in the African-American
22 population?

23 A That's correct.

24 Q And about how many people are on earth, Investigator
25 Amick?

1 A Over 6 billion.

2 Q So based on that, what is your conclusion?

3 A That the stain left on item 13 came from John Portee.

4 Q And did you develop any other results from any other
5 items you tested?

6 A Yes. Item 99 which was a swab from Southern
7 Gentleman's card, like a business card, the DNA
8 profile developed from that item also matched John
9 Portee.

10 Q What's contained in State's 109, are these the
11 Southern Gentleman's cards?

12 A That's correct. They look similar. Continuing on
13 the results, item 86 was a mixture. 86 was a swab
14 from a green bag.

15 Q Let me stop you right there. You said it was a swab
16 from the green bag?

17 A That's correct.

18 Q Contained in State's 109?

19 A It appears to be the bag. I'd have to look at the
20 packaging and my initials on the packaging.

21 Q And what were your results from the swab from the
22 green bag?

23 A Item 86, the green bag, was a mixture. John Portee
24 could not be excluded from this mixture. And there
25 was an unknown female also on that item, meaning --

1 Q Describe to the jury what a mixture is?

2 A A mixture, you can tell by the profiles we developed
3 if there's one or more than one people present. So
4 if there is more than one person present, we will
5 term that a mixture.

6 Q And the defendant could not be excluded as being a
7 contributor to that mixture?

8 A That's right. That means his genetic make up was
9 found on that bag as well as another individual who I
10 did not know the identity of.

11 Q And that was an unknown female?

12 A That's correct.

13 Q Did you also find this same unknown female's DNA on
14 other items?

15 A Yes. Item 95, 122 and 123.

16 Q And item 95 being ...?

17 A Swab from brown paper bag.

18 Q 122?

19 A 122 is a pair of black/gray underwear. And 123 is a
20 gray/black t-shirt. All of those items are from the
21 same unknown female.

22 Q So out of the dozens and dozens of items you tested,
23 those were the only results that you were able to
24 determine?

25 A That's correct. There was a couple of other

1 statements. Items 98, 112 and 116 were too weak to
2 interpret. So, as is the nature of DNA evidence,
3 some of the evidence may not have enough DNA on it to
4 get a full profile. Some may not have any on it at
5 all to get a profile. And some may have a little bit
6 where you really can't make a conclusion. So that's
7 what that statement means.

8 Q So you were not able to develop a profile from items
9 61 or 62?

10 A That's correct.

11 Q And can you tell the jury what items 61 and 62 are?

12 A 61 and 62 are swabs from .45 shell casings, markers A
13 and B.

14 Q And you did find DNA; it was just not enough to
15 interpret?

16 A That's correct.

17 Q Beg the Court's indulgence. Items 63, 64, 65 and 66,
18 can you tell the jury what those items are?

19 A 63, 64, 65, 66?

20 Q Yes, sir.

21 A 63 was a swab from a Hi-Point .45 inside the muzzle.

22 64 was a swab from the Hi-Point .45 end of muzzle.

23 65 was from Hi-Point .45 trigger area. And 66 was
24 swab from Hi-Point .45 slide frame.

25 Q And what were your results on those items?

1 **A** 63, 64, 65, 66, no DNA profile was developed from
2 these items.

3 **Q** So there was DNA present, just not enough to
4 interpret?

5 **A** That's correct.

6 **Q** And item 73, the swab from the rear office doorknob,
7 what were your results on that item?

8 **A** 73?

9 **Q** Yes, sir.

10 **A** 73, there was no DNA extracted from that item.

11 **Q** And item 74, a swab from the rear office, the safe
12 handle, what were your results on that item?

13 **A** 74, there was no DNA profile developed from that
14 item.

15 **Q** Does that mean that the DNA was too weak to
16 interpret?

17 **A** There was not enough to get a profile. Correct.

18 **MS. MCDUFFIE:** Beg the Court's indulgence.

19 Nothing further, Your Honor.

20 **MR. STRICKLER:** May it please the Court, sir.

21 **THE COURT:** Sure.

22 CROSS EXAMINATION

23 **BY MR. STRICKLER**

24 **Q** Good afternoon, Mr. Amick.

25 **A** Good afternoon.

1 Q How many different reports did you issue in this
2 case?

3 A I believe there was two reports.

4 Q And you've indicated that items 63, 64, 65 and 66,
5 what were your conclusions in regard to them?

6 A There was no DNA profile developed from those items.

7 Q Now, and if I understand your testimony correctly,
8 that translates as you found presence of DNA but
9 couldn't develop a profile?

10 A That's correct.

11 Q Okay. Could you tell -- let me drop back a second.
12 Can you describe briefly, unless you need to be more
13 than briefly, can you describe and give us an
14 overview of the steps involved in conducting the DNA
15 analysis?

16 A Sure. Basically, to try to get a DNA profile, it's a
17 series of steps involving extraction. You quantify
18 the DNA. So you try to find out how much DNA is
19 there. And then you run a human identification kit
20 on that to actually develop the profile, the genetic
21 profile. And then you place that on an instrument
22 for detection.

23 Q Okay. Prior to engaging in the DNA analysis, do you
24 do any other steps? Do you do any other type of
25 analysis?

1 **A** Depending on the evidence, we may do some basic
2 serology. So, is there blood present? Is it human
3 blood? Or is there semen present in some cases? So
4 we do some potentially basic serology.

5 **Q** Because DNA can go ahead and be used to detect the
6 presence of DNA present in blood, in other human
7 bodily fluids. Correct?

8 **A** Yes. There is DNA in other bodily fluids.

9 **Q** And the skin that's shed on a regular basis left on
10 surfaces, correct?

11 **A** That's correct.

12 **Q** So every time you're checking for DNA, it's not
13 necessarily associated with blood. Given the right
14 circumstances, you may want to do some preliminary
15 testing and see whether you've got the presence of
16 blood or not, correct?

17 **A** That's correct.

18 **Q** Okay. And, indeed, I am looking at your report. I
19 see indication that no blood detected on items 64, 65
20 and 66. Is that correct?

21 **A** That's correct.

22 **Q** And that would be the swab from the Hi-Point .45 end
23 of muzzle, correct?

24 **A** That's 64.

25 **Q** Right. 65, trigger area?

1 A That's correct.

2 Q And the slide frame, 66. Correct?

3 A That's correct.

4 Q All right. So while you found DNA -- well, let me
5 ask you this. I don't see an indication as to
6 whether or not blood was detected on item 63. I see
7 indications of no blood was detected on 64, 5 and 6.
8 Okay. I don't see anything to the negative. Does
9 that mean that there was no blood there, or did you
10 not test the inside of the muzzle for the presence of
11 blood?

12 A It would -- me, I did not test that.

13 Q -- Okay. That's what I'm thinking. It's highly
14 unlikely that you'd have anything in there that could
15 survive something like a muzzle strike?

16 A Well, it's really based on, I look at the swab and I
17 don't want to consume what may be on the swab to do a
18 presumptive test. So if I make a determination and
19 there's potentially not much material there, I'll
20 just go straight ahead and do DNA analysis on it.

21 Q Okay. So you did test 63 for the presence or absence
22 of blood. And you tested 64, 5 and 6, and they were
23 negative for the presence of blood, correct?

24 A That's correct.

25 Q Okay. So when you indicate that DNA extraction was

1 attempted and it was -- I'm going to forget your
2 terminology here -- 63, 64, 5 and 6, or 3, 4, 5 and
3 6; whatever DNA was there was not associated with
4 blood, correct?

5 A No. It's two different results.

6 Q Right.

7 A 64, 5 and 6, no blood was detected.

8 Q Right.

9 A And 63, 4, 5 and 6, there was no DNA profile
10 developed.

11 Q Yeah. That's what I mean. But since you've already
12 excluded blood as the contributor for whatever DNA
13 might be present at 4, 5 and 6, then whatever DNA
14 profile -- or whatever DNA was there that was
15 insufficient to give you a profile was not associated
16 with blood? Am I being too convoluted for you?

17 A Yes. It's a bit confusing. We don't normally report
18 it in that fashion. So, I mean, --

19 Q Well, --

20 A If there was -- well, I would say this, that there
21 was no profile developed from those items. I mean,
22 that's basically how we would put it.

23 Q What's the difference between no profile and no DNA?

24 A If there is a no profile, no DNA means that when I
25 did my quantitation I saw the presence of DNA. It

1 may have been a very small amount. So I'll go
2 forward to the next step and try to develop a
3 profile. If I don't get a profile, then it gets
4 reported as no profile, no DNA profile. If I didn't
5 get anything in the quantitation at all, it gets
6 reported as no DNA extracted.

7 Q Okay. Now, the quantitation, you are doing something
8 that's called STR DNA analysis, right?

9 A I am.

10 Q Short tandem repeat DNA analysis, correct?

11 A That's correct.

12 Q It involves something called polymerase chain
13 reaction, correct?

14 A That's correct.

15 Q Okay... Now, and polymerase chain reaction is a
16 scientific procedure that you take a small amount of
17 DNA, use some chemicals -- I'll use the term
18 chemicals -- whatever; and make them multiply
19 themselves so that you get a larger amount of the
20 same DNA, correct; in as simple terms as I can put
21 it?

22 A I would he describe it differently. But it's close
23 enough.

24 Q When do you do your quantitation? Prior to trying to
25 increase the amount of DNA you have to work with?

1 A That's correct.

2 Q Okay. So the quantitation is at that step. And it's
3 at that point, that you detected the presence of DNA
4 on these 63, 4, 5 and 6?

5 A That's correct.

6 Q Okay. So you take the presence and then you run the
7 procedure which is the polymerase chain reaction?

8 A That's correct.

9 Q Right? Which amplifies the amount of DNA that's
10 present?

11 A That's correct.

12 Q Okay.

13 A We actually use polymerase chain reaction on
14 quantitation, too. But most people use it
15 synonymously with the amplification that you're
16 talking about.

17 Q Okay. And it's after that when you increase the
18 amount of the sample that you're dealing with so that
19 you can try to detect the presence or you can
20 identify the presence, the DNA presence. And it's
21 after that point in time that you had the results
22 that you described as not no DNA present but
23 insufficient?

24 A No DNA profile developed.

25 Q No DNA profile developed. And is that term that you

1 use, no DNA profile developed, is that a term of art
2 with you?

3 A A term of what?

4 Q A term of art with you. Is it a term that has
5 special significance?

6 A I don't think it has any more special significance
7 than the actual meaning that there was not a DNA
8 profile developed.

9 Q All right. You operate your work under a protocol
10 that's been established by the Sheriff's Department,
11 correct?

12 A That's correct.

13 Q Okay. That protocol basically regulates every step
14 of the procedure from the very beginning through what
15 you report in your reports, correct?

16 A It is a guideline for the analysis and the reporting
17 format. And it does have very specific steps in it,
18 yes.

19 Q I mean, you're required to have that, correct?

20 A The protocol?

21 Q Right.

22 A Yes.

23 Q I mean, you couldn't operate as a DNA lab without it,
24 right?

25 A Well, you could, but there are certain quality

1 standards that we adhere to based on international
2 accreditation that, yes, we are required to have.

3 Q Now, when you say no DNA profile developed, is there
4 a place in your protocol that indicates when you
5 should use that as a report that you make, as a
6 conclusion that you report rather?

7 A No. I don't think it's specifically enumerated in
8 there as to if you don't get a profile you would term
9 it no DNA profile. I don't think those words are in
10 there.

11 Q Now, at the time you write the conclusion that no DNA
12 profile was developed, is that before or after you
13 have run the electropherograms?

14 A All the reporting statements are done after all of
15 the analysis is complete.

16 Q And will you describe what the electropherogram is,
17 please, and what that looks like and how that helps
18 you arrive at your conclusions?

19 A Sure. An electropherogram is just a printout of the
20 detection of the DNA. It's produced by an
21 instrument, a genetic analyzer that uses a laser to
22 detect DNA fragments. So we basically will read the
23 DNA profile from that piece of paper. It represents
24 the DNA profile on a piece of paper.

25 Q And what is present on the electropherogram when no

1 DNA profile is developed?

2 A Well, you would normally see when there is a DNA
3 profile peaks, different colored peaks that are
4 labeled with the DNA types. A profile that has no
5 DNA profile developed, you basically see lines,
6 straight lines, the absence of peaks.

7 Q All right. You testified that -- if I got you
8 correctly -- that the profile on what you've labeled
9 item, or the Sheriff's Department labeled item 13,
10 Wendy's hat, what you call the Wendy's hat, matches
11 Mr. Portee, correct?

12 A That's correct.

13 Q And you gave a number associated with that match.
14 And you've testified that the profile on 99 which is
15 a swab from one of the Southern Gentleman's cards
16 also matches Mr. Portee, correct?

17 A That's correct.

18 Q You tested an item number 67 which is referred to by
19 you as a pair of black gloves, correct?

20 A That's correct.

21 Q And the result for that was what?

22 A 67.1 and 67.2 which is the left and right black
23 glove.

24 Q Right.

25 A There was no blood detected on those items.

1 Q Okay.

2 A And there was no DNA extracted from those items.

3 Q So from the black gloves you got neither blood nor

4 DNA?

5 A That's correct.

6 Q Correct?

7 A That's correct.

8 Q Now, what you're looking for or what you're comparing

9 are alleles present at specific spots on specific

10 chromosomes. Is that correct?

11 A That's part of the analysis, yes.

12 Q Ideally, you would find the presence of either, for a

13 pure sample, one or two alleles at any given location

14 that you test for. Correct?

15 A That's correct. In the single source sample, you

16 would find one or two alleles at any location.

17 Q All right. And will you tell us what an allele is?

18 A An allele is a various or a variation of a gene. So

19 you can think of an allele as eye color. There are

20 several different alleles for eye color. One would

21 be blue. One would be brown. So those are different

22 variations of a single gene. The alleles that we

23 deal with, you cannot physically see them; that is,

24 they don't code for an outward characteristic. But

25 that's used as an example. It's a variation of a

1 gene.

2 Q To your knowledge, or to the community's knowledge,
3 the alleles you test for don't code for any
4 particular physical trait in the human being,
5 correct?

6 A That's right.

7 Q So you're looking for an allele as a variation of a
8 particular gene. And you may have, oh, a couple of
9 variations in particular. You may have a number of
10 variations that you can find in a particular gene,
11 correct?

12 A That's correct. Every location we look at can have
13 many forms of the gene. And that's what we use to
14 differentiate between people. Some genes you may
15 share between unrelated individuals, just like you
16 would share eye color. But we look at a lot of
17 different locations. So given all those together,
18 you can differentiate between people.

19 Q Okay. Do you have your report in front of you?

20 A I do.

21 Q Or reports rather? Both of them?

22 A I think I have just the final, the latest report.

23 Q Your latest report did not contain a table. Is that
24 correct?

25 A That's correct.

1 Q Okay. Let's do it this way. Item 13 in your initial
2 report, this is at location D8S1179. You find the
3 presence of alleles what?

4 A Item 13 at D8 you said?

5 Q Yes, sir.

6 A 11 and 16.

7 Q 11 and 16. On your second report or on the run for
8 John Portee, okay, what alleles are present at that
9 location?

10 A It's no different. The second report is a
11 supplemental report based on the fact that additional
12 evidence was submitted to be run. So we simply run
13 that additional evidence, add it to the other report
14 and author that report. So all the items weren't
15 re-run. It was just additional items were added and
16 reported.

17 Q Right. I'm just looking at the -- all I have is the
18 electropheragram from the 2nd. Okay? So I want to
19 find out what alleles you found present for John
20 Portee when you ran his known sample. Okay?

21 A Oh. On his standard?

22 Q Right.

23 A Oh. I misunderstood you. So for D8 for Portee's
24 standard, it was 11, 16.

25 Q I'm sorry. We're not communicating here. For

1 D21S11, 28 and 32.2 on the cap?

2 A That's correct.

3 Q And the same on the standard for Mr. Portee, correct?

4 A That's correct.

5 Q D7S820, you have a 10 in parentheses on the sample
6 from the cap, correct?

7 A That's correct.

8 Q And that parentheses is explained. That has a
9 significance to it in your report, correct?

10 A That's correct.

11 Q And what would be that significance?

12 A The significance is that it is a peak that is smaller
13 than other peaks. So it falls in a certain range of
14 intensity. And we indicated that on the report, on
15 some reports.

16 Q Okay. And what does your protocol say about
17 interpreting results for that peak?

18 A It says peaks between 75 and 149 RFU, which is
19 relative fluorescent units is what we're talking
20 about here, are in the stochastic region which means
21 that there potentially could be allele dropout. So
22 based on our validation of this test, when you have
23 DNA at that lower level, you may or may not see a
24 peak come up there. That's what a stochastic region
25 is. So we indicated that on the type of report that

1 you're looking at as parentheses.

2 Q Okay. And for Mr. Portee, it's a 10?

3 A That's correct.

4 Q Okay. And the peak level for M is up where it should
5 be. It's well over the minimum peak level required,
6 correct?

7 A It is higher, yes.

8 Q Now, for CSF1PO, this is another location that you're
9 looking at, you found for the cap nothing?

10 A That's correct.

11 Q Didn't get any result?

12 A That's correct.

13 Q For Mr. Portee you have, if I read it correctly, 8
14 and 11, correct?

15 A That's correct.

16 Q And when we get two alleles present, that means
17 you've got one from mom and one from dad, right?

18 A That's right.

19 Q And when you get one allele present, that means you
20 picked up the same genetic allele from both parents,
21 right?

22 A That's correct.

23 Q Okay. Now, D3S1358. And that's 15 and 16 at both
24 places, right?

25 A That's correct.

1 Q And what is called I understand TH01 is inconclusive
2 on the cap, correct?

3 A That's correct.

4 Q What does inconclusive mean?

5 A It means there was some reason that the analyst who
6 is interpreting this, which would be me, decided to
7 not include those results, meaning there was an
8 instrumental problem, electrophoretic problem, any
9 number of issues that may arise during analysis. It
10 doesn't mean that it was an exclusion. It means that
11 the data has somehow been compromised because of
12 instrument issues most likely.

13 Q Okay. And your protocol would dictate that you would
14 review or you are required to go ahead and report
15 that as an inconclusive result, correct?

16 A The protocol is going to outline what is an allele,
17 what isn't an allele. And it gives the discretion to
18 the analyst to use their experience to do the
19 interpretation. So, if you looked at the
20 electropherogram for the Wendy's hat, both alleles
21 that I deemed inconclusive on TH01 are present and
22 match John Portee at that locus. However, because of
23 the peak shape of one of them, I -- to be
24 conservative to the defendant in this case, we just
25 used that inconclusive for that locus.

1 Q All right. D13S317 on the hat, that's an 11 in
2 parentheses. Is that correct?

3 A That's correct.

4 Q Okay. And for Mr. Portee it is an 11 and a 14?

5 A That's correct.

6 Q The hat does not have an 11 and a 14, correct?

7 A That's correct. It has an 11 in that region we spoke
8 about. Which means basically when you see a profile
9 that has alleles in that region, you would expect
10 what we call drop out. So in this case the 14 allele
11 has dropped out.

12 If you look at the profile as a whole, you can
13 look and see that the larger loci, which means
14 reading from left to right, the fragments themselves
15 are small and they get larger. The larger loci are
16 the ones that degrade first or easier. So everything
17 on the right side of the page you would expect on a
18 profile that has less than optimal DNA, you would see
19 drop out of maybe both alleles as in the case of
20 C.SF1PO, one allele in the case of this locus, or
21 maybe neither allele. You may get a full profile.

22 But you can recognize that pattern across the
23 entire profile as a degraded sample. And that along
24 with the peak height that you're seeing here, those
25 peak heights in that range we spoke about, you would

1 expect, or an analyst would expect to see potentially
2 low locus or loci that have drop out in them. And
3 that's what has occurred at this locus.

4 Q All right. And what you have is the presence of one
5 allele on the questioned sample and two on the known
6 sample for Mr. Portee?

7 A That's correct.

8 Q Now, you didn't include this sample, or this sample
9 was not included by you in arriving at your
10 statistical comparisons, correct?

11 A That's correct.

12 Q Now, the next ones, D16S539 is 9 and 13 with the 9
13 and the 13 being in those parentheses on the
14 questioned, on the hat. Correct?

15 A That's correct.

16 Q All right. And that means again that they're below
17 this 149 relative fluorescent unit level. And I
18 guess that's a sign that you should interpret them
19 cautiously because there can be some problems
20 associated with them, right?

21 A They're interpreted -- cautiously is probably an
22 accurate word. But I would -- not that they're
23 wrong. They just can have those things I just spoke
24 about, drop out, et cetera. So they are, I think the
25 profile actually says, interpreted with caution. So

1 you use your analyst's discretion and your experience
2 to interpret those peaks.

3 Q All right. D2S1338, the questioned or the hat is a
4 23 in parentheses, correct?

5 A That's correct.

6 Q And Mr. Portee's known sample is 23 and 26, correct?

7 A That's correct.

8 Q So there is one allele with the parentheses around it
9 present on the hat, and Mr. Portee definitely has,
10 known sample, two alleles at that locus, right?

11 A That's correct. Again, drop out.

12 Q Your former explanation or your explanation we just
13 went through a few minutes ago, right?

14 A That's correct.

15 Q Of course, you know, if I have two alleles present
16 and it's not drop out, then it's not the same person
17 when it's only one present on the questioned sample?

18 A You have to look at the entire profile. You can't
19 just look at one locus. But in general your
20 statement is correct. If you have an exclusion at
21 one locus or a non-match at one locus, you can
22 exclude that individual.

23 Q Right. Because it's either my DNA or it's not?

24 A That's correct.

25 Q Right? So if it doesn't match, it's not him?

1 A No. That's not what I said.

2 Q Well, I understand. Go ahead. I don't want to cut
3 you off. If you want to explain, go ahead.

4 A No. If it doesn't match at one locus, if there is --
5 then it's an exclusion. That's not the same as if
6 you have a matching allele and an allele that dropped
7 out of one locus. Those are two different
8 situations.

9 Q And calling it as a drop out is your function as a
10 DNA analyst, right?

11 A That's correct. And as well as, like I said before,
12 we're upheld to a certain quality standard. So every
13 one of these cases and every interpretation I make is
14 independently technically reviewed by another
15 qualified analyst. So he has to agree with my
16 interpretations. It's not just what I think. It is
17 interpreted again by another technical reviewer.

18 Q Right. Another employee of the Richland County
19 Sheriff's Department, correct?

20 A Another qualified analyst. Not just an employee, but
21 another qualified DNA analyst.

22 Q I understand that. But you are an employee of the
23 Sheriff's Department, right?

24 A Yes.

25 Q And the person who reviews your work is a person of

- 1 the Sheriff's Department, right?
- 2 A That's correct.
- 3 Q Okay. Just checking. D19, both are 13.2 and 16.2,
- 4 correct?
- 5 A That's correct.
- 6 Q VWA, you've got a parentheses 14, parentheses 19 on
- 7 the hat and the plain 14 and 19 on the known sample,
- 8 correct?
- 9 A That's correct.
- 10 Q All right. Now, T-box is 9 and a 9?
- 11 A Correct.
- 12 Q Right? Now, D18 is -- I see a dash there. That's
- 13 what?
- 14 A That means there was, just like in CSF, there was no
- 15 alleles labeled in that locus.
- 16 Q This is on the hat, right?
- 17 A That's correct.
- 18 Q All right. For Mr. Portee D18 is 12 and 18?
- 19 A Correct.
- 20 Q All right. And we get the sex check is male on both
- 21 of them, right?
- 22 A That's correct.
- 23 Q All right. Now, D5S818, that shows as an 11 on both
- 24 the hat and Mr. Portee, right?
- 25 A That's right.

1 Q And then on what's called FGA, the last of these
2 alleles, you get a 19 in parentheses on the hat and
3 you get a 19 and a 24 on Mr. Portee?

4 A That's correct.

5 Q This is drop out again according to you?

6 A Right.

7 Q Beg the Court's indulgence, Your Honor, one moment.

8 THE COURT: Okay.

9 Q Thank you that's all have.

10 REDIRECT EXAMINATION

11 BY MS. MCDUFFIE

12 Q Investigator Amick, your conclusions as to items 61,
13 62, 63, 64, 65 and 66 were what?

14 A 61, 62, 63, 64, 65, 66, no DNA profile was developed
15 from those items.

16 Q Those were the swabs from the two shell casings and
17 the four swabs from the gun?

18 A That's correct.

19 Q There was DNA, just not enough to develop a profile?

20 A That's correct.

21 Q And because you could not develop a profile, you
22 could not compare it to anyone's known DNA samples?

23 A That's correct.

24 MS. MCDUFFIE: Nothing further, Your Honor.

25 THE COURT: You can step down. Mr. Strickler.

1 **MR. STRICKLER:** Yes, sir.

2 **THE COURT:** You need to step up.

3 (Whereupon, a bench conference is had)

4 **THE COURT:** I don't usually quit early for hair
5 appointments. All right, jurors. I'm just kidding
6 with them. What time do you want to crank back up?

7 **MR. MEADORS:** Beg the Court's indulgence.

8 **THE COURT:** It depends on when the witnesses are
9 here. I mean, jurors just don't like being in that
10 room. They'd rather be out looking. They don't have
11 enough money left to shop.

12 **MR. MEADORS:** Your Honor, I think to expedite
13 it, to get things done, 2:30 would help everybody.

14 **THE COURT:** 2:30. Okay, jurors. Don't talk
15 about the case. See you at 2:30.

16 (Jury out at 12:47 p.m.)

17 **THE COURT:** Okay. 2:30. See you all then.

18 (Whereupon, a lunch break is taken)

19 **THE COURT:** All right, Solicitor. Are you about
20 ready?

21 **MR. MEADORS:** Yes, sir.

22 **THE COURT:** Defense is always ready, right?

23 **MR. STRICKLER:** Yes, sir.

24 **THE COURT:** Bring them in.

25 (Jury in at 2:35 p.m.)

1 **THE BAILIFF:** The jury is all present, Your
2 Honor.

3 **THE COURT:** Okay.

4 **MR. MEADORS:** May it please the Court. We call
5 David Collins..

6 DAVID J. COLLINS, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Please have a seat. State your full
9 name for the record.

10 **THE WITNESS:** I'm David Jeffrey Collins.

11 DIRECT EXAMINATION

12 **BY MR. MEADORS**

13 **Q** Good afternoon.

14 **A** Good afternoon.

15 **Q** You're an investigator, correct?

16 **A** That is correct.

17 **Q** With the Richland County Sheriff's Department?

18 **A** Yes. I work in the forensics laboratory at the
19 Richland County Sheriff's Department.

20 **Q** As I've asked you to before, I'm going to ask you
21 again now; tell these folks, these ladies and
22 gentlemen of the jury, a little bit about David
23 Collins; where you were born, where you went to
24 school, your education, your training and in
25 particular your education and training in the field

1 of expertise I'm going to ask you to testify about
2 today, please?

3 A I was born and raised in Columbia, South Carolina,
4 and I received my bachelor's degree from the Citadel
5 in 1984 and was hired by SLED in 1990 to be a
6 firearms and tool marks examiner in their forensics
7 laboratory. Upon being hired by SLED I entered what
8 is essentially an on-the-job training program in
9 firearms and tool mark analysis. That program lasts
10 for anywhere from two to three years. And after
11 about two and a half years in that program I
12 successfully completed it and began doing case work
13 on my own.

14 In addition to that training I have received
15 continuing education and training in my field in the
16 form of schools that I've attended outside of my
17 in-department training. For instance, I have
18 attended armor's courses or firearms repair courses
19 provided by various firearms manufacturers and also
20 attended shooting scene reconstruction training in
21 Arizona.

22 We have a professional association which is the
23 Association of Firearms and Tool Marks Examiners or
24 AFTE. And through that association I have received
25 continuing training in the form of annual training

1 seminars which we attend as often as possible.

2 In this course of my work as a firearms and tool
3 marks examiner I have also been qualified and
4 testified as an expert in firearms identification and
5 examination in excess of 200 times in the state
6 courts of South Carolina and also in the federal
7 court system, the military court system and at the
8 magistrate level. I've also testified in the state
9 courts of North Carolina and Georgia in that
10 capacity.

11 After being employed by SLED until 2002 I was
12 hired by the Richland County Sheriff's Department to
13 establish their firearms analysis section or firearms
14 laboratory with the department there, and that's
15 where I have been ever since.

16 Q It's first to say you love your job, isn't it?

17 A Yes, it is..

18 MR. MEADORS: Your Honor, at this time we'd
19 offer David Collins as an expert in the field of
20 firearms identification.

21 MR. STRICKLER: We have no voir dire for Mr.
22 Collins.

23 THE COURT: Okay. He can testify.

24 Q Before we get to this specific case, generally,
25 Investigator, if you have a gun and a projectile or

1 shell casing, what is it you do or attempt to do, or
2 what type of examinations can you perform if you have
3 these items?

4 A. The primary function of a fireman and tool mark
5 examiner is what many of you are familiar with seeing
6 on television and referred to as a ballistics exam.
7 That actually only partly describes what we do. A
8 primary concern of ours is whether or not a fired
9 bullet or a fired cartridge case originated from a
10 specific fireman. And the way that we can do that is
11 by microscopically examining markings left by the
12 firearm on fired bullets or cartridge cases that are
13 unique to that particular firearm.

14 When we receive a firearm in the laboratory the
15 first thing that we're going to do is to note its
16 condition as its received. We're going to take
17 several different types of notes and/or measurements
18 of that firearm. We do the same thing with fired
19 bullets and cartridge cases. We'll take
20 measurements. You will describe them in your notes,
21 any type of damage that has been done to them, which
22 is frequent in the case of bullets especially, that
23 you'll receive damaged evidence. We go through this
24 documentation process first and then we move on to
25 actual test firing the firearm and microscopic

1 analysis.

2 And the way that we can do these examinations is
3 that when a firearm is manufactured there are various
4 machining processes that move or remove metal from
5 the firearm. For instance, inside the barrel of most
6 firearms, excluding shotguns, there are spiraling
7 grooves called rifling that are there to cause the
8 bullet to spin as it leaves the barrel of the gun.

9 This spinning action serves to stabilize the
10 bullet in flight in much the same way that a
11 quarterback attempts to throw a spiraling pass to
12 stabilize the ball. The idea here is to stabilize
13 the bullet so that it flies in a straighter path.

14 This process that forms these rifling grooves in
15 the barrel of the firearm will leave behind
16 microscopic defects in that barrel that can be used
17 to identify bullets fired from that barrel back to
18 that particular firearm or barrel.

19 The reason for this is that those defects that
20 are left in the barrel are unique in their size,
21 shape, location; and, therefore, the scratch marks or
22 striations that they leave on the surface of a bullet
23 are unique to that particular firearm in much the
24 same way that a fingerprint is unique to a person.

25 Likewise, with cartridge cases, there are

1 various metal parts of the firearm that will stamp or
2 mark a cartridge case in a way that is also unique to
3 that particular firearm. What I will do in the
4 laboratory is test fire a suspect firearm and compare
5 those test fired standards which I know came from
6 that gun with evidence items such as cartridge cases
7 and bullets.

8 I'll be examining them side-by-side under a
9 comparison microscope and looking for areas where
10 these individual markings, we call them individual
11 identifying characteristics, match. If I can find
12 sufficient agreement between the test standards that
13 I fired from that gun and on the evidence item, I can
14 render a conclusion that those particular evidence
15 items were fired by that particular firearm.

16 Often we'll receive items of evidence that were
17 not fired by a suspect firearm. And sometimes you
18 can look at the actual rifling impressions, for
19 instance, on a bullet and tell that they are grossly
20 different, either the number of them, their direction
21 of twist, whether it twists to the left or to the
22 right, it might be different than what we have on an
23 evidence firearm that's been submitted; and we can
24 therefore, exclude that gun as being as possible
25 source of that item.

1 Q Excellent. And what you have just described is what
2 you did in this case basically?

3 A Yes, it is.

4 Q And before I get -- Your Honor, can I have him step
5 down briefly?

6 THE COURT: You can.

7 Q Investigator, if you'll stand over there so the court
8 reporter can hear you. And I've had you do this
9 before. And under our Circuit Court rules about
10 weapons, will you look at this weapon and tell me if
11 it is secured, if there's any way in the world it
12 could be fired?

13 A There's a lock mechanism in place in the firearm that
14 renders it safe, and it cannot be fired in its
15 current condition.

16 Q And this, for the record, is State's 113. Is this
17 the firearm that was brought to you for examination?

18 A Yes, it is.

19 Q Can you tell the jury a little bit about this?

20 A This is a Hi-Point brand firearm. It is -- if I
21 could put on my glasses, because looking through a
22 microscope for 20 years has kind of made it hard for
23 me to see small markings. This is a model JH
24 Hi-Point brand firearm. It's chambered for .45 auto
25 caliber ammunition. And it is a semi-automatic

1 pistol which means that it is designed to fire one
2 shot. Each time the trigger is pulled, once it's
3 been loaded, the safety is off, each time you pull
4 the trigger it is designed to fire one shot. And it
5 will continue to do so each time you pull the trigger
6 until the magazine is empty.

7 Q How long between shots? I mean, how quick can you
8 fire two shots?

9 A The rapidity with which one can fire multiple shots
10 depends a lot on the shooter's skill. The firearm
11 itself is going to cycle. That is, when you fire the
12 gun the slide is going to come to the rear, extract
13 the fired cartridge case from the chamber and eject
14 it and then cock the firearm and move back forward
15 loading it again. It does all this automatically.
16 It does it also in a fraction of a second typically.
17 So a shooter can in many cases fire the gun just as
18 rapidly as he can pull the trigger.

19 Q So boom, boom is possible?

20 A Yes. Very possible.

21 Q And the difference between this and the automatic is,
22 if you just held the trigger down on automatic, it
23 would just keep firing?

24 A A fully automatic weapon would be what many of us
25 have seen on television. It would be like a machine

1 gun or a sub-machine gun. It will continue to fire
2 as long as you have the trigger pulled to the rear
3 until the magazine is empty. This is not that type
4 of firearm.

5 Q All right. And on a semi-automatic -- and this is a
6 what caliber?

7 A .45 auto.

8 Q Once you fire one shot, what comes out of the side,
9 if anything? What happens to the casing?

10 A When you fire this gun two things are going to be
11 forced from the gun. First the projectile is going
12 to exit from the muzzle of the gun. And the fired
13 cartridge case, as long as this gun is functioning
14 properly, will be ejected from the ejection port
15 here. The ejection port is where this cable for this
16 lock mechanism comes from the gun. And it will be
17 ejected typically to the right.

18 Q You've got that gun. Was there a cartridge in it
19 when you received it?

20 A There was no ammunition in the firearm. There was no
21 magazine submitted with the gun.

22 Q No magazine submitted to you with the gun?

23 A That is correct.

24 Q You can have a seat back. Keep that with you, if you
25 will. And again, for the record, that's State's 113.

1 In addition to the gun, Investigator, were you also
2 submitted several other items, specifically what's
3 been entered as State's 130? Could you look at these
4 and tell me if you recognize them, and were they a
5 part of your examination with this weapon?

6 A Yes. These are the two fired bullets or bullet
7 fragments that I received in this case.
8 Specifically, when I received these items they were
9 assigned item numbers at Richland County Sheriff's
10 Department for our purposes and our reporting
11 purposes. One of them was a fired bullet, and the
12 other was a fired bullet jacketed core which means
13 it's consistent with any portions of one bullet that
14 separated upon impact.

15 Q All right. And on your -- just for our purposes now,
16 item 6 on your report is which one?

17 A This would be item 6 in this package.

18 Q And that is a fired bullet. Does it depict where
19 that came from?

20 A This a fired bullet. And the evidence tech partially
21 covered some of the labeling on the package. My
22 report indicates that it was removed from the victim,
23 Johnson, at the autopsy.

24 Q That would be one Carlaus Johnson?

25 A Yes.

1 Q And your item 7 which I think you testified was a
2 bullet jacketed core, where was that from?

3 A This is indicated as being recovered from the victim,
4 Latora Bolton, at autopsy.

5 Q Okay. So --

6 A If I can make an additional comment.

7 Q Sure.

8 A On item 6, I received that item. It was one intact
9 bullet. But during the course of my examination it
10 also separated into two items.

11 Q And I will get to that in a minute. But now we've
12 got the fired bullet, the bullet and the fired bullet
13 core. Did you also receive two other items,
14 specifically items 18 and 19 on your report but
15 what's been admitted into evidence as State's 43 and
16 State's 42? And could you look at those and tell us
17 if you recognize them; and, if so, how do you
18 recognize them?

19 A These are two fired .45 auto caliber cartridge cases.
20 These are the items that I examined in this case. It
21 is a procedure that we use in the laboratory that
22 upon completion of our examination and often during
23 our examinations we will mark these items in a way
24 that enables us to identify them later.

25 If the item itself is too small for us to

1 effectively mark in a way that will be legible or if
2 the surface of the item isn't conducive to markings,
3 we will mark the container in which we placed it.
4 All of these items bear my markings on the item and
5 on the container. And the firearm in question bears
6 my markings very boldly on the side.

7 Q And is that also so you can come in here and tell
8 these folks right here that this is what it is and is
9 what I examined and I know because I put my mark on
10 there?

11 A That's correct.

12 Q I'm going to ask you one more question and I'm going
13 to be quiet and just let you talk. Is it fair to say
14 you had a gun, two shell casings that came from the
15 scene according to your documentation --

16 A Yes.

17 Q -- and two bullets that came from the bodies of the
18 victims. All this was submitted to you and you were
19 asked to examine all of these items to see if you
20 could come up with an opinion as to whether or not
21 the bullets and the shell casings were fired by that
22 weapon?

23 A That is correct.

24 Q Tell the ladies and gentlemen what you did?

25 A As I stated before, the first thing that I do in any

1 case such as this is I will examine the items and
2 document their condition as I receive them. Starting
3 with the fired bullets, I documented their weight as
4 they were received, any dimensions of them. I was
5 able to determine early on that they were consistent
6 with .45 caliber projectiles based on their diameter.

7 I then also examined the cartridge cases and
8 made notes as to their condition, their brand, what
9 brand of ammunition they were. And then moving on to
10 the firearm, I made notes as to its condition. I
11 noted during the course of that examination that it
12 was missing a magazine and that an attempt had been
13 made to obliterate or alter the serial number at some
14 point in time.

15 Following those examinations I then moved on
16 into the test firing phase. Now, when we take a
17 firearm such as this into the laboratory we need to
18 test it for two purposes, one of which is to
19 determine whether or not it functions, whether or not
20 it works. The second reason is to obtain those test
21 standards that I was talking about before, test
22 firing the bullets and cartridge cases that I will
23 use for microscopic comparisons of evidence.

24 And the way we do this is we'll fire the gun
25 into a water tank. The water enables us to capture

1 the bullets with the least amount of damage to them;
2 and, therefore, we'll have those items available for
3 microscopic comparison.

4 As a result of my examinations, my microscopic
5 examinations, I was able to identify sufficient
6 matching individual characteristics to determine that
7 this firearm had indeed fired both of the fired
8 cartridge cases that were recovered from the scene.
9 It had fired one of the bullets, the one that was
10 recovered from Carlaus Johnson at autopsy. And it
11 also fired the bullet jacket that had been removed
12 from Latora Bolton.

13 The additional item, the bullet core that had
14 also been removed from the victim, Bolton, did not
15 bear any markings that I could use for identification
16 purposes. None of the parts of the firearm ever came
17 into contact with the core of the bullet which is
18 encased in a copper jacket material. Therefore,
19 there were no markings there that I could use to
20 identify whether it came from that gun or not.
21 However, based on the information from the autopsy,
22 it was consistent with that core and that bullet
23 jacket I did match to the firearm as having once been
24 part of the same bullet.

25 Q And that bullet jacket came from where?

1 **A** It was fired by this gun.

2 **Q** And it came from the body?

3 **A** Yes.

4 **Q** So you were able to match, if you will, that part of
5 the bullet to that gun?

6 **A** Yes. That is correct.

7 **Q** And is it fair to say you take the test fired bullet
8 and then compare those markings to these to see if --

9 **A** That's exactly what we do.

10 **Q** Come up with an opinion?

11 **A** What I'm doing is I'm looking at both these items.
12 I'm looking at the test fired bullet and I'm looking
13 at the evidence bullet at the same time under a
14 comparison microscope that enables me to look at both
15 items at the same magnification and term them
16 independently of one another to see if I can find
17 areas where these markings match.

18 In all of this examination the markings that
19 were left were by the firearm on the bullets were of
20 exceedingly high value. These bullets were very well
21 marked to the extent that I could find matching
22 characteristics in each of the rifling groove
23 impressions on each of the bullets.

24 **Q** So, Investigator David Collins, do you have an
25 opinion in your field of expertise where the bullet,

1 your item 6, the bullet from Ms. Carlaus Johnson, and
2 your item 7, the bullet jacket from the victim,
3 Latora Bolton, do you have an opinion as to what
4 firearm, where those bullets came from, what firearm
5 fired the bullets that ended up in the bodies of
6 these two ladies? Do you have an opinion?

7 **A** It is my opinion this firearm was the firearm that
8 fired those bullets.

9 **Q** And the shell casings that were found in Wendy's that
10 were also submitted to you, do you have an opinion in
11 your field of expertise as to what firearm fired
12 those shell casings?

13 **A** It is also my opinion that both of the cartridge
14 cases from the scene were fired by this firearm.

15 **Q** Let me ask you something. You hear pretty good I
16 guess?

17 **A** Not as well as I did when I started doing this work.

18 **Q** Well, do you wear a plug in your ear when you shoot
19 these?

20 **A** Yes, I do.

21 **Q** Is this a loud gun?

22 **A** Compared to other firearms, it does generate a lot of
23 noise when you fire it.

24 **Q** Beg the Court's indulgence. Thank you.

25 **MR. STRICKLER:** May it please the Court.

1 **THE COURT:** Okay.

2 CROSS EXAMINATION

3 **BY MR. STRICKLER**

4 **Q** Good afternoon, Mr. Collins.

5 **A** Good afternoon.

6 **Q** Really just a couple of things. As I understand your
7 testimony, you conduct a microscopic examinations,
8 and this is of the cartridges and the shell casings
9 or rather the bullets themselves?

10 **A** That is correct.

11 **Q** Side-by-side in a microscope looking for these
12 microscopic defects. Do you then take photographs of
13 them to demonstrate the defects that you're relying
14 on?

15 **A** I do take photographs of the comparisons but I do not
16 use those photographs to render my opinion. My
17 opinion is based purely on what I see through the
18 glass of the microscope. The reason we take
19 photographs is that it may be some time, perhaps a
20 number of years, before the case actually goes to
21 trial and I need something in the form of a note to
22 remind myself of what it was I was looking at through
23 the microscope.

24 **Q** Okay. And you indicated that as to both the casings
25 and the projectiles, at least as to the projectile

1 jackets?

2 A Yes.

3 Q That as to the casings and the jackets and the
4 projectiles, there were sufficient matching
5 characteristics?

6 A That is correct.

7 Q I believe that was your testimony, right?

8 A Mm-hmm (affirmative).

9 Q What constitutes sufficient matching characteristics?

10 A Contrary to what some people have seen in forensics,
11 latent print examinations, there is no set number of
12 matching points of identification that we use to
13 render a positive conclusion or an identification.
14 The determination as to whether or not that
15 particular item was fired by that particular firearm
16 comes from examination of the location, size and
17 other proper matching orientation and other factors
18 with these markings that is based on your training
19 and experience.

20 This is one of the reasons why it takes so long
21 to train into this field, is that during the course
22 of that training you will not only examine hundreds
23 if not thousands of matching bullets, but you will
24 also examine blindly; that is, without knowing the
25 answer prior to the examination, numbers of

1 non-matching identifications. So you learn how to
2 make the differentiation.

3 A problem which you run into specifically with
4 bullets is that they are often damaged upon impact
5 and, therefore, leave you with a decreased number
6 perhaps of areas that you can examine. So that the
7 quality and quantity of the individual
8 characteristics that you're examining and the number
9 of them that you can discern are in agreement are
10 what you will use to render that conclusion.

11 Q Okay. So, in essence, you've got two or three years
12 worth, as you described, on-the-job training to
13 develop an eye for this stuff?

14 A That's correct.

15 Q And when you come in you don't have a set number that
16 you have to have to render your opinion. You come in
17 and render your opinion, correct?

18 A That is correct. At this point in time there is no
19 standardized manner of doing that in the industry as
20 far as a set number of matching characteristics,
21 although some study is being done into doing that.

22 Q So, to your knowledge, you're not aware of any
23 empirical studies that have been published that would
24 say you have to have so many matching characteristics
25 before you can render an opinion, correct?

1 **A** There are studies ongoing into how many would be
2 sufficient.

3 **Q** Right.

4 **A** But there is nothing so far that says you have to
5 have a certain amount to do that.

6 **Q** Okay. Those studies are ongoing. They haven't been
7 completed I take it, correct?

8 **A** That's my take on it, yes.

9 **Q** Thank you very much, sir.

10 **MR. MEADORS:** Nothing further. Thank you.

11 **THE COURT:** Step down.

12 (Whereupon, a bench conference is had)

13 **THE COURT:** Jurors, apparently there's a tape
14 they're going to play and they're not going to play
15 the whole tape. So just don't talk about the case.
16 Step out. We're going to finish the testimony today
17 before 6 easy.

18 **MR. MEADORS:** Way before that.

19 (Jury out at 3:03 p.m.)

20 **MR. MEADORS:** Your Honor, out of -- I don't
21 know -- there's a whole bunch of phone calls. Out of
22 there, we're going to offer two. One of them from
23 your purposes ...

24 (Pause - conferring)

25 **THE COURT:** Well, let him read it. He may not

1 have any objection.

2 MR. STRICKLER: If I could just have a few
3 minutes to go over this transcript, Judge.

4 THE COURT: You've got it.

5 (Pause)

6 (Whereupon, a break is taken)

7 MR. STRICKLER: Your Honor, if I could just take
8 advantage of the brief moment here and ask a
9 question.

10 THE COURT: Yes. You can do that.

11 MR. STRICKLER: My understanding from Mr.
12 Meadors is that after these tapes they'll have a
13 pathologist testify and that's it.

14 MR. MEADORS: Unless I think of something I
15 forgot beforehand; yes, sir.

16 MR. STRICKLER: Well, I'll confine my question
17 to the pathologist. I also understand there's some
18 discussion of introducing autopsy photographs. And I
19 thought if there is such a --

20 MR. MEADORS: We were just thinking the same
21 thing. We're pulling them right now to show him.

22 MR. STRICKLER: I thought perhaps we could deal
23 with it while the jury is out.

24 THE COURT: We will.

25 (Pause)

1 (WHEREUPON, State's Exhibit No. 140 is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 141 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 142 is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 143 is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 144 is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 145 is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 146 is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 147 is marked
16 for identification.)

17 (WHEREUPON, State's Exhibit No. 148 is marked
18 for identification.)

19 (WHEREUPON, State's Exhibit No. 149 is marked
20 for identification.)

21 (WHEREUPON, State's Exhibit No. 150 is marked
22 for identification.)

23 (WHEREUPON, State's Exhibit No. 151 is marked
24 for identification.)

25

1 (WHEREUPON, State's Exhibit No. 152 is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 153 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 154 is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 155 is marked
8 for identification.)

9 **MR. STRICKLER:** My understanding, Your Honor, is
10 the State's going to introduce a number of x-rays
11 that I have no objection to.

12 **THE COURT:** All right.

13 **MR. STRICKLER:** They also want to introduce what
14 has been marked as State's 147 and 148 or one of the
15 two of these I take it or both.

16 **MS. MCDUFFIE:** They're of each. One is of each
17 victim.

18 **MR. STRICKLER:** One of them each. 148 being
19 of --

20 **THE COURT:** What are they?

21 **MR. STRICKLER:** -- ms. Bolton and 147 being of
22 Ms. Johnson.

23 **THE COURT:** Well, they don't need to come in.
24 They've already got pictures of them.

25 **MR. STRICKLER:** Thank you.

1 (Pause)

2 **THE COURT:** Mr. Meadors, is there anything else?
3 You all are sitting there for your health, are you
4 ready?

5 **MR. MEADORS:** No, sir. I'm not sitting here for
6 my health. If you want to start, we'll just go ahead
7 and --

8 **THE COURT:** No. No, no, no, no, no, no, no.
9 How long will it be?

10 **MR. MEADORS:** I can't tell you that. She said
11 it wouldn't take long. If you want us to go ahead
12 and start, we can start.

13 **THE COURT:** I'll step off for five minutes.
14 Then I'll come back. That will give you time.

15 **MR. MEADORS:** We had it to a certain spot we
16 thought was going to be good and we had added another
17 page and a half. And that just ...

18 **MR. STRICKLER:** It's my fault.

19 (Pause)

20 **THE COURT:** Okay. Everybody ready?

21 **MR. MEADORS:** Thank you. Yes, sir.

22 **MR. STRICKLER:** Yes, sir.

23 **THE COURT:** Well, let's bring the jury back in.

24 (Jury in at 3:32 p.m.)

25 **THE BAILIFF:** The jury is all present, Your

1 Honor.

2 **THE COURT:** Okay. You may proceed.

3 **MR. MEADORS:** Thank you, Your Honor. If it
4 pleases you, we call Sergeant Dave McRoberts.

5 WILLIAM D. MCROBERTS, after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Please have a seat and state your
8 full name for the record.

9 **THE WITNESS:** William David McRoberts.

10 DIRECT EXAMINATION

11 **BY MR. MEADORS**

12 **Q** Good afternoon.

13 **A** Good afternoon.

14 **Q** Your rank is sergeant?

15 **A** Yes, sir.

16 **Q** As I do with all my witnesses, please tell these
17 ladies and gentlemen about you, Sergeant McRoberts;
18 where you were born, went to school, education,
19 training and how long you've been in law enforcement,
20 please?

21 **A** I was born and raised here in Columbia. I've been
22 with the Richland County Sheriff's Department since
23 May of 1993 where I started as a uniformed patrol
24 officer, was on the road for about two years. I got
25 promoted to investigator where I've been ever since.

1 Q And you're assigned now to what division?

2 A I'm assigned right now to the property crimes
3 division.

4 Q And other than your -- do you all have periodic --
5 you've been to the Criminal Justice Academy?

6 A Yes, sir.

7 Q And you all have periodic training?

8 A Every year.

9 Q Updates or yearly?

10 A Yes, sir.

11 Q And in 2006 where were you at the Sheriff's
12 Department?

13 A I was a sergeant in the major crimes unit.

14 Q And did you get involved and did you become the lead
15 investigator in the case of State of South Carolina
16 vs. John Portee?

17 A Yes, sir. I was on call that weekend for major
18 crimes.

19 Q That was my next question. So you were on call that
20 was Labor Day weekend?

21 A Yes, sir.

22 Q You got a call. Did you have an occasion to respond
23 to

24 A I did.

25 Q And is that the Wendy's?

1 A Yes, sir.

2 Q Is that in Richland County?

3 A It is.

4 Q What, if anything, did you observe or what
5 information did you gather for investigative purposes
6 initially?

7 A When I got there initially, it was around 3:23 that
8 afternoon, Sunday afternoon. I spoke with the day
9 shift investigator who was Investigator Willoughby.
10 He gave me a brief description of what happened, what
11 was inside. At that point I went and spoke to the
12 manager who actually had come to work that day and
13 found them, and then I went in to see the scene for
14 myself.

15 Q And we know the players now. That would be
16 Ms. Patrice Trapp?

17 A Yes, sir.

18 Q And you say you then went in and observed the scene?

19 A Yes, sir.

20 Q Did you see the bodies of Ms. Johnson and Ms. Bolton?

21 A I did.

22 Q And at the time you got there, was other law
23 enforcement already there?

24 A Yes, sir.

25 Q Now, after you had been informed about these bodies,

1 did you learn in the initial course of the
2 investigation who was supposed to open up that day?

3 A I did.

4 Q And who was supposed to open up?

5 A I spoke to Ms. Trapp and she told me that two
6 employees and one manager were supposed to open up
7 that morning. And two people of the three were
8 inside the business, were deceased. That was Latora
9 Bolton and Ms. Johnson.

10 Q And Mr. Portee was the other individual who was
11 supposed to work?

12 A Mr. John Portee was the third one that was missing.

13 Q And when you arrived at Wendy's, was Mr. Portee
14 there?

15 A No, sir.

16 Q Based on your investigation, had any other law
17 enforcement seen him that morning at Wendy's?

18 A No, sir.

19 Q And we've heard testimony. But just going through
20 here, did you acquire information about a prior
21 incident and/or threat between Ms. Bolton and Mr.
22 Portee?

23 A I did.

24 Q And as the lead investigator, you're kind of
25 gathering all of this information?

1 A Yes, sir.

2 Q Did you yourself, or do you know, was there any
3 forced entry to any of the doors?

4 A There was no forced entries to the business other
5 than the drive-thru windows that has already been
6 explained by Ms. Trapp.

7 Q My next question. Okay.

8 A Yeah.

9 Q On your observations, did -- and you've seen the
10 pictures; I'm not going to show them to you now --
11 how did it appear to you that Ms. Bolton -- in what
12 position did it appear to you that Ms. Bolton was
13 before she received the bullet?

14 A Ms. Bolton appeared to have been sitting down facing
15 the counter. It's almost like what I'm sitting at
16 here, except it was just an encased small office.
17 And the door was, you know, to the left, much like
18 this is.

19 Q And in this initial investigation, were you all able
20 to determine what time Ms. Johnson clocked in that
21 morning?

22 A I believe she had clocked in around 8:05.

23 Q And did you get to talk to anyone else who knew
24 whether or not -- or knew how the defendant, John
25 Portee, got to work?

1 A I spoke to Mr. Godwin or Goodwin.

2 Q He's testified here?

3 A Right. I spoke to him. He had come to the scene and
4 was there when I got there.

5 Q As a result of that, did you learn who took Mr.
6 Portee to work on occasion?

7 A Yeah. He told me that his girlfriend, Heather
8 Hunter, brought him to work usually.

9 Q And as a result of that information, did you get an
10 address for her?

11 A I did. I ran her name through the Department of
12 Motor Vehicles and got an address over on Hawthorne,
13 4417 Hawthorne where she lived. It was on her
14 driver's license.

15 Q And that's what you do as an investigator, right?
16 You ask people different things, who is supposed to
17 work, and then you try to find -- you take one step
18 at a time?

19 A Yes, sir.

20 Q Were there other Wendy's employees that showed up?

21 A There were a few who showed up.

22 Q And did you talk to them? When I say you, you as the
23 lead investigator; were they talked to by
24 investigators?

25 A They were talked to by other investigators. And I

1 had overheard some conversations of them talking.

2 Q You can't say what they said.

3 A No.

4 Q But, I mean, you took statements from Moesha Outin?

5 A Yes.

6 Q Ms. Patrice Trapp?

7 A Right.

8 Q Ms. Williams?

9 A Yes, sir.

10 Q Ms. Jahquetta Owens?

11 A Yeah.

12 Q Now, did you attempt to find Defendant John Portee?

13 A Later on that afternoon we did.

14 Q And prior to that, while you're still at Wendy's, you
15 saw the officers there gathering evidence. You saw
16 it yourself, correct?

17 A Yes, sir.

18 Q Were you there when the initial dog went to the other
19 parking lot behind -- into O'Neal Court?

20 A If he was running a track while I was there, I wasn't
21 -- I was talking to the -- I don't remember him, the
22 dog running the track. I don't remember. If he was
23 there, he was on the other side of the parking lot.
24 I'm not sure what time he was there.

25 Q But initially while you're still there, did you get

1 kind of the background of the timeframe from
2 Ms. Trapp?

3 A I did.

4 Q Take a statement from her?

5 A Yes, sir.

6 Q And all that's included in your investigative report?

7 A Yes, sir.

8 Q Okay. After that -- well, did you all at some point
9 talk to Ms. Kelly Jones? And she's testified.

10 A Yes, sir.

11 Q Did she tell you what time she called?

12 A She did.

13 Q Got an answer and then called back, no answer?

14 A Right.

15 Q Now, at some point did you call the defendant's -- or
16 a number you had for the defendant's home and speak
17 to somebody in his family?

18 A I did. Mr. Godwin had given me a number that they
19 had listed for him. And it ended up being I think
20 Mr. Portee's mother's home phone number.

21 Q As a result of that phone call and speaking to his
22 mother?

23 A Yes, sir.

24 Q Did you then go somewhere where you thought Mr.
25 Portee might be?

1 A I spoke to her, and she --

2 Q Without saying what she said, did you go somewhere?

3 A Without saying what she said, I headed to

4

5 Q And prior to that, after you found out that that's
6 where he might be, did you finish taking your
7 statements?

8 A We finished taking the statements and I met with the
9 oncoming shift up at the Region Three substation
10 which is just up -- it's at the old Denny Terrace
11 Elementary School which is --

12 Q I'm sorry. I couldn't hear. The old what?

13 A The old Denny Terrace Elementary School. That's our
14 substation for that region is at.

15 Q So you thought Mr. Portee might be at Hawthorne. You
16 then go meet with officers at Region Three?

17 A I did.

18 Q And why did you do that?

19 A To kind of get an idea or give them an idea of why we
20 needed to talk to this guy and if anything, you know,
21 what he would tell us, and kind of prepare them just
22 in case, you know, he might run.

23 Q And I'm going to show you State's 144. It's not
24 blown up because it got blurry. But on State's 144,
25 do you recognize this?

1 **A** Yes, sir.

2 **MR. MEADORS:** Your Honor, we'd offer State's 144
3 without objection.

4 **THE COURT:** Okay.

5 (WHEREUPON, State's Exhibit No. 144 is admitted
6 into evidence.)

7 **Q** Now, I'm going to have you come down in a minute, not
8 now. But is Hawthorne street depicted on here?

9 **A** It's the street right here.

10 **Q** It's the street right here, Hawthorne. Is it marked
11 Hawthorne? It says Hawthorne. I believe, correct?

12 **A** It says Hawthorne.

13 **Q** When you're at Region Three, you knew that's where
14 you were going, correct?

15 **A** Yes, sir.

16 **Q** What plan, if any, did you all devise about what you
17 were going to do when you got to Hawthorne Street, if
18 anything?

19 **A** I had the uniformed guys set up a perimeter, you
20 know, around the house within, you know, several
21 streets of it just in case. In my experience, I've
22 been, you know, on numerous arrest warrants. If
23 somebody runs, they're not going to run very far
24 within the first initial contact.

25 **Q** And so, were you trying to cover the general area?

1 A We were trying to cover the general area just in
2 case.

3 Q Would that include back behind the house and the
4 streets behind the house?

5 A Yes, sir.

6 Q After you all had met again, you all would be the
7 officers at Region Three, what did you do?

8 A We had a uniformed car in the front and I was in an
9 unmarked pick-up truck. I got behind him. And I had
10 Investigator Gonzales in the car with me. And we
11 rode down -- we actually came down Hawthorne to the
12 front of the house.

13 Q And come down here, if you would. Your Honor,
14 permission? It's going to be just a few questions.

15 **THE COURT:** You can certainly step down.

16 Q If you would stand there. Watch your step, please.
17 Just so madam court reporter can hear. Can you point
18 out the residence that you were going to Hawthorne
19 which we now know is Heather Hunter's road.

20 A It would be the one in the middle I believe with the
21 driveway.

22 Q Right here?

23 A Yeah.

24 Q The one in the middle with the driveway?

25 A Mm-hmm (affirmative).

1 Q Now, where did you go specifically?

2 A We came down from this direction because our
3 substation would have been --

4 Q Orient us. What's this here?

5 A This is over near Eau Clair High School, right across
6 the street. When the marked units and myself, we
7 came down this road, the other units were positioned
8 around the block and around the area just in case he
9 did take off and run. We came down the front of the
10 -- right in front of the house.

11 Q In front of this house here?

12 A Yeah. The one with the driveway. And you can see
13 that one from the --

14 Q Now, what are some of the surrounding roads? What's
15 that?

16 A Lakeside.

17 Q Okay. If I was to leave this courthouse, how do you
18 get there?

19 A The quickest way would be to go up North Main and
20 then veer off Monticello Road.

21 Q Okay. You're down here?

22 A Right.

23 Q Your other officers are back in this area?

24 A Yes, sir.

25 Q What happens? What do you observe?

1 A Well, I was driving. Like I said, --

2 Q You can sit down.

3 A -- the uniformed guy was in the front. As we pull
4 up, we see a subject take off running to the back of
5 the house we were stopping at.

6 Q And there's some pictures in here somewhere of the
7 back of the residence at 44 (sic) Hawthorne?

8 A Mm-hmm (affirmative).

9 Q Is that the direction you saw him run?

10 A Yes, sir.

11 Q How far -- I mean, did you yourself actually see him
12 running?

13 A I saw him initially go to the back of the house, take
14 off to the back of the house. But after that I
15 didn't pursue him because we still had people on the
16 front porch. We didn't know who they were.

17 Q And what happened after that? What did you do?

18 A We put out a description of what the person was
19 wearing. And we had already given the uniformed guys
20 a picture of Mr. Portee just in case, you know, here
21 again, just in case they saw him running or walking
22 down the street. Within several minutes we get a
23 call from one of the deputies that were on one of the
24 perimeter streets that says he had Mr. Portee in
25 custody.

1 Q And was that deputy on Lakeside?

2 A Yes, sir. That was Mr. Jernigan.

3 Q And is it fair to say leaving the back of the house
4 at Hawthorne, Lakeshore would be a road you'd run
5 into back there?

6 A Yes, sir.

7 Q How did John Portee get back to where you were at
8 Hawthorne after he was stopped by one of your
9 officers?

10 A After Mr. Jernigan positively identified him, I told
11 him to bring him back to Hawthorne, and he brought
12 him back in the back of a patrol car.

13 Q So we're now back at 4417 Hawthorne on September 3rd,
14 2006, correct?

15 A Yes, sir.

16 Q It's the same day, right?

17 A Yes, sir.

18 Q When you first saw Mr. Portee, did he say something
19 to you? Did he initiate a conversation with you?

20 A Yes, sir.

21 Q And tell these ladies and gentlemen of the jury what
22 he said?

23 MR. STRICKLER: Your Honor, subject to my
24 previously stated objections.

25 THE COURT: All right. Fine.

- 1 **A** He was asking us -- he was asking me why he was being
2 arrested. I told him, "You know why you're being
3 arrested."
- 4 **Q** And what did he say to you specifically, if you
5 looked at your notes, after you said that?
- 6 **A** He said that he heard something about what had
7 happened at Wendy's where he worked today but he had
8 nothing to do with it. And then he stated he was
9 dropped off at work at the Wendy's this morning
10 around 7:45 and he knocked on the door and no one let
11 him in, so he left. And that was pretty much it.
- 12 **Q** And at that point -- so he initiated the
13 conversation. What's going on? You know what's
14 going on. And then he said 'I heard something about
15 Wendy's'?
- 16 **A** Yes, sir.
- 17 **Q** Now, at that point -- I think you said earlier there
18 were some other folks there at the house. Were there
19 other individuals at the house?
- 20 **A** They ended up being Heather Hunter's two sons that
21 were out on the front porch.
- 22 **Q** I'm trying not to lead you. That was her two sons?
- 23 **A** Right.
- 24 **Q** And at some point did you talk with them?
- 25 **A** Yes, sir.

1 Q And did they talk to you that day?

2 A They did.

3 Q The sons?

4 A Yes, sir.

5 Q Chaz?

6 A They did.

7 Q Stacy?

8 A Yes, sir.

9 Q And after you had talked to Mr. Portee or he talked
10 to you, what did you do next?

11 A I had him transported by the same uniformed deputy
12 that caught him, I had him transported back to the
13 Sheriff's Department on _____ and placed in
14 a holding cell that we have there at the Sheriff's
15 Department.

16 I was talking to his girlfriend at the time,
17 Heather Hunter, and of course her two sons. And they
18 agreed to come up to the Sheriff's Department to talk
19 to us, to give us statements about -- you know, once
20 we explained what was going on, she agreed to come up
21 there and talk to us.

22 Q So you talked on September 3rd to Heather Hunter,
23 Chaz and Stacy?

24 A Yes, sir.

25 Q Chaz Hunter, Stacy Hunter, Heather Hunter?

1 A That's correct.

2 Q And then at some point you go to the Sheriff's
3 Department, correct?

4 A Right.

5 Q That's where you talked to them?

6 A I left from the Hawthorne address to go back to the
7 Sheriff's Department. And I believe the victims'
8 advocate, Mr. Talkish, transported Ms. Hunter and her
9 kids up there.

10 Q And he's a victims' advocate?

11 A He's a victims' advocate.

12 Q Now, let me ask you this much. Did other officers
13 stay at the Hawthorne residence after you left?

14 A Investigator Gonzales stayed behind. And I don't
15 remember if any uniformed guys stayed.

16 Q This will come as no surprise to everybody. But did
17 David Lucas bring his dog out there?

18 A Yes, sir.

19 Q And when you saw John Portee when he was brought back
20 by the officer, did he have anything in his hand?

21 A No, sir.

22 Q And Gonzales has already testified that he saw him
23 running in the woods, correct?

24 A That's correct..

25 Q David Lucas comes and the dog runs and you all find

1 this bag, correct?

2 A Yes, sir.

3 Q You weren't there then?

4 A No, sir. I wasn't there.

5 Q Now, as a result of your investigation and talking
6 with Mike Godwin who I guess at the time was over I
7 don't know how many Wendy's in this area, were you
8 able to determine how much cash would have been in
9 the safe that night?

10 A I talked to him the following day because he had to
11 actually get into the crime scene and check the books
12 and check everything. But then he stated that \$1600
13 was missing from the safe.

14 Q Beg the Court's indulgence. Going back to Wendy's
15 real quick, when you said Ms. Bolton was sitting
16 down, --

17 A Yes, sir.

18 Q -- based on your training and experience, did it look
19 like there had been a struggle?

20 A There hadn't been a struggle.

21 Q And I believe you all executed a search warrant at
22 the residence of John Portee or some of his family
23 members, correct?

24 A His mother's house. Yes, sir.

25 **MR. STRICKLER:** Your Honor, objection. Leading.