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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JODY LYNN WARD,

APPELLANT

APPELLATE CASE NO. 2025-002597

RECORD ON APPEAL

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MELODY J. BROWN
Senior Assistant Deputy Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 03-GS-22-1030, 1031
 COUNTY OF GEORGETOWN)

The State,)
)
 Plaintiff,) TRANSCRIPT OF RECORD
)
 -versus-) March 15-18, 2004
)
 Jody Lynn Ward,)
)
 Defendant.)

B E F O R E:

Honorable Paula H. Thomas
 Georgetown County Courthouse
 Georgetown, South Carolina

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

J. Gregory Hembree, Esquire
 Robert B. Bryan, Esquire
 Attorneys for the Plaintiff

Margaret Ann Kneece, Esquire
 J. Wesley Locklair, III, Esquire
 Attorneys for the Defendant

Grace L. Hurley, CVR-CM
 Official Reporter

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STATE V. JODY WARD

03-GS-22-1030, 1031

Juror No.	Name		State	Defense	Court
133	Barbara Wilson	BF	X		
1	Myra Alston	BF		X	
88	Robert Myers	WM			
48	Judy Harper	WF			
44	Derrick Grove	BM	X		
87	Glenda Munnerlyn	WF		X	
107	Barbara Smith	BF		X	
141	Paul Griffin	WM			
2	Ronald Altman	WM			
100	Reta Simpson	WF			
79	Mart Mihalakis	WM		X	
98	Daphne Ray	WF			
130	Norman Wilcox	WM		X	
34	Jeffery Fisher	BM		X	
19	Marisa Cooper	WF			
76	Theodis McGee	BM		X	
69	Rochelle Leary	BM		X	
59	Sandra Johnson	BF		X	
145	Sydney O'Neil	WF			
112	Virgil Spivey	BM			
150	David Williams	WM	X		
93	Kelly Polen	WF			
16	Carl Chatman	BM			
74	Carol McCann	WF			
ALT. 1					
121	Antonio Thompson	BM	X		
68	Julie Nance	BF			
ALT. 2					
64	Jefferson Kirby, III	WM	X		
39	Bernadette Gardner	BF			

1 (On the record, Monday, March 15, 2004.)

2 THE COURT: All right, and our Solicitor is here, Mr.
3 Greg Hembree. I'll be glad to hear from you now.

4 MR. HEMBREE: Thank you, Your Honor, may it please the
5 Court. I now call the case of The State of South Carolina
6 versus Jody Lynn Ward. I call this case by way of two
7 indictments submitted to the Grand Jury on July 8th of
8 2003.

9 THE COURT: Mr. Hembree, I hate to interrupt, but let
10 me make sure we've got Defense counsel here as well and I
11 do not see them present. Let's run for them before you
12 read those indictments.

13 MR. HEMBREE: Fair enough. Thank you, Your Honor.

14 THE COURT: I'm sorry. I just called on you too soon.

15 We do have somebody who is looking for our Defense
16 lawyers; don't we? Okay, wanted to make sure.

17 (Defense attorneys enter courtroom.)

18 MR. LOCKLAIR: Sorry, Your Honor.

19 THE COURT: All right, yes, sir, Mr. Hembree, once
20 again.

21 MR. HEMBREE: Thank you, Your Honor, may it please the
22 Court.

23 THE COURT: Yes, sir.

24 MR. HEMBREE: I now call the case of The State of
25 South Carolina versus Jody Lynn Ward. I call this case by

1 way of two indictments presented to the Georgetown County
2 Grand Jury and true-billed on July the 8th, 2003. The
3 first indictment is indictment number 03-GS-22-1030. This
4 is a one-count indictment for the charge of murder, the
5 murder of Wilfred Brown.

6 The second indictment is 03-GS-22-1031. This is a
7 one-count indictment alleging the murder of Elton Rutledge,
8 Jr. Your Honor, let the record reflect that I am passing
9 these indictments up to the Court.

10 THE COURT: Ladies and gentlemen of the jury panel,
11 you have heard the State call the case of The State versus
12 Jody Lynn Ward, who has been indicted on two charges of
13 murder. These indictments have been true-billed.

14 I tell you that to ask you this question, is there any
15 member of the jury panel who has any information whatsoever
16 regarding these charges against Jody Lynn Ward, if so, or
17 knows anything about this incident, if so please stand.

18 Now, in just a moment I will be asking you whether you
19 have read anything in the media about that and I expect
20 that I would be -- I will be getting some responses to that
21 and I'll ask you about that, if, in fact, you've read
22 anything in the media, but my question is directed if you
23 have any direct information other than what you may have
24 read or seen regarding these charges, if so, please stand.

25 (No response.)

1 THE COURT: Is there any member of the jury panel who
2 due to the nature of the charges, that being two counts of
3 murder, is there any member of the jury panel who is unable
4 to serve as a juror due to the nature of the charges and
5 would be unable to be fair and impartial to both the
6 Defendant and the State, if so, please stand.

7 All right, sir, I'm going to need for you to come
8 forward. I may ask these down.

9 BAILIFF: Number 53.

10 MR. HOLLADAY: Number 53.

11 THE COURT: This is Juror Number 53.

12 (Whereupon, an on-the-record bench conference was held
13 with Juror Number 53, John D. Holladay, Jr., counsel for
14 the Defense and counsel for the State in the presence, but
15 out of the hearing, of the jury venire.)

16 THE COURT: I won't holler out everything you say.
17 I'm just going to ---

18 MR. HOLLADAY: That's all right. I mean, I know the
19 accused.

20 THE COURT: You know him?

21 MR. HOLLADAY: Yes, ma'am.

22 THE COURT: Okay, I was going to ask you that question
23 a little bit later on.

24 MR. HOLLADAY: Okay.

25 THE COURT: The fact that you know him, what's your

1 relationship with him?

2 MR. HOLLADAY: Just an acquaintance, I know of him.

3 THE COURT: You just know of him?

4 MR. HOLLADAY: Uh-huh (affirmative response).

5 THE COURT: Okay.

6 MR. HOLLADAY: I've worked with his mother.

7 THE COURT: All right, is that in any way going to
8 effect your ability to be fair and impartial to both the
9 State and to the Defendant?

10 MR. HOLLADAY: I don't know.

11 THE COURT: You don't know.

12 MR. HOLLADAY: I mean, I just feel awkward serving
13 like that.

14 THE COURT: And it's you feel awkward because you know
15 his mother?

16 MR. HOLLADAY: Right.

17 THE COURT: Has she discussed anything about this with
18 you?

19 MR. HOLLADAY: I don't, I don't talk to her. I just
20 used to work with her.

21 THE COURT: Okay, and you don't work with her anymore?

22 MR. HOLLADAY: No.

23 THE COURT: Okay, now, can you set that aside, though,
24 and can you decide this case based solely on the evidence
25 that's presented in the trial of this case and be fair to

1 both the Defendant and to the State?

2 MR. HOLLADAY: I suppose I could.

3 THE COURT: Now, and I appreciate that answer, and I
4 know you have to do some soul-searching to know for sure,
5 but I have to know for sure.

6 MR. HOLLADAY: Right.

7 THE COURT: You think it over. Can you do that?

8 MR. HOLLADAY: I don't know.

9 THE COURT: You don't know?

10 MR. HOLLADAY: No, to be honest.

11 THE COURT: All right, now, let me ask you this,
12 because you're not talking about a current relationship ---

13 MR. HOLLADAY: Right.

14 THE COURT: --- or you currently work with the mother.

15 MR. HOLLADAY: Right.

16 THE COURT: And this is a past relationship; right?

17 If I give you time to think it over can you tell me
18 definitively yes or no? Yes, you could be fair and
19 impartial, but no, you think it'll affect your ability?

20 MR. HOLLADAY: Okay.

21 THE COURT: Do you need some more time?

22 MR. HOLLADAY: Yes.

23 THE COURT: Can I ask you just to step aside for just
24 one moment. Yes, sir.

25 MR. BRYAN: Just while we're here, while he's doing

1 that, two jurors came in after, you know, while you started
2 that, calling him forward, just wanted to let you know.

3 THE COURT: See, and they should know to hold them
4 aside so I know to ask the questions.

5 MR. BRYAN: They're on the back, the two ladies on the
6 back row over there.

7 THE COURT: All right, let me talk to my bailiffs.
8 I'm going to hold you aside for just a moment just to give
9 you some time to soul-search.

10 MR. HOLLADAY: Okay.

11 THE COURT: Because I've put you on the spot so
12 quickly. If you'll have a seat. Don't discuss it with
13 anyone else and we'll call you back ---

14 MR. HOLLADAY: All right.

15 THE COURT: --- in just one moment.

16 (Whereupon, the following takes place in open court.)

17 THE COURT: All right, we have two jurors who came in
18 late. To the bailiffs, do you know who they are, and if we
19 have any more jurors that come in late I need them held
20 aside so I ask them -- so I can ask them the questions.
21 I've got to go back through the questions and they need to
22 hear the charges again.

23 Who are those individuals, please?

24 BAILIFF: Right here.

25 THE COURT: All right, did you hear all the questions?

1 Did you hear the charges or hear -- were you here for when
2 the Solicitor announced what the charges were?

3 MS. GRATE: No.

4 MS. HOLMES: No.

5 THE COURT: All right, well, I'm going to have to get
6 with you in just a moment. Do we have everybody now?

7 BAILIFF: Have 47.

8 THE COURT: All right, all right, ladies, the
9 Solicitor has announced the case that was being called is
10 The State versus Jody Lynn Ward. He's charged for -- he's
11 been indicted for murder, and in this indictment it is that
12 of Mr. Wilfred Brown. There's also a separate indictment
13 in which Jody Lynn Ward has been charged with murder and
14 that murder is of Mr. Elton Rutledge, and I tell you that
15 to ask you this question, do you have any information other
16 than what you may have read in the media or that type of
17 thing, do you have any direct information regarding these
18 incidents? If so, let me know.

19 MR. LOCKLAIR: Your Honor, is there any way we could
20 place those jurors under oath?

21 THE COURT: They're under oath. They're already under
22 oath and they have indicated no. Let me get your juror
23 numbers. What's your number, ma'am?

24 MS. GRATE: 129.

25 THE COURT: Okay, and you have any direct information?

1 MS. GRATE: No.

2 THE COURT: All right, and yes, ma'am.

3 MS. HOLMES: 54.

4 THE COURT: Juror Number 54, do you have any direct
5 information?

6 MS. HOLMES: No, but I know the families.

7 THE COURT: All right, I'll ask you about that in just
8 a moment.

9 Now, let me ask you this, can either of you -- do
10 either of you feel that you would be unable to be fair and
11 impartial due to the nature of the charges, those being
12 murder? If so, I need for you to come forward. If you
13 cannot be fair and impartial because of the nature of the
14 charges please come forward.

15 (No response.)

16 THE COURT: And then, ma'am, you may be seated.
17 You've been brought up to date.

18 All right, yes, ma'am, now we're up to date, I
19 believe. I just want to make sure everybody has gotten the
20 questions. Your Juror Number?

21 MS. THACKER: 120, Jean Thacker.

22 THE COURT: Okay.

23 (Whereupon, an on-the-record bench conference was held
24 with Juror Number 120, Jean M. Thacker, counsel for the
25 Defense and counsel for the State in the presence, but out

Voir Dire

1 of the hearing, of the jury venire.)

2 THE COURT: Yes, ma'am.

3 MS. THACKER: I'm a -- my family was a victim of a
4 violent crime. My daughter -- my sister was murdered when
5 she was 13. .

6 THE COURT: Okay, and that is a question that I do get
7 to and ask later on.

8 Can you set that aside and base your decision in this
9 case solely on the evidence and testimony that's presented.

10 MS. THACKER: I also work with someone that's involved
11 in this case, too.

12 THE COURT: All right, who is it that you work with?

13 MS. THACKER: Candy Cox used to work with me.

14 THE COURT: Okay, "she used to work with me," I don't
15 know what that involvement is in the case, but you have
16 worked with that individual?

17 MS. THACKER: Uh-huh (affirmative response).

18 THE COURT: Have you discussed this case with that
19 individual?

20 MS. THACKER: No.

21 THE COURT: Okay, now, let me ask you, can you set
22 those matters aside -- is that a potential witness in the
23 case?

24 MR. HEMBREE: Yes, ma'am. .

25 THE COURT: Oh, that is someone who may be testifying?

1 MR. LOCKLAIR: Yes, ma'am.

2 THE COURT: Okay, if she testifies are you going to
3 weigh her testimony more heavily based solely on your past
4 relationship?

5 MS. THACKER: It's possible, yeah.

6 THE COURT: Okay, all right, I'm going to excuse you,
7 ma'am. Your Juror Number once again?

8 MS. THACKER: 120.

9 (Whereupon, the following takes place in open court.)

10 THE COURT: Juror Number 120 is excused from this
11 particular trial. You need to have a seat. I'll give you
12 further instructions later.

13 BAILIFF: Number 60.

14 (Whereupon, an on-the-record bench conference was held
15 with Juror Number 60, James D. Joyce, counsel for the
16 Defense and counsel for the State in the presence, but out
17 of the hearing, of the jury venire.)

18 THE COURT: All right, yes, sir.

19 MR. JOYCE: I don't know if this is a problem for the
20 Court, but I have known Assistant Solicitor Bryan for 30
21 years and he's a friend, and I just didn't want it to be a
22 problem if I was selected.

23 THE COURT: Is he that old?

24 MR. JOYCE: Doesn't seem like it.

25 MR. BRYAN: I've known him for about 32 years.

1 THE COURT: I ask that question and what I really will
2 get at is is that in any way going to affect your ability
3 to be fair and impartial to both the Defendant and the
4 State? I mean, are you going to ---

5 MR. JOYCE: I don't think so, I mean, it's
6 consciously. I don't know if that ---

7 THE COURT: Okay, now, I appreciate the answer, but I
8 have to know for sure.

9 MR. JOYCE: A yes or no, right?

10 THE COURT: Yes.

11 MR. JOYCE: I would say no.

12 THE COURT: It will ---

13 MR. JOYCE: Would not influence.

14 THE COURT: It will not affect your ability to be fair
15 and impartial. So, you could set that relationship with
16 the family aside and listen to the facts of this case; is
17 that correct?

18 MR. JOYCE: I think so.

19 THE COURT: Okay, now, I think so.

20 MR. JOYCE: Okay, yes, ma'am, yes, ma'am.

21 THE COURT: All right, any question about that?

22 MR. JOYCE: No, I just, I just really wanted it to be,
23 be brought out before if I was selected or something.

24 THE COURT: All right, and you've done the right
25 thing, but what the Court needs to get at is now in light

1 of that can you be fair and impartial to the Defendant?

2 MR. JOYCE: Yes, ma'am.

3 THE COURT: Okay, thank you.

4 (Whereupon, the following takes places in open court.)

5 THE COURT: The juror will remain with us.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 54, Bryinne Holmes, counsel for the
8 Defense and counsel for the State in the presence, but out
9 of the hearing, of the jury venire.)

10 BAILIFF: Number 54.

11 THE COURT: Yes, ma'am.

12 MS. HOLMES: Juror Number 54.

13 THE COURT: Yes, ma'am.

14 MS. HOLMES: And I know the family, the Rutledge
15 family.

16 THE COURT: You know which family, I'm sorry?

17 MS. HOLMES: The Rutledge family.

18 THE COURT: Okay.

19 MS. HOLMES: They are my cousins.

20 THE COURT: Do you -- have you talked with them about
21 this case at all?

22 MS. HOLMES: No.

23 THE COURT: All right, but they're related to you?

24 MS. HOLMES: Uh-huh (affirmative response), I'm
25 related to their mother.

Voir Dire

1 THE COURT: Is it a close relationship? Do you
2 socialize with them? Do you go to family reunions with
3 them, do you ---

4 MS. HOLMES: No, we don't go to family reunions, but
5 we socialize when we see other, when we see each other.

6 THE COURT: All right, let me get you to step away for
7 just one moment, and I'll talk to the attorneys.

8 MS. HOLMES: Okay.

9 THE COURT: Forgive me for just one moment.

10 (Whereupon, the following takes place in open court.)

11 THE COURT: Did he just walk in? He's got to be held
12 aside if he's just walked in. That means I need to go
13 through every question with him. So, just pull him back
14 there and just start all over again. That's why it's very
15 important that we get you back here timely. Just keep him
16 standing so I don't miss him. So, if you'd stand, stand
17 him in the back. I'll question him along, I'll catch him
18 up. All right.

19 (Counsel and Court confer.)

20 THE COURT: As to this, she's indicated she's got
21 family, cousins of the victim in the case. I have concerns
22 because of that relationship. She says she does socialize
23 with them. Is there any objection to my releasing this
24 juror?

25 MR. HEMBREE: No, ma'am.

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1 MR. LOCKLAIR: No, ma'am.

2 (Whereupon, the following takes place in open court.)

3 THE COURT: Your Juror Number again?

4 MS. HOLMES: 54.

5 THE COURT: Juror Number 54 is excused from this
6 particular case but you may remain with us. I'll give you
7 further instructions later.

8 MS. HOLMES: All right.

9 THE COURT: Now, to my late juror. Let me bring you
10 forward so I don't have to announce to everyone else.
11 They've already heard these questions, and we'll see if we
12 can go through them very quickly. In the future, I'll go
13 ahead and reprimand you in front of everybody, but in the
14 future be here timely. It really sets us back.

15 (Whereupon, an on-the-record bench conference was held
16 with Juror Number 34, Jeffery D. Fisher, counsel for the
17 Defense and counsel for the State in the presence, but out
18 of the hearing, of the jury venire.)

19 BAILIFF: Number 34.

20 THE COURT: All right, sir, the case has been called
21 in this -- the case that has been called is The State
22 versus Jody Lynn Ward. He has been indicted on two
23 different indictments for murder, one with the victim being
24 Elton Rutledge, the other with the victim being a Wilfred
25 Brown. Do you have any direct information, you have any

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1 information other than what you may have read in the media
2 or heard regarding these incidents?

3 MR. FISHER: No, ma'am.

4 THE COURT: Okay, now, as you can see both of these
5 indictments are for murder. That simply means that's what
6 he's been charged with. Are you unable or do you feel that
7 you would be unable to be fair and impartial due to the
8 nature of the charges in this case?

9 MR. FISHER: Ask that question again, please.

10 THE COURT: Because he's been charged with murder ---

11 MR. FISHER: Right.

12 THE COURT: --- and that -- is that in any way going
13 to affect your ability to be fair and impartial to both the
14 Defendant and to the State?

15 MR. FISHER: No, no.

16 THE COURT: Okay, all right, and I think that's as far
17 as I had gotten. Does that bring him up to date? I
18 believe that's it.

19 Okay, now, you can join the rest, and you'll be in
20 with the rest of the questions. So, at this point I
21 brought you up to date.

22 (Whereupon, the following takes place in open court.)

23 THE COURT: Is there any member of the jury panel who
24 has formed or expressed an opinion as to the guilt or
25 innocence of this Defendant? If so, please stand.

1 (No response.)

2 THE COURT: I need to stress to you that a Defendant
3 is presumed innocent until his guilt has been proven beyond
4 a reasonable doubt. Is there any member of the jury panel
5 who will not be able to follow that important principle of
6 law? If so, please stand.

7 (No response.)

8 THE COURT: Mr. Ward, if you would stand for just a
9 moment, please.

10 (Complies with request.)

11 THE COURT: Is there any member of the jury panel who
12 is related by blood or marriage or friends or business
13 acquaintance with Mr. Jody Ward, the Defendant in this
14 case? If so, please stand.

15 (No response.)

16 THE COURT: Mr. Ward, you may be seated.

17 The alleged victims in this case are Mr. Elton
18 Rutledge and Mr. Wilfred Brown. I had mentioned those
19 before. Is there any member of the jury panel who was
20 related by blood or marriage or who was friends or a
21 business acquaintance with these individuals; if so, please
22 stand.

23 All right, yes, sir, let me have you come forward as
24 well, sir.

25 Juror Number 38.

1 BAILIFF: 38, yes.

2 THE COURT: 38.

3 All right, yes, sir, if you'd come here and you'd
4 speak into this microphone but we'll all be listening as
5 best we can.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 38, Luther Gamble, counsel for the
8 Defense and counsel for the State in the presence, but out
9 of the hearing, of the jury venire.)

10 THE COURT: What's the relationship?

11 MR. GAMBLE: Okay, I don't know whether -- my wife is
12 first cousin of the Rutledge if that has anything.

13 THE COURT: Okay, now, has your wife talked to you
14 anything about this case?

15 MR. GAMBLE: No.

16 THE COURT: Has she talked to them to your knowledge
17 about the case?

18 MR. GAMBLE: No.

19 THE COURT: Is that in any way going to affect your
20 ability to be fair and impartial to both the Defendant and
21 the State in this case?

22 MR. GAMBLE: No.

23 THE COURT: All right, any question about that?

24 MR. GAMBLE: No, I don't think so.

25 THE COURT: Okay, thank you.

1 MR. LOCKLAIR: Could we just have his wife's name,
2 Your Honor?

3 THE COURT: Yeah, your wife's name, sir?

4 MR. GAMBLE: Vernell ---

5 THE COURT: Vernell.

6 MR. GAMBLE: --- Thompson Gamble.

7 THE COURT: Okay, and when you said you didn't think
8 so I need to be absolutely sure.

9 MR. GAMBLE: Oh, no.

10 THE COURT: Can you be, can you be fair and impartial
11 to both sides?

12 MR. GAMBLE: Oh, yes.

13 THE COURT: Thank you, sir.

14 MR. GAMBLE: Okay.

15 (Whereupon, the following takes place in open court.)

16 THE COURT: You may remain with us, just have a seat.
17 Is there any member of the jury panel who is
18 themselves involved with law enforcement? If so, please
19 stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel who
22 either themselves or a close family member or acquaintance
23 is employed with law enforcement? I guess this is
24 extending it. Let me ask it this way. Do you have a
25 family member or a close acquaintance who is involved in

1 law enforcement? If so, please stand.

2 All right, we do have several and we'll start in the
3 beginning and work -- in the front and work our way back,
4 yes, sir.

5 MR. GRIFFIN: I've got several friends who are law
6 enforcement officers.

7 THE COURT: All right, now, is that in any way going
8 to affect your ability to be fair and impartial to both the
9 State and the Defendant?

10 MR. GRIFFIN: No.

11 THE COURT: Your Juror Number?

12 MR. GRIFFIN: 141.

13 THE COURT: Thank you, sir, you may be seated.

14 Yes, sir.

15 MR. MCGEE: I have family and friends.

16 THE COURT: All right, your Juror Number?

17 MR. MCGEE: 76.

18 THE COURT: All right, and is that in any way going to
19 affect your ability to be fair and impartial to both the
20 Defendant and the State?

21 MR. MCGEE: No, it won't.

22 THE COURT: Thank you, sir.

23 Yes, sir.

24 MR. KIRBY: Juror Number 64, Your Honor, I was a
25 military policeman in the army.

1 THE COURT: All right, and is that in any way going to
2 affect your ability to be fair and impartial to both the
3 Defendant and the State?

4 MR. KIRBY: No, Your Honor.

5 THE COURT: Thank you, sir.

6 Yes, ma'am.

7 MS. MCCANN: I'm Juror Number 74 and my husband was a
8 former Secret Service Agent.

9 THE COURT: All right, and you've heard me ask the
10 others. I'll ask you as well.

11 MS. MCCANN: Right, no.

12 THE COURT: Will that affect your ability to be fair
13 and impartial?

14 MS. MCCANN: No.

15 THE COURT: No, thank you, ma'am.

16 And yes, yes, sir.

17 MR. SANDERS: I have -- Number 147, I've got a couple
18 of close friends with law enforcement.

19 THE COURT: All right, and once again, is that going
20 to affect your ability to be fair and impartial?

21 MR. SANDERS: No, ma'am; no, ma'am.

22 THE COURT: Thank you, sir.

23 Now, I do have a juror that I had -- I wanted to give
24 more time to. Could I have you come forward at this time?

25 That was Juror Number 53, Juror Number 53.

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1 And ladies and gentlemen, be patient with us. We are
2 getting through this.

3 (Whereupon, an on-the-record bench conference was held
4 with Juror Number 53, John D. Holladay, Jr., counsel for
5 the Defense and counsel for the State in the presence, but
6 out of the hearing, of the jury venire.)

7 THE COURT: I was just simply giving you some time to
8 contemplate if it would in any way affect your ability to
9 be fair and impartial. Have you ---

10 MR. HOLLADAY: I, I don't know.

11 THE COURT: Okay, well, you're still saying, "I don't
12 think." I need something definitive. If you have a doubt
13 about that you need to let me know, but if you feel that
14 you can be fair and impartial you need to let me know that,
15 too.

16 MR. HOLLADAY: I have doubts about that.

17 THE COURT: You have doubts, and your Juror Number
18 again?

19 MR. HOLLADAY: 53.

20 THE COURT: 53.

21 (Whereupon, the following takes place in open court.)

22 THE COURT: Okay, Juror Number 53 is excused from this
23 particular case but you remain with us, please.

24 I'm sorry I hadn't asked a question. What was that?

25 BAILIFF: The same thing you just asked last.

1 THE COURT: About law enforcement?

2 BAILIFF: Family members.

3 MR. HARDEE: No, ma'am, this may not pertain to a
4 question you've asked.

5 THE COURT: Well, I'm going to ask more questions.

6 MR. HARDEE: Oh, I'm sorry.

7 THE COURT: But while we've got you up here.

8 MR. HARDEE: Yeah, it may have been the family ---

9 THE COURT: What's your, what's your juror number?

10 (Whereupon, an on-the-record bench conference was held
11 with Juror Number 47, Stacey R. Hardee, counsel for the
12 Defense and counsel for the State in the presence, but out
13 of the hearing, of the jury venire.)

14 MR. HARDEE: Were you going to refer back to family
15 members?

16 THE COURT: I've already asked if you were related at
17 all to the victim.

18 MR. HARDEE: I wasn't, but when I was taking, when we
19 were taking a break I recognized an old high school friend
20 of mine and embraced her and I don't know who else seen
21 that, but after ---

22 THE COURT: And who was that? Did you know?

23 MR. HARDEE: That was I. Conyers, the mother-in-law of
24 the victim. It was only after the reunion that I realized
25 that she is the mother-in-law of the victim and a lot of

1 people seen that. So, that's just information.

2 THE COURT: I think that that was important
3 information. Thank you for sharing that with us. Would
4 you mind just stepping back for just one moment and let me
5 talk to the attorneys in this case.

6 (Court and counsel confer.)

7 THE COURT: Yeah, I'm just going to have to. Under
8 this particular case he admitted that he hugged a family
9 member of the victim unbeknownst to him that that was the
10 relationship. He now knows the relationship. He's
11 admitted that many of the jurors had seen that and I think
12 that it would be appropriate that he not serve in this
13 particular case for fear that those jurors certainly with
14 him may be asking about that relationship and about the
15 family. He certainly would have some knowledge of the
16 family. So, he is being excused.

17 (Whereupon, the following takes place in open
18 court.)

19 THE COURT: Sir, you are being excused from this
20 particular case. Remain with us and I'll give you further
21 instructions.

22 All right, you've heard me ask this question over and
23 over again as we ask questions. Can you be fair and
24 impartial because you understand what I'm getting at. What
25 we need is a fair and impartial jury. Is there any member

1 of the jury panel who would be unwilling to admit that they
2 could not be fair and impartial for fear of some sort of
3 just, fear of some sort of ramification or that maybe even
4 the Judge would be mad with you. The truth of the matter
5 is I would need to know if you can't be fair and impartial
6 and all parties need to know the truth. So, is there any
7 member of the jury panel who would be unwilling to admit
8 that or wants to now admit that when they failed to do so
9 in the past? If so, please stand.

10 (No response.)

11 THE COURT: That's a little bit of a complicated
12 question, but I wanted to make sure that you weren't
13 feeling pressured to say, "Yes, I can be fair and
14 impartial." I want simply you to understand that we simply
15 need to know the truth.

16 All right, is there any member of the jury panel who
17 belongs to a civic group such as Mothers Against Drunk
18 Driving, People Against Rape, Citizens Against -- Citizens
19 Advocating Decency and Return to Ethics or Parents
20 Empowered to Save Teens or Citizens Against Violent Crime.
21 If you're a member of one of these groups or a similar
22 group please stand.

23 (No response.)

24 THE COURT: All right, is there any member of the jury
25 panel who either themselves or has had a close family

1 member or a close friend who was a victim of a violent
2 crime and for that reason feels that they could not be fair
3 and impartial? If so, please stand. If that has bothered
4 you so emotionally that you feel like you cannot set that
5 aside and be fair and impartial in this case and judge this
6 case based on the facts and circumstances presented and the
7 evidence presented in this case, then please stand.

8 We have one. Yes, ma'am, if you'll come forward.

9 (Whereupon, an on-the-record bench conference was held
10 with Juror Number 9, Sara W. Bouchette, counsel for the
11 Defense and counsel for the State in the presence, but out
12 of the hearing, of the jury venire.)

13 BAILIFF: Number 9.

14 THE COURT: Okay, yes, ma'am.

15 MS. BOUCHETTE: Mark Wright was my cousin and he was
16 killed and they've never found his murderer. It happened
17 in Andrews.

18 THE COURT: Is that in any way going to affect your
19 ability to be fair and impartial?

20 MS. BOUCHETTE: I think that it would.

21 THE COURT: Okay, and your number once again?

22 MS. BOUCHETTE: 9.

23 THE COURT: Juror Number 9.

24 (Whereupon, the following takes place in open court.)

25 THE COURT: Juror Number 9 is excused from this

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1 particular case. Thank you, ma'am.

2 Is there any member of the jury panel who either
3 themselves or a close family member has been accused of a
4 violent crime and this would affect your ability to be fair
5 and impartial to both the State and the Defendant? If so,
6 please stand.

7 (No response.)

8 THE COURT: All right, is there any member of the jury
9 panel who has read in the paper or heard on the media
10 anything in this case? If so, please stand.

11 ~~MS. MUNNERLYN: I expected such.~~ So, I'm not surprised. That's okay.

12 Those of you who have heard go ahead. I want -- I
13 still need you to stand. If you've read anything, unless
14 you've been excused from the case. If you've been excused
15 from the case I don't need, I don't need for you to stand,
16 but if you have read or heard anything about the case and
17 what I will need to do is hear from you individually and
18 I'll just have you come forward and ask you about that with
19 the emphasis on and I'll tell you the emphasis will be on
20 your ability to set what you've heard or read aside and
21 base your decision solely on the evidence and testimony
22 presented in this courtroom. That's what will be
23 important. Ma'am, your Juror Number?

24 MS. MUNNERLYN: 82, I believe.

25 THE COURT: Okay, we'll double-check. Your name?

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1 (Whereupon, an on-the-record bench conference was held
2 with Juror Number 87, Glenda M. Munnerlyn, counsel for the
3 Defense and counsel for the State in the presence, but out
4 of the hearing, of the jury venire.)

5 MS. MUNNERLYN: Glenda Munnerlyn, Munnerlyn, Glenda.

6 MR. HEMBREE: 87.

7 THE COURT: Munnerlyn.

8 MS. MUNNERLYN: It's 82 or 86.

9 THE COURT: Juror Number 87, okay, this is Juror
10 Number 87, yes, ma'am.

11 MS. MUNNERLYN: Well, I had heard about it working at
12 the hospital, the one of the indictments was for a
13 Rutledge.

14 REPORTER: I can't hear when they talk out there. I'm
15 sorry.

16 THE COURT: (To open court) All right, everybody needs
17 to be quiet out there. We're having difficulty hearing.

18 MS. MUNNERLYN: And her mother -- his mother works at
19 the hospital. So, I heard, you know, about it there. I
20 didn't hear anymore about it than that.

21 THE COURT: Okay, now, have you already formed or
22 expressed an opinion as a result of what you've heard?

23 MS. MUNNERLYN: No.

24 THE COURT: All right, can you set aside what you've
25 heard and base your, because you will be required to do

1 this, and base your opinion just on the evidence and
2 testimony presented in this courtroom?

3 MS. MUNNERLYN: Yes, I can.

4 THE COURT: That's all we can ask of you. Can you be
5 fair and impartial to both sides?

6 MS. MUNNERLYN: Yes.

7 THE COURT: Thank you, ma'am. You may remain with us.

8 (Whereupon, the following takes place in open court.)

9 THE COURT: The juror will remain with us.

10 (Whereupon, an on-the-record bench conference was held
11 with Juror Number 18, Audrey Cooper, counsel for the
12 Defense and counsel for the State in the presence, but out
13 of the hearing, of the jury venire.)

14 BAILIFF: 18.

15 THE COURT: Yes, ma'am, if you'll talk into this.
16 What did you hear and where?

17 MS. COOPER: The "Georgetown Times", I heard about the
18 case. Actually, one of the victim's father is -- was my
19 classmate. That's why I was -- I had saw the name. I was
20 interested. He -- I also knew him personally because he
21 did some work on my mother's home. He is a roofer and
22 ---

23 THE COURT: Was this in the past?

24 MS. COOPER: This is about a year and a half ago, I
25 believe, a little bit longer, maybe two years ago.

1 THE COURT: Okay, let me ask you. You're telling me
2 several things.

3 MS. COOPER: Okay.

4 THE COURT: First of all, the things that you've
5 heard, can you set those aside and base your decision
6 solely on the evidence presented in this case? Can you
7 just set those out of your mind?

8 MS. COOPER: Yes, I believe I can.

9 THE COURT: Okay, all right, now, as to this
10 relationship that you know the victim's father.

11 MS. COOPER: Yes.

12 THE COURT: Is that correct? Now, is that in any way
13 going to affect your ability to be fair and impartial to
14 both the State and the Defendant in this case?

15 MS. COOPER: I want to say no. I want to say no, but
16 ---

17 THE COURT: Well, I really need you to soul search.

18 MS. COOPER: Okay.

19 THE COURT: You let this Court know.

20 MS. COOPER: Okay.

21 THE COURT: Do you want -- I gave another gentleman an
22 opportunity to think about it. Do you want some time to
23 really soul search and think about it and we'll have you
24 come back?

25 MS. COOPER: Yeah, I can do that.

1 THE COURT: Okay, we'll do that.

2 MS. COOPER: Okay.

3 (whereupon, the following takes place in open court.)

4 THE COURT: Yes, ma'am.

5 BAILIFF: Number 100.

6 THE COURT: If you'll speak right in here. This is
7 Juror Number 100.

8 (Whereupon, an on-the-record bench conference was held
9 with Juror Number 100, Reta C. Simpson, counsel for the
10 Defense and counsel for the State in the presence, but out
11 of the hearing, of the jury-venire.)

12 MS. SIMPSON: I really don't know that much about it,
13 but I have, you know, glanced at the articles in the
14 newspaper, but I haven't -- I don't know the real details.

15 THE COURT: Okay, have you formed any opinion as a
16 result?

17 MS. SIMPSON: No, ma'am.

18 THE COURT: Okay, can you set aside what you may have
19 read about this case and decide the case solely on the
20 evidence presented in this courtroom?

21 MS. SIMPSON: Yes.

22 THE COURT: Can you be fair and impartial towards each
23 side?

24 MS. SIMPSON: Uh-huh (affirmative response), I think
25 so.

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1 THE COURT: Thank you. That's all we can ask, thank
2 you.

3 (Whereupon, the following takes place in open court.)

4 THE COURT: The juror will remain with us.

5 BAILIFF: Number 144.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 144, Sandra M. Mobley, counsel for the
8 Defense and counsel for the State in the presence, but out
9 of the hearing, of the jury venire.)

10 MS. MOBLEY: I've just heard rumors in my area because
11 it was not far from where we live in our neighborhood,
12 Browns Ferry, and the mother-in-law lives in the
13 neighborhood.

14 THE COURT: Okay, all right, so, you've really got two
15 issues. Let's deal with both of those. First of all,
16 let's deal with what you may have heard. Can you set that
17 aside and understand that that's not evidence in this
18 courtroom unless you hear it as evidence in this courtroom
19 ---

20 MS. MOBLEY: Of course.

21 THE COURT: --- and base your decision solely on the
22 evidence presented?

23 MS. MOBLEY: Uh-huh (affirmative response).

24 THE COURT: Can -- you can do that?

25 MS. MOBLEY: Yes.

1 THE COURT: Okay, all right, and so, you could be fair
2 and impartial to both sides; is that correct?

3 MS. MOBLEY: Well, yes.

4 THE COURT: All right, now, let me ask you about that,
5 the fact that the mother-in-law is -- that's the mother-in-
6 law of who, one of the victims ---

7 MS. MOBLEY: No.

8 THE COURT: --- or the mother-in-law of the Defendant?

9 MS. MOBLEY: The Defendant.

10 THE COURT: Okay, the mother-in-law of the Defendant
11 lives in your neighborhood. Is that in any way, in any way
12 going to affect your ability to be fair and impartial?

13 MS. MOBLEY: No.

14 THE COURT: Thank you. That's what I need to know.
15 Thank you for revealing that.

16 (Whereupon, an on-the-record bench conference was held
17 with Juror Number 19, Marisa M. Cooper, counsel for the
18 Defense and counsel for the State in the presence, but out
19 of the hearing, of the jury venire.)

20 BAILIFF: Number 19.

21 THE COURT: All right, Juror Number 19, yes, ma'am, if
22 you'll speak as if you're talking into this ---

23 MS. COOPER: Yes.

24 THE COURT: --- and we'll be listening.

25 MS. COOPER: I just read about it in the newspaper,

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1 and ---

2 THE COURT: All right.

3 MS. COOPER: --- I mean I'm assuming that a lot of
4 people did, but you asked the question, so.

5 THE COURT: All right, yeah, absolutely, and it has
6 been in the paper but what you'll be required to do is set
7 all that aside, out of your mind ---

8 MS. COOPER: Uh-huh (affirmative response).

9 THE COURT: --- and any opinions you may have formed
10 as a result and base the case solely on the evidence and
11 testimony presented in this courtroom. Can you do that?

12 MS. COPPER: Yes, ma'am.

13 THE COURT: Can you be fair and impartial towards each
14 of the sides in this case?

15 MS. COOPER: Yes, ma'am.

16 THE COURT: Thank you.

17 (Whereupon, the following takes place in open court.)

18 THE COURT: She'll remain with us.

19 (Whereupon, an on-the-record bench conference was held
20 with Juror Number 145, Sydney H. O'Neil, counsel for the
21 Defense and counsel for the State in the presence, but out
22 of the hearing, of the jury venire.)

23 BAILIFF: Number 145.

24 THE COURT: If you'll just speak as if you're talking
25 into this and we'll be listening.

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1 MS. O'NEIL: Just what I've read in the paper.

2 THE COURT: All right, now, can you set what you might
3 have read in the paper aside ---

4 MS. O'NEIL: Uh-huh (affirmative response).

5 THE COURT: --- and base this case solely on the
6 evidence and testimony presented during, during the trial?

7 MS. O'NEIL: Uh-huh (affirmative response), yes, I
8 can.

9 THE COURT: All right, can you be fair and impartial
10 towards each of the parties?

11 MS. O'NEIL: Yes.

12 THE COURT: Thank you very much.

13 MS. O'NEIL: Uh-huh (affirmative response).

14 THE COURT: You may be seated.

15 (Whereupon, the following takes place in open court.)

16 THE COURT: Remain with us.

17 (Whereupon, an on-the-record bench conference was held
18 with Juror Number 2, Ronald W. Altman, counsel for the
19 Defense and counsel for the State in the presence, but out
20 of the hearing, of the jury venire.)

21 BAILIFF: Number 2.

22 THE COURT: Juror Number 2.

23 MR. ALTMAN: Juror Number 2.

24 THE COURT: Yes, sir.

25 MR. ALTMAN: Ronald Altman, yes, ma'am, I was

1 following it in the papers, the subject of the day when it
2 was published, and it won't have any bearing on my -- I
3 haven't preformed an opinion one way or the other.

4 THE COURT: Can you set all that aside ---

5 MR. ALTMAN: Yes, ma'am.

6 THE COURT: --- and base your decision solely on the
7 evidence presented here?

8 MR. ALTMAN: Yes, ma'am, I certainly can.

9 THE COURT: Thank you. That's all we can ask, thank
10 you, sir.

11 MR. ALTMAN: You're welcome.

12 (Whereupon, an on-the-record bench conference was held
13 with Juror Number 74, Carol W. McCann, counsel for the
14 Defense and counsel for the State in the presence, but out
15 of the hearing, of the jury venire.)

16 THE COURT: Yes, ma'am.

17 BAILIFF: 74.

18 THE COURT: Yes, ma'am, Juror 74.

19 MS. MCCANN: I remember when it happened. I heard a
20 lot about it and watched it on the news and read in the
21 papers. Lately I haven't see anything about it. We've
22 been out of town, so.

23 THE COURT: Let me ask you, can you set aside anything
24 that you may have read or heard about the case and base
25 your decision solely on the evidence presented in this

1 courtroom?

2 MS. MCCANN: Yeah, uh-huh (affirmative response).

3 THE COURT: All right, can you be fair and impartial
4 towards the State and the Defendant?

5 MS. MCCANN: Yes.

6 THE COURT: Thank you.

7 MS. MCCANN: Uh-huh (affirmative response), thank you.
8 (Whereupon, the following takes place in open court.)

9 THE COURT: She'll remain with us.

10 (Whereupon, an on-the-record bench conference was held
11 with Juror Number 59, Sandra Y. Johnson, counsel for the
12 Defense and counsel for the State in the presence, but out
13 of the hearing, of the jury venire.)

14 THE COURT: Yes, ma'am.

15 BAILIFF: Number 59.

16 THE COURT: All right, did you hear that or read about
17 it, what?

18 MS. JOHNSON: Read about it.

19 THE COURT: Okay, where?

20 MS. JOHNSON: In "Georgetown Times".

21 THE COURT: Okay, now, can you set aside anything you
22 may have read about this case and base the -- base your
23 decision on the case solely on the evidence presented in
24 this courtroom?

25 MS. JOHNSON: Yes.

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1 THE COURT: Can you be fair and impartial to both the
2 Defendant and the State?

3 MS. JOHNSON: Yes.

4 THE COURT: Thank you.

5 MS. JOHNSON: Thank you.

6 (Whereupon, an on-the-record bench conference was held
7 with Juror Number 147, Terrance D. Sanders, counsel for the
8 Defense and counsel for the State in the presence, but out
9 of the hearing, of the jury venire.)

10 BAILIFF: 147.

11 THE COURT: Juror Number 47.

12 MR. SANDERS: 147.

13 BAILIFF: 147.

14 THE COURT: 147, thank you.

15 MR. SANDERS: For the most part of it I just heard
16 when the drug deal went bad and he was all bragging about
17 he killed two human beings and several other things.
18 That's not going to be a problem with me being truthful for
19 the case.

20 THE COURT: Okay, now, can you set all of that
21 information aside?

22 MR. SANDERS: Yes, ma'am.

23 THE COURT: And base the decision solely on the
24 evidence that's presented in this courtroom?

25 MR. SANDERS: Yes, ma'am.

1 THE COURT: All right, and I don't know, the evidence
2 that's presented in this courtroom may differ greatly from
3 what you've read. It may be what you've read but you've
4 got to put all of that out of your mind and any conclusions
5 that you might have reached out of your mind. Can you do
6 that?

7 MR. SANDERS: Yes, that's no problem.

8 THE COURT: Can you be fair and impartial to both the
9 State and the Defendant?

10 MR. SANDERS: Yes, ma'am.

11 THE COURT: All right, thank you.

12 MR. SANDERS: All right.

13 (Whereupon, an on-the-record bench conference was held
14 with Juror Number 129, Lisa M. Grate, counsel for the
15 Defense and counsel for the State in the presence, but out
16 of the hearing, of the jury venire.)

17 THE COURT: Yes, ma'am.

18 BAILIFF: 129.

19 THE COURT: Juror Number 129, yes, ma'am.

20 MS. GRATE: Just read in the paper, I keep up with the
21 paper, news.

22 THE COURT: Okay, now, can you set aside anything that
23 you may have read in the paper ---

24 MS. GRATE: I certainly can.

25 THE COURT: --- and base your decision solely on the

1 evidence and testimony in this case?

2 MS. GRATE: Yes, I can.

3 THE COURT: You can do that?

4 MS. GRATE: Yes, I can.

5 THE COURT: Can you be fair and impartial to both the
6 Defendant and the State?

7 MS. GRATE: Yes.

8 THE COURT: Thank you.

9 MS. GRATE: Uh-huh (affirmative response).

10 THE COURT: The juror will remain with us.

11 (Whereupon, an on-the-record bench conference was held
12 with Juror Number 130, Norman K. Wilcox, counsel for the
13 Defense and counsel for the State in the presence, but out
14 of the hearing, of the jury venire.)

15 BAILIFF: Juror 130.

16 THE COURT: Yes, sir.

17 MR. WILCOX: Juror 130.

18 THE COURT: Yes, sir, did you -- was it something you
19 read or heard?

20 MR. WILCOX: Read in the newspaper.

21 THE COURT: Okay, now, can you, can you set aside
22 anything that you may have read about this case and base
23 this case solely on the evidence that's presented in this
24 courtroom?

25 MR. WILCOX: Yes.

1 THE COURT: All right, can you be fair and impartial
2 to both the State and the Defendant?

3 MR. WILCOX: Yes.

4 THE COURT: Thank you. You'll remain with us, sir.

5 (Whereupon, an on-the-record bench conference was held
6 with Juror Number 35, Marvadine B. Forehand, counsel for
7 the Defense and counsel for the State in the presence, but
8 out of the hearing, of the jury venire.)

9 THE COURT: Yes, ma'am.

10 BAILIFF: 35.

11 THE COURT: Juror Number 35. Yes, ma'am, if you'll
12 speak as if you're talking into this microphone we'll be
13 listening. Yes.

14 MS. FOREHAND: I have read articles in the paper, but
15 it has, you know, just from outside, but I was being
16 honest.

17 THE COURT: Okay, well, we appreciate that. That's
18 what we want to know. Can you set aside anything that you
19 might remember about what you read, any -- set it all
20 aside, and base the decision solely on the evidence and
21 testimony presented in this courtroom?

22 MS. FOREHAND: Yes.

23 THE COURT: Can you do that?

24 MS. FOREHAND: Yes.

25 THE COURT: Can you be fair and impartial to both the

1 Defendant and the State?

2 MS. FOREHAND: Yes.

3 THE COURT: Thank you.

4 (Whereupon, the following takes place in open court.)

5 THE COURT: If I could see Juror Number 18 one more
6 time. I was giving you some time to think about it.

7 (Whereupon, an on-the-record bench conference was held
8 with Juror Number 18, Audrey Cooper, counsel for the
9 Defense and counsel for the State in the presence, but out
10 of the hearing, of the jury venire.)

11 THE COURT: Now, again, there's no right or wrong
12 answer. There's just the truth.

13 MS. COOPER: Okay.

14 THE COURT: You just let us know. Could you be fair and
15 impartial to both the State and the Defendant in this case?

16 MS. COOPER: Okay, no, because it was an animosity
17 because of the work that was done wasn't going real good.
18 So, I think I better step aside.

19 THE COURT: All right, well, thank you for your
20 honesty.

21 (Whereupon, the following takes place in open court.)

22 THE COURT: Number 18 is excused.

23 I've told many of you that you have to set aside
24 anything that you may have read or heard or speculate about
25 this case, set all of that aside, get that out of your mind

1 and you have to base your decision in this case solely on
2 the evidence that's presented. Ma'am, you need to stay
3 with us because I'll have to give you some further -- I'm
4 sorry, but I'll have to give you some further instructions.
5 You are excused from this case but I'll have to do
6 something with those of you who are excused. I'll give you
7 instructions in just a minute.

8 Now, once again, I told you you have to set all that
9 aside and base your decision in this case on the evidence
10 that's presented in this courtroom. By the same token, you
11 are not to base your -- you are to base your decision on
12 the evidence presented and not strictly on emotion.

13 Is there any member of the jury panel who is going to
14 be unable to set aside the emotional aspect and base this
15 decision solely on the evidence and testimony? If so,
16 please stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel who
19 has ever been employed or performed voluntary work at the
20 Georgetown Memorial Hospital? If so, please, stand.

21 (Court and counsel confer.)

22 THE COURT: Just give me, give me the juror number,
23 please, once again. Your juror number?

24 MS. MUNNERLYN: 87.

25 THE COURT: All right, your juror number?

1 MS. O'NEIL: 145.

2 THE COURT: Your juror number?

3 MS. THOMPkins: 126.

4 THE COURT: Your juror number?

5 MS. GRATE: 129.

6 THE COURT: And yes, sir.

7 MR. GROVE: 44.

8 THE COURT: All right, now, because you have worked at
9 Georgetown Memorial Hospital is that in any way going to
10 affect your ability to be fair and impartial to both the
11 Defendant and the State in this case? If so, remain
12 standing.

13 (No response.)

14 THE COURT: I'll ask it this way. Is there any member
15 of the jury panel who has -- who has a relationship with
16 the families of Elton Rutledge or Wilfred Brown and you
17 have not already revealed that? If you have already
18 revealed that we've already discussed it, but if you have a
19 relationship with either of those families and have not yet
20 revealed that, please stand.

21 (No response.)

22 THE COURT: At this time I'm going to have the
23 attorneys introduce themselves and we will begin with the
24 attorneys for the State. I'll allow you to take your
25 place. I'll move back up.

1 MR. HEMBREE: Good morning, good afternoon.

2 My name is Greg Hembree. I'm the Solicitor for the
3 15th Judicial Circuit and I have responsibility for
4 prosecuting criminal cases in Horry and Georgetown
5 Counties.

6 Trying this case with me will be Deputy Solicitor for
7 Georgetown, Bo Bryan. The chief case officer in this case
8 is investigator with the Georgetown Sheriff's Office, Gary
9 Todd.

10 MR. LOCKLAIR: And my name is Wesley Locklair. I,
11 along with Margaret Ann Kneece represent Jody Ward. We're
12 both in different firms out of Murrells Inlet, and we
13 practice criminal defense around the State.

14 THE COURT: All right, at this time I'm going to have
15 the attorneys list potential witnesses. Now, these are
16 witnesses who may be called in the trial of the case.
17 Before I do that let me ask about the attorneys. This
18 would be a good time.

19 Is there any member of the jury panel who is related
20 by blood or marriage or friends with any of these attorneys
21 or who has been represented by any of these attorneys or
22 who has been on the other side of a case in which one of
23 these attorneys might have represented the opposing party;
24 if so, please stand.

25 (No response.)

Voir Dire

1 THE COURT: All right, very well. I'm going to turn
2 now to Solicitor Hembree for a list of potential witnesses.
3 Listen very carefully. These are the individuals who may
4 be called in the trial of the case and I need to ask you
5 about these individuals.

6 Yes, sir.

7 MR. HEMBREE: Thank you, Your Honor.

8 I would like to note for the record that this is an
9 extensive list of 63 witnesses. We will -- I would like to
10 state for the benefit of the Court and for the benefit of
11 the jury that we do not intend to call all 63 witnesses,
12 but just to -- didn't want to scare anybody about this long
13 list.

14 THE COURT: Thank you, Mr. Hembree.

15 MR. HEMBREE: Barry Watford; Detective Jimmy Burke,
16 Georgetown Police Department; Candy Cox; Billy Wilson;
17 Senior Agent Steve Lambert from SLED; Denise Langston Cox;
18 Latrese Rutledge; Reverend Elton Rutledge, Sr.; Indria
19 Brown; Nadine Brown; Beverly Ward; Sean Savery; Officer
20 Danny Cooper, Georgetown Police Department; Officer Eddie
21 Dingle, South Carolina Department of Natural Resources;
22 Walker Bone; Charles Lamb; Eric Grantham; Agent Stacy Brown
23 of the Alcohol, Tobacco and Firearms Department; Josh
24 Ackerman; Jason Ackerman; Paula Lamb; Buffy Lynn Parsons;
25 Curtis Fields; Wade Jones; Rhonda Cook; Brian Alston; Brian

1 Elliott; Melissa Elliott; John Elliott; Lieutenant Ernest
2 Hampton, Georgetown County Sheriff's Office; Agent Ivan
3 Holden, Georgetown County Sheriff's Office; Shane Prince;
4 Agent Frank Preston, Alcohol, Tobacco and Firearms; Clifton
5 Rogers, Jr.; Carter Weaver, Assistant Sheriff, Georgetown
6 County Sheriff's Office; Arthur Young; Alice Newman; Deputy
7 Kevin Holt, Georgetown County Sheriff's Office; Coroner
8 Kenny Johnson; Louis Bazen; Officer Earl Graham, Charleston
9 Police Department; Deputy Chris Doerr, Georgetown County
10 Sheriff's Office; Special Agent Jeff Crooks, SLED; Special
11 Agent Jim Hickman, SLED; Special Agent Michelle Dixon,
12 SLED; Lieutenant Matthew Grayson, Georgetown County
13 Sheriff's Office; Officer Danny Watson, Georgetown Police
14 Department; Investigator Jonathan Lambert, Georgetown
15 County Sheriff's Office; Roger Cox, Jr.; Tracy Collins;
16 Jody Owens; Olin Hewitt; Kevin Cooper; Roger Dale Ackerman,
17 Sr.; Roger Dale Ackerman, Jr.; Jason Poston; Investigator
18 Gary Todd, Georgetown County Sheriff's Office; Special
19 Agent Rod Greene, SLED; Senior Agent Dan DeFreese, SLED;
20 Cecil Bradstreet, SLED; Officer Richard Cote, Myrtle Beach
21 Police Department; and Special Agent Rhett Holden, SLED.

22 THE COURT: All right, is there any member of the jury
23 panel who is related by blood or marriage or friends or
24 business acquaintance with any of these potential
25 witnesses? If so, please stand.

1 (No response.)

2 THE COURT: All right, very well, if we could then
3 hear from the Defendant.

4 MR. LOCKLAIR: In addition to those witnesses, these
5 are the other potential witnesses: Michael Abner; John
6 Evans; Susan Evans; Don Girnst [spelled phonetically]; Tony
7 Harper; Julius Inman; Kenny Johnson; Mark Johnson; Neil
8 Johnson; Willie Lambert; Dr. Hal Morgan; Investigator Don
9 Myers; Jerry Oldham; Chris Parsons; Mike Rodan; Carol Ward;
10 Lynn Ward; and Rondie Ward.

11 THE COURT: Is there any member of the jury panel who
12 is related by blood or marriage or business or personal
13 acquaintance with any of these potential witnesses; if so,
14 please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel who
17 is aware or conscious of any bias or prejudice for or
18 against the State or for or against the Defendant? If so,
19 please stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel who
22 for any reason whatsoever feels that they could not be fair
23 and impartial to both the Defendant and the State? If so,
24 please stand.

25 (No response.)

1 THE COURT: Are there any additional requests?
2 Anything from the State?

3 MR. HEMBREE: No additional requests from the State,
4 Your Honor.

5 THE COURT: All right, anything from the Defendant?

6 MS. KNEECE: Nothing from the Defense.

7 THE COURT: All right, now to those individuals who
8 have been excused from this particular trial I'm going to
9 excuse you at this time as we begin this process. I ask
10 you to call in after six o'clock this evening, call in
11 after six o'clock this evening and follow those
12 instructions. If you have been excused from hearing this
13 particular case you may leave at this time, call in after
14 six.

15 Okay, go get her then. If there's one that left that
16 was not supposed to bring her back in.

17 Bear with us. I think somebody slipped away on us.
18 I'm sure you all had the urge.

19 Let's have order and let me go ahead and -- yes.

20 MS. KNEECE: May we approach?

21 THE COURT: Yes, you may. Wait just a moment. The
22 strikes are five and ten; Madam Clerk, five and ten.

23 (Whereupon, a Bench conference was held in the
24 presence, but out of the hearing, of the jury venire.)

25 THE COURT: All right, as you hear your name and

1 number called if you would please come forward. You will
2 walk through that middle gate, and I'll get one of the
3 bailiffs to open that up for you. You will stand with your
4 back to me facing the front of the courthouse and you'll
5 remain standing there until you're asked to either have a
6 seat in the jury box or to return to your seat, and as you
7 hear your name and number called, please bring your
8 personal belongings with you assuming that you will be
9 chosen to serve in this particular case.

10 Now, don't be too concerned if when you're standing
11 there the attorneys ask to approach and ask to come talk to
12 me. We are dealing with a matter of law that we will be
13 discussing. So, just remain standing there patiently until
14 we direct you to either return to your seat or have a seat
15 in that jury box.

16 Now, yes, sir, Mr. Mapp, did you need to talk with me?

17 MR. MAPP: No, ma'am.

18 THE COURT: All right, we'll begin at this time.

19 THE CLERK: Juror Number 133, Barbara Wilson.

20 What says the State?

21 MR. HEMBREE: Please excuse Ms. Wilson from the trial
22 of this case.

23 THE COURT: You may return to your seat.

24 THE CLERK: Juror Number 1, Myra Alston.

25 What says the State?

1 MR. HEMBREE: Please present Ms. Alston.

2 THE CLERK: What says the Defense?

3 MR. LOCKLAIR: Please excuse Ms. Alston from service
4 on this case.

5 THE COURT: You may return to your seat.

6 THE CLERK: Juror Number 88, Robert Myers.

7 What says the State?

8 MR. HEMBREE: Please present Mr. Myers.

9 THE CLERK: What says the Defense?

10 MR. LOCKLAIR: Please present Mr. Myers.

11 THE COURT: Have a seat in the jury box, sir.

12 THE CLERK: Juror Number 48, Judy Harper.

13 THE COURT: Is that 48?

14 THE CLERK: Yes, Your Honor.

15 THE COURT: Thank you. If you'd back up just a little
16 bit they can both see you.

17 (Complies with request.)

18 THE COURT: There you go.

19 THE CLERK: What says the State?

20 MR. HEMBREE: Please present Ms. Harper.

21 THE CLERK: What says the Defense?

22 MR. LOCKLAIR: Please present Mrs. Harper.

23 THE COURT: Have a seat in the jury box, right over
24 here.

25 THE CLERK: Juror Number 44, Derrick Grove.

1 What says the State?

2 MR. HEMBREE: Please excuse Mr. Grove from the trial
3 of this case.

4 THE COURT: You may return to your seat.

5 THE CLERK: Juror Number 87, Glenda Munnerlyn.

6 What says the State?

7 MR. HEMBREE: Please present Ms. Munnerlyn.

8 THE CLERK: What says the Defense?

9 MR. LOCKLAIR: Please excuse Mrs. Munnerlyn from this
10 case.

11 THE COURT: You may return to your seat.

12 THE CLERK: Juror Number 107, Barbara Smith.

13 What says the State?

14 MR. HEMBREE: Please present Ms. Smith.

15 THE CLERK: What says the Defense?

16 MR. LOCKLAIR: Your Honor, may we approach?

17 THE COURT: Yes, you may.

18 (Whereupon, a Bench conference was held in the
19 presence, but out of the hearing, of the jury.)

20 (Whereupon, an on-the-record bench conference was held
21 with Juror Number 107, Barbara Smith, counsel for the
22 Defense and counsel for the State in the presence, but out
23 of the hearing, of the jury venire.)

24 THE COURT: Ma'am, let me ask you just a quick
25 question over here. If you'll speak as if you're talking

1 into this microphone.

2 MS. SMITH: Okay.

3 THE COURT: Now, were you talking with the victim's
4 family earlier?

5 MS. SMITH: Huh-uh (negative response), no, ma'am.

6 THE COURT: Now, do you know the victim's family?

7 MS. SMITH: No, ma'am.

8 THE COURT: Okay, all right, thank you, ma'am.

9 MS. SMITH: Okay.

10 THE COURT: (In open court.) Just remain there till we
11 tell you otherwise.

12 MS. SMITH: Okay.

13 THE COURT: Thank you. Yes, sir..

14 MR. HEMBREE: Thank you, Your Honor.

15 Please present Ms. Smith.

16 THE CLERK: What says the Defense?

17 MR. LOCKLAIR: Please excuse Mrs. Smith from this
18 trial.

19 THE COURT: You may return to your seat.

20 THE CLERK: Juror Number 141, Paul Griffin.
21 What says the State?

22 MR. HEMBREE: Please present Mr. Griffin.

23 THE CLERK: What says the Defense?

24 MR. LOCKLAIR: Please present Mr. Griffin.

25 THE COURT: Have a seat in the jury box.

1 THE CLERK: Juror Number 2, Ronald Altman.
2 What says the State?
3 MR. HEMBREE: Please present Mr. Altman.
4 THE CLERK: What says the Defense?
5 MR. LOCKLAIR: Please present Mr. Altman.
6 THE COURT: Have a seat in the jury box.
7 THE CLERK: Juror Number 100, Reta Simpson.
8 What says the State?
9 MR. HEMBREE: Please present Ms. Simpson.
10 THE CLERK: What says the Defense?
11 MR. LOCKLAIR: Please present Ms. Simpson.
12 THE COURT: Have a seat in the jury box.
13 THE CLERK: Juror Number 79, Mart Mihalakis; is that
14 right? Close?
15 MR. MIHALAKIS: That'll work.
16 THE CLERK: Okay.
17 What says the State?
18 MR. HEMBREE: Please present Mr. Mihalakis.
19 MR. MIHALAKIS: Mihalakis.
20 MR. HEMBREE: Sorry about that.
21 THE CLERK: What says the Defense?
22 MR. LOCKLAIR: Please excuse Mr. Mihalakis.
23 THE COURT: You may return to your seat.
24 THE CLERK: Juror Number 98, Daphne Ray, Juror Number
25 98.

1 What says the State?

2 MR. HEMBREE: Please present Ms. Ray.

3 THE CLERK: What says the Defense?

4 MR. LOCKLAIR: Please present Ms. Ray.

5 THE COURT: Have a seat in the jury box.

6 THE CLERK: Juror Number 130, Norman Wilcox.

7 What says the State?

8 MR. HEMBREE: Please present Mr. Wilcox.

9 THE CLERK: What says the Defense?

10 MR. LOCKLAIR: Please excuse Mr. Wilcox from this
11 case.

12 THE COURT: You may return to your seat.

13 THE CLERK: Juror Number 34, Jeffery Fisher.

14 What says the State?

15 MR. HEMBREE: Please present Mr. Fisher.

16 THE CLERK: What says the Defense?

17 MR. LOCKLAIR: Please excuse Mr. Fisher from this
18 case.

19 THE COURT: You may return to your seat.

20 THE CLERK: Juror Number 19, Marisa Cooper.

21 What says the State?

22 MR. HEMBREE: Please present Ms. Cooper.

23 THE CLERK: What says the Defense?

24 MR. LOCKLAIR: Please present Mrs. Cooper.

25 THE COURT: Have a seat in the jury box.

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1 THE CLERK: Juror Number 76, Theodis McGee.
2 What says the State?
3 MR. HEMBREE: Please present Mr. McGee.
4 THE CLERK: What says the Defense?
5 MR. LOCKLAIR: Please excuse Mr. McGee.
6 THE COURT: You may return to your seat.
7 THE CLERK: Juror Number 69, Rochelle Leary.
8 What says the State?
9 MR. HEMBREE: Please present Mr. Leary.
10 THE CLERK: What says the Defense?
11 MR. LOCKLAIR: Please excuse Mr. Leary.
12 THE COURT: You may return to your seat.
13 THE CLERK: Juror Number 59, Sandra Johnson.
14 What, come back down here. What says the State?
15 MR. HEMBREE: Please present Ms. Johnson.
16 THE CLERK: What says the Defense?
17 MR. LOCKLAIR: Please excuse Mrs. Johnson.
18 THE COURT: You may return to your seat.
19 THE CLERK: Juror Number 145, Sydney O'Neil.
20 What says the State?
21 MR. HEMBREE: Please present Ms. O'Neil.
22 THE CLERK: What says the Defense?
23 MR. LOCKLAIR: Please present Mrs. O'Neil.
24 THE COURT: Have a seat in the jury box.
25 THE CLERK: Juror Number 112, Virgil Spivey.

1 What says the State?

2 MR. HEMBREE: Please present Mr. Spivey.

3 THE CLERK: What says the Defense?

4 MR. LOCKLAIR: Please present Mr. Spivey.

5 THE COURT: Have a seat in the jury box.

6 THE CLERK: Juror Number 150, David Williams.

7 What says the State?

8 MR. HEMBREE: Please excuse Mr. Williams from this
9 trial.

10 THE COURT: You may return to your seat.

11 THE CLERK: Juror Number 93, Kelly Polen.

12 What says the State?

13 MR. HEMBREE: Please present Ms. Polen.

14 THE CLERK: What says the Defense?

15 MR. LOCKLAIR: Please present Mrs. Polen.

16 THE COURT: Have a seat in the jury box.

17 THE CLERK: Juror Number 16, Carl Chatman.

18 What says the State?

19 MR. HEMBREE: Please present Mr. Chatman.

20 THE CLERK: What says the Defense?

21 MR. LOCKLAIR: Please present Mr. Chatman.

22 THE COURT: Have a seat in the jury box.

23 THE CLERK: Juror Number 74, Carol McCann.

24 What says the State?

25 MR. HEMBREE: Please present Ms. McCann.

1 THE CLERK: What says the Defense?

2 MR. LOCKLAIR: Please present Mrs. McCann.

3 THE COURT: Have a seat in the jury box.

4 THE CLERK: Juror Number ---

5 THE COURT: For our alternate, go ahead. These are
6 for our alternate.

7 THE CLERK: Juror Number 121, Antonio Thompson.

8 What says the State?

9 MR. HEMBREE: Please excuse Mr. Thompson from this
10 case.

11 THE COURT: You may return to your seat.

12 THE CLERK: Juror Number 68, Julie Lance.

13 What says the State?

14 MR. HEMBREE: Please present Ms. Lance.

15 THE CLERK: What says the Defense?

16 MR. LOCKLAIR: Please present Mrs. Lance.

17 THE COURT: Have a seat in the jury box.

18 For our alternate two.

19 THE CLERK: Juror Number 64, Jefferson Kirby, III.

20 What says the State?

21 MR. HEMBREE: Please excuse Mr. Kirby from this trial.

22 THE COURT: You may return to your seat.

23 THE CLERK: Juror Number 39, Bernadette Gardner.

24 What says the State?

25 MR. HEMBREE: Please present Ms. Gardner.

1 THE CLERK: What says the Defense?

2 MR. LOCKLAIR: Please present Mrs. Gardner.

3 THE COURT: Have a seat in the jury box.

4 Are there any motions in regard to this jury?

5 Anything from the State?

6 MR. HEMBREE: No motions from the State, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. LOCKLAIR: Nothing from the Defense, Your Honor.

9 THE COURT: All right, very well.

10 I'm going to turn first to my jury. Well, for
11 scheduling purposes let me have you come forward, please.

12 (Whereupon, a Bench conference was held in the
13 presence, but out of the hearing, of the jury and jury
14 venire.)

15 THE COURT: All right, ladies and gentlemen of the
16 jury, I look forward to working with each and every one of
17 you. I need for you to understand that this afternoon
18 we're going to be doing some motions and making sure that
19 everything is in order for you to begin hearing this case.
20 So, I'm not going to have you here until nine o'clock
21 tomorrow morning, but I need you back in that jury room at
22 nine o'clock tomorrow morning.

23 Now, I'll make sure they have some doughnuts or
24 something back there for you and coffee, especially coffee.
25 So, come a little earlier so that you can enjoy that,

1 partake in that. Be here timely because it's our intention
2 to bring you out right at nine o'clock and go ahead and
3 begin the trial of this case. Once again, on behalf of
4 both the State and the Defendant look forward to working
5 with you.

6 Now, let me give you some very important instructions
7 and that is not to discuss the case with anyone, don't do
8 any independent investigation. When you go home you're
9 going to have a spouse, loved one, neighbor, friend, child,
10 somebody is going to say, "Have you been chosen to serve on
11 the case," and they may even know what it's about. You
12 cannot discuss it with them. You cannot discuss it. I, I
13 don't know if anything is going to be on TV about it or on
14 the computer or in the paper, but I'm asking you to stay
15 away from all three of that media. If you run across
16 anything that even looks like that you are to put it down.
17 Please do not read, please do not listen to anything that
18 has to do with this case.

19 Now, everybody that's involved in this case, all of
20 the parties who are potential witnesses, who are families,
21 the Solicitor's Office, the Public Defenders, all of these
22 individuals can, have been directed by me not to speak to
23 you. So, don't misinterpret anything that they may do as
24 not being friendly. I'm sure they're all friendly
25 individuals, but they know not to talk to the jury. So,

1 don't even attempt to speak other than a maybe quick hello.
2 That would be the extent of any conversations you could
3 have. Can't discuss this case with anyone, certainly can't
4 discuss it with any of the parties that are involved, can't
5 even discuss it amongst yourselves when you convene in that
6 jury room in the morning at nine o'clock. Now, that
7 sometimes comes as a surprise. During the course of the
8 trial you can't discuss the case until you've heard all of
9 the evidence and testimony.

10 Now, these are really strict instructions I'm giving
11 you. They're difficult instructions, but I trust that each
12 of you will follow those very carefully. That's very
13 important.

14 Have a very good evening. We're going to walk you
15 through. We're going to show you where it is that you
16 are to arrive at nine o'clock in the morning. You may go
17 through now. Wait just a minute for the rest of the jury.
18 Was there a request for this jury to be sworn before I
19 released them?

20 (No response.)

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 (Remaining jury panel dismissed with call-in
24 instructions.)

25 THE COURT: The case has been called. The Defendant

1 is now in custody. We will be breaking for lunch at this
2 time. We will take a lunch break until 2:10. We will see
3 you back here, unusual time I know, but gives us a little
4 bit of time, 2:10. Thank you very much. We'll see you
5 then.

6 ***** OFF THE RECORD *****

7 (On the record.)

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Thank you. Please be seated.

11 We have some remaining motions. Many matters have
12 already been dealt with, but I'm going to leave it now to
13 the moving party to raise whatever motions need to be
14 addressed at this time.

15 Yes, sir.

16 MR. LOCKLAIR: May it please the Court, Your Honor.

17 I guess the first thing I'd like to start out with was
18 our motion on their PowerPoint presentation.

19 THE COURT: Okay, that's not where I would normally
20 put any kind of camera. Let me -- I need to talk to the
21 media people just very briefly over here.

22 MR. LOCKLAIR: Yes, ma'am.

23 THE COURT: Excuse me for just one minute and then
24 we'll get to it. Let me see you over here for one minute
25 and let me just give you some parameters and tell you some

1 things.

2 (Court confers with news media.)

3 THE COURT: I'll just state on the record that I
4 talked to the media, there's the camera and the papers and
5 all were here. I just wanted to remind them of some of the
6 rules that we have in place in these kind of cases. If it
7 ever becomes distracting then I'll have to rethink their
8 presence in the courtroom. So long as we can continue with
9 our work without distraction it is fine and they understand
10 that the jurors will not be -- there will be no video or
11 pictures of our jurors in place, and we will move that
12 camera tomorrow to insure that. I have some concerns about
13 the jurors there. So, we can move it over here sometime
14 tomorrow. We have no jury here today. So, it's fine.

15 All right, now, back to the motion at hand. Yes, sir.

16 MR. LOCKLAIR: May it please the Court, Your Honor.
17 Well, I guess first is a preliminary matter. We'd just
18 like to make sure that all the previous motions and the
19 hearings from December 8th of 2003, February 26 and 27 of
20 2004 are made a part of this record with all attached
21 exhibits for appellate purposes.

22 THE COURT: Okay, and that's fine. Now, what I want
23 you to do though and it's going to be incumbent upon you to
24 raise anything that you feel this Court has not fully ruled
25 upon at this point in time. So, we'll take them one by

1 one.

2 MR. LOCKLAIR: Yes, ma'am.

3 The first thing I believe, and I believe I had spoken
4 briefly with Solicitor Hembree about this, was reviewing
5 their PowerPoint presentation. I think they've said they
6 wouldn't have a problem with letting us see it ahead of
7 time to see if there were any problems with that. We could
8 probably work that out between us.

9 MR. HEMBREE: Well, that's not my recollection of our
10 discussion, but we're not -- we don't, we don't intend to
11 use the PowerPoint presentation in the trial. So, that's a
12 moot point.

13 THE COURT: All right.

14 MR. LOCKLAIR: Our other one, Your Honor, was the
15 motion to divulge any investigative notes of the agents or
16 officers. It's my understanding they said they have given
17 everything over to you and we've been provided with
18 everything as far as the notes from Investigator Todd and
19 Investigator Hampton.

20 THE COURT: The understanding of the Court is
21 everything was provided. I did get the file, but they
22 informed this Court that the file that I have is the exact
23 same file that was handed to you; is that correct?

24 MR. HEMBREE: That's correct, Your Honor. That file
25 was provided to the -- well, it had been provided to

1 Defense counsel in pieces other times, but we -- back in
2 December after this discovery issue was raised we copied
3 that file and actually went to the offices of the Defense
4 counsel and went through each document and actually had
5 them review each document to confirm that it was the
6 document that was in there and to sign for those documents.

7 THE COURT: If you, if you are wanting to look at the
8 file that was handed to the Court, you have any objection
9 to them being able to go through that and insure that
10 everything that the Court was provided you were provided as
11 well? That was what was -- what the Court was to review.

12 MR. LOCKLAIR: Yes, ma'am.

13 THE COURT: All right, and I'll give you the
14 opportunity this afternoon right in this courtroom in the
15 presence of everyone to look through that, well in the
16 presence of the parties, let me put it that way, the State
17 and the Defendant.

18 MR. LOCKLAIR: Yes, ma'am, thank you, Your Honor.

19 Additionally, we had made a motion to compel
20 disclosures of plea bargains and deals. The Solicitor had
21 disclosed those through the time of the hearing. We just
22 wanted to make sure there were no other additional deals or
23 plea bargains that have been worked out since that time.

24 MR. HEMBREE: There are none, Your Honor.

25 THE COURT: Very well.

1 MR. LOCKLAIR: Your Honor, the next motion would go
2 towards -- it's several items. In fact, it was a motion we
3 had to suppress the introduction of evidence. We had
4 submitted a memorandum in support of this motion to the
5 Judge, to you, Your Honor, and carbon copy to the
6 Solicitor's Office.

7 The first was any and all pictures of human remains.
8 We would argue, number one, that that's not relevant to
9 proving any issue in the case; number two, that even if it
10 is relevant, any probative value that it might have for the
11 State is outweighed by any -- by the prejudicial effect
12 that it would then have on Mr. Ward, and we would ask that
13 those items and any pictures be excluded from evidence in
14 this case.

15 THE COURT: Mr. Hembree, we'll take them one by one.

16 MR. HEMBREE: Thank you, Your Honor.

17 There are two photographs of human -- well, first let
18 me state that we had already -- we had already resolved the
19 issue of autopsy photographs, anything of that nature. The
20 State does not intend to introduce those -- any autopsy
21 photographs. So, that, you know, that we will -- we'll
22 concede that point.

23 There are two photographs of human remains that were
24 recovered at the crime scene that we do intend to
25 introduce. Let me go ahead and have these marked as

1 Court's exhibits.

2 THE COURT: Well, when you say two photographs
3 recovered, you mean two photographs that were taken of the
4 crime scene.

5 MR. HEMBREE: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. HEMBREE: These were photographs taken by SLED
8 crime scene processors at the -- they were taken at the
9 crime scene. They are -- I would describe them as two
10 photographs of human remains, what appear to be bones and a
11 tennis shoe and some feathers, actually, in a -- looking
12 down into a -- I call it a croaker sack. It's a big like a
13 bushel or a big bag.

14 THE COURT: All right.

15 (Whereupon, Court's Exhibit Number One [Photograph of
16 Remains] and Court's Exhibit Number Two [Photograph of
17 Remains] appropriately marked.)

18 MR. HEMBREE: I can pass these up to the Court.

19 THE COURT: All right.

20 (Counsel for the State and counsel for the Defense
21 confer.)

22 MR. HEMBREE: Your Honor, these photographs
23 corroborate testimony of other agents. The first thing it
24 does is it establishes the crime scene. It shows what the
25 SLED agents found when they opened up that bag. Now, Louis

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1 Bazen, who is going to testify for the State, was the
2 individual who gave, we would allege, gave the Defendant a
3 ride when he moved the bodies. We believe that the facts
4 will show that he buried the bodies, the two bodies in one
5 location, waited approximately a month and then went back
6 to that location and took the bodies or what he could
7 gather of the bodies, placed them into this croaker sack
8 and took the croaker sack, put it in the trunk of the car
9 driven by Louis Bazen. Bazen then drove him, drove the
10 Defendant Ward to another location at Ward's direction and
11 he disposed of this bag once again. Took it down in kind
12 of a swampy area and buried them down there. Based on Mr.
13 Bazen's statement to law enforcement after this happened
14 law enforcement brought out a cadaver dog and they
15 recovered these, these -- the bodies.

16 This will corroborate a couple of things. One it, it
17 establishes the crime scene. It will -- it is a photograph
18 of the crime scene as it, as or what the SLED agents found.
19 It will corroborate Mr. Bazen's testimony in several
20 respects: one, that the, that the bags were used and that
21 he put the parts into the bags. Thirdly, it will
22 corroborate Mr. Bazen in that it has feathers in the bag.
23 Now, I mention that. It's kind of an odd thing to mention
24 but there was a statement made by the Defendant Ward to
25 Bazen that when he went back there there were vultures all

1 over the bodies. So, these feathers, although they have
2 not been -- we would not offer testimony from an expert
3 that these are vulture feathers, they were very large
4 feathers that could be from a vulture, appear to be from a
5 very large bird like a vulture or a turkey, something of
6 that nature. So, it also goes to corroborate Mr. Bazen's
7 testimony in that respect.

8 Likewise, it will help to -- it'll help the
9 pathologist in explaining her testimony to demonstrate to
10 the jury what she had to look at. One of the issues in
11 this case, another issue in this case is that Elton
12 Rutledge was not identified by dental records or some other
13 means because the condition of the bodies were so
14 deteriorated that the doctor wasn't able to say, "Well,
15 this is" -- you know, they found Wilfred Brown's dental
16 records, we were able to identify his skull but could not
17 positively identify Elton Rutledge's skull. At the -- the
18 pathologist wasn't able to do that and I think it's going
19 to be important for the jury to understand and to see what
20 the pathologist had to deal with when making that
21 determination. We will offer proof through other means to
22 prove that it was Elton Rutledge through circumstantial
23 evidence and kind of treating it almost like a no body case
24 and putting up some evidence along those lines, but I think
25 that will -- it will go to corroborate both Louis Bazen and

1 corroborate, well, the crime scene expert, as well as the
2 pathologist, as well as the Denise Langston also has some
3 testimony that this would help to corroborate, although to
4 a lesser degree, more Louis Bazen's testimony.

5 THE COURT: All right, and do you need both of these?
6 You've got them marked as One and Two. Have you had an
7 opportunity to review, to view these photographs?

8 MR. LOCKLAIR: Yes, ma'am, they provided those in
9 discovery.

10 THE COURT: Okay, all right.

11 MR. HEMBREE: We would, we would be able to make our
12 presentation with one.

13 THE COURT: All right, let me say this. I do think
14 due to the fact that and that is the way, that was the
15 condition in which it was seen at the crime scene.

16 MR. HEMBREE: That's correct.

17 THE COURT: All right, I do think it's relevant. I
18 don't think it's unduly prejudicial. They're -- they have
19 not taken out any particular parts of it and add any
20 closeups. This is the way it was observed right there on
21 the scene and I will allow it in evidence. What I will do
22 though is ask if one of these, unless both of them are
23 necessary, if just one of these will be chosen and come
24 take a look and then we'll see what ---

25 MR. HEMBREE: Thank you, Your Honor.

1 THE COURT: --- what can be, how it could be narrowed
2 down.

3 MR. HEMBREE: Judge, we would, we would offer State's
4 -- no, I'm sorry, Court's Exhibit Number One as the
5 photograph that we would propose to use.

6 THE COURT: The Court's allowing then what's now
7 marked as Court's Exhibit Number One over objection.

8 MR. LOCKLAIR: Thank you, Your Honor.

9 MR. HEMBREE: Your Honor, not to argue against myself
10 but I want to -- when I, when I -- thank you for the
11 ruling. I don't want, but for purposes of the record I
12 would note that this bag doesn't show any bloody tissue or
13 anything of that nature. It's strictly a tennis shoe, some
14 feathers and really look -- they look like just bones. I
15 mean, and even that is -- I mean, you can't really tell
16 what they're from. So, I would note that. Also, we'd cite
17 several cases in support of the State's position, State
18 versus Donald Kelley, at 319 S.C. 173; State versus
19 Brazell, 325 S.C. 65; State versus Lang, at 353 S.C. 78;
20 and State versus Gary Hayes, I don't have a cite number
21 for.

22 THE COURT: Thank you, sir. Yes, sir.

23 MR. LOCKLAIR: Your Honor, the next issue would be law
24 enforcement took some pictures of a stop sign at the
25 intersection of Gapway and Indian Hut Roads. Even by law

1 enforcement admission this is not the crime scene. The
2 sign is riddled with bullets of different calibers, also it
3 looks like there's some buck or bird shot from shotguns
4 being shot at it.

5 When we went out to the scene we saw boxes, empty
6 boxes from bullets, beer cans. It's obviously a place
7 where people hang out, shoot lots of guns. They recovered
8 some shell casings in that area as well, which I think
9 they're alleging the Defendant had shot at the sign,
10 they're his shell casings. One of the main reasons, the
11 sign bears the letters KKK printed in really big letters on
12 it, Your Honor, which obviously everybody knows what that
13 stands for. There are some racial undertones to this case.
14 We just think that having a stop sign with that on it would
15 be unduly prejudicial to our client. We don't think it
16 offers any probative value because there's no proof that
17 the bullet holes in that sign were made by him, they can't
18 pinpoint any of the bullet holes as being made by him out
19 there allegedly target shooting or whatever with friends,
20 and we just don't think that it has any probative value
21 whatsoever, and if the Court did find that it happened to
22 have any probative value we would certainly say that the
23 prejudicial effect outweighs that probative value.

24 THE COURT: Yes, sir.

25 MR. HEMBREE: I can make, I can make this I think a

1 little easier than it might first sound. On the shell
2 casings, dealing with the shell casings, the State does not
3 intend to introduce the shell casings in this case. So,
4 that we have -- we will concede that point to Defense.

5 As to the stop signs, and actually there are two stop
6 signs at this location and both of them are shot up pretty
7 badly. One stop sign says on the front of it KKK. The
8 other stop sign says on the front of it, in addition to
9 stop, the other sign says on the front of it "Roger loves
10 Cindy," and I would offer these two photographs as Court's
11 Exhibits Three and Four.

12 (Whereupon, Court's Exhibit Number Three [Photograph
13 of Stop Sign] and Court's Exhibit Number Four [Photograph
14 of Stop Sign] appropriately marked.)

15 MR. HEMBREE: Your Honor, one of the witnesses that
16 will testify in this case is a Denise Langston who was the
17 girlfriend of the Defendant at one time. She will offer
18 testimony that she was aware that the Defendant had a nine
19 millimeter TEC-9 semiautomatic handgun, that she saw it in
20 his possession and that she was actually with him when he
21 shot it a short time, I would say about a month before the
22 murder. It wasn't right before the murder, but she was,
23 she was familiar with this weapon, and again, was with him
24 when he shot it. She would offer testimony that he shot it
25 at that stop sign, he was with her, stopped the car, shot

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1 it at that one, didn't shoot it at the KKK stop sign. We
2 don't intend to offer any, any testimony or offer the
3 picture of the stop sign with the KKK. So, that part's
4 out. This part, this is the one that she would say was
5 shot at. It really just serves to corroborate her
6 testimony that she saw him in possession of this gun, was
7 aware that he had it. That's -- that would be the reason
8 that we would offer the testimony about the gun.

9 THE COURT: In light of the fact that they have no
10 intention of presenting the stop sign that has KKK written
11 on it do you still have a concern?

12 MR. LOCKLAIR: Yes, ma'am, we would still have a
13 concern, number one, is you can see how riddled up those
14 signs are. Number one, I doubt Denise Langston can
15 positively testify if any bullets fired by Jody Ward
16 actually struck the stop sign, and I'm positive she cannot
17 identify which of those bullet holes were caused by Jody
18 Ward. Obviously, if she can testify that she saw him with
19 a nine millimeter gun and they went out there, that takes
20 care of the probative value that they need. We think by
21 putting in those pictures the jury could assume that Jody
22 Ward was the one who made all these bullet holes in it and
23 we don't even know if one of those bullet holes was made by
24 him. He could be a terrible shot and have missed every
25 time.

1 THE COURT: Why don't we -- let's see what sort of
2 foundation we get in this particular case, and I'll have to
3 deal with that after I hear the foundation laid.

4 MR. HEMBREE: Thank you, Your Honor.

5 MR. LOCKLAIR: Thank you, Your Honor.

6 Our next matter, Your Honor -- the next matter would
7 relate to any and all pictures of the deceased in this
8 case, any pictures that the Prosecution would intend to
9 introduce of them.

10 MR. HEMBREE: We don't intend to offer any photographs
11 of the deceased in this case other than the one photograph
12 of the bag that the Court has ruled on.

13 THE COURT: All right.

14 MR. LOCKLAIR: Okay, the next matter was the shell
15 casings which they said are not going to be introduced,
16 which would move us to -- we'd move to suppress any and all
17 firearms or other weapons which were seized from the
18 Defendant's house. Our argument would be these were seized
19 by the ATF. I don't believe any of the weapons seized have
20 any relation to the alleged bullets that they think could
21 have or I don't think they can link any of the guns to any
22 of the projectiles in this case. I don't think any of them
23 were nine millimeters. I think that it would be unduly
24 prejudicial for it to come in the Defendant possessed a lot
25 of guns. If it comes in it would probably have to come in

1 that the reason they found them was pursuant to a search
2 warrant and that the ATF was involved because he was a
3 felon in possession of a weapon, and we just think it would
4 be unduly prejudicial to bring in all the guns. None of
5 those guns have any link to this crime at all. I don't
6 think there's any evidence that links them in any way
7 whatsoever to any of the allegations based on these
8 indictments and we'd ask that they be suppressed.

9 THE COURT: Yes, sir.

10 MR. HEMBREE: Your Honor, we do not intend to offer
11 these other weapons that are unrelated to this crime in
12 this, as part of the State's case in this case.

13 THE COURT: All right, yes, sir.

14 MR. LOCKLAIR: Finally, Your Honor ---

15 THE COURT: Weapons unrelated to the crime will not be
16 offered, it's the position of the State.

17 MR. LOCKLAIR: Thank you. Finally, Your Honor, we
18 would move on and we'd move to suppress evidence that Jody
19 Ward has been accused of sinking a red Firebird or any
20 other vehicle for that matter into Dawhoo Lake or any other
21 body of water. We feel that this is unduly prejudicial.
22 We feel that it should be excluded under Rules 403 and 404.
23 Your Honor, we don't believe that it goes to any Lyle
24 exception to prove motive, identity, existence of common
25 scheme or plan, absence of mistake, accident or intent.

1 Your Honor, we also would say that there's no connection
2 between the alleged prior bad act and this crime. We
3 believe that the State would not be able to establish any
4 sort of connection that would get it in and we don't feel
5 that it fits the Lyle exceptions, Your Honor.

6 THE COURT: Yes, sir.

7 MR. BRYAN: Thank you, Your Honor, may it please the
8 Court.

9 The State's position is that it is admissible under
10 Rule 404(B) to show both identity and through common scheme
11 or plan. Essentially the evidence, Your Honor, is that
12 some period only about two weeks before -- first of all you
13 should know that the Sidekick, which was the car that the
14 State alleges the Defendants [sic] were killed in by the
15 Defendant, Jody Ward, and belonged to the Defendant, Jody
16 Ward, was found sunk in Dawhoo Lake, okay. Secondly, this
17 Defendant owned another vehicle which was a Firebird, a red
18 Firebird which the State would have two witnesses for the
19 proposition that the Defendant had about two weeks
20 previously sunk the red Firebird in Dawhoo Lake. So, we
21 would say that this is common scheme or plan and should be
22 admissible basically through common scheme or plan, which
23 is sort of inextricable from the identity. We would be
24 really trying to show the identity of the killer as a
25 person whose pattern was, common scheme or plan was to

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1 dispose of evidence through this very, not only similar but
2 identical method. In other words he dumped the Firebird in
3 Dawhoo Lake. He was charged with insurance fraud. Two
4 weeks later he commits a murder. The place in which the
5 murder was committed was his other vehicle. They're both
6 found at the bottom of Dawhoo Lake, and I think that
7 they're not only similar but they're identical in his
8 method of destruction of evidence. Obviously, the
9 prejudicial value, if you find that they are related and
10 they are probative under common scheme or plan, which we
11 would say that obviously it would go to show the
12 identity.

13 I'll point out to the Court as well, Your Honor, the
14 Defendant in this case, Jody Ward, a day or so after these,
15 the victims were missing went to the police department and
16 reported his Suzuki Sidekick missing, actually filed a
17 police report and said that the victims in the case,
18 Wilfred Brown and Elton Rutledge, had stolen his vehicle,
19 his Suzuki Sidekick, which was then found at the bottom of
20 Dawhoo Lake right next to his other vehicle which he had
21 sunk, and we would, we would say that it goes to the
22 continuing course of the murder which was part of it was to
23 cover up the murder after it was finished, and that
24 obviously is relevant inasmuch as it is probative of his
25 identity. In other words the fact that he says, "These

1 fellows stole my Suzuki Sidekick," and then it's found at
2 the bottom of a lake next to his other car that he sunk two
3 weeks before is probative of his identity. So, then you
4 ask whether it is unfairly prejudicial, and essentially,
5 Your Honor, I think it's, it's basically absurd to think
6 that a Defendant is -- the jury is going to hold this
7 Defendant accountable for murder because they're made aware
8 of evidence that he was trying to defraud an insurance
9 company. In other words the original bad act was sinking
10 the Firebird to defraud the insurance company. That is --
11 pales in comparison to the charge that is before this jury
12 which is murder, and I think that the prejudicial value is
13 obviously minimal compared to the charge versus his prior
14 bad act, which was just dumping a car in Dawhoo Lake to
15 defraud the insurance company. So, we think that it's,
16 first of all, probative of identity from common scheme or
17 plan and also not unduly prejudicial.

18 THE COURT: Thank you sir, yes, sir.

19 MR. LOCKLAIR: Your Honor, we would argue first that
20 it's not part of a common scheme or plan. When you do
21 common scheme or plan you actually have to relate the prior
22 bad act and the crime. In this case the prior bad act is
23 insurance fraud, getting rid of the car and the crime here
24 is murder. They're not related. He wasn't covering up any
25 evidence by sinking the Firebird. He was actually

1 allegedly committing a crime by sinking the Firebird.

2 Your Honor, furthermore, we don't think it goes to
3 identity. There have been several people investigated as
4 accessory after the facts. There's been some warrants
5 taken out for obstruction of justice. We don't think
6 necessarily that the identity of whoever allegedly killed
7 Wilfred and Elton Rutledge would be related back to Jody
8 Ward just because he might have had some involvement in
9 disposing of a vehicle. We don't think that that goes to
10 identity and we think it would be unduly prejudicial.
11 Further, we don't think they have met the standard of
12 proving to the Court by clear and convincing evidence that
13 Mr. Ward did sink the Firebird, and before this can even
14 come in, even if there is a common scheme or identity it
15 must be proven by clear and convincing evidence that he, in
16 fact, committed this prior bad act, and we don't believe
17 they've done that. We would ask on those grounds that it
18 be excluded from evidence in this trial.

19 THE COURT: Is it your intention to offer any proof as
20 to?

21 MR. BRYAN: We have two witnesses that we could offer,
22 Your Honor. They're not here. I'd have to call them and
23 bring them down here.

24 THE COURT: We'll have to do that ---

25 MR. BRYAN: And we can get them here.

1 THE COURT: --- before there's any intention of
2 evidence in regard to that under State v. Beck.

3 MR. LOCKLAIR: Your Honor, if they could not get them
4 here we would obviously object to any evidence being
5 brought out in their opening if we had to delay the
6 hearing.

7 THE COURT: And it could not happen until there's been
8 a ruling in that regard.

9 MR. LOCKLAIR: Thank you, Your Honor.

10 THE COURT: All right, I will hold that in abeyance
11 until we -- until you can present the sufficient evidence
12 and we'll take that up at a later time.

13 All right, anything further?

14 MR. LOCKLAIR: Your Honor, I believe that would get us
15 to the point of the Jackson v. Denno hearing. I believe
16 that would get us to the point of holding the Jackson v.
17 Denno hearing on the admission of the statement of the
18 Defendant.

19 THE COURT: Is that our final motion?

20 MR. LOCKLAIR: It is from the Defense, Your Honor. I
21 don't know if the State has anything new that has arisen.

22 MR. HEMBREE: Maybe just to clean up a little bit,
23 Your Honor, I've got -- in looking at the Defense proposed
24 witnesses on their list there are several folks on there
25 that appear to be experts. I have not been provided

1 anything in discovery regarding these experts. I haven't
2 been provided anything in discovery by the Defense. I
3 would, so I guess I would renew, first off, I would renew
4 my motion under reciprocal discovery if there's anything
5 they intend to offer that we're entitled to we'd like to
6 have that.

7 THE COURT: Yes, sir.

8 MR. LOCKLAIR: There is nothing that is covered under
9 the Rules of Criminal Procedure or the case law that we
10 need to produce to the Solicitor at this time, Your Honor.

11 THE COURT: All right, do you have experts that will
12 be testifying?

13 MR. LOCKLAIR: Your Honor, we have not decided who
14 we'll be calling at this time, but there are -- we -- there
15 are experts on the list, but obviously we know our duties
16 under the rules and if we've not complied -- I just don't
17 want to give away our trial strategy to the Solicitor about
18 who we will and won't be calling, but obviously if we have
19 any experts and we didn't comply with the rules they would
20 be excluded and we understand that.

21 THE COURT: Okay, very well.

22 MR. HEMBREE: Your Honor, we'd also -- we also need
23 Social Security numbers and dates of birth on all of their
24 witnesses.

25 MR. LOCKLAIR: Your Honor, that will be next to

1 impossible. A lot of these witnesses are just people out
2 in the community. I don't know if we can get an
3 investigator to get all that. Some are people who have
4 refused to talk to us in person, have been adamant about
5 refusing to talk to us. So, it's hard for us to get
6 personal information from hostile witnesses.

7 THE COURT: All right, you do -- you get what you can
8 get and provide to them.

9 MR. LOCKLAIR: We will get everything we can to him
10 today but a lot of them, a lot of them are dual people that
11 were on their list.

12 THE COURT: All right.

13 MR. HEMBREE: One person, Your Honor, that
14 particularly concerns me is the psychiatrist and from
15 Columbia, Dr. Harold Morgan, I believe. I don't know if
16 there's any, if there's any attempt to offer a psychiatric
17 or psychological defense in this case. I assume there's
18 not because we've not been notified of that under Rule 5,
19 but ---

20 THE COURT: And there would -- there would be notice
21 of that.

22 MR. LOCKLAIR: Your Honor, we've complied with the
23 rules and anything we intend to offer would be in
24 comportion -- would comport with the Rules of Criminal
25 Procedure. We're not trying to get around the rules. We

1 obviously know if we want to offer an expert and we've not
2 provided that or we're supposed to provide that's going to
3 be excluded. So ---

4 THE COURT: All right, very well.

5 MR. HEMBREE: Thank you, Your Honor.

6 MR. LOCKLAIR: The last thing, Your Honor, I guess,
7 before we get to the Jackson v. Denno I just wanted to put
8 on the record that the State has said they do not intend to
9 offer any scientific evidence under Council.

10 MR. HEMBREE: We are not offering any DNA evidence,
11 Your Honor.

12 THE COURT: All right.

13 MR. LOCKLAIR: Then I think we would like to move for
14 a Council hearing on any scientific evidence that they
15 would offer if it's applicable, but since we don't know
16 what they're offering I don't know what to go -- what to
17 move to have the hearing on because he said DNA and not
18 scientific. If they're offering scientific evidence then
19 we would ---

20 THE COURT: He said DNA, that's right.

21 MR. LOCKLAIR: We would like a Council hearing on any
22 scientific evidence.

23 MR. HEMBREE: We intend to offer evidence -- I don't
24 know if this -- I don't know -- I wouldn't consider this
25 scientific evidence, I don't believe, but I'll -- just to

1 be on the safe side I guess I could just say we're going to
2 comply by the rules and to quit talking but I'm going to be
3 a little more forthright with the Court. We do intend to
4 offer testimony from Dan DeFreese, who is the senior agent
5 from SLED who will testify about ballistics and what he
6 found. We intend to offer some evidence from Steve
7 Lambert. Essentially he is the -- he is a serologist and
8 DNA expert. Now, he didn't do the DNA in this case, but
9 he's basically going to tell us that he didn't find
10 anything and explain why.

11 THE COURT: All right.

12 MR. LOCKLAIR: Your Honor ---

13 THE COURT: You still feel the need for the hearing?

14 MR. LOCKLAIR: Can I have one moment to talk with co-
15 counsel?

16 THE COURT: Certainly.

17 (Mr. Locklair and Ms. Kneece confer.)

18 MR. LOCKLAIR: Your Honor, I guess it would just
19 depend on how far in-depth they want to go with DNA. This
20 is a mitochondrial DNA case, which is different than
21 nuclear DNA. It's basically from decomposing, things like
22 that. It basically can only be traced through maternal
23 lineage. There's a lot of questions about the accuracy of
24 that type of DNA analysis.

25 THE COURT: Apparently all he's saying is that, "We

1 didn't do," and why.

2 MR. HEMBREE: We're not going to go into DNA at all
3 through Steve Lambert.

4 THE COURT: All right.

5 MR. HEMBREE: We're not even going to talk about DNA.

6 THE COURT: Okay.

7 MR. HEMBREE: We don't intend to raise that issue at
8 all.

9 I guess the last thing and Mr. Bryan reminded me of
10 this, perhaps, I mean the pathologist will certainly
11 testify. I don't know if that's what you're contemplating
12 with a Council hearing.

13 MR. LOCKLAIR: I don't think a pathologist, I don't
14 think their findings in an autopsy fall under Council.

15 MR. HEMBREE: I don't think so either, but just to be,
16 just to be on the safe side.

17 THE COURT: All right.

18 MR. LOCKLAIR: That would bring us up to the Jackson
19 v. Denno hearing, Your Honor.

20 THE COURT: All right, all right, do you just want to
21 note what your motion is and then go ahead and allow him to
22 call his first witness?

23 MR. LOCKLAIR: That'd be fine, however the Court
24 wishes to proceed. I believe it's their burden.

25 THE COURT: Yes, you just note what the motion is and

1 then they ---

2 MR. LOCKLAIR: Yes, ma'am.

3 THE COURT: --- then they'll have to present the
4 evidence.

5 MR. LOCKLAIR: Yes, ma'am.

6 THE COURT: You've got a motion to suppress?

7 MR. LOCKLAIR: Suppress the statement of Jody
8 Ward.

9 THE COURT: All right, very well, yes, sir, if you'd
10 call your first witness, please.

11 MR. BRYAN: Thank you, Your Honor.

12 The State calls Captain Kenny Owens.

13 MR. LOCKLAIR: Your Honor, we would ask for the
14 sequestration of all witnesses whom would apply to this
15 hearing. I believe that would be Mr. Weaver and I believe
16 -- I don't see Captain Schwartz in here. I believe he's
17 already outside.

18 THE COURT: Are they already sequestered?

19 MR. HEMBREE: No, they're not, Your Honor. We can, we
20 can accomplish that.

21 THE COURT: All right, I'll grant that hearing -- for
22 purposes of this hearing. We'll deal with --
23 sequestration, we've already dealt with for purposes of the
24 trial of the matter and it was granted and mutual.

25 AT THIS TIME KENNETH EARL OWENS WAS CALLED TO THE STAND,

1 DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

2 THE CLERK: Please be seated and state your full name
3 for the record.

4 MR. OWENS: Full name is Kenneth Earl Owens.

5 EXAMINATION

6 BY MR. BRYAN:

7 Q: All right, you work at the Georgetown County Detention
8 Center?

9 A: That's correct.

10 Q: And what is your -- what are your duties there?

11 A: I'm the captain. I'm chief of operations. When the
12 inmates, you know, send me a request whether they want to
13 talk to their family or just have problems with the staff
14 or, you know, any reason I just sort of keep the lid on, on
15 the jail.

16 Q: All right, and were you -- were you employed at the
17 detention center in that capacity on January the 8th of
18 2003?

19 A: That's correct.

20 Q: All right, and did you ever have any conversations
21 with Jody Ward? Did you ever talk to him?

22 A: Yes, sir.

23 Q: All right, and tell me how those conversations would
24 come about.

25 A: Any time I get a request from an inmate, whether it's

1 Jody or whoever, I bring them to my office to see if I can
2 solve the problem.

3 Q: All right.

4 A: And he sent me a request on that day.

5 Q: How many times did you talk to Jody Ward?

6 A: I probably talked to Mr. Ward probably 20 or 30 times.

7 Q: All right, and any of those times did you ever
8 initiate the conversation?

9 A: No.

10 Q: Okay, so, to be clear those are times when he has sent
11 for you and said that he had an issue that he wanted to
12 talk to you about as far as his incarceration?

13 A: That's correct.

14 Q: All right, and as far as this particular date of
15 January the 8th of 2003 tell the Court how you came to be
16 involved with Jody Ward on that day or was it that day or
17 the day before actually? I don't know. Do you remember
18 when he -- Jody Ward called you?

19 A: I'm not certain about the date. He came to my office
20 and said he'd like to talk to Sheriff Carter Weaver.

21 Q: All right, so, how was it that he came to your office?

22 A: He sent me a request.

23 Q: Okay, and then pursuant to that request what did you
24 do?

25 A: I contacted Chief Schwartz, the administrator at the

1 jail, and told him that Mr. Ward would like to talk to Mr.
2 Weaver.

3 Q: All right, tell me about that conversation that you
4 had with Jody Ward. Where did that take place? When he
5 sent you a request what did you do?

6 A: That took place in my office.

7 Q: All right, did you ---

8 A: The captain's office.

9 Q: All right, and did you have him brought to your
10 office?

11 A: Yes, I did.

12 Q: All right, and was that customary for you to do
13 whenever he made the request?

14 A: Yes.

15 Q: All right, and was anybody else present at that time
16 besides you and Jody Ward?

17 A: No.

18 Q: Okay, and what did he, what did he tell you while he
19 was in your office or what if anything did he tell you?

20 A: The only thing that, you know, he requested to see
21 Sheriff Carter Weaver.

22 Q: All right, and did he -- when you say Sheriff Carter
23 Weaver, did he call him by name or did he just say he
24 wanted to speak to an officer?

25 A: No, he specifically said Mr. Weaver.

1 Q: Okay, all right, and what did you do? Did you talk to
2 him about anything else that day?

3 A: Not that I -- I mean, probably some minor
4 conversations, but I can't remember. Sometime I talk to 20
5 inmates a day.

6 Q: Okay, and what did you do as a result of that
7 conversation?

8 A: I called the jail administrator, Mr. Mike Schwartz,
9 and relayed the message.

10 Q: Okay, what exactly did you tell Mike Schwartz?

11 A: That I had Jody Ward in my office and he wanted to
12 talk to Sheriff Carter Weaver.

13 Q: Okay, while, let me take you back just a second.
14 While he was -- Jody Ward was in your office that day did
15 you threaten him in any way in order to get him to give you
16 a statement?

17 A: No, sir; no, sir.

18 Q: All right, did you coerce him in any way?

19 A: No, sir.

20 Q: Did you promise him anything in return for him giving
21 a statement?

22 A: No, sir.

23 Q: All right, and just to be clear who initiated the
24 conversation about him speaking to law enforcement?

25 A: Mr. Ward.

Kenneth Owens - Exam by Ms. Kneece

1 Q: All right, I don't have any other questions. Please
2 answer any questions that the Defense has.

3 THE COURT: Yes, sir. Yes, ma'am.

4 EXAMINATION

5 BY MS. KNEECE:

6 Q: I know you said you had some trouble with
7 recollection. Do you remember what time this call came in
8 or this request came in from Jody?

9 A: I can't answer that truthfully. I'm not sure.

10 Q: And when he was in your office did he request to make
11 any phone calls?

12 A: Not that I recall. In the past I have let him make
13 calls but I don't recall him asking to make a phone call.

14 Q: And is your extension out at the detention center
15 3415?

16 A: That's correct.

17 Q: And you don't recall whether or not he asked to call
18 his lawyer?

19 A: On certain days he did, but I can't recall. If he
20 asked -- anytime he requested to call his attorney I let
21 him.

22 Q: Would you be surprised if a call was made at 2:44 to
23 his lawyer's office from your office? Would that surprise
24 you?

25 A: No.

1 Q: And what is the time span from -- you don't recall if
2 a phone call was made. How long was he in your office?

3 A: Approximately five minutes.

4 Q: And between the time that he was in your office and
5 made a request to speak to Carter what happened to him
6 then? Did he go back to his cell?

7 A: Yes.

8 Q: So he was taken back to his cell?

9 A: That's correct.

10 Q: How long was he there before he was seen by Mr.
11 Weaver?

12 A: That I'm not certain about because I didn't -- I don't
13 think I took him upstairs.

14 Q: After he was taken back to his cell did you get
15 another request from him to speak to Carter?

16 A: No.

17 Q: And do you know -- did you take him up there? Where
18 was it?

19 A: I think Mr. Weaver spoke to him upstairs but I think
20 he went up to Chief Schwartz's office.

21 Q: So, it was in the chief's office?

22 A: Right.

23 Q: And do you recall if Jody was shackled at the time?

24 A: I'm not positive, but I don't think so.

25 (Counsel for Defense and State confer.)

1 MS. KNEECE: Your Honor, if I could, from what I
2 understand there's no objection from the State, if I could
3 offer as an exhibit these are phone records from the
4 detention center from Captain Owens's extension 3415, which
5 shows a telephone call January 8th, '03, at 2:44 p.m. to
6 843 ---

7 MR. BRYAN: Is she testifying, Your Honor, or does she
8 seek to offer it?

9 MS. KNEECE: I'm just trying to lay a foundation for
10 the Court, Your Honor, on what's on here.

11 THE COURT: And there -- it's without objection, be a
12 Court's exhibit?

13 MS. KNEECE: Just -- yes, ma'am.

14 THE COURT: Okay, it's Court's Exhibit Number?

15 REPORTER: Five.

16 THE COURT: Five, Court's Exhibit Number Five.

17 (Whereupon, Court's Exhibit Number Five [Telephone
18 Records] appropriately marked.)

19 MR. HEMBREE: Your Honor, I'd just like to -- I'd like
20 to say it's, it's without objection but this was not
21 provided to us in discovery and it may not needed to be
22 provided to us in discovery but I'm really, really
23 concerned that I've been listening to for months about how
24 the State was trying to play hide the ball, and now it's
25 today the Defense hasn't provided documents that they want

1 to bring into this courtroom. It concerns me. I don't
2 understand the double standard here.

3 MR. LOCKLAIR: Your Honor, ours isn't in violation of
4 the law like theirs was.

5 THE COURT: All right, I believe there was a
6 determination and let me remind you each before I take you
7 back to Council and remind you further that this is not the
8 way we're going to handle this trial. It is not the way
9 we're going to handle it. I'll be talking to you about
10 that soon.

11 All right, question your witness.

12 MS. KNEECE: Thank you, Your Honor.

13 Again, I'm just trying to make it clear that the
14 number 84 ---

15 THE COURT: Well, you can show it to him and show him
16 what it is and see if he can make heads or tails out of it.
17 Let the witness testify.

18 BY MS. KNEECE:

19 Q: Is your -- what number is listed to the far left of
20 this document?

21 A: 3415.

22 Q: And whose extension is that?

23 A: That is my extension.

24 Q: And do you see a phone call on 2 -- at 2:44 in the
25 afternoon of January 8th, '03?

1 A: Yes.

2 Q: And what number is listed there?

3 A: 357-4454.

4 Q: And is -- does that refresh your memory at all as to
5 whether or not Jody called and requested to speak to his
6 lawyer on the 8th?

7 A: That doesn't refresh my memory. I mean, the records
8 show that it took place and I'm -- certainly I let him but
9 it's like I said, you know, I saw Jody on numerous
10 occasions. I have, like I say, 15, 20 inmates a day. So,
11 I don't remember, but if it's on the phone records and he
12 was in my office I'm sure that if he requested a phone call
13 I let him because, you know, that's what I'm there for.

14 Q: And you stated that you did not get another request
15 after Jody was taken back to his cell for him to speak to
16 Carter Weaver?

17 A: Not that I remember, not that I recall.

18 Q: And did you say that you took him up there or how did
19 he get up there?

20 A: If I recall I took Jody upstairs.

21 Q: And do you know if he was shackled during the
22 statement?

23 A: No, he was ---

24 Q: Do you recall if you took the shackles off of him?

25 A: If I recall Jody was not shackled because while I was

1 upstairs at one point he went to the -- he asked to use the
2 rest room, and anyway, I was in the hallway and they asked
3 me to stand by the door.

4 MS. KNEECE: If I could beg the Court's indulgence.

5 BY MS. KNEECE:

6 Q: Do you recall shackles ever having to have had been
7 cut off of Jody?

8 A: Yes, I do.

9 Q: And do you remember when that was? Could it have been
10 this January 8th, 2003?

11 A: It's possible because I cut the shackles off of him I
12 do remember.

13 MS. KNEECE: Your Honor, also from what I understand
14 that there's no objection from the State. These are the
15 business phone logs of the Joye and Locklair Law Firm, it
16 shows a January 8th, 2:45 phone call, which is consistent
17 with a phone call made from Captain Owens, and it states,
18 "If you are not talk to Solicitor/he would talk to Sheriff
19 and Solicitor, just let him know," and it states it's for
20 Wesley and the message is from Jody Ward. We'd like to
21 have that as a Court's exhibit as well.

22 THE COURT: All right, it's a Court's Exhibit. That'd
23 be Number Six.

24 (Whereupon, Court's Exhibit Number Six [Phone Logs]
25 appropriately marked.)

1 MS. KNEECE: Nothing further from this witness.

2 THE COURT: Anything further?

3 MR. BRYAN: Just briefly, Your Honor.

4 REEXAMINATION

5 BY MR. BRYAN:

6 Q: Did Jody Ward ever tell you that he wanted his lawyer
7 present when he spoke to Mr. Weaver? .

8 A: No.

9 Q: Did he ever request that his lawyer be present for any
10 of your conversations?

11 A: No.

12 Q: After this phone call was made do you have any
13 recollection of him saying, "Never mind. Don't send the
14 Sheriff out here?"

15 A: No.

16 Q: All right.

17 MR. BRYAN: Nothing further.

18 THE COURT: You may step down, sir.

19 A: Thank you.

20 THE COURT: Call your next witness please.

21 MR. BRYAN: The State calls Chief Mike Schwartz.

22 AT THIS TIME MICHAEL AARON SCHWARTZ WAS CALLED TO THE
23 STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

24 THE CLERK: Please be seated and state your full name
25 for the record.

1 MR. SCHWARTZ: Michael Aaron Schwartz.

2 EXAMINATION

3 BY MR. BRYAN:

4 Q: Who are you employed by?

5 A: Georgetown County Sheriff's Office.

6 Q: And where do you work?

7 A: Georgetown County Detention Center.

8 Q: What's your title there?

9 A: Jail administrator.

10 Q: Okay, and just real briefly, what are your general
11 responsibilities?

12 A: My main responsibilities is total operation of the
13 detention center.

14 Q: Okay, on January the 8th, 2003, did you get a call
15 from Kenny Owens?

16 A: Yes, sir.

17 Q: All right, in reference to Jody Ward?

18 A: Yes, sir.

19 Q: All right, and as a result of that conversation what
20 did you do?

21 A: I called Carter Weaver.

22 Q: Who's Carter Weaver?

23 A: He's the Assistant Sheriff of the Georgetown County
24 Sheriff's Office.

25 Q: All right, and what did you tell Assistant Sheriff

1 Carter Weaver?

2 A: That Jody Ward wanted to speak to him.

3 Q: Okay, what else did -- was your conversation with
4 Carter Weaver?

5 A: That was it.

6 Q: Okay, did you have any contact with Jody Ward with
7 respect to him attempting to contact Assistant Sheriff
8 Weaver?

9 A: No, sir.

10 Q: All right, did you threaten or coerce in any way Jody
11 Ward to get him to make a statement?

12 A: No, sir.

13 Q: Did you make him any promises?

14 A: No, sir.

15 Q: Did you ever have any conversation -- well, let me ask
16 you this first. Did you hold paperwork that would allow
17 this Defendant, Jody Ward, to correspond with his brother
18 who was incarcerated at the Department of Corrections? Did
19 you ever withhold any paperwork to that effect?

20 A: Not that I'm aware of, sir.

21 Q: All right, and did you have any conversation at any
22 time with Jody Ward about holding paperwork that would
23 allow him to correspond with his incarcerated brother?

24 A: No, sir.

25 Q: Do you know about any paperwork ---

1 A: Yes, sir.

2 Q: --- with respect to Jody Ward?

3 A: Yes, sir.

4 Q: What was that? Kind of briefly explain to the Court
5 what this paperwork is.

6 A: It was a request from the Department of Corrections
7 and I believe the way it is so that the inmate from South
8 Carolina Department of Corrections can correspond with an
9 inmate at the Georgetown County Detention Center. We allow
10 all correspondence to go out but I guess South Carolina
11 Department of Corrections requires something beside.

12 Q: Did you get something from Jody Ward's brother from
13 the Department of Corrections?

14 A: Got something from the Department of Corrections, yes.

15 Q: Do you remember what that was?

16 A: No, sir.

17 Q: Did you hold it or sit on it or wait?

18 A: To the best of my knowledge I don't recall doing
19 anything but signing it.

20 Q: Did you have any intention to make him wait additional
21 time to coerce him, Jody Ward to do anything?

22 A: No, sir.

23 Q: Were you present during the conversation between Kenny
24 Owens and Jody Ward?

25 A: No, sir.

1 Q: Were you present during the conversation between Jody
2 Ward and Assistant Sheriff Weaver?

3 A: No, sir.

4 Q: I don't have any other questions. Please answer any
5 questions the Defense has.

6 THE COURT: Yes, sir.

7 EXAMINATION

8 BY MR. LOCKLAIR:

9 Q: Chief Schwartz, did you see Jody Ward at all on
10 January 8th of 2003?

11 A: I don't recall, sir.

12 Q: You don't remember seeing him coming over talking to
13 Carter, anything like that?

14 A: No, sir; no, sir.

15 Q: Okay, thank you.

16 MR. LOCKLAIR: No more questions, Your Honor.

17 THE COURT: Anything further?

18 MR. BRYAN: No, ma'am.

19 THE COURT: You may step down.

20 Call your next witness.

21 MR. BRYAN: The State calls Assistant Sheriff Carter
22 Weaver.

23 AT THIS TIME CARTER WEAVER WAS CALLED TO THE STAND, DULY
24 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

25 THE CLERK: Please be seated. State your full name

1 for the record.

2 MR. WEAVER: Carter Weaver.

3 EXAMINATION

4 BY MR. BRYAN:

5 Q: Who are you employed by?

6 A: Georgetown County Sheriff's Office.

7 Q: And were you employed there on January the 8th, 2003?

8 A: Yes, sir.

9 Q: All right, and what is your title?

10 A: I'm the assistant sheriff.

11 Q: Okay, and briefly what are your responsibilities?

12 A: Just oversee the day-to-day operations of the
13 Georgetown County Sheriff's Office.

14 Q: Okay, did you take a statement from Jody Ward on
15 January the 8th, 2003?

16 A: Yes, sir.

17 Q: All right, what time was that?

18 A: The actual ---

19 Q: Go ahead.

20 A: The actual statement took place or began at
21 approximately 3:50 p.m.

22 Q: All right, and where did you take his statement?

23 A: In the victims' advocate's office at the detention
24 center.

25 Q: All right, and was Jody Ward in custody?

- 1 A: Yes, sir.
- 2 Q: All right, was anybody else there?
- 3 A: Initially, yes, sir, there was.
- 4 Q: Who else was there?
- 5 A: Chief Schwartz.
- 6 Q: All right, and what did he do?
- 7 A: He basically waited with Mr. Ward until I arrived at
- 8 the detention center and then he left.
- 9 Q: All right, how was it that you came about to -- that
- 10 you responded to the detention center to speak to Jody
- 11 Ward?
- 12 A: I received a phone call at my office.
- 13 Q: Who was the phone call from?
- 14 A: Chief Michael Schwartz.
- 15 Q: All right, what did he tell you?
- 16 A: He advised me by telephone that Jody Ward wanted to
- 17 sit down and talk with me and give me a statement as to
- 18 what happened.
- 19 Q: What did you do as a result of that
- 20 conversation?
- 21 A: I gave your office a call, sir, and also got
- 22 some equipment such as a tape recorder, a pad and a
- 23 pen.
- 24 Q: Did you respond?
- 25 A: Yes, sir.

1 Q: All right, had you talked with Jody Ward before?

2 A: Yes, sir, briefly.

3 Q: All right, what happened in that instance?

4 A: That was incidental to arrest and he asked for an
5 attorney.

6 Q: And what did you do?

7 A: The interview ceased. I left the room.

8 Q: When you spoke to Jody Ward this January the 8th,
9 2003, was he in handcuffs?

10 A: No, sir.

11 Q: Did you make a tape-recording of that ---

12 A: Yes, sir, I did.

13 Q: --- conversation? Okay.

14 I'm going to hand you what's been marked for
15 identification purpose as Court's Exhibit Seven. Can you
16 take a look at that and tell me if you recognize it?

17 A: Yes, sir, I do.

18 Q: What is that?

19 A: It is a transcription of a taped statement that I took
20 from Jody Ward on January the 8th, 2003.

21 Q: And have you had a chance to review that previous to
22 today?

23 A: Yes, sir.

24 Q: And does it truly and accurately reflect the
25 conversation that you all had at the detention center?

1 A: Yes, sir, it does.

2 Q: Thank you.

3 MR. BRYAN: Your Honor, we'd ask this be made a
4 Court's exhibit.

5 THE COURT: That's been provided previously.

6 MR. LOCKLAIR: No -- yes, ma'am, and no objection.

7 THE COURT: All right.

8 (Whereupon, Court's Exhibit Number Seven [Statement of
9 Defendant] appropriately marked.)

10 BY MR. BRYAN:

11 Q: When, when you responded to the jail and spoke with
12 Jody Ward on this occasion did you use any physical force
13 to get him to give you a statement?

14 A: No, sir.

15 Q: Did you threaten him in any way?

16 A: No, sir.

17 Q: Did you coerce him in any way?

18 A: No, sir.

19 Q: Did you make him any promises of favor if he would
20 give a statement?

21 A: No, sir.

22 Q: Do you know of anybody else who made any threats,
23 coercion, promises in any way to Jody Ward to get you to --
24 or get him to make this statement?

25 A: No, sir, I do not.

1 Q: Before he gave his statement did you read him his
2 rights?

3 A: Yes, sir.

4 Q: His Miranda rights?

5 A: Yes, sir.

6 Q: I'm going to hand you what's been marked for
7 identification purpose as State's [sic] Eight. What is
8 that? Oh, I'm sorry, Court's Exhibit Number Eight?

9 A: It's a Miranda warning form.

10 Q: All right, and more specifically what Miranda warning
11 is it? Can you tell?

12 A: It's the Miranda warning that I read and presented for
13 Mr. Jody Ward to sign on January the 8th, 2003, prior to
14 the statement being taken.

15 Q: And are those the rights that you read Mr. Ward?

16 A: Yes, sir, it is.

17 Q: Would you tell the Court exactly what you told Mr.
18 Ward?

19 A: You have the right to remain silent, anything you say
20 can and will be used against you in a court of law, you
21 have the right to talk to a lawyer and have him present
22 with you while you are being questioned. If you cannot
23 afford to hire a lawyer one will be appointed to represent
24 you before any questioning if you wish one. If you desire
25 to make a statement or answer questions you have the right

1 to stop at any time during the statement or questioning.

2 Q: Did Mr. Ward appear to be under the influence of
3 illegal alcohol or drugs or under the influence of anything
4 at all when you gave him his Miranda warning?

5 A: No, sir.

6 Q: Did he appear to understand the warning?

7 A: Yes, sir.

8 Q: All right, on that document, is it signed by anybody?

9 A: Yes, sir, it is.

10 Q: Who signed it?

11 A: Jody L. Ward.

12 Q: Anybody else?

13 A: Myself, Carter Weaver.

14 Q: Did Mr. Ward date and put a time on it?

15 A: I dated it and I put the time on it.

16 Q: Okay, what day and time is it?

17 A: January the 8th, 2003, at 3:36 p.m.

18 Q: Is there anything else written on that form other than
19 Miranda warnings and you all's signature, date and time?

20 A: Yes, sir.

21 Q: What is that?

22 A: It's written, "I called Mr. Weaver to jail."

23 Q: And who wrote that?

24 A: Mr. Ward.

25 MR. BRYAN: At this time Your Honor, we'd offer this

1 as Court's Exhibit Eight.

2 MR. LOCKLAIR: No objection.

3 THE COURT: Without objection.

4 (Whereupon, Court's Exhibit Number Eight [Miranda
5 Warning Form] appropriately marked.)

6 BY MR. BRYAN:

7 Q: Did the -- did Mr. Ward agree to talk to you?

8 A: Excuse me?

9 Q: Did he agree to give you a statement?

10 A: Yes, sir, he did.

11 Q: Okay, did he ever ask, after you read him his Miranda
12 warning, did he ask for a lawyer?

13 A: No, sir.

14 Q: What would you have done if he had asked for a lawyer?

15 A: The interview would have stopped.

16 Q: And you said he did give you a statement and that that
17 was tape recorded; is that correct?

18 A: Yes, sir.

19 Q: I don't have any further questions. Please answer any
20 questions the Defense counsel has.

21 THE COURT: Cross.

22 MR. LOCKLAIR: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 EXAMINATION

25 BY MR. LOCKLAIR:

1 Q: You said the statement you began taking it about 3:50
2 p.m.?

3 A: That's correct, yes, sir.

4 Q: And he signed his Miranda form at 3:36 p.m.

5 A: Yes, sir.

6 Q: Why did you not start the tape recorder at 3:36 when
7 you initially spoke with him?

8 A: He stated that he needed to go to the rest room after
9 he was mirandized..

10 Q: Okay, why didn't you tape record when you were talking
11 to him and mirandizing him?

12 A: I believe the Miranda was done later on the tape. The
13 Miranda form was done and I took Mr. Ward to the rest
14 room.

15 Q: And you did a separate Miranda on the tape?

16 A: That's my recollection.

17 Q: Okay, you said initially Chief Schwartz was there but
18 he left before you and Jody started talking?

19 A: He left at some point -- he left prior to the
20 interview beginning on tape.

21 Q: Okay, did you stay for any point in time after the
22 interview or as soon as they took Mr. Ward back down did
23 you leave?

24 A: I left the building, yes, sir.

25 Q: Were you there or did you happen to see Captain Owens

1 cut the shackles or Chief Schwartz cut the shackles off of
2 Jody, off his ankles?

3 A: No, sir.

4 Q: Do you recall seeing the shackles on him?

5 A: I don't recall.

6 Q: Isn't it true that you're the one who asked him to
7 write on the Miranda form, "I called Carter Weaver to
8 jail?"

9 A: Yes, sir.

10 Q: Were you aware of -- that Jody was being held in A
11 unit rather than general population?

12 A: No, sir.

13 Q: Okay, were you aware of him having problems and having
14 made complaints to the jail about his food having spit and
15 other things in it and not being able to eat and things
16 like that?

17 A: No, sir.

18 Q: In the transcript where you go over the Miranda forms
19 you never asked him at that point if he wanted to have his
20 lawyer present; did you?

21 A: I read the Miranda as it was, as it was written.

22 Q: You read it as it was?

23 A: Yes, sir.

24 Q: At that point in time did you know that he had an
25 attorney?

1 A: Yes, sir.

2 Q: And were you aware that it was me?

3 A: I'm not sure if I was aware if you were his particular
4 lawyer or not, sir.

5 Q: Okay, did Captain Owens make you aware that Jody had
6 tried to contact me at approximately 2:45 p.m. that day?

7 A: No, sir.

8 Q: And at no point in the transcript did you ever
9 specifically say, "Jody, if you want me to call your lawyer
10 he can come right out here?"

11 A: No, sir, I'd never use those words, no, sir.

12 Q: You just used the general Miranda language from the
13 Miranda form?

14 A: Yes, sir.

15 Q: Is that correct? How long did the statement take?

16 A: Approximately an hour, hour and a half.

17 Q: There was a previous time when Jody had spoken to you;
18 isn't that correct?

19 A: Yes, sir, it was.

20 Q: And he had asserted his right to counsel?

21 A: Yes, sir.

22 Q: Who else was with you at that point in time during
23 that interview as far as law enforcement would be
24 concerned?

25 A: Sheriff Cribb.

1 Q: Sheriff Cribb, and was this something that was
2 initiated by you all or initiated by Jody?

3 A: It was initiated by law enforcement.

4 Q: Do you recall when that was?

5 A: It would have been the date of arrest.

6 Q: His arrest on these charges?

7 A: Yes, sir.

8 Q: And where did you all speak to him on that date?

9 A: At the Georgetown County Detention Center.

10 Q: Do you allege at any other point other than January
11 8th that Jody ever tried to make contact with you to
12 initiate a statement?

13 A: I recall getting phone calls during the time of his
14 arrest, between the time of his arrest and January 8th that
15 Jody wanted to speak to me, and at no time did I take a
16 statement or did he give me a statement except on January
17 the 8th.

18 Q: Let me ask you this, if you had somebody who's charged
19 with a double murder and they keep calling you to talk to
20 them, why didn't you go out and talk to him?

21 A: Any -- I was never given the information that Jody
22 Ward wanted to talk to me in reference to the incident that
23 occurred to tell his story except on January the 8th in
24 those words or those terms.

25 Q: Well, if all these other times he called you or

1 somebody said he wanted to get a hold of you what did they
2 say that was about? He just wanted a friendly chat with
3 his assistant sheriff?

4 A: I never received a call from Chief Schwartz to this
5 nature except on January the 8th.

6 Q: Well, what were all the other calls about regarding
7 Jody?

8 A: I'm unsure, sir.

9 Q: You're unsure. So, you're not sure who initiated
10 those calls or ---

11 A: That's correct.

12 Q: --- on the subject or anything? And you didn't
13 follow up with those?

14 A: No, sir, I did not.

15 Q: You all have any other other double murder trials
16 pending in Georgetown County right now?

17 A: No, sir, we do not.

18 Q: And you didn't think it was important that one of the
19 biggest cases you all have and the suspect wants to talk to
20 you?

21 A: Any information I received on this case was passed on
22 to the Solicitor's Office and/or the investigators.

23 Q: All those 20 other times that he -- somebody tried to
24 get in touch with you did you call the Solicitor's Office
25 and tell them that you had received those calls?

- 1 A: No, sir, I did not.
- 2 Q: But you did on this occasion; correct?
- 3 A: That's correct.
- 4 Q: Who did you speak to at the Solicitor's Office?
- 5 A: I believe I spoke to someone in the Georgetown
- 6 office. It may have been Solicitor Bryan.
- 7 Q: Did they advise you that Mr. Ward had an attorney?
- 8 A: No, sir, they did not.
- 9 Q: They didn't mention anything about that?
- 10 A: No, sir.
- 11 Q: They didn't mention anything to make sure that you
- 12 got a valid waiver of his rights to counsel or anything
- 13 like that?
- 14 A: No, sir, they were -- their concern was how was I
- 15 contacted and by who.
- 16 Q: Okay, and what did you tell them?
- 17 A: I told her that I received a call from Chief
- 18 Schwartz.
- 19 Q: Okay, and what did Chief Schwartz tell you in that
- 20 conversation?
- 21 A: That Mr. Ward would like to talk to me about the
- 22 incident that had occurred to tell his side of the story.
- 23 Q: Okay, and did Mr. Schwartz say he had this knowledge
- 24 firsthand?
- 25 A: He said he had spoke with Captain Owens.

1 Q: And Captain Owens had stated that Mr. Ward wished to
2 speak to you?

3 A: Yes, sir.

4 Q: Okay, how long after you got this phone call from
5 Chief Schwartz did you go out to the detention center?

6 A: Probably took me approximately 45 minutes to an hour
7 to arrive at the detention center.

8 Q: And that would include the driving time, calling the
9 Solicitor ---

10 A: Yes, sir.

11 Q: --- getting the tape recorder and all that ready?

12 A: Yes, sir.

13 Q: Okay, and you're saying the 14 minutes from 3:36 to
14 3:50 was when Jody was in the bathroom?

15 A: That's correct. I believe we may have got a cup of
16 coffee or water and also went to the rest room.

17 Q: Okay.

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

19 BY MR. LOCKLAIR:

20 Q: When you arrived at the jail where was Mr. Ward?

21 A: He was on the second, administration floor of the
22 detention center.

23 Q: Was he in the lobby, was he in a holding cell, was he
24 in an office?

25 A: No, sir, he was, he was in the general administration

1 area in an office.

2 Q: You know if they had previously taken him back to his
3 cell between the time Chief Schwartz called you and the
4 time you arrived at the detention center?

5 A: I have no knowledge of that.

6 MR. LOCKLAIR: That's all we have, Your Honor.

7 THE COURT: Yes, sir.

8 MR. BRYAN: Nothing further, Your Honor.

9 THE COURT: You may step down, sir.

10 MR. BRYAN: We don't have any additional witnesses,
11 Your Honor.

12 THE COURT: You have any witnesses?

13 MR. LOCKLAIR: Beg the Court's indulgence one moment,
14 Your Honor.

15 No, ma'am, Your Honor, we do not have any witnesses to
16 call.

17 THE COURT: All right. I'll be glad to hear
18 arguments. You have any?

19 MR. LOCKLAIR: Oh, I didn't know if they were going
20 to argue first since they had the burden, Your Honor.
21 I didn't know if -- how you wanted to do it. I'll go
22 ahead.

23 THE COURT: That's fine. We'll just have you respond.

24 MR. LOCKLAIR: May it please the Court, Your Honor, we
25 would allege that this taped statement was taken

1 involuntarily. Even if Mr. Ward had initiated any
2 conversation with Captain Owens, once he was taken back to
3 his cell and put back into custody the initiation of that
4 conversation then ended. When he was brought back out of
5 his cell that was initiated by law-enforcement.

6 You heard testimony that Captain Owens at one point
7 had to cut the shackles off of Mr. Ward. He doesn't
8 remember what day, but that can kind of tell you the
9 circumstances of how he was incarcerated when shackles are
10 placed on him so tightly the bolt cutters have to be used
11 to remove them. Your Honor, as you can see, there is a
12 discrepancy. The Miranda form, it was went over, it was
13 signed at 3:36 and there's a 14-minute break. There's
14 nothing on the tape about when Miranda was originally gone
15 over, what was said there. A simple hitting the record
16 button could have solved that. If you read the transcript
17 although he goes back through the basics of the Miranda
18 form again, when he goes through specifics he never says,
19 "Do you want your lawyer here," specifically.

20 Police knew he had an attorney. When he initiated the
21 conversation with Captain Owens we would say that by trying
22 to call my office any initiation he had made by being
23 brought upstairs, because he had to initiate it from
24 downstairs, so if he initiated from downstairs and then got
25 upstairs and said, "I want to call my lawyer," it had to

1 end right there, Your Honor, it had to end unless he
2 initiated again. They cannot re-initiate at that point and
3 say, "Well, you initiated earlier. So, we're going to re-
4 initiate it and you can waive your right to a lawyer."
5 Edwards says that any initiation by the police causes the
6 statement to be taken in violation of the constitution,
7 Your Honor, and we would say when they asked him to come
8 back up after he had called his attorney that they were
9 then initiating the conversation. Further, we would say
10 that there was some influence exerted by Carter Weaver by
11 having the Defendant write on the Miranda form
12 specifically, "I called Carter Weaver up here," but we
13 would say if Your Honor finds that there was any initiation
14 by Mr. Ward, his subsequent phone call to my office ended
15 the initiation of that, and at that point we think that the
16 statement was taken in violation of his constitutional
17 rights, and we would ask the Court to suppress the
18 statement.

19 THE COURT: Yes, sir.

20 MR. BRYAN: May it please the Court, Your Honor, just
21 with respect to the Defense's arguments that the State re-
22 initiated contact after when -- by virtue of Mr. Weaver
23 responding, I'd submit that that's absurd. He asked to
24 speak to Mr. Weaver by name, and until he's -- Mr. Weaver
25 responded within an hour of his request to speak to him.

1 He wasn't physically present when he asked to speak to him.
2 He asked to speak to Mr. Weaver by name. Mr. Weaver
3 responded within an hour later at his request, and it seems
4 to me to be kind of an absurd semantical argument to say
5 that because he wasn't there when he asked to speak to him
6 that that was re-initiating contact to respond in a timely
7 manner in a period of about 50 minutes at the Defendant's
8 request. So, under that argument it would really be
9 impossible for a Defendant to re-initiate contact if he was
10 incarcerated unless the officer happened to be on the site
11 and in his presence at the time. It just makes no sense
12 whatsoever. Assistant Sheriff Weaver responded promptly
13 within an hour. He brought with him a Miranda form, which
14 as far as the -- his attorney being present I'll point you
15 to number three on the Court's Exhibit Number Eight, I
16 believe, the Miranda warning says, "Three, you have the
17 right to talk to a lawyer and to have him present with you
18 while you are being questioned." It's on its face. He
19 read it to him. He had him read it and sign it. In
20 addition he took the further precautionary measure of
21 having Mr. Ward write in his own handwriting on the same
22 exhibit, "I called Mr. Weaver to the jail." We would
23 suggest or submit that that suggests that he had, in fact,
24 called, re-initiated contact with law enforcement.

25 As far as him calling his lawyer, I point you to the

1 Court's Exhibit that the Defense actually asked to be
2 admitted. That's Court's Number Six. It says -- it's a
3 message from Jody Ward at 2:45 which says, "If you're not
4 going to talk to the Solicitor," he would talk to the
5 Sheriff and Solicitor just to let him know. So, it doesn't
6 even say that he asked to speak to him. It says simply
7 that he was giving them a message that he intended to talk
8 to law enforcement, that's their own admission, was
9 something that came out of their office.

10 Finally, I'll just point out a couple of things on the
11 transcript, Your Honor. There's, obviously, you have again
12 the transcript on page one that says, "You have the right
13 to have -- to talk to a lawyer and have him present."
14 That's on tape. Mr. Ward stated at 3:36 that he understood
15 those rights. He asked on page two, "In the 14 minutes
16 from the time that your Miranda was written," which was
17 3:50, "what happened during that time, did we just have a
18 general conversation about why I was here, about the fact
19 that you called me to the jail?" Mr. Ward, "Yes, sir."
20 "Then we went to the bathroom; is that correct?" "Yes."
21 "And got some water?" "Yes." "Did anything else happen at
22 that time?" "No." "Jody, has anybody threatened you in
23 any way today or at anytime you've been incarcerated to
24 give a statement?" "No, sir." Your Honor, you can go
25 through the entire transcript, but there was nowhere in

1 there the Defendant complained about any threats, coercion,
2 intimidation, promises nor did he ever say, "Geez, these
3 cuffs are awful tight." He never complained about the
4 cuffs at all during the hour-long period. It's a 50
5 something page transcript and never does he make the first
6 reference to him being uncomfortable or in shackles or
7 being coerced or intimidated.

8 Finally, the argument that the cuffs were cut off I
9 think is a mischaracterization of, I believe, Kenny Owens's
10 testimony who stated that, he may have stated that the
11 cuffs were cut off. I'm not sure if I missed that or not.
12 If he did I'm sure that he didn't testify that they were
13 cut off because they were so tight that they were causing
14 discomfort to the Defendant. What happens is sometimes
15 the cuffs lock up. It has nothing to do with how tight
16 they are or not and routinely they have to be cut off, but
17 it's no -- I don't believe he testified or gave any
18 indication that Jody was in any pain as a result of that,
19 the cuffs.

20 So, Your Honor, we think the case law is clear. The
21 controlling case is obviously Arizona versus Edwards, and
22 it states that the -- once counsel has been or Miranda has
23 been invoked or counsel has been requested law enforcement
24 can't speak to the Defendant unless the Defendant re-
25 initiates contact. I think that there is ample evidence

1 that's what happened in this case and that further the
2 statement as a result of his re-initiating contact was made
3 voluntarily, freely and of his own free will and that it
4 should be admissible.

5 THE COURT: Yes, sir.

6 MR. LOCKLAIR: Your Honor, just briefly, Edwards is on
7 point, and as they say once a suspect demands his attorney
8 I could have called every law enforcement officer in
9 Georgetown County and told them to come to the jail to talk
10 to me, but the second I say I want my attorney it all ends,
11 all that initiation is gone as if it never happened. At
12 that point they must then establish a new valid waiver and
13 initiation of conversation by the suspect. It is clear
14 that he called for me after he had spoken with Chief Owens
15 and prior to Carter Weaver coming down there because he had
16 then reinvoked his right to his attorney. That message,
17 Your Honor, we would submit is ambiguous at best about what
18 it means. He was calling to talk to me. I have a
19 recollection of that, of the day he called and that was
20 just taking a message to tell me what the call was about,
21 but whether that happened or not, Your Honor, the point is
22 once he said, "I want to talk to my lawyer. I want to call
23 Wesley Locklair," and he made that call they had to cease
24 and desist all interrogation of him until such time as he
25 re-initiated the conversation and that did not happen here,

1 Your Honor.

2 THE COURT: The Court finds by a preponderance of the
3 evidence that this, this interview was initiated by the
4 Defendant. The evidence is this, that there is a note, in
5 fact, some recollection of a call, but the note that
6 indicates the call is indicating, "I want to speak, I'm
7 going to speak to the sheriff," is basically the indication
8 on it. It sounds as if it's -- that he's not saying,
9 "Please come here and be with me. I want an attorney
10 present," it's simply that, "I'm going to speak to the
11 sheriff."

12 It's further evidence, and I say by the preponderance
13 of the evidence, further evidence that he continued in that
14 desire and that he signed on a document saying that, "I, I
15 ask you to be here," before ever giving the statement.
16 There is evidence, also, and I'll just go through this.
17 The Court has carefully considered the evidence that's been
18 presented by the State and the Defendant, and the Court
19 finds by a preponderance of the evidence that it was
20 initiated by the Defendant, and that before this alleged
21 incriminating statement or confession was obtained from the
22 Defendant the Defendant was fully advised of his rights
23 under the Fifth and Sixth Amendments to the Constitution of
24 the United States, that the Defendant was advised of his
25 constitutional safeguards required under Miranda versus

1 Arizona, the Defendant was advised prior to any
2 interrogation that he had the right to remain silent. The
3 Defendant was advised, once again prior to any
4 interrogation, that if he waived his right to remain silent
5 and made a statement that the statement would be used
6 against him in a court of law and the Defendant was advised
7 prior to any interrogation that he had a right to employ or
8 select an attorney. In this particular case, he had an
9 attorney and that if he could not or he did not have an
10 attorney one could be appointed for him and that he had the
11 right to have the attorney present with him at all times
12 during all the interviews and interrogation. He was
13 advised that any interrogation would stop if, in fact, he
14 wanted to terminate the interrogation at any time and stop
15 answering questions that he could do so.

16 The Defendant was advised prior to any interrogation
17 that if during interrogation he desired an attorney the
18 interrogation would stop and he could get his attorney.
19 The Defendant knowingly, intelligently waived his rights
20 under the Fifth and Sixth Amendments to the Constitution of
21 the United States and the constitutional safeguards that
22 were required under Miranda, that the alleged incriminating
23 statement or confession was obtained from the Defendant
24 freely and voluntarily, it was given without duress,
25 without coercion, without undue influence, without reward,

1 without promise or hope of reward, without promise of
2 leniency, without threat of injury or without impulsion or
3 inducement of any kind and that this alleged incriminating
4 statement or confession was the voluntary product of a free
5 and unconstrained will of the Defendant.

6 Once again I'll note that under Edwards v. Arizona,
7 also, he was in the Court's, based on the preponderance and
8 the standard will be higher before the jury, but he was the
9 one who initiated the contact with law enforcement.

10 Is there anything further that needs to be addressed
11 at this time?

12 MR. LOCKLAIR: Nothing from us, Your Honor.

13 THE COURT: Will note that this is admissible into
14 evidence. The jury will be charged though in regards to
15 the standard.

16 MR. LOCKLAIR: Thank you, Your Honor.

17 THE COURT: I have one outstanding matter and that is
18 dealing with the prior bad act, and I am looking at case
19 law in regard to that. Let me clarify a few points.

20 Did I hear it correctly when I was told that the first
21 car, that incident happened about two weeks prior? I need
22 a time frame and let me make sure I'm clear.

23 MR. HEMBREE: Your Honor, my recollection it was about
24 four to five days prior.

25 THE COURT: Four or five days prior, okay.

1 MR. LOCKLAIR: I know the warrant, I think the warrant
2 alleges sometime right before then. I'm not sure. I'd
3 have to look at it real quick.

4 THE COURT: All right, okay.

5 MR. LOCKLAIR: Actually I have a copy of the warrant
6 if you want me to clear it up for Your Honor.

7 THE COURT: Yeah, okay, that would be helpful.

8 One other thing that I want to address in regard to
9 that, is there any indication that these individuals who
10 are the victims of these -- were the victims in this case
11 had knowledge of or were contributing in any way to the
12 person -- in other words would that -- would it any way go
13 not only to identity or common scheme or plan but to
14 motive?

15 MR. LOCKLAIR: It's completely unrelated, Your Honor.

16 MR. HEMBREE: It's unrelated to motive, Your Honor.

17 THE COURT: Okay.

18 MR. LOCKLAIR: Your Honor, the warrant says that it
19 was August 1st when he filed the report, but it doesn't
20 reflect when he allegedly sank the car which obviously it
21 would have to be sometime before that.

22 MR. HEMBREE: My, my -- again, Your Honor, my
23 recollection is it was the day before July the 31st, I'm
24 pretty certain was when the, when the car was allegedly
25 sank, sunk and the -- and then he reported it stolen the

Motions

1 following day in the exact same manner as he did with the
2 Suzuki. He sank it on that night and then reported it
3 stolen the next day.

4 THE COURT: Following day, all right.

5 Now, are you going to or when will you be prepared to
6 present the evidence to this Court regarding this prior bad
7 act?

8 MR. HEMBREE: We've got one of the -- I think one of
9 the witnesses is here, maybe both of them. It might be a
10 good time to take a second.

11 THE COURT: We can take a quick break.

12 MR. HEMBREE: A few minutes and ---

13 THE COURT: You see if you can get that together. If
14 you can we'll go ahead and finish that this afternoon.

15 MR. HEMBREE: That sounds great. Thank you, Your
16 Honor.

17 ***** OFF THE RECORD *****

18 (On the record.)

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Thank you. Please be seated.

22 On the issue of prior bad act you will be presenting
23 evidence of the prior bad act at this time; is that
24 correct?

25 MR. HEMBREE: That's correct, Your Honor. We -- the

1 State calls Denise Langston to the witness stand. As luck
2 would have it, Your Honor, the witness is in the rest
3 room.

4 THE COURT: All right.

5 MR. HEMBREE: She's on her way.

6 THE COURT: That's quite all right. I didn't really
7 give time for this break.

8 AT THIS TIME LYNN DENISE COX WAS CALLED TO THE STAND, DULY
9 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

10 THE CLERK: Please be seated and state your full name
11 for the record.

12 MS. COX: It's Lynn Denise Cox.

13 EXAMINATION

14 BY MR. HEMBREE:

15 Q: Ms. Cox, do you know the Defendant in this case?

16 A: Yes, sir.

17 Q: And how long have you known him?

18 A: I've known him just about all my life, I mean. We
19 went to school together and I've known him since I was
20 young.

21 Q: How would you describe your relationship with him
22 today?

23 A: I mean, I don't too much care for him right now for
24 what he's put me through, but I mean, I don't hate him.

25 Q: Okay, you're not, you're not romantically involved

1 with him ---

2 A: No.

3 Q: --- in any way at this time?

4 A: No.

5 Q: Were you at one time in history?

6 A: Yeah, we were dating for about a year off and on.

7 Q: Okay, how serious were you dating?

8 A: Well, he moved in with me. I mean, we lived together
9 off and on for a year.

10 Q: And when did this -- give me the, roughly the time
11 frame of when you all were, you all were living together
12 off and on for a year.

13 A: When we first started seeing each other it was, I
14 think, during the summer of, I'm not sure of the year maybe
15 2001 or ---

16 Q: 2001?

17 A: Something like that.

18 Q: Okay, this -- if it might help, if it would help you
19 the murders in this case allegedly occurred on August the
20 3rd of 2002, to give you a frame of reference.

21 A: Okay.

22 Q: Is it your testimony that you began dating him in the
23 summer of 2001?

24 A: I believe so.

25 Q: And about when did you break up with him?

1 A: We broke up a few months; he moved out a few months
2 before the murders occurred.

3 Q: So, end of May, June?

4 A: Maybe something, between June and July of that year.

5 Q: Okay of 2002?

6 A: Uh-huh (affirmative response).

7 Q: Now, during the time that you were dating did you come
8 into possession of a 1996 red Pontiac Firebird?

9 A: Yes, sir.

10 Q: Could you tell this Court how that occurred, how that
11 happened?

12 A: Well, we went down there.

13 Q: We being who?

14 A: Me and Jody went down there and purchased the car. He
15 originally put the car in my name.

16 Q: Where did you all buy it from?

17 A: From Georgetown Motors.

18 Q: Okay.

19 A: He originally put it in my name, and I mean, we broke
20 up off and on between the time we were dating, and I
21 originally wanted it back from him but then, I mean, I
22 wasn't working at the time. So, I told him he could just
23 keep it, him and Beverly.

24 Q: Who, who, I'm sorry to interrupt you, but who was
25 making the payments on the car?

1 A: He was.

2 Q: All right, so, it's in your name but Defendant Jody
3 Ward is making the payments?

4 A: Yeah, he was making the payments on it.

5 Q: All right, now, at some point did you all -- you said
6 you broke up on and off; is that right?

7 A: Uh-huh (affirmative response), yes, sir.

8 Q: Several, several times during the course of this year?

9 A: Yes, sir.

10 Q: All right, but this -- the final breakup was in?

11 A: Between June and July.

12 Q: June and July of 2002?

13 A: Uh-huh (affirmative response), before that I went down
14 there and signed the title over out of my name. He was
15 supposed to originally put it in his mother's name.

16 Q: Why, why did you sign the title out of your name in --
17 over, back over to the car dealership?

18 A: Well, him and Beverly got back together. He moved
19 back in with her after he moved out. He was originally
20 supposed to go down there and put it in his mother's name
21 and I found out later that he put it in her name and after
22 that, I mean, it was a while after he just kept talking
23 about trying to get rid of it ---

24 Q: All right.

25 A: --- because he got behind on the payments and ---

1 Q: All right, did he tell you he was behind on the
2 payments?

3 A: Uh-huh (affirmative response).

4 Q: And he said he was going to get rid of it.

5 A: Yeah.

6 Q: Now, did he indicate what he meant by that?

7 A: He just said that he was going to get rid of it and
8 he was going to act like that it got stolen, and I mean, he
9 talked about it for a while before he actually did it.

10 Q: How long did that discussion kind of just -- how many
11 times did he tell you that he was going to get rid of it or
12 act like it was stolen kind of this kind of talk?

13 A: I'm not sure how many times. I mean, he talked about
14 it several times about getting rid of it.

15 Q: And about how long was it before he actually did it
16 and you first started hearing this plan?

17 A: Before he sank it how long was it when he was talking
18 about it?

19 Q: Yes.

20 A: Maybe a month or so, I mean, maybe about a month.

21 Q: A month or so?

22 A: Something like that.

23 Q: Okay, now, did you have occasion -- have you ever been
24 to Dawhoo Lake?

25 A: Not before he called me to come pick him up from down

1 there one night.

2 Q: All right, so, he called you. Do you know the dates
3 that he called you and asked you to come out to Dawhoo
4 Lake?

5 A: I don't remember the date but I know it was about
6 maybe a week before that the murders occurred.

7 Q: Okay, the murders occurred again August the 3rd, 2002.

8 A: The 3rd.

9 Q: So, sometime the week before?

10 A: Yeah, about a week.

11 Q: Okay, and tell us about the telephone call.

12 A: He just told me that he needed me to come pick him up
13 and he told me where he was at and I told him I had never
14 been down there, and he explained to me how to get down
15 there, and I went down there and picked him up and when I
16 got there he was standing there and he got in the car and,
17 I mean, he told me he sank it.

18 Q: He told you he sank what?

19 A: The red Firebird.

20 Q: Did he tell you what he was going to do?

21 A: He just said he was going to act like it got stolen
22 from like out of a parking lot or somewhere.

23 Q: Did he mention what kind of parking lot?

24 A: I'm not -- I don't remember. I just remember him
25 saying he was going to act like it got stolen from

1 somewhere.

2 Q: Do you remember what he -- what time of the day it was
3 when you went out there to pick him up?

4 A: It was dark. I mean, I don't know the exact time.

5 Q: And now, you all weren't dating but he called you to
6 come get him. Was that, I mean, was that uncommon or odd
7 or ---

8 A: No, usually, I mean, we wasn't dating at the time. We
9 were, I mean, I was doing my own thing and he was living
10 with his wife, but just like, I mean, he'd stop by or come
11 by whenever he wanted to, he called or, I mean.

12 Q: You all still saw each other from time to time?

13 A: Yeah.

14 Q: Now, after you got back where did you take him? He's
15 told you that he sank the car and he's going to report it
16 stolen. On the way back -- is that on the trip back in
17 from Dawhoo Lake?

18 A: He, he asked me to take him to pick his truck up from
19 somebody's house right there in Sampit. I don't know whose
20 house or where it -- I mean, it's right there on the corner
21 going into Sampit going in that, back next Georgetown, I
22 mean Andrews.

23 Q: My geography is not that good. I'm ---

24 A: Okay, well, I dropped him off there and he got his
25 truck.

Lynn Denise Cox - Exam by Mr. Hembree

1 Q: Was that the end of the discussion that night about
2 the, about the red Firebird?

3 A: I believe he came back over there to Candy's that
4 night, and you know, he was ---

5 Q: And I think, well, let me stop you.

6 A: Candy Cox.

7 Q: Candy Cox, now, who was Candy Cox?

8 A: That's my sister-in-law.

9 Q: And where did she live in relation to your house?

10 A: Right beside me.

11 Q: You all were real close?

12 A: Yeah, because I was going back there and he came back
13 over there.

14 Q: And was he talking about the Firebird?

15 A: Yeah, he was bragging about, you know, he sank it. I
16 mean, he was telling us that he sank it.

17 Q: Okay, and there were other people present when he was
18 telling you this? Do you remember who else was there when
19 he was talking about sinking the red Firebird?

20 A: I just want to say I know my brother was there and
21 Candy.

22 Q: Okay, could have been others?

23 A: Maybe, I mean, I'm not -- I mean, I just know for sure
24 they were there.

25 Q: On other occasions after the night that he sank the

1 car, were there other occasions when he talked about
2 sinking the red Firebird in your presence?

3 A: Well, he just, after the murders occurred he was
4 talking about that -- because he heard that they had went
5 down there looking for the Suzuki in the same place in
6 Dawhoo Lake and he just was, I mean, he was bragging about
7 he couldn't believe that they found the Firebird and didn't
8 find the Suzuki.

9 Q: So, when the police were diving looking in Dawhoo Lake
10 they found the Firebird?

11 A: The Firebird, but they didn't find the Suzuki at the
12 time, right.

13 Q: At the time they didn't find the Suzuki, got you. Do
14 you know if he reported it stolen? Did he tell you that he
15 -- did he tell you after he reported it stolen that he had
16 done that?

17 A: You talking about the Firebird or ---

18 Q: Yes, ma'am, the Firebird?

19 A: He told me he was going to report it stolen. I mean,
20 I didn't know when exactly he did, but he said he was.

21 Q: Okay, but you don't -- you don't recall him ever
22 saying anything to you that, "Hey, you know, I called the
23 police yesterday," or, "My wife called the police yesterday
24 and we got" ---

25 A: No.

Lynn Denise Cox - Exam by Mr. Hembree

1 Q: No further questions. Thank you, Ms. Cox. Please
2 answer any questions Defense counsel might have for
3 you.

4 A: Sorry.

5 THE COURT: Yes, ma'am.

6 MS. KNEECE: Thank you, Your Honor, may it please the
7 Court.

8 THE COURT: Yes.

9 EXAMINATION

10 BY MS. KNEECE:

11 Q: Ms. Cox, how many times did you meet with law
12 enforcement in regards to this case?

13 A: I'm not sure exactly, I mean.

14 Q: Do you recall talking to Gary Todd on 8339 Gapway
15 Road? Is that your residence?

16 A: That used to be.

17 Q: And he came to talk to you back in August of 2002,
18 August 10th?

19 A: I remember him and Hampton coming out there talking to
20 me.

21 Q: And do you remember going to the Sheriff's Department
22 shortly thereafter on August 13th, 2002, to talk to
23 investigators in regards to this case?

24 A: I remember going. I don't remember the dates but ---

25 Q: And you met with law enforcement at some time August

1 -- well, August 20th you wore a wire; didn't you?

2 A: Uh-huh (affirmative response).

3 Q: And so, did you meet with law enforcement about
4 wearing a wire ---

5 A: Uh-huh (affirmative response).

6 Q: --- and you talked to them again more about the case;
7 isn't that true?

8 A: Yes.

9 Q: And then you gave a taped statement in September,
10 September 27th.

11 A: Yes.

12 Q: Did you mention anything about the Firebird on those
13 --- prior to your taped statement in September?

14 A: I'm not sure when I mentioned it, but I mean, I told
15 them about it.

16 Q: But you met with them in August, on August 10th they
17 came to your house. Did you tell them anything about the
18 Firebird then?

19 A: The first time I talked to them I didn't say anything
20 about, I mean, nothing.

21 Q: And you didn't say anything on the 13th either; did
22 you?

23 A: I'm not sure.

24 Q: And you didn't tell them anything on August 20th or
25 anytime you met with them either about the Firebird?

Lynn Denise Cox - Exam by Ms. Kneece

1 A: I don't remember the dates, but I mean, I told them
2 about everything once he was locked up.

3 Q: Do you recall what you said in your taped statement
4 when Gary Todd asked you about the Firebird? Do you recall
5 what you said Jody had told you? Did you say, "He just --
6 he just said that he couldn't believe you all found the
7 Firebird and didn't find the Suzuki?" Is that all you told
8 law enforcement at that time about the Firebird?

9 A: I'm not sure.

10 Q: And who mentioned the Firebird? Was it law
11 enforcement or did you bring it up?

12 A: They asked me if I knew anything about it and I told
13 them.

14 Q: And in your preparation for trial with either the
15 Solicitor's Office or the Sheriff's Department who brings
16 up the Firebird?

17 A: I mean, I didn't just come out and say about, I mean,
18 anything about it when I talked to them, but I mean, they
19 knew about it before.

20 MS. KNEECE: If I could beg the Court's indulgence,
21 please.

22 I don't have any further questions, Your Honor. Thank
23 you.

24 MR. HEMBREE: Nothing on redirect, Your Honor. We'd
25 ask that Ms. Cox be excused for today.

1 THE COURT: All right, any objection?

2 MR. LOCKLAIR: No, ma'am.

3 THE COURT: All right, you may step down and you're
4 free to go.

5 Call your next witness.

6 MR. HEMBREE: Your Honor, I'm waiting for Jonathan
7 Lambert. I hate to do this in this sort of piecemeal
8 fashion and you may just want to call it quits for today
9 and ---

10 THE COURT: Is he -- you're expecting him?

11 MR. HEMBREE: He is, I'm told, five minutes away, so.

12 THE COURT: All right, we'll take a five-minute break
13 and let's see if that's true.

14 MR. HEMBREE: Sorry about that. I apologize to the
15 Court.

16 ***** OFF THE RECORD *****

17 (On the record.)

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Thank you. Please be seated.

21 There was another witness who was being called in to
22 testify on the issue of prior bad acts, specifically the
23 alleged insurance fraud, the sinking of the Firebird. The
24 Court in chambers felt that that was not necessary and
25 noted that the Court already did find clear and convincing

Motions

1 evidence that that standard had been met of the prior bad
2 act, not a concern about that. The Court's concern is
3 whether it falls under a Lyle exception. I'll be asking
4 for any cases that can be supplied from either the State or
5 the Defendant on that issue and we'll continue to look at
6 that issue and have it under advertisement.

7 MR. HEMBREE: Thank you, Your Honor.

8 MR. LOCKLAIR: Thank you, Your Honor.

9 THE COURT: Now, does that conclude our motions prior
10 to beginning our work with the jury in the morning?

11 MR. HEMBREE: Yes, Your Honor, from the State's
12 perspective, yes.

13 THE COURT: All right, anything from ---

14 MR. LOCKLAIR: From the Defense as well, Your Honor.

15 THE COURT: All right, very well. If there are any
16 matters that need to be addressed in the morning I ask you
17 to come here and be here a little earlier. I direct the
18 Sheriff's Department to see that the Defendant is here by
19 eight o'clock in the morning. I need him here early. I
20 want to make sure he is here and he is in there and that
21 there's no -- he needs some breakfast, too, but there is no
22 chance that any of our jurors will happen upon him coming
23 in. So, he's going to come in early and already be there
24 prior to our jury coming because you remember our jury is
25 going to be here at nine. So, no later than eight he needs

1 to be here. Also, since he's in custody he will be fed by
2 the County. So, don't forget his lunch. I knew that was
3 a bit of a problem today, but that'll be taken care of from
4 this point forward.

5 Yes, ma'am.

6 MS. KNEECE: There was a -- I mean, sometimes the
7 jurors arrive early. They were here some of them at 8:30.

8 THE COURT: I have ---

9 MS. KNEECE: If we could bring him in through the
10 back.

11 THE COURT: They and that's, that's the way they'll
12 bring him in and ask that we have somebody who goes ahead
13 and I have no objection to if you can let him have his
14 clothes changed when he comes in. He will walk in with the
15 clothes changed. I have no objection to that so long as
16 he's got clothes to wear. The change can happen at the
17 detention center so he doesn't come in in those things.
18 You still will bring him in, though, through the back and
19 hold him, all right.

20 MS. KNEECE: Thank you, Your Honor, thank you.

21 THE COURT: Anything else that can be addressed?

22 MR. HEMBREE: Nothing from the State, Your Honor.

23 MR. LOCKLAIR: Nothing from the Defense, Your Honor.

24 THE COURT: All right, very good. We will see you
25 here then before nine. The Defendant will be here at eight

Motions

1 and we will begin with our opening statements in the trial
2 of this case in the morning. See you then.

3 MR. HEMBREE: Thank you, Your Honor.

4 MR. LOCKLAIR: Thank you, Your Honor.

5 ***** OFF THE RECORD *****

6 (On the record, Tuesday, March 16, 2004.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, I also want to let you know at
10 this point we've had a couple of jurors that will need to
11 be questioned. I have received a notice from Juror Number
12 68 and from Juror Number 88. They both are indicating that
13 there is some relationship with somebody who is listed as a
14 witness.

15 One of them is saying basically that she knows the
16 family. I don't know whose family. The other one is
17 saying that one of the witnesses cleaned their house for a
18 number of years and they've come to realize that. I need
19 to bring them out and question them more fully in that
20 regard. We'll begin at this time.

21 I'll first take Juror Number 88, Juror Number
22 88.

23 (Whereupon, Juror Number 88, Robert Myers, enters
24 courtroom.)

25 THE COURT: Hello, sir. If you would just stand there

1 in front of me. You were right to bring this to the
2 Court's attention once you realized, but what I have --
3 what I have received is that one of the witnesses cleaned
4 your house for a number of years; is that correct?

5 MR. MYERS: That is correct.

6 THE COURT: All right, which witness was that?

7 MR. MYERS: Lynn Ward.

8 THE COURT: Lynn Ward?

9 MR. MYERS: That's correct.

10 THE COURT: All right, and how long ago was that?

11 MR. MYERS: It was on and off but the last, the last
12 that I can remember was sometime probably last summer.

13 THE COURT: All right, and how did that relationship
14 end?

15 MR. MYERS: I just didn't -- no longer needed that
16 service.

17 THE COURT: All right, would you say that you were a
18 close friend or acquaintance of Lynn Ward?

19 MR. MYERS: I would not.

20 THE COURT: Okay, how -- and when you no longer needed
21 the service was the relationship fine upon termination?

22 MR. MYERS: Yes, absolutely.

23 THE COURT: All right, now, if Mr. or is it Lynn, is
24 it Ms. Ward?

25 MR. MYERS: Yes.

Questioning of Juror

1 THE COURT: I don't even know, is that -- Ms. Ward?
2 If Ms. Ward testifies in this case are you going to weigh
3 her testimony more heavily or think of it less based on,
4 solely on this relationship?

5 MR. MYERS: No, Your Honor.

6 THE COURT: All right, did you discover anything about
7 this incident through Ms. Ward?

8 MR. MYERS: No.

9 THE COURT: All right, have you had any discussions
10 with her?

11 MR. MYERS: Not regarding this, just brief, brief
12 discussions, held just casual conversation.

13 THE COURT: Okay, but nothing about this particular
14 case?

15 MR. MYERS: No, no, Your Honor.

16 THE COURT: All right, now, let me ask you is the fact
17 that you knew Ms. Ward in that capacity in the past in any
18 way going to affect your ability to be fair and impartial
19 to both the Defendant and to the State?

20 MR. MYERS: I do not, do not think so.

21 THE COURT: Okay now, while I appreciate that answer I
22 really need to know for sure. It's very important.

23 MR. MYERS: No, Your Honor, it will not.

24 THE COURT: Okay, now, let me ask it one more time.
25 Will it in any way affect your ability to be fair and

1 impartial to both the State and to the Defendant?

2 MR. MYERS: No, Your Honor.

3 THE COURT: All right, and any doubt about that?

4 MR. MYERS: In my heart I don't have a doubt about it.

5 I just ---

6 THE COURT: You want to -- you want to ---

7 MR. MYERS: I've never been through this process
8 before. I don't know, but ---

9 THE COURT: All right.

10 MR. MYERS: --- I mean, I do feel that I can be
11 impartial in this ---

12 THE COURT: Okay.

13 MR. MYERS: --- in this situation.

14 THE COURT: All right, when you said you don't know
15 you -- that makes me have to question you again.

16 MR. MYERS: Okay.

17 THE COURT: You said that you were not familiar with
18 the process and you don't know. Is it the process that
19 you're unfamiliar with that you don't know or is it the
20 fact that you don't know if you can be fair and impartial?

21 MR. MYERS: No, it's the process, Your Honor.

22 THE COURT: Okay, just needed to clarify that.

23 I'm going to have you step out for just one moment.

24 Please don't discuss what we've discussed with the fellow
25 jurors and I need to talk with the attorneys and I'll have

1 you back out in just a moment. Thank you, sir.

2 MR. MYERS: Thank you.

3 (Whereupon, Juror Number 88, Robert Myers, exits
4 courtroom.)

5 THE COURT: Anything from the State in regard to that
6 seated juror?

7 MR. HEMBREE: Nothing from the State, Your Honor.

8 THE COURT: Anything from the Defendant?

9 MS. KNEECE: If we could beg the Court's indulgence,
10 please.

11 THE COURT: Yes.

12 MS. KNEECE: Nothing from the Defense, Your Honor.

13 THE COURT: All right, is it the position of the State
14 and the Defendant that he would remain on? Are you
15 satisfied that he can be fair and impartial in this case?
16 Let me hear from the State.

17 MR. HEMBREE: The State's satisfied he can be fair and
18 impartial. He seemed to -- he answered questions clearly.
19 He answered them directly, and it was obvious that he, you
20 know, he, when he said, "In my heart I know I can be, I can
21 be fair and impartial," that, that's about all we can ask
22 of him.

23 THE COURT: From the Defendant?

24 MS. KNEECE: The same sentiment from the Defendant.

25 THE COURT: Very well. We'll bring him back out.

1 (Whereupon, Juror Number 88, Robert Myers, enters
2 courtroom.)

3 THE COURT: Mr. Myers, thank you for being forthright.
4 We want you to stay on. You have indicated that you can be
5 fair and impartial and we are requesting that you remain on
6 as a seated juror. Thank you very much.

7 MR. MYERS: Thank you, Your Honor.

8 (Whereupon, Juror Number 88, Robert Myers, exits
9 courtroom.)

10 THE COURT: We now need Juror Number 68.

11 (Whereupon, Juror Number 68, Julie Lance, enters
12 courtroom.)

13 THE COURT: Ma'am, if you would just come and speak to
14 me. Relax. You've done nothing wrong. You simply are
15 bringing to the Court's attention a matter that we, we
16 needed to know about.

17 MS. LANCE: Uh-huh (affirmative response).

18 THE COURT: And we thank you for that. Apparently
19 after you had thought about it you realized that you know a
20 family that's connected with this case and they live in the
21 same community; is that correct?

22 MS. LANCE: Yes.

23 THE COURT: All right, what family is that, ma'am?

24 MS. LANCE: Well, I know, know them by the Linen,
25 their last name is Linen.

Questioning of Juror

1 THE COURT: You know, you know Linen. Would you come
2 over here in front of this microphone because you're going
3 to -- everyone is going to be able to hear you better
4 there.

5 MS. LANCE: Okay, uh-huh (affirmative response).

6 THE COURT: That's right, very good. You know a
7 family whose last name is Linen?

8 MS. LANCE: Yes.

9 THE COURT: All right, and anyone else?

10 MS. LANCE: Well, I know the grandmother. They live
11 in the same community.

12 THE COURT: Now, when you say the grandmother, the
13 grandmother of whom?

14 MS. LANCE: Of, oh, gosh, I really don't know their
15 name but I know their family.

16 THE COURT: Okay, so, you wouldn't say that they were
17 close personal friends?

18 MS. LANCE: No, but they live in the same community.

19 THE COURT: They live in the community.

20 MS. LANCE: And I know their whole family.

21 THE COURT: Okay.

22 MS. LANCE: Yes.

23 THE COURT: So, you know who they are? You know
24 you're acquaintances with them? You know them when you see
25 them?

1 MS. LANCE: No.

2 THE COURT: You don't know them when you see them?

3 MS. LANCE: Huh-uh (negative response).

4 THE COURT: You simply know that they are in the area?

5 MS. LANCE: Yeah.

6 THE COURT: Okay, all right, now, let me ask you this,
7 have you heard anything about the case from any of these
8 individuals that live in your community?

9 MS. LANCE: Yeah.

10 THE COURT: You have? They've talked to you about
11 this case?

12 MS. LANCE: Yes.

13 THE COURT: Who was that?

14 MS. LANCE: When it first happened relatives was
15 talking about it.

16 THE COURT: Okay, relatives of whom?

17 MS. LANCE: Of this family.

18 THE COURT: Which family? I'm having a problem with
19 family, a Linen family?

20 MS. LANCE: Yeah, I know them by the Linen family but
21 since she get married I don't know her last name.

22 THE COURT: Okay, and she's related to who that -- in
23 this case?

24 MS. LANCE: My dad.

25 THE COURT: All right, now, you've indicated that

Questioning of Juror

1 they're in your community but you don't know them real
2 well, but they're in -- you know they're in the community.

3 MS. LANCE: Yeah.

4 THE COURT: And that someone of that family had said
5 something about this incident early on when it first
6 happened; is that correct?

7 MS. LANCE: Yes.

8 THE COURT: Okay, now, let's deal with a couple of
9 things. First of all, the fact that members of the family
10 live in your community is that in any way going to affect
11 your ability to be fair and impartial towards both the
12 Defendant and the State?

13 MS. LANCE: It's hard to say.

14 THE COURT: It is a difficult question.

15 MS. LANCE: Uh-huh (affirmative response).

16 THE COURT: But I need to know. So, I need for you to
17 think about it.

18 MS. LANCE: Uh-huh (affirmative response).

19 THE COURT: Will it in any way affect your ability to
20 be fair and impartial?

21 MS. LANCE: I try not to let it be but I can't really
22 say.

23 THE COURT: All right, now, and then that's much
24 appreciated because that's part of what you would need to
25 do is put all of that aside and base your decision strictly

1 on the evidence and testimony in this courtroom.

2 MS. LANCE: Yeah.

3 THE COURT: So, I'm going to ask you once -- first of
4 all, let me ask you that. Can you set that relationship
5 aside, that knowledge that they're in your community, can
6 you set that aside and base this decision strictly on the
7 evidence and testimony presented in this courtroom?

8 MS. LANCE: Yeah.

9 THE COURT: Okay, now, I'm going to take you a step
10 further. Can you be fair and impartial towards both
11 the Defendant and to the State?

12 MS. LANCE: Yes.

13 THE COURT: All right, now, there was something else
14 that you told this Court and that is you said that you had
15 had some discussion about the case.

16 MS. LANCE: Uh-huh (affirmative response).

17 THE COURT: Do you recall exactly with whom?

18 MS. LANCE: You're talking about yesterday or earlier?

19 THE COURT: I'm talking about earlier. Did you talk
20 with someone about the case yesterday?

21 MS. LANCE: Well, that's how I know we connected
22 because this girl she was talking about the case and then I
23 realized it but I didn't say anything.

24 THE COURT: Okay, so, you overheard someone talking
25 about the case in your presence?

1 MS. LANCE: Yes.

2 THE COURT: Okay, and that happened yesterday when?

3 MS. LANCE: After I get home.

4 THE COURT: Did someone come to your home and talk to
5 you about the case?

6 MS. LANCE: No, she talked to me on the phone, but I
7 didn't say anything about it, and I just realized it was
8 the same case that I was on.

9 THE COURT: Okay.

10 MS. LANCE: Uh-huh (affirmative response).

11 THE COURT: So, someone called you on the phone about
12 the case.

13 MS. LANCE: Yeah, she was talking about it.

14 THE COURT: Who was that?

15 MS. LANCE: A friend, uh-huh (affirmative response).

16 THE COURT: Okay, a friend whose name you know?

17 MS. LANCE: Yeah.

18 THE COURT: All right, ma'am, who was that individual?

19 MS. LANCE: Willie Mae Washington.

20 THE COURT: All right, and what did she say to you
21 about the case?

22 MS. LANCE: She was saying about this guy had murdered
23 two people and said lived right in the community and it's a
24 way back and she asked me if I was on that case. I tell
25 them, "I don't know," because I had know I didn't suppose

1 to discuss it with nobody. I said, "I don't know."

2 THE COURT: Okay, all right, let me let you step back
3 for just one moment. We're going to hold you back there
4 and let me talk to the attorneys in regard to this matter.

5 MS. LANCE: Uh-huh (affirmative response).

6 THE COURT: And we'll bring you right back out with
7 more questions. Thank you.

8 MS. LANCE: Okay.

9 (Whereupon, Juror Number 68, Julie Lance exits
10 courtroom.)

11 THE COURT: Counsel, if I could see you up here for
12 just one moment. I'm just trying to get a connection here.

13 (Whereupon, a Bench conference was held.)

14 THE COURT: Counsel, thank you. I will call her back
15 in and do some more questioning. We still need Juror
16 Number 68, please.

17 (Whereupon, Juror Number 68, Julie Lance, enters
18 courtroom.)

19 THE COURT: All right, Ms. Lance, once again let me
20 assure you that you are doing the right thing by being open
21 and honest about what has happened, and ultimately we need
22 to know what's gone on and we need to know if it's going to
23 in any way effect your ability to be fair and impartial.

24 Let me go back. There was a Ms. Washington who called
25 you last night.

1 MS. LANCE: Uh-huh (affirmative response).

2 THE COURT: Did you -- you didn't -- well, let me just
3 ask it. Did you call her first?

4 MS. LANCE: Let me think now. No, I call her 'cause
5 she was sick and then she was -- because she know I ---

6 THE COURT: Because she's sick.

7 MS. LANCE: Yeah.

8 THE COURT: So, you called her to check on her because
9 she was ill?

10 MS. LANCE: Yeah.

11 THE COURT: And then she started asking you have you
12 been chosen in the case and started talking to you about
13 the case; is that correct?

14 MS. LANCE: Yeah, uh-huh (affirmative response).

15 THE COURT: Okay, now, is she -- what is her interest
16 in the case? Why does she know about it or think she knows
17 about?

18 MS. LANCE: Well, she, she know about it because she
19 read a lot and she watch TV and ---

20 THE COURT: Does she have any relationship with any of
21 the families that are ---

22 MS. LANCE: I really don't know.

23 THE COURT: Okay, all right, so, she just started
24 telling you about what she read and heard.

25 MS. LANCE: Yeah, because she said this case going to

1 go on for two, 'two, two weeks she said in the paper or read
2 about it.

3 THE COURT: Okay, okay, now, and did you just cut her
4 off and tell her, "I can't talk about it?"

5 MS. LANCE: Yeah.

6 THE COURT: Or did you talk to her about it?

7 MS. LANCE: No, I say, "I can't say nothing. I don't
8 know if I'm on this case."

9 THE COURT: Okay, all right, now, let's deal with some
10 of that. What she said she's read out of the paper or
11 she's heard somewhere. Now, let me just tell you that what
12 you may have read or may have heard or what she may have
13 read or may have heard may or may not be correct.

14 MS. LANCE: Uh-huh (affirmative response).

15 THE COURT: And it is not evidence in the case. Can
16 you set all of that aside, forget it and base your decision
17 solely on the evidence that's presented in this courtroom
18 under our rules of law and evidence? Can you do that?

19 MS. LANCE: I'll try.

20 THE COURT: Well, I appreciate that. It is so
21 important that I need to know absolutely you could do it.
22 Can you put that out of your mind or has it so, has it so
23 impressed your mind that you can't let that go?

24 MS. LANCE: Well, I going to be honest with you about
25 it, family and they know me but I don't know, okay, like

1 the girl grandmother and all the rest of the family they
2 know me and if I is a jury and on there I don't know what
3 they -- how they are going to feel about the situation
4 because the family know me.

5 THE COURT: All right, so, you think because they know
6 you that they would have some feelings one way or the other
7 depending on what you did.

8 MS. LANCE: Yeah.

9 THE COURT: Does that make it hard for you to be fair
10 and impartial?

11 MS. LANCE: It's hard to say, but I'll try do my best.

12 THE COURT: Okay.

13 All right, thank you, ma'am. I'm going to have you
14 step back out and then I'll talk to the attorneys in the
15 case one more time. Thank you for your patience.

16 MS. LANCE: Okay.

17 (Whereupon, Juror Number 68, Julie Lance, exits
18 courtroom.)

19 THE COURT: I'll tell you I have some concerns and my
20 concerns are that she's, she's feeling pressure from a
21 family that is -- there's no evidence that they're giving
22 her any pressure. She's feeling that upon herself and I do
23 think that that will effect her ability to be fair and
24 impartial, and when she just said, "I'll be honest," she
25 blurted that out.

1 Anything from the State?

2 MR. HEMBREE: Your Honor, I just would agree. The --
3 I think her response or her concerns about her relationship
4 with the family members was not in response to a question.
5 She was talking about one thing and then all of a sudden
6 she just went down this track and that, I mean, you know,
7 that indicates to me that that's her overriding concern
8 that she wanted to get that out and if it's that compelling
9 to her then I'm concerned that she would, she could sit on
10 this case and eliminate that relationship from her
11 deliberations. We'd ask that she be excused.

12 THE COURT: Yes, sir.

13 MR. LOCKLAIR: We'd have the same feelings as the
14 Court and ask that she be excused.

15 THE COURT: Juror Number 68, please.

16 (Whereupon, Juror Number 68, Julie Lance, enters
17 courtroom.)

18 THE COURT: Yes, ma'am, no more questions, but let me
19 let you know that we're going to excuse you because of your
20 concern in this particular case.

21 MS. LANCE: Uh-huh (affirmative response).

22 THE COURT: That there is a concern and I think even
23 you have that of your ability to be fair and impartial.

24 MS. LANCE: Uh-huh (affirmative response).

25 THE COURT: So, we're going to excuse you and thank

1 you so much for being so forthright with the Court. You're
2 free to go.

3 MS. LANCE: Well, I'm sorry about that because I
4 really didn't know.

5 THE COURT: That's quite all right, ma'am. Thank you,
6 thank you for being honest.

7 MS. LANCE: Okay.

8 (Whereupon, Juror Number 68, Julie Lance, exits
9 courtroom.)

10 THE COURT: All right, very well.

11 Anything from the State prior to bringing our jury
12 out?

13 MR. HEMBREE: Nothing from the State, Your Honor.

14 THE COURT: Anything from the Defendant?

15 MR. LOCKLAIR: Nothing from the Defendant, Your
16 Honor.

17 THE COURT: All right, I'm going to bring them out.
18 I'll question them about any pretrial publicity, anything
19 that they may have read. I'm also going to question them
20 about the two additional witnesses who were not listed on
21 yesterday. We're ready for them.

22 (Whereupon, the following takes place in the presence
23 of the jury.)

24 THE COURT: Oh, where is our alternate? Let's see if
25 we can -- I -- you're the alternate. You have assigned

1 seating, and while we're at it I'll go ahead and tell you
2 that there is one other assigned seat. If you all will
3 just slide down one that will make it easier. Thank you.
4 We will have one other assigned seat and that is whenever
5 you choose the foreperson of the jury. When you choose the
6 foreperson of the jury then that person will sit where
7 you're sitting now and when I see that happening
8 consistently I'll know that you have chosen that person.

9 Now, let me tell you what the foreperson does.
10 They're really no more important than any other member of
11 the jury and you're all important but the foreperson has
12 some additional duties and that is to see to it that each
13 and every member of the jury can be heard when you begin
14 deliberations, and the foreperson is the one who will be
15 the spokesperson for the jury. It may be as simple as too
16 hot or too cold in the jury room to a more complicated
17 matter of law when you do begin deliberations, and then
18 also the foreperson is the one who will sign and date the
19 verdict form on behalf of the jury's unanimous decision.
20 So, be thinking about who it is that you would like to have
21 serve in that capacity.

22 During any of these breaks that we have I've already
23 told you you can't discuss the case. You can't discuss the
24 testimony that you've just heard, but you can be getting to
25 know one another and decide and make that first decision

1 about who you will have serve in that capacity.

2 Now, I do need to ask you because I do understand that
3 there was some information about this case in the media, on
4 TV and in a paper. Was everybody able to refrain from
5 reading or seeing or viewing anything or discussing
6 anything about this case? If you were unable to, if you
7 happened upon something please raise your hand.

8 (No response.)

9 THE COURT: All right, everybody was able to follow
10 that. I thank you very much for that. Also want to let
11 you know that we have excused one of the alternates. You
12 are now our first alternate, but we have excused an
13 alternate and that was simply because she's done nothing
14 wrong. She simply brought a matter to the Court's
15 attention and was excused. So, to the contrary she was
16 proper in what she did in bringing it to the Court's
17 attention.

18 Now, I need to ask you about a couple of more
19 witnesses and these were individuals who were not listed on
20 the witness list yesterday but I need to ask you whether
21 you are related by blood or marriage or friends or business
22 acquaintance with these two individuals. These two
23 individuals work at the -- they work with the Sheriff's
24 Department, but they actually work at the correctional
25 center. They work out at the detention center which is the

1 individuals are Kenny Owens and Mike Schwartz, a Kenny
2 Owens and a Mike Schwartz. If any of you are related by
3 blood or marriage or friends or have a business or personal
4 acquaintance with any of these witnesses or either of these
5 witnesses please raise your hand.

6 (No response.)

7 THE COURT: All right, very well.

8 MS. POLEN: Excuse me.

9 THE COURT: Oh, yes, ma'am.

10 MS. POLEN: There was one witness mentioned yesterday
11 that I knew as an acquaintance 30 years ago. We went to
12 church together but I don't know him.

13 THE COURT: All right.

14 MS. POLEN: I just don't know.

15 THE COURT: And who is that individual?

16 MS. POLEN: Don Myers.

17 THE COURT: And your juror number?

18 MS. POLEN: 93.

19 THE COURT: Okay, and I trust I know the answer
20 to this, will that in any way effect your ability

21 ---

22 MS. POLEN: No.

23 THE COURT: --- to be fair and impartial?

24 MS. POLEN: No, I just figured I ought to let you know
25 that I do know who he is.

1 THE COURT: All right, many times I fashion it as a
2 close friend rather than just an acquaintance.

3 MS. POLEN: Okay.

4 THE COURT: And so, that's ---

5 MS. POLEN: Well, that's what I thought.

6 THE COURT: Yeah, and that's how I've asked most of
7 those. So, I understand that because the gist of those
8 questions are if it will any way effect your ability to be
9 fair and impartial, and so, that's why I even covered at
10 the end if there is any reason that you feel that you could
11 not be fair and impartial and I'll ask that one more time.
12 If there is any reason that any of you feel you could not
13 be fair and impartial in this case if you'd raise your
14 hand.

15 (No response.)

16 THE COURT: All right, very good. All right, good, we
17 have got our jury in place. I'm going to have you sworn in
18 at this time. If you would please stand.

19 (Whereupon, the jury was sworn by the Clerk.)

20 THE COURT: Your duty as jurors lies essentially in
21 the oath that you've just taken and that is to well and
22 truly try the facts of the case because you, ladies and
23 gentlemen of the jury, will be the sole and exclusive judge
24 of the facts of the case and no one else in this courtroom
25 will have a right to pass upon the facts except you.

1 Now, you will work hand in hand with me, I as the
2 judge of the law and you as the judge of the facts, and
3 what you will do is you will make a determination of what
4 those true facts are and you'll apply those facts to the
5 law as I charge it to you at the close of the case and in
6 that way you'll reach your verdict in this case.

7 Now, because you are the judge of the facts it's
8 important that you understand what you're to base your
9 findings of fact upon and that is upon the competent
10 evidence that's presented during the trial of the case.

11 Now, evidence can take several forms and the one that
12 you're probably most familiar with is a witness live on the
13 witness stand and they'll be testifying before you and
14 you'll be able to gauge and weigh their credibility, their
15 believability and you should do that. There is another
16 form of evidence and that comes in the form of documents,
17 photographs, those type of things, exhibits that are
18 entered into evidence. You'll be able to take those
19 exhibits back with you in the jury room when you do begin
20 deliberations in the case, and then finally there's a form
21 of evidence called a stipulation, and that's simply an
22 agreement between the State and the Defendant. Now, if
23 evidence should come in that form by way of a stipulation I
24 as the Court will make it very clear to you that that
25 matter is in evidence for your consideration. So, remember

Opening Instructions by Court

1 the testimony comes from the witness stand, from the
2 documents that are entered into evidence and any
3 stipulations.

4 Now, let me tell you what is not evidence. What the
5 attorneys have to say in their opening statements as well
6 as what they say in their closing arguments is not evidence
7 for your consideration. Now, don't misunderstand me. What
8 they have to say is very important. It will assist you in
9 sifting through the evidence, but you're to recall that
10 evidence as you heard it from the witness stand or as you
11 saw it in that exhibit that was displayed.

12 Now, as you know, the State has charged the Defendant,
13 Jody Lynn Ward, with murder. We've got two indictments for
14 murder. Now, indictments are simply the formal process
15 that has brought this case to court. They are simply the
16 piece of paper that has brought this individual to court.
17 Now, to these indictments the Defendant has pled not guilty
18 and this places upon the State the burden of proving the
19 Defendant guilty beyond a reasonable doubt. A person
20 charged with committing a criminal offense in South
21 Carolina is never required to prove himself innocent. I
22 charge you that it is a vital and important rule of
23 evidence that a Defendant in a criminal trial, no matter
24 how great or serious may be the offense for which he is
25 charged, must always be presumed innocent until his guilt

1 has been proven beyond a reasonable doubt. Now, this
2 presumption of innocence remains with the Defendant at all
3 times, from the time he is first charged and throughout the
4 trial and until you, the jury, have upon the testimony and
5 evidence presented reached a verdict. It is the solemn
6 duty of you the jury if not convinced of his guilt beyond a
7 reasonable doubt to find the Defendant not guilty. On the
8 other hand if the State has proven to your satisfaction the
9 guilt of the accused beyond a reasonable doubt it would
10 then be your solemn duty to find the Defendant guilty.

11 Now, please understand this term reasonable doubt in
12 its plain and ordinary meaning, a doubt which would cause a
13 reasonable person to hesitate to act. So, once again the
14 burden of proof is upon the State to establish evidence to
15 your satisfaction the guilt of Jody Lynn Ward on murder as
16 to indictment 03-GS-22-1031 and the guilt of the Defendant,
17 Jody Lynn Ward, for murder as to 03-GS-22-1030.

18 Now, ladies and gentlemen, cases such as this could
19 not move forward unless you were here ready and willing to
20 try. I know none of you asked to be on this particular
21 case. None of you asked to be called this particular week,
22 but I trust having been called upon to do so that you will
23 set aside anything you may have heard, anything you may
24 have seen and you will base your decision strictly on the
25 law and the evidence that's presented in this case. When

Opening Instructions by Court

1 you do that no one will find fault with your verdict and
2 you will have fully discharged your duty as jurors.

3 Now, I'm going to give you a couple of hand signals
4 that may be helpful during the course of the trial. We
5 have a tendency to plow on in here and if you need a break
6 for any reason, if you will simply raise your hand and
7 spread five fingers this means to me, "Judge, I need a
8 five-minute break." Now, at the next convenient time we'll
9 take that break, and when you catch my eye you can put your
10 hand back down. I'll nod at you and you'll know I've seen
11 you, and so, and I promise you I won't single you out or
12 embarrass you in any way, but at that next convenient time
13 we'll break. Don't wait too long to ask for it because I
14 may not be able to break immediately, but if you think you
15 need a break don't hesitate, go ahead and raise that hand.

16 Another equally important hand signal is this. This
17 means, "Judge, I cannot hear the testimony or I cannot see
18 an exhibit that's being displayed." You are the judge of
19 the facts. It's very important that you're able to hear
20 and see. If you raise that finger I'll make sure that
21 witness or that attorney speaks up or that I speak up or
22 that exhibit is better displayed. So, don't forget that
23 hand signal. It could be helpful as well. Now, I thank
24 you for the attention that you've paid the Court and I ask
25 that you give that same attention to the attorneys as they

1 begin with their opening statements, and we'll begin at
2 this time. Yes, sir.

3 MR. HEMBREE: Thank you Your Honor, may it please the
4 Court.

5 THE COURT: Yes, sir.

6 MR. HEMBREE: What is the value of a human life? It
7 depends on who you ask. In this case, ladies and
8 gentlemen, Jody Lynn Ward decided that the value of Elton
9 Rutledge, Jr., was \$525. The Defendant, Jody Ward, decided
10 that the value of Wilfred Brown was \$525.

11 I want to take you back to August the 3rd, 2002. Jody
12 Ward, testimony will show, got up that morning, visited his
13 ex-girlfriend, went by his wife's house and borrowed her
14 car. The Samurai Suzuki, little, little bitty SUV. At
15 some point that morning he picked up Wilfred Brown and
16 later Elton Rutledge, Jr., and they drove around in the
17 Georgetown Community running errands, going here, going
18 there and during the course of these travels he made
19 several telephone calls. Jody Ward called his ex-
20 girlfriend, Denise Langston Cox. You'll hear from Ms. Cox,
21 and on every time he called her he would give her an update
22 on what he was doing, what was going on, and the first
23 couple of calls was just kind of friendly calls, but at
24 some point he called and he was angry. He was mad. His
25 attitude had changed and he told Denise Langston Cox that

1 these boys had ripped him off for a \$1050, that they were
2 planning to buy a pound of marijuana but he had been taken,
3 fooled, robbed, stolen, tricked, and he was mad, and if he
4 didn't get his money he was going to do something about it.

5 Curiously, one of the calls that followed later in the
6 day came from Wal-Mart. Jody Lynn Ward calling Denise
7 Langston Cox, and he tells her he's there buying bullets.
8 She tells him, "Don't do anything crazy." Calls once again
9 late in the day and finally calls nearly midnight. Says,
10 "I'm here at my, my -- at the end of my street on Sirfield
11 Road, Georgetown County," where his -- Mr. Ward's wife
12 lives, and, "I need you to come pick me up."

13 Denise Langston Cox gets out of bed, gets in her
14 vehicle. Evidence will show she traveled to Sirfield Road
15 where, sure enough, Jody Ward was standing there waiting on
16 her, traveled back to her house. Mr. Ward told her they
17 were fighting, they weren't getting along, they're fussing,
18 with his wife, he and his wife were fussing.

19 They arrived back at the home of Denise Langston Cox,
20 and he tells her a story that was so chilling, so cold.
21 The Defendant, Jody Ward, tells Denise Langston Cox that he
22 got rid of them boys that ripped him off, he shot them and
23 he buried them on a -- off a dirt road, pulled them in the
24 woods, that he took the vehicle, the Samurai Suzuki, and he
25 dumped it in Dawhoo Lake in another part of Georgetown

1 Landing, Georgetown County, pushed it off into the lake and
2 sank the car, got rid of that. He tells her after he
3 finishes confessing to these two murders, he tells her
4 that, "You're the only one I've told this to, better not
5 get out or I'll kill you and I'll kill your children and
6 I'll know it's you because you're the only one I've told."

7 Well, Denise Langston Cox doesn't tell anybody for a
8 while. She -- she's questioned by the police, "I don't
9 know nothing about nothing." That's her story initially.
10 It's only after the Defendant, Jody Ward, is arrested,
11 placed in custody and is being held at the Georgetown
12 County Detention Center that Denise Langston Cox when asked
13 by police to come down and talk with them about this
14 reveals the truth. On numerous occasions she had been
15 threatened by Jody Ward, kept her on a string, wanted to
16 kind of keep, make sure she stayed on the team. Of course
17 once he was arrested that stopped and she was free, she was
18 safe to tell the truth.

19 Prior to that happening, there was a manhunt, a search
20 for these two bodies, these two young men. No results,
21 missing, missing for a long time, August the 3rd, August
22 the 4th, August the 5th, August the 10th, bring it up to
23 August the 29th. The police haven't -- can't find the
24 bodies, looked all over the place, checked lakes, you know,
25 been, looked and looked, looked and looked and looked, and

1 a young man comes forward. On August 29th this young man,
2 Louis Bazen, the brother-in-law of the Defendant, on or
3 about August 29th is approached by the Defendant, Jody
4 Ward. He says, "Look here, Louis, I've got some marijuana
5 plants that I need to move. I've got them in this location
6 and I need to get them, I need to dig them up and move them
7 to another spot. I don't have a ride. Can you drive me
8 over there?" "Sure, I'll take you over there."

9 Carries him down to Walker Hunt Club Road, excuse me,
10 to a Hunting Club Road, not Walker Hunt Club Road at the
11 Defendant's direction, drives him to the location. He lets
12 out the Defendant. He says, "You go on down and just pull
13 back around and I'll, I'll get these things and we will be
14 on our way." There was a fence. The car couldn't go
15 through the fence. The Defendant crawls around, goes in
16 the fence, goes down a dirt road. A few minutes pass and
17 he comes back out shovel in hand, went down with two empty
18 sacks, I'm going to call them croaker sacks, big, one big
19 burlap bag, one big vinyl bag you might see oysters carried
20 in, two big sacks empty and a shovel when he goes down the
21 road. When he comes back down the road Bazen can see him
22 dragging these bags, this bag. Now looks to be one sack,
23 burlap bag pulled over the white croaker sack and the
24 shovel in the other hand dragging this bag down the road.
25 Doesn't see any marijuana plants sticking out the top, just

1 sees the bag.

2 Jody says, "Open the trunk," hits the button, the
3 trunk opens, Jody loads this bag into the back of the
4 trunk, throws the shovel in the back, "All right, Louis,
5 now we're going to go down to Walker Hunt Club Road here a
6 couple of miles away," directs him to another location.
7 Louis Bazen drops Jody Ward off, but he notices on the trip
8 that he has a terrible smell about him, a stench that just
9 defies description. He asks him, "Man, you stink, you
10 smell."

11 They get to Walker Hunt Club Road. Jody Ward goes
12 around to the trunk, pulls the bags out, pulls the bag out,
13 the shovel, drags it off into a swampy area off of a dirt
14 road. Louis Bazen, again, pulls off, waits a little while,
15 comes back, picks up Jody Ward, takes him home. Now, this
16 is on or about the 29th of August. Time passes. As it
17 does, the concern about this event begins to weigh on young
18 Louis Bazen. It's heavy on his shoulders, and he finally
19 says, "You know, I'm not sure but something is not right
20 about this." He talks to his parents. He talks to his
21 preacher. His preacher says, "Son, you have got to tell
22 the police. You have got to do the right thing."

23 Louis Bazen goes to law enforcement, and he tells the
24 truth. He tells about what happened. Law enforcement
25 initiates a search of the area, begins on the 12th,

Opening Statement by Mr. Hembree

1 culminates on the morning of the 13th when a number of
2 officers involved in the manhunt or the search for these
3 bodies locates, there's no other way to describe it, a bag
4 of bones in a shallow grave in a swamp off Walker Hunt Club
5 Road, the body parts of two people in this, in these bags.
6 That leads to the arrest of Defendant Jody Ward and
7 ultimately to the statement of Denise Langston Cox. She
8 gives her statement September 27th after Mr. Ward has been
9 arrested.

10 Now, I want to talk with you a little bit about the
11 law in this case. Judge Thomas will charge you on the law.
12 There are a few points that I think would be helpful for
13 you to know as you begin this process. It's fairly
14 straightforward as far as the charge, the charge of murder,
15 the unlawful killing of another with malice aforethought.
16 That's what murder is, intentional and unlawful killing of
17 another with malice aforethought. I think most folks have
18 a pretty good idea what that means up to a point. The key
19 term that I would like to spend a moment talking with you
20 about is malice aforethought. Malice, black heart, evil
21 intentions, fatally bent on mischief is one of the archaic
22 terms we use to describe malice. I'll talk to you about
23 Jody Lynn Ward's heart.

24 After the murders, after he dumped the car, middle of
25 the night the day of the murder he calls the mother of

1 Wilfred Brown and accuses Wilfred Brown of stealing his
2 wife's Samurai Suzuki, and he knows those two young men are
3 in a shallow grave with a couple of spade fulls of dirt
4 over their face, evil heart.

5 Aforethought, now, this term implies, it requires a
6 great deal of planning. It makes you think of a, you know,
7 some sort of plot to kill that there has been a lot of
8 planning that went into something, but under South Carolina
9 law and this is an important point that aforethought, that
10 malice, that intention to take the life of another can be
11 formed the instant before the fatal blow is struck, before
12 the fatal shot is fired. It doesn't have to be some kind
13 of long-term plan, some sort of, you know, extensive thing.
14 It can be something that happens, that evil intent is
15 formed immediately. That split-second right before the
16 shot is fired is sufficient aforethought. That's an
17 important point.

18 Finally, I want to talk with you about a legal concept
19 known as the hand of one is the hand of all. Now, I'm
20 going to suggest to you, folks, that there is no evidence,
21 save one thing, that implicates anyone else in this murder
22 except Defendant Jody Ward. Now, all evidence indicates
23 he, Rutledge, Brown are together during the day, they're
24 seen by other people. The Brown and Rutledge are last seen
25 alive in the company of just the Defendant, Jody Ward.

1 However, at some point, and you will hear this in the
2 course of this trial, at some point Jody Ward decides to
3 give a statement in January of 2003. He contacts the
4 Sheriff's Office, contacts the jailer and he says, "I want
5 to talk to Assistant Sheriff Carter Weaver. I want to tell
6 my story. I want to tell my side of this thing." Now, he
7 gets Carter Weaver over there and he gets a taped
8 statement, an audiotaped statement you'll -- you will have
9 the opportunity to hear, and by the time he gets around to
10 telling this story to Assistant Sheriff Weaver he, he
11 really accounts for most of the evidence in the case. He
12 kind of talks about different pieces of evidence and how he
13 got blood on his shoes and how he did this how, you know,
14 how he had to wash his shirt and had blood on his shirt and
15 lots of different things like that, and he'll -- you know,
16 you can listen to all this, but he picks a guy named Brian
17 Elliott and he says, you know, "Brian Elliott was with us
18 that day and Brian Elliott, Brian Elliott got into a, into
19 a tussle over the gun with these fellows and then Brian
20 Elliott sort of kind of accidentally shot Wilfred Brown and
21 then and then he went around and he shot Elton Rutledge,
22 gosh, you know, it was -- it just happened and, you know,
23 I'm just kind of standing there, and it's all sort of
24 amazing to me, but -- and then after that I took care of --
25 let's see, well, I took care of getting rid of the gun. I

1 took the gun away from him and I took care of all that and
2 I took care of getting rid of the car and I took care of
3 getting rid of the bodies because he, Elliott said he
4 didn't want anything to do with this thing. He didn't want
5 to, he didn't want to, you know, mess with this anymore.
6 So, he -- I just took him home and he stayed home and I
7 went ahead and buried the bodies and I took the car out to
8 Dawhoo Lake and I sunk it and, you know, I did all these
9 things and kind of to follow up."

10 There's a legal concept known hand of one is the hand
11 of all. Folks, I would submit to you Brian Elliott had
12 nothing to do with this case. I think there's going to be
13 physical evidence that will, that will help to convince you
14 that Brian Elliott had nothing to do with this case. I
15 don't think there's anything, there's no evidence in this
16 case that's going to indicate that he had anything to do
17 with it other than the statement of the Defendant, and I
18 don't believe that. However, the concept of hand of one is
19 the hand of all stands for this proposition if a Defendant
20 is present aiding and abetting in the course of a crime
21 then that individual is just as guilty as the principal.
22 They don't have to pull the trigger to be guilty of murder.
23 It's a concept I don't think we will employ here but I want
24 you to know about it.

25 There's three things I want from you during the course

1 of this trial, and I do not believe this case will take two
2 weeks or a long, long period of time. We set aside lengthy
3 periods of time to be careful, to be prudent but to start
4 off and tell you, you know, I maybe can give you some
5 relief on that, don't think that'll be the case. Three
6 things I want and I've told this to probably 150 juries
7 over the years. The first thing I want you to do is listen
8 carefully. Most of the evidence in this case, and Judge
9 Thomas referred to this. People are going to put their
10 hand on the bible. They're going to swear to tell the
11 truth. They are going to get in this chair and they are
12 going to share testimony with you. It will be testimony or
13 evidence. Sometimes when people think of evidence they
14 think it's something they can hold, you know, something
15 they can see. Actually, as Judge Thomas already stated,
16 most of the evidence in this trial is going to be
17 testimonial evidence and it's so critical that you listen
18 carefully to that because you're likely only going to hear
19 it once, and if you miss an important fact it could hinder
20 you in making a judgment and a deliberation that is
21 truthful and fair and just. So, listen carefully.

22 The second thing I ask of you is to be fair. Folks,
23 you know, the most important thing we will accomplish here
24 in the course of this week is to make our justice system
25 work. You have to keep an open mind. The State, because

1 we have the burden, presents its proof first. That's our
2 opportunity. That's our obligation and it's human nature
3 to sometimes listen to one side of the story and then say,
4 "Hum, well, that sounds -- that makes sense. Okay, I've
5 got that." I'm asking you not to do that even though
6 you're going to hear my side of the story first. I am
7 asking you to keep an open mind until you have heard all of
8 the evidence and testimony. The Defense does not have to
9 put up a case. The constitution doesn't require that of
10 them. They may choose to do so in this case, but what I'm
11 saying is don't make any decisions until you've heard it
12 all, and the Judge will charge you on the law at that
13 point. Judge Thomas will tell you when you can start
14 making up your minds. She will say you can now begin your
15 deliberations. At that point that's when you, that's when
16 you engage and that's when you start to make up your mind
17 and don't, you know, it will be based on -- I ask you to
18 keep an open mind, but I ask you also to base it on the
19 evidence, not just on what the lawyers say, not just on
20 what anybody says except the testimony and the evidence.
21 That's what controls, what comes from that witness stand,
22 what you see and the physical evidence. So, that's what
23 controls. Be fair and keep an open mind, and finally, I
24 ask you to use your judgments and your good common sense to
25 render a verdict that is just. That's what we seek in this

Opening Statement by Mr. Hembree

1 case, justice. We want justice for the families of Elton
2 Rutledge and Wilfred Brown. We want justice for the
3 community and we want justice for the Defendant, Jody Ward.
4 Thank you.

5 THE COURT: Thank you, sir.

6 Yes, yes, ma'am.

7 MS. KNEECE: Thank you, Your Honor. May it please the
8 Court?

9 THE COURT: Yes, ma'am.

10 MS. KNEECE: Good morning. We've already been
11 introduced. I stood up at the beginning, and again, this
12 is Wesley Locklair. This is our staff, Wendy and Stacey,
13 and this is Jody Ward, and I want to say if there's
14 anything that the Defense staff or attorneys do during this
15 case that is offensive, please don't hold that against
16 Jody, and I think it's been made very clear that your job
17 here is to listen to the facts in the case.

18 What the Solicitor just said is his theory of what
19 happened that day, and they're going to go with their
20 theory and they're going to try to put up their case to
21 establish what they think happened. That's their burden of
22 proof and he has now told you what they're going to prove,
23 and you've also heard, and a lot of this is redundant but
24 it's so important, your job is to judge the credibility of
25 the people sitting in there, in that chair, who has

1 something to lose by what they testify to and who has
2 something to gain by their testimony. You can believe some
3 of what somebody says, all of what somebody says or
4 discount the whole thing.

5 Listen to what law enforcement did and did not do in
6 this case to prove, to help the State meet their burden of
7 proving that Jody Ward, with malice aforethought, killed
8 two individuals. Listen to what the evidence is going to
9 be presented. This should not and cannot be a fishing
10 expedition for you all. You should not go back into the
11 jury room and say, "What about this? What about that?"
12 Well, it's not your job and you should not fill in the
13 blanks of the puzzle of the pieces that are missing. This
14 is as good as their case is going to get. This is the
15 trial and look and listen for what has been done and what
16 has not been done.

17 You are going to hear some graphic testimony, and
18 there's no doubt about that and you may see some graphic
19 pictures, but they still have to prove that Jody Ward with
20 malice aforethought killed two individuals, and every time
21 you look over at Jody Ward you have to, every time you see
22 him he is clothed, cloaked in a heavy cloak of innocence,
23 and if at any point you can't look at him during this
24 trial, if you're starting to decide his guilt before all of
25 the evidence is done, you have an obligation to tell the

Opening Statement by Ms. Kneece

1 Judge. You cannot. You have to listen to the entire case,
2 and every time you look at that man right there he must be
3 innocent.

4 I'm not going to comment on the facts. It is their
5 job to put up the case and we will go forward. I just want
6 to say that we thank you in advance, as the Solicitor said,
7 he's asking, this is absolutely important to a lot of
8 people, and we thank you for your attention for listening
9 and for your service.

10 THE COURT: Thank you, ma'am. Call your first
11 witness.

12 MR. HEMBREE: The State calls, the State calls Denise
13 Langston Cox to the witness stand.

14 AT THIS TIME LYNN DENISE COX WAS CALLED TO THE STAND, DULY
15 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

16 THE CLERK: Please be seated. Please state your full
17 name for the Court.

18 MS. COX: Lynn Denise Cox.

19 DIRECT EXAMINATION

20 BY MR. HEMBREE:

21 Q: Ms. Cox, where are you from?

22 A: Right here in Georgetown.

23 Q: Did you grow up here?

24 A: Yes, sir.

25 Q: Did you go to school here?

1 A: Yes, sir.

2 Q: Where did you go to school?

3 A: Elementary school went to McDonald and I went to Beck
4 Middle and Georgetown High.

5 Q: And do you know the Defendant in this case?

6 A: Yes, sir.

7 Q: How long have you known him?

8 A: I've known him just about all my life, I mean, I've
9 growed up with him, we went to school together.

10 Q: Ms. Cox, do you have any children?

11 A: Yes, sir, I have three boys.

12 Q: How old are they?

13 A: I have one 14, one 12 and one 8.

14 Q: Do you live here in Georgetown County at this time?

15 A: Yes, sir.

16 Q: Tell this jury about the nature of your relationship
17 with Jody Ward back in 2002.

18 A: At that time, I mean, we weren't dating, but I mean,
19 we were still talking, he'd still come by the house and see
20 me and drop by or whatever, but at that particular time we
21 were not together. We had been dating prior to that off
22 and on for a year.

23 Q: Tell us about, tell us about the time frame in which
24 you were dating.

25 A: It was probably sometime that summer in 2002 we

Lynn Denise Cox - Direct by Mr. Hembree

1 started dating maybe and dated off and on for a year.

2 Q: Okay, so, you started in 2002 or started in 2001?

3 A: One, I believe, 2001.

4 Q: When you say you were dating, how deeply involved were
5 you in this relationship?

6 A: Well, he ended up moving in with me and we were
7 together for a few months. I mean, he lived with me for a
8 few months, then he left, went back home to his wife, ended
9 up moving back in with me months later, and a few months
10 after that he moved back out and went back home to his
11 wife.

12 Q: At what point did the, I guess, serious side or the
13 living together part of this relationship come to an end?

14 A: It was either June or July of 2002.

15 Q: Do you know where Mr. Ward went after he broke up with
16 you?

17 A: He moved out with me and moved back in with his wife.

18 Q: Now, the -- after he moved back in with his wife,
19 June, July of 2002, did you continue to stay in touch with
20 Mr. Ward?

21 A: Well, like I said, he would come by my house, he'd
22 drop by, he'd call, I mean, he'd just show up whenever, I
23 reckon, he got the urge to come by he'd come by.

24 Q: Now, were you still friendly with him?

25 A: I mean, we were friends. He'd come over, hang out

1 for, you know, a few minutes, maybe five minutes sometimes,
2 20 minutes and then he'd, he'd leave.

3 Q: I know it's kind of, maybe even kind of embarrassing
4 but were you still romantically involved in any way during
5 this time frame?

6 A: Not like you, I mean, we wasn't like serious but, I
7 mean, off and on yeah.

8 Q: I want to take you to August the 3rd of 2002. Tell me
9 about how that day started for you.

10 A: Well, I got a phone call and he said that he was on
11 the way to my house. I was in the bed sleeping. So, I
12 just, I mean, I stayed in the bed. I heard him pull up and
13 I went and unlocked the door.

14 Q: About what time of the day was that?

15 A: Probably close to nine o'clock that morning. He came
16 over, came inside. He asked me to drive him to Georgetown
17 because he didn't have any license and he said he was
18 wanting to go buy him some weed and he asked me to drive
19 him and I told him that I couldn't because I had my
20 children and he stayed for maybe 15 minutes or so and he
21 left and then he said he'd see me later on.

22 Q: Okay, you indicated he was driving his truck?

23 A: He was driving a red and black Ford truck.

24 Q: Red and black Ford truck?

25 A: Uh-huh (affirmative response).

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- 1 Q: When he came to your house?
- 2 A: Yes, sir.
- 3 Q: Anybody -- did you see anybody with him when he came
- 4 to your house early that -- well, about nine o'clock or so
- 5 that morning?
- 6 A: No, he was by himself.
- 7 Q: And there for about 15 minutes and he left?
- 8 A: Uh-huh (affirmative response), yes, sir.
- 9 Q: You said you couldn't give him a ride why?
- 10 A: I had my kids with me. They were over there at my
- 11 house.
- 12 Q: Now, did you hear from him later in the day?
- 13 A: Maybe a few hours passed or maybe an hour. I don't
- 14 remember the exact time, but he called me back and he said
- 15 that he had went by and picked up Wilfred Brown and ---
- 16 Q: Did you know Wilfred Brown?
- 17 A: No, I had heard him talk about him because he said he
- 18 used to buy drugs from him, but I had never met him, never
- 19 seen him. He said they were together and he was supposed
- 20 to be going to purchase him some weed, and I think, I mean,
- 21 really that was -- I think that first conversation that was
- 22 really what it was all about. He just said he was going to
- 23 get, you know, purchase him some weed.
- 24 Q: Did -- what was his general tone of voice and
- 25 demeanor? What was Jody Ward's tone of voice and demeanor

1 on that first telephone call?

2 A: He, I mean, he just -- he acted like they were just
3 riding around, you know, getting high or something. I
4 mean, they were just ---

5 Q: Was he in good ---

6 A: Yeah.

7 Q: --- was he in good spirits?

8 A: Yeah, he was fine then.

9 Q: Now, did you receive a second call?

10 A: A little while later he called and said that they were
11 supposed to be going to meet somebody at a park behind the
12 Seafood Kitchen and ---

13 Q: All right, where is the Seafood Kitchen?

14 A: In Georgetown off Highmarket Street.

15 Q: Off Highmarket Street?

16 A: Somewhere there was a park, a little park or something
17 back there.

18 Q: Okay.

19 A: He said they were going to meet someone back there and
20 he'd give Wilfred some money to go get him some weed and my
21 assumption that when he called that Wilfred must have been
22 going, you know, going over there right then to, you know,
23 he was dropping him off and he had went over there to meet
24 the guy, whoever it was, to make the switch.

25 Q: So, you said you got the impression or maybe

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1 assumption that Wilfred was out of the vehicle?

2 A: Yeah, like he was going over there then to make the
3 switch.

4 Q: Did you know or did he ever tell you in either one of
5 those two conversations, did Jody Ward tell you what
6 vehicle he was driving at that point?

7 A: I'm not sure that he told me what he was in at that
8 time.

9 Q: Okay, did he -- he indicated he was with Wilfred. Did
10 he indicate that anybody else was there with him?

11 A: Not at that time.

12 Q: Okay, not at that point. Did he indicate to you or
13 how -- did he indicate, if any, how much money was involved
14 in this transaction that was to take place?

15 A: In that conversation I don't think he did mention. I
16 think it was the next conversation I had with him.

17 Q: Okay, tell me about in this conversation, we're at the
18 second one, again, what was Defendant. Jody Ward's tone of
19 voice, general demeanor over the telephone?

20 A: He, I mean, he acted all right. I mean, he just said
21 that they were, you know, he was getting him some weed,
22 they were making a, you know, purchase and that was about
23 it and we hang up, hung up after that.

24 Q: How -- was this a long conversation, short
25 conversation?

1 A: It wasn't very long.

2 Q: Now, did you hear again by telephone from Defendant
3 Jody Ward that day?

4 A: A little while later, I'm not sure of the time.

5 Q: About what time of day would you say this third
6 telephone call comes in?

7 A: Maybe somewhere around lunchtime or maybe a little
8 after, I mean, but he called me back and said that Wilfred
9 had went over there, took the money, and at this phone call
10 he told me that it was \$1050 and he was supposed to be
11 getting a pound of weed and when he got over there the way
12 I took it that Wilfred give the guy that was supposed to
13 give him the weed the money and he neither got the weed or
14 the money back and he was upset and he said that they had
15 cheated him out of the money.

16 Q: Did he indicate to you in this conversation any action
17 he might take as a result of this cheating?

18 A: He said that he was either going to get his money
19 back, the weed or something was going to happen.

20 Q: He didn't go into any detail about what was going to
21 happen?

22 A: In that conversation I'm not sure, but later or it
23 might have been that one, I'm not sure, but he told me that
24 he would kill him if he didn't give him his money back.

25 Q: Did he indicate who he would kill if he didn't get his

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1 money back?

2 A: Wilfred.

3 Q: Tone of voice in this third?

4 A: He was mad.

5 Q: During this third conversation did he ever mention
6 Elton Rutledge?

7 A: No, I never knew there was another person in there
8 with him or with them until later on.

9 Q: When you refer to weed, I think we all probably know
10 what you're talking about, but what are you, what are you
11 talking about there?

12 A: You mean?

13 Q: What is weed?

14 A: You talking about Jody and Wilfred or ---

15 Q: Yeah.

16 A: He just, I mean.

17 Q: What is it, I mean, what is it? Just, that's my
18 question. What -- when you say weed what are you, what are
19 you talking about? Is there another name for it?

20 A: You're trying to say they, I mean?

21 Q: No, ma'am. Listen to my question. When you say, you
22 keep referring to, you referred to in the previous
23 testimony that they went to buy a pound of weed.

24 A: Uh-huh (affirmative response), well, I was talking
25 about Jody and Wilfred.

1 Q: I understand and you used the term weed, W-E-E-D;
2 right?

3 A: Uh-huh (affirmative response).

4 Q: Now, what I'm asking you is what's another name for
5 weed?

6 A: Weed?

7 Q: Yeah.

8 A: Marijuana, pot.

9 Q: Marijuana, exactly.

10 A: I'm sorry.

11 Q: I know that's such a basic question.

12 A: I though you were saying we.

13 Q: I'm sorry.

14 A: Sorry..

15 Q: My, my, that's my problem. The acoustics in this
16 courtroom are a challenge sometimes. Thank you.

17 Now, we get on to the next phone call. Let me ask
18 you, this third phone call that he was angry, that you said
19 he was angry ---

20 A: Yeah, he was upset.

21 Q: --- he tells you about the 1050 and the pound and that
22 if he didn't get his money or his dope he's going to kill
23 Wilfred. How long was that conversation?

24 A: I never, I don't think we ever stayed on the phone
25 maybe a few minutes or so. I mean, it wasn't very long at

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1 the time when he called.

2 Q: When was the next time or did you hear from him
3 another time by telephone?

4 A: The next phone call I got I believe was he called and
5 said that he was going into Wal-Mart with Wilfred and he
6 was going in there to purchase bullets, and I mean, I was
7 -- I mean it just shocked me because I didn't believe that.
8 I thought he was just trying to, you know, scare him or
9 something, you know, to try to get his money back, and I
10 said, "You're in Wal-Mart with him buying bullets," and he
11 said yes, and I said, "And he's with you, in there with
12 you," and he says yes, and I said, "Well, you don't need to
13 do nothing, you know, stupid, I mean," and he, I mean, we
14 wasn't on the phone, you know, long at all and he hung up.

15 Q: All right, did he respond when you said, "You don't
16 need to do anything stupid?" Did he say anything back to
17 you?

18 A: He just said that he was going to get his money or
19 weed back or, you know, he was going to take care of him.

20 Q: All right, he was going to take care of him. Now, do
21 you recall about what time of the day that was?

22 A: I don't remember what time.

23 Q: Was it after dark or was it in the, in the daytime?

24 A: I think that was during the daytime.

25 Q: Now, you received a fifth phone telephone call?

1 A: The next phone call I got he said that he was at his
2 wife's house, him and his wife's house and that he was
3 showing Wilfred his bulldogs.

4 Q: What time of day, about what time of the day was that?

5 A: I want to say that was, I know it was after lunch, I
6 mean, I don't know. I don't remember no times.

7 Q: And he said that he was over there showing bulldogs?

8 A: Yes.

9 Q: And, okay, a short conversation?

10 A: Yeah, I mean, I could tell he was outside on his cell
11 phone, but I mean, I didn't hear any, you know, nobody
12 else's voice, but he just said they were -- he was over
13 there showing him his bulldogs.

14 Q: And finally, you received a final telephone call from
15 the Defendant on August the 3rd, 2002. Tell us about that
16 last phone call.

17 A: It was, I would say close midnight. He called and I
18 was sleeping and he called and said that he wanted me to
19 come pick him up from the end of his road on Sirfield
20 Street and he said he'd meet me on the highway. So ---

21 Q: About what time of day was that?

22 A: That was at midnight and I went and picked him up and
23 he came back to my house and I was, you know, I went back
24 in there and was getting back into bed and ---

25 Q: Was there any conversation in the car on the way home?

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1 A: The only thing I remember him saying really on the way
2 home was like that him and Beverly had had a fuss or got in
3 a fuss or an argument or something and he wanted me to come
4 pick him up, and once we got in my house he started telling
5 me about what had happened.

6 Q: Did he ever tell you anything about them stealing his
7 truck, his car?

8 A: Not then.

9 Q: Tell this jury, you got back to your house, you said
10 he told you what happened. Denise, I want you and just
11 take your time, it's important, tell this jury what
12 Defendant Jody Ward told you about what happened that night
13 or when he talked to you at your home that night around
14 midnight?

15 A: He just said that he got rid of them and I found out
16 there was a second boy with him and that he said that he
17 shot both of them, that at that time that he said that they
18 were down a dirt road and they got out the vehicle. He
19 shot Wilfred. I, from what I understood, they were kind of
20 next the front of the truck. He shot him first, and then
21 the other boy got scared and jumped, went to jump in the
22 back of the -- back door of the Suzuki, and he shot him,
23 and he told me that he had buried them and that he had sunk
24 the Suzuki in the Dawhoo Lake.

25 Q: Did he tell you what gun he used?

1 A: I don't know if it was in that conversation that he
2 told me what gun he used, but he did originally tell me, I
3 know it was the -- I want to say it was the TEC-9 that he
4 had, and ---

5 Q: Could that have been in another conversation, a
6 subsequent conversation that you had with him?

7 A: I don't know if it was that night he said he used that
8 gun or another. I'm not sure, but I remember him telling
9 me that he had the TEC-9 and he threw it in Greens Creek
10 but later on he told me he went back and gotten it.

11 Q: So, he said he used the TEC-9 and got rid of it in
12 Greens Creek; is that what you said?

13 A: Yes, sir.

14 Q: And then he said but he went back and told you later
15 on that he got it out of Greens Creek?

16 A: Yes, sir.

17 Q: Now, let's talk about this TEC-9. Are you -- have you
18 seen this gun in the possession of Defendant, Jody Ward,
19 before?

20 A: Yes, sir.

21 Q: On how many occasions?

22 A: Maybe between five and ten times, maybe.

23 Q: And in relation to the day of the shooting, August
24 the 3rd, 2002, I want you to kind of roll the calendar
25 back and tell me about how long before that day did you

1 first see this gun in the possession of Defendant, Jody
2 Ward?

3 A: Before August the 3rd how long he had it before?

4 Q: Uh-huh (affirmative response), yes, ma'am.

5 A: Maybe between a month or two.

6 Q: Okay, a period of time?

7 A: Yeah.

8 Q: Are you familiar with what kind of bullets this gun
9 shot?

10 A: I don't really know that -- I mean, much about guns, I
11 mean.

12 Q: Were you ever present or in the presence of Jody Ward
13 when this gun was fired?

14 A: We were together one night on the crossroads at Gapway
15 and Indian Hut and we went out there and he shot up the
16 stop sign, I mean, you know, I reckon he was trying it
17 out.

18 Q: Now, tell me -- just tell me a little about that.
19 What time of day was that?

20 A: It was at night time because it was dark because we
21 were in his truck and he was shining the headlights on the
22 stop sign.

23 Q: His truck being that ---

24 A: The red and Ford -- the red Ford black ---

25 Q: The red and black Ford pickup.

1 A: Yeah.

2 Q: And about, the approximate date, if you can say,
3 before the -- in relation to when the ---

4 A: It wasn't long after he had gotten the gun because he
5 was wanting to try it out.

6 Q: And were you with him when he got the gun?

7 A: When he got the gun?

8 Q: Yes, ma'am.

9 A: Uh-huh (affirmative response).

10 Q: Who did he get the gun from?

11 A: A friend of his, Jody Owens.

12 Q: Jody Owens. You were present when that transaction
13 took place?

14 A: I wasn't there when he actually got it from him, but I
15 was in the vehicle when he came back with it.

16 Q: Okay, so, he goes and meets with Jody Owens without a
17 gun and he comes back and he has the gun. Did he show it
18 to you?

19 A: Uh-huh (affirmative response).

20 Q: Describe this gun for us. What does it look like?

21 A: It's a black gun, maybe this long (indicating) and it
22 has a long clip on it.

23 Q: You've got to hold your hands up. You're kind of
24 demonstrating with your hands.

25 A: It's maybe this long or so. I'm not ---

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1 Q: Would you say that's ---

2 A: Approximately.

3 Q: --- maybe a foot or a little more than a foot
4 long?

5 A: Maybe about this long and it has a clip on it.

6 Q: Let me show you State's Exhibit Number Five for
7 identification purposes and ask you to take a look at
8 that.

9 A: It looked like this one. I mean, I don't know. I
10 mean, it looks like that.

11 Q: That looks exactly like that make of gun?

12 A: Yeah.

13 Q: You can't say with any confidence that that's the
14 gun?

15 A: I couldn't say this was -- no, I couldn't say this is
16 it, but it looks like it.

17 Q: Thank you.

18 MR. HEMBREE: Your Honor, we'd like to offer this as
19 State's Exhibit Number Five at this time.

20 THE COURT: Bear with us just one moment, please.

21 (Whereupon, a Bench conference was held in the
22 presence, but out of the hearing, of the jury.)

23 BY MR. HEMBREE:

24 Q: Ms. Cox, I'm going to withdraw this exhibit and not
25 offer it, not offer it at this time.

1 I'm going to, I'm going to draw your attention to a
2 map that's been marked as State's Exhibit Number Two for
3 identification purposes and ask, taking a look at this map,
4 and at the roads that are marked on this map, this is a
5 county map generated by the county, do you recognize these
6 roads?

7 A: Yes, sir.

8 Q: Indian Hut?

9 A: Yes, sir, Gapway.

10 Q: Gapway, Highmarket, Sirfield, would this map assist
11 you in presenting your testimony to this jury?

12 A: Yes, sir.

13 MR. HEMBREE: Your Honor, we'd like to go ahead and
14 move this map into evidence as State's Number Two at this
15 time?

16 THE COURT: Any objection to State's Two?

17 MS. KNEECE: No, ma'am.

18 THE COURT: State's Two in evidence without
19 objection.

20 (Whereupon, State's Exhibit Number Two [Map - Poster]
21 introduced into evidence and appropriately marked.)

22 BY MR. HEMBREE:

23 Q: And Ms. Cox, I think the best way for me to do this,
24 present this to the jury is to have you come down and kind
25 of just stand in front of them and I'll hold the map. I've

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1 got a little pointer here. Let me have you stand here and
2 face the court reporter like that, and you can use this
3 pointer and show us a couple of the -- I'd like to identify
4 a few of the key locations on this map. Now, at the time
5 on December 3rd, excuse me, December, on August the 3rd of
6 2002 where were you living?

7 A: Right here.

8 Q: Right there at Gapway Road?

9 A: Yes, sir.

10 Q: Okay, and you were living next door to whom?

11 A: Candy Cox.

12 Q: Okay, let me ask you to take this sticker that says
13 Denise Langston residence, 8339 Gapway Road, and place that
14 next to your home where you've identified on this map,
15 right there, okay, a little green dot there, and then I'm
16 going to ask you to take this sticker that's marked, been
17 marked Candy Cox's residence and put it next to her
18 residence if you would do that.

19 (Complies with request.)

20 Q: All right, now, I'd like you to identify where, if you
21 can, where Jody Ward was living on August the 3rd of 2002.

22 A: Right here.

23 Q: That's right there on Sirfield Street?

24 A: Yes, sir.

25 Q: Okay, 183 Sirfield, and if you would mark that with

1 that label that says Jody Ward residence.

2 (Complies with request.)

3 Q: Thank you. Now, tell me about -- do you know -- do
4 you know any locations where Jody Ward had lived in the
5 past?

6 A: He used to live on Deer Springs Loop.

7 Q: Used to live on Deer Springs Loop. How long did he
8 live there? Do you know? Do you recall?

9 A: I'm not sure.

10 Q: All right, did you know where his house was there?
11 Had you been to his home?

12 A: He had showed me, I mean, after we started dating but,
13 I mean, I didn't know before that.

14 Q: I got you. Now, I'd like you to take this sticker
15 that says Deer Springs Loop, former home of Jody Ward, and
16 mark that or place that on the map in the appropriate
17 location,

18 A: Should be right in there.

19 Q: Right in there, okay. Now, you've also testified that
20 on one occasion you were with Defendant Jody Ward and you
21 fired or he fired, I'm sorry, he fired the TEC-9 nine
22 millimeter or TEC-9 handgun you described to us.

23 A: Should've been -- we were coming from Georgetown.

24 Q: Okay.

25 A: So, it was at this stop sign.

1 Q: Okay, at the stop sign that was located right there?

2 A: Uh-huh (affirmative response), at the crossroads.

3 Q: I'll show you State's Exhibit Number Six for
4 identification and ask if you can identify that stop sign.
5 I don't want to show it to the jury yet. I just want to
6 show it to you.

7 A: I, yeah, I don't -- I mean, I don't know particular
8 which one it was but ---

9 Q: Okay, well, then I'm, I'm not going to offer that into
10 evidence, but there was a stop sign that you ---

11 A: Uh-huh (affirmative response).

12 Q: --- that he pulled up on?

13 A: It was right here.

14 Q: How far away was he when he engaged in this target
15 practice? How far away from the stop sign was he?

16 A: Maybe from here to the door over there.

17 Q: So, would you say that's maybe 25 feet?

18 A: Approximately, yeah.

19 Q: Okay, pretty close?

20 A: Yeah.

21 Q: How many shots did he fire at the stop sign?

22 A: A lot.

23 Q: Okay, 10, 20?

24 A: Probably more, yeah.

25 Q: More like 20?

1 A: Uh-huh (affirmative response).

2 Q: Did he have to reload the weapon, too?

3 A: I don't know, I don't know, I just, I mean, I know he

4 ---

5 MS. KNEECE: Your Honor, may I object to the relevancy
6 of this?

7 THE COURT: All right, let me have you come over here
8 and we'll discuss that. You can stand right there. He'll
9 be right back.

10 (Whereupon, a Bench conference was held in the
11 presence, but out of the hearing, of the jury.)

12 BY MR. HEMBREE:

13 Q: Okay, taking you to, again, now that we have the map
14 out, taking you to the night, August the 3rd, about
15 midnight, tell me your travel, your path of travel, after
16 you got the call from Defendant Jody Ward, he said, "Come
17 get me. I'll be on the end of my street" -- had you done
18 that before?

19 A: Yeah.

20 Q: Okay, so, that wasn't such a shock to you?

21 A: No.

22 Q: Okay.

23 A: I left my house and came to crossroads.

24 Q: All right, you came down, you went this way. I guess
25 that's east on Gapway.

1 A: Down Indian -- on Indian Hut.

2 Q: South on Indian Hut.

3 A: Came out on highway -- well Georgetown Highway 521.

4 Q: All right, turn left there?

5 A: And came down to Sirfield and he was standing at the
6 highway.

7 Q: Okay, standing at -- really on -- at Georgetown --
8 what's called Georgetown Highway or Highmarket Street?

9 A: Yeah.

10 Q: And then you took the same path carrying him home?

11 A: Yes.

12 Q: How long a drive is that, I mean, how many miles?

13 A: Eight, 10, I don't know.

14 Q: Is it a quick trip?

15 A: Yeah, it's not very far, I mean.

16 Q: Okay, you don't know how many miles?

17 A: No, I don't know how many miles.

18 Q: All right, please, if you will, take the stand.

19 (Complies with request.)

20 Q: Now, Ms. Cox, you, you testified that he, the
21 Defendant Jody Ward made this statement to you the night of
22 the murder, told you about how it happened, told you what
23 he did with the bodies, told you what he did with the car.
24 Later at some point or that night or some point later he
25 told you what he did with the gun.

1 A: Yes.

2 Q: That he threw it in the creek, then he went back and
3 got it out of the creek.

4 A: And got it.

5 Q: Did he ever tell you, did he ever tell you that
6 anybody else was involved in this murder?

7 A: Never.

8 Q: Hint about it, suggest anyone else?

9 A: Never.

10 Q: When the police first or Sheriff's Office first began
11 investigating this case did they come and talk to you early
12 in the investigation?

13 A: They came and talked to me. I don't remember the date
14 or anything but they came to my house and questioned me and
15 asked me if I knew anything about it and I told them no.

16 Q: And you told them you don't know anything about it?

17 A: Yes.

18 Q: Why did you tell them that?

19 A: Because he had threatened me. He had just left there
20 earlier that day and he told me he would kill me and my
21 kids if I said anything.

22 Q: Now, Ms. Cox, when was the first time the Defendant
23 Jody Ward made any threats to you about you talking about
24 this case?

25 A: The day that he told me about it, the night. He told

1 me that if I said anything that he knew where it would come
2 from, he'd make sure that I went down with him and he'd
3 also kill me and my children.

4 Q: That was the night that he told you ---

5 A: Yes.

6 Q: --- about the whole affair. What did you say to him?

7 A: I didn't know what to say.

8 Q: What was your state of mind when, when he -- after he
9 told you about the murders and then offered these threats?

10 A: I was in shock. I was blown away. I just -- I
11 couldn't believe that he had done something like that.

12 Q: Did you believe that he might hurt you?

13 A: I was scared to death, somebody that I thought I knew
14 and had lived with and he tells me that he killed two
15 people and he would kill me and my kids.

16 Q: Did you think he would?

17 A: At that point, yeah.

18 Q: When you were living there at that point in time on
19 Gapway ---

20 A: Yes.

21 Q: --- was anybody else living there with you other than
22 your children?

23 A: Not at that time.

24 Q: You were by yourself?

25 A: Yes.

1 Q: Three boys, little boys?

2 THE COURT: You need to say yes or no.

3 A: Yes.

4 THE COURT: All right.

5 Q: Now, you just testified that the day the police, the
6 first time the police came to talk with you about this that
7 the Defendant had just left your home?

8 A: Earlier, maybe about a few hours.

9 Q: Were you still dating him at this time in any way?

10 A: No, he had just, I believe that was the same day he
11 had came and got me to drive him to see his brother in
12 prison.

13 Q: Okay.

14 A: And it was a few hours after that when they came by to
15 question me.

16 Q: On that day you said he made yet another threat to
17 you?

18 A: Just, I mean, just about every time I seen him he'd
19 say, "You remember what I said? You know what's going to
20 happen if you say anything."

21 Q: How many times, if you can say, did Defendant Jody
22 Ward offer some sort of threat after the time, after he
23 told you about what happened but before he was arrested?

24 A: Numerous times, just about every time I seen him. He,
25 I mean, he'd just pop by sometime in the middle of the

- 1 night. He'd just ride by, he'd stop. Sometimes he
2 wouldn't stop. He'd just ride by, I mean, and before he
3 left he'd say, "You remember what I said?" He said, "I'll
4 kill you and your kids," he said, "because I don't care."
5 Q: Did you take him seriously on these other occasions?
6 A: Very.
7 Q: But the first time the police talked to you you said,
8 "I don't know anything?"
9 A: Right.
10 Q: Did they talk to you again?
11 A: Yes.
12 Q: What do you tell them the second time?
13 A: I didn't know anything.
14 Q: Okay, you just kind of, "Don't know anything about
15 that, leave me alone." Now, at some point did you agree to
16 wear a wire?
17 A: Yes.
18 Q: Tell us about that.
19 A: I had told them that I would wear a wire, and after I
20 thought about it I got scared and I went and told him that
21 they asked me to wear a wire. So, I mean, he kind of knew
22 that I was going to.
23 Q: And what was his response to all that?
24 A: He thought it was funny.
25 Q: He thought it was funny?

1 A: Yes.

2 Q: Okay, why did he -- did he say why he thought it was
3 funny?

4 A: He just knew what they were trying to do.

5 Q: And what was the plan? What were they trying to do?
6 What did he say?

7 A: They were trying to see if he would say anything about
8 what had happened about the murders.

9 Q: Try to get him to talk to you about it?

10 A: Yes.

11 Q: But you tipped off the -- you tipped him off?

12 A: Yes.

13 Q: Now, at some point -- well, in September, September
14 27th ---

15 A: Yes.

16 Q: --- 2002, the police want to talk to you again?

17 A: Yes.

18 Q: How did -- how was that contact initiated, who started
19 that?

20 A: Well, they -- I believe they came to the house and
21 asked me, they said they had to ask me a few more
22 questions, and I went down there and met them, and I told
23 them everything I knew ---

24 Q: At this ---

25 A: --- but that's -- at that point in time he was locked

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1 up.

2 Q: Okay, at that point in time on September the 27th ---

3 A: They had arrested him.

4 Q: --- they had arrested the Defendant, Jody Lynn Ward?

5 A: Yes.

6 Q: For what, for these murders?

7 A: Yes.

8 Q: Were you aware at that point that the bodies had been
9 located?

10 A: I don't believe I knew at that point that -- I'm not
11 sure. I don't remember.

12 Q: When was the last time you had contact with Defendant
13 Jody Ward before his arrest?

14 A: I think it might have been a few days before he got
15 arrested he came by my house.

16 Q: All right, who all was there?

17 A: Well, it was maybe a few times, maybe within a week.
18 One night he had called my sister-in-law's house. Me and
19 my current boyfriend were in the river, and he had called
20 over there several times she said, and when we got back she
21 had told us to come over there and get something to eat
22 because it was late. We were all sitting at the table and
23 Jody had called, said he wanted to talk to me.

24 Q: Was his, was his tone urgent?

25 A: Yeah, he acted like he really needed to talk to me.

1 It wasn't a few minutes he drove up in the yard, didn't
2 knock on the door or anything, just come on in, sat at the
3 table in between me and my boyfriend, and he was pale as a
4 ghost. He looked like he had been on something.

5 Q: He was pale you say?

6 A: He was white as a ghost.

7 Q: Okay.

8 A: He looked like he was -- had been doing some kind of
9 drugs. He came in there and he had a few words with my
10 boyfriend. He really never even said anything to me. Then
11 he asked me to walk outside with him, he wanted to talk to
12 me, and I told him I couldn't, I wasn't going outside with
13 him and then he got, you know, I could tell he kind of got
14 mad. He left. He called back several times after that and
15 we ended up just cutting the ringer off the phone.

16 Q: But you didn't talk to him, but he continued to call
17 you that same evening?

18 A: Yes.

19 Q: And you just turned the phone off eventually?

20 A: Yes.

21 Q: And he was arrested shortly thereafter?

22 A: Yes.

23 Q: You didn't talk to him after that?

24 A: There was one other time that he came by that I didn't
25 know he was there. I had walked to my sister-in-law's

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1 house one morning. We were fixing to get the kids ready
2 for school. We had just gotten back from the river that
3 night. She was going to take them to school for me. So, I
4 went over there to take her the clothes. I didn't lock my
5 back door. We live side by side. I walked over there in
6 my pajamas, came back, he was standing inside my house. He
7 came in there and told me he was going to kill my
8 boyfriend, told me that if he couldn't have me nobody was
9 going to have me. He wanted me to kick my boyfriend out,
10 get -- let him move back in. I told him no.

11 Q: Did he, did he say anything -- did he offer any other
12 threats regarding your knowledge of this case in that
13 conversation?

14 A: He, before he left, yes.

15 Q: But he did leave?

16 A: Yes, finally.

17 Q: How, how -- in relation to when he was arrested, about
18 how long before his arrest did that meeting occur?

19 A: It wasn't maybe a few days, a week, not, I mean, not
20 long at all.

21 Q: The -- you -- you indicated that you told the whole
22 story, told, talked to law enforcement on September 27th
23 and gave a statement?

24 A: Yes.

25 Q: They videotaped that statement; is that correct?

1 A: Yes.

2 Q: And told you they were videotaping the statement?

3 A: Yes.

4 Q: You've looked at that statement.

5 A: Yes.

6 Q: You've reviewed it. You know, you go along from
7 August the 3rd to September 27th holding on to this. Why
8 did you tell the truth then?

9 A: Because he was locked up and I felt that he couldn't
10 hurt me.

11 Q: Ms. Cox, for this jury and for the record, would you
12 please identify the person in this courtroom that confessed
13 to you the murders of Wilfred Brown and another person,
14 confessed to you that he disposed of the vehicle, confessed
15 to you that this involved a drug rip off and told you that
16 if you didn't -- you told law enforcement he would kill
17 you? Can you identify him in this courtroom?

18 A: (Complies with request.)

19 Q: You're pointing to the Defendant, Jody Lynn Ward?

20 A: Jody Ward.

21 Q: Please answer any questions Defense counsel might have
22 for you.

23 THE COURT: We have come to a good breaking point.

24 I'm going to remind you as I send you back to the jury room
25 just for a quick break do not discuss the case. Please do

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1 not discuss the case amongst yourselves. We will have you
2 back out in the very near future. You may go back at this
3 time. All rise, please.

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

6 THE COURT: You may be seated.

7 Anything from the State prior to--- anything that we
8 need to put on the record or anything out of the presence
9 of the jury prior to coming back from our break? Anything
10 from the State?

11 MR. HEMBREE: Nothing from the State, Your Honor.

12 THE COURT: Anything from the Defendant?

13 MR. LOCKLAIR: We'd just ask that you admonish the
14 witness not to speak with anybody during the break about
15 her testimony.

16 THE COURT: All right, and I'll be glad to do that.

17 You are still on the stand and still giving testimony.
18 Don't discuss your testimony with anyone. We'll put you
19 back up on the stand right after you've had a break. All
20 right, you may step down.

21 Very well. See you back in here in about 10 minutes.

22 ***** OFF THE RECORD *****

23 (On the record.)

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Thank you. You can remain standing I
2 believe if our jury is ready. First of all let me ask, is
3 there anything from the State?

4 MR. BRYAN: No, Your Honor.

5 MR. HEMBREE: No, Your Honor.

6 THE COURT: Anything from the Defendant?

7 MS. KNEECE: No, ma'am.

8 THE COURT: All right, let me get the witness back on
9 the stand. Where is our witness?

10 MS. COX: Right here.

11 THE COURT: Very good. I'm simply going to remind you
12 that you are under oath. Is our jury ready? All right,
13 we're ready for them.

14 (Whereupon, the following takes place in the presence
15 of the jury.)

16 THE COURT: Please be seated. Welcome back, ladies
17 and gentlemen of the jury. We are now in the phase of the
18 cross examination of this witness. We'll begin at this
19 time. Ms. Kneece.

20 MS. KNEECE: Thank you, Your Honor. May it please the
21 Court.

22 CROSS EXAMINATION

23 BY MS. KNEECE:

24 Q: You go by Ms. Langston or Ms. Cox now?

25 A: It's Cox.

Lynn Denise Cox - Cross by Ms. Kneece

1 Q: Ms. Cox, you've met with the Solicitors on this case
2 several times to discuss your testimony; haven't you?

3 A: I think maybe two or three.

4 Q: And specifically relating to what you were going to
5 testify here to court.

6 A: They just questioned me. I mean, it was the same
7 thing I had told them, I mean. They like reviewed, I mean,
8 you know, they were asking me questions and I told them.

9 Q: And you've talked to the police several times, too ---

10 A: Yes.

11 Q: --- about your story?

12 A: Well, they interviewed me a few times and then I made
13 the taped statement.

14 Q: And how many times have you gone over your taped
15 statement?

16 A: Twice.

17 Q: And in your preparation for testimony here today did
18 the Prosecution prepare you how to handle questions from
19 the Defense?

20 A: They just told me to answer honestly and truthfully.

21 Q: And did they discuss with you your inconsistencies in
22 some of your statements and some issues concerning your
23 statements to police?

24 A: I don't really know what you're talking about, I mean.

25 Q: Well, did they go over some issues with the things

1 that you've told police?

2 A: They just asked me the same questions about what I
3 have told them before and ---

4 Q: And Jody is the one who ended the relationship with
5 you; is he not?

6 A: Well, me and him both got in an argument and ---

7 Q: And he left you; didn't he?

8 A: Well, we both got in the argument and he, yes, he
9 left, packed his stuff and left.

10 Q: And he got back with his wife; didn't he?

11 A: Yeah, he went back home to his wife.

12 Q: And Jody would give you money; wouldn't he?

13 A: When we were living together.

14 Q: Pay your light bill, take care of your kids. He would
15 give you money on a regular basis; didn't he?

16 A: Most of the time he wasn't working. I was working.

17 Q: He was -- he wasn't crabbing at the time?

18 A: I mean, he, he really wasn't working when we were
19 together.

20 Q: And he would give you marijuana; wouldn't he?

21 A: Yeah, on occasions, yes.

22 Q: And you would call him and ask him for it; wouldn't
23 you?

24 A: Not really. He most of the time come by and bring it
25 if he had one. He'd come by and he'd smoke it.

1 Q: Do you remember the first time you were interviewed in
2 regards to this case?

3 A: Yes.

4 Q: And what date was that?

5 A: I don't remember a date.

6 Q: Would August 10th sound about right?

7 A: I'm not sure of the date.

8 Q: And how about the time they came to your house? I
9 mean, this is pretty significant. They come to your house
10 to talk to you on August 10th?

11 A: The first time that I talked to them, yes, they came
12 to my house.

13 Q: And what did you tell law enforcement the first time
14 you talked to them?

15 A: That I didn't know what they were talking about.

16 Q: And you told them -- at that time you only told them
17 about a trip that you had just taken to Ridgeland.

18 A: Yes.

19 Q: With Jody?

20 A: Yes.

21 Q: The first time you met with law enforcement did you
22 tell them that Jody had threatened to kill you or your
23 family?

24 A: Not at that time.

25 Q: And how long does it take to get to Ridgeland?

Lynn Denise Cox - Cross by Ms. Kneece

- 1 A: I don't remember, maybe a few hours. I don't know.
- 2 Q: Three hours?
- 3 A: Approximately, maybe.
- 4 Q: Do you remember which way you all went?
- 5 A: No, because that's the first time I had ever been. I
- 6 mean, I didn't know where I was going.
- 7 Q: I mean, do you -- you don't remember? You were ---
- 8 A: I mean, I don't never have -- I mean, I don't know how
- 9 exactly to get there. That's the first time I had ever
- 10 been there.
- 11 Q: It is back roads or highways?
- 12 A: I want to say maybe -- I don't know. We went next
- 13 Columbia or something. I don't -- Charleston, I don't
- 14 know. I don't remember.
- 15 Q: You remember the times of phone calls on a specific
- 16 day, Ms. Cox, but you can't remember what the road was like
- 17 when you drove to Ridgeland?
- 18 A: I had never been there. I don't, I mean, I don't
- 19 recall.
- 20 Q: Were you asleep when you drove?
- 21 A: No. We were smoking dope the whole way there. I
- 22 don't remember.
- 23 Q: When was the second interview that you had with law
- 24 enforcement? Wasn't that shortly after your Ridgeland
- 25 trip? Does the 13th sound familiar to you?

Lynn Denise Cox - Cross by Ms. Kneece

- 1 A: I want to say the first time I talked to them it was
2 the same day that I took him there.
- 3 Q: And then you met with them at the Sheriff's Department
4 ---
- 5 A: After that.
- 6 Q: --- three days later.
- 7 A: Uh-huh (affirmative response).
- 8 Q: And what did you tell them during this interview?
- 9 A: I don't believe I told them anything at that time
10 either.
- 11 Q: And, in fact, you told Gary Todd that the last time
12 you talked to Jody was at 12 o'clock that afternoon; was it
13 not, the afternoon of the 3rd? You don't recall telling
14 Gary Todd that?
- 15 A: At 12 o'clock that day, I mean, I might have talked to
16 him at 12 o'clock, but I know the last time I talked to him
17 was at midnight.
- 18 Q: But you don't recall telling law enforcement on the
19 13th of August that the last time you talked to Jody was at
20 12 o'clock in the afternoon on the 3rd.
- 21 A: Ma'am, that's almost been two years ago.
- 22 Q: You called him that day as well; did you not?
- 23 A: What day?
- 24 Q: The day of August 3rd.
- 25 A: I might have.

1 Q: Did you go over phone records with the Solicitor's
2 Office or law enforcement?

3 A: They asked me if I knew if he had phone numbers on
4 there and I glanced at them, but I mean, I didn't sit there
5 and look at the times or anything like that.

6 Q: So, you went over phone records in regards to this
7 case; did you not?

8 A: Well, they asked me if I knew some phone numbers on
9 it.

10 Q: But you hadn't done that at the time you had the
11 interview on August 13th; did you? So, you didn't know
12 that they knew that you had talked to him more that day.

13 A: No, I don't reckon.

14 Q: So, when you told law enforcement, told Gary Todd that
15 you had talked to him and the last time you talked to him
16 at 12 o'clock that day you lied; didn't you?

17 A: I don't even know. I mean, I couldn't tell you what
18 time I talked to him. That's been almost two years.

19 Q: Two days after the August 13th interview, 2002, you
20 had some worthless check charges; did you not?

21 A: Yes.

22 Q: And you were arrested and booked?

23 A: I picked my check up, checks up. I paid for them.

24 Q: Did -- but you had a bond set by Judge Pyatt?

25 A: Well, they didn't arrest me. I just went in there and

1 signed the papers, paid the money and left.

2 Q: Is there a booking report in regards to these checks?

3 A: I don't know.

4 MS. KNEECE: May I approach the witness?

5 THE COURT: Yes.

6 BY MS. KNEECE:

7 Q: Do you recognize that?

8 A: I remember signing a paper in front of the judge, and
9 I paid the money and that was it, I mean.

10 Q: Did you have a bond set?

11 A: I don't know if there was a bond. I mean, I think it
12 was I just signed a paper. Maybe it was a PR bond or
13 something. I don't know.

14 Q: But you had to go to the police department in regards
15 to worthless checks?

16 A: I went to the Sheriff's Department, paid the money,
17 signed the paper in front the judge and that was it.

18 Q: Was anybody from law enforcement related to this case
19 present with you when the papers were signed, as you say?
20 Was Gary Todd there, Lieutenant Hampton?

21 A: No, I went in front of Judge Pyatt, and I think it was
22 Mr. Heyward, was that his name, the guy that's over the
23 warrants.

24 Q: And did anybody related to this case discuss your
25 check charges with you?

1 A: I believe they told me I had some checks down there.

2 Q: So, at the time you were talking to them they knew and
3 you knew that they were aware of these worthless check
4 charges; correct?

5 A: Uh-huh (affirmative response).

6 Q: And what happened to those charges? They just
7 disappear, just went away?

8 A: No, I paid the money and they set a PR bond.

9 Q: When was the next time you met with law enforcement in
10 regards to this case?

11 A: I don't know no specific dates.

12 Q: Would the 19th sound familiar?

13 A: I'm not sure.

14 Q: And what did you discuss during this interview with
15 Gary Todd? Is this the time that you told him about his
16 hobbies, what he liked to eat, he had three children? Did
17 you discuss all that with him at that point?

18 A: I could have. I'm not sure.

19 Q: And you went down to the Sheriff's Department for that
20 interview; did you not?

21 A: I'm not sure. I probably did.

22 Q: You didn't discuss this part with the Prosecutors; did
23 you before you testified today?

24 A: I mean I don't remember specific dates I went down
25 there and talked to them. I know I went down there a few

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1 times and ---

2 Q: Did you tell them on this day that Jody had threatened
3 to kill you and your family?

4 A: I told them everything the day that they taped the
5 statement because he was arrested at that time and I knew
6 it.

7 Q: And when was -- do you remember -- you met with them
8 the next day on the 20th to wear a wire. That's the day
9 you wore the wire; correct?

10 A: Okay, well.

11 Q: So, you're meeting back and forth with law
12 enforcement. You're getting to know these people. You've
13 now been with them four times at least, and did you tell
14 them at this point that Jody had threatened you and
15 threatened to kill your children on August 3rd?

16 A: At the time I wore the wire I agreed to wear it but
17 after I thought about it I got scared because I was scared
18 if he found out or noticed something on me that I didn't
19 know what was going to happen.

20 Q: But you wore the wire, you met with him?

21 A: Yes, yes, I did.

22 Q: And you got word to Jody that you were going to wear a
23 wire; correct?

24 A: Yes, because I got scared.

25 Q: So, he knew at this point that you had been involved

1 in law enforcement; did he not?

2 A: Well, I told him they had asked -- he had asked me to
3 wear a wire.

4 Q: Did you tell law enforcement at this point, "Now Jody
5 knows I'm involved with you all. I'm scared to death.
6 He's threatened to kill me and my family?" Did you tell
7 them that?

8 A: No, because I had told him about the wire.

9 Q: But you also told him you were involved in law
10 enforcement at this point.

11 A: Well, he knew they had talked to me.

12 Q: And you weren't scared then that he would know that
13 you're talking to them and you're going to say something?

14 A: Well, I told him about the wire. So, I kind of felt
15 like he wasn't going to do anything at that point.

16 Q: Tell me how this wire incident came about. Law
17 enforcement came to you and suggested you wear a wire.

18 A: No, they just asked me if I would agree to wear it and
19 I told them yeah, but the more I thought about it the
20 scareder [sic] I got.

21 Q: And they talked to you about what questions to ask
22 him and what information they wanted to get from the tape;
23 correct?

24 A: They just told me to talk to him and see if he would
25 mention anything about it.

1 Q: Now, during the wire incident Jody tells you several
2 times, "Stop calling me. Leave me alone"; does he not?

3 A: Probably so because he knew I was wearing a wire.

4 Q: And -- but he's talking about, "Hey, look, I'm trying
5 to get in touch with -- stay with my family. Quit calling
6 me."

7 MR. HEMBREE: Your Honor, I have to object. This is
8 hearsay.

9 MS. KNEECE: It's what the Defendant said.

10 MR. HEMBREE: Yeah, it's ---

11 THE COURT: You want to come over here?

12 (Whereupon, a Bench conference was held in the
13 presence, but out of the hearing, of the jury.)

14 BY MS. KNEECE:

15 Q: And you had been calling Jody and calling him before
16 the wire incident; correct? Called him at work, called him
17 on his cell phone?

18 A: Where did he work?

19 Q: Crabbing.

20 A: How would I call him at work?

21 Q: I'm asking you. You kept calling him and calling him;
22 didn't you? Well, you were having contact with him. You
23 were calling him; were you not?

24 A: He was calling me.

25 Q: But you were calling him up ---

1 A: He would go to Junior Chavis's house and call me, yes,
2 uh-huh (affirmative response).

3 Q: And you were, you were crying the day of the wire
4 incident; weren't you?

5 A: Yes, I was because after I done it.

6 Q: You told him you loved him; didn't you?

7 A: I wasn't crying when I was with him. I cried after I
8 did it.

9 Q: You weren't crying on the tape?

10 A: I don't believe so. I was crying after I left there.

11 Q: And you told him several times you loved him, you
12 loved him; did you not, when you saw him?

13 A: I believe he told me the same thing, too.

14 Q: Was law enforcement -- had they threatened to take
15 your children away?

16 A: Law enforcement?

17 Q: Yeah, did you not state on the wire that law
18 enforcement had been telling you, "that they're threatening
19 to take my children away"?

20 A: I don't remember nothing about that.

21 Q: You don't recall whether or not law enforcement ever
22 talked to you about taking your children away? You're
23 saying you don't remember that?

24 A: About taking my children away?

25 Q: And you don't recall making that statement to law

1 enforcement?

2 A: I don't recall that.

3 Q: When the meeting with law enforcement was over did
4 they act like they knew you had told Jody in advance?

5 A: After?

6 Q: Yeah, after you get through with the wire incident,
7 you had met Jody, when you go back to give law enforcement
8 the wire, whatnot, did they act like they knew that you had
9 told Jody?

10 A: Not to my knowledge they didn't.

11 Q: Did they say, "Hey, this thing is rigged?" You know,
12 so, you fooled them; didn't you?

13 A: Well, I mean, when I got out the truck I started
14 crying and they just asked me, I mean, I think they asked
15 me if I was all right and I just says yeah and walked off.

16 Q: So, they believed it was a legitimate issue, I mean,
17 an incident where you were working with them but you
18 weren't; were you, you had already gotten word to Jody?

19 A: Yes, because I was scared.

20 Q: But you weren't working with law enforcement. So, you
21 fooled them; didn't you?

22 A: I reckon you could say that.

23 Q: When did law enforcement tell you that they knew you
24 had gotten word to Jody?

25 A: I don't remember.

1 Q: And they weren't happy about it; were they?

2 A: They just told me they knew that I had tipped him off.

3 Q: You're saying that's all they, that's all they did?

4 A: Well, I remember them telling me that they knew I had

5 tipped him off.

6 Q: And they were upset that you had tricked them; weren't

7 they?

8 A: Well, I reckon they were.

9 Q: And in fact, the next time you met with law

10 enforcement for your taped statement on September 27th,

11 '02, there was a warrant for obstruction of justice; was it

12 not?

13 A: Yeah, they told me they had a warrant.

14 MS. KNEECE: And may I approach the witness?

15 THE COURT: Yes, you may.

16 BY MS. KNEECE:

17 Q: Do you recognize this?

18 A: Yeah.

19 Q: And what is that?

20 A: It's a warrant for obstruction of justice.

21 Q: And is that a copy of what you saw on September 27th?

22 A: It looks like it.

23 Q: And it's typed up; is it not?

24 A: Yep, it's typed up.

25 Q: Is it signed by a judge?

Lynn Denise Cox - Cross by Ms. Kneece

1 A: Looks like Isaac Pyatt.

2 Q: Signed by the investigator?

3 A: Yes.

4 Q: Got your name on it?

5 A: Yes.

6 Q: This was a warrant for you? What's the penalty for
7 obstruction of justice?

8 A: I couldn't tell you.

9 Q: You don't know if it's ten years? You never -- law
10 enforcement never told you that?

11 A: They might have told me but I don't know.

12 Q: You don't remember a warrant with your name typed on
13 it facing 10 years?

14 A: I remember them telling me I had a warrant for
15 obstruction of justice.

16 Q: Telling you? Did they show it to you on 9-27?

17 A: I remember seeing it on the desk.

18 Q: You remember seeing it on the desk. How long were you
19 present the day you got this warrant sitting there and the
20 day of your taped interview? What time did you get there
21 for your interview? 11:30 sound about right?

22 A: I was fixing to say maybe about midday. I'm not sure.

23 Q: 11:30, do you remember what time you left that day?

24 A: I was there a few hours.

25 Q: Five hours sound about right?

1 A: Might have been.

2 Q: So, you were there with them for five hours. What
3 point in your being there for five hours did they tape your
4 statement?

5 A: It wasn't very long after I was there I don't believe.

6 Q: You don't recall what time, that the taping of your
7 statement started at four o'clock in the afternoon?

8 A: I don't remember a time.

9 Q: So, if it was at four o'clock in the afternoon you had
10 been there for a while; hadn't you?

11 A: I must have been.

12 Q: What did you do during that time?

13 A: A lot of the time I was there I sat there and cried.

14 Q: And you were talking to law enforcement.

15 A: I went to the bathroom about five or six times because
16 I was so upset.

17 Q: And they were talking to you. I mean, you've got many
18 hours in here before your taped statement.

19 A: Yeah, but I talked to them and told them what had
20 happened before they taped it.

21 Q: So, when you talked to them they had taken notes and
22 everything about your statement; correct? They've gone
23 over your statement with you before it was taped; did they
24 not?

25 A: Well, they wrote down what I told them.

Lynn Denise Cox - Cross by Ms. Kneece

1 Q: And so, you had rehearsed before your taped statement
2 what you had already said?

3 A: Well, I really didn't have to rehearse it. I knew
4 what had been said to me.

5 Q: Yet you can't remember some of the things you said on
6 there.

7 A: Well, it's been two years. I can't remember exact
8 dates and times.

9 Q: So, you're sitting there getting ready for your taped
10 interview and this obstruction of justice warrant. So,
11 they knew you had tricked them before. You knew by the
12 time of the taped interview what they wanted to hear;
13 didn't you?

14 A: Well, at that time I felt like I needed to get it off
15 of my chest because he was locked up and I felt like I was
16 safe then for me and my kids and I knew it was the right
17 thing to do.

18 Q: You said during your taped statement and you testified
19 here today that he had -- when Jody had talked to you he
20 said he had given the money to Wilfred to give to somebody?

21 A: Uh-huh (affirmative response).

22 Q: And he didn't know the name of who that somebody was?

23 A: Well, I don't know if he knew the name but I didn't
24 know the name. I wasn't there.

25 Q: And that Wilfred went to go give the money to this guy

1 to get the weed; isn't that what you said?

2 A: Yes.

3 Q: But you went on to say in your taped statement that
4 they took the money and he didn't get any weed. Do you
5 remember saying that?

6 A: Well, Wilfred and whoever the guy was.

7 Q: So, it was two people who had taken his money?

8 A: Well, whoever Wilfred give the money to he was
9 supposed to get the weed from him. So, I said they.

10 Q: And you said you dated Jody, you spent time together
11 and he lived with you and whatnot. Surely you knew about
12 his drug deals.

13 A: Yes.

14 Q: And he told you how things went down; how, you know,
15 he'd come back from them. Isn't it -- wouldn't it be
16 normal for Jody to want to see the weed before he paid the
17 money for it?

18 A: Well, I had never -- I didn't know this person he was
19 dealing with now. I've heard him talk about making deals
20 with him because Jody said he had been locked up and hadn't
21 been long got out, and I've heard him talking about making
22 deals with him. So, I mean, I didn't know nothing about
23 this person, but I mean.

24 Q: But wasn't it typical for Jody, normally he wanted to
25 see the weed before he gave anybody his money?

1 A: Well, I mean.

2 Q: You know the way he worked. He wouldn't give them his
3 money till he saw the weed; would he?

4 A: Well, I wasn't there. So, I mean, I can't tell you if
5 ---

6 Q: But normally that's what he'd do?

7 A: I, I don't know.

8 Q: You told law enforcement that Jody said he was going
9 to get his money back or he was going to kill them. That's
10 what you told them, and Gary Todd asked you, "Do you think
11 that that was odd for him to say that or" -- do you
12 remember responding, "I didn't really think anything about
13 it"?

14 A: I didn't think that he would actually kill somebody,
15 no.

16 Q: So, you didn't think anything about it?

17 A: I didn't actually think that he would kill somebody.

18 Q: And you're stating, you also testified that Jody is
19 supposedly making these statements riding around with
20 Wilfred in the car?

21 A: That's what he said.

22 Q: Now, you told Gary Todd during the interview that the
23 TEC-9, that Jody had shot the TEC-9 months before this;
24 correct?

25 A: Yeah, he shot it.

1 Q: And you don't know if he -- did he -- he didn't
2 mention the gun that day; did he, on August the 3rd?

3 A: I don't remember him mentioning the gun that day. He
4 might have. He might not. I don't remember.

5 Q: But you've never told law enforcement anything about
6 him mentioning a gun that day; did you?

7 A: That's what I'm saying. I don't remember if he told
8 me about it that day or if it was later.

9 Q: Well, surely law enforcement asked you if he mentioned
10 that?

11 MR. HEMBREE: Your Honor, I've got to object. She's
12 not letting her answer the question. She's interrupting
13 the witness.

14 THE COURT: Go ahead and let her answer.

15 Q: What was your question?

16 THE COURT: You want to ask again? You know the
17 question?

18 Q: Did you tell law enforcement, did you ever tell law
19 enforcement that he mentioned a gun that day?

20 A: When he told me about what happened on August the 3rd?

21 Q: Yeah.

22 A: That's what I'm saying. I don't remember if he told
23 me that day or if it was later he told me that day, I mean,
24 another day that he told me about the gun.

25 Q: Do you recall when the first time is that you had

1 mentioned to law enforcement what day Jody had mentioned to
2 you about the gun?

3 A: I just said I don't recall exactly when he mentioned
4 to me about the gun. I just remember him telling me where
5 he put it and then he told me he went back and moved it.

6 Q: Do you remember meeting at the Sheriff's Department in
7 February of 2003 and telling them at that interview about
8 the gun for the first time?

9 A: Probably so.

10 Q: And did this information just come to you at this
11 point or had you been in contact with Jody or what?

12 A: Well, I have been -- I've never had to go through an
13 experience like this, and I have been to the doctor. I
14 have had to been put on some medicine for depression and
15 everything else because of this. I mean, it's not
16 something that happens every day.

17 Q: And they interviewed you as possibly being involved in
18 this; did they not?

19 A: They might have could. I mean, I don't know.

20 Q: You don't know?

21 A: They asked me if I had ---

22 Q: They charged your best friend; didn't they?

23 A: Well, it's my sister-in-law.

24 Q: Your sister-in-law.

25 A: Uh-huh (affirmative response).

Lynn Denise Cox - Cross by Ms. Kneece

1 Q: She's charged in this case; isn't she?

2 A: Yes.

3 Q: So, you're aware that that's a possibility; are you
4 not, and you told law enforcement that every time Jody saw
5 you he threatened to kill you?

6 A: He would stop by and he made sure before he left.

7 Q: And you've been involved with law enforcement many
8 times in the past; haven't you? You've filed reports,
9 you've filed five or six reports, and you've been on the
10 other side, I mean, you've been a complainant, and I mean,
11 you deal with law enforcement a lot, Ms. Cox; don't you?

12 A: I wouldn't say a lot.

13 Q: How many would you say?

14 A: I don't know.

15 MS. KNEECE: If I could beg the Court's indulgence?

16 BY MS. KNEECE:

17 Q: I mean, you've, you've filed -- surely you would know
18 if you filed reports; correct?

19 A: I filed a few.

20 Q: What's a few, Ms. Cox?

21 A: I don't know the exact amounts..

22 Q: Have you ever filed any where you were a victim of
23 simple assault?

24 MR. HEMBREE: Your Honor, I'm going to have to object
25 to the specific nature of that. If she wants to ask her

1 how many or would you be surprised that on such and such a
2 date you filed one, I've got no problem with that, but as
3 far as going into specific areas of conduct the rules ---

4 THE COURT: Do you want to rephrase?

5 Q: Would you be surprised if you were a complainant on
6 five police reports and a victim on four? So, a total of
7 nine times you've been involved with the police, with the
8 police, you, yourself? Would that surprise you?

9 THE COURT: You need to answer it out loud.

10 A: I don't know how many times.

11 Q: But would that surprise you?

12 A: I reckon.

13 Q: Is that a yes or a no?

14 A: I don't know how many times.

15 MS. KNEECE: Your Honor, if I could to refresh her
16 memory?

17 THE COURT: I'll allow you to approach.

18 MR. HEMBREE: Well, Your Honor, wait a minute. She
19 answered, "I reckon." When she said was she surprised she
20 said, "I reckon." That's a, where I come from that's a
21 yes.

22 THE COURT: It sounded like an, "I don't know," to me.
23 You want to ask it again and see what she's got to say? I
24 don't want to put words in her mouth.

25 BY MS. KNEECE:

1 Q: Would you be surprised if five different times you
2 were a complainant with law enforcement, meaning you go
3 down there and file a report or -- and four different times
4 you were a victim in the case, meaning a report was taken,
5 these are actual incidents, nine different times from 1999
6 to 2003? Would that surprise you?

7 A: I reckon it does.

8 Q: It does surprise you? You're not aware of all those
9 times? You don't remember?

10 A: I know about some of them, but I mean.

11 Q: You wouldn't remember, you don't remember back in 1999
12 you were a victim of burglary in that case?

13 A: Yes, I remember that.

14 Q: You remember in 2001 filing a report for intimidation,
15 trespass and telephone calls? Do you remember that report?

16 A: Yes, I remember that.

17 Q: You remember a 2002 report where you filed a report
18 for simple assault, disorderly conduct, June of 2002?

19 A: I don't remember that one but ---

20 Q: Do you remember July of 2002 filing a report for
21 intimidation where you were a victim on that one?

22 A: Yes.

23 Q: And filing another report June 18th of 2003 for
24 intimidation?

25 A: I don't, I don't remember -- I don't ---

1 Q: You don't remember going down to the police station
2 and filing that report?

3 A: I'd have to look at it to remember which one you're
4 talking about or what it is about, I mean.

5 Q: You remember being a victim of larceny? You remember
6 being involved in an incident concerning a larceny, any
7 theft or anything, filing that report?

8 A: Well, there were a few times I filed a report of some
9 things got stolen.

10 Q: And you filed a report back in November of 2003 for
11 assault and battery of a high and aggravated nature;
12 correct? That's just this past November?

13 A: November?

14 Q: You don't recall that?

15 MS. KNEECE: If I could approach the witness, please?

16 THE COURT: Yes.

17 BY MS. KNEECE:

18 Q: Do you recognize that?

19 A: Yes, I remember it now. I didn't know which, I didn't
20 think it was -- that was.

21 Q: So, it refreshed your memory. So, you remember that
22 one?

23 A: Yes, I remember that now.

24 Q: And you've been listed as a Defendant on some reports
25 as well; correct?

1 A: Yes.

2 Q: So, you were involved with law enforcement a good bit.

3 I mean, 1999, that's nine different incidents. I mean, you

4 know them.

5 A: I don't like really know them, but I mean, if there's

6 something that happens then you file a report.

7 Q: You call them. That's right. So, you're comfortable

8 with calling law enforcement; are you not?

9 A: Well, if something happens and you're a victim of

10 something that's what you're supposed to do.

11 Q: You took the trip with Jody to Ridgeland on what day?

12 Was that the 9th?

13 A: I don't know the date.

14 Q: And he had threatened you the first time you say on

15 August the 3rd; correct?

16 A: Yes.

17 Q: And he threatened to kill you and your children?

18 A: Children, yes.

19 Q: And you stated you were scared, absolutely, I mean

20 you'd been threatened?

21 A: Yes.

22 Q: Yet on the 9th you got in a car with him and drove

23 three hours to Ridgeland; didn't you?

24 A: Yes, because he kept asking me over and over and over

25 to take him.

Lynn Denise Cox - Cross by Ms. Kneece

1 Q: And was anybody else in the car?

2 A: No.

3 Q: Just you and Jody.

4 A: Just me and him.

5 Q: And you don't remember if it's the back woods, back by
6 Kingstree to get to Ridgeland?

7 A: I don't know. I mean, I've never been there. That
8 was the first time I had ever been there.

9 Q: And you all got back late that night.

10 A: It was kind of late. It was dark. I remember it was
11 dark.

12 Q: Around midnight; isn't that right?

13 A: I remember it was kind of late. I mean, I don't know.

14 Q: Do you remember telling law enforcement it was around
15 midnight?

16 A: It might have been. I just know it was late. It was
17 dark.

18 Q: So, you're telling the jury that you rode three hours
19 to Ridgeland and three hours back in a car with Jody Ward
20 by yourself late at night and he had threatened to kill you
21 and your children.

22 A: Well, he came by my house several times, also, and did
23 the same thing.

24 Q: And you -- again, after you'd been threatened you get
25 in a car with Jody by yourself, just you two, late at

1 night, back roads with a man who you say had threatened to
2 kill you and your children several times?

3 A: Yes, he did.

4 Q: Do you know if anybody else had been charged, you
5 yourself know if Jody Owens was charged in regards to this
6 case?

7 A: I don't know.

8 Q: Do you know if he -- if Jody gave the gun that you saw
9 him with back to Jody Owens; do you know that?

10 A: I have, I mean, I don't know of that.

11 Q: You don't know at the time of August 3rd, do you, that
12 Jody still had that TEC-9; do you?

13 A: Well, after he told me what had happened, a while
14 later he said that that was the gun that he got rid of in
15 Greens Creek and also went back and got it.

16 Q: You didn't tell law enforcement that until February
17 11th; did you of 2003?

18 A: I don't know the date I told them that.

19 Q: You didn't -- you've never told law enforcement that
20 he had a gun on that day; did you?

21 A: I told them that he had a gun.

22 Q: You told law enforcement that he had a gun prior to
23 ---

24 A: They asked me if I had ever seen him with a gun.

25 Q: --- February 11th.

1 A: And I told them I had seen him with that black TEC-9.

2 Q: Let me be real clear. On August 3rd, did you ever
3 tell law enforcement that he had a gun that day?

4 A: I don't remember what day it was I told them that he
5 had -- I mean ---

6 Q: And you don't know if he had given that gun back to
7 Jody Owens months before that; do you?

8 A: Well, if he told me after he said that he killed those
9 two boys that that was the gun he got rid of so how would
10 he have given it back to him?

11 Q: You came up with new information in February 11th of
12 2003 after your friend had been arrested; hadn't you, your
13 cousin or sister-in-law? That's when you first mentioned
14 the gun; isn't it?

15 A: I don't remember when I mentioned the gun.

16 Q: You don't recall. I mean, surely they asked you
17 several times about the TEC-9 during your interview in
18 September?

19 A: And I told them I had seen them -- had seen him with a
20 gun.

21 Q: Months before, but you don't mention anything about
22 August 3rd and a gun until February 11th, 2003, after Candy
23 Cox has been charged; isn't that correct?

24 A: I don't know when I mentioned it.

25 MS. KNEECE: If I could beg the Court's indulgence,

1 please?

2 Nothing further, Your Honor.

3 THE COURT: Redirect.

4 MR. HEMBREE: Nothing on redirect, Your Honor.

5 THE COURT: You may step down.

6 MR. HEMBREE: The State calls Kevin Cooper to the
7 witness stand.

8 Your Honor, I'd ask that this witness -- she was just
9 looking at me like if can she go. I'd ask that this
10 witness be excused.

11 THE COURT: Wait just one moment. Any objection to
12 this witness being released?

13 MR. LOCKLAIR: No objection from the Defense.

14 THE COURT: You're free to go.

15 AT THIS TIME THOMAS KEVIN COOPER WAS CALLED TO THE STAND,
16 DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

17 THE CLERK: Please be seated. Please state your full
18 name for the record.

19 MR. COOPER: Thomas Kevin Cooper.

20 DIRECT EXAMINATION

21 BY MR. HEMBREE:

22 Q: Mr. Cooper, where do you live, sir?

23 A: 231 Gibson Road.

24 Q: Here in Georgetown County?

25 A: Yes, sir.

Kevin Cooper - Direct by Mr. Hembree

1 Q: How long have you lived in Georgetown County?

2 A: My whole life.

3 Q: And where did you go to school?

4 A: Georgetown High.

5 Q: All right, graduate?

6 A: Yes, sir.

7 Q: When did you graduate high school?

8 A: '96.

9 Q: So, how old are you now?

10 A: 26.

11 Q: 26 years old. Do you -- are you acquainted with the
12 Defendant in this case, Jody Ward?

13 A: Sir?

14 Q: Are you acquainted, do you know the Defendant in this
15 case, Jody Ward?

16 A: Yes, sir; yes, sir.

17 Q: How long have you known him?

18 A: I'd say about ten years, something like that.

19 Q: And how would you describe your relationship with him?

20 A: We've always been friends.

21 Q: Still friends?

22 A: Yes, sir.

23 Q: Okay, you don't have any hard feelings toward him
24 about anything.

25 A: No, no.

1 Q: Mr. Cooper, I want to take you back to the time frame
2 of August, early August 2002, and do you also -- are you
3 acquainted with a person by the name of Wilfred Brown?

4 A: Yes, sir.

5 Q: How do you know -- how did you know Mr. Brown?

6 A: I went to school with him.

7 Q: Where?

8 A: In Georgetown.

9 Q: Did the Defendant go to school with you at Georgetown
10 High as well?

11 A: No, sir, he was a little bit ahead of me.

12 Q: He was ahead of you?

13 A: Yes, sir.

14 Q: Did he go to Georgetown High School? Was he -- do you
15 know if he went there?

16 A: I think, yes, sir.

17 Q: He's just a little older than you?

18 A: Right.

19 Q: I got you. So, he graduated before you did?

20 A: Yes, sir.

21 Q: And then Wilfred Brown was he in your class or was ---

22 A: Yes, sir, we're the same year.

23 Q: The same year. Were you, were you friends with
24 Wilfred Brown?

25 A: Yes, sir.

1 Q: Again, taking you back to early August of 2002 did you
2 have occasion to see Defendant Jody Ward and Wilfred Brown
3 together?

4 A: Yes, sir.

5 Q: If you would tell this jury the circumstances of that
6 meeting. How did you get -- where, where did it happen?

7 A: Well, I was on my lunch break. It was on a Saturday,
8 and I was at Jody Owens's house.

9 Q: Okay, now, what ---

10 A: He ---

11 Q: --- let me stop you. What kind of work do you do?

12 A: Heating and air.

13 Q: And heating and air.

14 A: Yes, sir.

15 Q: So, you install them, work on them, what do you do
16 with them?

17 A: Both, install them and work on them, troubleshoot
18 them.

19 Q: And you were doing that kind of work back in August of
20 2002?

21 A: Yes, sir.

22 Q: You indicated that it was a Saturday?

23 A: Yes, sir.

24 Q: Now, you were on and -- but you -- you work on
25 Saturdays?

- 1 A: Yes, sir.
- 2 Q: All right, tell -- continue. You're on, you said
- 3 you're on your lunch break. What happened next?
- 4 A: Well, I went to my mama's to eat and Jody Owens lives
- 5 next door and I went over there because we were friends and
- 6 we was just hanging out.
- 7 Q: Now, tell us, tell us who Jody Owens is.
- 8 A: He's just a friend of mine. We grew up together,
- 9 lived -- neighbors.
- 10 Q: Now, to your knowledge is he also friends with the
- 11 Defendant, Jody Ward?
- 12 A: Yes, sir.
- 13 Q: To your knowledge is he also friends with Wilfred
- 14 Brown?
- 15 A: Yes, sir.
- 16 Q: So, all of you all knew each other?
- 17 A: Oh, yeah.
- 18 Q: Went to eat at your mom's house. About what time of
- 19 the day was it?
- 20 A: Around, around noon.
- 21 Q: Could it have been 11?
- 22 A: It could have been anywhere from 11 to one. That's
- 23 usually when we take lunch.
- 24 Q: Some time between 11 and one?
- 25 A: Yes, sir.

1 Q: When you went over to Jody Owens's house who was
2 there?

3 A: Just Jody.

4 Q: What was he doing?

5 A: He was painting his roof, putting a seal coat on his
6 trailer.

7 Q: .Okay, and how long were you there before -- well, did
8 anybody else arrive at the house?

9 A: Jody and Wilfred came up.

10 Q: About how long were you there before they came up?

11 A: I was there approximately ten minutes before they got
12 there.

13 Q: Now, where were you in the house or outside the house
14 when Jody Ward and Wilfred Brown arrived?

15 A: I was on the front porch and Jody was on the roof.

16 Q: Jody Owens?

17 A: Right.

18 Q: Okay, better make that ---

19 A: Yeah.

20 Q: --- better keep that clear for us. Do you recall what
21 vehicle they arrived in?

22 A: No, sir.

23 Q: Now, in a previous statement, you've given a previous
24 statement to law enforcement?

25 A: Yes, sir.

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1 Q: You indicated that that vehicle was a red Firebird?

2 MS. KNEECE: Objection, Your Honor, to leading,
3 objection.

4 MR. HEMBREE: I'll ask it, I'll ask it a different
5 way, Your Honor.

6 THE COURT: Sustained, disregard that question.
7 Rephrase.

8 MR. HEMBREE: Thank you, Your Honor.

9 BY MR. HEMBREE:

10 Q: In that previous statement what vehicle did you
11 indicate the Defendant was driving along with Wilfred
12 Brown?

13 A: I said the Firebird.

14 Q: You said a Firebird?

15 A: Right.

16 Q: All right, but you're saying today that you don't
17 know.

18 A: I mean, I'm not positive. I just saw him driving it
19 all the time. I knew he drove a red Firebird. So, I just
20 assumed that's what they was driving.

21 Q: So, you're not really sure what they were driving?

22 A: No, sir.

23 Q: Now, was there anybody else with them at that point in
24 time when they arrived ---

25 A: No, sir, just them two.

1 Q: --- at the house? Could there have been anybody else
2 with them?

3 A: I guess, I didn't see nobody.

4 Q: Okay, did you actually see them pull up?

5 A: Well, they drove up behind us and whenever I heard the
6 door shut I turned around and saw them getting out.

7 Q: And who was driving?

8 A: Jody.

9 Q: And Wilfred Brown in the passenger seat?

10 A: Yes, sir.

11 Q: Where did they go after they arrived?

12 A: They come up to the porch where I was at.

13 Q: And did you have conversation with either or both of
14 them?

15 A: With both of them.

16 Q: What was Wilfred Brown's general attitude and
17 demeanor?

18 A: Well, he was, you know, he was laughing and joking
19 around and I ain't seen him in a long time and he come up
20 and we shook hands and talked and joked around.

21 Q: Now, how about Mr. Ward, what was his general attitude
22 and demeanor?

23 A: He was, he was mad. He was upset.

24 Q: Okay, what was he -- did he indicate to you what he
25 was upset about?

- 1 A: He just said somebody took his money or got his money.
- 2 Q: Uh-huh (affirmative response), anything else?
- 3 A: He said he was mad, that somebody got his money and
- 4 we, we talked and that's when he asked me to buy some
- 5 bullets for him.
- 6 Q: Asked you to buy some bullets?
- 7 A: Yes, sir.
- 8 Q: What kind of bullets?
- 9 A: Nine, nine millimeter.
- 10 Q: And did he tell you where to go buy these bullets?
- 11 A: He asked me to run to Wal-Mart and get them.
- 12 Q: Wal-Mart?
- 13 A: Yes, sir.
- 14 Q: Did he give you any money?
- 15 A: Well, he handed me a ten and a five, but I didn't take
- 16 it.
- 17 Q: A ten and a five dollar bill?
- 18 A: Yes, sir.
- 19 Q: But you didn't take it?
- 20 A: No, sir.
- 21 Q: Did he indicate to you who had taken his money?
- 22 A: No, sir, he didn't say who.
- 23 Q: Did he indicate to you how much money was taken?
- 24 A: No, sir.
- 25 Q: After you gave him the money or you refused to take

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1 the money from him what happened?

2 A: Well, he put the money back in his pocket and we was
3 all outside and we talked and that's -- we just sat around,
4 which I didn't stay long, maybe ten minutes and I left to
5 go back to work.

6 Q: Did you all smoke anything together?

7 A: Yes, sir.

8 Q: What was that all about?

9 A: We just smoked a joint.

10 Q: Now, and then you left?

11 A: Yes, sir, went back to work.

12 Q: When was the next time that you had occasion to be in
13 the company of Jody Ward?

14 A: I'm not sure of the exact date. I mean, it was
15 sometime in August. Jody Owens called me and said he had
16 to go pick up some crab pots and he didn't have no license.
17 He asked if I'd drive him. I said yeah. So, I took my
18 truck and went and got his daddy's trailer and we went to
19 Chavis Landing, I think it was, and we was loading the crab
20 pots up and Jody Ward was there.

21 Q: Did you overhear a conversation between Jody Ward and
22 Jody Owens?

23 A: Yes, sir.

24 Q: Would you please tell this jury the content of that
25 conversation?

1 A: Well, we was tying crab pots on the trailer and the
2 two Jodys was at the back of the trailer talking and I was
3 just tying ropes and I heard him say that them boys who
4 got his money he got them. He was taking care of it.

5 Q: That they was taken care of?

6 A: Yeah, he had taken care of it.

7 Q: Did he say who he had taken care of?

8 A: No, sir.

9 Q: And who did -- who was doing the talking?

10 A: Jody Ward.

11 Q: And who was he directing the conversation to?

12 A: Jody Owens.

13 Q: Did he ask him any more -- did you overhear any more
14 discussion about that?

15 A: No, sir, I really wasn't paying attention.

16 Q: What did they -- what did they do? You didn't pay any
17 attention to that?

18 A: Well, I mean, I wasn't trying to get in that
19 conversation.

20 Q: You wanted to kind of stay out of it.

21 A: Right.

22 Q: And what did Jody Ward do after making this statement
23 to Owens?

24 A: Well, we finished tying all the crab pots up and they
25 went inside to get a receipt for the crab pots.

1 Q: You talked to Jody Ward since?

2 A: No, sir.

3 Q: Please answer any questions Defense counsel has for
4 you.

5 CROSS EXAMINATION

6 BY MS. KNEECE:

7 Q: Mr. Cooper, what was your relationship with Wilfred
8 Brown?

9 A: Close friends or good friends.

10 Q: You sold marijuana for him; didn't you?

11 A: No.

12 Q: You never sold? He wouldn't give you a pound or two
13 to go sell for him?

14 A: No.

15 Q: And the -- I mean, this is -- this whole incident has
16 been a big deal around the community; hasn't it?

17 A: Yes, ma'am.

18 Q: A lot people been talking?

19 A: Yeah.

20 Q: A lot of rumors?

21 A: Yes, ma'am.

22 Q: A lot of people are saying, "Well, Jody told me this.
23 Jody told me that." Haven't you heard that?

24 A: Yes, ma'am.

25 Q: And that's different people have said different

1 things; haven't they?

2 A: I've heard a few stories.

3 Q: And there's stuff all around of different people kind
4 of being involved in this case ---

5 A: Yes.

6 Q: --- trying to say that Jody had told them something;
7 isn't that true?

8 A: Yes, ma'am.

9 Q: And you said when Jody is acting all mad and saying
10 all this stuff about, "Go buy me some bullets," Wilfred is
11 sitting right there laughing?

12 A: Yes, ma'am, or smiling.

13 Q: So, Wilfred didn't think anything about it; did he?

14 A: Not to see him, no, ma'am.

15 Q: And you know all the people involved in all of this;
16 don't you?

17 A: Yes, ma'am.

18 Q: And you all have talked about this quite a bit?

19 A: Who?

20 Q: All the, all the players in this, all the different
21 people, Denise or Candy or Jody Owens?

22 A: Well, I'm not -- but I never talked to Denise or
23 Candice or anyone.

24 Q: Do you know if Jody Owens owned guns?

25 A: I mean, he's got a couple of shotguns that I know of.

1 We used to hunt together.

2 Q: Do you know if Jody Owens had any nine millimeter or
3 anything?

4 A: I'm not sure.

5 Q: Nothing further from this witness, Your Honor.

6 THE COURT: Redirect.

7 MR. HEMBREE: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. HEMBREE:

10 Q: Were you aware if Jody Ward had a nine millimeter?

11 A: I knew he had guns, but I don't know what kind. I
12 mean, he's always had guns. He's a hunter, too.

13 Q: You'd never saw him with a nine millimeter handgun?

14 A: No, sir.

15 Q: Very good.

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

17 THE COURT: You may step down, sir.

18 Call your next witness, please.

19 MR. HEMBREE: The State calls Beverly Ward to the
20 witness stand.

21 AT THIS TIME BEVERLY WARD WAS CALLED TO THE STAND, DULY
22 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

23 THE CLERK: Please be seated. Please state your full
24 name for the record.

25 MS. WARD: My name is Beverly Ward. Judge, I choose

1 to use my marital rights, to exercise my spousal rights and
2 not testify against my husband.

3 THE COURT: All right, let him ask a question and then
4 we'll take it from there.

5 MS. WARD: Okay.

6 DIRECT EXAMINATION

7 BY MR. HEMBREE:

8 Q: Ms. Ward, what is your -- Mrs. Ward, what is your
9 relationship to the Defendant in this case, Jody Ward?

10 A: He is my husband.

11 Q: Okay, how long have you all been married?

12 A: For 10 years.

13 Q: You all have children together?

14 A: We have three.

15 Q: Okay, let me ask you about -- take you back to August
16 the 3rd of 2002. Was Mr. Ward at home that morning?

17 A: He was there briefly, yeah.

18 Q: And did he borrow your car that day, your Suzuki
19 Samurai?

20 MR. LOCKLAIR: Your Honor, may we approach?

21 THE COURT: Yes.

22 (Whereupon, a Bench conference was held in the
23 presence, but out of the hearing, of the jury.)

24 THE COURT: All right, ladies and gentlemen of the
25 jury, I'm going to allow you just to take a very quick

1 break. Please do not discuss the case. We're going to
2 have you back out in the very near future. You may step
3 back at this time. All rise, please.

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

6 THE COURT: All right, please be seated.

7 . Mrs. Ward, I hope that you understood me when I said
8 you -- I heard you when you said you wanted to exercise
9 your right to spousal immunity, you didn't want to testify
10 against your husband. I basically responded to you that
11 wait until a question was asked, wait until you were asked
12 something, and then after that the questions were asked and
13 you began to answer questions. I just wanted to make sure
14 that you understood though that I was simply asking you or
15 directing you to wait until a question was asked.

16 Now, as far as the rule, there has been some argument
17 that has been made. The Solicitor's position is that
18 spousal immunity extends only to statements or things that
19 the spouse has said to you, that is the direction. What is
20 being asked at this point are not what he said to you but
21 just testifying about what you had observed yourself. He
22 has and understands that he would stay away from any kinds
23 of communications that Mr. Ward might have given to you,
24 to include any nods or winks or anything that might have
25 given you any sort of information. That will not be the

1 subject, that's the Court's understanding from side bar, of
2 this interrogation. Is there anything -- is that correct
3 first of all from the State?

4 MR. HEMBREE: For purposes of the record, Your Honor,
5 yes. The State does not intend to elicit any statements
6 made by the Defendant to Mrs. Ward on this day or any other
7 day.

8 THE COURT: Anything from the Defendant in regard to
9 that?

10 MR. LOCKLAIR: No, ma'am, as long as they're not going
11 into any privilege communications with her.

12 THE COURT: All right, so, you understand now where
13 you may exercise. Are you clear on that?

14 A: Yeah, I guess.

15 THE COURT: Okay, all right, very well. I just wanted
16 to make sure that we, we took care of that and we took care
17 of on the record but outside of the presence of the jury.

18 We are ready for them if they're ready for us. Wait
19 just a minute. I'll have you rise if they're coming out.
20 It might save some time. And all you will do is say you're
21 exercising your spousal immunity if you feel the question
22 is addressing something he has asked, something he told
23 you; okay?

24 (Whereupon, the following takes place in the presence
25 of the jury.)

Beverly Ward - Direct by Mr. Hembree

1 THE COURT: All rise, please.

2 Thank you, please be seated.

3 DIRECT EXAMINATION (Continued)

4 BY MR. HEMBREE:

5 Q: Mrs. Ward, let me again take you back to August the
6 3rd of 2002. What was Mr. Ward's primary residence at this
7 time?

8 A: He was at the house, he was with Denise, he was at his
9 mom's, he was -- I wouldn't say he was at one specific
10 place. I mean, he was all over. He had clothes at mom's.
11 He had clothes here. He had things here.

12 Q: Yes, ma'am, okay, but that particular, but you
13 testified just a moment ago that on that particular day he
14 was home that morning.

15 A: Yeah.

16 Q: Approximately what time did Mr. Ward leave that
17 morning?

18 A: He left in the truck early that morning.

19 Q: Now, describe what truck.

20 A: The red and black Ford.

21 Q: Okay.

22 A: I didn't ask. I got to the point where I didn't ask
23 Jody where he was going or what he was doing but he was in
24 the truck that morning and he returned in the truck later.

25 Q: About how long was he gone if you recall?

1 A: I would -- '30 minutes to an hour maybe.

2 Q: When he got back what did he do?

3 A: Something was going wrong with the truck. The fuel
4 pump or something was going out in it and he asked me to
5 take -- to follow him down to a mechanic's house that we
6 know down the road, and I followed him down there and he
7 got back into my vehicle. We left the truck.

8 Q: So, you all both went down to the mechanic's, dropped
9 the truck off to get fixed, presumably?

10 A: I followed him, yeah.

11 Q: You followed him and then who drove back to your
12 house?

13 A: I did.

14 Q: And where was your house?

15 A: Sirfield's.

16 Q: Sirfield Street, would that be 183 Sirfield Street?

17 A: At the time, yes.

18 Q: At the time, yes, ma'am. Now, Mrs. Ward, after you
19 arrived home -- well, how far a trip was this to the
20 mechanic's, a short trip?

21 A: Short trip, five or ten minutes.

22 Q: Very good, got it. After you arrived back home what
23 happened?

24 A: I went in the house and started my normal breakfast
25 with my kids or I would call a normal morning, breakfast

1 with kids, and he left with the truck, left with the
2 Sidekick.

3 Q: With the Suzuki?

4 A: Uh-huh (affirmative response).

5 Q: Now, what color is that vehicle?

6 A: I would call it green.

7 Q: Green, okay. And did you -- at any point in the day
8 did you become annoyed about this whole situation?

9 A: Several times during the day. I called a couple of
10 times, I would say, one or two times on his cell phone
11 asking him, you know, when's he going to bring the truck
12 back because I'm home with three kids, it's my truck. It's
13 not his vehicle.

14 Q: So you were stuck there?

15 A: Yes.

16 Q: Three children?

17 A: Yes.

18 Q: And no vehicle?

19 A: Yes.

20 Q: So, you called him a number of times during the day?

21 A: To ask him -- he needs to bring my truck home.

22 Q: All right, and I don't want -- and I respect your
23 privilege and I don't want to ask about what he said back
24 to you. I'm not going to ask you about that. So, I just
25 want to stop you. I don't want you to slip up on that

1 unintentionally. When did you expect him to be back, I
2 mean, in your mind?

3 A: I would say an hour or two at the most. Jody's hour
4 or two turns into four or five hours. I mean, it wasn't
5 unusual that he would stay gone three or four hours.

6 Q: Right, and when he -- what time did he return?

7 A: I would say ten or maybe 10:30 that night. We were in
8 bed ---

9 Q: You and the kids.

10 A: --- me and my children.

11 Q: Your kids were in bed, you were in bed.

12 A: Yes.

13 Q: And he turns up about nine, 10:30 you said?

14 A: I would say around 10:30, 10, 10:30..

15 Q: And where ---

16 A: I, to be, I can't exact time. I was asleep. He woke
17 me up and I was asleep.

18 Q: What was he driving when he returned home?

19 A: I have no clue. I didn't look outside. There wasn't
20 any car outside.

21 Q: So, no, no Suzuki?

22 A: Yeah, not when he come in. He said the boys had took
23 -- I'm sorry.

24 Q: Again, I'm only doing this because I don't want you to
25 -- I'm not trying to get -- make you slip on it and I

1 respect your privilege and I don't want to -- I want to
2 stop you before you say anything about what he might have
3 said to you.

4 THE COURT: Let me, let me make clear to the jury when
5 we're talking about a privilege she has asserted a spousal
6 privilege about communications with a spouse and that's
7 what we're discussing and not trying to ask her about that,
8 simply trying to ask her about other things. If you'd go
9 right ahead I wanted to make sure the jury was clear on
10 what was being discussed.

11 MR. HEMBREE: Thank you, Your Honor.

12 BY MR. HEMBREE:

13 Q: During the course of the day -- let me ask this.
14 Need to go back a question. When did -- approximately
15 when did Mr. Ward leave with your Samurai Suzuki that
16 morning?

17 A: To be exact I couldn't tell you. I would think it
18 would have been along 9:30, ten o'clock maybe.

19 Q: 9:30, ten o'clock?

20 A: I would think, before lunch.

21 Q: Did -- understood, and you've testified already that
22 he returned at about 10:30 that night?

23 A: (Indicates affirmatively.)

24 Q: During that approximate 12-hour time frame did you
25 ever see Mr. Ward during the course of the day?

1 A: Huh-uh (negative response).

2 Q: Did you ever see ---

3 A: I only had contact with him on his cell phone.

4 Q: Understood.

5 THE COURT: And when you say huh-uh (negative
6 response) it's hard for the court reporter to take that as
7 a yes or a no so if you ---

8 A: No, I had not seen him.

9 Q: After Mr. Ward returned home, well, what -- without
10 talking about the communications, what transpired between
11 the two of you? How was the mood in your house?

12 A: We were arguing.

13 Q: And did Mr. Ward stay home that night?

14 A: No.

15 Q: He left the house about what time?

16 A: He didn't stay -- he probably wasn't there 30 minutes.
17 He left very -- he was in and out.

18 Q: Got you.

19 A: I mean, he made a few phone calls, in and out, and
20 then he came back in the next morning probably I would say
21 8:30, 9 early morning.

22 Q: Turned up the next morning and what did you do on that
23 Sunday?

24 A: The next morning?

25 Q: The next day, yes, ma'am.

Beverly Ward - Direct by Mr. Hembree

- 1 A: That he arrived?
- 2 Q: After he got back.
- 3 A: My normal with my children, wake up and do their
4 routine and we were waiting on a way to go down to the
5 Sheriff's Department about my vehicle.
- 6 Q: Okay, you wanted to go to the Sheriff's Department?
- 7 A: Yes.
- 8 Q: And did you go to the Sheriff's Department?
- 9 A: Yes.
- 10 Q: For what purpose?
- 11 A: To report my truck was stole.
- 12 Q: And you did, in fact, get a ride to the Sheriff's
13 Department at some point?
- 14 A: Yeah, we had to wait on his mom, I think, to get off
15 work or something to come over and us get the vehicle and
16 she stayed with my children.
- 17 Q: Now, when you arrived at the Sheriff's Office do you
18 remember who you made the report to?
- 19 A: No, not at all.
- 20 Q: Do you know who was with you when the report was made
21 as far -- who did you take with you when the report was
22 made?
- 23 A: Just Jody, it was me and Jody.
- 24 Q: The Defendant, Jody. Thanks very much. Please answer
25 any questions Defense counsel has for you.

1 MR. LOCKLAIR: We have no questions for this witness,
2 Your Honor.

3 THE COURT: All right, very well, you may step down,
4 ma'am.

5 MR. HEMBREE: Your Honor, we'd ask that Mrs. Ward be
6 excused if she'd like to.

7 THE COURT: Any objection?

8 MR. LOCKLAIR: No objection, Your Honor.

9 THE COURT: All right, you're free to leave if that's
10 your desire.

11 For scheduling purposes let's -- do we have time for
12 another witness before lunch or is this a good breaking
13 point?

14 MR. BRYAN: I think we can get another one in.

15 THE COURT: My question is how long would the next
16 witness be approximately.

17 MR. BRYAN: Probably 15, 20 minutes, Your Honor.

18 THE COURT: Let's try one more witness then.

19 MR. BRYAN: The State calls Nadine Brown.

20 AT THIS TIME NADINE BROWN WAS CALLED TO THE STAND, DULY
21 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

22 THE CLERK: Please be seated. Please state your full
23 name for the record.

24 MS. BROWN: Nadine Brown.

25 DIRECT EXAMINATION

Nadine Brown - Direct by Mr. Bryan

- 1 BY MR. BRYAN: .
- 2 Q: Where do you live, Ms. Brown?
- 3 A: In Maryville.
- 4 Q: Can you tell us exactly where in Maryville?
- 5 A: 48 Hinds Street.
- 6 Q: Okay, how many children do you have?
- 7 MR. LOCKLAIR: Your Honor, may we approach?
- 8 THE COURT: Yes, you may.
- 9 MR. LOCKLAIR: I have an objection regarding an order
- 10 you issued.
- 11 THE COURT: Bear with us for just one minute, please.
- 12 (Whereupon, a Bench conference was held in the
- 13 presence, but out of the hearing, of the jury.)
- 14 THE COURT: We will continue. Thank you.
- 15 BY MR. BRYAN:
- 16 Q: How many children do you have?
- 17 A: I had two, but I have one now. I have a daughter.
- 18 Q: All right, what's your daughter's name?
- 19 A: Tanai Brown.
- 20 Q: How old is she?
- 21 A: 21.
- 22 Q: Who's your other child?
- 23 A: Wilfred Brown.
- 24 Q: Where did Wilfred live?
- 25 A: On Front Street with his wife and his daughter.

1 Q: Do you know the address?

2 A: No, I don't.

3 Q: How far was it from your house?

4 A: Well, I know it's less than a mile, I mean, maybe
5 about two blocks, two, three blocks.

6 Q: All right, who's his -- who's Wilfred's wife?

7 A: Indria.

8 Q: And you said he had a child?

9 A: Yes.

10 Q: Who is that?

11 A: A little girl named India.

12 Q: Is that his only child?

13 A: He has a son, Diaz.

14 Q: How old is he?

15 A: He's seven now.

16 MR. LOCKLAIR: Your Honor, I'm going to object to
17 relevancy.

18 THE COURT: Overruled, I'm going to allow it.

19 MR. BRYAN: That's all I have on that, Your Honor.

20 BY MR. BRYAN:

21 Q: Where did -- you said Wilfred lived on Front Street?

22 A: Yes.

23 Q: Is that right? Can you tell this jury what happened
24 on August the 3rd of 2002?

25 A: Yes, on that day it was somewhere in between, well,

1 around about in between 11 or 12 o'clock when a knock came
2 on the door, and when I answered the door the young man
3 told me his name was Jody Ward and he asked -- he told me
4 that he came to pick Wilfred up, and I told him that
5 Wilfred didn't live here, but I could call him on the
6 telephone and let him know that he was here, and just as
7 I got ready to close the door to go make the call he told
8 me never mind Wilfred was coming.

9 Q: Okay, you said the person knocked at the door?

10 A: Yes.

11 Q: What did he look like? Can you describe him? Do you
12 see him in the courtroom?

13 A: He's sitting right over there.

14 Q: So, you said that you closed the door to make a phone
15 call and as you did that he said what?

16 A: Before I could close the door he told me that Wilfred
17 was coming, he see him and he's coming.

18 Q: Who told you that?

19 A: Jody Ward did.

20 Q: Okay, did you see what Jody Ward was driving?

21 A: All I could remember is the jeep was green. I don't
22 know what kind it was, but I know it was green.

23 Q: It was a green jeep?

24 A: Yes.

25 Q: All right, and did you ever see Wilfred that morning?

1 A: No, I didn't.

2 Q: Okay, what happened next?

3 A: Well, I closed the door and I went on because I have a
4 mother that I take care of, and I went to check on her, and
5 when I came back through to go into the kitchen I looked
6 out the window and the jeep was gone.

7 Q: Okay, what happened next?

8 A: Next, later on during the day some friends of
9 Wilfred's came over and they wanted to talk to him and I
10 told them that I could call him on the telephone and find
11 out if he could come on over so that they could talk to
12 him, and I called -- first I paged him and he didn't answer
13 the page and then I called him on his cell phone and he
14 never called me back.

15 Q: About what time was that?

16 A: It had to been around about maybe four o'clock.

17 Q: Okay, you say he never called back?

18 A: He never called back. He usually call. Whenever,
19 whenever I page him or call him he usually calls right back
20 and he never did it.

21 Q: All right, did you have -- what number did you put in
22 the phone? Did you have any special number or did you just
23 put your home number?

24 A: I put my home number and I usually dial 911 and he'll
25 call me right back.

1 Q: Did you call, dial 911?

2 A: Yes, I did.

3 Q: All right, you say he usually called back. Why is
4 that?

5 A: Because he's always -- well, he knows that sometimes I
6 don't have a vehicle and I need for him to go to the store
7 at times and pick up stuff for me and my mother, and when I
8 call him he'll call me right back, and he's always calling
9 and checking and coming by.

10 Q: That was August the 2nd, I'm sorry, August the 3rd,
11 2002; is that right?

12 A: Yes.

13 Q: All right, and have you heard from Wilfred Brown since
14 then?

15 A: No, I haven't.

16 Q: Have you ever talked -- did you ever talk to Jody Ward
17 again?

18 A: He called the house about somewhere between ten and 12
19 o'clock that night.

20 Q: And what did he say?

21 A: He wanted to know have I heard from Wilfred and I told
22 him no I haven't heard from Wilfred, and then I asked him
23 why, and he told me that Wilfred had taken his jeep and
24 that his wife wanted her jeep back and that she wanted to
25 go to the police station to report it missing, and I told

1 him, "Well, don't do that. Let me call him and see if I
2 can get in touch with him," and he said okay, and I never
3 heard anymore from him that night, but I tried calling and
4 paging Wilfred and I still didn't get any answer.

5 Q: Were you ever able to talk to him again?

6 A: Who, Jody?

7 Q: Jody Ward.

8 A: No.

9 Q: Specifically about the conversation that he had with
10 you at ten or 11 that night did he mention -- he said
11 something about his wife wanting to know where the car was;
12 is that correct?

13 A: Yes.

14 Q: Did he mention the fact that she was talking about
15 going to the police?

16 A: Yes.

17 Q: Did you ever make a missing person report or report
18 the fact that Wilfred was gone to the police?

19 A: Yes, yes.

20 Q: When did you do that?

21 A: The next day.

22 Q: I don't have any other questions. Please answer any
23 questions that the Defense has.

24 THE COURT: Cross.

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

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. LOCKLAIR:

4 Q: Ms. Brown, you said that some friends of Wilfred's
5 came by that day.

6 A: Yes.

7 Q: And you paged him on his pager?

8 A: Yes.

9 Q: And you called him on his cell phone?

10 A: Correct.

11 Q: What type of work was Wilfred doing at the time?

12 A: Landscaping.

13 Q: Was that his only job?

14 A: That I knew of.

15 Q: Did he work for himself or did he work for somebody
16 else?

17 A: It was for somebody else.

18 Q: Did he have this pager and cell phone as part of his
19 business?

20 A: I would imagine so.

21 Q: Okay, would people come by a lot looking for Wilfred?

22 A: Not really because they knew that he didn't live
23 there.

24 Q: Okay, were these friends that came by that day were
25 they good friends of his?

1 A: Yes.

2 Q: But they knew he didn't live there?

3 A: Right, but they, they didn't live in Georgetown. They
4 were from out of town and they wanted to talk to him ---

5 Q: Okay.

6 A: --- because they hadn't seen him in a while.

7 Q: Isn't it true that Wilfred used to own guns?

8 A: Pardon me?

9 Q: Isn't it true that Wilfred used to own guns?

10 A: I don't know anything about that.

11 Q: You didn't have to get any guns out of your house at
12 some point in time?

13 A: No.

14 Q: Isn't it true that in the past there would be times
15 when Wilfred might not be able to be accounted for?

16 A: I don't -- I can't answer that.

17 Q: I mean, there were situations in the past that if you
18 would have paged him or called him he would have been
19 unable to call you back; correct?

20 A: He would, he would call back. If I called him on his
21 pager he would always call me back and on his cell phone.

22 Q: Now, if he would always call you back on the pager
23 then why would you ever have to call him on the cell phone?

24 A: Well, if he didn't answer the page then I would call
25 because I never knew which one he would have on him,

1 whether he would have the pager or the cell phone.

2 Q: Do you know if his wife worked?

3 A: Yes.

4 Q: Indria? What did she do?

5 A: She takes care of some elderly people, I think it is,
6 that she does.

7 MR. LOCKLAIR: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 BY MR. LOCKLAIR: . .

10 Q: Was Indria Brown working back in August of 2002?

11 A: Yes, she was.

12 Q: Was she doing the same job then?

13 A: Yes.

14 Q: Thank you.

15 MR. LOCKLAIR: That's all I have, Your Honor.

16 THE COURT: Redirect?

17 MR. BRYAN: Nothing further, Your Honor.

18 THE COURT: You may step down.

19 All right, ladies and gentlemen of the jury, we have
20 come to a good breaking point for lunch. It is now 12:30
21 and I will ask you to be back in that jury room at 12:45,
22 if you will be back in that jury room -- I'm not -- I'm
23 sorry, at 1:45. That would give you a 15-minute lunch. I
24 think you might need more time than that. At 1:45, that
25 will give us ample time if there are any matters of law

1 that need to be addressed, we will handle those prior to
2 your coming out. So, please be prompt. It is our
3 intention to bring you out promptly at 1:45. Please do not
4 discuss the case, and let me give you a few more bits of
5 information that will be helpful to you. Please wear your
6 juror sticker out there and please put it where we can see
7 it. That will make sure that if we're sitting by you or
8 happen to be next to you at lunch the case will not be
9 discussed and remember, and I said this once before,
10 everyone associated with this case has been directed not to
11 discuss it with you, nor to discuss it in your presence,
12 and if you have that juror sticker on they will be very
13 cautious about that. So, please wear that. I know you
14 don't want to do that, but it will help us out. Also, I'm
15 directing everybody associated with this case to have no
16 contact with our jurors. You are free to go to lunch at
17 this time. All rise.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right, I won't even ask you to be
21 seated unless there's anything further. Is there anything
22 from the State?

23 MR. HEMBREE: Nothing from the State, Your Honor.

24 THE COURT: Anything from the Defendant?

25 MR. LOCKLAIR: No, ma'am.

1 THE COURT: All right, I'll ask you to be here a
2 little earlier just in case there are matters of law that
3 need to be addressed. Otherwise, we will begin at 1:45.
4 Let me make sure I'm straight on that. See you then. Have
5 a good lunch.

6 MR. HEMBREE: Thank you, Your Honor.

7 ***** OFF THE RECORD *****

8 (On the record.)

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right, anything from the State prior
12 to bringing the jurors out?

13 MR. HEMBREE: Nothing from the State, Your Honor. I
14 note -- I just note that some of the victims' family
15 members are not back in the courtroom. Of course, we can't
16 hold up proceedings for them. It's 1:45 right now, but
17 just -- I would hate for them to kind of start streaming in
18 in the next ---

19 THE COURT: They won't be streaming in. They won't be
20 in till we take a next break. Check and see if you can
21 open that door and see who's here.

22 MR. HEMBREE: I'm going to check out here in the hall.

23 THE COURT: I think we've bought a little bit of time
24 because I don't know that all our jurors are here. We're
25 lacking one? Yeah, just check and see if they're out,

1 that's fine, and someone's getting the Defendant; is that
2 correct?

3 MS. KNEECE: Yes, ma'am, they wanted to make sure that
4 all the jurors were locked up before they brought him back
5 in here.

6 MR. BRYAN: Our next witness is one of them, Your
7 Honor. She's in the parking lot walking across the street.

8 THE COURT: Okay, we need to stress to them that I'm
9 really going to try to be as punctual as possible, which
10 means at the time I say. Let's go ahead and have the
11 Defendant here and tell the parties to be here.

12 MS. KNEECE: There is one issue the Defense would like
13 to bring up.

14 THE COURT: All right, and let me let you know to
15 those of you who are coming in, in the future if I say a
16 particular time go ahead and plan on coming in earlier so
17 that you can pass through and we can do all of that and
18 just be here and ready at that time.

19 All right, yes, ma'am.

20 MS. KNEECE: Thank you, Your Honor.

21 We would just ask that the Prosecution not elicit any
22 more testimony from any of the witnesses in regards to
23 children of the deceased. I mean, once the cat's out of
24 the bag it's kind of, you know, it's untimely to object.
25 You can object but it's out of the bag and we would just

1 respectfully request that that not be elicited anymore
2 based on it's, you know, irrelevant testimony.

3 THE COURT: Yes, sir, you have any position on that?

4 MR. HEMBREE: No, Your Honor, I don't have any -- we
5 don't intend to elicit any more testimony about children
6 from, I guess, Wilfred Brown. I believe Ms. -- I would, I
7 would hope that the Defense would take the same position
8 with their client if he takes the stand.

9 THE COURT: All right, I think that has already been
10 addressed, at least about children, but, correct.

11 MR. HEMBREE: It's already out there on both sides,
12 Your Honor. I think what Ms. Kneece is asking is she
13 doesn't want us to just reiterate it for every witness.
14 Likewise, it's already been established and I wouldn't,
15 would want the same courtesy or same approach taken by
16 Defense.

17 THE COURT: Any objection to that?

18 MS. KNEECE: No, ma'am.

19 THE COURT: All right, very well. Anything further?

20 MS. KNEECE: Nothing from the Defense.

21 THE COURT: We're ready for them. All rise, please.

22 (Whereupon, the following takes place in the presence
23 of the jury.)

24 THE COURT: Thank you. Please be seated.

25 Welcome back, ladies and gentlemen of the jury. Let

1 me remind you that we are in the phase of the case where
2 the State has the opportunity to present evidence and
3 testimony. Call your next witness, please.

4 MR. BRYAN: Thank you, Your Honor. The State calls
5 Indria Brown.

6 AT THIS TIME INDRIA BROWN WAS CALLED TO THE STAND, DULY
7 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

8 THE CLERK: Please be seated. Please state your full
9 name for the record.

10 MS. BROWN: Indria Brown.

11 DIRECT EXAMINATION

12 BY MR. BRYAN:

13 Q: Where do you live, Ms. Brown?

14 A: I currently live at 187 Collington Way.

15 Q: Okay, and where did you live in -- on August the 3rd,
16 2002?

17 A: 1904 Front Street.

18 Q: And have you ever been married?

19 A: Yes.

20 Q: All right, who is your husband?

21 A: Wilfred Brown.

22 Q: Okay, can you tell this jury what happened on August
23 the 3rd of 2002?

24 A: Every Saturday I go and tend to my grandmother because
25 she's bedridden and he usually comes with me. If not, he

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1 stays home and I come back and get him, but this particular
2 Saturday I was not feeling well. So, he called and he
3 regularly called and checked on me, and during lunchtime he
4 asked if I wanted him to get a -- find a ride to bring me
5 lunch, and I said that was fine, and from there he told me
6 that he had, called me back and told me he found a ride and
7 asked me what I wanted for lunch and I felt like Tony's.

8 So, he told me to go ahead and place my order, and ---

9 Q: All right, let me slow you down.

10 A: Uh-huh (affirmative response).

11 Q: You said you -- on Saturdays you took care of your
12 grandmother?

13 A: Yes.

14 Q: Is that right?

15 A: Yes.

16 Q: Where did she live?

17 A: 120 Feather Drive.

18 Q: All right, is that in Georgetown County?

19 A: Yes.

20 Q: All right, can you step off the stand for just one
21 second? Let me get you to come stand in front of the jury,
22 and I'm going to show you what's been marked State's Number
23 Two. Do you see anywhere on there, can you show this jury,
24 let me get you to step back here a little bit.

25 THE COURT: You'll have to turn her around facing the

1 court reporter. If you could do it that way. There you
2 go.

3 Q: Do you see on here, can you point to where your
4 grandmother lived?

5 A: Right here.

6 Q: I'm going to give you that and ask you to put it where
7 you say your grandmother lived.

8 A: (Complies with request.)

9 Q: You can step back on the witness stand. What time did
10 you go over there?

11 A: I have to be there no later than 8:15.

12 Q: Okay, and when did you hear from your husband?

13 A: When I got there. He made sure that I made it there.

14 Q: Okay, and you all had a conversation about lunch?

15 A: Yes.

16 Q: Is that right? And when was that conversation?

17 A: About noon, a little -- about noon, but he called me
18 back to make sure I -- what I wanted to eat. That was
19 around two o'clock.

20 Q: Okay, so, to be clear, you originally talked to him
21 about whether he wanted to bring you lunch at around noon
22 and then he called you back to find out what you wanted at
23 two; is that correct.

24 A: I believe, yes, sir, I can't remember right off.

25 Q: Okay, all right, when he called you back you all

- 1 talked about what you wanted for lunch? Did you tell him
2 what you wanted?
- 3 A: Yes.
- 4 Q: All right, what did you tell him?
- 5 A: Tony's steak and cheese sub and a pizza.
- 6 Q: All right, was there anybody else over at your
7 grandmother's house?
- 8 A: Yes.
- 9 Q: Who else?
- 10 A: My aunt and her nephew, I mean, her son, sorry.
- 11 Q: What are their names?
- 12 A: William and Rounette.
- 13 Q: And were you the only one getting food brought?
- 14 A: Yes.
- 15 Q: Okay, so, what happened next?
- 16 A: Where did I left off? Sorry, after that he called me
17 back and said that he found a ride with Jody Ward and that
18 he was going to be there soon and he arrived about three
19 o'clock, and ---
- 20 Q: Okay, about what time did he call you and say he found
21 a ride with Jody Ward?
- 22 A: That was, that was during the process when he asked me
23 what did I want to eat that he ---
- 24 Q: Around two o'clock?
- 25 A: Uh-huh (affirmative response).

1 Q: Okay, so, he then calls you back and the next thing is
2 when he showed up; is that right?

3 A: Yes.

4 Q: Okay, what time did he get to Feather Drive?

5 A: It was about 3:10.

6 Q: Okay, and tell the jury who he was with.

7 A: Elton Rutledge and Jody Ward.

8 Q: All right, and was Elton Rutledge a friend of his?

9 A: Yes.

10 Q: All right, and did you know Jody Ward?

11 A: No.

12 Q: All right, how did you know it was Jody Ward that was
13 with him?

14 A: He called his name.

15 Q: He being who?

16 A: Wilfred, my husband.

17 Q: Wilfred called Jody Ward's name?

18 A: He had, yes.

19 Q: All right, could you identify Jody Ward?

20 A: Yes.

21 Q: All right, who is he? Do you see him in the
22 courtroom?

23 A: The guy sitting over there.

24 Q: All right.

25 THE COURT: Let the record reflect that she pointed to

1 Jody Ward at the Defendant's table.

2 BY MR. BRYAN:

3 Q: All right, when he got there did you see what they
4 were driving? You said that was about 3:10; is that
5 correct?

6 A: Yes.

7 Q: Did you see them drive up?

8 A: Yes.

9 Q: All right, what were they driving?

10 A: The green Sidekick.

11 Q: Okay, and who was driving?

12 A: Jody Ward.

13 Q: All right, do you remember who was in the front seat?

14 A: My husband.

15 Q: And who was in the back seat?

16 A: Elton.

17 Q: Okay, and that was about 3:10 you said; is that
18 correct?

19 A: Yes.

20 Q: All right, what did they do?

21 A: They came in. Well, my husband knocked and came in
22 and he usually sits in a blue chair. That's where he sat.
23 Elton sat across in another chair and Jody, he stand --
24 well, he stood at the foot of my grandmother's bed.

25 Q: All right, did you have any conversation with Jody

1 Ward?

2 A: Not really, they -- my aunt asked him did he want to
3 sit down. He said no, and she -- well, he asked who was my
4 grandmother and she said Ms. Baker and he repeatedly asked,
5 "That's Ms. Baker."

6 Q: All right, did they bring anything with them?

7 A: Food.

8 Q: Okay, what'd they bring?

9 A: The pizza and the sub.

10 Q: All right, who ate?

11 A: Me, Elton and Wilfred.

12 Q: All right, what about Jody Ward, did he eat?

13 A: No, he didn't.

14 Q: What happened to him?

15 A: He left.

16 Q: Do you know where he went or did he say anything about
17 where he was going?

18 A: He just said he'll be back.

19 Q: Okay, how long was he gone?

20 A: Approximately 20 minutes.

21 Q: All right, and when he came back what happened?

22 A: They left.

23 Q: Okay.

24 A: But when he came back we were in the back. We --

25 Elton was already outside and when my -- well, my cousin

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- 1 told me that -- told Wilfred that they were outside. We
2 already knew that they was going to leave. So, Wilfred
3 went to the rest room and then he left.
- 4 Q: Okay, and who did he leave with?
- 5 A: Jody Ward and Elton.
- 6 Q: Okay, and did you see them leave?
- 7 A: Yes.
- 8 Q: Okay, and was anybody else with them?
- 9 A: No.
- 10 Q: All right, did you know where they were going or did
11 your husband say where he was going?
- 12 A: He was supposed to go home.
- 13 Q: Okay, and when they left what were they -- who was
14 driving?
- 15 A: Jody Ward.
- 16 Q: And what kind of vehicle was he driving?
- 17 A: The green Sidekick.
- 18 Q: Okay, when's the next time you talked to your husband?
- 19 A: After he left I never talked to him.
- 20 Q: And you haven't talked to him since August the 3rd of
21 2002.
- 22 A: No.
- 23 Q: Did you ever speak to Jody Ward again?
- 24 A: Yes.
- 25 Q: Do you need some water?

1 A: Tissue.

2 Q: You talked to Jody Ward again at some point?

3 A: At that night.

4 Q: Okay, and can you tell the jury how you ended up
5 talking to Jody Ward?

6 A: Well, my husband didn't return none of my phone calls
7 or he didn't answer the pages and ---

8 Q: Was that normal for him?

9 A: No, it's not..

10 Q: All right, did he normally call you back?

11 A: Yes.

12 Q: Okay, when he didn't answer the phone or his pager
13 what did you do?

14 A: I repeatedly paged him, left a message and called his
15 phone up until it was time for me to leave my grandmother's
16 house.

17 Q: All right, and how is it that you ended up talking to
18 Jody Ward?

19 A: Well, I went home and I went and see if my husband had
20 called the house and he didn't but on the ID I saw ---

21 (Noise in courtroom.)

22 THE COURT: It's a hearing aid. It's somebody's
23 hearing aid that's making the noise. It'll just have to be
24 adjusted, all right. Okay, it's taken care of.

25 Go right ahead.

1 Q: Do you remember where you were?

2 A: Where who were?

3 Q: Do you remember where you were in your testimony?

4 A: Oh.

5 Q: You were talking about trying to contact your husband
6 and ultimately how you spoke to Jody Ward that night.

7 A: Okay, I went home and changed my clothes before I went
8 to my mother-in-law's house, and I checked the ID and I saw
9 Jody Owens but I didn't see Owens at that time. I just saw
10 Jody and I called that number because that was the only
11 number I didn't know and when I talked to Jody Owens he
12 said that it wasn't him that Wilfred was with. It was Jody
13 Ward and he gave me the cell phone number.

14 Q: Let me clarify something. Did you know prior to this
15 day, had you ever met Jody Ward?

16 A: I met -- I seen him once in Wal-Mart.

17 Q: Did you know him?

18 A: No.

19 Q: All right, did you know Jody Owens?

20 A: Not really, no.

21 Q: Okay, so, you got a call on your caller ID that said
22 Jody Owens and you thought that's who your husband had been
23 with?

24 A: Yes.

25 Q: Is that right? All right, and then you called that

1 number and you spoke to somebody who said you had the wrong
2 Jody; is that right?

3 A: Yes.

4 Q: Okay, what happened as a result of that conversation?

5 A: He gave me Jody Ward's cell phone number but he gave
6 me the wrong first three digit numbers and I had to call
7 him back.

8 Q: So you called him and the phone didn't work?

9 A: Yes.

10 Q: Or the number didn't work?

11 A: Yes.

12 Q: All right, and then you called Jody Owens back?

13 A: Yes.

14 Q: Did you ultimately get a good number for Jody Ward?

15 A: Yes, the second time.

16 Q: Go ahead. You called him at that number?

17 A: I didn't get an answer.

18 Q: All right, did you ever speak to him?

19 A: No, not until my mother-in-law called.

20 Q: All right, when did that happen?

21 A: That was about 11, 11:30.

22 Q: All right, and how did your mother-in-law contact Jody
23 Ward?

24 A: She didn't contact him. He called her.

25 Q: Okay, and were you there when that happened?

1 A: No.

2 Q: All right, did you ever speak to him again?

3 A: Who?

4 Q: Jody Ward?

5 A: I repeatedly called him after he told us his story and
6 to see if he ever saw them and he kept saying, no, he
7 didn't.

8 Q: All right, so, he called your mother-in-law and said
9 that they had taken his car?

10 A: Yes, yes.

11 Q: And then after that you repeatedly called him?

12 A: Yes.

13 Q: And did you get in contact with him?

14 A: Yes.

15 Q: And what did he say?

16 A: That he haven't seen them, and when he, well, when he
17 do see them he would call me.

18 Q: All right, did he mention the story that he had told
19 your grandmother, I mean, I'm sorry, his mother -- your
20 mother -- his mother-in-law?

21 A: Yes, he repeated the story.

22 Q: Okay, so, what did he tell you about what had happened
23 to your husband and Elton Rutledge?

24 A: That, that they were at Money Savers and he -- they
25 took his vehicle and he had to catch a ride from his uncle.

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1 Q: Did he say whether they had permission to take his
2 vehicle?

3 A: No, he didn't.

4 Q: Did he mention anything about reporting the car
5 stolen?

6 A: No, not until the Sunday when we report, report, did
7 the missing report.

8 Q: I don't have any other questions. Please answer any
9 questions that the Defense has.

10 THE COURT: Cross.

11 MS. KNEECE: Thank you, Your Honor. May it please the
12 Court.

13 THE COURT: Yes, ma'am.

14 CROSS EXAMINATION

15 BY MS. KNEECE:

16 Q: Hey, Miss Brown.

17 A: Hey.

18 Q: Were you aware that Wilfred had arranged a drug deal
19 earlier that day? Did you know that?

20 A: No, I didn't.

21 Q: Were you aware of Wilfred's drug business?

22 A: Around me, no.

23 Q: He wouldn't do that around you?

24 A: No.

25 Q: Were you aware about the guns and stuff that Wilfred

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1 had? Were you aware of that?

2 A: He never had possession of a gun in my presence.

3 Q: And do you know if Jody Owens had talked to Jody Ward
4 before the phone call to your in-laws to say that or to you
5 to say that you all had called looking for Wilfred?

6 A: I don't know.

7 Q: I don't have any further questions.

8 THE COURT: Redirect?

9 MR. BRYAN: No, no, Your Honor.

10 THE COURT: You may step down, ma'am.

11 A: Thank you.

12 THE COURT: Call your next witness, please.

13 MR. BRYAN: The State calls Sean Savery.

14 AT THIS TIME SEAN SAVERY WAS CALLED TO THE STAND, DULY
15 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

16 THE CLERK: Please be seated.

17 THE COURT: We're going to have to take your cell
18 phone. They're just not allowed in the courtroom.

19 MR. SAVERY: Sorry about that.

20 THE COURT: Okay, we'll make sure you get it back.

21 MR. SAVERY: All right.

22 THE CLERK: Please state your full name for the
23 record.

24 MR. SAVERY: Sean Savery.

25 DIRECT EXAMINATION

1 BY MR. BRYAN:

2 Q: Mr. Savery, who are you employed by?

3 A: AirGate PCS.

4 Q: And are they affiliated with anybody?

5 A: They are an affiliate of Sprint PCS.

6 Q: And how is that?

7 A: We sell products and services under the Sprint brand

8 name.

9 Q: All right..

10 REPORTER: Hold up. He didn't turn the microphone

11 around.

12 THE COURT: Oh, okay, sorry about that.

13 REPORTER: I apologize.

14 THE COURT: All right, if you'd please continue.

15 Q: How are you affiliated with Sprint?

16 A: I'm the store manager at the Mt. Pleasant store.

17 Q: Okay, and I'm going to show you what's been pre-

18 marked as State's ID Number 9 and ask you if you can tell

19 the jury what that appears to be?

20 A: From the best of my knowledge this looks like a bill

21 generated from Sprint PCS.

22 Q: All right, can you tell who is the customer that would

23 be the customer on that cell phone?

24 A: The customer on this would be Wilfred Brown.

25 Q: And are those records normally kept in the course of

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1 regularly conducted business? Is this -- are these
2 regularly generated documents?

3 A: AirGate PCS doesn't generally -- doesn't create them,
4 but Sprint PCS I believe do.

5 Q: Okay, and that's another subsidiary or company ---

6 A: Yes.

7 Q: . --- company related to Sprint?

8 A: Uh-huh (affirmative response), yes.

9 Q: And is it the regular practice of Sprint or one of
10 their companies to generate these documents?

11 A: It's, again, AirGate PCS does not do it, but I believe
12 Sprint PCS does.

13 Q: I don't have any other questions.

14 MR. BRYAN: I'd ask that State's Nine be admitted into
15 evidence.

16 THE COURT: Any objection?.

17 MS. KNEECE: Yes, ma'am, I would object. He said he
18 believes, he doesn't know, you know, they didn't -- there's
19 some serious questions that we have concerning these
20 records. I mean, we may want to approach.

21 THE COURT: All right, I'll let you approach.

22 (Whereupon, a Bench conference was held in the
23 presence, but out of the hearing, of the jury.)

24 MR. BRYAN: I don't have any other questions.

25 THE COURT: Have any questions?

1 MR. LOCKLAIR: No questions, Your Honor.

2 THE COURT: Just one second. Let me have you come
3 back here for just a moment. Bear with us. My apologies,
4 and remember every time that I bring them over and we are
5 talking, we are talking about a matter of law, not a matter
6 of fact because that's for your sole determination.

7 (Whereupon, a Bench conference was held in the
8 presence, but out of the hearing, of the jury.)

9 THE COURT: There's been an indication of no more
10 questions. The Court has had a side bar. There's an
11 objection to reopening the testimony. The Court has
12 overruled that objection. I'm going to allow the
13 questions.

14 BY MR. BRYAN:

15 Q: I'm going to show you State's Nine again.

16 A: Okay.

17 Q: What do you do at -- what's the name of your company
18 again?

19 A: AirGate PCS.

20 Q: All right, and what do you do there?

21 A: I'm the store manager.

22 Q: All right, what does AirGate do?

23 A: AirGate sells Sprint PCS products and services.

24 Q: All right, and what are Sprint services?

25 A: Telephones, air time, accessories, long distance.

Sean Savery - Direct by Mr. Bryan

1 Q: Air time meaning they sell the ability to talk on the
2 phone ---

3 A: Correct.

4 Q: --- on them.

5 A: Correct.

6 Q: Okay, and is that, what you've got in front of you,
7 is that a bill from Sprint?

8 A: It looks like it is. Since I didn't create the bill
9 I can't say for sure, but it certainly looks like something
10 Sprint would create.

11 Q: Do you create bills that look like that? Do you ever
12 create bills?

13 A: Personally I do not, no.

14 Q: Does anyone at your store create bills?

15 A: No.

16 Q: Do you -- can you say whether that is a Sprint bill or
17 not? Are you qualified in your official capacity to say
18 that that is an official Sprint document?

19 A: I can say that from my knowledge I've seen things like
20 this come from Sprint, yes.

21 Q: All right, and if that were -- if somebody brought,
22 it's a potential customer or a customer who you had sold a
23 service to had a complaint about their bill, have you ever
24 seen anybody in that capacity and have you ever seen a
25 document like that presented to you in your official

1 capacity?

2 A: This looks very similar to a Sprint bill. So, yes,
3 I've dealt with situations that look similar to this. This
4 looks like it's more of a computer-generated printout as
5 opposed to a -- something that would be mailed to a
6 customer.

7 Q: Do you recognize the writing on the document and what
8 it means and can you testify as to what the writing on the
9 document means?

10 A: I can interpret the bill, certainly.

11 MR. BRYAN: At this time, Your Honor, we would again
12 offer State's Nine.

13 THE COURT: All right, do you, do you view those types
14 of bills? Do you see those bills and interpret those as a
15 regular course of what you do in your capacity? Is it
16 common practice for you to review those bills?

17 A: Yes.

18 THE COURT: All right, so, you're familiar with
19 those.

20 A: Yes.

21 THE COURT: All right, and is that, in fact, a Sprint
22 bill?

23 A: It, it certainly looks like it is. In my capacity as
24 an AirGate employee we're an affiliate of Sprint. So,
25 therefore, I'm not necessarily qualified to testify on

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1 Sprint's behalf because I don't technically work for
2 Sprint, but this is a legitimate bill that looks like it
3 came from Sprint.

4 THE COURT: All right. He answered the question, all
5 right.

6 MR. BRYAN: We're asking to admit State's Nine, Your
7 Honor.

8 THE COURT: All right, yes, sir.

9 MR. LOCKLAIR: Your Honor, we would just raise our
10 previous objections as to authenticity, his competency to
11 testify and foundation.

12 THE COURT: Sustained.

13 MR. LOCKLAIR: Thank you.

14 MR. BRYAN: Thank you, Your Honor.

15 THE COURT: Thank you, sir, and we'll make sure you
16 get your cell phone back.

17 A: Thank you very much.

18 THE COURT: Make sure we've -- give that to him.

19 All right, call your next witness, please.

20 MR. BRYAN: The State calls Latrese Rutledge.

21 AT THIS TIME LATRESE RUTLEDGE WAS CALLED TO THE STAND, DULY
22 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

23 THE CLERK: Please be seated. Please state your full
24 name for the record.

25 MS. RUTLEDGE: Latrese Rutledge.

1 DIRECT EXAMINATION

2 BY MR. BRYAN:

3 Q: Ms. Rutledge, where do you live now, currently?

4 A: Currently in Greenville, South Carolina.

5 Q: And what are you doing there?

6 A: I'm a student at USCS.

7 Q: Okay, back on -- well, tell me this first. What's
8 your relationship to Elton Rutledge?

9 A: He's my brother.

10 Q: And that's Elton Rutledge, Jr.; is that right?

11 A: That's correct.

12 Q: And Elton Rutledge, Sr., is your father?

13 A: Right.

14 Q: Back on August the 3rd, 2002, where were you living
15 then?

16 A: At 709 Palm Avenue in Georgetown.

17 Q: Who were you living with?

18 A: My parents.

19 Q: All right, anybody besides you and your parents living
20 there?

21 A: My sisters and Elton.

22 Q: How many sisters you've got?

23 A: There were two living there.

24 Q: What happened on August the 3rd of 2002?

25 A: From the beginning, from that morning?

1 Q: Yeah, from that morning, just generally any contact
2 you had with Elton Rutledge, Jr., your brother.

3 A: Well, that morning when I, I woke up I went outside to
4 wash my car and he came out there with me, and as I was
5 washing my car he was just out in the street dribbling the
6 basketball, and after that we went and we vacuumed out my
7 car and went to the gas station, got a bottle of water,
8 went back to the house and that was it.

9 Q: All right, did you -- what were your plans for that
10 day?

11 A: We were going to go to the mall to go shopping.

12 Q: Did you talk to your brother about that?

13 A: Yes, I asked him to go with me.

14 Q: And what time was it that you all talked about going
15 to -- going shopping? Where were you going shopping?

16 A: In Myrtle Beach at the mall, the Pottery.

17 Q: Okay, and about what time did you all have that
18 conversation?

19 A: That was about, I'd say, a little after one, probably
20 1:30.

21 Q: And did he say he was going to go with you?

22 A: Yes, he was going to go.

23 Q: All right, did he go shopping with you?

24 A: No, he didn't.

25 Q: Okay, why not?

1 A: Because he left and I haven't seen him since.

2 Q: Tell me about him leaving, did he tell you he was
3 leaving or how do you -- how'd that come about?

4 A: Well, he got a phone call, and ---

5 Q: Do you know who the phone call was from?

6 A: I don't.

7 Q: Okay, all right, he got a phone call and what
8 happened? Where were you when he got the phone call?

9 A: I was in the den and he was in the far end of the
10 house in the front room talking on the phone. I couldn't
11 hear what was said, but I know I told him I was going to be
12 ready at two o'clock, but while I was in the shower I heard
13 the door close and that was the last that I seen him.

14 Q: So, you haven't heard from him since August the 3rd to
15 today; is that right?

16 A: That's correct.

17 Q: All right, was it -- and he was living at home, the
18 same house you were living at.

19 A: Yes, uh-huh (affirmative response).

20 Q: Was it normal for him to leave for long periods of
21 time and not stay in contact?

22 A: No, it wasn't.

23 Q: And what was the longest period, while you all were
24 living under the same roof, what's the longest period you
25 had gone without not knowing where he was?

1 A: Probably about a day but he would either call later on
2 or he would call the next day.

3 Q: I don't have any other questions. Please answer any
4 questions the Defense has.

5 MR. LOCKLAIR: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. LOCKLAIR:

9 Q: Ms. Rutledge, when did you first move in with your
10 parents? Did you live with them since you were younger
11 before moving to Greenville or had you moved out and moved
12 back in?

13 A: Well, I came back for the summer. I was just there
14 for the summer.

15 Q: Okay, so, in 2002 when did you get here?

16 A: I got there at the beginning of June or July.

17 Q: Okay, so, you had been there probably a month or two
18 before?

19 A: Right.

20 Q: You said that Elton told you that you all were going
21 -- he was going to go to the mall with you?

22 A: Yes, uh-huh (affirmative response).

23 Q: And then when you got out, you were in the shower he
24 was just gone and he didn't say anything to you before he
25 left.

1 A: No, he didn't say anything.

2 Q: Do you know Wilfred Brown?

3 A: Yes.

4 Q: Was Elton friends with Wilfred Brown?

5 A: Yes.

6 Q: Isn't it true that your family didn't like Elton
7 hanging around Wilfred Brown because he was a bad
8 influence?

9 A: Not to my knowledge.

10 Q: Your father didn't have a problem with that?

11 A: No.

12 Q: You never heard anything like that?

13 A: No.

14 Q: Okay, prior to 2002 were you up in Greenville before
15 you came back down here?

16 A: Well, at that time I was in Spartanburg.

17 Q: In Spartanburg. Were you in school?

18 A: Uh-huh (affirmative response).

19 Q: Were you home for a break?

20 A: Yes.

21 Q: Okay.

22 MR. LOCKLAIR: Beg the Court's indulgence? That's all
23 the questions we have, Your Honor.

24 THE COURT: Redirect?

25 MR. BRYAN: None, Your Honor.

1 THE COURT: All right, you may step down.

2 Call your next witness, please.

3 MR. BRYAN: The State calls Elton Rutledge, Sr.

4 AT THIS TIME ELTON NATHANIEL RUTLEDGE, SR., WAS CALLED TO

5 THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS

6 FOLLOWS:

7 THE CLERK: Please be seated.

8 MR. BRYAN: Your Honor, may we approach?

9 THE COURT: Yes, you may.

10 (Whereupon, a Bench conference was held in the
11 presence, but out of the hearing, of the jury.)

12 THE CLERK: Please state your full name for the
13 record.

14 MR. RUTLEDGE: Elton Nathaniel Rutledge, Sr.

15 DIRECT EXAMINATION

16 BY MR. BRYAN:

17 Q: Reverend Rutledge, you live here in Georgetown?

18 A: Yes, I do.

19 Q: All right, what do you do?

20 A: I am a full-time pastor.

21 Q: How are you related to, I know it's an obvious
22 question, but how are you related to Elton Rutledge, Jr.?

23 A: I'm his father.

24 Q: Okay, how was your relationship with your son?

25 A: It was a very fatherly and a son relationship where

Elton Rutledge, Sr. - Direct by Mr. Bryan

1 there's no, no indifferences.

2 Q: Were you close?

3 A: Yes, we were.

4 Q: All right, did, before August the 3rd of 2002, did
5 Elton go to church?

6 A: Yes, he did.

7 Q: What did you call him, by the way? Did you call him
8 Elton or what did you call him?

9 A: Mikey.

10 Q: Why is that?

11 A: He had a very voracious appetite.

12 Q: All right, did he go to church?

13 A: Yes, he did.

14 Q: All right, was he involved at church?

15 A: Yes, he was a president of the junior ushers. He also
16 was a member of the Sons of Allen, which is in honor of the
17 founder of the African Methodist Church.

18 Q: Let me ask you this first, when's the last time you
19 saw your son?

20 A: It was August the 3rd it's around 12:30 the last I
21 seen him.

22 Q: Where was he then?

23 A: He was at home in our living room at our house at 709
24 Palm Avenue.

25 Q: All right, and did you all have any plans to do

1 anything that day?

2 A: Yes, sir, we are, as was reluctant to say that we also
3 are a commercial homebuilder also, light residential.

4 We're ---

5 Q: That's what you do?

6 A: Him and I.

7 Q: In addition to being a reverend you do that?

8 A: Him and I, yes, sir.

9 Q: Okay, and did he work with you?

10 A: He did.

11 Q: All right, and what did you all have planned to do
12 that afternoon?

13 A: Well, we had just got back from our family vacation
14 out of -- in Florida, and before going on vacation we
15 placed a piece of our equipment in the living room, and
16 after we got back, which we cut our vacation short because
17 of one of my associate ministers had expired and so we came
18 back to -- cut our vacation short to funeralize my
19 associate minister, and before leaving I heard he was on
20 the telephone with someone. I don't know whether he made
21 the call or someone called him but I learned, later learned
22 that he was on the phone and he asked that -- me if I was
23 going to have enough time to move the break then or what.
24 I told him no let it stay there because it wasn't on my
25 feet or his.

Elton Rutledge, Sr. - Direct by Mr. Bryan

- 1 Q: What break, what are you talking about, moving what?
- 2 A: It's, it's a piece of equipment that forms metal in
- 3 the construction field.
- 4 Q: Is it an expensive piece of equipment?
- 5 A: Quite expensive.
- 6 Q: All right, was that why -- where was it?
- 7 A: In the living room of our home.
- 8 Q: All right, was that why you had it in the living room
- 9 of your house? You didn't want it ---
- 10 A: Yes, uh-huh (affirmative response).
- 11 Q: Okay, and you needed to move it; is that right?
- 12 A: Right, right.
- 13 Q: And you couldn't -- how big is it?
- 14 A: It's 14 feet 10 inches long.
- 15 Q: All right, could you move it by yourself?
- 16 A: No, sir.
- 17 Q: All right, so, you and your son were basically -- he
- 18 was going to help you move it; is that correct?
- 19 A: Correct.
- 20 Q: And so, you all had some conversation about whether
- 21 you'd have time to do that that day?
- 22 A: Yes, sir. He said to me that he wanted to go with a
- 23 friend of his for about 15 or 20 minutes, ride out with him
- 24 was the term he used to.
- 25 Q: Did he say who it was?

1 A: No, he didn't.

2 Q: Okay.

3 A: So, I told him it was quite all right because where I
4 was going was going to take at least two and a half hours
5 and that we could move it when we -- when I got back.

6 Q: What time were you expected to be back?

7 A: The services was at one o'clock, and as I said about
8 2:30, three o'clock I would ---

9 Q: And so, you went to the service?

10 A: Yes, I did. I performed the service.

11 Q: And he went presumably off with his friend somewhere;
12 is that right?

13 A: Pardon me?

14 Q: He went off with his friend as far as you knew.

15 A: Yes, he did.

16 Q: And what time did you get home?

17 A: It was roughly around 3:30, quarter till four.

18 Q: All right, and was he there then?

19 A: No, sir.

20 Q: All right, and you all had planned to move this piece
21 of equipment that afternoon?

22 A: Yes.

23 Q: All right, have you heard from him or seen him since?

24 A: No.

25 Q: Okay, now, you said that he was involved at the

1 church. Has anybody at the church seen him or heard from
2 him that you know of?

3 A: No, sir.

4 Q: All right, and you all worked together and what was
5 your work relationship like? Was he a, was he a dependable
6 worker? Did he show up to work when he was supposed to be?

7 A: Yes, as a matter of a fact the job after our vacation
8 was one that he had, in fact, negotiated.

9 Q: Were you basically kind of training him to take over
10 the family business at that point?

11 A: Yes, exactly.

12 Q: How was he doing in that capacity? How was he -- was
13 he showing any promise?

14 A: He was making suitable proficiency, yes. He was doing
15 good.

16 MR. BRYAN: I don't have any further questions.

17 THE COURT: Cross.

18 MR. BRYAN: I'm sorry, Your Honor. One -- the Court's
19 indulgence.

20 THE COURT: Sorry.

21 BY MR. BRYAN:

22 Q: I want to go back a little bit. How long had --
23 prior to August the 3rd, 2002, how long was your son living
24 with you? How long had he been in the house, under your
25 roof?

1 A: In fact he -- it was about after a period of time, it
2 was just well over two months.

3 Q: And before that where was -- where was he before
4 that? Was he incarcerated for a period of time?

5 A: Yes, he was, yes.

6 Q: All right, how long, how long was he at the
7 Department of Corrections?

8 A: Actually three years and about six months.

9 Q: Okay, and obviously you knew where he was when he was
10 incarcerated; is that right?

11 A: Right.

12 Q: And then he have regular conversations with you? Did
13 he call home?

14 A: At least twice a week.

15 Q: Okay, and did you all go to see him?

16 A: Yes, we did.

17 Q: All right, prior to his incarceration where did he
18 live? Did he live at home with you?

19 A: Yes, well, for an instant there he did take on an
20 apartment and I believe, in fact, it was with a young lady
21 and that did not last very long. So, he ---

22 Q: When was -- go ahead.

23 A: So, he was right back at home.

24 Q: About when was that?

25 A: This was roughly about ninety -- in '99.

523

1 Q: And about how long was he out of the house and in the
2 apartment?

3 A: It could not have been more than maybe two months.

4 Q: Did you know where the apartment was?

5 A: Yes, sir.

6 Q: And did he stay in contact with you during that
7 period?

8 A: Yes, he did.

9 Q: And prior to that then he was living at home.

10 A: He was.

11 Q: And when he was home did he ever leave for long
12 periods of time?

13 A: I can think of several instances where he did leave
14 home and we have a vacation spot in Myrtle Beach which he
15 did stay probably overnight.

16 Q: All right, how long, how long a stretch would he stay
17 gone when he would leave, days, weeks, months?

18 A: I can say overnight.

19 Q: Okay, so, you can't think of any time he stayed gone
20 longer than a night other than the two-week stretch he
21 moved in with the -- somebody in the apartment; is that
22 fair to say?

23 A: At one point I can remember him actually going on the
24 sort of like explorers, he was in explorer clubs also and
25 for young mens, and there he would go, I think he spent

1 something like three nights there or three days.

2 Q: What kind of club was that? Who is it affiliated
3 with?

4 A: It's -- actually it's affiliated with the Boy Scouts
5 of America.

6 Q: Okay, at that point did you know where he was though?

7 A: Yes.

8 Q: Okay, did he ever go long stretches of time without
9 checking in with you when he was a young man?

10 A: Never.

11 Q: All right, or you said while he was in that apartment
12 you knew where he was and he checked in with you then?

13 A: Actually came home, it's most where he ate his meals
14 at at home.

15 Q: Okay, and then you knew where he was for the three
16 years that he was in the Department of Corrections and
17 spoke with him often; is that right?

18 A: Yes.

19 Q: And then after he was released he came home and he was
20 never gone from your sight for more than a night at a time;
21 is that right?

22 A: About eight hours I would say.

23 Q: All right, since April 3rd, 2002, have you heard
24 anything from him or from anybody else about his
25 whereabouts?

1 A: April?

2 Q: I'm sorry August the 3rd, 2002?

3 A: No, sir, I haven't heard from him.

4 THE COURT: Cross.

5 MR. LOCKLAIR: May it please the Court, Your Honor.

6 CROSS EXAMINATION

7 BY MR. LOCKLAIR:

8 Q: Mr. Rutledge, you said there was no indifferences with
9 you and your son?

10 A: No, sir.

11 Q: You didn't have a problem with his past and the
12 activities that he chose to participate in?

13 A: Here with his past?

14 Q: Yes, sir.

15 A: No, sir, no.

16 Q: You're a preacher; correct?

17 A: I am a pastor, yes.

18 Q: And he was in jail for attempted strong armed robbery;
19 correct?

20 A: That's what it was said, yes.

21 Q: And it was pled down from an attempted armed robbery;
22 correct?

23 A: From what I told -- what I was told, yes.

24 Q: Okay, and as a preacher you didn't have a problem with
25 that?

1 A: Do I have a problem with it?

2 Q: Yes.

3 A: Well, quite naturally I do have a problem with that,
4 but if I were allowed to say so that it was brought out
5 that he was there but he did not participate.

6 Q: Okay, so, you had reconciled that with your son?

7 A: Yes.

8 Q: Okay, but he's been in some trouble before; hasn't he?

9 A: I think he did. He got in a fight with his ---

10 MR. BRYAN: Object, Your Honor, to the relevance.

11 THE COURT: We'll have to side bar.

12 MR. LOCKLAIR: May we side bar?

13 THE COURT: Let me see.

14 (Whereupon, a Bench conference was held in the
15 presence, but out of the hearing, of the jury.)

16 BY MR. LOCKLAIR:

17 Q: Mr. Rutledge, there have been other times when Elton
18 has been away from home for an extended period of time due
19 to incarceration; isn't there?

20 A: Doing incarceration?

21 Q: Because he was incarcerated, because he was in jail.

22 A: Not that I know of.

23 Q: Were there any other times that you can remember where
24 he was ever away from home because he had to spend a night
25 in the county jail?

1 A: Yes, there were one time when I believe it was ---

2 Q: Just you don't have to go into any specifics, but one
3 previous incident?

4 A: Yes.

5 Q: All right, did you know Wilfred Brown?

6 A: Yes, I did.

7 Q: And you all didn't like Elton hanging around with
8 Wilfred Brown; did you?

9 A: Didn't like him hanging with him, no.

10 Q: Because Wilfred was a bad influence?

11 A: Well, just like any other father would I would
12 encourage him to choose his confidant very wisely.

13 Q: And did you encourage him about choosing friendship
14 with Wilfred Brown?

15 A: No, sir.

16 Q: Did you ever counsel him about his decision to hang
17 around with such a person?

18 A: Sure.

19 Q: And what did you tell him about that?

20 A: I told him, let him know that certainly whenever he
21 chooses a friend let it be one with the same quality that
22 he would look for in any friendship, that's one that's
23 right, outstanding. It's, I guess, it's the American way.

24 Q: So, you all didn't know anything about Wilfred that
25 would make you be hesitant about your son hanging around

1 him?

2 A: Well, it's very prevalent in the media that there were

3 ---

4 Q: Well, don't, don't comment on what's in the media just
5 what you have your own personal knowledge of. If you don't
6 have knowledge just say so.

7 A: . From reading, yes.

8 Q: I mean, you have no personal knowledge?

9 A: No.

10 Q: Okay.

11 MR. LOCKLAIR: Beg the Court's indulgence. No more
12 questions, Your Honor.

13 THE COURT: Redirect?

14 MR. BRYAN: No, Your Honor.

15 THE COURT: You may step down, sir.

16 Call your next witness, please.

17 MR. BRYAN: The State calls Officer Danny Watson.

18 AT THIS TIME DANNY WATSON WAS CALLED TO THE STAND, DULY
19 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

20 THE CLERK: Please be seated. Please state your full
21 name for the record.

22 MR. WATSON: Danny Watson.

23 DIRECT EXAMINATION

24 BY MR. BRYAN:

25 Q: Who are you employed by?

- 1 A: I'm with the Georgetown City Police Department.
- 2 Q: How long you been with the city?
- 3 A: Ten years.
- 4 Q: On August the 4th of 2002 what were your duties and
5 responsibilities?
- 6 A: On that date I was the supervisor for a patrol shift
7 taking normal law enforcement calls for service.
- 8 Q: Okay, part of your job to take incident reports,
9 etcetera?
- 10 A: That's correct.
- 11 Q: Did you take an incident report in reference to a
12 stolen vehicle on August the 4th, 2002?
- 13 A: Yes, sir, I did.
- 14 Q: All right, who'd you take the report from?
- 15 A: On that date Mr. Jody Ward and his wife came to the
16 police department to report a vehicle stolen.
- 17 Q: All right, who did you list as the victim?
- 18 A: I listed Mrs. Ward as the victim. She was the
19 registered owner of the vehicle.
- 20 Q: All right, who all was there when the report was made?
- 21 A: Myself, Mr. and Mrs. Ward.
- 22 Q: All right, and as between Mr. and Mrs. Ward who did
23 the talking?
- 24 A: Mr. Jody Ward did most of the talking.
- 25 Q: Okay, what did he tell you about -- what kind of car

1 did he say had been stolen?

2 A: It was a Suzuki Sidekick, a sport utility vehicle, a
3 small four-door truck type vehicle.

4 Q: And what did he tell you had happened?

5 A: Mr. Ward stated that the previous day, the August the
6 3rd, he and a man named Wilfred Brown had been riding in
7 his vehicle. Mr. Brown had been driving the vehicle and
8 Mr. Ward had been a passenger. They went to a house to
9 pick up another gentleman who Mr. Ward stated he did not
10 know, but did overhear the first name of Elton used for
11 this second individual. Once all three of them were in the
12 vehicle they drove to the convenience store at the corner
13 of Highmarket and Merriman Road.

14 Q: Do you know the name of that store?

15 A: I believe it's called the Money Saver.

16 Q: Okay, all right, what did he tell you happened there?

17 A: He stated that he got out of his vehicle leaving the
18 other two gentlemen in the car and he went inside the store
19 to purchase some drinks. While inside the store he stated
20 he looked out the window, observed Mr. Wilfred Brown and
21 the other individual talking with someone in the parking
22 lot. He then told me that he witnessed the second
23 individual known only as Elton get in the driver's side of
24 his vehicle. He observed Mr. Wilfred Brown get in the
25 passenger side of the vehicle and they left the parking lot

1 with him still in the store.

2 Q: All right, did he make any other statements about
3 things that they had said to him?

4 A: Yes, he did. He stated during the time that we spoke
5 at the Police Department that he had overheard Mr. Wilfred
6 Brown and the other individual talking about taking a trip
7 out of town, possibly to Georgia or in Myrtle Beach. He
8 also made the comment that Wilfred Brown had asked to
9 borrow his vehicle the day, that same day or asked him to
10 rent a car for Mr. Brown and he stated that he refused to
11 do either one of those things for Mr. Brown.

12 Q: Did he say what time the car was stolen?

13 A: I believe he stated about four p.m. in the afternoon
14 approximately.

15 Q: I don't have any other questions.

16 MR. LOCKLAIR: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. LOCKLAIR:

20 Q: Are you familiar -- did you know Wilfred Brown back in
21 August of 2002?

22 A: I knew him through my work with the police department.

23 Q: Okay, do you recall telling Mr. Ward when he filed
24 this report that he was lucky nothing happened to him
25 personally?

1 A: I don't recall saying that.

2 Q: Would that have been something you might have said
3 based on the circumstances and the people involved based on
4 your knowledge?

5 A: It's hard to say. Mr. Ward's statements didn't lead
6 me to believe that he was in any personal danger. He was
7 out of the vehicle when the vehicle was stolen. I'm not
8 saying I didn't say that. I don't recall saying that to
9 him.

10 Q: Okay, thank you.

11 MR. LOCKLAIR: That's all I have, Your Honor.

12 MR. BRYAN: Nothing further.

13 THE COURT: You may step down, sir.

14 MR. HEMBREE: Your Honor, our next witness we will be
15 setting up the videotape. We can go ahead and do that and
16 go forward or if you want it might be a good time for a --
17 for our afternoon break.

18 THE COURT: Yeah, we'll go ahead and take a break so
19 you can set up and we'll just have the jurors come in
20 around it. It'll already be set up. I'm going to allow
21 you to go back to the jury room with these instructions,
22 please do not discuss the case. We'll have you back out in
23 the very near future. You may go back at this time. Make
24 sure they have some sodas and snacks back there, please.
25 All rise.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right, we will take about a 10-minute
4 break. See you back in here in 10 minutes.

5 ***** OFF THE RECORD *****

6 (On the record.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Thank you. Please be seated.

10 Anything from the State prior to bringing the jury
11 out?

12 MR. HEMBREE: Yes, Your Honor, we have a number of
13 exhibits that we propose to introduce through the next two,
14 through the next two witnesses, and I've consulted with
15 Defense counsel for a few minutes as we kind of reviewed
16 these and I believe we might be able to deal with some of
17 the issues on the admissibility of these photographs before
18 we bring the jury in. That way it'll just make for a
19 smoother presentation and probably a much quicker
20 presentation if we don't have to kind of go through each
21 one and have them introduced as we go.

22 THE COURT: Have you shared them? Are those the ones
23 that are in dispute?

24 MR. HEMBREE: Let's see which ones -- well, perhaps we
25 can put on the record which ones are in dispute. First is

1 a photographs of Dawhoo Lake and the area where the car was
2 recovered. This would be testified to by the diver who
3 recovered the vehicle.

4 THE COURT: All right.

5 MR. LOCKLAIR: We don't have an objection to that one,
6 Your Honor.

7 THE COURT: All right.

8 MR. HEMBREE: The next one, Your Honor, is State's Ten

9 ---

10 THE COURT: What number was that?

11 MR. HEMBREE: I'm sorry, that's State's Four for
12 identification purposes.

13 THE COURT: Okay.

14 MR. HEMBREE: I'll ---

15 THE COURT: State's Four is ---

16 MR. BRYAN: A picture of Dawhoo Lake.

17 MR. HEMBREE: Photograph of Dawhoo Lake.

18 THE COURT: Do you want to go ahead and stipulate that
19 it's in evidence without objection?

20 MR. LOCKLAIR: That's fine. We'll stipulate it's in
21 evidence, Your Honor.

22 (Whereupon, State's Exhibit Number Four [Photograph]
23 introduced into evidence and appropriately marked.)

24 MR. HEMBREE: Your Honor, State's Ten is a photograph
25 of the license plate on the back of the Suzuki Sidekick.

1 That was after, after it was recovered from Dawhoo Lake.

2 MR. LOCKLAIR: Your Honor, we're going to have an
3 objection to basically photographs 10 through 25. We'd
4 object. There's already been testimony about the vehicle
5 being sank. There's going to be subsequent testimony about
6 it. We think that it can cause -- it would be cumulative
7 evidence. It could be misleading to the jury because the
8 condition of the vehicle does not reflect in any way the
9 condition it was at the time of the alleged crime, and we
10 further think it could confuse the issues and also cause
11 unfair prejudice to our client due to the nature of the
12 vehicle afterwards.

13 MR. HEMBREE: Your Honor, we're not, we're not going
14 to propose or try to offer testimony that this was the
15 exact condition. This would be the condition of the
16 vehicle at the time that the SLED agents processed it, the
17 crime scene specialists processed it. So, it certainly, it
18 changed from the time before it went into the lake until
19 after it went into the lake. We're not going to try to make
20 any argument that it's in the exact condition.

21 THE COURT: All right, and that is Number Ten?

22 MR. HEMBREE: That's correct, Your Honor. I guess it
23 would be our position that it goes to the weight.

24 THE COURT: And let me see how many of the auto do you
25 have.

1 MR. HEMBREE: We have ---

2 MR. LOCKLAIR: Ten through 25.

3 THE COURT: They're all ---

4 MR. HEMBREE: Sixteen, Your Honor, that have to do
5 with the outside and the inside, different shots for
6 different purposes.

7 THE COURT: All right, and the purpose of that Number
8 Ten?

9 MR. HEMBREE: The purpose of Number Ten is to show the
10 license tag. This was how the car was identified when the
11 divers went into the water to locate it. They found, they
12 found that it was a Suzuki.

13 THE COURT: All right.

14 MR. HEMBREE: Then they found a license tag and
15 confirmed that that was.

16 THE COURT: Sounds relevant.

17 MR. LOCKLAIR: Yes, ma'am, Your Honor, but as far as
18 Number Ten is concerned he will get to Number 12 in a
19 second, which I'm sure you're going to find relevant
20 because it reflects an alleged entry hole from a bullet and
21 in that picture it also reflects the license plate. It's
22 not a closeup, but we would say that's cumulative.

23 THE COURT: Could we use Number 12 instead? Let's
24 take a look at that.

25 MR. HEMBREE: The problem with that, Your Honor, is

1 you can't really see the number all the way. It's at an
2 angle. Let me just pass those up to the Court. I think
3 you might see what I'm talking about.

4 On Number 12 the -- and this is State's for ID 12, you
5 can see that the license tag is bent; and so, you can't
6 really see the number clearly. In Number Ten, that's the
7 only reason I offered Number Ten in addition to that is you
8 could see the number clearly in Number Ten. They took it
9 at an angle. They took the photograph at an angle so they
10 could get, in spite of the bend, they could get the entire
11 license plate.

12 THE COURT: Yeah, I see that. I do see the necessity
13 for it. All right, I would allow Number Ten in and that
14 was Number 12. I can go ahead and deal with Number 12 in
15 that it was showing a bullet hole that is relevant to the
16 crime in the case and I'll allow Number 12. We've dealt
17 with both of those.

18 MR. LOCKLAIR: Okay, we would argue Number 13 is
19 cumulative to Number 12.

20 THE COURT: All right.

21 MR. LOCKLAIR: It shows the exact same bullet hole I
22 believe as Number 12 except for with a dowel punched
23 through the bullet hole.

24 MR. HEMBREE: Well, Your Honor, that's the -- they
25 used that dowel to try to determine the bullet path, the

1 bullet track so they could find because they were looking
2 for the bullet. That's the purpose -- of course, you can't
3 tell at what angle the bullet enters in picture Number 12
4 but you can in Number 13.

5 MR. LOCKLAIR: Your Honor, we'd argue that if they
6 need 13 to show the direction of the bullet it shows the
7 bullet hole just like 12 and presenting 12 would just be
8 cumulative evidence.

9 THE COURT: Let me see 12 and 13.

10 (Complies with request.)

11 THE COURT: I can see why both of them would be
12 offered, one to show just the bullet hole so there wouldn't
13 be an argument about, "Well, we don't know what that is."
14 There's something with a stick stuck in it. Are you going
15 to concede? Do you say that that is, in fact, a bullet
16 hole?

17 MR. LOCKLAIR: I mean, they're going to testify that
18 it's a bullet hole. I don't think I have the expertise but
19 ---

20 THE COURT: And I'm going to -- I don't see where
21 there's -- it's any prejudice to the client or that it's
22 unduly cumulative. One of them shows simply the bullet
23 hole. The other is at somewhat of a different angle
24 showing the angle of the hole. I'm going to allow those
25 both in.

1 MR. LOCKLAIR: Just for the record, Your Honor, our
2 further objection on the dowel would be that ---

3 THE COURT: Okay.

4 MR. LOCKLAIR: --- obviously you can see the back of
5 that vehicle has been bent; and so, the dowel might not
6 accurately reflect the path that the bullet traveled when
7 the car was in proper condition.

8 MR. HEMBREE: And certainly that would, that was
9 something that would be appropriate for cross examination
10 about what does, what does this dowel mean, you know, what
11 does this track mean. I think that's -- it doesn't go to
12 the admissibility but it does go to the weight and
13 certainly is right for cross examination. We didn't speak
14 directly about Number 11.

15 THE COURT: And let me go ahead and rule on that. I
16 would agree and I would allow you to ask about -- if they
17 knew what condition it was in prior to and whether that
18 would make a difference in the angle.

19 MR. LOCKLAIR: And we would obviously have an
20 objection ahead of time of anybody testifying to the
21 ballistics and the angle who is not qualified as an expert
22 in that area as well.

23 THE COURT: Absolutely and that will not be allowed in
24 if, in fact, that foundation is not laid.

25 MR. LOCKLAIR: Yes, ma'am, thank you.

1 THE COURT: It is subject to that foundation.

2 MR. HEMBREE: Thank you, Your Honor.

3 Number, Number 11 was just a side view of the
4 condition of the vehicle. It's sort of a broad view.

5 MR. LOCKLAIR: We would just say that's cumulative.
6 It doesn't offer any relevant evidence to the jury
7 whatsoever. It doesn't reflect anything that could help
8 them decide an issue of fact. In fact, by the windows
9 being busted out it could confuse them, to lead them to
10 think that some of that damage could have occurred prior to
11 being in the lake.

12 THE COURT: Yeah, I don't know what the relevance
13 would be just having a side view. We've got the back.

14 MR. HEMBREE: Well, Your Honor, the ---

15 THE COURT: Just show me ---

16 MR. HEMBREE: --- the officer, the officer is going to
17 testify that the front passenger and driver side windows
18 were rolled down. The front windshield is out, but it just
19 shows the general condition of the vehicle, which is ---

20 THE COURT: All right, so, does that mean that we can
21 cut down on some of the others because I suspect you're
22 going to come closer to see the front window was rolled
23 down and see the front windshield is out, and what I'm
24 trying to do is just cut down on the amount of these.

25 In other words if that will take the place of several

1 and it would be useful if you can say it's relevant for
2 these purposes, the front windshield is busted out and it
3 shows that those windows were down.

4 MR. HEMBREE: It shows that the windows are down.
5 That's -- and it's probably the best one I have showing
6 that the windows were down.

7 THE COURT: Okay.

8 MR. HEMBREE: The fact that the front window is broken
9 out.

10 THE COURT: You want -- you've got another one for
11 that?

12 MR. HEMBREE: Well, no, we're not going to offer
13 another one for that purpose. Now, that's -- and it's --
14 that's going -- that's an issue that's not really settled
15 because it could have come out in the process of pulling it
16 off the bottom of the lake. We're not trying to allege
17 that the front window was out after the crime ---

18 THE COURT: Okay.

19 MR. HEMBREE: --- don't -- I'm not trying -- I'm not
20 going there, but it's -- there's going to be testimony that
21 a lot of this damage could have occurred in the process of
22 dragging it from the bottom of Dawhoo Lake.

23 THE COURT: All right, I'll allow that in and that is
24 number?

25 MR. HEMBREE: This is Number -- State's 11.

1 THE COURT: Eleven, okay.

2 MR. HEMBREE: Fourteen, Your Honor, shows the -- is a
3 view of the ceiling, the headliner basically of the vehicle
4 showing that it's full of mud. One of the witnesses is
5 going to testify that the car was actually found upside
6 down in the lake. Hence, when they pulled it out of the
7 lake it, you know, scooped up and all this mud settled in
8 the headliner. That's the only reason I offer that one.
9 Just general, again, generally showing the poor condition
10 of the vehicle after it was in the lake.

11 THE COURT: Unless that becomes some sort of issue in
12 dispute I don't see the relevance of that just getting ---

13 MR. HEMBREE: I'll leave that one, we'll drop that
14 one. That we will not offer Number 14.

15 THE COURT: That's 14.

16 MR. HEMBREE: Your Honor, Number 15 is a, is a
17 photograph of the front interior compartment of the vehicle
18 showing a couple of things. One, it shows the -- it shows
19 the shifter knob and it shows the key that's in the
20 vehicle. We have a closer up picture and I'll be quite
21 honest 15 and 16 -- 16 is a closeup picture of the shifter
22 knob and you can also see the key. It's just very
23 difficult to get a perspective of where this -- what this
24 is without the larger picture, and this picture just
25 doesn't show a very good picture of the key. It's hard to

1 make out. This is a closeup view where you can see the key
2 much clearer. So, again, you know, sort of a far away
3 perspective. This is, this is for perspective, to give the
4 jury a better, clearer understanding.

5 THE COURT: Any objection to those?

6 MR. LOCKLAIR: I mean, we would object on relevancy
7 and it being cumulative. Obviously if you find the
8 relevance, Your Honor, we would say that they only need one
9 or the other. I mean, from both of these I can obviously
10 make out that's the gear shift and steering column with the
11 key because the driver's door with the gear shift and the
12 steering wheel.

13 THE COURT: Yeah, and I don't know which number that
14 is but the one to my most left, the closer up would
15 probably be the one. I do find it's relevant. I know
16 where they're going with that is that the key was put in
17 and it was -- so, that -- and it was put in gear. So, yes,
18 I do find that it's relevant and I will limit you, though,
19 to one, and I'll let you make that choice.

20 MR. HEMBREE: Thank you, Your Honor. Thank you, Your
21 Honor. We'll set Number 15 aside and proceed with Number
22 16. The next photograph, Your Honor, is again the interior
23 compartment, State's Number 17, and the front with the door
24 closed. The other photograph is with the driver's side
25 door open. There appears to be damage here that was caused

1 by a fired projectile in this location right here. I have
2 two, again, two photographs depicting this. Seventeen and
3 18, this is the first one I just referred to was 17.
4 Eighteen is a closeup of that damage. Once again, it's
5 virtually impossible just looking at State's 18 to
6 understand where this damage has occurred on the passenger,
7 excuse me, driver's side door. So, I'm using 17 to show
8 the driver's side door as it was closed where the crime
9 scene specialist can refer to the area where 18 takes
10 place.

11 THE COURT: All right, and what's the objection in
12 that one?

13 MR. LOCKLAIR: Well, Your Honor, we would say that
14 those are cumulative and the expert can explain them just
15 by using one. This one obviously goes back again to the
16 windows being down and the damage to the vehicle and we
17 would just say that they're cumulative.

18 THE COURT: And I disagree on this one. I think that
19 is really necessary for the perspective and that's going to
20 be provided though you have an expert to say what that is.

21 MR. HEMBREE: Understood, Your Honor.

22 THE COURT: And that foundation is laid. Those are
23 numbers ---

24 MR. HEMBREE: Seventeen and 18, Your Honor.

25 THE COURT: --- 17 and 18.

1 MR. HEMBREE: Your Honor, 20 -- I mean, excuse me,
2 Number 19 is a photograph taken from the right back seat
3 area, back door, the door open shooting a photograph here.
4 Now, there will be testimony that there is a bullet hole
5 that strikes at this particular point and the top of the --
6 of this passenger side front seat, the back top of the
7 passenger side front seat. Once again, in State's 20
8 you've got a closeup of the bullet hole, but that it's so
9 close that you can't get any perspective on where it is.
10 Once again, we're offering 19 for the sole purpose of
11 giving the jury some perspective on where 20 is or the
12 actual damage is on Number 20.

13 THE COURT: All right, yes, sir.

14 MR. LOCKLAIR: And Your Honor, this is basically
15 covering 19 through 22 because 21 and 22 also deal with the
16 front seat with the dowels and we would say that it was
17 cumulative evidence as well. Additionally, I think the one
18 he's showing, the first one he has actually could be used
19 if that one is admitted to eliminate 17 or 18, whichever
20 was the wider angled shot that you admitted in because the
21 expert could then testify that that is the spot where the
22 closeup of the other bullet hole is. So, we would think
23 that could eliminate one of the previous pictures dealing
24 with that one.

25 THE COURT: The one with the dowel is the same

1 picture?

2 MR. HEMBREE: Your Honor, there is a, there is another
3 photograph with the dowel, Number 21, once again to show
4 the track of the bullet or how they located the bullet.

5 MR. LOCKLAIR: Your Honor, we would object to that one
6 in particular because the evidence shows that the bullet
7 was actually taken from between the fabric in the seat.
8 So, for them to be able to get that dowel all the way
9 through they had to change the condition of that vehicle
10 after they found it. They created that extra hole to be
11 able to push that dowel all the way through.

12 MR. HEMBREE: That's true, Your Honor. They pulled
13 the cover off the front of the seat because the bullet went
14 through the seat and then stopped at the front cover of the
15 seat, hit that and then traveled down inside the seat. We
16 can get by without this one. I'll go ahead and offer that.

17 MR. LOCKLAIR: What number was that?

18 THE COURT: All right, let's -- that could be
19 misleading.

20 MR. HEMBREE: 21 we will not seek to introduce.

21 THE COURT: Is withdrawn, all right, and the others I
22 will allow in. I do believe that same thing. It needs to
23 allow for that perspective provided the expert lays that
24 foundation.

25 MR. LOCKLAIR: Yes, ma'am.

1 MR. HEMBREE: Thank you, Your Honor.

2 Finally, 22 and 23, 22 shows, is a view of the front
3 of that front seat where the bullet came through. The
4 cover has been removed and the bullet, 23 shows where the
5 bullet was located at the bottom of the seat down where it
6 meets the material there. Again, I think this one is just
7 going for perspective to see this.

8 THE COURT: And would that even be necessary when you
9 have it, it went in through the back and the testimony is
10 going to be where it landed?

11 MR. HEMBREE: Honestly, Judge, I think 22 we can do
12 without.

13 THE COURT: All right.

14 MR. HEMBREE: This would be where the bullet was
15 actually located is ---

16 THE COURT: And 23 is certainly relevant as to where
17 it ended up.

18 MR. HEMBREE: Your Honor, I will not seek to introduce
19 -- no, I'll take that back. Number 24 I will need to
20 introduce. This is a -- there was a baby seat that was in
21 the car in the back seat, in the back driver side of the
22 seat. It was hooked in. The condition of the baby seat
23 you can see that it's really caked with mud here and it's
24 in bad shape. That is going to be relevant later in some
25 testimony about, about blood testing and why that blood

1 testing may be have been affected based on the condition of
2 the vehicle.

3 THE COURT: Let me see if I hear the foundation for
4 the relevancy on that. Then I'll let you -- allow you to
5 make your motion at that time.

6 MR. LOCKLAIR: The additional thing we would raise on
7 it, Your Honor, is 19 would be cumulative. It clearly
8 shows the condition of the vehicle. You can see the baby
9 seat to your far left with mud on it. You can see mud on
10 the back passenger seat.

11 THE COURT: I don't know. I mean, I'm telling you I
12 can't from here ---

13 MR. LOCKLAIR: Okay.

14 THE COURT: --- but that doesn't mean, I mean ---

15 MR. LOCKLAIR: Yes, ma'am.

16 THE COURT: --- although I -- my vision is better far
17 off than it is close up. Yeah, I can't tell what that is
18 honestly. I can tell something is there, but you just see
19 just, just the end of it, just the edge of it. Yeah, I can
20 understand provided that there is some relevancy other than
21 just showing a baby seat covered with mud, that wouldn't be
22 relevant, but you're saying that they're going to say
23 because of the condition they were unable to get the blood,
24 DNA or something along those lines?

25 MR. HEMBREE: Correct.

1 THE COURT: Is that's what's going to happen?

2 MR. HEMBREE: Correct.

3 THE COURT: All right, let's wait and here if that, if
4 that has -- that foundation is laid for relevancy.

5 MR. HEMBREE: Understood, Your Honor.

6 And then finally, the State's 25 which shows the
7 condition of the seat of the bench back seat in the vehicle
8 what appears to be a stain on the -- in the center of the
9 seat.

10 THE COURT: And why would that not take the place of
11 the one that you just showed the Court?

12 MR. HEMBREE: Well, because this is the condition of
13 the actual seat, not the baby seat.

14 THE COURT: All right.

15 MR. HEMBREE: And from this one you can see ---

16 THE COURT: But can't you see in that baby seat?

17 MR. HEMBREE: Not really.

18 MR. LOCKLAIR: Yes, ma'am.

19 THE COURT: All right.

20 MR. HEMBREE: It's at a side, it's at a side view and
21 it's sort of -- well, let me hand it up to you.

22 THE COURT: Okay.

23 MR. HEMBREE: You can take a look, but it's your view
24 of the inside of that baby seat is pretty well obstructed.

25 THE COURT: All right, let's, let's see. It -- I can

1 see in it enough to know that it's full of mud, all right.
2 Those two we'll wait and see whether the foundation is laid
3 appropriately.

4 MR. LOCKLAIR: Yes, ma'am.

5 I guess the final issue -- do you have any other
6 exhibits other than the tape? That'd be the final issue,
7 would be the videotape they plan to introduce. I believe
8 it's a videotape of them getting the car out of Dawhoo
9 Lake. We would object, that although it may be relevant,
10 we would first state, obviously, we don't think it's
11 relevant. We think that's it's cumulative based on the
12 pictures and the testimony that they've created. We think
13 it would create confusion among the jury. Obviously,
14 they've had people testify to the car being pulled out.
15 They're going to have somebody testify that they pulled the
16 car out, that they had to get divers down there. There's
17 obviously pictures that have been -- are going to be put
18 into evidence that are going to show the condition of the
19 car. The pictures obviously show the alleged projectile
20 marks in the car, as well as any possible stains that they
21 allege were in the car, and we think by showing them
22 actually just pulling the car out it doesn't go to help
23 prove any issue. They know, that jury by now has heard
24 testimony and will hear more that the car was dumped in the
25 lake, it had to be recovered and these pictures will go

1 towards that of covering the condition of the vehicle
2 afterwards. We just don't see how it's relevant to show a
3 video of them having to pull the car out of the lake. It
4 doesn't go to help the jury decide any issue in this case.

5 MR. HEMBREE: Well, that's really for the witness to
6 say, Your Honor. I think he would say that it would assist
7 him in explaining his testimony and what procedures were
8 used and how they went about getting this vehicle out of
9 the lake. The condition is going -- the condition of the
10 vehicle clearly has changed. I think the process of
11 getting it out of the lake is what results in some of those
12 significant changes like the windshield being broken out
13 and the muddy condition of the interior, which effects
14 certain evidentiary issues inside the vehicle. So, the
15 process that was used I think is relevant. I think that's
16 going to be important for the jury to understand that, and
17 the videotape is rather short. It's not going to go on and
18 on. It just basically shows them pulling it out of the
19 lake, the process that was used, it will help this witness
20 explain his testimony to this jury.

21 MR. LOCKLAIR: Your Honor, we would just argue that
22 whatever occurred under the lake the video is not going to
23 show. So, the witness is making suppositions based on his
24 examination of the vehicle and how they found the vehicle
25 at the end. They cannot testify as to what damage was

1 caused under water while they were dragging the vehicle and
2 I don't see any relevance in them pulling the vehicle out
3 of the lake because basically it's going to show, you know,
4 whatever ahead of time and the vehicle actually being drug
5 out of the lake and then positioned on the landing and I
6 just don't see how that goes to help the jury determine any
7 issue. I think it's cumulative to these pictures as well
8 as to other testimony.

9 THE COURT: I agree. It seems that it would be
10 sufficient that you could have your individual testify as
11 to what they did and how they pulled it out of the lake.
12 Now, it may become and it may become important if there's a
13 challenge about the damage that happened to it coming out
14 of the lake. Then it may be appropriate on reply to say,
15 "We can show you exactly how it happened. Here's exactly
16 how it happened coming out of the lake," and you would
17 have opened it up.

18 MR. HEMBREE: Well, Your Honor, with the same, with
19 the same rationale, though, none of these pictures should
20 come in under any of these circumstances. If you're saying
21 that because a live witness can get up there and say, "This
22 is how we did it and this is what we did," so you cannot
23 see it.

24 THE COURT: But it's because -- it's because you have
25 those pictures, I mean, it's because you have your live

1 witness who can explain what happened and you have those
2 pictures that are going to be introduced into evidence.
3 You then want them to see what I think would be, I don't
4 know how long it is, but I would imagine that it would be
5 some length of time watching that get pulled out. How long
6 is that?

7 MR. HEMBREE: Five, ten minutes, it's very short.

8 THE COURT: Let me see it.

9 (Whereupon, State's Exhibit Number Eight played.)

10 THE COURT: Your objection specifically is what?

11 MR. LOCKLAIR: Your Honor, we think that it's
12 cumulative to the pictures and the other testimony. We
13 think that it could lead to confusion of the issues among
14 the jury as well.

15 THE COURT: How, how is it confusing the jury other
16 than it's not a very good video?

17 MR. LOCKLAIR: We just think that the condition of the
18 car coming out does not accurately depict how it went in
19 previously, and we just don't see how it's relevant either,
20 Your Honor, the fact they had to pull the truck out upside
21 down. I mean, big deal. There's testimony he put the
22 truck in the lake. The fact of how it got drug out is
23 completely irrelevant to any issue in this case, and the
24 fact they had to hook a rope up or a cable up to it and tow
25 it out upside down does not help prove anything.

1 THE COURT: I tend to agree. I don't think the video
2 is appropriate to be shown. The testimony that it was
3 pulled out is enough. What becomes relevant about that
4 vehicle are the bullet holes.

5 MR. LOCKLAIR: Yes, ma'am.

6 THE COURT: And the things that they are showing and
7 possibly also the thickness of the mud and that type of
8 thing if it did interfere with any further studies that
9 could have been done, but as far as pulling it out I don't
10 see the relevance. I agree. It will not be shown to the
11 jury. First the testimony will be that there were divers,
12 that it was located and that it was pulled out.

13 MR. LOCKLAIR: Yes, ma'am, obviously. Thank you, Your
14 Honor.

15 THE COURT: All right, is there anything else that we
16 need to deal with prior to bringing the jury out?

17 MR. HEMBREE: Not from the State, Your Honor.

18 THE COURT: Anything from the Defendant?

19 MR. LOCKLAIR: Beg the Court's indulgence, Your
20 Honor.

21 May we approach, Your Honor?

22 (Whereupon, a Bench conference was held.)

23 THE COURT: All right, anything further?

24 MR. HEMBREE: Nothing from the State, Your Honor.

25 THE COURT: We're ready for them. All rise, please.

1 (Whereupon, the following takes place in the presence
2 of the jury.)

3 (Whereupon, Court's Exhibit Number Nine [Note from
4 Juror Number 68] and Court's Exhibit Number 10 [Note from
5 Juror Number 88] appropriately marked.)

6 THE COURT: Please be seated.

7 Welcome back. We remain in the phase of the case
8 where the State has the opportunity to present evidence and
9 testimony. We did not forget about you back there in the
10 jury room, certainly knew you were back there. We did
11 handle some matters of law. We're glad to have you back.
12 Call your next witness, please.

13 MR. HEMBREE: Thank you, Your Honor. The State calls
14 Deputy Chris Doerr to the stand.

15 AT THIS TIME CHRISTOPHER WILLIAM DOERR WAS CALLED TO THE
16 STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

17 THE CLERK: Please be seated. Please state your full
18 name the record.

19 MR. DOERR: Christopher William Doerr.

20 DIRECT EXAMINATION

21 BY MR. HEMBREE:

22 Q: Deputy Doerr, who do you work -- I'm sorry, you're
23 Corporal Doerr?

24 A: Yes, sir.

25 Q: Corporal Doerr, who do you work with?

1 A: Georgetown County Sheriff's Office.

2 Q: And how long have you been with the Sheriff's Office?

3 A: Approximately ten years.

4 Q: What are your areas of responsibility with the
5 Sheriff's Office?

6 A: I'm the corporal for the warrants division. I also
7 head up our marine patrol and dive team.

8 Q: Marine patrol and dive team.

9 A: Yes, sir.

10 Q: And was it in that capacity that you were called upon
11 to assist in this case?

12 A: Yes, sir.

13 Q: And what actions did you or who requested your
14 assistance in this case?

15 A: The investigators, Gary Todd and Ernest Hampton.

16 Q: And what did they ask you to do?

17 A: They asked me to dive various locations in the county.

18 Q: Now, and I think we probably have a pretty good idea
19 of what that involves but just generally, not talking about
20 this case, but generally when you dive for something what
21 is the -- how does this work, what does it, what does it
22 entail?

23 A: Well, I get requested by whoever it is to -- a request
24 to dive a certain area, and normally I'm looking for --
25 they tell me what it is that they're, that they're looking

1 for and based on what we're looking for depends on the
2 personnel we get and the equipment that we get to go out
3 there and search the area.

4 Q: All right, now, what is a typical, I mean, I
5 understand you use different equipment depending on what
6 kind of a, what kind of an operation it is, but you put on
7 like a big air, air tank?

8 A: Scuba, yes, sir.

9 Q: Scuba gear?

10 A: Yes, sir, full gear, scuba system which has the
11 regulator and the air tank and normally we wear wet suits,
12 gloves, booties, fins, mask and, and a dive light and ropes
13 for safety.

14 Q: And you were called upon in this case by Investigators
15 Todd and Hampton to look for something. What did they
16 request you to search for?

17 A: They were searching for a vehicle.

18 Q: Okay, do you know what kind of vehicle that was?

19 A: I was told a greenish in color Suzuki Sidekick.

20 Q: Suzuki Sidekick?

21 A: Yes, sir.

22 Q: Now, were you provided with a license tag number?

23 A: I was.

24 Q: 563 MYN?

25 A: That part I don't recall at this point, but I was

1 provided with a, with a tag number.

2 MS. KNEECE: Your Honor, if I could object just to the
3 Solicitor leading. If he could just ask the question.

4 MR. HEMBREE: Be glad to, Your Honor.

5 THE COURT: Yes, sir, if you would rephrase.

6 MR. HEMBREE: Thank you, Your Honor.

7 BY MR. HEMBREE:

8 Q: The -- after they requested your assistance to look
9 for the Suzuki, the green Suzuki Sidekick do you recall the
10 date you first dived Dawhoo Lake?

11 A: That was August 12th of 2002.

12 Q: Okay, did you locate the Suzuki Sidekick on that day?

13 A: No, I did not.

14 Q: Did you have occasion to dive that area again?

15 A: Yes, I did.

16 Q: On what dates, day?

17 A: I dove it a -- briefly a second time with no success,
18 and then actually it was a third time. That was September
19 30th, 2002, is when I actually located the vehicle.

20 Q: September 30th of 2002?

21 A: Yes, sir.

22 Q: Okay, now, tell me about on your first dive, August
23 the 12th of 2002, describe to this jury the conditions in
24 the water.

25 A: Well, I've been diving approximately 20 years, and as

1 far as conditions was that's the nastiest water. It's a --
2 more of a swamp. It's stagnant water. It's not, not
3 necessarily that currents are bad. There's no moving water
4 in there, but it's just that it's stagnant and all the
5 debris that's in the water make it a very undesirable dive.
6 You wouldn't go there to dive for fun by no stretch.

7 Q: What kind of visibility?

8 A: Zero.

9 Q: Okay.

10 A: We're talking using a cave light, which actually has a
11 battery pack that attaches to your -- next to your tank
12 that you're breathing on and have a cable with the, with
13 the halogen bulb, which is typically used for dive, diving
14 in caves, but we also use it in bad visibility, and with
15 that we're still only talking maybe two or three inches of
16 visibility.

17 Q: Poor conditions?

18 A: Absolutely.

19 Q: You indicated you dived a second time without success?

20 A: Correct, tried diving, we actually -- I dove alone at
21 that particular time just attached to a rope and was ---

22 Q: Is that a good idea?

23 A: No, not normally. We were just doing a very limited
24 search area, were unable to get another diver at the time,
25 but they did want to try it again. So, we, we tried it

1 just briefly, and based on entanglement and just the
2 conditions it's just -- it's not, not a good dive to dive
3 by yourself.

4 Q: Now, taking you up to September the 30th of 2002.

5 A: Yes, sir.

6 Q: Were you successful on that dive?

7 A: . We were.

8 Q: All right, describe to this jury if you would the
9 steps you took to prepare for that dive.

10 A: I was requested again to dive this same location. We
11 were able to -- Charleston, the City of Charleston has
12 equipment called side-scan sonar which they put -- it looks
13 like a torpedo. They put it in the water. They call it a
14 fish, and they drag it behind a boat and it gives them an
15 image in the, in the water and we were able to get them to
16 come down with that equipment. They also had a second
17 piece of equipment, another type of sonar where it's on a
18 stick and you -- and it looks kind of like a big microphone
19 and it goes underneath the water and it does a pinging,
20 ping, ping and when you're turning it, if it hits some sort
21 -- the sonar hits a metal type object it gives a different
22 type, a higher pitch ping and based on the City of
23 Charleston people came down first, they did that pinging
24 and were able to get an idea that over on the left-hand
25 side of this landing there was something over there, some

1 type of metal. We didn't know at that point. We used a
2 smaller boat, a 14-foot boat because of the conditions we
3 were in you couldn't use a bigger type of boat but we were
4 able to make do with a smaller boat. They put the second
5 piece of equipment, this fish in there and drug that area
6 and were able to get a pretty good idea of where something
7 was based on shadows and sonar and that they actually used
8 that same hand-held piece of equipment right over that area
9 and got a very strong pinging sound, and basically gave me
10 a pretty good area of where, where to go down and try; and
11 so, at that point myself and a fellow diver went down in
12 that area, and I believe we were in about 18 feet of water
13 when we came across a vehicle down there.

14 Q: Now, did you have to have a broad search or did you
15 pretty well go right where they told you and you find?

16 A: We pretty well, I mean, within just a couple of minutes
17 we were on something. We didn't know at the time what it
18 was.

19 Q: What were the conditions like on this particular dive?

20 A: It's the same. There is no good conditions there. I
21 mean, there is -- it's a, it's a pluff type silt on the
22 bottom. It just does a mushroom effect. As soon as you
23 get into it it comes and it just covers you. By the time
24 you get out of there you're just -- you're black. I mean,
25 your ears, your nostrils, anything, anywhere that that

1 nasty can get it got.

2 Q: Let me show you a photograph, State's Four in
3 evidence, and ask you to identify that photograph for the
4 jury.

5 A: Yes, sir, this is, I guess, an aerial photo of the
6 dirt road leading up to the landing there at Dawhoo Lake
7 where we recovered the vehicle.

8 Q: Okay, and this area marked Dawhoo Lake Landing ---

9 A: Yes, sir.

10 Q: --- would that be the area where the vehicle ---

11 A: Yes, sir, that's the actual landing and it's just off
12 of from that landing where we found the vehicle.

13 MR. HEMBREE: I'd like to go ahead and publish that to
14 the jury.

15 THE COURT: Any objection?

16 MS. KNEECE: No, Your Honor.

17 THE COURT: All right.

18 BY MR. HEMBREE:

19 Q: Once you -- how did you know that -- you said you were
20 on something. You testified earlier you were on something.
21 What steps did you take to confirm that this was the item
22 you were searching for?

23 A: First came up to a big metal object and I take the
24 light and try to see and I believe I was looking at some
25 part of the manifold system, muffler system, the piping and

1 actually just kind of followed around the object until I
2 came across a tire and when I came across a tire the hubcap.
3 or the emblem inside the tire had a -- the Suzuki "S",
4 that, that, their logo was on it. So, I knew -- I felt
5 fairly confident I was on a Suzuki at that time. Went
6 around to the vehicle fishing around and actually came up
7 to the license plate, memorized the license plate number at
8 the time, came up and published it or, you know, told the
9 people, told the investigators.

10 Q: Told the investigators?

11 A: What, what, what plate number was down there attached
12 to this vehicle.

13 Q: And base -- after you indicated what the plate number
14 was what was their response?

15 A: That it was the correct vehicle or the correct plate.

16 Q: What would have been your next step in the process of
17 recovering this vehicle?

18 A: Well, I kind of skipped a half a step there. Once we
19 found the vehicle we went ahead and tied. We had floating,
20 buoys attached to us that we could actually tie to the
21 vehicle to mark the placement of it so we don't -- so we
22 could locate it again, and so we actually we had done that.
23 We tied, I think, two floats to the vehicle and then
24 actually came up and let them know what we had found, and
25 at that point, I believe at that point they went ahead and

1 were calling for a wrecker to come, come down to the
2 landing.

3 Q: So, the wrecker was not already there when you started
4 this process?

5 A: No. We didn't have any idea whether we were going to
6 locate anything or not.

7 Q: Now, tell this jury a little bit about the procedure
8 of the actual recovery once you have located it, the actual
9 removing the vehicle from the bottom of Dawhoo Lake.

10 A: Well, they bring a -- it's like the 18-wheeler type.
11 It's the big wreckers in order to be able to drag this
12 vehicle from underwater, and they have the grappling hook
13 like a big fish hook, and we actually have to pull that.
14 It's attached to a chain, which is actually attached to the
15 cable that's attached to the vehicle to the tow truck and
16 we have to drag that out to the site and then go down and
17 try to find something substantial to hook this to and then
18 they tighten up the cable and then eventually start
19 bringing the vehicle into shore.

20 Q: So, tell me is it, if I understand it correctly,
21 you're dragging it across the bottom first?

22 A: Well, no, we actually inflate our -- we have a -- the
23 jackets that we wear provide flotation if you put air into
24 them. So, we're able to stay on the surface because you're
25 -- this is actually probably the most physical part of the

1 thing is the weight of all that chain that you're having to
2 pull out there takes both of us to, and actually I think we
3 had the boat come up to us and help us kind of hang on to
4 the boat while we pulled, drug this out to the general area
5 out in the water and then went down with it. So, we did
6 all that on the surface and then we go down. When we get
7 in the area we go down with, with this grapple hook.

8 Q: With the cable, the chain?

9 A: Right.

10 Q: And hooked it up?

11 A: Right.

12 Q: How many times did you have to hook it in this case?

13 A: We hooked it the first time and the wrecker started
14 dragging it and it got hooked on something underneath. I
15 don't know what type of debris but it was able to -- it
16 freed itself, the hook did. So, we actually had to go back
17 down there and reattach it one other time, and then they
18 were able to bring it up.

19 Q: Now, when you say the wrecker pulls it out, does it
20 lift it up or is it lifted -- pull it this way?

21 A: It's, it's dragging, while it's initially out there it
22 drags it till it gets, I'd say, 30 feet from the wrecker,
23 probably, and then the wrecker extends out his boom, lifts,
24 lifts up the boom of the wrecker to try to get the vehicle
25 off the, off the ground, off the bottom of the lake and

1 lift it up and actually elevating it as best it can out of
2 the water to pull it out the rest of the way.

3 Q: Is that what happened in this case?

4 A: Yes.

5 Q: And they just what -- tell -- describe to this jury
6 the scene as it came out of the water.

7 A: Well, you know, you're watching this cable. It's just
8 a cable for a long time and then eventually I think you
9 start seeing some bubbles from, you know, from air pockets
10 that are underneath there, and I think then, then there's
11 different, the oils and whatnot that are in the vehicle
12 they start, you have starting have a little bit of the oil
13 pools around the vehicle. We actually try to -- we get out
14 of the way at that point normally in case the cable breaks
15 free or we don't really want to be in that, in the
16 chemicals that are coming out of the vehicle, but we get
17 off to the side and just let the wrecker pull the vehicle
18 out. I'm thinking this particular case the vehicle came up
19 on its, on its back, on the hood or the roof and kind of
20 drug it up and out.

21 Q: Okay, so, was the vehicle upside down in the, in the,
22 at the bottom of the lake?

23 A: When we came to the vehicle it was already upside
24 down, yes. That's how we discovered the vehicle.

25 Q: Got you. So, it's on -- the top is on the bottom.

1 The top of the car is on the bottom of the lake?

2 A: There you go, that's right.

3 Q: Got it. Do you recall which way it was facing?

4 A: It was facing as if -- if you were driving from the
5 landing and headed to the water it was still headed that
6 way. The hood of the vehicle was facing away from the
7 landing.

8 Q: Let me show you State's Exhibit Number 11 for
9 identification purposes and ask if you can identify that
10 for us?

11 A: This is the vehicle we recovered.

12 Q: Now, is that generally the condition it was in when it
13 was recovered?

14 A: Yes.

15 Q: Was it wetter?

16 A: Yes.

17 Q: Other than, other than the water?

18 A: Correct, that's -- I think it had a little bit more
19 mud on it at the time. I don't know. I guess it's been
20 rained on and whatnot, but that's the -- that is the
21 general condition of the vehicle.

22 MR. HEMBREE: Your Honor, we'd go ahead and move this
23 photograph into evidence as State's 11.

24 THE COURT: All right, State's 11, it's in evidence.

25 (Whereupon, State's Exhibit Number 11 [Photograph of

1 Suzuki Sidekick] introduced into evidence and appropriately
2 marked.)

3 MS. KNEECE: Your Honor, we would just ask that you
4 note our objection and we'd like to renew it, have a
5 continuing objection for all the photos.

6 THE COURT: Very well. It's in evidence over
7 objection.

8 MR. HEMBREE: Like to go ahead and publish this to the
9 jury also.

10 THE COURT: Yes, you may.

11 BY MR. HEMBREE:

12 Q: Corporal, after the vehicle was recovered did that end
13 your involvement in this case?

14 A: Correct, once, once the vehicle was brought to the
15 surface basically I'm packing up my -- all of our
16 equipment, cleaning it off and the investigators take over
17 from that point.

18 Q: Okay, to your knowledge was it turned over to SLED
19 crime scene?

20 A: Correct.

21 Q: And could you tell us what county is Dawhoo Lake
22 located in?

23 A: Georgetown County.

24 Q: Please answer any questions Defense counsel might have
25 for you.

1 THE COURT: Cross.

2 MS. KNEECE: Thank you. May it please the Court?

3 THE COURT: Yes, ma'am.

4 CROSS EXAMINATION

5 BY MS. KNEECE:

6 Q: Corporal Doerr?

7 A: Yes, ma'am.

8 Q: You don't know the condition of the vehicle before it
9 went into the lake; do you?

10 A: No, ma'am.

11 Q: And you don't know if the windows, any of the windows
12 were all intact prior to it going into the lake; do you?

13 A: No, ma'am.

14 Q: That could have happened when it was pulled from the,
15 pulled out of the lake; could it not have, or while it was
16 in the lake?

17 A: While it was underwater, to the best of my knowledge,
18 went around the vehicle, and I believe that -- I believe
19 all the windows were intact at the time, but again, the
20 visibility is so poor there I can -- I can't say for
21 absolute certainty that we were able to touch every window
22 but the ones that I touched they were intact.

23 Q: Thank you, nothing further.

24 THE COURT: Redirect?

25 MR. HEMBREE: Nothing on redirect, Your Honor.

1 THE COURT: You may step down, sir.

2 A: Thank you.

3 THE COURT: Call your next witness.

4 MR. HEMBREE: Thank you, Your Honor. The State calls
5 Rod Greene to the witness stand.

6 AT THIS TIME RODERICK GREENE WAS CALLED TO THE STAND, DULY
7 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

8 THE CLERK: Please be seated. Please state your full
9 name for record.

10 MR. GREENE: Roderick Greene.

11 DIRECT EXAMINATION

12 BY MR. HEMBREE:

13 Q: Agent Greene, who do you work for?

14 A: I work for South Carolina Law Enforcement Division,
15 more commonly called SLED.

16 Q: In what capacity?

17 A: I'm in the latent prints crime scene department.

18 Q: And in that department what are your areas of
19 responsibility?

20 A: In as far as latent prints I'm a latent print
21 examiner. We examine fingerprints, tire wear, footwear.
22 We also do blood spatter interpretation and we're called by
23 local police agents. We go out and process crime scenes.

24 Q: How did you become involved in the case of State
25 versus Jody Ward?

1 A: On the 30th of September one of the other agents,
2 Michelle Dixon, was called on this case. She was already
3 the agent involved in this case and she was told to come
4 down and process a vehicle and I came with her.

5 Q: She came at your request or local law enforcement's?

6 A: At -- right, at, at the -- at Georgetown Sheriff's
7 Office request.

8 Q: When did you arrive? When did you begin the process
9 of working up the crime scene?

10 A: We, we came on the 1st of October, 2002, to process
11 the car.

12 Q: About what time of the day did you get to Georgetown
13 County?

14 A: We arrived at the Sheriff's Office about, I believe it
15 was about ten o'clock, and then shortly thereafter we went
16 over to the impound lot which is at the detention center to
17 process the vehicle.

18 Q: And when you arrived that's where the vehicle was
19 located.

20 A: Yes.

21 MR. HEMBREE: Excuse me a minute.

22 BY MR. HEMBREE:

23 Q: Let me show you State's Number 11 in evidence and ask
24 if you can identify that for us.

25 A: Yes, I can.

1 Q: What is that?

2 A: This is a picture of the vehicle that we processed
3 that day.

4 Q: And is it in the condition that you found it or is it
5 in the same -- in this photograph is it in the condition
6 that you found it on October the 1st of 2002?

7 A: Yes, it is. The vehicle was very muddy and water
8 logged.

9 Q: Still water logged?

10 A: Yes.

11 Q: Thank you.

12 Now, what was your, I guess, the first step in
13 processing and when we say crime scene processing that
14 would -- that could be a car, that could be somebody's
15 house, that could be a store, a street corner, anything
16 like that?

17 A: Correct.

18 Q: All right, that's broader ---

19 MR. LOCKLAIR: Your Honor, we'd, we'd object that a
20 proper foundation hasn't been laid for this area of
21 testimony.

22 THE COURT: All right, are you working on laying the
23 foundation?

24 MR. HEMBREE: Well, it depends on what the foundation
25 is that they're objecting to.

Roderick Greene - Direct by Mr. Hembree

1 MR. LOCKLAIR: Well, Your Honor, obviously he's going
2 to be getting into an ---

3 THE COURT: Let me see you at side -- see you at side
4 bar.

5 (Whereupon, a Bench conference was held in the
6 presence, but out of the hearing, of the jury.)

7 BY MR. HEMBREE:

8 Q: Agent, let me ask you a few questions about your
9 training and background with SLED. You indicated that
10 you're with the latent prints division and that as a part
11 of that you handle prints, footwear impressions,
12 bloodstain, blood pattern analysis, as well as crime scene
13 processing; is that correct?

14 A: That's correct.

15 Q: May have been something else I might have left out,
16 but I want to focus on your crime scene processing skills.
17 If you would, share with this jury the benefit of your
18 training in that area, in that field.

19 A: With -- once hired at SLED we go through the law
20 enforcement course given by the South Carolina Criminal
21 Justice Academy, and once at SLED we have a two-year
22 training program in which you study under other court-
23 qualified examiners in crime scenes. During that time
24 period you go to crime scenes with, with those agents and
25 assist them learning how to process crime scenes. There's

1 also required readings. We have a library there and upon
2 completing the reading and hands-on training you are then
3 given written tests, and once the written tests are
4 completed you're then able to receive cases, and after you
5 start receiving cases there's another six-month period that
6 someone else has to be with you on crime scenes evaluating
7 you.

8 Q: How long have you been with SLED?

9 A: I've been at SLED for four years now.

10 Q: And when did you conclude your training in crime scene
11 processing?

12 A: My training in crime scene was completed in May of
13 2001. So, after -- it took me a little over a year.

14 Q: Are you certified, is there some certification by SLED
15 in the field of crime scene processing?

16 A: There -- we are, we are now -- we've been -- the lab
17 has been accredited as far as the latent prints department.
18 Now we're going for accreditation for crime scene but there
19 is -- our department, of course, we're, we're, we're signed
20 off as crime scene -- being certified as doing crime
21 scenes, but now we're going through outside organizations
22 to be certified in crime scene.

23 Q: Are you specifically certified by SLED to process
24 crime scenes?

25 A: Yes, I am.

1 Q: And what's the benefit -- give us the benefit of your
2 educational training prior to going to SLED.

3 A: I have a bachelor of science degree in geology from
4 Furman University.

5 Q: Has that been beneficial to you in processing crime
6 scenes?

7 A: Well, just, yes, the -- in being objective looking
8 for, you know, the science aspects of it, yes.

9 Q: Now, at the time that you processed this crime scene
10 or this vehicle were you -- you were certified to be -- as
11 a crime scene processor by SLED?

12 A: Yes, I was.

13 Q: Have you been qualified in states of this court --
14 courts of record in this state to testify regarding crime
15 scene processing?

16 A: Yes, I have.

17 Q: On how many occasions?

18 A: On two other occasions.

19 Q: General sessions cases?

20 A: Yes.

21 MR. HEMBREE: Your Honor, we would offer Agent Rod
22 Greene as, as a certified crime scene processor or crime
23 scene specialist and request that he be allowed to testify
24 as such.

25 THE COURT: Any questions as to his expertise?

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1 MR. LOCKLAIR: No, Your Honor, we don't have any voir
2 dire for him.

3 THE COURT: All right, this Court does find him to be
4 an expert in the area of crime scene processing.

5 All right, and ladies and gentlemen of the jury, let
6 me explain to you what that means. It means that normally
7 a person, a layperson wouldn't come in here and testify as
8 to any type of opinion, but when you're an expert, you have
9 an area of expertise, then you may do so.

10 Yes, sir.

11 BY MR. HEMBREE:

12 Q: Once you arrived in Georgetown County and went to --
13 you indicated, I believe you testified earlier that you had
14 been to the Sheriff's Department and then went to the
15 impound lot to where -- to the place where the vehicle was
16 stored.

17 A: Correct.

18 Q: And you've also testified, I think through State's
19 Number 11, that that was the general condition of the
20 vehicle when you found it?

21 A: Yes.

22 Q: What was the first step in the processing of this
23 vehicle?

24 A: The first step is to take overall pictures of the
25 vehicle. That's just going around the vehicle taking

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1 photographs from all sides.

2 Q: Took lots of photographs in this case?

3 A: That's correct.

4 Q: A number of them. What would have been the next step
5 in the process?

6 A: After taking general photographs we then go in closer
7 and look for evidence relevant to the case.

8 Q: Do you examine the exterior or the interior of the
9 vehicle first?

10 A: The exterior.

11 Q: And if you would, describe to this jury what you
12 found, any material findings you made regarding the
13 exterior of this vehicle?

14 A: After taking the initial photographs of the exterior
15 we found what was -- what we noted as a bullet hole in the
16 rear of the vehicle on the rear hatch door.

17 Q: Let me show you State's Exhibits Number 12 and 13 and
18 ask if you can identify those two photographs.

19 A: Yes, I can.

20 Q: Please tell us, describe to us State's 12 for
21 identification purposes.

22 A: Okay, 12 is a photograph of the rear of the vehicle,
23 and in the vehicle in this picture the -- what we describe
24 as a bullet hole is visible.

25 Q: And please describe to us State's Number 13 for

1 identification purposes.

2 A: This is another photograph of the rear of the vehicle
3 and what we've done to track the path of the bullet we used
4 a dowel, which is nothing more than a wooden stick, a
5 straight wooden stick, and we insert it, you know, from one
6 side of the hole finding the other hole, you know, to track
7 the bullet, and in some cases follow the exact path that
8 the bullet was fired from.

9 Q: Very well. . .

10 MR. HEMBREE: Your Honor, we would offer these,
11 State's 12 and 13 into evidence at this time.

12 MR. LOCKLAIR: With our previous objections, Your
13 Honor.

14 THE COURT: In evidence over objection.

15 MR. HEMBREE: Thank you, Your Honor.

16 (Whereupon, State's Exhibit Number 12 [Photograph of
17 Suzuki Sidekick] and State's Exhibit Number 13 [Photograph
18 of Suzuki Sidekick] introduced into evidence and
19 appropriately marked.)

20 BY MR. HEMBREE:

21 Q: Perhaps the best way for me to do this instead of
22 bringing you up and down the whole time, we'll go through
23 all the photographs first, get them introduced, then we'll
24 bring you down in front of the jury and I want you to show
25 them some things; okay?

1 A: Okay.

2 Q: So, stay with me just a minute. After completing your
3 exterior search what was the next step in the process?

4 A: The next step we would then take photographs of the
5 interior of the vehicle.

6 Q: Got you. I'm going to show you State's Number 16 and
7 ask if you can identify -- 16 for identification purposes
8 and ask if you can identify that for us.

9 A: Yes, this is a photograph of the in -- the front
10 passenger portion of the vehicle. It was taken from the
11 passenger side toward the driver's side of the vehicle.

12 Q: All right, and what of evidentiary significance do you
13 find in this photograph?

14 A: In this photograph the ignition is visible and the key
15 is still in the ignition and the gearshift was in gear. It
16 was not in park.

17 MR. HEMBREE: Your Honor, we'd move 16 into evidence.

18 MR. LOCKLAIR: With our previous objection, Your
19 Honor.

20 THE COURT: In evidence over objection.

21 (Whereupon, State's Exhibit Number 16 [Photograph of
22 Suzuki Sidekick] introduced into evidence and appropriately
23 marked.).

24 BY MR. HEMBREE:

25 Q: I ask you to take a look at Number 17 for

1 identification purposes, and if you would describe to us
2 the scene and then tell us what of evidentiary significance
3 you find in that photograph?

4 A: This is another view of the driver's compartment from
5 the passenger side towards the driver's side, and in this
6 picture it's slightly covered here, but there is a
7 photograph of what appeared to be another mark created from
8 a bullet on the driver's door.

9 Q: Then let me show you Number 18 and ask you to describe
10 that for us as well.

11 A: This is a, this is a closeup of the driver's door of
12 the -- and we have put scale tape in this picture to
13 highlight the area that we felt was made by a bullet.

14 Q: Is damage that was done to this door?

15 A: Yes.

16 Q: So, does this correlate -- does 18 correlate to Number
17 17; is that correct?

18 A: Yes.

19 MR. HEMBREE: Your Honor, we would move State's 17 and
20 18 into evidence at this time.

21 THE COURT: All right.

22 MR. LOCKLAIR: We'd ask that our previous objections
23 be noted.

24 THE COURT: In evidence over objection.

25 (Whereupon, State's Exhibit Number 17 [Photograph of

1 Suzuki Sidekick] and State's Exhibit Number 18 [Photograph
2 of Suzuki Sidekick] introduced into evidence and
3 appropriately marked.)

4 Q: And I take you to photograph, State's 19 for
5 identification purposes. Describe that to us, please.

6 A: This is a photograph from the rear of the passenger
7 side of the car. The rear door is open and the photograph
8 is from the back of the vehicle towards the front.

9 Q: And what of evidentiary significance do you find in
10 this photograph?

11 A: On the back of the passenger seat we found what
12 appeared to be a bullet hole.

13 Q: Now, I take you to State's 20 for identification
14 purposes. Can you describe that to us?

15 A: This is a closeup of the back of that passenger seat
16 and it's just a closeup shot of that bullet hole.

17 MR. HEMBREE: Your Honor, we would move State's 20 or
18 excuse me, 19 and 20 into evidence.

19 MR. LOCKLAIR: We'd ask our objections be noted.

20 THE COURT: All right, in evidence over objection.

21 MR. HEMBREE: Thank you, Your Honor.

22 (Whereupon, State's Exhibit Number 19 [Photograph of
23 Suzuki Samurai] and State's Exhibit Number 20 [Photograph
24 of Suzuki Samurai] introduced into evidence and
25 appropriately marked.)

1 BY MR. HEMBREE:

2 Q: I take you to now State's Exhibit Number 23 for
3 identification. Describe that for us, please.

4 A: This is a picture of the front passenger seat. We
5 were looking for a bullet and we peeled the fabric back and
6 found a projectile.

7 Q: A projectile, what is that?

8 A: This is the, the portion of the bullet that it's --
9 that comes out of the casing when you fire a gun.

10 MR. HEMBREE: Your Honor, we'd move State's 23 into
11 evidence at this time.

12 MR. LOCKLAIR: Previous objection, Your Honor.

13 THE COURT: It's again over objection.

14 (Whereupon, State's Exhibit Number 23 [Photograph of
15 Suzuki Samurai] introduced into evidence and appropriately
16 marked.)

17 BY MR. HEMBREE:

18 Q: State's 24 for identification purposes. Can you
19 describe that to us?

20 A: Yes, this is a picture of the back seat of the car.
21 There was a car seat in the back seat and it was, it was
22 still locked in.

23 Q: Okay, what kind of a car seat is that?

24 A: A child, a child seat.

25 Q: Like a baby child seat?

1 A: Yes.

2 Q: And you indicated it was still locked in when you
3 found it?

4 A: Yes.

5 Q: What's the condition of that, of that seat?

6 A: It's, it's extremely muddy and wet, bogged down with
7 water.

8 Q: Got you.

9 MR. HEMBREE: Your Honor, we would move State's 24 into
10 evidence at this time.

11 MR. LOCKLAIR: Your Honor, we would object under
12 relevancy.

13 THE COURT: It's been noted once again. I'm going to
14 have to see you over here. That was something that we had
15 dealt with.

16 (Whereupon, a Bench conference was held in the
17 presence, but out of the hearing, of the jury.)

18 BY MR. HEMBREE:

19 Q: Finally, let me show you State's 25 for identification
20 purpose, and if you would describe the scene there for us.

21 A: This is another picture of the back seat showing the
22 child seat and next to it what appeared to us to be some
23 type of stain.

24 Q: All right.

25 MR. HEMBREE: Your Honor, we would move this into

1 evidence as State's 25 at this time.

2 MR. LOCKLAIR: Your Honor, we would renew our
3 objection on that as well to relevancy.

4 THE COURT: And once again, both of those, and I'll be
5 glad to hear from you.

6 MR. HEMBREE: Let me, let me, let me talk with you
7 about this one.

8 THE COURT: You need to come over here.

9 (Whereupon, a Bench conference was held in the
10 presence, but out of the hearing, of the jury.)

11 THE COURT: Okay, let's go ahead and ask him about it,
12 too.

13 BY MR. HEMBREE:

14 Q: Regarding this stain were there any presumptive tests
15 to determine what the stain might be?

16 A: Yes, we were -- one of the things we were searching
17 for in the car is blood and we have a presumptive test for
18 blood.

19 MR. LOCKLAIR: Your Honor, I would, I would object to
20 we. If he didn't perform this personally or have first-
21 hand knowledge then we would object to his competency to
22 testify.

23 MR. HEMBREE: Let me, let me just ask it very
24 directly.

25 BY MR. HEMBREE:

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1 Q: Who did the presumptive tests?

2 A: I did.

3 Q: And what sort of test did you use? What testing
4 method and procedure did you use?

5 A: It's, the reagent we used is called phenolphthalein,
6 and basically take a swab of the stain and then on that
7 stain you add phenolphthalein and if it's, if it's blood
8 it'll react and turn hot pink.

9 Q: Now, this is a presumptive test not a conclusive test?

10 A: Right, it's, it's a presumptive test, meaning it can
11 be presumed to be blood but we can't tell if it's human
12 blood or not.

13 Q: Okay, so, it could be animal blood for all you know?

14 A: Yes.

15 Q: Okay.

16 MR. HEMBREE: Your Honor, we would offer State's 25
17 into evidence.

18 THE COURT: All right, yes, sir.

19 MR. LOCKLAIR: No objection, Your Honor.

20 THE COURT: In evidence without objection.

21 MR. HEMBREE: Thank you, Your Honor.

22 (Whereupon, State's Exhibit Number 25 [Photograph of
23 Suzuki Sidekick] introduced into evidence and appropriately
24 marked.)

25 BY MR. HEMBREE:

1 Q: Now, agent, I'm going to have to ask you to do all
2 that over again because ---

3 A: All right.

4 Q: --- it's not really fair for me to show these to the
5 jury until they've been put into evidence. So, come on
6 down and I'm going to have you stand right over here. Show
7 them on these photographs the areas of -- if you'll stand
8 right here and face the court reporter. I've got a pointer
9 here. I'll let you use that and have you describe this
10 photograph, what is now in evidence as State's Exhibit
11 Number 12 and tell this jury what this is a photograph of.

12 A: Okay, this is a photograph of the rear of the vehicle
13 and right here is the point that we described as a bullet
14 hole.

15 Q: Okay, now, what effort did you undertake to determine
16 -- what additional evidence did you seek or what efforts
17 did you take to find that evidence once you determined that
18 there was a hole in this car that looked like a bullet
19 hole?

20 A: Being that we thought it was a bullet hole it's
21 important for us to then find the bullet if we can. So, we
22 ran a dowel through the hole.

23 Q: All right, and I'm going to stop you there and show
24 you State's Number 13 in evidence. What does that depict?

25 A: That's, that's -- this is a dowel which is just a

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1 straight wooden stick and we ran it through the hole and
2 through the -- another hole that the bullet made on the
3 other side of this door in an effort to track the bullet.

4 Q: Now, does the fact that the dowel comes in at this
5 angle mean that that is the exact angle of the -- did the
6 -- does that mean the bullet traveled straight through?

7 MR. LOCKLAIR: Your Honor, objection. Outside his
8 area of expertise. He's not qualified in ballistics.

9 MR. HEMBREE: It's not a ballistics question, Your
10 Honor. It's just a, it's just a question about the travel
11 of the bullet.

12 THE COURT: Here I'm going to limit his testimony.
13 He's not going to get into the ballistics, but I'll limit
14 his testimony as to what he did at the scene with that
15 dowel.

16 MR. HEMBREE: Thank you, Your Honor.

17 BY MR. HEMBREE:

18 Q: As a result of pushing this dowel through the holes,
19 what did you find?

20 A: The -- it appeared the bullet traveled through the
21 door.

22 MR. LOCKLAIR: Objection to his answer, Your Honor,
23 outside the scope of his expertise.

24 THE COURT: All right, gentlemen, let me see you over
25 here.

1 (Whereupon, a Bench conference was held in the
2 presence, but out of the hearing, of the jury.)

3 THE COURT: Just not a conclusion reached in that
4 field.

5 BY MR. HEMBREE:

6 Q: Okay, you placed the dowel in the hole. Now, did you
7 have any opinion as to where the bullet entered the
8 vehicle?

9 A: Yes, the bullet entered from outside of the vehicle
10 going in.

11 Q: Why do you say that?

12 A: Because of the way that the metal was bent. It was
13 bent towards the inside of the vehicle.

14 Q: And you found another hole, you testified to, inside
15 the vehicle.

16 A: Right, on the other side of the door, also, went
17 inside of the vehicle.

18 Q: Got you.

19 A: Yes.

20 Q: So, there's a, there's a -- would you -- kind of an
21 exit hole.

22 A: Right.

23 Q: Would that be fair to say?

24 A: Right, exiting the door.

25 Q: All right, and then did you find yet another hole?

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1 A: Yes, in, in the rear of the vehicle there was another
2 hole more on the, on the bottom of the vehicle.

3 Q: Okay, entrance hole or exit?

4 A: It, it entered and hit, it hit, it hit the bottom but
5 it didn't enter. It didn't enter the vehicle.

6 Q: Okay, now, what steps did you take to recover the
7 projectile at that point?

8 A: At this point, we -- well, the door, of course, was
9 open and there was a couple of inches of mud in the back of
10 the vehicle. So, we then secured a shovel and sifting
11 with, again, the shovel and out all of the mud into the
12 sifter looking through all of the mud for a projectile.

13 Q: Did you recover one?

14 A: No, we didn't.

15 Q: And can you say, is it within your area of expertise
16 or can you say, can you say from any knowledge that you can
17 -- you know what the path of this bullet was?

18 MR. LOCKLAIR: Objection, Your Honor, outside the
19 scope of his expertise.

20 MR. HEMBREE: I'll withdraw that question, Your Honor.

21 THE COURT: Sustained.

22 MR. HEMBREE: I'll withdraw that question.

23 BY MR. HEMBREE:

24 Q: Let me take you to -- any other significant
25 evidentiary findings on the exterior of the vehicle?

1 A: Not, not offhand, I'd have to see the picture.

2 Q: Okay, was the vehicle damaged?

3 A: Yes, there was, there was damage to both sides of the
4 vehicle, the front windshield was broken out, the rear
5 window was broken out, and one of the side windows was
6 broken.

7 Q: What about the driver's side and passenger side front
8 windows?

9 A: Those windows were rolled down. They were still in
10 place. They were just -- they were rolled down.

11 Q: Got you. Now, I'm going to take you to State's 16
12 into evidence and ask you to describe that photograph for
13 this jury.

14 A: This is a picture of the front passenger compartment
15 of the vehicle. This is from the passenger side towards
16 the driver's side. Up here is the steering wheel and right
17 here is the ignition and there is the keys still in the
18 ignition. If you look down here, there's the gearshift and
19 I don't know if you can see it, but that's the park, and
20 you can see it's down in gear.

21 Q: Take you to State's -- we'll do these together because
22 they really have about the same thing. First to State's
23 17. Describe that to the jury, please.

24 A: This is a photograph from the passenger side of the
25 vehicle towards the drive side. This is the driver side

- 1 door here, the inside of the door, and right in here is an
2 area that we also noted as possibly damage from a bullet.
- 3 Q: Was a projectile recovered after taking a look at this
4 damage?
- 5 A: No, it wasn't.
- 6 Q: And I'll take you to State's 18 in evidence and ask
7 you to describe this for the jury.
- 8 A: This is an enlargement of that area on the driver's
9 door. This is the inside of the door. Up here would be
10 the window. This is that area that we noted as, noted as
11 possibly being from a bullet. It's -- the bullet would
12 have come from a very shallow angle and reflected off
13 somewhere.
- 14 Q: It didn't punch through the metal?
- 15 A: No, it didn't punch through the metal.
- 16 Q: Okay, and let me take you to State's 19 in evidence
17 and have you describe that photograph to this jury.
- 18 A: This is the -- from the rear passenger side of the
19 vehicle going towards the -- you can see the front of the
20 vehicle. That's the steering wheel, the driver's side but
21 -- and right here is where we noticed another possible
22 bullet, bullet wound in that seat.
- 23 Q: Now, did that appear to be an entrance hole or an exit
24 hole?
- 25 A: It appeared to be an entrance hole.

1 Q: And this is the -- well, let me just set that one. I
2 got it. Now, I take you to State's 20 in evidence.

3 A: This is an enlargement of that damage. It's -- this
4 is the passenger seat. You can see this is the headrest
5 and that's the hole that we were talking about.

6 Q: Now, did you recover a projectile that correlated to
7 this damage?

8 A: Yes, we did.

9 Q: Tell the jury about what steps you took to recover
10 that projectile.

11 A: That's the rear of the seat that we noted as an
12 entrance wound; so, therefore, we went to the front and
13 peeled back the fabric and just pulled it down and found
14 the projectile.

15 Q: Now, did -- so, obviously there wasn't an exit hole
16 from the material in the front of the seat?

17 A: There was a, there was a hole but we don't think -- it
18 couldn't have been from the bullet.

19 Q: Okay, and because you recovered the bullet?

20 A: Right, because the bullet was still in the seat.

21 Q: And you peeled the -- I guess I'm just trying to get
22 you to -- I don't have a good picture of that. You just
23 peeled the cloth down? Is that basically what you did?

24 A: Right, we just -- we, we took a scalpel and just cut
25 around the edge of the seat and just peeled it down.

1 Q: And just to make it crystal clear, which seat was this
2 in the vehicle?

3 A: This is the front passenger seat.

4 Q: Now, I'm going to show you State's 23 in evidence and
5 ask you to describe that to this jury.

6 A: This is a picture of us pulling the fabric down and
7 here's the, the projectile. This is, this is the back of
8 the seat that your back would rest on and down here is your
9 seat.

10 Q: That's a projectile?

11 A: Here's the projectile.

12 Q: While you're standing there let me ask you to take a
13 look at State's 26 for identification purposes for us.

14 A: This is the -- a container that we used to, to gather
15 that, that projectile and put in.

16 Q: Would you take a look at it for us, please? You might
17 have to pull that tape off. Okay, what is that?

18 A: This is the projectile that we recovered that day.

19 Q: The same thing we're seeing in State's 23?

20 A: Correct.

21 Q: Who recovered that projectile?

22 A: I recovered this one.

23 MR. HEMBREE: Your Honor, we would move State's 26
24 into evidence at this time.

25 MR. LOCKLAIR: No objection.

1 THE COURT: All right, without objection.

2 (Whereupon, State's Exhibit Number 26 [Projectile]
3 introduced into evidence and appropriately marked.)

4 BY MR. HEMBREE:

5 Q: And finally taking you to State's 25 in evidence
6 describe this scene to us, please.

7 A: This is a photograph of the rear seat. This is taken
8 from the passenger side, and this is the child seat that
9 was still locked into place, and this is the stain that we
10 did the presumptive test on to test for blood.

11 Q: Now, tell us -- you've indicated that you did a
12 phenolphthalein test.

13 A: Yes.

14 Q: And it's a presumptive test for blood but you can't
15 say whether it's human blood or animal blood or what it is,
16 just that it's blood.

17 A: Right, we -- out in the field we test for blood. If
18 it comes up positive for blood we collect it, take it back
19 to the lab so a DNA analyst can then analyze it.

20 Q: And is that what you did in this case?

21 A: Yes.

22 Q: What areas in this vehicle did you take samples from
23 to turn over to the lab?

24 A: We -- we took the -- we took samples from the rear
25 seat and we also tested the child's seat, which also came

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1 up positive. So, we then took the cover from the seat and
2 the cushion beneath off of the child's seat.

3 Q: And took that into custody and turned it into the SLED
4 lab?

5 A: Yes.

6 Q: Okay, Steve Lambert with SLED?

7 A: Yes. The case would have been logged in and
8 eventually up to Lambert.

9 Q: Please take the stand. Thank you, Agent.

10 Any other items of evidentiary significance that you
11 can recall that you recovered from the vehicle?

12 A: I could take a look at my notes and see exactly what
13 we ---

14 Q: Be happy for you to do that if that would be helpful.

15 A: No, that's everything we collected besides the film.

16 Q: Film being the photographs that you -- that we've seen
17 already?

18 A: Correct.

19 Q: Got it. Once you concluded your analysis of this or
20 your collection of these -- this evidence at the crime
21 scene that conclude your involvement in this case?

22 A: Yes.

23 Q: Very good. Please answer any questions Defense
24 counsel might have for you.

25 THE COURT: Yes, sir.

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

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. LOCKLAIR:

5 Q: Agent Greene, isn't it true that when the cuttings
6 from the seat were analyzed no human blood could be
7 identified?

8 A: I don't have any information as far as that. Those
9 reports wouldn't come back to me.

10 Q: Okay, so, once you processed the scene it kind of went
11 out of your hands?

12 A: That's correct.

13 Q: Okay, it is true though that you all were not able to
14 get anything as far as latent prints are concerned;
15 correct?

16 A: We, we didn't, we didn't process the car for latent
17 prints because of the condition of the vehicle. It was
18 very muddy and still wet. Going -- trying to get latent
19 prints off a vehicle you use a very fine powder and it
20 wouldn't have -- we wouldn't have been able to use it on
21 the vehicle because of the condition.

22 Q: So, due to the condition in you all's opinion it
23 wasn't worth doing that; correct, because it wouldn't have
24 been fruitful.

25 A: We, we are the latent print examiners. That's our

1 expertise and we know we wouldn't have been able to process
2 the vehicle for prints.

3 Q: Okay, you said that you found a projectile in the
4 front seat; correct?

5 A: Correct, in the front passenger seat.

6 Q: Okay, and that was actually found between the cloth of
7 the seat and the foam of the seat; correct?

8 A: That's correct.

9 Q: Could you determine by looking at the projectile, do
10 you have any experience that would allow you to determine
11 what type of ammunition that might have been?

12 A: No, no, I don't.

13 Q: Okay, did you examine the projectile to see if it had
14 been altered in any way by hitting metal or any other hard
15 objects or did it appear to be in the condition it would
16 have come out of the, the actual bullet when it was
17 released from the gun?

18 A: It was for, as far as projectiles go, it was in, it
19 was in a lot better condition than I've seen some, but I'm
20 not -- I don't examine projectiles as part of my job.

21 Q: Okay, but in your experience as a crime scene analyst
22 and law enforcement would it be fair to say that a bullet
23 would have to be traveling pretty slow not to pass through
24 a piece of fabric?

25 A: Yes, I agree.

1 Q: Okay, and in your experience, unless that bullet hits
2 some object to slow it down under the laws of physics the
3 only other thing that would slow it down would be the
4 distance from which it was fired; correct?

5 A: Or, or it could have been a malfunctioning projectile.

6 Q: A malfunctioning projectile could have also caused it
7 to come out slow enough?

8 MR. HEMBREE: Your Honor, I -- let's approach the side
9 bar here.

10 (Whereupon, a Bench conference was held in the
11 presence, but out of the hearing, of the jury.)

12 BY MR. LOCKLAIR:

13 Q: Was there any evidence of blood stains in the front
14 passenger seat?

15 A: No, there wasn't.

16 Q: You stated that the alleged projectile impact area on
17 the driver's side door came from a shallow angle; correct?

18 A: That's correct, to the door itself.

19 Q: Isn't it true in your crime scene analysis of this
20 vehicle that you all concluded that the door was open when
21 the projectile hit it; correct?

22 A: Those are notes that Michelle Dixon made. I would
23 agree that the projectile would have been traveling at a
24 shallow angle to the door. Whether it was open or not I
25 don't believe we can say that.

1 Q: Okay, so, you -- in your expert opinion as a crime
2 scene analyst it cannot be said whether the door was open
3 or shut when the bullet hit it; correct?

4 A: That's correct.

5 Q: Okay, now, you said the one on the back of the vehicle
6 in your opinion came from outside the vehicle; correct?

7 A: Yes, that's correct.

8 Q: And you also said that it did not go -- penetrate the
9 floor of the vehicle when it entered the vehicle; correct?

10 A: That's correct.

11 Q: And you didn't have anything to do with the analysis
12 of the child's car seat cover either; did you?

13 A: No, I didn't.

14 MR. LOCKLAIR: Beg the Court's indulgence, Your
15 Honor.

16 THE COURT: Yes, sir.

17 BY MR. LOCKLAIR:

18 Q: One more question, Agent. You wouldn't have any
19 specialized knowledge or training in the area of
20 ballistics; do you?

21 A: No, I do not.

22 Q: So, you would not be able to say where the projectiles
23 were fired from. To a reasonable degree of scientific
24 certainty you could not state where?

25 A: The one in the rear I could say that was from the rear

1 of the vehicle going forward but not at an exact angle that
2 it, that it went in.

3 Q: Needless to say that bullet had to come from outside
4 the vehicle?

5 A: Outside the vehicle, yes.

6 Q: Thank you.

7 MR. LOCKLAIR: No further questions, Your Honor.

8 THE COURT: Redirect.

9 MR. HEMBREE: Nothing on redirect, Your Honor.

10 THE COURT: All right, thank you, sir, you may step
11 down.

12 MR. HEMBREE: Agent, we'd ask -- excuse me, Judge,
13 we'd ask that Agent Greene be excused so he can travel back
14 to Columbia.

15 THE COURT: Any objection to his being excused from
16 subpoena?

17 MR. LOCKLAIR: No objection from the Defense, Your
18 Honor.

19 THE COURT: All right, you're free to go back to
20 Columbia.

21 A: Thank you.

22 THE COURT: For scheduling purposes if I may see you
23 one more time. I'm going to have you wear a path down.

24 (Whereupon, a Bench conference was held in the
25 presence, but out of the hearing, of the jury.)

1 THE COURT: Call your next witness, please.

2 MR. BRYAN: Tracy Collins, the State calls Tracy
3 Collins.

4 AT THIS TIME TRACY ELAINE COLLINS WAS CALLED TO THE STAND,
5 DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

6 THE CLERK: Please be seated. Please state your full
7 name for the record.

8 MS. COLLINS: Tracy Elaine Collins.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. BRYAN:

12 Q: Ms. Collins, do you know Jody Ward?

13 A: Yes, sir.

14 Q: How do you know him?

15 A: Through ex-boyfriend, Billy Wilson.

16 Q: All right, and what was their relationship?

17 A: They were friends.

18 Q: Were they good friends?

19 A: They worked together.

20 Q: I'm sorry. Were they good friends?

21 A: Yes, sir.

22 Q: All right, how long have you known Jody Ward?

23 A: About five years.

24 Q: All right, and you met him through your boyfriend
25 about five years ago?

1 A: Sir?

2 Q: You met him through your boyfriend about five years
3 ago?

4 A: Yes, sir; yes, sir.

5 Q: How often did you see Jody Ward?

6 A: Just about every day or every other day.

7 Q: Okay, did you also know Wilfred Brown?

8 A: Yes, sir.

9 Q: Was he a friend of yours?

10 A: Yes, sir.

11 Q: And Elton Rutledge, Jr., did you know him?

12 A: Not as good as Will. I knew him from school.

13 Q: Okay, did you ever have occasion to fire a weapon
14 with Jody Ward?

15 A: Yes, sir.

16 Q: All right, can you tell the jury the circumstances
17 around that? How did you ---

18 A: We was ---

19 Q: --- how did you get together with Jody Ward on that
20 occasion?

21 A: We was at Denise's house and me, him, Denise and Billy

22 ---

23 Q: And when, when was this?

24 A: About probably June of 2002.

25 Q: Okay.

1 A: And we went up there and Jody came in there and he
2 said he had a gun he wanted us to go shoot. It was a nine
3 millimeter and we went to the crossroads and we all shot it
4 at the stop sign.

5 Q: How did you know it was a nine millimeter?

6 A: He said he had a nine millimeter and wanted to know

7 ---

8 Q: He, he being who?

9 A: Jody Ward.

10 Q: Okay, and who brought the gun?

11 A: Jody.

12 Q: And whose gun was it?

13 A: Jody's.

14 Q: All right, and what -- can you describe the gun for
15 the jury?

16 A: It was about that long (indicating). It had a clip on
17 it and the barrel had like holes around it. I mean ---

18 Q: Okay, was it a ---

19 A: --- it had a big clip on it.

20 Q: How big was the clip?

21 A: Like a banana clip, you know.

22 Q: Okay, was it an automatic weapon or a ---

23 A: Yes, sir.

24 Q: Okay, was it a normal -- was it like a normal pistol?

25 A: No, sir, it didn't have like a revolver. It was just

1 like pow, pow, pow, pow.

2 Q: And how did you hold it?

3 A: Like this (indicating).

4 Q: Okay, I don't have any other questions. Please answer
5 any questions the Defense has.

6 THE COURT: Cross.

7 CROSS EXAMINATION

8 BY MR. LOCKLAIR:

9 Q: You used to hang out with Wilfred Brown a lot; didn't
10 you?

11 A: Yes, sir.

12 Q: In fact, you used to give him rides around a lot;
13 didn't you?

14 A: Yes, sir.

15 Q: So, you were involved in a lot of his business;
16 weren't you?

17 A: I mean, me and him and Daniel, I mean, there was all
18 kind of us that rode around with Will.

19 Q: How often would you see Wilfred with a gun?

20 A: I never seen Will with a gun.

21 Q: How often were you involved in drug transactions with
22 him?

23 A: I never dealt with him directly with drug
24 transactions. It was always through somebody else.

25 Q: How many times would that be?

Tracy Collins - Cross by Mr. Locklair

1 A: I knew him since I was 12 years old. So, it was a
2 good bit.

3 Q: Hundreds of drug transactions?

4 A: Yeah, I mean, I guess. It wasn't always drugs when I
5 was with him.

6 Q: What else would it be?

7 A: Just friends.

8 Q: Just friends, was Billy getting drugs from him?

9 A: Yes, sir.

10 Q: How much would he get?

11 A: He'd get weed from him, I mean.

12 Q: A lot?

13 A: Yeah.

14 Q: Would he buy it by the ounce or by the pound?

15 A: By the ounce, some, you know.

16 Q: Ever buy as much as a quarter pound?

17 A: Yes, sir.

18 Q: Ever buy a pound?

19 A: I'm not sure.

20 Q: Okay, so, if he's buying a quarter pound it's fair to
21 say Billy was probably selling that; correct?

22 A: Yeah.

23 Q: Do you know Jody Owens?

24 A: Yes, sir.

25 Q: Have you ever seen Jody Owens with a firearm?

1 A: No, sir, well, with a shotgun, I mean, hunting.

2 Q: A shotgun. Do you know Brian Elliott?

3 A: Yes, sir.

4 Q: Have you ever seen him with a firearm?

5 A: No, sir.

6 Q: How well do you know Brian?

7 A: I knew him from them. He went crabbing with Jody and
8 stuff like that, and I worked at the bait house. He'd come
9 up there and sell us crabs.

10 MR. LOCKLAIR: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 MR. LOCKLAIR: Nothing further, Your Honor.

13 MR. BRYAN: Nothing on redirect, Your Honor.

14 THE COURT: You may step down.

15 Call your next witness.

16 MR. BRYAN: The State calls Louis Bazen.

17 AT THIS TIME DONALD LOUIS BAZEN WAS CALLED TO THE STAND,

18 DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

19 THE CLERK: Please be seated. Please state your full
20 name for the record.

21 MR. BAZEN: Donald Louis Bazen.

22 DIRECT EXAMINATION

23 BY MR. BRYAN:

24 Q: How old are you, Louis?

25 A: 24.

1 Q: All right, how do you know Jody Ward?

2 A: He's my brother-in-law.

3 Q: Okay, so, he's married to your sister?

4 A: Yes, sir.

5 Q: And what's your sister's name?

6 A: Beverly Ward.

7 Q: Okay, how long have you known Jody?

8 A: Probably five years.

9 Q: Did you ever live with Jody Ward?

10 A: Yes, sir.

11 Q: All right, why were you living with Jody Ward? When
12 were you living with him and why were you living with him?

13 A: Probably around the time of August.

14 Q: Of what, of 2002?

15 A: Yes, sir.

16 Q: All right, why is it that you were staying with Jody
17 Ward? He was obviously -- was he -- you were moving in
18 with your sister; is that right?

19 A: Yeah.

20 Q: And she was his husband; is that correct?

21 A: Yeah.

22 Q: All right, why did you move in with them?

23 A: No special reason.

24 Q: All right, were you having some kind of just trouble
25 at home?

1 A: Yeah.

2 Q: Okay, you've got a -- in 2000 you pled guilty to an
3 offense of breaking into a motor vehicle; is that correct?

4 A: It's -- I think that was in '98, but yeah.

5 Q: I think the offense was in '98 and you pled guilty in
6 2000; is that correct?

7 A: Yeah.

8 Q: On or about August the 29th of 2002 did you give Jody
9 Ward a ride somewhere?

10 A: Yes, sir.

11 Q: All right, tell the jury how that came about.

12 A: On the 29th Jody had asked me to give him a ride and I
13 didn't think nothing of it. So, we left from his house.

14 Q: Let me stop you right there. Did you have a driver's
15 license?

16 A: Yes, sir.

17 Q: All right, and did Jody have a driver's license?

18 A: No, sir.

19 Q: Okay, all right, go ahead. You said he asked -- what
20 kind of car was it that you were in?

21 A: A Plymouth Breeze.

22 Q: Okay, and who did that belong to?

23 A: My sister, Beverly Ward.

24 Q: Okay, all right, he asked you for a ride and you said
25 you all left the house. Where was -- what was the address

Louis Bazen - Direct by Mr. Bryan

1 of the house that you were at?

2 A: 183 Sirfield Street.

3 Q: And that's where Beverly and Jody and you were living
4 at the time?

5 A: Yes, sir.

6 Q: Okay, all right, so, you got in the Plymouth Breeze at
7 Jody's direction and you started to travel. Did you know
8 where you were going?

9 A: No, sir.

10 Q: All right, where did you go?

11 A: He had asked me to take him down to Junior Chavis's
12 house and which is on the same street, Sirfield Street,
13 yeah.

14 Q: All right, did you do that?

15 A: Yes, sir.

16 Q: Okay, and what did you do if anything at Junior
17 Chavis's house?

18 A: I just drove there. I was in the car.

19 Q: All right, what did Jody do?

20 A: Jody got out and went and talked to Mr. Junior Chavis
21 and got a brown burlap bag from him.

22 Q: Okay, then what'd you do?

23 A: Jody got back in the car and we left from Junior's and
24 went back down to Sirfield Road up to my other sister's
25 house, which is Buffy Bazen, Buffy Parsons and which now,

1 and ---

2 Q: Where, what street does she live on?

3 A: She lives on Sirfield.

4 Q: Okay, what did you do there?

5 A: Jody got out and I'm pretty sure he had asked my
6 sister to borrow a shovel from him, from her, and then
7 after that we left from there.

8 Q: Let me stop you there. You say you're pretty sure he
9 asked you -- asked her to borrow a shovel. Did he get a
10 shovel?

11 A: Yes, sir.

12 Q: Did you see him get a shovel?

13 A: Yes, sir.

14 Q: What did he do with it?

15 A: He put it in the trunk.

16 Q: Okay, what did he do after he put the shovel in the
17 trunk?

18 A: He got back in the car and we left from Sirfield
19 Street.

20 Q: Where'd you go next?

21 A: We went down Highmarket Street going next Andrews.

22 Q: Did you know where you were supposed to go?

23 A: No.

24 Q: How did you decide where you were going?

25 A: Jody just tell me where to go to.

1 Q: All right, so, he was just pointing you and telling
2 you where he wanted you to turn basically?

3 A: Basically.

4 Q: All right, so, after you got the shovel from your
5 sister's house or Jody got the shovel, put it in trunk, got
6 in the car where did you go after that or where did he tell
7 you to go?

8 A: We left out and went down Highmarket Street going next
9 Andrews and we bared off on Kent Road and went down Kent
10 Road a good ways and turned onto the Gapway Road, Gapway
11 dirt road.

12 Q: Okay, what happened on Gapway Road?

13 A: Well, we went down Gapway Road to the Crossroads and
14 he told me to keep on going. So, I kept on going straight
15 on Gapway dirt road.

16 Q: Let me stop you at the Crossroads. That was the
17 crossroads of Gapway and what?

18 A: Indian Hut.

19 Q: Okay, you went, you went across Indian Hut?

20 A: Yes, sir.

21 Q: Okay, then what?

22 A: Probably went 150 yards and Jody told me to stop and
23 which I did and he told me to pop the trunk and he had
24 gotten out and he got a burlap bag out and a shovel and he
25 told me to go down the road and come back in about 15

1 minutes.

2 Q: Let me show you what's -- let me show you what's been
3 marked State's 27 for identification purposes. Do you
4 recognize where that is?

5 A: Yes, sir.

6 Q: All right, what is that a picture of?

7 A: That's a picture of Hunting Club Road.

8 Q: All right, and when you say a Hunting Club Road what
9 -- is there any particular significance of this Hunt Club
10 Road? You ever been there with Jody Ward?

11 A: That's where he had told me to stop at after I cross
12 the Crossroads.

13 Q: Okay, so, you said about 150 yards or so past the
14 Crossroads he asked you to stop, and is that where the Hunt
15 Club Road he asked you to stop on?

16 A: Yes, sir.

17 Q: Okay, I'm going to show you -- all right, and this is
18 State's 28. What is that a picture of?

19 A: That's a picture of the same road.

20 Q: All right, is it basically a little closer?

21 A: Yeah, it's just a closer picture.

22 Q: All right, and then State's 29, what is that a
23 picture of?

24 A: That would be a picture of the same road but on the
25 inside of the road.

1 Q: All right, is there a gate on the picture?

2 A: Yes, sir.

3 Q: All right, and this is from the other side of the gate
4 looking back?

5 A: Yeah.

6 Q: Okay, all right, what happened when you stopped on
7 that Hunt Club Road? He asked you to stop. What happened
8 next?

9 A: He asked me to stop and he told me to pop the trunk
10 and which I did and he had gotten out and got a burlap bag
11 and a shovel and he come to the door and he told me to go
12 down the road and come back in 15 minutes.

13 Q: All right, did you do that?

14 A: Yes, sir.

15 Q: All right, where did you go?

16 A: I went farther on down the road maybe a half a mile or
17 so.

18 Q: I'm sorry.

19 A: I went farther on down the road, maybe a half a mile
20 or so and turned around and came back.

21 Q: Okay, when you turned around, came back where did you,
22 where did you go to then?

23 A: I stopped in front of that Hunting Club Road.

24 Q: Why'd you do that?

25 A: No particular reason, that's pretty well, you know, I

1 dropped him off there.

2 Q: Did Jody ask you to circle around and come back after
3 a little while and stop there?

4 MR. LOCKLAIR: Objection to leading.

5 THE COURT: Sustained.

6 Q: All right, when you -- how long were you gone driving
7 around before you came back?

8 A: Round about 13 to 15 minutes.

9 Q: All right, and why were you driving around in the
10 general area of this Hunt Club Road?

11 A: For no particular reason, just.

12 Q: Was it your idea?

13 A: No.

14 Q: Whose idea was it?

15 A: I guess pretty well, you know, Jody's.

16 Q: Okay, so, when you came back, you stopped the car,
17 what happened next?

18 A: I stopped the car and I glanced down the road and I
19 didn't see nobody. So, I just sat there for a minute, and
20 I glanced down the road again, and I seen Jody and he had
21 something brown in his hand, and I figured, you know, it
22 was a deer because, you know, it's just big, it looked
23 like, you know, he might have been dragging it or
24 something. I don't know, and ---

25 Q: Did you see an actual object or what were you looking

1 at?

2 A: Just a burlap bag.

3 Q: Okay, so, it was a bag full of something; is that
4 right?

5 A: I guess.

6 Q: Or was something in it?

7 A: I thought it was a deer from the distance but.

8 Q: All right, let me show you State's 29 again. Is this
9 the road that you saw Jody Ward walking down?

10 A: Yeah.

11 Q: With the burlap sack?

12 A: Uh-huh (affirmative response).

13 MR. BRYAN: At this time, Your Honor, I would ask to
14 move State's 27, 28 and 29 into evidence.

15 MR. LOCKLAIR: No objection, Your Honor.

16 THE COURT: Without objection.

17 (Whereupon, State's Exhibit Number 27 [Photograph of
18 Hunt Club Road]; State's Exhibit Number 28 [Photograph of
19 Hunt Club Road] and State's Exhibit Number 29 [Photograph
20 of Hunt Club Road] introduced into evidence and
21 appropriately marked.)

22 BY MR. BRYAN:

23 Q: All right, as Mr. Ward got closer what happened next?

24 A: As he got closer he told me -- he hollered at me
25 because I was on the Gapway Road and he had said back up to

1 the gate right here; and so, I did, and I realized, you
2 know, he had had a burlap bag and he told me to pop the
3 trunk and I was still in the car and I popped the trunk and
4 I just sat right there.

5 Q: All right, you said there was a gate. Was the gate
6 opened or closed?

7 A: The gate was closed.

8 Q: And this is State's 28, again, which is in evidence.
9 Is that a picture of the gate you're talking about?

10 A: Yes, sir.

11 Q: And was -- is it open or closed in the picture?

12 A: It's open.

13 Q: All right, and at that time it was closed; is that
14 right?

15 A: Yes, sir.

16 Q: Okay, and where did you stop in relation to this?

17 A: Right in front of the gate right here.

18 Q: Okay, and Jody went on the other side of the gate?

19 A: Yes, sir.

20 Q: Okay.

21 MR. BRYAN: Permission to publish State's 28, Your
22 Honor?

23 THE COURT: Yes, sir.

24 BY MR. BRYAN:

25 Q: All right, so, Jody, Jody then asked you to pop the

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1 trunk, he put the bag with the contents and the shovel in
2 the trunk; is that right?

3 A: Yes, sir.

4 Q: All right, what happened next?

5 A: He come around and got into the car, and he says,
6 "Man, I stink," and I didn't pay no attention, you know.
7 My nose is always bad. It's always like that, and I kind
8 of realized, you know, his hands was dirty or whatever,
9 whatnot, but -- and we left from there and went back out to
10 the Gapway Road and then went to the Crossroads or right
11 there on Indian Hut and started going back next to the
12 Highmarket next Georgetown.

13 Q: All right, why'd you go there?

14 A: He asked me to.

15 Q: Okay, where'd you go next?

16 A: I started going next Highmarket down Indian Hut Road
17 and I was speeding. I didn't think nothing about it, and
18 he says, "Man, slow down," and which I did.

19 Q: What was his demeanor like when he said, "You're
20 speeding?" What was he acting like?

21 A: He just said, "Man, slow down."

22 Q: And you did?

23 A: Yeah.

24 Q: Okay, all right, what happened next?

25 A: We went on down that road, and we got to the Walker

1 Farm Road and he told me to pull in there. So, I did.

2 Q: Let me stop you right there. How many times have you
3 -- was it common for you to drive Jody Ward around?

4 A: Yes, sir.

5 Q: All right, how many times you reckon you've driven him
6 around?

7 A: Probably every bit of a dozen times.

8 Q: Did he ever ask you -- did you ever speed on any other
9 occasion?

10 A: I'm always speeding every now and then, got a heavy
11 foot, man.

12 Q: Did he ever ask you to stop speeding previous to this?
13 Was there ever a time he said, "Man, stop speeding?"

14 A: No, sir.

15 Q: All right, all right, you now -- you -- you all had
16 progressed to Walker Farm Road; is that right?

17 A: Yes, sir.

18 Q: All right, let me show you what's has been marked as
19 State's 30. Can you identify that road?

20 A: Yeah, that's the Walker Farm Road.

21 Q: All right, and is this the same road that Jody asked
22 you to drive down?

23 A: Yes, sir.

24 Q: All right, what did you do at Walker Farm Road?

25 A: I went down to Walker Farm Road probably a hundred,

1 150 yards, and Jody asked me to stop. So, I did and he got
2 out and he told me to again pop the trunk, and I did and he
3 got a burlap bag out and a shovel, and he had spoke to me.
4 I was still in the car. He says, "Go down there and turn
5 around and come back." So, I went down the road a little
6 piece, maybe a quarter of a mile or so and turned around
7 and come back.

8 Q: What did he do before you -- before you drove away did
9 he get anything out of the car?

10 A: Yeah, he got a burlap bag out and a shovel.

11 Q: Okay, and then he asked you to drive away and you did
12 that. You drove away?

13 A: Yes, sir.

14 Q: And you drove around for a little while at his
15 direction.

16 A: I went on further down that road and just turned
17 around and come back.

18 Q: All right, and did you come back to the same spot that
19 you had dropped him off at?

20 A: Yes, sir.

21 Q: All right, and what happened when you got back? Was
22 Jody there?

23 A: Yes.

24 Q: All right, did he have anything with him?

25 A: He had a shovel.

1 Q: Did he have the bag anymore?

2 A: No, sir.

3 Q: This picture, State's 30, when you were there with
4 Jody Ward, obviously, these vehicles were not there; were
5 they?

6 A: No, sir.

7 Q: Okay, other than that does this fairly and accurately
8 represent the road that you're referring to?

9 A: Yes, sir.

10 MR. BRYAN: All right, Your Honor, I'd ask that
11 State's 30 be admitted into evidence.

12 THE COURT: Any objection?

13 MR. LOCKLAIR: No objection, Your Honor.

14 THE COURT: All right, without objection.

15 (Whereupon, State's Exhibit Number 30 [Photograph]
16 introduced into evidence and appropriately marked.)

17 BY MR. BRYAN:

18 Q: So, Jody came back. What did he do with the shovel?

19 A: He had spoke to me and I was in the car and he says
20 pop the trunk.

21 Q: Did you do that?

22 A: Yeah.

23 Q: What did he do?

24 A: He put the shovel into the trunk.

25 Q: Okay, and then what happened?

1 A: He got in and we left and went further on down the
2 Indian Hut Road out to the main highway, which is
3 Georgetown Highway and beared back to the right and went
4 down to, down the road and turned left again onto Kent Road
5 and went down there a little ways to his mother's house.

6 Q: Okay, what happened at his mother's house?

7 A: He got out and washed off his arms and I think he went
8 inside, may have changed his shirt, I don't know.

9 Q: When you say he washed off his arms, did he wash --
10 where did he wash his arms off?

11 A: Outside.

12 Q: Did he wash his whole arm or both his arms or how much
13 of his arms did he wash off?

14 A: Both his arms probably up to his elbows.

15 Q: Okay, all right, what happened after you left? Did he
16 get back in the car?

17 A: Yes, sir.

18 Q: All right, then where'd you go?

19 A: Back to my sister's house.

20 Q: Okay, did Jody Ward ever make any statements to you
21 after that?

22 A: Maybe a couple of days later he had mentioned -- we
23 was -- I'm suggesting that we was probably going out to my
24 mother's and we was on the Indian Hut Road and he said that
25 them boys was in that block right there but I didn't want

1 to, I didn't want to hear it. I didn't, you know, I didn't
2 want to think that, you know, to my knowledge because I
3 didn't want to, you know.

4 Q: Did he say there was anything else in that block
5 beside the boys? Did he say anything else about what was
6 out there?

7 A: He said that there was just buzzards just everywhere
8 and it was -- he said that he had shot that sign up right
9 there at the Crossroads.

10 Q: All right, did he ever say anything about getting rid
11 of some boys?

12 MR. LOCKLAIR: Objection, leading.

13 THE COURT: Sustained.

14 Q: What other statements did ---

15 MR. BRYAN: Sorry, Your Honor.

16 BY MR. BRYAN:

17 Q: What other statements did he make?

18 A: He, he said that he had gotten rid of them boys.

19 Q: When did he say that?

20 A: I really, I really can't recall that.

21 Q: Was it before or after? Do you know if, just if you
22 know, was it before or after you had driven him around?

23 A: It was after.

24 Q: A long time after or a few days after, a week, a
25 month, can you say?

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1 A: I'm guessing around a week.

2 Q: All right, let me get you to come down off the witness
3 stand real quick, stand right over here next to me. I'm
4 going to get you to refer to this exhibit, which is State's
5 Two, and if you can stand kind of -- I'll tell you what,
6 I'll hold this and you get where the jury can hear you and
7 she can hear you and show me where you were living at that
8 time.

9 A: Right here.

10 Q: All right, and you went from there, show the jury on
11 the map where ---

12 THE COURT: He's -- now, the witness is really going
13 to have to speak up. He's very soft spoken.

14 Q: Yeah, you're going to have to speak so she can hear
15 you. Where were you living?

16 A: I was living right here on Sirfield Street.

17 Q: And that's already been marked as Jody Ward's house;
18 right?

19 A: Yes, sir.

20 Q: Okay, and where, at his direction, just show the jury
21 on the map where you went next.

22 A: We left from Sirfield Street, went down this road to
23 Chavis's Landing, back up to my sister's house, which is
24 not on there as you can see, and we left from there, come
25 back up to Highmarket Street.

1 Q: Let me stop you right there. Your sister and Chavis
2 Landing where you got the shovel or where Defendant got the
3 shovel and the burlap sack are both on Sirfield, all three
4 on Sirfield right there; is that correct?

5 A: Yes, sir.

6 Q: Okay, then you came back up here and what'd you do?

7 A: I came back to Highmarket Street and went down this
8 road, as shown, right on down to -- past Indian Hut Road
9 right on down to Kent Road, which would be right here and
10 come down this road right here and went right on and it
11 comes around to a circle that comes back from this to
12 Gapway Road right here.

13 Q: So, you took a right onto Gapway Road?

14 A: Yes, sir.

15 Q: All right, and then where'd you go?

16 A: I come down this Gapway Road right here to the
17 Crossroads, which is Indian Hut right here.

18 Q: So, this is the Crossroads that you were talking about
19 with the stop sign and where you went across?

20 A: Yes, sir.

21 Q: All right, and where'd you go next?

22 A: Come down this road a little ways and stopped and then
23 I left and come down here, came back ---

24 Q: This is the first, okay, this was the first place
25 where Jody asked you to stop and where the gate was; is

1 that right?

2 A: Yes, sir.

3 Q: And he came back with a burlap sack ---

4 A: Yeah.

5 Q: --- full of what you thought at first was a deer.

6 I'm going to ask you to mark on the map, take this little
7 label and stick it on the map where you say he asked you to
8 stop the first time.

9 A: (Complies with request.)

10 Q: All right, and then you went where?

11 A: I left from there and went down here and came back
12 maybe 10, 15 minutes later, come back down here and stopped
13 for, I don't know, five minutes or so, left from there and
14 come back down to Indian Hut Road and then come out to, to
15 Highmarket Street.

16 Q: Okay.

17 A: I made a stop right here on that Walker Farm Road.

18 Q: Why'd you stop, why'd you stop here off of Indian Hut?

19 A: Jody had asked me to stop on the Walker Farm Road.

20 Q: And this is the place where he then took the bag and
21 asked you to drive around some more and come back and came
22 back without the bag; right?

23 A: Yes, sir.

24 Q: That's what I'm going to ask you to mark as crime
25 scene two, just put that on the map where you remember that

1 being.

2 A: (Complies with request.)

3 Q: And I also have a label for Walker Farm Hunting Club.
4 Do you know where that is?

5 A: Yes, sir.

6 Q: Can you put this on the map where that is?

7 A: (Complies with request.)

8 Q: So, that's basically the same little road where he
9 asked you to stop; is that right?

10 A: Yes, sir.

11 Q: Okay, all right, have a seat back on the jury stand or
12 the witness stand.

13 A: (Complies with request.).

14 Q: All right, now, after that did you ever get in contact
15 with Lieutenant Hampton at the Sheriff's Department or did
16 he contact you?

17 A: Yes, sir.

18 Q: Did you ever take him out to Walker Farm Road to show
19 him where you had taken Jody Ward the second, the second
20 time he asked you to stop?

21 A: I didn't actually take Mr. Todd out there. I give him
22 pretty well idea of the place.

23 Q: All right, and you didn't go with Investigator Hampton
24 out there? You didn't go with any law enforcement out
25 there? You just told them where it was.

Louis Bazen - Direct by Mr. Bryan

1 A: Yes, sir.

2 Q: Okay, did the Sheriff's Department or any law
3 enforcement agency contact you in reference to this case or
4 did you contact them?

5 A: I contacted them.

6 Q: All right, so, you came forward; is that right, and
7 why did you do that?

8 A: A conscience can't stand but so much, man.

9 Q: What were you, what kind of problems were you having?

10 A: You just can't, you can't -- it just ain't right, man,
11 you know there's ---

12 Q: When you say it just isn't right what are you talking
13 about?

14 A: What I, what I thought that may have happened, you
15 know, what I thought that may have went on.

16 Q: And what did you think had happened?

17 MR. LOCKLAIR: Objection, lack of personal knowledge.

18 MR. BRYAN: I'm asking him why he came forward, Your
19 Honor.

20 THE COURT: I'm going to let him answer why he came
21 forward.

22 A: I thought that ---

23 THE COURT: If you'd ask, re-ask the question, "Why
24 did you come forward?"

25 BY MR. BRYAN:

1 Q: Why, why is it exactly that you came forward?

2 A: Just, just my conscience was bothering me.

3 Q: I don't have any other questions. Please answer any
4 questions Defense has.

5 THE COURT: Cross.

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

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. LOCKLAIR:

10 Q: Mr. Bazen, you were convicted in 2000 of breaking into
11 a motor vehicle; correct?

12 A: Yes, sir.

13 Q: You stated earlier that Jody made several statements
14 to you about locations in the woods and shooting up a road
15 sign?

16 A: Yes, sir.

17 Q: Did he make any other statements to you?

18 A: No, sir.

19 Q: He didn't tell you them boys had shot at him and put
20 four or five holes in the Suzuki?

21 A: Not to my recollection.

22 Q: Do you recall giving a statement to Investigator Gary
23 Todd on September 14th of 2002 with Investigator Hampton
24 present?

25 A: Can you repeat the question?

1 Q: Do you recall giving a taped statement to
2 Investigators Todd and Hampton on September 14th of 2002?

3 A: Yes, sir.

4 Q: And you don't recall at that point telling them that
5 them boys had shot at him and put four or five holes in the
6 Suzuki?

7 A: I may have. I'm not sure.

8 Q: Okay, but you're real clear on all these other
9 details; right?

10 A: Yes, sir.

11 Q: You drink a lot; don't you?

12 A: Every now and then.

13 Q: Smoke marijuana?

14 A: No.

15 Q: You don't smoke marijuana?

16 A: No, sir.

17 Q: Never?

18 A: I have.

19 Q: When was the last time you smoked marijuana?

20 A: Probably a year ago.

21 Q: Okay, were you a regular user of marijuana back then?

22 A: Back then, yeah.

23 Q: Okay, but you cleaned up now?

24 A: Yeah.

25 Q: Okay, how many times have you prepared your testimony

1 for this case?

2 A: Probably four to five times.

3 Q: Okay, and you've met with the Solicitor and law
4 enforcement a lot; haven't you?

5 A: Yes, sir.

6 Q: And in fact, you gave an affidavit about meeting with
7 them back on -- in July of 2003; correct? You made the --
8 you remember meeting with them in July of 2003?

9 A: I ain't sure. I've been there so many times.

10 Q: Okay, well, do you remember meeting with Gary Todd and
11 Greg Hembree at the Solicitor's Office and them telling you
12 that you knew more than what you've said in your statement?

13 A: Yes, sir.

14 Q: You recall that?

15 A: Yes, sir.

16 Q: How long did they interrogate you for on that day?

17 A: Probably, probably 35 to 40 minutes.

18 Q: Okay, you hadn't previously told anybody that it was
19 four hours?

20 A: No, but I have heard talk about, you know, that it was
21 four hours, but ---

22 Q: Okay, and isn't it true that you previously stated
23 that Mr. Hembree said that if you helped him he would help
24 you with a DUI; correct?

25 A: He had spoken up and said something about, "Don't you

Louis Bazen - Cross by Mr. Locklair

1 have a DUI," and I said, "Yeah, but I got that taken care
2 of."

3 Q: They were offering to help you out; correct?

4 A: I don't know what he was offering.

5 Q: Okay, he just wanted to know ---

6 A: Maybe, maybe, I don't know.

7 Q: ---- he just wanted to know if you had a DUI?

8 A: I don't know what, what he was ---

9 Q: Okay, and when you talked to Gary Todd on the
10 interview in September isn't it true at that time that he
11 made it clear to you they weren't going to charge you with
12 any drug charges or anything; correct?

13 A: He may have.

14 Q: Okay, you don't recall that either; correct? Have you
15 ever been diagnosed with any memory problems?

16 A: No, sir.

17 Q: Does all the marijuana you've smoked did that effect
18 your memory?

19 A: No, sir.

20 Q: You just have a selective memory and remember what you
21 want and don't remember what you don't want?

22 A: I wouldn't say that.

23 Q: Okay, but you don't remember a lot of these other key
24 issues that happened in these interviews; right?

25 A: Well, actually, you know, as you know, it's been two

1 years now.

2 Q: Okay, but you've been over this several times with the
3 prosecutors; correct?

4 A: Yes, sir.

5 Q: How many times did you meet with people from the
6 Solicitor's Office?

7 A: Probably three to four times.

8 Q: Okay, was that to go over what you would testify to
9 today?

10 A: No, not actually, not all the times.

11 Q: Okay, but sometime they went over your testimony;
12 correct?

13 A: Yes, sir.

14 Q: And they told you, "These are the questions we're
15 going to ask"; correct?

16 A: Yes, sir.

17 Q: And they got you to answer them and they moved on
18 accordingly; correct?

19 A: Yes, sir.

20 Q: Okay, so, basically your memory at this point is based
21 on what the Solicitor's Office reminded you of through
22 those meetings?

23 A: Well, pretty well what they've asked me all along is
24 what my story has been all along.

25 Q: Okay, but certain parts of it you conveniently forget;

1 correct? Like I'm sure when you were talking with
2 Investigator Todd you don't remember having to be prompted
3 to the fact that it was two bags rather than one bag that
4 you claim he got; correct? Okay, and I'm sure you don't
5 remember telling him that when he came back with the burlap
6 bag you did not see him put the bag in the trunk. Do you
7 remember telling him that, that you did not actually see
8 him physically place the bag into the trunk of the vehicle;
9 correct?

10 A: I may have told him that. I was in the car.

11 Q: Okay, and so, the trunk is popped. So, you could not
12 see him place something in the trunk; correct?

13 A: Correct.

14 Q: And isn't it also true when you first talked with
15 Investigator Todd you never said that you saw him get the
16 bag out of the car at the second location, you just said,
17 "I suppose he got the bag out at the second location";
18 correct?

19 A: I may have.

20 Q: Did you actually physically see him remove the bag
21 from the trunk? You were in the vehicle; correct?

22 A: Yes, sir.

23 Q: The trunk was popped; correct?

24 A: Yes, sir.

25 Q: He was behind the car; correct?

1 A: Yes, sir.

2 Q: You couldn't see him at that point; correct?

3 A: No.

4 Q: So, it's fair to say you did not personally see him
5 remove any bag from the trunk; correct?

6 A: I guess.

7 Q: Throughout these many interrogations you've had with
8 the Solicitor's Office and the Sheriff's Department and the
9 number of meetings you've had they've been quite emotional
10 on you; haven't they?

11 A: Yes, sir.

12 Q: In fact, there have been times that it's brought you
13 to tears; correct?

14 A: Yes, sir.

15 Q: Have you ever made any allegations of anybody trying
16 to put words in your mouth, and think carefully. You're
17 under oath. Have you ever told anybody that somebody tried
18 to put words in your mouth about this case?

19 A: I don't think so. There's more or less been Gary Todd
20 trying to say that, you know, "You know more than what you
21 know," you know, other than that.

22 Q: Pressuring you, they didn't think you were being
23 honest with them; right?

24 A: Pretty much.

25 Q: Would it be fair to say they thought you were

Louis Bazen - Cross by Mr. Locklair

1 withholding evidence?

2 A: Yeah, that'd be fair to say.

3 Q: And I'm assuming they took out a warrant on you for
4 that; correct?

5 A: No, sir.

6 Q: They didn't take out a warrant on you, but they
7 thought you were obstructing justice; correct?

8 A: Well, from -- I don't know. It just -- Gary Todd was
9 just more or less like shaking a tape at me of some kind of
10 Willie Lambert tape or something another like that.

11 Q: And that's the tape where Willie Lambert implicates
12 you in this; correct?

13 MR. BRYAN: Objection, Your Honor.

14 MR. LOCKLAIR: I'll withdraw the question, Your Honor.

15 BY MR. LOCKLAIR:

16 Q: When he was waving ---

17 THE COURT: Disregard the question.

18 Q: --- when he was waving that tape at you did he tell
19 you why?

20 A: He ---

21 MR. BRYAN: Objection, hearsay,. Your Honor.

22 THE COURT: Sustained.

23 Q: Was the tape the reason that he thought you weren't
24 telling him everything?

25 MR. BRYAN: Objection, calls for speculation.

1 Q: When he told ---

2 MR. LOCKLAIR: I'll withdraw, Your Honor.

3 THE COURT: Sustained.

4 BY MR. LOCKLAIR:

5 Q: When he told you that you weren't telling him
6 everything was he holding the tape at that time?

7 A: I don't think so.

8 Q: Okay, what was he holding the tape -- did he ever tell
9 you why he was holding the tape?

10 MR. BRYAN: Objection, Your Honor.

11 THE COURT: Sustained.

12 MR. LOCKLAIR: I'll move on, Your Honor.

13 BY MR. LOCKLAIR:

14 Q: Have you ever viewed the Willie Lambert tape?

15 A: No, sir.

16 Q: Okay, and when Gary Todd was talking with you about
17 that tape Greg Hembree was present; correct?

18 A: Yes, sir.

19 Q: In fact, you tried to leave that interview and exited
20 the Solicitor's Office and Mr. Hembree had to come back and
21 get you and bring you back inside; didn't he?

22 A: No, sir. Mr. Hembree didn't come out.

23 Q: Did somebody else come out and get you?

24 A: I left out of there in quite a wildly manner because
25 it pissed me off. I mean, I've done everything I could do,

1 you know, to be right and truthful and honest with them all
2 and they was sitting there, you know, it just seemed like
3 they was trying to interrogate me, telling me that I knowed
4 more and I didn't -- it just didn't seem right and Hampton
5 came outside and spoke with me.

6 Q: Okay.

7 A: And he spoke with me for like five minutes out there
8 along with my father, and after that my father had kind of
9 more or less said that, "You need to go back in there and
10 talk with them," and by then Mr. Bo Bryan and Greg Hembree
11 had walked outside the Solicitor's Office, and I think I
12 may have shook their hand and left.

13 Q: Okay, and when you said earlier you were mad you're
14 mad because basically they were telling you that you
15 weren't being truthful. They were basically calling you a
16 liar; correct, and that got you mad.

17 A: Pretty ---

18 Q: You were trying to do the right thing and the police
19 were telling you you were lying?

20 A: Pretty much they was trying to say that, "You know
21 more than what you're telling us," and I couldn't, I
22 couldn't tell them no more.

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

24 THE COURT: Yes.

25 MR. LOCKLAIR: No more questions, Your Honor.

1 THE COURT: Redirect?

2 MR. BRYAN: No, no, Your Honor.

3 THE COURT: You may step down, sir.

4 A: May I be excused?

5 THE COURT: There hadn't been a request.

6 MR. BRYAN: We've got no objection to releasing him
7 from his subpoena; Your Honor.

8 THE COURT: Any objection? You may go ahead and step
9 down. It's just a matter of whether you're released from
10 subpoena is the issue now. Any objection to this witness
11 being released from subpoena?

12 MR. LOCKLAIR: Yes, ma'am, we would. We might have a
13 need to recall him at a later point in time.

14 THE COURT: All right, you're still under subpoena.
15 You'll still need to be coming here. We will be adjourning
16 though for this evening. We have come to that point. So,
17 you can go on back, but you'll need to return pursuant to
18 your subpoena.

19 We have just come to a good breaking point for the
20 evening, ladies and gentlemen of the jury. I need for you
21 to be back here tomorrow morning. We won't start until
22 9:30 tomorrow morning. We will begin at 9:30 tomorrow
23 morning, but let me tell you I need for you to be promptly
24 here at 9:30. I know it's a little bit later but we are
25 finishing early tomorrow because of a death and a funeral

1 that needs to be attended to by one of the parties or some
2 of the parties that are involved in the trial of this case.
3 So, we will be finishing tomorrow at noon. So, please be
4 here promptly at 9:30 so we can get as much testimony in as
5 we possibly can prior to noon. You will have tomorrow
6 afternoon off because of that and because the funeral is
7 out of town and we will start back that next morning. So,
8 I'll give you more instructions about that tomorrow.

9 Have a good evening. You need to follow those same
10 instructions that I gave you about not discussing the case
11 with anyone, not neighbors, friends, spouse, loved one, no
12 one and also staying away from any media regarding this
13 case and that might include computers these days as well as
14 newspapers and radio and TV. So, please be very cautious
15 about that. I'll ask you about that in the morning.
16 Arrive early so you can enjoy a doughnut or a biscuit and
17 some coffee and we will have you out promptly at 9:30.
18 We'll see you then. Have a good evening.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right, you may be seated.

22 Anything from the State at this time?

23 MR. HEMBREE: Nothing from the State, Your Honor.

24 THE COURT: Anything from the Defendant?

25 MR. LOCKLAIR: No, ma'am.

1 MS. KNEECE: No, ma'am.

2 THE COURT: We will see you here tomorrow morning at
3 9:30. Be here earlier if there are matters of law because
4 it's my intention to get them out promptly at 9:30.

5 Now, as far as Mr. Ward if you will be here once
6 again, what time? You want him here at eight o'clock once
7 again?

8 MS. KNEECE: They had him here 7:15. They were great.

9 THE COURT: Well, wonderful. Early, the same type of
10 thing, if he could be here early, we won't have any of
11 those types of concerns.

12 Very good. We will see you here in the morning. Have
13 a good evening.

14 ***** OFF THE RECORD *****

15 (On the record, Wednesday, March 17, 2004.)

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Good morning, please be seated.

19 Anything from the State prior to bringing the jurors
20 out?

21 MR. HEMBREE: Nothing from the State, Your Honor.

22 THE COURT: Anything from the Defendant?

23 MR. LOCKLAIR: No, ma'am.

24 THE COURT: All right, very well, we are ready for
25 them.

1 (Whereupon, the following takes place in the presence
2 of the jury.)

3 THE COURT: All rise, please.

4 Thank you, please be seated.

5 Welcome back, ladies and gentlemen of the jury. Let
6 me let you know that we remain in the phase of the case
7 where the State has the opportunity to present evidence and
8 testimony.

9 Now, let me ask you, did any of you have any
10 difficultly in refraining from discussing this case with
11 anyone or did you happen upon it in the media in any form?
12 If so, please raise your hand.

13 (No response.)

14 All right, well, you have been very careful with that.
15 Very good. I appreciate that very much. I've often been
16 asked what would happen if you had run across something and
17 I simply need to question you more fully. It becomes a bit
18 more complicated. We appreciate it very much when you're
19 able to follow those instructions.

20 All right, very well. Mr. Hembree, if you'd call your
21 next witness, please.

22 MR. HEMBREE: Thank you, Your Honor.

23 The State calls Agent Rhett Holden to the stand.

24 AT THIS TIME RHETT HOLDEN WAS CALLED TO THE STAND, DULY
25 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

1 THE CLERK: Please be seated. Please state your full
2 name for the record.

3 MR. HOLDEN: Rhett Holden.

4 DIRECT EXAMINATION

5 BY MR. HEMBREE:

6 Q: Agent Holden, who do you work for?

7 A: With the South Carolina Law Enforcement Division.

8 Q: And what are your responsibilities with SLED?

9 A: I'm in the vice unit.

10 Q: Vice unit. So, what do you -- what laws do you
11 typically enforce?

12 A: Narcotics, alcohol, that type of thing.

13 Q: Got you, and where are you assigned?

14 A: I'm in Georgetown County.

15 Q: Grew up here?

16 A: Yes, sir.

17 Q: How long you been working with SLED?

18 A: A little over nine years.

19 Q: Now, in addition to your responsibilities in enforcing
20 narcotics and alcohol laws, are you sometimes called upon
21 to engage in other activities, assist law enforcement in
22 other ways?

23 A: Yes, sir.

24 Q: And did you at some point become involved in or assist
25 in the case of the investigation of the case of State

1 versus Jody Ward?

2 A: Yes, sir, I did.

3 Q: Would you please tell this jury how you first got
4 involved in this investigation?

5 A: On the day that they had received some information
6 about a possible location of the bodies I was at the
7 Sheriff's Office that day and they were getting some
8 deputies together to go to that area and spoke with
9 Lieutenant Hampton and I went with them to assist them that
10 day.

11 Q: Now, how would you characterize this effort? What was
12 the -- what was -- what were you all going to do?

13 A: They were -- they had some information about a -- in
14 the location, in that certain area we were just going in
15 that area to go in the woods and look and see if we could
16 find anything.

17 Q: Now, do you recall what date this was?

18 A: I think it was September 12th.

19 Q: And about what time did you get started on your
20 search?

21 A: It was -- I think it was after lunch sometime that
22 day.

23 Q: Did -- what area were you requested to search?

24 A: It was over off of Indian Hut Road in Georgetown
25 County.

1 Q: Okay, area known as Walker Hunt Club Road?

2 A: Yes, sir.

3 Q: I want to show you this photograph, State's Exhibit
4 Three for identification purposes, and ask if you can
5 identify from this aerial photograph any relevant
6 locations?

7 A: . Yes, sir, Indian Hut Road and ---

8 Q: Let me get you to speak into that microphone.

9 A: Okay.

10 Q: Nice and loud.

11 A: Indian Hut Road and where Deer Springs Loop is off of
12 that road in that area and the next, it was a dirt road.
13 It was the next road up past the Deer Springs Loop area is
14 where, where we were.

15 Q: And that's noted here as Walker Farm Hunting Club?

16 A: Yes, sir.

17 Q: Now, can you indicate on this aerial photograph the
18 approximate area where the human remains were recovered?

19 A: It was, it was on the road here after, after the big
20 loop curve and in that area right here.

21 Q: Okay.

22 MR. HEMBREE: Your Honor, we'd like to go ahead and
23 move this photograph into evidence at this time.

24 THE COURT: Any objection?

25 MS. KNEECE: No objection.

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1 THE COURT: All right, that's State's Three in
2 evidence without objection.

3 (Whereupon, State's Exhibit Number Three [Aerial
4 Photograph] introduced into evidence and appropriately
5 marked.)

6 BY MR. HEMBREE:

7 Q: We'll bring you down and show the jury that in just a
8 minute.

9 A: Okay.

10 Q: Approximately what time did you say that you arrived
11 at the -- in the area of Walker Hunt Club Road?

12 A: It was sometime after lunch that day.

13 Q: Who else was searching with you?

14 A: There were several deputies from the Sheriff's Office.
15 There was -- Lieutenant Hampton was there. There was,
16 there was a lot of people there.

17 Q: And what was the general terrain that you were
18 searching? Could you describe what the lay of the land
19 was?

20 A: It was pine trees, a lot of pine straw, there was some
21 low areas that were swampy and boggy. It was real wet in
22 those low areas and it was real thick.

23 Q: What was the procedure that you used, what was the
24 procedure you used to conduct your search?

25 A: We pretty much fanned out just in straight lines, and

1 just walked -- we walked through the woods and looked
2 around.

3 Q: Now, this is on the 12th of September I think you
4 said?

5 A: Yes, sir, I believe so.

6 Q: Did you find anything on the 12th of September?

7 A: No, sir.

8 Q: What was the plan?

9 A: Just to keep searching at that time with the
10 information they had. We kept looking and then they were,
11 they were going to -- they called for a, a cadaver dog that
12 would possibly assist in that search.

13 Q: Now, you say a cadaver dog. What's a cadaver dog?

14 A: It's a dog that is trained to search out for bodies.

15 Q: All right, and where was the cadaver dog coming from?
16 Who -- you all don't have a cadaver dog at Georgetown?

17 A: No, sir, they called Horry County. There was one in
18 Horry County.

19 Q: Now, when did you re-initiate the search?

20 A: Pretty much the whole afternoon, that afternoon, and
21 we started again the next morning. It got dark that
22 afternoon and we started again the next morning.

23 Q: That would have been the 13th of September?

24 A: Yes, sir, that morning.

25 Q: Tell us about the search on the 13th of September.

1 A: We met that morning at the same location. Shortly
2 after we met and got there, myself and the gentleman that
3 had brought the dog we went into the woods. I was there
4 just -- I carried a radio so I could have some contact with
5 Lieutenant Hampton and the other deputies that were outside
6 on the road. We had been in the woods maybe 15 or 20
7 minutes and the dog, the dog handler stated that the dog
8 had alerted in a certain area.

9 Q: What does the term alert mean?

10 A: That the dog had let his handler know that he had
11 found something.

12 Q: Got you. What did you do?

13 A: We secured that area where the dog had alerted for his
14 handler. We secured that area and it was turned over to
15 the Sheriff's Department who secured the area till the SLED
16 crime scene guys came in and processed the crime scene.

17 Q: Let me show you a few photographs and ask if you can
18 identify these. This one is already in evidence, State's
19 30 in evidence. Can you identify that photograph for us
20 ---

21 A: Yes, sir.

22 Q: --- Agent Holden? Describe that for us.

23 A: This is where the vehicles, the vehicles were parked
24 on the dirt road ---

25 Q: Let me get you to speak loud into the microphone.

1 A: Okay, where the vehicles were parked on the dirt road
2 beside the location where we went in the woods at.

3 Q: Now, let me show you State's 31 for identification
4 purposes and ask if you can describe that photograph for
5 us.

6 A: Looks like a shot from the road in, going into the
7 trail that we actually walked into straight off the road
8 going into where the crime scene was.

9 Q: Okay, where the bodies were recovered down -- you go
10 to that trail to get to where the bodies were?

11 A: Yes, sir.

12 Q: Let me show you State's 32 for identification purposes
13 and ask if you can describe that for us.

14 A: It's a, it's a low lying area with some water in it,
15 it's kind of swampy and where the, the top of the burlap
16 type bag was that we, when we located the, the bag in the
17 woods right there.

18 Q: Is this the area where the dog alerted?

19 A: Yes, sir.

20 Q: And that shows the general conditions of the area?

21 A: Yes, sir, it was kind of boggy and swampy right there.

22 Q: And finally, State's 33 for identification purposes.

23 A: This is the, the area that the dog alerted on. When I
24 looked at it it's the way it appeared at that time.

25 MR. HEMBREE: Your Honor, we would -- let me show

Rhett Holden - Direct by Mr. Hembree

1 these to Defense counsel. We would move State's 31, 32 and
2 33 into evidence at this time.

3 MS. KNEECE: May we approach, Your Honor?

4 THE COURT: Yes, you may.

5 (Whereupon, a Bench conference was held in the
6 presence, but out of the hearing, of the jury.)

7 THE COURT: Okay, 31 and 32 are in evidence without
8 objection. Thirty-three is in evidence over objection.

9 (Whereupon, State's Exhibit Number 31 [Photograph];
10 State's Exhibit Number 32 [Photograph] and State's Exhibit
11 Number 33 [Photograph] introduced into evidence and
12 appropriately marked.)

13 Q: If you'll step down, Agent Holden, I want to ask you
14 to step in front of this jury.

15 THE COURT: And you are really going to need to speak
16 up when you are down there. You don't have the benefit of
17 a microphone.

18 A: Okay.

19 Q: So, I'm going to have you stand here and face this
20 direction so the court reporter can get everything that you
21 need to say or that you are saying, and I've got a pointer
22 here that might be helpful. If you need that you're
23 welcome to it.

24 Now, first I'm taking you to State's Exhibit Number
25 Three in evidence that you described as an aerial

1 photograph of the Walker Farm Hunting Club Road. If you'll
2 just show the jury the area here?

3 A: This is Indian Hut Road off of 521 and this is a dirt
4 road right here on Walker Farm and this is the dirt road
5 that goes all the way through here, and this is the area
6 that we're talking about and the Deer Springs Loop is
7 another road. It's a little subdivision off of Indian Hut
8 Road.

9 Q: Is this fairly -- is this close to this?

10 A: Yes, sir.

11 Q: Taking you to State's 30, describe that -- show the
12 jury.

13 A: Again, this is the dirt road that was off of Indian
14 Hut Road here, and this is a shot down the road where the
15 vehicle is parked in the road and on the left-hand side
16 here is the area that we went into in the woods on that
17 day.

18 Q: On State's 31 if you'll show the jury this or describe
19 this photograph to the jury.

20 A: This is a shot of the -- from the dirt road looking
21 into the woods, the path that we walked into on that day.

22 Q: Is this taken from the road?

23 A: Yes, sir, it's taken from the road into the -- shot
24 into the woods.

25 Q: Take you to State's 32 now, have you describe that

Rhett Holden - Direct by Mr. Hembree

1 scene to the jury.

2 A: Yes, sir, this is part of the area that was kind of
3 boggy and swampy, right in that -- in the, in the woods
4 right here, and this is the area where the brown burlap
5 type bag was that the dog went to that morning.

6 Q: Now, what direction -- are we looking back toward the
7 road from this vantage point?

8 A: I believe so. I'm not, I'm not sure, but that was in
9 that area right there.

10 Q: And then finally State's 33 if you'd describe that to
11 us.

12 A: This is the immediate area, the brown burlap, burlap
13 type bag that was -- the dog went to that area that morning
14 and that is shown in that picture right here.

15 Q: Thank you, Agent Holden. You can take your seat.

16 A: (Complies with request.)

17 Q: Agent Holden, did you, did you search any other areas
18 ---

19 A: Yes, sir, we went ---

20 Q: --- during the course of this two day search for
21 bodies?

22 A: Yes, sir.

23 Q: Where, where else did you search?

24 A: It's right down the road from it at Indian Hut and
25 Gapway. There's another road right down there and we went

1 down there and looked at that location.

2 Q: And let me show you State's 27, 28 and 29 and ask you
3 if you can -- if you can -- if you recognize what those
4 photographs depict?

5 A: Yes, sir, this is a dirt road that's off of Gapway
6 Road and it's a road that goes down into a little shed. It
7 was like a hunting camp or something like that.

8 Q: Now, is that shed pictured in Number 28 there?

9 A: Yes, sir, this is a shot down the road. It's like a
10 little shed out in the woods here.

11 Q: Okay, and then 29?

12 A: That's a shot looking back out towards the road away
13 from the shed.

14 Q: Okay, looking back down toward Indian Hut?

15 A: Toward, towards Gapway Road.

16 Q: Gapway Road, I'm sorry, Gapway Road?

17 A: Yes, sir.

18 Q: Did you do some searching in this area?

19 A: Yes, sir, we did.

20 Q: What were you looking for?

21 A: The -- there was a possibility that they had some
22 information that there may have been some evidence here and
23 they were looking but we didn't find anything.

24 Q: Didn't find anything?

25 A: No, sir.

1 Q: Okay, tell me the location where you found, the dog
2 alerted on the burlap bag, Walker Hunt Club Road or off of
3 Walker Hunt Club Road?

4 A: Yes, sir.

5 Q: What county is that in?

6 A: That's in Georgetown County.

7 Q: Please answer any questions Defense counsel might have
8 for you.

9 THE COURT: Cross.

10 MS. KNEECE: No, ma'am.

11 THE COURT: All right, you may step down, sir.

12 You want this witness released?

13 MR. HEMBREE: We would ask that Agent Holden be
14 released.

15 THE COURT: Any objection?

16 MS. KNEECE: No objection.

17 THE COURT: You're free to leave, sir.

18 Call your next witness please.

19 MR. HEMBREE: Thank you, Your Honor.

20 The State calls Agent Jeff Crooks to the witness
21 stand.

22 AT THIS TIME JEFFREY ALLEN CROOKS WAS CALLED TO THE STAND,
23 DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

24 THE CLERK: Please be seated. State your full name
25 for the record.

1 MR. CROOKS: Jeffrey Allen Crooks.

2 DIRECT EXAMINATION

3 BY MR. HEMBREE:

4 Q: Agent Crooks, who do you work with?

5 A: I'm a senior agent with the South Carolina Law
6 Enforcement Division commonly referred to by the acronym
7 SLED..

8 Q: And what division are you assigned to?

9 A: Currently assigned to the latent print crime scene
10 unit.

11 Q: And what does the latent print, crime scene unit do?

12 A: We respond when requested to all 46 counties of the
13 state when requested by city, county, state or federal
14 agencies to assist them with investigation of crime scenes.

15 Q: Now, what specialized training have you received in
16 the field of crime scene investigation?

17 A: I am a certified police officer in the State of South
18 Carolina. I have successfully completed courses in
19 fingerprint development, crime scene investigation, palm
20 print identification, bloodstain pattern analysis, advanced
21 bloodstain pattern analysis, and I have testified in both
22 state courts of South Carolina and North Carolina as an
23 expert in crime scene investigation.

24 Q: On how many occasions?

25 A: Four times in North Carolina and approximately nine

1 times in South Carolina.

2 Q: How about your educational background prior to joining
3 SLED?

4 A: I have a bachelor of science degree from the Citadel.

5 Q: And ---

6 MR. HEMBREE: Well, at this point, Your Honor, we
7 would offer Agent Crooks as an expert in the field of crime
8 scene investigation and request that he be permitted to
9 testify in that capacity.

10 THE COURT: Yes.

11 MR. LOCKLAIR: No objection, Your Honor.

12 THE COURT: All right, without objection.

13 BY MR. HEMBREE:

14 Q: Agent Crooks, how did you get involved in the death
15 investigation of Wilfred Brown and Elton Rutledge?

16 A: Special Agent Michelle Dixon and myself were requested
17 by Georgetown County Sheriff's Office to respond to help
18 them with an investigation of some found, what they
19 believed to be some found human remains.

20 Q: And what date was that?

21 A: That was on the 13th of September.

22 Q: Approximately what time did SLED receive the call or
23 your department receive the call for assistance?

24 A: We received the call at 10 o'clock in the morning and
25 we arrived at the crime scene at 12:45 in the afternoon.

1 Q: Now, when you arrived what was your -- what's the
2 first thing that you do?

3 A: Well, the first thing we did was talk to the local
4 investigators to find out exactly what they had. After
5 talking to them we did what we call a visual walk through
6 of the crime scene. We look at the area, figure out what
7 it is exactly we have and formulate a plan as to what we
8 need to do.

9 Q: And what was the plan?

10 A: Well, the first thing we had to do was take pictures,
11 document the crime scene as it was when we arrived. We did
12 take pictures of the crime scene, and after that we would
13 collect any evidence that we found that needed to be
14 collected for analysis.

15 Q: A number of these photographs have already been
16 introduced into evidence. I'm not going to review those
17 with you right now, but I've got three I want you to take a
18 look at and describe to us.

19 MR. LOCKLAIR: Your Honor, may we approach? We'll
20 have an objection on these photographs.

21 THE COURT: Yes, you may.

22 (Whereupon, a Bench conference was held in the
23 presence, but out of the hearing, of the jury.)

24 BY MR. HEMBREE:

25 Q: Agent Crooks, let me show you State's 34 for

1 identification purposes at this time and ask you to
2 describe what that photograph depicts?

3 A: This is a photograph I took showing a large what
4 appears to be a burlap bag. It contained human remains as
5 well as some clothing. Also in the photograph is an
6 indentation in the ground. This indentation is actually
7 where the bag was sitting and the bag was lifted up in
8 order to figure out what was in it once it was
9 photographed.

10 Q: The second photograph, State's 35 for identification
11 purposes, please describe what that depicts?

12 A: This is another photograph of the same bag. Upon
13 opening the bag we observed another white plastic type bag
14 inside. We also observed several large bird feathers.

15 Q: And finally, State's 36 for identification purposes.

16 A: This is a closeup photograph of the same bag. Once
17 the white bag inside the burlap bag was opened we
18 photographed as it was that we saw it when we first opened
19 the bag and observed several numerous bones as well as a
20 pair of sneakers.

21 MR. HEMBREE: Your Honor, at this time we'd move
22 State's 34, 35 and 36 into evidence.

23 MR. LOCKLAIR: Subject to our previous objections,
24 Your Honor.

25 THE COURT: All right, we'll note that on the record.

1 They're in evidence over objection.

2 MR. HEMBREE: Thank you, Your Honor.

3 (Whereupon, State's Exhibit Number 34 [Photograph];
4 State's Exhibit Number 35 [Photograph] and State's Exhibit
5 Number 36 [Photograph] introduced into evidence and
6 appropriately marked.)

7 BY MR. HEMBREE:

8 Q: Agent Crooks, let me have you step down for just a
9 minute.

10 A: (Complies with request.)

11 Q: And I'm going to ask you to stand facing the Judge so
12 that the court reporter and the Judge can hear you very
13 clearly. You've got a good strong voice. So, I don't
14 think this will be much of a problem for you.

15 First I'm going to take you to State's Exhibit Number
16 30, and tell us -- tell this jury what that's a photograph
17 of?

18 A: This is a photograph that I took. This is the road,
19 the closest road to the actual crime scene. It depicts my
20 vehicle as well as Special Agent Dixon's vehicle.

21 Q: So, these are actually SLED vehicles here and here?

22 A: Yes, sir, they both are.

23 Q: Okay, take you to State's 31 in evidence.

24 A: This is a photograph of the location we entered the
25 crime scene, appeared to be somewhat of a trail that had

1 developed and that was photographed to indicate where in
2 the woods we entered.

3 Q: What was -- what were the general conditions in this
4 location of the land?

5 A: Very rural, on one side of the road it appeared to be
6 some woods that had been logged and it was more like an
7 open field, cut down type situation. . The other side of the
8 road where the actual crime scene was was very thick swampy
9 woods, a lot of pine trees. At some points we were up
10 above our ankles in the actual swamp water while we were
11 working the scene.

12 Q: And that kind of leads us up to Number 32, and just
13 point out the areas of evidentiary significance to the jury
14 in this photograph.

15 A: Down here is the same burlap bag I discussed earlier.
16 This is a photograph from behind the bag shooting back
17 towards the road that I mentioned where our vehicles were,
18 and in the background you can actually see the water
19 showing how the scene was as far as we were up to well over
20 our ankles in that water while we were processing the
21 scene.

22 Q: Number 33?

23 A: This is more closeup photograph of the same bag. This
24 is the bag as it was when we first got there. Some of the
25 pine needles were brushed away from it, and we photographed

1 it just as it was. This is the photograph prior to
2 investigating the bag any further.

3 Q: State's 34, describe that scene.

4 A: Once the picture I was just describing was taken we
5 moved the bag in order to further examine it. The bag was
6 somewhat down in the ground and when we lifted it up it
7 created this area right here. This shows the indentation
8 that the bag was in, down in, in, about half into the
9 ground.

10 Q: It appears there's water in that indentation?

11 A: Yes, sir, there is.

12 Q: State's 35?

13 A: This is a more closeup photograph of the same bag.
14 Once we opened the actual burlap bag there's a white
15 plastic bag inside and we also observed a large bird
16 feather in the bag.

17 Q: And finally State's 36?

18 A: This is a -- the photograph, once we opened the white
19 bag inside the burlap bag we observed numerous bones as
20 well as a pair of sneakers, and there were several more
21 bird feathers inside that white bag.

22 Q: Agent Crooks, you can take the stand, please.

23 A: (Complies with request.)

24 Q: Let me show you State's 37 for identification purposes
25 and ask if you can identify that for us.

1 A: Yes, sir, I can.

2 Q: What is that?

3 A: These are some of the feathers that were observed in
4 the bag.

5 MR. HEMBREE: Your Honor, we'd go ahead and we'd ask
6 that these feathers be moved into evidence at this time.

7 MR. LOCKLAIR: Can I see the picture, Your Honor?

8 THE COURT: Yes.

9 MR. LOCKLAIR: Oh, the feathers actually -- okay, no
10 objection.

11 THE COURT: In evidence without objection. What
12 number was that again?

13 MR. HEMBREE: Thirty-seven, Your Honor.

14 THE COURT: Thirty-seven, thank you.

15 (Whereupon, State's Exhibit Number 37 [Feathers]
16 introduced into evidence and appropriately marked.)

17 BY MR. HEMBREE:

18 Q: Agent Crooks, you're not an ornithologist?

19 A: No, sir, I'm not.

20 Q: You're not an expert in birds or feathers or those
21 kinds of things.

22 A: No, sir, I am not.

23 Q: Are you an outdoorsman?

24 A: Yes, sir, I am.

25 Q: What type of outdoor activities ---

1 MR. LOCKLAIR: Your Honor, we're going to object to
2 this line of questioning. He's already said he's not an
3 expert in this area.

4 MR. HEMBREE: We're -- Your Honor, we're not seeking
5 to seek -- we're not seeking expert testimony from him.
6 We're seeking lay testimony for it, from him.

7 THE COURT: All right, let's see where it goes, and
8 we'll -- I'll allow you to renew your objection at the
9 appropriate time.

10 MR. LOCKLAIR: Yes, ma'am.

11 BY MR. HEMBREE:

12 Q: What sort of outdoor activities do you engage in?

13 A: Hunting, deer hunting and turkey hunting.

14 Q: And in that hobby do you -- are you familiar with
15 wildlife that you see in the woods?

16 A: Yes, sir, I am.

17 Q: Including birds?

18 A: Yes, sir.

19 Q: And I would ask in your lay opinion what type of
20 birds would you expect ---

21 MR. LOCKLAIR: Objection, Your Honor. We don't think
22 they've laid a proper foundation for him to identify.

23 THE COURT: All right, sustained.

24 MR. HEMBREE: I'll withdraw the question, Your Honor.

25 BY MR. HEMBREE:

1 Q: Thank you, Agent Crooks. Agent Crooks, after you had
2 recovered the bag what did you then do?

3 A: Once we recovered the bag we turned it over to the
4 coroner for further investigation. We did not go into the
5 bag any further because we were worried that if we started
6 taking things out of the bag as far as human remains
7 looking for additional evidence there's a chance we could
8 lose anything that might be in the bag. So, we turned the
9 entire bag and its contents, aside from the two feathers
10 that we collected, over to the coroner.

11 Q: For the purpose of conducting an autopsy?

12 A: Yes, sir, that's correct.

13 Q: And did you do any other searching or did you search
14 any other locations while you were here on that particular
15 day?

16 A: Yes, sir, we did.

17 Q: And what area was that?

18 A: Just down from the actual crime scene there was a road
19 that appeared to be an entrance to some sort of hunting
20 lodge. There's an indication from the investigators that
21 we spoke to that there may have been another location that
22 these bodies were originally buried prior to the location
23 they were found. This was one of the areas that they
24 indicated they wanted to investigate to see if there was
25 any indication that the bodies could have been there. So we

1 went to that location and looked around but we did not see
2 anything to indicate or that we could confirm that the
3 bodies had been there at any time.

4 Q: Got you, okay. Please answer any questions Defense
5 counsel has for you.

6 THE COURT: Cross?

7 MR. LOCKLAIR: No questions, Your Honor.

8 THE COURT: Sir, you may step down. You want this
9 witness released from subpoena?

10 MR. HEMBREE: Yes, Your Honor, we would ask that Agent
11 Crooks be allowed to return to Columbia.

12 MR. LOCKLAIR: Without objection.

13 THE COURT: You're free to leave.

14 Call your next witness.

15 MR. HEMBREE: The State calls Dr. Kim Collins to the
16 witness stand.

17 THE COURT: This might be a good time before we bring
18 Dr. Collins out to go ahead and take a break. I've gotten
19 some indication of a need for a break. So, we'll take a
20 very quick morning break this morning. You can just simply
21 put those exhibits in your seat and then if you'll go back
22 to your original seat you'll be able to pick it back up and
23 be viewing those. So, I'll allow you to just stand up, put
24 those in your seat and we will allow you to have that quick
25 break. Please remember do not discuss the case. I'm going

Objection

1 to allow them to go. We'll pull you to the side for right
2 now. You may step back at this time.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: You can -- she can stay right here. You
6 can call her from here when they return.

7 We'll take a 10-minute break. See you back in here in
8 10 minutes.

9 MR. LOCKLAIR: Your Honor, could we put our objection
10 on the record prior to taking?

11 THE COURT: This would be an appropriate time.
12 Certainly, yes, sir.

13 MR. LOCKLAIR: Thank you. Are they all in?

14 THE COURT: Make sure that door is closed. You may be
15 seated.

16 MR. LOCKLAIR: Your Honor, we would just object to the
17 pictures of the bones and items, they're State's Exhibits
18 34, 35 and 36 coming into evidence. We don't feel that the
19 State has laid a proper foundation to identify those bones
20 as an actual part of this crime scene. There was no
21 testimony to establish even that they were human bones and
22 no link to the alleged deceased victims in this case.

23 THE COURT: All right, any response?

24 MR. HEMBREE: Well, Your Honor, they're, they are
25 photographs of the actual crime scene as they -- as it

Objection

1 appeared to the agents that investigated. There will be
2 further testimony obviously to wrap those things up.

3 THE COURT: And I have to say, I need to put this on
4 the record. That was not the objection at side bar. The
5 objection at side bar was that there was no DNA, not ---

6 MR. LOCKLAIR: Well, yes, ma'am, that -- that they
7 hadn't laid a foundation through DNA evidence, sorry, Your
8 Honor, that's what we meant. They hadn't laid the
9 foundation through DNA evidence to establish that.

10 THE COURT: Okay, all right, okay, and so that's
11 really still your position ---

12 MR. LOCKLAIR: Yes, ma'am, proper foundation.

13 THE COURT: --- because there's no DNA. All right,
14 there could be a foundation laid in another matter and
15 there will be in this case, and if you had just said proper
16 foundation and not just said DNA the Court's ruling may
17 have been different. It may have been that they wouldn't
18 have been published until they had further testimony, at
19 which time they would have been published, but what was
20 said at side bar was that there was no DNA to connect them
21 and ---

22 MR. LOCKLAIR: I believe I said a lack of foundation.

23 THE COURT: --- my understanding is there will never
24 be DNA. So, it's changed to the foundation now, just in
25 general?

Objection

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1 MR. LOCKLAIR: I believe we said a foundation based
2 on DNA, but ---

3 MS. KNEECE: I recall.

4 MR. LOCKLAIR: --- but we would object to foundation.
5 I mean, DNA was our basis for that.

6 THE COURT: All right, well, it's been entered into
7 evidence now based on that, that limited objection that you
8 said at bar. Once again, that's a situation where I would
9 have pulled it and we can pull those and we can just keep
10 them out until such time as the foundation is laid that
11 these are, in fact, human remains.

12 MR. HEMBREE: Well, my concern, Your Honor, is I don't
13 know how you -- how we can pull it.

14 THE COURT: Yeah.

15 MR. HEMBREE: Once it's been -- I mean, it's been
16 published. It's been testified about.

17 THE COURT: I need to note for the record that the
18 objection that was stated to this Court prior to putting it
19 on the record was there was no DNA evidence. There will
20 not be DNA evidence in this.

21 MR. LOCKLAIR: Yes, ma'am.

22 THE COURT: It was nothing more but the DNA having not
23 been established. That will not happen in this case. So,
24 I have ruled based on that.

25 MR. LOCKLAIR: Yes, ma'am, because they -- they're

1 going to -- I know they're going to establish the
2 foundation on one through subsequent witnesses. It was
3 the other one through the DNA that they weren't.

4 THE COURT: All right, okay, all right, I've overruled
5 on those grounds.

6 MR. LOCKLAIR: Thank you.

7 MR. HEMBREE: Thank you, Your Honor.

8 THE COURT: All right, we'll take a 10-minute break.
9 See you in 10 minutes.

10 ***** OFF THE RECORD *****

11 (On the record.)

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Thank you. Please be seated.

15 Anything from the State prior to bringing the jury
16 out?

17 MR. HEMBREE: No, Your Honor.

18 THE COURT: Anything from the Defendant?

19 MR. LOCKLAIR: No, Your Honor.

20 THE COURT: We're ready for them.

21 (Whereupon, the following takes place in the presence
22 of the jury.)

23 THE COURT: Thank you. Please be seated.

24 Once again, call your next witness.

25 MR. HEMBREE: Thank you, Your Honor. The State calls

1 Dr. Kim Collins to the stand.

2 AT THIS TIME KIMBERLY ANN COLLINS WAS CALLED TO THE STAND,
3 DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

4 THE CLERK: Please be seated. Please state your full
5 name for the record.

6 MS. COLLINS: Kimberly Ann Collins, C-O-L-L-I-N-S.

7 DIRECT EXAMINATION

8 BY MR. HEMBREE:

9 Q: Dr. Collins, where do you work?

10 A: Medical University of South Carolina in Charleston.

11 Q: And in what capacity?

12 A: I'm a professor of pathology and laboratory medicine.
13 I'm also director of the forensic pathology service and the
14 autopsy service.

15 Q: What is the -- what is the specialty or sub-specialty
16 of forensic pathology? What does that deal with?

17 A: Well, pathology is the study of diseases and we use
18 the laboratory to diagnose and treat patients, such as
19 biopsies, blood work, etcetera. All of you have had
20 experience with the pathology laboratory. Forensic
21 pathology is the investigation of unnatural death or
22 trauma; and so, predominantly we use the autopsy in our
23 investigation. That's our number one tool; and so, we
24 examine bodies postmortem and we perform autopsies to
25 determine how they died, what manner and all such as to

1 help with investigation with police officers and coroners.

2 Q: Dr. Collins, if you would, share with this jury the --
3 your educational background in the field of forensic
4 pathology.

5 A: I went to college at the University of Georgia and
6 then I attended medical school at Medical College of
7 Georgia. After medical school I completed a combined
8 anatomic and clinical pathology residency at Bowman Gray,
9 which is Wake Forest University School of Medicine. After
10 my residency I completed a forensic fellowship at the
11 Medical University of South Carolina.

12 THE COURT: All right.

13 MS. KNEECE: Your Honor, we will stipulate that she's
14 qualified as an expert.

15 THE COURT: All right.

16 MR. HEMBREE: In the field of forensic pathology.

17 THE COURT: That field?

18 MS. KNEECE: That's correct.

19 THE COURT: All right, and she's so found.

20 MR. HEMBREE: Thank you, thank you, Your Honor.

21 BY MR. HEMBREE:

22 Q: Dr. Collins, were you called to assist in the death
23 investigation of Wilfred Brown or a death investigation
24 involving a bag of bones?

25 A: Yes, I was by Coroner Kenny Johnson.

1 Q: All right, and when did you conduct or what, what were
2 you asked to do in this case?

3 A: We were notified by the coroner that they had found
4 some remains, some bones. So, first of all, he wanted to
5 know if they were human remains and then he wanted to know
6 if we could identify the individual and also try to
7 determine the cause and manner of death; and so, the bones
8 were transported to the Medical University.

9 Q: Did you conduct an autopsy on these bones?

10 A: Yes, we did. There was not much tissue left. So, we
11 did conduct an examination, a postmortem examination of the
12 bones.

13 Q: And on what date did you conduct this autopsy?

14 A: September 14th, 2002, and we started the examination
15 at nine o'clock in the morning.

16 Q: If you will describe to the jury the extent of your
17 examination of these remains.

18 A: The remains were received in a bag and within the bag
19 there was also some clothing and there were white Adidas
20 sneakers, a sock and multiple bones with these clothes.
21 Also, there was a pair of plaid boxer shorts, and ---

22 Q: Let me stop, let me stop you right there, Dr. Collins.

23 A: Yes.

24 Q: And I want to show you what's been marked for
25 identification as State's 39. These are in a biohazard

1 bag. So, you'll need to use some gloves there.

2 A: Yes, this one's broken, get one more. Okay.

3 Q: Dr. Collins, I would ask you to examine the contents
4 of this biohazard bag, and tell me if you recognize any of
5 the contents?

6 A: Within the bag are the two Adidas white sneakers that
7 I mentioned and the plaid boxer shorts, and there's some
8 fabric. I'm assuming it's probably the socks, yes, it's a
9 pair of socks.

10 MR. HEMBREE: Your Honor, we would move these items
11 into evidence at this time as State's 39.

12 MS. KNEECE: Without objection.

13 THE COURT: In evidence without objection.

14 (Whereupon, State's Exhibit Number 39 [Shoes, Socks
15 and Boxer Shorts] introduced into evidence and
16 appropriately marked.)

17 BY MR. HEMBREE:

18 Q: What did you do with these items after you recovered
19 them?

20 A: We photographed them, logged them in and then we
21 transferred them to law enforcement to an Agent Gary Todd
22 of the Georgetown County Sheriff's Office.

23 Q: Please continue with your testimony. What else did
24 you -- you indicated that you were going through these bags
25 and you found the clothing. What else did you find?

1 A: Well, before we started really examining the bones, as
2 I mentioned earlier, to determine whether they're human or
3 not we didn't want to move the contents too much before we
4 x-rayed the contents, and we do this on all of our cases of
5 any skeletonized remains or even a decomposed individual.
6 So, we did x-ray the entire contents and we did find that
7 there was a radiopaque, or it showed up white on the x-ray,
8 projectile within part of these remains. So, we did that
9 first and then we took out each individual bone, determined
10 what bone it was, left or right, such as left or right arm,
11 and then we examined the skull and the different parts of
12 the bones, skeleton, excuse me, to determine also male
13 versus female, black versus white.

14 Q: Can you within a reasonable degree of medical
15 certainty offer an opinion as to how many individuals or
16 how many people's bones were in these bags?

17 A: At least two different people because we have two
18 mandibles, which is your jaw bone, the lower jaw bone, also
19 we have two right collar bones and the other bones are not
20 duplicated. Would you like for me to go over the bones
21 that were present?

22 Q: Certainly, if you would, Doctor.

23 A: There was a skull that was intact, two mandibles as I
24 mentioned, one went with the skull and one was -- did not
25 match up with the skull. We had a right shoulder blade.

1 We had two vertebrae, the bones in the neck that came from
2 the neck region, bones in the backbone from the neck
3 region, one backbone that come from the chest area, and
4 three larger backbones that came from the lower back
5 region. We had one sternum, which is your breast bone
6 here. We had 12 intact ribs, one part of a rib. I
7 mentioned the two right collar bones. We had two upper
8 arms. So, we had a left and a right upper arm. We had two
9 sets of the arm bones in the forearm. You have two bones
10 in each forearm. So, we had those two sets. We had some
11 hand bones and some foot bones. We had a right femur,
12 which is your thigh. We had a right tibia, which is your
13 shin bone. We had a right fibula, which is also a bone in
14 your lower leg, and then there were two unidentified
15 rubbery fragments, which were most likely just with the
16 debris that was gathered when they brought the bones to us.

17 Q: Did you have, in these bones, did you have a complete
18 skeleton of either person?

19 A: No, we do not.

20 Q: Did you determine within a reasonable degree of
21 medical certainty that these were, in fact, human remains?

22 A: Most definitely, most definitely.

23 Q: Now, what else did you find of evidentiary
24 significance regarding the skull?

25 A: The skull, it was intact; however, there was a defect

1 on the left side toward the back of the skull, and it was a
2 gunshot wound defect, and within the skull was the piece of
3 bullet that I mentioned that we saw on the x-ray; and so,
4 the skull had the hole from the bullet wound, as well as
5 some fractures around it.

6 Q: Let me show you State's 38 for identification purposes
7 and ask if you can identify that. If you'll open that up.

8 A: It has on the outside "FA". That stands for forensic
9 autopsy, 02 for 2002, and 481, that is the case number that
10 I'm reading off here from the skeletonized remains, and it
11 is a metal fragment consistent with what we found at
12 autopsy. It's grey and also copper-colored, and we turned
13 this over also to the Sheriff's Office.

14 Q: Thank you.

15 MR. HEMBREE: Your Honor, we'd move this bullet
16 fragment into evidence at this time as State's 38.

17 MS. KNEECE: Without objection.

18 THE COURT: Without objection.

19 (Whereupon, State's Exhibit Number 38 [Bullet
20 Fragment] introduced into evidence and appropriately
21 marked.)

22 BY MR. HEMBREE:

23 Q: And Dr. Collins, tell me again, or I don't know if you
24 described it already, where was the entrance wound on the
25 skull?

1 A: The entrance wound was on the left side of the head
2 behind the ear and toward the back.

3 Q: Now, was there an exit wound?

4 A: No, there was not. That is -- and we've got the
5 bullet fragment that was within the skull.

6 Q: Do you have an opinion within a reasonable degree of
7 medical certainty on the cause of death of this person
8 whose skull is represented here?

9 A: The individual who belonged to this skull their cause
10 of death or his cause of death was a gunshot wound to the
11 head.

12 Q: Now, tell us about the -- your efforts to determine
13 who these bones belonged to.

14 A: Certain bones in the body you can look at to determine
15 the sex of an individual and to determine the race. The
16 most common and the best bones are the head bones, the
17 skull bones and the pelvic bones, but we -- our hip bones.
18 We didn't have any hip bones and we used the skull and we
19 could tell just by looking at the skull that it was a man
20 and we could also tell certain racial characteristics that
21 it was a black man. Looking at the mandible that did not
22 belong to the skull I could tell that it was a man, but I
23 could not take it any further than that. I could tell it
24 was an adult man but I was unable to do race just on the
25 mandible itself, the jaw bone itself.

1 Q: What additional efforts did you undertake to determine
2 the identity of the individuals?

3 A: Once we told the investigators that we had an adult
4 black male they provided x-rays that we could compare our
5 skull and our jaw with these x-rays, and that is a type of
6 scientific identification, and it's comparing premortem
7 radiographs, especially dental x-rays, the ones you take in
8 your dentist office and postmortem radiographs. So, we
9 obtain the premortem radiographs that he had -- that he
10 would have had at the dental office. We got some dental
11 records, and then we x-rayed our remains. Again, we x-
12 rayed the skull and the mandible in the exact position as
13 the dental x-rays are and what you're matching up are
14 configurations of the teeth, and you're matching up
15 fillings that are in our teeth because everyone has a
16 different kind of arrangement and different kind of
17 geography of the fillings in the teeth. So, we were able
18 to match this up and identified the intact skull with its
19 matching mandible as Wilfred Brown.

20 Q: Were you able to identify the -- you didn't have
21 another skull; is that correct?

22 A: That's correct. We only had part of another jaw bone.
23 There was nothing characteristic about that partial
24 mandible to aid us in identification; and so, we
25 transferred it to law enforcement in the hopes that they

1 could do DNA extraction for identification.

2 Q: And -- but you were not able to determine the identity
3 from your investigation of the second body ---

4 A: That's correct. We ---

5 Q: --- the second mandible?

6 A: We just have this individual listed as unknown male.

7 Q: Were you able, within a reasonable degree of medical
8 certainty, to determine the cause of death of the second
9 male?

10 A: No, not just looking at that one jaw, no.

11 Q: You can certainly offer the opinion that he was
12 deceased.

13 A: He's definitely deceased. He was with the homicide
14 victim and my conclusion would be that he was also a victim
15 of homicide. I cannot tell you the exact cause of his
16 death, though, just looking at what little we have of the
17 skeletal remains on this individual.

18 Q: All within a reasonable degree of medical certainty?

19 A: That's correct, yes.

20 Q: Thank you, Dr. Collins. If you would answer any
21 questions Defense counsel might have for you.

22 MS. KNEECE: No questions, Your Honor.

23 THE COURT: You may step down, ma'am. You want this
24 witness released?

25 MR. HEMBREE: We would ask that Dr. Collins be

Steve Lambert - Direct by Mr. Hembree

1 excused.

2 THE COURT: All right, and you are free to leave.

3 Call your next witness.

4 MR. HEMBREE: Thank you, Your Honor, the State calls
5 Agent Steve Lambert to the witness stand.

6 AT THIS TIME STEVE LAMBERT WAS CALLED TO THE STAND, DULY
7 SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

8 THE CLERK: Please be seated. Please state your full
9 name for the record.

10 MR. LAMBERT: Steve Lambert, L-A-M-B-E-R-T.

11 DIRECT EXAMINATION

12 BY MR. HEMBREE:

13 Q: Good morning, Agent Lambert.

14 A: Good morning.

15 Q: Who do you work with?

16 A: The South Carolina Law Enforcement Division also known
17 as SLED.

18 Q: In what capacity?

19 A: I'm assigned to the DNA laboratory where I perform DNA
20 and forensic serology analysis.

21 Q: And if you would give the jury the benefit of your
22 experience and training in DNA and serology.

23 A: Okay, I've got a degree in chemistry in 1983. I've
24 got a doctorate in biochemistry from the University of
25 South Carolina in 1990. At that point I went to work at

1 SLED and trained in the laboratory on how to perform
2 forensic serology. I went to the FBI Academy in Quantico,
3 Virginia, and took their FBI DNA analysis course, received
4 graduate credit from the University of Virginia for that
5 course, also was a visiting scientist at the FBI Academy in
6 the summer of 1990, and since then have attended numerous
7 seminars and symposia on the subject of DNA and serology
8 analysis.

9 MR. HEMBREE: Your Honor, we would ask ---

10 BY MR. HEMBREE:

11 Q: Have you been qualified to testify as an expert in
12 DNA and serology analysis in courts of record of this
13 state?

14 A: Yes, sir.

15 Q: On how many occasions?

16 A: About 60 times.

17 MR. HEMBREE: Your Honor, we would ask that Senior
18 Agent Steve Lambert be qualified to testify as an expert in
19 the field of serology and DNA analysis.

20 THE COURT: Yes.

21 MR. LOCKLAIR: Your Honor, we would have no objection
22 unless he intends to go into any statistical analysis and
23 we would say he doesn't have an expert basis on that.

24 THE COURT: All right, is that the intent?

25 MR. HEMBREE: We do not intend to go into that type of

1 information.

2 THE COURT: All right, very well, without objection.

3 MR. LOCKLAIR: Thank you, Your Honor.

4 MR. HEMBREE: Thank you, Your Honor.

5 BY MR. HEMBREE:

6 Q: Senior Agent Lambert, if you would tell us how you got
7 involved in this death investigation.

8 A: In this particular case I received some items that
9 were submitted to the lab for DNA analysis.

10 Q: And did you conduct a DNA analysis on any of these
11 items?

12 A: Yes, I did.

13 Q: What was turned over to you for analysis?

14 A: The first item that I received was a jaw bone for DNA
15 testing.

16 Q: What type of DNA testing did you conduct?

17 A: I attempted to conduct what's called STR analysis.
18 That stands for short tandem repeat analysis. That's the
19 kind of testing we perform in our lab and virtually every
20 forensic lab in the country does the same test. To do this
21 test what we do is we extract DNA from the item to be
22 tested and attempt to perform DNA analysis on it. However,
23 we were unable to extract high molecular weight, high
24 quality DNA from the jaw bone. It just decayed too far and
25 we were unable to get any DNA from that.

1 Q: No DNA profile was determined?

2 A: That's correct.

3 Q: The -- there were -- were there blood samples or
4 cuttings with -- let's -- with alleged or possible, a
5 possible bloodstain submitted to SLED for analysis?

6 A: Yes, sir.

7 Q: And to your knowledge were those -- did those test
8 positive or were they inconclusive?

9 A: The samples that were submitted were cuttings from a
10 seat. They had tested positive on the presumptive tests.
11 There is a test that's performed at a crime scene or in the
12 presumptive part of the testing to where we can determine
13 presumptively whether it's blood or not, and these tested
14 positive for that test. However, the confirmatory test to
15 show that, in fact, it is human blood was negative and this
16 could be for one of, one of two reasons. It could have
17 been nonhuman blood on those samples or there just wasn't
18 enough blood to give us a positive test on the confirmatory
19 test. So, those are the two conditions where you'd get a
20 presumptive and then get a negative confirmatory test.

21 Q: So, is it my understanding that it is possible that
22 this was, in fact, human blood but you were unable to
23 confirm that?

24 A: That's correct. It could have been human blood but it
25 was just below the threshold of detection for the

1 confirmatory test.

2 Q: Your test just said that it was below the threshold of
3 detection. What factors would effect that threshold that
4 would inhibit or prevent it from reaching that threshold?

5 A: When I looked at the stain and these stains in
6 particular they appeared to be very diffuse, very dilute,
7 and if they had been diluted by water, for instance, it
8 could be that the sample had just dissolved into the water
9 and we weren't able to pick up enough blood to do the
10 testing.

11 Q: Let me give you a hypothetical. If this vehicle or if
12 these cuttings came from a vehicle, these stains came from
13 a vehicle and that vehicle was at the bottom of a lake from
14 August the 3rd of 2002 until September, excuse me, October
15 the 1st of 2002, nearly two months, could that have an
16 impact or an effect on the ability to secure a bloodstain
17 that's testable?

18 A: Absolutely because there's material in the, in the
19 water that is going to degrade the DNA. There is bacteria.
20 There's a whole lot of things that go on that are going to
21 break down that blood. It's going to diffuse into the
22 water. It's going to be chewed up by the bacteria and
23 that's the reason quite often in these cases that we don't
24 get a result. I'd be surprised to get a result off of a
25 sample that had been stored under those conditions.

1 Q: Please answer any questions Defense counsel has for
2 you.

3 THE COURT: Cross.

4 CROSS EXAMINATION

5 BY MR. LOCKLAIR:

6 Q: Did you ever run a test for human blood or DNA on the
7 shoes of the Defendant?

8 A: No, sir, they were not submitted to the lab.

9 Q: Thank you.

10 MR. LOCKLAIR: That's all I have, Your Honor.

11 THE COURT: Redirect.

12 MR. HEMBREE: Nothing on redirect, Your Honor.

13 THE COURT: You may step down, sir. You want this
14 witness released?

15 MR. HEMBREE: Yes, Your Honor. We'd ask that Senior
16 Agent Lambert be allowed to go back to Columbia.

17 MR. LOCKLAIR: No objection.

18 THE COURT: All right, you're free to go.

19 Call your next witness.

20 MR. HEMBREE: The State calls Senior Agent Dan
21 DeFreese.

22 AT THIS TIME FRANK DAN DEFREESE WAS CALLED TO THE STAND,
23 DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

24 THE CLERK: Please be seated. Please state your full
25 name for the record.

1 MR. DEFREESE: My name is Frank Dan DeFreese. It's D-
2 E, capital F-R-E-E-S-E.

3 DIRECT EXAMINATION

4 BY MR. HEMBREE:

5 Q: Senior Agent DeFreese, with whom are you employed?

6 A: I work for the South Carolina Law Enforcement Division
7 in the laboratory in Columbia.

8 Q: In what capacity?

9 A: I'm assigned to the unit within the laboratory where
10 we do the analysis of firearm and tool mark evidence.

11 Q: Would that be sort of commonly known as a ballistics
12 expert?

13 A: It is known as that yes, sir.

14 Q: And if you would share the benefit of your training
15 and experience in the field of firearm and tool mark
16 identification.

17 A: All right, sir, I'm a graduate of the University of
18 South Carolina in Columbia, and my principal training in
19 the field of firearm and tool mark identification occurred
20 at SLED. I was employed in 1967 and I was first assigned
21 to the SLED firearms laboratory.

22 I studied the techniques of firearm and tool mark
23 identification under a gentlemen named Millard Cate, who
24 established the SLED laboratory when SLED itself was
25 established in 1947.

1 After a period of about two and a half years of
2 studying the techniques of firearm and tool mark
3 identification under him I began accepting cases on my own
4 and testifying as to my results, which I have been doing
5 since 1969, and I've testified in courts throughout this
6 state and other states and in federal court.

7 Q: On how many occasions?

8 A: I don't know exactly. I'm still thinking it's
9 something between five and 600 times.

10 Q: Very good. Agent DeFreese or ---

11 MR. HEMBREE: Your Honor, we would ask that Agent
12 DeFreese be qualified to testify as an expert in the field
13 of firearms and tool mark identification.

14 MR. LOCKLAIR: Without objection, Your Honor,.

15 THE COURT: All right.

16 A: Thank you.

17 BY MR. HEMBREE:

18 Q: Agent DeFreese, I'm going to show you what's in
19 evidence as State's 26 and State's 38. Ask you to take a
20 look at those items and tell me if you recognize them.

21 A: Yes, sir, I do.

22 Q: What are those?

23 A: States 26 is a fired copper alloy jacketed bullet most
24 consistent with a nine millimeter Luger caliber bullet.

25 State's Exhibit 38 is a copper alloy bullet jacket fragment

1 whose exact caliber I couldn't determine because of its
2 damaged condition. I did observe that the remaining land
3 and groove widths on this fragment and on State's Exhibit
4 26 were the same. This could be a fragment of a nine
5 millimeter Luger caliber bullet, but it could also be a
6 fragment of another caliber bullet.

7 Q: You testified though that the lands and grooves,
8 describe to this jury what lands and grooves are and what
9 that analysis involves.

10 A: One of the things that we're frequently asked to do in
11 the firearms laboratory is to identify bullets as being
12 fired by a particular firearm or by a particular firearm
13 barrel. Sometimes when a gun is not submitted in a case
14 we're also asked to identify two different or two different
15 bullets to see if they were fired by the same gun barrel or
16 not.

17 Q: Did you have a gun to compare these bullets to in this
18 case?

19 A: No, no gun was submitted in this case.

20 Q: Thank you.

21 A: The identification or the attempt to identify bullets
22 to a particular gun barrel is based on the individual
23 markings that are left on a bullet by a rifled firearm and
24 that includes rifles, pistols and revolvers, and even now
25 some shotguns that have a series of spiraling flutes inside

1 their barrel, inside the tube that is the barrel of the
2 gun. These raised and lowered sections spiral as they
3 proceed down the barrel. The bullet is gripped by these
4 spiraling flutes, what we call rifling, for the purpose of
5 imparting a spin on the bullet. As the bullet is being
6 propelled down and out of the barrel the bullet is spun to
7 enhance its accuracy. Much in the same way as a
8 quarterback puts a spin on a football to keep it from
9 tumbling end over end in flight, the rifling puts a spin on
10 a bullet to keep it stable in flight. By looking at the
11 markings that remain on a bullet after being fired, in some
12 cases when the bullet is not too badly damaged we can find
13 the individual tool markings which differ from barrel to
14 barrel. These make up essentially the signature of the
15 barrel that's placed on the bullet that's fired in that
16 particular barrel, and in cases where the bullet is
17 sufficiently undamaged and where the barrel itself is
18 consistent in its markings, we are able to identify a
19 particular bullet back to a particular gun barrel or
20 lacking the gun barrel to identify two bullets as being
21 fired by the same gun barrel. If I had the gun I would
22 test fire it and I would obtain bullets that I knew that
23 gun had fired, and I would compare the test bullets with an
24 evidence bullet. If I don't have a gun I would compare an
25 evidence bullet or bullet jacket with another specimen,

1 which is what I did in this case.

2 MR. LOCKLAIR: Objection, Your Honor. May we
3 approach?

4 THE COURT: Yes, you may.

5 (Whereupon, a Bench conference was held in the
6 presence, but out of the hearing, of the jury.)

7 BY MR. HEMBREE:

8 Q: I think we were at the point that you were requested
9 to compare these two bullets to each other because you
10 didn't have a gun to compare the two; is that correct?

11 A: That's correct.

12 Q: And what were the results -- what type of an
13 examination is conducted? What steps do you actually take
14 to conduct that examination?

15 A: Of course, with any evidence submission we collect
16 certain information about the specimen and about the
17 related case information. After doing that the bullet or
18 bullet jacket fragment in this case would be, would be
19 marked and then a microscopic, a side-by-side microscopic
20 examination would be done using a comparison microscope,
21 which is a kind of microscope that lets us look at two
22 things at the same time, and as the objects would appear to
23 me there would be like a dividing line, a hairline in the
24 middle of my field of view in the microscope, and I would
25 look at one bullet on one side and one on another, and I

1 would be able to manipulate the bullet or bullet jacket in
2 this case so that I could bring any marked area directly
3 next to another marked area to see if the markings were the
4 same.

5 Q: What were your significant findings based on findings
6 from the side-by-side comparison with the microscope?

7 A: While I found the same widths of lands and groove
8 impressions in both State's Exhibit 26 and 38, both of the
9 specimens were in too bad a condition and had too few
10 markings to positively identify the two of them as being
11 fired by the same gun barrel. The markings that were
12 present indicate that it could have been fired by the same
13 gun or by the same gun barrel, but it also could have been
14 fired by two different gun barrels.

15 Q: Understood. You couldn't say conclusively that they
16 were fired from the same gun.

17 A: No, sir, not in this case.

18 Q: Understood, and was, was there -- what was the
19 condition -- was that condition based on just one of the
20 bullets or were both the bullets' conditions questioned or
21 difficult?

22 A: It was both. There was degradation to both specimens.
23 State's Exhibit 26 is somewhat blackened in its condition.
24 It was somewhat oxidized, even though it's relatively
25 complete. It's almost the complete weight of 115 grain

1 nine millimeter bullet. It weighed like 114 grains and a
2 fraction. State's Exhibit 38 was totally missing its core,
3 which is not a part of the bullet we would use for
4 identification purposes. It weighs only about a little
5 over ten grains. It's, it's about the weight of one tenth
6 of a bullet, but it is rather severely distorted and has a
7 very limited area of individual markings, of markings that
8 I would expect the gun barrel to have put on them.

9 Q: Understood. The -- what other analysis regarding
10 these bullets were you requested to do?

11 A: The principal analysis was just to determine if they
12 were both fired by the same gun and to suggest for the
13 investigator a list of possible firearms that might help
14 him in his investigation by measuring, in the case of
15 State's Exhibit 26, where we have a relatively complete
16 bullet we can measure the width of the land and groove
17 impressions, and from a database which we collect of known
18 firearms I can suggest for the investigator a list of
19 possible nine millimeter Luger caliber firearms that could
20 have fired State's Exhibit 26. Now, I couldn't do that
21 with State's Exhibit 38 because of its rather damaged
22 condition but I could do it for State's Exhibit 26.

23 Q: Is that -- did you provide that list to law
24 enforcement in your report?

25 A: Yes, sir, it is included as a part of my report.

1 Q: And there are quite a number of firearms that could
2 have or makes of firearms that could have fired this
3 bullet; is that a fair statement?

4 A: Yes.

5 Q: Maybe 25 or 30, 30, 35?

6 A: I didn't count them, but there are at least that many,
7 maybe more.

8 Q: Was one of those Intratec?

9 A: Yes.

10 Q: Now, are you familiar with a semiautomatic known as a
11 TEC-9?

12 A: I am.

13 Q: What sort of caliber does a TEC-9 fire?

14 A: It fires nine millimeter Luger caliber cartridges.

15 Q: And who is the maker of a TEC-9?

16 A: Well, there's the Intratec Company. The TEC-9 is made
17 by Intratec and there's a very similar firearm also made by
18 the Introdynamic Company.

19 Q: Now, do these weapons look similar?

20 A: They look very similar, yes.

21 Q: Would these two companies or these, are they on your
22 list?

23 A: Yes.

24 Q: So it's, based on that analysis and the list you've
25 run here, it is possible that a TEC-9 fired these bullets?

1 A: Yes. The specifications that we know a TEC-9
2 possesses are similar to the rifling on State's Exhibit 26.
3 It's not the only one but it's among those.

4 Q: And could you describe what a TEC-9 looks like?

5 A: A TEC-9 looks rather like a -- it's a very large
6 semiautomatic pistol. It has a plastic grip frame. The
7 magazine is located in front of the trigger guard instead
8 of passing through the grip. It looks rather like a
9 submachine gun with no shoulder stock and a very, very
10 short barrel is really what it looks like, but there are
11 some automatic pistols which as manufactured will fire one
12 shot for each pull of the trigger.

13 Q: So, you have to pull the trigger boom, boom, boom,
14 boom, boom?

15 A: Right, each time you shoot it if the gun, it was
16 working as intended it fires only once.

17 Q: About how long is this firearm?

18 A: There are a couple of different barrel lengths as
19 supplied on the TEC series of firearm. The barrel lengths
20 go anywhere from like two or three inches to like six
21 inches, and the overall length of the firearm I would say
22 is about 16, 18 inches, and depending on the magazine
23 that's in it, because the magazine can have a capacity of
24 over 30 rounds, and the magazine can be quite high, too,
25 when it's inserted.

1 Q: So, you're -- show using your hands. About how high
2 would it be?

3 A: Maybe a foot high.

4 Q: Okay. I believe that's all the questions I have for
5 you. If you would answer any questions Defense counsel
6 has.

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

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. LOCKLAIR:

11 Q: Agent DeFreese, in your report you listed a lot of
12 firearms that possibly could have fired this weapon;
13 correct?

14 A: Yes, sir, I did.

15 Q: And if I told you there were 37 listed would that be
16 fair to say or would you believe that?

17 A: If you counted them I could certainly believe that.

18 Q: Okay, but you also said in your report it's included
19 to those but not limited?

20 A: Yes.

21 Q: So, it could be more than those guns you listed that
22 could have fired this bullet; correct?

23 A: Yes, sir, I'm not saying I know every single gun ever
24 made.

25 Q: Yes, sir.

1 A: And that there could be some custom-made guns or some
2 other guns in addition to those that we're aware of that
3 could have fired this bullet.

4 MR. LOCKLAIR: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes, you may.

7 Q: I ask you if you can identify that document.

8 A: Yes, sir, I can.

9 Q: And what is that document?

10 A: This document is a copy of what was page 16 in my case
11 notes of this case.

12 Q: And what significance is that document? What can you
13 use that document for in your line of work?

14 A: This is, is generated. It's a computer file, this
15 being the first page of it, to the database in which we
16 keep our dimensions, our rifling dimensions. This would be
17 a part of what I used to generate the list of possible
18 makes of firearms that may have fired State's Exhibit
19 26.

20 Q: Okay, and could you please explain what a groove
21 impression width is to the jury?

22 A: Yes, sir, different firearms use differing numbers of
23 lands and grooves inside their barrels. Their
24 manufacturers just determine, for instance, that they want
25 to use five lands and grooves or six or eight or some of

1 them use over 20. It's, it's a determination they make.
2 Different makes of guns use different numbers of lands and
3 grooves, and then within the number of lands and grooves,
4 like in the case of State's Exhibit 26, it had six lands
5 and grooves. Some manufacturers will want to use
6 relatively wide lands and narrow grooves. Some of them
7 will want to use about the same width of lands and grooves,
8 and some will use the contrary. They'll, they'll use just
9 different dimensions. By observing an evidence bullet
10 we'll measure the width of the land and groove impressions
11 on the bullet and then we will compare that with data that
12 we've collected on the firearms that we have test fired and
13 the page I was just shown has some of the data that was
14 used for search purposes. I measured State's Exhibit 26
15 and I obtained some measurements from it that I used to
16 compare against the database to generate the list of
17 possible firearms.

18 Q: Okay, and certain fire -- as you said there's certain
19 minimum and maximum widths of the grooves that the
20 manufacturers put in the projectiles?

21 A: Yes, there's, there's a certain amount of wear and
22 tear on the tooling. There's a certain amount of leeway
23 over time. Some manufacturers will change the width of the
24 lands and grooves by a little bit from gun to gun, but what
25 -- there's a range of widths that we would be looking for

1 for given makes.

2 Q: Is there a minimum or maximum width you would look at
3 to determine the caliber of the bullet?

4 A: A minimum or maximum?

5 Q: For a nine millimeter Luger.

6 A: A -- pardon me, a minimum or number, a maximum what
7 number? I'm ---

8 Q: Of groove -- of the measurement of the width of the
9 groove?

10 A: Just whatever, whatever information we have, you know,
11 the -- there is a certain width of land that a manufacturer
12 probably wouldn't go under for a given caliber with a given
13 number of lands and grooves because if he went, if he made
14 his lands too narrow the bullet would not be properly
15 gripped, but you would expect there to be like the
16 circumference of the bullet is going to end up being one
17 dimension and within that usually the lands and grooves are
18 equally spaced. They're not always equally spaced but I
19 don't -- I'm not sure I exactly follow your line of
20 questioning here.

21 Q: Is there any maximum groove width that could be --
22 where you could limit the length or the distance across the
23 groove width? Is there any maximum that it would be for a
24 nine millimeter Luger?

25 A: Probably in actual production guns you would probably

1 find an upward limit in our database. I don't know what
2 that would be.

3 Q: Let me just ask you about this as far as finding a
4 maximum groove width what does that signify to you in your
5 analysis?

6 A: Well, among the data that's on the sheet you've given
7 me is I'm telling the computer database to look for all my
8 nine millimeter Luger calibers with six lands and grooves
9 and a right-hand twist because, of course, the rifling has
10 to twist either to the right or to the left, and then I'm
11 telling it to look in a range where my land impression
12 width goes from about 55 thousandths to about 65
13 thousandths and where my groove impression width goes in
14 the range of 117 to 127 thousandths. That's, that's in
15 essence what I'm telling the computer to look for and to
16 spit me out all of the firearms in the database that have
17 rifling characteristics that are like this and it actually
18 gave me 134 firearms that were in the database, but now, a
19 lot of those were duplicates, you know, we had more than
20 one of a given manufacturer. That's the reason the 134
21 hits yields like 37, if you say so, different makes.

22 Q: Out of your search for possible weapons that could
23 have fired a nine millimeter Luger cartridge, did you do
24 any searches where the maximum groove width was in excess
25 of .127?