

Original

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

RECEIVED

FEB - 7 2014

S.C. Supreme Court

ROBERT LEE HEYDMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001861

APPENDIX

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2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS
3
4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 VS.)
7 ROBERT LEE HEYDMAN,)
8 DEFENDANT.) 07-GS-42-4087
9
10 september 24th, 2008
11 Spartanburg, South Carolina
12
13 B E F O R E:
14 THE HONORABLE PAUL M. BURCH, Judge, and a jury.
15
16 A P P E A R A N C E S:
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18 ASSISTANT SOLICITORS
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23 Attorney for the Defendant
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P R O C E E D I N G S

MR. MCPHERSON: Judge, may we approach?

(Whereupon, a bench conference was held at this time.)

SOLICITOR BARNETTE: Judge, on the juror questions, we have a few objections to theirs. I don't know if they have any objections to ours. I just wanted to let you know that.

THE COURT: All right.

MR. MCPHERSON: Judge, before we get started, I wanted to urge a motion for continuance in this case if I could.

THE COURT: Okay. Solicitor, if you'll call the case and let's get it on the record, and then I'll hear Mr. McPherson's motion.

MR. MCPHERSON: Your Honor, this is the state versus Robert Lee Heydman, Case Number 2007-GS-42-4087, Your Honor. And the indictment is for murder. It has been true billed by the Grand Jury. I'll pass it up to the Court, Your Honor.

THE COURT: All right. Mr. McPherson.

SOLICITOR BARNETTE: I'll pass it to, to the Court, Your Honor.

MR. MCPHERSON: Judge, I'd like to make a motion for a continuance on the grounds that there's a videotape out there which I requested about a week ago when I got some more reports in. The prosecutor's informed me that that was

1 a mistake. There was never a video made. And then
2 yesterday I was informed that a video was made, but they
3 weren't gonna introduce it into evidence. I said well, that
4 doesn't matter. I need to take a look at that video if it
5 could possibly help us in our case.

6 And as of my arguing at this point, they've not
7 furnished me or allowed me to view the video. They've not
8 furnished me a copy of which they normally would do or even
9 allowed me to view it.

10 Secondly, the second grounds is this morning there's a
11 big article in the paper, and I would like to introduce this
12 as a Court, as an exhibit where it says woman pleads guilty
13 in murder case. It involves the codefendant and my case.
14 And I just don't believe we can come up with a jury panel
15 that's not tainted because of this article. Again, I'd like
16 to have this marked as an exhibit and introduce it into
17 evidence as---

18 THE COURT: Court Exhibit.

19 MR. MCPHERSON: Yes, sir.

20 (Whereupon, the newspaper article was marked as Court's
21 Exhibit No. 1 for identification purposes only at this
22 time.)

23 MR. MCPHERSON: And I believe, I believe the State has
24 already seen this article.

25 SOLICITOR BARNETTE: We have, Your Honor.

1 THE COURT: All right. Solicitor.

2 SOLICITOR BARNETTE: Thank you, Your Honor.

3 In response to his first motion, they first, when we
4 were talking to the Sheriff's Department, they was not a
5 video. Then they said they'd made a digital camera. They
6 now told me they can't, they can't find the video. So, we
7 do not have a video to provide to them. We do not have the
8 video for the trial of this case. I've never been supplied
9 with it. They said they was gonna get it to me, but they
10 said it does not, it does not exist now. I don't know if
11 somebody copied over it or if it was preserved. But we do
12 not have it.

13 MR. MCPHERSON: Well, Judge, I would think, at the very
14 minimum, they should be required to have the investigator
15 that made that video come here and testify that he can't
16 find that video.

17 SOLICITOR BARNETTE: And we'll be glad to do that, Your
18 Honor, if the Court requires me to do that.

19 THE COURT: All right. I'll reserve ruling on that.
20 See if you can get the detective over here and let's get an
21 explanation on the record. I think we probably ought to do
22 that.

23 As far as publicity, I'm gonna reserve ruling on that
24 until I voir dire the jury.

25 MR. MCPHERSON: Yes, sir.

1 THE COURT: Okay.

2 MR. MCPHERSON: Yes, sir.

3 SOLICITOR BARNETTE: Your Honor, we do have one matter.
4 There's a mental health evaluation that was requested on Mr.
5 Heydman. I have copies of that and he was found competent
6 to stand trial and criminal responsibility. He was
7 criminally responsible and the capacity to conform. I'd
8 like to enter that as Court Exhibit No. 1 just to satisfy
9 that part of the record, Your Honor.

10 THE COURT: Any objection to that?

11 MR. MCPHERSON: No, Your Honor.

12 THE COURT: All right.

13 SOLICITOR BARNETTE: Or Court Exhibit No. 2 I guess,
14 Your Honor---

15 THE COURT: Right.

16 SOLICITOR BARNETTE: ---because the newspaper article
17 is 1.

18 THE COURT: That's correct.

19 (Whereupon, the mental health report was marked as
20 Court's Exhibit No. 2 for identification purposes only at
21 this time.)

22 THE COURT: I propose -- let's go ahead and voir dire,
23 dire the jury and see how we wind up with that. If we can't
24 go forward because of publicity, I can't go forward. If I,
25 it appears that we can go forward with the jury panel that

1 we have after proper extensive voir dire possibly, then we
2 will select a jury, but we won't swear them till we get all
3 these issues resolved.

4 Okay?

5 MR. MCPHERSON: Yes, sir.

6 SOLICITOR BARNETTE: Yes, sir.

7 THE COURT: We'll just do some rearranging. We may
8 have to temporarily ask some people to relocate or to step
9 out until we can get the jury panel settled in here and see
10 how much room we got left over. We'll try to accommodate
11 everybody. But I'll turn it over to the bailiff's staff at
12 this time.

13 SOLICITOR BARNETTE: And, Your Honor, did you want us
14 to, did you want us to quote on the objections we had on the
15 voir dire questions or do you want us just to approach the
16 bench about that, Your Honor?

17 THE COURT: Yeah, while they're getting them, y'all
18 come on.

19 (Whereupon, a bench conference was held at this time.)

20 (Whereupon, the following takes place within the
21 presence of the entire jury panel.)

22 THE COURT: All right. We got a -- we got one row
23 left?

24 BAILIFF: Yes, sir.

25 THE COURT: If anybody needs to come on in, let them

1 have a seat.

2 BAILIFF: Let them on in, okay, sir.

3 (Pause.)

4 THE COURT: All right. Good morning, ladies and
5 gentlemen of the jury. I want to thank you for your
6 patience with the, with the Courts that are running this
7 week.

8 I'm Paul Burch. I'm a Resident Circuit Judge for the
9 Fourth Circuit. We got two courts running. Judge Dennis is
10 over in the master courtroom, and we're also trying criminal
11 cases in this courtroom. So, we are sitting in what we call
12 the Court of General Sessions over here this week.

13 We got a case that we're gonna need your help on and
14 I've got some additional questions to pose to you other than
15 the ones that have already been asked and answered.

16 The case that's been called for trial is entitled the
17 State of South Carolina versus Robert Lee Heydman,
18 defendant.

19 solicitor, and you'll need to help me now. He is
20 charged in a Bill of Indictment that I do not have with the
21 offense of---

22 SOLICITOR BARNETTE: Did I pass that indictment up,
23 Your Honor?

24 THE COURT: I'm sorry. I did have it. I hid it. For
25 the offense of murder under our South Carolina Code 16-3-10

1 allegedly occurring in Spartanburg County on or about
2 December the 13th, 2006. The victim being one Richard
3 Fowler. Said indictment having been true billed by the
4 Grand Jury of Spartanburg County.

5 First of all, I'm gonna ask a series of questions about
6 kinship and relationship. Now, I ask the jury to pay close
7 attention to me as we work through these.

8 Anybody on the jury panel related by blood or by
9 marriage or have any business, social, religious, or
10 fraternal relationship with the defendant, Robert Lee
11 Heydman, who I'm gonna ask to stand at this time and face
12 the panel.

13 would the defendant stand and face the panel for me?

14 (Defendant complies.)

15 THE COURT: Am I pronouncing that name correctly?

16 MR. MCPHERSON: Yes, sir.

17 THE COURT: Thank you, sir. You may be seated.

18 (Defendant complies.)

19 THE COURT: Also, these other individuals, I'm gonna
20 call their name. If they're present, I'm gonna ask them to
21 stand. Many of them are not present and will not be present
22 until called at the proper time. But if you are here, I'm
23 gonna ask you to stand.

24 Shawn Porter.

25 Patricia Bradley.

1 Michael G. Woodcock.
2 Investigator William R. Gray.
3 Investigator David Hogsed.
4 (Witness stands.)
5 THE COURT: Investigator W. Lindsey.
6 R.E. Bogan.
7 Rick Gregory.
8 (Witness stands.)
9 THE COURT: Rusty Clevenger.
10 Patty Ruff.
11 Bertha Raines.
12 Joseph Stewart.
13 Freddie Thompson.
14 Doctor J. David Wren with Spartanburg Regional Medical
15 Center.
16 Ashley Gantt.
17 Stephanie Gantt.
18 Angela Dawn Fowler.
19 Minor 1
20 Minor 2
21 Minor 3
22 Tammy Hogan.
23 Fred Manler.
24 Sergeant Danny Jones.
25 (Witness stands.)

1 THE COURT: Deputy Phillip Chappel.
2 Investigator Jason Bryant.
3 (Witness stands.)
4 THE COURT: Investigator David Taylor.
5 Investigator Nicki Cantrell.
6 Investigator Reid Lindsey.
7 Lieutenant, Lieutenant Mike Woodcock.
8 And I may call some of these names twice. I apologize.
9 But I've got a long list.
10 Investigator William Gary.
11 Investigator Shawn Nix.
12 Sergeant Allan Wood.
13 Investigator David Hogsed.
14 Investigator Dominick Baird or Baird. It's B-A-I-R-D.
15 Investigator Shamika Sanders.
16 Deputy Jack Westmoreland.
17 Deputy Margaret Greer.
18 Investigator Robert Shaffer or Shaffer.
19 Investigator Rusty Clevenger.
20 Investigator Rick Gregory.
21 Christie Beall. That's spelled B-E-A-L-L.
22 Investigator Randy Bogan.
23 Nikki Perry.
24 Agent Lilly Gallman.
25 Toni Broom.

1 Nicki Broom. I'm sorry.

2 Nikki Perry, Agent Lilly Gallman, and Toni Broom all
3 being with the State Law Enforcement Division.

4 Charles Thomas Gilbert.

5 Laura Redino.

6 Christian Lemaster.

7 Carolyn Blackwell.

8 Evelyn Heydman.

9 Christy Bailey.

10 Jennifer Scheid. It's S-C-H-E-I-D.

11 Bertha Raines.

12 Freddie Thompson again.

13 Brad Harris.

14 Danny Smith.

15 Amy Stephens.

16 Alfred Stuckley.

17 Darryl Pruitt.

18 Patricia Bradley.

19 Jack Brigmon.

20 Shawn Porter.

21 Dwayne Evans.

22 Haldone Oden.

23 And John Fowler.

24 The question, once again, anybody related by blood or
25 by marriage or you are a or have any business, social,

1 religious, or fraternal relationship with any of those
2 individuals?

3 (Jurors respond.)

4 THE COURT: We'll start on the front row.

5 Yes, ma'am, I need your juror number and a response to
6 the question.

7 JUROR: 123. I know Mr. Hogsed. I work with his wife
8 and also the children went to the school that I teach at.

9 THE COURT: Thank you.

10 JUROR: The same here, I'm Juror Number 34.

11 THE COURT: All right.

12 Yes, ma'am.

13 JUROR: I'm Juror Number 48. I think you mentioned a
14 wood in police.

15 THE COURT: Wood.

16 JUROR: Uh-huh. (Affirmative). We had several wood
17 children that came to our school. I didn't teach them. But
18 they came to our school.

19 THE COURT: Had a woodcock or Allan Wood, Sergeant
20 Allan Wood.

21 JUROR: His children came to our school.

22 THE COURT: Okay. Thank you.

23 JUROR: Number 12. I'm Johnathan Bridwell and I, David
24 Taylor is a family friend.

25 THE COURT: Thank you, sir.

1 JUROR: Juror 169. I attended high school with Jason
2 Bryant.

3 THE COURT: All right. For those of you that
4 responded, if your relationship, whatever it may be, if it
5 would affect your ability to be a fair and impartial juror
6 in this case, please stand at this time, but don't say
7 anything.

8 (No response.)

9 THE COURT: All right. Anybody on the jury panel know
10 or have been represented in the past or presently
11 represented by the defendant, the defendant's attorney,
12 Mr. William McPherson?

13 (Mr. McPherson stands.)

14 THE COURT: If so, we need you to stand at this time.

15 (No response.)

16 THE COURT: Has anyone in the jury panel been
17 represented by or knows anyone in the Spartanburg County
18 Public Defender's Office or have a family member or a close
19 friend that has been or is currently represented by or knows
20 anyone employed by the Spartanburg County Public Defender's
21 office?

22 (No response.)

23 THE COURT: Has anyone on the jury panel been arrested
24 for, charged with, or convicted of any crime involving a
25 violent crime such as murder, and/or manslaughter, assault

1 and battery with intent to kill, armed robbery, criminal
2 sexual conduct, burglary, criminal domestic violence of a
3 high and aggravated nature or an assault on another person
4 and/or, or similar type crimes, if so, I need you to stand
5 at this time.

6 (No response.)

7 THE COURT: Same question except an immediate family
8 member or very close friend that has been charged, arrested,
9 or convicted of any such crimes.

10 (Juror responds.)

11 THE COURT: Your juror number please and response?

12 JUROR: 13. It was my husband.

13 THE COURT: What crime was that?

14 JUROR: Murder and armed robbery.

15 THE COURT: Thank you.

16 Anyone else?

17 (No response.)

18 THE COURT: Is anyone on the jury panel currently being
19 or has been prosecuted by Barry Barnette---

20 (Solicitor Barnette stands.)

21 THE COURT: ---or Jennifer Jordan---

22 (Solicitor Jordan stands.)

23 THE COURT: ---or anyone within the Seventh Judicial
24 Circuit Solicitor's Office?

25 (No response.)

1 THE COURT: Has anyone on the jury panel been arrested
2 by the Spartanburg County Sheriff's Department or by the
3 State Law Enforcement Division?

4 (Juror responds.)

5 JUROR: Fraudulent check, '93.

6 THE COURT: Thank you.

7 JUROR: Juror 130. The same.

8 JUROR: I'm not certain I qualify for this. Dog
9 catcher, Juror Number 72. I have a dog catcher. I have an
10 arrest record for that. There was a fine.

11 THE COURT: All right. Thank you.

12 Does anyone on the jury panel know of any reason -- let
13 me back up. I need -- I'm gonna ask that last. Disregard
14 that at this time.

15 Is anyone on the jury panel a member of any
16 organization that does not recognize the government of the
17 United States or the State of South Carolina?

18 (No response.)

19 THE COURT: This case involves an alleged homicide
20 which occurred at Gobbler's Knob Road in Boiling Springs on
21 or about December the 13th, 2006.

22 Have you discussed this case or heard anyone discuss
23 this case either today or before today, if you would, we
24 need you to stand and give your juror number, but don't say
25 anything about what you may have discussed.

1 JUROR: Number 34.

2 JUROR: Number 23.

3 THE COURT: All right. The, the two of you will step
4 over here and have a seat in the jury box please.

5 Yes, sir.

6 JUROR: 125.

7 THE COURT: Same thing.

8 All right. If you'll come over.

9 JUROR: 45.

10 THE COURT: Do I have anybody on the panel, this
11 includes the ones that are seated over here too, that have
12 formed an opinion about this case based upon any, any
13 information that you may have received?

14 (No response.)

15 THE COURT: This case has received some publicity in
16 the news media.

17 I ask you now has anyone read any news article about
18 this case or heard any news release or article about this
19 case?

20 (Jurors respond.)

21 THE COURT: Your number -- all right.

22 JUROR: 14.

23 THE COURT: If you'll step up please and join these
24 jurors.

25 JUROR: 52.

1 THE COURT: 52.

2 JUROR: 159.

3 THE COURT: 159, if you'll come up.

4 Anyone else?

5 The question was have you or, read or heard any news
6 coverage about this case.

7 (Juror responds.)

8 THE COURT: Number?

9 JUROR: 130.

10 THE COURT: If you'll come up please.

11 Are any of you related by blood or marriage or you have
12 a friend or anyone who's employed by the Seventh Judicial
13 Circuit Solicitor's Office, the Spartanburg Department of
14 Public Safety, the Spartanburg County Sheriff's Office, the
15 police department of any town or city in Spartanburg or
16 Cherokee Counties or SLED, State Law Enforcement Division,
17 if so, I need you to stand at this time.

18 (Jurors respond.)

19 THE COURT: Start to the left and move to the right.

20 Yes, ma'am, I need your number and how that question
21 applies.

22 JUROR: Number 31. My husband works for the City of
23 Spartanburg.

24 THE COURT: In what capacity?

25 JUROR: He's assistant fire chief.

1 THE COURT: Thank you.
2 Yes, ma'am.
3 JUROR: Juror 11. Kin to Paul Roper.
4 THE COURT: All right. And he's with who?
5 JUROR: The Spartanburg Public Police Department.
6 THE COURT: And how -- can you tell us that kinship?
7 JUROR: He's married to my first cousin.
8 THE COURT: Okay. Thank you.
9 Your number?
10 JUROR: 53. I got two cousins that work for
11 Spartanburg County.
12 JUROR: 165. Sister-in-law that works for Cherokee
13 County Sheriff's Department. She's a victim advocate in
14 public relations.
15 THE COURT: Thank you.
16 Yes, sir.
17 JUROR: I went to high school with Sheriff Wright.
18 THE COURT: Your number?
19 JUROR: 155.
20 JUROR: Number 80. My aunt's a probation officer,
21 Spartanburg County.
22 THE COURT: And her name?
23 JUROR: Erin Johnson.
24 THE COURT: Thank you.
25 BAILIFF: Your Honor?

1 THE COURT: Yes, ma'am.

2 JUROR: I'm not sure if it applies or not. My
3 brother-in-law is in the detention center. I don't know
4 exactly what he does. He checks on inmates I think.

5 THE COURT: All right. And your number?

6 JUROR: 42.

7 THE COURT: Thank you.

8 JUROR: I'm sorry. 142.

9 THE COURT: 142.

10 JUROR: 142.

11 THE COURT: Are any of you currently employed or
12 employed in the past by any civilian or military law
13 enforcement agency?

14 (Juror responds.)

15 JUROR: 53, Air Force law enforcement.

16 THE COURT: Thank you.

17 Have any of you had a close, a friend that's ever been
18 the victim of any of those crimes that I've already
19 mentioned or you had a close friend or relative that's been
20 the victim of a murder or homicide?

21 (Juror responds.)

22 THE COURT: All right. We'll start to the left and
23 move to the right.

24 JUROR: Number 31. My brother-in-law was murdered in
25 Spartanburg County 20 years ago.

1 THE COURT: Thank you.

2 JUROR: I'm Number 13. My best friend was murdered and
3 my cousin was murdered.

4 JUROR: Number 34. My step-grandfather was murdered.

5 THE COURT: Thank you.

6 JUROR: Number 24. My husband's aunt was murdered two
7 years ago in Newberry County.

8 JUROR: Number 45. And my best friend's sister was
9 murdered about five to six years ago.

10 THE COURT: Okay.

11 JUROR: 159. My step-grandmother was murdered four
12 years ago.

13 THE COURT: Any of you or immediate family member a
14 victim or a witness in any case currently being prosecuted
15 by the Solicitor's Office here in the Seventh Circuit?

16 (No response.)

17 THE COURT: Same question, but in the past.

18 (Juror responds.)

19 THE COURT: Yes, ma'am.

20 JUROR: I did work with the Solicitor's Office on a --
21 my husband was a lynching case and they disagreed with the
22 Sheriff's Office and the Solicitor's Office and it was -- he
23 was lynched by five men, and they didn't -- they just didn't
24 agree -- the Solicitor's Office didn't want to prosecute.
25 The Sheriff's Office had the thing. And my husband did not

1 get justice.

2 THE COURT: All right. And your number again was 45?

3 JUROR: Yes, sir.

4 MR. MCPHERSON: I'm sorry. What was that number?

5 THE COURT: 45.

6 JUROR: It was the only true lynching case they'd had
7 in Spartanburg County, and they wanted them for drugs
8 instead of lynching. And they -- nobody knew anybody in the
9 case. And I can tell you Neal Urch, he was the detective
10 then, and he went to Iraq and now -- Neal Urch is over the
11 deputies, the patrol deputies.

12 SOLICITOR BARNETTE: Your Honor, may we approach for
13 one second?

14 (Whereupon, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: Madam Juror, do you remember which
17 solicitor was in office when that happened?

18 JUROR: I did deal with Trey -- I'm sorry, sir, Your
19 Honor. I dealt with Trey Gowdy. I dealt with Barry
20 Barnette. I dealt with a lady that was a victim's advocate.
21 But she never been a victim. So, she couldn't really, you
22 know, relate to us. And Trey Gowdy would refuse to talk to
23 us and he had another deputy that he put on it. And we
24 mostly talked to him by phone.

25 And Neal Urch, like I said, this was a very severe

1 case. And they -- all Trey Gowdy -- it went on for 18
2 months. They got no restitution. Two is in prison. Two
3 are dead. One has lost his children.

4 THE COURT: Thank you.

5 JUROR: And so, they -- when he left---

6 THE COURT: I said thank you.

7 JUROR: Oh, I'm sorry. I'm sorry, Your Honor.

8 THE COURT: That's all right.

9 Are any of you a member or a contributor to any group
10 such as C.A.V.E., that's Citizen Against Violent Crime,
11 SADD, MADD, or any group such as that that may be an
12 advocacy group for the rights of victims of crime?

13 (Juror responds.)

14 JUROR: I have people that come to my house, but it's
15 our own group of victims---

16 THE COURT: Okay.

17 JUROR: ---Your Honor.

18 THE COURT: And that's Juror Number 45.

19 Expansion of that question, any of you contributor to
20 any organization such as the Troopers Association or the Law
21 Enforcement Officers Association, Sheriff's Association,
22 Police Chief's Association, if so, we need you to stand.

23 (Juror responds.)

24 JUROR: 164.

25 THE COURT: Thank you.

1 JUROR: Sheriff's Association.

2 JUROR: Juror 38. I have contributed in the past to
3 the Troopers Association.

4 THE COURT: Thank you.

5 JUROR: 126. Troopers Association.

6 THE COURT: Thank you.

7 JUROR: 39. Troopers Association.

8 JUROR: 13. Troopers Association.

9 THE COURT: Thank you.

10 JUROR: 130. Troopers Association.

11 THE COURT: Do any of you believe that a person accused
12 of or arrested for a criminal offense is guilty by virtue of
13 the arrest?

14 (No response.)

15 THE COURT: Do any of you believe that an accused is
16 guilty and must prove his innocence?

17 (No response.)

18 THE COURT: Is any member of the panel not able to
19 accept an instruction that it is the responsibility of and
20 the burden of the State or the prosecutor to prove a
21 defendant's guilt beyond a reasonable doubt on every element
22 of an offense charged?

23 (No response.)

24 THE COURT: Has any member of the jury panel ever been
25 a, a juror before?

1 (Juror responds.)

2 THE COURT: All right. I'm gonna ask each one of you
3 to give your juror number, whether it was criminal or civil,
4 and just the outcome of the case. And if you remember what
5 the case was about, what the charge was.

6 We'll start with the left and move to the right.

7 JUROR: Juror 169. I served probably about four or
8 five years ago, armed robbery, domestic violence I believe.

9 THE COURT: And outcome?

10 JUROR: The armed robbery was not guilty, and the
11 domestic violence was guilty.

12 THE COURT: Thank you.

13 JUROR: Juror Number 9. A case involving drugs and I
14 don't remember what it was about.

15 THE COURT: All right.

16 JUROR: Number 18 and it was armed robbery and it was
17 guilty.

18 THE COURT: Thank you.

19 JUROR: 53. It was a civil suit, civil suit and ruled
20 against.

21 THE COURT: All right. Thank you.

22 JUROR: Juror 162. It was a housing dispute of some
23 kind, and I don't remember it.

24 THE COURT: Okay. Thank you.

25 JUROR: 165. It was civil. It was like shoplifting.

1 several cases that were, they were all guilty.

2 THE COURT: Thank you.

3 JUROR: Juror 38. I was involved in a civil case that
4 was dismissed before it went to the jury.

5 THE COURT: Yes, ma'am.

6 JUROR: Number---

7 THE COURT: That's fine. Go ahead.

8 JUROR: 152. It was a DUI and they were found not
9 guilty.

10 JUROR: 150. It was civil court and it's been so long
11 I forgot about it.

12 THE COURT: All right. Thank you.

13 Yes, ma'am.

14 JUROR: 48. It was civil and it was about 20 years
15 ago. It was a wreck and we had to determine the amount of
16 money. But that's all I can tell you.

17 JUROR: 39. It was civil. It was a domestic dispute.
18 I don't remember.

19 JUROR: Number 79. I served as a juror on a murder
20 trial. There were three defendants. It was a drive-by
21 shooting. There were six counts. Five of them were found
22 guilty. One not guilty.

23 THE COURT: I over, I overlooked a question and I
24 realize I don't want to open this up. So, I'm gonna, I'm
25 gonna restrict it.

1 Is any member of the panel been the victim of a serious
2 assault?

3 I know -- I realize everybody when they were teenagers
4 or kids probably had a fight with their sibling or whatever.
5 We're not worried about something like that. We're talking
6 about a serious assault like a high and aggravated nature or
7 something like assault and battery with intent to kill. I
8 overlooked that question.

9 (Juror responds.)

10 THE COURT: Yes, sir.

11 JUROR: It was -- it wasn't an assault and battery with
12 intent to kill. But it was a couple guys that jumped on me
13 and they were found guilty.

14 THE COURT: Okay. And your number again?

15 JUROR: 130.

16 THE COURT: 130.

17 (Juror responds.)

18 BAILIFF: Your Honor?

19 JUROR: 39. In 1968 I was assaulted by a man in the,
20 in the parking lot of college I was attending and the police
21 officer who was guarding the place heard me and he got away
22 and I wasn't hurt.

23 THE COURT: All right. And your number again?

24 JUROR: 39.

25 THE COURT: Thank you.

1 Does anybody on the jury have a belief or would, would
2 have a tendency to believe the testimony of a police officer
3 over any other witness?

4 (No response.)

5 THE COURT: Anybody have any allegiance to law
6 enforcement or the police or prosecutor whereby you could
7 not be a fair and impartial juror in a case?

8 (No response.)

9 THE COURT: Is anybody aware of any bias, any
10 prejudice, or opinion that would affect your ability to be a
11 fair and impartial juror in this case?

12 (Juror responds.)

13 THE COURT: Your number again?

14 JUROR: I'm 13.

15 THE COURT: All right.

16 JUROR: Due to my husband's situation.

17 THE COURT: Thank you.

18 All right.

19 JUROR: I'm just having a hard time because of what
20 happened and that's all I can say, Your Honor. I can be
21 fair and stuff. But I can't say that all this is, you know,
22 it's carried out through our life, lives. So --.

23 THE COURT: Thank you.

24 I'm gonna step down beside the court reporter's bench.
25 I'm gonna ask counsel to approach and I'm gonna speak with

1 each of you individually.

2 okay.

3 (Whereupon, the following takes place outside the
4 hearing of the jury panel.)

5 BAILIFF: Juror 14, Your Honor.

6 JUROR: Saw it in the paper today.

7 THE COURT: Okay. The fact that you read an article in
8 the paper today about the case, would that affect your
9 ability to be a fair and impartial juror in this case?

10 JUROR: No, sir.

11 THE COURT: Okay. You may return to your seat.

12 BAILIFF: Juror 34.

13 THE COURT: What did you see or read or hear?

14 JUROR: We have her youngest child at our school for
15 the last two years, and I just -- I don't think that I could
16 be -- I don't, I don't know. I don't, just don't think I
17 should be one of the ones chosen.

18 THE COURT: Okay. 34. Thank you. If you'll just keep
19 that to yourself.

20 You can return to your seats back out there when you
21 get through.

22 BAILIFF: Juror 123.

23 JUROR: I teach at the school where the girls went. I
24 was there when they actually came and got the girls when it
25 happened. So, we've just discussed, you know, about the

1 case.

2 THE COURT: All right. The fact that you've had
3 discussion involved with the children, discussions of this
4 case, if you were to be chosen on this jury, could you be
5 both fair and, and impartial to the state and to the
6 defendant?

7 JUROR: Yes, sir. I mean I'm close to it. But I mean
8 obviously I'd have a hard time having heard the evidence.

9 THE COURT: You feel that you could be a fair and
10 impartial juror?

11 JUROR: Yes, sir.

12 THE COURT: All right. Thank you.

13 BAILIFF: Juror 125.

14 JUROR: I, I read about the case and I read the, about
15 when it happened.

16 THE COURT: When did you read?

17 Do you remember?

18 JUROR: Today.

19 THE COURT: Today?

20 JUROR: Yes.

21 THE COURT: The fact that you read that article in the
22 paper today, would that affect your ability to be a fair and
23 impartial juror in this case?

24 JUROR: I, I have notions about it. I mean, you know,
25 but I think honestly, I -- probably not you know. I mean I

1 think the, from what I've read, you know, the wife admitted
2 it. so, that kind of went with me and make me think.

3 THE COURT: We appreciate you being honest with us.
4 Your number again?

5 JUROR: 125.

6 THE COURT: Thank you.

7 BAILIFF: Juror 24.

8 JUROR: I -- it was just discussed by what happened in
9 the paper this morning, and I mean it was, you know, nothing
10 as far as details other than the, what was in the paper.
11 Just being casual conversation.

12 THE COURT: Okay. would the fact that an article was
13 in the paper this morning or any discussion you had about
14 it, would that affect your ability to be a fair and
15 impartial juror?

16 JUROR: No, sir, it would not.

17 THE COURT: Thank you.

18 JUROR: Thank you.

19 BAILIFF: Juror 45.

20 THE COURT: Did you read or hear something in the paper
21 about the case?

22 JUROR: Yes, sir.

23 THE COURT: Okay. would that affect your ability to be
24 a fair and impartial juror in the case?

25 JUROR: No. My only---

1 THE COURT: Okay. I heard the other situation.

2 Bearing that in mind, if you were to be seated on this
3 jury, do you believe you could be both fair and impartial to
4 the State and to the defense?

5 JUROR: I believe that I can. But with, with, with
6 what happened, I just don't know cause my husband, we didn't
7 get justice because of the Solicitor's Office and we
8 couldn't hire our own attorneys. And with -- the
9 Spartanburg deputies wanted, you know, it was the only true
10 lynching. He didn't know anybody or anyone else and it went
11 on for 18 months. And he got no justice. And they set --
12 the police were -- and instead of this -- some of them are
13 dead. Three of them are in the penitentiary. And they let
14 them loose when it happened.

15 So, how it come out. One of the guys lived a quarter
16 of a mile from our house. And you know, it was New Years
17 Eve night, which we stay at home. And I called and he sat
18 up in the hospital. And the guy came in and he was on
19 drugs.

20 THE COURT: Okay.

21 JUROR: I don't -- I mean I'm just saying.

22 THE COURT: I'm gonna ask you again, if you would be
23 seated on this case, could you be both fair and impartial to
24 both the State and the defense?

25 JUROR: I don't know that I could because Trey wasn't a

1 very---

2 THE COURT: Appreciate your honesty.

3 JUROR: I mean I'll just -- I have to be honest.

4 THE COURT: All right. Okay. Thank you.

5 You just have a seat in the back.

6 BAILIFF: Juror 130.

7 JUROR: The gentleman directly behind me in the jury
8 room, we discussed it this morning while we were waiting. I
9 didn't read about the case.

10 THE COURT: Okay. So, you didn't read it?

11 JUROR: No, sir.

12 THE COURT: Would the fact that y'all discussed it,
13 would that affect your ability to be a fair and impartial
14 juror in this case?

15 JUROR: No, sir.

16 THE COURT: Thank you.

17 JUROR: All right. Thank you.

18 THE COURT: 159.

19 JUROR: I saw an article in the newspaper and we
20 discussed it.

21 THE COURT: Is -- that was when?

22 JUROR: This morning.

23 THE COURT: This morning.

24 The fact that you saw that article, would that affect
25 your ability to be a fair and impartial juror in this case?

1 JUROR: No, it would not.

2 THE COURT: Okay. Thank you.

3 BAILIFF: Juror 52.

4 THE COURT: Hey.

5 JUROR: I just read the article in the paper this
6 morning. That's all I've really heard about it.

7 THE COURT: Okay. Would the fact that you saw an
8 article this morning in the paper, would that affect your
9 ability to be both fair and impartial to both the State and
10 the defense in this case?

11 JUROR: No, sir.

12 THE COURT: Thank you.

13 (Whereupon, a bench conference was held out of the
14 hearing of the jury at this time.)

15 THE COURT: Anybody on the panel related by blood or by
16 marriage or have any business, social, religious, or
17 fraternal relationship with Brad Baxter?

18 (No response.)

19 THE COURT: All right. Any juror have any reason
20 whatsoever why you could not be a fair and impartial juror
21 in this case should you be seated on it?

22 Those of you who have already discussed such with us up
23 here, you do not have to stand again.

24 (No response.)

25 THE COURT: All right.

1 (Whereupon, a bench conference was held out of the
2 hearing of the jury at this time.)

3 THE COURT: Any further inquiry from the jury from the
4 State?

5 SOLICITOR BARNETTE: None from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. MCPHERSON: No, Your Honor.

8 THE COURT: All right. Every county is different. But
9 as your name is called, we need you to come forward, I'll
10 say about right here, turn and face both tables where they
11 can get a look at you, and we will seat a jury at this time.

12 strikes are five and ten. we'll seat two alternates.
13 The strikes are one and two per alternate.

14 If you would give your undivided attention to Madam
15 Clerk. Please bring your personal belongings with you if
16 you are called forward.

17 (Whereupon, a jury panel was selected at this time.)

18 THE COURT: Thank you, Madam Clerk.

19 SOLICITOR BARNETTE: Your Honor, do you want one or two
20 alternates?

21 THE COURT: Two.

22 (Whereupon, another alternate juror was selected at
23 this time.)

24 THE COURT: Okay. That -- thank you.

25 Any matters concerning jury selection from the State or

1 the defense?

2 SOLICITOR BARNETTE: One, one matter, Your Honor.

3 (Pause.)

4 SOLICITOR BARNETTE: None from the State, Your Honor.

5 MR. MCPHERSON: Not from the defense.

6 (Pause.)

7 THE COURT: All right. Counsel, I'm gonna release the
8 jury for lunch. We'll get started about two o'clock.

9 Is that any problem with anybody?

10 SOLICITOR BARNETTE: None from the State, Your Honor.

11 MR. MCPHERSON: No, Your Honor.

12 THE COURT: Okay. We got some work we got to do before
13 we break for lunch. I'm gonna let y'all go ahead. I need
14 you back in the jury room, which the bailiff staff will show
15 you as you leave. Do not discuss this case with anyone.
16 Don't even discuss it among yourselves. I'm gonna instruct
17 you not to discuss this case among yourselves until you're
18 asked to deliberate it.

19 Now, should anybody try to approach you and talk with
20 you about this case, don't discuss it with them and notify
21 the security staff of any such approach. Should it happen
22 outside of court, notify the Sheriff's Department
23 immediately of any such contact.

24 Okay. All right. With that instruction, we're gonna
25 let y'all go. We'll see y'all back at two o'clock.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: How about our video or DVD or whatever?

4 SOLICITOR BARNETTE: They're going out to check on it
5 right now, Your Honor. They've asked them to go out and
6 tell us.

7 (Pause.)

8 SOLICITOR BARNETTE: Your Honor, I believe the two
9 officers are here.

10 THE COURT: Okay.

11 SOLICITOR BARNETTE: We'll go ahead and call them.

12 THE COURT: Let's get that on the record and get that
13 cleared up.

14 SOLICITOR BARNETTE: Your Honor, I'd like to call Randy
15 Bogan to the stand please.

16 RANDY BOGAN, being first duly
17 sworn, testified as follows:

18 SOLICITOR BARNETTE: Your Honor, I just plan on going
19 into the videotape part. Not all of the testimony
20 obviously.

21 DIRECT EXAMINATION

22 BY SOLICITOR BARNETTE:

23 Q Sir, where did you work back in December 13th, 2006?

24 A With the Spartanburg County Sheriff's Office.

25 Q What was your position there, sir?

Randy Bogan - Direct examination
by Solicitor Barnette

- 1 A I worked in forensics.
- 2 Q Did you work the crime scene at
- 3 here in Boiling Springs, South Carolina?
- 4 A Yes, sir, I did.
- 5 Q And at Gobbler's Knob, did you -- was there photographs
- 6 taken of that scene?
- 7 A Yes, sir, there were.
- 8 Q And was there a videotape taken at the scene?
- 9 A I honestly don't recall whether there was a video or
- 10 not.
- 11 Q Okay. Do you remember me having a discussion, I
- 12 believe you and Investigator Nix, about a videotape?
- 13 A Yes.
- 14 Q And have the, have the Solicitor's Office been given a
- 15 videotape?
- 16 A No, sir.
- 17 Q Okay. I believe there was reference in your notes --
- 18 A Yes, sir.
- 19 Q -- about a videotape?
- 20 A Yes, sir.
- 21 Q Investigator Nix was suppose to take that videotape?
- 22 A That's what was in the notes, yes, sir.
- 23 Q Has Investigator Nix said there was a videotape?
- 24 A As far as I know, he thinks there is one. But he's not
- 25 sure himself.

Randy Bogan - Direct examination
by Solicitor Barnette

1 Q Have you-all looked to see if you find that videotape?

2 A Yes, sir, and none can be found.

3 Q Initially did y'all think there was not a videotape?

4 A Yes, sir.

5 Q An then Officer Nix said there was a videotape?

6 A Yes, sir.

7 Q And y'all tried to go through all the cameras and all
8 the tapes or anything where these tapes would be?

9 A Yes, sir.

10 Q And have y'all been able to find that videotape?

11 A No, sir.

12 Q Okay. If you'll please answer any questions Mr.
13 McPherson may have for you.

14 CROSS-EXAMINATION

15 BY MR. MCPHERSON:

16 Q You said initially you thought there was not a
17 videotape?

18 A Initially, no, sir, not me. I didn't, I, I didn't
19 recall a videotape.

20 Q Well, didn't you -- you did a narrative report in this
21 case, did you not?

22 A That's correct.

23 Q And in your narrative report, you agree that you
24 mentioned that Investigator Nix took a video of the entire
25 residence?

Randy Bogan - Cross-examination
by Mr. McPherson

1 A Yes, sir, that's what was typed.

2 Q And you wouldn't put that in your statement unless you
3 had reason to believe a video was taken, correct?

4 A Unless it was mistakenly put in there.

5 Q Well, are you saying you made a mistake or---

6 A It's very possible I made a mistake. But as far as I
7 know now, yes, sir, I made a mistake.

8 Q Okay. Well, could you explain why you would put in
9 your statement that a video was taken?

10 A Because normally on the, the homicide scenes we do do
11 video and we do photographs, and normally the person that
12 does photographs also does video.

13 Q But you don't know whether -- basically your testimony
14 is you don't know whether a video was taken or not?

15 A To the best of my recollection, no, sir.

16 Q But you would admit that you did make reference to a
17 video in your report that you made?

18 A In that narrative, yes, sir.

19 MR. MCPHERSON: That's all I have.

20 THE COURT: You may step down, sir.

21 SOLICITOR BARNETTE: No further questions.

22 WITNESS: Thank you, Your Honor.

23 SOLICITOR BARNETTE: Like to call Investigator Nix,
24 Your Honor.

25 SHAWN NIX, being first duly sworn,

Shawn Nix - Direct examination
by Solicitor Barnette

1 testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR BARNETTE:

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

6 A I'm sorry, sir?

7 Q Give your full name for the record please?

8 A Michael Shawn Nix.

9 Q And where do you work at, sir?

10 A Spartanburg County Sheriff's Office.

11 Q And back on December 13th, 2006, what was your
12 position with the Sheriff's Office?

13 A Forensics officer.

14 Q And did you go to the crime scene at
15 in Boiling Springs, South Carolina?

16 A Yes, sir.

17 Q And at that scene, was there a videotape taken?

18 A I -- initially I, I remembered that there was one
19 taken. But I'm not so sure now.

20 Q Okay. Have you looked for this videotape?

21 A I personally have not looked for it.

22 Q Did Randy Bogan go look for it?

23 A Yes, sir, he did.

24 Q And have y'all been able to find the videotape?

25 A No, sir, we have not.

Shawn Nix - Direct examination
by Solicitor Barnette

- 1 Q So, do you know if one was actually done or not.
2 A I don't recall if there one was actually done or not.
3 I -- it's just based on some memory I have about it.
4 Q And you have not, obviously not given us a videotape,
5 the Solicitor's Office?
6 A No, sir, I have not.
7 Q Please answer any questions Mr. McPherson may have for
8 you.

9 CROSS-EXAMINATION

10 BY MR. MCPHERSON:

- 11 Q Do you still work at the Sheriff's Office?
12 A Yes, sir.
13 Q And if a video had been taken at the scene, you would
14 of been the one to take it?
15 A If I had taken the video at the scene, I would then,
16 after completing it, I would of turned it over to
17 Investigator Bogan.
18 Q All right. And do you normally file a report or, or
19 make any sort of report when you do photographs or videos or
20 anything like that?
21 A At the time when we were doing these homicides, our
22 procedure was, is that the main report is done by the lead
23 homicide investigator for the forensics unit.
24 Q So, you wouldn't make any report?
25 A No, sir.

Shawn Nix - Cross-examination
by Mr. McPherson

1 Q Now, based on your memory though, do you believe you
2 did make a video, is that correct?

3 A For some reason, yes, sir, I remember that.

4 Q And you're telling this Court that you made no effort
5 to locate that video yourself personally, correct?

6 A Personally, no, sir.

7 Q Now, when you do a video, what's the procedure you use
8 after you get back to the Sheriff's Office to secure the
9 video?

10 A To secure the video?

11 Q (Nods affirmatively.)

12 A It depends on what format is used for the video.

13 Q All right. Let's say it was in VHS form.

14 A Like the big cassettes, it would probably be put into a
15 evidence bag like other items of evidence.

16 Q All right. And you would submit it to evidence?

17 A And I would if I had retained control over it. But if
18 I had turned it over to somebody else, they would of been
19 the ones to submit it to evidence.

20 Q So, possibly you, you could of put it into evidence or
21 you could of turned it over to somebody else?

22 A No, I would not have put this particular video if, if
23 it exists for this particular homicide. I would not have
24 put it into evidence.

25 Q What would you have done with it?

Shawn Nix - Cross-examination
by Mr. McPherson

1 A As I said before, once I was done with it, I would of
2 turned it over to Investigator Bogan.

3 Q Okay. Why would you of turned it over to him?

4 A Because he asked to have the videos done from the
5 scenes with the, with the homicide scenes turned over to him
6 directly.

7 Q When did he ask that?

8 A On this particular occasion, when we, when we were
9 doing that. On other particular occasions, other homicides
10 I worked with him.

11 Q Okay. Now, if it was in a, a different format, what
12 would be the procedure you would follow?

13 A If you're talking about something that was saved to
14 like a memory stick, it would probably be left in the camera
15 itself, and then, again, I would turn it over to
16 Investigator Bogan. And then how he would get it to some
17 kind of media to be able to turn over to the Court would be
18 what he would do. How, how he would do it I don't know.

19 Q So, either way, it would of gone to Investigator Bogan?

20 A Yes, sir.

21 MR. MCPHERSON: That's all I have, judge.

22 SOLICITOR BARNETTE: No further questions, Your Honor.

23 THE COURT: You may step down, sir.

24 SOLICITOR BARNETTE: That would be all the witnesses we
25 call on this issue, Your Honor.

1 THE COURT: All right. Anything further for the
2 record?

3 MR. MCPHERSON: No, Your Honor.

4 SOLICITOR BARNETTE: No, Your Honor.

5 THE COURT: It's not there, it's not there. You
6 certainly may call him as witnesses and cross-examine them
7 as you see fit, counselor.

8 MR. MCPHERSON: Yes, sir.

9 THE COURT: All right. Based on that and based on the
10 outcome of the jury draw, I'm gonna deny the motions for
11 continuance. We didn't have enough contamination on the
12 jury as far as opinion about guilt or innocence when we went
13 through that procedure, which is all on the record, and we
14 were able to seat a fair and impartial juror in the Court's
15 opinion.

16 Okay.

17 MR. MCPHERSON: Judge, one other matter. I've, I've
18 requested several times that they give me criminal records
19 of any lay witness that's gonna testify in this case. And
20 so far they hadn't provided those records. Before any
21 witness testifies, I'd certainly like a copy of, for that.

22 SOLICITOR BARNETTE: And he'll, and he'll receive it.
23 I believe he's seen the records. We just haven't given it
24 to them yet.

25 MR. MCPHERSON: Well, I've only seen one record.

1 SOLICITOR BARNETTE: We'll get those to him.

2 MR. MCPHERSON: Two records. Fowler and Fowler.

3 SOLICITOR BARNETTE: Okay. Your Honor, we'll provide
4 those to him.

5 THE COURT: Fair enough.

6 All right. Let's break for lunch. We got just a shade
7 over an hour.

8 (Whereupon, Court was in recess for the lunch hour.)

9 THE COURT: We got everybody we need?

10 SOLICITOR BARNETTE: Judge, I think -- judge, do you
11 want to do the Jackson Denno motion hearing and the
12 sequestration of the witnesses who may be testifying in this
13 case?

14 THE COURT: What's the position of the State on
15 sequestration of the witnesses?

16 SOLICITOR BARNETTE: Your Honor, I would ask, of
17 course, one of our witnesses is one of the victim's family
18 members. We would ask her be able to stay. Rick Gregory is
19 the investigator from our office, and we'd ask him to be
20 able to stay. I think -- I believe that Mrs. Heydman is on
21 our witness list. We don't have any objection as to the
22 defendant's wife. We don't have any objection to her
23 staying. Outside that, I'll, I'll leave it to the Court's
24 discretion. But I wanted to ask and I think Mr. McPherson
25 would agree with that situation.

1 THE COURT: All right. So be it.

2 SOLICITOR BARNETTE: And Your Honor, one other matter I
3 wanted to bring up. We filed a third party guilt motion in
4 this case. I know he's gonna be talking about the
5 codefendant, Mrs. Fowler, in this case. I understand that's
6 not covered under the third party guilt motion. But
7 obviously, anybody that he would bring up outside of her and
8 Mr. Heydman in this situation, I think he needs to proffer
9 that information to the, to the Court. I don't know if he's
10 got anything like that. But I'm making the motion the
11 eliminate anything from that and I filed that motion with
12 the Court also when we filed the other one.

13 MR. MCPHERSON: Well, I have, I have some statements
14 that were made by Mrs. Fowler on the day of the incident.

15 THE COURT: Okay.

16 All right. Denno?

17 SOLICITOR BARNETTE: Yes, sir.

18 Like to call Investigator Bryant on that, Your Honor.

19 JASON BRYANT, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR BARNETTE:

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

25 A My name is Jason Bryant.

Jason Bryant - Direct examination
by Solicitor Barnette

- 1 Q And where do you work at, sir?
- 2 A Spartanburg County Sheriff's Office.
- 3 Q And what is your position there, sir?
- 4 A I'm a violent crimes investigator.
- 5 Q And how long have you been there, sir?
- 6 A I have been at the Sheriff's Office since 1996.
- 7 Q Okay. Back on December 13th, 2006, did you talk to
- 8 the defendant, Mr. Heydman, in this case?
- 9 A I did.
- 10 Q And before talking to him, did you give him his rights
- 11 on this case?
- 12 A I did.
- 13 Q Let me show you what's been marked as State's Exhibit
- 14 No. 4 for ID purposes at this time.
- 15 A Yes, sir.
- 16 Q Is that, is that the waiver form that you used in this
- 17 case, sir?
- 18 A It is. It is a pre-interrogation waiver form that we
- 19 use at the Sheriff's Office.
- 20 Q Okay. If you would, just tell the Court real quickly
- 21 what you do with this form, sir.
- 22 A What I do is I go through the top part, and, of course,
- 23 fill out the information, name, address, age, today's date,
- 24 time, and the address where we're at the location. Then I
- 25 read word for word the rights that are printed on the paper

Jason Bryant - Direct examination
by Solicitor Barnette

1 in the form. The above rights have been read to me by J.
2 Bryant. That's me, of course. And I insert my name there.

3 From there, go to I have read the same and I understand
4 my rights fully. I get a witness to witness that, and get
5 the individual to sign that.

6 Then I go through the next paragraph, which is I waive,
7 give up, my rights as explained above and agree to talk to
8 Officer Bryant and Gary in reference to the, whichever case
9 it is. The statement I make is my own free will without
10 fear, without fear, threat, promise, favor, or reward of any
11 kind.

12 I'm able to read and write the English language and,
13 and, in this case, he finished seven years in school. But
14 he advised me that he could not read or write. So, I marked
15 through that. I had an individual witness his signature
16 after he had signed it and then I notarized it.

17 Q And did you make sure he fully understand this, these
18 rights?

19 A Absolutely.

20 Q Did he appear to understand these rights?

21 A Absolutely.

22 Q Did y'all threat him in any way?

23 A No, sir, not at all.

24 Q Did you promise him anything?

25 A No, sir.

Jason Bryant - Direct examination
by Solicitor Barnette

1 Q After you read the waiver to him and everything, did he
2 speak to you?

3 A He did.

4 Q And what statements did he make to you, sir?

5 A If I could refer to my write-ups please?

6 Q Yes, sir.

7 A He did state that -- at first he stated that he'd only
8 known Dawn for about a month, and then he stated that he had
9 known her for longer. He stated that he had been to Dawn
10 and Richard's home to do some clean-up work in the yard, and
11 he stated that he had talked, that, that Dawn had talked to
12 him about her problems with the victim and stated that the
13 last time that he had talked to Dawn was 7:00 p.m. on 12/12
14 of 2006.

15 Q Okay, sir. So, he said that that, the night before is
16 the last time she, he talked with her at 7:00 p.m.?

17 A That is the night before the incident, yes, sir.

18 Q Okay. And did the interview cease?

19 A It did.

20 Q Okay. And when he made these statements to you, he, he
21 understood his rights and everything at that point?

22 A Yes, sir.

23 Q And for purposes of this hearing only, not, we're not
24 in front of the jury right now, what happened to cause the
25 interview to cease?

Jason Bryant - Direct examination
by Solicitor Barnette

1 A The interview ceased?

2 Q Yeah.

3 What caused it, just for purposes of this hearing?

4 A Oh, okay.

5 Q Since we don't have the jury present so the Court will
6 know why it ceased.

7 A At that time he invoked his right to an attorney and
8 the interview ceased.

9 Q So, he understood his rights to an attorney?

10 A That's correct.

11 Q And once he asked for the attorney, you ceased the
12 interview?

13 A That's correct.

14 Q Okay. And obviously we won't mention that in front of
15 the jury, but for purposes of this Court, we want to be --
16 for purposes of this hearing.

17 A Absolutely.

18 Q Okay. If you would, answer any questions Mr. McPherson
19 may have for you, sir.

20 CROSS-EXAMINATION

21 BY MR. MCPHERSON:

22 Q The paper you had before you, you say you read it to
23 him?

24 A That's correct.

25 Q And when you were reading it to him, did you understand

Jason Bryant - Cross-examination
by Mr. McPherson

1 that he could not read or write the English language?

2 A Once we got to the part where he stated that he was
3 able to read and write the English language, that's when he
4 advised me that he could not read.

5 Q Okay. And---

6 A But he understood what I was talking about.

7 Q And when you were reading him his rights, was anybody
8 present?

9 A Yes, sir.

10 Q Who all was present?

11 A Investigator William Gary witnessed the
12 pre-interrogation waiver form.

13 Q So, he witnessed you reading him this entire statement?

14 A Yes, sir.

15 Q And is it, is it your testimony that everything that's
16 on the document that you have before you is that---

17 A I'm sorry. I didn't understand your question.

18 Q I'm sorry. Everything that you have before you on
19 State's Exhibit 4, the entire document, was read to him or
20 just portions of that document?

21 A All of it.

22 Q The whole thing?

23 A Yes, sir.

24 Q So, you read to him Spartanburg County Sheriff's
25 Department, Spartanburg, South Carolina?

Jason Bryant - Cross-examination
by Mr. McPherson

1 A What I did was I advised him that it was a
2 pre-interrogation waiver form and went through the name and
3 information such as that.

4 Q Okay. So, you didn't read the whole form to him
5 though?

6 A I did not read Spartanburg County Sheriff's Office.

7 Q All right.

8 A He knew where he was.

9 Q And did he appear to be intoxicated or under the
10 influence?

11 A No, sir, not at all.

12 Q And did you promise him anything in order to get him to
13 talk to you?

14 A No, sir.

15 Q Did you tell him he was free to leave?

16 A He didn't ask.

17 Q Well, did you tell him?

18 A No, sir.

19 Q Was he free to leave?

20 A No, sir.

21 Q Okay. But he wasn't under arrest at the time, was he?

22 A At that time, yes, sir.

23 Q Okay. Did you tell him he was under arrest?

24 A No, sir.

25 Q And you didn't tell him that he was not free to leave?

Jason Bryant - Cross-examination
by Mr. McPherson

1 A No, sir.

2 Q So, he had no idea that he was under arrest at that
3 time?

4 A No, sir.

5 Q And you -- did you see him sign this document?

6 A I did.

7 Q And is that his signature on the document?

8 A That's his, yes, sir.

9 Q For certain?

10 A Yes, sir.

11 Q And you watched him sign this in your presence?

12 A Yes, sir.

13 MR. MCPHERSON: I have no further questions.

14 THE COURT: Anything else?

15 SOLICITOR BARNETTE: Nothing else, Your Honor, of this
16 witness.

17 THE COURT: You may step down. Thank you.

18 SOLICITOR BARNETTE: Your Honor, we have Investigator
19 Gary. I believe he's outside.

20 WILLIAM GARY, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR BARNETTE:

24 Q If you would, sir, state your name for the record
25 please.

William Gary - Direct examination
by Solicitor Barnette

- 1 A My name is William Robert Gary.
- 2 Q Where do you work at, sir?
- 3 A The Spartanburg County Sheriff's Office.
- 4 Q And what's your position there, sir?
- 5 A I'm an investigator assigned to the homicide division
- 6 of the Sheriff's Office.
- 7 Q Okay. And how long have you been at the Sheriff's
- 8 Department, sir?
- 9 A Thirteen and a half years.
- 10 Q Back on December 13th, '06, did you help Investigator
- 11 Bryant in a case in, in interviewing a, a Mr. Heydman?
- 12 A Yes, I did.
- 13 Q And was you present when his rights was read, sir?
- 14 A I was.
- 15 Q Let me hand you what's been marked State's Exhibit 4
- 16 for ID purposes.
- 17 Did Investigator Bryant read those rights to him?
- 18 A Yes, he did.
- 19 Q And did he appear to understand those rights?
- 20 A Yes, sir, he, he actually stated that he understood
- 21 them and that's when he signed them.
- 22 Q Okay. And did you understand too he couldn't read or
- 23 write?
- 24 A Yes, sir, that's why that was marked out on the form
- 25 cause he stated that's why he marked that out.

William Gary - Direct examination
by Solicitor Barnette

1 Q And in talking, in talking to him, did y'all promise
2 him anything?

3 A No, we did not.

4 Q Did y'all threaten him in any way?

5 A We did not.

6 Q Did he understand he had a right to ask for an attorney
7 when he wanted to?

8 A Yes, he did.

9 Q And just for purposes of that hearing, we'll be talking
10 about the attorney thing. Obviously we're not in front,
11 we're not in front of the jury right now.

12 And did he talk to y'all briefly?

13 A He did.

14 Q And did he make statements basically talking about
15 knowing Mrs. Fowler and things like that?

16 A Yes, sir.

17 Q And did he make statements about the last phone call
18 that was, that, the last time he talked to Mrs. Fowler?

19 A Yes, sir, I'd asked him when the last time he had
20 talked to her, and he told me that it was Tuesday while he
21 was in a parade that she had called while he was in the
22 parade telling him she's sorry she couldn't be there because
23 she was sick.

24 Q Okay. Was that the night before?

25 A I believe so. I don't remember what day of the week

William Gary - Direct examination
by Solicitor Barnette

1 this was on right now.

2 Q And after that, did the interview cease?

3 A It's a little while after that cause we went into
4 actually asking him about the phone call because there was
5 some phone calls that morning.

6 Q Uh-huh. (Affirmative).

7 A And I asked him about why he didn't tell us about that,
8 and he stated that I didn't ask him about those phone calls.
9 And shortly after that is when the interview ended because
10 that's when he requested an attorney.

11 Q If you would, please answer any questions Mr. McPherson
12 may ask.

13 CROSS-EXAMINATION

14 BY MR. MCPHERSON:

15 Q Isn't it normally y'all's procedure that when you read
16 somebody their rights you read them to them one at a time
17 and ask them if they, if they understood that right?

18 A I wouldn't say it's a procedure. It's kind of an
19 individual preference of investigators. Personally I do
20 not. I read items one through five to them and ask if they
21 have a question about any of those after they've all been
22 read is how I do it.

23 Q They didn't -- also your procedure that after you read,
24 read the rights, you have them initial each right to
25 indicate that they understood the rights?

William Gary - Cross-examination
by Mr. McPherson

1 A No, sir, it's not procedure that's at the Sheriff's
2 office. And, again, the way I do it is not to have them
3 initial that.

4 MR. MCPHERSON: I have no further questions.

5 SOLICITOR BARNETTE: Just one question, Your Honor.

6 REDIRECT EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q And did you witness this being done?

9 Did you sign that you witnessed this?

10 A Yes, I did.

11 Q And is that your signature on there with Investigator
12 Bryant?

13 A Yes, sir, my signature's in two spots for the witness.

14 SOLICITOR BARNETTE: And Your Honor, I'd just like to
15 pass these up to the Court and state line by line. These
16 are the waiver sheets.

17 MR. MCPHERSON: Judge, I have one more question or a
18 couple more questions.

19 THE COURT: All right. Recross.

20 RECROSS EXAMINATION

21 BY MR. MCPHERSON:

22 Q Did you witness Robert Heydman sign this document?

23 A Yes, sir.

24 Q So, the signature you see on this, on this document, in
25 your opinion, is Robert Heydman's signature?

William Gary - Recross-examination
by Mr. McPherson

1 A Yes, sir, I was in the room when he signed it.

2 Q You saw him sign it how many times?

3 A Twice.

4 Q All right. Thank you. That's all.

5 SOLICITOR BARNETTE: No further questions, Your Honor.

6 THE COURT: You may step down. Thank you.

7 WITNESS: Thank you, sir.

8 THE COURT: Anything further from the State?

9 SOLICITOR BARNETTE: Nothing further from the State,
10 Your Honor.

11 THE COURT: From the defense?

12 MR. MCPHERSON: We have nothing, Your Honor.

13 THE COURT: Well, I don't have any conflicting
14 evidence. So, I don't have to go into a detailed finding.
15 But I find that the statement is admissible and, I mean, you
16 know, as to the weight of it is and cross-examination, that
17 will be up to you, Mr. McPherson. It appears to be, to me
18 to be freely, voluntarily, and intelligently entered into,
19 and he did invoke his right to have an attorney and ceased
20 it at 5:27 p.m.

21 Anything else?

22 SOLICITOR BARNETTE: Nothing from the State, Your
23 Honor.

24 MR. MCPHERSON: No, Your Honor.

25 SOLICITOR BARNETTE: There is one thing, Your Honor.

1 We are going -- we have a map that we're gonna show the area
2 around where the crime scene occurred. We'd also have an
3 Internet where we have Google maps. I've talked to Mr.
4 McPherson. I was gonna show that to the jury. Yet -- I
5 don't think he has an objection to it. I showed him what I
6 was gonna do cause we are hooking up the Elmo. We'll
7 probably use it with the first witness. So, just let the
8 Court know it might take a second to have to hook it up
9 after openings to do that.

10 THE COURT: Let me know.

11 SOLICITOR BARNETTE: Okay.

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

13 (Whereupon, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. Thank you for your patience. I
16 hope you enjoyed your lunch, and we're ready to get started
17 with this trial.

18 I'm gonna make a few opening remarks to you to let you
19 know how we're gonna proceed. First thing we got to do is
20 get you under oath.

21 Mrs. Miller, Juror 113. You were the first out of the
22 box. So, you're gonna be the foreperson. When we come back
23 from a break or whatever, you can take the foreperson's
24 chair and don't worry about switching chairs now.

25 Madam Clerk.

1 (Whereupon, the jury panel was placed under oath at
2 this time.)

3 THE COURT: My few remarks are to let you know how
4 we're gonna proceed. It's a criminal case. The State has
5 the burden of proof. Burden of proof is prove the guilt of
6 the defendant beyond a reasonable doubt. If the State fails
7 in that proof, it will be your duty to find the defendant
8 not guilty. If the State proves the guilt of this defendant
9 beyond a reasonable doubt, it would be your duty to find him
10 guilty.

11 The way we're gonna go about this is after I finish my,
12 making my remarks, both sides will be allowed to make
13 opening statements. They are brief statements basically to
14 let you know an outline of the case as that particular side
15 sees it. It's not a required phase. In other words, they
16 can waive opening if they so desire. It's totally up to
17 each attorney to decide to do that.

18 After opening statements will come the evidentiary
19 portion of the case where you will receive the evidence.
20 Evidence may take different forms. It may be sworn
21 testimony from that witness stand to my right. It may be
22 documents, photographs, other physical type items. Whatever
23 the evidence is, it is crucial that you listen and observe
24 the evidence because you are the finders of the facts in
25 this case.

1 The Court is the judge of the law. The end result of
2 any case in Court is to reach a verdict. Verdict, a verdict
3 is a Latin derivative word which means a true saying or a
4 search for the truth. So, it can be said that a trial is a
5 search for the truth.

6 How do you reach a verdict?

7 You listen to the evidence. You weigh that evidence.
8 You find what you believe to be true and then apply that
9 evidence that you find to be true to the law that the Court
10 will give to you during the Judge's charge of the law and
11 thus reach a verdict.

12 No one else in this courtroom will be allowed to weigh
13 the evidence except you, the jury. I don't get involved in
14 that. I sit here as a neutral referee. I'm the judge of
15 the law. You are the judge of the facts.

16 As I've already told you, the burden of proof is on the
17 State, and they will have the right to go first in
18 presenting the evidence because that burden is on them.
19 After the evidentiary portion of the case will come the time
20 for the attorneys to make closing arguments and that's where
21 they try to argue their point to you. They try to persuade
22 you to see the evidence as they see it. After that will
23 come the Judge's charge on the law where you will receive
24 the law of the case.

25 Once those phases are completed, you will then be asked

1 to deliberate the case. And as I told you earlier, please
2 do not discuss this case, even amongst yourselves, until
3 you're asked to deliberate.

4 Some judges don't allow note taking. I do not forbid
5 that. I leave that up to you. But if you do keep notes,
6 you need to keep them to yourself. You can't share them
7 with another juror. Personally, if I was on a jury, I would
8 not keep notes because, with myself in mind, if I were on a
9 jury, I would be writing the note down, I would miss
10 something that could be said that's very important while I
11 was writing that note down. So, that, that's one weakness
12 that most humans have and some people are attentive enough
13 that they can listen to several things at the, at the same
14 time. But I'm not able to do that. So, I'll leave that up
15 to you.

16 Now, it's after lunch. Some of you may be use to
17 taking naps after lunch. Please don't do that to me. I
18 know it can be tempting to do, and you can sometimes nod off
19 no matter how much you try not to.

20 If you feel like that you're gonna fall asleep, let us
21 know. We'll take a coffee break.

22 Okay. All right. All I ask is you listen and observe
23 the evidence and follow the law of the case and the
24 instructions given to you and we will reach a verdict
25 hopefully later on this week.

1 And if you have any problems whatsoever, that's what
2 the bailiff staff is for, let them know. We'll try to deal
3 with it. Communication is the key to any type business or,
4 or Court procedure we have here. The quicker we know of a
5 problem the quicker we can address it.

6 All right. Based on what I've already said to you
7 then, the State gets to go first.

8 Solicitor, I'll turn the floor over to you.

9 SOLICITOR JORDAN: Thank you, Your Honor.

10 Ladies and gentlemen of the jury, this case is about
11 sinners and saints. They're two people involved in the
12 murder of Richard Fowler. Neither one of them are saints.

13 The first person is Angela Dawn Fowler. She is already
14 pled in this charge, in this case, and will be sentenced by
15 the judge at a later date facing up to 50 years. The other
16 person in the case sits here today, Robert Heydman.

17 I'm gonna tell you a little bit about the facts of the
18 case just so you'll have a road map when you see the
19 witnesses up on the stand. It may sound familiar to you
20 because the first that I ever read this case file for this
21 case, the thing that popped in my head was I've heard this
22 before.

23 I don't know about you guys, but I watch Lifetime
24 television, and I've seen the movies on there a lot. And
25 that's what this case reminded me of exactly.

1 Angela Dawn Fowler was married to the victim, Richard.
2 They were married in the late 80's, divorced in 2001,
3 separated for about a year after the divorce, but
4 reconciled. They had three children together, Minor 1
5 Minor 2 and Minor 3

6 In 2006, the Fowler family started going to Una First
7 Baptist Church here in Spartanburg County. Dawn went to the
8 church a lot along with the three girls. However, because
9 of health conditions, Richard Fowler, the victim in the
10 case, didn't go as often. At the church, Robert was a
11 member. Robert worked with the youth at the church.

12 He and Dawn became friends first at church. Then it
13 became where they became friends outside of church, saw each
14 other outside of church, talked on the phone, and sent each
15 other text messaging. The friendship developed.

16 She got to where she would confide in him certain
17 things. She talked to him about her relationship with her
18 husband. Told him that on occasion he, on occasion, that he
19 was verbally abusive to her and to her kids. He said don't
20 worry, I'll take care of the problem.

21 Well, on December the 13th of 2006, at the Fowler
22 home, which is at here in Spartanburg
23 County, phone conversations or phone calls started between
24 Dawn Fowler and this defendant around four o'clock in the
25 morning. A little after 7:00 Mrs. Fowler left to take two

1 of her kids to school. So, she leaves, takes Minor 3 and
2 Minor 2 to school, leaves the house with Minor 1 inside, who's
3 the oldest daughter, waiting on the school bus, and the
4 victim, Richard, laying in his bed.

5 When she left that day, she did something that she
6 doesn't normally do. She left the door to the carport to go
7 inside the house unlocked. She talked to Richard -- I'm
8 sorry. She talked to Robert, the defendant, a few times
9 while she was making the route to the different schools.
10 She had two kids, two separate schools, talked to him,
11 exchanged phone calls during that route. Told her at one
12 point don't come home just yet.

13 So, she goes by Ingle's in Springfield and gets gas
14 about 7:56 and then goes home. When she pulls into the
15 driveway, she notices one thing and that's the thing that
16 she's looking for because that's the sign. The sign that he
17 is taken care of the problem. Richard. And that's that the
18 carport door inside the house, the screen, the storm door is
19 left open. The inside door is left open. That's the sign
20 that he's completed the act. She sees that. She calls
21 9-1-1.

22 Ladies and gentlemen, as the judge is told you, Mr.
23 Heydman is charged with murder. In our state, murder is the
24 unlawful killing of another with malice aforethought. From
25 the witness stand, you're gonna hear from various people who

1 are gonna tell you about the events of that day and the
2 events leading up to that day.

3 You're gonna hear from Mrs. Fowler. You're gonna hear
4 from several officers from Spartanburg County Sheriff's
5 Office along with the State Law Enforcement Division or
6 SLED, what we always call them. You're also going to hear
7 from various other witnesses here in the community, and
8 finally you're gonna hear from a defendant, I'm sorry,
9 you're gonna hear from another witness from the Spartanburg
10 County Detention Center who's gonna tell you a little bit
11 about what the defendant told him about the case.

12 Ladies and gentlemen, you're also gonna hear from
13 Doctor Wren who's gonna explain the injuries that Mr. Fowler
14 suffered on that day back on December the 13th of 2006.

15 We thank you for your time in this case.

16 THE COURT: Mr. McPherson.

17 MR. MCPHERSON: I'm asking that you listen carefully to
18 the evidence as it comes in because what the State told you
19 is not exactly the way this thing went down. For one, she
20 told you they were text messaging back and forth when they
21 well know that my client can't read and write. So, he can't
22 text message. So, he couldn't of been text messaging her.
23 And if she was text messaging him, he can't even read it and
24 the evidence will show that.

25 As far as these phone calls that she mentioned that

1 started early in the morning and went on through the day,
2 you're gonna hear testimony that Mr. Heydman was calling
3 Mr. Fowler and not Mrs. Fowler. But sometimes he would talk
4 to Mrs. Fowler. Sometimes to Mr. Fowler on his telephone.

5 The evidence is gonna show that Mr. Heydman left his
6 house. He went to a construction site to apply for some
7 jobs. And then he was gonna go by Mr. Fowler's house and
8 present a job to him, Mr. Heydman is a handyman, and he had
9 typed up or had his wife type up a proposal to do some, some
10 work for him at his home.

11 And the evidence is gonna show that when he got to this
12 home the door was opened and he heard some noise. He walked
13 in and he saw Mrs. Fowler, Dawn Fowler, striking her husband
14 over the head with some kind of wooden object like a stick.
15 And the evidence will show that he took that stick away from
16 her. That where Mr. Heydman made his mistake was he didn't
17 call the law enforcement. He took that stick and threw it
18 away.

19 The evidence is gonna show that the witnesses that the
20 State has have been bought with good deals. You're gonna
21 hear that Mrs. Fowler, that the State has given Mrs. Fowler
22 a sweetheart deal in order to testify against him. And
23 you'll see, after you hear all the evidence, that she's just
24 trying to save her own hide and she'll say anything to save
25 her own hide.

1 And then they mentioned to you that they have somebody
2 from jail that's gonna testify. He is in the same position.
3 He's just trying to save his own hide. He has a horrible
4 record and you'll hear about this.

5 So, we ask that you keep an open mind in this case
6 until you've heard all the evidence.

7 Thank you.

8 SOLICITOR BARNETTE: May it please the Court, Your
9 Honor.

10 We'd like to call Investigator Bryant to the stand
11 please.

12 JASON BRYANT, being first duly
13 sworn, testified as follows:

14 SOLICITOR BARNETTE: One moment, Your Honor, please.

15 DIRECT EXAMINATION

16 BY SOLICITOR BARNETTE:

17 Q Sir, if you would, state your full name for the record
18 please.

19 A My name is Jason Bryant.

20 Q Okay. And where do you work at, sir?

21 A Spartanburg County Sheriff's Office.

22 Q And what position do you have there, sir?

23 A A violent crimes investigator.

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

25 A I've been with the Sheriff's Office since 1996.

Jason Bryant - Direct examination
by Solicitor Barnette

1 Q Back on February, I mean December 13th, 2006, was you
2 working at the Sheriff's Department then, sir?

3 A I was.

4 Q And was you called to the scene of a crime, sir?

5 A Yes, sir, I was.

6 Q And where was that scene at, sir?

7 A That was at in Spartanburg.

8 Q And that's located here in Spartanburg County?

9 A That's correct.

10 Q When you arrived there, what was the call that went out
11 originally?

12 A Originally the call that had went out was a burglary in
13 progress.

14 Q And when you got there, what did you find, sir?

15 A I, I observed the responding officers, I believe it was
16 Sergeant Danny Jones, Sergeant Phillip or Deputy Phillip
17 Chappel, and David Hogsed, who was already on the scene, and
18 I met with the complainant, Dawn Fowler.

19 Q And when you met with her, did you talk to her first
20 before going into the crime scene?

21 A I did.

22 Q And what did she tell you when you arrived at the crime
23 scene?

24 A She advised me and gave me a statement to, that she had
25 went to take her children to school, and when she arrived

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by Solicitor Barnette

1 back home, the doors to the residence were standing wide
2 open and she had then called 9-1-1.

3 Q And what time -- do you know what time the, the first
4 patrol car arrived there?

5 A If I remember correctly, it was around 8:05 or shortly
6 after.

7 Q And was that when the 9-1-1 call was made?

8 A Yes, sir, to the best of my recollection.

9 Q Did you go into the crime scene after the search
10 warrant was obtained?

11 A After a search warrant was obtained I did.

12 (Whereupon, a map was marked as State's Exhibit No. 1.

13 A knife was marked as State's Exhibit No. 2. A swab was
14 marked as State's Exhibit No. 3. The pre-interrogation
15 waiver form was marked as State's Exhibit No. 4. Two
16 photographs were marked as State's Exhibit Nos. 5 and 6. A
17 receipt was marked as State's Exhibit No. 8. All of the
18 above exhibits were for identification purposes only at this
19 time.)

20 Q Let me do this first. Let me show you what's been
21 marked as State's Exhibit No. 1.

22 Is that a map of the general area around where this,
23 where the crime scene was at?

24 A Yes, sir, it is.

25 SOLICITOR BARNETTE: Okay. Your Honor, may I have

Jason Bryant - Direct examination
by Solicitor Barnette

1 permission to enter this into evidence and publish it to the
2 jury?

3 THE COURT: (Nods affirmatively.)

4 MR. MCPHERSON: No objection.

5 THE COURT: Okay. Entered without objection.

6 (Whereupon, State's Exhibit No. 1 was received into
7 evidence at this time.)

8 Q Okay. Going right here, is this Gobbler's Knob right
9 here.

10 A That is correct.

11 Q And this is Route 85?

12 A Yes, sir.

13 Q And is that the Business 85 right there?

14 A Yes, sir.

15 Q Or no, is that the bypass?

16 I'm sorry.

17 A That's, that's the bypass. I apologize.

18 Q And is this Pine Street coming out right here?

19 A That is.

20 Q And is this Asheville Highway going up through here?

21 A Yes, sir.

22 Q Okay. And the approximate area where this was, was
23 this right here near the corner?

24 A It was, it was very close, yes, sir.

25 Q Okay. Okay. That's a little bit better.

Jason Bryant - Direct examination
by Solicitor Barnette

1 So, it would of been right here in this area right in
2 here?

3 A Yes, sir, that's correct.

4 Q Okay. When you went into the scene, did you see any
5 signs of forced entry in the house?

6 A No, sir, I did not.

7 (Whereupon, a group of photographs were marked as
8 State's Exhibit Nos. 9 through 38 for identification
9 purposes only at this time.)

10 Q Let me show you what's been marked as State's Exhibit
11 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 at
12 this point.

13 Do those picture fairly represent what you saw that
14 day, sir?

15 A That's correct.

16 SOLICITOR BARNETTE: Your Honor, like to move these
17 into evidence at this time.

18 MR. MCPHERSON: No objection.

19 THE COURT: In without objection.

20 (Whereupon, State's Exhibit Nos. 9 through 21 were
21 received into evidence at this time.)

22 SOLICITOR BARNETTE: Your Honor, permission to publish
23 these pictures to the jury?

24 THE COURT: Yes, sir.

25 Q Okay. Showing you State Exhibit No. 9, is this a

Jason Bryant - Direct examination
by Solicitor Barnette

1 picture of the front of the residence, sir?

2 A That is.

3 Q Showing you State Exhibit No. 10, is this a picture of
4 the carport area where the driveway goes up to the carport?

5 A That's correct.

6 MR. MCPHERSON: Judge, I would ask that he let the
7 police officer tell what's in the picture and not lead the
8 witness.

9 SOLICITOR BARNETTE: I'll rephrase the questions, Your
10 Honor.

11 Q If you would, sir, just tell what this area here is,
12 sir.

13 A That is the carport area of the residence at
14

15 Q And what is this item right here in---

16 A Are you -- that's the screen door that's ajar or
17 opened.

18 Q Okay. And was that opened when the police officers
19 arrived there?

20 A That's correct.

21 Q And was it, the slide opened to it to keep it open?

22 A The compression spring mechanism was opened and latched
23 to keep it in the open position.

24 Q Okay. Showing you State's Exhibit No. 11.

25 what is this, sir?

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by Solicitor Barnette

- 1 A That's the front door of the residence.
- 2 Q And did y'all take a look at the front door?
- 3 A We did.
- 4 Q Was there any sign of forced entry there?
- 5 A No, sir, it was secured.
- 6 Q And was there any sign of forced entry of the windows
- 7 or anything?
- 8 A No, sir.
- 9 Q Showing you State's Exhibit No. 12, can you tell us
- 10 what that, what that is, sir?
- 11 A That's the carport area at .
- 12 Q Okay. Was this the screen door that was opened?
- 13 A That's correct.
- 14 Q And State Exhibit No. 13, what's that a picture of,
- 15 sir?
- 16 A The rear of the residence.
- 17 Q Did y'all also check this back-door?
- 18 A That's correct.
- 19 Q And was the back-door, was any sign of forced entry?
- 20 A No sign of any forced entry.
- 21 Q And was there any signs of ever being used in that
- 22 laundry area?
- 23 A No, sir, it was, it was -- I don't remember exactly.
- 24 But it was an unused door if I remember correctly.
- 25 Q Any signs of break-in in these windows?

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- 1 A Not at all.
- 2 Q And State Exhibit No. 14, if you would, tell the jury
3 what that is, sir.
- 4 A That's the side corner of the house on the other side
5 of the carport area.
- 6 Q And was there any windows on this end of the house?
- 7 A No, sir.
- 8 Q Showing you State Exhibit No. 15, what's that a picture
9 of, sir?
- 10 A That's another view of that side area more towards the
11 road.
- 12 Q Showing you State Exhibit 16, can you tell us what that
13 is, sir?
- 14 A That's the screen door at the carport area with the
15 door opened.
- 16 Q And was that the position of the door when you saw it?
- 17 A That's correct.
- 18 Q Showing you State Exhibit 17, what's that a picture of,
19 sir?
- 20 A That is a photo of the locking mechanism or the handle
21 mechanism of the screen door.
- 22 Q Showing you State Exhibit 18, what is that a picture
23 of, sir?
- 24 A That is the locking mechanism and the handle of the
25 screen door also on the carport area.

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by Solicitor Barnette

1 Q This item right here, what is this, sir, right here?

2 A That's -- I'm sorry. I don't know the technical term.
3 I've always called them compression springs. If you go get
4 a load of groceries or whatever and you don't want to keep
5 opening your screen door or anything such as that, you flip
6 the latch and it stays open.

7 Q Is that the way this was when that---

8 A That's correct.

9 Q State Exhibit No. 19, what is that, sir?

10 A Those are the door jam photos and the, of the lock,
11 receivers at the screen door.

12 Q And was there any signs of forced entry on those?

13 A No, sir.

14 Q State Exhibit No. 20, what is that, sir?

15 A That's the locking mechanism of the door of the carport
16 area.

17 Q Was there any signs of damage to that, sir?

18 A No, sir.

19 Q And was this door also---

20 A It was.

21 Q And State Exhibit No. 21.

22 A That is the actual door knob and locking mechanism of
23 the screen or the carport area.

24 Q And was there any damage to that?

25 A No, sir.

Jason Bryant - Direct examination
by Solicitor Barnette

1 Q After y'all went inside and checked to make sure no
2 signs of forced entry, did you notice anything taken from
3 the house or anything done inside the house?

4 A Nothing appeared to be disturbed or in disarray such as
5 a burglar or anything such as that.

6 Q Was any items stolen or anything?

7 A No, sir, there was electronics, jewelry, cash still
8 inside the residence.

9 Q And nothing -- in your experience as a detective, are
10 those items usually taken in burglaries?

11 A Those, those are gone in a burglary. That's gone.

12 Q When was the first thing you noticed anything wrong,
13 sir, if you---

14 A I'm sorry. I didn't understand you.

15 Q What's the first thing you -- when was the first
16 thing -- did you notice any room having anything wrong in
17 it?

18 A When we, when I made entry actually through the carport
19 door area, that goes into like a kitchen area, dining room
20 area, and nothing was in disarray or anything such as that.
21 I go on down, nothing was, nothing was out of place or, or
22 anything such as that till you get to the bedroom area.
23 Then I believe it was to the right back bedroom.

24 Q And in that bedroom, what did you see, sir?

25 A I observed the victim lying on the bed on his back with

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1 a silver knife on his chest, battered unrecognizable. You,
2 you couldn't even hardly distinguish the race of the, of the
3 victim. There was a lot of blood on the walls, the ceiling
4 fans, the ceiling such as that. There was jewelry on a
5 nightstand. There was, if you're facing the bed and the
6 victim, which was covered up with a, with a, with a cover up
7 until about his chest area, to the right, there was a cell
8 phone, if I remember correctly, on that nightstand to the
9 right. To the left, there was a home phone and some
10 medication. But the, the room was full of electronics,
11 jewelry, and the victim had cash on him, on his person
12 actually.

13 Q Let me show you some more pictures, sir. Let me show
14 you what's been marked as State's Exhibit 22, 23, 24, 25,
15 26, 27, 28, 29, 30, 31, 32, 33, 34, all the way to State
16 Exhibit 38.

17 A Okay.

18 Q If you would, take a look at those picture, sir, and
19 see if they fairly represent what you saw that day.

20 A Yes, sir.

21 SOLICITOR BARNETTE: Your Honor, I'd like to move these
22 items, State Exhibit 22 through 38, into evidence at this
23 time.

24 MR. MCPHERSON: Judge, we have no objection to 23
25 through 38. We do have an objection to 22. I'd like to

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by Solicitor Barnette

1 approach the bench if I could.

2 (Whereupon, a bench conference was held out of the
3 hearing of the jury at this time.)

4 THE COURT: Note an objection by defense on 22. I'm
5 gonna allow it in though.

6 Okay.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 (Whereupon, State's Exhibit Nos. 22 through 38 were
9 received into evidence at this time.)

10 SOLICITOR BARNETTE: Your Honor, permission to publish
11 the pictures?

12 THE COURT: Yes, sir.

13 Q Showing you State Exhibit No. 22, sir, what is that a
14 picture of, sir?

15 A That's the picture of the victim, as I described
16 earlier when I walked into the room, lying in the bed with
17 the covers, and that's the silver knife, and that's the
18 nightstand that I described to the left.

19 Q Showing you State Exhibit 23, what is this, sir?

20 A That's the nightstand to the left of the victim.

21 Q Let me show you State Exhibit No. 24.

22 What is that, sir?

23 A That's another photo of the left side of the bed and
24 nightstand area.

25 Q Was there also blood on the blind, it may be hard to

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1 see here, on the blinds and on the walls, sir?

2 A That's, that's correct. They had what appeared, what
3 appeared to be blood on the blinds, the wall, and the
4 headboard.

5 Q Let me show you what's been marked as State's Exhibit
6 25.

7 A That's, that's a better photo of it there.

8 Q And what is, what does that substance appear to be up
9 on the blinds, sir?

10 A Blood.

11 Q State Exhibit 26, what is this a picture of, sir?

12 A That is the headboard and the right side of the bed
13 area.

14 Q State Exhibit 27, what is this, sir?

15 A That is the pillows and a photo of the headboard area.

16 Q Okay. And what is on the headboard there, sir?

17 A Blood.

18 Q State Exhibit No. 28, what is this, sir?

19 A That's a---

20 THE COURT: Hold up, hold up just a second.

21 SOLICITOR BARNETTE: I apologize, Your Honor.

22 THE COURT: Can -- juror on the end, can you see?

23 JUROR: I can see, yes.

24 THE COURT: Feel free to move down to the end.

25 JUROR: That's fine.

Jason Bryant - Direct examination
by Solicitor Barnette

- 1 BAILIFF: Get you a chair.
- 2 Q Okay. I apologize, sir.
- 3 what, what was this again a picture of, sir?
- 4 A That's a photo of the pillow that was on the bed along
- 5 with the victim.
- 6 Q Let me show you State Exhibit 29, what is this, sir?
- 7 A That is a photo of the victim with the covers and the
- 8 silver knife that I had described that was on his chest.
- 9 Q State Exhibit No. 30, what is that a picture of, sir?
- 10 A That is a photo of the victim along with the pillow
- 11 that I described earlier.
- 12 Q State Exhibit No. 31, what is that a picture of, sir?
- 13 A That would also be of the headboard area and the blood,
- 14 what appeared to be blood.
- 15 Q And those items you see up here, is that right?
- 16 A That's correct.
- 17 Q State Exhibit 32, what is that picture of, sir?
- 18 A That is the nightstand area to the right as I described
- 19 right beside the bed.
- 20 Q Okay. And do you have a picture, is -- what does that
- 21 appear to be, sir?
- 22 A The home phone and a cell phone.
- 23 Q And was there also medication?
- 24 A Medication and everything such as that.
- 25 Q And you had several items of that?

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by Solicitor Barnette

- 1 A That's correct.
- 2 Q State Exhibit 33, what does this show, sir?
- 3 A That was a photo of the nightstand to the right and
4 also along with like a puppy pad type that was on the floor
5 area.
- 6 Q And State Exhibit 34.
- 7 A That's that puppy pad area.
- 8 Q And has what on it it appears to be, sir?
- 9 A I'm sorry?
- 10 Q What does it appear to have on it?
- 11 A Blood.
- 12 Q State Exhibit 35.
- 13 A That is a photo of the bedroom door when it was closed
14 in the room which the victim was in.
- 15 Q And what does this appear to be on it, sir?
- 16 A Blood.
- 17 Q State Exhibit 36.
- 18 A That is the---
- 19 Q What is that?
- 20 A That is the ceiling fan in the bedroom, back bedroom
21 where the victim was.
- 22 Q And what does this appear to be on it?
- 23 A Blood.
- 24 Q State Exhibit 37, what's this a picture of, sir?
- 25 A That's a photo of the headboard area again and blood.

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1 Q And State Exhibit 38.

2 A That's the bed area also with what appears to be blood.

3 Q After you went to the scene, where did you go from
4 there, sir?

5 A I went back to the Sheriff's Office in which I began
6 speaking to Dawn Fowler.

7 Q And during the investigation and, and the interviews,
8 did you develop another suspect?

9 A We did.

10 Q And who was that, sir?

11 A That was Robert Heydman.

12 Q Okay. Did, did you read Mr. Heydman his rights?

13 A I did.

14 Q And in, in reading his rights, did he understand
15 everything, sir?

16 A He did.

17 SOLICITOR BARNETTE: May I approach the bench, Your
18 Honor?

19 THE COURT: Uh-huh. (Affirmative).

20 Q Did you give him his Miranda warnings, sir?

21 A I did, from a pre-interrogation waiver form.

22 Q If you would, read to the jury what you gave him, what
23 rights you gave him, sir.

24 A The rights that I gave him before we started are at the
25 top and went through his name, address, age, the date, the

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1 time, and the location or the address where we were at. And
2 then I read him his rights from this form.

3 One. I have the right to remain silent.

4 Two. Anything I say can and will be used against you
5 in a Court of law.

6 Three. I have the right to talk to a lawyer and have
7 his present while you're being questioned.

8 Four. If I can not afford to hire a lawyer, one will
9 be appointed to represent me before any question if I wish,
10 before any questioning if I wish.

11 I have the right to stop answering questions at any
12 point in the questioning. That's number five.

13 The above rights have been read to me by me, J. Bryant,
14 and underneath that it says I have read the same and I
15 understand my rights fully, and he signs and that signature
16 is also, by a witness also, which was Investigator Gary.

17 Q And then after you read, read him his rights and
18 everything, did you find that him and Dawn Fowler went to
19 Una Baptist Church together?

20 A I did.

21 Q And did, did you confirm that they were friends and
22 knew each other?

23 A I did.

24 Q And during the interview, did you ask him about any
25 phone calls?

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1 A I did.

2 Q How -- well, if you would, just tell the jury how long
3 did he say he knew Mrs. Fowler.

4 A The first time, the first time he answered he stated
5 that he had only known her for about a month. Then he
6 stated that he had known her for a longer period of time
7 than that.

8 Q And did you confirm that he made phone calls with her?

9 A I did. He stated -- oh, I'm sorry. Go ahead.

10 Q You go ahead, sir.

11 A He stated that the last time that he had talked to her
12 was on, if I can refer to my notes, 12/12 of '06, the night
13 before this incident, at approximately 7:00 p.m.

14 Q So, he didn't tell you about any phone calls he had had
15 the morning of the, December 13th?

16 A No, sir.

17 Q After interviewing him, did you go to his house?

18 A We did.

19 Q And did you also obtain his phone records?

20 A We did.

21 Q Did you get a search warrant for those phone records?

22 A Yes, sir, we did.

23 Q Did you also get a search warrant for Angela Dawn
24 Fowler's phone records?

25 A I did.

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1 SOLICITOR BARNETTE: Your Honor, may I go get these
2 marked?

3 (The Court nods affirmatively.)

4 (Whereupon, eight swabs were marked as State's Exhibit
5 Nos. 39 through 46. A SLED report was marked as State's
6 Exhibit No. 48. Two sets of phone records were marked as
7 State's Exhibit Nos. 49 and 50. A cell phone was marked as
8 State's Exhibit No. 51. Another set of phone records were
9 marked as State's Exhibit No. 52. All of the above exhibits
10 were for identification purposes only at this time.)

11 Q Let me show you what's been marked as State's Exhibit
12 49.

13 Are these the cell phone records of Mrs. Fowler that
14 you received?

15 A That is correct.

16 SOLICITOR BARNETTE: Your Honor, I'd like to enter
17 State's Exhibit No. 49 into evidence at this time.

18 MR. MCPHERSON: I would object on the grounds that
19 these are hearsay records and they, no proper foundation has
20 been laid in order get these records in.

21 SOLICITOR BARNETTE: Your Honor, I'd mark for ID
22 purposes. I do have the people coming from the two
23 companies on these records.

24 THE COURT: All right. Marked for ID only at this
25 time.

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1 Q Let me show you State Exhibit No. 50, sir.

2 Are those the text messages that you received from Mr.
3 Fowler's phone?

4 A That's correct.

5 SOLICITOR BARNETTE: Your Honor, I'd like to mark these
6 just for ID purposes only at this time.

7 THE COURT: Okay.

8 MR. MCPHERSON: Only for ID purposes.

9 Q Let me show you what's marked as State's Exhibit 52, if
10 you would, sir.

11 Is this the search warrant information you received on
12 Mr. Heydman's phone?

13 A That's correct.

14 SOLICITOR BARNETTE: Your Honor, I'd like to enter
15 these in for ID purposes at this time.

16 MR. MCPHERSON: Just for ID purposes.

17 SOLICITOR BARNETTE: For ID purposes.

18 Q And these are the cell phone records you received from
19 both their phones, is that right?

20 A That's correct.

21 Q And in this case, Mr. Heydman's phone was 864-680-5041?

22 MR. MCPHERSON: Your Honor, I'm gonna object.

23 A That's---

24 MR. MCPHERSON: He's leading the witness.

25 SOLICITOR BARNETTE: I'll rephrase the question, Your

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1 Honor.

2 Q You received what their cell phone numbers were, is
3 that right?

4 A That's correct.

5 Q And once you received that information, you asked for
6 the search warrant for the records?

7 A That's correct.

8 Q After -- in your interview with him, he said the last
9 time he talked to Dawn Fowler was seven o'clock the night
10 before?

11 A 7:00 p.m. on 12/12 of '06.

12 Q Did you later -- did y'all go to his house and was his
13 van looked at?

14 A It was.

15 Q And was those processed?

16 A It was.

17 Q And based off information you received, did you also go
18 to the landfill?

19 A We, we did.

20 Q And why did you go to the landfill?

21 A Information was obtained that that was possibly where
22 the murder weapon was.

23 Q Did y'all go out and search the landfill?

24 A We did.

25 Q And did y'all ever find the murder weapon?

Jason Bryant - Direct examination
by Solicitor Barnette

1 A We did not.

2 Q How big is the landfill?

3 A I know the one in Abbeville is about 185 acres. I
4 would say Spartanburg's was probably a little bit
5 comparable.

6 Q Is that the one on Exit 66 where you can see in the
7 skyline as you're coming on I-85?

8 A That's correct.

9 Q That's the landfill we're talking about?

10 A That's correct.

11 Q So, y'all tried your best, but obviously there's a lot
12 of area to cover?

13 A We did.

14 MR. MCPHERSON: I object to him leading the witness.

15 THE COURT: All right. Watch the leading.

16 SOLICITOR BARNETTE: Yes, sir.

17 One moment, Your Honor, please?

18 (Pause.)

19 Q And you was talking about money that was found on him?

20 A That's correct.

21 Q Was it found in his wallet on his person?

22 A If, if I could refer to my notes please?

23 (Pause.)

24 A The right rear pocket of the victim's black wallet was
25 recovered. Approximately \$58 in cash.

Jason Bryant - Direct examination
by Solicitor Barnette

1 Q And also did y'all talk to a lady at the Raceway?

2 A We did.

3 Q And where was this Raceway located?

4 A Right there at Springfield Crossing at Asheville
5 Highway and Springfield Road. Close to that area.

6 Q And you remember the lady, the name, the name of the
7 lady that y'all spoke to there?

8 A That was on 12/21 of '06 and that's when I spoke to a
9 Darlene Blake.

10 Q Okay. Looking on this map -- I was gonna give you the
11 laser pointer. There it is right in front of you there.
12 Right in front.

13 If you would, show approximately where the place that
14 you saw Mrs. Blake at or spoke to her at?

15 A If I could step down to where I can see?

16 Q Yes, sir, you may.

17 A (Witness comes down from the stand.)

18 This is Asheville Highway right here. This is the
19 Springfield Road. The Race Track I'm gonna say is
20 approximately right there on the left, left side of
21 Asheville Highway going on up towards Inman. You're gonna
22 have you, your North Spartanburg Fire Department on up the
23 road here. But this, this Race, Race Track's right in this
24 area here.

25 Q And is there an Ingle's near there, sir?

Jason Bryant - Direct examination
by Solicitor Barnette

1 A There is. It's, it's approximately across the road
2 right there at the -- this is what they commonly refer to as
3 the Springfield Crossing, and it's, it's an Ingle's that
4 sits right here with the Gas Mart, and then you got a BP and
5 everything such as here. But the Ingle's Gas Mart is here,
6 and your Ingle's Shopping Center is in this area.

7 Q And where is Hendrix Elementary at, sir?

8 A Hendrix Elementary is, is on the back side of this
9 right here. This is Springfield Road, and it's on the other
10 side of Pisgah Church if I remember correctly. Hendrix
11 Elementary sits right here.

12 Q And in interviewing Mrs. Fowler and everything, did you
13 receive information that she had went to the Ingle's that
14 day?

15 A We did.

16 Q And did y'all receive a receipt marked as State Exhibit
17 No. 8?

18 A Yes, sir, we did.

19 Q If you would, sir, take a look and see if that's the
20 receipt that y'all received.

21 A It is.

22 (Witness returns to the stand.)

23 SOLICITOR BARNETTE: Your Honor, like to enter this
24 into evidence at this time.

25 MR. MCPHERSON: Your Honor, we're gonna, going to

Jason Bryant - Direct examination
by Solicitor Barnette

1 object on that grounds that it hasn't been properly
2 authenticated yet or going by Mrs. Fowler.

3 SOLICITOR BARNETTE: Your Honor, I'd just like to mark
4 it for ID purposes at this time then, Your Honor.

5 THE COURT: Okay.

6 Q And y'all did receive this from Mrs. Fowler?

7 A That's correct.

8 Q If you would, sir, step down for a second. I got to
9 make this where the jury can see it.

10 A (Witness comes down from the stand.)

11 Q Are you familiar with Google maps, sir?

12 A I'm sorry, sir?

13 Q Are you familiar with Google maps that's on the
14 Internet?

15 A No, sir.

16 Q Have you seen these maps before?

17 A Have I?

18 I'm sorry.

19 Q Have you used these maps before?

20 A No, sir.

21 Q Okay. Please have a seat.

22 A (Witness returns to the stand.)

23 Q I'll -- go ahead and come on down, sir, if you would.

24 A (Witness comes down from stand.)

25 SOLICITOR BARNETTE: Your Honor, I'm going to go ahead

Jason Bryant - Direct examination
by Solicitor Barnette

1 and show -- me and Mr. McPherson had talked about this
2 earlier, using this. I think we mentioned it to the Court.

3 THE COURT: Right.

4 Q I want to bring it a little bit closer and then come
5 down so they can see it.

6 If you would, sir, do you see Gobbler's Knob on there,
7 sir?

8 Is it in this location right---

9 A It's up close to Caston or Caston, sir.

10 Q Okay. Here's -- do you see Gobbler's knob there, sir?

11 A That's -- okay, sir. Yes, sir.

12 Q And the house that we're talking about is located right
13 in here?

14 A Yes, sir.

15 Q Okay. And what road is this right here, sir?

16 A Upper Valley Falls.

17 Q I'll go back out, sir.

18 Is this the 85 bypass here, sir?

19 A That's correct.

20 Q And right here, sir, is that the Raceway we're talking
21 about?

22 A Yes, sir.

23 Q And is this the Ingle's here, sir?

24 A That's correct.

25 Q And what school is that?

Jason Bryant - Direct examination
by Solicitor Barnette

1 A That's Hendrix Elementary.

2 Q Okay. And the Ingle's we're talking about is this
3 Ingle's here?

4 A That's right.

5 Q If we go to the Raceway to 105, if we go to the Raceway
6 to their location from the house there, is it approximately
7 one and a half miles to that location?

8 A That sounds about correct.

9 Q Okay. And if we go to Ingle's, if you go around about
10 way, and there's also, and there's also -- there's several
11 routes to it.

12 Is that 2.2 miles going that way?

13 A Going up Springfield and cutting back across, I would
14 say that would be approximate, yes, sir.

15 Q And if you went the other way, how far would it be,
16 sir, from the front of Ingle's going another way?

17 A It'd be just about the same as it would be from the
18 Race Track.

19 Q Okay. About 1.7 miles coming this way?

20 A Yes, sir.

21 Q Okay. And going to Hendrix, there's another way you
22 can go or -- wait a minute. It's two ways.

23 Going from Hendrix around Springfield, it's 2.1 miles?

24 A Yes, sir.

25 Q Okay. And Boiling Springs Junior High, where is it

Jason Bryant - Direct examination
by Solicitor Barnette

1 located at?

2 A It's located up on the northern end of the county up
3 by, off of Highway 9.

4 Q So, it is above Boiling Springs?

5 A Yes, sir.

6 Q And it's on Route 9?

7 A It's right close to Route 9, yes, sir.

8 Q Okay. And there's a distance from there to there?
9 It's not like these distances?

10 A No, sir.

11 Q How far would you say that is it?

12 A Approximately it would be a few miles. I wouldn't know
13 right off. I've never drove the route for distance. I
14 couldn't testify to an exact.

15 Q But obviously it's not in this area?

16 A That's correct. It's on up the road.

17 Q Please, sir, have a seat.

18 A (Witness returns to the stand.)

19 Q If you would, sir, please answer any questions Mr.
20 McPherson may have for you, sir.

21 A Yes, sir.

22 MR. MCPHERSON: Judge, can I approach the bench?

23 THE COURT: Yes, sir.

24 (Whereupon, a bench conference was held out of the
25 hearing of the jury at this time.)

Jason Bryant - Direct examination
by Solicitor Barnette

1 THE COURT: We're going to take a ten minute recess,
2 and we'll come back. The jury step back.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Okay.

6 (Whereupon, a short recess was taken at this time.)

7 SOLICITOR BARNETTE: Your Honor, I'd like to enter
8 State's Exhibit 4 into evidence. I was gonna introduce it
9 originally. But it had the bottom of it where it requested
10 an attorney. So, I know we had to do a redacted version of
11 it. I'll show it to Mr. McPherson. Be State Exhibit No. 4.

12 MR. MCPHERSON: No objection.

13 (Whereupon, State Exhibit No. 4 was received into
14 evidence at this time.)

15 THE COURT: We got everybody?

16 SOLICITOR BARNETTE: Yes, sir.

17 Would you like Investigator Bryant back on the stand?

18 THE COURT: Yes, sir.

19 You ready, Mr. McPherson?

20 MR. MCPHERSON: Yes, sir.

21 THE COURT: Bring the jury.

22 (Whereupon, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. You may proceed.

25 CROSS-EXAMINATION

Jason Bryant - Cross-examination
by Mr. McPherson

1 BY MR. MCPHERSON:

2 Q Sir, you would agree with me, would you not, when you
3 talked to Dawn Fowler she was lying to you right off the
4 bat?

5 A Yes, sir.

6 Q In fact, even when you took her to the Sheriff's Office
7 she still was lying to you?

8 A Yes, sir.

9 Q And would it be fair to say she's a liar, would it not?

10 A At that time, when she first, we first began to speak
11 she was lying.

12 Q All right. Now -- and you read Mr., Mr. Heydman his
13 rights.

14 You would agree with me that you determined, at some
15 point, that he could not read or write the English language?

16 A That's correct.

17 Q And so, you would agree with me if he can't read the
18 English language, then it would be very difficult for him to
19 read text messages?

20 A I don't know what his limitations on literacy are.

21 Q And you would also agree with me that he couldn't text
22 message cause he doesn't know how to write?

23 A I don't know, sir. He, he advised me he finished seven
24 years of school.

25 Q But he also advised you he couldn't read or write,

Jason Bryant - Cross-examination
by Mr. McPherson

1 didn't he?

2 A He did.

3 Q And you believed that, didn't you?

4 A I took his word for it.

5 Q All right. In fact -- may I approach the witness?

6 (The Court nods affirmatively.)

7 Q In fact, I'm handing you what's marked as State's
8 Exhibit 4.

9 A That's correct.

10 Q And on that statement, State's Exhibit 4, you marked
11 out the area where it says I can read and write the English
12 language?

13 A Right, right after he had finished seven years in
14 school, that's correct.

15 Q Right.

16 And did he explain to you about his education?

17 A He told me he completed seven years in school.

18 Q But did he tell you, while he was going through those
19 seven grades, that he really just kind of goofed off in
20 school and never learned to read and write?

21 A No, sir.

22 Q But you don't have any reason to not believe that, do
23 you?

24 A From what he told me, he, he said he couldn't read or
25 write.

Jason Bryant - Cross-examination
by Mr. McPherson

1 Q Okay. Now, were you the lead investigator on this
2 case?

3 A That's correct.

4 Q And when you do forensics, are you the one that tells
5 the forensic man I want you to do this, I want you to do
6 that, or does he just make those decisions on his own?

7 A There's also a lead forensics investigator that's
8 involved in each cases. What we have is we have -- I would
9 be the lead investigator and then what we have is a homicide
10 team leader for forensics, and they handled that aspect of
11 the investigation.

12 Q And so, you don't have any authority to tell them I'd
13 like you to take fingerprints here or anything like that?

14 A Sure. I could suggest things. If, if I'm there and
15 handling that aspect of the investigation or there when
16 they're handling that aspect of the investigation.

17 Q Okay. And do you know whether or not fingerprints were
18 taken of the, the door handles and the doors where the
19 alleged entry was made?

20 A I'm sorry, sir. I didn't understand your question.

21 Q Were fingerprints taken of the door where the burglary
22 was suppose to have taken place?

23 A The lead forensic investigator would be better to
24 handle that question. I wasn't there when they
25 fingerprinted the door.

Jason Bryant - Cross-examination
by Mr. McPherson

1 Q Okay. So, you don't know if they did or didn't?

2 A I, I couldn't testify to that. I wasn't there. I was
3 dealing with Mrs. Fowler and Mr. Heydman.

4 Q And have you ever heard of touch DNA?

5 A I have.

6 Q What is that?

7 Would you explain that to the jury?

8 A It's where -- to, to my limited knowledge of it, it's
9 where an individual touches something. Sometimes it may or
10 may not leave residual DNA on the item.

11 Q And did you ask -- did you request -- did you
12 specifically request any fingerprints to be taken?

13 A Like I stated, I was dealing with Mrs. Fowler and Mr.
14 Heydman.

15 Q Well, just yes or no.

16 A The lead forensic investigator was handling that.

17 Q Yes or no.

18 A Did I personally?

19 Q (Nods affirmatively.)

20 A No, sir.

21 Q Okay. Did you specifically request any touch DNA?

22 A I was dealing with them, no, sir.

23 Q And just yes or no.

24 A Well, it's more than a yes or no answer.

25 Q Well, I understand that you're not really---

Jason Bryant - Cross-examination
by Mr. McPherson

1 SOLICITOR BARNETTE: I would, I would object at this
2 time. I think it's been asked and answered.

3 MR. MCPHERSON: Well, he's not really answering the
4 question. He was saying he was doing this. But he didn't
5 say yes or no, I didn't.

6 SOLICITOR BARNETTE: Your Honor, I'm gonna object
7 because obviously under the expertise, and I kind of let him
8 have some latitude to ask about touch DNA, but obviously
9 he's not qualified on touch DNA.

10 THE COURT: Well, I think the question was simple. Did
11 he request touch DNA. Either yes or no. Of course, the
12 problem is I don't know that there's such a thing
13 necessarily. I don't want to get too deep into the facts,
14 but I guess he -- in other words, he needs to answer yes or
15 no. But he can also explain it.

16 SOLICITOR BARNETTE: Yes, sir.

17 THE COURT: But I don't know if there's such a test.
18 That could be the problem.

19 But you need to respond to the question, and then you
20 can, you can explain your answer.

21 WITNESS: Okay, sir. Thank you.

22 THE COURT: So, the question is did you request a touch
23 DNA test, is that correct?

24 MR. MCPHERSON: Yes, sir.

25 A I did not.

Jason Bryant - Cross-examination
by Mr. McPherson

1 Q Okay. Now, you interviewed a person by the name of Mr.
2 Raines, right?

3 A I'm sorry, sir. I didn't hear you.

4 Q You interviewed an individual from Una Baptist Church,
5 the pastor, by the name of Mr. Raines?

6 A I did, correct.

7 Q And when you interviewed him, you found that he was not
8 very cooperative, didn't you?

9 A That's correct. He stated he didn't want to get
10 involved.

11 Q And he didn't want to talk about it, did he?

12 A Well, he wanted to know what his wife had remembered
13 before he made any statements.

14 Q Right.

15 It would be fair to say he was not cooperative?

16 A If, if I could review my notes?

17 Just one second.

18 Q Yes.

19 THE COURT: Take your, take your time.

20 SOLICITOR BARNETTE: Your Honor, I'm gonna object based
21 off the motion before trial.

22 May we approach the bench?

23 (Whereupon, a bench conference was held out of the
24 hearing of the jury at this time.)

25 Q All right. You've had a chance to review your notes,

Jason Bryant - Cross-examination
by Mr. McPherson

1 right?

2 A That's, that's correct.

3 Q And it's fair to say he was not very cooperative?

4 A Well, at 5:25 p.m. on the same day I met with Phillip
5 Raines---

6 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
7 this point. It would be hearsay, anything that he was told
8 by the witness in this case.

9 THE COURT: All right. Okay. Unless you can show me
10 an exception.

11 MR. MCPHERSON: Well, I'm not asking him what he said.
12 I'm asking if he was cooperative or not cooperative.

13 SOLICITOR BARNETTE: I think we've answered that
14 question. I object. It's been asked and answered. That's,
15 that's three times or four times.

16 MR. MCPHERSON: Well, I withdraw the question.

17 THE COURT: Okay.

18 MR. MCPHERSON: I have no further questions.

19 SOLICITOR BARNETTE: Just a couple on redirect, Your
20 Honor.

21 REDIRECT EXAMINATION

22 BY SOLICITOR BARNETTE:

23 Q You just taking his word that he couldn't read or
24 write?

25 A That's, that's correct.

Jason Bryant - Redirect examination
by Solicitor Barnette

1 Q But he did tell you he went seven years in school?

2 A That's correct.

3 Q And he did sign it?

4 A That's correct.

5 Q You saw him sign his name to the form?

6 A Two times.

7 Q Two times.

8 And the other thing too is Angela Fowler lived at the
9 home?

10 A That's correct.

11 Q To find her fingerprints or DNA, would that be unusual?

12 A Not at all.

13 Q If Mr. Heydman had been there at the house before doing
14 things---

15 A He had.

16 Q ---and would it be unusual to find his fingerprints for
17 DNA there?

18 A Not at all.

19 Q And it can't be, it can't be aged?

20 I mean you don't know if it happened yesterday or a
21 year from now?

22 A Correct.

23 Q Thank you, sir. Please answer any questions Mr.
24 McPherson may have for you.

25 MR. MCPHERSON: I have no further questions.

Danny Jones - Direct examination
by Solicitor Jordan

1 THE COURT: You may step down. Thank you.

2 SOLICITOR JORDAN: State calls Sergeant Danny Jones.

3 THE COURT: Come up and be sworn please.

4 DANNY JONES, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR JORDAN:

8 Q Please state your name for the record.

9 A Danny James Jones.

10 Q Where are you employed?

11 A Spartanburg County Sheriff's Office.

12 Q How long have you been employed there?

13 A Twenty years.

14 Q What is your title?

15 A I'm a patrol sergeant.

16 Q Were you working on December the 13th of 2006?

17 A Yes, I was.

18 Q Okay. Did you respond to a call at ?

19 A Yes, I did.

20 Q Is that in Spartanburg County?

21 A Yes, it is.

22 Q What time were you dispatched or was dispatched?

23 A The original call went out about 8:10 that morning to
24 Deputy Kevin Murphy. So, I was closer. So, I advised, over
25 the radio, that I would take that call.

Danny Jones - Direct examination
by Solicitor Jordan

1 Q Okay. What time did you arrive?

2 A Approximately 8:26 in the morning.

3 Q Okay. When you arrived, who was at the residence?

4 A There were two ladies standing in the driveway in front
5 of the carport. Turned out to be Angela Fowler and her
6 mother, Kay Cox.

7 Q Okay. Was it -- anyone else at the residence?

8 A Not that I saw at that time.

9 Q Okay. I'm gonna show you what's previously been marked
10 and entered as State's Exhibit No. 16 and ask you if you
11 recognize this.

12 A That appears to be the carport door, storm door, entry
13 door in the carport area at .

14 Q Okay. Were you the first officer on scene?

15 A Yes, I was.

16 Q Okay. Is that how the door appeared when you were
17 there?

18 A Yes, it was. It was standing propped open like that.

19 Q Okay. Did you go inside the residence?

20 A Yes, I did.

21 Q Can you tell the jury who, if anyone, was inside?

22 A Yes, in the back bedroom there was a white male in the
23 bed. It turned out to be Richard Fowler.

24 Q Going back to State's No. 16, this door, did you notice
25 about the spring, anything about the spring on the door?

Danny Jones - Direct examination
by Solicitor Jordan

1 A Yes. When I entered through the doorway, I noticed it
2 had been -- there's a little metal tab on the automatic door
3 closer that can be slid into place to keep that door opened.
4 I believe that's what I saw holding that door open.

5 Q Okay. Please answer any questions Mr. McPherson may
6 have.

7 A Yes.

8 CROSS-EXAMINATION

9 BY MR. MCPHERSON:

10 Q Okay. So, this little metal cap that we're talking
11 about, that's something somebody would have to physically
12 touch and move in order to hold that compression and spring
13 open or whatever you call it?

14 A I would assume so, yes, sir.

15 Q Thank you.

16 But you're not responsible for taking fingerprints or
17 testing?

18 A No, sir, that's not my function.

19 Q Okay. Do you know if any tests were done on that
20 little slide that keeps that door open?

21 A No, sir, I wouldn't have that, that information.

22 Q All right. No further questions.

23 SOLICITOR JORDAN: Nothing further, Your Honor. May he
24 be excused?

25 MR. MCPHERSON: Yes, sir.

David Hogsed - Direct examination
by Solicitor Barnette

1 THE COURT: The sergeant's excused.

2 SOLICITOR BARNETTE: Your Honor, like to call
3 Investigator David Hogsed to the stand please.

4 DAVID HOGSED, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q If you would, sir, please state your full name for the
9 record.

10 A David Hogsed.

11 Q And where do you work at, sir?

12 A Spartanburg County Sheriff's Office.

13 Q And what is your position there, sir?

14 A I'm assigned to the crime scene unit.

15 Q And how long have you been in law enforcement, sir?

16 A It will be 19 years next month.

17 Q Back on December 13th, 2006, was you working that
18 day, sir?

19 A Yes, I was.

20 Q And was you called to the scene at
21 in Boiling Springs?

22 A Yes, sir, I was.

23 Q And when you -- did you receive a call to go to that
24 location?

25 A Yes, we did. We were dispatched at the request of our

David Hogsed - Direct examination
by Solicitor Barnette

1 uniform patrol division to come to that location.

2 Q And when you went to the -- if you would, tell the jury
3 what you saw and who was there when you got to the scene,
4 sir.

5 A When I arrived, I remember there was a car in the
6 driveway. I can't tell you the color or make of the car.
7 Several of our patrol units was on the car, on the scene,
8 and EMS was on the scene.

9 I exited my car, walked up to the left side of the
10 house where the carport was, entered that door, walked
11 through the house to the back right bedroom. Two or three
12 deputies in there, gentleman from EMS or an EMS personnel.
13 I observed Mr. Fowler's body, saw what we had. Immediately
14 asked that everyone exit the residence. And at that time we
15 all exited the residence.

16 Q Okay. And showing you State Exhibit 22, showing you
17 State Exhibit 22, is that the way Mr. Fowler appeared to you
18 when you, when he was in the bedroom, sir?

19 A Yes, sir, it is.

20 Q Okay. And when you arrived at the scene, showing you
21 State Exhibit No. 16, was the storm door opened at that
22 time?

23 A Yes, it was.

24 Q And was the -- I can't never say the right wrong, the
25 compression spring or whatever, was the tab over to keep

David Hogsed - Direct examination
by Solicitor Barnette

1 that open?

2 A Yes, the slide tab that's on the -- I don't know if
3 it's on a hydraulic system or from the air system on the
4 mechanism that would close the door automatically was slid
5 over holding the storm door opened.

6 Q Let me show you State Exhibit No. 18.

7 Was that the spring that you see at the bottom of the
8 door?

9 Is that the way it appeared?

10 A On the bottom left corner of the picture, yes.

11 Q And looking at it, did you see any signs of forced
12 entry in this case?

13 A I, I did a quick glance and did not. I didn't see that
14 the door frame was busted from where it had been pried open
15 or kicked in. And then we immediately exited the house.

16 Q And from there, did you -- and obviously I know other
17 members of the team came along?

18 A Yes, the way the crime scene unit is set up, we're a
19 nine person unit. At that time we were split up into three
20 teams. For instances such like this, there was a separate
21 team that was on call that week. Once we exited the house,
22 we started making phone calls and having that team respond
23 to our location.

24 Q Going to talk about fingerprints and DNA, if a person
25 lived in that house, would you expect their fingerprints to

David Hogsed - Direct examination
by Solicitor Barnette

1 be, to possibly be in there?

2 A Yes, we -- you handle and touch everything in your
3 home. You can expect someone's fingerprints, that live in
4 their home, for their fingerprints to be all over that home.

5 Q But is it uncommon not to find any fingerprints that's
6 reasonable in that house?

7 A It's actually very common, common that we don't find a
8 readable legible fingerprints in someone's house.

9 Q And just because I touch this right here, did that mean
10 I left a fingerprint there?

11 A No, it does not. There's a lot of factors that go into
12 play. One is how well you keep your home clean, how well,
13 how often you clean something, that's a big factor. How
14 often something's touched, when you lay a fingerprint over
15 the top of a fingerprint over the top of a fingerprint,
16 basically all you're doing is making one big blurry mess.
17 Dust buildup is a big hindrance to leaving a, a latent print
18 and also the, the condition, the condition, what I mean
19 condition, what I'm talking about is whether it's hot or
20 cold in the house, that's a big factor in latent
21 fingerprints as well. The types of surfaces you touch are a
22 big factor in whether or not you'll leave a fingerprint.

23 Q And then saying if I, if my hand's dry, are you gonna
24 leave a fingerprint?

25 Do you know?

David Hogsted - Direct examination
by Solicitor Barnette

1 A There's a possibility you may leave some. But if your
2 hands are oily, more oily than normal, especially in cold
3 weather, we see in cold weather people do not leave
4 fingerprints as often as you do in the Fall or the Spring or
5 Summer. The reason being is when your hands get cold, the
6 pores of your skin close up. You're not extracting as much
7 as the water and oil that your body normally does in the
8 summertime.

9 Q And if I take my hand and do that, what have I done
10 with this prints if there was one?

11 A You've actually just smeared it. There's a big
12 misconception with latent fingerprints. Everybody thinks
13 cause if you lift -- if you'll look at your fingertips,
14 you'll see a line. That's what we refer to as ridges. If
15 you lay your hand on an object and just barely move it,
16 you'll actually just smudge that fingerprint. Most readable
17 prints are where somebody has touched something and pretty
18 much rolled their hand straight off of it.

19 Q Is it common for you to find fingerprints at crime
20 scenes?

21 A Actually you would be surprised at the number of crime
22 scenes we go on and process where no latent prints are
23 lifted whatsoever.

24 Q Talking about DNA, just cause I touch something don't
25 mean I leave DNA, does it?

David Hogsed - Direct examination
by Solicitor Barnette

1 A No, it does not.

2 Q And you have to leave a substantial amount of stuff or
3 something on there, don't you?

4 A Yes, that's correct.

5 Q And if somebody had worked there or been there at that
6 house, is it -- could they leave DNA there?

7 A They could, and again, they could not. A lot of
8 factors are gonna go into play there. The type of work that
9 was done, whether or not when they were working if they were
10 wearing gloves or anything like that. There's a lot of
11 factors that could, that go into play there.

12 Q So, if a person's wearing gloves, would they leave DNA?

13 A No, they would not.

14 Q Would they leave fingerprints?

15 A No, they would not.

16 SOLICITOR BARNETTE: One moment, Your Honor, please.

17 (Pause.)

18 Q Please answer any questions that Mr. McPherson may have
19 for you, sir. Thank you.

20 CROSS-EXAMINATION

21 BY MR. MCPHERSON:

22 Q Were you the one responsible for the forensics or the,
23 whether or not fingerprints were lifted from the door?

24 A No, sir, I did not process the actual residence, the
25 crime scene. Once I exited the home, after observing Mr.

David Hogsed - Cross-examination
by Mr. McPherson

1 Fowler, I did not reenter the home.

2 Q All right. Okay. Do you know who would of been in
3 charge of that?

4 A I'm not a hundred percent sure. But I think
5 Investigator Randy Bogan was who we called out that day.

6 Q Okay. But you're not saying just because you might not
7 be able to get a fingerprint off a door or an object that
8 y'all don't try?

9 A No, I'm not saying because we didn't that no latent
10 prints were lifted, and I, I also don't know if any latent
11 prints were lifted from this crime scene. It doesn't mean
12 that an attempt was not made.

13 Q The same for touch DNA -- in other words, a good
14 investigation, you would at least attempt to locate
15 fingerprints, would you not?

16 A That's gonna depend on the type of crime it was
17 committed, and actually the investigator that is there,
18 whether or not they determine if latent print dusting should
19 of been done.

20 Q So, you're saying like the lead investigator would be
21 the one to order this stuff to be done?

22 A Yes, sir, that would be up to the, the crime scene lead
23 investigator. That would be a decision that he makes.

24 Q Jason Bryant?

25 A I'm talking about the crime scene investigator.

David Hogsted - Cross-examination
by Mr. McPherson

1 Q Okay. Who would that be?

2 A That would of been---

3 Q Bogan?

4 A ---Randy Bogan. He was the one that we called out that
5 day.

6 Q Okay. Now, you've also heard of a reagent called Blue
7 Star, have you not?

8 A I have.

9 Q And would you tell the ladies and gentlemen of the jury
10 what that is?

11 A Blue Star is actually a chemical that -- if, if you
12 watch any TV shows, you've heard the, probably heard the
13 term luminal. Blue Star is the company, is another reagent
14 that has come out that the Sheriff's Office has been using
15 because it's more friendly for us. But basically what it
16 does it's, it fluoresces where blood has been in, the
17 protein of blood, and we use it once the crime scene has
18 been cleaned up. If we can see the blood, there's no reason
19 to use Blue Star.

20 Q But if you can't see the blood and you think maybe the
21 blood has been cleaned up, then you do use that Blue Star to
22 see if perhaps somebody had tried to wash their blood off?

23 A On a person?

24 Q Not on a person. But on a floor or in a sink,
25 something like that.

David Hogsed - Cross-examination
by Mr. McPherson

- 1 A Again, that would depend on the crime scene
2 investigator and the type of crime that they're dealing
3 with.
- 4 Q Okay. And you don't know whether that was done in this
5 case or not, do you?
- 6 A No, sir, once I exited the home and the crime scene
7 unit that was on call responded, I left and handled other
8 calls throughout Spartanburg County that day.
- 9 Q But if you'd been in charge of this investigation, you
10 could of ordered this reagent of Blue Star to check around
11 to see if somebody cleaned up blood maybe in the bathroom or
12 anything like that, could you not?
- 13 A Could I have?
- 14 Q You could have, couldn't you?
- 15 A I could have. But I don't know that I could have.
- 16 Q All right. Now, you also were involved in other
17 matters in this case, were you not, dealing with---
- 18 A Yes, I was.
- 19 Q You searched a 1999 Dodge Caravan, correct?
- 20 A That's correct. The following date, December 14th, I
21 executed a search warrant on a green Caravan at our
22 Spartanburg County Shop.
- 23 Q And when you searched that Caravan, you found some
24 documents, did you not?
- 25 A I did.

David Hogsed - Cross-examination
by Mr. McPherson

1 Q In fact, they were on the right front floorboard,
2 correct?

3 A They were.

4 Q And one of those was a resume, correct?

5 A Yes, one was a resume type document for Robert Heydman
6 and the other was a work order type document showing the
7 name of Rick Fowler,

8 Q And you confiscated those documents, did you not?

9 A I did.

10 Q And do you know where they are today?

11 A They should be in evidence.

12 Q Could I see those two documents please?

13 SOLICITOR BARNETTE: Yes, sir.

14 Robert, get those two documents for him.

15 (Pause.)

16 SOLICITOR BARNETTE: No objection.

17 (Whereupon, the invoice was marked as Defendant's

18 Exhibit No. 1. The resume was marked as Defendant's Exhibit

19 No. 2. Both of the above were for identification purposes

20 only at this time.)

21 Q All right. I'm handing you what's been marked as
22 Defense Exhibit No. 1.

23 Do you recognize that document?

24 A Yes, sir, I do.

25 Q And that's the, that's the work order that you

David Hogsed - Cross-examination
by Mr. McPherson

1 retrieved from the floorboard of the green van?

2 A Yes, sir, it is.

3 Q And that van belonged to Robert Heydman, is that
4 correct?

5 A I don't know if it belonged to Mr. Heydman or not.

6 Q All right. Well, do you know who it belonged to?

7 A No, sir, I know it came out of this green van.

8 Q Okay. Then I'll show you what's marked as Defense
9 Exhibit No. 2.

10 Do you recognize that document?

11 A Yes, sir.

12 Q And what is it?

13 A That's the resume, I'm assuming it's the resume, resume
14 type document that I also found in the right rear
15 floorboard.

16 Q Okay. And you, you introduced both of those into
17 evidence, did you not?

18 A I did.

19 Q Now, that green van had been taken into I guess kind of
20 custody so y'all could search the vehicle, is that correct?

21 A I'm assuming so. It was already at the county shop. I
22 didn't even know it was at the county shop till I was asked
23 to execute the search warrant the following day.

24 MR. MCPHERSON: Okay. Your Honor, at this time I would
25 move to introduce into evidence Defense Exhibit 1 and 2.

David Hogsed - Cross-examination
by Mr. McPherson

1 THE COURT: Any objection?

2 SOLICITOR BARNETTE: No objection, Your Honor.

3 THE COURT: All right. In without objection.

4 (Whereupon, Defendant's Exhibit Nos. 1 and 2 were
5 received into evidence at this time.)

6 MR. MCPHERSON: If I could, I'd like to take a moment
7 to publish this to the jury.

8 THE COURT: Yes, sir.

9 MR. MCPHERSON: Judge, that's all the questions I have
10 of this witness at this time.

11 SOLICITOR BARNETTE: Just have a couple of follow-ups,
12 Your Honor.

13 THE COURT: Okay.

14 SOLICITOR BARNETTE: I apologize.

15 Can I have those back and I'm going to put them on the
16 screen?

17 So -- thank you.

18 Your Honor, permission to publish to the jury?

19 THE COURT: Sure. Go ahead.

20 REDIRECT EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q This is Defense, Defense Exhibit No. 1.

23 Is this what you saw in the van?

24 A Yes, sir, it is.

25 Q And it says all kinds of repairs, no jobs are too big

David Hogsed - Redirect examination
by Solicitor Barnette

1 or small?

2 A That's correct.

3 Q At the bottom, does that appear to be a telephone
4 number?

5 A It does.

6 Q What's the telephone number, sir?

7 A 864-680-5041.

8 Q Okay. And the top, this appears to be an invoice?

9 A It does.

10 Q And was that for December 11th, 2006?

11 A Yes, sir.

12 Q And when you went to the scene, it was December 13th,
13 2006?

14 A Yes, sir.

15 Q So, it appears that there was some work that was done
16 for Rick Fowler?

17 A That's correct.

18 Q Showing you Defendant's Exhibit No. 2. I think this is
19 the first page.

20 Can you read that for us, sir?

21 I know the jury can see it.

22 Just read it for the record.

23 A Robert L. Heydman, P.O. Box 156, Arcadia, South
24 Carolina, 29320. 864-680-5041.

25 Q Showing you Page 2 of that, does this appear to be a

David Hogsed - Redirect examination
by Solicitor Barnette

1 resume of some type I guess?

2 A Yes, sir, I -- when I first glanced at it and looked at
3 it, it appeared to be the resume showing the education and
4 employment record.

5 Q What grade did it say the defendant finished?

6 A Ninth grade.

7 Q Does it show a listing of jobs?

8 A It does.

9 Q Showing you State Exhibit No. 3 or Defendant's Exhibit,
10 Page 3 of Defendant's Exhibit No. 2. I apologize.

11 This all shows, shows different jobs that he did?

12 A Yes, sir.

13 Q If a person worked in a house or whatever, would you
14 expect possibly finding their fingerprints or DNA there?

15 A There's a possibility, yes.

16 Q But it wouldn't, it wouldn't surprise you if you did,
17 if they had worked in the house or been in the house?

18 A No, it wouldn't surprise me.

19 Q And you can't date the time that these fingerprints or
20 DNA would be found?

21 A No, we can not.

22 Q He asked you about Blue Star.

23 Blue Star is used to find blood---

24 A Yes, sir.

25 Q ---in a general location?

David Hogsted - Redirect examination
by Solicitor Barnette

1 And if you would put it on a person -- to find the
2 proteins?

3 A That's correct.

4 Q So, you really don't use it on people because people
5 have proteins on their skin and so forth?

6 A Yes, you may get what's called a false positive.

7 Q But the other thing too, you went to the crime scene
8 and looked in the bedroom, was there a question about blood
9 being everywhere?

10 A Was there a question about it?

11 Q Uh-huh. (Affirmative).

12 A It was visible. walls, headboard, wall behind the bed,
13 ceiling, all the way around the body.

14 Q So, there was -- was there any reason -- do you -- I
15 know you asked, answered the question, would you use Blue
16 Star, would you use Blue Star in this situation?

17 A Probably not.

18 Q Cause it wasn't a question of finding blood in this
19 situation, was there?

20 A No, no question at all.

21 Q Was all the blood in the bedroom as far as you can
22 tell?

23 A As far as I saw, yes, sir.

24 Q And thank you, sir. Please answer any questions -- let
25 me hand these back to these folks here.

David Hogsed - Recross examination
by Mr. McPherson

1 RECROSS EXAMINATION

2 BY MR. MCPHERSON:

3 Q Did you see blood scattered all over this bedroom?

4 So, it is a high probability that whoever did this
5 would of gotten blood on themselves, would they not?

6 A Yes, that's a high probability, yes, sir.

7 Q And if that person wanted to go in the bathroom or
8 something and wipe the blood off, then it's a high
9 probability that the victim's blood could of been in the
10 bathroom or in the, in the, in the bathtub somewhere?

11 A That is a possibility, yes, sir.

12 Q Okay. And so, it would be -- it could be a valuable
13 investigative tool, could it not?

14 A Yes, it could be.

15 Q All right. And as to, as to the exhibit that dealt
16 with all kinds of repairs, you don't know whether those
17 repairs had already been done or if this was going to be
18 done, do you?

19 A No, I do not.

20 MR. MCPHERSON: Have no further questions.

21 THE COURT: Anything else?

22 SOLICITOR BARNETTE: Just one, Your Honor.

23 REDIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Did you see Mrs. Fowler, the person that called in the

David Hogsed - Redirect examination
by Solicitor Barnette

1 phone call afterwards?

2 A I saw a female in the driveway. But I honestly didn't
3 pay any attention to who she was.

4 Q Did you see blood anywhere on her?

5 A No, I did not.

6 SOLICITOR BARNETTE: That's all the questions I have of
7 this witness, Your Honor.

8 RECROSS EXAMINATION

9 BY MR. MCPHERSON:

10 Q That doesn't mean she couldn't have cleaned it up if
11 she had blood on her, right?

12 A No, it does not.

13 Q So, you would agree if she had blood on her she could,
14 she could of run into the restroom somewhere and cleaned the
15 blood off?

16 A I'm assuming she could.

17 MR. MCPHERSON: Okay. That's all.

18 THE COURT: Is that it?

19 SOLICITOR BARNETTE: And then one more question.

20 REDIRECT EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q If you have blood on the clothes and everything, is
23 that so easy to get rid of?

24 A You would have to change clothes and probably, when we
25 got there with our response times, the washing machine would

David Hogsed - Redirect examination
by Solicitor Barnette

1 of been running.

2 THE COURT: Anything else?

3 MR. MCPHERSON: No, Your Honor.

4 THE COURT: You may step down.

5 SOLICITOR BARNETTE: Ask this witness be excused, Your
6 Honor.

7 MR. MCPHERSON: No objection.

8 SOLICITOR BARNETTE: May we approach, Your Honor?
9 He's excused, isn't he?

10 THE COURT: I think he said yes.

11 SOLICITOR BARNETTE: Yes.

12 (Whereupon, a bench conference was held out of the
13 hearing of the jury at this time.)

14 MR. MCPHERSON: Your Honor, I'd like to call Angela
15 Fowler to the stand.

16 SOLICITOR BARNETTE: Mrs. Fowler, if you would, go up
17 front please.

18 ANGELA FOWLER, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q Mrs. Fowler, if you would, state your full name for the
23 record please.

24 A Angela Dawn Fowler.

25 Q Okay. Make sure you talk loud so that these folks can

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 hear you back here.
- 2 okay?
- 3 A (Witness nods affirmatively.)
- 4 Q Mrs. Fowler, back in December of 2006, where did you
- 5 live at, ma'am?
- 6 A .
- 7 Q And who did you live there with, ma'am?
- 8 A Richard and my three children.
- 9 Q What's your three children's name, ma'am?
- 10 A Minor 1 Minor 2 and Minor 3
- 11 Q Where did ^{Minor 1} go to school at?
- 12 A Chapman High School.
- 13 Q Was she the oldest child?
- 14 A Yes, sir.
- 15 Q Did she have special needs?
- 16 A She did.
- 17 Q Could you tell the jury about her a little bit?
- 18 A She had seizures. She had a learning disability. She
- 19 was a little behind.
- 20 Q And what level does she function at?
- 21 A Seven, eight years old.
- 22 Q And your other two daughters, your middle daughter,
- 23 what's her name again?
- 24 A Minor 2
- 25 Q And where was she going to school at the time?

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 A Boiling Springs Junior High.
- 2 Q And your youngest daughter, what was her name?
- 3 A Minor 3 She went to Hendrix Elementary.
- 4 Q Before that day, was you working at that time?
- 5 A No, sir.
- 6 Q Was your husband working at that time, Richard Fowler?
- 7 A No, he wasn't.
- 8 Q And why was he not working?
- 9 A He had been hurt at work. Hurt his back at ExoPack.
- 10 Q And was he disabled?
- 11 A Yes, he was.
- 12 Q And did he have to use a cane to walk?
- 13 A Yes, he did.
- 14 Q And was he taking medications?
- 15 A Yes, sir.
- 16 Q What kind of medications was he taking?
- 17 A He was on a pain patch. He took Lortabs, Clonopin,
- 18 blood pressure medicine.
- 19 Q Did he spend a lot of time in the bed?
- 20 A He did.
- 21 Q And based off his injuries, had he received a
- 22 settlement on workman's comp?
- 23 A Yes, sir.
- 24 Q And how much was that settlement that he received?
- 25 A He got around 56,000.

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 Q Was it the total settlement before the legal fees and
2 everything, 90,000?
- 3 A Yes, sir.
- 4 Q And prior to this, did you take -- was there cashier's
5 checks from some of the money y'all received?
- 6 A Yes, sir.
- 7 Q And where was those cashier's checks placed?
- 8 A They were at Palmetto Bank in a security deposit box.
- 9 Q And who was that security deposit box -- what -- who's
10 name was it in?
- 11 A Richard's.
- 12 Q And do you know how much the checks was that was placed
13 in that safety deposit box?
- 14 A Not all of them, no. There was some for 50,000. Some
15 for 20. I'm not sure how he did all of them.
- 16 Q And, and those checks was in his name?
- 17 A Yes.
- 18 Q Did you ever go with him to the safety deposit box?
- 19 A Yeah, the first day he opened it.
- 20 Q Going back, do you know the defendant, Robert Heydman?
- 21 A Yes, sir.
- 22 Q How do you know him, ma'am?
- 23 A We met him at church, Una Baptist Church.
- 24 Q And when did you first meet him?
- 25 A At the church in like March or April of 2006.

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 Q And what did, what did he do there, ma'am, in the
2 church?
- 3 A He was over the youth in the church.
- 4 Q Did you-all get to know each other?
- 5 A Yes, sir.
- 6 Q Tell the jury how you got to know him and how often did
7 y'all have contact.
- 8 A We became real good friends. We talked at church, on
9 the phone, and then we got closer, and he spent time with
10 the kids at church and got to know Richard also.
- 11 Q Would y'all talk to each other?
- 12 A Yes, sir, on the phone.
- 13 Q On the phone?
- 14 A Uh-huh. (Affirmative).
- 15 Q And would you call him on your cell phone?
- 16 A Yes, sir.
- 17 Q And would you call him back or would he call you back
18 on his cell phone?
- 19 A Yes, sir.
- 20 Q Did you use to meet him places?
- 21 A Yes, sir, at time.
- 22 Q What places would you meet him at?
- 23 A At the laundromat near Kassie's school.
- 24 Q Near Hendrix?
- 25 A Yes, sir.

Angela Fowler - Direct examination
by Solicitor Barnette

1 Q And then is that area called Springfield Crossing?

2 A Right.

3 Q Was he doing, coming over to look -- did he use to come
4 over to y'all's house?

5 A He had been over there to take some stuff off Richard
6 wanted hauled off. He came over to do that.

7 Q Did he know all of your kids?

8 A Yes.

9 Q Was that from church?

10 A Uh-huh. (Affirmative).

11 Q Did he also was gonna do work for y'all, had done work
12 for y'all?

13 A Yes, he had hauled a bunch of stuff off for us a couple
14 days before.

15 Q Okay. Did, did you talk to him about your husband?

16 A I did.

17 Q What did you tell him about your husband?

18 A How abusive he was and how he was with the kids and
19 just how bad we lived in our situation at home.

20 Q Would you say -- what kind of abuse was it?

21 A Mainly verbal abuse. But Richard had pulled a knife on
22 me before.

23 Q All right. What did Mr. Heydman -- and can you
24 identify him in the courtroom here today?

25 Do you see him?

Angela Fowler - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q Could you point to him please and describe what he's
3 wearing?

4 A He's sitting in with the beige suit on, white shirt,
5 glasses.

6 SOLICITOR BARNETTE: Your Honor, I would have the
7 record reflect that she's identified the defendant.

8 MR. MCPHERSON: No objection.

9 THE COURT: All right.

10 Q What did he say what he could do about it?

11 A He told me he could take care of the problem if it
12 didn't get better at home with Richard.

13 Q And when you say took care of the problem, what did you
14 understand that to be?

15 A That he would take care of Richard, kill Richard.

16 Q On December 12th, 2006, did you talk to him about
17 that situation?

18 A I did.

19 Q And had you talked about it before?

20 A Yes, we had.

21 Q And what was gonna happen?

22 When was he gonna do it?

23 A On the next day he said to leave the door unlocked and
24 he would come take care of Richard when I took the kids to
25 school.

Angela Fowler - Direct examination
by Solicitor Barnette

1 Q Did he call -- the morning of December 13th, 2006,
2 did he call and leave you voice mails?

3 A Yes, he did.

4 Q And on those voice mails, what did he tell you?

5 A To make sure he left the door open and that if he took
6 care of it he would leave the back carport door propped
7 open.

8 Q That was the carport door, is that right?

9 A Carport door.

10 Q Did you talk to him around seven o'clock that morning?

11 A Yes, sir.

12 Q And what did y'all talk about then?

13 A Well, he was asking how the kids were. He talked to
14 Kassie, wanted to know if everybody was okay, and if things
15 got better the night before with Richard.

16 Q What did you tell him?

17 A I told him we were fine, but things didn't really get
18 better. We just all went to bed and he just reminded me to
19 leave the door open.

20 Q And did you leave the carport door opened?

21 A Yes, sir.

22 Q Did your middle child, did she say good-bye to her dad
23 before she left that morning?

24 A Yes, sir.

25 Q Did you take, did you take two of your children to

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 school that morning?
- 2 A I did.
- 3 Q Which two did you take with you?
- 4 A The two, the middle one and, and the smallest one,
- 5 Kassie and ^{Minor 2}
- 6 Q And where did -- what time did you leave approximately?
- 7 A 7:15, 7:20.
- 8 Q In the morning?
- 9 A Yes, sir.
- 10 Q And where did you go first?
- 11 A To Hendrix Elementary.
- 12 Q And Hendrix is about, I know you've seen the map or
- 13 whatever, about a mile and eighth, .8 or whatever, to the
- 14 school?
- 15 A Right.
- 16 Q Did you drop her off there?
- 17 A I did. I dropped her off.
- 18 Q After you dropped her off there, where did you go then?
- 19 A I went up Valley Falls Road to Number 9 and took ^{Minor 2}
- 20 to the junior high school.
- 21 Q And is this Boiling Springs Junior High?
- 22 A Boiling Springs Junior High.
- 23 Q And where is that located, ma'am?
- 24 A Up Highway 9 like toward Lake Bowen kind of.
- 25 Q Is that on the other side of Boiling Springs?

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 A Right.
- 2 Q How is the traffic that morning?
- 3 A Not real bad. That early it's not as busy as -- but
- 4 it's just a little hectic.
- 5 Q What time did she have to be at school that day?
- 6 A 7:40.
- 7 Q Did you get her there on time?
- 8 A Yes, sir.
- 9 Q As you was driving up there, did you receive a phone
- 10 call?
- 11 A Yes, sir, I did.
- 12 Q Who did you receive the phone call from?
- 13 A From Robert.
- 14 Q And what did y'all talk about?
- 15 A He told me to make sure we cleared all of our voice
- 16 mail messages off of our phones for that, he had left and he
- 17 had left some on ^{Minor 2} phone.
- 18 Q Did you do that?
- 19 A Yes, sir.
- 20 Q And what else did he tell you?
- 21 A He told me to take a little time coming home so he
- 22 could take care of Richard.
- 23 Q And driving back on Route 9, did you pass several gas
- 24 stations?
- 25 A I did.

Angela Fowler - Direct examination
by Solicitor Barnette

1 Q Which gas station did you go to?

2 A To the Ingle's at Springfield near our house.

3 Q And did you receive a receipt from that?

4 A Yes.

5 Q And did you keep receipts and things like that?

6 A Yes, sir.

7 Q Show you what's been marked as State's Exhibit 8 for ID
8 purposes.

9 Is this the receipt you received from Ingle's?

10 A Yes, sir.

11 Q And that is the actual receipt you received from the
12 pump there?

13 A Right.

14 Q And this is the Ingle's at Springfield Crossing?

15 A Yes, sir.

16 SOLICITOR BARNETTE: Your Honor, at this time I'd like
17 to move State's Exhibit No. 8 into evidence.

18 MR. MCPHERSON: No objection.

19 THE COURT: In without objection.

20 (Whereupon, State's Exhibit No. 8 was received into
21 evidence at this time.)

22 SOLICITOR BARNETTE: Your Honor, permission to publish
23 it at this time?

24 THE COURT: Yes, sir. You got to plug it back in.

25 SOLICITOR BARNETTE: Yeah, I'll have to plug it in.

Angela Fowler - Direct examination
by Solicitor Barnette

1 I'll move on while it's warming up.

2 Q After you got gas, what did you do then, ma'am?

3 A I went home and pulled up in the driveway and saw the
4 carport door propped open.

5 Q I'm gonna have to ask you to talk louder. I apologize
6 for this right here. It makes it hard to hear.

7 A I went home and pulled up in the driveway and the
8 carport door was propped open. So, I just sat in my car and
9 called 9-1-1.

10 Q And you knew that was the signal?

11 A Uh-huh. (Affirmative).

12 Q And when you called 9-1-1, did you -- what did you tell
13 9-1-1 or tell or what did you -- did you report it as a
14 break-in?

15 A Yes, sir.

16 Q And did the police respond?

17 A Yes, sir.

18 Q Who else came to the scene?

19 A I called my mother and she came over there.

20 Q And how far is your mother away from there?

21 A Maybe five minutes from there.

22 Q Did your mom know about what was going on between you
23 and Mr. Heydman?

24 A No.

25 Q As she was standing -- as you was standing there, did

Angela Fowler - Direct examination
by Solicitor Barnette

1 you call Mr. Heydman then?

2 A I called her, called him from my mom's phone.

3 Q And why did you use your mom's phone?

4 A My cell phone had died.

5 Q Okay. Did you call 9-1-1 before you made those phone
6 calls?

7 A Right.

8 Q And what did Mr. -- what did you tell Mr. Heydman?

9 A I told him that Richard had passed away, could he get
10 in touch with your preacher.

11 Q And what did he say to you?

12 A He said oh, man, and he said he would get in touch with
13 the preacher.

14 Q And why, why would you have that conversation with him
15 like that?

16 A Cause my mother didn't know what was going on.

17 Q Did you want her to know what was going on?

18 A No.

19 Q When Investigator Bryant came to talk to you, did you
20 tell him the truth the first time?

21 A No.

22 Q Why didn't you tell him the truth?

23 A I was scared. I didn't really know what to think.

24 Q Later on did you tell law enforcement what happened?

25 A Yes, sir.

Angela Fowler - Direct examination
by Solicitor Barnette

1 Q Did you tell them about the plan?

2 A Did I tell them -- I'm sorry?

3 Q You told them about the plans, about leaving the door
4 opened?

5 A Yes, sir.

6 Q And did you tell them originally---

7 MR. MCPHERSON: Your Honor, I'm gonna object to him
8 leading the witness.

9 THE COURT: (Nods affirmatively.)

10 SOLICITOR BARNETTE: Okay. I'll, I'll rephrase the
11 question, Your Honor.

12 Q Did -- why did you tell them the story that you stab,
13 that he tried to stab you first and you tried to stab him?

14 A Cause I was scared and trying to cover-up for Robert.
15 I didn't know what was going on. I didn't know how to -- I
16 was just in shock. So, I just was trying to cover up for
17 him.

18 Q But later on did you tell them about him?

19 A Yes, sir.

20 Q Had you talked to anybody else before about your
21 husband's abuse?

22 A Yes, sir.

23 Q Who else had you talked to it about it?

24 A A friend of mine, Shawn, and Pat, and my preacher from
25 church and one of my Sunday school teachers.

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 Q Had you talked to Shawn Porter before about doing
2 something about Richard?
- 3 A Yes, sir.
- 4 Q And you'd asked him about trying to find somebody that
5 could do that for you?
- 6 A Yes, sir.
- 7 Q So, you talked to other folks about this?
- 8 A Right.
- 9 Q And when you went back that day, did you think Richard
10 Heydman would do it?
- 11 A I wasn't sure. I didn't -- he said he would. But I
12 didn't think he would actually do it.
- 13 Q Mrs. Bradley, did you have a conversation with her in
14 the jail?
- 15 A Yes.
- 16 Q In that conversation, did you tell her about the plan?
- 17 A I did.
- 18 Q And did you tell her about meeting Mr. Heydman?
- 19 A Yes, sir.
- 20 Q Did you tell her where you had met him?
- 21 A Yes, sir.
- 22 Q Did you tell her about the door?
- 23 A Yes, sir.
- 24 Q Did you tell her---
- 25 MR. MCPHERSON: Judge, I'm gonna object to him leading

Angela Fowler - Direct examination
by Solicitor Barnette

1 the witness. I mean he can ask her what did she tell
2 Mrs. Bradley.

3 Q What did you tell Mrs. Bradley then?

4 A I told her about meeting Robert and asking him to take
5 care of Richard. I told her the signs of leaving the door
6 open, and I told her about the, my bond hearing being
7 denied, the first hearing I had, and I just told her what
8 had happened.

9 Q Did you tell her about the -- I'll rephrase the
10 question.

11 Did, did you tell her anything else about, from the
12 bond hearing?

13 A I told her -- I described the room to her, the way you
14 had talked about it in the courtroom.

15 Q And where had you heard that from?

16 A From my bond hearing and I'd also been told some from
17 my sister.

18 Q Okay. So, when you saw Mrs. Bradley, was this a period
19 of time after the bond hearing?

20 A Yes, sir.

21 Q In the bond hearing, was it described?

22 A Yes, sir.

23 Q Your clothing, did -- what clothing did you wear that
24 day?

25 A I had on a pink T-shirt with blue fleece like pajama

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 pants.
- 2 Q And was you wearing those clothes before you went to
- 3 take the girls to school?
- 4 A Yes, sir.
- 5 Q Is that the same clothes you was wearing when the
- 6 Sheriff's Department arrived there?
- 7 A Yes, sir.
- 8 Q Did you -- did you strike your husband that morning?
- 9 A No, sir.
- 10 Q Did you stab your husband that morning?
- 11 A No, sir.
- 12 Q Did you -- was you involved in the plan to kill your
- 13 husband?
- 14 A Yes, sir.
- 15 Q Were you the person who actually killed him?
- 16 A No, sir.
- 17 Q Now, you've pled guilty to conspiracy to commit murder,
- 18 conspiracy to kidnap, and accessory after the fact of
- 19 murder?
- 20 A Yes, sir.
- 21 Q That carries up to 50 years in prison?
- 22 A (Witness nods affirmatively.)
- 23 Yes, sir.
- 24 Q Who's gonna be the person that sentences you on that?
- 25 Who will be the person that will sentence you,

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 determine your sentence?
- 2 A The judge.
- 3 Q Which judge is that?
- 4 A Judge Burch I think.
- 5 Q This -- the gentleman sitting up on the bench?
- 6 A Okay. Yes, sir.
- 7 Q Have you been promised anything?
- 8 A No, sir.
- 9 Q Have you been threatened in anyway?
- 10 A No, sir.
- 11 Q Now, you didn't plead guilty to murder?
- 12 A No.
- 13 Q You realize murder carries a life sentence?
- 14 A Yes, sir.
- 15 Q Fifty years -- how old are you, ma'am?
- 16 A I'm 38.
- 17 Q How old would you be in 50 years?
- 18 A Eighty-eight.
- 19 Q And half that time, how old would you be?
- 20 A Sixty-eight.
- 21 Q Why would you do this, ma'am?
- 22 A To get my children out of living in the life they were
- 23 living and I didn't know what else to do.
- 24 Q Are you also responsible for the death of Richard
- 25 Fowler?

Angela Fowler - Direct examination
by Solicitor Barnette

- 1 A Yes, sir.
- 2 Q Were you one of the causes of his death?
- 3 A Yes, sir.
- 4 Q Is he dead because of you and Robert Heydman?
- 5 A Yes, sir.
- 6 SOLICITOR BARNETTE: One moment, Your Honor, please.
- 7 (Pause.)
- 8 Q Ma'am, what is your -- what was your cell phone number?
- 9 A 357-5403.
- 10 Q That's 357-5403?
- 11 A Yes, sir.
- 12 Q What is the -- and area code 864?
- 13 A 864.
- 14 Q Please answer any questions Mr. McPherson may have for
- 15 you, ma'am.
- 16 CROSS-EXAMINATION
- 17 BY MR. MCPHERSON:
- 18 Q Ma'am, you would agree with me, would you not, that
- 19 you're a liar?
- 20 A No, sir.
- 21 Q So, you didn't lie, you didn't lie to the investigators
- 22 or to the police when they first showed up at your house?
- 23 A I've told them the whole story now.
- 24 Q You told them, when they initially arrived, that it was
- 25 a burglary, did you not, that you suspected a burglary?

Angela Fowler - Cross-examination
by Mr. McPherson

1 Isn't that what you told them?

2 A Yes, sir.

3 Q And that was a lie, wasn't it?

4 A Yes, sir.

5 Q And so, you would agree when you started off lying to
6 the, the police, correct?

7 A Yes, sir.

8 Q And even when you went to the Sheriff's office, you
9 were still lying to them, isn't that correct?

10 A No, sir.

11 Q When you went to the Sheriff's Office, you were
12 maintaining your story until they started confronting you
13 with other evidence, isn't that correct?

14 A Yes, sir.

15 Q So, you were lying to them at the Sheriff's Office,
16 correct?

17 A Yes, sir.

18 Q All right. Now, you would admit to this jury that when
19 you were being questioned you told one of the officers that
20 was questioning you that you stabbed your husband?

21 Didn't you tell them that?

22 A Yes, sir.

23 Q But now you're saying that's a lie, right?

24 A I didn't stab my husband.

25 Q So, you lied again even though you admitted to killing

Angela Fowler - Cross-examination
by Mr. McPherson

- 1 your husband, right?
- 2 Isn't that right?
- 3 Yes or no?
- 4 A Yes, sir.
- 5 Q And you were charged initially as an accessory before
- 6 the fact and an accessory after the fact?
- 7 Accessory before the fact you realized carried the same
- 8 sentence as murder, did you not?
- 9 A It was 30 to life is what they told me.
- 10 Q Right.
- 11 Thirty to life without the possibility of parole,
- 12 correct?
- 13 A Yes, sir.
- 14 Q And later on you were charged with murder, were you
- 15 not?
- 16 A No, I haven't been charged with murder.
- 17 MR. MCPHERSON: I would like to have an exhibit marked.
- 18 SOLICITOR BARNETTE: Your Honor, may we approach the
- 19 bench for a second?
- 20 (Whereupon, a bench conference was held out of the
- 21 hearing of the jury at this time.)
- 22 (Whereupon, an indictment was marked as Defendant's
- 23 Exhibit No. 3 for identification purposes only at this
- 24 time.)
- 25 Q I'm showing you what's marked as Defense Exhibit No. 3.

Angela Fowler - Cross-examination
by Mr. McPherson

1 I want you to take a moment to look at that document.

2 A (Witness complies.)

3 Q Have you had a chance to look at that document?

4 A Yes, sir.

5 Q You would agree with me that it's an indictment?

6 A Yes, sir.

7 Q And it's an indictment for murder?

8 A Yes, sir.

9 Q And it's an indictment indicting Dawn, Angela Dawn
10 Fowler?

11 A Yes, sir.

12 Q And that's you, correct?

13 A Yes, sir.

14 Q So, you would agree with me that you were indicted for
15 murder?

16 A Yes, sir.

17 MR. MCPHERSON: Your Honor, at this time I would move
18 to introduce Defense Exhibit 3 into evidence.

19 SOLICITOR BARNETTE: I don't have an objection. She
20 was never formally arraigned on that. But I have no
21 objection. It was true billed.

22 THE COURT: Without objection.

23 MR. MCPHERSON: Thank you.

24 (Whereupon, Defendant's Exhibit No. 3 was received into
25 evidence at this time.)

Angela Fowler - Cross-examination
by Mr. McPherson

1 Q Now -- so, as an accessory before the fact, you were
2 facing 30 years to life in prison, right?

3 A Yes, sir.

4 Q With murder, you were also facing 30 years to life in
5 prison, correct?

6 A Yes, sir.

7 Q And as an accessory after the fact, you're facing like
8 15 years in prison, right?

9 A Yes, sir.

10 Q And they keep telling you what you pled to you, you
11 could be sentenced up to 15, up to 50 years, right?

12 A Yes, sir.

13 Q But you could also be sentenced to zero years, isn't
14 that correct?

15 A They said zero to fifty.

16 Q Right.

17 So, it's possible for you to come out with somewhere
18 like five, ten years in prison even though at one point you
19 admitted to stabbing your husband, isn't that correct?

20 A Yes, sir.

21 Q So, you have everything to gain by testifying against
22 Mr. Heydman, don't you?

23 A No, sir.

24 Q Oh, you've already got a sweetheart deal from the
25 State, wouldn't you agree with that?

Angela Fowler - Cross-examination
by Mr. McPherson

1 A No, sir.

2 Q You don't?

3 Now, you mentioned Shawn Porter, right?

4 A Yes, sir.

5 Q And this, this was years ago when you were talking to
6 Shawn Porter if he knew anybody that would kill your
7 husband, wasn't it?

8 A No, I didn't ask him if he had, knew anybody that would
9 kill him.

10 Q What did you ask him exactly?

11 A To kick his butt.

12 Q I'm sorry?

13 A To kick his butt.

14 Q It was more to it than that, was it not?

15 A No, it wasn't.

16 Q The truth is you asked him two or three times if he
17 knew anybody that would get rid of your husband, right?

18 A No, sir.

19 Q So, you deny that?

20 A Yes, sir.

21 Q Now, the other thing that puzzles me is that you keep
22 referring to Mr. Fowler as your husband, but you really
23 weren't even married to him, were you?

24 A No, sir.

25 Q You had -- y'all had gotten a divorce years earlier,

Angela Fowler - Cross-examination
by Mr. McPherson

- 1 hadn't you?
- 2 A Yes, sir.
- 3 Q And so, even though you claim you were having all these
- 4 so called problems with him, you could of just picked up
- 5 your kids and walked out because there was no marriage
- 6 strings attached, isn't that correct?
- 7 A That's correct. But it's not that easy.
- 8 Q I'm sorry?
- 9 A It's not that easy.
- 10 Q But you could have, couldn't you?
- 11 Instead of asking people to get rid of your husband,
- 12 you could of just walked out and taken your kids with you,
- 13 couldn't you?
- 14 A No, sir.
- 15 Q Before you pled the other day you were working, weren't
- 16 you?
- 17 A No, I wasn't. Yes, I was working just recently.
- 18 Q Yes, recently.
- 19 A Yes.
- 20 Q So, you're able to hold down a job, are you not?
- 21 A Yes, sir.
- 22 Q And you're able to take care of your kids on your own,
- 23 are you not?
- 24 A Yes, sir.
- 25 Q So, you could of just walked out with your kids, right?

Angela Fowler - Cross-examination
by Mr. McPherson

1 A Yes, sir.

2 Q Now, and your husband was ordered to pay you child
3 support when you got, when y'all got the divorce, wasn't he?

4 A Yes, sir.

5 Q All right. Now -- and now, when you talked to
6 Investigator Lindsey, you told him that you had only struck
7 up this conversation with Mr. Heydman about taking care of
8 your husband a couple of weeks earlier, is that correct?

9 A Yes, sir.

10 Q Is that true or not true?

11 A Yeah, we started talking about it and planning a couple
12 of weeks earlier.

13 Q Is that true or not true?

14 A Yes, sir.

15 Q So, you'd only been talking about it for two weeks?

16 So, your testimony is in two weeks time you were able
17 to convince him to murder your husband?

18 A We talked about the---

19 Q Is that what you're saying?

20 A ---problems and then yes, we talked about it.

21 Q In two weeks time you talked him into doing your
22 husband in, correct?

23 A Yes, sir.

24 Q Now, when you talked to the police, when you gave them
25 the statements that you gave them, you indicated you never

Angela Fowler - Cross-examination
by Mr. McPherson

- 1 went into the house until the, until the police department
2 arrived, isn't that correct?
- 3 A Yes, sir.
- 4 Q Is that true or not true?
- 5 A That's true.
- 6 Q Isn't it true that you had a conversation with Patricia
7 Bradley while y'all were at the jail together?
- 8 A Yes, sir.
- 9 Q And isn't it true you told her you went into that room?
- 10 A No, I never went back in the house.
- 11 Q Isn't it true you told her that Richard was asleep in
12 the bed and that when you went in the bedroom you could tell
13 that he had been beaten and that there was blood everywhere?
14 You told her that, didn't you?
- 15 A No, I didn't. I didn't go back in the house.
- 16 Q So, you deny that, don't you?
- 17 A Uh-huh. (Affirmative).
- 18 Q And isn't it true one time you asked Patricia Bradley
19 if you could use her son to beat the shit out of Richard, I
20 mean out of your husband, isn't that correct?
- 21 A Yes, sir.
- 22 Q So, you really just despised him, didn't you?
- 23 A No, sir.
- 24 Q In fact, you would take his pills, his pain pills and
25 give them to other people, would you, wouldn't you?

Angela Fowler - Cross-examination
by Mr. McPherson

1 A I have.

2 Q Even though you knew he needed them, you would take
3 them and give them to, to your friends, right?

4 A I have.

5 Q And one of them being Shawn Porter?

6 A Yes, sir.

7 Q Now, do you remember when you called 9-1-1 -- and have
8 you had an opportunity to hear that tape?

9 A No, sir.

10 Q And they asked you if anyone was in the house and you
11 told them no.

12 Do you remember that?

13 A Yes, sir.

14 Q Why did you tell them no if you knew your husband had
15 been in that house when you left?

16 A Cause I was confused, in shock.

17 Q It's because you were lying, isn't that right?

18 A No, sir.

19 Q That's not right?

20 You know, it would seem to me the first thing you would
21 want to know when you come home and see a door opened is my
22 husband all right, is he there, is he not there.

23 That would be the first thing you'd do before you
24 called the police, isn't that right?

25 A Yes, sir.

Angela Fowler - Cross-examination
by Mr. McPherson

1 Q But you didn't do that, did you?

2 A No, sir.

3 Q Now, you, you been hoping, that out of this mess you
4 created, that you won't get any more than about 15, 20 years
5 at the most, right?

6 That's what you're hoping for, isn't it, at the most?

7 A Well, I'd hope for the best.

8 Q In fact, you would like to just get five years, isn't
9 that right?

10 A No, sir.

11 Q You've never mentioned five years?

12 A No, sir.

13 Q And your husband was a handicap, was handicapped, isn't
14 that correct?

15 A He had to walk some with a cane, yes.

16 Q And did he drive?

17 A He drove the day before he was killed.

18 Q How many cars did y'all have?

19 A Just one.

20 Q What kind of car was that?

21 A A Ford Taurus, Toyota Camry.

22 Q And Mr. Heydman, did you know what kind of vehicle he
23 drove?

24 A I'm sorry?

25 Q Do you know what kind of vehicle Mr. Heydman normally

Angela Fowler - Cross-examination
by Mr. McPherson

1 drove?

2 A A green minivan.

3 Q A green minivan?

4 A Yes, sir.

5 Q And Mr. Heydman would sometimes do work for you and
6 your husband?

7 A He has, yeah.

8 Q And he's kind of like a handyman, is he not?

9 A Yes, sir.

10 Q And your husband needed a handicapped ramp, isn't that
11 true?

12 A He had talked about it. I don't, I don't know.

13 Q So, it would be feasible for Mr. Heydman to come to
14 your house with a proposal to build a handicapped ramp,
15 wouldn't it?

16 A We haven't talked to him about it at that time.

17 Q But that would be feasible in your opinion, would it
18 not?

19 A Not if we hadn't talked to him.

20 Q Now, when you were talking with Mrs. Bradley, I'm
21 bouncing back, when you were talking to Mrs. Bradley in the
22 jail, you described to her the person that allegedly was
23 involved in this matter -- you told her that he was a
24 preacher at a Baptist Church in Una, did you not?

25 A I told her he was the, over the youth at the church.

Angela Fowler - Cross-examination
by Mr. McPherson

1 Q So, you deny telling her he was like a preacher at the
2 Una Baptist Church?

3 A I told her he was the youth pastor over the youth.

4 Q I'm asking you are you denying that statement?

5 A Yes, sir.

6 Q Who was the preacher at Una Baptist Church?

7 A Bill Raines.

8 MR. MCPHERSON: I have no further questions.

9 SOLICITOR BARNETTE: Just a couple on redirect, Your
10 Honor.

11 REDIRECT EXAMINATION

12 BY SOLICITOR BARNETTE:

13 Q So, he's been in the house before?

14 A Yes, sir.

15 Q He's been in there more than one time?

16 A Yes, sir.

17 Q He's done work in the house---

18 A Yeah.

19 Q ---or been in the house doing work?

20 A Right.

21 Q So, would it be unusual to find fingerprints or
22 anything from him in the house, that house?

23 A Right.

24 Q When you called 9-1-1, was that part of the plan?

25 A Yes, sir.

Angela Fowler - Redirect examination
by Solicitor Barnette

1 Q And at the bond hearing, did you hear a vivid
2 description of the scene and everything at the bond hearing?

3 A Yes, sir.

4 Q Who did you hear that from?

5 A From you.

6 Q And is that what you passed on to Mrs. Bradley?

7 A Yes, sir.

8 SOLICITOR BARNETTE: One thing I did, I was going to --
9 I want to pass on to the jury, Your Honor. I'd like to
10 publish -- I want to hand it to them essentially. I think
11 it's State Exhibit No. 8.

12 Is that the Ingle's receipt, ma'am?

13 A Yes, sir.

14 Q And what was the time on it?

15 A 7:56 a.m.

16 Q Is that when you received the receipt?

17 A Yes, sir.

18 SOLICITOR BARNETTE: Your Honor, if I can publish this
19 to the jury?

20 THE COURT: Sure.

21 Q So, ma'am, have you been promised a sentence?

22 A No, sir.

23 Q Was this a straight up plea?

24 A Yes, sir.

25 Q No recommendations?

Angela Fowler - Redirect examination
by Solicitor Barnette

1 A Yes, sir.

2 Q And who's the person sentencing you?

3 A Judge Burch.

4 Q All right. Thank you, ma'am.

5 THE COURT: Any further questions?

6 RE CROSS EXAMINATION

7 BY MR. MCPHERSON:

8 Q You would agree that when Mr. Heydman sometimes would
9 do, do work for y'all that he would go to Richard and
10 Richard would tell him to do this or do that and sometimes
11 you were left out of the picture?

12 A Yes, they were friends.

13 Q So, as far as building a ramp, that could of just come
14 straight from Richard to Mr. Heydman, isn't that correct?

15 A Well, normally he would of told me something like that.

16 Q Okay. But it could of come straight from Richard?

17 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
18 this. I don't know if that's within the scope of redirect
19 or not.

20 THE COURT: Anything further on that?

21 MR. MCPHERSON: No, Your Honor.

22 THE COURT: Okay. Well, it's already answered.

23 You may step down. Thank you.

24 SOLICITOR BARNETTE: May we approach, Your Honor?

25 THE COURT: Yes, sir.

1 (Whereupon, a bench conference was held out of the
2 hearing of the jury at this time.)

3 THE COURT: It's 15 after 5:00. We're going to stop
4 for the evening. I'm gonna ask you to be back here at
5 9:30 in morning. We will resume the trial then.

6 However, I do need to remind you not to discuss this
7 case with anyone. Don't even go home and discuss it with
8 any family members. However, if you've got family members
9 at home, let them handle any phone calls or any knocks at
10 the door or any communication that might be attempted.

11 I'm also gonna instruct you at this time to avoid
12 watching or reading any news or press coverage until after
13 this case is completed. It's all right to watch the
14 national news, but just avoid any local news until we're
15 through with this case.

16 Anybody got any questions about our timing?

17 (No response.)

18 THE COURT: All right. 9:30 in the morning we'll see
19 you then.

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

22 THE COURT: All right. Counsel, if I can see y'all up
23 here before we quit for the evening.

24 (Whereupon, a bench conference was held out of the
25 hearing of the jury at this time.)

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(whereupon, Court was in recess for the evening.)

1 Thursday, September 25th, 2008

2

3 THE COURT: All right. So y'all won't be blaming me
4 for the holdup this morning, we got one juror who just
5 showed up. We got another one missing. So, we're tracing
6 it out.

7 Anything for the record while we're waiting?

8 MR. MCPHERSON: Not from the defense.

9 SOLICITOR BARNETTE: Not from the State, Your Honor.

10 THE COURT: We got the Clerk's Office trying to phone
11 his home phone now trying to find out what we can. If
12 everybody will just sit tight.

13 (Whereupon, the juror was picked up by the Sheriff's
14 Department and brought to the courtroom where Judge Burch
15 had an off-the-record discussion with the juror.)

16 THE COURT: Okay. Other than a delay, there's no harm
17 done. He's got a brother and he had to take his brother to
18 work this morning, and he thought he could catch some more
19 sleep, and he went back home and he was relying on his
20 mother to wake him up. And apparently his backup system
21 failed him and he's very apologetic.

22 So, we'll move on. He'll suffer his punishment from
23 the other 13 back there.

24 SOLICITOR BARNETTE: Your Honor, if I can just put on
25 the record, the only concern we had obviously is the

1 Sheriff's Department had to pick him up and bring him here.
2 I don't know -- I'm sure they did a good job and everything.
3 But I don't know if that would possibly taint him.

4 THE COURT: Did you pick him up?

5 OFFICER: Yes, sir, we did. He was not handcuffed and
6 my patrol car does not have a cage in it. So, he was free.
7 He was not detained. We just transported him.

8 THE COURT: He's, he's very embarrassed and very
9 apologetic. So, I'm, I'm confident he's okay.

10 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

11 THE COURT: All right. I expect he's already caught a
12 little bit of a third degree back there. So, we're ready
13 whenever you-all are.

14 SOLICITOR BARNETTE: State's ready, Your Honor.

15 MR. MCPHERSON: Defense is ready.

16 THE COURT: Okay. Bring them in.

17 While they're coming in, y'all poll, waive polling of
18 the jury since I gave them those instructions about the
19 press or do you want me to have them polled?

20 SOLICITOR BARNETTE: Yes, sir, we do.

21 MR. MCPHERSON: Yes, sir.

22 (Whereupon, the following takes place within the
23 presence of the jury.)

24 THE COURT: Madam Clerk, I'm going to need you to poll
25 the jury and make sure they haven't read or listened to or

1 heard any coverage.

2 (Whereupon, the following takes place within the
3 presence of the jury panel.)

4 THE COURT: Good morning, ladies and gentlemen.

5 All right. We're ready to go now, and what we're gonna
6 do, since I gave you some specific instructions before you
7 left last night, we're gonna poll you and make sure we
8 hadn't had any contact or any news coverage that has been
9 read or heard.

10 So, Madam Clerk will poll each one of you and pose the
11 question to you. If you will respond either yes or no
12 please.

13 (Whereupon, the jury was polled concerning viewing or
14 reading any news account of this trial and all jurors
15 answered that they had not read or heard anything concerning
16 this trial.)

17 THE COURT: Anything further of the jury polling from
18 the State or the defense?

19 MR. MCPHERSON: No, Your Honor.

20 SOLICITOR BARNETTE: No, Your Honor.

21 THE COURT: You may proceed.

22 SOLICITOR BARNETTE: Your Honor, I'd call Minor 2
23 Minor 2 to the stand please. Minor 2. Excuse me.

24 Minor 2, being first duly
25 sworn, testified as follows:

Minor 2 r - Direct examination
by Solicitor Barnette

1 DIRECT EXAMINATION

2 BY SOLICITOR BARNETTE:

3 Q If you would, ma'am, please give me your full name for
4 the record.

5 A Minor 2

6 Q And Miss , where do you go to school at now?

7 A Boiling Springs High School.

8 Q And I'm gonna have to ask you to talk a little bit
9 louder so these folks can hear you.

10 A okay.

11 Q I know it's hard.

12 where did you go to school back on December 13th,
13 2006?

14 A Boiling Springs Junior High.

15 Q And where did you live at then, ma'am?

16 A in Boiling Springs.

17 Q And who did you live there with, ma'am?

18 A My mother and father and my two sisters.

19 Q And what's your mom's name?

20 A Angela Dawn Fowler.

21 Q And what's your father's name?

22 A Richard Craig Fowler.

23 Q Back on December 13th, 2006, did you go to school
24 that day?

25 A Yes.

Minor 2 r - Direct examination
by Solicitor Barnette

1 Q And who took you to school, ma'am?

2 A My mom.

3 Q And who else did she take to school that day?

4 A My younger sister.

5 Q And what's her name?

6 A Minor 3

7 Q Did, did you see your dad that morning?

8 A Yes, sir.

9 Q And could you tell the jury, did you see him before you
10 left?

11 A Yes.

12 Q Could you tell them what happened or what, what y'all
13 said?

14 A I just walked in there and said I love you and he said
15 bye, I love you, have a good day.

16 Q Okay. And did he have a cup of tea?

17 A Yes.

18 Q When you left, about what time was it when you left
19 with your mother?

20 A About 7:15.

21 Q Okay. And where did she go first?

22 A To take my little, my younger sister.

23 Q And where did she go to school at?

24 A Hendrix Elementary.

25 Q And after she dropped her off, where did y'all go then?

Minor 2 r - Direct examination
by Solicitor Barnette

1 A To take me to school.

2 Q And the junior high, I call it the new junior high, is
3 it the new junior high up on Route 9?

4 A Yes.

5 Q And did she drop you off there?

6 A Yes.

7 Q What car was she driving that day?

8 A The Toyota Camry.

9 Q What color is it?

10 A Like light brown.

11 Q Let me show you State Exhibit No. 5.

12 Is that the picture of the, the car your mom was
13 driving that day?

14 A Yes.

15 SOLICITOR BARNETTE: Your Honor, I'd like to enter
16 State Exhibit No. 5 into evidence at this time.

17 MR. MCPHERSON: No objection.

18 THE COURT: In without objection.

19 (Whereupon, State's Exhibit No. 5 was received into
20 evidence at this time.)

21 SOLICITOR BARNETTE: May I publish it to the jury, Your
22 Honor?

23 THE COURT: Yes, sir.

24 SOLICITOR BARNETTE: Thank you.

25 Q So, this was the car that you -- I don't know if you

Minor 2 - Direct examination
by Solicitor Barnette

1 can see it or not?

2 A Yes.

3 Q Is that the car your mom drove that day?

4 A (Witness nods affirmatively.)

5 Q That morning -- when was, when was the next time you
6 saw your mom that day?

7 A My -- between 8:00 or 9:00 that night.

8 Q And where did you see her at?

9 A The Sheriff's Office.

10 Q And the clothes that she was wearing at the Sheriff's
11 office, was that the same clothes she was wearing before
12 y'all went to school?

13 A Yes.

14 Q Let me show you what's been marked as State Exhibit No.
15 6.

16 Can you describe -- do you remember what she was
17 wearing?

18 A It was a pink T-shirt with a gray jacket and like blue
19 pajama bottoms.

20 Q Let me show you State Exhibit No. 6.

21 Is that---

22 A Yeah.

23 Q ---a picture of what she was wearing that day?

24 A Yes.

25 Q And is that her in the picture?

Minor 2 r - Direct examination
by Solicitor Barnette

1 A Uh-huh. (Affirmative).

2 SOLICITOR BARNETTE: Your Honor, I'd like to enter
3 State Exhibit No. 6 into evidence at this time.

4 MR. MCPHERSON: No objection.

5 SOLICITOR BARNETTE: Thank you.

6 (Whereupon, State's Exhibit No. 6 was received into
7 evidence at this time.)

8 SOLICITOR BARNETTE: May I publish it to the jury, Your
9 Honor?

10 THE COURT: Yes, sir, it's in without objection.

11 Q It's not the best picture in the world, but is that the
12 clothes that she was wearing when you saw, when she took you
13 to school that day?

14 A Yes.

15 Q And was that the clothes you saw her wearing that night
16 when you saw her again?

17 A Yes.

18 Q When you saw her, did you give her a hug?

19 A Yes.

20 Q Did you notice any blood on her or anything?

21 A No.

22 Q Did you see any blood on her clothes or anywhere on
23 her?

24 A Hu huh. (Negative).

25 Q And what time did she drop you off at the school do you

Minor 2 - Direct examination
by Solicitor Barnette

1 think or what time did you usually have to be -- when did
2 your first class start?

3 A It started about 7:50.

4 Q What time do you think she dropped you off there at
5 school?

6 A Close to 7:40.

7 Q Thank you.

8 One moment, Your Honor, please.

9 (Pause.)

10 Q And did she receive phone calls on her cell phone in
11 the car?

12 Was she talking on her cell phone in the car?

13 A I think once.

14 Q And that was while she was driving down the road?

15 A Yes.

16 Q If you would, answer any questions of Mr. McPherson.
17 Thank you, ma'am.

18 MR. MCPHERSON: I have no questions, Your Honor.

19 THE COURT: You may step down. Thank you.

20 SOLICITOR BARNETTE: Your Honor, we ask for this
21 witness to be excused.

22 MR. MCPHERSON: No objection.

23 THE COURT: You're excused.

24 SOLICITOR BARNETTE: Your Honor, I'd like to recall
25 Investigator Bryant just for a couple of questions.

Jason Bryant - Direct examination
by Solicitor Barnette

1 THE COURT: Okay. You're still under oath, Mr. Bryant.

2 JASON BRYANT, having been

3 previously sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR BARNETTE:

6 Q If I could just ask you, State Exhibit No. 5, I think
7 you've seen this earlier, sir, is that the car that was in
8 the driveway when you got to the scene?

9 A That is correct.

10 Q And you talked to Mrs. Fowler there at the scene?

11 A That's correct, yes, sir.

12 Q Did you see any blood on her or her clothes or
13 anything?

14 A No, sir, not at all.

15 Q You didn't?

16 And you talked to her.

17 Obviously you'd look for things like that?

18 A Absolutely. I put her in the car right beside me.

19 Q So, you spent -- how long did you spend with her?

20 A I spent several minutes with her on the scene there,
21 and then at the Sheriff's Office later on.

22 Q So, you saw her several times.

23 And was it the same clothes she was wearing at the
24 scene?

25 A Yes, sir, that's correct.

Jason Bryant - Direct examination
by Solicitor Barnette

1 Q Did she ever change her clothes?

2 A Not at all.

3 Q One other thing just to clarify, State Exhibit No. 4,
4 was this the waiver you gave to Mr. Heydman, the rights you
5 read to him?

6 A That's correct.

7 SOLICITOR BARNETTE: Your Honor, I'd like to enter
8 State Exhibit No. 4 into evidence at this time.

9 MR. MCPHERSON: No objection.

10 THE COURT: All right. In without objection.

11 (Whereupon, State's Exhibit No. 4 was received into
12 evidence at this time.)

13 SOLICITOR BARNETTE: And Your Honor, may I just publish
14 one thing off of this to the jury?

15 Q Of course, this is where you read, read the rights to
16 him and everything?

17 A Yes, sir.

18 Q And at the time you started the interview was
19 5:10 p.m.?

20 A That's correct.

21 Q Okay. That's all the questions -- wait one second.
22 (Pause.)

23 Q And one other thing too.

24 Let me show you what's been marked as State's Exhibit I
25 think 44.

Jason Bryant - Direct examination
by Solicitor Barnette

1 I'll let you open this.

2 A Let me open this?

3 Q On the, on the bottom.

4 okay. Marked this for State's Exhibit 45.

5 was this a Buccal swab that was collected from Mr.

6 Heydman?

7 A It was.

8 Q And was you present when that was collected?

9 A I was.

10 Q And---

11 A While Investigator Durham collected it, yes, sir.

12 Q And did you see him seal it in that package?

13 A Yes, sir, I did.

14 SOLICITOR BARNETTE: Your Honor, I'd like to move
15 State's Exhibit 45 into evidence at this time.

16 MR. MCPHERSON: No objection, Your Honor.

17 THE COURT: All right. In without objection.

18 (Whereupon, State's Exhibit No. 45 was received into
19 evidence at this time.)

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

22 CROSS-EXAMINATION

23 BY MR. MCPHERSON:

24 Q Mrs. Fowler was arrested the same day that picture was
25 taken of her in those clothes, is that correct?

Jason Bryant - Cross-examination
by Mr. McPherson

1 A That's correct.

2 Q And so, you'll came to the Sheriff's Department and
3 came into custody of her clothes, is that correct?

4 A She was transported to the county jail with those
5 clothes on.

6 Q All right. And did, did you or do you know if anyone
7 in your department ordered any kind of test run on those
8 clothes?

9 A I do not know, sir.

10 Q So, you're saying as far as you know there were no
11 tests run on her clothes?

12 A That's correct. There was no visible blood on her.
13 But I do not know of any, any tests that were performed.

14 Q And do you know if there were any tests done on her
15 shoes?

16 A I do not know, sir.

17 Q But you didn't do any, did you?

18 A No, sir.

19 Q Did you check the bottom of her shoes?

20 A I checked her person, yes, sir, and it was extremely
21 visible there was---

22 Q On her person.

23 Now, listen, I asked her did you check the bottom of
24 other shoes?

25 A No, sir.

Jason Bryant - Redirect examination
by Solicitor Barnette

1 Q All right.

2 A No, sir.

3 MR. MCPHERSON: I have no further questions.

4 SOLICITOR BARNETTE: Just one on redirect, Your Honor.

5 REDIRECT EXAMINATION

6 BY SOLICITOR BARNETTE:

7 Q You did check her?

8 You looked her over and everything?

9 A Absolutely.

10 Q And once y'all realized she was a suspect, did you look
11 her over?

12 A Yes, sir, absolutely.

13 Q And you never saw any visible blood?

14 A No, sir, not at all.

15 Q But you went into the bedroom and you saw the blood in
16 the bedroom?

17 A All over the place, yes, sir.

18 SOLICITOR BARNETTE: That would be all.

19 THE COURT: You may step down.

20 WITNESS: Thank you, Your Honor.

21 SOLICITOR BARNETTE: I'd like to call Mrs. Blackwell to
22 the stand, Your Honor. Cheryl Blackwell.

23 Mrs. Blackwell, if you would, come on up, ma'am, and
24 she's going to swear you in right there.

25 CHERYL BLACKWELL, being first duly

Cheryl Blackwell - Direct examination
by Solicitor Barnette

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR BARNETTE:

4 Q Mrs. Blackwell, if you would, give me your full name
5 for the record please.

6 A what?

7 Q Could you give me your full name for the record please?
8 I'll talk a little bit louder so you can hear me.

9 A Okay. Carolyn Diane Blackwell.

10 Q And what do you -- where do you live at, Mrs.
11 Blackwell?

12 A 257 Caston Circle, Boiling Springs.

13 Q And how close was that to ?

14 A Probably a block or two blocks.

15 Q On the morning of December 13th -- well, let me go
16 back, back.

17 was you working at that time?

18 A No.

19 Q Are you retired, ma'am?

20 A I'm retired.

21 Q And where do you work at before this, ma'am?

22 A Mettler Toledo scale.

23 Q Okay. And what did you do there, ma'am?

24 A I assembled scales.

25 Q On the morning of December 13th, 2006, did you go to

Cheryl Blackwell - Direct examination
by Solicitor Barnette

1 Boiling Springs Junior High School?

2 A Yes, I did.

3 Q And why did you go there, ma'am?

4 A I took my grandson.

5 Q And while you was going to school, let me show you

6 State Exhibit No. 5, did you see this car?

7 A Yes, I did. I got in behind it.

8 Q Okay. And what was familiar to you?

9 What, what was another thing that reminds you of this,
10 familiar, that drew your attention to this car, you knew
11 about this car?

12 A Oh, the baby doll laying up in the back rearview.

13 Q Okay. And you knew this person was your neighbor that
14 had this car at ?

15 Is this your neighbor's car?

16 MR. MCPHERSON: Judge, I'm gonna, gonna, gonna object
17 to him leading the witness.

18 Q Was this car your neighbor's, neighbor's car in your
19 neighborhood?

20 A Yes.

21 Q Okay. When you got behind the car, did you see who
22 was, who was in it?

23 A Yes, I did. It was a person driving, a lady, and she
24 had a passenger, and it was a lady, a little girl or a small
25 girl.

Cheryl Blackwell - Direct examination
by Solicitor Barnette

- 1 Q And where did you start following her at on the road?
- 2 A It was Upper Valley Falls Road.
- 3 Q About what time did you get behind this car?
- 4 A 7:00, maybe 7:20, between 7:00, about 7:30. Between
- 5 7:20 and 7:30.
- 6 Q And when you got behind this, did you follow the car
- 7 all the way to Boiling Springs?
- 8 A All the way to Boiling Springs Junior High.
- 9 Q And which route did y'all go?
- 10 A We went up, I guess it's Old Valley Falls Road and hit
- 11 Number 9 and then went straight on up Number 9 until we got
- 12 to Boiling Springs Junior High.
- 13 Q And that's above the Wal-Mart---
- 14 A Right.
- 15 Q ---over there?
- 16 A Right.
- 17 Q And did you see her drop the young girl off?
- 18 A Yes, I did. I stayed right in behind her.
- 19 Q Okay.
- 20 A Sure did.
- 21 Q And did you follow her from the school?
- 22 A Yes, I did. I got in behind her until we got back down
- 23 and I, we turned. Both of us turned off and got on I guess
- 24 it's Old Valley Falls Road, and then I turned off and went
- 25 to the trash dump and she kept on coming. So, or going.

Cheryl Blackwell - Direct examination
by Solicitor Barnette

1 She was in front of me.

2 Q And when you went to the school, was there school
3 traffic there and everything?

4 A Was it what?

5 Q Was there traffic there at the school?

6 A Oh. Yeah, yeah.

7 Q And when you dropped them off -- about what time did
8 you drop your grandson off?

9 A I don't know. It probably took about ten, fifteen
10 minutes to get there. So, it probably be before eight
11 o'clock. They have to be there before eight o'clock. So,
12 it was before then.

13 Q And did you follow her car all the way back?

14 A All the way back, uh-huh. (Affirmative).

15 Q And did you notice she was talking on the cell phone or
16 not?

17 A The whole time there and the whole time back. What
18 caught my attention was she was weaving from one side of the
19 road to the other, and had the phone in her hand, and we
20 thought, my grandson said golly, look like she might be
21 drunk or on drugs or something. But I don't know.

22 Q Uh-huh. (Affirmative).

23 A Yeah.

24 Q But you felt like it was the cell phone?

25 A The whole time, there and back, she was on the cell

Cheryl Blackwell - Direct examination
by Solicitor Barnette

1 phone.

2 SOLICITOR BARNETTE: One moment, Your Honor, please.

3 (Pause.)

4 Q Thank you, ma'am. Please answer any questions that Mr.
5 McPherson may have for you.

6 CROSS-EXAMINATION

7 BY MR. MCPHERSON:

8 Q Now, these times that you gave the prosecutor, the
9 questions you just answered---

10 A I can't hear well.

11 Q These times that you just gave when you left your
12 house, when you arrived at the school and all that, these
13 are just approximate times?

14 A Right.

15 Q And you weren't checking your watch to make sure what
16 time it was?

17 A No, hu huh. (Negative).

18 Q So -- and you indicated it takes how long to drive to
19 the, to the junior high school?

20 A How long?

21 Q Yeah.

22 A From my house to there, probably ten, fifteen minutes.

23 Q Okay. And I believe you indicated the earliest you
24 could of left your home was around 7:20?

25 A Between 7:00 -- it was 7:30, somewhere along in there.

Cheryl Blackwell - Cross-examination
by Mr. McPherson

1 It was different times every morning.

2 Q All right. Different times.

3 But these are all just approximate times, correct?

4 A Well, it's pretty accurate.

5 Q But you weren't checking your watch, were you?

6 A No.

7 MR. MCPHERSON: Okay. No further questions.

8 SOLICITOR BARNETTE: Your Honor, we ask the witness be
9 excused.

10 MR. MCPHERSON: No objection.

11 THE COURT: The witness is excused. Thank you.

12 SOLICITOR JORDAN: State calls Jack Brigmon.

13 JACK BRIGMON, being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR JORDAN:

17 Q Please state your name for the record.

18 A William Jack Brigmon.

19 Q Where are you employed?

20 A I'm the store manager for Ingle's Markets on Asheville
21 Highway or Springfield Corners.

22 Q Okay. Is that near Spartanburg First Baptist?

23 A Yes, ma'am, it's right---

24 Q North Spartanburg First Baptist Church?

25 A Yes, ma'am, it's below it.

Jack Brigmon - Direct examination
by Solicitor Jordan

- 1 Q Okay. I'm going to show you what's previously been
2 marked and entered into evidence as State's Exhibit No. 8.
3 Can you recognize this?
4 A Okay. Yes, ma'am, it has our routing account number on
5 it.
6 Q Okay. Place it up here.
7 Mr. Brigmon, I'm gonna give you a pointer right here.
8 A Okay.
9 Q Right there and it turns red.
10 Can you show the routing number that you're referring
11 to?
12 A It's the number across the top.
13 Q Okay. What does that refer to?
14 A It's the -- it identifies our Gas Express. When a
15 person pays with a debit card or credit card, it goes
16 through the routing company in Charlotte. It signifies our,
17 our account.
18 Q Okay. And that is your store on Asheville Highway?
19 A Yes, ma'am.
20 Q Okay. What time and date was this done at?
21 A Okay. It was 12/13/06 at 7:56. Those are the date and
22 time.
23 Q Please answer any questions that Mr. McPherson may
24 have.
25 MR. MCPHERSON: No questions.

Jack Brigmon - Direct examination
by Solicitor Jordan

1 THE COURT: Thank you, sir.

2 SOLICITOR JORDAN: May this witness be excused?

3 MR. MCPHERSON: Oh, I'm sorry.

4 No objection.

5 THE COURT: The witness is excused. Thank you.

6 WITNESS: Okay.

7 SOLICITOR JORDAN: Thank you.

8 SOLICITOR BARNETTE: I'd like to call Investigator Rick
9 Gregory to the stand.

10 THE COURT: All right.

11 RICK GREGORY, being first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q Sir, if you would, give your full name for the record
16 please.

17 A Richard Wesley Gregory.

18 Q And where do you work at, sir?

19 A Spartanburg County Solicitor's Office.

20 Q And how long have you been at the Solicitor's Office?

21 A About -- just under four years now.

22 Q And before that, where did you work at?

23 A At Spartanburg County Sheriff's Office.

24 Q And how long did you work there, sir?

25 A Approximately 21 years.

Rick Gregory - Direct examination
by Solicitor Barnette

1 Q And what positions did you hold there, sir?

2 A Uniform patrol officer, and investigator, homicide
3 investigator, sergeant with violent crimes, lieutenant,
4 captain over patrol and captain over investigations.

5 Q Did you go up to and drive that
6 from that location up to Boiling Springs Junior High on
7 Route 9?

8 A Yes, sir, I did.

9 Q How far is that amount?

10 A It's 5.2 miles.

11 Q And did you drive from Boiling Springs Junior High over
12 to Hendrix Elementary or the Ingle's, whatever, too, sir?

13 A From Boiling Springs Junior High back to Ingle's?

14 Q Yes.

15 A Yes, it was 6.6 miles.

16 Q And did you go back from there to Gobbler's Knob
17 location from there?

18 A Yes, I did.

19 Q And approximately how far was it for that?

20 A Well, it would of been -- I actually drove one other
21 location. I went to Hendrix Elementary also. But it was,
22 it was ten minutes from Gobbler's Knob to Boiling Springs
23 Junior High.

24 Q Let me ask you this. It might be easier to do.

25 What was the round trip?

Rick Gregory - Direct examination
by Solicitor Barnette

1 A Thirty, thirty-four minutes.

2 Q Okay. So, it's 34 minutes---

3 A Yes, sir.

4 Q ---making it round trip?

5 A Yes, sir.

6 Q And is that going the speed limit and everything?

7 A Yes, sir.

8 Q And how was traffic?

9 A There was no -- it was, it was not during the morning
10 traffic. If traffic -- there was, there was no problem with
11 traffic.

12 Q So, obviously you didn't drive during school time or
13 anything?

14 A No, I did not.

15 Q So, it took 34 minutes total?

16 A Yes.

17 Q That's not counting for pumping gas or stopping or
18 anything like that?

19 A No, that's correct.

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

22 A Yes, sir.

23 MR. MCPHERSON: No questions.

24 THE COURT: You may step down. Thank you.

25 WITNESS: Thank you.

Shamika Sanders - Direct examination
by Solicitor Barnette

1 THE COURT: Like to call Investigator Sanders to the
2 stand.

3 SHAMIKA SANDERS, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR BARNETTE:

7 Q And if you would, ma'am, please state your name for the
8 record.

9 A Shamika Sanders.

10 Q And where do you work at, ma'am?

11 A Spartanburg County Sheriff's Office.

12 Q And what is your position there, ma'am?

13 A Crime scene technician.

14 Q And how long have you been with the Sheriff's
15 Department, ma'am?

16 A Seven years.

17 Q Back on December 13th, 2006, was you working that
18 day, ma'am?

19 A Yes.

20 Q And was you called to the crime scene at
21 ?

22 A Yes.

23 Q And did you go into that crime scene?

24 A I did.

25 Q And of course, photographs were taken and different

Shamika Sanders - Direct examination
by Solicitor Barnette

1 items was collected?

2 A Yes.

3 Q Let me show you what's been marked as State's Exhibit
4 No. 2.

5 Is that the knife that was collected from the scene?

6 A Yes, it is.

7 Q Okay. And was that collected by you?

8 A Yes.

9 SOLICITOR BARNETTE: And Your Honor, I'd like to enter
10 State Exhibit No. 2 into evidence at this time.

11 MR. MCPHERSON: No objection.

12 (Whereupon, State's Exhibit No. 2 was received into
13 evidence at this time.)

14 Q And I can go through all the pictures with you and
15 everything, but was there blood everywhere in the room?

16 A Yes, there was.

17 Q But later on did you see Mr. Heydman?

18 A Yes.

19 Q And did you collect some swabs from him?

20 A Yes.

21 Q And where did you collect the swabs from him, ma'am?

22 A They were collected from his hands, arms, both arms,
23 and forehead area.

24 Q Okay. Let me show you what's been marked as State's
25 Exhibits 43, 42, 44, 41, 40, 39, and 46.

Shamika Sanders - Direct examination
by Solicitor Barnette

1 If you would, take a look at those and see if those are
2 swabs that you collected from Mr. Heydman.

3 A Yes, they are.

4 Q If you would, tell the jury a little bit about how you
5 collected those, if you would.

6 A From the right arm, I would always place on latex
7 gloves to cover my hands. That way there's no interference
8 with anything from me versus the individual I was collecting
9 it from. I'll take a swab, which is a Q-tip swab. It would
10 be dipped in distilled water to preserve anything on it, and
11 from there I'd take the hands and just swab the area.

12 Q And once you collect all these swabs, do you secure
13 them in that box?

14 A Yes, the box is marked and the Q-tips are placed
15 inside.

16 Q And are those secured?

17 A Yes.

18 Q And was those entered into evidence?

19 A Yes.

20 SOLICITOR BARNETTE: Okay. Your Honor, at this time
21 I'd like to enter in -- and of course, this is where it's,
22 they're secured in there everything from there?

23 A Uh-huh. (Affirmative).

24 Q All right.

25 A Yes.

Shamika Sanders - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Your Honor, I'd like to enter
2 State Exhibit 46, 39, 44, 40, and 43, and 42, and 41.

3 MR. MCPHERSON: No objection.

4 THE COURT: All right.

5 (Whereupon, State's Exhibit Nos. 39 through 44 and 46
6 were received into evidence at this time.)

7 Q I'd like you to describe to the jury, you swabbed these
8 items, these areas from him and these were submitted to SLED
9 lab for testing?

10 A Yes.

11 Q Did you also go to the autopsy of Richard Fowler?

12 A Yes.

13 Q And in that, in that autopsy, did Doctor Wren collect a
14 blood sample from Mr. Fowler?

15 A Yes.

16 Q And was that sample given to you?

17 A It was.

18 Q And did you place that sample, that sample into
19 evidence?

20 A Yes, it was secured and placed in evidence.

21 Q And the evidence was taken to SLED at a later time?

22 A Yes.

23 SOLICITOR BARNETTE: One moment, Your Honor, please.

24 (Pause.)

25 SOLICITOR BARNETTE: Your Honor, I'm gonna reserve the

Shamika Sanders - Cross-examination
by Mr. McPherson

1 right to recall her in our case if anything comes up
2 concerning the chain or anything.

3 THE COURT: All right.

4 CROSS-EXAMINATION

5 BY MR. MCPHERSON:

6 Q Mrs. Sanders, did you make a report in this case?

7 A I'm sorry?

8 I can't hear you.

9 Q Did you make a report in this case?

10 A Our proper protocol, the reports are written by the
11 lead investigator on the case.

12 Q Okay. So, your answer is no?

13 A No, sir.

14 Q All right. Now, you also took a sample from Mr.
15 Heydman's legs, did you not?

16 A No, sir, I do not recall that.

17 Q Well, you did, you did a return to this, didn't you?
18 Didn't you do a return when you took these swabs from
19 him?

20 A A return?

21 Q Yes.

22 A From the search warrant, yes.

23 Q Yes.

24 And do you, do you have your return now?

25 A Yes, I have it.

Shamika Sanders - Cross-examination
by Mr. McPherson

1 Q would you agree that it says there was a controlled
2 swab off of leg of Heydman on that return?

3 May I approach the witness?

4 A I do not see that in the return.

5 Q All right.

6 A I'm not sure where you're looking from.

7 MR. MCPHERSON: Can I have this marked for
8 identification purposes?

9 (Whereupon, the return was marked as Defendant's
10 Exhibit No. 4 for identification purposes only at this
11 time.)

12 Q I'm showing you what's been marked as Defendant's
13 Exhibit 4.

14 Do you recognize this?

15 A Can I see the front sheet of this?

16 I'm not sure what this is coming from.

17 Q I'm sorry?

18 A Can I see the front sheet of this?

19 (Pause.)

20 A Yes, I do recognize it.

21 Q All right. And that's the return that was filled out
22 in this case?

23 A Yes, it is.

24 Q And on that return, it does indicate you took control
25 swabs from his leg?

Shamika Sanders - Cross-examination
by Mr. McPherson

- 1 A Yes.
- 2 Q All right. So, you would agree with me that you did
- 3 take swabs from his legs?
- 4 A Yep.
- 5 Q And would you also agree with me that in addition to
- 6 swabs, you took a, took his clothes, his glasses, and all
- 7 that, and put it into evidence too?
- 8 A I did not take his clothes.
- 9 Q Would be---
- 10 A No, sir, I did not collect the clothes.
- 11 Q I'm sorry?
- 12 A I did not collect the clothes.
- 13 Q Who would of been the one that collected the clothes?
- 14 A Evidence sheets -- that would of been Robert Shaffer.
- 15 Q All right. Well, based on that return, would you agree
- 16 with me that his clothes were collected?
- 17 A Yes.
- 18 Q All of his clothes I mean as far as you can tell?
- 19 A What's listed on here, yes, sir.
- 20 Q All of his outer garments were taken?
- 21 A I'll be happy to read what's listed on here.
- 22 Q Okay.
- 23 A Blue baseball cap, hat, Carolina 4X4 boots brown,
- 24 gloves, underwear, dark gray size 38, Una First Baptist
- 25 Church yellow shirt, white tank top, two white socks,

Shamika Sanders - Cross-examination
by Mr. McPherson

1 eyeglasses, Dickie's work pants.

2 Q And you would agree that they were put into evidence,
3 correct?

4 A Yes.

5 Q That means the Sheriff's Office took control of these
6 items, correct?

7 A The items are in evidence, yes.

8 Q And they could run any test they wanted to on these
9 clothes, correct?

10 A Not the Sheriff's Office, no.

11 Q Well, I mean you could, you could forward them on to
12 SLED to run the rest?

13 A Yes.

14 Q But you could request, from SLED, any kind of test you
15 wanted to run on those clothes, could you not?

16 A Yes.

17 Q And that would include his boots?

18 You could have the boots checked out very carefully,
19 could you not, at SLED?

20 A Yes.

21 MR. MCPHERSON: No further questions.

22 SOLICITOR BARNETTE: Just got one.

23 REDIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Can I see that sheet real quick?

Shamika Sanders - Redirect examination
by Solicitor Barnette

1 Showing you State, Defendant's Exhibit No. 4 for ID
2 purposes, again, ma'am, what time was these items collected?

3 A 20:20. That's 8:20 p.m.

4 Q So, you don't know if he had changed these clothes or
5 anything like that?

6 A No, I do not.

7 Q So, you don't know if that's the same clothes he wore
8 on that day or not?

9 A No, I do not.

10 Q And the areas you swabbed was areas that did not have
11 clothing over them, the majority of them?

12 A Right.

13 Q And these items like the forehead, the hands, the face,
14 things like that?

15 A Yes.

16 Q Thank you, ma'am.

17 THE COURT: Anything further?

18 MR. MCPHERSON: No, Your Honor.

19 THE COURT: You may step down. Thank you.

20 SOLICITOR BARNETTE: Could she be excused, Your Honor?

21 MR. MCPHERSON: No objection.

22 THE COURT: Without objection.

23 SOLICITOR BARNETTE: Like to call, and I may not be
24 pronouncing this right, Jennifer Scheid. I think that will
25 be our next witness, Your Honor.

Jennifer Scheid - Direct examination
by Solicitor Barnette

1 JENNIFER SCHEID, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR BARNETTE:

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

7 A Jennifer Scheid.

8 Q And where do you work at, ma'am?

9 A Sprint Nextel.

10 Q And where are you -- where do you work from, ma'am?

11 A Overland Park, Kansas.

12 Q And what is your duties at Sprint Nextel, ma'am?

13 A I'm a custodian of records.

14 Q Okay. And is part of your job is to testify about
15 phone records?

16 A Yes.

17 Q And how times have you testified in court about phone
18 records?

19 A Twenty-five to thirty.

20 Q And you have been qualified to do that?

21 A Yes.

22 Q And as part of your duties, as part of your duties to
23 monitor, to monitor and interpret phone records, ma'am?

24 A Yes.

25 Q Let me show you what's been marked State's Exhibit 52

Jennifer Scheid - Direct examination
by Solicitor Barnette

1 and also State's Exhibit 50. I believe these were text
2 messages too.

3 Is that another thing that y'all keep records on?

4 A Yes.

5 Q If I would let you look at those and see if those,
6 those records are from y'all's company, ma'am.

7 A This one is not.

8 Q Let me make sure. I may of given you the wrong -- I
9 did. I apologize. I gave you the Verizon. Let me give you
10 State Exhibit 49. Didn't mean to trick you.

11 A Yes.

12 Q Those are the records?

13 A Yes.

14 Q Okay. And what records, phone number is that for,
15 ma'am?

16 A (864)357-5403.

17 Q And do you have the subscriber information on that
18 phone?

19 A Yes.

20 Q Who was that phone subscribed to?

21 A Richard Fowler.

22 Q And was these text messages from that or involved in
23 that phone also on that other exhibit?

24 A Yes.

25 SOLICITOR BARNETTE: Your Honor, I'd like to move these

Jennifer Scheid - Direct examination
by Solicitor Barnette

1 records into evidence at this time.

2 MR. MCPHERSON: No objection.

3 (Whereupon, State's Exhibit Nos. 49 and 50 were
4 received into evidence at this time.)

5 SOLICITOR BARNETTE: Your Honor, may I publish these to
6 the jury at this time?

7 (The Court nods affirmatively.)

8 Q If you would, ma'am, please just step down for a
9 second.

10 A (Witness comes down from the stand.)

11 Q I know we have numerous phone records here. Let me
12 show you specifically on December 13th, 2006. Make sure
13 the jury can see that. Let me ask you this question, ma'am.
14 What is this number being right here?

15 A Greenville just refers to a general area.

16 Q So, that would be in this area around in this, in South
17 Carolina?

18 A Yes.

19 Q We'll move that over so we can see better.

20 If you would, explain to the jury, if you use the
21 pointer, the different listings of each items and what it
22 means.

23 A Calling number is simply the number either making the
24 call. If it's an outgoing call, you would see the target
25 telephone number, or if it's an incoming call, you would see

Jennifer Scheid - Direct examination
by Solicitor Barnette

1 the number calling in. Called number will almost always be
2 the same as dialed digits. Dialed digits is the number that
3 the caller entered into the key pad of the phone. M.R.,
4 which stands for mobile to mobile, will either have a zero
5 if it is in an outgoing call or one if it's incoming call or
6 a two which indicates a routed call. And a routed call
7 happens when someone is outside their home coverage area
8 before if a call goes into our customer's voice mail.

9 Start date will have the month, day, year and time,
10 which is also listed in military time of the call. And date
11 is the exact same. And then the duration, which will always
12 be shown in seconds.

13 Q Let me ask you this question, ma'am.

14 The number of, first number on there, the calling
15 number is (864)680-5041?

16 A Yes.

17 Q And that is the same number -- showing you Defendant's
18 Exhibit No. 2, that's the same number that's listed on
19 Defendant's Exhibit No. 2, is it not?

20 A Yes.

21 Q And what time was this call made?

22 A That call was made at 4:11:25 seconds.

23 Q And how long did it last?

24 A Sixty-two seconds.

25 Q And that's right over here?

Jennifer Scheid - Direct examination
by Solicitor Barnette

- 1 A Yes.
- 2 Q And it ended -- what time did it end?
- 3 A 4:12:27.
- 4 Q And the number called was this number?
- 5 A (864)357-5403.
- 6 Q And did that phone -- was that answered or did that go
- 7 to voice mail?
- 8 A No, that went to voice mail. Anytime you see a 11 in
- 9 front of the area code on called number, that's an
- 10 indication to us that the call went into our customer's
- 11 voice mail.
- 12 Q And the next time -- did this number call again?
- 13 A Yes.
- 14 Q And what time did it call?
- 15 A 6:26:45.
- 16 Q And did this call also go into a voice mail?
- 17 A Yes.
- 18 Q And how long did it last?
- 19 A Fifty-three seconds.
- 20 Q Okay. Again, did he call again later on?
- 21 A That number called again at like 6:56:17 seconds and
- 22 the duration was 54 seconds.
- 23 Q Later on, did the, this number, 357-5403, call 68-5041
- 24 (sic)?
- 25 A Yes.

Jennifer Scheid - Direct examination
by Solicitor Barnette

- 1 Q And what, what time did it call?
- 2 A 7:01:31.
- 3 Q And when did that call in?
- 4 A 7:14:41.
- 5 Q How long did it last?
- 6 A 787 seconds.
- 7 Q And this call was answered or was sent out, I guess
- 8 answered by the other call or was sent to the other phone?
- 9 A Yes, that was an outgoing call.
- 10 Q Later on, did -- is this where they're checking their
- 11 voice mail right here?
- 12 A Yes.
- 13 Q Okay. And did she -- and this person or this phone
- 14 checked its voice mail at 7:17:34?
- 15 A Yes.
- 16 Q Later on, did this number, 680-5041, call again?
- 17 A Yes.
- 18 Q And was it answered by 357-5403?
- 19 A We could never say, based on this record, if it was
- 20 answered or not. It was 408 seconds in duration.
- 21 Q But the voice mail did not pick this one up?
- 22 A No, it didn't.
- 23 Q So, it was not picked up by voice mail.
- 24 So, it was an incoming call?
- 25 A Yes.

Jennifer Scheid - Direct examination
by Solicitor Barnette

- 1 Q And that call was made when or received?
- 2 A 7:30:17.
- 3 Q And it ended?
- 4 A 7:37:05.
- 5 Q And it was how long?
- 6 A 408 seconds.
- 7 Q Did this number call three more times the 357-5403?
- 8 A Yes.
- 9 Q And what times were those?
- 10 A 7:44:59, 7:44 or 7:45:33 and also 7:49:43. Those calls
- 11 were all routed into the voice mail.
- 12 Q Was not -- did this number, 357-5403, call 9-1-1?
- 13 A Yes.
- 14 Q And what time did it call 9-1-1?
- 15 A 8:05:18.
- 16 Q And the call ended when?
- 17 A 8:06:34.
- 18 Q How long did that call last?
- 19 A Seventy-six seconds.
- 20 Q Okay. Now, this phone also called three more numbers?
- 21 A Yes.
- 22 Q And those phone calls were made at what times?
- 23 A 8:07:39.
- 24 Q And lasts until?
- 25 A 8:08:37.

Jennifer Scheid - Direct examination
by Solicitor Barnette

- 1 Q And then the next phone call?
- 2 A 8:12:20. Ended at 8:13:01.
- 3 Q And the last call?
- 4 A 8:13:08 ending at 8:15:29.
- 5 Q Okay. And these was all on December 13th, 2006?
- 6 A Yes.
- 7 Q And showing you this here, publishing another part of
- 8 State Exhibit No. 49, who was the subscriber on this
- 9 account?
- 10 A Richard Fowler.
- 11 Q And what was their address?
- 12 A , Boiling Springs, South Carolina,
- 13 29316.
- 14 Q Thank you.
- 15 And I don't want to go through all the records with the
- 16 jury. They, they are gonna have that available to them to
- 17 review.
- 18 But for example, I'm just taking a page, there's
- 19 several pages, I think Page 16 out of all these materials,
- 20 going back to December 3rd, 2006, was those calls made
- 21 from 357-5403 to 680-5401?
- 22 A Yes.
- 23 Q Was this call made on December 2nd, 2006?
- 24 A Yes.
- 25 Q What time?

Jennifer Scheid - Direct examination
by Solicitor Barnette

- 1 A 21:29:48.
- 2 Q And there's another time when the phone number called,
3 357-5403, made another call to 68-5041 (sic).
4 What was the date and time of that?
- 5 A 12/3/06 at 14:06:33.
- 6 Q And when we're talking about 14:06, that's two
7 o'clock---
- 8 A Two.
- 9 Q ---in the afternoon, military time?
- 10 A Yes.
- 11 Q And how long did that phone call last?
- 12 A 1077 seconds.
- 13 Q And on this, these two, there's times where 680-5041
14 called 357-4303?
- 15 A Yes.
- 16 Q And when was that call made.
- 17 A 12/4/06 at 15:05:50.
- 18 Q And there was -- I mean we can go through all these
19 records, but they would have every phone call made into the
20 357 number in this case and that was outgoing calls too?
- 21 A Yes.
- 22 Q And that would have it from November 25th all the way
23 up to December 13th?
- 24 A Yes.
- 25 Q 2006?

Jennifer Scheid - Direct examination
by Solicitor Barnette

1 A Correct.

2 Q Let me show you State Exhibit No. 50.

3 These were text messages on the phone number, the 357
4 number we was looking at?

5 A Yes.

6 Q Instead of going through all these or whatever, they
7 would have the number incoming and out-coming on the text
8 messages?

9 A Yes.

10 Q If you would, please have a seat, ma'am.

11 A (Witness returns to the stand.)

12 Q Please answer any questions Mr. McPherson may have for
13 you, ma'am.

14 A Okay.

15 CROSS-EXAMINATION

16 BY MR. MCPHERSON:

17 Q Ma'am, I just have one or two questions.

18 As to who, the person that made these calls and the
19 person that answered these calls you can not testify to, is
20 that correct?

21 A Yes.

22 Q And you would agree that, that this phone is in the
23 name of Richard Fowler, is that correct?

24 A Yes.

25 Q So, there's a possibility that he could of been the

Jennifer Scheid - Cross-examination
by Mr. McPherson

1 recipient of some of these calls, is that correct?

2 A I don't know.

3 Q But it's possible since it's in his name, would you not
4 agree?

5 A I guess it would be possible.

6 MR. MCPHERSON: No further questions.

7 SOLICITOR BARNETTE: We'd ask this witness be excused,
8 Your Honor.

9 MR. MCPHERSON: No objection.

10 THE COURT: Witness is excused.

11 SOLICITOR BARNETTE: Your Honor, let me go outside and
12 just make sure our next witness, our next witness is here.

13 CHARLES GILBERT, being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR BARNETTE:

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

18 A Charles Thomas Gilbert.

19 Q And where do you work at, sir?

20 A Verizon Wireless.

21 Q And what is your position there, sir?

22 A District supervisor.

23 Q And is part of your duties as custodian of records or
24 dealing with records, phone records in your company?

25 A Yes, sir.

Charles Gilbert - Direct examination
by Solicitor Barnette

1 Q And part of your duty would be interpreting, looking at
2 records, and even changing them or making changes if needed
3 in that situation?

4 A Yes.

5 Q I'd like to show you what's been marked as State's
6 Exhibit No. 52.

7 If you would, take a look at those records and see if
8 those are records from y'all's company.

9 A Yes, sir.

10 Q And these records, are they for the number 680-5041
11 area code 864?

12 A Yes.

13 SOLICITOR BARNETTE: Your Honor, I'd like to enter
14 these, State Exhibit No. 52 at this time.

15 Let me just ask one other question.

16 Q Who is the subscriber information on this one here,
17 sir, and I believe it's in the back there?

18 A Subscriber.

19 Q I know it's a lot of paper information there.

20 A The account's under Robert Heydman.

21 Q Okay. Thank you, sir.

22 A Uh-huh. (Affirmative).

23 SOLICITOR BARNETTE: Your Honor, I'd like to enter
24 these into evidence at this time, sir.

25 MR. MCPHERSON: No objection.

Charles Gilbert - Direct examination
by Solicitor Barnette

1 THE COURT: In without objection.

2 (Whereupon, State's Exhibit No. 52 was received into
3 evidence at this time.)

4 SOLICITOR BARNETTE: Your Honor, I'd like to publish
5 this to the jury at this time.

6 THE COURT: All right.

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

8 A (Witness comes down from the stand.)

9 Q Showing you one part of State Exhibit 52 -- right here.
10 I'm sorry.

11 A Okay.

12 Q This is the customer information, is that correct?

13 A Yes, sir.

14 Q And whose name was it again in?

15 A Robert Heydman.

16 Q of course, we have the records I believe all the way
17 from October 1st up through December 13th, 2006, showing
18 the records there. Starting on October 1st, 2006,
19 specifically to December 13th.

20 Showing you Page 32 of the 33 pages of these records,
21 the 680-5041 number, that was Mr. Heydman's number?

22 A Correct.

23 Q And did he call 357-5403?

24 A That's correct.

25 Q What time did he call that day?

Charles Gilbert - Direct examination
by Solicitor Barnette

- 1 A well, it's in military time. So, it will be -- that
2 one's at 4:11.
- 3 Q would that be in the a.m.?
- 4 A A.M., yes.
- 5 Q Later on did he make another phone call to that number?
- 6 A Yes.
- 7 A That was at six, that was at 6:26.
- 8 Q Okay. And he made another phone call to that number?
- 9 A Yes.
- 10 Q And what was the---
- 11 A 6:55.
- 12 Q Did, did he make another phone call or did -- let me
13 see here.
- 14 A Yeah, there's another phone call out there at 7:30.
- 15 Q At---
- 16 A 7:45.
- 17 Q Another one?
- 18 A Uh-huh. (Affirmative).
- 19 Q Did he make another one at---
- 20 A 7:49.
- 21 Q Okay. Now, these point -- the Star 86, what does that
22 mean, sir?
- 23 A That's voice mail, where he was checking his voice
24 mail.
- 25 Q So, he was his checking voice mail at 6:59 and 6:59

Charles Gilbert - Direct examination
by Solicitor Barnette

1 again?

2 A Yeah.

3 Q And the 228350, what does that mean, sir?

4 A The 228 is updating the program with his phone and 350
5 most likely it's data usage on an inset.

6 Q So, these are numbers that he called from there?

7 A Yes.

8 Q And he checked his voice mail again---

9 A Yes.

10 Q ---for those dates.

11 And of course, if we went back through and checked
12 these numbers, it would be located -- anytime these two
13 numbers was in there would be through October 1st if they
14 were in there?

15 A Correct.

16 Q If you would just have a seat, sir. Thank you.

17 A (Witness returns to the stand.)

18 Q Please answer any questions Mr. Heydman, I mean Mr.
19 McPherson may have for you, sir.

20 MR. MCPHERSON: No questions.

21 THE COURT: May the witness be excused?

22 SOLICITOR BARNETTE: Your Honor, I'd like to reserve
23 the right to recall him in rebuttable if we need to down the
24 road.

25 THE COURT: Okay. Strike that then.

Robert Rosenberg - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Yes, sir, we'd like to release him
2 for now for him to go back to work. We may need him later.

3 THE COURT: Okay.

4 WITNESS: All right. Thank you.

5 SOLICITOR BARNETTE: Your Honor?

6 MR. MCPHERSON: Could we approach please?

7 (Whereupon, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: We're going to take a brief recess. Try to
10 hold it about ten minutes.

11 The jury may step back to the room.

12 (Whereupon, a short recess was taken at this time.)

13 THE COURT: Ready?

14 SOLICITOR BARNETTE: Yes, sir, we are, Your Honor.

15 THE COURT: All right. If they're ready, we're ready.

16 (Whereupon, the following takes place within the
17 presence of the jury.)

18 SOLICITOR BARNETTE: Thank you, Your Honor.

19 Like to call Officer Robert Rosenberg to the stand
20 please.

21 ROBERT ROSENBERG, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Sir, if you would, give your full name for the record

Robert Rosenberg - Direct examination
by Solicitor Barnette

1 please?

2 A I'm Robert L. Rosenberg.

3 Q And where do you work at, sir?

4 A I'm currently employed at the Spartanburg County
5 Sheriff's Office.

6 Q What is your position there, sir?

7 A I'm currently assigned to the evidence division.

8 Q And as an evidence officer, is evidence logged in daily
9 at the Sheriff's Department?

10 A Yes, it is.

11 Q And is it maintained until it's taken out of evidence
12 to another location?

13 A Yes, sir.

14 Q Okay. Like today, you had to bring the evidence from
15 the Sheriff's Department back?

16 A Yes, sir.

17 Q And y'all maintain that while it's in that area?

18 A Yes, sir.

19 Q Let me show you State's Exhibit -- several of these
20 items are already entered into evidence or whatever.

21 Like, for example, State Exhibit 42, 46, 44, 44, 40,
22 39, and 41, those are items that was logged into evidence at
23 the Sheriff's Department and maintained till they were taken
24 to SLED?

25 A Yes, sir.

Robert Rosenberg - Direct examination
by Solicitor Barnette

1 Q Okay. And also the blood sample of the victim, Robert
2 Fowler, that was maintained at the Sheriff's Department and
3 taken to SLED?

4 A Yes, of the victim, I don't know if we took it or the
5 Coroner's Office took it.

6 Q Shamika Sanders took it.

7 A Okay.

8 Q Would that be maintained at the Sheriff's Department?

9 A Yes, sir, it would be.

10 Q And was that later on taken to SLED by Rusty Clevenger?

11 A Okay. Yes, sir, I do have documentation.

12 Q And did Rusty Clevenger later take these items as well
13 as the items from State Exhibit No. 2, and these items were
14 taken to SLED, is that correct?

15 A Yes, sir.

16 Q And while they were maintained at the Sheriff's
17 Department, did anybody tamper with these items or maintain
18 these items while they was in y'all's possession?

19 A No, sir.

20 Q Matter of fact, all the evidence that you-all had in
21 y'all's possession you-all maintained and nobody tampered
22 with it?

23 A It would not have been tampered with. The defense and
24 the State has a right to come in and observe it before,
25 while they're conducting their investigation before Court.

Robert Rosenberg - Direct examination
by Solicitor Barnette

1 Q Matter of fact, Mr. McPherson's been over to view the
2 evidence before, isn't that correct?

3 A I believe so, sir.

4 Q If you would, please answer any questions Mr. McPherson
5 may have of you.

6 MR. MCPHERSON: No questions.

7 THE COURT: Step down. Thank you.

8 SOLICITOR BARNETTE: Your Honor, I'd like to call
9 Investigator Rusty Clevenger to the stand please.

10 RUSTY CLEVINGER, being first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR BARNETTE:

14 Q If you would, sir, please state your full name for the
15 record.

16 A My name is Rusty Clevenger.

17 Q And where do you, where do you work at, sir?

18 A I work for---

19 Q Where did you work at prior to this?

20 A I've been a sheriff's detective, worked in the
21 Solicitor's Office, and now I work in training for the
22 forensics division here in Spartanburg.

23 Q And how long have you been in law enforcement, sir?

24 A Twenty-three years.

25 Q Back on, in this case, did you take some evidence to

Rusty Clevenger - Direct examination
by Solicitor Barnette

1 SLED, sir?

2 A I did.

3 Q Specifically did you take, I think I have the swabs in
4 front of them, read them again, State's Exhibit 39, 40, 42,
5 46, 44, 43, and 41 as well as the blood sample from the
6 victim in this case?

7 A I could verify by the evidence sheet, but I did take a,
8 a large number, a good bit of evidence on this case.

9 Q Okay. And---

10 A It's also sealed up with my initials on it.

11 Q Yes, sir.

12 Let me look at several of the items and several of
13 these items came from this, these items here.

14 Was these several of the items that you took down to
15 SLED?

16 A That's correct. They bear my initials.

17 Q And if you would, just show the jury, just pull it up
18 there, when you take it to SLED, obviously this evidence is
19 secured, and then you take it to SLED, what happens once you
20 give it to the intake person at SLED?

21 A They, in turn, seal it as well. We seal it at the
22 Sheriff's Office and then it's, in turn, sealed at SLED, and
23 on the seal it's required for me to put my initials and the
24 date that it's brought down.

25 Q And did you do this on this evidence?

Rusty Clevenger - Direct examination
by Solicitor Barnette

1 A Yes, sir, I did.

2 Q The swabs that was from Mr. Heydman that was taken by
3 Shamika Sanders, did you take those swabs down to SLED?

4 A On the suspect I did not. On the, the victim in this
5 case and the, and the other stuff that was from the crime
6 scene, I did.

7 Q Okay. Did you take the swabs down from the suspect in
8 this case that was collected by Mrs. Sanders?

9 A I need to look at the evidence sheet to verify.

10 SOLICITOR BARNETTE: May I approach the witness, Your
11 Honor?

12 THE COURT: (Nods affirmatively.)

13 A The reason I questioned this is Mr. Heydman's DNA was
14 taken at a later date. Some time after this was transported
15 if I remember correctly.

16 Q Let me show you this here, right here. This may
17 refresh your memory, sir.

18 Did you transport the items down that was taken from
19 Mr. Heydman, the swabs down to SLED?

20 A Give me just a moment.

21 (Pause.)

22 A Okay. Plastic gloves worn by Mr. Heydman, yes.

23 Q No. No, that's not what I was asking you about, sir.
24 I was asking you about the swabs that was taken from him.

25 MR. MCPHERSON: Judge, could we approach the bench?

Rusty Clevenger - Direct examination
by Solicitor Barnette

- 1 SOLICITOR BARNETTE: I'll ask him. I'll clear that up.
2 That won't be an issue.
- 3 Q The gloves that we was talking about, that was the GSR
4 kit they used for fingernail scrapings?
- 5 A That's correct.
- 6 Q Is that right?
- 7 A That's correct.
- 8 Q Okay. Those weren't worn by Mr. Heydman?
9 It was supplied to make sure the fingernails was
10 protected?
- 11 A That's correct.
12 Could you refer to which item?
13 They're cut off. That's the reason I'm having trouble
14 with it, sir.
- 15 Q I'm referring to these items right here where it was
16 taken from his forehands, his head, face, left arm, left,
17 right-hand.
- 18 A That's correct. Yes, I did.
- 19 Q And you transported those items down to SLED, is that
20 right?
- 21 A Yes, sir.
- 22 Q And once you got there, they were sealed in your
23 presence?
- 24 A That's correct.
- 25 Q And they were placed in the intake box?

Rusty Clevenger - Direct examination
by Solicitor Barnette

1 A That's correct.

2 Q And later on they were given to SLED DNA?

3 A Yes, sir.

4 Q Okay. And also the blood sample from the victim in
5 this case, Robert Fowler, was taken down also?

6 A Yes, sir.

7 Q And that was given to SLED also?

8 A Yes, sir.

9 Q If you would, please answer any questions Mr. McPherson
10 may have for you.

11 CROSS-EXAMINATION

12 BY MR. MCPHERSON:

13 Q And do you have a sheet of everything you took to SLED,
14 is that correct?

15 A Well, I have this sheet. The numbers are kind of
16 obscure on the edge. So, if you're referring to a specific
17 number, I'd be glad to look at it.

18 Q State's Exhibit No. 2, that's the, that's the knife
19 that was found at the scene, did you transport that to SLED?

20 A It bears a seal on the side with my initials as well as
21 these evidence bag. Yes, sir, I did.

22 (Whereupon, a list of evidence was marked as
23 Defendant's Exhibit No. 5 for identification purposes only
24 at this time.)

25 Q All right. I'm showing you what's been marked as

Rusty Clevenger - Cross-examination
by Mr. McPherson

1 Defense Exhibit 5---

2 A Uh-huh. (Affirmative).

3 Q ---for identification purposes.

4 Do you recognize that document?

5 A I recognize it as bearing the case number of this case,
6 yes, sir, I do.

7 Q And does it have your signature on there?

8 A It does.

9 Q And do you recall the purpose of this document?

10 A Yes, to take it to SLED. The document that I took it
11 to SLED.

12 Q Okay. So, you took this document to SLED, is that
13 correct?

14 A That's correct.

15 Q I mean Defense Exhibit 5.

16 A A copy of it. This is a copy of the original, yes,
17 sir.

18 Q Okay. Now, so, you would agree with, agree with me
19 that what's on Defense Exhibit 5, you took a pair of brown
20 work gloves?

21 A I would have to look at the individual packets to
22 verify because it would be sealed. But yes, sir.

23 Q All right. And would you agree with me you took to
24 SLED a brake pedal cover?

25 A If it says that, yes, sir, I did.

Rusty Clevenger - Cross-examination
by Mr. McPherson

1 Q And that you also took a steering wheel with you to
2 SLED?

3 A It says that, yes, I did.

4 Q Well, does it say that?

5 A Yes, sir, it does.

6 MR. MCPHERSON: All right. Your Honor, I would move to
7 introduce into evidence State's Exhibit 5.

8 SOLICITOR BARNETTE: No objection, Your Honor.

9 THE COURT: In without objection.

10 MR. MCPHERSON: I'm sorry?

11 THE COURT: In without objection.

12 MR. MCPHERSON: Thank you.

13 (Whereupon, Defendant's Exhibit No. 5 was received into
14 evidence at this time.)

15 Q Do you recall a conversation you had with SLED later on
16 after you took this evidence to SLED in which you requested
17 that they stop, not run tests on any of these items, but to
18 run tests only on the steering wheel?

19 A I remember a conversation I believe I had with
20 Mrs. Ruff at State Law Enforcement.

21 Q Yes.

22 A I asked her to put a rush on the steering wheel. But I
23 did not ask for them not to test anything. I asked for a
24 rush to be put on the steering wheel because the forensic
25 tech that collected it, David Hogsed, told me that it

Rusty Clevenger - Cross-examination
by Mr. McPherson

1 appeared there was blood on the steering wheel.

2 Q I don't -- I'm sorry. I don't want what somebody else
3 told you. I just want you to testify as to what you told
4 Mrs. Ruff.

5 A I asked Mrs. Ruff to put a rush on the steering wheel,
6 and I did not exclude any other evidence in this case.

7 Q Okay. So, you, you're denying that you told her forget
8 everything, just run the, run the test on the steering
9 wheel?

10 A I, I mean I can testify again to what I told her. I
11 asked her to put a rush on the steering wheel based on what
12 evidence I was told about, and the rest of the stuff would
13 have come through in a normal cycle.

14 MR. MCPHERSON: All right. No further questions.

15 SOLICITOR BARNETTE: We ask for the witness to be
16 excused, Your Honor.

17 MR. MCPHERSON: I have no objection.

18 THE COURT: The witness may step down and is excused.

19 SOLICITOR BARNETTE: Your Honor, I'd like to call Lilly
20 Gallman to the stand.

21 LILLY GALLMAN, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q If you would, ma'am, please give your full name for the

Lilly Gallman - Direct Examination
by Solicitor Barnette

- 1 record.
- 2 A It's Lilly Smalls Gallman.
- 3 Q And where do you work at, Mrs. Gallman?
- 4 A South Carolina Law Enforcement Division.
- 5 Q And what is your position there, ma'am?
- 6 A I'm employed as a forensic DNA analyst.
- 7 Q And how long have you been working there, ma'am?
- 8 A Since January of 1990.
- 9 Q And how many cases have you been qualified as a DNA
- 10 analysis, in DNA analysis?
- 11 A You mean in the court system?
- 12 Q Yes, ma'am.
- 13 A Approximately 60.
- 14 Q And have you been qualified in this Court before, in
- 15 State Court as well as other courts?
- 16 A Yes, sir.
- 17 Q And if you would, tell the jury a little bit about your
- 18 education and a little bit about your experience, ma'am.
- 19 A I have a degree in biology from the University of South
- 20 Carolina. Once I received my degree I continued working in
- 21 the area of molecular or DNA. I've done cloning and
- 22 sequencing of DNA. And as I said, I began working with the
- 23 South Carolina Law Enforcement Division in January of 1990
- 24 as a forensic DNA analyst.
- 25 During that time, I've taken advanced genetic courses.

Lilly Gallman - Direct Examination
by Solicitor Barnette

1 I've also attended the FBI DNA schools. I've participated
2 in being qualified as a forensic serologist since my time
3 with SLED. And I've also attended the South Carolina Law
4 Enforcement, Law Enforcement qualification so I could become
5 a law enforcement agent. I've been involved with doing DNA
6 testing for approximately 30 years.

7 SOLICITOR BARNETTE: Your Honor, at this time I'd like
8 to move her as an expert in DNA analysis.

9 MR. MCPHERSON: No objection.

10 THE COURT: So qualified.

11 Q In this case, Mrs. Gallman, did you receive a sample
12 concerning the victim's blood in this case?

13 A Yes, I did.

14 Q And did you also receive the swabs in front of you?

15 I know I keep saying what the State's Exhibit they
16 were. State's Exhibits 39, 40, 42, 46, 44, 43, and 41 in
17 this case.

18 Give you a chance to look at those to make sure.

19 A Yes, I did.

20 Q And obviously you received other items here too?

21 Is this a copy of your report, ma'am?

22 Get this marked real quick.

23 (Pause.)

24 Q Let me let you look at that, ma'am.

25 Looking at State Exhibit 48, is that a copy of your

Lilly Gallman - Direct Examination
by Solicitor Barnette

1 report, ma'am?

2 A Yes, it is.

3 Q And was this report based off analysis you did on the
4 swabs as well as other things you received in this case?

5 A That's correct.

6 SOLICITOR BARNETTE: Your Honor, I'd like to move
7 State's Exhibit 48 into evidence at this time.

8 MR. MCPHERSON: I object on the grounds it's hearsay.
9 She can testify, but---

10 SOLICITOR BARNETTE: I can do it that way, Your Honor,
11 if you want me to. It's just the sample, just the report.
12 Let you look at it.

13 THE COURT: She did this report?

14 SOLICITOR BARNETTE: Yes, she did.

15 THE COURT: If she produced the record, I'll overrule
16 the objection.

17 SOLICITOR BARNETTE: Thank you, Your Honor.

18 (Whereupon, State's Exhibit No. 48 was received into
19 evidence at this time.)

20 Q Mrs. Gallman, if you would, just come, step down for a
21 second if you would.

22 A (Witness comes down from the stand.)

23 Q Okay. Showing you a page -- may I publish it to the
24 jury, Your Honor?

25 THE COURT: Yes, sir.

Lilly Gallman - Direct Examination
by Solicitor Barnette

1 MR. MCPHERSON: Your Honor, I'm sorry.

2 Did you agree with my objection or---

3 THE COURT: No, she had -- the statement from counsel
4 was that she actually produced the, the report herself. So,
5 I'm gonna allow it in. Now, if there's any hearsay that's
6 within that, now we need to cover that with separate
7 objections.

8 SOLICITOR BARNETTE: May we approach the bench then?

9 I don't know what his objection was. She did write the
10 report. But we can make it clear.

11 THE COURT: Okay. Note his objection.

12 You may proceed.

13 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

14 Q Looking at all this, ma'am, you went ahead and did
15 test -- did you receive a blood sample from Richard Fowler?

16 A Yes, I did.

17 Q And that was -- also you received a Buccal swab from
18 Robert Heydman?

19 A Yes.

20 Q Can you explain to the jury what the blood of a Buccal
21 swab was used for?

22 A There's a window -- it's the -- it's blood that's taken
23 from the body, the body and the Buccal swab is a swab when
24 you take like a Q-tip and just swab on the inside of the
25 person's mouth. Since everyone's DNA is the same in their

Lilly Gallman - Direct Examination
by Solicitor Barnette

1 body, you can use either blood as a standard or swab from
2 the mouth as a standard for a person in a case.

3 Q In this case, there was swabs taken from the body of
4 Robert Heydman?

5 A Yes.

6 Q And these, and these swabs were those items right up
7 there we looked at?

8 A Yes, sir.

9 Q And they were from the different parts that were
10 listed?

11 A Yes.

12 Q And you did DNA analysis on those swabs---

13 A Yes, I did.

14 Q ---as well as several other items in this case?

15 Using the item number, the swabs in this case, did you
16 do -- these are the results of your findings in this case?

17 A Yes, they are.

18 Q Okay. And of course, you did swabs from the blood of
19 the knife you did DNA analysis on that?

20 A Yes, I did.

21 Q And going to Item 1112, which is gonna be the swab --
22 1112 is the swab from the forehead of Robert Heydman?

23 A That's correct.

24 Q Can you tell the jury what you found on that swab?

25 A Okay. On reading from my report and it states that DNA

Lilly Gallman - Direct Examination
by Solicitor Barnette

1 obtained from Item 11.2 is a mixture of these two
2 individuals. The DNA profile of the major contributor to
3 this mixture I'm saying also matches the DNA profile of
4 Robert Heydman because he's already, he's listed earlier in
5 the report. I also stated that Richard C. Fowler can not be
6 excluded as a possible minor contributor to this mixture.
7 And then I go on to give a probability or a stat to that
8 particular mixture which is one in 170,000.

9 Q So, this DNA in one in seventy, 170,000 came from
10 Richard Fowler, is that the probability, is that correct?

11 A That's the probability based on the mixture. The
12 information that you gather from the, the DNA profile that
13 was given by the mixture is what you use to calculate the
14 statistics of that particular profile.

15 Q Okay. And you went through each one of these swabs and
16 this one is the one you got the strongest probability on is
17 11.2?

18 A Yes.

19 Q The other ones you had, can you tell what the results
20 of the other ones were?

21 A Okay. 11.1 on Robert Heydman, it was a mixture of at
22 least three individuals, and we have a mixture of, of at
23 least three individual, quite a few times, times it's not
24 easy to distinguish who's the major contributor or the minor
25 contributor. That's why it stated as Robert Heydman can not

Lilly Gallman - Direct Examination
by Solicitor Barnette

1 be excluded as a possible contributor to this mixture. You
2 can't pull him out as a major contributor. But you, you can
3 see his DNA profile in that mixture.

4 Q And you went through 11.4.

5 A Yes, the DNA profile of the major contributor,
6 contributor also matches the DNA profile of Robert, Robert,
7 Robert Heydman. I was able to pull him out as a major
8 contributor.

9 Q And then 11.5.

10 A Again, he's, he's in this mixture and he is the major
11 contributor in that mixture, and Richard Fowler could not be
12 excluded as a possible minor contributor to this mixture.

13 Q Let me ask you this question.

14 If a person did have blood on them or something on them
15 and they washed it, would that affect the ability to find
16 DNA on somebody?

17 A It could affect the ability to find another person's
18 DNA on, on a person if they washed it off.

19 Q So, if they used soap and water or water or whatever
20 they used, would that affect it?

21 A Yeah, any kind of washing will diminish the DNA that's
22 on this person if it's from a foreign individual.

23 Q And could that have happened in this case.

24 A Yes, it could be -- it depends on what you're starting
25 with. If there's a small amount there, a person sweating,

Lilly Gallman - Direct Examination
by Solicitor Barnette

1 or just wiping could remove that foreign DNA from their
2 body.

3 Q And as a matter of fact, you'd done other swabs like
4 from the knife.

5 For example, the knife, the swabs from the knife, 2.1,
6 who did those come back to?

7 A The swab from the knife matched the DNA profile of
8 Richard Fowler.

9 Q But that was a stronger result from that knife?

10 A It was a clean profile, yes.

11 Q Okay. In that case -- and, of course, you went through
12 the fingernail scrapings of both Richard Fowler and Robert
13 Heydman, and both of them came back to the individuals?

14 A That's correct.

15 Q If you would, please have a seat back.

16 A (Witness returns to the stand.)

17 Q But from Mr. Heydman's forehead was the DNA of Richard
18 Fowler, the victim?

19 MR. MCPHERSON: Your Honor, I'm gonna object to him
20 leading the witness.

21 SOLICITOR BARNETTE: I'll rephrase the question, Your
22 Honor.

23 Q Did you find DNA of Richard Fowler, the victim, on the
24 forehead of Robert Heydman?

25 A On the swab from the forehead, it was a mixture. Mr.,

Lilly Gallman - Direct Examination
by Solicitor Barnette

1 Mr. Heydman was the major contributor to that mixture, and
2 the minor contributor, Mr. Richard Fowler, could not be
3 excluded as being a minor contributor to that mixture.

4 Q And that was the same on some other swabs that was
5 found too?

6 A This is correct.

7 Q And those other spots was 11.5, 11.1, these items come
8 from the left arm of Robert Heydman as well as the left side
9 of Robert Heydman's face?

10 A That's correct.

11 Q Could washing or cleaning that be a reason why it was
12 weaker than on the knife?

13 A It, it could a---

14 MR. MCPHERSON: I'm gonna object on the grounds he's
15 already been asked and answered.

16 THE COURT: She already answered it?

17 SOLICITOR BARNETTE: Okay. I'll just move on then,
18 Your Honor.

19 Please answer any questions that Mr. McPherson may have
20 for you.

21 CROSS-EXAMINATION

22 BY MR. MCPHERSON:

23 Q Mrs. Gallman?

24 A Yes.

25 Q Now, when you say that the person can't be excluded,

Lilly Gallman - Cross-examination
by Mr. McPherson

1 that doesn't mean that you're saying that it is that person
2 though, is that correct?

3 A In this particular case, what I'm saying is that when I
4 look at the DNA profile that was developed from the mixture,
5 and I compare it to the standard that was given to me from
6 Mr. Heydman and Mr. Fowler, I could conclude that Mr.
7 Heydman was the major contributor and Mr. Fowler could not
8 be excluded as the minor contributor to this mixture.

9 Q Well, when you said can't be excluded, that doesn't
10 mean that he actually was the contributor, isn't that
11 correct?

12 A It means that when I look at the profile and look at
13 his profile that his alleles or his numbers are there.

14 Q But when you say you can not exclude him, that doesn't
15 mean you can include him, does it?

16 A It doesn't mean that I---

17 Q There is big difference.

18 A It's a possibility that I could include him in the
19 mixture.

20 Q I understand when you can't exclude them.

21 But you can't definitely say that's his DNA profile,
22 can you?

23 A Based off, on the information that I have there, I'm
24 saying that I can not exclude him as a possible contributor.

25 Q I understand. But you're avoiding my question.

Lilly Gallman - Cross-examination
by Mr. McPherson

1 I keep asking you and you know you're avoiding my
2 question, don't you?

3 A No, sir, I'm basing it on my report.

4 Q All right. But when you -- I'm gonna ask you again.
5 when you say you can't exclude him, that doesn't mean
6 that it's definitely his DNA, does it?

7 Does it?

8 Just answer yes or no.

9 A It's not a yes or no question. I'm sorry. Based on
10 the information that I have, I could not exclude him, which
11 means that I could possibly include him in the mixture.

12 Q Well, if you could possibly include him in the mixture,
13 it also means you could possibly exclude him from the
14 mixture?

15 In other words, you're just saying it's a possibility?

16 A No, I could not exclude him. If I, if I could have
17 excluded him I would have stated that in my report.

18 Q All right. But I'm asking you again, was it -- when
19 you say you can't exclude him, you can't positively say that
20 was him or his DNA profile, can you?

21 Just answer me yes or no.

22 Can you or not?

23 A I -- no.

24 Q All right.

25 A But I can say that I could not exclude him---

Lilly Gallman - Cross-examination
by Mr. McPherson

1 Q I understand that.

2 A ---as a part of that mixture.

3 Q I understand that.

4 Now, you did a DNA profile of his fingernail scrapings,
5 did you not?

6 A That's correct.

7 Q And often times, on fingernail scrapings, you can find
8 the DNA of the alleged victims in his too, is that correct?

9 A Yes, sir, if there was any touching or scraping, yes.

10 Q And in this case, did you find any DNA belonging to the
11 alleged victim in this case?

12 A No, I did not.

13 Q Under the fingernail, under the fingernail scrapings
14 from Robert Heydman?

15 A No, I did not.

16 Q Now, you were all -- you also did a swab or did an
17 analysis of a swab from the steering wheel, did you not?

18 A Yes, I did.

19 Q And the DNA profile from that steering wheel from Mr.
20 Heydman's car came back to whom?

21 A To an unidentified male individual.

22 Q And did you perform any swabs on a, the rubber pad of a
23 brake pedal?

24 A No, I did not.

25 Q Do you recall whether or not that was submitted to you?

Lilly Gallman - Cross-examination
by Mr. McPherson

1 A No, not that I recall.

2 Q And the actual knife itself, did you come into control
3 of that knife at all?

4 A No, I did not.

5 Q So, all you saw were just swabs taken from the blade of
6 the knife, is that correct?

7 A Yes, Item Number 2.1 is swabs from blade of the knife.

8 Q But as far as the handle of the knife and you performed
9 no analysis on the handle of the knife, is that correct?

10 A No, I did not.

11 Q No further questions.

12 SOLICITOR BARNETTE: Just one question, Your Honor.

13 REDIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q Mrs. Gallman, on the forehead, the probability that you
16 got was what that it was Richard Fowler's?

17 A It was one in 170,000.

18 Q So, it was stronger there than other parts, other swabs
19 you looked at?

20 A That particular mixture profile it is, it was.

21 Q So, the odds that -- that was odds of that being from
22 Mr. Richard Fowler?

23 A Oh, seeing that particular DNA profile, yes, that's the
24 statistics, stats from that item.

25 Q So, that means from every one person that profile is

Lilly Gallman - Redirect examination
by Solicitor Barnette

1 170,000 people?

2 A Yes, sir.

3 Q Thank you.

4 RE CROSS EXAMINATION

5 BY MR. MCPHERSON:

6 Q But that, that's a real low odd, would you not agree?

7 Normally -- all right. Let me put this way.

8 Normally when you get a definite hit on somebody's DNA,
9 no problems with it at all, the odds are like one in
10 millions or even quadrillions, isn't that correct?

11 A It depends on the profile and how often you see that
12 particular profile in a population. Even if I have just a
13 single individual, if I am not able to develop a complete
14 DNA profile, then the stats could be low. It depends on the
15 profile.

16 Q All right. Let's just go back items -- let's just go
17 back to your results on Items 9, and 11, 3, and 11.7.

18 What were the odds you got in that?

19 A It's one in 970 quadrillion.

20 Q So, that's, that's a pretty good hit, would you not
21 agree?

22 A Like I said, it depends on the profile and whether I
23 have a complete DNA profile or not.

24 Q All right.

25 A And that, and, and with those items, I was able to

Lilly Gallman - Recross examination
by Mr. McPherson

1 generate a complete DNA profile.

2 Q Would you agree with me that there's a huge difference
3 between one and 970 quadrillion and one in 170,000?

4 A Yes, there's a difference. But like I said---

5 Q But would you agree---

6 A ---it depends on the profile.

7 Q ---that's a huge difference?

8 A There's a, there's a difference there. There's a big
9 difference between the two. But like I said, it depends on
10 the profile.

11 MR. MCPHERSON: No further questions.

12 SOLICITOR BARNETTE: Just one follow-up on that.

13 REDIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q If washing it off would affect the odds of that, of the
16 status, statistics on it if somebody washed their face?

17 A Yeah, it depends on how much I'm starting with. If
18 there's a small amount of DNA that I'm starting with, then
19 the stats could be lowered.

20 Q Thank you, ma'am.

21 RECROSS EXAMINATION

22 BY MR. MCPHERSON:

23 Q But it doesn't necessarily be, doesn't necessarily have
24 to come from washing.

25 Didn't you testify earlier that it could come from just

Lilly Gallman - Recross examination
by Mr. McPherson

1 sweating or things like that that could lower the stats?

2 A Yes, I did. You could just wipe, wipe away. Also---

3 Q So, if you just did something like this, that could --
4 I mean if you take your arm and wipe your forehead that
5 could---

6 A Cause you're in -- any way you use to remove it it
7 could happen.

8 Q All right. No further questions.

9 SOLICITOR BARNETTE: We ask for the witness to be
10 excused, Your Honor.

11 THE COURT: May the witness be excused?

12 MR. MCPHERSON: Yes.

13 THE COURT: You may step down.

14 Y'all approach just a minute.

15 (Whereupon, a bench conference was held out of the
16 hearing of the jury at this time.)

17 SOLICITOR BARNETTE: Your Honor, we call Rhonda Roberts
18 to the stand.

19 RHONDA ROBERTS, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR BARNETTE:

23 Q Mrs. Roberts, where do you work at, ma'am?

24 A I work for the Law Firm of Harrison, White, Smith, and
25 Coggins.

Rhonda Roberts - Direct examination
by Solicitor Barnette

- 1 Q And do you work with Danny Smith in that office?
- 2 A Yes, sir.
- 3 Q And does he handle workman's comp cases?
- 4 A Yes, he does.
- 5 Q And did he handle a workman's comp case for Richard
- 6 Fowler?
- 7 A Yes, sir.
- 8 Q And are you one of the folks that's in charge of
- 9 maintaining their records over at the law firm?
- 10 A Actually I'm the office manager.
- 11 Q Okay. So, you're in charge of those records, make
- 12 payments---
- 13 A Yes.
- 14 Q ---and statements and so---
- 15 A Yes.
- 16 Q And I think Mr. Smith asked you come over for him. He
- 17 was tied up in another matter.
- 18 Do you have those records with you, ma'am?
- 19 A I do.
- 20 Q Okay. Let me show you State Exhibit 54. I believe
- 21 this is a copy of the records that you have with you.
- 22 A It is.
- 23 Q Okay. I'll let you hold on to that for a second there.
- 24 Did Richard Fowler receive a settlement?
- 25 MR. MCPHERSON: Your Honor, I'm gonna object to this

Rhonda Roberts - Direct examination
by Solicitor Barnette

1 line of testimony in that it's not relevant to my client.
2 It might be to Dawn Fowler. But---

3 SOLICITOR BARNETTE: Your Honor, I think it's very
4 relevant. We have a witness -- can we approach the bench
5 please?

6 (Whereupon, a bench conference was held out of the
7 hearing of the jury at this time.)

8 THE COURT: Go ahead.

9 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

10 Q On September 22nd, 2006, did the law firm receive a
11 settlement on behalf of Richard Fowler?

12 A Yes, sir.

13 Q And what was the total of those two settlements that
14 Mr. Fowler received?

15 A The total, 90,000.

16 Q So, it's 90,000 total that was received by the law firm
17 in this case?

18 A Yes.

19 Q Okay. And was Mr. Fowler told about this obviously?

20 A Yes.

21 Q And was he cut checks concerning this settlement?

22 A Yes, sir.

23 Q And when was these checks cut, ma'am?

24 A Let's see.

25 Q Here you go, ma'am.

Rhonda Roberts - Direct examination
by Solicitor Barnette

1 A September 22.

2 Q 2006.

3 And then later on in this day was it shortly given to
4 Richard Fowler?

5 A Yes, sir.

6 SOLICITOR BARNETTE: Your Honor, I'm gonna mark that
7 for ID purposes cause it's a lot of documents involved in
8 that and so forth.

9 (Whereupon, the documents were marked as State's
10 Exhibit No. 54 for identification purposes only at this
11 time.)

12 SOLICITOR BARNETTE: But please answer any questions
13 Mr. McPherson may have for you.

14 MR. MCPHERSON: No questions, judge.

15 THE COURT: You may step down. Thank you.

16 SOLICITOR BARNETTE: We ask for the witness to be
17 excused, Your Honor.

18 MR. MCPHERSON: Without objection.

19 SOLICITOR JORDAN: State calls Kristen Lemaster.

20 KRISTEN LEMASTER, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR JORDAN:

24 Q Can you state your name for the record?

25 A Kristen Lemaster.

Kristen Lemaster - Direct examination
by Solicitor Jordan

- 1 Q Are you employed?
- 2 A I'm employed with Palmetto Bank in Boiling Springs.
- 3 Q Okay. Did Richard Fowler have a safety deposit box
- 4 with your bank?
- 5 A Yes, ma'am.
- 6 Q And when did he open that?
- 7 A On October 18th of '06.
- 8 Q Okay. Were you there the first time that he came in
- 9 and opened it up?
- 10 A Uh-huh. (Affirmative).
- 11 Q Who was with him?
- 12 A His wife.
- 13 Q Okay. Whose name was the box opened in?
- 14 A It was actually opened under Richard Fowler. Was
- 15 asked -- he's, he's the only one that was on the account.
- 16 Q Okay. By him being the only one on the account, does
- 17 that mean that he's the only one who had access to it?
- 18 A Right.
- 19 Q Okay. Could his wife come in and open it?
- 20 A No. No, ma'am.
- 21 Q How many times did Mr. Fowler access his box between
- 22 the time, between the time he opened it and his death?
- 23 A Four.
- 24 Q Okay. When was the last time he accessed it?
- 25 A On 12/06/2006.

Kristen Lemaster - Direct examination
by Solicitor Jordan

1 MR. MCPHERSON: Your Honor, again, I'm gonna object on
2 the grounds of relevance. It's not relevant.

3 THE COURT: All right. I'll overrule the objection.
4 But it's noted.

5 Go ahead.

6 SOLICITOR JORDAN: Thank you, Your Honor.

7 Q When was the -- did you receive a subpoena in this
8 case?

9 A Uh-huh. (Affirmative).

10 Q Pursuant to that subpoena, did you open up the box?

11 A We did.

12 (Whereupon, a copy of a check was marked as State's
13 Exhibit No. 55 for identification purposes only at this
14 time.)

15 Q Okay. I want to show you what's previously been marked
16 as State's No. 55 and ask you if recognize this document.

17 A I do.

18 Q Could you tell the jury what those are?

19 A These are actually cashier's checks that were purchased
20 for Mr. Fowler when he opened his checking account with the
21 money that he opened it with, and he purchased these for
22 cashier's checks and then stuck them in the safety deposit
23 box.

24 Q Okay. Were those the times that they took it out of
25 the---

Kristen Lemaster - Direct examination
by Solicitor Jordan

1 A Yes.

2 Q ---safety deposit box?

3 A Yes, sir.

4 Q Did you hand those over to---

5 A We actually gave them to -- we got copies of them, gave
6 them to who they needed to go to I guess once the subpoena
7 came to us saying what we needed to do to get the items out
8 of the box. I don't really know.

9 Q Was it a person from the Sheriff's Office?

10 A Yes.

11 SOLICITOR JORDAN: Your Honor, we move to admit this
12 into evidence at this point.

13 MR. MCPHERSON: Same objection.

14 THE COURT: Okay. I'm gonna allow it in subject to his
15 objection.

16 (Whereupon, State's Exhibit No. 55 was received into
17 evidence at this time.)

18 SOLICITOR JORDAN: May I publish to the jury?

19 (The Court nods affirmatively.)

20 Q Please answer any questions Mr. McPherson may have.

21 A Okay.

22 CROSS-EXAMINATION

23 BY MR. MCPHERSON:

24 Q Ma'am, you'd agree with me that those checks that were
25 just displayed to the jury, they were made out to Richard

Kristen Lemaster - Cross-examination
By Mr. McPherson

1 Fowler?

2 A Actually the checks were made out to him and what he
3 did is he just pushed them -- he would put them into a safe
4 deposit box, and, therefore, if he needed to get back into
5 it, he could and he could cash them.

6 Q I understand.

7 But they're made out to him?

8 It says pay to the order of who on those checks?

9 A To Richard Fowler, uh-huh. (Affirmative).

10 Q And he's the only that can properly cash those checks,
11 is that correct?

12 A Correct.

13 Q And his wife can't, can't come in and even access the
14 box, can she?

15 A Correct.

16 Q And the only way she could access that box is if he
17 gave her permission to access that box?

18 A Correct.

19 Q And he would have to be there to sign the card?

20 A Right.

21 Q And he would have to be present before the box is
22 pulled out?

23 A Correct.

24 Q All right. So, there's no way she could have accessed,
25 Mrs. Fowler's, Dawn, his wife, could of accessed that box?

Kristen Lemaster - Cross-examination
By Mr. McPherson

1 A Correct.

2 Q And even if she did get her hands on that check, she
3 would still need his signature in order to cash those
4 checks, wouldn't she?

5 A Yes, because they are made out to Mr. Fowler.

6 MR. MCPHERSON: No further questions.

7 SOLICITOR JORDAN: May this witness be excused?

8 MR. MCPHERSON: No objection.

9 THE COURT: The witness is excused.

10 SOLICITOR BARNETTE: Your Honor, the next witness might
11 be a little bit more lengthy.

12 THE COURT: All right. Lunch is here for the jury.
13 We're gonna break for one hour. So we'll be ready to go at
14 five minutes till 2:00.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 SOLICITOR BARNETTE: May we approach, Your Honor?

18 (Whereupon, a bench conference was held out of the
19 hearing of the jury at this time.)

20 THE COURT: We're ready if they're ready.

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

23 SOLICITOR BARNETTE: May it please the Court, Your
24 Honor.

25 I'd like to call Alfred Stuckey to the stand please.

Alfred Stuckey - Direct examination
by Solicitor Barnette

1 ALFRED STUCKEY, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR BARNETTE:

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

7 A Al Stuckey. S-T-U-C-K-E-Y.

8 Q And where do you work at, sir?

9 A Currently employed with the South Carolina Law
10 Enforcement Division better known as SLED.

11 Q How long have you been with SLED, sir?

12 A Since October of 1997.

13 Q And back in -- recently have you been involved in the
14 trace department, sir?

15 A No, sir.

16 Q Have you been involved in, I think examinations of
17 different items that's been sent in for evidence?

18 A Yes, sir.

19 Q Okay. Are you in the latent prints department or was
20 in the latent prints department at one time, sir?

21 A Yes, sir, I was at one time.

22 Q Okay. And what, what position are you in now, sir?

23 A I'm currently assigned to the special operations
24 division fugitive task force.

25 Q And how long have you worked in latent prints, sir?

Alfred Stuckey - Direct examination
by Solicitor Barnette

1 A I worked in latent prints from October of 1997 until
2 December 31st of 2007.

3 Q And have you been qualified in State Court before on
4 latent print examinations, sir?

5 A Yes, sir, I have.

6 Q And can you tell the jury a little bit about your
7 education about latent prints?

8 A I have a Bachelor, I have a Bachelor of Science Degree
9 in Criminal Justice from the University of South Carolina.
10 I completed the two year, two year training program at the
11 forensic services laboratory dealing with latent
12 fingerprints. I also have gone through numerous classes,
13 through the South Carolina Criminal Justice Academy, and the
14 International Association for Identification.

15 Also, during my time, I served as a field training
16 officer in latent fingerprints to other examiners.

17 MR. MCPHERSON: Your Honor, I'll stipulate to his
18 qualifications as a latent print examiner.

19 SOLICITOR BARNETTE: That will be fine, Your Honor.
20 We'll move him in as an expert in latent prints.

21 THE COURT: So be it.

22 SOLICITOR BARNETTE: Okay. Thank you, sir.

23 Q Latent prints, is that basically what we call
24 fingerprints, sir?

25 A Yes, sir, that is correct.

Alfred Stuckey - Direct examination
by Solicitor Barnette

1 Q Is there other type prints that we use too like print
2 anything you can look on a describable object in that case?

3 A I'm sorry. I didn't understand you.

4 Q The -- let me rephrase the question.

5 Basically fingerprints, but it can involve other type
6 prints like cloth prints, fabric print, things like that
7 also?

8 A Any type of impression that may not be visible to the
9 naked eye, but must be developed in order to be seen.

10 Q Did you receive a knife in this case, sir, to examine?

11 A Yes, sir, I did.

12 Q And I'm going to give it to you here in a second.

13 Let me let you look at what's been entered into
14 evidence as State Exhibit No. 2.

15 Did you examine that item, sir?

16 A Yes, sir, I did.

17 Q And what was it, sir?

18 A It is a silver in color knife.

19 Q In your examination, did you find any fingerprints or
20 any usable latent prints on that, sir?

21 A No, sir, I did not.

22 Q Okay. And did you find any kind of prints on that?

23 A I did find an impression, yes, sir.

24 Q What kind of impression did you do?

25 A It was a fabric impression.

Alfred Stuckey - Direct examination
by Solicitor Barnette

1 Q But obviously you didn't find any prints that can be
2 identified to anybody on the knife?

3 A That's correct, yes, sir.

4 Q If you would, please answer any questions Mr. McPherson
5 may have.

6 (Whereupon, a SLED Report was marked as Defendant's
7 Exhibit No. 6 for identification purposes only at this
8 time.)

9 CROSS-EXAMINATION

10 BY MR. MCPHERSON:

11 Q Sir, you did find some fabric impressions, is that
12 correct?

13 A A fabric impression.

14 Q Okay. A, but you found it in two different areas, is
15 that correct?

16 A No, sir.

17 Q All right. Well, you mentioned -- I'm sorry. I have
18 Item 2.2 and 2.3 and perhaps I'm just confused. If you
19 could explain that please.

20 A Yes, sir, in order to develop this particular
21 impression, it became visible during a preliminary or an
22 intermediate process of just plain black powder. I
23 attempted to make a lift. That lift did not come out so
24 well. So, I went to another process called Amino Black.
25 Amino Black reacts with the proteins in blood.

Alfred Stuckey - Cross-examination
by Mr. McPherson

1 After I, after I did that process, I was able to
2 photograph it. The first lift, which I denoted as Item 2.2,
3 is the same as Item 2.3. The impression noted in Item 2.3
4 was more visible and looked better. So, I used it to
5 perform my conclusion.

6 Q And did you make a report in that case?

7 A Yes, sir, I did.

8 Q And I'm handing you what's marked as Defense Exhibit 6.
9 Is that a copy of your report?

10 A Yes, sir, it is.

11 MR. MCPHERSON: Your Honor, at this time I would like
12 to offer into evidence Defense Exhibit 6.

13 SOLICITOR BARNETTE: No objection, Your Honor.

14 (Whereupon, Defendant's Exhibit No. 6 was received into
15 evidence at this time.)

16 Q All right, sir. In other words, you found a fabric
17 impression and you requested additional information, did you
18 not?

19 A Yes, sir, it's standard, if I find a fabric impression,
20 to request standards to compare that to.

21 Q And did you get those standards?

22 A No, sir, I did not.

23 Q Okay. Now, the date of your examination was what?

24 A The date the report was generated was January 26th,
25 2007.

Alfred Stuckey - Cross-examination
by Mr. McPherson

1 Q All right. Now---

2 A Oh, I'm sorry. Did you---

3 Q Well, I've got one.

4 If the, the -- you're not a DNA expert, are you?

5 A No, sir, I'm not.

6 Q Now, if the DNA expert testified that she received
7 swabs from the blade of the handle, of the knife, from the
8 blade of the knife, would those swabs have been something
9 you did?

10 A Yes, sir.

11 Q All right. So, the only thing you can recall swabbing
12 would be the blade if that's all she had received and---

13 A If that's all she received, yes, sir.

14 Q All right. No further questions.

15 SOLICITOR BARNETTE: Just one or two on follow-up, Your
16 Honor.

17 REDIRECT EXAMINATION

18 BY SOLICITOR BARNETTE:

19 Q The cloth impression, that could be from -- what could
20 that be from?

21 A That can be from a glove, a shirt, a blanket, any, any
22 type of fabric, the cloth of a sofa, a bed spread, cloth --
23 a sheet of a bed. Any, any type of impression from a
24 fabric.

25 Q Could it be also from a cloth glove?

Alfred Stuckey - Redirect examination
by Solicitor Barnette

1 A It could be from cloth gloves, yes, sir.

2 Q And would that be a reason why there would be no
3 fingerprints on there if they had gloves on?

4 A Yes, sir, that is correct.

5 Q Showing you what's been marked as State's Exhibit No.
6 2.1. Take a look at that, sir, and I believe it's opened
7 there, sir, on the top.

8 A Oh, it's opened.

9 Q I think on the top, yes, sir.

10 Was this the swab that was taken from the knife?

11 A Yes, sir, it was.

12 Q And was that swab submitted for DNA?

13 A Yes, sir, it was.

14 Q Okay. And that's marked SLED's Exhibit Number 2.1?

15 A That's correct, yes, sir.

16 SOLICITOR BARNETTE: Okay. Your Honor, I'd move to
17 enter this into evidence at this time.

18 MR. MCPHERSON: Did you do the swab?

19 WITNESS: Yes, sir, I, I swabbed it.

20 MR. MCPHERSON: No objection.

21 THE COURT: Okay.

22 (Whereupon, State's Exhibit No. 2.1 was received into
23 evidence at this time.)

24 SOLICITOR BARNETTE: That will be all. The -- that
25 would be all the questions I have, Your Honor.

Alfred Stuckey - Redirect examination
by Solicitor Barnette

1 MR. MCPHERSON: I have no further questions.

2 THE COURT: You may step down.

3 WITNESS: Thank you.

4 SOLICITOR JORDAN: State calls Doctor David Wren.

5 SOLICITOR BARNETTE: Your Honor, we'd ask for this
6 witness to be excused.

7 MR. MCPHERSON: No objection.

8 THE COURT: Witness is excused.

9 DAVID WREN, being first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR JORDAN:

13 Q Please state your name for the record.

14 A John David Wren.

15 Q Where are you employed?

16 A I'm a pathologist at Spartanburg Regional Medical
17 Center.

18 Q Can you tell the jury a little bit about your
19 background, education wise and training?

20 MR. MCPHERSON: Judge, I'll stipulate as to his medical
21 training as his expert as a pathologist.

22 SOLICITOR JORDAN: Judge, we'd offer him as an expert
23 in the field of pathology.

24 THE COURT: All right. So be it.

25 Q Doctor Wren, did you perform an autopsy on the body of

David Wren - Direct examination
by Solicitor Jordan

1 Richard Craig Fowler?

2 A Yes, I did the autopsy on an individual identified as
3 Richard C. Fowler on December the 14th, 2006, beginning at
4 approximately 8:45 a.m. in the Spartanburg Regional Medical
5 Center autopsy room.

6 Q Can you describe for the jury the injuries that you
7 found on Mr. Fowler's body?

8 A Well, he had multiple injuries mainly concentrated
9 about his head. But he also had several stab wounds in his
10 right upper chest. The injuries to his head were extensive
11 and it would be very difficult to follow all of the injuries
12 if I described each in detail.

13 But suffice it to say, the right side of his face was
14 crushed. He had multiple fractures of his nose. His
15 maxilla, which is the facial bone the teeth are on, was
16 split in the midline. He had open skull fractures on the
17 side of his left face with brain exuding. He had a couple
18 of stab wounds to his face and neck and abrasions and
19 contusions all over the place.

20 In summary, he had multiple blows to the head with,
21 with a blunt object that caused skull fractures and facial
22 fractures, a depressed fracture of his right side of his
23 face, and he had stab wounds to his neck, and at least two
24 stab wounds to his chest. Two of them which went into his
25 thoracic cavity. One lacerating his lower border of his

David Wren - Direct examination
by Solicitor Jordan

1 right upper lobe of the lung, and one going into the
2 pericardial sac, which is the sac around the heart, and
3 actually penetrated the right atrium of the heart causing
4 bleeding into the pericardial sac, and the other one into
5 the lung caused bleeding into the left lung.

6 His brain was macerated or, or, from, from the front
7 all the way back to almost the midportion of the brain from
8 the bones fracturing in his skull, and, and pressing on the,
9 the brain tissue, which is relatively fragile.

10 Q Doctor Wren, based upon the autopsy, autopsy, can you,
11 to a reasonable degree of medical certainty, state what the
12 cause of death was to Richard Craig Fowler?

13 A Well, a lot of these individually or collectively could
14 of caused death in this individual. Although there's very
15 little bleeding in the chest, he was probably almost dead
16 when those wounds were inflicted although they weren't very
17 severe. I, I attributed the cause of death as open head
18 injuries with basilar skull fracture, which is the base of
19 the skull was fractured, which almost invariably causes
20 death secondary to blunt force trauma to the head.

21 Q Doctor Wren, did you, in your autopsy, note any marks
22 on either one of Mr. Fowler's arms or hands?

23 A Yes, he had what are called defense type wounds to his
24 left dorsal hand, the back side of his hand, that consisted
25 of a contusion and abrasions or bruise and abrasions as if

David Wren - Direct examination
by Solicitor Jordan

1 he had stuck his hand up at one time to ward off blows to
2 his head.

3 Q Did you note any on the right-hand?

4 A No, I didn't see any, any injuries to his right-hand.

5 Q Thank you, Doctor Wren. Ask -- please answer any
6 questions Mr. McPherson may have.

7 MR. MCPHERSON: I have no questions, Your Honor.

8 SOLICITOR BARNETTE: May this witness be excused?

9 MR. MCPHERSON: Yes.

10 THE COURT: Thank you, doctor. You are excused.

11 SOLICITOR BARNETTE: Your Honor, State calls John
12 Fowler to the stand. It may take them a second.

13 Mr. Fowler, if you would, come on up here, sir.

14 JOHN FOWLER, being first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Mr. Fowler, if you would, state your full name for the
19 record please.

20 A John Christopher Fowler.

21 Q And where were you born and raised at, sir?

22 A I was raised in Spartanburg. I think I might of been
23 born in Washington State or somewhere.

24 Q And you've lived most of you life here in Spartanburg
25 then?

John Fowler - Direct examination
by Solicitor Barnette

- 1 A Yes, sir.
- 2 Q Presently, where are you incarcerated at, sir?
- 3 A At the Spartanburg County Detention Facility.
- 4 Q During your incarceration there, did you meet the
- 5 defendant in this case, Robert Heydman?
- 6 A Yes, sir.
- 7 Q Do you see him in the courtroom here today?
- 8 A Yes, sir.
- 9 Q Can you describe what he is wearing?
- 10 A A gray suit, bald head, glasses on.
- 11 Q Can you identify what kind of tie he's wearing?
- 12 A It's black, gray, and some white circles on it looks
- 13 like.
- 14 SOLICITOR BARNETTE: Your Honor, I'd ask the record
- 15 reflect that he's identified the defendant.
- 16 MR. MCPHERSON: No objection.
- 17 THE COURT: Okay.
- 18 Q During that time, did you get to talk to Mr. Heydman?
- 19 A Yes, sir.
- 20 Q And where did you talk to him at?
- 21 A On the rec yard, which is the smoking area of the, when
- 22 we came out from 2:30 to four o'clock.
- 23 Q During this time, did he talk to you about why he was
- 24 in prison?
- 25 A Yes, sir.

John Fowler - Direct examination
by Solicitor Barnette

1 Q what did he tell you, sir?

2 A He said that he was having an affair with a woman named
3 Dawn Fowler. She had a husband named Richard Fowler and he
4 met them at the Una First Baptist Church. He said that,
5 during the course of their affair, she asked him to kill her
6 husband and she was gonna pay with \$90,000 she was suppose
7 to receive in Probate Court.

8 He came over to the house one day. He got a call that
9 morning. He came over to the house. He said it was a call
10 from Richard asking him to come do an estimate on a
11 wheelchair ramp. He came over in a '99 green, forest green
12 van. He came through the back-door, which was left open for
13 him. And he heard a noise. He came in the back and Richard
14 was laid on the bed, Dawn was stabbing him, and he took an
15 ax handle and hit him upside the head and the chest, which
16 is what killed him, and then he told Dawn to call the police
17 and act like she just came home and say it was a burglary,
18 and he left and threw the ax handle in the garbage dumpster.

19 Q Did he say anything where some of the money was located
20 at in the settlement?

21 A It was a safety security deposit box, something like
22 that.

23 Q And did he say who had access to it?

24 A Just Richard, Richard Fowler.

25 Q Had you read about any of this information before?

John Fowler - Direct examination
by Solicitor Barnette

- 1 A No, sir.
- 2 Q Had you heard about any of this information before?
- 3 A No, sir.
- 4 Q Was you involved in this case in anyway?
- 5 A No, sir.
- 6 Q When you were first contacted about this, did you first
- 7 talk about it to law enforcement?
- 8 A No, sir.
- 9 Q Who did you first talk to about it?
- 10 A The private investigator named Brad Baxter. He worked
- 11 for an attorney, Kurt Tavinere, out of Anderson.
- 12 Q So, later on did the Solicitor's Office contact you
- 13 afterwards?
- 14 A Yes, sir.
- 15 Q And you gave a statement?
- 16 A Yes, sir.
- 17 Q Now, you're presently serving time, waiting on charges
- 18 yourself?
- 19 A Yes, sir.
- 20 Q And what charges are you waiting on right now, sir?
- 21 A I have two armed robberies. I've got a, I've got a
- 22 attempted car breaking pending, a violation of probation,
- 23 inciting a riot.
- 24 Q Have we promised you anything?
- 25 Has anybody promised you anything about that?

John Fowler - Direct examination
by Solicitor Barnette

1 A No, sir.

2 Q Are you being offered anything for this testimony here
3 today?

4 A No, sir.

5 Q Did you originally approach us about this case?

6 A I approached Brad Baxter and I believe he brought it to
7 y'all.

8 Q But Baxter, Baxter work for law enforcement or anything
9 like that?

10 A No, sir.

11 Q What you're testifying today, is this what Robert
12 Heydman told you?

13 A Yes, sir.

14 Q Please answer any questions Mr. McPherson may have for
15 you, sir.

16 CROSS-EXAMINATION

17 BY MR. MCPHERSON:

18 Q Sir, in the last ten years, have you ever been
19 convicted of a crime that was punishable by death or
20 imprisonment in excess of one year?

21 A One year you said?

22 Q Yeah.

23 Have you been convicted of anything that could of
24 brought you time in excess of one year?

25 A Yes, sir.

John Fowler - Cross-examination
by Mr. McPherson

1 Q Would you tell the ladies and gentlemen of the jury
2 what that is?

3 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
4 this point. I think the proper way, if he's gonna ask him
5 that, ask him what the offense is. He can answer from
6 there.

7 THE COURT: If you'll rephrase your question.

8 Q Is it true you've been convicted of grand larceny?

9 A Yes, sir.

10 Q Is it true you've been convicted of distribution of
11 anabolic steroids?

12 A No, sir.

13 MR. MCPHERSON: Can I approach the witness?

14 Can I approach the witness?

15 THE COURT: Yes, sir.

16 Q Have you seen your rap sheet?

17 Do you know what a rap sheet is?

18 A I have an idea, yes, sir.

19 Q All right. I want you to take a look at this.

20 Could I have this marked for identification purposes
21 please?

22 (Whereupon, the rap sheet was marked as Defendant's
23 Exhibit No. 7 for identification purposes only at this
24 time.)

25 THE COURT: Yes, sir.

John Fowler - Cross-examination
by Mr. McPherson

1 SOLICITOR BARNETTE: May we approach, Your Honor?

2 THE COURT: Yes, sir.

3 (Whereupon, a bench conference was held out of the
4 hearing of the jury at this time.)

5 Q All right. I'm showing you what's marked as State's,
6 Defense Exhibit 7 for ID purposes.

7 Do you recognize that?

8 A Yes, sir.

9 Q That has your name on it, correct?

10 A Yes, sir.

11 Q And remember I asked you earlier about a grand larceny
12 and you see it on this sheet?

13 A Yes, sir.

14 Q Could you speak louder so the---

15 A Yes, sir.

16 Q All right. Now, I want to show you what's -- I asked
17 you about the distribution of anabolic steroids.

18 A That's not mine.

19 Q Would you agree that it shows somebody convicted of
20 that crime?

21 A Actually that was brought up when I went for court on
22 another charge, and it does show somebody convicted. But
23 that's not mine. I've never been charged with that.

24 Q All right.

25 A I have distribution of crack cocaine.

John Fowler - Cross-examination
by Mr. McPherson

- 1 Q Okay. You got distribution of crack cocaine?
- 2 A Yes, sir, two of them.
- 3 Q You were convicted of that?
- 4 A Yes, sir.
- 5 Q And were you convicted of financial transaction card
- 6 fraud?
- 7 A Yes, sir.
- 8 Q And you've been to prison twice before?
- 9 A Yes, sir.
- 10 Q Now, I believe you testified you also have some pending
- 11 charges and armed robbery, I mean two armed robberies,
- 12 correct?
- 13 A Yes, sir.
- 14 Q And probation violation, correct?
- 15 A Yes, sir.
- 16 Q And on the armed robberies, is it true you could
- 17 receive -- you could agree that you could receive anywhere
- 18 from ten to thirty years on that?
- 19 A Yeah, I believe that's what they carry.
- 20 Q And that's a nonparoleable offense?
- 21 A Right.
- 22 Q So, if you possibly are found guilty or pled guilty to
- 23 those charges, you're facing a total of 60 years in prison,
- 24 are you not?
- 25 A Yes, sir.

John Fowler - Cross-examination
by Mr. McPherson

1 Q And how much time are you facing on your probation
2 violation if you know?

3 A I think they're gonna terminate it. I'm not sure when.
4 When I went to the hearing, they was gonna terminate it.
5 I'm not exactly sure. Maybe five years at the most.

6 Q And you want this jury just to believe that in spite of
7 your long history of being a criminal, that out of the
8 goodness of your heart, you're coming in here and testifying
9 as to the truth today and you don't expect anything in
10 return, is that correct?

11 A Yes, sir.

12 Q And I think you also mentioned -- let me, let me ask
13 you this.

14 You gave a statement to -- let's see. You gave a
15 statement back in April of 2008, isn't that correct?

16 A Yes, sir.

17 Q All right. And I think you mentioned that you had a
18 riot or inciting prisoners, is that correct?

19 A Yes, sir.

20 Q And would you agree with me that the State, in order to
21 show they have good faith of helping you out in these cases,
22 has already dismissed the riot case?

23 A No, sir.

24 Q You wouldn't?

25 Your Honor, at this time I'd like to introduce into

John Fowler - Cross-examination
by Mr. McPherson

1 evidence a certified copy of a document pertaining to this
2 defendant. I'll show it to defense, I mean to the State.

3 SOLICITOR BARNETTE: I won't object though. I may call
4 a witness in response to that though.

5 MR. MCPHERSON: All right.

6 THE COURT: Now, I want to show you -- well, I hadn't
7 had it marked. I'm sorry. I apologize.

8 THE COURT: All right. It's in without objection.

9 (Whereupon, the indictment was marked as Defendant's
10 Exhibit No. 8 and received into evidence at this time.)

11 Q All right. I show you what's been marked as Defense
12 Exhibit No. 8.

13 A Okay.

14 Q You've seen these types of warrants before, have you
15 not?

16 A Yes, sir.

17 Q And this is a warrant in your name, is it not?

18 A Yes, sir.

19 Q And it's a warrant for that prison, incite prisoners to
20 riot, riot case?

21 A Correct.

22 Q And on the next page, it indicates it was dismissed, is
23 that correct?

24 A That's what it says.

25 Q And the date it was dismissed?

John Fowler - Cross-examination
by Mr. McPherson

- 1 A 6/9/08.
- 2 Q Okay. And the prosecutor put down the reason for
- 3 dismissal?
- 4 A To be prosecuted on other charges.
- 5 Q And it says -- but above that it says prosecutorial
- 6 discretion, doesn't it?
- 7 A Actually I think they wanted me to plead to malicious
- 8 damage to property.
- 9 Q So, I mean already they've shown their good faith by
- 10 dismissing this charge against you?
- 11 A That's good. I didn't know that.
- 12 Q And---
- 13 A Thank you.
- 14 Q They didn't put down insufficient evidence.
- 15 They put down prosecutorial discretion, isn't that correct?
- 16 A What's that mean?
- 17 Q That means because the prosecutor wants to.
- 18 A Oh, okay.
- 19 Q You agree with that, don't you?
- 20 A I guess.
- 21 Q Now, you realize that the prosecutor, if he so desires,
- 22 he could drop these armed robberies to common law robberies
- 23 or even something less inclusive than that, couldn't he?
- 24 A That would be nice, yes, sir.
- 25 Q Yes.

John Fowler - Cross-examination
by Mr. McPherson

1 And that's what you're hoping for, isn't it?

2 A That would be nice.

3 Q All right. Now, the truth is what Robert told you is
4 that he came upon Dawn Fowler, while she was striking
5 Mr. Fowler in the head with some kind of object like a
6 stick, and that he took the stick away from Mrs. Fowler?

7 Isn't that what he told you?

8 A No, sir, said she was stabbing him.

9 SOLICITOR BARNETTE: Your Honor, may we approach the
10 bench for a second?

11 THE COURT: Okay.

12 (Whereupon, a bench conference was held out of the
13 hearing of the jury at this time.)

14 Q The truth is he also didn't tell you anything about a
15 knife until after he had his bond hearing, and he came back
16 and told you I just learned that a knife was used in this
17 case, isn't that true?

18 A He said a knife was found with her fingerprints on it
19 that was on the scene. I'm not sure when the bond hearing
20 was. It was the middle of April when we talked about this.

21 Q Okay. Now, where were you exactly when this
22 conversation took place?

23 A We were on the recreation yard walking circles.

24 Q So, just you and him walking in a circle?

25 A Me and him and the other ten, fifteen people that be

John Fowler - Cross-examination
by Mr. McPherson

1 out there with us.

2 Q Was he just talking specifically to you?

3 A Yes, sir.

4 Q And so, as far as you know, nobody else heard this?

5 A Actually I know one other person that did hear it.

6 Q Was he walking with you?

7 A No, he was walking behind us.

8 Q Okay. But you and -- you would say that y'all were in
9 continuous motion walking and he was talking?

10 A Yeah, we were talking back and forth.

11 MR. MCPHERSON: I have no further questions.

12 THE COURT: Anything further?

13 SOLICITOR BARNETTE: Couple on redirect, Your Honor.

14 REDIRECT EXAMINATION

15 BY SOLICITOR BARNETTE:

16 Q You said there was another fellow with y'all?

17 A Yes, sir.

18 Q What was his name?

19 A His name was Haldone Oden.

20 Q Was he a roommate of yours?

21 A Yes, sir.

22 Q You didn't even know this charge had been dismissed
23 until he just showed it to you?

24 A Actually I didn't. It's nice to hear. I don't -- they
25 said that they trying to drop it though to get it to plead

John Fowler - Redirect examination
by Solicitor Barnette

1 to---

2 MR. MCPHERSON: Your Honor, I object to hearsay.

3 A ---malicious damage.

4 THE COURT: Got to be careful what somebody else said.

5 SOLICITOR BARNETTE: Yes, sir.

6 Q But you didn't even know this charge had been
7 dismissed?

8 A No.

9 Q And have you been promised anything on the armed
10 robberies or whatever?

11 A No, sir, I talked to my lawyer today and he said there
12 was no promises.

13 Q Okay. And who is your lawyer, sir?

14 A Timothy Ray.

15 Q Okay. Please answer any other questions Mr. McPherson
16 may have, any other questions you have.

17 MR. MCPHERSON: No, no further questions.

18 THE COURT: You may step down. Thank you.

19 SOLICITOR BARNETTE: Your Honor, we're gonna call Mr.
20 Haldone Oden.

21 MR. MCPHERSON: Judge, could we approach?

22 THE COURT: Yes, sir.

23 (Whereupon, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: Come on up.

Haldone Oden - Direct examination
by Solicitor Barnette

1 HALDONE ODEN, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR BARNETTE:

5 Q Mr. Oden, can you give us your full name for the record
6 please?

7 A Haldone Galoren Oden.

8 Q And, sir, where are you currently housed?

9 A Butler, South Carolina.

10 Q And are you -- have you lived in Spartanburg before?

11 A Yes, sir.

12 Q Most of your life here?

13 A Yes, sir.

14 Q Currently what are you in prison for, sir?

15 A Conspiracy on a drug case.

16 Q Do you know the defendant in this case, Mr. Heydman?

17 A Yes, sir, I do.

18 Q Where did you first meet him at?

19 A Spartanburg County Jail.

20 Q Okay. Do you see him here in the courtroom today?

21 A Yeah, sitting right here on the left.

22 SOLICITOR BARNETTE: Your Honor, I ask the record show
23 that he identified the defendant.

24 MR. MCPHERSON: No objection.

25 THE COURT: All right.

Haldone Oden - Direct examination
by Solicitor Barnette

- 1 Q Can you tell the jury where did you usually see him at
2 in the county jail?
- 3 A On the rec yard.
- 4 Q About what times?
- 5 A 2:30 to four o'clock.
- 6 Q And did you also know John Fowler?
- 7 A Yes, I do.
- 8 Q Did he use to talk to Mr. Heydman?
- 9 A Yeah, on a daily basis.
- 10 Q And at times did you use to overhear conversations they
11 had?
- 12 A Yeah, I heard a conversation or two.
- 13 Q Okay. Can you tell the jury what you heard in this
14 conversation?
- 15 A Basically that he was having an affair with the
16 paralyzed man and his wife and she wanted him dead. So,
17 they came to agreement of doing it. And after that he went
18 to the house one day and caught her stabbing the man in the
19 head and chest area. So, they began beating the man with
20 the ax handle of the ax and disposed, threw it in the van to
21 dispose of it at the recycling bin on down the street.
- 22 Q Did he ever talk about money or anything like that?
- 23 A Yeah, I think the man had a \$90,000 settlement in a
24 trust fund box that didn't have her name on it.
- 25 Q You mean a trust fund -- you mean a security box?

Halldone Oden - Direct examination
by Solicitor Barnette

- 1 A Security box, yeah, security.
- 2 Q And he said that she didn't even have her name on it?
- 3 A No, her name wasn't on.
- 4 Q Did he say anyway how he was gonna get, how she was
- 5 gonna get it or anything like that?
- 6 A No, he didn't say that either.
- 7 Q And did you hear him, overheard him say anything?
- 8 A Yeah, I overheard it.
- 9 Q You're in federal custody?
- 10 A Yes, sir.
- 11 Q Have you been promised anything?
- 12 A No, sir.
- 13 Q Why are you giving this information?
- 14 A Because I feel like it was wrong for it to be, you know
- 15 what I'm saying, to do a paralyzed man like that that can't
- 16 defend himself.
- 17 Q You're not trying to do this to help yourself or
- 18 anything like that?
- 19 A No, sir.
- 20 Q Please answer any questions Mr. McPherson may have for
- 21 you.
- 22 CROSS-EXAMINATION
- 23 BY MR. MCPHERSON:
- 24 Q And you were convicted in 2004 of crack cocaine?
- 25 A Yes, sir, I was.

Haldone Oden - Cross-examination
by Mr. McPherson

1 Q How many, how many drug convictions do you have?

2 A Two.

3 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
4 this point. He can ask about the, the conviction. He can't
5 go into the numbers of them.

6 MR. MCPHERSON: I hadn't been furnished with a copy.

7 SOLICITOR BARNETTE: Okay. It's not on his rap sheet.

8 Q You were convicted federally recently, were you not?

9 A Yes, sir, I was.

10 Q And how much time did you get on that?

11 A Thirty-six months.

12 Q All right. And I notice you were in jail and you were
13 in the county jail for burglary first?

14 A Yes, sir, I was.

15 Q And what's the status of that charge?

16 A Waiting for a trial.

17 Q Okay. So, you realize the burglary first brings
18 anywhere from fifteen years to life in prison, don't you?

19 A Yes, sir, I do.

20 Q And you also realize that if you give good testimony,
21 the prosecutor can write the federal authorities and your
22 attorney can file and ask that they resentence you.

23 Do you understand that, don't you?

24 A It's possible. But I haven't got no motion for that,
25 sir.

Haldone Oden - Cross-examination
by Mr. McPherson

- 1 Q Right.
- 2 So, by testifying, you could receive some real benefits
- 3 out of this testimony, could you not?
- 4 A Sir, I don't need it. I'm short time.
- 5 Q Well, I understand.
- 6 But burglary first is not short time.
- 7 That's fifteen to life, isn't it?
- 8 A Yeah, but I'm innocent of those charges, sir.
- 9 Q Well -- but they're still pending, aren't they?
- 10 A Yes, sir, they are.
- 11 Q And the State's holding that over your head for the
- 12 time being, aren't they?
- 13 A Yes, sir, they are.
- 14 Q So, being that you say you're innocent, perhaps they'll
- 15 dismiss it once you're done with your testimony, right?
- 16 A That's not -- I don't know, sir. That's not a promise
- 17 to me.
- 18 Q So, it's fair to say you're testifying in hopes of not
- 19 having to spend a whole lot of time in prison?
- 20 A No, sir, that's wrong.
- 21 Q And the truth of the matter is the reason, what Mr.
- 22 Heydman really told you was that he walked in on Mrs. Fowler
- 23 and saw her hitting Mr. Fowler over the head with this stick
- 24 and he, with a stick and/or some kind of object, that he
- 25 took it away from her and disposed of it, isn't that

Haldone Oden - Cross-examination
by Mr. McPherson

1 correct?

2 A No, sir, it's not.

3 Q And the truth is he didn't even mention a knife to
4 y'all until after he had his bond hearing and he came back
5 and told you I just learned that a knife was used in this
6 case?

7 A No, sir, it was up front.

8 Q Now, you and Fowler, y'all were roommates, were you
9 not?

10 A Yes, sir.

11 Q So, would of been real easy for y'all to get together
12 and come up with this, would you?

13 A I mean how we come up with some of the information we
14 wouldn't have?

15 Q well, you could of---

16 A If -- the information that we had had to be told to us,
17 sir.

18 Q I understand. But it's real easy to kind of manipulate
19 the facts if you know enough of them.

20 would you agree with that?

21 A No, sir.

22 Q If you know that a knife was used -- and if he, he told
23 you everything that happened from his standpoint, it would
24 be real easy for you to change it around just a tab and make
25 it---

Halldone Oden - Cross-examination
by Mr. McPherson

1 A Why would I do that?

2 Q Now, where were you when he made this statement?

3 A On the rec yard.

4 Q And what were you doing on the rec yard?

5 A walking.

6 Q Okay. And who was walking with you?

7 A I was walking behind him and Mr. Fowler.

8 Q And so, he was talking so you could hear him?

9 A Yes, sir, I was close enough.

10 MR. MCPHERSON: Okay. I have no further questions.

11 SOLICITOR BARNETTE: No further questions of this
12 witness, Your Honor.

13 THE COURT: You may step down. Thank you.

14 SOLICITOR BARNETTE: Your Honor, if I could have just a
15 minute to check the exhibits just to make sure everything's
16 in. I think that will be the State's case once we check
17 everything.

18 THE COURT: All right. How much time you need?

19 SOLICITOR BARNETTE: I just want to make sure. I just
20 need to check with the court reporter, Your Honor. If we
21 could do this -- we might be able to do this right here.

22 (Pause.)

23 SOLICITOR BARNETTE: Your Honor, the State would rest.

24 MR. MCPHERSON: I need -- I have some motions I'd like
25 to make.

1 THE COURT: Ladies and gentlemen of the jury, if you'll
2 step out to your room. Give me a few minutes to handle some
3 matters of law.

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

6 MR. MCPHERSON: Your Honor, I would make a motion for
7 directed verdict in this case on the grounds that there's no
8 credible evidence that the defendant, Robert Lee Heydman,
9 murdered Richard Fowler.

10 SOLICITOR BARNETTE: Your Honor, we would argue that
11 there's ample evidence in this case. Obviously you've got
12 the testimony of Angela Dawn Fowler along. That would be
13 enough there. You have the DNA of the victim on his
14 forehead. That's not a high amount, but obviously it's
15 there. You've got two gentlemen that testified that he
16 definitely finished off Mr. Richard Fowler with an ax
17 handle. In this case, he told them, told them facts that
18 there's no way they could know about it. The information
19 was not public information.

20 If you collected all the evidence together, I believe
21 there's no question we carried our burden to get over the
22 directed verdict and we want to go to the jury on this
23 charge.

24 THE COURT: Based on the evidence before the Court,
25 I'll have to deny that motion.

1 MR. MCPHERSON: Could I have just a few minutes, Your
2 Honor?

3 THE COURT: Yes, sir, let's all take about ten minutes
4 and then we'll come back.

5 SOLICITOR BARNETTE: Thank you, Your Honor.

6 (Whereupon, a short recess was taken at this time.)

7 SOLICITOR BARNETTE: Your Honor, I don't know if the
8 defendant's gonna testify. I don't know when they want to
9 do the advice of rights or anything like that.

10 MR. MCPHERSON: I'll speak to the defendant anytime you
11 want me to, Mr. McPherson, about his Fifth Amendment rights.

12 MR. MCPHERSON: I think we'd like to hear all the
13 evidence and then go into that issue. When we're down to
14 our last witness, then I'd like to go into that.

15 THE COURT: Good enough.

16 All right. Bring the jury in.

17 (Whereupon, the following takes place within the
18 presence of the jury.)

19 MR. MCPHERSON: Judge, defense would call Randy Bogan.
20 I'll get him.

21 RANDY BOGAN, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MCPHERSON:

25 Q would you state your name for the record please?

Randy Bogan - Direct examination
by Mr. McPherson

1 A Randall Eugene Bogan.

2 Q And how are you employed?

3 A I work with the Spartanburg County Coroner's Office at
4 this time.

5 Q And back on December the 13th, 2006, where were you
6 working?

7 A I was working with the Spartanburg County Sheriff's
8 Office in the forensics division.

9 Q And do you recall investigating an offense that
10 happened off---

11 A Yes.

12 Q ---Gobbler's Knob Road?

13 A Yes, sir, I do.

14 Q And did you go out to the scene?

15 A Yes, I did.

16 Q And who was in charge of the forensics out there?

17 A I was.

18 Q Okay. And would you tell the ladies and gentlemen of
19 the jury what you did as far as forensics were concerned?

20 A Actually I oversee several people who do different jobs
21 or different portions of the residence. Basically I
22 actually physically myself do a diagram. I also do a, a
23 write-up, a summary of what happened on the scene. They
24 take photographs, videos, fingerprints, blood spatter, they
25 collect evidence. I receive the evidence from them and

Randy Bogan - Direct examination
by Mr. McPherson

- 1 actually send it off to SLED to be analyzed.
- 2 Q Okay. Now just briefly I, I believe you indicated a
3 video was taken in this case?
- 4 A Well, I don't recall one specifically being taken
5 myself.
- 6 Q Okay. But you did mention in your report that one was
7 taken, did you not?
- 8 A Yes, there was one mentioned in my report. However, it
9 may be a typographical error on my part. I'm certainly
10 not--
- 11 Q Okay. Now, were the doors processed for prints?
- 12 A Yes, they were.
- 13 Q Do you know who did that?
- 14 A Shawn Nix I believe did that.
- 15 Q Okay. And was the knife collected?
- 16 A Yes, the knife was collected.
- 17 Q And was it sent in to SLED to analyze for touch DNA?
- 18 A Yes, I sent it into SLED for touch DNA and
19 fingerprints.
- 20 Q Okay. And did you perform -- did you or do you know if
21 any of your other people performed any tests out at the
22 scene maybe looking in the bathrooms to see if perhaps blood
23 had been cleaned up in the bathroom or washed off or
24 anything like that?
- 25 A We examined all of the rooms in the residence. The one

Randy Bogan - Direct examination
by Mr. McPherson

1 major room was the, where the incident occurred where all of
2 the blood was in the bedroom. Where the victim was located,
3 we found some spots on, if I recall correctly, if you're
4 going outside of that bedroom into the hallway, just outside
5 of the bedroom, where the door was open, where the doorway
6 is, I think there was some blood spatter on the wall outside
7 of that because the blood was, of course, on all walls.

8 The rest of the residence we examined for any kind of
9 disturbance or anything like that, and nothing looked out of
10 the ordinary from the rest of the residence.

11 Q Do you know what a reagent called Blue Star is?

12 A Yes, sir, I do.

13 Q What is that?

14 A It reacts to proteins in the blood.

15 Q And a lot of times you use that when you can't
16 physically see the blood, but you can tell that blood has
17 maybe been there, is that correct?

18 A That is correct.

19 Q And would you tell the ladies and gentlemen of the jury
20 whether or not you ran any of those kind of tests in this
21 case?

22 A No, none of those tests were ran. And basically I've
23 been to approximately, I would say, over a hundred homicide
24 scenes in my stint with the Sheriff's Office. Whenever I
25 come across something that I know and look to be wiped down

Randy Bogan - Direct examination
by Mr. McPherson

1 with Clorox or some other kind of reagent, you can, you can
2 see the swipe marks actually in a sink, on a wall, any other
3 places for that matter. And you can actually see the swipe
4 mark because the bleach or whatever's used to wipe that off
5 will, of course, leaves marks.

6 And like I say, I examined the residence, the remainder
7 of the residence and saw no apparent evidence of any of that
8 being done. Therefore, that's why I didn't use any Blue
9 Star.

10 Q But you would agree, in certain cases, y'all have gone
11 so far as to take plumbing apart to be able to get swabs off
12 the plumbing, isn't that correct?

13 A I remember in one case that that was, that was done,
14 yes, sir.

15 Q But you didn't do it in this case, did you?

16 A No, sir.

17 Q All right. And there's also a certain kind of light
18 you can use to help spot blood, isn't that correct?

19 A Specifically not by itself, no, sir, not to my
20 knowledge.

21 Q Okay. Well, what is it with this light?

22 A There's a four -- use can use fluorescent light and
23 sometimes see blood with orange goggles. However, that
24 wasn't used as well because, as I said previously, we
25 examined the residence and there was no apparent swiping of

Randy Bogan - Direct examination
by Mr. McPherson

1 anything or anything being used in the drain, in the sinks
2 of the residence.

3 Q Now, did you also go to the defendant's home or do you
4 recall?

5 A No, sir, I didn't.

6 Q Do you know who was in charge of that part of the
7 investigation?

8 A No, sir, I don't.

9 Q Okay. So, you don't know what tests, if any, were
10 taken at his?

11 A No, sir, I don't.

12 Q All right. No further questions.

13 SOLICITOR BARNETTE: I'd like to ask a few, a few, Your
14 Honor.

15 CROSS-EXAMINATION

16 BY SOLICITOR BARNETTE:

17 Q Investigator Bogan, you took diagrams of the crime
18 scene, is that right, or made diagrams of them?

19 A Yes, sir, that's correct.

20 (Whereupon, a diagram was marked as State's Exhibit No.
21 56 for identification purposes only at this time.)

22 Q Let me show you what's been marked State's Exhibit 56.
23 It's really a two Part -- there's two diagrams with it. One
24 of the, I believe of the house, floor plan, and one of the
25 room itself.

Randy Bogan - Cross-examination
by Solicitor Barnette

1 A Yes, sir, that's correct. And I did these.

2 Q You did those.

3 Your Honor, I'd like to enter State's Exhibit 56 into
4 evidence at this time.

5 MR. MCPHERSON: No objection.

6 (Whereupon, State's Exhibit No. 56 was received into
7 evidence at this time.)

8 Q Showing the jury this diagram here, can, if you would,
9 just step down for a second, sir.

10 A (witness come down from the stand.)

11 Q If you would, just describe the, the layout for the
12 jury so that we know what it is.

13 A All right, sir. If you're coming in here, the carport,
14 and this is the side door from the carport going into the
15 kitchen area. Of course, the den is up in the front side of
16 the residence because here's the front entrance. There is a
17 bedroom between, right beyond the den. Here's the hallway.
18 Here's the bedroom where the victim was located on the bed,
19 and this is the doorway I was speaking of earlier where I
20 stated there was blood all, all around in the bedroom.

21 The major portion of it, of course, is on the bed.
22 However, there was some blood spatter that continued through
23 the door and out to the hallway here, which I have marked
24 as, I can't see it, sorry, 28. And then, of course, there's
25 a bathroom here, the other bedroom, and as I stated, this

Randy Bogan - Cross-examination
by Solicitor Barnette

1 is -- well, this is a laundry room, another bathroom, and
2 the back, back-door of the residence here.

3 And the only, the only blood that we found was located
4 in this bedroom and the spot out here that was on the wall.
5 And I'm, I'm still, I don't remember the results, as of this
6 spot, No. 28, as it being blood or not. I'm not sure
7 whether it was blood or not.

8 Q But it would be, would of been through the doorway?

9 A Oh, yes, sir, without a doubt. That's, that's the
10 only---

11 Q Let me show you the other part of this diagram.

12 Is this a diagram of the room, sir?

13 A Yes, sir, it is. Basically what I done with the room,
14 this is the same room, the one single bedroom that the
15 victim was in. This is the doorway. And basically I laid
16 down the walls for you, okay, to show you the blood spatter
17 that was on each one of the walls. And also showing you the
18 door area, the way the door opened, and it was opened, and,
19 of course, this is the entrance to the door.

20 This is actually not showing you the hallway. But
21 through that door, and into the hallway was that one spot
22 that we thought was blood. However, all these markings here
23 15, 14, 7, 10, 9, 8, 11, all of these that I have marked or
24 most of these that I have marked on the wall are blood
25 spatter.

Randy Bogan - Cross-examination
by Solicitor Barnette

1 Q And did y'all find blood on the ceiling fan also?

2 A Yes, sir, there was blood on the ceiling as well.

3 There was several blood spatter marks on the ceiling fan
4 itself and on the ceiling itself.

5 Q Let me show you State Exhibits -- y'all went through
6 every room of the house, is that right?

7 A That's correct.

8 Q And y'all took pictures of -- you took numerous
9 pictures?

10 A I'm not -- I would say three, maybe four hundred
11 pictures just as an estimate. Yes, there's many photographs
12 taken.

13 (Whereupon, eight photographs were marked as State's
14 Exhibit Nos. 57 through 64 for identification purposes only
15 at this time.)

16 Q Let me let you look at State Exhibit I think 51 through
17 63 I think. If you would, take a look at those pictures,
18 sir, and see if those fairly represent what you saw in that
19 room, in that house.

20 A Yes, sir, it is.

21 Q Let me show you State Exhibit 64.

22 Does that also fairly represent what you saw there?

23 A Yes, sir.

24 SOLICITOR BARNETTE: Your Honor, I'd like to move all
25 these into evidence at this time.

Randy Bogan - Cross-examination
by Solicitor Barnette

1 MR. MCPHERSON: No objection.

2 (Whereupon, State's Exhibit Nos. 56 through 64 were
3 received into evidence at this time.)

4 SOLICITOR BARNETTE: May I publish them to the jury,
5 Your Honor?

6 THE COURT: Yes, sir.

7 Q Okay. Y'all went into both bathrooms and saw the
8 kitchen sink?

9 A Yes, sir.

10 Q Had anybody apparently washed their hands or done
11 anything that you saw blood in there or anything in any one
12 of the sinks?

13 A Not in any of the sinks. There was actually two
14 bathrooms sinks and the kitchen sink.

15 Q Let me show you State Exhibit No. 60, publishing that
16 to the jury, was this one of the bathroom sinks?

17 A Yes, sir, it was. As you can see here, there's a hair
18 brush there and none of these, none of these, none of these
19 were placed there. The photographs were taken the way it
20 was whenever we first arrived. So, none of this has been
21 moved. And as you can see, there's a roll of toilet paper
22 in the sink. So, there's no way anybody actually washed up
23 anything in that sink otherwise the toilet paper would of
24 been wet and it wasn't.

25 Q And let me show you State Exhibit 61.

Randy Bogan - Cross-examination
by Solicitor Barnette

1 Is this the other bathroom sink?

2 A Yes, sir, it is.

3 Q Did y'all see any evidence of anybody washing up or
4 anything there?

5 A No, sir, and you can't really tell in this photograph,
6 but it is really clean. And if there had been any swipe
7 marks or anything, I'd of definitely saw that or any Clorox
8 used or any kind of detergent used in that. Also, the, the
9 hair brush is right at the edge of the sink.

10 Q And would you have smelled it?

11 A Oh, yes, sir, without a doubt.

12 Q And State's Exhibit 62, what was that, sir?

13 A That's the toilet in the small bathroom in the storage
14 area. But I'm -- of course, nothing had been flushed down
15 that toilet because all those items are on that toilet the
16 way they are.

17 Q Let me show you State Exhibit 57. Move it back a
18 little bit or -- what is this a picture of, sir?

19 A That's a picture of the laundry room at the back
20 entrance of the residence, and that's just clothes and
21 things that are on top and actually the, the shirts were
22 hanging, but there's other clothes that are actually on top
23 of the washing machine and the dryer is to the right and
24 neither one of those have been tampered with.

25 Q Any so, was there any evidence anybody washed anything

Randy Bogan - Cross-examination
by Solicitor Barnette

1 or any of that nature?

2 A No, sir.

3 Q Let me show you State Exhibit No. 64, what was this a
4 picture of, sir?

5 A That's a picture of the kitchen and the way it was
6 whenever we got there. The sink has a few dishes in it I
7 believe, and, of course, the counter, the counter was clean
8 except for the little bit of clutter that you see on it with
9 the medicine bottles and things.

10 Q So, there was -- did you see any evidence of anything
11 being washed or anything like that?

12 A Nothing being washed off the counter or anything.

13 Q Let me show you State Exhibit 63.

14 what is that a picture of, sir?

15 A That's another picture, just a different view of the
16 kitchen. Actually here is the -- here's the sink that you
17 just saw a picture of, and right, it's kind of hard to do
18 looking this way, but here, here's the, the hallway that you
19 go down and down that hallway and to the right is another
20 room where the victim was in. But this is the basic look of
21 the entire kitchen the way it was, and, and it's just
22 showing that there was no, no signs of any struggle or
23 anything like that in the kitchen.

24 Q And State Exhibit 59, is that just another picture of
25 it?

Randy Bogan - Cross-examination
by Solicitor Barnette

1 A That's another photograph from the, if you're standing
2 close to the sink and the refrigerator which you just saw,
3 this is looking back the other way to the door and through
4 the door to the left is gonna be the den area to the front
5 portion of the residence, and the door to the right is the
6 carport door.

7 Q Showing you State Exhibit 58.

8 A This is gonna be just inside the den in the front room
9 of the residence. And that's the couch that's against the
10 wall. The door you just saw that I said went into the den,
11 as soon as you walk into the door, look to your right, this
12 is what you see.

13 Q Did you see any evidence of anybody trying to wash
14 anything, any disturbances, or anything?

15 A No, sir, there was no evidence of washing. No evidence
16 of cleaning. No evidence -- if, if any evidence had, had of
17 been cleaned, just to, to give you my mind set, if any
18 evidence would have tried to be cleaned up, it would on been
19 in the bedroom and none of that was messed with. Not any of
20 that.

21 The knife was still on the body. There was blood all
22 in the room and none of that was tampered with. No evidence
23 of any wiping of blood in any of the sinks, toilets,
24 anywhere in the residence.

25 Q And the blood splatter, would that be all over the

Randy Bogan - Cross-examination
by Solicitor Barnette

1 person that attacked Mr. Fowler?

2 A Yes, sir. And the reason I say that is because there
3 was a void in the bed. The victim -- of course, where the
4 victim laid on the bed, there was a void. And what I mean
5 by a void is a place in the bed where there was no blood.
6 where the victim was lying there was a void.

7 And if, if I am the victim, and I'm lying in the bed
8 the way you're looking at me right now, this way, on the
9 right side, was the only void that was on the bed sheets or
10 covers of that bed. Everywhere else around the room, if you
11 had a -- if I had a person standing right here, all the way
12 around that person, 360 degrees except for that person was
13 standing, there was blood. That just try to give, try to
14 give you, try to give you an example. But there was a blood
15 void in that one particular place and that's where somebody
16 was actually standing over.

17 Q Thank you, sir. Please be seated.

18 A Yes, sir.

19 (Witness returns to the stand.)

20 Q If you would, sir, please answer any questions Mr.
21 McPherson may have for you.

22 A Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. MCPHERSON:

25 Q Which side of the bed was that void on?

Randy Bogan - Redirect examination
by Mr. McPherson

1 A If you're, if you walk into the bedroom, the bed is
2 just to the left of the door that you walk into. The void
3 is on the left side of the bed.

4 Q Okay. Now, I believe you also collected fingernail
5 scrapings from the deceased, Mr. Fowler, is that correct?

6 A I didn't collect them. I believe Shamika Sanders did
7 at the autopsy.

8 Q Okay. And they were sent in for DNA analysis too, is
9 that correct?

10 A That's correct.

11 Q And the purpose of that is what?

12 A To see if there was any struggle or anything between
13 the victim and the suspect.

14 Q All right. And sometimes evidence gets up under his
15 skin or under his fingernails, is that correct?

16 A Yes, sir, but to the best of my knowledge, this victim
17 was impaired somehow and I don't think he could get out of
18 the bed well, and, therefore, I don't think a struggle could
19 have ensued.

20 Q Now, if a doctor testified that he had a defense,
21 defensive wounds that means he was at least trying to defend
22 himself?

23 A That's correct.

24 MR. MCPHERSON: Okay. No further questions.

25 SOLICITOR BARNETTE: Just one, Your Honor.

Randy Bogan - Recross examination
by Solicitor Barnette

1 RECROSS EXAMINATION

2 BY SOLICITOR BARNETTE:

3 Q If he had gloves, he wouldn't have anything on his hand
4 then, would he?

5 A No, sir.

6 MR. MCPHERSON: No further questions.

7 THE COURT: You may step down. Thank you, sir.

8 MR. MCPHERSON: May he be excused?

9 SOLICITOR BARNETTE: No objection, Your Honor.

10 THE COURT: This witness is excused.

11 WITNESS: Thank you, Your Honor.

12 MR. MCPHERSON: Defense would call Patty Ruff.

13 PATTY RUFF, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCPHERSON:

17 Q Would you -- I'm sorry. Would you state your full name
18 for the record please?

19 A Patty Browning Ruff, R-U-F-F.

20 Q Okay. How are you employed?

21 A I am employed with the South Carolina Law Enforcement
22 Division, which is more commonly known as SLED.

23 Q And in what capacity are you employed?

24 A I am presently employed as a criminal intelligence
25 analyst in the intelligence fusion center.

Patty Ruff - Direct examination
by Mr. McPherson

1 Q Okay. And back in May of 2007, how were you employed?

2 A Forensic evidence technician in the evidence processing
3 department.

4 Q And what does that mean exactly or what -- let me just
5 ask, ask you this way.

6 What are your duties?

7 A At that time my duties were to -- it's a simple term is
8 like evidence collection. For example, if an item of
9 evidence, the request would be for blood or something like
10 that, I would do like a visual exam, and then a chemical
11 test that we call fanal thalline. It's a presumptive test
12 which means that it's a possibility that it's blood. It's
13 not conclusive. If that test comes back positive, we'll
14 collect a sample and then send it to the DNA Department for
15 further testing. If it's another request, we do several
16 requests of other body fluid, trace, hair, and fibers.

17 Q Okay. Now, did you make a report in this case?

18 A Yes, sir, I did.

19 (Whereupon, a SLED report was marked as Defendant's
20 Exhibit No. 9 for identification purposes only at this
21 time.)

22 Q And now I'm showing you what is marked as Defense
23 Exhibit 9.

24 Do you recognize that document?

25 A Yes, sir, this is my report.

Patty Ruff - Direct examination
by Mr. McPherson

1 MR. MCPHERSON: Your Honor, at this time, I'm, I would
2 like to offer into evidence Defense Exhibit 9.

3 SOLICITOR BARNETTE: No objection, Your Honor.

4 (Whereupon, Defendant's Exhibit No. 9 was received into
5 evidence at this time.)

6 Q Now, except for the gloves that were sent to you by
7 mistake, you received, you received, in evidence, I mean you
8 received a knife, is that correct?

9 A No, sir, I did not.

10 Q Well, I mean there was a knife that was given to you
11 for examination?

12 A According to documentation, there was a knife that was
13 submitted to the forensic laboratory, but it did not come to
14 my department. It went to another department for latents I
15 believe, and it never, it never came to my department.

16 Q All right. But this -- it's in your report that, that
17 on all these items there was no results, I mean no
18 examination performed, is that correct?

19 A There was an examination performed on the steering
20 wheel.

21 Q But that was it?

22 A Yes, sir.

23 Q And all these other items, why was not an examination
24 performed?

25 A It was documented that Betty Walker received a phone

Patty Ruff - Direct examination
by Mr. McPherson

1 call from Rusty Clevenger---

2 SOLICITOR BARNETTE: Your Honor, I'm gonna, I'm gonna
3 object at this time because it's hearsay, what's coming in
4 next. They can say they received a phone call.

5 THE COURT: Can't go into what anybody said unless you
6 can show me an exception.

7 Q All right. Your instructions were not to perform these
8 tests that day---

9 SOLICITOR BARNETTE: Objection, Your Honor. Ask for
10 hearsay and hearsay answer.

11 THE COURT: You can rephrase your question maybe.

12 Q Pursuant to instructions, you did not perform any tests
13 other than on the steering wheel, is that correct?

14 A That is correct.

15 Q And you rushed the steering wheel and that was the only
16 one, is that correct?

17 A Yes, sir.

18 Q Now, these items that are listed on your document,
19 other than the plastic gloves, where did they go to?

20 A I received a container that had a steering wheel in it.
21 That was the only container that I received. The other
22 containers that -- I believe those items were in State's, in
23 a sealed container the whole time they were at SLED either
24 in the evidence control room or the evidence processing
25 refrigerator until they were returned.

Patty Ruff - Direct examination
by Mr. McPherson

1 Q Okay. But you would agree with me that, based on your
2 report, on all items that are in Defense Exhibit 9, except
3 for the steering wheel, there was no examination performed?

4 A By me, yes, sir.

5 Q And this, this is dated May 21, 2007, isn't that
6 correct?

7 A Yes, sir.

8 MR. MCPHERSON: No further questions.

9 SOLICITOR BARNETTE: Just a few, Your Honor.

10 CROSS EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q You never talked to anybody directly from the Sheriff's
13 Department, did you?

14 A No, sir, I did not.

15 Q So, a lot of times y'all have to pick and choose what
16 items are taken or tested, is that right?

17 A That is correct.

18 Q Is that because of money and economics sometimes?

19 A Yes, sir, and the volume of evidence that we receive.
20 We continuously have a back log. And, for certain
21 situations where it may be up to a hundred items that are
22 received on a case, and we try to communicate with officers
23 or whatever and do the most, I guess the most probative
24 evidence in a case. And the evidence is always preserved if
25 we need to process it at a later date.

Patty Ruff - Cross-examination
by Solicitor Barnette

1 Q The -- if somebody changed their clothes, would that
2 affect the result that you would get?

3 A Yes, sir, it would.

4 Q Thank you. No further questions.

5 THE COURT: Is that it?

6 MR. MCPHERSON: That's it. No further questions.

7 May she be excused?

8 SOLICITOR BARNETTE: Yes, she may.

9 THE COURT: The witness is excused.

10 MR. MCPHERSON: The defense would call Shawn Porter.

11 SHAWN PORTER, being first duly

12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCPHERSON:

15 Q would you state your full name for the record please?

16 A Shawn Lee Porter.

17 Q Mr. Porter, where -- do you live in Spartanburg County?

18 A Yes, sir.

19 Q And how long have you lived in Spartanburg?

20 A About ten years.

21 Q Do you know a person by the name of Dawn Fowler?

22 A Yes, sir.

23 Q How long have you known her?

24 A Since about 2003.

25 Q Is that when you first met her?

Shawn Porter - Direct examination
by Mr. McPherson

- 1 A Yeah. Yes, sir.
- 2 Q And back in 2003, how would you describe your
3 relationship with her?
- 4 A She was my best friend.
- 5 Q All right. Why was she your best friend?
- 6 A Cause she -- we were just friends. She was my best
7 friend.
- 8 Q Well, what -- did she give you things or not give you
9 things?
- 10 A Yes, sir.
- 11 Q What would she give you?
- 12 A Money, drugs, whatever I wanted.
- 13 Q And how often would she give you money?
- 14 A Whenever I wanted it.
- 15 Q But how often, like every other day or everyday?
- 16 A Yeah. Yes, sir.
- 17 Q Well which?
- 18 Every day or every other day?
- 19 A About every other day.
- 20 Q And how much money would she give you every other day
21 more or less?
- 22 A However much I asked more.
- 23 Q Well, but normally how much would she give you?
- 24 A Two, three hundred dollars.
- 25 Q And this was going on every other day?

Shawn Porter - Direct examination
by Mr. McPherson

1 A Yes, sir.

2 Q For how long a period of time?

3 A About two years, two and a half, maybe three.

4 Q Okay. And did she ever talk to you about her, her
5 husband?

6 A Yes, sir.

7 Q And did she ever ask you to do anything regarding her
8 husband?

9 A Yes, sir.

10 Q what did she ask you?

11 A She asked me if I knew anybody to get rid of him.

12 Q To get rid of him?

13 A Yes, sir.

14 Q And how many times did she ask you that?

15 A Maybe twice.

16 Q Okay. And she would, she would give you drugs, is that
17 what you said?

18 A Yes, sir.

19 Q what kind of drugs would she give you?

20 A Lortab, Xanaxes, methamphetamine, cocaine, marijuana,
21 whatever I wanted.

22 Q And who did these drugs come from?

23 A That I have no idea.

24 Q Well---

25 A well, the, the pills came from Richard---

Shawn Porter - Direct examination
by Mr. McPherson

1 Q Okay.

2 A ---Fowler.

3 Q All right. Did you ever meet Richard Fowler?

4 A No, sir.

5 MR. MCPHERSON: I have no further questions.

6 SOLICITOR JORDAN: No questions, Your Honor.

7 THE COURT: You may step down. Thank you, sir.

8 MR. MCPHERSON: May he be excused?

9 SOLICITOR JORDAN: Yes, sir.

10 THE COURT: Witness is excused.

11 MR. MCPHERSON: Defense would call Patricia Bradley,
12 Patricia Bradley.

13 PATRICIA BRADLEY, being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCPHERSON:

17 Q Would you state your name for the record please?

18 A Patricia Bradley.

19 Q And you reside in Spartanburg County?

20 A I do.

21 Q How long have you lived here?

22 A All, all my life except for 15 years my husband was in
23 the military.

24 Q Okay. And did -- do you, do you know a person by the
25 name of Dawn Fowler?

Patricia Bradley - Direct examination
by Mr. McPherson

- 1 A I do.
- 2 Q And when did you first meet her?
- 3 A Five or six years ago.
- 4 Q And how did you come to meet her?
- 5 A I -- she was an acquaintance of my son, Shawn.
- 6 Q Okay. And do you know any of the goings on between
- 7 your son and Mrs. Fowler?
- 8 A Oh, yeah.
- 9 Q What was going on between your son and Mrs. Fowler?
- 10 A She -- it started out, he went up there to get payroll
- 11 checks cashed, and she started giving him money, pills, cell
- 12 phones, buying wrestling gear, and so forth to that effect.
- 13 Q Okay. And this started in 2003?
- 14 A Around about that, that time.
- 15 Q And did you know, did you know or not know whether or
- 16 not she had asked your son if he knew anybody to get rid of
- 17 her husband?
- 18 A Yes.
- 19 Q You do know that?
- 20 A I do know that for a fact.
- 21 Q Okay. And did she ever approach you and ask you if she
- 22 could use your son for something or to do something to her
- 23 husband?
- 24 A Yes.
- 25 Q What did she ask you?

Patricia Bradley - Direct examination
by Mr. McPherson

- 1 A That if I could get Shawn to beat the---
- 2 Q Just say it exactly like she said it.
- 3 A ---shit out of Richard.
- 4 Q She asked you that?
- 5 A To ask Shawn, yes.
- 6 Q And you weren't kind of shocked at that?
- 7 A It shocked me because my son wasn't raised that way.
- 8 Q Okay. Were you mad at her?
- 9 A I wouldn't say mad. I was just shocked. I didn't like
10 my son, you know, to be used in that sort.
- 11 Q Okay. Now, were you put in jail at one time?
- 12 A I was. But I'd like to explain why.
- 13 Q All right. Why were you put in jail?
- 14 A I've been married for 22 years. My husband committed
15 adultery. I found out, I was upset, and we got into an
16 altercation and I slapped him to get him off of me, and I
17 was charged with CDV.
- 18 Q Okay.
- 19 A And went to jail.
- 20 Q And while you were in jail, did you come across Dawn
21 Fowler?
- 22 A I did.
- 23 Q Was she in the same area as you were in at the jail?
- 24 A Yes.
- 25 Q And did y'all talk about this incident?

Patricia Bradley - Direct examination
by Mr. McPherson

1 A Yes.

2 Q Do you recall what she told you?

3 A Yes.

4 Q What did she tell you?

5 A She told me -- well, first of all, I said why haven't
6 you got out on bond and she asked me or she told me that
7 she, because of Richard's sister, that's why she hadn't got
8 out on bond, because Richard's sister was afraid that the
9 same thing that she done to Richard, his sister was afraid
10 that the same thing would happen to her that happened to
11 Richard.

12 Q Okay.

13 A That she would have the same, that she would do the
14 same thing to her that she done to Richard.

15 Q Okay. And did she describe the room to you---

16 A She---

17 Q ---that Richard was in when he was---

18 A She did.

19 Q ---killed?

20 A She did.

21 Q And was that description as if somebody had relayed it
22 to her or if she had been in there?

23 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
24 this time. This is speculation on the part of the witness.

25 THE COURT: No, I'm gonna, I'm gonna give him lead way.

Patricia Bradley - Direct examination
by Mr. McPherson

1 Go ahead.

2 Q Did you understand the question?

3 A Repeat it.

4 Q Was that description as if somebody had told her what
5 the room was like or as if she had been in that room?

6 A As if she was in that room.

7 Q When she described it to you, were you fairly certain
8 she had been in that room?

9 A Yes.

10 Q And did she tell you that the guy that was involved in
11 this was a preacher at Baptist Una Church, Baptist Church in
12 Una?

13 A Yes, and that he had three girls.

14 Q Okay. But she did say he was a preacher at a Baptist
15 Church in Una?

16 A Yes.

17 Q All right. No further questions.

18 THE COURT: Your witness, solicitor.

19 SOLICITOR BARNETTE: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q Mrs. Bradley, she had had the bond hearing, is that
23 right, before this happened?

24 A Yes.

25 Q And the bond hearing, obviously you weren't there?

Patricia Bradley - Cross-examination
by Solicitor Barnette

1 A No.

2 Q So, you don't know what was described or anything?

3 A No, hu huh. (Negative).

4 Q And also didn't she tell you -- what else did she tell
5 you about Mr. Heydman?

6 A That he had three daughters and that she had, that she
7 had slept with him. She, she, she was sleeping with him.

8 Q Did she also tell you what happened that day when her
9 husband was killed, what he did?

10 A Yes.

11 Q What did she tell you about it?

12 A She told me that he had parked down below where they
13 had lived, and walked up to his house, to her house and
14 entered at the side of the carport and went in to where
15 Mrs., where Mr. Fowler had been sleeping.

16 Q But she said she left the door open?

17 A Yes, she said she had left the door unlocked and took
18 Minor 2 to school and Minor 1 was catching the bus.

19 Q Did she say what he used to kill him?

20 A A ball bat.

21 SOLICITOR BARNETTE: One moment, Your Honor, please.

22 (Pause.)

23 SOLICITOR BARNETTE: Thank you, ma'am.

24 REDIRECT EXAMINATION

25 BY MR. MCPHERSON:

Patricia Bradley - Redirect examination
by Mr. McPherson

1 Q Now, she didn't name Mr. Heydman, did she?

2 A No.

3 Q She just named a person that was a preacher at Una
4 Baptist Church, is that correct?

5 A Right, with the description of what was inside the
6 room.

7 Q Right.

8 Okay. That's all I have.

9 SOLICITOR BARNETTE: No further questions of this, of
10 this witness, Your Honor.

11 THE COURT: You may step down. Thank you.

12 MR. MCPHERSON: May she be excused?

13 SOLICITOR JORDAN: Yes, sir.

14 SOLICITOR BARNETTE: Yes, sir.

15 THE COURT: The witness is excused.

16 MR. MCPHERSON: Bertha Raines.

17 SOLICITOR BARNETTE: May we approach for a second, Your
18 Honor?

19 THE COURT: Yes, sir.

20 (Whereupon, a bench conference was held out of the
21 hearing of the jury at this time.)

22 THE COURT: Go ahead.

23 BERTHA RAINES, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

Bertha Raines - Direct examination
by Mr. McPherson

1 BY MR. MCPHERSON:

2 Q Would you state your name for the record please?

3 A Bertha Raines.

4 Q And where do you live?

5 A in Una.

6 Q Okay. And are you married?

7 A Yes, sir.

8 Q And what does, what does your husband do?

9 A He pastors at Una First Baptist and he works at

10 P.H.O.M.

11 Q Okay. Do you know Robert Heydman?

12 A Yes, sir.

13 Q How long have you known Robert Heydman?

14 A About four or five years.

15 Q Okay. And is -- now, does Robert Heydman go to your
16 church---

17 A Yes, sir.

18 Q ---or your husband's church?

19 A Yes, sir.

20 Q How long had he been going to your church?

21 A About four or five years. Ever since we known him.

22 Q Okay. And is he a pastor at your church?

23 A He's on the youth committee and taught a Sunday school
24 class.

25 Q I know.

Bertha Raines - Cross-examination
by Solicitor Jordan

1 But is he a pastor at your church?

2 A No, sir.

3 Q Okay. That's all I have.

4 CROSS-EXAMINATION

5 BY SOLICITOR JORDAN:

6 Q Mrs. Raines, you know Mrs. Fowler also?

7 A Yes, ma'am.

8 Q Okay. You also know Mr. Heydman from church like you
9 just testified?

10 A Yes, ma'am.

11 Q Isn't it true that sometimes you would be at church
12 functions with Mr. Heydman and he would show you his cell
13 phone?

14 A Yes, ma'am.

15 Q What would he show you on his cell phone?

16 A Dawn would call.

17 Q Okay. Would he, would he also show you text messages
18 from Dawn?

19 A Yes, ma'am.

20 Q What did the text messages say?

21 A Different things. One time she showed a picture of her
22 dog and she had texted that she loved him or something like
23 that.

24 Q Okay. And he knew what the text messages said?

25 A Yes, ma'am.

Bertha Raines - Cross-examination
by Solicitor Jordan

1 Q And who they were from?

2 A Yes, ma'am.

3 Q Okay.

4 MR. MCPHERSON: Your Honor, I object to that. That
5 calls for speculation on her part as far as she knew, he
6 knew what the text messages said.

7 Q Would he tell you who the text messages were from?

8 A He would show me.

9 Q Okay. But you know that Dawn text messaged him?

10 A No, I don't know that he text message her.

11 Q Let me ask you this.

12 Did you ever have some concerns about his relationship
13 with Dawn?

14 A Yeah.

15 Q Okay. Did you talk to him about those?

16 A Yeah.

17 Q What made, what made you concerned or what brought
18 about the concern?

19 A I, I don't know. I really just had a feeling. I don't
20 know how to explain it.

21 Q What kind of feeling?

22 A About she was trouble, she was looking for something.

23 MR. MCPHERSON: Judge, I object. That's just calling
24 for speculation here.

25 THE COURT: Yeah, be careful with the speculation. I

Bertha Raines - Cross-examination
by Solicitor Jordan

1 mean---

2 SOLICITOR JORDAN: Okay, Your Honor.

3 Q Did you ever tell him that it was unusual or that he
4 shouldn't sit with her so much at church?

5 A I don't think I told him that.

6 Q Okay. Do you use to work with Mr. Heydman on his
7 handyman jobs?

8 A Yes, ma'am, I did.

9 Q Did you stop working with him?

10 A No, we just run out of work.

11 Q Just ran out of work.

12 Nothing further, Your Honor.

13 THE COURT: That do it?

14 MR. MCPHERSON: That's it.

15 THE COURT: You may step down. Thank you.

16 MR. MCPHERSON: Could we approach, Your Honor?

17 THE COURT: Yes, sir.

18 (Whereupon, a bench conference was held out of the
19 hearing of the jury at this time.)

20 THE COURT: Ladies and gentlemen of the jury, if you'll
21 step back to your room. I got to have a matter of law
22 session here.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: Give me just a minute. I sent my law clerk

1 to get my note pad.

2 (Pause.)

3 THE COURT: Mr. Heydman.

4 DEFENDANT: Yes, sir.

5 THE COURT: I need your undivided attention please. I
6 need to talk with you about your Fifth Amendment right to
7 our United States Constitution and then also a similar
8 counterpart provision of our State Constitution.

9 The Fifth Amendment to the Constitution of the United
10 States provides, in part, that no person shall be compelled,
11 in any criminal case, to be a witness against himself. This
12 provision of the constitutional law means that you can not
13 be compelled or required to testify in this case.

14 It is a right and a privilege which the law extends to
15 you. It is a personal privilege and no one can waive this
16 right except you. You have a right not to testify, but you
17 also have a right to testify. I will grant you the right to
18 consult your attorney before you make a decision.

19 If you elect not to testify, this can not be used by
20 the State as an inference of guilt and your election not to
21 testify can not be considered by the jury in its
22 deliberations. If you elect to testify and waive the
23 privilege extended to you by the Fifth Amendment to the
24 Constitution of the United States, I advise you now that you
25 will then assume the role of a witness in this case, and you

1 then waive or give up your Constitutional privilege against
2 self-incrimination.

3 This means that if you voluntarily take the witness
4 stand and testify, you will then subject yourself to the
5 same rules that govern other witnesses and you may be
6 examined and cross-examined on any relevant issue in this
7 case, and you may be impeached to the same extent as any
8 other witness all of which, however, would be subject to our
9 rules of evidence and procedure.

10 I further advise you that if you elect to take the
11 witness stand and testify, this decision on your part must
12 be made freely, voluntarily, intelligently, and with
13 knowledge of the protections given to you by the Fifth
14 Amendment to the Constitution of the United States and with
15 knowledge of consequences of your election to testify.

16 Before you give me a final answer concerning what I
17 have just gone over with you, do you wish to consult with
18 your attorney?

19 DEFENDANT: No, sir.

20 THE COURT: Have you discussed with your attorney
21 whether you should or should not testify?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you understand what he has explained to
24 you?

25 DEFENDANT: Yes, sir.

1 THE COURT: Do you understand what I just went over
2 with you?

3 DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about what I just
5 explained to you?

6 DEFENDANT: No, sir.

7 THE COURT: Do you wish to testify?

8 DEFENDANT: Yes, sir.

9 THE COURT: Very good.

10 MR. MCPHERSON: Could we take a short break?

11 THE COURT: Yes, sir.

12 Let's stand at ease for about five minutes.

13 (Whereupon, a short recess was taken at this time.)

14 THE COURT: Ready?

15 SOLICITOR BARNETTE: I'm ready.

16 MR. MCPHERSON: Yes, sir.

17 THE COURT: Bring them on.

18 (Whereupon, the following takes place within the
19 presence of the jury.)

20 THE COURT: Okay.

21 MR. MCPHERSON: Your Honor, we would, we would call
22 Robert Heydman to the stand.

23 THE COURT: Come around and be sworn please.

24 ROBERT HEYDMAN, being first duly
25 sworn, testified as follows:

Robert Heydman - Direct examination
by Mr. McPherson

1 DIRECT EXAMINATION

2 BY MR. MCPHERSON:

3 Q Would you state your full name please?

4 A Robert Lee Heydman.

5 Q How old are you, Mr. Heydman?

6 A Forty-eight years old.

7 Q And where were you born?

8 A New Jersey.

9 Q All right. How long have you lived in Spartanburg
10 County?

11 A Twenty years.

12 Q And are you married?

13 A Yes, ma'am.

14 Q And who, to whom are you married?

15 A Evelyn Blake Heydman.

16 Q Okay. And do you work?

17 A Yes, sir.

18 Q What kind of work do you do?

19 A I do all kinds of repairs.

20 Q What kind of repairs, repairs?

21 A Anything that you need done around your house or
22 business.

23 Q Well, can you do electrical repairs?

24 A Yes, sir.

25 Q And how far did you go in school?

Robert Heydman - Direct examination
by Mr. McPherson

- 1 A I went to the ninth grade, but I finished the seventh.
2 Q Okay. And during that time, did you learn to read and
3 write?
4 A No, sir.
5 Q Who does your typing for you?
6 A My wife.
7 Q Have you ever been able to read or write?
8 A No, sir.
9 Q Can you sign your name?
10 A I can print it.
11 Q Okay. Do you know a person by the name of Dawn Fowler?
12 A Yes, sir.
13 Q Now, you understand this incident happened back in
14 December of 2006?
15 A Yes, sir.
16 Q So, prior to this incident in December of 2006, how
17 long had you known Dawn Fowler?
18 A Somewhere around September of '06.
19 Q Okay. And where did you meet Dawn Fowler?
20 A At Una First Baptist Church.
21 Q And are you a member of Una Baptist Church?
22 A Yes, sir.
23 Q How long had you been going to that church?
24 A Approximately four or five years.
25 Q Okay. Now, did you know Richard Fowler?

Robert Heydman - Direct examination
by Mr. McPherson

- 1 A Yes, sir.
- 2 Q And how long had you known Richard Fowler?
- 3 A The same length of time as I known Dawn.
- 4 Q And where did you meet Richard Fowler?
- 5 A At the Una First Baptist Church.
- 6 Q And was he paralyzed like you heard one of these
- 7 witnesses testify to?
- 8 A No, sir.
- 9 Q And what kind of condition was he in?
- 10 A He had a back problem. He had to have a walker or a
- 11 cane sometimes to, when he come to church.
- 12 Q Okay. But he could get around?
- 13 A Yes, sir.
- 14 Q To your knowledge, he could drive an automobile?
- 15 A Yes, sir.
- 16 Q All right. And did you drive a vehicle?
- 17 A Yes, sir.
- 18 Q Normally what type of vehicle would you drive?
- 19 A On a normal day-to-day basis is a '79 Ford pickup.
- 20 Q All right. And did you ever drive this green van
- 21 you've heard mentioned?
- 22 A Yes, sir.
- 23 Q The one where they took the steering wheel?
- 24 A Yes, sir.
- 25 Q That came off of your vehicle?

Robert Heydman - Direct examination
by Mr. McPherson

- 1 A Yes, sir.
- 2 Q All right. How would you describe your relationship
3 with Dawn Fowler?
- 4 A As a friend.
- 5 Q And how about with Richard Fowler?
- 6 A The same.
- 7 Q Well, how close were you to Dawn Fowler?
- 8 A She was like a sister.
- 9 Q And Richard Fowler?
- 10 A He was like a brother.
- 11 Q All right. And would Dawn ever text message you?
- 12 A Yes, sir.
- 13 Q And could you read those text messages?
- 14 A No, sir.
- 15 Q And then how would you know what she was saying?
- 16 A Like we had testimony earlier, Mrs. Raines worked for
17 me and I'd show her my telephone and she'd tell me what the
18 text message said.
- 19 Q Okay. And did she ever speak to you about Dawn being
20 too close to you?
- 21 A She had mentioned that, you know, that she was out to,
22 to no good.
- 23 Q Okay. Now, would you ever call Richard Fowler on the
24 phone?
- 25 A From time to time, yes, sir.

Robert Heydman - Direct examination
by Mr. McPherson

1 Q And how often would you call him when you say from time
2 to time?

3 A Me and Richard would talk at least once, maybe twice a
4 day, maybe more.

5 Q That often?

6 A Yes, sir.

7 Q Okay. And how often would you talk to Dawn?

8 A Well, a lot of times she would answer the phone and
9 then she'd hand it over to Richard and we'd both have
10 conversations.

11 Q Okay. And -- now, do you recall the day of the
12 offense?

13 A Yes, sir.

14 Q All right. Do you recall what time you got up in the
15 morning?

16 A Average morning I'm usually up between 3:30 and 4:30.

17 Q Okay. Now, you saw some evidence that there was a
18 phone call made from your cell phone to a cell phone that
19 was in the name of Richard Fowler.

20 A Yes, sir.

21 Q Did you make that phone call?

22 A Every morning when I get up I checked my phone for
23 messages and that phone number was on my phone. So, I
24 called it back. But nobody answered.

25 Q Okay. And what were your plans for that day?

Robert Heydman - Direct examination
by Mr. McPherson

1 A I was going out to find some work for me and Mrs.

2 Raines to do and put some bids in on some jobs.

3 Q Okay. And what time did you leave the house?

4 Do you recall?

5 A It was somewhere around 6:00, 6:30.

6 Q Okay. And where did you go?

7 A Took my granddaughter to the bus stop and dropped her
8 off, and then I left her there and I went to the Raceway on
9 Asheville Highway and delivered a dress to another lady in
10 the church for Christmas.

11 Q Okay. And from there where did you go?

12 A Then I went over to Highway 9 and talked to some
13 construction workers over there about getting some work.

14 Q And what kind of work were you trying to get?

15 A Any kind of construction work.

16 SOLICITOR BARNETTE: Mr. McPherson, there's some over
17 here, sir.

18 MR. MCPHERSON: I'm looking for that resume. I found
19 it.

20 Q Okay. I'm showing you what's marked as Defense Exhibit
21 2.

22 Do you recognize that document?

23 A Yes, sir.

24 Q What is it?

25 A That's a front page of my resume.

Robert Heydman - Direct examination
by Mr. McPherson

- 1 Q And who typed this document up?
- 2 A My wife.
- 3 Q And can you read it or not read it?
- 4 A No, sir.
- 5 Q What was the purpose of this document?
- 6 A To pass on to some subcontractors to let them know what
- 7 kind of work that I could do and see if they had any work
- 8 for me to do.
- 9 Q And do you recall what businesses you went to that day?
- 10 A Yes, sir.
- 11 Q Where did you go to?
- 12 A I went to Potter & Shackelford and talked to the
- 13 superintendent there, and he said they didn't take resumes,
- 14 that I'd have to contact the main office in Greenville.
- 15 Q Okay. Did you go anywhere else?
- 16 A They was another construction company on the same job
- 17 site, and it was -- I can't recall the name of the company
- 18 right off.
- 19 Q Okay. But did they hire you or offer to hire you?
- 20 A No, the other company took my resume and said he would
- 21 turn it into their company and get back in touch with me.
- 22 Q Did anybody ever get back in touch with you?
- 23 A No, sir.
- 24 Q All right. And I'm showing you what's marked as
- 25 Defense Exhibit No. 1.

Robert Heydman - Direct examination
by Mr. McPherson

1 Do you recognize that document?

2 A Yes, sir.

3 Q What is it?

4 A That is a invoice to do some work for Mr. Fowler.

5 Q And who typed up this invoice?

6 A My wife.

7 Q And what was the purpose of this invoice?

8 A Richard Fowler and me had talked about having some
9 handicap ramps put around his residence and maybe a little
10 deck on the back where they could have to sit in the summer
11 time.

12 Q All right. And when did you talk to Richard about
13 this?

14 A I had talked to him on the -- December the 11th.

15 Q Okay.

16 A And when I went over there to clean up some stuff out
17 of the yard and stuff like that, me and him had talked and
18 Mrs. Fowler was gone to get the kids from school. And he
19 asked me would I come back one day that week and move some
20 furniture out cause he was gonna buy them a new bedroom
21 suit.

22 Q Okay. And did you help Richard out a lot or not very
23 often?

24 A It's every now and then. Whenever he needed some help
25 I'd try to go over and help him.

Robert Heydman - Direct examination
by Mr. McPherson

1 Q Okay. And now this, this morning there was some phone
2 calls I believe from your cell phone to a cell phone that's
3 in the name of Richard Fowler, is that correct?

4 A Yes, sir.

5 Q And who did you talk to?

6 A I talked to Richard.

7 Q And what did you talk to him about?

8 A I was talking to him about doing some work in moving
9 the furniture around and maybe doing the handicapped ramps
10 and stuff.

11 Q And did you ever talk to Dawn on that same phone?

12 A Yes, sir.

13 Q So, you were talking to both while they were still at
14 home?

15 A Yes, sir.

16 Q Okay. Now, after you went to the construction sites --
17 do you recall what time that was?

18 A I'm thinking it was somewhere between 7:30, quarter
19 till 8:00.

20 Q Okay. And after you left the construction sites, what
21 happened?

22 A I come back to the Fowler residence.

23 Q And why did you go to the Fowler residence?

24 A Cause I had talked to Richard that morning and he said
25 that he would like to get that moved out cause he had plans

Robert Heydman - Direct examination
by Mr. McPherson

- 1 for the, a moving company to bring some furniture in.
- 2 Q Okay. And, and what about the invoice?
- 3 A I was gonna---
- 4 Q Is that part of it or not part of it?
- 5 A I was gonna show that to him or present that to him at
- 6 that same time.
- 7 Q Okay. And so, you went straight from the construction
- 8 site to Richard's house?
- 9 A Yes, sir.
- 10 Q Do you remember how you drove?
- 11 A Coming from Number 9 up Valley Falls Road to Upper
- 12 Valley Falls Road into the housing development.
- 13 Q Okay. And when you got there, what did you observe?
- 14 A When I had pulled up into the driveway, the, the garage
- 15 door was -- well, not the garage door, but the side door of
- 16 the house was propped open like maybe, you know, somebody
- 17 was, started to move stuff around in the house. So, I went
- 18 to the door and I knocked and, and spoke and said is anybody
- 19 at home, and I heard some kind of like struggling or, you
- 20 know, loud noises back towards the back like they somebody
- 21 moving something. So, I walked in, on into the house
- 22 towards the back bedroom where the furniture was suppose to
- 23 be moved.
- 24 Q Okay. What did you observe when you walked toward the
- 25 back end of the house?

Robert Heydman - Direct examination
by Mr. McPherson

1 A When I walked into the back portion of the house, I
2 observed Mrs. Fowler standing over Mr. Fowler with a stick
3 beating him in the head.

4 Q Was it a baseball bat?

5 A I'm not really sure what kind of stick it was. It was
6 just a wooden object about 3-foot long and probably about
7 two and a half inches around.

8 Q Okay. And when you saw her doing that, what did you
9 do?

10 A I grabbed the stick from her and left the scene and
11 told her to call 9-1-1 cause I said he may still be alive,
12 call 9-1-1.

13 Q And did you fuss at her or anything like that?

14 A No, sir.

15 Q And what were you thinking when you saw this?

16 A I was in shock when I saw it. I mean it just, it
17 really surprised me when I walked into the residence cause I
18 didn't really know that they was having that bad of, you
19 know---

20 Q And you knew, you knew they were having problems, did
21 you not?

22 A Yeah, I knowed they was having squabbles like any
23 married couple would have or anybody that's living together,
24 you know, you have your ups and downs. But I never would of
25 thought it went this far.

Robert Heydman - Direct examination
by Mr. McPherson

- 1 Q Okay. So, what did you do with that stick?
- 2 A I put it in my vehicle and left and throwed it in the
- 3 landfill.
- 4 Q And why didn't you call the police yourself and turn it
- 5 in?
- 6 A Like I said, I was in shock and didn't realize what I
- 7 was doing at the time that this incident happened.
- 8 Q And you realize that was wrong?
- 9 A Yes, sir.
- 10 Q And you destroyed or got rid of evidence?
- 11 A Yes, sir.
- 12 Q Now, did you kill Richard Fowler?
- 13 A No, sir.
- 14 Q Did you assist Dawn Fowler in killing Richard Fowler?
- 15 A No, sir.
- 16 Q So, it's your testimony that she killed Richard Fowler
- 17 as far as you know?
- 18 A As far as I know, sir.
- 19 Q Now, you've heard testimony that there was a knife
- 20 used.
- 21 A Yes, sir.
- 22 Q When did you first learn that a knife was used in this
- 23 case?
- 24 A When we come over here for a bond hearing and the lady
- 25 there had mentioned it in the bond hearing.

Robert Heydman - Direct examination
by Mr. McPherson

1 Q All right. Now, do you know this man Fowler that
2 testified?

3 A I met him at the county jail, yes, sir.

4 Q Okay. And the other fellow, Oden, did you know him?

5 A Yes, sir, I met him at the county jail too.

6 Q And did you talk to them about this case?

7 A To somewhat, yes, sir.

8 Q And what did you tell -- let's start with John Fowler.

9 A We was walking around the rec yard at the jail, and he
10 asked me what my charges was and I told him. And he, you
11 know, kind of proceeded, said what happened. And I
12 presented it just like I told you now what happened, and
13 that was all that was ever said.

14 Q Well, you knew that there was some---

15 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
16 leading the witness at this point.

17 Q What, if anything, did you tell him about \$90,000?

18 A I told him that Dawn told me that Richard had got a
19 \$90,000 settlement from workman's comp and he had it in a
20 safe deposit box in the bank and he wouldn't put her name on
21 it. But she did get a key to it. And as soon as she got
22 her name on it, she was gonna get the money.

23 Q Okay. And did you ever talk to this Haldone Oden about
24 this case?

25 A No, sir.

Robert Heydman - Direct examination
by Mr. McPherson

1 Q So, whatever he was testifying to, he must of heard
2 from Fowler as far as you know?

3 A Yes, sir.

4 Q All right. Were you and Fowler friends up to that
5 point?

6 A We had talked on the rec yard.

7 Q And did you know that he had -- when you were talking
8 to him, did you know that he had serious problems against
9 him?

10 A No, sir, I did not.

11 Q Okay. Do you know whether or not the information
12 regarding the murder of Richard Fowler had spread throughout
13 the jail?

14 A A number of times that some folks would come up to me
15 and say that they heard---

16 SOLICITOR BARNETTE: Your Honor, I object at this point
17 about hearsay.

18 THE COURT: Okay.

19 Q Just answer yes or no.

20 Did you not---

21 SOLICITOR BARNETTE: Your Honor, I'm gonna object.

22 That's hearsay. Any question from somebody else from the
23 jail unless he can show an exception. I think it's hearsay.

24 THE COURT: Can't go into what somebody else said.

25 Q All right. Without telling me what other people said,

Robert Heydman - Direct examination
by Mr. McPherson

1 did anybody ever come up to you and relate facts to you
2 about the incident?

3 SOLICITOR BARNETTE: Your Honor, I'm gonna object.

4 MR. MCPHERSON: I'm not asking the facts that were
5 related.

6 THE COURT: I'm gonna let him ask it. I think it's
7 already been answered.

8 But go ahead.

9 A No, sir.

10 Q Okay. Now, there was a lot of calls on the cell phone
11 going back and forth between your cell phone and a cell
12 phone that was in Dawn Fowler's possession at the time of
13 her, her arrest.

14 Are you aware of that?

15 A Yes, sir.

16 Q Now, all these phone calls, were you talking to her?

17 A Not at all of them, no.

18 Q Okay. But some of the times you were?

19 A Yes, sir.

20 Q Did you change your clothes that day?

21 A No, sir.

22 Q And how do you suppose Richard's DNA got on your
23 forehead?

24 A When I grabbed the stick from Dawn and removing it from
25 the scene.

Robert Heydman - Direct examination
by Mr. McPherson

- 1 Q Okay. Was there a lot of blood on that stick or can
2 you recall?
- 3 A I'm not sure.
- 4 Q Okay. Did you stab Richard Fowler?
- 5 A No, sir.
- 6 Q Did you ever hit him over the head with a stick or a
7 baseball bat or anything that day?
- 8 A No, sir.
- 9 Q Did Dawn ever ask you to help her take care of her
10 husband?
- 11 A Numerous times.
- 12 Q What would she say?
- 13 A She said she'd like to get rid of her husband.
- 14 Q Well, you didn't think that was kind of serious?
- 15 A Yeah, but like I told her, that if it got too bad, what
16 she needed to do is take her kids and leave and go to her
17 mama's or her sister's or, you know, just get out of the
18 situation and I told Mr. Fowler the same thing.
- 19 Q And you weren't concerned that she kept asking you
20 about getting rid of her---
- 21 A Like I said, she asked me several times, and I told her
22 that I didn't want to hear anymore about that. If they
23 couldn't, you know, work their problems out or separate,
24 that I didn't need to hear anymore of that. Then we would
25 discontinue our friendship. And so, she stopped.

Robert Heydman - Direct examination
by Mr. McPherson

1 Q Okay. Now, were you a pastor at Una Baptist Church?

2 A No, sir.

3 Q Were you like a pastor at Una Baptist Church?

4 A No, sir.

5 MR. MCPHERSON: No further questions.

6 CROSS-EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Mr. Heydman, here's a lady telling you she wants to get
9 rid of her husband and you stick around?

10 A Yeah, I was a friend.

11 Q Why did you get away from her if you knew that was the
12 situation?

13 A Like I said, I was a friend.

14 Q And the stick you're talking about, you took it to the
15 landfill?

16 A Yes, sir.

17 Q Landfill off Exit 56?

18 A No, sir.

19 Q Which one?

20 A The one in Lyman and Wellford.

21 Q That's what I'm talking about, Exit 66.

22 That's the Lyman Wellford exit there?

23 A Not in my knowledge, no.

24 Q Do you know where Exit 66 is?

25 A Yeah, it's right there at 29 and 85.

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 Q Okay. Where's the landfill in relation to that?
- 2 A Off of -- there's one off of that road, yes. But the
- 3 one that I went to was off of 292 and 357.
- 4 Q Okay. And you went in broad daylight and got rid of
- 5 this stick?
- 6 A Yes, sir.
- 7 Q Where did you put the stick?
- 8 A In the landfill.
- 9 Q No.
- 10 Where did you put it when you took it?
- 11 A It was in my pickup truck.
- 12 Q Where at in your pickup truck?
- 13 A In a trailer.
- 14 Q Where did you go at the landfill?
- 15 A Went and unloaded the stuff that I had on my truck in
- 16 my trailer.
- 17 Q So, you unloaded everything in your trailer?
- 18 A Sir?
- 19 Q You unloaded everything out of your trailer?
- 20 A Yes, sir.
- 21 Q You've got a murder weapon inside your trailer and you
- 22 unloaded everything in the trailer and loaded it with it?
- 23 A Yes, sir.
- 24 Q When you went on these construction jobs -- is there
- 25 anybody here from the construction companies?

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 A No, sir.
- 2 Q You went to two of them.
- 3 Where were they located on Highway 9?
- 4 A It's right up above the Pizza Hut.
- 5 Q Pizza Hut up on Route 9?
- 6 A Yeah, they's building a mini-mall there.
- 7 Q Okay. You talked to two different companies?
- 8 A Yes, sir.
- 9 Q What time was this again?
- 10 A Somewhere approximately between 7:30, quarter till
- 11 8:00.
- 12 Q And you talked to both of these people---
- 13 A Yes, sir.
- 14 Q ---about this?
- 15 And you talked to them about working for them?
- 16 A Yes, sir.
- 17 Q You talked to them about what you could do?
- 18 A Yes, sir.
- 19 Q They talked to you about what they had -- that they
- 20 didn't have anything?
- 21 A Right.
- 22 Q One of them took your resume?
- 23 A Yes, sir.
- 24 Q Another one you talked to there?
- 25 A Yes, sir.

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 Q How long did you take talking to them there?
- 2 A I would say probably about 15, 20 minutes.
- 3 Q Okay. So, you took fifteen or twenty minutes to talk
- 4 to them?
- 5 A Yes, sir.
- 6 Q And this is between 7:30, 7:45?
- 7 A Yes, sir.
- 8 Q And then you drove to the Fowler residence?
- 9 A Yes, sir.
- 10 Q And you get to the Fowler residence and this door is
- 11 wide open?
- 12 A Yes, sir.
- 13 Q Angela Fowler is killing her husband in the back room,
- 14 and she's got that door wide open?
- 15 A Yes, sir.
- 16 Q And then you go back and you tell her -- you see her
- 17 beating him with a stick?
- 18 A Uh-huh. (Affirmative).
- 19 Q What kind of stick was this?
- 20 A It was just a stick about three foot long, about two
- 21 and a half inches around.
- 22 Q What kind of wood?
- 23 A Probably pine.
- 24 Q You do construction work, don't you?
- 25 A Yes, sir.

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 Q You work with wood?
- 2 A Yes, sir.
- 3 Q And you just construction -- I mean do you do carpentry
- 4 work too?
- 5 A Yes, sir.
- 6 Q You know how to use numbers?
- 7 A Yes, sir.
- 8 Q You know how to use a ruler?
- 9 A Yes, sir.
- 10 Q You know what kind of wood this is.
- 11 what kind of wood -- what kind of stick was it?
- 12 A I told you it was a, a pine stick about 3-foot long,
- 13 two and a half inches around.
- 14 Q And where was she at when she's doing this?
- 15 A In the back bedroom.
- 16 Q Where at in the back bedroom?
- 17 A Standing over the top of him.
- 18 Q Standing over top of him.
- 19 which side?
- 20 A The right side of the bed.
- 21 Q And you talked about this knife.
- 22 You never saw a knife?
- 23 A No, sir.
- 24 Q Right in the middle of his chest?
- 25 A No, sir, I never did.

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 Q Show you State Exhibit 22.
2 So, you just saw that right there?
3 A If it would of been there, yes, sir, I would have.
4 Q That wasn't there?
5 A No, sir.
6 Q What time did you get to the residence?
7 A I'd say approximately probably about ten minutes till
8 8:00 or somewhere close, eight o'clock.
9 Q Close to eight o'clock?
10 A Yes, sir.
11 Q And you go in, you take this stick from this lady?
12 A Yes, ma'am.
13 Q There's blood everywhere, isn't there?
14 A As far as I can tell, yes, sir.
15 Q You take this stick from her?
16 A Yes, sir.
17 Q What did she say?
18 A She didn't say nothing. She just looked at me real
19 strange, and I told her I said Dawn, you don't need to be
20 doing this and call 9-1-1 and I took the stick and left.
21 Q She calls 9-1-1?
22 A As to what I've heard in testimony, yes, sir.
23 Q Do you realize, sir, she called 9-1-1 at 8:05?
24 A And?
25 Q How in the world can she beat a man like that---

Robert Heydman - Cross-examination
by Solicitor Barnette

1 MR. MCPHERSON: Your Honor, I object.

2 Q ---and not have blood all over her?

3 MR. MCPHERSON: Your Honor, I object to him harassing
4 the witness and yelling at him.

5 SOLICITOR BARNETTE: I'll rephrase your question.

6 THE COURT: Pose the question.

7 Q She calls at 8:05.

8 How in the world does she get rid of all the blood off
9 her clothes, sir?

10 A I don't have a clue, sir.

11 Q Sheriff's Department, when did they talk to her, sir?

12 A It was somewhere between 5:00 and 5:30, six o'clock
13 that evening.

14 Q You had plenty of time to get your clothes changed,
15 didn't you?

16 A No, sir.

17 Q Well, where did you go after all this?

18 A I left and went up to my house.

19 Q What time did you get to your house, sir?

20 A It was probably somewhere around 8:15, 8:20.

21 Q Wait a minute.

22 You're at the Fowler house---

23 A Yes, sir.

24 Q ---at eight o'clock or something like that.

25 A There or a little after.

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 Q You drive all the way up to this landfill on 292, empty
2 your trailer.
- 3 A Yes, sir.
- 4 Q Where's your house at, sir?
- 5 A It's on Arcadia.
- 6 Q And you get back at 8:15 to your house?
- 7 A No, sir, when I left the Fowler residence I went
8 straight to my house, and got in my pickup and went to the
9 landfill about 8:15 to 8:30.
- 10 Q When you get to the landfill, don't you have to clear,
11 to be cleared to empty things in the landfill?
- 12 A No, sir.
- 13 Q People don't check you and make sure that the, you're
14 not illegally---
- 15 A They ask you if it's your belongings or is it come from
16 a job site or whatever.
- 17 Q Isn't it true you told folks that you dumped it in that
18 dumpster down the road?
- 19 A No, sir.
- 20 Q So, you go to a landfill where there's people at it to
21 dump the murder weapon?
- 22 A Yes, sir.
- 23 Q So, you removed this stick from your -- which car did
24 you drive to the Fowler residence?
- 25 A I was in a '99 Dodge Caravan.

Robert Heydman - Cross-examination
by Solicitor Barnette

1 Q So, you take the Caravan, take the stick out of the
2 Caravan?

3 A Yes, sir.

4 Q And put it in your trailer?

5 A Yes, sir.

6 Q Where did you do that at?

7 A At my house.

8 Q Now, there's neighbors around your house, right?

9 A Yes, sir.

10 Q The stick don't have blood on it?

11 A I imagine it does.

12 Q Did you look at it?

13 A No, sir, I did not.

14 Q You didn't look at the stick?

15 A No, sir, I just grabbed the stick out of Mrs. Fowler's
16 hand and put it in my van and went to the house and took it
17 out of my van and put it in my trailer and I left and went
18 to the landfill and took the stuff out of my van and my
19 truck and unloaded it.

20 Q You -- here's the stick.

21 You've seen the pictures, haven't you?

22 A Yes, sir.

23 Q There's blood everywhere. There's got to be blood all
24 over this stick.

25 A Yes, sir.

Robert Heydman - Cross-examination
by Solicitor Barnette

1 Q And you don't know if there's blood on it?

2 A Like I said, I didn't pay it no attention. I imagine
3 they was blood.

4 Q And as a matter of fact, you took it and put it in your
5 van.

6 where did you put it at in your van?

7 A Right front floorboard.

8 Q Did you cover it up with anything?

9 A No, sir.

10 Q Then you put it in the trailer?

11 A Yes, sir.

12 Q Then you took it -- obviously took it out of the van
13 and put it in the trailer?

14 A Yes, sir.

15 Q It's daylight outside too?

16 A Yes, sir.

17 Q Then you took it to the landfill?

18 A Yes, sir.

19 Q And threw it away?

20 A Yes, sir.

21 Q And you never noticed it had any blood on it?

22 A Like I said, it most likely had blood on it cause she's
23 beating the man in the head with it.

24 Q Did you get blood on your hands?

25 A No, sir.

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 Q You didn't?
- 2 A No, sir.
- 3 Q You didn't have any blood on your hands?
- 4 A No, sir.
- 5 Q You didn't have any blood anywhere?
- 6 A They was a trace on my forehead as evidence has shown.
- 7 Q You didn't wash your hands?
- 8 A No, sir.
- 9 Q You didn't get rid of your clothes?
- 10 A No, sir.
- 11 Q You didn't wipe your face?
- 12 A No, sir.
- 13 Q You didn't even call law enforcement?
- 14 A No, sir.
- 15 Q Why not?
- 16 A Cause I didn't know what to do, sir.
- 17 Q Here's a lady that just killed her husband.
- 18 You're not going to tell anybody about it?
- 19 You're gone say well, I'm gonna hide the evidence?
- 20 A I didn't even think about it, sir.
- 21 Q You said you talked to Mr. Fowler all the time.
- 22 A Yes, sir.
- 23 Q You always talked to him on the cell phone?
- 24 A Yes, sir.
- 25 Q You always talk to her on the cell phone?

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 A Yes, sir.
- 2 Q Who always had the cell phone?
- 3 A Sometimes he would answer it and sometimes she would.
- 4 So, I don't know. I wasn't there.
- 5 Q What's her home number?
- 6 A I don't have a clue, sir.
- 7 Q Richard Fowler was mostly at home, isn't he?
- 8 A Most of the time, yes, sir.
- 9 Q Because of his injuries?
- 10 A Yes, sir.
- 11 Q He wouldn't have a cell phone out, would he?
- 12 A As far as I know, that's what the phone they used all
- 13 the time.
- 14 Q Didn't you meet Mrs. Fowler over at the laundromat?
- 15 A No, sir, I don't.
- 16 Q You never met her at the laundromat?
- 17 A No, sir.
- 18 Q You never received texts asking you to meet her at the
- 19 laundromat?
- 20 A No, sir.
- 21 Q How many times did you talk to her on the witness, on
- 22 the day of the. December 13th?
- 23 A I would say probably twice, maybe three times.
- 24 Q Did you call her or she call you?
- 25 A I called her once and she called me once.

Robert Heydman - Cross-examination
by Solicitor Barnette

1 Q What time did she call you?

2 A The last time was somewhere around nine o'clock and she
3 was on her mother's cell phone at that time.

4 Q Okay. When did you talk to her?

5 Sir, when did you call her?

6 A The last time that I talked to her and Mr. Fowler was
7 somewhere around 7:30 that morning.

8 Q How long did you talk to her, her?

9 A It was briefly. It wasn't maybe a minute or two.

10 Q You only talked to her for a minute or two?

11 A Yeah, and then I talked to Mr. Fowler for several
12 minutes.

13 Q How could you talk to Mr. Fowler when she's up at the
14 Boiling Springs Junior High?

15 A I talked to him on the phone.

16 Q How could you talk to him on the phone when he's at the
17 house?

18 A Well, how do you know that the phone wasn't at the
19 house?

20 Q Well, you said you talked to both of them, sir.

21 A Right, and---

22 Q You can't talk to both of them. They're not at the
23 same spot.

24 A I talked to both them on that same cell phone number
25 that's on my phone records.

Robert Heydman - Cross-examination
by Solicitor Barnette

1 Q At 7:30?

2 A Somewhere around 7:00, 7:30, yeah.

3 Q When she's taking her two daughters to school. She's
4 taking one to Boiling Springs Junior High. We -- there's a
5 witness following her up to Boiling Springs Junior High, and
6 he's at the house.

7 You're talking to both of them?

8 A I don't know that he's at the house at that point in
9 time.

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

11 (Pause.)

12 Q But you never told the, the Sheriff's Department -- you
13 never called them?

14 You never called 9-1-1?

15 A No, sir.

16 Q And you claim you print your name?

17 You don't sign it?

18 A I scribble it sometimes. Most of the time I print it.

19 Q On State Exhibit 4, is that your signature?

20 A That's my scribble, yes, sir.

21 Q But you never called law enforcement and never told law
22 enforcement?

23 A No, sir.

24 Q How many times did you call them from October 1st
25 till now, until December 13th on the cell phone?

Robert Heydman - Cross-examination
by Solicitor Barnette

- 1 A It was frequently.
- 2 Q You called all the time?
- 3 A Yeah.
- 4 Q You claim you didn't meet them until September of 2006?
- 5 A It was somewhere around September.
- 6 Q You didn't meet them in the Spring of 2006?
- 7 A September, October, November, December.
- 8 Q When did you actually meet them?
- 9 A Like I said, somewhere in September.
- 10 Q And a woman that told you that she wanted her husband
- 11 killed and you stick around?
- 12 A What is a friend suppose to do, just leave them?
- 13 Q But you was a friend for her that morning, weren't you,
- 14 sir?
- 15 A Sir?
- 16 Q You was a friend of hers that morning, weren't you?
- 17 Not Mr. Fowler's.
- 18 A No, I was a friend of both of them, sir.
- 19 SOLICITOR BARNETTE: That's it, Your Honor.
- 20 REDIRECT EXAMINATION
- 21 BY MR. MCPHERSON:
- 22 Q Sir, when you say you took the, a trailer to the dump,
- 23 what was in that trailer?
- 24 A They was an old TV and a bunch of toys and stuff that
- 25 had come from the Fowler residence.

Robert Heydman - Redirect examination
by Mr. McPherson

1 Q Okay. Now, as far as going back to the construction
2 site, what -- you were arrested the same day of the
3 incident, were you not?

4 A That afternoon, yes, sir.

5 Q All right. And how long were you in jail without an
6 attorney?

7 A Up until they appointed you.

8 Q Well, do you recall how long that was then?

9 A I was thinking somewhere around nine or ten months.

10 Q It was a long time?

11 A Yes, sir.

12 Q And whatever resume you would of left at the
13 construction site would be long gone and people have
14 forgotten about it?

15 A Yes, sir.

16 MR. MCPHERSON: No further questions.

17 SOLICITOR BARNETTE: Nothing else, Your Honor.

18 THE COURT: You may step down. Thank you.

19 MR. MCPHERSON: Your Honor, we rest.

20 THE COURT: Thank you, sir.

21 SOLICITOR BARNETTE: Your Honor, we don't have
22 anything, anything to present in reply.

23 THE COURT: All right. Y'all approach please.

24 SOLICITOR BARNETTE: Yes, sir.

25 (Whereupon, a bench conference was held out of the

1 hearing of the jury at this time.)

2 THE COURT: Okay. I am aware from the other Court that
3 there's a juror that has a conflict tomorrow.

4 Who was that juror?

5 (Juror raises her hand at this time.)

6 JUROR: I'm Juror Number 24.

7 BAILIFF: Juror 24.

8 THE COURT: Is that conflict still in place?

9 JUROR: Yes, sir.

10 THE COURT: And you need to be out tomorrow?

11 JUROR: Yes, sir.

12 THE COURT: All day?

13 JUROR: Yes, sir.

14 THE COURT: Okay. If we continue on this evening with
15 the closings and charge we'll be way into the night. We
16 will stop for the evening. I'm gonna excuse Juror Number
17 24, as agreed earlier by Judge Dennis, that she would not be
18 here on Friday. In the morning when we arrive, we've got
19 two alternates, their names will be put into the random draw
20 and we will determine who will step up. We'll do that in
21 the morning.

22 Remember my instructions about any contact, and also
23 about press coverage.

24 Okay. Any questions or any concerns before we stop for
25 the evening?

1 (No response.)

2 THE COURT: All right. We will, we will start at 9:30
3 in the morning. All of you get the extra alarm clock out in
4 the morning and set two of them.

5 okay. All right. We'll see you then.

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

8 THE COURT: Let's give them a minute or two to clear
9 the premises and then we'll stop.

10 (Pause.)

11 THE COURT: Court's in recess till 9:30 in the morning.

12

13 (Whereupon, Court was in recess for the evening.)

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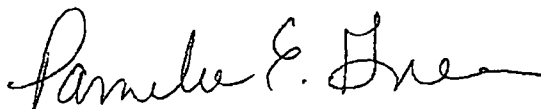
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 24th and 25th day of September, 2008.

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

November 15th, 2008



PAMELA E. GREEN, Court Reporter

1 In the Court of General Sessions
2 Spartanburg County, South Carolina
3

4 The State of South Carolina
5 versus
6 Robert Lee Heydman, Defendant
7 Case Number: 2007-GS-42-4087
8

9 Heard on Friday, September 26, 2008.
10 Before the Honorable Paul M. Burch

11 Appearances:

12 Barry J. Barnett
13 Jessica Jordan
14 Solicitor's Office
15 180 Magnolia Street
16 Spartanburg, SC 29306
17 William McPherson
18 Public Defenders Office
19 366 North Church Street
20 Spartanburg, SC 29303
21

22 Reported by: Janet M. Rich
23 Circuit Court Reporter
24 1992 Downey Street
25 Rock Hill, SC 29732

I N D E X

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1 (Court resumes at 09:52 AM.)

2 The Court: All the jury is here. What about
3 polling of the jury?

4 Mr. Barnett: We waive it, Your Honor.

5 Mr. McPherson: I'd like to poll the jury.

6 The Court: Okay. Madame Clerk, poll them
7 again like we did yesterday and just for precaution
8 let's just ask them if anyone has been contacting
9 them. Bring them in.

10 The Court: While they're coming in we got to
11 draw the alternate. Counsel, do you have any
12 objection to with us drawing out of the cup or do
13 you want to load it back in the computer?

14 Mr. Barnett: I don't have any problem with the
15 cup.

16 Mr. McPherson: I don't have any problem with
17 the cup.

18 The Court: All right. Thank you.

19 (The jury returns to the courtroom at 9:53 AM.)

20 (The alternate juror is drawn by the clerk.)

21 The Clerk: Teresa Comer, number 31.

22 The Court: If you will switch up, you will
23 will be the 12th juror, okay.

24 The Juror: Okay.

25 The Court: Good morning.

1 (The Jury: Good morning.)

2 The Court: Appreciate everybody reporting this
3 morning. We've had a shift in personnel that
4 required a little delay this morning, but it's
5 sometimes we have to change around personnel and
6 other folks have to come from across the State so
7 we're ready to get back to work here, but we're
8 going to poll you once again. Madame Clerk will
9 take care of that.

10 The Clerk: Ladies and gentlemen of the jury, I
11 would pose a question to you and once I have given
12 you my question I will ask you to please stand, give
13 your response to the question, and then be seated
14 once I call your jury name and number. The question
15 being: Has anyone since yesterday or any time
16 during the trial had any type contact with anyone
17 pertaining to the trial, watched any news reports,
18 read any papers, or had any conversation about this
19 trial since we have started the trial? Juror number
20 13 Racine Miller.

21 The Juror: No.

22 The Clerk: Thank you. Juror number 108 Pattie
23 McJimpsey.

24 The Juror: No.

25 The Court: Juror number 95 Emily Legrand.

1 The Juror: No.
2 The Clerk: Juror number 115 Tamika Mitchell.
3 The Juror: No.
4 The Clerk: Juror number 9 Jenny Brady.
5 The Juror: No.
6 The Clerk: Juror number 11 Carmen Bridges.
7 The Juror: No.
8 The Clerk: Juror number 39 Patricia Deloach.
9 The Juror: No.
10 The Clerk: 165 number Tammie Wilkins.
11 The Juror: No.
12 The Clerk: Juror 116 Adam Monserrate.
13 The Juror: No.
14 The Clerk: Juror number 62 Dorlores Hall.
15 The Juror: No.
16 The Clerk: Jury number 169 Freedom Winstead.
17 The Juror: No.
18 The Clerk: Juror number 170 James Wise.
19 The Juror: No.
20 The Clerk: Juror number 31 Teresa Comer.
21 The Juror: No.
22 The Clerk: They have been polled, judge.
23 The Court: Anything further concerning the
24 polling of the jury this morning.
25 Mr. Barnett: Nothing from the State, Your

1 Honor.

2 Mr. McPherson: No, Your Honor.

3 The Court: All right. We move to the argument
4 phase of the case. I assume the State waives
5 opening on the law unless Mr. McPherson requires you
6 to.

7 Mr. Barnett: Yes, sir, we would like to.

8 Mr. McPherson: We'd like to waive the
9 requirement too.

10 The Court: The floor is yours, Mr. McPherson.

11 Mr. McPherson: Thank you. May it please the
12 court.

13 The Court: Sure.

14 Closing statement by Mr. McPherson:

15 My client Robert Heydman admits that he broke
16 the law but not the one for which he stands charged.
17 He's charged for the offense of murder but he's not
18 admitting to that. He's admitting to making
19 numerous mistakes, or at least several mistakes; one
20 of them being that he took a piece of evidence, a
21 stick or the club that was used in the beating of
22 Richard Fowler, and another being that he should
23 have called the police immediately and told them
24 what was going on and he admits that he made those
25 mistakes. And I understand it's real hard for

1 people to understand why a person would do this but
2 you've got to remember when people are in a or a
3 given person in a given situation they all react
4 differently to a given situation. Just because he
5 didn't react the way you would have reacted doesn't
6 mean he didn't react the way he's reacting. And I'm
7 sure you've seen that in little children and people
8 like that. Remember, he can't read, he can't write,
9 he's a handyman, not an educated man. He was
10 shocked. He was confused. He made some bad
11 decisions. He disposed of the stick which was bad
12 and he didn't call the police but that doesn't make
13 him guilty of murder, it makes him guilty of another
14 offense, but he's not charged with that offense.

15 Now let's look at the evidence that you do
16 have. You have Dawn Fowler. How many different
17 stories has she given? Numerous stories about what
18 happened. First it was a burglary. She also
19 admitted she stabbed him and I find that very
20 significant that she admitted to stabbing him. Now
21 no pressure was applied to her, she just said that I
22 was scared, and that was a pretty poor excuse for
23 making an admission that you stabbed a person. And
24 another significant key piece of evidence, and I
25 don't know if you picked up on this, but she didn't

1 know what the murder weapons were, but she did say
2 that a knife was used and when you heard the
3 evidence you heard that a knife was used in this
4 offense.

5 She's getting a sweetheart deal from the State.
6 She was charged with murder. She was charged with
7 accessory before the fact, accessory after the fact.
8 She was facing 30 years to life in prison. So
9 obviously in order to save her time, time in prison,
10 she would say anything the State would want her to
11 say. She's trying to save her own hide at the
12 expense of Mr. Hyman.

13 Mrs. Fowler or Ms. Fowler is a horrible woman.
14 You heard how back in 2003, and I don't know how
15 long this has been going on, but we know at least
16 since 2003 she's been trying to get somebody to kill
17 her husband, and I submit to you that 2003 to 2006,
18 that's like three years, and after awhile she just
19 got up and got tired of asking people to do it for
20 her and she did it herself.

21 What makes this case really bad is she was
22 divorced from him and he was under court order to
23 pay her child support and she could have just walked
24 out on him and didn't. She chose to murder him.

25 Now you have John Fowler and Oden, both these

1 guys have horrible or terrible criminal records;
2 they are obvious hoping for a reduction in their
3 sentences. They are both facing heavy-duty prison
4 time. Fowler is looking at a maximum of at least 60
5 years in prison and that's, these are non-parolable
6 offenses that he's looking at and we're talking 60
7 years. Oden was facing burglary first charge. He
8 also has Federal charges which he can get reduced
9 possibly, but on the State charges that are still
10 pending against Oden, he's facing anywhere from 15
11 years to life in prison, life in prison, so
12 obviously these two guys will say anything to save
13 their own hide. So you had three witnesses come up
14 and testify to you who will say whatever the State
15 wants them to say in order to save their own hide
16 and to get better time or less time in prison. And
17 as far as these two guys go, they were cellmates,
18 it's real easy for them to get together and come up
19 with this story. All Mr. Heydman has to do is tell
20 them exactly what happened and then they can change
21 a few facts around and turn it around on him and
22 then they can go to the State and say, look, we got
23 something good for you, and we'll testify if you'll
24 help us. Both of these guys are liars. They both
25 have long criminal histories. These guys are

1 burglars, armed robbers, drug dealers, liars,
2 thieves; how could you base a conviction on
3 something like that?

4 DNA on Mr. Heydman, he explained to you how
5 that happened and it was a reasonable explanation.
6 When he's taking a stick away from Ms. Fowler,
7 perhaps some of that blood dropped off on him off
8 the stick. Mr. Heydman's account of how it happened
9 and after she had stabbed him and he walked in on
10 her while she was clubbing him to death, if that's
11 the way it happened, and that's a reasonable
12 explanation.

13 Now let's look at what the State did not tell
14 you or what they have should have done. Number one
15 you've got this gas receipt which they relied on
16 very heavily. And I'm sure you've all been to these
17 gas stations or other place where they time stamp
18 these things and these time were not accurate.
19 Somebody should have gone in and verified the
20 accuracy of that time stamp on this receipt.. It
21 could have been done easily enough the day of the
22 offense or even a few days after the offense and
23 they didn't bring you any witness to come in here
24 and testify that those receipts, those time stamps
25 are accurate and the reason they didn't is because

1 they know they are not accurate.

2 Now the other thing I want you to consider is
3 that when you kill somebody, not you, but when
4 somebody kills a person, it only takes a short
5 period of time. It doesn't take forever. It takes
6 a minute or less to do it. And if you do it right
7 they are dead in just a few seconds.

8 Now the thing that concerns me about this case
9 is where is the fingerprint evidence? Why wasn't it
10 presented with any fingerprints evidence? Why
11 didn't they test -- remember the little spring on
12 the door, that there was a tab that you slide
13 forward; you know, somebody would have had to take
14 that pad and slide it forward with their fingers.
15 Why didn't they test that for touch DNA? That would
16 would have been easy enough. Why didn't they test
17 the bathrooms in both Richard Fowler's home and
18 Mr. Heydman's home for possible blood evidence?
19 They know how to do it. They just didn't do it.
20 Why didn't they test the clothes of Mrs. Fowler, or
21 Mr. Fowler for that matter, for possible blood
22 evidence? They could have. They even went so far
23 as as to send Mr. Heydman's clothes to SLED but they
24 never got tested. Why didn't they test the bottom
25 of Mr. Fowler and Mr. Heydman's shoes for blood

1 evidence? They should have, you know they should
2 have, but they didn't. Why didn't they test
3 Mr. Heydman's cap for blood evidence? They could
4 have but they didn't. Why didn't SLED run all the
5 tests that were requested of them? They could have.
6 You heard their excuses. There is no evidence at
7 the sheriff's office, checked the dirty clothes
8 basket or the dirty clothes in either house. That
9 would have been a prudent investigation look through
10 the dirty clothes, have somebody come in here and
11 testify that they looked and they didn't find
12 anything, but they didn't do that. They should have
13 done that in Mr. Heydman's home and Ms. Fowler's
14 home.

15 Now I guess the thing that concerns me the
16 most, and they did do this and I give them credit
17 for this, the sheriff's office did take the knife
18 and they sent it down to SLED and requested they do
19 a touch DNA analysis on the handle of that knife and
20 you would think that would be a critical piece of
21 evidence in this case, but they didn't do it. My
22 clients's life is at stake and these are things they
23 should have done. SLED did run a test on the blade
24 of the knife and they got an impression on the blade
25 of the knife and then they wrote back to the

1 sheriff's office, and you can look at these reports
2 that are in evidence, they wrote back to the
3 sheriff's office and said please send us such and
4 such if you want us to work on this knife more and
5 they never got what they requested.

6 You know all we heard from the sheriff's
7 office, you know, why didn't you do this, why didn't
8 you do that, was excuses, excuses, excuses. You
9 know, they were saying when they were talking about
10 fingerprints; well, you know, sometimes they get
11 smeared, sometimes you can't get fingerprints,
12 sometimes there is no fingerprints in cold weather,
13 but that's not an excuse for at least trying. You
14 should at least try to look at the fingerprints and
15 then have the man come in here or whoever does the
16 analysis and so we tried but there were none, but
17 they didn't even do that in this case.

18 And you heard about the, you heard from SLED
19 why they didn't run all these tests, and I've got
20 one of these reports and I want you to take a look
21 at it. It's State's exhibit nine, in my opinion a
22 very critical piece of evidence. When you get back
23 in the jury room take a look at this and ask
24 yourself why does it say knife results no
25 examination performed. It just goes on and on of

1 all this stuff that was sent to SLED and you heard
2 one of the SLED agents testify, well, we're busy, we
3 don't have time; we've got a lot of work to do; we
4 have got other stuff we're taking care of, but my
5 client was charged with murder and he deserves a
6 right to have this stuff tested. They are wanting
7 to put him away for a long, long time and he
8 deserves the right to have this evidence tested and
9 for y'all to come into this courtroom and testify as
10 to what they found, whether they found anything or
11 didn't find anything, but they all wanted to tell
12 you is that we're too busy, we're too busy.

13 Now let me ask you this if your son or daughter
14 or spouse was --

15 Mr. Barnett: Your Honor, I object to this
16 point.

17 The Court: You cannot personalize. I have to
18 sustain the objection.

19 Mr. McPherson: If one's son or daughter or
20 spouse was faced with a serious crime and time in
21 prison wouldn't you want the investigation to be as
22 thorough as possible. Wouldn't one's son or
23 daughter was sent to prison based on the testimony
24 of some criminals yet one knew that all this other
25 evidence was out there, wouldn't you be sick or

1 wouldn't that person be sick to know that they were
2 not given justice? It's time somebody sends a
3 message to the sheriff's office and to SLED that
4 they need to do a thorough investigation especially
5 in a murder case especially when a man's life is at
6 stake. Somebody needs to tell SLED they need to
7 perform these tests that are requested of them.

8 Now I want you to remember that Mr. Heydman
9 gave you a reason why he went over to the home of
10 Richard Fowler and that was to do a ramp, handicap
11 ramp, and when the police searched his car or his
12 van rather, what did they find? They found an
13 invoice for the work to be done. Mr. Fowler told
14 you that he went and looked for work that morning.
15 And what did they find in his van? A resume from
16 where he went to the different construction sites.
17 I want you to take a look at State's exhibit three.
18 What was Dawn Fowler charged with? Murder. Why did
19 the State give her such a sweetheart deal? Who
20 wouldn't say anything in order to save their own
21 hide.

22 I want you to look at John Fowler. He's
23 already had cases being dismissed and he's got other
24 pending cases that are serious. Obviously he would
25 testify the only way the State wants him to and for

1 these reasons Mr. Heydman is requesting that you
2 come back with a verdict of not guilty. Thank you.

3 The Court: Thank you, sir. Solicitor.

4 Mr. Barnett: May it please the court, Your
5 Honor.

6 Closing statement by Mr. Barnett:

7 Madam Forelady, members of the jury, the one
8 thing you bring with you is the common sense that
9 you have everyday lives and everything. The first
10 thing the defense attorneys always do is attack the
11 police investigation. You know in your everyday
12 lives, I wish I could tell you that I was a perfect
13 individual, that I did everything perfect, I don't.
14 I'm not saying everything is perfect in this case.
15 Angela Dawn Fowler is a horrible person for what she
16 did in this case and she will answer to that man
17 right there. He's facing up to 50 years in prison.
18 He's heard everything you heard in this courtroom.
19 The thing I want you to realize is we had the DNA.
20 He had to admit that he was there. They said, well,
21 you didn't check for fingerprints. Well, if we
22 found fingerprints, he worked there, he's inside the
23 house, that's what that would explain. He did DNA,
24 but he was in the house, he worked there, that
25 explained the DNA. That's what they want you to

1 focus on.

2 What I want you to focus on is this: What you
3 heard from this stand right here. You heard Minor 2
4 , and this is like a Lifetime movie.

5 The Court Reporter: I can't hear you.

6 Mr. Barnett: Okay. I'll speak up a little
7 louder.

8 She talked about saints and sinners. Believe
9 me there has been a lot of sinners in this case.
10 Minor 2 is not one of the sinners. Fortunately
11 she's one of the saints and she's going to have to
12 live with what happened that day. Can you imagine,
13 she goes and she sees her dad, he's laying in the
14 bed around 7:15, says goodbye to her and he says,
15 "goodbye honey, I love you." She rides with her
16 mom. They go to Hendricks Elementary to drop her
17 youngest daughter off. She goes to Boiling Springs
18 Junior High and she's dropped off there. She saw
19 what her mom wore that day and you got the picture,
20 State's number six of what she was wearing that day,
21 she says she was wearing the same thing I saw her
22 that morning, then I saw her that evening at the
23 sheriff's Department. She said I didn't see any
24 blood on her. She hugged her.

25 Then you got Caroline Blackwell. She's sees

1 him, she pulls behind him and she sees a car and
2 what she appeared a baby doll in the back of the
3 car. You'll have that. She says she followed this
4 car with them in it, seeing her on the cell phone,
5 driving up the road, follows them up to Boiling
6 Springs, goes back down the road, follows her then
7 and I asked her, "What time did you fall behind
8 her?" She said 7:20 - 7:30 somewhere around that
9 range. She said it'll take ten minutes to drive to
10 junior high and come back. She followed this car.
11 She has nothing to gain in this case.

12 Then you'll have State's exhibit 8 and they
13 will be packaged in this envelope if you want to
14 look at them more. Mr. McPherson made a big deal
15 over this, but this is 7:26 on December 13 a receipt
16 they got from her that she got gas that day.

17 The best guy Rick Gregory said he drove it
18 round trip and of course you saw some of this up on
19 the maps and he said took 34 minutes to go around
20 trip and he told you the mileage it took to get up
21 there. Of course, you got to remember that you got
22 school traffic going up the road and everything. If
23 you look at that time line and the witnesses, there
24 is no way she could have done this, the part this
25 man did right here.

1 You heard Jason Bone talk about talking to her.
2 he talks to her, 911 is called at 8:05, ladies and
3 gentlemen, you got that on the phone records. He
4 says there is no blood on her. He's sitting right
5 beside of her looking at her, and you've seen the
6 pictures of the room, and you'll have those back
7 there with you, there is blood everywhere. And he
8 says that it takes a few seconds. That didn't take
9 a few seconds, ladies and gentlemen. There is no
10 way there wouldn't have been blood all over the
11 person that did this.

12 Let's talk about Mr. Heydman. He tells you,
13 "We're just friends." Well, you are going to have
14 text messages, ladies and gentlemen, and I didn't
15 show you this during the trial but it's in evidence,
16 I'm going to show it to you now. You have two
17 specifically on this. The reason I asked him about
18 the laundromat, here it is, you'll have it, it's
19 State's exhibit 50, this is her text message to him.
20 The first one occurred on December 6 at 7:55 from
21 her phone number of 357-5403 680-5041, "Let me know
22 if you get this text, if you need get this text. I
23 wish I could hug you. Meet me at two at that
24 laundromat on Springfield."

25 You'll see it right here. It's on December 6,

1 that's her phone number, that's his phone number,
2 "let me know if you get this, we need to meet -- let
3 me know if you get this, you need to get back. I
4 wish I could give you a hug, you give me a hug.
5 Meet me at two at that laundromat on Springfield."

6 There is also another one. This is his phone
7 number. This is her phone number, was delivered:
8 "I wish you could text. We could talk more. I need
9 to talk to you now. I miss you and love you. Talk
10 am. Night sweetheart."

11 And you are going to have the phone records and
12 you can look at the numerous calls that each one of
13 the persons made to each other over a long period of
14 time.

15 Let's talk about the day that he talked about.
16 He says he's going to go to the construction sites.
17 He makes a phone call to her at 4:11 in the morning
18 and he leaves a voice mail. She's already put the
19 plan into action or he and her is.

20 At 4:11 a.m. he calls her, his number is
21 680-5041, I asked him that, and also got his
22 documentation which he handed in, her number is
23 357-5403. He calls at 4:11 leaves her a voice mail.
24 He calls her again at 6:26. Calls her again at
25 6:55. Then it goes down here. She winds up calling

1 him 7:01 He calls her at 7:03, 7:45, 7:45, 7:49.
2 The funny thing is he says he's on a job interview
3 at 7:30 He's on the cell phone at 7:30 talking to
4 Angela Fowler, talks to her for seven minutes at
5 least, and you got both their sets of phone records
6 you can compare. He says he's on the construction
7 site working out and then he says I talked to both
8 of them. I talked to Richard and Angela or Dawn.
9 There is no way. There is no way. You heard the
10 evidence here. She's with her daughter at Boiling
11 Springs Junior High, he is talking to her, but they
12 are getting ready to do what they needed to do.

13 She left the door open that day. He goes in
14 there and does his business and they had talked
15 about the signal and the signal was to leave that
16 door open. He says the door is wide open. If you
17 are going to kill husband, would you leave your door
18 open, wide open for anybody to walk in there and see
19 him? No. That's what I'm talking about, ladies and
20 gentlemen, common sense. That's what you bring here
21 in this courtroom tells you in this situation.

22 It was slid open, and of course they make the
23 big deal no fingerprints, you didn't check for all
24 that stuff and everything. Well, gloves. The thing
25 about the knife they keep talking about. The SLED

1 agent told you that he checked the knife. He was
2 able to get a fabric impression off of it. It could
3 have come from a glove, could have come from a
4 shirt, could have come from the blanket He
5 couldn't find any fingerprints. If there is no
6 fingerprints, there probably is not going to be
7 touch DNA on this knife.

8 And again if you find that evidence on there
9 they said, well, he's been there anyway. She lives
10 leaves there anyway. It doesn't prove anything.
11 They come and tell y'all this. But what you heard
12 in this courtroom is what the verdict should be in
13 this case.

14 Then he makes up a story about the stick. I
15 asked him about this stick. He says it's pine
16 stick. I don't know how many people got pieces of
17 pine hanging around their house. Here's a guy
18 that's a handyman, he's a carpenter, he's using
19 things like that, hammer. I'm sure he's used to
20 pounding nails in all the time, used to using that
21 sort of action all time. Why would the Fowlers have
22 need of a piece of wood like that? Richard Fowler
23 is bed. There is no reason for Angela Dawn Fowler
24 to have a piece of stick like that or a baseball bat
25 or a stick similar to a baseball bat that he would.

1 He says he reaches in and grabs the stick from
2 her. He says, Oh, I got a little spot of blood on
3 me there and tried to explain the DNA away. DNA is
4 not an issue. He was there. "But I took the
5 stick." I said, "Is there any blood on it? I don't
6 know." He answered that way several times. How in
7 the world do you not know there is any blood on a
8 stick.

9 And he said, initially he said he went to the
10 landfill and then he changed his story and said, no,
11 I went home and got the trailer and loaded the
12 trailer. Why would you go home with that stick?
13 Well because you need to change clothes.

14 And he says I take the stick to the landfill
15 out here and dump it and everything and he never
16 called the police. What makes more sense? And he
17 says this man was like a brother to me. She's like
18 a sister. What makes him make the decision, I'm
19 just going to let my brother lay there in bed like
20 this? He takes his sister's side of it, puts
21 himself in the middle of this, like this, and grabs
22 the handle and gets rid of it for her. Don't ever
23 call 911. Why don't you call 911 right there? Why
24 in the world would you want to get involved in
25 something like this? Why in the world would you

1 stay up there and say, well, yeah, she told me
2 several times she wanted me to kill him. Why you
3 going to stay with somebody like that? There is no
4 way. That's common sense, ladies and gentlemen.

5 He knew because he loved her. He knew she
6 would get some money possibly in his mind. In his
7 mind they were married and all the way through life.
8 There is a \$9000 settlement that he had gotten. She
9 knew it. She couldn't get it. He put it in his
10 name. There's probably a good reason why he put it
11 in in his name, to keep her from getting it. She
12 had talked to other people about killing him in the
13 past obviously. She wanted somebody to do it for
14 her. She couldn't find the right person until she
15 found that man right there because he did it.

16 They keep talking about the two inmates,
17 Mr. Fowler and Mr. Oden. I agree with him. I agree
18 that possibly got anything to do. The thing that's
19 so crazy about this, he agreed with everything he
20 told. He said, yeah, I told them about the
21 settlement. I told them about the safety box.
22 There is no way they could know about this. He said
23 they wouldn't talk about it in jail. You can listen
24 to his testimony, because he said he didn't talk to
25 them, they wasn't talking about it at the jail. The

1 only way they could know and he said he told them
2 and he knew that they knew he went back and finished
3 him off. And he talks about all these things.

4 What happened to Richard Fowler shouldn't
5 happen to anybody. And Minor2 shouldn't have
6 to come and testify in court and tell the last time
7 she saw her dad that day. Angela Fowler was the one
8 who did this. She will face her judgment from that
9 man right there. And I'm going to ask that Richard
10 Heydman needs to face his judgment in front of that
11 man right there.

12 The other thing too is you have these pictures
13 back there, they took pictures of the bathrooms, the
14 washing machine, everything. Nobody washes their
15 hands. He claims that he left 8 o'clock. She
16 called 911 8:05. Five minutes to clean up that kind
17 of bloody mess, there is no way.

18 The Sheriff's Department even talked to him.
19 He never told them, he never called 911, he never
20 told them what you heard in the courtroom.

21 Would you want -- can you imagine that man left
22 his brother looking like that? Common sense, ladies
23 and gentlemen, that's one thing you bring to this
24 courtroom. There is no way that he would have done,
25 left a man like that, not told anybody about it, not

1 called anybody, unless he did it. He's the one that
2 beat that man to death. Richard Fowler don't
3 deserve this; his family don't deserve this; his
4 daughter don't deserve this; but that man and Dawn
5 Fowler deserves anything that they get and that's
6 why I'm asking you, ladies and gentlemen, I'm asking
7 you to give this man and Angela Dawn Fowler what
8 they deserve and they deserve to face that man right
9 there and they face to be sentenced. She's facing
10 fifty years. He's facing the same amount. He's
11 guilty of murder, ladies and gentlemen. His story
12 doesn't match up with the facts. There is no way --
13 she did do this. She planned this. She helped plan
14 it. He executed it and he executed Richard Fowler
15 for it. That's what the State and the family of
16 Richard Fowler ask you. Her sister, her family, and
17 everybody. Thank you, ladies and gentlemen.
18 Thank you, Your Honor.

19 The Court: Thank you, gentlemen.

20 Charge by the court:

21 Madame Forelady, ladies and gentlemen of the
22 jury, it's now my duty to charge you the law of the
23 case. I will guess it's probably going to take
24 somewhere around 30 minutes. Does anybody need a
25 brief recess, keeping that in mind; everybody okay?

1 Okay.

2 I want to thank counsel for their presentation
3 in the case and their very able arguments. It's now
4 my duty to charge you and instruct you the law
5 applicable to the case and it's your duty as jurors
6 to accept and apply the law as the court now states
7 it to you. As jurors it's your exclusive duty to
8 decide all the issues of fact in this case and for
9 that purpose to determine the effect, the value --

10 Mr. McPherson: Your Honor, I'm sorry. Could
11 we take that off the screen please?

12 The Court: Yes, sir, somebody will. Take that
13 off. In fact we need to kill all those lights.

14 (Complies.)

15 The Court: Thank you, sir.

16 Mr. Barnett: You are welcome, Judge.

17 The Court: Once again it's your exclusive duty
18 to decide all the issues of the fact in the case for
19 that purpose to determine the effect, the value, the
20 weight, and the truth of the evidence. Both the
21 State and the defendant have a right to expect that
22 you will conscientiously consider and evaluate the
23 evidence and apply the law of the case thereto, to
24 the end of both the State of South Carolina and the
25 defendant will receive and retain a fair and

1 impartial in this trial this case.

2 As you have already heard, the defendant in
3 this case is charged with the offense of murder. To
4 the charge and to the indictment the defendant has
5 entered a plea of not guilty and a plea of not
6 guilty by defendant places the burden of proof on
7 the State to prove by evidence the guilt of the
8 defendant beyond a reasonable doubt before you the
9 jury can find the defendant guilty.

10 A defendant is presumed in law innocent of the
11 charge contained in the indictment. It is a
12 cardinal and fundamental rule of the law of evidence
13 that a defendant, irrespective of the enormity of
14 the charge against him, will always be presumed
15 innocent of the crime for which he is indicted
16 unless and until the guilt of the defendant has been
17 proved by evidence that satisfies you the jury of
18 his guilt beyond a reasonable doubt.

19 The presumption of innocence is not a mere
20 legal theory and it is not just a legal phrase. The
21 presumption of innocence is a substantial right to
22 where or to which every accused is entitled. Our
23 Supreme Court has declared that the presumption of
24 innocence is like a robe of righteousness placed
25 about the shoulders of a defendant and it remains

1 with him and assigns him to that class, the
2 innocent, until that presumptive robe of
3 righteousness has been stripped from his person by
4 evidence satisfying you the jury the guilt of the
5 defendant beyond a reasonable doubt.

6 The presumption of innocence accompanies a
7 defendant from the time of his arraignment and
8 appearance in the court and continues with the
9 defendant throughout every stage of the trial and
10 continues with the defendant after you retire to the
11 jury room to deliberate your verdict.

12 The presumption of innocence continues in
13 existence to the benefit of the defendant until you
14 the jury reach the conclusion that the State has
15 proved the guilt of the defendant beyond a
16 reasonable doubt.

17 The State is not required to prove the guilt of
18 a defendant beyond all doubt or beyond every doubt
19 but beyond a reasonable doubt.

20 Some of you may have served as jurors in civil
21 cases where you were told that it is only necessary
22 to prove that a fact is more likely true than not
23 true. In criminal cases the government's proof must
24 be more powerful than that. It must be beyond a
25 reasonable doubt. Proof beyond a reasonable doubt

1 is proof that leaves you firmly convinced of the
2 defendant's guilt.

3 There are very few things in this world that we
4 know with absolute certainty and in criminal cases
5 the law does not require proof that overcomes every
6 possible doubt. If based on your consideration of
7 the evidence you are firmly convinced that the
8 defendant is guilty of the crime charged, you must
9 find him guilty.

10 If on the other hand you think there is a real
11 possibility that he is not guilty, you must give him
12 the benefit of the doubt and find him not guilty.

13 A defendant is entitled to every reasonable
14 doubt arising in the case. If upon any issue of
15 fact essential to conviction and a verdict of guilty
16 you have a reasonable doubt as to how that issue
17 should be resolved, it would be your duty to resolve
18 that reasonable doubt in favor of the defendant.

19 A defendant is not required to prove his
20 innocence but the State is required in law to prove
21 every essential element of the offense charged
22 against the defendant by evidence which satisfies
23 you the jury of the guilt of the defendant beyond a
24 reasonable doubt before you could convict the
25 defendant and find him guilty.

1 If then upon the whole case you have a
2 reasonable doubt as to the guilt or the innocence of
3 the defendant, he is entitled to that reasonable
4 doubt and would be entitled to an acquittal or a
5 verdict of not guilty. But on the other hand, if
6 upon the whole case you find that the State has
7 proved by evidence which satisfies you the jury of
8 the guilt of the defendant beyond a reasonable
9 doubt, then in such circumstance it would equally be
10 your duty to convict the defendant and find him
11 guilty.

12 I instruct you now that the indictment in this
13 case, which you will have later, is not evidence and
14 cannot be considered by the jury as evidence in the
15 case. An indictment is the formal written
16 instrument which contains the charge against a
17 defendant and it serves as the former document by
18 which the case is processed into our court system.

19 During this trial each of us, you and I, have
20 certain duties to perform. As the trial judge it is
21 my responsibility to preside over the trial of the
22 case and I also have the duty to rule upon or pass
23 upon the admissibility of evidence offered during
24 the progress of the trial. You are to consider only
25 the competent evidence before you. And you are to

1 disregard and disabuse from your mind any testimony
2 ordered stricken from the record of this case during
3 the progress of the trial if there be any. You are
4 to consider only the testimony which has been
5 presented from the witness stand, together with any
6 exhibits admitted into the record of the case, and
7 any stipulations of counsel made into the record if
8 there be any.

9 Now what the attorneys say during their
10 questioning and during their argument to you is not
11 necessarily evidence. They may quote the evidence
12 or they may repeat the evidence or they may refer to
13 the evidence but what they say is not evidence. So
14 once again you are to determine this case on the
15 proper evidence that's been presented to you during
16 this trial.

17 Now I have the additional duty to charge you
18 the applicable law of the case. As the presiding
19 judge I am the sole judge of the law of the case and
20 it's your duty to accept and apply the law as I now
21 state it to you. If you have preconceived idea as
22 to what the law is or what the law ought to be in
23 this case and it should not agree with what I tell
24 you the law is, you are obligated under your oath to
25 abandon this preconception on your part because you

1 are sworn to accept the law precisely as I state it
2 to you.

3 In every case tried in this court before a jury
4 the jury becomes the sole and exclusive judge of the
5 facts of the case. You the jury are the judge of
6 the facts in this case and the court is the judge of
7 the law in a case. The constitution of our State
8 has declared that a trial judge shall not intimate,
9 state, comment upon, or make any statement to a
10 trial jury about the facts in a case. Since you are
11 the sole judge of the facts, you are not to infer
12 from anything that I've said during the progress of
13 this trial, in ruling upon the admissibility of
14 evidence or otherwise, or anything that I say to you
15 during the course of this charge to you that I have
16 an opinion about the facts in the case. The law
17 does not permit me to have an opinion about the
18 facts in the case. That is a matter solely for you
19 the jury to determine. As jurors then it is your
20 duty to determine, as I have stated to you, the
21 effect, the value, the weight, and the truth of the
22 evidence presented during the course of this trial.

23 Necessarily then you must assess the
24 credibility of the witnesses who have testified in
25 this case. Credibility is simply a legalistic term

1 which means believability. It becomes your duty
2 then to analyze and evaluate the evidence and
3 determine that evidence which convinces you of its
4 truth.

5 I charge you that in determining the question
6 of the credibility or believability of witnesses,
7 you may believe one witness as against several
8 witnesses or several witnesses as against one
9 witness.

10 You may believe a part of the testimony of a
11 witness and reject the remaining part of the
12 testimony of that same witness.

13 You may believe the testimony of a witness in
14 its entirety or reject the testimony of a witness in
15 its entirety.

16 You may consider whether any witness has
17 exhibited any interest, any bias, or any prejudice
18 in the case; and what we mean by that is you can
19 determine through use of your common sense and your
20 good judgment who has the most reason to be telling
21 an untruth, or on the opposite, who has the most
22 reason to be telling you the truth.

23 You may consider the demeanor of a witness and
24 the appearance of the witness from the witness stand
25 and you may consider the opportunity for knowledge

1 concerning those things about which a witness
2 testified.

3 And in doing so, in exercising your mental
4 processes and in determining what you consider to be
5 true, the law simply requires that you exercise your
6 good judgment, your common sense, your sense of
7 logic and reason, and your experiences in life. You
8 then apply these attributes of ability to the
9 evidence and determine what you consider the
10 truthful evidence and to these true state of facts
11 as determined by you the jury you take and apply the
12 law as I state it to you and thus arrive at a true
13 verdict in the case.

14 Once again, you are to try this case based on
15 the evidence that's properly before the court, not
16 on anything that you may have watched on any
17 television show or movie, any theatrical
18 performance, anything outside of this courtroom. It
19 would not be proper for you to give that
20 consideration as evidence in this case. You
21 determine the case based on the evidence presented
22 here in court.

23 All right. Now I'm going to speak with you
24 about the charge in this case; in other words, the
25 law applicable to the indictment.

1 The charge made in this indictment is murder.

2 I'm going to first read to you section 16-3-10,
3 that's 16-3-10 of the code of laws of South Carolina
4 which states: Murder is the killing of any person
5 with malice aforethought either express or implied.
6 I point out to you that the word implied also means
7 the same as inferred.

8 What is malice? Malice is defined in the law
9 of homicide as a term of art. Malice does not
10 necessarily mean an actual intent to kill. This is
11 a technical term importing wickedness and excluding
12 just cause or legal excuse. It is something which
13 springs from wickedness, from depravity, from a
14 depraved spirit, from a heart devoid of social duty
15 and fatally bent on mischief.

16 Malice is a word suggesting wickedness, hatred,
17 and a determination to do what one knows to be wrong
18 without just cause or excuse or legal provocation.
19 Malice need not be in the mind of the one doing the
20 killing any particular length of time before the act
21 of killing in order to render the killing murder.
22 If it is present in the mind of the one doing the
23 killing any length of time before the act, then its
24 presence would be sufficient to render the killing
25 murder. Malice is said to be expressed where there

1 is manifested a violent, deliberate intention
2 unlawfully to take away the life of another human
3 being. Malice is implied where one intentionally
4 and deliberately does an unlawful act which he then
5 knows to be wrong and in violation of his duty to
6 another and where no excuse or legal provocation
7 appears. And when the circumstances attending a
8 killing show abandoned heart, a malignant heart,
9 fatally bent on mischief.

10 The words express and implied do not mean two
11 kinds or two different kinds of malice. Rather the
12 term signify the way in which malice may be proved.
13 Express malice where a person by word of mouth
14 expressed hatred or ill will for another or ill will
15 for another or where the State proves beyond a
16 reasonable doubt that the defendant was making
17 preparation before the event to accomplish the
18 event..

19 The jury may also conclude by deductive
20 reasoning that under certain circumstances malice
21 may arise even though there is no express or direct
22 evidence of an intent to kill.

23 Malice may be implied or inferred if it is
24 proved beyond a reasonable doubt that there was a
25 willful, deliberate, and intentional doing that was

1 a willful, deliberate, and intentional doing of an
2 unlawful act without just cause or excuse.

3 The proof of this act, however, is merely a
4 piece of evidence from which the inference or
5 implication of malice may arise. In other words,
6 the inference would be simply an evidentiary fact to
7 be taken into consideration by you the jury along
8 with other evidence in the case and you may give it
9 such weight as you determine it should receive.
10 Furthermore, even when there is an absence of a
11 specific fixed and deliberate intent to take a life
12 of a particular person or that of any person the law
13 says that if it is proved beyond a reasonable doubt
14 that one intentionally killed another with a deadly
15 weapon or with a dangerous instrumentality, such as a
16 gun an implication of malice may arise. The use of
17 a deadly weapon permits to infer malice but it does
18 not require you to infer malice.

19 If facts are proved beyond a reasonable doubt
20 sufficient to raise an inference of malice to your
21 satisfaction, this inference would be simply an
22 evidentiary fact to be taken into consideration by
23 you the jury along with other evidence in the case
24 and you may give it such weight as you find it
25 should receive. You, as jurors, are free to accept

1 or reject as permissive inference depending on your
2 view of the facts.

3 Further, there must be malice aforethought
4 which means that the malice must have been conceived
5 in the mind of the defendant prior to the fact
6 producing the fatal result. However, the law does
7 not require that the malice must exist for any
8 appreciable length of time before the commission of
9 the act.

10 I also charge you that the State is not
11 required to prove a motive for a homicide or murder.

12 Now, ladies and gentlemen of the jury, I
13 further charge you that the law is that if a crime
14 is committed by two or more persons who are acting
15 together in the commission of the crime, the act of
16 one is the act of all. This is true if there are
17 two people or more than two people involved in an
18 act. Two people or more than two people can be
19 guilty of killing another, this is guilty of murder,
20 when only one of the people fired the shot or
21 committed the act that caused the death. If two or
22 more people are together are acting together,
23 assisting each other in the commission of the
24 offense, the law says that under these circumstances
25 the act of one is the act of all. The hand of one

1 is the hand of all.

2 Proximate cause is the direct cause, the
3 immediate cause, the efficient cause, the cause
4 without which the death would not have resulted.
5 Now there may be more than one proximate cause that
6 causes the death of a person. The acts of two or
7 more persons may combine together to be a proximate
8 cause of the death of the person. The defendant's
9 act may be regarded as the proximate cause if it is
10 the direct cause to the death of the victim. The
11 defendant's act need not be the sole cause of death,
12 but it has to be the direct cause without which the
13 death of the victim would not have resulted and this
14 has to be proved to you by the State of South
15 Carolina beyond a reasonable doubt.

16 One who inflicts an injury on another is deemed
17 by law to be guilty of murder in the first degree
18 where the injury contributes immediately or
19 immediately to the death of the other. The fact
20 that the other causes also contribute to the death
21 of a person does not relieve the defendant from
22 responsibility.

23 Ladies and gentlemen of the jury, you are not
24 partisans or advocates for the State of South
25 Carolina or the defendant. You do not serve as

1 jurors to reward friends or punish enemies.

2 Obviously such a perverted system of justice would
3 be intolerable in our society. You have been
4 selected by both the State and the defendant has
5 fair and impartial jurors. It is your duty then by
6 your joint deliberations to determine the truth of
7 this case, giving to the defendant the benefit of
8 every reasonable doubt on each and every issue, then
9 to the facts which you determine to be true, you
10 then take and apply the law which has been given to
11 you by the court, and thus arrive at a verdict which
12 does speak the truth of the case for the word
13 verdict which has a Latin derivative means a true
14 saying. When you have accomplished these
15 responsibilities you will have satisfied your oath
16 as jurors and you will have discharged your duty to
17 this court.

18 I will now instruct you in the forms of verdict
19 in this case. Don't give any weight as how I
20 numerically cover these forms of the verdict
21 with you. I have to cover them in some fashion.

22 If the State has failed to prove the guilt of
23 this defendant beyond a reasonable doubt your
24 verdict will be two words not guilty. --

25 If the State has proved the guilt of this

1 defendant beyond a reasonable doubt your verdict
2 will be one word guilty.

3 The verdict that you render in this case must
4 be the verdict of each and every juror. It must be
5 your unanimous verdict. All 12 jurors must agree on
6 the verdict which you are authorize Madame Forelady
7 to write for the jury.

8 Madame Forelady, here is the indictment. the
9 front of the it and the back of it. The back left
10 hand corner, I apologize, because there's a clock in
11 stamp there, but there is room enough for you to
12 write in the appropriate verdict on the top line and
13 at the bottom where it's a clear space, if you would
14 sign your name as foreperson of the petite jury and
15 then put the date. I apologize for that, sometimes
16 they hit it with the clock in stamp and get in the
17 way.

18 I'm going to send you back in a minute and I'm
19 going to ask you not to begin your deliberations
20 until we send this indictment with the exhibits back
21 to you because I have to check in one last time to
22 make sure we got everything accounted for and I also
23 have to check in with the attorneys.

24 Madame Forelady, make sure that when you are
25 deliberating that all 12 deliberating jurors are

1 present. If somebody takes a restroom break or a
2 smoke break, cease your deliberations until you have
3 all 12 back in place. If you have any problems
4 knock on the door and let the bailiff know we will
5 try to attend to it.

6 Now the alternative will be placed in a
7 separate room. We will take care of lunch for the
8 alternate, but we do need you in a separate room
9 away from the deliberating jury at this particular
10 time.

11 Madame Forelady, should you begin your
12 deliberations and you have a juror or jurors that
13 refuses to deliberate with you, please notify the
14 court and we will try to take care of that situation
15 too. Okay. All right. I'm going to ask you to
16 step back to your room, relax a minute, and we will
17 get all this information which is evidence back to
18 you.

19 (The jury exits the courtroom at 10:57 AM.)

20 The Court: Anything for the record.

21 Mr. Barnett: None from the State, Your Honor.

22 Mr. McPherson: No, Your Honor.

23 The Court: Thank you, gentleman.. I appreciate
24 y'all's very professional presentation in this case.
25 It makes the job on the court a lot easier when I've

1 got professional attorneys who know what they are
2 doing before me and it makes a big difference to me
3 and I appreciate it. I do need you to check off on
4 all your exhibits to make sure they are present.
5 Once you have done that and approved that with the
6 court reporter, I'm going to ask Mr. Bailiff if he
7 will deliver the evidence back to the jury along
8 with the indictment with instructions at that
9 particular time to begin their deliberations. Thank
10 you very much.

11 Mr. Barnett: Thank you, Your Honor.

12 (The jury begins deliberation at 11:06 AM.)

13 The Court: All right. Court is now at ease.

14 (Court resumes at 01:44 PM.)

15 Mr. Bailiff: I will bring the alternate in
16 now, judge.

17 The Court: That will be fine. Put him over
18 there in that outside chair. The State ready.

19 Mr. Barnett: The State is ready, Your Honor.

20 The Court: The defense.

21 Mr. McPherson: The defense is ready.

22 The Court: Bring them in.

23 (The jury returns to the courtroom at 01:47
24 PM.)

25 The Court: Madame Forelady, has the jury

1 reached a verdict?

2 The Foreman: Yes, sir, we have.

3 The Court: If you'll hand it up by Mr. Bailiff
4 please. Sheriff, if you'll hand this to Madame
5 Clerk and we'll ask the clerk to publish the
6 verdict.

7 The Clerk: In the State of South Carolina, the
8 county of Spartanburg, in the court of general
9 sessions the State versus Robert Lee Heydman
10 indictment number 2007-GS-42-4087 indicted for
11 murder. We the jury has unanimously reached a
12 decision and has come back with a verdict of guilty
13 signed by the Foreman this 26 day of September 2008.

14 Ladies and gentlemen of the jury, if this is
15 your verdict and still your verdict please indicate
16 by raising your right hand. Thank you.

17 The Court: Thank you, Madame Clerk. Anything
18 further of the jury?

19 Mr. Barnett: None from the State, Your Honor.

20 Mr. McPherson: I'd like to poll the jury
21 individually.

22 The Court: Very well. Madame Clerk, if you'll
23 poll the jury.

24 (The jury is polled and all affirm this
25 verdict).

1 The Clerk: You've been polled. The polling is
2 complete.

3 The Court: Anything further?

4 Mr. McPherson: I'm -- not until you excuse the
5 jury.

6 The Court: Ladies and gentlemen of the jury, I
7 want to thank you for serving on this jury, but I
8 also want to thank you for your patience with the
9 court. I know we've had some delays in the trial,
10 some of it required that I review some matters of
11 law, and as I told you, you are the triers of the
12 fact and I'm the judge of the law and sometimes it
13 takes a little while to sort those matters of law
14 out so we can proceed with the trial and I do thank
15 you for your patience with us.

16 This completes your term of jury service for
17 this week. Of course it being Friday we will stop
18 later on this afternoon with the proceedings here
19 and then start another term later on. Fortunately
20 in South Carolina jury terms normally just last a
21 week.

22 If you are selected to be on a jury in the
23 future, I certainly hope you'll be willing to serve.
24 You will not be required to serve again this
25 particular year, and then the next two years it will

1 be a situation where you can choose to serve or
2 either ask for an exception if you are asked to
3 called, but I would encourage you to serve if you
4 will.

5 I want to thank the alternate for his patience
6 in standing by for us. As you know the alternate
7 serves if one of the other jurors becomes
8 incapacitated and fortunately that did not happen.

9 So with that said, if you would like to leave
10 you may do so. If you need an employment slip,
11 Mr. Bailiff will tell you or show you where to go
12 for your slip. Your checks will be mailed out. If
13 you don't get a check within say two weeks be sure
14 to check with the clerk's office to trace that out.
15 Do not be upset with the court or the clerk's office
16 about the amount of pay you are going to get. We
17 don't control that. That's a matter for county
18 council, so we'll let you to speak to them about
19 that.

20 If you would like to stay and watch the next
21 phase of the trial which is the mitigation and
22 sentencing, you are more than welcome to do so. As
23 a matter of fact, if you'd like to stay and you feel
24 more comfortable you can have a seat back in the
25 gallery area where Mr. Alternate is at this time or

1 you are free to go unless anybody's got a question.
2 All right. Thanks once again. If you want to say
3 you can have a seat back there; otherwise you are
4 excused.

5 (The jury exits the jury box.)

6 The Court: All right. Anything for the record
7 before we move into mitigation?

8 Mr. McPherson: Yes, Your Honor. At this time
9 I'd like to make a motion for a new trial on the
10 grounds that the verdict is not supported by the
11 evidence that's in this case.

12 The Court: I don't require a response from the
13 State. Based on the evidence before the court I
14 deny that motion. Solicitor, I'll hear from the
15 State first.

16 Mr. Barnett: Yes, sir. I'm getting the
17 sentence sheet done for Your Honor right now. May
18 I approach, Your Honor. Your Honor has heard the
19 facts of this case so I won't go through the facts
20 of it obviously, but he does have a prior record for
21 criminal domestic violence. He has one count of
22 that on his record.

23 Your Honor, it's a, it's a brutal crime. One
24 of the things that bothered me -- unfortunately now
25 thanks to this man's actions and Angela Dawn

1 Fowler's actions, there is three girls, they don't
2 have a father, probably never have a mother from
3 them. And I know that Dawn's sister would like to
4 address the court and she has some documents that
5 she'd like to hand up to. I'm going to show them to
6 Mr. McPherson. I've shown them to Mr. McPherson.
7 There is a picture of Richard Fowler and his three
8 kids. I'll pass it up. As well as a card from him
9 to his sister and there is a picture in there too,
10 him with his father. Your Honor, we pass that up to
11 you.

12 The Court: Okay.

13 Mr. Barnett: Give your full name for the
14 record. Your Honor, may we get the card back?
15 Thank you.

16 Mrs. Hogan: My name is Tammie Renee Hogan.
17 Your Honor, Richard Craig Fowler was my brother and
18 you'll often hear me refer to him as Craig. This
19 come from the last Christmas we spent together and
20 if you would let me I would like to read it.

21 "The world that we grew up in now seems a
22 little small but it was big in laughter, love, and
23 caring. We didn't have a lot of things that you
24 call luxuries but we were rich in character and
25 caring.

1 "Looking back I'm grateful for the way we were
2 raised and how we're a close knit family saw us
3 through. It gave us a foundation we built on
4 through the years and I'm lucky to have shared all
5 of this with you."

6 This is a little note from him and hopefully
7 you'll see what kind of person that he was. This
8 says: "I know that we've been, I know that we have
9 grown up a lot now, but I want to thank you for
10 everything from then, taking me in until now,
11 helping me with the pain and the depression I've
12 been through. I want to also thank you and your
13 family for all the things that you have done for my
14 family and kids. We have stayed so close that I
15 feel like Tandy, little Rick, and Gabby are as close
16 as my own kids to me. I'm glad to see that your
17 life has got much better from all the roughness you
18 went through at first.

19 "I pray each night for you, Dennis -- excuse
20 me, Tandy, little Rick, and Gabby, thanking Him for
21 having y'all happy and healthy. Me and you have
22 faced hard times but we face them about the same
23 times and together and that is what is so
24 interesting and had mom and dad support and help
25 like always.

1 "I think that it is wonderful that you take the
2 time out for Minor 1 I told Dawn, I see you just
3 like mom was in the way she cared and kept us all
4 together. Even when we did not see eye to eye, I
5 see all this in you now. I know I never say it but
6 I love you and your family so much and just being
7 here at times means a lot to all of us.

8 "I've always looked up to my big sister growing
9 up, even though we had our spats, and now I still
10 look to you and dad more without mom here. Like you
11 used to say, I was a momma's boy. Ha - ha. I have
12 always known she is happier and in a better place
13 now.

14 "I love you now and your family like my own and
15 I want to wish you and your family a Merry Christmas
16 and a wonderful New year 2006.

17 "love, Craig and family." And I'm sorry.

18 The Court: You are fine.

19 Mrs. Hogan: And I hope from this that you can
20 tell that my brother was a loving and caring person
21 who valued family. And I also want you to know that
22 my dad is not present today because this death has
23 left him emotionally devastated. This act has
24 created more victims than just my family. Your
25 Honor, for Mr. Heydman his sentence may start today

1 but my life sentence started December 13, 2006.

2 Thank you.

3 The Court: Thank you.

4 Mr. Barnett: Thank you, Your Honor. That will
5 be all from the State, Your Honor. Thank you.

6 The Court: Mr. McPherson.

7 Mr. McPherson: Your Honor, my client is 48
8 years of age. He did in good faith try to work this
9 case out with the State as you are well aware of.
10 He was trying to, he wanted to take responsibility
11 for his actions. He was, as you know, asking for
12 something similar, a plea agreement similar to what
13 Dawn Fowler got. I know he's been convicted of
14 murder and a 30 year sentence or whatever you give
15 him is a life sentence to him. His family is here.
16 All these, his stepchildren, his stepson, his
17 stepdaughter, and his wife is here. He has a lot of
18 people here from the church that support him and ask
19 that you do whatever you have to do.

20 The Court: Mr. Heydeman, anything you'd like
21 to say?

22 Mr. Heydeman: I'd just like to say I wished it
23 never happened.

24 The Court: All right. Mr. Heydman, I'm going
25 to go ahead and inform you now that you have

1 appellate rights in this matter. If you want to
2 file an appeal please be on notice that you must
3 file notice of appeal within ten days of sentence.

4 I've listened very carefully to all of the
5 negotiations that went on in this case and the
6 related case. I listened very carefully to the
7 evidence. I could sit up here and rattle on a
8 sermon about some of the things that I've observed,
9 but I'm not going to do it except it to that I sit
10 back in amazement that humans can go into a church,
11 be so devote Christians and then turn around and do
12 something this vicious and brutal. And I heard some
13 of the evidence about the possible love triangle or
14 relationship but you know what all this boils down
15 to? Pure greed. You wanted to get your hands on
16 that \$90,000 or what was left of that \$90,000 so bad
17 that you brutally beat a man that trusted you,
18 caught him completely off guard and beat him, beat
19 his brains out. I cannot afford to allow you to be
20 back on the streets of Spartanburg County ever. The
21 sentence is life imprisonment. Is Mr. Kelly here?

22 Mr. Barnett: That's what we're getting ready
23 to check right now.

24 The Court: Counsel, y'all approach.

25 (Bench conference and Mr. Kelly enters the

1 courtroom.)

2 The Court: Okay. You can step back to the
3 table if you'd like. I know emotions are running
4 high now, strong feelings on every side of every
5 issue in this case. I am not going forward with the
6 sentencing of this defendant this afternoon mainly
7 because I in good conscience cannot do it without at
8 least giving the daughters an opportunity to be
9 here. I feel very strongly that I need to hear from
10 them and there are three.

11 Mr. Barnett: Yes, sir, it's three daughters.

12 The Court: Those that will be willing to come
13 before the court I want to give them that
14 opportunity and I hope they will. But there is a
15 caveat to that, we don't have court next week, but I
16 will be back to this circuit in a few weeks. I can
17 accomplish two things by delaying it, I could
18 satisfy my desire to have them present to put in
19 their word about this situation, but also I want
20 probation and parole to do a presentence report on
21 this defendant. I will look to counsel to
22 coordinate that with probation and parole; but back
23 to where I was headed. I don't want anybody
24 communicating with these daughters in any way
25 concerning this case until after I complete this

1 sentencing. If I find out that anybody has tried to
2 influence anything that they say, there is going to
3 be trouble. Everybody get my drift? I don't want
4 any pressure or influence put on those daughters. I
5 want to hear from their heart, okay. Now all of you
6 are good Christian people. It's obvious to the
7 court from what all I heard during this trial, so I
8 expect you to live like good Christian people until
9 we get this resolved in a couple weeks or three
10 weeks. I'll give everybody a little time to settle
11 down but I want everybody to understand I cannot go
12 forward unless I give those girls an opportunity to
13 say what they might want to say. Does the State
14 have any questions?

15 Mr. Barnett: The State doesn't have any
16 questions, Your Honor.

17 The Court: The defense.

18 Mr. Kelly: None, Your Honor.

19 The Court: All right. Remember what I said,
20 everybody in this courtroom is on notice, no
21 pressure, no comments, no suggestions to those three
22 children. All right.

23 If you would coordinate, the two of you, about
24 us getting with the clerk, the folks over in Gaffney
25 County to give everybody plenty of notice to be

1 there and that will give you a chance to arrange for
2 the children to be there too. I'm hoping we can do
3 this and not interfere with a lot of school time but
4 let's try to workout a time. We need to do it the
5 first part of the week too.

6 Mr. Barnett: We'll probably do it that Monday,
7 Your Honor.

8 The Court: That will be great.

9 Mr. McPherson: Thank you, Your Honor.

10 The Court: This matter will be continued until
11 next term in Gaffney. Any other matters?

12 Mr. Barnett: None from State, Your Honor.
13 Thank you very much.

14 The Court: This term of general sessions court
15 for Spartanburg County is now Adjourned sine die.

16 (Court's in recess at 02:20 PM.)
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1 I, Janet Rich, official court reporter for the Sixteenth
2 Circuit of the State of South Carolina, do hereby certify
3 that the forgoing is a true, accurate, and complete
4 transcript of record of all the proceedings had and
5 evidence introduced in the trial of the captioned case,
6 relative to appeal, in the court of general sessions for
7 Spartanburg County, South Carolina, on the 26 day
8 September of 2008.

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

11
12
13 

14 Janet M. Rich
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FORM 5

2011-CP-42-2966 ⁴¹³

STATE OF SOUTH CAROLINA)
County of Spartanburg)

IN THE COURT OF COMMON PLEAS

Robert Lee Heydman #330872)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

Request For A Hearing And
Appointment of Counsel

FILED
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SPARTANBURG COUNTY
2011 JUL -8 PM 2:18
M. HOPE BLACKLEY

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, 430 OAKLAWN Road, Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence Spartanburg Courthouse, 180 Magnolia St. Spartanburg S.C. 29306-2335
3. Name(s) of co-defendant(s) (if any) Angela Dawn Fowler
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007- GS-42-4087

413

86

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 28, 2008
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Filed June 8, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None. Opinion Was Without Precedential Value
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Not Applicable
- (b) _____

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CHARLESTON COUNTY
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M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel and Appellate
(b) Counsel, and Prosecutorial Misconduct. Const. Violations of
(c) the 6th and 14th Amendments of the U.S. Constitution.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached supplemental page 3A.
(b) _____
(c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
(d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Not Applicable
ii. _____
iii. _____
iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Not Applicable
ii. _____
iii. _____
iv. _____

9/6

1. Ineffective Assistance of Trial Counsel.

A. During the proceedings Attorney was suffering from hearing impairment and unable to adequately follow the proceedings.

B. Conflict of Interest. My Attorney represented one of the witnesses against me who got a reduced sentence for testifying. [Also if a witness agreement was reached it should have been disclosed to the jury]

C. My Attorney failed to obtain necessary expert testimony. [Also an expert will need to be obtained and presented at the PCR hearing with regards to this issue].

D. My Attorney failed to object to improper jury charge, improper closing comments, judicial remarks concerning my religion, and prejudicial hearsay testimony.

E. My Attorney failed to request a jury charge on accessory after the fact when the evidence warranted such a charge.

2. Prosecutorial Misconduct.

A. The prosecution failed to disclose facts, agreements and evidence concerning the jailhouse witness motives for testifying. [Their plea transcripts may need to be obtained]

3. Ineffective Assistance of Appellate Counsel.

A. Appellate Counsel failed to raise and present direct appeal issues.

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HARTMANBURG COUNTY
2011 JUL -8 PM 2:18
M. MOPE BLACKLEY

(c) the disposition thereof:

- i. Not Applicable
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Not Applicable
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Not Applicable
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Not Applicable
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Not Applicable
- ii. _____
- iii. _____

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 MARTINBURG COUNTY
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 M. HOPE BLANCHLEY
 Revised 03/2008

9/17

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Issues are PCR claims AND therefore could only now be raised.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Not Applicable
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. William McPherson, Public Defender, 366 N. Church St.
Spartanburg S.C. 29303
- ii. Joseph L. Savitz, III Chief Appellate Defender, P.O.
Box 11589, Columbia, S.C. 29211-1599
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. During Arraignment, trial and sentencing.
During direct Appeal.
- ii. _____
- iii. _____

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19. State clearly the relief you seek in filing this application:

To have conviction overturned, set aside or vacated. To
have sentence set aside or vacated, and/or any other
relief the Court deems just and proper

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Robert Lee Heydman #330872, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Robert Heydman

SWORN to and subscribed before me this 5th
 day of July, 2011.

Dana M. Blackley (L.S.)
 Notary Public

My Commission Expires: Jan 28, 2018

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2011 JUL -8 PM 2:18
 M. HOPE BLACKLEY

98

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Robert Lee Heydman #330872, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Robert Heydman
Applicant

SWORN or affirmed to and subscribed before me this

5th day of July, 2011.

Dan M. Murrell
Notary Public.

My Commission Expires: JAN 28, 2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUL -8 PM 2:18
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Robert Lee Heydman, #330872,	)	2011-CP-42-2966
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 8, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the August 2007 term of the Spartanburg County Grand Jury for murder (07-GS-42-4087). He was represented by William H. McPherson, Esquire. On September 28, 2008, the Applicant proceeded to trial where he was found guilty of the charge by a jury. He was sentenced by the Honorable Paul M. Burch to confinement for life.

A timely notice of appeal was submitted and an Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Heydman, Op. No. 2011-UP-269 (filed June 8, 2011). The Remittitur was returned on June 24, 2011.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, the Applicant's appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to adequately follow the trial proceedings because of a hearing impairment he suffered from during trial,
 - b. Counsel acted under a conflict of interest because Counsel represented a State's witness, who got a reduced sentence for cooperating,
 - c. Counsel failed to obtain necessary expert testimony
 - d. Counsel failed to object to improper jury charge, closing argument, judicial remarks regarding Applicant's religion, and hearsay testimony,
 - e. Counsel failed to request a jury charge on accessory after the fact when the evidence warranted such a charge
2. Ineffective assistance of appellate counsel, in that;
 - a. Appellate counsel failed to raise and present valid direct appeal issues;
3. Constitutional violations of the 6th and 14th amendments; and
4. Prosecutorial misconduct, in that;
 - a. Prosecution failed to disclose facts, agreements and evidence concerning the jailhouse witness' motivation for testifying.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally

entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant has alleged violations of his constitutional rights and prosecutorial misconduct

for the State's failure to disclose information regarding a witness. However, the Respondent submits that these allegations are without merit first, because the applicant has failed to specifically set forth the grounds upon which they are based in accordance with S.C. Code Ann. §17-27-50. The respondent moves for summary dismissal pursuant to South Carolina Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact on these allegations which would necessitate an evidentiary hearing and that they should be dismissed as a matter of law.

Furthermore, it appears that these allegations might raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at his trial or on appeal. His failure to do so has waived these allegations as a ground for relief. Therefore, the Court should summarily dismiss these allegations.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegations of ineffective assistance of trial and appellate counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 7, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Robert Lee Heydman,

)
)

2011-CP-42-2966

Applicant,

)
)

v.

)
)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

)
)

Respondent.

)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Franklin Milton Mann, Jr.
1089 Boiling Springs Road
Spartanburg, South Carolina 29303



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 7th day of May, 2012.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG

Robert Lee Heydman, #330872,

Applicant,

-VS-

State of South Carolina,

Respondent.

CASE NO.: 2011-CP-42-2966

Deposition of WILLIAM MCPHERSON, a witness called by Counsel on behalf of the Defendant, pursuant to the applicable provisions of the South Carolina Rules of Civil Procedure, taken via telephone by Cynthia L. Weathers, a Professional Court Reporter and Notary Public in and for the State of South Carolina, on March 18, 2013 at the Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, South Carolina, commencing at the hour of 2:10 p.m.

APPEARANCES

F. Milton Mann, Esq.
151 Harold Flemming Court
Spartanburg, South Carolina 29303

REPRESENTING THE APPLICANT

Suzanne H. White, Esq.
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549

REPRESENTING THE RESPONDENT

ALSO PRESENT

Thomas Sams, SCDC
Alan McKnight, SCDC
Robert Lee Heydman, #330872

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1 S T I P U L A T I O N S

2 It is hereby stipulated by and between Counsel for
3 the respective parties that the reading and signing
4 of the deposition transcript is waived.

5 Whereupon,

6 WILLIAM MCPHERSON,

7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MANN:

11 Q. Good afternoon. My name's Milton Mann. Can you
12 hear me sufficiently?

13 A. Yes. I hear you fine. Thank you.

14 Q. I appreciate it. Can you please state your name
15 for our record.

16 A. My name is William McPherson.

17 Q. And Mr. McPherson, you're actually an attorney; is
18 that correct?

19 A. That's correct.

20 Q. And I believe you're like myself. You're licensed
21 in more than one state; correct, sir?

22 A. Correct.

23 Q. And at some point in your life, you've provided
24 some legal services here in the state of South
25 Carolina?

1 A. That's correct.

2 Q. And do you remember the case in question that we're
3 here on a post-conviction relief about today?

4 A. Yes. I do.

5 Q. And do you remember representing Mr. Heydman?

6 A. Yes. I do.

7 Q. Can you tell me the dates of your representation,
8 please?

9 A. I can't tell you that offhand. I know I had his
10 case for about a year or so. If you want, I can
11 look into the paperwork and see if I can give you
12 the dates.

13 Q. I would actually appreciate that, because, you
14 know, forgive me. I'm one of those attorneys that
15 I kind of walk things through and put the picture
16 together in my head. So forgive me, but I would
17 like to know when you were providing legal services
18 to him, please.

19 A. Okay. I'm sorry. Let me look in one more place.
20 I don't think I have that information at hand.

21 Q. Okay. Mr. McPherson, it sounds as if you're
22 looking through documentation and papers; is that
23 correct?

24 A. That's correct.

25 Q. Can you give me an idea as to what you're referring

1 to? Do you have a case file or are you looking at
2 information provided to you?

3 A. I'm looking for information that was provided to
4 me. I have the post-conviction relief form. I
5 have the record on appeal. I have the transcript
6 from the trial. But I was also furnished with the
7 file from the Public Defender's Office, and that's
8 the one I'm having trouble laying my hands on. And
9 so as to the dates, I can't tell you.

10 Q. Okay. The file from the Public Defender's Office,
11 would that have been a file that you would have put
12 together during your representation?

13 A. For the most part, yes.

14 Q. Okay. And was that file maintained here in the
15 Public Defender's Office in the state of South
16 Carolina, Spartanburg County?

17 A. Yes. I was.

18 Q. Okay. Did you receive a copy or did you receive
19 the hard file, itself?

20 A. No. I received a copy.

21 Q. Okay. Do you want to take a break and look for
22 that copy?

23 A. Well, hold on just a minute.

24 Q. Yes, sir.

25 A. I think they provided it to me on CD. Let me see.

1 I think I have it. Okay. I've got it here in PDF
2 format form.

3 Q. Yes, sir. Do you have a way to access this so you
4 could give me these dates of representation? I
5 hate to be a stickler, but I think one of the --
6 and let me lay a background -- I'll let you look at
7 that while I move on to some more basic questions,
8 background questions. And that way, we can proceed
9 forward, if that's okay with you?

10 A. That's okay.

11 Q. All right. I'm going to ask you to multi-task, in
12 other words. I'm sorry. Mr. McPherson, my
13 understanding is that you did represent my client,
14 Mr. Heydman, through an appointment through the
15 Public Defender's Office respecting criminal
16 charges that were against him in Spartanburg
17 County. Is that your understanding or
18 recollection?

19 A. Yes.

20 Q. Okay. Do you remember what the charges were that
21 he was -- that you were representing him
22 respecting?

23 A. Murder.

24 Q. Okay. And we don't have the dates of
25 representation yet, but you'll come back with me on

1 that; correct?

2 A. Well, I'm trying.

3 Q. Yes, sir.

4 A. They were in a bunch of different files. But go
5 ahead.

6 Q. Okay, sir. Do you remember when the case was
7 tried?

8 A. Well, do you want me to give you a specific date?

9 Q. I'd love to know when the case was tried just so
10 that I can put it in the record for us.

11 A. Okay. Just a second. I do remember trying the
12 case.

13 Q. Yes, sir. You know they frown on me testifying.

14 A. They do?

15 Q. Sometimes.

16 A. If you want to try to lead me, that's okay.

17 Q. I'm working on it.

18 MS. WHITE: It's September 24th, 2008.

19 BY MR. MANN: (Resuming)

20 Q. Yeah. It looks like the trial commenced on
21 September 24th, 2008.

22 A. Okay. I wouldn't disagree with that date.

23 Q. You wouldn't agree with that date?

24 A. I would not disagree with that date.

25 Q. Okay. I gotcha. But now that is on the beginning

1 of the trial transcript. You did tell me, though,
2 you do remember and recall trying the case?

3 A. Yes.

4 Q. Do you remember preparations and conversations with
5 Mr. Heydman?

6 A. Yes.

7 Q. Okay.

8 A. We met quite a few times.

9 Q. Was it fair to say that they were serious charges?

10 A. Very serious.

11 Q. Yes, sir. Now you understand that this is a post-
12 conviction relief that has been filed. Is that
13 your understanding, again?

14 A. Yes. That's my understanding.

15 Q. Okay. Okay. Some of the concerns that Mr. Heydman
16 had about his representation during the trial
17 center respecting your services.

18 A. Yes. That's my understanding.

19 Q. Okay. One of -- and I'll try to go through the
20 list that he has provided to me. Some of them, I
21 will definitely want to talk about more than
22 others. But one of them that I think was the first
23 one, was a suggestion you're hearing impaired.

24 A. Well, that's true.

25 Q. Okay. Do you wear any kind of hearing assistant

1 devices?

2 A. I do now, but I wasn't wearing them back then.

3 Q. Okay. Had you been prescribed them or given them
4 at the time --

5 A. No.

6 Q. -- prior to 2008? So this was just something you
7 had not availed yourself of?

8 A. Correct.

9 Q. Okay. And had you ever had a doctor represent to
10 you that you should have them?

11 A. No.

12 Q. Okay. So you felt very comfortable that that was
13 something respecting your person that you were
14 comfortable with making that decision?

15 A. Yes.

16 Q. Do you feel in any way that that impacted your
17 ability to provide him services or follow the
18 proceedings?

19 A. No. I do not feel like it impaired my services.

20 Q. Okay. Moving to one of the next issues, and this
21 is why, at some point in time, we've got to get
22 these dates of representation kind of hammered out.
23 Did you represent any of the other witnesses that
24 testified at the trial at any time?

25 A. Not that I can recall. I don't believe I did.

1 Q. Okay. At any point in time, did you have a
2 conversation with Mr. Heydman that you had
3 represented one of the testifying witnesses that
4 offered, quite frankly, testimony against him at
5 the trial?

6 A. I don't think I represented that. I think what
7 came out was that someone in our office, but not
8 me, personally, represented one of the witnesses
9 that testified against him.

10 Q. Do you recall the testimony of a witness by the
11 name of Fowler?

12 A. Yes.

13 Q. Okay. Can you characterize his testimony for me?

14 A. Well, there were two witnesses. Fowler, and then
15 there was another guy. One of them was the main
16 witness who testified they were out in the jail
17 yard walking around, talking, and that Heydman or
18 Heydman told him about the incident, and that he
19 had admitted to committing the act against the
20 victim in this case.

21 Q. Okay. And --

22 A. And then there was another fellow. I don't
23 remember his name, who was walking behind Heydman
24 and the other fellow, and he overheard the same
25 conversation.

1 Q. And the second gentleman, could his name have been
2 Odeman, I believe, Odum?

3 A. I believe that's right.

4 Q. And again, I'm looking for the names, myself, just
5 to make sure we're on the same sheet. It's Oden, I
6 believe. Let's go back to John Fowler, though,
7 John C. Fowler. So you did not represent him at
8 any time that you represented Mr. Heydman; did you?

9 A. That's correct. To the best of my knowledge,
10 that's correct.

11 Q. Okay.

12 A. You know, as best I can remember, it was someone
13 else in our office that represented him.

14 Q. Okay. Now if it's someone else in your office, is
15 that a conflict of interest?

16 A. It could be, but I wasn't aware of anything that
17 was going on between Fowler and the other case. In
18 fact, I didn't even know of the agreement until
19 toward the end of, you know, it was almost time to
20 go to trial.

21 Q. Did John Fowler's testimony hurt your case?

22 A. I would say it certainly wasn't helpful. You know,
23 it was like an admission, that if the jury chose to
24 believe it, he was admitting to Fowler that he had
25 committed this act. I would say yes, it did hurt.

- 1 Q. In reading the trial transcript, you did try, to
2 flag their term, challenge the credibility of Mr.
3 Fowler's statements by pointing to the fact that he
4 had received special treatment from the
5 Prosecutor's Office?
- 6 A. Yes. That's correct.
- 7 Q. Do you recall going through that process?
- 8 A. Yes. If I remember, the Prosecutor had dismissed
9 the case, whatever case they had against him.
- 10 Q. At least some of the charges, from my reading of
11 the transcript?
- 12 A. Right. Well, anyhow, that's the way I remember it
13 was yeah. We were arguing that they barred his
14 testimony.
- 15 Q. Sure. Did you receive any information from inside
16 your office that these negotiations were going on?
- 17 A. I did not.
- 18 Q. Okay. And again, forgive me for belaboring the
19 point, but did the conflict, or potential conflict,
20 with the Public Defender's Office come to your
21 attention during the trial?
- 22 A. I don't recall that --
- 23 Q. Okay.
- 24 A. -- to be quite frank with you.
- 25 Q. Do you --

1 A. I know it was late after -- it was late in the game
2 when it came to my attention.

3 Q. Okay. And when it came to your attention, did you
4 talk to Mr. Heydman in some form or fashion about
5 it?

6 A. I don't recall.

7 Q. Okay. If his recollection is that upstairs on the
8 second floor, outside the general sessions
9 courtrooms that you met up there in the holding
10 chamber in the little breakout conference room, and
11 you told him that there was a potential conflict
12 respecting Mr. Fowler, do you think he may be in a
13 better position to have a recollection of that
14 conversation?

15 A. Possibly.

16 Q. Okay. And if it happened before resting the case,
17 should that have been brought to the court's
18 attention?

19 A. That's hard for me to answer, but perhaps it should
20 have.

21 Q. Because to me, it seems almost as if the situation
22 would almost require a mistrial, in my mind. Would
23 you disagree with me?

24 A. I do not disagree. I'm not sure it would have been
25 granted.

1 Q. Well, again, I'm -- and forgive me. And you know,
2 just thinking through the professional conduct and
3 all the things that they require of us, if your
4 office is working on a deal for Mr. Fowler that
5 involves him testifying directly against your
6 client, and that testimony is going to be hurtful
7 to your client, that seems to me as hard of a
8 direct conflict as I can imagine.

9 A. Yes.

10 Q. Okay.

11 A. I tend to agree with that.

12 Q. And who was your trial judge again? Was it Judge
13 Burch?

14 A. Yes. It was.

15 Q. Okay. Do you think Judge Burch would have gone
16 along with that kind of a conflict?

17 MS. WHITE: Object to speculation.

18 A. Yes. I really don't know.

19 BY MR. MANN: (Resuming)

20 Q. Okay. But irrespective, it wasn't brought to the
21 benefit of the Judge for the Judge to give guidance
22 to the attorneys.

23 A. That's correct.

24 Q.. All right. And Mr. McPherson, please accept my
25 question with the utmost respect. Do you think a

1 mistake was made in that?

2 A. In not bringing it to the Judge's attention?

3 Q. Yes, sir.

4 A. Yes. I guess it was.

5 Q. Okay. Now I've looked through the transcript.

6 There are many sidebars in this proceeding; were
7 there not?

8 A. I don't recall.

9 Q. Okay. I counted personally no less than two
10 sidebars just during Mr. Fowler's testimony. Would
11 you disagree, or do you want to review the
12 transcript yourself?

13 A. Well, I don't disagree.

14 Q. Okay. In a thing such as this, the conflict could
15 have been brought up in any one of those sidebars;
16 correct?

17 A. It could have been brought up.

18 Q. All right. I'm going to take a brief recess and
19 I'm going to talk to my client off the record for
20 about five or ten minutes.

21 A. Okay.

22 Q. And I'm going to do my best to wrap it up so that
23 we can all go back to doing other things.

24 MR. MANN: So I'm going to turn it over to you
25 to get me my break, if you don't mind.

1 MS. WHITE: Okay. William, we can put you on
2 mute or we can call you back. Which do you prefer?

3 MR. MANN: I'm personally fine with mute.

4 MS. WHITE: Okay.

5 WITNESS: I think mute would probably be best,
6 because sometimes it's hard to get through.

7 MS. WHITE: Okay. All right. We'll put you
8 on mute right now for a few minutes.

9 WITNESS: Okay.

10 MR. MANN: Thank you, sir.

11 WITNESS: Thank you.

12 (Off the record)

13 BY MR. MANN: (Resuming)

14 Q. Mr. McPherson, I appreciate you answering my
15 questions for me.

16 A. Okay.

17 Q. The two questions that I continue to have, though,
18 are just this. Have you ever had an opportunity to
19 review John Fowler's file with the Spartanburg
20 County Public Defender's Office?

21 A. No.

22 Q. Would it have been stored in the same area that Mr.
23 Heydman's file would have been stored in?

24 A. To the best of my knowledge, it would have been.

25 Q. Did --

1 A. But we don't --

2 Q. Yes, sir.

3 A. The attorneys don't pull the files once they go to
4 storage. Somebody else pulls those.

5 Q. I'm following you, but the files are not segregated
6 under lock and key, for example, your case files,
7 as opposed to --

8 A. Correct. To the best of my knowledge, that's
9 correct.

10 Q. Okay.

11 A. I've never even been to the storage where they're
12 filed, so I don't really know how they're kept.

13 Q. Gotcha. But nonetheless, to your knowledge, you
14 would have probably had equal access to either
15 file.

16 A. You mean to Mr. Heydman's or to Mr. Fowler's?

17 Q. That is correct, sir.

18 A. I can't really answer that. I'm not sure that's
19 true.

20 Q. Okay. I believe that that's all the questions that
21 I have at this time. Thank you very much. I may
22 have brief redirect after Ms. White. Thank you,
23 sir.

24 A. Okay. Thank you.

25

CROSS-EXAMINATION

1 BY MS. WHITE:

2 Q. All right. Thank you, William. To start off with,
3 can your give us a brief idea of how long you'd
4 been practicing law when you represented Mr.
5 Heydman in September, 2008?

6 A. 2008? About 40 years.

7 Q. And --

8 A. Yeah. About -- somewhere in that neighborhood.
9 I'd been doing criminal practice for about 25
10 years.

11 Q. Okay. And in your experience with criminal law
12 prosecution, defense?

13 A. Well, I was a prosecutor for 18 years. And then
14 when I came to South Carolina -- I was a defense
15 attorney before I started being a prosecutor. I
16 defended criminal cases here in Texas. I did
17 relatively little criminal law in South Carolina.
18 I moved to Texas and started doing, after I got my
19 license here, I started practicing criminal defense
20 work. And then I can't remember how many years
21 went by, and then I went to work -- I would assume
22 that it was about ten years later, I went to work
23 for the District Attorney's Office. And then I was
24 a prosecutor for 18 years. And then I went to work
25 in 2006 for the Public Defender's Office as a

1 public defender again.

2 Q. Okay. And at this time, this was a murder case,
3 obviously. Had you represented anyone else on
4 prior murder charges?

5 A. Both as a prosecutor and as a defense attorney.

6 Q. Okay. So this wasn't your first major, major case
7 of a serious crime.

8 A. That's correct.

9 Q. And I know we've talked some about your employment.
10 You said that you think you represented him about a
11 year, at least a year, prior?

12 A. Yes. At least a year. I was looking at some of
13 the notes. I can't tell exactly when we picked him
14 up, but I know we made contact sometime in July of
15 2007.

16 Q. Okay.

17 A. And my appointment started somewhere around that
18 time, but I can't give you an exact date.

19 Q. Okay. And when you say picked up, do you go,
20 initially, and meet with a client, or do they sign
21 up and then meet with someone in your office? How
22 does that work?

23 A. An investigator goes over and talks to people that
24 are in jail, find out if they have an attorney,
25 find out if they need an attorney. They find out

1 if they can afford an attorney. And if it meets
2 all the qualifications, they fly to our office for
3 the appointment of an attorney, and then someone
4 else goes through and appoints people within the
5 Public Defender's Office to represent the different
6 individuals.

7 Q. Okay. Now --

8 A. But it's an investigator that initially talks to
9 the Defendant.

10 Q. Okay. When the investigator meets with the
11 clients, and you initially get the file, is there
12 any information on there about possible co-
13 defendants or people involved in the case?

14 A. It's more like a one or two-page document, and it
15 may list co-defendants, but it certainly wouldn't
16 have listed that Roy whatever his name was.

17 Q. Okay. And that was kind of my question, was Mr.
18 Fowler was not a co-defendant involved in this
19 particular case; was he?

20 A. Correct. The one that I was concerned about was
21 Patricia Bradley. That was a co-defendant, or at
22 least we felt like was a co-defendant, in this
23 case.

24 Q. Okay. And as a general rule from your experience
25 working in the office, if there's co-defendants on

1 a case, does the PD office present both of those
2 co-defendants?

3 A. Normally, if they're going to trial, they'll keep
4 the trial case and send out any other cases.

5 Q. Okay. So generally, as it relates to someone
6 that's considered a co-defendant --

7 A. They'll send them out.

8 Q. Okay.

9 A. If it looks like it's going to trial, they'll send
10 out any possible conflicts.

11 Q. Okay. In regards to this case, you went through a
12 couple of different things. Ya'll obviously went
13 through and requested a motion for mental health
14 evaluation.

15 A. Correct.

16 Q. Okay. So you had had some opportunity to sit down
17 and talk with your client, Mr. Heydman, about some
18 issues for that period; is that right?

19 A. Correct.

20 Q. Okay. And you also -- the State kind of made a
21 motion to prevent you from doing any third-party
22 guilt, other than, I know, any testimony regarding
23 Ms. Fowler, who was the victim's wife, or estranged
24 wife.

25 A. Correct.

1 Q. Okay. Had you talked with your client about trial
2 strategy and what the strategy was for your
3 defense?

4 A. Yes.

5 Q. Had you ever discussed with him any plea offers?

6 A. Yes.

7 Q. And what were the extent of the plea offers that
8 the State had offered?

9 A. They came down to 30 years to murder, which was the
10 lowest they could go on a murder charge, and ran it
11 by him. And I think at the time, he was around 58
12 years of age. He said that would be the same as a
13 death sentence. He's rather try the case. I was
14 trying to get him down to a manslaughter charge.
15 And we came close, but they went and talked to Trey
16 Gowdy. Trey said no, just try it. So we couldn't
17 get them down below 30 years. And my client felt
18 like that was still too much time to do a plea of
19 guilty on.

20 Q. Okay. And in regards to the defense strategy, what
21 did ya'll discuss for trial?

22 A. Well, our strategy was to try to make it look more
23 like the victim's wife was the perpetrator, and
24 that my client came in and tried to stop her from
25 doing it.

1 Q. Okay. And the State, in addition to this testimony
2 of Mr. Fowler, they had done some DNA testing; is
3 that right?

4 A. Yes.

5 Q. On some blood or some -- from Mr. Heydman.

6 A. That's correct.

7 Q. What other evidence or testimony did the State have
8 that they were presenting in support of his guilt
9 on this charge?

10 A. You mean besides what Ms. Fowler said?

11 Q. Right. So I mean just kind of go through with me,
12 if you wouldn't mind --

13 A. We had Ms. Fowler, who testified he did it, and
14 that --.

15 Q. And that was the victim's wife?

16 A. Yeah, and that they had planned it, that they had
17 planned it all along. And but that Mr. Heydman was
18 the one who actually did it. And then they found
19 his DNA. I believe it was on his forehead.
20 Anyhow, I believe they got it off his skin.

21 Q. And when you say his DNA, they found the victim's,
22 or --

23 A. The victim's DNA on Mr. Heydman's -- I believe it
24 was on his skin or on his body. It was on his
25 person.

- 1 Q. Okay.
- 2 A. They took that from the jail, if I recall
- 3 correctly.
- 4 Q. Okay.
- 5 A. And then they had those two guys from the jail.
- 6 And they were not helpful. And I instructed Mr.
- 7 Heydman not to talk to anybody about this case. So
- 8 he knew I was upset with him when that came out.
- 9 But, I mean, there wasn't anything I could do by
- 10 then.
- 11 Q. Now there was a statement that your client had
- 12 given. Was that harmful or helpful or neither?
- 13 A. Well, you mean one that he gave to the police?
- 14 Q. Yes. Ya'll had a Jackson -v- Denno hearing on it.
- 15 A. I'm sorry. I don't recall that.
- 16 Q. Okay. And the murder weapon, was that ever
- 17 recovered?
- 18 A. No.
- 19 Q. Okay. But there had been some testimony of him
- 20 discarding it in a trash or junk pile.
- 21 A. Correct.
- 22 Q. Okay. So in general, the testimony of this Mr.
- 23 Fowler that was a jail snitch was one of several
- 24 pieces that they had?
- 25 A. That's correct.

1 Q. Okay. Just a follow-up on that Mr. Fowler, as
2 well. In general, you testified that you weren't
3 aware of any potential conflict until the end, or
4 close to the end, of your representation of Mr.
5 Heydman.

6 A. Correct.

7 Q. In your --

8 A. Well, I'm not -- I can't even remember when it was
9 brought to my attention that it was a conflict.

10 Q. Okay.

11 A. As best I remember, the cases they had against
12 Fowler got dismissed. We turned up some that got
13 dismissed, and that was towards the end.

14 Q. And that was discussed actually during trial,
15 during your cross?

16 A. Yes.

17 Q. Okay. In your experience, and I know you testified
18 that you had not ever seen his file, would you have
19 -- is this a situation that normally, finding out a
20 State's witness had been represented by your
21 office, is that something completely out of the
22 ordinary?

23 A. Not completely out of the ordinary. I know if our
24 office, especially if our boss feels like there's a
25 conflict, they'll deal with it. But I just don't

1 recall this that well.

2 Q. Right. So based on your experience and how you
3 would have handled things in the past, if you
4 thought it was a -- obviously, we know you didn't
5 raise it to the court. But if it was an issue that
6 you thought was potentially damaging or could have
7 been mistrial worthy, would you have raised it to
8 the court?

9 A. Yes.

10 Q. Okay.

11 A. I believe I would have.

12 Q. All right. I think that is all I have at this
13 time, Mr. McPherson. Let me check and see if we've
14 got some redirect.

15 **REDIRECT EXAMINATION**

16 BY MR. MANN:

17 Q. A little redirect. Not too very much. Mr.
18 McPherson, I'm going to hit on just some simple
19 things, both for my benefit as well as Mr.
20 Heydman's benefit. The rules of professional
21 conduct require that as an officer of the court and
22 an attorney, we cannot suborn perjury; correct?

23 A. Correct.

24 Q. And so Mr. Heydman, by no stretch of the
25 imagination, ever came to you and said I did it. I

1 murdered this victim. Did he? And I will point
2 you --

3 A. I don't remember if he ever told me that or not.

4 Q. I point you to hopefully refresh your memory, he
5 testified on your direct examination that he did
6 not.

7 A. He did not testify, as best -- or did he?

8 MS. WHITE: He did, yeah.

9 BY MR. MANN: (Resuming)

10 Q. He testified. Yes, sir. He did testify. And he
11 testified no, that he came in, that he came upon
12 the scene --

13 A. That's right. I remember that.

14 Q. Okay.

15 A. Actually, that was what he told me early on --

16 Q. Okay.

17 A. -- from the very beginning.

18 Q. All right.

19 A. The way he testified was his story of what
20 happened, his recollection of the events of what
21 happened, from almost the first time I met him.

22 Q. Okay. And the point I'm trying to get at is you
23 had to believe that he was at least not lying to
24 you. In other words, he did not come to you and,
25 as the rules require, he didn't come to you and say

1 I did A, and then got on the stand and said
2 something different, because as an officer of the
3 court, we'd have to hold our hands up, and we'd
4 have to take a time out, spend some time with our
5 client, and petition for some time with the Judge.
6 Is that your understanding?

7 A. Yes, pretty much.

8 Q. I was going to say, I'm sure you've been through
9 this more than I have even. With the experience
10 you've had, I'm sure you've actually had to do that
11 before; is that correct?

12 A. Go to a judge and tell him my client's not being
13 truthful?

14 Q. Yes, sir.

15 A. I don't recall ever doing that.

16 Q. Okay. Have you ever had to pull your client aside
17 and say hey, wait a minute. You're story is not --

18 MS. WHITE: Object to relevance.

19 MR. MANN: And just to put on the record as to
20 what I think relevance is, Ms. White did a
21 wonderful job laying out all the vast experience
22 that this learned counsel has. And I'm just trying
23 to get a feel on my particular issue. So anyway.

24 BY MR. MANN: (Resuming)

25 Q. But --

1 A. I have to tell clients they cannot lie.

2 Q. Yeah. Yeah. Have you ever had to take a time out
3 during testimony?

4 A. No.

5 Q. Okay. And thankfully, that's because you did a
6 good job preparing your clients and kept them on
7 the straight and narrow. But now if we look at the
8 situation that we're talking about today, first
9 off, your office was representing Mr. Fowler while
10 he was negotiating with the Solicitor's office
11 giving a story 180 degrees opposite of what your
12 client was testifying to. And the same office was
13 representing both of these gentlemen.

14 MS. WHITE: Is that a question?

15 BY MR. MANN: (Resuming)

16 Q. And I perceive that as a direct conflict. And the
17 reason of the conflict is our professional rule --

18 MS. WHITE: I'm going to object to no
19 question, testifying.

20 MR. MANN: I'm getting to it, but anyway, I'll
21 clean it up and do it again. And let's go back.

22 BY MR. MANN: (Resuming)

23 Q. Mr. McPherson, I'll just start over. I'll retract
24 that. Mr. McPherson, if your office is
25 representing Mr. Heydman through you, and is

1 representing Mr. Fowler through another attorney in
2 your office, and they're offering in the same trial
3 testimony that is 180 degrees opposite from one
4 another, that is a direct conflict. Would you not
5 agree?

6 A. I would agree.

7 Q. Okay. Well, would you also agree that Mr. Heydman
8 had no way to learn that Mr. Fowler was being
9 represented by your office other than you telling
10 him?

11 A. That's sounds correct.

12 Q. Okay. And again, attempting to refresh your
13 memory, you brought it to his attention in one of
14 the breakout sessions upstairs, in the holding
15 cell, conference room that's made available for
16 detainees, and had a conversation with him, just
17 the two of you in the room. Do you remember that
18 conversation?

19 A. No.

20 Q. Okay.

21 A. But if I brought it to his attention, that was
22 probably around the first time I learned of the
23 conflict.

24 Q. Okay. And that would be during the trial, because
25 you did not meet with him after the trial; did you?

1 A. I don't recall if I did or not. Sometimes, we meet
2 after trial to see if they want to file an appeal.

3 Q. Okay. But again, would you defer to Mr. Heydman as
4 to the timing of this conversation?

5 A. Yes.

6 Q. Okay. And given that you agree with me it is a
7 conflict, would that not have been something most
8 appropriate to bring to the trial judge?

9 A. Yes.

10 Q. Okay. I have nothing further.

11 MS. WHITE: William, then I think we're done.

12 WITNESS: Okay.

13 MR. MANN: Thank you, sir.

14 MS. WHITE: Hold on one second.

15 MR. MANN: Do you want to read and sign, Mr.
16 McPherson? Read and sign?

17 MS. WHITE: The transcripts, once they're
18 completed, would you like to read and sign those
19 for accuracy?

20 WITNESS: If you want me to, I will.

21 MS. WHITE: It's up to you. I mean I'll have
22 a chance to review them as well when we get them.

23 WITNESS: Well, then not necessarily.

24 MS. WHITE: All right. I think that's it
25 then. Thank you very much, William.

1 WITNESS: Okay. Thank you.

2 MS. WHITE: All right.

3 MR. MANN: Thank you, sir. I hope you have a
4 good practice in Texas. Have a good day.

5 (Whereupon, the deposition concluded at 2:50 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

Be it known that I, Cynthia L. Weathers, a Professional Court Reporter and Notary Public, did take the testimony of William McPherson via telephone on March 18, 2013 at the Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, South Carolina;

That the witness was duly sworn under pains and penalties of perjury to testify the truth, the whole truth, and nothing but the truth;

That the foregoing pages constitute a true and accurate transcription of the testimony given at that time and place aforesaid to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any matter of its outcome.

In Witness whereof, I have hereunto set my hand and seal this 26th Day of March, 2013.

Cynthia L. Weathers
Notary Public For South Carolina
My Commission Expires January 13, 2021

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Robert Lee Heydman,)
5 Applicant,) TRANSCRIPT OF RECORD
6 The State,) 2011-CP-42-2966
7 Respondent.) April 4, 2013
8 Spartanburg, South Carolina
9
10
11

11 B E F O R E:

12 HONORABLE J. MARK HAYES, II, JUDGE
13
14

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

16 FRANKLIN M. MANN, JR., ESQUIRE
17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

25 ORIGINAL

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 (Whereupon, a bench conference was held off the record.)

2 THE COURT: Okay. Yes, ma'am.

3 MS. WHITE: Thank Your Honor. This is the case of Robert
4 Heydman vs. the State of South Carolina, it's Case Number
5 2011-CP-42-2966. Mr. Heydman was indicted in August 2007 for
6 murder, proceeded to trial where he was represented by William
7 McPherson of the, uh, public defender's office. September
8 28th 2008 Mr. Heydman was found guilty and received a life
9 sentence. An appeal was filed with an Anders brief and, uh,
10 the conviction and sentence were affirmed. He's filed this
11 application June ele -- excuse me, June 8th 2011 and he raised
12 various claims of ineffective assistance of counsel, appellate
13 counsel, prosecutorial misconduct and constitutional
14 violations, uh, but I believe he's right -- represented today
15 by Franklin Mann, Jr. and I believe that they, uh, wish to
16 proceed on only one main grounds, I'll turn it over to him at
17 time.

18 MR. MANN: Thank Your Honor. Good morning, Milton Mann
19 here on behalf of Mr. Heydman, uh, in addition we've got
20 Ms. Foster who is assisting me in the preparation of of this
21 application for relief. Uh, I would simply just prefer to
22 call Mr. Heydman and and we can sort out the various issues
23 that he raised on his PCR appeal, uh, or application but
24 Ms. White is correct, there's only one grounds that we're
25 gonna proceed forward on this morning.

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 THE COURT: And is that you just wanna refer that to
2 ineffective assistance of counsel?

3 MR. MANN: Ineffective assistance of counsel due to a
4 direct conflict, uh, through the public defender's office,
5 yes, Your Honor.

6 THE COURT: Okay, and, sir, just come right around up
7 here (indicating) and, sir, if you would just as best you can
8 place your left hand on that Bible and raise your right hand
9 and allow me the opportunity to swear you in.

10 (Whereupon, the applicant came forward.)

11 ROBERT LEE HEYDMAN, having been
12 first duly sworn, testified as follows:

13 THE COURT: Thank you, sir. Just have a seat in that red
14 chair but be careful for that step up, okay?

15 THE APPLICANT: Yes, sir.

16 THE COURT: Thank you.

17 MR. MANN: Thank Your Honor.

18 DIRECT EXAMINATION BY MR. MANN:

19 Q. Uh, could you please state your name for our record.

20 A. Robert Heydman.

21 Q. Okay and, Mr. Heydman, uh, why are we here today?

22 A. We're here to try to get some relief from all this, uh,
23 murder charge.

24 Q. Okay. And you filed an application, uh, for a a a PCR
25 application, correct?

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 A. Yes, sir.

2 Q. Alright. Uh, I believe you heard the rendition that
3 Ms. White gave respecting, uh, your previous trial, your
4 conviction, uh, is all that accurate information?

5 A. Yes, sir.

6 Q. And you take no exception to that, it was a 2008 trial,
7 correct?

8 A. Yes, sir.

9 Q. It was before I believe Judge Burch.

10 A. Yes, sir.

11 Q. Okay. You received a life conviction?

12 A. Yes, sir.

13 Q. Your attorney was Mr. McPherson?

14 A. Yes, sir.

15 Q. Okay. Uh, we had the opportunity I think a little over a
16 week ago to take Mr. McPherson's deposition, correct, ---

17 A. Yes, sir.

18 Q. --- and we did that actually here in this courthouse
19 building. A copy of his deposition has been handed up to the
20 Court?

21 A. Yes, sir.

22 Q. Alright. And we gonna talk about a few things within
23 that, okay?

24 A. Yes, sir.

25 Q. Now when you previously or, excuse me, when you

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 originally filed your application for a PCR, a post-conviction
2 relief, you raised a number of grounds, correct?

3 A. Yes, sir.

4 Q. You and I have gone through each of those grounds and we
5 have come up with the ones that based upon our attorney/client
6 relationship we feel are the most effective to potentially
7 lead you to relief, ---

8 A. Yes, sir.

9 Q. --- the others we're going to jettison them, for lack of
10 a better term, we're gonna abandon those at this time,
11 correct?

12 A. Yes, sir.

13 Q. And the the grounds that we think may most potentially
14 lead you to relief is the fact that you had ineffectiveness of
15 counsel due to a direct conflict in the public defender's
16 office.

17 A. Yes, sir.

18 Q. Alright. Uh, simple question: You're not on anything
19 that would alter your ability to answer any questions that we
20 have this mornin'?

21 A. No, sir.

22 Q. In other words, you didn't receive cold medication or
23 anything before you got here?

24 A. No, sir.

25 Q. And you feel good today?

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 A. Yes, sir.

2 Q. Alright. Uh, at your trial Mr. McPherson was your
3 counsel, correct?

4 A. Yes, sir.

5 Q. There was a variety of evidence offered against you in
6 the murder trial.

7 A. Yes, sir.

8 Q. Alright. Uh, one of those was a gentleman by the name of
9 Mr. Fowler.

10 A. Yes, sir.

11 Q. Mr. Fowler came into contact with you, how how did you
12 get to know Mr. Fowler?

13 A. Uh, we met in the, uh, detention center ---

14 Q. Okay.

15 A. --- Spartanburg.

16 Q. And this was while you were waiting trial, uh, for the
17 2008 murder con -- murder charge that you were on trial for,
18 correct?

19 A. Yes, sir.

20 Q. Such a bad question I apologize but anyway but you did
21 meet him in in in the holding facility while you're waiting
22 the trial at issue.

23 A. Yes, sir.

24 Q. Okay. Uh, did ya have conversations with him?

25 A. We had several conversations on regular, yeah.

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 Q. Alright. Uh, and at some point in time he decided to
2 contact his attorney ---

3 A. Yes, sir.

4 Q. --- respecting conversations he said that he'd had with
5 you.

6 A. Yes, sir.

7 Q. At trial do you recall what he testified?

8 A. He testified that we had a conversation about the the
9 murder of, uh, Richard Fowler.

10 Q. Okay. And basically, to to boil it down, he basically
11 said you confessed to him that you had murdered him.

12 A. Yes, sir.

13 Q. Okay. Was that truthful?

14 A. No, sir.

15 Q. Uh, at some point in time it came to your attention that
16 Mr. McPherson -- back up, I gotta ask one more question first.
17 Strike that, excuse me. Mr. McPherson worked with the public
18 defender's office, correct?

19 A. Yes, sir.

20 Q. Okay, so he was your appointed counsel?

21 A. Yes, sir.

22 Q. So you went through the process and they assigned him to
23 you.

24 A. Yes, sir.

25 Q. Okay. And that was the Spartanburg County Public

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 Defender's office.

2 A. Yes, sir.

3 Q. Alright. At some point and obviously you had
4 conversations with him, ---

5 A. Yes, sir.

6 Q. ---- did he ever have a conversation with you respecting
7 his office and Mr. Fowler?

8 A. Yes, sir.

9 Q. Tell me what you recall of that conversation.

10 A. We went out, well the jury had went out for deliberations
11 and we went back to the holdin' facility back there, he took
12 me back in a little room and he said that, uh, there was a
13 conflict in the case ---

14 Q. Okay.

15 A. --- and I didn't know what that meant and, uh, he said
16 instead of bringing it up to the judge his attention that I
17 could use it for a PCR.

18 Q. Okay. So he he was concerned about it by, at least by
19 the time the jury had gone out for deliberation.

20 A. Yes, sir.

21 Q. Okay. Uh, and all evidence had been put in?

22 A. As far as I know, sir.

23 Q. Okay. So if the jury's out deliberating, all the
24 evidence had been put into the trial, correct?

25 A. Yes, sir.

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 Q. Okay. Uh, where were you when you had this conversation
2 with him?

3 A. We was in the, uh, conference room in the little holding
4 area over here.

5 Q. Same place next door we met this morning?

6 A. Yes, sir.

7 Q. Okay. Uh, was anybody else in the room with you?

8 A. No, sir.

9 Q. Just the two of ya.

10 A. Yes.

11 Q. Okay. And the conflict he was talking about is the
12 public defender's office was representing ---

13 A. Yes.

14 Q. --- him, okay. Uh, at the trial of the case Mr. Fowler,
15 uh, was cross-examined ---

16 A. Yes.

17 Q. --- to a degree, correct?

18 A. Yes.

19 Q. I don't believe that the conflict came out in the
20 testimony offered at trial, did it?

21 A. No.

22 Q. No. But it did come out that his attorney had worked a
23 deal for him, correct?

24 A. Yes.

25 Q. Were charges dismissed or dropped ---

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 A. Yes.

2 Q. --- that were against him?

3 A. Yes.

4 Q. And that was as as the Court heard, ya know, ---

5 A. Yeah.

6 Q. --- but for the, for the thanks or at least that's one of
7 the inferences for the thanks of his testimony against you.

8 A. Yes, sir.

9 Q. You testified at trial ---

10 A. Yes, sir.

11 Q. --- and you testified that you did not commit the murder,
12 correct?

13 A. Yes, sir.

14 Q. He testified at trial, Mr. Fowler did, he testified you
15 did commit murder.

16 A. Yes.

17 Q. Alright. I call that a direct conflict myself, would
18 you?

19 A. Yes, sir.

20 Q. Alright. Uh, did Mr. McPherson ever suggest to you that
21 he should go to the Court and discuss this court, uh, conflict
22 with the Court?

23 A. He mentioned it in the conference room there ---

24 Q. Okay.

25 A. --- but then he said it was too late since the jury had

ROBERT LEE HEYDMAN - DIRECT EXAMINATION BY MR. MANN

1 already been deliberated they would just hold off.

2 Q. He didn't tell you when he found out about the conflict,
3 did he?

4 A. No, sir.

5 Q. But definitely by the time the jury went out he was aware
6 there ---

7 A. Yes.

8 Q. --- was a conflict. Okay. Uh, you had the opportunity
9 to sit through his deposition.

10 A. Yes.

11 Q. Okay. Uh, during my examination of him he he said there
12 his office both represented you and Mr. Fowler as well.

13 A. Yes.

14 Q. He also said that that was a conflict.

15 A. Yes.

16 Q. He also said that he made a mistake.

17 A. Yes.

18 Q. And he also said that it shoulda been brought to Court's
19 attention.

20 A. Yes, sir.

21 Q. And he also said Mr. Fowler's testimony against you was
22 damaging.

23 A. Yes.

24 Q. Okay. Uh, I'm your attorney today, correct?

25 A. Yes, sir.

ROBERT LEE HEYDMAN - CROSS-EXAMINATION BY MS. WHITE

1 Q. Are you satisfied with the services of your attorney?

2 A. Yes, sir.

3 Q. Okay. Is there any other information that you would like
4 this court to have on this matter that I've not asked you?

5 A. No, sir.

6 Q. Okay. And you had an opportunity, we we went over the
7 memorandum we provided.

8 A. Yes.

9 Q. Okay. And again, I can let you think for a minute, I
10 think the Court will give us that much latitude, but if you
11 can think of anything else that we need to to provide from
12 you, I need you to provide us that information. This is an
13 open question, if you know of anything else you'd like to add
14 to the record we can do that now, okay?

15 A. Not that I know of.

16 Q. Okay, give me one second. Let me talk with Ms. Foster, I
17 wanna make sure that I'm not overlooking something and then I
18 think I'm through with my questions, okay?

19 (Whereupon, a discussion was held off the record.)

20 MR. MANN: Okay, alright. Your Honor, I believe that's
21 all the questions I have.

22 MS. WHITE: Thank Your Honor.

23 CROSS-EXAMINATION BY MS. WHITE:

24 Q. Mr., and I'm sorry I've been callin' it Heydman but it's
25 Heydman, ---

ROBERT LEE HEYDMAN - CROSS-EXAMINATION BY MS. WHITE.

1 A. Yes, ma'am.

2 Q. --- correct? Mr. Heydman, now you testified that
3 Mr. Fowler had testified that he had gotten some charges
4 dismissed at the trial as a result of his testimony against
5 you?

6 A. Yes, ma'am.

7 Q. Okay. Is it not true that when he was asked on direct
8 charges -- on direct that he said that he was serving time
9 waiting on charges for arm -- two armed robberies, an
10 attempted car breaking and a violation of probation, inciting
11 a riot?

12 A. Yes, ma'am.

13 Q. And when the solicitor asked him if he had been promised
14 anything for the testimony he said no, sir.

15 A. Yes, ma'am.

16 Q. Okay. Uh, and then Mr. McPherson asked him about those
17 same charges and he said he knew that he could potentially
18 receive up to 30 years on any of the armed robberies, ---

19 A. Yes, ma'am.

20 Q. --- okay, and he said he's hoping he thought they were
21 gonna maybe terminate his probation but he wasn't sure.

22 A. Yes, ma'am.

23 Q. Okay. But there was one or two charges, like one warrant
24 that was dismissed, is that your understanding?

25 A. Uh, there was one warrant mischarged and a startin' a

ROBERT LEE HEYDMAN - CROSS-EXAMINATION BY MS. WHITE

1 fire and destroying of a pod in the county facility.

2 Q. Okay, and those are the charges, when you say he got
3 charges dismissed ---

4 A. Yes, ma'am.

5 Q. --- those are the ones you're referrin' to.

6 A. Yes.

7 Q. And those are charges that they had some warrants out for
8 him on but do we know if they --- he had been indicted on
9 those?

10 A. I'm not sure if he had or not.

11 Q. Okay. Uh, but again, he also testified that he did not
12 receive any consideration or any promises from the solicitor's
13 office in exchange for his testimony?

14 A. He said that he hoped that they give him a break on a lot
15 of his charges is what ---

16 Q. Right, ---

17 A. --- he said.

18 Q. --- he hoped but he had not been promised anything.

19 A. That's what he said.

20 Q. Okay, and, uh, McPherson when he testified did he not
21 testify in his deposition that obviously he was not aware
22 until later point that any -- that Mr. Fowler was even
23 involved in the case?

24 A. Yes, ma'am, he said that, uh, he wasn't aware but he
25 found out later in the trial that there was a conflict yes,

1 ma'am.

2 Q. Okay. And did he acknowledge that even if his office had
3 represented him he had no knowledge of his file or his case
4 Mr. Fowler's?

5 A. Yes, ma'am, that's what he said in his deposition ---

6 Q. Okay. And he also said that he he didn't necessarily
7 recall the conversation with you about the conflict, he just
8 remembered that he discovered it later in the trial?

9 A. Yes, ma'am, he said that, uh, I would know better 'cuz he
10 didn't recall havin' that conversation but if I said it that
11 he believed it would be true.

12 Q. Okay. But again, he said he didn't have access to the
13 file and had no knowledge of any kind of deal that was worked
14 out between anybody.

15 A. Yes, ma'am.

16 Q. Okay.

17 MS. WHITE: Alright, hold on one second, Your Honor.

18 (Whereupon, a discussion was held off the record.)

19 MS. WHITE: And, Your Honor, I just note that where I was
20 discussing page 273 is in the cross of the trial transcript.
21 Mr. McPherson actually showed the warrant to Mr. Fowler, uh,
22 and showed that it was dismissed and actually read the reasons
23 out to him on the stand so he had not testified to that prior
24 until, uh, they were cross-examination they actually showed
25 him the warrant, uh, and the fact that it was dismissed and he

ROBERT LEE HEYDMAN - REDIRECT EXAMINATION BY MR. MANN

1 said he wasn't even aware a that so I just want to point that
2 out on 273 and 274 and I think, Your Honor, that's all the
3 questions I have.

4 THE COURT: Any redirect limited to what she went into?

5 MR. MANN: Yes, Your Honor, just very very briefly.

6 THE COURT: Um-hum.

7 REDIRECT EXAMINATION BY MR. MANN:

8 Q. Uh, we we were talking about Mr. McPherson's
9 cross-examination of Mr. Fowler, ---

10 A. Yes, sir.

11 Q. --- uh, Mr. McPherson did bring out that I think the pod
12 fire charge had been dropped due to the decision of the
13 prosecution, correct?

14 A. Yes, sir.

15 Q. Okay. Uh, I have one other real brief question. And I
16 think we've actually covered it sufficiently. Okay, I I,
17 that's all I have, Your Honor.

18 THE COURT: Thank you, sir, you may step down.

19 THE APPLICANT: Thank you, sir.

20 (Whereupon, the applicant left the stand.)

21 THE COURT: Does the applicant intend to call any other
22 witnesses?

23 MR. MANN: Your Honor, we do not.

24 MS. WHITE: Your Honor, the State has no witnesses other
25 than the transcript obviously of Mr. McPherson's deposition,

MOTIONS AND MATTERS

1 that's in ---

2 MR. MANN: And and and, Your Honor, ---

3 THE COURT: Um-hum.

4 MR. MANN: --- I believe that I misspoke. Of course
5 there are things within defense counsel that we referred to
6 that we're offering in our direct appeal so I would join in
7 this witness being for both ---

8 THE COURT: Alright.

9 MR. MANN: --- as a called witness on behalf of the
10 applicant.

11 THE COURT: Alright, I received a copy of his deposition,
12 can I give that to the court reporter to have that marked as
13 the exhibit?

14 MS. WHITE: Yes, Your Honor.

15 MR. MANN: As a joint exhibit?

16 THE COURT: Okay.

17 MS. WHITE: And I I have another copy if Your Honor would
18 like it or is that ---

19 THE COURT: I have, I believe I've got two, let me be
20 sure.

21 MR. MANN: And, Your Honor, if if I may approach. If ---
22 Lucy, I I'm gonna give another copy to the law clerk ---

23 MS. WHITE: Okay.

24 MR. MANN: --- in case he takes it under advisement.

25 Judge, here's a copy of my memorandum for your law clerk as

MOTIONS AND MATTERS

1 well as another copy of the transcript if it makes it, if it
2 saves the State some copies.

3 THE COURT: Alright, we will now have the deposition
4 marked as joint exhibit.

5 (Deposition of William McPherson marked Joint Exhibit
6 No. 1 for identification.)

7 MS. WHITE: And, Your Honor, uh, I think other than that
8 deposition testimony if Your Honor would like to hear any
9 closing remarks, I'd be happy to offer those.

10 MR. MANN: Your Honor, I would actually request to be
11 able to make a brief closing argument.

12 THE COURT: Alright, outside of the return I've got the
13 memorandum of law in support of the post-conviction relief,
14 did the State also have a memo?

15 MS. WHITE: No, Your Honor, uh, Mr. Mann provide that to
16 us this morning so, uh, if you would like, we'd be happy to
17 provide a memorandum in response if you need that.

18 THE COURT: Alright. Okay, yes, sir, Mr. Mann.

19 MR. MANN: Your Honor, very very briefly. The the the
20 point that I've tried to make, and and hopefully it's it's
21 come through as as clear as my humble self can try to present
22 it to the Court, uh, the professional rules of conduct provide
23 that if there is a conflict of interest certain things have to
24 be done. In the midst of the trial it -- when it became
25 apparent to Mr. McPherson there was a direct conflict between

MOTIONS AND MATTERS

1 these two witnesses, it was incumbent upon him to receive
2 guidance from the Court as well as to receive written
3 confirmation from his client that the conflict of interest had
4 been resolved or had waived. Given the fact that
5 Mr. McPherson acknowledges this mistake within his deposition
6 when he acknowledges that he should have brought it to the
7 Court, Your Honor, I humbly suggest that the attorney/client
8 relationship at that point in time was breached. There can be
9 no greater ineffectiveness of counsel than for an attorney to
10 create a situation where he is no longer counsel for an
11 individual and that is the gist of our argument, Your Honor.

12 THE COURT: And so it's your, I mean, I have not looked
13 at these documents but my ---

14 MR. MANN: Yes.

15 THE COURT: --- understanding is that Mr. McPherson
16 represented your client during the trial ---

17 MR. MANN: Correct.

18 THE COURT: --- and that the witness who testified was
19 represented by another member of the public defender's office
20 at ---

21 MR. MANN: Yes, Your Honor, ---

22 THE COURT: --- the same time?

23 MR. MANN: --- uh-huh, ---

24 THE COURT: Okay.

25 MR. MANN: --- and and he was actively bargaining and

MOTIONS AND MATTERS

1 soliciting on his behalf.

2 THE COURT: His attorney was acting, not Mr. McPherson.

3 MR. MANN: Same office but yes, Your ---

4 THE COURT: Okay.

5 MR. MANN: --- Honor, same office.

6 THE COURT: Alright.

7 MR. MANN: And, Your Honor, you know, just to carry it
8 one step further and and again from a public policy
9 standpoint, I think why, you know, that we have these rules
10 where if there is a conflict between attorneys within the same
11 office that they cannot represent without full disclosure is
12 because and again burden a proof's on me, I understand we
13 haven't put the testimony into trial, but I think just from a
14 pub -- public public policy standpoint is that when you've got
15 staffs and files within the same office Chinese walls just
16 don't exist and that's the public policy argument behind this.
17 Ya know, facts and circumstances of Mr., uh, Heydman's trial
18 don't need to be floating around the water cooler with facts
19 and circumstances for the benefit of of Mr. Fowler and so
20 that's why I think this is actually something pretty serious
21 to think about so anyway but, Your Honor, thank you for your
22 consideration, do you have any other questions for me?

23 THE COURT: (Nodded in the negative.)

24 MR. MANN: Judge, thank you.

25 THE COURT: Yes, sir.

MOTIONS AND MATTERS

1 MS. WHITE: Your Honor, in particular, uh, as it relates
2 to conflict of interest and ineffective assistance of counsel,
3 to establish that there's a violation of the Sixth Amendment
4 right to, uh, counsel, to effective counsel based on a
5 conflict of interest, you can't just have a a supposition, you
6 have to actually show that the conflict of interest adversely
7 affected his attorney's performance. I don't think that that
8 has been shown here, uh, in any sense. I think that there's
9 speculation as to whether or not that could have affected
10 something, it's the fact that simply his office also
11 represented someone. As Mr. McPherson testified in his
12 deposition, he was not even aware of that 'cuz obviously when
13 the interviews are conducted to obtain clients you don't
14 testify as to who might possibly be a, for lack of a better
15 term, "jailhouse snitch" later once someone's already been
16 arrested and in the jailhouse. Uh, in this situation you've
17 got to show that your attorney owed a duty to someone whose
18 interests were adverse, Mr. McPherson did not. Mr. McPherson
19 said he had no contact with the, uh, or discussion about the
20 case or about Mr. Fowler's testimony with the attorney who
21 represented him, he did not even know who represented him, he
22 did not access or view the file and he had no access as far as
23 he knew to it. He said there's someone that maintains their
24 files, uh, and pulls all the files for them. In addition, I
25 think that although the applicant has mentioned the rules of

MOTIONS AND MATTERS

1 professional conduct, there are several cases on point that
2 mention that the rules of professional conduct actually have
3 no bearing on the constitutionality of a conviction so it's
4 it's separate, the rules of professional conduct that
5 attorneys abide by is separate from the rules as
6 post-conviction relief, uh, relief goes and I think, uh, *Lomax*
7 *v. State*, Your Honor, 379 SC 93, it's a 2008 case, is right on
8 point.

9 MR. MANN: SC what was that again, Ms. White?

10 MS. WHITE: 379 ---

11 MR. MANN: Alright.

12 MS. WHITE: --- SC 93 ---

13 MR. MANN: Thank you.

14 MS. WHITE: --- 2008 that directly addresses whether or
15 not an attorney had a conflict of interest, uh, the standard
16 for determining that and the fact that even if the attorney
17 did not advise a defendant of the potential conflict of
18 interest it still does not affect the constitutionality of a
19 conviction and that's what post-conviction relief is for, so
20 the State would argue that the applicant has failed to meet
21 his burden of proof in establishing that there was a conflict
22 of interest or that in any way it affected his constitutional
23 right to effective counsel, so we would ask that you deny the
24 application.

25 THE COURT: Okay, I will take a look at it.

MOTIONS AND MATTERS

1 MS. WHITE: Okay, ---

2 MR. MANN: Alright.

3 MS. WHITE: --- thank Your Honor.

4 MR. MANN: Thank you very much, Judge.

5 THE COURT: Good luck to you, sir.

6 THE APPLICANT: Thank you, sir.

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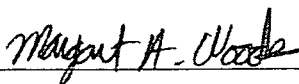
25

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on April 4, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 4 through 25, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 November 5, 2013

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
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25

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

Robert Lee Heydman, #330872,

2011-CP-42-2966

Applicant,

RECEIVED

v.

ORDER OF DISMISSAL - 2013

State of South Carolina,

S.C. SUPREME COURT

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 8, 2011. The Respondent made its Return on or about May 6, 2012. An evidentiary hearing into the matter was convened on April 4, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Franklin M. Mann, Jr., Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The transcript of a telephone deposition conducted with William McPherson, Esquire, ("Counsel") was submitted to the Court on behalf of the Respondent. This Court also had before it a copy of the records from the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, the trial transcript, and a Memorandum of Law submitted on behalf of Applicant.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUL 26 AM 8:46
M. HOPE BLICKLEY

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the August 2007 term of the Spartanburg County Grand Jury for murder (07-GS-42-

SCARNEEDS

4087). He was represented by William H. McPherson, Esquire. On September 28, 2008, the Applicant proceeded to trial where he was found guilty of the charge by a jury. He was sentenced by the Honorable Paul M. Burch to confinement for life.

A timely notice of appeal was submitted and an Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence.

State v. Heydman, Op. No. 2011-UP-269 (filed June 8, 2011). The Remittitur was returned on June 24, 2011.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to adequately follow the trial proceedings because of a hearing impairment he suffered from during trial,
 - b. Counsel acted under a conflict of interest because Counsel represented a State's witness, who got a reduced sentence for cooperating,
 - c. Counsel failed to obtain necessary expert testimony
 - d. Counsel failed to object to improper jury charge, closing argument, judicial remarks regarding Applicant's religion, and hearsay testimony,
 - e. Counsel failed to request a jury charge on accessory after the fact when the evidence warranted such a charge
2. Ineffective assistance of appellate counsel, in that;
 - a. Appellate counsel failed to raise and present valid direct appeal issues;
3. Constitutional violations of the 6th and 14th amendments; and
4. Prosecutorial misconduct, in that;
 - a. Prosecution failed to disclose facts, agreements and evidence concerning the jailhouse witness' motivation for testifying.

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CLERK OF COURT
SPARTANBURG COUNTY
2013 JUL 26 AM 8:46
M. HOPE BLACKLEY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

This Court notes that the Applicant, at the beginning of the hearing, voluntarily waived all allegations except for his claim of ineffective assistance of counsel as a result of the alleged conflict of interest and chose to proceed only on that allegation. Therefore, all other allegations are deemed voluntarily abandoned.

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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SPRINGFIELD COUNTY
2013 JUL 26 AM 8:16
MELOP BLACKLY

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that at his trial, the State presented the testimony of John Fowler. Applicant testified that he met Fowler while in the detention center waiting for trial and had several conversations with Fowler on the recreation yard. Fowler testified at trial that he and Applicant had a conversation regarding the victim and that Applicant confessed to the murder. Applicant testified that Fowler's testimony was not truthful. However, Applicant testified that during trial Fowler also testified that certain charges against him had been dismissed. Applicant also testified that during jury deliberations, Counsel indicated to him that there could possibly be a conflict, but instead of Counsel presenting it to the court, Counsel advised Applicant to use the issue for a post-conviction relief action. Applicant also testified that Counsel did not inform him of when the conflict was discovered.

As it relates to a possible conflict, Counsel testified that he never represented Fowler, but believed that someone in the Office of the Public Defender may have represented Fowler. Counsel also testified that he was not aware of anything related to Fowler and his cases until time for Applicant's trial. In fact, Counsel testified that the initial form filled in by a potential client asks for co-defendants' names to address conflicts, but Fowler's name would not have

appeared on that form. Counsel stated that he did try to challenge the credibility of Fowler's testimony by pointing out that the State had dismissed some charges against Fowler. However, Counsel testified that he did not receive any information from his office that any negotiations were taking place. Counsel also testified that he never reviewed Fowler's file from his office, nor did he know how the file was stored or have access to the file. Counsel testified that he could not recall exactly what time he realized that his office also represented Fowler, but he did acknowledge that he did not bring the information to the attention of the trial judge. However, Counsel also testified that based on his years of experience, if the potential conflict was an issue that was damaging to Applicant's case or was mistrial worthy, Counsel would have raised the issue to the court.

This Court, based upon review of the Applicant's testimony and documents presented, finds that the Applicant has failed to meet his burden of proof of establishing ineffective assistance of counsel. Even though the public defender's office represented both the Applicant and Fowler, the representation of each did not arise out of the same facts or circumstances. There is also nothing in the record to suggest that Fowler's attorney had any access to the Applicant's file or that Counsel was denied any information about Fowler. In fact, it appears that the only connection between Applicant and Fowler was the fact that they shared time together at the local jail.

This Court finds that the situation created in Applicant's case by the public defender's office representing Fowler does not create an automatic disqualifying event for Counsel. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual

conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id.; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Additionally, the Rules of Professional Conduct have no bearing on the constitutionality of a criminal conviction. Langford v. State, 310 S.C. 357, 360, 426 S.E.2d 793, 795 (1993). Applicant failed to establish that Counsel's performance was adversely affected by his office's representation of Fowler.

Furthermore, this Court finds that there is nothing to indicate that had a motion for mistrial been made it would have been granted, or that Fowler's testimony would have changed at a second trial, and thus, the outcome would most likely be the same. This Court finds that the Applicant has failed to meet his burden of proof. Accordingly, this allegation is dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel as it relates to a possible conflict of interest, Counsel's testimony is more credible than Applicant's testimony. This Court further finds Counsel adequately conferred with Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not

met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

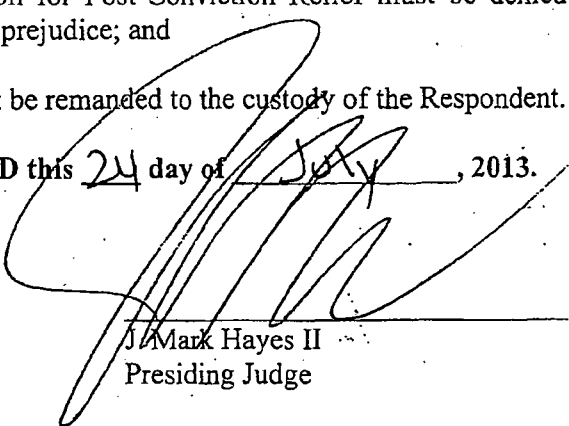
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of July, 2013.


J. Mark Hayes II
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUL 26 AM 8:46
MARHOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff Dept.

John Spoden

1. REPORT MADE

2. REPORT MADE

3. CARD FILLED

4. INDEXED

ARREST NUMBER

K198024

5. TRAFFIC VIOLATIONS CODE

☒

DOCKET NO
07-GS-42-4087

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

Computer

COURT OF GENERAL SESSIONS

AUG 27 2007

TERM

THE STATE

VS.

Robert Lee Heydman

ACTION OF GRAND JURY

For person of Grand Jury
Date: 8-23-07

VERDICT

SMITH, JIMMY

MURDER

Indictment for

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

For person of Petit Jury
Date: 9-26-08

9-26-08

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

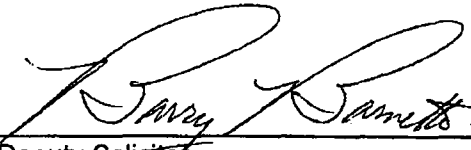
INDICTMENT

At a Court of General Sessions, convened on AUG 23 2007, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Robert Lee Heydman, did in Spartanburg County on or about December 13, 2006, feloniously, willfully, and with malice aforethought, kill one Richard Fowler, by stabbing and beating him to death, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


Deputy Solicitor