

19164

No Respondent's Brief Filed

VOLUME II OF III

ANDERS RESPONSE BRIEF
ANDERS

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ORAN SMITH,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Senior Appellate Defender

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

Attorney for Appellant
VOLUME II OF III
PAGES 501-1000

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
Fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

INDEX

INDEX.....	i
JUNE 15, 2009 TRIAL TRANSCRIPT	1
DECEMBER 7-9, 2009 TRIAL TRANSCRIPT.....	735
INDICTMENT	1235
CERTIFICATE OF COUNSEL	1237

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Yes.

2 Q. And Ms. Snow, obviously.

3 A. Yes.

4 Q. Not Mr. Creech.

5 A. Okay.

6 Q. That's what you recall?

7 A. Yes, that's what I recall.

8 Q. Thank you.

9 Yesterday we had started going through your
10 typed notes --

11 A. Yes, ma'am.

12 Q. -- and I would like to resume that, if we could.

13 A. Okay.

14 Q. I think I already covered the first page. On
15 the second page -- and, again, I don't have numbers that
16 would relate to yours --

17 A. Okay.

18 Q. -- on mine. But this one begins -- the first
19 page at the bottom starts with 6507 with your canvass.

20 A. Yes.

21 Q. And then you go to that next page as to the
22 second paragraph where you're talking about Rick Lester.

23 A. Yes.

24 Q. And that I believe was the individual that one
25 of your witnesses identified as her boyfriend?

1 A. Yes.

2 Q. Was that the same gentlemen that drove the black
3 Cadillac?

4 A. Yes.

5 THE COURT: Ms. Taylor, could you pull that
6 microphone?

7 And, Detective Patrick, if you will make sure
8 that you speak into the microphone. Thank you.

9 Q. [Ms. Taylor] And he's the gentleman that you
10 met with but did not get a written statement from; is that
11 correct?

12 A. I don't believe I did. Let me check and make
13 sure.

14 [Whereupon, the witness reviews documents]

15 A. I don't have it with me, if I did it.

16 Q. [Ms. Taylor] And then on the next page it
17 begins with -- you, as the lead detective, while you may
18 not speak to everybody involved in the case, you're
19 speaking to the other officers who are speaking to people;
20 is that right?

21 A. Yes. On some occasions, yes.

22 Q. And you get that information and include it in
23 these reports that you're doing to, again --

24 A. Usually, we all try to do our own supplementals.
25 Some do and some don't. If I'm working closely with

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 another detective, I try to add that supplemental in with
2 my own supplemental. But, for instance, Carl Mastantuno,
3 I had no -- you know, no close working relationship with
4 him at the time. He was off doing his own thing;
5 therefore, he did his own supplemental. So sometimes I --
6 sometimes I never know what happens with other officers,
7 or what they're doing, until I get the supplementals.

8 Q. Do you have any supplements from Detective Hill?

9 A. I do not.

10 Q. Any reports at all from Detective Hill?

11 A. No.

12 Q. But you have in this paragraph obviously
13 communicated to him. Is that accurate?

14 A. I'm sorry?

15 Q. In this paragraph that I'm about to talk to you
16 about --

17 A. Uh-huh.

18 Q. -- again, is Detective Hill called? You spoke
19 with him in order to get the information that you had
20 included in this report --

21 A. Is that still under 6607?

22 Q. It is the third page --

23 A. Uh-huh.

24 Q. -- of the note that I have. The very first
25 words are, talked to, at the very top of the page.

MIA PERRON, CCR, CVR-CM

-10-

1 A. Talked to. Yes. Detective Hill called Leroy
2 McKelvey? Is that --

3 Q. Yes. That's where I am.

4 A. All right.

5 Q. So you had spoken to Detective Hill in order to
6 get this information?

7 A. Yes.

8 Q. And essentially what do you learn from Detective
9 Hill is reference to Leroy McKelvey and any interaction he
10 may have had with Ms. Snow?

11 A. Detective Hill advised that he had -- McKelvey
12 had called him -- or he called Mr. McKelvey. And we
13 had -- his number was located in the personal phone book
14 of Ms. Snow's. Mr. McKelvey came to the police
15 department, stated he went to Snow's apartment on Friday
16 and had sex with Ms. Snow; he returned on Sunday and
17 knocked on her door, no one answered the door, and he left
18 and called her later at a residence; he asked why no one
19 answered the door; Ms. Snow told him she was not feeling
20 good; he called her back on Monday but received no answer.

21 Q. Okay. And to your knowledge, is there a written
22 statement that Mr. McKelvey gave?

23 A. Let me check and see.

24 [Whereupon, the witness reviews documents]

25 A. Yes.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. [Ms. Taylor] Okay. And then I'm moving on to
2 the bottom of the next page which is dated 6/12/07.

3 A. Okay.

4 Q. And that just refers to the phone calls, that
5 you had subpoenaed records from for AT&T, indicating the
6 calls coming into her home on Sunday the 3rd; is that
7 correct?

8 A. Yes.

9 Q. And was there -- I believe someone talked about
10 an answering machine in the black phone that was taken?

11 A. Yes.

12 Q. Were there any messages on that machine?

13 A. None that we could retrieve.

14 Q. And then I'm moving on to the bottom of the
15 page. And it's noted 6/13/07, beginning with Sargent
16 Walley?

17 A. Yes.

18 Q. And I think you talked with this about
19 [phonetic] Mr. Voight yesterday. This involves the Kelly
20 Ann lady who gave you the name of James Obie Creech; is
21 that right?

22 A. She didn't give me the name. Actually, the
23 anonymous caller gave Sargent Walley the name Kelly Ann
24 and said that Obie lived with her and was dating her
25 currently.

1 Q. Okay. And what, if anything, was attributed to
2 why you needed to speak with James Obie Creech in
3 reference to Ms. Cheryl Snow?

4 A. The anonymous caller told Sargent Walley that he
5 had dated her in the past and was aggressive towards her.
6 So that's why he was spoken to.

7 Q. And that would have been presumably why you
8 wanted that consent for a body search?

9 A. Yes.

10 Q. Okay. Moving on to the next page, which the
11 date is 7/17/07 is the paragraph I wanted to talk to you
12 about.

13 A. Yes, ma'am.

14 Q. We talked a little bit about this yesterday.
15 This indicates that you spoke with Detective Bunker?

16 A. Yes.

17 Q. And that would have been the lady who testified
18 here maybe Monday?

19 A. Yes. I believe so.

20 Q. Maybe Tuesday?

21 A. Maybe.

22 Q. I can't remember. But she's with your crime
23 scene unit?

24 A. Yes, ma'am.

25 Q. Okay. And that what is written here said that

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 she told you, per SLED, that the skin cells belonging to
2 Oran Smith were located on the pajama bottoms. Is that
3 what --

4 A. That -- yes, ma'am.

5 Q. Is that your recollection, as well?

6 A. Yes.

7 Q. You were in --

8 A. Those -- I'm sorry. Go ahead.

9 Q. You can go on.

10 A. No. I'm done.

11 Q. You were in court yesterday when Ms. Gallman
12 testified?

13 A. Yes.

14 Q. And we went through a good bit about the DNA
15 sources?

16 A. Yes.

17 Q. Is it still your understanding, after hearing
18 Ms. Gallman testify, that any skin cells were located
19 anywhere that can be attributed to Oran Smith?

20 A. His profile was belong -- I think it was the 150
21 lunas [phonetic], is what I understand, above -- there's a
22 match below. There's not -- and in between is that 150
23 standard. If you're below either, you can't say it's a
24 match. They can't for protocol -- per protocol, SLED
25 protocol. So below, it was a weak standard but it was

1 still linked and he cannot be excluded. That's what I
2 understood. So that it was there, but she couldn't say
3 match because it was below that 150 luna [phonetic]
4 standard. That's what I gathered.

5 Q. Before we get to any conclusions, let's just
6 back up to the issue of whether there were any skin cells.

7 A. I don't know that there were any skin cells.
8 No, I do not.

9 Q. Okay. And then right below that -- and I'm not
10 sure if we talked about this yet or not. We had begun to
11 talk about the interview that you participated in --

12 A. Yes.

13 Q. -- with Oran Smith.

14 A. Uh-huh.

15 Q. And I think that -- I think that Mr. Voight had
16 shown you and introduced the advice of rights waiver.

17 A. Yes, ma'am.

18 Q. Now, were you present for that entire interview?

19 A. I may have stepped out a time or two, but I
20 can't recall. It's been two years.

21 Q. Would you have been there at the beginning?

22 A. Yes.

23 Q. Okay. Did you understand that Oran Smith had
24 been -- had a head injury in 1994?

25 A. Yes.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. Does he look today substantially like he did two
2 years ago?

3 A. He's put on a little weight.

4 Q. But as far as his face, he's still missing an
5 eye?

6 A. Yes.

7 Q. And he has the scars on the left side of his
8 head --

9 A. Yes.

10 Q. -- pretty pronounced.

11 Were you aware of his educational background?

12 A. Yes.

13 Q. And what were you aware of?

14 A. I was aware that he graduated school in the
15 ninth grade -- or his last year of school was ninth grade.

16 Q. That he had, at best, a ninth-grade education?

17 A. Yes.

18 Q. Were you aware that the education that he had up
19 until the ninth grade was special-ed classes?

20 A. I didn't know that.

21 Q. Were you aware that he was disabled as a result
22 of that injury in 1994?

23 A. I knew that he had collected some SSI checks,
24 stuff like that.

25 Q. That he was not able to work and got Social

1 Security?

2 A. Yes.

3 Q. Do y'all take any special precautions, when you
4 have somebody who has any sort of disability, to make sure
5 that those folks understand these rights that you're
6 talking about?

7 A. If it's noted -- I mean, if it's noticeable that
8 they don't understand or they have a mental disability,
9 then, yes, we do take special precautions.

10 Q. What would those special precautions be?

11 A. I really don't know because I have yet to
12 encounter anybody with a severe mental disability that did
13 not -- completely did not understand. If that's the case,
14 we just -- we don't do it. We don't take the interview.

15 Q. And so none of those precautions, whatever they
16 might be, weren't done in this case?

17 A. No, because he responded intelligently.

18 Q. And we talked yesterday, as well, that
19 essentially in the beginning Oran was cooperative and he
20 talked with y'all?

21 A. Yes.

22 Q. He came with -- y'all go pick him up that time?

23 A. Yes.

24 Q. He got in the car with you, came on downtown to
25 North Charleston.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. [No response]

2 Q. And I think you testified he was in the front
3 seat?

4 A. Yes.

5 Q. And you were driving?

6 A. Yes.

7 Q. Is that the normal way to --

8 A. Yes.

9 Q. -- transport people that you consider suspects
10 in a homicide?

11 A. It's -- we have to. There's no other way to do
12 it.

13 Q. Okay. And once you got there -- now I'm looking
14 at your notes which are typed in on 7/18/07.

15 A. Uh-huh.

16 Q. And when you type these notes, when would that
17 have happened?

18 A. When?

19 Q. Would this have been after the statement, or
20 during the statement?

21 A. After. Well, sometimes days after.

22 Q. But this one would have -- since you date it
23 7/18, would have been sometime later that same day?

24 A. That's actually what happened on 7/18/07.

25 Q. Oh. It's not necessarily when you typed it?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Correct.

2 Q. Okay. Do you have any independent recollection
3 of when you actually would have --

4 A. I do not.

5 Q. -- prepared this?

6 A. It's been a while. No.

7 Q. Okay. But the notes in here indicate that
8 essentially that Oran talked and told you and Detective
9 Elmore the same information he had provided to Detective
10 Elmore and I think Detective Hill back in June 6?

11 A. Yes.

12 Q. And that was how it proceeded until Detective
13 Elmore, I'm assuming -- you tell me if it's Detective
14 Elmore to you. But your note says: [reading] when told
15 of DNA evidence --

16 A. Yes.

17 Q. -- [reading] recovered from the ligature, he
18 continued to deny involvement, is what it says. And I'm
19 assuming you mean that he never denied that he was
20 involved with Cheryl Snow, did he?

21 A. No.

22 Q. Never denied he was with her that weekend?

23 A. No.

24 Q. He just denied that he had killed her?

25 A. Right.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. Then that next note says: we explained that we
2 only wanted to help him.

3 A. Yes.

4 Q. Who explained that?

5 A. Detective Elmore, I'm guessing, because I really
6 didn't speak much. Kind of sat back and listened. He was
7 concerned about going to prison, how long will I spend in
8 prison; I don't know how long you're going to spend in
9 prison; but it would help you -- it would help you and
10 help this case if you'd go ahead and get it off your chest
11 and tell us what happened.

12 Q. And did Detective Elmore communicate that to him
13 just like you did to me?

14 A. I can't verbatim two years ago tell you what
15 detective -- exactly what Detective Elmore said.

16 Q. Right.

17 A. But that's what I'm guessing would have been
18 said to him.

19 Q. And then after whatever happened in that
20 conversation, this written confession was made?

21 A. Yes.

22 Q. And Detective Elmore wrote it, or did you write
23 it?

24 A. I believe I wrote the statement.

25 Q. Moving on now to the headline date of 6/28/07.

1 It's about three pages past that, I think.

2 A. 6/28?

3 Q. 6/28/07, Detective Mastantuno.

4 A. That's Detective Mastantuno's statement. I
5 mean, supplemental.

6 Q. But it said follow up. Yeah.

7 A. Okay.

8 Q. And let's see. The second paragraph, which
9 is 6/6/07: [reading] Detective Mastantuno was instructed
10 to attempt to retrieve video surveillance from the Hot
11 Spot --

12 A. Right.

13 Q. -- Sunoco and BP.

14 A. Right.

15 Q. You directed him to do that?

16 A. I don't know if I did. I don't remember
17 directing him to do that. It could have been a
18 supervisor.

19 Q. Would you have been interested in seeing those
20 videotapes?

21 A. Yes.

22 Q. Why?

23 A. Just to prove or disprove the story.

24 Q. Of different things people --

25 A. Right.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. -- including Oran Smith, may have told you?

2 A. Right.

3 Q. And then that next paragraph: [reading] the
4 manager of the Hot Spot was not within the Charleston area
5 and would return next week. I was instructed she was the
6 only individual with the access code for the surveillance
7 system.

8 A. Right.

9 Q. Is this Detective Masto --

10 A. Mastantuno.

11 Q. -- Mastantuno --

12 A. Uh-huh.

13 Q. -- notes, or is this you typing notes from him?

14 A. No. This is Detective Mastantuno's actual
15 typed --

16 Q. Direct?

17 A. Yes.

18 Q. Okay. Do you know whether the videotapes from
19 the Hot Spot were ever actually recovered?

20 A. I do not know that, no, ma'am.

21 Q. Okay. And when you spoke to Richard Lester,
22 when was the last time, if you recall, that he told you he
23 had seen Ms. Snow? And I'm just looking at what is --

24 A. Let me -- let me try to find it in my
25 supplemental. I remember seeing something in there about

1 speaking with him and what he said.

2 Q. The one that I'm looking at is -- it's the last
3 page that I have and it's -- I'm not sure if it's right,
4 but it looks like it was filed on 6/5/07.

5 [Whereupon, the witness reviews documents]

6 Q. [Ms. Taylor] Let me show you what I'm looking
7 at.

8 A. Yeah.

9 [Whereupon, Ms. Taylor proffers documents to the
10 witness]

11 A. 6/6? Is it --

12 Q. [Ms. Taylor] Yeah. There it is. Do you have
13 that page?

14 A. Yeah. There we go. Right here.

15 Q. And I'm not seeing it in the notes. I just
16 didn't know whether you had it somewhere else or if you
17 might recall.

18 A. I don't recall exactly when the last time he saw
19 her. I believe that his relationship with her is based on
20 whether or not she was into drugs or alcohol at the time.
21 If she was, he had nothing to do with her. He's an
22 elderly male on oxygen so he moves pretty slow and, you
23 know, he's got some medical issues to combat.

24 Q. Okay. The next thing I would like to just go
25 through with you is that in addition to your typed

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 reports, you did handwritten notes throughout the case; is
2 that right?

3 A. Yes, ma'am, to a certain point.

4 Q. To what point did you do that?

5 A. Usually, at least I try -- I try my best to --
6 once everything starts slowing down a little bit, once I
7 get back on a regular shift change, I usually go back and
8 try to supplement each day, if I can. And sometimes I
9 don't and sometimes I do. So usually that's when my
10 written notes stop. Because these -- my binder starts at
11 the time I respond and I don't have time to go to the
12 computer and sit down and type. So whenever I get down to
13 where I'm slow enough, or it's slow enough to where I can
14 go back and actually start typing each day, I usually try
15 to do that. Sometimes I do and sometimes I don't.
16 Sometimes it takes a couple of days to go back to the
17 computer.

18 Q. Do you have your notes with you?

19 A. Yes, ma'am.

20 Q. And what I have is approximately thirty pages.

21 A. Okay.

22 Q. I'm not going to go through all of them.

23 A. Okay.

24 Q. I just wanted to make sure that we have the same
25 thing.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Okay.

2 Q. And I don't know whether mine are in the same
3 order as yours.

4 A. The first page, 6407733.

5 Q. Actually, the first three pages I have are just
6 names and phone numbers. But the one I want to talk to
7 you about is 6407733.

8 A. Okay.

9 Q. And that one would be when you arrived at the
10 scene?

11 A. Yes.

12 Q. And I see that you noted up here in the right-
13 hand corner that there were pry marks on the door?

14 A. Yes.

15 Q. Did you look at those?

16 A. I did briefly.

17 Q. And we've seen some photographs of them. You
18 don't have any other photographs, or any other scientific
19 work, or anything that was done with that?

20 A. No.

21 Q. And then right below at the -- looks like maybe
22 this is your notes with William Ackerman.

23 A. Yes.

24 Q. And that's just, again -- you've already talked
25 to us about that he had talked to her around 2:30 p.m. Do

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 you know which day that was? Was it Sunday or --

2 A. That would have been that day, 6/4/07. Oh, what
3 day? I'm sorry. What day --

4 Q. Which day he talked to her.

5 A. -- he talked to her? I believe in his statement
6 he said it was a Sunday, but I think he was confused on
7 what day is Saturday or Sunday or Monday. He didn't -- he
8 was unable to tell me very well.

9 Q. What the dates may have been?

10 A. Yeah.

11 Q. Okay. And then the next page that I have it
12 looks like you -- this appears to be -- because there are
13 apartment numbers 103, 104. So I'm assuming this is you
14 canvassing the area?

15 A. Yes.

16 Q. And I may be reading this name wrong. Gay
17 Reason, 105?

18 A. Guy Reason?

19 Q. Guy? Okay. Do you see where I am?

20 A. Yes.

21 Q. Okay. Or actually at the very top of that same
22 page it says, again, phone line cut. Do you see that
23 right at the very top?

24 A. Oh. The next page?

25 Q. Yes, the next page.

1 A. Okay. Hang on one second. Phone number --

2 [Whereupon, the witness reviews documents]

3 A. Yes.

4 Q. [Ms. Taylor] Did you do anything regarding this
5 cut phone line?

6 A. No.

7 Q. You just saw it and noted it?

8 A. Actually, I don't think I saw it. I think
9 sometimes if somebody comes out, like a crime-scene
10 investigator goes back to their vehicle and says
11 something, it looks like the phone lines were cut, I'll
12 jot it down so I can go back and -- if it comes up later.

13 Q. So do you have any independent recollection of
14 anything about a phone line being cut?

15 A. No.

16 Q. Now, if you'll go back to that 105 individual --

17 A. Uh-huh.

18 Q. -- Mr. or Ms. Reason. Do you remember
19 interviewing that person?

20 A. I do not.

21 Q. What do your notes indicate that you got from
22 that person? And, again, would it be fair to assume that
23 you're talking to neighbors about what they saw or heard?

24 A. Yes.

25 Q. And what did that individual tell you?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Said: [reading] I saw her yesterday, 6/3/07,
2 taking things out of trunk of -- Rick's trunk; good
3 relationship; did not hear anything last night; known
4 since January.

5 Q. And is that the only conversation that you had
6 with that individual, to the best of your knowledge?

7 A. Yes, to the best of my knowledge.

8 Q. Flipping through one, two, three, four -- about
9 six pages. And the next one begins with -- I guess this
10 is your interview with Rick Lester. [Reading] Met Rick
11 Lester.

12 The name Frederick is at the very top.

13 A. Yes.

14 Q. Okay. And it appears there's another interview.
15 I'm just trying to figure out -- [reading] McBride
16 interview, Perry.

17 A. Yes.

18 Q. Is that Rick Lester, or is that something
19 totally unrelated to Rick Lester?

20 A. That's unrelated. That's when we were meeting
21 with Mr. Lester is when I received a phone call that said
22 that -- I believe it was Mr. McBride --

23 [Whereupon, the witness reviews documents]

24 Q. [Ms. Taylor] But you don't think that has
25 anything to do with Mr. Lester?

1 A. No. No, ma'am.

2 Q. All right. And we can move through that page to
3 the next page. And the next page. And then I get to one
4 that begins with: [reading] starts 6/6/07, videotapes,
5 Carl Mastantuno.

6 A. Yes.

7 Q. And that indicates that -- I guess that's,
8 again, when you were taking those notes regarding
9 Detective Hill, that he called the Leroy number in red
10 book.

11 A. Yes.

12 Q. What was the red book?

13 A. That was a binder or a notebook that Ms. Snow
14 had in her residence. I believe it was located in her
15 residence, or provided by someone else. I'm not sure
16 exactly how the red book come into play. But in flipping
17 through that, I guess Leroy's number was located in the
18 book.

19 Q. Okay. And then right below that -- and I think
20 you talked to us a little bit about this Paula Bowen
21 individual?

22 A. Paula Bowen.

23 Q. And right at the bottom of that page there are
24 four notations. Can you tell me what that's all about?
25 It starts with: [reading] might ID; may be Hispanic; I'm

MIA PERRON, CCR, CVR-CM

-29-

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 out sure.

2 A. Paula Bowens. Paula Bowens. I believe Paula
3 Bowen was a friend of Cheryl's we spoke to and she -- what
4 we were trying to do is just find a little history of who
5 she was dating and what kind of trouble she may have
6 relayed to Ms. Bowen prior to her passing. So Ms. Bowen,
7 of course, would go through and give us what she thought
8 could have happened.

9 Q. And there are four notes made there about things
10 Ms. Bowen told you?

11 A. Yes.

12 Q. Any of those four notations have anything to do
13 with Oran Smith?

14 A. No.

15 Q. And the next thing that I have is a drawing.

16 A. Yes.

17 Q. Is that of the apartment complex?

18 A. Yes.

19 Q. Is there any significance? I see that you've
20 got sort of the horseshoe that you described yesterday and
21 three little circles --

22 A. Uh-huh.

23 Q. -- and some marks on it --

24 A. Uh-huh.

25 Q. -- and a star. Is there -- what's that star

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 for?

2 A. That was -- I really don't know, to be honest
3 with you. I'm not sure what apartment that is.

4 Q. Do you recall what the three dots in the other
5 places are?

6 A. That's the victim's apartment, Mr. Ackerman, and
7 Mr. Stender's apartment.

8 Q. Thank you. And then the next page I have
9 begins: [reading] notes on Leonard Gettis.

10 A. Yes.

11 Q. And you talked about him yesterday --

12 A. Yes.

13 Q. -- and the statement you took?

14 A. Yes, ma'am.

15 Q. And, let's see. I have one, two, three, four,
16 five -- it looks like five-and-a-half pages that appear to
17 be notes that you had taken regarding Mr. Gettis and your
18 conversation with him. Is that accurate?

19 A. Yes. Yes, ma'am.

20 Q. I'm sorry?

21 A. Yes, ma'am.

22 Q. Okay. And then you began some notes about some
23 other folks that you also talked with Mr. Voight
24 yesterday, Cathy Knox, some other folks. And moving along
25 a couple of pages, 6/11/07. You've already told us about

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 that. That was the conversation or whatever you learned
2 about Ms. Kelly Ann and James Obie Creech. Or Kelly Ann's
3 phone number, anyway.

4 A. Yes, ma'am.

5 Q. And, actually, the next page is your notes about
6 what you've already told us. And then it looks like
7 you've got a couple of pages regarding Mr. I think it was
8 Boules [phonetic] --

9 A. Yes.

10 Q. -- the gentleman that you got his name from
11 somewhere but talked to. You and Mr. Voight went through
12 that yesterday. He apparently had no connection.

13 A. Correct.

14 Q. And four pages, and then that's the end.

15 A. Yes, ma'am.

16 Q. Other than those thirty pages of notes and the
17 several pages of typed reports, do you have any other
18 written memorandum that applies to the investigation --

19 A. No, ma'am.

20 Q. -- as it was conducted in this case?

21 A. No, ma'am.

22 Q. And you've been in the courthouse -- or in the
23 courtroom throughout the trial?

24 A. Yes.

25 Q. Did you hear us talking about the temperature in

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 the room?

2 A. Yes.

3 Q. In the home?

4 A. Yes.

5 Q. Were you aware that it was at sixty-two degrees
6 at any point early into the investigation? Is that --

7 A. No, I did not.

8 Q. -- something you found out later?

9 A. Yes.

10 Q. And none of your forensic folks mentioned that
11 to you or thought it was odd?

12 A. No.

13 Q. And I think I asked --

14 A. They may have mentioned that, though. I don't
15 recall them mentioning anything like that.

16 Q. And I think I asked them yesterday if there were
17 any prints taken off of the thermostat that would have
18 adjusted that temperature. Are you aware of anyone doing
19 that?

20 A. I'm not aware of it. I wasn't inside when they
21 -- while they were processing.

22 Q. And you talked a little bit yesterday with
23 Mr. Voight about homicides in North Charleston and
24 unsolved homicides and any pressure that you may have been
25 under.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Uh-huh.

2 Q. Do you remember how many homicides North
3 Charleston had in 2007?

4 A. I do not.

5 Q. And how long have you been there?

6 A. With North Charleston Police Department?

7 Q. Yes.

8 A. Roughly nine years.

9 Q. Okay. So you've been around a while.

10 A. Yes.

11 Q. What pressure, if any, is there when you don't
12 have a solved homicide?

13 A. There's no pressure. All it is is you have to
14 go over your case with your supervisors. And it is what
15 it is. You can't change the facts of a case. It's either
16 you have it or you don't. Of course, you're called and
17 asked where you're at with the case, do you have -- got
18 anything new or anything like that. But it's a personal
19 pressure more than a work-related pressure.

20 Q. But it's what you do?

21 A. Yeah.

22 Q. And you want to solve them?

23 A. Yeah.

24 Q. And is it true or false or completely irrelevant
25 that when you find a homicide, the sooner you solve it,

1 the more likely you are to? The longer it goes without
2 someone being arrested --

3 A. Well, if it's related to evidence. You lose a
4 lot of evidence. You lose a lot of witnesses, people get
5 over things, and it's harder to solve the longer it goes.

6 Q. As time passes?

7 A. Yes, ma'am.

8 Q. And you also talked with Mr. Voight about why
9 you wanted to bring Oran Smith back in.

10 A. Yes.

11 Q. And I think he asked you whether you had an
12 arrest warrant for him, and you said no.

13 A. Right.

14 Q. But I think at some point you may have said that
15 you could have had one, you could have gotten one?

16 A. I believe I could have. That's something I
17 would have to speak with my supervisors about to go over.
18 But --

19 Q. And at that point in time Oran had already been
20 questioned once in June, and at that point he provided all
21 the information to y'all, and he just said, I didn't kill
22 her; is that right?

23 A. That's correct.

24 Q. And you knew that he had admitted being there,
25 admitted having sex with her, admitted knowing her for

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 years --

2 A. Yes.

3 Q. -- but that he had left sometime Sunday
4 afternoon --

5 A. Right.

6 Q. -- and not gone back?

7 A. Right.

8 Q. What evidence did you have at that moment that
9 would have gotten you an arrest warrant?

10 A. I felt at the time that everything combined,
11 with the DNA -- I think it was pushing it a little bit but
12 I think with the DNA at the time, with what I was under
13 the impression of at the time, would have been enough to
14 obtain an arrest warrant. I may be wrong. It depends.

15 Q. I'm sorry. Are you finished?

16 A. I'm done. I'm finished.

17 Q. Take the DNA out.

18 A. Uh-huh.

19 Q. Let's go to the day before you got whatever
20 information you got from Ms. Bunker and you got what you
21 got from SLED.

22 A. Right.

23 Q. Based on the evidence that you have in the case
24 to date, would you have been able to get an arrest
25 warrant?

1 MR. VOIGHT: Objection.

2 THE COURT: Basis?

3 MR. VOIGHT: Relevance.

4 THE COURT: Counsel approach.

5 [Whereupon, an off-the-record bench conference
6 is held]

7 THE COURT: Overruled.

8 Q. [Ms. Taylor] Do you remember the question?

9 A. Yes, I do.

10 Q. Answer?

11 A. No.

12 MS. TAYLOR: Just checking my notes.

13 [Whereupon, Ms. Taylor reviews documents]

14 Q. [Ms. Taylor] Do y'all have tape recorders in
15 Charleston?

16 A. Crime scene has tape recorders, I believe. They
17 use them to -- as you saw, to record the scene.

18 Q. And do you have video cameras?

19 A. Yes. That's what I was -- yeah, video cameras.
20 We have video cameras. Crime scene has a video camera.

21 Q. So you have available to you the opportunity to
22 have an actual recording of these interviews and
23 interrogations you do with people, don't you?

24 A. Yes.

25 Q. Do you do that?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. No.

2 Q. And you don't have any in this case?

3 A. No.

4 Q. During the interview, during any point of the
5 interrogation, did either you or Detective Elmore engage
6 Oran in conversation when talk about prison came up and
7 say, just tell us you did it, help us, we'll help you?

8 A. No.

9 Q. You did talk about helping him, though, didn't
10 you?

11 A. Yes.

12 Q. You remember that.

13 A. Yes.

14 Q. Any conversation about because of his disability
15 that even if he admitted it, he wouldn't serve much time?

16 A. No. Not to my -- not to my recollection, no.

17 Q. And those handwritten notes in your little --
18 the spiral notebook that we just went through --

19 A. Yes.

20 Q. -- you don't have any of those from this
21 interview interrogation --

22 A. I do not.

23 Q. -- with Oran, do you?

24 A. I do not.

25 Q. And you have seen this. We have several pieces

1 of paper; is that correct?

2 A. Yes.

3 Q. We've got -- and just from single pieces of
4 paper that Oran Smith may have been presented with?

5 A. I'm sorry?

6 Q. Just pieces of paper that Oran Smith may have
7 been given? He got the advice of rights form?

8 A. Yes.

9 Q. And he would have gotten two of those; right?

10 A. Yes.

11 Q. One in June and one in July?

12 A. Yes, ma'am.

13 Q. And then he would have had these written
14 statements, both of which were written by police officers
15 but then presented to him?

16 A. Uh-huh.

17 Q. And he signed them?

18 A. Yes.

19 Q. And then we have the consent to body search.
20 Anything else?

21 A. Not that I can recall. You may have something
22 different, but I can't recall anything at this time that
23 he may have --

24 Q. And -- I'm sorry.

25 A. -- that he may have. I don't know.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. And every piece of paper that you or any other
2 officer handed him he signed, didn't he?

3 A. Yes.

4 MS. TAYLOR: Court's indulgence one moment.

5 THE COURT: Yes, ma'am.

6 [Whereupon, Ms. Taylor reviews documents]

7 MS. TAYLOR: Just one last question.

8 Q. [Ms. Taylor] We talked about the videotaping or
9 audio-taping statements.

10 A. Yes, ma'am.

11 Q. North Charleston in 2007, did you have a policy
12 to do that or not do it? Or you just didn't do it?

13 A. No. We have never had a policy.

14 Q. Okay. And how about in 2009? Do you have --

15 A. 2009 is being talked about and things are being
16 purchased, but as of yet we haven't had a policy of
17 recording.

18 Q. Okay. You said things are being purchased?

19 A. Yes. That we're getting a new building and
20 they're going to equip our interview rooms and everything
21 with the audio-video recording.

22 Q. And do you know why that policy is going to be
23 put into effect?

24 A. Because now it's being questioned quite often.
25 And it's across the nation. A lot of departments are

MIA PERRON, CCR, CVR-CM

-40-

1 starting to do that now, for good reason.

2 Q. And would you agree with me that unlike the
3 crime-scene video and photographs that are taken that if
4 there is an independent, completely unbiased accounting of
5 what goes on in that room --

6 A. Uh-huh.

7 Q. -- we don't have to argue about it, do we?

8 A. Right.

9 MS. TAYLOR: Thank you.

10 THE WITNESS: Yes, ma'am. Thank you.

11 THE COURT: Mr. Voight?

12 MR. VOIGHT: Thank you, Your Honor.

13 Detective, I just have a few questions. I
14 really don't want to go back through all of this.

15 REDIRECT EXAMINATION

16 BY MR. VOIGHT:

17 Q. You spent some time with Ms. Taylor talking
18 about the statement and the interactions you may have had
19 with Leonard Gettis?

20 A. Yes.

21 Q. Mr. Gettis cooperated and gave you a statement?

22 A. Yes.

23 Q. And you talked to his minister and his father to
24 check out where he was on Sunday?

25 A. Yes.

MIA PERRON, CCR, CVR-CM

-41-

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. And did that check out?

2 A. Eventually, yes.

3 Q. And you talked to his employer to find out where
4 he was when he said he was at work?

5 A. Yes.

6 Q. And did that check out?

7 A. Yes.

8 Q. And you talked to his friend Sam to check out --
9 because he said he had talked to Sam. And did that part
10 of his story check out?

11 A. Yes.

12 Q. Was there anything other than the fingerprint in
13 Cheryl Snow's apartment that linked Leonard Gettis to her
14 death?

15 A. No.

16 Q. Was there anything -- well, Detective, also
17 Ms. Taylor asked you about some of the things that
18 Detective Hill did in speaking with Mr. McKelvey. As part
19 of your investigation, Mr. McKelvey was interviewed as
20 well?

21 A. Correct.

22 Q. Is there anything, other than the fingerprint on
23 the Pepsi can in the trash can, that links Leroy McKelvey
24 to this involvement?

25 A. No.

1 Q. You talked about with Ms. Taylor your
2 interactions with James Obie Creech. After you had
3 investigated Mr. Creech and what Mr. Creech had to say to
4 you, was there anything that linked Mr. Creech to Ms.
5 Snow, other than the previous relationship he may have had
6 months earlier?

7 A. No.

8 Q. Ms. Taylor asked you a little bit about William
9 Ackerman and Thomas Stender, as well.

10 A. Yes.

11 Q. You had some interaction with those gentlemen?

12 A. I did.

13 Q. Could you describe those gentlemen?

14 A. Elderly white males, speak as of the mentally
15 challenged, try to be helpful but it just doesn't work.

16 Q. Could you tell just by speaking with them that
17 they had mental issues?

18 A. Yes.

19 Q. Those were apparent to you?

20 A. Yes.

21 Q. Would you consider those -- either of those
22 gentlemen robust gentlemen, or would they be more normal
23 size or more frail?

24 A. Frail. They're elderly males.

25 Q. Now, when you talked to Oran Smith on the 18th,

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 would you have described him as frail?

2 A. I'm sorry. Say that one more time.

3 Q. When you talked to Oran Smith on the 18th of
4 July, 2007, would you have described him as frail?

5 A. No.

6 Q. More normal?

7 A. Yeah. Medium to average build.

8 Q. Would -- in his speech patterns and the way he
9 related to you both in the car and the interview room, did
10 he appear to suffer from any of the same deficits that
11 William Ackerman or Thomas Stender suffered from?

12 A. No.

13 Q. Did he appear disabled in any way?

14 A. No.

15 Q. Other than the scar on his head and the fact he
16 had lost an eye, was there anything abnormal about him and
17 his interaction with you at those times? Was there
18 anything other than those two things abnormal about him?

19 A. No.

20 Q. Did he seem to understand what you were saying?

21 A. Yes.

22 Q. Did he understand why he was there?

23 A. Yes.

24 Q. Did he understand the rights that you read to
25 him?

1 A. Yes.

2 Q. Did he waive those rights?

3 A. Yes.

4 Q. If we had a video of that conversation, would
5 that video have shown you or Detective Elmore threatening
6 him?

7 A. No.

8 Q. Would that video have shown you or Detective
9 Elmore promising him anything?

10 A. No.

11 Q. Would that video have shown you or Detective
12 Elmore saying, you're only going to get a little bit of
13 time because of your -- because of your disability?

14 A. No.

15 Q. Would that video have shown Oran Smith saying
16 that he flipped?

17 A. Yes.

18 Q. Would it have shown Oran Smith saying that he
19 strangled Cheryl Snow?

20 A. Yes.

21 Q. Because that's what he did say; right?

22 A. Yes.

23 Q. As a common practice when you're trying to
24 obtain a confession from somebody to tell the person from
25 whom you're trying to get the confession that you'll feel

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 better if you get this off your chest --

2 A. Yes.

3 Q. -- is that a tactic that you used or that
4 Detective Elmore used on Oran Smith?

5 A. Yes.

6 Q. Did he appear to be better or be relieved after
7 he got that off his chest?

8 A. Yes, he did.

9 MR. VOIGHT: The State tenders, Your Honor.

10 THE COURT: Ms. Taylor?

11 MS. TAYLOR: Hello again.

12 THE WITNESS: Hello.

13 RECROSS-EXAMINATION

14 BY MS. TAYLOR:

15 Q. Mr. Voight asked you if Leonard Gettis was
16 cooperative?

17 A. Yes.

18 Q. And you honestly said eventually?

19 A. Yes.

20 Q. Because Leonard Gettis lied to you at the
21 beginning of the interview?

22 A. Initially, yes. But initially he was
23 cooperative because he came into the station on his own
24 accord.

25 Q. He came in and he lied to you?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Yes.
2 Q. He told you he didn't know Cheryl Snow?
3 A. Right.
4 Q. That he didn't know any women on Sumner Avenue?
5 A. Right.
6 Q. You showed him a picture of Cheryl Snow, didn't
7 you?
8 A. Yes.
9 Q. And he said, I don't know who that is?
10 A. Right.
11 Q. And then Mr. Voight said you talked to -- or
12 somebody talked to his dad. We went over his dad's
13 statement yesterday --
14 A. Yes.
15 Q. -- Herbert or Hubert?
16 A. Yes.
17 Q. And Mr. Voight said he cooperated --
18 MR. VOIGHT: Objection.
19 THE COURT: Basis?
20 MR. VOIGHT: Beyond the scope.
21 THE COURT: Sustained.
22 MS. TAYLOR: May we approach?
23 THE COURT: You may?
24 [Whereupon, an off-the-record bench conference
25 is held]

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 THE COURT: Do you withdraw your objection, Mr.
2 Voight?

3 MR. VOIGHT: I will. I will.

4 THE COURT: All right. Thank you. Ms. Taylor,
5 you may proceed.

6 MS. TAYLOR: Thank you.

7 Q. [Ms. Taylor] Do you remember the question?

8 A. [No response]

9 Q. [Ms. Taylor] Let's see if I -- about dad,
10 Hurbert Gettis.

11 A. Yes. Yes. Okay.

12 Q. And Mr. Voight said that you spoke with him, or
13 whoever spoke with him, and that dad corroborated whatever
14 whenever?

15 A. As far as being home, yes.

16 Q. Do you remember us going through Mr. Gettis'
17 statement?

18 A. Leonard's?

19 Q. No, Herbert. Hubert, the dad.

20 A. Yeah, slightly. I'll just go back through it.

21 Q. Essentially dad said, yeah, he was home all day,
22 or I'm not sure if he was home all day, I don't really
23 know.

24 A. Correct. Yeah. Yeah.

25 Q. What did he corroborate?

1 A. Well, I guess he somewhat corroborated because
2 he said at first he was there, then he said towards the
3 end, I'm not sure if he was there. But he gave us
4 information as to -- if I'm not mistaken, that his
5 preacher came over, which is what Leonard said, he
6 remembered seeing a preacher or two other gentlemen coming
7 up the steps.

8 But let me make sure.

9 [Whereupon, the witness reviews documents]

10 A. Yeah, stuff like that. Somewhat corroborated
11 his story. Of course at the end he says, I don't know if
12 he was home or not. But they both gave similar
13 information as to what happened at the house on Sunday, so
14 that's what I mean by the corroboration, I guess.

15 Q. [Ms. Taylor] And also Mr. Voight asked you
16 about Sam Smith. Remember Sam Smith?

17 A. Sam Smith?

18 Q. That's the guy that Leonard Gettis told you he
19 went to hang out with --

20 A. Yes. Yes.

21 Q. -- visited with or whatever.

22 And, again, I'm sorry. I don't know which page
23 of your handwritten spiral notebook this would be, but the
24 date is 6/8/07. I pulled that out, so I don't know what
25 it's in between.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Give me a second.

2 [Whereupon, the witness reviews documents]

3 Q. [Ms. Taylor] Let me just show you what page, in
4 case that will help you find it.

5 A. Let's see. Go to -- that's it. Okay?

6 Q. That's it?

7 And in the second paragraph there are notes. I
8 can't read them all, but it appears that you talked to Sam
9 Smith at Quality Glass?

10 A. Yes, ma'am.

11 Q. And what does it say?

12 A. Talked to Sam Smith at Quality Glass, Meeting
13 Street; knows from work together; Smith doesn't hang
14 out -- doesn't really hang out together.

15 Q. That says hang out together?

16 A. Yeah. They don't go to the bar drinking
17 together and they don't, you know, come over to each
18 other's house, but they know each other from previously
19 working together.

20 Q. All right. And Mr. Voight asked you about
21 Mr. McKelvey.

22 A. I'm sorry?

23 Q. Mr. McKelvey.

24 A. Yes.

25 Q. The individual who had admitted that he had been

1 with Cheryl Snow on Friday, and I believe he's also the
2 gentleman that said he stopped by on Sunday and knocked on
3 the door?

4 A. Yes.

5 Q. Do you know whether he gave a consent to body
6 search?

7 A. I don't know.

8 Q. Do you recall that Ms. Gallman said if he did,
9 his DNA was never presented to her?

10 A. That's correct.

11 Q. Nor was Mr. Creech's?

12 A. That's correct.

13 Q. And he also talked to you about Mr. Ackerman and
14 Mr. Stender, who are Cheryl Snow's neighbors --

15 A. Yes.

16 Q. -- about their size and fragility?

17 A. Yes.

18 Q. What does Leonard Gettis look like?

19 A. Leonard Gettis? He is a heavysset white male
20 about five eight, five nine, I think.

21 Q. All right.

22 A. Probably -- Gettis. Yeah. Yeah.

23 Q. How about Mr. McKelvey?

24 A. McKelvey is tall. If I remember correctly, he's
25 a tall gentleman, slender, skinny guy.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. Is he frail?

2 A. No, he's not frail. No.

3 MS. TAYLOR: I'm just checking things.

4 [Whereupon, Ms. Taylor reviews documents]

5 Q. [Ms. Taylor] The last thing that Mr. Voight
6 talked to you about was all of the things that we would
7 know and see if there was a videotape of the
8 interrogation?

9 A. Yes.

10 Q. And I would like to talk about that. We don't
11 have that, do we?

12 A. No, we do not.

13 MS. TAYLOR: Thank you.

14 THE COURT: Detective, you may step down.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Call your next witness.

18 MR. VOIGHT: The State would call Sargent Carl
19 Mastantuno.

20 [Whereupon, Mr. Mastantuno comes forward]

21 THE CLERK OF COURT: Place your left hand on the
22 Bible, raise your right.

23 [Whereupon, Mr. Mastantuno is duly sworn by the
24 clerk of court as follows: do you swear or affirm that
25 the testimony you shall give this Court and jury in the

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 trial of this case shall be the truth, the whole truth,
2 and nothing but the truth, so help you God]

3 THE WITNESS: I do.

4 THE CLERK OF COURT: Thank you, sir. Please be
5 seated.

6 [Whereupon, Mr. Mastantuno takes the witness
7 stand]

8 THE CLERK OF COURT: For the record, please
9 state your name and spell your last name.

10 THE WITNESS: Carl Mastantuno. M-A-S-T-A-N-
11 T-U-N-O.

12 - - - - -

13 CARL MASTANTUNO,

14 Having Been First Duly Sworn,

15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MR. VOIGHT:

18 Q. You're Sargent Mastantuno; right?

19 A. Yes, sir. Sargent Mastantuno.

20 Q. Back in June of 2007 it was Detective
21 Mastantuno?

22 A. Yes, sir.

23 MR. VOIGHT: If you could, sir, could you sit as
24 far up and pull that microphone to you. The air-
25 conditioning gets a little loud, and we need to make

MIA PERRON, CCR, CVR-CM

-53-

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 sure that everybody can hear you.

2 Q. [Mr. Voight] Now, Sargent, in June of 2007 did
3 you have the occasion to assist in the investigator of a
4 homicide of a Cheryl Snow?

5 A. Yes, sir, I did.

6 Q. And on the 5th of June, did you attempt to
7 locate an Oran Smith at his parents' house in Moncks
8 Corner?

9 A. Yes, sir.

10 Q. Who went with you?

11 A. It was myself; and there was two members from
12 the Intelligence SLED Police Unit, which is a violent
13 warrant service that we have at the police department
14 where they attempt to locate individuals; and I believe
15 there was also a either Berkeley or Dorchester County
16 deputy.

17 Q. And Moncks Corner, that would probably be a
18 Berkeley County --

19 A. Yes, sir.

20 Q. -- sheriff's deputy?

21 Who was there when you arrived at the house? Do
22 you recall?

23 A. Mr. Smith was there, and a female. It was
24 possibly his mother or sister. I'm not exactly sure which
25 one answered the door.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. Did you have the occasion to talk to Mr. Smith
2 at all?

3 A. Yes, sir.

4 Q. Did you talk about the case at all?

5 A. No, sir.

6 Q. Did Mr. Smith appear cooperative to you?

7 A. Extremely.

8 Q. Did you tell him why you were there?

9 A. Yes, sir. I mentioned to him that pretty much a
10 situation came up where detectives needed to speak with
11 him at the police station.

12 Q. Did you tell him about a homicide?

13 A. No, sir.

14 Q. Did you tell him about Cheryl Snow at all?

15 A. No, sir.

16 Q. Was that information that you had at that time?

17 A. I did have the information.

18 Q. Did Mr. Smith appear to understand what you were
19 saying?

20 A. Yes, sir.

21 Q. Did he agree to come down to the station with
22 police officers?

23 A. Yes, sir.

24 Q. Were you the person who accompanied him down?

25 A. No, sir, I was not.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. Did you stay at the residence?

2 A. Yes, sir.

3 Q. For what purpose did you stay at the residence?

4 A. I stayed to secure the residence while a search
5 warrant was being drawn and then acted upon.

6 Q. Did you assist in the execution of that warrant?

7 A. Yes, sir.

8 Q. And that was of Oran Smith's room in his
9 parents' house?

10 A. Yes, sir. Just his room.

11 Q. How long, approximately, did you stay at the
12 Smith residence?

13 A. Probably three to four hours, I believe.

14 Q. Did you have the chance to observe Mr. Smith's
15 room?

16 A. Yes, sir.

17 Q. Did you have the chance to observe the house?

18 A. Yes, sir.

19 Q. Anything unusual about the house?

20 A. The main thing that comes to mind is I know when
21 we were walking down the hallway to his room, several
22 other bedrooms I observed they had padlocks on the -- on
23 their -- to secure that room so you couldn't go into the
24 room.

25 Q. Did you have the occasion to be directed to

1 various retail establishments after Mr. Smith had given
2 his initial statement to the police on the 5th of June?

3 A. Yes, sir.

4 Q. And do you recall who directed you there?

5 A. I believe -- I'm not exactly sure who it was.
6 We had a meeting. We had a meeting prior and different
7 elements were tasked out, as far as what needed to be done
8 in the investigation, and that was what I was tasked with.

9 Q. On June 6th did you have the occasion to go to
10 the Hot Spot in North Charleston?

11 A. Yes, sir.

12 Q. And what is the Hot Spot?

13 A. It's a convenience-store gas station.

14 Q. And for what purpose did you go there?

15 A. I went there to review the -- their video
16 footage, surveillance footage, in order to assure -- I
17 believe in one of -- in one of Mr. Smith's statements he
18 mentioned that he was at that location at a certain date
19 and time, and I was there to confirm that.

20 Q. Was the manager there?

21 A. No, sir, the manager wasn't there when I was
22 there.

23 Q. Were you able to review any videotape from the
24 Hot Spot?

25 A. No, sir.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. On that day did you also travel to the Sunoco
2 gas station?

3 A. Yes, I did.

4 Q. And for what purpose did you travel to the
5 Sunoco gas station?

6 A. Also to review their video footage.

7 Q. Did you have the opportunity to review any video
8 footage at the Sunoco?

9 A. Yes, sir, I did.

10 Q. And do you recall how you did that?

11 A. I believe that based on his statement that was
12 provided, when Mr. Smith was at that particular
13 convenience store that he purchased some sort of a Koal-
14 Aid drink. I got with the clerks working. We were able
15 to pull their records and their invoices and we located
16 any times that that particular item that he said he
17 purchased was actually purchased, and we reviewed the
18 footage for those times.

19 Q. So each time a drink of that nature was
20 purchased, you were able to review on video that
21 transaction?

22 A. Yes, sir.

23 Q. Were you ever able to locate an image of Oran
24 Smith on that video?

25 A. No, sir.

MIA PERRON, CCR, CVR-CM

-58-

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. Approximately how much time did you spend
2 looking at that video?

3 A. Two hours, I would say.

4 Q. Did you also have the occasion to travel to the
5 BP station there by 526 and Rivers Avenue?

6 A. Yes, sir, I did.

7 Q. And for what purpose did you go there?

8 A. Also to review their video footage to identify
9 if Mr. Smith was at that location during the time he
10 stated.

11 Q. Were you able to find the image of Mr. Smith on
12 that station's visual equipment?

13 A. No, sir, I was not.

14 Q. Approximately how much time did you spend
15 looking at that video?

16 A. An hour, two hours. One or two hours or so.

17 Q. Is that the only involvement that you had in
18 this case?

19 A. Yes, sir, it is.

20 MR. VOIGHT: Please answer any questions that
21 Ms. Taylor may have for you.

22 MS. TAYLOR: Court's indulgence one moment.

23 Do you have any -- good morning, Sargent.

24 THE WITNESS: Good morning.

25

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Do you have any reports that you made as a result of your involvement in this case?

A. I have a supplemental.

Q. Do you have it with you?

A. I don't have it with me, no.

MS. TAYLOR: The Court's indulgence, Your Honor.

THE COURT: Yes, ma'am.

Q. [Ms. Taylor] I have Mr. Voight's copy. Is that it?

A. Yes, ma'am.

Q. Do you know when -- and let me look at this, as well. But this indicates it's on 6/6/07; you were instructed to attempt and retrieve video surveillance from the Hot Spot, Sunoco on Remont, and the BP located on Rivers and 526. Is that correct?

A. Yes, sir. June 6th.

Q. And do you recall --

A. Yes, ma'am.

Q. I'm sorry.

A. I'm sorry.

Q. Do you recall who asked you to do that?

A. No, ma'am.

Q. To go to those places?

MIA PERRON, CCR, CVR-CM

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. No, ma'am.

2 Q. And do you have any idea why those places were
3 identified?

4 A. Yes, ma'am. During the -- we had a meeting
5 where different elements were tasked out, as far as what
6 needed to be completed for the case, and during the
7 meeting that's what I was tasked with. The reason for me
8 to do that was really based on one of Mr. Smith's
9 statements or one of the statements that was obtained
10 during the course of the investigation that he was
11 allegedly at those locations.

12 Q. Have you had a chance to look at that statement?

13 A. No, ma'am.

14 Q. I'll show it to you now.

15 [Whereupon, Ms. Taylor proffers documents to the
16 witness]

17 Q. [Ms. Taylor] Go ahead. It's three pages long.
18 Take your time. And if you could tell me when you find in
19 that statement anything related to those three videos.

20 [Whereupon, the witness reviews documents]

21 A. In the first page it mentioned the Hot Spot.

22 Q. [Ms. Taylor] Okay. And that's the one that you
23 did go to and try to see --

24 A. Uh-huh.

25 Q. -- but you were not able to?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Yes.

2 Q. Did you ever go back and try again?

3 A. I made contact with the manager. The manager
4 was not able to -- there's no footage on that video.

5 Q. Got you.

6 A. Also, the first page mentions the Kangaroo gas
7 station, which is that BP that's being referred to on
8 there.

9 Q. Okay. So that's the one on 526?

10 A. Yes, ma'am.

11 Q. Okay. And what does it say there about the
12 Kangaroo gas station?

13 A. It says Saturday, June 2nd, 2007, I met with --
14 it looks like some guy at the Kangaroo gas station next to
15 the train tracks and the thrift store on Rivers.

16 Q. Now, and I can't quite remember what Mr. Voight
17 was asking you about, but what were you going to the --
18 the Kangaroo is the BP.

19 A. Yes, ma'am.

20 Q. What were you going there to look for? Was that
21 where the juice-box thing was supposed to be?

22 A. No. The juice box was at the Sunoco on Remont
23 Road.

24 Q. The Sunoco on Remont Road.

25 And what did we think had happened here, if we

1 know? Why were you were going to look at video of -- are
2 the videos of inside the store?

3 A. On some locations. Some locations also have
4 video on the outside of the store, as well.

5 Q. And what did you look at that day?

6 A. I looked at -- which one?

7 Q. At the BP.

8 A. That one, I looked at the outside video. Of
9 them both, actually. I looked at -- concentrated
10 primarily on the outside video.

11 Q. Okay. And that's the Kangaroo?

12 A. Uh-huh.

13 Q. Now, you said you looked at the outside videos?

14 A. Uh-huh.

15 Q. I'm sorry. I must have misheard something. I
16 thought Mr. Voight was asking you about purchases of the
17 drink.

18 A. That was at the -- that was at the Sunoco on
19 Remont Road.

20 Q. Remont. Okay.

21 So at the Kangaroo you looked on exterior video?

22 A. Yes, ma'am.

23 Q. [Ms. Taylor] And you didn't see anything --

24 A. No, ma'am.

25 Q. -- that you thought was Oran Smith?

State vs.. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. No, I did not.

2 Q. And do you know what times you looked at videos
3 when you -- which period of time of video, not when you
4 watched the video.

5 A. I can't give you specifics right now. But I do
6 know that I had a time frame of when he was allegedly at
7 that location, and that's what I concentrated on.

8 Q. And you were there on June 6? Is that when you
9 went and did this?

10 A. Yes. Yes, ma'am.

11 Q. And so they kept the exterior videos that they
12 had for at least four days?

13 A. Uh-huh.

14 Q. Okay. Anywhere else in here that you -- are you
15 finished reading, or you're still reading?

16 A. [No response]

17 [Whereupon, the witness reviews documents]

18 A. Okay. The last page has mention of the Hot Spot
19 again: purchased Black & Milds.

20 Q. [Ms. Taylor] And anything about the place you
21 went on Remont Road looking for a juice box or a drink?

22 A. Well, there's again mention of the gas station
23 right there at 526 and Rivers where he waited on a --
24 waited on a ride. I don't see -- I don't see it in this
25 statement.

1 Q. Okay. And, again, you didn't have that
2 statement, somebody just told you, well, you go to these
3 places and see what you can find?

4 A. Yes, ma'am.

5 Q. Now, Mr. Voight also asked you if when you
6 talked with Oran at his house --

7 And I was going to ask you: we've got some
8 friends, family members, back here. Do you recognize the
9 female that would have been at his house?

10 A. No, ma'am, I do not.

11 Q. His mom is right there on the second row in the
12 orange jacket. Was it her, or was it a younger woman? If
13 you recall.

14 A. I can't recall.

15 Q. No idea.

16 He asked you if it appeared to you that Oran
17 understood what you were talking to him about, and you
18 said yes.

19 A. [Indicates affirmatively]

20 Q. Appearances ever deceive you, Sargent?

21 A. Not in this situation, no.

22 Q. Not in this situation? What does that mean?

23 A. Appearance -- he appeared to understand what I
24 said, what I was asking him to do.

25 Q. And you also told Mr. Voight that when you went

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 up there -- and you were -- were you with anyone from
2 North Charleston?

3 A. Yes, ma'am.

4 Q. Okay. Who was with you from North Charleston?

5 A. Yes, ma'am.

6 Q. Who was with you from North Charleston?

7 A. Officer Kruger.

8 Q. Okay. That's another -- is that a uniformed
9 officer --

10 A. That's a --

11 Q. -- or a detective or --

12 A. He's a uniformed officer.

13 Q. Were you in uniform that day?

14 A. No, I was not.

15 Q. So it was you in a suit like you're wearing now?

16 A. Yes.

17 Q. And then you also told us about a couple of
18 other folks that were there.

19 A. Uh-huh.

20 Q. You said there were two SLED officers?

21 A. No. There was -- there were two North
22 Charleston officers were there.

23 Q. Who was the other one?

24 A. Officer Winston.

25 Q. Okay. Is that a uniform or --

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Yes.

2 Q. Okay.

3 A. And there was a deputy.

4 Q. From Berkeley?

5 A. I believe it was Berkeley.

6 Q. Okay. Was that it?

7 A. Initially, yes, ma'am.

8 Q. What about later?

9 A. Later, when the search warrant was enacted,
10 several other detectives came with a search warrant.

11 Q. Okay. So did I just misunderstand you? I
12 thought you said something about two SLED officers --

13 A. No.

14 Q. -- from the violent service warrant --

15 A. No. The two uniform officers that I mentioned,
16 they're a unit that pretty much tries to locate
17 individuals.

18 Q. Okay. So those would be North Charleston, as
19 well?

20 A. Yes. Yes, ma'am.

21 Q. So you just had the Berkeley officer because you
22 were in Berkeley County?

23 A. Yes, ma'am.

24 Q. Okay. Where were all you guys when you went to
25 the house?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. I believe we were at the front door.

2 Q. And Oran came out to meet you?

3 A. Yes, ma'am. Came right to the front door.

4 Q. Right away?

5 A. Yeah. Well, he -- I believe when we -- when I
6 first knocked on the door, the female answered. I asked
7 to speak with him. And he was in the back of the house.
8 I believe he came to the door within a minute of knocking
9 on the door.

10 Q. And he left with you?

11 A. He left with the other officers.

12 Q. With you guys?

13 A. Yes, ma'am.

14 Q. Okay. And you searched his room you said for
15 three or four hours?

16 A. The total amount of time that I was there, from
17 the time I arrived on scene, was about three or four
18 hours.

19 Q. Okay. How long -- were you the one actually in
20 his room searching for stuff?

21 A. I was assisting in the room.

22 Q. What were y'all looking for?

23 A. Any items -- any items that were possibly
24 involved in the situation. I think any -- I think we were
25 looking for any paperwork, anything with a connection to

MIA PERRON, CCR, CVR-CM

-68-

1 the victim.

2 Q. And Mr. Voight also asked you if there was
3 anything unusual about the home. Do you know how many
4 people live in that home --

5 A. I do not know.

6 Q. -- how many children --

7 A. No, ma'am.

8 Q. -- that the Smiths have?

9 A. I don't know that.

10 Q. And you mentioned there were locks on the doors?

11 A. Yes, ma'am.

12 Q. Do you know why there were locks on the doors?
13 Did you ask the family why there were locks on the doors?

14 A. Yes, ma'am, I did.

15 Q. Okay. What did they tell you?

16 A. That -- I believe it was his sister that I
17 asked, and that she was afraid of Mr. Smith going in her
18 room.

19 Q. Going in her room and doing what?

20 A. I didn't elaborate.

21 Q. Did you find books in Oran Smith's room that he
22 took, that were diary journals, from his sister?

23 A. I believe there were journals that were located.
24 I don't know whose they were.

25 MS. TAYLOR: The Court's indulgence.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 THE COURT: Yes, ma'am.

2 [Whereupon, Ms. Taylor and Mr. Nixon confer]

3 Q. [Ms. Taylor] After the hours of searching --
4 did you search the whole house, or just Oran's room?

5 A. Just his room.

6 Q. After the hours you spent in his room, did you
7 locate anything at all of evidence value that connected
8 him in any way to the killing of Cheryl Snow?

9 A. I really can't speak upon what all was -- there
10 were several people. I was not the primary person
11 conducting the search warrant. I was just really
12 assisting, and I really can't remember what was logged in
13 evidence from his room that day.

14 Q. Did you prepare the return?

15 A. No, ma'am.

16 MS. TAYLOR: Thank you.

17 THE COURT: Mr. Voight?

18 MR. VOIGHT: No further questions.

19 THE COURT: May Sargent Mastantuno step down and
20 be excused?

21 MR. VOIGHT: Yes, ma'am.

22 THE COURT: Any objection, Ms. Taylor?

23 MS. TAYLOR: No. No.

24 THE COURT: Sargent, you may step down and be
25 excused, but feel free to remain in the courtroom.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE WITNESS: Thank you.

4 THE COURT: Call your next witness.

5 MR. VOIGHT: May we approach, Your Honor?

6 THE COURT: Yes, sir.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 THE COURT: Ladies and gentlemen of the jury,
10 this is an appropriate time for us to take our
11 midmorning break.

12 Please do not begin your deliberations. Do not
13 discuss this case amongst yourselves.

14 Please rise for the jury.

15 [Whereupon, the jury exits the courtroom at
16 11:13 a.m.]

17 THE COURT: Please be seated. Anything before
18 we take our break?

19 MR. VOIGHT: No, Your Honor.

20 MS. TAYLOR: No, ma'am.

21 THE COURT: All right. We'll take a ten-minute
22 break. Please be back at 11:25. Thank you.

23 MS. TAYLOR: Thank you.

24 [Whereupon, a recess is taken from 11:15 a.m. to
25 11:25 a.m.]

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 THE COURT: Anything before we bring in the
2 jury?

3 MR. VOIGHT: No, Your Honor.

4 MS. TAYLOR: No, ma'am.

5 THE COURT: Please bring in the jury. Please
6 rise for the jury.

7 [Whereupon, the jury enters the courtroom at
8 11:26 a.m.]

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

11 THE COURT: Thank you. Please be seated.

12 Mr. Voight, please call your next witness.

13 MR. VOIGHT: The State calls Detective Keith
14 Elmore.

15 [Whereupon, Mr. Elmore comes forward]

16 THE CLERK OF COURT: Place your left hand on the
17 Bible, and raise your right, please.

18 [Whereupon, Mr. Elmore is duly sworn by the
19 clerk of court as follows: do you swear or affirm that
20 the testimony that you shall give this Court and jury
21 in the trial of this case shall be the truth, the whole
22 truth, and nothing but the truth, so help you God]

23 THE WITNESS: I do.

24 THE CLERK OF COURT: Thank you, sir. Please be
25 seated.

1 [Whereupon, Mr. Elmore takes the witness stand]

2 THE CLERK OF COURT: For the record, please
3 state your name and spell your last name.

4 THE WITNESS: Keith Elmore. E-L-M-O-R-E.

5 - - - - -

6 KEITH ELMORE,

7 Having Been First Duly Sworn,

8 was Examined and Testified as Follows:

9 DIRECT EXAMINATION

10 BY MR. VOIGHT:

11 Q. Detective, how are you currently employed?

12 A. With the City of North Charleston Police
13 Department.

14 Q. Were you so employed on the -- in June and July
15 of 2007?

16 A. Yes, sir.

17 Q. Where were you assigned in 2007?

18 A. In the North Charleston Police Department
19 detective persons crime unit.

20 Q. And as a persons detective, are you tasked with
21 investigating homicides and other violent crimes against
22 persons?

23 A. I am.

24 Q. And in June of 2007, did you have the occasion
25 to assist Detective Patrick in the investigation of the

MIA PERRON, CCR, CVR-CM

-73-

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 homicide of Cheryl Snow?

2 A. Yes, I did.

3 Q. Specifically, on the 5th of June did you have
4 the occasion to come into contact with Oran Smith?

5 A. Yes, I did.

6 Q. Do you see Mr. Smith in the courtroom today?

7 A. Yes, he is here.

8 Q. Does he look roughly the same today as he did in
9 2007?

10 A. Pretty much the same.

11 Q. How did you first come into contact with Oran
12 Smith?

13 A. Oran Smith was picked up by Detective Mastantuno
14 and brought back to the station, after he was located at
15 his home in Moncks Corner, and I met him there at the
16 interview room at our station in North Charleston.

17 Q. Was that your first encounter with Oran Smith?

18 A. Yes, it was.

19 Q. How did Mr. Smith appear to you at that time?

20 A. He was fine.

21 Q. At that time did you read Mr. Smith his rights?

22 A. Yes, we advised him of his constitutional
23 rights.

24 Q. I'm going to show you what's been marked as
25 State's Exhibit 3 and 4 and ask you if you could identify

1 those.

2 A. We have a North Charleston Police Department
3 advisement of constitutional rights, and I also have a
4 North Charleston Police Department witness statement.

5 Q. Is that the statement that Oran Smith gave you
6 on the 5th of June?

7 A. Yes, sir, it is.

8 Q. And in whose handwriting is that written?

9 A. This is written in my handwriting.

10 MR. VOIGHT: At this time, Your Honor, the State
11 would offer for introduction State's 3 and 4.

12 MS. TAYLOR: Without objection.

13 THE COURT: State's 3 and 4 into evidence
14 without objection.

15 [Whereupon, State's Exhibit Number 3, advice of
16 rights, is admitted into evidence by the Court]

17 [Whereupon, State's Exhibit Number 4, statement,
18 is admitted into evidence by the Court]

19 Q. [Mr. Voight] Does your name appear anywhere on
20 that rights admonition form?

21 A. Yes. I'm a witness on there.

22 Q. Are you the person that read Mr. Smith his
23 rights?

24 A. No, I'm not.

25 Q. And who did? Who did that?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Detective Corporal James Hill.

2 Q. Were you present when Detective Hill read Mr.
3 Smith his rights?

4 A. I was, yes.

5 Q. What rights -- and if you could just tell us
6 from the form, what rights did you hear Detective Hill
7 read Mr. Smith? Go ahead and read it.

8 A. I'll read them out to you. Normally what we'll
9 do, we'll -- just so that you have a good understanding
10 of how we do it, it's advising the constitutional rights.
11 It has a section up here where it says full name, date
12 of birth, age, grade completed in school. And then it
13 says -- there's a little section there, I, blank, have
14 been advised by blank. And we have filled out Oran
15 Smith's name, which Detective Hill did; his date of birth;
16 his age; and the highest grade that he actually completed,
17 to make sure that we understand that he has completed this
18 grade. And that's what he told he completed, the ninth
19 grade. And then we have his name filled in, Oran Smith.
20 And he has been advised by Detective Hill. Then we will
21 read these five sentences here, which I'll re-show him.
22 And then after reading each sentence we would ask him, do
23 understand what I just read, and he would verbally say yes
24 and nod his head.

25 So the first question went -- and we will read

MIA PERRON, CCR, CVR-CM

-76-

1 this as if we were him. We would say you, but of course
2 it's meaning him. [Reading] You have the absolute right
3 to remain silent, do not have to answer any questions or
4 give a statement, and these facts cannot be used against
5 me.

6 And we would ask him do you understand what I
7 just read. He nodded yes and verbally said yes.

8 [Reading] If I do answer questions or give
9 a statement, anything you say can and will be used against
10 -- it says me, but you in a court of law.

11 Do you understand what I just read. Yes
12 verbally and nod yes.

13 Third question: [reading] you have the right to
14 consult with a lawyer of your choice before you answer
15 questions, give a statement, and also have him present
16 while you are being questioned.

17 Do you understand those rights. It's again
18 stated yes with a nod stating yes.

19 [Reading] If you wish to talk to a lawyer or
20 have him present but unable to afford to hire a lawyer,
21 one will be appointed to represent you free of charge.

22 Do you understand that. Again, yes verbally and
23 a nod yes.

24 Then the final question: [reading] if you
25 decide to answer questions or give a statement without

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 having a lawyer present representing you -- it says me,
2 but it's you -- and then it says I, meaning you have the
3 absolute right during this interview to stop answering
4 questions and remain silent.

5 Do you understand what I just read. Again, he
6 said yes with a nod.

7 And then after that there's a little sentence
8 here that says: [reading] I fully understand each of
9 these rights explained to me.

10 And we would ask him that question. He again
11 stated yes and with a nod, and we would have him check off
12 or either initial each one stating that he did -- that
13 were read to him, which he understood. And then it
14 further states, witness, Detective Hill signed, second
15 witness, I signed. Oran signed his signature, date, time
16 of him understanding what he just read or what was read to
17 him.

18 And then down here at the bottom it says
19 further: [reading] having these rights in mind, I wish to
20 waive these rights and answer questions concerning the
21 charge of. And what we have here is an investigation to
22 threats -- excuse me -- to have these rights read to me in
23 reference to an investigation. No threats, force, or
24 promises of any kind have been made to me by anyone to
25 cause me to waive these rights and/or answer questions.

1 Again, a witness by Detective Hill, myself, signed by Oran
2 Smith, date and time.

3 Q. Okay. Is that form the first thing you do
4 before you talk to somebody?

5 A. Yes, sir, it is.

6 Q. And why do you do that first?

7 A. My particular reason, this is policy for us, for
8 one thing. And just in case we get any admissions of a
9 crime that someone is being investigated for, they fully
10 understand that they have right to legal counsel before
11 that and that they also do not even have to answer
12 questions or even talk to us in reference to this matter,
13 if they choose to.

14 Q. Did Mr. Smith seem to understand those rights?

15 A. Yes, he did, very well.

16 Q. Did Mr. Smith waive those rights in your
17 presence?

18 A. Yes, he did.

19 Q. Did Mr. Smith appear to be suffering from any
20 deficits or any mental illness when he gave you this
21 statement?

22 A. No, he was not.

23 Q. Did he appear to understand everything that you
24 said?

25 A. Yes, he did. And we ask these questions, also:

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 if he had been drinking, is he on medication, things of
2 that nature.

3 Q. Were you satisfied that he wasn't impaired in
4 any way before you took that statement?

5 A. A hundred-percent satisfied.

6 Q. Did you threaten him to make that statement?

7 A. Of course not. No.

8 Q. Did you promise him anything?

9 A. No, sir.

10 Q. Now, in that first statement which happened back
11 in June, did Oran Smith admit to killing anybody?

12 A. No, he did not.

13 Q. Did you tell him then that he was being
14 investigated for a homicide?

15 A. I told him that we were questioning him in
16 reference to a homicide of Ms. Cheryl Snow.

17 Q. Was he handcuffed?

18 A. No, he was not.

19 Q. Was he free to leave after the interview?

20 A. Yes, he was.

21 Q. In fact, he did leave after the interview?

22 A. Correct.

23 Q. Why did you write his statement of what's
24 contained in State's 4? Why did you write that?

25 A. Normally we ask people if they are good in

1 writing, with writing skills. Some are, some aren't.
2 Some state, I'll write my own statement; some say, well, I
3 prefer you write it, I'm not that good at it.

4 And I offered that to Oran and he said, I'd feel
5 comfortable if you write it. And of course and I start my
6 statements: this statement is being written by Detective
7 Elmore with my permission, because I'm writing it as if
8 I'm this person, based on what they are telling me. And
9 I'm writing -- normally what I will do, I have them tell
10 me the whole scenario. That way I can have an
11 understanding of what I'm going to write.

12 Then I will have them repeat back to me again
13 after I ask -- I go over it myself and what I remember
14 them explaining to me. I say, so this took place, this
15 and this and this, blase, this and that, and they'll be
16 like, yeah, that's right.

17 And then I say, okay, I'm going to start writing
18 the statement now; say everything again; I'm going to be
19 writing, so kind of go slow with me so that I can -- I
20 say, I may stop you and I may make sure that I'm writing
21 down the correct information; I may ask you a question or
22 two, make sure that everything I put is correct.

23 After I write out everything, I'll read it back
24 to them and make sure that everything I've got is what
25 they're saying that they're saying. And I also let them

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 read it. And they'll read over it and if there's any
2 mistakes or discrepancy or anything, anything that I need
3 to --

4 But for the most part, everything that I wrote
5 down is what he agreed to, and he signed and dated it.

6 Q. Okay. So he had the ability to take a look at
7 it.

8 Did he get a copy of it?

9 A. Yes, he did.

10 Q. Did Oran Smith admit to knowing Cheryl Snow?

11 A. Yes, he did.

12 Q. Did he admit to being in Cheryl Snow's apartment
13 prior to her death?

14 A. Yes.

15 Q. But he stopped short of implicating himself in
16 her death?

17 A. Correct.

18 Q. Is that correct?

19 A. Correct.

20 Q. Detective, did there come an occasion in July
21 when you went to talk to Oran Smith again?

22 A. Yes, there was.

23 Q. Who was with you at that time?

24 A. Myself and Detective Patrick.

25 Q. Now, from the time you talked to him in June to

1 the time you talked to him in July, had anything been done
2 in this investigation that made you want to talk to Oran
3 Smith again?

4 A. Detective Patrick sent off the pajama bottoms
5 that was used for the strangulation of Ms. Snow. DNA
6 samples from that were collected and sent to SLED, which
7 DNA evidence revealed Oran Smith's DNA was on those object
8 -- on that object.

9 Q. And you didn't know that the first time you
10 talked to him, did you?

11 A. No, did not.

12 Q. Where did you go encounter Oran Smith the second
13 time?

14 A. Detective Patrick and I met him at his
15 residence.

16 Q. Was anybody else there?

17 A. There was a young lady who answered the door.

18 Q. Where was Oran when the door was answered?

19 A. He was in the back area of that residence.

20 Q. Did he come out the front door to greet you?

21 A. No, he did not.

22 Q. What did he do?

23 A. He came -- the young lady, we asked to speak to
24 him. We told her who we were and we needed to speak to
25 Oran. She said okay. She went to the back area of the

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 house. I could kind of hear the footsteps. Detective
2 Patrick and I stood there on the porch. Me being who I am
3 trained in North Charleston, we normally like to kind of
4 watch the back of the residence and we -- people tend to
5 run out of the back door, we hear it slam, and they hit
6 the woods. So I kind of stepped down to the side.
7 Detective Patrick stayed on the porch. And Oran came from
8 the back-residence side of the residence, walking up to
9 the front area.

10 Q. He didn't attempt to run away from you, though,
11 did he?

12 A. No, he did not.

13 Q. Did he seem surprised to see you?

14 A. I guess he wouldn't have been surprised, because
15 his sister had already told him the police was out there
16 to see him. But he did seem nervous.

17 Q. Did you tell him why you were there?

18 A. I told him that we needed to speak to him again,
19 that we had some more developments in the case and we
20 needed to speak with him.

21 Q. Did he agree to come with you?

22 A. Yes, he did.

23 Q. Did he seem to understand what you were telling
24 him?

25 A. Yeah, he understood. I just explained to him, I

1 said, we got some more stuff in the case we would like to
2 talk with you about, see if you can help us out and get an
3 understanding of, you know, the new evidence that we
4 located. Oran said okay.

5 And he made a motion, then he started walking
6 back towards the back of the residence where he came. And
7 I'm like, whoa, whoa, whoa, where you going, man, slow
8 down. And he kind of stopped and he turned and he looked
9 at me slowly, says, I'm going to jail, aren't I. I said,
10 well, that's -- you know, we have to discuss this matter.
11 And I said, you know, we will find out later, you know,
12 but we just need to talk to you in reference to this new
13 evidence that we found. And he kind of nodded his head
14 and he said, okay. He said, well, I need to let my sister
15 or mother know that I'm leaving. And I said, well,
16 Detective Patrick will let her know, because he was
17 standing at the front door and the young lady came back
18 and he told her that we were taking him and that's where
19 he'll be. And he left with us.

20 Q. Was he placed in handcuffs?

21 A. No, he was not.

22 Q. Was he placed under arrest at that time?

23 A. No, he was not.

24 Q. When you went out to Moncks Corner to get him,
25 did y'all have an arrest warrant for him?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. No, we did not.

2 Q. Where did he sit in the car?

3 A. He sat in the front seat with Detective Patrick,
4 and I sat in the back behind him. And he was patted down
5 for weapons, just for officer safety.

6 Q. And he didn't have any weapons?

7 A. He did not.

8 Q. Did y'all have a conversation in the car riding
9 from Moncks Corner to North Charleston?

10 A. Yes, we did.

11 Q. Did you talk about the case at all?

12 A. No, we did not talk about the case.

13 Q. What did y'all talk about?

14 A. Just talking, in general. He and I kind of knew
15 -- one of the detectives that worked with us he knew, went
16 to high school with. He was talking about him. I have a
17 family member who lives in his community that I asked him
18 if he knew, and he said yeah. I think they were related
19 on another side. And we talked about that, and just
20 family and just life in general.

21 Q. Did Mr. Smith appear to understand the content
22 of your conversations?

23 A. Oh, yes. Fully.

24 Q. Did he appear to hear voices at all --

25 A. No.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. -- did he have any auditory hallucinations?

2 A. No, sir. The conversation was completely
3 normal.

4 Q. Did he appear to be impaired at all?

5 A. No, he did not.

6 Q. Did he appear slow? unable to understand what
7 you were saying?

8 A. No. No, sir.

9 Q. This officer that you had discussed, is this
10 Officer Phason [phonetic]?

11 A. Correct.

12 Q. And that's a North Charleston detective?

13 A. Yes, he is.

14 Q. Did Mr. Smith appear to be apprehensive or
15 afraid of Officer Phason [phonetic]?

16 A. No. There wouldn't have been any need to. No.

17 Q. Did he relay to you a story about an incident
18 that occurred to him in school some years earlier with
19 Officer Phason [phonetic]?

20 A. Yes, he did.

21 Q. As a result of that incident, did he relay to
22 you any fear that he may have had of Officer Phason
23 [phonetic]?

24 A. He made the comment like, you don't want to --
25 that's a big guy, you don't want to mess with him. And

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 that was pretty much the brunt of it. He didn't say, I'm
2 scared of him, I wouldn't go around him, or anything of
3 that nature. He's like, that's a pretty big guy, he's a
4 tough guy, something like that.

5 Q. Is he a big guy?

6 A. Yeah, he is.

7 Q. What was the tone of the conversation in the
8 car, if you can recall? What -- can you describe to the
9 jury was it -- was it conversational or --

10 A. Oh, it was --

11 Q. -- serious? What --

12 A. I mean, we had to ride from Moncks Corner back
13 to North Charleston, so we was in the car at least a good
14 thirty minutes. I was comfortable in the back seat, Oran
15 was comfortable in the front seat, and we just -- we had a
16 nice conversation. It wasn't -- nothing out of the
17 ordinary. It was three guys hanging out, was just riding
18 down to the local convenience store or whatnot.

19 Q. It may have been some guys hanging out, but you
20 had a purpose in mind when you were -- when you brought
21 him back to the station; right?

22 A. That's correct.

23 Q. I'm going to show you what's been previously
24 admitted into evidence as 1 and 2 and ask you --

25 MR. VOIGHT: May I approach the witness, Your

MIA PERRON, CCR, CVR-CM

-88-

1 Honor?

2 THE COURT: You may.

3 Q. [Mr. Voight] -- if you can identify those.

4 A. This is another advisement of constitutional
5 rights with the City of North Charleston, that I filled
6 out and signed and dated, and defendant's statement for
7 North Charleston Police Department filled out by Detective
8 Patrick.

9 Q. And that's what you did when you got back to the
10 station; right?

11 A. Yes. We advised him of his rights again.

12 Q. Were you the person that advised him of his
13 rights this time?

14 A. Yes, I was.

15 Q. And not to repeat, but were those the same
16 rights that you've previously told the jury about in the
17 same form?

18 A. Yes. That's the same format form.

19 Q. And did Mr. Smith indicate anywhere on that form
20 that he understood his rights?

21 A. Yes. He did so by initialing, where he put his
22 own initials; he signed, sign and date, put the times on
23 there.

24 Q. And, again, just as in the previous statement,
25 he signed waiving those rights?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Correct.

2 Q. At any time during the second statement did he
3 ask for a lawyer?

4 A. No, he did not.

5 Q. But he was advised that he could have one at any
6 time?

7 A. Yes, he was.

8 Q. And he was advised that he didn't have to talk
9 to you?

10 A. That's correct.

11 Q. Now, who led the questioning of this second
12 statement?

13 A. I was the leader.

14 Q. Did Mr. Smith appear to understand everything
15 that you were saying to him?

16 A. Yes, he did.

17 Q. Did he seem to be impaired in any way in his
18 comprehension or the way he could relay things to you?

19 A. No. Spoke fine.

20 Q. Did he seem more nervous in the interview room
21 than he had been in the car?

22 A. He got kind of fidgety. You know, the wiping of
23 the hands. He was looking down. No -- nothing to not
24 expect from a person that's being sitting there questioned
25 about a murder of supposedly a friend.

MIA PERRON, CCR, CVR-CM

-90-

1 Q. Did he -- was he handcuffed in the interview
2 room?

3 A. No, he was not.

4 Q. Now, I think you just testified in the first
5 statement that you like to talk first and then try to
6 reduce what you've talked about to writing. Is that what
7 you did this time?

8 A. Yeah. What I did: when I got him in there, of
9 course the very first thing I do is advise them of their
10 constitutional rights. And after I've done that, that
11 gives me the liberty to talk to them in reference to this
12 case. Because like I stated before, he was a witness to
13 the first statement, and now he's a defendant, and so he
14 was advised and he's more or less being looked at as a
15 defendant because of the evidence that we had accumulated.

16 And I told Oran, I said, you know, we spoke
17 before and you told me your side of the story and what
18 happened. I said, can you remember what happened that
19 night that you were there you last spent with Cheryl. And
20 he said yeah. And I said, well, go ahead and tell me the
21 story. And he repeated to me basically the same thing he
22 repeated from the first statement.

23 Q. Did you tell him that wasn't good enough?

24 A. Yes, I did.

25 Q. Did you tell him that you thought that he was

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 lying to you?

2 A. I told him I knew he was lying, and that he was
3 lying.

4 Q. And what did you think he was lying about?

5 A. About not murdering or strangling Cheryl Snow.

6 Q. How did you confront him with that?

7 A. After I gave him numerous amount of time and
8 chances to clear his, you know, conscious, tell us the
9 truth, you know -- we know that you were there during the
10 time of the murder; we know that you did it; we have proof
11 that you were there and that you done it; are you sure you
12 don't want to just come clean and get this off your chest
13 and give yourself some closure. He refused to do so.

14 At that point I advised him, I said, well, Oran,
15 we have DNA evidence proving that you killed Cheryl Snow
16 and you strangled her that night. And he just got quiet.

17 Q. How long was he quiet?

18 A. Long enough to think of another lie to tell.

19 Q. Did you yell at him?

20 A. No.

21 Q. Did you threaten physical violence in any way?

22 A. No, I did not.

23 Q. Did you tell him that because of some mental
24 condition he may have he would only serve six months if he
25 told you what happened?

1 A. No, I did not.

2 Q. Did you promise to go light on him if he told
3 you what happened?

4 A. I did not, no.

5 Q. What was -- what did he say after he got quiet?

6 A. Well, after he got quiet and, like I said, he
7 came up with another lie, and then he came up with the
8 fact that she was strangled. We already knew that part,
9 so that he -- when that was presented to him his next
10 thing was, well -- and how I described the DNA to be on
11 some clothes, a piece of clothing that was used to
12 strangle her, that his DNA evidence proved that he was the
13 one actually doing the strangulation --

14 Q. Did you use the word pajamas?

15 A. No. I said there was a -- there was an item
16 used that she was strangled with, or whatever, or
17 something that was used, and your DNA skin grafts was on
18 that item. And he said, well, I was helping her fold
19 clothes because she had done her laundry, and I was
20 helping her fold clothes so that's probably how it got on
21 there. And I explained to him that that wouldn't have
22 been how.

23 Q. You told him basically that that wasn't true and
24 you --

25 A. Correct.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. -- knew that wasn't true?

2 A. Right.

3 Q. What was Detective Patrick doing while you were
4 questioning?

5 A. He was sitting next to me off to the side taking
6 notes.

7 Q. After you confronted him about that lie, what
8 did he say next?

9 A. He kind of stuck to the story, still refusing to
10 admit to the fact that he did, in fact, kill and murder
11 Cheryl Snow.

12 Q. Did you get loud with him?

13 A. No. I just -- I kept repeating to him, you did
14 it, you know you did it, we've got DNA stating that you
15 were there present during the time. The story that he
16 gave us checked out. We checked every avenue that he told
17 us except that one little hole that he refused to admit to
18 to the actual murder. And I explained that to him over
19 and over. I said, you were there; you told us you were
20 there; we know you were there. You know, up until the
21 point that she died, that just was totally skipped over.
22 And then he leaves supposedly to -- what he's advising us,
23 that she was alive when he left. And I told him, no; you
24 left her there; she was dead, and you knew that.

25 Q. What did he say next?

1 A. Again, it took a little longer. He didn't --
2 wouldn't admit to it. Then it got to the point to where I
3 was like -- after repeating myself, explaining the
4 evidence and stuff that we had, his statement, I told him,
5 I said, all right, Oran, I said, let's just do this; I
6 know you did it, you know you did it, Detective Patrick
7 knows you did it. I said, I don't even want you to tell
8 me you did it. I said, just tell me why did you do it.
9 And he said, I snapped, I flipped out. I said, what do
10 you mean. And then that's when he stated something about
11 I heard a voice -- heard voices that told me to do this.
12 And I'm like, do what. And he continued about, well, they
13 were saying that ever since I was over there; I just kept
14 hearing voices and they were saying like, kill her, kill
15 her, do this, do that, to her. And I'm like, okay. So
16 then it kind of went from there with that.

17 Q. Did he tell you what he used to strangle Cheryl
18 Snow?

19 A. He said that he grabbed something, a piece of
20 clothing. I don't think he knew whether it was pajama
21 bottoms or a shirt or nothing, but he just said he -- that
22 he reached for something and he grabbed something and tied
23 it around her neck; after he -- he had choked her out
24 unconscious prior to the strangulation, to her death.
25 When he grabbed her, some type of -- we don't know the

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 whole what led up to that part. But he grabbed her
2 physically around the throat from behind, took her to the
3 ground and he strangled her, until she was unconscious,
4 with his bare arms. After that, he got off of her and he
5 kind of said he stood there and that point she -- being
6 passed out, Cheryl started coming to, because she was only
7 unconscious. There was some blood there. That's where
8 the blood came from, from the abrasion that she received
9 from I guess her mouth or something hitting the floor.
10 Oran got off of her -- this is he statement. He got off
11 of her and he kind of just stood there realizing, you
12 know, you know, I messed up, I did something wrong. And
13 then at that point he said, I had to finish. And he said,
14 I knew I had to finish because when Cheryl woke up she
15 would have gone to the police and told them what I had
16 done. And he said, I couldn't let her tell, and I wasn't
17 going to go to jail. So he said, I grabbed something. He
18 said, I don't know what it was. I grabbed something, I
19 tied it around her neck, and I -- he said, I finished.
20 And then he left. He said he left out of the house. He
21 left the door kind of open and he went to the Hot Spot,
22 whatnot, the other things along the way that he done,
23 called his mother to come pick him up, and he went back to
24 Moncks Corner.

25 Q. Did he express any regret to killing Cheryl

1 Snow?

2 A. Yeah, he was regretful. He cried. He showed
3 emotion.

4 Q. After he told you that he had strangled Cheryl
5 Snow, did he mention any TV shows to you?

6 A. Yeah. He and I -- after he got it off his
7 chest, I kind of give him a minute. He was visibly upset.
8 He was crying. And I told him, I said, well, Oran, take a
9 minute. I said, I understand; I know that she was a
10 friend of yours, to a degree. I said, I don't know what
11 all took place, what led up to this. Because he still
12 didn't give a real reason why he did it. He just said he
13 snapped and that nature.

14 I gave him a minute. And at that point
15 Detective Patrick and I went ahead and Detective Patrick
16 wrote his statement out and we got all that squared away
17 and all of the paperwork.

18 And I kind of talked with him a minute. I was
19 like, Oran, I said, don't you feel better now. He was
20 like, yeah, I do. He said -- he said, I do feel a lot
21 better, you know; you know, it was hard.

22 So we kind of just -- kind of after Detective
23 Patrick finished doing all of the legal stuff, the
24 paperwork, and got everything finished up, I sat in there
25 with him. And Detective Phason [phonetic] came in there.

1 Of course, we knew he had already confessed and
2 everything.

3 And Detective Phason [phonetic] came in and
4 said, you all right, Oran, you okay. And he said, yeah,
5 I'm doing good. And they shook hands. And he said, well,
6 if there's anything we can do, Oran, to make you feel
7 better, you need any water -- we offered him anything. He
8 said, I'm good, this and that.

9 Then he kind of goes whew. He just -- he got
10 real comfortable all of a sudden. He's just like, you
11 know. And he pointed at me. He said, you know, you're
12 good. I'm like, what do you mean. He's like you're like
13 Horatio Schecaro [phonetic]. And I didn't know what he
14 was talking about. And Detective Phason [phonetic]
15 started laughing.

16 I was like -- and so I looked at -- I call him
17 O.J. I said -- I looked at O.J. I'm like, what are you
18 laughing at. He was like, what Oran just said. And I'm
19 like, well, what is he talking about. He says -- he says
20 you're Horatio, or whatever the guy's name is. I said,
21 well, who is this. I said, what is it. And Oran said,
22 well, it's the CSI man who's the guy on TV that gets
23 people to confess or whatever. He said, you're good at
24 it; you're like him; you remind me of him.

25 And I said, oh, okay. I said, well, I don't

1 know the show or whatever; I guess I'll have to check it
2 out. He was like -- he says, yes. He says, you're good,
3 he says, because you got me to confess all my shit. And
4 that's what he said.

5 Q. Did he seem comfortable and relaxed at that
6 point?

7 A. Oh, yeah. We sat around and we -- Detective
8 Phason [phonetic], he -- they laughed. We laughed about
9 it because, like I said, I didn't know the show. I'm
10 like, oh, okay. And that was pretty much that. Detective
11 Phason [phonetic] left and I just stood in there with him
12 and we talked, you know, and he was real relaxed.

13 Q. He still seemed coherent with you, though? He
14 was coherent?

15 A. Oh, yeah.

16 Q. He wasn't confused?

17 A. No.

18 Q. Now, when he was telling you about how he
19 strangled Cheryl and how he took her to the ground, did he
20 tell you where he left her? where he left her body?

21 A. He said she was laying at the -- in the floor of
22 the bedroom with her head up against a door -- or there's
23 a closet there in that area, and he said he left her
24 there.

25 MR. VOIGHT: One moment, Your Honor.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 [Whereupon, Mr. Voight and Mr. Simpson confer]

2 THE COURT: Yes, sir.

3 MR. VOIGHT: Thank you. The State would tender
4 the witness.

5 THE COURT: Ms. Taylor?

6 MS. TAYLOR: Thank you. Good afternoon.

7 THE WITNESS: Hi. How are you doing?

8 MS. TAYLOR: Or -- yeah. Good afternoon.

9 CROSS-EXAMINATION

10 BY MS. TAYLOR:

11 Q. Did you prepare any reports in this case?

12 A. On that day?

13 Q. Any day.

14 A. No, I didn't do any supplemental reports.

15 Q. I'm sorry. I didn't quite hear you.

16 A. No, I did not.

17 Q. You did not prepare any reports?

18 A. No, I did not.

19 Q. Did you do any part of the investigation in this
20 case other than taking these two statements?

21 A. I accompanied Detective Patrick throughout the
22 investigation. We went and talked to other witnesses or
23 possible suspects, yes.

24 Q. And in the course of doing whatever you did
25 along with Detective Patrick, you didn't do any reports?

MIA PERRON, CCR, CVR-CM

-100-

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. No, I did not.

2 Q. So basically what you know is that on two
3 different occasions you went to Oran Smith's home?

4 A. I went once to Oran Smith's house.

5 Q. One time you went to his home and got him, and
6 the second time you sat in on an interview-interrogation?
7 Actually performed it -- with Detective Patrick; is that
8 right?

9 A. I was in both interviews with him.

10 Q. The first one you were with whom?

11 A. Detective Hill.

12 Q. Just you and Detective Hill?

13 A. Yes, ma'am.

14 Q. And on that occasion, is that when you met him
15 at North Charleston Police Department?

16 A. Yes, it was.

17 Q. And the second time is when you and Detective
18 Patrick went up to his home?

19 A. Correct.

20 Q. Do you recognize any of his family in the
21 courtroom? Do you know them?

22 A. I don't know any of them.

23 Q. His mom, his dad, his sisters, brothers --

24 A. I remember -- the father looks familiar. I
25 remember he was upstairs the first time he was up there,

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 and Detective Patrick talked to them. But I do remember
2 the father's face.

3 Q. And when you say upstairs, you're not talking
4 about at their home, you're talking about North Charleston
5 Police Department?

6 A. Yes. Yes, ma'am.

7 Q. Does the North Charleston Police Department have
8 a holding facility, a jail cell?

9 A. No, we do not.

10 Q. So it's just y'all's offices and other county
11 offices, or whatever they are?

12 A. And an interview room, which is a private room.

13 Q. Describe for us this interview room.

14 A. It's probably about the size of this section
15 right here. There's a table there, there's a chair off to
16 the side, there's another chair that would be there.

17 Q. Let me stop you for one second. Just for the
18 record, you're pointing to what area of this courtroom?

19 A. I guess this would be the clerk?

20 Q. The court reporter.

21 A. Yes. Her section. It would be about this size.

22 Q. Okay. And can you estimate, again, for the
23 record, the size of that area?

24 A. I would say six-by-eight, I'm assuming. I don't
25 know.

1 Q. Okay. Go ahead.

2 A. There's a one-way mirror here. Like I said,
3 there was a chair there, which is where I normally sit; a
4 chair here; and this would be the entrance kind of like
5 the door here; and there's a table, kind of long. We was
6 up against this wall. And there's another chair in the
7 area over there where Oran would have sat.

8 Q. Okay. And once you're in that room, there's one
9 door?

10 A. Yes, ma'am.

11 Q. And in relation to the door, where were you?
12 And I'm talking about -- well, let's start with the first
13 one. It would have been you and Detective Hill?

14 A. Correct.

15 Q. Where were y'all sitting, and where was Oran
16 sitting?

17 A. We would have been sitting on the opposite sides
18 of the door so if someone was to walk in, they could just
19 walk in. And Oran was basically to the far corner of
20 the -- which would have been this corner over here, with a
21 table there.

22 Q. Okay. And is the table in between Oran and you?

23 A. It's not in between us. It's kind of like just
24 up against the wall. I mean, if I needed to reach over,
25 shake his hand or whatever, I could do so without having

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 to cross the table. The table is kind of just -- I guess
2 the best way to put it is this would be the table, Oran
3 would be sitting here, and Detective Hill or Patrick would
4 have been here, and this would be the entry to enter. So
5 I could kind of -- I could lean up against the table, he
6 can lean against the table. The only person who wouldn't
7 have access to the table is the person sitting over here.
8 So it was kind of like you can lean on it, you can write.
9 And that's where we do our paperwork, and hand it to them,
10 and stuff of that nature like that.

11 Q. So it would not have been between you and him
12 like this is between you and me?

13 A. No, ma'am.

14 Q. And you and Detective Patrick are between Oran
15 and the door?

16 A. We're kind of more in front of him to the door.

17 Q. If he had wanted to stand up and walk out of
18 that door, would you have stopped him?

19 A. No, I wouldn't have.

20 Q. And you went --

21 A. Oh. Excuse me. At which point? At the point
22 of the first interview, you mean?

23 Q. At any point.

24 A. Well, the first interview he would have been
25 free to go, but the second one he was -- after he was

1 advised of his constitutional rights and at that point we
2 would -- he was going to be arrested eventually, but we
3 wanted to talk to him but he decided to speak to us, so we
4 spoke to him first.

5 Q. Does the advisement of constitutional rights
6 create some difference that would allow him to leave or
7 not leave, in your mind?

8 A. No. The constitutional right is given -- it
9 gives him the right to leave if he's not under arrest. If
10 he's a witness, which he was the first interview that we
11 did. He was a witness, and that's why he signed a witness
12 statement form. If he wanted to leave or stop at any
13 time, he could have.

14 During the second one when I advised him of his
15 constitutional rights, he had the right to counsel or to
16 stop answering questions, or anything of that nature, and
17 had he done -- or decided, you know, he would have stopped
18 the conversation along what we were talking about and then
19 he would have been went ahead and placed under arrest with
20 the charge, based on the evidence that we had already had.

21 Q. I'm sorry. Did you just say that the second
22 interview, if he had not given you any other statement
23 different than he had the first time, you would have
24 arrested him anyway?

25 A. He was going to be arrested at that point, at

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 that station, for the murder of Cheryl Snow due to the
2 evidence that we had accumulated from SLED.

3 Q. And who made that decision and when?

4 A. Detective Patrick would have made that decision
5 as soon as possible, hopefully.

6 Q. And had you and Detective Patrick discussed that
7 prior to picking Oran up on July 18th, that you were going
8 to arrest him regardless of what happened?

9 A. I wouldn't say we discussed it. It's known.
10 Detective Patrick and I worked together for a long time.
11 We're experienced in what we do. And if I have DNA
12 evidence based on a murder case that this gentleman stated
13 that he was there and, you know, had access to him, we
14 know that he was there, then I wouldn't have let him gone,
15 either, without him being placed under arrest.

16 Q. We'll talk about that DNA evidence in just a
17 second.

18 A. I'm sure we will.

19 Q. Did you have a warrant or did Detective Patrick
20 have a warrant for Oran Smith's arrest on July 18th when
21 you went to his home?

22 A. No, ma'am, we did not.

23 Q. But you had this DNA evidence?

24 A. That's correct.

25 Q. Let's talk about the DNA evidence. What, if

1 any, independent knowledge of the DNA evidence did you
2 have?

3 A. That SLED reported that there was -- that there
4 was Oran Smith's DNA on the object used to murder Cheryl
5 Snow.

6 Q. And where did you get this understanding from?

7 A. My understanding came from SLED -- the evidence
8 came -- the report came back from SLED. Detective Patrick
9 informed me. When he got the information that it was Oran
10 Smith, I was sitting at my desk. He was at his desk. He
11 says, I just got the DNA evidence back from SLED. He
12 opened it. He says, let's go get Oran because this is his
13 DNA on there.

14 Q. Okay. Now, do you know what the source of any
15 DNA that may actually have been identified as Oran Smith's
16 was?

17 A. To my knowledge, it was his semen and skin graft
18 from his hands.

19 Q. Skin cells?

20 A. Skin cells. Excuse me.

21 Q. Did you ever see this report yourself?

22 A. I may have handled it or looked at it. And if I
23 did I couldn't tell you really what I'm looking at, other
24 than -- I don't read the DNA stuff, I mean, other than it
25 just says this is the suspect that it matched to and this

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 is the suspect.

2 Q. And let me ask you this. You had talked with
3 Oran Smith for how many hours on June -- well, let's look
4 at -- do you have the advice of constitutional rights form
5 from June 5th, '07?

6 A. I have -- yes.

7 Q. And what is the time indicated when those rights
8 were waived?

9 A. 9:34.

10 Q. And would that be 9:34 a.m. or p.m.?

11 A. On the 5th it would have had to have been 9:00
12 a.m., because we were up all night looking for him and
13 they got him late that morning.

14 Q. Okay. You were up all night the 4th looking for
15 him?

16 A. Which the 4th leading into the 5th. When they
17 discovered her body, it was I want to say approximately
18 dark, dusk or whatever. When we started, our
19 investigation would have led over into the 5th after
20 midnight through the late morning.

21 Q. Okay. So I'm sorry.

22 A. It would have been early a.m. of the 5th.

23 Q. Okay. And we have determined with Detective
24 Patrick's help that Monday was the 4th, the day the body
25 was discovered, around 7:20 in that evening. Is that your

MIA PERRON, CCR, CVR-CM

-108-

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 recollection?

2 A. Yes, ma'am.

3 Q. So the next day would have been Tuesday the 5th?

4 A. Correct.

5 Q. And, again, it says 9:34. You believe that
6 would have been a.m.?

7 A. Yes, ma'am.

8 Q. And then you also have a copy of his -- the
9 actual statement that was taken on 6/6/07?

10 A. Yes, ma'am.

11 Q. Okay. And you see the part there that says this
12 statement is given 6/6/07 at 10:00 p.m.?

13 A. Yes, ma'am.

14 Q. So are you telling us that you had Oran Smith
15 from 9:34 on the morning of Tuesday, the 5th, through
16 until 10:00 p.m. the next day?

17 A. That could have very well have been possible.

18 Q. So that's a pretty lengthy time?

19 A. Yes.

20 Q. If you will go back to that constitutional
21 advice form while we're on that. You went over with
22 Mr. Voight a good bit about this first paragraph, name,
23 date of birth, age, and grade completed in school?

24 A. Yes, ma'am.

25 Q. Why do you care what grade they completed in

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 school?

2 A. Why do I care? This is the department's thing.
3 I mean, this form, it's -- it's what they ask for. I
4 would have to answer by just giving a grade-school
5 education. That would make sure they have the capability
6 to understand it. You know, some people do go to college,
7 so we just write down college.

8 Q. And when you talked with him about his education
9 did you just say what was the grade he completed, and he
10 said 9th, and you wrote it down?

11 A. Yes, ma'am.

12 Q. Well, did you ask him, did you have any idea,
13 about what kind of classes he was in?

14 A. No, I did not.

15 Q. Did you know he was in special ed?

16 A. He stated that he's been in special classes or
17 whatnot, yeah.

18 Q. What does that mean to you --

19 A. That he --

20 Q. -- if anything.

21 A. If anything to me?

22 Q. Uh-huh.

23 A. When he said he might have been in special
24 classes, I figured that he may have a little difficulty in
25 education as far as school education, grade school.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. Did you know that he had a head injury in 1994?
2 He had been shot?

3 A. Yes, ma'am. He did state that to us.

4 Q. And you can see a pretty-pronounced scar on his
5 head. It's here now and it was there then, wasn't it?

6 A. Yes, it was.

7 Q. And that he's missing his right eye entirely.
8 That was the same condition he was in back then, wasn't
9 he?

10 A. That's correct.

11 Q. Did you know that he was not employable? that he
12 was disabled as a result of that? his only source of
13 income, besides his family, was his social security
14 income?

15 A. Yes, ma'am. He did state that to us.

16 Q. Did that mean anything to you?

17 A. I felt sorry for him. Other than that --

18 Q. And then farther down on this same form there's
19 a signature, two witness areas. And one is Detective Hill
20 and one is your signature as witness; is that right?

21 A. Yes, ma'am.

22 Q. Was there anybody else in the room with y'all in
23 that however many hours or days it was that you had Oran?

24 A. No, it was not.

25 Q. Just the two of you and Oran?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Ma'am?

2 Q. Just the two of you --

3 A. Oh. And Oran --

4 Q. -- and Oran?

5 A. Yes.

6 Q. I'm sorry. I'm trying to speak up.

7 Who wrote all of this stuff in here other than
8 Oran Smith's signature and Detective Hill's signature?
9 These checks that are over here, who did that?

10 A. At that point it either would have been
11 Detective Hill or Oran himself. Detective Patrick --
12 excuse me -- Hill was the one who advised him of this
13 statement.

14 Q. Okay. And do you notice there in the signature
15 portions -- because there's one place where Oran has
16 signed, that you already went through, about understanding
17 all of these rights. And then there's a second place
18 farther down saying that he understands and waives them
19 and he wants to talk to you, and no threats, forces, or
20 promises of any kind have been communicated, and Oran
21 Smith has signed each one of those blanks?

22 A. Yes, ma'am.

23 Q. Who put the X there in those blanks?

24 A. It probably was Detective Hill, since he was the
25 one that advised him of the rights, and X'd it and where

1 he needed to sign.

2 Q. And that's why he put the X there? It indicates
3 where he was supposed to sign?

4 A. Yeah. That's what we do for everyone.

5 Q. Okay. Now, this statement which you talked
6 about -- and it's in evidence, so the jury will get to
7 read it.

8 A. Okay.

9 Q. But you talked about, with Mr. Voight, that the
10 rights were read and he either nodded or said yes when
11 asked do you understand these?

12 A. Yes, ma'am.

13 Q. Is that your recollection?

14 A. Yes.

15 Q. Was there any conversation by you or Detective
16 Hill about what those rights actually meant?

17 A. He said he understood them. But, no, we didn't
18 go into like any detail. He read them, and he said he
19 understood them.

20 Q. Was there any conversation from Oran, other than
21 as you've already told us, a nod and a yes?

22 A. Was there any other? I'm sorry.

23 Q. Conversation. When you're going -- or when
24 Detective Hill is going through one, two, three, four,
25 five --

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Correct.

2 Q. -- he would read one and Oran would --

3 A. Other than --

4 Q. -- I think you said --

5 A. -- after he would read the one, do you actually
6 understand what I just read to you. And it was yes, yes.

7 Q. Was there any other verbal communications from
8 Oran during that process, other than the nod and the yes,
9 at the conclusion of Detective Hill reading and saying do
10 you understand me --

11 A. No. There was nothing else Oran stated.

12 Q. -- that first.

13 Now I'm going to talk about the June interview
14 first. When in that interview did you discuss with Oran,
15 or say to him, you told us what happened with Cheryl that
16 weekend; is she going to tell us the same thing; if we get
17 her on the phone, is she going to tell us that. Do you
18 remember asking him that?

19 A. Yes. I did ask him that.

20 Q. And when in this process -- because we've got
21 either twelve or fourteen hours, or two days.

22 A. Uh-huh.

23 Q. When in that process did that part of the
24 conversation occur?

25 A. After he was advised of his rights.

1 Q. So in the beginning of this interrogation, you
2 didn't tell him that Cheryl was even dead, did you?

3 A. No, I did not.

4 Q. And so y'all were talking, and you're trying to
5 get information from him about his knowledge of Cheryl
6 Snow and maybe being there. Because you knew at that
7 point he had been in her apartment; right?

8 A. Yes.

9 Q. Because y'all had the fingerprints on the beer
10 can?

11 A. Correct.

12 Q. He didn't deny that, did he?

13 A. No, he did not.

14 Q. Did he explain to you how long he had known
15 Cheryl?

16 A. I think he said they had known each other for
17 quite some time.

18 Q. And did he explain to you how they met?

19 A. I can't say of how they met, but they met some
20 way -- some -- I think they knew each other for at least a
21 year or so, some years, so I --

22 Q. Some years?

23 A. Right.

24 Q. Did he tell you the nature of their
25 relationship? Did y'all talk about how they knew each

1 other or what they were to each other?

2 A. Yes, they did.

3 Q. And what did he tell you?

4 A. They like would have sex or whatnot. He would
5 come over, he would hang out with her, and that type of
6 stuff.

7 Q. So they were friends and had a casual sexual
8 relationship?

9 A. Correct.

10 Q. They weren't seriously dating each other, were
11 they?

12 A. No, they were not.

13 Q. He was not her boyfriend, was he?

14 A. No, he was not.

15 Q. She had a boyfriend, didn't she?

16 A. No. She didn't have a boyfriend but she had a
17 friend, and Oran had a girlfriend.

18 Q. And so when do you think, in the course of
19 however long that took -- well, let me ask you this first.
20 Sorry.

21 Was it -- you told us in the morning you picked
22 him up? About thirty minutes to drive in, get into the
23 station. Did you start the interrogation pretty quickly
24 there, or was there any lunch breaks or food breaks or --

25 A. Which incident? You're --

1 Q. We're sticking with June for now.

2 A. That's the first one. I didn't pick him up.
3 The I.E.P. Team or whatever picked him up. That's when
4 Sargent Mastantuno did the search warrant on his
5 residence. They brought him back.

6 Q. Okay. So you meet him in the interrogation
7 room; is that right?

8 A. Correct.

9 Q. Is there anything other than just starting into
10 it right then after y'all did the advisement of rights?

11 A. Right. When we come into that room, we sat down
12 and -- I had already met him, introduced myself -- or
13 Detective Hill introduced himself. We sat him down. We
14 said, okay, we'll explain. Said, we need to talk to you
15 in reference to this incident. We want to talk to you
16 about -- but first, before we do that, we need to advise
17 you of your constitutional rights. And that's just, you
18 know, what we do. That's part of, you know, this
19 investigation. Advise them of their constitutional
20 rights, and then we go ahead with any questions or
21 comments that we want to --

22 Q. What did you tell him the incident was you
23 wanted to talk to him about?

24 A. Pretty much I just asked him about Cheryl -- I
25 asked him if he knew Cheryl Snow. I do remember showing

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 him her driver's license picture, which was the only
2 picture that we had, just her picture. I said, do you
3 know this lady. Kind of did this number. I said, do you
4 know her, and he said, yeah. I said, well, who's that.
5 He was like, that's Cheryl. I said, how do you know her.
6 And he said, you know, they had relationships or whatever
7 off and on; you know, friends, whatever.

8 I asked him, so she is a friend of yours. He
9 was like, yeah. I said, can you call her. He was like,
10 yeah. I said, well, when was the last time you seen her.
11 He said, this weekend or -- yeah, this weekend. Because
12 we just picked him up. So then he kind of told us -- you
13 know, he went down his story, or whatever took place or
14 whatever. So I said, well, if I call her, will she tell
15 me the same thing, the same story you just told us. Then
16 he kind of, yeah, you know, I'm sure she would.

17 And then he kind of like was, well, did
18 something happen to Cheryl. I said, well, why would you
19 ask that. He said, well, you're asking me about her so I
20 assume something happened to her. I said, yeah, something
21 happened to her. And then he put his head down and he
22 kind of just did this number [indicates]. And nobody said
23 nothing.

24 I said, you want to tell me what happened to
25 her? Do you know what happened to her? He was like -- he

1 hold his head up and said, no, I don't -- I don't know
2 what happened to her. He said, what happened to her. I
3 said, you want to know what happened to her. Then he said
4 no. I said, well, why you wanted to know. He said,
5 because I don't want to hear nothing that bad -- that's
6 bad that had happened to her if she's hurt. And I said,
7 why do you think that she would be hurt. He said, well,
8 y'all the police; y'all wouldn't have me here if she
9 wasn't hurt if something bad happened to her. I said,
10 yeah, Oran, something bad happened to her; she's dead.
11 And he started crying.

12 Q. How many interrogations have you done in your
13 career?

14 A. Quite a few.

15 Q. How long have you been on North Charleston
16 Police Department?

17 A. Nine years December 4th this year.

18 Q. Had you worked at any other police department --

19 A. Yes, I did.

20 Q. -- before North Charleston?

21 A. Yes, ma'am.

22 Q. Where was that?

23 A. Cottageville and Summerville police department.

24 Q. How long is your total law enforcement career?

25 A. About eleven, twelve years.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. How many times have you interrogated people in
2 reference to a homicide?

3 A. I would say well over fifty.

4 Q. Quite a few?

5 A. Yes, ma'am.

6 Q. You don't ever take notes when you do this?

7 A. No, I do not.

8 Q. You just keep it all in your head?

9 A. Detective Patrick normally -- he likes to write,
10 so he takes the notes.

11 Q. He didn't take any in this interview.

12 A. He did not?

13 Q. He did not.

14 A. Well, he wasn't in that interview. Detective
15 Hill was there.

16 Q. I believe he didn't take any in the second
17 interview.

18 A. Oh, okay.

19 Q. I'm sorry. He wasn't in this one. You're
20 right. He may well have taken notes in this one, but he
21 did not in the second one. Does that surprise you?

22 A. No, it doesn't surprise me.

23 Q. So back to the first one. All of this that
24 you're telling us now, not much of that is in this
25 statement, is it?

1 A. No, ma'am.

2 Q. Why is that?

3 A. Because that's not what Oran said. I wrote the
4 statement in Oran's words. What he wanted to tell me is
5 what I wrote down. I didn't give him anything to say.

6 Q. Well, I mean, you just told us a whole bunch of
7 stuff that Oran said.

8 A. Well, we talked about a whole bunch of stuff.
9 We was in the interview for quite some time. I couldn't
10 have possibly have wrote down everything that we talked
11 about.

12 Q. But you can remember it today?

13 A. Oh, yeah, I -- I remember things.

14 Q. How long do you think -- again, I think this was
15 my first question -- in this interrogation process did you
16 spend with Oran, when you first picked him up in June,
17 before you told him that Cheryl was dead?

18 A. From the time that I advised him -- or Hill
19 advised him of his constitutional rights and to the point
20 that I told him that Cheryl was actually dead, we was
21 probably in the interview less than an hour.

22 Q. Okay. So within the first hour we've gone
23 through you asking him about what he knew and what his
24 time with Cheryl was, and he answered you?

25 A. Yes.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. Now, you've got that statement with you; right?

2 A. Yes, ma'am.

3 Q. And that's essentially the same thing that he
4 told y'all again on July 18th, isn't it?

5 A. Yes, ma'am.

6 Q. That he -- and I'm paraphrasing but you've got
7 it right there, so you correct me if I get it wrong,
8 because it's possible. He sees her Saturday? Comes to
9 her house sometime Saturday?

10 A. Yes.

11 Q. He talks about having some food, drinking some
12 beer, having some cigarettes, having some sex, going to
13 sleep, getting up the next morning, having some sex,
14 having some coffee or something, maybe eating something
15 else, they talk a little bit between them about different
16 things, somebody knocks on the door or calls and they talk
17 about that, and then he leaves because she says, time for
18 you to go, for whatever reason. Does that about cover it?

19 A. Yes, ma'am.

20 Q. Is there anything in that statement that he told
21 y'all about that isn't true?

22 A. Other than the fact that he left out of the part
23 about killing Cheryl Snow, this would be true, yes.

24 Q. Well, would be true or is true --

25 A. Is true.

1 Q. -- Detective?

2 A. It's true. It is true.

3 Q. Okay. Anything in that statement -- that he
4 truthfully told you -- about his whereabouts and what
5 happened, that you were unable to corroborate or you had
6 evidence to show was, in fact, not true?

7 A. It was true.

8 Q. Okay. So you spend hours and hours with him,
9 get this information. Do you go over it more than once in
10 those ten hours, or twenty, depending on if the dates are
11 right or wrong?

12 A. That's correct.

13 Q. Because you're talking for a long time whether
14 it's the same day that you picked him up -- or that he was
15 picked up at 9:34 and you take the statement at ten
16 o'clock that night, or it's a whole other day, the next
17 day, if the dates are correct?

18 A. Correct.

19 Q. So when you finished after the statement at ten
20 o'clock, what happens? Again, we're back in June.

21 A. After we finished the statement?

22 Q. Uh-huh.

23 A. Oran goes home.

24 Q. And then you have some peripheral involvement in
25 the case with some other suspects and witnesses or

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 whatever, but nothing else happens, as far as Oran is
2 concerned, and you, until after this DNA stuff?

3 A. Correct.

4 Q. Okay. Were you in the courtroom when
5 Ms. Gallman from SLED testified about the DNA stuff?

6 A. Yes, I was.

7 Q. Now, you told us it was yours and presumably
8 Detective Patrick's understanding that there were skin
9 cells located somewhere on the pajama bottoms where the
10 ligature was?

11 A. Correct.

12 Q. Do you have any idea where they were supposedly
13 related, at least what y'all thought, when you got this
14 information?

15 A. Where on the object?

16 Q. Yes.

17 A. I wouldn't know. I don't know where the skin
18 cells were located.

19 Q. Okay. Were you here for Detective Patrick's
20 testimony about why he wanted to send the pajama bottoms
21 to SLED to have them tested?

22 A. No, I was not.

23 Q. Is it still your understanding today that there
24 is any scientific evidence showing Oran Smith's -- or
25 anybody else's -- skin cells anywhere on those pajamas?

1 A. Skin cells? The only skin cells that I know of
2 was Oran Smith's.

3 Q. So you believe that somebody found skin cells?

4 A. Well, that's what SLED said, and SLED would have
5 been the one to check.

6 Q. Who at SLED said that?

7 A. Excuse me?

8 Q. Who in SLED said that?

9 A. That the DNA evidence came back to Oran?

10 Q. Uh-huh. You were here for Ms. Gallman -- you're
11 talking about Ms. Gallman?

12 A. Who's that? The black female from SLED?

13 Q. Yes. Yes.

14 A. To my knowledge, it was the suspect who's skin
15 grafts matched up with Oran Smith's.

16 Q. You don't recall me asking her whether she had
17 any skin --

18 MR. VOIGHT: Objection.

19 THE COURT: Basis? Please approach.

20 [Whereupon, an off-the-record bench conference
21 is held]

22 THE COURT: Sustained.

23 MS. TAYLOR: Court's indulgence one moment, Your
24 Honor.

25 THE COURT: Yes, ma'am.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 [Whereupon, Ms. Taylor and Mr. Nixon confer]

2 THE COURT: Ladies and gentlemen, we're going to
3 break for lunch after this witness, just to fill you
4 in. I see some of you eating your pens, anxiously
5 awaiting, so I just wanted to let you know where we are
6 as far as scheduling. Thank you.

7 Q. [Ms. Taylor] Okay. Let's go back to the
8 statement, put aside whatever Ms. Gallman may or may not
9 have said in court. And we're back to June again. You
10 told us that after that interview Oran went home, y'all
11 decided to go pick him up again in July, based on the SLED
12 evidence, whatever it may actually be. Now, you're in the
13 room again. Same room, right, or a different room?

14 A. Yes, ma'am, same room.

15 Q. Same? Same setup?

16 A. Yes, ma'am.

17 Q. Everybody is in the same place?

18 A. Yes, ma'am.

19 Q. Now, this was the occasion when you were at his
20 home; is that right?

21 A. Yes, ma'am.

22 Q. And, again, you talked about a couple of things
23 that were said by Oran, but none of that's in a report
24 anywhere; is that right?

25 A. Correct.

1 Q. Why do you guys that make reports, make reports?
2 What's the purpose of a law enforcement professional
3 making a report?

4 A. Okay. We have several reports that we make.
5 We've got police reports, we've got supplemental reports,
6 statements. What report would you maybe be specifically
7 talking about?

8 Q. Any report.

9 A. Keep track of whatever we need to keep track of.

10 Q. I'm sorry. I couldn't hear you.

11 A. You make a report to keep track of whatever you
12 need to take to keep track of, whatever the case may be.

13 Q. Everything that we are here today talking about
14 happened two years ago, didn't it?

15 A. Yes, ma'am.

16 Q. Is part of making reports at the time things
17 happen to preserve the accuracy of what really happened?
18 Has that got anything to do with anything?

19 A. Yes. That would have a lot to do with it.

20 Q. Do you ever make reports in cases, or did you
21 just not do it in this one?

22 A. Yes, I do make reports in cases. And I did not
23 do it in this one. It wasn't my case, it was Detective
24 Patrick's.

25 Q. But you participated in it, didn't you?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 A. Yes, ma'am.

2 Q. Now, you talked with Mr. Voight about this --
3 your -- is it cousin? Detective Phason [phonetic]?

4 A. Yes. He's a relative.

5 Q. And so there was something that -- some
6 communication about something that happened between him
7 and Oran when they were in high school?

8 A. That's correct.

9 Q. What happened?

10 A. There was a fight between the two of them.

11 Q. And what happened?

12 A. And to my recollection is that Detective Phason
13 [phonetic], at the time, had a girlfriend. Oran
14 supposedly made comments to or about the young lady. I
15 don't know any of the details about it. Detective Phason
16 [phonetic] confronted him at the school, I guess. I don't
17 know where the incident took place. Oran supposedly
18 denied whatever the gestures, or comments, statements
19 were, and Detective Phason [phonetic] punched him or did
20 some kind of Karate move on Oran and assaulted him.

21 Q. Okay. And you also talked with Mr. Voight [sic]
22 when you were in the room. And the second interview on
23 July 18th was a much shorter interrogation, wasn't it?

24 A. Oh, yes, ma'am, it was.

25 Q. Okay. The first one had been quite lengthy?

1 A. Correct.

2 Q. And so you talk, and you've already gone through
3 the advisement of rights and that he talked and he told
4 you the same information he had told you before?

5 A. That's correct.

6 Q. Pretty consistently; is that right?

7 A. Yes, ma'am.

8 Q. And that's a month and a week or so after the
9 first time you got it from him?

10 A. That's correct.

11 Q. Now, the first time you finished that statement,
12 did you confront Oran? Back in June, now. The first one.
13 Did you confront him, after he told you what had happened,
14 at that point?

15 A. Did I confront him as to what?

16 Q. Did you say, I don't believe you, I think you
17 are lying?

18 A. No, I did not.

19 Q. Why not?

20 A. Because at that point we didn't have much of
21 anything to go off of with what witness statements we had
22 collected, and it was still fresh and we knew that we had
23 to go talk to some more people. So we got Oran's
24 statement, based on what he had. We went over it and made
25 sure he understood, you know, what he was telling us and

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 that, in fact, that was the truth. He was pretty much at
2 that point the only person that we had that we really had
3 to talk to. So we left it at that until we got some more
4 investigation.

5 Q. So nothing in your intuition from all your years
6 as a law enforcement, or anything else, made you question
7 that what he was telling you, the information --

8 Which was fairly specific, wasn't it, as far as
9 statements go?

10 A. Yes, it was.

11 Q. -- that it was not true?

12 Any intuition or concerns or fears that what you
13 were getting and committing to writing there was not true
14 on --

15 A. No, it was --

16 Q. -- June 6th?

17 A. It was truthful. We checked into everything,
18 and it checked out.

19 Q. Now, on July 18th, different circumstances, at
20 least in your mind; right?

21 A. Correct.

22 Q. Okay. But still, in the beginning of the
23 interview you asked him to tell you what happened and he
24 did?

25 A. Yes, he did.

1 Q. And he told you -- how many times did you go
2 over with him -- you said a couple of times that he told
3 you that -- how many times do you think that he repeated
4 the same information?

5 A. I couldn't go into how many times. I mean, it
6 was several. He stuck to his story.

7 Q. And you indicated to Mr. Voight that he repeated
8 the same --

9 You call it a story, I call it a statement.
10 Same thing; right?

11 A. Correct. Correct.

12 Q. -- the information --

13 A. Correct.

14 Q. -- that y'all got from him?

15 A. Yes, ma'am.

16 Q. And you told him that -- at least once or twice,
17 as I recall, you tell Mr. Voight that now this time around
18 we did confront him?

19 A. Yes, ma'am.

20 Q. Mr. Voight asked you specifically. You said you
21 told him that wasn't good enough, didn't you?

22 A. [No response]

23 Q. Is that what you said?

24 A. I told him he was lying. I didn't say good
25 enough.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. You didn't say, that's not good enough?

2 A. No. I didn't say -- I don't talk like that.

3 Sorry.

4 Q. So what did you say?

5 A. I said, you lying.

6 Q. Just like that?

7 A. Yeah.

8 Q. Okay. What did he say?

9 A. He says, no, that's the truth. I said, well,
10 you're lying, Oran; I know you're lying; we all know
11 you're lying; and if you want to stick with this story,
12 basically it might be the truth but you're leaving
13 something out. I said, do you want to tell me what you're
14 leaving out? I said, because, yeah, we checked back. We
15 went to the video, we talked to people, we went to her
16 friends, I mean, we talked to everybody possibly that was
17 associated. I said, your story probably is the truth but
18 you're leaving out the fact of what happened when you
19 killed, strangled, Cheryl Snow.

20 Q. And how many times did you confront him with
21 that kind of a communication, you're lying, I know you're
22 lying, and whatever else you might have said, and he
23 responded to those confrontations by saying, I told you
24 what happened, I told you what happened?

25 A. Then he said, I told you what happened. I said,

1 well, you're not telling me all of what happened.

2 Q. How many times did that occur?

3 A. Several times. I couldn't give you --

4 Q. And then what -- what do you recall happening to
5 trigger this spontaneous change after the first statement
6 for hours and hours and hours, and the second statement
7 for at least some period of time? What was said by you or
8 Detective Patrick, if he said it, right before this
9 change?

10 A. I don't know what was said before the change. I
11 didn't -- in fact, I told him, I said, you'll feel a lot
12 better if you just tell the truth. I mean, you know, tell
13 the truth and you'll feel a lot better. I said, we
14 already know. And then I told him, I said, I'll tell you
15 what, do this for me; you don't have to tell me that you
16 did it, just tell me why you did it. And, I flipped.

17 Q. All right. Let's back up for one second. You
18 said you told him it wasn't the truth or you said, I know
19 you're lying. Did you say that?

20 A. Yes, ma'am.

21 Q. Now, what -- and I think we've already been
22 through this, but tell me if you think I'm wrong. Is
23 there anything that he had told you, both in the written
24 statement and in hours of interrogation, that was a lie?

25 MR. VOIGHT: Objection. Asked and answered.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 THE COURT: Overruled.

2 MR. VOIGHT: Thank you.

3 A. Could you please repeat it so I can make sure I
4 answer you correctly?

5 Q. [Ms. Taylor] Was there anything in either the
6 written statement taken June 6th, or the hours of
7 interrogation prior to that statement, or in the
8 investigation to the extent that you played any role in
9 it, and the second interrogation in July where he's still
10 maintaining the same information, the same statement that
11 he told you before -- anything in that that was a lie?

12 A. Yeah. It was a lie if the lie was that -- when
13 I asked him to tell me what took place from the time he
14 met Cheryl Snow until the time he left Cheryl Snow, the
15 lie was, I did not kill Cheryl Snow and when I left she
16 was alive. That was the lie.

17 Q. Okay. Anything else?

18 A. Everything else checked out fine, other than
19 that part.

20 Q. And the reason that you considered that a lie --
21 because you said you knew different, you knew he was
22 guilty. You told him that; right?

23 A. Yes, ma'am.

24 Q. We know you did it, Detective Patrick knows you
25 did it, we've got scientific evidence that says you did

1 it. All of this was going on; right?

2 A. Yes, ma'am.

3 Q. Prior to this confession here; right?

4 A. Yes, ma'am.

5 MS. TAYLOR: The Court's indulgence just one
6 moment.

7 THE COURT: Yes, ma'am.

8 Q. [Ms. Taylor] I needed to talk to you about one
9 other area. Mr. Voight was talking to you about how Oran
10 appears and did he seem okay and able to understand
11 everything that was going on. And he asked you if -- and
12 this is on any occasion that you were in a room or
13 anywhere else with Oran -- did he appear to have any
14 auditory hallucinations, did he appear to hear voices at
15 any point.

16 A. No, he didn't. No, he did not.

17 Q. And the first time you met him at his home and
18 there was, again, hours and hours of interrogation -- and
19 I think you even said at one point you did ask in the
20 advisement of rights part about whether you're taking any
21 medication or getting any treatment, or whatever you asked
22 in that part?

23 A. I asked him if he's on any medication or
24 anything now, presently, like drugs or anything that would
25 cause him not to be coherent. Yes, I did.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Q. And he said no?

2 A. Correct.

3 Q. Do you recall at what point in the -- and,
4 again, we're on the July interrogation -- the comments
5 were made about we want to help you? Or were there? Do
6 you recall any comments made by you or Detective Patrick,
7 we just want to help you?

8 A. No.

9 Q. You don't recall that?

10 A. No.

11 Q. Were you in here when Detective Patrick
12 testified?

13 A. No, I was not.

14 Q. You also were talking about -- I mean, not sure
15 where this came from. I just have it listed as you were
16 talking with Mr. Voight about blood that came from her
17 hitting the floor.

18 A. Yeah.

19 Q. Was that something you communicated to Oran in
20 some way?

21 A. That I told him that blood came from her hitting
22 the floor?

23 Q. Yes.

24 A. He told me that when he strangled her the first
25 time that he was on her and he got off her, he stopped and

1 he realized what he had done, he saw blood coming from
2 underneath her head; blood was coming out. I didn't tell
3 him that there was blood on the floor.

4 Q. So you recall that Oran said to you -- make sure
5 I have this right -- in July, during that interview --

6 A. Uh-huh.

7 Q. -- that he choked Cheryl the first time --

8 A. Yes.

9 Q. -- and at that point in time, immediately
10 thereafter, blood came from her onto the floor?

11 A. He stated that he saw some blood coming from her
12 mouth area or head area and that he knew he had to finish,
13 because she was going to call the cops, after he realized
14 that she was moving and coming to.

15 Q. And that would have been in what you're telling
16 us now prior to the actual strangulation with the ligature
17 that resulted in her death?

18 A. Yes.

19 Q. Now, you also -- do you have a copy of the July
20 18th statement?

21 A. Yes, ma'am.

22 Q. And I just want to clarify because, again, the
23 jury will get to read these for themselves. The first --
24 it starts: [reading] everything in my first statement was
25 truthful up until --

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 And so you didn't rewrite all of this same
2 information that's in the first three-page statement and
3 recount it again? You sort of adopted it together?

4 A. This was the statement that Detective Patrick
5 started. It's --

6 Q. I say you. I mean y'all.

7 A. Right.

8 Q. Did you understand what I just asked you?

9 A. Yes, ma'am. This is how Oran started his
10 statement. [Reading] Everything up until this statement
11 is truthful.

12 That's what Oran told Detective Patrick and he
13 wrote down.

14 Q. Inarticulate.

15 My question is this first statement in June,
16 which is three pages long, is that the same as what is
17 referred to here as my first statement so it was sort of
18 incorporated into --

19 A. I got -- yes, ma'am.

20 Q. Y'all just didn't take -- you didn't write --

21 A. Right. He didn't --

22 Q. -- it all over again?

23 A. Right. He didn't start from -- correct.

24 Q. And I recall you telling Mr. Voight, when you
25 were talking about what was said during the statement --

1 and I'm going to direct you to the second page of the July
2 18th statement. And there is an area which is scribbled
3 out, which Detective Patrick just was repetitive, you told
4 us about. You see that?

5 A. Yes, ma'am.

6 Q. Okay. And then right after that is the sentence
7 that says: [reading] I left the room and then left out
8 the front door. It was still daylight out when I left.

9 And then he goes on about going to Remont Road.
10 I'm sorry. Do you see where I am?

11 A. Yes, ma'am.

12 Q. Is there anything in there about him saying he
13 left the door open?

14 A. No, ma'am.

15 Q. But that's what you recall him saying?

16 A. No, he didn't -- he didn't say he left the door
17 open.

18 Q. Oh, I'm sorry. I thought you told Mr. Voight
19 that when you were talking to him about what was said in
20 the statement earlier.

21 A. No. What I said was he left the door open,
22 meaning once the murder was committed and Oran left the
23 residence, he didn't close the door behind him. Because
24 the person who called 911, who went by to visit Cheryl,
25 told us the door was open. It's like he didn't open the

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 door, he went to the door, the door was adjared
2 [phonetic], and he calls for Cheryl, and kind of pushed
3 the door open some more and called for Cheryl, walked,
4 called Cheryl, saw her body laying there, ran out. So I
5 said he left the door open because he would have been the
6 last person that had been in that residence.

7 Q. So when you were being directly examined by the
8 prosecutor, Mr. Voight, and relating your recollection of
9 his confession, when you said he left out and left the
10 door open that's your theory?

11 MR. VOIGHT: Objection. Asked and answered.

12 THE COURT: Overruled.

13 A. Yes, that's my theory of what happened based on
14 his statement into evidence that we have from our
15 investigation.

16 Q. [Ms. Taylor] And in his statement that you have
17 in this investigation, it doesn't say anything about him,
18 his words, saying when I left, I left the door open, does
19 it?

20 A. No, ma'am.

21 MS. TAYLOR: The Court's indulgence just one
22 moment.

23 THE COURT: Yes, ma'am.

24 [Whereupon, Ms. Taylor and Mr. Nixon confer]

25 Q. [Ms. Taylor] I don't think I asked you this,

1 but if I have just tell me. Do y'all have audiotapes at
2 North Charleston?

3 A. No, ma'am, we do not.

4 Q. Do you have videotapes?

5 A. No, ma'am, we do not.

6 Q. Nowhere in the North Charleston Police
7 Department is there an audio or videotape on June 6th
8 or July 18th, 2007?

9 A. No, ma'am.

10 MS. TAYLOR: Okay. Nothing further.

11 MR. VOIGHT: No other questions, Your Honor.

12 THE COURT: Detective, you may step down.

13 THE WITNESS: Thank you.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 MR. VOIGHT: At this time, the State and the
17 defense would agree to a stipulation, Your Honor, that
18 if called -- or re-called to testify, Officer Angela
19 Bunker would testify that the swabs contained in
20 State's 63 were the same swabs that she had obtained
21 from Oran Smith.

22 MS. TAYLOR: That is correct.

23 THE COURT: All right. Thank you.

24 Ladies and gentlemen, it is now an appropriate
25 time for us to take our lunch break. Please do not

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 begin your deliberations. Do not read, watch, listen
2 to any new accounts, if any, regarding this case.

3 Please do not discuss this case amongst
4 yourselves.

5 Please be back in your jury room at 2:30.

6 Please rise for the jury.

7 [Whereupon, the jury exits the courtroom at
8 12:53 p.m.]

9 THE COURT: Thank you. Be seated.

10 - - - - -

11 DEFENDANT'S RIGHTS

12 THE COURT: Mr. Smith, I'm going to take this
13 opportunity to go ahead and advise you of your right to
14 testify, as well as your constitutional right, so that
15 you may have the lunch hour to discuss this with your
16 attorney. Please rise.

17 Please swear the defendant.

18 THE CLERK OF COURT: Please raise your right
19 hand.

20 [Whereupon, Mr. Smith is duly sworn by the clerk
21 of court as follows: do you swear or affirm that the
22 testimony that you shall give shall be the truth, the
23 whole truth, and nothing but the truth, so help you
24 God]

25 MR. SMITH: Yes, I do.

1 THE CLERK OF COURT: Thank you.

2 THE COURT: Mr. Smith, at this time I am going
3 to explain to you certain of your rights. If you do
4 not understand anything that I say, please let me know,
5 and if you need me to explain anything to you in
6 further detail, please let me know.

7 Do you understand, Mr. Smith?

8 MR. SMITH: Yes, ma'am.

9 THE COURT: I'm going to need you to speak up,
10 Mr. Smith.

11 Mr. Nixon, if you could move that microphone
12 closer. Thank you.

13 We have now reached the stage of the trial where
14 you may present your defense. You have the right to
15 claim the protections given to you by the fifth
16 amendment to the constitution of the United States.
17 This amendment, sir, states in part no person shall be
18 compelled in any criminal case to be a witness against
19 himself. This means that you cannot be required to
20 testify in this case. You have the right to testify on
21 your own behalf. However, no one can make you testify.
22 This is a personal right, and no one can waive this
23 right except for you.

24 Do you understand that, Mr. Smith?

25 MR. SMITH: Yes, ma'am.

1 THE COURT: If you decide to testify, you will
2 be subject to the same rules that govern other
3 witnesses and you may be examined and cross-examined on
4 any relevant issue in this case.

5 In addition, if you have any convictions
6 involving dishonesty or false statements or for crimes
7 punishable by imprisonment for more than one year and
8 the Court determines that the probative value of
9 admitting this evidence outweighs its prejudicial
10 effect to you, the solicitor will be able to introduce
11 your record to attack your credibility.

12 If you decide to testify, this decision on your
13 part must be freely, voluntarily, and intelligently
14 made with the knowledge of the protections given to you
15 by the fifth amendment, as well as the consequences of
16 your decision to testify.

17 Mr. Smith, if you decide not to testify, I will
18 instruct the jurors that they cannot give the fact that
19 you did not testify any consideration whatsoever and
20 that there is to be absolutely no prejudice to you
21 because you did not testify. It is left entirely up to
22 you whether or not you will testify. You may talk with
23 your attorneys, your family and friends or anyone else,
24 but the final decision must be yours and yours alone.

25 Do you understand what I have explained to you,

1 Mr. Smith?

2 MR. SMITH: Yes, I do.

3 THE COURT: Do you have any questions about what
4 I have explained to you?

5 MR. SMITH: No, I don't.

6 THE COURT: Have you discussed with your lawyer
7 whether or not you wish to testify?

8 MS. TAYLOR: We have not had a final discussion
9 yet. We have discussed --

10 THE COURT: All right. Mr. Smith, when we
11 resume, and at the appropriate time, I'm going to ask
12 you one further question: do you wish to testify. So
13 that is the question that you need to speak with Ms.
14 Taylor and Mr. Nixon over the lunch hour.

15 Do you understand that question?

16 MR. SMITH: Yes, ma'am.

17 THE COURT: All right. Thank you. You may be
18 seated.

19 [Whereupon, Mr. Smith complies]

20 THE COURT: Mr. Voight, do you have any
21 additional witnesses?

22 MR. VOIGHT: No, Your Honor.

23 THE COURT: Does the State rest?

24 MR. VOIGHT: Yes, ma'am.

25 THE COURT: All right. We are going to go ahead

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 and take our lunch break. I will allow you to --

2 I understand now, Ms. Taylor, you will have some
3 motions?

4 MS. TAYLOR: Yes, ma'am.

5 THE COURT: All right. We will address those
6 motions right at 2:30. Typically the jurors are not
7 back right at 2:30, so we will go ahead and begin our
8 motions at that time.

9 And do you anticipate calling any witnesses, Ms.
10 Taylor?

11 MS. TAYLOR: I don't think so.

12 THE COURT: Are you requesting any lessor-
13 includeds?

14 MS. TAYLOR: No, ma'am. If you have the charges
15 and you want to go over what you're charging, we have
16 the basic one that you just talked about, obviously.
17 But, no --

18 MR. VOIGHT: None from the State, Your Honor.

19 Just a point of clarification. Detective Hill
20 is here. If Ms. Taylor doesn't intend on calling him,
21 I would ask that he be released from his subpoena.

22 MS. TAYLOR: I'm not intending on calling him.

23 THE COURT: All right. You may release
24 Detective Hill at this time. Thank you.

25 We're going to go ahead and take our lunch

1 break. Please be back at 2:30, prepared.

2 First of all, Mr. Smith, we'll discuss your
3 decision to testify or not testify after we hear the
4 motions, Ms. Taylor. All right? Thank you.

5 MS. TAYLOR: Thank you.

6 MR. VOIGHT: Thank you.

7 [Whereupon, a recess is taken from 12:58 p.m. to
8 2:29 p.m.]

9 THE COURT: All right. Ms. Taylor, do you have
10 any motions?

11 MS. TAYLOR: Mr. Nixon is going to make those
12 for me, Your Honor.

13 THE COURT: All right. Thank you. Mr. Nixon,
14 I'll be happy to hear from you.

15 MR. NIXON: Thank you, Your Honor. May it
16 please the Court. I didn't know if we needed to have
17 them rest on the record in front of the jury or --
18
19
20
21
22
23
24
25

- - -

- - -

MOTION TO EXCLUDE

THE COURT: We'll go ahead. The State has rested, and so I'm going to hear your motions. He will rest in front of the jury.

MR. NIXON: Okay. Thank you, Your Honor. May it please the Court.

The key things -- and if you would like for me to go through them all at first before you rule, or go one by one, just let me know.

The first is that we'll renew our motion to exclude the second statement from July 18th of 2007. I think based upon the testimony that you heard from Detective Elmo and -- or Elmore and the other detectives who testified about the statement, is different than -- the testimony that they gave in the Jackson v. Denno hearing is substantially different from the testimony that they gave during the course of the trial.

What you heard from those detectives during the course of the trial was at the time they went up to get Mr. Smith from his house in Moncks Corner, that he was not free to leave. There was some discussing before that he was -- they were going up there to talk to him just as a witness, not as a defendant. What came out in the testimony is that they were going up there to

1 talk to him as a defendant, that they were going to
2 arrest him no matter what he said or what he did, and
3 they had plans to do that regardless of what happened.
4 In fact, at one point he starts turning away and
5 walking away from the house. I think Detective Elmore
6 says, oh, whoa, whoa, whoa, wait a minute, where are
7 you going, come back here. That's clearly indicative
8 of somebody being in custody and he was being
9 interrogated. That's something different than what we
10 heard during the Jackson v. Denno statement.

11 Also, Your Honor, you heard a lot of testimony
12 during the course of trial different from the Jackson
13 v. Denno hearing in that repeatedly Detective Elmore
14 said to him, I know you're lying, I know you're not
15 telling me the truth. There is testimony about a
16 promise being made by Detective Patrick, or some kind
17 of indication that they were going to give him some
18 leniency if he would just come and say it and get it
19 off his chest. All that testimony is something new
20 that this Court heard for the first time during the
21 course of the trial that was not present during the
22 Jackson v. Denno statement or Jackson v. Denno hearing.
23 Unfortunately, the jury didn't get the benefit of
24 hearing that prior testimony. But clearly I think the
25 Court heard it and knows that it's different, and

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 substantially different.

2 Based upon those differences and the suggestion
3 of coercion that went on in that statement being taken
4 the second time, we would move to renew our motion to
5 exclude that second statement as not being freely and
6 voluntarily given and something that should not be
7 considered, not be given to the jury, that the
8 statement be excluded and that the Court give an
9 instruction to tell the jury not to consider anything
10 that was discussed about that second statement, Your
11 Honor.

12 Do you want me to go on to the next one first?

13 THE COURT: Yes, sir.

14 MR. NIXON: The next issue, Your Honor, is
15 clearly a discovery violation that we have. It's not
16 an issue of if we have one; we clearly have one. If
17 you look at Rule 5(a) under the criminal rules,
18 5(a)91), to read a portion of that near the end of (a):
19 [reading] the substance of any oral statement which the
20 prosecution intends to offer into evidence at the trial
21 made by the defendant whether before or after arrest in
22 response to interrogation or by any person then known
23 to the defendant to be a prosecution agent.

24 What you have with Detective Elmore for the very
25 first time during the trial of this case is several

1 statements allegedly made by the defendant that we are
2 just hearing about for the first time. I think he
3 clearly said he made no notes, he made no supplemental
4 reports. What he came and said today is substantially
5 different than what he said in the Jackson v. Denno.
6 And just specifically, Your Honor, I'll tell you
7 particularly I think three statements. The first:
8 Detective Elmore testified for the first time today,
9 quote, I'm going to go to jail, aren't I, as something
10 that the defendant allegedly said when he was at his
11 residence for the second time on July 17th or 18th at
12 the same time I was referring to a minute ago when he
13 turned around and started walking back to his residence
14 and Detective Elmore said, whoa, whoa, whoa, whoa, wait
15 a minute, where are you going, come back with me, and
16 he says, I'm going to jail, aren't I. First time the
17 defense has ever heard anything about that. It's not
18 in any supplement, it's not in any notes, it's not
19 anywhere. And it's clearly an oral statement of the
20 defendant that they introduced in their case in chief
21 which we did not have any prior knowledge of.

22 Your Honor, there is also a statement about --
23 towards the end of Elmore's in I think initial direct
24 where he says -- and of course I apologize to the Court
25 -- the quote is, got me to confess all my shit, end

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 quote. Clearly, in all the discussion about the TV
2 show and the detective and Miami CSI, all that stuff,
3 any kind of response that Mr. Smith allegedly gave to
4 Detective Elmore in any of that interrogation is
5 something that we've never heard before, it's the first
6 time it's ever been brought up, it's clearly an oral
7 statement of the defendant that we were entitled to
8 know about pursuant to the Rule 5 and Brady motions
9 that were previously filed by Ms. Taylor. And those
10 are two specifically that came up, to quote you right
11 now, that we've never heard before. And so any other
12 statements that the defendant allegedly made that we're
13 hearing about for the first time during the testimony
14 of Detective Elmore is something that's in violation of
15 Rule 5(a) as far as oral statement of the defendant,
16 and we would ask that those be excluded, not be
17 considered by the jury, an instruction given to the
18 jury not to consider those; and, secondly, that the
19 State not be allowed to reference those in their
20 closing argument is something that, you know, should
21 just be -- or should not be able to be made any
22 reference to.

23 THE COURT: Mr. Nixon, let me ask you: just
24 assuming that I grant your motion to exclude those
25 statements pursuant to Rule 5, how am I going to

1 exclude them at this time?

2 MR. NIXON: Well, Your Honor, at this point I
3 think -- and, again, it's a very good point. You
4 raised an issue that there's no objections made at the
5 time. You know, when you're sitting here and you're
6 hearing this stuff for the first time -- the rules say
7 you're supposed to be given all this information.
8 Clearly, we're finding out that that's not happening.
9 And the remedy, as obviously within your discretion, is
10 extremely broad. So at this point what I'm asking for
11 is that they not be allowed to reference those and to
12 argue those points to a jury in their closing argument
13 as statements of the defendant or statements that were
14 made. And I guess in that sense I'm asking that they
15 be excluded from any -- having any further reference --
16 the State make any further reference to those alleged
17 statements in their closing argument.

18 THE COURT: And you agree, Mr. Nixon, that a
19 contemporaneous objection was not made to those
20 statements?

21 MR. NIXON: I do agree with that, Your Honor.

22 THE COURT: All right. Thank you. And I did
23 not mean to interrupt you. I'm just -- I just wanted
24 to make sure that I exactly stated what relief you were
25 seeking with respect to those statements. Thank you.

1 MOTION FOR A DIRECTED VERDICT

2 MR. NIXON: The next one is just the directed
3 verdict motion. We make a motion for a directed
4 verdict based upon all the testimony that you've heard.
5 In the light most favorable to the State, clearly we
6 don't believe there's enough evidence for this case to
7 go to a jury or for it to be considered by a jury.

8 Basically what you have, and all that you have
9 and all that this jury has at this point, is some
10 speculation about DNA evidence that clearly the North
11 Charleston Police Department and perhaps the State,
12 too -- I think there's a fundamental misunderstanding
13 of what it shows and what it reveals. Clearly, the
14 case officers have testified to what they believed that
15 it gave them a reason to go back and talk to Oran
16 Smith, while their own witness, their own expert, has
17 come in and said just because somebody is excluded from
18 possibly being in this group doesn't mean that that is
19 a match.

20 So clearly you have their DNA expert coming in
21 to say this is not a match of Oran Smith. And what
22 North Charleston police heard, and what they've
23 testified to today -- and, granted, I'm not necessarily
24 faulting them. It's a confusing issue, no doubt about
25 it, for all of us. But what they've testified to is

1 that there was a match and that's why they went back to
2 him. And beyond that --

3 And, again, in conjunction with the other motion
4 to exclude the statement, that's all you have and
5 there's nothing else. Absolutely nothing else. You've
6 got the same evidence against two or three individuals,
7 fingerprints, DNA, what-have-you, as you did with Mr.
8 Smith. And we would submit to the Court that that's
9 just simply not enough to go to the jury on and request
10 a directed verdict on that, Your Honor.

11 The next -- I think that's the motions, Judge,
12 but I've got a few things about the charge if you would
13 like to --

14 THE COURT: All right. Let's address the
15 motions. Is that you, Mr. Voight?

16 MR. VOIGHT: Thank you, Judge.

17 THE COURT: Let's address, first of all, the
18 Rule 5 violation concerning the two statements by
19 Detective Elmore.

20 MR. VOIGHT: Okay. Just to make it very clear,
21 Mr. Nixon referenced a Brady motion. I'm not sure
22 which or if any of those things would be considered
23 Brady in that, if anything, they're exculpatory. I
24 don't see anything in there that's exculpatory, so I
25 just wanted to make very clear that there is no Brady

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 violation. I believe Mr. Nixon referenced a Brady
2 motion.

3 I also don't believe that they are Rule 5
4 violations. They are additional statements that were
5 provided by Detective Elmore in testimony as he
6 remembered things in the course of testifying. The
7 first one referring to, I'm going to jail, that's not
8 even a custodial -- that statement is not a custodial
9 statement in any way.

10 The remedy that Mr. Nixon seeks is untenable. I
11 mean, if he wants a motion for a mistrial, he needs to
12 come out and ask for it, but he's asking the Court to
13 do something that it just -- that remedy doesn't work.

14 THE COURT: Mr. Voight, how would the remedy of
15 you not mentioning either of those statements not work
16 from this point forward?

17 MR. VOIGHT: It doesn't serve his client, Your
18 Honor. It doesn't unring the bell.

19 THE COURT: It's not your position to determine
20 what statements do and don't --

21 MR. VOIGHT: I understand, Your Honor. I'm just
22 saying, though, that the traditional remedy for
23 something like that would be a mistrial. And he's not.
24 He's trying to craft a limitation on my argument. And
25 a limitation on any side's argument is not a remedy

1 favored by law because, frankly, what I say -- and just
2 like I'm assuming Ms. Taylor is going to be giving the
3 close for the defense -- is not evidence, and your
4 instructions are clearly going to say that what I say
5 is not evidence.

6 The only -- and the problem that we have is that
7 we have two statements of this defendant. And in most
8 custodial interrogation situations, just like the
9 testimony was from each of the witnesses -- we've heard
10 now four different witnesses over the course of three
11 days testify as to how these interrogations went. And
12 I believe Detective Elmore, Detective Patrick, and to
13 some degree Detective Hill -- because they're
14 experienced with these things -- have testified that
15 there is a preliminary discussion before anything is
16 recorded and then after all that is sorted out, then
17 they take a written statement and some things are
18 inadvertently left out and some things are condensed.

19 But none of these statements that the defense is
20 complaining about go to the essence of what Mr. Smith
21 admitted to. The comment about CSI Miami is not --
22 that's not going to -- that doesn't -- that's not
23 inculpatory or exculpatory. The I'm going to jail,
24 that may be his perception. It describes perhaps Mr.
25 Smith's perception when the officers got there, but it

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 doesn't go to any core or central issue either of the
2 admissibility or the voluntariness of his statement.

3 THE COURT: So it's your position, Mr. Voight,
4 that those two statements did not need to be provided
5 under Brady or Rule 5; is that correct?

6 MR. VOIGHT: Your Honor, these -- certainly as
7 to Brady they did not. I don't believe there's
8 anything exculpatory about them, so I think that's
9 clear. Under Rule 5, I think the better practice would
10 be had I known about the substance of those statements
11 in the detail with which they were testified to, I
12 think that the better practice certainly would have
13 been to disclose those in some manner.

14 THE COURT: And refresh my memory, Mr. Voight.
15 Who inquired about the television show first?

16 MR. VOIGHT: I did that. I did that.

17 What I thought I was going to get was, you're
18 good, you're like that guy on the TV show, which I
19 didn't, one, know that they didn't know anything about
20 and if they didn't, it was not -- I don't think it
21 rises to the magnitude of a violation. It was more
22 just one of those little details you like to give a
23 jury just to kind of humanize the whole bit.

24 The jail part I wasn't aware of, and I didn't
25 elicit it in the question. It came out as -- I can't

1 remember if it came out in cross or it came out in
2 direct, but it came out in more of a narrative answer
3 as to what happened when you got to a certain place.
4 And I believe that one is -- had I known about it,
5 sure, I would love to have told them about it. But
6 it's not --

7 THE COURT: But you knew about some reference to
8 a --

9 MR. VOIGHT: I knew about the reference -- I
10 knew about the TV-show reference, and I did elicit a
11 question. Or rather I posed a question and elicited
12 that response. The response was a little bit more full
13 than what I had anticipated. But, again, it's --

14 THE COURT: But the CSI comment came out in
15 response to your question, Mr. Voight --

16 MR. VOIGHT: Yes, it did.

17 THE COURT: -- is that correct?

18 MR. VOIGHT: Clearly, it did.

19 THE COURT: All right. Thank you.

20 MR. VOIGHT: Clearly, it did.

21 THE COURT: As to the Jackson v. Denno and the
22 difference in the testimony and the defense is, again,
23 renewing their motion to exclude the second statement,
24 be happy to hear from you regarding that.

25 MR. VOIGHT: Thank you, Your Honor.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Just because we -- you know, just because Mr.
2 Nixon has called it a substantial difference -- or
3 rather just that he called it a difference doesn't mean
4 it's a difference.

5 The point in a Jackson v. Denno hearing is not
6 to give -- lay out the full context of the actual
7 statement. It is to go to those factors that show that
8 the rights were read and that there was a knowing and
9 intelligent and voluntary waiver of those rights. It's
10 actually a -- it's more narrow than the testimony is at
11 trial. Once the statement is in, the content of the
12 statement is really not so much an issue at the Jackson
13 v. Denno so much as the legal basis for allowing it in.
14 And I believe all we heard -- and I don't believe the
15 differences were substantial. I believe that all we
16 had was just a further elaboration. And some of that
17 was through cross-examination. Some of that was Ms.
18 Taylor going through a very thorough examination of the
19 times and trying to get at each of these witnesses from
20 different angles. And that's thorough defense cross-
21 examination, but that's not substantial differences in
22 testimony.

23 Detective Patrick, who is the lead detective in
24 this matter, testified on direct the same way he
25 testified in the Jackson v. Denno, that he thought he

1 had enough evidence when he rode out to Oran Smith's
2 house on the 18th, he wasn't sure, he thought he did
3 but he didn't have a warrant. And that testimony was
4 exactly the same.

5 Now, we do have Detective Elmore speculating as
6 to whether or not -- if it were his case and if he were
7 in Detective Patrick's shoes, whether or not he would
8 allow Oran Smith to leave that room. But it's clear
9 through the questioning of -- Ms. Taylor's questioning
10 to Detective Elmore that that's Detective Elmore's
11 opinion about what he thought Patrick's analysis was.
12 We heard Patrick's analysis. It was the same before in
13 the Jackson v. Denno, it was the same afterwards. And
14 it doesn't make a difference.

15 As to the general motion for a directed verdict,
16 Your Honor, I believe this case has got evidence
17 falling out of its pockets. I think in the light most
18 favorable to us, it needs to go to the jury.

19 THE COURT: Well, let's break it down under Rule
20 19, Mr. Voight. Let's break it down, and give me all
21 the evidence for each of the elements of murder.

22 MR. VOIGHT: Your Honor, we have the killing of
23 another human being. I believe that malice
24 aforethought can be shown through the -- through how
25 she died. Malice can be formed in an instant. And

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 through the confession of Oran Smith, he states he
2 flipped, and that in an instance he formed the intent
3 to take Cheryl Snow's life. The malice is found in how
4 he choked her out, how he tied the ligature around her
5 neck and made sure that she was dead. I think I've got
6 pictures that show plenty of malice. I have the
7 identification of Oran Smith, Oran Smith's fingerprints
8 are clearly there, his DNA is found on the ligature
9 through his semen. There is a DNA sample that -- for
10 which he could not be excluded as a minor contributor
11 from another portion of the ligature.

12 Now, I think the State and defense can argue,
13 and reasonable people can argue, as to just what kind
14 of evidence that is. But alleles that match his
15 alleles are clearly present. At some point during
16 cross-examination Agent Hallman testified that they
17 were, in fact, skin cells. I don't think she went that
18 far with me, but I think she did go that far with Ms.
19 Taylor.

20 We have Jan Bryson testifying that those cells -
21 - that the sample 2.4.1 and 2.4.2, which she used an
22 alternative light source on them, they did not light
23 for semen, which is why she took them. She believed
24 them to be some other form, some other -- you know,
25 they did show something and that's why she collected

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 those particular samples.

2 And, lastly, we have Oran Smith two times
3 admitting that he had spent the weekend, that Cheryl
4 Snow had died, with Cheryl Snow. We have eleven of his
5 fingerprints there. We have his DNA on the pajama
6 bottoms that were tied around her neck before she died.
7 And, lastly, we have him admitting -- not under
8 coercion, not under duress, and not under promises, but
9 freely and voluntarily that he ended Cheryl Snow's
10 life.

11 I think I've covered it. I think that's it.

12 THE COURT: Mr. Nixon, your response? If we can
13 do them in the same order. Your Rule 5?

14 MR. NIXON: Yes, Your Honor, just briefly on the
15 Rule 5. Obviously, I'm not suggesting Mr. Voight knew
16 about those two statements and didn't tell him about us
17 -- tell us about it. If that were the case, we would
18 have a whole completely different ball game going on
19 right here.

20 What I do think he did say in his statement --
21 or his argument to the Court, is that he didn't know
22 about them. And that's the subject of my motion. The
23 rule doesn't say anything about exculpatory,
24 inculpatory, in custody, not in custody.

25 Rule 5(a)(1) says any statement of the defendant

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 that they introduce in their case is something that
2 they're entitled -- they have to give us. And he I
3 think said in his statement to you, his argument to
4 you, he didn't know about it, if he didn't know about
5 it he couldn't have given it to us. If he didn't give
6 it to us, then it's a technical violation of the rule
7 and those two things should be excluded, Your Honor.

8 With regards to the Jackson v. Denno hearing, I
9 would just briefly submit to the Court I think it's a
10 bootstrapped argument to hinge everything on the
11 statement. I mean, the statement is the issue of my
12 motion to exclude that deal and if you exclude that,
13 there's no question that all you've got is three or
14 four people that had sex or was around this woman over
15 the weekend, which is not a crime, and the only
16 additional information they have that would suggest
17 Oran Smith is in any other way involved is the
18 statement.

19 So I think that it comes down to that statement.
20 And, again, the basis of my motion for that is when the
21 Court and us are the only ones that heard that
22 testimony from the Jackson v. Denno hearing, and the
23 testimony that came out during the trial and that it
24 was different, that there was, you know, repeated
25 telling him that he's lying, repeated telling him that

1 he needs to get this off his chest, he's not telling
2 the truth, he needs to come clean with us. You know,
3 at some point of an extended period of interrogation
4 with the intention of going up there --

5 And, again, it is important what their
6 intentions were. And they said those to us. They were
7 going to go arrest him no matter what. The fact of the
8 matter is they didn't because they knew they didn't
9 have enough evidence and the evidence that they did
10 have there's a misunderstanding about and it's not
11 correct. It's not -- what they've testified to. And
12 obviously this will come out in closing, assuming we
13 get there. But what they testified to is that his skin
14 cells were on that item used to strangle the victim.
15 And they weren't. That's not what the DNA expert said.
16 It's what the impression of what she said was. But --
17 and, again, excluding somebody from being in that
18 category, all the DNA expert could tell us was that
19 it's a male.

20 Well, we got into this a little bit. Assume
21 there's six billion people in the world, half of them
22 are women, you've got three billion males,
23 approximately, so there's somewhere between one and
24 three billion other people that it could be. She
25 didn't even do any extrapolation of any numbers on it

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 because probably they're too large. She has no idea.
2 There's an infinite, almost infinite, number of other
3 people that could also not be excluded. And I guess
4 the double negative obviously gets confusing.

5 But the bottom line is it's not a match to him
6 and they thought that it was, and that was their
7 underlying basis of why they went back up there to even
8 question him again. But the long and short of it was
9 that's what starts that second statement. They put --
10 they take him into custody, whoa, whoa, whoa, don't go,
11 you're coming with us. They take him down, they keep
12 him there, and they essentially break him until some
13 point in time that he allegedly says, okay, I did it.

14 You know, other issues, as well, go in there:
15 whether or not he stopped the statement, whether or not
16 he quit talking to him and they say, you know,
17 basically they're not going to let him go until he says
18 what they wanted to hear. All those issues go to the
19 freeness and voluntariness of the statement.

20 And, you know, the Jackson v. Denno purpose is
21 to initially -- for the Court to make an initial
22 determination of whether or not they think it's freely
23 and voluntarily. Based upon what you had at the time,
24 I think the Court was probably right in ruling as they
25 did. Now you have additional information, different

1 testimony, additional testimony, that shows that that
2 statement was not freely and voluntarily given, and I
3 think there's plenty of basis in the court -- for the
4 Court to exclude that statement based upon those
5 grounds, Your Honor.

6 And I believe those are the three going to the
7 directed verdict.

8 THE COURT: All right. Anything further, Mr.
9 Nixon, before I make my ruling?

10 MR. NIXON: Not on that. Just, like I said,
11 Your Honor, just the charges issue.

12 THE COURT: Okay. With respect to the two
13 statements by Detective Elmore, based upon what the
14 Court has heard in arguing those two statements I am
15 not going to allow -- I am going to grant your motion
16 that the two statements be excluded from any further
17 proceedings.

18 And, Mr. Voight, I do note that closings are not
19 to be considered evidence but based upon the arguments
20 heard, I am not going to allow the two statements I'm
21 not -- excuse me -- I'm going to jail, aren't I, and
22 you got me to confess my shit. Those two will not be
23 allowed.

24 As to the Jackson v. Denno hearing, based upon
25 what the Court heard during Monday's motion hearing, as

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 well as from the testimony as presented with respect to
2 your motion to move to exclude the second statement of
3 the defendant, the Court, again, looked to the totality
4 of the circumstances in determining whether or not the
5 defendant's statement was freely, voluntarily,
6 knowingly given.

7 Based upon the testimony presented at both the
8 trial here today, as well as during the Jackson v.
9 Denno hearing, the defendant initialed the waiver
10 advice of rights, which I believe is State's Number 1.
11 Detective Elmore, during the Jackson v. Denno as well
12 as during the trial, indicated that the defendant did
13 not appear to be under the influence, understood his
14 rights. He asked him if he had been drinking, taking
15 any medication. He indicated that he had not.

16 The defendant did not appear to be impaired,
17 according to the testimony by Detective Patrick during
18 the Jackson v. Denno hearing as well as the trial. The
19 defendant was read the form, initialed next to each
20 right, the information was reduced to writing, and he
21 was allowed an opportunity to change. Assuming that --
22 well, the testimony the Court heard was not different
23 substantially as to those things to which the Court
24 looked at in making its determination of whether or not
25 the statement was freely and voluntarily given, and I

1 deny your motion to reconsider the admission of now
2 State's 1 and 2. Note your exception to the record.

3 With the motion for directed verdict, under Rule
4 19 the Court must look to determine whether or not the
5 nonmoving party has failed to present competent
6 evidence. The Court is concerned with the existence or
7 nonexistence of evidence, and not the weight of the
8 evidence. The statute and the elements of murder, one
9 of the most serious crimes, is also, ironically, the
10 shortest. The elements of the crime are that there is
11 a deceased person. Dr. Presnell testified that she
12 performed an autopsy on the victim, Cheryl Snow. The
13 act must be committed with malice, either inferred or
14 explicit. There was exceptional -- abundant testimony
15 as to the manner of death; that Ms. Snow suffered
16 strangulation. There was also testimony that
17 fingerprints, semen and DNA linked to the defendant
18 were found, as well as there was substantial testimony
19 that the crime occurred in Charleston County.

20 Based upon those factors, the Court finds that
21 the State has met its burden of the existence of
22 evidence, and deny your motion for a directed verdict.

23 Any other motions or matters?

24 - - -

25 - - -

CHARGE CONFERENCE

MR. NIXON: Thank you, Your Honor.

Just briefly on the charges. And I think I -- I hope I've got the correct one. I'm looking on page 8 of the charge that is the defendant's good character and/or reputation section that goes from page 8 into page 9.

THE COURT: Yes.

MR. NIXON: Obviously, that starts off: the defendant has presented evidence. Obviously, this is a matter -- and I didn't know this at the time. I'm sure the Court -- that he's not presenting any evidence in this case.

THE COURT: All right. We will remove -- I do these because it's easier to remove than to insert, especially since we don't have our own printer here in Charleston.

MR. NIXON: Thank you, Your Honor.

The next one is on page 10, failure of the defendant to testify. On the fifth line down at fourth or fifth, in consideration -- in your consideration on the question of the guilt or innocence of the defendant, I would submit to the Court that the innocence of the defendant is not at issue here. It's either his guilt, or not guilty, and we propose that

1 it'll be in your consideration of the question whether
2 the defendant is guilty or not guilty and then go on
3 from there, and just to take out the innocense part.

4 THE COURT: Mr. Nixon, if I just strike "or the
5 innocense", would that be satisfactory?

6 MR. NIXON: In your consideration on the
7 question of the guilt of the defendant?

8 THE COURT: Yes.

9 MR. NIXON: That's fine, Your Honor.

10 THE COURT: Mr. Voight, any objections to
11 striking --

12 MR. VOIGHT: No objections.

13 MR. NIXON: And going along those same lines,
14 Your Honor, the next page, on page 11, that same
15 charge, next to the last line, the defendant is not
16 required to prove his innocense to read that he is not
17 required to prove that he is not guilty.

18 THE COURT: Mr. Voight?

19 MR. VOIGHT: Your Honor, I believe that your
20 instruction follows the traditional wording of this
21 particular instruction. Unlike the previous striking
22 of the word innocense, I think that that would change
23 its meaning and its emphasis, and I actually think that
24 the interests of the defendant are better suited with
25 the Court's instruction.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 THE COURT: Mr. Nixon?

2 MR. NIXON: Your Honor, I just maintain my prior
3 argument obviously it's not an issue of this Court of
4 anybody's innocence, and he's presumed innocent, he's
5 not required to prove anything. Any suggestion of
6 proving anything at all I think is something that we
7 don't want to put in there for this -- for the
8 defendant.

9 THE COURT: Mr. Nixon, I note your objection but
10 I will leave that sentence in. Thank you.

11 MR. NIXON: Thank you, Your Honor.

12 THE COURT: Anything further?

13 MR. NIXON: I believe that's got it, Judge.
14 Thank you.

15 THE COURT: Mr. Smith, please rise.

16 [Whereupon, Mr. Smith complies]

17 THE COURT: Mr. Smith, I will remind you that
18 you're still under oath.

19 Before we broke for lunch, I advised you of your
20 constitutional rights and inquired whether or not you
21 had decided you were going to testify. Have you had
22 substantial time to meet with your attorney to discuss
23 that right?

24 MR. SMITH: Yes, ma'am.

25 THE COURT: And what is your decision concerning

1 whether or not you will testify?

2 MR. SMITH: No. I won't.

3 THE COURT: You will not be testifying?

4 MR. SMITH: Right.

5 THE COURT: Have you had enough time to meet
6 with your attorneys, friends, or family members, to
7 come to that decision?

8 MR. SMITH: Yes, ma'am.

9 THE COURT: And do you have any further
10 questions for either your attorney or for the Court?

11 MR. SMITH: No, ma'am.

12 THE COURT: Thank you, Mr. Smith.

13 Do you have any witnesses, Ms. Taylor?

14 MS. TAYLOR: We do not.

15 THE COURT: All right. So the defense rests?

16 MS. TAYLOR: We do, Your Honor. If we're going
17 to plan to go right into everything, could I have just
18 one moment to --

19 THE COURT: Yes, ma'am.

20 And are there any -- now that the defense has
21 rested, are there any additional motions or matters?

22 MS. TAYLOR: We would just renew everything that
23 was just said.

24 THE COURT: All right. Thank you. And the
25 defense has now rested.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Anything from the State?

2 MR. VOIGHT: No, Your Honor.

3 THE COURT: All right. We will take ten minutes
4 so that y'all may use the restroom or do whatever.
5 Will you be using PowerPoint or anything? We're ready
6 to go straight into closings?

7 MR. VOIGHT: Straight into closing the old-
8 fashioned way.

9 THE COURT: And you're prepared to go?

10 MS. TAYLOR: Yes, ma'am.

11 THE COURT: All right. Let's take a ten-minute
12 recess. Thank you.

13 [Whereupon, a recess is taken from 3:05 p.m. to
14 3:26 p.m.]

15 THE COURT: Thank you. Be seated. Mr. Voight,
16 will you be doing the closing?

17 MR. VOIGHT: I will, Your Honor.

18 THE COURT: And Ms. Taylor? Mr. Nixon?

19 MS. TAYLOR: I will.

20 THE COURT: And you have last close, Ms. Taylor.

21 MS. TAYLOR: I do.

22 THE COURT: All right. Anything before we bring
23 in the jury?

24 MR. VOIGHT: No, Your Honor.

25 MS. TAYLOR: No, ma'am.

1 THE COURT: Please bring in the -- hold on one
2 second.

3 Ladies and gentlemen of the jury, please do not
4 move -- excuse me -- of the audience, please do not
5 move while an attorney is speaking. There will be a
6 break between Mr. Voight's closing and Ms. Taylor's
7 closing. If you need to leave, leave at that point.
8 And after Ms. Taylor closes, I will give you a brief
9 moment to leave. It is disruptive for all of the
10 parties involved if you are moving while the attorney
11 is speaking. Thank you.

12 Please bring in the jury.

13 Please rise for the jury.

14 THE COURT: You will both need to rest on the
15 record in front of the jury.

16 MR. VOIGHT: Yes, Your Honor.

17 [Whereupon, the jury enters the courtroom at
18 3:28 p.m.]

19 THE BAILIFF: The jurors are all present, Your
20 Honor.

21 THE COURT: Thank you. Please be seated.

22 Mr. Voight?

23 MR. VOIGHT: At this time, Your Honor, the State
24 rests.

25 THE COURT: Thank you. Ms. Taylor?

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 MS. TAYLOR: Thank you, Your Honor. The defense
2 rests, as well.

3 THE COURT: Thank you.

4 Ladies and gentlemen of the jury, you have now
5 heard all of the testimony that will be presented in
6 this case, as well as all the exhibits. It is now time
7 for the closing arguments of counsel. After closing
8 arguments, I will instruct you on the law applicable to
9 this case.

10 Mr. Voight?

11 MR. VOIGHT: Thank you, Your Honor.

12 - - - - -

13 CLOSING ARGUMENT

14 MR. VOIGHT: Two days ago I told you where I
15 thought this case was going to go and what I thought
16 the evidence was going to prove. That's what I have to
17 do the first time I stand up. And I don't get to
18 address you until now. This is the last time I get to
19 address you. In a few minutes I'm going to sit down
20 and Ms. Taylor is going to be able to address you.

21 I think it did go about like I thought it was
22 going to go. It never goes exactly like I thought it
23 was going to go, but I think it did go like I thought
24 it was going to and like the evidence was going to
25 lead.

1 Ms. Taylor apologized in her opening statement
2 for some images that you were going to see, some
3 details you were going to hear, and I didn't and I'm
4 not now. Unfortunately, prosecutors and defense
5 attorneys and judges and police officers often get to
6 see behind the curtain into that apartment, behind the
7 police tape, some of the unpleasant things that happen
8 every day to pleasant people. And maybe I'm
9 desensitized to it after all these years of doing it,
10 but there were some images you needed to see, some
11 testimony that you needed to hear, to really appreciate
12 why we are here, the seriousness of why we are here.

13 We are here because of a -- the system -- this
14 system is perhaps the deepest and most profound use of
15 our constitution that most of us get to experience,
16 perhaps other than the vote that we cast when you cast
17 it. Those are the two ways I think that most people
18 use the constitution as a document.

19 The constitution has allowed Mr. Smith to have
20 his day in court. We are here because he pleaded not
21 guilty. The State accused him of a crime, a very
22 serious crime, and he pleaded not guilty. And this is
23 his day in court. This is how the system is set up.
24 And the system places upon me a burden. It's not
25 enough for me to come in and tell you he's guilty. I

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 have to prove to you he's guilty. And unlike in any
2 civil court, the burden of proof is the highest that we
3 have: beyond a reasonable doubt. And I have to prove
4 each and every element of the offense, a murder, beyond
5 a reasonable doubt.

6 He has exercised his right. You are here, I am
7 here, and he is here. Cheryl Snow is not here. Cheryl
8 Snow you only got to know a little bit, not the
9 horseback riding classes she -- not the joy that she
10 brought to people, just the Polaroids. That's all you
11 got to see. It's not a mystery. This isn't one of
12 those forty-eight-hour mysteries where they set up the
13 premise and they go, well, we interviewed this one, who
14 is it. We know who did it. On June 5th we had a clue,
15 an old-fashioned clue. We had a fingerprint. Not one.
16 We had eleven. That was the first one they hit, the
17 very first one they hit. Good police work right from
18 the beginning.

19 You know, we have a list that has your names,
20 where you live. People who are a little more detail
21 oriented than I keep track of who's from Charleston,
22 who's from North Charleston, who's from -- wherever you
23 may have been drawn from in Charleston County. And I
24 don't know. But if you live in North Charleston, feel
25 good about today. Feel good about the job they did.

1 You've heard from Al Hallman, you've heard from
2 Ray Garrison, you heard from Angie Bunker. That
3 apartment, that little apartment, got turned inside
4 out. And I've got a box of stuff over there that
5 doesn't mean anything. It's not evidence. I pulled
6 from that box stuff that I think means something. And
7 it's right here. You get to take all this back with
8 you. That's evidence, and that's evidence that they
9 found on the scene processing it, not letting the
10 detective into the room. God forbid he stumbles around
11 and messes something up.

12 They're going to process that scene. And they
13 do. And they're thorough. And they missed the phone.
14 The detective says, you know, find me the phone. They
15 go back the next day and spend hours again. And you
16 heard about all the lift cards, going through the
17 trash, going everywhere in that apartment. But almost
18 immediately they pulled the initial lifts. They said
19 Ray Garrison -- who knows fingerprints, who's been
20 knowing fingerprints forever. He knows what he's
21 looking for. The first one they hit, Oran Smith.

22 But you know what? That's not enough. It
23 wasn't enough then. It wasn't enough to the detectives
24 and the officers who had to investigate this crime.
25 There are other fingerprints in the house. There are

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 other leads. And these detectives are not going to
2 make a rush.

3 Now, they get the fingerprint of Oran Smith.
4 They start looking for Oran Smith. You heard Detective
5 Patrick, you heard Detective Elmore. Overnight they're
6 looking for Oran Smith. Did they -- what do they think
7 he's going to tell him? They don't know. They don't
8 make assumptions, and they don't act on those
9 assumptions. They want him to tell them, you know,
10 basically, why is your fingerprint in that apartment.
11 He has a story. They track him down and he tells them.
12 He tells them, I was in there over the weekend, he
13 knows Cheryl, he's got a casual on-and-off relationship
14 with Cheryl and he was in that apartment. He was the
15 last man in that apartment that we know of.

16 But that's not enough. And they don't think
17 it's enough. And they don't browbeat him into a
18 confession. They don't do any of those things that you
19 may have read about or heard about on TV. They're
20 going to let the evidence take them where it goes, and
21 they're going to track down all those loose ends.

22 And there's a reason why I spent time with
23 Detective Patrick about day-by-day what was he doing.
24 Every day, from the time Cheryl Snow's body was
25 discovered until the time Oran Smith was arrested,

State vs. Oran Smith
Jury Trial -- Volume 3 of 4
June 17, 2009

1 Detective Patrick lived with this case. He may not
2 have worked on it every day but as you can see through
3 his testimony -- which is also evidence that you get to
4 consider -- every day he did a little something. A
5 question was asked; a question was answered.

6 Gradually, all the loose ends -- or most,
7 because this is life and it's not perfect. You don't
8 write it. It's not an Agatha Christy or Murder She
9 Wrote or something like that. We don't tie it all
10 neatly in a bow -- which is kind of a dangerous
11 comparison in this case.

12 There are -- and I've had to look this up before
13 as to where this comes from. There are red herrings,
14 things that really don't mean anything because they're
15 really not clues to anything. They don't answer
16 anything.

17 The North Charleston Police Department and
18 Detective Patrick had to work to exclude Leroy McKelvey
19 from any involvement in this case. His fingerprint was
20 found there, as well. Not eleven of them; just once on
21 a Pepsi can in the trash. They had to exclude Leonard
22 Gettis, and that was not as easy because his
23 involvement almost overlapped Oran's in that apartment.
24 He was there the day before, or it seemed like he was.
25 They had to go back and talk to ministers and

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 employers. And they ultimately took his DNA and sent
2 that to SLED, as well, because they were going to let
3 the evidence lead them. They weren't going to make
4 assumptions and shoehorn evidence where it did not
5 belong.

6 The same with Obie Creech. He's a dead-end.
7 He's a red herring. So many of those people that
8 Detective Patrick talked to ultimately led them
9 nowhere. The phone led him nowhere, the phone records
10 led him nowhere. He subpoenaed them. He testified
11 that he did, and there was some cross-examination about
12 what was found and what wasn't found. That's not why
13 we're here. But it's part of the investigation, part
14 of the thoroughness of the investigation.

15 For example, Detective Mastantuno, Sargent
16 Mastantuno now, they get the initial story from Oran
17 Smith, and just like they do for Mr. Gettis and just
18 like they do for McKelvey and just like they would have
19 done for anybody that they thought was in that
20 apartment -- they didn't have to so much for Obie
21 Creech because his story was -- and Richard Lester and
22 all the other people that they may have talked to, they
23 just -- there was nothing to link them there.

24 Detective Mastantuno goes -- just like Detective
25 Elmore, Detective Patrick wouldn't be buying Mr.

1 Gettis' story, interviewed people. Mastantuno, it's
2 his job to go back and see, well, if he said he was
3 here at such and such a time, maybe there will be a
4 picture of him. Is that going to convict him? No.
5 Matter of fact, it may help him if he's in those
6 videos. If he says he was there at this time and he
7 is, maybe he's telling the truth.

8 And just because he's not -- just because
9 Detective Mastantuno spent hours looking at videotapes
10 from service stations and Oran Smith isn't there, that
11 really doesn't make Oran Smith's statement any more or
12 less true. But it does show you that they were going
13 to go the extra yard to make sure that they weren't
14 going to arrest the wrong person, God forbid, convict
15 the wrong person, or waste their valuable time with
16 somebody who couldn't have done it. Because their time
17 is valuable. And what do they spend their time on?

18 Now, I have to prove to you that a murder was
19 committed. And you heard from Dr. Presnell, you also
20 heard from Scott Hille, Ms. Snow's dead. The manner of
21 her death was a homicide. You don't strangle yourself
22 like that and have an accidental -- and I have to prove
23 malice aforethought. And that is an old English term
24 that has been kind of brought with us, historically,
25 into our law. Some states have kind of reworked it so

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 you don't have to use a word like malice aforethought.
2 But a depraved heart, evil intent. There are certain
3 euphemisms or little synonyms that we use. And, of
4 course, the Court gets to tell you what the law is on
5 that. The root of the word malice, of course -- and
6 the law says that that intent can be formed in an
7 instant. And I have to prove it.

8 Now, I have already shown you all the pictures
9 I'm going to show you. I'm not going to show you.
10 You've seen them. You are going to -- you're going to
11 take them back to the jury room and you can look at
12 them.

13 Oran Smith flipped, and he choked out Cheryl
14 Snow. That's malice. That's evil intent. If that was
15 all he did, he might have gone to jail for something.
16 But that's not all. It gets worse. He grabs what's in
17 this bag right here; and that is, two pair of pajama
18 bottoms that was one inside the other that were in
19 Cheryl Snow's bedroom. And he ties them around her
20 neck and ends her life, ends it, because he has to
21 because he has to finish, because he's afraid of the
22 consequences of choking her out. I've shown you that.
23 I've shown you evidence beyond a reasonable doubt.

24 You will hear I think a lot -- I mean, this is
25 it for me. I get to stand up and say my piece, then I

1 have to sit down. What I'm telling you is not
2 evidence; what they tell you is not evidence. And the
3 judge is going to tell you the law. You've heard and
4 seen everything that you have to consider and make your
5 decision. But you're going to hear I think a lot about
6 what the DNA evidence is in this case and you're going
7 to I think hear a very different interpretation on,
8 one, what it shows, and, two, it's importance, from Ms.
9 Taylor. I'm not a betting person by nature, but I
10 would bet that that's what she's going to spend a
11 substantial amount of time talking about that.

12 One thing that's very clear and very obvious is
13 that in that ligature, in those pajama bottoms, is the
14 DNA of Oran Smith. And Agent Gallman testified to
15 that. And that would be from the sample that contained
16 his semen. Okay? So at any time that any of the
17 officers in this case relayed information or believed
18 that they had information that his DNA was on the thing
19 that killed Cheryl Snow -- well, it clearly is. From
20 that sense, it's clearly there. The thing that killed
21 Cheryl Snow has got his unmistakable genetic marker on
22 it. That evidence is unassailable.

23 Now, there has been a lot of talk about skin
24 cells. You've heard the evidence. You've heard Jan
25 Bryson, who is a technician from SLED. You heard her

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 describe that she was using an alternate light source,
2 also called a forensic light source, and the very same
3 light source that Sargent Hallman used to pour over
4 that apartment to make sure he hadn't missed any fibers
5 or hairs or anything. Well, Jan Bryson used it to
6 detect semen. And she found it, and she made a finding
7 there. But also she was looking for epithelial cells,
8 skin cells. And she didn't testify that she found skin
9 cells because, once again, they're only going to go as
10 far as the evidence is going to take them. Okay? She
11 testified that she looked in areas -- as directed by
12 Detective Patrick to look for areas where the ligature
13 appeared to have been pulled or held. That's where
14 they suspected that they would find skin cells. And if
15 they found skin cells, they suspected that they would
16 find DNA.

17 And what did they find? Agent Hallman did not
18 sit up here and tell you that they found his DNA on
19 skin cells on those cuttings. She didn't say that,
20 because she's only going to go as far as the evidence
21 allows. What she did tell you -- and I think that
22 Detective Patrick actually summed it up very well on
23 cross-examination, when he was being asked about this
24 by Ms. Taylor, was she found some DNA from those areas
25 where they expected DNA to be found, from the skin

1 cells, not semen. So this is -- what they found here
2 was not semen.

3 Well, first of all, it couldn't have been semen
4 because part of it was from Cheryl Snow. She was the
5 major -- it was a mixed sample. The one person that
6 they did know was Cheryl Snow. Well, on her pajama
7 bottoms, her DNA would be expected. Certainly not from
8 semen, because that's something that Cheryl Snow could
9 not produce. It was from some other source, probably
10 semen. But they found a minor contributor, somebody
11 else's DNA there.

12 And we heard testimony from Agent Gallman about
13 alleles and how they are markers in chromosomes and how
14 they have distinct numbers, and those numbers are
15 actually repetitions in that chromosome, certain -- I
16 believe they're amino acids -- in those repetitions are
17 unique and usually when you get a long string of them
18 in the pattern that fits a particular person, you can
19 make a positive ID.

20 They had enough of the genetic material on
21 numerous items. And Detective Gallman -- or Agent
22 Gallman testified to that to show that many of these
23 samples had Cheryl Snow's DNA on them. None of these
24 had -- nothing that she tested had Leonard Gettis' DNA.
25 Now, nothing. Not close. Not a match. Leonard Gettis'

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 DNA is not on the very item that killed Cheryl Snow.
2 Oran Smith's is. Leonard Gettis' is not.

3 There are alleles, though. And that's -- that
4 was the electrophoretogram chart that I put up. And
5 some of them are above the threshold and below the
6 threshold, meaning that some of them -- some of these
7 alleles, there's enough genetic material on the certain
8 -- and that chart goes across -- there are certain
9 chromosomes that they test that do not come from Cheryl
10 Snow. They cannot come from Cheryl Snow. There are
11 some of those markers that are both above the threshold
12 and below the threshold that match those found on Oran
13 Smith. Is it enough to say that's Oran Smith's DNA?
14 No. And she didn't say it. She wouldn't say it,
15 because she has a professional -- she has a -- she has
16 rules and regulations that she follows in her
17 profession that requires a certain threshold and she
18 couldn't testify about that.

19 Oran Smith was not excluded, though, and that is
20 significant. But it's also significant -- it's not
21 nothing. And when questioned about probabilities
22 numbers, could that have been one in a billion or one
23 in three billion males -- nobody testified to those
24 numbers because they couldn't. That's actually
25 something -- there's a name for that, by the way, if

1 you hear some of that. This is what the name is. It's
2 called a prosecutor's fallacy. That's where we say,
3 well, there's six billion people in the world and half
4 of them are male and there's not a match so it could be
5 one of three billion people. Well, that's not how
6 statistics work. And the reason why it's called a
7 prosecutor's fallacy is because it's usually people at
8 our table who are doing bad math like that. Okay?

9 That's not how math works, that's not how
10 probability works. Probability is a little bit more
11 detailed than that. And that's why Agent Gallman, who
12 had some background in probability, wasn't going to
13 fall into that trap. There may be three billion men in
14 the world. How many of those men had access to Cheryl
15 Snow's apartment in the first week of June, 2007?
16 There are continents of them that don't.

17 Maybe not -- there are all sorts of factors that
18 go into probability. And when you have as many things
19 that would exclude you, you don't have a number that is
20 believable. So there's no probability that it's
21 somebody else. That's not a number that makes sense.

22 What does make sense is that there are certain
23 alleles, certain distinctive markers. Leonard Gettis
24 doesn't have them, Cheryl Snow doesn't have them. Oran
25 Smith has them and they are there, right where they

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 were expected to be. Does that mean is that it? Well,
2 no. No, it's not. We have his DNA in his semen on the
3 very item that is used to kill Cheryl Snow in a brutal,
4 violent way. We have at least eleven fingerprints of
5 his in that apartment.

6 And there's the one fingerprint, I think Sargent
7 Garrison was talking about, that they didn't identify.
8 Was that some mystery person's fingerprint? Sargent
9 Garrison wasn't going to testify to that, and he
10 didn't. He was asked that question. No. It just
11 meant that it didn't have the requisite detail to be
12 identified to these people.

13 And you heard probably more about fingerprints
14 than you ever wanted to. But it's necessary. I mean,
15 it's not just -- it's not like it is on TV. They don't
16 go into some fancy room with big computer screens,
17 touch screens, and go ta-ta-ta-ta, and there -- oh,
18 look, there's a fingerprint that pops up, and they go
19 arrest someone. They did real work, every one of them
20 did real work, looking print by print, lift by lift.
21 Some lifts, some prints, didn't have enough detail to
22 give them what they wanted, which was just any result
23 at all, and they pulled them.

24 There is no mystery fingerprints in there. You
25 didn't hear that testimony. It's fun that way, but

1 that's not what you heard. That's not evidence. No
2 mystery DNA, either. And it's not was it Oran Smith's
3 or was it not. It's not that simple. Well, the semen
4 is Oran Smith's, and I'm not prepared as a professional
5 to tell you that it is, in my expert opinion, a match.
6 But I can tell you it isn't. And that's not the same
7 thing that it's not him, or it could be one of three
8 billion people. It's not that. It certainly wasn't
9 Leonard Gettis'.

10 And that brings us to the last little bit of
11 evidence that I want to talk to you about. Sometimes
12 good police work is just good police work. And
13 sometimes calling a liar on a lie is just good police
14 work, and sometimes not letting them get away with a
15 lie is just good police work. And I'm not here to
16 convict Oran Smith for being a liar. I'm here to
17 convict him of being a murderer. But Detective Elmore
18 had it right. There's a big old hole in that story
19 about what happened that night with Cheryl; a big old
20 hole. Forgot to add a little detail about me killing
21 Cheryl. And it wasn't a clever trick to get him to
22 confess. It wasn't a subterfuge, it wasn't threats or
23 coercion or promises made. It was an asive
24 perseverance, not taking -- not taking B.S. from Oran
25 Smith. Oran Smith for some reason felt that he could

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 talk his way out of this particular situation, and he
2 couldn't.

3 And I think Oran Smith has a conscious, and I
4 think it weighed on him and I think that's the
5 testimony that you heard. I'm sure he would like to
6 take a lot of things back about that night, about him
7 snapping, about choking a fifty-five-year-old very
8 small woman to death with his arm and then pausing,
9 considering what he had done. And rather than take any
10 step that was positive or good and reach deep into that
11 part of his heart, where perhaps only malice lies, and
12 grabbing those pajama bottoms and fastening them around
13 her neck, her limp and twitching body on the floor, and
14 choking the last breath out of her as the blood
15 collected -- choked the life out of her. I'm not sure
16 if he would like to take that back.

17 I'm sure he would love to take back five minutes
18 in a room with Detectives Elmore and Patrick. Maybe
19 the only time that you've heard of all the things he
20 may have said, when he tells -- when we finally
21 completed the circle, we finally completed the picture
22 on what he had done.

23 There are some -- like I said, there are some
24 things that are not legally tied in this case, not
25 perfect. I can't tell you when Cheryl Snow died, what

1 time exactly. I can't. The doctor gave us a range of
2 death that included the 3rd and the 4th. It was fairly
3 broad. And there's something unusual in there. The
4 thermostat being turned down to sixty-two degrees was
5 unusual. And given the testimony of everything that
6 you may have heard that Leonard Gettis told the police,
7 or Leroy McKelvey told the police, or Richard Lester
8 told the police, or Thomas Stender told the police, or
9 William Ackerman told the police, or Oran Smith told
10 the police, there's no reason for the temperature to be
11 sixty-two degrees in there. It messes up rigor mortis
12 and to the time of death. We don't know. It is
13 unusual. I can't explain it, and so I don't know when
14 Cheryl died exactly.

15 I don't know why the door was ajar when Cheryl
16 was found by Thomas Stender. I don't know. There are
17 pry marks on the door. I don't know if they were from
18 a previous tenant, a previous incident. I don't know
19 why.

20 But I think the detectives were very adept and
21 they track down-- and they noted those things. We
22 know about them because of their investigation. You
23 know, I probably didn't dwell on it as much as I should
24 have. I tried to dwell on as many loose ends: you
25 know, Kelly Ann and Obie Creech and Nathaniel and the

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 phone -- Detective Patrick and his appearance. All
2 those things wound up leading nowhere. But the only
3 reason why Ms. Taylor can be able to spend any time on
4 those things is because of the investigation that North
5 Charleston did, the thorough investigation, that led
6 them first to Oran Smith and then last to Oran Smith
7 after other people had been excluded and after all the
8 evidence had been collected.

9 I want to thank each and every one of you for
10 your attention. I appreciate your looking at me while
11 I'm up here.

12 I want to thank the Court for running this as
13 efficiently for all of us as possible.

14 And I want to thank Ms. Taylor and Mr. Nixon,
15 who have been thoroughly professional in what they've
16 done. Mr. Nixon has done a lot of things outside of
17 the presence of the jury that you haven't seen but both
18 of them have done an excellent job fighting me, where I
19 needed to be fought, in representing their client.

20 Mostly, I want to thank the North Charleston
21 Police Department for what's over here on this table,
22 and what came out of that witness stand; and that is,
23 evidence, the evidence that you will mull over and
24 consider deeply and thoroughly, as is your oath, and
25 this -- this physical evidence.

1 Oran Smith flipped. Something happened in an
2 instant. And, again, I can't explain everything in
3 this case, and I can't explain why. I can tell you,
4 though, that I have proven that he did it. He took the
5 life of Cheryl Snow, and we can't get that back. I
6 would ask each and every one of you to consider the
7 evidence that you've heard and return a verdict of
8 guilty, which I believe is the only verdict, the only
9 solution, the only conclusion, to this entire process
10 that began two years ago and ends today. And I thank
11 you.

12 THE COURT: Ms. Taylor?

13 MS. TAYLOR: Thank you, Your Honor. May it
14 please the Court, Mr. Voight.

15 - - - - -

16 CLOSING ARGUMENT

17 MS. TAYLOR: Good afternoon, ladies and
18 gentlemen. I am sure that by now you are all very
19 tired, and seeing me step up here with bunches of
20 pieces of paper -- but I am going to have to ask you
21 one more time for your patience and attention. My work
22 here is just about done, and the hardest part of yours
23 is just about to start.

24 We talked on Monday about how difficult it is
25 for what you-all are about to do. It's hard to sit in

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 here. Those of us who do this on a semi-regular basis,
2 it's hard for us. For anybody to sit in one room and
3 one place for days and hours at a time, and to absorb
4 stuff that is totally outside the realm of what you are
5 used to absorbing, is not an easy task. And so I truly
6 and genuinely appreciate -- all of you have been very
7 attentive, you have your notes you were taking, and
8 listening, and taking it all in. And for that I am
9 grateful. Mr. Nixon is grateful. Oran and his family
10 are grateful, as well. So thank you.

11 I don't want to take a whole lot more of your
12 time because I know that y'all have a life waiting for
13 you outside of here. It's already late in the day.
14 You've listened to all of the evidence with the rest of
15 us, and at any point in time -- and, again, I know you
16 have already invested a lot of time. But once you are
17 able to return to your jury room and start your
18 deliberations, any time you need to see any evidence,
19 any of this evidence, any of the crime-scene videos,
20 any of the photographs, or if there an issue against
21 what Mr. Voight said -- and what Judge Harrington is
22 going to tell you, it's absolutely true.

23 What we say to you is what we think we know,
24 what we think we heard, what we think we have seen in
25 all of these pieces of paper. We are not infallible,

1 by any means. So if I say something is evidence that
2 you think is not what you heard -- that's why this lady
3 sits here and gets every word that is said in this
4 courtroom down on the record. So if I say Ms. Gallman
5 said something that you think, I don't think so, you
6 can hear it back. You just have to ask.

7 This is a somewhat unusual murder trial in that
8 it is entirely an investigator case. Not one fact
9 witness came into this courtroom that was anywhere in
10 the vicinity of Cheryl Snow's home whenever this
11 happened. You heard about some neighbors and some
12 friends, and you heard about some other folks. None of
13 them came into this courtroom and took the stand and
14 told you what, if anything, they know about those last
15 days of her life.

16 It was based entirely on the investigation. And
17 my position is that that investigation was failed and
18 flawed, especially in the end, because these two police
19 officers reached a conclusion that was either
20 deliberately made or mistakenly so. They both told you
21 throughout the whole chronology of this case they
22 didn't have evidence against Oran Smith until they got
23 this phone call from SLED.

24 And a lot of confusion -- and I'm not going to
25 talk to you a lot about DNA, frankly. I'm going to

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 only tell you this. Ms. Bryson was very clear I think
2 in what she said. She got a call from Detective
3 Patrick. And you can see Mr. Voight did it, too. And
4 this makes sense when you think about forensic
5 evidence. When Detective Patrick sat in that chair and
6 we were talking about what to send and what we were
7 looking for, what did people have, he did exactly what
8 Mr. Voight did when he was talking to you. He held his
9 hands like someone holding whatever -- knew would be
10 the legs of the pajama bottoms. They would have been
11 wrapped around her neck and pulled until she died.

12 Now, I'll give you that. If that's, in fact,
13 what was found, then that might be persuasive evidence
14 because if that were there, then that might be
15 something from which you could infer that person held
16 that edge of the legs and tied and pulled. That would
17 make sense.

18 Now, we know that's not what we had. Whatever
19 information we have, that ain't it. His semen, very
20 clearly she said, was in the crotch area. Now, we know
21 because Oran told them. He wasn't like Leonard Gettis
22 when they came to his door and said do you know this
23 lady. They showed him her picture. There's no
24 mistake. No. There's a big difference. He saw the
25 picture. Well, that wasn't what Oran said. Told them

1 for hours in the police station in a tiny little
2 interview room. He talked and he talked and he talked
3 and they finally said, all right, and let it go.

4 He admitted he had sex with her. He admitted he
5 was in her apartment. He admitted that he had beer.
6 He admitted that he had Newport cigarettes. He
7 admitted that they hung out and listened to music. All
8 of that excellent police work. And it was good. I'll
9 give you that. Confirmed the truth of what he said.
10 Yet not one scintilla of doubt exists --

11 For years they had a relationship. He wasn't
12 her boyfriend, she wasn't his girlfriend. Forget who
13 told us that, but one of the police officers did find
14 that out. He had a girlfriend; Cheryl had a boyfriend.
15 They had this casual thing in the middle.

16 They stayed for hours in her apartment. They
17 ate, they drank, had sex, and he left. And no
18 indication, not one tiny, tiny piece of evidence, that
19 anything bad happened while he was there. There's no
20 fight, there's no motive, there's no explanation of any
21 sort why this casual long-term friendship all of a
22 sudden went way bad. No drugs. Three beers: Cheryl's
23 prints on one, his prints on one. The other one --

24 And, you know, I'm not going to argue with Mr.
25 Voight about his perception about fingerprints and

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 whether one is identified or not identified, that we
2 have unknown people's fingerprints. Again, Al Hallman
3 and Ray Garrison are exactly the kind of forensic
4 professionals you would ever want to have. They go in.
5 They did their job. And their job is simply comparing.
6 They're not the ones that necessarily go in there and
7 say what it is they're going to get. Sometimes they
8 do, sometimes they don't. Ms. Bunker was the one that
9 went in. The chief agent obviously has got the power
10 to say, I want you to go get this or that. They just
11 took what they had and they compared it and they very
12 simply, honestly, truthfully told you what they had
13 and, equally honestly, think of those gray areas and
14 said, yeah, just -- this tells us he was there. He
15 told you his statement. He's told us he had a beer.
16 He told us that. And right on through --

17 Now, the last thing I'll say about the DNA is --
18 again, my recollection may be different than yours, but
19 what I can recall in asking Ms. Gallman -- and I'll
20 admit I had a hard time following her, no question
21 about it. But the one thing I can remember is trying
22 to get her to tell me the source of the second DNA.
23 The semen we know, and we understand that. That's
24 clear. What was the source of this other DNA that you
25 say is not a match, you say you cannot exclude, and

1 then we have all this conversation in between about
2 whatever that is? No question it is not a match.
3 That's what I -- that's what it means. And that's what
4 she finally -- even she had to admit, well,
5 scientifically, I can't say that. And why can't you
6 say that? Because there are rules. And why are there
7 rules in science? Because if we don't have rules, then
8 science is worthless and that test does no good.

9 Nothing forensically in this case proves
10 anything relating to Cheryl's identity of the person
11 that killed her. That is just the sad truth.
12 Circumstances, suspicion, theories: the time for that
13 is over. Proof is what is supposed to be brought into
14 this courtroom and laid out for y'all to decide. It's
15 not your responsibility to solve this case. It's not
16 your responsibility to connect -- unconnect the dots.
17 Your responsibility -- is to weigh what was shown to
18 you and to apply the constitution and then to render a
19 verdict that speaks the truth.

20 Now, the judge is going to talk to y'all about
21 the law, the constitution, so I'm not going to spend a
22 whole lot of time on that. But I am going to say one
23 little part, and at least about two more areas I want
24 to talk to you about, and that's the evidence other
25 than the forensic stuff. But there is a couple of

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 things. And, again, I don't want to waste your time
2 on what you've all heard already. But as far as
3 the excellent investigative procedures, one of the
4 things -- two things that struck me through this trial
5 -- and y'all may think that lawyers come into trials
6 and we know everything that is coming. That's not the
7 case. We don't.

8 And I'm surprised to see this whole telephone
9 thing. Now, I've seen that criminal-scene video that
10 y'all saw in the courtroom and you'll have the
11 opportunity to view again. And that's why when I was
12 talking to you about how Hallman -- I was talking about
13 a white phone with a handset and a cord. The wire had
14 been ripped out of the wall. That was pretty important
15 to me. I thought, okay, any prints on that? Because,
16 I mean, if you've got prints of somebody pulling that
17 phone, that would be proof. Well, it turns out they
18 didn't take that phone. They took this other phone.
19 And I asked Ms. Gallman just one phone, is that it,
20 that phone right there. She was the one talking to us
21 about that. Yeah, just one phone. Well, we went back
22 during the lunch break because we just couldn't -- you
23 know, am I insane. Surely we saw a white phone. So
24 I'm going to ask you to look again. It's at about
25 minute four on that video, and it shows that white

1 phone and, right beside it, that black phone. So if
2 they took that phone -- because what they were asked to
3 take was the answering machine -- nobody thought that
4 it might be important to take the phone that clearly
5 had been, by somebody, ripped away from the wall.

6 Now, that may be a small thing. But what about
7 the thermostat? Everybody knows sixty-two degrees in
8 June, and the woman had a cold. So we don't who turned
9 it down. We don't know why. Mr. Voight has his
10 theory, and it's a good theory, that the person who
11 killed Cheryl Snow was that clever to go and crank down
12 the thermostat in hopes of delaying discovery or
13 whatever. Wouldn't it have been helpful, couldn't it
14 have proved, to dust the thermostat for prints? Might
15 that not have revealed something relevant to the person
16 being there?

17 There's one other piece, and I can't now
18 remember it. But that's the kind of thing -- that when
19 I asked y'all in opening argument to pay attention to
20 these details and to challenge them, that's the kind of
21 thing that I --

22 Now, probably the most important issue in this
23 case, and the only one at all that actually potentially
24 could be considered evidence, is the statement. Now,
25 South Carolina is an interesting state in criminal

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 procedural law. And in the state of South Carolina it
2 is part of your job, as well, to determine the
3 voluntariness of any statement that is brought into
4 this courtroom. Now, we went over this, all of you
5 reviewed the statement and those waiver of rights. And
6 you've heard about how there's a little interview room
7 and what happened with Oran. And Judge Harrington is
8 going to talk to y'all a good bit about how you
9 determine what consideration, if any, to give to the
10 statement.

11 You heard the police officers. And we heard
12 from two. There were actually three police officers
13 that were involved in taking these two statements and
14 who were present on both occasions. You did not hear
15 from Detective Hill. He did not come in and talk to
16 you.

17 But you heard from Detective Patrick and you've
18 heard from Detective Elmore. We talked about that they
19 knew, when they brought Oran Smith in there both times,
20 that he had issues. They knew he had a head injury.
21 They knew he didn't even graduate from high school.
22 Not only did he not graduate from high school, by the
23 time that he was in high school he was a special-
24 education student. They knew that he was disabled and
25 that he was on SSI. And Detective Patrick, when asked

1 if you have any protocol that you use when you've got
2 those that might need a little extra explanation to
3 make sure they really understand this stuff, yeah, we
4 do; I don't know what it is because I've never dealt
5 with anyone like that. Really.

6 And as far as Detective Elmore, I'm not going to
7 spend a whole lot of time with y'all about that. All I
8 am going to say and ask you -- you sat here and watched
9 him. You heard what he said to Mr. Voight, and you
10 heard what he said with me. A couple of times when I
11 asked him about things he said to Mr. Voight he said, I
12 didn't say that. Well, if he can't remember in a span
13 of twenty to thirty minutes what he said under oath in
14 a courtroom in a trial for murder, do you really think
15 that he could believe and remember -- do you really
16 believe that he can remember the kinds of details that
17 he was all of a sudden full of, two years ago, one of
18 dozens of interrogations? He said -- I might be wrong
19 about that, but he had an unexplainable, unbelievable
20 recall. No notes, no reports, but, man, what a brain.

21 Now, one of the things that Judge Harrington is
22 going to tell you about the statements is you take into
23 consideration the circumstances of the -- of the person
24 that's supposedly making the statement, their mental
25 abilities, education, opportunity, any of that, ability

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 to understand what is going on --

2 We talked about the last one on those advice
3 forms. Once you started -- and y'all will have those
4 to see -- simple language. But the last one is if you
5 start a statement without a lawyer, any time you want
6 to stop you just stop. Well, I kind of think he did.
7 They talked to him for ten hours in two days, and on --
8 on June 6th and he told them over and over what he had
9 done with Cheryl, when he had been there. They kept
10 asking him. Finally he said, oh, all right -- and then
11 though nothing changes in the case except this
12 misunderstanding of whether there is DNA and what the
13 DNA is --

14 Because let's be honest about the DNA. Best-
15 case scenario on the DNA already establishes what we
16 already know, what Oran already told them: yes, I was
17 with her for almost two days; yes, we slept together;
18 we were together, we had sex together. And maybe some
19 of my skin, it may be some of -- it may be some of my
20 semen -- the other one, the other mysterious stuff that
21 they want to say is skin cells, we don't really know.
22 Ms. Bryson said it could have been sweat. I don't
23 know. It's right up here, right here --

24 So even after all that argument about that, if
25 that is Oran's sweat or whatever, what does that prove?

1 Only what he has told them was the truth all along.
2 But in their minds, that's not what they've heard.
3 They've got the call a month and a week into the
4 investigation that they say they spent a lot of time
5 of -- I'll give them that. And they didn't solve it.
6 They didn't solve it. They had nowhere else to go.
7 They got that information and whether they
8 inadvertently misunderstood it, whether it was
9 miscommunicated to them, or whether they just thought,
10 that's all we've got, you know, take it and we're going
11 to run with it. And run with it they did.

12 They went back to Oran's house. And I love
13 that. Mr. Voight talks about spinning the facts. They
14 talked to you about how they searched all night for
15 Oran Smith. You know, every time they went looking for
16 Oran Smith, guess where Oran Smith was. At home.
17 Every time they went looking for him -- doesn't ever
18 say one time he was not -- did he ever one time say it?
19 I don't want to leave? No. They came and got him. He
20 went with them.

21 In that second statement they talked and talked.
22 And I told you a second ago that I thought that he
23 exercised that fifth right; that he stopped. Because
24 what difference is it when you tell somebody over and
25 over and over, when you say it about sixty times -- I

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 don't know how many times it was -- that this is what I
2 know, this is what I did. And they say, no, that is
3 not what you did; that is not the truth; you are lying
4 to me; it's not good enough; this truth you are telling
5 me isn't good enough; you know you did it; you know
6 you're lying; you're going to jail for a long time.

7 Now, if you think that the way Detective Elmore
8 described his interrogation to you as truthful, you
9 have the right to believe that. And if you really
10 think that it's a very nice, polite, pleasant exchange,
11 that there was no intervention of any sort to the man
12 that you now know as Oran Smith, then believe it. But
13 if you have any doubt that it transpired quite like
14 that, then it is your duty and your obligation to
15 discard it -- to give it no consideration because if it
16 can't be reliable, there is no reason to believe it as
17 the truth.

18 And, of course, I have lots more papers but I
19 think honestly that y'all have heard and know this
20 case, at least what has been presented in this
21 courtroom, as well as I do and as well as Mr. Voight
22 does. All I'm going to ask you is, again, that last
23 little bit of patience and attention. It is tempting
24 to go back there -- Judge Harrington is going to talk
25 to you a little while about the law, and then you're

1 going to get to go back into your room and finally, for
2 the first time, you get to talk to each other about the
3 facts, the last facts that you'll see in this
4 courtroom. And it's already 4:30, and I know every
5 single one of you have somewhere else calling to you,
6 but please don't rush.

7 Mr. Voight asked -- I talked to you a lot about
8 Oran and his family. Well, Cheryl has got family in
9 here, too, and Cheryl deserves every minute of time
10 that is necessary for a truthful and just verdict. Her
11 death was a tragedy. She had some problems. She's had
12 some problems, but that doesn't diminish her life or
13 her value at all. She lived a risky life, but it was
14 her life to live. She had every right to live.
15 Whoever did this to her had no right whatsoever to do
16 what they did. All that we ask you now is not to
17 compound that tragedy by making another victim of Oran
18 Smith, a man who has his own issues, who did not kill
19 Cheryl Snow. Thank you.

20 THE COURT: Ladies and gentlemen, we've reached
21 the point in the trial that I will instruct you on the
22 law applicable to this case. If you would like to take
23 a moment and stand and stretch before I give you the
24 charge, feel free to do so at this time.

25 - - -

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, I remind you that during this trial you and I have had certain duties to perform. As the trial judge it is my responsibility to preside over the trial in this case, and I also have the duty to rule on the admissibility of the evidence that is offered during the trial.

You are to consider only the competent evidence before you. If there was any testimony that was ordered stricken from the record in this case, you must disregard that testimony.

You are to consider only the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record in this case, as well as any stipulations of counsel.

I have the additional duty to charge you on the law applicable to this case. As the presiding judge, I am the sole judge of the law of this case and it is your duty as jurors to accept the law as I state it to you now. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you, you must abandon your idea because you are sworn to accept the law and apply the law as I state it to you now.

In every case tried in this court before a jury,

1 the jury becomes the sole judge of the facts of this
2 case. A trial judge cannot state or make any comment
3 to a trial jury about the facts in this case. Since
4 you, the jury, are the sole judge of the facts in this
5 case, you are not to infer from anything that I have
6 said during the progress of the trial or during the
7 charge on the law now that I have any opinion about the
8 facts in this case. The law does not allow me to have
9 an opinion about the facts in this case. This is a
10 matter solely for you, the jury, to determine. As
11 jurors it is your duty to determine the effect, value,
12 and weight and truth of the evidence that has been
13 presented during this trial.

14 The indictment charges the defendant with
15 murder. I remind you that the fact that the defendant
16 was arrested, charged, and indicted in this case is not
17 evidence in this case and cannot be considered by you
18 in any way as evidence of guilt in this case, nor does
19 it create any presumption or inference of guilt. This
20 document is simply the formal written instrument which
21 contains the charge made against the defendant. It is
22 the formal document by which this case is brought into
23 court. The defendant has pled not guilty to this
24 indictment and that plea puts the burden on the State
25 to prove the defendant guilty. A person charged with

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 committing a criminal offense in South Carolina is
2 never required to prove himself innocent.

3 I charge you that it is an important rule of law
4 that the defendant in a criminal trial, no matter what
5 the seriousness of the charge may be, will always be
6 presumed to be innocent of the crime for which the
7 indictment was issued unless guilt has been proven by
8 evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 This presumption of innocence does not end when
11 you begin your deliberations. It accompanies the
12 defendant throughout the trial until you reach a
13 verdict of guilt based on evidence satisfying you of
14 that guilt beyond a reasonable doubt. The presumption
15 of innocence is like a robe of righteousness placed
16 about the shoulders of the defendant, which remains
17 with the defendant until it has been stripped from the
18 defendant by evidence satisfying you of the defendant's
19 guilt beyond a reasonable doubt. The presumption of
20 innocence is not mere legal theory, it is not just a
21 legal phrase, it is a substantial right to which every
22 defendant is entitled unless you, the jury, are
23 satisfied from the evidence of the defendant's guilt
24 beyond a reasonable doubt.

25 The State has the burden of proving the

1 defendant guilty beyond a reasonable doubt. Some of
2 you may have served as jurors before in civil cases
3 where you were told that it is only necessary to prove
4 that a fact is more likely true than not true, such as
5 by greater weight or preponderance of the evidence. In
6 criminal cases, the State's burden must be more
7 powerful than that. It must be beyond a reasonable
8 doubt. Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the defendant's guilt.
10 There are very few things in this world that we know
11 with absolute certainty, and in criminal cases the law
12 does not require proof that overcomes every possible
13 doubt. If based upon your consideration of the
14 evidence you are firmly convinced that the defendant is
15 guilty of the crime charged, you must find the
16 defendant guilty. If, on the other hand, you think
17 there is a real possibility that the defendant is not
18 guilty, you must give the defendant the benefit of the
19 doubt and find him not guilty.

20 There are two types of evidence which are
21 generally presented during a trial: direct evidence
22 and circumstantial evidence. Direct evidence is the
23 testimony of a person who claims to have actual
24 knowledge of a fact, such as an eye-witness. It is
25 evidence which immediately establishes the main fact to

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 be proved. Circumstantial evidence is a chain --
2 excuse me. Circumstantial evidence is proof of a chain
3 of facts and circumstances indicating the existence of
4 a fact. It is evidence which immediately establishes
5 collateral facts from which the main fact may be
6 inferred. Circumstantial evidence is based on
7 inference and not on personal knowledge or observation.
8 The law makes absolutely no distinction between the
9 weight or value to be given either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than that
12 of direct evidence. You should weigh all of the
13 evidence in this case. After weighing all the evidence
14 if you are not convinced of the guilt of the defendant
15 beyond a reasonable doubt, you must find the defendant
16 not guilty.

17 Necessarily, you must determine the credibility
18 of witnesses who have testified in this case.
19 Credibility simply means believability. It becomes
20 your duty as jurors to analyze and to evaluate the
21 evidence and determine which evidence convinces you of
22 its truth. In determining the believability of
23 witnesses who have testified in this case, you may
24 believe one witness over several witnesses or several
25 witnesses over one witness. You may believe part of a

1 testimony of a witness and reject the remaining part of
2 the testimony of that same witness. You may believe
3 the testimony of a witness in its entirety or reject
4 the testimony of a witness in its entirety. You may
5 consider whether any witness has exhibited to you any
6 interest, bias, prejudice, or other motive in this
7 case. You may also consider the appearance and manner
8 of a witness while on the witness stand.

9 The rules of evidence ordinarily do not permit
10 persons, witnesses, to testify to opinions or to
11 conclusions. An exception to this rule exists for
12 witnesses we call expert witnesses, a witness who by
13 education and experience has become expert in some art,
14 science, profession or calling may state an opinion as
15 to relevant and material matter in which the witness
16 claims to be an expert and also may state the reasons
17 for that opinion. You should consider any expert
18 opinion received in evidence in this case and, like any
19 other evidence, give it the weight you think it
20 deserves. If you decide that the opinion of an expert
21 witness is not based on sufficient education and
22 experience, or if you conclude that the reasons given
23 in support of the opinion are not sound or that the
24 opinion is outweighed by other evidence, you may
25 disregard the opinion entirely. An expert witness'

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 testimony is to be given no greater weight than that of
2 other witnesses simply because the witness is an
3 expert. Further, you are not required to accept an
4 expert opinion, even though it is not contradicted.

5 I instruct and emphasize that the fact the
6 defendant did not testify is not a factor to be
7 considered by you in any way in your deliberation and
8 in your consideration of the guilt of the defendant.
9 It must not be considered by you in any manner
10 whatsoever. A defendant has the constitutional right
11 to remain silent, and the assertion of this right must
12 not be considered by you in your deliberations. I
13 repeat: under your oath, you are to draw no conclusion
14 whatsoever from the fact that the defendant in this
15 case did not testify. The fact that this defendant did
16 not testify should not even be discussed in the jury
17 room. The burden of proof, as I have stated to you, is
18 on the State. The defendant is not required to prove
19 his innocence. The burden of proof remains on the
20 State to prove guilt beyond a reasonable doubt.

21 In order to establish criminal liability,
22 criminal intent is required. For example, the mental
23 state required to be proven by the State for a
24 particular crime might be purpose, intent, knowledge,
25 recklessness, or criminal negligence. Criminal intent

1 must be proven by the State beyond a reasonable doubt.
2 Criminal intent is always a matter that must be
3 determined by the jury from the circumstances
4 surrounding the situation. There is no way to prove
5 intent to a mathematical certainty. There is no way
6 that medical science can dissect a person's brain and
7 determine what the person had in mind, so the law says
8 that criminal intent may be inferred from the
9 circumstances shown to have existed. This is how you
10 make a determination of whether or not the element
11 requiring intent was present. It is not necessary to
12 establish intent by direct and positive evidence, but
13 intent may be established by inference in the same way
14 as any other fact: by taking into consideration the
15 acts of the parties and all the facts and circumstances
16 of the case. Criminal intent is a mental state, a
17 conscious wrongdoing. It is up to you to determine
18 what the defendant intended to do, based on the
19 circumstances shown to have existed. Criminal intent
20 can arise from action or a failure to act. It may
21 arise from negligence, recklessness, or an indifference
22 to duty, or to consequences that is considered by law
23 to be the equivalent of criminal intent.

24 A statement alleged to have been made by the
25 defendant has been admitted into evidence in this case.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 While the Court has determined that the statement is
2 admissible, I instruct you that you make the ultimate
3 decision of whether or not the defendant made the
4 statement. If the defendant did make the statement,
5 you must determine whether the statement was made by
6 the defendant voluntarily and of his own free will.
7 This means that the statement was not caused by
8 pressure, force, fear, threats, coercion, or
9 intimidation, or by hope or a promise of leniency or a
10 reward of any kind. In determining whether the
11 statement was voluntary, you should consider both the
12 characteristics of the defendant as well as the details
13 of the questioning. Some of the factors that you must
14 consider are the age of the defendant, the defendant's
15 education or lack of education, the defendant's mental
16 ability or capacity, the defendant's IQ or
17 intelligence, the defendant's background and
18 environment, the place and length of detention, the
19 nature of the questioning, and the advice or lack
20 thereof to the defendant of his constitutional rights,
21 including, but not limited to, the right to remain
22 silent, that any statement could be used against him in
23 court, the right to have a lawyer present, that if he
24 could not afford a lawyer a lawyer would be appointed
25 to represent him without any cost, and that he could

1 stop making a statement at any time. You must
2 carefully consider all of the surrounding circumstances
3 before you give any weight to an alleged statement.
4 The State has the burden of proving beyond a reasonable
5 doubt that the alleged statement was voluntary. If you
6 determine it was, you may give the statement any
7 further consideration that you deem proper. You must
8 decide what weight, if any, should be given to the
9 alleged statement. If you determine the alleged
10 statement was not the free and voluntary statement of
11 the defendant, you should not consider the statement at
12 all.

13 The defendant is charged with murder. The State
14 must prove beyond a reasonable doubt that the defendant
15 killed another person with malice aforethought. Malice
16 is hatred, ill will, or hostility towards another
17 person. It is the intentional doing of a wrongful act
18 without just cause or excuse and with an intent to
19 inflict an injury or under circumstances that the law
20 will infer an evil intent. Malice aforethought does
21 not require that malice exists for any particular time
22 before the act is committed, but malice must exist in
23 the mind of the defendant just before and at the time
24 that the act is committed; therefore, there must be a
25 combination of the previous evil intent and the act.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 Malice aforethought may be express or inferred. These
2 terms express or inferred do not mean different kinds
3 of malice, but merely the manner in which malice may be
4 shown to exist. That is either by direct evidence or
5 by inference from the facts and circumstance which are
6 proved. Express malice is shown when a person speaks
7 words which expresses hatred or ill will for another,
8 or when the person prepared beforehand to do the act
9 which was later accomplished. For example, lying in
10 wait for a person, or any other acts of preparation
11 going to show that the deed was in the defendant's
12 mind, would be express malice. Malice may be inferred
13 from conduct showing a total disregard for human life.
14 Inferred malice may also arise when the deed is done
15 with a deadly weapon. A deadly weapon is any article,
16 instrument, or substance which is likely to cause death
17 or great bodily harm. Whether an instrument has been
18 used as a deadly weapon depends upon the facts and
19 circumstances of each case. The following are examples
20 of instruments which may be deadly weapons: a pistol,
21 a shotgun, a rifle, a dirk, dagger, knife, slingshot,
22 metal knuckles, razor, gasoline, firebomb, Molotov
23 cocktail, and lighter fluid. A gun may be a deadly
24 weapon, even if it is not operating.

25 Ladies and gentlemen, there are two possible

1 verdicts which you may find in this case. There is no
2 significance whatsoever in the way I state these
3 verdicts. It's simply one must go first.

4 Madam Foreperson, you are responsible for
5 filling out the verdict form. You will also certify
6 that your decision is the unanimous decision of the
7 jury, and you will sign and date the verdict form.

8 In the Court of General Sessions, docket 2007-
9 GS-10-13172, State of South Carolina, County of
10 Charleston, State of South Carolina versus Oran L.
11 Smith, defendant. Verdict one: we, the jury, find the
12 defendant not guilty; or, two, we, the jury, find the
13 defendant guilty of murder.

14 Again, Madam Foreperson, you will sign,
15 certifying that this is the unanimous verdict of the
16 jury, and date it today's date.

17 Ladies and gentlemen, your verdict must be a
18 unanimous one. When the jury agrees on the verdict,
19 you will knock on the door and inform the bailiff that
20 you have now reached a verdict. At that time we will
21 receive you back in the courtroom.

22 Ladies and gentlemen, I ask, with the exception
23 of my two alternates, that you return to your jury room
24 at this time. Do not begin your deliberations until
25 you are told to do so. We will be gathering the

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 verdict form, as well as the exhibits that go back with
2 you, so you may not begin your discussions or your
3 deliberations until you are told to do so by the
4 bailiff.

5 For my two alternates, you will remain separated
6 from the jury for just a few moments.

7 Please rise for the jury.

8 [Whereupon, the jury exits the courtroom at
9 4:45 p.m.]

10 THE COURT: Thank you. Be seated.

11 Any objections or exceptions to the charge as
12 read? From the State?

13 MR. VOIGHT: Not from the State, Your Honor.

14 MS. TAYLOR: None from the defense.

15 THE COURT: From the defense?

16 And have we -- I need counsel to come forward
17 and verify the verdict form is in order.

18 And have we gathered the evidence that will be
19 going back?

20 MS. TAYLOR: We have not -- just make sure
21 nothing is not going back that shouldn't, but --

22 [Whereupon, counsel review verdict form]

23 [Off the record momentarily]

24 THE COURT: Mr. Voight, Ms. Taylor, any
25 objection to the evidence that is going back on the

1 cart?

2 MS. TAYLOR: No.

3 THE COURT: From the State?

4 MR. VOIGHT: No, Your Honor.

5 THE COURT: From the defense?

6 MS. TAYLOR: No, ma'am.

7 THE COURT: And no objection to the indictment
8 going back, as well as to the Court's prepared verdict
9 form? From the State?

10 MR. VOIGHT: None from the State, Your Honor.

11 MS. TAYLOR: None.

12 THE COURT: All right. And anything before we
13 send all of the evidence back?

14 MR. VOIGHT: No, Your Honor.

15 THE COURT: I was going to see -- it's five
16 o'clock -- to inquire whether they wanted to begin
17 their deliberations in the morning.

18 Do you take a position, Mr. Voight?

19 MR. VOIGHT: I would prefer them dive into it
20 and see if we could work it out tonight, Your Honor.
21 That would be my position.

22 THE COURT: Ms. Taylor?

23 MS. TAYLOR: Generally, I would agree with that.
24 Yes. I think it's early.

25 THE COURT: Okay. Thank you.

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 All right. Tell them they may begin their
2 deliberations.

3 All right. We'll be at ease in this case.

4 [Whereupon, evidence is sent to the jury at
5 4:52 p.m.]

6 [Whereupon, a recess is taken from 4:52 p.m. to
7 6:09 p.m.]

8 THE COURT: They've indicated that they wish to
9 go home. I think, considering the lateness of the
10 hour, that we will -- I will bring them in, indicate
11 again my admonition, you know, that they must stop
12 deliberation, they cannot do any independent research,
13 all of those things, and then they will come back in
14 the morning at 9:00 to resume their deliberations.

15 Anything from the State?

16 MR. VOIGHT: No, Your Honor.

17 MS. TAYLOR: Will you just let them come
18 directly into their room, or do you want us here at
19 9:00?

20 THE COURT: No, no. You-all do not have to be
21 here. I have your cell numbers, so we will call you
22 should there be a note or a verdict.

23 And so they will resume, and we have other
24 matters that will be going on in the courtroom, as
25 well.

1 Please rise for the jury. Please bring in the
2 jury.

3 [Whereupon, the jury enters the courtroom at
4 6:10 p.m.]

5 THE COURT: Thank you. Please be seated.

6 Ladies and gentlemen of the jury, the bailiff
7 has indicated to me that you did not wish to order
8 dinner and that you wished to go home and resume your
9 deliberations in the morning.

10 Madam Foreperson, is that correct?

11 THE FOREPERSON: That's correct.

12 THE COURT: Ladies and gentlemen of the jury, I
13 now caution you that you must cease your deliberations.
14 You may not discuss this case amongst yourselves until
15 all twelve of you are present. You may not discuss
16 this case with friends, family members, or anyone
17 involved in this case. You must not read, watch,
18 listen to, any news account should there be any
19 involving this case. You must not do any independent
20 research regarding this case. You need to be back in
21 your jury room at 9:00 a.m. in the morning.

22 I caution you that you may not begin your
23 deliberations or discuss this case until all twelve of
24 you are back in the jury room in the morning. The
25 bailiff will have the evidence and will not bring the

State vs. Oran Smith
Jury Trial - Volume 3 of 4
June 17, 2009

1 evidence until all twelve of you are in there.

2 Madam Foreperson, it is your responsibility to
3 make sure no deliberations occur until all twelve of
4 you are present.

5 Please have a restful evening and, again, please
6 remember my admonition not to discuss this case, do not
7 continue your deliberations, and do not read, watch,
8 listen to, any news accounts regarding this case.

9 Please have a restful evening. We will see you
10 back in your jury room. You will just report back to
11 your jury room at 9:00 a.m. Thank you.

12 Please rise for the jury.

13 [Whereupon, the jury exits the courtroom at
14 6:12 p.m.]

15 THE COURT: Thank you. Be seated. Anything
16 before we recess for the evening? From the State?

17 MR. VOIGHT: Not from the State, Your Honor.

18 THE COURT: From the defense?

19 MS. TAYLOR: Nothing, Your Honor. Did you
20 dismiss the alternates earlier?

21 THE COURT: They are dismissed. And you do not
22 -- again, you do not need to be here. We will call you
23 if we have a note or a verdict. Thank you, again, and
24 have a restful evening. Thank you.

25 [JURY TRIAL ADJOURNS AT 6:14 P.M.]

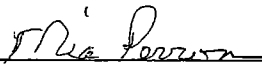
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Wednesday, June 17, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 5th day of June, 2010.


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

-227-

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) INDICTMENT NO.: 2007-GS-10-13172

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 ORAN SMITH,)
)
 DEFENDANT.)
 _____)

JURY TRIAL

VOLUME 4 OF 4

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Thursday, June 18, 2009, Commencing at 9:00 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
 Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Gregory K. Voight, Esquire
Chad Simpson, Esquire
9th Circuit Solicitor's Office
101 Meeting Street, Fourth Floor
Charleston, South Carolina 29402

FOR THE DEFENDANT:

Donna Taylor, Esquire
Taylor Shoun Bowley & Byrd
39 Broad Street, Suite 101
Charleston, South Carolina 29401

William H. Nixon, Jr., Esquire
Attorney at Law
Post Office Box 331
Charleston, South Carolina 29402

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	5
ALLEN CHARGE	8
CERTIFICATE OF COURT REPORTER	14

INDEX TO EXHIBITS

MARKED/ADMITTED

Court's Exhibit Number 1
[Note from the jury]

Court's Exhibit Number 2
[Note from the jury]

Court's Exhibit Number 3
[Note from the jury]

Court's Exhibit Number 4
[Note from the jury]

Court's Exhibit Number 5
[Note from the jury]

PROCEEDINGS

[Whereupon, the jury resumes deliberations at
9:00 a.m..]

[Whereupon, Court's Exhibit Numbers 1 through 5,
notes from the jury, are marked by the court reporter]

THE COURT: All right. The Court has received a
note: [reading] we are at an impasse. Please advise.

I'm going to bring the jury in and give them the
Allen Charge.

Anything further, Mr. Voight?

MR. VOIGHT: Nothing from the State, Your Honor.

MR. NIXON: Your Honor, just for the record, to
put it on there: we would object to an Allen charge at
this point. If you would hear me out on that?

THE COURT: Certainly.

MR. NIXON: The basis -- obviously I think it's
in the Court's discretion, and I don't want to argue
with you since you've ruled, but just to give me an
opportunity to put this on the record.

I think we have a jury that obviously got this
case last night. They had it for an hour. They got a
chance to discuss it at that point. They had time to
go home and sleep on it last night. Obviously this is
not something that's a rash decision with them or
something that it's 10:00 or eleven o'clock at night,

MIA PERRON, CCR, CVR-CM

1 they're tired, they want to go home.

2 You, I think, did the great thing: sent them
3 home. They're back today. They've come back with some
4 intelligent questions. I think those have been
5 answered appropriately. They asked for the charge,
6 they got the charge, they've had a chance to review it.
7 There was a question about whether or not they wanted
8 to listen to the testimony of the two officers and then
9 apparently decided they did not want to. Clearly
10 they're smart and clearly they know what's going on.
11 And at this point, if they're at an impasse and it's a
12 hung jury, I don't think there is anything in the law
13 that requires an Allen charge at this point and I think
14 it's just going to put us hopelessly here longer.

15 If they've already said that is their decision,
16 it would be our position that we go ahead and call this
17 as a mistrial and a hung jury and be done with it. But
18 that is the position of the defense, Your Honor.

19 THE COURT: All right. Thank you, Mr. Nixon,
20 for your input, and I think that it is very well
21 articulated.

22 The note does say please advise so I do think
23 the purpose of the Allen charge is to give them advice,
24 and so that is what the Court is going to do. Mr.
25 Nixon, thank you.

MIA PERRON, CCR, CVR-CM

State vs. Oran Smith
Jury Trial - Volume 4 of 4
June 18, 2009

1 MR. NIXON: Thank you, Your Honor.

2 THE COURT: Please bring in the jury.

3 They are down at the end of the hall so just
4 kind of be at ease, but they are down at the end of the
5 hall.

6 MR. NIXON: Your Honor, will we be able to look
7 at the charge that you propose to give?

8 THE COURT: It's the standard charge. Twelve
9 reasonable people can't ever come back and do the -- be
10 more reasonable or impartial. The standard one.

11 MS. TAYLOR: That one would also have something
12 about damage to your --

13 THE COURT: Yes.

14 [Whereupon, the jury enters the courtroom at
15 1:04 p.m.]

16 THE BAILIFF: The jurors are all present, Your
17 Honor.

18 THE COURT: Thank you. Thank you. Please be
19 seated.

20 Madam Foreperson, I have received your note,
21 marked now as Court's Exhibit Number 5, that you are at
22 an impasse and to please advise.
23
24
25

- - -

- - -

MIA PERRON, CCR, CVR-CM

-7-

ALLEN CHARGE

THE COURT: Ladies and gentlemen, as you have stated that you have been unable to agree on a verdict in this case, and I have previously instructed you that the verdict of the jury must be unanimous: when a matter is in dispute it isn't always easy for even two people to agree, so when twelve people must agree it becomes even more difficult.

In most cases absolute certainty cannot be reached or expected; however, you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors, tell each other how you feel and why you feel that way, discuss your differences with open minds.

Although the verdict of the jury must be unanimous, every one of you has the right to your own opinion. The verdict you agree to must be your own verdict, the result of your own convictions, and you should not give up your firmly-held belief merely to be in agreement with your fellow jurors.

The majority should consider the minority's opinion, and the minority should consider the majority's opinion. You should carefully consider and

State vs. Oran Smith
Jury Trial - Volume 4 of 4
June 18, 2009

1 respect the opinions of each other and reevaluate your
2 opinion for reasonableness, correctness, and
3 impartiality. You must lay aside all outside matters
4 and reexamine the questions before you, based on the
5 law and the evidence in this case.

6 If you do not agree on a verdict in this case, I
7 must declare a mistrial. In that case, it does not
8 mean that anybody wins. It just means that at some
9 future time I will try this case with some other jury
10 sitting where you now sit. The same participants will
11 come in, and the same lawyers will ask basically the
12 same questions and give basically the same answer, and
13 we'll go through the whole process again.

14 You were selected in the same manner and from
15 the same source as any future jury will be, and there
16 is no reason for me to suppose that the case will ever
17 be submitted to more twelve intelligent, impartial,
18 conscientious, and competent jurors than the twelve of
19 you here today or that more or clear evidence will ever
20 be produced on one side or the other.

21 I ask, therefore, that you return to your
22 deliberations with the hope that you an arrive at a
23 verdict within a reasonable time. Thank you.

24 Please rise for the jury.

25 [Whereupon, the jury exits the courtroom at

State vs. Oran Smith
Jury Trial - Volume 4 of 4
June 18, 2009

1 1:07 p.m.]

2 THE COURT: Thank you. Be seated.

3 Any objections to the charge as read?

4 MR. VOIGHT: No, Your Honor.

5 MR. NIXON: No, Your Honor.

6 THE COURT: Ms. Taylor, I thought that those was
7 the one. I've got two standard ones that the Court
8 gives, and the other one does have the due damage. So
9 I apologize. I thought that that was the one I had
10 pulled. But they're essentially the same ones --

11 MS. TAYLOR: Yes, ma'am.

12 THE COURT: But, again, no objections to the one
13 that the Court read?

14 MS. TAYLOR: I think that you covered it with
15 the don't give up your strongly-held convictions.

16 THE COURT: All right. Thank you.

17 We'll be at ease until we get either a note or a
18 verdict. Thank you.

19 [Whereupon, Court's Exhibit Number 6, note from
20 the jury, is marked by the court reporter]

21 [Whereupon, a recess is held from 1:08 p.m. to
22 3:14 p.m.]

23 THE COURT: Thank you. Please be seated.

24 Court Exhibit 6: we remain deadlocked and do
25 not anticipate any change to this status. Signed, the

MIA PERRON, CCR, CVR-CM

-10-

State vs. Oran Smith
Jury Trial - Volume 4 of 4
June 18, 2009

1 foreperson.

2 Anything before I bring in the jury?

3 MR. VOIGHT: No, Your Honor, not from the State.

4 MS. TAYLOR: Not from the defense.

5 THE COURT: Thank you.

6 [Whereupon, the jury enters the courtroom at
7 3:15 p.m.]

8 THE BAILIFF: All jurors are seated, Your Honor.

9 THE COURT: Thank you. Thank you. Please be
10 seated.

11 Ms. Foreperson, I have received a note now
12 entitled Court's Exhibit Number 6. What is the jury's
13 announcement at this time?

14 THE FOREPERSON: We remain deadlocked.

15 THE COURT: And as the foreperson, do you feel
16 that there is anything, any further instructions or
17 further explanation of the law, that would make it
18 beneficial for you to continue your deliberations?

19 THE FOREPERSON: I do not.

20 THE COURT: And at this time the Court will
21 declare a mistrial in this case.

22 Ladies and gentlemen of the jury, you have
23 completed your service in this trial, as well as for
24 the week. You have earned your exemption for the next
25 three years.

1 You are free to leave at this time, and you may
2 now discuss this case amongst yourselves, with friends,
3 family members, or anyone involved in this case. That
4 also means that you have the right not to discuss this
5 case with anyone. Should anyone continue to discuss
6 this case with you and you feel that it becomes to a
7 level of harassment, if you will please call the clerk
8 of court and I will handle the matter personally.

9 If you wish, I would like to personally thank
10 you for your service to Charleston County this week.
11 You do not have to remain here to do so but if you
12 would like to, I would like to personally thank you in
13 your jury deliberation room. So for those of you who
14 would like to remain around for just a moment, I would
15 appreciate meeting each one of you personally.

16 Please rise for the jury.

17 You are released.

18 [Whereupon, the jury exits the courtroom at
19 3:17 p.m.]

20 THE COURT: Thank you. Please be seated.

21 Any matters from the State?

22 MR. VOIGHT: None, Your Honor.

23 THE COURT: Any matters from the defense?

24 MS. TAYLOR: No, Your Honor.

25 THE COURT: To members of the victim's family, I

State vs. Oran Smith
Jury Trial - Volume 4 of 4
June 18, 2009

1 am sorry. I know that this is not a resolution for you
2 at this time, and I do extend my condolences to you.

3 And to the State and to the defense, I wish to
4 thank both counsel. Both of you were professional and
5 competent and very ethical in your representation of
6 your client's interest.

7 And Mr. Smith and to your family, good luck to
8 you, as well. Thank you.

9 [JURY TRIAL CONCLUDES AT 3:18 P.M.]

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MIA PERRON, CCR, CVR-CM

-13-

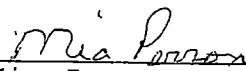
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Thursday, June 18, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 5th day of June, 2010.


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

STATE OF SOUTH CAROLINA	)	
	) -	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 07-GS-10-13172
	)	
Oran Smith,	)	
	)	
Defendant.	)	

TRANSCRIPT JURY TRIAL

The within Jury Trial was held December 7-9, 2009. before The Honorable R. Markley Dennis, Jr. in Courtroom 4D of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Gregory Voight, Assistant Solicitor
 Chad Simpson, Assistant Solicitor
 9TH CIRCUIT SOLICITORS OFFICE
 100 Broad Street, 4th Floor
 Charleston, South Carolina 29401
 Appearing for State of South Carolina

Donna K. Taylor, Esq.
 William Nixon, Esq.
 39 Broad Street, Suite 101
 Charleston, South Carolina 29401
 Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

INDEX

Index of Testimony	3
Index of State's Exhibits	4 - 7
Index of Defendant's Exhibits	8
Index of Court's Exhibits	8
Jury Qualification/Selection	9
Motions <i>in limine</i>	50
Welcome by The Honorable R. Markley Dennis, Jr.	66
Opening Statement by Solicitor Voight	76
Opening Statement by Ms. Taylor	80
Defense for Directed Verdict	399
Examination of Defendant re: right to testify	408
Charge Conference	417
Closing Argument by Solicitor Voight	424
Closing Argument by Ms. Taylor	439
Jury Charge	453
Verdict	479
Defense Motion for new trial	482
Sentence	498
Certificate of Court Reporter	500

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

3

INDEX OF TESTIMONY

Witness	Direct	Cross	Redirect	Recross
Scott Hille	87	94	98	
Angela Bunker	99	125		
Al Hallman	134	156	165	166
Ray Garrison	166	180	185	
Scott Wyant	190	201		
Janice Bryson	206	215		
Erin Presnell	228	240		
Lilly Gallman	246	272		
Shawn Patrick	280	312	339	343
Keith Elmore	346	365		

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

INDEX OF STATE'S EXHIBITS

No.	Description	Reference
1	Advice of Rights Form	299
2	7-18-07 Statement by Oran Smith	305
3	Advice of Rights Form	350
4	6-6-07 Statement of Oran Smith	351
5	Void	
6	Video (prepared from SX 19)	121
7	Void	
8	Void	
9	Photograph	58
10	Photograph	58
11	Photograph of front door to apartment	104
12	Photograph of beer car on shelf	104
13	Void	
14	Photograph of bed	104
15	Beer can	108
16	Miscellaneous CDs	109
17	Newport cigarette pack	109
18	Mug (blue)	110
19	Video cassette	103
20	Photograph of kitchen counter	104

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

5

INDEX OF STATE'S EXHIBITS

No.	Description	Reference
21	Photograph of kitchen counter	104
22	Photograph of desk in bedroom	104
23	Photograph, body of victim Cheryl Snow	104
24	Photograph of eyeglasses	104
25	Pajama bottoms (2)	199
26	Void	
27	Void	
28	Fingerprint card of Oran Smith	168
29	Fingerprints of Leonard Geddis	168
30	Fingerprints card of Cheryl Snow	168
31	Print search (McKelvey)	148
32	Fingerprint life from cigarette pack	171
33	Void	
34	Fingerprint from beer can	172
35	Fingerprint from CD	173
36	Void	
37	Fingerprint from cigar box	175
38	Fingerprint	
39	Fingerprint	
40	Fingerprint from coffee cup	176

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

INDEX OF STATE'S EXHIBITS

No.	Description	Reference
41	Fingerprint	143
42	Fingerprint	143
43	Fingerprint	143
44	Fingerprint	143
45	Fingerprint	143
46	Fingerprint	143
47	Fingerprint	143
48	Fingerprint	143
49	Fingerprint	143
50	Fingerprint	143
51	Fingerprint	143
52	Fingerprint	143
53	Fingerprint	143
54	Fingerprint	143
55	Fingerprint	143
56	Fingerprint	143
57	Fingerprint	143
58	Fingerprint	143
59	Fingerprint	143
60	Fingerprint	162

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

7

INDEX OF STATE'S EXHIBITS

No.	Description	Reference
61	Eyeglasses	111
62	Report of Lilly Gallman, SLED	249
63	Swab taken Oran Smith	118
64	SLED cuttings from pajamas	ID Only
65	Report of Officer Hille	89
66	Report of Officer Hallman	142
67	North Charleston Fingerprints Report	170
68	e-mail, Garrison to Bunker	179
69	DNA, Page 6 of 7 of Exhibit 62	252
70	DNA, Page 7 of 7 of Exhibit 62	252
71	Photograph of pajama bottoms	196

***VOID exhibits used in prior trial (mistrial)**

INDEX OF DEFENDANT'S EXHIBITS

(None Entered)

INDEX OF COURT'S EXHIBITS

No.	Description	Reference
1	Letters, Family of Victim	493

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

9

1 December 7, 2009 9:30 A.M.

2

3 (STATUTORY JURY QUALIFICATION)

4 (JURY PANEL IN @ 10:50 A.M.)

5 (DEFENDANT PRESENT)

6 THE COURT: All right. Ladies and
7 Gentlemen, thank you very much, and I'm sorry
8 for the tight quarters. It's one of the things,
9 you know, you work with architects -- and I'm
10 not being critical -- you design some things --
11 we have one courtroom on each floor -- really,
12 the largest one is on the fourth floor. The
13 rest of them don't accommodate enough jurors.
14 I guess some people just missed that somewhere
15 along the line. We'll try not to keep you here
16 too long.

17 We need your assistance in helping to
18 resolve this. And I am apologizing for the
19 tightness of the quarters, but we'll work
20 through it. If anybody does need -- we can
21 bring some chairs in, if we need to, Mr.
22 Williams (Bailiff). Is anybody extremely
23 uncomfortable? (No response).

24 The case that we are starting is a case
25 captioned State of South Carolina versus Oran

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

10

1 Smith. Mr. Smith has been accused in this
2 document that I hold in my hand that brings us
3 here of the crime of murder. And the State,
4 being the party that has the responsibility in
5 this state of making the claims or bringing
6 charges against persons who are accused of
7 committing criminal offenses. Mr. Smith has
8 been accused by this document. We'll talk about
9 that in just a moment.

10 Let me introduce to you Mr. Smith. Mr.
11 Smith is seated at the table to my left. If you
12 will please stand and face the jury panel for
13 me, please.

14 DEFENDANT: (Complies).

15 THE COURT: This is Mr. Smith. Thank
16 you. You may be seated, sir.

17 DEFENDANT: (Complies).

18 THE COURT: Are there any members of
19 the jury panel related by blood or marriage,
20 have any business dealings with, socially or
21 casually acquainted with Mr. Smith, have any
22 connection at all, please stand. (No response).
23 Thank you. There appear to be none.

24 Mr. Smith is represented by Ms. Taylor
25 and Mr. Nixon. If you would identify

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

11

1 yourselves, please.

2 MS. TAYLOR: My name is Donna Taylor.

3 I work with a firm locally by the name of
4 Taylor, Shoun, Bowley & Byrd. I am partners
5 with Cheryl Shoun, Lynn Bowley and Catherine
6 Byrd.

7 MR. NIXON: My name is Bill Nixon.

8 I'm in private practice. I'm a solo
9 practitioner, which means that I practice by
10 myself.

11 THE COURT: Thank you. Are there any
12 members of the jury panel related by blood or
13 marriage, have any business dealings with,
14 socially or casually acquainted with either Mr.
15 Dixon or Ms. Taylor or ever been represented by
16 their or their firms? If so, please stand. (No
17 response). Thank you. There appear to be none.

18 The Solicitor for the Ninth Circuit is
19 Scarlet Wilson. Are there any members of the
20 jury panel related by blood or marriage, have
21 any business dealings with, social or casually
22 acquainted with, ever been represented by Ms.
23 Wilson? If so, please stand. (Juror stands).
24 Yes, sir?

25 JUROR NUMBER 232: Very casually

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

12

1 acquainted, Your Honor.

2 THE COURT: And your name and number?

3 JUROR NUMBER 232: Dick Watson.

4 I'm juror 232.

5 THE COURT: Mr. Watson, the fact that
6 you have that casual acquaintance, would that
7 affect or influence you in this case, sir?

8 JUROR NUMBER 232: No, sir.

9 THE COURT: Will you base your
10 decision on the evidence and the law, and would
11 your decision be fair to both sides, sir?

12 JUROR NUMBER 232: Yes, sir.

13 THE COURT: Thank you very much.
14 Yes?

15 JUROR NUMBER 7: I am Jennifer
16 Bagwell. The solicitor's office is helping the
17 hotel that I work for with prosecuting for
18 fraud.

19 THE COURT: There's a criminal case
20 being made?

21 JUROR NUMBER 7: Yes, sir.

22 THE COURT: It has not been brought
23 yet?

24 JUROR NUMBER 7: No, uh-uh.

25 THE COURT: The fact that you may

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

13

1 have that experience, would that affect or
2 influence you in this case?

3 JUROR NUMBER 7: No, sir.

4 THE COURT: Is there an investigation
5 the Solicitor's conducting at this point?

6 JUROR NUMBER 7: I don't know. I
7 haven't received any paperwork or anything
8 about it. I don't know the status of the
9 investigation.

10 THE COURT: I'm going to do this.
11 Your number, please?

12 JUROR NUMBER 7: Seven.

13 THE COURT: I'm going to excuse
14 number seven out of an abundance of caution, Ms.
15 Bagwell. Are they returning to -- do you know
16 what the plan is?

17 CLERK: Return to Judge Jefferson's
18 courtroom.

19 THE COURT: Take her to Judge
20 Jefferson's courtroom or direct her to that, and
21 she can join that panel. If you can add her to
22 it -- if not, just return to the jury room.
23 Because I'm sure what they're doing is putting a
24 panel in my courtroom and Judge Jefferson, and
25 then the panel will be sent to Judge Hughston's

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

14

1 later this morning. Probably the best thing to
2 do.

3 JUROR NUMBER 7: Yeah, because I'm
4 not quite sure. I don't know any details or
5 anything about it.

6 (JUROR NUMBER 7 EXCUSED)

7 THE COURT: That's fine. If you'll
8 just go back to the jury panel room, you're
9 excused from participation in this, and then you
10 can follow the instructions there.

11 JUROR NUMBER 7: Thank you.

12 THE COURT: Thank you. Are there
13 others? (No response). Thank you. There
14 appear to be none.

15 Ms. Wilson has assistants that work
16 with her. Mr. Voight will be handling this. If
17 you will identify yourself and anyone that will
18 be assisting you, Mr. Voight.

19 MR. VOIGHT: Thank you very much, Your
20 Honor. My name is Greg Voight. I'm an
21 Assistant Solicitor. This is Chad Simpson, he
22 will be helping me out through some of this
23 trial. There may be an investigator coming in,
24 Mr. Nesmith. Also sitting at the table is a
25 North Charleston detective, Shawn Patrick, who

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

15

1 was the chief investigator in this case.

2 THE COURT: Thank you. Are there any
3 members of the jury panel related by blood or
4 marriage, have any business dealings with,
5 socially or casually acquainted with Mr. Voight,
6 Mr. Simpson, Mr. Nesmith or Mr. Patrick, ever
7 been represented by Mr. Voight or Mr. Simpson?
8 If so, please stand. (No response). Thank you.
9 There appear to be none.

10 Are there any members of the jury panel
11 related by blood or marriage, have any business
12 dealings with, socially or casually acquainted
13 with anyone employed with the Solicitor's
14 Office? She has offices in Berkeley and
15 Charleston Counties. If so, please stand.
16 Yes, sir?

17 JUROR NUMBER 233: My sister-in-law
18 works there, in the Berkeley office.

19 THE COURT: In the Berkeley office.
20 Your name and number, please?

21 JUROR NUMBER 233: Robert Watts,
22 233.

23 THE COURT: Mr. Watts, would that
24 affect or influence you in this matter?

25 JUROR NUMBER 233: No, sir.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

16

1 THE COURT: Would you base your
2 decision on the evidence and the law, and will
3 that decision be fair to both sides?

4 JUROR NUMBER 233: Yes, sir.

5 THE COURT: Thank you, sir. You may
6 be seated. Are there others?

7 JUROR NUMBER 65: I don't really know
8 if this is the right category or not. I have a
9 case coming to trial that I've been waiting on
10 for the last year or so with the Solicitor. I
11 don't know which one.

12 THE COURT: They are handling a case
13 right now for you?

14 JUROR NUMBER 65: I don't know which
15 one, but I know it's going through her. So I
16 don't really know the name off the top of my
17 head. I would hate to say ---

18 THE COURT: Your case?

19 JUROR NUMBER 65: My case. I'm the
20 defendant in the case.

21 THE COURT: Would not affect you at
22 this point. But let me ask you now, the fact
23 that you have a case and that they are
24 prosecuting that case would that affect or
25 influence you in this matter?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

17

1 JUROR NUMBER 65: I would like to say
2 no, but I will be prosecuted.

3 THE COURT: I think the best thing to
4 do, to protect us, just as we did with the other
5 one, is let you work in the civil side. Your
6 name and number, please?

7 JUROR NUMBER 65: Cheyne Dowds, number
8 sixty-four (sic).

9 THE COURT: Number 64 (sic) will be
10 excused from participation in this. Why don't
11 we make a note that he will be only for civil
12 jury. Thank you, sir. If you will join that
13 lady in the jury assembly room again.

14 (JUROR NUMBER 65 EXCUSED)

15 THE COURT: Are there others? (No
16 response). Thank you. There appear to be none.

17 Are there any members of the jury panel
18 who now or formerly, or members of your
19 immediate family now or formerly worked with law
20 enforcement in any capacity? If so, please
21 stand. Yes, sir?

22 JUROR NUMBER 213: Air Force
23 security police for about nine years and a
24 Myrtle Beach police officer.

25 THE COURT: You're not now?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

18

1 JUROR NUMBER 213: No, sir.

2 THE COURT: The fact that you had
3 that experience, would that affect or influence
4 you in any way?

5 JUROR NUMBER 213: No.

6 THE COURT: Will you base your
7 decision on the evidence and the law, and will
8 that decision be fair to both sides?

9 JUROR NUMBER 213: Yes, sir.

10 THE COURT: Your name and number,
11 please?

12 JUROR NUMBER 213: Matthew Snyder,
13 213.

14 THE COURT: Thank you, Mr. Snyder.
15 Yes, sir. Any others?

16 JUROR NUMBER 294: My son's a
17 deputy with the Charleston County Sheriff's
18 Office.

19 THE COURT: Would that affect or
20 influence you in any way in this case?

21 JUROR NUMBER 294: No, sir, it
22 would not.

23 THE COURT: Could you make a
24 commitment to both sides that it would not?

25 JUROR NUMBER 294: Yes, sir.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

19

1 THE COURT: And will you base your
2 decision on the evidence and the law, and will
3 that decision be fair to both sides?

4 JUROR NUMBER 294: Yes, sir.

5 THE COURT: Your number again?

6 JUROR: I believe it's 219.

7 THE COURT: Thank you, sir. Any
8 others? (No response). Thank you. There
9 appear to be none.

10 Ladies and Gentlemen, I'm going to call
11 out the names of a number of persons. And if
12 you're related by blood or marriage to any of
13 these individuals, have any dealings with them,
14 socially or casually acquainted, have any
15 connections at all, you need to stand and share
16 that information, please, with the Court.

17 The following persons are employed with
18 the North Charleston Police Department:

19 Scott Hille,
20 Angie Bunker,
21 Andy Coker,
22 Scott Wyant,
23 Ray Garrison,
24 Al Hallman,
25 Karl Mastantuno.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

20

1 The following persons who are employed
2 with the South Carolina Law Enforcement
3 Division, also known as SLED:

4 Jan Bryson
5 Lilly Gallman.

6 Those are the two with SLED.

7 Also the following with the North
8 Charleston Police Department:

9 Shawn Patrick,
10 Keith Elmore.

11 And then Erin Presnell who is employed
12 with MUSC.

13 Any of those? (No response). Thank
14 you. There appear to be none. Yes?

15 JUROR NUMBER 162: I have a
16 question.

17 THE COURT: Sure.

18 JUROR NUMBER 162: Karl Mastantuno,
19 does go by Allen?

20 THE COURT: Does he go by "Allen", by
21 any chance?

22 MR. VOIGHT: Allen Mastantuno is the
23 younger brother of Karl Mastantuno.

24 JUROR NUMBER 162: I went to high
25 school with an Allen.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

21

1 THE COURT: Would that affect you in
2 any way?

3 JUROR NUMBER 162: No, sir.

4 THE COURT: And if Karl Mastantuno
5 should testify, would you consider his testimony
6 the same as any witness that testifies?

7 JUROR NUMBER 162: Yes, sir.

8 THE COURT: Would you base your
9 decision on the evidence and the law, and would
10 that decision be fair to both sides?

11 JUROR NUMBER 162: Yes, sir.

12 THE COURT: Your name and number,
13 please?

14 JUROR NUMBER 162: Andrew Norton,
15 Number 162.

16 THE COURT: Thank you, Mr. Norton.
17 Any others? (No response). Thank you. There
18 appear to be none.

19 The dispute, as I mentioned to you, is
20 created or framed by this document that I hold
21 in my hand. It is what it appears to be to you,
22 it's a piece of paper. It's not evidence. It
23 merely contains the allegations against Mr.
24 Smith which brings us here today.

25 Mr. Smith is accused in this document

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

1 which we call an indictment of committing the
2 offense, as I stated, of murder. It alleges
3 that Mr. Smith did, in Charleston County, on or
4 about June 3rd, 2007, with malice aforethought,
5 kill and murder Cheryl Snow by means of
6 strangulation or strangling her, and that she
7 died as a result of the strangulation on June
8 3rd, 2007.

9 I share that with you, Ladies and
10 Gentlemen, to find out, first of all, if any
11 member of the jury panel has heard anything,
12 read anything, do you have any prior knowledge
13 of this dispute? If so, please stand. (No
14 response). Thank you. There appear to be none.

15 Ladies and Gentlemen, is there anything
16 about the nature of this dispute, that is
17 someone being accused of killing another with
18 malice aforethought, that you because of
19 something that may have happened to you or a
20 family member or a close personal friend in your
21 lifetime, some philosophy you may have, some
22 strong feelings you may have concerning this
23 offense, that would affect or in any way
24 influence your ability to analyze the evidence
25 and decide what you believe to be the true facts

State of South Carolina v. Oran Smith

23

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 fairly and impartially? If you feel that it
2 would have an effect on that process and in
3 applying the law fairly and impartially, please
4 stand. (No response). Thank you. There appear
5 to be none.

6 Are there any members of the jury panel
7 or members of your immediate family that have
8 ever been either the victim or you were involved
9 in the case in support of the victim of a
10 violent offence, or you were accused of
11 committing a violent offense or you were
12 involved in assisting in the case in connection
13 with a person so accused? If that applies -- if
14 you've had any connection with any criminal
15 process involving a violent criminal offense,
16 please stand.

17 I would ask you to come forward,
18 please. The attorneys may approach.

19 BAILIFF: Juror number 294, Your
20 Honor.

21 SIDEBAR:

22 THE COURT: Yes, sir, your name
23 and number.

24 JUROR NUMBER 294: Joseph
25 Zealberg, Number 294. I was stopped at a stop

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

24

1 sign and a gentleman came up and started beating
2 on my car and I -- also, as you know, I've
3 served as an expert in trials.

4 THE COURT: Yes, sir, thank you.
5 Do you believe that this experience would affect
6 or influence you in this case?

7 JUROR NUMBER 294: It would
8 not as a professional, but personally I ---

9 THE COURT: I understand. Thank
10 you. I'll excuse you.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Juror Number 294 will be
13 excused from participation in this case. Please
14 return to the jury room. Have a good day.
15 Thank you, sir.

16 (JUROR NUMBER 294 EXCUSED)

17 THE COURT: Are there others? (No
18 response). Thank you. There appear to be none.

19 Are there any members of the jury panel
20 who are members of organizations or groups
21 affiliated with law enforcement agencies or make
22 contributions to any of those types of agencies?
23 Just by way of illustration and example: MADD,
24 Mothers Against Drunk Driving; SADD, Students
25 Against Drunk Driving; Citizens Against Violent

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

25

1 Crimes, CAVE, and similar organizations? If so,
2 please stand. Yes?

3 JUROR NUMBER 145: Donate to the state
4 troopers?

5 THE COURT: And would that affect you
6 in any way?

7 JUROR NUMBER 145: No, sir.

8 THE COURT: Your name and number?

9 JUROR NUMBER 145: Trey McCraw,
10 145.

11 THE COURT: Thank you, Mr. McCraw.
12 Yes?

13 JUROR NUMBER 106: I donate to the
14 state troopers too.

15 THE COURT: Would that affect you in
16 any way?

17 JUROR NUMBER 106: No, sir.

18 THE COURT: Your name and number,
19 please?

20 JUROR NUMBER 106: 106.

21 THE COURT: Your name?

22 JUROR NUMBER 106: June Herzog.

23 THE COURT: Thank you, Ms. Herzog.
24 Yes, sir?

25 JUROR NUMBER 12: I have donated to

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

26

1 the FOP and Sheriff on a yearly basis.

2 THE COURT: Would that affect you in
3 any way, sir?

4 JUROR NUMBER 12: No, sir.

5 THE COURT: Your name and number?

6 JUROR NUMBER 12: Kevin Bealer, Number
7 12.

8 THE COURT: Thank you, Mr. Bealer.
9 Are there others? (No response). Thank you.
10 There appear to be none.

11 Are there any members of the jury panel
12 that have previously served in a trial, a
13 criminal dispute trial, as a juror? If so,
14 please stand. (No response). Thank you very
15 much. There are none.

16 One of the aspects of this dispute,
17 Ladies and Gentlemen, that's pretty fundamental
18 not only in this state but in every state as far
19 as I know in the United States is that persons
20 who are accused of committing criminal offenses
21 are -- and we'll talk more about this when
22 you're selected -- are presumed to be innocent.
23 That's a very active presumption. And that
24 presumption remains until and unless the State
25 proves that person -- proves the elements of the

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

27

1 offense beyond a reasonable doubt. And stated
2 another way, it carries the day alone if you're
3 not convinced beyond a reasonable doubt that the
4 elements have been established.

5 And that persons who accused of
6 committing criminal offenses have no burden to
7 prove or disprove anything at all. Because the
8 law says they're presumed innocent and they
9 don't have to prove anything.

10 The only party in this dispute that has
11 any burden of proof is the State. And stated
12 another way, persons accused of committing
13 criminal offenses not only don't have to
14 disprove anything, they don't have to present
15 any evidence. They don't have to do anything.
16 The law says that's their right, as the State
17 has the burden of proof.

18 Is there anything about your philo-
19 sophy, anything about a strong belief that you
20 may have, something that may have happened in
21 your life that would give you any concern about
22 your ability to follow that principle of law,
23 together with all other principles of law that
24 I will give to you, and apply that fairly and
25 impartially to the facts in this case? If you

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

28

1 feel they would, please stand. (No response).

2 Thank you. There are none.

3 Are there any additional specific
4 questions from the State, Mr. Voight?

5 MR. VOIGHT: No, sir.

6 THE COURT: Any additional questions
7 from Mr. Smith?

8 MS. TAYLOR: The effect of drugs or
9 mental illness?

10 THE COURT: Ladies and Gentlemen, if
11 there was evidence in the trial of this case
12 concerning the use of drugs by a person or
13 persons, the effects of drugs on one using drugs
14 and/or mental illness of any type, is there
15 anything about your philosophy, something that
16 has happened in your life, a family member, that
17 would in any way affect your ability to be a
18 fair and impartial juror if you heard testimony
19 concerning those issues? If so, please stand.
20 (No response). Thank you. There appear to be
21 none. Did that cover everything?

22 MS. TAYLOR: Yes, sir.

23 THE COURT: Ladies and Gentlemen, the
24 last question that I have for you is one that I
25 talked about when we were qualifying you, and

1 it's this. Based on what you've heard thus far,
2 is there anything about this dispute that would
3 give you any concern about your ability to make
4 a commitment to the Court and to both sides that
5 you would, at the appropriate time, apply your
6 common sense, your sense of logic and reason
7 fairly and impartially in analyzing the evidence
8 and decide what you believe to be the true
9 facts, considering only the evidence?

10 And then once deciding those facts,
11 taking the law as I gave it to you and apply
12 that law fairly and impartially to that evidence
13 and to those facts so that your decision will be
14 fair to both sides. If you feel you could not
15 make that commitment, please stand. (No
16 response). Thank you very much. There are
17 none.

18 What will happen now, Ladies and
19 Gentlemen, we'll go through the process of
20 selecting jurors. And each side has the right
21 to excuse jurors. In this case the State can
22 excuse five and Mr. Smith can excuse ten. And
23 we'll call your names, and you'll come forward.
24 Mr. Wilson will give you instructions. He may
25 tell you to bring with you your personal

1 effects.

2 When he calls your name if you'll come
3 forward and stand in front of this podium, as
4 I'm standing, facing the parties. First the
5 State will say -- may say to excuse the juror,
6 say seat the juror, swear the juror. If the
7 State says we'll seat this juror, then Mr. Smith
8 has an opportunity to say the same things. And
9 we'll go through the process. If either side
10 excuses you, that's just part of the process..
11 It doesn't mean anything. Don't take it
12 personally. That's just how the process works.
13 You'll just take your seat and we'll just call
14 the next person until we select our jury. We
15 will select twelve jurors and one alternate.

16 Mr. Wilson, thank you so much, sir, and
17 I will turn it over to you now, sir.

18 CLERK: Thank you.

19 THE COURT: Thank you.

20 CLERK: Juror number 265, Gerald
21 Feinberg.

22 (JUROR BEFORE COUNSEL)

23 CLERK WILSON: What say you for the
24 State?

25 MR. VOIGHT: Please present this

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

31

1 juror.

2 CLERK: What say you for the
3 defendant.

4 MS. TAYLOR: Court's indulgence one
5 moment?

6 THE COURT: Certainly.

7 MS. TAYLOR: Please swear the juror.

8 CLERK: Sir, you've been selected for
9 the trial of this case. If you would, please,
10 have a seat in the jury box.

11 (JUROR NUMBER 265 SEATED)

12 CLERK: Juror number 162, Andrew
13 Norton.

14 (JUROR BEFORE COUNSEL)

15 CLERK: What say you for the State?

16 MR. VOIGHT: Please present this
17 juror.

18 CLERK: What say you for the
19 defendant?

20 MS. TAYLOR: Court's indulgence.

21 THE COURT: Certainly.

22 MS. TAYLOR: Please seat the juror.

23 CLERK: Sir, you've been selected for
24 the trial of this case. Please have a seat in
25 the jury box.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

32

1 (JUROR NUMBER 162 SEATED)

2 CLERK: Juror Number 106, June Herzog.

3 (JUROR BEFORE COUNSEL)

4 CLERK: What say you for the State?

5 MR. VOIGHT: Please present this

6 juror.

7 CLERK: What say you for the

8 defendant?

9 MS. TAYLOR: Please excuse Ms. Herzog.

10 CLERK: Ma'am, you've been excused

11 from the trial of this case. If you would

12 please have a seat back in the audience.

13 (JUROR NUMBER 106 EXCUSED)

14 CLERK: Juror number 258, Beth Clarke.

15 (JUROR BEFORE COUNSEL)

16 CLERK: What say you for the State?

17 MR. VOIGHT: Please present this

18 juror.

19 CLERK: What say you for the

20 defendant?

21 MS. TAYLOR: Please seat the juror.

22 CLERK: Ma'am, you've been selected

23 for the trial of this case.

24 (JUROR NUMBER 258 SEATED)

25 THE COURT: Please remember to bring

1 with you your personal effects.

2 CLERK: Juror number 257, Michael

3 Cisco.

4 (JUROR BEFORE COUNSEL)

5 CLERK: What say you for the State?

6 MR. VOIGHT: Please present this

7 juror.

8 CLERK: What say you for the

9 defendant?

10 MS. TAYLOR: Please seat this juror.

11 CLERK: Sir, you've been selected for

12 the trial of this case. Please have a seat in

13 the jury box.

14 (JUROR NUMBER 257 SEATED)

15 CLERK: Juror number 70, John Dupree.

16 (JUROR BEFORE COUNSEL)

17 CLERK: What say you for the State?

18 MR. VOIGHT: Please present this

19 juror.

20 CLERK: What say you for the

21 defendant?

22 MS. TAYLOR: Please excuse the juror.

23 CLERK: Sir, you've been excused from

24 the trial of this case. Please have a seat back

25 in the audience.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

34

1 (Juror NUMBER 70 EXCUSED)

2 CLERK: Juror number 55, Jacqueline

3 Conyers.

4 (JUROR BEFORE COUNSEL)

5 CLERK: What say you for the State?

6 MR. VOIGHT: Please present this

7 juror.

8 CLERK: What say you for the

9 defendant?

10 MS. TAYLOR: Please seat this juror.

11 CLERK: Ma'am, you've been selected
12 for the trial of this case. Please have a seat
13 in the jury box.

14 (JUROR NUMBER 55 SEATED)

15 CLERK: Juror number 116, Bernard

16 Jackson.

17 (JUROR BEFORE COUNSEL)

18 CLERK: What say you for the State?

19 MR. VOIGHT: Please present this

20 juror.

21 CLERK: What say you for the

22 defendant?

23 MS. TAYLOR: Court's indulgence.

24 THE COURT: Yes.

25 MS. TAYLOR: Please seat Mr. Jackson.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

35

1 CLERK: Sir, you've been selected for
2 the trial of this case. Please have a seat in
3 the jury box.

4 (JUROR NUMBER 116 SEATED)

5 CLERK: Juror number 278, Thomas
6 McMillan. What say you for the State?

7 MR. VOIGHT: Please present this
8 juror.

9 CLERK: What say you for the
10 defendant?

11 MS. TAYLOR: Please excuse Mr.
12 McMillan.

13 CLERK: Sir, you've been excused from
14 the trial of this case. Please have a seat back
15 in the audience.

16 (JUROR NUMBER 278 EXCUSED)

17 CLERK: Juror number 10, Angela
18 Ballato.

19 (JUROR BEFORE COUNSEL)

20 CLERK: What say you for the State?

21 MR. VOIGHT: Please present this
22 juror.

23 CLERK: What say you for the
24 defendant?

25 MS. TAYLOR: Court's indulgence.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

36

1 Please excuse Ms. Ballato.

2 CLERK: Ma'am, you've been excused
3 from the trial of this case. Please have a seat
4 back in the audience.

5 (JUROR NUMBER 10 EXCUSED)

6 CLERK: Juror number 259, Patricia
7 Clark.

8 (JUROR BEFORE COUNSEL)

9 CLERK: What say you for the State?

10 MR. VOIGHT: Please excuse the juror.

11 CLERK: Ma'am, you've been excused
12 from the trial of this case. Please have a seat
13 back in the audience.

14 (JUROR NUMBER 259 EXCUSED)

15 CLERK: Juror number 176, Phillip
16 Powell.

17 (JUROR BEFORE COUNSEL)

18 CLERK: What say you for the State?

19 MR. VOIGHT: Please present this
20 juror.

21 CLERK: What say you for the
22 defendant?

23 MS. TAYLOR: Court's indulgence one
24 moment. Please excuse Mr. Powell.

25 CLERK: Sir, you've been excused from

State of South Carolina v. Oran Smith

37

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 the trial of this case. Please have a seat back
2 in the audience.

3 (JUROR NUMBER 176 EXCUSED)

4 CLERK: Juror number 147, Patrick
5 McKinney.

6 (JUROR BEFORE COUNSEL)

7 CLERK: What say you for the State?

8 MR. VOIGHT: Please present this
9 juror.

10 CLERK: What say you for the
11 defendant?

12 MS. TAYLOR: Court's indulgence,
13 please.

14 THE COURT: Yes, ma'am.

15 MS. TAYLOR Please excuse Mr.
16 McKinney.

17 CLERK: Sir, you've been excused from
18 the trial of this case. Please have a seat back
19 in the audience.

20 (JUROR NUMBER 147 EXCUSED)

21 CLERK: Juror number 14, Stella
22 Altman.

23 (JUROR BEFORE COUNSEL)

24 CLERK: What say you for the State?

25 MR. VOIGHT: Please present this

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

38

1 juror.

2 CLERK: What say you for the
3 defendant?

4 MS. TAYLOR: Please swear Ms. Altman.

5 CLERK: Ma'am, you've been selected
6 for the trial of this case. Please have a seat
7 in the jury box.

8 (JUROR NUMBER 14 SEATED)

9 CLERK: Juror number 145, Trey McCraw.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 MR. VOIGHT: Please present this
13 juror.

14 CLERK: What say you for the
15 defendant?

16 MS. TAYLOR: Court's indulgence.
17 Please excuse Mr. McCraw.

18 CLERK: Sir, you've been excused from
19 the trial of this case. Please have a seat back
20 in the audience.

21 (JUROR NUMBER 145 EXCUSED)

22 CLERK: Juror number 279, David
23 McNair. What say you for the State?

24 MR. VOIGHT: Please present this
25 juror.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

39

1 CLERK: What say you for the
2 defendant?

3 MS. TAYLOR: Court's indulgence.
4 Please excuse Mr. McNair.

5 CLERK: Sir, you've been excused from
6 the trial of this case. Please have a seat back
7 in the audience.

8 (JUROR NUMBER 279 EXCUSED)

9 CLERK: Juror Number 172, Louise
10 Parker.

11 (JUROR BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 MR. VOIGHT: Please excuse this juror.

14 CLERK: Ma'am, you've been excused
15 from the trial of this case. Please have a seat
16 back in the audience.

17 (JUROR NUMBER 172 EXCUSED)

18 CLERK: Juror number 113, Mary Humkey.

19 (JUROR BEFORE COUNSEL)

20 CLERK: What say you for the State?

21 MR. VOIGHT: Please present this
22 juror.

23 CLERK: What say you for the
24 defendant?

25 MS. TAYLOR: Please swear this juror.

1 CLERK: Ma'am, you've been selected
2 for the trial of this case. Please have a seat
3 in the jury box.

4 (JUROR NUMBER 113 SEATED)

5 CLERK: Juror number 271, Marla
6 Hamilton.

7 (JUROR BEFORE COUNSEL)

8 CLERK: What say you for the State?

9 MR. VOIGHT: Please present this
10 juror.

11 CLERK: What say you for the
12 defendant?

13 MS. TAYLOR: Please swear Ms.
14 Hamilton.

15 CLERK: Ma'am, you've been selected
16 for the trial of this case. Please have a seat
17 in the jury box.

18 (JUROR NUMBER 271 SEATED)

19 CLERK: Juror number 224, Steven
20 Tompson.

21 (JUROR BEFORE COUNSEL)

22 CLERK: What say you for the State?

23 MR. VOIGHT: Please present this
24 juror.

25 CLERK: What say you for the

1 defendant?

2 MS. TAYLOR: Please excuse Mr.

3 Tompson.

4 CLERK: Sir, you've been excused from
5 the trial of this case. Please have a seat back
6 in the audience.

7 (JUROR NUMBER 224 EXCUSED)

8 CLERK: The defendant has one strike
9 remaining. Juror number 213, Matthew Snyder.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 MR. VOIGHT: Please present this
13 juror.

14 CLERK: What say you for the
15 defendant?

16 MS. TAYLOR: Please swear Mr. Snyder.

17 CLERK: Sir, you've been selected for
18 the trial of this case. Please have a seat in
19 the jury box.

20 (JUROR NUMBER 213 SEATED)

21 CLERK: Juror number 193, Jeannette
22 Saunders.

23 (JUROR BEFORE COUNSEL)

24 CLERK: What say you for the State?

25 MR. VOIGHT: Please present this

1 juror.

2 CLERK: What say you for the
3 defendant?

4 MS. TAYLOR: Court's indulgence.
5 Please swear Ms. Saunders.

6 CLERK: Ma'am, you've been selected
7 for the trial of this case. Please have a seat
8 in the jury box.

9 (JUROR NUMBER 193 SEATED)

10 CLERK: Juror Number 12, Kevin Bealer.

11 (JUROR BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 MR. VOIGHT: Please present this
14 juror.

15 CLERK: What say you for the
16 defendant?

17 MS. TAYLOR: Court's indulgence.
18 Please excuse Mr. Bealer.

19 CLERK: Sir, you've been excused from
20 the trial of this case. Please have a seat back
21 in the audience.

22 (JUROR NUMBER 12 EXCUSED)

23 CLERK: Defendant has exhausted all of
24 his strikes. Juror number 291, Christine
25 Urrichio.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

43

1 (JUROR BEFORE COUNSEL)

2 THE COURT: What say you for the
3 State?

4 MR. VOIGHT: Please excuse this juror.

5 CLERK: Ma'am, you've been excused
6 from the trial of this case. Please have a seat
7 back in the audience.

8 (JUROR NUMBER 291 EXCUSED)

9 CLERK: Juror number 284, Robert
10 Ramella.

11 (JUROR BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 MR. VOIGHT: Please present this
14 juror.

15 CLERK: Any challenge from the
16 defendant?

17 MS. TAYLOR: None. Please swear Mr.
18 Ramella.

19 CLERK: Sir, you've been selected for
20 the trial of this case. Please have a seat in
21 the jury box.

22 (JUROR NUMBER 284 SEATED)

23 CLERK: Your Honor, those are our
24 twelve jurors.

25 THE COURT: Thank you very much, Mr.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

1 Wilson. Let's select an alternate. Strikes
2 will be one and two.

3 CLERK: Yes, sir. Juror number 175,
4 Jeanette Pendergras.

5 (JUROR BEFORE COUNSEL)

6 CLERK: What say you for the State?

7 MR. VOIGHT: The State would ask to
8 excuse this juror.

9 CLERK: Ma'am, you've been excused
10 from the trial of this case. Please have a seat
11 back in the audience.

12 (JUROR NUMBER 175 EXCUSED)

13 CLERK: The State has exhausted its
14 strike. Juror number 48, Roger Carter. Any
15 challenge from the State?

16 MR. VOIGHT: No challenge.

17 CLERK: What say you for the
18 defendant?

19 MS. TAYLOR: Please excuse Mr. Carter.

20 CLERK: Sir, you've been excused from
21 the trial of this case. Please have a seat back
22 in the audience.

23 (JUROR NUMBER 48 EXCUSED)

24 CLERK: Juror number 75, Molly Ellis.

25 (JUROR BEFORE COUNSEL)

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

45

1 CLERK: Any challenge from the State?

2 MR. VOIGHT: No challenge.

3 CLERK: What say you for the
4 defendant?

5 MS. TAYLOR: Court's indulgence.
6 Please seat Ms. Ellis.

7 CLERK: Ma'am, you've been selected
8 for the trial of this case. Please have a seat
9 in the jury box.

10 (JUROR NUMBER 75 SEATED)

11 CLERK: Your Honor, our jury has been
12 selected.

13 (JURY SEATED)

14 THE COURT: Thank you very much, Mr.
15 Wilson. Are there any Motions from the State
16 regarding the selection?

17 MR. VOIGHT: No motions from the
18 State, Your Honor.

19 THE COURT: Any motions from Mr.
20 Smith regarding the selection of the jury?

21 MS. TAYLOR: None.

22 THE COURT: Thank you very much.
23 Ladies and Gentlemen, those of you that were not
24 selected -- is the plan for them to go back, or
25 are they excused for lunch?

1 CLERK: They need to go to Judge
2 Hughston's courtroom, 4B.

3 THE COURT: They're waiting on this
4 group. Will someone take them there?

5 CLERK: Yes.

6 THE COURT: Mr. Brown (Bailiff) will
7 take you to Courtroom 4B where Judge Hughston is
8 waiting on you. Have a great day. Thank you
9 very much.

10 Ladies and Gentlemen, those of you that
11 were selected, thank you very much, and I
12 certainly look forward to working with you in
13 this case. It's a little after 12:00 now, and
14 I would assume that none of you plan to start a
15 diet program with me today. It's about the
16 lunch time, so let's go ahead and recess for
17 lunch at this point.

18 I'm going to give you a little bit
19 longer today because there are a couple of
20 matters that we need to take up out of your
21 presence. So we'll do that when you're excused.

22 Let me talk to you for a moment,
23 though, about the seating. Ms. Ellis has been
24 selected as our alternate juror. Ms. Ellis,
25 thank you very much. While you're the

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

47

1 alternate, you may sit in either of those
2 chairs. They belong to you. So I would ask the
3 other jurors not to sit in those two chairs.

4 Ms. Ellis, the alternate juror really
5 doesn't have -- that term doesn't have any
6 significance at this point. You're still very
7 much a part of the jury. If, at the end of the
8 trial, the first twelve are able to continue,
9 then you would not participate in the final
10 deliberations. But since neither you nor I know
11 the status of the jurors at that point, please
12 remember that you are very much a part of the
13 jury. I know that it will not affect your
14 attention to the trial. The only thing that it
15 does do, it prevents you from being selected as
16 the presiding juror.

17 Another way of saying that, Ladies and
18 Gentlemen, is the foreperson, foreman, forelady.
19 I let the jury select their presiding juror.
20 I'm permitted to do it or the jury may do it.
21 I just typically let the jury do it. At some
22 point I would ask that you identify that person.

23 The presiding juror or foreperson is
24 the one that will be responsible for signing the
25 verdict form on behalf of the jury panel. They

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

48

1 also will be responsible for receiving any
2 evidence that might be introduced and returning
3 that evidence to the Court when the jury has
4 completed its deliberations. The presiding
5 juror has a designated seat. Ms. Altman is
6 occupying that seat at the moment. She's
7 eligible, as are of any of you -- any of the
8 first twelve is eligible to serve. I will
9 simply ask that once you've identified that
10 person, that that individual simply occupy that
11 seat. But until the presiding juror has been so
12 identified, you're free to occupy that seat and
13 any other seat as you come in. We don't have
14 assigned juror seats in this state. Some states
15 do, but we don't. So feel free to occupy any of
16 the seats.

17 The presiding juror -- after you talk
18 with each other a little bit -- really, the
19 presiding juror serves more as a facilitator,
20 I think, if I had to summarize what a presiding
21 juror does. Some may be more equipped and more
22 -- they may be better suited for that. But you
23 pick them. That's not necessarily binding. But
24 I'd ask you to select that person at some point
25 in time.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

49

1 Please remember -- and you're going to
2 probably tire of my saying this to you. But
3 it's so critical that I repeat it every time we
4 recess for the day or for lunch. When you're
5 out, please wear your juror buttons. That will
6 let persons know that you are serving on the
7 jury. It's important because persons may
8 inadvertently talk about this case in your
9 presence. If they see your juror button, it may
10 make them aware of that.

11 Do not permit anyone to talk about this
12 case in your presence or talk to you about
13 serving on this case, or serving as a juror this
14 week, for that matter. That would be
15 inappropriate. And if that should occur, you
16 need to make that known and report it to the
17 Court upon your return.

18 Please don't discuss the case among
19 yourselves until the Court gives you the
20 instruction to begin your deliberation. While
21 you're out don't speculate about it. You
22 haven't heard any evidence yet. Of course,
23 it's that evidence that you will ultimately
24 analyze and make your decision on what the true
25 facts are. But don't talk among yourselves

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

50

1 about the case.

2 Have a good lunch, and I ask you to
3 return to your jury room at 2:00 o'clock.

4 Thank you very much. You are free to leave.

5 They will show you where you need to return when
6 you exit the floor.

7 (JURY OUT @ 12:00 NOON)

8 THE COURT: Any exceptions or
9 additions to the Court's remarks thus far from
10 the State?

11 MR. VOIGHT: No, Your Honor.

12 THE COURT: Any exceptions or
13 additions from Mr. Smith at this point?

14 MS. TAYLOR: No, sir.

15 THE COURT: Thank you very much.
16 We have a Motion *in limine*. Ms. Taylor, I'll
17 be delighted to hear from you now.

18 MS. TAYLOR: Thank you, Your Honor.

19 In the prior trial of this case there were
20 remarks made by at least one of the law
21 enforcement officers regarding the internal
22 locks or internal things that were witnessed
23 during a search warrant. He further exacerbated
24 that remark by simply stating that they were
25 there because the family was afraid of him.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

51

1 That is in fact false. Those locks were placed
2 on the home sometime when he was an adolescent
3 because the parents had foster children in the
4 home.

5 We have, I believe, entered into an
6 agreement where no law enforcement officer will
7 comment on there being internal locks on the
8 doors.

9 THE COURT: Okay. Is that correct,
10 Mr. Voight?

11 MR. VOIGHT: It is correct, Your
12 Honor. I'm going to instruct all the officers
13 to avoid that particular subject.

14 THE COURT: Very well. Of course,
15 unless there's some other reason that it's
16 brought up through testimony, then I'll assume
17 that you'll abide by that.

18 MR. VOIGHT: Yes, sir.

19 THE COURT: If, for some reason, some
20 door has been opened by some comment or some
21 testimony, if you will make that known to the
22 Court, I'll be happy to hear further any
23 discussion or argument we want to have on this
24 issue. But at this point I will assume that
25 you'll abide by that agreement.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

52

1 MR. VOIGHT: Absolutely.

2 THE COURT: Thank you. Are there any
3 other matters?

4 MS. TAYLOR: There is another matter,
5 Your Honor, that we spoke about briefly. There
6 is in this case two statements which were taken
7 from Oran Smith, one in June taken by the
8 police, and one in July which led to his
9 subsequent arrest. We had argued previously
10 that the second statement was coerced. Mr.
11 Smith has brain damage from a prior injury.
12 He's deaf in one ear, blind in one eye. The
13 circumstances overall, we felt, were coercive
14 and I have requested at that time that that
15 statement be suppressed.

16 Quite frankly, this is the first case
17 that I've had to retry involving a confession.
18 I did not research that issue. I, of course,
19 assumed the Court essentially will redo the
20 entire trial. But it's my understanding from
21 the Court that that is *res judicata* and will
22 not be litigated again. I did want to just
23 create a continuing objection to that with the
24 determination by the prior Court.

25 THE COURT: Let me ask you a

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

53

1 question. I assume something. I assume that
2 that statement, the hearing was held and
3 conducted prior to the jury being sworn in
4 that case.

5 MR. VOIGHT: Yes, sir. We had
6 pretrial Motions in that case.

7 THE COURT: And the presiding judge
8 was whom?

9 MR. VOIGHT: Judge Harrington.

10 THE COURT: Judge Harrington?

11 MR. VOIGHT: (Affirmative nod).

12 THE COURT: And Judge Harrington made
13 a ruling omitting that statement?

14 MR. VOIGHT: That's correct, Your
15 Honor.

16 THE COURT: After hearing fully the
17 evidence concerning its admissibility?

18 MR. VOIGHT: That's correct, Your
19 Honor. I believe that that Motion was reheard
20 at the closing of the State's case as well,
21 after hearing the testimony again. And the
22 Court's ruling was, in both instances, that it
23 did not violate -- that the taking of the
24 statement did not ---

25 THE COURT: I've only had it occur

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

54

1 one time, and it was a ruling made -- there was
2 a written decision made Judge Westbrook in a
3 case that I tried years ago. And that's when I
4 decided that -- you know, this case has a
5 record. Certainly, the retrial doesn't have any
6 binding effect on either side, I mean the
7 mistrial. But that being a hearing conducted
8 specifically on a Motion on a *Jackson v. Denno*,
9 and it did not occur during the trial of the
10 case, I believe that ruling stands.

11 And for me to rule otherwise, I'd be
12 basically overruling a prior decision of a
13 Circuit Court judge. I don't think I have the
14 authority to do that.

15 I don't think -- I think that stands on
16 its own, because there was a separate hearing.
17 It was not -- as I understand, the trial
18 testimony, other than the renewal of your motion
19 -- but the decision as to whether or not, by the
20 preponderance of the evidence, the requisite
21 standard was established that decision was made
22 by Judge Harrington prior to the trial.

23 MS. TAYLOR: It was, Your Honor. I
24 honestly don't remember whether the jury was
25 sworn or not.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

55

1 THE COURT: Typically, they don't.

2 MR. VOIGHT: We didn't begin that
3 trial until late on Monday because we had
4 extensive Motion hearing testimony up to that
5 point.

6 THE COURT: Thank you very much.
7 Your Motion is noted. Certainly, I will
8 certainly entertain any objections you have on
9 its admissibility at the time, if the State
10 chooses to admit it. But as to the determina-
11 tion which is required of the Court, I believe
12 that has been previously made, and therefore I
13 decline to have a second *Jackson v. Denno*
14 hearing.

15 MS. TAYLOR: I understand, Your Honor.

16 THE COURT: No problem. Thank you.
17 Anything else? If at lunch you'all think we
18 have to have it, let me know and we'll do it at
19 some point in time. I don't know what point in
20 the proceeding you plan to introduce the
21 statement.

22 MR. VOIGHT: That would probably be
23 tomorrow.

24 THE COURT: If you find anything,
25 just bring it to my attention and I'll be happy

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

56

1 to hear it.

2 MS. TAYLOR: The photographs -- that's
3 the only remaining one.

4 THE COURT: There was one photograph
5 that I saw that was not -- that I just gave a
6 preliminary indication I would not probably
7 admit that. But we can mark it for identifica-
8 tion, if necessary.

9 MS. TAYLOR: I believe there were
10 others, Your Honor. There is one on the crime
11 scene video that I would object to.

12 MR. SIMPSON: We have no stills of
13 the crime scene video *per se*. But we do have
14 some photographs just to give Your Honor an idea
15 of what the crime scene looked like.

16 THE COURT: Was that the picture that
17 I saw a part of the video?

18 MR. VOIGHT: It was not. That picture
19 was taken before the video, it showed the body
20 and ligature in the position that they were
21 found by the initial officers.

22 THE COURT: Let me say this. If
23 there's ever a challenge as to that, anything
24 in that photograph, then we may have to revisit
25 that. I'm just stating right now that I think

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

57

1 the prejudice outweighs the probative value.
2 However, if there's some major issue that that
3 photograph answers some challenge, then I'll
4 be delighted to revisit that issue.

5 You'all talk among yourselves at lunch
6 and we'll come back before the jury. I'll see
7 you at 1:45. Thank you. We'll be at-ease.

8 (LUNCH RECESS)

9 (DEFENDANT PRESENT)

10 THE COURT: This is the video?

11 MR. VOIGHT: This is the video.

12 THE COURT: Can you fast-forward it
13 to the part that's objectionable?

14 MR. VOIGHT: Yes, we can -- (video
15 playing).

16 THE COURT: And your objection to
17 that is what?

18 MS. TAYLOR: They have a still
19 photograph of the body in place as she was
20 found. This is the video taken after they've
21 already turned the body over, they've moved the
22 sheets on the bed.

23 THE COURT: Never mind. I see that
24 now. No, I'm not going to allow that. It's not
25 necessary. It won't prove anything. The

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

58

1 probative value is outweighed by the prejudice
2 clearly, at this point.

3 MR. VOIGHT: I want to know clearly at
4 what point to stop.

5 THE COURT: You'all can work that
6 out. You can have it edited if you wanted to.
7 But we're not going to show the body. Okay?

8 MR. VOIGHT: Okay. Then we will stop
9 it at that ---

10 THE COURT: That'll be fine. Not a
11 problem.

12 MS. TAYLOR: I'm not sure what comes
13 after that.

14 MR. VOIGHT: But that's the only place
15 that shows the body.

16 MS. TAYLOR: Yes, it is.

17 MR. VOIGHT: Your Honor, we have three
18 photographs. And I'm going to hand them up.
19 They were previously marked as State's Exhibit
20 23, State's Exhibit 9, and this will be State's
21 Exhibit 10.

22 THE COURT: Okay.

23 MR. VOIGHT: These are the very shots
24 that Ms. Taylor said -- both those shots are the
25 very same shots that are in the video. Do you

State of South Carolina v. Oran Smith

59

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 have an objection to those?

2 MS. TAYLOR: Well, I'm sorry, Judge, I
3 may have the numbers wrong. Twenty-three was
4 the shot where her body was lying in place on
5 the floor.

6 THE COURT: Uh-huh, (affirmative).

7 MS. TAYLOR: I'm not objecting to
8 that.

9 THE COURT: I will allow twenty-
10 three. It shows everything -- the close-up
11 showing basically the blood, which is State's
12 9, if you object to that one I sustain the
13 objection to that.

14 MS. TAYLOR: We would on that one.

15 THE COURT: All right.

16 MS. TAYLOR: The only issue I have
17 about the other one, Judge, other one is that
18 that is an autopsy photographs ---

19 THE COURT: It's not been marked.

20 MR. VOIGHT: It will.

21 THE COURT: It will be State's 10.
22 Let's get it marked so that it is State's 10.

23 (SO MARKED AS STATE'S EXHIBIT 10

24 FOR IDENTIFICATION)

25 MS. TAYLOR: My issues with that are

1 the markings on the back of her body and one
2 hand that is showing. I'm not sure why.

3 THE COURT: I would assume that
4 photograph will be introduced during the
5 pathologist who testifies -- the testimony?

6 MR. VOIGHT: If I might address that,
7 Your Honor, one issue that was consistent
8 through about four witnesses in the last trial
9 of this matter was because the ligature had been
10 removed at the autopsy and had been subsequently
11 handled by SLED agents and others it was very
12 difficult, much like you can't get things back
13 in the original packaging. It's very confusing
14 and difficult for the jury to imagine the
15 ligature as it was.

16 The purpose of this particular
17 photograph which is State's 10 is that the State
18 intends to have a crime scene technician, who
19 was present at the autopsy and took these
20 photographs, be able to try to reconstruct what
21 the ligature looked at the time that he saw it
22 at the autopsy. Because right now it's a bunch
23 of junk that's cut up.

24 THE COURT: What's the significance
25 of -- why is that a critical issue?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

61

1 MR. VOIGHT: Well, the -- the issue is
2 that the State contends that there are two
3 separate DNA samples taken from this particular
4 object, from the ligature; one of which was a
5 mixed DNA sample of semen that was contained on
6 the inner pajama. These are two pajama bottoms,
7 worn one over the other -- and that is a little
8 confusing. The semen sample is a mixed sample
9 taken from the inner one. And it's not clearly
10 the inner one. We have other photographs that
11 we are not -- which I don't believe there's a
12 dispute -- which was separate from the body,
13 which tends to indicate which one is the inner
14 one and which one is the outer one.

15 The second DNA sample is what maybe
16 skin cells, epithelial cells. They're DNA of
17 another source. Again it's a mixed sample.
18 But there's questioning of the SLED technician
19 that took the samples when they arrived at SLED
20 as to where those samples were taken from.

21 We reconstructed the ligature the way
22 that it was originally taken and packaged, and
23 pictures such as these were sent to SLED as well
24 for their benefit to deal with those samples.

25 THE COURT: You're telling me, Judge,

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

62

1 we really don't have a reason why we need to
2 show that. Because all you've done is just gone
3 on about stuff that really and truly doesn't
4 have anything to do with my question. My
5 question is why is it necessary to have that
6 photograph?

7 I mean, that doesn't help me at all.
8 If people are there, they can testify to where
9 it came from. We don't need to have a picture
10 of it to know where it came from.

11 At this point I don't know. I'll have
12 to wait to hear how the evidence unfolds. Okay?
13 Thank you.

14 MR. VOIGHT: If I might be heard on
15 State's 9, which at this point I take that the
16 Court will exclude as being more prejudicial
17 than probative?

18 THE COURT: At this point I'm giving
19 you an indication, Mr. Voight, at the time that
20 we get ready to testify, -- I don't know. Why
21 is that picture more significant than the other
22 picture?

23 MR. VOIGHT: Your Honor, of the two
24 pictures that I have to actually show a close-
25 up of ---

1 THE COURT: Why is it necessary to
2 show a close-up?

3 MR. VOIGHT: It's no more necessary to
4 show a close-up than to show the scene at all.

5 THE COURT: Then I would agree with
6 you that it's not admissible at all. I mean,
7 the purpose of that is to simply inflame the
8 passion and prejudice of the jury. Thank you,
9 sir. It doesn't show anything.

10 MR. VOIGHT: I would disagree with
11 you.

12 THE COURT: I appreciate that. And
13 you know what? You're entitled to that. But
14 the final call is mine. Thank you, sir.

15 MR. VOIGHT: Thank you very much.

16 THE COURT: There's no need for you
17 to disagree with me. That's disagreed when you
18 offer it. Thank you, sir.

19 MR. VOIGHT: Thank you very much.

20 THE COURT: That could be construed
21 -- and I know it's not, but it could be
22 construed as arguing, which violates the Rules.
23 And we're not going to do that.

24 MR. VOIGHT: Thank you, sir. Judge,
25 you know I don't do that.

1 THE COURT: I know you don't. Thank
2 you, sir. But those little asides aren't
3 necessary either, because you know me as well as
4 -- because I'm going to engage you every time
5 you do that. Thank you, sir.

6 MR. VOIGHT: I understand.

7 THE COURT: Okay. Thank you, sir.
8 At the time it comes -- we're talking in a
9 vacuum right now. I haven't had the benefit
10 that you guys have. You'all have been through a
11 trial. I haven't. I haven't seen anything.
12 All I've seen is a photograph. Right now it has
13 no meaning other than it's a photograph. At
14 some later stage it may have some meaning, and I
15 probably can articulate a better position on it
16 as well. So thank you.

17 COURT REPORTER: If I might have that
18 to mark?

19 MR. VOIGHT: Your Honor, may I
20 approach the court reporter?

21 THE COURT: Sure.

22 MR. VOIGHT: (Tenders photograph to
23 court reporter).

24 COURT REPORTER: Marked as State's
25 Exhibit 10 for identification.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

65

1 THE COURT: Are we ready for the
2 jury? State ready?

3 MR. VOIGHT: Yes, sir.

4 THE COURT: Defendant's ready. Let
5 the record reflect Mr. Smith is present.

6 Bring in our jury, please. Thank you.
7 Please remain seated. Thank you.

8 (JURY IN @ 2:06 P.M.)

9 THE COURT: Thank you, Ladies and
10 Gentlemen. We're ready now to continue with the
11 matter we started. Please give your attention
12 now to Mr. Wilson as he administers your oath.

13 CLERK: Thank you, Your Honor.
14 Ladies and Gentlemen of the jury, at this time
15 if you would please stand and raise your right
16 hands to be sworn. And if you would, please
17 respond verbally to the oath.

18 Do you swear or affirm that you will well
19 and truly try and a true deliverance make to the
20 State and to the defendant at the Bar and a true
21 verdict render based on the evidence and the
22 law, so help you God?

23 (UNANIMOUS AFFIRMATIVE RESPONSE BY JURORS)

24 THE COURT: Thank you, Mr. Wilson.
25 And thank you, Ladies and Gentlemen. By virtue

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

66

1 of that oath now you have become a judge with
2 me, and now you and I will work together to
3 resolve this dispute.

4 As I mentioned to you when we were
5 qualifying you this morning, this wonderful
6 system of dispute resolution has two judges when
7 you are present. And you, now, have become the
8 sole judge of the facts in this dispute. No one
9 else in this process has that duty and burden
10 and responsibility with you.

11 I have nothing to do with the facts.
12 Nothing that I say to you, nothing that I do
13 during this trial, none of my rulings when you
14 hear them should be considered by you as an
15 indication or suggestion of how you are to
16 resolve the factual issue(s), because that's
17 your job and yours alone.

18 I told you this morning that you were
19 extremely qualified to perform those tasks that
20 you've accepted, and I restate that. You've
21 certainly brought with you everything that you
22 need when you walked in the courtroom. Because
23 if you think about it, how many times a day or
24 how many times in our life have we made that
25 decision? We've heard somebody say something or

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

67

1 we've read something and we make a decision for
2 ourselves. Most of the time it's subconscious.
3 But in this situation you'll be making a
4 conscious decision. You'll be looking at
5 something, analyzing that something and making
6 decisions on whether you believe it or not.

7 That something is the evidence, and the
8 evidence alone. Now, folks, evidence consists
9 of the testimony of the witnesses and exhibits
10 that are introduced and admitted in evidence
11 through that testimony.

12 I say "admitted into evidence",
13 sometimes witnesses may refer to a document and
14 it's marked for identification. And the witness
15 testifies concerning that document, but the
16 document itself may not be admitted. You may
17 consider the testimony without the document, but
18 you just won't have the document itself.

19 Sometimes they will admit the document,
20 ask that it be introduced. If that occurs, then
21 the testimony regarding that document and the
22 document itself is a matter that you will
23 consider at the appropriate time.

24 You also brought something else with
25 you that we really haven't talked about

1 specifically, but we talked about it in a very
2 generic and sort of a broad-brush sort of way.
3 And that is, you've brought an open mind.

4 If you think about the questions that
5 I asked of you, most of them didn't have any --
6 or all of them had no real correct answer.
7 They were designed to help you make a deter-
8 mination as to whether or not you would have
9 any problems making the commitment you just
10 made to both sides. And the last question I
11 asked you was was there anything about this
12 dispute that would give you any concern about
13 your ability to make the commitment that you
14 just made. And each one of you, by not
15 responding, indicated there was not.

16 So what you said in really no
17 uncertain terms is. 'I don't know anything
18 about this. I haven't made any decisions in
19 this case, nor is there anything about this in
20 my life and my life's experience that would
21 give me any concern about my ability to
22 maintain that until I've been instructed
23 otherwise.'

24 I mentioned that at the appropriate
25 time you will be analyzing this evidence. That

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

69

1 will be the last instruction that I give you
2 during my charge, which will occur after you've
3 heard all the evidence and after you've heard
4 the arguments of the attorneys. And that is
5 the last instruction that I give before you
6 retire to begin your deliberations.

7 So until the Court tells you that you
8 may begin your deliberations, please remember
9 something very important to your really
10 following that oath and honoring that oath;
11 that you must maintain an open mind and not
12 reach any conclusions until the Court gives you
13 the instruction to do so.

14 So whatever you have to do -- some
15 people, I happen to be one of them, hear some
16 things and I have a tendency sometimes to go
17 jumping ahead or try to fill in the blanks,
18 without having the blanks actually completed.
19 The danger with that is sometimes you fill them
20 in incorrectly.

21 And then there are people -- and you
22 may be one of them -- that when you ask them
23 something, they listen to you and they listen
24 intently. They hear it all. And then they
25 want to think about what they've heard. And

1 then they'll take it. That, I think, would be
2 the perfect picture of a juror, because that's
3 what you're expected to do.

4 Now, during the testimony and during
5 the process is proceeding, certainly everyone
6 expects that you will make those mental notes
7 that will assist you in analyzing the person's
8 credibility. And by that and by way of
9 illustration, you know as I do, that sometimes
10 it's not what somebody says, there may be some
11 facial feature, some body language that you
12 found helpful to you in making your decision of
13 whether you believe that person. Certainly, I
14 expect you to make that mental note of, yes, I
15 observed that about this witness. But what I'm
16 saying is but don't reach a conclusion of I
17 observed that, therefore I don't believe this
18 witness. That would be jumping to conclusions.
19 That's something that you may talk about when
20 you get to the point of discussing the case.
21 And that is, well, you know, 'in my life I've
22 observed these things and I observe that about
23 this witness.' And then you and the other
24 jurors can discuss that. And that may be
25 helpful to them. Maybe there's a way to

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

71

1 explain that, that it doesn't lead you to that
2 conclusion.

3 But certainly everyone expects you to
4 make those types of notes that will assist you.
5 But I just ask that you not go any further than
6 that as we go through the trial.

7 Now, during this process we're going
8 to hear -- there are really four distinct
9 stages. In just a moment, the attorneys will
10 speak to you in what we call opening statements
11 before you hear any evidence. They speak to
12 you twice, once before you hear the evidence
13 and then again after you've heard the evidence.

14 In opening statements, they give you
15 an overview of the dispute and they talk about
16 some of the evidence you may hear. And then
17 after the evidence, obviously you've gone
18 through the trial and then it's appropriate for
19 them to discuss that evidence with you and
20 suggest reasonable inferences that you may draw
21 from that evidence.

22 Their remarks are very important.
23 They're officers of this Court and you should
24 give them your undivided attention, and I'm
25 confident that you will do that. But while

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

72

1 they're extremely important, please remember
2 something. Just as my remarks are not
3 evidence, their remarks should never be
4 considered as evidence.

5 After the attorneys finish their
6 opening statements, then we'll proceed. You'll
7 hear from the State first. Why? Because, as I
8 mentioned to you in qualifying you, in this
9 state and every state in this country, the
10 State is the party who makes the accusation and
11 the law says they have the burden of proof and
12 that burden rests solely on the State. And
13 they have to present evidence to satisfy you
14 beyond a reasonable doubt of each element of
15 the offense of murder before you may return a
16 verdict of guilty.

17 Because, you see, that's what it
18 means. A guilty verdict means simply that the
19 jury hearing that case and analyzing the
20 evidence at the appropriate time and were
21 convinced of that standard beyond a reasonable
22 doubt as to each element of that crime.

23 I will define for you in the charge
24 the elements required for murder. And then
25 when you begin your deliberations, you'll be

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

73

1 analyzing the evidence specifically to answer
2 a question for you. 'Am I convinced beyond a
3 reasonable doubt that that element has been
4 established?' If your answer is yes, then the
5 State has met its burden of proof on that
6 element and you can go to the next one.

7 If at any point your collective
8 decision is, 'well, it might be or it could be,
9 it's possible', then the State has failed on
10 that element and you must return a verdict of
11 not guilty.

12 Because that's what a not guilty
13 verdict means. It means that the State did not
14 convince that jury beyond a reasonable doubt as
15 to every element. If it fails on one, then the
16 verdict has to be not guilty.

17 I will remind you, and I'll tell you
18 about that again -- we'll talk about it again
19 when I give my charge, that Mr. Smith, in this
20 entire process, has absolutely nothing to
21 explain, to prove, has no responsibility to
22 present any evidence. You should never look to
23 him for anything. If you do, you violate your
24 oath. He has no responsibility and no duty
25 whatsoever in this case to do anything at all.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

74

1 He doesn't have to present any evidence. He
2 doesn't have to testify. He has -- nothing,
3 because nothing rests on him. It rests on the
4 State. So the State will present its case.
5 But notwithstanding the fact that he doesn't
6 have to, if he wants to call witnesses, he
7 doesn't get to do that until you've heard the
8 entire State's case. And you can see a very
9 logical reason why you certainly shouldn't
10 begin your deliberations, and you certainly
11 shouldn't decide anything until you've heard
12 all the evidence.

13 But more importantly, and really the
14 most important, the entire process has to be
15 experienced. You have to go through that.
16 Because each stage is critical to the ultimate
17 decision, and that is what you decide has been
18 established in this case as being the true
19 facts and what your verdict is, based on the
20 facts and the law.

21 Now, during the charge we'll talk
22 about a number of legal principles. I've
23 already mentioned to you when I qualified you
24 about the presumption of innocence. And that
25 certainly will be reiterated at that time. As

1 you know, the defendant has that presumption.
2 It's an active presumption. It's maintained
3 throughout the entire trial and may be only
4 removed when you begin your deliberations and
5 after that you are satisfied otherwise beyond a
6 reasonable doubt. I'll define that term for
7 you as well.

8 "Reasonable doubt", I'll tell you, is
9 a doubt that would make an honest, sincere and
10 conscientious juror who's searching for the
11 truth in a case to hesitate to act or take some
12 action.

13 Maybe some of you have participated in
14 civil trials before. Typically, the burden of
15 proof in a civil trial is the preponderance or
16 greater weight of the evidence. Stated another
17 way, it's a probability standard. In other
18 words, the burden of proof in that proceeding,
19 it has to be more probable than not. If it is
20 then that particular element would be
21 established. But not so in a criminal case.
22 Because in a criminal case, it's more than a
23 probability standard; it's beyond a reasonable
24 doubt. And we'll talk about that more in
25 detail during the charge.

1 I look forward to trying this case
2 with you. It's an honor to serve with each one
3 of you as a judge. And I thank you so much for
4 your attention to my remarks and ask you now to
5 give that same attention to the attorneys as
6 they give their opening statements on behalf of
7 their clients. Mr. Voight?

8 MR. VOIGHT: Oran Smith murdered
9 Cheryl Snow. That is the framework of this
10 entire matter.

11 On June 4, 2007 or late on the 3rd of
12 June, 2007, in North Charleston and Charleston
13 County, Cheryl Snow expired, she died. It's
14 not just that she died, she was murdered. A
15 homicide. A homicide is the taking of the life
16 of another without justification or without a
17 cause that would make it legally justified.

18 In this case, Cheryl was wearing a
19 pair of pajama bottoms, two pairs of pajama
20 bottoms. She had worn them at some point that
21 night, and you will hear evidence of that.
22 They were wrapped around her neck with a very
23 simple knot and the ends of that knot were
24 pulled very tight until she was strangled.

25 Murder is a crime that, as the judge

1 is doing to tell you late, requires what we
2 call "malice aforethought." Malice is an evil
3 heart, ill will. It's an old-fashioned word
4 that means that somebody was up to no good when
5 they did that.

6 We don't have a psychological test of
7 a physical test that enables us to look inside
8 peoples' mind, so we have to go with the facts
9 and circumstances that surround an incident to
10 infer malice. Evidence that we are going to
11 present to you today and tomorrow will show
12 malice, by the tightness of that ligature, the
13 force that would be required to have been used.
14 It's a horrible way to die. You will find
15 malice in the evidence, everywhere.

16 I have to prove identify, who did it.
17 There are a couple of different ways of doing
18 that. I am sure that all of you are familiar
19 with the C.S.I. franchise on T.V., different
20 cities, various locales, the high-tech
21 techniques that are used.

22 We definitely are less high-tech in
23 North Charleston but North Charleston find
24 evidence the right way, by the book. They
25 investigate, look for evidence. They go out

1 and they find fingerprints, old-fashioned
2 investigation, fingerprints that have been
3 science for more than a hundred years.

4 Whose fingerprints did they find
5 first? Oran Smith's and, not surprisedly,
6 Cheryl Snow's. He's arrested, brought down to
7 the jail. Fingerprints that show that he was
8 there.

9 And there is some evidence -- you are
10 also going to hear about some DNA evidence.
11 DNA evidence on the ligature itself, DNA
12 evidence of Oran Smith and, again not
13 surprisingly, that of Cheryl Snow that was on
14 her pajamas.

15 That alone may not be enough. It
16 means that he was there, to means that he had
17 contact with Ms. Snow, with her pajamas.

18 But you'll hear evidence from Mr.
19 Smith, Oran said that he did it. He will tell
20 you how he did it.

21 One of the reasons ~~that~~ I like trying
22 cases with Judge Dennis is because at the end
23 his instructions are always very clear. Also
24 at the beginning, he gives instructions that
25 are very clear and that means that I don't have

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

79

1 to. He has explained very clearly the
2 parameters of what we are about to go through
3 in this process.

4 He has told you that the evidence that
5 you will get comes from the witness stand and
6 what may be introduced here, that it is what
7 witnesses tell you and not what the lawyers
8 tell you. That is very important. When you're
9 -- sometimes when you're back in that jury
10 room, you've got to sift through what you know
11 about this case -- not because I just told you,
12 because what I tell you is to obviously
13 influence you about the case. You have to sift
14 through what you know from the evidence, what
15 the witness says versus what the lawyer said.
16 For example, a 'red jacket' has nothing to do
17 with this case but let's say that there was a
18 red jacket. If the witness talked about a coat
19 or a jacket and the lawyer said, 'Did you find
20 the red jacket in the car?' The witness says,
21 'we found a coat in the car.' Then you have to
22 determine if the color of the garment makes a
23 difference. The evidence is what the witness
24 says, where it found, what it was. The evidence
25 is not the color of it, because that's what the

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

80

1 lawyer said.

2 I would ask you to take a very careful
3 account of what you think you know the evidence
4 is. Take away everything that I've said to
5 you, take away everything the defense counsel
6 says, because all that I want you to consider
7 is what comes from this witness stand and the
8 evidence that you see here.

9 Oran Smith murdered Cheryl Snow.

10 The evidence shows that. Thank you.

11 THE COURT: Ms. Taylor?

12 MS. TAYLOR: Thank you, Your Honor.

13 Good afternoon. First of all, I want to thank
14 you all for being here. We've talked a lot
15 about how important jurors are to our system
16 and that is correct.

17 Oran Smith is seated here at the
18 counsel table, together with Bill Nixon who
19 will be assisting me. Seated behind Oran is
20 his family members.

21 Oran grew up in Moncks Corner and I
22 would like to tell you a little bit about his
23 background. As you can see, he wears an eye
24 patch. When he was eighteen he lost an eye,
25 lost hearing in one ear, is disabled. You will

1 hear about that, as well, but what I want to do
2 -- obviously a murder trial is profoundly
3 difficult, it's difficult for Oran, for his
4 family, for the family of the victim. It's
5 going to contain certain distasteful
6 information that you may find difficult to
7 absorb. It's difficult to sit through a trial
8 such as this and weigh and carry the burden of
9 making the right decision about the ultimate
10 resolution.

11 This murder was especially cruel and I
12 am sure we can all think of much more pleasant
13 things that we would rather be doing but you
14 have accepted the duty as jurors and have
15 agreed to set all of that aside. The single
16 most important thing that you bring into this
17 courtroom is your mind, that it remains open
18 and that it remains yours. This system works.
19 As Judge Dennis said, it is a marvelous system.
20 It is. It works so well because if you follow
21 the map created centuries ago, then it works
22 because you are here to be fair and impartial.
23 It is not you objective to reward friend,
24 punish enemies -- or the other way around
25 either -- but to simply listen objectively to

1 the evidence as it is offered.

2 We are advocates, the State is an
3 advocate. That's why what we, the lawyers, say
4 to you is not testimony. We can argue, we can
5 suggest and we can outline and all of that is
6 perfectly fine but all that matters is what the
7 witnesses say on that stand, not the way that
8 it might be interpreted, altered or skewed by
9 anybody else other than the twelve of you.

10 Individually each of you has been
11 asked by the court to listen carefully
12 to the evidence until all the evidence has been
13 presented. Then at the end of the case you
14 will get the instruction on the law and you
15 will go back and you begin the deliberation
16 process. Each one of you must individually
17 reach a conclusion and then together,
18 collectively agree, based on the evidence and
19 the law.

20 I don't know why twelve people sit on
21 juries, but I know why we don't have one, two
22 or three -- that's because it is a difficult
23 thing to do and a way that we are sure, most
24 carefully, that it is the right decision is to
25 have twelve people coming together, from such

State of South Carolina v. Oran Smith

83

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 different backgrounds, presumably who will be
2 able to communicate in spite of their
3 differences to reach a fair and just decision
4 that protects what is one of the most important
5 individual rights in this country, and that is
6 our liberty.

7 As the judge told you, the decision in
8 this case must be based on evidence beyond a
9 reasonable doubt. It is not like a civil case
10 where the burden is the preponderance of the
11 evidence, more it is more likely than not, a
12 criminal court has a much higher standard; it
13 must be evidence that convinces you beyond a
14 reasonable doubt that the defendant is guilty.
15 It's a much higher standard.

16 In this country, we don't allow the
17 government to make that decision, we don't
18 leave that decision to law enforcement to say
19 'this guy did it' and they are guilty until
20 they can prove that this didn't do it. In this
21 country you are presumed innocent until proven
22 guilt.

23 In this case, very briefly, you heard
24 from Mr. Voight a little bit about what the
25 evidence is going to be. You will hear that in

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

84

1 June of 2007 that Cheryl Snow was found in her
2 apartment in an apartment complex.

3 You will hear that Oran Smith and she
4 knew each other, that they had known each other
5 for several years. You will hear that Oran
6 Smiths' fingerprints were found in her
7 apartment. Oran Smith's were not the only male
8 fingerprints that were found in her apartment,
9 that he was not the only individual who had
10 spent time with her that weekend in her home.

11 A day or two after her body was found,
12 because of -- I believe because of a beer car
13 that had his fingerprints on it, he was
14 contacted by the police. He went voluntarily
15 with the police and he made a statement. Early
16 June. That talked with him for quite a few
17 hours. He told them, 'Yes, I know Cheryl Snow.
18 Yes, I was with her. I was in her apartment
19 that Saturday, we spent time together. Yes, we
20 were sexual partners, we had sex. I spent the
21 night with her, we had sex the next day. I
22 left midafternoon because she'd gotten a phone
23 call that said another guy was going to come
24 over. I left.'

25 You heard Mr. Voight talk about DNA

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

85

1 evidence. There is some forensic evidence in
2 this case. He talked about some things that
3 were done and some things that were not done
4 but should have been done. There is some
5 evidence in this case that was on the pajamas
6 that Ms. Snow had at some point being wearing,
7 but the question is whether or not there was
8 identifiable evidence, what it was, and what if
9 any relevance does it have with Mr. Smith.

10 Maybe what Mr. Voight said was right
11 and maybe it wasn't. That's what some of the
12 witnesses who take the stand will talk to you
13 about, whether there was good and viable
14 evidence -- first, what was it and if there is
15 what, if any, relevance it does to solving this
16 mystery.

17 There are lots of different types of
18 murder cases. One is where there is no
19 disagreement about what happened, it is just
20 whether or not it was a murder. This is not
21 that kind of case. This is a case where we
22 absolutely agree that whatever happened to her
23 in that apartment on June 4th -- or whenever it
24 was, because Mr. Voight seems not to know when
25 she died. We know that she found Monday

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

86

1 evening in her apartment. You will hear from
2 the pathologist that they cannot gauge when she
3 died.

4 The question for you'all is not
5 whether this was a murder or not, the question
6 is who killed Cheryl Snow. They are going to
7 bring evidence, such as they have, to say that
8 they think Oran Smith did.

9 I told you about the first statement.
10 There was a second statement, in late July,
11 when they came back. Oran voluntarily came to
12 talk with them. In the interim between
13 statements, one piece of information that came
14 back and you'll hear -- and I want you to pay
15 very close attention to that, because that is a
16 large part of what created the second statement
17 and is also a large part of what created, in
18 the minds of the North Charleston Police
19 Department, that they had their man, that
20 they'd decided it was Oran Smith. That
21 involved -- it might skin cells, or it might
22 not. It might be conclusion, it might not. It
23 might exclude, it might not. But -- it's
24 technical stuff, but it's not as complex as it
25 sounds. I ask that you listen very carefully

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

87

1 not only to what the science people have to say
2 about it but also how it played a role as being
3 the first piece in this puzzle, as being what
4 started this process, was when North Charleston
5 Police Department decided that Oran Smith was
6 their man. So they picked him up again, they
7 took him to the station and they interrogated
8 him until they got a "confession" -- that
9 second time.

10 But we are here today to test that
11 confession, he contests that "confession." You
12 twelve are selected to hear the case because he
13 is saying to you now, "I did not kill Cheryl
14 Snow." That's what we are going to ask that
15 you resolve for us. Thank you very much for
16 your time and your attention.

17 THE COURT: You may call your first
18 witness.

19 MR. VOIGHT: Thank you, Your Honor.
20 Scott Hille.

21 (WITNESS TAKES STAND)

22 SCOTT HILLE, being duly sworn to tell
23 the truth, the whole truth and nothing but the
24 truth, testified, as follows:

25 DIRECT EXAMINATION

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

88

1 BY MR. VOIGHT:

2 Q. Officer Hille, how are you assigned
3 currently?

4 A. I'm currently working a dual purpose
5 narcotics and patrol in the special operations
6 division of the North Charleston Police
7 Department.

8 Q. How were you assigned on June 4, 2007?

9 A. On June 4th, 2007, I was a field training
10 officer assigned to north evening shift patrol
11 division.

12 Q. On that date did you have the occasion
13 to respond to 1253 Sumner Avenue in North
14 Charleston?

15 A. I did.

16 Q. Is that in the county of Charleston?

17 A. It is.

18 Q. Do you know approximately what time you
19 responded out there?

20 A. I would have to refer back to the incident
21 report that I wrote. It's been a few years.

22 MR. VOIGHT: May I approach the witness?

23 THE COURT: You may.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. VOIGHT:

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

89

1 Q. Officer, I am going to hand you ---

2 MR. VOIGHT: Could we have a blanket
3 number for identification number.

4 COURT REPORTER: The next number is
5 State's Exhibit 65 identification.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. VOIGHT:

8 Q. I hand you what has been marked as State's
9 Exhibit 65 for identification and ask you to
10 take a look at that. Can you identify that,
11 Officer Hille?

12 A. Yes, sir. This is the incident report that
13 I wrote after responding to the scene at 1253
14 Sumner Avenue.

15 Q. Would referring to that report to refresh
16 your recollection, can you tell the time that
17 you arrived there?

18 A. It indicates here that ---

19 Q. Officer, could you refresh your recollec-
20 tion by referring to that report without
21 reading it to the jury?

22 A. Yes. (Upon review), I was on patrol that
23 evening, and I was actually turning from North
24 Rhett onto Sumner Avenue in a southeasterly
25 direction. They dispatched the call right as

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

90

1 I made that turn. It was a short distance,
2 within a half mile from the actual scene, so I
3 was probably within a quarter mile of the
4 actual location when they put the call out.
5 The call was dispatched about twenty minutes
6 after 7:00 p.m., and I arrived within that
7 minute.

8 Q. Were you the first officer on the scene?

9 A. I was.

10 Q. What did you see when you got there?

11 A. I was familiar with the location because
12 it's an assisted-type facility, so there are
13 multiple single-story apartments.

14 Q. When you say it's an assisted facility,
15 what specifically -- what kind of facility
16 is it normally used for, if you know?

17 A. I'm not sure right now what it's used for.
18 But I believe it to be like a halfway house,
19 where they're provided with living arrangements
20 and a manager to oversee things. They're
21 responsible for the upkeep of their -- the
22 inside, but the outside is maintained by the
23 manager and the property manager.

24 Q. And what did you see when you got there?

25 A. I located the apartments -- when you turn

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

91

1 into the driveway to the apartment complex,
2 there's a single-story building with several
3 apartments on the right-hand side. And
4 immediately after turning in I saw an
5 individual standing next to it where a door
6 was slightly ajar and he was flagging me down.
7 Making the assumption that he was the caller,
8 I exited my vehicle and walked up and made
9 contact with him and spoke to him.

10 Q. Was that, in fact, the apartment to which
11 you have been directed?

12 A. Yes.

13 Q. Did you go inside that apartment?

14 A. I did. I did. We were dispatched as a
15 person down, and it was a -- I don't remember
16 exactly how the call came out, but I knew it
17 was of a serious nature and that there was
18 supposed to be a human inside and unconscious.
19 I was sure what exactly transpired. I produced
20 my service weapon and pushed the door open.

21 Q. Was the door locked?

22 A. No, it was not locked.

23 Q. Was the door latched?

24 A. It was not latched. I pushed the door
25 open. I identified myself as a police officer,

1 and I looked down into the apartment as deep as
2 I could see, looking for any threat, any bad
3 guys, anybody producing a weapon or anybody
4 else, any occupants, in the apartment.

5 I entered and you could see all the way to
6 the back pretty much unobstructed.

7 And as I moved in a little bit, on my left
8 there was a partially open door that led back
9 to a bedroom, and I could see a human figure
10 laying on the ground face down.

11 Q. Did you approach that figure?

12 A. I did. I looked and cleared the back. By
13 "clear", I mean made sure there was nobody
14 hiding behind the door. As the door swung open
15 I moved back to make sure there was nobody
16 hiding in any part of the room, and then I
17 approached the victim. I found her to be very
18 cool to the touch, not breathing, unresponsive
19 and no pulse.

20 Further into the room was a door that was
21 what was -- I believe it to have been a
22 bathroom, that was locked and we couldn't gain
23 entry. We didn't know if anybody was hiding in
24 there or not. So we backed back out of the
25 room. I stayed in a spot where I could

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

93

1 maintain eye coverage of the victim laying on
2 the ground and then also that door beyond the
3 victim, to make sure that nobody would clear
4 if they were hiding there.

5 The other distinguishing thing that I
6 remember about the apartment was that the air
7 conditioning was set at an extremely cold
8 temperature. For June, it was a warm day and
9 when we walked in it was cold in the apartment.
10 It was very, very cold.

11 Q. As the first responding officer, after you
12 had done what you just testified to, what was
13 your next responsibility?

14 A. Once I located the victim, I immediately
15 requested via police radio for our dispatchers
16 to notify (a) a supervisor which was already en
17 route, and (b) for EMS to respond.

18 My supervisor at the time -- I had an
19 excellent working relationship with, and
20 suggested that he also notify forensics and
21 that they start that way, knowing that there
22 was a potential that they would be needed.

23 Q. Were you present when forensics arrived?

24 A. I was.

25 Q. And who was the person -- how did forensics

1 arrive? Who came?

2 A. Angela Bunker was a police officer working
3 in forensics that day, and she was, I believe,
4 nearby and responded right away.

5 Q. Did you maintain a perimeter around the
6 apartment?

7 A. I did. For the entire time that the crime
8 team was present and working on the apartment,
9 up until I was relieved at approximately 10:00
10 p.m., I maintained a crime scene log and a
11 perimeter of that apartment from the door.

12 Q. So access to and from the apartment was
13 secured by you?

14 A. Yes.

15 MR. VOIGHT: Please answer any
16 questions that Ms. Taylor may have of you.

17 THE COURT: Cross examine.

18 MS. TAYLOR: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. TAYLOR:

21 Q. This incident report that you just review-
22 ed, is that the only written report that you
23 created in the course of your touching this
24 case?

25 A. Yes, ma'am.

1 Q. You mentioned that you were familiar with
2 the apartment complex. Do you have any idea
3 how large -- how many residents lived in this
4 or how many residents may have been in the
5 complex?

6 A. I'll do my best on that one. I know it's
7 of varying occupancy, not that the residents
8 are transient, but that they have a set time
9 that they are there and they come and go. It
10 does have a neighboring apartment that carry
11 more and that's why I'm familiar with it, the
12 foot traffic going to and from.

13 Q. Sure.

14 A. I would think -- my best guess would be --
15 I think there was two to four apartments per
16 complex and there were three complexes. I'm
17 not a hundred percent sure, but I think that's
18 how it is.

19 Q. And you mentioned -- you were asked about
20 the door. Did you examine the front door?

21 A. I briefly looked for any obvious marks of,
22 you know, -- any obvious signs, without getting
23 into too much detail -- just something that I
24 could note for forensics investigators, and I
25 didn't see anything.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

1 Q. You did not see any pry marks anywhere on
2 the door?

3 A. Not that I recall. None that were of
4 significance that caught my eye. Nothing like
5 that, that I recall.

6 Q. Mr. Voight asked you whether the door was
7 locked or latched. Could you describe for the
8 jury how open it was?

9 A. There was a -- the locking mechanism was
10 not engaged, and the latch mechanism was not
11 engaged. The door was -- all you had to do was
12 just push the door slightly and it would open.
13 There was no chain across. There was nothing
14 blocking the back side of the door. It was
15 just a simple push-to-open door and we could
16 open the door. So it was open maybe a half an
17 inch to an inch. It was open enough to see
18 that it was unlatched.

19 Q. And did you actually test the locking
20 mechanism to see whether it was locked at the
21 handle or not?

22 A. I don't believe I did.

23 Q. So it was ---

24 A. -- ajar. That would be the word.

25 Q. Thank you. And do you know who else had

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

97

1 been in the residence prior to your arrival?

2 A. No, ma'am.

3 Q. Did you speak at all with the gentleman
4 that called it in?

5 A. I did, and he had indicated that there was
6 something wrong in the apartment. And he had
7 come over to see her and had found her -- I'm
8 not sure if he had seen her from the way the
9 door was pushed open or whether he had entered
10 the apartment.

11 Q. Do you remember his name?

12 A. I do not.

13 Q. Is it indicated in the report that you have
14 in front of you?

15 A. (Upon review), yes.

16 Q. Did you take any statements from anybody?

17 A. Not that I recall. I do remember trying
18 to locate any witnesses by canvassing the
19 apartment complex, but I don't remember
20 referring anybody to the detectives. So I
21 don't recall.

22 Q. And you did not have any conversation with
23 the person specifically with the gentleman who
24 called in the complaint, about whether he had
25 been in the apartment before your arrival or

1 not?

2 A. I don't recall.

3 MS. TAYLOR: Thank you very much.

4 THE COURT: Redirect, Mr. Voight?

5 MR. VOIGHT: Just a few questions.

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 BY MR. VOIGHT:

9 Q. The Mr. Stender (phonetic) that Ms. Taylor
10 asked you about, was he a resident of the
11 apartment complex, as far as you know?

12 A. I believe so, yes.

13 Q. Only if you -- what was your impression?
14 And did he require any assistance in this
15 assisted-living facility?

16 A. I didn't dive into his background as to why
17 he was there.

18 MR. VOIGHT: Thank you.

19 THE COURT: Recross, Ms. Taylor?

20 MS. TAYLOR: None. Thank you.

21 THE COURT: Thank you. You may step
22 down, Officer Hille.

23 (WITNESS STEPS DOWN)

24 THE COURT: Call your next witness,
25 Solicitor.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

99

1 MR. VOIGHT: Angela Bunker.

2 (WITNESS TAKES STAND)

3 ANGELA BUNKER, being duly sworn to
4 tell the truth, the whole truth and nothing but
5 the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MR. VOIGHT:

8 Q. Officer Bunker, how are you currently
9 assigned at the North Charleston Police
10 Department?

11 A. I'm currently assigned to the night patrol.

12 Q. In June of 2007, how were you assigned?

13 A. In 2007, I was assigned to the forensic
14 unit of North Charleston.

15 Q. And how long did you work with the forensic
16 unit?

17 A. For almost five years.

18 Q. And what were some of your responsibilities
19 and roles with the forensics unit?

20 A. My primary job in the forensic unit was to
21 respond to any kind of violent crime, such as
22 homicide, armed robbery or anything that could
23 possibly be completed by forensics.

24 Q. Did you ever lift fingerprints?

25 A. Yes, sir.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

100

1 Q. Did you ever dust for fingerprints?

2 A. Yes, sir.

3 Q. What does that mean, to lift fingerprints
4 and dust for fingerprints?

5 A. To dust for fingerprints is to take a
6 volcanic powder and you put it on a brush and
7 you pretty much scatter it throughout an area,
8 and hopefully it will develop some kind of
9 latent prints which are left by your fingers
10 that are later identified.

11 Q. You weren't the person who analyzed those
12 prints?

13 A. No, sir.

14 Q. That's not your expertise?

15 A. No, sir.

16 Q. Was your job basically to gather evidence?

17 A. Yes, sir.

18 Q. For other people to analyze?

19 A. Yes, sir.

20 Q. In your role of gathering evidence did you
21 have the occasion to take photographs of crime
22 scenes?

23 A. Yes, I took most of the preliminary
24 photographs.

25 Q. Of this particular case?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

101

1 A. Yes.

2 Q. And you also took -- and on this particular
3 crime, did you also use a video camera to do
4 video, as well?

5 A. Yes.

6 Q. And what would be the purpose of taking
7 crime scene photos?

8 A. Crime scene photos are to be able to
9 establish the scene, to locate items that were
10 located throughout the scene, pretty much as it
11 is prior to any officers being involved or
12 prior to anything being disturbed.

13 Q. When you take crime scene photos do you try
14 to take them before anybody has disturbed
15 things, any other police officers or
16 technicians have disturbed the scene?

17 A. We try to take the crime scene photos as
18 soon as possible. Obviously, there are
19 officers that go into the scene that have to
20 clear things and make sure it's safe for other
21 officers to enter and for any other personnel
22 to enter. But we try to get them in as soon as
23 we can.

24 Q. What is the purpose of taking a video of
25 the scene?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

102

1 A. Videos of a scene kind of help you walk
2 through the exact layout of the actual scene
3 itself, helps you place everything where it
4 needs to be at a distance as opposed to a flat
5 picture, where everything is on video.

6 MR. VOIGHT: May I approach, Your
7 Honor?

8 THE COURT: You may.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. VOIGHT:

11 Q. I'm going to show you what's marked as
12 State's Exhibit 19 and ask you if you can
13 identify that?

14 A. This is the original high eight tape of the
15 crime scene that was later transferred into a
16 CD form.

17 Q. Are you the person that took that -- took
18 the video?

19 A. Yes, sir.

20 Q. And are you the person who placed that tape
21 into evidence?

22 A. Yes, sir.

23 Q. And are you the person that transferred
24 that over into video format?

25 A. Most likely, yes, sir.

State of South Carolina v. Oran Smith

103

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 MR. VOIGHT: At this time, I would
2 offer to introduce State's 19.

3 MS. TAYLOR: No objection, Your
4 Honor.

5 THE COURT: Subject to the
6 objections previously heard in the former
7 record of this matter, it is admitted.

8 (SO ENTERED AS STATE'S EXHIBIT 19)

9 MR. VOIGHT: Thank you, Your Honor.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. VOIGHT:

12 Q. On June 4th, 2007, did you have occasion to
13 respond to 1253 Sumner Avenue in Charleston?

14 A. Yes, sir.

15 Q. Were you the first crime scene technician
16 on the scene?

17 A. Yes, sir.

18 Q. Who was present when you first arrived?

19 A. Upon my arrival, PFC Hille and a trainee
20 officer were setting up the crime scene.

21 Q. Was there anybody in the actual apartment?

22 A. Not at that time.

23 Q. What did you do first?

24 A. I entered into the crime scene by giving
25 Officer Woods my name and badge number to put

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

104

1 me on the crime log. We then went into the
2 apartment itself and Officer Hille showed me
3 where the deceased was located.

4 Q. Did you have your camera with you?

5 A. Yes, sir.

6 Q. Did you begin to take photographs upon
7 entering the house?

8 A. Yes, sir.

9 Q. I show you what I've marked previously as
10 State's Exhibits 11, 22, 20, 24, 23, 21 and
11 State's Exhibits 14 and 12.

12 MS. TAYLOR: Beg the court's
13 indulgence one moment -- (Upon review), all of
14 these are without objection, Your Honor.

15 THE COURT: Okay.

16 (SO ENTERED AS STATE'S EXHIBIT 11)

17 (SO ENTERED AS STATE'S EXHIBIT 12)

18 (SO ENTERED AS STATE'S EXHIBIT 14)

19 (SO ENTERED AS STATE'S EXHIBIT 20)

20 (SO ENTERED AS STATE'S EXHIBIT 21)

21 (SO ENTERED AS STATE'S EXHIBIT 22)

22 (SO ENTERED AS STATE'S EXHIBIT 23)

23 (SO ENTERED AS STATE'S EXHIBIT 24)

24 DIRECT EXAMINATION CONTINUED

25 BY MR. VOIGHT:

1 Q. I would ask you to take a look at these and
2 identify them if you can. Take a look at them
3 there for a second.

4 A. (Reviewing).

5 Q. Now, Officer Bunker, were you the only
6 person with a camera from North Charleston
7 Police Department on the crime scene on that
8 night?

9 A. No, sir.

10 Q. Who else was taking pictures that night?

11 A. Corporal Coker also assisted in taking
12 photographs.

13 Q. Are some of those photographs Corporal
14 Coker's?

15 A. Yes, sir.

16 Q. Are you able to identify which ones are
17 yours and which ones are Corporal Coker's?

18 A. For the most part, yes, sir.

19 Q. Was he there at the same time you were?

20 A. He got there directly behind me.

21 Q. And what would be the purpose of having two
22 of you taking photographs at the same time?

23 A. A lot of times the primary forensic unit,
24 which was myself, gets a little tied up with
25 being pulled from here to there, making sure

1 everything gets completed. So once a secondary
2 unit comes on the scene, they will most likely
3 take over the primary pictures and make sure
4 that we got everything.

5 Q. And are these the photographs that you and
6 Corporal Coker took that day?

7 A. Yes, sir.

8 MR. VOIGHT: At this time I'd like to
9 move to offer, file and introduce State's 12,
10 14, 21, 24, 20, 22, 11 and 23.

11 THE COURT: So 11, 12, 14, 20, 21,
12 22, 23 and 24? Is that it? I'm just asking?

13 MR. VOIGHT: 11, 12, 14 --

14 THE COURT: 20, 21, 22, 23 and 24?

15 MR. VOIGHT: That's correct.

16 THE COURT: 11, 12, 14, 20, 21, 22,
17 23 and 24 are admitted without objection.

18 COURT REPORTER: They have been so
19 entered.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. VOIGHT:

23 Q. I'm going to show you what's been marked as
24 State's 11. Officer Bunker, what does that
25 depict?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

107

1 A. That photograph is the front of the
2 apartment building upon my arrival.

3 Q. That's Cheryl Snow's apartment?

4 A. Yes.

5 Q. Or the apartment occupied by Cheryl Snow.
6 And is that the only door in and out of the
7 apartment that you know of?

8 A. Yes, sir.

9 Q. I'm going to show you what's been marked as
10 State's Exhibit 12. What does that depict?

11 A. That is a beer can that was located in the
12 apartment.

13 MR. VOIGHT: May I approach, Your
14 Honor?

15 THE COURT: Yes, you may.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. VOIGHT:

18 Q. I'm going to show you what's been marked as
19 State's Exhibit 15. Can you take a look at
20 that and tell me what that is?

21 A. This is a Steel Reserve beer can, the same
22 one that's in the photograph.

23 Q. What is the significance of the beer can?

24 A. This item was collected from the scene in
25 reference to latent prints being lifted from

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

108

1 that can.

2 Q. So there were fingerprints found on the
3 beer can?

4 A. Yes, sir.

5 Q. And you're not the person who analyzed
6 those fingerprints.

7 A. No, sir.

8 MR. VOIGHT: At this time the State
9 would move to offer, file and introduce this
10 exhibit.

11 MS. TAYLOR: Without objection,

12 THE COURT: 15, did you say?

13 MR. VOIGHT: 15.

14 THE COURT: 15 is admitted without
15 objection.

16 (SO ENTERED AS STATE'S EXHIBIT 15)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. VOIGHT:

19 Q. I show you what was previously marked as
20 State's 14. Can you tell me what that is?

21 A. This is the bed that was in the same room
22 and that's the way it was upon our arrival.

23 MR. VOIGHT: May I approach, Your
24 Honor?

25 THE COURT: Yes, sir.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

109

1 DIRECT EXAMINATION CONTINUED

2 BY MR. VOIGHT:

3 Q. I'm going to show you what was previously
4 marked as State's Exhibits 16 and 17. Would
5 you take a look at those and tell the jury what
6 those are?

7 A. State's Exhibit 17 is a Newport pack that
8 was located in the bedroom, and State's Exhibit
9 16 are miscellaneous CD's. The only CD's that
10 were collected from the scene were the ones
11 that had latent detail on them.

12 Q. Latent detail means --

13 A. Fingerprints.

14 Q. -- there's some fingerprints?

15 A. Yes, sir.

16 MR. VOIGHT: At this time the State
17 would offer, file and introduce Exhibits 16 and
18 17.

19 MS. TAYLOR: Without objection.

20 THE COURT: Without objection, 16
21 and 17 are admitted.

22 (SO ENTERED AS STATE'S EXHIBIT 16)

23 (SO ENTERED AS STATE'S EXHIBIT 17)

24 DIRECT EXAMINATION CONTINUED

25 BY MR. VOIGHT:

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

110

1 Q. I show you what's been marked as State's
2 Exhibit 21. What does that depict?

3 A. That is the kitchen area countertop that
4 has a blue mug and towels on it.

5 MR. VOIGHT: May I approach, Your
6 Honor?

7 THE COURT: Yes.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. VOIGHT:

10 Q. I show you what was previously marked as
11 State's 18 and ask you to take a look at that
12 and identify it, please?

13 A. Eighteen is the blue mug that's located in
14 the photo.

15 MR. VOIGHT: At this time the State
16 would offer, file and introduce number
17 eighteen.

18 THE COURT: Any objection?

19 MS. TAYLOR: None.

20 THE COURT: Without objection, it is
21 admitted.

22 (SO ENTERED AS STATE'S EXHIBIT 18)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. VOIGHT:

25 Q. I show you what was marked as State's

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

111

1 Exhibit 24, and I show you what was previously
2 marked as State's 61. Can you identify that in
3 the picture?

4 A. State's 61 is the eyeglasses with some
5 blood. If you look at the picture, you can
6 tell there is a pair of eyeglasses that had
7 some blood on them.

8 Q. State's 61 are the eyeglasses depicted in
9 the photograph?

10 A. Yes, sir.

11 MR. VOIGHT: At this time the State
12 would offer, file and introduce State's 61 into
13 evidence.

14 MS. TAYLOR: Without objection.

15 THE COURT: Without objection,
16 State's 61 is admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 61)

18 DIRECT EXAMINATION CONTINUED

19 BY MR. VOIGHT:

20 Q. How much time did you spend -- did you
21 personally spend processing this crime scene?

22 A. Several hours.

23 Q. Did you have an occasion to go back to this
24 particular crime scene?

25 A. Yes, sir, on the 6th of June, I returned.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

112

1 Q. And what was the purpose of going back?

2 A. In reference to a -- I'm sorry, I had the
3 wrong date. On the 7th.

4 Q. The 7th of June?

5 A. Yes. We returned back to the scene in
6 reference to follow-up on a statement that we
7 received from a possible suspect.

8 Q. Did you seize anything on that date?

9 A. Yes, sir. We collected a split pea soup
10 can from the trash can and also a small black
11 -- excuse me, also a twelve-ounce Pepsi can,
12 two red Lifestyles condom packages, and also a
13 Kodak disposable camera.

14 Q. Let me return back to the 4th. Did you go
15 back in the back bedroom and see the deceased?
16 Did you see Cheryl Snow?

17 A. Yes, sir.

18 Q. Did the North Charleston crime scene unit
19 take pictures of Cheryl Snow's body?

20 A. Yes, sir.

21 Q. Approximately how many pictures did you
22 take?

23 A. We took a lot of photos.

24 Q. And what would be the purpose of taking a
25 lot of pictures?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

113

1 A. A lot of photos -- you can never have too
2 many photos. And we want to make sure we get a
3 picture of everything, and in that case we just
4 overlap.

5 Q. Did the photos that you took show how
6 Cheryl Snow died?

7 A. They insinuate, yes, sir. They showed how
8 she was located upon our arrival.

9 Q. How was she located upon your arrival?

10 A. The victim was face down on the floor
11 between the two closets. There was a closet
12 and a small hallway that led into the restroom,
13 and she was located in that area right there,
14 face down. Her head was partially in the
15 closet area that had no doors on it, and her
16 feet were angled towards the bedroom door. She
17 was wearing a striped thong and a grey midriff
18 tank top with a nude-color bra. All her
19 clothing was on as it was designed to be worn.
20 She had a pair of fleece pajama pants that had
21 blue fibers tied around her neck tightly.
22 Q. Did you'all take pictures of -- the fleece
23 pajamas, would those be called a ligature if
24 they were used to strangle somebody?
25 A. Yes, sir.

1 Q. So if I call them either the pajamas or the
2 ligature, it all means the same thing; okay?

3 A. Yes, sir.

4 Q. The pictures that you took, did they
5 demonstrate how she was strangled?

6 A. They insinuated that, yes, sir, that there
7 was a large knot, insinuating that the pajama
8 pants had been tightened tight enough to
9 suffocate her.

10 Q. The crime scene took pictures of that?

11 A. Yes.

12 Q. And you took pictures of the pajamas around
13 her neck?

14 A. Yes.

15 Q. I'm going to show you what's been marked as
16 State's Exhibit 63 and State's Exhibit 23.

17 Does that show the way she was when you first
18 saw her?

19 A. Yes, sir.

20 Q. Had anything been altered in that photo-
21 graph by the crime scene; had anything been
22 moved or changed?

23 A. No, sir.

24 Q. That white mass of cloth on the back of her
25 head, what is that?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

115

1 A. That's the pajamas.

2 Q. In this particular photograph can you see
3 the knot?

4 A. Not exactly. It's up towards the neck
5 area.

6 Q. And you went out there and actually took
7 photographs that will clearly show the knot;
8 right?

9 A. Yes, sir.

10 Q. You were actually up closer in that
11 particular photograph to document every part
12 of the scene ---

13 A. Yes, sir.

14 Q. --- to be certain; didn't you?

15 A. Yes, sir.

16 Q. Before you took the video, had anybody else
17 been in there to disturb the body?

18 A. I do not believe so.

19 Q. EMS was out there that night?

20 A. Yes, sir.

21 Q. And when EMS goes out there do they go
22 check for vital signs?

23 A. I believe that only one EMS personnel
24 entered in, and she was noticeably deceased at
25 that time, so no other EMS personnel entered at

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

1 that time.

2 Q. When someone is found deceased like that,
3 certain other things forensically are done
4 initially by the North Charleston crime scene
5 unit to preserve evidence to the body. Isn't
6 that correct?

7 A. Yes, sir.

8 Q. Are bags placed on the hands?

9 A. Yes, sir.

10 Q. What would the purpose of that be?

11 A. Bags are also placed on the hands of
12 shooting victims or for other unknown or
13 possible way -- a lot of times a bag is to
14 protect any kind of substance that might be
15 under the fingernails or gunpowder if there
16 is a shooting. It just protects a lot of the
17 evidence when things are being moved around.

18 Q. Did you ever have the occasion to come
19 and take an oral swab of Oran Smith?

20 A. Yes, sir.

21 Q. What would be the purpose -- first of all,
22 what is an oral swab?

23 A. An oral swab is a collection of DNA from
24 the cheek.

25 Q. And how is it collected?

1 A. It's collected simply by a swab which is
2 pretty much a dry Q-tip and then placed in a
3 sealed container.

4 Q. And did you have the occasion to perform
5 that procedure on Oran Smith?

6 A. Yes, sir.

7 Q. Do you recall when you did that?

8 A. Not off the top of my head, sir.

9 Q. I'm going to show you what was previously
10 marked as State's Exhibit 63. Would you take
11 a look at that for me? Does that envelope
12 contain your name?

13 A. Yes, sir.

14 Q. What is that object, if you know?

15 A. This is a control swab of Mr. Oran Smith's
16 cheek that was taken on June 5th.

17 Q. You would have taken that on the 5th of
18 June?

19 A. Yes, sir.

20 MR. VOIGHT: At this time the State
21 would offer, file and introduce Exhibit 63.

22 MS. TAYLOR: Without objection.

23 THE COURT: Without objection,
24 State's 63 is admitted.

25 (SO ENTERED AS STATE'S EXHIBIT 63)

1 DIRECT EXAMINATION CONTINUED

2 BY MR. VOIGHT:

3 Q. And that swab, State's Exhibit 63, that was
4 the test sample that was later sent to SLED?

5 A. Yes, sir.

6 Q. And how do you know that?

7 A. SLED has specific packaging for items and
8 they are tagged and marked with a sticker.

9 MR. VOIGHT: Hold on a second.

10 THE COURT: Certainly.

11 MR. VOIGHT: May I approach, Your
12 Honor?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. VOIGHT:

16 Q. I'm going to show you what's been marked as
17 State's Exhibit 6. Can you identify that?

18 A. Yes, sir. This is a copy of the photo-
19 graphs that were taken and that is a CD of
20 them.

21 Q. So State's 6 is what you made State's 19
22 from?

23 A. Yes, sir.

24 Q. Before we show this to the jury, what was
25 the purpose of taking this particular video-

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

119

1 tape?

2 A. The video helps put it in real time and
3 also you're able to see the bruising on the
4 body. You're able to put the scene together.

5 Q. Now, before we put this up there, describe
6 if you can what -- are there -- when you're
7 taking a video, do you know what's important in
8 a crime scene?

9 A. A lot of time at the primary investigation
10 of a crime scene, we're not sure what's
11 important at that time and what's not important
12 until we find out from -- are there statements
13 from witnesses, we don't know what's important
14 and what's not.

15 Q. The person who became the lead detective on
16 this case, had he actually entered the crime
17 scene by the time you had actually shot this
18 video? If you know.

19 A. I'm not sure, sir.

20 Q. The North Charleston crime scene unit, did
21 you'all let anybody in besides members of your
22 own unit for a certain amount of time?

23 A. I believe at the time the video was taken
24 it was just Corporal Coker and myself there at
25 that time.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

120

1 Q. And who from the crime scene unit would
2 have responded to this particular scene?

3 A. On any homicide the majority of the
4 forensic team responds, including the sergeant
5 and all the persons covering the forensics for
6 that day.

7 Q. Did Sergeant Hallman respond?

8 A. Yes, sir.

9 Q. Did Ray Garrison respond?

10 A. Yes, sir.

11 Q. Where does the video start?

12 A. The video starts at the entrance to the
13 apartment.

14 Q. And where does the video end?

15 A. It ends at the back of the apartment
16 building.

17 Q. So the video ends with a shot of the body?

18 A. Yes, sir.

19 (BENCH CONFERENCE)

20 MR. VOIGHT: Your Honor, at this time
21 I would offer, file and introduce State's
22 Exhibit 6 which is a copy of State's 19, which
23 I believe is ---

24 THE COURT: Correct.

25 MR. VOIGHT: This is a CD of the tape

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

121

1 that was taken by Officer Bunker.

2 THE COURT: And subject to the same
3 objection that you raised concerning the tape
4 itself, I believe. And we've heard the
5 objection, and I've actually viewed the video
6 in camera. So the objections and the rulings
7 on the objections are continued, but the video
8 which is State's Exhibit 6, the CD, is admitted
9 subject to that objection. Thank you.

10 MS. TAYLOR: Thank you.

11 (SO ENTERED AS STATE'S EXHIBIT 6)

12 DIRECT EXAMINATION CONTINUED

13 BY MR. VOIGHT:

14 Q. (Video playing) -- Officer Bunker, you are
15 taking a picture here of what appears to be a
16 front door. Why are you stopping there?

17 A. The primary reason for taking the picture
18 of the door is to prove that there was no sign
19 of forced entry.

20 Q. (Video playing) -- Do you know what those
21 marks are on the door?

22 A. The black smudges on the door is finger-
23 print powder.

24 Q. What's the purpose of putting fingerprint
25 powder there on the door?

1 A. This is attempting to locate any kind of
2 maybe fingerprints of any witnesses that may
3 have been in the residence.

4 Q. Do you film with sound?

5 A. We try to keep everything quiet. We
6 announce prior to filming that video will be
7 running.

8 Q. So the camera does have sound capability;
9 you just try to be quiet?

10 A. It does have sound capabilities, sir.

11 Q. (Video playing) -- is that a rabbit?

12 A. Yes.

13 Q. (Video playing) -- again, is that finger-
14 print powder?

15 A. Yes, sir.

16 Q. (Video playing) -- Officer Bunker, there
17 seems to be a lot of items in this apartment.
18 Did that pose any challenge in trying to obtain
19 fingerprints?

20 A. There's was a lot to do. There's a lot of
21 items to see if it was even worth trying to
22 fingerprint or not.

23 Q. (Video playing) -- was that phone hooked
24 up?

25 A. No, sir.

1 Q. (Video playing) -- At the time you took the
2 video did you believe that that was possibly
3 important?

4 A. It goes back to what I said earlier. At
5 the time you're at the crime scene you don't
6 really know what's important and what's not.
7 But to have a phone there and it not be plugged
8 in, it might be important.

9 Q. (Video playing) -- are those some of the
10 CDs from which prints were collected?

11 A. Yes, sir.

12 Q. (Video playing) -- is that a beer can?

13 A. Yes, sir.

14 Q. Was an alternative light source used in the
15 investigation of this scene?

16 A. Yes, sir.

17 Q. What is an alternative light source?

18 A. It's in simple terms it's a black light
19 that's able to enhance any kind of bodily
20 fluids that might be -- such as on the bed
21 area.

22 Q. Did it reveal anything?

23 A. No.

24 Q. Is that a labor-intensive process usually,
25 using an alternative light source?

1 A. Yes, it can be.

2 Q. Why is that?

3 A. It's a rather large machine and also you
4 have different goggles to show different
5 substances.

6 Q. Do you use it on every scene?

7 A. No.

8 Q. Did you use it on this scene?

9 A. Yes, sir.

10 Q. That video continues on in the bedroom
11 where the body was found. Is that right?

12 A. Yes, sir.

13 MR. VOIGHT: Please answer any
14 questions that Ms. Taylor may have for you.

15 THE COURT: Do you have a lengthy
16 cross examination, Ms. Taylor?

17 MS. TAYLOR: Conceivably, it might
18 be ten or fifteen minutes.

19 THE COURT: Why don't we take a
20 break at this point, Ladies and Gentlemen, and
21 let you go to your jury room? Do not begin
22 your deliberations. Don't discuss the case.
23 We'll be with you in about ten minutes. Thank
24 you.

25 (JURY OUT @ 3:32 P.M.)

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

125

1 THE COURT: Anything from the State
2 before recessing?

3 MR. VOIGHT: No, sir.

4 THE COURT: Anything from the
5 defendant?

6 MS. TAYLOR: No, sir.

7 THE COURT: Thank you. We'll be at-
8 ease. I would ask that during the break that
9 you not have any conversation with any of the
10 attorneys. You're free to step down if you
11 wish.

12 THE WITNESS: Thank you.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: Let's bring in our jury,
16 please.

17 (JURY IN @ 3:42 P.M.)

18 THE COURT: Thank you, Ladies and
19 Gentlemen, we're ready to continue. Ms.
20 Taylor, you may begin your cross examination.

21 CROSS EXAMINATION

22 BY MS. TAYLOR:

23 Q. Good afternoon. When you were talking with
24 Mr. Voight you were reviewing the one and a
25 half page typed report; correct?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

126

1 A. Yes, ma'am.

2 Q. Is that the only written report that you
3 provided with regard to this case?

4 A. Other than the SLED request forms, but this
5 is my only report.

6 Q. Thank you. You told us, I think, that the
7 video that we saw you actually were holding the
8 camera?

9 A. Yes, ma'am.

10 Q. And that there was another officer who took
11 some of the photographs, but between the two of
12 you every photograph that we have seen was
13 taken by either you or Mr. Coker?

14 A. Yes, ma'am.

15 Q. We saw and we heard you talk as well, and
16 we saw some of the things you collected, I
17 believe. When you say you collected items you
18 said you collected a soup can, a split pea soup
19 can, a beer can, did you literally go and take
20 those items out of the trash?

21 A. Yes, ma'am.

22 Q. When you do that do you use baggies like we
23 see on T.V.?

24 A. Yes, ma'am.

25 Q. And you use those to protect the evidence

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

127

1 so it can be tested without contamination by
2 officers or other persons?

3 A. Yes, ma'am.

4 Q. And the things that I wrote down -- tell me
5 if you can what you took was a split pea soup
6 can, a twelve-ounce Pepsi can, a disposable
7 camera and condoms?

8 A. Yes, ma'am. There were two red LifeStyles
9 condoms and two black LifeStyles condoms?

10 Q. And were these condoms that had been used
11 or were these packages of condoms?

12 A. Packages from the trash.

13 Q. And the disposable camera, did you'all
14 ultimately print photographs from that?

15 A. Yes, ma'am. On the 21st, the disposable
16 camera was taken into evidence to Sam's Club
17 where the City has a contract for developing
18 photos. And twenty-six family pictures were
19 developed from the camera and the photos were
20 also entered into evidence after they were
21 developed.

22 Q. And nothing relevant to help us resolve
23 this situation?

24 A. No, ma'am.

25 Q. Did you or anyone that you know of dust

1 that camera for fingerprints to see whom might
2 have thrown it in the trash?

3 A. No, ma'am, I don't believe so.

4 Q. Did you dust some of these other items, the
5 Pepsi can?

6 A. Yes, ma'am.

7 Q. And I think you already told us about the
8 beer can and you dusted the cigarette pack?

9 A. Yes, ma'am, all those items were processed..

10 Q. Did you take those?

11 A. Yes, ma'am.

12 Q. Did the cigarette pack have cigarettes in
13 it? Do you recall, or was it an empty package?

14 A. I believe it was an empty package.

15 Q. I know that Mr. Voight asked you at one,
16 point if the video camera had sound, and you
17 said it did, that you just make every effort
18 not to have sounds when you are filming the
19 crime scene?

20 A. Yes, ma'am.

21 Q. Is that your personal video camera or does
22 the North Charleston Police Department's own
23 that?

24 A. It is North Charleston's.

25 Q. You also talked to Mr. Voight about taking

1 a oral swab from Oran Smith. Did you take any
2 other swabs of any other suspects?

3 A. Yes, ma'am. I do not know the names
4 offhand, but yes, ma'am.

5 Q. Who are those people?

6 A. It would be within the SLED report.

7 Q. We looked at one point on the video and you
8 were talking to us as well about a telephone, I
9 believe that it was a white telephone on a
10 table or a desk or something?

11 A. Yes, ma'am. A white telephone was located
12 between the kitchen and the living area --
13 there was a table right there that it was
14 located on.

15 Q. And we all saw the video, but what I saw
16 was a cord that was hand down but that was
17 detached from the little white plug that would
18 have been -- whatever you call it -- where you
19 fit it into the jack in the wall?

20 A. Yes.

21 Q. Is that correct?

22 A. The phone was disconnected from the wall
23 jack, but the jack to the jack in the phone was
24 disconnected.

25 Q. So if I thought I saw a little white

1 plastic jack in the actual jack on the wall and
2 on the end of the wire, and the wire coming out
3 of it?

4 A. Yes, ma'am. It was pulled out of the
5 actual jack.

6 Q. So what we see on the floor is just the
7 wire with that phone line coming out?

8 A. Yes, ma'am. I apologize.

9 Q. Did you take that phone into custody?

10 A. Yes, ma'am.

11 Q. Did you do something with that phone?

12 A. It was processed for latent prints.

13 Q. Did you do that yourself?

14 A. I believe so, yes, ma'am.

15 Q. And also in the report that you were going
16 over with Mr. Voight, some of the things we saw
17 in the video, there were medications. Did you
18 take those into evidence or determine whether
19 any of them were used?

20 A. I believe the coroner collected the
21 medications where they can take them to the
22 autopsy and compared them with the toxicology.

23 Q. And we've already talked about the CDs and
24 the plastic cases. There's also indications of
25 a love letter to the victim. Did you take that

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

131

1 into evidence?

2 A. Yes, ma'am, that was taken into evidence.

3 Q. Could you determine who had written that
4 letter?

5 A. No.

6 Q. Did you print that or dust that letter for
7 prints that you know of?

8 A. Personally, no, ma'am. I did not.

9 Q. Do you know whether anyone else did?

10 A. I am not sure.

11 Q. We saw the fingerprint dust on the door.
12 Do you know whether any fingerprints were
13 actually lifted from the door?

14 A. Not off the top of my head, ma'am.

15 Q. And I think you had mentioned that, in
16 response to a question from Mr. Voight, that
17 was no forced entry. What did you base that
18 on?

19 A. The fact that the locks were still secured
20 and they were installed as -- sometimes at a
21 forced entry there is broken glass or
22 splintering. The door seemed to be intact.

23 Q. Did you touch the handle of the door to
24 determine whether it had been locked and was
25 ajar or whether it was unlocked entirely when

1 you got there?

2 A. No, ma'am, I did not. Officer Hille wasn't
3 able to advise how it was whenever he arrived.

4 Q. And if he didn't, do you know anyone else
5 who might be able to answer that question for
6 us?

7 A. No, ma'am. I'm sorry.

8 MS. TAYLOR: The Court's indulgence
9 one moment.

10 THE COURT: Certainly.

11 CROSS EXAMINATION CONTINUED

12 BY MS. TAYLOR:

13 Q. Did you notice how many phones were in the
14 apartment?

15 A. I only saw the one phone.

16 Q. And that would have been the only one that
17 you would have taken?

18 A. Yes, ma'am.

19 Q. The white telephone?

20 A. Yes, ma'am, the white phone.

21 Q. You talked about a lot of things that you
22 took out of the apartment. Tell us one more
23 time what happens to the things that you take
24 once you take them into evidence.

25 A. The items that I take from the scene are

State of South Carolina v. Oran Smith

133

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 packaged and entered into an evidence log.
2 Then they are secured on scene in a crime scene
3 vehicle, which was my vehicle. Then the items
4 are taken back into the forensics lab where the
5 processing is completed on them and then they
6 are secured and initialed and packaged and they
7 are placed in an evidence locker unless they
8 are signed out.

9 Q. If they go to SLED then they come back to
10 North Charleston?

11 A. Yes, ma'am. They're signed out from the
12 North Charleston evidence room. They go up to
13 SLED and then they are returned to North
14 Charleston.

15 Q. And all of the evidence that was taken out
16 of the apartment and that went to SLED and was
17 tested has been returned back here in the
18 courtroom for the trial.

19 A. Yes.

20 Q. Thank you.

21 THE COURT: Redirect.

22 MR. VOIGHT: No, sir.

23 THE COURT: Thank you very much.

24 You may step down.

25 (WITNESS EXCUSED)

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

134

1 THE COURT: Call your next witness,
2 please.

3 MR. SIMPSON: The State calls Al
4 Hallman.

5 (WITNESS TAKES STAND)

6 AL HALLMAN, being duly sworn to tell
7 the truth, the whole truth and nothing but the
8 truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MR. SIMPSON:

11 Q. Sgt. Hallman, you're not feeling very well
12 today, are you?

13 A. No, sir.

14 Q. We appreciate you being here, and we'll be
15 as quick as we can. What is your current
16 occupation?

17 A. I am employed by the City of North
18 Charleston Police Department.

19 Q. What is the nature of your work with that
20 department?

21 A. I am currently supervisor of the forensics
22 investigation unit.

23 Q. And how long have you been working in that
24 regard?

25 A. Approximately sixteen years.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

135

1 Q. What educational background do you have to
2 prepare you for that type of work?

3 A. I have attended numerous training courses
4 in the area of evidence collection and
5 preservation, evidence processing, latent
6 prints comparison and identification, shooting
7 incident reconstruction, and I've got a degree
8 from the American Institute of Applied Sciences
9 in Forensic Science.

10 Q. As a member of the North Charleston crime
11 scene forensic services unit, have you ever had
12 the occasion to collect fingerprints from a
13 crime scene?

14 A. Yes, I have.

15 Q. Approximately how many times?

16 A. Thousands.

17 Q. And have you also had occasion to compare
18 those prints to known prints?

19 A. Yes, sir.

20 Q. And approximately how many times?

21 A. Again, thousands upon thousands.

22 Q. Have you ever qualified as an expert in
23 fingerprint analysis in any court of this
24 state?

25 A. Yes, sir, I have.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

136

1 Q. Approximately how many times have you
2 testified as an expert?

3 A. In excess of fifty times.

4 MR. SIMPSON: Your Honor, at this
5 point we would offer Sergeant Al Hallman as an
6 expert in the area of latent print collection
7 and identification.

8 THE COURT: Do you care to examine
9 his qualifications?

10 MS. TAYLOR: No, Your Honor. We
11 would stipulate Mr. Hallman's qualifications.

12 THE COURT: Very well. He will be
13 permitted to render opinions in those areas.

14 MR. SIMPSON: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. SIMPSON:

18 Q. Sergeant Hallman, how did you come to be
19 involved in the present investigation?

20 A. I was notified to respond to Sumner Avenue
21 on the night of the incident.

22 Q. Was this to an apartment on Sumner Avenue?

23 A. Yes, sir, it was.

24 Q. Were there any other crime scene officers
25 on the scene when you arrived?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

137

1 A. Yes, Investigator Bunker was already on the
2 crime scene when I got there.

3 Q. What did you observe upon arrival at the
4 apartment?

5 A. The exterior of the apartment was taped off
6 with yellow crime scene tape. There was an
7 officer present there with a crime scene log
8 documenting who entered and exited the crime
9 scene.

10 When I got there I met with Investigator
11 Bunker to get an overview as to what had taken
12 place, and then we went into the residence.

13 Q. Can you describe for the jury what you
14 observed in the residence?

15 A. Yes, sir. When we entered the front door
16 we entered directly into the living room area.
17 Directly across the living room area was the
18 kitchen area which was separated by a bar. Off
19 to the left was a doorway, and that doorway
20 entered into the bedroom and that is where the
21 victim was found. The victim was a white
22 female. She was laying face down. Her head
23 was toward the closet at the far end of the
24 bedroom and her feet were upward toward the
25 entrance doorway.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

138

1 MR. SIMPSON: Your Honor, may I
2 approach the witness?

3 THE COURT: Yes, you may.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. SIMPSON:

6 Q. Officer, I'm handing you what's been moved
7 into evidence as State's 23. Is that an
8 accurate representation of the position of the
9 victim when you arrived?

10 A. Yes, sir, it was.

11 Q. How did you respond as far as your official
12 duties go? What was your first act when you
13 arrived on the scene?

14 A. Once I got to the scene and met with
15 Investigator Bunker and, like I said, got an
16 overview of what had taken place, then we took
17 a brief walk through the residence so that I
18 could get a visual of what had occurred. I
19 then notified other members of the forensic
20 team to respond to assist in the investigation.

21 Q. Do you remember specifically who you called
22 to respond?

23 A. Sergeant Garrison responded and I believe
24 Corporal Coker responded, if I'm not mistaken.

25 Q. And how did you proceed once these officers

1 responded?

2 A. Once they got to the scene we entered the
3 scene and began documenting the entire interior
4 of the residence with photography. We photo-
5 graphed items of potential evidence. We took
6 photographs of the victim in her current
7 position so that once we went in and started
8 processing evidence we'd have the photographic
9 documentation to show how the residence was
10 found upon arrival. And once that was done we
11 began to identify areas and items of evidence
12 and began processing those areas.

13 Q. Sir, could you describe to the jury what
14 a latent fingerprint is?

15 A. A latent -- the word "latent" means
16 invisible to the naked eye. And a latent print
17 occurs on a surface whenever the palm and the
18 fingers of the hand or your feet come in
19 contact with given surfaces and leave an
20 impression. That's what's called a latent
21 impression. And, as I said, "latent" means
22 invisible to the naked eye. It requires some
23 other type of processing to make it visible and
24 comparable.

25 Q. Did you also ask that Sergeant Garrison

1 bring certain chemicals to the scene?

2 A. I believe Sergeant Garrison -- I requested

3 a chemical called amido black. A-m-I-d-o.

4 B-l-a-c-k, black. That chemical is used to

5 process an area where there is or was blood

6 evidence that might have been wiped away.

7 This chemical actually bring back the

8 impression that the blood was there, even if

9 it's been wiped away with certain chemicals.

10 It will still bring back the impression. It

11 shows us where blood was at that time.

12 Q. Did you process this scene with that

13 chemical?

14 A. Yes, sir, we did.

15 Q. Was the result?

16 A. Nothing of evidentiary value was noted.

17 Q. Did you begin to process the scene for

18 these latent lifts?

19 A. Yes, sir.

20 Q. And what was the results of that?

21 A. We obtained several latent fingerprint

22 lifts from various items in the area within the

23 residence.

24 Q. Do you recall how many?

25 A. Not off the top of my head, no. It was

1 approximately twenty, if I'm not mistaken.

2 Q. Did you return to the scene the following
3 day, on Tuesday?

4 A. Yes, sir, I did.

5 Q. And what was the purpose of you returning?

6 A. The investigators went there with a search
7 warrant on the residence so that we could go
8 ahead and collect a V-tech telephone that had
9 an answering machine on it. They wanted to
10 examine the answering machine to see if there
11 was any audible recordings on it that might
12 bear on this case.

13 Q. Did you collect that phone?

14 A. Yes, we did.

15 Q. Did you collect any additional fingerprints
16 on returning?

17 A. Yes, sir. I processed a bowl in the sink
18 in the kitchen and several latent prints were
19 lifted off that bowl as well.

20 Q. And so from the two days to the best of
21 your knowledge, do you remember how many latent
22 lifts were taken from the residence?

23 A. Both by myself and Corporal Coker, I want
24 to say a total of twenty-four. I'm not quite
25 sure. I don't have my report in front of me.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

142

1 Q. Would it refresh your recollection if you
2 could see that report?

3 A. Yes, sir.

4 MR. SIMPSON: May I approach, Your
5 Honor?

6 THE COURT: You may.

7 MR. SIMPSON: (Tenders document to
8 witness).

9 THE WITNESS: (Upon review) --
10 actually, there was a total of twenty-eight
11 that both myself and Corporal Coker took.

12 COURT REPORTER: Marked as State's
13 Exhibit 66 for identification.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. SIMPSON:

16 Q. Sergeant Hallman, you just reviewed State's
17 Exhibit 66 for I.D. only and you said there
18 were twenty-eight total?

19 A. I believe that's right, yes, sir.

20 Q. Did you collect a latent lift card, and can
21 you explain to the jury the process you would
22 use, the labeling process?

23 A. Yes, sir. When we process an item of
24 evidence and develop what appears to be an
25 identifiable latent print, we then apply a

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

143

1 clear fingerprint tape across this latent
2 impression. It is then lifted from the surface
3 that it was developed on and it is affixed to a
4 white backing card. Some cards bear more than
5 just one latent lift, but we identify each pack
6 of cards as to where the lifts were lifted from
7 and they're given an identification number of
8 L-1 through however many cards are lifted; "L"
9 indicating the word "latent", number one being
10 the first card and subsequent and so forth.

11 Q. And do you also indicate on those cards the
12 general description of the location where the
13 lifts were?

14 A. Yes, sir, that's documented on the back of
15 the card indicating where the lifts were taken
16 from.

17 Q. Let me hand you what has been pre-marked
18 for I.D. only as State's Exhibit 32-59.

19 MR. SIMPSON: May I approach, Your
20 Honor?

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. SIMPSON:

24 Q. Can you identify these items for the jury?

25 A. Latent card number L-1 is two latent lifts

1 lifted from the Newport cigarette pack by
2 Corporal Coker.

3 Q. We'll be going through these at some point.
4 But for the moment these are latent cards, L-1
5 through L-28?

6 A. Yes, sir, they are.

7 Q. Starting with L-1 that's marked for I.D.
8 Only as State's 32, where in the apartment was
9 that card lifted?

10 A. It was lifted from the Newport cigarette
11 pack.

12 Q. Sergeant, I'm ---

13 MR. SIMPSON: May I approach, Your
14 Honor?

15 THE COURT: Yes.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. SIMPSON:

18 Q. I'm handing you what has been entered into
19 evidence as State's Exhibit 14. Can you
20 describe this for the jury?

21 A. Yes. This is a photograph that was taken
22 in the victim's bedroom and it shows a pack of
23 Newport cigarettes.

24 Q. Is that the Newport cigarette pack from
25 which L-1 was lifted?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

145

1 A. I believe so, yes.

2 Q. Moving on now to card L-3, which has been
3 marked for I.D. Only as State's 34, from where
4 was that lift taken?

5 A. That was lifted from a Steel Reserve can.
6 I believe it was a beer can.

7 Q. Sergeant, I'm showing you what's been
8 marked as State's 12 -- marked and entered.
9 Can you describe that to the jury?

10 A. Yes. It's the photograph of like a plastic
11 white set of shelves, and it has the Steel
12 Reserve can on the middle shelf.

13 Q. And is that the Steel Reserve can you were
14 referring to earlier?

15 A. Yes, sir.

16 Q. Moving on to card L-4, marked for I.D. Only
17 as State's 37, from where were those lifts
18 taken?

19 A. L-4 is marked State's 35.

20 Q. Okay. Thank you.

21 A. It was lifted from a CD on the dresser in
22 the victim's bedroom.

23 Q. Moving on to L-6.

24 A. L-6 is two lifts that were lifted from the
25 cigar box with a speaker inside in the victim's

1 bedroom.

2 Q. Now, if you would, skip ahead to your
3 number L-22. Can you describe where those
4 lifts were taken?

5 A. L-22 was -- one lift lifted from the magnet
6 on the car stereo speaker in the cigar box in
7 the victim's bedroom.

8 Q. So that was the speaker in the box you
9 referenced earlier?

10 A. Yes, sir.

11 Q. Going back to card L-9?

12 A. L-9 was lifted from a large coffee cup in
13 the kitchen by Corporal Coker. Three lifts.

14 MR. SIMPSON: Your Honor, may I
15 approach?

16 THE COURT: Yes.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. SIMPSON:

19 Q. I'm showing you what's been entered as
20 State's 21. Can you describe that for the
21 jury?

22 A. That's a photograph of the counter in the
23 kitchen and it shows two coffee cups, one
24 smaller and one larger. And the larger coffee
25 cup is where Corporal Coker took those lifts

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

147

1 from.

2 Q. Sergeant, what is done with the latent
3 lifts once they're collected?

4 A. They are forwarded to myself -- at that
5 time they were either forwarded to myself or
6 Sergeant Garrison. Being that I was still
7 present on the scene, they were forwarded to
8 Sergeant Garrison who responded back to the
9 Police Department and started to conduct a
10 comparison.

11 Q. Are they compared to known fingerprint
12 samples?

13 A. Yes, sir. They're compared to -- what a
14 known fingerprint is is an actual ink image
15 taken from a person. We refer to that as a
16 "known print." And the latent prints are
17 compared to the known prints side-by-side.

18 Q. Sergeant ---

19 MR. SIMPSON: May I approach, Your
20 Honor?

21 THE COURT: Yes.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. SIMPSON:

24 Q. I show you what's been marked for I.D. only
25 as State's 28 through 31. Can you identify

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

148

1 those for the jury?

2 A. State's 28 is known fingerprint impressions
3 from Oran Lamar Smith referenced as K-1 or
4 known one.

5 State's 29 is known ink impressions from a
6 Leonard Herbert Geddis, also marked by
7 identification number K-2.

8 Item 30, State's Exhibit 30 is ink
9 impression from Cheryl Lynn Snow marked
10 identification number K-3.

11 State's Exhibit 31 is a printout of an
12 identification from a latent to a known ink
13 impression bearing the name Leonard McKelvey,
14 black male, date of birth 1-24-55. It also has
15 the I.D. of latent number 25.1 present on it.

16 Q. Sir, would you take a moment and describe
17 for the jury how you go about making
18 comparisons to a latent lift and a known?

19 A. Certainly. Like I said earlier, it's done
20 in a side-by-side fashion. We start with the
21 latent print. And when examining latent prints
22 we try to locate what we call target areas or
23 something within that latent print that jumps
24 out at you, that's kind of not normal or not
25 the normal ridge flow or pattern. Once we've

1 located a target area or starting point, if you
2 want to refer to it as that, then we go to the
3 known impressions and we start looking for
4 pattern types. And if we find a matching
5 pattern type, like a slanted loop to the left,
6 then we start looking for this target area
7 within the known print. Once we've found that
8 target area, then we go back and forth, from
9 the latent to the ink, point by point by point
10 to make a positive identification.

11 Q. How many points of comparison matches are
12 needed in your experience before you'll make a
13 positive match?

14 A. There is no set number. It's whatever the
15 examiner is comfortable with. I have testified
16 in General Sessions court to a four-point
17 identification and got a conviction. It was a
18 very odd four-point identification. It's just
19 whatever the examiner is comfortable with to
20 call the identification.

21 Q. Sergeant, does the situation sometime arise
22 where a latent lift is of insufficient detail
23 that you feel like 'I can't make a comparison
24 of this lift'?

25 A. Yes, sir. If we had examined a latent lift

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

150

1 that just basically had no ridge detail or
2 significant points of identification within
3 that latent print, then it would be termed it
4 is insufficient for identification.

5 Q. Is it a frequent occurrence?

6 A. Yes, sir.

7 Q. Are you just making the determination
8 through your experience that 'I'm not
9 comfortable making a comparison with the detail
10 I have on this lift?

11 A. No, we'll make a comparison. It's just
12 impossible to effect an identification.

13 Q. Make a conclusion?

14 A. Right. If we cannot get a firm conclusion
15 one way or the other, then it's deemed
16 unidentifiable.

17 Q. How do you indicate that situation on your
18 report?

19 A. "Insufficient for identification."

20 Q. The analysis work in the present case, some
21 was done by you; correct?

22 A. Yes, sir. Some was done by me and some by
23 Sergeant Garrison.

24 Q. You just kind of split the work in this
25 case?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

151

1 A. Yes, sir.

2 Q. Did you prepare latent lift cards L-20
3 through L-28 that I presented to you?

4 A. Could I refer to my report, please?

5 Q. Sure.

6 MR. SIMPSON: May I approach, Your
7 Honor?

8 THE COURT: Yes.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. SIMPSON:

11 Q. I'm handing the witness State's Exhibit 66
12 for I.D. Only.

13 A. (Upon review) -- yes, I conducted
14 comparisons on cards number 21 through 28.

15 Q. With what known samples did you compare
16 them?

17 A. Oran Lamar Smith, Leonard Herbert Geddis,
18 Cheryl Snow and Leroy McKelvey.

19 Q. Beginning what's marked as L-21 by you,
20 State's Exhibit 52 for I.D. Only by us, where
21 were those lifts taken?

22 A. L-21.1 and L-21.2, both of those were
23 obtained from a blue glass bowl in the kitchen
24 sink.

25 Q. And you compared those with your known

1 samples?

2 A. Yes, sir, I did.

3 Q. And what was the result?

4 A. L-21.1 was positive with the number six
5 left thumb of Leonard Herbert Geddis.

6 L-21.2 was positive with the number seven
7 left index finger of Leonard Herbert Geddis.

8 Q. Moving on to L-22, State's Exhibit 53 for
9 I.D. Only, from where were those lifts taken?

10 A. That lift was obtained from the magnet on
11 the car stereo speaker in the cigar box in the
12 victim's bedroom.

13 Q. What were the results of your comparison in
14 that case?

15 A. L-22.1 was positive with the number eight
16 left middle finger from Oran Lamar Smith.

17 Q. So it was your conclusion that the
18 defendant's fingerprints were found in the
19 bedroom of the victim?

20 A. That is correct.

21 MR. SIMPSON: Your Honor, at this
22 point I would move State's Exhibit 53, the
23 latent lift, into evidence.

24 THE COURT: Any objection?

25 MS. TAYLOR: None.

1 THE COURT: Without objection it is
2 admitted.

3 (SO ENTERED AS STATE'S EXHIBIT 53)

4 DIRECT EXAMINATION CONTINUED

5 BY MR. SIMPSON:

6 Q. Sergeant, State's Exhibit L-24, would you
7 share with the jury your conclusion on that
8 card?

9 A. Yes, L-24 no identifications were effected
10 to any of the known impressions that we had
11 supplied to us.

12 Q. Moving on to State's Exhibits 56 and 57 for
13 I.D. only, L-25 and L-26 by your number?

14 A. Latents 25 and 26 and 27 and 28 -- excuse
15 me, latents 25, 26 and 27 were lifted from a
16 twelve-ounce Pepsi can found in the trash can.

17 Latent 25.1 was positive with the number
18 one right thumb of Leroy McKelvey and latent
19 Latent 26.1 was positive with number three
20 right middle finger of Leroy McKelvey.

21 Latent 27 and Latent 28 were insufficient
22 for identification.

23 Q. Sir, you've already testified that yourself
24 and Sergeant Garrison split up the analysis
25 work in this case.

1 A. Yes, sir.

2 Q. In that regard, did you have any looks at
3 L-1 through L-20?

4 A. Sergeant Garrison did the comparisons on
5 L-1 through L-20, and I later confirmed his
6 findings.

7 Q. Did you also compare those to the known
8 samples of Leroy McKelvey?

9 A. Yes, sir, -- to Leroy McKelvey and to
10 Leonard Geddis.

11 Q. And what was the results there?

12 A. Negative results.

13 Q. So on L-1 to L-20, neither Leonard Geddis
14 nor Leroy McKelvey was a match to any of those
15 latent prints?

16 A. That is correct.

17 Q. As you're getting matches on these
18 individuals do you relay these conclusions to
19 anyone?

20 A. Once we've gotten the identifications, they
21 are -- and they have been confirmed by another
22 examiner, then those findings are immediately
23 relayed to the investigators handling the case.

24 Q. Do you recall who the lead detective was on
25 the present case?

1 A. No, sir, I don't. I believe it was Shawn
2 Patrick, but I do not recall.

3 Q. But certainly you would have communicated
4 the results of your ---

5 A. Yes, sir. That was done on the scene that
6 night. Yes, sir.

7 MR. SIMPSON: One moment.

8 THE COURT: Sure.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. SIMPSON:

11 Q. Sergeant Hallman, do you recall -- tell the
12 jury how long you were out there that night and
13 the following day?

14 A. The initial response, we were out there for
15 hours. I don't recall exactly how many hours,
16 but we were out there for a very, very long
17 time. The next day when I responded with
18 investigators with the search warrant, it was
19 brief. But the initial investigation lasted
20 for hours and hours and hours.

21 Q. Would you describe your work that you
22 processed the entire scene?

23 A. Yes, sir; we went through that house with a
24 fine-tooth comb. We processed everything that
25 could possibly be processed for fingerprints,

1 for DNA. I collected swabs from the victim,
2 from the area around the victim where she was
3 found, from off the victim herself. And to the
4 best of my knowledge, there was no stone left
5 unturned in that residence once we were done.

6 Q. Thank you. Please answer any questions Ms.
7 Taylor might have.

8 THE COURT: You may cross examine.

9 CROSS EXAMINATION

10 BY MS. TAYLOR:

11 Q. You talked about what you discovered in the
12 apartment and you have referred to a report?

13 A. Yes, ma'am.

14 Q. Do you have that up there with you?

15 A. I do.

16 Q. I just want to make sure that I have what
17 you have. I have your observations and
18 actions, and a four-page typed report?

19 A. Yes, ma'am.

20 Q. Then there's one, two, three, four, five,
21 six pages of the latent prints conclusions with
22 that?

23 A. I've got three pages of the latent print
24 conclusions, but you may have Sergeant
25 Garrison's as well.

1 MS. TAYLOR: May I approach, Your
2 Honor, just to make sure.

3 THE COURT: Certainly.

4 CROSS EXAMINATION CONTINUED

5 BY MS. TAYLOR:

6 Q. Can we compare? I just want to make sure
7 that I've got what you've got.

8 A. Okay. This one, this, this is L-23 and
9 then the back sheet of that one.

10 Q. These are the only three pages that contain
11 what you did, along with the four-page report?

12 A. That's right.

13 Q. I don't want to go through everything that
14 you went through with Mr. Simpson but I do want
15 to look at a couple of things in your
16 observations and action report.

17 A. Yes, ma'am.

18 Q. You indicated that you didn't see any
19 evidence that the apartment had been ransacked.

20 A. No, there were quite a number of items
21 inside this residence. The bedroom itself was
22 just loaded with various items. There were
23 several items on the living room floor that
24 were on the floor, but it really didn't appear
25 as though it was put there by some sort of

1 violence. It was just -- the entire house was
2 just in disarray, but not in disarray as if by
3 violence.

4 Q. Not from what happened to cause Ms. Snow's
5 death?

6 A. Yes, ma'am.

7 Q. And you went through a fairly long list of
8 items, some of which were in the photographs,
9 including some beer cans, cigarette packs, CDs,
10 speakers, stuff like that, which you were later
11 lifted prints from, identifying those prints as
12 belonging to Oran?

13 A. I believe Oran's prints were identified on
14 the magnet of the car stereo speaker.

15 Q. And the cigarette pack, ---

16 A. (Affirmative nod).

17 Q. --- beer can?

18 A. Those were -- are you talking about the
19 ones with Leonard Geddis?

20 Q. Actually, maybe I'm wrong. I'm talking
21 about L-1.

22 A. L-1 through L-20 was compared by Sergeant
23 Garrison, I believe.

24 Q. So you didn't do that?

25 A. No, ma'am. All I did was confirm his

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

159

1 findings on those cards.

2 Q. Did you pick those items up, or you just
3 didn't have anything to do with taking them?

4 A. No, I collected -- I assisted in the
5 collection of the latents at the scene, but
6 they were forwarded to Sergeant Garrison so
7 that they could be compared.

8 Q. And those were some of the ones that you
9 confirmed of his, but he did the initial ---

10 A. Correct.

11 Q. And that evidence was reported.

12 A. Yes, ma'am.

13 Q. And that's why you wouldn't have those
14 reports with you?

15 A. Correct.

16 Q. I'm with you. You talked a good bit about
17 taking some fingerprints and what they tell us.
18 Obviously, specifically they tell us what we
19 touch. Right now, if I hold the side of this,
20 it may leave my fingerprint on it.

21 A. No, your fingerprint's there.

22 Q. So if you dust that, what does that tell
23 you?

24 A. It tell me that your hand came in contact
25 with that surface.

1 Q. Now, if you dust it next week, will my
2 fingerprint still be there?

3 A. That would depend on how many people have
4 had the opportunity to come in contact with
5 that surface since you placed your fingerprint
6 there.

7 Q. Is there any way that a fingerprint, my
8 pressing onto this board or lightly touching
9 it, gives us any other information on when I
10 was standing here touching it?

11 A. No, ma'am. It has been researched and
12 researched and there is no way to put a time
13 stamp on a latent fingerprint.

14 Q. So for any of the objects which you talked
15 about here today which revealed a fingerprint
16 of an individual connected in any direct way
17 with Ms. Snow's homicide, the actual killing of
18 Cheryl Snow?

19 A. I really couldn't say. Like I said, we
20 processed everything in that house, regardless
21 of its location, and any identifiable prints
22 were lifted. Whether or not a car stereo
23 speaker was used as a direct result of a
24 homicide, no, ma'am. I cannot say that.

25 Q. Some cases may be that can be used, is that

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

161

1 not correct?

2 A. Sometimes, yes, ma'am.

3 Q. If there's a homicide with an object that
4 was used to inflict injury, such as a blunt
5 injury, you might have a print of someone on
6 that object.

7 A. Yes, especially in blunt-force trauma
8 cases.

9 Q. We talked about these other comparisons.
10 We know of at least two others that indicate
11 they were black males were in her home at some
12 point in time -- where you took or found prints
13 off the beer can and, I think, a blue bowl?

14 A. Yes, the blue bowl was Leonard Geddis and
15 the Pepsi can was Leroy McKelvey.

16 Q. Again, all that tells us is those two
17 gentlemen were also at some point in time
18 touching those items.

19 A. That's correct.

20 Q. The second page of your report indicates --
21 I'm sorry, it starts on the very first page,
22 last paragraph, indicates that you also
23 participated on June 5th in a search warrant?

24 A. Yes, ma'am.

25 Q. What was taken at that time?

1 A. The V-Tech telephone/answering machine.

2 Q. Do you remember what that telephone looked
3 like?

4 A. Not off the top of my head.

5 Q. Would it refresh your memory to see it?

6 A. If I could look at the photos, I'm sure.

7 Q. We actually have the phone.

8 A. Okay.

9 MS. TAYLOR: May I approach the
10 witness?

11 THE COURT: Yes, you may.

12 CROSS EXAMINATION CONTINUED

13 BY MS. TAYLOR:

14 Q. (Displaying telephone).

15 A. Yes, ma'am, that's the phone.

16 Q. Will you take it out so we can see it?

17 A. Certainly.

18 COURT REPORTER: State's Exhibit 60.

19 THE COURT: Sixty -- the bag is
20 State's Exhibit 60, containing the phone.

21 THE WITNESS: A V-Tech phone with
22 answering machine.

23 CROSS EXAMINATION CONTINUED

24 BY MS. TAYLOR:

25 Q. Did you perform any kind of testing on that

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

163

1 phone?

2 A. No, ma'am, I did not. The phone was turned
3 over to the investigators, to the detectives,
4 because they wanted to examine it to see if
5 there was any audible evidence present on the
6 recorder.

7 Q. No dusting for fingerprints on that phone?

8 A. No.

9 Q. Any other phones take from that residence
10 that you know of?

11 A. Not to my knowledge, no, ma'am.

12 Q. Did you test any phones within the
13 apartment?

14 A. There was a white phone in the apartment.
15 It was dusted for fingerprints, but no lifts
16 were obtained.

17 Q. And you didn't take that phone out of the
18 apartment?

19 A. No.

20 Q. We've talked about fingerprints and how we
21 get them. What effect, if any, would someone
22 wearing gloves have on the ability to take a
23 print from a surface?

24 A. Any time any type of surface comes in
25 between the palms of the hands or the fingers

1 of the hands and the surface being touched, it
2 basically ruins the opportunity to leave a
3 latent print with identifiable ridge detail.
4 Now, they can leave a glove impression that can
5 actually be identified to a particular glove.
6 But it does preclude or it does cause the
7 inability to leave a latent fingerprint
8 impression on a surface. The glove stops any
9 kind of -- anything between the hands and the
10 surface being touched.

11 Q. If you throw a towel over something and
12 grab it --

13 A. You're not going to leave a latent print on
14 it.

15 Q. When you say you can compare the glove,
16 assuming that you had a glove and you had an
17 imprint, you might do a comparison of the two
18 and can be pretty sure if it's that glove?

19 A. Yes, ma'am.

20 MS. TAYLOR: The Court's indulgence
21 one moment.

22 THE COURT: Certainly.

23 CROSS EXAMINATION CONTINUED

24 BY MS. TAYLOR:

25 Q. That's it. Thank you very much.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

165

1 THE COURT: Redirect.

2 MR. SIMPSON: Briefly, Your Honor.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. Sergeant Hallman, are different surfaces
7 more conducive to obtaining fingerprints?

8 A. Absolutely. The smoother the surface, such
9 as glass, an automobile metal, shiny metal,
10 those are the best surfaces to obtain finger-
11 prints. This water jug would be ideal to
12 obtain fingerprints.

13 Q. I'm sorry to interrupt, but something like
14 a towel or fabric ---

15 A. Fabric is -- unless the substance on the
16 hands is would leave a visible impression, such
17 as blood or ink or something like that, then
18 you're not going to get a latent print off a
19 towel.

20 Q. So you didn't do any prints of the ligature
21 or the pajama bottom?

22 A. No.

23 Q. Why?

24 A. Because the chance of getting a latent
25 print on that was pretty much zero. We elected

1 to go for the DNA analysis on the ligature.

2 MR. SIMPSON: No further questions.

3 THE COURT: Recross?

4 MS. TAYLOR: No. Thank you.

5 THE COURT: Thank you. You may come
6 down, Mr. Hallman.

7 THE WITNESS: Thank you, Your Honor.

8 (WITNESS STEPS DOWN)

9 MR. SIMPSON: Your Honor, may I
10 collect the exhibits and return them?

11 THE COURT: Certainly. Call your
12 next witness, please.

13 MR. SIMPSON: The State calls Ray
14 Garrison.

15 (WITNESS TAKES STAND)

16 RAYMOND L. GARRISON, being duly sworn
17 to tell the truth, the whole truth and nothing
18 but the truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q. Sergeant Garrison, are you currently
22 employed with the North Charleston forensics
23 services unit?

24 A. No, sir. I work the street now.

25 Q. Were you at some point employed with that

1 unit?

2 A. Yes, sir. I spent fifteen years with the
3 forensics unit.

4 Q. What years were you employed?

5 A. With forensics in '93 through the first
6 part of 2009, last part of 2008.

7 Q. Have you ever had the occasion to testify
8 in court as an expert in fingerprint comparison
9 and analysis?

10 A. Yes, I have.

11 MS. TAYLOR: Your Honor, we can
12 stipulate to Mr. Garrison's qualifications.

13 THE COURT: Very well. You may
14 continue with your questions as you feel
15 necessary.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. SIMPSON:

18 Q. Sergeant, how did you become involved in
19 the present investigation?

20 A. I responded to the scene. I was just
21 coming off of back surgery and I arrived while
22 the scene was being processed. And once the
23 scene was processed the other investigator on
24 the scene handed me several latent fingerprint
25 lifts which I then examined.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

168

1 Q. You assisted the crime scene officers on
2 scene with the taking of the lifts?

3 A. I kind of stood around and supervised.

4 MR. SIMPSON: May I approach the
5 witness, Your Honor?

6 THE COURT: Yes, you may.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. SIMPSON:

9 Q. Can you identify those items for the jury?

10 A. State's Exhibit 28 is a fingerprint card
11 bearing the name of Oran Lamar Smith with my
12 initials, the case number and the date of
13 examination.

14 State's Exhibit 29 is a 10-print
15 fingerprint card bearing the name of Leonard
16 Herbert Geddis with the case number and the
17 initials of Sergeant Hallman.

18 State's Exhibit 30 are the examination
19 prints of one Cheryl Snow bearing my initials,
20 the case number and the date of examination.

21 Q. And in the present case did you compare
22 those known prints with latent lifts L-1
23 through L-20?

24 A. Yes, I did.

25 MR. SIMPSON: May I approach, Your

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

169

1 Honor?

2 THE COURT: Yes.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. SIMPSON:

5 Q. I hand you what's been marked for I.D. Only
6 as State's 32 through 59. Can you tell us what
7 those are, sir?

8 A. State's 32 through 59 are latent finger-
9 prints recovered from the scene.

10 Q. Beginning with what's been marked as
11 State's Exhibit 32 for I.D. Only and is
12 referred to by your number as L-1, where was
13 that lift taken from the crime scene?

14 A. A Newport cigarette pack.

15 Q. And did you compare those lifts with your
16 known samples?

17 A. I did.

18 Q. What was the results of that comparison?

19 A. Do you have a copy of my report?

20 Q. I do. Would your report refresh your
21 recollection?

22 A. Yes, sir.

23 MR. SIMPSON: May I approach, Your
24 Honor?

25 THE COURT: Yes, sir.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

170

1 MR. SIMPSON: (Tenders document to
2 witness).

3 COURT REPORTER: State's Exhibit 67
4 for identification.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. SIMPSON:

7 Q. And we're referring to L-1.

8 A. Yes, sir. L-1 from the Newport cigarette
9 pack was identified as positive for the number
10 seven, left index finger of item K-1, which is
11 the fingerprint card for Oran Smith.

12 Q. So you concluded the defendant's finger-
13 print was located on that Newport cigarette
14 pack?

15 A. Yes, sir.

16 MR. SIMPSON: Your Honor, at this
17 time I'd like to move State's Exhibit 32 into
18 evidence.

19 THE COURT: Any objection?

20 MS. TAYLOR: None, Your Honor.

21 THE COURT: Without objection, it is
22 admitted.

23 (SO ENTERED AS STATE'S EXHIBIT 32)

24 DIRECT EXAMINATION CONTINUED

25 BY MR. SIMPSON:

State of South Carolina v. Oran Smith

171

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 Q. Regarding item L-2 in your report, can you
2 explain from where these lifts were taken?

3 A. The lifts on card L-2 were taken from a
4 Steel Reserve beer can found at the scene.

5 Q. And what were the results of that
6 comparison?

7 A. The results of that, L-2.2 was positive
8 with the number nine, or left ring finger, of
9 Cheryl Snow.

10 L-2.3 was positive with the number seven,
11 left index finger of Cheryl Snow.

12 Those are the only identifications on L-2.

13 Q. Officer, do you expect to find a lot of
14 matches to the victim because the crime scene,
15 because it was her apartment?

16 A. Yes, sir.

17 Q. Regarding what has been marked as State's
18 34 for I.D. Only, this is referred to by your
19 number L-3, from where were those lifts taken?

20 A. State's L-3 are two lifts taken from the
21 Steel Reserve can found at the scene.

22 Q. And what were the results of your
23 comparisons?

24 A. Comparisons on L-3 -- L-3.1 was positive
25 with the number one, right thumb of item K-1

1 which is the imprint card of Oran Smith.

2 L-3.2 was positive with the number six, the
3 left thumb of item K-1, Oran Smith.

4 L-3.3 was positive with the number one,
5 right thumb of item K-1, Oran Smith.

6 Q. So it was your conclusion that the
7 defendant's fingerprints were found on a Steel
8 Reserve beer can in the victim's apartment?

9 A. Yes, sir.

10 MR. SIMPSON: Your Honor, at this
11 point the State would move 34 into evidence.

12 THE COURT: Any objection?

13 MS. TAYLOR: None, Your Honor.

14 THE COURT: Without objection, 34
15 is admitted.

16 (SO ENTERED AS STATE'S EXHIBIT 34)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. SIMPSON:

19 Q. Moving to what's been marked as State's 35
20 for I.D. only, referred to by your numbering as
21 L-4, where were these lifts taken?

22 A. The lifts on item L-4 or State's Exhibit 35
23 were taken from a CD on the dresser.

24 Q. what was the results of your comparison?

25 A. L-4.1 was positive with the number eight or

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

173

1 left middle finger of item K-1, the imprint
2 card for Oran Smith.

3 Q. So your conclusion that the CD from the
4 dresser contained a fingerprint from the
5 defendant?

6 A. Yes, sir.

7 MR. SIMPSON: Your Honor, at this
8 time we'd move State's 35 into evidence.

9 MS. TAYLOR: No objection.

10 THE COURT: Without objection,
11 State's 35 is admitted.

12 (SO ENTERED AS STATE'S EXHIBIT 35)

13 DIRECT EXAMINATION CONTINUED

14 BY MR. SIMPSON:

15 Q. What were your results, going by your
16 numbering, for L-5?

17 A. L-5, State's Exhibit 36, was also lifted
18 from a CD case on the dresser. And the latent
19 parent on L-5.1 was positive with the number
20 six, left thumb of Oran Smith.

21 Q. That was L-5.1?

22 A. Yes, sir. Oh, I'm sorry. L-5.1 matched
23 number six of item K-3, Cheryl Snow.

24 Q. Moving on to State's Exhibit 37 for I.D.

25 Only, which is your number L-6, can you

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

174

1 indicate to the jury where these lifts were
2 taken?

3 A. State's Exhibit 37 was taken from the cigar
4 box, with a speaker, in the bedroom.

5 Q. What was the results of your comparison?

6 A. L-6.1 was positive with the number one,
7 right thumb, of Oran Smith.

8 L-6.2 was also positive with the number
9 one, right thumb, of Oran Smith.

10 L-6.3 was also positive with the right
11 thumb of Oran Smith.

12 L-6.4 was positive with the number nine,
13 left ring finger of item K-3 which is the ten-
14 print card for Cheryl Snow.

15 L-6.5 was positive with the left palm, the
16 interdigital area of Cheryl Snow's elimination
17 card.

18 Q. So it was your conclusion that the cigar
19 box in the bedroom contained the fingerprints
20 of the defendant as well?

21 A. Yes, sir.

22 MR. SIMPSON: Your Honor, at this
23 time I would move State's Exhibit Number 37
24 into evidence.

25 MS. TAYLOR: No objection.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

175

1 THE COURT: Without objection, it is
2 admitted.

3 (SO ENTERED AS STATE'S EXHIBIT 37)

4 DIRECT EXAMINATION CONTINUED

5 BY MR. SIMPSON:

6 Q. Sir, what were your conclusions upon
7 analyzing the prints on cards L-7 and L-8?

8 A. L-7 and L-8 were insufficient for
9 identification.

10 Q. Is that a frequent occurrence?

11 A. Yes, sir.

12 Q. Moving on to what has been marked for I.D.
13 Only as State's Exhibit 40, referred to in your
14 report as L-9, where were those lifts taken?

15 A. State's Exhibit 40 were taken from a large
16 coffee cup in the kitchen.

17 Q. What were your results from the comparison?

18 A. L-9.1 was positive with the number eight,
19 left middle finger of Oran Smith.

20 L-9.2 was positive with the number six,
21 left thumb of Oran Smith.

22 Q. Was it your conclusion, then, that the
23 fingerprints of the defendant were on a coffee
24 mug in the kitchen?

25 A. Yes, sir.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

176

1 MR. SIMPSON: Your Honor, at this
2 time I would move State's Exhibit 40 into
3 evidence.

4 MS. TAYLOR: No objection.

5 THE COURT: Without objection, it is
6 admitted.

7 (SO ENTERED AS STATE'S EXHIBIT 40)

8 DIRECT EXAMINATION CONTINUED

9 BY MR. SIMPSON:

10 Q. What were the results of your examination
11 of L-10?

12 A. L-10 was also insufficient for identifica-
13 tion.

14 Q. L-11?

15 A. L-11, no identification detected for items
16 K-1, K-2 or K-3 which indicates no matches with
17 Oran Smith, Cheryl Snow or Leonard Geddis.

18 Q. L-13?

19 A. L-13, positive with the number three, right
20 index finger of Cheryl Snow.

21 Q. L-14 and 15?

22 A. L-14 and 15 -- L.14-1 positive with the
23 number nine, left right finger of Cheryl Snow.

24 L-14.2, insufficient for identification.

25 L-15 positive with the number three, right

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

177

- 1 index finger of Cheryl Snow.
- 2 Q. L-16 through 19?
- 3 A. L-16 through 19 were insufficient for
- 4 identification.
- 5 Q. And finally, L-20?
- 6 A. L-20, positive with the number four, right
- 7 ring finger of Cheryl Snow.
- 8 Q. Sir, we've already discussed that you and
- 9 Sergeant Hallman shared the analysis work in
- 10 this case?
- 11 A. Yes, we do in every case.
- 12 Q. Are you familiar with the conclusions
- 13 reached on your own and the conclusions that
- 14 he reached as well?
- 15 A. Yes, sir.
- 16 Q. So is it correct to summarize and say that
- 17 fingerprints located in the apartment matched
- 18 four individuals?
- 19 A. Four individuals, yes.
- 20 Q. Cheryl Snow, the victim?
- 21 A. Right.
- 22 Q. Leonard Geddis?
- 23 A. Correct.
- 24 Q. Leroy McKelvey?
- 25 A. Correct.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

178

- 1 Q. And the defendant, Oran Smith?
- 2 A. Correct.
- 3 Q. And how many latent lift prints taken from
- 4 this apartment matched the defendant Oran
- 5 Smith?
- 6 A. Let me count to be accurate -- (up review),
- 7 ten.
- 8 Q. We have one from the Newport cigarette
- 9 pack, correct?
- 10 A. Yes, sir.
- 11 Q. Three from the Steel Reserve beer can?
- 12 A. Correct.
- 13 Q. One from the CD on the dresser?
- 14 A. Yes, sir.
- 15 Q. Three from the cigar box in the bedroom?
- 16 A. Yes, sir.
- 17 Q. And one from the stereo magnet in that
- 18 cigar box?
- 19 A. (Affirmative nod).
- 20 Q. And two from the coffee cup in the kitchen.
- 21 A. Yes, sir.
- 22 MR. SIMPSON: Beg the Court's indul-
- 23 gence.
- 24 THE COURT: Certainly.
- 25 DIRECT EXAMINATION CONTINUED

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

179

1 BY MR. SIMPSON:

2 Q. Sergeant Garrison, do you recall assisting
3 SLED at all in their analysis of some of the
4 evidence in this case?

5 A. I don't recall assisting ---

6 Q. If I were to show you correspondence, would
7 that refresh your recollection?

8 A. Yes, sir.

9 MR. SIMPSON: May I approach, Your
10 Honor?

11 THE COURT: Yes, you may.

12 COURT REPORTER: State's Exhibit 68
13 for identification.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. SIMPSON:

16 Q. I'm handing you State's Exhibit 68 for I.D.
17 Only.

18 A. State's 68 is an email -- copy of email
19 from me to Angie Bunker.

20 Q. Sir, if you could, don't read the email.
21 Just read it to yourself and see if that
22 refreshes your recollection.

23 A. (Upon review) -- Yes, it does.

24 Q. And what were you communicating to SLED, if
25 you recall?

1 A. We were discussing issues of DNA and the
2 male profile that he found.

3 Q. Did you also send some pictures up to Lilly
4 Gallman at SLED?

5 A. Yes, I did.

6 Q. And what was the purpose of sending her the
7 pictures?

8 A. She needed photographs of how the ligature
9 was applied.

10 Q. Please answer any questions Ms. Taylor has
11 for you.

12 THE COURT: Cross examine.

13 MS. TAYLOR: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MS. TAYLOR:

16 Q. I just want to make sure that, again, I
17 have the same report that you just went over
18 with Mr. Simpson. You have a three-page latent
19 print department items submitted and results
20 report?

21 A. Three pages, yes, ma'am.

22 Q. Any other reports that you created?

23 A. There is a report with a brief narrative in
24 which I used some chemicals that we use inside
25 the Department.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

181

1 Q. Is that dated June 4th, 2007?

2 A. Yes, ma'am.

3 Q. Anything else?

4 A. Just the e-mail provided by Mr. Simpson.

5 MS. TAYLOR: May I approach?

6 THE COURT: Certainly.

7 CROSS EXAMINATION CONTINUED

8 BY MS. TAYLOR:

9 Q. Is this that e-mail?

10 A. Yes.

11 Q. You just went through a list of items
12 related to Oran that you found prints in Ms.
13 Snow's apartment that matched Oran's?

14 A. Yes.

15 Q. Just to make sure I've got it right, one
16 cigarette pack, that would be a Newport pack.
17 Do you know whether that was empty or had
18 cigarettes in it?

19 A. I don't recall.

20 Q. And then was there just one Steel Reserve
21 beer can, or was there more than one?

22 A. There were two Steel Reserve beer cans, one
23 contained the prints of Cheryl Snow and one
24 bore the prints of Oran Smith.

25 Q. So they weren't mingled prints on the cans?

- 1 A. No, ma'am.
- 2 Q. It appeared she was drinking one can and he
3 was drinking another one?
- 4 A. Right.
- 5 Q. Were they both found in the bedroom?
- 6 A. I don't know. I spent most of my time
7 outside because of back surgery, leaning
8 against the car.
- 9 Q. And then one CD. Was it a CD itself, or
10 the case that the CD came in?
- 11 A. One was a CD and one was a CD case.
- 12 Q. And then we talked about this cigar box?
- 13 A. Yes, ma'am, with the speaker in it.
- 14 Q. The speaker and then a coffee cup?
- 15 A. Yes.
- 16 Q. And you actually saw all of those items
17 yourself?
- 18 A. Yes, ma'am. I took a tour of the crime
19 scene when I arrived.
- 20 Q. And you performed whatever forensic testing
21 on those items that would have been done?
- 22 A. The team performed the search for latent
23 prints. And once the prints were lifted they
24 were forwarded to me. I returned to the
25 station and did the analysis.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

183

1 Q. So you're comparing two pieces of paper?

2 A. That's correct.

3 Q. So did you see these actual items or not?

4 A. Yes, I did.

5 Q. Did you see, when reviewing or holding or
6 touching or whatever you do with them, any
7 other forensically relevance any of those items
8 that would have been used to help solve the
9 crime?

10 A. No, ma'am, I did not see any.

11 Q. No blood, no hair, nothing like that?

12 A. No.

13 Q. What, if anything, does it tell you that
14 you found Oran Smith's fingerprints on a
15 cigarette pack, beer can, CD, cigar box and
16 coffee cup in Cheryl Snow's apartment?

17 A. That at some point he was in the apartment,
18 most likely.

19 Q. And he was smoking cigarettes, maybe?

20 A. Yes, ma'am.

21 Q. Probably drinking beer?

22 A. Yes, ma'am.

23 Q. Maybe listened to some music?

24 A. Yes, ma'am.

25 Q. And maybe he had a cup of coffee.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

1 A. Yes, ma'am.

2 Q. And whatever the cigar box -- that had a
3 speaker in it?

4 A. Yes, ma'am.

5 Q. I also noticed that at the bottom of the
6 first page of your report, there is -- of the
7 latent print department report -- it says
8 "submit complete friction ridge exemplars for
9 Smith and Geddis for further comparison."

10 What is a complete friction ridge exemplar?

11 A. A complete friction ridge exemplars
12 actually are standards taken from every area
13 of the palm and fingers that have friction
14 ridge skin on them, the identifying ridges on
15 the palm and the hand.

16 Q. You would have asked for those why?

17 A. Just to further eliminate any partials or
18 palm prints or anything that wasn't represented
19 on the ten-print cards.

20 Q. So for further comparison?

21 A. Yes, ma'am.

22 Q. Was that done, submission of a complete
23 friction ridge exemplar?

24 A. I had not received any before I was
25 transferred.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

185

1 Q. So what you could have done with those
2 things was not be done?

3 A. Right.

4 Q. Did you do at any point any dusting or
5 testing of any of the telephones at the scene
6 or that were removed from the apartment?

7 A. I did not, no.

8 MS. TAYLOR: The Court's indulgence.

9 THE COURT: Certainly.

10 MS. TAYLOR: Thank you very much.

11 THE COURT: Redirect?

12 MR. SIMPSON: None, Your Honor.

13 THE COURT: Thank you, sir. You may
14 step down.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 (WITNESS STEPS DOWN)

18 THE COURT: At this point, Ladies
19 and Gentlemen, we'll recess for the evening.
20 Please remember that you are not at liberty to
21 discuss this case among yourselves or outside
22 of the courtroom. And that would include
23 anyone that may be at home tonight.

24 When you arrived I imagine the first
25 question will be "what are you doing, and

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

186

1 what's the case about." And a great temptation
2 will be to talk about it. But if you do that,
3 you will have violated the oath that you took
4 because you will have started your
5 deliberations by discussing this case. Talk
6 about something else. We'll finish this case
7 maybe tomorrow, or certainly by Wednesday, and
8 then you'll be free to talk about it if you
9 want.

10 Please do not allow anyone to talk
11 about it in your presence or talk to you about
12 serving on this case. Tomorrow -- I don't know
13 that it will be in the news, but sometimes it
14 is. If you see -- if you happen to read the
15 newspaper in the morning and see an article
16 about the trial, just put it down. Don't read
17 it, please, because, again, your commitment is
18 that you're going to try this case based on
19 what you hear in this courtroom. And while it
20 may have absolutely no effect on that decision,
21 it would create a problem and an inference that
22 someone could draw. Somebody could say, "well,
23 I saw him or her reading the newspaper about
24 it." And not that it would be anything wrong,
25 but it's just, again, we want to keep and

State of South Carolina v. Oran Smith

187

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 preserve what we're doing in this courtroom to
2 the extent we can. And I appreciate that.

3 Don't conduct any independent
4 research. We've had this happen. We're an
5 information society, and it's a wonderful thing
6 to have that at our fingertips, literally, just
7 a wealth of information. But what we have is
8 people who have access to computers, we've had
9 situations where they conduct their own
10 research on the law and other issues. If you
11 do that, it destroys everything that we're
12 doing. The case will have to be retried.

13 So the Chief Justice has sent out an
14 Order -- having had children, and now
15 grandchildren, you're almost reluctant to say
16 anything about it. Because sometimes you can't
17 suggest it and it doesn't happen. But when you
18 talk about it, unfortunately, sometimes -- I
19 know with children they say, "hummm, that's
20 exactly what I'd like to do." I know you're
21 not going to do that. But, please, you could
22 jeopardize all the energy and efforts expended
23 by everybody.

24 Have a good evening. Please return to
25 the jury room by 9:30 in the morning. Come

1 directly to the jury room. No need to call the
2 message tonight -- the answering machine. That
3 message does not apply to you. So I look
4 forward to seeing you in the morning.

5 You've occupied that seat twice. Have
6 they selected you as the presiding juror, or do
7 you just like that seat?

8 JUROR: (Negative gesture).

9 THE COURT: Thank you very much. I
10 did notice that at least one juror is taking
11 notes, which is fine with me. That's not a
12 problem. Any of the others that want to, if
13 you'll just make that known, we can make the
14 writing material available. But I would ask
15 that you please give the notes to the bailiff
16 who will hand them to the Clerk and then when
17 you return tomorrow, we'll give them to you.
18 So they're kept here.

19 Thank you very much. Have a great
20 evening.

21 (JURY OUT AT 4:55 P.M.)

22 THE COURT: Anything from the State
23 before we recess?

24 MR. VOIGHT: No, Your Honor.

25 THE COURT: Anything from the

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

189

1 defendant?

2 MS. TAYLOR: No, Your Honor.

3 THE COURT: Just for planning
4 purposes, you have, obviously, the SLED
5 witnesses will be here tomorrow. Are all of
6 the North Charleston Police Department
7 witnesses going to testify?

8 MR. VOIGHT: I believe that we've
9 already skipped Coker and will continue to skip
10 him. We may drop one more of the North
11 Charleston witnesses.

12 THE COURT: That's fine. Just for
13 planning purposes. But you'll have the two
14 SLEDs and MUSC. And without -- you don't have
15 to tell me anything, but at this point, do you
16 have witnesses that you anticipate calling?

17 MS. TAYLOR: No, sir. We do not
18 anticipate any witnesses.

19 THE COURT: Very well. Certainly
20 you're not bound by that. Thank you very much.
21 Have a good evening.

22 MS. TAYLOR: Thank you.

23 (COURT IN RECESS)

24 (TRANSCRIPT CONTINUED NEXT PAGE)

25

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

190

1 DECEMBER 8, 2009 9:40 A.M.

2

3 (DEFENDANT PRESENT)

4 THE COURT: Good morning. Let the
5 record reflect that Mr. Smith is present. Any
6 matters from the defendant we need to discuss
7 before we bring in the jury?

8 MS. TAYLOR: None, Your Honor.

9 THE COURT: Any matters from the
10 State, Mr. Simpson?

11 MR. SIMPSON: No, sir.

12 THE COURT: Then we will continue to
13 be at-ease until the jurors get here. Just
14 bring them in when they all arrive.

15 BAILIFF: Yes, sir.

16 (JURY IN @ 9:45 A.M.)

17 THE COURT: Ladies and Gentlemen,,
18 please give your attention to the next witness.
19 Solicitor, call your next witness.

20 MR. VOIGHT: Thank you very much,
21 Your Honor. Scott Wyant.

22 (WITNESS TAKES STAND)

23 SCOTT WYANT, being duly sworn to tell
24 the truth, the whole truth and nothing but the
25 truth, testified, as follows:

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

191

1 DIRECT EXAMINATION

2 BY MR. VOIGHT:

3 Q. How are you currently assigned?

4 A. North Charleston Police Department crime
5 scene unit.

6 Q. Is it correct to call you Officer or
7 Detective, or what's your correct title?

8 A. Detective is fine.

9 Q. Detective. How long have you been with the
10 North Charleston crime scene unit?

11 A. Almost twelve years now.

12 Q. And how much of that time have you been
13 with the crime scene unit?

14 A. Well, with the Department, I've been there
15 for fifteen years. But with crime scene,
16 twelve years.

17 Q. What are some of your duties in crime
18 scene?

19 A. I respond to any and all major crime
20 scenes, burglaries, armed robbery, home
21 invasions, murders, rapes, anything of a major
22 event. I go to the scene. I photograph. I
23 collect fingerprints. I collect evidence and
24 process the scene for anything that will help
25 us find a suspect.

1 Q. Did you have the occasion to assist in a
2 homicide investigation that occurred on Sumner
3 Avenue in North Charleston approximately June
4 4th, 2007?

5 A. I did.

6 Q. What was your role in the investigation?

7 A. I responded to MUSC and attended the
8 autopsy of the victim.

9 Q. Why is it important to send a crime scene
10 technician to an autopsy?

11 A. We go to the autopsy to take photographs,
12 collect evidence and help the investigators
13 with their investigation to determine -- we
14 collect evidence about the body, first of all,
15 we collect the clothing and stuff, and also
16 help the investigators in their follow up with
17 any defendants that they may have, to help
18 determine if they're telling the true story or
19 not.

20 Q. Did you take photographs at this particular
21 autopsy?

22 A. Yes, I did.

23 Q. Approximately how many photographs did you
24 take?

25 A. Eighty-two photographs.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

193

1 Q. What's the purpose of taking eighty-two --
2 the detail of taking eighty-two specific
3 photographs?

4 A. In this particular one, Dr. Caplan was very
5 thorough -- is very thorough in his job and he
6 dissected -- I mean I took pictures of the
7 victim and I took several close-up pictures of
8 the ligature around her neck. And also Dr.
9 Caplan had dissected the area of the neck
10 where, uh, where the trauma had occurred, and I
11 took very close up photos of the trauma to her
12 neck, the hyoid bone and the muscles in her
13 throat.

14 Q. Were those pictures to preserve an image of
15 that so that if somebody had to review them
16 later they would have at least the best
17 evidence that we could present them with of
18 what actually occurred at the autopsy?

19 A. That's correct.

20 Q. You said your purpose was to collect
21 evidence at an autopsy. What kind of evidence
22 did you collect in this particular case?

23 A. In this particular case, you know, once the
24 victim's fingernails are clipped -- they clip
25 the fingernails looking for any kind of skin

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

1 tissue under the nails. I fingerprinted her
2 hands because we need to make fingerprints in
3 what we call major case prints to eliminate her
4 prints from a print found at the scene.

5 Q. Is that to use her prints in comparison
6 later with any prints that may have been found
7 on the scene?

8 A. That's correct.

9 Q. And what else did you collect there?

10 A. Oral swabs, rectal/vaginal swabs, pulled
11 hair from different areas of her body, the
12 fingernail clippings, any -- we found a hair on
13 her buttocks that was collected. I also
14 collected tubes of blood from her, which is
15 standard. We collect those for DNA purposes in
16 case the defendant has blood on his clothes or
17 anything like that. The victims hands had
18 paper bags on them to preserve any evidence. I
19 collected those bags. Her camisole, her
20 panties and the ligature from her neck.

21 Q. The blood that you collect, is that for use
22 as a DNA standard in case her DNA had to be
23 compared to someone else's or any DNA found on
24 the scene?

25 A. Exactly.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

195

1 Q. I'm going to show you what's been
2 previously marked as State's Exhibit 25 and
3 ask you to put on gloves and take a look in
4 that bag and see if you can identify what those
5 items are.

6 COURT REPORTER: State's Exhibit 71
7 for identification.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. VOIGHT:

10 Q. Detective, I'm going to hand you what's
11 marked as State's Exhibit 71 for identification
12 and ask -- you may want to replace those gloves
13 -- ask you to take a look at that and see if
14 you recognize that particular photograph as
15 being a photograph that was taken at the
16 autopsy?

17 A. Yes, I recognize it.

18 Q. And what is the photograph of, Officer?

19 A. The photograph is of the ligature once it
20 was removed from the victim's neck. It was
21 placed on kind of a towel. It's a towel they
22 have in the autopsy room, and it was
23 reassembled so you can see it after it was
24 removed from her neck.

25 MR. VOIGHT: At this time, Your

1 Honor, I would offer State's Exhibit 71.

2 MS. TAYLOR: No objection.

3 THE COURT: Without objection,
4 State's Exhibit 71 is admitted.

5 (SO ENTERED AS STATE'S EXHIBIT 71)

6 DIRECT EXAMINATION CONTINUED

7 BY MR. VOIGHT:

8 Q. I'm going to put this up on the board,
9 Detective. Is that what we've referred to as
10 the ligature?

11 A. Yes, it is.

12 Q. What is a ligature in more common parlance?

13 A. A ligature can be a rope, a cable, anything
14 used to tie something up or, as in this case,
15 used to strangle somebody.

16 Q. And what was the purpose of you placing the
17 ligature in that particular position?

18 A. That was actually somewhat of how it was
19 when it was on her neck, just removed from her
20 neck. Actually, Dr. Caplan had placed it in
21 that position.

22 Q. Has the knot that was placed in that
23 ligature been untied in this photograph?

24 A. Yes, it has.

25 Q. Is that tape at that one point on the

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

197

1 circle of the ligature?

2 A. Yes, that's tape.

3 Q. And what is the purpose of that tape,
4 Detective?

5 A. Dr. Caplan had -- he had cut the ligature
6 off the neck in about this area. And as he cut
7 it, once he cut it he kind of help the ends and
8 he taped it up to kind of preserve the end of
9 each area that he had cut.

10 Q. Now, in that particular picture was there
11 more than one part to the ligature? What did
12 the ligature consist of?

13 A. It consisted of two pieces of the victim's
14 pajama bottoms.

15 Q. Are both pieces of those pajama bottoms
16 visible in that particular picture? Maybe I'll
17 move this down.

18 A. I can't really see it in this particular
19 picture. I just see the outer pair here.
20 There was also an inner pair. I think I have a
21 better picture where you can see the inner
22 pair.

23 Q. Did you tell me what State's Exhibit 25
24 was?

25 A. No, I didn't.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

198

1 Q. What is State's Exhibit 25?

2 A. State's Exhibit 25 is the ligature that I
3 had collected at the autopsy.

4 Q. And once you collect the ligature, where
5 does it go?

6 A. Well, in this case it was secured in an
7 evidence bag and taped up and initialed and
8 stuff with an evidence sticker and subsequently
9 sent to SLED for examination.

10 Q. And that's to Columbia?

11 A. That's correct.

12 Q. When SLED's done testing it, what do they
13 then do with it?

14 A. Once they're done testing it and getting
15 their clippings and testing it, they send it
16 back to us; usually in the same package,
17 sometimes in their own packaging.

18 Q. Are you the person who collected that piece
19 of evidence from the autopsy?

20 A. The ligature?

21 Q. Yes.

22 A. Yes, I did.

23 MR. VOIGHT: At this time the State
24 would offer to introduce State's 25.

25 MS. TAYLOR: No objection, Your

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

199

1 Honor.

2 THE COURT: Without objection,
3 State's Exhibit 25, a bag containing clothing,
4 is admitted.

5 (SO ENTERED AS STATE'S EXHIBIT 25)

6 MR. VOIGHT: May I ask Detective
7 Wyant to come down from the witness stand?

8 THE COURT: You may.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. VOIGHT:

11 Q. Can you bring State's Exhibit 25 with you?

12 A. (Complies)

13 Q. Can you take, Detective, the outer garment
14 of the ligature and place it in, as best you
15 can, the position that you saw it on the body
16 reflected in the photographs?

17 A. (Arranging exhibit) -- something along
18 those lines.

19 Q. I notice on this ligature or these pajama
20 bottoms there are certain writings and markings
21 on them, letters, numbers, that sort of thing.
22 Did you make those?

23 A. No, sir, I didn't.

24 Q. Do you know where they might have come
25 from?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

200

1. A. From the investigator at SLED. When we
2 sent it to SLED they -- any type of fluids
3 specifically, anything they find, they actually
4 will put their own marking on it and put
5 initials to mark, you know, what they found and
6 where they found it at.

7 Q. There appear to be some cuttings taken from
8 this. Did you do those?

9 A. No, sir.

10 Q. And who would have done those?

11 A. SLED also did that.

12 Q. This is what we're calling the outer pajama
13 bottoms. That's what reflected by the darker
14 blue flowers in that photo.

15 A. That's correct.

16 Q. Is there some other item of clothing in
17 State's 25?

18 A. Yes, sir. These are the inner pajamas that
19 were actually inside of these at the time of
20 recovery.

21 Q. As though they were worn at the same time,
22 one outside the other?

23 A. Yes, sir.

24 Q. Detective, other than gathering visual
25 information in terms of photographs, as well as

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

201

1 the items that you lifted, the hair, blood
2 samples, the swabs, as much forensic evidence
3 as you could from Cheryl Snow's body, did you
4 do any analysis in this particular case?

5 A. No, I just responded to the autopsy, took
6 the photographs, collected the evidence, and
7 packaged it up.

8 Q. And did you try to collect as much evidence
9 as you possibly could from the body at the
10 autopsy?

11 A. Everything that we found.

12 Q. Please answer any questions that Ms. Taylor
13 may have for you.

14 THE COURT: Cross examine?

15 CROSS EXAMINATION

16 BY MS. TAYLOR:

17 Q. I have a couple of questions for you,
18 Detective Wyant, to make sure I understand.
19 So there were two pairs of pajama bottoms?

20 A. That's correct.

21 Q. One, I think you already stated was on the
22 inside, which was a size Large, and the ones on
23 the outside which is an Extra Large. Do you
24 recall whether that's correct?

25 A. I don't recall what size they are. But I

1 recall that the more lacy ones that are to the
2 left there -- to your right ---

3 Q. These?

4 A. Yes. Those were actually the pajamas that
5 were inside of the other ones. And I believe
6 SLED pulled them apart because when Dr. Caplan
7 had taken them off, he just cut it
8 and taped the ends and, you know, I took some
9 additional photos on the blue sheet and I
10 packaged them in that package.

11 Q. So when Dr. Caplan removed them, he removed
12 it as one item.

13 A. That's correct.

14 Q. And then once Dr. Caplan did what he did
15 and you took that photograph, then you took
16 possession of these, put them in the bag and
17 they were processed at SLED?

18 A. That's correct.

19 Q. And you don't do any of the actual testing.

20 A. No, ma'am, I don't.

21 Q. And the report that you have in this case,
22 is it this one typed page and then the list of
23 every item that you had found dated 6/6/2007?

24 A. That's correct.

25 Q. And then you also have two pages -- it

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

203

1 looks like handwritten listing of things. Is
2 that right?

3 A. I don't know what you're looking at. I'm
4 sorry.

5 MS. TAYLOR: May I approach, Your
6 Honor?

7 THE COURT: You may.

8 CROSS EXAMINATION CONTINUED

9 BY MS. TAYLOR:

10 Q. I want to show you this and make sure this
11 is yours.

12 A. (Upon review) -- that's correct. That's
13 the chain of custody.

14 Q. And then the only other thing I have is the
15 description of evidence. Was that prepared by
16 you?

17 A. No, that was prepared by one of the
18 detectives by the name of Yearwood. As the
19 doctor removes it and they photograph it, she
20 sat there and filled out this form. And she
21 signed it over to me -- kind of the chain of
22 custody, from the autopsy removal to me. It
23 shows the date and time on it.

24 Q. Is there anything on her list that's not on
25 your list? Do you need to look at them to make

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

204

1 sure that we have everything?

2 A. Yes, it seems to all be here.

3 Q. Do you have nineteen items there on all
4 those?

5 A. (Upon review) -- seventeen.

6 Q. Seventeen?

7 A. That's right.

8 Q. Do you have the list that I had asked you
9 about earlier, the typed list? It looks like
10 it's part of your typed report, signed by you.
11 Do you have that list?

12 A. Yes, ma'am; I do.

13 Q. And how many items are on that? I just
14 want to make sure there's none that are
15 missing.

16 A. (Upon review) -- I have nineteen items on
17 here.

18 Q. I'm going to hand this one back to you and
19 see if we are missing two items.

20 A. I can show you what the two items are.

21 Q. Okay.

22 A. The reason I had two more additional items
23 on here is because I put on here approximately
24 eighty-two digital photographs of the victim.
25 That's something that I did at the autopsy

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

205

1 which would be on the chain of custody as
2 different. And also the major case prints from
3 the victim's hands wasn't put on their chain.

4 Q. So everything that we have that you got
5 from the autopsy is contained in this records
6 and we have those today.

7 A. You should, yes.

8 Q. And there are just a couple of things -- I
9 know you don't do any testing, but you did say
10 that there was a hair that was taken from her
11 that was a human hair, not one of her hairs?

12 A. I don't know.

13 Q. I'm looking at the list.

14 A. Okay. The hair from neck. I assume it was
15 a human hair, but I don't know.

16 Q. And then a hair from her left hand?

17 A. Yes, ma'am.

18 Q. And then a hair from her body?

19 A. Yes.

20 Q. And my question especially is these are not
21 hairs that were plucked from her. They were
22 hairs that were found lying in different
23 positions?

24 A. That's correct, like loose hairs on her.

25 MS. TAYLOR: That's all the questions

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

206

1 I have.

2 THE COURT: Redirect.

3 MR. VOIGHT: No redirect, Your Honor.

4 THE COURT: You may come down, sir.

5 (WITNESS STEPS DOWN)

6 THE COURT: Call your next witness,
7 please.

8 MR. VOIGHT: Jan Bryson.

9 (WITNESS TAKES STAND)

10 JANICE BRYSON, being duly sworn to
11 tell the truth, the whole truth and nothing but
12 the truth, testified, as follows:

13 DIRECT EXAMINATION

14 BY MR. VOIGHT:

15 Q. Ms. Bryson, how are you employed?

16 A. I'm employed by the South Carolina Law
17 Enforcement Division.

18 Q. In what capacity are you currently
19 employed?

20 A. I'm a forensic technician in the evidence
21 processing department.

22 Q. How long have you been with SLED?

23 A. I've been with SLED twenty years.

24 Q. And what are some of the roles that you may
25 have had as a forensic technician? What are

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

207

1 some of the things you're asked to do?

2 A. Whenever items of evidence are submitted to
3 the lab with a request to look for body fluids
4 such as blood and semen, hair and fibers, I
5 process the evidence. I collect the evidence
6 and make sure that it's sent to the appropriate
7 department.

8 Q. In this case did you receive evidence?

9 A. Yes, sir.

10 Q. And what type evidence was that?

11 A. I received a tank tee-shirt and a pair of
12 pajama pants.

13 Q. Here on this table, if I could ask you to
14 stand up for just a second, I've got laid out
15 State's Exhibit 25. Are these the pajama pants
16 that we're talking about? Can you see it from
17 there?

18 A. Yes, sir, it appears to be.

19 Q. Have a seat for just a second. When the
20 pajama pants came to you, who did they come to
21 you from?

22 A. I received the pants from a technician in
23 our evidence intake area.

24 Q. And what's that technician's name?

25 A. Selena Kinard.

1 Q. And when the pants leave your hands, after
2 you're done with them, where do they go --
3 where did they go in this case?

4 A. I placed the pants back into the container
5 I received it in and take it up to the
6 technician in our evidence intake area to be
7 returned to the submitting agency.

8 Q. So do you make a note of every piece of
9 evidence you receive and who you receive it
10 from?

11 A. (Affirmative nod), I make a note of every
12 piece of evidence that I receive.

13 Q. Do you make a note of to whom you give
14 every piece of evidence?

15 A. Yes, sir, I do.

16 Q. And why is that important?

17 A. It's to track where the evidence goes,
18 who has custody of that particular piece of
19 evidence.

20 Q. When you get a particular piece of evidence
21 do you rely on the agency that gives it to you
22 to kind of tell you what you're looking for?

23 A. Yes, sir. They fill out a log-in request
24 form. They list the items of evidence that are
25 submitted to the lab and they put a request for

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

209

1 each item and what they're specifically looking
2 for.

3 Q. Okay. Is what you're looking for on any
4 particular piece or item limited by what the
5 agency asks for? Or do you look for things
6 on your own?

7 A. If I come across something that I feel may
8 be important or probative, I will collect that.

9 Q. So you're not strictly limited by just what
10 the agency asks you for?

11 A. No.

12 Q. The pajama bottoms that you received from
13 North Charleston, what did North Charleston ask
14 you to look for?

15 A. They asked me to look for blood, semen and
16 touch DNA.

17 Q. Blood DNA, as I understand it, is DNA
18 that's derived from blood or blood stains. Is
19 that correct?

20 A. Yes, sir.

21 Q. Semen, similarly, would be from seminal
22 fluid of some sort?

23 A. Right.

24 Q. Some sort of sexual discharge?

25 A. (Affirmative nod).

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

210

1 Q. What is touch DNA, as you understand it?

2 A. Touch DNA is like if you have a pen and you
3 touch it and you get enough friction on it, you
4 can collect -- swab the pen and you can collect
5 the skin cells that are on the pen.

6 Q. So it's possible for people to leave their
7 DNA merely by touching objects?

8 A. That's correct.

9 Q. Can I ask you to maybe put on some gloves
10 there and come down around and take a look here
11 at State's 25.

12 MR. VOIGHT: May I ask the witness to
13 come down, Your Honor?

14 THE COURT: Yes.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. VOIGHT:

17 Q. You have your report with you. Did North
18 Charleston send you anything else in addition
19 to your report to help you -- to give you any
20 understanding of how this item may have been
21 used as a ligature?

22 A. Yes. I received an e-mail with pictures
23 attached to use as a reference point as to
24 where I might collect the touch DNA.

25 Q. And those pictures were useful to you in

1 understanding how the ligature was used?

2 A. Yes, sir.

3 Q. And were they useful to you in obtaining
4 the samples that you ultimately obtained?

5 A. Yes, sir.

6 Q. State's 25, as we have it laid out here,
7 contains two items. Do you recognize those
8 items?

9 A. Yes, sir, I do. These are my initials and
10 the SLED item number.

11 Q. I see a 2.5 there. What is that?

12 A. When I make a cutting, I will notate on the
13 item where I take my cutting from. 2.5 is
14 where I made cuttings, right here.

15 Q. And what was the purpose of making a
16 cutting at 2.5?

17 A. 2.5 was positive for the presumptive test
18 for semen.

19 Q. And how did you determine that it was
20 presumptive for semen? What test did you use?

21 A. What I use is -- we use an alternate light
22 source. The room is dark and I wear protective
23 eyewear. I circle the areas, under the
24 alternate light source, that fluoresce that is
25 red in each area. And after I've done that,

1 then I go back and do a spot test for semen.'

2 And if I get a positive, I will go and cut that
3 area out and send it to DNA for further
4 examination.

5 Q. So you cut 2.5 out because it tested
6 presumptive for semen?

7 A. Yes, sir. It was from the crotch area of
8 the pajama pants, the pair that was inside.

9 Q. So those were inside the other pair?

10 A. That's correct.

11 Q. Where did you make a cutting for touch DNA?

12 A. When I received the pajama pants it was
13 kind of positioned like that. I used this as a
14 reference point as to where someone was twist-
15 ing, maybe. So I just swabbed the whole area
16 of this piece right here.

17 Q. Did you make any cuttings in your search
18 for touch DNA, or did you just take swabs?

19 A. I just collected swabs.

20 Q. What are those swabs -- what did you label
21 those swabs?

22 A. Any DNA.

23 Q. Any DNA?

24 A. Uh-huh, (affirmative nod).

25 Q. Did they have specific numerical values

1 when you submitted them to the DNA lab?

2 A. Right. The pajama pants -- there were two
3 pairs of pajama pants, one was inside the other
4 pair. But they were given an item number of
5 two. So when I make my cuttings, I go -- these
6 are my parent items -- 2.1, 2.2 and so on.

7 Q. Do you know what ultimately 2.4 became or
8 where you took item 2.4 from?

9 A. I took a cutting from the back leg, left
10 leg -- the short piece of the pants.

11 Q. I think as you had them originally, is that
12 the area where the cutting may have been, were
13 I'm pointing? Is that your number 2.4?

14 A. That's it, (affirmative nod). Yes, sir.

15 Q. That would have been where you made a
16 cutting.

17 A. Right.

18 Q. And what would have been the purpose of
19 taking that particular cutting? Would that
20 have been for touch DNA as well?

21 A. Yes, sir, it was.

22 Q. What was the characteristic of that
23 particular piece of cloth that made you believe
24 it might be a good sample for touch DNA?

25 A. When I used the alternate light source it

1 will fluoresce just like semen, vaginal
2 secretions, sweat, urine, things of that
3 nature. So when I used the alternate light
4 source it fluoresced, so I cut that out because
5 it had fluoresced under the alternate light
6 source.

7 Q. Did it fluoresce as though it were semen?

8 A. No.

9 Q. Did it fluoresce as though it were blood?

10 A. No.

11 Q. And in your experience did you believe that
12 that was a possible -- that the way it
13 fluoresced was possibly indicative of touch
14 DNA, such that touch DNA would have been found?

15 A. Yes, sir.

16 Q. After you make your cuttings are all these
17 thing ~~submitted~~ submitted to the DNA technician?

18 A. Yes, sir. The cutting that I make I place
19 in individual envelopes and I label each
20 envelope as to what I'm looking for. Then I
21 place those cuttings in a heat-sealed pouch, I
22 seal it, initial and date it. In this case I
23 gave my cuttings to Lilly Gallman for DNA
24 analysis.

25 Q. So the cuttings that you took and the swabs

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

215

1 that you took from this item and any other item
2 that you would have then went to Lilly Gallman,
3 who is a SLED analyst for DNA purposes?

4 A. Yes, sir.

5 Q. Please answer any questions that Ms. Taylor
6 may have of you.

7 THE COURT: You may take your seat.
8 Or do you need her down there.

9 MS. TAYLOR: I do need her there.
10 Thank you, sir.

11 THE COURT: That's fine.

12 CROSS EXAMINATION

13 BY MS. TAYLOR:

14 Q. Good morning.

15 A. Good morning.

16 Q. If you could just show me the second
17 cutting, I think it was 2.4.2. I want to make
18 sure I understand that there were three
19 cuttings total. Is that right -- that you
20 took?

21 A. I took two cuttings.

22 Q. And 2.4, is that not yours?

23 A. When I make my cuttings, my cutting is 2.4.
24 Then when the DNA analyst does her analysis,
25 she may make another cutting from that cutting

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

216

1 and she would label that. 2.4.2 or one, I did
2 not generate that.

3 Q. So just 2.4.

4 A. That generated starting with me.

5 Q. And that is a cutting from the pajama
6 pants; right?

7 A. My 2.4 is a cutting from the back left leg
8 of the pants, and I think Lilly made another
9 cutting from that piece.

10 Q. Let me figure out which report you're
11 referring to so we can have the same one.

12 A. This is my worksheet that I produced.
13 And these are the items that I submitted to
14 Lilly Gallman.

15 Q. Could I see that?

16 A. Sure, (tenders).

17 Q. So did you prepare a report other than --
18 this is your little worksheet?

19 A. Yes, ma'am, it is.

20 Q. Do you have a copy of your report?

21 A. Yes, ma'am.

22 Q. Can we get that?

23 THE COURT: Approach, please.

24 (BENCH CONFERENCE)

25 THE COURT: Thank you. Let's move

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

217

1 on to something else.

2 MS. TAYLOR: Okay.

3 THE COURT: Thank you.

4 CROSS EXAMINATION CONTINUED

5 BY MS. TAYLOR:

6 Q. Let's see if I can follow. You're the
7 first SLED agent who gets this?

8 A. I'm the first analyst.

9 Q. But you have control, other than the person
10 who you got it from?

11 A. Yes, ma'am.

12 Q. And you cut -- show me which part of this
13 leg.

14 A. 2.1 is where I took the swabs that I
15 labeled for touch DNA.

16 2.2 is from the crotch area.

17 Q. This is from the same pair of pajamas?

18 A. There were two pair of pajamas.

19 Q. Right.

20 A. One was the inside and one was the outside.

21 Q. So the two cuts we're talking about right
22 now are from the one pair that was outside? Is
23 that right?

24 A. The Extra Large pair was the outside pair,
25 and that's where I took two swabs, 2.2. That's

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

218

1 my 2.2, where I took the swabs from.

2 Q. And one part you indicated did reveal
3 semen?

4 A. Right. That was cutting 2.5, and that was
5 from the inside pair, from the crotch area.
6 And the pajama pants were already cut like that
7 when I received them.

8 Q. Did you do any other testing, other than
9 finding semen on the inside pair of pajamas?

10 A. No, ma'am.

11 Q. And the semen was something you saw with
12 the alternate light source first and then you
13 ran the test?

14 A. Right, in the crotch area.

15 Q. When you did these tests did you draw any
16 conclusions from them, or do you just find
17 them, identify them until they go somewhere
18 else?

19 A. They go somewhere else. I just make a note
20 of the potential evidence and send them to the
21 DNA department.

22 Q. On the second pair you indicate that you
23 had done some swab work and showed us where
24 that was.

25 A. (Indicating).

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

219

1 Q. Did you test the entire pair of pajamas
2 with the swabs that you collected, or just
3 those items that you marked with your initials?

4 A. Which items?

5 Q. For the exterior pair?

6 A. The exterior pair. The pictures that I
7 received gave me a point of reference of where
8 to collect my swabs.

9 Q. And you've got them marked, is that not
10 correct?

11 A. This is where I circled the areas under the
12 alternate light source that fluoresced. And
13 then I go back and do a spot test. This means
14 that it was negative for the spot test. "ABS"
15 is absent spot test.

16 Q. Is that what both of those are?

17 A. Yes, ma'am.

18 Q. And that, you said, was the bottom part of
19 the leg of the exterior pajamas?

20 A. Right.

21 Q. Did I understand you to say that there was
22 another area that you also tested on that same
23 pair of pajamas for touch DNA?

24 A. 2.4 was a cutting from the back left leg,
25 the short piece of the pants.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

220

1 Q. That's the inside pair.

2 A. 2.4, right there -- that area.

3 Q. So that is higher up, at the top of the leg
4 or the buttocks area?

5 A. The back of the pants.

6 Q. And that was the lower leg and the upper
7 area of the back. And did you find anything
8 on that area from your swabs?

9 A. No, ma'am; I didn't. I collected it for
10 possible touch DNA.

11 Q. But you did collect something?

12 A. Yes, ma'am.

13 Q. So you had three total collections from
14 what you did with the pajama bottoms?

15 A. No, ma'am. I collected five separate
16 samples.

17 Q. Five separate samples?

18 A. Uh-huh, (affirmative nod).

19 Q. You're going to have to help me through
20 that one. You've got the two off the exterior
21 pair.

22 A. 2.1 was from the cut portion, the short
23 piece that was detached.

24 2.2 was swabs from the top of the leg and
25 crotch area, the right leg with the label in

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

221

1 the back.

2 So that would be the pants -- and then 2.3
3 was swabs from the lower portion of the right
4 pants leg.

5 Q. And that's everything?

6 A. And 2.4 was a cutting from the back left
7 leg, the short piece of the pants.

8 A. Right.

9 Q. And 2.5 was a cutting that was positive for
10 the presumptive test for semen.

11 A. (Affirmative nod).

12 Q. And that is what you did in this case
13 relative to these pants?

14 A. And I collected possible hair. Yes, ma'am.

15 Q. Where did you collect possible hair from?

16 A. The two pair of pajama pants.

17 Q. How many piece of hair did you collect?

18 A. I don't remember.

19 Q. And they would have followed the same path
20 that we've been talking about; whatever you
21 collect, you do what you do and then it goes
22 down to DNA?

23 A. That's correct.

24 Q. Anything else that you did?

25 A. No, ma'am.

1 Q. And this touch DNA that you talked about
2 with Mr. Voight, you indicated that literally
3 if we touch items, small flakes of our skin may
4 remain on those items?

5 A. That's correct.

6 Q. Is that a fair assumption?

7 A. Yes, ma'am.

8 Q. And then you talked about blood and semen.
9 Is there any other kind of thing that we leak
10 that would show our DNA?

11 A. You probably need to ask the DNA analyst.
12 She can explain that in more detail.

13 Q. I'll do that. Thank you very much.

14 THE COURT: Redirect?

15 MR. VOIGHT: No redirect, Your Honor.

16 THE COURT: You may come down from
17 the stand.

18 (WITNESS STEPS DOWN)

19 THE COURT: Ladies and Gentlemen, at
20 this point there are several matters I need to
21 take up out of your presence. I'm going to go
22 ahead and take the time and also take our
23 break. You may retire to your jury room. Do
24 not begin your deliberations. Do not discuss
25 the case. We'll be with you probably in about

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

223

1 ten or fifteen minutes. Thank you.

2 (JURY OUT @ 10:22 A.M.)

3 THE COURT: Thank you very much.

4 We had a sidebar concerning questions and line
5 of questions that Ms. Taylor was asking. I
6 certainly understand the rationale for the
7 questions. But I ruled that I don't think
8 it's probative for anything for the jury.
9 It's moreso for me as to whether or not
10 everything has been produced to the defendant
11 in compliance with the requests that have been
12 made for the evidence.

13 I assume that you had talked with
14 these people. Maybe they didn't talk to you.
15 But from this point forward, I want every
16 person that's going to have a report, you talk
17 to them, you compare all that so that you can
18 raise any issue that you want to raise that the
19 State has failed to produce. Otherwise,
20 there's just no reason to ask these people
21 questions about whether or not you have the
22 same number of reports. It doesn't matter
23 whether you have them or not from their
24 perspective.

25 MS. TAYLOR: Yes, sir.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

224

1 THE COURT: Thank you. So please
2 accommodate that, Solicitor, if you will.

3 MR. VOIGHT: Judge, ---

4 THE COURT: You don't have to
5 explain anything. Any report that anybody has
6 and they're going to refer to any document,
7 that needs to be shown. I'm not saying you
8 haven't done it. I just want that done again.

9 MR. VOIGHT: Just for the record,
10 Your Honor, I believe that I turned over every
11 report.

12 THE COURT: I understand that.

13 MR. VOIGHT: I don't have the
14 complete file for any of these.

15 THE COURT: Mr. Voight, I'm not
16 talking about you. I'm talking about the
17 witnesses.

18 MR. VOIGHT: I understand.

19 THE COURT: If a witness is going
20 to be shown a document -- and, frankly, I'm
21 assuming that you've shown them the document
22 that you're going to show them, because that
23 would be kind of silly to ask them about a
24 document that you haven't talked with them
25 about before testifying. But sometimes it

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

225

1 becomes necessary, and I understand that.

2 Ms. Bryson, I want to be sure that
3 you had the same -- there was some question of
4 numbers. Maybe you can explain it.

5 And then before we bring the jury
6 back, if there's something I'll be delighted to
7 hear from you, Ms. Taylor.

8 MS. TAYLOR: Thank you, Your Honor.

9 THE COURT: Thank you so much. And
10 thank you for your patience with the Court.

11 MS. TAYLOR: Thank you, Judge.

12 THE COURT: We'll be at-ease for
13 about ten or fifteen minutes. Thank you.

14 (BRIEF RECESS)

15 (DEFENDANT PRESENT)

16 THE COURT: Mr. Voight, are you
17 ready to continue, sir?

18 MR. VOIGHT: I am, sir.

19 THE COURT: Thank you, sir. Let
20 the record reflect Mr. Smith is present.
21 The defendant is ready, Ms. Taylor?

22 MS. TAYLOR: Yes, Your Honor.

23 THE COURT: If you would invite the
24 jury to return, please. Thank you, sir.

25 (JURY IN @ 10:35 A.M.)

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

226

1 THE COURT: Thank you, Ladies and
2 Gentlemen. At the break the bailiff was
3 advised that there were five jurors that
4 requested some note pads. And those have been
5 given to you now. That's fine. As I mentioned
6 yesterday, I believe one juror was taking them
7 yesterday, and that's fine.

8 Some judges don't permit jurors to
9 take notes. I'm not one of them. I just want
10 to caution you about a couple of things. First
11 of all, the notes are your notes. They are to
12 help you when you begin your deliberations, and
13 that's the purpose of those. And that's why I
14 think it's appropriate for jurors to take them,
15 because they may be very beneficial to you when
16 you get to that point.

17 But I would remind you that the lady
18 seated to my right and to whom some of you
19 spoke when we were qualifying you, Ms.
20 Garrison, is my court reporter. She is the
21 only person in this room that has the
22 responsibility for the record, the verbatim
23 record. That's her job. She does it
24 exceedingly well, I might add. She doesn't
25 need that endorsement, but she is -- she's

1 great and a pleasure to work with also. But
2 having said that, at the end of this trial --
3 and you probably are aware, but I will remind
4 you that during your deliberations if there is
5 some disagreement about what someone said or
6 didn't say, we have the ability of replaying
7 that testimony for you, should that become
8 necessary. However, having said that, it's
9 certainly appropriate for you to make the notes
10 for whatever purpose you may deem them
11 necessary. And that's fine.

12 I would also remind you, however, that
13 some persons are better note-takers than
14 others. And I say that for this reason. With
15 your writing, obviously you have to, more than
16 likely, look down at the paper to accomplish
17 that. And as we discussed when we started this
18 case, sometimes it's not just what somebody's
19 saying, but how they're saying it, some
20 mannerism, some facial feature that you could
21 miss if you were writing something down. So
22 I just caution you about that.

23 But having said that, please feel free
24 to take notes. And if any others wish to have
25 note materials, just let us know and we'll be

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

228

1 delighted to furnish you with that material.

2 Thank you very much. Since you have been
3 sitting on the back now and now assumed the
4 front row and that seat, did the jury select
5 you, sir, as the presiding juror?

6 PRESIDING JUROR: I believe that's
7 what happened.

8 THE COURT: I think that's probably
9 what happened. I assumed that. And thank you
10 very much, sir. And that will be your seat for
11 the balance of the trial. Your juror number,
12 please, for the record?

13 PRESIDING JUROR: 284.

14 THE COURT: Thank you, sir. And
15 thank you, Ladies and Gentlemen. I appreciate
16 that. We're now ready to continue.

17 Mr. Voight, thank you, sir. You may
18 call your next witness.

19 MR. SIMPSON: Thank you, Your
20 Honor. The State calls Dr. Erin Presnell.

21 (WITNESS TAKES STAND)

22 SUSAN ERIN PRESNELL, being duly sworn
23 to tell the truth, the whole truth and nothing
24 but the truth, testified, as follows:

25 DIRECT EXAMINATION

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

229

1 BY MR. SIMPSON:

2 Q. Dr. Presnell, where are you employed?

3 A. I'm a forensic pathologist at the Medical
4 University of South Carolina.

5 Q. Could you describe a little for the jury
6 about what a forensic pathologist does?

7 A. To kind of back up and explain some of the
8 background, forensic pathology is actually a
9 subspecialty of pathology.

10 Pathology, in general, is the study of
11 disease. Pathologists -- and most pathologists
12 actually look at tissues from living people.
13 Like if you go to a family doctor and you get
14 a skin biopsy or a woman has a breast lump and
15 she has a breast biopsy, that tissue is sent to
16 a pathologist and they would look under the
17 microscope and say it's cancer or it's not,
18 it's an infection or it's not.

19 I did a general pathology training,
20 but I did additional subspecialty work in
21 forensic pathology where you're not just
22 looking at a single issue, you're looking at a
23 whole entire body on a deceased person. We are
24 looking for diseases, because a lot of our
25 tests are DNA analysis, but we're also look at

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

230

1 traumas and interpreting traumas. And
2 ultimately through a procedure called an
3 autopsy we try to list the cause and manner
4 of death.

5 Q. Doctor, could you describe for the jury the
6 type of educational and continuing training
7 background that's required to be a forensic
8 pathologist?

9 A. Pathologists are physicians. So we go to
10 college, I went to Clemson. I actually came
11 here to MUSC for medical school, which was four
12 years. After you get your M.D., you have to
13 pick your speciality -- pathology, pediatrics,
14 whatever. I picked pathology, which at the
15 time was a five-year training program and then
16 an additional year of forensics; that's about
17 fourteen years. During the process you have to
18 take Board examinations -- I am Board-certified
19 in pathology and also in forensic pathology.

20 Q. Is there any requirement that you continue
21 that training?

22 A. Well, the employment at the hospital
23 requires continuing medical education. Yes,
24 we do that for certification purposes.

25 Q. And how long have you been employed as a

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

231

1 criminal pathologist?

2 A. Since 1999, ten years.

3 Q. Have you ever testified in court in that
4 regard?

5 A. Yes.

6 Q. Approximately how many times?

7 A. It was be an estimate, maybe seventy or
8 eighty.

9 Q. In each of those times were you deemed
10 qualified as an expert in that area?

11 A. An expert in forensic pathology.

12 MR. SIMPSON: Your Honor, at this
13 time I would move that the witness be qualified
14 as an expert.

15 MS. TAYLOR: No, objection, Your
16 Honor.

17 THE COURT: Very well. She will
18 certainly be permitted to render opinions in
19 the area of forensic pathology.

20 MR. SIMPSON: Thank you, Your
21 Honor.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. SIMPSON:

24 Q. Just to be clear from the get go, did you
25 perform the autopsy in the present case?

1 A. No, this autopsy was performed by one of
2 the forensic pathologists that I work with
3 before he moved back up to Michigan.

4 Q. What is that pathologist's name?

5 A. Dr. Mike Caplan.

6 Q. Have you had occasion to review Dr.
7 Caplan's report from the autopsy?

8 A. Yes, in doing a report on an autopsy not
9 only do we do an examination, but we do
10 diagrams and take lot of pictures. So I've
11 reviewed all that material.

12 Q. Have you in reviewing his written report
13 confirmed his observations through the
14 photographs?

15 A. I have.

16 Q. Did you find his report to be a thorough
17 review of his autopsy?

18 A. I did, all of his reports are very
19 thorough.

20 Q. And in comparing his observations and
21 conclusions to the photographs, did you find
22 his observations and conclusions to be
23 scientifically sound, in your expert opinion?

24 A. Yes.

25 Q. Doctor, what conclusion did Dr. Caplan

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

233

1 reach as to the manner of death?

2 A. The manner of death -- there's actually
3 four types or manners of death. There's
4 natural death, suicide, accident and homicide.
5 There actually could be undetermined, too, if
6 you can't figure out which of the four. In
7 this case this death was ruled a homicide;
8 homicide being death at the hands of another.

9 Q. Doctor Caplan's conclusion as to cause of
10 death was ---

11 A. Briefly, ligature strangulation or
12 strangulation around the neck with a ligature.

13 Q. Could you review with the jury some detail
14 of the scientific observations that led Dr.
15 Caplan and yourself, through review, to come to
16 that conclusion?

17 A. First, this requires a little bit of
18 background on the mechanism of death and what
19 the actual strangulation means. If you
20 remember, your heart pumps your blood around
21 your body. There are actually two types of
22 vessels that go to your head and leave from
23 your head. Arteries go to your head carrying
24 oxygenated blood, of course, your brain needs
25 oxygen to survive. And your veins return the

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

234

1 deoxygenated blood, blood that's already got
2 the oxygen taken out of it, back to your heart
3 to go back to your lungs to be oxygenated. So
4 the lungs receive oxygen via the airways, your
5 trachea and your larynx. When there's
6 compression around the neck -- actually, a lot
7 of people think maybe it's an airway that's
8 being compressed. Usually that's not the case.
9 It only requires about thirty-three pounds of
10 pressure to compress your trachea and your
11 larynx versus your vessels, your jugular and
12 your carotid arteries are a lot easier to
13 compress. The veins, it only take about four
14 pounds of pressure to close them off, and for
15 the arteries with the oxygenated blood, it
16 takes about eleven pounds of pressure to close
17 them off. So when you apply pressure around
18 the neck what you're actually doing is
19 occluding the vessels. So somebody could
20 actually still breathe in and out of their
21 airways. But the trouble is that the blood is
22 no longer making it to your head. And because
23 of that your brain is basically dying from the
24 lack of oxygen. So it's still a type of
25 asphyxia; you're actually breathing, but the

1 oxygen can't get to your head.

2 Now, with that being said, with a
3 strangulation-type death a lot of times a
4 victim may struggle and there's intermittent
5 pressure on the vessels. Sometimes they're
6 being occluded and sometimes some of the
7 pressure is released as there is movement.

8 And because of that -- and this will
9 explain some of the findings that we see at
10 autopsies. First of all, we see she has the
11 ligature still around her neck. This is
12 basically a pair of pajama pants. Upon
13 removing those pajamas we see a big blanched
14 area, a big area of really pale skin from the
15 pressure of that ligature on the skin.
16 However, above that ligature her face is a real
17 dark kind of red color and she has a bunch of
18 little tiny -- kind of what we call
19 hemorrhages, petechia, little tiny round
20 hemorrhages on the skin and also you can see
21 them in the eyes. And the reason those are
22 there is remember what I was saying about the
23 intermittent pressure. The pressure is on the
24 arteries, so we're still applying the pressure
25 but not enough to close off the arteries, so

1 the blood is going to your head. The
2 oxygenated blood is still going to your head,
3 but it can't get out. The veins that are
4 taking your blood back to your heart are
5 pressed down. Because of that, the pressure
6 starts building in your head. And ultimately
7 the real small vessels, the capillaries, the
8 little, tiny vessels will start to burst
9 because of that buildup of the pressure. So
10 that's why we have those little tiny marks.
11 She had that on her face.

12 She also had -- there's a bone in your
13 neck called the hyoid bone. It's a U-shaped
14 bone right at the base of your tongue, way high
15 up in the neck. That is also fractured with
16 the pressure directly to the neck.

17 Those were the majority of her
18 findings related to the ligature strangulation.

19 Q. You mentioned earlier that during the
20 course of a typical autopsy a lot of photo-
21 graphs are taken?

22 A. Yes.

23 Q. And these observations noted by Dr. Caplan,
24 you also confirmed through observation of those
25 photographs?

State of South Carolina v. Oran Smith

237

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 A. I did.

2 Q. Was there also a note as to an additional
3 injury, both externally and internally?

4 A. Yes, we'll document everything. Some of
5 the other findings are she had several, a
6 number of contusions on her lower extremities,
7 on her legs. Most of them are a brown color
8 which suggests that they're older, not
9 sustained at the time of this incident. She
10 also had an abrasion or a scratch, where you
11 scrap off the skin, on her back.

12 As far as her head, she had two abrasions
13 on the left side of her face, and the other
14 injury is a contusion or a bruise on the left
15 front lower part of her scalp. So right inside
16 the scalp area there was a big contusion in
17 that area which is consistent with some type of
18 blunt trauma. It wasn't sharp trauma, like a
19 knife. It was some type of blunt object that
20 struck her on top of her head.

21 Q. Doctor, I realize causation isn't really
22 your job, but can you say would that blunt
23 force be consistent with hitting the floor when
24 you're falling down?

25 A. Yes, the floor could be the blunt object

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

238

1 that resulted in that injury.

2 Q. Doctor, you referenced earlier some
3 television shows. I wonder if you could tell
4 the jury a little bit about -- we've all seen
5 *Law and Order* when the M.E. looks at the
6 detective and pinpoints the time of death. I
7 was wondering if you could explain to the jury
8 is a real-world type of conclusion that a
9 medical examiner would make?

10 A. No. Actually, what -- the death scenario
11 and how it works -- let me back up a bit. The
12 basis for this is that a number of things
13 happen to an individual after they die, and
14 they happen in a progression. The blood
15 levels. The body gets stiff. The body cools.
16 And then you start getting some changes of
17 decomposition. The skin starts to slip off.
18 The gas in your body starts to produce and you
19 bloat up. So there's a sequence of events that
20 happen after someone passes on. There's a way
21 to estimate how long each one takes, but most
22 of these things are very controlled conditions
23 with a, quote, "normal" individual in temperate
24 conditions, seventy-five degrees. And to take
25 those things and apply them to individual

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

239

1 cases, it wouldn't be correct. What's more
2 usual if we have a proposed scenario. 'Doctor,
3 this is what we think' or 'this is what the
4 witnesses are saying that we think when the
5 person might have died.' And for us to say
6 yes, our findings support that or no, they
7 don't support that -- so, say, someone two
8 hours ago walked into a convenience store and
9 two hours later they're dead. And I look at
10 them and they're already bloated from
11 decomposition, then clearly that doesn't
12 support that scenario. My long answer, I
13 guess, to make it shorter is no, we can't
14 narrow it down specifically.

15 Q. But if I understand correctly you can, if
16 given what is thought to be a time of death, at
17 least either give some opinions based on times,
18 that that could be the case or could not be the
19 case?

20 A. Yes. Like, for example, in this case, the
21 time of death or the date of death was thought
22 to be around June 4th. We examined her on June
23 5th. Her rigor had already become stiff. Her
24 livor, which is her color that comes from blood
25 settling, had settled in a fixed position. So

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

240

1 all that is consistent with her death around
2 that time.

3 Q. But if I understand you, there was nothing
4 that would be inconsistent with a death, say,
5 on June 3rd as opposed to June 4th?

6 A. Right. It could have been June 3rd, yes.

7 Q. What effect on a natural body's deposition
8 would a cooler temperature have?

9 A. Anything cool slows down the process of
10 decomposition. Just like keeping things in the
11 refrigerator, they don't spoil. Things in a
12 cooler condition will slow down that whole
13 process.

14 MR. SIMPSON: Court's indulgence

15 THE COURT: Certainly.

16 MR. SIMPSON: Thank you, Dr.

17 Presnell. Please answer any questions that Ms.
18 Taylor has for you.

19 THE COURT: You may cross examine.

20 MS. TAYLOR: Thank you.

21 CROSS EXAMINATION

22 BY MS. TAYLOR:

23 Q. Good morning.

24 A. Good morning.

25 Q. Just a couple of questions. I understand

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

241

1 that you're interpreting Dr. Caplan's report.

2 Were you present for this autopsy?

3 A. No; I was not.

4 Q. So you didn't see personally or did you see
5 personally any of the evidence involved from
6 the autopsy?

7 A. I didn't see any in person, but I did
8 review the photographs of the material.

9 Q. And the written report that he made?

10 A. His written report and the diagrams.

11 Q. Is there anything -- you were talking right
12 at the end regarding the time of death. You
13 were talking about scenarios or information
14 that might be provided. Was there any informa-
15 tion provided by North Charleston Police or any
16 other law enforcement agency to you or to Dr.
17 Caplan or to anyone at MUSC regarding
18 circumstances of what they thought might have
19 occurred?

20 A. The coroner provided Dr. Caplan a fair
21 amount of information as far as -- about where
22 she was found and the circumstances surrounding
23 that, and some of her history.

24 Q. Is there any of that information that would
25 be relevant for us today to know regarding

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

1 anything that could solve this question?

2 A. As far as ---

3 THE COURT: Hold it: I'm not going
4 to allow that question. It requires her to
5 make a legal determination. But if you will
6 rephrase your question.

7 MS. TAYLOR: I will. Thank you, Your
8 Honor.

9 CROSS EXAMINATION CONTINUED

10 BY MS. TAYLOR:

11 Q. Is there anything in the information that
12 you are referring to know, the information
13 provided by law enforcement or anybody else,
14 that's included in Dr. Caplan's report that he
15 would have reviewed, which could have supported
16 the conclusion drawn by Dr. Caplan regarding
17 the manner of death?

18 A. No. The manner of death, we would not have
19 had to have any information to know that death
20 was a ligature strangulation, and that is a
21 homicide. Some information from the scene
22 which we would not have attended, it might be
23 helpful to assess or determine the time of
24 death.

25 Q. And was there any information that related

1 to that?

2 A. Well, the coroner provided us with the
3 temperature in the environment where she was,
4 which he said was sixty-two degrees.

5 Q. If I understand you correctly, there's no
6 information from any witnesses who gave the
7 last time she was seen or known or anything
8 like that, which would have allowed you to
9 either confirm things or deny?

10 A. There was information relayed that a friend
11 had seen her around midnight on June 4th.

12 Q. And the time of death discussed, Dr. Caplan
13 determined -- I think I read this correctly.
14 She was found on the evening of June 4th and the
15 autopsy was done June the 5th. Is that right?

16 A. Yes.

17 Q. On the morning of June 5th?

18 A. Yes.

19 Q. You also talked about contusions on
20 different parts of the body. Did I understand
21 you correctly, though, that apparently they
22 were older?

23 A. Yes, the contusions or the bruises on the
24 lower extremities, the legs, had already
25 started to be healed by the body. And

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

244

1 microscopic inspection proved that those
2 bruises didn't occur at the time of her death.
3 Q. Can you say how old they would have been?
4 A. A couple of days.
5 Q. And then I heard you mention as well that
6 there were a couple of scratches, I think, to
7 the left side of her face?
8 A. Abrasions to the left side of her face,
9 right above the eyebrow and right on the left
10 side of the eyebrow.
11 Q. Were those recent or old, or do you know?
12 A. They were not described as healing at all.
13 They would be consistent with all her other
14 trauma, which is the contusion to her scalp.
15 Q. And your motioning to this part of your
16 head. Is that where the one, in fact, was?
17 A. Yes, the left front of her scalp, which is
18 right in this area.
19 Q. And Mr. Simpson had asked you whether that
20 would be consistent with a fall, someone
21 falling down and hitting the floor.
22 A. I believe he asked me if it was consistent
23 with striking the floor. So however she got
24 there. It was consistent -- there was no
25 pattern to it. It was just a big bruise. So

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

245

1 anything with a flat surface, a blunt surface.

2 Could it have been the floor? Yes.

3 Q. Could it have been someone hitting her in
4 the head with an object?

5 A. Yes.

6 Q. Could it have been her bumping into the
7 door?

8 A. Yes.

9 Q. Is there any medical or scientific ability
10 to say what caused that injury?

11 A. Just that it is a blunt trauma. It's
12 another type of trauma that you can undergo.

13 Q. Dr. Caplan, and he was a pathologist,
14 reviews the information provided to determine
15 the cause of death. Is that a fair assumption?

16 A. I'm sorry. What was the question?

17 Q. Dr. Caplan or you or any other pathologist
18 who does what you do to examine the body and
19 anything else provided to you in order to
20 determine cause of death, medically? Is that
21 what you do?

22 A. Yes.

23 Q. Can you in any way contribute, in this way,
24 in particular, to identifying who would have
25 caused the homicide?

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

246

1 A. No, we're just interpreting the traumatic
2 injuries.

3 Q. Thank you.

4 THE COURT: Redirect?

5 MR. SIMPSON: I have no redirect.

6 THE COURT: Thank you very much.

7 (WITNESS STEPS DOWN)

8 THE COURT: Call your next witness,
9 please.

10 MR. VOIGHT: The State calls Lilly
11 Gallman.

12 (WITNESS TAKES STAND)

13 LILLY GALLMAN, being duly sworn to
14 tell the truth, the whole truth and nothing but
15 the truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY MR. VOIGHT:

18 Q. Ms. Gallman, where do you work?

19 A. I work for the South Carolina Law Enforce-
20 ment Division.

21 Q. How long have you worked there?

22 A. I began in January of 1990, so it will soon
23 be twenty years.

24 Q. And what do you do for SLED?

25 A. I'm employed as a forensic DNA analyst.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

247

1 Q. What are the job duties of a forensic DNA
2 analyst?

3 A. We receive evidence for the purpose of
4 identification. Along with the evidence we
5 receive standards that we also use to compare
6 to the evidence. So what I do as a forensic
7 DNA analyst, I check for the presence of body
8 fluids first. And the next step I would go
9 into developing a DNA profile from the evidence
10 and the known standards, from the individuals,
11 be it the subject or the victim.

12 Q. What training do you have in the field of
13 DNA analysis?

14 A. I have a degree in biology from the
15 University of South Carolina. Once I completed
16 my degree there I continued working at the
17 University of South Carolina in the area of
18 molecular genetics where I did sequencing and
19 cloning. I also instructed graduate students.

20 As I said, I began working with the South
21 Carolina Law Enforcement Division in January of
22 1990 as a forensic DNA analyst. Since that
23 time, I've attended the FBI DNA typing school.
24 I've also attended the South Carolina Criminal
25 Justice Academy to become a certified police

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

248

1 officer. I've also attended auditors training
2 classes to become an auditor coordinator in the
3 United States.

4 Q. Have you ever testified in court as an
5 expert in the field of forensic DNA analysis?

6 A. Yes, I have.

7 Q. Approximately how many times?

8 A. Approximately between fifty and sixty
9 times.

10 MR. VOIGHT: At this time the State
11 would offer Ms. Gallman as an expert in the
12 field of forensic DNA analysis.

13 THE COURT: Do you care to examine
14 her qualifications?

15 MS. TAYLOR: No, Your Honor.

16 THE COURT: Very well. She
17 certainly will be permitted to render opinion
18 in that area.

19 MR. VOIGHT: Thank you very much,
20 Your Honor.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. VOIGHT:

23 Q. Ms. Gallman, in connection with this case
24 did you prepare a report?

25 A. Yes, I did.

State of South Carolina v. Oran Smith

249

Case No. 07-GS-10-13172

Jury Trial - December 7-9, 2009

Before The Honorable R. Markley Dennis, Jr.

1 Q. I'm going to show you what's been
2 previously marked as State's Exhibit 62 and
3 ask you if you can identify that?

4 A. Yes, I can. This is a copy of the report
5 that I issued in this case.

6 Q. And that is a seven-page report indicating
7 what you tested as well as the findings and the
8 analysis of what you found.

9 A. Yes.

10 MR. VOIGHT: At this time the State
11 would offer, file and introduce State's Exhibit
12 62.

13 THE COURT: Any objection?

14 MS. TAYLOR: None.

15 THE COURT: Without objection,
16 State's Exhibit 62 is admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 62)

18 MR. VOIGHT: Thank you, Your Honor.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. VOIGHT:

21 Q. Ms. Gallman, what is -- in simple terms for
22 the jury, what is DNA?

23 A. DNA stands for deoxyribonucleic acid. It
24 can said to be the blueprint of the body. You
25 get part of your DNA from your mother, and part

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

250

1 from your father. In the area of forensic DNA
2 analysis, we look at different areas on the DNA
3 and put together to be able to develop a DNA
4 profile of a particular individual or from a
5 piece of evidence that's submitted in a case.

6 Q. What do you call these areas that you're
7 looking for DNA?

8 A. There is different DNA loci found on the
9 chromosomes.

10 Q. Loci, is that Latin for location?

11 A. Yes.

12 Q. That's kind of like alumni. It's plural,
13 meaning multiple locations, multiple places?

14 A. Yes, it is.

15 Q. If I can ask you to identify what's marked
16 as State's Exhibits 69 and 70. Do you
17 recognize those two items?

18 A. Yes, they are the last two pages of my
19 report, the charts that were generated.

20 Q. So these would be the charts that contain
21 the information from pages six of seven of your
22 report?

23 A. Yes.

24 Q. Are these true and accurate representa-
25 tions, basically blowups of those two pages of

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

251

1 your report?

2 A. May I see them?

3 Q. I can hold them up, if you like.

4 A. Yes, they are.

5 MR. VOIGHT: At this time the State
6 would offer, file and introduce State's 69 and
7 70.

8 MS. TAYLOR: No objection.

9 THE COURT: Without objection, but
10 why don't we just use them, because as I
11 understand it, they're blowups of the document
12 itself, the last two pages. And it's for
13 purposes of talking to the jury. The jury will
14 have the document. They don't need the
15 blowups. So let's just use them for
16 demonstrative purposes.

17 MR. VOIGHT: I plan just to use them
18 for demonstrative purposes, and I haven't
19 gotten to that part yet.

20 THE COURT: That's all right. But
21 there's no need to admit them if you want to
22 use them for demonstrative purposes. Thank
23 you.

24 MR. VOIGHT: Thank you very much,
25 Your Honor.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

1 (SO MARKED AS STATE'S EXHIBIT 69 - ID ONLY)

2 (SO MARKED AS STATE'S EXHIBIT 70 - ID ONLY)

3 DIRECT EXAMINATION CONTINUED

4 BY MR. VOIGHT:

5 Q. I notice on the chart that some of your
6 findings are expressed in numerical values.

7 What are those numbers called?

8 A. They're alleles method.

9 Q. How do you spell alleles?

10 A. A-l-l-I-e-s -- I'm sorry. A-l-l-e-l-e-s.

11 Q. So what does the word "allele" mean when
12 we refer to it?

13 A. What they are, are pieces of DNA that's
14 found on a person's chromosomes that are
15 repeats of certain people's DNA. For example,
16 if you look in that part, it contains
17 information and each part is the same. For
18 example, let's say you have nine parts in a row
19 that have the same information. So we're just
20 talking about that they are repeats of the same
21 information. That's just a general way of
22 saying what does it look like on the DNA, if
23 you have nine parts that contain the same
24 information, or we have thirteen parts that
25 contain the same information. They do not code

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

253

1 for any particular gene for a person. They're
2 just repeats of DNA that are found on the
3 chromosomes.

4 Q. They're patterns that you can recognize
5 because they're repeated, so that you can
6 identify a certain person's DNA or exclude
7 other people's DNA?

8 A. That's correct.

9 Q. What does it mean to exclude somebody's
10 DNA?

11 A. That would mean that once I had developed
12 a DNA profile from the evidence and from the
13 person requesting, it could be for the victim
14 or another subject in a case, and you look at
15 the DNA profiles, compared them, they do not
16 match. That means that that person is excluded
17 as contributing that particular evidence in the
18 case.

19 Q. When you're going to do a DNA analysis,
20 what is the first step that you take? What is
21 a standard?

22 A. The standard could be a person's blood or
23 oral swab or what we call a buccal swab from
24 that particular person. All it is, is -- when
25 I say a "standard", it means that I know who

1 that particular sample is coming from.

2 Unlike with the evidence, we have no idea
3 who it belongs to until you develop a DNA
4 profile and compare it to someone.

5 Q. So in a case like a homicide it would be
6 normal to be provided a standard from the
7 victim. Would that be correct?

8 A. That's correct.

9 Q. So that if you had the samples of anything,
10 blood, semen, sweat, anything -- you would have
11 a known person to compare the two to know
12 whether or not they were the victim's?

13 A. That's correct.

14 Q. And in this case were you provided a
15 standard for the victim?

16 A. Yes, I was.

17 Q. And you were able to develop a DNA profile
18 based on that standard?

19 A. Yes.

20 Q. Were you also given swabs from other
21 individuals in this case?

22 A. Yes, I was.

23 Q. And were you able to develop DNA profiles
24 of those individuals?

25 A. Yes.

1 Q. I'm going to hand you what's been marked as
2 State's 64 and ask you if you can identify that
3 from the package?

4 A. I would need to open it. I know what it
5 is, but I need to open it to know exactly
6 what's in it.

7 Q. Okay.

8 A. (Upon review) -- this particular packet
9 contains the cuttings that were made by Ms.
10 Bryson for -- to develop a DNA profile.

11 Q. And you had previously developed standards.
12 And who did you receive standards from in this
13 case?

14 A. I received oral swabs for Oran Smith and
15 Leonard Geddis.

16 Q. So on your page six of seven -- for
17 demonstrative purposes, State's 69 -- you
18 display a numerical value for each of those
19 standards. And that would be Cheryl Snow, Oran
20 Smith and Leonard Geddis. Is that correct?

21 A. That's correct.

22 Q. And you don't determine who gets submitted
23 to you, do you?

24 A. No, I do not.

25 Q. So you don't know -- other than knowing

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

256

1 which ones of those you received -- you don't
2 know what, if any, implications or connection
3 to the case either Oran Smith or Leonard Geddis
4 would have?

5 A. No, I do not.

6 Q. You're just looking for the numerical
7 values contained in their DNA to include them
8 or exclude them, if possible.

9 A. That's correct.

10 Q. And it's true that in some cases you can
11 neither exclude nor include a person based on
12 the samples given to you?

13 A. That's correct.

14 Q. So it's possible that other people -- that
15 had there been someone else tested, that their
16 DNA would be not sufficient to give you any
17 basis for a scientific finding at all?

18 A. That's correct.

19 Q. At the top of the Table on pages six of
20 seven there are -- in the left-hand column is
21 the items. I'm presuming those are the items
22 that you tested for DNA purposes?

23 A. Yes.

24 Q. And across the top are a series of columns.
25 What do those columns represent? They're each

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

257

1 represented by letters and numbers. What do
2 those columns represent?

3 A. This top row going across is the area on
4 the DNA chromosomes that we utilize to develop
5 the DNA profile.

6 Q. And how many different categories are
7 those?

8 A. We look at sixteen.

9 Q. And what is this last one here at the end?

10 A. It's a sex chromosome.

11 Q. And women have -- women's sex chromosomes
12 are designated how?

13 A. As an X.

14 Q. And men's are designated how?

15 A. As a Y.

16 Q. So in the most simplistic terms, if a Y
17 is present in that particular column, that
18 would indicate the presence of male DNA.

19 A. That's correct.

20 Q. If an X is present it really doesn't tell
21 us much of anything, does it? Because X can be
22 either a woman or a man.

23 A. Yes, under normal circumstances.

24 Q. Under normal circumstances.

25 A. If there's a male, then there's an XY.

- 1 Q. On some of these alleles -- let me direct
2 to you the fourth column which is CF F-1 PO.
3 The number of repetitions that Cheryl Snow has
4 in her DNA are represented on your chart by an
5 eleven/twelve.
- 6 A. Yes.
- 7 Q. And I notice that Oran Smith's is also
8 represented by an eleven/twelve.
- 9 A. Yes.
- 10 Q. And Leonard Geddis has a nine/twelve, but
11 nevertheless he has a twelve as well.
- 12 A. Yes.
- 13 Q. On any of the items that you tested, would
14 the presence of twelve be able to tell you --
15 would you be able to distinguish in that
16 particular column as to who provided the twelve
17 that went into that sample, if one was found?
- 18 A. No, sir, I would not.
- 19 Q. And if an eleven or a twelve were found,
20 similarly, you couldn't tell if they were from
21 Cheryl Snow -- in that particular column -- or
22 if they were from some other person, Oran
23 Smith, who happens also to be an eleven/twelve?
- 24 A. No, I could not.
- 25 Q. From the look of it you tested quite a few

1 items. And I'm going to place those up here.
2 You tested fingernail clippings, vaginal swabs,
3 swabs from right hand, rectal swabs, cuttings
4 from a tee-shirt. Did you find the presence of
5 Cheryl Snow's DNA on the majority of these
6 items?

7 A. Yes, I did.

8 Q. Were you able to, in the majority of these
9 items, determine that Cheryl Snow was the major
10 contributor?

11 A. Yes.

12 Q. And that's to be expected, isn't it, from
13 either clothing worn by Ms. Snow or swabs taken
14 from her body. You would expect to find her
15 DNA, wouldn't you?

16 A. Yes, you would.

17 Q. And so, essentially for Cheryl Snow's DNA,
18 you found it essentially where you expected to
19 find it?

20 A. Yes.

21 Q. Do all people shed DNA at the same rate, or
22 do different people shed DNA differently?

23 A. Some people shed their skin cells more so
24 than others. So the probability of finding
25 their DNA on an item is increased by that fact.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

260

1 We can't tell if a person is a shedder, as you
2 would say, of skin cells just by looking at
3 them. But when you test items that they
4 possibly could have touched, you could tell by
5 that.

6 Q. You compared Leonard Geddis's DNA profile,
7 which is expressed in this third row on page
8 six of seven. Did you compare Leonard Geddis's
9 DNA profile with each of these other items that
10 you tested?

11 A. Yes, I did.

12 Q. Were you able to come to a scientific
13 conclusion whether or not Leonard Geddis --
14 whether he contributed any DNA to any of these
15 items?

16 A. He was excluded as a possible contributor
17 to these items.

18 Q. What does it mean that he's excluded?

19 A. It meant that based on the information that
20 I was able to gather with the DNA profiles from
21 the evidence, his DNA profile was not seen.

22 Q. His DNA profile wasn't found in the
23 fingernail clippings? It wasn't found in any
24 of the swabs?

25 A. No.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

261

1 Q. And his DNA profile wasn't found on the
2 cuttings from the pajama bottoms?

3 A. No, it was not.

4 Q. The cuttings from the pajama bottoms, on
5 your chart, are labeled 2.4.1, 2.4.2, 2.5F and
6 2.5M. What's the difference between 2.4-1 and
7 2.4-2?

8 A. When I received the cuttings, it was one
9 cutting labeled 2.4. It was a large cutting.
10 In order to be able to put it inside a tube
11 that we use to do our extraction, I had to make
12 a smaller cutting from that particular item.
13 So I took two cuttings from item 2.4 and
14 generally it's item 2.4.1 and 2.4.2.

15 Q. On 2.5F and 2.5M was there any specific
16 designation as to what the letters are used
17 for?

18 A. Yes, on item 2.5F, semen was found on that
19 item. When semen is found on an item, what we
20 attempt to do is to separate the epithelial
21 cells from sperm cells. 2.5F is the first
22 fraction or the female fraction, where you're
23 just looking at the epithelial cells. 2.5M is
24 when you're trying to only have sperm cells
25 there. They're all in one soup, as you would

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

262

1 say. And you take off the first fraction and
2 you add back another solution that pops open
3 the sperm cells.

4 Q. So you're able to separate -- I'm assuming
5 this is what you'd call a mixed sample? When
6 it first comes to you, it's a mixed sample?

7 A. Yes, it is.

8 Q. And in this particular sample, it would
9 come from either semen or seminal fluid as well
10 as skin cells of the woman?

11 A. Yes.

12 Q. And you were able to determine the skin
13 cells matched Cheryl Snow's DNA profile.

14 A. That's correct.

15 Q. Were you able to determine whose cells were
16 the major contributor or the contributor for
17 the male part of 2.5?

18 A. I was able to determine that the semen
19 donor for item 2.5 was Oran Smith.

20 Q. That is expressed on this chart by
21 comparing the numbers of Oran Smith's sample
22 with the numbers that you ultimately found?

23 A. Yes. I compared Oran Smith's DNA profile
24 to the DNA profile generated from the semen
25 when I looked at 2.5.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

263

1 Q. For example, here in this column Oran Smith
2 is a 19.2 and FGA. And the FGA over here
3 contains 19.2 as well.

4 A. That's correct.

5 Q. And on the D5S81A he's eleven/twelve.
6 Over here we find eleven/twelve as well.
7 We also find other numbers there as well.

8 We find a twenty-four in FGA and a
9 twelve/thirteen in FGA. Why would those
10 numbers appear?

11 A. They are the DNA profile from Cheryl Snow.

12 Q. So that's a bit of Cheryl Snow. Her DNA is
13 contained -- you haven't been able to separate
14 the DNA entirely. Is that correct?

15 A. Not completely. We attempt to separate the
16 epithelial cells from the sperm cells. But
17 with them starting out in the same soup, there
18 are times when you cannot separate them.

19 Q. Here at 2.5, which is the semen, we don't
20 find Leonard Geddis; right?

21 A. That's correct.

22 Q. He's excluded.

23 A. Yes.

24 Q. It can't be him.

25 A. No, it's not him.

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

264

1 Q. On the 2.5, on this row, some of these
2 numbers -- and it's more clear in your report
3 than it is in the blowup. But some of these
4 numbers appear darker than others. What would
5 be the purpose of that in your report?

6 A. The numbers that are darker are bold. And
7 when you have a major contributor, we bold
8 those numbers.

9 Q. So that's more DNA showing up?

10 A. Yes.

11 Q. Is SLED's DNA lab accredited?

12 A. Yes, it is.

13 Q. To obtain accreditation you have to have
14 certain standards in report DNA analysis?

15 A. That's correct.

16 Q. As best you can, you try to adhere to those
17 standards. Is that correct?

18 A. Yes.

19 Q. The standard set up for accreditation
20 sometimes dictate what your opinion can and
21 cannot be. Is that correct? Based on the
22 findings that you ultimately find?

23 A. Yes.

24 Q. I notice that in some -- I guess move on
25 down here to 2.4.1 and 2.4.2. Those are the

State of South Carolina v. Oran Smith
Case No. 07-GS-10-13172
Jury Trial - December 7-9, 2009
Before The Honorable R. Markley Dennis, Jr.

265

1 items that -- what were you looking for in
2 2.4.1 and 2.4.2?

3 A. The cuttings that were made by Ms. Bryson
4 were given to me stating that we were looking
5 for anyone foreign from Cheryl Snow.

6 Q. Were those the cuttings where you were
7 looking for possible touch DNA?

8 A. Yes..

9 Q. And what is touch DNA?

10 A. It just means that someone handled that
11 item or placed their hand on that item.

12 Q. You found certain of these numerical values
13 on these two rows taken from this one sample,
14 cutting two, are expressed in parentheses. Why
15 is that?

16 A. They're in parentheses because they fall
17 within a particular range between seventy-five
18 and a hundred forty-nine RPU, which is relative
19 progressive units. That's a designation that's
20 given to the peak highs, I guess you could say,
21 of alleles.

22 Q. So there's the presence of those alleles,
23 but the quantity of them isn't quite as much as
24 there could be for those that are not
25 expressed.

1 A. That's correct. What it means is the
2 amount of DNA that comes from that contributor
3 is much less than the one for the major
4 contributor.

5 Q. Are those numerical values expressed in
6 parentheses still reliable?

7 A. Yes, they are.

8 Q. I notice that at places on this chart,
9 specifically 2.2, 2.3, 6 and 7, there are
10 places that are blank. They don't contain any
11 allele values at all. Why would these be
12 blank?

13 A. It's because no DNA profile was developed
14 at those particular areas.

15 Q. They would have been below the threshold of
16 reliability, if something was even there?

17 A. That's correct.

18 Q. So it may have been numerical values were
19 expressed, but they were not of sufficient
20 reliability for you to be able to count on in
21 your analysis?

22 A. Yes.

23 Q. Their peak highs were too low.

24 A. Yes.

25 Q. So we have blank spots on some of these