

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2011-CP-10-0571

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SC Supreme Court

Michael Dunham, 313860,

Petitioner,

v

State of South Carolina,

Respondent

APPENDIX

VOLUME II of II

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS

STATE,)
)
PLAINTIFF,)
)
v)
)
MICHAEL DUNHAM,)
)
DEFENDANT)
_____)

TRANSCRIPT OF RECORD
05-GS-10-8285

SUMTER, SOUTH CAROLINA
TUESDAY, FEBRUARY 14, 2006
WEDNESDAY, FEBRUARY 15, 2006

BEFORE

HONORABLE LARRY R PATTERSON, PRESIDING JUDGE

APPEARANCES

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TAKEN BY MELISSA R WINFIELD
CERTIFIED VERBATIM REPORTER

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COURT ADJOURNED FOR TODAY

WEDNESDAY, FEBRUARY 15, 2006

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Melina R. W. [Signature]
COURT REPORTER

215-06

DATE

[Signature]
CLERK RECEIVING EXHIBITS

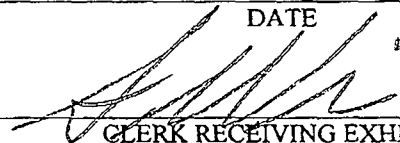
2/11/06 Statement of Jean Lucchesi
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Melina R Winger
COURT REPORTER

2-15-06

DATE


CLERK RECEIVING EXHIBITS

1 **SOLICITOR WILSON** JUDGE, BEFORE YOU BRING THEM IN, I
 2 HAVE A WITNESS JEAN JACQUES WHO YOU HEARD SOME TESTIMONY
 3 ABOUT JUST NOW HE KNEW THE DEFENDANT AT DJJ AS WELL AS
 4 ALSO KNEW JUSTIN LEMON WHO WILL TESTIFY LATER TO THAT DAY
 5 AT DJJ IT'S MY POSITION THAT WE NEED TO OFFER THIS
 6 INFORMATION THAT ALL OF THESE GUYS WERE TOGETHER AT DJJ
 7 BEFORE IT CAME OUT BECAUSE IT SHOWS HOW LONG THEY KNEW
 8 EACH OTHER, THAT THEY WERE ALL THERE TOGETHER STEVEN
 9 JOHNSON WAS NOT THERE WITH THEM, AND HE DIDN'T KNOW HE
 10 DIDN'T KNOW THESE GUYS I THINK JJ WILL TESTIFY TO THAT
 11 WE DON'T INTEND TO GET INTO ANY SPECIFICS AS TO WHY THE
 12 DEFENDANTS WERE THERE OR IN FACT WHY ANYBODY WAS THERE,
 13 BUT JUST THE FACT THAT THEY WERE THERE I THINK IS
 14 ADMISSIBLE AS A SUBSTANTIVE PART OF OUR CASE

15 **THE COURT** I DON'T THINK THE STATE CAN EVER PUT THE
 16 CHARACTER OF THE DEFENDANT IN EVIDENCE, SO THAT CAN'T
 17 COME IN THAT PUTS HIS CHARACTER IN EVIDENCE SO THAT
 18 JUST CAN'T COME IN THEY CAN TESTIFY THEY KNEW HIM
 19 BEFORE AND HOW LONG THEY KNEW HIM, BUT THEY DON'T HAVE TO
 20 SAY WHERE

21 **SOLICITOR WILSON** I—

22 **THE COURT** THAT'S WHY I UNDERSTAND— YOU CANNOT EVER
 23 PUT THE DEFENDANT'S CHARACTER IN EVIDENCE UNLESS HE PUTS
 24 IN HE HAS TO PUT IT IN

25 **SOLICITOR WILSON** JUDGE AND AGAIN, WE WOULDN'T BE

1 OFFERING IT FOR THAT I UNDERSTAND THAT THE COURT
 2 RULING, IT WOULD BE MY REQUEST AND I WOULD BE ABLE TO
 3 LEAD THE WITNESS THROUGH THAT PART OF THE TESTIMONY SO
 4 THAT HE DOESN'T VOLUNTEER THAT THIS IS ONE OF THE
 5 WITNESSES, I DON'T KNOW IF YOU'VE HAD AN OPPORTUNITY TO
 6 READ OUR TRIAL BRIEF, BUT HE IS IDENTIFIED WITH AND
 7 ASSOCIATED WITH THE DEFENDANT HE HAS BEEN UNCOOPERATIVE
 8 WITH US, AND I JUST DON'T KNOW THAT HE WILL YOU KNOW- I
 9 HAVEN'T BEEN ABLE TO TALK WITH HIM AND STEER HIM AWAY
 10 FROM THAT IN OTHER WORDS, I HAVEN'T BEEN ABLE TO GIVE
 11 HIM INSTRUCTIONS I DON'T KNOW IF HE WOULD FOLLOW THEM
 12 IF I DID

13 **THE COURT** YOU WILL HAVE TO TELL HIM NOT TO MENTION
 14 THE FACT IF YOU CALL HIM AS A WITNESS, HE'S YOUR
 15 WITNESS YOU CANNOT PUT THE DEFENDANT'S CHARACTER IN
 16 EVIDENCE I-

17 **SOLICITOR WILSON** I UNDERSTAND, AND I DON'T INTEND
 18 TO

19 **THE COURT** I THINK SINCE WE GOT THIS FAR ALONG IT
 20 WOULD BE WISE NOT TO DO THAT

21 **SOLICITOR WILSON** I GUESS I JUST-

22 **THE COURT** I UNDERSTAND WHAT YOU'RE SAYING
 23 SOLICITOR, I'M JUST TELLING YOU WHAT THE FACTS OF THE
 24 RULES OF EVIDENCE ARE SO THERE IS NO NEED FOR US TO
 25 DISCUSS IT YOU CANNOT PUT HIS CHARACTER IN EVIDENCE

1 IF YOUR WITNESS DOES IT THEN YOU HAVE TO SUFFER THE
2 CONSEQUENCES SO YOU BETTER TALK TO HIM NOW IF HE DOES
3 IT INTENTIONALLY, I'LL JUST HAVE TO BE THE JUDGE OF THAT

4 SOLICITOR WILSON YES SIR THAT INVESTIGATOR I THINK
5 IS INFORMING HIM OF THAT

6 MR DAVIS JUDGE MAY I APPROACH FOR A MOMENT?

7 THE COURT DO YOU WANT TO IMPEACH THIS GUY?

8 MR DAVIS YES SIR JUDGE I RECEIVED A COPY OF THE
9 NEXT WITNESS'S RECORD AGAIN, THESE ARE YOUNG FOLKS AND
10 WE ARE DEALING WITH A JUVENILE RECORD THESE ARE
11 DIFFICULT-- WHAT IT LOOKS LIKE, IT LOOKS LIKE FROM AUGUST
12 20, 2002, THERE WAS AN ARREST ON AN ARMED ROBBERY THAT
13 SAME CODE, WAS THE SAME DATE OF THIS IS SEQUENTIALLY
14 THREE IN A ROW THE LAST ONE IS SHOWING IT NOW STRONG
15 ARMED ROBBERY, AND OVER THE COURT ACTIONS IT HAS R&E
16 MY UNDERSTANDING OBVIOUSLY HE WOULD HAVE BEEN GOING TO
17 R&E UNLESS HE WAS CONVICTED OF STRONG ARMED ROBBERY, AND
18 THEN SEPTEMBER 23, 2003, IT HAS CRACK, AND THEN OVER TO
19 THE COURT ACTIONS WAS DJJ THOSE WOULD BE THE TWO FROM
20 HIS JUVENILE RECORD, AND AS FOR THE FIRST ONE JUDGE WE
21 WOULD RELY ON TWO CASES AND I GAVE THE COURT COPIES AT
22 BEGINNING OF TRIAL, AND THE STATE COPIES AS WELL THE
23 STATE V AL-AMIN IT'S FOUND AT 353-SC-405 IT'S A 2003
24 CASE, AND ALSO-- THAT WILL BE THE ONE YOUR HONOR IT JUST
25 SAYS IT'S ARMED ROBBERY IS A CRIME OF DISHONESTY UNDER

1 SOUTH CAROLINA RULE 7609A2 AND THAT'S BASING THAT OPINION
2 ON THAT DECISION

3 THE COURT DID Y'ALL TAKE A STATEMENT FROM THIS
4 WITNESS SOLICITOR?

5 SOLICITOR WILSON YES SIR

6 THE COURT HE GAVE THE STATEMENT TO LAW ENFORCEMENT?

7 SOLICITOR WILSON YES SIR

8 THE COURT IS THAT THE REASON YOU ARE CALLING THIS
9 WITNESS?

10 SOLICITOR WILSON I'M CALLING HIM BECAUSE HE HEARD
11 THE DEFENDANT CONFESS

12 THE COURT OK, AND HE'S TESTIFIED AND MADE STATEMENT
13 TO THAT EFFECT?

14 SOLICITOR WILSON YES SIR

15 THE COURT OK IF HE HEARD IT I DON'T KNOW, YOU
16 KNOW, ALL THOSE OTHER BACKGROUND THINGS WHY THEY ARE
17 IMPORTANT. EXCEPT HE CAN IMPEACH HIM IF HE WAS CONVICTED
18 OF ROBBERY AND—

19 MR. DAVIS HE HAD A CRACK CHARGE

20 THE COURT AND POSSESSION OF CRACK

21 MR. DAVIS THANKS

22 SOLICITOR WILSON YOU ARE ALLOWING THE CRACK CHARGE
23 AS WELL? I WASN'T SURE WHETHER THEY WERE ALL UNDER WHAT
24 RULE

25 MR. DAVIS WE'RE NOT GOING TO NEED EITHER ONE JUDGE

1 I'VE STOOD UP THERE YEARS AGO AND HAD A JUDGE LOOK AT ME
2 CROSS-EYED AND TELL ME DRUG CHARGES AREN'T A DISHONESTY
3 CRIME, SO I FIRST OF ALL THINK THAT'S-- IF NOT THEN I
4 THINK IT FALLS WITHIN THE TIME FRAME

5 THE COURT IF HE'S A WITNESS YOU CAN ASK HIM IF HE'S
6 BEEN CONVICTED OF-- OF COURSE YOU DON'T HAVE THE RECORDS
7 OF CONVICTION, I'M NOT SURE THAT YOU DO YOU GOING TO
8 HAVE TO LIVE WITH WHATEVER HIS ANSWER IS

9 MR DAVIS YES SIR

10 THE COURT NOW IF YOU BRING OUT THE FACT THEY KNEW
11 EACH OTHER OR WHATEVER IT WAS--

12 MR DAVIS I UNDERSTAND JUDGE I OPEN THE DOOR I
13 SUFFER THE CONSEQUENCES

14 THE COURT BUT NOW IF SHE DOESN'T ASK HIM A DIRECT
15 QUESTION OR LEAD HIM IN THAT I DON'T HAVE TO CORRECT IT
16 SOMEWHERE I GUESS

17 MR DAVIS YES SIR THANK YOU

18 THE COURT ALRIGHT BRING THE JURY IN

19 JURY IN (2 50 P M)

20 THE COURT ALRIGHT SOLICITOR CALL YOUR NEXT WITNESS

21 SOLICITOR WILSON STATE CALLS JEAN JACQUES

22 THE WITNESS IS SWORN (JEAN JACQUES)

23 JEAN JACQUES - EXAMINATION BY SOLICITOR WILSON

24 Q YOU PRONOUNCE YOUR NAME JACQUES?

25 A YES MA'AM

1 Q MR JACQUES HOW OLD ARE YOU?
2 A EIGHTEEN
3 Q HOW FAR DID YOU GO IN SCHOOL?
4 A NINTH GRADE
5 Q DID YOU DROP OUT?
6 A YES MA'AM
7 Q HAVE YOU BEEN IN TROUBLE SINCE YOU DROPPED OUT?
8 A YES MA'AM
9 Q DID YOU GET IN TROUBLE FOR DRUGS, ROBBERY?
10 A YES MA'AM
11 Q BEEN UP THE ROAD TO DJJ FOR THAT?
12 A YES MA'AM
13 Q DID YOU GROW UP IN THE CHARLESTON AREA?
14 A YES MA'AM
15 Q AND DID YOU KNOW THE DEFENDANT MR DUNHAM?
16 A YES
17 Q ARE YOU GOOD FRIENDS WITH HIM?
18 A UH HUH
19 Q WERE YOU GOOD FRIENDS WITH A GUY NAMED MICHAEL
20 JETER?
21 A NO
22 Q WEREN'T GOOD FRIENDS WITH HIM?
23 A NO
24 Q BEFORE ALL THIS HAPPENED, DID YOU KNOW A GUY NAMED
25 STEVEN JOHNSON?

1 A YES MA'AM

2 Q AND DID MR DUNHAM INTRODUCE YOU TO STEVEN?

3 A YES MA'AM

4 Q AND BEFORE ALL THIS HAPPENED YOU HAD KNOWN STEVEN

5 ABOUT TWO MONTHS, IS THAT RIGHT?

6 A YEAH AROUND THAT TIME

7 Q BUT YOU HAD KNOW MR DUNHAM A COUPLE YEARS BEFORE

8 THAT, HADN'T YOU?

9 A ABOUT A YEAR

10 Q OK BUT THE TIME OF DECEMBER, 2004, YOU KNEW THE

11 DEFENDANT FOR ABOUT A YEAR AND YOU HAD KNOWN STEVEN

12 JOHNSON FOR ABOUT TWO MONTHS, IS THAT RIGHT?

13 A YES MA'AM

14 Q LETS GO TO DECEMBER 13, 2004, LET ME ASK YOU THIS,

15 YOU'RE NOT HERE TODAY BECAUSE YOU WANT TO BE ARE

16 YOU?

17 A NO MA'AM

18 Q DID YOU GET A SUBPOENA TO BE HERE?

19 A YES MA'AM

20 Q YOU BEEN WAITING OUTSIDE TO TESTIFY?

21 A YES MA'AM

22 Q DO YOU REMEMBER BACK ON MONDAY, DECEMBER 13, 2004,

23 THE DAY BEFORE THE POLICE INTERVIEWED YOU ABOUT WHAT

24 YOU HAD BEEN DOING THAT DAY, DO YOU REMEMBER IT?

25 A I AIN'T SURE EXACTLY

1 Q EXCUSE ME?

2 A YEAH

3 Q I CAN'T UNDERSTAND YOU

4 A YEAH

5 Q YES?

6 **THE COURT** THE JURY HAS GOT TO HEAR WHAT YOU HAVE TO
7 SAY SIR SO YOU NEED TO SPEAK UP

8 A YEAH

9 Q TELL THE JURY WHAT YOU HAD DONE ON THE MORNING THAT
10 ALL OF THIS HAPPENED THE DAY OF THE SHOOTING?

11 A WHAT YOU MEAN WHAT I DID?

12 Q WHAT DID YOU DO WHEN YOU GOT UP, WHERE DID YOU GO?

13 A I WENT DOWN TO STEVEN JOHNSON HOUSE

14 Q WHY DID YOU GO THERE?

15 A TO GO GET HIM I GUESS

16 Q OK WAS HE THERE WHEN YOU GOT THERE?

17 A UM HUH

18 Q WAS HIS GIRLFRIEND THERE?

19 A I THINK SO

20 Q DID YOU STAY THERE THE FIRST TIME YOU WENT BY?

21 A NO

22 Q YOU DIDN'T? WHERE DID YOU GO?

23 A WE LEAVE

24 Q OK DID YOU LEAVE WITH HIM?

25 A YEAH

1 Q WHERE DID Y'ALL GO THE FIRST TIME YOU LEFT?
2 A GO WALK TO HIS GIRLFRIEND'S, I THINK GARRETT STREET
3 Q DID YOU WALK WITH THEM?
4 A YEAH
5 Q WHAT DID YOU DO AFTER YOU DROPPED HER OFF?
6 A WENT BACK TO HIS HOUSE
7 Q AND WHAT HAPPENED WHEN YOU GOT TO HIS HOUSE?
8 A CHILLED THERE FOR A LITTLE WHILE
9 Q WHO DID YOU TALK TO WHILE YOU WERE CHILLING?
10 A HUH?
11 Q WHO?
12 A STEVEN
13 Q DID YOU SEE HIS STEPDAD?
14 A NO
15 Q DO YOU KNOW THE CRIBBS? DID YOU SEE THEM OUT THERE?
16 A NO
17 Q YOU DIDN'T SEE THEM OUT THERE THE WHOLE DAY?
18 A NO
19 Q DO YOU REMEMBER TELLING THE POLICE THAT YOU SAW HIM?
20 A NO
21 Q ARE YOU SAYING YOU DIDN'T SEE HIM OR--
22 A I DON'T REMEMBER TELLING THE POLICE I SEE HIM
23 Q ARE YOU SAYING NOW THAT YOU DIDN'T SEE HIM OR YOU
24 DON'T REMEMBER SEEING HIM?
25 A I THEN SAY I DIDN'T SEE HIM, NOW I SAY I DON'T

1 REMEMBER SEEING HIM

2 Q YOU MAY OR MAY NOT HAVE SEEN HIM?

3 A NO I REMEMBER TELLING THE POLICE I DIDN'T SEE HIM

4 I DON'T REMEMBER TELLING THEM I DID SEE HIM

5 Q OK WHAT I'M ASKING YOU NOW IS DO YOU REMEMBER

6 WHETHER OR NOT YOU SAW HIM?

7 A I KNOW I AIN'T SEEN HIM

8 Q YOU KNOW YOU DIDN'T SEE HIM NOW?

9 A UH HUH

10 Q WHEN YOU WENT BACK TO THE HOUSE AFTER TAKING

11 STEVEN'S GIRLFRIEND TO HER PLACE, AFTER WALKING HER

12 THAT WAY, AND YOU CAME BACK TO STEVEN'S HOUSE, DID

13 HE TAKE A SHOWER?

14 A YEAH

15 Q AND WHAT DID YOU DO WHILE HE WAS TAKING A SHOWER?

16 A I WAS WAITING IN THE HOUSE

17 Q OK WHAT DID Y'ALL DO AFTER HE TOOK A SHOWER?

18 A WENT TO MARSHVIEW

19 Q HOW DID Y'ALL GET TO MARSHVIEW?

20 A WALKED

21 Q YOU DON'T REMEMBER HAVING A BIKE THAT DAY?

22 A YEAH ONE BIKE, I HAD A BIKE

23 Q AND HE HAD A BIKE TOO, DIDN'T HE?

24 A I DON'T REMEMBER I DON'T THINK SO, I DON'T KNOW

25 Q YOU DON'T KNOW WHETHER HE HAD A BIKE OR NOT?

1 A I CAN'T REMEMBER

2 Q WHEN YOU GOT TO MARSHVIEW, DID YOU SEE JUSTIN LEMON

3 THERE?

4 A YES

5 Q DID YOU SEE ANOTHER GUY BRANDON THERE?

6 A NO YEAH, HE BEEN THERE

7 Q AND AFTER YOU GOT THERE DID THE DEFENDANT AND JETER

8 COME DRIVING UP?

9 A YEAH

10 Q WHAT WERE THEY IN?

11 A A GRAY GRAND MARQUIS

12 Q AND WHO DID THAT CAR BELONG TO?

13 A MICHAEL DUNHAM

14 Q WHO WAS DRIVING, DO YOU REMEMBER?

15 A NO

16 Q WHAT HAPPENED AFTER THE DEFENDANT AND MR JETER CAME

17 OUT TO MARSHVIEW?

18 A WE STAYED FOR A LITTLE WHILE, AND STEVEN WANTED TO

19 TAKE THE CAR TO HIS HOUSE

20 Q STEVEN TOOK THE CAR TO HIS HOUSE?

21 A YEAH

22 Q DID HE TAKE ANYTHING WITH HIM?

23 A BIKE

24 Q HOW DID HE GET THE BIKE?

25 A HE PUT IT IN THE TRUNK

1 Q OK HOW LONG WAS STEVEN GONE?

2 A NOT THAT LONG

3 Q HE COME RIGHT BACK?

4 A YEAH

5 Q AT ANY POINT DID YOU HEAR MR DUNHAM TALKING ABOUT
6 WHY HE WANTED STEVEN TO TAKE THE BIKE TO-- I MEAN
7 TAKE THE CAR TO HIS HOUSE?

8 A NO

9 Q YOU NEVER HEARD HIM DISCUSS THAT?

10 A UH-UH

11 Q DID YOU EVER HEAR MR DUNHAM TELL ABOUT WHAT HAD
12 HAPPENED EARLIER IN THE DAY REGARDING A SHOOTING?

13 A NO

14 Q YOU NEVER HEARD HIM DISCUSS THAT?

15 A NO

16 Q NOW MR JACQUES YOU RECALL BEING INTERVIEWED BY THE
17 POLICE ON DECEMBER 14, 2004, DON'T YOU?

18 A YES MA'AM

19 Q AND I'M GOING TO SHOW YOU A COPY OF STATE'S EXHIBIT
20 51, DO YOU RECOGNIZE THAT? YES OR NO?

21 A YES MA'AM

22 Q AND IS THAT FIRST PAGE YOUR HANDWRITING?

23 A YES MA'AM

24 Q YOU WROTE THAT STATEMENT?

25 A YES MA'AM

1 Q DO YOU PEMEMBER TELLING THE POLICE ABOUT WHAT THE
2 DEFENDANT TOLD YOU AT MARSHVIEW?

3 A YES MA'AM

4 Q OK WHAT DID HE TELL YOU ABOUT WHERE THE CAR HAD
5 BEEN AND WHAT HE HAD DONE THAT DAY?

6 A I TELL THE POLICE THAT HE AIN'T TELL ME NOTHING
7 WHICH HE DIDN'T, BUT THEY TOLD ME WHEN I GET THERE
8 THAT SOMEBODY ALREADY TELL THEM THAT HE TOLD ME
9 SOMETHING, AND IF I WAS TO TELL THE OTHERWISE THAT I
10 COULD GET LOCKED UP FOR THIRTEEN OR SOME MUCH YEARS
11 FOR ACCESSORY AFTER THE FACT OR WHATEVER IT WAS, SO
12 I JUST TELL HIM WHAT HE WANTED TO HEAR SO I WOULDN'T
13 GET IN NO TROUBLE FOR IT

14 Q OK DO YOU RECALL TELLING THEM THAT MR DUNHAM
15 DIDN'T TELL YOU WHAT HAD HAPPENED EARLIER IN THE
16 DAY, BUT HE HAD TOLD STEVEN JOHNSON WHAT HAD
17 HAPPENED AND YOU OVERHEARD IT?

18 A NO I REMEMBER TELLING THAT BECAUSE THAT WAS WHAT
19 HE WANTED TO HEAR

20 Q SO YOU DON'T DENY TELLING THEM THAT YOU OVERHEARD
21 THIS DEFENDANT TELL STEVEN JOHNSON THAT THE CAR WAS
22 HOT?

23 A NO MA'AM

24 Q YOU TOLD THE POLICE THAT?

25 A YES MA'AM

1 Q YOU DON'T DENY THAT?

2 A NO MA'AM

3 Q OK YOU ALSO TOLD THE POLICE THAT HE ASKED STEVEN

4 JOHNSON TO TAKE THE CAR TO HIS HOUSE, DIDN'T YOU

5 TELL THE POLICE THAT?

6 A YES MA'AM

7 Q AND YOU ALSO TOLD THE POLICE DID YOU NOT, THAT THE

8 DEFENDANT HAD TOLD YOU THAT JETER HAD BEEN IN A

9 FIGHT?

10 A YES MA'AM

11 Q OK YOU DON'T DENY TELLING THE POLICE THAT?

12 A UH UH

13 Q AND THAT JETER ACTUALLY SAID HE GOT THE BETTER OF

14 THE GUY HE BEAT THE GUY UP?

15 A YES MA'AM

16 Q BEAT HIM WITH A BOARD?

17 A NO, I DON'T REMEMBER SAYING THAT

18 Q YOU DON'T REMEMBER SAYING ANYTHING ABOUT THE BOARD?

19 A UH UH

20 Q YOU ALSO TOLD THEM THAT JETER CALLED DUNHAM FOR

21 HELP?

22 A YES MA'AM

23 Q AND THAT JETER CALLED AND ASKED THAT HE BRING A GUN?

24 A NO, I DON'T REMEMBER SAYING THAT NEITHER

25 Q EXCUSE ME?

1 A I DON'T REMEMBER SAYING THAT NEITHER
2 Q ALRIGHT, DO YOU REMEMBER TELLING THEM THAT JETER
3 CALLED DUNHAM TO HELP HIM COME GANG THE GUY?
4 A NO MA'AM
5 Q YOU DON'T REMEMBER SAYING THAT?
6 A THEY HELPED HIM FIGHT
7 Q THEY HELPED FIGHT HIM?
8 A YEAH
9 Q OK, NOT GANG HIM BUT FIGHT HIM?
10 A YEAH
11 Q AND YOU TOLD THE POLICE THAT DUNHAM SAID THAT HE DID
12 THAT, THAT HE DROVE THE CAR OVER THERE AND MET
13 JETER?
14 A YES MA'AM
15 Q AND HE TOLD HIM THAT DUNHAM SHOT?
16 A NO, I--
17 Q THAT DUNHAM FIRED A GUN?
18 A NO MA'AM
19 Q YOU DIDN'T TELL THEM THAT?
20 A UH UH
21 Q YOU DID NOT TELL THEM THAT DO YOU RECALL TELLING
22 THEM THAT ON DECEMBER 14, 2004, OFFICER BOYD AND
23 ANDERSON THAT DUNHAM TOLD Y'ALL TO WATCH THE NEWS
24 THAT IT WOULD BE ON THE NEWS?
25 A NO MA'AM

1 Q YOU DIDN'T TELL THEM THAT?

2 A YEAH, I TELL THEM THAT

3 Q OK BUT DUNHAM TOLD YOU TO WATCH THE NEWS DIDN'T
4 HE?

5 A NO

6 Q HE NEVER TOLD YOU THAT?

7 A NO

8 Q DO YOU REMEMBER MEETING WITH INVESTIGATOR KEITH HARE
9 WITH OUR OFFICE AND ME ON JANUARY 26 OF THIS YEAR?

10 A YES MA'AM

11 Q YOU MET WITH US FOR ABOUT AN HOUR, IS THAT ABOUT
12 RIGHT?

13 A YES

14 Q DO YOU REMEMBER GOING THROUGH YOUR STATEMENT AND
15 TELLING US THAT PARTS OF IT YOU DIDN'T REMEMBER, BUT
16 PARTS OF IT YOU DID?

17 A YES MA'AM

18 Q AND DO YOU REMEMBER US GOING THROUGH THE PARTS THAT
19 WERE ACCURATE AND THE PARTS THAT WEREN'T ACCURATE,
20 DO YOU REMEMBER THAT?

21 A YEAH

22 Q AND DO YOU REMEMBER TELLING US MORE THAN ONE TIME
23 THAT DUNHAM SAID THAT JETER SAID HE HAD BEEN IN A
24 FIGHT, AND THAT JETER BEAT THE GUY UP, BUT THE GUY
25 CAME AFTER HIM WITH A BOARD THAT'S WHAT YOU TOLD

1 KEITH HARE?

2 A YEAH

3 Q THAT DUNHAM SAID?

4 A YEAH

5 Q YOU ALSO TOLD HIM THAT JETER CALLED DUNHAM FOR HELP,
6 AND THAT DUNHAM WENT TO JETER, AND THAT THEY WERE
7 GOING TO FIGHT THE GUY?

8 A UM HUH

9 Q YOU DON'T DENY TELLING US THAT AND YOU TOLD US
10 THAT YOU KNEW SOMETHING HAD HAPPENED WITH THE CAR,
11 AND THAT'S WHY STEVEN WENT TO TAKE IT TO HIS PLACE,
12 ISN'T THAT RIGHT?

13 A UM HUH

14 Q AND DUNHAM TOLD YOU ALL THIS AT MARSHVIEW
15 APARTMENTS?

16 A ALL OF WHAT?

17 Q ALL OF WHAT I JUST SAID

18 A UM HUH

19 Q HE TOLD YOU THAT SO WHEN YOU WERE TALKING WITH
20 INVESTIGATOR HARE ON JANUARY 26, YOU WERE TELLING
21 HIM WHAT DUNHAM TOLD YOU?

22 A UM HUH

23 Q NOT WHAT THE POLICE TOLD YOU?

24 A NO

25 Q OK SO LET'S GET THIS STRAIGHT FORGET ABOUT

1 ANYTHING THAT THESE POLICE OFFICERS TOLD YOU OK
2 DUNHAM TOLD YOU THAT JETER HAD GOTTEN IN A FIGHT,
3 YES OR NO?

4 A YES

5 Q DUNHAM TOLD YOU THAT JETER SAID HE GOT THE BEST OF
6 THE GUY?

7 A YES

8 Q DUNHAM TOLD YOU THAT JETER TOLD HIM TO COME HELP HIM
9 FIGHT THE GUY?

10 A YES

11 Q IS THAT TRUE OR FALSE?

12 A YEAH

13 Q OK, AND DUNHAM SAID THAT HE DID THAT?

14 A YEAH

15 Q DUNHAM TOLD Y'ALL TO WATCH THE NEWS TO SEE WHAT
16 HAPPENED?

17 A YEAH

18 Q DUNHAM ASKED STEVEN TO GO PUT THE CAR AT HIS HOUSE
19 BECAUSE IT WAS HOT?

20 A YEAH

21 Q AND DUNHAM IS YOUR FRIEND ISN'T HE?

22 A YEAH

23 Q NO FURTHER QUESTIONS YOUR HONOR

24 CROSS EXAMINATION BY MR DAVIS - JEAN JACQUES

25 Q MR JACQUES, YOU GO BY JJ RIGHT?

1 A YEAH

2 Q SPEAK UP SO THE JURY CAN HEAR YOU LET'S GET RIGHT

3 TO THE GIST OF IT YOU WENT AROUND AND AROUND THERE

4 WITH THE SOLICITOR ABOUT WHAT YOU SAID AND WHAT YOU

5 DIDN'T SAY AND WHAT WAS TRUE AND WHAT WASN'T TRUE?

6 A YEAH

7 Q SIMPLY THIS, THE STATEMENT YOU GAVE TO POLICE BACK

8 IN DECEMBER 13, 2004, I WANT TO TALK ABOUT THAT

9 STATEMENT WHEN WAS IT THAT THEY TALKED TO YOU, DO

10 YOU REMEMBER WHAT TIME OF DAY IT WAS?

11 A WHEN THE DETECTIVES COME?

12 Q YES

13 A IT HAD TO BE LIKE THREE OR FOUR IN THE MORNING

14 Q THREE OR FOUR IN THE MORNING THAT'S ACTUALLY ON

15 THE FOURTEENTH, THE NEXT MORNING, RIGHT?

16 A YEAH

17 Q AND WHERE DID THEY COME AND GET YOU FROM?

18 A MY HOUSE

19 Q AND WHERE IS THAT?

20 A ON ATTAWAY

21 Q ATTAWAY STREET THAT'S IN NORTH CHARLESTON, RIGHT?

22 A UH HUH

23 Q WAS THERE ONE COP CAR OR SEVERAL COP CARS?

24 A TWO

25 Q TWO COP CARS THEY COME GET YOU, THEY PUT YOU IN

(1) ONE OF THE CARS AND THEY TAKE YOU BACK TO THE
2 SHERIFF'S DEPARTMENT, RIGHT?
3 A YEAH
4 Q WHEN YOU GET BACK TO THE SHERIFF'S DEPARTMENT THEY
5 PUT YOU IN AN INTERROGATION ROOM, DON'T THEY?
6 A YEAH
7 Q SMALL LITILE ROOM?
8 A RIGHT
9 Q AND THERE IS COPS, THERE IS DETECTIVES COMING IN AND
10 OUT OF THERE TALKING TO YOU, RIGHT?
11 A YEAH
12 Q AND THEY ARE TRYING TO FIND OUT WHAT YOU KNOW,
13 RIGHT?
14 A YEAH
15 Q AND YOU START TALKING TO THEM AND THEY START TELLING
16 YOU THAT WHAT YOU ARE SAYING ISN'T RIGHT?
17 A UM HUH
18 Q ISN'T THAT RIGHT?
19 A YEAH
20 Q AND THE REASON THEY KNOW YOU ARE LYING IS THEY TEIL
21 YOU WHAT OTHER PEOPLE ARE TELLING THEM, RIGHT?
22 A YEAH
23 Q AND SO THEY KEEP SAYING THAT CAN'T BE TRUE BECAUSE
24 WE'VE HEARD FROM SOME OTHER PEOPLE SOMETHING
(25) DIFFERENT, RIGHT?

1

A YEAH

2

Q AND THEY TELL YOU WHAT THESE OTHER PEOPLE ARE

3

SAYING?

4

A YEAH

5

Q AND THESE OTHER PEOPLE WERE TELLING THE POLICE THAT

6

MICHAEL HAD DONE THIS, RIGHT?

7

A YEAH

8

Q THEY TOLD YOU THAT, THE POLICE TOLD YOU THAT, RIGHT?

9

A YEAH

10

Q AND TOLD YOU THAT OTHER PEOPLE SAID YOU WERE AT

11

MARSHVIEW THAT NIGHT, RIGHT?

12

A DO WHAT?

13

Q OTHER PEOPLE WERE SAYING YOU WERE OUT AT MARSHVIEW?

14

A YEAH YEAH

15

Q AND YOU WERE THERE AND THAT MR JUSTIN LEMON WAS

16

THERE, RIGHT?

17

A YEAH

18

Q AND MR JOHNSON WAS THERE, RIGHT?

19

A YEAH

20

Q AND MR DUNHAM WAS THERE?

21

A YEAH

22

Q AND THEY TOLD YOU MR GENE WAS THERE?

23

A YEAH

24

Q AND THESE OTHER PEOPLE WERE HEARING HIM ADMIT TO

25

THIS, YOU HAD TO HAVE HEARD IT TOO, RIGHT?

1 A THAT WAS WHAT THEY WAS SAYING

2 Q THAT'S WHAT THEY TOLD YOU?

3 A YEAH

4 Q DID THEY LET YOU TELL THEM WHAT YOU HAD TO SAY?

5 A NO, BECAUSE THEY SAYING THAT I BEEN LYING AND THAT

6 IF I WAS TO SAY THAT I COULD GET THIRTEEN YEARS

7 THEY SAID THAT'S WHY STEVEN JOHNSON GETTING LOCKED

8 UP FOR NOT BEING HONEST WITH THEM

9 Q YOU REMEMBER THAT?

10 A THAT WHAT HE TELL ME

11 Q HE'S A FRIEND OF YOURS AS WELL?

12 A UM HUH

13 Q AND YOU KNOW --- Y'ALL LIVE BASICALLY NEAR EACH

14 OTHER, RIGHT?

15 A YEAH

16 Q YOU WERE RIDING A BIKE THAT DAY AT SOME POINT?

17 A UM HUH

18 Q DID YOU HAVE A CAR?

19 A NO

20 Q MIKE HAD A CAR, RIGHT?

21 A YEAH

22 Q YOU KNOW WHAT IT LOOKS LIKE, THAT BIG FOUR DOOR

23 SILVER CAR, RIGHT?

24 A UH HUH

25 Q BIG DENT ON THE SIDE?

1 A YEAH

2 Q YES?

3 A YEAH

4 Q HAVE YOU EVER DRIVEN THAT CAR, HE LET YOU USE THAT
5 CAR? HAS HE LET MR JOHNSON USE THE CAR?

6 A I CAN'T REMEMBER I THINK SO

7 Q HOW ABOUT MR LEMON?

8 A UH UH

9 Q HE HAD NOT LET MR LEMON YOU ARE NOT SURE ABOUT
10 MR JOHNSON, WHETHER HE HAD EVER USED IT BEFORE?

11 A NOT SURE

12 Q WELL YOU KNEW HE HAD LET OTHER PEOPLE USE IT BEFORE,
13 YOU KNOW VICKI?

14 A YEAH

15 Q HE LET HER DRIVE THAT CAR BEFORE?

16 A I AIN'T SURE

17 Q YOU'RE NOT SURE BUT THERE HAS BEEN TIMES WHEN
18 PEOPLE COME ASK HIM CAN I BORROW YOUR CAR, AND HE
19 SAYS SURE YOU CAN USE THE CAR, RIGHT?

20 A YEAH

21 Q AND NOW WHEN YOU ARE BEING INTERROGATED AT THREE IN
22 THE MORNING, TAKEN OUT OF YOUR HOUSE DOWN TO THE
23 SHERIFF'S DEPARTMENT, HOW MANY DETECTIVES CAME IN
24 AND TALKED TO YOU, HOW MANY DIFFERENT ONES?

25 A A FEW OF THEM I AIN'T KNOW HOW MUCH EXACTLY, BUT I

1 KNOW A FEW DIFFERENT ONES WAS IN AND OUT
 2 Q MORE THAN A COUPLE RIGHT?
 3 A YEAH
 4 Q A FEW OF THEM COMING IN AND OUT HOW LONG DID THEY
 5 KEEP YOU THERE AT THE SHERIFF'S DEPARTMENT BEFORE
 6 THEY LET YOU GO?
 7 A HOUR OR TWO
 8 Q OK DURING THAT TIME DID THEY EVER LET YOU GO TO
 9 THE BATHROOM, GET A DRINK WATER, OR ANYTHING?
 10 A NO- THEY LET ME GET SOME WATER
 11 Q THEY LET YOU GET WATER OK WERE YOU TIRED?
 12 A YEAH
 13 Q HAD YOU BEEN TO SLEEP AT ALL THAT NIGHT?
 14 A I HAD JUST WENT TO SLEEP WHEN THEY COME AND WAKE ME
 15 UP.
 16 Q BUT AT SOME POINT THEY FINALLY LET YOU GO HOME,
 17 RIGHT? DID THEY DRIVE YOU BACK HOME?
 18 A YEAH
 19 Q AND THIS WAS AFTER ABOUT AN HOUR OR TWO OF TALKING
 20 TO YOU?
 21 A UM HUH
 22 Q NOW, WAS IT ASKING YOU QUESTIONS OR TELLING YOU WHAT
 23 THEY KNEW?
 24 A TELLING ME WHAT THEY KNOW
 25 Q- AND AFTER YOU WROTE THIS STATEMENT WHAT THEY HAD

1 BEEN TELLING YOU, THAT'S WHEN THEY LET YOU GO?

2 A UM HUH

3 Q RIGHT?

4 A YEAH

5 Q AND JUST-- I DON'T WANT TO BE UNCERTAIN ABOUT IT,

6 ANYTHING THAT WAS GIVEN IN THAT STATEMENT BACK THEN

7 THAT'S JUST BECAUSE THAT S WHAT YOU WERE HEARING

8 RIGHT, FROM THE POLICE?

9 A UM HUH

10 Q NOT FROM WHAT YOU REMEMBERED?

11 A UM HUH

12 Q NOW, LET'S JUST MENTION WHEN YOU WERE COMING IN

13 GETTING READY TO TESTIFY IN FRONT OF THIS JURY AND

14 YOU WERE WITH THE SOLICITORS HOW MANY TIMES DID

15 YOU COME IN AND MEET WITH THEM?

16 A ONCE

17 Q ONE TIME HOW LONG DID YOU TALK TO THEM?

18 A ABOUT AN HOUR LIKE SHE SAID

19 Q AND WAS THAT DOWN HERE AT THEIR OFFICE?

20 A YEAH

21 Q THEY TAKE YOU BACK AND THEY SWIPE THE CARD AND OPEN

22 UP THE DOOR AND GET BACK IN THE BACK?

23 A YEAH

24 Q AND WAS IT JUST MS WILSON AND MR HARE BACK THERE?

25 A UM HUH

(1)

1 Q AND THEY WENT OVER YOUR STATEMENT AS WELL?

2 A YEAH

3 Q OK DID YOU TELL THEM THAT PARTS WEREN'T TRUE?

4 A I TRY, YES

5 Q SO THEY WERE SAYING SIMILAR TYPE THINGS, IT CAN'T BE
6 THAT WAY, RIGHT?

7 A YEAH

8 Q AND AFTER YOU WENT THROUGH AND GAVE THEM THAT NOW
9 SOME OF IT IS TRUE, THAT'S WHEN THEY LET YOU BACK
10 OUT, RIGHT?

11 A YEAH

12 Q OK NOW, WHEN YOU WERE AT THE SHERIFF'S DEPARTMENT
13 DID THEY READ YOUR MIRANDA WARNINGS ABOUT YOU DIDN'T
14 HAVE TO TALK TO THEM AND ALL THAT, DID THEY EVER SAY
15 THAT?

16 A NO

17 Q THEY DID NOT?

18 A NO

19 Q DID THEY EVER SWEAR YOU IN UNDER OATH?

20 A NO

21 Q WHAT ABOUT WHEN YOU WENT TO TALK TO THE SOLICITOR'S
22 OFFICE, DID THEY EVER READ YOU THOSE WORDS, YOU
23 DIDN'T HAVE TO TALK TO THEM, GET A LAWYER AND THAT
24 STUFF?

(25)

25 A. UH UH

1 Q DID THEY PUT YOU UNDER OATH?

2 A UH UH

3 Q YOUR UNDER OATH TODAY THOUGH, YOU KNOW THAT?

4 A UM HUH

5 Q YOU DON'T KNOW WHAT HAPPENED ON THAT SHOOTING ON
6 WEST MONTAGUE DO YOU?

7 A UH UH

8 Q OK JUDGE ONE MOMENT MR JACQUES NO OTHER
9 QUESTIONS THANK YOU

10 REDIRECT BY SOLICITOR WILSON - JEAN JACQUES

11 Q MR JACQUES YOU DON'T KNOW WHAT HAPPENED ON MONTAGUE
12 AVENUE DURING THAT SHOOTING DO YOU?

13 A UH UH

14 Q YOU WEREN'T ON MONTAGUE AVENUE WERE YOU?

15 A UH UH

16 Q YOU WERE WITH STEVEN JOHNSON ALL THAT AFTERNOON
17 WEREN'T YOU?

18 A UM HUH

19 Q YOU WERE AT HIS HOUSE, WEREN'T YOU?

20 A YEAH

21 Q YOU WALKED WITH HIM TO MARSHVIEW?

22 A YEAH

23 Q AND THEN YOU SAW HIM LEAVE, PUT A BIKE IN HIS TRUNK,
24 GO AWAY FOR JUST A LITTLE WHILE AND COME STRAIGHT
25 BACK?

1 A YEAH

2 Q HE WASN'T GONE FOR JUST FIVE MINUTES WAS HE?

3 A I AIN'T KNOW THE TIME EXACTLY, BUT IT AIN'T BEEN
4 THAT LONG, NO

5 Q AND BEFORE HE LEFT THIS DEFENDANT AND MICHAEL JETER
6 CAME RIDING UP IN THAT CAR DIDN'T THEY?

7 A YEAH

8 Q NO QUESTION ABOUT THAT THE TWO OF THEM WERE
9 TOGETHER, AND IT WAS AFTER THAT POINT THAT THIS
10 DEFENDANT ASKED STEVEN JOHNSON TO TAKE THE CAR HOME?

11 A UM HUH

12 Q AND THAT'S WHAT HE DID?

13 A YEAH

14 Q STEVEN JOHNSON DID THAT? YOU HADN'T BEEN WITH
15 STEVEN JOHNSON OVER AT MONTAGUE?

16 A UH UH

17 Q YOU HADN'T BEEN WITH STEVEN JOHNSON IN THAT CAR?

18 A UH UH

19 Q ALRIGHT, NOW AGAIN, REGARDING WHAT YOU HEARD THIS
20 DEFENDANT TELL STEVEN JOHNSON OR YOU OR JUSTIN LEMON
21 OUT AT MARSHVIEW, LET'S BE CLEAR ON WHAT YOU HEARD,
22 OK? OK?

23 A YEAH

24 Q YOU HEARD HIM SAY THAT JETER HAD BEEN IN A FIGHT?

25 A YEAH

1 Q AND THAT JETER CALLED HIM TO COME PICK HIM UP?

2 A YEAH

3 Q AND THAT JETER ASKED HIM TO COME HELP HIM FIGHT THE
4 GUY?

5 A YEAH

6 Q YOU DIDN'T HEAR HIM SAY ANYTHING ABOUT A GUN?

7 A UH UH

8 Q BUT HE SAID THAT HE WENT TO JETER?

9 A YEAH

10 Q AND THAT AFTER THAT YOU SAID THAT YOU KNEW SOMETHING
11 WAS WRONG WITH THE CAR, SOMETHING WAS HOT WITH THE
12 CAR?

13 A YEAH

14 Q OK THAT'S NOT WHAT DETECTIVE BOYD OR ANY OTHER
15 POLICE OFFICER TOLD YOU IS IT?

16 A UH UH

17 Q THAT'S WHAT HE TOLD YOU?

18 A NO, THAT'S WHAT I KNEW MYSELF

19 Q CAUSE YOU HEARD IT ALL HAPPEN?

20 A NO JUST BY THE WAY THEY BEEN ACTING

21 Q OK TELL THE JURY HOW HE WAS ACTING AND HOW MICHAEL
22 JETER WAS ACTING WHEN THEY CAME UP TO MARSHVIEW?

23 A LIKE THEY WAS HIGH OR SOMETHING I GUESS I DON'T
24 KNOW

25 Q WHAT DID THEY DO WITH THEIR CLOTHES?

1 A NOTHING

2 Q DO YOU REMEMBER THE DEFENDANT CHANGING CLOTHES AT

3 ANY POINT?

4 A UH UH

5 Q DO YOU REMEMBER JETER LEAVING AT ANY POINT?

6 A WHEN HE WENT HOME

7 Q OK HOW DID HE GO HOME?

8 A IN A CAB

9 Q SO DUNHAM DIDN'T TAKE HIM HOME IN THE CAR?

10 A UH UH

11 Q AND STEVEN JOHNSON DIDN'T GIVE HIM A RIDE HOME?

12 A UH UH

13 Q A CAB CAME AND GOT HIM THAT'S ALL I HAVE YOUR

14 HONOR

15 MR DAVIS BEG THE COURT'S INDULGENCE

16 RECROSS BY RODNEY DAVIS - JEAN JACQUES

17 Q MR JACQUES WHEN YOU WENT DOWN AT THREE IN THE

18 MORNING TO THE SHERIFF'S DEPARTMENT YOU WERE SCARED

19 ABOUT WHAT WAS GOING ON, WEREN'T YOU?

20 A UM HUH

21 Q WHILE THERE WHEN THEY TOLD YOU COULD BE ARRESTED AND

22 CHARGED JUST LIKE MR JOHNSON HAD BEEN, YOU WERE

23 MORE SCARED WEREN'T YOU?

24 A YEAH

25 Q YOU'RE STILL SCARED IF YOU DON'T SAY THE RIGHT THING

1 YOU ARE GONNA GET IN TROUBLE?

(2) A YEAH

3 Q THANK YOU THAT'S ALL I HAVE

4 THE COURT THANK YOU YOU MAY COME DOWN MR

5 JACQUES

6 SOLICITOR WILSON YOUR HONOR IF HE COULD REMAIN

7 THE COURT YOU NEED TO WAIT JUST GO ON AND HAVE A

8 SEAT

9 SOLICITOR WILSON STATE CALLS CHRIS WHITE

10 THE WITNESS IS SWORN - CHRIS WHITE

11 EXAMINATION OF CHRIS WHITE BY SOLICITOR WILSON

12 Q HOW YOU DOING MR WHITE?

13 A HOW YOU DOING?

14 Q I'M ALRIGHT I APPRECIATE YOU BEING HERE

15 A NO PROBLEM

16 Q HOW OLD ARE YOU?

17 A FORTY

18 Q AND HOW FAR DID YOU GO IN SCHOOL MR WHITE?

19 A TWELVETH GRADE

20 Q YOU FINISHED HIGH SCHOOL?

21 A YES

22 Q ARE YOU WORKING NOW?

23 A YES

24 Q WHAT KIND OF WORK DO YOU DO?

25 A BRICK MASON

1 Q AND WHO DO YOU DO THAT FOR?
2 A DANNY BROWN
3 Q OK WHERE DO Y'ALL WORK MOSTLY?
4 A RIGHT NOW WE ARE IN
5 Q OK, YOU BEEN DOING THAT FOR A WHILE?
6 A YES BEFORE THAT PIPE WORK BEFORE THAT LAYING
7 PIPE, PIPEWORK
8 Q OK MR WHITE HOW DO YOU KNOW STEVEN JOHNSON?
9 A MY STEPSON
10 Q OK, AND AT ONE POINT DID YOU LIVE IN THE HOUSE WITH
11 HIM ON RUTH DRIVE?
12 A YES I DID
13 Q AND DO YOU RECALL DECEMBER 13, 2004, THE DAY THE
14 POLICE CAME OUT THERE AND SEARCHED THE CAR THE WHOLE
15 DAY?
16 A NEVER FORGET IT
17 Q AND YOU ACTUALLY WERE AT HOME WHEN THE POLICE CAME,
18 WERE YOU NOT?
19 A YES
20 Q IF YOU COULD JUST TELL THE JURY WHAT YOU RECALL
21 ABOUT THAT DAY WHERE YOU HAD BEEN, WHAT YOU DID,
22 THE TIMES YOU REMEMBER
23 A OK AT THE TIME I WAS WORKING FOR LANDMARK
24 CONSTRUCTION WE WAS WORKING IN MT PLEASANT, AND I
25 CAME HOME MAYBE ABOUT THREE, MAYBE THREE THIRTY, AND

1 I SEEN MY STEPSON STEVEN AND HIS GIRLFRIEND WALKING
2 UP THE STREET SO WHEN I GOT THERE I DON'T REMEMBER
3 EXACTLY WHO I ASKED ABOUT, WE CALL EACH OTHER
4 LITTLEMAN, I SAY WHERE LITTLEMAN GOING THEY SAY HE
5 GOING TO WALK SHAWN HOME

6 Q WAIT A MINUTE, YOU AND STEVEN CALL EACH OTHER
7 LITTLEMAN?

8 A YEAH, THAT'S WHAT WE CALL EACH OTHER

9 Q OK

10 A SO THEY SAY HE'S GONE TO WALK SHAWN HOME WHICH IS
11 DOWN THE STREET SO I WENT IN THE HOUSE AND GOT
12 SOME TOOLS AND I STARTED WORKING ON THE DOG HOUSES
13 AND STUFF LIKE THAT, AND ABOUT THAT TIME STEVEN CAME
14 BACK TO THE HOUSE

15 Q FROM WALKING HIS GIRLFRIEND?

16 A YES YES

17 Q OK

18 A AND HE LEFT AGAIN AND HIM AND JJ CAME BACK ON
19 BICYCLES, AND JJ SAID- I MEAN STEVEN SAID HE'S GOING
20 TO TAKE A SHOWER SO JJ HE STAYED OUT THERE WITH ME
21 IN THE BACKYARD, YOU KNOW WE TALKED THEN STEVEN
22 CAME BACK OUT AND THEY GOT ON THE BICYCLES AND WENT
23 UP THE STREET

24 Q DID BOTH OF THEM HAVE BIKES?

25 A YES THAT'S WHAT I SAW SO I WAS WORKING AND

1 MESSING AROUND IN THE YARD AND THE NEXT THING YOU
2 KNOW STEVEN CAME BACK IN MICHAEL'S CAR I BEEN
3 KNOWING HIM COMING DOWN THERE WITH STEVEN, I DIDN'T
4 ANYTHING ELSE ABOUT IT YOU KNOW HE GOT OUT THE
5 CAR, I SAID WHAT'S UP MAN HE SAID MICHAEL TOLD ME
6 TO PARK HIS CAR HERE HE'S GOING TO COME BACK AND GET
7 IT LATER SO I DIDN'T THINK NOTHING ABOUT IT, JUST
8 KEPT DOING WHAT I HAD TO DO, AND THEN NEXT THING YOU
9 KNOW, TEN OR FIFTEEN MINUTES LATER, POLICE
10 EVERYWHERE, YOU KNOW, SO

11 Q ALRIGHT LET'S BACK UP A LITTLE BIT NOW YOU SAID
12 YOU GOT OFF WORK AROUND WHAT TIME?

13 A I GUESS IT WAS LIKE THREE OR THREE THIRTY, IT WAS
14 EARLY BECAUSE WE USUALLY WORK TO LIKE FIVE THIRTY
15 THAT DAY WE WAS OFF EARLY

16 Q SO THREE OR THREE THIRTY YOU'RE GETTING OFF WORK,
17 AND AT THAT POINT WHEN YOU ARE GETTING OFF YOU ARE
18 PASSING STEVEN AND HIS GIRLFRIEND?

19 A YES I TURNED OFF OF NORTH RHETT, COMING DOWN TO
20 RUTH DRIVE, TO MY RESIDENCE

21 Q AT SOME POINT LATER HE COMES BACK WITHOUT THE
22 GIRLFRIEND?

23 A YES HE WALKED HER HOME

24 Q HE TAKES A SHOWER?

25 A NO, HE DIDN'T TAKE A SHOWER THEN

1 Q STRAIGHTEN ME OUT THEN

2 A HE LEFT AGAIN AND WENT UP THE STREET

3 Q WITH WHO?

4 A BY HIMSELF

5 Q BY HIMSELF?

6 A YEAH, HIM AND JJ COME BACK

7 Q OK

8 A ON BICYCLES

9 Q ALRIGHT JUST SO WE GOT, FROM THREE TO THREE THIRTY

10 HE COMES HOME FROM WALKING THE GIRLFRIEND, HE LEAVES

11 AGAIN, THAT TIME ON FOOT OR ON HIS BIKE?

12 A I'M NOT SURE, I THINK HE LEFT ON FOOT

13 Q OK HE COMES BACK WITH JJ?

14 A YEAH, IT WAS SO QUICK I THOUGHT HE MET JJ UP THE

15 STREET THEY CAME BACK SO QUICK

16 Q ALRIGHT, SO HE COMES BACK WITH JJ, HE TAKES A

17 SHOWER?

18 A YEAH

19 Q DO THEY TALK WITH YOU?

20 A NO I WAS JUST SITTING IN THE YARD AND JJ WAS

21 TALKING TO ME I WAS LETTING HIM KNOW THAT I'M NOT

22 REALLY A CARPENTER AND STUFF LIKE THAT, BUT YOU KNOW

23 I'M DOING WHAT I CAN DO, AND STUFF LIKE THAT, AND BY

24 THAT TIME STEVEN GOT THROUGH TAKING A SHOWER AND HE

25 CAME OUT THE HOUSE, THEY GOT ON THEIR BICYCLES AND

1 LEFT

2 Q HE AND JJ?

3 A YES

4 Q AND THE NEXT TIME YOU SEE STEVEN HE'S IN MICHAEL'S

5 CAR?

6 A YES

7 Q OK, AND I BELIEVE YOU TOLD THE POLICE IT WAS AROUND

8 FIVE FIFTEEN, FIVE TWENTY, OR SOMETHING LIKE THAT

9 WHEN HE CAME BACK WITH HIS CAR?

10 A I WOULD SAY SO YES

11 Q BUT IT WAS BEFORE DARK?

12 A OH YEAH, IT WAS RIGHT AT DARK YEAH, IT WAS JUST

13 BEFORE DARK, YES

14 Q DID HE SEEM LIKE ANYTHING WAS WRONG AT THAT POINT?

15 A NO HE DIDN'T, LIKE I SAID WHEN HE PULLED UP I LOOKED

16 AT HIM, I SAID WHAT'S UP LITTLEMAN, HE SAID WELL

17 MICHAEL ASKED ME TO PARK HIS CAR HERE HE'S GOING TO

18 COME BACK AND GET IT LATER SO I SAID OK I HOLLERED

19 AND HE LEFT

20 Q WERE THERE A

21 A THEY CAME OUT THE WOODS LIKE BABE RUTH

22 Q ALRIGHT, AND SO WHEN YOU WERE FEELING LIKE --- DID

23 YOU TELL THEM EVERYTHING YOU JUST TOLD THE JURY?

24 A DID I TELL THEM EVERYTHING, YES

25 Q YOU TOLD THEM THE WHOLE STORY?

1 A YES, I TOLD THEM THE WHOLE STORY

2 Q THE FIRST TIME YOU TALKED TO THEM?

3 A NOT THE FIRST TIME, NO I DIDN'T I WAS SCARED THE

4 FIRST TIME, I GUESS YOU CAN CALL IT PROTECTING LOVED

5 ONES, I DIDN'T KNOW WHAT HE HAD DONE, SO I TOLD THEM

6 A DIFFERENT STORY, YES I DID

7 Q TELL THE JURY WHAT--

8 A I TOLD THEM THAT I DIDN'T KNOW WHOSE CAR IT WAS, AND

9 I WENT TO USE THE BATHROOM AND I CAME OUT THE

10 BATHROOM, I SEEN THREE GUYS GOING DOWN THE ROAD

11 Q WAS THAT TRUE?

12 A NO IT WASN'T IT WASN'T

13 Q WHEN DID YOU TELL THEM THE TRUTH ABOUT WHAT

14 HAPPENED?

15 A LATER ON, AFTER I HAD FOUND OUT, AFTER THE OFFICER

16 HAD TOLD ME, IN THE YARD AND EVERYTHING, WHEN THEY

17 WERE SEARCHING THE HOUSE WHAT HAD HAPPENED

18 Q WHAT DO YOU MEAN WHAT HAD HAPPENED?

19 A THAT THE CAR HAD BEEN INVOLVED IN A DRIVE-BY

20 SHOOTING

21 Q UH HUH

22 A I SAID OH MY GOD THEY CAME BACK AND GOT ME ABOUT

23 ELEVEN O'CLOCK THAT NIGHT, TOOK ME BACK DOWN TO THE

24 STATION AND HE TOLD ME, HE SAID MR WHITE I FELT

25 LIKE WHEN I WAS AT YOUR HOUSE THAT YOU WASN'T GIVING

1 ME THE RIGHT AND TRUE STATEMENT HE SAID I'M
2 LEAVING OUT, I'M GOING TO TALK TO MY SUPERIOR, WHEN
3 I GET BACK I'D LIKE FOR YOU TO GIVE ME A TRUE
4 STATEMENT SO I WROTE DOWN MY STATEMENT AND TOLD
5 THEM EXACTLY WHAT HAPPENED

6 Q YOU WROTE IT IN YOUR HANDWRITING?

7 A YES I DID

8 Q DID ANY ONE OF THE OFFICERS TELL YOU WHAT YOU SHOULD
9 SAY OR WHAT--

10 A NO

11 Q I MEAN OTHER THAN THE TRUTH?

12 A NO

13 Q DID THEY TELL YOU WHAT

14 A NO

15 Q DID THEY GIVE YOU STEVEN'S STATEMENT TO REVIEW OR
16 JJ'S STATEMENT TO REVIEW OR ANYTHING LIKE THAT?

17 A WELL ACTUALLY WHAT HE SAID, I WAS IN THE OFFICE AND
18 HE CAME BACK IN AND HE SAID MR WHITE WE HAVE
19 ALREADY TALKED TO STEVEN AND HE HAD TOLD US THE TRUE
20 STATEMENT THAT YOU DID SEE HIM BRING THE CAR HOME,
21 SO YOU KNOW, WE NEED YOU TO TELL

22 Q WHAT HAPPENED?

23 A YES

24 Q DID THE OFFICERS TELL YOU ANYTHING ELSE THAT STEVEN
25 HAD TOLD HIM?

1 A NO HE DIDN'T

2 Q ANY DETAILS ABOUT WHAT HAPPENED AT MARSHVIEW?

3 A NO

4 Q HE JUST TOLD YOU THAT STEVEN ACKNOWLEDGED THAT YOU
5 SAW HIM IN THE CAR?

6 A YES

7 Q AFTER HE TOLD YOU THAT WHAT DID YOU DO?

8 A I WROTE DOWN THE TRUE STATEMENT

9 Q THAT'S ALL I HAVE

10 CROSS EXAMINATION OF CHRIS WHITE BY RODNEY DAVIS

11 Q MR WHITE HOW YOU DOING?

12 A ALRIGHT, HOW YOU DOING?

13 Q I'M ALRIGHT THERE IS NO DOUBT IN YOUR MIND NOW
14 ABOUT WHAT HAPPENED AND WHAT DIDN'T HAPPEN, RIGHT?

15 A YES

16 Q AND YOU'VE TOLD THAT TO THE JURY TODAY?

17 A YES

18 Q WHAT REALLY HAPPENED BUT YOU DID ADMIT JUST A
19 MOMENT AGO THAT ORIGINALLY YOU WEREN'T COMPLETELY
20 FORTHCOMING WITH THE POLICE?

21 A NOT THE FIRST TIME, NO

22 Q OK I'D LIKE TO WALK YOU THROUGH THIS FIRST LET
23 ME GET A FEW THINGS OUT OF THE WAY JUST A LITTLE
24 BIT THAT DAY, BEFORE THAT DAY DID YOU KNOW
25 MICHAEL?

A YES

Q YOU KNEW THAT HE AND YOUR STEPSON STEVEN WERE
BUDDIES?

A YEAH

Q AND THEY HANG AROUND TOGETHER?

A YEAH

Q AND YOU'VE SEEN BOTH OF THEM IN THAT CAR BEFORE?

A YEAH

Q STEVEN HAS USED THAT CAR BEFORE HASN'T HE?

A NO, I HAVEN'T NEVER SEEN HIM DROVE IT

Q YOU'VE NEVER SEEN HIM DRIVE IT?

A I HAVE NEVER SEEN STEVEN DRIVE IT

Q YOU'VE SEEN HIM IN THE CAR AND THEN AFTER YOUR SON
DROVE UP THAT DAY AND PARKED MICHAEL'S CAR THERE IN
THE FAR SIDE OF YOUR DRIVEWAY IT WAS JUST RIGHT
AFTER THAT THAT ALL THOSE POLICE ROLLED UP RIGHT?

A NO, THAT WAS BEFORE, HE BROUGHT THE CAR THERE BEFORE
THE POLICE CAME

Q I'M SORRY IF I MISSTATED HE PARKS THE CAR AND SOON
THEREAFTER HERE COMES THE POLICE

A YES

Q HE HAD RIDDEN OFF ON A BIKE?

A UM HUH

Q AND IT WAS JUST HIM IN THE CAR?

A YES

- Q AND THE POLICE ROLLED UP WITH THEIR GUNS DRAWN?
2 A YEAH
3 Q SEVERAL CARS?
4 A SEVERAL CARS
5 Q OK, IT WAS LIKE BABE RUTH, YOU WAS SCARED YOU DIDN'T
6 KNOW WHAT WAS GOING ON?
7 A YES
8 Q WHEN THEY GOT THERE THAT TIME THEY WERE CONCERNED
9 ABOUT THE CAR?
10 A YES
11 Q AND THEY WANTED TO LOOK IN THE HOUSE AND SEE IF THEY
12 COULD FIND ANYBODY, RIGHT?
13 A NO
14 Q DID THEY LOOK IN THE HOUSE AT THAT POINT?
15 A DID THEY LOOK IN THE HOUSE?
16 Q RIGHT
17 A NO
18 Q THEY WERE JUST CONCERNED ABOUT THE CAR AT THAT
19 POINT, RIGHT?
20 A YES SIR
21 Q AND DO YOU REMEMBER IF IT WAS OFFICER KINSEY OF
22 NORTH CHARLESTON OR MAYBE OFFICER CATLETT, DETECTIVE
23 CATLETT WITH THE SHERIFF'S OFFICE, OR DO YOU RECALL?
24 A MAYBE SO I DON'T KNOW WHO IT WAS
25 Q AND THAT WAS ABOUT FIVE FIFTY-THREE, ABOUT SIX

1 O'CLOCK, A LITTLE BIT AFTER DARK?

2 A WHEN THEY CAME?

3 Q YES, WHEN THE POLICE CAME?

4 A IT WAS GETTING DARK IT WAS GETTING DARK

5 Q OK THAT WOULDN'T SURPRISE YOU, WOULD IT?

6 A I DON'T ACTUALLY KNOW THE TIME, BUT IT WOULDN'T

7 SURPRISE ME IT WAS JUST GETTING DARK, YEAH, WHEN

8 THEY PULLED UP

9 Q THE QUESTION, IT WOULDN'T SURPRISE YOU IF THE POLICE

10 REPORT SAID 5 53 P M ? OK NOW WHEN THEY WERE

11 FIRST TALKING TO YOU OUT THERE AT THE HOUSE ON RUTH

12 DRIVE YOU ORIGINALLY SAID THAT IT WAS YOUR STEPSON

13 MR JOHNSON AND TWO OTHER BLACK MALES WERE IN THE

14 CAR ORIGINALLY?

15 A NOT ME, I DIDN'T SAY THAT

16 Q OK TWO OTHER BLACK MALES-- I'M SORRY YOU SAW ON THE

17 SCENE, I DIDN T- SAW YOUR SON AND SAW TWO OTHER

18 BLACK MALES DOWN THE STREET, IS THAT RIGHT?

19 A NO

20 Q YOU DIDN'T TELL THE OFFICER THAT YOUR STEPSON AND

21 TWO OTHER MALES, ONE WEARING A BLUE HOODED

22 SWEATSHIRT, AND ONE WEARING A RED WINDBREAKER TYPE

23 JACKET, WERE WALKING DOWN THE STREET WHEN YOU SAW

24 THEM?

25 A NO I DON'T REMEMBER SAYING MY STEPSON

1 Q OK THE OTHER PART OF THAT-

2 THE BAILIFF JUDGE I THINK ONE OF THE JURORS IS
3 GETTING ILL

4 THE COURT YOU WANT TO STEP OUTSIDE ALRIGHT THE
5 GIRL IN THE FRONT APPEARS TO BE GETTING SICK OR
6 SOMETHING I'LL CHECK AND SEE WHAT'S GOING ON

7 JURY OUT (3 31 P M)

8 BACK ON (3 41 P M)

9 THE COURT SHE'S GOING TO BE ABLE TO MAKE IT, SHE
10 SAID

11 JURY IN (3 42 P M)

12 Q ALRIGHT MR WHITE I'M NOT TRYING TO CONFUSE YOU
13 ABOUT THIS, BUT YOU MENTIONED A COUPLE OF PEOPLE
14 WALKING DOWN WHEN YOU WERE FIRST TALKED TO BY POLICE
15 AT YOUR HOUSE HELP ME, WHEN DID YOU MENTION-

16 A THE FIRST STATEMENT THAT I GAVE THAT WAS UNTRUE I
17 TOLD THEM I USED THE BATHROOM, I CAME OUT THE HOUSE
18 AND I SEEN THREE GUYS WALKING DOWN THE STREET
19 THAT'S WHAT I SAID

20 Q OK YOU'RE TALKING ABOUT FIRST STATEMENT, THAT
21 WOULD BE AFTER THE POLICE PICKED YOU UP AND DROVE
22 YOU SOMEWHERE ON RIVERS?

23 A NO THAT WAS ELEVEN O'CLOCK THAT NIGHT

24 Q OK

25 A THAT WAS THE SECOND STATEMENT

1 Q SO WE ARE CLEAR, THERE IS ONE STATEMENT THAT YOU
2 GAVE OUT THAT YOU TALKED TO SOMEBODY, RIGHT?

3 A YES

4 Q AND THE OTHER WAS LATER THAT NIGHT YOU WROTE IT
5 DOWN?

6 A YES

7 Q OK ALRIGHT, AND ON THE FIRST ONE THERE AT THE
8 HOUSE THAT WASN'T COMPLETELY RIGHT?

9 A NO

10 Q AND THE SECOND ONE WOULD HAVE BEEN WRITTEN, AND
11 THAT'S THE FIRST TIME AFTER YOU TALKED TO SOME
12 DETECTIVES, RIGHT?

13 A YES

14 Q AND ON THAT IT WAS ABOUT ELEVEN O'CLOCK, THEY CAME
15 BACK AND GOT YOU AND TOOK YOU SOMEPLACE ON RIVERS
16 YOU THINK? OK PUT YOU IN A LITTLE ROOM?

17 A UM HUH

18 Q AND WITH YOU AND DETECTIVES COMING IN AND OUT TO
19 TALK WITH YOU?

20 A NO

21 Q JUST THAT ONE HAD A CONVERSATION WITH YOU?

22 A FIRST IT WAS TWO THEN ONE LEFT OUT, AND THEN THE
23 OTHER ONE HE TALKED TO ME AND THEN HE LEFT

24 Q AND THAT'S WHEN HE MADE THE COMMENT THAT WE HAVE
25 ALREADY TALKED TO STEVEN AND HE SAID YOU SAW HIM IN

1 THE CAR?

2 A YES

3 Q THINK ABOUT IT AND I'M GONNA TALK TO SOMEBODY, THEN

4 WE'LL TALK ABOUT WHAT YOU HAVE TO SAY, SOMETHING TO

5 THAT EFFECT, RIGHT?

6 A HE SAID WE ALREADY HAVE TALKED TO STEVEN AND HE HAD

7 CONFESSED THAT YOU SEEN HIM DRIVE THE CAR HE SAID

8 I'M GOING TO TALK TO MY SUPERIOR, WHEN I COME BACK I

9 WOULD LIKE FOR YOU TO THEN WROTE THE TRUE STATEMENT

10 Q SO THE LAST ONE IS WHEN YOU TALKED ABOUT 4 P M

11 STEVEN PULLS UP IN THE CAR, HE WAS THE ONLY PERSON

12 IN THE CAR, RIGHT?

13 A YES

14 Q AND IN THAT ONE YOU ADMIT TO THE POLICE THAT BEFORE

15 YOU HADN'T BEEN TRUTHFUL RIGHT? I NEED YOUR—

16 A EXCUSE ME?

17 Q I NEED YOUR ANSWER OUT LOUD

18 A REPEAT THE QUESTION PLEASE

19 Q IT WAS IN THAT FINAL STATEMENT WHERE YOU TOLD THEM

20 THAT WHAT YOU SAID BEFORE WASN'T RIGHT?

21 A THE FIRST STATEMENT?

22 Q RIGHT

23 A YES

24 Q OK BUT IT TOOK UP UNTIL THAT TALK WITH THE

25 — DETECTIVE TO GET ALL THAT STRAIGHTENED UP I THINK

1 THE DETECTIVE TOLD YOU THAT HE UNDERSTOOD, THAT HE
2 HAD KIDS TOO?

3 A YES

4 Q RIGHT?

5 A UM HUH

6 Q AND YOU SAID MAYBE OVERPROTECTIVE LOVE OR SOMETHING
7 TO THAT EFFECT?

8 A UM HUH

9 Q SO IT WAS AFTER THAT THAT HE CAME BACK IN AND YOU
10 WROTE OUT THAT STATEMENT NOW JUST BEFORE THAT
11 HAPPENED THOUGH, YOU HAD SAID- YOU WERE A LITTLE
12 MORE DETAILED INCORRECTLY, BUT YOU WERE A LITTLE
13 MORE DETAILED TWO BLACK MALES ABOUT FORTY OR FIFTY
14 AWAY FROM THE STOP SIGN, THAT'S WHAT YOU TOLD THE
15 POLICE AT ONE POINT, RIGHT?

16 A I DON'T REMEMBER THAT

17 Q YOU DON'T REMEMBER GIVING THAT DESCRIPTION ALONG
18 WITH THE BLUE HOODIE?

19 A I REMEMBER THAT, BUT I DON'T REMEMBER ABOUT THE
20 FORTY OR FIFTY FEET

21 Q AND DO YOU REMEMBER TELLING ONE HAD A RED
22 WINDBREAKER WITH A HOOD AND JEANS?

23 A YES I REMEMBER THAT

24 Q OK NOW AT SOME POINT THE POLICE DID SEARCH YOUR
25 HOUSE, RIGHT?

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1 A OH YES SIR

2 Q LONG TIME, ABOUT FIVE HOURS WASN'T IT?

3 A UM HUH

4 Q IN FACT, THEY HAD TO WAIT AND GO GET A WARRANT TO

5 COME BACK AND SEARCH, ISN'T THAT RIGHT?

6 A YES THEY SEARCHED IT ANYWAY AND GOT A WARRANT

7 THEY COME BACK AND SEARCHED IT AGAIN

8 Q OK SO THEY SEARCHED YOUR HOUSE SOME, THEN THEY

9 STOP, GO GET A WARRANT AND SEARCH- ALL TOGETHER IT'S

10 ABOUT FIVE HOURS IN YOUR HOUSE YOUR FAMILY

11 OUTSIDE?

12 A YES

13 Q YOU NEVER BEEN THOUGH ANYTHING LIKE THIS BEFORE?

14 A OH NO

15 Q DIDN'T KNOW WHAT WAS GOING ON?

16 A NO I DIDN'T

17 Q YOU WERE SCARED AND THE REASON YOU WEREN'T

18 COMPLETELY FORTHCOMING EARLY ON WAS YOU WERE SCARED

19 AND YOU THOUGHT STEVEN HAD DONE SOMETHING?

20 A YES

21 Q DIDN'T KNOW WHAT HE HAD DONE?

22 A YEAH I AIN'T KNOW IF HE HAD DONE SOMETHING OR

23 DIDN'T DO NOTHING, I JUST-

24 Q AND HOW LONG WAS IT, YOU SAY, HOW LONG WAS IT THAT

25 YOU WERE OVER THERE AT THAT PLACE ON RIVERS AT THE

1 POLICE STATION?

2 A I WOULD SAY ABOUT HOUR, MAYBE HOUR AND A HALF
3 SOMETHING LIKE THAT

4 Q AND ONCE YOU FINALLY GAVE THEM THAT STATEMENT THAT
5 YOU TESTIFIED TO THE JURY HERE TODAY THEY LET YOU GO
6 HOME?

7 A YES THEY DID

8 Q ONCE YOU GOT HOME THEY ALREADY DONE WITH ALL THE
9 SEARCHING AND ALL THAT?

10 A YES

11 Q MR WHITE JUST ONE SECOND PLEASE SIR MR WHITE
12 THANK YOU VERY MUCH NO OTHER QUESTIONS

13 REDIRECT BY SOLICITOR WILSON - CHRIS WHITE

14 Q MR WHITE HOW DID YOU KNOW WHAT TO TELL THE POLICE
15 ABOUT SEEING JJ AND ABOUT SEEING STEVEN AND SHANNA?

16 A I DIDN'T KNOW WHAT TO SAY BECAUSE THAT'S WHAT
17 HAPPENED THAT'S WHAT I SEEN WHEN I GOT THERE, YES

18 Q OK DID ANYBODY TELL YOU TO SAY THAT?

19 A NO

20 Q DID ANYBODY TELL YOU THAT STEVEN HAD TALKED ABOUT
21 THAT?

22 A NO

23 Q THE ONLY THING THEY TOLD YOU WAS THAT STEVEN HAD
24 ACKNOWLEDGED YOU SAW HIM IN THE CAR?

25 A YES

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1 Q AFTER THAT YOU TOLD THEM WHAT YOU KNEW?
2 A YES
3 Q AND WHEN YOU TOLD THEM THAT IT WAS ABOUT FIVE
4 FIFTEEN, FIVE TWENTY OR SO WHEN STEVEN CAME BACK
5 WITH THE CAR, HE HAD ONLY BEEN GONE FOR LIKE TWENTY
6 MINUTES?
7 A YES, IF THAT MUCH
8 Q WHEN HE AND JJ LEFT HE WAS GONE ABOUT TWENTY MINUTES
9 BEFORE HE CAME BACK WITH THE CAR?
10 A YES, I WOULD SAY
11 Q THAT'S ALL I HAVE
12 THE COURT THANK YOU MR WHITE
13 SOLICITOR WILSON DETECTIVE SKAGGS
14 THE WITNESS IS SWORN (DETECTIVE GARY SKAGGS)
15 EXAMINATION BY SOLICITOR WILSON - GARY SKAGGS
16 Q DETECTIVE SKAGGS WHERE ARE YOU EMPLOYED?
17 A I AM CURRENTLY EMPLOYED WITH THE DORCHESTER COUNTY
18 SHERIFF S OFFICE DETECTIVE DIVISION
19 Q HOW LONG HAVE YOU BEEN WITH DORCHESTER?
20 A APPROXIMATELY SIX MONTHS
21 Q AND WHERE WERE YOU BEFORE YOU WENT TO DORCHESTER?
22 A CHARLESTON COUNTY SHERIFF S OFFICE DETECTIVE
23 DIVISION
24 Q OK, NOW AT SOME POINT DID YOU BECOME INVOLVED IN THE
25 INVESTIGATION OF THE MURDER OF ANTHONY GAMBRELL

1 WHICH TOOK PLACE OVER ON MONTAGUE?

2 A YES MA'AM I DID

3 Q AND AT SOME POINT ON DECEMBER 13, 2004, DID YOU HAVE
4 OCCASION TO GO OVER TO RUTH DRIVE?

5 A I DID

6 Q AND DID YOU MEET STEVEN JOHNSON THERE?

7 A I DID

8 Q AND AFTER YOU MET HIM THERE WHERE DID YOU TAKE HIM?

9 A WE TOOK HIM BACK TO THE SHERIFF'S OFFICE ON
10 PINEHAVEN DRIVE JUST OFF OF RIVERS AVENUE

11 Q DO YOU RECALL ABOUT WHAT TIME THAT WAS?

12 A NO MA'AM I DON'T I GOT NOTIFIED OF THE HOMICIDE
13 APPROXIMATELY FIVE O'CLOCK

14 Q AND IT WAS SOMETIME--

15 A SOMETIME AFTER THAT

16 Q AN HOUR OR TWO?

17 A AN HOUR TO TWO HOURS AFTER THAT, YES MA'AM

18 Q AND YOU TOOK HIM OVER AFTER YOU MET HIM ON RUTH,
19 TOOK HIM WHERE?

20 A BACK TO THE SHERIFF S OFFICE ON PINEHAVEN DRIVE

21 Q AND WHAT WAS THE PURPOSE OF THAT?

22 A TO INTERVIEW HIM TO GET A STATEMENT ABOUT THE
23 INCIDENT, AND DO A GSR KIT

24 Q OK TELL THE JURY WHAT A GSR KIT IS?

25 A A GSR KIT IS AN ACRONYM THAT WE USE IN THE BUSINESS

1 IT'S A GUNSHOT RESIDUE KIT

2 Q HOW DO YOU DO THE KIT OR PERFORM THE TEST?

3 A WELL IN THE KIT THERE IS SPECIFIC INSTRUCTIONS THAT

4 HAVE TO BE FOLLOWED EXACTLY YOU TAKE THE

5 INSTRUCTIONS OUT THERE IS PLASTIC GLOVES IN THERE

6 THAT HAVE TO BE USED THERE IS VIALS THAT EACH ONE

7 HAVE FOR SPECIFIC LOCATIONS ON THE HANDS

8 Q WELL TELL THE JURY WHAT YOU ARE EVEN DOING TO THE

9 HANDS

10 A WELL WHAT I'M DOING TO THE HANDS IS I'M CHECKING FOR

11 RESIDUE BECAUSE WHEN YOU FIRE A GUN THE BLOWBACK OR

12 THE POWDERS AND FRAGMENTS FROM THE BULLETS WILL COME

13 BACK ON YOUR HANDS, AND WHAT WE ARE DOING WITH THE

14 GUNSHOT RESIDUE IS TO CHECK AND SEE IF THE HAND HAS

15 FIRED A GUN RECENTLY, WITHIN AT LEAST SIX HOURS

16 Q SO YOU TAKE BASICALLY SOME SORT OF SWAB FROM—

17 A WE TAKE SWABS AND IN THE KIT THERE WAS SOME— THERE

18 IS A STICKY SUBSTANCE THAT YOU PULL OUT THE VIAL AND

19 YOU PAT THEM ON THE HANDS, ON THE BACK OF THE HANDS,

20 ON THE PALM OF THE HANDS

21 Q AND THESE GUNSHOT RESIDUE KITS THEY HAVE TO BE— THE

22 TESTS HAVE TO BE PERFORMED ON SUSPECTS ON CERTAIN

23 TIME DON'T THEY?

24 A YES MA'AM WITHIN SIX HOURS

25 Q OK, AND THIS TEST ON STEVEN JOHNSON THAT YOU

1 PERFORMED ON HIM WAS DONE WITHIN THAT SIX HOURS?

2 A YES MA'AM

3 Q I WANT TO SHOW YOU STATE'S EXHIBIT 36 IS THIS THE

4 KIT THAT YOU USED ON STEVEN JOHNSON?

5 A IT IS

6 Q AND AFTER YOU TOOK THOSE SAMPLES FROM STEVEN

7 JOHNSON'S HANDS WHAT DID YOU DO WITH THEM?

8 A I IMMEDIATELY- THEY WENT INTO EVIDENCE

9 Q DID YOU SEAL THE BACK OF IT?

10 A I DID THIS EVIDENCE SEAL TAPE IS THERE YOU'LL

11 SEE THAT MY INITIALS ARE ON THE TAPE WHERE IT WAS

12 SEALED

13 Q OK, AND DID YOU FILL OUT THE FRONT OF THAT?

14 A I DID I DID

15 Q AND THEN ONCE YOU TAKE THE SAMPLES FROM THE PERSON,

16 IN THIS CASE STEVEN JOHNSON, YOU LOG IT INTO

17 EVIDENCE WHAT HAPPENS IN THE REGULAR COURSE?

18 A IN THE REGULAR COURSE-

19 Q OF AN INVESTIGATION?

20 A OF AN INVESTIGATION- WE SEND THEM OFF TO SLED FOR

21 THE ANALYSIS

22 Q YOUR HONOR AT THIS TIME WE OFFER STATE'S EXHIBIT 36

23 THAT'S ALL I HAVE

24 CROSS EXAMINATION OF GARY SKAGGS BY MR DAVIS

25 Q DETECTIVE SKAGGS HOW YOU DOING SIR?

1 A FINE

2 Q THAT WASN'T THE ONLY ROLE YOU PLAYED IN THIS

3 INVESTIGATION WAS IT?

4 A NO SIR

5 Q YOU ALSO TOOK THE STATEMENT OF STEVEN JOHNSON,

6 RIGHT?

7 A I DID

8 Q AND HE'S THE ONE THAT ULTIMATELY GETS- WELL HE'S THE

9 FIRST ONE ARRESTED IN THIS CASE ISN'T HE?

10 A I DON'T KNOW THE SEQUENCE OF EVENTS OF WHO WAS

11 ARRESTED OR THE TIME LINE SIR

12 Q WELL HE WAS INTERVIEWED BY YOU A LITTLE BIT AFTER

13 EIGHT O'CLOCK, IS THAT ABOUT RIGHT?

14 A YES SIR A LITTLE BIT AFTER EIGHT MYSELF AND

15 DETECTIVE ANDERSON

16 Q AND WAS DETECTIVE BUNCE INVOLVED IN THAT AS WELL?

17 A DETECTIVE BUNCE WAS THERE

18 Q WE'VE HEARD THE TESTIMONY IN THIS COURT- BUNCH OF

19 DETECTIVES ON THIS CASE IT WAS HOMICIDE-

20 A EVERYONE COMES OUT THERE IS NO DIFFERENCE IN THIS

21 DEPARTMENT OR IN OTHER DEPARTMENTS THERE HAS BEEN

22 HOMICIDES IN DORCHESTER COUNTY WHERE THE WHOLE

23 DETECTIVE DIVISION GOES OUT IT'S NOT JUST ONE

24 PERSON, IT'S THE WHOLE DIVISION GOES OUT AND IT'S A

25 TEAM EFFORT

THIRD JUDICIAL CIRCUIT

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1 Q AND SO THAT INCLUDES ANY INTERROGATION OF WITNESSES
 2 AT THE SHERIFF'S DEPARTMENT?
 3 A YES SIR
 4 Q SO WHILE YOUR SIGNATURE MAY BE ON THE STATEMENT HERE
 5 ALONG WITH DETECTIVE ANDERSON'S IT WAS LIKELY THAT
 6 DETECTIVE BUNCE AND OTHERS WERE INVOLVED IN THAT AS
 7 WELL?
 8 A I COULD'VE HAVE VERY WELL HAVE BEEN, BUT MYSELF AND
 9 DETECTIVE ANDERSON WERE PROBABLY THE TWO THAT WERE
 10 MOST INSTRUMENTAL IN THE INTERVIEW
 11 Q AND MR JOHNSON IS THE FIRST OF THE FIVE SUSPECTS
 12 THAT'S INTERVIEWED?
 13 A I DON'T REMEMBER THE EXACT TIME LINE OR EXACTLY WHEN
 14 THE NUMBER OF PEOPLE WERE IN AND OUT
 15 Q OK WELL NOW THERE WAS A BRIEFING AT 9 30 WASN'T
 16 THERE ON THE 13TH? WAS IT SIR?
 17 A WITH THE DETECTIVES?
 18 Q YES SIR
 19 A YES SIR THERE WAS SEVERAL, IN FACT I BELIEVE THERE
 20 WAS TWO MEETINGS THAT NIGHT
 21 Q OK, SO MR JOHNSON IS TAKEN FROM HIS RESIDENCE ON
 22 RUTH DRIVE, BROUGHT OVER TO THE SHERIFF'S DEPARTMENT
 23 EIGHT O'CLOCK OR A LITTLE BIT AFTER THAT, HE'S
 24 INTERROGATED, AND THERE IS A BRIEFING ABOUT NINE
 25 THIRTY ABOUT WHAT'S GOING ON? --

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1 A RIGHT

2 Q OK, SO ISN'T HE THE FIRST ONE THAT'S INTERVIEWED,
3 YOU DON'T RECALL?

4 A I DON'T RECALL SIR

5 Q AND YOU ALSO DON'T RECALL AT THAT POINT WHETHER HE
6 ABOUT AN HOUR LATER WAS THE FIRST ONE ARRESTED?

7 A SIR, IT WAS PROBABLY ABOUT AN HOUR LATER THAT HE WAS
8 ARRESTED FROM THE TIME HE WAS INTERVIEWED, FROM THE
9 INITIAL INTERVIEW WITH MYSELF AND DETECTIVE
10 ANDERSON THEN HE HAD A SUBSEQUENT INTERVIEW WHERE
11 YOU HEARD THE SECOND STATEMENT FOR DETECTIVE
12 ANDERSON AND ANOTHER DETECTIVE, BELIEVE IT OR NOT I
13 CAN'T READ HIS SIGNATURE

14 Q I UNDERSTAND NOW, ONE OF THE SUSPECTS THAT WAS
15 ALSO INTERROGATED THERE WAS MY CLIENT MR DUNHAM?

16 A YES SIR

17 Q HE CAME TO THE SHERIFF'S DEPARTMENT?

18 A RIGHT

19 Q WITH HIS MOTHER AND WITH A GUY NAMED BRANDON
20 CUTTINO? OR DO YOU RECALL?

21 A I DON'T RECALL SIR

22 Q YOU DON'T RECALL ANY CRUISER HAVING TO GO PICK HIM
23 UP AND BRING HIM IN?

24 A NO SIR, I DON'T RECALL THAT

25 Q AND HE CAME AROUND ELEVEN O'CLOCK, ELEVEN THIRTY,

1 SOMETHING LIKE THAT?

2 A I DON'T RECALL THAT SIR

3 Q OK

4 A I WASN'T INVOLVED IN THE INTERVIEW WITH MR DUNHAM

5 Q WELL AT THE BRIEFING AT NINE THIRTY WEREN'T YOU TOLD

6 ABOUT ALL THE INFORMATION YOU GUYS HAD GATHERED AT

7 THAT POINT?

8 A YES SIR WE HAD- I MEAN IT WAS A CONGLOMERATION OF

9 ALL THE INFORMATION THAT EVERYONE HAD GATHERED, AND

10 PEOPLE WERE GIVEN SPECIFIC JOBS TO DO AFTER THAT

11 Q I UNDERSTAND AND SO- BUT YOU DO KNOW THAT SOME

12 TIME LATE THAT NIGHT MY CLIENT CAME IN-

13 A YES SIR YES SIR

14 Q HE GAVE A STATEMENT?

15 A YES SIR

16 Q AND HE TOLD YOU OR HE TOLD THE SHERIFF'S DEPARTMENT

17 WHERE HE WAS

18 SOLICITOR WILSON OBJECTION

19 A I CAN'T TESTIFY TO THAT

20 THE COURT I SUSTAIN THE OBJECTION

21 Q YOU DON'T KNOW WHAT HE SAID?

22 A NO SIR I DON T

23 Q AFTER HE WAS IN THOUGH, ONE OF THE THINGS YOU DID

24 ABOUT ONE THIRTY IN THE MORNING, YOU WENT SEARCHING

25 FOR A GUY NAMED JJ, IS THAT RIGHT? JAMES JACQUES,

1 YOU REMEMBER LOOKING FOR HIM OVER ON BRANCH AVENUE?

2 A WE DID MYSELF AND SEVERAL OTHER DETECTIVES,
3 DETECTIVE BUNCE DID GO OUT LOOKING FOR FOLKS, WE
4 EVEN WENT OVER TO—

5 Q I DIDN'T ASK YOU ABOUT THAT RIGHT NOW—

6 A YES SIR

7 Q YOU WENT LOOKING AT ONE THIRTY OVER AT BRANCH AVENUE
8 FOR JJ? YOU WERE PERSONALLY INVOLVED IN THAT,
9 RIGHT?

10 A YES SIR

11 Q OK THEN ABOUT, A LITTLE BIT AFTER 2 A M YOU WERE
12 PERSONALLY INVOLVED IN LOOKING FOR MR JETER WHO WAS
13 FOUND ON BON AIRE DRIVE, BON AIRE STREET, RIGHT?

14 A YES SIR HE WAS

15 Q AND YOU WERE PERSONALLY INVOLVED IN BRINGING HIM
16 BACK TO THE SHERIFF'S DEPARTMENT?

17 A YES SIR

18 Q DETECTIVE SKAGGS GIVE ME JUST A SECOND PLEASE
19 THAT'S ALL THE QUESTIONS I HAVE

20 **SOLICITOR WILSON STATE CALLS INVESTIGATOR KJELLMAN**

21 **THE WITNESS IS SWORN (INVESTIGATOR K KJELLMAN)**

22 **EXAMINATION OF K KJELLMAN BY SOLICITOR BURNEY**

23 Q INVESTIGATOR KJELLMAN WOULD YOU TELL THE JURY WHERE
24 YOU WORK AND WHAT YOU DO?

25 A I WORK FOR CHARLESTON COUNTY SHERIFF'S OFFICE IN

1 THERE TECHNICAL SERVICES UNIT

2 Q AND TELL THE JURY WHAT A TECHNICAL SERVICES UNIT IS?

3 A WE PROCESS CRIME SCENES WE RESPOND TO CRIME

4 SCENES WE DO THE FINGER PRINTING, COLLECTING OF

5 EVIDENCE, PROCESSING OF EVIDENCE THAT COMES BACK

6 FROM THOSE CRIME SCENES

7 Q AND WOULD YOU TELL THE JURY HOW YOU BECAME INVOLVED

8 IN THIS CASE?

9 A I WAS CALLED OUT TO MONTAGUE-- WEST MONTAGUE FOR THE

10 INCIDENT ONCE I RESPONDED THERE I HAVE TO RESPOND

11 DOWN TO MUSC TO PHOTOGRAPH THE VICTIM'S INJURIES

12 Q AND WHERE DID YOU GO AT MUSC?

13 A TO THE MORGUE

14 Q AND WHAT DID YOU DO WHILE YOU WERE AT THE MORGUE?

15 A MET WITH DETECTIVE BOYD, GOT A PHOTOGRAPH OF THE

16 VICTIM'S INJURY, PHOTOGRAPHS OF HIS TATTOOS

17 Q DID YOU DO ANYTHING ELSE-- YOU MENTIONED ONE OF YOUR

18 JOBS IS COLLECTING EVIDENCE, DID YOU COLLECT

19 ANYTHING ON THAT DAY?

20 A I BELIEVE I COLLECTED THE VICTIM S CLOTHING

21 Q AND WAS THAT ALSO ON THE THIRTEENTH?

22 A YES

23 Q OK COURT'S INDULGENCE AND DID YOU HAVE OCCASION

24 TO RETURN TO MUSC?

25 A THE FOLLOWING DAY I RETURNED

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- 1 Q THAT WAS ON DECEMBER 14?
- 2 A YES
- 3 Q AND WHAT DID YOU DO ON THAT DAY?
- 4 A ATTEND THE AUTOPSY
- 5 Q AND DID YOU COLLECT ANY EVIDENCE ON THAT PARTICULAR
- 6 DAY?
- 7 A I COLLECTED A BULLET FRAGMENT, A PROJECTILE
- 8 FINGERNAIL CLIPPINGS, HAIR CLIPPINGS, AND VIAL OF
- 9 BLOOD COLLECTED FROM THE VICTIM
- 10 Q I'M GOING TO SHOW YOU WHAT'S MARKED AS STATE'S
- 11 EXHIBIT 38, FOR IDENTIFICATION 47, DO YOU RECOGNIZE
- 12 THESE EXHIBITS?
- 13 A YES
- 14 Q AND WHAT IS STATE'S EXHIBIT 38?
- 15 A IT'S A GUNSHOT RESIDUE COLLECTION KIT
- 16 Q AND THAT WAS COLLECTED ON WHO?
- 17 A IT WAS DONE ON THE VICTIM
- 18 Q OK, ANTHONY GAMBRELL, AND DID YOU PERFORM THIS GSR,
- 19 THIS IS WHAT WE JUST HEARD ABOUT THE GSR KIT, AND
- 20 DID YOU COLLECT THE EVIDENCE FROM THE VICTIM'S
- 21 HANDS?
- 22 A NO, I DIDN'T PERFORM THE KIT
- 23 Q OK, WHO PERFORMED THE KIT?
- 24 A DETECTIVE WOOD
- 25 Q AND WERE YOU PRESENT WHEN THAT WAS DONE?

1 A NO I WASN'T

2 Q WHEN WAS THAT DONE?

3 A THAT WAS DONE PRIOR TO MY ARRIVAL AT THE MORGUE

4 Q ON THE THIRTEENTH?

5 A YES

6 Q AND WHEN YOU COLLECTED THAT GSR KIT WAS IT SEALED?

7 A YES

8 Q AND ALL OF IT HAD BEEN FILLED OUT DOES IT LOOK IN

9 THE SAME CONDITION AS IT WAS WHEN YOU RECEIVED IT?

10 A YES

11 Q AND HOW ABOUT STATE'S EXHIBIT 47?

12 A THAT'S THE FRAGMENTS, THE PROJECTILE

13 Q DO YOU RECALL WHAT THEY ARE?

14 A YES, THE PROJECTILE THAT WAS COLLECTED FROM THE

15 VICTIM

16 Q OK, AND DOES THAT HAVE ANY IDENTIFYING MARKINGS ON

17 IT?

18 A JUST MARKINGS I PUT ON THERE LABELING WHERE IT WAS

19 TAKEN FROM, THE DATE, AND THE VICTIM'S NAME, AND OUR

20 CASE NUMBER

21 Q YOU RECOGNIZE YOUR HANDWRITING ON THAT?

22 A YES I DO

23 Q AND THEN ONCE YOU COLLECTED THAT GSR KIT, WHAT DID

24 YOU DO WITH IT?

25 A THAT GOT TRANSPORTED BACK TO THE EVIDENCE COMPOUND

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1 Q OK, AND DID YOU TRANSPORT IT ANY OTHER PLACE?
2 A I DID TRANSPORT IT UP TO SLED
3 Q AND DID YOU TRANSPORT ANY OTHER GSR KITS?
4 A THE OTHER TWO GSR KITS, YES
5 Q LET ME SHOW YOU STATE'S EXHIBIT 37 AND ASK IF YOU
6 RECOGNIZE THAT?
7 A YES I DO
8 Q AND THEN STATE'S 36
9 A YES I DO
10 Q ARE THOSE THE OTHER TWO GSR KITS THAT YOU
11 TRANSPORTED TO SLED?
12 A YES
13 Q YOUR HONOR AT THIS TIME WE MOVE STATE'S 36, 37, 38
14 AND 47 IN EVIDENCE
15 MR DAVIS JUDGE I BELIEVE 36 IS ALREADY IN, BUT
16 THAT'S 37, 38, AND 47
17 THE COURT WITHOUT OBJECTION CROSS EXAMINATION
18 CROSS EXAMINATION OF K KJELLMAN BY MR DAVIS
19 Q CAN YOU HELP ME OUT ON THE LAST NAME?
20 A KJELLMAN
21 Q KJELLMAN, OK THANK YOU NOT ONLY DID— YOU'RE PART
22 OF THE CRIME SCENE, RIGHT?
23 A YES
24 Q AND TSU FOR THE SHERIFF'S DEPARTMENT, RIGHT
25 A RIGHT, TECHNICAL SERVICES UNIT

1 Q SAME THING AS CRIME SCENE, RIGHT?

2 A YES

3 Q IN FACT YOU WENT TO THE CRIME SCENE IN THIS CASE
4 WHICH IS WEST MONTAGUE, RIGHT?

5 A YES

6 Q YOU ASSISTED AT THAT SCENE?

7 A NOT VERY- I ARRIVED AND I WAS ASKED TO GO BACK DOWN
8 TO MUSC

9 Q BECAUSE THEY SAID YOU WOULD BE INVOLVED WITH THE
10 AUTOPSY, RIGHT?

11 A SAID THAT NIGHT IT WOULD BE RESPOND TO THE MORGUE
12 AND PHOTOGRAPH THE INJURIES

13 Q GATHER WHAT EVIDENCE YOU COULD?

14 A YES

15 Q AND YOU WOULD'VE HAVE TAKEN PHOTOS?

16 A YES

17 Q NOW, YOU ALSO LATER- LATER I BELIEVE YOU ALSO HAVE
18 PROCESSED THE CAR OF THE DECEASED?

19 A AS FAR AS LIFTING ANY FINGERPRINTS OFF THE CAR, I
20 DIDN'T DO IT

21 Q YOU DID NOT?

22 A NO

23 Q WOULD THAT THEN BE OFFICER ROY WILLOUGHBY THAT WOULD
24 HAVE DONE THAT?

25 A YES, I BELIEVE SO

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1 Q YOU WERE AWARE THAT THAT WAS DONE, RIGHT?

2 A YES

3 Q ARE YOU AWARE OF ANY OTHER TYPE OF PROCESSING DONE

4 TO THE CAR?

5 A TO THE CAR?

6 Q YES

7 A I KNOW WE DID THE FINGERPRINTS AND PHOTOGRAPHS I

8 DON'T RECALL EXACTLY WHAT ELSE WE DID WITH IT

9 Q YOU THINK THERE WAS OTHER PROCESSING YOU DID?

10 A YES, I'M JUST NOT SURE WHAT IT WAS

11 Q THESE OTHER CRIME SCENE TECHNICIANS WOULD KNOW MORE

12 WHAT ALL HAPPENED TO THE CAR?

13 A YES

14 Q THAT PERHAPS WOULD BE OFFICER WILLOUGHBY?

15 A YES

16 Q YOU GOT A FROM WHEN YOU SENT ITEMS TO SLED, THE

17 SOUTH CAROLINA LAW ENFORCEMENT DIVISION, RIGHT?

18 A YES

19 Q AS EVIDENCE, AND THERE IS AN EVIDENCE INVENTORY

20 SHEET, RIGHT?

21 A YES

22 Q IN THIS CASE, AS IT PERTAINS TO GUNSHOT RESIDUE

23 KITS, THERE WAS ONLY THREE SENT, RIGHT?

24 A YES

25 Q ONE, YOU WERE THERE WHEN THEY OBTAINED IT FROM MR

1 GAMBRELL THE DECEASED?

2 A YES

3 Q ONE FROM STEVEN JOHNSON?

4 A YES

5 Q AND ONE FROM MY CLIENT?

6 A YES

7 Q AND THAT'S THE ONLY GSR KITS THAT WERE SUBMITTED,
8 RIGHT?

9 A YES

10 Q NO OTHER QUESTIONS

11 SOLICITOR BURNEY NO OTHER QUESTIONS YOUR HONOR

12 STATE CALLS HUE TANG

13 THE WITNESS IS SWORN (HUE TANG)

14 EXAMINATION OF HUE TANG BY SOLICITOR BURNEY

15 Q WHERE ARE YOU EMPLOYED?

16 A I AM EMPLOYED BY SOUTH CAROLINA LAW ENFORCEMENT
17 DIVISION

18 Q IS THAT COMMONLY KNOWN AS SLED?

19 A YES MA'AM

20 Q AND WHAT IS YOUR JOB AT SLED?

21 A MY ASSIGNMENT IS FORENSICS DIVISION MY CURRENT
22 POSITION IS CRIMINALIST IN TRACE EVIDENCE SECTION

23 Q AND HOW LONG HAVE YOU BEEN EMPLOYED AT SLED?

24 A THIS APRIL WILL BE MY SIXTEENTH YEAR

25 Q AND WHAT IS FORENSIC TRACE EVIDENCE INVESTIGATION?

1 A WE INVESTIGATE STARTING FROM ARSON, GUNSHOT RESIDUE,
2 DUCT TAPE, EXPLOSIVE, GLASS ANALYSIS I THINK I
3 COVERED IT

4 Q WILL YOU TELL THE JURY ABOUT YOUR EDUCATIONAL
5 BACKGROUND?

6 A I RECEIVED A BACHELOR OF SCIENCE IN BASIC CHEMISTRY
7 FROM THE UNIVERSITY OF SOUTH CAROLINA

8 Q HAVE YOU HAD ANY SPECIALIZED TRAINING IN THE AREA OF
9 TRACE EVIDENCE?

10 A COMPLETE IN ARSON ANALYSIS, I COMPLETED MY TRAINING
11 IN GUNSHOT RESIDUE ANALYSIS, AND OF COURSE,
12 CURRENTLY I'M IN TRAINING FOR PAINT ANALYSIS

13 Q AND ARE YOU A MEMBER OF PROFESSIONAL ORGANIZATIONS
14 RELATING TO THAT FIELD AS WELL?

15 A YES MA'AM I'M A MEMBER OF AMERICAN ACADEMY OF
16 FORENSIC SCIENTISTS

17 Q AND HAVE YOU BEEN PREVIOUSLY BEEN QUALIFIED AS AN
18 EXPERT IN THE FIELD OF TRACE EVIDENCE?

19 A YES MA'AM I HAVE

20 Q AND HAVE BEEN QUALIFIED IN GENERAL SESSIONS COURT?

21 A YES MA'AM I HAVE

22 Q APPROXIMATELY HOW MANY TIMES?

23 A IN TRACE EVIDENCE, AROUND TEN, TEN TIMES

24 Q YOUR HONOR I OFFER AGENT TANG AS AN EXPERT IN THE
25 AREA OF FORENSIC TRACE INVESTIGATION

1 THE COURT ANY QUESTIONS?

2 MR DAVIS NO

3 THE COURT

4 Q CAN I SHOW YOU WHAT'S IN EVIDENCE AS EXHIBITS 36, 37
5 AND 38, AND ASK YOU IF YOU RECOGNIZE THOSE ITEMS?

6 A YES MA'AM

7 Q AND DID YOU HAVE AN OPPORTUNITY TO EXAMINE THEM?

8 A YES MA'AM I DID

9 Q AND WOULD YOU TELL THE JURY WHAT TESTING YOU
10 CONDUCTED?

11 A I PERFORMED GSR TESTS ON THE KIT FROM ANTHONY
12 GAMBRELL AND STEVEN JOHNSON

13 Q OK, AND LET'S START WITH THE KIT OF ANTHONY
14 GAMBRELL, WHAT CONCLUSIONS DID YOU COME UP WITH?

15 A IN THE SAMPLES SUBMITTED IN THE KIT LABELED ANTHONY
16 GAMBRELL THE QUANTITY OF METALS DETECTED DID NOT
17 INDICATE THE PRESENCE OF GUNSHOT RESIDUE

18 Q AND AS REGARD TO THE KIT FOR STEVEN JOHNSON WHAT WAS
19 YOUR CONCLUSION?

20 A IN THE SAMPLES SUBMITTED IN THE KIT LABELED STEVEN
21 JOHNSON THE QUANTITIES METALS DETECTED DID NOT
22 INDICATE PRESENCE OF GUNSHOT RESIDUE

23 Q AND YOU MENTIONED THAT YOU DID NOT TEST THE KIT THAT
24 WAS LABELED MICHAEL DUNHAM?

25 A THAT'S CORRECT

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1 Q WHY DID YOU NOT TEST THAT?

2 A BECAUSE IT WAS COLLECTED BEYOND THE SIX-HOUR TIME
3 FRAME

4 Q OUTSIDE OF THAT SIX HOURS?

5 A THAT'S RIGHT

6 Q AND THAT'S NOT RELIABLE AFTER SIX HOURS?

7 A THAT'S CORRECT

8 Q NO FURTHER QUESTIONS

9 CROSS EXAMINATION OF HUE C TANG BY MR DAVIS

10 Q MAY IT PLEASE THE COURT YOUR HONOR AGENT TANG
11 THERE WERE NO OTHER GUNSHOT RESIDUE KITS SUBMITTED
12 IN THIS CASE, WERE THERE?

13 A BESIDES THESE THREE?

14 Q YES SIR

15 A NO SIR

16 Q AND DETERMINING THE PRESENCE OF GUNSHOT RESIDUE
17 REQUIRES SOME SPECIAL EDUCATION AND SOME SPECIAL
18 TOOLS, DOESN'T IT?

19 A I DON'T QUITE UNDERSTAND

20 Q I COULDN'T DO GUNSHOT RESIDUE ANALYSIS BECAUSE I
21 DON'T HAVE YOUR BACKGROUND?

22 A NOT COLLECTING IT PERFORMING THE TEST, YES

23 Q TO COLLECT IT YOU ARE BASICALLY JUST SWABBING AREAS
24 WHERE YOU THINK THE MUZZLE BLAST OR GUNSHOT RESIDUE
25 MIGHT BE, IS THAT RIGHT?

1 A I BELIEVE THE OFFICER TESTIFIED EARLIER IN THE KIT
 2 IT HAD FIVE TUBES ALONG WITH THE FOUR STICKY TABS HE
 3 MENTIONED THAT'S WHAT HE COLLECTED A STICKY TAB TO
 4 REACH IN THE PALM OF THE HAND AND THE BACK OF THE
 5 HAND OF EACH ONE THEN YOU PERFORM ON THE TUBE—
 6 WHAT YOU DO THEN YOU ADD FIVE PERCENT NITRIC ACIDS
 7 AND YOU PERFORM— FIRST OF ALL YOU COLLECT A BLANK
 8 TUBE REACHING FAR AWAY FROM THE HAND, MOST LIKELY
 9 THE BACK OF, THEN YOU COLLECT BOTH PALM AND THE BACK
 10 OF YOUR HAND
 11 Q PRETTY MUCH ANYBODY COULD COLLECT THE EVIDENCE, BUT
 12 IT TAKES AN EXPERT TO ANALYZE THE EVIDENCE, IS THAT
 13 RIGHT?
 14 A YES THAT'S RIGHT
 15 Q AND YOU USE SPECIAL MACHINES FOR LACK OF A BETTER
 16 TERM UP AT SLED TO DO THE TESTING, IS THAT RIGHT?
 17 A YES
 18 Q WHAT I UNDERSTAND THESE ARE MICROSCOPIC PARTICLES,
 19 IS THAT RIGHT?
 20 A YES, THAT'S RIGHT
 21 Q YOU CAN'T SEE UNLESS YOU'VE GOT A MICROSCOPE OR SOME
 22 OTHER INSTRUMENT TO REVEAL THEM, RIGHT?
 23 A ELECTRON MICROSCOPE
 24 Q ELECTRON MICROSCOPE, AND THIS IS A PARTICULAR AREA
 25 OF EXPERTISE?

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1 A YES

2 Q HOW MANY SLED AGENTS ARE ABLE TO TESTIFY ABOUT THAT

3 BESIDES YOU?

4 A CURRENTLY WE HAVE THREE OTHERS

5 Q THREE OTHERS BESIDES YOU?

6 A THAT'S CORRECT

7 Q THIS ISN'T SOMETHING THAT LAYPEOPLE ARE GOING TO BE

8 ABLE TO LOOK AT AND FIGURE OUT NOW, ARE THEY?

9 A IF YOU DON'T HAVE ALL THAT BACKGROUND TRAINING IN

10 INSTRUMENTS

11 Q NOW CERTAINLY IF I WERE TO FIRE A GUN AND MY HEART

12 IS BEATING AND I'M SWEATING AND MOVING AROUND SOME

13 OF THE GUNSHOT RESIDUE THAT WOULD GET ON MY HANDS

14 WOULD BE ABSORBED IN MY SKIN, RIGHT?

15 A THROUGH THE SWEAT GLANDS YES SOME OF IT

16 Q OK, AND SOME OF IT WOULD KIND OF DISSIPATE THAT WAY,

17 GO AWAY THAT WAY?

18 A THAT'S RIGHT

19 Q NOW IF MY HEART HAS STOPPED BEATING, IF I STOPPED

20 PERSPIRING IT'S A LITTLE MORE SLOWLY THAT IT SINKS

21 INTO MY SKIN, IS THAT AN ACCURATE STATEMENT?

22 A YES

23 Q SO IT WOULD STAY ON MY SKIN A LITTLE LONGER, IF MY

24 HEART HAD STOPPED IT WOULD STAY ON THERE A LITTLE

25 LONGER THAN SOMEONE WHO IS RESPIRATING?

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1 A YES

2 Q THAT'S NOT THE ONLY WAY THAT IT GOES AWAY THOUGH
3 IF I WANTED TO WASH OFF MY HANDS THAT'S A WAY TO GET
4 RID OF THESE MICROSCOPIC PARTICLES, RIGHT?

5 A YES SIR, THAT'S ONE WAY

6 Q PUTTING MY HANDS IN AND OUT OF MY POCKETS COULD?

7 A AT'S ANOTHER WAY

8 Q YOU COMMENTED THAT'S A WAY IT COULD HAPPEN, RIGHT?

9 A THAT'S ANOTHER WAY, LIKE YOU TAKE OFF YOUR JACKET
10 YOUR SLEEVE WOULD RUB AGAIN IT WOULD MOVE IT, OR YOU
11 CAN WASH YOUR HAND, OR JUST LIKE YOU MENTIONED
12 EARLIER STICK YOUR HAND IN YOUR POCKET, ANY ACTIVITY
13 THAT WOULD DISTURB THE PARTICLES WITH YOUR HAND THAT
14 WOULD REMOVE IT

15 Q OK YOU'VE ALREADY BEEN QUALIFIED AS AN EXPERT SO I
16 WANT TO GIVE YOU A HYPOTHETICAL QUESTION IN YOUR
17 EXPERT OPINION IS IT POSSIBLE TO FIRE A PISTOL, A
18 REVOLVER, AND LET'S SAY FOUR OR SO HOURS LATER OK-

19 A OK

20 Q FOUR OR SO HOURS LATER SOMEONE SWABS AND DOES THOSE
21 STICKY THINGS AND GETS WHATEVER IS ON MY HANDS, IT'S
22 POSSIBLE THAT IN FOUR HOUR TIME FRAME IT'S POSSIBLE
23 FOR ME TO MOVE AROUND OR OTHERWISE REMOVE THAT SO IT
24 WOULDN'T SHOW UP?

25 A THAT'S CORRECT

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1 Q SO WHEN YOU MAKE A FINDING THAT WHAT WAS SUBMITTED
2 TO YOU DOESN'T HAVE METALS SIGNIFICANT ENOUGH TO
3 SHOW THAT THEY FIRED A GUN, WHEN YOU MAKE THAT
4 FINDING, YOU ARE NOT SAYING ABSOLUTELY CERTAINLY
5 THEY DIDN'T?

6 A DIDN'T FIRE THE WEAPON?

7 Q RIGHT

8 A GUNPOWDER WASN'T PRESENT ON THE HAND

9 Q BUT WHAT I'M SAYING IS IF YOU SAY IT WASN'T PRESENT
10 THAT EITHER MEANS THEY DIDN'T FIRE A WEAPON OR THEY
11 COULD HAVE FIRED IT AND REMOVED THE EVIDENCE, ISN'T
12 THAT TRUE?

13 A YES SIR

14 Q OK, AND BECAUSE OF THAT, BECAUSE THIS IS SUCH A
15 SMALL AND EASILY DISTURBED TYPE OF EVIDENCE, LIKE
16 YOU SAID EARLIER, IT'S OUTSIDE THE SIX HOUR SO IT'S
17 ACTUALLY TAKEN OFF OF THE HANDS YOU NOT GOING TO
18 FOOL WITH TRYING TO FIGURE OUT WHETHER THEY FIRED A
19 GUN OR NOT?

20 A NOT OUTSIDE THE SIX HOURS, YES THAT'S CORRECT

21 Q BUT IF IT'S INSIDE THE SIX HOURS AND YOU FIND THAT
22 THE QUANTITIES OF METALS DETECTED DID NOT INDICATE
23 THE PRESENCE OF GUNSHOT RESIDUE, OK, YOU CANNOT IN
24 YOUR EXPERT OPINION TELL THESE JURORS THAT THAT
25 PERSON DIDN'T FIRE A GUN?

1 A I CANNOT TESTIFY THE PERSON DISCHARGED A WEAPON OR
2 NOT DUE TO-

3 Q YOU DON'T KNOW, THEY COULD HAVE OR THEY COULD NOT,
4 RIGHT?

5 A THAT'S TRUE

6 Q EITHER WAY OK MR TANG THANK YOU NO OTHER
7 QUESTIONS

8 SOLICITOR BURNEY NO OTHER QUESTIONS YOUR HONOR
9 THE COURT THANK YOU SIR

10 SOLICITOR BURNEY DARREN PRIOETTI

11 THE WITNESS IS SWORN (DARREN PRIOETTI)

12 EXAMINATION OF DARREN PRIOETTI BY SOLICITOR BURNEY

13 Q GOOD AFTERNOON MR PRIOETTI WHERE ARE YOU
14 EMPLOYED?

15 A SUNCOM WIRELESS

16 Q AND WHERE IS YOUR OFFICE?

17 A BERLIN, PENNSYLVANIA

18 Q DID YOU FLY IN TO CHARLESTON TO BE HERE?

19 A YES

20 Q DUG OUT FROM UNDER THAT

21 A YES

22 Q WHAT IS YOUR JOB AT SUNCOM?

23 A I'M A SENIOR BUSINESS SECURITY ANALYST

24 Q DOES SUNCOM ALSO GO BY THE NAME OF TRICOM PCS

25 A TRICOM PCS WE RECENTLY CHANGED OUR NAME TO SUNCOM

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1 WIRELESS, BUT OUR CORPORATE TRADING NAME AT THE TIME
2 WAS TRICOM PCS, BUT OUR BRAND NAME IN THIS AREA WAS
3 SUNCOM

4 Q OK, AND THAT'S BACK IN DECEMBER OF 2004, YOUR
5 CORPORATE NAME WAS TRICOM?

6 A YES, TRICOM, PCS

7 Q AND DID I ASK YOU WHAT YOUR JOB WAS A TRICOM?

8 A SENIOR BUSINESS SECURITY ANALYST

9 Q AND DID YOUR COMPANY RECEIVE A SEARCH WARRANT FOR
10 CERTAIN MOBILE PHONE RECORDS?

11 A YES

12 Q I'M GOING TO SHOW YOU- I'M GOING TO SHOW YOU WHAT'S
13 MARKED AS STATE'S EXHIBIT 2 FOR IDENTIFICATION AND
14 ASK YOU TO TAKE A LOOK AT THAT AND TELL ME IF YOU
15 CAN IDENTIFY THAT

16 A THAT WOULD BE A SCREEN SHOT OF OUR CALL RECORDS

17 Q ARE THOSE PHONE RECORDS MAINTAINED UNDER THE CARE
18 AND CONTROL OF SUNCOM OR TRICOM?

19 A YES THEY ARE

20 Q ARE THEY MADE IN THE REGULAR COURSE OF BUSINESS?

21 A YES

22 Q AND ARE THOSE RECORDS MADE CONTEMPORANEOUSLY WITH
23 THE CALLS BEING MADE RECEIVED?

24 A I'M SORRY?

25 Q ARE THOSE RECORDS THAT YOU HAVE OF CALLS MADE

1 CONTEMPORANEOUS WITH THE CALLS BEING MADE OR
2 RECEIVED? MEANING IF I MADE A CALL TODAY WOULD THAT
3 CALL BE RECORDED IN THE RECORD?

4 A YES, CORRECT

5 Q AND ARE THOSE RECORDS REGULARLY MAINTAINED?

6 A YES

7 Q YOU DIDN'T CREATE THOSE SPECIAL FOR US?

8 A NO

9 Q AND WHOSE RECORDS ARE THOSE, WHO IS THE CUSTOMER?

10 A THE CUSTOMER NAME ON THIS IS RAY SHAWN GREEN

11 Q WHAT TELEPHONE NUMBER?

12 A THE TELEPHONE NUMBER LISTED IS 843-345-5430

13 Q AT THIS TIME WE MOVE STATE'S 2 IN EVIDENCE

14 MR DAVIS NO OBJECTION YOUR HONOR

15 SOLICITOR BURNEY NO FURTHER QUESTIONS

16 CROSS EXAMINATION OF DARREN PRIOETTI BY MR DAVIS

17 Q JUST BRIEFLY TELL ME YOUR LAST NAME

18 A PRIOETTI

19 Q THAT'S THE CELL PHONE, THE RECORDS FROM THE CELL
20 PHONE, RIGHT?

21 A CORRECT

22 Q MOBILE TELEPHONE CORRECT?

23 A PCS

24 Q PCS, OK AND BASICALLY THAT PRINT SCREEN YOU ARE
25 TALKING ABOUT THAT SHOWS WHO OPENED THAT ACCOUNT?

1 A THAT'S THE SECOND PAGE, OUR CUSTOMER SERVICE SCREEN,
2 YES
3 Q SO ALL YOU CAN TELL THE JURY IS WHO OPENED THE
4 ACCOUNT NAME THE PHONE NUMBER AND WHEN CALLS CAME IN
5 OR OUT, RIGHT?

7 Q AND WHAT NUMBERS ARE BEING USED?

8 A YES WE HAVE THAT ABILITY, YES

9 Q THAT'S THE EXTENT OF YOUR ABILITY TO GIVE
10 INFORMATION?

11 A FROM WHAT I HAVE IN FRONT OF ME, YES

12 Q YOU COULDN'T BE ABLE TO TELL THE JURY WHETHER I
13 BORROWED THAT PHONE TO MAKE A CALL?

14 A NO

15 Q IT'S NOT GOING TO SAY THAT ON THOSE RECORDS?

16 A NO IT DOESN'T SAY WHO USED THE PHONES, IT JUST
17 SAYS WHO THEY ARE REGISTERED TO

18 Q THANK YOU

19 SOLICITOR BURNEY NO FURTHER QUESTIONS MICHELLE
20 MONTEAU

21 THE WITNESS IS SWORN (MICHELLE MONTEAU)

22 EXAMINATION OF MICHELLE MONTEAU BY SOLICITOR BURNEY

23 Q MS MONTEAU CAN YOU TELL THE JURY WHERE YOU WORK AND
24 WHAT YOU DO?

25 A I WORK FOR THE CINGULAR WIRELESS AT NORTH CHARLESTON

1 STORE I REPRESENT THEM IN CUSTOMER SERVICE

2 Q AND DID YOUR COMPANY RECEIVE A SEARCH WARRANT FOR A

3 MOBILE PHONE RECORD?

4 A CORRECT

5 Q I'LL SHOW YOU STATE'S 53 THAT'S MARKED FOR

6 IDENTIFICATION AND ASK YOU IF YOU RECOGNIZE THAT?

7 A YES

8 Q ARE THOSE RECORDS MAINTAINED UNDER THE CARE,

9 CUSTODY, AND CONTROL OF CINGULAR?

10 A YES MA'AM

11 Q AND ARE THEY MADE IN THE REGULAR COURSE OF BUSINESS?

12 A YES MA'AM

13 Q AND ARE THOSE CALLS RECORDED CONTEMPORANEOUSLY WITH

14 THEM BEING MADE AND RECEIVED?

15 A CORRECT

16 Q AND ARE THOSE RECORDS REGULARLY MAINTAINED?

17 A YES

18 Q AND WHO IS THE- WELL FIRST I OFFER EXHIBIT 53

19 MR DAVIS NO OBJECTION

20 Q AND I ASK YOU WHO IS THE CUSTOMER FOR THAT ACCOUNT?

21 A VICTORIA MARTIN

22 Q AND CAN YOU READ THE PHONE NUMBER THAT'S ASSIGNED TO

23 VICTORIA MARTIN?

24 A JUST A SECOND IT'S 843-819-3436

25 Q THANK YOU THAT'S ALL

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CROSS EXAMINATION OF MICHELLE MONTEAU BY MR. DAVIS

- 1
2 Q JUST BRIEFLY THAT'S FOR A WIRELESS OR MOBILE
3 PHONE?
4 A CORRECT
5 Q THE RECORDS?
6 A YES SIR
7 Q AND SO AGAIN, I'LL ASK YOU THE SAME QUESTIONS WHAT
8 YOU ARE ABLE TO TELL THIS JURY IS WHO OPENED THE
9 ACCOUNT, CORRECT?
10 A CORRECT
11 Q AND THAT'S VICTORIA MARTIN?
12 A CORRECT
13 Q YOU ARE ABLE TO TELL US WHAT HER NUMBER WAS,
14 CORRECT?
15 A CORRECT
16 Q WHEN CALLS CAME IN AND OUT?
17 A CORRECT
18 Q AND WHAT NUMBERS CORRESPOND WITH THOSE CALLS?
19 A YES SIR
20 Q THIS IS A PREPAID PHONE, ARE YOU ABLE TO TELL THAT
21 BY THE RECORDS, A PREPAID ACCOUNT?
22 A YES SIR YOU MEAN THE BILL?
23 Q YES CAN YOU TELL BY WHAT YOU HAVE WHETHER THIS IS A
24 PREPAID PHONE OR NOT?
25 A - NO SIR

1 Q YOU ARE NOT ABLE TO TELL, OK, AND AGAIN YOU ARE NOT
2 ABLE TO TELL BY THOSE RECORDS NOR DO YOU HAVE
3 PERSONAL KNOWLEDGE WHO ACTUALLY USED THE PHONE
4 BELONGING TO VICTORIA MARTIN?

5 A CORRECT

6 Q NO FURTHER QUESTIONS THANK YOU

7 SOLICITOR BURNEY NO QUESTIONS YOUR HONOR MAY I
8 APPROACH?

9 THE COURT WE NEED TO TAKE ABOUT FIVE MINUTES THEN
10 WE'LL COME BACK

11 JURY OUT (4 32 P M)

12 BACK ON (4 42 P M)

13 JURY IN (4 43 P M)

14 SOLICITOR WILSON STATE CALLS INVESTIGATOR DAVID
15 OWEN

16 THE WITNESS IS SWORN (DAVID H OWEN)

17 EXAMINATION OF DAVID H OWEN BY SOLICITOR WILSON

18 Q INVESTIGATOR OWEN WHERE ARE YOU EMPLOYED?

19 A CHARLESTON COUNTY SHERIFF'S OFFICE

20 Q AND HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S
21 OFFICE?

22 A SINCE AUGUST OF 2002

23 Q WHAT DO YOU DO THERE?

24 A I'M IN CRIME SCENE INVESTIGATION

25 THE BAILIFF JUDGE THE JUROR IS SAYING SHE CAN'T

1 HEAR

2 THE COURT SHE CAN'T HEAR BECAUSE OF THAT MACHINE
3 SOLICITOR WILSON CAN THE JURY HEAR ME? JUST LEAN
4 CLOSE INTO THAT MICROPHONE OK

5 A OK

6 JUROR IT'S THE LAWYER I CAN'T HEAR

7 Q HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S
8 DEPARTMENT?

9 A SINCE AUGUST OF 2002

10 Q AND YOU ARE IN THE TECHNICAL SERVICES UNIT?

11 A YES MA'AM

12 Q AND TELL THE JURY WHAT KIND OF WORK YOU DO WITH THAT
13 UNIT?

14 A I'M A CRIME SCENE INVESTIGATOR

15 Q AND ON DECEMBER 13, 2004, IS THAT THE WORK THAT YOU
16 WERE DOING?

17 A YES MA'AM

18 Q AND AT SOME POINT DID YOU GET CALLED OUT TO BE
19 INVOLVED IN THE CASE WE ARE HERE ABOUT THIS WEEK?

20 A YES MA'AM

21 Q WERE YOU A FIRST- WHAT'S CALLED A FIRST RESPONDER TO
22 THE SCENE?

23 A NO MA'AM NOT TECHNICALLY THE FIRST RESPONDER I
24 WAS THE FIRST CRIME SCENE INVESTIGATOR ON THE SCENE

25 Q AND HAD THERE BEEN OTHER PEOPLE AT THE CRIME SCENE

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1 BEFORE YOU GOT THERE OUT ON MONTAGUE?

2 A YES MA'AM

3 Q IN FACT WHEN YOU ARRIVED THE VICTIM WAS NO LONGER

4 THERE, IS THAT CORRECT?

5 A THAT'S CORRECT

6 Q AND THIS AREA WHERE THE SHOOTING— WHERE THE VICTIM

7 HAD BEEN SHOT THAT WAS IN CHARLESTON COUNTY?

8 A THAT'S CORRECT

9 Q ALRIGHT NOW, WHEN YOU GOT TO THE SCENE ALONG WITH

10 THE OFFICERS WHAT DID YOU AND THE OTHER OFFICERS DO

11 IN ORDER TO SECURE THE SCENE IN ORDER TO TRY TO

12 OBTAIN EVIDENCE?

13 A EXCUSE ME WHEN I FIRST ARRIVED ON THE SCENE I

14 NOTICED THAT CRIME SCENE BARRIER TAPE, YELLOW TAPE,

15 HAD CLOSED OFF A SECTION OF THE ROAD SO I KNEW THAT

16 THE POTENTIAL CRIME HAD ALREADY BEEN PROTECTED I

17 WALKED AROUND AND SPOKE WITH THE FIRST RESPONDING

18 DEPUTIES ON THE SCENE TO TRY TO GET A BRIEF

19 DESCRIPTION OF WHAT HAD TAKEN PLACE AND SEE IF THEY

20 HAD LOCATED ANY EVIDENCE ON THE OUTSIDE OF THE CRIME

21 SCENE

22 Q DID YOU RECOVER ANY EVIDENCE OUTSIDE?

23 A FROM OUTSIDE THE CRIME SCENE, NO

24 Q AND DID YOU AND THE OTHER OFFICERS SET OUT TO LOOK

25 FOR ANYTHING THAT WOULD HAVE BEEN RELATED TO THE

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1 SHOOTING?

2 A YES MA'AM WE WERE TOLD THERE WAS A SHOOTING SO WE
3 NORMALLY LOOK FOR ANY, LIKE A HANDGUN THAT MAYBE AT
4 THE SCENE, SHELL CASINGS, PROJECTILES, ANY OTHER
5 POTENTIAL EVIDENCE

6 Q TELL THE JURY WHAT YOU MEAN WHEN YOU SAY SHELL
7 CASING VERSUS PROJECTILES

8 A A SHELL CASING IS THE CASING ON A SEMI-AUTOMATIC GUN
9 THAT'S EJECTED FROM THE GUN IN A REVOLVER IT WOULD
10 STILL BE IN THE WHEEL CYLINDER A PROJECTILE IS THE
11 ACTUAL OBJECT THAT IS PROJECTED DOWN THE BARREL AND
12 AWAY FROM THE GUN INTO THE POTENTIAL TARGET

13 Q NOW IN THIS CASE YOU AND THE OTHER OFFICERS LOOKED
14 FOR SHELL CASINGS?

15 A THAT'S CORRECT THERE WAS A SECTION ON WEST
16 MONTAGUE THAT HAD BEEN INDICATED, THE SHOULDER OF
17 THE ROADWAY AS WELL AS THE ROADWAY WAS A POINT OF
18 ENTRY SO WE DID A LINE SEARCH WHICH IS WALKING UP
19 AND DOWN LOOKING WITH FLASHLIGHTS AS WELL AS METAL
20 DETECTORS

21 Q OK, AND WERE YOU ABLE TO FIND ANY SHELL CASINGS AT
22 THAT SCENE?

23 A NO MA'AM WE WERE NOT

24 Q AND USING METAL DETECTORS?

25 A THAT'S CORRECT

1 Q AND YOU MENTIONED WHEN A SEMI-AUTOMATIC IS FIRED
2 SHELL CASINGS ARE SPIT OUT FOR LACK OF A BETTER
3 WORD?

4 A THAT'S CORRECT

5 Q AND WITH A REVOLVER LIKE GUN WHAT HAPPENS TO THE
6 SHELL CASINGS?

7 A THE SHELL CASINGS STAY WITHIN THE WHEEL CYLINDER
8 UNTIL THE PERSON HAVING THE GUN WOULD OPEN THE WHEEL
9 CYLINDER AND EJECT THE CASINGS

10 Q BUT YOU FOUND NO SHELL CASINGS ON THE SCENE ON WEST
11 MONTAGUE?

12 A NO SHELL CASINGS

13 Q HOW ABOUT PROJECTILES OR TARGETS THAT HAD BEEN HIT
14 OUT THERE ON THE SCENE?

15 A WE FOUND NO PROJECTILES WE CHECKED SOME OF THE
16 RESIDENCES THAT WERE CLOSE, IN CLOSE PROXIMITY, AND
17 DID NOT FIND ANY--

18 Q NOW WHY WOULD YOU CHECK THE RESIDENCES?

19 A BECAUSE PROJECTILES ARE KNOWN TO GO A GREAT
20 DISTANCE

21 Q YOU MEAN LIKE IF SOMEBODY FIRED A BULLET TWENTY OR
22 THIRTY YARDS AWAY MY IT MIGHT LODGE IN A HOME OR
23 SOMETHING LIKE THAT?

24 A THAT'S CORRECT

25 Q SO Y'ALL LOOKED ON THE EXTERIOR OF BUILDINGS OR--

1 A BUILDINGS, TREES, SIGNS, ANYTHING THAT A PROJECTILE
2 MAY BE LODGED IN WE WERE NOT ABLE TO FIND ANY

3 Q DIDN'T FIND ANY?

4 A NO MA'AM

5 Q FOUND NO WEAPON THERE?

6 A NO MA'AM

7 J OK ALRIGHT, I'M GOING TO SHOW YOU EXHIBITS 6 AND 7
8 AND ASK YOU IF YOU RECOGNIZE THOSE PHOTOGRAPHS?

9 A YES MA'AM I DO

10 Q WHAT ARE THOSE?

11 A EXHIBIT 6 IS A PICTURE OF THE ROADWAY, THE SIGN OF
12 LANES MOBILE HOME PARK INDICATING THE ADDRESS 4635
13 WEST MONTAGUE TO INCLUDE SHOWING THE ROAD STATE'S
14 EXHIBIT 7 SHOWS THE MULTI- WHITE TOWEL WITH MULTI-
15 COLOR STRIPES ON IT LAYING CLOSE TO THE SIGN
16 INDICATING 4635 WEST MONTAGUE

17 Q WHY WAS THAT TOWEL OF SIGNIFICANCE, WHY DID YOU TAKE
18 A PICTURE OF THAT?

19 A WE WERE TOLD THAT THE TOWEL WAS USED ON THE VICTIM

20 Q DID THAT ALSO HELP YOU MARK THE GENERAL AREA OF
21 WHERE THE SHOOTING HAD TAKEN PLACE?

22 A YES MA'AM

23 Q AT THIS TIME WE OFFER STATE'S 6 AND 7

24 MR DAVIS NO OBJECTION

25 THE COURT WITHOUT OBJECTION

1 Q I'M GOING TO SHOW THESE TO THE JURY YOUR HONOR
2 STATE'S EXHIBIT 6, IF YOU COULD USE THAT POINTER THE
3 SIGN THAT YOU WERE SAYING THAT INDICATED THE MOBILE
4 HOME PARK
5 A THE SIGN IS RIGHT HERE, THE WHITE SQUARE WITH THE
6 BLACK LETTER WRITING
7 Q AND HOW ABOUT- WHAT IS THAT BELOW IT?
8 A THIS IS THE WHITE TOWEL THAT'S ON THE SHOULDER OF
9 THE ROAD
10 Q I'M GOING TO SHOW YOU NOW WHAT'S BEEN PREVIOUSLY
11 INTRODUCED AS STATE'S EXHIBIT 1, IF YOU COULD- IF
12 YOU NEED TO STEP DOWN THAT'S FINE CAN YOU SHOW THE
13 JURY WITH THE POINTER ON STATE'S EXHIBIT ONE WHERE
14 THAT SAME SIGN THAT YOU SAW IN STATE'S EXHIBIT 6
15 WOULD BE?
16 A IT'S AT THE TOP CENTER OF THE SCREEN
17 Q AND THAT B-SHAPED BUILDING TO THE LEFT?
18 A TOWN HOMES OR CONDOS
19 Q AND IN STATE'S EXHIBIT 4, AGAIN THE WHITE SIGN?
20 A THIS IS THE WHITE SIGN
21 Q OK
22 A THIS IS WEST MONTAGUE AND THE BOTTOM OF THE SCREEN
23 ARE THE SAME APARTMENTS OR CONDOS
24 Q AND THAT CORNER IS KIND OF THAT RED TRUCK?
25 A YES MA'AM

1 Q NOW, YOU DID NOT ATTEND THE AUTOPSY, IS THAT
2 CORRECT?

3 A NO I DID NOT

4 Q BUT YOU HAD AN OPPORTUNITY TO VIEW OR SEE THE
5 PROJECTILE THAT WAS RECOVERED FROM THE VICTIM'S
6 BODY, HAVE YOU NOT?

7 A YES MA'AM

8 Q AND WHAT CALIBER BULLET WAS THAT?

9 A IT APPEARED TO BE A 22 CALIBER

10 Q OK, AND WAS THAT KEPT IN EVIDENCE AT CHARLESTON
11 COUNTY?

12 A YES MA'AM

13 Q AND YOU MENTIONED THAT THERE WAS NO WEAPON RECOVERED
14 AT THE SCENE, DID YOU OR THE OTHER OFFICERS RECOVER
15 A WEAPON ANYWHERE RELATED TO THIS SHOOTING?

16 A LATER THE NEXT DAY ON THE 14TH

17 Q JUST REGARDING THE SHOOTING ITSELF?

18 A NO NO WE DID NOT

19 Q ALRIGHT, SO YOU HAD NOTHING TO COMPARE THE 22
20 CALIBER BULLET TO SEE IF IT MATCHED OR ANYTHING LIKE
21 THAT?

22 A NO WE DID NOT

23 Q NOW, LATER ON THE NIGHT OF THE 13TH DID YOU HAVE AN
24 OPPORTUNITY TO GO BACK TO RUTH DRIVE?

25 A YES MA'AM I DID

1 Q AND WHY WAS IT YOU WERE OUT THERE?

2 A I WAS ADVISED THAT THE VEHICLE THAT WAS THOUGHT AS
3 THE POSSIBLE SUSPECT VEHICLE HAD BEEN LOCATED AT THE
4 ADDRESS ON RUTH DRIVE

5 Q OK, WHAT DID YOU SEE WHEN YOU ARRIVED THERE?

6 A WHEN I ARRIVED ON RUTH DRIVE I DID IN FACT FIND THE
7 LATE MODEL GRAY OR SILVER COLOR GRAND MARQUIS

8 Q AND AT THAT TIME, LET ME SHOW YOU EXHIBIT 24 DO
9 YOU SEE THE GRAY MARQUIS THAT YOU SAW ON RUTH DRIVE?

10 A YES MA'AM IT'S TO THE LEFT OF THE PICTURE

11 Q AND TO THE RIGHT IS THAT THE HOME ON RUTH DRIVE?

12 A YES MA'AM IT IS

13 Q DID YOU AND OTHER OFFICERS SEARCH THAT HOME?

14 A LATER THAT EVENING A SEARCH WARRANT WAS OBTAINED AND
15 I SEARCHED THE RESIDENCE

16 Q AND DID YOU FIND ANYTHING OF EVIDENTRY VALUE IN THE
17 HOME?

18 A INSIDE THE HOME, NO MA'AM

19 Q AND THAT WAS STEVEN JOHNSON'S HOME, CORRECT?

20 A YES MA'AM

21 Q LET ME SHOW YOU STATE'S EXHIBIT 25 AND 26 ASK YOU
22 IF YOU CAN IDENTIFY ANYTHING OUT OF THOSE

23 A YES MA'AM

24 Q WHAT ARE THEY?

25 A THEY'RE AERIAL PHOTOGRAPHS OF RUTH DRIVE, AND THE

1 HOUSE IN QUESTION WHERE THE GRAND MARQUIS WAS FOUND

2 Q OK, AND ARE THOSE THERE AN ACCURATE DEPICTION OF THE
3 AREA AROUND RUTH DRIVE?

4 A YES MA'AM

5 Q YOUR HONOR AT THIS TIME WE OFFER STATE'S 25 AND 26
6 WITHOUT OBJECTION

7 **THE COURT** OK, WITHOUT OBJECTION

8 Q NOW, HOW WAS IT THAT THESE AERIAL PHOTOGRAPHS CAME
9 TO BE TAKEN?

10 A ANOTHER ONE OF OUR INVESTIGATORS, INVESTIGATOR ROY,
11 WAS GOING FLYING IN THE COUNTY HELICOPTER ON ANOTHER
12 MISSION A FEW DAYS AFTER THAT AND I ASKED THEM TO
13 OBTAIN THOSE PHOTOGRAPHS FOR ME WHILE HE WAS UP
14 THERE

15 Q OK, DID YOU TELL ANYBODY YOU WERE SENDING A
16 HELICOPTER UP TO HAVE THESE PICTURES TAKEN?

17 A NO MA AM

18 Q YOU JUST ASKED HIM TO GO TAKE SOME PICTURES AT RUTH
19 DRIVE AND HE DID THAT?

20 A YES MA'AM

21 Q STATE'S EXHIBIT 25, AGAIN RUTH DRIVE WHERE STEVE
22 JOHNSON LIVES, DO YOU SEE THE HOME THERE ON RUTH
23 DRIVE?

24 A YES MA'AM I DO

25 Q AND DO YOU SEE ANY CARS THERE?

1 A YES MA'AM THERE IS A SMALL LIGHT COLORED, I
2 BELIEVE IT'S A SEDAN, AND THE SAME BURGUNDY AND
3 MAROON PONTIAC MINIVAN THAT WAS THERE THAT NIGHT ON
4 THE 13TH

5 Q AND HOW WERE THOSE CARS PARKED?

6 A THEY WERE BACKED INTO THE DRIVEWAY

7 Q AND THIS PHOTOGRAPH WAS JUST TAKEN ON A RANDOM DAY
8 SOMETIME AFTER?

9 A THAT'S CORRECT

10 Q NOW WHILE AT THE SCENE ON WEST MONTAGUE DID YOU AND
11 THE OTHER OFFICERS VIDEO THE AREA?

12 A YES MA'AM AS I PHOTOGRAPHED THE SCENE I HAD
13 INVESTIGATOR WHITE WALK BESIDE AND VIDEO TAPE THE
14 SCENE

15 Q SO YOU HAVE A VIDEO AND PHOTOGRAPHS?

16 A THAT'S CORRECT

17 Q BUT NOTHING OF EVIDENTRY VALUE WAS OBTAINED THERE?

18 A NO MA'AM

19 Q THE PHOTOGRAPHS WOULD SHOW BASICALLY WHAT'S ON THE
20 PHOTOS?

21 A YES MA'AM

22 Q NOW YOU MENTIONED THAT Y'ALL SEARCHED RUTH DRIVE
23 WHAT DID YOU DO WITH THE GRAND MARQUIS THAT YOU
24 FOUND THERE THAT NIGHT?

25 A CALLED FOR A TOW TRUCK, I BELIEVE IT WAS JAMES

1 THAT ARRIVED I INSTRUCTED HIM THAT HE NEEDED TO WEAR
2 GLOVES WHEN HE SECURED THE VEHICLE ONTO THE TRUCK AND
3 TOUCH IT AT LEAST AS POSSIBLE AFTER I PHOTOGRAPHED IT
4 THE TOW TRUCK ARRIVED, AND I ASKED FOR IT BE A TOW TRUCK
5 AND THE GRAND MARQUIS BACK TO OUR EVIDENCE COMPOUND

6 Q OK, AND WERE YOU INVOLVED IN THE PROCESSING OF THE
7 CAR?

8 A NO MA'AM I WAS NOT

9 Q WHO DID THAT?

10 A SGT WILLOUGHBY

11 Q ALRIGHT, NOW WERE YOU INVOLVED IN OTHER SEARCH
12 WARRANTS RELATED TO THIS CASE?

13 A YES MA'AM I WAS

14 Q WERE YOU INVOLVED IN A SEARCH OF A TRAILER ON NORTH
15 MURRAY BOULEVARD?

16 A YES MA'AM I WAS

17 Q AND WHO WAS THAT TRAILER RELATED TO?

18 A TO THE DEFENDANT, MICHAEL DUNHAM

19 Q THAT'S WHERE HE LIVED?

20 A YES

21 Q AND THEN ALSO WERE YOU INVOLVED IN A SEARCH ON BON
22 AIRE BOULEVARD OVER NEAR WEST MONTAGUE?

23 A YES MA'AM I WAS

24 Q AND WHO WAS THE RESIDENCE ON BON AIRE ASSOCIATED
25 WITH?

1 A THE CO-DEFENDANT MICHAEL JETER

2 Q AND THEN HOW ABOUT THE SEARCH ON SUMNER AVENUE AT
3 THE MARSHVIEW APARTMENTS?

4 A I DON'T BELIEVE ANY OF THE DEFENDANTS RESIDED IN
5 THAT AREA IT WAS TOLD TO ME THAT THEY HUNG OUT
6 THERE AND POSSIBLY WENT THERE AFTER THE INCIDENT

7 Q AND WAS AN APARTMENT SEARCHED THERE ON SUMNER
8 AVENUE?

9 A YES MA'AM

10 Q DID YOU FIND ANYTHING OF EVIDENTRY VALUE IN ANY OF
11 THOSE SEARCHES?

12 A NO MA'AM I DID NOT

13 Q THAT'S ALL THE QUESTIONS I HAVE FOR THIS WITNESS
14 YOUR HONOR

15 CROSS EXAMINATION OF DAVID OWEN BY MR DAVIS

16 Q INVESTIGATOR OWEN YOU ARE ONE OF THE TECHNICAL
17 SERVICE UNIT DEPUTIES?

18 A THAT'S CORRECT

19 Q AND AGAIN TSU IS CRIME SCENE?

20 A YES SIR

21 Q THE JURY MAY BE MORE FAMILIAR WITH CRIME SCENE
22 TECHNICIANS?

23 A THAT'S CORRECT

24 Q GO OUT AND COLLECT EVIDENCE FROM WHERE EVER IT'S
25 LOCATED?

- 1 A THAT'S CORRECT
- 2 Q ANALYZE, PRESERVE, AND COME AND TESTIFY ABOUT IT?
- 3 A YES SIR
- 4 Q YOU'RE ONE OF THE ENTIRE TEAM?
- 5 A YES SIR THERE IS A TOTAL OF FIVE OF US INCLUDING
- 6 THE SUPERVISOR
- 7 Q AND MOST OF THAT GROUP WAS CALLED OUT ON THIS NIGHT
- 8 WEREN'T THEY?
- 9 A ALL EXCEPT ONE
- 10 Q I THINK ONE OF THE OTHER DEPUTIES SAID IT WAS A TEAM
- 11 EFFORT, RIGHT?
- 12 A YES SIR
- 13 Q OK AMONG THE SEVERAL THINGS YOU DID, THE SOLICITOR
- 14 JUST MENTIONED THE SEARCH OF THREE DIFFERENT
- 15 RESIDENCES?
- 16 A YES SIR
- 17 Q IS THAT RIGHT?
- 18 A YES SIR
- 19 Q YOU WERE INVOLVED WITH THE ONE ON BON AIRE
- 20 BOULEVARD, RIGHT?
- 21 A YES SIR
- 22 Q THAT'S OVER NEAR WHERE THE SHOOTING HAPPENED, RIGHT?
- 23 A YES SIR, IT'S KINDA ON THE CORNER OF BON AIRE AND
- 24 WEST MONTAGUE
- 25 Q AND THAT'S MR JETER'S, THE DEFENDANT THAT IS NOT ON

1

TRIAL TODAY, HIS RESIDENCE?

2

A YES SIR

3

Q THEN YOU ALSO SEARCHED, YOU HELPED WITH TEAM

4

SEARCHING AT MURRAY DRIVE, IS THAT RIGHT?

5

A NORTH MURRAY, YES

6

Q NORTH MURRAY DRIVE THAT'S WHERE MICHAEL DUNHAM WAS

7

LIVING, ISN'T IT?

8

A YES SIR

9

Q OK, AND YOU ALSO HELPED WITH TEAM SEARCH AT SUMNER

10

AVENUE, RIGHT?

11

A YES

12

Q THAT'S MARSHVIEW APARTMENTS WE'VE HEARD ABOUT

13

PREVIOUSLY?

14

A. YES SIR

15

Q AND I THINK YOUR QUOTE WAS NOTHING OF EVIDENTRY

16

VALUE WAS FOUND AT ANY OF THOSE RESIDENCES?

17

A NO SIR

18

Q NO GUN WAS EVER FOUND?

19

A NOT MATCHING THE 22 CALIBER PROJECTILE THAT WAS

20

RECOVERED

21

Q CERTAINLY ANY TESTIMONY THAT A PISTOL WAS USED,

22

RIGHT?

23

A WHAT-

24

Q ANY TESTIMONY THAT A PISTOL WAS USED TO KILL MR

25

GAMBRELL?

1 A YES SIR

2 Q THERE WERE NO PISTOLS AT ALL?

3 A NO SIR

4 Q ANOTHER THING YOU ACTUALLY DID, DIDN'T YOU REQUEST

5 THE GUNSHOT RESIDUE TO BE TAKEN FROM MR GAMBRELL

6 THE DECEASED?

7 A YES SIR

8 Q THAT WAS BY YOUR REQUEST?

9 A YES SIR

10 Q WERE YOU INVOLVED IN WHAT'S CALLED MAJOR CASE

11 PRINTS?

12 A I DID NOT- I MAY HAVE RECEIVED THEM IF THEY BROUGHT

13 THEM TO THE EVIDENCE COMPOUND

14 Q YOU DIDN'T TAKE MAJOR CASE PRINTS?

15 A NO SIR, I DID NOT

16 Q VERY QUICKLY SO THE JURY CAN UNDERSTAND MAJOR CASE

17 PRINTS IS A FULL PRINTING OF SOMEONE'S PALM AND

18 FINGERPRINTS, IS THAT ACCURATE?

19 A YES SIR

20 Q AND MAJOR CASF PRINTS, WHEN YOU REFER TO THEM THAT'S

21 JUST WHAT IT MEANS IT'S THE PRINTS THAT YOU TAKE

22 WHEN THE CASE IS A VERY SERIOUS CASE?

23 A NOT NECESSARILY

24 Q YOU DO THAT ALL THE TIME WHEN YOU TAKE FINGERPRINTS?

25 A IF ANY OF THE INVESTIGATORS FIND WHAT'S BELIEVED TO

1 BE A PARTIAL PRINT AND THINK THAT IT MAY BE COMPARED
2 TO A MAJOR CASE PRINT, IF THEY HAVE A SUSPECT, AND
3 GET MAJOR CASE PRINTS FROM THERE TO BE COMPARED THAT
4 WAY LIKE IF WE HAVE A PALM IMPRESSION.

5 Q LET ME BACK UP A BIT SO IF YOU HAD A PALM
6 IMPRESSION, NORMALLY THAT'S NOT SOMETHING WOULD BE
7 ON FILE YOU COULD GET THEM

8 A THAT'S RIGHT WE HAVE TO GET MAJOR CASE PRINTS DONE

9 Q IF YOU HAVE FINGERPRINTS LEFT ON SOME PIECE OF
10 EVIDENCE, GENERALLY YOU'RE JUST GONNA COMPARE THOSE
11 TO OTHER FINGERPRINTS?

12 A YES SIR

13 Q AND IF A SERIOUS CASE AND YOU JUST HAVE FINGERPRINTS
14 YOU WOULD GO AHEAD AND GET THE PALMS THE FULL THING
15 SO YOU HAVE TO MAKE GOOD COMPARISONS, IS THAT RIGHT?

16 A THAT'S CORRECT

17 Q YOU WEREN'T INVOLVED IN DOING THAT IN THIS CASE BUT
18 YOU WERE AWARE THAT IT WAS DONE?

19 A YES SIR

20 Q YOU WERE AWARE THAT IT WAS DONE ON MR JETER,
21 CORRECT?

22 A YES

23 Q YOU WERE AWARE IT WAS DONE ON MR DUNHAM, CORRECT?

24 A CORRECT

25 Q THOSE ARE THE ONLY TWO PEOPLE THAT HAD MAJOR CASE

1 PRINTS DONE, CORRECT?

2 A TO MY KNOWLEDGE, CORRECT

3 Q WELL WOULD YOU HAVE BEEN THE ONE TO HAVE RECEIVED
4 ANY MAJOR CASE PRINTS, I THINK YOU MENTIONED THAT
5 EARLIER?

6 A ONE OF FIVE WITHIN THE UNIT, YES

7 Q YOU ARE NOT AWARE THAT THE UNIT TEAM GOT ANY MAJOR
8 CASE PRINTS FROM ANYBODY OTHER THAN MR JETER?

9 A THAT'S CORRECT

10 Q AND MR DUNHAM? OK DID THE TEAM GO TO TWO
11 DIFFERENT APARTMENTS OVER IN MARSHVIEW?

12 A I'M ONLY AWARE OF ONE APARTMENT

13 Q OK, AND DO YOU RECALL WHICH PARTICULAR APARTMENT YOU
14 HELPED DO ANY SEARCH?

15 A IT WAS APARTMENT 'C' AS IN CHARLES 4

16 Q OK YOU EVER HAD ANY DIFFICULTY FIGURING OUT WHICH
17 APARTMENTS THAT WAS?

18 A I THINK THAT HAD BEEN DETERMINED BY THE TIME I GOT
19 THERE, BUT THERE WAS DIFFICULTY IN DETERMINING
20 DECEMBER 13TH AND 14TH IT WAS NEAR CHRISTMAS TIME AND
21 THE APARTMENT I SEARCHED THE DOOR WAS WRAPPED WITH
22 WRAPPING PAPER COVERING UP THE APARTMENTS
23 NUMERICALLY

24 Q THERE WERE TWO BUILDINGS ATTACHED BY A STAIRWELL,
25 RIGHT?

1 A YES SIR

2 Q AND IN EACH THE BUILDING THE APARTMENTS ARE NUMBERED
3 1, 2, AND ON UP, I MEAN THERE IS AN APARTMENT NUMBER
4 1 ON BOTH SIDES, ISN'T THERE?

5 A I--

6 Q DO YOU RECALL?

7 A NO SIR I JUST CONCENTRATED ON THE ONE APARTMENT

8 Q OK I'D LIKE TO SHOW YOU SOME ITEMS THAT ARE
9 ALREADY IN EVIDENCE FIRST OF ALL I'D LIKE TO SHOW
10 YOU-- AND I THINK WE SAW THIS A MOMENT AGO, I THINK
11 IT'S NUMBER 21, YOU RECOGNIZE THAT?

12 A YES SIR THAT IS THE GRAND MARQUIS PARKED AT RUTH
13 DRIVE

14 Q AND THAT'S WHERE IT WAS WHEN YOU FOUND IT?

15 A THAT'S CORRECT

16 Q AND THERE IS A VAN?

17 A YES SIR

18 Q IS THAT THE SAME ONE YOU POINTED OUT IN THE AERIAL
19 PHOTOGRAPH?

20 A YES SIR

21 Q OK, AND THE GRAND MARQUIS THE FRONT OF IT IS ABOUT
22 TO THE-- THE PASSENGER SIDE THE REAR WHEEL WELL, IS
23 THAT APPROXIMATELY?

24 A APPROXIMATELY, YES SIR

25 Q IS THAT BASICALLY WHAT YOU WERE TOLD WHEN YOU WERE

1 OUT THERE?

2 A YES

3 Q OK, I WANT TO SHOW YOU NUMBER 23 IS THAT ANOTHER

4 PHOTO OF THE SAME VEHICLE?

5 A YES SIR

6 Q SO WHEN IT'S BACKED IN THERE THAT TREE LIMB WAS

 HANGING OVER IT PRETTY GOOD, WASN'T IT?

8 A YES SIR

9 Q NOW THAT'S AT RUTH DRIVE, CORRECT?

10 A YES SIR

11 Q AND IF I REMEMBER YOU STARTED OUT AT THE SCENE OF

12 THE SHOOTING, RIGHT?

13 A YES SIR, ON WEST MONTAGUE

14 Q THAT'S OVER WEST MONTAGUE EXTENSION, RIGHT?

15 A YES SIR

16 Q AND THAT'S OVER THERE WHERE DORCHESTER ROAD AND WEST

17 MONTAGUE KINDA WRAPS AROUND A BIT?

18 A YES SIR

19 Q MAY I APPROACH THE WITNESS YOUR HONOR I'M GOING TO

20 SHOW YOU EXHIBIT 28 DO YOU RECOGNIZE THAT AERIAL

21 PHOTOGRAPH?

22 A YES I DO

23 Q OK, AND DOES THAT DEPICT THE GENERAL AREA WE ARE

24 TALKING ABOUT?

25 A YES SIR

1 Q AND WOULD YOU BE ABLE IN THIS PHOTOGRAPH TO POINT TO
2 WHERE YOU CREATED A CRIME SCENE?

3 A YES SIR

4 Q YOUR HONOR WILL HE BE ABLE TO STEP DOWN? NOW WE
5 NEED TO SPEAK UP AS WE TALK TO THE JURY CAN YOU
6 JUST POINT TO THE JURY ROUGHLY WHERE THE CRIME SCENE
7 WAS ESTABLISHED?

8 A THIS IS WEST MONTAGUE THESE ARE THE APARTMENTS OR
9 TOWN HOMES I POINTED OUT EARLIER THE WHITE SIGN
10 STATING LANE'S MOBILE HOME PARK IS ACTUALLY COVERED
11 BY THIS GREEN LINE, BUT IT WOULD BE IN THIS GENERAL
12 AREA WE HAD ROPED OFF TWO OR THREE HOUSES

13 Q WHILE ON THE SCENE LOOKING FOR ANY EVIDENCE AT WEST
14 MONTAGUE YOU WERE- YOU GOT INFORMATION THE CAR WAS
15 FOUND ON RUTH DRIVE, RIGHT?

16 A YES SIR

17 Q SO YOU WENT FROM THAT LOCATION- YOU WENT TO THE
18 OTHER SIDE OF NORTH CHARLESTON ON RUTH DRIVE, RIGHT?

19 A YES SIR

20 Q DO YOU REMEMBER WHEN YOU- WHAT TIME YOU DID THAT?

21 A I LEFT THE SCENE AT WEST MONTAGUE AT APPROXIMATELY
22 1823 WHICH IS 6 23 IN THE EVENING AND PROCEEDED TO
23 RUTH DRIVE

24 Q WELL NOW HELP ME OUT, DO YOU RECALL WHAT TIME YOU
25 LEFT WEST MONTAGUE?

1 A YES, I LEFT WEST MONTAGUE AT APPROXIMATELY 1823
2 WHICH IS 6 23 IN THE EVENING

3 Q DO YOU RECALL WHAT TIME YOU GOT TO RUTH?

4 A I DON'T REMEMBER THE EXACT TIME, I BELIEVE IT WAS
5 ABOUT 20 TO 25 MINUTES TO GET TO THE SCENE

6 Q OK, AND WHEN YOU ARE ON THE SCENE YOU ARE IN SOME
7 TYPE OF POLICE UNIFORM, CORRECT?

8 A THAT IS CORRECT

9 Q AND YOU ARE IN SOME TYPE OF POLICE VEHICLE, CORRECT?

10 A YES SIR, A MARKED VEHICLE

11 Q AND THAT SAME VEHICLE WAS TAKEN FROM WEST MONTAGUE
12 OVER TO RUTH DRIVE?

13 A THAT'S CORRECT

14 Q ABOUT 20 OR 25 MINUTES?

15 A YES

16 Q AND THAT WAS ABOUT SIX O'CLOCK AT NIGHT?

17 A YES SIR

18 Q SIX THIRTY?

19 A IN NORTH CHARLESTON

20 Q OK GIVE ME ONE SECOND PLEASE NO OTHER QUESTIONS
21 THANK YOU

22 REDIRECT BY SOLICITOR WILSON - DAVID OWEN

23 Q MR DAVIS WAS ASKING YOU ABOUT NORTH MURRAY
24 BOULEVARD, THE DEFENDANT'S HOME LET ME SHOW YOU
25 STATE'S EXHIBIT 27 AND ASK YOU IF YOU COULD CIRCLE

1 WHERE THE TRAILER WAS ON NORTH MURRAY WHERE YOU
2 SEARCHED, AND COULD YOU ALSO CIRCLE ON STATE'S
3 EXHIBIT 27 WHERE MARSHVIEW APARTMENTS IS, AND THEN
4 AGAIN RUTH DRIVE YOUR HONOR AT THIS TIME WE OFFER
5 STATE'S EXHIBIT 27

6 MR DAVIS NO OBJECTION YOUR HONOR

7 Q IF YOU COULD JUST STEP DOWN TO THE JURY AND SHOW
8 THEM THESE LOCATIONS FIRST OF ALL NORTH MURRAY
9 DRIVE THE DEFENDANT'S RESIDENCE RIGHT HERE

10 A YES MA'AM

11 Q AND WHICH HIGHWAY IS THIS?

12 A THIS IS REMOUNT ROAD

13 Q AND THEN NORTH MURRAY- I'M SORRY MARSHVIEW
14 APARTMENTS OFF SUMNER THAT WE'VE BEEN DISCUSSING

15 A THERE IS SUMNER RIGHT THERE MARSHVIEW APARTMENTS

16 Q AND THEN RUTH DRIVE WHERE STEVEN JOHNSON LIVES

17 A SUMNER ACROSS NORTH RHETT AND DOWN TO RUTH DRIVE

18 Q THAT'S ALL I HAVE

19 SOLICITOR WILSON INVESTIGATOR DAVID WILLOUGHBY

20 THE WITNESS IS SWORN (INVESTIGATOR DAVID WILLOUGHBY)

21 EXAMINATION OF INVESTIGATOR WILLOUGHBY BY SOL WILSON

22 Q SGT WILLOUGHBY WHERE ARE YOU EMPLOYED?

23 A CHARLESTON COUNTY SHERIFF'S OFFICE

24 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

25 A SINCE 1988

1 Q WHAT DO YOU DO THERE?

2 A I'M CURRENTLY ASSIGNED TO INVESTIGATIONS UNIT I'M
3 A DETECTIVE SERGEANT

4 Q NOW BEFORE THAT BACK IN DECEMBER OF 2004, WHERE WERE
5 YOU WORKING AT THE SHERIFF'S DEPARTMENT?

AS THE SUPERVISOR OF THE TECHNICAL SERVICES UNIT

7 Q AND DID YOU BECOME INVOLVED IN COLLECTING AND
8 PROCESSING EVIDENCE WITH REGARD TO THIS CASE?

9 A YES MA'AM I DID

10 Q AND DID YOU HAVE OCCASION ON DECEMBER 13, 2004, TO
11 SEARCH A SILVER GRAND MARQUIS?

12 A YES MA'AM

13 Q AND WHERE DID YOU DO THAT?

14 A WE DID IT AT THE EVIDENCE COMPOUND AT 355 PINEHAVEN
15 DRIVE WHICH IS IN NORTH CHARLESTON

16 Q OK, AND WHY WOULDN'T YOU JUST DO THAT OUT ON RUTH
17 DRIVE WHERE THE CAR WAS FOUND?

18 A WELL YOU WANT TO GO TO AN AREA WHERE IT IS BETTER
19 CONTROLLED, YOU HAVE LIGHTING, BETTER TOOLS,
20 EQUIPMENT IT'S EASIER TO BRING THE VEHICLE TO THE
21 TECHNICAL SERVICES UNIT AS OPPOSED TO TRYING TO
22 BRING ALL THE EQUIPMENT OVER THERE BECAUSE YOU DON'T
23 KNOW WHAT YOU ARE GOING TO FIND WHEN YOU BEGIN THE
24 SEARCH AND YOU WANT TO HAVE YOUR TOOLS READILY
25 AVAILABLE TO PROCEED WITH WHAT YOU FIND WHEN YOU

1 FIND IT

2 Q WHEN YOU SEARCHED THAT CAR WERE YOU LOOKING FOR
3 SHELL CASINGS?

4 A YES MA'AM, WE WERE LOOKING FOR ANY ITEMS THAT WOULD
5 LEAD TOWARDS THE VEHICLE BEING TIED TO THE DRIVE-BY
6 SHOOTING

7 Q DID YOU FIND ANY SHELL CASINGS IN THE VEHICLE?

8 A NO MA'AM NO MA'AM WE DID NOT

9 Q DID YOU FIND ANY BULLETS OR LIVE ROUNDS IN THE
10 VEHICLE?

11 A NO MA'AM WE DID NOT

12 Q DID YOU FIND A WEAPON IN THE VEHICLE?

13 A NO MA'AM WE DID NOT

14 Q ALRIGHT DID YOU SEARCH THE VEHICLE FOR LATENT
15 FINGERPRINTS?

16 A YES MA'AM MYSELF AND INVESTIGATOR ROY

17 Q OK, WOULD YOU EXPLAIN TO THE JURY WHAT A LATENT
18 FINGERPRINT IS?

19 A A LATENT FINGERPRINT IS A FINGERPRINT THAT IS NOT
20 VISIBLE BY THE NAKED EYE THERE IS LATENT, PATENT,
21 AND PLASTIC FINGERPRINTS PATENT AND PRESSURE IS
22 WHAT YOU CAN SEE VISIBLY LIKE WHAT YOU'D HAVE IF YOU
23 HAD MUD ON YOUR HANDS AND YOU TOUCH SOMETHING
24 LATENT IS WHEN THEY ARE INVISIBLE TO THE NAKED EYE
25 WITHOUT BEING ENHANCED, AND THEN PLASTIC WOULD BE IF

1 THEY WERE IN SOMETHING LIKE SILLY PUTTY OR SOMETHING
2 TO THAT EFFECT WOULD BE A PLASTIC PRINT

3 Q AND TELL THE JURY HOW YOU GO ABOUT THE SEARCH FOR
4 PRINTS THAT YOU CAN'T SEE WITH THE NAKED EYE, LATENT
5 PRINTS?

6 A THE MOST COMMON METHOD OF DOING IT, ESPECIALLY ON
7 THE EXTERIOR OF A VEHICLE WOULD BE THROWING POWDER,
8 AND WE DUST AN AREA OF POWDER AND YOU HAVE A LITTLE
9 BRUSH JUST LIKE A FEATHER DUSTER BUT ITS SMALLER,
10 AND YOU DUST THE ENTIRE OUTSIDE OF THE CAR, AND AS
11 YOU ARE DUSTING YOU LOOK FOR PRINTS COMING TO YOU,
12 WHICH MEANS DEVELOPING AND YOU WANT TO KEEP WORKING
13 THEM UNTIL YOU THINK THAT THEY ARE CLEAR, AND THEN
14 YOU GO AROUND THE CAR AND MARK THE ENTIRE CAR ONCE
15 THAT IS DONE YOU COME BACK WITH A DRY ERASER IS WHAT
16 WE USE ON AN EXTERIOR OF A CAR A DRY ERASER IS THE
17 SAME THING A TEACHER WOULD USE ON A SCHOOL BOARD AND
18 I LOOK AT THE PRINTS YOU KNOW, IDEALLY YOU'D WANT
19 TO HAVE ONE PRINT PER CARD BUT THAT'S NOT GOING TO
20 HAPPEN SO WHAT YOU DO IS YOU MARK THE AREA WITH
21 AS FEW PRINTS AS YOU THINK YOU CAN GET ON A CAR
22 WITHOUT DESTROYING OTHER PRINTS AND YOU MARK THEM 1,
23 2, 3, 4, 5, AND IT'S IN MY HANDWRITING IF I'M DOING
24 THE PRINTS THEN YOU PHOTOGRAPH EACH ONE OF THOSE
25 NUMBERS, AND YOU COME BACK WITH TAPE, CLEAR TAPE,

1 AND YOU TAPE OVER THE PRINT WHEN YOU LIFT THE TAPE
2 THE FINGERPRINT COMES UP WITH THE TAPE AS WELL AS
3 DRY ERASER MARK NOW YOU HAVE TO DO THAT WHILE THE
4 MARK IS STILL WET IF YOU WAIT AND IT'S A HUNDRED
5 DEGREES OUTSIDE AND IT DRIES ITS HARDER TO LIFT IF
6 IT'S COLD OUTSIDE IT'S HARDER TO LIFT SO WOULDN'T BE
7 AS CLEAR AS IF YOU GET IT REAL MOIST, OK YOU PUT
8 THE CARD BACK DOWN ON THE SAME MARK AND YOU
9 PHOTOGRAPH IT AGAIN THEN WHAT YOU HAVE IS YOU HAVE
10 MY HAND WRITTEN NUMBER ON A CARD, A PICTURE SHOWING
11 EXACTLY WHERE THAT HANDWRITTEN NUMBER CAME FROM OFF
12 OF THAT CAR SO IT IDENTIFIES EXACTLY WHERE THAT
13 FINGERPRINT CAME FROM THE SCENE

14 Q AND SGT WILLOUGHBY DID YOU RECEIVE TRAINING IN
15 ORDER TO BE ABLE TO DO THESE LATENT PRINT
16 COLLECTIONS?

17 A YES MA'AM I RECEIVED TRAINING AT THE CRIMINAL
18 JUSTICE ACADEMY IN COLUMBIA, AND THEN ON THE JOB
19 TRAINING

20 Q HOW MANY CRIME SCENES OR ITEMS OF EVIDENCE WOULD YOU
21 SAY YOU HAVE PROCESSED AND ANALYZED FOR LATENT
22 PRINTS?

23 A THOUSANDS I WOULD ASSUME

24 Q AND HAVE YOU TESTIFIED A NUMBER TIMES IN COURT
25 REGARDING HAVING FOUND LATENT PRINTS?

1 A YES MA'AM

2 Q YOUR HONOR AT THIS TIME WE OFFER SGT WILLOUGHBY AS
3 AN EXPERT IN THE COLLECTION OF LATENT PRINTS,
4 FINGERPRINTS

5 **THE COURT** WITHOUT OBJECTION

6 Q OK, SO IN THIS SITUATION YOU PROCESSED THE CAR FOR
7 LATENT PRINTS?

8 A YES MA'AM

9 Q DID YOU PROCESS THE INSIDE OF THE CAR AND THE
10 OUTSIDE OF THE CAR?

11 A YES WE DID INSIDE AND OUTSIDE

12 Q OK, AND TELL THE JURY WHAT KIND OF SURFACES ARE BEST
13 FOR PRESERVING PRINTS SO THAT YOU CAN SOMETIME LATER
14 COME BACK AND TRY TO COLLECT IT?

15 A THE SMOOTHER THE SURFACE, THE DRYER THE SURFACE THE
16 BETTER IT IS TO COLLECT A PRINT THEY MAKE
17 AUTOMOBILES NOW WITH EXTERIORS, REAL SHINY EXTERIORS
18 SO THE EXTERIOR IS SMOOTH THE DASHBOARD AND
19 EVERYTHING HAS A TEXTURED FEEL TO IT IF YOU CAN
20 RECALL BACK WHEN— WELL WHEN I WAS A CHILD WE USED TO
21 HAVE ICEBOXES THAT WERE REAL SMOOTH AND MY MOMMA
22 USED TO FUSS AT ME ALL THE TIME BECAUSE WE WOULD GET
23 FINGERPRINTS ALL OVER THOSE ICEBOXES AND I'M SURE
24 Y'ALL CAN REMEMBER BACK TO THAT TOO, AND NOW THEY'VE
25 COME UP WITH TEXTURED ICEBOXES, AND THAT TEXTURED

1 ICEBOXES, THE IDEA BEHIND IT WAS TO HIDE THE
2 FINGERPRINTS, AND SO THE SAME THING HAS HAPPENED ON
3 THE DASHBOARD OF A CAR IT'S TEXTURED NOW SO IT'S
4 HARDER TO PICK UP THE FINGERPRINTS OFF OF IT THERE
5 IS A FABRIC INSIDE YOU ARE NOT GOING TO BE ABLE TO
6 THROW POWDER AND COLLECT PRINTS OFF OF THAT FABRIC
7 SO THAT'S SOME OF THE STUFF THAT HINDERS YOU ON THE
8 INTERIOR OF A CAR OF COURSE, YOU DO HAVE SOME
9 SMOOTH AREAS, LIKE THE GEAR SELECTOR, THE INSIDE
10 WINDOWS, THOSE KIND OF AREAS ARE STILL SIMILAR TO
11 THE OUTSIDE OF THE VEHICLE, YOU WOULD BE ABLE TO
12 COLLECT IT WITH POWDER

13 Q NOW, I'M GOING TO SHOW YOU STATE'S EXHIBIT 9 WHICH
14 IS ALREADY IN EVIDENCE IS THAT THE CAR THAT YOU
15 PROCESSED?

16 A YES MA'AM

17 Q AND THIS PHOTOGRAPH WAS TAKEN AT THE EVIDENCE
18 COMPOUND?

19 A YES MA'AM

20 Q THE DENT IN THE SIDE OF THE CAR, THAT WAS THERE
21 BEFORE YOU PROCESSED IT?

22 A THAT'S HOW IT ARRIVED AT THE COMPOUND, YES MA'AM

23 Q AND THEN STATE'S EXHIBIT 10, THE DRIVER'S SIDE OF
24 THE CAR, THE SAME THING?

25 A AS IT ARRIVED

1 Q THE DENT IN THE FRONT QUARTER PANEL THAT WAS THERE?

2 A YES MA'AM

3 Q NOW, LET ME SHOW YOU STATE'S EXHIBITS 12, 13, 14,
4 15, 17, AND 18, AND ASK YOU IF YOU RECOGNIZE THESE?

5 A THESE ARE PHOTOGRAPHS OF THE PROCESS I JUST SPOKE TO
6 YOU ABOUT ON HOW WE COLLECTED THE FINGERPRINTS IT
ALSO SHOWS THE INTERIOR OF THE TRUNK, SHOWING WE
8 SEARCHED THE INTERIOR OF THE TRUNK AND INTERIOR OF
9 THE DRIVER'S COMPARTMENT ON THE VEHICLE THE
10 PICTURES THAT YOU CAN SEE, I'M GOING TO START WITH
11 THIS ONE, I DON'T KNOW WHETHER YOU CAN SEE IT OR NOT
12 FROM HERE, BUT YOU CAN SEE THERE IS MY NUMBERS 1, 2,
13 3 AND, OF COURSE, I TRY TO GET AS FEW A PRINTS AS I
14 CAN IN THE CAR—

15 **THE COURT** YOU'VE GOT TO PUT THAT IN EVIDENCE

16 Q BEFORE YOU START THAT—

17 A I'M SORRY

18 Q THOSE ARE THE PHOTOGRAPHS YOU TOOK OF THE CAR?

19 A INVESTIGATOR ROY TOOK THIS AS I WAS OVERWATCHING
20 HE WAS IN TRAINING

21 Q OK, AND ARE THOSE PHOTOGRAPHS FAIR AND ACCURATE
22 DEPICTIONS OF THE CAR AS YOU WERE PROCESSING IT?

23 A YES MA'AM

24 Q YOUR HONOR AT THIS TIME WE OFFER STATE'S 12, 13, 14,
25 15, 17, 18, AND 16 INTO EVIDENCE

1 **THE COURT** WITHOUT OBJECTION THEY ARE IN EVIDENCE

2 Q SGT WILLOUGHBY I WANT TO FIRST SHOW STATE'S EXHIBIT
3 18 THE INTERIOR OF THE CAR WHEN YOU PROCESSED THE
4 INTERIOR OF THE CAR DID YOU HAVE ANY LUCK FINDING
5 ANY LATENT PRINTS?

6 A WE DISCOVERED ONE LATENT FINGERPRINT AND THAT'S OFF
7 OF THE, NUMBER 28, IT'S OFF THE GEAR SELECTOR

8 Q OK HOW ABOUT THE STEERING WHEEL OR THE DASH?

9 A NO MA'AM

10 Q WOULD THAT SURPRISE YOU?

11 A NO, BECAUSE OF THE TEXTURES AND THE WEATHER OUTSIDE
12 IT WAS JUST COOL OUT THERE SO IT WAS LESS CHANCE OF
13 SWEATING AND TRANSFERRING THOSE TYPE OF FLUIDS.

14 Q OK SO YOU JUST GOT ONE PRINT INSIDE OF THE CAR?

15 A YES MA'AM

16 Q NOW, STATE'S EXHIBIT 12 EXPLAIN TO THE JURY WHAT
17 THAT IS A PHOTOGRAPH OF?

18 A THAT'S A PHOTOGRAPH OF WHERE I HAD THROWN POWDER
19 DOWN TO ENHANCE THE PRINTS, THE LATENT FINGERPRINTS,
20 THEN I MARKED THEM 1, 2, 3 WITH THE DRY ERASER, AND
21 AS YOU CAN SEE IT'S IN HAND SCRIPT, IT'S NOT A
22 FACTORY MADE NUMBER, AND WHAT I'M TRYING TO DO IS
23 I'M TRYING TO GET A FEW A PRINTS AS I CAN ON ONE
24 CARD NOW WHEN I LIFT LATENT PRINTS I HAVE TO HAVE
25 TAPE BEFORE THE FINGERPRINT AND I HAVE TO HAVE TAPE

1 AFTER THE FINGERPRINT SO IN ORDER TO ACCOMMODATE
2 SOMETIMES YOU ARE GOING TO GET 2 OR 20 OR HOWEVER
3 MANY YOU ARE GOING TO BE ABLE TO GET TO GO PAST THE
4 PRINT AND GO FOR THE PRINT SO LIKE I SAID IDEALLY
5 YOU WOULD WANT TO HAVE ONE PRINT PER CARD, BUT
6 THAT'S NOT GOING TO HAPPEN VERY OFTEN

Q AND IN FACT I'M GOING TO SHOW THE JURY STATE'S
8 EXHIBIT 13, WHAT IS THAT?

9 A THAT'S WHERE I ALREADY LIFTED THE PRINT AND I PLACED
10 IT- I DON'T TAKE THE TAPE COMPLETELY OFF THE CAR AND
11 HINGE IT OFF, BUT ONCE I HINGE IT OFF I LAY THE CARD
12 ON THE TAPE AND THEY LAY IT BACK ON THE CARD AND
13 THAT SHOWS 1, 2 AND, OF COURSE, 2 IS OVERLAPPED
14 UNDERNEATH NUMBER 1, AND THEN NUMBER 3 IS WHERE
15 PRINTS WERE LAYING ONE OVER ANOTHER AND IT WASN'T A
16 PLACE FOR ME TO STOP IT UNTIL I GOT TO THE TOP OF
17 THE CARD SO WHEN I DID I BUTTED THE CARDS UP
18 LENGTHWISE, AND I THINK IT IS THREE CARDS THAT ARE
19 ACTUALLY NUMBER 3 THE 3 CARDS ARE LINKED ON ONE
20 PIECE OF PAPER

21 Q AND THEN- BUT THESE ARE STATE'S 12 AND 13 ARE BEFORE
22 AND AFTER PICTURES IN A WAY?

23 A YES MA'AM

24 Q BEFORE THE CARD WAS PUT ON WITH THE TAPE AND THEN
25 AFTER THE CARD?

1 A YES MA'AM

2 Q AND ON STATE'S EXHIBIT 14, WHAT IS THAT?

3 A THAT'S FROM WHAT I CAN SEE HERE BY THE DOOR KNOB,

4 THERE IS NUMBER 4, THERE IS NUMBER 5 BY THE BACK

5 WINDOW, AND I THINK THAT'S NUMBER 6 ON THE FENDER

6 BACK THERE, I CAN'T LOOK AT IT FROM THIS DISTANCE,

7 BUT I BELIEVE THAT'S NUMBER 6, AND THAT'S WHERE WE

8 ARE SHOWING A GROUPING OF THEM WHICH GIVES YOU A

9 BETTER IDEA OF WHERE THESE THINGS ARE WHAT I LIKE

10 TO REFER TO IT AS WHEN YOU ARE TAKING PICTURES OF AN

11 AREA, YOU WANT TO TAKE THE PICTURE OF THE PLATE THE

12 TABLE AND THE ROOM, AND THEN YOU IF YOU JUST HAVE

13 PLATE PICTURES YOU CAN'T TELL WHERE THAT PLATE IS IN

14 THE ROOM SO IF YOU EXPAND OUT THAT'S HOW YOU

15 FINALLY TAKE A PICTURE OF THE PLATE WHICH IS THE

16 FINGERPRINT WHICH WE SHOWED EARLIER, AND YOU WOULD

17 TAKE A PICTURE OF THE TAPE, WHICH IS THIS QUARTER OF

18 THE ROOM HERE, AND THEN YOU GO BACK TO ROOM, IT

19 COULD BE THE WHOLE SIDE OF THE CAR, AND IT GIVES YOU

20 A BETTER IDEA ACTUALLY OF WHERE NUMBER 2, NUMBER 5,

21 NUMBER 4, AND NUMBER 6 IS LOCATED DOWN ON THAT

22 TARGET

23 Q AND THEN AGAIN THE ACTUAL PICTURE STATE'S EXHIBIT

24 15, WHAT IS THAT?

25 A THAT'S WHEN WE HAD HINGED THE TAPE UP AND PLACED THE

1 CARD UNDERNEATH AND IT SHOWS THE EXACT SAME NUMBER,
2 WRITTEN EXACTLY THE SAME WAY IS PICKED UP BY THAT
3 TAPE ALONG WITH THE FINGERPRINTS THAT WERE
4 PHOTOGRAPHED AT THAT SAME PLACE AND ALL PLACED ON
5 THAT CARD

6 Q AND Y'ALL COLLECTED A NUMBER OF LATENT PRINTS DID
7 YOU NOT?

8 A TWENTY-EIGHT TWENTY-EIGHT CARDS, NOW I DON'T KNOW
9 HOW MANY LATENT PRINTS, ACTUAL PRINTS WE GOT, BUT
10 THERE WERE TWENTY-EIGHT LIFTS

11 Q WHY WOULD THERE BE A DIFFERENCE BETWEEN THE NUMBER
12 OF CARDS AND THE ACTUAL NUMBER OF PRINTS THAT YOU
13 GOT?

14 A LIKE ON NUMBER 3, IT MAY HAVE BEEN ON THE DOOR POST
15 THERE THERE MAY HAVE BEEN 10, 15, PRINTS ON THAT
16 ONE CARD, BUT ITS ONE LIFT BECAUSE ITS ONE NUMBER,
17 ITS ONE PIECE OF PAPER, SO THAT'S ONE LIFT

18 Q LET ME SHOW YOU STATE S EXHIBIT 42, 43, 44 45 AND
19 46 IF YOU COULD TELL THE JURY WHAT THOSE ARE?

20 A NUMBER 46 IS LIFT NUMBER 3, WANT ME TO SHOW THE
21 NUMBER?

22 Q NOT YET, JUST TELL ME WHAT THEY ARE

23 A FORTY-FIVE IS LIFT NUMBER 1, 44 IS LIFT NUMBER 7, 43
24 IS LIFT NUMBER 24, 42 IS LIFT NUMBER 25

25 Q AGAIN Y'ALL DID NUMBERS 1 TO 28 PUTTING THE TAPE,

THIRD JUDICIAL CIRCUIT

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1 PEELING IT OFF ON THE CARD?

2 A THAT'S CORRECT

3 Q AND THOSE THE LIFTS THAT YOU OBTAINED FROM THAT

4 SILVER MERCURY GRAND PRIX?

5 A YES MA'AM THEY ARE

6 Q YOUR HONOR AT THIS TIME WE OFFER STATE'S EXHIBIT 42,

7 43, 44, 45, AND 46 IN EVIDENCE

8 **THE COURT** WITHOUT OBJECTION

9 Q AND AGAIN DETECTIVE WILLOUGHBY NUMBER 46 THAT'S THAT

10 LONG ONE NUMBER 3 THAT--

11 A THAT'S CORRECT

12 Q YOU PROBABLY GOT A NUMBER OF PRINTS ON THAT ONE?

13 A YES THERE IS QUITE A FEW ON THERE AND THAT'S WHY

14 THE CARD IS SO LONG BECAUSE THERE WASN'T STOPPING

15 POINT WHERE I COULD PUT THE TAPE DOWN WITHOUT LOSING

16 ANY

17 Q AND NUMBER 25 IS SHORT AND STATE'S EXHIBIT 42--

18 A I THINK IT'S JUST 2 ON THERE

19 Q STATE'S EXHIBIT 45

20 A THAT ONE IS MOVED UP BECAUSE I WAS TRYING TO PROTECT

21 NUMBER 2, I BELIEVE NUMBER 2 IS RIGHT UNDERNEATH IT

22 I ACTUALLY LIFTED NUMBER 2 BEFORE I LIFTED NUMBER 1,

23 BECAUSE IF I LIFTED THEM THE OTHER WAY I WOULD HAVE

24 LOST NUMBER 1

25 Q AND THEN NUMBER 6, EXHIBIT 44 AND 43 ARE NUMBER 7

1 AND NUMBER 24?

2 A YES MA'AM

3 Q NOW ONCE THESE LATENT PRINTS ARE COLLECTED, YOU
4 DON'T ACTUALLY ATTEMPT TO MATCH THEM TO A PERSON
5 YOURSELF?

6 A NO MA'AM I DON'T

7 Q IN THIS CASE WHAT DID YOU DO WITH ALL OF THE LATENT
8 CARDS YOU HAD COLLECTED FROM THE MERCURY?

9 A THEY WERE COMPILED, THEY WERE PUT IN THE ENVELOPE,
10 THEY WERE HANDLED BY INVESTIGATOR OWENS, HE WAS THE
11 ONE RUNNING THE RETURN ON IT, AND THOSE LATENTS WERE
12 TRANSPORTED TO THE NORTH CHARLESTON POLICE
13 DEPARTMENT BY INVESTIGATOR OWENS

14 Q OK, AND WAS THAT FOR THEIR EXPERT TO SEE IF HE COULD
15 MAKE ANY MATCHES WITH THOSE FINGERPRINTS?

16 A THAT'S CORRECT

17 Q NOW, BASED ON YOUR EXPERIENCE AND YOUR TRAINING CAN
18 YOU DATE, IN OTHER WORDS CAN YOU PUT A TIME STAMP ON
19 A FINGERPRINT?

20 A NO MA'AM

21 Q SO EVEN THOUGH YOU KNOW YOU COLLECTED THOSE ON
22 DECEMBER 13, YOU DON'T KNOW THAT THEY WERE PUT
23 THERE?

24 A NO MA'AM I DON'T FINGERPRINTS ARE SUBJECT TO THE
25 ELEMENTS IF YOU HAD A BLACK CAR, OBVIOUSLY THE

1 FINGERPRINTS AREN'T GOING TO LAST AS LONG, THEY ARE
2 GOING TO COOK OFF EVERYBODY HAS TOUCHED A BLACK
3 CAR IN AUGUST THEY JUST COOK OFF, AND THEN THE
4 SAME THING IN WINTERTIME IN WINTERTIME THEY ARE
5 NOT GOING TO LAST AS LONG EITHER BECAUSE THE COLD
6 AIR IS GOING TO DRY THEM OFF TO BE ABLE TO SAY A
7 FINGERPRINT IS GOING TO LAST 100 WEEKS, OR 10
8 MINUTES, OR AN HOUR, I WOULDN'T BE ABLE TO DO THAT,
9 I DON'T THINK ANYBODY COULD

10 Q SO THERE IS NO TELLING WHETHER OR NOT THE
11 FINGERPRINTS HAD BEEN THERE FOR DAYS OR WEEKS OR
12 MONTHS?

13 A NO MA'AM

14 Q OK BEG THE COURT'S INDULGENCE THAT'S ALL I HAVE
15 YOUR HONOR

16 CROSS EXAMINATION OF DAVID WILLOUGHBY BY MR NEELEY

17 Q ST WILLOUGHBY DID YOU FIND ANY PRINTS ON THE
18 STEERING WHEEL?

19 A NO SIR

20 Q AND DID YOU FIND ANY ON THE DASH?

21 A NO SIR

22 Q WHAT ABOUT INSIDE BY THE CAR HANDLE?

23 A NO SIR, NOT ON THE INTERIOR BY THE DOOR HANDLES

24 Q OK, BUT YOU DID GET ONE FROM THE GEAR SELECTOR IS
25 THAT RIGHT?

1 A THE GEAR SELECTOR

2 Q DID YOU TRY ANY OF THE OTHER SPACES?

3 A YES SIR, WE DID. IF WE GET A PRINT IF IT IS CLEAR
4 OR NOT, IF WE PULL A PRINT, IF IT IS AN ACCEPTABLE
5 LIFT OR NOT, WE KEEP THE CARD

6 Q ARE YOU AWARE OF ANY PROCESSING DONE ON THE CAR
7 EXCEPT THE FINGERPRINTS?

8 A WE RAN A BLACK LIGHT ACROSS THE INTERIOR OF IT

9 Q WHAT IS THE PURPOSE OF A BLACK LIGHT?

10 A THE BLACK LIGHT, IT WOULD SHOW THE CONTRAST ON IT IF
11 YOU HAD SOME FLUIDS, BODY FLUIDS, OR OTHER FLUIDS IN
12 THERE, IT WOULD SHOW JUST TO GIVE US A BETTER
13 FEELING OF WHAT WE WERE WORKING AT

14 Q DID YOU MAKE A REPORT OR ANYTHING ABOUT THAT?

15 A NO, THERE WAS NOTHING FOUND

16 Q OK THANK YOU SIR NO FURTHER QUESTIONS

17 REDIRECT BY SOLICITOR WILSON - DAVID WILLOUGHBY

18 Q YOU EVEN SEARCHED THE BACK SEAT AREA?

19 A YES MA'AM

20 Q AND THE INSIDE BACK DOORS FOR PRINTS?

21 A YES MA'AM WE DO THAT FOR LATENTS AS WELL AND WE
22 LIFT THE BACK SEAT UP TO CHECK FOR ANY ITEMS IN THAT
23 AREA AND PULL ANYTHING OUT OF THE TRUNK EVERYTHING
24 THAT CAN BE REMOVED FROM THE VEHICLE WITHOUT
25 DAMAGING THE VEHICLE IS REMOVED

1 Q SO NOTHING IN THE BACK SEAT?

2 A NO MA'AM

3 THE COURT THANK YOU SIR LADIES AND GENTLEMEN OF
4 THE JURY THE COURT REPORTER CAME DOWN FROM SUMTER TODAY
5 AND SHE DIDN'T BRING ANYTHING SHE IS GOING TO BE WITH
6 US TOMORROW, AND I BORROWED A COURT REPORTER FROM ANOTHER
7 JUDGE SO WE COULD WORK UNTIL SHE GOT HERE SINCE SHE IS
8 GOING TO BE ABLE TO COME BACK WE'LL START AT 9 30 TO GIVE
9 HER TIME TO GET HERE NINE THIRTY SEE Y'ALL THEN DO
10 NOT DISCUSS THE CASE WE'LL FINISH TOMORROW

11 RECESS (5 36 P M)

12 THE COURT BRING THE JURY IN PLEASE

13 JURY IN (9 44 A M)

14 SOLICITOR BURNEY AL HALLMAN

15 THE WITNESS IS SWORN (INVESTIGATOR AL HALLMAN)

16 EXAMINATION OF AL HALLMAN BY SOLICITOR BURNEY

17 Q WHERE ARE YOU EMPLOYED?

18 A WITH THE CITY OF NORTH CHARLESTON POLICE DEPARTMENT

19 Q AND WHAT DO YOU DO FOR NORTH CHARLESTON POLICE
20 DEPARTMENT?

21 A I AM CURRENTLY ASSIGNED TO THE FORENSIC
22 INVESTIGATIONS UNIT

23 Q AND THAT'S AS WE'VE LEARNED IS COMMONLY REFERRED TO
24 AS CRIME SCENE?

25 A YES MA'AM

1 Q AND WHAT'S YOUR POSITION THERE WITH CRIME SCENE,
2 WHAT TYPE OF DUTIES DO YOU HAVE?

3 A I RESPOND TO VARIOUS CRIME SCENES TO PROCESS THE
4 SCENES WE DOCUMENT THEM WITH PHOTOGRAPHS, WE
5 COLLECT EVIDENCE AND PROCESS EVIDENCE, AND I'M ALSO
6 ONE OF THE SENIOR LATENT PRINT EXAMINERS IN THE
7 DIVISION

8 Q SO PART OF YOUR JOB IS TO EXAMINE FINGERPRINTS?

9 A YES MA'AM

10 Q WILL YOU TELL THE JURY ABOUT WHETHER YOU HAD ANY
11 TRAINING IN THE FIELD OF EXAMINING FINGERPRINTS?

12 A YES MA'AM I'VE RECEIVED NUMEROUS TRAINING SEMINARS
13 AND TRAINING COURSES IN THE FIELDS OF RIDGEOLOGY AND
14 FINGERPRINT COMPARISONS AND IDENTIFICATION, AND I'VE
15 ALSO GOT A CERTIFICATION THROUGH THE IAI OR THE
16 INTERNATIONAL ASSOCIATION FOR IDENTIFICATION AS A
17 CERTIFIED LATENT FINGERPRINT EXAMINER

18 Q AND A PART OF YOUR JOB DUTIES HAVE YOU HAD OCCASION
19 TO EXAMINE LATENT PRINTS WHICH WE LEARNED ABOUT
20 YESTERDAY TO A INK PRINT?

21 A YES MA'AM

22 Q CAN YOU APPROXIMATE HOW MANY TIMES YOU'VE DONE THAT?

23 A NO MA'AM I CANNOT THOUSANDS OF THOUSANDS OF PRINTS
24 I'VE LOOK AT OVER THE YEARS

25 Q AND HAVE YOU BEEN QUALIFIED IN GENERAL SESSIONS

1 COURT IN THE FIELD, AN EXPERT IN THE FIELD OF
 2 FINGERPRINT ANALYSIS?
 3 A YES MA'AM
 4 Q AND CAN YOU APPROXIMATE HOW MANY TIMES THAT HAS
 5 HAPPENED?
 6 A OVER 25
 7 Q OK AT THIS TIME YOUR HONOR WE WOULD OFFER SGT
 8 HALLMAN AS AN EXPERT IN THE FIELD OF FINGERPRINT
 9 ANALYSIS NOW, YESTERDAY THE JURY LEARNED ABOUT
 10 LATENT PRINTS THAT ARE PRINTS THAT ARE UNSEEN TO THE
 11 NAKED EYE AND THEN PATENT PRINTS WHICH THE EXAMPLE
 12 THAT WAS GIVEN IS IF A CHILD TOUCHES A REFRIGERATOR
 13 WERE YOU HERE FOR THAT?
 14 A YES MA'AM
 15 Q SO WE ALSO HEARD THE DISCUSSION ABOUT MAJOR CASE
 16 PRINTS WOULD YOU TELL THE COURT WHAT A MAJOR CASE
 17 PRINT IS?
 18 A YES MA'AM THE TERM MAJOR CASE PRINTS IN MY AREA OF
 19 EXPERTISE DEALS WITH OUR TERMINOLOGY TO DESCRIBE INK
 20 IMPRESSIONS OF A PERSON'S ENTIRE PALM PRINT,
 21 FINGERPRINTS, AND THE SECOND AND THIRD JOINT OF EACH
 22 FINGER BASICALLY IT COVERS FROM THE WRIST TO THE
 23 TIPS OF THE FINGERS, THE SIDES OF THE HANDS AND THE
 24 FINGERTIPS WE CLASSIFY-- WE CALL THOSE MAJOR CASE
 25 PRINTS MERELY BECAUSE WE ARE GETTING MORE THAN JUST

1 YOUUP STANDARD TEN PRINT FINGERPRINT CARDS

2 Q SO THAT WOULD BE THE WHOLE HAND PRINT AND THEN THE
3 ROLL OF EACH FINGER?

4 A YES

5 Q ALL OF THAT WOULD BE PUT IT HAS NOTHING TO DO WITH
6 THE TYPE OF CASES INVOLVED, IT'S THE SET OF PRINTS?

7 A RIGHT, IT'S JUST TERMINOLOGY, CORRECT

8 Q NOW IS IT POSSIBLE FOR SOMEONE TO TOUCH A SURFACE
9 AND NOT LEAVE A PRINT?

10 A YES IT IS

11 Q IS IT POSSIBLE TO BE AT A LOCATION AND NOT LEAVE A
12 PRINT?

13 A YES IT IS

14 Q EXPLAIN TO THE JURY HOW THAT COULD OCCUR

15 A AN EXAMPLE I GIVF FOR THAT IS IF WE WERE TO BRING A
16 CRIME SCENE INVESTIGATOR IN HERE TODAY AND HAVE THEM
17 PROCESS THIS FENCE RIGHT HERE THEY WOULD NOT FIND MY
18 FINGERPRINTS BECAUSE I HAVE NOT TOUCHED IT, BUT THAT
19 DOES NOT MEAN I'M NOT SITTING HEPE IF A PERSON IS
20 IN A GIVEN AREA AND DOES NOT TOUCH A SURFACE THEN
21 NATURALLY HE'S NOT GONNA LEAVE ANY IMPRESSIONS
22 WHATSOEVER, AND IF HE'S GOT GLOVES ON OR IF HE'S GOT
23 ANY KIND OF SUBSTANCE BETWEEN HIS HANDS AND THE
24 SUBSTANCE HE'S TOUCHING AGAIN NATURALLY HE'S NOT
25 GOING TO LEAVE AN IMPRESSION

1 Q DID YOU EXAMINE ANY ITEMS RELATED TO THIS CASE?

2 A YES I DID

3 Q AND WHEN DID YOU MAKE THOSE EXAMINATIONS?

4 A MY FIRST EXAMINATIONS IN THIS CASE WERE ON DECEMBER
5 13, 2004

6 Q AND MAY I APPROACH YOUR HONOR LET ME SHOW YOU
7 STATE'S EXHIBITS 42 THROUGH 46 WHICH ARE ALREADY IN
8 EVIDENCE

9 A YES THESE ARE LATENT FINGERPRINT CARDS THAT WERE
10 SUBMITTED TO MY OFFICE BY CHARLESTON COUNTY
11 SHERIFF'S OFFICE FOR PRINT ANALYSIS

12 Q LET ME BACK UP WHEN YOU WERE TALKING ABOUT WHEIHER
13 A PERSON CAN BE AT A LOCATION AND NOT LEAVE PRINTS,
14 I ALSO ASK YOU IF IT IS POSSIBLE FOR A PERSON TO
15 TOUCH A SURFACE AND NOT LEAVE A PRINT AND YOU SAID
16 THAT WAS POSSIBLE, WOULD YOU EXPLAIN TO THE JURY HOW
17 THAT COULD OCCUR?

18 A YEAH I DID IF YOU ARE WEARING GLOVES LIKE I SAID
19 OR IF THERE IS A SUBSTANCE OR MATERIAL BETWEEN A
20 PERSON'S ACTUAL HANDS AND THE SURFACE HE'S TOUCHING
21 THEN THEY ARE NOT GOING TO LEAVE AN IMPRESSION
22 WHATSOEVER

23 Q HOW ABOUT THAT EXAMPLE WE GOT OF THE TEXTURED
24 REFRIGRATOR OR DASHBOARD OR THINGS LIKE THAT?

25 A SURE, THE SURFACES THAT ARE CONDUCTIVE TO

1 FINGERPRINTS VARY THERE ARE SURFACES THAT ARE VERY
2 CONDUCTIVE SUCH AS GLASS OR SHINY METAL, AND THERE
3 ARE SURFACES THAT ARE NOT CONDUCTIVE AS WAS STATED
4 YESTERDAY SUCH AS CLOTH OR VINYL WITH A TEXTURE OR
5 TEXTURED REFRIGERATORS FOR EXAMPLE THERE ARE A LOT
6 OF DIFFERENT MATERIALS THAT MAY APPEAR SLICK THAT
ARE REALLY NOT CONDUCTIVE TO HOLDING A FINGERPRINT
8 SUCH AS WOOD FOR EXAMPLE

9 Q AND YOU SAID YOU MADE AN EXAMINATION ON DECEMBER 13,
10 2004?

11 A YES I DID

12 Q OK, AND WHAT WERE THE RESULTS OF YOUR EXAMINATION?

13 A I RECEIVED 28 LATENT PRINT CARDS OR BASICALLY WHITE
14 CARDS BEARING LATENT PRINTS FROM THE CHARLESTON
15 COUNTY SHERIFF'S OFFICE THAT HAD BEEN SUBMITTED TO
16 MY OFFICE FOR ANALYSIS I ENTERED SEVERAL OF THESE
17 PRINTS INTO OUR COMPUTER SYSTEM AND WAS ABLE TO
18 IDENTIFY TWO INDIVIDUALS

19 Q AND WHAT INDIVIDUALS DID YOU IDENTIFY?

20 A LATENT NUMBER 1 1 ON CARD NUMBER 1 WAS IDENTIFIED TO
21 MICHAEL JETER LATENT NUMBER 3 1 ON CARD NUMBER 3
22 WAS IDENTIFIED TO MICHAEL JETER LATENT NUMBER 5 1
23 ON CARD NUMBER 5 WAS IDENTIFIED TO MICHAEL DUNHAM,
24 AND LATENT NUMBER 6 1 ON CARD NUMBER 6 WAS
25 IDENTIFIED TO MICHAEL DUNHAM, WHICH IS A BLACK MALE

(1)

WITH A DATE OF BIRTH OF 9/5/1986

2 Q OK AND YOU SAID THERE WERE 28 CARDS, WHAT WERE THE
3 RESULTS OF EXAMINATION OF CARD 7 THROUGH 28?

4 A ON THAT DATE CARD 7 THROUGH 28 DID NOT CONTAIN
5 SUFFICIENT RIDGE DETAIL FOR ENTRY INTO OUR COMPUTER
6 SYSTEM

7 Q AND THEN DID YOU COMPARE-- ONCE YOU MADE THOSE
8 COMPARISONS DID YOU MAKE ANY NOTATIONS?

9 A YES I DOCUMENTED THEM WITH MY REPORT AND THEN I
10 CONTACTED THE CHARLESTON COUNTY SHERIFF'S OFFICE AND
11 ADVISED THEM OF OUR FINDINGS AND REQUESTED MAJOR
12 CASE PRINTS ON A MICHAEL JETER AND A MICHAEL DURHAM
13 AT THE TIME, I HAD THE NAME DURHAM, AS IT WAS GOTTEN
14 OR IT WAS RECEIVED THROUGH OUR COMPUTER SYSTEM

15 Q RIGHT, AND IS THAT ON THOSE SAME CARDS WE HEARD SGT
16 WILLOUGHBY TESTIFY HE LAID DOWN WITH A STRIP OF TAPE
17 AND LIFTED THOSE PRINTS UP?

18 A YES MA'AM

19 Q YOU MADE NOTATIONS ON THOSE SAME CARDS?

20 A YES I DID

(21)

21 Q AND AFTER YOU MADE YOUR ANALYSIS AND YOU GOT THE
22 MAJOR CASE PRINTS, THE WHOLE HAND PRINT AND THE
23 ROLLED FINGERPRINTS ON THIS ARREST, DID YOU COMPARE
24 THOSE AGAINST THOSE CARDS AS WELL?

25 A YES MA'AM I COMPARED-- I DID FURTHER COMPARISONS ON

1 DECEMBER 23, 2004, AND SUBSEQUENTLY I IDENTIFIED
2 THREE ADDITIONAL FINGERPRINTS TO ONE MICHAEL JETER

3 Q OK, AND WHICH ONES ARE THOSE?

4 A THAT WAS LATENT NUMBER 1 2, LATENT NUMBER 1 3, AND
5 LATENT 4 1 WERE ALL IDENTIFIED TO MICHAEL JETER

6 Q AND AGAIN DID YOU MAKE A SUBSEQUENT EXAMINATION OF
THE MAJOR CASE PRINTS AGAINST THOSE?

8 A YES EVERY LATENT PRINT THAT WAS UNIDENTIFIED IN
9 THE CASE WAS COMPARED TO THE MAJOR CASE PRINTS OF
10 JETER AND DUNHAM AND NO FURTHER IDENTIFICATIONS WERE
11 MADE

12 Q AND DOESN'T MEAN THAT- WELL LET ME ASK YOU THIS
13 THE ONES YOU DID MAKE AN IDENTIFICATION WAS IT
14 BECAUSE THE PRINTS WERE ACTUAL PRINTS THAT DID
15 COMPARE AGAINST THE MAJOR CASE CARD FOR MR DUNHAM
16 AND MR JETER, OR WHETHER THAT WAS SMUDGED AND POOR
17 QUALITY PRINTS?

18 A IT WAS A LITTLE OF BOTH THERE WERE SEVERAL CARDS
19 THAT WERE IDENTIFIABLE, CONTAINED IDENTIFIABLE
20 CHARACTERISTICS THAT JUST WERE NOT POSITIVE TO
21 EITHER ONE OF THE SUBJECTS THAT I HAD PRINTS ON, AND
22 THEN THERE WERE SEVERAL PRINTS THAT WERE
23 UNIDENTIFIABLE AS WELL

24 Q NO FURTHER QUESTIONS

25 CROSS EXAMINATION OF AL HALLMAN BY MR DAVIS

1 Q LET S START RIGHT THERE YOU SAID OF THESE 28 PRINT
2 CARDS USED THERE WAS 7 THOUGH 28 I BELIEVE COULDN'T
3 BE COMPARED TO THE COMPUTER?

4 A THAT COULD NOT BE ENTERED INTO THE COMPUTER, YES
5 SIR

6 Q BUT WHEN THE STATE ASKED YOU THEY MIGHT BE SMUDGED
7 BUT THEY DIDN'T MATCH UP TO NEITHER MR JETER NOR
8 MR DUNHAM?

9 A THAT'S CORRECT

10 Q YOU ASKED FOR MAJOR CASE PRINTS FROM MR JETER AND
11 MR DUNHAM, CORRECT?

12 A THAT IS CORRECT

13 Q BECAUSE ON THE INITIAL RUN THROUGH THE COMPUTER
14 THOSE WERE THE ONLY TWO THAT GOT IDENTIFIED?

15 A THAT IS CORRECT

16 Q YOU DIDN'T REQUEST ANY OTHER MAJOR CASE PRINTS?

17 A NO, BECAUSE I HAD NO INFORMATION ON ANY OTHER
18 INDIVIDUALS

19 Q YOU ARE NORTH CHARLESTON POLICE DEPARTMENT, RIGHT?

20 A YES SIR

21 Q YOU WEREN'T INVOLVED IN THIS CRIME SCENE OVER ON
22 WEST MONTAGUE?

23 A NO SIR, NOT AT ALL

24 Q YOU WERE JUST SENT THESE WHITE CARDS THE JURY HAS
25 ALREADY SEEN AND SAID YOU'RE AN EXPERT, SEE IF THESE

1 MATCH UP TO ANYBODY?

2 A THAT'S CORRECT

3 Q YOU WEREN'T AWARE THAT THERE WERE FIVE SUSPECTS IN
4 THE CASE?

5 A NO I WAS NOT

6 Q YOU WEREN'T EVEN AWARE UNTIL THE PRINTS MATCHED OF
7 DUNHAM'S NAME OR MR JETER'S NAME?

8 A THAT IS CORRECT

9 Q THERE WERE FROM 7 THROUGH 28, THERE WERE SOME PRINTS
10 THAT YOU MIGHT HAVE BEEN ABLE TO MAKE A MATCH ON HAD
11 YOU HAD OTHER PRINTS TO COMPARE THEM WITH?

12 A YES SIR

13 Q I'M GOING TO CIRCLE BACK A LITTLE BIT JUST SO THE
14 JURY WILL UNDERSTAND TWENTY-EIGHT CARDS, YOU GAVE
15 THE EXAMPLE THERE AFTER YOU GOT THE MAJOR CASE
16 PRINTS, A CARD CAN HAVE MORE THAN ONE PRINT, RIGHT?

17 A ABSOLUTELY

18 Q SO FOR EXAMPLE, IN ONE REPORT YOU HAVE 1 1 AND
19 THAT'S A PRINT OFF OF CARD NUMBER 1?

20 A THAT'S CORRECT

21 Q AND THAT MATCHED UP TO MICHAEL JETER?

22 A JETER, CORRECT

23 Q OK, NOW IN THE SECOND REPORT YOU HAD 1 2, THAT MEANS
24 IT WOULD HAVE BEEN THE SECOND PRINT OFF THAT SAME
25 CARD?

1 A SAME CARD

2 Q AND THAT ALSO BELONGED TO MICHAEL JETER?

3 A YES SIR

4 Q SO WE ARE TALKING 28 CARDS, IT COULD BE A WHOLE LOT
5 MORE THAN 28 PRINTS?

6 A ABSOLUTELY

7 Q SO WHEN YOU ARE SAYING CARDS 7 THROUGH 28, 21 CARDS,
8 RIGHT?

9 A I THINK THAT WAS RIGHT

10 Q THERE COULD HAVE BEEN MORE THAN 21 PRINTS ON THOSE
11 CARDS?

12 A ABSOLUTELY

13 Q AND YOU'VE ALREADY SAID THERE WERE ONES ON THERE
14 THAT COULD HAVE BEEN COMPARED, BUT YOU JUST WEREN'T
15 GIVEN THE OPPORTUNITY?

16 A I WAS NOT GIVEN KNOWN IMPRESSIONS OF OTHER SUBJECTS,
17 YES

18 Q NOW, YOU ALSO TALKED TO THE SOLICITOR ABOUT HOW IT'S
19 POSSIBLE ABOUT SOMEONE BEING THERE AND THE PRINTS
20 NOT BEING THERE?

21 A CORRECT

22 Q THE SURFACE, WHETHER IT CAN RETAIN THE PRINT OR NOT,
23 RIGHT?

24 A YES

25 Q PART OF IT IS THE INTENT OF THE PERSON, THEY CAN

1 WIPE IT DOWN?

2 A ABSOLUTELY

3 Q THEY CAN CLEAN IT OFF?

4 A YES SIR

5 Q GIVE ME JUST A MINUTE

6 A SURE

7 Q NO OTHER QUESTIONS

8 SOLICITOR BURNEY NO OTHER QUESTIONS

9 THE COURT THANK YOU SIR

10 SOLICITOR WILSON JUSTIN LEMON

11 THE WITNESS IS SWORN (JUSTIN LEMON)

12 EXAMINATION OF JUSTIN LEMON BY SOLICITOR WILSON

13 Q MR LEMON IF YOU WILL LEAN INTO THAT MICROPHONE JUST
14 LIKE YOU JUST DID THE COURT REPORTER HAS TO TAKE
15 DOWN, AND THE JURY NEEDS TO BE ABLE TO HEAR YOU AS
16 WELL

17 A YES MA'AM

18 Q MR LEMON HOW OLD ARE YOU?

19 A SEVENTEEN

20 Q AND HOW FAR DID YOU GO IN SCHOOL?

21 A NINTH GRADE

22 Q DID YOU QUIT SCHOOL?

23 A YES MA'AM

24 Q AND YOU GOT IN SOME TROUBLE AT SOME POINT DIDN'T
25 YOU?

1 A YES MA'AM

2 Q DID YOU GET A POSSESSION CHARGE?

3 A YES MA'AM

4 Q WAS THAT POSSESSION OF MARIJUANA?

5 A YES MA'AM

6 Q YOU WERE AT THE DJJ NOW, AREN'T YOU?

7 A YES MA'AM

8 Q DOES THAT MEAN YOU VIOLATED YOUR PROBATION FOR THAT

9 POSSESSION CHARGE?

10 A YES MA'AM

11 Q HOW LONG HAVE YOU BEEN UP IN COLUMBIA?

12 A ABOUT FOUR MONTHS

13 Q DO YOU KNOW HOW MUCH LONGER YOU'VE GOT TO BE UP

14 THERE?

15 A UNTIL MAY

16 Q FOR VIOLATING ON A SIMPLE POSSESSION CHARGE?

17 A YES MA'AM

18 Q BEFORE YOU GOT SHIPPED UP TO COLUMBIA, WHERE DID YOU

19 LIVE?

20 A REMOUNT ROAD

21 Q HERE IN NORTH CHARLESTON?

22 A YES MA'AM

23 Q AND HOW LONG HAVE YOU LIVED IN THE CHARLESTON AREA

24 JUSTIN?

25 A SINCE I WAS THREE

1 Q SINCE YOU WERE ABOUT THREE YEARS OLD, OK IS THE
2 AREA THAT YOU LIVED AT NEAR MONTAGUE APARTMENTS?

3 A YES MA'AM

4 Q ABOUT HOW FAR DO YOU KNOW?

5 A RIGHT DOWN THE STREET

6 Q RIGHT DOWN THE STREET WALKING DISTANCE?

7 A YES MA'AM

8 Q JUSTIN DID YOU KNOW A GUY BY THE NAME OF ANTHONY
9 GAMBRELL, THE VICTIM IN THIS CASE?

10 A NO MA'AM

11 Q HOW ABOUT HIS GIRLFRIEND GINA BROWN?

12 A NO MA'AM

13 Q DID YOU KNOW A GUY BY THE NAME OF RAYSHAWN GREEN?

14 A NO MA'AM

15 Q HOW ABOUT STEVEN JOHNSON, DID YOU KNOW HIM?

16 A YES MA AM

17 Q HOW LONG DID YOU KNOW STEVEN?

18 A THREE YEARS

19 Q HOW ABOUT JEAN JACQUES OR JJ, DID YOU KNOW HIM?

20 A YES MA'AM

21 Q HOW LONG HAVE YOU KNOWN HIM?

22 A TWO YEARS

23 Q AND THE DEFENDANT MICHAEL DUNHAM, DID YOU KNOW HIM?

24 A YES MA'AM

25 Q ABOUT HOW LONG HAVE YOU KNOWN HIM?

1 A FOUR OR FIVE YEARS

2 Q OK MICHAEL JETER HOW LONG DID YOU KNOW HIM?

3 A SIX MONTHS

4 Q YOU KNOWN HIM ABOUT SIX MONTHS

5 THE COURT LET'S TAKE A BREAK

6 BACK ON 10 18 A M

7 JURY IN 10 19 A M

8 THE COURT READY TO PROCEED

9 Q JUSTIN YOU SAID YOU HAD KNOWN MICHAEL JETER FOR
10 ABOUT SIX MONTHS?

11 A YES MA'AM

12 Q AND YOU ALSO TESTIFIED THAT YOU KNEW VICTORIA
13 MARTIN?

14 A YES MA'AM

15 Q AND YOU HAD BOUGHT A CELL PHONE FROM VICTORIA MARTIN
16 BACK AT THE TIME THIS OCCURRED, IS THAT RIGHT?

17 A YES MA'AM

18 Q HOW MUCH DID YOU PAY VICTORIA FOR THAT CELL PHONE?

19 A SEVENTY DOLLARS

20 Q AND THAT NUMBER WAS 819-3436?

21 MR DAVIS OBJECTION YOUR HONOR TO LEADING

22 Q DO YOU REMEMBER WHAT THE NUMBER IS?

23 A NO MA'AM

24 Q WOULD IT REFRESH YOUR RECOLLECTION IF YOU SAW
25 RECORDS REGARDING THAT NUMBER AS TO WHAT THE NUMBER

1 WAS?

2 A YES MA'AM

3 Q I'M GOING TO SHOW YOU WHAT'S ALREADY BEEN INTRODUCED
4 AS STATE'S EXHIBIT 53 AND ASK YOU TO TAKE A LOOK AT
5 THAT DOES THAT REFRESH YOUR MEMORY AS TO WHAT THE
6 PHONE NUMBER YOU BOUGHT FROM VICTORIA WAS?

7 A YES MA'AM

8 Q AND WHAT WAS THAT NUMBER?

9 A 819-3436

10 Q AND AFTER YOU BOUGHT THE CELL FROM-- OR WHEN WAS IT
11 YOU BOUGHT THE CELL PHONE FROM VICTORIA, DO YOU
12 REMEMBER?

13 A IN NOVEMBER

14 Q NOVEMBER OF 2004?

15 A UH HUH

16 Q AND DID YOU HANG ON TO THAT CELL PHONE?

17 A NO MA'AM

18 Q WHAT DID YOU DO WITH IT?

19 A SELL IT

20 Q WHO DID YOU SELL IT TO?

21 A DUNHAM

22 Q THE DEFENDANT, AND DO YOU SEE HIM HERE TODAY?

23 A YES MA'AM

24 Q WHERE IS HE?

25 A OVER THERE

1 Q WHICH ONE?

2 A IN THE MIDDLE

3 Q IN THE MIDDLE IN THE BURGUNDY TIE?

4 A YES MA'AM

5 Q YOUR HONOR PLEASE LET REFLECT HE IDENTIFIED THE

6 DEFENDANT SO YOU SOLD THE PHONE TO DUNHAM HOW

7 MUCH DID YOU SELL IT TO HIM FOR?

8 A THIRTY DOLLARS

9 Q AND DO YOU REMEMBER WHEN IT WAS YOU SOLD IT TO HIM?

10 A NO MA'AM

11 Q NOW, JUSTIN YOU TESTIFIED THAT YOU KNEW THE

12 DEFENDANT MICHAEL JETER AND STEVEN JOHNSON BEFORE

13 DECEMBER 13 OF 2004, DO YOU RECALL BEING INTERVIEWED

14 BY THE POLICE ABOUT KNOWING THEM?

15 A YES MA'AM

16 Q AND WERE YOU INTERVIEWED SHORTLY AFTER THE SHOOTING

17 OCCURRED?

18 A YES MA'AM

19 Q AND WHEN YOU FIRST MET WITH THE POLICE DID YOU TELL

20 THEM EVERYTHING YOU KNEW ABOUT WHAT HAPPENED AT

21 MARSHVIEW APARTMENTS ON THE LATE AFTERNOON OF

22 DECEMBER 13, 2004?

23 A NO MA'AM

24 Q YOU DIDN'T TELL THEM EVERYTHING AT FIRST?

25 A NO MA'AM

1 Q DID THEY BELIEVE YOU WHEN YOU FIRST JUST KINDA OF
 2 SKIMMED OVER THINGS?
 3 A NO MA'AM
 4 Q DID YOU EVENTUALLY TELL THEM WHAT HAPPENED OUT AT
 5 MARSHVIEW THAT AFTERNOON?
 6 A YES MA'AM
 7 Q AND DID YOU WRITE ALL THAT OUT?
 8 A YES MA'AM
 9 Q WHEN- LET'S GO THROUGH THAT DAY DECEMBER 13TH WERE
 10 YOU IN SCHOOL AT THE TIME?
 11 A YES MA'AM
 12 Q WHERE WERE YOU GOING TO SCHOOL?
 13 A YOUTHFIELD
 14 Q AND WHAT IS YOUTHFIELD?
 15 A A SCHOOL WHERE YOU GET YOUR TRADE
 16 Q WHAT KIND OF TRADES WERE YOU LEARNING ABOUT?
 17 A CONSTRUCTION
 18 Q CONSTRUCTION AND WHAT TIME DID SCHOOL GET OUT FOR
 19 YOU?
 20 A THREE O'CLOCK
 21 Q AND YOU WERE IN SCHOOL ON THAT MONDAY, DECEMBER 13TH?
 22 A YES MA'AM
 23 Q -- DID YOU STAY THE WHOLE DAY?
 24 A NO MA'AM
 25 Q HOW WAS IT THAT YOU WERE GOING TO LEAVE EARLY?

1 A DUNHAM WAS GOING TO PICK ME UP
2 Q AND WHO ELSE DID HE PICK UP?
3 A A BOY NAMED TONY
4 Q WHAT DID HE PICK YOU UP IN?
5 A HIS CAR
6 Q AND WHAT KIND OF CAR DID HE HAVE?
7 A A GRAY CAR
8 Q HAD YOU RIDDEN IN THAT CAR BEFORE?
9 A YES MA'AM
10 Q LET ME SHOW YOU STATE'S EXHIBIT 22, DOES THAT LOOK
11 LIKE THE CAR THAT DUNHAM PICKED YOU UP IN?
12 A YES MA AM
13 Q WHERE WAS YOUTHFIELD, THE SCHOOL, LOCATED?
14 A ASHLEY PHOSPHATE ROAD
15 Q AND HE PICKED YOU AND TONY UP AT WHAT TIME?
16 A TWO OR TWO THIRTY
17 Q WHERE DID HE TAKE YOU?
18 A HE TOOK TONY HOME
19 Q WHERE DID TONY LIVE?
20 A SHELDON
21 Q SHELDON WHERE IS THAT?
22 A BY
23 Q OK IS THAT NORTH CHARLESTON SOMEWHERE
24 A ON REMOUNT
25 Q REMOUNT OK, HE TAKES TONY HOME FIRST, THEN WHERE

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HEARING

1 DID HE TAKE YOU?

2 A HE TAKE ME BY MY HOUSE

3 Q AND DID YOU GO INSIDE YOUR HOUSE?

4 A NO I CALLED MY MOM BECAUSE I DIDN'T HAVE A KEY SHE
5 SAY SHE WAS AT THE MALL

6 Q SHE SAID SHE WAS WHERE?

7 A AT THE MALL

8 Q OK, AND SO WHAT DID YOU DO?

9 A WENT TO MARSHVIEW

10 Q DID YOU RIDE TO MARSHVIEW?

11 A YES MA AM

12 Q WITH WHOM?

13 A DUNHAM

14 Q AND WHAT HAPPENED AFTER YOU GOT TO MARSHVIEW, DID
15 MICHAEL HANC AROUND?

16 A NO MA AM HE LEFT

17 Q DO YOU KNOW WHERE HE WENT?

18 A UH UH

19 Q TWO OR THREE HOURS

20 A TWO OR THREE HOURS OK, SO IF YOU GOT OUT OF SCHOOL
21 AROUND TWO OR TWO THIRTY YOU THINK YOU WERE AT
22 MARSHVIEW BY THREE O'CLOCK OR SO?

23 MR DAVIS OBJECTION YOUR HONOR LEADING

24 Q DO YOU KNOW WHAT TIME YOU WERE AT MARSHVIEW?

25 A THREE OR THREE THIRTY

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HEARING

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1 Q THREE OR THREE THIRTY, AND YOU DIDN'T SEE MICHAEL
2 DUNHAM ACAIN FOR ABOUT HOW LONG?
3 A TWO OR THREE HOURS
4 Q DID YOU SEE STEVEN JOHNSON THAT DAY?
5 A YES MA'AM
6 Q AND WHERE DID YOU SEE HIM?
7 A AT MARSHVIEW
8 DO YOU KNOW HOW HE GOT TO MARSHVIEW?
9 A BIKE
10 Q DID YOU SEE ANYBODY WITH HIM?
11 A YEAH JEAN AND BRANDON
12 Q OK DO YOU KNOW WHETHER OR NOT THEY WERE ON BIKES?
13 A NO MA'AM
14 Q YOU DON'T KNOW OK SO YOU WERE ALREADY AT
15 MARSHVIEW WHEN STEVEN GOT THERE?
16 A UH HUH
17 Q AND HE GETS THERE WITH A BIKE?
18 A UH HUH
19 Q WHAT DID Y'ALL DO OUT AT THOSE APARTMENTS?
20 A WE WENT TO DOROTHY JONES HOUSE TO WATCH MOVIES?
21 Q ALRIGHT WHEN YOU SAY HEP HOUSE WAS THAT HER
22 APARTMENT?
23 A YEAH, APARTMENT
24 Q AND THAT WAS RIGHT THERE AT MARSHVIEW?
25 A YES MA'AM

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1 Q DID ALL OF Y'ALL GO INSIDE AND WATCH MOVIES?
2 A YES MA'AM
3 Q DID YOU STAY INSIDE THE ENTIRE TIME?
4 A YES MA'AM
5 Q HOW ABOUT STEVEN JOHNSON, DID HE STAY INSIDE THE
6 ENTIRE TIME?
7 A YES MA AM
8 Q HOW ABOUT JJ?
9 A YES MA'AM
10 Q OK, SO Y ALL WERE INSIDE AT SOME POINT YOU SAID
11 THAT YOU SAW THE DEFENDANT AGAIN AFTER HE DROPPED
12 YOU OFF?
13 A HE CAME BACK
14 Q OK WHO DID HE COME BACK WITH?
15 A JETER
16 Q DO YOU KNOW HOW THEY CAME BACK?
17 A IN THE CAR
18 Q WHOSE CAR?
19 A DUNHAM'S
20 Q NOW HOW DO YOU KNOW IF THEY WERE IN DUNHAM S CAR IF
21 YOU WERE INSIDE THE APARTMENT?
22 A BECAUSE HE CAME AND KNOCKED ON THE DOOR AND TELL US
23 TO COME OUTSIDE
24 Q OK, WHO CAME OUTSIDE?
25 A ALL OF US

1 Q ALRIGHT, WHO IS ALL OF JS?
2 A ME, JJ, AND STEVEN AND FRANK
3 Q DID YOU NOTICE ANYTHING ABOUT THE WAY HE WAS ACTING
4 OR THE WAY JETER WAS ACTING?
5 A YEAH, LIKE JETER BEEN ACTING
6 Q AND HOW ABOUT DUNHAM?
7 A YES MA'AM
8 Q HOW WAS HE ACTING?
9 A HE WAS JUST MOVING AROUND A LOT AND I SEE JETER WENT
10 TO THE TRUNK TO GET A SHIRT
11 Q AND DO WHAT WITH THAT SHIRT?
12 A CHANGE HIS SHIRT
13 Q DID DUNHAM KEEP ON THE SAME CLOTHES HE HAD ON?
14 A NO
15 Q HOW DID HE CHANGE OR WHERE?
16 A HE HAD TELL STEVEN TO TAKE THE CAR
17 Q WHAT WAS THAT?
18 A HE HAD TOLD STEVEN TO TAKE THE CAR FIRST
19 **MR DAVIS** OBJECTION
20 **THE COURT** WHAT WAS THE QUESTION?
21 Q HE WAS TELLING WHAT DUNHAM TOLD STEVEN JOHNSON, THE
22 DEFENDANT SAID
23 **THE COURT** OVERRULED
24 Q OK, WHAT DID DUNHAM TELL STEVEN?
25 A TAKE THE CAR TO HIS HOUSE

1 Q ' OK AND DID STEVEN DO THAT[^]

2 A YES MA AM

3 Q AND WHAT HAPPENED WITH STEVEN'S BIKE?

4 A HE PUT IT IN THE TRUNK

5 Q AND THEN DID STEVEN LEAVE?

6 A YES MA'AM

7 Q OK WELL HOW ABOUT DUNHAM DID HE HANG AROUND?

8 A YEAH, UNTIL STEVEN GET BACK

9 Q DID HE EVER LEAVE?

10 A YEAH

11 Q HOW DID HE LEAVE?

12 A STEVEN'S BIKE

13 Q HOW LONG WAS HE GONE FOR WHEN HE LEFT?

14 A FIVE MINUTES

15 Q DO YOU KNOW WHETHER OR NOT OR HOW FAR DUNHAM LIVED

16 FROM MARSHVIEW WHERE Y'ALL HANG OUT?

17 A UP THE STREET

18 Q COULD YOU WALK THERE?

19 A YES MA'AM

20 Q COULD YOU RIDE A BIKE THERE?

21 A, YES MA'AM

22 Q WHEN DUNHAM GOT BACK DID HE LOOK THE SAME AS HE

23 LOOKED BEFORE HE LEFT?

24 A NO MA AM ---

25 Q WHAT WAS DIFFERENT?

1 A THE CLOTHES
2 Q ALRIGHT, AND YOU SAID THAT STEVEN HAD TAKEN HIS CAR-
3 DUNHAM'S CAR AND COME BACK?
4 A YES MA'AM
5 Q AND HE WAS GONE FOR HOW LONG?
6 A WHO STEVEN?
7 Q YES
8 A ABOUT TEN MINUTES BECAUSE HE HAD TO RIDE THE BIKE
9 BACK
10 Q ALRIGHT SO HE TOOK DUNHAM'S CAR AND RODE HIS BIKE
11 BACK?
12 A ALRIGHT NOW JUSTIN WHILE YOU WERE OUT AT MARSHVIEW
13 AND ALL OF THIS WAS GOING ON WITH THE CAR, DID YOU
14 HEAR DUNHAM TALKING TO STEVEN ABOUT WHY HE WANTED
15 HIM TO TAKE THE CAR?
16 MR DAVIS SAME OBJECTION
17 THE COURT OVERRULED
18 Q DID YOU HEAR HIM TELLING STEVEN WHY HE WANTED HIM TO
19 TAKE THE CAR?
20 A YEAH
21 Q WHAT DID DUNHAM TELL STEVEN?
22 A TAKE THE CAR WE BEEN SHOOTING AT SOMEBODY
23 Q DID HE TELL YOU WHO HE WAS SHOOTING AT?
24 A NO MA'AM
25 Q DID HE TELL YOU WHETHER OR NOT HE HIT THEM?

1 A NO MA'AM

2 Q DID HE SAY WHETHER OR NOT HE KNEW IF HE HIT THE

3 PERSON?

4 A HE SAID HE THINK HE DID

5 Q BUT HE DIDN'T KNOW FOR SURE?

6 A NO MA'AM

7 Q WHAT DID DUNHAM SAY WAS THE REASON HE SHOT SOMEBODY?

8 A HE DIDN T SAY

9 Q DID DUNHAM TELL YOU OR DID YOU HEAR HIM TELL STEVEN

10 AT ANY POINT WHY HE WENT TO GO SHOOT SOMEBODY?

11 A UH UH

12 Q DID YOU HEAR HIM TELL STEVEN ANYTHING ABOUT HOW HE

13 AND JETER GOT TOGETHER-

14 MR DAVIS OBJECTION YOUR HONOR TO LEADING

15 THE COURT I M GOING TO SUSTAIN THE OBJECTION

16 Q THANK YOU YOUR HONOR JUSTIN DID YOU HEAR THE

17 DEFENDANT TELL ANYTHING ABOUT HOW HE AND JETER CAME

18 TO BE TOGETHER?

19 A NO MA'AM

20 Q SO YOU DON T KNOW?

21 A NO MA'AM

22 Q BEG THE COURT S INDULGENCE THIS PHONE THAT YOU HAD

23 OF VICTORIA'S DO YOU KNOW ABOUT WHEN IT WAS THAT

24 YOU SOLD IT?

25 MR DAVIS THAT S BEEN ASKED AND ANSWERED

1 Q I'M NOT SURE WHAT THE ANSWER IS

2 THE COURT I DON'T KNOW IF HE TESTIFIED AS TO THE
3 DATE, SO GO AHEAD AND ANSWER IT

4 A I DON'T KNOW

5 Q DO YOU KNOW IF IT WAS BEFORE THE SHOOTING OCCURRED?

6 MR DAVIS OBJECTION YOUR HONOR JUST ASKED AND
7 ANSWERED

8 THE COURT I'M GOING TO OVERRULE THE OBJECTION YOU
9 CAN ANSWER

10 Q WAS IT BEFORE OR AFTER YOU WERE INTERVIEWED BY THE
11 POLICE?

12 A BEFORE

13 Q THAT'S ALL I HAVE

14 CROSS EXAMINATION OF JUSTIN LEMON BY MR DAVIS

15 Q SO YOU HAVE NO IDEA WHEN IT WAS BEFORE THE POLICE
16 INTERVIEWED YOU THAT YOU SOLD THE PHONE TO MICHAEL
17 FOR THIRTY DOLLARS?

18 A NO SIR

19 Q YOU GOT IT IN NOVEMBER WAS IT BEFORE DECEMBER, WAS
20 IT SOMETIME IN NOVEMBER?

21 A PROBABLY

22 Q PROBABLY PROBABLY IN NOVEMBER SOMETIME NOW IS
23 IT TRUE THAT YOU THREW THAT PHONE AWAY?

24 A NO, I HAD LIED

25 Q YOU LIED DO YOU REMEMBER TALKING TO MYSELF AND LT

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1

GINN AN INVESTIGATOR FROM THAT OFFICE, DO YOU
REMEMBER TALKING TO US?

2

3

A YEAH

4

Q YOU REMEMBER TELLING US THOUGH, RIGHT?

5

A YES SIR

6

Q WE ASKED YOU ABOUT THIS PHONE AND YOU SAID YOU HAD

7

THROWN IT AWAY, IS THAT RIGHT? I NEED YOUR ANSWER

8

OUT LOUD

9

A YES SIR

10

Q AND THAT WASN'T TRUE YOU ARE TELLING THE JURORS

11

THAT YOU LIED TO US ABOUT THAT?

12

A YEAH THE ONLY REASON I LIED BECAUSE YOU BEEN

13

TRYING TO MAKE IT SEEM LIKE I WOULD GET IN TROUBLE

14

FOR THE PHONE BECAUSE YOU KEEP-

15

Q YOU KNOW THAT I WORKED FOR MICHAEL, RIGHT? RIGHT?

16

A YES SIR

17

Q YOU KNOW I'M HIS LAWYER, RIGHT?

18

A YES SIR

19

Q THAT I'M NOT CONNECTED TO THE POLICE, RIGHT? I NEED

20

YOUR ANSWER OUT LOUD

21

A YES SIR

22

Q I DON'T WORK WITH THE POLICE RIGHT?

23

A YES SIR

24

Q HE'S AN INVESTIGATOR FOR THE PUBLIC DEFENDER'S

25

OFFICE, RIGHT?

1 A YES SIR

2 Q WE TOLD YOU THAT RIGHT? RIGHT?

3 A YES SIR

4 Q BUT YOU DID LIE TO US ABOUT THAT RIGHT?

5 A YES SIR

6 Q NOW, YOU ALSO TALKED TO POLICE BACK ON DECEMBER 14,

7 2004, RIGHT?

8 A YES SIR

9 Q AND THAT WAS ABOUT SIX O'CLOCK IN THE EVENING?

10 A YES SIR

11 Q ON DECEMBER 14TH, RIGHT?

12 A YES SIR

13 Q THEY CAME AND GOT YOU, IS THAT RIGHT? THEY GOT YOU—

14 A NO I WENT WHEN MOM TAKE ME

15 Q YOU KNEW THEY HAD BEEN LOOKING FOR YOU?

16 A YES, SHE HAD CALLED MY COUSIN'S HOUSE AND TELL ME

17 THEY WAS SEARCHING THE HOUSE AND STUFF

18 Q THEY WERE SEARCHING YOUR HOUSE?

19 A YEAH

20 Q THEY WERE LOOKING FOR YOU SO YOU WENT DOWN TO THE

21 SHERIFF'S DEPARTMENT RIGHT?

22 A NO THEY WAS SEARCHING MY HOUSE FOR A GUN, FOR A GUN

23 THEY SAID

24 Q WHAT I'M SAYING IS WHEN YOU FOUND OUT THEY WERE

25 LOOKING FOR YOU AND SEARCHING YOUR HOUSE FOR A GUN

1 YOU WENT DOWN TO THE SHERIFF'S DEPARTMENT RIGHT?

2 A YES SIR

3 Q NOW ABOUT SIX O'CLOCK ON TUESDAY EVENING THE 14TH,

4 RIGHT?

5 A YES SIR

6 Q AND YOUR MOM WENT WITH YOU?

7 A YES SIR

8 Q BUT SHE DIDN'T GO BACK IN THE BACK WITH YOU, DID

9 SHE?

10 A NO SIR

11 Q YOU WENT BACK IN THE BACK BY YOURSELF, AND YOU ARE

12 SEVENTEEN NOW?

13 A YEAH, I WAS SIXTEEN AT THE TIME

14 Q AND THEY PUT YOU IN AN INTERROGATION ROOM DIDN'T

15 THEY?

16 A YES SIR

17 Q A LITTLE ROOM, RIGHT?

18 A YES SIR

19 Q AND YOU TALKED TO-- DO YOU REMEMBER DETECTIVE BUNCE

20 DO YOU REMEMBER THAT DETECTIVE?

21 A I DON T REMEMBER THEY NAME

22 Q DO YOU REMEMBER DETECTIVE SKAGGS?

23 A I DON'T REMEMBER NOBODY NAME

24 Q THERE WERE SEVERAL DETECTIVES CAME IN AND OUT

25 TALKING TO YOU, RIGHT?

(1)

A NO, ONLY TWO

2

Q JUST TWO OK AND YOU WERE IN THERE ABOUT AN HOUR
AND A HALF WITH THEM?

3

4

A YES SIR

Q AND, NOW I WANT TO BE CLEAR ABOUT THIS, WHEN MR
GINN AND MYSELF TALKED WITH YOU WE NEVER MENTIONED
ANYTHING ABOUT YOU BEING CHARGED WITH ANYTHING ON
THIS DID WE?

6

7

9

A YES SIR

10

Q WE DID?

11

A NO, Y'ALL MENTIONED ABOUT PAPER IN HIS HAND TALK
ABOUT THAT PIECE OF PAPER

12

13

Q PIECE OF PAPER, THAT'S WHAT THE POLICE HAD SHOWN
YOU, RIGHT?

14

15

A YEAH

16

Q NOW I WANT TO BE CLEAR ABOUT THIS ME AND MR GINN,
WE NEVER TALK TO YOU ABOUT BEING CHARGED WITH
ANYTHING, I MEAN THAT WE WOULD CHARGE YOU FOR
ANYTHING DID WE? WE JUST TALKED ABOUT THIS PIECE OF
PAPER DIDN'T WE?

17

18

19

20

21

A NO, Y'ALL WHY YOU HAVE TO KEEP TELLING ME ABOUT THE
PAPER

22

23

Q I NEED YOU TO SAY THAT AGAIN

24

A YOU SAY WHY HE KEEP TELLING ME ABOUT THE PAPER

(25)

Q YOU WERE TALKING ABOUT THE PAPER, AND THIS IS

1 SOMETHING THE POLICE HAD SHOWN YOU, RIGHT? WAY BACK
2 THEN, DECEMBER 14 WHEN YOU WENT IN THERE AND TALKED
3 TO THEM, RIGHT?

4 A YEAH

5 Q AND FROM THAT PAPER THEY WANTED TO TALK TO YOU ABOUT
6 MISPRISION OF A FELONY, RIGHT?

7 A YEAH

8 Q SO MR GINN AND I WERE TALKING TO YOU ABOUT THIS
9 PAPER THE POLICE HAD SHOWN YOU RIGHT?

10 A YES SIR

11 Q AND WE JUST ASKED YOU IF THE POLICE TOLD YOU WHAT
12 THAT WAS, RIGHT?

13 A YES SIR

14 Q YOU DIDN T KNOW WHAT MISPRISION OF FELONY WAS, DID
15 YOU?

16 A NO SIR

17 Q BUT YOU KNEW WHEN THE POLICE TALKED TO YOU ABOUT IT
18 DECEMBER 04 YOU KNEW THERE WAS SOME TYPE OF CRIME?

19 A YES SIR

20 Q AND YOU KNEW THAT THEY TOLD YOU THAT?

21 A YES SIR

22 Q AND THAT'S WHAT MR GINN AND I WERE ASKING YOU
23 ABOUT, RIGHT?

24 A YES SIR

25 Q SO TO BE CLEAR, IT WAS THE HOUR AND A HALF IN THE

1 SHERIFF'S DEPARTMENT INTERROGATION WHERE THE POLICE
2 TALKED TO YOU ABOUT THIS CRIME CALLED MISPRISION OF
3 FELONY, RIGHT?

4 A YES SIR

5 Q AND TOLD YOU THAT IF ANYONE WAS GUILTY OF THAT THEY
6 COULD FACE JAIL TIME, RIGHT?

7 A YES SIR

8 Q AND THEY WARNED YOU ABOUT THAT RIGHT?

9 A YEAH, AFTER I DONE TELL THEM

10 Q OK, LET'S TALK ABOUT THAT YOU HAD ALREADY TALKED
11 TO THEM AT SOME POINT AND WRITTEN DOWN A STATEMENT,
12 RIGHT?

13 A YES SIR

14 Q OK, AND THAT WAS WITH DETECTIVE BUNCE AND WITH- YOU
15 DON'T REMEMBER THOSE TWO?

16 A NO SIR

17 Q THE TWO DETECTIVES, RIGHT? AND SO YOU WROTE DOWN A
18 STATEMENT, RIGHT?

19 A YES SIR

20 Q AND THAT'S WHEN THEY THEN TALKED TO YOU ABOUT THAT
21 CRIME OF MISPRISION OF A FELONY, RIGHT?

22 A NO, THE SECOND- I WRITE TWO OF THEM AFTER I WRITE
23 THE SECOND ONE

24 Q OK, YOU WRITE TWO STATEMENTS AND AFTER THE SECOND
25 STATEMENT THEY WARN YOU ABOUT THIS CRIME THAT YOU

1 COULD BE CHARGED WITH RIGHT?

2 A YES, SIR

3 Q AFTER THAT SECOND STATEMENT THEY LET YOU GO, RIGHT?

4 A NO THEY TALK TO ME ABOUT THAT PAPER FIRST

5 Q OK, AND THEN THEY LET YOU GO?

6 A YEAH

7 Q YOU WENT HOME WITH YOUR MOM?

8 A YEAH

9 Q OK THE REASON YOU WROTE OUT THE STATEMENT IS YOU

10 KNEW SOMETHING MORE THAN WHAT YOU WERE TELLING,

11 RIGHT?

12 A HUH?

13 Q THE REASON YOU WROTE THE SECOND STATEMENT IS THE

14 POLICE TOLD YOU KNEW MORE THAN WHAT YOU WERE

15 TELLING RIGHT?

16 A NO, THEY BEEN LIKE WE KNOW YOU DIDN'T HAVE NOTHING

17 TO DO WITH IT, BUT WE THINK YOU GOT SOME INFORMATION

18 THAT YOU GOT TO TELL

19 Q YOU HAVE MORE INFORMATION THAT WHAT YOU ARE TELLING,

20 THAT'S WHAT THEY TOLD YOU RIGHT?

21 A YEAH

22 Q OK THAT S ALL I M GETTING AT NOW YOU WERE

23 MOSTLY IN DOROTHY'S APARTMENT ON THE 13TH, WEREN'T

24 YOU?

25 A YES SIR

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1 Q UP THERE WATCHING MOVIES, RIGHT?

2 A YES SIR

3 Q WATCHING THEM SCARY MOVES, RIGHT? THE ONES WITH

4 DAWN OF THE DEAD OR SOMETHING LIKE THAT?

5 A NO

6 Q IT WASN'T SCARY MOVIES?

7 A NO, IT WAS MATIDA

8 Q EXCUSE ME?

9 A MATIDA

10 Q I CAN'T UNDERSTAND YOU

11 A THE ONE WE CALL MATIDA

12 Q OK, JUST ONE MOVIE?

13 A NO TWO

14 Q TWO MOVIES BUNCH OF YOU WERE UP THERE WATCHINC YOU

15 WERE UP THERE WATCHING MOVIES, RIGHT?

16 A TWO

17 Q AND DOROTHY'S APARTMENT IS ON THE SECOND FLOOR,

18 RIGHT?

19 A YES SIR

20 Q AND IT'S ON THE BACK OF THE BUILDING, RIGHT?

21 A YES SIR

22 Q IT DOESN'T FACE THE PARKING LOT, DOES IT?

23 A YEAH YOU CAN SEE THE CARS IN THE PARKING LOT FROM

24 THE BANNISTER I MEAN FROM THE-

25 Q IF YOU COME OUTSIDE THE APARTMENT, RIGHT?

1 A YEAH

2 Q IF YOU ARE LOOKING OUT THE WINDOWS, NONE OF THE

3 WINDOWS LOOKED OUT AT THE PARKING LOT, DID THEY?

4 A NO

5 Q AND SHE'S GOT THOSE GREEN BLINDS, DOESN'T SHE?

6 A I DON'T KNOW NOW

7 Q YOU DON'T REMEMBER THE GREEN BLINDS? YOU WERE UP AT

8 DOROTHY'S A LOT AREN'T YOU?

9 A YEAH, BUT I AIN'T BEEN LOOKING AT HER BLINDS

10 Q OK, SO YOU WERE INSIDE WATCHING A MOVIE YOU WEREN'T

11 LOOKING OUTSIDE?

12 A NO WE CAN'T SEE OUTSIDE

13 Q OK, THANK YOU NOW YOU BUY A PHONE FOR SEVENTY

14 DOLLARS FROM VICKI RIGHT?

15 A UM HUH

16 Q AND YOU SELL IT TO MICHAEL FOR THIRTY?

17 A YES SIR

18 Q DIDN'T HE HAVE HIS OWN TELEPHONE?

19 A NO HE HAD LOST IT

20 Q HE DIDN'T HAVE HIS OWN TELEPHONE?

21 A HE DID BUT HE HAD LOST IT

22 Q YOU DIDN'T TELL MR GINN AND I THAT HE HAD HIS OWN

23 PHONE?

24 A YEAH

25 Q OK WERE YOU LYING AGAIN?

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HEARING

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- 1 A HE DID HAVE A PHONE, BUT HE LOST IT
- 2 Q I WAS ASKING YOU THIS, WERE YOU LYING AGAIN?
- 3 A ABOUT WHAT?
- 4 Q WHEN YOU TOLD US ABOUT THE PHONE SITUATION, WERE YOU
- 5 LYING AGAIN TO US?
- 6 A ABOUT HIM HAVING A PHONE?
- 7 Q YEAH
- 8 A HE DID HAVE A PHONE
- 9 Q ALRIGHT YOU'RE WEARING A GREEN JAIL JUMPSUIT
- 10 TODAY, IS THAT RIGHT?
- 11 A YES SIR
- 12 Q THEY BROUGHT YOU DOWN HERE, THE SHERIFF'S DEPARTMENT
- 13 BROUGHT YOU DOWN HERE IN A VAN TODAY?
- 14 A YES SIR
- 15 Q WHO IS THIS TONY GUY WHY DON T YOU TELL THE JURY
- 16 THE LAST NAME OF THIS TONY GUY THAT RODE ALONG WITH
- 17 YOU AND MICHAEL?
- 18 A I DON'T KNOW HIS LAST NAME, HE JUST GOES TO SCHOOL
- 19 Q YOU DON'T KNOW HIS LAST NAME?
- 20 A UH UH
- 21 Q YOU DROPPED OUT AFTER THE NINTH GRADE RIGHT?
- 22 A YES SIR
- 23 Q THAT'S WHEN YOU GOT IN SOME TROUBLE?
- 24 A NO, I GOT ON PROBATION
- 25 Q AND THAT'S WHY YOU ARE IN JAIL TODAY, RIGHT?

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1 A ' YES SIR
2 Q BEG THE COURT'S INDULGENCE MR LEMON I'VE GOT A
3 FEW MORE QUESTIONS BACK AROUND THE END OF 2004,
4 YOU EVER WEAR YOUR HAIR IN ROWS?
5 A CORN ROWS?
6 Q YEAH
7 A ' YEAH
8 Q YOU EVER WEAR IT IN BRAIDS?
9 A THAT'S THE SAME THING
10 Q OK YOU WERE AT MARSHVIEW ON DECEMBER 13th AROUND
11 THREE OR THREE THIRTY YOU SAY?
12 A YES SIR
13 Q ONCE YOU GOT THERE THREE OR THREE THIRTY YOU NEVER
14 LEFT?
15 A NO SIR YEAH I LEFT LIKE AT NIGHTTIME
16 Q LATE THAT NIGHT?
17 A NO AROUND LIKE SEVEN OR EIGHT
18 Q YOU DIDN T GO TO WEST MONTAGUE?
19 A NO SIR
20 Q ' YOU WEREN'T IN MICHAEL'S CAR?
21 A NO SIR
22 Q YOU DIDN T GET A CALL FROM MR JETER TO GO PICK HIM
23 UP?
24 A ' NO SIR I AIN'T HAD NO PHONE
25 Q YOU DIDN T GO OVER THERE AND SHOOT SOMEBODY?

1 A NO SIR

2 Q YOU DIDN'T ASK MR JOHNSON ABOUT THAT CAR?

3 A NO SIR

4 Q YOU DIDN'T TAKE THE CAR TO RUTH DRIVE AND PARK IT?

5 A NO SIR

6 Q YOU STAYED AT MARSHVIEW YOU THINK YOU GOT THERE
7 AROUND THREE OR THREE THIRTY AT MARSHVIEW AND LEFT
AROUND SEVEN?

9 A OR EIGHT

10 Q SEVEN OR EIGHT SO NOW YOU LYING TO US NOW LIKE YOU
11 LIED TO ME AND MR GINN BEFORE?

12 A NO SIR

13 Q YOU ARE TELLING THE TRUTH NOW, RIGHT?

14 A YES SIR

15 Q WELL DID YOU TELL THE TRUTH TO THE DETECTIVES WHEN
16 THEY WERE TALKING TO YOU?

17 A NOT AT FIRST

18 Q YOU LIED TO THEM NOW ONCE YOU GAVE THAT SECOND
19 STATEMENT AND THEN THEY TOLD YOU NOW YOU CAN BE
20 CHARGED WITH SOMETHING IF YOU ARE LYING, THAT'S WHEN
21 THEY LET YOU GO, RIGHT?

22 A YES SIR

23 Q NO OTHER QUESTION

24 REDIRECT BY MS WILSON - JUSTIN LEMON

25 Q JUSTIN DID MR DAVIS AND MR GINN TELL YOU WHY THE

1 CELL PHONE WAS SO IMPORTANT?

2 A NO SIR- NO MA'AM THEY JUST ASKED ME ABOUT THE

3 NUMBER, WHOSE NUMBER THESE IS

4 Q YOU DON T KNOW WHY IT WAS IMPORTANT?

5 A NO MA AM

6 Q EVERYBODY HAD JUST BEEN ASKING YOU ABOUT IT?

7 A YES MA'AM

8 Q AND WHEN THE POLICE CAME TO YOU I BELIEVE YOU TOLD

9 MR DAVIS THAT THEY CAME TO YOU AFTER YOU GAVE THE

10 FIRST STATEMENT AND THEY SAID TO YOU, WE KNOW YOU

11 DIDN'T HAVE ANYTHING TO DO WITH IT, BUT WE THINK YOU

12 KNOW A LITTLE MORE?

13 A YES MA'AM

14 Q DID YOU KNOW A LITTLE MORE?

15 A YEAH I WRITE MY SECOND STATEMENT

16 Q YOU HAD MORE INFORMATION, DIDN'T YOU?

17 A YES MA'AM

18 Q AND AFTER THEY CONFRONTED YOU WITH THEIR SUSPICIONS

19 THAT YOU KNEW MORE DID YOU TELL THEM THE REST OF

20 THE STORY?

21 A YES MA'AM

22 Q AND YOU DON'T WANT TO BE HERE TODAY DO YOU?

23 A NO MA'AM

24 Q HOW DID YOU GET HERE?

25 A THE SHERIFF

1 Q THEY HAULED YOU DOWN HERE?

2 A YES MA'AM

3 Q IT WOULD SUIT YOU IF YOU HADN'T BEEN HERE, WOULDN'T
4 IT?

5 A MA AM?

6 Q IT WOULD SUIT YOU IF YOU HADN'T BEEN HERE TODAY,
7 WOULDN T IT?

8 A YES MA'AM

9 Q YOU DON'T HAVE A DEAL FOR COMING HERE DID YOU?

10 A NO MA'AM

11 RECROSS BY MR DAVIS - JUSTIN LEMON

12 Q JUST BRIEFLY, YOUR HONOR SHERIFF'S DEPUTIES
13 BROUGHT YOU DOWN HERE TODAY, RIGHT?

14 A YES SIR

15 Q YOU ARE SERVING TIME NOW AND YOU ARE TESTIFYING FOR
16 THE STATE, RIGHT?

17 A YES SIR

18 Q YOU DON'T EXPECT SOME BENEFIT FROM THAT?

19 A NO SIR

20 Q YOU DON T EXPECT THEM TO HELP YOU OUT WITH THE TIME
21 YOU ARE SERVING RIGHT NOW FOR GIVING THIS TESTIMONY?

22 A NO SIR I AIN'T GOT THAT MUCH TIME, I ONLY GOT SIX
23 MONTHS

24 Q THANK YOU MR LEMON

25 THE COURT THANK YOU YOU CAN COME-DOWN

1 SOLICITOR WILSON BEG THE COURT'S INDULGENCE SUSAN
2 PRESNELL

3 THE WITNESS IS SWORN (SUSAN A PRESNELL, MUSC)

4 EXAMINATION BY SOLICITOR BURNEY - SUSAN A PRESNELL

5 Q GOOD MORNING WOULD YOU TELL THE JURY WHERE YOU
6 WORK AND WHAT YOU DO?

7 A I'M A FORENSIC PATHOLOGIST I WORK DOWN AT THE
8 MEDICAL UNIVERSITY, UNIVERSITY OF SOUTH CAROLINA
9 RIGHT DOWN THE STREET

10 Q HOW LONG HAVE YOU BEEN EMPLOYED?

11 A I STARTED ON AS A FORENSIC PATHOLOGIST IN '99

12 Q AND AS A PATHOLOGIST DO YOU PERFORM AUTOPSIES?

13 A YES ACTUALLY FORENSIC PATHOLOGY IS A SUB-SPECIALTY
14 OF PATHOLOGY AND MOST PEOPLE ARE FAMILIAR WITH
15 FORENSIC ANALYSIS, CSI AND ALL THE SHOWS ON TV, BUT
16 PATHOLOGY IN GENERAL IS A BROADER FIELD MOST
17 PATHOLOGISTS, AND PATHOLOGY MEANS THE STUDY OF
18 DISEASE MOST PATHOLOGISTS WILL EXAMINE TISSUE
19 BIOPSIES OR ANYTHING ANOTHER PHYSICIAN WILL REMOVE
20 FROM THEIR PATIENT LIKE AN ORGAN RESECTION FOR
21 CANCER THEY WILL LOOK AT THAT UNDER THE MICROSCOPE
22 AND THEY COME UP WITH A DIAGNOSIS SUCH AS CANCER OR
23 INFECTION FORENSIC PATHOLOGY IS ACTUALLY A SUB-
24 SPECIALITY OF THAT WHERE WE DON'T JUST LOOK AT
25 TISSUE BIOPSY OR ORGAN, WE REVIEW THE ENTIRE PERSON

1 AND GO THROUGH THE PROCESS OF AN AUTOPSY, AND WE RE
2 NOT JUST LOOKING AT DISEASE WHICH WE DO EVALUATE
3 PATIENTS WITH THAT, BUT WE ARE ALSO LOOKING AT
4 TRAUMA AND THROUGH THAT COMING UP WITH THE CAUSE
5 DEATH THAT'S MY MAIN ROLE AT THE UNIVERSITY

6 Q AND YOU'VE BEEN EDUCATED AS A DOCTOR AND TRAINED IN
7 FORENSIC PATHOLOGY AS WELL?

8 A YES GO COLLEGE AND MEDICAL SCHOOL AND THEN YOU DO
9 TRAINING FOR SEVEN YEARS IN GENERAL PATHOLOGY AND
10 THEN AFTER THAT YOU ARE A SUB-SPECIALTY IN FORENSIC
11 PATHOLOGY AND I'VE TAKEN MY NATIONAL BOARDS FOR BOTH
12 PATHOLOGY AND FORENSIC PATHOLOGY AND BOARDED IN THIS
13 PARTICULAR AREA

14 Q HAVE YOU BEEN QUALIFIED AS AN EXPERT IN GENERAL
15 SESSIONS COURT IN THE AREA OF FORENSIC PATHOLOGY?

16 A YES I HAVE

17 Q YOUR HONOR WE OFFER DR PRESNELL AS AN EXPERT IN THE
18 AREA OF FORENSIC PATHOLOGY

19 **THE COURT** ALRIGHT

20 Q YOU'VE ALREADY EXPLAINED TO THE JURY WHAT FORENSIC
21 PATHOLOGY IS AND THAT YOU PERFORM AUTOPSIES CAN YOU
22 GIVE THE JURY THE NUMBER OF AUTOPSIES YOU PERFORM IN
23 A YEAR?

24 A WE PROBABLY DO ABOUT 200 EACH, 200 TO 250

25 Q AND DID YOU PERFORM AN AUTOPSY ON ANTHONY GAMBRELL?

1 A YES I DID ON DECEMBER 14, 2004

2 Q AND DID THAT AUTOPSY TAKE PLACE AT MUSC?

3 A YES IT DID

4 Q AND BASED ON THE AUTOPSY YOU PERFORMED— FIRST OF ALL
5 LET ME ASK YOU THIS DO YOU FORM EXPERT OPINIONS AS
6 TO THE CAUSES OF DEATH?

7 A WELL WHAT WE ARE DOING IS WE ARE LOOKING AT WOUNDS
8 AND WE ARE EVALUATING THAT INJURY AND DECIDING WHICH
9 ONE WOULD BE RESPONSIBLE FOR DEATH IF THAT S THE
10 QUESTION, AND GIVE AN EXPERT OPINION

11 Q AND WHAT ARE THE POSSIBLE CAUSES OF DEATH?

12 A WELL THERE IS A ZILLION POSSIBLE CAUSES OF DEATH
13 THERE APE FOUR SEPARATE MANNERS OF DEATH WHERE YOU
14 CLASSIFY THE DEATH AS EITHER A NATURAL DEATH, A
15 SUICIDE AN ACCIDENT OR AN HOMICIDE, AND SOMETIMES
16 IF WE CAN'T DETERMINE ONE THEN WE'LL CALL IT
17 UNDETERMINED

18 Q AND WHAT IS YOUR EXPERT OPINION CONCERNING THE
19 MANNER OF DEATH OF ANTHONY GAMBRELL?

20 A WE CLASSIFIED THE FINDINGS AS A HOMICIDE

21 Q SHARE WITH THE JURY YOUR FINDINGS

22 A AT THE AUTOPSY WE DETERMINED THAT HE HAD TWO GUNSHOT
23 WOUNDS ONE OF THEM ENTERED THE BACK OF HIS LEFT
24 LEG AND EXITED THE LEFT SIDE OF HIS LEFT LEG THAT
25 JUST WE THROUGH SKIN, SKELETAL MUSCLE, EXITED THE

1 BULLET DID NOT REMAIN IN THE BODY ANOTHER GUNSHOT
2 WOUND, THE OTHER GUNSHOT WOUND WAS BASICALLY TO THE
3 CENTER OF HIS CHEST IT ENTERED HIS HEART, WENT
4 INTO HIS LEFT LUNG, WENT THROUGH HIS RIBCAGE INTO
5 THE SOFT TISSUE IN THE BACK, THE BACK AREA, AND THE
6 BULLET REMAINED THERE, AND BECAUSE OF THE INJURY THE
7 BULLET GOING THROUGH THE HEART AND THE LUNGS AND THE
8 BLEEDING SUSTAINED FROM THAT, WE CLASSIFIED THIS AS
9 THE CAUSE OF DEATH GUNSHOT WOUND TO THE CHEST WAS
10 THE CAUSE OF DEATH

11 Q AND WERE PHOTOS TAKEN AND X-RAYS TAKEN DURING THE
12 COURSE OF THE AUTOPSY?

13 A YES THEY WERE

14 Q I'LL SHOW YOU WHAT'S MARKED AS STATE'S 39, 40, 41
15 DID YOU PROVIDE US COPIES OF PHOTOGRAPHS THAT WERE
16 TAKEN DURING THE AUTOPSY?

17 A YES, WE PROVIDED A CD

18 Q THIRTY NINE IS AN X-RAY OF THE DECEDENT'S LEG
19 EXHIBIT 40 IS X-RAY OF THE LOWER CHEST AND ABDOMEN,
20 AND EXHIBIT 41 IS A PHOTOGRAPH OF THE BULLET WE
21 RECOVERED FROM MR GAMBRELL

22 A YOUR HONOR THE STATE OFFERS 39, 40 AND 41

23 **THE COURT** NO OBJECTION

24 Q LET ME SHOW YOU STATE S 39, AND IF YOU WOULD--

25 A THAT'S AN X-RAY OF THE LEG WE ACTUALLY HAVE TWO X-

1 RAYS, ONE IS A LITTLE BIT HIGHER AND THEN THIS X-RAY
2 HAVING THE WHOLE LEG, AND THIS IS THE KNEE JOINT
3 RIGHT IN THIS AREA, AND YOU CAN SEE LITTLE FRAGMENTS
4 OF WHITE MATERIAL, THAT'S THE FRAGMENTS OF THE
5 BULLET, IT'S NOT THE BULLET JUST LITTLE FRAGMENTS
6 THAT ARE LEFT BEHIND

7 Q YOU DESCRIBED A BULLET ENTERING THE LEG AND EXITING
8 THE LEG?

9 A YES THIS IS A PERFORATING GUNSHOT WOUND MEANING
10 THAT BULLET ENTERED THE BODY AND LEFT THE BODY

11 Q CAN YOU EXPLAIN THIS TO THE JURY FOR ME

12 A AGAIN WE HAD TWO X-RAYS IN THE CHEST AREA THIS IS
13 ACTUALLY THE LOWER CHEST RIGHT HERE, LOWER CHEST
14 AND THE ABDOMEN, AND THERE IS THE AREA RIGHT THERE
15 YOU CAN SEE THE RIBS, THE LOWER RIBS THERE AND THAT
16 WHITE PROJECTILE THAT WHITE MARKING THERE IS THE
17 BULLET THAT WE RECOVERED

18 Q SO THAT'S THE LOWER PART OF THE RIBS?

19 A WELL THE WHOLE PICTURE RIGHT HERE IS YOU PUT THE
20 FILM RIGHT BELOW BREAST AREA AND WE TOOK THE PICTURE
21 AND THAT WOULD BE THERE DOWN TO RIGHT THERE

22 Q AND THEN STATE'S 41?

23 A THAT S THE BULLET THAT WE RECOVERED

24 Q AND WHEN YOU RECOVERED THAT DID YOU GIVE THAT TO THE
25 OFFICER?

1 A WE TRANSFERRED THAT TO THE SHERIFF'S OFFICE

2 Q I HAVE NO FURTHER QUESTIONS

3 MR DAVIS WE DON'T HAVE ANY QUESTIONS OF THE
4 WITNESS

5 THE COURT THANK YOU MA'AM YOU CAN BE EXCUSED

6 SOLICITOR BURNEY YOUR HONOR AT THIS TIME WE OFFER
7 STATE'S EXHIBIT 8, 11, AND 19 PHOTO OF THE CAR

8 THE COURT WITHOUT OBJECTION

9 SOLICITOR BURNEY AT THIS TIME THE STATE RESTS

10 THE COURT LADIES AND GENTLEMEN THAT'S ALL THE
11 EVIDENCE AND TESTIMONY FROM THE STATE WE'RE GOING TO
12 TAKE A BREAK AND TAKE UP SOME LEGAL MATTERS THEN I'LL
13 BRING YOU BACK OUT IF Y'ALL WOULD STEP OUT FOR JUST A
14 FEW MINUTES DO NOT DISCUSS THE CASE

15 JURY OUT 11 03 A M

16 THE COURT MR DAVIS I ASSUME THAT YOU HAVE
17 DISCUSSED FULLY WITH YOUR CLIENT MR DUNHAM WHETHER OR
18 NOT HE WILL TESTIFY?

19 MR DAVIS WE HAVE DISCUSSED THAT YOUR HONOR YOUR
20 HONOR IF I MAY, A COUPLE OF THINGS I WOULD LIKE A BRIEF
21 AMOUNT OF TIME TO DISCUSS THAT WITH HIM AT THIS TIME
22 PUT A MOTION FOR THE RECORD?

23 THE COURT ALRIGHT

24 MR DAVIS JUDGE OBVIOUSLY I RENEW THE PRETRIAL
25 MOTION OF IMPROPER IDENTIFICATION THAT I MADE ALSO,

1 BRING THE TESTIMONY IN FRONT OF THE JURY TO RENEW THAT
2 MOTION I RENEW THE SUBSEQUENT MOTION FOR MISTRIAL, AND
3 AT THIS POINT I MUST MAKE A MOTION FOR A DIRECTED
4 VERDICT WE WOULD ARGUE THAT THE EVIDENCE PRESENTED AT
5 THIS POINT EVEN IN THE LIGHT MOST FAVORABLE TO THE STATE
6 ONLY CASTS SUSPICION ON MY CLIENT AS BEING INVOLVED IN
7 THIS HOMICIDE THERE IS NOT SUFFICIENT EVIDENCE THAT
8 WOULD ALLOW THIS TO GO TO THE JURY THE EVIDENCE SO FAR
9 IS MERE SUSPICION, MERE CONJECTURE, LACKING SUFFICIENT
10 PROBATIVE VALUE TO CONTINUE THIS CASE FORWARD

11 THE COURT OK I WOULD HAVE TO DENY THE MOTION AND
12 DENY THE MOTION FOR MISTRIAL

13 MR DAVIS JUDGE I'LL JUST ASK FOR A BRIEF PERIOD OF
14 TIME, FIVE MINUTES

15 THE COURT ALRIGHT SIR DOES HE HAVE ANY
16 CONVICTIONS YOU INTEND TO IMPEACH HIM ON?

17 SOLICITOR WILSON YES SIR YOUR HONOR HE HAS-

18 THE COURT IF HE TAKES THE STAND

19 SOLICITOR WILSON YES SIR HE HAS A CONVICTION FOR
20 BURGLARY AND A CONVICTION FOR POSSESSION OF A STOLEN
21 MOTOR VEHICLE AND GRAND LARCENY WE BELIEVE THE THREE
22 OF THOSE WOULD BE ADMISSIBLE UNDER 609

23 THE COURT ALRIGHT THERE IS A GOOD POSSIBILITY THAT
24 SHE MIGHT BE ABLE TO IMPEACH YOU WITH THOSE BUT, OF
25 COURSE YOU WILL TELL HIM THAT I WILL CLEARLY INSTRUCT

1 THE JURY IF HE TESTIFIES THOSE WOULD NOT COME IN BECAUSE
2 THEY WOULD BEAR ON HIS GUILT OR INNOCENCE IN THIS CASE
3 ONLY IF IT MAY BEAR UPON CREDIBILITY OR BELIEVABILITY, IF
4 IT WOULD BEAR AT ALL

5 MR DAVIS YES SIR, IF I MAY--

6 THE COURT AND I LL GO OVER IT WITH HIM IN DETAIL
7 AFTER YOU TALK

8 MR DAVIS WE ASK THE COURT TO CONSIDER THE RULES ON
9 THAT ONCE I DISCUSS THAT WITH HIM WE WOULD ARGUE OF
10 COURSE THAT THE BURGLARY CHARGE IS NOT A CRIME OF
11 DISHONESTY AND, THEREFORE ALL THREE WOULD FALL UNDER THE
12 609, THE BALANCE TEST OBVIOUSLY IF IT'S DISHONESTY THEY
13 GET THEIR RIGHT TO IMPEACH, BUT IF IT'S NOT A CRIME OF
14 DISHONESTY WE WOULD ARGUE THAT BURGLARY IS NOT, BUT THEN
15 IT'S UP TO THE COURT TO DO A BALANCING TEST, AND I AM
16 SURE THAT THE COURT IS AWARE THAT UNDER 609A1 IT'S THE
17 OPPOSITE OF 403 NORMALLY ANY TYPE OF EVIDENCE THAT'S
18 GONNA COME IN 403 IS A RULE INCLUDED IT'S GOING TO BE
19 UNLESS PREJUDICIAL EFFECT IS SHOWN TO SUBSTANTIALLY
20 OUTWEIGH THE PROBATIVE VALUE 609 WHEN IT IS THE ACCUSED
21 IS EXACTLY THE OPPOSITE EVIDENCE THAT THE ACCUSED MAY
22 BE CONVICTED OF SUCH A CRIME OTHER THAN ONE OF DISHONESTY
23 SHALL BE ADMITTED IF THE COURT DETERMINES THAT THE
24 PROBATIVE VALUE OF ADMITTING THIS EVIDENCE OUTWEIGHS ITS
25 PREJUDICIAL EFFECT TO THE ACCUSED WE KNOW THAT ITS

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1 GOING TO BE PREJUDICIAL, AND I UNDERSTAND THE COURT THAT
2 THE JURY WILL BE INSTRUCTED THAT ITS ONLY FOR CREDIBILITY
3 THAT ANY MENTION AGAINST THE ACCUSED IS OBVIOUSLY
4 PREJUDICIAL IT'S TO THE STATE TO SHOW THAT THE
5 PROBATIVE VALUE IN ADMITTING IT OUTWEIGHS THE PREJUDICIAL
6 EFFECT, AND I WILL ARGUE THAT THESE BEING JUVENILE
7 RECORDS FIRST OF ALL, NOT CRIMES OF DISHONESTY, AND IT IS
8 ABSOLUTELY PREJUDICIAL THE PROBATIVE VALUE IS SO
9 MINUSCULE COMPARED TO THE ADVERSE EFFECT TO MY CLIENT THE
10 STATE SHOULD BE BARRED FROM COMMENTING ON ANY OF IT AND
11 JUDGE GIVE ME ONE SECOND I'LL GIVE YOU THE CASE, AND I
12 HANDED IT UP AND I GAVE A COPY TO THE STATE JUDGE, I
13 ACTUALLY MENTIONED IT PREVIOUSLY, STATE V SHAW WHICH IS
14 A COURT OF APPEALS DECISION FROM 1997, 328SC454, AND
15 JUDGE I DON T HAVE TIME TO GO THROUGH ALL OF IT BUT I
16 WOULD SUBMIT TO THE COURT THAT THAT CASE IS THAT 609A2,
17 LIMITING THE DISHONESTY OF FALSE STATEMENT LANGUAGE TO
18 THOSE CRIMES INVOLVING SOME MISREPRESENTATION TO LIE AND
19 EXCLUDED THOSE CRIMES WHICH DO NOT CARRY WITH THEM
20 FALSIFICATION CRIMES SUCH AS PERJURY OR OF PERJURY,
21 FALSE STATEMENT, FRAUD, EMBEZZLEMENT, FALSE PRETENSE OR
22 ANY OTHER EVENTS IN THE NATURE OF THOSE, WE WOULD ARGUE
23 THAT THESE THREE DON'T FALL IN THAT DEFINITION,
24 THEREFORE, IT REQUIRES A BALANCING IT WOULD BE FAIRLY
25 PREJUDICIAL AND PROBATIVE VALUE THANK YOU

1 **SOLICITOR WILSON** YOUR HONOR I DON'T BELIEVE THE
2 FACT THAT THEY ARE A JUVENILE HAS ANY RELEVANCE AT ALL
3 UNDER THE RULES IF IT WERE AN IMPEACHABLE OFFENSE AS AN
4 ADULT IT WOULD BE AN IMPEACHABLE OFFENSE AS A JUVENILE
5 I THINK IT--

6 **THE COURT** HOW OLD IS HE NOW?

7 **MR DAVIS** NINETEEN

8 **SOLICITOR WILSON** I THINK THAT'S A GOOD QUESTION
9 YOUR HONOR BECAUSE IT HASN T BEEN THAT LONG SINCE HE WAS
10 A JUVENILE I THINK ITS CLEAR THAT GRAND LARCENY IS A
11 CRIME OF DISHONESTY POSSESSION OF A STOLEN VEHICLE IS
12 CLEARLY A CRIME OF DISHONESTY, AND I THINK WE RE ARGUING
13 ABOUT THOSE TWO THINGS ACTUALLY YOUR HONOR I THINK ITS
14 CERTAINLY MORE A CRIME OF DISHONESTY THAN A POSSESSION OF
15 CRACK CHARGE WOULD BE GOING INTO SOMEONE'S HOME OR
16 BUSINESS WITHOUT THEIR CONSENT IN ORDER TO COMMIT A
17 CRIME

18 **THE COURT** YOU RE ARGUING PRIOR EVIDENCE, YOU CAN'T
19 DO THAT

20 **SOLICITOR WILSON** I APOLOGIZE YOUR HONOR, BUT
21 CERTAINLY ON IT'S FACE WITHOUT COMPARING IT WITH ANY
22 OTHER CRIME, ON ITS FACE GOING INTO SOMEONE'S
23 ESTABLISHMENT WHETHER IT BE A HOME OR A BUSINESS WITHOUT
24 THEIR CONSENT AND TRYING TO COMMIT A CRIME INSIDE IS
25 CERTAINLY A CRIME OF DISHONESTY IN ANY EVENT EVEN IF

1 YOU WERE TO DO THE BALANCING TEST, I THINK THAT UNDER THE
2 BALANCINC TEST IT IS PROBATIVE AS TO HIS TRUTHFULNESS, AS
3 TO HIS CREDIBILITY OF WHETHER OR NOT WE CAN TRUST WHAT HE
4 IS SAYING, THE FACT THAT HE HAS THESE CONVICTIONS, AND I
5 THINK UNDER A BALANCING TEST THE PROBATIVE VALUE IS
6 IMPORTANT AND DOES OUTWEIGH ANY PREJUDICIAL EFFECT YOU
7 ARE GOING TO INSTRUCT THE JURY OR YOU WOULD INSTRUCT THE
8 JURY THAT THEY CAN'T USE THAT AGAINST HIM AS TO WHETHER
9 OR NOT HE IS CUILTY OF THIS CRIME AND THAT WOULD CORRECT
10 ANY UNDUE PREJUDICE

11 THE COURT OK, I'LL MAKE ON THE RECORD THE REASON
12 FOR MY RULINC IN THIS REGARD AN ISSUE IN THIS CASE IF
13 MR DUNHAM TAKES THE WITNESS STAND, AND I'M NOT
14 INDICATING THAT HE SHOULD NOT TAKE THE WITNESS STAND, AND
15 I'M NOT INDICATING HE SHOULD EITHER WAY, BUT THAT IS A
16 DECISION HE WILL HAVE TO MAKE AFTER LISTENINC TO HIS
17 ATTORNEY HE WILL HAVE TO MAKE THAT DECISION AS TO WHETHER
18 TO TAKE THE WITNESS IN FRONT OF THE JURY OR NOT TO
19 TESTIFY AS I HEARD THIS CASE, IF MR DUNHAM TAKES THE
20 WITNESS STAND, AND I'M JUST SPECULATING NOW AS TO WHAT HE
21 MAY OR MAY NOT DO, I'M JUST SAYING IF HE DID I HAVE NO
22 IDEA WHAT HE'S GOING TO DO AND WHAT HIS DECISION IS AND I
23 AM- SURE MR DAVIS HAS FULLY DISCUSSED IT WITH HIM AND
24 HE'S GOING TO DISCUSS IT WITH HIM AGAIN IN JUST A FEW
25 MINUTES, AND I ASSUME HIS FAMILY IS HERE IS THERE

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1 SOMEBODY?

2 **MR DAVIS** YES YOUR HONOR YES YOUR HONOR

3 **THE COURT** THE TESTIMONY IN THIS CASE IN REGARD TO
4 HIS THREE FRIENDS, I BELIEVE IT WAS THREE THAT TESTIFIED
5 THE LAST ONE, THE OTHER GUY THAT TOOK THE CAR THEIR
6 CREDIBILITY HAS BEEN ATTACKED THE DEFENSE THIS MORNING
7 BROUGHT IT OUT TO THE JURY WHATEVER WEIGHT IT MAY CARRY
8 WITH THEM THE INCONSISTENCIES IN THEIR STATEMENTS SO A
9 KEY ISSUE IN THIS CASE IN REGARD TO ALL WITNESSES, AND A
10 KEY ISSUE IF MR DUNHAM TAKES THE WITNESS STAND, WOULD BE
11 THE CREDIBILITY AND THE BELIEVABILITY OF ANY WITNESS WHO
12 TESTIFIES ALL OF THEM THE THREE PEOPLE, HIS FRIENDS WHO
13 WERE THERE, AND MR DUNHAM ALL THEIR TESTIMONY IT'S
14 BEEN POINTED OUT THAT THEY MADE INCONSISTENT STATEMENTS
15 BEFORE THAT SO THE CREDIBILITY OF EACH AND EVERY
16 WITNESS IS VERY IMPORTANT TO THE DECISION OF THE JURY IN
17 THIS CASE THE CREDIBILITY OF THE DEFENDANT IF HE TOOK
18 THE WITNESS STAND WOULD BE VERY IMPORTANT IN DETERMINING
19 THIS CASE AND BALANCING THE PREJUDICIAL EFFECT AND
20 PROBATIVE VALUE AND CONSIDERING AS MR DAVIS HAS SAID,
21 READING FROM THE RULE, THE TWO CRIMES CLEARLY- WELL I
22 WOULD THINK THAT MY RULING WOULD BE THE STATE COULD
23 IMPEACH HIM ON ALL THREE OF THE OFFENSES IF HE COMMITTED
24 THOSE CRIMES ADDITIONALLY, THE CRIME OF BURGLARY IS
25 NORMALLY TO GO IN AND TAKE SOMETHING FROM SOMEONE'S

1 RESIDENCE, BUSINESS, OR HOUSE IT'S WITH THE INTENT TO
2 COMMIT A CRIME INSIDE OF THAT RESIDENCE SO USUALLY IT'S
3 TAKING SOMETHING OUT OF THE RESIDENCE SO I WOULD LET
4 THE IMPEACHMENT IN REGARD TO ALL THREE IF HE HAS
5 COMMITTED THOSE CRIMES I'LL GIVE Y'ALL ABOUT TEN OR
6 FIFTEEN MINUTES AND THEN WE'LL BE READY TO START DO
7 YOU, REGARDLESS OF WHAT MR DUNHAM DECIDES, DO YOU INTEND
8 TO PRESENT ANY TESTIMONY OR ARE YOU READY TO- I JUST
9 NEED TO KNOW ABOUT BRINGING THE JURY IN

10 MR DAVIS YES SIR ONCE I'M DONE SPEAKING WITH HIM
11 I'LL KNOW, AND IF AT ALL IT WOULD BE BRIEF

12 THE COURT OK

13 MR DAVIS IF HIS DECISION IS TO TESTIFY IT WOULD BE
14 A LONGER DEFENSE IF HE DOES NOT, AT MOST WE MAY STILL
15 NEED WITNESSES BUT IT WOULD BE VERY QUICK

16 THE COURT OK

17 MR DAVIS THAT'S THE BEST I CAN TELL YOU RIGHT NOW
18 JUDGE JUDGE, YOUR RULING THEN IS ALL THREE CRIMES ARE
19 DISHONESTY SO THEY WOULD COME IN THAT WAY

20 THE COURT IN MOST CASES IT IS A CRIME OF
21 DISHONESTY NOW I DON'T KNOW THE CIRCUMSTANCES AROUND
22 THIS CRIME IF HE WENT IN AND STOLE SOMETHING IT WOULD
23 BE A CRIME OF DISHONESTY, IF NOT IN THE BALANCING TEST
24 OTHERWISE THE CREDIBILITY OF ALL THE WITNESSES ARE SO
25 IMPORTANT IN THIS CASE THAT I THINK THAT EVIDENCE THAT

THIRD JUDICIAL CIRCUIT

(803) 436-2150

1 WOULD REFLECT ON CREDIBILITY SHOULD BE ADMITTED

2 MR DAVIS THANK YOU YOUR HONOR

3 SOLICITOR WILSON YOUR HONOR, ASSUMING WE HAVE A
4 SHORT DEFENSE CASE, WOULD YOU HAVE US CLOSE BEFORE LUNCH?

5 THE COURT YES USUALLY IF ITS NOT MORE THAN 30
6 MINUTES THE JURY TUNES YOU OUT, BUT THERE WAS A LAWYER
7 WHO SAID I ARGUED FOR TWO HOURS IN EVERY CASE AND SAID I
8 NEVER LOST A CASE LAWYER GREENWOOD HE ARGUED FOR TWO
9 HOURS BUT HE LOST THAT ONE THE FIRST ONE HE LOST, BUT
10 YOU'VE GOT A TWO HOUR LIMIT, BUT USUALLY LAWYERS DON'T
11 ARGUE MORE THAN 30 OR 45 MINUTES OR 50 MINUTES I M NOT
12 GOING TO STOP YOU AND I'M NOT GOING TO PUT A TIME LIMIT
13 ON YOU BECAUSE YOU CAN'T REALLY DO A GOOD JOB LOOKING AT
14 YOUR WATCH, BUT ALL OF YOU HAVE DONE IT ENOUGH AND SEEN
15 IT DONE ENOUGH TO KNOW THAT YOU DON'T WANT TO GET TOO FAR
16 OUT OF LINE

17 MR DAVIS AND JUDGE I DON'T BELIEVE I WANT TO SPEAK
18 FOR MS WILSON BUT I DON'T BELIEVE IT'S THE LENGTH OF
19 THE ARGUMENTS AS MUCH AS IT IS PREPARING TO SET UP TO
20 GIVE THE ARGUMENTS IS MORE OF A CONCERN BOTH WITH THE
21 EXHIBITS, THE PROJECTIONS WE HAVE JUST PREPARING STUFF
22 I DON'T BELIEVE THE CLOSINGS WILL BE LONG BUT I THINK
23 IT'S JUST A LITTLE TIME, PREP TIME

24 THE COURT TO ME THAT JURY IS AN INTELLIGENT GROUP
25 OF PEOPLE, SOME OF THEM ARE BUT I KNOW I'VE SPOKEN TO

1 TWO OR THREE WALKING UP AND DOWN THE HALL THE SAID
2 HELLO AND GOOD MORNING THEY SAID IT INTELLIGENTLY I
3 DON'T THINK WE GONNA NEED TO SEE A LOT OF THAT STUFF
4 BECAUSE I CAN SEE IT AND I CAN REMEMBER IT, AND I DON'T
5 KNOW THE ISSUE IS AROUND THE WAY IT HAPPENED IN REGARD TO
6 SHOWING THE OVERHEAD OF NORTH CHARLESTON SO MANY TIMES
7 I DON'T KNOW WHAT THAT BEARS ON I DON'T THINK THERE IS
8 ANY- IT SEEMS TO BE UNDISPUTED THEY FOUND THE CAR AT THE
9 BOY'S HOUSE THEY FOUND CAR THERE AND NONE OF YOU ARE
10 GOING TO ARGUE AGAINST THAT, WHERE EVER IT WAS THAT'S
11 WHERE THEY FOUND THE CAR YOU MIGHT WANT TO SHOW IT TO
12 SHOW THE TREES, MAYBE HE WAS TRYING TO CONCEAL IT
13 SOMEHOW, I DON'T KNOW, BUT WHATEVER Y'ALL WANT TO DO YOU
14 CAN DO IT, BUT SOME OF THESE OTHERS YOU PROBABLY DON'T
15 NEED TO SHOW AGAIN, BUT THAT'S UP TO Y'ALL, WHAT EVER YOU
16 WANT TO DO IF YOU WANT TO GO AN HOUR A PIECE LET ME
17 KNOW

18 SOLICITOR WILSON I THINK WE RE JUST BOTH HEADING
19 FOR JUST AFTER THE BREAK, I DON'T KNOW I THINK I'LL BE
20 TWENTY MINUTES BUT I'D RATHER HAVE A BREAK BEFORE LUNCH,
21 COME BACK ARGUE, CONSTRUCT DURING THE BREAK INSTEAD OF
22 HAVING TO INTERRUPT-

23 THE COURT SINCE THE JURORS DIDN'T COME IN UNTIL
24 NINE THIRTY THEY PROBABLY HAD A LATE-BREAKFAST-THEY
25 PROBABLY-

1 SOLICITOR WILSON I KNOW YOU ARE GOING TO KEEP IT
2 ROLLING, THAT'S FINE

3 BREAK (11 21 A M)

4 THE COURT MR DAVIS HAVE YOU DISCUSSED IT WITH YOUR
5 CLIENT?

6 MR DAVIS I HAVE YOUR HONOR HE WISHES NOT TO
7 TESTIFY

THE COURT ARE YOU GOING TO PRESENT ANY TESTIMONY?

9 MR DAVIS JUDGE WE WOULD LIKE TO AND HE AND I
10 DISCUSSED IT OBVIOUSLY PREVIOUSLY AND BASED ON THAT IT'S
11 A DECISION ON OUR PART THE ONLY WITNESSES WE WOULD CALL
12 WOULD BE THREE OFFICERS IN TRYING TO COORDINATE WHEN
13 THE STATE WOULD FINISH SO I WOULD HAVE THE OFFICERS HERE,
14 I'M INFORMED BY MY INVESTIGATOR THAT THE THREE OFFICERS,
15 TWO OF WHICH ARE ON THE WAY AND ONE WILL BE HERE IN 11
16 MINUTES I JUST NOW WAS HANDED A NOTE THAT THE SECOND
17 OFFICER WILL BE HERE AT ONE, AND THEN ONE OFFICER I DON'T
18 HAVE --- AND I DO NOT INTEND TO DELAY THE COURT, WE
19 DIDN'T KNOW HOW MANY MORE WITNESSES THE STATE HAD THERE
20 ARE SOME LAYWITNESSES WHICH NOW WE ARE DECIDING WE WILL
21 NOT CALL THERE IS A COUPLE OF ISSUES REAL BRIEFLY ON
22 TWO OF THE OFFICERS, BUT ONE IS IF THE STATE STIPULATE WE
23 CAN HANDLE IT THAT WAY, BUT I JUST WANT AVAIL THE COURT
24 THE INFORMATION I HAD AND TRY TO FIGURE OUT

25 THE COURT MR DUNHAM, MANY PEOPLE SAY THE MOST

1 IMPORTANT DECISION THAT A DEFENDANT HAS TO MAKE IN A
2 CRIMINAL CASE IS WHETHER OR NOT TO TAKE THIS WITNESS
3 STAND AND TESTIFY UNDER OATH IN THE PRESENCE OF THIS
4 JURY, AND TESTIFY IN REGARD TO WHATEVER YOU WANT TO
5 TESTIFY TO IN REGARDS TO THE EVIDENCE AND TESTIMONY IN
6 THIS CASE NOW, YOU HAVE A CONSTITUTIONAL RIGHT TO
7 EITHER TESTIFY OR TO REMAIN SILENT, AND THE BURDEN OF
8 PROOF IS ALWAYS UPON THE STATE TO PROVE YOU GUILTY BEYOND
9 A REASONABLE DOUBT YOU DO NOT HAVE TO PROVE YOURSELF
10 INNOCENT YOU CAN EXERCISE YOUR CONSTITUTIONAL RIGHT TO
11 TESTIFY OR NOT TO TESTIFY OR TO REMAIN SILENT THE FACT
12 THAT YOU DO NOT TAKE THE WITNESS STAND I WILL TELL THE
13 JURY CANNOT CREATE ANY PRESUMPTION AGAINST YOU, AND I
14 WILL TELL THEM THAT THEY CANNOT LET THAT FACT ENTER IN
15 THE SLIGHTEST DEGREE AGAINST YOU, AND THEY COULDN T EVEN
16 BRING THAT UP IN THEIR DISCUSSIONS OR DELIBERATIONS IN
17 THE JURY ROOM UNDER THE CONSTITUTION OF SOUTH CAROLINA
18 AND THE CONSTITUTION OF THE UNITED STATES IT IS YOUR
19 PREROGATIVE, YOUR DECISION, TO EITHER TESTIFY OR REMAIN
20 SILENT, AND THE BURDEN OF PROOF IS ALWAYS UPON THE STATE
21 OF SOUTH CAROLINA TO PROVE YOUR GUILT BY COMPETENT
22 TESTIMONY BEYOND A REASONABLE DOUBT THE FACT THAT YOU
23 DO-NOT TESTIFY CANNOT AND MUST BE CONSIDERED AGAINST YOU
24 AND I'M NOT INDICATING AGAIN WHAT YOU SHOULD DO THAT'S
25 A VERY IMPORTANT DECISION YOU SHOULD MAKE IN REGARD TO

1 THIS CASE AFTER DISCUSSING IT FULLY WITH YOUR LAWYER
2 NOW, I WILL INSTRUCT THE JURY IN REGARD TO ANY CRIMES YOU
3 MAY HAVE COMMITTED, IF ANY, AND IF YOU WERE ASKED ABOUT
4 THOSE CRIMES THAT YOU MAY OR MAY NOT HAVE COMMITTED, THAT
5 EVIDENCE IS ADMITTED FOR A LIMITED PURPOSE IT WOULD NOT
6 COME IN AND COULD NOT COME IN TO BEAR ON YOUR GUILT OR
7 INNOCENCE IN THESE ALLEGATIONS OF MURDER ANY PRIOR
8 CONVICTIONS YOU ARE ASKED ABOUT WOULD ONLY BE ADMITTED
9 FOR A LIMITED PURPOSE AS TO HOW IT WOULD BEAR ON YOUR
10 CREDIBILITY OR BELIEVABILITY OF YOUR TESTIMONY IN THIS
11 CASE IF IT WOULD BEAR OR NOT, THAT WOULD BE UP TO THE
12 JURY THEY CANNOT AND MUST NOT CONSIDER A PRIOR RECORD
13 AS ANY EVIDENCE OF YOUR GUILT OF THE CHARGES FOR WHICH
14 YOU ARE BEING TRIED IN THIS COURTROOM NOW, DO YOU
15 UNDERSTAND YOUR RIGHT TO TESTIFY OR YOUR CONSTITUTIONAL
16 RIGHT TO REMAIN SILENT, AND ANY PRIOR RECORD YOU MAY HAVE
17 AND HOW THEY WOULD BE USED IN THE COURTROOM, DO YOU FULLY
18 UNDERSTAND THAT MR DUNHAM?

19 MR DUNHAM YES SIR

20 THE COURT HAVE YOU FULLY DISCUSSED WITH YOUR
21 ATTORNEY BEFORE TODAY AND TODAY DURING THIS BREAK WHETHER
22 OR NOT YOU WANT TO TESTIFY OR NOT?

23 MR DUNHAM YES SIR

24 THE COURT HAVE YOU PERSONALLY MADE A DECISION IN
25 THIS CASE?

1 MR DUNHAM YES SIR

2 THE COURT WHAT IS YOUR DECISION?

3 MR DUNHAM I WON'T TESTIFY

4 THE COURT YOU ARE NOT GOING TO TESTIFY

5 MR DUNHAM YES SIR

6 THE COURT OK THANK YOU WE DON'T HAVE AN OFFICER
7 HERE NOW DO WE?

8 MR DAVIS IF I CAN JUST CALL MY INVESTIGATOR BACK
9 IN THE COURTROOM JUDGE EVIDENTLY DETECTIVE BUNCE IS NOW
10 WORKING AT A HIGH SCHOOL AND HE'LL DRIVE AS QUICKLY AS HE
11 CAN ABOUT SIX MINUTES BEFORE NOON THE OFFICER WAS
12 INSTRUCTED TO COME TO THIS COURTROOM I HAVE NOT SEEN
13 THE OFFICER YET, AND OFFICER KINSEY WE ARE TRYING TO
14 MAKE CONTACT NOW

15 THE COURT WELL I CAN GIVE THE JURY A BREAK NOW I
16 DON'T KNOW HOW LONG IT TAKES HIM SOME OF THEM WERE LATE
17 COMING BACK YESTERDAY I CAN GIVE THEM ABOUT 20 MINUTES
18 OR 30 MINUTES WE LL START BACK AT 1 30 WE LL BE
19 FINISHED BY THE TIME WE DRAW THE JURY AT 2 00 FOR THAT
20 NEXT CASE

21 SOLICITOR WILSON WILL WE CLOSE AFTER YOU DRAW YOUR
22 OTHER JURY?

23 THE COURT WE COULD DO THAT WOULD THAT SUIT YOU?

24 SOLICITOR WILSON SURE

25 THE COURT ARE THEY GOING TO DRAW THE JURY IN THE

1 OTHER CASE?

2 SOLICITOR WILSON AS FAR AS I KNOW THEY ARE IF NOT
3 I HOPE WE CAN DRAW OUR OTHER JURY

4 THE COURT WE HAVE A PANEL COMING IN AT TWO O CLOCK
5 WHAT I'LL DO THEN IS BRING THE JURY BACK 1 30 TO FINISH
6 AND THEN WE'LL TAKE THE TESTIMONY AFTER THAT I WILL
7 SELECT THE JURY IN THE OTHER CASE

JURY IN (11 59 A M)

9 THE COURT LADIES AND GENTLEMEN IT APPEARS THAT WE
10 MOVED A LITTLE FASTER THAN ANTICIPATED, AND WE'VE GOT
11 THREE MORE OFFICERS OR FOUR MORE OFFICERS THAT MAY
12 TESTIFY SO I'M GOING TO LET Y'ALL GO AHEAD AND COME
13 BACK AT ONE THIRTY TO MAKE SURE THEY ARE HERE, AND I
14 TALKED TO BOTH SIDES AND I DON'T THINK THAT IT WILL BE
15 VERY LONG AND WE'LL GET THE TESTIMONY IN CLOSING
16 ARGUMENTS, AND CONCLUDE THIS MATTER TODAY SO IF Y ALL
17 WILL BE BACK AT ONE THIRTY DO NOT DISCUSS THE CASE WITH
18 ANYONE THANK YOU SO MUCH

19 JURY BREAK (12 01 P M)

20 THE COURT WE WILL BE IN RECESS UNTIL 1 30

21 BACK ON (1 43 P M)

22 MR DAVIS JUDGE WE VE GOT A NEW DEVELOPMENT I
23 TALKED WITH TWO OF THE OFFICERS ALREADY DURING THE BREAK
24 AND WE TALKED TO MY CLIENT AGAIN BASED ON THE KIND OF
25 TESTIMONY THAT WE HAD WE DECIDED NOT TO PRESENT A CASE

1

SO WE WILL NOT BE PRESENTING A CASE

2

DEFENSE RESTS (1 48 P M)

3

THE COURT ALRIGHT Y'ALL READY TO PRESENT CLOSING

4

ARGUMENTS?

5

SOLICITOR WILSON YES SIR

6

THE COURT YOU NEED TO DO ANYTHING BEFORE WE START?

7

SOLICITOR WILSON I GOT IT ALL DONE I'M READY

8

THE COURT OK YOU GO FIRST AND HE GOES LAST ANNE

9

SUMNER IS THE FOREPERSON THE FORM FOR THE VERDICT WOULD

10

BE GUILTY OF MURDER OR NOT GUILTY

11

THE BAILIFF JURORS ARE ALL PRESENT YOUR HONOR

12

THE COURT LADIES AND GENTLEMEN THE ATTORNEYS HAVE

13

INFORMED ME THEY ARE READY TO MAKE THEIR CLOSING

14

ARGUMENTS

15

SOLICITOR WILSON YOU KNOW THIS IS THE STATE V

16

MICHAEL DUNHAM THIS IS NOT THE STATE V MICHAEL JETER

17

TODAY IS NOT MICHAEL JETER S DAY IT'S THE DEFENDANT'S

18

DAY, MICHAEL DUNHAM'S DAY YOU SHOULDN'T CONCERN

19

YOURSELF ABOUT THE EVIDENCE AGAINST MICHAEL JETER

20

CERTAINLY THERE HAS BEEN A LOT OF TESTIMONY ABOUT HIM

21

WHAT YOU ARE CONCERNED ABOUT IS THE EVIDENCE IN THIS

22

CASE YOU ARE CONCERNED ABOUT WHAT HAPPENED ON DECEMBER

23

13, 2004 YOU ARE THE FINDERS OF THE FACTS, YOU ARE THE

24

JURORS OF THE FACTS THE JUDGE IS GOING TO GIVE YOU IAW

25

HE'S GOING TO TELL YOU ABOUT THE ELEMENTS OF THE CRIME

1 HE IS GOING TO TELL YOU ABOUT DIFFERENT THINGS THAT
2 GOVERN YOUR DELIBERATIONS HE IS THE JUDGE OF THE LAW,
3 AND AS I TOLD YOU AT OPENING HE DOESN'T MAKE FINDINGS
4 ABOUT FACTS, WE DON'T MAKE FINDINGS ABOUT FACTS THAT'S
5 YOUR JOB, THAT'S WHY WE PICKED YOU THAT S WHY WE
6 SELECTED PEOPLE WITH COMMON SENSE TO USE THEIR LIFE
7 HISTORY, THEIR EXPERIENCE IN LISTENING TO AND JUDGING
8 I SAW ON THE WITNESS STAND, AND I TOLD YOU WE HAVE
9 TO PROVE OUR CASE BEYOND A REASONABLE DOUBT AND THE
10 JUDGE WILL TELL YOU THAT THAT MEANS YOU SHOULDN'T HAVE A
11 HESITATION TO ACT, BUT THAT DOESN'T MEAN THAT YOU
12 SHOULDN'T DELIBERATE CERTAINLY YOU SHOULD CONSIDER ALL
13 THE EVIDENCE, THINK ABOUT IT, BE CAREFUL IN YOUR
14 DECISION HE WILL TELL YOU AND I SUBMIT TO YOU THAT OUR
15 BURDEN IS NOT BEYOND ALL DOUBT BECAUSE IF YOU WERE
16 ABSOLUTELY CERTAIN OF EVERYTHING THAT HAPPENED ONE
17 HUNDRED PERCENT CERTAIN, YOU WOULD HAVE SEEN IT AND HEARD
18 IT YOURSELF, BUT YOU WEREN'T THERE, YOU AREN T WITNESSES
19 INSTEAD YOU HAVE TO TAKE THE EVIDENCE THAT IS PRESENTED
20 BEFORE YOU THERE ARE FEW THINGS EVER THAT YOU CAN BE
21 ABSOLUTELY CERTAIN ABOUT, AND THE JUDGE WILL TELL YOU
22 THAT IF WE HAVE PROVEN OUR CASE, IF WE HAVE LEFT YOU
23 FIRMLY CONVINCED THAT THIS DEFENDANT SHOT ANTHONY
24 GAMBRELL RIGHT IN FRONT OF GINA BROWN'S EYES --IF WE HAVE
25 FIRMLY CONVINCED YOU, THEN HE IS GUILTY, AND I SUBMIT TO

1 YOU BASED ON ALL THE TESTIMONY, BASED ON ALL THE
2 EVIDENCE THAT'S EXACTLY WHAT WE HAVE DONE YOU ARE THE
3 JUDGE OF THE CREDIBILITY OF THE WITNESSES, AND WHAT THAT
4 MEANS IS AGAIN, YOUR WHOLE LIFE EXPERIENCE, HOW PEOPLE
5 LOOK, HOW THEY ACT, ARE THEY NERVOUS, IF THEY ARE
6 NERVOUS, WHY ARE THEY NERVOUS IF YOU BELIEVE THEY ARE
7 NOT TELLING THE TRUTH ABOUT SOMETHING WHY AREN'T THEY
8 TELLING THE TRUTH ABOUT SOMETHING YOU CAN BELIEVE ALL
9 OF SOMEONE'S TESTIMONY, YOU CAN BELIEVE NONE OF IT, YOU
10 CAN BELIEVE SOME OF IT YOU CAN PICK AND CHOOSE, BASED
11 ON YOUR BELIEFS, BASED ON WHAT YOU SAW AND HEARD, AND
12 BASED ON YOUR EXPERIENCES THAT'S VERY IMPORTANT IN THIS
13 CASE, VERY IMPORTANT YOU'RE GOING TO HAVE AND YOU'VE
14 GOT THE DIRECT TESTIMONY THAT'S THE MEAT AND POTATOES,
15 THAT'S WHAT PEOPLE SAW, WHAT PEOPLE HEARD, WHAT YOU CAN
16 TOUCH AND FEEL, WHAT GINA SAW WHEN SHE WAS OUT THERE,
17 WHAT MS RODRIGUEZ SAW LUCKILY MS RODRIGUEZ WAS
18 OUTSIDE HER APARTMENT THE DAY THIS HAPPENED, AND LUCKILY
19 SHE HEARD THE SHOTS AND SHE GOT A GOOD LOOK AT THE CAR,
20 BECAUSE THAT'S WHAT SET EVERYTHING IN MOTION YOU HEARD
21 OFFICER BARRIS, REMEMBER HIM, HE WAS ONE OF THE FIRST
22 OFFICERS THAT TESTIFIED, AND HE TOLD YOU ABOUT RESPONDING
23 TO THE SCENE, ABOUT PUTTING A BOLO OUT, A BE ON THE LOOK
24 OUT, FOR A CAR, AND MS RODRIGUEZ TOLD YOU THAT SHE WAS
25 TAKEN AFTER A CAP WAS SPOTTED TO RUTH DRIVE THAT'S WHAT

1 UNFOLDED THIS WHOLE CASE, THE FINDING OF THAT CAR YOU
2 HEARD RAYSHAWN GREEN, REMEMBER HIM AT THE VERY BEGINNING,
3 ONE OF OUR FIRST WITNESSES CLEARLY DID NOT WANT TO BE
4 HERE, A LITTLE BIT HARD TO UNDERSTAND HE WAS WITH JETER
5 WHEN THEY WERE WALKING AROUND, THEY HAD BEEN TO THE
6 STORE HE'D SEEN JETER GET IN A FIGHT AFTER THE FIGHT
7 JETER ASKED FOR HIS PHONE HE GIVES JETER HIS PHONE TO
8 MAKE A CALL, HE DOESN'T HEAR WHO HE CALLS THEN HE SEES
9 A CAR, THIS CAR, COME PICK JETER UP, GO DOWN THE ROAD A
10 LITTLE WAYS, HE HEARS THE SHOT, HE SEES THE MAN FALL
11 WHAT DOES RAYSHAWN DO, YOU TALK ABOUT CREDIBILITY, HE
12 GOES TO THE VICTIM HE GOES TO HIM, BECAUSE HE DIDN'T
13 HAVE ANYTHING TO DO WITH IT HE THOUGHT THE FIGHT WAS NO
14 BIG DEAL HE GOES TO GINA WHO IS UNDERSTANDABLY UPSET
15 AND DOESN'T WANT ANYTHING TO DO WITH HIM HE OFFERS HELP
16 AND SHE TURNS HIM AWAY SHE TELLS PEOPLE HE WAS WITH THE
17 FIGHTER, THE FIGHTER WAS IN THE PASSENGER SIDE THAT
18 SHOWS CREDIBILITY WHEN YOU THINK ABOUT WHETHER OR NOT
19 RAYSHAWN GREEN HAD ANYTHING TO DO WITH IT HE'S TRYING
20 TO GET TO THE VICTIM, SEE WHAT HE CAN DO, BECAUSE HE
21 KNOWS HOW RIDICULOUS THIS IS, HOW ABSURD, THAT A MAN IS
22 DEAD OVER A SCRAP LIKE THAT YOU THINK ABOUT THAT THE
23 FINGERPRINTS, YOU HEARD TESTIMONY ABOUT THAT THAT'S
24 DIRECT EVIDENCE ONCE AGAIN THAT'S EVIDENCE YOU CAN SEE,
25 FEEL, AND TOUCH THEY FOUND FINGERPRINTS ON THE CAR

1 -
2 THEY FOUND MR DUNHAM'S FINGERPRINTS THEY EVEN TOLD US
3 THAT'S NOT THAT BIG A SURPRISE THAT HIS OWN FINGERPRINTS
4 WOULD BE IN THE CAR NOT A SURPRISE THAT JETER'S
5 FINGERPRINTS WOULD BE IN THE CAR HOW MANY WITNESSES DID
6 WE HAVE THAT TOLD YOU THAT JETER AND DUNHAM WERE
7 TOGETHER SO YOU WOULD EXPECT TO FIND JETER'S
8 FINGERPRINTS IN THE CAR STEVEN JOHNSON'S FINGERPRINTS,
9 THEY DIDN'T FIND THOSE IN THE CAR SO THEY WEREN'T
10 COMPARED, BUT DOES THAT MATTER I'M SURE MR DAVIS IS
11 GOING TO STAND UP AFTER ME, BECAUSE I CAN'T TALK TO YOU
12 AGAIN, I'M DONE FOR THIS, AND SAY WHAT ABOUT ALL THOSE
13 OTHER FINGERPRINTS, YEAH THEY MATCHED SOME TO JETER AND
14 DUNHAM, BUT WHAT ABOUT ALL THOSE OTHER ONES STEVEN
15 JOHNSON TOLD YOU HE WAS IN THE CAR, WE DON'T NEED HIS
16 FINGERPRINTS TO PUT HIM IN THE CAR HE BACKPACK WAS
17 FOUND IN THE CAR THOSE GUYS SAW HIM LEAVING MARSHVIEW
18 HE WAS IN THE CAR WE DON'T KNOW WHETHER THE CAR WAS IN
19 THE SHOP THE CAR OBVIOUSLY HAD DAMAGE TO IT, WHETHER IT
20 HAD BEEN IN A WRECK, WHETHER IT HAD BEEN PUSHED, TOWED,
21 ANYTHING THERE IS NO TELLING WHOSE FINGERPRINTS ARE
22 ALSO AROUND THAT CAR DON'T GET LOST IN THAT WHAT WE
23 ARE HERE TO TALK ABOUT IS DECEMBER 13, AND WHAT THE
24 EYEWITNESSES SAY HAPPENED AND WHO WAS IN THAT CAR THIS
25 CORROBORATES IT, NO QUESTION, WE'RE GLAD TO HAVE IT, BUT
IT DOESN'T REALLY MOVE THE BALL BECAUSE STEVEN JOHNSON

1 ADMITS BEING IN THE CAR, WHEN DUNHAM OWNS THE CAR, AND
2 WHEN EVERYBODY PUTS JETER IN IT ALL THOSE GUYS WERE OUT
3 AT MARSHVIEW THERE IS JUST NO TELLING HOW MANY PEOPLE
4 TOUCHED THAT CAR AT SOME POINT OR ANOTHER, BUT THOSE ARE
5 THE TYPES OF EVIDENCE THAT ARE CONSIDERED DIRECT
6 EVIDENCE THESE PHONE RECORDS, YOU DIDN'T HEAR MUCH
ABOUT THESE THROUGHOUT YOU HEARD A LITTLE BIT ABOUT
8 THEM TODAY FROM JUSTIN LEMON, AND THEN YOU HEARD AGAIN
9 RAYSHAWN GREEN WAS THE VERY FIRST WITNESS, HE TOLD YOU
10 THE PHONE NUMBER WE HAVE STATE'S EXHIBIT 52 WHICH SHOWS
11 YOU THAT THIS IS HIS PHONE WITH HIS PHONE RECORDS, AND HE
12 TOLD YOU THAT RIGHT AFTER THE FIGHT JETER ASKED FOR HIS
13 PHONE, AND JETER USED THE PHONE, HE WASN'T SURE WHO HE
14 WAS CALLING, AND IF YOU LOOK ON DECEMBER 13, AT 4 33 AND
15 4 35, TWO TIMES, THERE ARE TWO CALLS THAT ARE MADE 819-
16 3436, 17 SECONDS, AND THEN 2 MINUTES LATER, 819-3436,
17 RAYSHAWN GREEN HE TOLD YOU THAT HE DIDN'T KNOW VICTORIA
18 MARTIN, HE DIDN'T KNOW JUSTIN LEMON, HE DIDN'T KNOW
19 STEVEN JOHNSON, HE DIDN'T REALLY KNOW JETER THAT WELL
20 HE KNOWS NOBODY ON THAT SIDE OF TOWN OVER AT MARSHVIEW
21 HE DIDN'T KNOW THOSE PEOPLE JETER JUST WALKED UP WITH
22 HIS BROTHER HIS BROTHER TOLD HIM HE KNEW HIM, BUT HE
23 SAID HE DIDN'T KNOW HIM HE WANTED THE PHONE REMEMBER
24 WHAT TIME WE ARE TALKING ABOUT NOW, GINA TOLD YOU THAT
25 THE FIGHT WAS RIGHT AROUND 4 30 SOMETHING LIKE THAT, AND

1 THEN THE SHOOTING TOOK PLACE SHORTLY THEREAFTER AT
2 4 35, TWO CALLS, TO VICTORIA MARTIN'S PHONE, THE SAME
3 PHONE THAT JUSTIN LEMON TOLD YOU ABOUT TODAY THAT HE
4 BOUGHT FROM HER FOR SEVENTY DOLLARS IN NOVEMBER AND SOME
5 TIME LATER HE SOLD TO DUNHAM FOR THIRTY DOLLARS LO AND
6 BEHOLD, RAYSHAWN GREEN'S PHONE HAPPENED TO CALL DUNHAM'S
7 PHONE AND A FEW MINUTES LATER, GUESS WHO SHOWS UP
8 DUNHAM SHOWS UP, AND PICKS UP HIS BUDDY JETER DIRECT
9 EVIDENCE WHAT YOU ALSO HAVE IN THIS CASE IS GOING TO BE
10 CIRCUMSTANTIAL EVIDENCE AND THAT- WHEN YOU EVALUATE
11 CIRCUMSTANTIAL EVIDENCE YOU HAVE TO LOOK AT THIS
12 CREDIBILITY ISSUE, AND THINK ABOUT STEVEN JOHNSON, AND
13 JEAN JACQUES, JJ COMPARE AND CONTRAST THE DIFFERENCE IN
14 THEIR DEMEANOR, COMPARE AND CONTRACT THE DIFFERENCE IN
15 THE WAY IN WHICH THEY APPROACHED THEIR TESTIMONY LOOK
16 AT WHAT STEVEN DIDN'T TELL YOU IF WE WERE TRYING SO
17 HARD TO MAKE EVERYTHING FIT IF STEVEN JOHNSON WERE
18 TRYING SO HARD TO FRAME UP THIS GUY HE COULD HAVE TOLD
19 WHERE THE GUN WAS HE COULD HAVE EASILY DONE THAT HE
20 DIDN'T DO THAT BECAUSE HE DOESN'T KNOW DUNHAM DIDN'T
21 TELL HIM WHERE THE GUN WAS IF STEVEN JOHNSON HAD THE
22 GUN COULDN'T HE HAVE EASILY TOLD THE POLICE WHERE IT WAS,
23 AND THEN SAID OH BY THE WAY DUNHAM TOLD THAT'S WHERE HE
24 PUT THE GUN HOW WOULD THAT HAVE BEEN FOR HIM IF HE
25 WAS TRYING SO HARD TO PLEASE THE POLICE, DON'T YOU THINK

1 T-EY WOULD HAVE LIKED TO HAVE HAD A MURDER WEAPON HE
2 COULD HAVE EASILY TOLD THEM THAT, AND THEN ALL HE HAD TO
3 SAY WAS I KNOW IT BECAUSE MICHAEL DUNHAM TOLD ME, BUT HE
4 DIDN'T DO THAT BECAUSE HE DOESN'T KNOW HE DIDN'T HAVE
5 THE GUN, AND MICHAEL DUNHAM DIDN'T TELL HIM WHAT HE HAD
6 DONE WITH GUN HE ALSO DIDN'T SIT HERE AND TELL YOU WELL
7 I 35 I WOKE UP, AND THEN AT 1 55 I TOOK A WALK DOWN
8 THE STREET WITH MY GIRLFRIEND, AND I GOT BACK HE DIDN'T
9 TELL YOU TIME AND TIME AND TIME, BECAUSE HE DIDN'T KNOW
10 HE TOLD YOU GENERALLY WHAT HE HAD DONE THAT DAY BECAUSE
11 IT WASN'T AN IMPORTANT DAY TO HIM HE HAD NO IDEA HE
12 WOULD NEED THAT INFORMATION LATER, AND WHEN HE DIDN'T
13 HAVE THAT INFORMATION, HE DIDN'T MAKE IT UP HE TOLD
14 Y'ALL HE WOKE UP AROUND 1 00 AND HE THOUGHT HE BROUGHT
15 THE CAR BACK SOMETIME JUST ABOUT DARK HE DIDN'T TRY TO
16 MAKE IT ALL FIT FOR YOU, HE DIDN'T TRY TO MAKE IT ALL FIT
17 FOR THE POLICE YOU THINK ABOUT THAT WHEN YOU ARE
18 LOOKING AT HIS CREDIBILITY, YOU THINK ABOUT HOW HE LOOKED
19 ON THE STAND MR DAVIS WENT OVER THE MAP, IT WAS CLEAR
20 HE HAD NOT SEEN THAT AERIAL MAP BEFORE, AND HE DIDN'T
21 KNOW EXACTLY WHERE WAS WHAT WHEN YOU LOOK AT THE MAP
22 YOU WILL BE ABLE TO SEE, YOU SAW IT JUST RIGHT IN FRONT
23 OF YOU HOW DIFFICULT IT CAN BE TO LOOK AT AN AERIAL MAP
24 HE WASN'T JUST TRYING TO GO ALONG AND GET ALONG HE WAS
25 TRYING TO BE ACCURATE ABOUT HIS RECOLLECTIONS ABOUT

1 THINGS THAT HAPPENED THAT DAY LOOK AT WHAT JJ SAID AND
2 WHAT STEVEN SAID, AND HOW THEY DON'T FIT EXACTLY,
3 PERFECTLY, NEATLY, AND THE REASON THEY DON'T IS BECAUSE
4 IT IS NOT ORCHESTRATED IT'S NOT PLANNED, IT'S NOT
5 SOMETHING SERIOUSLY AGAINST MICHAEL DUNHAM THEIR
6 MEMORIES ARE FLAWED THEY DIDN'T GET TOGETHER AND GET
7 THEIR STORIES STRAIGHT, AND LAW ENFORCEMENT DIDN'T TELL
8 THEM TO DO THAT EVEN JJ, AS DIFFICULT AS HE WAS ON THE
9 STAND, DID NOT TELL YOU THAT THE POLICE SHOWED HIM WHAT
10 STEVEN JOHNSON SAID OR THE POLICE TOLD HIM WHAT STEVEN
11 JOHNSON SAID HE DID SAY HE STARTED TELLING THEM WHAT
12 THEY WANTED TO HEAR HE TOLD YOU THAT NO QUESTION, BUT
13 HE ALSO TOLD YOU THAT EVERYTHING THAT HE HEARD FROM THE
14 POLICE WHAT HE REMEMBERED HE TOLD YOU WHAT HE
15 REMEMBERED ON HIS OWN HE TOLD YOU THAT HE THOUGHT THAT
16 DUNHAM AND JETER WERE BOTH ACTING STRANGE STEVEN
17 JOHNSON DIDN'T TELL YOU THAT YOU KNOW, MAYBE STEVEN
18 JOHNSON ISN'T AS HARD OF A GUY AS JJ IS MAYBE STEVEN
19 JOHNSON HADN'T BEEN ON THE STREET QUITE LIKE JJ STEVEN
20 JOHNSON TOLD YOU THAT HE DIDN'T REALLY NOTICE ANYTHING
21 TOO FUNNY MICHAEL ASKED HIM TO GO TAKE THE CAP AND HE
22 AGREED TO DO IT MAYBE HE SHOULD HAVE KNOWN, I DON'T
23 KNOW, EVENTUALLY HE KNEW, BUT BEFORE HE LEFT THERE IS NO
24 EVIDENCE THAT HE KNEW HE TOLD YOU, JJ TOLD YOU, THAT
25 THE DEFENDANT SAID JETER HAD BEATEN THE GUY UP THAT'S

1 WHAT JJ SAID NOW AGAIN BOTH STEVEN AND JJ ARE
 2 REMEMBERING THAT THERE WAS A FIGHT BETWEEN JETER AND
 3 ANTHONY GAMBRELL THEY BOTH REMEMBERED THAT THERE WAS A
 4 FIGHT AND THAT DUNHAM WAS TALKING ABOUT IT, BUT THEY HAD
 5 DIFFERENT RECOLLECTIONS ABOUT WHO WON THE FIGHT OR IF WE
 6 EVEN KNEW THAT THAT SHOWS YOU ONCE AGAIN THEY AREN'T
 DOVETAILING THEIR TESTIMONY, OR CATERING THEIR TESTIMONY
 8 FOR YOU ONE BIKE OR TWO, JJ COULDN'T REMEMBER, YOU KNOW
 9 WHY IS THAT, I DON'T KNOW IS IT BECAUSE HE WASN'T OUT
 10 THERE I SUBMIT TO YOU IT'S NOT, IT'S JUST SOMETHING
 11 ONCE AGAIN THAT WASN'T IMPORTANT TO JJ AT THE TIME AS TO
 12 WHETHER OR NOT HE WAS ON HIS BIKE OR NOT STEVEN JOHNSON
 13 SAID THEY BOTH RODE OFF ON BIKES, STEVEN SAID THEY BOTH
 14 RODE OFF ON BIKES IS THAT A CRUCIAL FACT, NO BUT I
 15 SUBMIT TO YOU IT GIVES YOU INSIGHT ONCE AGAIN THAT THESE
 16 PEOPLE ARE TELLING WHAT THEY REMEMBER HOW THEY REMEMBER
 17 IT IT'S KINDA OF LIKE YOU MIGHT REMEMBER WHO WON THE
 18 SUPER BOWL, YOU MIGHT NOT REMEMBER WHO SCORED FIRST OR
 19 WHO SCORED LAST, YOU STILL KNOW WHO WON CIRCUMSTANTIAL
 20 EVIDENCE TAKE NOTE OF THE TERM CIRCUMSTANTIAL EVIDENCE,
 21 AND NO MATTER WHAT YOU HEAR FROM THE DEFENSE IT IS NOT A
 22 FOUR LETTER WORD CIRCUMSTANTIAL EVIDENCE IS PERFECTLY
 23 GOOD EVIDENCE WHEN YOU USE YOUR COMMON SENSE TO APPLY IT,
 24 AND THERE IS PLENTY OF CIRCUMSTANTIAL EVIDENCE TO GO
 25 ALONG WITH THE PHYSICAL EVIDENCE HERE FIRST OF ALL THE

- LOCATION OF THE CAR THE CAR WAS RECOVERED AT STEVEN
 2 JOHNSON'S HOUSE, AND YOU HEARD THE TESTIMONY FROM STEVEN
 3 AND FROM CHRIS THAT THE CARS, THEY OFTEN PARK THEIR CARS
 4 BACKED IN AT THAT HOUSE THAT WAS NO BIG DEAL THE
 5 OFFICER TOLD YOU THAT WHEN THEY WENT UP TO TAKE THE
 6 AERIAL PHOTOS THEY DIDN'T CALL AND TELL THE PEOPLE ON
 7 RUT- DRIVE THEY WERE GOING UP IN THE HELICOPTER TO TAKE
 8 AERIAL PHOTOS THEY JUST FLEW UP THERE LOOK WHAT YOU
 9 SEE A SOME RANDOM DAY, DAYS AFTER THE SHOOTING, YOU SEE
 10 THE CARS BACKED IN THINK ABOUT WHERE THE CAR WAS THE
 11 CAR IS AT STEVEN JOHNSON'S HOUSE WHO IS AT STEVEN
 12 JOHNSON'S HOUSE, HIS MOM AND HIS BABY SISTER NOW IT
 13 DEFIES COMMON SENSE TO THINK THAT STEVEN JOHNSON WENT
 14 ACROSS TOWN FOR MICHAEL JETER, A GUY HE DOESN'T EVEN
 15 KNOW, SHOOTS SOMEBODY AND THEN TAKES THE CAR THAT HE WAS
 16 IN THAT'S ALL BANGED UP CLEARLY IDENTIFIABLE, IT WAS IN
 17 BROAD DAYLIGHT, AND PARKS IT IN HIS MOMMA'S YARD COME
 18 ON, THAT MAKES NO SENSE THAT HE WOULD DO THAT THE CAR
 19 ISN'T AT NORTH MURRAY, IT ISN'T WHERE THE DEFENDANT
 20 LIVES, NO IN FACT, YOU HEARD TODAY HE RODE HIS BIKE
 21 HOME TO CHANGE CLOTHES HE DIDN'T WANT THAT CAR ON
 22 MURRAY DRIVE, HE WANTED HIS FRIEND STEVEN JOHNSON TO TAKE
 23 THE CAP FOR HIM YOU THINK ABOUT THAT, WITH FRIENDS LIKE
 24 THAT THINK ABOUT THE TIME, YOU'VE GOT THE TIME OF THE
 25 MURDER CALL, REMEMBER I TALKED TO OFFICER BARRETT, HE WAS

1 THE ONE WHO DIDN'T HAVE HIS GLASSES, AND ASKED HIM WHAT
2 TIME HE GOT THE CALL OUT, HE WAS REALLY NEARBY HE SAID
3 INITIALLY HIS MEMORY WAS REFRESHED, THAT IT WAS 4 41 BY
4 THE TIME HE GOT THE CALL OK, THE TIME FROM THE SCENE
5 OVER ON WEST MONTAGUE ALL THE WAY OVER TO THE MARSHVIEW
6 APARTMENTS AND DENISE CATLETT TESTIFIED THAT SHE MEASURED
7 THAT TIME ONE DAY RECENTLY, THREE O'CLOCK IN THE
8 AFTERNOON, NOT FOUR THIRTY, BUT WE COULDN'T CHECK THE
9 TIME THAT DAY BECAUSE WE DIDN'T NECESSARILY KNOW WHERE WE
10 WERE SUPPOSED TO BE GOING FROM THE SCENE NINE MINUTES
11 AND FORTY SECONDS SO FROM 4 41 SAY 5 21 IT GETS TO
12 MARSHVIEW AND THEN AGAIN FROM MARSHVIEW TO RUTH DRIVE IS
13 JUST DOWN THE STREET ANOTHER MINUTE STEVEN, ACCORDING
14 TO HIS STEPDADDY, HE GETS HOME WITH THE CAP APPROXIMATELY
15 TWENTY MINUTES AFTER HE LEFT, AND THAT WAS AT
16 APPROXIMATELY 5 20 THAT STEVEN, ACCORDING TO CHRIS,
17 AGAIN CHRIS WASN'T SAYING I WAS LOOKING AT MY WATCH, HE
18 HAD TO GUESSTIMATE, BUT HE SAID HE THOUGHT WHEN GOT HOME
19 AROUND 5 20, HE THOUGHT HE HAD JUST LEFT 20 MINUTES
20 EARLIER SO THAT PUTS STEVEN LEAVING HIS HOUSE AT ABOUT
21 5 00 TO GO DOWN TO MARSHVIEW THINK ABOUT THE
22 RELATIONSHIP WITH STEVEN JOHNSON AND THIS GUY MICHAEL
23 JETER THAT'S CIRCUMSTANTIAL EVIDENCE RIGHT THERE THAT
24 STEVEN JOHNSON DIDN'T SHOOT HIM WHAT WAS THEIR
25 RELATIONSHIP, DO YOU REMEMBER, STEVEN JOHNSON, THIS GUY,

1 HIS RELATIONSHIP WITH MICHAEL JETER THEY DIDN'T HAVE A
2 RELATIONSHIP HE DIDN'T KNOW MICHAEL JETER HE TOLD YOU
3 THAT THAT WAS THE FIRST DAY HE HAD MET HIM WHEN THE
4 DEFENDANT INTRODUCED HIM THAT THE DEFENDANT TOLD HIM
5 THAT HE SHOULD KNOW WHO MICHAEL JETER WAS, BECAUSE STEVEN
6 WENT TO SCHOOL WITH MICHAEL'S YOUNGER BROTHER, BUT HE
7 DIDN'T KNOW HIM, AND SO MR DAVIS WOULD HAVE YOU BELIEVE
8 THAT STEVEN JOHNSON IS GONNA DRIVE ACROSS TOWN TO
9 MONTAGUE TO PICK UP MICHAEL JETER AND THEN SHOOT SOMEBODY
10 FOR HIM THEY'RE NOT BUDDIES, THEY'RE NOT FRIENDS THAT
11 DEFIES LOGIC WHAT DOES FIT, JJ TOLD YOU, RELUCTANT AS
12 HE WAS TO BE HERE, THAT HE WAS WITH STEVEN THE WHOLE
13 AFTERNOON HE WENT OVER THERE, THEY TALKED, TOOK THE
14 GIRLFRIEND HOME, CAME BACK, STEVEN TOOK A SHOWER, HUNG
15 AROUND A LITTLE BIT MORE, THEN THEY WENT TO MARSHVIEW
16 HE TOLD YOU, JUSTIN LEMON TOLD YOU STEVEN TOLD YOU THAT
17 THIS GUY, MICHAEL DUNHAM, WAS THE ONE WHO ASKED STEVEN TO
18 PARK THE CAR AT HIS HOUSE AND THAT MICHAEL DUNHAM TOLD
19 HIM WHEN HE GOT BACK, HERE IS THE DEAL WITH THE CAR, IT'S
20 HOT JETER CALLED ME TO COME HELP HIM HE HAD BEEN IN A
21 FIGHT, TOLD ME TO BRING MY GUN, AND I SHOT HIM, I THINK I
22 SHOT, DOESN'T KNOW IF HE HIT HIM OR NOT CHRIS WHITE,
23 AGAIN HE TELLS YOU THE CAR WAS PARKED NORMALLY, HE ALSO
24 CONFIRMS THAT JJ AND STEVEN JOHNSON WERE TOGETHER THAT
25 DAY THAT THEY HAD BEEN AT THE HOUSE, AND JUSTIN LEMON HE

1 CAME BEFORE YOU TODAY WITH NO DEAL HE TELLS YOU THE
2 DEFENDANT PICKS HIM JP FROM SCHOOL, HE GOES HOME, BUT HE
3 CAN'T GET IN HIS HOUSE HE CALLS HIS MOM, MOM IS AT THE
4 MALL HE DECIDES TO WALK ON UP OR GO ON UP TO MARSHVIEW,
5 DUNHAM TAKES HIM UP TO MARSHVIEW, AND THEN DUNHAM LEAVES
6 NOW REMEMBER HE TELLS YOU THAT WAS 3 00 OR 3 30 HE
7 ALSO TELLS YOU ONCE AGAIN THAT HE DOESN'T SEE MICHAEL
8 DUNHAM FROM 3 00 OR 3 30 FOR TWO OR THREE MORE HOURS
9 AGAIN, HE'S NOT WATCHING THE CLOCK, BUT HE KNOWS IT'S AT
10 LEAST TWO OR THREE MORE HOURS BEFORE HE SEES DUNHAM TWO
11 HOURS FROM 3 30 PUTS YOU AT ABOUT 5 30, PLENTY OF TIME TO
12 HAVE GONE OVER TO MONTAGUE, SEEN MR JETER, AND TO HAVE
13 DONE THIS CRIME, PLENTY OF TIME, AND LEMON IS THE ONE
14 ALSO THAT TOLD YOU, HE DOESN'T KNOW HOW THOSE PHONE
15 RECORDS ARE IMPORTANT, THAT HE HAD NO IDEA JJ WAS
16 NERVOUS ABOUT IT BECAUSE JJ IS ACTING LIKE HE COULD GET
17 IN TROUBLE FOR THE PHONE CALL, BUT HE DIDN'T KNOW WHAT
18 WAS IMPORTANT ABOUT HE HAD THE PHONE, HE GAVE IT
19 MICHAEL DUNHAM FOR THIRTY DOLLARS THAT'S THE LAST HE
20 KNEW ABOUT DUNHAM HAD A PHONE AT ONE POINT, YES HE HAD
21 A PHONE, BUT HE HAD LOST IT, SO HE SOLD HIM HIS, AND THAT
22 WOULD BE THE PHONE CALL OR THE PHONE NUMBER THAT WAS USED
23 WHEN MICHAEL JETER USED RAYSHAWN GREEN'S PHONE AND CALLED
24 FOR BACK UP, AND CALLED FOR HELP THAT ALL FITS LADIES
25 AND GENTLEMEN, AND AGAIN THE TIME LINE FITS PERFECTLY

1 WITH WHAT JEAN TESTIFIED TO, WHAT THE POLICE TESTIFIED
2 TO, WHAT JUSTIN LEMON TESTIFIED TO, IT ALL MAKES SENSE
3 IT ALL MAKES SENSE THERE IS ONE THING I HAVEN'T TALKED
4 TO YOU ABOUT AND THAT'S GINA BROWN'S IDENTIFICATION OF
5 THE DEFENDANT LADIES AND GENTLEMEN SHE TESTIFIED TO YOU
6 HOW TRAUMATIC THIS WAS SEEING HER BOYFRIEND GUNNED DOWN
7 RIGHT IN FRONT OF HER THERE IS NO QUESTION ABOUT THAT
8 THERE IS NO QUESTION THAT WOULD BE UPSETTING YOU HAVE
9 TO REMEMBER THIS, SHE TESTIFIED THAT THE GUN LOOKED LIKE
10 A REVOLVER THE POLICEMAN TOLD YOU THAT THEY DIDN'T FIND
11 ANY SHELL CASINGS AT THE SCENE, WE PEN'T ANY SHELL CASINGS
12 IN THE CAR AGAIN THAT'S CIRCUMSTANTIAL EVIDENCE THAT
13 THE GUN USED ACTUALLY WAS A REVOLVER, AND NO SHELL
14 CASINGS WERE SPIT OUT THAT WE FOUND SHE TOLD YOU SHE
15 PICKED OUT MICHAEL JETER LIKE THAT, THE OFFICER TOLD YOU
16 THAT NO PROBLEM, SHE HAD SEEN HIM IN THE FIGHT, AND SHE
17 SAW HIM IN THAT PASSENGER SEAT, NO PROBLEM WITH THAT, AND
18 THEN THE OFFICER TESTIFIED, SHE TESTIFIED TOO THAT WHEN
19 SHE SAW THIS NEXT LINEUP, THE ONE WITH THE DEFENDANT IN
20 IT, SHE BROKE DOWN CRYING SHE GOT VERY UPSET SHE TOLD
21 YOU THAT SHE GAVE A DESCRIPTION, SHE GAVE A DESCRIPTION
22 OF A GUY WITH A MUSTACHE, BRAIDS SEE STEVEN JOHNSON'S
23 BOOKING PHOTO, HE DIDN'T HAVE BRAIDS HE DOESN'T LOOK
24 LIKE THESE GUYS, NOT EVEN CLOSE HE DOESN'T LOOK LIKE
25 THESE GUYS AT ALL GINA BROWN LOOKED AT THIS PHOTO

1 LINEUP AND NARROWED IT DOWN TO TWO, REMEMBER SHE HAD SEEN
2 A WHOLE BUNCH OF PHOTO LINEUPS, SHE HAD SEEN ONE WITH
3 JETER IN IT, SHE SAW TWO OTHER ONES, AND SHE SAW THIS
4 ONE, AND ALL THOSE PHOTOGRAPHS WHEN ASKED ABOUT THE
5 SHOOTER, SHE NARROWED IT DOWN TO TWO, TWO PHOTOGRAPHS AND
6 YOU LOOK AT THEM, YOU LOOK AT THE GUY IN NUMBER 3 AND
7 NUMBER 5, AND YOU'LL SEE THAT THEY LOOK ALIKE SHE TOLD
8 YOU TO HER THAT THEY LOOK ALIKE, AND YOU KNOW WHAT, AT
9 THAT TIME WHEN SHE IS LOOKING AT THESE TWO PHOTOGRAPHS
10 THAT SHE HAS NARROWED DOWN FROM HOW MANY, SHE'S LOOKING
11 AT THESE TWO, SHE HAS NO IDEA ABOUT ANY OF THIS NO IDEA
12 THAT THE GUY, NUMBER 5, SHE WAS TORN BETWEEN NUMBER 3 AND
13 NUMBER 5 SHE HAS NO IDEA THAT HE HAPPENS TO OWN A
14 SILVER MERCURY WITH DENTS ON BOTH THE PASSENGER AND
15 DRIVER'S SIDE SHE HAS NO IDEA THAT MICHAEL DUNHAM, HIS
16 BUDDY WAS MICHAEL JETER, SHE HAS NO IDEA THAT RAYSHAWN
17 GREEN GAVE MICHAEL DUNHAM HIS PHONE, GAVE MICHAEL JETER
18 HIS PHONE AND THAT HE CALLED MICHAEL DUNHAM, SHE HAS NO
19 IDEA SHE DIDN'T KNOW ANY OF THAT SHE WAS ABLE TO
20 NARROW IT DOWN TO TWO, AND WHEN SHE WAS HERE IN THE
21 COURTROOM, SHE WAS ABLE TO LOOK AT THIS DEFENDANT AND
22 REMEMBER HIM, SITTING IN THAT CAR, PULLING THAT GUN,
23 SHOOTING ANTHONY GAMBRELL TWICE ONCE IN THE LEG AND
24 ONCE IN THE CHEST IT IS A DAY THAT SHE WILL NEVER
25 FORGET LADIES AND GENTLEMEN I ASK YOU TO THINK ABOUT ALL

1

OF THAT WHEN YOU GO BACK TO YOUR JURY ROOM THINK ABOUT
 2 HOW IT'S CORROBORATED WITH STEVEN JOHNSON NOT HAVING
 3 GUNSHOT RESIDUE ON HANDS THINK ABOUT HOW IT'S
 4 CORROBORATED BY THE FINGERPRINTS THINK ABOUT HOW
 5 EVERYTHING GINA TOLD YOU WAS CORROBORATED BY THE EVIDENCE
 6 THAT CAME LATER SHE KNOWS IT WAS MICHAEL DUNHAM WHO
 7 PULLED THE TRIGGER, BECAUSE SHE WAS THERE, S-HE SAW IT
 8 YOU KNOW IT BECAUSE SHE TOLD YOU YOU KNOW IT BECAUSE
 9 STEVEN JOHNSON CAME IN HERE LOOKED AT YOU TOLD YOU THAT
 10 HE CONFESSED TO BEING THE SHOOTER THAT JEAN JACQUES, AS
 11 BADLY AS HE DIDN'T TO BE HERE, AS RELUCTANT AS HE WAS,
 12 STILL ADMITTED THAT THIS DEFENDANT ASKED STEVEN TO GO
 13 PARK THE CAR, THAT THIS DEFENDANT TOLD HIM TO TAKE HIS
 14 BIKE AND RIDE HIS BIKE BACK JUSTIN LEMON, HE TOLD YOU
 15 THE VERY SAME THING THAT THIS DEFENDANT WAS THE ONE THAT
 16 RODE UP WITH MICHAEL JETER, AND I ASKED HIM HOW DID YOU
 17 KNOW IF YOU WERE IN THE APARTMENT UPSTAIRS, BECAUSE HE
 18 ASKED US ALL TO COME OUT HE ASKED US TO COME OUT, AND
 19 THAT'S WHEN ASKED STEVEN TO TAKE THE CAR LADIES AND
 20 GENTLEMEN ALL OF THIS EVIDENCE, ALL OF THE EVIDENCE SHOWS
 21 YOU THAT MICHAEL DUNHAM (Juror coughing) AND AS RIDICULOUS
 22 AS IT IS, AS SAD AS IT IS, THAT'S ALL IT TAKES I ASK
 23 YOU DO ONE THING AND THAT'S TO GIVE MICHAEL DUNHAM HIS
 24 VERDICT THE VERDICT THAT HE EARNED, AND I SUBMIT TO YOU
 25 THAT ALL THE EVIDENCE SHOWS YOU THAT HE IS THE ONE THAT

25

① DID THE MURDER

MR DAVIS WHEN I STARTED MY OPENING STATEMENTS ON
MONDAY, I TOLD YOU IT WAS A TRAGEDY, WE ALL AGREE TO
THAT IT'S A TRAGEDY FOR MR GAMBRELL AND HIS FAMILY,
IT'S A TRAGEDY FOR GINA BROWN AND HER FAMILY I ALSO
TOLD YOU IT'S A TRAGEDY FOR MY CLIENT HE'S WAITED NOW
SOME 430 DAYS TO CLEAR HIS NAME AND Y'ALL WERE THE ONES
THAT THAT COULD HAPPEN THROUGH WE'VE HAD THREE DAYS NOW
OF TESTIMONY AND ONE THING IS FOR SURE, WE'VE HAD A WHOLE
LOT OF LYING FROM THAT WITNESS STAND WITNESSES LIE
THEY'VE ADMITTED THAT THERE WERE A LOT OF ADMITTED
LIARS TESTIFYING TESTIMONY DOESN'T ALWAYS COME OUT AS
YOU'D EXPECT, AND I SAID THAT WE DIDN'T HAVE A LOT TO
SAY, WE HAD NO INVOLVEMENT HE DOESN'T HAVE ANYTHING TO
SAY AT FORMAL ARRAIGNMENT THE JUDGE ASKED HIM, READ OFF
THE INDICTMENT HOW DO YOU PLEAD, NOT GUILTY WE'VE HAVE
NO INVOLVEMENT WE DON'T HAVE A LOT TO SAY I NEED TO
MAKE SURE YOU UNDERSTAND WHAT WAS PRESENTED THESE PAST
FEW DAYS ONCE I'M DONE THE JUDGE WILL TELL YOU ABOUT
THE LAW AND YOU GET TO DECIDE MY CLIENT WAS AT
MARSHVIEW APARTMENTS ON DECEMBER 13, 2004, DURING THE
LATE AFTERNOON THAT'S WHERE HE WAS EVERYONE AGREES ON
THAT THAT'S WHERE HE WAS I TOLD YOU AT THE BEGINNING
THIS WAS A CASE ABOUT PERCEPTION AND KNOWLEDGE AND BIAS
AND CREDIBILITY, AND IT IS WHETHER THEY WERE ABLE TO

1 PERCEIVE WHAT THEY WERE ABLE TO SEE, WHETHER THEY HAVE
 2 KNOWLEDGE ABOUT WHAT THEY ARE TALKING ABOUT OR NOT, AND
 3 THEN WHAT BIAS THEY MIGHT HAVE TO BE TRUTHFUL OR NOT AS
 4 A COMMUNITY WE WANT TO CONVICT THE SHOOTER HERE IS THE
 5 STATE'S THEORY, IT'S NOT MY JOB TO ARGUE THE STATE'S,
 6 HERE IS THEIR THEORY THEY'D HAVE YOU BELIEVE, DESPITE
 7 THEIR WITNESSES IT WAS A LITTLE FIGHT, IT'S SENSELESS
 8 IT COULDN'T HAVE BEEN A LITTLE FIGHT FOR SOMEONE TO BE
 9 SHOT AND KILLED, IT HAD TO HAVE BEEN A BIG FIGHT BIG
 10 FIGHT BETWEEN MR MICHAEL JETER, THE STATE'S NOT TRYING
 11 HIM THEY ARE TRYING MICHAEL DUNHAM, BUT MR JETER GOT IN
 12 THIS FIGHT WITH MR GAMBRELL, AND THEY WOULD HAVE YOU
 13 BELIEVE THAT THEY CALLED MICHAEL DUNHAM WHO LIVES ON
 14 REMOUNT ROAD, NORTH MURRAY DRIVE, OFFICER OWEN TOLD YOU
 15 TWENTY OR TWENTY-FIVE MINUTES AWAY OFFICER OWEN,
 16 REMEMBER HE DROVE FROM THE CRIME SCENE ALL THE WAY OVER
 17 BUT MICHAEL DUNHAM ARRIVES IN HIS CAR, DENTS ON THE SIDE,
 18 EASILY RECOGNIZABLE, HE DRIVES OVER THREE TO FIVE MINUTES
 19 LATER IN HIS CAR, AND MICHAEL DUNHAM SHOOTS A STRANGER
 20 FOR MICHAEL JETER THAT'S WHAT THEY WOULD HAVE YOU
 21 BELIEVE, THAT'S THEIR CASE AFTERWARD THEY HAD THESE
 22 WITNESSES THEY CALLED, THEY'D ALSO HAVE YOU BELIEVE THAT
 23 MICHAEL DUNHAM AND MICHAEL JETER DRIVES BACK TO MARSHVIEW
 24 APARTMENTS IN THE CAR WHERE HE ALWAYS HANGS OUT AND
 25 STARTS BLABBING ABOUT IT HEY, WE JUST SHOT SOMEBODY

1 STARTS BLABBING ABOUT IT, AND THEN THEY'D HAVE YOU
 2 BELIEVE THEY ASKED STEVEN JOHNSON NOW YOU GO HIDE THIS
 3 CAR, AND I'M GOING TO STAY HERE AT MARSHVIEW AND HANG OUT
 4 WITH ALL THESE GUYS NOW, TO PROVE THAT THEY'VE GOT JJ,
 5 JUSTIN LEMON, STEVEN JOHNSON TO PROVE THAT THEY HAVE
 6 THE ENTIRE COUNTY SHERIFF'S DEPARTMENT DETECTIVE UNIT,
 7 THE ENTIRE CHARLESTON COUNTY SHERIFF'S DEPARTMENT CRIME
 8 SCENE UNIT AND THE FULL DISPOSAL OF THE SOLICITOR'S
 9 OFFICE AND THEIR INVESTIGATORS THAT'S WHAT THEY'VE GOT
 10 THE PROOF IS FROM THREE ADMITTED LIARS, ADMITTED LIARS
 11 WHO KNEW THEY COULD BE ARRESTED THEY ARE RELYING ON
 12 THOSE THREE ADMITTED LIARS I STARTED TO JUST A SECOND
 13 AGO THIS EVIDENCE BACK HERE THE STATE HAS ENTERED INTO
 14 EVIDENCE AGAIN THE JUDGE HAS TOLD AND WILL TELL YOU
 15 AGAIN THEY HAVE THIS BURDEN OF PROOF, THEY ARE REQUIRED
 16 TO PROVE THIS CASE WE DON'T HAVE TO PROVE ANYTHING IT
 17 WOULD BE NICE TO PROVE IN HERE TODAY WHO THE SHOOTER WAS,
 18 WE'RE NOT GOING TO BE ABLE TO DO THAT, NOBODY IS THEY
 19 PRESENTED ALL THESE EXHIBITS, ALL THIS EVIDENCE FOR YOU
 20 TO TAKE BACK TO THE JURY ROOM AND LOOK AT WHAT DON'T
 21 THEY HAVE? NO GUN, NO GUNSHOT RESIDUE NOW LET ME STOP
 22 THERE, NO GUNSHOT RESIDUE THEY TESTED THE VICTIM MR
 23 GAMBRELL, THEY TESTED MR JOHNSON, AND THEY TESTED MR
 24 DUNHAM, OK MR DUNHAM BY THE TIME HE HAD GONE DOWN WITH
 25 HIS MOM TO THE SHERIFF'S DEPARTMENT AND THEY DO THAT IT'S

1 ALREADY OUTSIDE THE TIME LIMIT IT'S TOO LATE FOR THAT
 2 EVIDENCE IT'S TOO LATE THEY DIDN'T GET ANY GUNSHOT
 3 RESIDUE OFF ANY OTHER SUSPECTS, NO OTHER SUSPECTS, AND
 4 JUST BECAUSE MR JOHNSON'S COMES BACK SHOWING NO GUNSHOT
 RESIDUE, YOU HEARD THE SLED AGENT SIT UP HERE TALKING,
 6 REMEMBER PUT YOUR HANDS IN YOUR POCKETS, WASH IT OFF,
 7 ANYTHING LIKE THAT YOU CAN DESTROY THAT EVIDENCE PRETTY
 8 EASILY JUST BECAUSE THE PIECE OF PAPER YOU TAKE BACK
 9 SHOWS NO GUNSHOT RESIDUE ON MR JOHNSON DOESN'T MEAN HE
 10 DIDN'T FIRE A GUN WHAT ELSE DON'T THEY HAVE THEY HAVE
 11 NO GUNSHOT RESIDUE IN THE CAR THE ONLY THING THEY DID
 12 ON THE CAR WAS THEY PRINTED IT, YOU HEARD A LOT OF
 13 TESTIMONY ABOUT THAT GUESS WHAT THEY FOUND, THEY FOUND
 14 MR JETER A PERSON WITH A MOTIVE TO SHOOT MR GAMBRELL,
 15 FOUND HIS PRINTS ON THE CAR FOUND MR DUNHAM'S, ITS HIS
 16 CAR, THEY FOUND HIS PRINTS THEY FOUND ONE PRINT ON THE
 17 INTERIOR, ONE, AND WHO WAS THE LAST PERSON IN THE CAR,
 18 MR JOHNSON I'M NOT GOING TO GO THROUGH THE ENTIRE
 19 TESTIMONY IT SEEMS LIKE WE NEED TO FOCUS ON THREE
 20 PERSONS, MR LEMON IS THE ONLY PERSON, THE ONLY PERSON
 21 WHO PUTS THIS CELL PHONE IN MY CLIENT'S HANDS HE WAS
 22 THE LAST WITNESS THEY HAD THE LAST WITNESS THE
 23 SHERIFF'S DEPARTMENT HAD, THE LAST WITNESS THE STATE
 24 CALLED WE NEED TO TALK A LITTLE BIT ABOUT MS BROWN AND
 25 WE NEED TO TALK ABOUT STEVEN JOHNSON MR LEMON IS

1 ESSENTIAL TO THEM HE'S KNOWN MR DUNHAM FOR ABOUT FOUR
 2 TO FIVE YEARS, BUT IF HE LIES HE CAN FACE YEARS IN JAIL
 3 HE TOLD YOU THAT HE'S ALSO ADMITTED TWO TIMES HE LIED
 4 I ASKED HIM ABOUT IT, DID YOU LIE TO THE POLICE, YEAH
 5 DID YOU LIE TO ME AND MY INVESTIGATOR WHEN WE TALKED TO
 6 YOU, YEAH NOW, I WISH THERE WERE SOME WAY TO DIVINE THE
 7 TRUTH, WHETHER HE'S LYING OR NOT LYING, I WISH THERE WAS
 8 SOME WAY TO DO THAT I'M NOT SURE THERE IS HE'S A
 9 LIAR DO YOU BELIEVE HIM THEN YOU WANT TO BELIEVE HIM
 10 NOW, I DON'T KNOW WHAT YOU DO, HE'S A LIAR NOW, HE
 11 ADMITTED HE TOLD US HE THREW THE PHONE AWAY, HE TOLD THE
 12 POLICE HE SOLD IT TO MR DUNHAM FOR THIRTY DOLLARS HE
 13 ADMITS HE LIED ABOUT OTHER STUFF THE ONLY PERSON WE ARE
 14 DEALING WITH, THE STATE WENT TO QUITE A PEACH HERE, THE
 15 ONLY WAY THERE IS, THERE IS CELL PHONE RECORDS I THINK WE
 16 UNDERSTAND WHAT THAT MEANS, CELLULAR PHONES, OK ANYBODY
 17 CAN HAVE THEM, JUST BECAUSE THERE IS A NAME ON THE
 18 ACCOUNT THAT'S WHO IS GOING TO BE STUCK WITH PAYING THEM,
 19 BUT THEY ARE CELL PHONES HE TOLD YOU HE HAD NO IDEA WHY
 20 MR DUNHAM WOULD HAVE SHOT MR GAMBRELL, BECAUSE THERE IS
 21 NO REASON THERE IS NO REASON HE ALSO TOLD YOU HE
 22 DIDN'T KNOW HOW MR DUNHAM AND MR JETER GOT TOGETHER, SO
 23 HE DOESN'T KNOW THAT EITHER NOW REMEMBER THIS, HE'S THE
 24 ONE THAT CAME IN GREEN UNIFORM, OK BROUGHT DOWN HERE BY
 25 THE SHERIFF'S DEPARTMENT, HE'S GOT SIX MORE MONTHS, ONLY

1 SIX MORE MONTHS TO SERVE UNLESS HE COMMITS A CRIME,
2 RIGHT? HE KNOWS HE BETTER STICK TO THE STORY, HE BETTER
3 STICK TO THE STORY OR HE COULD FACE YEARS IN PRISON
4 MISPRISION OF A FELONY, WASN'T EVEN SURE WHAT THAT MEANT
5 BUT HE KNEW HE WAS FACING A LOT OF TIME I WANT TO SPEND
6 A MOMENT TALKING ABOUT MS BROWN IT'S TRAGIC FOR HER
7 IT WAS A VERY DRAMATIC EVENT WE HEARD HER TESTIFY AND
8 WE HEARD DETECTIVE CABOT TESTIFY ABOUT HOW HYSTERICAL SHE
9 GOT SHE HAD AN OPPORTUNITY TWELVE HOURS AFTER THE
10 SHOOTING HAPPENED SHE HAD AN OPPORTUNITY TO HELP FIND
11 THE SHOOTER NOBODY IS GOING TO WANT MORE TO DO THAT
12 THAN SHE IS YOU REMEMBER THAT, THEY SHOWED HER SOME
13 PHOTO LINEUPS THEY MAY OR NOT BE IN HERE, TAKE A LOOK
14 AND SEE SHE HAS ALREADY PICKED THE PASSENGER, OK SHE
15 PICKS MR JETER YOU HEARD HER TESTIFY ABOUT HIM AND
16 DETECTIVE CATLETT TESTIFY ABOUT IT SHE'S NOT SURE ABOUT
17 IT JUST THINK ABOUT IT JUST GOT IN A FIGHT, IT'S
18 COMING BACK TO HER AND THEN SHE SEES PHOTO NUMBER TWO AND
19 SHE REALIZES THESE FOLKS LOOK A WHOLE LOT LIKE THE
20 SHOOTER, THESE FOLKS LOOK A WHOLE LOT LIKE THE DRIVER
21 BUT I DON'T KNOW, I'M NOT SURE AND THAT'S WHEN SHE STARTS
22 GETTING UPSET, BECAUSE EVERYBODY WANTS THE SHOOTER
23 SHE'S NOT SURE I HAVE TO THINK ABOUT IT A LITTLE BIT -
24 THEY DIDN'T ENCOURAGE HER, THEY DIDN'T PRESSURE HER SHE
25 COULD HAVE PICKED NOBODY SHE PICKED NUMBER 3 HAD NO

1 IDEA WHETHER THAT WAS THE SHOOTER OR NOT, THAT'S WHO SHE
 2 PICKED, NOT MP DUNHAM SHE WANTS TO PICK THE SHOOTER,
 3 THE WANTS TO PICK THE SHOOTER NOW, IT IS SO EASY FOR
 4 HER TO RECOGNIZE THE PASSENGER I'D LIKE TO TALK ABOUT
 5 WHEN SHE COMES IN HERE TO COURT AND SAYS ABOUT THE
 6 SHOOTER SHE HAS ONE MINUTE SHE TOLD YOU TO VIEW THIS
 7 ENTIRE EPISODE RIGHT? ONE MINUTE SO THE CAR PULLS UP
 8 FROM BEHIND, THEY ARE WALKING ALONG, THE CAR PULLS UP
 9 BEHIND A LITTLE FASTER THAN THEY ARE MOVING, OK SHE
 10 TURNS AND LOOKS, I RECOGNIZE THE GUY IN THE PASSENGER
 11 SEAT, THAT GUY JUST GOT IN A FIGHT WITH MY BOYFRIEND, AND
 12 THE NEXT THING A GUN IS STICKING OUT AND BANG, BANG,
 13 BANG, TWO OR THREE TIMES, AND SHE FOCUSES ON THE GUN
 14 BECAUSE SHE KNEW THE DETAILS OF THE GUN SHE SAYS IT
 15 LOOKS LIKE A WESTERN GUN, HE HAD A TAN OR MARBLE COLORED
 16 HANDLE, HAD A ROUND CIRCULAR THING ON THE END, SHE GAVE A
 17 REAL GOOD DESCRIPTION OF THAT, THAT'S WHAT SHE TOLD US
 18 AFTER SHE HAD SEEN THE PASSENGER SHE RECOGNIZED, AND SHE
 19 HAD A GENERAL IDEA OF WHO THE DRIVER WAS AND SHE DID HER
 20 BEST TO CONVEY THAT TO THE SHERIFF'S DEPARTMENT,
 21 MUSTACHE, SHOT WITH HIS RIGHT HAND, BLUE KIND OF JACKET,
 22 AND SHE THINKS HE HAD BRAIDS THAT'S THE BEST SHE CAN
 23 DO HOW MANY PEOPLE MATCH THAT DESCRIPTION WHEN SHE
 24 WAS ASKED IN COURT AFTER SHE PICKED, THE DEFENDANT
 25 SITTING AT THE DEFENSE TABLE AND SHE SAID WELL HOW DO YOU

1 RECOGNIZE HIM NOW, SKIN COLOR SHE WANTS THE SHOOTER
2 CONVICTED, WE ALL DO NOW, THE SHOOTING AT 4 30ISH P M
3 DECEMBER 13, 2004, ABOUT 4 A M SHE IS SHOWED THESE
4 PHOTOS THE NEXT MORNING, AND SHE PICKS NUMBER 3 NOW,
5 SHE ALSO TALKS ABOUT ONE OTHER TIME SEEING THIS
6 DEFENDANT, THIS GUY, AND ME IN COURT HE WAS IN A GREEN
7 UNIFORM YOU KNOW WHAT A GREEN UNIFORM IS, HE WAS IN A
8 GREEN UNIFORM SITTING UP HERE BESIDE ME, NOBODY ELSE
9 AROUND, AND SHE KNEW WHAT WAS GOING ON THIS IS A PERSON
10 THAT'S SHE HAS BEEN TOLD IS THE SHOOTER HE'S ARRESTED
11 AS BEING THE SHOOTER HE'S STANDING RIGHT HERE BESIDE ME
12 IN FRONT OF THE JUDGE SHE COULDN'T REMEMBER IT WAS SOME
13 MONTHS LATER, NOW ITS IN HERE, NOW ITS IN HERE, YOU KNOW
14 THEY'VE GOT THE SHOOTER, THAT'S WHO IS CHARGED WITH BEING
15 THE SHOOTER, NOW ITS HIM, AND TODAY OR THIS WEEK WE'RE
16 TRYING THE SHOOTER MS BROWN WE NEED TO YOU TO COME
17 DOWN AND TESTIFY WE ARE GOING TO TRIAL AGAINST THE
18 SHOOTER THAT'S WHAT THEY CLAIM, THEY ARE CLAIMING HE'S
19 THE SHOOTER SO JUST LIKE MR DUNHAM HAS WAITED THIS
20 AMOUNT OF TIME TO HAVE HIS NAME CLEARED, SHE WANTS TODAY
21 THE IDENTIFICATION 430 DAYS LATER, 420 OR WHATEVER DAYS
22 LATER, TO BE MORE ACCURATE THAN 12 HOURS AFTER THE
23 SHOOTING WE UNDERSTAND WE UNDERSTAND EVERYBODY
24 WANTS THE SHOOTER TO BUT THAT'S NOT THE SHOOTER YOU SAW
25 THE PHOTOGRAPHS, YOU'LL SEE THE PHOTOGRAPHS OF WHO SHE

1 WAS SHOWN SHE WAS NEVER SHOWN MR JOHNSON BRAID,
2 TWISTED HAIR STEVEN JOHNSON, HE'S THE WITNESS THAT HAS
3 THE AGREEMENT WITH THE STATE REMEMBER, I ASKED ABOUT
4 THAT, THAT LETTER HE HAS AN AGREEMENT WITH THE STATE
5 HE'S NOT CHARGED WITH MURDER HE BONDED OUT THE NEXT
6 DAY NOW HE WAS ASKED QUESTIONS ABOUT A MURDER SO HE
7 KNEW THAT WAS POSSIBLE A POSSIBLE CHARGE HE BONDED OUT
8 THE NEXT DAY THIS IS THE GUY THAT HID THE CAR, THIS IS
9 THE GUY THAT HAD THE CAR, AND HE'S THE FIRST WITNESS TO
10 EXPLAIN WHAT HAPPENED FIRST ONE, FIRST ONE, 8 P M
11 AFTER THE SHOOTING, THE FIRST PERSON TO GIVE A STORY
12 HE'S ALSO AN ADMITTED LIAR NOW, THE THING IS THOUGH, HE
13 WENT IN AT 8 P M AND TALKED TO THE POLICE, GAVE HIS
14 STORY THE POLICE HELD ON TO IT UNTIL 4 A M , CHARGED
15 WITH LYING THEY'RE UNSURE HE'S THE ONE TO BE SCARED
16 OF REMEMBER HIS STEPDAD, MR WHITE, HE WAS SCARED I'M
17 NOT SURE, BUT HE WAS SCARED WITH ALL THOSE POLICE
18 RUNNING AROUND WITH GUNS DRAWN AND SEARCHING HIS HOUSE
19 SCARED HIM LIKE BABE RUTH HE SAID, RIGHT LIKE BABE
20 RUTH, AND HE THOUGHT THAT STEVEN HAD DONE SOMETHING WE
21 HAVE ONE CONVICTED SHOOTER, BUT THAT'S NOT THE SHOOTER
22 IT'S THE STATE'S JOB, THEY ARE THE ONE THAT BROUGHT THIS
23 TRIAL, BUT THEY SAY HE IS WE'LL LET YOU DECIDE
24 IMAGINE BEING HIM AND TAKING YOU TO AN INTERROGATION ROOM
25 AT THE SHERIFF'S DEPARTMENT ALONE DETECTIVES KEEP

1 COMING IN AND OUT, TELLING YOU YOU ARE LYING WE KNOW
 2 THAT'S WRONG, OTHER PEOPLE ARE TALKING, WE KNOW THAT'S
 3 WRONG IT'S A TEAM EFFORT, THAT'S WHAT THE DETECTIVE
 4 SAID ALL THE DETECTIVES, ALL THE CRIME SCENE ARE
 5 INVOLVED IN THIS IMAGINE THAT FOR A SECOND IMAGINE
 6 BEING A TEENAGER ALONE IN THERE AND TOLD WE WANT TO TALK
 7 TO YOU ABOUT MURDER, SHOOTING, IF YOU LIE TO US YOU CAN
 8 GO AWAY FOR A FEW YEARS WE AS A COMMUNITY WANT TO FIND
 9 THE SHOOTER, TRYING TO GET TO THE BOTTOM OF IT, I
 10 UNDERSTAND THAT BUT ONCE STEVEN JOHNSON'S STORY CAME
 11 OUT, IT'S POSSIBLE, HIS STORY IS POSSIBLE, ONCE IT CAME
 12 OUT EVERY OTHER STORY UNTIL IT MATCHED HIS THEY WON'T LET
 13 GO, BUT WHEN IT DID MATCH HIS THEY WERE LET GO, AND THEY
 14 WEREN'T CHARGED EVERY OTHER STORY, THEY GAVE STATEMENTS
 15 AND THEN WHEN THE STATEMENTS MATCHED JOHNSON'S STORY THEY
 16 WERE LET GO AND NOT CHARGED AGAIN, IT'S A TRAGEDY THAT
 17 MR GAMBRELL GOT SHOT, BUT LETS NOT COMPOUND THE TRAGEDY,
 18 OK LETS NOT CONVICT SOMEONE JUST FOR THE SAKE OF
 19 GETTING SOMEBODY, HE'S NOT THE SHOOTER YOU CONVICT
 20 BASED ON PROOF, NOT ON LEAPS OF FAITH, ON PROOF, AND THE
 21 LEAP OF FAITH YOU HAVE TO MAKE HERE TO CONVICT MR DUNHAM
 22 BEING THE SHOOTER IS YOU HAVE TO BELIEVE THE LIARS
 23 YOU'RE GOING TO HAVE A BUNCH OF EVIDENCE BACK THERE, BUT
 24 NOT MUCH PROOF OF ANYTHING THE PROOF CONNECTING ARE
 25 THESE WITNESSES AND THEY ARE LIARS YOU'RE GOING TO HAVE

1 TO MAKE A LEAP OF FAITH ON LIARS' TESTIMONY TO BELIEVE
2 THAT MICHAEL DUNHAM DID THIS THE JUDGE IS GOING TO
3 EXPLAIN ALL THE LAWS YOU HAVE TO BE FIRMLY CONVINCED
4 THAT HE WAS THE SHOOTER BEYOND A REASONABLE DOUBT YOU
5 CAN'T HESITATE TO ACT YOU'RE GOING FROM HOME, LEFT THE
6 OVEN ON, YOU'RE SURE YOU DIDN'T BUT THERE IS A CHANCE
7 MAYBE I DID, RIGHT? THAT'S THE BURDEN THEY HAVE CANNOT
8 CONVICT ---I TOLD YOU AT THE BEGINNING THAT MICHAEL
9 DUNHAM, YOU HEARD HIM, SAID HE'S NOT GUILTY, MORE THAN
10 THAT HE SITS THERE INNOCENT MICHAEL DUNHAM IS NOT THE
11 SHOOTER

12 THE COURT LET'S TAKE A SHORT LITTLE RECESS SINCE
13 IT'S RIGHT AFTER LUNCH

14 BREAK (2 52 P M)

15 THE BAILIFF ORDER IN THE COURT

16 SOLICITOR WILSON I WANTED TO ASK THE COURT IF YOU
17 INTEND TO IF NOT I WOULD LIKE TO REQUEST THE CHARGE ON
18 THE HAND OF ONE IS THE HAND OF ALL

19 THE COURT THE ONLY EVIDENCE IS THAT HE DID SHOOT

20 SOLICITOR WILSON YOUR HONOR, WE WOULD JUST SUBMIT
21 THAT BASED ON THE TESTIMONY OF

22 THE COURT FIRST OF ALL NO CHARGE IS PRESENTED, SO I
23 HAVE NO REQUESTS FOR CHARGE, BUT I'LL LET YOU PUT IT ON
24 THE RECORD

25 SOLICITOR WILSON I WAS JUST GOING TO REQUEST THAT

1 BASED ON THE TESTIMONY THAT THE DEFENDANT TOLD SOME OF
2 THE WITNESSES THAT WE SHOT AT SOMEBODY, HE ALSO SAID THAT
3 I SHOT, BUT HE ON OCCASION SAID THAT WE SHOT, AND THAT
4 WOULD BE THE BASIS FOR OUR REQUEST

5 THE COURT THANK YOU

6 JURY IN (3 10)

7 THE BAILIFF JURORS ARE ALL PRESENT

8 THE COURT LADIES AND GENTLEMEN OF THE JURY THIS
9 DOCUMENT WHICH I HOLD IN MY HAND CHARGES THE DEFENDANT
10 MICHAEL DUNHAM WITH MURDER THE INDICTMENT CONTAINS THE
11 CHARGES AGAINST THE DEFENDANT IT IS NOT EVIDENCE IN THE
12 CASE AND SHOULD NOT BE CONSIDERED BY YOU AS EVIDENCE IN
13 THE CASE IT IS MERELY A VEHICLE, A PIECE OF PAPER THAT
14 BRINGS THIS CASE TO COURT, AND YOU WILL EVENTUALLY REPORT
15 YOUR VERDICT ON THE BACK OF THIS INDICTMENT THE FACT
16 THAT SOMEONE HAS BEEN CHARGED AND ARRESTED IS NOT ANY
17 EVIDENCE OF THEIR GUILT NOW TO THIS INDICTMENT THE
18 DEFENDANT HAS PLEAD NOT GUILTY HIS PLEA OF NOT GUILTY
19 PLACES THE BURDEN OF PROOF ON THE STATE OF SOUTH CAROLINA
20 TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT NOW,
21 LADIES AND GENTLEMEN THAT IS A CARDINAL AND IMPORTANT
22 RULE OF LAW OF EVIDENCE IN A CRIMINAL CASE THAT NO
23 MATTER WHAT THE SERIOUSNESS OF THE CHARGES ARE, THE
24 DEFENDANT IS ALWAYS PRESUMED TO BE INNOCENT OF THE CRIME
25 OF WHICH HE IS INDICTED UNTIL YOU, THE JURY, HEARS

1 EVIDENCE THAT SATISFIES YOU OF HIS GUILT BEYOND A
 2 REASONABLE DOUBT, AND THAT'S NOT A MERELY A LEGAL THEORY
 3 OR A LEGAL PHRASE THAT IS A SUBSTANTIAL RIGHT WHICH ALL
 4 OF US ARE ENTITLED TO, THAT IS THE PRESUMPTION OF
 5 INNOCENCE UNTIL THE JURY GET EVIDENCE THAT SATISFIED THEM
 6 OF GUILT BEYOND A REASONABLE DOUBT NOW, YOU AS JURORS
 7 IN THIS CASE HAVE CERTAIN FUNCTIONS AND RESPONSIBILITIES
 8 THAT ARE TOTALLY DIFFERENT FROM MINE I AM PROHIBITED BY
 9 THE CONSTITUTION OF THIS STATE FROM DISCUSSING FACTS WITH
 10 YOU AND I WILL NOT DO THAT I APPRECIATE YOU BEING HERE
 11 TO DETERMINE THE FACTS, TO PASS UPON THE CREDIBILITY AND
 12 THE BELIEVABILITY OF ALL THE TESTIMONY, EACH AND EVERY
 13 WITNESS MORE THAN ANYONE I'VE HAD TO BE THE JUDGE OF
 14 THE LAW AND THE FACTS IN MANY CASES, AND I APPRECIATE YOU
 15 THE JURY BEING HERE TO DO THAT NOW IF I HAVE DONE
 16 ANYTHING DURING THE COURSE OF THE TRIAL TO LEAD YOU TO
 17 BELIEVE THAT I HAVE AN OPINION ABOUT THIS CASE EITHER FOR
 18 THE STATE OR THE DEFENDANT YOU DISREGARD THAT IF I DID
 19 ANYTHING I DIDN'T MEAN TO, AND I WOULDN'T DO ANYTHING TO
 20 INFRINGE UPON YOUR RESPONSIBILITY TO PERFORM YOUR
 21 FUNCTIONS IN THIS COURTROOM NOW, LADIES AND GENTLEMEN
 22 AS I MAY HAVE TOLD YOU AT THE BEGINNING, YOU ARE CITIZENS
 23 OF CHARLESTON COUNTY YOU BRING INTO THIS COURTROOM YOUR
 24 GOOD JUDGEMENT, YOUR COMMON SENSE, YOUR EVERYDAY
 25 EXPERIENCES IN LIFE, AND YOU ARE AS QUALIFIED TO

1 DETERMINE THE FACTS OF THIS CASE AS WELL AS ANYONE NOW,
2 IN THAT CONNECTION LADIES AND GENTLEMEN YOU PASS UPON THE
3 CREDIBILITY AND THE BELIEVABILITY OF ALL THE EVIDENCE AND
4 TESTIMONY I KNOW YOU WOULDN'T DO IT LIGHTLY, BUT IN
5 THAT REGARD YOU CAN BELIEVE EVERYTHING A WITNESS TOLD YOU
6 OF YOU CAN DISBELIEVE EVERYTHING A WITNESS TOLD YOU YOU
7 CAN BELIEVE PART OF WHAT A WITNESS TOLD YOU AND YOU CAN
8 DISBELIEVE PART OF WHAT A WITNESS TOLD YOU YOU CAN
9 BELIEVE ONE WITNESS AS AGAINST SEVERAL, OR SEVERAL
10 WITNESSES AS AGAINST ONE THESE WITNESSES HAVE TESTIFIED
11 UNDER OATH IN YOUR PRESENCE YOU WERE ABLE TO OBSERVE
12 THE Demeanor OF THE WITNESSES, THEIR FACIAL EXPRESSIONS,
13 YOU CAN ASK YOURSELF, WAS A WITNESS FORTHRIGHT, HOW DID
14 THAT WITNESS COME TO KNOW THE FACTS ABOUT WHICH THEY
15 TESTIFIED, WAS THERE ANY REASON FOR THE WITNESS TO BE
16 BIAS OR PREJUDICE IN THE CASE WAS THERE ANY OTHER
17 EVIDENCE IN THE CASE TO MAKE THE TESTIMONY OF THAT
18 WITNESS STRONGER OR WEAKER I'M JUST MENTIONING A FEW
19 THINGS THAT YOU MAY CONSIDER IN DETERMINING AND SEEKING
20 THE FACTS AND THE TRUTH IN THIS CASE, AND TO EMPHASIZE
21 THE WEIGHT YOU SEE FIT TO GIVE TO THE EVIDENCE AND
22 TESTIMONY IS FROM YOUR SOLE DETERMINATION NOW, JUST AS
23 YOU ARE THE JUDGES OF THE FACTS, I HAVE TO EXPLAIN THE
24 LAW TO YOU, THAT'S MY RESPONSIBILITY YOU APPLY THE
25 FACTS THAT YOU CAN FIND TO THE LAW AND WRITE A VERDICT IN

1 THE CASE THAT SPEAKS THE TRUTH NOW, LADIES AND
2 GENTLEMEN THE STATE HAS THE BURDEN OF PROVING EACH AND
3 EVERY ELEMENT OF THE CRIME CHARGED BEYOND A REASONABLE
4 DOUBT ANY REASONABLE DOUBT THAT YOU HAVE IN YOUR
5 DELIBERATIONS SHOULD BE RESOLVED IN FAVOR OF THE
6 DEFENDANT THE DEFENDANT IS ENTITLED TO ANY REASONABLE
7 DOUBT A REASONABLE DOUBT MAY EXIST BECAUSE OF THE
8 EVIDENCE AND TESTIMONY THAT YOU'VE HEARD, OR THE LACK OF
9 EVIDENCE AND TESTIMONY IN THE CASE IF YOU HAVE A
10 REASONABLE DOUBT AS TO THE GUILT OF THE DEFENDANT, HE IS
11 ENTITLED TO THAT DOUBT AND WOULD BE ENTITLED TO AN
12 ACQUITTAL OR A VERDICT OF NOT GUILTY NOW, WHAT IS A
13 REASONABLE DOUBT A REASONABLE DOUBT IS THE KIND OF
14 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO
15 ACT NOW, WE ARE DOING CIVIL AND CRIMINAL COURT THIS
16 WEEK, AND JURORS ARE SERVING IN BOTH COURTS IF YOU
17 SERVE OR SERVED ON A JURY IN CIVIL COURT, YOU WOULD BE
18 TOLD IN MOST CASES THERE THE BURDEN OF PROOF IS BY THE
19 GREATER WEIGHT OF THE PREPONDERANCE OF THE EVIDENCE OF
20 THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE IN A
21 CRIMINAL CASE THE STATE'S PROOF IS POWERFUL THAN THAT, IT
22 IS BEYOND A REASONABLE DOUBT PROOF BEYOND A REASONABLE
23 DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
24 DEFENDANT'S GUILT NOW THERE ARE VERY FEW THINGS IN THIS
25 WORLD THAT WE CAN KNOW WITH ABSOLUTE CERTAINTY, AND THE

1 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
 2 DOUBT IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE,
 3 YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
 4 THE CRIME CHARGED YOU MUST FIND HIM GUILTY IF, ON THE
 5 OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY HE IS
 6 NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT
 7 TO FIND HIM NOT GUILTY NOW, THERE ARE TWO TYPES OF
 8 EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL,
 9 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE DIRECT
 10 EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR
 11 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN
 12 EYEWITNESS CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
 13 OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF
 14 THE FACT THE LAW MAKES ABSOLUTELY NO DISTINCTION
 15 BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR
 16 CIRCUMSTANTIAL EVIDENCE NOR IS GREATER DEGREE OF
 17 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN DIRECT
 18 EVIDENCE YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE
 19 AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED
 20 OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT,
 21 YOU MUST FIND HIM NOT GUILTY LADIES AND GENTLEMEN,
 22 EVIDENCE CAME IN IN REGARD TO CRIMINAL CONVICTIONS OF
 23 WITNESSES THAT EVIDENCE IS ADMITTED ONLY FOR ONE
 24 PURPOSE AND THAT IS IT'S NOT RELEVANT FOR ANYTHING ELSE,
 25 AND THAT COMES IN ON THE ISSUE OF THE CREDIBILITY OR

1 BELIEVABILITY OF THOSE WITNESSES, AND YOU GIVE IT
2 WHATEVER WEIGHT YOU THINK IT DESERVES THE CREDIBILITY
3 OF THE WITNESS ALONE NOW, LADIES AND GENTLEMEN AN ISSUE
4 IN THIS CASE IS THE IDENTIFICATION OF THE DEFENDANT AS
5 THE PERPETRATOR OF THE CRIME CHARGED THE STATE OF SOUTH
6 CAROLINA HAS THE BURDEN OF PROOF AND IDENTITY BEYOND A
7 REASONABLE DOUBT IDENTIFICATION TESTIMONY IS AN
8 EXPRESSION OF BELIEF, OR AN IMPRESSION BY A WITNESS YOU
9 MAY CONSIDER THE OPPORTUNITY A WITNESS HAD TO OBSERVE THE
10 PERSON IDENTIFIED, AND TO THEREAFTER MAKE AN
11 IDENTIFICATION IT IS FOR YOU THE JURY TO DETERMINE THE
12 ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT YOU
13 MUST CONSIDER THE CREDIBILITY OF EACH IDENTIFICATION
14 WITNESS IN THE SAME WAY AS THE OTHER WITNESSES YOU MAY
15 CONSIDER HIS OR HER TRUTHFULNESS AS WELL AS THE CAPACITY,
16 OPPORTUNITY, AND CIRCUMSTANCES OF THE OBSERVATION OF THE
17 MATTERS ABOUT WHICH HE OR SHE TESTIFIES, AND LADIES AND
18 GENTLEMEN THE FACT THAT THE DEFENDANT DOES NOT TESTIFY IN
19 HIS OWN BEHALF CANNOT AND MUST NOT BE CONSIDERED AGAINST
20 HIM UNDER ANY CIRCUMSTANCES OR IN ANY MANNER WHATSOEVER
21 THE FACT THAT THE DEFENDANT DOES NOT TAKE THE WITNESS
22 STAND IN HIS OWN BEHALF DOES NOT CREATE ANY PRESUMPTION
23 AGAINST HIM, AND I CHARGE YOU THAT YOU MUST NOT PERMIT
24 THAT FACT TO WEIGH IN THE SLIGHTEST DEGREE AGAINST THE
25 DEFENDANT NOR SHOULD THIS FACT ENTER INTO THE

1 DISCUSSIONS OR DELIBERATIONS OF THE JURY IN ANY MANNER
2 WHY? BECAUSE UNDER THE CONSTITUTION OF SOUTH CAROLINA
3 AND THE CONSTITUTION OF THE UNITED STATES IT IS THE
4 PREROGATIVE OF THE DEFENDANT TO TESTIFY OR TO REMAIN
5 SILENT AND THE BURDEN OF PROOF IS ALWAYS UPON THE STATE
6 OF SOUTH CAROLINA TO ESTABLISH HIS GUILT BY COMPETENT
7 TESTIMONY BEYOND A REASONABLE DOUBT NOW, LADIES AND
8 GENTLEMEN IN THIS INDICTMENT THE STATE MUST PROVE TO YOU
9 BEYOND A REASONABLE DOUBT THAT IN CHARLESTON COUNTY ON OR
10 ABOUT DECEMBER 13, 2004, NUMBER 3 IN CONCERT WITH ANOTHER
11 AND WITH MALICE AFORETHOUGHT, MICHAEL BARNEY DUNHAM DID
12 KILL AND MURDER ANTHONY GAMBRELL BY THE MEANS OF SHOOTING
13 HIM WITH A HANDGUN, AND THAT ANTHONY GAMBRELL DID DIE IN
14 CHARLESTON COUNTY AS A PROXIMATE RESULT OR DIRECT RESULT
15 OF THAT SHOT ON DECEMBER 13, 2004 THE STATE MUST PROVE
16 EACH AND EVERY ELEMENT THAT I'VE GONE OVER WITH YOU IN
17 THIS INDICTMENT BEYOND A REASONABLE DOUBT FOR YOU TO FIND
18 A VERDICT OF GUILTY IF THEY HAVE FAILED TO PROVE ANY
19 ELEMENT OF THE CRIME CHARGED YOUR VERDICT WOULD BE NOT
20 GUILTY NOW, LADIES AND GENTLEMEN MURDER IS THE KILLING,
21 I'LL DEFINE SOME OF THE TERMS FOR YOU, MURDER IS THE
22 KILLING OF ONE PERSON BY ANOTHER WITH MALICE
23 AFORETHOUGHT, EITHER EXPRESSED MALICE OR IMPLIED MALICE
24 IN ORDER TO CONVICT OF MURDER THE STATE MUST NOT ONLY
25 PROVE THAT THE DECEASED WAS KILLED BY THE DEFENDANT BUT

1 IT MUST PROVE BEYOND A REASONABLE DOUBT THAT THE KILLING
2 WAS DONE WITH MALICE AFORETHOUGHT NOW, LADIES AND
3 GENTLEMEN MALICE IN THE LAW OF HOMICIDE IS A TERM OF LAW,
4 IT IS A TECHNICAL TERM IT IMPORTS WICKEDNESS EXCLUDING
5 JUST CAUSE OR EXCUSE IT IS SOMETHING WHICH SPRINGS FROM
6 DEPRAVITY FROM A HEART DEVOID OF SOCIAL DUTY FATALLY
7 BENT ON WRONGDOING MALICE HAS BEEN DEFINED AS THE
8 WRONGFUL INTENT TO INJURE ANOTHER, AND INDICATES A WICKED
9 OR DEPRAVED SPIRIT, INTENT ON DOING WRONG THE WORDS
10 EXPRESSED OR IMPLIED MALICE DO NOT MEAN DIFFERENT KINDS
11 OF MALICE, BUT MERELY THE MANNER IN WHICH THE ONLY KIND
12 OF MALICE KNOWN TO THE LAW MAY BE SHOWN TO EXIST MALICE
13 IS EXPRESSED WHEN THERE ARE OF VENGEANCE, OR WHEN OTHER
14 CIRCUMSTANCES SHOW DIRECT THAT THE CRIMINAL PURPOSE WAS
15 ENTERTAINED NOW THE LAW SAYS IF ONE INTENTIONALLY KILLS
16 ANOTHER WITH A DEADLY WEAPON THE IMPLICATION OF MALICE
17 MAY ARISE, AND IF FACTS ARE PROVED BEYOND A REASONABLE
18 DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR
19 SATISFACTION, THIS INFERENCE WOULD BE SIMPLY A EVIDENTRY
20 FACT TO BE TAKEN INTO CONSIDERATION BY YOU THE JURY ALONG
21 WITH OTHER EVIDENCE IN THE CASE, AND YOU MAY GIVE IT SUCH
22 WEIGHT AND YOU DETERMINE IT SHOULD RECEIVE YOU MAY
23 ACCEPT OR REJECT THIS PERMISSIVE INFERENCE DEPENDING ON
24 YOUR VIEWS OF ALL THE EVIDENCE NOW MALICE AFORETHOUGHT,
25 WE DEFINE MURDER AS AN UNLAWFUL KILLING WITH MALICE

1 AFORETHOUGHT WHAT DO WE MEAN BY AFORETHOUGHT? IT MEANS
2 THAT WHILE THE LAW DOES NOT REQUIRE MALICE TO EXIST FOR
3 ANY PARTICULAR LENGTH OF TIME BEFORE THE COMMISSION OF
4 THE ACT, IT MUST BE AFORETHOUGHT THERE MUST BE A
5 COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT
6 PRODUCING THE FATAL RESULT THE MALICE MAY NOT BE IN THE
7 MIND OF THE ONE DOING THE WRONGFUL ACT ANY PARTICULAR
8 LENGTH OF TIME IF IT IS PRESENT IN THE MIND ANY LENGTH
9 OF TIME BEFORE THE ACT AND AT THE TIME OF THE ACT
10 ACCOMPANYING AND PROMPTING THE ACT, THEN ITS PRESENT
11 WOULD BE SUFFICIENT NOW, THE LAW SAYS THAT THE ACT MUST
12 PROXIMATELY CAUSE, THAT MEANS DIRECTLY CAUSE THE DEATH OF
13 THE VICTIM, THAT IS BUT FOR THE GUNSHOT WOUND THAT
14 OCCURRED THE VICTIM WOULD NOT HAVE DIED PROXIMATE CAUSE
15 IS THE DIRECT CAUSE OF DEATH NOW, LADIES AND GENTLEMEN
16 IF THE STATE HAS PROVEN EACH AND EVERY ELEMENT OF THE
17 CRIME THE VERDICT IS GUILTY IF THEY FAILED TO PROVE ANY
18 ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT, YOUR
19 VERDICT WOULD BE NOT GUILTY THOSE ARE THE ONLY TWO
20 POSSIBLE VERDICTS, AND I PUT THEM ON THE SHEET SO YOU CAN
21 DELIBERATE THOSE AND IT CAN BE SIGNED WHATEVER VERDICT
22 YOU REACH MUST BE UNANIMOUS, ALL TWELVE OF YOU HAVE TO
23 AGREE NOW, EVERYONE HAS AN EQUAL VOTE, AN EQUAL VOICE,
24 AN EQUAL INPUT INTO THE VERDICT OF THIS CASE, BUT SOMEONE
25 HAS TO PRESIDE AND THAT WOULD BE YOUR RESPONSIBILITY

1 MADAM FOREMAN, OK NOW, I'M GOING TO LET YOU STEP OUT
2 FOR JUST A MINUTE, AND DO NOT BEGIN YOUR DELIBERATIONS AT
3 THIS TIME, LET ME GO OVER MY CHARGES IF THERE IS
4 ANYTHING, THE LAWYERS WANT TO TELL YOU ABOUT THE LAW, I
5 MAY BRING YOU BACK IN TO DO THAT IF NOT, I'LL TELL THE
6 - - IF AND HE'LL BRING THE EVIDENCE BACK, ALL THE
7 EVIDENCE, SO YOU CAN BEGIN YOUR DELIBERATIONS WHEN YOU
8 REACH A UNANIMOUS VERDICT, LET HIM KNOW AND I'LL BRING
9 YOU IN AND WE'LL TAKE THE VERDICT THANK YOU SO MUCH

JURY OUT (3 28 P M)

11 THE COURT WE WILL BE IN RECESS IN THIS TRIAL UNTIL
12 THEY REACH A VERDICT

13 MR DAVIS JUDGE FOR THE RECORD--

14 THE COURT SHE TOLD ME SHE WENT OVER EVERYTHING WITH
15 YOU AND Y'ALL AGREED THAT EVERYTHING IS THERE I HAVE
16 ONE COURT'S EXHIBIT AND I THINK THAT'S THE ONLY ONE I
17 HAVE, AND THAT WAS THE ACKNOWLEDGMENT

18 MR DAVIS AND THE ALTERNATES YOUR HONOR
19 RECESS

20 THE COURT MADAM FORELADY, YOU'VE REACHED A VERDICT,
21 IS THAT CORRECT?

22 FOREPERSON YES SIR

23 THE COURT WOULD YOU HAND IT TO THE BAILIFF?
24 PUBLISH THE VERDICT PLEASE

25 THE BAILIFF YES YOUR HONOR THE STATE OF SOUTH

1 CAROLINA V MICHAEL BARNEY DUNHAM, DEFENDANT, CASE NUMBER
2 2005-GS-10-8285 WE THE JURY BY UNANIMOUS CONSENT FIND
3 THE DEFENDANT MICHAEL BARNEY DUNHAM GUILTY OF MURDER
4 SIGNED BY ANNE SUMNER THE FOREPERSON, DATED FEBPUAPY 15,
5 2006 LADIES AND GENTLEMEN OF THE JURY IF THIS IS YOUR
6 VERDICT PLEASE REPLY BY RAISING YOUR RIGHT HAND THANK
7 YOU

8 THE COURT ANY QUESTION ABOUT THE FORM OF VERDICT?

9 MR DAVIS NO YOUR HONOR, I'D ASK THAT THE JURY BE
10 POLLED

11 THE COURT ALRIGHT

12 THE BAILIFF LADIES AND GENTLEMEN OF JURY I WILL BE
13 ASKING YOU TWO QUESTIONS, IS THIS YOUR VERDICT AND THIS
14 IS STILL YOUR VERDICT WHEN I CALL YOUR NAME THE JUROR
15 WILL YOU PLEASE STAND ANNE SUMNER, JUROR NUMBER 251, IS
16 THIS YOUR VERDICT?

17 JUROR #251 YES SIR

18 THE BAILIFF THIS IS STILL YOUR VERDICT?

19 JUROR #251 YES SIR

20 THE BAILIFF THANK YOU, BE SEATED JUROR #126,
21 DONNA JACOBS, IS THIS YOUR VERDICT?

22 JUROR #126 YES SIR

23 THE BAILIFF IS THIS STILL YOUR VERDICT?

24 JUROR #126 YES SIR

25 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR

1 #25, IS THIS YOUR VERDICT?

2 JUROR #25 YES SIR

3 THE BAILIFF IS THIS STILL YOUR VERDICT?

4 JUROR #25 YES SIR

5 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR

6 #184, NICOLE LESARIO, IS THIS YOUR VERDICT?

7 JUROR #184 YES SIR

8 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR

9 #148, DIANE LETER, IS THIS YOUR VERDICT, IS THIS STILL
10 YOUR VERDICT?

11 JUROR #148 YES SIR

12 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR

13 #76, IS THIS YOUR VERDICT?

14 JUROR #76 YES SIR

15 THE BAILIFF IS THIS STILL YOUR VERDICT?

16 JUROR #76 YES SIR

17 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR

18 #145, IS THIS YOUR VERDICT?

19 JUROR #145 YES SIR

20 THE BAILIFF IS THIS STILL YOUR VERDICT?

21 JUROR #145 YES SIR

22 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR

23 #290, IS THIS YOUR VERDICT?

24 JUROR #290 YES

25 THE BAILIFF IS THIS STILL YOUR VERDICT?

1 JUROR #290 YES SIR

2 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR
3 #47, JOEL CHAPIN, IS THIS YOUR VERDICT?

4 JUROR #47 YES SIR

5 THE BAILIFF IS THIS STILL YOUR VERDICT?

6 JUROR #47 YES SIR

7 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR
8 #79, BERTHA FRANKLIN, IS THIS YOUR VERDICT?

9 JUROR #79 YES SIR

10 THE BAILIFF IS THIS STILL YOUR VERDICT?

11 JUROR #79 YES SIR

12 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR
13 #205, JILLIAN REARDON, IS THIS YOUR VERDICT?

14 JUROR #205 YES SIR

15 THE BAILIFF IS THIS STILL YOUR VERDICT?

16 JUROR #205 YES SIR

17 THE BAILIFF THANK YOU PLEASE BE SEATED JUROR
18 #316, LEE WEATHERSBY, IS THIS YOUR VERDICT?

19 JUROR #316 YES SIR

20 THE BAILIFF THIS IS STILL YOUR VERDICT?

21 JUROR #316 YES SIR

22 THE BAILIFF THANK YOU PLEASE BE SEATED IS THERE
23 ANYONE'S NAME I MISSED? YOUR HONOR THE VERDICT STANDS

24 THE COURT ANYTHING ELSE?

25 MR DAVIS NO SIR

1 **THE COURT** ANYTHING FROM THE STATE?

2 **SOLICITOR WILSON** YES SIR YOUR HONOR AS YOU HAVE
3 SEEN THE VICTIM'S FAMILY IS PRESENT HERE IN THE
4 COURTROOM THEY'VE BEEN HERE ALL WEEK THEY'VE BEEN
5 VERY SUPPORTIVE AND COOPERATIVE WITH US IN OUR
6 INVESTIGATION AND PROSECUTION I BELIEVE THAT THE
7 VICTIM'S MOTHER WOULD LIKE TO ADDRESS THE COURT BEFORE
8 SENTENCING

9 **THE COURT** OK LADIES AND GENTLEMEN, I'M GOING TO
10 EXCUSE Y'ALL Y'ALL HAVE WORKED VERY HARD YOU'VE BEEN
11 A VERY GOOD JURY AND WE APPRECIATE THAT I KNOW YOU
12 DELIBERATED CONSCIENTIOUSLY YOU ARE EXCUSED FOR THE
13 WEEK YOU DO NOT HAVE TO COME BACK WE'VE SELECTED A
14 JURY IN THE NEXT CASE WHICH WILL TAKE THE NEXT TWO DAYS,
15 AND I THINK THAT THE CLERK, YOU WILL MAIL THEIR CHECKS

16 **THE CLERK** YES YOUR HONOR THE CHECKS WILL BE MAILED
17 OUT ON FRIDAY, AND A LETTER FOR THEIR EMPLOYER

18 **THE COURT** AND A LETTER FOR YOUR EMPLOYER IF YOU
19 NEED IT YOU'LL BE PAID FOR YOUR SERVICE AND FOR YOUR
20 MILEAGE, AND A LETTER TO SHOW YOUR EMPLOYER IF YOU NEED
21 THAT TO SHOW HIM OR WHOEVER YOU WORKED FOR THAT YOU WERE
22 HERE ON JURY DUTY LADIES AND GENTLEMEN THANK YOU SO
23 MUCH, YOU ARE EXCUSED FOR THE WEEK THANK YOU ALRIGHT,
24 WE'LL GO AHEAD AND HEAR FROM THE STATE

25 **SOLICITOR WILSON** JUDGE FIRST OF ALL I THANK YOU FOR

1 YOUR PATIENCE AND FOR YOUR GUIDANCE DURING THIS TRIAL -
 2 THINK THAT IT WENT VERY SMOOTHLY ESPECIALLY CONSIDERING
 3 SOME OF THE INCONVENIENCES WE HAD AS YOU SAW, THIS IS A
 4 FAIRLY STRAIGHTFORWARD CASE, BUT IT WAS A DIFFICULT CASE
 5 BECAUSE MOST OF THE STATE'S WITNESSES WERE FRIENDS OF THE
 6 DEFENDANT THEY WERE VERY RELUCTANT IT WAS VERY
 7 DIFFICULT FOR THEM TO BE HERE, BUT BE THAT AS IT MAY THEY
 8 DID SHOW UP THEY DID TESTIFY AND IN THE END I BELIEVE
 9 TESTIFIED TRUTHFULLY THIS WAS AN IMPORTANT CASE I THINK
 10 FOR THE COMMUNITY DRIVE BY SHOOTINGS UNNERVE EVERYONE,
 11 AND CERTAINLY ALTHOUGH THERE WAS EVIDENCE THAT THE VICTIM
 12 HAD BEEN IN A SCUFFLE WITH MICHAEL JETER EARLIER IN THE
 13 DAY IT CERTAINLY DIDN'T WARRANT ANYTHING OF THIS
 14 MAGNITUDE I COMMEND GINA BROWN FOR BEING STRONG AND FOR
 15 PAYING ATTENTION, AND FOR TAKING NOTE OF WHAT SHE SAW IN
 16 ALL OF THAT CONFUSION FOR TAKING A TRIP FROM HER HOME
 17 TOWN TO COME MEET WITH US ON OCCASION AND FOR BEING HERE
 18 THROUGHOUT THE WEEK, AND FOR KEEPING HER COMPOSURE UNDER
 19 THE STRESS OF GIVING HER TESTIMONY YOUR HONOR, AS I
 20 MENTIONED THIS IS A SERIOUS CASE, THIS IS A SENSELESS
 21 CASE, AND BASED ON THE FACTS OF THE CASE, WE THE STATE
 22 WILL BE ASKING FOR A LIFE SENTENCE I DO BELIEVE THE
 23 VICTIM'S MOTHER WHO HAS BEEN HERE ALL WEEK WOULD LIKE TO
 24 ADDRESS THE COURT

25 THE COURT OK, I'LL HEAR FROM THE MOTHER

1 **MS CARPENTER** MY NAME IS CONNIE GAMBRELL CARPENTER
 2 MY SON'S NAME WAS ANTHONY GAMBRELL TWENTY-SEVEN YEARS
 3 AGO GOD GAVE ME THAT CHILD, AND I HAD A DIFFICULT TIME
 4 BRINGING HIM HERE BUT GOD INSTILLED IN ME THIS IS YOUR
 5 CHILD I TOOK CARE OF HIM AND WHEN HE GOT TO BE OLDER HE
 6 TOOK CARE OF HIMSELF I DON'T KNOW THE REASON SOMEBODY
 7 TOOK THAT CHILD AWAY FROM ME AND NOW HE CAN'T SPEAK FOR
 8 HIMSELF, SO THIS IS MY JOB TO SPEAK FOR HIM I DON'T
 9 HOLD NO MALICE FOR THAT YOUNG MAN THAT DID THIS, BUT FOR
 10 EVERY ACTION THERE IS REACTION AND CONSEQUENCES I FEEL
 11 FOR HIS MOTHER BACK THERE, BUT I'M ASKING YOU WHATEVER
 12 THE LAW ALLOWS, THE MAXIMUM OF WHATEVER IT IS TO BE
 13 JUSTIFIED WHICH WOULD NEVER BE FOR THE LIFE OF MY CHILD,
 14 BUT HE HAS TO BE ACCOUNTABLE FOR WHAT HE DID SO I'M
 15 ASKING THE MAXIMUM OF WHAT THE LAW ALLOWS TO BE JUST FOR
 16 MY CHILD BE INSTALLED ON THIS YOUNG MAN THANK YOU

17 **SOLICITOR WILSON** YOUR HONOR, I DON'T BELIEVE ANYONE
 18 ELSE WANTS TO ADDRESS THE COURT AGAIN I THANK THE COURT
 19 FOR YOUR TIME AND I ALSO WANT TO COMMEND THE SHERIFF'S
 20 OFFICE FOR WORKING AS HARD AS THEY'VE WORKED ON THIS
 21 CASE, AND AS YOU SAW THE WITNESSES BEING THE DEFENDANT'S
 22 FRIENDS WERE VERY RELUCTANT BUT THE OFFICERS CONTINUED TO
 23 PUPSUE, CONTINUED TO CORROBORATE, AND I BELIEVE BASED ON
 24 THEIR PERSEVERANCE AND THEIR PERSISTENCE WE WERE ABLE TO
 25 REACH A GUILTY VERDICT, AND I BELIEVE THAT WAS THE RIGHT

1 VERDICT IN THIS CASE THANK YOU

2 MR DAVIS YOUR HONOR, MY CLIENT HAS SOME FAMILY
3 HERE, I'M NOT SURE THEY WANT TO ADDRESS THE COURT THANK
4 YOU

5 THE COURT DO YOU WANT TO GIVE ME HIS PRIOR RECORD?

6 SOLICITOR WILSON YES SIR YOUR HONOR, I'M SORRY AS
7 WE DISCUSSED DURING THE TRIAL THE DEFENDANT DID HAVE OR
8 DOES HAVE A PRIOR RECORD HE HAS FROM 2000 HE HAD A
9 BURGLARY SECOND DEGREE CONVICTION, FROM 2002 HE HAD A
10 POSSESSION OF A STOLEN MOTOR VEHICLE, GRAND LARCENY, AND
11 FAILURE TO STOP FOR A BLUE LIGHT CONVICTION

12 MR DAVIS THANK YOU YOUR HONOR MAY IT PLEASE THE
13 COURT JUDGE CERTAINLY WE RESPECT THE JURY'S VERDICT IN
14 THIS CASE, BUT I AM IN A DIFFICULT POSITION BECAUSE I
15 CERTAINLY CAN TELL YOU THAT WHILE I RESPECT THEIR
16 VERDICT, IT DOES NOT COME UP WITH THE MAN I'VE REPRESENTED
17 OVER THE LAST 14 MONTHS IN REPRESENTING HIM IN THIS CASE
18 HE'S ONLY 19 YEARS OLD NOW I MET HIM WHEN HE WAS 18
19 ARRESTED THE SAME NIGHT THIS INCIDENT HAPPENED I CAN
20 SAY THAT FROM THE MOMENT I MET HIM, HE IS NOT INVOLVED OR
21 KNOWLEDGE IN THIS AGAIN, I CERTAINLY RESPECT THE JURY'S
22 VERDICT, BUT I'D HAVE TO BE FORTHRIGHT WITH THE COURT,
23 WE'VE HAD NO CONVERSATIONS OTHER THAN HIM MAINTAINING NO
24 KNOWLEDGE AND NO INVOLVEMENT JUDGE, HE IS 19 YEARS OLD
25 NOW, HIS FATHER IS DECEASED, HIS MOTHER HAS BEEN HERE IN

1 THE COURTROOM PRETTY MUCH NONSTOP THROUGHOUT THIS TRIAL
2 ALONG WITH HIS SISTER AND HIS BROTHER THEY DO NOT WISH
3 TO SPEAK TO THE COURT ALSO HIS GIRLFRIEND HAS BEEN WITH
4 HIM FOR THE PAST THREE DAYS JUDGE, THERE WERE WITNESSES
5 ON THE WITNESS LIST FOR BOTH SIDES, HIS MOTHER, JAMIE
6 MITCHELL, AND NOT A RELATIVE BUT JAMES MITCHELL WHO HE
7 WAS LIVING WITH BACK IN DECEMBER, 2004 JUST BRIEFLY HE
8 RESIDED AT THAT RESIDENCE THAT WAS A CO-WORKER OF HIS
9 MOTHER, THEY WERE GOOD FRIENDS AND AMAZINGLY MR
10 MITCHELL STEPPED UP, THERE HAD BEEN SOME DOMESTIC ABUSE
11 IN THE HOME FROM HIS STEPFATHER TOWARDS THE FAMILY
12 MEMBERS IN THE HOME SO THERE WAS A DSS ACTION, NOT
13 BECAUSE OF ANY WRONGDOING BY HIS MOTHER BUT BECAUSE THE
14 STEPFATHER WAS IN THE HOME FOLLOWING THAT HE WAS PLACED
15 WITH THIS GUARDIAN, MR JAMES MITCHELL STEPPED UP AND
16 THAT'S WHO HE RESIDED WITH THERE ON NORTH MURRAY DRIVE WE
17 HEARD TESTIMONY ABOUT JUDGE, WE UNDERSTAND AND
18 SYMPATHIZE WITH THE GAMBRELL FAMILY AS WE SAID ALL ALONG
19 REALITY JUDGE IS THAT NO MATTER WHAT HAPPENS TODAY IT
20 WON'T MINIMIZE THEIR LOSS OR THEIR PAIN OR THEIR
21 SUFFERING I'M CERTAINLY GOING TO BEG THE COURT FOR THE
22 30 YEAR MINIMUM SENTENCE IN THIS CASE I THINK IT WOULD
23 SERVE JUSTICE BECAUSE CERTAINLY IT WAS A SENSELESS ACT,
24 MY CLIENT IS ONLY 19 NOW AS YOU WELL KNOW EVEN THE 30
25 YEAR SENTENCE HE'LL HAVE TO SERVE THAT OUT BASICALLY

1 HE'D BE A 50 YEAR OLD MAN IF HE WERE TO SURVIVE THAT
2 SENTENCE AND THEN BE RETURNED TO SOCIETY THERE IS
3 NOTHING IN MY REPRESENTATION OF HIM, AND I WILL ARGUE NOR
4 IN THE MINOR RECORD HE HAS A JUVENILE THAT WOULD SHOW
5 THAT THIS CONFORMS WITH HIS CHARACTER JUDGE I DO
6 BELIEVE THAT MY CLIENT WOULD LIKE TO ADDRESS THE COURT
BRIEFLY AND ON HIS BEHALF I WOULD BEG THE COURT FOR THE
8 MINIMUM, I THINK THAT WOULD SERVE JUSTICE BUT ALSO MIKE
9 WOULD BEG FOR LENIENCY

10 MR DUNHAM TO TELL YOU THE TRUTH, I DON'T EVEN KNOW
11 NOTHING ABOUT THIS CASE I DON'T KNOW NOTHING ABOUT THIS
12 CASE I JUST HAPPENED TO BE WITH THE WRONG PEOPLE AT THE
13 WRONG TIME, AND I GET LOCK UP BEING WITH THEM MY MAMA
14 ALWAYS TELL ME NOT TO MESS WITH THEM BUT I DON'T LISTEN
15 I JUST THOUGHT FRIENDS, FRIENDS THEY GET LOCK UP, THE
16 POLICE COME TO ME AND THEY JUST PUT THE CHARGE ON ME
17 I'M SORRY FOR HER SON I DIDN'T KNOW THE YOUNG MAN I
18 DON'T KNOW WHO HE WAS AND ME AND MICHAEL JETER WASN'T
19 EVEN THAT CLOSE FOR ME TO DO SOMETHING LIKE THAT FOR HIM,
20 YOU KNOW IF HE DID THAT THAT'S ON HIM I DID NOT DO
21 THIS JUDGE, AND THE REASON WHY I DIDN'T WANT TO TESTIFY
22 WAS BECAUSE MY PRIOR RECORD WOULD HAVE CAME UP AND I HAD
23 A JUVENILE I LEARN FROM MY MISTAKES WHEN I BECAME AN
24 ADULT I NEVER, I DID NOT MAKE NO MORE MISTAKES

25 THE COURT ANYTHING ELSE MR DUNHAM?

1

MR DUNHAM NO SIR THANK YOU

2

THE COURT ANYTHING ELSE FROM THE DEFENSE?

3

MR DAVIS THAT'S ALL YOUR HONOR THANKS

4

THE COURT MR DUNHAM I AM SORRY, I AGREE WITH THE

5

JURY I HEARD THE CASE, AND I HEARD YOUR FRIENDS TESTIFY

6

AND I HEARD THE LADY TESTIFY, AND I HEARD HEP TESTIFY

7

TWICE, AND THEY GAVE ME- I LOOKED AT HER DEMEANOR, AND IT

8

WAS YOUR AUTOMOBILE, AND I KNOW THE JURY IS HERE THAT'S

9

JUST- I APPRECIATE YOUR STATEMENT BUT I THINK THE JURY

10

AND THE EVIDENCE SUSTAINED THE CONVICTION, AND I DON'T

11

KNOW WHAT OCCASIONED THIS INCIDENT, BUT FOR EVERY

12

COMMUNITY IN THIS COUNTY THEY JUST HAVE TO UNDERSTAND

13

THAT THESE DRIVE BY SHOOTINGS JUST CANNOT BE TOLERATED BY

14

ANYONE WHY ANYONE WOULD TAKE THIS INNOCENT PERSON'S

15

LIFE WALKING DOWN THE STREET WITH HIS GIRLFRIEND IS

16

BEYOND ME I CAN'T UNDERSTAND WHY AN AUTOMOBILE WOULD

17

DRIVE BY AND JUST SHOOT THIS MAN DOWN REGARDLESS OF WHO

18

HE WAS, AND WE'VE HEARD FROM BOTH SIDES SENTENCE OF THE

19

COURT IS THAT MICHAEL B DUNHAM BE SENTENCED TO THE STATE

20

DEPARTMENT OF CORRECTIONS FOR THE TERM OF HIS LIFE

21

22

23

24

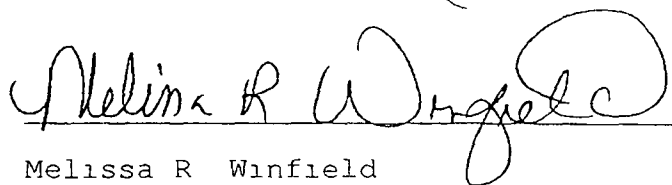
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CERTIFICATE

This is to certify that the hearing in State vs Michael Dunham, consisting of Two Hundred Twenty Nine (229) pages is a true and correct transcript of the testimony given after being duly heard and hearing was reported by the method of Stenomask with Backup

I further certify that I am not employed by any of the parties in this matter or their counsel nor do I have any interest, financial or otherwise, in the outcome of same

IN WITNESS WHEREOF I have hereunto set my hand and seal this 15th day of June, 2006

A handwritten signature in cursive script, reading "Melissa R. Winfield", is written over a horizontal line.

Melissa R Winfield
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires 3-5-2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston

STATE

VS

Michael B Dunham

AKA

Race B Sex M Age

DOB 9/5/80 SS#

Address

City State Zip

DL# SID#

INDICTMENT/CASE#

2005 GS 10 8285

AW# 11-805891

Date of Offense 12/13/04

S C Code § 16 3-10

CDR Code # 0 1 1 1 1 1 6

☐ CASE RESTORED

☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO MURDER

in violation of § 16 03-10 of the S C Code of Laws bearing CDR Code # 0 1 1 1 1 6

☐ NON VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17 25-45

The charge is ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury

The plea is ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State

ATTEST

Samson

Solicitor

Defendant

Attorney for Defendant

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment

of \$ _____ plus costs and assessments as applicable the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation Parole and Pardon Services standard conditions of probation which are incorporated by reference

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on _____

☐ The Defendant is to be given credit for time served pursuant to S C Code §24 13 40 to be calculated and applied by the State Department of Corrections

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms

☐ set by SCDPPPS

Recipient

Fine \$ _____

§14 1 206 (Assessments 107 5%) \$ _____

§14 1 211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§14 1 211(A)(2) (DUI Surcharge) \$100 \$ _____

§56 5 2995 (DUI Assessment) \$12 \$ _____

§ 35 13 (Public Def/Prob) \$500 \$ _____

§73 3 1B TP (Law Enforce Funding) \$25 \$ 25.00

§33 7 1B TP (Drug Court Surcharge) \$100 \$ _____

§50 21 114(BUI Breath Test Fee) \$50 \$ _____

§56 5 2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab or Job Corp

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd in equal consecutive weekly/monthly

pmts of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other

☐ Appointed PD or appointed other counsel §35 13 TP Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code

Sentence Date

Clerk of Court/ Deputy Clerk

Court Reporter

M. Winfield

L.R. Pelt
21 0 13 15
February 15, 2006

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Larry R. Patterson, Circuit Court Judge

Case Nos. 2005-GS-10-8285

The State

Respondent

v

Michael Barney Dunham

Appellant

BRIEF OF APPELLANT

Joshua Snow Kendrick
JOSHUA SNOW KENDRICK PC
1720 Main Street Suite 202
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(803) 765-0717

Attorney for the Appellant

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

- 1 DID THE JUDGE ERR IN ADMITTING THE TESTIMONY OF A PHOTOGRAPHIC LINEUP AND AN IN-COURT IDENTIFICATION WHERE THE VICTIM DID NOT PICK OUT THE APPELLANT FROM THE PHOTOGRAPHIC LINEUP?

}

STATEMENT OF THE CASE

Appellant Michael Dunham was indicted and tried in Charleston County for murder. He proceeded to trial by jury on February 13, 2006. Prior to trial, Dunham moved to suppress all evidence related to an eyewitness' identification of Dunham.

The judge ruled the identification was reliable and the trial proceeded. Dunham was convicted and sentenced to life in prison.

ARGUMENT

I DID THE JUDGE ERR IN ADMITTING TESTIMONY OF A PHOTOGRAPHIC LINEUP AND AN IN-COURT IDENTIFICATION WHERE THE VICTIM DID NOT PICK OUT THE APPELLANT FROM THE PHOTOGRAPHIC LINEUP?

Prior to Appellant Michael Dunham's trial the court held a pretrial hearing on the admissibility of a photographic lineup. The girlfriend of the victim, Gina Brown, was unable to pick out Dunham from a photographic lineup.

Investigator Denise Catlett of the Charleston County Sheriff's Office testified regarding the photographic lineup shown to Brown (R p 5, l 6). Catlett testified she met with Brown in the early morning hours of December 14, 2004 (R p 6 ll 17-20). The lineups were based on physical descriptions of the suspects given by Brown (R p 6 ll 2-13).

Brown immediately identified a suspect in the first lineup (R p 7, ll 12-20). She testified the person she identified was the passenger in the car involved in the shooting of the victim (R p 8 ll 4-6).

Brown was next shown a lineup that contained a picture of Dunham. Catlett testified Brown was unable to choose between two pictures in the lineup (R p 8, ll 11-13). After she was unable to make a choice, the investigators asked her to concentrate on her memory of the crime scene and make a choice based on the facial features of the man she saw (R p 8 ll 17-24). After calming down and thinking about her identification, Brown selected a photograph of someone other than Dunham (R p 9, ll 13-14). Catlett testified she felt they had the correct suspects despite the fact Brown did not identify Dunham in the photographic lineup (R p 10 ll 8-12).

On cross-examination, Catlett testified the pictures in the lineup were all similar (R p 14 ll 13-25).

The defense argued to the judge that admission of the photographic lineup would be unduly prejudicial. Counsel pointed out the fact Brown had actually chosen someone other than the defendant from the photographic lineup (R p 41 ll 3-6). Counsel also pointed out on the record the in-court identification of Dunham was made by Brown despite the fact she did not take any time in considering who was in the courtroom (R p 40 ll 18-21). Counsel argued Brown's failure to identify Dunham from a lineup and her in-court identification of him with little or no consideration was unduly prejudicial (R p 41 ll 10-13). Because the in-court identification was improperly made more reliable by the testimony related to the photographic lineup, the State in effect used the photographic lineup to improperly bolster the in-court identification.

The judge ruled the identification at issue was not unduly suggestive because the defendant was not arrested based on the photographic lineup (R p 45 ll 19-21). This ruling was not related to the defense argument and was an error.

The photographic lineup should not have been admitted in conjunction with the in-court identification. The judge did not correctly consider and rule upon Dunham's pretrial motion regarding the identification by Brown. At the beginning of the pretrial hearing, the assistant solicitor stated there was a motion regarding the identification procedure and a *Neil v. Biggers* hearing was required (R p 2 ll 15-18). The defense clarified its motion by telling the court he was making a motion to suppress the identification based on the failure to pick out the defendant from a photographic lineup (R p 2 ll 20-25, p 3 ll 1-2). The court then clarified the objection was to an in-court identification (R p 3, ll 7-8). It is clear from Dunham's argument he was actually arguing the combination of the out-of-court and in-court identification was unduly prejudicial to Dunham.

This distinction is important because this Court has considered a similar issue in *State v Prioleau* 339 S C 605 529 S E 2d 561 (Ct App 2000) Though this court correctly applied the law to reverse the defendant s conviction in *Prioleau* the Supreme Court reversed the decision without considering the analysis because the argument had not been properly raised in the lower courts *State v Prioleau* 345 S C 404, 410 548 S E 2d 213 216 (2001)

Though the facts of this Court s *Prioleau* decision are different the reasoning applies to the instant case and requires that Dunham s conviction be reversed In the *Prioleau* case there were three victims present at the scene of the crime Two of the victims identified Prioleau from a photographic lineup but the third victim never viewed the lineup In the courtroom the third defendant identified Prioleau from a photographic lineup and identified him in the courtroom In ruling the identification was unduly prejudicial this Court stated the identification was used to improperly bolster the identifications by the other two victims It gave undeserved credibility to the other identifications and was not a harmless error *Sate v Prioleau* 339 S C 605 615 529 S E 2d 561 (Ct App 2000)

By allowing evidence of an incomplete identification from a photographic lineup in conjunction with an in-court identification in the instant case the court allowed the State to improperly bolster the credibility of its own witness The witness was unable to pick Dunham from a photographic lineup It is irrelevant that Brown picked two similar photos, one of whom was Dunham because the photo array should have contained six similar-looking photos Investigator Catlett testified the photos were all similar in the photographic lineup (R p 14 ll 9-25) After being unable to pick Dunham from a photographic lineup Brown clearly made an in-court identification after only a cursory glance at Dunham if she even looked at him (R p 42 ll 10-13)

By allowing this combination of unreliable identifications the State was allowed to give the identifications a false reliability. The photographic lineup did not result in identification. Allowing the witness to testify regarding this unreliable identification while identifying the defendant in the courtroom makes the identification appear reliable, despite the fact there was actually an incorrect identification.

The judge's ruling that the identification was not suggestive because it was not the reason Dunham was arrested is not supported by any case law. There is not case in this state or any other, that bases the admissibility of identification on whether the identification led to an arrest. Such a rule would result in an intolerable situation. Any identification made after the arrest of a suspect would be reliable. This rule would make almost all identifications reliable regardless of their true accuracy and should not be allowed by this Court.

In addition to this ruling the judge ruled the identification was reliable based on a totality of the circumstances (R p 46 ll 1-3). This was error. The judge did not state what circumstances he considered nor did he place on the record any basis for his decision. If he had those circumstances would have required that he rule the identification of Dunham was unreliable as a matter of law. The trial court is required to consider five factors in determining the reliability of an identification: (1) the witness' opportunity to observe the criminal at the time of the crime, (2) the witness' degree of attention, (3) the accuracy of the witness' prior description of the criminal, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. *State v Moore*, 343 S Ct 282, 289, 540 S E 2d 445, 448-449 (2000) (citing *Neil v Biggers*, 409 U S at 199, 93 S Ct at 382).

The first three factors are the same for both identifications. Brown testified the car containing the shooter passed her and the victim from behind at approximately twenty to thirty miles per hour, much faster than she and the victim were walking (R p 20, ll 22-23 p 21 ll 10-14). She also testified she thought she was able to observe the car for a minute (Tr p 21, ll 15-17). Her own testimony contradicts the fact she would have been able to observe the occupants of the vehicle for a minute. Her testimony reflects she would have been able to observe the occupants for a very short period of time. At best, she had a very minimal opportunity to observe the occupants of the car.

There is very little testimony regarding Brown's degree of attention at the time of the shooting. On cross-examination, Brown testified she fell down and immediately ran behind another car at the time of the shooting (R p 35 ll 18-25 p 49 ll 1-3). This testimony contradicts Brown's ability to have seen the shooter with any great degree of attention.

The initial description of the shooter by Brown was elicited from her direct examination testimony during the pretrial hearing. Brown testified the shooter was a black man with a mustache wearing a black tee shirt and a flak jacket' (R p 23 ll 11-22). This general description gives little information regarding the physical characteristics of the suspect. There is no testimony regarding his height, weight, or any other physical features. There is no evidence in the record this description was accurate.

As to the out of court identification, the fourth factor weighs heavily against Brown's identification. There is no level of certainty, as the testimony clearly reflects she was unable to identify Dunham at all. Though this identification took place twelve hours after the incident, this is the only fact that remotely supports Brown's identification.

The in court identification took place approximately two years after the incident. Though Brown testified she was absolutely certain Dunham was the shooter, the other factors clearly contradict this assertion.

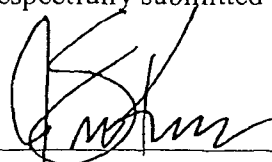
Based on a review of the factors required for a reliable identification, both of Brown's identifications fail as a matter of law and should not have been admitted into evidence by the trial court.

CONCLUSION

The trial court should not have admitted the out of court or in-court identification of Appellant Dunham by witness Brown. The court admitted the evidence on an improper basis. Additionally, the identification was unreliable as a matter of law.

Michael Dunham's conviction should be reversed.

Respectfully submitted,



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December 8, 2008
Columbia, South Carolina

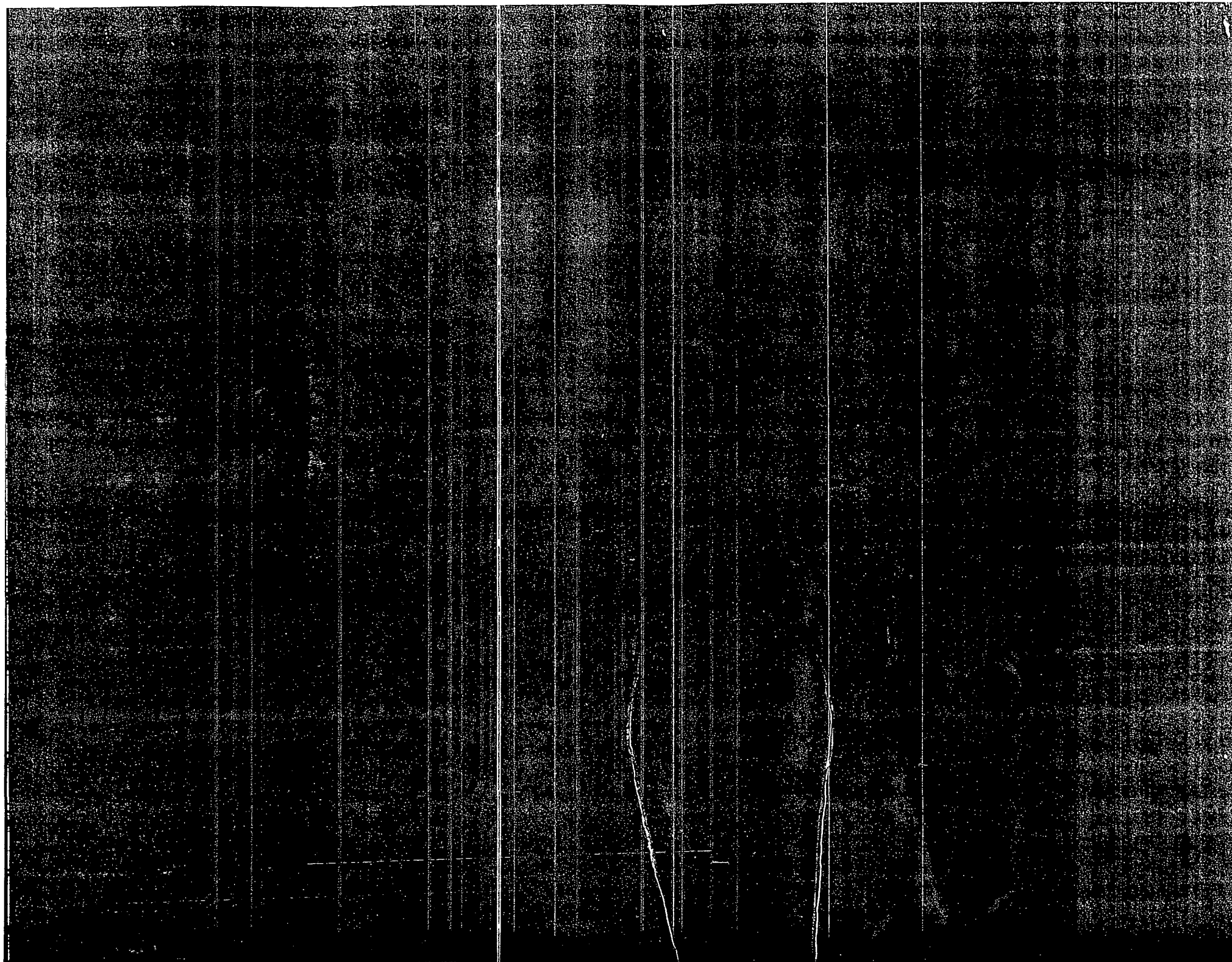


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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I Did the judge err in admitting the testimony of a photographic lineup and in-court identification where the victim did not pick out the appellant from the photographic line-up?

RESPONDENT'S STATEMENT OF THE CASE

Appellant, Michael Barney Dunham, murdered the victim, Anthony Gambrell, on the afternoon of December 13, 2004. On information and belief, Dunham was arrested and charged with Gambrell's murder on December 14, 2004. On November 7, 2005, Dunham was indicted by the Charleston County Grand Jury for the crime of murder (2005-GS-10-8285). Dunham was represented on the charge by Rodney Davis, Esq. The State was represented by Scarlett Wilson, Esq. Dunham proceeded to trial on February 13, 2006 before the Honorable Larry R. Patterson and a jury. On February 15, 2006, the jury found Dunham guilty of the murder of Anthony Gambrell. Due to the brutality and recklessness of the crime, Dunham was sentenced to life in prison by Judge Patterson on February 15, 2006. (Tr. p. 229).¹

¹Dunham also had previous juvenile adjudications for burglary, possession of a stolen vehicle and grand larceny.

RESPONDENT'S STATEMENT OF FACTS

On the afternoon of December 13, 2004, Anthony Gambrell (the victim) and his girlfriend were walking along the side of Montague Avenue in North Charleston. Four young males began following the couple and saying things to them (R 96-97, Tr 2/13 pp 109-110). Anthony turned around and faced the young men. All witnesses agree there was a fight between Anthony and one of the young men, *Michael Jeter* (R 62-63, 97-98, Tr 2/13 pp 75-76, 110-111). After the fight ended, *Jeter* told the victim, "[y]ou wait right here" (R 98, Tr 2/13 p 111). *Jeter* walked off with the other three young men. Anthony and his girlfriend resumed walking down Montague Avenue in the opposite direction (R 74 & 99, Tr 2/13 pp 87 & 112).

Jeter immediately borrowed a phone from one of the other young men, Rayshawn Green, and called Appellant Michael Dunham ("Dunham") on Dunham's cell phone. *Jeter* asked Dunham to come and pick him up (R 64-65, 176-77, Tr 2/13 pp 77-78 & Tr 2/14 pp 67-68). Dunham picked up *Jeter* in Dunham's car, a gray Mercury Marquis (R 65-67, 176-77, Tr 2/13 pp 78-80 & Tr 2/14 pp 67-68). Dunham and *Jeter* then proceeded to look for the victim and his girlfriend. They came upon them still walking along the same road where the fight had just taken place minutes before (R 99-100, Tr 2/13 pp 112-113). Dunham and *Jeter*, still riding in Dunham's gray Mercury Marquis, came up behind the victim and his girlfriend (R 100-101, Tr 2/13 pp 113-114). Dunham was driving and *Jeter* was in the passenger seat (R 101 & 109, Tr 2/13 pp 114 & 122). Dunham took a pistol and fired two to three shots in the direction of the victim and his girlfriend, Gina Brown, while *Jeter* watched from the passenger seat (R 101-02 & 133, 176-77, Tr 2/13 pp 114-115 & 2/14 pp 24, 67-68). The victim was struck in the chest (R 99, Tr 2/13 p 112). Gina was not hit and survived the assault. The shooting occurred approximately around 4:30 in the

afternoon (R 74, 82, 89, Tr 2/13 pp 87, 95, 102)

Before the victim was struck, Gina saw *Jeter* sitting in the passenger seat and another black male, who was driving the car, firing a pistol (R 101, Tr 2/13 p 114) Gina positively identified *Jeter* from a photographic lineup as both the person who had gotten in the fight with the victim just minutes before the shooting and the person who was in the passenger seat of the car from which the gunshots were fired (R 106, Tr 2/13 p 119) When she was shown a six picture photo-lineup with Dunham's picture in it, she initially told officers the shooter was either Dunham or another individual in photograph #3 The police asked her to focus on the facial features, and if possible, pick one of the two photographs She picked #3, but she told the officer she was not sure, because they both looked like the shooter² (R 108-110, Tr 2/13 pp 121-123) The investigator noted on the information sheet in her own handwriting that Gina was not sure about her identification between #3 and #5, because she was looking at the darker skin and she thought they looked alike (R 9, Tr 2/13 p 22, ll 11-24)

Gina positively identified Dunham at trial as the shooter (R 27-28, 109 & 123-24, 143-44, Tr 2/13 p 40-41, 122, & 2/14, pp 14-15, 34-35) She testified that she based her in-court identification on the view she got of Dunham during the drive-by shooting, and not because he was sitting at the defense table or because she had seen and positively identified him at a previous bond hearing (R 28 & 123-24, 142-43, Tr 2/13 p 41 & 2/14 pp 14-15, 33-34) She testified she was positive Dunham was the shooter (R 28, Tr 2/13 pp 41, ll 23-25)

The State's case did not center or hinge on Gina's identification of Dunham Police began

²The identity of the person in photograph #3 is not discussed in the record It appears his photograph was placed in the line-up because he resembled Dunham and the description given by the victim Dunham's picture is photograph #5

their investigation by locating the car that was used in the drive-by shooting (R 84-88 & 177-78, 187, Tr 2/13 pp 97-101 & 2/14 pp 68-69, 78) Rayshawn Green, who was one of the young men involved in the earlier altercation that led to the shooting, and who let *Jeter* borrow his phone to call Dunham, actually saw *Michael Jeter* get into the passenger side of Dunham's gray Grand Marquis immediately before the shooting Rayshawn saw the car drive away back toward where the earlier altercation had occurred (R 64-66, Tr 2/13 p 77-79) Rayshawn was not paying attention to who was driving the car when *Jeter* got into it (R 73, Tr 2/13 p 86)

After the car pulled away, Rayshawn then heard three shots and turned around and saw what had occurred (R 66, Tr 2/13 p 79) He and his brother ran to the scene of the murder (R 66, Tr 2/13 p 79) As they arrived, they saw Gina crying and yelling at *Jeter*, who was still riding in Dunham's car (R 66, Tr 2/13 p 79) Rayshawn positively identified Dunham's gray Grand Marquis as the vehicle *Jeter* got into and which was used in the drive-by shooting of the victim (R 67, Tr 2/13 p 80)

Another eyewitness, Patricia Rodriguez, had stopped at a grocery store to pick up a few things As she was heading to her house, which was nearby, she saw the victim and his girlfriend walking along the side of the road (R 74, Tr 2/13 p 87) She had parked her car at her home and was attempting to open her front door when she heard two gunshots (R 74, Tr 2/13 p 87) She then turned around and saw a car speeding off with its tires "squalling"[sic] (R 75, 77, Tr 2/13 pp 88, 90) She could see the heads of two people in the car that sped away (R 77, Tr 2/13 p 90) She then heard a young lady screaming, and she went to help her (R 75, Tr 2/13 p 88) Ms Rodriguez saw the victim on the ground She tried to call 911 and help Gina with the victim at the same time (R 75, Tr 2/13 p 88) Ms Rodriguez saw the bullet hole in the victim's chest (R

76, Tr 2/13 p 89) Ms Rodriguez positively identified Appellant Dunham's gray Grand Marquis as the vehicle that sped away after the shooting of the victim (R 76, Tr 2/13 p 89) She specifically remembered that Dunham's car had a dent on the passenger front door (R 76, Tr 2/13 p 89)

Police almost immediately located the car at the home of Chris White White testified that his stepson, Stephen Johnson, pulled into the yard around *dusk* on December 13, 2004 in Appellant Michael Dunham's gray Grand Marquis There was no one with his step-son When Mr White asked his stepson what he was doing in Dunham's car, Stephen told his step-father that Dunham had asked him to park his car at Mr White's home and he, Dunham, would come and get it later (R 254, Tr 2/14-15 p 41) Stephen then left Mr White's home on his bicycle, which he took out of the trunk of Appellant's car A few minutes later, numerous police arrived at Mr White's home and took custody of Dunham's car

Stephen Johnson explained to the jury in detail how he came into possession of Appellant's car at dusk the afternoon of December 13, 2004 He testified that earlier on the afternoon of December 13th he had been sleeping when his friend Jean (JJ) Jaquez came to his house and woke him up The two sat on the porch until about two-thirty p m (2 30) JJ left so Stephen could shower Stephen then left his house walking Stephen ran into his girlfriend, and Stephen started walking her home As he was walking his girlfriend home, Stephen ran into JJ again Stephen and JJ walked back to Stephen's house Stephen showered and the two then left Stephen's house on bicycles They rode around awhile and ended up at Marshview Apartments (R 164-170, Tr 2/14 pp 55-61)

Once they arrived there, they hung out with Appellant Dunham, Justin Lemon and *Michael*

Jeter Dunham actually introduced Stephen Johnson to *Michael Jeter*. The two had never met before. After Stephen had been at Marshview Apartments for a while, Dunham asked Stephen to go park his Grand Marquis at Stephen's house. Stephen testified he had never driven Appellant's car before by himself. He had only driven the car one time before and that was with Dunham in the car. Stephen testified that on December 13th he put his bike in the trunk of Dunham's car and drove the Grand Marquis to his house, Stephen's house, and parked it in the yard. Stephen testified it was almost dark when he did this for Appellant Dunham. Stephen testified he told his step-father why he was there, and he then took the bike out of the trunk of Dunham's car and rode back to Marshview Apartments. (R 170-74, Tr 2/14 pp 61-65)

Stephen testified that when he got back from moving Dunham's car he sat down at the bottom of a staircase where Dunham was talking with some of the other guys. Stephen testified he overheard Dunham talking, and it sounded like Dunham had just shot somebody. (R 174-75, Tr 2/14 pp 65-66) Dunham told Stephen that they shot at somebody from the car. (R 176, Tr 2/14 p 67) Appellant said it was him and *Jeter* who shot at someone. (R 176, Tr 2/14 p 67) Dunham said the reason they shot at somebody was [t]hat *Jeter* had got in a fight with somebody. "That *Jeter* called Dunham." "To bring him the gun." (R 176, Tr 2/14 p 67, ll 13-21) Stephen also testified that Dunham told him that when they saw the victim "he, Dunham let off two or three shots." (R 177, Tr 2/14 p 68, ll 3-4) Dunham also told Stephen that there was a girl with the guy he had just shot at. (R 177, Tr 2/14 p 68) Dunham also told Stephen that the gun he used was a 22. (R 177, Tr 2/14 p 68)

Stephen also positively identified Dunham's car as the one Dunham told him to hide and the one Dunham said was involved in the shooting. (R 178-79, Tr 2/14 pp 69-70) Stephen testified

that after he heard the car had been involved in a shooting, he left Marshview Apartments on his bike and went back home. When he got home, the police were already there at his house.

Jean (JJ) Jacques testified as well. He testified about how he and Stephen Johnson met up early the afternoon of the 13th and how they eventually ended up at Marshview Apartments. After they got there, Appellant Michael Dunham and *Micheal Jeter* came driving up (R 229, Tr 2/14-15 p 16). Appellant and *Jeter* were in Appellant's gray Grand Marquis (R 229, Tr 2/14-15 p 16). Jacques testified the car belonged to Appellant Dunham (R 229, Tr 2/14-15 p 16). Jacques, a friend of Dunham, was a hostile witness, but Jacques admitted that Appellant Dunham told him that *Jeter* had gotten in a fight (R 236, 246, Tr 2/14-15 p 23, 33). Jacques testified that Appellant told him *Jeter* said he got the best of the guy (R 236, Tr 2/14-15 p 23). Appellant Dunham told Jacques that *Jeter* told him to come help him fight the guy (R 236, 247, Tr 2/14-15 p 23, 34). Dunham told Jacques that *Jeter* called him to come pick him up (R 247, Tr 2/14-15 p 34). Dunham also told Jacques that he did that, went and helped *Jeter* (R 236, 247, Tr 2/14-15 pp 23, 34).

Jacques testified that after Dunham and *Jeter* returned in the car he, Jacques, knew something was wrong or "hot" with the car by the way Dunham and *Jeter* were acting (R 247, Tr 2/14-15 p 34). Jacques heard Dunham ask Stephen Johnson to put his car at Stephen's house because it was hot (R 236, Tr 2/14-15 p 23). Jacques also heard Dunham tell the other boys to watch the news and see what happened (R 236, Tr 2/14-15 p 23).

Justin Lemon also testified under oath. Lemon, who had known Dunham for five (5) years, testified that Appellant picked him up from school on the day of the victim's murder around 2:30 p.m. and dropped him off at Marshview Apartments. Lemon testified that Appellant left in his gray

Grand Marquis and was gone about two hours. Lemon testified that he saw Stephen Johnson arrive at Marshview Apartments on a bicycle. He also testified that Jean Jacques and another boy named Brandon were also there at the apartments. Lemon testified that after about two hours Appellant Dunham showed back up at Marshview Apartments in Dunham's gray car. *Michael Jeter* was with him. Lemon testified he and the other boys were watching movies in an apartment when Appellant knocked on the door and asked them to come outside. Lemon testified that *Jeter* and Appellant were acting different, and *Jeter* went to the trunk of Appellant Dunham's car and got a shirt and changed his shirt. (R 356, Tr 2/14-15 p 143) Lemon testified that Dunham told Stephen Johnson to take the car to Stephen's house. (R 356-57, Tr 2/14-15 pp 143-144) Lemon testified that Appellant Dunham left for about five minutes and when he came back he had changed his clothes. (R 357, 358, Tr 2/14-15 pp 144, 145) Lemon testified Dunham lived just five (5) minutes up the street, walking distance, from Marshview Apartments. (R 357, Tr 2/14-15 p 144) Lemon testified that Dunham told Stephen Johnson that they had been shooting at somebody and to take the car. (R 358, Tr 2/14-15 p 145) Lemon testified that Dunham said he thought he hit the guy they were shooting at. (R 359, Tr 2/14-15 p 146)

Lemon also testified he had previously purchased a cell phone from a Victoria Martin. He sold the cell phone to Dunham about a month before the murder. The State introduced telephone toll records which established that *Jeter*, using Rayshawn Green's phone, did in fact call Dunham on the phone Dunham had obtained from Lemon. (R 64-70, 348-50 & 409, 411, See Tr 2/13 pp 77-83, 2/14-15 135-137 & pp 195-196, State's Exhibit 52 & 53)

At the autopsy, it was determined that the victim died as a result of bleeding to death from the gunshot wound to the chest. The bullet went through the victim's heart. Recovered from the

— victim's body was a fired bullet (R 378, Tr 2/14-15 p 165) The victim also had a through and through gunshot wound to the back of the leg (R 377-78, Tr 2/14-15 p 164-165) The bullet recovered from the victim's chest was a 22 caliber bullet (R 303, 378-380, Tr 2/14-15 pp 90, 165-167)

Police were also able to lift fingerprints from Appellant Dunham's car The fingerprints of *Michael Jeter* and Dunham were found on or in Dunham's gray Grand Marquis (R 339-341, Tr 2/14-15 pp 126-128)

ARGUMENT

This issue is not preserved for appeal because Dunham did not make a contemporaneous objection to the introduction of testimony regarding the photo-line up or the in-court identification at the time of their admission or make a subsequent motion to strike. Furthermore, there is no merit to this issue, because the photographic line-up was not improperly suggestive nor was the in-court identification based on anything illegal or suggestive, and even if erroneous, their admission was harmless given the overwhelming evidence of Dunham's guilt.

Failure to Preserve the Issue

On appeal, Dunham challenges *the admission of testimony regarding the photographic line-up and the victim's in-court identification of him* as the driver and shooter. Dunham failed to preserve any issue regarding the admissibility of testimony regarding the photographic line-up or regarding the in-court identification because he did not make a contemporaneous objection to the admission of this evidence when it was admitted into evidence. Therefore, this appeal should be dismissed.

Dunham objected to any in-court identification of him by the surviving victim by way of a *pre-trial* motion in limine. Dunham argued any in-court identification should be suppressed because the eyewitness was unable to identify him from a photograph line-up within twelve (12) hours after the crime. Therefore, she should be prohibited from making an in-court identification. The motion resulted in an *in camera* Neil v. Biggers³ hearing which included sworn testimony. (R. 4-40, Tr. 2/13 p. 17, 123 - p. 53, 18). At the conclusion of the Biggers hearing, the trial judge over-ruled the objection to the admission of the identification.⁴

³Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972)

⁴It is questionable whether any issue regarding *testimony about the photographic line-up* containing Dunham was even preserved at this hearing, much less later on. In his motion and at the hearing, counsel objected to the witness making an in-court identification after she failed to

After the *motion in limine* was denied, Dunham's counsel and the State took up other pretrial motions regarding other unrelated evidence in the case. Subsequently, the jury was brought into the courtroom and sworn. The trial judge made his preliminary remarks to the jury, and the State and Dunham's counsel made their opening statements to the jury. Several witnesses were then called to the stand and testified for the State. These witnesses included two eyewitnesses and the first officer on the scene. (R. 59-89, See 2/13 Tr. pp. 72-102)

After these three witnesses testified, the victim's girlfriend, Gina Brown, testified under oath before the jury. When the victim's girlfriend was testifying, the State asked her about the photographic line-up identification of *Michael Jeter* and the circumstances surrounding it. The only objection raised to the identification of *Jeter* was on the basis of hearsay. (R. 105-06, See 2/13 Tr. p. 118, l. 8 - p. 119, l. 24) The State also asked her about the photographic line-up which included Dunham and the circumstances surrounding that identification. Appellant again objected on the grounds of hearsay regarding statements the officer showing the photo line-up may have made. (R. 107, See Tr. 2/13 p. 120, ll. 3-25) Gina Brown then testified to the circumstances surrounding the photographic line-up identifications in this line-up without any objection from Dunham. (R. 107-08, See Tr. 2/13 p. 120, l. 14 - p. 121, l. 24) After this testimony, the State then offered the line-up itself, State's Exhibit 30, to which Dunham's counsel objected.⁵ (R. 108-09, Tr. 2/13 p. 121, l. 25 -

positively identify him in the photographic array. (R. 2-3, See Motion & Tr. p. 15, l. 20 - p. 16, l. 8) At the close of the hearing, in arguing his motion or position, counsel stated the victim's initial identification of two people from the line-up was highly prejudicial. It is not clear counsel was asking the trial judge to exclude any testimony about the photographic line-up. The motion in limine was about the in-court identification. (R. 2-4, 40-46, 113-114, See Motion & Tr. 2/13 pp. 15-17, 53-59, 2/14 pp. 4-6, 15-18, ln. 2)

⁵This was a general objection and did not state the basis. Therefore, it was insufficient to preserve the specific issue raised for appeal.

p 122, l 3) The Court sustained the objection as to the cover-sheet on the line-up but overruled the objection as to the array (R 109, Tr 2/13 p 122, ll 3-6) The State continued with its direct examination by asking Gina Brown if she saw the person in the courtroom who shot her boyfriend. She said that she did. She positively identified Dunham as the shooter. *She made her in-court identification of Dunham without any objection from Dunham* (R 109, Tr 2/13 p 122, ll 10-21) The State then offered State's Exhibit Number 31, which was a copy of the photo-line up which contained Dunham's photograph and from which the victim initially picked both photographs and later picked photograph #3 ⁶ (R 109-110, Tr 2/13 p 122, l 22 - p 123, l 2) Defense counsel stated on the record that *he had no objection to the admission of State's Exhibit Number 31* (R 109-110, Tr 2/13 p 122, l 22 - p 123, l 2) The witness was then asked if State's Exhibit Number 31 was the same lineup as she signed off on photograph #3. She stated that it was the same, and it was the same as Exhibit 30 (R 110, Tr 2/13 p 123, ll 4-8) There was no objection by Dunham to this testimony (R 110, Tr 2/13 p 123) The State then asked to publish State's Exhibit #31 to the jury. The Court permitted the same, and there was no objection by Dunham (R 110, See Tr 2/13 p 123)

After the witness finished testifying on direct examination, there was a bench conference involving counsel and Judge Patterson (R 110, Tr 2/13 p 123) The Court then asked Dunham's counsel how long the cross-examination would be, and he responded that it would probably be lengthy (R 110, Tr 2/13 p 123) Judge Patterson decided to excuse the jury for the evening and begin cross-examination in the morning. The jury was excused.

⁶The only difference in State's Exhibit 30 and 31 which Respondent can identify is the handwriting over photograph #3 which appears to be Gina Brown's signature. Exhibit #31 is a clean copy of the photo array.

After all of this, Dunham's attorney *then stated that he needed to renew his earlier objections* to the identification made by this witness, and the objections from the pre-trial hearing (R 111, Tr 2/13 p 124) The objection came to late The objection was not contemporaneous with the admission of the evidence and therefore was not timely State v Wannamaker, 346 S C 495, 500, 552 S E 2d 284, 287 (2001) ⁷ This issue was not preserved for appeal

A *motion in limine* seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury ⁸ A pre-trial evidentiary ruling on the admissibility of evidence is preliminary A ruling *in limine* is not final Unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review State v Griffin, 339 S C 74, 77, 528 S E 2d 668, 669 (2000), State v Fletcher, 363 S C 221, 250, 609 S E 2d 572, 587(Ct App 2005), State v Wood, 362 S C 520, 526, 608 S E 2d 435, 438 (Ct App 2004)(making a *motion in limine* to exclude evidence at the beginning of trial does not preserve issue for review because a *motion in limine* is not a final determination, therefore moving party must make contemporaneous objection when evidence is introduced), Watson v Chapman, 343 S C 471, 481, 540 S E 2d 484, 489 (Ct App 2000), Samples v Mitchell, 329 S C 105, 108, 495 S E 2d 213, 216 (Ct App 1997), State v Gagum, 328 S C 560, 565, 492 S E 2d 822, 824 (Ct App 1997)(an *in limine* motion is not final, the losing party must renew his objection at trial when the evidence is presented in order to preserve the issue for review), State v Luckabaugh, 327 S C 495, 498, 489

⁷The fact that Judge Patterson said "all right" in response to counsel's late attempt to preserve any pre-trial objection(s) does not preserve the issue for appeal The objection must be made at the time the evidence is offered

⁸The fact that Dunham entitled his motion a Motion to Suppress is irrelevant It was still a *motion in limine* to prohibit the introduction of evidence

S E 2d 657, 659 (Ct App 1997)

On this preservation issue, this case is strikingly similar to State v Burton, 326 S C 605, 612, 486 S E 2d 762, 765 (Ct App 1997) In Burton, this Court held that a ruling made *in camera* to determine the admissibility of the victim's sister's testimony was not sufficient to preserve the issue for review when after the *in-camera* hearing, testimony was given by two other witnesses, a break was taken, and then the victim's sister testified without objection The ruling in Burton is applicable to the facts of this case

Gina Brown made the in-court identification without any objection from Dunham Brown also testified to the circumstances surrounding the line-up Dunham's picture was in without a renewal of any pre-trial objection The only objections raised to this testimony were hearsay objections regarding what the investigator said to Ms Brown during presentation of the line-ups Additionally, Dunham objected to the admission of State's Exhibit 30, but he did not object to State's Exhibit 31, which the witness testified was the same line-up⁹ Dunham did not raise the objection he raised pre-trial until after the witness had testified completely on direct examination and after the identification testimony was taken and admitted before the jury The objection was not

⁹The record is not even clear what the objection to State's Exhibit 30 was Dunham's objection was a general objection (R 109 Tr 2/13 p 122) Investigator Catlett testified the notes on the cover-sheet, which was originally part of Exhibit 30, were hers Exhibit 30 and 31 appear to be the same except for the victim's signature over photograph #3 Gina Brown testified it was the same line-up from which she identified photograph #3 Therefore, it was the same line-up from which she preliminarily indicated the shooter was either #3 or #5 (Appellant's photograph) (R 108-111, See 2/13 Tr pp 121-124) Additionally, when Investigator Catlett testified, Dunham objected to the admission of the cover sheet, which contained Catlett's notes regarding the witness partial identification and trouble distinguishing between Dunham's photograph and photograph #3 (R 153-54, See Tr 2/14 p 44, 1 22-p 45, 1 10) The officer testified to the circumstances surrounding the photo line-up without objection, but the trial judge would not allow the cover-sheet into evidence with the notes

timely The objection must be made at the time of the admission of the evidence

This case is clearly distinguishable from those cases where the motion *in limine* was immediately before the witness' testimony or the trial judge indicated that his ruling was final and there was no need for further objection See State v Forrester, 343 S C 637, 642, 541 S E 2d 837, 840 (2001), State v Govan, 372 S C 552, 556-57, 643 S E 2d 92, 94 (Ct App 2007), State v Wood, 302 at 526, 608 S E 2d at 438-39, State v Tufts, 355 S C 493, 497, 585 S E 2d 523, 525 (Ct App 2003), State v Humphries, 346 S C 435, 439-441, 551 S E 2d 286, 289 (Ct App 2001), *reversed on other grounds*, 354 S C 87, 579 S E 2d 613 (2003), Samples v Mitchell, State v Mueller, 319 S C 266, 268, 460 S E 2d 409, 411-12 (Ct App 1995) In the present case, the motion *in limine* occurred prior to the trial of the case, additional motions were heard after this motion, opening arguments were made, and then three other witnesses testified Evidence was introduced prior to the victim's girlfriend even testifying The trial judge's ruling was preliminary only See Govan, 372 S C at 557, 643 S E 2d at 94 (pointing to the fact that no evidence was taken between the ruling on the *motion in limine* and the admission of the evidence in finding the issue was preserved) Furthermore, counsel in the present case waited until after the testimony and evidence was introduced to the jury, and the witness had completed her entire direct examination before attempting to renew his *motion in limine* This issue is not preserved for appellate review Forrester, 343 S C at 642, 541 S E 2d at 840 (normally a moving party must make a contemporaneous objection when the evidence is introduced) Dunham made no contemporaneous objection to preserve this issue

In fact, Dunham waived and abandoned this issue by allowing Ms Brown to make her in-court identification without objection and by allowing Ms Brown to testify regarding the

circumstances surrounding the line-up without a proper objection. Additionally, Dunham waived and abandoned this issue at trial by allowing cumulative evidence, State's Exhibit #31, into evidence without objection. Furthermore, Detective Catlett testified without objection to the circumstances surrounding the photographic line-ups. Appellant's appeal must be dismissed.

Additionally, Dunham now asserts in his appellate brief that the State improperly bolstered *in camera* identification by the admission of the photographic line-up. Dunham did not raise this argument below. (See Tr. 2/13, 2/14, & 2/14-15). He cannot raise it now for the first time on appeal. State v. Dickman, 341 S.C. 293, 296, 534 S.E.2d 268, 269 (2000) (party cannot argue one ground at trial and another ground on appeal), State v. Conyers, 326 S.C. 263, 266, 487 S.E.2d 181, 183 (1997) (argument not made to the trial court is not preserved for review). This preservation issue was decided in State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 217 (2001), wherein our Supreme Court held that the issue was not preserved because "Prioleau did not base his objection at trial on the theory that the identification improperly bolstered the identifications" of two other witnesses. This appeal must be dismissed.¹⁰

¹⁰Dunham did not argue improper bolstering during the motion *in limine* during direct examination, or at a later *in camera* hearing regarding the witness seeing and identifying Appellant at an earlier bond hearing. At the second *in camera* hearing, Dunham did attempt to renew his earlier objection in light of the additional testimony that the witness first positively identified Dunham at a bond hearing, however, by that time the identification evidence was already before the jury without any contemporaneous objection by Dunham, and Dunham did not move to strike that testimony based on the bond hearing testimony. Dunham did make a motion for a mistrial based on the bond hearing information and that motion was denied (R. 113-130, See Tr. p. 4, l. 25 - p. 21, l. 15). At the close of the second *in camera* hearing, Judge Patterson again found the identification was reliable and admissible. (See Tr. 2/14 pp. 5 - 18, ln. 2). Dunham does not raise the bond hearing issue or the mistrial motion on appeal. (See B.O.A.). In fact, Dunham does not mention in his brief at all the second *in camera* hearing or Judge Patterson's second finding of reliability and admissibility of the witness' identification. (See B.O.A.).

The Merits

Dunham alleges the trial judge erred in admitting testimony regarding the photo line-up and Gina Brown's in-court identification of him as the person she saw on December 13, 2004 driving the gray Mercury Marquis and shooting at her boyfriend. He alleges he is entitled to reversal of his murder conviction and a new trial based on this alleged error alone. Dunham is wrong in his allegation of trial judge error and regarding his entitlement to a new trial.

Dunham alleges the trial judge should not have admitted the in-court identification because the witness did not pick Dunham out of the photographic line-up shown to her in the early morning hours after the murder. Dunham misunderstands the purpose of a Biggers hearing and is wrong regarding our case law on the admissibility of such evidence.

An in-court identification of an accused is inadmissible if a *suggestive out-of-court identification procedure* created a very substantial likelihood of irreparable misidentification. State v. Traylor, 360 S. C. 74, 81, 600 S. E. 2d 523, 526 (2004). Generally, "a trial court must hold an in camera hearing when the State offers a witness whose testimony identifies the defendant as the person who committed the crime, and the defendant challenges the in-court identification as being tainted by the previous *illegal identification or confrontation*." State v. Ramsey, 345 S. C. 607, 613, 550 S. E. 2d 294, 297 (2001) *emphasis added*. The purpose of the *in camera* hearing is to determine whether the in-court identification was of independent origin or was the tainted product of the circumstances surrounding the prior, illegal or tainted out of court identification. State v. Carlson, 363 S. C. 586, 594, 611 S. E. 2d 283, 287 (Ct. App. 2005) *citing* Simmons v. United States, 390 U. S. 377, 384, 88 S. Ct. 967 (1968) (conviction based on suggestive pre-trial identification and subsequent in-court identification will be set aside only if the photographic identification was so suggestive as

to give rise to a very substantial likelihood of irreparable misidentification), and State v Moore, 343 S C 282, 286, 540 S E 2d 445, 447 (2000) (“An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification”) Only if the pretrial procedure was suggestive, should the trial court consider the second question, i.e. whether there is a substantial likelihood of irreparable misidentification State v Brown, 356 S C 496, 503, 589 S E 2d 781, 784-85 (Ct App 2003) *quoting Moore*, 343 S C at 287, 540 S E 2d at 447-48, *other citation omitted*

In the *in camera* hearing, Dunham alleged the in-court identification should be suppressed because the witness did not positively identify him when the photo-array was displayed to her Dunham does not even allege this pre-trial identification procedure was illegal or improperly suggestive This is not sufficient to suppress testimony regarding the line-up or the in-court identification The analysis ends here

In fact, Dunham cannot show the presentation of the photo-array was an illegal or improperly suggestive prior identification The record shows the presentation of the photographic line-up and the witness’ partial identification of Dunham and another individual was anything but suggestive This Court need proceed no further in the analysis on this issue Brown, 356 S C at 503, 589 S E 2d at 784-85, Moore, 343 S C at 287, 540 S E 2d at 447-448

What Occurred at Trial

After the jury was selected but before the trial began, the Solicitor notified the court that there was an issue regarding identification Dunham’s counsel informed Judge Patterson that the victim’s girlfriend had been shown a line-up containing Dunham, and the victim’s girlfriend alternated between picking Dunham and someone else’s photograph in the line-up (R 2, Tr 2/13 p 15)

Dunham's trial counsel stated that he moved to prohibit the victim's girlfriend from identifying his client in court since she did not identify him prior to the trial (R 2-3, Tr 2/13 pp 15-16) A Neil v Biggers, hearing was conducted by Judge Patterson including taking of sworn testimony from the officer who conducted the photo line-up identification and from the surviving victim, Gina Brown ¹¹ (R 4, Tr 2/13 p 17)

Investigator Catlett testified that she presented at least two line-ups to the surviving victim Gina Brown at her aunt's home ¹² Out of two of the photo line-ups or arrays she was able to identify someone Investigator Catlett testified that Ms Brown had given a physical description of the two suspects in the vehicle that committed the drive-by shooting Investigator Catlett testified that the photographic line-ups were assembled with similar individuals in each line-up based on the victim's descriptions of each suspect (R 6, Tr 2/13 p 19) Prior to presenting Gina with the photographic line-ups, Investigator Bartlett went over the Charleston County Sheriff's Office photographic lineup information sheets with her Bartlett testified that she did not tell the victim that either one of the perpetrators were in any of the line-ups, and she asked Gina if she recognized anyone in the photographic line-ups which were presented to her separately (R 7-8, Tr 2/13 pp 20-21) Investigator Bartlett testified that when she was shown the first line-up, she identified *Michael Jeter* as the passenger in the vehicle that committed the drive-by shooting (R 7-8 Tr 2/13 pp 20-21)

¹¹The State did not object to the conducting of a Neil v Biggers hearing and in fact insisted on it

¹²Investigator Catlett testified that she had four line-ups with her and showed at least two of them to the victim Investigator Catlett could not remember if she showed all four line-ups Gina testified that she was shown more than just the two (R 29, Tr 2/13 p 42) She testified she was shown four line-ups (R 14, 21, Tr 2/14 p 27 & 34) She did not recognize anyone in the other line-ups (R 29 & 143, Tr 2/13 p 42 & 2/14 p 34)

Bartlett testified that when she was shown another line-up, Bartlett testified Gina immediately became upset and Investigator Bartlett asked her to calm down. After she calmed down, Bartlett testified Gina was torn between two photographs. Bartlett testified she could not choose between photograph #3 and photograph #5 because one had darker skin (R 8, Tr 2/13 p 21). The photographs were black and white photographs (R 8-9, Tr 2/13 pp 21-22). Dunham's photograph was photograph #5. Bartlett testified that after she calmed down the victim immediately pointed to photograph #3 and photograph #5. Bartlett testified that she eventually signed off on picture #3, however Bartlett noted on the Sheriff's Information Sheet at that time that she wasn't sure between photograph #3 and photograph #5 because one had darker skin but the two looked alike (R 9, Tr 2/13 p 22). Detective Bartlett testified that the victim did not state that she was absolutely positive the shooter was in photograph #3 (R 10, Tr 2/13 p 23). Bartlett testified the individuals in photographs #3 and #5 do look similar, the only difference being their complexion (R 10-11, Tr 2/13 pp 23-24). After the line-ups were shown, based on the information police had that led them to show Gina Brown the line-ups, Investigator Bartlett was confident police had arrested the right people, Jeter and Dunham, even though the witness did not positively identify Dunham from his photo line-up (R 10, Tr 2/13 p 23, ll 2-15).

Gina Brown also testified during the pre-trial hearing. Ms. Brown testified that at the time of the trial she was twenty-seven (27) years old and was employed as a server. She had previously been employed as a manager at a restaurant and had worked there for nine (9) years. Ms. Brown testified that at the time her boyfriend was murdered she was not under the influence of any alcohol or drugs or anything like that (R 18, Tr 2/13 p 31). She testified that the shooting occurred at approximately 4:30 in the afternoon and the lighting outside was bright (R 18-19, Tr 2/13 pp 31-

32) She testified the weather was clear. It had not been raining or snowing or anything of that nature (R 19, Tr 2/13 p 32). She told Judge Patterson she and the victim had just walked to a convenience store and purchased some cigarettes. She testified to the altercation that occurred between her boyfriend and *Michael Jeter*. She testified she heard *Michael Jeter* tell the victim, you just wait right here (R 20, Tr 2/13 p 33). She testified she and the victim started walking down the street but every now and then she would look back (R 20, Tr 2/13 p 33).

Gina testified that she saw a car riding up slowly behind them (R 20, Tr 2/13 p 33). She testified she and her boyfriend were walking beside a two-lane road (R 23, Tr 2/13 p 36). She testified the window was down on the car (R 22, Tr 2/13 p 35). She testified she was about the width of a car from the assailant car when she saw the driver and the occupant and the shooting occurred (R 23, Tr 2/13 p 36). She testified that she saw the driver shoot two or three times (R 20-21, Tr 2/13 p 33-34). She testified she saw him reach down for the gun before he fired it (R 22, Tr 2/13 p 35). She also testified that *Michael Jeter* was in the passenger compartment (R 21, Tr 2/13 p 34). She recognized him as the same person who had just been in the fight with her boyfriend (R 21, Tr 2/13 p 34). She estimated that the vehicle was moving at twenty (20) to thirty (30) miles an hour at the time of the shooting (R 21, Tr 2/13 p 34). She also testified the car was moving a little faster than she and her boyfriend were walking (R 22, Tr 2/13 p 35). She testified that she got to see them for "I don't know. Maybe a minute" (R 21, Tr 2/13 p 34). But she also testified that she could not be sure exactly how long she got to see them (R 21, Tr 2/13 p 34). She testified she saw the shooter fire with his left hand (R 22, Tr 2/13 p 35). She testified she had not seen the driver any time before she saw him shooting but she had seen the passenger before (R 22, Tr 2/13 p 35). She testified that she gave a description of the shooter

to police, including that the shooter was a black man, with a black t-shirt and she believed a flack jacket, bluish in color (R 35, Tr 2/13 p 48) She also told police he had a mustache (R 23, Tr 2/13 p 36) His complexion was lighter than hers (R 35, Tr 2/13 p 48) She also testified later before the jury that she told police it looked like to her that he had braids (R 104, Tr 2/13 p 117) She testified that she gave her description at the police station

Gina testified that she was shown a total of four line-ups at her aunt's house out of which she was able to identify persons in two (R 29 & 136-37, 143, Tr p 2/13 p 42 & 2/14 pp 27-28, 34) She testified that Detective Catlett showed her the photographic line-ups and did not tell her that either of the perpetrators of the murder were in the line-ups She also testified that Detective Catlett did not tell her who to pick out (R 25, Tr 2/13 p 38) She testified that she picked out *Michael Jeter* from the first photographic line-up because she recognized him from the earlier altercation and as the passenger in the car that committed the murder (R 25, Tr 2/13 p 38) She testified that she had no question at all that the photograph of *Michael Jeter* was the person in the passenger seat of the car, and she told the officer the same (R 24-25, Tr 2/13 pp 37-38)

With regard to the other photographic line-up from which she recognized someone, she testified that two pictures stood out to her, #3 and #5 She testified that they looked alike to her (R 26, Tr 2/13 p 39) She testified they looked like the shooter to her (R 26, Tr 2/13 p 39) She testified that she had a hard time between selecting photograph #3 and photograph #5 She testified she had difficulty because they looked alike except for the skin color (R 26-27, Tr 2/13 pp 39-40) She testified she selected #3 because the skin color was darker, but she testified she was not sure number three was the actual shooter (R 27, Tr 2/13 p 40) She testified that #3 and #5 looked like the shooter (R 27, Tr 2/13 p 40) She testified photograph #3 looked most like the

shooter but only because of the complexion (R 27, Tr 2/13 p 40) She testified before the jury that she did not say she positively identified #3 as the shooter (R 108, Tr 2/13 p 121) She testified she thought #3 and #5 looked like the shooter (R 108, Tr 2/13 p 121)

Gina Brown positively identified Dunham in the courtroom in the *in camera* hearing and before the jury as the man who shot and murdered her boyfriend (R 21, 27, 109, Tr 2/13 pp 34, 40, 122) She testified she had absolutely no doubt that Dunham was the shooter (R 28, Tr 2/13 p 41) She testified that the basis for her in-court identification was that he was the one she saw the day of the murder (R 28, Tr 2/13 p 41)

After hearing all of the testimony at the Biggers hearing, Judge Patterson ruled that the photographic line-up was not unduly suggestive (R 45, Tr 2/13 p 58) He pointed out that in viewing the first line up the witness positively identified the person in that line-up He also noted in the second line-up she picked out two photographs, one of them being the Defendant in this case, and she in fact signed on the other photograph, photograph #3 She did not make an identification there and apparently he was not arrested because of the identification, so that process was not unduly suggestive ¹³

¹³Dunham argues that this sentence of the record indicates Judge Patterson considered an improper factor in deciding the line-up was not unduly suggestive (See B O A) Respondent does not read this sentence in the same way Reviewing the Judge's comments in context, the trial court was pointing out that the line-up could not be suggestive because the victim did not positively identify Dunham but narrowed the identification down to Dunham and another person and even signed on the other person's photograph, therefore the police could not even arrest Dunham based on this identification The presentation of the photographic line-up could not be suggestive Furthermore, the record from the conclusion of the second *in camera* hearing shows that Judge Patterson made his decision based on the testimony he saw and heard and that Gina Brown's identification was credible and therefore reliable (R 125-130, See 2/14 Tr pp 16-21) See State v Roach, 364 S C 422, 613 S E 2d 791 (Ct App 2005)(judge's comments in ruling on motion to suppress an in-court identification must be considered in the context they were made) Dunham fails to mention this second finding by Judge Patterson (See

Based on the "totality of the circumstances" Judge Patterson found that the question of the accuracy of the victim's identification should be submitted to the jury (R 46, Tr 2/13 p 59, ll 1-7) He denied the defense motion to suppress (R 46, Tr 2/13 p 59, l 7)

Gina Brown testified to essentially the same facts before the jury as she testified to *in camera*. She testified to the young men following she and the victim up the street. She testified that her boyfriend got into a physical fight with *Michael Jeter* as a result of which *Jeter* told them to stay right there. She testified she and the victim continued to walk up the road and the car came up behind them. She testified the driver's side window on the car was down, and she immediately recognized *Jeter* as the passenger in the car. She testified she had never seen the driver before that day, but she saw him fire the gun two to three times.

She also testified she could see the gun and it was a revolver. She testified she saw the handle of the gun and it appeared to be tan or marble. She testified that she was able to get a good look at the driver. After going to the hospital, she gave police a statement at the police station and gave them a description of the person driving the car. She testified she told police it looked like he had braids and a mustache. It also looked like he was wearing a jacket. She described the passenger as light skinned, kind of chunky with a black t-shirt and long hair (R 92-105, Tr 2/13 pp 105-118)

Later that same night, she was shown four photographic line-ups in all at her aunts' house. She testified the police did not tell her the perpetrators were in any of the line-ups or that she had to pick anyone out. She testified that she could have said that she didn't recognize anyone (R 105-111, Tr 2/13 pp 118-124)

B O A)

camera examination of the witness as a result of what he believed Ms Brown testified to on direct ¹⁴

The jury was sent out and Ms Brown testified that she saw Appellant at a bond hearing before a Circuit Judge some time after his arrest. She testified she immediately recognized Dunham and recognized him from the shooting on December 13th not because he was in the courtroom for a bond hearing. She testified she told the victim's family while she was there at the hearing and she thought she told a police investigator ¹⁵. When she arrived back home from the bond hearing, she told her family that Dunham was in fact the trigger-man and driver. (R 113-124, Tr 2/14 pp 4-15)

After considering all of her testimony, Judge Patterson again found her identification was admissible. He stated on the record that he had watched the witness testify and observed her demeanor and believed she was being honest and forthright about her identification. After considering her testimony, Judge Patterson held that her identification was a question for the jury, and he would charge them regarding the same in his jury instructions. Judge Patterson found that she did pick out Dunham along with another individual and thought it was one of the two at the time she was shown the photo-array. Judge Patterson found that he had reviewed the two photographs,

¹⁴Defense counsel told the judge his notes reflected that the witness said something about seeing Dunham at a preliminary hearing, and he would like to question her separately about that fact. The judge also thought he remembered that testimony. Actually, Respondent cannot find anywhere in the record where the witness stated in the first *in-camera* hearing or on direct examination that she saw Dunham at a preliminary hearing. Regardless, Judge Patterson convened a second in-camera hearing on this issue which complied with State v Simmons, *infra*. Counsel was allowed to question the witness extensively about this *in camera* and before the jury. The trial judge again found the witness' identification reliable and admissible. Dunham raises no issue regarding his being viewed and identified at a bond hearing. As previously stated, the fact that the witness first positively identified Dunham at a bond hearing is not even mentioned in Appellant Dunham's brief. (See B O A)

¹⁵The chief investigator did not recall being told of this identification. The Solicitor was not aware of this identification. Dunham moved for a mistrial on discovery grounds. The trial judge denied the motion. Dunham does not raise this issue on appeal. (See B O A)

#3 and #5, and found that they do look very much alike. Judge Patterson found the matter should be submitted to the jury and he would instruct them that the State must prove the identity of the perpetrator beyond a reasonable doubt. The record, read as a whole, reflects that he found her identification reliable. (Tr. 2/14 pp. 15-18). He did not abuse his discretion or commit legal error.

Standard of Review

The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006), State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005), State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999).

The decision to admit eyewitness identification is within the trial judge's discretion. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). The admission of eyewitness identification is in the trial court's discretion and will not be disturbed on appeal absent an abuse of that discretion or the commission of prejudicial legal error. State v. Moore, 343 S.C. at 288, 540 S.E.2d at 448, State v. Brown, 356 S.C. at 502, 589 S.E.2d at 784. "Reliability is the linchpin in determining the admissibility of identification testimony." Id. at 504, 589 S.E.2d at 786, citing Manson v. Brathwaite, 432 U.S. 98 (1977), State v. Blassingame, 338 S.C. 240, 251, 525 S.E.2d 535, 541 (Ct. App. 1999).

"The admissibility of an in-court identification is frequently challenged by a criminal defendant on the grounds that a pre-trial identification procedure was unduly suggestive." State v. Rice, 375 S.C. 302, 327, 652 S.E.2d 409, 422 (Ct. App. 2007) referencing Moore, 343 S.C. at 286, 540 S.E.2d at 447 ("An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.")

no argument nor has he pointed to any fact that would cause this Court to find or conclude that the photographic line-up, or how it was shown to the surviving victim shortly after the crime, was suggestive. In fact, the evidence shows that the line-up was anything but suggestive.

The testimony shows that after developing Dunham as a suspect, his photograph was placed in a photographic array with five other individuals of similar physical characteristics. Four photographic arrays were shown to the victim. The officers did not suggest to Gina Brown that the shooter was in any of the particular photographic arrays that were shown to her. The evidence was uncontradicted that the police officers did not tell her which photograph to identify. The testimony established that the line-up was shown to the victim, and she identified either Dunham or the person in photograph #3 as being the shooter. She testified she could not tell which one because they looked so much alike. She testified she only picked out photograph #3 based on the complexion in the black and white photograph. Additionally, she testified that the shooter looked like #3 or Dunham and the only reason she picked #3 was because of how his complexion was reflected in the photographs. The officer who showed the photographic line-ups testified consistent with the victim's testimony on these points.

The presentation of the photographic line up was not suggestive in any way and the jury was aware that the surviving victim actually pointed to Dunham and photograph # 3 and then actually picked out someone other than Dunham. The photographic line-up was certainly not improperly suggestive. *See State v. Gambrell*, 274 S.C. 587, 266 S.E.2d 78 (1980) (wherein the Court found that the fact that the witness could not differentiate between two photographs because they "looked so much alike" belies any assertion that the photos were selected or arranged in a manner likely to suggest to the witness to identify the appellant). *See also State v. Turner*, 373 S.C. 121, 644 S.E.2d

693 (2007)(photo-line up was not unduly suggestive where despite variations in background appellant did not stand out in comparison to other individuals where all six men had facial hair and all appeared to be "built as described by the victim) State v. Brown, 333 S C 185, 508 S E 2d 38 (Ct App 1998)(a witness identification need not be one hundred percent certain in order to meet due process requirements)

— The testimony regarding the photographic line-up was also relevant and admissible because the victim narrowed her selection down to Dunham and photograph #3 as the shooter. The testimony was clear she was not sure about her identification of #3. Both photographs looked like the shooter to the victim, the detective, and the trial judge. And, the victim just happened to narrow her choice of the shooter down to two individuals, one of whom was the owner of the car used in the shooting and also the same person who admitted to his friends that he had committed the shooting. Evidence is relevant and therefore admissible if it shows the existence of a fact is more likely than not. The admission of the line-up was also necessary. The line-up was admissible so the jury could see each of the photographs in the line-up and judge for themselves whether the photographs were similar or not and why the victim had difficulty in picking one photograph. The evidence surrounding the photographic line-up was properly admitted.

— The admissibility of testimony regarding the photographic line-up is supported by State v. Brown. In Brown, this Court upheld the trial court's determination that a witness partial identification at a photographic line-up display was reliable and therefore admissible. The Court pointed to several facts as controlling. First, the witness viewed the line-up only six days after the crime was committed. Second, there was no evidence presented at trial that indicated the circumstances surrounding the photo array were tainted. Third, although the witness testified that

she could not swear to the defendant's identification at that time, she stated she believed his picture portrayed one of the robbers. Fourth, she explained her hesitancy to identify the defendant because she did not want to make a mistake. Fifth, this Court pointed out that an eyewitness identification need not be one hundred percent certain in order to meet due process requirements. Id., citing State v. Washington, 323 S. C. at 111, 473 S. E. 2d at 481, U. S. v. Peoples, 748 F. 2d 934 (4th Cir. 1984) (per curiam) cert. denied 471 U. S. 1067, 105 S. Ct. 2143 (1985) (finding testimony that defendant "resembled" one of the bank robbers admissible).

The testimony regarding the photographic line-up in this case was admissible for the same reasons. There was nothing suggestive about the line-up itself or its presentation. The line-up was shown just twelve (12) hours after the crime itself. The witness only made a partial identification but stated both pictures looked like the shooter because they looked alike to her, and the detective and the trial judge agreed. Fourth, she explained why she could not make a positive identification and she picked out the other photograph, photograph #3, because of his complexion. Finally, her identification did not have to be one hundred percent certain to be admissible.

Furthermore, for the same reason Dunham cannot show that the viewing of the photographic line-up created a very substantial likelihood of irreparable misidentification. State v. Caldwell, 378 S. C. 268, 662 S. E. 2d 474 (Ct. App. 2008). Police showed the witness four photographic line-ups. They did not suggest to her that any of the perpetrators of the murder were in any of the line-ups. They did not tell her who to pick out. There was nothing suggestive about the line-ups themselves. Additionally, this partial identification of Dunham was corroborated by other evidence in the case including the fact that the car used in the shooting belonged to Dunham and other witnesses identified Dunham as the shooter based on his admissions to them. State v. Gambrell, 274 S. C. 587,

266 S E 2d 78 (1980)(fact that victim's identification of appellant was corroborated by another witness weighed in favor of finding there was not a substantial likelihood of irreparable misidentification) ¹⁶See also State v Brown, *supra* (noting witness' identification was corroborated by admissions of the defendant) Judge Patterson did not err in admitting testimony regarding the photographic line-up

The in-court identification was properly admitted as well. The in-court identification could not have been tainted by the photographic line-ups, because as previously discussed, there was nothing suggestive or improper about the photographic line-ups. The officers showed Ms. Brown four (4) different line-ups and they did not indicate the shooter was in any of them. The officers did not pick out any pictures for the victim, she picked them out herself. Dunham cannot show that a prior improper or illegal photographic line-up tainted the in-court identification, because there was nothing suggestive about that process. Because the out-of-court identification procedure was not unduly or improperly suggestive, this court need proceed no further in its analysis. State v Brown, 356 S C 496, 589 S E 2d 781 (Ct. App. 2003)

The State was not improperly bolstering the witness' in-court identification by introducing the facts surrounding the photographic line-up, but introducing the true facts of the case and the investigation, that the witness had made a partial identification of Dunham twelve (12) hours after the murder. Furthermore, the testimony regarding the photographic line-up did not bolster the witness in-court identification, because the witness testified she first positively identified Dunham at a prior bond hearing. This information was before the jury from which they could judge the

¹⁶The witness partial identification of Dunham is also corroborated by the fact that the witness positively identified Jeter as the passenger. Other witnesses identified Jeter as the passenger and Appellant's car and the one used in the robbery.

witness credibility

Furthermore, the in-court identification was admissible because the witness testified that she identified Dunham based on her view of him the afternoon when the shooting took place, not based on the fact that he was sitting at counsel table for the trial. Gina Brown's inability to identify Appellant specifically when shown the photo-array does not serve as a basis to exclude her in-court identification. Even when a witness fails to identify a defendant in a photo-array, the in-court identification can stand. See State v. McCord, 349 S C 477, 483, 562 S E 2d 689, 692 (Ct App 2002) citing State v. Blanchard, 920 S W 2d 147, 149 (Mo Ct App 1996)(the fact that a witness is unable to make a positive identification from a photo array does not negate the reliability of their positive in-court identification), Commonwealth v. Wilson, 649 A 2d 435, 445 (PA 1994)(finding no error in admission of in-court identification where trial was six and one-half years after the alleged crimes) See also State v. Scipio, 283 S C 124, 322 S E 2d 15 (1984)(where victim failed to identify defendant from photo line-up but was able to identify him from a physical line-up and make an in-court identification), and People v. Maloney, 201 Ill App 3d 599, 609, 558 N E 2d 1277(Ill App 1990)(as a matter of law, a victim's or witness' inability to identify a defendant subsequently to, even soon after, the commission of the offense charged does not render incompetent and inadmissible his identification of the defendant at a later lineup or even later at trial) The remedy for any inherent suggestiveness of an in-court identification is cross-examination and argument. See State v. Rice, 375 S C at 327, 652 S E 2d at 422 (wherein the witness misidentified two accomplices of the victim near the time of her disappearance, but made an in-court identification of the defendant), citing State v. Lewis, 363 S C 37, 609 S E 2d 515 (2005)

Likewise, the fact that the victim saw and first positively identified Dunham at a prior bond

hearing does not mean the in-court identification is inadmissible State v Simmons, 308 S C 80, 82-83, 417 S E 2d 92, 93-94 (1992) Suggestiveness alone does not require the exclusion of evidence State v Stewart, 275 S C 447, 272 S E 2d 628 (1980) "Even though there may be a degree of suggestiveness in the procedures and events that took place before the in-court identifications, a trial judge must consider the totality of the circumstances " Id The testimony at the second *in camera* hearing and at trial established that the victim identified Dunham based on her recognizing him from the shooting *not* from his being charged and appearing before the court for a bond hearing State v Simmons See State v Patrick, 318 S C 352, 357, 457 S E 2d 632, 635-36 (Ct App 1995)(finding no abuse of discretion in admission of identification where the victim was with the perpetrator under 'well-lighted conditions,' the victim testified she looked at him carefully, *observed another trial involving the defendant* and immediately knew the defendant "was the one"), State v Cunningham, 275 S C 189, 268 S E 2d 289 (1980)(in court identification need not be struck where witness testified his identification of the defendant was not based on what he saw at the preliminary hearing but on the day of the crime), State v Thomas, 268 S C 343, 234 S E 2d 16 (1977)(witness' in-court identification was based on her view of defendant on the day of the crime and not affected by her immediate recognition of him when seeing him enter the courtroom with four similarly dressed men) See also State v Drayton, 293 S C 417, 361 S E 2d 329 (1987)(wherein the Court upheld the admission of the witness in-court identification where the witness could not identify the defendant from a photo-album but recognized him immediately upon seeing him on TV after his arrest and at a preliminary hearing) In Drayton, the witness specifically testified his identification was based on his viewing of the driver the morning after the killing He further testified that his identification was uninfluenced by anything that happened after that morning Id

Gina Brown testified as follows

Q Ms Brown when you saw the defendant in court at that other hearing, did you recognize him immediately?

A Yes

Q And what did you recognize him from?

A From the day of the incident

Q Okay And from the date of the incident where you saw him doing what?

A Shooting Anthony

Q Did you have any question about it that day?

A No

Q Is that why you told your family?

A Yes

Q And was your family present with you in court?

A No

Q Just Anthony's family?

A Yes

Q And when you went back and saw your family, you them as well?

A Yes

Q You didn't have any question about that being the shooter?

A No

Q And you recognized him from December 13th?

A Yes (R 123-24 Tr 2/14 p 14, l 18 - p 15, l 16)

Q Ms Brown, at the other hearing when you saw the defendant, did you recognize him?

A yes, ma'am

Q What did you recognize him from?

A From the incident that had happened earlier

Q What incident?

A The shooting

Q Who did you recognize him to be?

A The shooter

Q Did you have any question about that?

A No, ma'am

Q Would you tell them if you did?

A Yes, ma'am (R 142, Tr 2/14 p 33, ll 8-22)

See also State v Tisdale, 338 S C 607, 527 S E 2d 389 (Ct App 2000)(reliability of victim's identification of defendant while seeing him on a televised bond hearing was from a non-governmental source and was best analyzed by the trier of fact, the jury) ¹⁷ An in-court identification is admissible if based on information independent of the out-of-court procedure State v Rogers, 263 S C 373, 210 S E 2d 604 (1974) As the record reflects, Gina Brown's in-court identification

¹⁷This Court in Tisdale pointed out that many jurisdictions have rejected a Biggers analysis when the suggestiveness does not involve the government or police and held the issue is one of weight not admissibility Id citing Kubat v Thieret, 867 F 2d 351, 359 (7th Cir 1989), State v Brown, 38 Ohio St 3d 305, 528 N E 2d 523 (Oh 1988), United States v Peele, 574 F 2d 489, 491 (9th Cir 1978), and United States v Zeiler, 470 F 2d 717 (3d Cir 1972) *other citations omitted*

was based on her view of her boyfriend's murderer on December 13, 2004 ¹⁸

The fact that Ms Brown's in-court identification of Dunham is corroborated by other witnesses and testimony weighs against a finding that a substantial likelihood of irreparable misidentification was created by any pre-trial confrontation Gambrell, 274 S C at 587, 266 S E 2d 78 Ms Brown just happened to identify Dunham, the owner of the car which was used in the drive-by shooting Furthermore, she just happened to identify Dunham, the same man who admitted to three (3) different witnesses that he committed the drive-by shooting that killed her boyfriend There is no substantial likelihood of irreparable misidentification

Even if this Court were to proceed to the Neil v Biggers analysis, Judge Patterson did not abuse his discretion in the admission of the evidence A trial judge must find the identification reliable to find the testimony admissible Neil v Biggers Judge Patterson did so in denying Dunham's motion and admitting the in-court identification after a Neil v Biggers hearing In fact, Judge Patterson found Gina Brown's testimony to be credible after viewing her in person over two days (R 125, Tr 2/14 p 16, ll 13-19) Factors to evaluate reliability of the identification include "the opportunity of the witness to view the criminal at the time of the crime, the witness degree of attention, the accuracy of the witness' prior description of the criminal at the time of the crime, the level of certainty demonstrated by the witness at the time of the confrontation, and the accuracy of the witness' prior description of the criminal and the confrontation " State v Stewart, 275 S C 447, 450, 272 S E 2d 628, 629 (1980) *See also* State v Cheeseboro, 346 S C at 541, 552 S E 2d at 308 The ultimate determination of weight the testimony is to be given rests with the jury State v

¹⁸Again, Appellant does not raise this issue on appeal, but instead argues that the State used the line-up to improperly bolster the witness' in-court identification (See B O A)

Wilson, 345 S C 1, 545 S E 2d 827 (2001)

Gina Brown certainly had an excellent opportunity to view Dunham at the time of the crime. She testified she was anywhere from half-a-car length to a car length from Dunham when she saw him reach down and come up with a pistol and start firing at her and her boyfriend. See State v. Washington, 323 S C 106, 473 S E 2d 479 (Ct App 1996)(wherein the Court pointed to the fact

the witness observed the defendant from two to eight feet as supporting reliability of identification). The opportunity was such that she could see Dunham's facial hair and braids. She testified she got a good look at him. She also could see the handle of the weapon and that it was a revolver. She testified the car was moving slightly faster than she and her boyfriend were walking, so she had time to look at Dunham's face. Furthermore, she witnessed him shooting her boyfriend in broad daylight, somewhere between 4 00 and 5 00 in the afternoon. See State v. Turner, 373 S C 121, 644 S E 2d 693 (2007)(wherein the Supreme Court pointed to the fact that the witness saw the defendant outside on a sunny afternoon as weighing in favor of its reliability and therefore its admissibility).

Her degree of attention was certainly heightened based on the fight that had just occurred and the threat made by Michael Jeter. She testified that as she and the victim were walking down the road, she would look back from time to time. Additionally, she was a victim of this drive-by shooting as her life was endangered as well. Certainly, it is well accepted that a victim's degree of attention during the commission of a crime is, understandably, acute. State v. Moore, 343 S C 282, 540 S E 2d 445 (2000), State v. Ford, 278 S C 384, 386, 296 S E 2d 866, 867 (1982). The fact that the witness was under fear made her attention more acute. State v. Washington, *supra*, State v. Johnson, 318 S C 372, 458 S E 2d 49 (Ct App 1995).

Her prior description was satisfactory given that she identified Petitioner to police as a black male, wearing a jacket, with facial hair and braids. She testified at trial that the only difference in his appearance from the time of the murder to trial was that he had more braids in his hair at trial. She could not judge his height at the time of the incident because Dunham was seated in a motor vehicle. This was certainly reasonable.

Additionally, out of four photographic arrays, she was able to identify Dunham's photograph and photograph #3 as the shooter. The victim had a high degree of certainty regarding the fact that it was either Dunham or another individual in photograph #3 that was the shooter. The trial judge looked at the photographs and found Dunham's photograph and #3 were very similar. The investigator also testified the photographs are similar. It is important to note at this point that she did not say #3 was definitely the shooter only that the person looked like the shooter. She also said Dunham's photograph looked like the shooter and Dunham was identified by others as being the driver of Dunham's car and Jeter's accomplice. While the identification lacked certainty, "certainty is not always required." Washington, 323 S.C. at 111, 473 S.E.2d 479. An identification is not unreliable because it is phrased in uncertain terms. Id., *finding persuasive* U.S. v. Peoples, (witness stated defendant resembled one of the bank robbers), and Patler v. Slayton, 503 F.2d 472 (4th Cir. 1974) (witness allowed to testify there was no conflict in defendant's appearance and appearance of man she saw running from the crime scene). While her level of certainty at this confrontation was not certain, it was when she saw Dunham at his bond hearing. She was so certain that she confirmed the same to the victim's family and to her own family when she returned from the bond hearing. And, she testified her identification was based on her view of Dunham at the time of the shooting, not because he was charged.

Finally, the length of time between the partial photographic identification and the crime was only twelve hours. This has been recognized as a relatively short period of time regarding identification. State v. Turner, *supra* (Court pointed to the fact the line-up was shown the same day as the crime), State v. Traylor, (wherein the Court found the identification of Traylor was made two days after the incident, clearly weighing in favor of its reliability), State v. Gambrell, 274 S C 587, 266 S E 2d 78 (1980) (where both the photographic line-up and the physical line-up were conducted within two weeks of the incident). And her positive identification of him at a bond hearing was not too far removed from the crime itself. See State v. Drayton, 293 S C 417, 361 S E 2d 329 (1987) (wherein the Court in listing the evidence in relation to the Biggers factors noted that the in-court identification by the witness was made two-years after the crime occurred and found the totality of the circumstances warranted admission of the in-court identification).¹⁹

Judge Patterson did not abuse his discretion in admitting the circumstances surrounding the photographic line-up or the in-court identification, because he considered the totality of the circumstances in reaching his decision that the victim's in-court identification was reliable. See Neil v. Biggers, *supra* (a court must consider the totality of the circumstances to determine whether an identification may be reliable even when the procedure has been suggestive), State v. Carlson, 363 S C 586, 611 S E 2d 283 (Ct App 2005).

There was nothing suggestive about the photographic line-up or its presentation. The jury heard all of the facts regarding its presentation, her partial identification and eventual

¹⁹Gina Brown testified she saw Dunham at the bond hearing sometime before September of 2005 (R 115-18, 123-24, 139-40, Tr 2/14 pp 6-9, 14-15, 30-31). This means the positive identification was made within approximately eight (8) and one-half (½) months of the murder at the outside limit.

misidentification of one photograph and why she did so. The jury also heard all of the facts regarding the witness later identification of Dunham at his bond hearing and how she identified him from her view of him on December 13th, 2004. The victim's identification was reliable even if the bond hearing had any inherent suggestiveness. Finally, the in-court identification was admissible because the witness' identification of him was based on her view of him on the day of the crime, which was just over one year prior to the trial.

The victim had ample opportunity to view her assailant at the time of the crime. "The crime occurred outside during a sunny afternoon." Turner, 373 S.C. at 128. The victim had a full facial view of the perpetrator when the shooting took place. Her attention was manifested by the description she gave police. Turner, 373 S.C. at 121. The jury heard all of the facts regarding her partial out-of-court identification and her positive in-court identification. They were able to judge the witness credibility regarding her in-court and out-of-court identification. Washington, 323 S.C. at 112. The identifications were reliable. Judge Patterson did not abuse his discretion or commit prejudicial legal error in admitting testimony regarding the photographic line-up or the in-court identification. Dunham's appeal should be dismissed.

Harmless Error

Even assuming *arguendo* the trial judge erred in admitting testimony regarding the photo-lineup and/or the in-court identification, their admission was harmless. First, the admission of the photographic line-up was harmless where Dunham allowed the admission of cumulative evidence, State's exhibit #31, which was a copy of the photographic line-up from which the victim first pointed to Dunham and another individual and eventually picked out photograph #3, someone other than Dunham. Also, the testimony surrounding the photographic line-up was admitted without objection.

Additionally, there was nothing suggestive about the photographic identification, especially where the victim was shown four (4) different line-ups and was able to identify individuals from only two photo-arrays

Furthermore, the jury was aware of all of the circumstances surrounding the photographic identification and how the witness came to make an in-court identification. The jury was certainly aware that the witness identified a different photograph from the photo-array, and that the witness recognized Petitioner at a later bond hearing based on her view of him at the time of the crime.

More importantly, the State's case did not hinge on the witness identification of Dunham. State v. Ramsey, 345 S. C. 607, 550 S. E. 2d 294 (2001) (admission of identification evidence, even if erroneous, was harmless given other identification evidence), *citing* State v. Simmons, 308 S. C. 80, 417 S. E. 2d 92 (1992) (under certain circumstances, if the identification is corroborated by either circumstantial or direct evidence, the harmless error rule is applicable), State v. Thompson, 276 S. C. 616, 281 S. E. 2d 216 (1981) (improper in-court identification was merely cumulative to accomplice's damaging testimony and other corroborative evidence linking appellant to the crime), *referencing* State v. Blackburn, 271 S. C. 324, 247 S. E. 2d 334 (1978), Schneble v. Florida, 405 U. S. 427, 92 S. Ct. 1056 (1972), Harrington v. California, 395 U. S. 250, 89 S. Ct. 1726 (1969), Chapman v. California, 386 U. S. 18, 87 S. Ct. 824 (1967).

"Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." Pagan, 369 S. C. at 212, 631 S. E. 2d at 267 (*citing* Arnold v. State, 309 S. C. 157, 172, 420 S. E. 2d 834, 842 (1992), State v. Mizzell, 349 S. C. 326, 333, 563 S. E. 2d 315, 318-19 (2002)). In making a determination regarding harmless error, this Court will look at the entire record. State v. Miller, 367 S. C. 329, 626 S. E. 2d 328 (2006). This Court will not set aside a conviction for an

insubstantial error not affecting the result when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached State v Kelley, 319 S C 173, 460 S E 2d 368 (1995) The evidence against Dunham was overwhelming²⁰

First, the victim's girlfriend positively identified *Michael Jeter* as the person who got into the fight with the victim just a few minutes before the drive-by shooting She identified *Jeter* as the person who threatened to come back She also positively identified *Jeter* as the passenger in the car used in the drive-by shooting She also testified that *Jeter* was not the shooter, but the person who was driving the car was the shooter This testimony was admissible independent of any identification of Dunham

Rayshawn Green also identified *Michael Jeter* as the person who got into the fight with the victim and that he got into the gray Grand Marquis passenger seat as it sped away toward the victim and his girlfriend immediately before the shots were fired from the car *Jeter* was riding in The unobjected to evidence established that the shooter was the person driving the gray Grand Marquis riding with *Michael Jeter* who was in the passenger seat

Police almost immediately located the vehicle used in the drive-by shooting It was positively identified by two different eyewitnesses, Rayshawn Green, and Patricia Rodriguez, who was unlocking her front door after returning from the grocery store It was proven beyond any doubt that the vehicle belonged to Appellant Dunham Each of the eyewitnesses testified there were two individuals in the car The victim's girlfriend said there was a passenger and a driver, and the driver was the shooter Rayshawn Green testified *Jeter* called someone to pick him up and then the Gray Marquis arrived and *Jeter* got into the passenger seat, but someone else was driving the car as it sped

²⁰Dunham did not testify or introduce any testimony (R 394, Tr 2/14-15, p 181)

away toward the victims Ms Rodriguez testified that she could see two heads in the front of the car as it sped away from the drive-by shooting Whoever was in Dunham's car with *Michael Jeter* was the murderer of Anthony Gambrell

Stephen Johnson identified Dunham as the driver and triggerman in the murder Not because Stephen witnessed the murder, but because Dunham told Stephen what he had done In addition to Dunham directing Stephen to hide his car, Stephen overheard Dunham bragging about the shooting Stephen testified that when he got back from moving Appellant's car he sat down at the bottom of a stair case where Dunham was talking with some of the other guys Stephen testified he overheard Dunham talking and it sounded like Dunham had just shot somebody (R 175, Tr 2/14 p 66) Dunham told him that they shot at somebody from the car (R 176, Tr 2/14 p 67) Dunham said it was him and *Jeter* who shot at someone (R 176, Tr 2/14 p 67) Dunham said the reason they shot at somebody was "[t]hat Jeter had got in a fight with somebody " "That he called him " "That Jeter called Dunham " "To bring him the gun " (R 176, Tr 2/14 p 67, ll 13-21) Dunham told him that when they saw the victim, ' he, Dunham let off two or three shots ' (R 177, Tr 2/14 p 68, ll 3-4) Dunham also told Stephen facts only the killer would know Dunham told Stephen that there was a girl with the guy he had just shot at (R 177, Tr 2/14 p 68) Dunham also told Stephen that the gun he used was a 22 (R 177, Tr 2/14 p 68) The autopsy confirmed the victim was killed by a 22 caliber weapon (R 303, 378-380, Tr 2/14-15 pp 90, 165-167)

Jean (JJ) Jacques testimony also identified Dunham as the trigger-man in the drive-by shooting based on Dunham s statements He testified how after arriving at Marshview Apartments, Dunham and *Michael Jeter* came driving up in Dunham's gray Grand Marquis (T 229, Tr 2/14-15 p 16) Jacques testified the car belonged to Dunham (R 229, Tr 2/14-15 p 16) Jacques, a friend

of Dunham, was a hostile witness, but Jacques admitted that Dunham told him that *Jeter* had gotten in a fight (R 236, 246, Tr 2/14-15 p 23, 33) Jacques testified that Dunham told him *Jeter* said he got the best of the guy (R 236, Tr 2/14-15 p 23) Dunham told Jacques that *Jeter* told him to come help him fight the guy (R 236, 247, Tr 2/14-15 pp 23, 34) Dunham told Jacques that *Jeter* called him to come pick him up (R 247, Tr 2/14-15 p 34) Dunham also told Jacques that he did not know that, went and helped *Jeter* (R 236, 247, Tr 2/14-15 pp 23, 34)

Jacques testified that after Dunham and *Jeter* returned in the car, he, Jacques, knew something was wrong or "hot" with the car by the way Dunham and *Jeter* were acting (R 247, Tr 2/14-15 p 34) Jacques heard Dunham ask Stephen Johnson to put his car at Stephen's house because it was hot (R 236, Tr 2/14-15 p 23) Jacques also heard Dunham tell the other boys, to watch the news and see what happened (R 236, Tr 2/14-15 p 23)

Justin Lemon's testimony also established that Dunham was the trigger-man in the drive-by shooting Lemon, who had known Dunham for five (5) years, testified Dunham picked him up from school on the day of the victim's murder and dropped him off at Marshview Apartments Lemon testified that Dunham left in his gray Grand Marquis and was gone about two hours Lemon testified that he saw Stephen Johnson arrive at Marshview Apartments on a bicycle He also testified that Jean Jacques and another boy were also there at the apartments Lemon testified after about two hours Dunham arrived back at Marshview Apartments in Dunham's gray car *Michael Jeter* was with him (R 345-355, Tr 2/14-15 pp 132-142)

Lemon testified he and the other boys were watching movies in an apartment when Dunham knocked on the door and asked them to come outside Lemon testified that *Jeter* and Dunham were acting different, and *Jeter* went to the trunk of Dunham's car and got a shirt and changed shirts

(R 356, Tr Tr 2/14-15 p 143) Lemon testified he also overheard Dunham tell Stephen Johnson to take the car to Stephen's house (R 356-57, Tr 2/14-15 pp 143-144) Lemon testified that Dunham then left for about five minutes and when he came back he, Dunham, had changed his clothes (R 357, 358, Tr 2/14-15 pp 144, 145) Lemon testified Dunham lived just five (5) minutes up the street from Marshview Apartments, within easy walking distance (R 357, Tr 2/14-

Lemon testified he overheard Dunham tell Stephen that they had been shooting at somebody and to take the car (R 358, Tr 2/14-15 p 145) Lemon testified that Dunham said he thought he hit the guy they were shooting at (R 359, Tr 2/14-15 p 146) ²¹

Physical evidence also identified Dunham as the trigger-man in the drive-by shooting Police were also able to lift fingerprints from Dunham's car The fingerprints of *Michael Jeter* and Dunham were found on or in the gray Grand Marquis (R 318-334, 339-41, Tr 2/14-15 pp 105-121, 126-128) Additionally, the State introduced telephone toll records which established that *Jeter* in fact called Dunham immediately after he and the victim got in the earlier altercation that precipitated the drive-by shooting (R 64-70, 348-350, See Tr 2/13 pp 77-83, 2/14-15 pp 135-137, 195-196) This evidence corroborates the fact that it was Dunham that picked up *Jeter* in Dunham's gray Grand Marquis just seconds before the shooting

The evidence was extremely strong and Dunham's guilt was conclusively proven without regard to Gina Brown's identification of Dunham "[A]n insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached' " Pagan, 369 S C at 212, 631 S E 2d at 267 (quoting

²¹Importantly, not only do these three friends of Dunham testify to Dunham's admissions regarding the shooting, they also identify Dunham arriving at Marshview Apartments with *Michael Jeter* after the shooting

State v Bailey, 298 S C 1, 5, 377 S E 2d 581, 584 (1989)), State v Adams, 354 S C 361, 381, 580 S E 2d 785, 795 (Ct App 2003) In this case, no other rational conclusion could have been reached by the jury given the evidence of Dunham's guilt

The jury knew *Jeter* precipitated the murder, Dunham's car was used in the murder, and Dunham was the driver and shooter "There is no reversible error in the admission of evidence that is cumulative to other evidence properly admitted' State v Griffin, 339 S C 74, 77-78, 528 S E 2d 668, 670 (2000) There was abundant evidence in the record Dunham was guilty of murder State v Mitchell, 286 SC 572, 336 S E 2d 150 (1985) (admission of hearsay testimony harmless given abundant evidence in the record from which jury could have found the appellant guilty) "Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial " State v Sherard, 303 S C 172, 175, 399 S E 2d 595, 596 (1991), State v Haselden, 353 S C 190, 577 S E 2d 445 (2003)(admission of improper evidence is harmless where the evidence is merely cumulative to other evidence), State v Braxton, 343 S C 629, 541 S E 2d 833 (2001), State v Blackburn, 271 S C 324, 247 S E 2d 334 (1978), *see also* State v Williams, 321 S C 455, 469 S E 2d 49 (1996)(instructing that error in admission of evidence is harmless where it is cumulative to other evidence which was properly admitted), State v Douglas, 367 S C 498, 520, 626 S E 2d 59, 71 (Ct App 2006)

CONCLUSION

Dunham failed to preserve the issue he raises on appeal by a timely objection at the time the evidence was introduced or by a subsequent motion to strike Additionally, there is no merit to the argument he raises on appeal because the photographic line-up was not suggestive and the in-court identification was based on the witness view of the crime which occurred a matter of a few feet from

her in broad daylight Finally, any error by the trial judge was harmless given the overwhelming evidence that Dunham was the trigger-man and driver in this drive-by shooting which resulted in the murder of Anthony Gambrell Dunham's appeal should be dismissed

Respectfully submitted,

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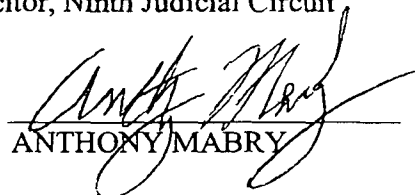
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December 8, 2008

THIS OPINION HAS NO PRECEDENTIAL VALUE IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State Respondent

v

Michael Barney Dunham Appellant

Appeal From Charleston County
Larry R. Patterson Circuit Court Judge

Unpublished Opinion No. 2010-UP-191
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AFFIRMED

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Scarlett A. Wilson of Charleston for
Respondent

PER CURIAM Michael Barney Dunham appeals his conviction for murder, arguing the trial court erred in admitting witness testimony regarding a photographic lineup and the witness's subsequent in-court identification of him as the shooter. We affirm.

"The United States Supreme Court has developed a two-prong inquiry to determine the admissibility of an out-of-court identification. State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007) (citing Neil v. Biggers, 409 U.S. 188 (1972)). First, a court must ascertain whether the identification process was unduly suggestive. Id. Second, even if an identification procedure is suggestive, it need not be excluded so long as, under all the circumstances, the identification was reliable notwithstanding the suggestiveness. Id. Here, no evidence in the

record suggests the photographic lineup was suggestive. Because the first prong of the Biggers analysis is not satisfied in this case, we do not proceed to the second prong to consider the reliability of the identification. Accordingly, the trial court correctly admitted witness testimony regarding the photographic lineup and the witness's subsequent in-court identification of Dunham as the shooter.

AFFIRMED [1]

HUFF, THOMAS, and KONDUROS, JJ , concur

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

97
mf

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)

2011-CP-10-541
IN THE COURT OF COMMON PLEAS

#313860
Michael Barney Duham)
Full name and prison number (if any) of Applicant)

v)

State of South Carolina)

APPLICATION FOR

POST CONVICTION RELIEF

FILED AP 5/11/11
CLERK OF COURT
2011 JAN 25 AM 11 28

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court it shall be in writing (legibly handwritten or typewritten) signed by the applicant and verified (notarized) and it shall set forth in concise form the answers to each applicable question. If necessary applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should therefore exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- 1 Place of detention L.C.J. - Ashley A-03 - P.O. Box 205
Ridgeville South Carolina 29472
- 2 Name and location of Court which imposed sentence Charleston County
General Sessions - Charleston, South Carolina 29415
- 3 Name(s) of co defendant(s) (if any) Michael Tyrus Jeter
Steven Raynard Johnson
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed
(a) 2005-GS 10-8285 Murder

736

- (b) _____
(c) _____

5 The date upon which sentence was imposed and the terms of the sentence

- (a) February 15, 2006 Life
(b) _____
(c) _____

6 Check whether a finding of guilty was made

- (a) after a plea of guilty _____
(b) after a plea of not guilty after a plea of not guilty
(c) after a plea of nolo contendere _____

7 Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8 If you answered yes to (7) list

(a) the name of each Court to which you appealed

- i The South Carolina Court of Appeals
ii _____
iii _____

(b) the result in each such Court to which you appealed

- i Affirmed
ii _____
iii _____

(c) the date of each such result

- i March 4, 2010
ii _____
iii _____

(d) if known citations of any written opinion or orders entered pursuant to such results

- i Unpublished Opinion
ii _____
iii _____

9 If you answered no to (7) state your reasons for not so appealing

- (a) N/A

(b) _____

(c) _____

10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

(a) Ineffective assistance of trial counsel

(b) Denial 6 & 14 amendments

(c) _____

11 State concisely and in the same order the facts which support each of the grounds set out in (10)

(a) Counsel failed to conduct pretrial investigation, both factual & legal

(b) _____

(c) _____

12 Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions if any already specified in (8)? No

(d) any other petitions motions or applications in this or any other Court? No

13 If you answered yes to any part of (12) list with respect to each petition motion or application

(a) the specific nature thereof

i N/A

ii _____

iii _____

iv _____

(b) the name and location of the Court in which each was filed

i N/A

ii _____

iii _____

IV _____
(c) the disposition thereof

I N/A

II _____

III _____

IV _____

(d) the date of each such disposition

I N/A

II _____

III _____

IV _____

(e) if known citations of any written opinions or orders entered pursuant to each such disposition

I N/A

II _____

III _____

IV _____

14 Has any ground set forth in (10) been previously presented to this or any other Court State or Federal in any petition, motion or application which you have filed?

No. first filing PCR

15 If you answered 'yes' to (14) identify

(a) which grounds have been presented

I N/A

II _____

III _____

(b) the proceedings in which each ground was raised

I N/A

II _____

III _____

16 If any ground set forth in (10) has not previously been presented to any Court, State or Federal set forth the ground and state concisely the reasons why such ground has not previously been presented

(a) all grounds in (10) are first time challenged

(b) _____

(c) _____

17 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? N/A

(b) your trial if any? yes

(c) your sentencing? yes

(d) your appeal if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation presentation or consideration of any petitions motions or applications with respect to this conviction, which you filed? No

18 If you answered yes to one or more parts of (17), list

(a) the name and address of each attorney who represented you

i Rodney Davis and Kristen Meely, Esquires
Charleston County Bar

ii Joshua Snow Kendrick
1924 Barnwell Street Columbia South Carolina 29201

iii _____

(b) the proceedings at which each such attorney represented you.

i Trial and Sentencing

ii Direct Appeal

iii _____

19 State clearly the relief you seek in filing this application

Conviction and Sentence reversed and
remanded for new trial
NOTE I Reserve the Right to amend the instant application

20 Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I Michael Dunbar #313860 being duly sworn
upon my oath depose and say that I have subscribed to the foregoing application that I know the
contents thereof that it includes every ground known to me for vacating setting aside or
correcting the conviction and sentence attacked in this application and that the matters and
allegations therein set forth are true

Michael Dunbar

SWORN to and subscribed before me this 14th
day of January 2011

Luduan Bryant (LS)
Notary Public

My Commission Expires May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I Michael Duoban #313860 hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor In support of my
application I declare under penalty of perjury that the following facts are true

- (1) I am the applicant in this action and I believe I am entitled to redress
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof

Michael B. Duoban
Applicant

SWORN or affirmed to and subscribed before me this
17th day of January 2011

Ludrean Bryant
Notary Public

My Commission Expires May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Michael B Dunham #313860

Applicant

v

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS

2011-CP-10-571

RETURN

FILED
2011 MAY -6 PM 12 54
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

The Respondent making its Return to the Application for post conviction relief filed January 25 2011 would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County The Applicant was indicted at the November 2005 term of the Charleston County Grand Jury for murder (2005 GS-10-8285) Rodney D Davis, Esquire represented the Applicant The Applicant proceeded to trial on February 13 15, 2006, after which a jury found him guilty as indicted The Honorable Larry R Patterson sentenced the Applicant to confinement for life

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected Joshua Snow Kendrick Esquire represented the Applicant on appeal Following full briefing by both sides the Court of Appeals affirmed the conviction and sentence State v Dunham, Op No 2010 UP-191 (S C Ct App filed March 4 2010) The Remittitur was issued on March 22 2010

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions the Applicant's records from the Department of Corrections the trial transcript, the Record on Appeal, the Supplemental Record on Appeal the Brief of Appellant, the Final Brief of Respondent the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur dated March 22, 2010

II

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of trial counsel in that counsel failed to conduct pretrial investigation – both factual and legal

III

In a post conviction relief action the Applicant bears the burden of proving the allegations in the application Butler v State 286 S C 441 334 S E 2d 813 (1985) Where the application alleges ineffective assistance of counsel as a ground for relief the Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result ' Strickland v Washington, 466 U S 668 104 S Ct 2052 2064 80 L Ed 2d 674 692 (1984) Butler 286 S C 441, 334 S E 2d 813

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment Strickland, 466 U S 668 The Applicant must overcome this presumption in order to receive relief Cherry v State 300 S C 115, 386 S E 2d 624 (1989)

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V

WHEREFORE, having made its Return the Respondent requests that an evidentiary hearing be held

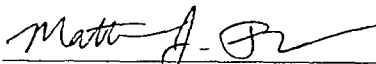
Respectfully submitted

ALAN WILSON
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

MATTHEW J FRIEDMAN
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P O Box 11549
Columbia SC 29211
(803) 734 3737

May 5 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2011-CP-10-571

MICHAEL B DUNHAM #313860)

Applicant)

vs)

STATE OF SOUTH CAROLINA)

Respondent)

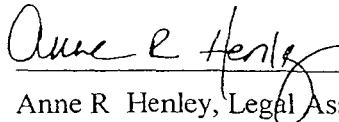
AFFIDAVIT OF SERVICE BY MAIL

2011 MAY 16 PM 12 54
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

- 1 I am an employee of the Respondent in the above-captioned action
- 2 Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail
- 3 I have this day **served** a copy of the **Return** in the above captioned matter on the following person by depositing same in the United States mail postage prepaid

Paul E Sperry Esquire
40 Calhoun St Ste 400
Charleston, SC 29401

DATED this 5th day of May 2011



Anne R Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2011-CP-10-00571

MICHAEL DUNHAM,

Plaintiff

V

STATE OF SOUTH CAROLINA,

Defendant

TRANSCRIPT OF RECORD

September 15 2011
Charleston, South Carolina

B E F O R E

THE HONORABLE DEADRA L JEFFERSON, JUDGE

A P P E A R A N C E S

Mr Matthew Friedman, Assistant Attorney General
Representing the State

Mr Joshua Snow Kendrick, Esquire
Representing the Defendant

Anne Bouley Meyer RPR
Circuit Court Reporter

I N D E X WITNESSES

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EXHIBITS

None

1 MR KENDRICK Your Honor, I've got some things I've
2 printed out that I was going to use as exhibits They
3 are actually in the record on appeal that was submitted
4 to the Court or Appeals

5 THE COURT What are you referring to?

6 MR KENDRICK They are phone records I went
7 rough the transcript, and the only way to establish
8 the exact time this happened is to look at the phone
9 records that the State introduced as Exhibit 52 and 53
10 I have got it pulled out

11 THE COURT Are they a part of the record?

12 MR KENDRICK They're a part of the record,
13 Your Honor As a matter of fact I had to get them from
14 the clerk of court when we were doing the direct appeal
15 because the Attorney General's requested it

16 As you were mentioning earlier I don't know
17 that I need to try to go through and --

18 THE COURT If it's in the record, you just need
19 to point to -- I have read the whole -- you'd have to
20 tell me where it's at

21 MR KENDRICK What I think the easiest thing to
22 do, Your Honor, is at the appropriate time I will just
23 explain to you where they come in But rather than try
24 to lay the foundation

25 THE COURT You just tell me the page and line

1 numbers I guess I'm trying to figure out why would
2 you admit them twice if they're already in the record
3 on appeal?

4 MR KENDRICK Right, Your Honor, I wouldn't I
5 don't know, I've had judges ask me to kind of have my
6 own exhibits, PCR exhibits

7 THE COURT I read the record And I make my
8 notations as to the cases and lines and everything So
9 it's totally different We all do things differently
10 Like I said, there are 49 of us, we all have our own
11 way of doing things

12 It's probably easier for me if you give me a
13 line and a page number because then that would be
14 easier for me in terms of the flow of information when
15 I'm looking back over it when I'm doing an order or if
16 I take the matter under advisement for me when I'm
17 reviewing my notes

18 MR KENDRICK They're the last six pages in the
19 record on appeal Your Honor

20 THE COURT Oh, then that's --

21 MR KENDRICK Very easy

22 THE COURT That's very easy

23 MR KENDRICK And I don't know what your
24 practice is, Your Honor, but it may be just because of
25 the time if you would take it under advisement and let

1 us both submit proposed orders I don't know

2 THE COURT I rule from the bench It is really
3 an anomaly if I don't And if I rule for you, then
4 you'll do the order And if I rule for the State, then
5 Mr Friedman will do the order

6 I will say, however, that generally I write my
own orders And Mr Friedman will tell you it's rare
8 that I sign anything he sends to me It starts out
9 about 5 pages and it ends up about 20 Am I correct?

10 MR FRIEDMAN That's true

11 THE COURT I write my own I'm very fact
12 specific because I understand that the one -- I have
13 sat on many appellate panels And the one thing that I
14 like, and I guess it just comes from my roots as a
15 family court judge when I was the fact finder, is the
16 one thing that I understand is that in a court of
17 equity or any kind of court where the court is the fact
18 finder, they need to be clear what I was thinking So
19 I make sure they know And I'm very specific about it

20 MR KENDRICK And Your Honor, with all due
21 respect to your colleagues, I think they don't always
22 get some of this read, at least the trial records

23 THE COURT I think I owe that to the people who
24 are coming before me I think that I owe it to them to
25 read prior to court so that I can understand what is

1 going on instead of trying to play catch-up So I
2 figure that's the least I can do for you

3 And sometimes I remember better than others what
4 I have read Some days it all sort of runs together
5 for me, which I guess is human But even after a
6 hearing, even after I have -- and you heard me say this
7 to the lawyers today -- no ruling is final until I sign
8 it

9 And I would be misleading you if I didn't tell
10 you that sometimes I read things and I change my mind
11 Sometimes after I have heard it it seems different to
12 me once I have reviewed the record again So and
13 that's the wonderful thing about it not being final
14 until I sign it

15 So even after -- even though I read in advance
16 of court, once I have heard a case I go back and read
17 it again just to make sure that, you know, that I
18 really have processed what I have read and that I
19 understand it

20 If you'd just like, it's the last six pages of
21 the record?

22 MR KENDRICK I think so, Your Honor And
23 because I have got them -- as a matter of fact, if you
24 go back I will tell you exactly where If you start
25 with State's Number 411 on the record on appeal

1 I don't know if that's how you have it, I think
2 you get the record on appeal from the Court of Appeals
3 maybe, or do you --

4 THE COURT No, I have the record on appeal I
5 have the entire -- usually it's submitted to me along
6 with the entire trial transcript

7 MR KENDRICK Starting on Page Number 411 of
8 the record of appeal It should be the last --

9 THE COURT The last part of the closing
10 argument, or what is it?

11 MR KENDRICK No, Your Honor It was --
12 they're exhibits that were admitted like that -- I
13 don't know, the attorney general wanted them in I
14 handled the direct appeal also I don't remember why
15 the attorney general wanted those records in there

16 THE COURT Yeah, I have the transcript of
17 record right here

18 MR KENDRICK If you look at the last, starting
19 at 411 which is

20 THE COURT You know what I have the transcript
21 of record

22 MR KENDRICK You may not have the actual record
23 on appeal

24 THE COURT Yeah, I have it

25 MR KENDRICK If you will go to the very back,

1 starting on page 411

2 THE COURT These charts and graphs?

3 MR KENDRICK Yes

4 And the only reason that I point these out, and
5 I can tell you the exact page cited, but on page 415,
6 Your Honor

THE COURT Uh-hum

8 MR KENDRICK At entries 33 and 34

9 THE COURT Uh-hum

10 MR KENDRICK Those are the relevant phone
11 calls

12 THE COURT The record of appeal doesn't have
13 the calls you are referring to It starts at page 413
14 with calls 1 through 8 Page 414 calls 9 through 22
15 And then Page 417 calls 52 through 64

16 MR KENDRICK Your Honor, I had two record on
17 appeals in my file One that had the pages and one
18 that didn't I did the record on appeal, so I will
19 tell you that it was my mistake

20 What I can do is give you the actual --

21 THE COURT I probably would have gotten a copy
22 of what the Court of Appeals has

23 MR KENDRICK Again, I didn't ask for those
24 records to be included in the record on appeal

25 THE COURT They always are I always get the

1 full appellate record

2 MR KENDRICK What I mean is when I did the
3 record on appeal, it was the attorney general that
4 designated those phone records

5 I actually -- I think I mentioned the other day,
6 I had to come down here and get you to sign an order to
7 rseal this file and pull these things out of the file
8 So I may have messed it up, but no one seemed to
9 notice

10 THE COURT Well in the record on appeal that
11 was submitted to the Court of Appeals, the only calls
12 that are in the record are calls 1 through 8 -- well
13 the record of them from Erickson, called and service
14 history report, and calls 1 through 8, 9 through 22,
15 and 52 through 64 are the only phone calls that are
16 included in this record on appeal

17 MR KENDRICK Do you have Page 409, Your Honor,
18 in the record on appeal?

19 THE COURT I do

20 MR KENDRICK Okay, if you will look at --

21 THE COURT Can you all accommodate me for a
22 quick second?

23 MR KENDRICK Yes, Your Honor

24 (Whereupon, a recess was taken)

25 THE COURT Ready to proceed from the applicant?

1 MR KENDRICK Yes, Your Honor I will tell you
2 exactly what I was trying to tell you a minute ago I
3 have got my thoughts together

4 THE COURT Yes, sir Okay

5 MR KENDRICK It's Page 409 on the record on
6 appeal, Your Honor It's State's Exhibit 52, phone
7 calls 29 and 30 If you read through the trial, you
8 know what happened here was a shooting

9 The person, the first witness testified that he
10 let someone borrow his phone That person called
11 someone, they picked him up, and then the shooting
12 occurred immediately afterwards All this happened in
13 about a five to six minute frame of time

14 Both 29 and 30 are the phone calls they are
15 referencing And I use that just to establish that the
16 second phone call was at 4 35 It gives us sort of a
17 window of when the crime happens, probably between 4 40
18 and maybe 4 50 That will be important because one of
19 the witnesses I'm presenting is an alibi witness that
20 was noticed but not called

21 So that's why I want to bring that up beforehand
22 so that I can kind of not have to tie everything
23 together

24 THE COURT Okay, that's fine
25 Call your first witness

1 MR KENDRICK I will call my client, Mr
2 Dunham

3 MR MICHAEL DUNHAM,
4 after having first been duly sworn to state the truth,
5 the whole truth and nothing but the truth, testified on
6 his oath as follows

7 THE COURT You may be seated, sir
8 You may proceed with questioning the witness

9 MR KENDRICK Thank you, Your Honor

10 THE COURT You're welcome

11 DIRECT EXAMINATION

12 BY MR KENDRICK

13 Q Mr Dunham you are currently serving a life
14 without parole sentence for a murder conviction from
15 2005 in Charleston County?

16 A Yes, sir

17 Q You went to trial on that case correct?

18 A Yes, sir

19 Q You have maintained your innocence from the time
20 of your arrest up until today, correct?

21 A Yes, sir

22 Q Who was your attorney?

23 A Rodney Davis

24 Q He is a Charleston Public Defender?

25 A Yes, sir

1 Q When did you first meet with him after you went
2 to jail?

3 A I would say two weeks after I was incarcerated

4 Q Did you give him the names of any witnesses at
5 that time?

6 A Yes, sir

7 Q What names did you give him?

8 A Victoria Martin

9 Q Okay Were there more?

10 A Just Victoria Martin

11 Q Okay Tell me why you gave him the name of Ms
12 Martin?

13 A Because she was my alibi witness

14 Q Okay Did you at any time during the 16 months
15 you were in jail tell him that you were not innocent or
16 that you did not have an alibi?

17 A No, sir I always told him that I had an alibi
18 witness

19 Q Do you remember the day of your trial?

20 A Yes, sir

21 Q Would it help you remember, February 13, 2006?

22 A Yes, sir

23 Q When was the last time before trial started that
24 you met with your attorney?

25 A Like the day before

1 Q Okay When you say the day before, I don't
2 remember what day your trial started Was it the same
3 week of the trial?

4 A Yes, sir My trial started Monday

5 Q All right So do you think you met with him the
6 week before or?

7 A That Friday

8 Q Okay And on that Friday did you then talk to
9 him anymore about your alibi defense?

10 A Yes, sir

11 Q All right Was it your understanding that he
12 would present your alibi witness at the trial?

13 A Yes, sir, I thought he would She was
14 subpoenaed, but he never called her to the stand

15 Q As far as you know, he did subpoena her and she
16 was present at the trial or during the week you were in
17 court?

18 A Yes, sir

19 Q Did you, during the trial, discuss with him
20 whether or not she would be called?

21 A Yes, sir He told me that he wasn't going to
22 call her due to his assessment

23 Q All right When did he tell you that he was not
24 going to call --

25 THE COURT Let me interrupt you one second

1 Okay, continue

2 MR KENDRICK Thank you

3 THE COURT You're welcome

4 Q (By Mr Kendrick) Mr Dunham, we were talking
5 about during the trial you were expecting your lawyer
6 to call an alibi witness And at some point was there
7 a discussion about that alibi witness?

8 A Yes, sir

9 Q And did your attorney say he was going to call
10 or not going to call the alibi witness?

11 A He said he wasn't going to call her due to his
12 decisions

13 Q His decisions?

14 A Yes, sir

15 Q Did you discuss that with him?

16 A I told him that I wanted her to be on the stand
17 He said that she would hurt us more than she would help
18 us

19 Q Did he give you any basis for that?

20 A No, sir

21 Q And the jury found you guilty?

22 A Yes, sir

23 Q Let me ask you one other thing Mr Michael
24 Jeter was a codefendant of yours correct?

25 A Yes, sir

1 Q But he was not tried at the same time as you?

2 A No, sir

3 Q Do you know if he was tried before or after you?

4 A After

5 Q All right Are you aware of any -- do you have
6 any knowledge of the facts of his case?

7 A No, sir

8 Q All right

9 MR KENDRICK That's all I have, Your Honor

10 THE COURT Any questions for the witness?

11 MR FRIEDMAN No questions, Your Honor

12 THE COURT Okay You may call your next

13 witness

14 MR KENDRICK Your Honor, my next witness would
15 be Mr Michael Jeter I believe he's in the back

16 MR MICHAEL JETER,

17 after having first been duly sworn to state the truth,
18 the whole truth and nothing but the truth, testified on
19 his oath as follows

20 THE COURT You may proceed

21 MR KENDRICK Your Honor, may I question him
22 from the podium?

23 THE COURT Absolutely

24 DIRECT EXAMINATION

25 BY MR KENDRICK

1 Q Mr Jeter, my name is Josh Kendrick You and I
2 have met on a couple of occasions, correct?

3 A Yes, sir

4 Q I came and spoke with you at the department of
5 corrections last week, and then we spoke yesterday here
6 at the courthouse?

7 A I remember

8 Q You were charged with the same murder that Mr
9 Dunham was tried on, correct?

10 A Correct

11 Q Did you go to trial before him or after him?

12 A After

13 Q All right At trial you didn't deny your
14 presence at the scene of the crime, correct?

15 A No, sir

16 Q So you admitted that you were there when the
17 shooting occurred?

18 A When, at trial?

19 Q Just in general during the course of this case
20 Am I correct that you admitted that you were present
21 when the shooting occurred, you just didn't know that
22 the shooting was going to occur?

23 A Right But it was not at my trial because it
24 was never presented, the question was never presented
25 in my presence

1 THE COURT I'm sorry, sir, could you repeat
2 that? I couldn't hear you

3 THE WITNESS The question that he just asked me
4 was never presented at my trial

5 THE COURT Okay

6 Q (By Mr Kendrick) Now there was a fight back in
7 December of 2004 that you were involved in, correct?

8 A Yes, sir

9 Q And just very briefly tell me what happened
10 after that fight ended?

11 A Well you know I placed a phone call, you know,
12 let my homeboy know what had took place

13 Q If I could just interrupt you for one second,
14 I'm sorry, but just to keep things smoothly running

15 I have got State's Exhibit 52 from Mr Dunham's
16 trial which shows a phone call to a number
17 843-819-3436, one at 4 33 and one at 4 35 the day of
18 the shooting Are those the phone calls you placed?

19 A Yeah, correct

20 Q Who were you trying to call?

21 A My homeboy, Brandon Catino Busy

22 Q Were you trying to call Mr Dunham?

23 A No At the time I didn't know who that was

24 Q How did you get this phone number?

25 A He gave it to me upon my release

1 Q Release from?

2 A DJJ, I mean from ROTC

3 Q He told you to call you if you needed something?

4 A Yeah, this was the number

5 Q Did anyone pick up those phone calls?

6 A Yeah, a dude pick up the phone and be like, yo,
7 where you at? I'm like, man, let Busy know what went
8 down I'm right around the corner I m like, come get
9 me then And he came and got me

10 Q Okay Someone came and picked you up in an old
11 silver dented car, right?

12 A Yes, sir

13 Q Was it Michael Dunham that came and picked you
14 up?

15 A No, sir

16 Q Do you know who it was that came and picked you
17 up?

18 A I man now did I know

19 Q Okay Well how do you know now who it was?

20 A Through we went to bond court

21 Q Okay And who was it that picked you up?

22 A Steven Johnson

23 Q , Mr Johnson was also charged with murder in this
24 case-at some point?

25 A I believe so

1 Q Did he testify against you at your trial?

2 A Yes, sir

3 Q Did he admit that he was there?

4 A Yeah Really his testimony was really something
5 about a fight, something I really can't remember his
6 testimony but

7 Q But he didn't agree that he was in the car with
8 you?

9 A That question was never presented

10 Q Okay You knew Mr Dunham was charged with this
11 same murder, correct?

12 A Supposedly

13 Q But you knew about that before he went to trial
14 and you knew that he was facing charges for the
15 shooting?

16 A Yeah I was under the impression I was, you
17 know, supposed to go to trial first, you know

18 Q Okay When Mr Dunham went to trial first, did
19 you ever talk to your lawyer or to Mr Dunham's lawyer
20 about the possibility of testifying on Mr Dunham's
21 behalf?

22 A I was under the impression that I was but I --
23 never spoke to anybody Nobody ever just -- I really
24 can't tell you that because there was a big
25 misunderstanding when I was supposed to testify to get

1 voluntary manslaughter because I didn't know what was
2 going on at the time

3 I didn't find anything out until he supposedly
4 had got found guilty of the charge That's when
5 everything really manifested itself

6 THE COURT Let me make sure I understand his
7 case And I don't mean to interject myself

8 SIR I need to understand what you're saying
9 Are you saying that you thought you were going to
10 testify against him and get the benefit of a lower
11 situation, that being voluntary manslaughter?

12 THE WITNESS No, ma'am

13 THE COURT what are you saying? I'm a bit
14 confused

15 THE WITNESS That I was supposed to at last set
16 the record straight as for what happened from the
17 events what all took place

18 THE COURT Explain to me what you mean by that

19 THE WITNESS They were saying we was together
20 But I was saying, no, it was me and Steven Johnson
21 together whoever this was at the time, I didn't know
22 who he was

23 MR KENDRICK I may be able to clarify with a
24 couple of questions

25 THE COURT No, I'm clear now I needed to be

1 clear that he understood your questions And I needed
2 to understand the context of what he said

3 Q (By Mr Kendrick) So when you say you thought
4 you were going to testify, you weren't going to testify
5 against Mr Dunham, you were going to testify in your
6 own trial and explain what happened?

7 A Yeah I was supposed to testify in his trial on
8 what took place

9 Q Correct And were you willing to do that?

10 A Yes, sir

11 Q Were you willing to testify and admit that you
12 were present at the shooting?

13 A Exactly

14 Q But you just wanted to make sure they knew that
15 Mr Dunham was in fact not present at the shooting?

16 A Yes, sir

17 Q When you went to trial a month later, what
18 happened in your trial?

19 A It was a bunch of circumstance who just saying
20 like they heard a situation supposedly went down And,
21 you know, really a lot of confusion I really didn't
22 understand it because everybody's testimony was like
23 inconclusive to what was going on

24 Q What was the result of your trial? At some
25 point did your trial stop and did you plead guilty?

1 A Yes, sir

2 Q Tell me about that

3 A I pled guilty because I didn't want to put my
4 family no further through it Because I was under the
5 impression I just was like, you know, instead of
6 getting the life sentence I pled guilty

Q what did you plead guilty to?

8 A Voluntary manslaughter

9 Q How much time did you get?

10 A 30 suspended to 15

11 Q So your active sentence you got was 15 years?

12 A 11 years out of 15

13 A Right, so you'll do 11?

14 A (Affirmative head shake)

15 Q And that was after the state rests their case
16 that you entered that guilty plea?

17 A Yes, sir

18 MR KENDRICK Your Honor, if I can beg the
19 Court's indulgence

20 THE COURT Uh-hum

21 Q (By Mr Kendrick) very short and I will be done
22 If you had been asked to testify at Mr Duhnam's trial
23 that he was not there, would you have testified to
24 that?

25 A Yes, sir

1 MR KENDRICK That's all I have, Your Honor

2 THE COURT Any questions, Mr Friedman?

3 MR FRIEDMAN Yes, Your Honor

4 CROSS-EXAMINATION

5 BY MR FRIEDMAN

6 Q Mr Jeter, do you remember giving a statement to
law enforcement?

8 A who?

9 Q Do you remember giving a statement to law
10 enforcement prior to your trial?

11 A Yes, I do The statement was never entered

12 Q That's not what I'm asking I'm just asking if
13 you remember the statement?

14 A Yes

15 Q You admitted that there was an altercation, and
16 you've admitted that today too, right?

17 A Right, there was

18 Q Do you remember in your statement that you
19 called Michael Dunham?

20 A At the time that's who the officer said he was
21 But I never knew the name The officer said, that was
22 Michael Dunham, the Dawson fellow I didn't know he
23 was referring to him, that Michael Dunham right there

24 Q Do you remember telling them that about 20
25 minutes after the fight that you got in Mr Dunham's

1 car?

2 A At the same time I didn't know they were
3 referring to Mr Dunham right there

4 Q And it's your testimony that you were trying to
5 call Brandon Catano, is that right?

6 A Yes, sir

7 Q Brandon Catano is not the one who showed up in
8 the car?

9 A It was Steven Johnson who showed up instead

10 Q And you testified at the time you didn't know
11 who Steven Johnson was?

12 A I never testified

13 Q I'm talking about today

14 A Right Until after the situation happened to
15 where you know, everything really came out, when we
16 all came to the county jail That's when I knew him
17 now

18 Q Did you know who he was when you got in the car
19 with him?

20 A No, sir

21 Q Did you know a guy named John Jaquez?

22 A I know of him

23 Q Did you know a guy named Justin Lyman?

24 A These guys, but then they was case-wise

25 THE COURT I'm sorry, sir, please repeat your

1 answer

2 THE WITNESS Case-wise Not personally,
3 case-wise

4 Q (By Mr Friedman) Who was your attorney in your
5 case?

6 A Stanley Feldman

7 Q Did you have any discussions with him about
8 testifying on Mr Dunham's behalf?

9 A No, I didn't -- I mean I talked to him about it,
10 but he never said anything I was brought into here
11 for trial, I was brought up here under the impression
12 that I was But he never really gave me a really
13 specific answer to that question

14 Q Do you know whether or not Mr Feldman would
15 have let you speak with Mr Davis, who s Mr Dunham's
16 attorney?

17 A I didn't -- probably

18 Q Was there any benefit to you to testify at Mr
19 Dunham's trial?

20 A No, sir

21 MR FRIEDMAN I have nothing further, Your
22 Honor

23 THE COURT Any redirect?

24 MR KENDRICK Just briefly, Your Honor

25 REDIRECT EXAMINATION

1 BY MR KENDRICK

2 Q In direct response to what he just asked you, if
3 your attorney had asked you if you could speak to Mr
4 Dunham or Mr Dunham's lawyer about testifying, that
5 would have been your choice, right?

6 A True indeed

7 Q You would have been the one to make that call?

8 A Yes, sir

9 Q Isn't it true the benefit to you of testifying
10 for Mr Dunham would be to make sure that an innocent
11 man didn't go to jail?

12 A That's correct

13 MR KENDRICK That's all I have, Your Honor

14 THE COURT Any objection to the witness being
15 excused from the State?

16 MR FRIEDMAN No, Your Honor

17 THE COURT From the defense?

18 MR KENDRICK No, Your Honor

19 THE COURT Sir, you are excused

20 Any further witnesses?

21 MR KENDRICK Your Honor, we call MS Victoria
22 Martin

23 MS VICTORIA MARTIN,
24 after having first been duly sworn to state the truth,
25 the whole truth and nothing but the truth, testified on

1 her oath as follows

2 THE COURT You may proceed

3 MR KENDRICK Thank you, Your Honor

4 DIRECT EXAMINATION

5 BY MR KENDRICK

6 Q MS Martin, I'm Josh Kendrick You and I have
7 spoken a number of times this week, correct?

8 A Yes, sir

9 Q I want to talk to you a little bit about Mr
10 Dunham's case Do you remember looking back the day
11 that they say he was involved in a shooting?

12 A Yes, sir

13 Q You have an independent memory of that day?

14 A Yes, sir

15 Q Is that the same day he was arrested for the
16 shooting?

17 A Yes, sir

18 Q I want to ask you, and I don't want to embarrass
19 you, but as to the nature of your relationship with Mr
20 Dunham, you all sort of had a romantic relationship?

21 A Yes, we did

22 Q All right Now would he come over to your house
23 most afternoons?

24 A Yes, he did

25 Q Tell me about that?

1 A well --

2 Q You don't have to tell me the details, but just
3 the timing of when he would come

4 A It's embarrassing, but it's okay Yeah, we'll
5 call each other and he'll come to me and we used to
6 have sex

7 Q When would he usually come over?

8 A Like 2 00, between 2 00 and 5 00

9 Q okay Let's talk about this specific day which
10 would have been December 13th, 2004, the day he was
11 arrested

12 Do you remember when you all got together? when
13 he came over?

14 A Uh-hum

15 Q What time was that?

16 A well about 2 00-something because it was after I
17 got out of school

18 Q When did you get out of school?

19 A I got home like 2 15, got out of school like 2
20 o'clock

21 Q And you know that he came over after that?

22 A Uh-hum

23 Q All right Now tell me what other things
24 happened that day that help you kind of remember what
25 times you all were together?

1 Let me ask you first before we go to that, from
2 2 o'clock, when did he finally leave?

3 A 5 o'clock because that's before my mom comes
4 home from work

5 Q Okay, we'll get to that in a minute But
6 between 2 00 and 5 o'clock, tell me anything that
7 happened that would help you mark the time he was
8 there?

9 A My siblings came home from school

10 Q When did your siblings come home from school?

11 A Like almost at 4 o'clock

12 Q How do you know that it was almost at 4 o'clock?

13 A Because they get out at 3 40, and they get off
14 the bus at 4 00 And it's a little after 4 00 when
15 they come in the house

16 Q When your siblings got home, was Mr Dunham
17 still at your house?

18 A Yes, he was

19 Q You said a minute ago Mr Dunham left at 5
20 o'clock How do you know specifically it was 5 o'clock
21 when he left your house?

22 A Because my mom gets off exactly at 5 o'clock
23 and he got to be gone before she gets there from work

24 Q Because you don't want your mom to know you all
25 were hanging out?

1 A Yep

2 Q You still wanted to hang out with him as long as
3 possible, right?

4 A Yeah, but I didn't want her to know I was having
5 sex with him at 16 years old

6 Q I understand so you can say based on your
7 memory of that day that from 2 o'clock to 5 o'clock Mr
8 Dunham was with you?

9 A Uh-hum

10 Q Did he ever leave at any point during that
11 trial?

12 A NO

13 Q I'm going to ask you another question There is
14 a phone number that was involved in this trial, an
15 843-819-3436 that was registered to you I suppose when
16 the account was opened?

17 A Uh-hum It was a pre-paid singular phone

18 Q Okay Who did you give that phone to?

19 A No, I sold it to Justin

20 Q Justin?

21 A Lemmon

22 Q Do you know if Justin Lemmon gave the phone to
23 Michael Dunham?

24 A No because Michael had a phone

25 Q Was Michael's number 843-819-3436?

1 A No

2 Q How often did you speak to Michael on the phone?

3 A Every day

4 Q And do you have anything that specifically
5 reminds you of the number he would call you from?

6 A Yeah I remember it was a 364 number And when
7 it popped up his Mama's name came up and it said Jenny
8 Mitchell

9 Q And Jenny Mitchell, you actually thought?

10 A I thought it was a girl

11 Q Some other girl it was because his mom has a
12 different last name?

13 A Yes

14 Q Now did anyone from either the State, the
15 prosecutor's office, or from Mr Dunham's defense team
16 come to talk to you about the afternoon that he was
17 with you before the trial?

18 A No When they came to me they came to me with
19 some pictures of his car

20 Q Now when you say they, are you talking about
21 police people or defense people?

22 A I think they were prosecutors

23 Q Okay Solicitors?

24 A Yeah

1 that afternoon?

2 A Yeah, they know They asked me I told them
3 that we had something going on and then they showed me
4 three different pictures or four different
5 pictures, something like three or four pictures

6 And one picture was one side of his car And
7 the other side with the dent in the door

8 Q Did they ask you any detailed questions about
9 the afternoon that he was with you?

10 A I don't think so

11 Q Okay Did you tell Mr Dunham's defense team
12 about this? I know you were listed as an alibi
13 witness You had talked to his lawyer about this?

14 A Uh-hum

15 Q Were you at the trial?

16 A Yes, I was

17 Q Why were you at the trial?

18 A Because I got subpoenaed to come because I was
19 his alibi witness

20 Q Do you remember who subpoenaed you?

21 A No

22 Q At some point the trial ended and you never got
23 called as a witness, correct?

24 A Uh-hum I came here Monday through Friday

25 Q So you were here every day?

1 A Every day and I never got called

2 Q , Did you have any discussions with Mr Dunham's
3 attorney about why he wasn't going to call you?

4 A NO

5 Q Did you have any discussions with Mr Dunham
6 about not being called? I guess you couldn't talk to
7 him?

8 A No

9 Q Okay Did you ever talk to anyone about why you
10 were not going to be called as an alibi witness?

11 A NO

12 Q Did you expect --

13 A I was mad that I had to come up here every day
14 and I was never called though

15 Q Did you expect to be called -- I'm sorry, the
16 week of the trial, which was Valentine's Day week 2006?

17 A Uh-hum

18 Q Would you have testified in that courtroom to
19 what you've just testified to this afternoon?

20 A Yes, I would have

21 Q And nothing about your story has changed?

22 A No, it hasn't

23 Q Just very briefly, you actually came here from
24 Kentucky to testify today, correct?

25 A All the way from Kentucky, Morgan Field, yes, I

1 did

2 Q And I sent you a subpoena but explained to you
3 that technically I couldn't force you to come under
4 that subpoena because you weren't in South Carolina?

5 A Yes, you did

6 Q But you rode 20 hours on the bus yesterday to --

7 A No, it was more than 20 hours No, it was more
8 than 20 hours

9 Q I'm sorry It was supposed to be 20 hours, but
10 it was a long trip?

11 A Yes, it was

12 Q Thank you for coming

13 MR KENDRICK That's all I have for Ms
14 Martin

15 THE COURT Any cross-examination of the
16 witness?

17 MR FRIEDMAN Just one, Your Honor

18 CROSS-EXAMINATION

19 BY MR FRIEDMAN

20 Q Ms Martin, did you ever talk to Rodney Davis,
21 who was Mr Dunham's attorney?

22 A Yes The Public Defender? Yes, I did

23 Q You did talk to him?

24 A Uh-hum I talked to him the first time like
25 whenever it first happened And then like right before

1 his trial began he came, he found me, he said I was
2 like hard to find

3 And he said that I was the only person or was a
4 witness whose story didn't change over the years

5 MR FRIEDMAN I have nothing further, Your
6 Honor

7 THE COURT Any redirect?

8 MR KENDRICK No, Your Honor

9 THE COURT Any objection to the witness being
10 excused?

11 MR KENDRICK No, Your Honor

12 MR FRIEDMAN No

13 THE COURT Ma'am, you are excused

14 You may call your next witness

15 MR KENDRICK Your Honor, I rest at this time

16 THE COURT State have any witnesses?

17 MR FRIEDMAN Yes, Your Honor The State would
18 call Rodney Davis

19 THE COURT Mr Davis, if you would come forward
20 to be sworn

21 MR RODNEY DAVIS,
22 after having first been duly sworn to state the truth,
23 the whole truth and nothing but the truth, testified on
24 his oath as follows

25 THE COURT You may proceed

1 MR FRIEDMAN Thank you

2 DIRECT EXAMINATION

3 BY MR FRIEDMAN

4 Q Mr Davis, how long have you been practicing
5 law?

6 A Next month is the start of the 16th year I
7 passed the bar in '96

8 Q How much of that time has been in criminal law?

9 A 100 percent

10 Q Were you appointed or retained in this case?

11 A Appointed

12 Q Do you remember about how many times you met
13 with the applicant prior to the trial?

14 A I don't I have some part of the file with me
15 There is an entire banker's box in the back of the
16 courtroom, and an investigator file Several times I
17 could look at my file if I needed to

18 Q Did you think you had enough time to prepare for
19 trial?

20 A Yes

21 Q Do you recall if you discussed the elements of
22 the charges and what the State was required to prove?

23 A I don't recall specifically, but that's my
24 normal practice to do that, yes

25 Q Do you remember if you discussed potential

1 defenses with him?

2 A Yes

3 Q What was his defense at trial?

4 A We had filed a notice of alibi, so that was
5 certainly a plausible defense In looking through the
6 transcript and my notes to prepare for today, it's
7 quite clear that the week before trial he was hesitant
8 on testifying or not himself

9 And the transcript and my notes show that there
10 was discussion after the State rested And it was at
11 that time in those discussions that he did not want to
12 testify And we discussed the alibi witnesses and some
13 law enforcement witnesses that we had under subpoena

14 In fact law enforcement witnesses were on the
15 way And as Ms Martin just testified, she was
16 certainly here But we discussed it and we decided to
17 not put up a defense

18 THE COURT I'm sorry, please repeat what you
19 said I lost the last part of it

20 THE WITNESS Ultimately we decided not to put
21 up a defense He did not want to testify We were not
22 going to call -- there were two teenage girls, Ms
23 Martin and another girl, Ms Brown, that we potentially
24 could have called

25 But when he did not want to testify, we had

1 discussions about whether we call them in the absence
2 of his testimony setting up the alibi when he decided
3 not to we had three officers also under subpoena, two
4 of which, my recollection is two of which were on the
5 way to court My investigator called them and they
6 were on the way to court

7 But our continued discussions, client and
8 co-counsel, decided that instead of calling those
9 officers for very little testimony to show that there
10 are other suspects, that we felt that that was not
11 sufficient to give up the right of last argument to
12 simply call those officers for a minor amount of
13 testimony that would be given

14 Q (By Mr Friedman) Did you discuss that with the
15 applicant that you would have last argument if you did
16 not present any witnesses?

17 A Yes I always try to discuss that with them
18 while it should not be the decision, it should be in
19 their mind that I could be the last person the jury
20 hears from, of course other than the judge, if we do

21 present evidence Certainly

22 Q Did you speak with Ms Martin prior to the
23 trial?

24 A Yes

25 Q Was there any particular reason that you chose

1 not to call her at the trial?

2 A While she was testifying I was looking at my
3 file and my investigator's file And just for the
4 record on when I go to trial it's my policy to create a
5 file folder for every potential witness And so I have
6 a file folder for her, and in this case my investigator
7 had a file folder for her as well

8 To directly answer why we did not call her is
9 what I said a moment ago When we had discussions with
10 Mr Dunham, ultimately it was decided he did not want
11 to testify, then we discussed whether we would call any
12 other lay witnesses or any law enforcement officer, any
13 witnesses at all

14 And it was the consensus decision, my client's
15 ultimate decision, that we were not going to call
16 witnesses The only thing in reviewing my file folder
17 from her testimony a moment ago is it's absent in my
18 notes, my investigator's report, his file, my file, the
19 testimony that Mr Dunham was there and then left

20 The notes and the information and my
21 recollection is that he arrived around 4 00 or 5 00 and
22 was there in and out of the apartment But not -- the
23 notes I have don't completely correspond with the fact
24 that he left and went away at 5 00

25 In fact it helped What I'm saying though is I

1 thought it actually helped us in the sense that she was
2 going to be testifying that he was in and around the
3 Marsh View Apartments from about 4 00 or 5 00 on
4 watching TV -- or watching movies, that scary movie,
5 and hanging out

6 At one point leaving for a little bit and riding
a bicycle But we didn't have an absolute alibi, but
8 we certainly had the basis for a potential alibi and we
9 were ready to present it

10 Q Do you remember there was some testimony about
11 Justin Lemmon selling his phone -- buying his phone
12 from Victoria and selling it to the applicant?

13 A I do

14 Q Were you able to cross-examine Mr Lemmon about
15 that?

16 A I'm sure there was cross-examination, I don't
17 recall the exact questioning

18 Q Do you remember any discussion about Michael
19 Jeter, his codefendant, prior to the trial?

20 A I had correspondence with Mr Jeter's attorney,
21 Stanley Feldman It was not -- let me rephrase that,
22 we had sporadic conversations back and forth

23 There was discussions about whether the State
24 was going to try both defendants at the same time,
25 whether they were going to sever Both Mr Feldman

1 and I were very interested, obviously, as happens when
2 there are multiple defendant cases frequently that one
3 client works an agreement and is going to testify
4 against the other

5 So we both had indicated to each other if that's
6 going to happen just let us know so that we can prepare
7 for that We would not reveal any confidences, of
8 course, but just for procedure if nothing else If Mr
9 Dunham -- and the State certainly was trying to get Mr
10 Dunham to cooperate and provide information and be a
11 witness against Mr Jeter

12 Mr Dunham, and I said this on the record after
13 the conviction, he had always maintained that he was
14 not the person in the car and he didn't do this
15 So we had nothing for the State, and we had no reason
16 to help the State and nothing to help the State with

17 But we were in discussions about that So I did
18 correspond with Mr Feldman before the trial

19 Q Were there ever any discussions with Mr Feldman
20 about Mr Jeter testifying at the trial of Mr Dunham's
21 trial?

22 A No He never offered that I never requested
23 that I never requested to speak with Mr Jeter about
24 whether he would testify or not

25 I heard part of his testimony I came in a

1 moment ago, I heard part of his testimony My
2 recollection is that there was nothing in the record at
3 the time or nothing in discovery at the time that would
4 have suggested that he would have offered that
5 testimony

6 I certainly didn't seek it out we had opposing
7 defenses It was my perception of the case that Mr
8 Jeter, I felt, was actually in a tougher position which
9 people are identifying him as being in the altercation
10 in the fight that led up to the shooting, that he was
11 more identifiable

12 we had the position that any partial
13 identification of Mr Dunham was weak at best And we
14 certainly tried to pick at that to show inconsistencies
15 and the identification of Mr Dunham was very weak
16 And ultimately that's the defense we went forward on

17 Q Do you recall any testimony about Jeter and the
18 defendant being together after this incident?
19 witnesses seeing them together?

20 A well after, yes

21 MR FRIEDMAN I have nothing further, Your
22 Honor

23 THE COURT Any questions for the witness?

24 MR KENDRICK Just briefly, Your Honor

25- CROSS-EXAMINATION

1 BY MR KENDRICK

2 Q Mr Brown (sic), how are you doing today?

3 A All right

4 Q If you don't mind looking at this document Is
5 that the notice of alibi that you filed?

6 A It certainly appears to be It has his name at
the top, my signature at the bottom It corresponds
8 February 3rd, '06

9 Q Okay

10 MR KENDRICK Your Honor, I'd ask to move this
11 in as Exhibit 1 This is something that was not
12 included in any of the records that I think you have,
13 but --

14 THE COURT What is it?

15 MR KENDRICK It is a certified copy from the
16 clerk of court of the defendant's notice of alibi
17 Just to keep the record clean, I'd like to have this
18 document in the record

19 THE COURT That would be in his record He
20 would have had to file it Pursuant to the rules, he
21 has to give notice to the State and then it has to go
22 in the file as well I don't think there is any
23 contention that he didn't give notice of alibi pursuant
24 to the rules, is there?

25 MR KENDRICK No

1 THE COURT I don't think see that as an issue
2 He gave notice of alibi as required by the rules and
3 listed her as a witness

4 MR KENDRICK okay

5 Q (By Mr Kendrick) Just with reference to Ms
6 Martin, it sounded like the reason that you didn't want
7 to call her is because you wanted to maintain the last
8 argument?

9 A One factor In looking again, preparing for
10 this and going back through all the notes and
11 transcripts and all that, I had my notes from
12 throughout the trial

13 And my notes that correspond with the transcript
14 where the judge had reviewed what prior record, if any,
15 if Mr Dunham testified, I have notes on that I have
16 a big line and then here's what my notes say Chat
17 with defendant, re testifying Does not want to
18 testify

19 And then I have got, discuss witnesses colon
20 will not, underline, call Vicki will call Horn, Bunts
21 and Kinsey Those are three offers that were en route
22 That would have been obviously, very limited, that's my
23 limited notes from the discussion that Mr Dunham and I
24 had about what, if any, defense do we present

25 I know from the transcript and from my

1 investigator notes that he had called these officers to
2 get them on their way And in the meantime we made a
3 decision in fact, no, we are not even going to call the
4 officers

5 That was a two-step -- I think more the alibi
6 was foregone because Mr Dunham was not going to
7 testify, is my recollection I felt -- we felt that
8 it's not a complete alibi, it's not a perfect alibi
9 because there is some comings and goings And if he
10 didn't testify -- certainly he had the agreement I'm
11 not guilty I want a trial -- but if he didn't testify
12 about where he was and he didn't do it, and we
13 presented Vicki only, that that was going to be weak

14 And so that rather than presenting a weak alibi,
15 we would not present one at all It was his decision
16 to testify or not being the first domino And then
17 once we decided that because he chooses not to we are
18 not calling her And then we had the other three
19 officers but it didn't make sense to call them for the
20 limited purpose of showing there were other suspects
21 and so ultimately we didn't call anyone

22 Q As far as Mr Jeter, when you say that you had
23 opposing defenses, am I correct in my understanding
24 that Mr Dunham said he had nothing to do with this,
25 Mr Jeter said, yeah, I was there but I didn't know

1 this guy that was driving was going to shoot the
2 person?

3 A Right And I didn't phrase it well, just in the
4 sense that Mr Dunham had always maintained to me that
5 he wasn't there, he wasn't the one driving the car, he
6 wasn't there

7 And we believe that the identification, the
8 attempted identification -- of course then we had the
9 identification in the courtroom, but we tried to deal
10 with that -- that identifying him, while that would be
11 the part that if believed would convict him, we also
12 felt that would be weak and we would be fighting that

13 Versus it was my view of the case that Mr
14 Feldman's client is identifiable He's there He is
15 in a fight More than one person see him, they see him
16 get in the car They have a tougher time saying,
17 wasn't the only one there

18 Now certainly he -- I understood had they come
19 up for trial together he certainly -- my anticipation
20 is he would have said, I didn't shoot

21 Now I certainly had no reason to believe then
22 that he would have identified the driver More
23 importantly, I had no reason to believe he would
24 identify the driver as someone other than Mr Dunham
25 But I did not talk to him

1 Q Right

2 MR KENDRICK Beg the Court's indulgence

3 That's all I have, Your Honor

4 THE COURT Any redirect?

5 MR FRIEDMAN No, Your Honor

6 THE COURT Let me make sure I'm clear, Mr

7 Davis How old was your client at the time of this
8 trial?

9 THE WITNESS I can, if I can step to my box at
10 the back of the courtroom I can tell the Court

11 THE COURT Sure I'm curious

12 THE WITNESS Your Honor, our initial intake
13 form he's listed as 18 His date of birth is 9/5/86
14 And a screen was in December of 2004 So he was 18
15 when we screened him I'd have to see exactly when we
16 went to trial, but --

17 THE COURT That answers the question basically

18 THE WITNESS Yes, Your Honor

19 THE COURT Just so that I'm clear, you said you
20 got here at the tail end of Ms Martin's testimony, or
21 did you hear the entire testimony?

22 THE WITNESS I heard her entire testimony, Your
23 Honor

24 THE COURT Am I correct, because I want to make
25 sure I heard you correctly, that you said that you have

1 a file for every witness, and your investigator had a
2 file as well?

3 THE WITNESS I have a file for every witness
4 My investigator had a file for her, I'm not sure if he
5 has --

6 THE COURT I didn't mean to imply that she had
7 one for every witnesses But she had one for this
8 witness?

9 THE WITNESS He Yes, Your Honor

10 THE COURT And that your notes do not reflect
11 the testimony that you heard here today, is that
12 accurate?

13 THE WITNESS Just a moment, Your Honor I have
14 two things to go from that First is my handwritten
15 notes in her file that I would have used, two different
16 places that Mr Dunham -- I have got 4 00 to 5 00 p m
17 defendant calls her, come meet outside He was riding
18 up on a bike alone

19 Other notes in the same file Defendant arrives
20 in Marsh View, 4 00 to 5 00 p m and it's still
21 daylight

22 THE COURT So your records reflect that he was
23 there at some sporadic moments between 4 00 and 5 00
24 potentially?

25 THE WITNESS No, that's when he arrived

1 THE COURT I just wanted to make sure what I
2 heard and had written was accurate

3 THE WITNESS Then just going down the notes I
4 will summarise, and I will certainly be as specific as
5 you want me to I have notes here she is identifying
6 some folks for me, Chanice, Devante, Koana

7 Then we go on down to Kara Robinson almost
8 fought with Vicki Chanice's sister was telling Ms
9 Robinson that Vicki was talking about her Michael
10 broke it up They were at Dorothy's house until about
11 midnight or 1 00 a m He left on his bike

12 Mr Lemmon walked up after Mr Dunham was there
13 So it's just that my notes seem to indicate that he
14 arrives at 4 00 or 5 00 and is there throughout the
15 evening until midnight or 1 00 a m

16 THE COURT Okay But it's not -- consistent
17 with what you heard today?

18 THE WITNESS If I heard her right that he was
19 there and left at 5 00

20 THE COURT She said 2 15 and left at 5 00

21 THE WITNESS Right So the time frames are a
22 little different

23 THE COURT But irregardless of that it's your
24 testimony that strategically you did not feel -- you
25 felt it was a weak alibi at best, and it was not worth

1 giving up last argument?

2 THE WITNESS Without him testifying

3 THE COURT Yeah, I left out that part but it
4 presumes that part of it

5 THE WITNESS Yes ma'am This actually, my
6 notes would be a stronger alibi, I would argue, than
7 what she testified to today

8 I'm going from my notes, and she was certainly
9 there, she's a witness to it But if he was in and
10 around that apartment all the way up until midnight,
11 that's actually stronger than him leaving at around
12 5 00 before her mother gets there

13 In our discussions my recollection is that --
14 and he was concerned about testifying before we went to
15 trial And we understood that And my opening is very
16 short and very thin because I didn't want to promise
17 more than what I could provide And I didn't know what
18 his decision would be until after the State's case

19 When he, like I said the first domino was, I
20 don't want to go on the stand Fair enough, we can
21 call Vicki and she can present that But without you
22 and just her, I'm not sure how that's going to play
23 out

24 THE COURT And strategically, in terms of
25 assessing the matter, that was not worth giving up last

1 argument?

2 THE WITNESS Correct So we did discuss that
3 would be rather weak, let's not call her How about
4 calling the officers, though, to show that they were
5 investigating other suspects including Jeter and
6 Johnson and others

7 Well let's really think about that Do we
8 really want to call them just for that purpose and lose
9 last argument? And to both of those, them being in our
10 opinion while a defense a weak defense, it was not
11 worth presenting for that little bit of evidentiary
12 value and holding on to last argument and just take
13 shots at the State's case that the identity is not --
14 their theory is not valid

15 THE COURT And you never had any indication
16 from Mr Feldman that Mr Jeter was willing to come
17 forward and say that he was not there, he had nothing
18 to do with it, he was an innocent man?

19 THE WITNESS I had nothing from Mr Feldman
20 indicating that he was going to do that I can tell
21 you, it was mostly by e-mail they were rather short
22 dealing with Stanley was sick at one point, was going
23 to postpone the trial

24 Hey, you let me know if your client is going to
25 testify, and I will let you know if there is some deal

1 just to tell you that it's going to be separate I
2 never said, can I speak with Mr Jeter I never
3 directly asked for that

4 THE COURT But if you thought he had something
5 valuable to say or to exculpate your client, you would
6 have

7 THE WITNESS I would have We frequently know,
8 I at least would have made the request Certainly
9 looking back I wonder if I should have, but I certainly
10 didn't see -- my anticipation was they were going to
11 have to admit he was there, but I got --

12 THE COURT You felt that would have damaged
13 your client in the long run?

14 THE WITNESS Well I didn't know if he was going
15 to say he was driving It was hard to dispute that the
16 car certainly looked like my client's, or perhaps was

17 And so certainly if we had -- in hindsight had I
18 known he was going to name somebody else, oh my gosh
19 we have got to get him on the stand That's the best
20 evidence we could have

21 But given the circumstantial -- it was a
22 circumstantial case -- everything else at the time I
23 did not have a reason to believe he would give me a
24 name I didn't know who he would give me

25 THE COURT Based on your relationship, and I

1 mean working relationship with Mr Feldman, having
2 dealt probably with many cases together, just in a
3 collegial manner because we have a small bar, do you
4 believe that is something he would have disclosed to
5 you without you having to ask?

6 THE WITNESS If it would not have hurt his
7 client Certainly he would have kept a confidence and
8 not told --

9 THE COURT I mean if his client, as he said
10 today, said I wanted to do this He would have been
11 constrained and told you that, I think If his client
12 directed him to communicate that to you

13 THE WITNESS I think Mr Feldman would have
14 I'm speculating, again based on my working experience
15 with him I was not here for all of Mr Jeter's
16 testimony If he testified that he was actively
17 wanting Mr Feldman to contact me, I think Mr Feldman
18 would have

19 THE COURT I don't want to misstate his
20 position, but his position basically was that he wanted
21 to come -- he thought he was under some impression that
22 he was going to testify at the defendant's trial and
23 tell them what took place and that he wasn't there
24 Meaning the defendant wasn't there

25 THE WITNESS Until this PCR hearing, I had no

1 knowledge that he would testify to that And the State
2 may have brought him over each day, we didn't have him
3 under subpoena

4 Because again I had no knowledge who he was
5 going to say was the driver And in the absence of
6 that knowledge, I could make an argument And then
7 heaven forbid if I talk to him and he said, yeah, it
8 was Mr Dunham, then we are in a bind

9 where if I don't have that information, then of
10 course I can continue on with my client's position

11 THE COURT Well in good faith you could argue
12 that your client simply was not there at all?

13 THE WITNESS Correct

14 THE COURT Okay

15 Any questions as a result of the court's
16 questions from the applicant?

17 MR KENDRICK Your Honor I don't have any
18 questions but I would if the Court allows me, I can
19 call Ms Martin to rebut Not as a rebuttal witness,
20 but what --

21 THE COURT She has been present now and I
22 wouldn't give weight to anything she said at this point
23 because she could then change her testimony which would
24 be beneficial And hindsight is 20/20 I believe she
25 was honest in her tes -- I mean I believe she testified

1 as to what she believed the substance of her alibi
2 testimony would be

3 MR KENDRICK The only thing, Your Honor, that
4 I would have -- can I please explain to you why I --
5 because she told me this in the hallway long before 2
6 o'clock today, that at 5 o'clock when Mr Dunham left
7 her house, he simply left her apartment, he didn't
8 leave the apartment complex

9 So nothing with that is inconsistent with --

10 THE COURT That's wouldn't exculpate him If
11 the shooting took place in the apartment complex

12 MR KENDRICK It did not take place in the
13 apartment complex

14 THE COURT But she wouldn't be able to identify
15 -- she wasn't with him, she wasn't joined at his hip
16 the whole time he was in the apartment complex, was
17 she? Apparently he was involved with two girls

18 MR KENDRICK Makes no difference, Your Honor,
19 because the shooting happened at 4 00 or 5 o'clock, and
20 he left at 5 o'clock

21 The only thing I'm bringing up is that I don't
22 disagree with what Mr Davis said that his notes
23 reflect that he left at 5 o'clock I'm just saying
24 that she would say he left at 5 o'clock but didn't
25 leave --

1 THE COURT I don't think that makes a
2 difference because he said that's a stronger argument
3 for him He was there the entire time uninterrupted
4 what is crucial is that she testified he got to her
5 house at 2 15 and left at 5 00 because she didn't want
6 her Mama to know she was having sex with him, and
7 that's not reflected in their notes

8 And that's what I wanted clarified I wanted to
9 make sure that I heard him correctly At this point
10 she would simply be saying -- if she were to change her
11 testimony at this point, I can tell you that I
12 wouldn't --

13 MR KENDRICK It's absolutely not changed, Your
14 Honor I will tell you that --

15 THE COURT Let's just say for the record I will
16 note, and I have no reason to question that her
17 testimony would be that he was still in the apartment
18 complex after 5 00

19 which is consistent with what Mr Davis has said
20 which is that he was with her sporadically in and out
21 up until midnight And then helped break up a fight
22 and whatever else

23 MR KENDRICK Based on what you've just said,
24 Your Honor, if you'll allow me a brief closing argument
25 I will tell you what I was going to --

1 THE COURT No, I need to make sure the State
2 doesn't have any other witnesses

3 Does the State have any questions for the
4 witness as a result of the Court's questions?

5 MR FRIEDMAN No, Your Honor No other
6 questions

7 THE COURT Okay Any objection to Mr Davis
8 being excused?

9 MR KENDRICK None at all, Your Honor

10 MR FRIEDMAN No, Your Honor

11 THE COURT Okay You're excused

12 THE WITNESS Thank you, Your Honor

13 THE COURT You're welcome Have a good
14 evening

15 Anything further from the State?

16 MR FRIEDMAN Nothing further, Your Honor

17 THE COURT I will be glad to hear argument

18 MR KENDRICK Thank you, Your Honor

19 Your Honor, there are two critical pieces I
20 think of the puzzle here And I have picked up from
21 your questions to Mr Davis sort of where Your Honor I
22 think is focusing

23 I will try to address it altogether so that we
24 can do this more briefly But we have an alibi
25 witness Regardless of what his notes reflect, we have

1 someone who gets up here and testifies, he was with me
2 at the time of the murder

3 If you look at the transcript, the murder didn't
4 happen at the Marsh View Apartments, it didn't happen
5 on the same street or anything He would have had to
6 have left in his car after receiving a phone call,
7 which she specifically testified he didn't do

8 Your Honor, the reason I was kind of making a
9 big deal out of these phone records earlier is because
10 they give us almost a pinpoint time When you read Mr
11 Rashaan Green's testimony, which is the first witness,
12 he says Michael Jeter got the phone, he made a couple
13 of phone calls

14 He says, within five minutes a car pulled up
15 And then about a minute later, if not less, he heard
16 gunshots Those two phone calls, according to the
17 State's evidence were at 4 32 and 4 35 So if Mr
18 Dunham is not out driving his car at around 4 40, then
19 he had a very good alibi

20 We have a witness who would basically be able to
21 say that This is a swearing contest, Your Honor
22 There is an identification that is very unclear, she
23 picks out two people You can argue that's because
24 they look alike, but all six were supposed to look
25 alike So the identification doesn't carry a lot of

1 weight

2 You have three guys who testify very
3 inconsistently about overhearing Mr Dunham and Mr
4 Jeter talking about this But their statements and
5 their testimony absolutely don't match up

6 So what you've got here is a very weak case
7 against a man who had last argument Your Honor, the
8 last argument thing, I understand it, But I disagree
9 that you can call that a strategy decision and decide
10 the case on that

11 I have tried a bunch of state cases, I have
12 tried a bunch of federal cases In federal court it
13 doesn't make any difference, you never get last
14 argument In state court sometimes you have to put up
15 evidence And I will tell you that my experience as a
16 criminal defense lawyer, an alibi is one of those times
17 where you have to put up evidence

18 You don't have to put your client up You never
19 have to put your client up As a matter of fact,
20 that's one of the -- even though the client has a lot
21 of input that's one of the decisions that they can
22 make and you can't override it That is not the same
23 as --

24 THE COURT Is that the law in South Carolina?

25 MR KENDRICK Absolutely, Your Honor If your

1 client says he wants to testify, you have to let him
2 And if he says he doesn't want to, you cannot force him
3 to

4 THE COURT I misunderstood what you were
5 saying You were saying he gets to make all the
6 decisions about his case

7 MR KENDRICK Absolutely not

8 THE COURT That's not the case law

9 MR KENDRICK Absolutely not No, that's what
10 I mean, Your Honor

11 In other words, it wouldn't make any difference
12 Mr Dunham didn't have the power to say, don't call an
13 alibi witness All he has the power to do is say, I
14 don't want to testify

15 When he said he didn't want to testify, I
16 understand that there may be times -- you know, I'm
17 going to take that back Your Honor I disagree that
18 there is ever a time that you would accept last
19 argument over presenting a full and complete defense

20 So it can be called a strategy decision, but
21 that isn't what it is It was a mistake And I have a
22 great deal of respect for Mr Davis, and I think he did
23 a good job on this trial

24 But where he didn't do a good job was not
25 calling this alibi witness And ultimately, Your

1 Honor, I think that had a great deal to do with why he
2 ended up getting convicted

3 If you look at Mr Jeter's testimony, again you
4 can't claim because he didn't go talk to Mr Jeter
5 because he didn't think he'd help him, that that's any
6 kind of reason for you not to expect that Mr Jeter
7 would have testified on Mr Dunham's behalf

8 And I will tell in the opposite, if I were to
9 come in here and say, well, Your Honor, I've got 20
10 witnesses but I don't think I'm going to call them
11 because I don't know what they're going to do, but I
12 know the witness said this You would tell me, Mr
13 Kendrick, you know how it works, you can't do that

14 THE COURT How it works is any good attorney
15 never calls a witness unless they know what the words
16 are going to be that come out of their mouth You
17 don't ever take a chance like that

18 It's like Pandora's box Any question a lawyer
19 asks is rhetorical You should know the answer before
20 the witness opens their mouth within certain varying
21 degrees Because even in an in-camera hearing,
22 witnesses never testify the same

23 There is always some variance, but it should not
24 come as a complete surprise You should know what's
25 going to come out of the witness's mouth And that's a

1 big risk to take when you don't know Because once the
2 bell is rung, how you going to unring it?

3 MR KENDRICK Your Honor, I agree with you
4 How do you get to that point?

5 THE COURT Because Stanley would have told him,
6 I think, if his client wanted to testify

7 MR KENDRICK why wouldn't he have gone and
8 asked him? I mean, I don't know --

9 THE COURT They were talking, he would have
10 volunteered it I just -- I mean, Mr Feldman It's
11 been my -- see all these attorneys have a very close
12 working relationship

13 If he was going to testify -- it's a funny
14 thing Hindsight is always 20/20 after people have
15 already pled guilty and gotten their sentence His
16 position now holds very little water for me as to what
17 his position was before

18 His position before was very tenuous He didn't
19 know what was going to happen with him So it's very
20 nice for him to come in now and say, I would have
21 exculpated my friend I have had cases where people
22 have come in and exculpated their friends with no deals
23 in place where it worked a substantial detriment to
24 them and they got the maximum because it was just the
25 right thing to do

1 You don't waffle when it's the right thing to
2 do And what my perception is of Mr Jeter is he
3 didn't know what was going to happen to him beforehand
4 And now he has the benefit of hindsight and he wishes
5 he had come forward

6 Or maybe now because he knows he got the minimum
7 penalty, or the maximum under -- he got a lesser
8 included which really in effect was a lesser penalty
9 And now he has clarity in thought that I really wanted
10 to come and exculpate my friend

11 It has been my experience that when people want
12 to exculpate people, they do it And they come whether
13 a deal is in place or not

14 MR KENDRICK He was here all week, Your Honor
15 He was at the courthouse

16 THE COURT But he could have -- I mean there is
17 nothing that precluded him -- the crux of it is that he
18 didn't know what he was going to say And it's nice
19 now with the benefit of years having passed to say what
20 he would have said And of course he can say what he
21 would have said because he has been sentenced now and
22 he is serving his time I don't know

23 MR KENDRICK But, Your Honor, the problem I
24 have with the position you are taking is that --

25 THE COURT I don't have a position, I'm the

1 Court I am objective I don't have to win or lose
2 I don't have anybody to reward or punish

3 The Court does not advocate It simply
4 interprets the law and looks at the facts and makes
5 findings

6 MR KENDRICK Then, Your Honor, the problem I
7 have with the way you are telling me how you view this
8 testimony is that what Mr Jeter would have said or
9 wouldn't have said is somehow important to this
10 decision

11 But we don't know that And the reason we don't
12 know that is because Mr Dunham's counsel did not try
13 to talk to him And now whether Mr Feldman and Mr
14 Dunham's --

15 THE COURT It's unlikely Mr Feldman would have
16 let him talk to him

17 MR KENDRICK But, Your Honor we don't know
18 that And I mean I was --

19 THE COURT I know as a matter of policy where
20 you have -- as a lawyer, would you let your client talk
21 to another person's lawyer where their position
22 potentially are at odds with one another?

23 MR KENDRICK I've had it happen both ways,
24 Your Honor

25 THE COURT You've allowed your client to talk

1 to somebody else's lawyer with no privilege where they
2 could inculcate themselves and that could be used
3 against them because they have no privilege with the
4 other person's lawyer

5 I don't think you would want to say that out
6 loud again Because that really could subject you to
7 some real ethical issues as well as malpractice issues

8 MR KENDRICK No, it wouldn't, Your Honor

9 THE COURT I would never, ever allow my client
10 to talk to somebody else's lawyer where they could
11 inculcate themselves They would be quiet until it all
12 rode itself out Because my only obligation is to my
13 client I have no obligation to somebody else

14 MR KENDRICK There is nothing in the record to
15 support --

16 THE COURT That's common sense You have no
17 obligation -- if you represent somebody, you represent
18 their interest Your only job is to protect them

19 You are not the solicitor where you are supposed
20 to advocate the finder of truth That's not -- you
21 know the wheels of the system all have a function, it's
22 all a cog

23 It's the State's position and job to find the
24 truth, irregardless of where it finds them Even if
25 they're in the middle of trial and they find out that

1 there is something that exculpates somebody, they have
2 a different duty They have a duty to bring it to the
3 attention of the Court Guess what, we charged the
4 wrong person

5 And even though jeopardy has attached, it's our
6 duty to come to you and tell you that and to dismiss
7 these charges, and to pursue the person who actually
8 did it Or if there is something inconsistent, they
9 have really a much higher duty in terms of disclosing
10 to defense counsel and to the system

11 A defense attorney's job is to protect their
12 client That's why there are certain questions they
13 don't ask them That's why there are certain questions
14 they don't ask other attorneys

15 And I haven't practiced law in about 16 years,
16 but I did do some criminal law And I never would have
17 allowed my client to talk to somebody else's lawyer I
18 never let my client talk to a police officer without a
19 proffer agreement in place, unless I knew my client was
20 going to get something in return for that that was
21 beneficial to them

22 That is just too many uncontrolled circumstances
23 where your client can sit with an attorney that he has
24 absolutely no privilege with, and totally inculcate
25 himself and it can be used against him later

1 MR KENDRICK But, Your Honor, you've just told
2 me that you've seen it happen up here and it's worked
3 out --

4 THE COURT But that's where a person has said,
5 I want to come and testify, that's different That's
6 not talking to somebody else -- that's where somebody
7 says in a group of friends, or a group of associates,
8 that this person didn't do it And they come and
9 testify

10 And they have either already pled guilty or
11 going to plead guilt without a deal in place That's
12 not the same as you letting somebody in an uncontrolled
13 environment talk to your client

14 MR KENDRICK But, Your Honor, what you re
15 basically telling me is that if we put some type of
16 conjecture out there, we just assume that's the way it
17 works --

18 THE COURT No I'm telling you based on my
19 experience in this court I have never seen a public
20 defender or a private attorney allow their client to
21 talk to somebody else's attorney where your defenses
22 are potentially antagonistic until it all plays itself
23 out and where they determine, it's not going to hurt my
24 client

25 And, number one, I can't be sued for

1 malpractice Number two, my client isn't going to file
2 a PCR against me for ineffective assistance for letting
3 him inculcate himself I mean there are a lot of
4 variables There are a lot of moving parts to this
5 equation

6 And it is out of the margins that we are talking
7 about I have seen people come in and testify that
8 this person had nothing to do with it

9 MR KENDRICK And I have found on a number of
10 occasions in other cases to ask codefendant's lawyers
11 to let me talk to them And I have had them say no,
12 let me think about it I have had them say no, but I
13 think I've had them say yes

14 But either way, Your Honor, what we are doing is
15 speculating It simply didn't happen so we don't know
16 the answer to the question So again, the guy got up
17 here and testified and he said he would have testified
18 to that There is not a shred of evidence against
19 that

20 Mr Davis was very honest up there He said I
21 didn't ask him I never tried to find out if he would
22 have let me talk to him or not, and he said he would
23 So the evidence in front of Your Honor on the record
24 here is that he would have done it

25 Now would it have been a stupid decision? would

1 it have not worked out well for him? I don't know

2 THE COURT That's really not the crux of it,
3 it's a credibility question really because hindsight is
4 always 20/20 And you are asking me to look back in
5 like a crystal ball and see what he would have done
6 then versus what he would have done now

7 MR KENDRICK There is no evidence against what
8 he said, Your Honor

9 THE COURT Is there a reason you didn't call
10 Mr Feldman and ask?

11 MR FRIEDMAN I tried to call him, Your Honor
12 He was nice enough to talk to me, he didn't really want
13 to -- I didn't want to subpoena him because he didn't
14 really want to get in the middle of this

15 I tried to call him He couldn't remember
16 whether he talked to Mr Davis about letting Mr Davis
17 talk to Mr Jeter

18 THE COURT He didn't remember whether Mr Jeter
19 ever told him he wanted to testify?

20 MR FRIEDMAN No He didn't remember that
21 And I don't want to say what --

22 THE COURT Well I don't want you to -- yeah, I
23 wouldn't want you to -- I was curious to know why he
24 wasn't -- because he would be the person who could
25 corroborate it one way or the other

1 MR FRIEDMAN I tried to find out and he didn't
2 really remember

3 MR KENDRICK And, again, Your Honor, I mean I
4 think when you keep talking about what it would have
5 done to hurt Mr Jeter, Mr Jeter never denied --

6 THE COURT But that's not critical in the
7 Court's determination Like I said, people testify
8 sometimes against -- you have people that walk into a
9 police station and incriminate themselves just because
10 it's the right thing to do

11 I had a case in Anderson where a gentleman saw a
12 murder And he had exposure of 30 years And he
13 walked into a police station and said I witnessed this
14 murder and I will testify without a deal because it's
15 just the right thing to do

16 And he got the maximum penalty And he came
17 from the Department of Corrections, and he testified
18 against the people that murdered somebody It happens
19 every day It's not unusual Sometimes people just do
20 the right thing, or what they perceive to be the right
21 thing

22 MR KENDRICK I don't understand if Mr Jeter
23 testimony reflects that he was at this courthouse every
24 day during the trial but nobody called him Obviously
25 the State is not going to call him

1 THE COURT I don't know

2 MR KENDRICK why would the State call him to
3 say that the person they think did it didn't do it
4 They're not going to do that

5 So the only person left that would have had an
6 answer was the defense And again without even talking
7 to him or trying to talk to him, all we are left to do
8 right now is guess what would have happened

9 we just can't say for sure we can say that
10 based on my experience and on your experience, and I
11 don't disagree that they're probably similar, that it's
12 probably not going to happen But we don't know that
13 we just don't know

14 THE COURT well you have the burden of proving
15 to me that he should have talked to him, and that he
16 would have had the chance to talk to him, and that he
17 would have said what he said today

18 MR KENDRICK And right now the testimony in
19 front of Your Honor is that that is exactly the case

20 Just because no one called Mr Feldman, Mr
21 Feldman didn't get up here to testify, I mean I will
22 take the Attorney General at face value that he says he
23 doesn't remember

24 Mr Jeter testified on the record, I would have
25 done it I mean the evidence that's in this court is

1 that he would have done it The evidence that is in
2 this court says he would have testified on Mr Dunham's
3 behalf that he wasn't there

4 I mean it s the same thing as the alibi witness,
5 Your Honor The evidence in front of you is that there
6 is this alibi, this is what she said This is what
7 would have happened And, you know, whether we'd like
8 it or don't like it or have a position on it, it's
9 here It's here and it's not opposed by anybody So
10 we have to accept it

11 So I mean, I don't know how else I can meet the
12 burden than putting up unopposed testimony from
13 somebody who points and says, this wasn't the guy The
14 guy who did it was Steven Johnson who, as you know from
15 the record, he was charged

16 This isn't a situation where we don't have
17 anything to back up what he said Steven Johnson was
18 charged with this murder He was one of the suspects
19 in these police reports But the uncontested testimony
20 here shows that it was not Michael Dunham that
21 committed this crime And he is doing a life sentence
22 and he didn't do it

23 THE COURT But that's not what I consider
24 that's an issue for direct appeal My issue is whether
25 he had ineffective assistance of counsel

1 Whether he is innocent or not -- and really a
2 jury never finds somebody innocent, they simply find
3 him not guilty, which means the State hasn't met their
4 burden of proof

5 But the bottom line is this Court is not the
6 forum to determine someone's guilt or innocence
7 That's why you have a direct appeal, which was done

8 The issue in this Court and before this Court is
9 whether he has met his burden by a preponderance of the
10 evidence that his counsel was ineffective And but for
11 that defective performance, the outcome of the trial
12 would have been different That's the sole purpose of
13 a PCR

14 MR KENDRICK And I just put up two critical
15 witnesses that would have testified --

16 THE COURT And I don't want there to be some
17 misapprehension that that is the function of this Court
18 because it's not

19 MR KENDRICK No, I know what the function of
20 the Court is, Your Honor But two people got up there
21 and testified to evidence that my client didn't do
22 this But they didn't get to testify at trial And
23 that is the crux of my argument That is exactly what
24 I'm telling you should have been done

25 You know, if Mr Feldman had come in here and

1 said, oh, I talked to Michael Jeter, he never told me
2 any of this stuff Then I would say, okay, all right,
3 I guess we gave it the old college try, but he didn't
4 And I would submit to you that he is not going to

5 So there is no one to in any way contest what
6 Mr Jeter says In fact, it's entirely consistent with
7 everything that went on in this trial I mean there is
8 nothing that Mr Jeter said that's different from the
9 independent witnesses --

10 THE COURT The issue is not what Mr Jeter
11 said, the issue is whether Mr Davis was ineffective
12 for calling him

13 MR KENDRICK He didn't call him

14 THE COURT So the substance of what he had to
15 say is not the issue I need you to bring your
16 argument, kind of wind it down

17 MR KENDRICK Your Honor there is nothing that
18 has been put in the record about why he didn't call
19 him He simply said, I didn't talk to him I never
20 asked him

21 He is not actually the one who said he didn't
22 think Mr Feldman would let him talk to him There is
23 no evidence in this court that Mr Feldman would or
24 would not have let Mr Jeter talk to him The only
25 evidence is Mr Jeter said, I would have talked to him

1 Same thing with the alibi, Your Honor The only
2 reason he gives for not calling alibi witnesses is to
3 maintain last argument, which is not enough of a
4 consideration for you to give up your only defense to a
5 murder charge

6 THE COURT Anything, Mr Friedman?

7 MR FRIEDMAN Just briefly Thank you, Your
8 Honor

9 THE COURT You're welcome

10 MR FRIEDMAN Your Honor, the State would
11 submit that the applicant has failed to meet his
12 burden Mr Davis looked into the alibi issue, he spoke
13 with Ms Martin

14 He testified that it was not a perfect alibi
15 There was some coming and going He was still planning
16 to call her as long as the applicant testified But
17 ultimately the applicant decided not to testify

18 They had some discussion about having last
19 argument And of course there was some trial strategy
20 to that And it was also the applicant's decision,
21 one, not to testify, and two, not to present any
22 witnesses And that was something that the applicant
23 ultimately decided

24 As for the Mr Jeter, Mr Davis testified that
25 there was nothing in the discovery to suggest that Mr

1 Jeter would testify the way he did today He did not
2 know if Mr Jeter was going to say that the applicant
3 was the driver, and he didn't want to risk putting him
4 up there without knowing what he was going to say

5 And as far as Stanley Feldman I don't think I
6 could have brought him in here today to testify about
7 any conversations he had with Mr Jeter since there is
8 attorney/client privilege Mr Jeter is not the one
9 bringing the PCR hearing, bringing the PCR application

10 He told me that he didn't want to get involved,
11 that's why I didn't bring him here today But either
12 way, I wouldn't have been able to ask him about his
13 discussions with Mr Jeter

14 THE COURT That's correct, it would have been
15 protected by privilege You are absolutely accurate
16 Although once Mr Jeter -- well I guess he still would
17 be bound by privilege

18 MR KENDRICK I think Mr Jeter broke
19 privilege Your Honor, by -- but I don't know that that
20 has any bearing

21 THE COURT I don't think that he ever said that
22 he told -- I don't know, I would have to go back and
23 look at his testimony But I don't know that he did
24 anything that would have waived his privileged
25 communications with his lawyer, but it's something to

1 think about

2 MR KENDRICK I think that Mr Feldman and what
3 he would or wouldn't have said needs to be irrelevant,
4 which I think it is anyway because he didn't come in
5 here

6 I don't think his testimony should have anything
7 to do with this decision

8 MR FRIEDMAN Yeah I would submit that it's
9 not relevant, Your Honor either way But I would ask
10 the Court to deny and dismiss the application

11 THE COURT The Court is constrained to look at
12 the entirety of the record not any one item in
13 isolation And just in the interest of time, we all
14 know what the standard is in determining the efficacy
15 of counsel and whether their performance fell below the
16 objective standard of reasonableness

17 And it's a two-prong test, and more than that is
18 required That falling below that objective standard
19 of reasonableness must result in some prejudice to the
20 defendant, that being rising to the level of
21 undermining the Court's confidence in the outcome of
22 the trial

23 There have been two things isolated out of this
24 trial that the applicant alleges -- the two particulars
25 in which he alleges his attorney's performance falls

1 below that standard and that he has been prejudiced in
2 some way regarding that

3 I have heard the testimony of the alibi witness,
4 which was appropriately noticed to the State As well
5 as Mr Jeter, who was a codefendant I apologize and I
6 appreciate you all indulging me as I refreshed my
7 memory regarding what I had read earlier There are
8 several codefendants in this case, not just Mr Jeter
9 and Mr Dunham

10 However, taking the issues as they have been
11 raised in the order I find Mr Davis' testimony to be
12 credible I have had many trials with Mr Davis I'm
13 very familiar with his trial ability

14 And to say that he fights very hard for his
15 clients is a gross understatement To say that he is
16 -- what's the word I'm looking for -- conscientious is
17 also an understatement

18 I have no reason to believe that he deviated
19 from what I have experienced in terms of his trial
20 ability from that during the course of his trial
21 considering his experience in trials of this type

22 Having made that observation, I do find his
23 testimony to be credible And it's easy to be a Monday
24 morning quarterback in a case It's easy once the case
25 has been tried to its conclusion to wish that it had

1 been done differently, especially when the desired
2 result has not been achieved

3 But that is not the Court's standard I have to
4 look at, one, whether his performance was deficient,
5 whether it fell below an objective standard, whether it
6 resulted in prejudice

7 Now our courts have been clear that when counsel
8 articulates a valid reason for employing a certain
9 strategy, such conduct will not be deemed ineffective
10 assistance of counsel And the Court is not required
11 to second-guess that strategy

12 While it may not have been a strategy that PCR
13 counsel or the Court may have employed, that does not
14 mean that it was any less effective or any less valid
15 in making that decision

16 Of course he is not required -- he is not
17 allowed to simply rely on a blanket statement that he
18 employed a certain strategy, but he has to articulate
19 what that strategy was, and he did For the record he
20 indicated that this alibi witness was noticed That he
21 feels that what she testified to today was different
22 than what he had in his notes, but what he had in his
23 notes was actually stronger than what she testified to
24 today

25 But, nevertheless, what she testified to today

1 was that he was with her from an uninterrupted period
2 of time from 2 15 until 5 00 However what she told
3 Mr Davis at the time of this incident was that he
4 arrived between 4 00 and 5 00, and remained with her in
5 the general vicinity of the residence where she lived
6 at the time until about midnight

7 which based on the phone calls that have been
8 pointed out to the Court, probably was the stronger --
9 what he has in his notes might have been more to his
10 client's advantage at the time than what she testified
11 here to today

12 But I don't know that it's particularly
13 dispositive But I felt that it did need to be noted
14 for the record, those inconsistencies between her
15 recollection and those that were preserved at the time
16 of this incident in Mr Davis', as well as his
17 investigator's, notes

18 Mr Davis articulated for the record that he had
19 a very thorough discussion with his client as to
20 whether he should or should not testify His client
21 was adamant, really from the outset about not
22 testifying

23 And that with consultation with his client, as
24 well as co-counsel in the case, that they determined
25 that -- and these are my words not his -- that it

1 really would have created a credibility gap for an
2 alibi witness to testify without the corroboration or
3 be able to contact that testimony with the testimony of
4 the defendant when he decided he did not want to
5 testify

6 And using Mr Davis' words, he felt that it was
7 not complete, it was not perfect, and therefore it was
8 weak And that it was a weak alibi at best without the
9 testimony -- because the defendant always denied that
10 he was there

11 And he felt, and in terms of developing a case
12 with his client, that the best strategy was that there
13 was a weak ID, and that was the best issue And that
14 that is the issue that they focused on and advocated
15 regarding the case

16 And in his estimation in terms of that strategy,
17 that a weak alibi was not worth losing last argument
18 which would be his having the ability to hear the
19 State's argument, and basically in essence rebut that
20 argument with the trial testimony and facts as they
21 were elicited

22 And have his voice be the last voice the jury
23 heard in terms of convincing them regarding the
24 credibility and reliability of witnesses, and the
25 weakness of the ID, as contrast with his voice being

1 the last voice the jury heard prior to hearing
2 instructions from the court

3 This is a strategy that is employed all of the
4 time I see it used all the time And, quite frankly,
5 effectively used a lot of the times resulting in
6 acquittal of people who have offenses against them
7 because the attorney had the ability to listen to the
8 totality of the State's argument and basically rebut
9 all of those arguments in their testimony, and filling
10 in any credibility gaps or otherwise when arguing
11 matters to the jury, and rebutting those on behalf of a
12 client

13 So it is a valid strategy, it is employed
14 regularly, and it is a successful strategy And Mr
15 Davis was able to articulate for the record, and not
16 simply make a blanket statement, as to why that
17 strategy was employed

18 There is also -- we have been talking of course
19 in the record, what's contained within the record is
20 the trial transcript And I think it would be remiss
21 not to mention that this is not only testimony that was
22 against Mr Dunham, there was an eyewitness who
23 testified that he made a statement to him that he had
24 shot this victim And he didn't know why, basically,
25 but that he had done it

1 And without going into all of that, there is
2 direct testimony in the record of that from -- make
3 sure I have the name correct -- that being of Mr
4 Lemon

5 Mr Lemmon's testimony not only corroborates
6 that in fact the defendant committed this shooting, but
7 he also places Mr Jeter in proximity with the
8 defendant at the time of these incidents, with them
9 coming and going with one another, riding in the car
10 together, and putting his bicycle in the trunk of the
11 car

12 And when you consider that in the totality of
13 them not calling Mr Jeter, I'm not certain that wasn't
14 a valid strategy Because assuming for argument s sake
15 Mr Jeter actually came to trial and said what he said
16 he was going to say today, that contrasted with Mr
17 Lemmon testifying to something completely inapposite
18 I'm not certain would have been a good strategy for Mr
19 Dunham

20 I frankly think it may have been
21 counterproductive And I'm not certain how much
22 credibility a jury would have given that in light of an
23 eyewitness who testified as to their comings and goings
24 that day, what they were doing And corroboration of
25 the fact that he bought the cell phone from the alibi

1 witness, and then subsequently sold it to Mr Dunham

2 So that -- the puzzle then becomes, when you
3 look at the puzzle of the entirety of the record, I'm
4 not going to second-guess Mr Davis in terms of not
5 calling his witnesses to preserve last argument As I
6 have already stated for the record, and made findings
7 for the record, that was a valid strategy to employ
8 and one that is not unusual, one that is employed and
9 is actually quite successful

10 But even in light of Mr Jeter's testimony, of
11 course not Monday morning quarter-backing, in the
12 isolation of this record it has been argued that it
13 would have exculpated Mr Dunham But in the light of
14 the entirety of the record, he cannot meet his burden
15 that that actually would have happened

16 Other than the assertion from Mr Jeter in
17 hindsight that he would have come in and said that,
18 I'm not certain, nor is there anything in the record,
19 that would support that he was going to say that on
20 that day in light of the flux of this case

21 But he -- this witness Mr Lemmon, corroborates
22 that Mr -- that they were all together in essence on
23 this event That Mr Dunham allowed him to use his
24 vehicle That they had come and gone and some other
25 things

1 And then what did Dunham say was the reason
2 say he shot somebody?

3 He didn't say

4 Did Dunham tell you or did you hear him tell
5 Steven at any point why he wanted to go shoot somebody?

6 Uh-hum

7 Did you hear him tell Steven anything about how
8 and -- how he and Jeter got together?

9 And then there was an objection for leading, but
10 he answers No, ma'am

11 So you don't know

12 And this phone that you had of Victoria's, do
13 you know about when it was sold?

14 And then they go into the whole thing about him
15 buying the phone from her and selling it

16 So I'm not certain, based on this record, I'm
17 not convinced that Mr Jeter's testimony in light of
18 that other testimony would have been exculpatory to the
19 defendant In fact I think in terms of a credibility
20 contest it may well have damaged him Because you know
21 with credibility it's a funny thing Either the jury
22 completely believes you or they completely disbelieve
23 you

24 Again, juries come to the equation with
25 incredible common sense And a sixth sense about when

1 people are telling the truth that I think far exceeds
2 most of us in terms of that collective thought and that
3 collective reasoning in reaching a verdict

4 But without belaboring the time, because it is
5 now 6 42, and I'm sure you all are exhausted, as is my
6 support staff who I've prevailed upon, the Court finds
7 that he has failed to meet his burden of proof

8 I'm going to instruct Mr Friedman to prepare
9 the Court a proposed order That is to be e-mailed to
10 me in word format And that is also to be e-mail to
11 the applicant's counsel at the same time and method
12 that it is sent to me

13 Mr Kendrick, if you could make sure that you
14 provide Mr Friedman with your e-mail address so that
15 it can be sent at the same time If you have anything
16 you want to add to the order or otherwise have any
17 input, please let Mr Friedman know

18 Or if it's already come to me of course you can
19 always e-mail my clerk and copy Mr Friedman on it, and
20 then we will go from there

21 He is to provide that to the Court within 20
22 days And he can make and findings of fact and
23 conclusions of law consistent with the record

24 Thank you all so much I appreciate it

25 MR KENDRICK Thank you, Your Honor

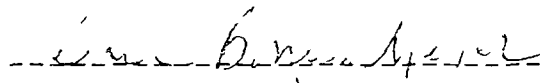
1 (Whereupon, the proceedings in this matter
2 before the Court were adjourned)

3 * * * * *

4
5 C E R T I F I C A T E
6 -----
7
8
9

10 I, the undersigned, ANNE BOULEY MEYER,
11 Official Court Reporter for the Ninth Judicial
12 Circuit of the State of South Carolina, do hereby
13 certify that the foregoing is a true, accurate, and
14 complete transcript of record, and of all the
15 proceedings had and evidence introduced in the above
16 captioned case, relative to appeal, in the Circuit
17 Court for South Carolina, on the indicated date

18 I do further certify that I am neither
19 of kin, counsel, nor interest to any party hereto
20

21 

22 Anne Bouley Meyer, RPR
23 Circuit Court Reporter
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Michael Dunham, #313860)
Applicant)
v)
State of South Carolina,)
Respondent)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO 2011-CP-10 0571

ORDER OF DISMISSAL

2011 NOV -8 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge
Applicant's Attorney
Respondent's Attorney
Trial Counsel
Date of Hearing
Court Reporter

Deadra L. Jefferson
Joshua S. Kendrick, Esq
Matthew J. Friedman Esq
Rodney D. Davis, Esq
September 15, 2011
Anne Meyer

This matter comes before the Court by way of an application for post conviction relief PCR filed January 25, 2011. The Respondent filed its Return on May 6, 2011. An evidentiary hearing into the matter was convened on September 15, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Joshua S. Kendrick, Esquire. Matthew J. Friedman Esquire of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Rodney D. Davis, Esquire, Michael Jeter, and Victoria Martin also testified at the PCR hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Supplemental Record on Appeal, the Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur

[Handwritten signature]

dated March 22, 2010, the PCR application, and the State's Return thereto

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the November 2005 term of the Charleston County Grand Jury for murder (2005-GS-10-8285). Rodney D. Davis, Esquire, represented the Applicant. The Applicant proceeded to trial on February 13–15, 2006, after which a jury found him guilty as indicted. The Honorable Larry R. Patterson sentenced the Applicant to confinement for life.¹

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joshua S. Kendrick, Esquire, represented the Applicant on appeal. Following full briefing by both sides, the Court of Appeals affirmed the conviction and sentence. State v. Dunham, Op. No. 2010-UP-191 (S.C. Ct. App. filed March 4, 2010). The Remittitur was issued on March 22, 2010.

ALLEGATIONS

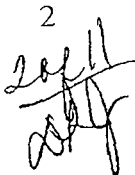
The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel failed to conduct pretrial investigation – both factual and legal.
2. At the hearing, Applicant alleged ineffective assistance of counsel for a) failing to speak with co-defendant Michael Jeter and b) failing to pursue an alibi defense through witness Victoria Martin.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility.

¹Pursuant to S.C. Code Ann. § 16-3-10, the crime of murder carries a penalty range of thirty (30) years to life imprisonment or death.

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This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified he gave counsel the names of witnesses, including his alibi witness Victoria Martin. He testified he met with counsel on the Friday before his Monday trial, and he thought counsel was going to present the alibi defense at trial. Applicant testified counsel told him at trial he was not going to call Ms. Martin because she would hurt more than she would help his case. Applicant testified he was not tried at the same time as co-defendant Michael Jeter, and Mr. Jeter was tried after him.

Michael Jeter, Applicant's co-defendant, testified he was charged with the same murder as Applicant. He asserted he did not deny his presence at the shooting. He testified after the fight he tried to call Brandon Catino. He asserted he was not trying to call Applicant and he does not know the Applicant. Mr. Jeter testified a person named Steven Johnson answered the phone. He testified he did not know Steven Johnson at the time. Mr. Jeter testified he never talked to anyone about testifying at Applicant's trial. He asserted he would not have received any benefit from testifying on Applicant's behalf, except to make sure that an innocent man did not go to jail. He stated had he testified at Applicant's trial he would have testified Applicant was not there.

Mr. Jeter admitted he gave a statement to law enforcement, in which he admitted there was an altercation, admitted he called Applicant, and admitted he got into Applicant's car about twenty (20) minutes after the fight. However, Mr. Jeter testified he did not know law enforcement was referring to the Applicant when he admitted he called Applicant. Mr. Jeter testified he did not know Steven Johnson until he got into the car with him. He testified he knew of Jean Jacques and knew Justin Lemon in regards to the case. Mr. Jeter testified his attorney,

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Boell
JG

Stanley Feldman, Esquire, never discussed testifying on Applicant's behalf at trial. He asserted he ultimately pled guilty to voluntary manslaughter after Applicant's trial, receiving a sentence of thirty (30) years suspended to fifteen (15) years.

Victoria Martin testified she was in a romantic relationship with Applicant. She asserted she had an independent recollection of the day of the shooting. She testified Applicant would come over to her house most afternoons from 2:00 PM – 5:00 PM. On the day of the incident, she testified Applicant came over to her house around 2:15 PM after she returned home from school. She testified Applicant left shortly before 5:00 PM because her mother was coming home from work—she was sixteen (16) years old at the time and did not want her mother to know about her relationship with Applicant. She testified she knew Applicant was still at her house at 4:00 PM, because he was there when her siblings returned home from school. She asserted he never left during that time. Ms. Martin testified she sold her phone to Justin Lemon, but Justin Lemon never sold that phone to Applicant. She asserted Applicant had his own phone. She testified the solicitor questioned her about the Applicant prior to trial with pictures of the car. She testified she also spoke with Applicant's trial counsel after the incident occurred and immediately before trial. She testified she was subpoenaed for trial, but she was never called as a witness.

Trial counsel testified he filed a notice of alibi. He testified a week before the trial, Applicant was hesitant about testifying. His other potential witnesses included potential alibi witness Victoria Martin and three (3) law enforcement witnesses whose testimony would have been minor. Counsel testified he spoke with Victoria Martin prior to trial, and his notes do not correspond with her testimony given at the PCR hearing. He testified his notes indicate Applicant arrived at her home in Marshview Apartments between 4:00 PM and 5:00 PM and he

4/11/11
2/2/11

stayed until midnight or 1 00 AM, which he felt was a stronger alibi than that given at the PCR hearing. However, Counsel testified his notes indicate there was some coming and going from her apartment during the timeline, and, therefore he did not feel it was a complete alibi. He contended it was a weak alibi at best in the absence of Applicant's testimony. He testified he did not believe it was worth calling the police officers as his only witnesses. Rather, after a discussion with Applicant, he believed the best strategy was to not present any witnesses in order to preserve last closing argument. Counsel testified he and Applicant discussed whether he should or should not testify prior to trial and at the conclusion of the State's case. Counsel further testified he discussed last argument with Applicant. He contended ultimately it was Applicant's decision not to testify. After Applicant decided not to testify, counsel testified they discussed whether they would call any witnesses. Counsel testified it was Applicant's decision not to call other witnesses. Counsel testified the preservation of last argument was the paramount concern after the viability of the alibi defense became an issue. He testified after the Applicant decided not to testify, he felt it was not plausible to present a "weak alibi without corroboration in the absence of a complete and perfect alibi. He testified it was always the Applicant's defense that he was not there, therefore he felt the stronger posture, and best issue, was to attack a 'weak identification. He testified strategically he determined it is better not to put up an alibi defense when it had the potential to create a credibility gap for the Applicant. He testified preserving last argument was a trial strategy, but it was also Applicant's decision. He testified Applicant's strongest defense was to attack a very weak identification.

Counsel testified he never spoke with co-defendant Michael Jeter. He testified he had some correspondence with Jeter's attorney, Stanley Feldman, but he does not know if Mr

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Feldman would have allowed him to speak with Jeter² He testified he never discussed Jeter testifying on Applicant's behalf with Mr. Feldman. He testified, based on experience, it is unlikely Mr. Feldman would have allowed this as he would not have allowed his client to inculcate himself where their defenses to a crime were antagonistic. He also testified in his experience, if Jeter wanted to testify he would have made that clear to his attorney. He further testified nothing in his file reflects that Stanley Feldman ever offered Jeter's testimony to exculpate the Applicant. He testified there was nothing in discovery, or from Mr. Feldman, to suggest Jeter's testimony at trial would have been consistent with his testimony at the PCR hearing. He testified Jeter and Applicant's positions regarding this incident were always antagonistic. He asserted he did not know if Jeter was going to testify that Applicant was the driver. Counsel testified there was testimony from multiple witnesses—including Applicant's friends—indicating Applicant and Jeter arrived at Marshview together in Applicant's car. He also testified he was able to cross-examine Justin Lemon regarding the phone.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e) SCRPC. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that 'counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.' Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984), Butler 286 S.C. at 442, 334 S.E.2d at 814.

² The State represented to the Court it called Stanley Feldman and Mr. Feldman did not recall discussing with Mr. Davis about his client talking to Mr. Davis. Mr. Feldman further did not recall whether his client mentioned he wanted to testify on behalf of the Applicant. Mr. Feldman expressed he did not wish to testify at the PCR hearing and the State submitted and agreed his testimony was not relevant.

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The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 622, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its 'reasonableness under prevailing professional norms.' Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court finds trial counsel's testimony is credible. This Court also finds Mr. Jeter's testimony lacks credibility. This Court finds counsel is a trial practitioner who has fifteen (15) years of experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, discovery, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds counsel demonstrated the

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normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina State v. Pendergrass, 270 S C 1, 5, 239 S E 2d 750, 752 (1977), Strickland, 466 U S at 687-88, 104 S Ct at 2064-65, Butler, 286 S C at 442, 334 S E 2d at 814 This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation Counsel interviewed potential witnesses including an alibi witness, filed a notice of alibi, and subpoenaed the witnesses to testify at trial This Court finds counsel's representation did not fall below an objective standard of reasonableness

This Court finds counsel made a valid strategic decision not to call any witnesses or present any evidence "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case" Caprood v. State, 338 S C 103, 109, 525 S E 2d 514, 517 (2000) Where trial counsel articulates a valid reason for employing a certain trial strategy such conduct will not be deemed ineffective assistance of counsel Roseboro v. State, 317 S C 292, 294, 454 S E 2d 312, 313 (1995) Counsel's strategy will be reviewed under an objective standard of reasonableness" Ingle v. State, 348 S C 467, 470, 560 S E 2d 401, 402 (2002) Here, counsel testified his notes indicate Victoria Martin gave him a different story than the version she testified to at the PCR hearing Counsel's notes indicate Applicant arrived at Ms Martin's apartment between 4 00 PM and 5 00 PM and left between midnight and 1 00 AM, but was in and out of the apartment rather than without interruption as she now reports Due to the comings and goings from the apartment counsel felt Ms Martin did not provide a perfect alibi Despite not being a perfect alibi, counsel testified he thought the story reflected in his notes was a stronger alibi Counsel testified Applicant decided not to testify so counsel did not believe it was worth calling Ms Martin or

any law enforcement witnesses without Applicant's testimony. Counsel felt it would create a credibility gap by calling alibi witnesses whose testimony was not corroborated by the Defendant's testimony. This Court finds counsel's testimony credible that the alibi defense was weak without Applicant's testimony and was not worth losing last closing argument. Counsel testified he discussed the right to testify and last argument with Applicant, and Applicant ultimately decided not to testify or present any witnesses. This Court finds counsel's trial strategy to preserve last argument was valid and reasonable, because he was able to rebut the State's closing argument. This Court also finds counsel's testimony credible the Applicant's best defense was to attack the veracity of a weak identification.

This Court finds counsel provided a valid strategy by not calling Mr. Jeter as a witness at trial. In addition to losing last argument, counsel testified there was nothing in the discovery or from Stanley Feldman to suggest Mr. Jeter would testify that Applicant was not in the car. In light of the entire record, this Court is not convinced Mr. Jeter's testimony would have been exculpatory. Counsel did not know what Mr. Jeter would have said on the stand, so he made a reasonable decision not to call him as a witness. The Court also notes it is very unlikely Mr. Feldman would have allowed counsel to speak with Mr. Jeter as it is his job to protect his client. This Court also finds there is direct testimony from Justin Lemon and others that place Mr. Jeter and Applicant in the car together. Mr. Lemon testified Applicant and Jeter returned to Marshview Apartments together in Applicant's car (Tr. 355:10-19). Mr. Lemon also testified he heard Applicant tell Steven Johnson to take his car back to his house because they had been shooting at somebody and he thought he hit the person (Tr. 358:18-359:4). Considering this testimony, it would not have been a good strategy to call Mr. Jeter as it could have proven to be counter-productive. Mr. Jeter's testimony may have damaged the Applicant in terms of

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credibility

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

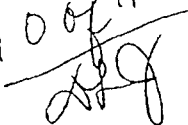
All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate

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review His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed

IT IS THEREFORE ORDERED

- 1 That the application for post-conviction relief be denied and dismissed with prejudice, and
- 2 That the Applicant be remanded to the custody of the Respondent

AND IT IS SO ORDERED this 2nd day of November 2011



The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

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