

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

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S.C. Supreme Court

DARRELL N. MITCHELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000929

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

GENERAL SESSIONS COURT
2007-GS-21-1423

THE STATE OF SOUTH CAROLINA,

Plaintiff

-vs-

DARRELL NATHANIEL MITCHELL,

Defendant.

TRANSCRIPT OF RECORD

September 9, 2008
Florence, South Carolina

B E F O R E:

THE HONORABLE J. ERNEST KINARD, Judge.

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

FRANCIS A. HUMPHRIES, JR., Esquire
Attorney for the State

R. SCOTT JOYE, Esquire
Attorney for Defendant

SARA L. SNIPES
Family Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No exhibits were presented.)

MOTION TO BE RELIEVED

3

1 TUESDAY, SEPTEMBER 9, 2008

2 (WHEREUPON, at 9:29 a.m., on Tuesday, September 9,
3 2008, this matter was called for a motion, with all
4 parties present in the courtroom.)

5 THE COURT: Okay. Mr. Joye, I understand that you
6 received an unexpected letter in the mail.

7 MR. JOYE: Sure did, Your Honor. As I left and
8 returned to -- to the motel that I'm staying at
9 yesterday, I received a call from one of my -- one of my
10 office personnel who said that I had a -- a letter marked
11 personal and confidential from the Supreme Court,
12 specifically grievance board, and did I want them to open
13 it.

14 I said, well certainly, I did because I wasn't there
15 to open it and I didn't know what it was pertaining to.
16 At that time, -- you have in your possession a letter
17 written to me by the grievance board and a letter written
18 to them by Mr. Mitchell.

19 I dispute many of the points in there. I've been
20 ready to try this case. Judge, I don't -- I've never
21 taken a position that I should tell people to take a
22 guilty plea or not take a guilty plea. It never
23 happened. I try to tell them what the best -- what the
24 best evidence the State has, what our position is, and
25 I've spent a lot of time with Mr. Mitchell.

MOTION TO BE RELIEVED

4

1 I've tried to tell him what I thought about the
2 case, the way I thought that Solicitor Humphries would
3 approach the case. And -- And I've made some decisions
4 that probably he didn't agree with in this case. I
5 clearly think that. But I think I'm duty-bound to ask
6 for -- to be relieved. I've -- I've been here and ready
7 to try this case.

8 Mr. Mitchell also tells me that the eleven (11)
9 o'clock news had him on it last night. I'm clueless as
10 to what the content of that report was. I didn't see it.
11 Don't know. Certainly I've told Mr. Mitchell that --
12 that it is okay for them to say that this case is
13 starting this week and show his picture, that there's no
14 problem with that.

15 The -- The only context would be whether or not they
16 went into any of the plea issues.

17 **THE COURT:** If they did that, we certainly couldn't
18 try it.

19 **MR. JOYE:** I understand. I have no clue. I
20 honestly don't know -- even know what channel that was
21 that was here. I don't if anyone saw the report. But---

22 **THE COURT:** Any idea---

23 **MR. JOYE:** ---that's a secondary issue.

24 **DEFENDANT MITCHELL:** No, sir. I don't.

25 **THE COURT:** All right.

MOTION TO BE RELIEVED

5

1 **MR. JOYE:** So I don't know what -- I don't know what
2 Mr. Mitchell's position is now. I would assume that he
3 wants a different attorney. I don't know what---

4 **MR. HUMPHRIES:** I don't have a dog in the fight,
5 Judge.

6 **THE COURT:** No. You don't.

7 **MR. HUMPHRIES:** I'm just here.

8 **THE COURT:** Mr. Mitchell, the Solicitor takes no
9 position on this. The Solicitor, who is Mr. Humphries,
10 is ready to proceed with the trial. He was ready
11 yesterday. He has all his witnesses, and he's ready to
12 go forward.

13 Mr. Joye when he brought this up, I told him we
14 needed a hearing on it. So we haven't really discussed
15 anything about it because, you know, if we discuss things
16 outside of your presence, you think we -- or might think
17 we're colluding up on you.

18 So, but Mr. Joye says he is prepared to try the case
19 today. However, it's hard for him to represent a client
20 who does not want him to represent them. So the bottom
21 line, you have written this letter and basically said he
22 hasn't talked to you enough, and he has not investigated
23 -- or his investigator has not contacted some potential
24 witnesses that you had and so forth.

25 I take it, Mr. Joye, you deny that?

MOTION TO BE RELIEVED

6

1 **MR. JOYE:** Yes, sir. Your Honor, I have been on
2 the horns of dilemma before where I have gone out and
3 tried to talk to witnesses, only to have them to give a
4 second story. And then the next thing I know, I -- I'm
5 like, "Well, didn't you tell me," and, obviously, that
6 raises an objection, which then he says, "Well, does Mr.
7 Joye want to try the case or you want to be a witness?"

8 I'm not an investigator. I did hire an investigator
9 who went into Mr. Mitchell's neighborhood. He spoke
10 specifically to those -- to at least one of the witnesses
11 that Mr. Mitchell pointed him to. The rest of the
12 witnesses he couldn't find or they didn't want to be
13 found. We're talking about folks who -- who are crack
14 dealers and---

15 **MR. HUMPHRIES:** Let me object. I'm -- For those
16 purposes, I may not need to be here.

17 **THE COURT:** Oh, that's -- that's okay.

18 **MR. HUMPHRIES:** You think we're all right?

19 **THE COURT:** He's just covered that.

20 **MR. HUMPHRIES:** Okay.

21 **MR. JOYE:** But -- But they're -- the witnesses --
22 the type -- the witnesses that he was talking about are
23 witnesses who don't want to be found because it's all
24 involving illegal---

EXAMINATION BY THE COURT

7

1 **THE COURT:** All right. That's fine. So you think,
2 having practiced law for how long?

3 **MR. JOYE:** Your Honor, I'm -- I'm in my twelfth year
4 of practicing law.

5 **THE COURT:** And you did not ask to represent, of
6 course, Mr. Mitchell?

7 **MR. JOYE:** No, sir. Your Honor, Judge Russo
8 specifically called me and asked me would I take this
9 case because no one in Florence or Marion County was
10 going to be comfortable taking it, just as Solicitor
11 Clements called Solicitor Henry and got Solicitor
12 Humphries to try it.

13 **THE COURT:** And you feel you've used all your skills
14 in getting prepared for trial?

15 **MR. JOYE:** Judge, I try to tell folks how I think
16 things go based on what I've seen before.

17 **THE COURT:** Do you feel -- and, of course, it's a
18 matter of interpretation -- that you have not pressured
19 Mr. Mitchell into accepting a plea; it's just you
20 explained to him that if he took the manslaughter plea
21 and the State recommended the cap between sixteen (16)
22 and twenty (20), that's all that he would get, maximum of
23 twenty (20)?

24 And you explained to him, I'm sure, that if he
25 didn't accept that, and the State went forward with a

EXAMINATION BY THE COURT

8

1 murder trial, -- and I don't know anything about the
2 case, but just from what I've heard before we started in
3 the indictment, it's just going to be murder, guilty or
4 not, -- and that's thirty (30) to life.

5 So -- If he's -- if he wants a trial, and you didn't
6 pressure him one way or another, is that right?

7 MR. JOYE: No, sir. I absolutely told him what I
8 think that he -- he interprets when I tell him how I
9 think things stand in court---

10 THE COURT: Yeah.

11 MR. JOYE: ---to be pressure. Judge,---

12 THE COURT: Well, that's a good question.

13 MR. JOYE: ---there's a fork in the road, and you've
14 got to take one of them. And -- And that's the pressure
15 that's applied. Which fork do you take? I -- The
16 pressure is the fork, it's not either path that he takes.

17 THE COURT: All right. Mr. Mitchell, here is the
18 situation: It's very difficult for an attorney to
19 represent you if you lack confidence in the attorney. If
20 you would prefer another attorney, we can do that and not
21 try the case. Mr. Joye is ready to go up and pick the
22 jury right now. The jury's waiting. So it -- Whatever
23 you want, really.

24 We're easy to get along with. And my situation, I
25 put no pressure on you when I was explaining the rights

EXAMINATION BY THE COURT

9

1 to you. I was just telling you what you gave up if you
2 pled guilty. And here is my position: I'm the senior
3 circuit judge. I've been doing it longer than anybody
4 else. And I have been chief criminal judge in
5 metropolitan areas, so I've sentenced more people than
6 any other sitting judge. I can say that since Judge Epps
7 is now retired.

8 One time in Richland, I sentenced eighty-two (82)
9 homicide people. Now, I don't know whether it was in a
10 year or fifteen (15), eighteen (18) months because I had
11 it for eighteen (18) months straight, so. But anyway, I
12 counted them up, and that's -- that's just everybody that
13 ended up -- where somebody ended up dead. It's not all
14 manslaughters and murders. It's hunting accidents, car
15 wrecks where somebody got killed.

16 Anyway, eighty-two (82) times in one year or one
17 term I sentenced people who -- where somebody had died.
18 And I have taken manslaughter pleas when it was -- should
19 have been a murder trial, whatever. But I don't get into
20 that because, one, I'm just a state employee. I get paid
21 nine to five, you know, whether I try -- whether I try
22 your case or take your plea and somebody else comes in a
23 pleas.

24 When you left yesterday, we did about ten (10) or
25 fifteen (15) pleas, because we had to vacate the

DEFENDANT DECISION TO RETAIN

10

1 courthouse or we would have done more yesterday
2 afternoon. So they've got plenty for me to do, and so
3 I've got no position because I don't anything about your
4 case. But the bottom line is the jury's up there ready
5 to start the trial. So you need to tell me whether you
6 want Mr. Joye to proceed or whether you want another
7 lawyer.

8 DEFENDANT MITCHELL: I'll go with Mr. Joye. But I'm
9 still concerned about that telecast yesterday evening.

10 THE COURT: Well, we need to find out about that.

11 (To law clerk) So we will find out about that?

12 LAW CLERK: I'll see what I can do.

13 THE COURT: I mean, we're going to actually need to
14 get a picture of it, I think.

15 DEFENDANT MITCHELL: You know, the only I'm
16 concerned, Your Honor, because you had mentioned that
17 before---

18 THE COURT: I told---

19 DEFENDANT MITCHELL: ---I had a chance to leave the
20 courtroom.

21 THE COURT: ---I told them not to put anything on
22 there concerning your pleading guilty.

23 DEFENDANT MITCHELL: See, I truly don't know what
24 was -- what was said because I was in my cell. The
25 fellows come knocking on my door. "They got you on TV.

DEFENDANT DECISION TO RETAIN

11

1 They got you on TV." By the time I could get to the
2 window to look out at the TV, my -- my picture was gone.

3 THE COURT: All right. Well, we need to find out.

4 DEFENDANT MITCHELL: I'm quite sure the fellows in
5 the pod that I'm in know it was me because I've been
6 there---

7 THE COURT: Well, if they mentioned anything about
8 your offering to plead guilty, the trial does not go
9 forward.

10 DEFENDANT MITCHELL: I -- Like I said, truly I don't
11 know what was said.

12 THE COURT: We'll find out. Y'all go find out.

13 MR. JOYE: Your Honor, I'd ask for -- ask the Court
14 to allow me to get an expedited transcript of this
15 hearing.

16 THE COURT: Sure.

17 MR. JOYE: And I can answer that---

18 THE COURT: You got it.

19 (To court reporter) You need to give him a copy of
20 the hearing because he's got to file with the grievance
21 commission, answer to what he says. And Mr. Mitchell
22 says he's satisfied at this point, which should take care
23 of this matter.

24 MR. JOYE: Thank you, Your Honor.

DEFENDANT DECISION TO RETAIN

12

1 THE COURT: So let me know as soon as we find out
2 about the telecast, and we'll just keep the jury sitting
3 at the---

4 MR. JOYE: I'll do that, if you don't mind.

5 DEFENDANT MITCHELL: How long will it take to -- to
6 subpoena phone records?

7 THE COURT: Huh?

8 DEFENDANT MITCHELL: How long will it take to
9 subpoena some phone records?

10 THE COURT: Well, he -- he can't discuss anything
11 with me.

12 MR. JOYE: We'll go talk about it.

13 THE COURT: All right. We'll go back upstairs and
14 let me know what you find out.

15 MR. JOYE: Yes, sir.

16 THE COURT: The jury's sitting there, so they --
17 they're all right for a while.

18

19 (WHEREUPON, at 9:40 a.m., this matter was
20 concluded.)

21

22 ***** END OF REQUESTED TRANSCRIPT OF RECORD *****

23

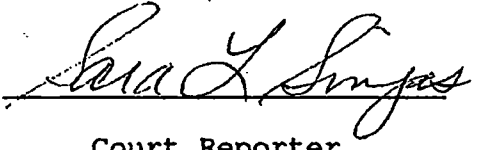
24

25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF FLORENCE)

I, the undersigned, Sara L. Snipes, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the motion hearing of the captioned case, relative to appeal, in the General Sessions Court for Florence County, South Carolina, on the 9th day of September, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.


Court Reporter

Florence, South Carolina

September 11, 2008.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF FLORENCE) COURT OF GENERAL SESSIONS
3) 07-GS-21-1423

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Darrell Nathaniel Mitchell,)
8 Defendant.)
9

10 September 8-10, 2008
11 Florence, South Carolina
12

13 B E F O R E:

14 THE HONORABLE J. ERNEST KINARD, JR., JUDGE; and a
15 jury.
16

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

18 FRANCIS A. HUMPHRIES, JR., DEPUTY SOLICITOR
19 Attorney for the Plaintiff

20 R. SCOTT JOYE, ESQ.
21 Attorney for the Defendant
22

23
24 DEBORAH M. McCURDY, RPR
25 Official Court Reporter

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STATE EXHIBITS

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SEPTEMBER 8, 2008

MR. HUMPHRIES: May it please the Court, Your Honor?

THE COURT: All right.

MR. HUMPHRIES: Present in the courtroom is Darrell Nathaniel Mitchell and his attorney, Scott Joye.

He is indicted under Indictment Number 2007-GS-21-1423. That is an indictment for murder.

I have been appointed as a Special Prosecutor in the case by the 12th Circuit Solicitor.

This Defendant has indicated a willingness to plead under North Carolina vs. Alford to the crime of voluntary manslaughter.

There are negotiations in this case.

THE COURT: Okay. All right, jurors, you do not have to leave, but here is the situation.

Judge Nettles has selected a jury, I guess y'all were here while that was going on, trying a murder case. This is a case that was going to be in front of me that was going to take three or four days. Apparently the Defendant has decided to plead guilty, so we don't need y'all for this trial.

So if you would like to go home, you can. You

1 have a number that you can call tonight after 6:00,
2 don't call before then, and there will be a message
3 on there. It will either be, come in tomorrow or
4 call back tomorrow at a certain time or call the
5 next day, whatever. We don't know yet.

6 So we're not running you out of the courtroom,
7 but if anyone would like to go, now would be the
8 time because I don't want y'all -- it is too many
9 people out there to be jumping up and down and
10 leaving piecemeal. Any juror that wants to leave
11 and call after 6:00, if you would leave now.
12 Otherwise, you can't leave until the plea is over.
13 Oh, they are outside. All right. Go tell them
14 that. All right.

15 Okay, well, in any event, we have got one
16 Darrell Nathaniel Mitchell standing out here. Is
17 that you?

18 THE DEFENDANT: That's correct.

19 THE COURT: And, Mr. Mitchell, are you doing
20 all right? More or less?

21 THE DEFENDANT: More or less, yes, sir.

22 THE COURT: All right. Now -- is it Deputy or
23 Assistant Solicitor?

24 MR. HUMPHRIES: Deputy, Your Honor.

25 THE COURT: Deputy Solicitor Humphries has

1 been assigned to this case. He is not a member of
2 the 12th Circuit Solicitor's Office. Do you
3 understand that?

4 THE DEFENDANT: Yes, sir, I do, yes.

5 THE COURT: He advises me that after
6 consultation with your attorney, Mr. Joye, you have
7 decided to enter a plea of guilty under North
8 Carolina vs. Alford to the crime of manslaughter,
9 which is a lesser included crime of the crime of
10 murder. Is that correct?

11 THE DEFENDANT: I did not commit the crime,
12 Your Honor, but I was -- I was truly high.

13 THE COURT: Right.

14 THE DEFENDANT: And --

15 THE COURT: What I'm asking, though, is it
16 your intent to plead guilty under North Carolina
17 vs. Alford, which Mr. Joye has explained to you, is
18 that you are not saying I did it, you are just
19 saying you have examined all the evidence and you
20 feel if you went through a trial the jury would
21 convict you anyway, no matter what you did? Is
22 that the bottom line?

23 THE DEFENDANT: Yes, possibly so, yes.

24 THE COURT: All right. Now, you do understand
25 that manslaughter carries all the way up to 30

1 years?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, the Solicitor, Deputy
4 Solicitor, indicated that there have been plea
5 negotiations, so I guess I need to hear what that
6 is before I tell you you are looking at 30 years.

7 MR. HUMPHRIES: Yes, sir, Your Honor.

8 In return for his plea of guilty under North
9 Carolina vs. Alford to voluntary manslaughter, the
10 State has negotiated a sentencing range of 16 to 20
11 years with the Court's discretion within that
12 range.

13 THE COURT: Okay. All right, now,
14 Mr. Mitchell, do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, Mr. Mitchell, I'm not talking
17 down to you, but you are not a constitutional
18 scholar, right? I mean, you haven't been to law
19 school or anything?

20 THE DEFENDANT: No, I have not.

21 THE COURT: What you do when you plead guilty
22 under North Carolina vs. Alford -- and I just kind
23 of touched on it -- is you say you have spent a lot
24 of time going over the facts that could be produced
25 by the State during a trial, you have gone over

1 everything you could do in the way of presenting a
2 defense, and you are satisfied that whether you
3 were guilty or not, it is a very, very high
4 probability that the jury would convict you no
5 matter what happened. Do you understand that?

6 THE DEFENDANT: Yes, sir, I understand that.

7 THE COURT: All right. Now, voluntary
8 manslaughter, as I mentioned, is a lesser included
9 crime of the crime of murder. Murder would carry
10 all the way up to life. Voluntary manslaughter has
11 a maximum of 30 years.

12 The Solicitor indicated that through your
13 attorney or with your attorney they have reached an
14 agreement that you would be sentenced within a
15 range of 16 to 20 years -- 20 years max, 16 years
16 minimum -- if you enter this plea under North
17 Carolina vs. Alford. Do you understand that?

18 THE DEFENDANT: I understand that.

19 THE COURT: Unfortunately, from your
20 viewpoint, voluntary manslaughter is classified as
21 a crime of violence most serious offense, and so
22 forth, and it is one of those, what, no parole
23 offenses. It carries -- you have got to serve at
24 least 85 percent of any sentence that is imposed
25 before you are eligible for release. And even if

1 you are released, you are not totally released.
2 You are on supervised release for a year, and they
3 can put you back in until you max out if you don't
4 comply with conditions they impose on you. Do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Now, of course, you
8 couldn't get one today since you are offering to
9 enter this plea, but if you plead just flat not
10 guilty, you are entitled to a jury trial. Do you
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: In a trial you do not have to
14 prove you are not guilty. The State has the burden
15 of convincing 12 jurors unanimously beyond a
16 reasonable doubt that in fact you are guilty of the
17 crime charged by this indictment. Do you
18 understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: If you wanted a trial, the State
21 couldn't just call 12 jurors up there. You would
22 be able to participate in that process. You would
23 have 10 strikes, they are called. You could excuse
24 10 individuals. So could the State. And
25 eventually 12 jurors would be seated.

1 Of course, if you enter this plea you don't
2 get a trial. Do you understand that?

3 THE DEFENDANT: (No response.)

4 THE COURT: These are just the rights that you
5 give up by waiving a trial, Mr. Mitchell, and I'm
6 not trying to confuse you or anything, I just have
7 to go over each one of the rights that you give up
8 to make sure you understand them. You don't get 12
9 jurors to decide it because you have removed them
10 from the consideration of whether you should suffer
11 for this crime or not. Do you understand that?

12 THE DEFENDANT: (Nods negatively.)

13 (Pause.)

14 MR. JOYE: Judge, I beg the Court's indulgence
15 for a moment.

16 THE COURT: All right.

17 (Mr. Joye confers with Defendant.)

18 MR. JOYE: Your Honor, my client has decided
19 to exercise his trial rights.

20 THE COURT: All right, well, he can certainly
21 have one.

22 MR. JOYE: Thank you, Your Honor. Now, what
23 do we do about the jurors?

24 THE COURT: Well, we have already excused the
25 jurors.

1 MR. JOYE: Till in the morning?

2 THE COURT: Till in the morning. Here is the
3 situation. Y'all need to talk it over. We can try
4 it in the morning. They -- we need to be very
5 careful because they probably told them he was
6 going to plead guilty is why they are going, so he
7 can't get a trial in front of this panel, I
8 wouldn't think?

9 THE CLERK: No, sir, I didn't tell them that.
10 I just told them we were doing scheduling. I
11 didn't tell them anything about a trial.

12 THE COURT: All right. If y'all are satisfied
13 with that, we can start it in the morning. Three
14 day trial?

15 MR. HUMPHRIES: Two day.

16 THE COURT: Anyway, we will be through with it
17 this week?

18 MR. HUMPHRIES: Yes, sir.

19 MR. JOYE: Sure, Your Honor. I don't --

20 THE COURT: All right, now, Mr. Mitchell, I'm
21 not trying to talk you into pleading guilty. What
22 I have to do, though, when someone stands up and
23 pleads is I have to go over and tell them each of
24 the rights that they give up by waiving a jury
25 trial. I can't just say, you waive a jury trial.

1 I have to go over each of the rights. I was not
2 trying to confuse you or complicate you or
3 anything, I was just going over the rights that you
4 give up. And I have to say every time when I do
5 that that if you enter a plea you don't get to
6 exercise that right.

7 And I didn't cover them all. You have got the
8 right of confrontation. That means you can
9 question all the State's witnesses. You have got
10 the right to object to the admissibility of
11 evidence, not that you would win on that, but you
12 have the right to make those motions and things.
13 They get ruled on during a trial. But if you enter
14 a plea, you know, you don't get to exercise any of
15 those trial rights. That's all.

16 And there are a couple more, but no need to go
17 over them if you have decided you don't want to
18 enter the plea.

19 THE DEFENDANT: Yes.

20 THE COURT: All right.

21 MR. HUMPHRIES: Your Honor, there is one thing
22 we need to place on the record, and that is that
23 the offer is obviously withdrawn and will not be
24 re-extended.

25 THE COURT: Okay.

1 MR. JOYE: Thank you, Your Honor.

2 THE COURT: And when he says it is withdrawn,
3 that means he is looking at murder, which is life
4 without parole, you know. Or -- yes, right.

5 MR. HUMPHRIES: Thank you, Your Honor.

6 MR. JOYE: Your Honor? Fran?

7 THE COURT: Oh, as far as TV, now, you can't
8 cover that or we can't have a trial on it.

9 TV STAFF: That's fine.

10 THE COURT: Are y'all straight with that?

11 TV STAFF: Yes, sir.

12 THE COURT: I mean, if y'all say anything
13 about he offered to plead guilty and changed his
14 mind, it is over, he just gets a new trial another
15 time, another place, or maybe even in another
16 county.

17 TV STAFF: We won't run anything.

18 THE COURT: Okay. All right.

19 MR. JOYE: For scheduling, do you want to
20 argue some motions this afternoon, Judge, or do
21 want us to do everything in the morning?

22 THE COURT: I'll be here, whatever y'all want
23 to do.

24 MR. HUMPHRIES: I don't know. What other
25 motions do we have?

1 MR. JOYE: Well, we had not done formerly on
2 the record about the res gestae stuff. And I think
3 we probably need to do that.

4 THE COURT: You can do that to protect
5 yourself.

6 MR. JOYE: Well, tomorrow morning is probably
7 fine. I mean, 15 minutes at the most.

8 THE COURT: Well, the jurors are coming in,
9 though, so you need to --

10 MR. JOYE: Well, whatever scheduling y'all
11 want to do, I don't care. It doesn't --

12 MR. HUMPHRIES: I'm staying here.

13 MR. JOYE: I'm staying here. There is no use
14 in me trying to go home and --

15 THE COURT: Well, why don't you just do your
16 motions while you are sitting there and then we
17 will get that out of the way. And then it will be
18 lunch time. And then we will have probably some
19 other things we can do this afternoon not involving
20 your case.

21 MR. JOYE: Sure.

22 THE CLERK: What time?

23 MR. HUMPHRIES: What time, right?

24 THE CLERK: When do you want to start?

25 THE COURT: We need to start, what, 9:30?

1 MR. HUMPHRIES: I'm available any time, Judge.

2 THE COURT: Tell them 9:15. That gives them
3 time to get here.

4 THE CLERK: Okay.

5 (Pause.)

6 MR. HUMPHRIES: May it please the Court, Your
7 Honor?

8 THE COURT: Okay.

9 MR. HUMPHRIES: The State previously submitted
10 a motion in limine to admit evidence pursuant to
11 Rule 404(b) and res gestae, which was briefly heard
12 in chambers.

13 We'd like to place those arguments and the
14 Court's ruling on the record at this time.

15 THE COURT: All right, Mr. Humphries, you can
16 do that.

17 MR. HUMPHRIES: Thank you, Your Honor.

18 Specifically, Your Honor, the State has moved
19 to introduce a series of drug transactions which
20 the State submits occurred before and after the
21 murder of the victim in this case by the Defendant.

22 That evidence would be elicited through the
23 testimony of a young woman named Ramona Bambi
24 Matthews.

25 Basically that testimony would be that

1 approximately 10:00 o'clock on the night of the
2 murder Ms. Matthews was contacted by telephone by
3 the Defendant, requested that Ms. Matthews, with
4 whom he was well acquainted and had had regular
5 dealings in the past, to deliver to him a 30-piece
6 or a 30-dollar rock of crack cocaine.

7 She did so. And at that time, when it came
8 time for payment, the Defendant was unable to pay
9 her the complete amount, that is \$30, and advised
10 Ms. Matthews that all he had was \$27.

11 She fussed at him a little bit, took the \$27,
12 but because he was a regular customer, let him off
13 the hook and said he would have to catch up with
14 her the next time.

15 Your Honor, approximately 2:00 o'clock in the
16 morning that following morning she received another
17 call from the Defendant.

18 At that time the Defendant requested that she
19 bring to him a 50-dollar rock of crack cocaine.

20 At that time she said, you didn't have the
21 money to pay for it the first time, I'm not
22 bringing you any more.

23 He said, well, I've got the money now. In
24 fact, I got enough money I need you to go buy me a
25 pack of cigarettes and a lighter too.

1 She got the 50-dollar rock, took it to him
2 with the cigarettes and the lighter.

3 Interestingly, the Defendant came out of the
4 side door for the first purchase. He came out of
5 the front door the second purchase. The side door
6 is actually the door where the victim had been
7 dragged from the living room to in front of the
8 carport area.

9 At that time she -- he paid her \$60, which
10 paid for the \$3 she owed him -- he owed her -- the
11 50-dollar rock, and the cigarettes and the lighter.

12 Your Honor, we submit that that is evidence
13 that should be admitted pursuant to Rule 404(b) of
14 the South Carolina Rules of Evidence and res
15 gestae.

16 We have submitted to the Court a number of
17 cases, State vs. Adams in particular, which is 322
18 S.C. 114, 470 S.E.2d 386. That was a case in which
19 the use of crack before an armed robbery was
20 admitted as well as the fact that proceeds from the
21 armed robbery were used to purchase crack.

22 State vs. Williams, 321 S.C. 455, 469 S.E.2d
23 49. That is a case where the purchase of crack
24 just prior to the murder was considered to be
25 404(b) evidence and res gestae.

1 State vs. Huff, which is 325 S.C. 88, 480
2 S.E.2d 77, where the purchase of crack where the
3 proceeds of a burglary were admitted under both
4 those theories of evidence.

5 And, finally, State vs. Gilchrist, which is
6 329 S.C. 621, 496 S.E.2d 424, where the Defendant
7 in this case gave the Co-Defendant crack just prior
8 to an attempted armed robbery. The Court admitted
9 that evidence and it was sustained by the Appellate
10 Court under the theories of res gestae and 404(b)
11 evidence.

12 We believe that this evidence particularly
13 goes to motive for the murder and to be res gestae
14 of the offense.

15 And of course Your Honor is well familiar with
16 the standard associated with res gestae and the
17 admission of 404(b) evidence. We submit that it is
18 much more probative than it is prejudicial. And we
19 would request that the Court admit it in limine.

20 THE COURT: Solicitor, did the Decedent have
21 any money on him --

22 MR. HUMPHRIES: Not in his wallet, Your Honor.

23 THE COURT: -- in an autopsy type review?

24 MR. HUMPHRIES: Not in his wallet, Your Honor.

25 THE COURT: All right.

1 MR. JOYE: Your Honor, we would -- I believe
2 we previously handed you State vs. Frederick. I'm
3 sorry, I don't have the cite. I believe I handed
4 you the case.

5 THE COURT: You gave me a copy of the case,
6 right.

7 MR. JOYE: And also The State vs. Smith, which
8 was an Horry County case, and I have not submitted
9 it, but in both of those cases the Court of Appeals
10 or the Supreme Court in fact reversed the Court of
11 Appeals in Frederick saying that the evidence from
12 two weeks earlier on a child abuse case in which
13 there was strong evidence that the child had been
14 abused and eyewitness testimony that this child had
15 been abused two weeks prior to the eventual death
16 of the child, and our Court said, well, that really
17 is too remote in time, it is not part of the
18 offense that actually led to the death of the child
19 two weeks later.

20 And the argument there was that there was an
21 ongoing type abuse situation and it was the ongoing
22 abuse that immediately led to the death of the
23 child.

24 Judge, what seems to be the case in each one
25 of these cases is we're not relying on

1 circumstantial evidence to prove a theory of the
2 case that is speculative at best. The fact that my
3 client didn't have money -- even if the testimony
4 of the drug dealer is to be believed, that my
5 client didn't have enough money -- he could have
6 very well been lying to her about that, and we
7 don't have any tie of the money that eventually led
8 to the second purchase.

9 This was a very, very bloody crime scene. It
10 was a -- the body was bloody. There is no tie of
11 blood to the money.

12 Judge, what we're trying to do is say -- and
13 plant the seeds in this jury's head of,
14 Mr. Mitchell is a crackhead, and a crackhead will
15 kill anybody for a little bit of money so that they
16 can get more crack.

17 Your Honor, in that respect it is much more
18 prejudicial than it is probative. It is not
19 probative of anything because we got no -- no
20 evidence at all that Mr. Mitchell got money from
21 David Mitchell, his father.

22 There is no tie between the money and David
23 Mitchell's death. It is simply nothing more than
24 speculation on the Prosecutor's part.

25 THE COURT: Okay. Well, with a heavy heart,

1 it comes in. It shows motive, opportunity. He
2 came out of the back door. Had money, did not have
3 money before, and had money after the fact. Good
4 jury argument about whatever, but I'm just
5 concerned with the admissibility, not the weight of
6 the evidence. So I will let it in.

7 MR. HUMPHRIES: Thank you, Your Honor.

8 MR. JOYE: Thank you, Your Honor.

9 THE COURT: And I did, of course, read the
10 cases. I had my law clerk read them too since she
11 had some interest in --

12 MR. HUMPHRIES: Very good. Thank you, sir.

13 THE COURT: -- understanding your theory.

14 (WHEREUPON, court adjourned for the day.)

15 SEPTEMBER 9, 2008

16 (WHEREUPON, motions in the case were
17 heard in family court and taken by the
18 family court reporter.)

19 (WHEREUPON, State's Exhibit No. 1 was
20 marked for identification only.)

21 (WHEREUPON, State's Exhibit Nos. 2
22 THROUGH 40 were marked for
23 identification only.)

24 (WHEREUPON, State's Exhibit No. 41 was
25 marked for identification only.)

1 THE COURT: Solicitor, is the State ready to
2 proceed?

3 MR. HUMPHRIES: The State is ready, Your
4 Honor.

5 THE COURT: What is the State ready to proceed
6 with?

7 MR. HUMPHRIES: The State now calls the case
8 of the State versus Darrell Nathaniel Mitchell,
9 Indictment Number 2007-GS-21-1423. It is an
10 indictment for murder. It has been true-billed by
11 the grand jurors in Florence County.

12 The State is ready to proceed.

13 I am going to hand up to the Court at this
14 time a potential witness list for the State.

15 (Deputy Solicitor complies.)

16 THE COURT: Hold it there one second.

17 (WHEREUPON, a bench conference was held
18 in the presence of the jury panel but
19 out of the hearing of the jury panel.)

20 THE COURT: Okay, jurors, if I could have your
21 attention. The Solicitor just handed me this
22 document. It is called an indictment. It contains
23 allegations. It alleges the commission of a
24 specific crime by Darrell Nathaniel Mitchell.

25 Mr. Mitchell is presumed innocent of all

1 charges. There is absolutely no burden on his part
2 to prove that he is not guilty. The State has the
3 entire burden of proof throughout the trial. In
4 order to get a conviction they must convince 12
5 jurors unanimously beyond a reasonable doubt of
6 every allegation contained in this particular
7 indictment.

8 Now, the indictment alleges that Darrell
9 Nathaniel Mitchell committed the crime of murder by
10 killing David Mitchell with malice aforethought
11 back in May of 2007.

12 Now, conferring with the attorneys, David
13 Mitchell was the father of Darrell Mitchell, all
14 right?

15 Now, Darrell Mitchell is present. If he would
16 just stand.

17 (Defendant stands.)

18 THE COURT: Just kind of face the panel.

19 (Defendant complies.)

20 THE COURT: Jurors, does he look familiar? Is
21 anybody related to him? Have you ever worked with
22 him? Lived in the neighborhood with him? Do you
23 know him at all? If so, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: All right, you can have a seat.

1 (Defendant seated.)

2 THE COURT: And while, Mr. Joye, you are
3 standing, if you will just tell us who you are.

4 MR. JOYE: My name is Scott Joye. I'm from
5 Murrells Inlet. And I practice law primarily in
6 Horry and Georgetown Counties, but occasionally
7 over here with you fine folks. And I practice with
8 the law firm of Joye, Nappier and Risher. That is
9 myself, Mark Nappier, Don Risher, and we have an
10 associate by the name of Wendy Hardin.

11 THE COURT: Jurors, do any of you have any
12 connection direct or indirect with Mr. Joye or any
13 member of his firm?

14 (WHEREUPON, there was no response.)

15 THE COURT: Has Mr. Joye or any member of his
16 firm ever represented you or a family member or do
17 they currently represent you?

18 (WHEREUPON, there was no response.)

19 THE COURT: Going a step further, has Mr. Joye
20 or any member of his firm ever been on the other
21 side of a controversy in which you were involved?
22 If so, please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. Jurors, I'm going to
25 ask a couple of questions, and if they apply, when

1 I say you or an immediate family member, I'm
2 talking about up and down and across. I'm talking
3 about parents, brothers, sisters, children. I'm
4 not talking about a fourth cousin twice removed,
5 all right?

6 So, jurors, if you or a family member
7 currently or in the past have been involved in law
8 enforcement at any level, from SLED to Marion City
9 Police to a wildlife officer who carries a gun to a
10 Highway Patrolman, if you would just please stand.
11 You or an immediate family member.

12 (Jurors stand.)

13 THE COURT: Now, the only way I can do it is
14 point. Just when I point, I need for you to just
15 state your name and say how that question applies
16 to you.

17 THE JUROR: My name is Helen Floyd. My
18 husband is a police officer for the City of
19 Florence.

20 THE COURT: All right, now after you have
21 given me the information, if you can be fair and
22 impartial -- and this applies to everybody -- just
23 have a seat.

24 (Juror seated.)

25 THE JUROR: Douglas Phillips. Police officer,

1 Lamar, South Carolina, 1971 to '74.

2 (Juror seated.)

3 THE COURT: Okay.

4 THE JUROR: Steve Becker. My brother is a
5 police officer with City of Florence.

6 THE COURT: Okay.

7 MR. JOYE: I'm sorry, name, please?

8 THE JUROR: Becker. Steve Becker.

9 (Juror seated.)

10 THE JUROR: Buddy Lynch. My uncle is a
11 sheriff officer, Florence County.

12 THE COURT: Okay.

13 (Juror seated.)

14 THE JUROR: Cornelia Joyner. My husband is a
15 wildlife biologist and carries a law enforcement
16 commission.

17 THE COURT: All right, thanks.

18 (Juror seated.)

19 THE JUROR: John D. Jordan. My brother is
20 with the Department of Natural Resources.

21 (Juror seated.)

22 THE COURT: Okay. Jurors, if you or an
23 immediate family member currently or in the past,
24 while not directly employed by law enforcement but
25 have occupied or occupy a quasi-law enforcement

1 position, such as a night watchman, a security
2 guard, somebody in a store that walks around
3 looking for shoplifters. Okay?

4 (Juror stands.)

5 THE JUROR: Helen Floyd. My son-in-law is
6 over security at McLeod Regional Medical Center.

7 THE COURT: Okay, thanks.

8 (Juror seated.)

9 THE COURT: And, jurors, generally we are in
10 the 12th Circuit. It is comprised of Florence and
11 Marion Counties. And your Solicitor, Mr. Clements,
12 normally prosecutes cases, or some member of his
13 staff. They had a conflict you don't need to
14 concern yourself with, so the case is actually
15 going to be prosecuted by Fran Humphries, who is a
16 Deputy Solicitor from the Conway area. If he will
17 just stand and tell us who he is.

18 (Mr. Humphries stands.)

19 MR. HUMPHRIES: Fran Humphries, Chief Deputy
20 Solicitor, 15th Circuit; serves Horry and
21 Georgetown County. As the judge told you, I am
22 here by special appointment as a 12th Circuit
23 Solicitor.

24 THE COURT: All right, jurors, if you or an
25 immediate family member currently or in the past

1 have had any connection with either of those
2 Circuit Solicitor's Offices, that would be the 12th
3 Circuit and 15th Circuit, or with Mr. Humphries in
4 particular, if you would just stand.

5 (Juror stands.)

6 THE JUROR: I'm a personal acquaintance of Ed
7 Clements.

8 THE COURT: All right. And Mr. Clements is
9 not trying the case, but what is your name?

10 THE JUROR: Dail Shaw. I'm sorry.

11 THE COURT: Can you be fair and impartial?

12 THE JUROR: Yes, sir.

13 THE COURT: Okay, fine.

14 (Juror seated.)

15 THE COURT: Jurors, if you or an immediate
16 family member currently or in the past have
17 occupied the position of Public Defender or if you
18 have been employed by the Office of Public Defender
19 or of an attorney who represents individuals
20 accused of commission of crimes, if you would
21 please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: All right. Jurors, I have a list
24 of potential witnesses. If you know an
25 individual -- if they are present I just need for

1 them to stand, but I may just have some bare names,
2 so if you know someone with the same or similar
3 name, if you would stand, the attorneys can tell
4 you whether the person you know is this person or
5 not. Now, just knowing a person does not
6 necessarily disqualify. If you are related to
7 them, to a certain degree it might.

8 But, anyway:

9 Sergeant Lee Davis of the Florence Police
10 Department.

11 (Witness stands.)

12 (WHEREUPON, there was no response.)

13 THE COURT: Officer Lawrence David, Florence
14 Police Department.

15 (Witness stands.)

16 (WHEREUPON, there was no response.)

17 THE COURT: Shannon Hill, Florence Police
18 Department.

19 (Witness not present.)

20 (WHEREUPON, there was no response.)

21 THE COURT: Corporal Chris Moreau, Florence
22 Police Department.

23 (Witness not present.)

24 (WHEREUPON, there was no response.)

25 THE COURT: Ramona Matthews.

1 (Witness not present.)

2 (WHEREUPON, there was no response.)

3 THE COURT: Gwendolyn McKnight.

4 (Witness not present.)

5 (WHEREUPON, there was no response.)

6 THE COURT: John Ortuno, who is currently or
7 in the past employed by SLED.

8 (Witness not present.)

9 (WHEREUPON, there was no response.)

10 THE COURT: Dr. Cynthia somebody.

11 MR. CLEMENTS: Schandl.

12 THE COURT: S-C-H-A-N-D-L, of the Medical
13 University of South Carolina.

14 (Witness not present.)

15 (WHEREUPON, there was no response.)

16 THE COURT: Adrienne White.

17 (Witness stands.)

18 (WHEREUPON, there was no response.)

19 THE COURT: Frank White.

20 (Witness stands.)

21 (WHEREUPON, there was no response.)

22 THE COURT: All right, jurors, I just read the
23 indictment to you, paraphrased it. I told you it
24 is not evidence, creates no inference of guilt
25 against Mr. Mitchell, but murder of course is a

1 violent crime.

2 To answer this question I'm going to need for
3 you to come up to the side bar here, and the
4 attorneys can come up. If you or an immediate
5 family member has ever been the victim of what you
6 perceive to be a crime of violence, I need for you
7 to come up.

8 The legislature classifies many things as
9 crimes of violence, obviously murder, manslaughter,
10 kidnapping, and so forth, would be crimes of
11 violence, armed robbery. But if you feel like you
12 have been the victim or immediate family member
13 have been the victim of anything that constitutes a
14 violent crime as you understand the term, if you
15 would come up and we need to query you about it.

16 (Jurors stand.)

17 THE COURT: Okay, attorneys, you can come up.

18 (Attorneys approach the bench.)

19 (Juror approaches.)

20 THE JUROR: My cousin, Davis Daniel, in
21 Columbia, his baby was murdered, Ashley Daniel.

22 THE COURT: How long ago was that?

23 THE JUROR: Well, I guess it's been many years
24 now. Several. Several.

25 THE COURT: Can you be fair and impartial?

1 THE JUROR: Of course.

2 THE COURT REPORTER: I'm sorry, ma'am, you
3 said in the beginning --

4 THE JUROR: Sharlayne Cullu, C-u-l-l-u.

5 (Juror seated.)

6 (Juror approaches.)

7 THE JUROR: I believe I'm 152. In 1998 I was
8 robbed, had a gun put to my head.

9 THE COURT: You didn't like that, did you?

10 THE JUROR: No, sir, I didn't. I thought I
11 was going to die. I even looked behind me to see
12 where I was going to fall. My head was fixing to
13 get filled with bullets.

14 THE COURT: Can you be fair and impartial on a
15 trial like this or would it put too much pressure
16 on you? It is just your call.

17 THE JUROR: Well, I will try to be fair.

18 THE COURT: I don't know your feelings. Does
19 anybody want to ask him anything?

20 MR. JOYE: Your Honor, I would ask him to be
21 excused for cause. He said he could try, but it
22 would be kind of hard.

23 THE COURT: Just have a seat. We won't put
24 him on.

25 MR. HUMPHRIES: 152.

1 THE COURT: We won't put you on this jury.

2 THE JUROR: Okay.

3 (Juror seated.)

4 THE BAILIFF: Number 79, John Jordan.

5 (Juror approaches.)

6 THE JUROR: My son was shot during a
7 convenience store robbery about four years ago.

8 THE COURT: Can you be fair and impartial?

9 THE JUROR: I think so.

10 MR. JOYE: Your Honor, I think it takes more
11 than "I think."

12 THE COURT: Well, that is just a manner of
13 speaking probably. You can either be -- in your
14 heart you know you can be fair or not.

15 THE JUROR: Yes.

16 THE COURT: You can?

17 THE JUROR: (Nods affirmatively.)

18 MR. JOYE: Okay, thank you, sir.

19 MR. HUMPHRIES: Thank you.

20 THE COURT: Y'all stay here one minute.

21 (Attorneys comply.)

22 THE COURT: All right, jurors, now, the
23 charge, understand it is just allegations, but
24 obviously David Mitchell did die and someone killed
25 him. So we're talking about the charge of murder.

1 If there is anything in the nature of the charge
2 that would prevent anybody from being a fair and
3 impartial juror, I need for you to come up.

4 In addition, if you have any strong feelings
5 about the use of drugs in society and if there are
6 accusations about the use of drugs that could come
7 up during this trial, if that would impact your
8 ability to be a fair and impartial juror, you need
9 to come up and tell us about it.

10 If you have strong moral or religious feelings
11 about the use of drugs in society or if you belong
12 to or contribute to any organization that takes a
13 position on the use of drugs in society, the
14 attorneys would like for you to come up.

15 THE BAILIFF: 114, Douglas Phillips.

16 (Juror approaches.)

17 THE JUROR: I just want you to know when I
18 left the Police Department in Lamar in 1974, that I
19 moved to Marion and I worked with Mr. Hunter West
20 buying drugs undercover, and stuff like that. And
21 that is what I'm telling you. So to be very
22 honest, I don't know whether I can be fair and
23 impartial or not, sir. That is being as honest as
24 I can with you.

25 THE COURT: Okay. Well, can you be fair and

1 impartial?

2 THE JUROR: Yes, sir.

3 THE COURT: Or shot at sunset? No, we would
4 have left you off the case.

5 MR. JOYE: Thank you, sir.

6 (Juror seated.)

7 THE BAILIFF: Mr. Dillonbeck.

8 (Juror approaches.)

9 THE JUROR: Your Honor, I'm a pastor and you
10 know I run into this all the time, and you know I
11 just don't know, you know, how it is going to
12 affect my judgment on the case.

13 THE COURT: We won't require you to serve.

14 THE JUROR: I mean, I'm not trying to get out.

15 THE COURT: We understand.

16 THE JUROR: Okay.

17 THE COURT: Just have a seat back there.

18 (Juror Dillenbeck seated.)

19 (WHEREUPON, the following bench
20 conference was held in the presence of
21 the jury but out of the hearing of the
22 jury.)

23 THE COURT: All right, now, do y'all need
24 anything else other than have you heard anything
25 about the case? There are two to be stricken for

1 cause.

2 (WHEREUPON, the bench conference was
3 concluded.)

4 THE COURT: Jurors, have any of y'all heard
5 anything about this case? Has anybody formed or
6 expressed any opinions as to who should prevail,
7 not knowing anything about the case? Is there any
8 juror aware of any reason why you couldn't be fair
9 and impartial, whether I have queried you about it
10 or not? I mean, you might not like the way the
11 judge's hair goes. I do the best I can with it.
12 Any reason?

13 (WHEREUPON, there was no response.)

14 MR. JOYE: You might query them about --

15 THE COURT: One of our issues, jurors,
16 apparently last night on one of the local TV
17 channels they had a picture of the Defendant, and
18 as we understand it from checking, it basically
19 just said he was going to be on trial today accused
20 of murdering his father.

21 If anybody saw that, if that impacted you, you
22 need to tell us about it.

23 (WHEREUPON, there was no response.)

24 MR. JOYE: Thank you, Judge.

25 THE COURT: Wait a minute. You have motions,

1 don't you?

2 (WHEREUPON, the following bench
3 conference was held in the presence of
4 the jury but out of the hearing of the
5 jury.)

6 MR. JOYE: The two jurors, one's brother was a
7 Florence police officer and one's husband. I think
8 one said her husband was a police officer, clearly,
9 and I think that was absolutely clear, but I also
10 ask the one that her brother --

11 THE COURT: You need to tell me the juror.

12 MR. JOYE: Steve Becker. Helen Floyd.

13 THE COURT: I think we let Floyd go, but I
14 don't think we let Becker go.

15 MR. HUMPHRIES: No.

16 THE COURT: Now, what I do, I just require
17 them to stand out there.

18 MR. JOYE: That's fine.

19 THE COURT: Get 12.

20 MR. HUMPHRIES: No problem with that. No
21 problem.

22 MR. JOYE: No problem.

23 (WHEREUPON, the bench conference was
24 concluded.)

25 THE COURT: All right, jurors, this is what

1 happens. One of the deputy clerks is going to pull
2 your name out and just call out your name. When
3 you hear your name if you would just stand. You
4 don't have to say anything or do anything. And
5 then the State either accepts you or not. And then
6 the Defense either accepts you or not. You know,
7 don't take it personal if they say excuse the
8 juror. You know, they checked into y'all. So --
9 and we, just for clarification, we think it is no
10 more than a three-day trial. Would that be a two-
11 or three-day trial, Mr. Humphries?

12 MR. HUMPHRIES: Yes, sir, Your Honor, no more
13 than that.

14 MR. JOYE: Yes, Your Honor.

15 THE COURT: You are not going to be running
16 into the weekend or anything?

17 MR. HUMPHRIES: No, sir.

18 MR. JOYE: No, sir.

19 THE COURT: If you hear your name, stand.

20 THE CLERK: What are the strikes?

21 THE COURT: Ten and ten.

22 THE CLERK: 156, Earl Hannah.

23 (Juror stands.)

24 THE CLERK: What says the State?

25 MR. HUMPHRIES: Please present the juror.

1 THE CLERK: What says the Defense?

2 MR. JOYE: Please seat the juror.

3 THE CLERK: Please have a seat.

4 THE COURT: No, just have a seat where you
5 are. We are going to call everybody up at one
6 time.

7 (Juror seated.)

8 (Juror 156, Earl Hannah, a black male,
9 was accepted as a juror.)

10 THE CLERK: 130, Crystal Smith.

11 (Juror stands.)

12 THE CLERK: What says the State?

13 MR. HUMPHRIES: Please excuse the juror.

14 THE CLERK: Please have a seat.

15 (Juror seated.)

16 (Juror 130, Crystal Smith, a white
17 female, was excused by the State.)

18 THE CLERK: 155, Radburn Gaymon.

19 (Juror stands.)

20 THE CLERK: What says the State?

21 MR. HUMPHRIES: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. JOYE: Please seat the juror.

24 THE CLERK: Please have a seat.

25 (Juror seated.)

1 (Juror 155, Radburn Gaymon, a white
2 male, was accepted as a juror.)
3 THE CLERK: 24, Christopher Coleman.
4 (Juror stands.)
5 THE CLERK: What says the State?
6 MR. HUMPHRIES: Please present the juror.
7 THE CLERK: What says the Defense?
8 MR. JOYE: Please seat the juror.
9 THE CLERK: Please have a seat.
10 (Juror seated.)
11 (Juror 24, Christopher Coleman, a white
12 male, was accepted as a juror.)
13 THE CLERK: 12, Sylvester Blakely.
14 (Juror stands.)
15 THE CLERK: What says the State?
16 MR. HUMPHRIES: Please excuse the juror.
17 THE CLERK: Please have a seat.
18 (Juror seated.)
19 (Juror 12, Sylvester Blakely, a black
20 male, was excused by the State.)
21 THE CLERK: 160, Dail Shaw.
22 (Juror stands.)
23 THE CLERK: What says the State?
24 MR. HUMPHRIES: Please present the juror.
25 THE CLERK: What says the Defense?

1 MR. JOYE: Please excuse the juror from the
2 trial of this case.

3 THE CLERK: Please have a seat.

4 (Juror seated.)

5 (Juror 160, Dial Shaw, a white female,
6 was excused by the Defense.)

7 THE CLERK: 50, Edwin Fountain.

8 (Juror stands.)

9 THE CLERK: What says the State?

10 MR. HUMPHRIES: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. JOYE: Please excuse the juror from the
13 trial of this case.

14 THE CLERK: Please have a seat.

15 (Juror seated.)

16 (Juror 50, Edwin Fountain, a white male,
17 was excused by the Defense.)

18 THE CLERK: 126, Natrice Ford.

19 (Juror stands.)

20 THE CLERK: What says the State?

21 MR. HUMPHRIES: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. JOYE: Please seat the juror.

24 THE CLERK: Please have a seat.

25 (Juror seated.)

1 (Juror 126, Natrice Ford, a black
2 female, was accepted as a juror.)
3 THE CLERK: 139, Larry Tunstall.
4 (Juror stands.)
5 THE CLERK: What says the State?
6 MR. HUMPHRIES: Please present the juror.
7 THE CLERK: What says the Defense?
8 MR. JOYE: Please seat Mr. Tunstall in the
9 trial of the case.
10 THE CLERK: Please have a seat.
11 (Juror seated.)
12 (Juror 139, Larry Tunstall, a white
13 male, was accepted as a juror.)
14 THE CLERK: 153, Charleen Cullu.
15 (Juror stands.)
16 THE CLERK: What says the State?
17 MR. HUMPHRIES: Please present the juror.
18 THE CLERK: What says the Defense?
19 MR. JOYE: Please excuse the juror from the
20 trial of this case.
21 THE CLERK: Please have a seat.
22 (Juror seated.)
23 (Juror 153, Charleen Cullu, a white
24 female, was excused by the Defense.)
25 THE CLERK: 84, Heather Kight.

1 (Juror stands.)
2 THE CLERK: What says the State?
3 MR. HUMPHRIES: Please present the juror.
4 THE CLERK: What says the Defense?
5 MR. JOYE: Please seat the juror.
6 THE CLERK: Please have a seat.
7 (Juror seated.)
8 (Juror 84, Heather Kight, a white
9 female, was accepted as a juror.)
10 THE CLERK: 32, Lashona Croker. Lashona
11 Croker.
12 (WHEREUPON, there was no response.)
13 THE CLERK: 134, Dawn Taylor.
14 (Juror stands.)
15 THE CLERK: What says the State?
16 MR. HUMPHRIES: Please present the juror.
17 THE CLERK: What says the Defense?
18 MR. JOYE: Please excuse the juror from the
19 trial of this case.
20 THE CLERK: Please have a seat.
21 (Juror seated.)
22 (Juror 134, Dawn Taylor, a white female,
23 was excused by the Defense.)
24 THE CLERK: 109, Brenda Odom.
25 (Juror stands.)

1 THE CLERK: What says the State?
2 MR. HUMPHRIES: Please present the juror.
3 THE CLERK: What says the Defense?
4 MR. JOYE: Please seat the juror in the trial
5 of this case.
6 THE CLERK: Please have a seat.
7 (Juror seated.)
8 (Juror 109, Brenda Odom, a white female,
9 was accepted as a juror.)
10 THE CLERK: 81, Cornelia Joyner.
11 (Juror stands.)
12 THE CLERK: What says the State?
13 MR. HUMPHRIES: Please present the juror.
14 THE CLERK: What says the Defense?
15 MR. JOYE: Please excuse the juror.
16 THE CLERK: Please have a seat.
17 (Juror seated.)
18 (Juror 81, Cornelia Joyner, a white
19 female, was excused by the Defense.)
20 THE CLERK: 157, Thomas Hansell.
21 (Juror stands.)
22 THE CLERK: What says the State?
23 MR. HUMPHRIES: Please present the juror.
24 THE CLERK: What says the Defense?
25 MR. JOYE: Please seat the juror.

1 THE CLERK: Please have a seat.
2 (Juror seated.)
3 (Juror 157, Thomas Hansell, a white
4 male, was accepted as a juror.)
5 THE CLERK: 85, Rebekah Kirby.
6 (Juror stands.)
7 THE CLERK: What says the State?
8 MR. HUMPHRIES: Please present the juror.
9 THE CLERK: What says the Defense?
10 MR. JOYE: Please excuse the juror from the
11 trial of this case.
12 THE CLERK: Please be seated.
13 (Juror seated.)
14 (Juror 85, Rebekah Kirby, a white
15 female, was excused by the Defense.)
16 THE CLERK: 141, William Valone.
17 (Juror stands.)
18 THE CLERK: What says the State?
19 MR. HUMPHRIES: Please present the juror.
20 THE CLERK: What says the Defense?
21 MR. JOYE: Please seat the juror.
22 THE CLERK: Please have a seat.
23 (Juror seated.)
24 (Juror 141, William Valone, a white
25 male, was accepted as a juror.)

1 THE CLERK: 7, Steven Becker.
2 (Juror stands.)
3 THE CLERK: What says the State?
4 MR. HUMPHRIES: Please present the juror.
5 THE CLERK: What says the Defense?
6 MR. JOYE: Please excuse the juror.
7 THE CLERK: Please have a seat.
8 (Juror seated.)
9 (Juror 7, Steven Becker, a white male,
10 was excused by the Defense.)
11 THE CLERK: 122, David Randall.
12 (Juror stands.)
13 THE CLERK: What says the State?
14 MR. HUMPHRIES: Please present the juror.
15 THE CLERK: What says the Defense?
16 MR. JOYE: Please seat the juror.
17 THE CLERK: Please have a seat.
18 (Juror seated.)
19 (Juror 122, David Randall, a white male,
20 was accepted as a juror.)
21 THE CLERK: 92, Buddy Lynch.
22 (Juror stands.)
23 THE CLERK: What says the State?
24 MR. HUMPHRIES: Please present the juror.
25 THE CLERK: What says the Defense?

1 MR. JOYE: Please excuse the juror from the
2 trial of this case.

3 THE CLERK: Please have a seat.

4 (Juror seated.)

5 (Juror 92, Buddy Lynch, a white male,
6 was excused by the Defense.)

7 THE CLERK: 118, Koritta Poston.

8 (Juror stands.)

9 THE CLERK: What says the State?

10 MR. HUMPHRIES: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. JOYE: Please seat Ms. Poston in the trial
13 of this case.

14 THE CLERK: Please have a seat.

15 (Juror seated.)

16 (Juror 118, Koritta Poston, a white
17 female, was accepted as a juror.)

18 THE CLERK: 74, Angel Huffman.

19 (Juror stands.)

20 THE CLERK: What says the State?

21 MR. HUMPHRIES: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. JOYE: Please seat Ms. Huffman.

24 THE CLERK: Please have a seat.

25 (Juror seated.)

1 (Juror 74, Angel Huffman, a black
2 female, was accepted as a juror.)
3 THE COURT: Alternate. The strikes are one
4 and two.
5 THE CLERK: 129, Sam Singletary.
6 (Juror stands.)
7 THE CLERK: What says the State?
8 MR. HUMPHRIES: Please excuse the juror.
9 THE CLERK: Please be seated.
10 (Juror seated.)
11 (Juror 129, Sam Singletary, a black
12 male, was excused by the State.)
13 THE CLERK: 96, Edward McKee.
14 (Juror stands.)
15 THE CLERK: What says the State?
16 MR. HUMPHRIES: Please present the juror.
17 THE CLERK: What says the Defense?
18 MR. JOYE: Please excuse the juror from the
19 trial of this case.
20 THE CLERK: Please have a seat.
21 (Juror seated.)
22 (Juror 96, Edward McKee, a white male,
23 was excused by the Defense.)
24 THE CLERK: 45, Jo Ann Evans.
25 (Juror stands.)

1 THE CLERK: What says the State?

2 MR. HUMPHRIES: Please present the juror.

3 THE CLERK: - What says the Defense?

4 MR. JOYE: Please seat the juror.

5 THE CLERK: Please have a seat.

6 (Juror seated.)

7 (Juror 45, Jo Ann Evans, was accepted as
8 the alternate juror.)

9 THE COURT: Okay, attorneys, do y'all have
10 anything concerning the strikes before we call them
11 up?

12 MR. HUMPHRIES: Nothing from the State, Your
13 Honor.

14 MR. JOYE: Judge, may we approach?

15 THE COURT: Yes, you can do it.

16 (WHEREUPON, the following bench
17 conference was held in the presence of
18 the jury but out of the hearing of the
19 jury.)

20 MR. JOYE: I don't have a Batson motion, but I
21 don't think this jury fairly represents the
22 population of Georgetown.

23 THE COURT: Not Georgetown.

24 MR. JOYE: Florence County.

25 THE COURT: I can't help you on that.

1 MR. JOYE: Well, I just wanted to approach
2 you. I mean, I can put it on the record -- we can
3 do that later. I don't have --

4 THE COURT: There is nothing I can help you
5 with.

6 MR. JOYE: Well, I understand.

7 THE COURT: Let's, once the jurors get on
8 there, I might need to ask them about the brother
9 that works with law enforcement if it is going to
10 come out during the trial.

11 MR. HUMPHRIES: That brother works with the
12 Sheriff's Department. This was investigated by the
13 City Police.

14 THE COURT: But I'm saying --

15 MR. HUMPHRIES: I know.

16 THE COURT: -- if that comes out, somebody
17 says they are close to him, we have to go with one
18 alternate.

19 MR. JOYE: Excuse me?

20 MR. HUMPHRIES: You are talking about --

21 THE COURT: Before we swear them in, say we
22 didn't ask -- tell you --

23 MR. HUMPHRIES: Talking about Franklin?

24 THE COURT: I'm not talking about anybody.
25 I'm talking about asking them if they --

1 MR. HUMPHRIES: He was not on our witness list
2 or anything, was he?

3 THE COURT: Who?

4 MR. HUMPHRIES: Brother.

5 MR. JOYE: Brother-in-law.

6 THE COURT: Brother-in-law?

7 MR. JOYE: Yes, he was on the witness list.

8 THE COURT: That's all right. I didn't know
9 that.

10 MR. HUMPHRIES: Yes, sir.

11 THE COURT: All right.

12 (WHEREUPON, the bench conference was
13 concluded.)

14 THE COURT: Okay, let's call them up.

15 THE CLERK: When I call your name, come
16 forward.

17 Earl Hannah, Radburn Gaymon, Christopher
18 Coleman, Natrice Ford, Larry Tunstall, Heather
19 Kight, Brenda Odom, Thomas Hansell, William Valone,
20 David Randall, Koritta Poston, Angel Huffman,
21 Edward McKee and Jo Ann Evans.

22 THE COURT: Hold it.

23 THE CLERK: Edward McKee did not get picked.

24 THE COURT: McKee. I didn't think we did.

25 THE CLERK: I'm sorry.

1 THE COURT: All right, jurors that were not
2 selected, I don't want y'all shouting and clapping
3 or anything. Y'all are going to get to go home.
4 If you want to, you can hang around and watch the
5 trial if you like. I need you to call that number
6 you have after 6:00 today and there will be a
7 message on there, you will come in in the morning
8 or call back tomorrow. If you would like to go,
9 now would be a good time.

10 (Remaining jury panel excused.)

11 THE COURT: Jurors, you have been here a
12 while. We'll take a 15-minute break. While you
13 are back there, don't get your hopes up, but elect
14 somebody foreperson. You will not get paid a penny
15 more, but somebody has to preside and sign the
16 verdict form, and so forth. It can be anybody
17 except the alternate, and we don't require a
18 unanimous vote. Just when you come back out tell
19 us who the foreperson will be.

20 If you will just step back into that room.

21 (WHEREUPON, the jury retires to the jury
22 room at 10:35 a.m.)

23 THE COURT: Okay, is there anything I can help
24 anybody with?

25 MR. HUMPHRIES: Your Honor, there are. We

1 have premarked all the exhibits for the State.

2 THE COURT: All right.

3 MR. HUMPHRIES: I'm advised that with the
4 exception of two those exhibits will go into
5 evidence without objection.

6 THE COURT: All right.

7 MR. HUMPHRIES: Can we take up those two
8 exhibits just briefly now?

9 THE COURT: Sure.

10 MR. HUMPHRIES: I'll show them to the Court.
11 Basically, there are two photographs. Actually
12 there are four photographs. There are two that are
13 larger that the jury will be able to look at.
14 There are two smaller corresponding photographs
15 that are on the crime scene diagram. They are
16 photographs of the victim where he was, as the
17 State alleges, left by the Defendant at the head of
18 the carport. They are State's Exhibit 8 and 9.
19 The State seeks to introduce them through the
20 testimony of the crime scene investigator, Corporal
21 Chris Moreau. He will testify that they would
22 assist him in his presentation to the jury.

23 He would also testify that the -- specifically
24 as relates to 8, I believe, which pictures the
25 shoe, the shoe appeared to have been taken from the

1 home and set on the carport, which the State would
2 submit would not have been done by a stranger.

3 The second is 9. And that photograph, in
4 addition to other evidence, would indicate that the
5 victim was drug from the residence to that position
6 given the condition of his clothes. The State
7 would submit they are not unduly prejudicial. They
8 are not close-up. They do not show any visible
9 wounds. And we would ask the Court admit them over
10 the objection of the Defendant.

11 THE COURT: Okay.

12 MR. JOYE: Your Honor, certainly I think they
13 can testify to any and all of what they told you,
14 Judge, that, just like Mr. Humphries said, and I
15 don't think there is any question, it seems obvious
16 that the body was moved from the home. However,
17 those two photos are -- and certainly they can
18 testify that the body was moved without having to
19 actually show the photographs.

20 THE COURT: Well, here is how I operate on
21 photos: The chill bump factor. If I look at them
22 and I don't get chill bumps, they come in. I get
23 no chill bumps at all.

24 MR. HUMPHRIES: Thank you, Your Honor.

25 THE COURT: They tell me Exhibit 8 is to show

1 the shoe was moved. It doesn't even show the body
2 at all. Number, whatever that is, 9 does not show
3 any wounds or anything, it just shows the location
4 of the body and indicates he was moved to that
5 point. So harmless at this point. If it had
6 pictures of stab wounds, and so forth, it would be
7 a different situation.

8 MR. HUMPHRIES: Thank you, Your Honor.

9 MR. JOYE: Thank you, Your Honor.

10 THE COURT: And I guess we're at ease for ten
11 minutes.

12 (WHEREUPON, State's Exhibit No. 1 was
13 admitted into evidence.)

14 (WHEREUPON, State's Exhibit Nos. 2
15 through 40 were admitted into evidence.)

16 (WHEREUPON, State's Exhibit No. 41 was
17 admitted into evidence.)

18 (Pause.)

19 THE COURT: Now, when I come back out, just
20 come to order. Everybody doesn't have to jump up
21 and down all day long, just at the start of the
22 trial.

23 All right.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: Ready?

1 MR. HUMPHRIES: Yes, sir.

2 MR. JOYE: Yes, sir.

3 THE COURT: Let's bring them in. Seat the
4 foreperson where the foreperson sits.

5 THE BAILIFF: Yes, sir.

6 (WHEREUPON, the jury came into open
7 court at approximately 10:56 a.m.)

8 THE COURT: Okay, swear the jury in.

9 THE CLERK: If you will please stand and raise
10 your right hand.

11 (Jury complies.)

12 THE CLERK: You shall well and truly try and
13 true deliverance make to the State of South
14 Carolina and the prisoner at the bar, whom you
15 shall have in your charge, and a true verdict
16 render according to the law and evidence, so help
17 you God?

18 JURY: I do.

19 THE CLERK: You may be seated.

20 (Jury seated.)

21 THE COURT: Okay, jurors, we are going to
22 start into the trial. I told you when you were
23 seated out there that this document I'm holding up
24 is an indictment. It is not evidence. It creates
25 no inference of guilt against the Defendant. It

1 simply contains allegations.

2 It alleges that Darrell Nathaniel Mitchell
3 committed the crime of murder in Florence County
4 back on May 17th of 2007 and that he feloniously,
5 willfully, and with malice aforethought killed
6 David Mitchell by means of stabbing him with a
7 knife or other sharp object.

8 Those are allegations. Mr. Mitchell is
9 presumed innocent of all charges. There is
10 absolutely no burden on his part to prove that he
11 is not guilty. In order to get a conviction, the
12 State must convince each of you 12 jurors, in other
13 words, unanimously beyond a reasonable doubt, that
14 he committed the crime.

15 Now, alternate juror, you need to pay
16 attention. Having presided over many trials, you
17 know, a child gets sick at school or something and
18 you have to go away. So if somebody has to go, the
19 alternate juror might be elevated to an original
20 juror, one of the original 12 at any point.

21 Mr. Foreman, your vote counts no more than any
22 other juror's, but somebody has to preside over
23 deliberations and act as spokesperson for the jury.
24 That takes place once deliberations commence. It
25 is not like we can have a meaningful conversation

1 while the trial is going on.

2 And here is how the trial progresses. The
3 State is going to make a brief opening statement to
4 you. That will not be evidence. That will be done
5 through Mr. Humphries. He is just going to outline
6 what he thinks the evidence will be presented and
7 may suggest conclusions he thinks you should draw
8 from it.

9 The Defense counsel, Mr. Joye over here, will
10 be able to make an opening statement stating the
11 Defendant's. There is no obligation, again, on the
12 part of the Defendant to prove that he is not
13 guilty at all. The State has the burden of proof,
14 again, beyond a reasonable doubt throughout.

15 You jurors are going to pass upon the
16 believability of all witnesses that testify. You
17 will be able to consider any evidence that is
18 introduced during the trial, documentary evidence,
19 photos, what have you.

20 And evidence consists of two types. You have
21 direct evidence and you have circumstantial
22 evidence. The law makes no differentiation between
23 them. Direct evidence is where somebody testifies
24 to something he or she states they observe. They
25 may not have it, but that is direct evidence. Like

1 if somebody comes in and says it is raining
2 outside. It may or may not be, but that is direct
3 evidence. If somebody comes in and doesn't say a
4 word and takes their umbrella down and shakes it
5 and water falls off, that is circumstantial
6 evidence it is raining outside. Or they could have
7 just stepped under a shower. So circumstantial
8 evidence is where you take a proven fact and from
9 that you infer the existence of other facts, and so
10 forth.

11 Now, murder is a serious charge, as you
12 understand it. As crimes are classified, that is
13 the type with most serious consequences, most
14 serious crimes an individual can commit. So I have
15 presided over just innumerable trials. The
16 attorneys have been involved in trials. If you
17 think at some point during the trial we are not
18 being serious about it, we are, it is just what we
19 do, okay? So you need to pay close attention
20 throughout. We intend no frivolity throughout the
21 proceeding, or anything like that. Every motion
22 that is made, every ruling that is made, you know,
23 there are serious consequences.

24 So the documents that have been introduced
25 into evidence have all been over beforehand, so

1 there will be no delay during the trial.

2 Now, this is not going to be a lengthy trial.
3 That doesn't take away from the seriousness of it
4 at all. So today we will probably stop between
5 5:30 and 6:00. It is hard to stop a witness in
6 mid-sentence, in other words. Sometimes you go
7 further depending upon witness's availability, and
8 what have you. We think we will be able to
9 probably conclude the trial tomorrow, but we don't
10 promise that because sometimes a witness takes ten
11 minutes, sometimes they might take an hour and a
12 half. So we can't really control that. We think.
13 The attorneys investigate the case, and so forth,
14 and have been with it for a while. They think they
15 know what the witness is going to say, but
16 sometimes they don't say exactly what they thought
17 before and ask questions and ask questions, and so
18 forth. But don't hold it against the attorneys if
19 they object. That is what they are supposed to do.
20 And I don't keep up with it. If somebody objects,
21 I rule, you know. That doesn't mean I'm favoring
22 one side or another. I might rule for the Defense
23 on five straight objections or the State. That is
24 because I call it like I think, I'm not trying to
25 influence the trial at all.

1 At the conclusion of the trial I will instruct
2 you on the law in more detail. I will tell you
3 that the State really has to prove every word that
4 is alleged in this indictment beyond a reasonable
5 doubt.

6 Murder is defined as the unlawful, felonious
7 killing of one human being by another human being
8 with malice aforethought, express or implied.

9 Malice is a legal term. It basically just
10 means that a person had no just cause for
11 committing what they did. It can indicate
12 ill-will, not necessarily towards that individual,
13 but towards society in general.

14 Malice implies wickedness and includes just
15 cause or excuse. Malice can be express or implied.
16 Express malice rarely happens. Sometimes it does.
17 Somebody is recorded as saying, I can't stand so
18 and so, I hate so and so, at 10:00 o'clock tomorrow
19 morning I'm taking a shotgun over there and I'm
20 blowing so and so away and the world would be
21 better off without him. Well, that is express
22 malice.

23 Malice can be implied from all the surrounding
24 circumstances. And where a deadly weapon is used,
25 that can raise an implication of malice. But like

1 it is, proof of malice, it is just evidence in the
2 case that a jury can consider on whether malice
3 existed or not. And malice must be aforethought.
4 In other words, before the act is committed.

5 Some things are not necessary to prove the
6 crime of murder. You know, we fight the battle of
7 people watch CSI and all those programs on TV.
8 Motive can be of interest, but it is not necessary
9 that the State prove motive. They only have to
10 prove that the killing occurred with malice
11 aforethought, express or implied.

12 At the conclusion of the trial, I will
13 instruct you in a little more detail on all the
14 elements, but right now we are just going to get
15 into it.

16 I will tell you that we'll stop for a break --
17 unless somebody needs a break, and I will keep my
18 eye on you, just raise your hand -- about every
19 hour and a half, hour and 45 minutes. Again, I
20 can't just do it right by the clock. We will try.

21 Opening statements will not take long,
22 probably take 10 to 15 minutes for each side, and
23 then we'll start calling witnesses. And then we'll
24 break for lunch, and we'll crank it back up.

25 Okay.

1 MR. HUMPHRIES: May it please the Court?

2 THE COURT: Sure.

3 MR. HUMPHRIES: Mr. Joye?

4 OPENING STATEMENT

5 MR. HUMPHRIES: Mr. Foreman, ladies and
6 gentlemen of the jury, I've been introduced to you
7 before. I'm Fran Humphries, Deputy Solicitor in
8 the 15th Circuit, which, again, serves Horry and
9 Georgetown Counties. I have, however, been
10 appointed as a Special Prosecutor in the 12th
11 Circuit to handle this particular case, and it is
12 my honor and privilege.

13 On May 17th, 2007, Darrell Nathaniel Mitchell
14 stabbed and killed his father, elderly father,
15 David Mitchell, at the home in which they resided.
16 That is what you're going to hear.

17 Now, are you going to hear it just like that?
18 No, ma'am. No, sir. But what the judge has told
19 you and what he'll tell you more about is that
20 there are two types of evidence. There is direct
21 evidence. That is evidence that you see or that
22 you sense with your senses, your five senses. And
23 there is circumstantial evidence, what a reasonable
24 inference would lead you to a logical conclusion.
25 And it is that type of evidence in this case that

1 will lead you to the logical conclusion that this
2 Defendant, Darrell Nathaniel Mitchell, stabbed and
3 killed his elderly father, David Mitchell.

4 Three folks resided in this residence where
5 the crime took place. It was the home of David and
6 his wife. And it had been their home for years and
7 years.

8 The Defendant's mother was completely
9 incapacitated and had been so for awhile. She was
10 on hospice. She was bedridden. She received care
11 from a hospice nurse, someone you'll hear from
12 today, and her family, most particularly her
13 husband. She was noncommunicative, didn't talk to
14 anybody. She didn't feed herself well. She
15 certainly couldn't get out of bed. She couldn't
16 dress herself. She couldn't take care of herself.
17 Those duties fell primarily to the father, David.

18 At some point in time they allowed their adult
19 son, Darrell Mitchell, to come back into the home.
20 What the Court has told you and what is often true
21 is that the State does not have to prove motive in
22 any case. It is not an element of the offense.
23 There is a reason for that. Because it is very
24 difficult unless obvious based on the evidence to
25 explain why one person would take the life of

1 another. But oftentimes you can surmise it from
2 the evidence, the context of the case.

3 That really is the question, isn't it, in a
4 case like this, where a father is killed by a son.
5 That is the compelling question. Why? Why?

6 I submit to you that the evidence in this case
7 will come very close to answering that question,
8 the question the State has no obligation to answer,
9 but we will.

10 This is a case which will not be long, not a
11 bunch of witnesses, probably eight. Again, it is
12 not a very long case. And as the judge has told
13 you, the length of the case certainly doesn't tell
14 you how important that case is, because I assure
15 you this case is extremely important to the family
16 of David Mitchell, who are also the family of
17 Darrell.

18 What you'll hear is basically this, that the
19 Defendant came home from fishing with a
20 brother-in-law approximately 9:15, 9:30. Went to
21 the residence that he shared with his father and
22 mother. And about 10:00 o'clock that night he
23 called a drug dealer, a woman named Ramona
24 Matthews, someone with whom he was familiar. And
25 he requested a certain amount of crack cocaine, in

1 this case a 30-dollar rock.

2 Ramona delivered that rock of crack cocaine to
3 Darrell Mitchell. He exited the side door. And
4 we'll talk a little bit about the residence and how
5 it is configured because it is important. Exiting
6 the side door, he goes to the street to collect the
7 crack cocaine, but he doesn't have all the money.

8 Ms. Matthews will tell you that he was \$3
9 short. He had \$27. She questioned him about it.
10 She fussed at him about it.

11 He said, that is all I got. And because she
12 was familiar with him, she said, you have to catch
13 me up the next time.

14 Folks, that next time was about 2:00 o'clock
15 that morning. And approximately 2:00 o'clock that
16 morning, she received another call from the
17 Defendant. And this time he wants a \$50 rock and
18 she tells him, you didn't have the money the last
19 time, I'm not bringing you any more drugs.

20 And he basically tells her, not only do I have
21 the money for the drugs, I can pay you what I owe
22 you for the first transaction, and by the way,
23 would you bring me a pack of cigarettes and a
24 lighter.

25 She does. And he does. That is, he has more

1 than enough money to complete that transaction, pay
2 for the cigarettes and lighter and catch up from
3 the first transaction.

4 But on this transaction he doesn't come out
5 the side door. He comes out the front door.

6 This is truly tragic beyond words. And the
7 question is, why? Why would a son kill his father
8 in the fashion as brutal as this? I believe that
9 question is going to be answered for you. Your job
10 today, for however many days, I suspect not too
11 many, is to speak the truth and, upon finding it,
12 to speak it by way of your verdict.

13 Now, I promise you at the end of this case I'm
14 not going to tell you what to say because that is
15 not why you have been selected. I'm going to ask
16 you to speak the truth. And I ask you now and I'll
17 ask you then. And if you have done that, you would
18 have fulfilled your obligation.

19 Thank you.

20 MR. JOYE: Your Honor?

21 THE COURT: Okay.

22 MR. JOYE: Solicitor?

23 OPENING STATEMENT

24 MR. JOYE: Ladies and gentlemen, I represent
25 David Mitchell -- Daniel Mitchell -- Darrell

1 Mitchell, excuse me. He stands accused of
2 murdering his own father for \$50 worth of crack.

3 Ladies and gentlemen, you are going to hear a
4 lot of testimony from these witnesses, some of whom
5 were at this scene for numerous hours.

6 But I tell you this, they will not bring you
7 one piece of evidence pointing to Darrell Mitchell.
8 Not one piece. The Solicitor is correct, you can
9 find a Defendant guilty on circumstantial evidence.
10 And they don't have to prove motive.

11 I submit to you in this case, if they don't
12 prove motive beyond all reasonable doubt, their
13 case falls completely apart. Their theory is that
14 he didn't have enough money the first time, but he
15 has got enough money -- and he didn't have enough
16 money at 9:30, but he's got enough money at
17 2:00 o'clock. So he must have killed his dad to
18 get it.

19 But you know what you won't see? Not one
20 piece of evidence that says that. They are going
21 to tell you all about the crime scene. They are
22 going to tell you all about where the blood was
23 found and where the body was found and it was moved
24 and it was this and it is that. But they can't
25 tell you, they can't show you, they said, believe

1 us because this is what we think happened.

2 This case, you'll find out that Darrell
3 Mitchell was arrested two days -- basically the
4 following day. The body was discovered in the
5 morning of David Mitchell. Darrell Mitchell was in
6 jail not that day but the following day. They
7 didn't investigate whether anybody else did it.
8 They made an assumption based on the word of a drug
9 dealer who is in prison for attempting to kill
10 someone else. They are asking you to make a giant
11 leap of faith.

12 What Solicitor Humphries didn't talk about was
13 reasonable doubt. He didn't talk about the fact
14 that it doesn't take anything but probable cause to
15 arrest Darrell Mitchell. It doesn't take anything
16 but probable cause to bring all of us here.

17 If you think Darrell Mitchell might have done
18 it, there is but one verdict: Not guilty. If you
19 think Darrell Mitchell maybe did it, there is not
20 but one verdict: Not guilty. If you think Darrell
21 Mitchell probably did it, it is still not enough.
22 You've got to remove reasonable doubt. And that is
23 what you can't do in this case.

24 Solicitor Humphries talked -- did not talk at
25 all about reasonable doubt. He says, hey -- they

1 don't even have any evidence that David Mitchell
2 had money. Not at all. The only evidence they've
3 got, you could exclude every other witness and put
4 up Ramona Matthews on this witness stand to say he
5 didn't have enough money, I fussed at him, he had
6 enough money the next time. And she is in jail for
7 attempting to kill someone.

8 This case, it has built-in reasonable doubt.
9 Solicitor Humphries says that it is the only
10 logical conclusion you can draw. He didn't say it
11 is the only logical conclusion you can draw beyond
12 a reasonable doubt.

13 Ladies and gentlemen, this case is about
14 reasonable doubt. This case is about Darrell
15 Mitchell being not guilty.

16 MR. HUMPHRIES: May it please the Court? The
17 State calls Gwendolyn McKnight.

18 THE COURT: Okay.

19 THE CLERK: Place your left hand on the Bible
20 and raise your right hand.

21 (Witness complies.)

22 THE CLERK: Do you swear to tell the truth,
23 the whole truth, and nothing but the truth, so help
24 you God?

25 THE WITNESS: I do.

1 THE CLERK: Please be seated in the witness
2 chair and state your full name for the record.

3 (Witness seated.)

4 THE WITNESS: Gwendolyn McKnight.

5 GWENDOLYN MCKNIGHT, after
6 being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HUMPHRIES:

9 Q Good morning, Ms. McKnight. How are you?

10 A Good morning. Fine, thank you.

11 Q Why don't you tell this jury how you are employed.

12 A I'm employed with the Winyah Hospice Community Care
13 of Florence, South Carolina.

14 Q And what are your duties associated with your
15 employment there?

16 A I am a hospice caregiver.

17 Q And how long have you held that position, or
18 positions like that?

19 A With Winyah Hospice, five years. In the total
20 healthcare field, approximately 15.

21 Q Now, let me ask you, did you provide services to
22 the Mitchells back in May of 2007?

23 A Yes, I did.

24 Q If you will, tell the jury about the services, to
25 whom you provided them, and what you basically did.

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 A I provided services for Ms. Edna Mitchell, who is
2 Mr. David Mitchell's wife.

3 And what I would do is come in in the morning
4 or afternoons and give her her bath, wash her up
5 and get her up in a wheelchair so that she can have
6 breakfast or dinner whenever I got there for lunch.

7 Q How long had you provided services, or how long had
8 your agency provided services to Ms. Edna?

9 A Approximately for me, I think I was attending to
10 Ms. Edna for probably about eight or nine months,
11 something like that. Eight or nine months.

12 Q Suffice it to say, you were very acquainted with
13 her physical and mental condition?

14 A Yes.

15 Q And let's talk just a bit about that, about
16 Ms. Edna's physical limitations, particularly in
17 May of 2007. Can you tell the jury about those?

18 A Yes. Ms. Edna, she was bed-bound. She couldn't
19 get up herself. I had to go in and bathe her, get
20 her dressed and everything. She couldn't speak.
21 She was incontinent.

22 And on this particular day, is that what
23 you're asking me?

24 Q Yes.

25 A May 17th?

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 Q Uh-huh.

2 A On this particular day when I got there, well, I
3 made a phone call to let them know that I was
4 coming.

5 Q Okay. Let's talk about that a bit. You say that
6 you go either in the morning or the afternoon?

7 A Yes.

8 Q This would have been in the morning?

9 A This would have been in the morning.

10 Q Okay. And tell me -- of course you have been to
11 that home many times. How many times a week did
12 you go to provide services to Ms. Edna?

13 A Five.

14 Q Five. And that is basically the maximum, is it
15 not, for hospice?

16 A Exactly.

17 Q Okay. And in this home, during that period of
18 time, do you know who resided there?

19 A Yes. Mr. David Mitchell, his wife, Ms. Edna, and
20 Darrell.

21 Q Okay. And when you say Darrell --

22 A Darrell Mitchell.

23 Q -- you are talking about Darrell Mitchell in this
24 case. Okay.

25 Let's talk then about that morning. Was this

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 your first client of the day?

2 A No, it wasn't. That would have been my second.

3 Q And when did you start that morning to provide
4 services to clients? How early in the morning do
5 you start?

6 A Normally I get to my first client 7:00 o'clock.
7 The first client, I got to them around, I guess it
8 could have been 7:30 or 8:00. But usually when I
9 go to my next client if I'm going to be early or
10 late I would call.

11 Q Okay. And on this occasion did you place a call to
12 the Mitchell residence?

13 A Yes, I did.

14 Q Okay. And do you know approximately what time that
15 was?

16 A It was -- it was in the morning time, and I know it
17 was before 11:00 o'clock, but it was definitely in
18 the morning because I was just getting ready to
19 leave my first client's house.

20 Q Okay. Now, when you placed that call, do you know
21 to whom you spoke?

22 A I don't know who it was, but it was a female. And
23 I specifically thought that I had the wrong
24 number, the wrong -- and I asked was this the
25 Mitchells' residence.

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 Q Well, let me ask you this. Had a female ever
2 answered the phone prior to that?

3 A No.

4 Q From the Mitchell residence?

5 A No.

6 Q No. And this conversation with this female, tell
7 the jury just a bit about it. Was it extended?
8 Was it brief?

9 A It was brief. I only called -- and I asked is this
10 the Mitchell residence. And the person, they said
11 yes.

12 And I said that I was calling to let
13 Mr. Mitchell know that I will be coming a little
14 earlier this morning, so -- and they said, well,
15 I'll give him the message, and that was it, end of
16 the call.

17 Q You then proceeded to the Mitchell residence?

18 A Yes, I did.

19 Q About how far out would you have been when you made
20 that call?

21 A It would take probably about 10 to 15 minutes from
22 Cashua to Darlington, off Darlington Street.

23 Q Now, when you arrived at the residence, how did
24 you -- and how did you typically enter the
25 residence?

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 A When I first got there, I knocked on the door.

2 That is the side door.

3 Q That is what I want to talk about. This house,
4 does it have a front door and a side door by the
5 carport?

6 A Yes.

7 Q Okay. And is the side door the door that you
8 usually go to?

9 A I usually go to the side door.

10 Q Okay. And what is usually the condition of the
11 side door when you arrive, is it locked or
12 unlocked?

13 A It was always locked.

14 Q And in what condition did you find the door this
15 morning?

16 A When I knocked, I knocked several times, and I
17 didn't get an answer then. So I saw the door was,
18 you know, open a little. So I just gathered that
19 Mr. Mitchell may have left it open for me since I
20 called earlier to let him know that I was coming
21 just in case. So I just went --

22 Q And let me ask you this, Ms. McKnight. When you
23 referred to Mr. Mitchell, you are referring to the
24 father?

25 A Right, Mr. David Mitchell.

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 Q And otherwise you call the Defendant Darrell?

2 A Yes.

3 Q Okay. Did you then enter the residence after you
4 found the door unlocked?

5 A Yes, I did..

6 Q And what occurred then?

7 A Well, Darrell Mitchell, Darrell, he said, Gwen, I
8 am going to let dad know that you're here, like he
9 normally did.

10 Q And what then did the Defendant do?

11 A He went to the door and knocked on the door several
12 times.

13 Q And which door are we talking about?

14 A The bedroom door.

15 Q Okay. And was he -- did he get an answer?

16 A No, he didn't.

17 Q What occurred then? Did you go into that bedroom?

18 A No, I didn't go in right then.

19 Q Okay. What did you do next? Or what did the two
20 of you do next, if you did it in concert?

21 A Yes. We just started looking around for him, and
22 Mr. Darrell, he was -- Darrell Mitchell -- he was
23 calling his dad several rooms.

24 And I told him, I said, well, he didn't leave
25 in the car because the car was still under the

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 carport, so he didn't left in the car.

2 And then he started looking around for him,
3 but still didn't get an answer.

4 Q Now, let me ask you this. Both of you were looking
5 around?

6 A Yes.

7 Q Who was it that ultimately discovered the body of
8 David Mitchell?

9 A We went out -- I think Darrell went out a little in
10 front of me, Darrell Mitchell, and I was right
11 behind him. Then he looked to the side in front of
12 his car, and there was the body.

13 Q And when you are talking about in front of this
14 car, is that -- you go out the side door that you
15 go to?

16 A Under the carport.

17 Q And that is the carport area?

18 A Right, under the carport.

19 Q You are saying then the body was in front of the
20 car, which was in the carport?

21 A Yes, right in front of the car.

22 Q About how far off from the carport, if you recall?

23 A Oh, the carport is right, maybe a few -- 5 feet,
24 something like that, 5 or 6 feet.

25 Q Did you attempt to determine whether or not David

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 Mitchell was deceased at that time?

2 A Yes, I did. I checked his pulse. He didn't have
3 any pulse. And at that time his body was stiff,
4 cold at the time, and bloody.

5 Q What occurred immediately after that?

6 A Well, Mr. Darrell Mitchell, he broke down and he
7 started crying and came back in the house and
8 started making some phone calls.

9 Q And do you know to whom he made the calls?

10 A I know he called his -- he spoke with his, I think
11 one of his brothers and his sister. He called his
12 sister then.

13 Q Well, let's go back just a minute. Did you have an
14 occasion to go into the room where Ms. Edna was
15 that day?

16 A Yes.

17 Q And in what condition did you find Ms. Edna?

18 A Ms. Edna, she wasn't under the covers. She was
19 attempting to be -- looked like getting dressed for
20 bed because her gown was on the bed.

21 Q And let's talk about -- little bit about that. Do
22 you know what David Mitchell's practice was in
23 regard to preparing his wife for bed?

24 A He always would dress her for -- I know that he
25 would dress her for bed because when I go there I

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 would have to undress her, but this particular
2 morning I didn't have to because she wasn't
3 dressed.

4 Q So her bed clothes were lying folded on the bed?

5 A Yes.

6 Q Did she also have to -- and there is no real
7 delicate way to put this, but she also had to use
8 adult diapers, is that correct?

9 A Yes.

10 Q And did it appear that she had been changed for the
11 evening with the adult diaper?

12 A No.

13 Q In fact, was there an adult diaper laid out beside
14 the bed clothes?

15 A There was a diaper that was laid out and she was
16 underneath one, but that one wasn't fastened.

17 Q Let me ask you, did it appear that Mr. David
18 Mitchell, the father, had slept in the bed with her
19 that evening?

20 A No.

21 Q She was lying on top of the covers?

22 A She was on top of the -- she wasn't under cover.

23 Q Right. And, again, without -- and there is no
24 delicate way to place -- to put this, but what was
25 the condition of her undergarments when you saw

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 Ms. Edna that morning?

2 A They looked soiled. It wasn't a clean diaper at
3 all.

4 Q It appeared she had not been changed in some time?

5 A Yes, that is the way it appeared.

6 Q Now, I assume much of this happened very quickly,
7 is that correct?

8 A Yes.

9 Q The side room, the room you come into from the side
10 door?

11 A Yes.

12 Q Did you, after all of the activity started to
13 settle down a little bit, have an opportunity to
14 view certain things within that side room,
15 particularly the blue chair where Mr. David
16 Mitchell often sat?

17 A Yes. The -- I guess there was an investigator,
18 whomever, they were there, and they asked me did
19 anything look different. And at that particular
20 time, I didn't pay any attention. And they asked
21 me, the blue chair, said was blood on it. And I
22 said no, that wasn't there when I left. And then
23 on the rug on the floor, they asked me was that
24 stain there, and I told them no, that wasn't.

25 Q You are talking about the time previous when you

GWENDOLYN MCKNIGHT -- DIRECT BY MR. HUMPHRIES

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1 were in there?

2 A Right. Right.

3 Q Were these stains apparent to you once you looked
4 at those items, the chair and the rug?

5 A Pardon me?

6 Q Were they apparent to you, I mean, were they
7 readily visible?

8 A Oh, yes, they were.

9 Q No question?

10 A No question.

11 Q And let me ask you, did you have any
12 recommendations for the family immediately after
13 the police arrived regarding what needed to occur
14 with Ms. Edna?

15 A You know, the family members got there. His sister
16 got there and we were, you know, just talking and
17 trying to figure out what had happened.

18 Q Okay. Was Ms. Edna removed from the house?

19 A After -- I did remove -- we washed her up and then
20 we had to bring her out. I got her dressed and
21 took her out because they had to do some more
22 investigating in the house. She was dressed and
23 carried out.

24 Q And let me ask you, the house that we're referring
25 to, the Mitchell home, is that in Florence County?

1 A That is in Florence County.

2 Q Thank you. Answer any questions the Defense may
3 have.

4 CROSS-EXAMINATION

5 BY MR. JOYE:

6 Q Ms. McKnight, Darrell Mitchell also assisted with
7 his mother, did he not?

8 A Yes, he did.

9 Q He was very loving with his mother?

10 A Yes, he was.

11 Q The -- when Darrell discovers the body, do you
12 think it was a normal reaction?

13 A Yes. To me it was, the way -- he started crying
14 and --

15 Q When Darrell Mitchell -- when you went to the
16 house, Darrell Mitchell -- it was normal, wasn't
17 it? He was normal?

18 A Yes, at the time he was, I guess.

19 Q After he broke down -- who called 9-1-1?

20 A Darrell. Darrell did.

21 Q Did you subsequently speak to law enforcement?

22 A They questioned me.

23 Q For how long?

24 A They had a few questions, not very long.

25 Q Five or ten minutes?

- 1 A Perhaps.
- 2 Q Did they ask you to write a statement?
- 3 A They took a statement from me.
- 4 Q They took a statement from -- a written statement?
- 5 A Well, I didn't write anything.
- 6 Q You didn't write it, but they were making notes?
- 7 A They were asking me questions. I give it to them.
- 8 Taking notes, so --
- 9 Q And you entered the residence through the side
- 10 door?
- 11 A Through the side door.
- 12 Q And that side door was open?
- 13 A It wasn't locked because I just went on in.
- 14 Q So anyone could have come and gone through that
- 15 side door? I mean, they wouldn't have had to break
- 16 it open or anything?
- 17 A No, it was open when I got there.
- 18 Q And a female answered the call? What --
- 19 approximately what time was that?
- 20 A I know it was before 11:00, had to have been before
- 21 11:00 o'clock because I just left my first client's
- 22 house.
- 23 Q Before 11:00 o'clock?
- 24 A It had to be in the morning time before this.
- 25 Q And in fact you got there at approximately 9:30?

GWENDOLYN MCKNIGHT -- CROSS BY MR. JOYE

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1 A It was early. It was early.

2 Q So clearly someone other than Darrell Mitchell was
3 in that house and answered the phone?

4 A When I got there?

5 Q No, ma'am, when you called?

6 A Sure. I know it was a female voice. If it wasn't,
7 they did a good job at disguising their voice.

8 Q You know Darrell's voice, don't you?

9 A Yes.

10 Q It wasn't his voice?

11 A No, it wasn't his voice.

12 Q Excuse me one second.

13 (Pause.)

14 Q Thank you, Ms. McKnight.

15 REDIRECT EXAMINATION

16 BY MR. HUMPHRIES:

17 Q Just one question. Ms. McKnight, the person to
18 whom that female voice belonged wasn't there when
19 you got there 15 minutes later, was she?

20 A No.

21 Q Thank you.

22 MR. HUMPHRIES: That's all, Your Honor.

23 THE COURT: You can step down.

24 (Witness steps down.)

25 MR. HUMPHRIES: The State calls Officer

1 Lawrence David.

2 MR. JOYE: Your Honor, I don't have any
3 objection to the witness being excused.

4 THE COURT: You are free to go if you like.

5 (Witness excused.)

6 (Witness approaches.)

7 THE CLERK: Place your left hand on the Bible
8 and raise your right hand.

9 (Witness complies.)

10 THE CLERK: Do you swear to tell the truth,
11 the whole truth, and nothing but the truth, so help
12 you God?

13 THE WITNESS: I do.

14 (Witness seated.)

15 THE CLERK: Please state your name for the
16 record.

17 THE WITNESS: Lawrence Steven David.

18 LAWRENCE S. DAVID, after
19 being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HUMPHRIES:

22 Q Officer David, tell this jury how you are employed.

23 A I'm employed with the City of Florence Police
24 Department. I've been working there for almost two
25 and a half years now.

LAWRENCE S. DAVID -- DIRECT BY MR. HUMPHRIES

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1 Q And, Officer David, in what capacity are you
2 employed with the Florence Police Department? What
3 are your duties?

4 A I'm a police officer. Anything that a police
5 officer does, that is what I do.

6 Q You are on the road? You work the road?

7 A Yes, I'm a street patrol.

8 Q Let me ask you, consistent with your duties with
9 the Florence Police Department, did you have an
10 occasion to respond to the Mitchell residence on
11 May 17th, 2007?

12 A Yes, sir.

13 Q And do you recall how the call came in to you?

14 A The call came in as a dead person found laying on
15 the ground outside.

16 Q And about how long did it take you to get to the
17 residence?

18 A Like a minute or two, because I was right around
19 the corner.

20 Q When you arrived at the residence, who was there?

21 A Mr. Mitchell, Darrell Mitchell, Ms. McKnight, and I
22 found out later that the mother was in the back
23 room.

24 Q And when you arrived, did you see the body of David
25 Mitchell?

LAWRENCE S. DAVID -- DIRECT BY MR. HUMPHRIES

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1 A Initially I didn't because I stepped up on the
2 porch and I thought I was going inside because that
3 is where everybody was at, and then I just looked
4 off to the side and I saw him with a white sheet
5 over him.

6 Q Now, do you know who placed the white sheet over
7 him?

8 A Mr. Mitchell told me he did so nobody went and
9 looked at his body.

10 Q Now, what then were your duties? Once you located
11 the body of David Mitchell, what is your protocol?
12 What does that require?

13 A Notify the supervisor for crime scene to come out,
14 and try to preserve the evidence as best as you
15 can, so that I mainly was staying with
16 Mr. Mitchell, Mr. David Mitchell, until I can get
17 another unit to come and back me up and then we can
18 start setting up a little crime scene, everything
19 like that.

20 Q And did you do that?

21 A Yes, sir.

22 Q And ultimately did -- were there other units
23 dispatched to you to assist you?

24 A Yes, sir. Lieutenant came, Crime Scene came,
25 investigators came, and we just started processing

LAWRENCE S. DAVID -- DIRECT BY MR. HUMPHRIES

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1 the scene.

2 Q And did you have an occasion to speak with
3 Defendant David -- or Darrell Mitchell that
4 morning?

5 A Yes, sir.

6 Q And did you determine the last time the Defendant
7 says he saw his father?

8 A He said -- Mr. Mitchell said the last time he saw
9 his father was about 12:00 o'clock midnight when he
10 was telling him goodnight.

11 Q And did he say where he was when he was telling him
12 goodnight?

13 A I just know inside the house.

14 Q So it was inside the house?

15 A Yes, sir.

16 Q All right. And he indicated to you that was the
17 last time he saw his father?

18 A Yes, sir.

19 Q Describe, you know, to this jury how big is this
20 house?

21 A It is not a big house. It is a normal size house.

22 Wow. Living room when you first walk into the side
23 door, couple of bedrooms, kitchen off to the side.

24 Normal house.

25 Q Not a sprawling house, I mean, big expansive house?

1 A No, sir.

2 Q Did you have further conversations with the
3 Defendant regarding how this crime may have
4 occurred and who may have committed it?

5 A Yes, sir. When I was talking to Mr. Mitchell, I
6 asked him is there any -- do you know who may have
7 did this, does your father know -- does he keep a
8 lot of money on him, why would somebody want to do
9 this, just general questions, because it is the
10 first time I ever worked a murder scene myself, so
11 I really didn't know where to start, I was just
12 thinking of questions that I could ask.

13 And he was like, no, he keeps a little bit of
14 money on him, and everything like that, but, you
15 know, he don't know who could have did that to him,
16 and everything.

17 Q And let me ask you, was there any point in time
18 when you were speaking with the Defendant Mitchell
19 that he changed that account of what happened?

20 A Well, when I talked to him, he pretty much was
21 making the same statements, but the last thing he
22 said to me when it was all said and done, he was
23 sitting at a table and he slapped the table and it
24 is like, that is my story, that is what happened.
25 I said okay. And I let the investigators know when

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1 they came so they might want to talk to him a
2 little bit more.

3 Q And, in fact, did you stay on the scene until, in
4 particular, the Crime Scene arrived?

5 A Yes, sir, I was there.

6 Q And did you preserve the crime scene to the best of
7 your ability until they took it over to further
8 investigate?

9 A Yes, sir.

10 Q Answer any questions Defense may have, please, sir.

11 A Yes, sir.

12 MR. JOYE: One second, Your Honor.

13 (Pause.)

14 MR. JOYE: We have no questions of this
15 witness.

16 THE COURT: You can step down.

17 (Witness steps down.)

18 MR. HUMPHRIES: The State calls Corporal Chris
19 Moreau.

20 THE COURT: All right.

21 (Witness approaches.)

22 THE CLERK: Place your left hand on the Bible
23 and raise your right hand.

24 (Witness complies.)

25 THE CLERK: Do you swear to tell the truth,

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1 the whole truth, and nothing but the truth, so help
2 you God?

3 THE WITNESS: I do.

4 (Witness seated.)

5 THE CLERK: Please state your full name.

6 THE WITNESS: Christopher Michael Moreau.

7 CHRISTOPHER M. MOREAU,

8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HUMPHRIES:

11 Q And, Corporal Moreau, tell this jury with whom you
12 are employed.

13 A City of Florence Police Department Crime Scene
14 Unit.

15 Q How long have been so employed?

16 A With the Police Department, since 2000, and then
17 with Crime Scene since 2005.

18 Q And let me ask you specifically as relates to being
19 assigned to Crime Scene, what is your title as
20 relates to Crime Scene?

21 A I am corporal assistant supervisor over the Crime
22 Scene Unit.

23 Q And let me ask you just in general, is one who is
24 assigned to Crime Scene, are they placed into that
25 unit without any training?

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1 A No, sir. Training is consistently ongoing.

2 Q And let's talk to the jury just a bit about the
3 type of training you received specifically as
4 relates to crime scene investigation.

5 A Several courses throughout the -- through the
6 academy, courses through SLED, DNA collection,
7 blood spatter analysis, crime scene preservation,
8 crime scene documentation -- I could have brought a
9 book -- evidence photography, a lot of things to do
10 with evidence collection.

11 Q Let me ask you, is there any way you can estimate
12 for this jury since 2005 the number of crime scenes
13 you investigated for the city?

14 A Three or four hundred if I had to guess. I would
15 have to pull the records.

16 Q And specifically as relates to crime scenes which
17 persons have met a violent death, can you estimate
18 for this jury how many crime scenes like that you
19 would have worked?

20 A At least two dozen involving death. Not always
21 homicide, but involving death.

22 MR. HUMPHRIES: Your Honor, at this time we
23 would offer Corporal Moreau as an expert in the
24 field of crime scene investigation.

25 MR. JOYE: Without objection, Your Honor.

1 THE COURT: Okay, jurors, when they do that, I
2 don't vouch for him, I don't know. All they have
3 to demonstrate to qualify somebody as an expert is
4 that through education, training or a combination
5 of those factors an individual has acquired more
6 knowledge in a particular field than you or I have.
7 He's met that. So once a person is qualified as an
8 expert they are entitled to give opinions within
9 their field of expertise. But certainly you can
10 consider the underlying facts on which they base
11 that opinion.

12 MR. HUMPHRIES: Thank you, Your Honor.

13 BY MR. HUMPHRIES:

14 Q Corporal Moreau, let's talk just a bit about your
15 protocol as it relates to crime scene
16 investigation. How do you begin that process?

17 Well, let me ask you this, first of all. Is
18 it a multistage process?

19 A Yes, sir.

20 Q Tell this jury how you begin that process.

21 A The process starts once we receive a call from
22 either an investigator, patrol, supervisor, even
23 patrol officers. They call us, advise us, you
24 know, of what they have or what they think they
25 have, and ask us, you know, to respond.

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1 We document -- we start documentation purposes
2 there as to what time we received the call, who
3 called it.

4 As soon as we get on the scene, the first
5 thing we want to do is make sure the scene is
6 secure. We talk to whatever officers are on the
7 scene, the initial responding officer, supervisors,
8 and/or investigators that may be there before us,
9 which does not happen that much, and get them to
10 give us a walk-through and explain what they saw
11 when they got there, what they may have found out
12 before we got on the scene. Pretty much just give
13 us an overview of everything so we know what to
14 concentrate on.

15 The very next step after that is photography.
16 Right now we are using Nikon digital 2200 camera.
17 In this case I believe I filled up five DVD's with
18 photographs photographing the scene.

19 Q That is a good place for us to start, Corporal.

20 MR. HUMPHRIES: And if I could get some
21 assistance with the easel?

22 I didn't mean you, Mr. Joye, but I appreciate
23 it.

24 (Mr. Joye helps with easel.)

25 MR. HUMPHRIES: Your Honor, if I may, and I am

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1 going to ask Corporal Moreau to keep his voice up,
2 but I'd like for him to be able to come down and
3 refer to a number of exhibits.

4 THE COURT: Okay, you can come down.

5 MR. JOYE: Your Honor--

6 THE COURT: You can step around and watch.

7 MR. JOYE: Thank you. My client also, Your
8 Honor?

9 THE COURT: Yes.

10 (Witness steps down.)

11 BY MR. HUMPHRIES:

12 Q I'm going to show you what has been marked as
13 State's Exhibit 1, I believe, introduced into
14 evidence without objection except as to two certain
15 photographs which have been admitted over
16 objection.

17 I am going to hand you the pointer. What I'd
18 like for you to do, first of all, you'll need to
19 speak so obviously the court reporter can hear you,
20 as well as the jury. Let me ask, can all of you
21 see this? Let me -- keep it this way. This way.
22 Speak to the court reporter and then all the jury
23 can see it. A little --

24 All right, now, let's get started. First of
25 all, if you will, let's orient this jury to this

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1 diagram.

2 MR. JOYE: Move it, the jury can't see it.

3 MR. FOREMAN: It can be angled a little bit.

4 Q Okay, here we go. Tell the jury a bit about this
5 crime scene diagram, if you will.

6 A What I drew here is Street in the City
7 of Florence. This is the house directly to the
8 left or west . The driveway is to the
9 left. It has got a covered porch in front of the
10 house. There is a ramp, obviously a wheelchair
11 ramp going up from the grass in the front yard.
12 This entire area here is the covered porch, which
13 covers -- the cover extends over the carport. A
14 white Cadillac parked under the carport. A silver
15 Cadillac parked in the front of the house. The
16 other vehicle I found was an older Chevrolet pickup
17 truck in the back.

18 Q Let me stop you there. What we will do is we will
19 refer to a number of exhibits which have already
20 been introduced, most of which are without
21 objection.

22 I am going to show you State's 2, and what I
23 want you to do is identify the photograph and then
24 we'll show it to the jury and you can relate that
25 photograph to the diagram, State's 1.

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1 A Okay. This is going to be the same photograph, a
2 small one on here. This is the driveway of the
3 residence. Red car you see there I believe
4 belonged to the home health nurse who you heard
5 from earlier. White Cadillac in front is the
6 Cadillac I was referring to in the carport right
7 here.

8 (Exhibit shown to jury.)

9 Q Now, State's 3.

10 A This is just going to be a closer photograph
11 showing the Cadillac and the red car, as well as
12 the covered porch area and the orientation as it is
13 on here with this covered porch and the side door
14 that has been referred to several times as the side
15 door that is shown in this picture. The front door
16 is around on the front of the porch, which is right
17 here.

18 (Exhibit shown to jury.)

19 Q And the jury will have all the exhibits and
20 photographs in the jury room with them.

21 Now, let me ask you, as a practice do you move
22 from the outside in when you are photographing a
23 crime scene?

24 A Yes, the general area you move in from there.

25 Q State's 4.

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1 A This is the same white Cadillac under the carport
2 to the left with a view showing into the side door
3 of the covered porch.

4 (Exhibit shown to jury.)

5 Q I want to show you State's 5. Tell the jury about
6 that photograph. And there are certain item
7 numbers in that photograph. Tell the jury what
8 those signify.

9 A What you see in this photograph is essentially the
10 same area, carport and Cadillac is right here.
11 Side door open right there. These little yellow
12 flags, what you see here is 2, 3, 4 and 5. They
13 are numbers. And you see a close-up on this.
14 Those are what we call evidence marking flags.
15 After we get all of our photographs without the
16 flags in it, we go back and certain items of
17 interest are marked with evidence, either flags or
18 cones. In this case they use yellow number flags
19 for visibility reasons.

20 (Exhibit shown to jury.)

21 Q Now, State's 6.

22 A This is a photograph from as soon as I got to the
23 front of the Cadillac standing in between the white
24 Cadillac and the door.

25 MR. HUMPHRIES: Your Honor, this photograph

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1 has been admitted subject to objection of the
2 Defense.

3 MR. JOYE: Thank you, Your Honor.

4 THE COURT: Okay.

5 Q I'm sorry, continue.

6 A This is when I got on the scene. EMS had already
7 been dispatched and verified the victim was
8 deceased. This is the first photograph I took of
9 the body coming around the corner.

10 Q And will you orient what is pictured in State's 6
11 to State's 1 exhibit?

12 A That would be the position of the body with the
13 head and one of the arms up, as you can see in the
14 picture, in front of the carport in the grass and
15 dirt right beside the house close to the side door.

16 (Exhibit shown to jury.)

17 Q Showing you now State's 7, can you tell this jury
18 what is portrayed in that photograph.

19 A This is standing in the same general area as the
20 last photograph you saw, between the Cadillac and
21 the porch, and what I was seeing on the ground
22 appeared to me to be obvious drag marks in the
23 concrete.

24 Q And did these drag marks lead to the body?

25 A Yes, sir.

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1 Q The victim in this case?

2 A Yes, sir.

3 MR. HUMPHRIES: State's 7 in evidence without
4 objection, Your Honor.

5 (Exhibit shown to jury.)

6 Q Showing you State's 8.

7 A This photograph was taken in front of the Cadillac.

8 MR. HUMPHRIES: And, Your Honor, this
9 photograph was admitted subject to the objection of
10 the Defense.

11 THE COURT: Okay.

12 A. This one was taken in front of the Cadillac showing
13 the orientation of victim's body with the end of
14 the carport in front of the Cadillac.

15 And what interested me in this was, one of the
16 victim's shoes had been set by somebody on top of
17 the bricks here.

18 Q Show the jury based on photographs in State's 8
19 where that would be.

20 A That would be right here in front of them to the
21 left of the Cadillac.

22 (Exhibit shown to jury.)

23 MR. HUMPHRIES: Your Honor, this the State's
24 9. It has been admitted subject to the Defense's
25 objection.

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1 THE COURT: Okay.

2 A This is a photograph of the victim after the sheet
3 was removed. What I observed as soon as they
4 removed the sheet is his pants being down, you
5 know, obvious dirt along with what appears to be
6 blood on his shirt and underwear. What this led me
7 to believe is that he was drug possibly by his arms
8 face up and that the action of being pulled across
9 the ground is what caused his pants to come down
10 like they are.

11 (Exhibit shown to jury.)

12 Q Let me ask you before we leave the body, Corporal
13 Moreau, did you have an occasion to attend the
14 autopsy?

15 A Yes, sir, I did.

16 Q And based upon that autopsy in which you were
17 present, were there visible wounds on the body of
18 the victim, David Mitchell?

19 A Yes, there were.

20 Q And how would you characterize those wounds?

21 A Multiple stab wounds.

22 Q Showing you now State's 10 in evidence.

23 A This photograph is once the victim was taken by
24 EMS, taken to McLeod. We went back with these
25 evidence marking cones. Number 2 and Number 3 that

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1 you will see in the photograph are the same two you
2 saw earlier. Number 1 was just marking the
3 position of the body. Number 2, I believe, is some
4 drag marks that are in the dirt, the drag marks you
5 saw on the concrete earlier.

6 (Exhibit shown to jury.)

7 Q This is on the outside. Do we start then moving to
8 the inside of the residence at this point?

9 A Yes.

10 Q Showing you State's 11 that is in evidence.

11 A This photograph is taken on the covered porch
12 looking directly into the side door.

13 (Exhibit shown to jury.)

14 Q And within that -- when you go in that side door,
15 to what room --

16 A It is the living room area that had a chair, a
17 couch, coffee table.

18 Q Now, showing you State's 12.

19 A This is the same doorway being viewed from inside
20 the den looking out the side door. This is that
21 doorway. This picture is of the threshold which I
22 saw what I believed to be blood on the threshold.

23 Q Let me do this. I'm going to show you in
24 conjunction with State's 12, State's 13. What is
25 State's 13?

1 A This is a close-up photograph following that one
2 showing the substance which was at this time
3 believed to be blood built up in the threshold
4 towards the outside. Generally when you have, you
5 know, a substance built up towards the outside, it
6 shows something was pulled across it in the
7 direction of where it is built up at.

8 Q And that would have been consistent with being
9 drug.

10 A That would be consistent with being drug out the
11 door, yes, sir.

12 (Exhibits shown to jury.)

13 Q State's 14?

14 A This is just a broader photograph of the same room
15 from the back corner in this direction. The
16 photograph goes out the door. And this photograph
17 you can see this blue chair. It was just inside
18 the door with what appeared to be a large blood
19 stain.

20 (Exhibit shown to jury.)

21 Q I show you State's 15.

22 A This one is the same room looking into the side
23 door showing my evidence flags, 5, 7 -- and 6 was
24 on the chair, you can't see it in this photograph.
25 Number 5 was what we believe to be blood stains on

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1 the floor, 7 is additional blood stains. Some of
2 these appear to have been wiped. Seven is beside a
3 large stand-up cabinet which you will see in
4 another picture coming up. And Number 8 is a piece
5 of carpet. You can't see it good in this one, but
6 the next photo it will show up, what appeared to be
7 a large blood stain on the carpet.

8 Q Let's do that now and show it in conjunction.
9 Well--

10 (Exhibits shown to jury.)

11 Q I'm going to show you in a series State's 16, 17
12 and 18, starting with 16, then I'll show it to the
13 jury.

14 A This is a close-up view of the coffee table with
15 the carpet, pretty much the center of the den.

16 The following view is standing at the right
17 end of the carpet there looking back towards the
18 door across the carpet showing the blue chair and
19 the floor in front of the china cabinet, I don't
20 know what you call that, and the carpet.

21 Q Curio?

22 A Thank you. The last one is a close-up on the stain
23 on the carpet, which is marked with Evidence Marker
24 Number 8.

25 (Exhibit shown to jury.)

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1 Q Let me show you State's 19, and ask if you know
2 what is depicted in that photograph.

3 A This is a close-up view on the curio cabinet here
4 with what appeared to be blood stains. These in
5 particular appear like they had been wiped, at
6 least lightly.

7 And, again, that is in this same front room
8 right up against the wall between the carpet and
9 the chair.

10 (Exhibit shown to jury.)

11 Q I'm going to show you State's 20 through 22, a
12 series, and ask if you can identify what is
13 portrayed in the photographs.

14 A Yes, this is a blue chair from just inside the
15 door, just inside the side door, showing obvious
16 stain. This is a close-up view on the stain. And
17 this third view is just showing that it was marked
18 with Evidence Marker Number 6, as I stated earlier,
19 for the stain on the chair.

20 (Exhibits shown to jury.)

21 Q Let me show you now State's 24 -- 23 and 24.

22 A These photographs are of the kitchen, which this
23 being the front room, the side room, the den as
24 soon as you come in the side door. The back wall,
25 right behind the back wall in that room, if you are

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1 looking straight in from the door is the kitchen.
2 Now, these views are looking into the kitchen. As
3 I'm standing here, the side door, back room would
4 have been right behind me to my left.

5 This first picture has my evidence marking
6 cones, 9 through 12, which were what we believed to
7 be blood stains on the floor of the kitchen.

8 This following photograph is after we applied
9 a chemical that is called amido black. What that
10 does is stains proteins in blood. So even if you
11 don't -- kind of like luminol, some of you may have
12 seen on TV. But what it does is stains the
13 proteins to kind of a dark green color, but even if
14 you can't see blood with the naked eye it will
15 bring it up, as in footprints, even fingerprints in
16 blood will come up using that chemical. But a dark
17 color you see on here is after we applied that
18 chemical after samples were taken of the blood we
19 could visibly see.

20 Q Let me ask you, you know, we talked about this
21 procedure. When you applied this amido black, you
22 are applying it to latent stains or patent stains
23 that is visible stains or non-visible stains or
24 both?

25 A Both. You can use it on both.

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1 Q So when we're talking about latent stains or hidden
2 stains --

3 A Right.

4 Q -- these would have been stains that are not
5 visible through your visual --

6 A Invisible to the naked eye.

7 (Exhibit shown to jury.)

8 Q Yet this chemical process is able to raise those
9 stains?

10 A Yes.

11 Q Based on a reaction to proteins in place?

12 A Right. Stains and proteins found in blood.

13 Q That was in the kitchen?

14 A Yes, sir.

15 Q I'm going to show you State's 25 and 26 together.

16 A First 25. This photograph here is taken right
17 beside the den; it was the dining room area,
18 kitchen was directly beside that. The victim and
19 his wife's bedroom would have been in this area
20 here. Can everybody see that? Looking down, there
21 is a small, very short hallway where there were two
22 bedrooms at the end. Looking from the dining room
23 area, which is where this photo was taken, there is
24 a bathroom straight ahead, there is a bedroom to
25 the left, bedroom to the right. The bedroom that

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1 was to the left at the end of the hallway appeared
2 to be more of a storage area. It had a bed in it,
3 but it was piled up on it. I'm not sure anybody
4 slept in it in quite awhile. The bedroom to the
5 right at the end of the hallway was the Defendant's
6 bedroom.

7 Q Let's talk just a minute about the proximity of the
8 Defendant's bedroom to this den or side door. How
9 close was it?

10 A Twenty-five feet maybe. The side room, the den
11 right here, straight down the hallway, the
12 Defendant's bedroom is here in the -- would have
13 been the southeast corner of the house.

14 Q Is it fair to say that this was a modest sized
15 house?

16 A It wasn't a very big house.

17 Q Let me ask you, when you arrived, in your
18 investigation, was there any loud music or loud TV
19 playing upon your arrival?

20 A No, sir.

21 Q And let me ask you as well, when we're talking
22 about this side room, were there two doorways on
23 either end of this side -- separating the side room
24 from the dining room?

25 A Yes, sir, there was a door on either end of the

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1 hallway.

2 Q And what were --

3 A End of the wall, excuse me.

4 Q And what was the condition of those doors when you
5 arrived, were they open or closed?

6 A They were open. And as I was advised, they stay
7 open.

8 I didn't get to explain that. That second
9 photograph is looking into the bedroom on the left
10 at the end of the hallway.

11 Q Which would be the storage --

12 A Right.

13 Q -- room basically?

14 (Exhibits shown to jury.)

15 Q Let's start with these two photographs first,
16 State's 27 and 28 in evidence.

17 A All right. As I entered, this is not the subject's
18 bedroom, not the Defendant's bedroom, but across
19 the hall the storage area, directly behind the door
20 is where I saw this mop in this photograph propped
21 up behind the door. I had to pull the door shut
22 while I was looking to see it. I wouldn't have
23 seen it with the door itself open all the way into
24 the bedroom.

25 Q Let's talk a little bit about the condition of that

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1 mop when you found it.

2 A The second photograph just shows it standing up in
3 a bucket. The mop was damp. It had a stain on
4 some of the fibers that appeared to resemble blood.
5 It was kind of a light pinkish stain and the mop
6 was still damp.

7 (Exhibits shown to jury.)

8 Q This is directly across from the Defendant's
9 bedroom?

10 A Yes, sir.

11 Q Approximately how many feet separated the
12 entranceways to those two bedrooms?

13 A Approximately 6 feet.

14 Q Let me show you these photographs in a series, 29,
15 30, and 31 in evidence.

16 A The first photograph is just a close-up on the mop
17 head itself. The stains I was referring to are in
18 this general area right in the center near the mop.

19 The second photograph, same room, just shows
20 Evidence Marker Number 15, which is what I used to
21 mark the mop.

22 The third photograph is what we -- the results
23 of a phenolphthalein presumptive blood test kit.

24 Q Tell the jury what that kit -- what the purpose of
25 that kit is.

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1 A Basically, if we come across a substance that we
2 believe to be blood or we need to test an item for
3 blood, even if you can't see the blood on it, what
4 we'll do is we'll swab it with a sterile swab and
5 apply to a series of three chemicals to it;
6 isopropyl alcohol, followed by phenolphthalein
7 fluid, the third is hydrogen peroxide.

8 And then if it turns hot pink, as right here,
9 and some of you may have seen on TV, if turns hot
10 pink it indicates the presence of blood proteins.
11 It doesn't tell us human or animal, but just tells
12 us that it is blood.

13 Q And let me ask you, in the field of crime scene
14 investigations, do you as a matter of protocol and
15 practice take certain samples for submission in our
16 case to the South Carolina Law Enforcement Division
17 forensic unit?

18 A Yes, sir.

19 Q Okay. And was that done in this case?

20 A Yes, it was. I believe we submitted ten sets of
21 swabs.

22 Q And let me ask you, in connection with the sample
23 taken from the mop in this case, was SLED able to
24 provide you the profile of the victim's blood from
25 the mop?

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1 A No, sir.

2 Q And the condition indicated by SLED was?

3 A Diluted. It could have been chemical or anything
4 on the mop.

5 Q So that as a result of dilution, they were not able
6 to get a DNA profile of the victim on this mop?

7 A That's correct.

8 (Exhibits shown jury.)

9 Q I'm going to show you State's 32, 33 and 34 as a
10 series. These are in evidence. Tell the jury what
11 is portrayed in those photographs.

12 A This photograph is back in the den looking out the
13 front door. The blue chair on the left. This is a
14 white plastic chair with a TV chair and clothes on
15 top of it right there.

16 This photograph goes in a little more detail
17 with what we observed to be -- possibly be blood on
18 the legs of this TV tray. And this is a close-up
19 on the stain that was tested positive for blood.

20 Q Again, this TV tray and the white chair are in what
21 room?

22 A The den just inside the side door.

23 Q Now, you talked about a process earlier, amido
24 black?

25 A Yes, sir.

1 Q And, again, this amido black is -- the process
2 through which you process amido black is able to
3 raise latent or hidden stains specifically as
4 relates to proteins in blood?

5 A Yes. If blood was on an area and was not
6 completely removed, it will show it with amido
7 black.

8 Q Showing you State's 35 and 36.

9 A This photograph was taken in the den. What you see
10 in the top left here is looking back into the
11 dining room area. The kitchen would be to the
12 left. This same room right here. And this general
13 vicinity right here looking back this way.
14 Everybody follow me?

15 All right, what is on the ground here is
16 stains that were developed using amido black, which
17 appeared to us to be wipe marks like would be
18 consistent with towel or somebody trying to clean
19 the scene, essentially.

20 Now, this is just a close-up view showing the
21 obvious wipe pattern that came up using amido
22 black. And, again, this is where blood was not
23 visible to the naked eye until we applied it to the
24 stain.

25 (Exhibits shown to jury.)

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1 Q Showing you State's 37 and 38.

2 A Okay, same floor in the den looking out towards the
3 front door showing stains that developed. It was a
4 small stain here and that was where the blood was
5 actually visible. It appears to be wiped slightly
6 but still visible in the first picture.

7 The second stain on there was not visible and
8 appears to be a large area where it was wiped. And
9 this is just again a closer up of the same stain.

10 (Exhibits shown to jury.)

11 Q State's 39.

12 A This is the same floor showing additional stains
13 that developed just before you go out the door with
14 the threshold, which you saw in the photograph
15 earlier. The side door leading out to the carport.
16 One or more of these were visible, but a lot more
17 developed after the chemical was used, which shows
18 that it was attempted to clean the stains as well.

19 (Exhibits shown to jury.)

20 Q And let's talk a little bit about that. On the
21 linoleum surfaces, did it appear, based on your
22 investigation and your expert opinion, that on
23 those surfaces, are those surfaces readily
24 cleanable versus carpet?

25 A Yes.

1 Q And based on your expert opinion, did it appear on
2 those surfaces, the readily cleanable surfaces,
3 that an attempt had been made to clean those up?

4 A Yes, it appeared an attempt had been made.

5 Q Finally, State's 40.

6 A This is a photograph of the same floor taken from
7 the doorway looking back across the den showing the
8 various stains on the floor, stains you have
9 already seen in the close-up photographs.

10 (Exhibits shown to jury.)

11 (Witness returns to witness stand.)

12 Q Corporal, tell the jury to a reasonable degree of
13 certainty in the field of which you work, that is,
14 crime scene investigation, do you have an opinion
15 as to whether or not there were attempts to clean
16 up this particular scene?

17 A Yes, sir. And from what --

18 Q Tell me why -- on what you base that.

19 A From my experience as not only crime scene
20 investigator, patrol officer, pretty much every
21 aspect of police work in general, from what I have
22 seen of strangers that come in, a robbery gone
23 bad --

24 MR. JOYE: Objection, Your Honor.

25 THE COURT: He can testify as to what he

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1 observed and do that. He can't speculate.

2 MR. HUMPHRIES: Yes, no question.

3 Q Tell the jury what evidence you observed at the
4 scene which would indicate to you that this crime
5 scene had been attempted to have been cleaned up.

6 A Evidence that blood was in certain areas. It had
7 been removed from those areas either by towel, mop,
8 something similar, cloth. Obvious wipe patterns
9 where the blood was removed from the floor. The
10 mop itself still being damp with what appeared and
11 tested positive for blood being in the back room.
12 Everything -- there was no signs of a struggle that
13 I could see. The furniture was all in place.
14 Everything was nice and neat, with the exception of
15 blood stains.

16 Q Now, let me ask you, you say that you attended the
17 autopsy of David Mitchell?

18 A Yes, sir, I did.

19 Q And as a part of the protocol in an autopsy, are
20 the personal effects from the body of the deceased
21 taken into custody by law enforcement at autopsy?

22 A Yes, sir.

23 Q And on David Mitchell's person was there a wallet
24 or any money?

25 A No, sir.

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1 Q Let me ask you, did you ultimately locate a wallet
2 belonging to David Mitchell?

3 A Yes, sir.

4 Q Tell the jury where you found that wallet.

5 A Inside the white Cadillac, the white vehicle that
6 was parked in the carport itself directly behind
7 where we found his body.

8 Q And tell this jury if you found one dollar in that
9 wallet?

10 A No, sir.

11 Q No currency in that wallet whatsoever?

12 A No, sir.

13 Q Answer any questions the Defense may have at this
14 time.

15 THE COURT: I don't believe the jury can
16 handle it, do you?

17 MR. JOYE: I think it probably will be rather
18 lengthy, Judge.

19 THE COURT: Jurors, we'll just save a little
20 time. We'll break for lunch. Don't talk about
21 this during this or any other breaks. Be back at
22 five minutes to 2, okay? That will give you an
23 hour and 20 minutes.

24 (WHEREUPON, the jury is excused for
25 lunch at 12:33 p.m.)

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1 THE BAILIFF: Everyone is out.

2 MR. HUMPHRIES: She said everyone is out, Your
3 Honor.

4 THE COURT: Okay, we're at ease unless you
5 need something.

6 MR. HUMPHRIES: Okay.

7 THE COURT: Be back at five minutes to 2 and
8 be ready to roll.

9 MR. JOYE: Your Honor, we only ask that you
10 instruct this officer that he is under oath and he
11 is in the middle of his testimony.

12 THE COURT: Right. You can't discuss the case
13 with anybody.

14 THE WITNESS: Yes, sir.

15 THE COURT: You are subject to
16 cross-examination coming up.

17 MR. HUMPHRIES: Can we talk a bit about
18 scheduling?

19 THE COURT: I'm listening to you.

20 (WHEREUPON, a bench conference was held
21 in the presence of the jury but out of
22 the hearing of the jury.)

23 (WHEREUPON, court adjourned for lunch.)

24 (Witness returns to witness stand.)

25 THE COURT: Is everybody ready to roll?

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1 MR. HUMPHRIES: The State is ready to proceed,
2 Your Honor.

3 MR. JOYE: Yes, sir.

4 THE WITNESS: Yes, Your Honor.

5 THE BAILIFF: Ready? All right, sir.

6 (WHEREUPON, the jury came into open
7 court at approximately 1:58 p.m.)

8 THE COURT: Okay, you may proceed.

9 MR. JOYE: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. JOYE:

12 Q Is it Corporal Moreau?

13 A Yes, sir.

14 Q Good afternoon, sir.

15 A Good afternoon.

16 Q Corporal, this is State's Exhibit 1. Can you tell
17 me that -- now, that is basically your crime scene,
18 is it not?

19 A That is a sketch I did of the scene, yes, sir.

20 Q Okay. And you consider all of this to be the
21 scene, the crime scene?

22 A Not all of it no, sir. This is --

23 Q Okay.

24 A This is the crime scene, as we considered it, and
25 the general area around it.

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1 Q Okay. What would you consider the crime scene to
2 be? Can you show me what you consider the crime
3 scene, would you say within the house and outside?

4 A I would say generally this area.

5 Q All the way around?

6 A Around the house, not all the way around the house.
7 General crime scene in this case would be inside
8 the house and just outside where we found the body
9 of the victim.

10 Q Okay. So all of the inside of the house would be
11 considered crime scene?

12 A For the most part, yes, sir.

13 Q I mean, when you first get there you consider
14 everything the crime scene basically, don't you?

15 A Yes, sir.

16 Q And y'all secure that, correct?

17 A We secure what we feel needs to be secured when we
18 get there. Sometimes when we arrive it is already
19 taped off for us.

20 Q Was it already taped off this time?

21 A There was crime scene tape up.

22 Q In other words -- where was the crime scene tape?

23 A Crime scene tape, as far as I remember, went across
24 the front of the house, blocking access to the
25 carport area and that door.

1 Q And this was a secure crime scene?

2 A It was as secure as the officers were able to make
3 it when they arrived with circumstances.

4 Q All right. And when you got there, there were a
5 number of people in this secure crime scene,
6 weren't there?

7 A Yes, sir, there were a number of family members
8 that were helping out with the wife of the
9 deceased.

10 Q So how about -- so this secure crime scene has got
11 a lot of people in it, doesn't it?

12 A Yes, sir.

13 Q People tracking back and forth, walking around?

14 A I didn't see anything that appeared to be tracked,
15 but people were walking around, yes, sir.

16 Q And, in this secure crime scene that people were
17 walking through, about how many people were there
18 when you got there?

19 A I couldn't tell you. I didn't count them. They
20 were there assisting with the mother.

21 Q More than four or five?

22 A I would say probably five or six family members,
23 among several officers who were at the scene.

24 Q You get a case like this, numbers of officers come
25 in and out, don't they?

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1 A A number of officers come to the scene. Generally
2 we try to limit those who come in and out on a
3 need-to basis.

4 Q Now, would you consider the two cars, they would be
5 part of your crime scene, would they not?

6 A Yes, sir, until ruled out.

7 Q And you, in this secure crime scene, you took
8 fingerprints off of them?

9 A Yes, sir.

10 Q I ask you, have you had an opportunity to see this?

11 A Yes, sir.

12 Q What is that, sir?

13 A SLED report.

14 Q What kind of SLED report?

15 A From latent section.

16 Q In this secure crime scene, can you tell me --
17 excuse me, let me look at it real quickly for you.

18 A Sure.

19 Q I'm going to --

20 (Pause.)

21 Q The secure crime scene of the latent impression,
22 Number 3.1, who is that?

23 A Officer Lawrence David.

24 Q And 3.4?

25 A As well, Officer David.

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1 Q In fact, how about 5.5?

2 A That is also Officer David.

3 Q 7.1?

4 A As well, Officer David.

5 Q 7.3, 7.4, 7.5, 7.6, 7.7?

6 A Officer David.

7 Q So primarily the fingerprints you found at your
8 secure crime scene were Officer David's?

9 A Yes, sir. He was first officer on the scene.

10 Q Would that be protocol to put your hands all over
11 your crime scene prior to someone like yourself
12 with your expertise getting there?

13 A No, sir, it would not. We try to teach as much as
14 possible scene security; however, new officers do
15 on occasion slip up.

16 Q And, now, can you tell -- did you collect a lot of
17 evidence?

18 A Define a lot.

19 Q Okay. You collected some evidence, did you not?

20 A Yes, sir.

21 Q Collect some clothes out of the washing machine?

22 A Yes, sir.

23 Q Any clothes belonging to Darrell Mitchell that you
24 identified as having any of David Mitchell's blood
25 on it?

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- 1 A No, sir.
- 2 Q Anything at all in any of your evidence that showed
- 3 Darrell Mitchell's blood -- Darrell Mitchell's
- 4 blood?
- 5 A As far as I know, there wasn't anything unless it
- 6 is a SLED report that I haven't read.
- 7 Q Well, isn't it true that you had the mop tested and
- 8 Darrell Mitchell's blood was found --
- 9 A Well, not necessarily blood. His DNA was found.
- 10 Q Okay. That brings another point. Now, you
- 11 testified that you saw -- that you tested positive
- 12 for blood, but you couldn't identify it as being
- 13 David Mitchell's blood, correct?
- 14 A Correct.
- 15 Q So, in fact, the blood that was found was Darrell
- 16 Mitchell's?
- 17 A Could have been.
- 18 Q It wasn't -- all right, excuse me. The proteins,
- 19 the serological proteins found were Darrell
- 20 Mitchell's blood?
- 21 A Yes, sir.
- 22 Q On the mop?
- 23 A Yes, sir.
- 24 Q Did y'all examine Darrell Mitchell for any cuts,
- 25 anything like that?

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1 A I did not. I don't know if the investigator did.

2 Q Let me ask you, wouldn't it be normal to find blood
3 proteins in a kitchen?

4 A I suppose if somebody cut theirsself in the kitchen.

5 Q Well, but you -- didn't you testify earlier that
6 you can't discern human blood from fish blood or
7 dog blood, or whatever, only that the amido black
8 shows blood?

9 A Yes, sir. That is why we sent it to SLED.

10 Q Do you recognize this?

11 A Yes, sir.

12 Q What is that?

13 A Crime scene entrance log.

14 Q How many names are on there before you got there to
15 do your crime scene investigation?

16 A There are nine names ahead of mine.

17 Q Nine names ahead of yours?

18 A Yes, sir.

19 Q What time did you get there?

20 A Can I refer to that sheet again?

21 Q Sure.

22 A 10:08.

23 Q 10:08. And the first responding officer was there
24 at 9:45?

25 A Around 9:30, I believe.

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1 Q Around 9:30?

2 A Yes, sir.

3 Q Numerous -- he was not the first person there, was
4 he?

5 A No, sir, I believe the nurse was, plus whoever was
6 already in the house.

7 Q And some family members?

8 A Yes, sir.

9 Q Before even Officer David got there?

10 A As far as I know, just the nurse before he got
11 there.

12 Q Now, you talked about in your report there was no
13 sign of forced entry?

14 A No, sir.

15 Q In your expertise as a crime scene analyst, would
16 that be consistent or inconsistent with an unlocked
17 door?

18 A That would be consistent with a door being
19 unsecured.

20 Q So, you can open the door -- anybody can open a
21 door -- you wouldn't need any force if the door was
22 unlocked, would you?

23 A No, sir.

24 Q Now, you took the clothes that Darrell Mitchell had
25 been wearing that day. Did you find any of David

- 1 Mitchell's blood on them?
- 2 A No, sir.
- 3 Q You did take some clothes into evidence, didn't
- 4 you?
- 5 A I did.
- 6 Q How much clothing?
- 7 A I believe it was a shirt, a pair of jeans with a
- 8 belt, and I want to say a pair of shoes and socks
- 9 that Investigator -- Sergeant Drayton brought me
- 10 and advised me that the Defendant had been wearing.
- 11 Q I hand you up your report. Can you show me -- what
- 12 evidence can you show of physical evidence of
- 13 Darrell Mitchell having anything to do with this
- 14 crime? Physical evidence?
- 15 A No, sir.
- 16 Q None?
- 17 A No, sir.
- 18 Q Now, and show -- tell the jury in your report where
- 19 the weapon was found.
- 20 A The actual weapon we weren't able to find. We
- 21 found several knives in the area, none of which
- 22 tested positive for blood in the kitchen sink area.
- 23 Q So you found knives in the kitchen sink area, but
- 24 absolutely no murder weapon?
- 25 A We couldn't conclude that any of them were or were

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1 not the murder weapon.

2 Q No clothes, no shoe prints point to Darrell
3 Mitchell?

4 A No, sir.

5 Q So basically -- you also don't have a clue who may
6 have cleaned up the blood in the kitchen?

7 A I can't say who cleaned it up, no, sir, just that
8 there was an attempt made to clean it.

9 Q But you don't know who did it?

10 A No, sir.

11 Q You don't know whether it was done that morning?
12 You can't say anything about it, can you?

13 A I can't say when it was done, just that it was.

14 Q And for all your crime scene evidence, not one iota
15 of blood in Darrell Mitchell's room?

16 A No, sir.

17 Q Not one bloody footprint in Darrell Mitchell's
18 room?

19 A No, sir.

20 Q From your crime scene investigation, you cannot
21 point to one speck of physical evidence implicating
22 Darrell Mitchell, can you?

23 A Not physical, no, sir.

24 MR. JOYE: Beg the Court's indulgence, Your
25 Honor.

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1 THE COURT: Okay.

2 (Pause.)

3 BY MR. JOYE:

4 Q I'm going to show you -- by the way, Darrell

5 Mitchell had carpet in his room, right?

6 A I believe so, yes, sir.

7 Q No blood on the carpet? Did you test that?

8 A No blood on the carpet.

9 Q How about look at, if you would, please, 26 and 28,
10 State's Exhibits. What kind of flooring is in
11 there in that storage room where you found the mop?

12 A Carpet.

13 Q Now, you testified that you can draw footprints and
14 blood up and you can actually find prints in blood
15 that maybe the naked eye can't see, correct?

16 A Not in carpet, but, yes, sir.

17 Q Huh?

18 A Not in carpet.

19 Q But you didn't find any blood either?

20 A On the carpet? No, sir.

21 Q One last time: Zero physical evidence pointing to
22 Darrell Mitchell?

23 A That's correct.

24 Q Thank you.

25 MR. JOYE: No further questions, Your Honor.

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1 MR. HUMPHRIES: Just a few, Judge. Thanks.

2 REDIRECT EXAMINATION

3 BY MR. HUMPHRIES:

4 Q No question there was no sign of forced entry, is
5 that correct?

6 A No question, no forced entry.

7 Q Let's talk a little bit about Officer David. There
8 are some safeguards, are there not, in crime scene
9 investigation in order to determine whether or not
10 prints were left by law enforcement?

11 A Yes, sir.

12 Q Called elimination prints?

13 A Yes, sir. All officers are printed prior to
14 employment even.

15 Q And that is what occurred in this case, is it not?

16 A Yes, sir.

17 MR. JOYE: Your Honor, I am going to object to
18 leading.

19 MR. HUMPHRIES: I will be glad to rephrase.
20 Thank you, Your Honor.

21 THE COURT: All right.

22 BY MR. HUMPHRIES:

23 Q When you raise a latent print on a vehicle, do you
24 immediately know to whom it belongs?

25 A No, sir.

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1 Q Does it require some analysis?

2 A Yes, by SLED.

3 Q Okay. And were these latent prints lifted from the
4 Cadillac submitted to SLED?

5 A Yes, sir, they were.

6 Q And is SLED also provided with the fingerprint
7 cards for certified law enforcement officers?

8 A Yes, sir.

9 Q And, again, what is the purpose of that?

10 A A lot of times it ends up being ruled-out prints
11 from scenes. We get a lot of hits on officers at
12 crime scenes.

13 Q Let's talk about the crime scene and the crime
14 scene log that was referred to.

15 Now, you previously testified that the crime
16 scene tape was all the way out at the street?

17 A Behind the Cadillac in the driveway, yes, sir.

18 Q When an entry is made into a crime scene log, does
19 that necessarily mean that the person whose name is
20 written on that log went into the immediate crime
21 scene or just inside the tape?

22 A No, sir, we tell the officers to log anybody who
23 crosses the tape.

24 Q Okay.

25 A Regardless of where they go in the scene, if they

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1 cross the tape, their name goes on the paper.

2 Q So the fact that these other names appear on the
3 crime scene log, does that mean, of necessity, that
4 those people actually entered, in this case, the
5 house?

6 A No, sir.

7 Q The clothes in the washing machine, a question was
8 asked, did you find any clothes of the Defendant's
9 in that washing machine. The answer is?

10 A No.

11 Q In fact, whose clothes did they appear to be?

12 A The mother's. They were female's clothing and some
13 of them were still soiled.

14 Q The question was also asked, you can't determine
15 when that crime scene was cleaned up. And you
16 answered?

17 A I could not give an exact time when it was cleaned,
18 no, sir.

19 Q However, you do know the condition of the mop?

20 A Yes, sir.

21 Q And it was?

22 A Damp.

23 Q You didn't find any bloody clothes from the
24 Defendant?

25 A No, sir.

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1 Q You didn't find a definitive murder weapon?

2 A No, sir.

3 Q Is it fair to say that as much as nine hours passed
4 before law enforcement responded to that scene
5 after the death of the victim?

6 A Yes, sir, it could have been. It could have been
7 more than that, more or less.

8 Q And would that, in fact, provide ample time for the
9 discarding of those items?

10 A Yes, sir.

11 Q And do you recall the condition of the shower in
12 the home?

13 A It was still water beaded on the sides, a damp wet
14 washcloth in the shower.

15 Q Thank you, Officer.

16 RECROSS-EXAMINATION

17 BY MR. JOYE:

18 Q Now, in your report you say that there were several
19 family members inside the house when you arrived?

20 A Yes, sir, helping out with the mother.

21 Q Other than Darrell Mitchell --and Adrienne and
22 Frank White, how many family members are logged in
23 there?

24 A I don't know these names if they are family or not.
25 I mean, I don't know. Ron Cain, I don't recognize

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1 that name. There is another name Jeffrey that I
2 don't recognize on this log. They may have been
3 the other family that was in there. And of course
4 the nurse.

5 Q So the clothes you found -- your testimony is that
6 you believe that there was a great deal of time
7 with which the evidence could have been discarded?

8 A I believe there was enough time had passed. I
9 can't tell you exact times.

10 Q Wouldn't it make sense if you cleaned up the crime
11 scene with a mop that you would want to discard
12 that too?

13 A That would make sense, unless you ran out of time.

14 Q And the mop, to reiterate, the only serological
15 proteins that you found were Darrell Mitchell's?

16 A I didn't find any, that was SLED.

17 Q Oh, so SLED found them?

18 A Yes, SLED analyzed what we sent them.

19 Q You can analyze and -- it would seem that the rest
20 of -- the other blood evidence was diluted, so you
21 couldn't identify anybody?

22 A What I was advised is it was diluted. The only
23 standard that was able to be completed was the
24 Defendant's.

25 Q Darrell Mitchell's blood, right?

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1 A Yes, sir.

2 Q Or serological protein found on the mop?

3 A Yes, sir.

4 Q Um, the wallet that you found in the Cadillac, did
5 it have a driver's license in it?

6 A I believe we found his driver's license in the
7 bedroom.

8 Q In the other wallet that Frank White and Darrell
9 Mitchell found, right?

10 A I didn't see a second wallet. I was shown the
11 photograph -- the driver's license of the victim,
12 at which time I took pictures of it inside the
13 house.

14 Q You took pictures. But there was no driver's
15 license found in the wallet you found in the car?

16 A No, the driver's license that I took photographs of
17 was handed to me outside of a wallet. It wasn't in
18 a wallet when it was handed to me.

19 Q Who handed it to you?

20 A I believe my sergeant.

21 Q Sergeant Boyd?

22 A Sergeant Boyd.

23 Q Did Sergeant Boyd find the wallet in the Cadillac
24 or did you find it?

25 A We were examining it together at the same time

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1 with -- I believe Frank White was standing in the
2 background. What we were doing was photographing,
3 searching and inventorying what was in the vehicle.

4 Q It is certainly conceivable that -- when you were
5 there, you never saw the driver's license come out
6 the wallet, though, did you?

7 A No, sir.

8 Q Thank you.

9 MR. HUMPHRIES: Nothing further, Your Honor.

10 THE COURT: You can step down.

11 THE WITNESS: Thank you, Your Honor.

12 (Witness steps down.)

13 MR. HUMPHRIES: The State calls John Ortuno.

14 THE COURT: Okay.

15 (Witness approaches.)

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

18 (Witness complies.)

19 THE CLERK: Do you swear to tell the truth,
20 the whole truth, and nothing but the truth, so help
21 you God?

22 THE WITNESS: I do.

23 THE CLERK: Please be seated and state your
24 full name.

25 (Witness seated.)

1 THE WITNESS: Manwell John Ortuno,
2 O-R-T-U-N-O.

3 M. JOHN ORTUNO, after
4 being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HUMPHRIES:

7 Q Mr. Ortuno?

8 A Yes, sir.

9 Q Please tell this jury with whom you are employed.

10 A With the South Carolina Law Enforcement Division,
11 commonly referred to as SLED.

12 Q And in what capacity are you employed with SLED?

13 A I'm a forensic DNA analyst.

14 Q And tell the jury how long you have been a forensic
15 DNA analyst.

16 A I have been working as DNA analyst for a little
17 over ten years.

18 Q And tell the jury, do you have some specialized
19 education and training in regard to become a DNA
20 analyst for SLED?

21 A Yes, sir, I do.

22 Q Please give the jury the benefit of that education
23 and training.

24 A I graduated with honors from the American
25 University in Washington, D.C. with a bachelor of

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1 science degree and major in chemistry. I have a
2 master's degree also majored in chemistry from the
3 University of South Carolina, Columbia.

4 I was hired as a research specialist at the
5 university where I performed experiments in a
6 molecular genetics laboratory. This was for
7 approximately three and a half years and led to two
8 publications and two peer review journals.

9 I am a graduate of the South Carolina Criminal
10 Justice Academy. I completed training at SLED in
11 the field of forensic serology and DNA analysis. I
12 have attended numerous conferences and seminars on
13 a yearly basis and have qualified as an expert in
14 both fields throughout the state.

15 Q And do you have an estimation about the number of
16 times you have been offered and accepted as an
17 expert in the field of forensic DNA analysis?

18 A Approximately 43 or 44 times.

19 Q Thank you.

20 MR. HUMPHRIES: Your Honor, at this time we
21 would offer Dr. -- Mr. Ortuno.

22 MR. JOYE: Without objection, Your Honor.

23 THE COURT: Okay. Same thing, jurors.

24 MR. HUMPHRIES: Thank you.

25 Q What I'd like you to do is, very briefly, short

1 version, tell the jury, if you will, what DNA is
2 and how you go about analyzing it and comparing it
3 to standards.

4 A DNA stands for deoxyribonucleic acid. It is a very
5 large complex molecule that is found in essentially
6 every cell of the human body.

7 Now, most of our DNA is the same. In fact,
8 99 percent of my DNA is the same as yours. But
9 because the molecule is so large, the remaining
10 1 percent is sufficient for us to develop what is
11 known as DNA profile.

12 Now, what we do is we receive evidence from
13 agencies, submitting agencies. They give us
14 samples that are collected from a crime scene. We
15 then take those samples and first determine whether
16 there is -- basically what we are looking for is
17 human body fluids, so typically what we look for is
18 blood, semen, saliva, sometimes hairs.

19 We do this because if we can identify a
20 sufficient quantity of a human body fluid, we can
21 then take it through a series of chemical steps,
22 which allows us to develop a DNA profile.

23 Once we have done this, we take standards,
24 which are known samples from individuals believed
25 to have been involved in the case, typically the

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1 victim and perhaps any subject or subjects that are
2 believed to have been associated in this case, and
3 that typically is either blood or saliva, develop
4 their DNA profile, and simply compare the DNA
5 profile from the victim or subjects to the evidence
6 DNA profiles.

7 It either matches or it doesn't match. If it
8 matches, we can give that match a statistical
9 value, a uniqueness, a rarity, how rare, how common
10 or uncommon is this profile in the general
11 population.

12 If it doesn't match, we're basically done. It
13 doesn't belong to that person.

14 Q And let me ask you, did you receive certain items
15 of evidence from the Florence City Police
16 Department in connection with this case?

17 A Yes, sir, I did.

18 Q And after having received them -- well, let me ask
19 you, did you also receive a standard from the
20 victim in this case, David Mitchell?

21 A Yes, sir, I did.

22 Q And having received those items of evidence, did
23 you then engage in this analysis of the samples and
24 the known standard of the victim?

25 A Yes, sir, I did.

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1 Q I want to refer you to a number of the items as you
2 have them identified. And let me ask, just let me
3 clarify just briefly, law enforcement -- well, when
4 they submit items of evidence to SLED, they will
5 have their own agency item numbers?

6 A Sometimes.

7 Q And SLED, when you -- when you receive those items,
8 do they always have the same item numbers as
9 provided by the local law enforcement agency?

10 A They would very rarely. It would be just by
11 coincidence if they matched.

12 Q Okay, so --

13 A We give our items based on as we receive them, we
14 give them numbers one through as many items as have
15 received.

16 Q So if we have, for instance, Florence City Police
17 Department Item 4 and your item is Item 11, that
18 would be usual as opposed to unusual?

19 A That is correct. If they submit something with
20 their own numbers, what we do then is assign that
21 item description their number, but yet we have to
22 give that same item our number. That might sound a
23 little confusing, but we have to go by -- we have
24 to account for the numbers one through however many
25 regardless of what they number that same item as.

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1 Q Very good. Now, if you will give me just one
2 moment.

3 (Pause.)

4 Q Referring to your Item 11, which you indicate are
5 swabs from Cone 4 -- and let me show you State's
6 Exhibit 5 for that purpose and tell me if you can
7 see the 4 contained within State's 5?

8 A I see a little tag with the Number 4 on it, yes,
9 sir.

10 Q Which would be the doorjamb in this case?

11 A That is what it appears to be.

12 Q In the threshold?

13 A Yes, sir.

14 Q Can you tell me based on your analysis what your
15 results were as it relates to your Item 11,
16 Florence City Police Department's Cone 4?

17 A Blood was indicated on that item. And the DNA
18 profile that was developed from Item 11 matched the
19 DNA profile from David Mitchell.

20 Q The victim in this case?

21 A Yes, sir.

22 Q Let me ask you to refer to your SLED Item 12, which
23 were swabs from Cone Number 5, which would be
24 Florence City Police Department's cone --

25 MR. HUMPHRIES: And if I can have the

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1 photograph just briefly so I can point out that.

2 (Mr. Humphries gets exhibit from jury.)

3 Q And that would be showing you State's 5 asking you
4 to see if you can identify a cone.

5 A That is just inside the door.

6 Q On the floor?

7 A Yes, sir.

8 Q Okay.

9 (Exhibit handed back to the jury.)

10 Q Now, as to your Item 12, Florence's Item 5, were
11 you able to achieve a result as of -- a result of
12 your analysis on that item?

13 A Yes, that also matched the victim, David Mitchell.

14 Q Referring now to your Item 14, which would be from
15 Cone 7, Florence's Cone 7, did you -- were you able
16 to achieve a result as a result of your analysis on
17 that item?

18 A Yes, that also matched the victim, David Mitchell.

19 Q And let me show you State's 15 and tell me if you
20 can identify Cone 7 as it appears in that
21 photograph?

22 A Cone 7 is inside the room on the floor as well.
23 That would be SLED's Item 14.

24 Q Thank you. Now, as to your Item 15, Florence's
25 Cone 8, were you able to achieve a result as a

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1 result of your analysis on that item?

2 A In that particular case, the amount of DNA that was
3 present was insufficient to develop a complete
4 profile.

5 Q Uh-huh.

6 A We call that a partial profile. And it just simply
7 means that everything that we're looking for that
8 we can use to compare to identify someone wasn't
9 all present, but what was there did in fact match
10 the victim, David Mitchell.

11 Q And showing you State's 18, do you see that Cone 8
12 in that photograph?

13 A Yes, I do -- or the Marker 8, yes.

14 Q It appears to be that rug?

15 A Yes, it does.

16 Q Now, let's go to your Item -- Items 16, 17 and 18.
17 That refers to Florence's Cones 9, 10 and 11.

18 A That's correct.

19 Q And I want to show you at this time State's 23 in
20 evidence. And tell me if you can identify those
21 cone numbers in that photograph.

22 A Yes, there are all three on the floor.

23 Q In the kitchen?

24 A Yes, that's correct.

25 Q And tell me, were you able to achieve a result as a

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1 result of your analysis on those items?

2 A SLED 16, 17 and 18 also were found to match the
3 victim, David Mitchell.

4 Q Now, let me ask you, Mr. Ortuno, you were submitted
5 a number of items in connection with this case, is
6 that fair to say?

7 A That's correct.

8 Q Were all of those items tested in terms of a DNA
9 analysis?

10 A No. Approximately ten, I believe.

11 Q Were there others, however, where you did a
12 preliminary analysis to determine whether or not
13 blood was indicated?

14 A Yes. We always try to determine whether the sample
15 submitted is of human origin, and of course in this
16 case blood is what they were seeking so everything
17 was tested for blood with the exception of one of
18 the fingernail scrapings.

19 Q Were there certain items that you received that you
20 were not -- that the sample was insufficient for
21 further DNA analysis?

22 A Yes.

23 Q And as it relates to those items -- once you
24 determine that, there is really nothing further
25 that you can do based on that sample, isn't that

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1 correct?

2 A There is nothing further I can do, that's correct.

3 Q Okay. But suffice it to say, even a number of
4 those items, the preliminary step indicated that
5 blood was indicated?

6 A That's correct.

7 Q So the very fact that you are able to indicate
8 blood in a sample does not mean that you can carry
9 that analysis out to the point where can develop a
10 DNA profile suitable for match?

11 A The test that we perform for blood is more
12 sensitive than the amount of cells necessary to
13 develop a DNA profile. So sometimes you can, in a
14 very, very weak amount of solution that is blood,
15 you may not have enough to carry it to develop a
16 DNA profile.

17 Q And just in summary:

18 Your Item 11, the doorjamb, the victim's
19 blood.

20 Your Item 12, inside the door on the floor,
21 victim's blood.

22 Your Item 14, the floor in the living room,
23 victim's blood.

24 Your Item 15, the rug in the living room,
25 basically David Mitchell cannot be eliminated.

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1 A He also matches everywhere where -- there is a
2 portion of that profile that does match him.

3 Q Very good.

4 A Yes.

5 Q And your Items 16, 17, and 18, the kitchen floor,
6 the victim's blood?

7 A That's correct.

8 MR. HUMPHRIES: I don't have any further
9 questions of this witness as this time, Your Honor.

10 THE COURT: Okay, cross-examination.

11 MR. JOYE: Just one second, Your Honor.

12 (Pause.)

13 CROSS-EXAMINATION

14 BY MR. JOYE:

15 Q You did examine the mop?

16 A After the initial items that were submitted
17 subsequent to that, the mop was submitted directly
18 to SLED for me to examine as well, yes, sir.

19 Q And Darrell Mitchell's blood was found on that mop?

20 A I can't say that.

21 Q Darrell Mitchell's serological fluid was found on
22 that mop?

23 A I can't say that.

24 Q Sir?

25 A I cannot say that.

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1 Q You didn't match Darrell Mitchell's blood on that
2 mop?

3 A I never received a standard from Darrell Mitchell,
4 so I cannot match to anything Darrell Mitchell.

5 Q Did you subsequently -- did you run the profile
6 through your CODIS system?

7 A Let me explain the procedure.

8 Q Sure.

9 A When a sample is submitted to SLED, we run the
10 tests and we determine that there is no match to
11 any of the individuals submitted for comparison.

12 It can become what is known as a forensic
13 unknown. And all it means is, this is a sample of
14 a DNA profile who we think may have been involved
15 in some way in the incident, although we're not
16 sure, but it is sufficient to enter into a
17 database.

18 So we enter all forensic unknown profiles into
19 what is called the CODIS, or Combined DNA Index
20 System database.

21 Now, this was performed. Now, once a week all
22 these unknown samples are run against all the
23 profiles that are currently in the CODIS, as we
24 call it, CODIS database.

25 In this particular case, and I believe this is

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1 what you are referring to, is SLED's Item Number
2 20, which is Cone Number 15, and I'm assuming Cone
3 Number 15 is the mop, I don't know that for a fact,
4 but if you could confirm that, I would feel better
5 about what I'm about to say. Cone Number 15.

6 Q I refer you to right here. What number is that?
7 And I know it is hard to see.

8 A It is not very -- it could be a 15. I guess that
9 is a 15.

10 Q And what does it say?

11 A It says mop. All right. So SLED's Number 20,
12 which has been identified as Cone Number 15, which
13 is a mop, did have a male profile. This male
14 profile did not match David Mitchell. And
15 therefore I entered it into CODIS as a forensic
16 unknown.

17 Now, we have a different department at SLED,
18 which is the CODIS Department, and they have
19 analysts that once a week will run -- basically
20 compare these unknown profiles that have been
21 entered each week with all other profiles that are
22 in there with individuals whose profile is already
23 in there, as well as other unknown profiles from
24 other cases.

25 This allows us to link what are called cold

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1 hits where we don't know that someone may be
2 involved in a case. It also allows us to compare
3 case to case. We can match one unsolved case with
4 another unsolved case.

5 When this was performed, there was what is
6 termed a CODIS hit. And the report that was issued
7 from that CODIS hit is from another analyst in this
8 department.

9 And I have here for you, sir, if you care to
10 have it, the report of that. This is not my
11 department. This is another department.

12 And it states in this letter, in the middle of
13 the paragraph, second paragraph actually, that in
14 fact it does, according to this analyst, the Item
15 Number 20, which is from the mop, was compared in
16 the CODIS system and the profile matches the
17 profile developed from Darrell Nathaniel Mitchell.
18 However, it further states, this information is
19 provided for investigative purposes only. If the
20 suspect is charged --

21 Q I'm going to stop you there, sir.

22 A Okay.

23 Q Thank you, sir.

24 A All right.

25 Q And you tested the mop for David Mitchell's?

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1 A I tested the mop for the only profile I had, which
2 was David Mitchell's.

3 Q And it was negative, or you couldn't make a
4 determination?

5 A No, I made a determination. Like you said, it was
6 negative. It did not match. It excluded David
7 Mitchell. That is a conclusion. Without any
8 doubt.

9 Q Is it unusual to run DNA analysis and never get a
10 subject sample from your -- the suspected
11 perpetrator?

12 A It is not that unusual when the only blood you are
13 expecting to find is the victim's. We have cases
14 that -- in a perfect world you would want
15 everybody's standards, including relatives that
16 might have been in the house as well. So to answer
17 your question, many cases we do have the standards
18 from all the subjects. If you don't expect the
19 subject to bleed, it is not necessarily to have
20 that. So I had no problem running these samples
21 without the subject.

22 Q And you didn't have Darrell Mitchell's, but you
23 were able to match it up with the CODIS system?

24 A I didn't.

25 Q You didn't personally, but someone did in your --

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1 A I could not determine that, but another analyst in
2 the CODIS Department made the link or the match
3 through the CODIS system.

4 Q Thank you, sir.

5 REDIRECT EXAMINATION

6 BY MR. HUMPHRIES:

7 Q If you don't mind, let me see that document you
8 were reading from. Of course, this isn't your
9 document?

10 A No. No, it isn't. It is from Nancy J. Skraba, who
11 is an analyst in the CODIS Department.

12 Q Yes, I know Nancy.

13 MR. JOYE: May I, Your Honor?

14 THE COURT: Sure.

15 (Mr. Joye looks at document also.)

16 Q Let's talk just a minute about this. You
17 initially -- did you initially receive swabs from
18 Florence City from the mop?

19 A Yes, sir, I did. That is in the first report dated
20 January 7th. As -- I believe that is SLED's Item
21 20.

22 Q Okay. And initially in receiving those swabs,
23 there was blood indicated, but it was insufficient
24 at that point, those swabs?

25 A No, sir, that is not exactly correct. We have a

1 policy at SLED. We attempt to keep the initial
2 analysis of ten samples simply because of the
3 volume of cases and items that need to be tested.

4 Q Oh, I see. I see.

5 A So if you'll count, I actually did ten.

6 Q Right.

7 A And it just so happened --

8 Q That that was Number 11, right?

9 A Or beyond ten.

10 Q Right. So --

11 A So I simply -- I did do the serology. I did
12 determine that blood was indicated. However, I
13 stopped at that point as I had already performed,
14 or selected ten.

15 Q Very good. Now, let me ask you. You've been
16 qualified as an expert obviously in this field.
17 The -- I believe there was a reference to those --
18 well, I think you ultimately had the mop, did you
19 not? Was the mop not provided to you?

20 A Subsequent to the initial report, the report dated
21 August 19th of 2008 was a result of the submission
22 directly to SLED of the mop, of which I took
23 custody of, and I examined myself, and I found some
24 slight discolorations that I -- in fact, I believe
25 I took four samples. I actually combined them all

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1 trying to obtain -- let's see here. No, I didn't.

2 On August 19th, I examined the mop, found four
3 strands, SLED's Item Numbers 30.1 through 30.4.

4 They all were positive for blood indicated. Very
5 small amount, weak, what I call diffuse, just
6 washed-out stains. And I took them through the DNA
7 process trying to develop a profile.

8 Q And when you refer to a weak or diffuse stain, that
9 would be consistent with the serological material?

10 MR. JOYE: Objection. Leading.

11 MR. HUMPHRIES: He is an expert; Your Honor,
12 and I'm asking him --

13 THE COURT: Well, haven't you covered
14 everything?

15 MR. HUMPHRIES: Well, except for this one
16 point.

17 THE COURT: You need to step up because I
18 don't know what you are going to ask.

19 MR. HUMPHRIES: All right, very good.

20 (WHEREUPON, a bench conference was held
21 in the presence of the jury but out of
22 the hearing of the jury.)

23 MR. HUMPHRIES: Very well. Thank you, Your
24 Honor.

25 MR. JOYE: Thank you, Your Honor.

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1 BY MR. HUMPHRIES:

2 Q Let me ask you then this way. What effect could a
3 damp mop, a surface that is damp, have on the
4 serological sample that you ultimately obtained,
5 having been submerged in water or some cleaning
6 material?

7 A Common sense would dictate that if the substance,
8 in this case, if the mop is damp, and it was moist,
9 it will dilute, or water down, to use layman's
10 terms, any sample that is there.

11 Q And, finally, let me ask you this one thing. We
12 have talked primarily about blood, saliva. It is
13 true -- or is it true that there are other means by
14 which -- or substances from which a DNA profile may
15 be generated?

16 A A DNA profile can be generated from any human
17 cells. So they can be skin cells, they can be --
18 well, skin cells actually is what you find in
19 saliva, it is the epithelial cells in your mouth.
20 So that. Blood. It is the white corpuscles that
21 contain the DNA. Hair, the roots. So you have
22 several trillion cells in your body, any of which
23 will have your profile.

24 Q And sweat?

25 A Sweat, once again, you are back to skin cells that

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1 are in the sweat, and that is what we target.

2 Q Thank you.

3 THE COURT: All right, you can step down.

4 THE WITNESS: Thank you, Your Honor.

5 MR. HUMPHRIES: Can we ask that he be excused,
6 Your Honor?

7 MR. JOYE: Without objection, Your Honor.

8 (Witness steps down and is excused.)

9 THE COURT: As soon as he gets out of the way,
10 we'll take 13 minutes, jurors. Don't talk about
11 the case. Step out.

12 We're ahead of schedule.

13 (WHEREUPON, the jury retires to the jury
14 room at 2:51 p.m.)

15 THE COURT: All right, we are at ease. We
16 don't want to finish too early today, right?

17 (WHEREUPON, a short break was taken.)

18 (WHEREUPON, the jury came into open
19 court at approximately 3:17 p.m.)

20 THE COURT: You may proceed.

21 MR. HUMPHRIES: The State calls Adrienne
22 White.

23 THE COURT: All right.

24 (Witness approaches.)

25 THE CLERK: If you will, place your left hand

1 on the Bible and raise your right hand.

2 (Witness complies.)

3 THE CLERK: Do you swear to tell the truth,
4 the whole truth, and nothing but the truth, so help
5 you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your
8 full name for the record.

9 (Witness seated.)

10 THE WITNESS: My name is Adrienne Mitchell
11 White.

12 ADRIANNE M. WHITE, after
13 being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HUMPHRIES:

16 Q Good afternoon, Ms. White.

17 A Good afternoon.

18 Q I notice that your middle name would have been your
19 last name prior to your marriage, Ms. Mitchell?

20 A Uh-huh.

21 Q Tell the jury, if you will, your relationship to
22 David Mitchell, the victim in this case?

23 A David Mitchell is my father.

24 Q And tell the jury, if you will, your relationship
25 to the Defendant in this case, Darrell Mitchell?

ADRIANNE M. WHITE -- DIRECT BY MR. HUMPHRIES

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1 A Darrell is my brother.

2 Q I appreciate that this is very difficult for you.

3 I'll try to keep the questions to a relative few.

4 Let me ask you, Ms. Mitchell, the residence in
5 which your parents lived, was that a family
6 residence for some time?

7 A Yes.

8 Q And did there come a time when all the kids had
9 left the home?

10 A Yes.

11 Q Tell me, how many children did your parents have?

12 A Four.

13 Q There is you, Darrell, you have --

14 A A younger brother, David.

15 Q David. And another?

16 A It is Darrell, Robert, myself, and David.

17 Q Okay. How old was your father at the time he died?

18 A Seventy-nine.

19 Q We have heard a little bit about your mama, Edna,
20 and about her physical condition.

21 Tell the jury a little bit about your
22 observations of your mother in terms of her
23 physical and mental condition around May of 2007.

24 A Well, my mama had Alzheimers for just about 13
25 years. And at that time she was not walking, she

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1 could not feed herself, she jibber-jabbered, but
2 she didn't speak. And she was totally dependent on
3 someone.

4 Q And that someone, was that primarily your father?

5 A My father was primary caregiver.

6 Q Your -- do you know what your father's practice and
7 custom was as relates to your mother when it came
8 time to go to sleep, what he did for your mother?

9 A Yes.

10 Q And what did he do?

11 A He would bathe her from her -- from their bedroom,
12 maybe I guess what some would call a bird bath
13 because he would --

14 Q Right.

15 A She was not able to walk at that time and he didn't
16 always put her in the shower, maybe sometime when
17 he had more help, but he was basically washing her
18 from the bed.

19 Q Would he then change her into bed clothes?

20 A Yes, uh-huh.

21 Q And did you sometimes assist in that?

22 A Yes, I would sometimes when I was there.

23 Q And did the other family members pitch in where
24 they could help?

25 A After Darrell moved in, he helped a lot, but mainly

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1 with cooking and lifting her. And I guess
2 occasionally he would help dress her, but not
3 washing her.

4 Q That job was left to her husband?

5 A Yes.

6 Q That is appropriate.

7 A And myself.

8 Q Sure.

9 A Uh-huh.

10 Q Let me ask you, back in May of 2007, who resided in
11 the home?

12 A My father, mother, and my brother David -- Darrell.

13 Q And had Darrell always lived with your parents?

14 A No. I think he came home either two or three years
15 prior to my father's death to help out in the home.

16 Q Okay. Your father allowed that?

17 A Well, he was hesitant about it, but Darrell
18 convinced my father and myself sort of that he
19 could be of some help, so --

20 Q Let's talk a little bit about the house and the
21 entryways into the house. That side door that
22 leads into the little den area --

23 A Uh-huh.

24 Q -- is that an area that your father utilized often?

25 A That was the primary entrance in and out of the

1 house, because we used to keep the front door
2 locked down.

3 Q And why would you do that?

4 A Because my mother at one point when she was walking
5 and getting about, she was a roamer, so we
6 basically nailed the door down for years. But I
7 think at that point they had begun to -- just
8 started using the front door.

9 Q Okay. And who primarily used the front door? Did
10 your father primarily use it?

11 A No, I don't think so.

12 Q The Defendant? If it was used, was it most likely
13 the Defendant that would use it as opposed to your
14 father?

15 A I believe I did hear my father say that Darrell
16 would use it, would go in and out of that door
17 sometime.

18 Q Now, when your daddy settled down for the night,
19 was it his practice to lock the doors?

20 A Yes, I would think it would be locked.

21 Q Okay. He was 79 years old?

22 A Uh-huh.

23 Q Let me take you, then, to that day, May 17th, okay?
24 How did you learn of your father's death?

25 A Darrell called me at work on my job.

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1 Q Okay. And did he seem upset to you?

2 A Yes, he was upset and he told me that they found --
3 he found dad out in the yard and there was blood.
4 And so I immediately hung up and left my job to go
5 over there.

6 Q Did you call your husband?

7 A Yes. When I got in the car, I think I first called
8 9-1-1, and they told me that they had already had a
9 report to go there, and then I called my husband.

10 Q And your husband is?

11 A Frank White.

12 Q When you got to the house, what -- where did you
13 go, first of all?

14 A I immediately went in through the den door, the
15 side door, and I think Darrell and the home
16 healthcare nurse, they both met me, and they were
17 very upset. And then I asked where was my dad, and
18 they took me outside.

19 And I said, what happened here? And we just
20 all were very upset.

21 Q Well, let he ask you, when you got there, the only
22 people there were whom?

23 A Darrell, the home healthcare nurse -- I think I was
24 the second one, and I think -- it wasn't long after
25 I got there that the young --

1 Q The officer?

2 A The police officer, right.

3 Q Officer David?

4 A Right, Officer David.

5 Q Now, did a number of family members come into the
6 house at that time?

7 A No. I think then other law officers, you know, and
8 most of the community people started gathering
9 around because they saw the police car. I think my
10 husband Frank was the next person to arrive.
11 Because I had to call -- I called my aunt. And but
12 people started arriving quickly after that. I
13 don't know, everything started happening very
14 quickly.

15 Q Did they actual come into the house?

16 A I don't really remember. I know myself and
17 Frank -- I think at that time most of -- a lot of
18 family were there, the police were asking them to
19 stay out. Uh-huh.

20 Q Okay. Do you recall EMS people coming in?

21 A I don't recall.

22 Q To check on your father?

23 A Huh-uh, because he was on the outside.

24 Q Right, right. Well, I mean inside the crime scene
25 tape, I guess is what I'm asking.

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1 A I left with my mother, and I don't even remember
2 seeing any crime scene tape.

3 Q Okay.

4 A Because at the point when I left, they said that
5 they were going to do -- that the crime scene
6 people were coming on to check the house and we
7 really needed to leave.

8 Q And you took your mother out?

9 A Yes. The home healthcare nurse come and we got her
10 dressed, got my mother dressed. And we all were
11 out in the yard. At first I didn't know what I was
12 going to do with her. And then I was advised by I
13 think her supervisor to take my mother to the
14 emergency room.

15 Q And that is what you did?

16 A Uh-huh.

17 Q Ms. White, let me ask you, what -- how would you
18 characterize your father's relationship with your
19 brother Darrell?

20 A It was very strained. And a lot of times they were
21 very argumentative.

22 Q And was that fairly consistent over the long period
23 of time over their relationship?

24 A Pretty much, because not long after Darrell came
25 into the home, you know, they started --

1 Q They started having those difficulties?

2 A Yes, uh-huh.

3 Q Okay. Answer any questions the Defense may have,
4 please.

5 CROSS-EXAMINATION

6 BY MR. JOYE:

7 Q Ms. White, first let me tell you that I'm sorry for
8 your loss -- losses.

9 A Uh-huh.

10 Q What was your brother's relationship like with his
11 mother?

12 A He was very caring for my mother, yeah.

13 Q Very loving relationship?

14 A It always appeared to have been.

15 Q He assisted in trying to take care of your mother?

16 A Yes, uh-huh.

17 MR. JOYE: Beg the Court's indulgence.

18 (Pause.)

19 Q Thank you, Ms. White.

20 A Okay.

21 THE COURT: You can step down, Ms. White.

22 (Witness steps down.)

23 MR. HUMPHRIES: The State calls Frank White,

24 Your Honor.

25 (Witness approaches.)

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1 MR. HUMPHRIES: You can affirm.

2 THE CLERK: Do you affirm to tell the truth,
3 the whole truth, and nothing but the truth, so help
4 you God.

5 THE WITNESS: I do affirm.

6 THE CLERK: Be seated and state your full name
7 for the record.

8 (Witness seated.)

9 THE WITNESS: My name is Frank White.

10 FRANK WHITE, after being
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HUMPHRIES:

14 Q Mr. White, what is your relation, let's start with
15 Adrienne White?

16 A Adrienne is my wife.

17 Q That was in --

18 A Thirty years, I might add.

19 Q Thank you. Nicely done. That then would make you
20 the brother-in-law to the Defendant, Darrell
21 Mitchell?

22 A That's correct.

23 Q And the son-in-law of victim in this case, David
24 Mitchell?

25 A That also is correct.

FRANK WHITE -- DIRECT BY MR. HUMPHRIES

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1 Q Let me ask you, first of all, how are you employed?

2 A I am an investigator for the Public Defender of
3 Florence County.

4 Q Let's go, if you will, to the early afternoon or
5 late afternoon/early evening of, I guess it is
6 May 16th, really, of 2007.

7 Did you have an occasion to be in the company
8 of or come into contact with the Defendant, Darrell
9 Mitchell?

10 A I did.

11 Q Tell the jury the circumstances around that, if you
12 will.

13 A He and I had planned to go fishing on that day, and
14 I had gotten my son to pick him up that day and
15 bring him to my home where I met him approximately
16 4:30, quarter to 5:00 that afternoon, and the two
17 of us went to Johnsonville to -- fishing.

18 Q And did you have any luck?

19 A It was a bad day.

20 Q We've all had those. About how long do you think
21 you stayed?

22 A I would think that we probably left Johnsonville
23 somewhere in the neighborhood of 8:00 o'clock.

24 Q And from there, where did you go?

25 A Came back to my house, because I wanted to unload

FRANK WHITE -- DIRECT BY MR. HUMPHRIES

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1 my boat, and I did that. And he came in the house
2 for a few minutes, and then we left to go back to
3 his home.

4 Q And when you refer to his home, that is the home
5 that he shared with his mother and father?

6 A That's correct.

7 Q And approximately what time do you believe it would
8 have been that you dropped him off there at his
9 home?

10 A I believe it would have been somewhere in the
11 neighborhood of 9:15 to 9:30.

12 Q And was there anything about the Defendant that
13 evening that he expressed any concern over?

14 A Darrell seemed to be fine to me that day. He
15 indicated on the way home that he expected to get
16 some money, that he had done some work for someone
17 and that he expected that perhaps that person had
18 come to bring him \$30, I believe it was. At least
19 my wife informed me that it was \$30 that we were
20 talking about. I couldn't remember the amount.

21 Q Okay. Did he do anything to determine whether or
22 not that money had been delivered?

23 A He made a call once he came to my house.

24 Q And do you know who he called?

25 A He called his father.

FRANK WHITE -- DIRECT BY MR. HUMPHRIES

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1 Q And as a result of that phone call, was it apparent
2 that the money had been delivered or not?

3 A It was.

4 Q Did you have any further contact with the Defendant
5 that evening after you dropped him off at home?

6 A I did not.

7 Q And when, then, was the next time you had any
8 contact with the Defendant?

9 A That would have been the following morning after my
10 wife's call.

11 Q And you've been married for 30 years. I assume
12 that you had at least that much time to get to know
13 the Defendant and of course your wife's parents?

14 A Certainly.

15 Q And tell me, Mr. White, can you characterize the
16 relationship between David Mitchell, the father,
17 and the Defendant, Darrell Mitchell?

18 A The relationship was, as my wife put it, strained.

19 Q Thank you, Mr. White.

20 CROSS-EXAMINATION

21 BY MR. JOYE:

22 Q Mr. White, what was the relationship with Darrell
23 and his mother?

24 A I always thought it was a good relationship.

25 Q A loving, caring son?

FRANK WHITE -- CROSS BY MR. JOYE

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- 1 A Yes, sir.
- 2 Q He helped a lot in taking care of your
- 3 mother-in-law, didn't he?
- 4 A I thought it was admirable.
- 5 Q You still think that?
- 6 A I do.
- 7 Q Would it be like your brother-in-law Darrell to
- 8 leave his mother soiled overnight if he knew about
- 9 it?
- 10 A I wouldn't expect him to do that, under normal
- 11 circumstances.
- 12 Q Did you and Darrell -- Darrell was visibly shaken
- 13 that day, was he not?
- 14 A I felt that he was.
- 15 Q Did you and Darrell have an occasion to go looking
- 16 for your father-in-law's wallet?
- 17 A I think what occurred was one of the officers asked
- 18 for his identification. The wallet was not on the
- 19 body. And I had no idea where the identification
- 20 might have been. But Darrell was able to produce
- 21 it.
- 22 Q And were you with him when he produced it?
- 23 A I was nearby.
- 24 Q Did you see him in fact get the wallet?
- 25 A I saw him go to get the wallet. I didn't see where

FRANK WHITE -- CROSS BY MR. JOYE

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1 he had actually taken it from. I knew it came from
2 out of the bedroom.

3 Q Okay. So you saw him go into the bedroom and
4 produce a wallet?

5 A That's correct.

6 Q The wallet that has previously been testified by
7 Corporal Moreau, was that wallet -- was that an old
8 wallet or -- that wasn't the wallet he used, was
9 it?

10 A I have no knowledge of that wallet.

11 Q So the only wallet that you were used to seeing you
12 in fact saw Darrell Mitchell produce out of the
13 bedroom?

14 A That's correct. And I believe that that one had
15 the driver's license and social security number in
16 it.

17 Q Excuse me.

18 (Pause.)

19 Q Did you also produce -- when Darrell came out, he
20 also produced a checkbook too, didn't he?

21 A I'm sorry, I can't -- I just don't remember. I
22 think that that might be correct, but I don't
23 remember.

24 Q Do you remember seeing the checkbook that day?

25 A I'm sorry, it has been several months and I just

FRANK WHITE -- CROSS BY MR. JOYE

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1 can't bring it to my recollection. I just can't.

2 Q Thank you, Mr. White.

3 REDIRECT EXAMINATION

4 BY MR. HUMPHRIES:

5 Q You said, Mr. White, that he would not have left
6 his mother in that condition under normal
7 circumstances. What if he was under the influence
8 of crack cocaine? Is it likely that he would have
9 left his mother in those conditions --

10 MR. JOYE: I am going to object to that, Your
11 Honor.

12 Q -- if he were under that influence?

13 MR. JOYE: I am going to object to that.

14 THE COURT: He didn't go into it at that
15 point. You can do that a little later.

16 MR. HUMPHRIES: Thank you, Your Honor.

17 THE COURT: You can step down, Mr. White.

18 MR. HUMPHRIES: Well, I've got one other
19 question, Your Honor.

20 THE COURT: Oh, all right.

21 MR. HUMPHRIES: Thank you.

22 BY MR. HUMPHRIES:

23 Q The wallet, that was produced by Darrell, was it
24 not?

25 A Yes, sir.

FRANK WHITE -- REDIRECT BY MR. HUMPHRIES

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1 Q He didn't have any trouble in bringing you that
2 wallet, did he?

3 A No, sir.

4 Q Thank you.

5 RECROSS-EXAMINATION

6 BY MR. JOYE:

7 Q Again, Mr. White, where did he go to get the
8 wallet?

9 A Out of the bedroom.

10 Q Whose bedroom?

11 A My father-in-law's.

12 Q Thank you, sir.

13 A Uh-huh.

14 (Witness steps down.)

15 MR. HUMPHRIES: The State calls Ramona
16 Matthews.

17 THE COURT: All right.

18 (Witness approaches.)

19 MR. HUMPHRIES: Ms. Matthews, come around and
20 be sworn, right around here.

21 THE CLERK: If you will, ma'am, place your
22 left hand on the Bible and raise your right hand.

23 (Witness complies.)

24 THE CLERK: Do you swear to tell the truth,
25 the whole truth, and nothing but the truth, so help

1 you God?

2 THE WITNESS: Yes, I do.

3 THE CLERK: Will you step up, sit down in the
4 witness chair, and state your full name for the
5 record.

6 (Witness seated.)

7 THE WITNESS: Ramona Renee Matthews.

8 RAMONA R. MATTHEWS, after
9 being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HUMPHRIES:

12 Q Good afternoon, Ms. Matthews.

13 THE COURT: Jurors, obviously Ms. Matthews
14 does not have on orange because she plays for the
15 Tigers, all right? Just take a wild guess and say
16 she has a prior criminal record that will be
17 brought out, I think.

18 MR. HUMPHRIES: It will, Your Honor.

19 THE COURT: And I don't know the extent of her
20 record. When a person testifies, generally you can
21 bring out a criminal record. It is for you jurors
22 to decide if you feel that that prior record
23 impacts on a person's credibility. That is not to
24 say you should discount what she testifies to, it
25 is just another factor you take into account when

1 you are evaluating her testimony.

2 Okay. All right.

3 BY MR. HUMPHRIES:

4 Q Ms. Matthews, I know this is very uncomfortable for
5 you, and I appreciate that. But let's do this, if
6 you will. If you would tell the jury at this point
7 where you are presently residing.

8 A With the South Carolina Department of Corrections.

9 Q And for what conviction are you now sentenced to
10 the South Carolina Department of Corrections?

11 A Assault and battery of a high and aggravated
12 nature.

13 Q What I need to do is to go through those offenses
14 which the law says may be properly brought out just
15 so we can get that out on the table and move on,
16 okay?

17 A Okay.

18 Q Do you have a conviction from a court date in 1999
19 for a possession of cocaine first offense?

20 A Yes, I do.

21 Q Do you have a conviction from a court date in 2001
22 for trafficking in crack 10 to 28 grams first
23 offense?

24 A Yes, I do.

25 Q Do you also have a conviction from that same court

1 date for possession of less than one gram of crack
2 cocaine first offense?

3 A Yes, I do.

4 Q Do you have a conviction from 2006 for felony
5 driving under the influence involving bodily
6 injury?

7 A 2000 --

8 Q For which you received 30 days?

9 A Driving under the influence or driving under
10 suspension?

11 Q Driving -- well, the records indicate driving under
12 influence, but in any event it was a 30-day
13 offense?

14 A Yes, sir. Yes.

15 Q And then in 2007, the one that you refer to,
16 assault and battery of a high and aggravated
17 nature?

18 A Yes.

19 Q That having been said, do you know the Defendant in
20 this case, Darrell Mitchell?

21 A Yes, I do.

22 Q And how long have you known Darrell Mitchell?

23 A Since the early 90's.

24 Q And how would you characterize your relationship
25 during that period of time with Darrell Mitchell?

1 A We were friends, good acquaintances.

2 Q What I want to do, Ms. Matthews, is to take you up
3 to May 17th -- May 16th, May 17th, of 2007. Do you
4 recall that time period?

5 A Yes, I do.

6 Q Do you recall having received a call from the
7 Defendant, Darrell Mitchell, in the late evening
8 hours of the 16th?

9 A Yes, I do.

10 Q Okay. And you are entitled to tell full context of
11 that conversation, okay? You can tell it all.

12 A Do you want me to?

13 Q I want you to tell it all. I want you to tell this
14 jury what that conversation was about.

15 A Darrell Mitchell called me and asked me to bring
16 him some crack.

17 And then I told him that I would be to his
18 house as soon as I got there.

19 Well, I had to go and pick it up before I got
20 to his house, to deliver it from.

21 Q Okay. And did he have a request about what size
22 rock or -- that he wanted?

23 A He told me he wanted \$30 worth of rocks.

24 Q Okay. Now, you said you had to go pick it up?

25 A Uh-huh.

- 1 Q Are you a big drug dealer?
- 2 A No, I'm not.
- 3 Q Did you in fact have a habit yourself?
- 4 A Yes, I do -- did.
- 5 Q Did? You have been clean for awhile?
- 6 A Yes, I have.
- 7 Q Did you in fact make that delivery of a 30-dollar
- 8 rock to Darrell Mitchell?
- 9 A Yes, I did.
- 10 Q And to where did you make that delivery?
- 11 A To his parents' house.
- 12 Q Okay. And is that where he was living at the time?
- 13 A Yes, it was.
- 14 Q Okay. Do you know about what time that would have
- 15 been?
- 16 A In between 9:30 and maybe a quarter to 10:00.
- 17 Q And how do you recall that timeframe?
- 18 A Because I had to pick up my girlfriend, Terry
- 19 Jordan Brown, from her job at 10:00 o'clock.
- 20 Q Okay. And so it was just before that?
- 21 A Uh-huh.
- 22 Q Okay. And when you arrived at the residence, did
- 23 you go inside?
- 24 A No, I didn't.
- 25 Q Okay. Tell the jury how it transpired.

1 A When I got there, I pulled in the front of the
2 house, and I called him on my cell phone and told
3 him to come outside, and which he did, he came to
4 my car.

5 When he got to my car, he gave me \$27. And I
6 told him that he told me he had \$30. And I fussed
7 at him a little while. And I ended up giving it to
8 him. He said he would get me later.

9 Q Let me ask you, when he came out of the house that
10 time, did you see what door he came out of?

11 A The first time?

12 Q Yes?

13 A He came out the side door.

14 Q Okay. That door right there beside the carport?

15 A Yes, sir.

16 Q Okay. Was that the last time you heard from
17 Darrell Mitchell that evening/early morning?

18 A No.

19 Q There was another time?

20 A Yes, it is.

21 Q Tell the jury about that.

22 A He called me, must have been about 1:00, 1:30
23 maybe, and told me he wanted to buy a 60, no a 50.
24 He said he wanted to get a 50.

25 Q What did you tell him?

1 A I told him, I said, are you sure you got \$50, I
2 said, because you know you didn't give me all my
3 money last time.

4 He said, yeah, I'm sure I got it, I got your
5 money. He said, and I got your \$3.

6 And then he asked me to bring him a pack of
7 cigarettes and a lighter.

8 Q Okay. Did you do that?

9 A Uh-huh. I left from where I was. I didn't have to
10 pick it up that time because I was with the person
11 who had it. So I left from where I was. I went to
12 the store, got his cigarettes, got a lighter, and
13 then I left from the store and I went to his house.
14 I pulled in the front like I did the first time.

15 Q Let me ask you, about what time was that?

16 A About 2:00, 2:30.

17 Q Okay. That morning?

18 A Uh-huh.

19 Q Okay. Now, what door did he come out of this time?

20 A He came out the front door.

21 Q And did he approach your vehicle, did you get out?

22 A No, he came to the vehicle. I never got out.

23 Q Okay. And how did that transaction go?

24 A He gave me the money. Well, I gave him the product
25 and he gave me the money. And I gave him his

1 cigarettes and lighter.

2 Q What did he give you?

3 A I believe he gave me \$60.

4 Q \$60?

5 A Uh-huh.

6 Q That would pay for the 50-dollar rock, \$3 he owed
7 you, cigarettes and lighter?

8 A Yes, sir.

9 Q And this would have been five hours, almost five
10 hours since the first transaction?

11 A Uh-huh, five, yes.

12 Q Okay. Now, did you have any other calls from the
13 Defendant?

14 A No.

15 Q The rest of that evening?

16 A No, I didn't.

17 Q Or early morning? Okay. Did there come a time
18 when you were aware that law enforcement wanted to
19 speak with you?

20 A Yes, the next day. I mean, that next morning, the
21 morning.

22 Q Okay. And how did that word get to you?

23 A Well, when I woke up I checked my cell phone and I
24 had a message from Lieutenant Jordan saying that I
25 needed to contact him, it was very important.

1 And my next message was from my daughter
2 saying Lieutenant Jordan had been to her job and I
3 need to call her. So I called her first and she
4 told me to call him. And that is what I did.

5 Q You called him? After that call, did you come down
6 to law enforcement and provide them the same
7 information you told the jury today?

8 A Yes, sir. I got there about maybe 6:00 o'clock.

9 Q Now, in providing that information, did law
10 enforcement -- well, let me ask you this. Was that
11 charge for which you were later convicted, was that
12 pending at the time this happened?

13 A Yes, it was.

14 Q Okay. Did law enforcement or anybody in the
15 Solicitor's Office, for that matter, promise you
16 anything or even mention those charges in relation
17 to your cooperation that night?

18 A No, they didn't.

19 Q And from that evening, when you told law
20 enforcement that information, how long was it
21 before some other official talked with you about
22 this particular case?

23 A Last month.

24 Q Who was that?

25 A Who was it?

1 Q Uh-huh?

2 A It was you and Investigator Davis and the gentleman
3 sitting right there.

4 Q Corporal Moreau. And when we arrived to see you,
5 were you surprised?

6 A Very much so.

7 Q Now, Ms. Matthews, did you plead guilty to the
8 offense of assault and battery of a high and
9 aggravated nature in this courthouse?

10 A Yes, I did.

11 Q And at the time you pled guilty to that offense,
12 was there any mention or any consideration given to
13 you by the Solicitor's Office for your corporation
14 in this case?

15 A No, it wasn't.

16 Q No mention of it?

17 A No mention of it at all.

18 Q And, Ms. Matthews, is there anything that the
19 Solicitor's Office can do for you now in your
20 present situation as a result of your testifying
21 today?

22 A No, it is not.

23 Q Thank you, ma'am. Answer any questions the Defense
24 may have of you.

25 CROSS-EXAMINATION

1 BY MR. JOYE:

2 Q Ms. Matthews, you have known Darrell a good long
3 time, haven't you?

4 A Yes, I have.

5 Q Darrell -- in fact, you used to live in that house,
6 didn't you?

7 A Yes, I stayed there for about a week.

8 Q And that was because you were dating his brother?

9 A Yes, and I didn't have anywhere to stay at the
10 time.

11 Q And you know Darrell pretty well, don't you?

12 A Pretty much.

13 Q He kind of has a little bit of a nervous
14 disposition, doesn't he?

15 A Yes.

16 Q Under normal circumstances?

17 A Uh-huh.

18 Q When you went to that house -- and I think you said
19 maybe 2:00, 2:30 in the morning?

20 A Uh-huh.

21 Q Did Darrell seem visibly upset?

22 A Not at all.

23 Q He was normal Darrell, wasn't he?

24 A Uh-huh, that I know of.

25 Q He didn't tell you anything like -- the first

1 time -- that I don't have enough money to pay you,
2 he just shorted you about three bucks and said he
3 would get you next time, right?

4 A Uh-huh, yes, sir.

5 Q He didn't say he was out of money?

6 A No, he didn't.

7 Q And you know Darrell does some odd jobs and things
8 for money?

9 A Yes, sir, I do.

10 Q Now, law enforcement, when you went to speak with
11 law enforcement, they immediately arrested you for
12 distribution of crack cocaine?

13 A No.

14 Q They didn't arrest you? You just told them that
15 you sold crack cocaine on two occasions that -- the
16 night before and they didn't arrest you for it?

17 A I didn't consider myself selling it. I picked it
18 up for him. He paid me back.

19 Q You gave him drugs; he gave you money?

20 A Uh-huh.

21 Q That would be a drug deal, would it not be?

22 A If that is the way you look at it.

23 Q And you are not a big drug dealer, are you?

24 A No, sir.

25 Q Now, you were convicted, however, for trafficking

1 more than 10 grams but less than 28 grams of crack
2 cocaine, correct?

3 A That was back in 2000 also.

4 Q Way back then?

5 A Uh-huh.

6 Q You weren't originally charged for assault and
7 battery of a high and aggravated nature, were you?

8 A No, I wasn't.

9 Q You were charged with assault and battery with
10 intent to kill?

11 A Yes, I was.

12 Q But you pled down to assault and battery of a high
13 and aggravated nature?

14 A Yes, I did.

15 MR. JOYE: Beg the Court's indulgence.

16 (Pause.)

17 Q Thank you, ma'am. No further questions.

18 A You are welcome.

19 REDIRECT EXAMINATION

20 BY MR. HUMPHRIES:

21 Q I just want to be clear, Ms. Matthews. Are you in
22 the habit of taking less money than the asking
23 price for drugs?

24 A Yes.

25 Q In this case you show up with a 30-dollar rock and

1 had he had \$30, would you have insisted on the \$30?

2 Do you understand my question?

3 A If he needed -- if he had \$30 and said he needed \$3
4 and gave me \$27, I would have took the \$27.

5 Q But he didn't tell you that, did he?

6 A No.

7 Q He just said, this is what I got?

8 A Uh-huh.

9 MR. JOYE: Objection. Nevermind. I'll ask a
10 question.

11 RECROSS-EXAMINATION

12 BY MR. JOYE:

13 Q Did he say, this is what I got, or is that what
14 Mr. Humphries said he said?

15 A That is what he had.

16 Q He just said, I'll get you later. And he didn't
17 say, I don't have but \$27, did he?

18 A No.

19 Q He just said, I'll get you later?

20 A He said, I got \$27, I'll get you later.

21 Q Now, it wasn't any big deal to you because you
22 bought \$60 worth of crack that night, right?

23 A Exactly.

24 Q And, in fact, you got 30 for you and 30 for?

25 A Him. And my money back. Well, except for \$3,

1 until later.

2 Q Thank you, ma'am. Nothing further.

3 THE COURT: You can step down.

4 (Witness steps down.)

5 MR. HUMPHRIES: Your Honor, we may have a
6 matter of law to take up at this time. Not in
7 relation to this witness.

8 THE COURT: Isn't this your last witness for
9 the day?

10 MR. HUMPHRIES: Yes, Your Honor. And she can
11 be excused.

12 (Witness excused.)

13 THE COURT: So, jurors, they moved faster than
14 they anticipated. Do you have witnesses in the
15 morning scheduled?

16 MR. HUMPHRIES: Your Honor, we just -- it is a
17 matter of law. It won't take very long. If we
18 could just take that up before we excuse the jury
19 for the evening.

20 THE COURT: Just step back to the jury room.
21 (WHEREUPON, the jury retires to the jury
22 room at 4:00 p.m.)

23 THE COURT: Okay, Mr. Humphries.

24 MR. HUMPHRIES: Your Honor, I had preserved
25 the issue of whether or not I intended to attempt

1 to introduce the Defendant's statement until after
2 this witness testified, depending on the
3 cross-examination. But, basically, the Defendant
4 in speaking with law enforcement that following
5 day -- and of course, I would not bring this up to
6 the jury, but after a polygraph examination, which
7 he showed deception, he was questioned further.
8 And at that time he -- his statement corroborates
9 Ms. Matthews' in terms of the two drug sales.

10 That statement, quite frankly, has a lot of
11 things which I believe are probably prejudicial to
12 him and probably not relevant. However, I believe
13 those two -- those statements regarding those drug
14 sales are relevant.

15 And what I propose is to elicit those
16 statements from the investigator, that is, that he
17 purchased crack cocaine from Ms. Matthews. And his
18 statement closely approximates those times.

19 Now, there are other things in those
20 statements, there is no question about it, which
21 are distasteful and, again, I believe probably not
22 relevant to determining the truth of this matter.

23 But, I say this, I believe that if I introduce
24 that statement, then clearly, under remainder of
25 writings or any such theory that the defense can go

1 into the rest and say anything, if they wish, not
2 me, but them. It would be up to them.

3 THE COURT: Go into what?

4 MR. HUMPHRIES: Well, whatever is contained
5 within that statement, I guess is what I'm saying.
6 It is the oral summary as in Lee Davis's report.

7 So that is where the -- that is the dilemma
8 I'm in. I intend to submit the statement as
9 relates to the corroboration of those two drug
10 sales.

11 If they want to stipulate, and I'm just
12 suggesting that, we can do that by stipulation. If
13 they do not wish to do that and wish me to put him
14 up and go into the statement in full, I could do
15 that. I'm just telling the Court I don't believe
16 some of it is relevant and certainly prejudicial to
17 the Defendant.

18 THE COURT: Well, I haven't read it and don't
19 know anything about it. What about it? You'll
20 probably stipulate?

21 MR. JOYE: Yes, sir, Judge. I need to
22 advise -- my client probably doesn't understand
23 what we're doing here, and I need to take a minute
24 or two to talk to him about it.

25 (Pause.)

1 MR. HUMPHRIES: These are the portions of the
2 statement I intend to introduce by stipulation.

3 That the Defendant admitted that he had smoked
4 crack on two occasions on the evening of the 16th.

5 That he stated that he purchased crack cocaine
6 shortly after 2130 hours on the evening of the
7 16th, which is 9:30. And I would explain that to
8 the jury. /

9 And that he also said at approximately 2:30 in
10 the morning he stated that he called Ramona
11 Matthews to bring him more crack cocaine.

12 That's all I intend to introduce.

13 THE COURT: All right.

14 MR. JOYE: Absolutely, Your Honor, we'll
15 stipulate to that.

16 MR. HUMPHRIES: And I guess, Your Honor, I
17 will just publish it to the jury and I will explain
18 to them that it is a stipulation by the State and
19 the Defense and then you may want to -- you do what
20 you want to do.

21 THE COURT: I'm going to tell them that we
22 agreed rather than publishing the statement that he
23 gave, relevant portions are stipulated to as
24 follows. Mr. Humphries is going to read that.

25 MR. HUMPHRIES: Very good. Thank you, Your

1 Honor.

2 THE COURT: And how many more witnesses do you
3 have?

4 MR. HUMPHRIES: Your Honor, I've only got one
5 more, and that is the doctor, and she will be here
6 at 9:15 in the morning.

7 THE COURT: All right, bring the jury back in.
8 (WHEREUPON, the jury came into open
9 court at approximately 4:08 p.m.)

10 THE COURT: Jurors, there is one small bit of
11 evidence that the State wants to put in.

12 There was a statement taken from the Defendant
13 that basically corroborates what Ramona Matthews
14 said, plus other things. They have agreed just to
15 let Mr. Humphries read what the Defendant said
16 rather than go through all that about were you
17 Mirandized, and so forth, and so forth.

18 All right.

19 MR. HUMPHRIES: Thank you, Your Honor.

20 And just for context, this statement would
21 have occurred the day following the murder. It was
22 given to law enforcement.

23 And at that time the Defendant, Darrell
24 Mitchell, stated to law enforcement that he smoked
25 crack on two occasions on the evening of the 16th.

1 He further stated that he purchased crack
2 cocaine shortly after 9:30 on the evening of the
3 16th.

4 And that approximately 2:30 in the morning he
5 stated that he called Ramona Matthews to bring him
6 more crack cocaine.

7 Thank you, Your Honor.

8 THE COURT: All right, now, jurors, we are
9 going to break till in the morning. We'll start
10 back at 9:15. But we will start at 9:15 in the
11 morning.

12 And don't talk about the case. Don't read
13 anything about it. We had TV cameras in here. I
14 don't know, it may or may not be on TV. And don't
15 look up things on the internet about like
16 circumstantial evidence, and stuff like that. You
17 have to decide the case based on what transpires in
18 this courtroom, okay?

19 So have a good night. See y'all in the
20 morning at 9:15.

21 (WHEREUPON, the jury is excused for the
22 day at 4:10 p.m.)

23 THE COURT: Let me know when they are all out.

24 (Pause.)

25 THE BAILIFF: They are all out, but the door

1 is not closed.

2 (Door closed.)

3 THE BAILIFF: All right, sir, everyone is out.

4 THE COURT: All right, Mr. Mitchell?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: It is just a little premature, but
7 here is the situation. The State represents they
8 have one more witness, and that is going to be some
9 doctor from the Medical University that is going to
10 testify.

11 After they have done that, you have the right
12 to proceed with a defense. You can testify or not.
13 I'm not suggesting that you testify or that you
14 don't. There are good reasons for testifying and
15 good reasons not. You have the right to call
16 witnesses and put up a defense.

17 You are represented by Mr. Joye, and since
18 we've got some time you need to discuss it with him
19 in some detail so it won't be just dumped on you
20 tomorrow because as soon as that witness is
21 through, you either have to go forward or not.

22 You have got all night to think about it. It
23 is an important decision. And if you elect not to
24 testify and you wanted me to instruct the jury they
25 couldn't even talk about your failure to take the

1 stand, I'd be happy to do that.

2 If you take the stand and testify, of course
3 you are subjected to cross-examination and they can
4 bring out any prior record you have, if any, but I
5 don't know.

6 But, anyway, those are the factors that you
7 need to talk over with your attorney before in the
8 morning.

9 MR. HUMPHRIES: Your Honor, would you like me
10 at this time to provide the prior record that the
11 State would intend to impeach him on so he could
12 consider that?

13 THE COURT: Yes, just tell us that so he will
14 be thinking about it.

15 MR. HUMPHRIES: In 2006 there was a conviction
16 of forgery of a value of \$5,000 or more. He was
17 convicted and received a sentence of 5 years
18 suspended to 30 days and probation for 5 years.

19 Also, one month later, he received a
20 conviction, forgery, \$5,000 or more -- actually, I
21 believe that is going to be the same court date, so
22 that is two, three -- he has three forgeries from
23 that day, all \$5,000 or more.

24 Let me doublecheck to make sure that is the
25 extent of it. And I believe it is. So those would

1 be the offenses that the State would intend to use
2 for impeachment.

3 THE COURT: And of course, Mr. Mitchell, it
4 would be the same thing. If they brought that out,
5 I would tell the jury they just consider that on
6 whether they feel it impacts your credibility. It
7 does not go to prove that you committed a crime.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: That is just something to think
10 about it.

11 Anything else I can help y'all with?

12 MR. HUMPHRIES: No, sir.

13 MR. JOYE: No, sir.

14 MR. HUMPHRIES: Thank you, Your Honor.

15 THE COURT: Okay. We are at ease.

16 (Pause.)

17 THE COURT: I have no problem sending the
18 indictment back. If somebody wants to type up a
19 form, I'd be happy to do that too. It is whatever
20 y'all want to do.

21 MR. HUMPHRIES: I don't have a preference,
22 Your Honor.

23 MR. JOYE: I don't either, Judge.

24 MR. HUMPHRIES: The indictment suits me.

25 (Pause.)

1 THE COURT: Debbie, he is going to put
2 something on the record with the consent of the
3 Solicitor.

4 MR. JOYE: I did not object, Madam Court
5 Reporter, to that my objection as to the pretrial
6 matter on res gestae and 404(b) prior bad acts.
7 The stipulation that we just put on the record was
8 under that continuing objection, but knowing that
9 it was in then I wanted to make sure that I
10 preserved, with the consent of the Solicitor --

11 MR. HUMPHRIES: That's correct.

12 MR. JOYE: -- for appeal that were
13 Mr. Mitchell to be convicted, that it would show a
14 contemporaneous objection under the res gestae and
15 Lyle ruling prior to trial.

16 THE COURT: All right.

17 MR. JOYE: Thank you, sir.

18 THE COURT: In the morning.

19 (WHEREUPON, court adjourned for the day.)

20 SEPTEMBER 10, 2008

21 THE COURT: Everybody ready?

22 MR. HUMPHRIES: Yes, sir.

23 MR. JOYE: Yes, sir.

24 THE COURT: Well let's bring them in.

25

1 (WHEREUPON, the jury came into open
2 court at approximately 9:24 a.m.)

3 THE COURT: All right, the jurors are present.
4 You may proceed.

5 MR. HUMPHRIES: Thank you, Your Honor. May it
6 please the Court? The State calls Cynthia Schandl.

7 THE COURT: Okay, Dr. Schandl, come around.
8 (Witness approaches.)

9 THE CLERK: If you will, place your left hand
10 on the Bible and raise your right hand.

11 (Witness complies.)

12 THE CLERK: Do you swear to tell the truth,
13 the whole truth, and nothing but the truth, so help
14 you God?

15 THE WITNESS: Yes, I do.

16 THE CLERK: Please be seated and state your
17 full name for the record.

18 (Witness seated.)

19 THE WITNESS: My name is Cynthia Anna Schandl,
20 S-C-H-A-N-D-L.

21 CYNTHIA A. SCHANDL, after
22 being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HUMPHRIES:

25 Q Dr. Schandl, tell the jury, if you will, how you

1 are employed.

2 A I am currently a forensic pathologist at the
3 Medical University of South Carolina. A forensic
4 pathologist is a medical doctor who has specialized
5 training in the field of pathology and further
6 training also in the field of forensic pathology.

7 Q Doctor, you referred to training. Please, if you
8 will, give the jury the benefit of your education
9 and training as relates to forensic pathology.

10 A Yes. In order to become a forensic pathologist,
11 first you have to have a bachelor's degree from
12 college, and then you go to medical school for four
13 years and get your medical degree, and then you
14 train as a pathology resident in specialized
15 pathology training, anatomic and clinical
16 pathology. That is an additional four years. And
17 after completing that residency training, there is
18 an additional one year of forensic pathology
19 fellowship training.

20 So after completing all of that training, then
21 you are eligible to take board examinations. There
22 is a national board examination for all of those
23 forms of pathology, anatomic pathology, clinical
24 pathology and forensic pathology, which I have
25 taken and passed.

CYNTHIA A. SCHANDL -- DIRECT BY MR. HUMPHRIES

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1 And at this point I have been faculty at the
2 Medical University for over four years.

3 Q And have you been offered and accepted as an expert
4 in the field of forensic pathology in courts of
5 record in this state?

6 A Yes, I have.

7 MR. HUMPHRIES: Your Honor, at this time we
8 would offer Dr. Schandl as an expert in the field
9 of forensic pathology.

10 MR. JOYE: Absolutely, Your Honor.

11 THE COURT: Okay. Qualified.

12 BY MR. HUMPHRIES:

13 Q Dr. Schandl, let's do this, to begin with. If you
14 will, tell the jury what an autopsy is and
15 basically the protocol that you go through in order
16 to perform an autopsy.

17 A An autopsy is an examination of an individual who
18 has died. So basically we are -- the coroner --
19 this is a coroner's state, so the coroner will let
20 us know that an individual has died and that they
21 have requested an examination of that body.

22 Then they send that to us or to another
23 forensic pathology office for examination.

24 So when we receive the body, first we will
25 look at the body as it comes to us, whether it is

1 clothed or unclothed, make note of that, take
2 photographs, and we will take the clothing off, if
3 the person should be clothed, look at the clothing,
4 see if there is anything of interest in the
5 clothing, any defects, any blood stains, those
6 sorts of things. So we will -- then document the
7 clothing.

8 And then we'll go to the body and do what we
9 call an external examination where we look
10 externally for those identifying features, such as
11 hair color, hair length, eye color, scars, as well
12 as evidence of trauma. So we'll do all that first,
13 just external examination. That is part of the
14 autopsy.

15 After we have done all of that, then we will
16 begin what many people think of as the autopsy,
17 which is the internal examination where a wide
18 incision is performed and the internal organs are
19 exposed and dissected, where, again, we're looking
20 for any trauma or any natural disease in all the
21 internal organs.

22 So that in total, as well as toxicological
23 examination of blood and urine, if available,
24 comprise the autopsy.

25 Also during the autopsy we take samples of the

1 organs and look at those later on under the
2 microscope to confirm our findings, first, what we
3 see with our eyes, and further make diagnosis.

4 So that whole entire process can take a month
5 on even six weeks, depending on when tests come
6 back, and so forth.

7 So the autopsy, although the first part of it,
8 the external and internal examination are completed
9 within a couple of hours, three hours, depending
10 upon the complexity of the case, the report can be
11 generated within about a month to six weeks,
12 depending, again, on when we get tests back.

13 So all of those things together make up the
14 autopsy.

15 Q And let me ask you, Dr. Schandl, were all of those
16 things done in connection with the autopsy of the
17 body of David Mitchell, the victim in this case?

18 A Yes, sir, all of those things are done in each of
19 our cases, including the autopsy of David Mitchell.

20 Q And as a result of that process or that protocol,
21 did you ultimately arrive at some findings or
22 diagnosis in connection with the autopsy?

23 A Yes, we certainly did. In the case of David
24 Mitchell I found that he was stabbed eight times,
25 and he also had a cut on the side from a

1 superficial sharp wound to his thumb.

2 Of those eight stab wounds, one of them went
3 into the heart and caused a great deal of bleeding.
4 That is the wound that I would consider the cause
5 of death.

6 One of the functions of a forensic pathologist
7 is to determine what caused death. And in my
8 opinion in this case, it was one of these eight
9 stab wounds, the one that did actually perforate
10 his heart, perforated David Mitchell's heart.

11 Now, he had, again, eight stab wounds. This
12 was one of them. Two of the other stab wounds
13 entered his abdominal cavity and perforated his
14 liver. One of the stab wounds entered his chest
15 cavity. The remaining stab wounds did not enter
16 body cavities, but just went into the subcutaneous
17 tissue and back and so did not then damage organs.

18 So those were the eight stab wounds. One was
19 to the back and the remaining six -- there were
20 eight all together. One was to the back, six were
21 to the front, the chest and abdomen, and one was
22 through the left arm.

23 Q Doctor, let me ask you -- this has already been
24 admitted without objection -- do you recognize this
25 diagram?

1 A Yes. This is a diagram -- during our performance
2 of the external examination, we will make a diagram
3 to demonstrate the findings. And this is a diagram
4 of the traumatic findings on David Mitchell.

5 MR. HUMPHRIES: And, Your Honor, for the
6 record, this is State's Exhibit 41 in evidence.

7 I would ask at this time that the witness be
8 allowed to step down.

9 THE COURT: She can step down.

10 (Witness steps down.)

11 Q And, Doctor, if you'll come over here with me, and
12 keeping your voice up and speaking towards the
13 court reporter, I'd like to go through your
14 findings. And if you will stand on this side.

15 And if you will, in the order you feel most
16 pertinent, go through your findings.

17 MR. HUMPHRIES: Can everybody see the diagram?

18 A So on this diagram, like I mentioned, this is a
19 diagram that I performed during the external
20 examination. And I have drawn on here on the
21 cartoon a general -- the general area of where the
22 stab wounds -- where the injuries are on the body
23 on this diagram.

24 And they are numbered just arbitrarily from
25 one to however many there are. In this case, there

1 are ten defects to the body, and so they are
2 numbered from one to ten.

3 And if we can just go through from one to ten
4 just in a numerical.

5 Q Fine. And let me ask you, just as a practical
6 matter, the fact that they are numbered one through
7 ten, does that signify anything as to the order in
8 which these wounds were sustained by the victim?

9 A No. I have absolutely no information as to which
10 injury occurred when. The order of the injuries I
11 cannot determine from my examination.

12 So this numbering is just for the benefit of
13 the paperwork so that we know when we're talking
14 about Injury Number One where to look.

15 So when I describe the injuries as Number One
16 or Number Two, everybody knows what I'm talking
17 about, okay?

18 Q Thank you, Doctor.

19 A So Number One was to the back. This injury did
20 perforate into the chest cavity.

21 Wound Number Two is the one that I described
22 to the left thumb. It was superficial. We
23 describe sharp wounds as either stab wounds if they
24 are deeper than they are wide on the skin, or
25 incise wounds if the wound on the skin is wider

1 than the wound is deep. So those are the two
2 descriptions.

3 All of them are stab wounds with the exception
4 of the one to the thumb, which is what we call an
5 incise wound because, again, the wound to the skin
6 on the surface is longer than the wound is deep.

7 So that is all those two words mean.

8 Q Let me ask you too, Doctor, as far as that
9 particular wound on the thumb, is that wound also
10 consistent with what has often been determined as a
11 defensive wound?

12 A We call any wounds to areas of the body that an
13 individual might be using for a defense as defense
14 wounds. It is sort of just another way to call it.

15 So in this case, since it is to a hand, it
16 could be a forearm, it could even be a foot, we can
17 call this a defense wound. It is consistent with
18 somebody attempting to defend themselves, just by
19 where it is on the body. So that is what he is
20 referring to as a defense wound. And it is
21 consistent with that since it is on the hand.

22 Q Thank you, Doctor.

23 A Now, the remaining ones, Number Three is actually
24 the wound that I'm considering the cause of death.
25 The remaining wounds are contributory. I cannot

1 tell you that any one in particular would not have
2 killed him. However, I can tell you that this
3 wound is a fatal wound. Wound Number Three does go
4 into the heart. And having gone into the heart,
5 caused a great deal of bleeding.

6 If you think in a two liter bottle of coke,
7 for example, 1.6 liters, so almost that whole two
8 liter bottle of coke, that much blood was into the
9 chest cavity, so it caused that much bleeding.
10 That is enough to kill a person. So Number Three
11 is the one that went into the heart.

12 Number Four didn't go into the chest cavity.
13 It is just into the soft tissues, into the
14 subcutaneous tissue beneath the skin.

15 Number Five went into the belly cavity and
16 struck the liver.

17 Number Six did not go into any cavity, so,
18 again, one of those wounds that went into the
19 subcutaneous tissue and to the back.

20 Number Seven is another one that hit the
21 liver. So Five and Seven hit the liver. Between
22 the two of those, there was a small amount of
23 bleeding into the abdomen, 50 milliliters. When we
24 compare that to how much was in the chest, which is
25 1.6 liters, there is 16 hundred milliliters. It is

1 not a lot of bleeding. But that is not unusual
2 because often the vessels to the liver will
3 constrict when there are other things going on. So
4 it doesn't give you a very good indication of how
5 much bleeding he would have had had he lived
6 longer. So Number Five and Seven did hit the
7 liver.

8 Number Eight is another wound that did not go
9 into any cavities. It was into the fat of the
10 belly. Okay?

11 And then there is -- since we have Number One
12 through Ten, Number Nine is the one to the left
13 arm. And the reason that there is ten wounds is
14 because Number Nine went all the way through the
15 arm, so that makes a second wound. Okay?

16 So just to recap, we have eight stab wounds,
17 one to the back, six to the chest and abdomen, and
18 then one that goes all the way through the arm.
19 And then we have the incised wound or the
20 superficial wound, if you like, to the thumb that
21 is consistent with a defense wound.

22 And one more time, the one that is fatal for
23 certain is Wound Number Three, which actually
24 entered into the heart and caused a great deal of
25 bleeding.

1 Q Thank you, Doctor. If you'll take the stand.

2 (Witness returns to the witness stand.)

3 Q And finally, Doctor, to a reasonable degree of
4 medical certainty, do you have an opinion as to the
5 cause of death?

6 A Yes, sir, I do.

7 Q And what is that opinion?

8 A Right cardiac ventricular perforation due to stab
9 wound to the left chest.

10 Q And, again, to a reasonable degree of medical
11 certainty, do you have an opinion as to the manner
12 of death?

13 A Yes. The manner of death in this case is a
14 homicide. We have several choices: Natural
15 homicide, suicide, accident, and undetermined.

16 And in this case, where one person's actions
17 lead to death of another person, that defines it as
18 a homicide.

19 Q Thank you. I don't have any further questions.
20 Please answer the questions of the Defense.

21 CROSS-EXAMINATION

22 BY MR. JOYE:

23 Q Two quick questions, Doctor, or one quick question.
24 How tall was Mr. Mitchell?

25 A Mr. David Mitchell was approximately 5 foot 6 and a

1 half inches.

2 Q And weight?

3 A And he weighed approximately 180 pounds.

4 Q Thank you ma'am. Nothing further.

5 MR. HUMPHRIES: That's all, Your Honor.

6 THE COURT: You can step down. And I guess
7 you are free to go back to Charleston.

8 THE WITNESS: Yes, sir.

9 MR. HUMPHRIES: Please. We got her up pretty
10 early this morning.

11 (Witness steps down and is excused.)

12 MR. HUMPHRIES: Your Honor, at this time, the
13 State in the case of The State versus Darrell
14 Mitchell rests.

15 THE COURT: Okay, jurors, I know you just got
16 out, but when the State puts up all their evidence
17 we have to go over some things with everybody. So
18 it will take a little while. If y'all would just
19 step out. And don't talk about the case quite yet.

20 (WHEREUPON, the jury retires to the jury
21 room at 9:39 a.m.)

22 MR. JOYE: Your Honor, at this time I would
23 move to renew any and all previous objections.

24 Secondly, I would move for a directed verdict
25 in favor of Darrell Mitchell and the Defense in

1 that there is no evidence tying Darrell Mitchell to
2 this murder.

3 At very best, you have a theory based on the
4 testimony of a witness against him and his own
5 confession as to the fact that there was -- he paid
6 \$27 to \$30 worth of crack cocaine. No one
7 established that that was all the money he had or
8 anything else. And that also that he then buys
9 more crack cocaine later on in the night. And the
10 only evidence that there is, if it -- I don't even
11 think there is any evidence that he did any of
12 this -- the only -- we've got a crime scene, we've
13 got no evidence pointing to Darrell Mitchell, and
14 we absolutely have nothing more than a theory of
15 their case, with no evidence to support that
16 theory.

17 THE COURT: They don't even have a weapon, do
18 they?

19 MR. JOYE: No, sir.

20 THE COURT: Well, unfortunately, I can't grant
21 it. Circumstantially, three people are in the
22 house. The mother is obviously incapacitated and
23 couldn't have done anything. He is up at 2:00 in
24 the morning. It is a small house. The father,
25 from the testimony of the last witness, resisted to

1 some position. And he had opportunity and motive,
2 circumstantially, in this case. And I recognize
3 there are flaws in all that. But, anyway, that is
4 up to the jury, so we will let it go.

5 MR. JOYE: Thank you, Your Honor.

6 THE COURT: Now, Mr. -- have you discussed
7 with Mr. Mitchell whether he is going to testify or
8 not?

9 MR. JOYE: I have, Your Honor, at some great
10 depth. My understanding is he does not wish to
11 testify.

12 THE COURT: All right, Mr. Mitchell, that is
13 your decision, you know. You had all night to
14 think about it. There are good reasons for
15 testifying and good reasons for not, you know. I
16 don't have to --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: -- go over that. You talked it
19 over with Mr. Joye in detail, and you have elected
20 not to testify?

21 THE DEFENDANT: That's right, Your Honor.

22 THE COURT: What about any other evidence?

23 MR. JOYE: No, Your Honor. And just for the
24 sake of the jury, I would go ahead and renew
25 objections and my motion for directed verdict so we

1 don't have to bring them in --

2 THE COURT: Right.

3 MR. JOYE: -- and do that and then redo it.

4 THE COURT: Okay. And if you don't put up any
5 evidence, of course, you get to close, I guess.

6 MR. JOYE: Yes.

7 THE COURT: That is an advantage for not
8 testifying, you know. All right.

9 So how long do y'all anticipate arguing?
10 Mr. Humphries?

11 MR. HUMPHRIES: Twenty-five, 30 minutes.

12 MR. JOYE: I'd say that is reasonable. I
13 don't know that I can go that long.

14 Judge, the only thing is, and the only other
15 issue that I have is I would like an opportunity to
16 review whatever circumstantial evidence charges the
17 Court is going to give.

18 THE COURT: I'm going to give them a very --
19 if you have one, I'll be happy to consider it.

20 MR. JOYE: I'm just looking at Judge
21 Anderson's book. I mean, I think that that pretty
22 much nails it down, but I just --

23 THE COURT: I am going to just --

24 MR. JOYE: I don't know what your normal
25 custom is, and I just wanted to have the

1 opportunity to review that at this time.

2 THE COURT: I'm just -- I will just, if that
3 makes you happy, I'll just read direct and
4 circumstantial evidence charge from Anderson's
5 book.

6 MR. HUMPHRIES: Well, Your Honor, I would --
7 if it is consistent with Rippon. I just need to
8 look at it.

9 THE COURT: I know. There it is right there.

10 MR. JOYE: Sure.

11 THE COURT: Page 11, I think.

12 MR. JOYE: Sir?

13 THE COURT: Page 11?

14 MR. JOYE: Yes, sir.

15 THE COURT: Just a wild guess.

16 MR. HUMPHRIES: I don't have any problems with
17 that.

18 THE COURT: I mean, I can amplify it, but if
19 you feel comfortable with just that, that is all I
20 will tell them.

21 MR. HUMPHRIES: The only question I've got
22 with regard to the charges is I just don't know
23 what the Court's position is on the reasonable
24 doubt charge, what charge.

25 THE COURT: I only tell them that it is the

1 kind of doubt that causes an ordinary person to
2 hesitate to act. I don't use reasonable, like you
3 don't use a definition in the definition.

4 MR. HUMPHRIES: Well, I would request that you
5 charge Victor versus Nebraska, or some version of
6 that charge.

7 THE COURT: I'm only going to charge that. So
8 you can argue whatever you like.

9 MR. HUMPHRIES: That wouldn't do much good,
10 would it, Judge?

11 THE COURT: I don't know. I don't know. I
12 just think you get in trouble expanding it,
13 historically, so I'm not going to get in trouble.
14 That is all I'm going to tell them. All right?

15 Any other charges anybody wants?

16 MR. HUMPHRIES: No, sir. I would request use
17 of a deadly weapon.

18 THE COURT: Yes, we've got that. I think,
19 Mr. Joye, I have to charge mere presence?

20 MR. JOYE: Your Honor --

21 THE COURT: Or do you not want me to mention
22 it?

23 MR. JOYE: Well, if Your Honor is going to --
24 I believe if you have to -- if you charge mere
25 presence, then you are going to probably have to

1 charge hand of one is hand of all. You don't think
2 so?

3 THE COURT: I'm just asking.

4 MR. JOYE: Well, I think -- Mr. Humphries and
5 I have spoken about this, and I know he is going to
6 ask --

7 THE COURT: There is no evidence that there
8 was any other hand there other than the lady was
9 there maybe, could have done it, right?

10 MR. JOYE: If we can get a mere presence
11 charge without the State getting a hand of one is
12 hand of all charge, then I'm all for it. But if it
13 is a tit for tat, I would rather have neither.

14 MR. HUMPHRIES: My position is if there is a
15 mere presence charge, then it should be accompanied
16 with something that would -- some charge that would
17 relate to another perpetrator, which would give me
18 the opportunity to use the theory of hand of one is
19 hand of all, because that is typically juxtaposed
20 that way. So that is my position.

21 THE COURT: All right. So you don't want it,
22 in other words?

23 MR. JOYE: Judge, if we're going to charge
24 mere presence --

25 THE COURT: That is up to you.

1 MR. JOYE: I guess my question is, if we do
2 get the mere presence charge, are we also going to
3 get the hand of one is hand of all?

4 THE COURT: I'm afraid so, don't you think?

5 MR. JOYE: I don't believe I want it, Judge.

6 THE COURT: All right.

7 MR. HUMPHRIES: I don't think there is
8 anything else. I just need a couple of minutes to
9 get the exhibits ready. I'm ready to go.

10 THE COURT: Well, Doris, why don't you take
11 them a lunch menu? We are going to start back at
12 10:00 o'clock roughly. Y'all argue for about an
13 hour, give them another 10-minute or 15-minute
14 break, then charge them, and then it is
15 12:00 o'clock.

16 And do you have the indictment? And we agreed
17 to send the indictment back, I think?

18 MR. HUMPHRIES: Yes, sir.

19 MR. JOYE: Yes, sir.

20 THE COURT: All right. And when I send the
21 indictment back, I always tell them that the fact
22 that the Grand Jury has returned a true bill, this
23 is just to be ignored.

24 MR. HUMPHRIES: Yes, sir.

25 THE COURT: Because if they look at it they

1 say, well, the Grand Jury has already said it.

2 MR. HUMPHRIES: Judge, in that light, when you
3 send it back to the Grand Jury, do you also explain
4 probable cause, that that is --

5 THE COURT: Well, that is fine, I will just
6 get a verdict form typed up.

7 MR. JOYE: Thank you, sir.

8 THE COURT: Oftentimes we just redact it and
9 take that out on the verdict. We'll just get --

10 MR. JOYE: I believe I think I would prefer a
11 verdict form. I'm sorry, I probably should have
12 done that myself.

13 THE COURT: All right, you've got it. And the
14 verdict form is either not guilty or guilty?

15 MR. JOYE: Yes, sir.

16 THE COURT: All right.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: You might want to check before we
19 send it back. It should be all right.

20 I guess you want me to tell them they are not
21 to consider him taking the stand?

22 MR. JOYE: Yes, Your Honor, absolutely.

23 THE COURT: Is everybody ready to roll?

24 MR. HUMPHRIES: The State is ready to proceed,
25 Your Honor.

1 MR. JOYE: Yes, Your Honor.

2 THE COURT: What is it you really want me to
3 say, that thing about firmly convinced?

4 MR. HUMPHRIES: Yes, sir, I do.

5 THE COURT: That one sentence I don't mind
6 saying.

7 MR. HUMPHRIES: Thank you, Your Honor.

8 THE COURT: I'm not going into that other
9 stuff. That is jury argument about the world might
10 fall tomorrow.

11 MR. HUMPHRIES: No, that is not what I'm
12 requesting, no, but it is the firmly convinced
13 language is what I'm requesting.

14 THE COURT: All right, that's fine.

15 MR. HUMPHRIES: Thank you, Judge.

16 THE COURT: I usually say that, and I don't
17 elaborate on it.

18 MR. HUMPHRIES: Yes, sir. And I know that
19 there are a number of versions to that charge.

20 THE COURT: Yes.

21 (WHEREUPON, the jury came into open
22 court at approximately 10:06 a.m.)

23 THE COURT: Okay, jurors, we come into the
24 final phase of the trial. The Defendant has
25 elected not to testify. There are good reasons for

1 testifying and good reasons not. He has a
2 constitutional right to testify or not testify. If
3 he doesn't testify, you can't discuss why he didn't
4 testify. You can't get into any of that at all.
5 All right?

6 One tactical advantage for not testifying is
7 he gets to make the last argument. Otherwise, the
8 State gets to open and close, for instance.

9 Okay.

10 MR. HUMPHRIES: May it please the Court?

11 THE COURT: Sure.

12 MR. HUMPHRIES: Mr. Joye?

13 CLOSING STATEMENT

14 MR. HUMPHRIES: Mr. Foreman, and ladies and
15 gentlemen of the jury, murder is the unlawful
16 killing of one human being by another with malice
17 aforethought.

18 Malice is a term of art. Malice imports
19 wickedness, a heart devoid of social conscience,
20 doing an unjust act. It is evil. And in this case
21 it can be inferred from the use of a deadly weapon.

22 Aforethought means that the malice must have
23 been in the mind of the perpetrator immediately
24 before the fatal blow or blows were struck,
25 literally that quick.

1 I submit to you folks that there is no
2 question but that what happened to David Mitchell
3 is murder. The issue quite simply is whether
4 Darrell Mitchell is the one who committed the
5 murder.

6 You'll be given two options at the end of this
7 case. After the lawyers finish their arguments,
8 after the judge gives you the charge on the law,
9 you will have two choices: Guilty or not guilty of
10 murder.

11 Clearly, it is murder. About that there can
12 be no question. It is not an accident. It is not
13 self-defense. It is murder.

14 Let's review the timeline. And this is the
15 admitted timeline. This is a timeline about which
16 there is no controversy.

17 On the evening of the 16th, Darrell Mitchell
18 arrived back at his home that he shared with his
19 parents between 9:15 and 9:30.

20 By approximately 10:00 o'clock, he was calling
21 Ramona Matthews to purchase drugs.

22 By 2:00 or 2:30 that next morning, he was
23 calling her again.

24 And by 9:00 or 9:30, he and the home
25 healthcare nurse, the hospice nurse, discovered the

1 body of his father having been dragged out of the
2 house, pulled to the head of the carport, and there
3 he lay.

4 That is the admitted timeline.

5 Let's talk about some of the other aspects of
6 the case that figure into that timeline. No
7 question that there were only three people in that
8 home. We know that Ms. Edna couldn't walk,
9 couldn't talk, couldn't feed herself, couldn't
10 bathe herself, couldn't care for herself. So
11 you've only got two walking, talking folks in that
12 house.

13 These are other things we know. We know the
14 murder occurred within that home in that den in the
15 side room. That we know.

16 We know that the victim, David Mitchell, put
17 up some sort of a defense or a struggle.

18 We know that someone -- someone -- attempted
19 to clean up the scene.

20 We know that the side door, which is always
21 locked at night, was open.

22 We know that the 10:00 o'clock transaction for
23 drugs, Darrell Mitchell exited the side door.

24 Remember, that is the door where -- that leads to
25 the room where his father spends most of his time.

1 And at 2:00 or 2:30, that transaction transpires
2 after he comes to the front door, the door which is
3 rarely used.

4 There are things that don't exist in this
5 case, and you have heard about those. I submit to
6 you you will hear a great deal more about that in
7 the Defense's closing argument. And what he'll say
8 to you, as he said over and over again, is there is
9 no physical evidence, nothing pointing to his
10 client, Darrell Mitchell.

11 And let's think about that just a moment.
12 Let's think about our timeline. Because I believe
13 what he is really asking you to do is to credit the
14 Defendant. To credit him. Basically to say,
15 Darrell, it is a pretty good job. You did a nice
16 job within the nine hours between the death of your
17 father and the arrival of the home healthcare
18 nurse. You did a good job. You got rid of your
19 clothes. You either cleaned or got rid of the
20 murder weapon. It is a nice job. Nine hours.
21 Credit the Defendant. Because, you see, those
22 things don't exist if the Defendant hides them away
23 or destroys them. It is not because law
24 enforcement didn't find them, it is because they
25 had been taken away. Credit the Defendant.

1 I told you that there might be an answer to
2 that question, which oftentimes we can't answer,
3 and that is, why? Why? I cannot tell you. I
4 cannot tell you of a certainty today that the
5 reason Darrell Mitchell killed David Mitchell was
6 because he needed more money for crack. I can't
7 tell you that. I can tell you that he was short at
8 9:30 or 10:00 and he was flush with money at 2:30.
9 Now, I don't believe he did any odd jobs between
10 9:30 and 2:00 o'clock in the morning.

11 Let's talk about the wallet of his father,
12 David Mitchell. Was it the one in the car? Well,
13 that one didn't even have an ID.

14 Well, folks, who produced the wallet with the
15 ID? Who knew exactly where to get it and with no
16 trouble was able to provide that to law
17 enforcement? Darrell Mitchell.

18 And did you hear any mention -- any mention --
19 of money in that wallet? No, ma'am. No, sir.

20 I really do try not to tell jurors what to
21 believe about the evidence. And it is
22 uncomfortable for the State to suggest what
23 occurred step by step by step based on the
24 evidence. But in this case -- in this case -- when
25 we talk about a logical conclusion, a logical

1 conclusion which leaves you firmly convinced,
2 truly, truly there is but one conclusion that you
3 can arrive at.

4 There was testimony from his sister, from his
5 brother-in-law. And, folks, did they appear to
6 have any personal axe to grind with the Defendant?
7 Did they seem to hate him? Or were they very
8 uncomfortable having been called to testify in a
9 case like this?

10 And they both said that particularly over the
11 last two or three years the relationship between
12 father and son was strained. Strained.

13 You know, I don't know. I don't know if that
14 night in a rage that was fueled by crack cocaine
15 and the stress and strain of an unsatisfying and
16 disappointing relationship between father and son
17 Darrell Mitchell took the life of his father.

18 But this I do know. There was rage. There
19 was rage. Eight stab wounds. One to the back.
20 Imagine that scene. Is that a scene -- is that
21 something that occurs quietly? Is that something
22 that occurs without some resistance from the
23 victim? Was there any testimony that either one of
24 his injuries would have been immediately
25 incapacitating to the point that the victim could

1 not have called out? No. Imagine that assault,
2 that deadly assault. Imagine the rage. That
3 doesn't happen quietly. There is no way.

4 You know, you heard from relatively few
5 witnesses. There was, however, a couple of
6 witnesses who did not take the stand but who I
7 submit to you speak clearly and loudly to you this
8 morning: David Mitchell and Edna Mitchell.

9 And what they say to you is that by 2:30 in
10 the morning when that second drug transaction
11 occurred, David Mitchell was dead.

12 And why do I say that? You recall Adrienne
13 White's testimony? You recall Gwendolyn McKnight's
14 testimony about David Mitchell caring for his wife
15 Edna, what his practice, what his routine was, when
16 it was time for bed. He went in to his wife,
17 bathed her, changed her, put on her bed clothes,
18 put her under the cover. And this night that
19 didn't happen. This night she was left laying
20 soiled in clothes from the day, top of the covers
21 with her bed clothes and a new diaper laying beside
22 her.

23 By 2:00 o'clock in the morning, Edna Mitchell
24 was dead -- I'm sorry, David Mitchell was dead.
25 Because he -- and there is a lot of talk about

1 Darrell Mitchell and how he loved his mama, how he
2 would never, never allow her to be in that
3 condition.

4 But there is one thing we do know. David
5 Mitchell, without exception, would never allow his
6 wife of all those many years to be in that
7 condition.

8 At 2:00 o'clock in the morning, David Mitchell
9 was dead.

10 And so what then does that tell you? I don't
11 know what the Defense is going to say. They may
12 say -- they may suggest to you, yes, I bought
13 crack, I smoked crack. I was so high on crack I
14 have no idea what happened in that house.

15 But I will tell you this. He wasn't so high
16 that he didn't have the presence of mind at
17 2:00 o'clock to make the second call. He wasn't so
18 high that at 2:00 o'clock he didn't have the
19 presence of mind to walk out the front door.

20 And why do we keep talking about that front
21 door? Because he drug his daddy out of the side
22 door.

23 Now, I don't know if he just couldn't face
24 going out that door. I don't know if he didn't
25 want to get any blood on him. But he didn't go out

1 the side door. And clearly that is where David
2 Mitchell went. There is no question about that.

3 Folks, do you have a feel for how modest and
4 small this house is? We're talking about the side
5 yard, or the side room, which is one extreme of the
6 house, okay, that is one side of the house. Here.
7 The other extreme side of the house, here. And
8 that is no more than 25 feet. These doors are
9 always open. There is no loud music, no loud TV.

10 Somebody cleaned up. Somebody. Folks, why?
11 Why in the world would anybody else clean up that
12 scene other than Darrell Mitchell? Why? If it had
13 been some stranger, quite frankly, if it been
14 anybody other than folks living in that house, that
15 scene would never have been cleaned up. Imagine
16 the time it took after the brutal and rage-filled
17 murder of David Mitchell and after having drug his
18 body out of the house and into the yard, imagine
19 the time it would have taken to accomplish the
20 cleaning that was done. Clean to the extent that
21 they had to use a chemical process just to raise
22 the stains off the floor. Now, that must have
23 become very frustrating for that person to know
24 that they could clean the linoleum but they
25 couldn't clean the carpet where the assault took

1 place, they couldn't clean the chair where
2 undoubtedly the victim fell back.

3 Think about the time that took and think about
4 why. Who? Who has an interest in cleaning that
5 house? There is but one person. One. No one
6 else. Darrell Mitchell.

7 Let's talk just a bit about the mop. And I
8 will tell you that forensic evidence can provide
9 answers, answers in which you can have great
10 confidence. It can also provide questions.

11 And what we know about the mop is it was damp.
12 Now, I am going to have to rely on some of you
13 folks to figure out how long a mop can stay damp.
14 I am just going to confess that I'm not that
15 familiar with it. But the mop was damp.

16 We know that when initially submitted samples
17 were submitted to SLED, blood was indicated, but
18 that it was dilute; that is, it wasn't sufficient
19 for examination.

20 Now, that is not where it ended. In all
21 fairness, law enforcement was not satisfied with
22 that so they took the whole mop to SLED. Other
23 samples were taken from the mop. And what did they
24 find? They find the genetic profile of Darrell
25 Mitchell.

1 Well, let's think about that. Let's think
2 about that. If you are using the mop to mop up
3 blood and it becomes so diluted either by putting
4 in water or some cleaning agent that they can
5 identify blood but can't develop a genetic profile,
6 but then one -- one genetic profile is ultimately
7 generated, and it is the Defendant's. How do you
8 think that would occur?

9 Well, you saw that the mop was just in a
10 regular old bucket. It didn't have one of those
11 fancy things you stick down and you push the handle
12 and it squeezes the mop out, squeezes it dry. So
13 how do you think you get that mop dry? How do you
14 think you do that? You think you might wring it?
15 Make sense? It seems like the only other
16 alternative, right?

17 And what was the last thing Mr. Ortuno, the
18 SLED analyst, said? Genetic profiles don't come
19 just from blood. They don't come just from saliva.
20 They can come from sweat, which is basically
21 sloughing off of the skin cells just as would occur
22 when you are wringing a mop. So I submit to you,
23 folks, that mop is no mystery at all. There is no
24 mystery at all. It was used to clean -- there is
25 no question -- no question but that David

1 Mitchell's blood was on that floor and it was
2 attempted to be cleaned up. There are patterns --
3 there are patterns, folks, that are absolutely
4 undeniable.

5 The wiping patterns, there is no question
6 about that. I don't think anybody will take any
7 issue that this scene, there was an attempt to
8 clean it up. That mop is no mystery. And there is
9 one good reason why Darrell Mitchell's genetic
10 profile is on that mop. Because he was the one
11 that was using the mop.

12 Folks, when I told you there was one logical
13 conclusion, this is what I'm talking about. You
14 know, credit, if you will, the Defendant for taking
15 the opportunity of destroying or hiding or
16 discarding his clothes, the knife.

17 And truly there is but one logical conclusion
18 about which you should be firmly convinced --
19 firmly convinced. And that is, that on that
20 evening Darrell Mitchell, in a rage fueled either
21 by cocaine or animosity towards his father, stabbed
22 him eight times, drug his body out of the house,
23 left it in the dirt, and then called up for more
24 drugs. Imagine that. Imagine that.

25 You know, this is interesting to me, and when

1 I first looked at it I just sort of went over it.
2 That there lay David Mitchell and somebody took the
3 time to take his shoe and place it out there. I
4 mean, it didn't get out there by itself. Would a
5 stranger do that?

6 It is tragic. It is tragic on so many levels.
7 It is a loss. David Mitchell's death was a loss,
8 to his wife, of whom he was the primary caregiver;
9 to his children; to his community. And by the
10 actions of Darrell Mitchell, he has created a
11 second loss within that family.

12 But on that night, May 16th -- May 17th of
13 2007, there was no concern for his mother, Edna
14 Mitchell. There was but one thing on the mind of
15 Darrell Mitchell, and that was that his daddy, for
16 whatever reason, was going to die. And he did it.

17 I told you before, I'm not going to tell you
18 what verdict to bring back. But I do tell you
19 this. You are absolutely charged -- you are
20 commanded under the law to speak the truth. You
21 were selected, each and every one of you, because
22 the Court and the attorneys believed that you could
23 and would do that.

24 This day, speak the truth and bring justice to
25 this case, to that family. And I submit to you,

1 ladies and gentlemen, that justice is the one thing
2 that Darrell Mitchell does not want.

3 CLOSING STATEMENT

4 MR. JOYE: Ladies and gentlemen, science is an
5 amazing thing, but science operates on the fact
6 that someone comes up with a theory. They take the
7 theory and they test it. And only after they test
8 this theory can they prove something.

9 I submit to you, Solicitor Humphries and the
10 State have a theory. But their theory they want to
11 be self-proving without evidence.

12 Ladies and gentlemen, David Mitchell died of
13 stab wounds. I don't think there is any question
14 about that. I think we all know that. That is not
15 even for consideration. That is a given.

16 Ladies and gentlemen, someone cleaned this
17 scene. Solicitor Humphries had the opportunity
18 when Dr. Ortuno was on the stand to say, Doctor, is
19 it possible that if Darrell Mitchell had killed his
20 father and used this mop to clean up the scene and
21 he wrung it out that he could leave skin cells
22 sufficient to test?

23 Well, Dr. Ortuno told you that the mop had
24 blood on it. He also told you it excluded David
25 Mitchell in the second test.

1 Ladies and gentlemen, I submit to you my
2 theory of the case. Law enforcement got there..
3 They see Darrell Mitchell and an invalid mother and
4 a father who is dead.

5 They talk to David -- to Darrell. Darrell
6 tells them, I smoked crack. I smoked crack twice
7 that night. In fact, Bambi -- we could get rid of
8 every witness in this case and turn it down to one
9 thing, Bambi. What did Bambi tell you about
10 Darrell Mitchell that night, the second time he
11 comes back -- she comes back? He acts normal. He
12 acts like he always did except he is high.

13 Ladies and gentlemen, I submit to you if you
14 just killed your father you are not going to be
15 acting normal.

16 Let's talk about the crime scene
17 investigation. Wow. Look at all of these
18 wonderful exhibits. A body drug over the
19 threshold. Blood on the threshold. Lots of blood.
20 Blood everywhere. Blood in the little living area.
21 Blood in the chair. Blood in the living area
22 again. Blood in the kitchen. Blood on the mop
23 that is not David Mitchell's.

24 If Darrell Mitchell is high on crack cocaine,
25 would he have made a mistake? Did he have that

1 wonderful presence of mind to not get blood in the
2 carpet in his bedroom? In the storage room where
3 the mop was found? In the bathroom where he took a
4 shower? On his clothes? Absolute no scientific
5 evidence. Nothing circumstantial evidence, ladies
6 and gentlemen. And as Solicitor Humphries said, he
7 said to leave you firmly convinced, but he didn't
8 finish the sentence -- beyond a reasonable doubt.
9 He wants his theory to prove itself without
10 anything to back it up.

11 I submit to you that no one was there to know
12 whether Darrell was in his room playing loud music
13 or whether the TV was loud. We have got no
14 testimony about that. They said the side door was
15 always locked. I don't know, Darrell Mitchell may
16 have left the door unlocked. Who knows?

17 They said there was no one else at the scene.
18 Their first witness, Ms. McKnight, says that there
19 was someone else there.

20 Ladies and gentlemen, look at the witnesses.
21 Look at Corporal Moreau. Look at the first
22 responding officer. He puts his hands all over the
23 crime scene. This crime scene was polluted from
24 Word One.

25 I didn't hear Solicitor Humphries ever ask

1 anybody, hey, did y'all mop up the floor when you
2 got here so you wouldn't be tracking? Because who
3 are the first people there? Family. What do they
4 tell you? Darrell Mitchell was visibly shaken.
5 What did Gwen McKnight tell you? She is the home
6 healthcare nurse. She says, he broke down.

7 Darrell Mitchell -- stand up, Darrell, and
8 walk over here.

9 (Defendant complies.)

10 MR. JOYE: Supposedly Darrell Mitchell pulled
11 a -- walk over here.

12 (Defendant complies.)

13 MR. JOYE: -- pulled and drug a 180-pound man
14 outside. Now, look at him. Do you think that that
15 is potentially possible?

16 You can have a seat.

17 (Defendant seated.)

18 MR. JOYE: Ladies and gentlemen, we can look
19 at these photos. We can say, yep, someone removed
20 the body. What we can't say is when the sheet was
21 put on him. I submit to you that was done by
22 Darrell Mitchell when they discovered him that
23 morning because he didn't want to leave his father
24 looking like this. The one given in this whole
25 case Darrell Mitchell loved his mother. He would

1 not leave his mother in that position all night
2 long.

3 You know, it is a funny thing about fathers
4 and sons. And I don't know how many of you
5 gentlemen out there are fathers of sons, but from
6 the day a son is born to a father, there is always
7 something there. It is there with my father. My
8 father actually came and watched part of this trial
9 yesterday. And it is there with my son. But I
10 tell you what it is not there with -- my mother.
11 My mother. No matter what, there is no way to
12 leave your mother in that position all night with
13 soiled diapers.

14 Ladies and gentlemen, Solicitor Humphries
15 makes a wonderful presentation. You know, I
16 just -- it is so nice to try someone with someone
17 you have a great deal of respect for and you admire
18 for their ability to try this case.

19 I'll tell you this. Without Solicitor
20 Humphries here, there would not be a case. He
21 makes a compelling argument. But it is an empty
22 argument because what you have to consider is not
23 what he says or I say, but what you saw and heard
24 from here.

25 In fact, Frank White says Darrell Mitchell had

1 \$30 delivered to him. Why does he short her? I
2 don't know. Don't know. He had \$30. Frank White
3 testified to it.

4 Ladies and gentlemen, Solicitor Humphries has
5 a great theory of the case. But the theories have
6 to be tested and confirmed over and over and over.
7 There is no confirmation of his theory. Not one
8 bit.

9 The wallet. Did you hear Solicitor Humphries
10 ask anybody about whether there was money in the
11 wallet? Where did Frank White say the wallet came
12 from? Where would you expect it to come from? You
13 are at home. You take your wallet and your money
14 out and you put it in there on the table or on the
15 dresser in your bedroom. That is normal. That is
16 not unnormal, that is normal.

17 Solicitor Humphries said the wallet was
18 hidden. Who said the wallet was hidden? Did you
19 hear anybody say the wallet was hidden from here?
20 No, didn't hear that. What you heard was he went
21 into his mother's and father's bedroom and got the
22 wallet.

23 Ladies and gentlemen, I submit to you if you
24 buy into the State's theory of the case and you
25 believe that maybe Darrell Mitchell killed his

1 father, there is but one verdict: Not guilty. If
2 you think Darrell Mitchell might have killed his
3 father, it is not enough. It is not enough. If
4 you think Darrell Mitchell probably killed his
5 father, ladies and gentlemen, that is still not
6 enough. Only beyond a reasonable doubt that you
7 are firmly convinced by the circumstantial
8 evidence -- and that is all this case is about --
9 hey, there are three people there, let's close up
10 this investigation and go home. No, this case
11 screams reasonable doubt. Screams reasonable
12 doubt. There is nothing -- not this, not these,
13 none of this -- none of this that proves anything
14 other than David Mitchell was murdered in that
15 house that night.

16 He talks about 25 days. Well, that was
17 Corporal Moreau, our crime scene investigator's
18 estimation. Ladies and gentlemen, why didn't he
19 pull a tape? He is a crime scene investigator.
20 Why do we have this, not -- what does it say down
21 here? Not to scale. Somewhere on here. I know I
22 have seen it. But it is not to scale. It is --
23 how hard would it have been to pull a tape, get you
24 some graph paper so that you folks, who ultimately
25 decide this case, can look and know how far it is,

1 not somebody's guesstimation, but know something
2 concretely using the scientific method confirming
3 things. It would have been very easy.

4 Ladies and gentlemen, you are going to have
5 these exhibits back there, for what good they are
6 going to do you.

7 This case is not about what you heard here.
8 Solicitor Humphries can't really talk about what
9 you heard here. This case is about what you hear
10 from him. Theory. Unsupported by facts.

11 The judge will charge you on circumstantial
12 evidence, which is a set of facts which leads to
13 another fact. Here, your set of facts leads you
14 right back to your set of facts. It never leads to
15 an existing fact because it can't be tested, it
16 can't be proved.

17 What can be proved, Darrell Mitchell was a
18 loving son to his mother. He and his father had
19 some issues. Never heard anything about any
20 violence between the two of them. That Darrell
21 Mitchell smoked crack. And someone did enough good
22 at cleaning up the crime scene that there was no
23 evidence to point to anyone. Footprints,
24 fingerprints, blood everywhere. Not in Darrell
25 Mitchell's room.

1 Ladies and gentlemen, for all we've done here
2 is say Darrell Mitchell smoked crack, convict him.
3 Darrell Mitchell was the only one there. Well, not
4 really. Ms. McKnight says a female was there.
5 Convict him.

6 I submit to you, these folks arrested Darrell
7 Mitchell on probable cause and probable cause alone
8 and thought that somewhere, somehow their science
9 was going to prove their theory of the case. It
10 didn't. It did not.

11 We don't even know if Darrell Mitchell's
12 father David could have been sitting in his chair
13 asleep and he didn't want to disturb him when he
14 went out the second time. Adrienne White said
15 Darrell used the front door, but he was the only
16 one that did so.

17 Ladies and gentlemen, this case is about
18 reasonable doubt, lack of evidence. This case is
19 about Darrell Mitchell being innocent in this
20 trial.

21 And the reason he is innocent of this trial is
22 that unless and until you guys, the 12 of you who
23 ultimately decide this case, you jurors, rip what
24 is called a cloak of innocence, that cloak of
25 innocence exists to anyone and everyone charged in

1 this country, they are shrouded in this cloak of
2 innocence, and only if the State can rip away this
3 cloak of innocence beyond a reasonable doubt can
4 you ever find someone guilty.

5 I submit to you if you are standing on the
6 edge of a river and you look across that river and
7 you say, well, I can swim to the other side, if you
8 have to make the decision about reasonable doubt,
9 can I actually swim this river, can I make it to
10 the other side, because if you don't the
11 alternatives are dire indeed, because you could
12 drown. That is what reasonable doubt is.

13 I submit to you in this case you cannot make
14 it across this river beyond a reasonable doubt.

15 (Judge stands.)

16 THE COURT: Okay, jurors, here is the
17 situation. I have to instruct you on the law. A
18 serious case, but the instruction is not long. If
19 anybody needs a break, just raise your hand. It
20 doesn't take a unanimous verdict. If everybody is
21 okay, though, I'll go ahead and sit down and
22 instruct you.

23 (WHEREUPON, there was no response.)

24 THE COURT: It looks like everybody is all
25 right.

1 (Judge seated.)

2 JURY CHARGE

3 THE COURT: I went last night to something
4 they had in Camden honoring four South Carolina
5 medal award winners and they had it all set up
6 outside and then it poured down rain and we had to
7 go under tents and we all got wringing wet. They
8 say it doesn't cause it, but my mother said don't
9 go outside in the rain or you'll get sick. You
10 know, well, there you go. So my voice is a little
11 under the weather. If you can't hear me, raise
12 your hand and I'll go back over it.

13 When we started the trial I held up this
14 document. I told you it was an indictment. It
15 charges the commission of a specific crime by
16 Darrell Nathaniel Mitchell. Now, the indictment is
17 not evidence. It just contains allegations.
18 Mr. Mitchell is presumed innocent of all charges.
19 Absolutely no burden on his part to prove that he
20 is not guilty.

21 Now, I'm going to read the indictment to you
22 because the State basically has to prove every word
23 in the indictment beyond a reasonable doubt to get
24 a conviction.

25 It alleges -- it being the indictment -- that

1 Darrell Nathaniel Mitchell did in Florence County
2 on or about May 17th, 2007, violate a couple of
3 sections of the laws of South Carolina in that he
4 did feloniously, willfully, and with malice
5 aforethought kill one David Mitchell by means of
6 stabbing him with a knife or other sharp object and
7 that the said David Mitchell did die as a proximate
8 result thereof. That is what the indictment
9 alleges.

10 Now, the word in there that you heard, a
11 proximate, you know the word approximate. That is
12 not what this is. It is one word, a, second word
13 is proximate. Proximate is a legal word. It just
14 means as a direct result of the stabbing, proximate
15 meaning direct. Okay? It would have been better
16 to say direct rather than a proximate because when
17 you say a proximate everybody thinks more or less.
18 But proximate means a direct cause.

19 Now, it takes a unanimous decision of you 12
20 jurors to decide the case. You all have to agree
21 on the form of verdict. While the indictment will
22 not come back, a verdict form will. And the
23 verdict form simply says: We, the jury, by
24 unanimous consent, find the Defendant Darrell
25 Nathaniel Mitchell on the charge of murder, either

1 not guilty or guilty. Twelve jurors have to agree.
2 Only the foreperson, though, signs the verdict.

3 Now, Mr. Foreman, once deliberations commence,
4 you preside over the deliberations. Your vote
5 counts no more than anybody's, but somebody has to
6 just kind of keep the discussion going.

7 Alternate Juror, when I conclude these remarks
8 I'm going to ask you to stay in the courtroom,
9 assuming the other 12 are still with us, don't go
10 back. If the original 12 are still with us in a
11 few minutes, we'll still give you steak or whatever
12 they ordered, but you don't get to go back and
13 deliberate.

14 Now, Mr. Foreman, if questions occur during
15 deliberation, if you would write them down with
16 some specificity I will try to answer the question.
17 I can't have any running dialog with you, of
18 course. But I can tell you, just to forestall some
19 questions, you jurors are going to have to decide
20 the case based upon the admitted evidence in the
21 case. In other words, I'm not able to give you
22 anything else in the matter of evidence.

23 If you would like, for instance, to have seen
24 another photograph or something, I can't give it to
25 you. It was not admitted into evidence. You will

1 have with you while you deliberate all documents
2 that were admitted into evidence. They have
3 numbers on them.

4 If you would like to have asked a witness who
5 testified another question, you can't ask that
6 question. Okay? You have to decide the case based
7 upon the testimony and evidence that was admitted.
8 In other words, I can't add anything to the case at
9 all.

10 Now, you have heard several times, many times
11 actually, that the State has the burden of proof
12 beyond a reasonable doubt.

13 The State is required to prove every element
14 that constitutes a crime of murder by evidence that
15 satisfies you jurors beyond a reasonable doubt.

16 The Defendant, as I mentioned, is not required
17 and is under no obligation to prove that he is not
18 guilty. The burden of proof remains on the State
19 of South Carolina through the Solicitor's Office to
20 prove guilt beyond a reasonable doubt.

21 Reasonable doubt is defined as the kind of
22 doubt that will cause an ordinary person to
23 hesitate to act. Proof beyond a reasonable doubt
24 is proof that leaves you firmly convinced of the
25 Defendant's guilt.

1 Beyond that, I'm not going to define that any
2 further. Reasonable doubt is the kind of doubt
3 that causes an ordinary person to hesitate to act.

4 Now, murder is a statutory crime. I'm going
5 to read the definition to you. And, you know, you
6 might be looking for more than it gives you. This
7 is all that it says:

8 Murder is the killing of any person with
9 malice aforethought, either express or implied.
10 Okay. That is the definition of murder.

11 All homicides result in the death of some
12 person, but in order to convict an individual of
13 the crime of murder, malice aforethought must be
14 present and the State must prove that beyond a
15 reasonable doubt. Without going through them, you
16 understand you've got driving under the influence
17 of intoxicants, getting in an accident and somebody
18 dies, that is not murder. There was no malice
19 aforethought present in that situation. You have
20 heard of hunting accidents where they have like
21 reckless homicide where somebody means to shoot a
22 deer and shoots a good friend or something. That
23 is resulting in death, but there was no malice
24 present at that point.

25 Malice, jurors, indicates a formed purpose and

1 design to do a wrongful act under circumstances
2 that exclude any legal right to do it.

3 Malice is a term of art that imparts
4 wickedness and excludes a just cause or excuse.

5 Now, express malice and implied malice do not
6 indicate two different forms of malice. It is just
7 a manner in which the State is required to prove
8 malice.

9 Express malice is where someone by word of
10 mouth, for instance, expresses ill-will or hatred
11 towards another. Or it can also be proved, though,
12 where the State proves beyond a reasonable doubt
13 that a Defendant was making preparations before the
14 event, before a killing to accomplish the event.

15 A jury can conclude by deductive reasoning
16 that under circumstances presented malice might
17 arise even though there was no express or direct
18 evidence of an intent to kill.

19 Now, jurors, where a person's death results
20 from the use of a deadly weapon -- and a deadly
21 weapon, of course, jurors, could be any
22 instrumentality that has the capacity of killing
23 someone, it could be simply a gun, knife, axe, any
24 hard object that could result in death -- now,
25 where a person's death is the result of the use of

1 a deadly weapon, if there is evidence in the case
2 from which an implication of malice could arise,
3 now you jurors are not bound to find that malice
4 existed, that is just evidence in the case. The
5 use of a deadly weapon permits jurors to infer
6 malice, but it does not require you to infer
7 malice.

8 Now, jurors, you have to decide the case, as I
9 mentioned to you, based upon the admitted evidence
10 in this case. Evidence consists of two types. You
11 have direct evidence and you have circumstantial
12 evidence.

13 Direct evidence is testimony given from the
14 stand of a person who asserts or claims to have
15 actual knowledge of a fact, such as an eyewitness.

16 Circumstantial evidence is proof of a chain of
17 facts and circumstances indicating the existence of
18 another fact.

19 The law makes absolutely no distinction
20 between the weight or value to be given to either
21 direct or circumstantial evidence, nor is a greater
22 degree of certainty required of circumstantial
23 evidence than of direct evidence.

24 You jurors weigh all the evidence in the case,
25 testimony and exhibits. After weighing all the

1 evidence, if you are not convinced of the guilt of
2 the Defendant beyond a reasonable doubt, you must
3 find the Defendant not guilty.

4 Now, you jurors weigh all evidence in the
5 case. Of necessity, you pass upon credibility of
6 all the witnesses who testified. You don't count
7 witnesses in trials, jurors, and you are not bound
8 to accept in its entirety the testimony from any
9 particular witness. You have the right to pick and
10 choose portions of testimony that you feel are
11 believable. After you have done that, the relative
12 weight that you attribute to believable testimony
13 is entirely up to you jurors.

14 When you are evaluating testimony, jurors,
15 basically you just use your common sense. Here are
16 a couple of factors you can take into account.

17 One would be the opportunity that a witness
18 had to see, hear or observe what the witness
19 testified to. Certainly you can consider the
20 demeanor of a witness. Whether a witness's
21 testimony is consistent or inconsistent should be
22 considered by you. Whether a witness has any
23 interest or bias in the outcome of the proceedings
24 should be taken into account. Whether testimony
25 becomes stronger or is made weaker by other

1 testimony or other evidences in the case is another
2 factor.

3 Now, jurors, during the trial a couple of
4 individuals were qualified as experts. I explained
5 to you at that point that before the first expert
6 was qualified that I didn't vouch for the
7 individuals.

8 In litigation, jurors, a lay person -- that is
9 someone who is not an expert -- can only give
10 opinions on matters within common knowledge, where
11 a person's opinion is as good as anybody's, like
12 that car was going too fast, that person looks like
13 he is intoxicated, things like that.

14 Beyond that, they have to -- they being the
15 person offering an individual as an expert --
16 demonstrate that through education, training and
17 experience or a combination of those factors the
18 individual has acquired more knowledge in a
19 particular field than you or I have in that field.

20 After that is done, the expert is entitled to
21 give opinions within their field of expertise.
22 They must give those opinions to a reasonable
23 degree of certainty within their field.

24 You know, if they say, I think or perhaps, or
25 so forth, they haven't met the criteria that they

1 have.

2 Now, when you are evaluating expert testimony,
3 certainly you can consider the other factors just
4 like any other witness of demeanor, consistency,
5 inconsistency.

6 And where an expert gives opinions, you are
7 not bound to accept them. And of course you can
8 look at the underlying facts on which an expert
9 bases his or her opinion in deciding what weight to
10 give to an opinion given by an expert.

11 Now, jurors, when an individual testifies and
12 the individual has a prior criminal record, as I
13 explained to you, the State can bring out the fact
14 that they have a criminal record. You can consider
15 the type crimes committed by an individual. And if
16 you feel that that impacts on the credibility of
17 the witness, you can make that determination. The
18 fact that a witness has a criminal record does not
19 mean you just necessarily exclude any testimony
20 given from them, that is just another factor like
21 demeanor, and so forth, that you take into account
22 when you are evaluating testimony.

23 Jurors, there is not much law that I can tell
24 you. If you go back and you want further
25 instructions, jurors, it is not much. I mean, I

1 would just tell you that reasonable doubt is the
2 kind of doubt that causes an ordinary person to
3 hesitate to act. The State has got to convince you
4 of the guilt of the Defendant beyond a reasonable
5 doubt and must -- you must be firmly convinced that
6 the State has met its burden of proof beyond a
7 reasonable doubt.

8 You jurors weigh all the evidence presented
9 during the trial. There are a couple of other
10 things on the issue of murder. We can go on and on
11 with it. But murder is an intentional act. Intent
12 can be inferred from the circumstances, of course.

13 And motive can be presented during a trial,
14 but it is not a qualification or a criteria that
15 motive exist before you can find an individual
16 guilty of a crime of murder.

17 So murder is an intentional act. Malice
18 aforethought -- malice must exist, and it must
19 exist prior to the time that the act is committed.
20 Malice after the fact would not meet that criteria.

21 So just as the statute says, murder is the
22 unlawful killing of one human being by another
23 human being with malice aforethought, express or
24 implied. That is it in the absolute nutshell,
25 jurors.

1 Now, what we have when you deliberate will be
2 the verdict form. Twelve jurors have to agree.
3 Only the foreperson signs. You can either check
4 off, not guilty or guilty, guilty or not guilty.
5 And I intend no emphasis by that, there are only
6 two ways you can say it, you know, only two ways it
7 can be typed. You either check off or circle it.

8 I explained to you that you pass on the weight
9 that you attribute to all admitted evidence in the
10 case and all the testimony. Arguments of counsel,
11 opening statements and closing arguments, they were
12 not witnesses. You understand that. You should
13 consider the arguments of counsel, but they were
14 not testified. And so I think you understand that,
15 but sometimes I don't say that, and I'm not
16 suggesting that any of the attorneys stated
17 anything they shouldn't have said, but just they
18 are not witnesses. You pass on whether the State
19 has met its burden of proof beyond a reasonable
20 doubt based upon the testimony from the stand and
21 the admitted documents that you will have with you
22 while you deliberate.

23 Beyond that, jurors, I do not instruct you at
24 this point.

25 Alternate Juror, if you would stay in here.

1 Other jurors, if you would go back. I have to
2 confer with counsel to see if they want me to
3 amplify what I said.

4 (WHEREUPON, the jury retires to the jury
5 room at 11:13 a.m.)

6 THE COURT: All right.

7 MR. JOYE: Nothing --

8 MR. HUMPHRIES: No, sir.

9 MR. JOYE: -- from the Defense, Your Honor.

10 THE COURT: Alternate Juror, you can hang
11 around, dinner won't be here till 12:00 o'clock, or
12 you can go home.

13 THE ALTERNATE: Yes.

14 THE COURT: And we will auction off your
15 dinner.

16 THE ALTERNATE: All right.

17 THE COURT: I guess you have to call back in.
18 You have to be back at 3:00 p.m. No rest for the
19 weary.

20 THE ALTERNATE: Shucks.

21 MR. HUMPHRIES: You might ought to stay for
22 lunch then.

23 (Alternate juror excused.)

24 THE COURT: If you will gather the evidence
25 up, give them the verdict form, and tell them to

1 begin deliberations.

2 (WHEREUPON, the exhibits were delivered
3 to the jury and the jury was instructed
4 to begin deliberations at 11:19 a.m.)

5 (Break.)

6 (WHEREUPON, Court's Exhibit Nos. 1
7 THROUGH 3 were marked for identification
8 only.)

9

10 THE COURT: Okay, I understand the jury has
11 reached a verdict. Is the State ready to receive
12 the verdict?

13 MR. HUMPHRIES: The State is ready to proceed,
14 Judge.

15 THE COURT: What about the Defense?

16 MR. JOYE: Yes, Your Honor.

17 THE COURT: Okay.

18 (WHEREUPON, the jury came into open
19 court at approximately 1:43 p.m.)

20 THE COURT: Okay, Mr. Foreman, has the jury
21 reached a verdict?

22 THE FOREMAN: Yes, we have.

23 THE COURT: If you have reached a verdict, if
24 you would hand it to the deputy clerk.

25 (The Foreman complies.)

1 (The Court views the verdict form.)

2 THE COURT: I know you have been practicing
3 reading it like you see on TV, but that is not the
4 way we do it.

5 THE CLERK: State of South Carolina versus
6 Darrell Nathaniel Mitchell. Indictment
7 2007-GS-21-1423.

8 We, the jury, by unanimous agreement, find the
9 Defendant, Darrell Nathaniel Mitchell, on the
10 charge of murder: Guilty. Dated, September 10,
11 2008. Signed, David Randall.

12 Members of the jury, if this is your verdict,
13 please raise your right hand.

14 (WHEREUPON, all jurors complied.)

15 THE CLERK: That's all of them.

16 THE COURT: Anything else required of the
17 jury?

18 MR. JOYE: Your Honor, I would ask to poll the
19 jury.

20 THE COURT: All right. Jurors, now, don't
21 panic. When they say poll the jury, it is not like
22 you are going to be stabbed or anything. She is
23 going to ask you two questions, and she is going to
24 say: Was that your verdict and is that still your
25 verdict. And she is talking about when she read

1 it, she is not talking about when you went in
2 there. Okay?

3 THE CLERK: Earl Hannah, was that your verdict
4 then, is it still your verdict now?

5 JUROR HANNAH: The truth? No, it is not my
6 verdict now.

7 THE COURT: Okay. Step back. It has to be a
8 unanimous verdict. You have to continue
9 deliberating.

10 (WHEREUPON, Court's Exhibit No. 4 was
11 marked for identification only.)

12
13 (WHEREUPON, the jury retires to the jury
14 room at 1:45 p.m. to continue
15 deliberations.)

16 THE COURT: Okay. It is usually the last one
17 that does that, not the first one.

18 MR. HUMPHRIES: I could have bet on that one.
19 (Break.)

20 THE COURT: They are giving Doris a fit
21 because they want to take a smoke break.

22 MR. HUMPHRIES: I don't have any problem with
23 that.

24 MR. JOYE: Well, I had to put up with my wife
25 when she didn't smoke any more. Absolutely go

1 smoke.

2 MR. HUMPHRIES: It doesn't matter to me. It
3 might give them a chance to clear their heads.

4 THE COURT: All right, well, tell them those
5 that want to, the rest of them have to stop
6 deliberating.

7 THE CLERK: They all want to go.

8 MR. HUMPHRIES: I'm sure they just want to get
9 outside.

10 THE CLERK: And I'm going to send the bailiff
11 with them along with two deputies.

12 MR. HUMPHRIES: That's fine with me.

13 THE COURT: All right.

14 THE CLERK: Can you give us just a minute,
15 Judge?

16 (Break.)

17 THE CLERK: They said give them five minutes.

18 THE COURT: They don't want the break? We can
19 go ahead.

20 (Pause.)

21 THE COURT: Okay, let's bring them in one more
22 time.

23 (WHEREUPON, the jury came into open
24 court at approximately 2:11 p.m.)

25 THE COURT: Okay, Mr. Foreman, after further

1 deliberation, do you feel the jury has reached a
2 verdict?

3 THE FOREMAN: Yes, sir, I do.

4 THE COURT: If you would hand it to Doris.

5 (The Foreman complies.)

6 (The Courts views the verdict form.)

7 THE CLERK: The State versus Darrell Nathaniel
8 Mitchell. Indictment 2007-GS-21-1423.

9 We, the jury, by unanimous agreement find the
10 Defendant, Darrell Nathaniel Mitchell, on the
11 charge of murder: Guilty. Dated, September 10,
12 2008. Signed, David Randall.

13 Members of the jury, if this is your verdict,
14 please raise your right hand.

15 (WHEREUPON, all jurors comply.)

16 THE CLERK: That's all, Judge.

17 MR. JOYE: If it please, Your Honor?

18 THE COURT: Okay, Defense counsel would like
19 the jury polled again.

20 THE CLERK: Earl Hannah, was this your verdict
21 then, and is it still your verdict now?

22 JUROR HANNAH: Yes.

23 THE CLERK: Radburn Gaymon.

24 JUROR GAYMON: Yes.

25 THE CLERK: Was this your verdict then and is

1 this still your verdict now?

2 JUROR GAYMON: Yes.

3 THE CLERK: Christopher Coleman, was this your
4 verdict then, and is it still your verdict now?

5 JUROR COLEMAN: Yes.

6 THE CLERK: Natrice Ford, was this your
7 verdict then, and is it still your verdict now?

8 JUROR FORD: Yes.

9 THE CLERK: Larry Tunstall, was this your
10 verdict then, and is it still your verdict now?

11 JUROR TUNSTALL: Yes.

12 THE CLERK: Heather Kight, was this your
13 verdict then, and is it still your verdict now?

14 JUROR KIGHT: Yes.

15 THE CLERK: Brenda Odom, was this your verdict
16 then, and is it still your verdict now?

17 JUROR ODOM: Yes.

18 THE CLERK: Thomas Hansell, was this your
19 verdict then, and is it still your verdict now?

20 JUROR HANSELL: Yes.

21 THE CLERK: William Valone, was this your
22 verdict then, and is it still your verdict now?

23 JUROR VALONE: Yes.

24 THE CLERK: David Randall, was this your
25 verdict then, and is it still your verdict now?

1 JUROR RANDALL: Yes.

2 THE CLERK: Koritta Poston, was this your
3 verdict then, and is it still your verdict now?

4 JUROR POSTON: Yes.

5 THE CLERK: Angel Huffman, was this your
6 verdict then, and is it still your verdict now?

7 JUROR HUFFMAN: Yes.

8 THE CLERK: That's all of them.

9 THE COURT: Okay. Jurors, here is the
10 situation. We have called other jurors back in at
11 3:00, we are going to have another trial, but that
12 person decided to plead guilty and I have sentenced
13 that person, so they aren't going to have anymore
14 trials this week, so y'all are virtually through
15 for the week.

16 The deputy clerk has your checks and can give
17 them to you. The next phase, they may make some
18 motions, but I am going to sentence the gentleman.

19 Murder carries like 30 years to life. And it
20 doesn't -- basically doesn't matter because any
21 sentence I give him is a life sentence because he
22 has to serve 85 percent. He is not in the best of
23 health. So there you go.

24 So you can wait around and watch the sentence
25 or you can leave now. If you are going to leave

1 now, now would be the time to leave, though. If
2 you want to stay, you can just stay there, no
3 problem.

4 All right.

5 MR. HUMPHRIES: May it please the Court?

6 THE COURT: Anybody that wants to leave can
7 leave.

8 (WHEREUPON, the jury was excused.)

9 THE BAILIFF: Everybody is out, Judge.

10 THE COURT: Okay. What say the Defense, if
11 anything?

12 MR. JOYE: Yes, Your Honor. I would renew any
13 and all objections previously made during the
14 course of the trial. At this point I would ask
15 again for a judgment notwithstanding the verdict.

16 Your Honor, in a light most favorable to the
17 State, I do not believe that they have met their
18 burden even under circumstantial evidence, that I
19 believe that this was a verdict based on the
20 passion and prejudice under the issue of the res
21 gestae and that the crack cocaine itself was
22 prejudicial enough to have this jury come back with
23 a guilty verdict.

24 That there was no evidence ever stating that
25 Darrell Mitchell had no money. There was no

1 evidence that Darrell Mitchell did this. There was
2 nothing to physically tie him to the scene.

3 I believe at the very -- at most, that a
4 potential motive and a -- potential motive and
5 potential opportunity, but I don't believe that
6 those are strong enough circumstantial evidence
7 to -- for any jury to find beyond a reasonable
8 doubt, and would ask the Court in its role as 13th
9 juror to overturn this verdict.

10 THE COURT: Okay. And of course you agree,
11 Solicitor?

12 MR. HUMPHRIES: I strenuously disagree, Your
13 Honor.

14 THE COURT: I'm afraid it was enough there
15 that the jury could have found him guilty, and they
16 did. There you go.

17 MR. JOYE: Thank you, Your Honor.

18 MR. HUMPHRIES: Your Honor, you of course have
19 heard the case.

20 THE COURT: Yes.

21 MR. HUMPHRIES: At least in regard to the
22 Defendant's prior record -- quite frankly, I don't
23 know where to stand in this courtroom -- but he has
24 a significant prior history which dates back to the
25 late 80's which involved drugs, forgeries, other

1 offenses of that nature. And he was -- the most
2 recent were forgeries, which I believe were on --
3 the victim of which was the victim in this case.
4 They had had -- the father actually had allowed
5 this Defendant to come back in the home to assist
6 with the mother, but also in -- with assistance for
7 him. He had been estranged from the father based
8 on his criminal conduct. And they knew that he was
9 a drug addict and had been for a significant period
10 of time. And, in any event, that would be more of
11 a context to the crime.

12 There is one representative of the family who
13 wishes to speak. It is the sister of the victim in
14 this case.

15 THE COURT: Okay?

16 MR. HUMPHRIES: If you'll come forward,
17 please, ma'am.

18 (Victim's sister approaches.)

19 MS. WILSON: Your Honor, my name is Eugenia
20 Mitchell Wilson. I'm the sister of David Mitchell.
21 This is not a day for this Mitchell family to
22 rejoice. This has been very devastating for this
23 family. We are a good family. We are Christians.
24 Darrell was raised in a Christian family by aunts
25 and uncles who loved him and nourished him when he

1 was a young boy all the way up to a young man.

2 But he has made some choices, and his choices
3 are not good. His father was good to him. He was
4 let back into the home because his father was
5 getting on in age and had an invalid wife. And he
6 thought that he could be of some help to him. But
7 he was very arrogant around his father. But his
8 father let him stay there under the advice of
9 family advised him not to let him come back into
10 the home, but he did.

11 I realize that Darrell has to pay for the
12 choices he has made, and he has made some bad
13 choices. And I think he should be held accountable
14 for them.

15 Yes, we are devastated because this has
16 happened to a brother who was a gentle man, a
17 deacon in his church. And Darrell was living in
18 like a Garden of Eden. There are things he should
19 have obeyed, his father's rules of the home because
20 it was his father's home.

21 So now he has to pay for the choices he has
22 made. And it hurts this family because this act
23 has been -- caused us pain because of the love we
24 have for Darrell and the love we had for my
25 brother.

1 We are not going to rejoice in this matter.
2 We will continue to pray for Darrell. But he has
3 been stubborn. He has never showed any remorse
4 towards the family for what he has done. We didn't
5 judge him. We had a jury to do that for us. So
6 that is all we have to say.

7 THE COURT: Okay, thank you.

8 MR. HUMPHRIES: Your Honor, that is the
9 State's case.

10 THE COURT: All right.

11 MR. JOYE: Your Honor, Darrell is almost 60
12 years old. I understand that regardless of the
13 sentence that this Court gives, it in essence is a
14 life sentence.

15 Your Honor, we felt all along Darrell has
16 maintained his innocence from Day One. I
17 understand the jury has spoken, and I respect that.

18 I would ask that this Court sentence Darrell
19 to whatever minimum sentence you deem appropriate.

20 THE COURT: Okay, Mr. Mitchell, you are
21 entitled to speak, if you'd like.

22 THE DEFENDANT: Your Honor, may I turn and
23 face the family?

24 THE COURT: Sure.

25 (Defendant faces the audience.)

1 THE DEFENDANT: Sister and brother and aunt,
2 you say I have not shown any remorse. David
3 Mitchell was my dad. Yes, he and I had hard times.
4 And call it arrogant, but I loved my dad, and he
5 loved me.

6 Whenever someone would call the house and want
7 something done, dad would always tell them he
8 didn't have time to do it, but my son is here, he
9 can do it, and I will stand behind him. Not only
10 was he my dad, he was my friend.

11 My sister, you knew that dad was a bickering
12 soul. It wasn't just me. A lot of it came from
13 him. You have been there at times and you got so
14 frustrated you had to leave for awhile. That was
15 just dad's way.

16 I didn't do this to my dad, your brother, or
17 to your dad. I didn't do this. And I want you to
18 know from my heart I didn't do this.

19 When I first got here this morning, I told
20 Scott that I think we had too much publicity.
21 Riding in here from middletown this morning, I
22 heard it on the radio, my name, my dad's name
23 called, and everything described. And I felt like
24 the police is the one put it on the radio because
25 they said one more witness to be called. How else

1 would the media get that if it didn't come from the
2 police, because they weren't here yesterday.

3 I'm sorry.

4 THE COURT: Mr. Mitchell, you understand I
5 just preside over the trial. And they have enacted
6 sentence ranges. And on murder, unfortunately, it
7 is 30 years to life.

8 THE FOREMAN: Yes, sir.

9 THE COURT: Since you are 60 years of age, not
10 in the best of health, and you were willing at one
11 point they talked about something 15 to 20, but
12 that is not an option now, so I just sentence you
13 to 30 years. That is the minimum I can give you,
14 and chances are you won't make it that long because
15 it is an 85 percent sentence, as you know, with no
16 parole or anything. You do get credit for the time
17 you have been incarcerated. That's it.

18 THE DEFENDANT: Thank you, Your Honor.

19 MR. JOYE: Thank you, Your Honor.

20 MR. HUMPHRIES: Thank you, Your Honor.

21 (WHEREUPON, the proceedings were concluded.)
22
23
24
25

(END OF TRANSCRIPT)

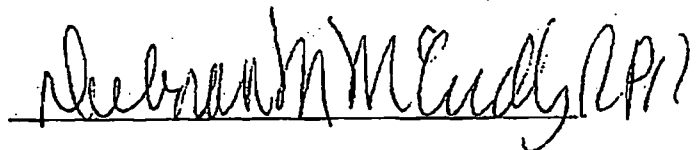
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 8th, 9th and 10th days of September, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 2, 2009



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter
My Commission Expires: 5/24/09

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.

Darrell Nathaniel Mitchell, Appellant.

Appeal From Florence County
J. Ernest Kinard, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-101
Submitted March 1, 2011 – Filed March 14, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Donald J. Zelenka,
Assistant Attorney General Brendan J. McDonald,
all of Columbia; and Solicitor Edgar L. Clements,
III, for Respondent.

PER CURIAM: Darrell Nathaniel Mitchell appeals his murder conviction and corresponding thirty-year sentence, arguing the trial court erred in refusing to issue a mere presence jury charge without also charging hand of one, hand of all. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Bryant, 372 S.C. 305, 315-16, 642 S.E.2d 582, 588 (2007) (stating an issue conceded at trial cannot be argued on appeal).

AFFIRMED.

WILLIAMS, GEATHERS, and LOCKEMY, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

2011-CP-21-234C

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of FLORENCE)Darnell N. Mitchell)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.APPLICATION FOR
POST-CONVICTION RELIEFFILED
2011 SEP - 1 PM 12:35
COMBIE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, SCINSTRUCTIONS - 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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention Lee Corr. INST. 990 Wisacky Hwy
Bishopville SC 29010
2. Name and location of Court which imposed sentence FLORENCE COUNTY
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-GS-21-1423 murder
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SEPTEMBER 10, 2008
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? YES _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. COURT OF APPEALS _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. CASE DISMISSED _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. march 2011 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASST. OF COUNSEL _____
- (b) DUE PROCESS VIOLATION _____
- (c) LACK OF EVIDENCE _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)
- COUNSEL WAS INEFFECTIVE FOR NOT PUTTING ON A DEFENCE
 - APPELLANT NOT GIVEN A CHANCE TO TESTIFY IN HIS OWN DEFENCE
 - THERE IS NO EVIDENCE TYING APPELLANT TO CRIME
11. Prior to this application have you filed with respect to this conviction
- any petition in a State Court under South Carolina Law?
YES
 - any petitions in State or Federal Courts for habeas corpus or post-conviction relief?
NO
 - any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO
 - any other petitions, motions or applications in this or any other Court?
NO
12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:
- the specific nature thereof:
 - DIRECT APPEAL
 -
 -
 -
 - the name and location of the Court in which each was filed:
 - SOUTH CAROLINA COURT OF APPEALS
 -
 -
 -
 - the disposition thereof:
 - CASE DISMISSED
 -
 -
 -

(d) the date of each such disposition:

i. MARCH 2011

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) 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) APPELLANT AWAITED DIRECT APPEAL VERDICT

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

YES

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? YES

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. R. Scott Joye 3575 Highway 17 Business Market Street 27905
- ii. Robert M. Dudek P.O. Box 11589 Columbia SC 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial / Sentencing
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

MY CASE BE OVER TURNED AND A NEW
TRIAL BE GIVEN

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

COUNTY OF

Florence

VERIFICATION

I, Darrell Mitchell, 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.

Darrell N. Mitchell

Sworn to and subscribed before me

This 31 day of Aug, 2011

Bracey Pinn L.S.

Notary Public for South Carolina

My Commission Expires 5-16-12

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Darrell Mitchell, 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 proceeding or give security therefor.

Darrell N. Mitchell
Applicant

Sworn to and subscribed before me

This 31 day of Aug, 2011

Bracey Pinn L.S.

Notary Public for South Carolina

My Commission Expires: 5-16-12

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

C.A. NO. 11-CP-21-2340

Darrell N. Mitchell,)

Applicant,)

RETURN

VS.)

State of South Carolina,)

Respondent.)

In response to the post-conviction relief application (PCR) filed September 1, 2011,

Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the August 2007 term of the Florence County Grand Jury for murder. R. Scott Joye, Esquire, represented Applicant. Applicant was tried September 8-10, 2008 and convicted by a jury as charged. The Honorable J. Ernest Kinard sentenced Applicant to thirty years imprisonment.

Applicant appealed his conviction and sentence. He was represented by Chief Appellate Defender Robert M. Dudek. The conviction was affirmed by the Court of Appeals. State v. Darrell Nathaniel Mitchell, 2011-UP-101 (S.C. Ct. App., filed March 14, 2011). The remittitur was issued on March 30, 2011.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the Department

FILED
2011 DEC 14 PM 1:38
CLERK OF COURT
C.C.P. & G.S.
FLORENCE COUNTY, SC

of Corrections, and the trial transcript.

Respondent reserves the right to amend its return upon the receipt of further information or materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully because of ineffective assistance of counsel, lack of due process, and insufficient evidence.

III.

The State submits Applicant's allegation that he received ineffective assistance of counsel is without merit. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). The State submits that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813

(1985).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's allegations of the denial of due process and insufficient evidence should have been raised, if at all, on appeal and are not proper issues for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Accordingly, they should be summarily dismissed.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

WHEREFORE, having made Return, Respondent requests that this Court dismiss this Application with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

December 13, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

DARRELL N. MITCHELL

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

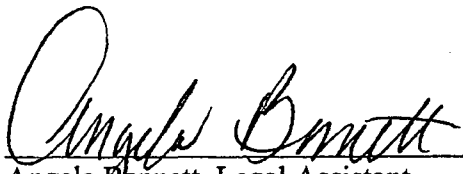
2011-CP-21-2340

AFFIDAVIT OF SERVICE BY MAIL

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:

Samuel Brunson, Esquire
Post Office Drawer 431
Florence, South Carolina 29503

DATED this 13th day of December, 2011


 Angela Bennett, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) IN THE TWELFTH JUDICIAL CIRCUIT

DARRELL N. MITCHELL SCDC 192228)
PLAINTIFF,)
STATE OF SOUTH CAROLINA) BRIEF AND AMENDMENT
DEFENDANT.)

Indicted in Florence County trial September 8. 2008 by the
Honorable J. Earnest Kinard, Jr.

ARGUMENTS

1. Ineffective Assistance of Counsel
2. Hands of One. Hands of All
3. The Mere Presence
4. Improper Allowed Evidence
5. Abuse of discretion By Judge
6. The Lack of Evidence
7. Testing of DNA

Trial Transcript-TT: Page-P: Line-L:

Ex.

A-Incident Report Supplemental; 1 page

B- Lee R. Davis Cpl. Report; 4 pages

C-America's Private Investigation Network Inc.; 4 pages

D-Police Crime Scene Entrance Log; 3 pages

E- Evidence Transfer Sheet; 1 page

F-Motion; 14 pages

2 -Index; 3-Motion to be relieved; Examination by
the Court; 10- Decision to retain counsel; 13-Certification of
Court Reporter

G- Search Warrant; 1 page
H- Trial Transcript

STATEMENT OF CASE

Applicant was indicted by the Florence County grand jury for murder. Applicant was tried on September 8, 2008 before Honorable J. Earnest Kinard, Jr., Applicant was represented by R. Scott Joy of Joy, Nappier & Risher LLC of 3575 Highway 17 Business Murrells Inlet S.C. 29576. Deputy Francis A. Humphries, Jr. was the solicitor.

Applicant was offered a 15 year cap on the charge before trial and refused from Solicitor Humphries.

On September 08, 2008 the Florence county Jury found Applicant Guilty of Murder. Honorable Judge Kinard sentenced applicant to thirty (30) years under the hand of one is the hand of all.

Pro-Se Brief Follows.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel did not object to judge addressing jurors about his guilty plea. TT.P.5 L.15-24. There are negotiations in this plea.

16: The Court: Okay. Alright. Jurors, you do not have to

17: to leave, but here is the situation.

18: Judge Nettles has selected a jury. I guess

19: y'all were here while that was going on. trying a

20: murder case. This is a case that was going to be

21: in front of me that was going to take three or four

22: days. Apparently the Defendant has decided to

23: plead guilty. So we don't need y'all for this

24: trial.

All the while Darrell Nathaniel Mitchell was standing in front of the judge. Some jurors left, but some stayed in the courtroom. These same jurors were on the jury for Darrell N. Mitchell's trial. (TT P.5-L.1-24)

the jurors had been tainted at this time, by thinking that he was going to plead guilty.

The judge also admitted such during a motion to relieve counsel. (TT. P.8-L.21) The Court: "Jury right now, the jury's waiting so it's --- whatever"

Counsel asked Defendant not to testify so that he could get to close argument to the jury.

Counsel failed to object that the judge failed to charge the jury as to not hold it against the Defendant for not taking the stand.

Defense counsel failed to invoke the sequestration Rule under Federal Jurisdiction precedent law, produced a condition of IATC citing: Spicer v. Warden of Roxbury Corr. Inst., 31 F. Supp 2d 509 (D.Nd. 1998) Hollmes v. Estell, 569 F. Supp. 146

(W.D. Tx. 1983) Lufkins v. Solom, 716 F. 2d 532 (8th Cir. 1983)

"Trial counsel fail to move to sequester the witnesses amounted to ineffective assistance of counsel.

Counsel Joye failed to investigate case because he says the people we're talking about are crack dealers and told judge Kinard that during his hearing to be relieved (TT P.6-L.13-14 & 21-24).

Counsel Joye already knew the State's main witness was a drug dealer because the State's theory was just because Applicant did drugs, and was high, and alone with his parents.

Counsel Joye allowed Solicitor to be included in the hearing for the motion for relieve of counsel, while the case was being discussed. (TT. P.6-L.15-24)

Counsel Joye failed to object to the chief investigator Frank White of the Public Defender's Office, went to Defendant's house with out a search warrant, and picked up Defendant's clothing and turned them over to Florence Police Department, and a knife he found in a shed behind the residence. See Ex. A (page and Ex. B 4pgs Incident report 2007 005026 By Cpl. L. Davis

Counsel also failed to argue there was no written search warrant to search Defendant's room.

Counsel Joye would not accept collect calls stating the state did not pay enough to allow collect calls. Defendant asked counsel Joye to get a change of venue because of all the publicity on T.V., news, papers, and radio. Atty. Jove should have filed a motion to that effect.

Code Ann. §17-21-80 the circuit shall have power in all criminal cases pending therein.

Defendant constantly asked for a copy of his case under Rule

5 from counsel Joye, so he could help in the case and know what was going on.

Counsel allowed the state to introduce evidence of collateral crimes against him in violation of Rule 404(b) of the Rules of Evidence.

Counsel's complete lack of investigation, failure to acquire expert witnesses, and defense witnesses fell below an objective standard of reasonableness.

EX C 3 pages

Counsel erred by accepting a jury instruction on the Hand of One, Hand of All.

The mere presence charge was called for by the evidence in the case. A mere presence charge is proper outside of an accomplice liability.

The judge abused his discretion by forcing the Defendant to waive a mere presence charge by not giving that instruction in the case. Attorney Scott Joy failed to object to the charge, leaving Defendant helpless during trial.

Special solicitor, Fran Humphries' opening statement for the state's theory is that the Defendant purchased crack cocaine from a dealer and didn't have enough money to pay for it; being short \$3.00 of the \$30.00, and later called for more when he didn't have any money.

The state's theory was that the Defendant killed his father for the money to purchase more crack. The Defendant had at one time stayed with the dealer, as both were accustomed to each other's thoughts and feelings.

The crime scene had been contaminated by at least nine (9) people who were in and out of the house. Several family members were inside the residence in the area of the kitchen and victim's bedroom. See Ex. D-3^{pgs} Incident report (Supplemental)

Christopher Moreau, officer for the Florence Police Dept. had concluded that the Defendant's father's body had been dragged outside and the blood had been cleaned up inside.

He admitted that the Defendant's clothing did not have any blood on them or could they find any with blood on them after a consent search from Adrienne White, who doesn't even live at the residence.

EX E - 1 page. Evidence transfer sheet
2 tubs of Blood - with out permission

Applicant alleges in this case that he was denied effective assistance of counsel at trial, errors of court, that Counsel fail to make any efforts to talk with witness, investigating officers. Failing to secure expert witnesses required to support such, failing to call witnesses in support of such, failing to get a bond set for applicant.

Applicant has been unable to secure the assistance of counsel he needed prior to trial, or on appeal and since in the courts to have issues fully addressed. This has caused the courts to misapprehend his claims, causing Applicant to be denied relief he is due. Precious constitutional rights are meaningless when a defendant is denied effective assistance of counsel, who has a duty of ensuring these precious rights are not violated, or denied. Otherwise there can be no justice, and the proceedings become a mockery of justice.

Applicant has sought to have a fair and meaningful hearing and resolution of his claims of being denied constitutional rights. However, at each level he has been denied such due to being appointed attorneys who are not willing or capable of assisting him, while respondent has used dilatory tactics, submitted erroneous orders and violating the rules to Applicant's prejudice.

Applicant only seeks to have his issues fully and fairly addressed, and means no disrespect toward any recent court appointed counsel's of the court.

Applicant is presently confined to the South Carolina Department of Corrections, at the Lee Correctional Institution, pursuant to order of commitment of the court, upon his conviction. The commitment was from the Clerk of Court of Florence County. The Applicant was indicted at the Sept. 2008 term of Court of General Sessions of Florence County for Murder (16-03-0010), He was represented by R. Scott Joy, of Murrells Inlet S.C. on September 8-10 2008 The Applicant proceeded to a bifurcated jury trial at the conclusion of which he was found guilty of Murder. The Applicant was sentenced by the Honorable Ernest Kinard, Jr., to confinement of thirty years. *State v. Odems Dec 28, 2011 opinion # 27084*

Applicant filed a timely Notice to Appeal and appeal was filed by Robert M. Dudek of the South Carolina Office of Appellate Defense. The Appellate raised the following issue on appeal:

Whether the Court erred by refusing to charge mere presents at the scene of the crime was insufficient to establish guilt unless defense counsel agreed to the jury also being charged "the

hand of one is the hand of all," since a mere presence charge was required given the evidence?

Applicant now files the following Post Conviction Relief.

Applicant herein submits an allegation of ineffective assistance of counsel which requires a showing of counsel's performance was deficient and that an Applicant defense was prejudiced as a results of counsel's deficient performance. Counsel's performance is deemed deficient when his service fail to reach an objective standard of reasonableness. Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991). In Riddle v. State, 308 S.C. 361, 418 S.E.2d 308 (1992), this court held to establish a claim of ineffective assistance of counsel, petitioner must show:

- (1) Counsels representation fell below an objective standard of reasonableness;
 - (2) but for counsel's errors there is a reasonable probability that the results would have been different.
- Also see, Strickland v. Washington, 466 U.S. 668 (1984).

Counsel's complete lack of investigation, failure to acquire expert witnesses, defense witnesses, along with below arguments, fell below an objective standard of reasonableness.

ARGUMENT

HAND OF ONE IS THE HAND OF ALL Theory of accomplice liability, one who joins with another to accomplish an illegal purpose is criminally liable for everything done by his accomplice to the common design or purpose. State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). The appellate court is limited to determining whether the trial court abused its discretion. State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998); State v. Bowie, 360 S.C. 210, 216, 600 S.E.2d 112, 115 (Ct. App. 2004). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. Foster, 354 S.C. 614, 621, 582 S.E.2d 426, 429 (2003); State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 793-94 (Ct. App. 2003_).

This court does not reassess the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; State v. Mattison, 352 S.C. 577, 583, 575 S.E.2d 852, 855 (Ct. App. 2003).

ARGUMENT

Jury Charge on "Hand of one Is the Hand of all"

Applicant also argues the trial court erred by charging the jury that "the hand of one is the hand of all."

The trial court is required to charge only the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). If any evidence supports a requested jury charge, the trial court should grant the request. State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004).

Under "the hand of one is the hands of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of a common design and purpose." State v. Langly, 334 S.C. 643, 648 515 S.E.2d 98, 101 (1999). Applicant argues this theory should not have been charged to the jury because there was no evidence of a common plan or scheme between Applicant and his Codefendant. "Because there was no codefendant involved for a common design or purpose."

18

Furthermore, this court is bound by the trial courts findings unless they are clearly erroneous. State v. Quattkebaum, 338 S.C. 441, 452, 527 S.E. 2d 105, 111 (2001); State v. Lands, 362 S.C. 97, 101, 606 S.E. 2d 503, 505 (Ct. App. 2004).

MERE PRESENCE

A mere presence introduction explains that the prosecution has to prove every element of the crime and that mere presence at the scene is not enough to sustain a conviction. State v. Mattison, 380 S.C. 326, 699 S.E. 2d 635 (Ct. App. 2008) The trial judge has to charge the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 594 S.E. 2d 462 (2004); State v. Zigler, 364 S.C. 94, 610 S.E. 2d 859 (Ct. App. 2005). An instruction on mere presence is often applicable in true cases of accomplice liability or constructive possession of contraband, there was absolutely no evidence of two or more people participating in the murder or robbery of the decedent in this case. State v. Dennis, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996).

Judge erred by failing to give a Mere Presence charge. Instead the judge made the decision to side with the Deputy Solicitor Humphries when he claimed the charge of mere presence and hand of one hand of all are "typically juxtaposed that way. So that is my position".

The judge then stated applicant could not have a "mere presence" instruction with out the hand of one is the hand of all" instruction. and forced applicants counsel to accept an instruction "only on the hands of one is the hands of all then applicants counsel stated "I don't believe I want it judge."

The failure to charge mere presents where it is called for by the evidence is reversible error. State v. Kimbrell, 394 S.C. 51, 362 S.E.2d 630 (1978). There is no evidence that applicant was a participant in a murder or was there any evidence there was two persons involved or that applicant was even home at the time of the death. Applicant was known to have frequent visitation of ladies and leave at all hours of the night.

Pursuant to the South Carolina Rules of Criminal Procedure Rule 29, SCRCrimP and State v. Miller, 1985, Defendant moves for a new trial based on the improper exclusion of evidence related to prior false allegations.

The exclusion of this testimony precluded the Defendant from presenting a full defense to a jury of his peers and thereby deprived him of the due process rights granted by S.C. Const. Art. 1553 & 6, and U.S. Const. Amend. V & XVI.

Under S.C. Code §17-23-175 based on a general hearsay objection in the out-of-court statement, was being offered to prove the truth of the matter asserted. S.C. Rule of Evidence: Rule 801 SCRE and on the grounds that the introduction of TV was being used to bolster the victim's testimony to keep him from testifying.

To be continued

37X A 1-Page

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 2007-005026

Officer: 221D MOREAU, C

Date Entered/Changed: 06/14/2007

Reviewer: 283A

Review Date: 06/17/2007

DETAILED STATEMENT OF INVESTIGATION:

2007-005026

HOMICIDE

CPL C MOREAU 221D

06/14/2007

ON 06/05/2007 AT APPROXIMATELY 1635 HRS, I MET WITH MR FRANK WHITE (SON-IN-LAW OF VICTIM) IN THE PARKING LOT OF THE CITY COUNTY COMPLEX. MR WHITE GAVE ME AN ANTIQUE WOOD HANDLED KNIFE THAT HE STATED WAS FOUND IN A SHED BEHIND THE RESIDENCE AT 925 INGRAM ST. THE KNIFE WAS FOUND INSIDE A SMALL BOX AND APPEARED TO HAVE BEEN THERE FOR SOME TIME. I TESTED THE BLADE FOR BLOOD SEVERAL TIMES USING A PHENOLPTHALEIN PRESUMPTIVE BLOOD TEST KIT. THE RESULTS WERE NEGATIVE FOR BLOOD. THE KNIFE WAS LOGGED INTO THE EVIDENCE ROOM UNDER LOC 987-0722, ITEM #11.

REVIEWED BY: SGT. STEPHEN BOYD 5283

REVIEWED ON: 06/17/2007

LEE R. DAVIS, CPL
5/25/2007
1000 HOURS
MURDER
2007-005026

THIS UNIT WAS DISPATCHED TO THE INCIDENT LOCATION IN REFERENCE TO A SUBJECT THAT WAS UNRESPONSIVE ON THE GROUND WITH SIGNS OF A STRUGGLE. ONCE ON SCENE I SPOKE TO OFC DAVID WHO SHOWED ME WHERE THE VICTIM DAVID MITCHELL WAS LAYING ON THE GROUND SEVERAL FEET FROM HIS REAR DOOR. EMS HAD RESPONDED AND DETERMINED THAT THE VICTIM WAS DECEASED. THE VICTIM MITCHELL WAS FOUND LAYING FACE-DOWN ON THE GROUND. THERE WAS A LARGE BLOOD STAIN ON THE REAR OF HIS SHIRT THAT HAD A HOLE IN THE CENTER IT, WHICH LED TO A PUNCTURE WOUND IN HIS BACK. WHEN MITCHELL'S BODY WAS TURNED OVER THERE WERE NUMEROUS PUNCTURE WOUNDS ON THE FRONT OF HIS BODY AS WELL AS A DEFENSIVE WOUND ON HIS ARM INDICATING THAT THERE WAS AN ATTEMPT TO DEFEND HIMSELF DURING THIS ATTACK. THERE WERE ALSO DRAG MARKS ON THE GROUND THAT EXTENDED ONLY A SHORT DISTANCE FROM DAVID MITCHELL'S FEET. THERE WAS NO DIRT UNDER THE BOTTOM OF MITCHELL'S SHOES WHICH INDICATED THAT HE HAD BEEN PLACED AT THAT POSITION WITHOUT TOUCHING THE GROUND. THIS UNIT THEN WENT INTO THE RESIDENCE WHERE I OBSERVED A BLUE CHAIR THAT WAS LOCATED IN THE DEN WHICH CONTAINED A LARGE SPOT OF BLOOD ON THE LOWER BACK PORTION. ON THE FLOOR JUST BEYOND THE BLUE CHAIR THERE WAS A LARGE BLOOD STAIN ON AN AREA RUG WHICH APPEARED TO HAVE BEEN SMEARED IN AN ATTEMPT TO REMOVE THE BLOOD FROM THE RUG. ALONG THE LINOLEUM FLOOR WERE SEVERAL DROPS OF BLOOD LEADING TO THE KITCHEN. SEVERAL OF THOSE BLOOD DROPS ALSO APPEARED SMEARED, AS IF AN ATTEMPT HAD BEEN MADE TO REMOVE THE BLOOD. AT THE ENTRANCE TO THE DOORWAY LEADING TO THE DEN, I OBSERVED BLOOD ON THE CENTER OF THE THRESHOLD LEADING TO THE EXTERIOR SIDE INDICATING THAT MITCHELL'S BODY HAD BEEN DRAGGED OUT OVER THE THRESHOLD. DURING THE COURSE OF THIS INVESTIGATION WE DID NOT DISCOVER ANY SIGNS OF FORCED ENTRY TO THE EXTERIOR DOORS, OR THE WINDOWS OF THE RESIDENCE. ADDITIONALLY, THERE WERE NO SIGNS OF A STRUGGLE WHICH LED INVESTIGATORS TO BELIEVE THAT THE CRIME SCENE HAD BEEN ALTERED PRIOR TO LAW ENFORCEMENT'S ARRIVAL. ADRIENE WHITE, THE VICTIM'S DAUGHTER, GAVE THIS AGENCY CONSENT TO SEARCH THE RESIDENCE AND CRIME SCENE INVESTIGATORS DISCOVERED A MOP IN THE BATHROOM THAT WAS STILL DAMP AND HAD BLOOD ON THE ENDS OF IT.

page next
2007-005026

THE OCCUPANTS OF THE RESIDENCE AT ST WAS THE VICTIM, DAVID MITCHELL, THE SUSPECT, DARRELL MITCHELL (DOB: SON OF THE VICTIM), AND THE VICTIM'S WIFE, EDNA MITCHELL, WHO IS SEVERELY DEBILITATED FROM ALZHEIMER'S AND REQUIRES TOTAL CARE. THIS UNIT, ALONG WITH SGT. DRAYTON, INTERVIEWED THE SUSPECT, DARRELL MITCHELL, AT THE INCIDENT LOCATION. MITCHELL STATED THAT HE WAS INSIDE THE RESIDENCE ALL NIGHT AND HE NEVER HEARD ANY CONFRONTATION BETWEEN HIS FATHER AND ANYONE ELSE. ADRIENE WHITE, WHO IS THE DAUGHTER OF THE VICTIM, WAS ALSO PRESENT AT THE RESIDENCE UPON MY ARRIVAL. WHITE STATED THAT SHE BELIEVED HER BROTHER EITHER MURDERED HER FATHER OR HE HAD KNOWLEDGE OF WHO DID IT. WHITE FURTHER STATED THAT HER FATHER NEVER OPENED THE DOOR FOR ANYONE WHO HE DID NOT KNOW, AND THAT IT WAS VERY UNUSUAL FOR HER MOTHER TO NOT BE DRESSED FOR BED. WHITE STATED THAT HER MOTHER'S NIGHTCLOTHES WERE FOLDED ON THE BED AND THAT SHE WAS NOT BATHED.

THIS UNIT, ALONG WITH SGT. DRAYTON, REQUESTED DARRELL MITCHELL TO COME DOWN TO FLORENCE PD FOR FURTHER QUESTIONING REGARDING THIS INCIDENT. ONCE DOWN AT FLORENCE PD, MITCHELL STATED THAT HE ARRIVED HOME AT APPROXIMATELY 2130 HOURS ON MAY 16TH, THE NIGHT BEFORE THE INCIDENT. MITCHELL STATED THAT HE LAST SPOKE WITH HIS FATHER AT APPROXIMATELY 2400 HOURS AS HIS FATHER WAS PREPARING TO BATHE HIS MOTHER AND PUT HER TO BED. AFTER A PERIOD OF QUESTIONING, MITCHELL ADMITTED THAT HE WAS A CRACK SMOKER AND THAT HE HAD SMOKED CRACK ON TWO OCCASIONS ON THE EVENING OF THE 16TH. MITCHELL FURTHER STATED THAT HE PURCHASED CRACK COCAINE SHORTLY AFTER 2130 HOURS ON THE EVENING OF THE 16TH, WATCHED AN X-RATED VIDEO, AND THEN WENT TO SLEEP. AT APPROXIMATELY 0100 HOURS, MAY 17TH, MITCHELL STATED HE SMOKED SOME MORE CRACK AND WENT AND SAT ON THE FRONT PORCH. MITCHELL STATED THAT AN UNKNOWN FEMALE, WHO HE CALLED A CRACKHEAD, WAS WALKING BY AND OFFERED HIM A SEXUAL FAVOR IN EXCHANGE FOR CRACK COCAINE. MITCHELL STATED THAT HE BROUGHT THE FEMALE IN THROUGH THE FRONT DOOR AND WENT TO HIS ROOM. HE FURTHER STATED, THAT HE NEVER WENT INTO THE DEN, SO HE WOULD NOT HAVE SEEN HIS FATHER WHEN HE CAME BACK INTO THE HOUSE. AT APPROXIMATELY 0230 HOURS, MITCHELL STATED THAT HE CALLED RAMONA MATTHEWS, AKA BAMBI, TO BRING HIM MORE CRACK COCAINE. MITCHELL STATED THAT HE SMOKED THE CRACK COCAINE, WATCHED ANOTHER X-RATED VIDEO, MASTURBATED, THEN WENT TO SLEEP. WE THEN QUESTIONED MITCHELL REGARDING THE BLOOD STAINS THAT HAD BEEN WIPED OFF OF THE FLOOR AS WELL AS THE MOP THAT WAS FOUND IN THE BATHROOM WITH BLOOD STAINS ON IT. MITCHELL STATED THAT HE HAD NO KNOWLEDGE ABOUT HOW THE BLOOD GOT THERE, OR WHO CLEANED THE BLOOD SPOTS. IT SHOULD BE NOTED THAT

DURING THE COURSE OF THIS INTERVIEW MITCHELL SHOWED NO EMOTIONS REGARDING THE DEATH OF HIS FATHER. MITCHELL WAS INSISTENT THAT HE HAD NO KNOWLEDGE OF WHO KILLED HIS FATHER OR HOW HE WAS KILLED. MITCHELL WAS ASKED TO TAKE A POLYGRAPH EXAMINATION TO ASSIST US IN OUR INVESTIGATION. INITIALLY MITCHELL STATED THAT HE WOULD FAIL THE POLYGRAPH BECAUSE HE HAD FAILED ONE IN THE PAST. CPL DUFF, THE POLYGRAPH EXAMINER FOR FLORENCE PD, CAME IN AND SPOKE WITH MITCHELL ABOUT THE OPERATION OF THE POLYGRAPH. CPL DUFF ASSURED HIM THAT HE COULD NOT FAIL THE POLYGRAPH AS LONG AS HE WAS BEING TRUTHFUL. MITCHELL REQUESTED TO SPEAK WITH HIS BROTHER-IN-LAW, FRANK WHITE (INVESTIGATOR FOR THE PUBLIC DEFENDER'S OFFICE) BEFORE AGREEING TO DO THE POLYGRAPH TEST. WHITE AGREED TO COME AND SPEAK WITH MITCHELL AT FLORENCE PD. AFTER SPEAKING TO WHITE, MITCHELL AGREED TO TAKE THE POLYGRAPH EXAMINATION. CPL DUFF CONDUCTED THE POLYGRAPH EXAMINATION ASKING THE FOLLOWING QUESTIONS:

DID YOU PARTICIPATE IN THE STABBING OF YOUR FATHER?
 DID YOU STAB YOUR FATHER AT 9 STREET?
 DO YOU KNOW FOR SURE WHO STABBED YOUR FATHER AT STREET?

AFTER THE EXAMINATION WAS CONDUCTED CPL DUFF INFORMED US THAT THE TEST RESULTS INDICATED THAT THERE WAS DECEPTION INDICATED ON ALL 3 QUESTIONS. MITCHELL WAS ADVISED OF THE RESULTS OF THE POLYGRAPH AND HE STILL INSISTED THAT HE HAD NO KNOWLEDGE ABOUT THE MURDER OF HIS FATHER. AFTER FAILING THE POLYGRAPH TEST, MITCHELL STARTED TO BECOME AGITATED WITH THE INVESTIGATING OFFICERS. HE STATED THAT IF WE ARE NOT GOING TO ARREST HIM HE WANTED TO GO HOME BECAUSE HE HAD NOTHING FURTHER TO SAY ON THIS MATTER. MITCHELL WAS TAKEN BACK TO HIS RESIDENCE AT APPROXIMATELY 1700 HOURS, MAY 17TH, BY THIS UNIT.

AT APPROXIMATELY 1730 HOURS, THIS UNIT MADE CONTACT WITH RAMONA MATTHEWS, AKA BAMBI MATTHEWS AGREED TO COME TO FLORENCE PD AND TO BE QUESTIONED REGARDING THIS INCIDENT. MATTHEWS STATED THAT MITCHELL CALLED HER ON HER CELL [(843)

AT APPROXIMATELY 2130 HOURS, MAY 16TH, AND ASKED HER TO BRING HIM A \$30.00 ROCK OF CRACK COCAINE. MATTHEWS STATED THAT WHEN SHE ARRIVED AT MITCHELL'S RESIDENCE HE ONLY HAD \$27.00 TO PAY FOR THE \$30.00 CRACK COCAINE. MATTHEWS STATED THAT SHE LET HIM HAVE THE CRACK FOR \$27.00 BECAUSE HE IS A REGULAR CUSTOMER. AT APPROXIMATELY 0230 HOURS, MAY 17TH, MITCHELL CALLED HER BACK AGAIN AND SAID HE WANTED 3 ROCKS AND A PACK OF NEWPORT 100'S. MATTHEWS STATED SHE ASKED MITCHELL IF HE HAD THE TOTAL AMOUNT THIS TIME, AND HE STATED HE DID. MATTHEWS STATED THAT

MITCHELL GAVE HER EXACTLY \$55.00 IN CASH. THIS UNIT ASKED MATTHEWS IF THIS WAS UNUSUAL FOR A SMOKER TO BE SHORT ON CASH FOR THE FIRST BUY, YET HAVE ENOUGH FOR THE SECOND PURCHASE OF CRACK. MATTHEWS STATED THAT IT WAS UNUSUAL. MATTHEWS STATED THAT SHE NEVER WENT INTO THE RESIDENCE, SO SHE HAD NO KNOWLEDGE ABOUT THE CONDITION OF THE VICTIM AT THIS TIME. MATTHEWS FURTHER STATED THAT MITCHELL APPEARED NORMAL DURING BOTH ENCOUNTERS ON THE NIGHT IN QUESTION.

THIS UNIT MADE CONTACT WITH JACK LAWSON, OF THE SOLICITOR'S OFFICE, AND ADVISED HIM OF THE SITUATION REGARDING MITCHELL AND THE VICTIM. LAWSON STATED THAT ALTHOUGH WE COULD NOT FIND THE MURDER WEAPON, THIS WAS A VERY STRONG CASE FOR A CIRCUMSTANTIAL MURDER, AND THAT MITCHELL SHOULD BE CHARGED. ON MAY 18TH, THIS UNIT WENT TO CITY COURT AND MET WITH JUDGE HEWITT AND ADVISED HER OF THE CIRCUMSTANCES REGARDING THIS MURDER. JUDGE HEWITT FOUND THAT THERE WAS PROBABLE CAUSE TO CHARGE MITCHELL WITH THE MURDER OF DAVID MITCHELL. THIS UNIT SIGNED WARRANT #J-396415, CHARGING DARRELL MITCHELL WITH THE MURDER OF HIS FATHER, DAVID MITCHELL. THIS UNIT, ALONG WITH SGT MCCLURE AND CPL LOCKHART, WENT TO _____ STREET AND SERVED THIS WARRANT ON MITCHELL. MITCHELL WAS TRANSPORTED TO THE FLORENCE COUNTY DETENTION CENTER WHERE HE AWAITS A BOND HEARING.

06/21/2007- THIS UNIT WAS CALLED TO _____ (ST BY FRANK WHITE (BROTHER -IN LAW) OF DARRELL MITCHELL AND HE ADVISED ME OF A CONVERSATION THAT HE HAD WITH DARRELL MITCHELL AT FLORENCE COUNTY DETENTION CENTER. WHITE STATED THAT DARRELL MITCHELL ADMITTED TO HIM THAT HE DID NOT KILL HIS FATHER BUT HE SAW IT AS IT WAS HAPPENING. I ADVISED WHITE THAT DARRELL MITCHELL NEVER MADE THIS STATEMENT TO US DURING THE COURSE OF OUR INVESTIGATION AND THAT I WOULD MAKE NOTE OF THIS FOR OUR INVESTIGATION.

America's Private Investigation Network, Inc.

1728 Main Street Columbia, SC 29201



Office: (803) 256-6120
Toll Free: (877) 256-6130
Fax: (866) 612-3696

July 1, 2008

Scott Joye
Joye Locklair & Powers, PC
3575 Hwy. 17 Business
Murrells Inlet, SC 29576

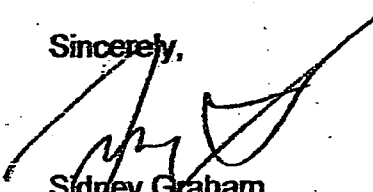
Dear Mr. Joye,

Enclosed is an invoice for Darrell Mitchell. We have been unable to make contact with Terry Lee at this point, but will continue to make further attempts in the future.

If you have any questions, please do not hesitate to contact our office.

We appreciate the opportunity to assist you with your investigative needs and look forward to working with you in the future.

Sincerely,



Sidney Graham
Private Investigator

Enclosure

320 ~~EX C~~

America's Private Investigation Network, Inc.

1728 Main Street Columbia, SC 29201



Office: (803) 256-6120
Toll Free: (877) 256-6130
Fax: (866) 612-3696

May 9, 2008

Scott Joye, Attorney at Law
3575 Hwy 17 Business
Murrells Inlet, SC 29576

RE: Darrell Mitchell

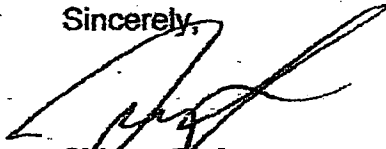
Dear Mr. Joye,

I interviewed Larry Muzon on April 28 at his residence on _____ Street in Florence. Mr. Muzon stated that he did not see anything on the night in question, and that there was a bad rainstorm that night.

Mr. Muzon also stated that the police had picked up approximately four people and interviewed them in connection with this case. If those interviews were conducted, there should be statements on file with the police department for those interviews.

If you have any further questions or concerns, please do not hesitate to contact our office.

Sincerely,



Sidney Graham
Private Investigator



AMERICA'S PRIVATE INVESTIGATION NETWORK, INC.
1728 MAIN STREET, COLUMBIA, SOUTH CAROLINA 29201

Office (803) 256-6120 • Toll Free (877) 256-6130 • Fax (866) 612-3696

WAIVER OF WRITTEN CONTRACT

I understand that South Carolina law requires that investigators have a written contract with clients or a written waiver of those contracts. Accordingly, I intend for this to serve as a blanket written waiver of the contract requirement between my firm (listed below) and America's Private Investigation Network, Inc.

Signature

Date

Name (Printed)

Name of Firm

Address

City, State, Zip Code

EX. C
322

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT
WARRANT NO.: J-396415

State of South Carolina,
vs.
Darrell Nathaniel Mitchell,
Defendant.

EX PARTE ORDER

FILED
2008 APR - 7 PM 12:19
GUINIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter comes before me on motion of attorney R. Scott Joye.

IT APPEARS that the Defendant is currently held in the Florence County Detention Center on the charge of murder. The victim is his father, David Mitchell.

IT APPEARS that due to the fact that the Defendant did not have the funds to retain an attorney, a Public Defender was appointed to represent him.

IT ALSO APPEARS that upon the appointment of a member of the Office of Public Defender, it was learned there was a conflict in that Frank White, the Defendant's brother-in-law, works for the Public Defender's office as Chief Investigator.

IT FURTHER APPEARS that in order to represent the Defendant to the best of my ability, I need to obtain the services of an investigator.

IT IS THEREFORE ORDERED that the court approve the amount of up to One Thousand and No/100's (\$1,000.00) Dollars to be used to hire said investigator.

IT IS SO ORDERED this 31 day of March, 2008.

Howard P. King
HOWARD P. KING
Court of General Sessions
Twelfth Judicial Circuit

March 31, 2008
Florence, South Carolina

CERTIFIED: A TRUE COPY
maie R. Sel. Spence
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

1091

FLORENCE POLICE DEPARTMENT

CRIME SCENE ENTRANCE LOG

VICTIM: DAVID MITCHELLCASE NUMBER: 2007-005026OFFENSE: HOMICIDEDATE: 05-12-2007REPORTING OFFICER: L. DAVIDLOCATION: 925 W. INGRAM ST

NAME	TIME IN	TIME OUT	REASON
GIVEN MCNEIGHT	0924	0925	
LAWRENCE DAVID	0924	0925	
DARRELL MITCHELL	0926	0926	
JEFFREY BERGMAN	0930	0940	
RON CAIN	0930	0940	
ADRIAN WHITE	0930	0935	
LT. JORDAN	0936	0940	
INV. DAVIS	0945	1031	
SET. BOND	10:06	11:11	
CPL. MONROE MOREAU	1008	1130	
SET. DAYTON	1008	1031	
DARRELL MITCHELL	1016	1031	
SET. BOND	1018	1100	
ROBERT HODGS	1020	1120	
ADRIAN WHITE	1032	1100	
FRANK WHITE	1036	1100	
INV. GORDON	1037	1118	
CHIEF SHELLEY	1104	1109	

TIME REPORTING OFFICER ARRIVES: 0925 TIME LEFT: 1823

FLORENCE POLICE DEPARTMENT

CRIME SCENE ENTRANCE LOG

VICTIM: DAVID MITCHELLCASE NUMBER: 2007-005028OFFENSE: HOMICIDEDATE: 05-17-2007REPORTING OFFICER: L. DAVITO

LOCATION: _____

NAME	TIME IN	TIME OUT	REASON
GODWIN	1107	1118	
BOYD	1116	~~1120~~ 1123	
JORDAN	1117	1120	
FLO. CO. EMB	1126	1148	
ROBERT FLORES	1127	1230	
MAJ. RAINES	1140	1143	
GODWIN	1145	1230	
MAJ. RAINES	1200	1208	
FRANK WHITE	1204	1206	
MAJ. RAINES	1209	1210	
FRANK WHITE	1215	1220	
MARCO MOREAU	1216	1223	
G. JORDAN	1324	1330	
MAJ. ACOSTA	1324	1330	
SGT. DRAITON	1554	1609	
CP. DAVIS	1554	1609	
CAMERON	1641	1643	
DRAITON	1717	1721	

TIME REPORTING OFFICER ARRIVES: _____

TIME LEFT: _____

326X E-1 page

326 ASHLEY AVENUE, CHARLESTON, SC 29425

Office (843) 792-3500 FAX (843) 792-3537

EVIDENCE TRANSFER SHEET

ON

5/18/07
(Date)

AT

1:46 pm
(Time)

NAME OF DECEASED ATCHELL, DAVID

AUTOPSY NUMBER FA07 345

TRANSFERRED AT

(Location)

MUSE

DESCRIPTION OF EVIDENCE

- TWO BLACK SHOES
- ONE BLUE PANTS
- ONE BROWN BELT WITH YELLOW METAL BUCKLE
- FIVE WHITE BRIEF-STYLE UNDERWEAR
- ONE BLACK PEN "BIC"
- ONE WHITE SLEEVELESS SHIRT
- ONE BLUE/GRAY PLAID BUTTON DOWN SHORT SLEEVE SHIRT
- ONE YELLOW METAL RING (BAND-TYPE)
- ONE YELLOW METAL RING WITH BLUE STONE
- ONE YELLOW METAL RING WITH CLEAR STONE
- RIGHT FINGERNAILS CLIPPINGS
- LEFT FINGERNAILS CLIPPINGS
- PULLED HEAD HAIR
- BAGS FROM RIGHT AND LEFT HANDS
- Two Purple-top tubes of blood
- TISSUE

From:

KIRKLEY YEARWOOD, MD
(Print name)

Representing:

(Signature)

MUSE

To:

CPL. Chris Mareau
(Print name)

(Signature)

Representing: Florence PD

STATE OF SOUTH CAROLINA

)

GENERAL SESSIONS COURT

)

2007-GS-21-1423

COUNTY OF FLORENCE

)

THE STATE OF SOUTH CAROLINA,

)

Plaintiff

)

-vs-

)

TRANSCRIPT OF RECORD

)

DARRELL NATHANIEL MITCHELL,

)

Defendant.

)

September 9, 2008

Florence, South Carolina

B E F O R E:

THE HONORABLE J. ERNEST KINARD, Judge.

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

FRANCIS A. HUMPHRIES, JR., Esquire
Attorney for the State

R. SCOTT JOYE, Esquire
Attorney for Defendant

SARA L. SNIPES
Family Court Reporter

I N D E X

MOTION TO BE RELIEVED	3
EXAMINATION BY THE COURT	7
DEFENDANT'S DECISION TO RETAIN CURRENT COUNSEL	10
CERTIFICATION OF THE COURT REPORTER	13

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No exhibits were presented.)

1 TUESDAY, SEPTEMBER 9, 2008

2 (WHEREUPON, at 9:29 a.m., on Tuesday, September 9,
3 2008, this matter was called for a motion, with all
4 parties present in the courtroom.)

5 THE COURT: Okay. Mr. Joye, I understand that you
6 received an unexpected letter in the mail.

7 MR. JOYE: Sure did, Your Honor. As I left and
8 returned to -- to the motel that I'm staying at
9 yesterday, I received a call from one of my -- one of my
10 office personnel who said that I had a -- a letter marked
11 personal and confidential from the Supreme Court,
12 specifically grievance board, and did I want them to open
13 it.

14 I said, well certainly, I did because I wasn't there
15 to open it and I didn't know what it was pertaining to.
16 At that time, -- you have in your possession a letter
17 written to me by the grievance board and a letter written
18 to them by Mr. Mitchell.

19 I dispute many of the points in there. I've been
20 ready to try this case. Judge, I don't -- I've never
21 taken a position that I should tell people to take a
22 guilty plea or not take a guilty plea. -- It never
23 happened. I try to tell them what the best -- what the
24 best evidence the State has, what our position is, and
25 I've spent a lot of time with Mr. Mitchell.

1 I've tried to tell him what I thought about the
2 case, the way I thought that Solicitor Humphries would
3 approach the case. And -- And I've made some decisions
4 that probably he didn't agree with in this case. I
5 clearly think that. But I think I'm duty-bound to ask
6 for -- to be relieved. I've -- I've been here and ready
7 to try this case.

8 Mr. Mitchell also tells me that the eleven (11)
9 o'clock news had him on it last night. I'm clueless as
10 to what the content of that report was. I didn't see it.
11 Don't know. Certainly I've told Mr. Mitchell that --
12 that it is okay for them to say that this case is
13 starting this week and show his picture, that there's no
14 problem with that.

15 The -- The only context would be whether or not they
16 went into any of the plea issues.

17 **THE COURT:** If they did that, we certainly couldn't
18 try it.

19 **MR. JOYE:** I understand. I have no clue. I
20 honestly don't know -- even know what channel that was
21 that was here. I don't if anyone saw the report. But---

22 **THE COURT:** Any idea---

23 **MR. JOYE:** ---that's a secondary issue.

24 **DEFENDANT MITCHELL:** No, sir. I don't.

25 **THE COURT:** All right.

wait
for
*
10/10

1 I've tried to tell him what I thought about the
2 case, the way I thought that Solicitor Humphries would
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22 **THE COURT:** Any idea---

23 **MR. JOYE:** ---that's a secondary issue.

24 **DEFENDANT MITCHELL:** No, sir. I don't.

25 **THE COURT:** All right.

Wait
per
*

1 **MR. JOYE:** So I don't know what -- I don't know what
2 Mr. Mitchell's position is now. I would assume that he
3 wants a different attorney. I don't know what---

4 **MR. HUMPHRIES:** I don't have a dog in the fight,
5 Judge.

6 **THE COURT:** No. You don't.

7 **MR. HUMPHRIES:** I'm just here.

8 **THE COURT:** Mr. Mitchell, the Solicitor takes no
9 position on this. The Solicitor, who is Mr. Humphries,
10 is ready to proceed with the trial. He was ready
11 yesterday. He has all his witnesses, and he's ready to
12 go forward.

13 Mr. Joye when he brought this up, I told him we
14 needed a hearing on it. So we haven't really discussed
15 anything about it because, you know, if we discuss things
16 outside of your presence, you think we -- or might think
17 we're colluding up on you.

18 So, but Mr. Joye says he is prepared to try the case
19 today. However, it's hard for him to represent a client
20 who does not want him to represent them. So the bottom
21 line, you have written this letter and basically said he
22 hasn't talked to you enough, and he has not investigated
23 -- or his investigator has not contacted some potential
24 witnesses that you had and so forth.

25 I take it, Mr. Joye, you deny that?

1 **MR. JOYE:** Yes, sir. Your Honor, I have been on
2 the horns of dilemma before where I have gone out and
3 tried to talk to witnesses, only to have them to give a
4 second story. And then the next thing I know, I -- I'm
5 like, "Well, didn't you tell me," and, obviously, that
6 raises an objection, which then he says, "Well, does Mr.
7 Joye want to try the case or you want to be a witness?"

8 I'm not an investigator. I did hire an investigator
9 who went into Mr. Mitchell's neighborhood. He spoke
10 specifically to those -- to at least one of the witnesses
11 that Mr. Mitchell pointed him to. The rest of the
12 witnesses he couldn't find or they didn't want to be
13 found. We're talking about folks who -- who are crack
14 dealers and---

15 **MR. HUMPHRIES:** Let me object. I'm -- For those
16 purposes, I may not need to be here.

17 **THE COURT:** Oh, that's -- that's okay.

18 **MR. HUMPHRIES:** You think we're all right?

19 **THE COURT:** He's just covered that.

20 **MR. HUMPHRIES:** Okay.

21 **MR. JOYE:** But -- But they're -- the witnesses --
22 the type -- the witnesses that he was talking about are
23 witnesses who don't want to be found because it's all
24 involving illegal---

1 **THE COURT:** All right. That's fine. So you think,
2 having practiced law for how long?

3 **MR. JOYE:** Your Honor, I'm -- I'm in my twelfth year
4 of practicing law.

5 **THE COURT:** And you did not ask to represent, of
6 course, Mr. Mitchell?

7 **MR. JOYE:** No, sir. Your Honor, Judge Russo
8 specifically called me and asked me would I take this
9 case because no one in Florence or Marion County was
10 going to be comfortable taking it, just as Solicitor
11 Clements called Solicitor Henry and got Solicitor
12 Humphries to try it.

13 **THE COURT:** And you feel you've used all your skills
14 in getting prepared for trial?

15 **MR. JOYE:** Judge, I try to tell folks how I think
16 things go based on what I've seen before.

17 **THE COURT:** Do you feel -- and, of course, it's a
18 matter of interpretation -- that you have not pressured
19 Mr. Mitchell into accepting a plea; it's just you
20 explained to him that if he took the manslaughter plea
21 and the State recommended the cap between sixteen (16)
22 and twenty (20), that's all that he would get, maximum of
23 twenty (20)?

24 And you explained to him, I'm sure, that if he
25 didn't accept that, and the State went forward with a

1 murder trial, -- and I don't know anything about the
2 case, but just from what I've heard before we started in
3 the indictment, it's just going to be murder, guilty or
4 not, -- and that's thirty (30) to life.

5 So -- If he's -- if he wants a trial, and you didn't
6 pressure him one way or another; is that right?

7 MR. JOYE: No, sir. I absolutely told him what I
8 think that he -- he interprets when I tell him how I
9 think things stand in court---

10 THE COURT: Yeah.

11 MR. JOYE: ---to be pressure. Judge,---

12 THE COURT: Well, that's a good question.

13 MR. JOYE: ---there's a fork in the road, and you've
14 got to take one of them. And -- And that's the pressure
15 that's applied. Which fork do you take? I -- The
16 pressure is the fork, it's not either path that he takes.

17 THE COURT: All right. Mr. Mitchell, here is the
18 situation: It's very difficult for an attorney to
19 represent you if you lack confidence in the attorney. If
20 you would prefer another attorney, we can do that and not
21 try the case. Mr. Joye is ready to go up and pick the
22 jury right now. The jury's waiting. So it -- Whatever
23 you want, really.

24 We're easy to get along with. And my situation, I
25 put no pressure on you when I was explaining the rights

1 to you. I was just telling you what you gave up if you
2 pled guilty. And here is my position: I'm the senior
3 circuit judge. I've been doing it longer than anybody
4 else. And I have been chief criminal judge in
5 metropolitan areas, so I've sentenced more people than
6 any other sitting judge. I can say that since Judge Epps
7 is now retired.

8 One time in Richland, I sentenced eighty-two (82)
9 homicide people. Now, I don't know whether it was in a
10 year or fifteen (15), eighteen (18) months because I had
11 it for eighteen (18) months straight, so. But anyway, I
12 counted them up, and that's -- that's just everybody that
13 ended up -- where somebody ended up dead. It's not all
14 manslaughters and murders. It's hunting accidents, car
15 wrecks where somebody got killed.

16 Anyway, eighty-two (82) times in one year or one
17 term I sentenced people who -- where somebody had died.
18 And I have taken manslaughter pleas when it was -- should
19 have been a murder trial, whatever. But I don't get into
20 that because, one, I'm just a state employee. I get paid
21 nine to five, you know, whether I try -- whether I try
22 your case or take your plea and somebody else comes in a
23 pleas.

24 When you left yesterday, we did about ten (10) or
25 fifteen (15) pleas, because we had to vacate the

1 courthouse or we would have done more yesterday
2 afternoon. So they've got plenty for me to do, and so
3 I've got no position because I don't anything about your
4 case. But the bottom line is the jury's up there ready
5 to start the trial. So you need to tell me whether you
6 want Mr. Joye to proceed or whether you want another
7 lawyer.

8 DEFENDANT MITCHELL: I'll go with Mr. Joye. But I'm
9 still concerned about that telecast yesterday evening.

10 THE COURT: Well, we need to find out about that.

11 (To law clerk) So we will find out about that?

12 LAW CLERK: I'll see what I can do.

13 THE COURT: I mean, we're going to actually need to
14 get a picture of it, I think.

15 DEFENDANT MITCHELL: You know, the only I'm
16 concerned, Your Honor, because you had mentioned that
17 before---

18 THE COURT: I told---

19 DEFENDANT MITCHELL: ---I had a chance to leave the
20 courtroom.

21 THE COURT: ---I told them not to put anything on
22 there concerning your pleading guilty.

23 DEFENDANT MITCHELL: See, I truly don't know what
24 was -- what was said because I was in my cell. The
25 fellows come knocking on my door. "They got you on TV.

1 They got you on TV." By the time I could get to the
2 window to look out at the TV, my -- my picture was gone.

3 **THE COURT:** All right. Well, we need to find out.

4 **DEFENDANT MITCHELL:** I'm quite sure the fellows in
5 the pod that I'm in know it was me because I've been
6 there---

7 **THE COURT:** Well, if they mentioned anything about
8 your offering to plead guilty, the trial does not go
9 forward.

10 **DEFENDANT MITCHELL:** I -- Like I said, truly I don't
11 know what was said.

12 **THE COURT:** We'll find out. Y'all go find out.

13 **MR. JOYE:** Your Honor, I'd ask for -- ask the Court
14 to allow me to get an expedited transcript of this
15 hearing.

16 **THE COURT:** Sure.

17 **MR. JOYE:** And I can answer that---

18 **THE COURT:** You got it.

19 (To court reporter) You need to give him a copy of
20 the hearing because he's got to file with the grievance
21 commission, answer to what he says. And Mr. Mitchell
22 says he's satisfied at this point, which should take care
23 of this matter.

24 **MR. JOYE:** Thank you, Your Honor.

1 **THE COURT:** So-let me know as soon as we find out
2 about the telecast, and we'll just keep the jury sitting
3 at the---

4 **MR. JOYE:** I'll do that, if you don't mind.

5 **DEFENDANT MITCHELL:** How long will it take to -- to
6 subpoena phone records?

7 **THE COURT:** Huh?

8 **DEFENDANT MITCHELL:** How long will it take to
9 subpoena some phone records?

10 **THE COURT:** Well, he -- he can't discuss anything
11 with me.

12 **MR. JOYE:** We'll go talk about it.

13 **THE COURT:** All right. We'll go back upstairs and
14 let me know what you find out.

15 **MR. JOYE:** Yes, sir.

16 **THE COURT:** The jury's sitting there, so they --
17 they're all right for a while.

18

19 (WHEREUPON, at 9:40 a.m., this matter was
20 concluded.)

21

22 ***** END OF REQUESTED TRANSCRIPT OF RECORD *****

23

24

25

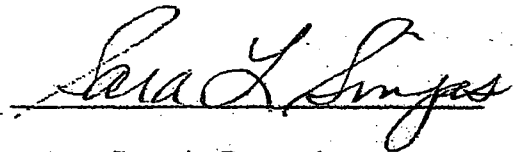
STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF FLORENCE)

I, the undersigned, Sara L. Snipes, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the motion hearing of the captioned case, relative to appeal, in the General Sessions Court for Florence County, South Carolina, on the 9th day of September, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Court Reporter

Florence, South Carolina

September 11, 2008.



City of Florence, South Carolina

Police Department

DATE:

05/17/07

TIME:

1030 hrs.

PLACE:

I, the undersigned, do hereby voluntarily consent that my Father's
Residence located at _____

_____ together with all

the contents thereof, may be searched by the officers securing this consent. I have been fully advised that I do not have to give this consent and that anything found as a result of such search, the possession of which either amounts to a crime under the Statutes of the State of South Carolina, or which may become involved in criminal proceedings or which involve me in criminal proceedings, may be retained by the officers, and may be used as evidence against me.

Adrienne M. White

(Signed)

WITNESSED BY:

Cpt. C. H. [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

COURT OF COMMON PLEAS

Darrell N. Mitchell)
192228)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
11-CP-21-2340

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

February 27, 2013
Florence, South Carolina

BEFORE :

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

APPEARANCES:

SAMUEL T. BRUNSON, ESQ.
Attorney for the Petitioner

TYSON ANDREW JOHNSON, SR., ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. SPENCER: Your Honor, this is Darrell
2 Mitchell versus South Carolina. It's 11-CP-21-2340.
3 Mr. Mitchell was indicted in August 2007 for murder.
4 Scott Joye represented him. Mr. Joye is seated with
5 me at counsel table. He was tried September 8th
6 through the 10th, 2008, convicted as charged, and
7 Judge Kinard sentenced him to 30 years imprisonment.
8 Mr. Mitchell appealed; the conviction was affirmed.
9 He's filed a post-conviction relief action alleging
10 ineffective assistance of counsel, lack of due
11 process and insufficient evidence. Mr. Mitchell has
12 also filed a brief and amendment with some other
13 allegations, and quite a few allegations; and at
14 this point I just would turn it over to Mr. Brunson
15 and ask that he would apprise the Court and counsel
16 of the claims that they're going forward with today.

17 THE COURT: Mr. Brunson.

18 MR. BRUNSON: Your Honor, I was appointed
19 to represent Mr. Mitchell a year or so ago in this
20 post-conviction relief application. We were before
21 Judge Russo six months ago, and Mr. Mitchell at that
22 time did not have his brief and things with him, or
23 maybe the first time we were before you; I cannot
24 remember exactly. But in any event, he filed this
25 brief with the Court because the Clerk of Court

1 called me and wanted to make sure that I had a copy
2 of it, and he had mailed me a copy as well also.
3 Generally I've explained to him exactly what grounds
4 are available in PCRs and what grounds are not.
5 Some would be better for direct appeal and some are
6 appropriate here, but he has listed all the things
7 that he thinks his counsel should have done and
8 including some objections and some preservation of
9 certain issues and has included all of those in his
10 brief. I would just request that you review the
11 brief and realize that he's not a lawyer in writing
12 this brief; but basically, you know, we're going
13 forward on ineffective assistance of counsel.

14 I don't know if you've had a chance to
15 review the transcript or are familiar with this case
16 at all, but Mr. Mitchell was indicted back in 2007
17 for murder. Mr. Mitchell's brother-in-law is Frank
18 White who at that time was the investigator with the
19 Florence Public Defender, and for that reason, Judge
20 Russo — nobody in Florence wanted to handle the
21 case because of that relationship. And Judge Russo,
22 the way that I read it, and Mr. Joye — and I'm just
23 looking at records; I'm Monday morning
24 quarterbacking here. And Mr. — Judge Russo called
25 Mr. Joye and specifically asked him to handle this

1 case and also a prosecutor was brought in,
2 Mr. Humphries from down at the beach as well, and
3 this case resulted in a trial. It's my
4 understanding that the trial was set to begin one
5 afternoon, and I don't know which day of the week
6 that was and at that time there were some
7 discussions about an Alford plea. Mr. Mitchell will
8 testify regarding that, that — there's some things
9 that are not clear in my mind but that the judge
10 basically told the jury that the murder trial we
11 were gonna have is now going to plead guilty, y'all
12 can go. And then the Alford plea fell through and
13 the trial started the next morning. Mr. Mitchell
14 takes the position that that was a tainted jury
15 pool. He had also raised some concerns about
16 Mr. Joye's preparation for the trial before the
17 things, and all of that will just come out in the
18 hearing here today.

19 THE COURT: All right, good. I'm ready
20 any time you are. If you will call your first
21 witness.

22 MR. SPENCER: I'd like to call
23 Mr. Mitchell.

24 THE CLERK OF COURT: Place your left hand
25 on the Bible, raise your right as much as possible.

PW - D. MITCHELL - DIRECT

1 WHEREUPON,

2 **DARRELL NATHANIEL MITCHELL,**
3 having been duly affirmed by the Clerk of Court,
4 testified as follows:

5 THE WITNESS: The testimony I give will be
6 the truth, but I do not like swearing.

7 THE CLERK OF COURT: You're affirming
8 then?

9 THE WITNESS: Yes.

10 THE CLERK OF COURT: Please be seated.
11 State your name for the record.

12 THE WITNESS: My full name is Darrell
13 Nathaniel Mitchell.

14 **DIRECT EXAMINATION**

15 BY MR. BRUNSON:

16 Q And I've been calling you Darrell for two years?

17 A Many people do.

18 Q Okay.

19 A I pronounce it Darrell.

20 Q Darrell?

21 A The spelling is identical.

22 Q Okay. Sir, how old are you?

23 A I will be 64 in ten days.

24 Q Okay. So you're 63 now?

25 A Yes.

PW - D. MITCHELL - DIRECT

1 Q And where were you born?

2 A Florence County.

3 Q Okay. And how far did you go in school here?

4 A I graduated Wilson High School in the year 1967.
5 I went to Florence Darlington Tech for two years. I
6 had a variety of military schools.

7 Q And were you in the US Navy?

8 A Yes, I were. I was.

9 Q Now what type of work did you do during your
10 adult life?

11 A I worked a variety of jobs, but once I got out of
12 the navy I worked for Seaboard Coastline right at
13 nine-and-a-half years.

14 Q Okay. Now in the year 2005 or '6 you were back
15 living with your parents; is that correct?

16 A Yes. My reason for being there, I was living in
17 Charlotte, between Charlotte and Winston Salem. But
18 at the time mom had Alzheimers and she had it for --
19 when she died she had it a little over 15 years. So
20 I went to -- when I had made my mind up to come home
21 try and help with mom because dad did not want to
22 put her in a nursing home or nursing facility so I
23 went to school there and took the CNA course,
24 certified nursing assistants course, so I'd know and
25 during my, clinicals, I requested to go on dementia

PW - D. MITCHELL - DIRECT

1 ward so know exactly how to deal with patients which
2 I come home because my mom was that way.

3 Q All right.

4 A And I had told my instructor, Patricia Priest,
5 that I didn't feel that I could give my mamma a bath
6 touching her genitals, you know, where I came from.
7 And she explained to me now, if I was sick would my
8 mom do it, and don't take it as a job, do it out of
9 love 'cause she said that she had the same
10 predicament with her daddy. She didn't think she
11 could do it, but when time arose she could do it and
12 that was my reason for coming back to Florence.

13 Q And sir, at that time were you on disability?

14 A Yes, I was.

15 Q Okay. And for what reasons were you on
16 disability?

17 A Well now, I had knee reconstructive surgery in
18 Asheville, North Carolina, at the VA hospital there
19 'cause I was told that was the best orthopedic
20 surgeons they had. I have hypertension, sleep
21 apnea, type two diabetic, and a little nerve
22 problem.

23 Q Okay. And this sleep apnea, diabetes, and high
24 blood pressure, those are things you've had for
25 quite a while; is that correct?

PW - D. MITCHELL - DIRECT

1 A Yes, they — it's not nothing just happened
2 overnight, no.

3 Q And what — which knee did you have replaced?

4 A My left knee.

5 Q Okay. And when was that done? Do you know what
6 year?

7 A Year 1994.

8 Q Okay. Now sir, since you've been in prison
9 you've also had a stroke; —

10 A Yes, I have.

11 Q —is that correct? Okay. And what medications
12 are you on today?

13 A I have 14 different medications — well, 15 with
14 the laxative prescribed to me and I can't — don't
15 remember the names of all of them, but now metformin
16 —

17 Q Why don't — let me ask you like this, you take a
18 lot of medicines, right?

19 A I take 14 different pills every day.

20 Q Okay. And what are those pills for?

21 A Diabetes, hypertension, high blood pressure,
22 cholesterol, and about four different pain
23 medications.

24 Q All right. Are you taking those today?

25 A Yes, sir.

PW - D. MITCHELL - DIRECT

1 Q Okay.

2 A And ---

3 Q Do those affect your ability to participate in
4 this matter?

5 A I don't feel it will be, no, sir.

6 Q I just want to put that on the record, okay? All
7 right. Now back in 2007 you were suffering from
8 health problems; is that correct?

9 A I was only taking seven pills a day then.

10 Q Okay. And as a result of those health problems
11 you were deemed disabled by some government agency?

12 A Yes.

13 Q Okay. Now, sir, your father was killed on
14 May 16th or May 17th of 2007; is that right?

15 A That's correct.

16 Q Okay. And a few days later you were indicted for
17 that crime; is that right?

18 A I believe it was two days later, yes.

19 Q Okay.

20 A I was arrested, yes.

21 Q All right. Do you know how long it was before
22 Mr. Joye was appointed to represent you?

23 A It was three, four, maybe five days when I was
24 going for a bond hearing. I was going for the bond
25 hearing when I got out the county jail where the

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1 court out there. And when I got there I was asked,
2 where's your lawyer, where's your lawyer. I didn't
3 know I had a lawyer 'cause no one had appointed to
4 me. About 30 minutes later Mr. Joye came in and
5 said, introduced himself and said he was appointed
6 my lawyer and the reason he was late because he was
7 outside talking to family. So that's when I met Mr.
8 Joye.

9 Q So that was three or four days after, after your
10 dad was killed?

11 A After my arrest, yes.

12 Q Or after your arrest, okay. And your arrest was
13 two days after your dad was killed?

14 A That's correct.

15 Q I've looked back and May 16th was a Wednesday and
16 May 17th was a Thursday. Do you remember that?

17 A May 16 was a Wednesday?

18 Q Probably don't?

19 A Locate me now, that Wednesday when all the
20 investigation was going on around the house the —
21 at that time it was Corporal Davis. The last time I
22 saw him during the trial he, he was addressed as
23 Sergeant Davis.

24 Q Right.

25 A He questioned me a little bit at the house and he

FW - D. MITCHELL - DIRECT

1 said don't go anywhere, I want to question you some
2 more.

3 Q Okay. Well, that's not what I'm asking you, but
4 you just — do you remember which day of the week
5 those days were off the top of your head? I don't.
6 I mean, I looked back on my phone and that's how I
7 found that out, but let's move on, sir. You met
8 Mr. Joye at your bond hearing; is that correct?

9 A I believe it was that Monday after my arrest.

10 Q Okay. And did you have an opportunity to speak
11 with him for a while at that time?

12 A At that particular time, like I say, when he
13 first came in he introduced himself and said he was
14 my lawyer and the reason why he was late — he told
15 me this in the courtroom. The reason that he was
16 late he was outside talking to my family.

17 Q Okay.

18 A But I was not given a bond so we went, left the
19 bond room and went back. He asked, he said, now did
20 I commit the crime. And before I had a chance to
21 answer, well never mind, never mind, never mind, and
22 that he would get back with me.

23 Q All right. Did you have an extensive meeting
24 with him that day?

25 A No.

PW - D. MITCHELL - DIRECT

1 Q Okay. Your trial was September of 2008 which
2 would have been about 16, 15 months later?

3 A That's correct.

4 Q How many times between the first time you met
5 Mr. Joye and the day you went to trial did you
6 actually meet with Mr. Joye?

7 A Approximately maybe six times.

8 Q Okay. And how long would those meetings last?

9 A They would vary. Now during this time I had seen
10 Mr. Joye more times than he and I talked because
11 sometimes he would be coming to the pod to see
12 someone else on his agenda. I tried calling
13 Mr. Joye. I only -- I was only able to call him
14 once, and at that time when I called the secretary
15 answered the phone and said he was not in so I asked
16 him for his voice mail. She put me on hold and
17 about 45 seconds to a minute later she came back on
18 the phone and said, I'll take the message. And I
19 told her then to explain to Mr. Joye, you know, that
20 I was just trying to get in touch with him, see how
21 everything was going, what was what.

22 Q All right. During those meetings with Mr. Joye
23 did you suggest witnesses that he should contact and
24 things he should do to help in your defense?

25 A Yes, I had asked him to get the photo lineup

PW - D. MITCHELL - DIRECT

1 records from that night because now I knew that the
2 county, the State, had them. I asked him about
3 maybe getting an investigator to talk to some of the
4 people that I had talked to that night.

5 Q Okay.

6 A And at that time he told me that he didn't have
7 the money that was allocated enough to do that with.

8 Q All right. Was an investigator eventually hired?

9 A Yes.

10 Q How many times did you meet with that
11 investigator?

12 A Once.

13 Q Okay. Did you give him names and locations of
14 persons to talk to?

15 A I give him names and I did not know number
16 addresses, but I explained to him that one
17 individual lived in the block across the street from
18 a business. One individual lived when you come to
19 the dead-end of the street, if you drive straight
20 across instead of making a turn you be driving in
21 that individual's yard. And the third individual,
22 he only lived about six houses down from me so I
23 estimate, I guesstimated that his address would have
24 been and that was the only one that the
25 investigator found.

PW - D. MITCHELL - DIRECT

1 Q Okay. And what was his name? Was it Larry
2 Mouzon?

3 A That was Larry Mouzon.

4 Q Okay.

5 A But Mr. Joye told me that the investigator told
6 him, he say/she say that Mouzon told him,
7 investigator, that it was a rainy night and he
8 couldn't see nothing, he don't know nothing.

9 Q All right. Now —

10 A The other two he didn't find.

11 Q Between the time of your arrest and when Mr. Joye
12 was hired in the time of your trial, did you have
13 concerns about Mr. Joye's representation?

14 A I was a little leary of it, yes. I — because he
15 seemed to, in my opinion, he came once to see me and
16 said that Mr. Clements called him and wanted to see
17 me. But he — Mr. Clements couldn't see me unless
18 he was there, but when I asked — when he came there
19 and I was brought to town to see Mr. Clements he was
20 not in the room. Mr. Clements offered me a plea
21 saying that he knew my family and with a slurry
22 speech. Now by I know his family, I know his family
23 well. Now I got a deal I'm gonna offer you here.
24 And so I didn't like his tone of voice that he was
25 speaking on, speaking down to me, and then Mr. Joye

PW - D. MITCHELL - DIRECT

1 seemed as though he wanted me to go along with the
2 plea.

3 Q Your lawyer allowed you to meet with the
4 solicitor by yourself?

5 A Well, I can't -- yes. Mr. Joye, I don't think
6 Mr. Joye was in the room. He was there -- he came
7 up into the courthouse hisself but he wasn't in the
8 room when I took, when I listened to Mr. Clements.

9 Q Okay. Now sir, did you, in fact, write a letter
10 to the supreme court voicing your disdain with your
11 representation?

12 A Yes, I did.

13 Q Okay.

14 A And --

15 Q When was that written? Do you remember?

16 A My memory is bad on that. I don't remember when
17 it was written, but I got a reply back from them
18 stating that they could not see that he was doing
19 anything wrong.

20 Q All right.

21 A But then once we got, was about to go to court,
22 date was already set, he had gotten a letter through
23 his office that the complaint was made so he turned
24 it in to the judge and the judge asked me then did I
25 want to remove Mr. Joye; but at the same token he

PW - D. MITCHELL - DIRECT

1 told me now, if I have Mr. Joye dismissed that he'd
2 have to send me back to the county and sit there for
3 another year and have two years before my name ever
4 came up on the document or I got a jury out there
5 already ready to proceed with the trial.

6 Q Okay. So ---

7 A So I ---

8 Q Before your trial started you had written the
9 Supreme Court or the grievance committee complaining
10 with Mr. Joye; is that correct?

11 A That's correct.

12 Q Okay. I've got a transcript from a hearing
13 before Judge Kinard and he gives you the opportunity
14 to get a new lawyer; is that correct?

15 A That's right. That's correct.

16 Q And what you're telling me is you chose not to
17 get a new lawyer because the judge said it'd be
18 another couple of years before you could be tried?

19 A That's correct.

20 Q And you were never granted bond in the case?

21 A No, because Mr. Joye said he never applied, tried
22 to get a bond for me because I didn't have nobody to
23 go my bond because he knew my family and none of
24 them would go my bond. That's what Mr. Joye told
25 me.

FW - D. MITCHELL - DIRECT

1 Q All right.

2 A That was from, he says, he was talking to them
3 before the first bond hearing, the reason why he
4 didn't try to get a bond.

5 Q All right. Now there was some testimony during
6 your trial about a damp mop. Do you know that?

7 A During the trial?

8 Q Yes.

9 A If I remember -- I don't know for sure during the
10 trial but there was a question about a damp mop, how
11 long would a mop stay damp inside of a bucket. Well
12 now, I don't know either but the housekeeper --
13 pardon me, but that same mop that was mentioned
14 during the trial, after five or six tries on the mop
15 then they came up with a direct hit. My DNA was
16 supposedly be on the mop, but it was never
17 re-checked by Mr. Joye to have anything checked on
18 it to see if it was my DNA.

19 Q All right.

20 A Because now I don't know how they got my DNA
21 because the military wasn't taking DNAs. The court
22 system, I never had opportunity to give them a DNA.
23 So how is my DNA got in? I don't know, through
24 false pretenses, I don't know.

25 Q Sir, had you given Mr. Joye the name of the

PW - D. MITCHELL - DIRECT

1 housekeeper as a potential witness?

2 A Pat is all I know and through the senior citizen
3 association. She came every Tuesday to clean the
4 house only once a week.

5 Q Okay.

6 A And the day she came to clean the house my
7 bathroom — she didn't clean my room. She cleaned
8 the kitchen area, mom and dad's bedroom, their
9 bathroom. Sometimes she would cook a meal, but my
10 bathroom would always be the very last room she
11 cleaned before she leave.

12 Q Okay. Did you provide him with her name as a
13 potential witness as far as you knew about it?

14 A Like I just stated, I could only tell him Pat and
15 she was from the senior citizen organization for the
16 housekeeping part.

17 Q And was the senior citizen —

18 A And that's when I did mention to him that — with
19 the Court's indulgence, excuse me, that a male,
20 sometimes we go to the bathroom. We hurriedly go
21 sometimes or while we're standing there the phone
22 may ring or someone may call us and for a brief
23 instance we turn off to the other side and some hit
24 the floor instead of going into the commode. I'm
25 quite sure, I mean, everybody have done that at

PW - D. MITCHELL - DIRECT

1 least once or twice in their lives. And so I'm
2 saying if my DNA was on that mop that's where it
3 came from when Pat cleaned my bathroom.

4 Q And Pat would have come on Tuesday; —

5 A Yes.

6 Q —is that correct?

7 A That's correct.

8 Q Which would have been the day before all this
9 happened?

10 A Yes.

11 Q It happened on Wednesday and Thursday?

12 A Yes.

13 Q Okay. Although you only knew Pat, you knew that
14 she came from the same senior citizen's group that
15 supplied the hospice worker as well; is that right?

16 A That's correct.

17 Q Okay, all right. And was that information given
18 to Mr. Joye to try ascertain —

19 A Yes, I did.

20 Q —this lady?

21 A And he knew about Gwen Knight and she was a
22 hospice worker that came in and got mom up in the
23 mornings.

24 Q Right, okay. Now you didn't testify at your
25 trial, did you?

PW - D. MITCHELL - DIRECT

1 A No, I did not.

2 Q Okay.

3 A Again --

4 Q And why was that?

5 A On my lawyer discretion. He advised me not to
6 take the stand because Mr. Humphries would eat me up
7 and spit me out was the words that he used if I'd
8 have got on the stand with my prior record.

9 Q Okay. And what was your prior record?

10 A I'm a professional wallpaper hanger, forgery.

11 Q I've read the transcript and Mr. Humphries was
12 gonna bring up some forgery charges from 2006, and
13 I'm not clear on it because I don't think he was
14 clear on it if there were more than one count or
15 more than one charge. But did you plead guilty to a
16 forgery charge in 2006?

17 A Yes.

18 Q Okay.

19 A Before Judge Nettles.

20 Q All right. And at that time you were given a
21 suspended sentence of 90 days or something like
22 that?

23 A I was given credit for time served. I served 90
24 days and he -- with the stipulation that I go to a
25 rehab center.

PW - D. MITCHELL - DIRECT

1 Q Okay.

2 A Take some — because I needed some help. So I go
3 to Circle Park — I think that's the name of it.
4 And the price they offered, they wanted 95-dollars
5 just to sign the application, fill out the
6 application. I didn't have it. So I came back here
7 to talk to the probation officer, asked him could I
8 go through a military program. He questioned me,
9 wanted to know was I a veteran; I told him yes. So
10 he said sure. All the judge stated was to go
11 through a program and successfully complete a
12 program. So the next day I called Dorn VA hospital
13 in Columbia, he told me to be there about two days
14 later. Went there, got enrolled, had me put — had
15 me housed at Providence Home, North Main Street, and
16 every day I went to the — they would give me two
17 bus tickets, one to come back to where I was staying
18 at and one to get back in the mornings.

19 Q Sir, you explained this to me last night. You
20 went through the rehab program; is that correct?

21 A Yes.

22 Q Now but in any event, I mean, there's mention of
23 drug use by you on the night of this incident; is
24 that correct?

25 A Yes.

PW - D. MITCHELL - DIRECT

1 Q All right. And the person that testified against
2 you, a young lady that I can't remember her name,
3 was known as Bambi?

4 A Bambi.

5 Q She was the State's — she was one of the State's
6 witnesses; is that right?

7 A She was — the only witnesses they had other
8 than — yes, she was one of the State's witnesses.

9 Q And she had quite an extensive criminal record as
10 well; —

11 A Yes.

12 Q —is that correct? Okay?

13 A You know.

14 Q Did Mr. Joye ask you about your health like I did
15 earlier? Did he ask you about your health
16 situation?

17 A Not completely, no, but he did bring up during
18 the court, during the trial that he had me to walk
19 across the podium there, I mean, the courtroom floor
20 and asked the jurors do they think I could drag a
21 body the weight that it was.

22 Q Okay. You were taking seven medicines at that
23 time?

24 A Yes.

25 Q So I assume they were prescribed by a doctor?

PW - D. MITCHELL - DIRECT

1 A Yes.

2 Q Okay. And who would that doctor have been? Was
3 that with the VA?

4 A I was getting them through the VA.

5 Q All right.

6 A They were sent to me once a month.

7 Q And the knee replacement with the VA; —

8 A Yes.

9 Q —is that right? Okay. Do you think anything
10 would have prevented Mr. Joye from bringing someone
11 to tell how bad your health was?

12 A That was never talked about.

13 Q Okay.

14 A But I was very displeased when I had mentioned to
15 him about that bathroom incident and it kind of
16 just, swnew, went over the mountain. He just didn't
17 bring it back up in the courtroom.

18 Q Okay, all right. Now when your trial started
19 there was an attempt at an Alford plea. Do you
20 remember that?

21 A Yes.

22 Q How did that come to pass?

23 A Once again, Mr. Joye told me, came to me and said
24 that Mr. Humphries, since my DNA was on the mop he
25 told me that David Mitchell was not my father. The

PW - D. MITCHELL - DIRECT

1 only dad that I have ever known he was my — he may
2 not have been my biological father, but he was my
3 dad and I didn't want that to come out in court to
4 belittle my mother. I loved my mother. And she was
5 very ill at the time. As a matter of fact, no —
6 pardon me, she had already passed the time I was in
7 court but I just didn't want, want it to be said
8 that I was a bastard child, that David Mitchell was
9 not my father. But I've come to grips with that
10 since then. Every human being in the United States
11 today over the age of 40 or 85 percent had sex
12 before marriage. 40 percent of the ones that's
13 married still have an extra outside marital affair.

14 Q Sir, what I'm trying to get to, when this came to
15 you you considered this Alford plea to protect your
16 mother's name; —

17 A Yes, I did.

18 Q —is that correct?

19 A That's the only reason I did it.

20 Q All right. Now I've got the record here.

21 MR. BRUNSON: And Your Honor, it's on page
22 5.

23 BY MR. BRUNSON:

24 Q Were y'all upstairs in the big courtroom?

25 A Yes.

PW - D. MITCHELL - DIRECT

1 Q Okay. And the court appears to tell the jury
2 that you've decided to plead guilty to murder and
3 that ---

4 A The jury selection pool was still seated.

5 Q Okay. Was that the same jury y'all used the next
6 day?

7 A Yes.

8 Q Okay.

9 A Part of them left, part of them stayed.

10 Q All right. And you were concerned about the
11 television publicity?

12 A Well, now ---

13 Q But the jury pool was the same one?

14 A The television publicity, that was in a separate
15 room. That wasn't in the open courtroom. Once we
16 left that small anti-room where the judge, judge's
17 chamber, and then came out into the courtroom,
18 that's when the plea bargain was about to go on.
19 And yes, the jurors was seated then. And when the
20 judge told them about he thought he was going to use
21 them because Judge Nettles had a murder trial
22 earlier but he don't think he'll be use them now
23 because that I was going to plead guilty. He didn't
24 say why I was pleading guilty because he didn't know
25 why. But the reason why, like I said, protecting my

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- 1 mother's name because I still love her. She's gone
2 today. So part of the jurors got up and left, and
3 then we started discussing about the plea but the
4 plea had changed from 15 years. When I say 20.
5 That's the reason the transcript said 16 and 20 but
6 all I could hear was 20, and I was not going to
7 plead to 20 for something I did not do. I did not
8 kill David Mitchell.
- 9 Q But a panel had not been separated for your trial
10 at that time, or do you know? Is it the same crowd
11 y'all pulled from the next morning?
- 12 A Prior to that crowd, I was there with the same
13 crowd we pulled from the next morning. I do believe
14 that.
- 15 Q Have you ever been prepared to take the stand?
- 16 A No, not once.
- 17 Q All right. I mean, had your lawyer decided early
18 on that you weren't gonna testify?
- 19 A No, I mean, I heard it the day of the court. The
20 second day we went there when I -- you're not --
21 yes, second day of the trial. That was when he told
22 me he didn't want me to take the stand.
- 23 Q Now at the end of the State's case did he talk to
24 you again about taking the stand?
- 25 A After the trial was over?

PW - D. MITCHELL - DIRECT

1 Q Well, the State rests and then it's your turn if
2 you're gonna put up evidence?

3 A Now they asked me — after when the judge asked
4 me was I going, I said no, I didn't want to go, I
5 was not going to get on the stand. Simply, again,
6 following the lead of my lawyer when he said best
7 for me not to get on the stand.

8 Q Okay. Did he put up any witnesses on your
9 behalf?

10 A No. There was no witnesses called for our side.
11 I had asked him well, what are we gonna do, I mean,
12 you need to put anything together? He states, I
13 don't have to prove you're innocent; the State got
14 to prove you're guilty. Now I understand that's the
15 law; but if you supposed to be helping me, I asked
16 him to subpoena the phone records. That was never
17 done. Because between —

18 Q Tell me what you asked him to do that he didn't
19 do?

20 A Say again.

21 Q Tell me what you asked your lawyer to do, what he
22 didn't do or you think he didn't do? You just
23 mentioned subpoenaing the phone records. What else?

24 A With the investigator, the investigator didn't
25 come about until maybe July or August, I would say

PW - D. MITCHELL - DIRECT

1 July, and the court was in September. When he came
2 out and talked to me I never heard anything from
3 him, and he said I'll be back and talk to you after
4 I go out and talk to these people. Mr. Joye tells
5 me he couldn't find but one; that was Larry Mouzon
6 and what Larry had said. I tried to talk ---

7 Q Was the investigator local or do you know?

8 A I don't know where he's from. No, he did give me
9 an address, said he was out of Columbia and is off
10 on Main Street in Columbia and he's a black man, but
11 I don't remember his name.

12 Q All right.

13 A I had spoken to Mr. Joye. The few times we did
14 speak when he was saying that Bambi, he was gonna
15 have Bambi come to be their witness. But now,
16 Mr. Joye stated to the judge that, well, maybe the
17 people that the investigator was going out to look
18 for was drug dealers or drug addicts and they didn't
19 want to be found; but still yet, the State went and
20 got already the known drug dealer and drug addict to
21 testify against me. I have known Bambi for 25, 30,
22 35 years in all different ways, in all different
23 settings, and I know Bambi would not complain about
24 3-dollars. A month before I was arrested the
25 Florence Police Department sent me a letter stating

PW - D. MITCHELL - DIRECT

1 that they had arrested Bambi and found my Master
2 charge card in her possession and for me to check
3 it, did I want to press charges. I didn't press any
4 charges. I canceled the card when I first found out
5 it was missing. And the only way I can feel is
6 remember that she got it, she had asked me one day
7 to buy her an auto part and I used the card to buy
8 the part with.

9 Q All I have here is a trial record and it shows a
10 lot of photographs were introduced into evidence.

11 A Yes, sir.

12 Q I mean, were there any drawings of your home?

13 A No.

14 Q Okay. There was a -- the solicitor seemed to
15 make a big deal about you using the front door one
16 time and the side door the other time. Why was
17 that?

18 A I'm glad that was brought up because it about to
19 slip my mind. The house has literally two front
20 doors, one leading from the den which comes off of
21 the side porch, a L-porch going across the house,
22 short legged L across the front, the long legged L
23 down the side by the fireplace. That's the den
24 door. The front door, 8 feet away, foot-and-a-half
25 over from the corner, but from the master bedroom

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1 you could -- if the door is open you could see the
2 den door. Living room, the den, and the dining room
3 with tile floors, hard floors. But the living room
4 floor was a carpet floor, and it could not be seen
5 from the master bedroom. So any time I get on my
6 little excursions at night after 8:30, 9:00 I would
7 always use the front door because then I could ease
8 out without disturbing anybody or without being seen
9 or if I'm bringing someone in. Ease in without
10 being seen because come across a carpeted floor and
11 it only had 5-feet of hard floor, tile floor, to get
12 back on to my bedroom which to, again, had a
13 carpeted floor in it.

14 Q So when you did your partying you were sneaking
15 in and out over the carpet?

16 A That's a way of putting it, yes.

17 Q Okay, all right.

18 A And the truth.

19 Q Do you know if Mr. Joye ever went to your house?

20 A I don't know 'cause I wasn't -- I was in
21 Effingham.

22 Q Anything else you want to tell me?

23 A Now I was tried on the hands of one of hands of
24 all. And to my understanding, hands of one hands of
25 all is when two individuals, one may not know what's

FW - D. MITCHELL - DIRECT

1 going on and the second individual can actually do,
2 but when they're actually together then it's the
3 hands of one hands of all. There's not another
4 person — I don't have a co-defendant so I feel it's
5 wrong for me — and Mr. Joye didn't object to that.
6 To my knowledge, best serve my memory, he didn't
7 object to that, hands of one the hands of all. I
8 think it was forced on Mr. Joye to go with that by
9 the judge. The judge the one who decided that he
10 use his recommendation to go with the hands of one
11 hands of all instead of a mere presence, mere
12 presence charge.

13 Q And you've written that brief where you've put
14 all these concerns in there; is that correct?

15 A Yes.

16 Q And you provided that to the Court? You filed it
17 with the clerk and —

18 A Yes.

19 Q —called and said they got it. All right.

20 A For this PCR hearing, yes.

21 Q He gets to ask you questions now. Listen to his
22 questions and answer them.

23 **CROSS-EXAMINATION**

24 BY MR. SPENCER:

25 Q Mr. Mitchell, I'm gonna ask you some followup

PW - D. MITCHELL - CROSS

1 questions about the matters that the lawyer just
2 talked with you about. One of the things I tried to
3 write, take some notes chronologically in the order
4 that you gave them in your testimony, and I'm gonna
5 go down the list in the order that I took them. One
6 of the things that you complained about and, as I
7 have in my notes, the very first complaint of
8 ineffective assistance of counsel that we got to
9 after all the preliminary stuff was that you were in
10 the room when Mr. Clements met with you and talked
11 about a possible offer but that Mr. Joye was not in
12 the room?

13 A To my memory recollection, no.

14 Q Okay.

15 A He mentioned to me when he came down to the
16 detention center that Mr. Clements notified him that
17 he wanted to speak to me and that was the reason he
18 came to Florence.

19 Q Okay, all right. So your complaint is you don't
20 remember him being in the room, sir?

21 A Yes.

22 Q All right. The judge asked you fairly early on
23 if you wanted to have a lawyer besides Mr. Joye?

24 A Yes.

25 Q And we talked a little about your rationale why

PW - D. MITCHELL - CROSS

1 you decided not to, but you decided to stick with
2 Mr. Joye at that time; is that correct?

3 A Yes.

4 Q On the bond issue, you didn't get a bond. I
5 think the understanding at that time was that your
6 family really could not have made the bond, they
7 could not have come up with the money.

8 A That's what he says, Mr. Joye said. Now for me
9 to bonded out -- correct me if I'm wrong, Your
10 Honor -- it has not to be a family member to do it.

11 Q So are you saying someone could have come up with
12 a bond for you?

13 A I know people that has.

14 Q Let me ask you this, how would that have affected
15 the outcome of your case, the final outcome?

16 A I do not know.

17 Q Okay.

18 A But I'm just saying the fact, I'm answering your
19 question, I do not know.

20 Q Yes, sir. Beg the Court's indulgence for just a
21 moment.

22 A Excuse me, sir.

23 Q Yes, sir.

24 A If you have a client, theoretically speaking if
25 you got a client, do you close avenues where a

PW - D. MITCHELL - CROSS

1 client cannot get in touch with you?

2 Q Are you answering the last question?

3 A No, I'm asking you this question 'cause Mr. Joye,
4 his office is in Murrells Inlet. I was in
5 Effingham, Florence County. I called his office
6 once collect, then he would not accept any other
7 collects calls, tell me to write him. But the
8 County does not give you free stationary to write
9 on.

10 Q Now is it your testimony that you did not have
11 several telephone conversations with Mr. Joye?

12 A Only one.

13 Q Okay.

14 A And it was not with Mr. Joye, it was with his
15 secretary.

16 Q But it was only one?

17 A Only one.

18 Q All right. Now the next issue that I have
19 chronologically was something regarding that the DNA
20 hit was never re-checked. I tried to write down
21 your answer as you gave it. The DNA hit was never
22 re-checked. So is that a fair recording of what you
23 said on your direct testimony?

24 A When Mr. Joye told me that they had a direct hit,
25 my DNA -- I'm trying to answer your question.

PW - D. MITCHELL - CROSS

1 Q Yes, sir.

2 A I asked him how did they get my DNA, how was my
3 DNA determined 'cause I had never known I had a DNA.

4 Q But then you had a prior criminal record; did you
5 not?

6 A They did not take it.

7 Q Are you sure?

8 A I'm positive.

9 Q All right. But now getting back to my question,
10 your claim against Mr. Joye was that the DNA hit was
11 never re-checked. Since then have you and your
12 lawyer had the DNA re-checked and have some evidence
13 to present?

14 A I don't have a lawyer.

15 Q Well, you have a PCR lawyer?

16 A No, it has not been re-checked.

17 Q Okay. So you don't have any new evidence to
18 present to the Court today on this?

19 A No.

20 Q You mentioned in your next claim that there was a
21 witness called Pat; that as I understand it, you say
22 Mr. Joye should have called; is that right?

23 A If he was trying to defend me he would ask her
24 some questions.

25 Q They should have called her as a witness is what

PW - D. MITCHELL - CROSS

1 I'm talking about?

2 A To ask her about the mop and the urine on the
3 floor and what time did she clean the house, yes, I
4 feel that way.

5 Q How would her testimony have been helpful to you?

6 A How would her testimony would have been helpful?

7 Q Yes.

8 A One, and say a direct hit on the mop, my DNA, the
9 forensic expert says that my DNA was placed on the
10 mop when I rung the mop out. But earlier Mr. Joye
11 had said there was some kind of chemical used to
12 take all the blood out the mop. That's what he
13 discussed with me, some, one of the few times when
14 he came to see me.

15 Q But you don't anticipate calling a witness Pat
16 today in this hearing, do you?

17 A Very good, no, I can't call Pat today because I
18 don't know where Pat is. I'm housed at Lee
19 Correctional Institution and have been there since
20 October the 13th, 2008.

21 Q Your next claim, as I have it in my notes, is
22 relates to your health issues, your physical
23 condition, and the relevance there as I understood
24 it from your lawyer was that you did not have the
25 ability to drag a body across the floor and do some

PW - D. MITCHELL - CROSS

1 of the physical things that would have been
2 necessary for the person that committed this crime.
3 But didn't Mr. Joye bring up these things at trial?

4 A I said that.

5 Q Did you?

6 A If you remember correctly, follow your notes. I
7 said Mr. Joye had me to rise, come out from behind
8 the desk and walk out in the middle of the floor and
9 walk back and he asked the jurors do they feel it
10 was possible for me to have done that.

11 Q So he did raise this issue?

12 A I said yes.

13 Q Yes, he did. Well, you don't have any complaints
14 with the way he raised that issue, do you?

15 A No.

16 Q Now next, we have that you say you were not
17 prepared to take the stand.

18 A I did not say I was not prepared to take the
19 stand. I said I was told not to take the stand.

20 Q Okay, I may have miswrote this, but you were not
21 prepared by Mr. Joye to take the stand. Is that ---

22 A We had never discussed me taking the stand until
23 he said I do not want you to take the stand.

24 Q All right. But now the final decision was that
25 you chose not to take the stand, was that your ---

PW - D. MITCHELL - CROSS

1 A No, Mr. Joye — a good client follows his, what
2 his lawyer represent and what his lawyer suggests.
3 Even though I had differences with Mr. Joye, when he
4 suggested do not take the stand I did not take the
5 stand.

6 Q All right. There came a time in this trial when
7 the judge asked you what is your intent, you intend
8 to testify, and what did you say?

9 A No.

10 Q So he didn't ask Mr. Joye what the decision was,
11 did he?

12 A No, he did not.

13 Q He asked you; didn't he?

14 A Still I was under, following Mr. Joye's
15 suggestion.

16 Q But you answered for yourself; didn't you?

17 A I was taking Mr. Joye's suggestion.

18 Q But your answer was —

19 A I was taking Mr. Joye's suggestion.

20 Q Yes, sir, I understand. You mentioned witnesses
21 that Mr. Joye should have called. As one of your
22 last complaints I just want to ask you, are those
23 witnesses here today, who are they, what would they
24 tell us?

25 A I have not watched Perry Mason to know law. I

PW - D. MITCHELL - CROSS

1 just enjoy watching it. Now, no, there's no
2 witnesses here today, and you'd be surprised at what
3 maybe they would tell you.

4 Q One of the last things that you claimed is that
5 you felt that Mr. Joye should have proven you
6 innocent?

7 A No, I did not say that.

8 Q You didn't say that?

9 A No, I did not say he should have proved me
10 innocent. I said he -- I felt that being my lawyer
11 he should have had some, put up some effort to help
12 me, some kind of defense to help me but he didn't
13 have no defense, no witnesses. 'Cause he said that
14 when he talked to my family, the reason why he was
15 late for the first bond hearing and that from
16 talking to my family that I could not make a bond if
17 he proceeded to try and get a bond for me.

18 Q Thank you.

19 MR. SPENCER: That's all the questions I
20 have, Your Honor.

21 THE COURT: Anything further?

22 **REDIRECT EXAMINATION**

23 BY MR. BRUNSON:

24 Q Just a few follow-up. I mean, sir, if you'd have
25 been out of jail could you have found these people?

PW - D. MITCHELL - REDIRECT

1 A Honestly, if I was to leave here right now this
2 very minute, within one hour I could have all four
3 of the people that I have mentioned during this
4 testimony. I could have all four of them at one
5 location if they're not at work.

6 Q So an investigator was unable to find these
7 people you wanted to call as witnesses, but you
8 think you could have if you had been out on bond?

9 A Yes.

10 Q Okay.

11 A Now today I don't know whether they're still
12 living or not or whether they're still living at the
13 same addresses.

14 Q Sir, were you receiving medical treatment while
15 you were in Florence at Effingham?

16 A Yes, sir.

17 Q Did they ever take blood from you?

18 A Yes, they did.

19 Q As part of their health care?

20 A Yes, they did and only once in a year-and-a-half.
21 It was June or July of 2008, the nurse station
22 called me in and stated that the doctor said he
23 needed them to draw some blood, and they drew a vile
24 of blood on me and they had not did that none of the
25 time I was there until then.

PW - D. MITCHELL - REDIRECT

1 Q All right. And was it before or after that time
2 that you learned of a positive DNA hit?

3 A It was after that time I learned of a positive
4 DNA hit.

5 Q Did you express those concerns to Mr. Joye?

6 A No, I did not.

7 Q Thank you, sir.

8 MR. BRUNSON: That's all I have.

9 THE COURT: Anything further? You may
10 step down.

11 Call your next witness.

12 MR. SPENCER: Your Honor, I'd like to call
13 Mr. Joye.

14 WHEREUPON,

15 **RICHARD SCOTT JOYE,**

16 having been duly sworn by the Court, testified as
17 follows:

18 **DIRECT EXAMINATION**

19 BY MR. BRUNSON:

20 Q Mr. Joye, can you state your full name please?

21 A Yes. Richard Scott Joye, J-O-Y-E.

22 Q Okay. And what do you do for a living?

23 A I'd say 95 percent of what I do is practice
24 criminal law.

25 Q Okay. And how long have you been practicing law?

PW - S. JOYE - DIRECT

1 A I had my first trial probably the second week of
2 January 2007. I was a prosecutor in the Fourteenth
3 Circuit Solicitor's Office.

4 Q Okay, and when did you finish law school?

5 A 1995. I clerked for the Honorable Sidney T.
6 Floyd for a year and we traveled state sitting,
7 observing, doing a lot of cooking for him on a
8 Friday.

9 Q Okay. And where is your office located?

10 A Murrells Inlet.

11 Q And do you generally practice in Horry and
12 Georgetown counties?

13 A I was actually in Florence as of yesterday. I've
14 been over here a great deal in federal court.

15 Q Okay, how about —

16 A So but for the most part Horry and Georgetown
17 Counties. I occasionally will take a case in
18 Florence or Marion or Williamsburg but not often.

19 Q Okay. Now you just said you finished law school
20 in 1995?

21 A May of 1995.

22 Q All right. And you worked for Judge Floyd for a
23 year?

24 A That's correct.

25 Q What did you do after that? Is that when you

FW - S. JOYE - DIRECT

1 went to the fourteenth circuit?

2 A That's correct.

3 Q All right. And when did you start back private
4 practicing?

5 A November of -- November of 1998 in Murrells
6 inlet.

7 Q All right. And were you approached by Judge
8 Russo to take this case?

9 A I was.

10 Q All right. And when do you remember getting
11 assigned or, whatever you get, I guess appointed or
12 agreement?

13 A Order of appointment, it looks like it came on
14 6/1/2007 and I met with -- may I return to the desk
15 for a second?

16 Q Sure.

17 A I had it highlighted. It looks like sometime
18 either the end of May or the first of June 2007 I'd
19 gotten a call from Judge Russo, and he asked me
20 would I be willing to take an appointment. And he
21 explained the situation to me. And I'll be honest
22 with you, I've never turned down an appointment in
23 my life and I've been called by a lot of people and
24 I didn't turn this one down.

25 Q Okay. In an appointed case how are you paid?

PW - S. JOYE - DIRECT

1 A By the -- I'm paid 40-dollars an hour out of
2 court, 60-dollars an hour in court, and I'm paid by
3 the Office of Indigent Defense up to a certain level
4 and then anything over that I have to ask for -- ask
5 for the judge to give me an order to pay me above
6 that limit.

7 Q All right. What about expenses, investigators
8 and such, do you have to generally ask for that?

9 A I have to go before the judge and ask for it.

10 Q Okay. And are you budgeted to do that? I mean,
11 do they just say --

12 A Yes, yes. I got one thousand dollars to hire an
13 investigator in this case.

14 Q And how much was your original budget cap, do you
15 know?

16 A A thousand dollars. I paid 1167-dollars.

17 Q That was for the investigator?

18 A That's correct.

19 Q How about for the legal services?

20 A Sir?

21 Q How much are you budgeted for the legal services?

22 A I think the cap maybe might be 7500 now. It
23 might have been 3500 then; however, you know, I
24 think judges are generally pretty generous because
25 they understand that we put a great deal of time and

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1 effort in these cases. But ultimately, we lose
2 money, I mean.

3 Q And are these cases, I mean, do they pay
4 substantially less than your for-hire work?

5 A Oh, God, yes.

6 Q So in taking a case such as this you're taking a
7 loss?

8 A Absolutely. But when I get into a case, how I'm
9 paid and how much I'm paid doesn't factor into the
10 equation at all. Now it does factor into the fact
11 that I may not have the money -- for example, if
12 Mr. Mitchell had been independently wealthy, maybe
13 I'd have had 25, 50-thousand dollars to have an
14 investigator beating the bushes day in and day out,
15 but I didn't have that in this case.

16 Q Okay.

17 A And I noticed the State used a fella who is a
18 highfalutin expert. Would you have the money to
19 hire one to go over his work?

20 A No, and quite honestly, I didn't think that the
21 DNA issue was much of an issue. The factors were
22 that it appeared that whoever killed Mr. Mitchell's,
23 Mr. Mitchell, killed him in the living room and that
24 they cleaned up the bloody scene and that there was
25 a mop with blood on it in the bathroom and that mop

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1 had been used to clean up the scene, which is really
2 unusual. You know, if for instance it was an armed
3 robbery, the body had actually been moved out of the
4 house and outside beside a car and that it was — an
5 armed robbery suspect or someone had been,
6 Mr. Mitchell been killed with a knife, very bloody
7 scene, all that blood is cleaned up with the mop and
8 it appeared that it had been cleaned up with the mop
9 that they found maybe in the bathroom or laundry
10 room or something like that in the bucket.

11 Q I mean, my reading of the DNA expert he basically
12 agreed that ten findings of the bloods were
13 Mr. David Mitchell who is the father, and that's
14 what he testified to which was probably pretty
15 obvious?

16 A Which would have been expected if someone had
17 used a mop to clean up the scene of the murder.

18 Q Okay. Now Mr. Mitchell, Darrell Mitchell, did
19 not take the stand; is that right?

20 A No, sir, he didn't. Mr. Humphries in my opinion
21 is one of the best trial lawyers in the State of
22 South Carolina. I did not tell him not to. I
23 advised him strongly against it. The — I was
24 concerned about him opening a door, the forgery
25 conviction which was mentioned earlier, it was his

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1 parents that he'd stolen from.

2 Q But the State's witness, I mean, her criminal
3 record was much worse than his?

4 A Oh, absolutely, I think we went all through that.

5 Q Now did you go to the scene?

6 A Yes, sir, sure did.

7 Q And when was that?

8 A On Sunday before we started the trial on Tuesday.

9 It was a house, I would say that probably it
10 wouldn't be much more than, I would consider, in my
11 estimation half the size of this courtroom, maybe a
12 little bit larger. And the living room,
13 Mr. Mitchell's story to me throughout was that
14 Mr. Mitchell was in his bedroom with a prostitute
15 smoking crack and watching pornographic movies. And
16 his bedroom would have been maybe 15 feet from the
17 living room and the chair where Mr. Mitchell,
18 Mr. David Mitchell was killed, appeared to have been
19 killed.

20 Q You went there the day before the trial?

21 A That's correct.

22 Q Didn't go there any time before then?

23 A You know I can't imagine —

24 Q Are you able to go in the house?

25 A Huh?

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1 Q Were you able to go into the house?

2 A Yes, sir, went through with the prosecutor and
3 the detective.

4 Q Did you take Mr. Mitchell with you?

5 A No, sir. I knew what Mr. Mitchell had told me.
6 He had bought the -- he had bought the crack from
7 Bambi and he had found a prostitute, and I don't
8 even remember her name on the street. He just -- he
9 didn't have a last name and she was using a street
10 name and that's all the evidence I -- that's the
11 only information I had about that person.

12 Q Okay. The investigator you hired, he was out of
13 Columbia?

14 A Yes, sir. And while I would have normally hired
15 Marion Brown who is a local white investigator, I
16 felt my best opportunity to get someone to open up
17 in a black neighborhood was to have a black
18 investigator go in there so I contacted some lawyers
19 in Columbia and I was given Mr. Graham's name.

20 Q Okay, but he didn't pan out anything, didn't have
21 luck finding these people?

22 A Well --

23 Q Other than as --

24 A If you give me a street name of someone over in
25 Murrells inlet I doubt very seriously I can go find

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1 them, you know.

2 Q Okay. Mr. Mitchell complains that you didn't try
3 to get him bond. Why was that?

4 A I didn't have — I had -- I told Mr. Mitchell
5 repeatedly, please have someone call me that says
6 they will stand your bond and I'll be happy to.
7 Repeatedly. Never once was I contacted by anybody.
8 And in fact, the very first meeting that I had, why
9 they had a bond hearing over in, over in Florence
10 County Detention Center with a magistrate is beyond
11 me; because quite frankly, he doesn't have
12 jurisdiction to handle a murder bond.

13 Q Okay. Did you ever move for a bond before a
14 circuit judge?

15 A I did not. I told Mr. Mitchell if he ever had
16 anybody to contact me to tell me that they were
17 willing to go to bond or to give me a name of anyone
18 who was willing to bond him out I would do so. I
19 had several conversations with the family. The
20 family obviously — Mr. Mitchell had a couple of
21 people in this world in terms of family, and Frank
22 White who is his brother-in-law kept going and
23 visiting with Mr. Mitchell even though I believe
24 that Frank White thought he'd killed his
25 father-in-law. But Frank White is a very Christian

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1 man, but they -- they discussed them actually
2 taking, bonding Mr. Mitchell out, and they just
3 weren't willing to do that.

4 Q All right. Sir, when the trial started and did
5 you go to Mr. Mitchell stating that the fact his
6 father wasn't his father was going to be brought up
7 in trial?

8 A I thought it was. I thought it was. I thought
9 that -- I'd rather it come from me than from him
10 sitting beside me and the jury sitting over here and
11 being one hundred percent shocked.

12 Q Okay.

13 A As it turns out, Fran Humphries did raise it, but
14 I was concerned as to his reaction to it and the
15 jury seeing that so I was preparing him for it. And
16 you know, it's like anything else I found out during
17 the course of a trial. I'm gonna tell him
18 everything I know, good, bad, and ugly.

19 Q All right. And sir, did you recommend an Alford
20 plea?

21 A Judge Kinard pulled us in the back.

22 Q And who is us?

23 A Me, and the Solicitor, Solicitor Fran Humphries,
24 and said what will your guy do? This is not an
25 uncommon occurrence when you practice criminal law.

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1 I said, Judge, I don't know, I think he's all he
2 wants to do is go to trial and I'm ready to go to
3 trial, whatever, you know, whatever it is. And he
4 says, the judge says, well, let me tell you this.
5 He said, Mr. Humphries, would you do a bond hearing?
6 Fran said yes. I would give him somewhere between
7 16 and 20 years. The judge said I'll tell you
8 straight up, I will give him 18 years. I said, well
9 Judge, I don't know whether he'd do it or not but
10 let me ask you this, if he did it do you care
11 whether he does it as an Alford plea because I knew
12 in my heart of hearts he wasn't ever going to say
13 that he killed his father. And he said, yes, I have
14 absolutely no problem with an Alford plea. I took
15 it to Mr. Mitchell. I said, you know, if you're
16 convicted I don't think you'll ever walk out of
17 prison alive at — you know, you got to serve at
18 least 85 percent of 30 years. This does give you
19 some hope and some chance of perhaps getting out.
20 But I'll be honest with you, at his age and his
21 health I wouldn't have taken it either.
22 Q Sir, when the offer was agreed to — and I mean,
23 I'm looking at Page 5 of the record. I mean, did
24 the judge not dismiss the jury?
25 A No, no. The jury had already been dismissed. We

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1 went downstairs. Judge Nettles was picking a jury
2 in his murder case, okay. Judge Nettles was picking
3 a jury in his murder case, and Judge Nettles
4 qualified the jury. During that time we went and
5 met with the judge regarding the Alford plea, and we
6 actually switched courtrooms, and we went downstairs
7 and we argued the -- he wanted me to be removed as
8 counsel. Eventually he decided maybe that wasn't in
9 his best interest. I raised the issue about, Judge,
10 I don't know what's going on with press in this
11 case. I think an inquiry was made or they looked at
12 it. They found out that said that there was going
13 to be the case of State versus Darrell Mitchell is
14 my understanding. When there was an agreement the
15 jury had been dismissed, complete and total juror
16 pool. The jury pool had never seen my client.
17 There was not a single juror in here. I have tried
18 murder cases. I've been trying cases for at that
19 time 12 years, 11 years, so it wasn't my first case.
20 And I might make a mistake here or there; but trying
21 to plea a case with the jury in here, ain't
22 happening, didn't happen.

23 Q Why does the record show that it happened?

24 A I'm not saying record shows it happened. I can't
25 tell you -- in fact, if you go to your -- why don't

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1 you pull your motion hearing and you'll find out
2 that the jury's been cut loose for the day. If
3 you'll look at that record, and then we come in here
4 and do that. The jury was not selected until the
5 next day.

6 Q Sure. But September 8th, 2008, which is the
7 trial record, I mean, you have it with you?

8 A Yeah.

9 Q I mean, the judge says, jurors, you don't have to
10 go but we're gonna take this guilty plea?

11 A This was not his case. That was not his case.
12 His case, if you'll bring me the supplemental record
13 I'll point it out to you.

14 Q Well, I've got this one. I mean, this one says
15 September the 9th, 2008. Is this the one you're
16 talking about?

17 A Yeah.

18 Q I mean, what's the supplemental report?

19 A The one you're holding, the little one.

20 Q I mean, all I can do is look at the transcript
21 that's got this caption on it.

22 A Sir, I can't — if you had bothered to subpoena
23 Solicitor Humphries he would tell you the same
24 thing. I've spoken within him this morning. Never
25 happened. The jury was not in here when he went to

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1 take the plea. Didn't happen. Wouldn't happen.

2 Q But the record says that?

3 A Well ---

4 Q I wasn't here. I'm Monday morning
5 quarterbacking. All I can do is read the record.

6 MR. SPENCER: Objection, Your Honor.

7 THE COURT: Yes, sir.

8 MR. SPENCER: The objection that is he's
9 answered the question fully more than once, and I
10 think counsel may be argumentative with him at this
11 point.

12 THE COURT: Sustained.

13 BY MR. BRUNSON:

14 Q Did he tell you about Pat, the housekeeper?

15 A I don't ever remember anything about Pat, the
16 housekeeper. However, it seemed clear based on my
17 experience having practiced criminal law for as long
18 as I have at that time that the mop contained the
19 blood of the victim because the scene had been
20 mopped up. I don't know where they would have
21 gotten another mop from if it had been an armed
22 robber that they would have killed somebody, mopped
23 up the scene and taken the mop. Didn't make any
24 sense. And he was 10-feet away, 15-feet away in his
25 bedroom.

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1 Q So you didn't call Pat the housekeeper who could
2 have told you she ---

3 A I don't remember ---

4 Q ---mopped the bathroom the day before?

5 A As best ---

6 Q I mean, both of them ---

7 A Now I have no clue about Pat the housekeeper.

8 MR. SPENCER: Your Honor, I would object
9 to the question and ask that beginnings of the
10 answer be stricken because they didn't call Pat the
11 housekeeper and he can't testify for Pat the
12 housekeeper. We don't even know her last name.

13 THE COURT: Any response?

14 MR. BRUNSON: Your Honor, is it my duty as
15 a PCR lawyer who gets paid nothing to do a complete
16 investigation and re-try a murder case? I mean, if
17 it is then I'll have to move for -- that we adjourn
18 and let me go get all these people. I just -- this
19 man says he told his lawyer to do this. The lawyer
20 said I couldn't find them, and that's what we're
21 here for today. But if I've got some duty to ---

22 THE COURT: What was your question again?

23 MR. BRUNSON: I just asked him did he call
24 Pat the housekeeper.

25 THE COURT: All right, go ahead and answer

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1 it.

2 THE WITNESS: Your Honor, Pat the
3 housekeeper, this is the first time I've ever heard
4 about Pat the housekeeper. Period.

5 BY MR. BRUNSON:

6 Q All right. Ms. McKnight testified in the trial,
7 right?

8 A Yes, she did.

9 Q And Mr. Mitchell tells me that Pat was from the
10 same agency so, I mean, probably something you could
11 have found out wouldn't you think, as opposed to ---

12 A I don't know what relevance Pat the housekeeper
13 has. I would assume a mop in the house should have
14 DNA of every person in the house's DNA.

15 Q Right.

16 A That's not -- the mop was offered because there
17 was blood on the mop and the scene had been mopped
18 up. It didn't say anything about Darrell Mitchell's
19 blood. And if they do mop I would assume they mop
20 around the toilet, and I would expect to find
21 Darrell Mitchell's DNA on the mop.

22 Q Well, the way I read it the only DNA hit ---

23 MR. SPENCER: Your Honor.

24 MR. BRUNSON: ---they got off the mop ---

25 MR. SPENCER: Can we have a question, Your

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1 Honor.

2 MR. BRUNSON: I'm asking one now.

3 THE COURT: Go ahead.

4 BY MR. BRUNSON:

5 Q The way I read the record, the testimony was the
6 only DNA we got off the mop after a certain time was
7 Darrell Mitchell's, and it wasn't blood. And then
8 somebody testified that they assumed Mr. Mitchell
9 run get out?

10 A I'll be happy to look.

11 Q I believe it was officer — and I can't remember
12 his name.

13 A If you'll point me to a page I'll be happy to.

14 Q Corporal Moreau. Your Honor, I had it marked.

15 A I believe it's John Artuno.

16 Q Right. I mean, he testified that he found the
17 DNA. I can't remember which one testified about the
18 hammering, could possibly leave it on there.

19 A Said DNA profile can be generated by any human
20 cells. They can be skin cells. They can be
21 epithelial cells, sweat. I don't...

22 Q That's page 157?

23 A Okay. And what about 157, sir?

24 Q I'm trying to find where somebody asked something
25 about wringing out a mop.

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1 MR. BRUNSON: I'm going to move on, Your
2 Honor.

3 BY MR. BRUNSON:

4 Q Sir, you were aware that Mr. Mitchell was in,
5 this Mr. Mitchell was in bad health or was on
6 disability?

7 A I was aware he was on disability. He had some
8 difficulty moving about.

9 Q Okay. Would it have been possible for you just
10 to bring some medical person in to testify about
11 those problems?

12 A It would have been possible; however, one thing
13 about practicing criminal law is if you don't have
14 any really great evidence you have to weigh whether
15 or not you want to lose your closing argument right
16 meaning I get to go last after they've put
17 everything else that they can -- and they can't
18 respond to anything that I raise in closing
19 argument. Kind of like the old he who laughs last
20 laughs longest. Now it's a concerted deal. I
21 didn't have any idea what they were gonna say. I
22 didn't have any idea -- Mr. Mitchell certainly
23 wasn't in the health he is now, okay. He was slow
24 moving; but I didn't have any indication that he, I
25 mean, he'd been out and fishing with his

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1 brother-in-law. I mean, he did some odd jobs. He
2 did odd jobs that he told me about so I didn't have
3 any real question about whether or not he was
4 physically capable of moving his father although I
5 did raise that issue.

6 Q So did you put up any testimony at all —

7 A If I put any piece of evidence at all I lose last
8 argument.

9 Q Okay, and that was your concern?

10 A Well, I didn't see where it was, there was any
11 great value. And look, it's easy to sit back here
12 and say, well, if I had done this or if I had done
13 that, that if I had done this or I had done that
14 things would have been different. If I were trying
15 this case again tomorrow I would do it exactly the
16 same. People ask me all the time, would you go out
17 and talk to the witnesses. No, I don't go talk to
18 witnesses. Now I might -- I might not speak with
19 them within an investigator present because if I sit
20 here and say, well, didn't you tell me so and so,
21 there's gonna be an objection and I'm not gonna be
22 able to do it so I'm incompetent per se for now
23 having this information that I can't put before a
24 jury and it's not my -- my job is not as an
25 investigator. My job is to investigate what I have

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1 in front of me.

2 Now in terms of talking about testifying,
3 I certainly told him he had every right to testify
4 and he had to weigh the benefit versus any potential
5 problem that he might have. He chose not to testify
6 'cause I absolutely didn't tell him not to testify.
7 I didn't tell him to take a deal.

8 Q Did you advise him not to testify?

9 A I advised him that I thought Fran Humphries was a
10 very good lawyer, and I thought the one thing he was
11 going to be able to say and put up was, you mean to
12 tell me someone you said you were in your bedroom
13 all night long and someone killed your father with a
14 knife and dragged him outside and you're 15, 20-feet
15 away and you don't hear anything? What was he going
16 to say?

17 Q And you were forced to admit that he had been
18 buying and smoking crack all night; isn't that
19 right?

20 A Absolutely, and in fact, I moved to exclude it,
21 had an ongoing objection to it. I did stipulate to
22 the expert not having to testify in terms of whether
23 or not it was crack. I didn't want to bring that
24 much more to it. Made a mistake. I stipulated
25 without preserving my ongoing objection. I spoke to

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1 Fran Humphries. He and I had already spoken about
2 it and that was the stipulation I was stipulating
3 subject to that objection. Fran Humphries said,
4 Your Honor, I'm sorry, I'm not Fran, we'd gone past
5 that part. And Fran said, Your Honor, I meant to
6 put it on record that this was supposed to come in
7 stipulated with the ongoing objection and I do so as
8 if contemporaneously done.

9 Q I read that, I mean, and I don't think you had
10 any choice, but wouldn't it -- you don't -- you
11 don't think that -- strike that, Your Honor. What
12 did you think convicted Mr. Mitchell?

13 A I'll be honest with you, people have strong
14 feelings about crack cocaine. Mr. Mitchell is in a
15 house that's very small. His room is really
16 literally right off the living room. His father is
17 killed 15, 20-feet away. They clean up the scene.
18 They drag him outside, which is totally inconsistent
19 with any type of armed robber. Nothing stolen. It
20 has a mother laying in the next bedroom who's
21 completely and totally bed ridden. He has
22 23-dollars to buy -- 23 or 27-dollars to buy
23 30-dollars worth of crack at 9:30. At 2:00 in the
24 morning he calls his dealer back. She says, well,
25 you didn't have the money the first time. He said

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1 well, I got, I got plenty of money, don't worry
2 about it, bring me a fifty, a pack of cigarettes and
3 a lighter. He didn't have money at 9:30 as best we
4 can say. He did have money at 2:00 in the morning.
5 I don't have a witness -- I don't remember what he
6 said the street name of the prostitute was, but he
7 brought her in there and they're smoking crack,
8 having sex, and watching porno movies. That would
9 have been my defense.

10 Q But didn't you need something to explain away the
11 27-dollars and then the 60-dollars? I mean --

12 A No.

13 Q Wouldn't Mr. Mitchell have to explain that to get
14 anywhere?

15 A He just said he had plenty of money. I mean, you
16 know, how -- I mean, it would have been his word
17 against hers, and he said, yeah, he was a little
18 short of money but she wasn't worried about it. You
19 know, would it have made a difference? I don't
20 know. But what would have happened would have been,
21 I think he could have potentially opened the door to
22 show that he had previously stolen from his family
23 before and I think that would have been very
24 damning.

25 Q I mean, was there any evidence that being on

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1 crack makes people violent?

2 A I don't think that was any part of it, but I
3 think jurors come in with their own preconceived
4 notions.

5 Q I mean, could it be possible if ---

6 A And if you want my honest opinion as a criminal
7 lawyer, I believe that jurors believe that a crack
8 head will kill you for a 20-dollar rock of crack.
9 Now it was never said in the trial but I believe
10 that's the way they think. Having practiced
11 criminal law now for now since 1997, I absolutely
12 believe that. Now I might be wrong but I believe
13 it.

14 Q Is there any scientific evidence to the contrary
15 that you know of?

16 A Any scientific evidence to the contrary of what?
17 That that was never an argument that was made. You
18 asked me what I believed and I told you.

19 Q Sure, but I'm saying could you have hired an
20 expert to say that crack makes you mellow?

21 A You know, I guess I could probably find some
22 expert somewhere to say crack makes you mellow; I
23 don't know. But I'm sure -- look, you can, you can
24 hire an expert to say whatever you want, you know
25 what, an expert who is simply being paid to say

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1 whatever you want isn't worth paying because jurors
2 will see right through it.

3 Q Well, the State had a couple of experts; didn't
4 they? To me, in reviewing this case they didn't add
5 anything to this case, did they?

6 A You know, —

7 Q The lady said the man died of stab wounds. I
8 think everybody knew that.

9 A Well, but if you're a prosecutor — and I've been
10 one before — you want, you want to put up
11 everything so the jury has a whole story because if
12 not, I'm going to say, get up in closing argument
13 and say, they didn't even tell you how he died, why
14 department they do that, why didn't they call
15 somebody to say he didn't die of a heart attack.
16 This is what I do for a living. This is how I pay
17 for my home and raise my children.

18 Q And in a case like Mr. Mitchell's you do it at a
19 loss?

20 A In a case like Mr. Mitchell's I do it at a loss
21 but I fight like — I'm sorry, Your Honor, I'll
22 fight like hell for him.

23 Q All right. Before the, I mean, Murrells Inlet to
24 Florence that's 90 or so; isn't it?

25 A Yes, sir, but I'm here on a routine basis, at

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1 least once every couple of weeks. And if you like
2 to go through the number of visits I have that
3 information for him. He said six, I'll be happy to
4 —

5 Q Is that about right?

6 A No.

7 Q You made more visits than six?

8 A If Your Honor please, 6/5/2007, 7/13/2007,
9 8/9/2007, 8/15/2007, 01/10, 3/13/200 -- excuse me,
10 that's, no. I'm sorry, that light is not real
11 great.

12 Q It's terrible.

13 A 01/10/2008, 3/13/2008, 9/28/2008, 5/23/2008,
14 8/7/2008, 9/6/2008, 9/7/2008, and then I believe
15 that's when we, about the time we started.

16 Q Those are the days of trial there at the end?

17 A Yeah, yeah.

18 Q So —

19 A But I met with him the day before trial again at
20 the jail.

21 Q And it's your testimony that jurors weren't
22 present during his guilty plea?

23 A Absolutely positively not. I can remember
24 looking back at his family members and others
25 interested. The jury had been cut loose. The jury

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1 had left for the day. I don't know why there's that
2 anomaly in the record, but there was -- I do.
3 remember that there was another guilty plea, not
4 his, that was done.

5 Q Sir, did you ever go to Effingham and see other
6 people and not see Mr. Mitchell?

7 A Oh, yes, sir, all the time. I had many federal
8 clients. But I tell you what I didn't do, I didn't
9 bill indigent defense for when I didn't go see him.

10 Q Yes, sir. I read the advance sheets myself.
11 Thank you.

12 MR. BRUNSON: Your Honor, that's all I
13 have.

14 **CROSS-EXAMINATION**

15 BY MR. SPENCER:

16 Q Mr. Joye, I want to ask you about the allegation
17 that Mr. Clements conveyed a plea offer when you
18 were not in the room. I want to ask you what is
19 your recollection of that?

20 A No way in God's green earth -- I specifically
21 remember. It was back here and I was sitting there,
22 and I'm gonna call him Ed because he's a friend of
23 mine. The family according to Ed wanted some
24 closure. They weren't burning up to see Darrell rot
25 in jail. In fact, they were a great deal more

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1 understanding than what I typically see in these
2 types of cases. And they -- Ed came in there and he
3 kind of laid it out for him. He said, look, you
4 know, that small house, three of you in the house,
5 cleaned up scene, I can't handle this case, I can't
6 prosecute it but if you agree to a deal. And let me
7 say this, I would never, ever, ever, just waltz the
8 prosecutor in there without taking to my client
9 about whether or not he wanted to hear him out.
10 That's not gonna happen.

11 Q All right. There was an allegation of a DNA hit
12 and the question was how did, how did the DNA get
13 matched. What is your understanding of that?

14 A On the trip down here on Sunday before trial, or
15 maybe it was Monday labor day, might have been
16 Monday was labor day and we came on Monday and
17 started on Tuesday, I'm not sure. Either Sunday or
18 Monday. I called Fran Humphries and we met here at
19 the courthouse to go visit the scene and I'm on the
20 phone with him and he said, he said, I got a little
21 information for you. He said, I wanted them to run
22 DNA on the mop again. I don't think the DNA -- he
23 wanted to run DNA on the mop. I don't know that
24 it'd ever been run. And they got the results back
25 that there was blood consistent with David Mitchell

PW - S. JOYE - CROSS

1 on the mop, and he said and we got a second person
2 that's not the son of the father and I went
3 (indicating expression), what? And he said, yep, we
4 got a second hit that's not a son of the father,
5 said but I ran — I told him to run it through
6 CODIS, which is fingerprints, DNA, all of that. And
7 people who have been in the Department of
8 Corrections have had their DNA taken and their
9 fingerprints taken and all that criminal stuff is
10 kept in a central registry, and it's a country wide
11 central registry. It does, however, come back to
12 your client. Could have knocked me over with a
13 feather. Didn't know Darrell was not the son of
14 David Mitchell.

15 Q And you spoke with him about that?

16 A Yes, sir, I did, because I thought it would come
17 up at trial and I spoke with him either — you know,
18 Judge, you mind if I look at my phone? I'm trying
19 to remember if it was labor day. It seems the jury
20 came back in on — I don't know if I can actually
21 get there or not, but I wanted to see if — I
22 thought I remember coming here on.

23 Q Well —

24 A Long story short is that either labor day or it
25 was the Sunday, it was a — for whatever reason we

PW - S. JOYE - CROSS

1 were, when I came over here it was either Sunday or
2 Monday and if it was Monday it was labor day.

3 Q All right. And there were other allegations
4 about your lack of investigation and I think one in
5 particular is that you didn't go to his house but
6 you did go to his house?

7 A I did go to his house and I looked at from where
8 his room was, I looked at things like, you know,
9 what the door, how sound proof I would think it
10 would be, you know, things like that I paid
11 particular because literally, if I remember
12 correctly you had the living room and maybe the
13 kitchen, straight through the kitchen to the right
14 was Darryl's room. Of course, it was 2008, now
15 we're here at 2013. But it literally, it no way in
16 God's green earth was it 30-feet. It was literally
17 15, 20-feet.

18 Q And the last allegation in my notes was that you
19 failed to call Pat the housekeeper. But when was
20 the first time you ever heard of Pat the
21 housekeeper?

22 A You know, I've heard of a lot of people and a lot
23 of things. Pat, the housekeeper, this was the first
24 time that I know of that Pat, the housekeeper, and
25 —

PW - S. JOYE - CROSS

1 Q You mean today's hearing?

2 A Yeah, but again, I don't know what Pat the
3 housekeeper, even having heard testimony would add.
4 It would seem to be pretty clear that the mop was
5 used to clean the blood on the floor from the murder
6 scene. And one of the problems that I saw with the
7 case was someone's coming in to rob, nothing stolen,
8 and the scene is cleaned up and the body removed.
9 That just doesn't, I mean, I had nothing to indicate
10 logically how or why would someone clean up the
11 scene other than someone who lived there. I mean, I
12 have no -- that's the one thing that you can't
13 explain in this case.

14 Q Did you find that that was overwhelming evidence
15 of guilt?

16 A It was as strong as circumstantial evidence as
17 I've ever had in any case.

18 Q Thank you. Please answer any questions
19 Mr. Brunson may have.

20 **REDIRECT EXAMINATION**

21 BY MR. BRUNSON:

22 Q Sir, I believe you testified that you learned
23 about a new DNA test the day before trial?

24 A That's correct.

25 Q Is that common in criminal law that they say, all

PW - S. JOYE - REDIRECT

1 right, we're going to change the rules the day
2 before trial?

3 A I didn't see it as changing the rules. You know,
4 sometimes you ask for additional testing. I would
5 expect to find Darryl's DNA on a mop of his house.

6 Q Okay. But the SLED man testified that David
7 Mitchell, the father's blood, was not on the mop.

8 A Maybe I got that wrong then I, you know, you
9 know, it's been five years.

10 Q The only DNA that was on the mop was Darrell
11 Mitchell's; is that right?

12 A You could be right. I, you know.

13 Q And if that's so, I mean, wouldn't Pat explain, I
14 mopped this bathroom the day before, of course, his
15 DNA is going to be on that mop?

16 A Yeah, I guess that would have been a real huge
17 issue whether DNA was found from Darrell Mitchell in
18 a house he lives in.

19 Q If I'm getting rid of evidence, I mean, blood,
20 clothes, all of that type of stuff, I mean wouldn't
21 you throw the mop out too? I mean, or could you ask
22 the maid where she left the mop the day before?

23 A If I had ever heard about the maid I very well
24 may would have called her or at least sent the
25 investigator to talk to her. Didn't make any

PW - S. JOYE - REDIRECT

1 difference to me. I had an investigator. I didn't
2 have to be find her. All I had to do was send him
3 to try to talk to her, and it would have been very
4 easy.

5 Q So you're saying that this gentleman never told
6 you about the maid?

7 A I don't remember any words about the maid.

8 Q Thank you, sir.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Anything further?

12 MR. BRUNSON: No, sir.

13 THE COURT: Any witnesses.

14 MR. SPENCER: No, sir.

15 THE COURT: I'll take it under advisement
16 and let you know something.

17

18 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

19

20

21

22

23

24

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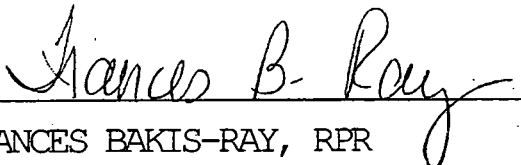
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 7th day of October, 2013.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Darrell N. Mitchell, # 192228,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-21-2340

ORDER OF DISMISSAL

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2013 MAR 25 PM 4:20

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 1, 2011. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on February 27, 2013, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Samuel T. Brunson, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was R. Scott Joye, Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the August 2007 term of the Florence County Grand Jury for murder. R. Scott Joye, Esquire, represented Applicant. Applicant was tried September 8-10, 2008 and convicted by a jury as charged. The Honorable J.

Ernest Kinard sentenced Applicant to thirty years imprisonment.

Applicant appealed his conviction and sentence. He was represented by Chief Appellate Defender Robert M. Dudek. The conviction was affirmed by the Court of Appeals. State v. Darrell Nathaniel Mitchell, 2011-UP-101 (S.C. Ct. App., filed March 14, 2011). The remittitur was issued on March 30, 2011.

ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully because of ineffective assistance of counsel, lack of due process, and insufficient evidence.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. 17-27-80.

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Ineffective assistance of counsel claim

Applicant started by testifying about his family history and his medical problems. According to Applicant, Scott Joye, Esquire (counsel) only met with him six times and the meeting times would vary. Applicant said he was only able to call counsel on the telephone once, and that he met with counsel's investigator once, but that he still had concerns about counsel's representation. Applicant claimed counsel did not investigate the scene of the crime but counsel directly refuted this as he testified he did travel to Applicant's residence and investigate.

Applicant complained he was left alone to discuss a plea with the Solicitor, and that the plea offer came directly from Solicitor Clements and that the Solicitor was "talking down" to him.

While Applicant said counsel was not present in the room during the conveying of the plea offer, counsel testified he was in the room at the time and that "no way on God's green earth" would he allow a client to speak with the Solicitor without his presence. Applicant testified he complained to the Supreme Court about counsel. Applicant indicated when the judge asked Applicant if he wanted another lawyer, he chose not to get a new lawyer.

Applicant averred counsel never "re-checked" the "hit" on his DNA regarding the DNA match on evidence found at the scene (blood on a mop at Applicant's residence used to clean up the blood at the scene) and with Applicant's DNA. Applicant argued there was no way there could have been a DNA match as Applicant believed the State didn't have Applicant's DNA. Counsel testified the State already had Applicant's DNA because of his past incarceration within the SC Department of Corrections.

Applicant further complained that counsel failed to get him released on bond, and that had Applicant been out of jail on bond pending his trial, he would have been more able to assist in the defense of his case. Counsel testified bond would have been futile as there was no one who could pay Applicant's bond, and that he told Applicant if he could get someone that would pay his bond he would get him a hearing. Applicant could not produce anyone to counsel that was willing and able to pay his bond, therefore counsel utilized time and resources toward the preparation of the trial of the case.

Applicant next claimed counsel failed to call a witness named "Pat" who cleaned his house to testify in his behalf. Applicant failed to show what this witness would have testified to or how the absence of this witness prejudiced his case. When asked about this person, counsel testified this is

"the first time I have ever heard about Pat the housekeeper." Counsel could not have called a witness that Applicant never told him about.

Applicant complained that counsel failed to bring up applicant's entire health history before the jury and failed to have him demonstrate he could not have dragged a body in order to move it or hide it. Counsel indicated he did bring up Applicant's lack of health, and it appears to have been part of his trial strategy in defending Applicant. The jury was able to see that Applicant needed assistance in walking. Counsel testified to the difficulty in putting up a defense to this case as Applicant told counsel he was in his bedroom with a prostitute smoking crack cocaine during the murder and that he did not hear anything.

Applicant chose to not take the stand in part because it would have opened the door to his criminal history, in that he had stolen from his parents in the past, as the alleged crime in the instant case was against his father. Additionally, Applicant had been out fishing with his brother in law which tended to show how mobile Applicant actually was, and counsel felt this would have tended to lessen Applicant's credibility. Additionally, not calling Applicant as a witness preserved counsel's ability to argue last and counsel felt that was a trial strategy advantage.

Applicant indicated he wanted to call the prostitute he was with as a witness, but counsel testified Applicant did not provide a last name for the prostitute. The investigator counsel hired was also unable to determine the identity of the prostitute. Counsel advised Applicant that the defense of being "fifteen feet away from a murder with a prostitute smoking crack would be a problem if he testified." Counsel also testified "he would have opened the door that he had stolen from his family before."

Next Applicant complained that the trial Judge brought up Applicant's willingness to plead

guilty in front of a jury. Tr. P 5. Counsel testified the jury referenced in the transcript was not Applicant's jury, as Judge Nettles was also selecting a jury for a case separate and distinct from Applicant's case. Counsel indicated he would not have gone forward had these comments been made by the trial judge about Applicant in front of the very jury that would try Applicant, nor would Judge Kinard, who had decades on the bench, have made the comments in front of Applicant's jurors. Counsel testified "the jury pool had never seen my client" and that it "didn't happen – never happened."

With regard to the trial strategy decisions, counsel testified "If I were trying this case tomorrow, I would try it exactly the same way." I find that counsel was not ineffective with regard to his representation of Applicant. I find that counsel was not deficient in this respect, nor was applicant prejudiced by any alleged deficiency. Further, I find counsel's trial preparation and actions were reasonable under prevailing professional norms, and therefore this claim is denied.

Applicant has failed to establish his burden of proving ineffective assistance of counsel as well as failing to establish he was prejudiced in any way. I find that counsel's performance was not deficient under these circumstances. Therefore this Court finds the Applicant's claims to be without merit, and they are therefore denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established

any constitutional violations or deprivations that would require this court to grant his application.

Therefore, this application for post conviction relief is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22 day of March, 2013.


WILLIAM H. SEALS
Presiding Judge
12th Judicial Circuit

Marion, South Carolina.

FILED
2013 MAR 25 PM 4:22
CLERK OF COURT
DOUGLAS
FLORENCE COUNTY, SC

423

ARREST WARRANT

J-396415

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

FLORENCE

THE STATE

against

DARRELL NATHANIEL MITCHELL

Address: FLORENCE SC 29501

Name: _____ SSN: _____

M Race: B Height: 5-5 Weight: 185

State: _____ RI #: _____

DOB: _____ Agency ORI#: SC0210100

Prosecuting Agency: FLORENCE MUNICIPAL COURT

Prosecuting Officer: DAVIS

Offense: MURDER

Offense Code: 0116

Code/Ordinance Sec. 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant DARRELL NATHANIEL MITCHELL

on

05/18/07
John Lochart
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORIGINAL
MUST BE RETURNED TO
FLORENCE MUNICIPAL COURT

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

FLORENCE

Personally appeared before me the affiant LEE DAVIS

being duly sworn deposes and says that defendant DARRELL NATHANIEL MITCHELL

did within this county and state on 05/17/2007 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of FLORENCE)

In the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0010 / MURDER

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THE DEFENDANT STABBED HIS FATHER AT ST. IN THE CITY OF FLORENCE WHERE HE LIVES WITH HIS
FATHER AND INVALID MOTHER. A HUGE AMOUNT OF BLOOD WAS OBSERVED IN A CHAIR IN THE RESIDENCE AND A PATH
WITH SPLATTERS OF BLOOD LEADING TO THE KITCHEN, AS IF THE WEAPON MAY HAVE BEEN WASHED THERE. THE
DEFENDANT HAD ATTEMPTED TO CLEAN BLOOD FROM THE DEN FLOOR WITH A MOP. THE VICTIM HAD BEEN TAKEN
OUTSIDE WHERE HIS BODY WAS DISCOVERED AROUND 9:30AM THE FOLLOWING DAY. THE DEFENDANT ADMITS TO
SMOKING CRACK AT 11:00PM AND 2:30AM AT THE RESIDENCE AND NEVER LEAVING THE RESIDENCE.

Signature of Affiant

Affiant's Address FLORENCE POLICE DEPT., 180 N. IRBY

FLORENCE SC 29501

Affiant's Telephone 843-665-3191

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/17/2007 defendant DARRELL NATHANIEL MITCHELL

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of FLORENCE) as set forth below

DESCRIPTION OF OFFENSE: MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

On 05/18/2007)

Charles Hewitt (L.S.))

Signature of Issuing Judge

Judge Code: JUDGE

Judge's Address BOX DD-CITY-COUNTY COMPLEX ROOM 506

FLORENCE SC 29501

Judge's Telephone 843-665-3148

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2007-005026

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

ORIGINAL

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

12
DET. JAMES RODGERS

FPD

Davis

PROS:

ELC

D/O:

05-17-2007

ARREST WARRANT NO.

J396415 (1)

ACTION OF GRAND JURY

TRUE BILL

K. [Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2007-GS-21-01723

The State of South Carolina,

County of FLORENCE

ELC

COURT OF GENERAL SESSIONS

AUGUST

TERM

2007

THE STATE

vs.

DARRELL NATHANIEL MITCHELL

Indictment for

MURDER

2007 AUG -2 PM 1:12
CLERK REEL-SHEARIN
CCOP & GS
FLORENCE COUNTY, SC

INDICTMENT FOR

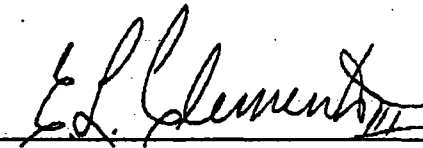
STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
MURDER

At a Court of General Sessions, convened on AUGUST 2, 2007, the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE - MURDER

That DARRELL NATHANIEL MITCHELL did in FLORENCE County on or about May 17, 2007, violate Sections 16-03-0010, 0020 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did feloniously, wilfully and with malice aforethought kill one David Mitchell, by means of stabbing him with a knife or other sharp object, and that the said David Mitchell did die as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEFLORENCEINDICTMENT/CASE#: 2007-GS-21-01423VS
DARRELL NATHANIEL MITCHELLAW#: J396415

AKA:

Date of Offense: 5-17-07Race: BSex: MAge: 59S.C. Code §: 16-03-0010DOB: 1SS#: 0016CDR Code #: 0016Address: 1City, State, Zip: FLORENCE, SC

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MURDERIn violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0016☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§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	\$ <u>25.00</u>
§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)	\$	\$ <u>3.90</u>
§90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
TOTAL		\$ <u>173.90</u>

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.

Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Court Reporter: D M' Cindy

Judge Code: _____

Sentence Date: 9/15/07