

VOLUME III OF III

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Clifton Newman, Circuit Court Judge

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THE STATE,

S.C. Supreme Court

RESPONDENT,

V.

FRANKIE LEE MCGEE,

APPELLANT

APPELLATE CASE NO. 2011-197606

RECORD ON APPEAL

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Arthur Thomas - Cross-examination
By Mr. Strickler

1 Q So, he told you the truth about that as far as you're
2 concerned, right?

3 A The neighbor observed him using a telephone.

4 Q Right.

5 A That corroborated some facts that we had. So, that
6 was, was a truth.

7 Q Page 35, Line 24, or 22, Mr. Reece. What phone did you
8 use, his cell phone, house phone?

9 Mr. McGee. I used his cell phone to call my wife.

10 Right?

11 A Right.

12 Q Tells us again, Page 37, talking about the church or
13 the place that Mr. Eichelberger had at the Blue Ribbon Cab
14 Company, right?

15 A Okay.

16 Q Line 3. I was told to go there to give out, hm, on
17 Monday and Wednesday to give out grocery gifts I believe is
18 what you -- I'm not certain what all a missionary does. I'm
19 just inquiring on. Yes, I been down that way.

20 Right?

21 A Right.

22 Q So, prior to that you had not given him any facts about
23 you being, he being spotted at that mission?

24 A No, but he corroborated again the facts that we had in
25 the case that he had gone to Reverend Eichelberger's church

Arthur Thomas - Cross-examination
By Mr. Strickler

1 and his missionary.

2 Q So, he told you the truth again, right?

3 A He corroborated the facts, yes, sir.

4 Q Line 15. You. So, you just went there for the
5 services?

6 Frankie. I went there -- I went to their services, but
7 I never went in. I went up there with my wife, but I never
8 went in.

9 So, he, he indicates that he was there with his wife,
10 correct?

11 A Correct.

12 Q And the information you have was that he was seen there
13 with a woman on one occasion anyway, correct?

14 A Correct, which was a corroboration but slash a lie
15 because he stated he didn't go in, but the witness on the
16 stand advised that they both came in to the service.

17 Q Page 37, sir, Line 23, all right, you used your cell
18 phone to call your wife.

19 Over on to 38, yes, I did.

20 So, again, he admits to calling his wife on the cell
21 phone, right?

22 A Yes.

23 Q Now, Page 40, Line 16. At this point in time y'all are
24 talking with him about being at Mr. Eichelberger's house
25 earlier on the 3rd and early on a day.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 And Mr. Reece. What did you -- what did he give you?

2 I'm referring to Mr. Eichelberger.

3 He gave me a, um, ah, um, a cup of water, a sandwich,
4 and a cup of water and a sandwich.

5 Right?

6 A Yeah.

7 Q How long was this interview after the incident, ten
8 months?

9 A Approximately.

10 Q Sir?

11 A Approximately ten months.

12 Q May 3rd to March 17th, the following year?

13 A Right.

14 Q Okay. Further down Line 22. Mr. Reece. All right.

15 And then when -- do you remember what time of day it was?

16 Now, he's already told you what time of day it was, but
17 Mr. Reece asked him do you remember what time of day it was.

18 McGee. Uh, I don't. I don't recall the correct time.

19 I don't, but I know it was after 12:00.

20 Right?

21 A Correct.

22 Q November 2nd, October 2nd, 2010, what did you have to
23 eat for lunch?

24 A Are you questioning me, sir?

25 Q October 2nd, 2010, some ten month ago, what did you

Arthur Thomas - Cross-examination
By Mr. Strickler

1 have to eat for lunch?

2 A If you're asking me that question I can't answer that
3 question.

4 Q Very good, sir.

5 And on October 2nd, 2010, when did you eat lunch?

6 A You're asking me that question and I can't answer that
7 for you either.

8 Q All right. It continues though, Page 41, Mr. Reece,
9 after 12:00 in the day.

10 Frankie. Yeah.

11 And it's daylight.

12 Uh-huh.

13 Mr. Reece. All right. So, between 12:00 and 1:00, is
14 that fair to say or 12:00 and 2:00?

15 McGee. Yeah, about that area, right.

16 All right. Do you remember the date this was?

17 Frankie. No, sir, I don't remember.

18 Right?

19 A That's correct.

20 Q And do you remember the month?

21 No, sir, I don't remember the month.

22 Mr. Reece. All right. But this was -- um. Was it the
23 same day that you heard on the news about Eichelberger?

24 Frankie. No, I heard about it about maybe a month, a
25 month and a half, or two months later.

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 Right?
- 2 A That's what he said.
- 3 Q Page -- let's see. Beginning on Page 41, Line 25. Mr.
- 4 Reece. Okay. Because I thought we just shook on the --
- 5 Uh-huh.
- 6 -- truth for truth and that kind of shit.
- 7 That's Mr. Reece then, right?
- 8 A What page are we on here now?
- 9 Q We're -- that was the -- we're on to Page 42.
- 10 A Okay.
- 11 Q I just read Lines 3 and 4.
- 12 A All right.
- 13 Q So, Page 42, Line 6, Mr. Reece. All right. So, let me
- 14 give you another truth. See if you can get some more truth
- 15 out of you because what you just did now, what you just did
- 16 just now was you lied to me. You tried to take me down the
- 17 road again.
- 18 Right?
- 19 A Correct.
- 20 Q So, he accuses him of lying.
- 21 Now, that's an interview or that's interrogation?
- 22 A That's an interview.
- 23 Q Now, that's a confrontational statement, isn't it?
- 24 A No, that's calling him a liar.
- 25 Q Right.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Mr. McGee's response, Page 42, Line 15 and 16, I told
2 you everything, the truth just now.

3 Right?

4 A Yes.

5 THE COURT: Ladies and gentlemen, I'll have you go to
6 the jury room. Please do not discuss the case.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: We'll take ten minutes.

10 (WHEREUPON, a short break was taken at this time.)

11 THE COURT: Bring the jury.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: You may continue.

15 MR. STRICKLER: Thank you, sir.

16 Please the Court.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. STRICKLER:

19 Q Mr. Thomas?

20 A Yes, sir.

21 Q We're still going through this statement here. It's
22 Page 43.

23 At this point you-all are speaking with Frankie about
24 being in the area, correct?

25 A That's correct.

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 Q Now, Mr. Reece. Go past 12:00 in the day.
2 Uh-huh.
3 Let's go to around let's say 6:00.
4 Uh-huh.
5 Okay. Mr. Reece. Because you're still in the area.
6 A Uh-huh. (Affirmative).
7 Q Frankie. Yes, I was.
8 Reece. All right.
9 Uh-huh.
10 Reece. Well, can't we go till around 9:00. You're
11 still in the area.
12 We can. We can, yes.
13 We can go up to 11:00.
14 Uh-huh.
15 You're still in the area?
16 Right.
17 We go to 11:30
18 Right.
19 Still in the area. You're still in the area around
20 Eichelberger's house. Okay. I'll just give you the truth.
21 The truth is you're still in the area around Eichelberger's
22 house?
23 Correct?
24 A Correct.
25 Q Page 44. Frankie. Okay. Give me something else now.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 What was you doing---

2 THE COURT: Madam Court Reporter, can you keep up with
3 the fast reading?

4 COURT REPORTER: Yes, sir.

5 THE COURT: You can?

6 COURT REPORTER: Yes.

7 THE COURT: All right.

8 MR. STRICKLER: I'll slow down. I'm sorry.

9 Reece. Give me something else now. What was you doing
10 in the area at 11:30 around Eichelberger's house?

11 McGee. Okay. To tell you the truth, yes, sir, I was
12 not around Reverend Eichelberger's house at 11:30. This is
13 11:30 at night.

14 Reece. Okay.

15 McGee. At 11:30 at nighttime.

16 Okay. McGee. I was still up there in that area when
17 you go down Farrow Road.

18 Now, Farrow Road, we've got overheads and all that.
19 This is, Issac Street. This is Farrow Road right here.

20 So, he is saying to you that he's in the area, but not
21 Mr. Eichelberger's house, correct?

22 A That is the statement he made at that moment, yes.

23 Q He tells you he's in a different area, correct, sir, is
24 what he says?

25 A He's on Farrow Road. It was a few blocks away from

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 Eichelberger's house.
- 2 Q Got you. We'll make some progress here. Page 49.
- 3 Okay.
- 4 A Great.
- 5 Q Asked about having a CD, CDL license.
- 6 A Uh-huh. (Affirmative).
- 7 Q Line 17/18. Frankie, you got a CDL license?
- 8 Indeed, yes, I do.
- 9 Correct?
- 10 A Correct.
- 11 Q Tells the truth, doesn't he, correct?
- 12 A Correct.
- 13 Q Page 50. You all discuss the winch bar with Frankie,
- 14 is that correct?
- 15 A Which line are you referring to?
- 16 Q Well, I'm getting right to it.
- 17 A Okay.
- 18 Q This is Mr. Reece at Page or Line 14. Frankie, look at
- 19 this for me, now. Do you know what it is, right?
- 20 A Okay.
- 21 Q McGee. It's, it's a tool.
- 22 Yeah, what kind of tool?
- 23 A pry bar.
- 24 A pry bar?
- 25 Uh-huh.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 What does it pry?

2 Sir, I don't know what. I mean I know you're trying to
3 build a case on me and everything.

4 No, I'm not trying -- I'm trying to build a case. Not
5 necessarily on you.

6 Okay?

7 A Okay.

8 Q And then we're over on 51.

9 Told you my job, told you my job is implicate you or
10 clear, right?

11 A That is correct.

12 Q Well, the plain fact of the matter is, when y'all came
13 in there, you knew that you were gonna charge him with this
14 homicide, right?

15 A As we stated to him, and I related to you, our job was
16 to implicate or clear him. We wanted to offer him an
17 opportunity to be truthful or to give us any kind of facts
18 that would lead us in another direction. He could not do
19 so. He actually implicated himself.

20 Q All right. I notice that the interview we have begins
21 on Page 4. You actually were recording your conversations
22 prior to speaking with Frankie, weren't you?

23 You had that tape recorder out before then, right?

24 A We had the tape recorder on I believe when we entered
25 the institution, that's correct.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Q Well, you had a conversation, I don't know whether it
2 was with the warden or someone else, in the institution
3 before you went and talked with Frankie, right?

4 A What I can recall, yes.

5 Q Okay.

6 A I don't believe the jury's privy to that.

7 Q Well, isn't it true that Mr. Reece, in your presence,
8 told this individual in the institution, prior to speaking
9 with Frankie, I'll tell you right now, warden, it looks like
10 we're gonna be charging him based on what we've got so far.

11 A Looks like we're going to be charging him based on what
12 we have so far.

13 Q Right.

14 A But we've not spoken to McGee and he did not implicate
15 himself further at that juncture.

16 Q Then at Page 2, Line 23, male speaker. All right.
17 Line 24, Mr. Thomas, and so definitely he'll be charged.

18 Y'all knew you were going to charge him when you went
19 in there?

20 There's nothing about clearing anyone here?

21 It was all implicate, right?

22 A It was either clear or implicate. We could not clear,
23 he was implicated, and then later charged due to the facts
24 and the evidence presented.

25 Q Very well, sir.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Back to Page 50, you're talking about Frankie says the
2 pry bar. Then you're trying to build a case on him.

3 Fifty-one.

4 A Fifty-one?

5 Q Yes, sir. Just to get a little context, Line 14, Mr.

6 Reece. Okay. I'm showing you Lance, and that's -- Lance is
7 Mr. Reeves, is that correct?

8 A That's correct.

9 Q Okay. Lance, I'm showing Frankie what's called a winch
10 bar, to you, a photograph we took from the winch bar. Don't
11 you recognize that as a winch bar?

12 McGee. No, I don't. I recognize that as the same
13 thing he said as a pry bar, right?

14 A Correct.

15 Q So, he doesn't recognize the winch bar.

16 We had Mr. Miles testify here earlier, right?

17 A Correct.

18 Q Frankie's boss?

19 A Correct.

20 Q And Frankie's not the only person who doesn't recognize
21 that as a winch bar, but even Mr. Miles says they don't use
22 that kind of winch bar.

23 A But he recognized it as a winch bar.

24 Q Right.

25 A And we felt that Mr. McGee should of been able to do so

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 as well working with that same company.
- 2 Q Frankie told you exactly what kind of winch bar he's
- 3 familiar with, didn't he?
- 4 A I don't recall.
- 5 Q Well, turn to Page 52 then.
- 6 A Fifty-two?
- 7 Q Line 4, Mr. Reece, didn't you have a chance to use
- 8 those kind of tools down at C. Ray Miles.
- 9 Mr. McGee. No, sir, we didn't have those.
- 10 Exactly what Mr. C. Ray Miles himself said, correct?
- 11 A He stated they had winch bars that looked different
- 12 from that if I recall correctly, but he did have winch bars.
- 13 Q What he said about C. Ray Miles using those winch bars
- 14 agrees completely with what Mr. Miles said, correct?
- 15 A Again, Mr. Miles recognized the winch bar immediately.
- 16 He just described his to be shaped differently.
- 17 Q All right. Now, we've established -- you've
- 18 established early on that, in, in your preliminary
- 19 conversations with Frankie, that he didn't graduate high
- 20 school, correct?
- 21 A If my recollection he went to the 12th grade.
- 22 Q Went to the 12th, did not graduate?
- 23 A That's correct.
- 24 Q In your follow-up investigation of Frankie, between
- 25 March 17th and March 22nd when you quit doing anything, did

Arthur Thomas - Cross-examination
By Mr. Strickler

1 you collect his educational records?

2 A No, we went for what he recalled his educational level
3 to be. I don't normally check. They say they finished
4 school, they finished school. They say they did not, they
5 did not. But that's why we require him to read the very
6 last paragraph so that we can ensure that he can read and
7 articulate and comprehend the language in that. So, he
8 reads the entire statement and then we have him read the
9 last paragraph aloud, and he did quite well.

10 Q Page 52, talking about the winch bar.

11 A Go ahead.

12 Q When you drive -- this is Line 17. Mr. Reece. Well,
13 to drive an 18-wheeler, won't you know what that is, man?
14 Come on now. You told me you would be honest. Let's be --

15 Mr. McGee. I'm being honest. I don't --

16 Mr. Reece. You're not being.

17 Mr. McGee. We don't use those kind right there. We
18 use long pry bars. He even calls a winch bar a pry bar.
19 Uses long pry bars with the screwdriver tips on them.

20 Right?

21 A That's correct.

22 Q Mr. Reece. With the screwdriver tips?

23 Yes.

24 Mr. Reece. You know what that is?

25 No, I don't know what that is.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Now, you feel, you-all felt that he should know what
2 that was, correct?

3 A Just as his boss did.

4 Q Right.

5 A Right.

6 Q Your feeling is that he should of known?

7 A Correct.

8 Q Testimony from anyone, please, who can say that yes, he
9 did know. I'm not talking feelings.

10 A No one testified to that effect.

11 Q All right. Page 53, sir, and this is Mr. Reece, Line
12 6. I'm hoping you'll give me some truth.

13 McGee. Okay. All right.

14 Mr. Reece. Okay. How about you stole a truck, an
15 18-wheeler, and came up there that day before maybe? How
16 about that? That's true, isn't it?

17 Now, prior to that point in time Frankie McGee had
18 never told you he'd taken a truck and come up there, right?

19 A That's correct.

20 Q Okay. So, you have now supplied Frankie with your
21 version of the facts in the case, right?

22 A We did supply him with an additional fact.

23 Q Okay. And Mr. McGee's reaction to that is, Page 53,
24 Line 11, no, sir, that's not.

25 Right?

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 A Well, that was his initial, but it soon changed.
- 2 Q We'll get there. His initial is he denies taking the
3 truck?
- 4 A That's correct.
- 5 Q Right?
- 6 A That's correct.
- 7 Q Mr. Reece, you're on video.
8 Well --
9 Mr. Reece. You're on fucking video doing it.
10 That's Mr. Reece, right?
- 11 A Correct.
- 12 Q Frankie. I don't know if I'm on video or not, but I
13 didn't steal an 18-wheeler that day I went up there.
14 He denies again, right?
- 15 A (No response.)
- 16 Q You didn't?
17 Well, what about the day before, because y'all's theory
18 is not that it was taken on the day of the incident, that it
19 was taken the day before the incident, right?
- 20 A That video evidence proved that it was taken on the
21 2nd.
- 22 Q All right. McGee. The day before. It's Line 21.
23 Mr. Reece. Yes, sir.
24 Mr. McGee. No.
25 So, one, two, third time he's denied taking that truck?

Arthur Thomas - Cross-examination
By Mr. Strickler

1 A Not uncommon, counselor.

2 Q Well, the other possibility is he's telling you the
3 truth?

4 A The evidence didn't show that, counselor.

5 Q Page 54, we're still talking about the truck, Line 3.

6 Matter of fact, Kershaw County Police or Camden Police,
7 one of them, weren't they talking to you about this?

8 Frankie's response is no.

9 Correct?

10 A That's correct.

11 Q You got someone in Kershaw County whose spoken with him
12 about it?

13 Police, Kershaw County Police spoke with Frankie McGee?
14 Who's your witness that did that?

15 A No one testified to that effect.

16 Q So, if he's denying no one's spoken to him, that would
17 be the truth, right?

18 A I can't speak on that truth or not.

19 Q Okay. Page 54, Line 12, Mr. Reece. Okay. Tell me
20 about how you got in that truck and you knocked down a damn
21 fence and you drove up to Columbia. Tell me where you
22 parked the truck at when you got to Columbia now because I'm
23 still under the impression you're gonna be honest and
24 straight forward with me because that's the way I'm being
25 with you.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Now, you would deny that at that point in time

2 Mr. Reece is raising his voice to Mr. McGee?

3 A Again, I'm not certain what the consideration of

4 raising a voice would be for you or I. Our interviews go

5 differently with different people. So, with the interview

6 that I heard on yesterday, it is quite calm compared to some

7 interviews that we've had. So, it's, again, your

8 interpretation, sir.

9 Q Page 54, Line 23, Mr. Reece. And I don't want to do

10 that. I really would like to say that you're an honest man

11 and you own up to what you've done, and whether it's a

12 mistake or whether you meant to do it. Now, I would like to

13 say shit happens so fast that it was all a mistake.

14 And, again, y'all are offering him the opportunity to

15 minimize his involvement by it, but confess by admitting to

16 it being a mistake, not an intentional or conscious act on

17 his part, aren't you?

18 A Again, we're trying to solicit some sense of truth from

19 Mr. McGee in reference to his action.

20 Q All right. Now, at this point in time your role and

21 Mr. Reece's role are pretty well defined. Mr. Reece is the

22 bad cop in this situation and you are the good cop, isn't

23 that true?

24 A No, we are investigators that are seeking the truth

25 about Reverend Eichelberger's murder. That is all.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Q Y'all don't play good cop/bad cop?

2 A I take my job very seriously. I don't play at all.

3 Q Pardon me for my choice of words.

4 You don't employ that technique good cop/bad cop at
5 all, correct?

6 A We just interview, sir.

7 Q During your interviews you don't employ that technique?

8 A We seek the truth --

9 Q Okay.

10 A -- With dialogue.

11 Q So, when Mr. Reece is raising his voice at Frankie
12 then, and you're calming yours with Frankie then, that's not
13 good cop and bad cop?

14 A Actually my voice and Reece's voice are different
15 tempos. I tend to speak in this manner throughout most of
16 the interviews. That's just my tone and my mannerisms.

17 Q Yes, sir.

18 Page 56, this is you, beginning at Line 8. What I'm
19 telling you is it's already deep and we're trying to put a
20 face on it. All right. We're trying to see if it was just
21 an opportunist thing that happened, one was surprised, and
22 one acted in a certain way, and you didn't mean it to go
23 down like that. You understand me? That's what we're
24 trying to see, you know, rather than it seems like might be
25 a monstrous type scenario where there's all intentions of

Arthur Thomas - Cross-examination
By Mr. Strickler

1 killing somebody or beating somebody. You understand me?

2 That's what we're after.

3 You said that, right?

4 A That is correct.

5 Q And, again, here's the opportunity. I'm not a monster.

6 It was just an opportunist thing. You didn't mean for it to
7 come down like that.

8 You give him the opportunity to agree with that, right?

9 A Yes, he was.

10 Q But that's not a technique, is it?

11 A No, that was just a statement made by myself.

12 Q Bottom of the page, 56, Line 21. Mr. Reece, the truth.

13 I don't think it's something that to do. Together since
14 you're sitting -- I sit down in front of you. I think it
15 this was one of those spur of the moment things.

16 It's just, as I understand it, it just happens that the
17 conversation takes place this way, that you repeatedly offer
18 him an opportunity to minimize his involvement by agreeing
19 with you and start the process of confessing. That's just
20 how the conversation occurred. It's not employing an
21 investigative technique.

22 A It is employing an opportunity to get the truth from a
23 murder suspect.

24 Q Page 57, sir, if I could, please, Line 5, Mr. Reece. I
25 from these -- It was one of those spur of the moment things.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 You do shit and you don't even have time to think about it.
2 I'm convinced in my heart that that's the way it happened,
3 but I can't get to that point which I believe may be the
4 truth if you insist on sitting there and lying to me. Spur
5 of the moment thing. Again, spur of the moment.

6 But that's just, that's just the random conversation
7 and how it comes about, is that correct?

8 A Again, seeking the truth from Mr. McGee.

9 Q Now, middle of the page, 57.

10 A Okay.

11 Q Line 12. By Mr. Reece. Now, breathe. Let's move
12 beyond your fabricated version of this and give me the
13 truth, and then let's see if the truth jives with what I've
14 got because what I've got is enough to hurt you real bad.

15 And at that point in time you're gonna deny that Mr.
16 Reece's voice was being raised, that he was getting
17 confrontational with, with Frankie?

18 A Again, it's a -- that's an interpretive thing. We've
19 worked together for approximately ten to eleven years in
20 investigation. To me that wasn't a raised voiced, but to
21 someone else it may have been.

22 Q Well, we got enough -- it was enough to hurt you real
23 bad. The only way you can get hurt any less is by the
24 truth. I know goddamned well that you understand what it is
25 I'm saying.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Again, Line 23, man up. It's been out there too long.
2 You been out there too long. Man the fuck up and deal with
3 this shit now.

4 This is Mr. Reece spoken, speaking with him, right?

5 A That is correct.

6 Q And those are the kind of words that are typically
7 delivered in a low key conversational sense or are they
8 delivered in an accusatory and intimidated sense?

9 A It was delivered the way Investigator Reece
10 communicated it, and how that may be interpreted by the jury
11 or yourself is up to you guys.

12 Q Yes, sir.

13 Now, Page 58, please, Line 9. Mr. McGee. No, you can,
14 you can, you can curse at me as loud as you want, but
15 whatever it is that you want to do, and whatever it is that
16 you're out to do, do whatever it is you want to because if I
17 did something I'll man up to it. If I didn't do it I'm not
18 going to man up to it.

19 So, Mr. McGee certainly thinks someone was being lied
20 to him, correct?

21 A And as I said earlier, that's interpreted by the
22 individual and the environment and what they heard.

23 Q Well, if the individual that you're interviewing thinks
24 you're cursing at him---

25 A He did curse.

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 Q Pardon me?
- 2 A There's no question he cursed.
- 3 Q And coming at him in a loud voice, that's not
- 4 interrogation, that's just interviewing?
- 5 A That is just an interview, sir.
- 6 Q All right, sir. Now, Mr. McGee said because if I did
- 7 something I'll man up to it. If I didn't do it I'm not
- 8 going to man up to it. We've got a couple of examples right
- 9 here on these two indictments that are in evidence of him
- 10 manning up to two burglaries, correct?
- 11 A Yes, but murder is quite different than burglary, and
- 12 it's not uncommon for a murderer to deny his actions during
- 13 an interview.
- 14 Q All right. Page 58, Line 25, Mr. McGee. You come in
- 15 here to -- I didn't go to college, and I know you did, but
- 16 you come in here to bulldoze me in a mental way or to try to
- 17 get me to coerce myself into saying something or doing
- 18 something that would put me in jeopardy, but I know for a
- 19 fact I'm not worried about none of that.
- 20 That's what he says, right?
- 21 A Uh-huh. (Affirmative).
- 22 Q So, Mr. McGee, over the course of the last few pages,
- 23 makes it clear that he feels that he's being, that y'all are
- 24 here trying to bulldoze him, right?
- 25 A I don't know if he made it clear of that, but he said

Arthur Thomas - Cross-examination
By Mr. Strickler

1 he's not going to be.

2 Q Then Line 6, Mr. Reece, why not?

3 Line 7. McGee. Because when you was out looking for
4 whoever did that, and then you started coming up with
5 information, with information looking for somebody else
6 to -- it's like the other police. They also come back to
7 somebody who, who got a record like me, got a record. So,
8 let's, let's go after him, after him.

9 Correct?

10 That's what he says?

11 A That's what he said, sir.

12 Q Now, I'm gonna go back to the page and line you
13 remember early on in the conversation and y'all are still
14 talking with him about, about deciding the waiver of rights.
15 He expressed reservations because he, I believe, termed it
16 his rights and had been in the past being railroaded?

17 A By other investigators, that's correct.

18 Q Right.

19 And y'all told him you wouldn't railroad him?

20 A And we did not. We just implicated him in his murder
21 through his confession.

22 Q And that's what you tell him, Page 60, Line, Line 6.

23 All right. We're talking as men here, you understand. You
24 know, when you start talking about railroading and coming up
25 with things off of that nature against these two

Arthur Thomas - Cross-examination
By Mr. Strickler

1 investigators, all right, he's, he's picking up on what we
2 do, all right, what we don't do, my brother, is railroad
3 anyone.

4 So, you claim that y'all don't railroad anyone?

5 A That is correct.

6 Q Bottom of 60, Mr. Thomas, Page, Line 22. Well, I can
7 choose from where I wouldn't have to ride the fuck out to
8 Wateree and interview you, sir.

9 You said that, right?

10 A I most definitely did. I was referring to him being
11 incarcerated and choosing persons who are incarcerated.

12 Q Page 61. This is you again. Line 18.

13 All right. We have a saying, a saying that we will not
14 do anything that a man, woman, or child from eight to
15 eighty-eight without looking them in the eye and giving them
16 an opportunity to talk to us, right?

17 A Correct.

18 Q That's kind of like y'all's motto?

19 A Correct.

20 Q So, while we're doing that, we will lie to them, right?

21 A The Supreme Court says we can.

22 Q That would be yes, you feel at liberty to lie to them,
23 correct?

24 A If need be.

25 Q You will supply them with facts, correct?

Arthur Thomas - Cross-examination
By Mr. Strickler

1 A If need be.

2 Q Sixty-two. Because whatever they may have that --
3 whatever they may have led them to you, we got warrants and
4 shit on you. You feel me.

5 Now, at this point, better back up and put that in
6 context, Your Honor.

7 Sixty-one, bottom of 23, that's why we're here. That's
8 the only reason because we have a code about what we do.
9 This is not everybody. You understand that you're
10 differentiating yourself with the techniques you employ for
11 officers who such and sos Mr. Thomas feels or Mr. McGee
12 feels that railroaded him in the past, right?

13 A Correct.

14 Q Do you understand me. Some people will send papers
15 down here wanting to see -- they want to know what you like,
16 what you look like, but because, whatever they may have led
17 them to you, you got warrants and shit on you, shit on you,
18 right?

19 A That's correct.

20 Q Okay. Then you're back at Line 6 back to this eight to
21 eighty-eight will sit in front of you, correct?

22 A Correct.

23 Q Page 62, Line 18, and this is you again, Mr. Thomas.
24 All right. Ask you to be truthful with those questions so
25 we can decide exactly what went on here. Is it, in fact, an

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 incident or an accident, do you understand me?
- 2 Right?
- 3 A Correct.
- 4 Q So, again, an opportunity to admit that you're involved
- 5 in something while terming it an accident.
- 6 All you want him to do is admit that he was involved in
- 7 something, right?
- 8 A All I wanted him to do was tell the truth about his
- 9 actions in the murder of Eichelberger.
- 10 Q Page 63, Line 15 to 16. We prefer not to ride out in
- 11 this damn country and stay in the city and do what we got to
- 12 do. Okay.
- 13 That was you, right?
- 14 A That is correct.
- 15 Q Now, at this point, beginning at 63, Line 25, Mr.
- 16 Reece, have you ever been to Reverend Eichelberger's house?
- 17 Uh-huh.
- 18 Q Right?
- 19 A Yes.
- 20 Q Mr. McGee, Page 64, Line 2. I've been on the porch
- 21 before.
- 22 Right?
- 23 A He told the truth because that's where the witness saw
- 24 him standing after murdering Eichelberger.
- 25 Q He told the truth in the porch part.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Uh-huh.

2 Is that where you met Reverend Eichelberger at, in the
3 porch part of his house?

4 McGee. No, sir. No, sir, I met him in his yard.

5 Now, Mr. Harp, who testified earlier, indicated that
6 Mr. Eichelberger was in his yard at the time that Mr. McGee
7 was eating the food that he had, right?

8 A That's correct.

9 Q Okay. So, he says he met him in his yard?

10 A That's correct.

11 Q Page 65, Line 10. Mr. Reece. At this point in time he
12 is raising his voice again, isn't he?

13 I'm not asking for a lie. I'm not asking for a bunch
14 of fucking confusion.

15 That's Mr. Reece speaking at that point in time, and
16 he's raising his voice then, isn't he?

17 A Again, that's an interpretation by whomever is
18 listening.

19 Q Sixty-five, Lines 24 and 25. Now we're getting to the
20 confession part.

21 Mr. Reece. Did you hit Reverend Eichelberger? Did you
22 ever attack Reverend Eichelberger?

23 Sixty-six, Line 1, Mr. McGee. No, sir, I didn't.

24 That, I assume, sir, would be a confession on his part
25 as you turn this, termed this interview?

Arthur Thomas - Cross-examination
By Mr. Strickler

1 A No, that would be another lie.

2 Q Mr. Reece. All right. why in the world then would you
3 find your fucking DNA in a pair of socks?

4 How about this goddamned sock that you, that you wore
5 that night when you hit Reverend Eichelberger with that tool
6 that I just showed you?

7 Now, that's the whammy.

8 Mr. McGee. That's not a whammy.

9 well, that's the whammy.

10 That's not the whammy.

11 Well, give me your whammy. You hit him back on a
12 whammy, hit me back on a whammy.

13 Mr. McGee. Those same socks, and if you did your
14 investigation proper, now you -- now you're talking. Tell
15 me what I should of done.

16 socks that you got. You did find them socks right
17 there by that store, that GazBah. Right there by that
18 store, by that, by that -- I think it says dumpster right
19 there. It says indistinct here. We've got the recording.

20 A That's where the---

21 Q Because that's where I took them off right there.
22 Cause you know you took socks, socks off at the store by the
23 dumpster.

24 A Go ahead.

25 Q That's where they're taken off right there. Left them

Arthur Thomas - Cross-examination
By Mr. Strickler

1 right, because when you're walking, you got Athlete's Foot,
2 you take, and your feet is like my feet are right now, like
3 these socks on I got right here, when I take these, it
4 says -- when I take these socks off, as long as I had them
5 on, I'll be throwing them away too.

6 So, you're taking your socks off and you threw them
7 away?

8 Yes.

9 Did that intentionally cause of the Athlete's Foot?

10 Y'all didn't follow-up on anything to see whether or
11 not -- I mean there's a, whether there's any factual basis
12 for him claiming to have Athlete's Feet, did you?

13 A No, sir, we did not.

14 Q Okay. Then you say, this is you speaking, 67, Line 11,
15 we're trying -- you're trying to tell me the sock you
16 recovered with your DNA on it, that came from the side of
17 the light pole?

18 Yes.

19 Now, it doesn't say the light pole on Issac Street or
20 the light pole next to whatever it was, [REDACTED], it
21 doesn't say that.

22 He tells you clearly, doesn't he, that he took them off
23 at the store next to, and it's in the statement that you can
24 hear, this dumpster, and he left them there next to the
25 light pole?

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Your interpretation is and what you're telling people
2 he said is he left them next to the light pole in some, on
3 some of these pictures here?

4 That's not what he said, is it?

5 A what he said initially is he left them in a dumpster.
6 As we continued to talk to him, he changed it to I left it
7 near a light pole. Again, none of that information was put
8 in the media. No one knew where those socks were recovered.
9 So, only the murder suspect would know where they placed
10 their socks at after killing Eichelberger, which was near
11 the light pole.

12 Q Near a light pole, right?

13 A As stated.

14 Q State's 116.

15 A 116?

16 Q Right?

17 A Yes.

18 Q Socks?

19 A Socks.

20 Q Light pole?

21 A Light pole.

22 Q Which picture of the GazBah show the shirt on the light
23 pole there?

24 A Again, I can't reference the GazBah having a light, but
25 I do know they have lights.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 THE COURT: Next question.

2 MR. STRICKLER: Yes, sir.

3 Q Page 71.

4 A Seventy-one?

5 Q Yes, sir.

6 A All right.

7 Q Line 17, Mr. Reece. Listen to this. I'm gonna hit you
8 with a what if.

9 Well, this is another set of facts that you're going to
10 supply Mr. McGee.

11 Uh-huh.

12 Reece. Okay. What the fuck if, before you slid your
13 socks on your hands, you touched that bar, your DNA got on
14 that.

15 Right?

16 A That's correct.

17 Q You have no testing indicating that Mr. McGee's DNA is
18 on that bar, correct?

19 A That is correct.

20 Q So, that's a lie?

21 A That was a what if.

22 Q Very well, sir.

23 Page 72. Mr. McGee, Line 10. I'm going to be truthful
24 with you. If you want to go ahead and charge me with this,
25 like you already did, go ahead and charge me. But as far as

Arthur Thomas - Cross-examination
By Mr. Strickler

1 being honest and knowing what I did, that I did that, I
2 didn't do that. I did not do that.

3 So, I would interpret that as him denying doing
4 something. You'd interpret that some different, some
5 different way, right?

6 A I interpreted it as a lie.

7 Q Who did it? I want to know who did it.

8 I didn't have nothing to do with it.

9 That would be another denial.

10 Mr. Reece, Line 18. All right. Put yourself in my
11 position. What would you do?

12 If you were the police and, and I was you, what would
13 you do?

14 Would you believe any goddamned thing I said to you,
15 would you?

16 That's what Mr. Reece says to him, correct?

17 A Correct.

18 Q Page 73, Mr. McGee. Now we're getting into his
19 interpretation of what's going on. Line 4. Mr. McGee.
20 Matter of fact, if you have an individual that's telling you
21 what he did, and that's what I did, and then you're going to
22 team up, and you jump on me, then you jumped on me for, for
23 me to say that I took a bar and went down there and killed
24 Reverend Eichelberger, which I did not do, I did not do
25 that.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 So, evidently, sir, your conversation is leaving him
2 with the impression that the three of you in this room are
3 ganging up on him, right?

4 A In terms of jumping on him about certain facts.

5 Q And, again, didn't do, didn't do.

6 You, Line 11, I got a question for you.

7 McGee. But let me finish. I'm not guilty for
8 murdering Reverend Eichelberger or a homicide.

9 Right?

10 A That's correct.

11 Q I've been in other situations, but not this one.

12 Correct?

13 A Correct.

14 Q Page 74, he admits on 74 that he hit somebody, right?
15 Page 74, Line 2.

16 A Right.

17 Q Or Line 3. I did hit somebody.

18 Right?

19 A That's correct.

20 Q Sixty-four, talk about who got hit, Line 21, one of the
21 drug dealers at the house that night.

22 Right?

23 A Correct.

24 Q All right. Then his conversation go on about drug
25 dealers.

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 Page 76, Mr. Reece, Line 5. And is that what happened
2 after you hit him with the raw fucking bar?
3 That's what he said, right?
4 A Which line are you on?
5 Q Then further down, Mr. Reece, at Line 11, well, I want
6 to give you a description of yourself.
7 Okay.
8 You, sir, are an evil person.
9 Okay.
10 And you're a fucking liar.
11 Right?
12 A Correct.
13 Q That doesn't sound accusatory to you?
14 A That's Investigator Reece interpretation of the person
15 that we're interviewing at that juncture. His actions can
16 be perceived as evil and his lies can be considered as lies.
17 Q Page -- well, Line 22. And that wasn't no
18 son-of-a-bitch that picked up your dirty ass, funky ass
19 socks off the ground and put on it. You knew Reverend
20 Eichelberger wouldn't be home. At least your ass thought
21 when you broke in that man's house after he did every
22 fucking thing he could to help you, and he confronted you in
23 the house, and you hit that man with that bar and you
24 fucking ran like the coward that you are.
25 Now, this is Page 77, Line 5. Now, 3:00 in the

Arthur Thomas - Cross-examination
By Mr. Strickler

1 morning, you use the phone, it's a funny fucking thing about
2 those goddamned telephone towers.

3 Line 9. They follow your ass wherever you go because
4 you tapped into one of them that night, and you called your
5 wife, and you made her come all the way from Camden to pick
6 up your sorry ass where you ran to.

7 Cell phone tower records or was that a lie?

8 A There were no cell phone tower records. He used a pay
9 phone to call his wife.

10 Q So, that would be a lie, right?

11 A If you say that. There are no records. He used a pay
12 phone from the Piggly Wiggly.

13 Q Page 79. Mr. Reece. Okay. Oh, Line, Line 11. I'm
14 sorry. Okay. I'm listening with all fucking ears.

15 Frankie. That night that my wife says she picked me up
16 in Piggly Wiggly wasn't, wasn't the night I got into it with
17 the guy. That was the day I had, I had let him use my
18 truck. I was suppose to wait there for him at the same
19 house I told you about.

20 Right?

21 A Right.

22 Q Page 81. Cause you gone -- you talked with him about
23 the incident with Mr. Eichelberger. You talked with him
24 about where there's been a conversation about or an incident
25 with another individual that got struck.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 You, to Mr. McGee, Line 9, the day you caught a ride to
2 Camden when all this transpired, that's the day you were,
3 you were staying on. I want to stay on that day.

4 McGee. I, I, I, I don't honestly remember.

5 Right?

6 So, all this round and round gets very confusing about,
7 about what days you're talking about. Frankie says I don't
8 honestly remember.

9 Eleven months after the fact, right?

10 That's what he says?

11 A That's what's stated there.

12 Q All right. Page 82. You. Line 8. We're still
13 talking about a conscious. All right. A Reverend's dead.
14 All right. If it was an accident, well, let's talk about
15 it. That's where we are right now.

16 And you're back to giving him an opportunity to
17 minimize his involvement, right?

18 A Again, giving him an opportunity to tell the truth
19 about his actions in this murder.

20 Q Just right down below, uh-huh, Line 13. Thomas. All
21 right. If you didn't mean to do it, let's talk about it to
22 get your true side of this thing.

23 A Correct.

24 Q All right. Page 83, Line 9. This is you again.
25 That's the day, that's the day you rode up in there in that

Arthur Thomas - Cross-examination
By Mr. Strickler

1 18-wheeler from that construction company?

2 McGee. No, sir, that's not what I'm talking about.

3 Mr. Reeves would be -- Line 22. Well, in the truck to
4 find out who it belonged to, maybe a phone number or
5 somebody who belonged to maybe because you thought it was
6 stolen, right? That's why your prints might of been on the
7 tool box.

8 Y'all don't have any prints, right?

9 A No.

10 Q From the truck?

11 A No prints from the truck.

12 Q Okay. And your DNA might be on the tool box from
13 inside the cab of the truck.

14 Don't have any DNA again from the tool box or in the
15 cab of any truck, right?

16 A No, we do not.

17 Q Now, 84, you, Line 14. What kind of truck was it?

18 It was a Mack. It was a Mack, a Mack.

19 That's what Mr. McGee says, right?

20 A Correct.

21 Q What color?

22 You just said it was a red truck, right?

23 A Correct, and he could of changed the color if it was
24 any color different since he said he got in it and moved for
25 that friend of his---

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 Q But y'all -- I'm sorry. Go ahead, sir.
- 2 A I'm just saying he could of changed the color of the
3 truck he said he moved if it was any different color than
4 red.
- 5 Q You supplied him with the red truck?
- 6 A And he did not change the color.
- 7 Q Well, he changed the brand of the truck, right?
- 8 A Right.
- 9 Q From a Mack, from a Peterbilt to a Mack?
- 10 A Again, a Mack truck is most commonly stated on the
11 average. When people see an 18-wheeler, they think Mack. I
12 don't even know what a Peterbilt is.
- 13 Q Okay. So, as I understand it, your contention is that
14 since he has a CDL license he should know everything about
15 every variety of winch bar it is, but he shouldn't know the
16 difference between two very common varieties of
17 tractor/trailer trucks?
- 18 A Well, obviously he didn't because he said Mack instead
19 of Peterbilt.
- 20 Q He also said -- well, read, Line 20, a Mack.
21 Twenty-one, McGee, a Mack tractor trailer.
22 Correct?
- 23 A That's correct.
- 24 Q Tractor trailer is the cab portion of the truck and the
25 trailer behind it?

Arthur Thomas - Cross-examination
By Mr. Strickler

1 The Peterbilt that was taken was the cab only, right?

2 A Correct.

3 Q Eighty-six, you're back again, Line 5, so that would
4 explain why your DNA or anything's on the steering wheel.

5 Again, there's no DNA on the steering wheel, right?

6 A No, there's not.

7 Q Okay. Line -- Page 87.

8 A Eighty-seven?

9 Q Mr. Reece. Yes, 87, Line 16. I didn't know if you
10 killed Reverend Eichelberger, but I'm convinced that's not
11 something you intended to do. You didn't intend to do that.
12 And then let you know that you did it. What I'm trying to
13 do is offer your ass a way out.

14 Mr. Reece even admits that he wants to offer Frankie a
15 way out. He admits he's giving him a chance to admit to his
16 involvement and minimize his involvement, but that's not a
17 technique you employ?

18 A And he's giving him an opportunity to tell the truth
19 once again.

20 Q Eighty-eight, Line 21, Mr., Mr. Reece. You're the
21 captain of that ship and your ass is sinking real fucking
22 fast. And once that ship goes down, you know and you know
23 it's under water, it ain't no swimming back up. It's too
24 late -- and you ain't, and you ain't going to be like them
25 fucking rats that leave a sinking ship.

Arthur Thomas - Cross-examination.
By Mr. Strickler

1 That's what Mr. McGee said, isn't it?

2 A That's correct.

3 Q All right. Page 89. Line 17. Mr. Reece. If you
4 meant to do it, just say. Reece, Thomas, Reeves, I picked
5 the fucking bar up and I beat the hell out of him. If you
6 didn't mean to do it, just tell me how it went down.

7 Right?

8 A Correct.

9 Q Again, an opportunity to go ahead and minimize his
10 involvement by confessing?

11 A An opportunity to tell the truth, sir.

12 Q Page 90, this is you, on Line 13. And like I said,
13 your eyes are talking, screaming at me right now. Let's
14 talk about this, this. Was it an accident?

15 Not an opportunity to minimize, an opportunity to tell
16 the truth?

17 A Yes, sir.

18 Q Right?

19 A As stated previously.

20 Q Line 17, striking Eichelberger in the head like that,
21 was it an accident? Did you intend to kill this man? I
22 don't think so. Did you?

23 So, again, accident.

24 Frankie, Page 90, Line 23. I'll talk to you all you
25 want and tell you everything you can that I possibly can

Arthur Thomas - Cross-examination
By Mr. Strickler

1 tell you about me and what I, next page, about me and what I
2 did.

3 Okay.

4 But I did not kill Reverend Eichelberger and I didn't
5 have nothing to do with killing Reverend Eichelberger.

6 Did you strike him?

7 No, I didn't strike Reverend Eichelberger.

8 All right. Page 93. Let me ask you this. Did you
9 even know there was a second person -- this is Line 7. I'm
10 sorry. Let me ask you this, did you know there was a second
11 person in the house?

12 McGee's response. Second person in that house?

13 He doesn't have any idea what you're talking about, the
14 second person, right?

15 A Because when he saw her she was in her car observing
16 him on the back porch.

17 Q All right.

18 A She wasn't in the house at the time.

19 Q Page 97, Line 20. Mr. Reece. Well, that's fine. When
20 you heard this about Reverend Eichelberger being that
21 Reverend Eichelberger helped you out that very same day, why
22 didn't you come forward to the police or call us on the
23 phone and say listen, I was at Reverend Eichelberger's house
24 that day. I need to talk to y'all.

25 Hu?

Arthur Thomas - Cross-examination
By Mr. Strickler

1 why didn't you do that, said Mr. Reece.

2 Frankie. Because had I would have did that, the first
3 thing would of happened, the first thing that would of
4 happened, they would of said well, he did it, he did it,
5 yeah, he did it, yeah, he did it cause if you call in and
6 say this about something or whatever, yeah, he did it, he's
7 the one, there's our man right there.

8 That's what it says, right?

9 A Correct. He did it.

10 Q All right. Now, Page 100, Line 22. Frankie's question
11 to y'all. Well, why are you cursing, cursing?

12 Mr. Reece. Because I'm bringing myself down to your
13 level.

14 Now, point out the time during this one hour
15 interrogation that Frankie McGee cursed at anyone?

16 A I can't recall him cursing at anyone --

17 Q Right.

18 A -- during our interview.

19 Q 101, Line 17. How deep do you think this is going?

20 Frankie. I'm not the man that you want. I'm not the
21 one that you want.

22 Right?

23 That would be a denial, right?

24 You'd say that'd be a lie?

25 He lied?

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 A That would be a lie, correct.
- 2 Q All right. In -- just a couple more questions and I'll
- 3 be done.
- 4 A Certainly.
- 5 Q There was a cell phone recovered from---
- 6 A Outside the Eichelberger's home.
- 7 Q ---the roadway outside the house?
- 8 A That's correct, sir.
- 9 Q And that's reflected -- actually show you State's 75.
- 10 A That's correct.
- 11 Q Okay. And there's another one in here. It's pulled
- 12 back a little bit. You can see it a little bit more in the
- 13 roadway.
- 14 A Yes, sir.
- 15 Q That item -- that's at the crime scene, right?
- 16 A It was.
- 17 Q Those photographs were taken that evening at the crime
- 18 scene, right?
- 19 A They were.
- 20 Q The crime scene is a secure area, right?
- 21 A Correct.
- 22 Q That phone at the crime scene was returned to a member
- 23 of Mr. Eichelberger's family later, is that correct?
- 24 A It was returned to a female member of the family that
- 25 when they rushed to the scene apparently she dropped it in

Arthur Thomas - Cross-examination
By Mr. Strickler

1 an attempt to head toward the house. Apparently they were
2 turned back and she dropped her phone.

3 Q Did you get the phone number off that?

4 A Off that phone, no. It was (inaudible).

5 Q Did you determine, through independent, independent
6 witnesses, when that phone ended up on the crime scene?

7 A I believe, upon return of the phone, the young lady
8 explained to us what happened, that she dropped it.

9 Q You just took her word for it, right?

10 A That is correct.

11 Q And Mr. Eichelberger had a land line phone in his
12 house, right?

13 A He did.

14 Q And you-all got the phone records relating to that land
15 line, correct?

16 A As I recall, yes.

17 Q Okay. And you actually decided to check the phone
18 records for Mr. Eichelberger's house, his land line, on
19 March the 12th, 2010, is that correct?

20 A If that is what the documents before you have, then I
21 must agree.

22 Q Okay. Let me show you a document and ask if you
23 recognize this, sir.

24 A Looks like a search warrant for AT&T.

25 Q For?

Arthur Thomas - Cross-examination
By Mr. Strickler

- 1 A Ask the question.
2 What is it?
3 Q What phone?
4 A It's for phone number [REDACTED]. That what's in the
5 affidavit itself.
6 Q Okay. Referring to the affidavit portion down there
7 --?
8 A House phone, requesting assistance, is that what you're
9 referring to?
10 Q Yes.
11 A Yes, sir.
12 Q It's the house phone?
13 A Correct.
14 Q Okay. And the date on which this was, the search
15 warrant was taken out?
16 A This one shows a date of March 12th, 2010.
17 Q Mr. Eichelberger had his cell phone?
18 A He did.
19 Q Do you have his cell phone records?
20 A To be honest I can not reference, but I believe they
21 may of had that in discovery.
22 Q I'm sorry?
23 A I said I can't reference it right now, but you may of
24 had it in the discovery. I'm not certain. But if you show
25 me documents I can look at it like you've just done.

Arthur Thomas - Cross-examination
By Mr. Strickler

1 Q This is the phone that was supposedly used by Frankie
2 McGee, if I understand the testimony in this case correctly,
3 right?

4 A Per McGee's statement.

5 Q All right. Thank you, sir.

6 A Thank you.

7 MR. STRICKLER: Just a second. Beg the Court's
8 indulgence one moment.

9 (Pause.)

10 Q Just to be clear, that last little bit with the search
11 warrant, you agree with me then that the search warrant for
12 Reverend Eichelberger's home phone was drawn up March 12th,
13 2010, correct?

14 A Per the document that you showed me.

15 Q Per the document. Thank you, sir.

16 THE COURT: Any redirect?

17 SOLICITOR CAMPBELL: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY SOLICITOR CAMPBELL:

20 Q He asked you some specifics about the statement and the
21 fact that it was recorded, and do you record it so that
22 later on down the line it can be played for the jury so they
23 can actually judge themselves what happened?

24 A We find that recording is more specific than a written
25 hand statement, and we decided years ago that we would start

Arthur Thomas - Redirect examination
By Solicitor Campbell

1 recording our defendant's statements so you have more
2 accurate accounts of what they actually said.

3 Q And the pertinent parts of that statement have been
4 published here in court, is that correct?

5 A They have been.

6 Q And that accurately reflects the tone, what was said,
7 and what, what happened that day?

8 A Vividly, yes, ma'am.

9 Q It is unusual for a person to commit a murder and lie
10 about it?

11 A Quite consistently.

12 Q He also asked you specifically about, and I won't go
13 through the whole thing again, but in that statement he's
14 talked about how, when you informed him there was a second
15 person in the house, he was surprised?

16 A Correct.

17 Q He said there was a second person?

18 A Correct.

19 Q Let me ask you this.

20 When you informed him that a pertinent piece of
21 evidence in this case was, was the DNA on the socks, what
22 was his reaction?

23 A He asked no questions. He just admitted that the socks
24 were his.

25 Q Was he surprised at all you were asking about socks?

Arthur Thomas - Redirect examination
By Solicitor Campbell

1 A He was not surprised, which definitely gave us
2 indicators that he was our man. He didn't ask what socks.
3 He just jumped into an alibi of Athlete's Feet for the socks
4 that we recovered for Eichelberger's murder.

5 Q And he denied knowing what a winch bar was?

6 A He did.

7 Q He changed the make of the truck?

8 A He did.

9 Q But who's -- was it -- who actually first said,
10 referenced the truck as being a red truck?

11 A I would have to look back at that statement to be
12 accurate on that, but I think Lance Reeves brought the truck
13 up if I---

14 Q But the fact that it was red was brought up by who?

15 A Mr. McGee I believe.

16 Q Thank you. And you also asked him specifically about
17 some cell phone or for a time period of 3:00AM in the
18 morning.

19 During the course of your investigation, did y'all
20 interview the defendant's wife?

21 A Yes, we did.

22 Q And at the time she was cooperative, is that correct?

23 A Yes, sir.

24 MR. STRICKLER: Objection. That's been asked and
25 answered on direct testimony, sir.

Arthur Thomas - Redirect examination
By Solicitor Campbell

1 THE COURT: Objection's overruled.

2 SOLICITOR CAMPBELL: Thank you.

3 Q She was cooperative, right?

4 A Yes.

5 Q And did she give you certain information about 3:00AM
6 in the morning?

7 A Yes, she did.

8 MR. STRICKLER: Objection. She's asking for hearsay at
9 this point.

10 THE COURT: Objection's sustained.

11 Q Without going into what she said to you, based on
12 information you got, was the 3:00AM time---

13 MR. STRICKLER: Objection, Your Honor. Now that's just
14 back dooring. That is still hearsay.

15 THE COURT: All right. Speaking responsive, speaking
16 objection.

17 MR. STRICKLER: I apologize, Your Honor.

18 SOLICITOR CAMPBELL: Your Honor, he was the one that
19 made the issue about the 3:00AM time period and where he
20 was, where he was picked up. We were just explaining why
21 they were exploring that, that it just didn't come out of no
22 where. It was based on their investigation, and I offer it
23 not for the truth of the matter asserted, but to show why
24 they did what they did.

25 THE COURT: Objection's overruled.

Arthur Thomas - Redirect examination
By Solicitor Campbell

- 1 Q You can answer.
- 2 A Yes, he gave specific times he mentioned.
- 3 Q He also asked you if you ever followed up on whether or
- 4 not this defendant had Athlete's Foot?
- 5 A Correct.
- 6 Q When is the first time you made contact with this
- 7 defendant?
- 8 A Around March 17th in the institution itself.
- 9 Q Are you aware of any testing that could of been done
- 10 ten months after the fact that would of shown whether or not
- 11 he had Athlete's Foot ten months after?
- 12 A I'm not aware of anything of that nature, no.
- 13 Q And is whether or not he had Athlete's Foot relevant to
- 14 your investigation?
- 15 A No, his DNA being inside the sock that carried
- 16 Reverend's Eichelberger's blood on the outside is what was
- 17 relevant to me and my partner in this investigation.
- 18 Q He also asked you on direct examination a question
- 19 about whether or not this defendant actually was able to
- 20 drive a tractor trailer I believe at one point early in his
- 21 cross-examination?
- 22 A Correct.
- 23 Q what class is reflected on this driving record of CDL
- 24 that you have?
- 25 A Give me one moment. He has a CDL Class A.

Arthur Thomas - Redirect examination
By Solicitor Campbell

1 Q He also asked you if you went back and showed Temika
2 Ashford a line-up with David Williams in it.

3 Would that be proper after showing a line-up?

4 A No, that is not our protocol. Williams was taken into
5 custody. He was in handcuffs and he was standing outside of
6 a vehicle. A light was placed on him for identification.
7 When that type of identification, identification is done, we
8 do not come back with a six pack line-up. That is the
9 identification that's used throughout the investigation.

10 Q And he also asked you about the defendant being
11 incarcerated at the time you spoke to him.

12 Did y'all specifically check and make sure or to see if
13 he was incarcerated in May of '09 when this occurred?

14 A Correct.

15 Q Was he incarcerated when this occurred?

16 A No, he was not.

17 Q I skipped -- a lot of pages he skipped. One line at
18 the end.

19 Do you recall, right as y'all were leaving this
20 interview, the defendant commenting on well, did you catch
21 me in a lie or something to that effect?

22 A On a---

23 Q What page is that?

24 A This is Page 102.

25 Okay. You want me to read that portion?

Arthur Thomas - Redirect examination
By Solicitor Campbell

1 Q What, what did he indicate about whether or not he
2 lied?

3 A In this area here he's saying that if I don't answer
4 then all the way completely, to your T, and you go back and
5 say I will, I lied about this, I lied about that, it's not
6 that I lied. It's just that I did not remember what you and
7 then it goes into --

8 Q So, at that point he's explaining to you why he may, he
9 lied?

10 A Correct.

11 SOLICITOR CAMPBELL: I have nothing further, Your
12 Honor.

13 THE COURT: Anything further?

14 MR. STRICKLER: No, sir, thank you.

15 THE COURT: All right. Thank you, sir. You may step
16 down.

17 WITNESS: Thank you, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, that is
19 it for this morning. It's one o'clock. We'll start back at
20 2:00. Have a good lunch.

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

23 THE COURT: Any matters before we break?

24 SOLICITOR CAMPBELL: None from the State, Your Honor.

25 MS. PRINGLE: Your Honor, may, may I inquire as to,

1 just for scheduling purposes, if the State can say, if I can
2 inquire as to how much longer they believe their case will
3 go?

4 I just got people on hold trying to---

5 THE COURT: Is that direct and cross-examination?

6 MS. PRINGLE: ---planning. If they can give us an idea
7 of their direct, I can probably guess on our
8 cross-examination.

9 THE COURT: All right. What says the State?

10 SOLICITOR CAMPBELL: Your Honor, we may not be able to
11 say anything based on -- I would never have thought we would
12 of spent the entire morning on cross-examination on
13 investigation Thomas. So, I can't say. I would assume if
14 it goes quickly we can finish this afternoon.

15 THE COURT: All right.

16 SOLICITOR CAMPBELL: I think that's best for her to
17 assume that.

18 THE COURT: Uncertain.

19 MS. PRINGLE: Okay. Thank you.

20 THE COURT: All right. We'll break for an hour.

21 (WHEREUPON, Court was in recess for the lunch break.)

22 THE COURT: Anything before the jury comes in?

23 SOLICITOR CAMPBELL: Nothing from the State.

24 MR. STRICKLER: No, -sir.

25 THE COURT: Bring the jury.

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 BAILIFF: The jury's seated, Your Honor.

4 THE COURT: All right. Very good.

5 Next witness.

6 SOLICITOR CAMPBELL: May it please the Court?

7 THE COURT: Yes.

8 SOLICITOR CAMPBELL: The State would call Investigator
9 Kevin Reece.

10 KEVIN REECE, after being first duly
11 sworn, testified as follows:

12 THE CLERK: Please have a seat. State your full name
13 for the record.

14 WITNESS: My name is Kevin Reece.

15 DIRECT EXAMINATION

16 BY SOLICITOR CAMPBELL:

17 Q Sir, where are you employed?

18 A Columbia Police Department.

19 Q And how long have you been in law enforcement?

20 A I've actually been in law enforcement since 1978.

21 Q 1978?

22 A I've worked at two different agencies.

23 Q And back in 2009 were you an investigator in the major
24 crimes unit?

25 A Yes, ma'am.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q And is that still your position?

2 A Yes, it is.

3 Q I want to turn your attention to May the 3rd, that
4 evening, and the early morning hours of May the 4th.

5 Did you respond to an area of town known as Greenview?

6 A I did.

7 Q And specifically to an address on Issac Street?

8 A I did.

9 Q Can you describe that area for the jury?

10 A The Issac Street area or the Greenview?

11 Q Greenview/Issac Street area.

12 A It's basically an area where older retired adults live.
13 Certainly it's a nice quiet neighborhood. Some parts of
14 the, of Greenview area, in particular next to this incident
15 location where the Eichelberger's house is a large church,
16 church. Across the street is a field that belongs, a vacant
17 lot that belongs to the church. There's a couple of -- I
18 think in that block that Mr. Eichelberger lives in, if I
19 recall right, it may be two or three houses and then the
20 church.

21 Q And in other areas of Greenview though, I guess you
22 generated somewhat of a (inaudible), certain areas in the
23 Greenview area?

24 A Generated.

25 Q Uh-huh. (Affirmative).

Kevin Reece - Direct examination
By Solicitor Campbell

1 A Absolutely. I did, but it's no different from any
2 other places in Columbia, you know, you got some of the
3 up-scale houses and then right across the other side of the
4 highway you may have some of the more dilapidated,
5 dilapidated houses.

6 Q That evening, did you respond to the Issac Street
7 address?

8 A I did.

9 Q And when you got there, was Investigator Pegram I
10 believe already on the scene?

11 A Pegram.

12 Q Pegram. I'm sorry.

13 And once you got there, tell the jury what you did.

14 A The, the first thing I did was -- when I have got the
15 call, I was at home asleep, and being that our unit is the
16 major crime scene unit, what we do on major crime scenes,
17 we're, we're called B-CAP Unit, crimes, violent crimes
18 against persons, and that is exactly what we do. We
19 investigate violent crimes against persons.

20 Normally my unit does not investigate a burglary. We
21 will investigate a burglary if there is an assault in that
22 burglary. Of course, this is the situation in Reverend
23 Eichelberger's case. The reason that everyone on my team
24 was called out was because Reverend Eichelberger had been
25 assaulted, and it wasn't one of those ordinary kind of

Kevin Reece - Direct examination
By Solicitor Campbell

1 assaults. He, he didn't look good. So, we treated it as
2 burglary, and, of course, and an assault with the mind set
3 that it was not gonna turn out very auspicious to Reverend
4 Eichelberger or his family.

5 Q Once you responded to Issac Street, did you make
6 contact with a man -- well, with your teammate and a man
7 named Larry Harp?

8 A Yeah, Investigator Pegram did.

9 Q And does he ever give you just certain information
10 about the person he'd seen that day?

11 A He said on the paper that he said that he saw a black
12 male earlier in the day in Reverend Eichelberger,
13 Eichelberger's yard, and he told Pegram that the gentleman
14 that he saw appeared to be eating something and, and talking
15 on the, on the telephone.

16 Q There that night at the scene, was there also another
17 witness, Ms. Temika Ashford?

18 A Yes, ma'am.

19 Q Did she also give a short statement to the police that
20 night?

21 A Yes, she did. I didn't see Ms. Ashford that night, but
22 I knew that there was a female involved in this, and that
23 the investigators had spoken with her.

24 Q That evening, back at headquarters, did you come in
25 contact with a David Williams?

Kevin Reece - Direct examination
By Solicitor Campbell

- 1 A I did. I think when I saw him out there with Pegram
2 before we went to headquarters.
- 3 Q Saw him on the scene as well?
- 4 A Uh-huh. (Affirmative).
- 5 Q He was, he was then transported back to headquarters to
6 be interviewed?
- 7 A He was.
- 8 Q And upon making contact with Mr. Williams, you
9 mentioned that the nature of this assault, was there certain
10 evidence you were looking for the presence or the absence
11 of?
- 12 A Absolutely.
- 13 Q And what type of evidence were you looking for when you
14 first made contact with Mr. Williams?
- 15 A Actually I was looking for a number of things.
16 Clothing. I was looking for maybe some blood on, on his
17 clothes or his shoes. Looking for sweat, looking for a
18 different kind of clothing, that kind of thing. Looking for
19 a moderate build, hairline.
- 20 Q And did you actually interview him that evening?
- 21 A Huh?
- 22 Q Y'all actually interviewed him that evening?
- 23 A Yes, we did.
- 24 Q And did you also collect certain items from him?
- 25 A Yes, we did.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q Including -- what exactly did you collect from him?

2 A Those shoes that you got there.

3 Q State's Exhibit No. 115?

4 A Right.

5 Q 115?

6 A Yes.

7 Q As well as did you also obtain a sample of his DNA?

8 A Yes, we did, and the way we got the DNA, one of two
9 ways. We get a Court order or we just simply ask your
10 permission. Giving your permission means that you
11 cooperate. We asked him during the interview and he
12 submitted to it. He didn't -- he said he didn't have any
13 problems with it. There was no reason why we wouldn't,
14 indicate that we would think he had a reason to deny us
15 that.

16 Q That night did you also become aware of two essential
17 pieces of evidence that were found near the crime scene?

18 A I did.

19 Q And what pieces of evidence were those?

20 A One was the winch bar that y'all been hearing about the
21 past couple of weeks. I didn't, I didn't know what a winch
22 bar was. We had to, had to look it up on the Internet. As
23 a matter of fact, none of the investigators in our office
24 knew what it was, and the other, the other thing was a pair
25 of white socks.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q And those were collected by crime scene personnel with
2 the appropriate method for you to do it, and not for you to
3 do it, right?

4 A That's right.

5 Q And that was done that night?

6 A It was.

7 Q And based on the information that you got as part of
8 your investigation, did those appear to be, have some
9 relevant evidence on them that would corroborate not only
10 the eye witness, but as to what happened?

11 A Yes, ma'am.

12 Q I want to turn your attention to May the 6th.

13 Did you and Sergeant Thomas actually interview Temika
14 Ashford?

15 A We felt that it would be necessary as well as prudent
16 to interview her.

17 Q And---

18 A The reason for that was there were some things in the
19 original statement that were called into question by Thomas
20 and myself.

21 Q And specifically were you trying to -- it is unusual
22 for you to have to follow-up on a statement taken from a
23 person who may have been traumatized?

24 A No, it's, it's not unusual.

25 Q And you did that in this case?

Kevin Reece - Direct examination
By Solicitor Campbell

- 1 A Yes, we did.
- 2 Q And was she able to give you a pretty detailed
3 description of the person?
- 4 A Yeah, she did. She gave us a little more information
5 because we spent a little more time with her.
- 6 Q And did she indicate whether or not she had observed
7 the person the police stopped, David Williams, that night?
- 8 A Not -- as a matter of fact she kept saying to us that
9 it was not him, and that the clothes that he had on did not
10 match the person that she saw coming out of the, of Reverend
11 Eichelberger's house.
- 12 Q That day did you also make arrangements for her to have
13 a, to meet up with the sketch artist at SLED?
- 14 A I did.
- 15 Q And did that take place?
- 16 A Yes, ma'am.
- 17 Q Over the course of the next several days, did y'all
18 continue to receive information, tips, about people who
19 claim to have knowledge of what might of happened?
- 20 A Yeah, we received an enormous amount of information.
21 More than we expected, but, yeah, we did.
- 22 Q And specifically during the course of that period of
23 time, did you locate the victim's cell phone, Reverend
24 Eichelberger's cell phone?
- 25 A Yes.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q And on May the 11th, specifically, did you -- were you
2 able to obtain that cell phone from someone?

3 A Yeah, I did. I got it from one of Reverend
4 Eichelberger's daughters.

5 Q One of his daughters?

6 A That's right.

7 Q And then was it submitted for further testing as far as
8 records within the phone?

9 A Or at some point after receiving the phone I personally
10 took it out to the South Carolina Law Enforcement Division
11 to their, one of their forensic units and to have them to
12 dump, what's called dump the phone. By dumping the phone,
13 we're simply trying to find out what kind of information we
14 can retrieve from that, that phone.

15 Q And were you able to retrieve any information from the
16 dump on that phone for this case, in this case?

17 A No, we only received his contacts, names of people that
18 he have and phone numbers in his phone.

19 Q Did you also make arrangements for the two items we
20 talked about, the winch bar and the socks, to be submitted
21 to the Richland County Sheriff's Department for testing?

22 A I did.

23 Q And what kind of testing are you requesting?

24 A Basically I was -- you're talking about the first time?

25 Q Yes, sir, the first time in June requesting.

Kevin Reece - Direct examination
By Solicitor Campbell

1 A DNA testing on those items.

2 Q And I believe, on June 15th, did you actually receive
3 the first report in this case on the DNA testing?

4 A I did.

5 Q And did that indicate whose blood were on those two
6 items?

7 A It indicated that, that the, that the red substance we
8 saw on the items was, in fact, blood and that it was the
9 blood of Reverend Eichelberger's and nobody else's.

10 Q I want to turn your attention to that Summer.

11 During the course of the Summer, did what started out
12 as an assault charge, did it get upgraded to murder?

13 A Yes, it did.

14 Q And the Reverend in this case I believe actually died
15 in the end of July, is that correct?

16 A I think I've got the -- let me check. July the 31st I
17 believe.

18 Q Is when you got the information?

19 A When I got the information. The phone call from
20 Thomas.

21 Q During the course of that Summer, did you continue to
22 follow-up on the leads and the information that was being
23 given to you?

24 A Absolutely. You -- I -- this -- there -- when you have
25 a case like this that is protracted, goes so long, there are

Kevin Reece - Direct examination
By Solicitor Campbell

1 periods when things go cold, and you don't have anything to
2 work on, to follow-up. So, generally just because we have a
3 case like that doesn't mean we're not assigned cases. So, I
4 was working other cases. This case here never left my desk.
5 So, every time something came in, no matter how
6 insignificant it may of seemed, we followed up on it.

7 Q In this case did you become aware of a person named
8 Stephon Jacobs?

9 A I did.

10 Q And based on the information, did you then develop a
11 photo line-up?

12 A I did.

13 Q And I'm gonna show you what's been marked as State's
14 Exhibit No. 3.

15 Is that the photo line-up you developed with Stephon
16 Jacobs in it?

17 A Yes.

18 Q And why was -- well, why is anyone put into the
19 line-up?

20 A You, you -- you're put into a line-up to -- if there
21 are any witnesses, then hopefully the ideal situation is for
22 that, would be for that witness to look at the line-up and
23 point to you and say that I'm positive this is the person.
24 Sometimes it happens, sometime it don't. But you use a
25 line-up based on information that you have gotten.

Kevin Reece - Direct examination
By Solicitor Campbell

1 You'd actually be negligent if you got a person's name,
2 somebody gave me a name to, like this person had something
3 to do with it, your incident, and, and you did not put him
4 in a line-up, you know. That wouldn't be a prudent thing to
5 do.

6 Q So you can include them or exclude them?

7 A It can include or exclude, yes.

8 Q And, and when you got this line-up, did you show it to
9 two of the witnesses in this case?

10 A I did.

11 Q And who were they?

12 A I believe Temika, Temika Ashford and Mr. Harp, Larry
13 Harp.

14 Q And did any of them pick anyone in the line-up, Mr.
15 Jacobs or anyone else?

16 A Ms., Ms. Ashford couldn't pick out anybody by what is
17 written on it. Mr. Harp looked at it and went directly to
18 Stephon Jacobs, and he said now this is not him because I
19 know him, and this is not him.

20 Q So, he was specific about it wasn't him?

21 A Yeah, he was. And a matter of fact, Thomas and I are
22 familiar with Mr. Jacobs, but we still put him in the
23 line-up.

24 Q As time continued, did you continue to follow-up on
25 leads in this case?

Kevin Reece - Direct examination
By Solicitor Campbell

- 1 A Yes, I did.
- 2 Q Interview family members?
- 3 A Uh-huh. (Affirmative).
- 4 Q Acquaintances of the victim?
- 5 A Right.
- 6 Q Trying to get information that might, might be
- 7 pertinent in this case?
- 8 A Anything we could come up with.
- 9 Q Turning your attention to the end of September,
- 10 September the 29th of 2009, did you develop another photo
- 11 line-up?
- 12 A September 29th?
- 13 Q Yes, sir.
- 14 A Yes, I did.
- 15 Q And I believe you actually showed it on the 30th. I'll
- 16 show you State's Exhibit No. 119.
- 17 A Okay. Yeah, I developed this line-up. Well, I had
- 18 someone develop in for me, but it was developed for this
- 19 case.
- 20 Q And who is the person of interest in that line-up?
- 21 A Marvin Magazine.
- 22 Q And the line-up on the 30th?
- 23 A On the 30th?
- 24 Q September 30th. I'm sorry. September 30th. Page---
- 25 A Right, Adrian, Adrian Stephon Miller.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q Mr. Miller?

2 A Right.

3 Q And did you show that line-up to anyone?

4 A I showed this line-up to Temika Ashford.

5 Q And what, if any information, was she able to give you
6 when she was shown that line-up?

7 And, again, when you're presenting line-ups, say even
8 if it's to the same witness, do you take steps to ensure you
9 don't influence them in any way?

10 A Absolutely.

11 Q And was this line-up shown properly as all of them are?

12 A Yes, it, it was. What I do, as a practice, is before,
13 before I even present the line-up -- the person knows what
14 I'm there for. In this case, Ms. Ashford did. We talked
15 with her some more, and I let them know that I have a
16 line-up I'd like to look at, let them look at. But before I
17 present the line-up to them, I don't even turn it over or
18 let them see what the colors on the line-up. I explained to
19 them that the person in question may or may not be in this
20 line-up. If you see the person that you saw leaving
21 Reverend Eichelberger's house that night, the night in
22 question, point him out.

23 Q And was Ms. Ashford able to make any positive
24 identification in this case?

25 A No, she wasn't.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q Was -- she give you any information that's reflected on
2 that line-up?

3 A She picked out two, two of the photos, Number 3 and
4 Number 5.

5 Q And what did she indicate about those?

6 A She just simply stated that it looks like Number 3 and
7 Number 5.

8 Q And that was all the information she was able to give
9 you?

10 A That's right.

11 Q All right. Later, on October 14th, 2009, did you also
12 show a photo line-up to Officer Duckett?

13 A I did.

14 Q And was he able to identify anyone?

15 A Not positively.

16 Q And, again, did he just narrow it down to the ones that
17 are similar?

18 A That's right.

19 Q During the Fall did you continue to follow-up on leads
20 in this case?

21 A I did.

22 Q And information that was given to you?

23 A Uh-huh. (Affirmative).

24 Q And in January, specifically January 22nd of 2009, did
25 you show another series of photo line-ups to someone or

Kevin Reece - Direct examination
By Solicitor Campbell

1 photos and photo line-ups?

2 A What, what was the date again?

3 Q January 22nd of 2010.

4 A I did.

5 Q And I'm gonna show you what's been marked as State's
6 122, 120, and 121.

7 Do you recognize those items?

8 A Yes, ma'am, I do.

9 Q And, again, who did you make contact with?

10 A I made contact with Temika Ashford again on these
11 line-ups.

12 Q And when you showed her each of those, again, was she
13 ever able to positively identify any one of these?

14 A She was never able to positively identify anybody,
15 but she was always consistent with what she said.

16 Q And what she said, I notice in the spot on State's
17 Exhibit No. 120, is that what she said basically about the,
18 the three people she said were similar?

19 A Right, she just spoke about body build on a person, and
20 the only thing she could see is from this part up, and head
21 shape, and the receding hairline.

22 Q And specifically in State's Exhibit No. 121, she said
23 it didn't even look---

24 A No, now that wasn't put in the line-up. I just needed
25 to know whether she knew that guy and I needed to know if I

Kevin Reece - Direct examination
By Solicitor Campbell

1 could put him in the area. So, that wasn't a line-up done.

2 Q And then 120 and 122 she wasn't able to positively
3 identify?

4 A No, she wasn't.

5 Q I want to turn your attention to the end of February of
6 2010.

7 Did you set up a meeting with Investigator John Barron
8 with the Richland County Sheriff's Department?

9 A I did.

10 Q And why did you do that, sir?

11 A Because, through, through the trainings and seminar,
12 some, some, somehow -- I knew I'd been to a training seminar
13 where it was mentioned about a new technique of extracting
14 DNA. I, I guess you could say that it was probably because
15 of the Eichelberger case being unsolved at that point and
16 period of my interest and the job that I'm, that I'm in. I
17 have to pay attention to it.

18 So, I learned a little about it, thought it would be a
19 good idea to go sit down and talk with John Barron about
20 what could be done, what I needed him to do, and what I was
21 looking for on some of those items that he had.

22 Q And you, in fact, met with him and discussed this?

23 A I did.

24 Q And as a result of that, did you instruct Investigator
25 Nelson to resubmit certain items to the lab?

Kevin Reece - Direct examination
By Solicitor Campbell

1 A I did.

2 Q And what items were those?

3 A Based on our conversation, it would have been more
4 advantageous to resubmit the socks because of the technique
5 of touch DNA.

6 Q Okay. And I show you State's Exhibit No. 104.

7 Those were the socks you collected and submitted---

8 A Yes.

9 Q ---and actually resubmitted?

10 A Yes, it was. It is.

11 Q I'm going to turn your attention to March the 11th,
12 2010.

13 Did you get contacted by Investigator Barron?

14 A I did.

15 Q And what information was he able to give as far as,
16 that involved your investigation?

17 A Basically told me he had done what I had asked him to
18 do, but I already knew that he was doing it. But he told me
19 he came up with a match of some DNA that was found inside
20 those socks.

21 Q And was he able to give you any identifying information
22 as far as the person whose DNA matched those socks?

23 A He did at first, but I don't think he gave it to me
24 right off the bat. He needed to, as per their procedure
25 from what I'm understanding, contact agents from the State

Kevin Reece - Direct examination
By Solicitor Campbell

1 Law Enforcement Division, some of their scientist as well,
2 and get them to check over, sort of like a check and
3 balances kind of thing, and verify the information that he
4 had. Once that was done, he notified me and let me know.

5 Q At that point did you develop another photo line-up?

6 A I did.

7 Q And who was in that photo line-up?

8 A You are talking about after?

9 Q Uh-huh, State's Exhibit No. 123.

10 A Based on that information I developed a photo line-up
11 that included Mr. McGee.

12 Q At that point had you confirmed generally that his
13 general build, physique, and everything was consistent with
14 what the eye witness had reported?

15 A I did.

16 Q On May the -- excuse me. March the 12th, did you get
17 some of your other investigators in your department to help
18 you in showing the line-up I believe to Mr. Larry Harp?

19 A Yes, ma'am.

20 Q And during the course of your investigation, did you
21 become aware of whether or not State's Exhibit No. 4 had
22 been shown to Mr. Harp and whether or not he recognized
23 anyone?

24 A I did. I asked Investigators Sumter and Mahoney to
25 take this photo line-up out and show it to Mr. Harp. Larry

Kevin Reece - Direct examination
By Solicitor Campbell

1 Harp was one of the people.

2 Q And that day did Investigators Sumter and Mahoney also
3 go and show a single photograph to Michelle Perry?

4 A Right.

5 Q And why was she shown a single photograph versus a
6 photo line-up?

7 A Well, in, in respect to Mr. Harp, Mr. Harp had seen an
8 individual in Reverend Eichelberger's yard earlier that day.
9 We still didn't know at that point whether the defendant had
10 been over there with any connection, and what, what
11 happened. Ms. -- what's, what's the lady's name, Ms. Perry?

12 Q Michelle Perry, yes.

13 A Or is an employee at the cab company in which Reverend
14 Eichelberger I believe was a part owner of, but the cab
15 company also houses -- one side is a cab company and another
16 part of the building is the church. I needed to -- well,
17 first of all, I, you know, based on what we got, we, we
18 couldn't simply just seek an arrest warrant for Mr. McGee,
19 but we chose not to do that. We chose to investigate it
20 first, and one of the things we needed to do was to be able
21 to put him in Green, the Greenview area at a specific time,
22 and make him familiar with Reverend Eichelberger or vice
23 versa.

24 One of the places we found it most prudent to start at
25 was, would of been the church and cab company. I sent them

Kevin Reece - Direct examination
By Solicitor Campbell

1 there to see if they could find me anybody at the cab
2 company/church that would recognize Mr. McGee and tell me
3 how they, tell us how they recognized him and that's what
4 they did.

5 Q And that's where they got information, from Michelle
6 Perry?

7 A That's right.

8 Q That day, did you also get certain information about
9 Frankie McGee's driver's license that was significant in
10 your investigation?

11 A Another thing we had to do, yes, I did, was after we
12 came to the realization of what that tool was, the
13 significance of it, we needed to determine if this person
14 had a, a CDL license and we were able to do that.

15 Q Later that day, turning your attention to a C. Ray
16 Miles Construction Company, based on information you
17 developed, you can't say what it is, but did you go and then
18 meet with C. Ray Miles Company?

19 A I'm getting, getting mixed up with the two companies
20 that we visited that day.

21 Q This is the one where he use to work.

22 A Yeah, we were in contact with, with two of them, two
23 places.

24 Q And did you ask them specific information about a winch
25 bar?

Kevin Reece - Direct examination
By Solicitor Campbell

1 A Right.

2 Q And his -- without -- you can't say what they said, but
3 without going into any, going there---

4 A I'm sorry?

5 Q And he was employed there?

6 A He was.

7 Q Then on March the 12th did you also instruct another
8 investigator in your department to do a search warrant for
9 the victim's phones?

10 A I had Investigator McCracken. I did.

11 Q That day, did you receive a phone call from a Sophia
12 McGee?

13 A I did.

14 Q And were you able to identify her relationship with
15 Frankie McGee?

16 A Yes.

17 Q And what was her relationship to Frankie McGee?

18 A His wife.

19 Q His wife?

20 A Right.

21 Q Moments after hanging up with Sophia -- you can't say
22 what she said.

23 Moments after hanging up with Sophia McGee, did you
24 then receive a phone call from another family member of
25 Frank McGee?

Kevin Reece - Direct examination
By Solicitor Campbell

1 A I did.

2 Q And who was that?

3 A That was his sister, Sandra Thomas.

4 Q And had you known Ms. Thomas prior to this?

5 A I been knowing her for a long time. Ever since she's
6 been working at the police department.

7 Q And prior to her call did you know anything about the
8 business in Camden being burglarized?

9 A No.

10 Q That next day, I believe on the 13th, did you make
11 contact with family members of the Eichelberger's?

12 A On the 13th of---

13 Q March.

14 A ---March?

15 Q Yes, sir.

16 A Yes, I did.

17 Q And that day did you also make contact with Temika
18 Issac, Ashford?

19 I'm sorry.

20 A I did.

21 Q I'm gonna show you what's been marked as State's
22 Exhibit No. 123.

23 When you made contact with Ms. Ashford on that day, did
24 you present that photo line-up?

25 A Yes, ma'am.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q Again, did you do anything to influence her during or
2 down or did you do anything in that, in that case?

3 A No, I didn't.

4 Q And when she showed the line-up -- when you showed her
5 the line-up, tell this jury what she indicated to you.

6 A I wrote notes on the bottom of it, and they -- it
7 simply says witness stated that the subject she, she saw on
8 May the 3rd, 2009, could be Number 3, could be Number 1.
9 She picked out Number 3 first. Number 3 is Mr. McGee. She
10 picked out Number 3 first, but stated both subjects
11 resembled the suspect that she saw, and she based that on
12 head shape and body build.

13 Q Moving your attention to March the 15th, did you
14 actually meet with Officer Sandra Thomas?

15 A I did.

16 Q And was she able to give -- you can't say what she
17 said.

18 Was she able to give you information that was pertinent
19 to your investigation?

20 A She did.

21 Q That day did you also go over to Sophia McGee's house
22 and interview her?

23 A We did.

24 Q And was, was she able to give you---

25 MR. STRICKLER: I object. Seeking to elicit hearsay

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1 and violate confrontation clause.

2 THE COURT: All right. Solicitor.

3 SOLICITOR CAMPBELL: My only question is gonna be was
4 she able to give you information pertinent in this case, and
5 I'm not going any further with that. I understand the
6 hearsay issue.

7 MR. STRICKLER: Then I'll withdraw my objections since
8 it's---

9 THE COURT: All right. Restate the question please.

10 SOLICITOR CAMPBELL: Thank you, sir.

11 Q On the 15th, that day, did you also go and interview,
12 you and Investigator Reeves, I believe, went in and
13 interviewed Sophia McGee?

14 A Yes.

15 Q At her residence?

16 A Right.

17 Q And was she able to give you information that was
18 pertinent to your investigation?

19 A She did.

20 Q That day did you also make contact with a detective in
21 the Camden Police Department?

22 A I believe it was, it was Investigator Reeves.

23 Q I'm sorry. Investigator Reeves did that.

24 And was he able to obtain a copy of a video that has
25 been shown here in court?

Kevin Reece - Direct examination
By Solicitor Campbell

- 1 A Yes.
- 2 Q Moving on to March the 16th, did you actually execute a
3 search warrant at Sophia McGee's home?
- 4 A I did.
- 5 Q And at this point have you been able to determine where
6 the defendant himself was in March of 2010?
- 7 A I did.
- 8 Q And was he at the Wateree Institute?
- 9 A No. I'm sorry?
- 10 Q McGee.
- 11 A In March, yeah.
- 12 Q Yes, 2010.
- 13 A Yeah.
- 14 Q We're to, at this point.
- 15 A I'm sorry. Yeah.
- 16 Q But were you able to determine where he was in the
17 Wateree Institute or any other institute in May of 2009?
- 18 A No, he was not there in May 2009.
- 19 Q When you executed the search warrant at Sophia McGee's
20 residence -- and where was that located?
- 21 A The address or the city?
- 22 Q The city or the area.
- 23 A It was Camden and Lugoff, Lugoff Camden.
- 24 Q That area?
- 25 A Uh-huh. (Affirmative).

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q What type of evidence were you looking for?

2 A Anything that could link him to the circumstances or
3 anything physical, socks that match these kind of socks,
4 clothing that might have resembled anything that he was
5 wearing in the, the video, any shoes that we might have
6 deemed to have blood on it, those kinds of things. CDL---

7 Q And this was ten months later?

8 A ---driver's license?

9 Yes.

10 Q Were you successful?

11 A No, we, we just got -- we got some socks and some, some
12 clothing, but nothing to sink your teeth into.

13 Q That was similar in nature, but not the actual
14 clothing?

15 A That's right.

16 Q On the 16th also did Investigator Reeves go and
17 interview the owners of the Camden Metal and Steel where the
18 18-wheeler had been stolen?

19 A Yes, in our questioning he did.

20 Q The next day, on the 17th, did Investigator Sumter and
21 Mahoney follow-up with an Ivan Moore?

22 A Yes, they did.

23 Q And I believe he was an acquaintance of the defendant?

24 A That was my understanding.

25 Q That day did you and Investigator Reeves and

Kevin Reece - Direct examination
By Solicitor Campbell

- 1 Investigator Thomas go to Wateree Institute, Correctional
2 Facility to interview Frankie McGee?
3 A Uh-huh. (Affirmative.)
4 Q And was that interview recorded?
5 A Recorded, yes, it was.
6 Q And we aren't going through it again.
7 That's what has been played during court today?
8 A Right.
9 Q The transcript?
10 A Right.
11 Q What was the purpose of you going to interview the
12 defendant prior to charging him?
13 A To ascertain any kind of information he may have had
14 concerning this case.
15 Q And when you got there, of course, he was advised of
16 his rights?
17 A Right.
18 Q And did he want to talk to you?
19 A He gave every indication that he would, he did, yeah.
20 Q And that's recorded and what's been played here in
21 court?
22 A Right.
23 Q There have been some questions about the initials that
24 were on the winch bar in this case.
25 Have you had an opportunity to look at those?

Kevin Reece - Direct examination
By Solicitor Campbell

- 1 A I did.
- 2 Q And what are those initials?
- 3 A C-A-B, CAB.
- 4 Q CAB?
- 5 A C-A-B.
- 6 Q There's also been a question about a phone that was
- 7 found at a crime scene, outside the crime scene actually.
- 8 There was a photograph. I'll show you State's Exhibit No.
- 9 75.
- 10 A Yes, ma'am.
- 11 Q whose phone was that?
- 12 A That turned out to be Reverend Eichelberger's cell
- 13 phone.
- 14 Q Or a family member?
- 15 A Well, let me see. I'm sorry.
- 16 what date?
- 17 Q This was collected that night outside the---
- 18 A It was a family member, it was a family member's phone.
- 19 I'm sorry.
- 20 Q And as indicated, an assault -- or his family members
- 21 responded to the scene?
- 22 A Yeah.
- 23 Q There was also further mention of a hat that was found
- 24 inside the residence.
- 25 A Uh-huh. (Affirmative).

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q Were you able to determine who the hat belonged to?

2 A Reverend Eichelberger.

3 Q And during the course of your investigation with
4 Frankie McGee, did you determine whether or not he had a
5 twin, an identical twin?

6 A No, he does not have a twin or an identical twin.

7 Q These's also been some testimony in this case about a
8 Crime Stoppers Tip or information that was relayed to
9 another agency during a Crime Stoppers tip.

10 That would not have come to your agency, would it?

11 A No, it would not of.

12 Q And it wasn't until after you talked to Sandra Thomas
13 that you even realized the relation between the stolen truck
14 and what happened to Reverend Eichelberger?

15 A Right.

16 Q And then when you followed up on the stolen truck---
17 MR. STRICKLER: Objection to the leading, Your Honor.
18 THE COURT: I haven't heard the question.

19 Q Did you follow-up on the stolen truck?

20 A We did.

21 Q And was it recovered?

22 A It was.

23 Q And where was it recovered?

24 A It was Token Street in the Greenview area at Happy
25 Dad's Towing Service, his yard.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q And during the course of your investigation, did y'all
2 interview Mr. Brown who was Happy Daddy's Towing?

3 A Right.

4 Q And he was able to give you the information and the
5 dates it was recovered?

6 A Right.

7 Q And as far as being able to retrieve the Crime Stopper
8 tip ten months later, you were not able to do that?

9 A No, we couldn't do that.

10 Q The night that this occurred with Reverend
11 Eichelberger, other than he and Temika Ashford being in the
12 home, were any of his sons, daughters, or any other of his
13 relatives in the house that night?

14 A No, there -- it was my understanding that there was
15 nothing else (inaudible) -- that those two were the only
16 people in the house.

17 Q There's also been some questions from, about a cell
18 phone that was used and seen by Mr. Harp, that the defendant
19 was using.

20 A Right.

21 Q Were you able to corroborate that from some phone
22 records you received from Sophia McGee's cell phone or---

23 A Right.

24 MR. STRICKLER: Objection, Your Honor. Hearsay.

25 THE COURT: Objection sustained.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q During the course of that -- in your experience in
2 interviewing people who commit violent crimes, which is what
3 you investigate, right?

4 A Right.

5 Q Is it unusual for a person to deny the violent act
6 itself?

7 A No, you can pretty much expect them to deny it.

8 Q In this case though you indicated the defendant wanted
9 to talk to you?

10 A Right.

11 Q And is that an issue?

12 A No, but if they gonna deny -- you know, sometimes
13 you -- we, we -- this, this case here is one, you know, of
14 those classic who done it. When you get on the scene, you
15 don't know who did it. So, you got to find out who did it.

16 There are other cases where we get, that we have, when
17 you get on the scene of a homicide, you have the perpetrator
18 standing there. He's like this and saying Reeves, Thomas,
19 Reeves, okay, I did it, there's the weapon right there, this
20 is why I did it.

21 This case is quite different. So, generally, in a
22 situation like this when the person you suspect is, is
23 actually guilty of what you are accusing them of, then
24 they're gonna want to talk to you because they want to
25 explain the story in a different way than it actually

Kevin Reece - Direct examination
By Solicitor Campbell

1 happened. It happens all the time.

2 Q Then there was some talk about during the course of
3 that interview you had with them, it's all recorded, when
4 you mentioned that there was a second person in the house,
5 he seemed surprised?

6 A Totally.

7 Q When you mentioned the socks, what was his reaction?

8 A When we mentioned the socks his reaction was to come up
9 with some kind of excuse about the socks because just the
10 mere mention of the sock to him meant that we had an item---

11 MR. STRICKLER: I'm gonna object to him testifying as
12 to what anything meant to Mr. McGee. That's pure
13 speculation, Your Honor.

14 THE COURT: What says the State?

15 SOLICITOR CAMPBELL: Your Honor, I think he is talking
16 about what he observed.

17 THE COURT: The objection's sustained.

18 Q Was he surprised?

19 A He was surprised, yeah.

20 Q I want to ask you, first of all, do you see -- let me
21 clarify that.

22 He was surprised when you mentioned the second person?

23 A Right.

24 Q But was he surprised when you mentioned the socks at
25 all?

Kevin Reece - Direct examination
By Solicitor Campbell

1 A I didn't get the sense -- I -- the sense I got was that
2 he knew about the socks. It didn't phase him any.

3 Q Okay. Let me show you what's been marked as State's
4 Exhibit 136.

5 Does this show the Greenview area including Issac
6 Street?

7 A Yes, it does.

8 SOLICITOR CAMPBELL: Your Honor, at this time we'd
9 offer it into evidence.

10 MR. STRICKLER: Without objection.

11 THE COURT: So admitted.

12 (WHEREUPON, State's Exhibit No. 136 was received into
13 evidence at this time.)

14 Q You can step down for a second.

15 A (Witness comes down from the stand.)

16 Q Come over to this side and speak up.

17 Does this show Farrow Road on there?

18 A Yes, it does.

19 Q And can you point it out for the jury?

20 A This is, this is Farrow Road, which runs north and
21 south.

22 Q And Issac Street, is it shown on here as well?

23 A Yes, it is. Issac.

24 Q It's actually upside down. This is upside down.

25 A This is Issac Street here.

Kevin Reece - Direct examination
By Solicitor Campbell

1 Q And this big yellow road would be Farrow Road?

2 A Farrow Road.

3 Q And then where would the Reverend's house be?

4 A If you're going northbound on Farrow Road toward I-20
5 or the mental hospital, and you make a left turn, it would
6 be in that first block about right here.

7 Q About that far?

8 A That's right.

9 Q And as far as Mr. Harp's house, where would it be in
10 conjunction?

11 A Mr. Harp's house would be across the street. This, I
12 believe, would be the church next to Reverend Eichelberger's
13 house, the parking lot, and Mr. Harp's house is right across
14 the street.

15 Q And there's been reference to a gas station that's
16 further down on Farrow, on Farrow Road I believe on
17 Fontaine.

18 A This is Fontaine. This is Farrow Road. This is the
19 tracks here, and the gas station would be right here on this
20 corner.

21 Q On that corner there?

22 A Uh-huh. (Affirmative).

23 Q And then I believe Token Street is further down here?

24 A It's Token Street here.

25 Q And then where it intersects with Bryant Road?

Kevin Reece - Direct examination
By Solicitor Campbell

1 A Right, parallel to Farrow Road.

2 Q And all this is accessible from Farrow Road, is that
3 correct?

4 A Absolutely.

5 Q Thank you, sir.

6 A (Witness returns to the stand.)

7 Q The people that interviewed Frankie McGee that day, did
8 Investigator Thomas?

9 A Say that again.

10 Q Was Investigator Thomas with you?

11 A Thomas and Reeves.

12 Q And where is Reeves located?

13 A Right there sitting behind Thomas.

14 Q Right behind him?

15 A Yes.

16 Q And it was the three of you that interviewed him?

17 A Yeah.

18 Q And the person that y'all interviewed that day, do you
19 see him here in the courtroom?

20 A Yes, I do.

21 Q And where is Mr. McGee?

22 A Sitting there at the defendant's table with a brownish
23 cranberry colored shirt on.

24 SOLICITOR CAMPBELL: Your Honor, may the record reflect
25 he's identified the defendant?

Kevin Reece - Direct examination
By Solicitor Campbell

1 THE COURT: Yes.

2 SOLICITOR CAMPBELL: That's all I have.

3 THE COURT: Cross-examination.

4 Mr. STRICKLER: Please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. STRICKLER:

8 Q Good afternoon, Mr. Reece.

9 A How you doing, Mr. Strickler?

10 Q Passing. Fair.

11 Just a few things actually. I'm not gonna go through
12 everything all over again.

13 All right?

14 A Cool.

15 Q Ms. Campbell just spoke with you about Mr. McGee's
16 reaction when he was informed, informed about a second
17 person being in the house.

18 A (Witness nods affirmatively.)

19 Q Okay. I show you Page 93 of this transcript. I don't
20 know whether you have a transcript. Yeah, you do, right up
21 there.

22 A What page?

23 Q Page 93.

24 A Got that.

25 Q Page 93, Line 7. This is by Mr. Reeves. Not Mr.

Kevin Reece - Cross-examination
By Mr. Strickler

1 Reece, right?

2 Let me ask you this. Did you even know there was a
3 second person in that house?

4 That's what we're talking about, right?

5 A Uh-huh. (Affirmative).

6 Q Okay. Frankie's reaction. Second person in what
7 house?

8 That's what his reaction is, right?

9 A Yeah.

10 Q Okay. And y'all then informed him that the house you
11 were asking him about was Reverend Eichelberger's house,
12 right?

13 A Well---

14 Q That's, that's Mr. Reeves' next statement, right,
15 Reverend Eichelberger's house?

16 A Being that we had been there, you know, for a good
17 while with him talking about the incident with Reverend
18 Eichelberger and what happened at Reverend Eichelberger's
19 house. As a matter of fact, we're way on Page 93. He knew
20 what house we were talking about. He couldn't of been
21 talking about anything else.

22 Q Well, sir, what you're testifying to is it's your
23 opinion he knew what house you're talking about?

24 A You asked the question. I gave you an answer.

25 Q Right, cause that's -- and the nature of the answer is

Kevin Reece - Cross-examination
By Mr. Strickler

1 that it is your opinion that he knew that, what house you
2 were talking about?

3 A It's my opinion, but it's also logic that there was
4 nothing else, no other house we were talking about
5 especially in that context.

6 Q Now, you and Mr. Thomas responded to the scene on 119
7 Issac on May 3rd, 2009, correct?

8 A Right.

9 Q And you entered the scene and spent a grand total of
10 four minutes inside that house, correct?

11 A Where did you get that from?

12 Q Well, correct or not correct, and then we'll talk about
13 where I got it.

14 A I don't think that is correct, no.

15 Q When -- was the document kept by the police called a
16 crime scene log?

17 A Yeah, I am.

18 Q And that's a document that's used to help ensure the
19 integrity of the crime scene, correct?

20 A True.

21 Q Okay. And you go ahead and someone's put in charge of
22 the crime scene log, and they record the arrivals and the
23 departures of various people into the crime scene, correct?

24 A Okay.

25 Q That's correct, isn't it?

Kevin Reece - Cross-examination
By Mr. Strickler

- 1 A Yeah.
- 2 Q Okay. It's not something unique to this case, right?
- 3 A Right.
- 4 Q It's standard operating procedure, right?
- 5 A Right.
- 6 Q Okay. I show you a document and ask if you recognize
- 7 that, sir.
- 8 A It's a crime scene log.
- 9 Q Okay. Does it indicate what case it's associated with?
- 10 A Reverend Eichelberger's case.
- 11 Q Okay.
- 12 A 119 Issac Street, Columbia, South Carolina.
- 13 Q And the last notation, last person noted as coming into
- 14 the crime scene?
- 15 A Investigator Reece.
- 16 Q That would be you, correct?
- 17 A (Witness nods affirmatively.)
- 18 Q Time in 01:38?
- 19 A 01:38.
- 20 Q Time out, 01:42?
- 21 A Well, to be honest with you, that document doesn't mean
- 22 anything to me. I could have walked out at 1:42, turned
- 23 around and walked back in, and the, whoever took the log
- 24 there was not even aware of me walking back in or walking
- 25 back out. You asked me a question and I'm telling you I

Kevin Reece - Cross-examination
By Mr. Strickler

1 spent more than four minutes in the crime scene.

2 Q Does the crime scene log reflect you leaving the crime
3 scene at 01:42?

4 A That is what the crime scene log reflects. You asked
5 me a question, if I spent four minutes in the crime scene,
6 I'm telling you no, I spent more than four minutes.

7 Q And this crime scene log does not reflect Mr. Thomas
8 ever even entering into the crime scene, correct?

9 A Well, then that right there -- I'll let you know that
10 that's not accurate because he was definitely in the crime
11 scene.

12 Q well, let me ask you, sir, if you can answer my
13 question.

14 Isn't it true this log does not reflect him even
15 entering the crime scene?

16 Is his name on there anywhere?

17 A It does not show that he entered the crime scene, but
18 still, it's not accurate.

19 Q Now, it's fair to say that you-all talked with lots of
20 people in the course of this investigation, right?

21 A (Witness nods affirmatively.)

22 Q I'm sorry, yes?

23 A That's fair.

24 Q Okay. You just have to respond verbally so the young
25 lady behind you can get it written down, sir.

Kevin Reece - Cross-examination
By Mr. Strickler

1 And among other people, you interviewed one Louise
2 Taylor, correct?

3 You personally, I believe, interviewed one Louise
4 Taylor?

5 A Can you give me a date so we'll be on the same sheet of
6 music?

7 Q Yes, sir. Yes, sir.

8 A My case notes?

9 Q Okay. Case notes?

10 A Uh-huh. (Affirmative).

11 Q Sure.

12 That would be September 14th, 2009, Page 9 of your case
13 notes, sir.

14 A Yes, sir.

15 Q All right. So, you interviewed Louise Taylor, correct?

16 A Right. I believe Thomas and I both would of interview
17 her.

18 Q Okay.

19 A It's just got interviewed Louise Taylor, right.

20 Q And she was Mr. Eichelberger's girlfriend, correct?

21 A I would say that's pretty fair, yeah.

22 Q And she told you she had been---

23 SOLICITOR CAMPBELL: Objection, Your Honor. Anything
24 she's said is hearsay.

25 THE COURT: How about that, Mr. Strickler?

Kevin Reece - Cross-examination
By Mr. Strickler

1 MR. STRICKLER: I will rephrase my question, sir.

2 THE COURT: All right. The objection's sustained.

3 SOLICITOR CAMPBELL: Thank you.

4 Q You developed information from her regarding
5 Mr. Eichelberger's, Eichelberger's whereabouts on the date
6 of the incident?

7 A Right.

8 Q You testified about getting the, Mr., Mr.
9 Eichelberger's cell phone and carrying it out to SLED
10 yourself, right?

11 A Yeah.

12 Q And they dumped the contents of the address book or
13 whatever, right?

14 A Right.

15 Q And what we know from that is that Frankie McGee's name
16 was not in that address book, right?

17 A That would be right.

18 Q Okay. And that was -- when did you take that off to
19 SLED?

20 A If you'll give me a minute I'll maybe tell you. I
21 think it was August the 27th or something like that when
22 we -- August 27th, 2009.

23 Q August 27th?

24 A Uh-huh. (Affirmative).

25 Q Okay. Some three and a half months after the incident?

Kevin Reece - Cross-examination
By Mr. Strickler

1 A Yep.

2 Q And I believe you testified that when you put this six
3 pack, this line-up together with Frankie's picture in it,
4 State's 123 --

5 A Uh-huh. (Affirmative).

6 Q -- right, that he was consistent with the information
7 you had from Ms. Ashford?

8 A Yeah.

9 You mean the description?

10 Q Yes.

11 A Uh-huh. (Affirmative).

12 Q And I heard you---

13 A That's not why I put him in the line-up because it was
14 consistent. That's not the only reason.

15 Q She testified that his physical description was
16 consistent though?

17 A But that's not the only reason. He was no longer able
18 to fly under the radar. That's why he was put in the, in
19 the line-up. His name came up. Everybody's name came up,
20 counselor, and we did a photo line-up.

21 Q Yes, sir, I understand that. My question to you was
22 not why you put him in the line-up or have, or testify to
23 that.

24 The question was is your testimony earlier was that he
25 was consistent with the description provided by Ms. Ashford

Kevin Reece - Cross-examination
By Mr. Strickler

1 or you're now testifying that his, his appearance was not
2 consistent with that provided by Ms. Ashford?

3 A I'm not saying that. You know I'm not saying that.
4 His appearance is, in fact, consistent with everything Ms.
5 Ashford was telling us. He was put in the line-up because
6 his DNA came back on those socks. Now, if he happens to fit
7 the description like everything else she's been saying,
8 there it is.

9 Q Okay. So, your testimony is that someone that's 5'8"
10 and 230-pounds is consistent with someone who is 6-feet tall
11 and 180 to 200?

12 A Well, you know, when Ms. Ashford---

13 Q Is that or is that not the information?

14 SOLICITOR CAMPBELL: Objection, Your Honor. He has the
15 right to---

16 THE COURT: The objection's sustained.

17 You may answer the question, sir.

18 A When Ms. Ashford saw him, Mr. McGee, first of all, she
19 was in a panic. She's sitting in her car and she's on the
20 move and so was he. You can't really expect her to get his
21 height, weight, and anything else perfect, which is what
22 happened. She wasn't perfect. She did everything she could
23 possibly do in identifying this person. That's why she was
24 so consistent with all the photo line-ups.

25 Q Okay. So, does that mean that 6-feet is the same as

Kevin Reece - Cross-examination
By Mr. Strickler

1 5'8"?

2 A No, I was just trying to explain to you how she could
3 get it mixed it. I don't know if 5'8" means 6'1" or 6'5" to
4 her. I'm telling you what she told us.

5 Q Well, 230 on a 5'8" frame is the same as 180 to 200 on
6 a 6-foot frame?

7 Is that your testimony?

8 A That's not my testimony.

9 Q Now, you indicated on your direct testimony that you
10 did a search warrant for Mr. Eichelberger's telephone,
11 correct?

12 A Which phone are you talking about?

13 Q The -- well, that's what I'm trying to clear up.

14 Which, which phone of his did you do the search warrant
15 from?

16 A We did the search warrant on the, on the home phone.

17 Q Is that the land line phone, right?

18 A Yeah.

19 Q That was done March 12th of 2010, is that right?

20 A That's right.

21 Q Okay. And when did you do the search warrant for the
22 call records for Reverend Eichelberger's cell phone?

23 A We never did one for his cell phone.

24 Q Now, you testified regarding Ms. Ashford viewing this
25 six pack line-up, No., State's 123, the one with Mr. McGee's

Kevin Reece - Cross-examination
By Mr. Strickler

1 picture in it, right?

2 A Yeah.

3 Q And your testimony is just what you wrote down.

4 Witness states subject she saw on 5/3/09 could be Number 3
5 and Number 1, right?

6 Picked Number 3 first, but stated both resembled the
7 subject because of the head shape and the body build, right?

8 A Right.

9 Q Okay. Pretty consistent with what she said when she
10 circled those picture on the other line-ups that were shown,
11 right?

12 A Right.

13 Q Okay. So, no substantial difference between her
14 reaction to that line-up, and I'm not gonna go through, go
15 through everyone, and the four or five other ones that she
16 was shown where she said one or two of them looked like the
17 guy, right?

18 A She was consistent if that's what you're asking me.

19 Q Now, you recorded this statement with Frankie out at
20 Wateree Correctional Institution.

21 You recorded other statements in this case too, did you
22 not?

23 A Right.

24 Q Temika Ashford?

25 A Right.

Kevin Reece - Cross-examination
By Mr. Strickler

- 1 Q You told her you were recording her, right?
- 2 A Uh-huh. (Affirmative).
- 3 Q Louise Taylor I just asked you about, you recorded the,
- 4 the interview with her, didn't you?
- 5 A Right.
- 6 Q Told her you were recording it, right?
- 7 A Yeah.
- 8 Q David Williams, you recorded him?
- 9 A Yep.
- 10 Q Told him you were recording it, right?
- 11 A Right.
- 12 Q A woman named, a name that hadn't come up, but a woman
- 13 named Amber Lewis that you interviewed, you recorded
- 14 statements from her, right?
- 15 A Right.
- 16 Q And told her you were recording her?
- 17 A Right.
- 18 Q Thank you, sir. That's all I have.
- 19 THE COURT: Redirect?
- 20 SOLICITOR CAMPBELL: I don't have anything further,
- 21 Your Honor.
- 22 THE COURT: All right. You may step down, sir.
- 23 WITNESS: Thank you, Your Honor.
- 24 THE COURT: Next witness.
- 25 SOLICITOR CAMPBELL: Your Honor, may I check one thing?

1 THE COURT: All right. Ladies and gentlemen, I'll have
2 you go to the jury room for a break at this time. Go to the
3 jury room.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. You want to check anything?

7 SOLICITOR CAMPBELL: Your Honor, if you'll just let me
8 check and make sure all the evidence is in.

9 THE COURT: All right.

10 (Pause.)

11 SOLICITOR CAMPBELL: Your Honor, this should not go
12 into evidence. I was wrong about that. 137 is the redacted
13 version that should go into evidence.

14 THE COURT: All right.

15 SOLICITOR CAMPBELL: We agree?

16 MR. STRICKLER: What's the---

17 SOLICITOR CAMPBELL: Two is the provisional---

18 MR. STRICKLER: Right.

19 SOLICITOR CAMPBELL: ---we handed up to the Court.

20 MR. STRICKLER: Right.

21 SOLICITOR CAMPBELL: So, it can not go into evidence.

22 MR. STRICKLER: Right.

23 SOLICITOR CAMPBELL: The redacted version is 137.

24 MR. STRICKLER: Okay.

25 SOLICITOR CAMPBELL: The 132 is in also. 132 and 137

1 and No. 2 is for ID only. I messed that up. These are
2 Exhibits 19, Your Honor.

3 (Pause.)

4 SOLICITOR CAMPBELL: Your Honor, in a review of the
5 evidence, everything is in. We've reviewed the autopsy
6 photos, which were not in.

7 At this time the State would rest, Your Honor.

8 MR. STRICKLER: (Inaudible).

9 THE COURT: All right. And with respect to the
10 photographs, the various photographs, I guess the blood
11 photographs, were any of them admitted or not?

12 SOLICITOR CAMPBELL: No, sir, as far as the autopsy
13 photographs?

14 THE COURT: No, the -- at the scene.

15 SOLICITOR CAMPBELL: Those were all admitted.

16 THE COURT: They were admitted?

17 SOLICITOR CAMPBELL: Yes, sir, they were admitted.

18 THE COURT: Okay.

19 SOLICITOR CAMPBELL: Did you want to review those?

20 THE COURT: No, you---

21 SOLICITOR CAMPBELL: Everything's admitted.

22 THE COURT: My second thought is they weren't admitted,
23 but since they've been admitted.

24 Defense ready?

25 MR. STRICKLER: Could we have just one minute to confer

1 with my client?

2 THE COURT: All right. would you like for me to speak
3 with him before or at some point regarding his right to
4 testify or not testify?

5 MR. STRICKLER: Yes, sir, I'm literally -- if I could
6 have literally one minute. This is all taken---

7 THE COURT: All right.

8 MR. STRICKLER: We've had this conversation.

9 (Pause.)

10 MR. STRICKLER: I've conferred with Mr. McGee. It's my
11 understanding that he does not wish to testify in this
12 regard. If Your Honor would like to go ahead and, and ask
13 him the pertinent questions.

14 THE COURT: All right. If you'll come right in front
15 of me there.

16 (WHEREUPON, the parties comply.)

17 THE COURT: Swear him for me please.

18 (WHEREUPON, the defendant was placed under oath at this
19 time.)

20 THE COURT: Mr. McGee, at this time I'm going to
21 explain to you certain of your rights. If you do not
22 understand anything that I say, please let me know. I'll be
23 happy to explain it to you in more detail.

24 You understand?

25 DEFENDANT: Yes, sir.

1 THE COURT: We've now reached the stage of the trial
2 where you may present your defense. As part of presenting
3 your defense, should you, your or your lawyer, you and your
4 lawyer could elect to present a defense. You have the right
5 to claim the protections given to you by the Fifth Amendment
6 to the Constitution of the United States. This amendment
7 states in part that no person shall be compelled in any
8 criminal case to be a witness against himself. This means
9 that you can not be required to testify in this case.

10 You do, however, have the right to testify on your own
11 behalf if you would like to, but no one can make you
12 testify. This is a personal right and no one can waive this
13 right except you. If you decide to testify, you will be
14 subject to the same rules that govern other witnesses, and
15 you may be examined and cross-examined on any relevant issue
16 in this case.

17 In addition, the State may be able to use any crimes
18 you've committed involving dishonesty, false statements, or
19 crimes punishable by more than one year, the State will be
20 able to use those crimes to impeach your credibility if I
21 determine that the probative value of admitting this
22 evidence outweighs its prejudicial effect to you.

23 Now, if you decide to testify, this decision must be a
24 free, voluntary, and intelligent decision made by you with
25 knowledge of the protections given to you by the Fifth

1 Amendment as well as the consequences of your decision to
2 testify. If you decide not to testify, I would instruct the
3 jurors that they can not give the fact that you did not
4 testify any consideration whatsoever, and that there is to
5 be absolutely no prejudice to you because you did not
6 testify. It is, it is left entirely up to you whether or
7 not you testify.

8 You may certainly speak with your lawyers, your family
9 members, friends, and anyone else you would like to speak to
10 you. However, it was indicated that you-all have spoken
11 about it and you've made a preliminary decision. You may
12 speak with them all again if you'd like to. But the final
13 decision will be left entirely up to you.

14 Do you understand what I've explained?

15 DEFENDANT: Yes, sir.

16 THE COURT: Do you have any questions about what I've
17 explained to you?

18 DEFENDANT: No, sir.

19 THE COURT: Would you like to talk to your lawyers
20 anymore or anyone else about whether or not you should
21 testify?

22 DEFENDANT: No, sir.

23 THE COURT: Have you made a decision about whether or
24 not you're gonna testify?

25 DEFENDANT: Yes, sir, I have.

1 THE COURT: And what's that decision?

2 DEFENDANT: I wish not to testify.

3 THE COURT: All right. Thank you very much.

4 DEFENDANT: Yes, sir.

5 THE COURT: Do you have other witnesses to present,
6 other defenses or any other defense you'd like to offer?

7 MR. STRICKLER: No, sir, the defense will rest.

8 THE COURT: All right. Well, we'll take about five to
9 ten minutes and then we'll come back and talk about where we
10 are. So, we'll be in recess for ten minutes.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: All right.

13 SOLICITOR CAMPBELL: Your Honor, at this -- are we
14 arguing and charging?

15 THE COURT: All right.

16 SOLICITOR CAMPBELL: Arguing or are we doing something
17 with the jury?

18 THE COURT: Well, let's see what the schedule is and
19 then we'll -- what kind of schedule do y'all want to be on
20 and then we'll know what's next.

21 SOLICITOR CAMPBELL: If possible, Your Honor, just that
22 those participating, going through the day, I still have
23 stuff to do on-line upstairs. It is 20 till 4:00. I
24 don't -- I really prefer to close in the morning if at all
25 possible.

1 THE COURT: All right. What says the defense?

2 MR. STRICKLER: Again, one of the rare times there's
3 complete agreement. No claim to referee. For different
4 reasons.

5 THE COURT: All right. That sounds good to me as well.
6 So, we'll let the jury go to---

7 SOLICITOR CAMPBELL: Do we go ahead and rest in front
8 of them?

9 THE COURT: Oh, yeah, we'll do all that.
10 Now, has the defense put in any evidence?

11 SOLICITOR CAMPBELL: Yes, sir.

12 MR. STRICKLER: The boards with DNA.

13 THE COURT: The State opens and close---

14 SOLICITOR CAMPBELL: Yes, sir.

15 THE COURT: ---closes?

16 MR. STRICKLER: Yes, sir.

17 THE COURT: So, we'll have them come out and then the
18 state will close, recognize the defense, and the defense
19 will rest, and then all that -- we'll have the jurors go and
20 come back at 10:00 tomorrow morning for closing arguments.

21 All right. Bring them on.

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

24 BAILIFF: The jury is seated, Your Honor.

25 THE COURT: For the State, Ms. Campbell, or

1 Ms. Simpson?

2 SOLICITOR SIMPSON: May it please the Court, Your
3 Honor, at this time the State rests.

4 THE COURT: All right. Ladies and gentlemen, the State
5 has rested. That means you've heard the State's case. Now
6 the defense's turn.

7 From the defense?

8 MR. STRICKLER: Thank you, Your Honor.

9 At this point in time the defense rests also.

10 THE COURT: All right. Ladies and gentlemen, the
11 defense has rested. That means we have now heard all of the
12 testimony and you've now seen all of the evidence in this
13 case. The next thing that will come up will be closing
14 arguments where the lawyers will give summations regarding
15 what they believe the evidence has shown, and shown and what
16 you, what they think your verdict should be.

17 Due to the time being almost four o'clock, and also the
18 time that it takes to do all of that, you will get home
19 quick today, at a quarter till 4:00, how about that and
20 we'll need you-all back tomorrow morning at 10:00 a.m.,
21 10:00 a.m. tomorrow morning. Please remember not to discuss
22 the case and we'll see you-all then. Ten o'clock.

23 What time tomorrow?

24 (All jurors respond ten o'clock.)

25 THE COURT: Ten o'clock. All right. Have a good day.

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

3 THE COURT: Any motions on behalf of the State or the
4 defense regarding the evidence?

5 From the defense?

6 MR. STRICKLER: Your Honor, I suppose we moved just a
7 little faster, but I, I needed to make a directed verdict
8 motion at the end of the State's case. I think the jury,
9 from a procedural standpoint --

10 THE COURT: Yes, sir.

11 MR. STRICKLER: -- I, I ask Your Honor note that as
12 being made at that point in time and renew, at this point in
13 time, simply on the basis simply being that the evidence was
14 taken in the light most favorable to the State fails to
15 submit a, a question for the, a jury question, and Your
16 Honor should direct a verdict of not guilty on a,
17 specifically, we submit on the evidence submitted during the
18 State's case on the issue of identity of the person who did
19 the killing in this case does not rise to the level from
20 which a jury could find, beyond a reasonable doubt, that Mr.
21 McGee committed this killing.

22 I submit on the Jackson versus Virginia, that's the
23 appropriate standard to use in judging the evidence in this
24 particular case. So, I'd move for a directed verdict at the
25 end of the State's case and renew it now at the end of the

1 defense case on that ground.

2 I would also, Your Honor, renew my previously stated
3 motion for mistrial which Your Honor declined to grant and
4 ask Your Honor to revisit your, your ruling. I have no
5 additional bases to add in that regard. We just ask Your
6 Honor to revisit the ruling and the Bender ruling granting
7 my motion for a mistrial in that regard.

8 I'd refer back to the motions, pretrial motions as far,
9 in support of my motion for a directed verdict. The motion,
10 specifically motion regarding the alleged identification on
11 the part of Ms. Ashford from the show-up line-up or rather
12 the, the photographic line-up and the motions to suppress
13 Mr. McGee's statement.

14 To the extent that those matters support or supply
15 support for finding there was a sufficient evidence
16 regarding the identity of the alleged perpetrator in this,
17 this case, I would submit that Your Honor's, in all due
18 respect, that Your Honor's rulings should be revisited and,
19 and revised, and with that in mind, and will consider that,
20 and Your Honor grant the motion for directed verdict in this
21 case and the renewal of that motion at the end of the
22 defense's case.

23 THE COURT: All right.

24 MR. STRICKLER: Thank you, Your Honor.

25 THE COURT: All right. I would note that the motion

1 was timely made. The Court did the, the record sequence of
2 the events as the State's closed, and recognize the defense,
3 for the defense about, without defense, without the jury
4 being sent out. So, the motion is timely made and
5 recognized by the Court as being timely made both at the end
6 of the State's case, and at the close of the evidence.

7 what says the State?

8 SOLICITOR CAMPBELL: Your Honor, respectfully we
9 disagree. With -- that evidence in this case is
10 overwhelming as to identity and clearly -- I mean I don't
11 think there's any (inaudible) burglary in the first degree
12 and for murder, and respectfully would ask you to deny the
13 motion.

14 THE COURT: The issues governed by Rule 19 of the South
15 Carolina Rules of Criminal Procedure, which states that on
16 motion of the defendant or on its own motion the Court shall
17 direct a verdict in the defendant's favor on any offense
18 charged in the indictment after the evidence on either side
19 is closed if there is a failure of competent evidence
20 tending to prove the charge and the indictment. In ruling
21 on the motion, the trial judge shall consider only the
22 existence or nonexistence of the evidence and not its
23 weight.

24 In this case, there is a vast amount of direct evidence
25 connecting the defendant to the crime and even a greater

1 amount of circumstantial evidence placing the defendant at
2 the scene of the crime, and there's scientific evidence on
3 which the jury could conclude that the defendant committed
4 the crimes. All of this evidence is for the jury to weigh
5 and decide based on, pursuant to Rule 19. It's not for the
6 Court to decide, and based on all of that, I respectfully
7 deny the motion for directed verdict. With respect to the
8 other motions made, the Court denies those motions based on
9 the same reasons given earlier.

10 MR. STRICKLER: Thank you, sir.

11 THE COURT: All right. With regard to charging,
12 charges, what's the charges?

13 what do you have?

14 SOLICITOR CAMPBELL: Your Honor, we did submit some up.
15 Does the Court have them or do I need to hand them up?

16 THE COURT: No, I have what the State submitted.

17 SOLICITOR CAMPBELL: In anticipation that there may be
18 some evidence of voluntary intoxication, I don't think there
19 has been --

20 THE COURT: All right.

21 SOLICITOR CAMPBELL: -- so I would withdraw that one.

22 THE COURT: All right.

23 SOLICITOR CAMPBELL: And the rest of them we would
24 stand by the request. I think I submitted two on voluntary
25 intoxication. We would withdraw anything on that.

1 First from the State, Ms. Campbell.

2 SOLICITOR CAMPBELL: Thank you, Your Honor.

3 Good morning.

4 The first thing I wanted to do, on behalf of the
5 citizens of Richland County, on behalf of the Eichelberger
6 family, who's been here over the course of this trial, is to
7 thank you for your service in this case. I know, when you
8 showed up, ten days ago, you might of imagined what type of
9 case you would be on and perhaps you didn't envision one
10 such as this. Because this case, ladies and gentlemen, is
11 very simply a home invasion that turned into a murder case.

12 The evidence that's been brought before you has been
13 hard to look at, distasteful, but I think, as you have heard
14 the evidence evolve, you understand the reason that we have
15 to bring this before you because the burden is on the State
16 of South Carolina to prove this defendant's guilt, as it
17 should be, beyond a reasonable doubt.

18 Now, you're gonna hear from me. I will talk to you a
19 little bit about the law in the case, and then the defense
20 is gonna have the opportunity to get up here and argue their
21 version of what happened that night, and then I'm gonna have
22 the opportunity to reply and talk to you a little bit more
23 about the facts.

24 But the sole judge of the law in this case is Judge
25 Newman. As I'm talking about the law, if I misquote, it's

1 not intentional. If he tells you something different, you
2 take the law as he gives it to you. Again, it's not
3 intentional because he is the sole finder of the law in this
4 case, and in that same vane, if either sides
5 mischaracterizes the facts, you remember them because the
6 roles in this courtroom are designed for a reason, and very
7 simply the prosecution has the opportunity to bring before
8 you any and all relevant and admissible evidence for you to
9 consider as to what happened that night on May the 3rd, that
10 night that cost Reverend Eichelberger his life. And the
11 role of the defense is to defend their client to the best of
12 their ability. The Judge's role is to determine what's
13 admissible, what you can hear, what's relevant, and then,
14 ultimately, to charge you on the law, to explain the law to
15 you that you must apply.

16 But the most important role in this courtroom, ladies
17 and gentlemen, by far, is yours. Because once you have been
18 charged, each of you individually and, then once you get
19 back in that courtroom, in that jury room collectively, you
20 must determine what happened back on May the 3rd, and then
21 you must apply the law as the judge gives it to you. Your
22 role is, by far, the most important. This system, some may
23 argue, it's the best system in the world and your role is
24 part of that system.

25 Now, you have heard all the evidence upon which you

1 must base your verdict.

2 what is evidence?

3 It's the sworn testimony that you have heard. You saw
4 each witness came before you, swore an oath to tell the
5 truth. It's the physical evidence which we will, you will
6 have back in the jury room. Those things which are
7 admissible and will go back with you. What is not evidence,
8 ladies and gentlemen, are questions by the lawyers,
9 speculation, innuendo, conjecture, or just plain wishful
10 thinking that it wasn't what it was. That is not evidence.

11 Now, I want to tell you something from the beginning.
12 If over the last week and a half, if we have done anything
13 to offend you in anyway, at times by questions that are
14 unartfully, then objections, we're clumsy, not well stated,
15 please don't hold that against Reverend Eichelberger and his
16 family. It is not intentional. If we've done anything to
17 offend you, please don't hold that against justice in this
18 case.

19 Now, in criminal cases, they're somewhat unique because
20 a defendant has, as he should, the absolute right to
21 confront each and every witness against him. That's in our
22 Constitution. It's survived the last several hundred years.
23 The right to confront each and every witness. You saw each
24 expert, whether it be a doctor, a DNA expert. And the
25 reason that, ladies and gentlemen, is very simply because,

1 in a criminal case, the defendant has the right to
2 cross-examine.

3 You heard about reports that were referred to, medical
4 reports, DNA reports, that weren't actually admissible. The
5 person has to actually come in here and testify before you
6 so that you can understand what their provocations are, so
7 that you can understand what their testimony, the basis for
8 it, so that you can judge their credibility.

9 You've heard police reports being referred to. You've
10 also, at times, heard about some witnesses, more witnesses
11 being at the crime scene that weren't brought in, and the
12 reason for that, ladies and gentlemen, is we simply can't
13 bring in the same person to say the same thing over and
14 over. It's called cumulative evidence. We can bring forth
15 witnesses who have something to add as far as your
16 explanation as to what happened on that night. In that same
17 vane, you've heard from a number of witnesses and I know you
18 were wondering what we were doing when we talked about the
19 chain of evidence in this case.

20 But because before something is admissible in testing
21 and results such in this case, DNA, can come before, we must
22 prove that no one altered or tampered with the evidence in
23 this case, and in this case, in this courtroom, there's
24 absolutely no evidence that any of the evidence was tampered
25 with or altered or changed or contaminated in anyway, and in

1 order for you to be able to have the results, we must prove
2 that, and that's the reason you have to hear from that
3 lengthy number of witnesses.

4 Now, the burden of proof. We must prove that Frankie
5 McGee, on May the 3rd of 2009, murdered and burglarized
6 Reverend Eichelberger. The burden of proof is upon the
7 State. It is the highest level of proof, and, ladies and
8 gentlemen, in this case that is a burden the State welcomes,
9 perhaps more than any other, because the evidence in this
10 case, the reasonable competent reliable evidence is
11 overwhelming.

12 Now, the Courts have made an attempt to define what is
13 reasonable doubt, and listen to the judge when he explains
14 this to you, and the most -- the simplest way to define
15 reasonable doubt, and I'm gonna talk to you about the law in
16 the case for a minute, is the type of doubt that would make
17 a reasonable man hesitate to act. But the Courts have gone
18 a little bit further in defining what reasonable doubt is,
19 and what you may consider when determining what Frankie Lee
20 McGee did back on May the 3rd, 2009. Proof beyond a
21 reasonable doubt is proof that leaves you firmly convinced
22 of the defendant's guilt.

23 There are very few things in this world that we know
24 with absolute certainty, and in criminal cases the law does
25 not require proof that overcomes every possible doubt. If,

1 based on your consideration of the evidence, you are firmly
2 convinced that the defendant's guilty of the crime charged,
3 you must find him guilty. If, on the other hand, you think
4 there's a real possibility that he is not guilty, you must
5 give him the benefit of the doubt and find him not guilty.

6 Proof that leaves you firmly convinced, the law
7 recognizes, we can't overcome perhaps every possible doubt.
8 But we only have to make sure that you are firmly convinced.

9 I submit, ladies and gentlemen, when you look at this
10 case and look at it in its entirety, all the evidence, which
11 I'll talk about in a minute, the proof overcomes every
12 possible doubt. But the only level we must reach is proof
13 that leaves you firmly convinced, and listen to the judge
14 when he explains that to you.

15 Now, you're going to have two indictments and that
16 doesn't mean, in this case, that there were two separate
17 events because often, when people commit crimes, they may
18 commit more than one crime. There may be an armed robbery
19 and assault and battery. There may be a strong armed
20 robbery and an assault. In this case, the two indictments
21 that are before you are murder and burglary in the first
22 degree.

23 Now, murder, our case, you've heard murder in the first
24 degree, second degree. In South Carolina, we have murder.
25 You will not be hearing from the judge that any lesser

1 included offenses apply in this case. Your consideration
2 are gonna be on two, guilty or not guilty of burglary in the
3 first degree, and guilty or not guilty of murder. Because
4 of the facts specific to this case, there are no lesser
5 included.

6 So, what is the definition of murder?

7 In South Carolina, the definition of murder is perhaps
8 the shortest definition in our Code of Laws to describe the
9 most heinous offense that can be committed in our state or
10 at least one of them. The killing of any person with malice
11 aforethought either expressed or implied. That's the
12 definition that we must meet and I want to talk to you a
13 little bit about those terms.

14 The killing of any person with malice -- and before I
15 go on, either express or implied, and I submit, ladies and
16 gentlemen, no one is gonna get up here and argue to you that
17 this wasn't a murder or this wasn't a burglary first. But
18 we still have the burden, and I want to go through them, of
19 showing you what those elements are and how we have met
20 them.

21 Now, malice, the judge will define to you.

22 what is malice?

23 when can you infer malice?

24 Because, very simply, when you've heard those terms
25 inferred or implied versus express malice, it doesn't mean

1 they're two different ways. But the law recognizes that
2 very seldom in life is someone going to have express malice.
3 It's called laying in weight.

4 And as you listen to the Judge's charge, listen
5 carefully because we don't have to prove some things that
6 some people may think to come to murder. Such as
7 premeditation. Its not part of the Judge's charge. Such as
8 motive. That is not part of the Judge's charge. Although,
9 in this case, the motive is obvious. He broke into the
10 house and it wasn't just to say hello.

11 In this case, do we have premeditation?

12 I submit, in this case, we actually do cause he was
13 casing that joint that afternoon not knowing that Mr. Harp
14 was paying attention.

15 So, express or inferred malice or implied malice,
16 what's the difference between those two. Express malice is
17 things such as lying in weight, or if I were to walk up to
18 you, another person, look them in the eye and say I am going
19 to kill you, and then pull out a gun and shoot them, that's
20 express malice. But the law recognizes, in very few cases,
21 where you're gonna have that. So, you can infer malice from
22 actions of the defendant, from what he was doing that night,
23 things of that nature, and I'm gonna go through with several
24 examples of that in this case. And, again, I submit
25 nobody's gonna argue that this wasn't murder.

1 Malice may be inferred from conduct showing a total
2 disregard for human life. Inferred malice may also arise
3 when the deed is done with a deadly weapon, and I submit,
4 ladies and gentlemen, when you take a crow bar, a winch bar,
5 and swing it like a baseball bat hitting an 87-year old man
6 in the head, that's malice. Just because he interrupted
7 your burglary of his home, that's malice.

8 But the law goes further and explains other ways in
9 this case because there's so many different examples in this
10 case of how you can infer malice or reach that malice
11 exists. The law goes a bit further. It recognizes that
12 malice can be transferred to another person. It does not
13 signify, necessarily impart, ill will towards the individual
14 injured. We don't have to prove that that night he went in
15 there to kill Reverend Eichelberger. All we have to prove
16 is that when he was in there he did it. When Reverend
17 Eichelberger came out from the room, surprised him, and then
18 he decided to make sure he got away and was not held
19 responsible, which almost happened, that he acted with
20 malice.

21 Malice does not necessarily impart ill will towards the
22 individual injured, but it signifies rather a general
23 malignant recklessness of the lives and safety of others or
24 condition of mind which showed a heart regardless of social
25 duty and fatally bent on mischief, and if that doesn't sum

1 up this case, ladies and gentlemen, nothing does.

2 The word malice itself, the easiest way to think about
3 it, were his actions malicious?

4 That comes from the word malice. A heart regardless of
5 social duty and fatally bent on mischief.

6 The law goes further in this case, well it implies it
7 in this case, there's a concept called felony murder. The
8 judge will instruct you that felony murder is the commission
9 or attempted commission of a felony that creates any
10 substantial foreseeable human risk and actually results in
11 the loss of life. This includes but not limited to felonies
12 which are inherently dangerous to life. Breaking into
13 someone's home with a winch bar in the middle of the night
14 to rob them is inherently dangerous to life. The law
15 recognizes that, and the judge will go further and charge
16 you on this concept.

17 It allows the jury to infer malice if you conclude the
18 homicide was the proximate and direct result of the
19 commission of a felony, and for that regard, burglary would
20 be a felony under our law. You can imply that malice
21 existed if a person in the commission of a felony at the
22 time of the fatal blow and no one is gonna get up here and
23 argue that it wasn't a burglary that was ongoing when the
24 fatal blow was struck.

25 Now, malice aforethought.

1 what does aforethought mean?

2 Does it mean you have to form malice, as we talked
3 about earlier, a specific intent to go in there and kill
4 them?

5 No.

6 The law recognizes that malice can be conceived at the
7 very moment the fatal blow is struck. Malice need not exist
8 for any appreciable period of time before the act of killing
9 occurs. Malice may be conceived the very moment the fatal
10 blow is given.

11 But in this case, ladies and gentlemen, once he made
12 the choice to commit a burglary, malice was in his heart.
13 Once he entered that home, malice was in his heart. There's
14 nobody that's gonna get up here and argue that there was no
15 malice in this case.

16 Now, the second indictment that is going to be back
17 there for your consideration -- and the Judge will instruct
18 you, you must consider the elements separately and make the
19 decisions separately on each one, and then all 12 of you
20 agree to whatever your verdict is. Burglary in the first
21 degree, and you will have the indictments actually back with
22 you and the elements are actually, in both crimes, are on
23 the indictments, is a person's guilty of burglary in the
24 first degree if a person enters a dwelling without consent
25 and with intent to commit a crime in the dwelling, and

1 either, when effecting entry or while in the dwelling or in
2 immediate flight, he or another participate in the crime, so
3 either while he's inside or going in or leaving, is armed
4 with a deadly weapon or explosive.

5 And as I go through these aggravating circumstances, we
6 don't have to prove each aggravating circumstance. We just
7 have to prove one of these exists, but this crime is so
8 heinous that it has many aggravating circumstances that
9 apply, that he causes physical injury to a person who is not
10 a participant in the crime, that he uses or threatens the
11 use of a dangerous instrument. If you think the winch bar
12 wasn't a deadly weapon, I submit it caused his death, that
13 makes it a deadly weapon in and of its own definition,
14 threatens the use of a dangerous instrument or uses or the
15 burglary is committed by the person with a prior record of
16 two or more convictions for burglary or house breaking or a
17 combination. That's the reason you heard that evidence. It
18 wasn't just to muddy his character. It was to show that
19 that's an aggravating circumstance which takes a burglary
20 not from just burglary in the second degree, but up to
21 burglary in the first degree. That's the difference.

22 Any one of these one, two, three, four, five different
23 aggravating circumstances is enough to make it burglary in
24 the first degree.

25 And, finally, the entering or remaining occurs in the

1 nighttime. The legislature understands that when people
2 break into people's homes, these are not dwellings. The --
3 they're -- not about a business, but dwellings, that's
4 different.

5 But that is inherently dangerous to life, and,
6 therefore, is a more egregious offense, and, again, nobody's
7 gonna get up here and argue that this wasn't burglary in the
8 first degree.

9 Now, the judge will instruct you that in considering
10 your verdict, you can consider evidence and there are two
11 different kinds of evidence you can consider. He will tell
12 you one's not better than the other. It's just how we
13 simply term them or relate them. It's direct evidence or
14 circumstantial evidence.

15 And what is direct evidence?

16 Direct evidence is eye witness ID's. It's what a
17 person sees or perceives through their senses, touch, feel,
18 sight, hearing. That's direct evidence.

19 You heard from Ms. Ashford, even though she was in the
20 next room and didn't actually see, what she heard is direct
21 evidence.

22 You heard from Mr. Harp. He was across the street, but
23 he saw the person. That is direct evidence.

24 But there's also circumstantial evidence.

25 Circumstantial evidence is proof of a chain of facts or

1 circumstances indicating the existence of a fact. The law
2 makes absolutely no distinction between the weight or value
3 to be given either direct or circumstantial evidence nor is
4 a greater degree of certainty required of circumstantial
5 evidence than of direct evidence. You should weigh all the
6 evidence in the case, and after weighing all the evidence,
7 you are not convinced of the guilt of the defendant beyond a
8 reasonable doubt, you must find him not guilty. If, on the
9 other hand, you are convinced he's guilty, you must find him
10 guilty.

11 So, in this case you've got both. Some cases are only
12 direct evidence, only one eye witness sees what happens,
13 come in and testifies, or they're other cases where all you
14 have is circumstantial evidence. The stealing of the truck
15 on the evening near a house given the winch bar being in the
16 truck, that's circumstantial evidence.

17 In this case, ladies and gentlemen, there is a
18 abundance of both direct and circumstantial evidence, and
19 what is good in this case is you have direct evidence, which
20 is totally corroborated by the circumstantial evidence. So,
21 you have both. But in every case it's important to look at
22 all the evidence before considering this defendant's guilt.
23 Not just one piece.

24 Now, the Judge will also instruct you that there was a
25 statement or confessions that was introduced in this case by

1 the defendant. The exception to any statements coming in,
2 such as you heard about statements that are referred to by
3 Ms. Ashford and other things, those aren't admissible. Only
4 the defendant's statement is admissible and it came in this
5 case and was actually recorded.

6 In considering whether or not you can consider the
7 statement and using it as far as the defendant's guilt, the
8 Judge will instruct you, although he made a preliminary
9 decision whether or not it's admissible, you too must decide
10 whether or not he wanted to talk to the police that day
11 (inaudible), and in considering that you consider his
12 background, his level of intelligence, and, in this case,
13 it's really nice because you actually hear him on the
14 videotape, on the audiotape. Excuse me. And consider that
15 he's the one that uses words like I don't want to
16 incriminate myself. He comes up with those words. It's his
17 level of intelligence.

18 Was he under the influence of any drugs or alcohol?

19 Those are all things you can consider, his background,
20 he got to the 12th grade before dropping out. Things of
21 that nature.

22 And important in that consideration for a person where
23 the statements gonna be used against them is whether or not
24 he was read his rights, and they're called Miranda rights,
25 that's advice of rights, and you have them recorded. These

1 officers jumped through all the hoops they were suppose to.

2 They did their job by the book. It's on tape.

3 They not only just went through his rights, they didn't

4 say oh, whatever, let's move on, they made sure he was

5 advised of his rights. They went back and forth. At one

6 point they even said if you just want to stop talking to us

7 at any point you tell us. You stop talking. Nobody's here

8 to railroad you. You stop talking if you want to. They did

9 their job.

10 There is no question he was advised of his rights.

11 There is no question that, after considering his pros and

12 cons, that he wanted to get his version of the facts out

13 there, and he signed off on the waiver, which he didn't even

14 have to do, he just had to be advised, but that he did sign,

15 and that's an important consideration.

16 Now, the Judge will also instruct you and he's already,

17 I think, given you some instructions on expert witnesses.

18 But expert witness is different from a lay witness or a

19 regular witness. I could not come in here and be an expert

20 witness because I don't -- I'm not an expert. An expert

21 witness is someone whose had specialized training and

22 education, and then must be qualified by the judge in order

23 to come before you and give an opinion as to any testing or

24 other information they have.

25 In this case you heard from a number of expert

1 witnesses. You heard from a DNA expert. You heard from
2 medical experts. You heard from pathologist, and the list
3 goes on. And the reason that they're allowed to come in
4 here is only because the judge qualifies them as an expert
5 because of their specialized training. You judge the
6 credibility of the experts the same way you do anyone else.

7 And that brings me to that last thing I want to talk to
8 you about as far as the law in this case. Credibility.
9 Because this case, as in every other one, it boils down to
10 credibility.

11 What is credibility?

12 Believability.

13 The judge will tell you, you can believe part of what a
14 witness says, some, none. It's totally up to you. You can
15 believe one witness against many, many against one. When
16 considering whether or not to believe a witness, consider if
17 they have a bias or prejudice. They may have something to
18 gain or lose by testifying to what they know.

19 Was it pleasant for them to come in here and testify?

20 Was it their demeanor?

21 You can consider is their testimony consistent with
22 other testimony and other evidence?

23 Those are all factors, and in that same vane, as you
24 heard, whenever any witness gets up here and chooses to take
25 the stand, and they have a prior record, it can come and be

1 used against them. The purpose of that is just so that you
2 can consider that in determining credibility, but in that
3 same vane, if that witness is corroborated by other
4 witnesses, that's another factor in determining credibility.
5 It's totally up to you.

6 And that gets me back to the final prong, the most
7 important role in this courtroom, ladies and gentlemen, is
8 yours.

9 All we ask is for justice. Justice for Reverend
10 Eichelberger, for the Eichelberger family, and for the
11 citizens of Richland County.

12 Thank you.

13 THE COURT: Counselor.

14 MR. STRICKLER: Please the Court?

15 THE COURT: Yes, sir.

16 MR. STRICKLER: Madam Forelady, ladies and gentlemen of
17 the jury, an answer for everything. Tuesday of last week we
18 started this case, and that's what you were informed, that
19 Frankie McGee has an answer for everything, an answer for
20 everything, and what I'd like to talk with you about today
21 is the folks who have an answer for everything in this
22 proceeding sitting right over there.

23 I'm going to cover with you what's been proven in this
24 case, and what is not been proven in this case, and then I'm
25 gonna ask that you (inaudible).

1 Ms. Campbell and I, this is probably the last time I'm
2 gonna agree with her, are in complete agreement. There was
3 a burglary in the first degree at Mr. Eichelberger's.
4 Mr. Eichelberger was assaulted and died as a direct result
5 of that assault, and that assault was a murder.

6 Okay. There's no question about it. She then gets up
7 and talks about muddying the waters and implies that's my
8 job. You need to understand, I'm clearing things up. You
9 have things that you have to consider. You'll have a job
10 that you have to do, but I'm gonna clear things up right off
11 the bat. It was a murder and it was a burglary in the first
12 degree.

13 So, what's left that you have to determine?
14 who did it, that's what you got to determine.

15 You got a bunch of stuff here from the State, and I
16 call it stuff. Some of it's evidence. It's all admitted as
17 evidence. Some of it's stuff.

18 You have -- I have no idea of how many pictures of the
19 outside that were entered into evidence. Hundreds. One of
20 them might be evidence of the scene. The rest of them are
21 stuff. I mean if you're looking for the general scene,
22 right there, this overhead. I got a picture of
23 Mr. Eichelberger's house, a picture of where the socks are,
24 a picture of where the rod is, and, here, if you needed to
25 know that, there's one that covers it all.

1 So, these, that's just stuff. This, if you need to
2 orient yourself, that covers it. But this wasn't put three
3 or four pieces of evidence in and talk about the massive
4 evidence that they have. No. One does it. All the rest is
5 stuff. You have pictures of the interior of the house that
6 shows what occurred there. Lots of stuff.

7 As I said, I'd like to talk to you (inaudible). So,
8 let's talk. And in talking about that, you need to
9 reference some of the witnesses.

10 So, what's been proven?

11 What's been proven is that Reverend Eichelberger's
12 blood is on this rod.

13 Which part?

14 All right. On one with the subject name David Williams
15 on it. It's collected. It's reflected in one of many of
16 these photos. Okay. So, that's what I'm talking about.

17 You want to talk circumstantial evidence, I mean
18 there's also testimony that it's consistent with what
19 (inaudible). Circumstantially, witness -- circumstantially,
20 it's reasonable to infer. That was used to pry the door
21 open, strike -- there's blood on it. It's reasonable to
22 infer that he was hit.

23 Okay. So, that's been proven.

24 What's been proven?

25 Been proven that a Peterbilt truck, okay, was recovered

1 a number of blocks away from Mr. Eichelberger's, and that it
2 had been stolen the day before Mr. Eichelberger dies and was
3 assaulted, Reverend. Mechanical. That's been, that's been
4 proven.

5 All right. We have the opinion of one person, sister
6 of, of Frankie, that he took the truck. That has not been
7 proven.

8 You have the video. You need to look at the video.
9 You got Frankie (inaudible) 5'8" inches tall, 230 pounds.
10 That's in evidence. There's a driver's license somewhere
11 with that information on it. 5'8". 230.

12 Now, he's going to the person in that video and see if
13 that comports with your opinion as to what a person looks
14 like who is 5'8" and 230. Okay. I submit to you it doesn't
15 look like that at all.

16 So, the truck was taken.

17 Have they proven that this bar, the bar -- what piece
18 of evidence have you heard that says the bar came from the
19 truck?

20 Okay. Now we need to talk about the difference between
21 evidence and speculation, proof and theory, cause what
22 you've got is largely theory. You got a theory from the
23 part of the state. Okay. Theory is stolen truck, came to
24 Columbia, took the bar off the truck, committed the assault.

25 What proof, we'll start with the bar, is there that the

1 bar came from that truck?

2 The answer is none.

3 You've got the person who owned the company where the
4 truck was from.

5 Yeah, they used those kind of bars.

6 Was it missing from the truck?

7 No idea. No idea. You can buy those bars in any truck
8 stop in America. They're all over the place. Common as can
9 be.

10 Did he check to see whether it was missing?

11 No.

12 Had any idea whether it was missing?

13 No.

14 But Frankie knew about those bars. Frankie knew about
15 those bars.

16 Really?

17 You have his boss came here and testified. Did not get
18 the answer -- Ms. Campbell did not get the answer that she
19 expected.

20 Are you familiar with this?

21 Yeah.

22 Use it?

23 No, we use smaller ones with, without a metal bracket.

24 Let's talk about what some of the tools you can employ
25 in seeking out the truth cause that's what your job is here,

1 to seek out the truth.

2 Is something corroborated?

3 Okay. Well, you know, we'll get around to what Frankie
4 just said or his wife, but what he has to say in just a
5 minute. They questioned him. You got his testimony, his
6 interrogation. Interrogation. Not interview. You have
7 this testimony. I don't know what they show the pictures
8 of. (Inaudible).

9 So, which one?

10 We didn't use winch bars like that. We used the ones
11 with the screwdriver ends on them as his boss testified
12 about. Smaller. No box end on it.

13 So, Frankie told you that. Their intention is that's a
14 lie, and you heard Mr. Thomas testify about that yesterday.
15 That's a lie.

16 Well, it's a lie with which a completely impartial
17 witness happens to agree. So, I'd submit no, it's not a
18 lie. That's the truth. He doesn't know anything about that
19 cause he never used one like that, and he's licensed to
20 drive an 18-wheeler. His boss hadn't never drove an
21 18-wheeler to have experience with any kind of winch bar in
22 his capacity of loading or unloading of the job sites. He
23 didn't drive an 18-wheeler.

24 We're on a journey here is what we're on, and the
25 journeys have been phrased from where we're going, which

1 I've always liked. It's called Crown Cooper Land. That is
2 a place where black is white, where up is down, where
3 interrogations are interviews, where corroborated truth
4 becomes lies, and where repeated, repeated, repeated denials
5 that you're involved in anything, repeated denials that
6 you're involved with anything become a confession. That's
7 Crown Cooper Land, and that's where the State is taking us.

8 Now, what's been proven?

9 It's been proven that that was found on the scene, and
10 I submit it's been proven that it's used to (inaudible).
11 Nothing in the truck.

12 What's been proven about the person who committed the
13 crime?

14 Well, it's proven that the person that's on trial now
15 5'8", 230 pounds. It's been proven or it's been testified
16 to by Temika Ashford that the person's tall, 6-feet tall,
17 medium to heavy build, blue jeans, and a white shirt.

18 Now, if you believe Mr. Harp saw Mr. McGee pacing
19 around outside earlier that day in his cutoff baggy jeans
20 shorts, not blue jeans, baggy jean shorts, and an athletic
21 jersey like there's testimony today, and he says he
22 recognized him ten months after the fact, ten months after
23 the fact.

24 If you choose to believe him, I don't know, this man
25 who is out stealing trucks and driving him over here is

1 carrying his change of clothes with him, his, to change from
2 his baggy shorts to straight blue jeans, and changing from,
3 you know, this athletic jersey that he's wearing to a
4 t-shirt, and that's the 230.

5 But what do they have to support that theory?

6 Absolutely nothing. Goose eggs, zip, nada, nil,
7 nothing. Speculation, theory. That's it. That's what they
8 have.

9 what do they have to have?

10 what is the standard that has to be employed here?

11 And that is proof beyond a reasonable doubt. Proof
12 that came off that truck with no questions left.

13 well, that's not proof. Didn't prove anything.

14 Socks. They have proven that those socks were worn
15 by -- proof. DNA is all over them. I admitted that to Mr.
16 Barron when he was testifying on the stand and he got
17 snapped back at oh, now you're testifying. Well, no, I'm
18 agreeing with you. That's fine. But you need to remember
19 things like that because, as you evaluate the credibility,
20 the believability of witnesses, you are allowed to consider
21 their demeanor, how they appear on the stand, whether they
22 are forthright in response to questions, or whether they're
23 evasive in their response to questions.

24 Mr. Barron, when did you set up the DNA lab along with
25 Mr. Amick at the Sheriff's Department?

1 2004.

2 When was the first time you did this touch DNA testing?

3 Oh, I -- excuse me?

4 You set up the lab. You got all these folks. I don't
5 know when the first time was.

6 Well, when was the first time you personally used it?

7 Oh, I don't know.

8 Is that forthright or is that evasive?

9 That's all a rhetorical question. That's as evasive as
10 you can get. That man knows when the first time it was
11 used. I don't know when the first time -- was it this case
12 or some other case?

13 I do know that they wouldn't answer my question. I'm
14 gonna talk about the DNA. What they bring in to you, as far
15 as DNA, are these nice little summary charts, which do
16 summarize their conclusions. Each witness' opinion. And
17 they do it that way, I submit, saying you don't have to deal
18 with any of the nuances. It's just plain this day. Nothing
19 you can question about it.

20 Well, that's one we had to blow these things up and got
21 all technical and I don't apologize for that. I don't
22 apologize if we were contentious with a witness.

23 Okay. This place, this place, this courtroom right
24 here is sometimes referred to as The Crucible. The
25 crucible, a crucible is a term from metallurgy. You put two

1 different kinds of metal in there, you subject them to heat,
2 you subject them to pressure, and you get a different metal.
3 (Inaudible) Tin, bronze, copper, and zinc, brass.

4 Okay. This is a crucible. You get different people
5 talking, different testimony, and they are subjected to heat
6 and pressure and that's my job, to apply the heat and
7 pressure, and let you see how they react. Mr. Barron
8 reacted by telling me basically that it's a (inaudible).

9 All right. Now, the proof. Those (inaudible). They
10 don't bring in to show you, I didn't make this up, I'm
11 talking with both Mr. Barron and Mr. Amick about it. 6.2.
12 The blood from this bar, this bar, these have blood on it.
13 That the blood agrees with Mr. Eichelberger's.

14 Okay. Right here, these wooden arrow, wham. I didn't
15 put that in there. Mr. Barron didn't even put that in
16 there. The machine puts that in there, and Mr. Barron
17 confirms that it matches what they have to have in order to
18 call it a real allele.

19 Well, what's the testimony?

20 That is a real allele that does not match Mr.
21 Eichelberger, and it does not match Mr. McGee. It's real,
22 doesn't match Mr. Eichelberger, it's not Frankie. This is
23 not muddying the waters. That's there and they need to
24 explain why that's there.

25 Explanation. Early on Mr. Barron talked about getting

1 real small samples, mixed samples, got more of one sample,
2 Mr. Eichelberger's, less of someone else's sample. They
3 both get amplified. So, you get big pikes, spikes right
4 there, and then you get the smaller ones consistent with the
5 smaller sample. Okay. DNA from someone else. Not DNA from
6 Frank.

7 I put this in. This is Frankie. You can compare it.
8 It's not hard. I mean the science is involved reading
9 these, tenth grade biology. I can read these. It ain't
10 that hard. They're (inaudible). This is another sample.

11 Okay. That's a cross sample right there, and he
12 explained why it's a cross sample. But you got that, the
13 one from Mr. Eichelberger. All you do is just light them
14 up, just the same, and see where they are. You can see.
15 Then you can get a ten. Socks that were scraped.

16 Okay. This first one right here. Talked about these
17 being consistent with David Williams and they agreed they
18 were. But more importantly, I then talked with them about
19 the fact that Number 14 right here does not match Mr.
20 Eichelberger. It does not match those two people.

21 I mean if they're gonna ram away about David Williams.
22 I don't know whether David Williams did it or not. I know
23 he's identified as doing it initially. But I don't know
24 whether he did it or not and that's not my job.

25 It's this doesn't belong to Frankie. This doesn't

1 belong to Mr. Eichelberger. This is present on that sock.
2 where it comes from, please explain, the people who have the
3 burden of proof, that's what it's called, the burden of
4 proving guilt beyond a reasonable doubt.

5 where did this come from?

6 If not from another person, where did it come from?

7 well, it came from another person. It's not something
8 degraded. Mr. Barron got started on it. Degraded stuff
9 just won't show up. Okay. That's a real piece of DNA,
10 belongs to someone. Doesn't belong, doesn't belong to Mr.
11 Eichelberger.

12 4.2.2, that's one of the socks. This is from the
13 (inaudible). okay. 4.2.2, right here. 34. 4.1.2. 136,
14 once again, this is Mr. Eichelberger's blood. You can
15 compare it. Check this -- this six and eleven, that's him.
16 You can check it with, with the chart on Mr. McGee.

17 That's not him. That's not him right there. That's
18 not Eichelberger. That's not McGee. That's someone else
19 entirely.

20 who?

21 It's mixed in with the blood. He obviously witnesses
22 that. It actually shows up on a ten the second time.

23 So, what is proved?

24 Proven that they're Frankie's socks.

25 okay. They have Mr. Eichelberger's blood on it.

1 Is there a problem with that?

2 Well, what is the problem with that?

3 Because they have other peoples DNA's or other person
4 or persons, person's DNA on it, and you have Frankie's
5 sample. I kicked those socks off at the store, at the, the
6 GazBah by a dumpster.

7 Okay. You got an overhead, and there's the cap. Okay.
8 See. GazBah.

9 Now, you listen to Mr. Thomas. Then he changed it to
10 light pole.

11 Okay. One thing y'all don't do when you come in here
12 is check your common sense at the door. All right. It's
13 one of the reasons you're sitting here. You don't check
14 your common sense at the door. Everyone in this room has
15 been to a 24-hour convenience store. That's the GazBah.
16 May not of been to that one. But you've seen one, you've
17 seen them all, and they all got lights all over the place.

18 Well, this man who -- I'm not gonna count them and I'm
19 not gonna make you sit through all of them again. But this
20 man, who in the beginning, early on, saying he didn't do it,
21 and who time and again says he didn't do it, and yet time
22 and again more says he didn't do it, just decides to tell
23 oh, yeah, it wasn't by the light pole, by the yard.

24 Well, he doesn't say that. Doesn't say anything like
25 that. He says he took them off at the store by the dumpster

1 and left them by the light pole. Same place, dumpster,
2 store, light pole, one of the same, one in the same thing.
3 That's what he says.

4 They (inaudible) believe that he admitted to leaving it
5 at the light pole right by, across the street from Mr.
6 Eichelberger's house. But he said no such thing. That's
7 their theory. That's not a fact. That's their theory.
8 That is not something's that's proven. The socks were found
9 in the yard close, close to a house. Right here. It's
10 close to that house as it is the light pole. They're in the
11 middle of a field. But their theory is that he has
12 confessed to it.

13 Well, this is Crime Tookie Land right here, right now.

14 How many times, how many times he said I did not do it,
15 I did not do it, I did not do it, I did not do it?

16 How many times you go through that?

17 How many times you have to say it?

18 How many times you have to say it and still be yelled
19 at and cursed at before you start thinking hey, you're
20 getting railroaded, which is what he's concerned about in
21 the beginning?

22 Should of shut up because whatever you say, whatever
23 you say, they have an answer for everything.

24 He's lying. Simply telling the truth. He told the
25 whole truth about using the phone. He's lying about other

1 things. Truth, they pick and choose the truth to help them.
2 They have termed the other things lies because it doesn't
3 match what they have.

4 what basis do they have for that?

5 These are people who say that we don't interrogate
6 people. We interview them. I interview people all the
7 time. People looking for a job. You know, I don't cuss
8 them out. I don't tell them that they're evil people. I
9 don't get in their face. We talk. That's an interview.

10 This is an interrogation. Nothing's wrong with it.
11 It's an interrogation that I kept the running tally on the
12 various techniques that are employed.

13 Here, let me feed you some information about the crime
14 so when you break, and tell us, you'll know the right things
15 to tell us. That's a technique. Both of us know. We just
16 talked with him. Encourage him to speak the truth.

17 Well, you got some lake front property in the Sahara
18 for you guys if you choose to buy into that. And if, if you
19 don't, then that's not credible testimony and you need to
20 take that into, into account as you consider whether or not
21 you believe what you're told.

22 It's an interrogation, and what you have in an
23 interrogation, it's from start to finish denial, and he did
24 not do it. The point is did not. Slightly cursed at him,
25 vilified by people who interrogated him, who then have the

1 nerve, the absolute gall, in response to cursing him,
2 because I'm trying to get down to your level. A person who
3 never raised his voice, never used anything other than
4 polite language with the people. To that level. Trying to
5 get down. You need to go up to get to that level. But, you
6 know, white is black, up is down. Denial is confession.

7 Now, reasonable doubt, move on to reasonable doubt.

8 6.2. Fourteen.

9 Reasonable doubt?

10 Remove those reasonable doubts with evidence and
11 speculation, not theory, not conjecture. Remove this.

12 Other reasonable doubts. The guy was 6-feet tall.
13 5'8". 180 to 200 pounds. This is to the person who did the
14 sketch, Mrs. Goff, who did the sketch. 180, Ms. Ashford,
15 Temika Ashford. 180 to 200 pounds. 230. Reasonable doubt.

16 Not the same person. The person was wearing white
17 t-shirt and blue jeans. The person was wearing baggy jeans,
18 shorts, and a wet sweaty shirt. Reasonable doubt.

19 Here's the other thing. You have the composite that's
20 in evidence. You also have a slew of these what we in
21 police call six packs. Six photograph line-ups.

22 Okay. You have, I don't know, four or five of them
23 shown to Ms. Ashford. Certainly looks like him, certainly
24 looks like him, looks like him, looks like him, one of which
25 is Frankie, the last one. Doesn't say it is him. Doesn't

1 say it looks any more like him than any of the other ones
2 that she's heard.

3 He's the one that she's saw. Now, Mr. Thomas tries to
4 go ahead and portray that as, no, she was more sure about
5 that than she was. Well, you wasn't even there. Ms.
6 Ashford or Mr. Reece was there. He wrote it down, what she
7 said.

8 Okay. Less than one -- I don't know who they are.
9 Certain between all those, half dozen. More than that.

10 So what?

11 What's that prove?

12 She recognizes him?

13 No, it does not.

14 Well, you got one person who claims to recognize him
15 in, in the area, and that's Mr. Harp. And the last time,
16 best guestimate on his part, the last time he recognized him
17 in the area is 5:30 in the afternoon. Six hours before that
18 happened. (Inaudible).

19 Well, they say great, put himself there. You can
20 listen to, to the recording. Frankie puts him there at some
21 point in time.

22 When you first heard about it?

23 The paper, two months after it happened.

24 What did you have for lunch ten months ago?

25 I don't know. That's Mr. Thomas.

1 well, of course, you don't know.

2 where did you eat lunch?

3 I don't know.

4 No reason to know. That's what Mr. Thomas says.

5 Now, I'm not gonna spend a lot of time talking about
6 the law. I listened to everything Ms. Campbell said about
7 the law. That is the law of the State of South Carolina.
8 His Honor is gonna charge you on the law. (Inaudible) all
9 one part of the law, and that's what your job is. Right
10 here, right now, your job. What the law says your job is.
11 Not me. What the law says.

12 The law says that you didn't show up here, sign our
13 board, and go ahead and convict someone. That's not what
14 your job is.

15 Okay. Your job is to determine what the facts are,
16 determine what facts have been proven to your satisfaction
17 beyond a reasonable doubt, and that's your job. And then
18 apply the law as His Honor charges it to the facts as you
19 find them. That's your job.

20 The law says your job here -- and you don't have any
21 friends to reward. Y'all aren't here because you have any
22 enemies to punish. Those are not your job. Your job is
23 just what it says. Determine what the facts are beyond a
24 reasonable doubt. Determine what they are beyond a
25 reasonable doubt. Apply the law as His Honor charges it to

1 the facts and arrive at a verdict if you can.

2 Verdict comes from two Latin words. Veris, true.
3 Dicto, to speak. Combine them together, their word,
4 veridicto, to speak the truth. That's what you're suppose
5 to do. It's actually a little further than that here cause
6 a verdict here means to speak the truth beyond a reasonable
7 doubt. Beyond a reasonable doubt.

8 Each of you needs to consider the evidence that you've
9 seen, that you've heard, that you'll have back there with
10 you, and decide what's been proven. You should speak about
11 your feelings with your fellow jurors. You don't have to
12 change your mind for anyone. You are responsible to
13 yourself to arrive at a verdict that speaks the truth beyond
14 a reasonable doubt.

15 Now, I'm not going to get back up here again. Ms.
16 Campbell is. She will say things with which I am sure I
17 will disagree entirely. You've already heard the only area
18 we agree we have. I won't be able to respond.

19 As you discuss the case in your jury room, I'd ask that
20 someone inform you in response to claims made by her, that
21 someone, doesn't have to be the same person, y'all are,
22 after all, seeking the truth, what explanation is there for
23 this DNA, for this DNA, for this DNA, for 6-feet rather than
24 5'8", for 180 to 200 rather than 230.

25 Okay. How have these things been explained away?

1 How has the State made, convinced you, beyond a
2 reasonable doubt, that denial is confession?

3 Denial is confession?

4 It's basic.

5 Okay. You have no friends to reward. You have no
6 enemies to punish. You're sworn to do your duty. You don't
7 own anyone anything. If you're not convinced, you are asked
8 to sit in judgment on another human being. By your verdict,
9 if you find guilt beyond a reasonable doubt, brand him as a
10 murderer, that's your job here. That's what you're being
11 asked to do.

12 All right. But the law says that proof has to be made
13 beyond a reasonable doubt. It needs to be made for the law.
14 It needs to be made for the victim in the case. It needs to
15 be made for Frank McGee, and you need to be comfortable in
16 the verdict you arrive at. If the verdict is guilty, you
17 need to be comfortable in that verdict. You need to be
18 comfortable beyond a reasonable doubt in arriving -- if you
19 aren't, then you vote not guilty.

20 There's nothing, last thing, makes you stop -- three
21 forms of verdict, guilty, not guilty, and not proven. We
22 don't have three in this state. We just have guilty and not
23 guilty. If it's not proven, then it's not guilty, and you
24 don't have to change your mind and say anyone else. You
25 have to arrive at a reasoned decision and a conscious

1 decision supported by your view of the facts and the law,
2 and I submit to you if you do that, if you take your oath to
3 find, if you hold the state to its burden of proof, then
4 you-all will return a verdict which does speak the truth,
5 and that verdict is not guilty.

6 Thank you.

7 THE COURT: Ladies and gentlemen, we'll take about a
8 five minute, about a five minute break. Please go to the
9 jury room. Do not discuss the case.

10 (WHEREUPON, a short recess was taken at this time and
11 the following takes place within the presence of the jury
12 panel.)

13 BAILIFF: The jury is seated, Your Honor.

14 THE COURT: Ms. Campbell.

15 SOLICITOR CAMPBELL: May it please the Court?

16 THE COURT: Yes, ma'am.

17 SOLICITOR CAMPBELL: In preparing for trial you always
18 try to anticipate what the defense may be or the defense
19 theory is going to be in each and every case. Typically, a
20 murder case, especially one as heinous as this, a defense,
21 you can't convict, there's no DNA linking to the scene. You
22 can't convict, you can't prove the cause of death. You
23 can't convict because the description doesn't match or the
24 defendant didn't give a statement.

25 But where the evidence that's overwhelming, we fall

1 back to the most ancient and oldest defense in the book.
2 Admit to some of the underlying facts that don't hurt you,
3 and just attack the ones that do. Attack the evidence, the
4 DNA. Attack the police, their conduct. Accuse them of
5 bullying, railroading his client.

6 And as I listened to the defense get up here and do
7 just that, it's as if Frankie McGee is a victim. He is a
8 victim according to them. Railroaded.

9 The defense has spent the last five minutes getting up
10 here and telling you not to believe anything I've said. I'm
11 not asking you to believe what I say. I'm asking you to
12 believe the evidence, the cold hard evidence that even
13 Frankie McGee, and we'll get back to that statement,
14 couldn't explain away, the overwhelming evidence in this
15 case.

16 They talk about how we can't prove that's the pry bar
17 from that truck. That's not an element of the offense. I
18 submit we have proven that it came from that truck.

19 They said that somebody referred to the truck as a
20 Peterbilt versus a Mack.

21 So, you can't convict because he wants to call it a
22 Mack?

23 And notice, we go into his statement, it's what he does
24 say as much as he denies. He says it's a Mack. Not a
25 Peterbilt. He distances himself from the actual facts.

1 It's a pry bar. Not a winch.

2 Ladies and gentlemen, we aren't getting up here and
3 saying just because he calls this a pry bar and not a winch
4 bar that makes him guilty. Oh, no. And the defense does
5 this to keep you from looking at the overall picture, the
6 overall overwhelming evidence of one man and my man alone,
7 and then he said you would be branding him a murderer.

8 No, ladies and gentlemen. The only person in this
9 courtroom that decided that Frankie Lee McGee was a murderer
10 was Frankie Lee McGee. All your job is, and the Judge will
11 tell you this, is to come to a verdict that speaks the
12 truth, the truth about what happened.

13 And their final theory of the case is they got, is he's
14 denied it over and over, and there is no doubt about that.
15 Because the very first thing he said, if you go to that
16 statement, is I don't want to say anything to incriminate
17 myself. Those are his words because if he just nods,
18 according to the defense theory, no murderer could deny what
19 they did could be convicted, that would be a rough world.

20 I want to talk to you and take this opportunity to talk
21 to you about the facts, the cold hard facts that are hard to
22 get around, and what it does prove in this case, what
23 evidence was credible, and which you must decide, and I
24 submit, ladies and gentlemen, when you look at all the
25 evidence in this case, there is but one verdict, and it is

1 the verdict that speaks the truth.

2 They talk about David Williams. David Williams was
3 caught there at the scene. They talk about the pressure
4 they had to solve this case. Well, they just got there to
5 just randomly pick people like they picked Frankie McGee out
6 of a machine at SLED.

7 wouldn't David Williams be an easy target?

8 He's there. And according to them, and no matter how
9 many times he said it, he wasn't identified.

10 Well, why not just identify him?

11 That's easy.

12 It's done. It's over.

13 They did their job and they want to twist it and turn
14 it against him?

15 They relied on the credible evidence in order to come
16 here before you, to go to a Grand Jury, to get an
17 indictment, to come here before you, and to ask you to
18 convict the real killer in this case.

19 Now, I want to talk about a lot of the evidence they
20 didn't talk about. Because in every case, as a juror, you
21 individually and then collectively look at all the evidence
22 and the overall picture that evidence paints. You look to
23 another person, a number of witnesses in this case, and the
24 first is Larry Harp, and he's important cause he said from
25 day one that this person was across the street. He noticed

1 it because it was unusual, and they tried to say that oh,
2 people were in and out of the Reverend's house all the time.

3 He noticed it that day because the guy was, remember --
4 and you remember the testimony, and I suspect, and I ask
5 you, I beg you, judge Mr. Harp.

6 What does he have to gain or lose?

7 All right. Is his credibility in question?

8 What does he notice?

9 He notices them on two occasions earlier in the day and
10 then late in the day.

11 And what is the defendant doing outside Reverend
12 Eichelberger's house?

13 Pacing back and forth. Going back and forth.

14 He sees him at one point with a sandwich or something
15 in his hand.

16 I submit, ladies and gentlemen, is that premeditation?

17 Is that casing the place, looking to see if this
18 burglary would be an easy one?

19 Reverend Eichelberger was 87 years old. Larry Harp
20 told the police from day one I saw that person, he looked
21 suspicious, I can recognize him again. They showed him a
22 line-up, and I submit this makes his ID even more credible
23 with other people, similar. He says no, he's not in there.
24 I even know one of them and I know it wasn't him. But I can
25 recognize that person again.

1 And Larry Harp, ten months later, came forward and
2 shown and identified the person he saw, and they're saying
3 that it can't be him because the clothing is different?

4 The defendant, in his own statement, says he was
5 staying in town with friends, he had some kind of fight with
6 his wife, at the Coronet which is like four blocks from
7 here.

8 Did he have time to change into his burglar clothes,
9 which are more generic, easier to spot if you're running
10 from a scene?

11 Is that credible evidence?

12 Is it believable?

13 So, at this point, with this very first witness, Larry
14 Harp, he puts him in the scene that day.

15 A victim?

16 And you heard from Temika Ashford. Temika Ashford was
17 30 years old when it happened. She was over at the
18 Reverend's house that night. He was helping her. He helped
19 people in his community. He looked after his fellow man.
20 He didn't pray on others.

21 Temika Ashford, and I -- judge her credibility.

22 What does she have to gain or lose?

23 It was very pleasant for her to come to this courtroom
24 and testify to what she did that night?

25 Why did she have anything against Williams, McGee, or

1 anybody?

2 She told you the vantage point. This is what makes her
3 credible. It's not that the police just got her to then
4 point to Frankie McGee. They did their job. They were
5 fair. This is real life. This isn't some movie or made up
6 TV as much as he wishes it was. She gave you a description,
7 and they want to say you can't convict because her
8 description is off by a few inches.

9 Ladies and gentlemen, I submit that's what makes her
10 description credible. She was in her car sitting down.

11 And do you remember what she said was so telling?

12 I don't know if he was bigger than me. That's what I
13 thought. That's what makes her credible. If she -- if they
14 make up some description and it fits him to a tee, it's
15 gonna be (inaudible). Some people are better at estimating
16 height. Some people are better at estimating weight.

17 Well, what did she tell you that is so telling?

18 It was a black male, 5'8" tall, 180 to 200 pounds was
19 her estimate from where she was sitting that day. Light to
20 medium complexion. Late 30's and early 40's. He was 43
21 when this happened. Receding hairline. Round head. They
22 been talking about triangles and stuff, but if you look at
23 the pictures and then you look at him right here now,
24 although he's shaved his head now so you can't see the
25 receding hairline.

1 Guess what?

2 Receding hairline and round head, a pot belly, heavy
3 set, body build, a white T-shirt, sweating in the neck, and
4 blue jeans.

5 Composite. She wasn't sure about certain features such
6 as those, and I submit, ladies and gentlemen, they talked
7 about the composite. Look at it. The hairline may go down
8 a little lower than it was, but it's dead on. It's dead on.
9 The body build, everything, to a tee.

10 And their position is you can't convict because she was
11 off a couple inches?

12 I submit, ladies and gentlemen, that's what makes her
13 credible.

14 She told you what happened that night, what she heard.
15 The last thing Reverend Eichelberger said, how did you get
16 in here, and then thump. She ran because she knew something
17 bad was going down. She comes around and luckily, I guess
18 unluckily, back in the vehicle, she came back around, she
19 stayed around, and she saw him leave, and she got a look at
20 him then, and then she got a look at him after. He dumped
21 the bar and he dumped the socks and he made his escape.
22 Cool, calm, got away from the scene to make sure that the
23 police didn't put out the BOLO, that he wouldn't get picked
24 up.

25 David Williams.

1 And another thing about David Williams, if he committed
2 the crime, wouldn't he just go in his house and hide?

3 Would he just be wondering the neighborhood smoking
4 marijuana?

5 Does that make any sense?

6 As much as they wished that David Williams is a viable
7 suspect, he wasn't and the police did their job eliminating
8 him a long time ago.

9 You heard from Michelle Perry.

10 And what's significant about her?

11 They wanted you to know (inaudible) before. And she
12 got up here and she was cross-examined like every single
13 witness was cross-examined vigorously.

14 And what did she tell you?

15 Yes, she'd seen him before on two occasions with the
16 Reverend. He had access.

17 He's a victim?

18 And remember, they don't know who Frankie McGee is.
19 The police have no radar on Frankie McGee until ten months
20 later.

21 And it just happens that all this is true?

22 Let's go further. Sandra Thomas, his sister, and it
23 wasn't easy. I felt awful for her to come in here and have
24 to testify. But she did the right thing. As hard as it was
25 for her to do, and then her reward is to get questioned

1 about how could you recognize him?

2 You can't see good enough?

3 She knows him.

4 It's like if you see someone from the back that you've
5 lived with all your life, you can recognize them. Their
6 walk, how they hold their head. She knows him.

7 Do you think that was easy for her?

8 And she even, back when it happened, did the right
9 thing. She called Crime Stoppers to report it.

10 Was it easy for her to come in here and tell you that?

11 No.

12 Was it the right thing?

13 Yes.

14 Did it cost her?

15 Yes.

16 And I submit, ladies and gentlemen, that's what makes
17 it credible because if she wasn't sure, she wouldn't do it.
18 And when she reported this back in May, she had no idea, no
19 idea the connection that proved so vital between the truck
20 stolen from Camden, Frankie Lee McGee, and Reverend
21 Eichelberger. I beg you to judge her. Judge her
22 credibility. They didn't talk about that, and then they
23 asked her something about some gold around one of his teeth.

24 Ladies and gentlemen, I submit Temika Ashford never
25 said that the defendant, Frankie McGee, come out of the

1 house smiling. we've been here all week. I haven't seen
2 his teeth yet.

3 Ivan Moore.

4 Again, what is significant about him?

5 The police approach him.

6 Do you know him?

7 And this is information. Remember. They're doing
8 their job. They're getting hard evidence before they go
9 around accusing people like they so freely accuse
10 Mr. Williams.

11 what is significant?

12 Yeah, he puts him in the area. He comes to town. Ivan
13 is an acquaintance of him, and I don't know why they talk
14 about him. Maybe his prior record because that's it. And
15 we don't pick the witnesses. He knows him. He rents out
16 his car sometimes. His wife drops him off sometimes, and I
17 submit -- cause later they talked to his wife.

18 what else?

19 They go back.

20 Earl Lee Brown, what was he able to tell you?

21 He owns Happy Daddy Towing. He finds that truck on the
22 3rd where it's left. The truck just happens -- oh, he talks
23 about how we can't put that winch bar, and I submits that's
24 what makes Mr. Kline credible is one exactly like it. But
25 he didn't do an inventory. So, he couldn't get up here and

1 in good faith tell you that's the bar. But he looked at it
2 and remember he stood over it and he said that's it, that's
3 just like it. But he has other winch bars.

4 He told you that he found the truck, and this is all
5 stuff the police put together ten months later. That's what
6 makes this so credible. And that's he can't.

7 He made a big deal about Mr. Miles not being able to
8 tell you that's the same one. No, but he did say it was a
9 winch bar. That's just not the ones we use to use.

10 And why is it significant and why are we dwelling on
11 whether or not he calls it a winch bar or a pry bar?

12 Because he's distancing himself.

13 The police, early on in their investigation, remember
14 that testimony. They didn't even know what kind of bar this
15 was. They had to do research because it's unique to the
16 trucking industry. The trucking industry, which just
17 happens to be his area, and at one point in one place he
18 says you can't prove that he, that he drove an 18-wheeler.
19 That's what he does for a living or was suppose to anyway.

20 The evidence is overwhelming. You heard some other
21 evidence and the key to the case, according to, is the DNA.
22 And, yeah, ladies and gentlemen, the DNA was (inaudible)
23 because it wasn't until the hit on the DNA, and you heard
24 from a number of the people. We'll talk about it.

25 You heard from medical personnel about what Reverend

1 Eichelberger went through, how long, how hard he fought to
2 live. But eventually succumbed. No one is gonna get up
3 here and say the cause of death is something else. You
4 heard from Christine Barrickman and Teresa Hines and then
5 John Barron and Gray Amick.

6 Well, ladies and gentlemen, as the Judge will tell you,
7 expert witnesses. They give an opinion because of their
8 training. You have heard all the expert testimony you can
9 consider in this case.

10 I am not an expert. No one else in this room was an
11 expert other than John Barron and Gray Amick, and they got
12 up here and they gave their opinions, and Barron and Gray
13 Amick concurred, agreed, it eliminated as much as they're
14 trying to point.

15 And then they say you can't convict because there's an
16 extra half of an allele or whatever they're called in one of
17 them?

18 They explain that. These test are sensitive. It's
19 like if someone else had handled it briefly, then their DNA
20 might be on it. It's small. Like folding clothes I believe
21 is how John Barron (inaudible).

22 The only expert testimony you have is that the evidence
23 in this case on those socks were two people. It excluded
24 the person they keep pointing to who is wearing those tennis
25 shoes, which we excluded from the crime scene, and had no

1 blood on them, and look at these.

2 You think that the person there could have some blood
3 bath on blood?

4 Look at the droplets.

5 would it have been on David Williams?

6 That's their theory?

7 You can't believe it because there's half an allele,
8 according to them. The expert testimony that you can rely
9 on in this case says unequivocally that the two people DNA,
10 the blood belongs to Reverend Eichelberger, and the only
11 other one, there's a mixture with the third allele like
12 which would be consistent with someone having a brief
13 encounter.

14 In their opening statements she talked about how she
15 had a hat and it got lost and her DNA could still be there
16 months later.

17 well, ladies and gentlemen, I submit that if someone
18 else could of gotten those socks and put them over their
19 hands, which they aren't disputing, and gone into Reverend
20 Eichelberger's house, and they wouldn't leave any DNA and
21 they wouldn't leave any fingerprints, and then assaulted,
22 with this item, an 87-year old Reverend while holding and
23 having to swing it -- remember the pathologist testimony..
24 That the DNA comes from sluffed cells, and they want to say
25 that that person would only leave one-half of one allele

1 that's so microscopic they can't even use the numbers?

2 That's their theory?

3 You think that wouldn't cause DNA to roll off. The
4 manner in which he had to open the front door with the
5 square in it?

6 You think that wouldn't cause someone else's DNA to be
7 present because let's get one thing straight. The only full
8 profiles you have in this case are Reverend Eichelberger and
9 the defendant, and I submit, ladies and gentlemen, we don't
10 have to explain a stray allele, but we have.

11 Be weary of the DNA testimony, that was their opening
12 argument. I submit they wish you would be weary of the DNA
13 testimony because the testimony alone from this sock and
14 this bar convict Frankie Lee McGee and no one else. Only
15 that. But in this case, ladies and gentlemen, there is so
16 much more.

17 You heard from other people. We put in the evidence of
18 his prior record, and things of that nature. Attack the
19 police. It's the oldest defense in the book. Try and make
20 him explain.

21 Ridicule, make fun of what they did.

22 That's the defense in this case?

23 You heard from each and every officer who had something
24 to contribute in this case, and I submit, ladies and
25 gentlemen, in this case, in this courtroom, this was not

1 just good police work. This was great police work. This
2 was thorough police work. This was police work that
3 eliminates any doubt as to who killed the Reverend.

4 This wasn't police officers who rushed to judgment.
5 They did their job. They relied on the testimony. This
6 isn't a case where oh, you can't convict, there's no DNA.
7 This isn't a case where oh, you can't convict, there's no
8 identification. He doesn't fit the description.

9 This is as good as it gets. This is real life.

10 You heard from Duckett, Paul Nelson, where they
11 recovered the socks, and you will see the nighttime
12 pictures. Remember he came back in the daytime to take
13 those. So, we can see the area which just happens to have
14 this light pole which they're trying to distance themselves
15 from as quick as they can because that's where Frankie McGee
16 slipped. He over-thought it. You can almost think about
17 it. He over-thought it.

18 First he said oh, left them by the trash can. I think
19 he referred to it as a dumpster at the gas station. But
20 Frankie knew that's not where he left them and he wanted to
21 give himself credibility. He didn't think it through
22 enough.

23 They say he didn't change. You listened to it. He was
24 very specific at first. The gas station at the trash can of
25 the dumpster. You remember it. Oops.

1 Did that occur there?

2 He said over and over in his closing argument he didn't
3 change it, he didn't change it, you be the judge. He didn't
4 refer, after that first time, to it being at the dumpster,
5 to anything of that nature, at that point.

6 You heard from other officers who went to the hospital,
7 who were there at the scene to detain a suspect as they
8 should, who was cleared, from Sumter, from Goff, from the
9 two investigators, and then you talked about the statement,
10 and, ladies and gentlemen, I submit the reason that there
11 was four hours of cross-examination on the statement, which
12 speaks for itself, they talked about how he didn't know he
13 was being recorded.

14 Thank goodness they did record it. You judge. You
15 think. They got up in opening argument and said they
16 slammed their hands. They were yelling. I submit, there's
17 been more yelling in this courtroom by lawyers than there
18 was on this tape. He was railroaded.

19 Really?

20 The statement, and let me go through it briefly, and I
21 promise I won't talk long.

22 What's significant?

23 Within the first 30 seconds, we're here, we're down
24 here about a homicide case. We're homicide investigators.

25 Misleading, railroading?

1 That's why they're there. The first thing they tell
2 him, before they even advise him of his rights, the first
3 thing.

4 He's advised of his rights and you remember this.

5 And what's the first reaction he has about whether or
6 not he wants to?

7 Well, I, I don't know what really to do because I don't
8 want to incriminate myself.

9 This is a person they're bullying, that is intimidated
10 by them cussing?

11 He doesn't want to incriminate himself, but he wants to
12 talk to them because he knows what's out there. He knows
13 what he did, and then the whole cross-examination in that,
14 those, those pages that he wrote, wherever they went, he
15 does deny it repeatedly.

16 I submit, ladies and gentlemen, people who commit
17 violent heinous acts tend to deny them. I don't want to
18 incriminate myself, nothing of it, or get in any kind of
19 trouble because that's the first thing on his mind. But he
20 knows it's out there, and he wants to know what the police
21 want.

22 Remember the whole statement. Again, Page 21.

23 Well, I don't know. I just don't want to incriminate
24 myself no further in something. Don't want to incriminate
25 myself no further.

1 This is before they (inaudible). This is before they
2 make accusations on him. He's trying to say, oh, are we
3 talking about some shooting, and he knows he's not in the
4 shooting. But when they tell him they're there to talk
5 about a homicide, even though he never admits, and I'll get
6 back to that, that he knows he was there that day, and
7 they're saying it wasn't on the same day, he does change
8 that up. He doesn't say what, and they first tell him, have
9 you ever been to Greenview.

10 They're there on a homicide. They said well, ask you
11 about Greenview and he doesn't say oh, you're here about
12 Reverend Eichelberger, which he admits he knew about it, and
13 he admits he knew he was a witness. But he didn't come
14 forward until after the fact.

15 The reason I'm saying this is I've had situations in
16 the past, not saying it's you, but I've had situations in
17 the past where I've been railroaded and he goes on because
18 sometimes, ladies and gentlemen, you can tell more from what
19 they deny and what that choose to admit. Then he was not
20 smart enough to figure it out.

21 The part about the tools, it's a tool. He doesn't want
22 to admit it's a winch bar, that he doesn't know what it is.
23 He doesn't want to say he's ever seen that one before. That
24 would be an admission in his mind, and that's the only
25 significance as far as that.

1 what else?

2 He knows he took the truck, the truck that he later
3 admits he got in and moved, but remember the testimony. The
4 credible testimony from Mr. Hines when he went to pick it
5 up. They had to cut off the gate that was still underneath
6 it wrapped around the axle.

7 Did this just happen to be a truck he went in and asked
8 the man about a job?

9 No, we don't get that.

10 How did you get to Columbia?

11 He's not gonna admit to anything cause he knows he used
12 that truck to get to Columbia, and remember too what was
13 significant when he was first being asked what it's about,
14 is this about my sister, Sandra, because she knew who took
15 the truck. It goes on and on.

16 The 18-wheeler, stole the truck. You're on the video.
17 I don't know if I'm on the video or not. But I didn't steal
18 an 18-wheeler that day.

19 what about the day before?

20 No.

21 He denies anything from which he could be held
22 culpable.

23 Confronted. Some of the clothes. Also two people
24 looked at the video and identified who was the person in the
25 video.

1 No, it's not me.

2 If you did this all at Reverend Eichelberger, which is
3 what you're saying, did you ever hit Reverend Eichelberger?

4 Did you ever attack Reverend Eichelberger?

5 No.

6 Because he's consistent about that in fact.

7 Remember the part, and I'll be brief, about when he's
8 confronted with the socks. He knows they're there. He
9 knows they're talking about Reverend Eichelberger. There's
10 never been any mention of any socks being involved in the
11 press or any other way. No.

12 So, he's being asked about whether Reverend
13 Eichelberger, what's going on, and the next thing they ask
14 him is about DNA on a pair of socks.

15 How about the guy doesn't stop before that night?

16 That's the whammy.

17 No, that's not a whammy.

18 Well, give me your whammy. Hit me back.

19 Those same socks.

20 Now, if you had done your investigation properly. Not
21 what the socks have to do with this.

22 How are socks involved in this?

23 He's already thought it through, if I'm ever
24 confronted, I'm gonna say I just left the socks out there
25 because he knows the socks are important. Because he knows

1 he wore the socks on his hands to kill the Reverend.

2 It's not like when asked about, you know, is there a
3 second person in the house?

4 what second person?

5 It's not what socks.

6 what do socks have to do with this?

7 well, ladies and gentlemen, he knows the socks are
8 significant and listen to the whole thing. You have
9 listened. There's not a mention of socks. His reaction
10 when confronted about what would appear to be a non issue is
11 let me tell you about the socks if you'd just done your
12 investigation properly. I could tell you about that. Not
13 what socks, why are you mentioning socks.

14 He goes on. First the socks. By the socks -- by the
15 store. By that, that trash can or something because that's
16 where I took them off. Right there.

17 well, if he takes them off by the trash can, why
18 wouldn't he put them in the trash can?

19 well, he's thinking this through.

20 well, might not work. Better go move back.

21 So, then -- and these are his words, his voice, not
22 anybody beating anything. You took the socks off and threw
23 them away because you have Athletes Foot that came from
24 beside the light pole. That's McGee.

25 Thomas question. They came from the side of the light

1 pole?

2 That's the first time he's heard that. That's from
3 McGee.

4 He changes his story. As much as they get up here and
5 talk about how he didn't change his story. He did. Because
6 suddenly he's thinking oh my, God, I've got them in the
7 wrong place. Maybe I better put them, you know, where they
8 were found. He didn't think it through.

9 Because that's where you took them off?

10 Yeah, right here, where I was. I took them off because
11 my feet were stinky.

12 Does that even make sense?

13 Is that bologna even credible?

14 He took off his socks because he had swollen stinky
15 feet so he could then either walk around bare foot with
16 swollen stinky feet or put the shoes back on that were
17 swollen and stinky too?

18 Does it even make sense?

19 That's the best he could do.

20 And it goes on. You willingly pulled your socks off
21 and put them at a light pole or something you're trying to
22 tell me. I'm sitting here. You were sitting at the light
23 pole and I took them off. Not another mention of a
24 dumpster. Not another mention of anything. And the reason
25 they attacked him so much in closing is because it's

1 telling.

2 It goes on. To the socks. Finally, you'll switch up a
3 little bit trying to clear yourself. Go ahead. You can't
4 do that, sir. All right. Got to come straightforward with
5 us. There's no way Reverend Eichelberger's blood was on
6 your socks and he agrees. He has no explanation for how
7 Reverend Eichelberger's blood would end up on his socks.

8 Then confronted with conversation police got from a
9 conversation with Sophia McGee. She gave them information.
10 They confront him with what she told them.

11 What if I told you that I spoke to someone. They don't
12 even ask. He knows what he said. They said you asked
13 something and had something in your heart in the frame of
14 what if I told you I hurt someone. I did hurt somebody or
15 hit somebody. I did hit someone, and you wanted to get that
16 off his heart. This is what he was explaining about.

17 All right. Didn't want to hear what you -- she didn't
18 want to hear what you had to say.

19 Did that conversation ever happen like that?

20 That was the extent of the conversation.

21 Yes, with my wife, and video on how he pistol whipped
22 some unknown drug dealer, and nowhere in any of this did he
23 talk about people he was with, where he was, and all this,
24 did he ever have a name for anyone. He gave a vague
25 description at some point. He never had a street name. He

1 didn't have a regular name. He didn't even know the name of
2 the people he was staying with at the Coronet Motel
3 according to him because they don't exist. There are no
4 names.

5 The drug house where I was that night. Couldn't
6 explain it, didn't know it existed, had no names. There
7 were no reports, they checked, of any drug dealer being
8 assaulted by Frankie McGee or anybody else. They then
9 confronted about how he went to the Piggly Wiggly parking
10 lot and got picked up by his wife. He, he even explains
11 that away. His wife wouldn't tell the truth.

12 The night my wife says she picked me up at Piggly
13 Wiggly wasn't, wasn't the night. I got into it with a guy.
14 That was the day I had to let him use my truck and I was
15 suppose to wait there for him at the same house I told you
16 to, and I'm almost through.

17 So then they asked him about the 18-wheeler, and he
18 hadn't thought this through either. They confronted him.

19 What if you're saying you didn't steal it, it could be
20 possible that you saw it, and you're a concerned citizen and
21 you went up to talk to somebody, and that's how you find
22 evidence.

23 So, all of a sudden he knows uh oh, maybe I need to
24 explain that truck and it goes further.

25 What kind of -- in the Greenvue area down by the drug.

1 I recall a truck being left there by a gas station. Well,
2 not a gas station. A pool hall. I recall a truck.

3 what kind of truck was it?

4 It was a Mack.

5 what color?

6 You just said it was a red truck.

7 Now he knows it's a red truck. He's the first one who
8 mentions a red truck. But he's trying to distance himself
9 from the type of truck it is. Then he goes on with the
10 story, and I'm not gonna go through it, about how he told
11 the guy that he wanted a job. He was talking about
12 employment. Then he got into the charge, and the guy had to
13 go to the, a drug house, and then the truck was hanging out
14 on the street. It's not good. Police could come by when
15 you're hanging out in the street in a truck. I guess with
16 the wire underneath it. So, he moved it, and that would
17 explain how his DNA got in there, but he didn't steal it
18 because remember it's called the art of confessing.

19 Try to explain away why evidence might be there for
20 you, but don't admit to the crime. And I submit, ladies and
21 gentlemen, when you look at this statement overall, it's not
22 just an admission and it goes on.

23 When he's confronted, the second person in the house.

24 What second person?

25 Finally, I guess got a song for that. He admits

1 Reverend Eichelberger helped him. Reverend Eichelberger was
2 a good person.

3 And when they asked him well, when you heard about
4 Reverend Eichelberger, that helped you that very same day,
5 why didn't you come forward to the police or call us on the
6 phone and say listen, I was at the Reverend's house that
7 day, and I need to talk to you.

8 His answer is why did you do that?

9 Because if I would of did that, the first thing that
10 would of happened, the first thing that would of happened,
11 she said well, he did it, he did it because he did.

12 If I said something earlier when you were questioning
13 me, and I got it mixed up, cause he knows he's caught in
14 lies, these three people were asking me questions. I
15 understand that (inaudible). It's been five or six months
16 now. But the questions you're asking me, if I didn't answer
17 them all the way and completely to a tee, and you double
18 back and said well, I lied about this and I lied about that,
19 he's even acknowledging he lied, it's just that I didn't
20 remember it, what you asked.

21 And Investigator Reece summed it up. With all due
22 respect to you, you're not a stupid person.

23 Ladies and gentlemen, it's what's in the statement.
24 It's what's in his (inaudible), and the evidence in this
25 case says well, I submit if you look at just the DNA

1 evidence alone, and this isn't a case where there's no DNA.
2 This case is there's full DNA, a full profile. Frankie
3 McGee. Reverend Eichelberger. That alone is enough to
4 convict in this case. Right there you are beyond a
5 reasonable doubt.

6 There's no other reasonable explanation than that the
7 person that killed Reverend Eichelberger with that winch bar
8 wearing those socks on his hands was Frankie McGee, but you
9 don't have to stop there in this case cause then you have
10 Mr. Harp. I beg you to judge his credibility.

11 What does he have to gain or lose?

12 He ID'd the defendant casing the joint that day.

13 But more, Ashford, her description, the receding
14 hairline, pot belly.

15 Ms. Perry ID'd him as going into the church.

16 Sandra Thomas ID'd him on the video in the trial, which
17 he just says he moved later.

18 The truck's found on Token Street. Six blocks. You
19 got the maps. And by the way, this is all evidence. That's
20 why the judge admitted it.

21 Ivan Moore, his acquaintance, his friend, who puts him
22 in the area frequenting the area, renting out his truck.
23 His wife would come and pick him up.

24 C. Ray Miles, the employer, was even familiar with
25 trucks. Used a similar bar. Not the same one.

1 Mr. Kline, that's the winch bar that would of been in
2 that truck. Just like it.

3 The CDL license, the photos showing his receding
4 hairline cause he didn't shave his head back then.

5 The statement.

6 All the State asks is you don't deem to believe us, or
7 believe them, all we ask is for you to believe the credible
8 overwhelming evidence in this case that led to one person
9 and one person only. You heard, there were hundreds of
10 leads in this case following that eliminated one-by-one.

11 The police did their job. As much as they don't like
12 it, they did their job, and they did it by the book. All
13 his rights were observed. Everything was protected for him.

14 And by the way, the only evidence that they come up
15 with, and once they put in evidence, he said he -- we didn't
16 want you to see this. We're the ones that gave it to them.
17 We're the ones that created these documents, and we're the
18 ones that put forth the credible expert testimony as to what
19 it all means. It's not up to me. It's not up to them.

20 Reverend Eichelberger was 87-years old. He lived in
21 the community that he cherished. He lived there for a long
22 time. He had a business which he ran successfully or part
23 of it, and he worked. He was 87-years old. He was vibrant.
24 He was actually in the prime of his life. Active.

25 He contributed to his community. He looked out for the

1 poor. He looked out for those less fortunate. He helped
2 people. He grew a garden in his backyard so he could give
3 food away. If anyone needed something, they could call him
4 because that's the type of person he was, and he deserved to
5 be that person, and give back and make our community better.
6 That's all he wanted to do.

7 And on the night in question, he's in this house, in a
8 different part of the house, and the house is kind of
9 L-shaped when Frankie Lee McGee broke in.

10 And remember what sound -- what did Temika Ashford say
11 he said when he confronted the person. Not who are you.
12 It's how did you get in here. The person he recognized from
13 that day. How did you get in here.

14 And Reverend Eichelberger, for all this giving, and he
15 would of given him anything. He would of helped him just
16 like he had helped him earlier that day, and he would have
17 helped him because that was Reverend Eichelberger. But
18 Reverend Eichelberger's last moments that were conscious or
19 which were purposeful in his life, the last thing he saw was
20 Frankie Lee McGee picking this up and swinging it repeatedly
21 at least two times into his head, into his shoulder.

22 The last thing he saw was his murderer and he should of
23 died there on the spot, but Reverend Eichelberger was truly
24 a unique individual and he wanted to live. He fought for
25 three months to live, to live so he could go back and be an

1 important part of this community.

2 Frankie Lee McGee ended that. He took that away from
3 Greenview, from Columbia. All we ask is justice for
4 Reverend Eichelberger.

5 What is just to have a family we do that, go back there
6 and you consider the evidence in this case, to render a
7 verdict that speaks the truth, a verdict that is just, and a
8 verdict that holds him responsible for his choices and his
9 decisions. Find Mr. McGee guilty for what he did.

10 Thank you.

11 THE COURT: Madam Forelady, and members of the jury,
12 you've heard the testimony, the evidence, and arguments of
13 the State and the defendant. I will now explain to you the
14 law that applies in this case.

15 Under the Constitution and laws of South Carolina, you
16 are the finders of the facts in this case. I do not have
17 the right to pass upon the facts or even to express any
18 opinion I might have as to them because this is a matter
19 solely for you to, the jury, to determine.

20 As jurors then, it is your duty to determine the fact,
21 the value, the weight, and the truth of the evidence
22 presented during this trial. You are also the judges, the
23 sole judges of the credibility, that is the believability,
24 of the witnesses who have testified and the evidence which
25 have been presented in this case.

1 In passing upon the credibility, you may take into
2 consideration many things such as the demeanor or manner of
3 testifying, whether the witness have a reason to be biased
4 or prejudiced, whether a witness' testimony was contradicted
5 on the one hand, or supported and corroborated on the other
6 hand. You may believe a small portion of a witness'
7 testimony and disregard the larger or vice versa. You may
8 believe one witness against many or many against one. All
9 these things you will consider bearing in mind that you
10 should give the defendant the benefit of any reasonable
11 doubt. It becomes your duty, as jurors, to analyze and to
12 evaluate the evidence and determine that evidence which
13 convinces you of its truth.

14 The rules of evidence ordinarily do not permit
15 witnesses to testify to opinions or conclusions. An
16 exception to this rule exists for witnesses we call expert
17 witnesses.

18 A witness, who by education and experience, has become
19 expert in some art, science, profession, or calling may
20 state an opinion as to relevant and material matters in
21 which the witness claims to be an expert, and may also state
22 the reasons for the opinion. You should consider any expert
23 opinion received in evidence in this case like any other
24 evidence. Give it the weight you think it deserves.

25 If you decide that the opinion of an expert is not

1 based on sufficient education and experience or if you
2 conclude that the reasons given in support of the opinion
3 are not sound or that the opinion is outweighed by other
4 evidence, you may disregard the opinion entirely. An expert
5 witness' testimony is to be given no greater weight than
6 that of other witnesses simply because the witness is an
7 expert. Further, you're not required to accept an expert's
8 opinion even though it is not contradicted.

9 A person who has a past criminal record is competent to
10 testify during a trial. A past record does not affect the
11 ability of that witness to testify. The past record may be
12 considered by you, if at all, in determining the witness'
13 believability. Remember you are the sole judges of the
14 facts in this case and of the believability of any and all
15 other witnesses.

16 There are two types of evidence which are generally
17 presented during a trial, direct evidence and circumstantial
18 evidence. Direct evidence is the testimony of a person who
19 claims to have actual knowledge of the fact such as an eye
20 witness. It is evidence which immediately establishes the
21 main fact to be proved.

22 Circumstantial evidence is proof of a chain of facts
23 and circumstances indicating the existence of a fact. It is
24 evidence which immediately establishes collateral facts from
25 which the main fact may be inferred.

1 Circumstantial evidence is based on inference and not
2 on personal knowledge or observation. The law makes
3 absolutely no distinction between the weight or value to be
4 given either direct or circumstantial evidence nor is a
5 greater degree of certainty required of circumstantial
6 evidence than of direct evidence. You should weigh all of
7 the evidence in this case. After weighing all the evidence,
8 if you're not convinced of the guilt of the defendant beyond
9 a reasonable doubt, you must find the defendant not guilty.

10 As the trial judge, it is my responsibility to preside
11 over the trial of this case and to rule upon or pass upon
12 the admissibility of the evidence offered during this trial.
13 You are to consider only the testimony which has been
14 presented from this witness stand together with any exhibits
15 which have been made part of the record. I have the
16 additional duty to charge you the law applicable to this
17 case, and as the presiding judge, I am the sole judge of the
18 law of this case.

19 It is your duty to, as jurors, to accept and apply the
20 law as I now state it to you and then reach your verdict.
21 And, finally, I charge you in this regard, that you should
22 not be concerned with what you think the law ought to be,
23 but what I charge you the law is.

24 Now, the fact that the defendant was arrested, charged,
25 and indicted is not evidence in this case, and can not be

1 considered by you as evidence of guilt in this case. Nor
2 does it create any presumption or inference of guilt. These
3 indictments are simply the formal written instruments which
4 contain the charges made against the defendant, and an
5 indictment is a formal document by which this case is
6 brought into Court.

7 The defendant has pled not guilty to the charge in each
8 indictment and that plea places the burden on the State to
9 prove the defendant guilty. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove himself innocent. I charge you that it is
12 an important rule of the law that a defendant, in a criminal
13 trial, no matter what the seriousness of the charge may be,
14 will always be presumed to be not guilty of the crime to
15 which for the indictment was issued unless guilt has been
16 proven by evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 This presumption of innocence does not end when you
19 begin your deliberations, but it accompanies the defendant
20 throughout the trial until you reach a verdict of guilt
21 based on evidence satisfying you of that guilt beyond a
22 reasonable doubt. The presumption of innocence is like a
23 robe of righteousness placed about the shoulders of the
24 defendant which remains with the defendant until it has been
25 striped from the defendant by evidence satisfying you of the

1 defendant's guilt beyond a reasonable doubt. The
2 presumption of innocence is not a mere legal theory. It's
3 not just a legal phrase. It is a substantial right to which
4 every defendant is entitled unless you, the jury, are
5 satisfied from the evidence of the defendant's guilt beyond
6 a reasonable doubt.

7 The State must prove the defendant guilty beyond a
8 reasonable doubt.

9 So, what is a reasonable doubt in the law?

10 A reasonable doubt is a doubt which makes an honest,
11 sincere, conscientious juror, in search of the truth, to
12 hesitate to act. Proof beyond a reasonable doubt must,
13 therefore, be proof of such a convincing character that a
14 reasonable person would not hesitate to rely and act upon it
15 in the most important of his or her own affairs. Proof
16 beyond a reasonable doubt can also be described as proof
17 that leaves you firmly convinced of the defendant's guilt.

18 There are very few things in this world that we know
19 with absolute certainty, and in criminal cases, the law does
20 not require proof that overcomes every possible doubt. If,
21 based on your consideration of the evidence, you are firmly
22 convinced of the defendant's guilt of the crime charged, you
23 must find him guilty. If, on the other hand, you think
24 there's a real possibility that he is not guilty, you must
25 then give him the benefit of the doubt and find him not

1 guilty.

2 Now, I instruct you and emphasize that the fact that
3 the defendant did not testify is not a factor to be
4 considered by you in anyway in your deliberations, and in
5 your consideration of the question of the guilt or the
6 innocence of the defendant. It must not be considered by
7 you in any manner whatsoever. A defendant has the
8 Constitutional right to remain silent, and the assertion of
9 this right must not be considered by you in your
10 deliberations.

11 I repeat, under your oath, you are to draw no
12 conclusion whatsoever from the fact that the defendant in
13 this case did not testify. The fact that this defendant did
14 not testify should not even be discussed in the jury room.
15 The burden of proof, as I have stated to you, is on the
16 State. The defendant is not required to prove his
17 innocence. The burden of proof remains on the State to
18 prove guilt beyond a reasonable doubt.

19 Now, a statement alleged to have been made by the
20 defendant has been admitted into evidence in this case.
21 While the Court has determined that the statement is
22 admissible, I instruct you that you make the ultimate
23 decision of whether or not the defendant made the statement.
24 If the defendant did make the statement, you must determine
25 whether the statement was made by the defendant voluntarily

1 and of his own free will. This means that the statement was
2 not caused by pressure, force, fear, threats, coercion, or
3 intimidation, or by hope or a promise of leniency or of a
4 reward of any kind.

5 In determining whether the statement was voluntary, you
6 should consider both the characteristics of the defendant
7 and the details of the questioning. Some of the findings
8 you must consider are the age of the defendant, the
9 defendant's education, or lack of education, the defendant's
10 mental ability or capacity, the defendant's IQ or
11 intelligence, the defendant's background and environment,
12 the place and length of detention, the nature of the
13 questioning, and the advice or lack thereof to the defendant
14 of his Constitutional rights, and including, but not limited
15 to, the right to remain silent, that any statement could be
16 used against him in a Court of law, the right to have a
17 lawyer present, and that if he could not afford a lawyer,
18 that a lawyer would be appointed to represent him without
19 any costs, and that he could stop making a statement at
20 anytime.

21 You must carefully consider all the surrounding
22 circumstances before you give any weight to an alleged
23 statement. The State has the burden of proving beyond a
24 reasonable doubt that the alleged statement was voluntary.
25 If you determine that it was, you may give the statement any

1 further consideration that you deem proper. You must decide
2 what weight, if any, should be given to the alleged
3 statement. If you determine that the alleged statement was
4 not the free and voluntary statement of the defendant, you
5 should not consider the statement at all.

6 The indictments in this case allege that the defendant
7 committed two separate offenses. The charges are murder and
8 burglary in the first degree. Each indictment charges a
9 separate and distinct offense. You must decide each
10 indictment separately on the evidence and the law applicable
11 to it uninfluenced by your decision as to any other
12 indictment. The defendant may be convicted or acquitted on
13 any or both of the offenses charged. You will be asked to
14 write a separate verdict of guilty or not guilty for each
15 indictment.

16 The defendant is charged with murder. The State must
17 prove, beyond a reasonable doubt, that the defendant killed
18 another person with malice aforethought. Malice is hatred,
19 ill will, or hostility toward another person. It is the
20 intentional doing of a wrongful act without just cause or
21 excuse and with an intent to inflict an injury or under
22 circumstances that the law will infer an evil intent.

23 Malice aforethought does not require that malice exist
24 for any particular time before the act is committed, but
25 malice must exist in the mind of the defendant just before

1 and at the time that the act is committed. Therefore, there
2 must be a combination of the previous evil intent and the
3 act.

4 Malice aforethought may be expressed or inferred.
5 These terms express and inferred do not mean different kinds
6 of malice, but merely the manner in which malice may be
7 shown to exist. That is, either by direct evidence or by
8 inference from the facts and circumstances which are proved.

9 Express malice is shown when a person speaks words
10 which express hatred or ill will toward another or when the
11 person prepared beforehand to do the act which was later
12 accomplished. For example, lying in wait for a person or
13 any other acts in preparation going to show that the deed
14 was within the defendant's mind would be express malice.

15 Malice may be inferred from conduct showing a total
16 disregard for human life. Inferred malice may also arise
17 when the deed is done with a deadly weapon. A deadly weapon
18 is any article, instrument, or substance which is likely to
19 cause death or great bodily harm. Whether an instrument has
20 been used as a deadly weapon depends on the facts and
21 circumstances of each case.

22 If one intentionally kills another during the
23 commission of a felony, the inference of malice may arise.
24 In that regard, burglary is a felony under our law, and if
25 facts are proved beyond a reasonable doubt sufficient to

1 raise an inference of malice to your satisfaction, this
2 inference would simply be an evidentiary fact to be taken
3 into consideration by you along with all other evidence in
4 the case, and you may give it the weight you decide it
5 should receive.

6 The defendant is charged with first degree burglary.
7 The State must prove the, must first prove, beyond a
8 reasonable doubt, that the defendant entered a dwelling
9 without consent. A dwelling is any building or portion of a
10 building in which a person ordinarily sleeps. The State
11 does not have to prove that force was used to gain entry.

12 Next, the State must prove, beyond a reasonable doubt,
13 that the defendant intended to commit a crime, either a
14 felony or misdemeanor, at the time of the entry. The mere
15 entry into a dwelling without consent is not burglary. If
16 the intent to commit a crime is formed after the entry it's
17 not burglary. On the other hand, if the defendant intended
18 to commit a crime at the time of the entry, it is a
19 burglary. Intent may be shown by acts and conduct of the
20 defendant and under circumstances from which you may
21 naturally and reasonably infer intent.

22 Finally, the State must prove, beyond a reasonable
23 doubt, that entering, while in the dwelling, or when
24 fleeing, the defendant was armed with deadly weapon. And,
25 again, a deadly weapon is any article, instrument, or

1 substance which is likely to cause death or great bodily
2 injury. Whether an instrument has been used as a deadly
3 weapon depends on the facts and circumstances of each case.
4 Ordinary objects may become deadly weapons when the facts
5 show that they have been used to inflict serious bodily harm
6 or death or, while in the dwelling, the defendant caused
7 physical injury to anyone not participating in the crime or,
8 while in the dwelling, the defendant used or threatened to use
9 a dangerous object or the defendant has a prior record of
10 two or more convictions for burglary and/or house breaking.

11 Evidence of prior offenses committed by the defendant
12 was not offered to prove the defendant had, has a bad
13 character or to prove that the defendant committed burglary
14 on this occasion. The prior convictions may be considered
15 by you only for the purpose of determining whether or not it
16 satisfies that element of the offense and based it first
17 degree burglary. Before you could even consider the
18 evidence of defendant's prior burglary and/or house breaking
19 conviction, you must first find that the State has proved,
20 beyond a reasonable doubt, that a burglary was committed by
21 the defendant.

22 If you find, beyond a reasonable doubt, that a burglary
23 was committed, then you must, you may consider the evidence
24 of the prior convictions as evidence of one of the
25 circumstances which would make a burglary first degree

1 burglary. If you do not find, beyond a reasonable doubt,
2 that the defendant committed these alleged prior offenses,
3 then you can not return a verdict of guilty based on this
4 particular aggravating circumstance or the defendant entered
5 or remained in the dwelling in the nighttime. Nighttime is
6 the period between sunset and sunrise during which there is
7 not enough daylight to recognize a person's face except by
8 artificial light or moonlight.

9 Madam Forelady, and members of the jury, you have been
10 selected by both the State and the defendant to be fair and
11 impartial jurors. It is your duty then, in joint
12 deliberations, to determine the truth in this case giving
13 the defendant the benefit of every reasonable doubt on each
14 and every issue, and from the facts that you determine to be
15 true, you take and apply the law which I've just given you
16 and thus arrive at a verdict which speaks the truth of this
17 case.

18 I've told you the standards you have to apply to the
19 charge of murder and burglary in the first degree. I will
20 give you a copy of these instructions in written form.
21 During your deliberations, you may refer to these
22 instructions to guide your decision making. You must
23 consider the instructions as a whole and not follow some and
24 ignore others. Please return the instructions to the Court
25 at the time your verdict is rendered.

1 You've heard the evidence and now you've heard the law.
2 Whatever your verdict as to each charge, Madam Forelady, you
3 will indicate by writing the word guilty or not guilty on
4 the back of the indictment under the word where it says
5 verdict. Then you will sign and date it. Be certain
6 there's no significance in the wording, which I state. The
7 verdicts, simply one must be stated first.

8 Remember that although the foreperson is the only juror
9 who writes the verdict, it is not hers alone. The verdict
10 has to be a unanimous verdict.

11 And, Madam Forelady, you're not authorized to write the
12 verdict until all of you have agreed as to what the verdict
13 should be.

14 Now, ladies and gentlemen, at this time I'm going to
15 send you to your jury room. All of you accept the two
16 alternates unless there is one of the first 12 who can not
17 continue with the deliberations.

18 As it relates to the first 12 jurors, if you are
19 capable, able to continue with the deliberations, please let
20 me see by show of hands, by raising your hands in the first
21 12 jurors selected, you can continue with the deliberations?

22 Is the other lady still with us?

23 Juror number -- if you're able to continue with the
24 deliberations, please let me know now by raising your hands.

25 (WHEREUPON, all jurors raise their hands at this time.)

1 THE COURT: All right. Thank you. That means that the
2 alternates will not return to the jury room. The first 12
3 jurors will go to the jury room.

4 I'll ask that you go to the jury room at this time, and
5 do not begin to discuss the case until you have received a
6 copy of this jury charge, the verdict form, and the
7 exhibits. Once you received these things, that will be your
8 signal, signal to begin your deliberations, and once you
9 begin your deliberations, you will deliberate until you have
10 reached a verdict at which time you will knock on the door,
11 advise the bailiff, and we will bring you out and receive
12 your verdict. Please go to the jury room at this time.

13 Madam Forelady, you will preside over the jury
14 deliberations.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: The two alternates, I'll speak with you all
18 in just a moment.

19 But as relates to the jury charge, are there any
20 additions or exceptions to the charge by the State or the
21 defense?

22 SOLICITOR CAMPBELL: No exceptions.

23 MR. STRICKLER: No exceptions, sir, to the jury charge.

24 THE COURT: All right. So you-all confer and make sure
25 all the exhibits are in order that go to the jury room so

1 they can begin deliberating.

2 (WHEREUPON, the two alternate jurors were dismissed at
3 this time.)

4 (WHEREUPON, the jury began deliberations at one o'clock
5 and returned with a question at 2:10.)

6 THE COURT: The jury sends, the jury sends a note
7 saying request the transcripts of the interview.

8 what says the State?

9 SOLICITOR CAMPBELL: Whatever the Court deems
10 appropriate. We have no opposition or objection to the
11 transcript.

12 THE COURT: What says the defense?

13 MR. STRICKLER: And we would object to the transcripts
14 being sent back with the jury relying on State versus
15 Gullage, 277 SC 268, 287 S.E.2d 488, case from 1982.

16 THE COURT: All right. The -- I don't know what State
17 versus Gullage says, but I know that the transcript is not
18 in evidence. So, the -- I can't send anything back to the
19 jury room that's not in evidence, but they can listen to
20 the, to any evidence. The oral statement is in, and
21 evidence. They can listen to it if they would like to.

22 So, bring the jury please.

23 Do you have any device that you-all can agree, that
24 you-all agree for submitting to them to listen to it in the
25 jury room?

1 SOLICITOR CAMPBELL: I have this computer.

2 MR. STRICKLER: I'll have to review it, what you intend
3 to send back to the jury room.

4 THE COURT: Assuming it's only -- that's the only
5 monitor, do you object to them, to that?

6 MR. STRICKLER: No, sir, if that's the only thing on
7 it.

8 THE COURT: All right.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 BAILIFF: The jury is seated, Your Honor.

12 THE COURT: All right. Madam Forelady, members of the
13 jury, you sent a note requesting a transcript of the
14 interview.

15 As I stated to you during the jury instructions, you
16 received the -- you've heard the testimony, you've received
17 the evidence, and that you must decide the case based on the
18 testimony and the exhibits. The exhibits include oral
19 recording of the statement, of the oral statement of the
20 interview. It does not include a transcript. So, if you
21 would like to listen to the interview, the -- we can provide
22 you with a computer to play the disk on if you listen to it
23 that way or it can be played in the courtroom and you can
24 listen to it here in the courtroom. So, whatever your
25 preference is, send another note and let me know. I'll be

1 ready to send it in along with something for you to listen
2 to it on. You already have the CD. We'll send something
3 for you to listen to it on or we'll have you come out and
4 play it in the courtroom.

5 Does that answer your question?

6 FORELADY: Yes, sir.

7 THE COURT: All right. Thank you. Please return to
8 the jury room.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. Any exceptions, exception to
12 the charge?

13 SOLICITOR CAMPBELL: No, sir.

14 THE COURT: They are---

15 MR. STRICKLER: No, sir.

16 THE COURT: All right. We'll be at ease awaiting the
17 jury.

18 (WHEREUPON, the jury began deliberations again at 2:10
19 and returned with another question at 2:15.)

20 (WHEREUPON, the beginning of the Court's statement was
21 not on the audio recording.)

22 THE COURT: -- listening to the recorded version of the
23 interview since the print version is not admissible in the
24 jury room. So, they want to hear it in the jury room.

25 What do we have to give to them?

1 SOLICITOR CAMPBELL: Your Honor, we may actually need
2 to get the disk and try it and see if it will work on this
3 computer before sending it back if it's possible. Whichever
4 is best for Your Honor.

5 THE COURT: Y'all said you had something to send to
6 them, and that's what they want to hear.

7 SOLICITOR CAMPBELL: It should work on that, Your
8 Honor. The computer we actually used in the courtroom is my
9 computer, and I don't think you want that to go back. So,
10 we've gotten this computer that doesn't have anything
11 accessible on it. I just assume -- it's an older computer.
12 I just want to make sure it plays, but we can just send it
13 back and let them figure it out.

14 THE COURT: All right. If you're ready for it to go
15 we'll send it back, and make sure it works. I would assume
16 you want to make sure it works.

17 (Pause.)

18 THE COURT: Do you have any volume on it,
19 Mr. Strickler?

20 I can't, I can't hear anything.

21 MR. STRICKLER: I haven't tried that far down yet, Your
22 Honor.

23 THE COURT: Okay. All right. Mr. Bailiff, I think we
24 need to get that exhibit out of the jury room so we'll know
25 if it works the disk. If it's suitable to send back it

1 shouldn't be so complicated.

2 Do we have an uncomplicated machine to send back there
3 to play it on?

4 MR. STRICKLER: I'm sorry, Your Honor. I was just
5 checking to make sure that there weren't any immediately
6 accessible documents on there.

7 THE COURT: Yeah, that's what I mean. It would seem
8 that the State would have a computer with no other documents
9 on it.

10 MR. STRICKLER: Well, and apparently they do, Your
11 Honor. I'm just double-checking on it.

12 THE COURT: Well, do y'all have another machine?

13 SOLICITOR CAMPBELL: That one doesn't have anything on
14 it.

15 THE COURT: I don't want to wait until Mr. Strickler
16 looks through every document on the computer.

17 (Pause.)

18 MR. STRICKLER: All right. Your Honor.

19 THE COURT: All right. So, it's fine for that to go to
20 the jury now?

21 MR. STRICKLER: Yes, sir.

22 THE COURT: All right. What kind of instructions do
23 they need to have?

24 MR. STRICKLER: Might want to ask if anyone knows how
25 to work it. It's up and ready to go. All they have to do

1 is click the envelope.

2 (WHEREUPON, the following instructions given by the
3 Court were not on audio recording.)

4 THE COURT: Is everyone satisfied, the State?

5 MR. STRICKLER: No, sir.

6 THE COURT: The defense?

7 SOLICITOR CAMPBELL: Yes, sir.

8 THE COURT: All right. Back at ease.

9 (WHEREUPON, the jury began deliberations again and
10 returned with a question at 3:15.)

11 THE COURT: This note says one juror wants to know if
12 you can see or hear the testimony of Officer Duckett.

13 What says the State?

14 (WHEREUPON, Ms. Campbell's response was inaudible.)

15 THE COURT: Defense.

16 MR. STRICKLER: Can't see it, but definitely can hear
17 it, Your Honor.

18 THE COURT: All right. You will -- when the jury is
19 ready to come in, tell them we're waiting, waiting on them.

20 BAILIFF: They're ready, Your Honor.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 BAILIFF: The jury's seated, Your Honor.

24 THE COURT: All right. Thank you.

25 Madam Forelady, members of the jury, this note says one

1 juror wants to know if he can see or hear the testimony of
2 Officer Duckett. You can't see the testimony because it
3 occurred last week. You can hear the testimony, and, and
4 the court reporter will play back the testimony. So, if
5 that's what you want, we can do it. We can have the court
6 reporter play back the testimony of Officer Duckett.

7 Is that what you want, Madam Forelady?

8 FORELADY: Yes, sir.

9 THE COURT: All right.

10 (WHEREUPON, a portion of the testimony of Officer
11 Duckett was played back for the jury at this time.)

12 THE COURT: All right. Madam Forelady, if at any point
13 in time you've heard as much as you want to hear, let me
14 know, we'll stop it. If you want to hear the entire
15 testimony, that's fine as well.

16 All right.

17 (WHEREUPON, another portion of the testimony of Officer
18 Duckett was played at this time.)

19 THE COURT: Stop it please.

20 Is that all you want to hear, Madam Forelady?

21 FORELADY: Yes, Your Honor.

22 THE COURT: All right. Thank you. Resume
23 deliberations.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Is there objection or exception by the
2 State or defense?

3 SOLICITOR CAMPBELL: No, sir.

4 MR. STRICKLER: No, Your Honor.

5 THE COURT: All right. Be at ease.

6 (WHEREUPON, the jury began deliberations again at
7 3:30 and returned with a verdict at 3:40.)

8 THE COURT: All right. Understand that there is a
9 verdict, and I want to caution everyone that it is important
10 that order be maintained in the courtroom at all times, and
11 that there be no outburst or any reaction to the verdict.

12 If y'all bring the jury please.

13 (WHEREUPON, the reading of the verdict and polling of
14 the jury was not on audio recording.)

15 MR. STRICKLER: We'll move for directed verdict in
16 this, in this regard or rather at this point in time grant a
17 new trial upon reconsideration of the previous ruling. No
18 additional bases. Your Honor, I'm just renewing my motions.

19 THE COURT: All right. Thank you.

20 Response by the State before sentencing, Ms. Campbell?

21 SOLICITOR CAMPBELL: Your Honor, just ask you abide by
22 your earlier rulings and respect the verdict of the jury.

23 THE COURT: These matters were addressed during the
24 course of the trial. You had hearings prior to and during
25 the trial regarding various issues, suppression, and the

1 Court ruled. With regard to the statement given by the
2 defendant, the Court ruled that statement be admissible in
3 that the jury would have to find beyond a reasonable doubt
4 and that the statement was, statements was free and
5 voluntary statement. Obviously the jury made that finding.
6 But prior to that the Court ruled that the matter was
7 substantially, was a voluntary statement, and that the State
8 followed the Constitutional rights of the defendant.

9 With regard to mistrial motion, after the State
10 elicited some testimony that the defendant was in a drug
11 area, the Court denied that motion in part because of the
12 parties including the defendant stipulated to certain
13 portions of the statement that I admitted, and that certain
14 portions of it should reference the area as described by the
15 defendant being a drug area.

16 Further, the reference to the drug area included a
17 great number of redactions by the Court which referenced the
18 defendant being in the drug area and purchasing and/or using
19 drugs. All of that was excluded by the Court, did not go to
20 the jury, and I find no basis for the Court to change my
21 ruling with regard to that.

22 With regard to the directed verdict, which were,
23 directed verdict motions, which were appropriately made at
24 the end of the State's evidence and at the close of the
25 case, in applying the rule, which is Rule 19 of the Rules of

1 Criminal Procedure, where the evidence was appropriate to be
2 submitted to the jury for the jury to weigh the evidence and
3 determine the facts of the case, it becomes a jury issue and
4 not an issue for the Court. I find that the, there's an
5 abundance of evidence, both direct and circumstantial,
6 indicating the defendant to be guilty of both crimes. Those
7 issues were submitted to the jury and the jury found, find,
8 found him guilty.

9 I find that the verdict is supported by an overwhelming
10 amount of evidence, and I respectfully deny that motion and
11 all other motions by the defense.

12 MR. STRICKLER: Thank you, sir.

13 (WHEREUPON, the jury was dismissed at this time.)

14 SOLICITOR CAMPBELL: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 THE COURT: Ms. Campbell.

18 SOLICITOR CAMPBELL: May it please the Court, Your
19 Honor.

20 First if we could address his prior record, the extent
21 of it.

22 THE COURT: Yes.

23 SOLICITOR CAMPBELL: His first conviction for attempted
24 strong armed robbery started back in 1994. He did receive a
25 probationary sentence on that charge.

1 His next conviction was for strong armed robbery,
2 excuse me, attempted strong armed robbery in 1997 for which
3 he received an active sentence. At that time his probation
4 from the first strong armed robbery was revoked.

5 Moving onto 2006 and seven, he was convicted of
6 burglary in the third degree, grand larceny, malicious
7 injury to personal property, burglary in the third degree,
8 grand larceny, and another count of burglary in the third
9 degree. Those were all in Kershaw County.

10 That same year, in Richland County, he was convicted of
11 breach of trust with intent to defraud and burglary in the
12 second degree for which he did receive an active sentence.
13 He was also put on a probationary sentence at that time, and
14 then, in the Fall of 2009, his probation was revoked on
15 those charges.

16 Your Honor, I believe there are members of the family,
17 at the appropriate time, would like to address the Court on
18 behalf of Mr. Eichelberger if the Court would permit that.

19 Is now appropriate?

20 THE COURT: Yes, be happy to hear from any and
21 everyone.

22 SOLICITOR CAMPBELL: If you can state your name prior
23 to talking and relationship you had with the victim.

24 MRS. JOHNSON: Mary Eichelberger-Johnson, the daughter
25 of Reverend Tryon Eichelberger, Senior.

1 THE COURT: Yes, ma'am.

2 MRS. JOHNSON: First, I'd like to thank the prosecutor
3 and investigators for the fine job that they did, and to
4 renew our faith in that our system does work. We are
5 pleased with what took place here, and as a family, as a
6 family of ministers, we do understand that, regardless, we
7 have to walk in love and we have to be healed, and I'd like
8 to thank the Court, Your Honor, for this opportunity to
9 speak.

10 THE COURT: All right. Thank you, Mrs. Johnson.

11 MR. EICHELBERGER: I'm Ken Eichelberger, the oldest son
12 of the late Reverend Tryon Eichelberger. I'm his look
13 alike. God be the glory that we seen justice bring on this
14 week.

15 Thanks to all of you, your hard works, your effort,
16 tireless hours when I gave up on our Court system. I told
17 him to his face that he wasn't doing his job, but he was on
18 his job, and we just thank all of you.

19 Jurors, thank you.

20 Solicitor, thank you.

21 Everyone that helped and the one that helped us cheer
22 upon the ledge or slope. Thank all of you and we appreciate
23 all, Dear God.

24 Justice reigned here in this courtroom. Thanks.

25 UNIDENTIFIED SPEAKER: And to God be the glory, great

1 things He has done.

2 THE COURT: Thank you.

3 SOLICITOR CAMPBELL: Your Honor, on behalf of the
4 family we have discussed a variety of possible punishments
5 in this case. This was a potential death penalty case.
6 However, I think, on behalf of the family, they would
7 respectfully ask, request a life sentence due to the very
8 nature of this crime.

9 THE COURT: Ms. Simpson.

10 SOLICITOR SIMPSON: Nothing further, Your Honor.

11 THE COURT: Anything further from the investigators?

12 INVESTIGATOR: No, Your Honor.

13 INVESTIGATOR: No, Your Honor.

14 SOLICITOR CAMPBELL: Thank you, sir.

15 THE COURT: All right. Anything else from the State?

16 SOLICITOR CAMPBELL: No, sir.

17 THE COURT: All right. To the defense.

18 MR. STRICKLER: Thank you, Your Honor.

19 Please the Court.

20 Very briefly, Frankie's 46, born and raised in Kershaw
21 County. As you've heard---

22 THE COURT: Have Mr., Mr. McGee come around.

23 MR. STRICKLER: All right.

24 THE COURT: Yes, sir.

25 MR. STRICKLER: Beg the Court's indulgence one moment

1 please, sir.

2 (Pause.)

3 MR. STRICKLER: Thank you, sir.

4 As I was saying, Your Honor, Frankie is 46 years old,
5 born and raised in Kershaw County where his wife still
6 resides. He is the father of three. He has two adult
7 children, and he has one five year old child. The five year
8 old's residing with, with his mother, with, with Frankie's
9 wife in Kershaw County.

10 As you've heard he's been through the, to the 12th
11 grade. He served in the United States military, and has
12 been employed, as you also heard, in some jobs relating to
13 mostly the construction industry in various capacities.

14 I've know him since, I guess since a couple days after
15 his arrest at which time I met him. Of course, I do not and
16 would not take issue with the finding of the jury. I will,
17 however, tell you that Mr. McGee has maintained his
18 innocence to me from the very first time I spoke with him.
19 This is not been a course of action we've taken because of
20 any other reason in this trial, any other reason than he's
21 maintained that he is not guilty of this, and that's what I
22 can tell you.

23 I'll make no particular pleas for our sentence. I
24 would just note for the record that we have already advised
25 Mr. McGee regarding the appellate process, and we will be

1 filing the necessary paperwork within the ten day period to
2 initiate that.

3 THE COURT: Ms. Davis.

4 MS. DAVIS: Nothing, Your Honor.

5 THE COURT: Mr. McGee, anything you'd like to say?

6 DEFENDANT: On behalf of the family, for what they went
7 through, I apologize for their loss, but I just want to say
8 that I'm not the person that committed that crime, and
9 there's nothing I can do about me being sentenced today, but
10 I just want everybody to know that justice has not been
11 served because I'm not the one that did it, Your Honor.

12 Thank you.

13 THE COURT: All right. Well, I'm not sentencing you
14 based on your being innocent. I'm not sentencing you based
15 on your proclaiming your innocence.

16 You met with the officers. You made the same claims
17 with them. Of course, it's rare that I find anyone in your
18 position who comes and stands before me after being found
19 guilty and confesses that they thought to be sentenced
20 particularly right after the lawyer said that we'll be
21 filing a notice of appeal within the ten days. So, I didn't
22 expect you to come and confess prior to being sentenced.

23 My experience in dealing with murder cases is that
24 people who commit murder have an amazing ability to just
25 blot it out of their minds, and just kind of create a,

1 create within themselves a different person than the person
2 who committed the crime. So, I'm not surprised at all as to
3 anything that you have said.

4 I can tell you this, the State has expended a
5 tremendous amount of resources in defending you. The State,
6 as you stand here today, with three lawyers. The Fifth
7 Circuit Public Defender, head of the Richland County Public
8 Defender, Ms. Pringle, Ms. Davis, an attorney, and you've
9 had the benefit of very aggressive, competent, and efficient
10 defending in addition to other resources expended by the
11 State in, in your state paying for you to have investigators
12 to investigate the investigator's work, and other resources
13 expended by the State, and all of that culminated into a
14 jury trial this past week in which the State has put up this
15 evidence, and you've had the right to offer anything that
16 you might of wanted to offer in your defense, and you have
17 been defended.

18 But I have no qualms whatsoever with the jury's
19 verdict, and if I'd been on the jury, I would be one of the
20 first ones to vote guilty because the evidence has proven
21 that you are guilty of murder and you're guilty of burglary
22 in the first degree, and what makes it worse than anything
23 else that you would choose to commit murder and burglary on
24 someone who sought to help you, and it seems to be
25 abundantly clear that you were strung out on drugs,

1 wondering around, prowling around in that neighborhood, up
2 to no good, and this is the end result of your actions.

3 So, for you to stand here and blame the jury, and blame
4 the system, claim that justice hasn't been done, now those
5 are hollow words to me cause justice is what the jury has
6 spoken it to be. That is, you're guilty of both of these
7 crimes. If there's anything that occurred during the course
8 of the trial that prevented the jury from deciding this case
9 guilty, then someone will review that. But a great amount
10 of time and effort has been taken into giving you the
11 benefit of what you did not give Reverend Eichelberger.

12 This is burglary in the first degree. You committed it
13 with a weapon. You committed it in the nighttime. You
14 committed it after being convicted of multiple burglaries
15 before, and the -- you're facing a, a sentence of up to life
16 on the burglary alone, and on the murder charge you're
17 facing 30 years to life. I don't know whether you're on
18 parole at this time.

19 Is he on parole?

20 Did he max out whatever sentence he was---

21 MR. STRICKLER: Yes, sir.

22 THE COURT: ---during that time they served these
23 warrants on him?

24 MR. STRICKLER: Yes, sir.

25 THE COURT: Does he have any outstanding probation

1 cases?

2 MR. STRICKLER: Not that I'm aware of, no, sir.

3 THE COURT: All right. Mr. McGee, for burglary first
4 degree, the sentence is 30 years.

5 For murder, the sentence is life.

6

7 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions for
9 Richland County, South Carolina, on the 8th, 9th, and 10th
10 day of August, 2011, as reported by April Herron and
11 transcribed by myself to the best of my ability.

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

14
15
16
17
18 January 12th, 2012

19
20
21 

22 PAMELA E. GREEN, Court Reporter
23
24
25

WITNESSES

(s) Kevin E Reese - CPD

ARREST WARRANT NUMBER

K642495

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury

Date: APR 16 2010

VERDICT

Guilty

Forfeiture of Petit Jury

Date:

DOCKET NO. 2010-GS-40-0121

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2010

42

THE STATE

vs.

FRANKIE LEE MCGEE

Indictment for
MURDER

16-03-0010

0116

Class FEL/EXM(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I

hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 14, 2010, the Jurors of Richland County present upon their oath:

MURDER

That Frankie Lee McGee did in Richland County, on or about May 3, 2009, willfully, feloniously, and intentionally kill the victim, Tryon Eichelberger, with malice aforethought, either express or implied, by means of blunt force trauma to the head, and the victim did die as a proximate result thereof, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. B. Giese
WARREN B. GIESE, SOLICITOR

1218
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

STATE VS.

Frankie La McElre

CA:

ace: *Black* Sex: *Male* Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: *CAMPBELL SC 29020*

_____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: *2010* -GS-40- *131*

A/W#: *K642495*

Date of Offense: *5-3-09*

S.C. Code §: *16-03-0010*

CDR Code #: *0116*

SENTENCE SHEET

disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

violation of § *16-03-0010* of the S.C. Code of Laws, bearing CDR Code # *0116*

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)

Plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST: _____

Kam C. [Signature] 1309
Solicitor SC Bar # _____ Defendant Attorney for Defendant SC Bar# _____

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of *life* days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

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 Corps. _____

Recipient: _____ May serve W/E beginning _____

Fine: _____ Substantive Abuse Counseling ☐

14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing ☐

14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. Of \$ _____ Beginning _____

36-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

36-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

35-13 (Public Def/Prob) \$500 \$ _____

23-3, 1B TP (Law Enforce. Funding) \$25 \$ _____

33-7, 1B TP (Drug Court Surcharge) \$100 \$ _____

30-21-114 (BUI Breath Test Fee) \$50 \$ _____

36-5-2942(J) (Vehicle Assessment) \$40/ea. \$ _____

30-11 TP (SCCJA Surcharge) \$5 \$ _____

% to County (if paid in installments) \$ _____

JOTAL \$ _____

Clerk of Court/ Deputy Clerk: *Jeanette McBride*

Court Reporter: *[Signature]*

CCA/217 (06/2009)

Presiding Judge: *[Signature]*

Judge Code: *2107*

Sentence Date: *5/10/11*

WITNESSES

(S) Kevin E Reese - CPD

ARREST WARRANT NUMBER

K642496

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date:

APR 16 2010

VERDICT

Guilty

Donna K. Cole 8/10/11
Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-40-0124

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2010

42

THE STATE
vs.

FRANKIE LEE MCGEE

**BURGLARY
1ST DEGREE**

SC Code: 16-11-311
CDR Code: 079
Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

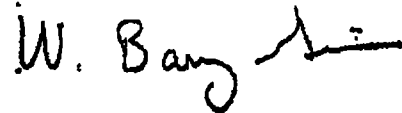
INDICTMENT

At a Court of General Sessions, convened on APRIL 14 2010, the Jurors of Richland County present upon their oath:

BURGLARY- 1ST DEGREE

That Frankie Lee McGee in Richland County on or about May 3, 2009, willfully and unlawfully enter the dwelling of Tryon Eichelberger without consent and with the intent to commit a crime therein and when, effecting entry or while in the dwelling or in immediate flight, the defendant was armed with a deadly weapon and/or caused injuries to a non-participant of the crime and/or threatened the use of a deadly instrument and/or entered or remained during the hours of darkness and/or the defendant has two or more prior convictions for burglary all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010 -GS-40- 124

AW#: K642496

AKA: Frankie Lee McLean

Date of Offense: 5-2-09

Race: Black, Sex: Male Age: _____

S.C. Code §: 16-11-311

DOB: _____ SS#: _____

CDR Code #: 079

Address: _____

City, State, Zip _____

SENTENCE SHEET

CL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Burglary 1st

In violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

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.

ATTEST:

Karen C. H. 13009
Solicitor SC Bar # _____

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.

Pursuant to 18 U.S.C. Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

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 Corps. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
§90.11 TP (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. Of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP, requires \$500 be paid to Clerk during probation.

Presiding Judge: C. New

Judge Code: 2109

Sentence Date: Aug 10, 2009

Clerk of Court/ Deputy Clerk: Jessy McBride
Court Reporter: M. Herring



City of Columbia

Police Department

"The Positive Difference"

DATE: 03-12-10

PHOTO LINE-UP

On this date Investigator(s) C. SUMPTER showed me LARRY HARR
 pictures at [REDACTED] Colo S.C. 29203
 (location)

I picked out a picture #3
 (identify photo)

which is the person (male/female, white/black), who committed the crime of Burglary at
[REDACTED] on 050309
 (location) (date of incident)

I hereby swear and certify the above is the truth.

Larry Harr
 (signed)

[REDACTED]
 (address)

[REDACTED]
 (phone)

Sworn to and Subscribed before me this
 _____ day of _____, 20____.

Notary Public for South Carolina

My commission expires: _____

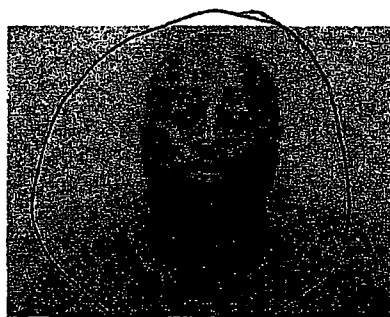




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JDA 03-12-10 1507 HRS



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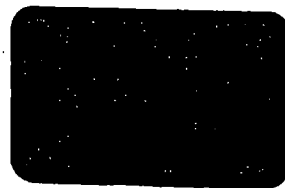
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#123



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3-13-10 Terrence Abtpe

Witness States the Subject she saw ON 5-3-04 could be # 3 and #1. She picked # 3 first but stated both resembles the suspect because of the head shape and body build.

1 INTERVIEW WITH FRANKIE MCGEE

2 REEVES: Where'd they go, that way?

3 MALE SPEAKER: Yes. (Inaudible.)

4 FEMALE SPEAKER: And she kept cutting in and out
5 too, so there may be something wrong (inaudible).

6 REEVES: I got it.

7 MALE SPEAKER: Come on in.

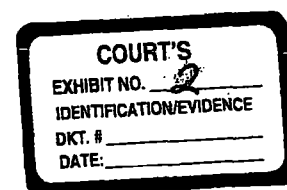
8 (Indistinct conversation.)

9 REEVES: Hey, how you doing? Lance Reeves.

10 Nice to meet you,

11 MALE SPEAKER: I'm hearing that it's a possible
12 homicide and that there may be other players in it. And
13 that's why you all are down here, to see if that's
14 possible. I mean, I don't want to get into any
15 investigation (inaudible) but my concern is, is if I've
16 got a knucklehead like that here, then more than likely,
17 if y'all could -- do you have any feel that -- because if
18 this guy -- we don't have an alarmed fence here. We're
19 kind of a soft Level Two. If this guy has any inclination
20 that he's looking at a possible homicide or a murder
21 conviction, he's going to get rabbit on me. And I don't
22 want another 96-hour event here at the institution with an
23 inmate with rabbit. Do you?

24 MALE SPEAKER: Yeah, no. I prefer to avoid
25 those, sir.



1 MALE SPEAKER: Yeah.

2 REECE: Well, I can tell you right now, warden,
3 it looks like we're going to be charging him based on what
4 we've got so far. We just want to be able to talk to him
5 now, and we're going to request that you put a hold on him
6 after we leave here, definitely, today. When we get back
7 up to Columbia and meet with the solicitor's office, I'm
8 pretty confident that we'll be charging him.

9 And it's my understanding that his release date
10 is April the 23rd of this year.

11 MALE SPEAKER: Which would be the first of the
12 month.

13 REECE: First of the month. All right.

14 MALE SPEAKER: Yeah, you got time, though, to
15 get a hold on him.

16 REEVES: Yeah, he's only got two more weeks.

17 REECE: So if he --

18 MALE SPEAKER: And that makes the rabbit thing
19 even more (inaudible).

20 THOMAS: Exactly.

21 REEVES: I can tell you, he knows we're coming
22 here to -- and what we're coming to see him about.

23 MALE SPEAKER: All right.

24 THOMAS: And so definitely, he'll be charged.

25 MALE SPEAKER: Well, more than likely, the next

1 time y'all talk to him, he's going to be at Kershaw or
2 Turbeville. I'm going to make a --

3 THOMAS: I told my (indistinct) man, before I
4 realized about the probation violation, I'm like, "No,
5 they have him down in Turbeville or something," but it's
6 just a probation type situation, so yeah.

7 MALE SPEAKER: All right. Well, I appreciate
8 y'all sharing this information with us, and good luck with
9 him.

10 MALE SPEAKER: Let me know if he's going on the
11 bus tomorrow or if we're riding him today.

12 MALE SPEAKER: We'll probably ride him today.

13 MALE SPEAKER: Okay. As soon as he comes out of
14 there, we'll put him right back down in lockup.

15 MALE SPEAKER: He's dressed out?

16 MALE SPEAKER: Yeah, he's dressed out in tan.
17 We'll just walk him straight back down and put him down in
18 the cell. I never took him out of his cell.

19 MALE SPEAKER: All right. Very good. Anything
20 we can do --

21 THOMAS: And we appreciate the accommodations.

22 REEVES: I will tell you -- I don't know if
23 they've mentioned this or not also, but during the
24 investigation, a couple -- his probation officer told us,
25 and I think his wife had also told us, that he had

1 contemplated suicide on multiple occasions. He never
2 attempted that, I don't think, right? But just wanted to
3 throw that out there too with you. He had talked about
4 it. And he told his probation officer, apparently, back
5 in May of last year the same thing, and --

6 MALE SPEAKER: All right?

7 THOMAS: Okay. Appreciate it.

8 MALE SPEAKER: Thank you. Well, we'll talk to
9 you after --

10 MALE SPEAKER: We'll keep you posted.

11 MALE SPEAKER: We got an extra, an extra person
12 to ride, right?

13 MALE SPEAKER: Yes, sir. We'll make that
14 happen. If we go today, we'll make that happen.

15 MALE SPEAKER: All right. Thanks, fellows.
16 Appreciate it.

17 REEVES: Thank you.

18 MALE SPEAKER: Thanks, guys.

19 MALE SPEAKER: I'll be out here (inaudible).

20 REEVES: Appreciate it.

21 (Indistinct conversation.)

22 REECE: Investigator Reece. How are you doing?.

23 MCGEE: All right.

24 THOMAS: Investigator Thomas.

25 MCGEE: All right.

1 THOMAS: How are you?

2 REEVES: I'm Lance Reeves, investigator.

3 REECE: We came down here from Columbia to talk
4 to you. We're Columbia investigators.

5 MCGEE: Mm-hmm.

6 REECE: Did you know we were coming?

7 MCGEE: No, I didn't.

8 REECE: You got any idea what we're down here
9 for?

10 MCGEE: No.

11 REECE: No idea at all, man?

12 MCGEE: No.

13 REECE: All right. We're down here about a
14 homicide case. We are homicide investigators.

15 MCGEE: Mm-hmm.

16 REECE: I think you got an idea now. You got
17 any idea now?

18 MCGEE: No, sir.

19 REECE: All right. Are you familiar with the
20 Greenview area of Columbia? You ever been there?

21 MCGEE: I know the Greenview area.

22 REECE: You ever been there?

23 MCGEE: Um, I've been there quite a few times.

24 REECE: Okay.

25 MCGEE: But, you know, not in the area, but

1 going through there.

2 REECE: Just going through?

3 MCGEE: Yeah.

4 REECE: What do you mean just going through?

5 MCGEE: Passing through when I come through,
6 through town.

7 REECE: What do you mean when you come through
8 town? Are you --

9 MCGEE: Driving through.

10 REECE: Driving through?

11 MCGEE: Yes, sir.

12 REECE: Do you drive on your job or something?
13 You're talking about with your job?

14 MCGEE: No, going to visit people and going
15 downtown and stuff like that.

16 REECE: Okay. All right. All right. That's
17 good. And you're from the Camden area.

18 MCGEE: Originally I'm from Elgin.

19 REECE: From Elgin?

20 MCGEE: Yes.

21 REECE: Okay. All right. Anyway, we came down
22 here because we need to talk with you about a homicide
23 that happened up there. And I'm hoping that you give us a
24 chance and hear us out and talk with us, and let's see if
25 we can work some things out here. Fair enough?

1 MCGEE: Yes, sir.

2 REECE: All right. Now, being that this is a
3 homicide investigation --

4 MCGEE: Mm-hmm.

5 REECE: -- I have to advise you of some rights.
6 You're incarcerated here, so under the Constitution,
7 you're incarcerated, I got to advise you of some rights.
8 And you're in custody, all right? You're not in custody
9 with us, but you're in custody of this institution. So
10 just bear with us a minute, and Thomas will read you some
11 rights.

12 THOMAS: And I'm Investigator Thomas. I'm going
13 to just advise you of your rights --

14 MCGEE: Mm-hmm.

15 THOMAS: -- okay? And again, because you are in
16 custody, we have to do so. We're not going to violate any
17 rights of anyone, okay?

18 MCGEE: Mm-hmm.

19 THOMAS: All right. Before we ask you any
20 questions, you must understand your rights. You have the
21 right to remain silent. Anything you say can be used
22 against you in court. You have the right to talk to a
23 lawyer for advice before we ask any questions and have him
24 with you during questions.

25 Now, I'm reading these, and as I read them, I'm

1 going to check off each area to make sure that you
2 understand. Did you understand those previous ones I just
3 read?

4 MCGEE: I understand.

5 THOMAS: Okay. The next one is if you can
6 afford a lawyer -- if you cannot afford a lawyer, one will
7 be appointed for you if you wish before questioning, okay?
8 All right, if you decide to answer questions now without a
9 lawyer present, you will still have the right to stop
10 answering questions at any time. You will also have the
11 right to stop answering questions at any time until you
12 talk to a lawyer. Do you understand that?

13 MCGEE: I understand.

14 THOMAS: Okay. All right. On this bottom
15 portion here -- hold on one second -- we're going to have
16 you -- did you finish school?

17 MCGEE: Do I attend school now?

18 THOMAS: No, have you finished school?

19 MCGEE: Um--

20 THOMAS: High school degree?

21 MCGEE: No.

22 THOMAS: What grade were you in?

23 MCGEE: I went to 12th grade, but I didn't
24 finish.

25 THOMAS: Okay.

1 REECE: So you got a 12th grade education?

2 MCGEE: Twelfth.

3 THOMAS: Okay. What's the time you got on
4 there?

5 REEVES: 12:10.

6 THOMAS: 12:10. All right. Wateree --

7 REEVES: 8200 State -- State Farm --

8 THOMAS: State Farm Road? 8200?

9 REEVES: Yep.

10 THOMAS: 8200.

11 REECE: Get him to put his initials on that.

12 All you're doing right here, Frank, is putting
13 your initials to say he read the rights to you, and you
14 said you understood them. It doesn't mean anything else.

15 THOMAS: Okay. And then, once you initial
16 those, before you sign anything, read that aloud so we
17 know that you understand that, and then, if you agree with
18 that, sign there. Okay?

19 MCGEE: Mm-hmm.

20 REECE: Can you do me a favor?

21 MCGEE: Yes, sir, what is it?

22 REECE: Would you read that aloud for me?

23 MCGEE: It says, "I have read this state and my
24 rights, and I understand what my rights are. I am willing
25 to make a statement and answer questions. I do not want a

1 lawyer at this time. I understand and I know what I am
2 doing. No promises or threats have been made to me, and
3 no pressure or coercion of any kind has been used at me."

4 REECE: All right. All that means is I ain't
5 threatened to beat your head against the wall if you
6 didn't talk to me, and I didn't promise you a red Cadillac
7 convertible if you do talk to me.

8 MCGEE: Mm-hmm.

9 REECE: Basically that's what that means, okay?

10 MCGEE: So if I sign this, what, I'm
11 incriminating myself?

12 THOMAS: No, if you sign this, what you're
13 saying to us is that, listen, y'all came down here and
14 talked about something.

15 MCGEE: Mm-hmm.

16 THOMAS: All right, I'm willing to talk you,
17 okay? And right now, I don't need a lawyer for what y'all
18 come here to talk to me about, all right? I'm not
19 interested in a lawyer. I'll talk to you.

20 REECE: Now, what -- yeah, and in addition, you
21 can -- it says down that even in the even -- what it means
22 is even if you're in the middle of a conversation with me
23 -- with us -- and you think, well, I don't want to talk
24 anymore, you can stop talking --

25 (Knock at door.)

1 REECE: -- any time you get, you get ready.

2 MALE SPEAKER: You wanted to see that?

3 THOMAS: Yes, sir. Thank you very much.

4 MCGEE: So in order for us to go further with
5 this, I have to sign this. Is that what you're saying?

6 REECE: Well, no, you don't have to sign it.
7 What this means is we've read you your rights, and signing
8 it is just clarification there we read your rights.
9 Somewhere down the road, if this comes up again, we needed
10 your signature to say we read you your rights. That's
11 all. You can talk to us without signing it just as we
12 read you your rights.

13 MCGEE: I'd rather talk to you -- because I've
14 had a lot of run-ins with the law, and I'll talk to you --

15 REECE: Okay.

16 MCGEE: -- openly without it.

17 REECE: You'll talk to us openly without it?

18 MCGEE: Yes, sir.

19 REECE: Okay, well, all right. Then what I'll
20 put -- I'll do is I'll put down that you refused to talk -
21 -

22 REEVES: Refused to sign.

23 REECE: -- by signing the, signing the waiver,
24 but you'll talk to us without signing the waiver.

25 MCGEE: Oh, yes, I will.

1 REECE: And if you will --

2 MCGEE: (Inaudible) understand that.

3 REECE: -- I just need you to put your -- okay,
4 and if you will, I just need you to put your initials
5 under that. You're not signing it. You're just putting
6 your initials. What I'm writing is that you agreed to
7 talk to us, but not sign.

8 MCGEE: Mm-hmm.

9 REECE: And your initials down here means, I
10 didn't sign it, but I initialed -- I am initialing what I
11 wrote down here.

12 MCGEE: Mm-hmm.

13 REEVES: That way, we don't leave here, and then
14 he -- the court can't say, well, he put that down there
15 later.

16 REECE: Yeah.

17 REEVES: You know what I'm saying.

18 MCGEE: So you're saying we're going to court.
19 Is that what you're saying, about a homicide?

20 (Indistinct crosstalk.)

21 THOMAS: And if your signature pops up up here,
22 and you didn't put it down there -- put it on there, all
23 you can say is, well, hell, why did he have it written
24 down here and then my initials down there if I didn't want
25 to sign it.

1 REECE: Right.

2 MCGEE: Well, why am I being accused of a
3 homicide in Greenville --

4 THOMAS: You ain't being accused of anything.
5 We just came down here to question you, all right? My job
6 is to clear or implicate.

7 MCGEE: Oh, okay, yeah.

8 THOMAS: You understand?

9 MCGEE: Yeah.

10 THOMAS: All right. With that said, you want to
11 sign it, or --

12 MCGEE: I don't want to sign, but I'll answer
13 any questions that you have.

14 THOMAS: Okay.
15 Did you do what I asked you to do out there?

16 REEVES: Mm-hmm.

17 THOMAS: Okay.
18 All right. Now, pay attention to what I'm
19 writing here. Get my glasses out here.

20 MCGEE: So y'all didn't come from SLED.

21 THOMAS: No.

22 REECE: No.

23 THOMAS: Where you get SLED from?

24 MCGEE: I don't know. I just thought maybe
25 y'all were SLED agents or something. I don't know.

1 THOMAS: Man, I work for a living, though. You
2 know what I'm saying?
3 MCGEE: Well, I'm -- I understand.
4 THOMAS: You feel me?
5 MCGEE: Mm-hmm.
6 THOMAS. All right.
7 All right. Um --
8 MCGEE: Is this about my sister?
9 THOMAS: About your sister?
10 MCGEE: Yeah.
11 THOMAS: Who is your sister?
12 MCGEE: Sandra.
13 THOMAS: Sandra who?
14 MCGEE: Sandra Laney (phonetic).
15 THOMAS: Sandra Laney?
16 MCGEE: Uh-huh.
17 THOMAS: I don't know a Sandra Laney.
18 MCGEE: Okay. Well.
19 THOMAS: All right. I'm going to write this
20 down here, and -- are you going to initial these for me?
21 MCGEE: I, I, I don't know what to really do
22 because I don't want to incriminate myself --
23 THOMAS: What -- nothing, nothing --
24 MCGEE: -- or get into any kind of trouble
25 because --

1 THOMAS: -- nothing, nothing, nothing you're
2 discussing right now --

3 MCGEE: -- I didn't do no homicide.

4 THOMAS: -- yeah -- is incriminating, and you're
5 not signing this in any order of incrimination. All
6 you're saying is, Listen -- you're saying -- when you sign
7 this, all you're doing is what you already said verbally:
8 I don't mind talking to you guys --

9 MCGEE: Well, somebody must have said something,
10 because --

11 THOMAS: And so that's what this is. I don't
12 mind talking to you --

13 MCGEE: Somebody said something.

14 THOMAS: -- whether you know anything about it
15 or not.

16 REECE: Well, if somebody said something, you
17 got to give me a chance to clear you.

18 MCGEE: But I don't know who could have said it.

19 REECE: Well, you ain't going to find out if we
20 don't have no conversation.

21 MCGEE: I didn't have no homicide with nobody.

22 REECE: Well, you ain't going to find out, sir,
23 if we don't have no conversation.

24 THOMAS: (Inaudible) to talk about.

25 REECE: And the only way, the only way you're

1 going to get around this is I'm going to have to be able
2 to put a face on you, okay? Now, I came down here to give
3 you a chance at that, regardless of what anybody said.

4 MCGEE: Mm-hmm.

5 REECE: You feel me?

6 MCGEE: I feel you.

7 REECE: So give me a chance to clear this matter
8 up.

9 MCGEE: All right.

10 REECE: All right.

11 MCGEE: Okay.

12 REECE: Now, let me ask you again. With that
13 said, do you want to sign this, or you want me to still do
14 it the way you wanted me to do it, the way I suggested you
15 do it --

16 MCGEE: I don't know what (indistinct) do, to be
17 honest. I really don't know. Can I just answer you the
18 questions, whatever you ask me, without me signing that?
19 Because I don't --

20 REECE: Well, sure, but I -- then I have the
21 rights here (indistinct) --

22 MCGEE: (Indistinct) waiving all my right. But
23 if I'm waiving my rights --

24 THOMAS: You can, you can waive your rights
25 without --

1 MCGEE: (Indistinct) trouble, right?

2 THOMAS: No, no, no, no, no.

3 REECE: You won't be in any trouble for waiving
4 your rights.

5 THOMAS: The rights that they're talking about
6 is this: If you don't want to talk to us, you don't have
7 to talk to us. Obviously you want to talk to us. You're
8 just trying to make sure you understand --

9 MCGEE: Mm-hmm.

10 THOMAS: -- what this paper means.

11 MCGEE: Yes.

12 THOMAS: Yes. You're not, you're not giving up
13 anything. If you sign this paper, all you're saying is, I
14 want to talk to you. I want to know what this is about.
15 I want to know who's accusing me of anything. All right?

16 MCGEE: All right.

17 THOMAS: I do want to talk to you.

18 MCGEE: Mm-hmm.

19 THOMAS: All right? And, at any point in our
20 conversation, you can say, well, I won't talk to you
21 anymore. That's what this paper is saying.

22 MCGEE: Because I have refused things before.

23 THOMAS: Yeah, I got you.

24 MCGEE: Mm-hmm.

25 THOMAS: And so it's not saying, Yeah, I did

1 this, and I'm guilty of anything. That's not what this is
2 saying. All this is saying is, Investigator Thomas,
3 Reece, and Reeves, I'm going to talk to you. And you've
4 already said that, all right? And I'll sign this and talk
5 to you. And, at some point, if I choose not to talk to
6 you, I won't talk to you anymore, all right?

7 That's pretty much what that is. But that's not
8 saying, Yeah I did this, or, I committed a homicide. No,
9 none of that. There's no trickery here.

10 MCGEE: But I must sign that is what you're
11 saying?

12 THOMAS: Well --

13 REECE: No.

14 THOMAS: -- yeah, it's not that you have to sign
15 it. It's just that we want to make sure that you
16 understand your rights. And you said you do.

17 MCGEE: Yeah.

18 THOMAS: And that, in understanding your rights,
19 you don't mind talking to us, which you say you don't.
20 You don't mind talking to us at all. You just don't want
21 to put your signature here because you think that you are
22 admitting to something. And that's not what this is.

23 MCGEE: Mm-hmm.

24 THOMAS: It's just, pretty much, do you want to
25 talk to us? And your answer's been yes. That's what that

1 is.

2 REECE: Right.

3 MCGEE: Mm-hmm. --A-murder. A homicide is a
4 murder. Somebody got shot.

5 REECE: Well, we can discuss that in a minute,
6 when we start the conversation.

7 MCGEE: Mm-hmm.

8 REECE: But before we start the conversation, in
9 fairness to you -- now, I'm going to tell you I'm one of
10 the fairest investigators you're ever going to run into.

11 MCGEE: Mm-hmm.

12 REECE: And you see the gentlemen right here? I
13 know them. Him I trained -- I've trained -- and him, we
14 are training, all right? So the kind of person I am,
15 that's the kind of person they are going to be. You feel
16 me? So in fairness to you, I have to make sure that you
17 understand this.

18 By signing this, you ain't incriminating
19 yourself on shit. By signing this, all you're saying is
20 that I wanted to talk -- I agreed to talk to the
21 investigators, and I understood what it is they read me.
22 But if you didn't want to sign it, but you wanted to talk
23 to us, you could still talk to us, but I have to document
24 the reason why you talked to us and did not sign it. Now,
25 that covers me, and that covers you.

1 MCGEE: Mm-hmm.

2 REECE: All right? Because I don't want to get
3 back to Columbia, and then something come up two months
4 later on, and your signature pop up on this thing here,
5 and you not being able to explain how your signature got
6 up on there.

7 MCGEE: Mm-hmm.

8 REECE: If you don't put your signature on that,
9 your signature ain't getting on it. You understand?

10 MCGEE: Mm-hmm.

11 REECE: But if you talk to us, and you don't put
12 your signature on here, the best thing to do -- it covers
13 my ass, their asses, and your ass too -- is for me to
14 write down here why you decided you did not want to sign
15 it, but you wanted to talk.

16 MCGEE: Mm-hmm.

17 REECE: Now, that's the only way this can be
18 handled. You understand?

19 MCGEE: Mm-hmm.

20 REECE: Quite frankly, if we can't do it that
21 way, I'd just as soon get up and walk out of here, and
22 then what happens happens.

23 MCGEE: Mm-hmm.

24 REECE: But I came down here man-to-man, to sit
25 down face-to-face with you and clear this matter up.

1 MCGEE: Mm-hmm.

2 REECE: You're saying somebody's accusing you of
3 a shooting. Well, hell, give us a chance to clear shit up
4 with you.

5 MCGEE: Okay.

6 REECE: Fair enough?

7 MCGEE: Fair.

8 REECE: All right. Now, I need to clear this up
9 one more time with you. If you're not going to sign this,
10 I'm going to right this down, right? Or are you going to
11 sign it?

12 MCGEE: Um, I don't know. I just like don't
13 want to incriminate myself no further in something because
14 -- the reason why I'm saying this is because I've had
15 situations in the past with -- not saying that it's you,
16 but I've had situations in the past with other officers,
17 and they pretty much railroaded me.

18 REECE: Well, I don't -- let me first apologize
19 for those other officers. That was very unprofessional.
20 Do you agree?

21 MCGEE: Yes.

22 REECE: You ain't going to find that on me.
23 That's why I'm -- I just spent the last 15 minutes trying
24 to go over with you about what needs to be done with this.

25 MCGEE: Mm-hmm.

1 REECE: Okay? I ain't going to railroad you.
2 MCGEE: And who is this gentleman here, again?
3 REECE: This is Investigator Reeves.
4 REEVES: Columbia Police Department.
5 THOMAS: And I'm Thomas.
6 MCGEE: Investigator Thomas.
7 THOMAS: Mm-hmm.
8 REECE: Reese.
9 MCGEE: Okay. All right.
10 REECE: Are we straight?
11 MCGEE: Um, I'm --
12 REECE: All right. Am I writing, or are you
13 signing?
14 MCGEE: It doesn't matter.
15 REECE: If it doesn't matter, you sign it, then.
16 They always say a man that has small print is an
17 honest man. You ever heard that?
18 MCGEE: No, sir.
19 REECE: All right. Do me a favor. Put your
20 initials right here. That's only saying that we read that
21 to you, and you understood it.
22 what high school did you go to?
23 MCGEE: Lugoff-Elgin.
24 REECE: Lugoff-Elgin?
25 MCGEE: Yes, sir.

1 Initial, initial these.

2 REECE: Yeah, just put your initials on that if
3 you understood (indistinct):---

4 All right. Now, what I'm going to do is -- it
5 says witness, witness and the time. I'm going to sign my
6 name on here that I witnessed you signed your signature,
7 initialed that, and you agreed to talk with us. He's
8 going to do the same thing, and that investigator there is
9 going to do the same thing. Okay?

10 Now, any time during the middle of the
11 conversation --

12 What time you got?

13 REEVES: 12:24.

14 REECE: All right. Any time, during the middle
15 of the conversation, if you feel the need to stop talking,
16 just stop talking. Just say, I don't want to talk no
17 more.

18 MCGEE: Mm-hmm.

19 REECE: Okay. Now, when you say that, then what
20 that means is that you've exercised your right to remain
21 silent.

22 MCGEE: Mm-hmm.

23 REECE: Okay? And when you do that, under the
24 Constitution, snapo. We got to leave you alone. We got
25 to not talk to you. But you can initiate it again, the

1 conversation.

2 But if you feel that you want -- if you -- let's
3 say you stopped in the middle of a conversation. Then,
4 all of a sudden, you feel that you want to start talking
5 again. You have to initiate the conversation. And you
6 can do that by saying, I want to talk to you all some
7 more, or after I walk out the door, Come on back and talk
8 to me, whatever you feel like saying. But it has to be
9 made clear, okay?

10 The reason it's done like that, that's the way I
11 like to do it --

12 MCGEE: Mm-hmm.

13 REECE: -- is because, after all is said and
14 done, then you'll be able to go home tonight and sleep
15 peacefully because you know in your heart you did the
16 right thing.

17 MCGEE: Mm-hmm.

18 REECE: And with me, I'll be able to go home and
19 sleep peacefully because I know in my heart I did the
20 right thing. And you can't -- when you get out of this
21 place here, you can't go nowhere and say Reece, Thomas,
22 and Reeves was like those other cops, and they railroaded
23 you.

24 MCGEE: Mm-hmm.

25 REECE: All right? I want you to have a most

1 honest experience --

2 MCGEE: Mm-hmm.

3 REECE: -- in spite of everything else. okay?

4 MCGEE: All right.

5 REECE: All right. Now, I'm just going to cut
6 to the chase, okay? I ain't going to try to bullshit
7 around and take you through the hoops and shit and try to
8 trick you into telling me jack shit.

9 MCGEE: Mm-hmm.

10 REECE: Fair enough?

11 MCGEE: That's fair enough.

12 REECE: I'm down here to talk to you about
13 Reverend Tryon Eichelberger.

14 MCGEE: Mm-hmm.

15 REECE: In all fairness to you, I feel you know
16 something about it, and I feel that you just fabricated
17 the story about what you were saying. I came down here to
18 appeal to you to let's move beyond the point that you find
19 yourself at now, because your eyes is welling up already.

20 MCGEE: Yeah (indistinct).

21 REECE: All right. I want to move beyond that
22 point and try to persuade you to let's do the right thing

23 --

24 MCGEE: Mm-hmm.

25 REECE: -- and see what happens down the road.

1 You understand?

2 MCGEE: Oh, I understand.

3 REECE: Now, I ain't talking about no shooting.

4 MCGEE: Mm-hmm.

5 REECE: Eichelberger wasn't shot.

6 MCGEE: Mm-hmm.

7 REECE: I want you to tell me exactly what
8 happened to him, and I want you to tell me how he ended up
9 there in his house, and what happened after that.

10 MCGEE: Mm-hmm.

11 REECE: I want you to tell me how you got to
12 Lugoff or Camden all the way up to Columbia and how you
13 got back there. And let me remind you about this.

14 MCGEE: Yeah.

15 REECE: I don't know you.

16 MCGEE: Right.

17 REECE: And you don't know me.

18 MCGEE: Mm-hmm.

19 REECE: Okay? I did not pull your name and your
20 face out of the clear, blue sky.

21 MCGEE: Right.

22 REECE: Okay? You're down here in this prison
23 here.

24 MCGEE: Mm-hmm.

25 REECE: I know a lot more than what you could

1 ever possibly think --

2 MCGEE: Right.

3 REECE: -- I know.

4 MCGEE: Mm-hmm.

5 REECE: So let's just deal with honesty.

6 MCGEE: Okay.

7 REECE: I'm being honest with you.

8 MCGEE: All right.

9 REECE: Let's deal with honesty --

10 MCGEE: Okay.

11 REECE: -- because sometimes, shit happens, man.

12 You find yourself in the middle of stuff.

13 MCGEE: Mm-hmm.

14 REECE: And (indistinct) one of those snap kind
15 of decisions.

16 MCGEE: Mm-hmm.

17 REECE: Ain't in your right mind, maybe. It
18 just happens --

19 (Unknown sound.)

20 REECE: -- you know. That's better than laying
21 and waiting on somebody, and then doing shit to them. You
22 feel me?

23 MCGEE: Oh, I understand.

24 REECE: You know where I'm going, don't you?

25 MCGEE: I understand clearly.

1 REECE: okay. Can we talk about this?
2 MCGEE: We can talk.
3 REECE: Okay. Don't tell me I don't know about
4 it, because if you do, I know you're lying to me.
5 MCGEE: I don't --
6 REECE: So let's be real.
7 MCGEE: I don't know what you know. I can only
8 tell you what I know.
9 REECE: Okay. Tell me what you know.
10 MCGEE: Um, what I know is I read in the
11 newspaper --
12 REECE: All right, stop. Hold on.
13 MCGEE: Mm-hmm.
14 REECE: Stop. Hold on. Let me take some notes.
15 MCGEE: All right.
16 REECE: Okay? And my notes will reflect what
17 you say.
18 Oh, hell. I ain't even got my notepad. Can
19 y'all right down the notes there?
20 REEVES: Yep.
21 REECE: Okay. All right.
22 My notes -- our notes will reflect --
23 There you go. Did you have my (indistinct)?
24 REEVES: Mm-mm. That's mine.
25 REECE: (Indistinct.) You got (indistinct) for

1 me?

2 REEVES: Mm.

3 REECE: All right. My notes will reflect what
4 you're saying, okay?

5 I got a feeling we're going to be here a while,
6 because I can tell right now, man --

7 MCGEE: Mm-hmm.

8 REECE: I've been doing -- how old are you?

9 MCGEE: I'm 45.

10 REECE: Forty-five.

11 MCGEE: Mm-hmm.

12 REECE: All right. I ain't -- you ain't much
13 younger than I am, but I've been doing this for a while, a
14 long while, and I can tell when God is trying to touch
15 somebody's heart.

16 MCGEE: He's trying, man.

17 REECE: I can tell when a man's got something on
18 his heart that he needs to get off. I can tell. I could
19 tell when I walked in the door and looked in your face --

20 MCGEE: Mm-hmm.

21 REECE: -- that, one, you knew --

22 --- end of audio file ---

23 --- beginning of audio file, overlapping --

24 REECE: -- when God is trying to touch
25 somebody's heart.

1 MCGEE: He's trying, man.

2 REECE: I can tell when a man's got something on
3 his heart that he needs to get off. I can tell. I could
4 tell when I walked in the door and looked in your face --

5 MCGEE: Mm-hmm.

6 REECE: -- that, one, you knew, you expected,
7 sooner or later, for the police to catch up with you.
8 Two, you just been sitting around, busting to get this off
9 your chest because you want to do the right thing. I can
10 guarantee you you want to do the right thing. Your whole
11 body language --

12 MCGEE: Mm-hmm.

13 REECE: -- (indistinct) do that. But you're
14 starting out wrong.

15 MCGEE: Yeah.

16 REECE: But, then, you ain't starting out no
17 differently than anybody else we (indistinct) confront in
18 this kind of situation with us.

19 MCGEE: Mm-hmm.

20 REECE: And we, we use every experience we come
21 across to learn and study a person. And you've got
22 something that you don't want to tell us. And I know you
23 do.

24 MCGEE: Mm-hmm.

25

1 REECE: I can guarantee you do. But you know
2 what? You need to get it off your chest --

3 MCGEE: Mm-hmm.

4 REECE: -- because, to be honest with you, one
5 of these days --

6 MCGEE: Mm-hmm.

7 REECE: -- I'm going to die. You know that?
8 whether it's in a car wreck or somebody will blow my
9 fucking head off or whether I just die of old age, one
10 day, I got to meet the maker.

11 MCGEE: Mm-hmm.

12 REECE: He does, he does, and you do too.

13 MCGEE: (Indistinct.)

14 REECE: And when I meet the maker --

15 MCGEE: Mm-hmm.

16 REECE: -- I want to have a clean slate. I
17 don't want to carry none of this garbage before God to
18 have to deal with it. I'd rather deal with it here in
19 this world than go somewhere else to have to deal with it.

20 And, you know, like I said, sometimes, you find
21 yourself in a situation, and you have to make those snap
22 decisions, and it happened so fast, you wasn't even in
23 control of yourself. And in this world right here, in
24 that situation, in the situation that you know what I'm
25 talking about --

1 MCGEE: Mm-hmm.

2 REECE: -- that makes a lot of difference about
3 the future. You understand, don't you?

4 MCGEE: Yes, I do.

5 REECE: I know you do. So I think before I
6 write down any fabrication --

7 MCGEE: Mm-hmm.

8 REECE: -- or allow any set of bullshit that
9 you're telling me --

10 MCGEE: Mm-hmm.

11 REECE: -- that's why I wanted to cut to the
12 chase. I don't want to waste your time, and I don't want
13 you to waste my time.

14 MCGEE: Right.

15 REECE: It ain't good if you waste my time, and
16 it ain't good if I waste your time because I could be out
17 there doing some other stuff, working on other cases
18 rather than coming down here trying to bullshit you into
19 talking to me.

20 MCGEE: Mm-hmm.

21 REECE: Let's get it off your chest.

22 (Indistinct), I'm begging you, please, let's get it off
23 your chest. Your family needs some closure, and Reverend
24 Eichelberger's family needs some closure. Man up.
25 Explain to me what happened, how it happened, why it

1 happened. Let's move on. Let's deal with your next
2 issue.

3 MCGEE: Mm-hmm.

4 REECE: Can we shake on that and agree that you
5 will do that for me?

6 MCGEE: We can shake on it.

7 REECE: Do you agree? Are we going to agree?

8 MCGEE: I agree.

9 REECE: Let's talk about it.

10 MCGEE: All right.

11 REECE: Tell me what happened. I know you're
12 about to go there again.

13 MCGEE: Listen. Listen, sir. I've got enough
14 to deal with in prison as it is.

15 REECE: Absolutely.

16 MCGEE: And I don't know how my name came up or
17 where it came up, but it did come up. That's the thing.

18 REECE: Mm-hmm.

19 MCGEE: And I want to straighten out why it came
20 up, straighten that out why it came up.

21 REECE: Okay, good. I'm glad you brought that
22 up. Let me ask you this. Why do you think it came up?

23 MCGEE: I have no -- honest to God, I have no
24 earthly idea.

25 REESE: All right, I'll tell you what, then.

1 Here's the deal. Let's make a deal.

2 MCGEE: Mm-hmm.

3 REESE: I'll give you a first thing. You give
4 me something. I give you something else. You give me
5 something.

6 MCGEE: All right.

7 REESE: Truth for truth.

8 MCGEE: Right.

9 REESE: Truth for truth.

10 MCGEE: Mm-hmm.

11 REESE: Fair enough?

12 MCGEE: Fair enough.

13 REESE: You were up there in the area that
14 night. You were spotted by people that night, even that
15 day --

16 MCGEE: Mm-hmm.

17 REESE: -- when Eichelberger got assaulted.
18 That's the truth. Give me something.

19 (Crosstalk.)

20 MCGEE: Yeah.

21 REESE: Hm?

22 MCGEE: That's the truth. I did go by there.

23 REESE: Go by where?

24 MCGEE: Mr. Eichelberger's house.

25 REESE: Okay.

1 MCGEE: I did go by there because I was told to
2 go there when I was in need of some food.

3 REESE: Who told you that, though?

4 MCGEE: People at the store. I asked them was
5 the church open. They said no, but they said Reverend
6 live down the road, and they told me where to go, and I
7 went there.

8 REESE: When did you go there?

9 MCGEE: When?

10 REESE: Yeah, when --

11 MCGEE: I can't remember when I went there.

12 REESE: Was it daylight out?

13 MCGEE: It was daylight. Well --

14 REESE: In between?

15 MCGEE: In between daylight, yeah.

16 REESE: Okay. Mm-hmm. All right, what'd you
17 do?

18 MCGEE: I used his phone to call my wife.

19 REESE: You used Eichelberger's phone to call
20 your wife?

21 MCGEE: Yes, I did.

22 REESE: Which phone did you use? His cell
23 phone, house phone --

24 MCGEE: I used his cell phone to call my wife.

25 REESE: So you saw Eichelberger.

1 MCGEE: Yes, I was face to face with him.
2 REESE: In the daytime?
3 MCGEE: Yes.
4 REESE: And you talked to him?
5 MCGEE: Yes.
6 REESE: What did you all talk about?
7 MCGEE: Um, I just talk about, you know, general
8 stuff, church or, um, his boat right there, and --
9 REESE: His boat?
10 MCGEE: Yeah, he had a boat.
11 REESE: Okay.
12 MCGEE: A fishing boat, bass boat.
13 REESE: Okay.
14 MCGEE: And we talked about general things in
15 general about life and, you know, and straightening up
16 your life and getting right and so forth.
17 REESE: Y'all talked about God?
18 MCGEE: Yes, we did.
19 REESE: Okay. You ever been to Eichelberger's
20 church?
21 MCGEE: No, I never did.
22 REESE: Never?
23 MCGEE: No.
24 REESE: What about the little missionary thing
25 they have over there at (indistinct)? You ever been

1 there? Little church, kind of church (indistinct) they
2 have there?

3 MCGEE: I was told to go there. Do they give
4 out, um, um -- on Monday and Wednesdays, they give out
5 grocery gifts, I believe, is what --

6 REESE: I'm not certain what all the missionary
7 does. I'm just inquiring on --

8 MCGEE: Yes, I've been down that way.

9 REESE: So you've been there a couple times,
10 maybe?

11 MCGEE: Mm-hmm.

12 REESE: Okay. Have you encountered Eichelberger
13 there (indistinct)?

14 MCGEE: No. No.

15 REESE: So you just went for their services?

16 MCGEE: I went to their services, but I never
17 went in. I went up there with my wife, but I never went
18 in.

19 REESE: Okay. Let's go back to the day that you
20 went to visit --

21 MCGEE: All right.

22 REESE: -- Reverend Eichelberger.

23 MCGEE: All right.

24 REESE: You used his cell phone to call your
25 wife.

1 MCGEE: Yes, I did.

2 REESE: Is that right?

3 MCGEE: Mm-hmm.

4 REESE: What kind of conversation did you have
5 with your wife?

6 MCGEE: I told her that -- me and her had a, a
7 argument and a dispute. And I had left home and moved out
8 for a few days, or had left for a couple of days, and I
9 told her I was ready to come back home.

10 REESE: Well, let me ask you this. When you --
11 while you were gone for those couple of days, where did
12 you stay?

13 MCGEE: I was staying with friends that I knew
14 in Columbia that I had did time with before.

15 REESE: And who was that?

16 MCGEE: Um, first names? First name or last
17 name?

18 REESE: Yeah, first name or last name.

19 MCGEE: When I got -- when I had -- I was
20 staying with -- at a place called the Coronet with -- I
21 don't really know people by their first names and last
22 names, but I was staying there with people that I have did
23 time -- that I did time with before, and --

24 REESE: At the Coronet?

25 MCGEE: Did time with before at the Coronet?

1 REESE: No, did you -- you were staying with the
2 person at the Coronet?

3 MCGEE: I stayed with a person at the Coronet
4 one time, and the next day, I stayed --

5 REESE: I'm talking about the day you were up
6 there with Eichelberger --

7 MCGEE: No.

8 REESE: -- and you used his phone.

9 MCGEE: No.

10 REESE: Well, then -- okay, you left home
11 because you're mad with the old lady.

12 MCGEE: Right.

13 REESE: They can piss you off sometimes. I
14 know. I got one too.

15 MCGEE: Mm-hmm.

16 REESE: And then you went up to Columbia, and
17 you stayed for a couple days before you went back home to
18 your wife.

19 MCGEE: Mm-hmm.

20 REESE: Right?

21 MCGEE: Yeah.

22 REESE: Have I got that right?

23 MCGEE: That's correct.

24 REESE: Okay. During that time, who did you
25 stay with, is what I'm asking you.

1 MCGEE: Um, the person's name, I don't know.

2 The people -- I mean, they go by street names. I don't
3 know.

4 REESE: Give me the street names. Sometimes
5 (indistinct).

6 MCGEE: I can't recall it. Oh, God, what name
7 is it? Um --

8 REESE: Oh, that's all right. We can move on.
9 Don't stress yourself.

10 MCGEE: Okay.

11 REESE: This ain't about nothing stressful.

12 MCGEE: All right.

13 REESE: So did you get food from Eichelberger
14 that day?

15 MCGEE: Yeah.

16 REESE: What did he give you?

17 MCGEE: He gave me a -- a, uh, a, um -- a cup
18 of, uh, water; a sandwich; and a, um -- a cup of water and
19 a sandwich.

20 REESE: A cup of water and a sandwich?

21 MCGEE: Mm-hmm.

22 REESE: All right. And then, when -- do you
23 remember what time of day that was?

24 MCGEE: Um, I don't -- I don't recall the
25 correct time. I don't. But I know it was after 12:00.

1 REESE: After 12:00 in the day?

2 MCGEE: Yeah.

3 REESE: And it's daylight?

4 MCGEE: Mm-hmm.

5 REESE: All right. So between 12 and 1? Is
6 that fair to say, or 12 and 2?

7 MCGEE: Yeah, about that area, right.

8 REESE: All right. And this -- do you remember
9 the date this was?

10 MCGEE: No, sir, I don't remember.

11 REESE: And do you remember the month?

12 MCGEE: No, sir, I don't remember the month.

13 REESE: All right. But this was, um -- was it
14 the same day that you heard on the news about
15 Eichelberger?

16 MCGEE: No. I heard about it about -- about,
17 maybe, a month and a half or two months later.

18 REESE: About a month and a half to two months
19 later?

20 MCGEE: And I didn't see it on the news. I read
21 it in the newspaper when I went to fill out an application
22 at a company. And I went in there to table --

23 REESE: Okay. Can I stop you?

24 MCGEE: Go ahead.

25 REESE: Okay, because I kind of thought we just

1 shook on --

2 MCGEE: Mm-hmm.

3 REESE: -- truth for truth and that kind of
4 shit.

5 MCGEE: All right.

6 REESE: All right? So let me give you another
7 truth, see if I can get some more truth out of you because
8 what you just did just now was you lied to me. You tried
9 to take me down the road again.

10 MCGEE: (Indistinct.)

11 REESE: That ain't right.

12 MCGEE: (Indistinct.)

13 REESE: But that ain't important. What's
14 important --

15 MCGEE: I told you everything the truth just
16 now.

17 REESE: Okay, well, I'm going to give you
18 another piece of truth.

19 MCGEE: All right.

20 REESE: All right? Um, let me see. Which one
21 do I want to release to you now? Mm. Two more people put
22 you in the area.

23 MCGEE: Okay.

24 REESE: Two more.

25 MCGEE: All right.

1 REESE: One a drug house, and one (inaudible),
2 don't even know you, picked you out of a lineup --
3 MCGEE: -- Mm-hmm.
4 REESE: -- same day. Go past 12:00 in the day.
5 MCGEE: Mm-hmm.
6 REESE: Let's go on up to around -- let's just
7 say 6:00.
8 MCGEE: Mm-hmm.
9 REESE: Okay? Because you were still in the
10 area.
11 MCGEE: Yes, I was.
12 REESE: All right.
13 MCGEE: Mm-hmm.
14 REESE: Well, can't we go up to around 9:00?
15 You were still in the area.
16 MCGEE: We can. We can, yes.
17 REESE: Or we can go up to 11:00.
18 MCGEE: Mm-hmm.
19 REESE: You were still in the area.
20 MCGEE: Right.
21 REESE: Can we go to 11:30?
22 MCGEE: Right.
23 REESE: You were still in the area. You were
24 still in the area around Eichelberger's house. Okay, I
25 just give you truth.

1 MCGEE: Okay.

2 REESE: Give me something else, now. What was
3 you doing in the area at 11:30 around Eichelberger's
4 house?

5 MCGEE: Okay. Um, to tell you the truth --

6 REESE: Yes, sir?

7 MCGEE: -- I was not around Reverend
8 Eichelberger's house at 11:30 --

9 REESE: Okay.

10 MCGEE: -- at 11:30 at nighttime.

11 REESE: Okay.

12 MCGEE: I was still up there in that area when
13 you go down Farrow Road. I know where you're talking
14 about. You're talking about a house on the left-hand
15 side. It's a drug house. That's where you're talking
16 about.

17 REESE: All right, well, tell me how to get
18 there so we'll be on the same sheet of music here.

19 MCGEE: Okay. You come down Farrow Road. The
20 gas station is right here. You cross the train tracks,
21 the gas station's right there in front of the train
22 tracks. Come off of, what, Fontaine or Park Lane,
23 whichever one.

24 REESE: Yeah, the big gas station, lit up at
25 night, Gas Mart.

1 MCGEE: Yes.

2 REESE: Gas Mart.

3 MCGEE: Right. Make a left right here. Go all
4 the way down, and veer off to the right, first right
5 before you pass -- before you go to the elementary school.
6 There's a drug house right down there. The same guy that
7 had the motel room, he stay at that drug house.

8 REESE: Well, you got to help me, because I
9 don't know who that person is. You could be talking about
10 drug smoke blow up your ass.

11 MCGEE: I know.

12 THOMAS: Give us a first name, last name, street
13 name. Give us something. You should at least know the
14 street name.

15 REESE: Well, describe him.

16 MCGEE: Okay. He's a black male, about,
17 probably in his late 20s or -- no more than late 20s,
18 between 28 and 31.

19 REESE: Okay. Is he heavier than you?

20 MCGEE: About my same size.

21 REESE: About your same size?

22 MCGEE: About my same size.

23 REESE: Okay.

24 MCGEE: And, um, he, um -- I don't know his
25 name.

1 REESE: What kind of hairstyle does he wear?
2 MCGEE: He keep his hair cut real long.
3 REESE: Okay, cut real long?
4 MCGEE: Mm-hmm.
5 REESE: Okay.
6 MCGEE: And, um, he, um -- his girlfriend drives
7 a, I think white or a gray Escalade, Cadillac Escalade.
8 REESE: Well, you understand, that could mean 50
9 million men out there, so you got to help me --
10 MCGEE: (Indistinct.)
11 REESE: Well, give me a name.
12 MCGEE: I don't know the guy's name. I don't
13 know his name. I haven't, I haven't been that way in, in
14 -- God, in eons.
15 REESE: What kind of work does this guy do?
16 MCGEE: He claimed he had a little, small
17 landscaping business.
18 REESE: A landscaping business?
19 MCGEE: Mm-hmm.
20 REEVES: Is he a drug --
21 MCGEE: Cutting yards and so forth.
22 REEVES: Is he a drug dealer?
23 MCGEE: Yeah, he's a drug dealer.
24 REEVES: How often have you bought drugs from
25 him?

1 MCGEE: Um --

2 REEVES: On multiple occasions?

3 MCGEE: About four, four occasions, yes.

4 REESE: Did he -- did you -- he sell you drugs?
5 You bought drugs from him?

6 MCGEE: I have purchased drugs from him before.

7 REESE: And what kind of drugs would that be?

8 MCGEE: It was marijuana and crack cocaine.

9 REESE: So you're on crack cocaine (indistinct)?

10 MCGEE: I was using crack cocaine at one time.

11 REESE: And when did you stop?

12 MCGEE: But -- when did I stop?

13 REESE: Yeah.

14 MCGEE: About -- oh, about a year and -- over a
15 year -- it's been over a year now. I don't know, but it's
16 been over a year now.

17 REESE: It's been over a year?

18 MCGEE: Yeah. I pass drug -- I'll pass drug
19 tests.

20 REESE: You pass drug tests? Is that why you
21 stopped?

22 MCGEE: No, I stopped because I have a five-
23 year-old, and I want to, I want to be able to be a true
24 dad to him and not somebody out in the street anymore,
25 ripping and running or whatever.

1 REESE: Well, let me ask you this. What if I
2 were to tell you that during the time of May, April, so
3 forth, there is information that you hadn't quite stopped
4 yet?

5 MCGEE: Mm-hmm.

6 REESE: You understand me?

7 MCGEE: May or April?

8 REESE: Yeah, during that time frame, that you
9 were still out there. You know what I'm saying? And --

10 MCGEE: Last year?

11 REESE: Yeah, last year.

12 MCGEE: Okay.

13 REESE: All right. What if I were to tell you
14 that I have information that, you know, at that point, you
15 hadn't stopped yet, that you still had those cravings, and
16 you were still out there doing that? Would that be an
17 incorrect statement?

18 MCGEE: No, it would not be an incorrect
19 statement.

20 REESE: Okay.

21 (Indistinct, crosstalk.)

22 MCGEE: -- incorrect statement because --

23 REESE: See, when people say a year -- and I'm
24 not going to cut you too close, but when people say a year
25 sometimes, sometimes to people, six months is a year. So,

1 you know, if you stopped, say, in August of last year or
2 maybe September (indistinct) a year now. People say a
3 year, and it might include all of last year. So just for,
4 for the sake of clarification right now, in the January
5 through, let's say, April, May time frame, you were still
6 smoking from time to time. Is that right?

7 MCGEE: On and off, I was.

8 REESE: (Indistinct.)

9 MCGEE: On and off.

10 REESE: I just wanted to clear that up.

11 MCGEE: But it wasn't every week, now.

12 REESE: Okay. All right. Just -- but just
13 clearing up that year thing.

14 MCGEE: All right.

15 REESE: All right, just clearing up that year
16 thing.

17 Frankie, you got a CDL license.

18 MCGEE: Yes, I do.

19 REESE: Where did you go to school for your
20 license?

21 MCGEE: Um, well, this is my third time getting
22 my CDL back, and, um, I first obtained my CDL in 1989.

23 REESE: Okay. And when is the last time you
24 went to a school and got it?

25 Lance, do you have a (indistinct)? Either one

1 of you.

2 when is the last time went?

3 MCGEE: Less than two years ago.

4 REEVES: The ones you gave me?

5 REESE: Yeah, just one.

6 Less than three years ago?

7 REEVES: You talking about the tool?

8 REESE: Yeah, you got a long one?

9 REEVES: Let me see.

10 REESE: Frankie, I want to show you something.

11 As I told you, (indistinct) I don't want to waste your
12 time.

13 That's fine. Either one of them.

14 Frankie, look at this for me, now. Do you know
15 what that is?

16 MCGEE: It's a, um, it's a tool.

17 REESE: Yeah, what kind of tool?

18 MCGEE: Um, a pry bar.

19 REESE: A pry bar?

20 MCGEE: Mm-hmm.

21 REESE: What does it pry?

22 MCGEE: Sir, I don't know what (indistinct). I
23 mean, I know you're trying to build a case on me and
24 everything.

25 REESE: No, I'm trying to build a case, not

1 necessarily on you.

2 MCGEE: Mm-hmm.

3 REESE: I told you my job is to implicate you or
4 to clear you.

5 MCGEE: Okay.

6 REESE: And you want to help me clear you.

7 MCGEE: Okay.

8 REESE: Tell me what that is.

9 MCGEE: I don't know what it is.

10 REESE: But you just said a pry bar. Why did
11 you say a pry bar?

12 MCGEE: Because when I was in the army, we used
13 stuff like this to pry stuff with.

14 REESE: Okay. I'm showing -- Lance, I'm showing
15 Frankie what's called a wench bar to you, a photograph we
16 took from a winch bar. Don't you recognize that as a
17 winch bar?

18 MCGEE: No, I don't. I recognize that as --

19 REESE: Have you ever used one of those?

20 MCGEE: No, sir, I haven't.

21 REESE: You drive 18-wheelers, right?

22 MCGEE: Yes, sir.

23 REESE: You got your CDL license, right?

24 MCGEE: Yes, sir.

25 REESE: You used to work for C Ray --

1 MCGEE: Miles.

2 REESE: -- Miles.

3 MCGEE: Mm-hmm.

4 REESE: Didn't you have the chance to use those
5 kind of tools down at C Ray Miles.

6 MCGEE: No, sir, we didn't have those.

7 REESE: Well, if you drive an 18-wheeler,
8 wouldn't you know what that is, man? Come on, now. You
9 told me you were going to be honest. Let's be --

10 MCGEE: I'm being honest. I don't --

11 REESE: You're not being --

12 MCGEE: We don't use these kind right here. We
13 use the long pry bars with the screwdriver tips on them.

14 REESE: With the screwdriver tips?

15 MCGEE: Yes.

16 REESE: Do you know what that is?

17 MCGEE: No, I don't know what that is.

18 REESE: Okay. All right. How did you get to
19 Columbia on the day that you were at Reverend
20 Eichelberger's yard?

21 MCGEE: I came up there early that morning,
22 caught a ride up there from -- I believe (indistinct) gas
23 station, caught a ride up there.

24 REESE: Who did you catch a ride with.

25 MCGEE: I don't know who it was. I was just

1 asking people are they going towards Columbia, Are you
2 going towards Columbia?

3 REESE: -Okay, well, I'm going to have to hit you
4 with another piece of truth.

5 MCGEE: All right.

6 REESE: I'm hoping you'll give me some truth.

7 MCGEE: All right.

8 REESE: Okay? How about you stole a truck, an
9 18-wheeler, an came up there the day before, maybe? How
10 about that? That's true, isn't it?

11 MCGEE: No, sir, that's not --

12 REESE: You're on video.

13 MCGEE: Well --

14 REESE: You're on fucking video doing it.

15 MCGEE: I don't know if I'm in video or not, but
16 I didn't steal no 18-wheeler the day I went up there --

17 REESE: You didn't?

18 MCGEE: -- because if I had --

19 REESE: Well, how about the day before?

20 MCGEE: The day before?

21 REESE: Yes, sir.

22 MCGEE: No.

23 REESE: Okay.

24 We did a search warrant on your house.

25 MCGEE: Mm-hmm.

1 REESE: Some of the clothes is in this video,
2 and also, two people looked at the video and identified
3 you as the person being in this video. Matter of fact,
4 did the Kershaw County police or Camden police, one of
5 them, don't they (indistinct) talk to you about this?

6 MCGEE: No.

7 REESE: They didn't? None of them -- they don't
8 talk to you about it?

9 MCGEE: No.

10 REESE: Well, I'm talking to you about it now.

11 MCGEE: I understand.

12 REESE: Okay. Tell me about how you got in that
13 truck, and you knocked down a damned fence, and you drove
14 up to Columbia. Tell me where you parked the truck at
15 when you got up to Columbia, now, because I'm still under
16 the impression that you are going to be honest and
17 straightforward with me because that's the way I'm being
18 with you.

19 MCGEE: Mm-hmm.

20 REESE: Okay? Now, if you insist on lying, the
21 only face I can put on you is that you're a liar.

22 MCGEE: Mm-hmm.

23 REESE: And I don't want to do that. I really
24 would like to say that you were an honest man, and you own
25 up to what you have done, whether it was a mistake or

1 whether you meant to do it. I would like to say shit
2 happened so fast, and it all was a mistake. But it ain't
3 no mistake you sitting here lying to me. I told you I
4 didn't pull your name out of the sky.

5 MCGEE: Mm-hmm. I know how people are.

6 REESE: All right. Well, this ain't got shit to
7 do with people.

8 MCGEE: Mm-hmm.

9 REESE: You're going to be surprised what got us
10 down here. It ain't got a damned thing to do with people.
11 But right now, I'm trying to get past the lies that you
12 are telling me.

13 THOMAS: It's about you, bro.

14 REESE: It is about you.

15 THOMAS: I feel -- it's not about people. It's
16 not about other people. And I want you to hear me, all
17 right? I want you to hear me, all right, because I'm
18 watching you, and you're answering Kevin's questions,
19 Investigator Reese's questions with your mouth
20 (indistinct).

21 MCGEE: Mm-hmm.

22 THOMAS: All right. And ever since you signed
23 that paper and right afterward, we've (indistinct) to you
24 in detail why we're here and who it involves and where we
25 put you. Your eyes have been giving up much more than

1 your mouth. Are you understanding me?

2 MCGEE: I hear you.

3 THOMAS: Your body language and everything
4 changed instantly, okay? And it appears that
5 (indistinct), all right, you're more open, but you still
6 (indistinct) know the details of this thing, how deep this
7 thing can go, all right?

8 what I'm telling you is it's already deep, and
9 we're trying to put a face on it, all right? We're trying
10 to see if it was just an opportunist thing that happened.
11 One was surprised, and one acted in a certain way, and you
12 didn't mean it to go down like that. You understand me?
13 That's what we're trying to see, you know, rather than it
14 seems that it might be a monstrous type scenario where
15 there's all intentions of killing somebody or beating
16 somebody. You understand me? That's what we're after.
17 We're here trying to --

18 REESE: I've already talked with your wife, and
19 I'm going to tell you what I told her.

20 MCGEE: Mm-hmm.

21 REESE: The truth. I don't think it's something
22 that (indistinct) to do. (Indistinct) together since
23 you're sitting -- I sit down in front of you. I think it
24 was one of those spur-of-the-moment things.

25 MCGEE: Mm-hmm.

1 REESE: You know, it was like (indistinct) flies
2 by your head --

3 (Claps.)

4 MCGEE: Mm-hmm.

5 REESE: I was one of those spur-of-the-moment
6 things. You do shit, and you don't even have time to
7 think about it. I'm convinced in my heart that that is
8 the way this happened, but I can't get to that point,
9 which, I believe, may be the truth, if you insist on
10 sitting here, lying to me.

11 MCGEE: Mm-hmm.

12 REESE: Now, breathe. Let's move beyond your
13 fabricated version of it, and give me the truth, and then
14 let's see if your truth jibes with what I got, because
15 what I got is enough to hurt you real bad, and the only
16 way you can get hurt any less is by the truth. I know
17 goddamned well you understand what it is I'm saying. I'm
18 talking man-to-man, face-to-face, no -- chest-to-chest,
19 heart-to-heart. You need to come clean with the truth.

20 Now, this has been on your heart and your mind
21 ever since it happened. You dragged your family in the
22 middle of this. Don't (indistinct) to suffer on account
23 of you. Man up. It's been out there too long. You've
24 been out there too long. Man the fuck up, and deal with
25 this shit now. And you're nodding your head, and you're

1 (indistinct). That means to me that you know what I'm
2 talking about, and you know what I'm saying. Can you be
3 so heartless as to try to drag this thing on out? What do
4 you plan on doing? Living with it for the rest of your
5 life? I don't think you'll be able to do that.

6 MCGEE: I don't feel like that, sir, at all.

7 REESE: You're about to fix your mouth and lie
8 to me.

9 MCGEE: No. You can, you can, you can curse as
10 me as loud as you want or whatever it is that you want to
11 do, but whatever it is that you're out to do, do whatever
12 it is you want to do because if I did something, I'll man
13 up to it. If I didn't do it, I'm not going to man up to
14 it.

15 REESE: Would you like to shake on that?

16 MCGEE: I can shake on it.

17 REESE: All right, let's shake on it.

18 MCGEE: No, I'm not going to shake on it.

19 REESE: Let's shake on it, that if you did
20 something, you'll man up --

21 MCGEE: I'm going to tell you why.

22 REESE: Tell me why.

23 MCGEE: I'm going to tell you why.

24 REESE: Tell me why, son.

25 MCGEE: You come in here to -- I didn't go to

1 college, and I know you did, but you come in here to
2 bulldoze me in a mental way or to try to get me to coerce
3 myself into saying something or doing something that will
4 put me in jeopardy. But I know for a fact I'm not worried
5 about none of that.

6 REESE: Why not?

7 MCGEE: Because when you was out looking for
8 whoever did that, and then you started coming up with,
9 with information, looking for somebody else to
10 (indistinct). It's like the other police. They always
11 come back to somebody who, who got a record, like me, got
12 a record. So let's, let's, let's go after him, after him.

13 REESE: Now, I'm going to pause you for a
14 minute.

15 MCGEE: Mm-hmm.

16 REESE: All right. I see what your allegation
17 is.

18 MCGEE: Mm-hmm.

19 REESE: And if that's your frame of mind, then I
20 understand what you're thinking, okay, if that's your
21 frame of mind. All right?

22 MCGEE: But --

23 REESE: Hold on. Hold on. Let me finish.

24 MCGEE: Sure.

25 REESE: Hold on and let me finish.

1 MCGEE: (Indistinct) done jump on me. Now
2 you're going to (indistinct) --

3 REESE: No, no. I'm just -- I'm just commenting
4 to you on your comment.

5 MCGEE: Mm-hmm.

6 REESE: All right? We're talking as men here.
7 You understand? And, you know, when you start talking
8 about railroading or coming up with things off that nature
9 against these two investigators, all right, he's
10 (indistinct). He's picking up on what we do. All right.
11 What we don't do, my brother, is railroad anyone. You
12 understand me?

13 MCGEE: Well, I --

14 REESE: We don't, we don't pick a person out of
15 a hat because you have a criminal record. You live in
16 Camden. Do you know how many people in Columbia have
17 criminal record that we could very well have said, Hey,
18 this guy's got a criminal record. This guy's got a
19 criminal record? You understand me? I got an ass of
20 people in Columbia --

21 MCGEE: Mm-hmm.

22 REESE: -- that I could choose from where I
23 wouldn't have to ride the fuck out to Wateree and
24 interview you, sir, in reference to this case if we were
25 picking people because of criminal records. That's not

1 what we're doing, sir. All right? What we're doing is
2 this. There is a pronounced amount of information that we
3 have, okay, evidence and so forth, that leads us to come
4 to Wateree to speak to you.

5 MCGEE: Okay.

6 REESE: Be clear about that.

7 MCGEE: I understand.

8 REESE: All right? Be clear about that. It's
9 not railroading. It's not trickery. All right? It's not
10 persuasion. All right? It is hardcore facts that have
11 led us right here.

12 MCGEE: Mm-hmm.

13 REESE: All right. If it's a loud voice or tone
14 about those facts being addressed to you being said to
15 encourage you to be truthful, or whether it is in any
16 other tone, it is not trickery. It is not picking you out
17 of the had. (Indistinct) facts that have us talking to
18 you. All right? We have a saying that we will not do
19 anything to any man, woman, or child, from 8 to 88,
20 without looking them in the eye and giving them an
21 opportunity to talk to us.

22 MCGEE: Mm-hmm.

23 REESE: That's why we're here. That's the only
24 reason. Because we have a code about what we do. This is
25 not everybody. You understand me? Some people will send

1 papers down here, wanting to see you. They want to know
2 what you look like. But because whatever they may have
3 led them to you, you got warrants and shit on you. You
4 feel me? All right. We never did that. All right?

5 MCGEE: Mm-hmm.

6 REESE: Eight to 88, we will sit in front of
7 you, and we will give you an opportunity to explain to us
8 what's going on in this given situation because you've
9 become a person of interest or whatever you may be. You
10 feel me?

11 MCGEE: I feel you.

12 REESE: That's what this opportunity right here
13 is.

14 MCGEE: Mm-hmm.

15 REESE: It's an opportunity to face you, ask you
16 specific questions --

17 MCGEE: Mm-hmm.

18 REESE: -- all right, ask you to be truthful
19 with those questions so we can decide exactly what went on
20 here. Is it, in fact, an incident or an accident? You
21 understand me?

22 MCGEE: Mm-hmm.

23 REESE: All right. Is it the instant reaction,
24 like my partner's been so adamantly stating to you, which
25 resulted in something that was un-fucking-expected? All

1 right? Which we believe that's what happened, all right?
2 But we have to speak to you, all right? And we have to
3 get your understanding on what happened out there, man.
4 All right? And we know it's on your heart. I'm going to
5 tell you why we know it's on your heart. Because we've
6 spoken to a number of people --

7 MCGEE: A number --

8 REESE: -- that have mentioned that something's
9 on your heart.

10 MCGEE: (Indistinct) on my heart.

11 REESE: Okay? All right. Which encourages us
12 to come speak to you further, all right? And that's why
13 we're here. No railroading. No picking you because you
14 have a record. I don't know you from dirt. My partner
15 doesn't know you from dirt. And you live in Camden. We
16 prefer not to ride out to this damned country and stay in
17 the city and do what we got to do. Okay?

18 So, now, with all that said, let's talk about
19 the truth of why we're here. All right?

20 There was an incident at the Eichelbergers'.
21 All right? We have evidential facts that say that that
22 incident and those actions happened by you. Have you ever
23 been in Reverend Eichelberger's house?

24 MCGEE: (Indistinct.)

25 REESE: Have you ever been in Reverend

1 Eichelberger's house?

2 MCGEE: I've been into the porch part.

3 REESE: In the porch part?

4 MCGEE: Mm-hmm.

5 REESE: Is that where you met Reverend
6 Eichelberger at, in the porch part of his house?

7 MCGEE: No, sir, I met him in his yard.

8 REESE: Okay. And you've never been beyond the
9 porch part.

10 MCGEE: No, sir.

11 REESE: Now, do you know any of your friends
12 that have been beyond the porch part and into Reverend
13 Eichelberger's house?

14 MCGEE: Any of my friend?

15 REESE: Yes, sir.

16 MCGEE: I really wouldn't say I have any friends
17 in Columbia.

18 REESE: Okay. So, in other words, you wouldn't
19 know anybody that has been inside Reverend Eichelberger's
20 house that would be associated with you.

21 MCGEE: No, sir. I don't.

22 REESE: Okay. Well, good. Well, let me ask you
23 this, son.

24 MCGEE: Yeah.

25 REESE: This is going to be the whammy here.

1 MCGEE: All right.

2 REESE: All right? Now, if I hit you with the
3 whammy, would you go on and tell me the truth then?

4 MCGEE: If you're hitting me with the whammy --

5 REESE: Mm-hmm.

6 MCGEE: Go on and hit me with the whammy.

7 REESE: Would you go on and tell me the truth?

8 MCGEE: I'm not going to -- I'm not going to sit
9 here.

10 REESE: I'm not asking for a lie. I'm not
11 asking for a bunch of fucking confusion.

12 MCGEE: Mm-hmm.

13 REESE: I'm just asking, if I hit you with the
14 whammy, would you tell me the truth?

15 THOMAS: It's a very direct question.

16 MCGEE: You already know the truth.

17 REESE: Yes, sir, I know the truth. I'm trying
18 to get you to tell me the truth.

19 MCGEE: You already know the truth.

20 REESE: All right. If you didn't assault
21 Reverend Eichelberger, which is what you're telling us --
22 is that right?

23 MCGEE: Yes, sir.

24 REESE: Did you hit Reverend Eichelberger? Did
25 you ever attack Reverend Eichelberger?

1 MCGEE: No, sir, I didn't.

2 REESE: All right. Why in the world, then,
3 would you find your fucking DNA in a pair of socks? How
4 about the goddamned sock that you wore that night? You
5 hit Reverend Eichelberger with that tool that I just
6 showed you. Now, that's the whammy.

7 MCGEE: That's not the whammy.

8 REESE: Well, what's the whammy?

9 MCGEE: That's not the whammy.

10 REESE: Well, give me your whammy. You hit me
11 back on a whammy.

12 MCGEE: Those same socks -- now, if you had did
13 your investigation properly --

14 REESE: Now we're talking. Tell me what I
15 should have done.

16 MCGEE: (Inaudible) socks that you got, you --
17 did you find them socks right there by that store, by
18 that, by that, by a (indistinct) or something? Because
19 that's where I took them off at, right there. That's
20 where they were token (sic) off at right there. I left
21 them right there because when you're walking, and you've
22 got athlete's foot, and you take your -- and your feet is
23 like my feet are right now -- like these socks on I got
24 right here --

25 REESE: Uh-huh.

1 MCGEE: -- when I take these socks off, as long
2 as I had them on, I will be throwing them away too.

3 REESE: You're taking you took the socks off,
4 and you threw them away.

5 MCGEE: Yes.

6 REESE: And you did that intentionally because
7 of athlete's foot.

8 MCGEE: Yes.

9 REESE: Okay. All right. So you're --

10 MCGEE: (Indistinct.)

11 REESE: -- you're trying to tell me that the
12 sock we recovered with your DNA on it --

13 MCGEE: That came from beside the light pole,
14 yes.

15 REESE: They came from beside the light pole?

16 MCGEE: Mm-hmm.

17 REESE: Because that's where you took them off
18 at.

19 MCGEE: Yeah, right here, when I was
20 (indistinct).

21 REESE: You took them off for what reason?

22 MCGEE: I took them off because my feet were
23 stink from walking. My feet were stink, and my feet
24 swell, right? And so --

25 REESE: Would there be any other reason for your

1 socks to be there, outside of your feet stinking, and you
2 having to pull your socks off?

3 MCGEE: I took them off, and I left them there.

4 REESE: That's the only reason?

5 MCGEE: There wasn't no reason for me to keep
6 them with me.

7 REESE: Okay. Well, I got one other question
8 for you.

9 MCGEE: Mm-hmm?

10 REESE: So that would be why I would find your
11 DNA on those socks. Is that what you're saying?

12 MCGEE: They were my socks, yes.

13 REESE: They were your socks.

14 THOMAS: Describe them so I'll make sure that we
15 got the right --

16 REESE: When you describe them, I got one other
17 question.

18 MCGEE: I don't know. I guess they're just
19 white socks. I think they're white socks.

20 REESE: Well, are they short, long, footies,
21 what?

22 MCGEE: No, they wasn't no footies. I don't
23 wear footies.

24 REESE: Are they like basketball socks, or --

25 MCGEE: Um, I can't remember exactly.

1 REESE: They're white, gray, blue? What color
2 were they?

3 MCGEE: I think they were -- they were either
4 white or gray.

5 REESE: Either white or gray? Okay, kind of
6 like basketball socks, sweat socks. Wasn't dress socks.

7 MCGEE: No.

8 REESE: So we'll make sure we're talking about
9 the same socks.

10 All right. So you willingly pulled your socks
11 off and put them by the light pole or something, you were
12 trying to tell me.

13 MCGEE: I was sitting there.

14 REESE: You were sitting there by the light
15 pole.

16 MCGEE: And I took them off.

17 REESE: And you took them off. Okay. All
18 right. And so that's why your DNA would probably be on
19 those socks, because you've got athlete's feet. Is that
20 right?

21 MCGEE: Yes, I do.

22 REESE: One other question. All right, if you
23 can answer this one for me, then maybe we have to leave,
24 since you're clearing up these socks for me.

25 MCGEE: Mm-hmm.

1 REESE: Why is Reverend Eichelberger's blood on
2 your socks, all over the socks?

3 MCGEE: Now, now, now wait a minute. Just
4 because his blood is on my socks --

5 REESE: Answer that question because
6 (indistinct) your socks --

7 MCGEE: When I left the socks --

8 REESE: These are your socks.

9 MCGEE: -- but then --

10 REESE: Eichelberger's blood on your socks.

11 MCGEE: Mm-hmm.

12 REESE: All right. Now, I don't care how bad
13 somebody's on crack. I don't care how bad somebody's on
14 drugs, all right? Nobody's going to pick up some sweaty,
15 athlete's foot socks, all right, from a light pole some
16 where specifically to do anything.

17 THOMAS: And you know that.

18 REESE: Okay?

19 THOMAS: You wouldn't do it, and you wouldn't do
20 it.

21 REESE: So -- all right, so the real question --
22 and we're talking about truth here, now. I mean, what
23 you're doing is this. I'm going to tell you what you're
24 doing. Your heart is trying to clear this up, you
25 understand, but your mind is battling with you. And I'm

1 telling you to go with your heart because you're doing the
2 right thing. You're telling some facts -- you understand
3 me -- that I believe put you where you're supposed to be,
4 and so forth, but you're switching it a little bit to try
5 to clear yourself. You understand me?

6 MCGEE: Okay. Go ahead.

7 REESE: And you can't do that, sir.

8 MCGEE: Mm-hmm.

9 REESE: All right? You got to come straight
10 forward with it. All right? There is no way Reverend
11 Eichelberger's blood is on your socks.

12 MCGEE: Mm-hmm.

13 REESE: All right, let me hit him with -- let me
14 hit him with another one, Thomas, since what he's saying
15 ain't helping.

16 THOMAS: (Indistinct) true, bro.

17 REESE: Listen to this. I'm going to hit you
18 with a what-if.

19 MCGEE: Mm-hmm.

20 REESE: Okay? What the fuck if, before you
21 slipped your socks on your hands, and you touched that
22 bar, your DNA got on that?

23 MCGEE: Mm-hmm.

24 REESE: What the fuck if? What if, when you
25 took that bar out of that truck that you stole and brought

1 to Columbia, you fucked around and touched the bar. Maybe
2 you put some shit on my hands so it'll act like gloves.
3 Your ass is nailed to the wall. Come down off the wall,
4 son. Just be truthful.

5 MCGEE: Mm-hmm.

6 THOMAS: It's time, man. You understand me?
7 There's no explaining this type of stuff away.

8 MCGEE: Okay, um --

9 THOMAS: All right? Let's be truthful.

10 MCGEE: Um, I'm going to be truthful with you.
11 If you want to go ahead and charge me with this, like you
12 already did, go ahead and charge me. But as far as being
13 honest and knowing that I did that, I didn't do that. I
14 did not do that.

15 REESE: Well, who did it?

16 MCGEE: I don't know who did it. I didn't have
17 nothing to do with it.

18 REESE: All right. Put yourself in my position.
19 What would you do? If you were the police, and I was you,
20 what would you do? Would you believe any goddamned thing
21 I just said? Would you?

22 MCGEE: I would believe -- I would believe what
23 is happening today concerning the way things are today.
24 Now, this is what I would believe, sir. If you have an
25 individual that has -- matter of fact -- anyway, I'm not

1 going to say that.

2 REESE: Say what you wanted to say.

3 THOMAS: (Indistinct.)

4 MCGEE: Matter of fact, if you have an
5 individual that's telling you what he did, and that's what
6 I did, and then you're going to team up, and you jump on
7 me, then you jump on me for me to say that I took a bar
8 and went down there and killed Reverend Eichelberger,
9 which I did not do -- I didn't do that. Now, I'm guilty
10 for being on drugs. Well, I used to be on drugs.

11 THOMAS: I got a question for you.

12 MCGEE: But -- let me finish. I'm not guilty
13 for murdering Reverend Eichelberger or a homicide.

14 THOMAS: Let me ask you this -- let me ask you
15 this question, man.

16 MCGEE: But I've been in other situations, but
17 not this one.

18 REESE: He's trying to ask you a question.

19 THOMAS: I got a question for you.

20 MCGEE: Go ahead, sir.

21 THOMAS: What if I told you that I spoke to
22 someone --

23 MCGEE: Mm-hmm.

24 THOMAS: -- who literally said that you asked --
25 or you had something on your heart in the frame of, what

1 if I told you I hurt somebody?

2 MCGEE: I did hurt somebody.

3 THOMAS: All right, or hit somebody?

4 MCGEE: I did hit somebody.

5 THOMAS: All right. And I kind of want to get
6 this off my heart.

7 MCGEE: Mm-hmm.

8 THOMAS: All right. But (indistinct) didn't
9 want to hear what you had to say --

10 MCGEE: Mm-hmm.

11 THOMAS: -- or what have you. Did that, did
12 that conversation ever happen with anybody?

13 MCGEE: Yes, it did.

14 THOMAS: Did it?

15 MCGEE: Mm-hmm.

16 REESE: Who'd it happen with?

17 THOMAS: who'd it happen with?

18 MCGEE: It happened with my wife.

19 REESE: Who was it that you were telling her you
20 hit or you hurt?

21 MCGEE: One of the drug dealers at the house
22 that night.

23 REESE: At what house?

24 THOMAS: That same night at the Eichelbergers'?

25 MCGEE: No, no, no, not at the Eichelberger

1 house but at the drug house, the drug house that I was at.
2 REESE: The same night at (indistinct)?
3 MCGEE: (Indistinct.).
4 REESE: Or the same night (indistinct)?
5 MCGEE: (Indistinct) same night (indistinct).
6 REESE: Well, what did you hit him with?
7 MCGEE: The guy?
8 REESE: Mm-hmm.
9 MCGEE: He pulled a pistol out on me.
10 REESE: Well, what did you hit him with?
11 MCGEE: His pistol.
12 REESE: Now, you took the pistol from him and
13 hit him with it.
14 MCGEE: That's right.
15 REESE: Why didn't you shoot the son of a bitch?
16 MCGEE: (Indistinct.).
17 REESE: Because you ain't got that in your
18 (indistinct).
19 THOMAS: Where is the pistol now?
20 MCGEE: Where is the pistol?
21 THOMAS: Yeah.
22 MCGEE: I don't know where the pistol's at.
23 THOMAS: Where who is the guy that you hit with
24 the pistol, that you took the gun? Who is that, if you
25 know?

1 MCGEE: When an individual, when a person is at
2 a drug house, you got drug dealers that come and go. They
3 won't tell you their names, and they'll tell you not to
4 ask them their names.

5 REESE: And is that what happened after you hit
6 him with the wrong fucking gun?

7 MCGEE: Mm-hmm.

8 REESE: He told you, Don't ask me my name?

9 MCGEE: No, I never did ask him his name to
10 start with.

11 REESE: Well, I'm going to give you a
12 description of yourself.

13 MCGEE: Okay.

14 REESE: You, sir, are an evil person.

15 MCGEE: Okay.

16 REESE: And you're a fucking liar. Give
17 yourself a chance --

18 MCGEE: Mm-hmm.

19 REESE: -- before it's too late, to relieve
20 yourself of that description that I just put on you.

21 You've also been picked out of several photo
22 lineups. And that wasn't no son of a bitch that picked
23 your dirty-ass, funky-ass socks up off the ground and put
24 on it. You knew Reverend Eichelberger wouldn't be home,
25 at least your ass thought, and you broke in that man's

1 house after he did every fucking thing he could to help
2 you, and he confronted you in that house, and you hit that
3 man with that bar, and you fucking ran like the coward
4 that you are.

5 Now, 3:00 in the morning, you used the phone.
6 It's a funny fucking thing about those goddamned telephone
7 towers.

8 MCGEE: Mm-hmm.

9 REESE: They follow your ass wherever you go.
10 Because you tapped into one of them that night, and you
11 called your wife, and you made her come all the way up
12 from Camden to pick your sorry ass up where you ran to.
13 Do I need to help you with that too? Well, I'm going to
14 help you. You ran to the Piggly wiggly parking lot over
15 there, across from the fucking Coronet Motel that you just
16 said you stayed at.

17 MCGEE: Mm-mm. No. That's incorrect.

18 REESE: Well --

19 MCGEE: That's incorrect.

20 REESE: -- have you ever been in the fire?
21 Because you're in it now.

22 MCGEE: That's, that's incorrect.

23 REESE: Well, correct me, please.

24 MCGEE: Well --

25 REESE: Correct me.

1 MCGEE: Well -- well, first of all, I didn't --
2 I didn't -- that wasn't -- I have got her to pick me up
3 from over there at times, but the night that -- or the day
4 that I was in Columbia, and I had that fight with that
5 guy, the fight was over him using my truck.

6 THOMAS: Which truck is that?

7 MCGEE: My pickup truck.

8 REESE: Your pickup truck. The fight was over
9 him using your pickup truck. Did you have your pickup
10 truck that night?

11 MCGEE: I didn't have it. He had it.

12 REESE: He had your pickup truck that night?

13 MCGEE: Mm-hmm.

14 REESE: Oh, no fucking shit.

15 MCGEE: Yeah.

16 REESE: Well, I thought you just told me a few
17 minutes ago -- I beg your pardon. Because a few minutes
18 ago, you just told me you caught a goddamned ride from
19 somebody down there --

20 MCGEE: I did.

21 REESE: -- at a truck stop or something.

22 MCGEE: I did, I did, to Camden -- I mean to
23 Columbia.

24 REESE: Look, man, it's cold outside.

25 MCGEE: It's cold.

1 REESE: It's time for you to come on in out of
2 the weather.

3 MCGEE: If you --

4 REESE: Come on in the heat. I'm listening.

5 MCGEE: If you'll listen to what I'm saying --

6 REESE: Give me a chance to clear you, because
7 I'm about to nail your ass to the wall now.

8 MCGEE: Listen to what I'm saying.

9 REESE: Give me a chance to clear you.

10 MCGEE: Listen to what I'm saying.

11 REESE: Okay, I'm listening. I'm all fucking
12 ears.

13 MCGEE: The night that my wife said she picked
14 me up at Piggly Wiggly wasn't, wasn't, wasn't the night I
15 got into it with the guy. That was the day I had, I had
16 let him use my truck, and I was supposed to wait there for
17 him, at the same house I told you about, the little drug
18 house. And when he came back, he was so late coming back,
19 so I told him to give me so many drugs. He didn't want to
20 do it. And so I said, well, give me the key. He said he
21 got one more place to go. So I told him, No, you don't.
22 So that's when we got into it. And I drove home in my
23 truck that night, my pickup truck that night. Nobody
24 didn't -- nobody didn't come and pick me up.

25 THOMAS: So nobody came and picked you up the

1 night you (indistinct) Eichelberger in the head is what
2 you're trying to tell me. You go on (indistinct)
3 yourself.

4 MCGEE: Um, I don't know about what you just
5 said, but the night that I was up there in Columbia, that
6 afternoon, I drove my pickup truck back home.

7 THOMAS: All right. What about the day that you
8 caught a ride from Camden and the day that you were in
9 Eichelberger's yard, had to catch a ride from Camden, and
10 the day that you took your socks off and the day that
11 Eichelberger's blood miraculously lands on the same sock
12 with your DNA on it. What about that day?

13 MCGEE: Was that two different incidents or just
14 one?

15 THOMAS: I'm talking about --

16 REESE: You tell us.

17 THOMAS: That's what I'm talking about.

18 MCGEE: I mean, I don't know. You said two
19 different things, and (inaudible phrase).

20 THOMAS: I'm saying that this is a section that
21 we've already talked about. We talked about it already
22 (inaudible).

23 MCGEE: Mm-hmm.

24 THOMAS: So I'm not talking about -- I'm not
25 emphasizing on the drug dealer's (indistinct) --

1 MCGEE: (Inaudible phrase.)

2 THOMAS: All right, I'm talking about the day
3 that we talked about you being at Eichelberger's house and
4 using his phone earlier that day, and so forth, the day
5 you took your socks off or whatever because you had
6 athlete's -- that same day. That's the day I'm talking
7 about.

8 MCGEE: Mm-hmm.

9 THOMAS: The day you caught a ride from Camden,
10 and all this transpired. That's the day you were staying
11 on. I want to stay on that day.

12 MCGEE: I, I, I, I don't honestly remember.

13 THOMAS: Okay.

14 MCGEE: But I can tell you this.

15 THOMAS: Mm-hmm.

16 MCGEE: It wasn't just one incident where I went
17 to Columbia --

18 THOMAS: Oh, I'm certain it wasn't.

19 MCGEE: -- to that, to that drug area right
20 there --

21 THOMAS: Oh, yeah, we know that. Yeah, we know
22 that.

23 MCGEE: I (indistinct) more than --

24 THOMAS: Yeah, we know that, but that's why I'm
25 making sure that we go back to the specific thing that we

1 started this interview with.

2 MCGEE: Okay.

3 THOMAS: You're drifting on me.

4 MCGEE: All right.

5 THOMAS: I'm trying to bring you back, okay?

6 And we're still talking about truth, man. All right?

7 MCGEE: Mm-hmm.

8 THOMAS: We're still talking about a conscience.

9 All right? A reverend's dead. All right? If it was an
10 accident, then let's talk about it. That's where we are
11 right now.

12 MCGEE: Mm-hmm.

13 THOMAS: All right? If you didn't mean to do
14 it, let's talk about it to get your true side of this
15 thing. But denying it, saying everything around it but
16 the truth, we're not going to get there that way. All
17 right? We're not going to get there that way. The only
18 thing that actually straightens this thing up is your
19 truth.

20 MCGEE: Mm-hmm.

21 THOMAS: Your truth on what happened that night.

22 MCGEE: I can tell you this, sir. I'm pretty
23 sure that if they hadn't raided that drug house, you could
24 go to that drug house, and you could ask them. It's going
25 to be -- if they haven't raided it, or if they did,

1 probably some of the same people are going to be there.
2 You can ask them and show them my picture when I used to
3 come there. And I didn't never -- I come there in my
4 pickup truck, and I leave there in my pickup truck.

5 REESE: Or you come without a ride because you
6 catch a ride from Camden, right?

7 MCGEE: That, that, that was one incident. That
8 was one incident.

9 REESE: That's the day, that's the day you rode
10 up there in that 18-wheeler from that construction
11 company. Is that (indistinct)?

12 MCGEE: No, sir, that's not what I'm talking
13 about.

14 REESE: No?

15 MCGEE: No.

16 REEVES: Let me ask you this, based on what he
17 just said. If you're saying that you didn't steal the 18-
18 wheeler, could it be possible that you saw the 18-wheeler
19 on the side of the road, you saw the fence hanging out
20 from underneath it, and you're a concerned citizen, right?
21 You went up in the truck because you know about trucks,
22 right? You went up in the truck to find out who it
23 belonged to, maybe a phone number of somebody who it
24 belonged to, maybe -- because you thought it was stolen,
25 right? That's why your prints might be on the toolbox,

1 and your DNA might be on the toolbox and inside the cab of
2 the truck? Could that be possible? Do you recall a truck
3 being down there?

4 MCGEE: Recall a truck being down where?

5 REESE: In the Greenview area.

6 REEVES: In the Greenview area, down by
7 (indistinct) Drug.

8 MCGEE: I recall a truck being, being left there
9 by a gas station. There's a gas station -- well, not a
10 gas station, but it's a little, um, uh, a pool hall or
11 whatever right there. I recall a truck being there. And
12 the day that that truck was there, I talked to the guy
13 standing there with the door open in the truck.

14 REESE: What kind of truck was it?

15 MCGEE: It was a Mack. It was a Mack, a Mack.

16 REEVES: What color?

17 MCGEE: You just said it was a red truck.

18 REEVES: Peterbilt?

19 MCGEE: A Mack. A Mack.

20 REEVES: A Mack?

21 MCGEE: A Mack tractor trailer.

22 REESE: And what did (inaudible) say to you?

23 MCGEE: I asked him if he -- the company he
24 worked for, was he doing any hiring.

25 REESE: Oh, so he (inaudible).

1 MCGEE: Yes.

2 REESE: What did he tell you?

3 MCGEE: He told me just

4 REESE: Did you get up in the truck?

5 MCGEE: Yeah, I got up in the truck with him,
6 and he took me.

7 REESE: Took you where?

8 MCGEE: He took me all around to the drug spot
9 that I was at and dropped me off right there. I've got,
10 I've got, I've got witnesses --

11 REESE: Did you ask him to drive it? Did you
12 test your steering wheel, by chance?

13 MCGEE: Yes, I did.

14 REESE: You did?

15 MCGEE: Yes. He got out -- he pulled over in
16 front of the drug house. He got out, went in the drug
17 house.

18 REESE: Oh, so you're trying to say he's a
19 smoker too.

20 MCGEE: Yeah, he was, he was.

21 REESE: All right, so he got out and went to the
22 drug house, and --

23 MCGEE: And when he came -- when you're sitting
24 there, you can't stay in the street like that because the
25 city police will keep riding through. So I got up and

1 pulled the truck over, pulled the truck over to the side.
2 He came back out, got in the truck. He took me around
3 there to another spot, another spot, another drug house.
4 I got out right there.

5 REESE: So that would explain why your DNA or
6 anything is on the steering wheel, because you drove the
7 truck is what you're trying to tell me.

8 MCGEE: I pulled it over.

9 REESE: You pulled it over.

10 REEVES: But you didn't drive it from Camden?

11 MCGEE: No, I didn't drive it from Camden.

12 REEVES: Okay.

13 REESE: Do you remember who he said he worked
14 for, what company he worked for?

15 MCGEE: I didn't even ask him.

16 THOMAS: But you asked for a job, though.

17 MCGEE: Yes, I did.

18 THOMAS: So (indistinct) company.

19 MCGEE: I asked him is his company doing any
20 hiring.

21 REESE: All right. Which company was that?

22 MCGEE: I don't know. I don't know the name of
23 the company. I can't remember all that.

24 REESE: How long have you had that potbelly and
25 that receding hairline you got there? How long have you

1 had that?

2 MCGEE: Ever since I got out of the military.

3 REESE: And that was when?

4 MCGEE: '96.

5 REESE: Fact about it, you got out of the
6 military, not on a dishonorable discharge, but they put
7 you out for some bullshit, right?

8 MCGEE: Well, it was something that happened,
9 but that was beyond my --

10 REESE: Your control. Yeah. Absolutely.

11 well, you know, I'm glad you brought the
12 military up because it gave me an opportunity to just
13 remind you once again that there ain't really nothing you
14 can tell me about you that I don't know.

15 MCGEE: I know you know everything about you.

16 REESE: I even know you killed Reverend
17 Eichelberger. But I'm convinced that's not something you
18 intended to do. You didn't intend to do that. And then
19 let you know that you did it, what I'm trying to do is
20 offer your ass a way out. I'm tired of making people look
21 demonic. Let me help you look like a human being. You're
22 way past the step of looking angelic, but I can make you
23 look like a human being. Give me a chance at that.
24 Because when I walk out here, if I don't have your truth,
25 then, in my mind, you're a fucking demon. And I just

1 don't think that that's what you are. I just think you
2 were strung out on crack. You're an opportunist. Eich's
3 house was dark
4 that night. And you were looking for some stuff to get,
5 like you always do when you're going to burglarize all
6 these other fucking places. You was looking for some
7 stuff to get to get your next hit.

8 THOMAS: That's it.

9 REESE: I've been doing this -- I've been doing
10 this a long time. All the fucking places I got on police
11 reports where you done been arrested for burglary and
12 convicted of burglary.

13 MCGEE: That wasn't.

14 REESE: Sir, I know how many hairs are on the
15 top of your fucking head. I know everything about you
16 there is to know.

17 MCGEE: Okay.

18 REESE: I also know that you are on a ship right
19 now.

20 MCGEE: Mm-hmm.

21 REESE: You're the captain of that ship, and
22 your ass is sinking real fucking fast. And once that ship
23 goes down and your nose go under water, ain't no swimming
24 back up. It's too late. And you ain't going to be like
25 them fucking rats that leave with the sinking ship. This

1 one right here, you're going down with it. You got a
2 chance at two points of salvation in the Lord Jesus
3 Christ. You need to do the right thing.

4 Now, Reverend Eichelberger didn't do anything to
5 anybody in that community up there other than help them,
6 and you know that.

7 THOMAS: Including you.

8 MCGEE: Absolutely, including you.

9 THOMAS: (Inaudible.)

10 REESE: You owe him more than what you've given
11 him.

12 THOMAS: Absolutely. Absolutely. And your eyes
13 are doing what they were doing earlier, and you know it.
14 You owe that man.

15 REESE: You owe him the truth.

16 THOMAS: All right, you owe him the truth.

17 REESE: If you meant to do it, just say, Reese,
18 Thomas, Reeves, I picked the fucking bar up, and I beat
19 the hell out of him. If you didn't mean to do it, just
20 tell me how it went down. Don't give me this thing --
21 you're preying on my intelligence. And you just said I
22 got a college degree. Well, you're absolutely fucking
23 right about that. I got two of them. And one of them
24 tells me that I ain't as stupid as what you might be
25 thinking that I am.

1 So this bullshit about somebody picked up your
2 dirty-ass socks, athletic foot, and put them on?

3 THOMAS: Not going to work, man.

4 REESE: Not here.

5 THOMAS: Your eyes are already talking to me,
6 bro. Listen, you owe Reverend Eichelberger the truth.
7 You owe him peace. Do you understand me? All right, that
8 man did nothing but help the entire community, including
9 you. You owe him --

10 REESE: I want your truth right now.

11 THOMAS: -- the truth. Give it to him, bro.
12 Give that man peace in his grave. You understand? Give
13 the family peace with your truth. And, like I said, your
14 eyes are talking -- screaming at me right now. Let's talk
15 about this. Was it an accident?

16 MCGEE: Was what an accident?

17 THOMAS: Striking Eichelberger in the head like
18 that. Was it an accident? Did you intend to kill this
19 man? I don't think so. Did you?

20 MCGEE: Well, I'll, I'll tell you like this
21 right here, sir.

22 THOMAS: I'm listening.

23 MCGEE: Um, I'll talk to you all you want and
24 tell you everything that I can possibly tell you --

25 THOMAS: Okay.

1 MCGEE: -- about me and what I did.

2 THOMAS: Okay.

3 MCGEE: But I did not kill Reverend
4 Eichelberger, and I didn't have nothing to do with killing
5 Reverend Eichelberger.

6 THOMAS: Did you strike him?

7 MCGEE: No, I didn't strike Reverend
8 Eichelberger.

9 THOMAS: Did you enter his home?

10 MCGEE: Yes, I did.

11 THOMAS: Did you enter his home without his
12 permission?

13 MCGEE: No, no, no, I didn't.

14 THOMAS: Now, did you --

15 MCGEE: If I had entered his home without
16 permission, he would have called the police on me.

17 THOMAS: Did you go back that night?

18 MCGEE: No, I didn't go back that night.

19 REESE: He didn't get a chance to call the
20 police on you.

21 MCGEE: I didn't go back that night.

22 REESE: You didn't give him a chance, man. You
23 conked out. You got scared.

24 MCGEE: I didn't go back that night.

25 REESE: You knew your ass was going back to

1 prison if he had just gotten to the telephone, because
2 Reverend Eich didn't play with guns. His weapon was his
3 community contacts, and on this particular night, during
4 this particular event, his weapon was the telephone. Oh,
5 if he could have just gotten to that telephone, he would
6 have been able to tell the police who it was who had just
7 broke into his house. That person would have been your
8 ass.

9 You couldn't take that, and you knew that if he
10 had gotten to the telephone, you were going. You were
11 going away. Because your ass is beyond three fucking
12 strikes. You knew that, and you hit Reverend Eichelberger
13 in the head with that bar that you took off that truck
14 that you stole. Don't give me this bullshit about I got
15 behind the wheel of the truck because the crack head went
16 in there to buy some drugs and to move it out the fucking
17 street so the cops won't come by and give him a ticket.

18 MCGEE: If you go by there --

19 REESE: Tell me where to go by. Where am I
20 going to?

21 MCGEE: (Indistinct.)

22 REESE: No, tell me where to go. You know what?
23 Your wife has been taking me to these places for fucking
24 years. You know the names of the people that you're
25 trying to drag into this.

1 MCGEE: I don't know the names, but I know where
2 they live.

3 REESE: All right... what we're going to do is --
4 we're not getting anywhere. We're going to pack up, and
5 we're going to go back to Columbia. And what befalls this
6 young man befalls him. It's as simple as that.

7 REEVES: Let me ask him this.

8 Did you even know there was a second person in
9 that house?

10 MCGEE: Second person in what house?

11 REEVES: Reverend Eichelberger's house.

12 MCGEE: (Indistinct.)

13 REESE: Well, how do you think we'd know about
14 your receding hairline and your potbelly that night, and
15 your crazed-ass look, high on drugs?

16 MCGEE: (Indistinct) right here. That night, I
17 had on a hat. So ain't no way in the world I could have
18 had no receding hairline.

19 REESE: Describe the hat. If you had a hat on,
20 describe your hat.

21 MCGEE: It was a hat that you buy at Walmart.
22 It's kind of a large Bass hat with a Bass thing on the
23 side, a Bass Pro patch on the side.

24 REESE: You know what? The only fucking people
25 wear those hats --

1 MCGEE: Mm-hmm.

2 REESE: -- id rednecks, and you're far from a
3 redneck.

4 MCGEE: But I had one on.

5 REESE: No.

6 MCGEE: I had one on.

7 REESE: I have my witness saying that you had a
8 receding hairline that was so fucking pronounced, the
9 goddamned light beamed off the top of your head. It's
10 you.

11 THOMAS: Yes, sir.

12 REESE: Not a hat.

13 THOMAS: Not a hat.

14 REESE: If you had a hat on, you took it off
15 before you went there.

16 MCGEE: No, sir.

17 REESE: But when you came out of this house, and
18 you were too fucking stupid, drugged up, and too fucking
19 blind to even see it.

20 MCGEE: Mm-hmm.

21 REESE: You know, the person really should have
22 run your ass over, and then we wouldn't have to be going
23 through this.

24 MCGEE: Mm-hmm.

25 REESE: You didn't have a hat on, son.

1 MCGEE: I did have a hat on that night. I know
2 what I had on.

3 REESE: Where were you that night?

4 MCGEE: I was in the -- at the area -- at the
5 drug house area. That's where I was at.

6 REESE: Well, tell me, because I really want to
7 believe you. I really want to go to that drug house and
8 clear your name out of this.

9 MCGEE: Okay.

10 REESE: So give me the name of the people,
11 because I know all the fucking drug dealers out there and
12 all the crack dealers and everything like that.

13 MCGEE: Okay.

14 REESE: You cannot give me the name and send me
15 to the right place because it does not fucking exist.

16 MCGEE: It exists. It exists.

17 REESE: Describe that hat for me again.

18 MCGEE: It was a camouflaged hat.

19 REESE: Okay.

20 MCGEE: It's not, it's not an army camouflage,
21 but it's a civilian green camouflage with a Bass Pro
22 sticker on the side.

23 REESE: Bass Pro?

24 MCGEE: You know, like Bass Pro, the fishing --

25 REESE: The fishing company?

1 MCGEE: Yes.
2 REESE: Okay. That's what you had on that
3 night.
4 MCGEE: Yes.
5 REESE: All right. What did you have on when
6 you went to Eichelberger's house?
7 MCGEE: When I went to his house that day?
8 REESE: Mm-hmm.
9 MCGEE: I don't remember what I had on.
10 REESE: Did you have the hat on then?
11 MCGEE: The hat on?
12 REESE: Yeah.
13 MCGEE: I can't remember if I had it on.
14 REESE: I'll answer for you. No you didn't.
15 MCGEE: I don't remember if I had it on.
16 THOMAS: You just said no you didn't.
17 REESE: I asked you before, and you didn't.
18 MCGEE: Okay.
19 REEVES: How many times have you been to that
20 Reverend Eichelberger's house?
21 MCGEE: I been there one time.
22 REEVES: Just one time?
23 MCGEE: Mm-hmm.
24 REESE: Why would you have a hat on at night,
25 but in the middle of May, when the fucking sun is out, you

1 don't have a hat on, and you stand out there in the man's
2 yard? What sense does that make?

3 MCGEE: Well, it doesn't make a lot of sense to
4 you, but in situations and incidents, things happen. I
5 probably would have left the hat at the house I was at
6 when I had to walk up there to the gas station and up that
7 way earlier that day.

8 REESE: Well, they -- well, they would say that,
9 at the time my witness saw you, you didn't have a hat on.

10 MCGEE: I can't remember if I did or if I didn't
11 because if I --

12 REESE: Well, later that evening, if you left it
13 at the house, more than likely, you left it there, and you
14 didn't (inaudible).

15 MCGEE: Um, I don't know. I don't know. All I
16 know is what I just told you.

17 REESE: Well, when you heard this --

18 MCGEE: No, I don't know what witnesses and
19 people I know (indistinct) people with cars.

20 REESE: Well, that's fine. When you heard this
21 about Reverend Eichelberger, being that Reverend
22 Eichelberger helped you out that very same day, why didn't
23 you come forward to the police or call us on the phone and
24 say, Listen, I was at Reverend Eichelberger's house that
25 day. I need to talk with y'all.

1 MCGEE: Mm-hmm.

2 REESE: Why didn't you do that?

3 MCGEE: Because had I would have did that, the
4 first thing would have happened, first thing that would
5 have happened, they would have said, well, he did it. He
6 did it. Yeah, he did it. Yeah, he did it. Because if
7 you call in and say this about something or whatever,
8 Yeah, he did it. He's the one. There's our man right
9 there.

10 REESE: You think I would have said that?

11 MCGEE: I don't know if you would have did it,
12 but I know it would have been did.

13 REESE: Well, I'm still willing to bend over
14 backwards to clear you, but you got to give me something
15 to work with. Give me something to work with, I can clear
16 you. If you don't give me nothing to work with, I can't
17 clear you.

18 MCGEE: Well, I don't know what you mean by
19 clearing me, but --

20 REESE: Not charging you. If you --

21 MCGEE: Well --

22 REESE: Mind what you say.

23 MCGEE: You're going to --

24 REESE: Be very careful what you say.

25 MCGEE: Oh, I will. You're going to do what

1 you're going to do. But if you could take me to the area
2 I told you about, off of Farrow Road right there, the drug
3 house, any questions you want to ask those guys right
4 there with me in front of them, I would be willing to go
5 up there and let them -- in front of them, or, if you want
6 to pick them up, whatever, take them in --

7 REESE: What you're asking me to do is reach up
8 and grab the moon out of the sky and drag it down to
9 earth. That ain't going to happen.

10 MCGEE: No, the house is not going --

11 REESE: And me taking you away from here ain't
12 going to happen either. So you can get off of that
13 schoolboy, Boy Scout bullshit because that ain't going to
14 happen.

15 MCGEE: But it happened.

16 REESE: You already know it's not going to
17 happen.

18 MCGEE: But it happened.

19 REESE: No. But it ain't happening now.

20 MCGEE: Okay.

21 REESE: The only thing that's going to happen is
22 your truth, I hope.

23 REEVES: He's got two ways to present this case.
24 He can present it the way he's already explained it to
25 you. You went in there. It was a -- you were caught off-

1 guard. You were strung out on drugs, all right? It was a
2 total mistake. You didn't mean to kill the man. It was a
3 surprise. It was a shock. I did what I did. I'm sorry
4 for it. I just hope God forgives me.

5 or he can go in there, You know what? I didn't
6 like Reverend Eichelberger. He pissed me off because he
7 didn't feed me. He pissed me off for some unknown reason.
8 I was going to get back at that motherfucker. I fucking
9 broke into his house with the intend to go inside, and
10 when I saw him, I hit him. I hit him, and I meant to kill
11 him. He's got that opportunity right now to put that on
12 you. If you don't talk to the man, he has no options. He
13 doesn't know which way to go.

14 REESE: Regardless of how I present it, Reeves,
15 I still don't think he meant to do it. And I ain't trying
16 to gain favoritism with you. I think -- I still think
17 you're an evil person, but I still do not think that you
18 meant to do it.

19 And this ain't no good cop/bad cop shit, man.
20 You've been looking at the TV too fucking much if that's
21 what you think.

22 MCGEE: Well, why are you cursing (indistinct)
23 cursing (indistinct)?

24 REESE: Because I'm bringing myself down on your
25 level --

INTERVIEW WITH FRANKIE MCGEE

1 MCGEE: (Indistinct.)

2 REESE: -- because this right here is the only
3 thing that you will fucking understand. Now, if my
4 cursing -- if I stop cursing -- if that's going to get you
5 to tell me the truth, then, by all means, I will stop
6 cursing. Whatever it's going to take to get you to tell
7 me the truth, just tell me, and it'll get done.

8 MCGEE: Mm-hmm.

9 REESE: But this stuff about taking me to the
10 gun and, Reese, I didn't do this and I didn't do that, no.
11 You want something from me, you give me something.

12 MCGEE: Mm-hmm.

13 REESE: Okay?

14 MCGEE: All right. I want you to search deeper.
15 I don't know who all those witnesses are you got panning
16 me out, or whatever, but you need to search deeper.

17 REESE: How deep you think this is going --

18 MCGEE: I'm not the man that you want. I'm not
19 the one that you want.

20 REESE: All right. Let's clear up. All right.

21 Um, Mr. McGee?

22 MCGEE: Yes, sir.

23 REESE: We're going to let you go back to your,
24 your dorm now.

25 MCGEE: Mm-hmm.

1 REESE: All right? And if I deem to charge you,
2 sir, you'll be hearing about it very soon.

3 MCGEE: Yes, sir. Yes, sir.

4 REESE: Before we walk out that door, is there
5 anything on your heart that you want to get off?

6 MCGEE: No, sir, there's nothing on my heart.

7 REESE: All right. Anything else y'all got to
8 ask (indistinct)?

9 MCGEE: Um, now, if I said something earlier
10 when you were questioning me, and I got mixed up because
11 three people was asking me questions, I understand that,
12 but as far as -- it's been five months or six months now
13 about the questions that you're asking me. So if I didn't
14 answer them all the way, completely, to your T, and you
15 double back and said, well, I lied about this, and I lied
16 about that, it's not that I lied. It's just that I didn't
17 remember what you (indistinct).

18 REESE: Well, with all due respect to you,
19 you're not the stupid person here.

20 MCGEE: Mm-hmm.

21 REESE: I beg your pardon. I am. I'm stupid
22 for sitting here listening to the bullshit that you're
23 trying to throw across.

24 MCGEE: Mm-hmm.

25 REESE: Do me a favor. Have a good day. And

1 tonight, when you sleep, lay down before you go to sleep,
2 say your prayer.

3 MCGEE: I say my prayers every night, sir.

4 REESE: Well, apparently you don't.

5 MCGEE: Yes, I do.

6 REESE: Well, then, somebody up there ain't
7 listening.

8 MCGEE: I can't say that. I can't say that.

9 REESE: Because if they were, they would have
10 told you to get this off your heart.

11 MCGEE: I can't say that nobody's not listening.
12 I can't say that.

13 REESE: Yeah, you're right. You're not
14 listening.

15 MCGEE: Well, sometimes I don't listen, but I'm
16 listening today.

17 REESE: All right. Apparently, you're not. But
18 you really don't need to say anything else. We're
19 finished with this interview.

20 MCGEE: Yes, sir.

21 (Indistinct conversation.)

22 REEVES: All right, we're stopping the interview
23 at 1:38 p.m. Current time -- current date is 12 -- 03 --
24 March 17th of 2010. It's going to be the interview with
25 Frankie McGee. It's going to be at Wateree Correctional

1 Facility with Arthur Thomas, Kevin Reese, and Lance
2 Reeves.

3 --- end of audio file ---

4 --- end of transcript ---

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1 CERTIFICATE OF TRANSCRIPTIONIST

2 I, Carol Anne Boutahar, do hereby certify:

3 That the foregoing audio files entitled "Interview
4 with Frankie McGee 1.wav" and "Interview with Frankie
5 McGee 2.wav" were transcribed; that the foregoing
6 transcript as typed is a true, accurate and complete
7 record of the audio files to the best of my ability under
8 the prevailing circumstances.

9 I further certify that I am neither related to nor
10 counsel for any party to the cause pending or interested
11 in the events thereof.

12
13
14 Carol Anne Boutahar

15 Carol Anne Boutahar

16 August 1, 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 The State of South Carolina,)

vs.)

Frankie Lee McGee,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Warrant Numbers: 2010-GS-40-00121; 00124

MOTION TO EXCLUDE LAY WITNESS
 OPINION TESTIMONY

COURT'S	3
EXHIBIT NO.	
IDENTIFICATION/EVIDENCE	
DKT. #	
DATE:	

I. Introduction

The defendant moves to exclude the lay opinion testimony of his sister Sandra Thomas. During the investigation of Mr. McGee, Ms. Thomas informed law enforcement that she had seen a crime stoppers video of a truck theft in Camden, South Carolina in May of 2009 and that she believes that the suspect in the video is her brother Frankie McGee. Based in part on this information, it is the State's theory that the Defendant stole the truck from Camden Steel on May 2, 2009 and that he drove this truck to Columbia where he abandoned it on Token Street near the home of the victim. The State alleges that the murder weapon, a winch bar used to tie down loads on large trucks, came from the truck that was stolen in Camden. There is no evidence that the winch bar in fact came from the truck that was stolen. The owners of the truck have been unable to identify the winch bar as one belonging to their company or as having come from the truck that was stolen. The most that they can say is that their company uses winch bars of that type. Surveillance video of the theft shows a black male of medium build walking from the truck towards the business and back to the truck. He leans over and picks up an aluminum refrigerator cast and puts it in the truck. He then gets in the truck and drives it through the gates and leaves the premises. An objective review of the video proves it is not of sufficient quality to identify anyone as the perpetrator. The South Carolina Rules of Evidence prohibit lay opinion testimony of the type sought to be offered here. Analysis of the applicable rules of evidence and case law follows.

Rule 602 of the South Carolina Rules of Evidence states, in part, "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness had personal knowledge of the matter." *Rule 602, SCRE*. If a witness is qualified to testify pursuant to Rule 602, and is not testifying as an expert witness, the scope of the witness's testimony is restricted to the matter at hand of which he or she has personal knowledge.

Even if a witness is shown to have personal knowledge of the matter being testified to, he or she may not testify outside of his or her personal knowledge to state an opinion on the matter unless the requirements of SCRE 701 are met. SCRE 701 states:

If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness's testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience, or training.

Rule 701, SCRE. Section (a) of this rule upholds the requirement of SCRE 602 that the witness testify only to matters within his or her personal knowledge passed on his or her own perception. *See notes following Rule 701, SCRE; State v. Bottoms*, 260 S.C. 187 (1973) (stating that a witness's opinion must be based on his or her personal observations). Section (b) of Rule 701 upholds the relevancy requirement of SCRE 401 and leads to the question of whether a witness may testify to his or her opinion on an ultimate issue in the case under SCRE 704.

Only when a lay witness's opinion testimony is deemed admissible under the requirements of 701 may a court consider allowing the witness to testify to his or her opinion on an ultimate issue in the case. However, "the opinion of a witness is not admissible where all the facts are capable of being clearly detailed so that the jury may form the correct conclusion therefrom." *Green v. Sparks*, 232 S.C. 414, 432 (1958); *see also, U.S. v. Grinage*, 390 F.3d 746 (2d Cir. 2004) (stating that Rule

701(b) under the Federal Rules of Evidence, which is identical to SCRE 701(b), is “designed to provide ‘assurance against the admission of opinions which would merely tell the jury what result to reach’”).

If a court finds that a lay witness’s opinion testimony is permissible under SCRE 602, 701, 401, and 704, such testimony is still subject to exclusion based on SCRE 403, which states that relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *Rule 403, SCRE; see also, State v. McClinton*, 265 S.C. 171 (1974) (stating that opinion evidence must not be superfluous).

The most recent South Carolina case on this issue is *State v. Herring*, 692 S.E.2d 490, 498 (2009). In the *Herring* case, the State elicited the testimony of three witnesses as to their interpretations of a video of a shooting at a night club. Defense counsel objected to the testimony on the basis of lack of personal knowledge. The trial court allowed the testimony but issued a curative instruction to the jury instructing them to come to their own conclusions. The Supreme Court’s analysis of the issue raised on appeal makes clear that the trial court committed error in allowing the testimony. The Supreme Court ultimately concluded that the curative instruction addressed any error committed by the trial court. However, the import of this opinion supports exclusion of lay opinion testimony relating to video evidence. This evidence should stand on its own and should be presented to the jury in such a fashion that the jurors can come to their own conclusions.

III. Argument

A. Because Sandra Thomas did not have personal knowledge of the truck theft at Camden Steel and Metal, her testimony should be excluded under SCRE 702.

In order for the testimony of Ms. Thomas to be heard by the jury, the State would first have to present evidence sufficient to prove that she has personal knowledge of the matter at hand. It is clear

from discovery material provided by the State that Ms. Thomas has no personal knowledge of this offense. Consequently, her testimony should be barred by Rule 602 of the South Carolina Rules of Evidence.

B. The testimony of Ms. Thomas would be lay witness opinion testimony that would not meet the requirements of SCRE 701 and therefore should be excluded.

In order to be admissible, Section (a) of SCRE 701 requires that a lay witness's opinion be based on his or her own perceptions. Ms. Thomas did not personally observe the truck theft. Therefore, she has no basis for her opinion.

Due to her lack of personal observation and knowledge of the incident in question, her testimony would be irrelevant under SCRE 401, and would also be impermissible opinion testimony under Section (b) of SCRE 701. That section mandates that the opinion of a lay witness must be "helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." *Rule 701(b), SCRE*. Given her lack of personal observation and knowledge of the offenses, there is no fact in issue that the opinion of Ms. Thomas could help in determining. Consequently, her opinions should be barred by Rule 701(b) of the South Carolina Rules of Evidence.

C. In light of the fact that the opinion testimony of Ms. Thomas would not be admissible under SCRE 701, her opinion as to an ultimate issue in the case should be barred by SCRE 704 as well as state and federal case law.

SCRE 704 permits a witness to testify to his or her opinion on an ultimate issue only when such testimony is "otherwise admissible." As stated above, the opinion testimony of Ms. Thomas would not be admissible under SCRE 701, and therefore would be inadmissible as to an ultimate issue in this case pursuant to SCRE 704.

Additionally, state and federal case law specifically forbid opinion testimony that would be superfluous or offered only to tell the jury what a piece of evidence shows when the jury is otherwise

perfectly capable of drawing their own conclusion from the evidence itself. *See State v. Herring*, 692 S.E.2d 490, *Green v. Sparks*, 232 S.C. 414, and *U.S. v. Grinage*, 390 F.3d 746, *supra*. In the present case, jury members would certainly be capable of viewing the video in question and drawing their own conclusions as to whether or not Mr. McGee is in fact the individual on the video. The opinion of Ms. Thomas as to whether or not it is him would be an impermissible lay opinion on an ultimate issue and therefore barred by SCRE 704 and the above-cited case law.

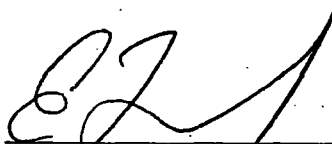
D. Even if the lay opinion of Ms. Thomas were permissible under SCRE 602, 701, 401, and 704, her testimony would be inadmissible under SCRE 403.

The opinion testimony of Ms. Thomas would violate SCRE 403 because its probative value would be substantially outweighed by its prejudicial effect. The jury will have the opportunity to view the video for themselves and will be fully capable of determining the quality and value of the video for themselves. Ms. Thomas' opinion is probative of nothing and would be extremely prejudicial and misleading due to her lack of personal knowledge under SCRE 403. This issue is further complicated by the fact that Ms. Thomas, in addition to being Mr. McGee's sister, is a law enforcement officer with the City of Columbia. Accordingly, her opinion carries with it the weight of law enforcement and her familial relationship to Mr. McGee. These dual roles would confuse the issue and place undue emphasis on her opinion in the eyes of the jury.

IV. Conclusion

Any testimony by Ms. Thomas as to the surveillance video of the truck theft would lack a sufficient evidentiary basis to establish her personal knowledge of any matter in this case and therefore should be excluded by SCRE 602. Given that Ms. Thomas did not perceive any events involved in this case, her testimony would be irrelevant under SCRE 401 and barred by SCRE 701 as opinions not rationally based on personal observation and not helpful to a determination of any fact in issue. Because Ms. Thomas' testimony would not be admissible under SCRE 701, she should be

prohibited from testifying to her opinion on an ultimate issue in the case pursuant to SCRE 704. The opinion testimony of Ms. Thomas should be excluded by SCRE 403 as unduly prejudicial, misleading and by considerations of delay, waste of time, and presentation of cumulative and superfluous evidence. Finally, recent case law supports exclusion of opinion testimony relating to video identification type testimony of the type sought to be offered by the State in this case. See *State v. Herring*, 692 S.E.2d 490, 498.



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Richland County Public Defender's Office

Columbia, South Carolina
This 1st day of August, 2011

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

Indictment Nos.: 2010-GS-40-00121

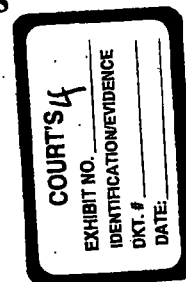
2010-GS-40-00124

The State of South Carolina,)

vs.)

Frankie Lee McGee,)
Defendant.)

**MOTION IN LIMINE RE
 PRECLUSION OF LYLE EVIDENCE**



On May 3, 2009 Tryon Eichelberger was assaulted in his home and struck in the head during a home invasion. Approximately three months later he died from these injuries. Located a short distance from the scene were a large metal bar and a pair of white socks. Each of these items had traces of the victim's blood on them. From May 2009 until March 2010 police investigated the crime but could not identify a perpetrator. In June of 2009, police submitted the white socks for DNA analysis but no DNA was detected and the results yielded no assistance to law enforcement. Over the following nine months police investigated numerous suspects. In February of 2009, investigators re-submitted the socks for additional testing. This time, analysis of the socks yielded the profile of Frankie Lee McGee. During the investigation of Mr. McGee, law enforcement discovered that Mr. McGee had a CDL license and had been employed at trucking companies in the past. This was significant to law enforcement because they believed the metal winch bar used in the assault was a tool used by trucking companies.

During the investigation, investigators were contacted by Sandra Thomas who is the sister of Frankie McGee. She is also an officer with the City of Columbia. She informed the investigators that she recalled a theft of a truck back in May 2009 when she saw a video of the theft on Crime Stoppers on television. She told officers that she thought the suspect looked like her brother and that she called Mr. McGee's wife, Sophia, to tell her to look at the video to see if she agreed. She also states that she reported as much to Crime Stoppers. She further stated that she knew Sophia McGee to have taken Mr.

McGee to Columbia on several occasions to buy drugs.

Investigators also interviewed Sophia McGee. According to investigators, Mrs. McGee told law enforcement that around the time of the incident but before May 6th she dropped Mr. McGee off in Camden. This was significant to law enforcement because the truck was stolen in Camden.

The defense now moves to exclude evidence of the theft of the truck from Camden on May 2, 2009 pursuant to Rules 402, 403, and 404 of the South Carolina Rules of Evidence. There is no connection between the truck theft and the assault on the victim. Furthermore, there is no evidence that Mr. McGee even committed the truck theft.

I. Motions in Limine

The purpose of a motion in limine is to prevent the disclosure of potentially prejudicial matters to the jury. State v. Floyd, 295 S.C. 518, 369 S.E.2d 842, 843 (1988). "[R]ulings in limine do not constitute final determinations on the admissibility of evidence." State v. Floyd, 295 S.C. 518, 369 S.E.2d 842, 843 (1988). "Trial judges must not be held, conclusively, to preliminary rulings made without benefit of all the pertinent and relevant evidence." Id. In order for the Court to make a ruling on this matter, it is necessary for the state to present the potentially prejudicial matters relating to the Court. A proffer is not enough. In order for the Court to hear all the pertinent and relevant evidence, the actual evidence must be presented. Because the evidence is potentially prejudicial, a ruling would have little effect if it were made after the jury has heard the prejudicial evidence. The jury will not be able to simply disregard what they have already heard. Furthermore, a preliminary ruling maintains the course of the trial and allows it to flow smoothly and without interruption. Therefore, the state must present the potentially prejudicial evidence to the Court before the commencement of the presentation of evidence to the jury. The defense requests hearing on this matter prior to the start of trial.

II. Relevance

Evidence is relevant if it tends to make more or less probable some matter in issue upon which it directly or indirectly bears. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) (cited in State v. Simmons, 427 S.E.2d at 177). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE; see also State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). "[W]hen the prejudicial effect of evidence substantially outweighs its probative value, the evidence may be excluded under rule 403 which is consistent with prior case law. State v. Garner, 304 S.C. 220, 403 S.E.2d 631 (1991)." Rule 402 of the SCRE outlines the standard of relevancy for evidence to be admissible.

The relevance of the Camden truck incident to the murder charge is obscure. Introduction of this evidence relating to a totally separate burglary of a business in Camden a day before the murder does nothing to further the state's case on the crime charged. The truck that was stolen was stolen on May 2, 2009 some time before 2:00 P.M. The assault was committed in the late evening hours on May 3, the next day, in Columbia. The truck was found a few streets away from the incident location on the same date it was stolen, May 2, 2011. There is surveillance video of the theft of the truck that is of insufficient quality to identify anyone as the perpetrator. There were no prints, DNA, or other forensic evidence found in the truck to link it to Mr. McGee or to the assault on Mr. Eichelberger in any way. The sole piece of evidence upon which the state can rely is the identification by Mr. McGee's sister who viewed the video and states she believes it was him. However, a review of the video illustrates the

impossibility of such an identification.¹

Even were it a reliable identification there is simply no connection between the truck theft and the home invasion. The only articulable connection is the allegation by the state that Mr. McGee committed both offenses and the presence of the truck therefore serves to identify him as the perpetrator of the assault. This connection is tenuous at best and does nothing more than inject confusion into the jury's analysis. While there is almost no probative value to the evidence proffered by the state, whatever value is present is far outweighed by the prejudicial effect of introducing to the jury the allegation of an entirely separate and distinct crime committed a day before the assault. The fact that the Camden theft involves a burglary, albeit of a business and not a home, compounds its prejudicial effect. Thus, the Camden Steel truck theft is not relevant and should be excluded during Mr. McGee's trial for murder. Even if the court deems these incidents to be relevant, the evidence should still be excluded because the probative value is substantially outweighed by the danger of unfair prejudice. The unfair prejudice within the context of this case would mean an undue tendency to suggest decision to the jury on an improper basis such as propensity.

III. Rule 404, *State v. Lyle*

A. The Rule

In 1923 the South Carolina Supreme Court stated "the familiar and salutary general rule, universally recognized and firmly established in all English-speaking countries, that evidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of the particular crime charged." *State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 807 (1923). "Under our system of justice, a conviction must be

¹ Note, the defense will argue in a separate motion that the identification by Sandra Thomas is

based upon evidence of the offense for which the accused is on trial rather than prior criminal or immoral acts." State v. Gore, 283 S.C. 118, 322 S.E.2d 12, 13 (1984). This rule is now reflected in South Carolina Rule of Evidence, Rule 404 adopted in 1995.

"The objections, from the viewpoint of English jurisprudence, to the admission of this class of evidence are patent. Proof that a defendant has been guilty of another crime equally heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty of the crime charged." State v. Lyle, 118 S.E. at 807. Evidence of other crimes is not admissible to prove the character of a person to show that he acted in conformity therewith. State v. Bailey, 275 S.C. 444, 272 S.E.2d 439, 440 (1980) (citing State v. Lyle); see also State v. Good, 315 S.C. 135, 432 S.E.2d 463, 466 (1993) ("evidence of other crimes committed by the defendant is inadmissible to show the bad character of the accused and that the accused acted accordingly"). "Its effect is to predispose the mind of the juror to believe the prisoner guilty, and thus effectively to strip him of the presumption of innocence." State v. Lyle, 118 S.E. at 807. "It compels the defendant to meet charges of which the indictment gives him no information, confuses him in his defense, raises a variety of issues, and thus **diverts the attention of the jury** from the one immediately before it." Id. (emphasis added). "[T]he general rule should be strictly enforced in all cases where applicable because of the prejudicial effect and injustice of such evidence, and should not be departed from except under conditions which clearly justify such a departure." State v. Sharpe, 239 S.C. 258, 122 S.E.2d 622, 630 (1961).

Exceptions to the above stated rule were recognized in State v. Lyle and were later included in Rule 404(b). Evidence of other crimes or bad acts is competent to prove the specific crime charged if, and only if, it shows:

an inadmissible opinion of a lay witness.

- a. motive;
- b. intent;
- c. the absence of mistake or accident;
- d. a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; or
- e. the identity of the person charged with the commission of the crime at trial.

Id. at 806. Evidence which falls into an exception does not mean that it is admissible. The following inquiries must first be made before the evidence is admitted.

- A. Can the government establish the prior bad act by clear and convincing evidence?
- B. If yes, what is the connection between the crime charged and the prior bad act sought to be introduced?
 - 1. In essence, how is the prior bad act relevant to prove a material fact or element of the crime charged?
 - 2. The connection between the prior bad act and the present crime must also be close, not just a general similarity.
- C. If yes, is the probative value of the evidence substantially outweighed by the danger of unfair prejudice?

The evidence must be excluded even if it is just "dangerously close to tipping the scales," despite its relevance to some material issue other than character.
- D. If yes, does the evidence sought to be introduced fit an exception?

B. The Camden Truck theft is inadmissible under SCORE 404(b)

As stated above, to qualify for admissibility under SCORE 404 the state must prove the act falls into one of the following categories: motive, intent, absence of mistake or accident, common scheme or plan, or identity. The truck theft does not qualify as evidence satisfying any of the exceptions under

404(b).

The only exceptions that may be applicable in the case at hand would be the identity or common scheme or plan exceptions. Motive would not apply because the only motive attributable to Mr. McGee-presumably theft-in each case is obvious. Accident and mistake would not apply because no such claim is being or could be made with respect to what can only be described as a burglary and assault. Similarly, there is no issue with respect to intent. Thus, since identity is the only issue presented in this case, the State must argue that the theft of the truck in Camden somehow identifies Mr. McGee as the individual who assaulted the victim.

The common scheme or plan and identity exceptions are interrelated, as evidence of common scheme or plan essentially goes to prove the identity of the perpetrator. *State v. Kennedy*, 528 S.E.2d 700 (Ct. App. 2000). To be admitted under this exception, the truck theft would have to serve to identify Mr. McGee as the perpetrator of the murder. This analysis is difficult to undertake in the instant case because there is so little connection between the two offenses and there is zero similarity between them.

The State could proceed on the theory that the degree of similarity is so unique and so similar so as to establish a clear logical connection between the crimes which necessarily establishes the possibility of only one perpetrator of the two crimes. This premise is amply supported by the case law. *State v. Timmons*, 327 S.C. 48, 488 S.E.2d 323 (1997); *State v. Patrick*, 318 S.C. 352, 457 S.E.2d 632 (Ct. App. 1995); *State v. Rivers*, 254 S.E.2d 299 (S.C. 1979). However, this is inapplicable to the case at hand. There is no similarity between the two offenses. There is only the allegation that Mr. McGee committed the Camden Truck theft and therefore he must be the individual who assaulted Mr. Eichelberger. This analysis is tortured at best.

In its analysis of the common scheme or plan exception the Supreme Court has set forth the following rule:

For admission under either theory (common scheme or plan and identity), our cases have required that the relationship between the acts must have established such a connection between them as would logically exclude or tend to exclude the possibility that the present crime *could have been committed by another person*.

Id. at 300, emphasis added.

The Court reiterated this holding in later cases finding that the *method* used must be so distinct and the similarity between the prior crimes and the one charged so strong that it is **highly improbable** that the present crime could have been committed by another person. *State v. Wilson*, 274 S.C. 635, 266 S.E.2d 426 (1980); *State v. Rivers*, 273 S.C. 75, 254 S.E.2d 299 (1979). That standard is not met here. It is entirely possible, and indeed likely, that these two acts were committed by different individuals. As noted above there is nothing to connect these two acts other than the state's unfounded belief that Mr. McGee committed them both.

The State could further simply argue that the theft of the truck is admissible because it identifies Mr. McGee as the individual who assaulted the victim because the commission of the one offense identifies him as the perpetrator of the other offense. The State's theory fails here too. Examples of cases in which this theory has been upheld include a direct, very clear connection between the two offenses. In *State v. Forney*, 468 S.E.2d 641 (1996) the Supreme Court upheld the admission of a murder conviction where the trial court had allowed evidence that the defendant and his co-defendant had stolen a car two hours prior to the murder of a police officer. During the theft of the car, the defendant has made a statement to one of the victims of the car theft that he would kill him if he didn't comply with his demands. The Court held that this evidence was admissible to

identify the defendant as the gunman in the later shooting of the police officer. This case demonstrates the requirement that there be a close connection between the two offenses and that the bad act evidence serve a clear purpose.

In State v. Martucci, 669 S.E.2d 598 (2008) the South Carolina Court of Appeals held admissible prior acts of child abuse committed by the defendant in a homicide by child abuse case. The court reasoned that because the defendant was claiming that the child's mother was the actual perpetrator, the prior acts were admissible to identify him as the one who had mistreated the child rather than her. In State v. Southerland, 447 S.E.2d 862 (1994), the South Carolina Supreme Court upheld admission of evidence relating to the theft of a shotgun from a trailer two weeks prior to the murder. This shotgun was later traded for drugs by the defendant the day after the murder. The court upheld admission of this evidence because the shotgun was the murder weapon and therefore served to identify the defendant as the gun man. There is a clear connection between those acts and the murder.

By contrast the South Carolina Supreme Court in State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) found inadmissible evidence relating to a statement made by a defendant in a murder case that he made while on the run from law enforcement. He told a woman he met that he was on the run because he was accused of killing a female named Monique or Monica. The trial court admitted the evidence of this statement as evidence satisfying the identity exception to Rule 404(b). The Supreme Court held that this statement in no way identified the defendant but rather served to show that he knew he was accused of murder. The Court further stated that the statement in no way logically related to the murder.

In the case at bar there is no logical relationship that can be established between the Camden

truck theft and the assault on the victim. The state's theory in this regard is based entirely on conjecture. The winch bar cannot be linked to Camden Steel and Metal and there is no evidence that Mr. McGee even committed the truck theft other than the identification by his sister. The defense maintains that the sister's identification is inadmissible evidence independent of the legal arguments put forth here.

III. CLEAR AND CONVINCING EVIDENCE.

The government must provide clear and convincing proof of a defendant's prior bad act for the evidence to be admissible. State v. Smith, 300 S.C. 216, 387 S.E.2d 245 (1989). Proof of an actual conviction is one way in which a proponent of Lyle evidence can establish bad acts and satisfy the clear and convincing standard. State v. Bell, 302 S.C. 18, 393 S.E.2d 364, 369 n.3, cert. denied, 498 U.S. 881 (1990). However, a prior bad act need not charge the defendant with a crime to qualify for admission. State v. Corley, 318 S.C. 260, 457 S.E.2d 1 (Ct. App. 1995). Without a conviction, however, clear and convincing proof that the defendant committed that prior bad act must be presented before the act may be considered by the trial court for analysis under Lyle.

The South Carolina State Supreme Court recently considered the clear and convincing standard in a homicide by child abuse case. In State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008), the Court found that evidence relating to prior acts of abuse against the victim had not been established by clear and convincing evidence. In that case, Fletcher and his girlfriend were both charged with killing the girlfriend's two year old son. One of Fletcher's friends testified that two weeks prior to the child's death he had observed the child at Fletcher's home left in an attic, pouring sweat, and left alone while Fletcher and his girlfriend were both home. He also testified that some time during the two weeks before the child died he came to the house and found the child handcuffed

to a bed by his feet. Both Fletcher and his girlfriend were home at the time. The Supreme Court reversed the Court of Appeals finding that there was simply no evidence that Fletcher was the perpetrator of the prior bad acts against the victim. The Court stated “[c]lear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal.” Fletcher, 664 S.E.2d at 483. Because there was no evidence that Fletcher was the person who placed the victim in the attic or in handcuffs, the Court held that the clear and convincing standard had not been met.

In State v. Pierce, 485 S.E.2d 913 (1997) and State v. Cutro, 504 S.E.2d 324 (1998) the Court came to the same conclusion. In Pierce, the Court reversed the trial court’s admission of testimony regarding a split lip in a homicide by child abuse case. Evidence was introduced that some time prior to the child’s death, he had been seen for a split lip. The Court found the evidence proving that the split lip was caused by the defendant was not clear and convincing and reversed his conviction. Recently, the South Carolina Supreme Court addressed the clear and convincing evidence standard in State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997). In Pierce, the defendant was convicted of homicide by child abuse. Hospital employees testified that the decedent had been treated previously for a split lip and a swollen eye. This testimony was offered to prove a common scheme or plan under the exception allowed by State v. Lyle. The Supreme Court held that the testimony regarding the decedent’s previous injuries was inadmissible absent a conviction or clear and convincing proof that the defendant inflicted the injuries. Mere speculation is not enough. In Pierce, the state failed to offer any proof that the defendant inflicted these injuries. Thus the testimony was inadmissible under Lyle and

the trial court erred in admitting it.

In State v. Cutro, the Court again held that the evidence relating to the death and assault on two other children had not been proven by clear and convincing evidence. In that case, the defendant was the care giver at her in home day care. Over the course of eight months two children died and one child suffered brain damage. Because she was not the only one present when the children were injured, the Court held that the state had not proven by clear and convincing evidence that she was the perpetrator.

In State v. Smith, 300 S.C. 216, 387 S.E.2d 245 (1989), it was error under State v. Lyle to admit evidence of another murder the defendant was suspected of committing to prove motive and common scheme or plan. The proof that the defendant committed the other crime was not clear and convincing, and the prejudice far outweighed its probative value.

In State v. DuBose, 288 S.C. 226, 341 S.E.2d 785 (1986), the defendant was charged with Manufacturing Marijuana. The state introduced aerial photographs of the defendant's property taken between 1981-83. The defendant was charged with manufacturing and trafficking marijuana in 1984. The state argued that marijuana could have been growing in the pictures and this evidence was admissible to show a common scheme or plan. "[T]here is a total failure of proof" that the defendant grew marijuana in the fields in the photos from 1981-83. Thus, the proof was not clear and convincing.

In State v. Atkins, 309 S.C. 542, 424 S.E.2d 554 (Ct. App. 1992), the government introduced evidence of a sexual assault upon a second victim to show the defendant's common scheme or design to get sexual gratification by molesting small children. It was incumbent upon the state to show by clear and convincing evidence that the defendant had in fact committed the assault upon the second victim. The Court of Appeals noted that if this threshold burden is not met, the trial court need not concern

itself with the issues of probative value and prejudicial effect of the evidence. In Atkins the evidence was less than clear and convincing that the defendant was guilty of the assault upon the second victim, therefore, it should have been excluded.

There is no evidence linking Mr. McGee to the theft of this truck. As noted above, the video of the theft shows an individual of medium build, wearing a striped shirt, and a hat. His face cannot be made out clearly in the video and there is absolutely no way to identify anyone from the quality of this video. The identification by Sandra Thomas is unreliable and speculative. She cannot glean who the perpetrator is from the quality of the video. It is impossible. The murder weapon cannot be linked to this stolen truck although the investigators would like to make this connection. The owners of Camden Steele and Truck Company indicated to law enforcement that while winch bars similar to the one found are used in that business, they can't say if one like that was on the truck that was stolen and/or if the winch bar was missing when the truck was returned. Moreover, Mr. McGee has not been charged with any crime associated with the theft of the truck in Camden which lends more credence to the defense position that the evidence does not rise even to the level of clear and convincing.

IV. THE CONNECTION BETWEEN THE PRIOR BAD ACT AND THE CRIME CHARGED.

There must be some connection between the prior bad act and the present crime charged. State v. Rivers, 273 S.C. 75, 254 S.E.2d 299 (1979). The connection between the prior bad act and the crime must be more than just a general similarity. State v. Stokes, 279 S.C. 191, 304 S.E.2d 814 (1983); see also State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984); State v. Hallman, 298 S.C. 171, 379 S.E.2d 115 (1989). There must be a close degree of similarity between the prior bad acts and the crime. State v. Campbell, 347 S.C. 449, 454 S.E.2d 899 (Ct. App. 1994). Several recent decisions from the

South Carolina appellate courts have illustrated the need for the close connection before evidence of prior bad acts is admissible.

For example, in State v. Pierce, *supra*, the defendant was convicted of homicide by child abuse. A hospital employee testified about the defendant's rough treatment of the decedent at the hospital one year prior to his death. The employee testified that the defendant jerked the decedent off the counter by his arm and roughly put him into his stroller. The trial court held the testimony admissible under the common scheme or plan exception to Lyle. The Supreme Court reaffirmed that a close degree of similarity or connection between the prior bad act and the crime is necessary. The connection between the prior bad act and the crime must be more than just a general similarity. The final holding in Pierce was that the prior bad acts about which the hospital personnel testified were not sufficiently similar to the acts which caused decedent's death. Thus, the evidence should have been excluded.

State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997), involved several incidents of prior bad conduct. One incident involved the subsequent purchase of crack cocaine with money obtained from the sale of saws stolen during the burglary. The Court held this incident was properly admitted as evidence of motive under Lyle. However, the witness's testimony concerning cocaine use and thefts prior to the incident did not meet the requirements to be admitted under Lyle. As to the witness's testimony concerning the prior cocaine use and thefts, there was no testimony demonstrating that a close degree of similarity between the earlier offenses and the crime charged (burglary). No testimony was presented as to the types of items previously stolen, the method and manner of the previous thefts, the location of the thefts, or that the defendant and witness had accomplished the thefts in a similar manner to the current warehouse burglary. This evidence was insufficient to demonstrate a common scheme. Further, this testimony was not relevant to demonstrate the defendant's motive for the current

burglary. The fact that the defendant and the witness had previously, on unspecified occasions, done crack cocaine or previously stolen to obtain money for crack does not serve to demonstrate a motive for the crime charged. On the contrary, the prior acts only serve to demonstrate that the defendant acted in conformity with his propensity to commit crimes, which introduction of would be in direct contradiction of Lyle.

In State v. Davenport, 321 S.C. 134, 467 S.E.2d 258 (Ct. App. 1996) the trial court allowed a witness to testify that the defendant had sexually assaulted her in 1989. The defendant was charged in 1989 with Assault and Battery with Intent to Kill and attempted Criminal Sexual Conduct. As to the 1989 charges, the defendant pleaded guilty to Assault and Battery of a High and Aggravated Nature. The state argued the weapons used (knives in both instances) and the relationships of the parties (the defendant only tangentially knew both of the victims before the assaults) provide the degree of similarity necessary to bring testimony of 1989 incident within Lyle. The appellate court said that "it cannot clearly perceive the connection between the acts," therefore the evidence should have been excluded. See also State v. Jenkins, No. 24440 (S.C. Sup. Ct. June 10, 1996).

The prior bad act sought to be introduced must be necessary to establish a material fact or element of the crime charged. The evidence must directly support "some substantial element" of the state's case, as where the purpose is to prove motive, intent, absence of mistake or accident, a common scheme or plan embracing several crimes so related to each other that proof of one tends to establish the other, and the identity of the wrongdoer. State v. Conyers, 268 S.C. 276, 233 S.E.2d 95, 96 (1977). "Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. United States v. Johnson, 610 F.2d 194 (4th Cir. 1979), cert. denied, 446 U.S. 911 (1980); State v. Byars, 277 S.C. 176, 284 S.E.2d 360 (1981); State v. Lyle, 125 S.C. 406, 118 S.E. 803

(1923)." State v. Johnson, 293 S.C. 321, 360 S.E.2d 317, 319 (1987). "If it is logically pertinent because it reasonably tends to prove a material fact, it is not rejected merely because it incidentally proves the defendant guilty of another crime." State v. Griffin, 277 S.C. 193, 285 S.E.2d 631, 634 (1981).

State v. Wilson, 274 S.C. 534, 266 S.E.2d 426 (1980), involved the charge of Criminal Sexual Conduct where the state tried to introduce evidence that the defendant had been positively identified in other sex related charges which occurred in the same vicinity more than three months later, to show identity and common scheme. The Supreme Court held the connection was too tenuous. "If there is any doubt as to the connection between the acts, the accused is to be given the benefit of the doubt and the evidence should not be admitted." Id. at 427. The Court noted that the time frame of three months diminished the similarity. See also State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984).²

In essence, the defendant gets the benefit of any doubt as to the admissibility of prior bad acts.

We can appreciate the difficulties encountered by trial judge in charting the amorphous area of the law created by the Lyle exceptions. When motive, intent, common scheme or plan, lack of accident or mistake, or identity cannot be shown by other means, Lyle can be used to provide a link between the prior bad act and the crime for which the defendant is being tried. However, Lyle is intended only to provide an exception to the general rule of inadmissibility. Furthermore:

if the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected."

State v. Lyle, 125 S.C. at 417, 118 S.E. at 807 (emphasis added)." State v. Carter, No. 2561 (S.C. Ct.

² In State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984), the defendant was cross-examined in a murder trial, where the victim was burned in a trailer fire, about the trailer of a former girlfriend's which was also burned. "When, as here, the previous alleged bad act is strikingly similar to the one for which [the defendant] is being tried, the danger of prejudice is enhanced. Moreover, the lack of a conviction, indictment, or arrest of [the defendant] for the prior fire and the absence of probative evidence linking

App. Sept. 23, 1996).³

[the defendant] to the prior act render the cross-examination improper." *Id.* at 13.

3 □ In State v. Douglas, 302 S.C. 508, 397 S.E.2d 98 (1990), the South Carolina Supreme Court reversed a conviction where there was not a sufficient connection between the crime charged and the prior bad act alleged. The fact that the defendant pulled a gun the night before the murder after "horseplaying" with another witness did not show the defendant's state of mind at the time he encountered the victim. No connection or relation between the two incidents was established. Furthermore, the prejudicial effect of admitting the prior bad act evidence was compounded by the fact that this evidence formed a substantial portion of the state's case. The prejudicial effect of admitting this evidence substantially outweighed its probative value, thereby raising a legally spurious presumption of guilt in the minds of the jurors.

V. CONCLUSION.

Thus, the court must address several questions when reviewing the state's request to allow the introduction of prior bad acts:

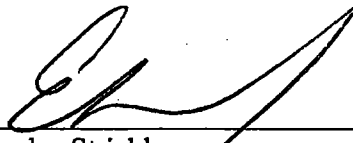
- A. Can the government establish the prior bad act by clear and convincing evidence?
- B. If yes, what is the connection between the crime charged and the prior bad act sought to be introduced?
 - 3. In essence, how is the prior bad act relevant to prove a material fact or element of the crime charged?
 - 4. The connection between the prior bad act and the present crime must also be close, not just a general similarity.
- C. If yes, is the probative value of the evidence substantially outweighed by the danger of unfair prejudice?
 - 1. The evidence must be excluded even if it is just "dangerously close to tipping the scales," despite its relevance to some material issue other than character.
- D. If yes, does the evidence sought to be introduced fit an exception?

If the answer to any one of these questions is no, then the evidence must be excluded under the law of South Carolina.

THEREFORE, any allegations of prior bad acts on the part of the defendant must be addressed by the trial court in camera to preclude all prejudicial allegations from reaching the jury. The defendant submits that the prior bad acts alleged by the state are inadmissible under Lyle. The defendant makes this motion pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United

States Constitution; Article One, Sections Three, Ten, Fourteen, and Fifteen of the South Carolina Constitution; along with other applicable law.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'D. Strickler', written over a horizontal line.

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This 1st day of August, 2011

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 24th, 2013


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