

VOL I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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JUL 28 2014

Appeal from Lexington County

S.C. Supreme Court

William Jeffrey Young, Circuit Court Judge

RANDALL S. TYLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000795

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT (dated June 9-13, 2003)	1
APPLICATION FOR POST-CONVICTION RELIEF	405
RETURN	448
ORDER OF CONTINUANCE (dated September 10, 2008)	452
ORDER OF CONTINUANCE (dated November 9, 2008)	456
ORDER OF CONTINUANCE (dated May 19, 2009)	458
ORDER OF CONTINUANCE (dated November 17, 2009)	460
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	464
ORDER OF CONTINUANCE (dated July 22, 2010)	494
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated September 17, 2010)	499
ORDER OF CONTINUANCE (dated December 30, 2010)	508
MOTION TO RECONVENE	515
ORDER OF CONTINUANCE (dated December 30, 2010)	529
MOTION TO AMEND PLEADINGS	533
HEARIND TRANSCRIPT (dated February 2, 2012)	566
PETITIONER'S EXHIBIT# 9 (GUNSHOT RESIDUE ANALYSIS)	748
PETITIONER'S EXHIBIT# 10 (FORENSIC AND DNA ANALYSIS)	749
PETITIONER'S EXHIBIT# 11 (FORENSIC AND DNA ANALYSIS)	750
PETITIONER'S EXHIBIT# 13 (LETTER DATED APRIL 15, 20030)	759

PETITIONER'S EXHIBIT# 14 (SLED BULLETT/PROJECTILE WORKSHEET).....	767
PETITIONER'S EXHIBIT# 16 (VOLUNTARY STATEMENTS AND ARREST WARRANTS OF SUSPECTS/WITNESSES).....	786
PETITIONER'S EXHIBIT# 17 (INTERVIEW OF JAMES T. WILLIAMS)	801
UNDERLYING FACTS IN SUPPORT OF PETITIONER'S MOTION TO RECONVENE	823
ORDER OF DISMISSAL	835
MOTION FOR RECONSIDERATION	858
HEARING TRANSCRIPT (dated August 15, 2012).....	867
ORDER DENYING MOTION TO ALTER	891
INDICTMENTS	894

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS
COURT:**

**PETITIONER'S EXHIBITS # 1 – 8 (PHOTOGRAPHS)
PETITIONER'S EXHIBIT # 18 (TAPE)**

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

3
4
5 STATE OF SOUTH CAROLINA,)

6 -VS-)

7 RANDALL SCOTT TYLER,)

8 Defendant.)

Transcript of Record
03-GS-32-2264-2266

9
10 June 9-13, 2003
11 Lexington, South Carolina
12

13 B E F O R E:

14 HONORABLE MARC H. WESTBROOK, Judge; and a jury.
15
16

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

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22

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24 Circuit Court Reporter
25

1	» » o < «	
2	Jury Impaneled	33
3	Jury Sworn	43
4	Opening Statement by Mr. Swarat	50
5	Opening Statement by Mr. Bolt	56
6	Closing Statement by Mr. Moses	324
7	Closing Statement by Mr. Bolt	330
8	Closing Statement by Mr. Swarat	351
9	Jury Charge	365
10	Verdict	389

INDEX OF WITNESSES

12	<u>WITNESSES:</u>	<u>PAGE</u>
13	SCOTTIE R. FRIER	
14	In Camera Direct By Mr. Swarat	62
15	In Camera Cross By Mr. Bolt	71
16	TODD HARTMAN	
17	Direct By Mr. Swarat	80
18	VICKI HALLMAN	
19	Direct By Mr. Swarat	91
20	Cross By Mr. Bolt	128
21	Redirect By Mr. Swarat	130
22	MICHAEL POOLE	
23	Direct By Mr. Swarat	132
24	JAMES THOMAS WILLIAMS	
25	Direct By Mr. Swarat	136

1	Cross By Mr. Bolt	160
2	Redirect By Mr. Swarat	164
3	Recross By Mr. Bolt	165
4	DONNA HUTTO	
5	Direct By Mr. Swarat	168
6	Cross By Mr. Bolt	184
7	Redirect By Mr. Swarat	189
8	Recross By Mr. Bolt	190
9	SCOTTIE FRIER	
10	Direct By Mr. Swarat	193
11	Cross By Mr. Bolt	215
12	JANICE EDWARDS ROSS	
13	Direct By Mr. Swarat	215
14	Cross By Mr. Bolt	224
15	Redirect By Mr. Swarat	226
16	ADRIAN NICHOLE RILEY	
17	Direct By Mr. Swarat	227
18	Cross By Mr. Bolt	234
19	Redirect By Mr. Swarat	236
20	RANDALL SCOTT TYLER	
21	Direct By Mr. Bolt	257
22	Cross By Mr. Swarat	290
23	Redirect By Mr. Bolt	304
24	Recross By Mr. Swarat	305
25	SCOTTIE R. FRIER	

1	Direct By Mr. Swarat	313
2	STATE'S EXHIBITS	
3	<u>NO.</u>	<u>DESCRIPTION</u>
4		<u>ID.</u> <u>EV.</u>
4	1-4	Aerial photos 88
5	5	Videotape 95
6	6	Chart with photos 106
7	11	Eyeglasses 109
8	12	Hat 109
9	10	Summary chart 111
10	7	Chart with photos 112
11	13	Box of tiles 115
12	14	Photo 116
13	8	Chart with photos 118
14	15	Shell casings (3) 118
15	16	Bullet fragment 119
16	17	Fragments, round, coins 123
17	18-20	Photos 125
18	21	Suspect kit 134
19	22-23	Convictions 167
20	24	Photo lineup 182
21	16-A&B	Bullet fragment 192
22	25	Photo lineup 205
23	26	Statement (Tyler) 209
24	27	Autopsy photo 219
25		

COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Note from jury	312	
2	Jury charge	383	
3	Note from jury	386	

Date: 6-9-03County: Lexington

VOIR DIRE

Case No: 03-GS-32-2264-66Judge: WestbrookPl./State: StateState/Pl's Atty: Swarat / mosesDefendant: Randall Scott TylerDefense Atty: D. BoltCourt Reporter: Pantsari

Page 1 of 2

Juror No.	Name	Sex	Race	Court	Strikes		Accept
					Plaintiff	Defense	
125	Frances Martoi	F	W				✓ ①
83	Martin McLenore	M	W				✓ ②
52	Terry Hancock	F	W			✓ ①	
91	Jack Parrish	M	W				✓ ③
59	Henry Henriksen	M	W			✓ ②	
155	Carolyn Di Russo	F	W				✓ ④
154	Rebecca Collum	F	W				✓ ⑤
72	Louise Kerce	F	W			✓ ③	
16	Freddy Brock	M	W			✓ ④	
58	William Henninger	M	W				✓ ⑥
168	Luanne Vinson	F	W			✓ ⑤	
65	Rozelle Hook	F	W				✓ ⑦
164	Jillian Major	F	B				✓ ⑧
162	Angela Lee	F	W			✓ ⑥	
81	Nelle Matthews	F	W			✓ ⑦	
105	Katherine Chaddock	F	W		✓ ①		
54	Marty Harris	M	W				✓ ⑨
2	Sonya Amaker	F	W				✓ ⑩

*For the court column, please indicate who made the motion to strike the jurors "for cause"
 "P" for Plaintiff or "D" for Defense

1 THE COURT: Solicitor, are you ready to call
2 your first case?

3 MR. SWARAT: Yes, Your Honor. Your Honor, at
4 this time we call Randall Scott Tyler on three charges:
5 Murder, burglary in the first degree, and criminal
6 conspiracy.

7 THE COURT: Thank you. Ladies and gentlemen
8 as you heard, the State now calls the case of the State
9 versus Randall Scott Tyler. And they do so by virtue of
10 these documents that I am holding in my hand. These are
11 indictments.

12 Let me tell you right off the bat that an
13 indictment is no more than a statement of the
14 charges against the Defendant. It is designed to
15 tell the Defendant what he is charged with and to
16 let him know what the State alleges he did to have been
17 charged.

18 It is not evidence and it certainly doesn't
19 mean he is guilty. Remember, as I told you earlier, the
20 State is required to prove his guilt on each and every
21 element of each charge. And, again, the indictment is
22 only a statement of the charges against him. That's all
23 it is.

24 I am going to read to you very briefly the
25 allegations contained in the indictments. First, as to

1 the indictment for murder, it alleges that Randall Scott
2 Tyler did, along with a codefendant in Lexington County,
3 between the dates of July 13 and July 14 of 2002, did
4 willfully, feloniously, and with malice aforethought
5 kill one Robert Lewis by shooting him with a firearm, a
6 deadly weapon, and/or beating him with an unknown
7 object; and Robert Lewis died as a result in violation
8 of the Code of Laws of South Carolina.

9 The second indictment is for burglary in the
10 first degree. It alleges that Randall Scott Tyler did,
11 along with a codefendant in Lexington County, between
12 the dates of July 13 and 14 of 2002, did willfully and
13 unlawfully enter the residence of Robert Lewis located
14 at Highway in Lexington County, South
15 Carolina without permission and with the intent to
16 commit a crime therein; that being assault or larceny.

17 And that while in the dwelling or flight from
18 the dwelling, the Defendant was armed with a deadly
19 weapon; or that the entering occurred during the
20 nighttime; or caused injury to the victim as a
21 nonparticipant; or that the Defendant had two or more
22 burglaries prior to this; or a combination of any of the
23 four, this all in violation of the Code of Laws of South
24 Carolina.

25 Also, on the third charge, criminal

1 conspiracy, it alleges that Randall Scott Tyler did in
2 Lexington County, on or about July 13 of 2002,
3 knowingly, unlawfully, and willfully, unite, combine,
4 conspire, confederate, agree or have tacit understanding
5 with Travis Harsey for the purpose of committing a
6 crime, that being assault or burglary or larceny, in
7 violation of the Code of Laws of South Carolina.

8 Now, remember again, you are under oath. And
9 if any of these questions that I ask apply to you, I
10 will ask that you stand, give us your name and your jury
11 number; and then we will see how the question applies to
12 you.

13 First of all, the State is represented in this
14 matter by the Eleventh Circuit Solicitor's Office. Has
15 any member of the jury venire -- and that includes
16 either you or a family member or a close friend -- ever
17 had any dealings or any relationship with the
18 Eleventh Circuit Solicitor's Office?

19 You may have worked for them, worked with them
20 as a victim to a crime, done business with them in some
21 fashion, any relationship in any way to the Eleventh
22 Circuit Solicitor's Office.

23 (Juror stands).

24 THE COURT: Yes, sir, your name and number?

25 JUROR: My name is Paul Walukewicz, 173. My

1 wife was formally married to an attorney here in
2 Lexington County.

3 THE COURT: And that was who?

4 JUROR: Larry Salley.

5 THE COURT: I believe he does some cases with
6 the Solicitor's Office. Would that affect whether you
7 could give both sides a fair trial in this case?

8 JUROR: No.

9 THE COURT: Thank you, sir. Anyone else?

10 (Juror stands).

11 THE COURT: Yes, ma'am, your name and number?

12 JUROR: My name is Margaret Hollis, G.S.63. I
13 used to work for Judge Long.

14 THE COURT: Would that affect your ability to
15 give both sides a fair trial?

16 JUROR: No, sir.

17 MR. BOLT: Did she say Judge Long, Your Honor?

18 THE COURT: Judge Long, yes, sir. Thank you,
19 ma'am. Anyone else?

20 (There was no response).

21 THE COURT: Particularly handling this case
22 ~~will be Assistant Solicitor Tav Swarat. This is~~
23 Mr. Swarat. Will anybody else be with you, Mr. Swarat?

24 MR. SWARAT: Yes, Your Honor, Marion Moses.

25 THE COURT: And Mr. Marion Moses. Does any

1 member of the jury venire know or know of Mr. Swarat or
2 Mr. Moses?

3 (There was no response).

4 THE COURT: Thank you. Do you have a list of
5 witnesses?

6 MR. SWARAT: I do, Your Honor. I believe the
7 clerk has that.

8 THE COURT: All right. Now, also let me ask
9 this. The Defendant is Mr. Randall Scott Tyler. Let
10 Mr. Tyler stand if he would, please, so they can see who
11 he is.

12 (The Defendant stands).

13 THE COURT: Does any member of the jury venire
14 know or know of Mr. Tyler?

15 (There was no response).

16 THE COURT: Thank you. He is represented by
17 Mr. Dennis Bolt. Does anyone know or know of Mr. Dennis
18 Bolt?

19 (There was no response).

20 MR. BOLT: Your Honor, Mr. Cox will probably
21 be here with me tomorrow.

22 THE COURT: Who?

23 MR. BOLT: James C. Cox, III.

24 THE COURT: Does anyone know or know of
25 Mr. James C. Cox, III?

1 (Juror stands).

2 THE COURT: Your name and number, please, sir?

3 JUROR: Garrett Galloway.

4 THE COURT: How do you know Mr. Cox?

5 JUROR: If it's the same one out of
6 Hartsville?

7 MR. BOLT: Yes.

8 JUROR: Just knew him because he did my
9 parent's divorce, I think. I don't know him personally.
10 I knew his daughter at school.

11 THE COURT: Would that affect your ability to
12 give both sides a fair trial?

13 JUROR: No, sir.

14 MR. BOLT: Your Honor, for the record, I
15 believe, he is talking about James Cox, Sr., Trey's
16 father.

17 JUROR: Okay.

18 THE COURT: Thank you, sir.

19 CLERK: He was number 159, Judge.

20 THE COURT: Thank you. Did any member of the
21 jury venire know or know of Mr. Robert Lewis?

22 (Juror stands).

23 THE COURT: Yes, ma'am, your name and number,
24 please?

25 JUROR: My name is Ethel Butler. I have a

1 son-in-law named Robert Lewis.

2 THE COURT: Now you have a son-in-law?
3 Mr. Lewis in the case is alleged to have died as a
4 result of this.

5 JUROR: Okay. Thank you, sir.

6 THE COURT: Anyone else?

7 (There was no response).

8 THE COURT: The following people may be
9 witnesses in this case. There are several of them,
10 about 30. So what I will do is call each name one at
11 the time.

12 If you recognize the name or if you think you
13 know or know of the person, please stand and give us
14 your name and number. Again, these are potential
15 witnesses in this case.

16 Some of them are here. If they are here, we
17 will let them stand for your convenience so you can see
18 them. But if they are not here, don't be concerned.
19 They don't necessarily have to be.

20 First of all, Sergeant Scottie Frier of the
21 Lexington County Sheriff's Department. I saw Sergeant
22 Frier over here. Does anyone know or know of Sergeant
23 Frier?

24 (Jurors stand).

25 THE COURT: Your name? Would you stand up,

1 please. Again, y'all need to stand because I have
2 trouble seeing the hands at my advanced age. Your name
3 and number?

4 JUROR: Terry Hancock. My number is G.S.52,
5 just an acquaintance. I cut his hair a few times a long
6 time ago.

7 THE COURT: Would that affect your ability to
8 give both sides a fair trial?

9 JUROR: No.

10 THE COURT: Thank you, ma'am. Yes, sir.

11 JUROR: My name is Robert Ross. I'm 176. I
12 believe he worked at Cayce a while back. I was an
13 Explorer back in high school.

14 THE COURT: Would that affect your ability to
15 give both sides a fair trial?

16 JUROR: No, sir.

17 THE COURT: Thank you, sir. Anyone else?

18 (Juror stands).

19 THE COURT: Yes, ma'am, your name and number,
20 please?

21 JUROR: My name is Carol Matthews. My number
22 is 167. I teach at the school where Mr. Frier's
23 children attended. I just know him in passing. I did
24 not teach his children personally.

25 THE COURT: Would that affect your ability to

1 give both sides a fair trial?

2 JUROR: No, sir.

3 THE COURT: Thank you, ma'am. Anyone else?

4 (There was no response).

5 THE COURT: Detective Vickie Hallman of the
6 Lexington County Sheriff's Department. This is
7 Detective Hallman.

8 (There was no response).

9 THE COURT: Thank you, ma'am. Detective Todd
10 Hartman of the Lexington County Sheriff's Department --
11 Deputy Hartman, excuse me.

12 (There was no response).

13 THE COURT: Valerie Hook of E.M.S., Emergency
14 Medical System.

15 (There was no response).

16 THE COURT: Jennifer Luka, spelled L-U-K-A.

17 (Juror stands).

18 THE COURT: Yes, sir, your name and number,
19 please, sir?

20 JUROR: Fred Brock, 16.

21 THE COURT: Yes, sir.

22 JUROR: I am the realtor that sold her house.

23 THE COURT: Would that affect your ability to
24 give both sides a fair trial?

25 JUROR: No, sir.

1 THE COURT: Thank you, sir. Anyone else?

2 (There was no response).

3 THE COURT: Deputy Todd Strange of the
4 Lexington County Sheriff's Department.

5 (There was no response).

6 THE COURT: Deputy Michael Phipps of the
7 Lexington County Sheriff's Department.

8 (There was no response).

9 THE COURT: Sergeant Nathaniel Collins of the
10 Lexington County Sheriff's Department.

11 (There was no response).

12 THE COURT: Deputy Amy Holbrook of the
13 Lexington County Sheriff's Department.

14 (There was no response).

15 THE COURT: Donna M. Hutto.

16 (There was no response).

17 THE COURT: Detective Jim Hickman of the
18 Lexington County Sheriff's Department.

19 (There was no response).

20 THE COURT: Detective Luke Fossum of the
21 Lexington County Sheriff's Department. This is
22 Detective Fossum.

23 (There was no response).

24 THE COURT: Dr. Joel S. Sexton.

25 (There was no response).

1 THE COURT: Dr. Janice E. Ross.
2 (There was no response).
3 THE COURT: Detective Chris Stout.
4 (There was no response).
5 THE COURT: Detective Linda Raines, again of
6 the Lexington County Sheriff's Department.
7 (There was no response).
8 THE COURT: Captain Joe Quigg of the Lexington
9 County Sheriff's Department.
10 (There was no response).
11 THE COURT: Is anybody going to be left at the
12 department? Janet Kenesko of the Lexington County
13 Sheriff's Department.
14 (There was no response).
15 THE COURT: Jamie Hite of the Laurens Police
16 Department.
17 (There was no response).
18 THE COURT: Amanda Massengale of the Lexington
19 County Sheriff's Department.
20 (There was no response).
21 THE COURT: S.L.E.D. Agent Adrienne N. Riley.
22 (There was no response).
23 THE COURT: Ken Whitler of S.L.E.D. Now,
24 S.L.E.D. is the South Carolina Law Enforcement Division.
25 Commonly we use the acronym of S.L.E.D. shortened for

1 that. Agent Ken Whitler. Does anyone know or know of
2 Agent Whitler?

3 (There was no response).

4 THE COURT: James Williams.

5 (There was no response).

6 THE COURT: Teresa Fox of the Providence
7 Hospital.

8 (There was no response).

9 THE COURT: Deputy Michael Poole of the
10 Lexington County Sheriff's Department.

11 (There was no response).

12 THE COURT: Let me see. Cecelia Staley of the
13 Lexington County Sheriff's Department.

14 MR. SWARAT: No, Your Honor. She is a citizen
15 witness.

16 THE COURT: She is not with the Lexington
17 County Sheriff's Department. She just got pulled into
18 that. She is not from the department then. She is a
19 citizen witness, Cecelia Staley. Does anyone know or
20 know of Mrs. Staley?

21 (There was no response).

22 THE COURT: Keisha Simpson.

23 (There was no response).

24 THE COURT: Denise Eargle of S.L.E.D.

25 (There was no response).

1 THE COURT: Sheree Brown of S.L.E.D.

2 (There was no response).

3 THE COURT: Phillip Coonfield of S.L.E.D.

4 (There was no response).

5 THE COURT: And Deborah Harsey.

6 (There was no response).

7 THE COURT: Again, does any member of the jury
8 venire feel that you may know or know of any of the
9 folks whose names I have just called?

10 JUROR: I think I taught --

11 THE COURT: Please stand.

12 (Juror stands).

13 JUROR: G.S.88, Nelle Matthews. I think I
14 taught Todd Strange when he was in seventh grade.

15 THE COURT: Okay.

16 JUROR: But it would not affect me.

17 THE COURT: It would not affect your ability
18 to give both sides a fair trial?

19 JUROR: No.

20 THE COURT: Thank you, ma'am. Anyone else?
21 Stand please if you do.

22 (There was no response).

23 THE COURT: Does any member of the jury venire
24 or has any member of the jury venire ever worked for a
25 law enforcement agency or do you have a family member or

1 a close friend who works for a law enforcement agency?

2 (Jurors stand).

3 THE COURT: Everyone go ahead and stand. If
4 you work for a law enforcement agency or have ever
5 worked for one or if you have a family member who works
6 for one, go ahead and stand. It doesn't mean they have
7 to be a law enforcement officer. They may be a
8 dispatcher or something like that. Anyway, if they work
9 for one.

10 (Jurors stand).

11 THE COURT: Your name and number, please,
12 ma'am?

13 JUROR: I'm Deona Travis, number 130. I don't
14 work for or know anyone there, but I have a friend that
15 works for the Sheriff's Department.

16 THE COURT: Would that affect your ability to
17 give both sides a fair trial?

18 JUROR: I don't think so.

19 THE COURT: Thank you, ma'am. Yes, sir.

20 JUROR: One-fifty-nine.

21 THE COURT: What is your name?

22 JUROR: Garrett Galloway. I've got extensive:
23 A stepfather, stepbrother, uncle, all --- stepbrother and
24 uncle, that's with the County, stepfather with
25 U.S.C.P.D.

1 THE COURT: Would that affect your ability --

2 JUROR: No, sir.

3 THE COURT: -- to give both sides a fair
4 trial?

5 JUROR: No, sir.

6 THE COURT: Thank you, sir. Yes, ma'am.

7 JUROR: Norma Hammill, 51. For a period my
8 husband worked for the shock incarceration unit over
9 there. He is not there now.

10 THE COURT: Would that affect your ability to
11 give both sides a fair trial?

12 JUROR: No, sir.

13 THE COURT: Thank you, ma'am. Yes, sir.

14 JUROR: Henry Henriksen, 59. I have a
15 daughter who is an active deputy sheriff in the City of
16 Anderson, South Carolina.

17 THE COURT: Would that affect your ability to
18 give both sides a fair trial?

19 JUROR: No.

20 THE COURT: Thank you, sir. Yes, sir.

21 JUROR: Robert Clements, 153. My father used
22 to work for the South Carolina Wildlife Department as a
23 warden.

24 THE COURT: Would that affect your ability to
25 give both sides a fair trial?

1 JUROR: No, sir.

2 THE COURT: Thank you, sir. Yes, ma'am.

3 JUROR: Terry Hancock, 52. My mother works
4 for the Lexington County Sheriff's Department.

5 THE COURT: Would that affect your ability to
6 give both sides a fair trial?

7 JUROR: No.

8 THE COURT: Thank you, ma'am. Yes, ma'am.

9 JUROR: Jeannie Dunn, 156. I work with the
10 wife of a narcotic agent.

11 THE COURT: Would that affect your ability to
12 give both sides a fair trial?

13 JUROR: No.

14 THE COURT: Thank you, ma'am. Yes, ma'am.

15 JUROR: Ethel Butler. My brother John, he
16 works for Lexington.

17 THE COURT: Would that affect your ability to
18 give both sides a fair trial?

19 JUROR: No.

20 THE COURT: Thank you, ma'am. Yes, sir.

21 JUROR: Joel Thompson, 17. I have a nephew
22 who is a police officer for the Myrtle Beach Police
23 Department.

24 THE COURT: Again, would that affect you as a
25 juror?

1 JUROR: No, sir.

2 THE COURT: Thank you, sir. Yes, sir.

3 JUROR: Joe Watson, G.S.134. I have a
4 brother-in-law at the Department of Corrections.

5 THE COURT: Would that affect your ability to
6 give both sides a fair trial?

7 JUROR: No, sir.

8 THE COURT: Thank you, sir. Yes, sir.

9 JUROR: Perry Long, number 79. I have a
10 cousin that's an investigator with S.L.E.D.

11 THE COURT: Would that affect your ability to
12 give both sides a fair trial?

13 JUROR: No.

14 THE COURT: Yes, ma'am.

15 JUROR: Carolyn DiRusso, G.S.155. My husband
16 works for the Department of Corrections, and my
17 brother-in-law used to be a deputy in Massachusetts.

18 THE COURT: Would that affect you sitting
19 fairly as a juror for both sides?

20 JUROR: No.

21 THE COURT: Thank you, ma'am. Yes, ma'am.

22 JUROR: Robin Davidson, number 31. I worked
23 for the Department of Public Safety.

24 THE COURT: Would that affect whether you
25 could give both sides a fair trial?

1 JUROR: No.

2 THE COURT: Yes, sir.

3 JUROR: Eddie Crout, G.S.30. I have an uncle
4 who retired with the Lexington Sheriff's Department. I
5 think he is a clerk down here now, A.A. Amick; and I
6 have got a first cousin who works for the Myrtle Beach
7 Police Department.

8 THE COURT: He is a bailiff. Would that
9 affect whether you could give both sides a fair trial?

10 JUROR: No, sir.

11 THE COURT: Thank you, sir. Yes, sir.

12 JUROR: I work at the Attorney General's
13 Office.

14 THE COURT: What is your name and number?

15 JUROR: David Stumbo, juror number 171.

16 THE COURT: Do you work with the Solicitor's
17 Offices at all?

18 JUROR: I worked in the P.C.R. division for a
19 year. I work in the opinion section now. I had some
20 dealings. I did go to some terms of P.C.R. court in
21 which we dealt with the solicitors, but I never went to
22 a term in the Eleventh Circuit.

23 THE COURT: Would that affect whether you
24 could give both sides a fair trial?

25 JUROR: No, sir.

1 THE COURT: Thank you, sir. Anyone else?
2 Have you ever worked for a law enforcement agency or if
3 you have a family member or a close friend who does?

4 (There was no response).

5 THE COURT: Has any member of the jury venire
6 ever been a witness for either the State or the defense
7 in a case in which someone else was charged with a
8 crime? In other words, a criminal case. Has anyone
9 ever appeared as a witness in such a case?

10 (Juror stands).

11 THE COURT: Your name and number?

12 JUROR: Freda Hatfield, G.S.55. It was a case
13 against my ex-husband.

14 THE COURT: Would that affect your ability to
15 give both sides a fair trial?

16 JUROR: No, sir.

17 THE COURT: Thank you, ma'am. Anyone else?

18 (There was no response).

19 THE COURT: Counsel, let me ask both of you to
20 step up. I just want to be sure about something.

21 (Whereupon there was a bench conference off
22 the record in the presence of the jury panel but out of
23 the hearing of the jury panel).

24 THE COURT: Counsel, I understand there would
25 be no objection to asking the jurors about the questions

1 of drugs.

2 MR. SWARAT: Correct, Your Honor.

3 MR. BOLT: Yes, sir.

4 (Juror stands).

5 THE COURT: Yes, ma'am.

6 JUROR: Yvonne Conley, number 28. I was a
7 witness about ten years ago in an assault case.

8 THE COURT: Would that affect your ability to
9 give both sides a fair trial?

10 JUROR: No.

11 THE COURT: Has any member of the jury
12 venire -- again, let me get back to the other question
13 first. This is a case that may involve questions
14 related to drugs.

15 Does any member of the jury venire have such
16 strong feelings about drugs, either pro or con, that it
17 would affect whether you could give both sides a fair
18 trial if that issue came up?

19 (There was no response).

20 THE COURT: Has any member of the jury venire,
21 either you or a close friend or a family member ever
22 been a victim of a violent crime? If anybody needs to,
23 you can discuss it where you are standing or you can
24 come up here and discuss with us. Either way is okay.

25 (Juror stands).

1 THE COURT: Your name and number?

2 JUROR: Donnie Spigner, 122. My stepfather
3 was murdered six years ago.

4 THE COURT: Would that affect whether you
5 could give both sides a fair trial in this case?

6 JUROR: Possibly.

7 THE COURT: We will excuse you from having to
8 sit in this case. Stay with us. You may get to be in
9 another one.

10 Yes, ma'am. You can come up here if you want
11 to. It will be fine.

12 (The following bench conference with the juror
13 was reported).

14 JUROR: I have a daughter --

15 THE COURT: Wait, wait. Let Mr. Bolt get over
16 here.

17 JUROR: I have a daughter that is waiting on a
18 trial right now in Lexington County that was a victim of
19 a sexual assault.

20 THE COURT: Would that affect whether you
21 could give both sides a fair trial?

22 JUROR: I think it probably would.

23 THE COURT: We will excuse you then.

24 CLERK: What is her name, Your Honor?

25 THE COURT: What is your name and number,

1 please, ma'am?

2 JUROR: Joyce Saylor, 169.

3 THE COURT: Thank you, ma'am.

4 (The bench conference was concluded).

5 THE COURT: Anyone else? Does anyone else
6 want to come up here?

7 (The following bench conference with the next
8 juror was reported as follows).

9 THE COURT: Tell me your name and number,
10 please, ma'am.

11 JUROR: Freda Hatfield, G.S.55. My ex-husband
12 was --

13 COURT REPORTER: Judge, I'm sorry, I cannot
14 hear.

15 THE COURT: Quiet in the courtroom, please.
16 We can't hear up here. Go ahead, ma'am.

17 JUROR: My ex-husband was convicted of rape in
18 Lexington and Aiken County.

19 THE COURT: Would that affect whether you
20 could give both sides a fair trial?

21 JUROR: No, absolutely not.

22 THE COURT: It would not affect you?

23 JUROR: No.

24 THE COURT: Thank you, ma'am.

25 (The juror leaves the bench, and a bench

1 conference with the next juror was reported as follows).

2 THE COURT: Yes, ma'am.

3 JUROR: G.S.50, Edna Hallman. My niece was
4 convicted in a guilty trial in the Cutro case.

5 THE COURT: Would that affect whether you
6 could give both sides a fair trial?

7 JUROR: I don't know, no.

8 THE COURT: It would not affect you?

9 JUROR: It would not affect me.

10 MR. SWARAT: Your Honor, I've got an issue. I
11 prosecuted Josh Cutro, which is her niece's husband
12 right now currently.

13 THE COURT: If he has a case involved with
14 that, would that affect whether you could give both
15 sides a fair trial?

16 JUROR: It might. It might.

17 THE COURT: We will excuse you from this case.
18 Stay here. Don't go anywhere.

19 (The bench conference was concluded).

20 THE COURT: Anyone else?

21 (Juror stands).

22 THE COURT: Yes, ma'am, what is your name and
23 number?

24 JUROR: Julie Barfield, G.S.6. I have a
25 sister-in-law that was kidnapped and raped.

1 THE COURT: Would that affect whether you
2 could give both sides a fair trial?

3 JUROR: No, sir.

4 THE COURT: Thank you, ma'am. Yes, ma'am.

5 JUROR: Judy Anderson, 3. My nephew was
6 brutally murdered in my sister's home, but it was in New
7 York in Rochester.

8 THE COURT: Would that affect whether you
9 could give both sides a fair trial?

10 JUROR: No, no.

11 THE COURT: Thank you, ma'am. Yes, ma'am.

12 JUROR: Angela Lee, 162. My aunt was murdered
13 by her husband, but I was a small child. It wouldn't
14 affect me.

15 THE COURT: It would not affect you. Thank
16 you, ma'am.

17 JUROR: Not that it would affect my decision,
18 but --

19 THE COURT: If you would stand, please, and
20 give us your name and juror number.

21 JUROR: Martha Galloway, G.S.44. I was held
22 up at gunpoint at an A.T.M. machine here in Columbia.

23 THE COURT: Would that affect whether you could
24 give both sides a fair trial?

25 JUROR: No.

1 THE COURT: Thank you, ma'am. Anyone else?

2 (There was no response).

3 THE COURT: I think I have got everything.

4 Did I leave any questions out? Any other others from
5 the defense?

6 MR. BOLT: Your Honor, there was mention of a
7 codefendant named Tracey Harsey. If you would inquire
8 of the jury panel whether anyone is acquainted with him
9 at this time.

10 THE COURT: I thought I had, maybe I did not.
11 Does anyone know or know of Travis Harsey?

12 (Juror stands).

13 JUROR: I knew of him.

14 THE COURT: What is your name and number?

15 JUROR: Marissa Conger, 27. My next door
16 neighbor was cousins with them. If they have a brother
17 named Sammy, then, yes, I know them.

18 THE COURT: Would that affect whether you
19 could give both sides a fair trial?

20 JUROR: No.

21 THE COURT: Thank you, ma'am. Anyone else?

22 (There was no response).

23 THE COURT: Does any member of the jury venire
24 know of any reason at all why you could not give both
25 sides a fair trial?

1 (There was no response).

2 THE COURT: At this time we are prepared to go
3 forward. Counsel, five and ten on the strikes; right?

4 MR. BOLT: Yes, sir.

5 MR. SWARAT: Yes, Your Honor.

6 THE COURT: At this time we are going to go
7 through the procedure or drawing a jury. I am going to
8 turn you over to the clerk. Again, ladies and
9 gentlemen, she has done this many times. She will be
10 kind and gentle with you. Madame Clerk.

11 (The jury is impaneled at 3:47 p.m.)

12 (During the jury selection process, the jurors
13 were called forward and peremptory strikes were
14 exercised as noted by the attached voir dire sheet made
15 a part of this record at page 6).

16 THE COURT: Counsel, let me ask both of you to
17 come up, please.

18 (Whereupon there was a bench conference off
19 the record in the presence of the jury but out of the
20 hearing of the jury)

21 THE COURT: Counsel, are there any motions
22 related to jury selection, including Batson motions or
23 J.E.B. motions from the State?

24 MR. SWARAT: None from the State, Your Honor.

25 THE COURT: Defense?

1 MR. BOLT: No, Your Honor.

2 THE COURT: Ladies and gentlemen, those of you
3 who were drawn for this case, we will go over and start
4 this case in just a little while this afternoon. I know
5 we don't have a lot of time, but we will get as much as
6 we can in.

7 We are going to try it at the courthouse. I
8 will ask each of you if you would to please go to the
9 courthouse. We will let you go in just a minute here.
10 If you want to park behind the B.B.&T. building, you
11 can.

12 They have parking spaces designated for jurors
13 there. There are spaces with blue dots. I tell some
14 folks, not red dots, blue dots. Look for the blue dot
15 spaces. You can park in those.

16 Walk across the street to the courthouse. And
17 if you will go in the front door and tell them that you
18 are a juror for general sessions, they will escort you
19 up to the jury room. In fact, a couple of bailiffs
20 might go on over there now and meet them over there.

21 It's very, very important that you don't talk
22 about the case in any way. Don't talk about any cases
23 at all while you are in there. We are actually going to
24 draw a couple more juries here in just a few minutes.

25 If you need to run an errand while you are

1 out, that is okay, too.. But go ahead and get there as
2 soon as you can. With that in mind, I will ask if you
3 will go on ahead; and we will see you over at the
4 courthouse in just a few minutes.

5 (The jury is excused).

6 (Whereupon there was a recess in the case)..

7 THE COURT: Counsel, let me note a couple of
8 things first. First of all, I understand, Mr. Bolt,
9 that you will be -- in your opening statement, you will
10 be admitting the Defendant's presence at the scene of
11 the crime; is that correct?

12 MR. BOLT: Yes, sir, Your Honor. My client
13 gave a statement three days after the death of the
14 victim. He said that he was at the scene and told me
15 that consistently throughout the time I have represented
16 him, which has been very close to the beginning of this..

17 So it's his -- we have discussed trial
18 strategy. I would say that he was at the scene, of
19 course not admitting that he committed any crime. If I
20 do that, then that sort of strategically locks him into
21 testifying.

22 So I told him in that regard that if he does
23 testify, of course, any prior criminal record is subject
24 to being used by the State against him.

25 THE COURT: Yes, sir.

1 MR. BOLT: I believe it would be prudent at
2 this time for the Court to question Mr. Tyler about
3 that.

4 THE COURT: Mr. Tyler, let me ask you if would
5 stand, please, sir.

6 Madame Clerk, would you put him under oath for
7 me, please.

8 CLERK: Yes, sir.

9 RANDALL SCOTT TYLER is first
10 duly sworn.

11 THE COURT: Mr. Tyler, do you understand what
12 Mr. Bolt has told me, that in his opening argument he
13 may have to use discussions that would in essence
14 require you to have to testify? Do you understand that?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: Do you understand, first of all,
17 that in a case such as this, the State has brought the
18 charges against you. So it is their burden of proof.
19 In other words, they must prove beyond a reasonable
20 doubt that you committed these crimes, and you have no
21 burden of proof. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So what that means is they have to
24 call witnesses, but you do not have to call witnesses;
25 and you don't have to testify. Now, do you understand

1 that?

2 THE DEFENDANT: Yes, sir, I do.

3 THE COURT: And do you understand though that
4 if you were to testify -- well, let's go back. If you
5 don't testify, you would have the right to have -- your
6 attorney could have the final closing argument. Do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Some people put value to that,
10 some don't. It depends on the individual. But do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Of course, if you were to testify,
14 that would in essence give that up. Do you understand
15 that?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: Also, if you do testify, of
18 course, once you testify and get on the stand, you have
19 to answer not only your attorney's questions, but then
20 you have got to answer the State's questions.

21 And if you get up in cross examination and
22 start feeling like you are in trouble, it's too late at
23 that point. You can't back out. Do you understand
24 that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Also, if you testify the State has
2 the right to ask you about certain prior convictions.
3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What we are going to do now is to
6 find out what they would ask you about, and we will make
7 that determination now.

8 Mr. Solicitor, if Mr. Tyler were to testify,
9 what prior convictions would you seek to elicit from
10 him?

11 MR. SWARAT: Your Honor, I have got a
12 receiving stolen property over a hundred dollars out of
13 the State of Michigan. The date of his conviction is
14 February the 23rd, '89. I also have a malicious injury
15 to personal property --

16 THE COURT: I'm sorry. What was that date?

17 MR. SWARAT: It was February the 23rd of '89.

18 THE COURT: What is your position on that,
19 Mr. Bolt?

20 MR. BOLT: My position is it's remote, Your
21 Honor. I would object to it.

22 THE COURT: Yes, sir. What about that,
23 Solicitor? I believe it is over ten years.

24 MR. SWARAT: Your Honor, I will go with
25 whatever the Court rules. I don't have a real argument

1 on those cases.

2 THE COURT: I would have to rule that that one
3 could not be admitted.

4 MR. SWARAT: Your Honor, from May of '91, it's
5 May 28th of 1991, I have got a breaking and entering
6 with intent to steal, two counts of that. Also, two
7 counts of larceny over a hundred dollars.

8 Your Honor, I believe I told you back in
9 chambers that those will be put on the record. Part of
10 the allegations in the burglary first indictment is that
11 he has two or more prior burglaries.

12 Your Honor, those breaking and entering with
13 intent in the State of Michigan track our burglary
14 statute. I intend to introduce these certain prior
15 convictions as evidence against Mr. Tyler whether we get
16 to his testimony or not.

17 THE COURT: Yes, sir. The 1991 convictions is
18 what you are talking about?

19 MR. SWARAT: Yes, sir.

20 THE COURT: Actually I don't think those would
21 come about whether he testified or not. Actually if you
22 are using it as part of the charge, you would have to
23 actually introduce those in your case.

24 MR. SWARAT: Correct.

25 THE COURT: Would that be correct?

1 MR. SWARAT: Yes, Your Honor.

2 THE COURT: Any objection on that, Mr. Bolt?

3 MR. BOLT: Your Honor, obviously I object on
4 remoteness on the impeachment grounds. But as far as
5 the case in chief under the amendment to the burglary
6 statute, there is no limitation on the time in the
7 statute. So I wouldn't have any basis for objecting.

8 THE COURT: Yes, sir, that is correct.

9 MR. BOLT: I suppose there would still be the
10 question of whether he could ask Mr. Tyler during his
11 testimony. I still think for impeachment purposes, it
12 is a separate issue and it's remote.

13 THE COURT: That's what I am just getting to.

14 MR. BOLT: Yes, sir.

15 THE COURT: Solicitor, I think you can bring
16 it up in your case; and, again, only admit evidence of
17 it to show that it's there. I don't believe you can
18 actually impeach him with it though.

19 MR. SWARAT: Your Honor, I will stay with
20 whatever confines you give me.

21 THE COURT: Yes, sir.

22 MR. SWARAT: Your Honor, as to the larceny
23 over a hundred dollars, technically those are crimes of
24 stealing. I think it's State versus Shaw that says it's
25 a crime that goes to truthfulness or untruthfulness, and

1 stealing certainly would qualify.

2 THE COURT: What about the ten-year provision
3 on that though?

4 MR. SWARAT: Your Honor, I believe under State
5 versus Shaw that it was outside the time limit. There
6 was a shoplifting conviction. The State was allowed to
7 impeach in State versus Shaw. Larceny is stealing and
8 certainly goes to his truthfulness or untruthfulness.

9 THE COURT: Yes, sir, I agree with that. What
10 about the ten-year provision?

11 MR. BOLT: Your Honor, I still object on the
12 same, on remoteness. I can't argue that it's not a
13 crime involving dishonesty since it is larceny, but it's
14 still outside the ten-year window.

15 THE COURT: Yes, sir. Anything else on that,
16 Solicitor?

17 MR. SWARAT: Your Honor, to be perfectly
18 honest, I don't want to create a good issue for appeal;
19 and I am not going to go over anything Your Honor tells
20 me to do.

21 THE COURT: All right. Well, again, I think I
22 will have to rule that you wouldn't be able to go into
23 that. It is over the ten years. Any others you would
24 attempt to ask him about?

25 MR. SWARAT: No, Your Honor.

1 THE COURT: Mr. Tyler, do you understand all
2 this then?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Understanding this do you feel
5 like you understand your rights as to whether to testify
6 or not?

7 THE DEFENDANT: Yes, sir, I do.

8 THE COURT: Mr. Bolt, anything else on that?

9 MR. BOLT: I don't believe so, Your Honor.

10 Thank you.

11 THE COURT: You can have a seat, Mr. Tyler.
12 Is the State ready then? I understand we are going to
13 take up motions once the jury is gone in a little while.

14 MR. SWARAT: Yes, sir.

15 THE COURT: Anything else from the State
16 before we begin?

17 MR. SWARAT: No, Your Honor.

18 THE COURT: From the defense?

19 MR. BOLT: No, sir, Your Honor.

20 THE COURT: Let's bring the jury in, please.

21 (The jury returns to the courtroom at
22 5:35 p.m.)

23 THE COURT: All parties and attorneys are in
24 the courtroom, and all jurors have returned.

25 Ladies and gentlemen, we apologize for the

1 delay in getting started so late. This case could take
2 up a substantial amount of time during the week. We
3 never know until we get into it.

4 We just want to get started and get off to
5 enough of a good start as we can. I thank you for your
6 cooperation with us. At this time we are prepared to
7 begin the case.

8 Madame Clerk, are you ready to swear the jury?

9 CLERK: Yes, sir.

10 (The jury is duly sworn).

11 THE COURT: Ladies and gentlemen, as we told
12 you earlier, by virtue of these indictments, the State
13 charges the Defendant, Mr. Randall Scott Tyler, with
14 three offenses. They charge him with murder, with
15 burglary in the first degree, and with criminal
16 conspiracy.

17 Now, to these charges the Defendant has pled
18 not guilty. That thereby places upon the State the
19 burden of proving him guilty beyond a reasonable doubt.

20 It is always the duty of the State to prove a
21 defendant guilty, not only just on the charges, but each
22 element of each charge must be proven beyond a
23 reasonable doubt to your satisfaction.

24 Now, let's talk for a moment about your role
25 and my role in this. First of all, your role is to sit

1 as the finders of fact. That is a very wide
2 discretionary role that is attributed to you.

3 In other words, nobody can disturb your
4 findings of the facts. Nobody can go back on them.
5 There is a lot of latitude given to you, and that is
6 because it is one of the sacred roles in a trial of a
7 case for the jury to do so.

8 As judges of the facts -- in fact, I can't
9 even tell you what the facts of the case are. I can't
10 even comment on the facts. If I do anything or say
11 anything, even by way of facial expression, that causes
12 you to think that I have some idea or some feeling about
13 the case, then you must actually ignore that and rely on
14 the findings of facts as you make yourselves.

15 Now, as finders of the facts, you are also
16 necessarily the judges of the credibility or in other
17 words, the believability of the witnesses who testify in
18 this case. Again, that is a very wide discretion that
19 is given to you.

20 In doing so that means very simply this. You
21 may believe everything a witness says, you may believe
22 nothing a witness says or you may choose to believe any
23 part and throw out the rest. That is the kind of
24 discretion that you have on the question of what
25 witnesses you believe.

1 You must consider only the evidence that comes
2 into the courtroom. You must put aside anything you
3 have heard before about this case or any case like it.
4 All of your findings must be made on what you see and
5 hear in this courtroom.

6 You must consider only the evidence that comes
7 into the courtroom. So let's talk for a moment about
8 what is evidence and what is not evidence. So what is
9 evidence?

10 Very simply evidence is the testimony of the
11 witnesses who take this stand, plus any items or
12 exhibits or documents that come in through those
13 witnesses. That's what evidence is.

14 So then what is not evidence? Well, first,
15 evidence is not anything you may have heard or read or
16 seen outside of this courtroom about this case or any
17 other case. As I told you a moment ago, you must put
18 that aside.

19 Evidence is not anything the lawyers say.
20 That is hard to distinguish sometime because the lawyers
21 are involved quite a bit in the trial of the case, but
22 it is very important that you make that distinction.

23 So the questions of a lawyer then are not
24 evidence; but when the lawyer asks the question, it is
25 the testimony of the witness that you determine how much

1 weight or credibility to give to. You give no weight,
2 no credibility to the comments or the questions of a
3 lawyer.

4 The lawyers also will make opening and closing
5 statements, but those opening and closing statements are
6 not evidence. They are only the lawyers' right to
7 comment on the evidence.

8 Of course, you are free to accept or reject
9 what any lawyer says about the evidence in this case.
10 You make the final determination of the facts. They
11 simply are trying to get you to agree with their
12 position, and it's up to you whether you agree with them
13 or not.

14 Evidence is also not anything that I say. My
15 role is to sit as the instructor of the law. You must
16 accept the law as I give it to you. Remember I told you
17 that when it comes to the facts, you have very wide
18 latitude, a lot of discretion.

19 You do not have that discretion when it comes
20 to the law. You don't decide what law you will accept
21 or will not accept. You must accept all of the law as I
22 give it to you as correct.

23 If I am wrong about anything, there is a time
24 and place for it to be corrected. But for today's
25 purposes, you must accept the law exactly as I give it

1 to you.

2 From time to time, the attorneys will have
3 objections. Don't be upset. Don't get concerned if an
4 attorney objects more than you think he should. They
5 simply do so --

6 Bailiffs, see that nobody moves. I want no
7 moving around. Nobody going in or out while I am
8 charging the jury. See that nobody else comes in or
9 out. I apologize.

10 As I said, the attorneys from time to time
11 will make objections. Don't be concerned if an attorney
12 objects more than you think he should. The rules of
13 evidence are sort of a separate language in themselves.

14 In other words, we have to talk a certain way;
15 and we have to say things in a certain way in the
16 courtroom. So when an attorney makes an objection, he
17 simply is making the objection within the frame work of
18 those rules of evidence. He is simply doing his job.

19 So you shouldn't be concerned if you think an
20 attorney is objecting more. An attorney may object a
21 lot and it may be because the other attorney is asking
22 questions the wrong way. So you never know which one is
23 actually wrong or which one is right. So that's why you
24 don't worry about that. You don't try to make that
25 determination.

1 When I make a ruling on an objection, it is
2 not that I favor one side or the other on that or have
3 any position. I simply am applying the rules of
4 evidence to that particular objection. So again, don't
5 let that concern you in any way.

6 Now, it's very, very important that you not
7 discuss this case with each other or with anyone else
8 while the trial is going on. Again, you will want to
9 tell family members or friends or coworkers where you
10 are, what you are doing; but don't talk about the case
11 and don't talk about the details of it.

12 Don't talk about it with anybody else. Don't
13 let anybody else talk about it with you. And
14 particularly in the jury room or anywhere else you are
15 as a jury, don't talk about it among yourselves.

16 You never talk about the case until all of the
17 evidence is in. You never know, the last thing you hear
18 might be the most important thing. That's why you want
19 to wait until everything is in until you start to
20 discuss the case at all.

21 I think the best thing that I can tell you is
22 to just observe and listen closely. And when it comes
23 time, use your good common sense and judgment that you
24 use every day in your lives in applying the facts and
25 then apply those facts to the law as I give it to you in

1 arriving at a verdict.

2 What is going to happen is this. Here is the
3 procedure. In just a moment the attorneys are going to
4 have opening statements. Then after that we will stop
5 for the day after those opening statements.

6 We will start in the morning with the
7 testimony. The next thing after that is the evidence in
8 the case. Once all of the evidence is completed, then
9 the attorneys will have closing statements.

10 After those closing statements, I will give
11 you a closing charge, or a closing instruction on the
12 law; and after that it will be your case. Again, it's
13 very, very important that you pay close attention and
14 that you not discuss the case at all until all of the
15 evidence is in.

16 Any exception to the charge from the State?

17 MR. SWARAT: None from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. BOLT: No, sir, Your Honor.

20 THE COURT: Let me now ask you to give your
21 undivided attention to the attorneys if you would
22 please.

23 Bailiffs, see that no one comes in or out
24 while the attorneys are addressing the jury.

25 MR. SWARAT: Thank you, Your Honor. May it

1 please the Court.

2 THE COURT: Yes, sir.

3 OPENING STATEMENT

4 MR. SWARAT: Ladies and gentlemen, during the
5 middle of last summer, Randy Tyler over there was mad
6 with Corky Lewis. People, his friends, called him Corky
7 Lewis. You heard his name as Robert Lewis, his given
8 name. He was mad enough with him that he put us here
9 today. His anger put us here today.

10 On July the 13th of last year, Randy put a
11 plan in motion. He didn't have a car that was working
12 at the time. He got a family member to take him to a
13 friend's house, Travis Harsey. You are going to hear
14 that name some, too.

15 He and Travis got there and in the presence of
16 family members, they started talking about something.
17 Randy was openly talking about being mad with Corky, had
18 something to do with money.

19 So Randy and Travis got together, took one
20 car, and they left somewhere up near Saint Andrews Road
21 way up here near the lake, went all the way down to
22 Swansea in the middle of the night, got there a little
23 before midnight.

24 They parked away from the house, parked where
25 nobody could see them from the house. Nobody could see

1 them from the road. They went in. They had a gun.
2 They jumped Corky in his garage where he was doing some
3 work, working on some equipment he had in there.

4 You will see from the evidence that they beat
5 him while he was in the garage, blood in the garage,
6 small amounts of blood, made quite a racket with some
7 arguing gone on.

8 During that arguing they woke up Corky's
9 girlfriend, Donna Hutto, who is in the middle in the
10 purple shirt right there with glasses on. Woke her up.
11 She knew Randy Tyler. She knew his voice.

12 She knew his face. She had known him for some
13 three years. They had seen him two days before. She
14 knew Randy Tyler. She heard that voice, heard that
15 argument, Randy yelling at Corky. Corky was saying, "I
16 don't know what you're talking about."

17 He was ordering him, trying to order him into
18 his own house. "I don't want to go in the house. We
19 don't need to go in the house." She was so scared that
20 she left out the door to go try to get some help.

21 She got some help. It was way too late for
22 Corky. She called the police too late. By the time she
23 got back, Corky was dead, beaten, shot, not one time,
24 not two times, not three times, not four times, but some
25 six times he was shot and dead in his own house, beaten

1 from the garage in his back yard, all the way through
2 his house to the place where he lay dead.

3 Well, when the police arrived, they
4 immediately knew who to look for: Randy Tyler. She had
5 not only heard his voice that night but she saw him when
6 he was there. She didn't see him anybody else. She
7 didn't know about Travis Harsey, his buddy, that was
8 involved with him.

9 The police went looking for him. They didn't
10 find Travis (sic), but they talked to some of his
11 family. They figured out where he lived. Travis --
12 excuse me, I apologize -- Randy Tyler, they were looking
13 for Randy.

14 They didn't find ran Randy, but they found
15 some of his family. "Randy was fishing with us that
16 night. He was out fishing. It couldn't have been him."

17 Well, they wanted to talk to Randy, couldn't
18 find him. Everybody in Columbia was looking for him,
19 police looking for him. Finally they talk to Randy. He
20 talked to Detective Frier that just walked out of the
21 courtroom a few minutes ago that you saw during jury
22 qualifications.

23 He told Detective Frier, "You might want to
24 look at my brother Matt. Matt looks a little bit like
25 me. I heard Matt is in town. He's a pretty bad guy.

1 Yo want might want to look at Matt."

2 So he obliged him. He looked at Matt to see
3 where Matt might have been that night. Well, Matt had
4 been in Michigan. He wasn't even in the Columbia area.
5 So he knew that wasn't true.

6 He went to check on that fishing story, talked
7 to some of those family members that said he was
8 fishing. One of them finally cracked. He said, "No, he
9 wasn't fishing. I need to tell you the truth.

10 "I took him up to Travis' house. He was mad
11 with Corky. He was talking about it on the way up
12 there. I didn't see a gun, but I saw the clip. I saw
13 bullets in it. I knew they were going down to Corky's.
14 When I left, they were still there; but I know they went
15 to Corky's."

16 Finally, Randy admitted that he was there. Of
17 course, he has his own story about it. He said, "Well,
18 Travis shot him. It wasn't me that shot him."

19 The important thing for you to understand in
20 this case is the law, the law in our State. Let me tell
21 you first what I don't have to prove, what we don't have
22 to prove under the law; and then I will explain to you
23 what we do have to prove.

24 I don't have to prove to you that Randy Tyler
25 shot Corky Lewis. I don't have to prove to you that he

1 ever held a gun. I don't have to prove to you his
2 actual involvement in the crime.

3 Because under our law, if two people are
4 involved in a violent crime such as this one, no matter
5 what their participation, the hand of one is the hand of
6 all. It's a bedrock in our system.

7 Randy Tyler could have merely been the
8 "getaway driver. He could have not even gone in the
9 house. If he is involved in helping out in any way in
10 the commission of this crime, he is guilty of everything
11 he is charged with. I don't have to prove whether or
12 not his hand held the gun. I don't have to prove his
13 participation, only that he was there and involved.

14 You are going to hear that from Donna Hutto.
15 She saw that man on her property yelling at her
16 boyfriend, screaming at him, trying to order him into
17 that house.

18 You will see the blood. You will see the
19 things that were knocked over. There were signs of a
20 struggle, a struggle from their garage into a room they
21 had built onto their house, through there, blood
22 everywhere, damage to the house, coffee table knocked
23 over, blood all over the couches in the living room, and
24 Corky laying dead there.

25 We don't have to prove to you what his

1 involvement was in Corky's death. We just have to prove
2 that he was there and he was involved. How are we going
3 to do that? You are going to hear from one of his own
4 family members about him taking him to Travis Harsey's,
5 and he was mad with Corky.

6 You will hear from Donna Hutto about seeing
7 that man and being so afraid she left because she was
8 afraid for her own life. She was trying to get Corky
9 some help.

10 Then finally you are going to hear -- we've
11 got something we didn't expect to get. Vickie Hallman
12 right there, who is an investigator with the Sheriff's
13 Department, is a crime scene investigator, kind of like
14 C.S.I. She goes in and she takes pictures. She does
15 diagrams. She collects things like blood. She did in
16 this case.

17 Inside that house they found not only Corky
18 Lewis' blood all over the house, they found some of
19 Randy Tyler's, too. We can put his blood in that house.
20 That will show you beyond any possible doubt that he is
21 involved.

22 We have to prove he was involved beyond a
23 reasonable doubt. It's not some crazy, foolish doubt
24 but a doubt that is reasonable based on the use of your
25 good common sense.

1 We ask you in the next few days -- and it
2 shouldn't be very long -- use those experiences you've
3 had in life, use that good common sense that you
4 possess, and give us only one thing. Give us the truth.
5 That's all we are ever going to ask for. If Randy Tyler
6 was involved in this crime, he is guilty of all of it.
7 Thank you.

8 THE COURT: Yes, sir.

9 OPENING STATEMENT

10 MR. BOLT: Ladies and gentlemen of the jury,
11 my name is Dennis Bolt. I represent Randy Tyler who you
12 met over here during the jury qualifications.

13 Now, I have been a lawyer for 30 years. I can
14 tell you one thing up front. We are not here to try to
15 pull the wool over your eyes, to fool you, beguile you
16 or trick you in any way.

17 This crime, which was a horrible crime, there
18 is no question that Mr. Lewis was horribly beaten and he
19 was shot six times and killed in his own home. There
20 isn't any question about that.

21 This is not a case where someone says, "I was
22 off somewhere else. I was in Timbuktu.. I wasn't
23 there." He has said from the first day that he was
24 there. Randy Tyler has said that. His story has never
25 wavered. His statement has never wavered.

1 Unlike many of the witnesses who you will hear
2 during this trial who have given a statement, two
3 statements, three statements filled with
4 inconsistencies, Randy Tyler has said from the date he
5 turned himself in, "This is what happened. I was there.

6 "Robert Lewis" -- whose name was Corky -- "was
7 my friend. I have been with him many times. I did not
8 kill him. I did not beat him. He was my friend. I did
9 not do this."

10 Now, sadly and unfortunately, you don't have
11 the codefendant, Travis Harsey, here. If we were
12 honestly seeking to find the truth -- and the State of
13 South Carolina has charged two men with murder, burglary
14 first degree, and conspiracy; and the very definition of
15 conspiracy is that they acted together -- wouldn't you
16 want to hear them together, see them together in the
17 same courtroom?

18 Wouldn't that be important to you? Wouldn't
19 that erase any reasonable doubt that you might have?
20 Wouldn't that be important to see them both right there
21 under the heat of cross examination under oath if they
22 testified?

23 But you are not going to have that. So one
24 jury will try Mr. Tyler and some other jury, I assume,
25 will try Mr. Harsey. I don't know that they will. The

1 State has alleged that they were both acting together.

2 So wouldn't it be good to hear Mr. Harsey? It
3 was Mr. Harsey's gun. And you will hear testimony about
4 how the gun was disposed of and by whom it was disposed
5 of. It was Mr. Harsey's brother.

6 Randy Tyler didn't even have a car. He is
7 effectuating some plot, some sinister plot; and he
8 doesn't even have an automobile. So you see, you are
9 going to have to wait and hear the evidence in this
10 case. It will take about three days for you to hear
11 everything.

12 One thing I learned as a lawyer many years
13 ago. There is no point in me standing up here
14 haranguing you about my view of the evidence because you
15 are going to hear it.

16 You are going to see it, and you are going to
17 form your opinions and your conclusions based on what
18 you see or what maybe you don't see, the presence of
19 evidence or the absence of evidence.

20 A reasonable doubt is a doubt which would
21 cause a reasonable person to hesitate to act. If you
22 are honestly seeking to find the truth and you hear all
23 the witnesses and see all the exhibits and you go back
24 into that jury room Wednesday afternoon, hopefully,
25 maybe Thursday afternoon, and one or more of you sit

1 down and say, "You know, I'm not sure," then Randy Tyler
2 is entitled by law to a verdict of not guilty.

3 The State has to prove each and every element
4 of each and every charge beyond a reasonable doubt. Any
5 citizen in this country is entitled to that. Now, just
6 one more thing I want to say. This was a bad thing that
7 happened. You will see perhaps evidence depicting the
8 brutal nature of Corky Lewis' death.

9 You have to be responsible enough and mature
10 enough and dedicated enough as jurors not to be
11 influenced by that. When the case is over and the judge
12 gives you the legal principles that apply to this case,
13 he will tell you that you cannot be swayed or persuaded
14 by passion or prejudice.

15 So the fact that Mr. Lewis was killed in a
16 brutal fashion cannot be something that causes you to
17 ignore the evidence and say, "Oh my, God. We have
18 got this one man here on trial. So we have got to
19 convict him because this was so brutal, so horrible, and
20 unspeakable." You can't do it. That would be wrong.

21 So thank you very much. I think the judge has
22 said that this is going to be it for the day. You will
23 come back tomorrow, and you will hear all the evidence
24 and all the testimony. In advance, thank you for your
25 patience.

1 THE COURT: Ladies and gentlemen, as I
2 indicated, we will stop for the day. I will ask you to
3 be back in the morning at -- counsel, any problem with
4 starting at 9:00 o'clock for either side?

5 MR. SWARAT: That would be fine, Your Honor.

6 MR. BOLT: Yes, sir, Your Honor.

7 THE COURT: I will ask you to be back in the
8 morning at 9:00 o'clock. We will be prepared to get
9 started then. Remember, don't talk with anybody about
10 the case. Don't let anybody talk about it with you.
11 Just come back to the jury room in the morning, and we
12 will see you then. Have a good evening.

13 (The jury is excused for the day at
14 6:00 o'clock p.m.)

15 THE COURT: Counsel, the jury is secured. I
16 believe -- any motions from the defense?

17 MR. SWARAT: Your Honor, we have got one more
18 juror leaving.

19 THE COURT: I'm sorry. I apologize.

20 MR. SWARAT: I believe she is going down the
21 elevator.

22 THE COURT: You are right. Thank you, sir.

23 (Pause).

24 THE COURT: Let's go ahead and get started.
25 Any motions from the defense?

1 MR. BOLT: Your Honor, I was going to take up
2 a 404 (B) matter about outstanding charges against
3 Mr. Tyler. Just from some preliminary discussions with
4 Mr. Swarat, I thought they were going to try to
5 introduce evidence of Lyle or 404 (B) material. I am
6 informed they are not. So I don't have anything to
7 present at this time.

8 THE COURT: Okay. Anything from the State?

9 MR. SWARAT: Your Honor, we have taken up his
10 prior record. That was one of the things I was going to
11 deal with. That has already been finished.

12 We have gone through and premarked some of the
13 exhibits, and I don't think they have any objections to
14 anything that we are going to introduce in this trial.

15 MR. BOLT: No, sir.

16 MR. SWARAT: I have already put stickers on
17 them, and I will just mark them as I go and inform
18 Coconut about which numbers they carry, and I think that
19 takes care of that.

20 The other thing is Mr. Tyler did give a few
21 statements, and we need to take care of it under Jackson
22 versus Denno at this time.

23 THE COURT: Okay.

24 MR. SWARAT: Your Honor, we call Detective
25 Scottie Frier.

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 THE COURT: Let me note for the record, we
2 will now consider ourselves convened into a hearing
3 under Jackson V. Denno.

4 SCOTTIE R. FRIER, being first
5 duly sworn, testified as follows:

6 CLERK: Have a seat and state your name and
7 spell your last name.

8 THE COURT: My name is Sergeant Scottie,
9 middle initial R., Frier, F-R-I-E-R.

10 (The following testimony was reported in
11 camera).

12 IN CAMERA EXAMINATION

13 BY MR. SWARAT:

14 Q Detective Frier, where are you employed?

15 A I am a sergeant with the Lexington County Sheriff's
16 Department.

17 Q And what was your role in this case?

18 A I was the chief investigating officer of the
19 homicide of Robert Lewis.

20 Q When did you get involved with this case?

21 A I was called July 13th of 2002 to respond to that
22 residence pursuant to a shooting incident.

23 Q During that evening did you interview Mrs. Donna
24 Hutto?

25 A Yes, I did.

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 Q And as a result did you develop a suspect in the
2 case?

3 A Yes, sir, she immediately identified Randy Tyler as
4 the person that was in her home arguing with Robert
5 Lewis.

6 Q As a result of that, did you take steps to try to
7 locate Mr. Tyler?

8 A Yes, we did. We secured arrest warrants for
9 Mr. Tyler and made public that we were holding
10 those warrants and wanted him by means of fliers
11 and by means of speaking with some members of his
12 family.

13 Q Detectives actually went down to Bluff Road where
14 he resided and talked to some of his family
15 members?

16 A Right. Some of the detectives originally, other
17 than myself, had spoken with his family and made
18 them aware that we were looking for him.

19 Q And did you locate Mr. Tyler that day?

20 A He was not located that day, no, sir.

21 Q At what point did you make contact with Mr. Tyler?

22 A Mr. Tyler turned himself into the Lexington County
23 Sheriff's Department on Sunday, July 14th. He had
24 a bondsman that was carrying a bond on him for
25 another charge who had learned that he was wanted,

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 and that bondsman brought him in.

2 MR, BOLT: Your Honor, I can't hear the
3 witness.

4 THE COURT: Speak up a little more if you
5 would.

6 THE WITNESS: Sorry about that.

7 A Mr. Tyler was brought to the Sheriff's Department
8 by a bondsman who was holding a bond on him for a
9 prior charge.

10 Q And he turned him into law enforcement?

11 A Yes, he did.

12 Q As a result of that, did you have conversation with
13 Mr. Tyler?

14 A We had a brief conversation with him originally,
15 explained to him what the charges were, and some
16 very cursory explanation or some understanding of
17 the information that we had against him if you
18 will.

19 Q Okay.

20 A At that particular time, Mr. Tyler had indicated
21 that he didn't want to make any statements, that he
22 wanted to consult with an attorney.

23 Q Had he been advised of his rights?

24 A Yes, he was. He was advised what the charges were
25 pending, some cursory information about what we had

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 developed, and the fact that he had the right to
2 talk to an attorney or to make a statement to us.

3 Q And he indicated that he wanted to exercise that
4 right?

5 A That's correct.

6 Q At that time did you ask him any questions,
7 interrogate him in any way whatsoever?

8 A No, sir, any interrogation or interview must stop
9 at that point.

10 Q Explain to the Court what happened next.

11 A After that Mr. Tyler was secured by having him put
12 in handcuffs so that he could be escorted around to
13 the detention center so that he could be processed
14 in.

15 Q During that time did Mr. Tyler on his own proffer
16 some information to you?

17 A Yes, sir. While Detective Fossum and I were
18 walking Mr. Tyler around to the detention center,
19 in an solicited statement Mr. Tyler said to us that
20 he had a brother, identified his brother by the
21 name of Matthew, indicated that his brother was in
22 the area, that he and his brother looked very much
23 alike and that he and his brother didn't get along
24 very well.

25 The inference was made on Mr. Tyler's part

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 that perhaps we should investigate his brother as
2 being involved in this as opposed to him being a
3 party to it.

4 Q And you had already explained to him that
5 Mrs. Hutto had seen him the night of the homicide?

6 A Right. It would be my interpretation that that's
7 why he throws the brother up to us because we had
8 indicated to him that someone had actually seen him
9 in the home.

10 Q She had actually picked him out of a photo lineup
11 as well?

12 A Right, knew him by face, knew him by body size and
13 build, knew him by movement, recognized his voice
14 explicitly. Then when she was shown a photo lineup
15 so that we could determine that we were talking
16 about the same Randall Tyler, she positively
17 identified him through a photo lineup, yes, sir.

18 Q At that point did he stop speaking with you?

19 A At the time as we were walking into the detention
20 center facility?

21 Q Yes, sir.

22 A Yes, sir. Again, him having asked for an attorney,
23 we did not question him. A statement was made to
24 him when he presented the facts of his brother,
25 either Detective Fossum or I one said, "Look, if

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 you've got some explanation about your brother,
2 perhaps you should talk to your attorney and make
3 arrangements to provide that to us. If there is
4 something we need to follow up on, you need to go
5 through your attorney and let us know that."

6 Q Later on were you contacted by an attorney on
7 behalf of Mr. Tyler?

8 A Yes, sir, I was.

9 Q And who was that attorney?

10 A A gentleman by the name of Lawrence Simmons, but
11 having known him for a while, I call him Larry
12 Simmons.

13 Q Did Mr. Simmons indicate that Mr. Tyler wanted to
14 talk with law enforcement?

15 A Yes, he did.

16 Q And when did that take place?

17 A That took place on July 16th. The conversations
18 that I had with Mr. Simmons probably began around
19 two or 3:00 o'clock in the afternoon. I finally
20 ended up in a situation where I was able to speak
21 to Mr. Tyler with his attorney present around 6:15
22 that afternoon.

23 Q At the time you had he and his attorney present,
24 did you again advise him of his rights?

25 A Yes, sir, I did. I used a form that we use at the

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 Sheriff's Department when we take a statement from
2 a suspect where Miranda issues may apply. Those
3 rights are printed out on that form.

4 They were discussed with Mr. Tyler, they were
5 read to him, they were explained to him; and then
6 if he was willing to speak with us, a request was
7 made of him to initial by those rights.

8 Q And did he initial by those rights?

9 A He did. Then we also had Mr. Simmons, his
10 attorney, initial by those rights.

11 Q Did he indicate that he wanted to give you a
12 written statement?

13 A Yes. With his attorney present, he indicated that
14 he wanted to give us a statement concerning what
15 had happened at Mr. Lewis' home.

16 Q And did you take a written statement from him?

17 A Yes, sir, I took a very brief written statement
18 from him.

19 Q Do you have that with you?

20 A Yes, sir, I do.

21 Q Can you publish the statement to the Court.

22 A Yes, sir. As I stated, it has some personal
23 information on the top identifying the person
24 giving the statement as Randall Tyler, T-Y-L-E-R.
25 At the time he was 35 years of age. He presented

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 the date of birth of January , indicating
2 that he was born in Michigan.

3 He gave the address of 8011 Bluff, B-L-U-F-F,
4 Road in Gadsden, South Carolina. Then it indicates
5 that the Detective Frier is taking a statement from
6 him following those rights issues that we spoke of
7 earlier. A statement was taken from Mr. Tyler that
8 read as follows:

9 "On Saturday July 13, 2002, I rode with Travis
10 Harsey to Robert -- quote, Corky -- Lewis' house.
11 Travis was driving his burgundy Cadillac. While
12 there I did not have a pistol on my person.

13 "All of a sudden while I was shaking Corky's
14 hand, Travis came up with a mask and gloves on.
15 Travis hit Corky in the head with a pistol. It was
16 a black pistol.

17 "Travis then led Corky and me into the house.
18 Travis shot into the couch. I ran from the house.
19 I heard several shots as I was running. Travis
20 picked me up on the road.

21 "Travis had a hand full of shell casings.
22 Travis said he shot him." He said, quote, there is
23 no veins. He's turning pink, end quote. That
24 statement was signed by Randall Tyler.

25 Q So it's a one-page statement and that's the end of

SCOTTIE FRIER -- IN CAMERA DIRECT -- MR. SWARAT

1 it?

2 A That is correct.

3 Q In addition to that, did he agree to identify
4 Travis Harsey in some way?

5 A Yes, he did. He was shown a photo lineup
6 containing a picture of who we had tentatively
7 identified as Travis Harsey. He did positively
8 identify the Travis Harsey we thought was the
9 appropriate person from the photo lineup.

10 Q Was a statement added at the bottom of that photo
11 lineup that he signed?

12 A I'm not sure.

13 MR. SWARAT: Your Honor, if I could approach
14 the witness.

15 THE COURT: Yes, sir.

16 A Yes, sir. In my handwriting there are the words,
17 "This is Travis Harsey. I was with him at Robert
18 Lewis' home. This is the man that shot the couch
19 at this home." There is another sentence on the
20 bottom, but I can't make it out. I'm sure it's
21 going to be on the original.

22 Q You have got the original in your case?

23 A Yes.

24 Q That's okay. You don't need to get it. He signed
25 off on that statement as well?

SCOTTIE FRIER -- IN CAMERA CROSS -- MR. BOLT

1 A Yes, he did.

2 MR. SWARAT: Your Honor, I believe that's all
3 I have at this time.

4 Q Oh, did you beat him, threaten him or coerce him in
5 any way to get him to give you these statements?

6 A No, sir. As I stated, his Miranda issues that were
7 addressed before he made the statement were done in
8 the presence of his attorney. His attorney also
9 initialed and waived Miranda rights as they applied
10 to that statement.

11 Q And the other statements he made about his brother
12 were made on his own accord without questioning?

13 A That was a self-initiated conversation on his part.
14 As I said, we were simply transporting him by
15 walking him or escorting him to the Sheriff's
16 detention center so he could be processed in.

17 MR. SWARAT: Your Honor, that's all I have.

18 THE COURT: Cross.

19 IN CAMERA EXAMINATION

20 BY MR. BOLT:

21 Q Sergeant Frier, the first statement, was that
22 recorded or reduced to writing?

23 A The first statements as in?

24 Q The first statement when you say that he implicated
25 his brother.

SCOTTIE FRIER -- IN CAMERA CROSS -- MR. BOLT

1 A No, sir. We were just -- as I said, we were
2 walking him to the detention center across the back
3 parking lot.

4 Q Does his brother, in fact, look like him? Do you
5 know?

6 A I have seen photographs of his brother. I don't
7 think they look alike.

8 Q You don't. Now, what was the cursory -- you said
9 you gave him some cursory information about the
10 case, about the evidence in the case. What was
11 that?

12 A Basically a statement along the lines: We don't
13 pull names out of phone books and just pick people
14 up. Somebody saw you in the house, that you have
15 been positively identified as being in the house
16 involved in an altercation with Robert Lewis.

17 Q Okay. Was Mr. Simmons present when you took the
18 written statement?

19 A Yes, he was.

20 MR. BOLT: I don't have anymore questions.

21 THE COURT: Any redirect?

22 MR. SWARAT: Nothing, Your Honor.

23 THE COURT: You can step down.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Any other witnesses?

1 MR. SWARAT: No, Your Honor.

2 THE COURT: Any witnesses on this issue,
3 Mr. Bolt?

4 MR. BOLT: No, Your Honor.

5 THE COURT: Mr. Tyler, let me be sure and
6 advise you. Do you understand that even in a hearing
7 such as this, you have a right to testify if you want
8 to?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If you do testify, the State can't
11 take anything that you say and use it in their case
12 against you. Now, they could ask you questions about it
13 later if you testified; but they can't do it in their
14 case against you. Do you understand that?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: Do you want to testify in this
17 hearing?

18 THE DEFENDANT: No, sir.

19 THE COURT: Anything else from the State?

20 MR. SWARAT: Nothing I can think of.

21 THE COURT: From the defense?

22 MR. BOLT: No, sir, Your Honor.

23 THE COURT: Counsel, I am going to find the
24 State has established the statements well enough to
25 allow them to be admitted and that they will be

1 admitted.

2 MR. SWARAT: Your Honor, I don't believe we
3 have anything else pretrial.

4 THE COURT: Anything else, Mr. Bolt?

5 MR. BOLT: No, sir, Your Honor. Thank you.

6 THE COURT: Okay. I will see you at
7 9:00 o'clock in the morning then.

8 (Whereupon the proceedings were concluded for
9 June 9, 2003).

10 (The following proceedings were reported on
11 June 10, 2003).

12 THE COURT: Anything from the State before we
13 begin?

14 MR. SWARAT: No, Your Honor.

15 THE COURT: For the defense?

16 MR. BOLT: No, Your Honor.

17 THE COURT: Let's bring the jury in, please.

18 (The jury returns to the courtroom at
19 9:10 a.m.)

20 THE COURT: All parties and attorneys are in
21 the courtroom, and all jurors have returned. Good
22 morning. Are you Mrs. Dunn? Is that correct?

23 JUROR: Excuse me?

24 THE COURT: Are you Mrs. Dunn?

25 JUROR: Yes, I am.

1 THE COURT: I will ask you to serve as the
2 forelady of the jury, please, ma'am. You don't have to
3 do anything now. I will tell when you do, okay?

4 JUROR: Thank you.

5 THE COURT: Call your first witness,
6 Solicitor.

7 MR. SWARAT: May it please the Court, Your
8 Honor. The State calls Master Deputy Todd Hartman.

9 CLERK: Your Honor, can I come up there,
10 please?

11 THE COURT: Yes, ma'am.

12 (Pause).

13 THE COURT: Ladies and gentlemen, let me ask
14 you to step back to the jury room just for a minute.
15 Something has come up that we need to take care of. Be
16 sure not to talk about the case while you are back
17 there.

18 (The jury retires to the jury room).

19 THE COURT: The jury is secured. Counsel, the
20 clerk advises that we've had a call from the husband of
21 one of the jurors that apparently is upset that his wife
22 is on the jury. As I understand, he works at the
23 Department of Corrections. I don't know exactly what he
24 does.

25 Madame Clerk, can you relate to us what the

1 gist of the conversation -- did you talk with him or
2 someone else?

3 CLERK: I talked to him, Your Honor. It was
4 Mr. DiRusso. He is a corrections officer, has been for
5 18 years; and he is not comfortable with his wife being
6 on this jury.

7 Because if this person does get convicted,
8 then he said his 18 years at the Department of
9 Corrections puts his life in jeopardy. And the way he
10 put it was he and his wife are not comfortable is the
11 way he put it.

12 THE COURT: His wife is not comfortable?

13 CLERK: That's what he said to me on the
14 phone. He wanted to speak to somebody in charge of the
15 court to get his wife off this jury.

16 THE COURT: Counsel, I think we all know for
17 the record we gave her every chance yesterday to say
18 what she needed to say. What is the State's position?
19 Apparently she has been talking to him about it also
20 which frankly bothers me a little bit.

21 MR. SWARAT: I guess we can only find that
22 out by talking to her, Your Honor. I guess that's what
23 I would suggest, in a way that doesn't embarrass her.

24 As far as him working at the Department of
25 Corrections and putting his life in jeopardy, that's

1 where he works. His life is always in jeopardy I would
2 submit. I think we are going to have to talk with her
3 or the Court would have to talk with her.

4 THE COURT: Mr. Bolt, what is your position?

5 MR. BOLT: I agree with Mr. Swarat.

6 THE COURT: Let me let her come back in
7 chambers. I will just talk with her privately back
8 there, okay?

9 MR. SWARAT: I have no objection to that
10 whatsoever.

11 THE COURT: Any objection?

12 MR. BOLT: No, Your Honor.

13 THE COURT: Madame Court Reporter, how
14 about -- don't bring your stuff but just sit in with me,
15 okay?

16 COURT REPORTER: Yes, sir.

17 THE COURT: Ask Mrs. DiRusso to come back to
18 my office.

19 (Whereupon there was a recess).

20 THE COURT: Counsel, let me put on the record
21 what has transpired. Mrs. DiRusso -- and, Madame Clerk,
22 what is her juror number?

23 CLERK: One-fifty-five, Your Honor.

24 THE COURT: Mrs. DiRusso, 155, is married to a
25 man who works with the Department of Corrections. He

1 apparently called this morning, had a rather tense
2 conversation with the Clerk of Court, and indicated that
3 he and his wife were both upset that she was on the
4 jury.

5 She indicated she was not upset, and she
6 didn't know he had called and, in fact, advises that she
7 had not even talked with him about it. My first
8 reaction is I don't think he wants to go home tonight
9 because she was extremely unhappy about it.

10 The first thing she did was she demanded to
11 call him, and I kind of waited a few minutes to let
12 her cool down just a little bit. I think we all agree,
13 however, that since he has raised that prospect, that
14 does compromise her as a juror; and I see no way she
15 can stay on the jury panel. What is the State's
16 position?

17 MR. SWARAT: Your Honor, I defer to the Court.
18 I want to make sure it's on the record that the
19 Defendant agrees with this decision as well.

20 THE COURT: Mr. Bolt.

21 MR. BOLT: Absolutely.

22 THE COURT: Who is the first alternate, Madame
23 Clerk?

24 CLERK: Jessie Ybabes, 149.

25 THE COURT: Are you ready? Is the State

1 ready?

2 MR. SWARAT: The State is ready.

3 THE COURT: Is the defense ready?

4 MR. BOLT: Yes, sir, Your Honor.

5 THE COURT: Bring them in.

6 (The jury returns to the courtroom).

7 THE COURT: Ladies and gentlemen, one of the
8 jurors, Mrs. DiRusso, has been removed from the jury at
9 her request. With that in mind -- well, apparently you
10 have already told him. Usually we wait until the judge
11 tells him.

12 Mr. Ybabes -- is that the correct
13 pronunciation -- you will sit as an active juror at this
14 point then.

15 JUROR: Yes, sir.

16 THE COURT: The State, are you ready to call
17 your first witness?

18 MR. SWARAT: Yes, Your Honor. The State calls
19 Deputy Todd Hartman.

20 TODD HARTMAN, being first
21 duly sworn, testified as follows:

22 CLERK: Have a seat and state your full name
23 and spell your last, please.

24 THE WITNESS: My name is Todd Hartman,
25 H-A-R-T-M-A-N.

TODD HARTMAN -- DIRECT -- MR. SWARAT

DIRECT EXAMINATION

1

2 BY MR. SWARAT:

3 Q Deputy Hartman, who do you work for?

4 A I work for the Lexington County Sheriff's
5 Department.

6 Q How long have you been in law enforcement?

7 A Since 1992.

8 Q Were you working for the Sheriff's Department in
9 the late evening of July 13th, early morning hours
10 of July 14th of last year?

11 A Yes, I was.

12 Q What shift were you working, sir?

13 A I was working the evening shift, midnight shift.

14 Q Did you respond to a call late that evening?

15 A Yes, I did.

16 Q Where did you respond to?

17 A I responded to Highway, which is in
18 Lexington County.

19 Q That's within the jurisdiction of Lexington County?

20 A Yes, sir.

21 Q What type of call were you responding to? Did you
22 know from dispatch?

23 A It was -- at the time the original call came out,
24 it was a civil dispute. And by the time that I
25 arrived on the scene, I was told that there was

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 somebody that was lying on the floor in the house.

2 Q Were you one of the first officers on the scene?

3 A I was the first officer, yes.

4 Q As the first officer on the scene, what are your
5 duties and responsibilities?

6 A My duties are to check to make sure the scene is
7 secure, make sure there's no other individuals that
8 are inside the house, and preserve the crime scene.

9 Q Preserve the crime scene and then check to see if
10 there are any individuals on the scene, suspect
11 type of individuals?

12 A Yes.

13 Q Do you do that with your gun drawn?

14 A Yes.

15 Q When you arrived on the scene, were you met by any
16 citizen witnesses?

17 A I was met by Mrs. Hutto and her brother.

18 Q Donna Hutto who is present in the courtroom, the
19 lady in the glasses on the front row over here
20 (indicating)?

21 A Yes, sir.

22 Q What was Mrs. Hutto's condition when you met her
23 that night?

24 A She was very upset, almost hysterical when I
25 arrived on the scene. She got out of the vehicle

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 behind me. I pulled in the driveway first, and
2 they came in right behind me.

3 Q She was not at Highway when you
4 arrived?

5 A No, sir.

6 Q They pulled in behind you?

7 A Yes, sir.

8 Q You say she was very upset, almost hysterical?

9 A Yes, sir.

10 Q In that state were you able to gather any
11 information from her?

12 A Yes, sir, I was.

13 Q What type of information are you looking for when
14 you arrive at a scene such as this one?

15 A Initial questions were what happened. I just
16 wanted to know what happened as I was going up to
17 the house. She told me that Mr. Lewis was laying
18 on the floor and that Randy Tyler was there before
19 she ran out of the house. They were having a real
20 bad argument, heated argument.

21 Q There was a bad argument with Randy Tyler involved?

22 A Yes, sir.

23 Q Who was the argument between? Did she tell you
24 that?

25 A It was between Mr. Lewis and Mr. Tyler.

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 Q What did she tell you, if anything, about this
2 Randy Tyler individual?

3 A I asked for a description. She told me that he was
4 a white male in his mid 30s. She said he had like
5 salt and pepper type hair and that he had blue
6 eyes. He was about five-nine, maybe about
7 160-pounds.

8 Q So no question she knew this individual?

9 A Yes.

10 Q Did you find Randy Tyler on the scene when you
11 arrived?

12 A No, sir, I did not.

13 Q As you are on the scene, do you evaluate and assist
14 in calling out another units to a crime such as
15 this one?

16 A Yes, sir, I do.

17 Q And did a major crimes unit arrive?

18 A Yes, sir.

19 Q Who would that be?

20 A It was Sergeant Frier.

21 Q And did somebody show up to process the crime scene
22 for evidence?

23 A Yes, sir.

24 Q Who would that have been that night?

25 A That was Investigator Vickie Hallman.

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 Q What was the weather like that night, Deputy
2 Hartman?

3 A There at the crime scene at the house, it was
4 clear. It was dry. I know it hadn't been raining.
5 There was no rain.

6 Q The middle of July, what was the temperature like
7 that night?

8 A It was warm. I can't tell you exactly what the
9 temperature was, but I know I was hot. I was
10 sweating.

11 Q Typical July in the Columbia area?

12 A Yes.

13 Q Have you had the opportunity to go back out to this
14 location during the daytime?

15 A Yes, sir, I went out yesterday.

16 Q Are you familiar with the layout of
17 Highway, this residence?

18 A Yes, sir.

19 Q If you could step down from the witness stand with
20 the Court's permission.

21 A (Witness leaves the witness stand).

22 Q Deputy Hartman, I'm going to show you a photograph.
23 It has been premarked as State's Exhibit 1. Do you
24 recognize what is shown in that photograph?

25 A Yes, sir. That is the house, the residence,

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 Q If we could show this to the jury.

2 MR. SWARAT: With the Court's permission, Your
3 Honor, I would like to publish these as we go if that's
4 all right.

5 THE COURT: Yes, sir.

6 BY MR. SWARAT:

7 Q Deputy Hartman, if you could help me out a little
8 bit. What is this area right through here
9 (indicating)?

10 A That is the actual house right there, the front
11 entrance.

12 Q And is this residence set back from the road a
13 little ways?

14 A Yes, the main road is Savannah Highway. It runs
15 back over behind these trees (indicating). It's
16 got a very long driveway.

17 Q There are trees blocking where the main roadway is
18 right over here (indicating)?

19 A Yes, sir.

20 Q These trees (indicating)?

21 A Yes, sir.

22 Q There is a break here (indicating), I notice.

23 A Yes, I believe that might be a power line, but I'm
24 not positive.

25 Q Then there is a large stand of trees before you get

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 to the house?

2 A Yes, sir.

3 Q So you pass through two sections of trees?

4 A Yes, sir.

5 Q This area back here in the back (indicating), what
6 is this?

7 A This area here looks like it was an add-on. I
8 believe that was where the pool table and stuff
9 was. This area right here (indicating) is another
10 garage, attached to the -- I don't know if it was
11 attached to the house, but it's right next to the
12 house.

13 Q This (indicating) is the main part of the house
14 here. This (indicating) is the add-on as you call
15 it with the pool table?

16 A Yes, sir.

17 Q Directly behind it. It's a little bit different
18 color than the roof there. And then there is a
19 fairly large garage directly behind that, very
20 close to it?

21 A Yes, sir.

22 Q Did you call out any units to search the wood line,
23 that area, to see if maybe a suspect or if
24 Mr. Tyler had fled on foot?

25 A I don't recall if I did ask for that. I think on

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 initial response, no, I did not.

2 Q And I am showing you what has been marked as
3 State's Exhibit Number 2. This is a photograph
4 from the back of the house back to the roadway?

5 A Yes, that is.

6 Q The roadway that is shown in the top of this
7 photograph, what is that roadway?

8 A That is the Savannah Highway, Highway 321.

9 Q This is in the Swansea area of Lexington County?

10 A Yes, sir.

11 Q If you go back in this direction (indicating) on
12 321, Savannah Highway, where would you end up?

13 A If you are going back this way here (indicating),
14 you would be going back toward Swansea.

15 Q This is back towards Swansea. It's actually on the
16 way through Swansea?

17 A Yes, it is.

18 Q If you are going in this direction (indicating)?

19 A That would be towards Orangeburg County, North,
20 South Carolina.

21 Q Towards North, South Carolina which is near
22 Orangeburg?

23 A Yes.

24 Q And this (indicating) is that add-on that you were
25 talking about earlier?

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 A Yes, sir, it is.

2 Q The different color section of the roof on the back
3 of the house, you say there was a pool table back
4 there?

5 A Yes, there was.

6 Q And then this (indicating) is the garage you were
7 speaking of that is very close to the house?

8 A Yes, sir, it is.

9 Q When you go through checking the crime scene with
10 your gun drawn, do you disturb anything in the
11 house?

12 A I opened a few doors to some of the bedrooms that
13 were in the house. That was the only thing that I
14 disturbed.

15 Q You've got to look in each room?

16 A Yes, I have to, yes.

17 Q To make sure nobody is hiding in there?

18 A Correct.

19 MR. SWARAT: Your Honor, we have agreed these
20 are in evidence. I just wanted to clarify that for the
21 record.

22 THE COURT: Is that correct, Mr. Bolt?

23 MR. BOLT: Yes, it is.

24 (State's Exhibits Number 1 through 4 are
25 received into evidence).

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 BY MR. SWARAT:

2 Q The power line area you were talking about in
3 between the tree line, is that depicted in State's
4 Exhibit Number 3?

5 A Yes, it is.

6 Q There is a sizable gap there cut through the trees.
7 I believe this is a close-up view of the back of
8 the house?

9 A Yes, it is.

10 Q In State's Exhibit Number 4. There are other
11 houses in the general area?

12 A Yes, there is.

13 Q But it's set pretty far off the road; is that
14 accurate?

15 A Yes, sir.

16 Q Once Detective Frier and Detective Hallman arrive
17 on the scene, do you release the crime scene to
18 them then? Do they take over the major duties
19 there at the scene?

20 A Yes, sir.

21 Q Did you stay there later on that evening?

22 A (Witness resumes the witness stand). Yes, sir, I
23 did for a little while.

24 Q E.M.S. eventually arrived?

25 A Yes, E.M.S. responded in just a little while.

TODD HARTMAN -- DIRECT -- MR. SWARAT

1 After I secured the crime scene, I asked for E.M.S.
2 to respond to check out Mr. Lewis.

3 MR. SWARAT: Beg the Court's indulgence.

4 (Pause).

5 Q Deputy Hartman, did Mrs. Hutto, when she was
6 relaying this information about Randy Tyler, did
7 she indicate what time this argument took place?
8 Is that indicated in your report?

9 A Yes, it is, sir.

10 Q What time was that?

11 A It was approximately 11:30.

12 Q And in South Carolina at 11:30 at night in the
13 summertime, is that during the hours of darkness?

14 A Yes, it was.

15 MR. SWARAT: Your Honor, that's all I have for
16 Deputy Hartman at this time.

17 Q Please any questions the defense may ask.

18 THE COURT: Cross.

19 MR. BOLT: I don't have any questions.

20 THE COURT: You can step down, Deputy. Thank
21 you, sir, and you are free to go if you would like.

22 MR. SWARAT: Thank you, Your Honor.

23 THE COURT: Counsel, what I will do is dismiss
24 each witness and excuse them from the courtroom if they
25 want to be excused. What I will do is just let each of

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 you indicate to me if you have any objection to that.

2 MR. SWARAT: Your Honor, with my next witness
3 I have a few things I need to set up. It will just take
4 a second or two.

5 THE COURT: Do we need to let the jury go back
6 to the jury room?

7 MR. SWARAT: It won't take that long, Your
8 Honor.

9 THE COURT: That's fine.

10 (Pause).

11 MR. SWARAT: Your Honor, at this time we call
12 Deputy Vicki Hallman.

13 VICKI HALLMAN, being first
14 duly sworn, testified as follows:

15 CLERK: Have a seat. State your full name for
16 the record and spell your last.

17 THE WITNESS: Vicki Hallman, H-A-L-L-M-A-N.

18 **DIRECT EXAMINATION**

19 BY MR. SWARAT:

20 Q Detective Hallman, who do you work for?

21 A The Lexington County Sheriff's Department.

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

23 A I'm working on 13 years.

24 Q What is your job description at the Sheriff's
25 Department?

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 A I'm actually classified as an I.D. officer, which
2 means that I work crime scenes and I process items
3 of evidence that come into the lab at the Sheriff's
4 Department.

5 Q What types of training and experience have you
6 received to be a crime scene investigator?

7 A I have been to an I.D. tech school that is
8 sponsored through the Criminal Justice Academy. I
9 have been to photography school, numerous other
10 schools, along with some in-house training; and I
11 spent three weeks with S.L.E.D. doing an internship
12 with their crime scene unit.

13 Q Roughly how many crime scenes have you been called
14 to in your career?

15 A Hundreds, a couple hundred.

16 Q Were you working the night of July the 13th of last
17 year, early morning hours of July 14th?

18 A I was on call for the weekend, yes.

19 Q You were on call?

20 A Yes, sir.

21 Q So if your beeper goes off, you have to get out of
22 bed and go?

23 A Absolutely.

24 Q Did you receive a call that night?

25 A Yes, I did.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 Q And where did you respond to?

2 A I responded to Highway in Lexington
3 County.

4 Q As a crime scene investigator, what is one of the
5 first things you do when you arrive on a scene such
6 as this one at a residence?

7 A A lot of times I will catch up with the first
8 responding officer to find out some basic details
9 about what has occurred. I will usually do a
10 walk-through to just basically look at the scene
11 and see what I have. Then I usually do a crime
12 scene video and do the photographs before anything
13 is touched or moved.

14 Q So that would have been Deputy Hartman that
15 testified earlier that you would have spoken with?

16 A Quite possibly or in this case I think Detective
17 Frier had already arrived on the scene, and he had
18 already been briefed. So I just got my information
19 from him.

20 Q And did he tell you a little bit about what you
21 had?

22 A Yes.

23 Q What information, if any, was related to you about
24 what type of scene this was, what type of crime
25 scene?

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 A Actually when I pulled up on the scene and looked
2 at the house, I could see the victim laying in
3 front of the door because his body was at the front
4 door. I basically found out there had been an
5 altercation and he was possibly shot.

6 Q Showing you State's Exhibit Number 1, pointing to
7 the house, can you indicate where the front door is
8 that you are referring to.

9 A The front door, there is a little pavement area in
10 the front that's a circle. If you walk straight up
11 that sidewalk, you are going into the front door.
12 So it's basically in the center of the house.

13 Q In between these two small wings of the house there
14 (indicating)?

15 A Correct.

16 Q There is a little area right in the middle that is
17 recessed there. You say from the outside looking
18 in, the victim's body was visible?

19 A Yes, sir.

20 Q Did you do a crime scene videotape in this case?

21 A Yes, I did.

22 MR. SWARAT: Your Honor, at this time we move
23 this into evidence as State's Exhibit Number 5, I
24 believe without objection.

25 MR. BOLT: Without objection, Your Honor.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 THE COURT: Without objection.

2 (State's Exhibit Number 5 is received into
3 evidence).

4 BY MR. SWARAT:

5 Q Detective Hallman, if you would I would ask you to
6 stand down. I will play this tape, and I would
7 like you to narrate for the jury if you would.

8 A (Witness leaves the witness stand).

9 MR. BOLT: Your Honor, my client and are going
10 to step over here.

11 THE COURT: Yes, sir, you may.

12 MR. SWARAT: Your Honor, I would like to
13 inquire of the jury if they can see the screen.

14 THE COURT: Can all jurors see okay? Jurors,
15 if you have trouble seeing, just raise your hand or say
16 something.

17 (During the playing of the videotape, State's
18 Exhibit Number 5, the following was reported).

19 BY MR. SWARAT:

20 Q You can feel free to narrate whenever you want.

21 A I usually start on the outside of the house. The
22 camera is having trouble focusing because there is
23 not a lot of light. This would be the front area
24 of the house with the front door. You can see the
25 crime scene tape that Deputy Hartman and the other

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 first officers would have put up to secure the
2 scene from people walking in on it.

3 There is a lighted area back over here that
4 comes from two garages that you will see shortly
5 because I walk around. This is a closed garage.
6 There is another garage here that is parallel that
7 you can't see with one of the bay doors up. If you
8 are facing the house, this would be left, going
9 right.

10 Q Everything, the tape, is as you discovered it?
11 Nothing has been altered in any way?

12 A Correct. You can see the front door in that area
13 right here.

14 Q Is there like a storm door there that is showing?

15 A Yes.

16 Q The main door to the house, the wooden door was
17 open?

18 A Correct, and the storm door was closed when I
19 arrived. This would be the left side of the house.

20 Q So the garages would be right over here?

21 A Correct. You should be able to see them in just a
22 moment. This would be the added-on room, which I
23 call the pool room for my purposes.

24 This would be a two-bay garage. The first bay
25 is up and the second bay is down. This would be

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 the inside of the garage. I was standing at -- the
2 bay door that is up, I'm standing at the bay door
3 just panning around in the garage.

4 Q Did you note any signs of a struggle or any
5 activity in the garage area?

6 A There is an area over here on the side that you
7 can't really see in the video that looked like --
8 there was a trash can overturned and some other
9 things that just looked a little bit out of place
10 to me.

11 Q Did you find any blood or foreign substances in the
12 garage?

13 A Yes, there were blood drops in the garage. This
14 would be basically the right side of the house.

15 Q This here would be the back yard?

16 A Correct, and there is a fence there also.

17 Q That's the streetlight type light into the back
18 yard?

19 A Correct. This would be the front door. You can
20 see the victim lying right here. Then basically I
21 would move in the house from here. This would be
22 standing or right outside the front door with the
23 storm door open now. You can see the living room
24 area with an overturned table, the victim, one of
25 the injuries to his arm.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 Q Was the victim a fairly large individual?

2 A Correct, he was. This would just be a general view
3 of the living room area.

4 Q If you go through the door here, where would you
5 lead to?

6 A That would be into the area I call the pool room,
7 which is the little added-on room in the back of
8 the house. This would be from the front hallway.

9 Q What is this back here?

10 A From what I could tell, that looked to be the
11 master bedroom. I called it basically the purple
12 bedroom because the walls were painted purple for
13 my purposes in my reports.

14 This is the couch. There appeared to be a
15 bullet hole in the arm of that couch. There also
16 appeared to be some blood on the back area of that
17 couch also.

18 Q Could you tell if that was transferred blood or
19 90-degree blood drops?

20 A It was transferred blood.

21 Q Explain to the jury what that means.

22 A Transferred blood is usually blood that is moved
23 from one object to another, and it's usually in
24 larger pools; whereas blood spatter or blood
25 droplets would be small and circular or elliptical

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 in shape.

2 Q Did the victim have a lot of head injuries?

3 A It appeared so, yes.

4 Q Was there an amount of blood in his hair?

5 A Yes, there was a large amount of blood in his hair.

6 You see his feet here. I located one shell casing
7 right here, and there is another shell casing that
8 you can't hardly see that is back here behind the
9 table a little bit farther.

10 This would be a love seat that's in the
11 corner, and there is also a large amount of
12 transfer stain on the back of that couch. There is
13 also another bullet hole or what appeared to be a
14 bullet hole in the transfer stain on that couch or
15 on that love seat right there.

16 Q This love seat, is it directly opposite that other
17 couch?

18 A It's catty-corner but it's on the opposite wall.

19 Q The other side of the room?

20 A Correct.

21 Q Did you find any shell casings in any other room of
22 the house besides this living room?

23 A No other room, no, sir.

24 Q What is this here?

25 A This would be the kitchen area. This is just a

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 large chair that matches everything else right
2 before the entrance to the pool room. I also
3 located another shell casing right down in the fold
4 of the couch cushion.

5 Q From the kitchen area, can you look out through the
6 pool room into the back yard?

7 A Yes, you can.

8 Q Into the windows into the pool room?

9 A There are two windows that you can view through the
10 kitchen and into the pool room and outside because
11 there is another window on that outside wall.

12 That would be the shell casing that I found in
13 the overstuffed chair right at the entrance to the
14 pool room. The camera didn't want to focus. This
15 would be the entrance into the pool room.

16 Q Are there signs of a struggle in that room as well?

17 A Most definitely, especially right here at the
18 entrance. There is one overturned bar stool with a
19 pool stick laying beside it, and there is an
20 upright bar stool that has 90-degree blood spatter
21 on top.

22 Q What is this?

23 A There's some ceiling tiles. And if you look up
24 right at the entrance, it looked like possibly one
25 of the stools had been picked up and shoved up in

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 there. There also appeared to be several sets of
2 knuckle marks with small traces of blood.

3 Q Was there blood in any of the knuckle marks
4 themselves?

5 A Yes, there was.

6 Q How about blood just out on the ceiling tiles?

7 A Correct, there was that also. This is just fall
8 down from the ceiling tiles. That would be the
9 back door that leads out of the residence.

10 There's a couple of steps down, and you
11 basically make an immediate left and you are in the
12 first garage that the bay door was up on the
13 outside.

14 Q And that goes into the back yard?

15 A Correct, it does.

16 Q How far is it from that door to the garage?

17 A Maybe five, six, seven feet. You go down like four
18 steps and make a left, and you are basically in
19 that room or in that building.

20 Q There is a back door to that garage going into the
21 pool room?

22 A A single door that leads into the pool room, yes.

23 Q What is this here?

24 A That's the 90-degree blood spatter on the upright
25 stool. There is also some other blood spatter that

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 goes down on the sides of the stool.

2 Q What do these windows go to?

3 A Those would be the two windows that if you look
4 through, you can actually see into the kitchen
5 area.

6 Q And vice-versa?

7 A Correct.

8 Q Do these windows here look in the direction of that
9 outer door to the back yard?

10 A Yes, they do.

11 Q And that's the door to the back yard we are talking
12 about here?

13 A Yes. Then you go down several steps and you
14 basically make an immediate left, and you are in
15 the first garage that the bay door was up on.

16 Q And all these doors are as they were found?

17 A They were as I found them, correct. There is like
18 a plastic green cup that is laying here that is
19 overturned, and it looked like it possibly had been
20 overturned recently because there was a pool of
21 something, probably like Coke or something along
22 those lines.

23 Q It was fresh liquid on the floor?

24 A Correct, it was.

25 Q And that's the truck we saw on the outside?

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 A Yes, it is.

2 Q Did you find any blood in this area over here in
3 the garage?

4 A Yes, there were a couple of drops on the floor.
5 There is a white box in this trailer, and there was
6 some spatter on top of that box also, some
7 droplets.

8 I basically just started back again. This
9 would be the entrance to the kitchen from the
10 living room area, just to kind of give a general
11 idea of what the rest of the house looked like.

12 Q Any areas disturbed in the kitchen that you noted?

13 A No, nothing that appeared out of the ordinary. And
14 then if you entered the house and went to the left,
15 this would be a front bedroom that looked like an
16 office area. There was no bed in it, but there was
17 like a computer desk and other numerous items
18 inside that room.

19 Q If you walk in the front door, the body is to the
20 left?

21 A The body is to the left. If you make a right, this
22 would be the bedroom on the front of the house.

23 Q And if you took a left over the top of Mr. Lewis,
24 that would be the master bedroom?

25 A Correct, it would.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 Q What type of gun was that?

2 A It's a B.B. pistol or an air pistol or air rifle.

3 Q Were any firearms recovered in the house?

4 A No, none were recovered.

5 Q Were there any firearms recovered off of Mr. Lewis'
6 person?

7 A No. This would be the hallway to the front door.
8 This is a second bedroom that if you walked out of
9 the first one and down the hall, you would be right
10 in it. So this bedroom is also on the right side
11 of the house but in the back.

12 Q Is that a cabinet that is opened over here?

13 A It's like a chifforobe chest that was open, yes.
14 This would be the bathroom. The back bedroom would
15 be here. There is a small closet here, and now we
16 are back up the hall at the front of the house.
17 This would be the master bedroom and the front
18 door.

19 Q Were there any items disturbed in this master
20 bedroom we are getting ready to see?

21 A There was a dresser drawer out of the main dresser
22 that was sitting on the bed that looked like it had
23 been possibly been rummaged through.

24 Q Is this the dresser you are talking about here?

25 A Correct, it is. Then this would be the drawer

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 sitting on the bed. There is a bathroom that is
2 actually a part of that bedroom. There is no door
3 or anything that separates it from the rest of the
4 bedroom.

5 Q There is a window over in here?

6 A Yes, there is.

7 Q From that window can you see out into the front
8 yard?

9 A Yes, you would be able to see to the front yard.

10 Q This is the drawer here that was pulled out?

11 A Yes. This would be the view if you were standing
12 in the entrance of the master bedroom looking out.

13 Q This area is very wet with blood here?

14 A Yes, it is.

15 Q This area right here is the glass storm door that
16 goes to the front yard?

17 A Yes, it is. That one area would lead back into the
18 living room. That was what appeared to be a shoe
19 print in blood in the front living room area.

20 Q Detective Hallman, actually you can stay down here.
21 After you do the crime scene videotape, do you also
22 go through and take still photographs?

23 A Yes, I do.

24 Q Detective Hallman, I am showing you some
25 photographs that are some selected shots from a

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 garage.

2 MR. SWARAT: I will move these in as one
3 exhibit, State's Exhibit Number 6, Your Honor, as I
4 understand without objection?

5 THE COURT: Any objection?

6 MR. BOLT: That is correct, without objection.

7 THE COURT: All right, without objection.

8 (State's Exhibit Number 6 is received into
9 evidence).

10 BY MR. SWARAT:

11 Q Detective Hallman, let me make sure everybody can
12 see. I know it's not easy the way this is set up
13 here. Can everybody see fairly well? If you can
14 walk us through just generally from photograph to
15 photograph starting at the top and explain what is
16 depicted in those pictures.

17 A This (indicating) would be the outside area of the
18 garage basically standing in the driveway. There
19 is a red, I think it's a Dodge pick-up, that is
20 parked out front.

21 The first bay door is up. The second bay door
22 is down. That's just a view inside. This would be
23 basically this area (indicating) over here. This
24 (indicating) is also an overturned trash can.

25 This would be the view if you stood right here

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 (indicating) in the entrance. This would be the
2 view back with the rear door and the overturned cup
3 (indicating).

4 This would be the view from the small door at
5 the back looking out towards the front with the
6 pick-up truck and with the cup. This photograph is
7 the area behind this trailer (indicating) on the
8 opposite side that you can't see.

9 There is like a little dolly stool that is
10 overturned. There is what appears to be eyeglasses
11 that are underneath here (indicating). The hammer
12 is laying down, and there is a hat that is flipped
13 up that is just laying on the floor.

14 Q Let me stop you for a second. Did you detect any
15 blood in this area here (indicating)?

16 A Yes, there is a drop of blood...

17 Q Maybe you can see it in this photograph.

18 A Correct. You can see it better in this one. There
19 is one drop of blood that is on the floor here
20 (indicating) close to the trailer.

21 Q In this trailer there is a white box here
22 (indicating)?

23 A It is.

24 Q Was any blood found on that box?

25 A Yes, there were droplets of blood on the top of

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 that box also.

2 Q So there are signs of a struggle in the garage --

3 A Yes.

4 Q -- and some blood. Is the blood heavy or fairly
5 light there in the garage?

6 A It's fairly light in the garage.

7 Q What is this (indicating)?

8 A This would be a back view of basically the pool
9 room with that entrance, and then this (indicating)
10 would be the door that leads into the back garage.

11 Q There is some artificial lighting here (indicating)
12 on the top of the door to the garage?

13 A Yes, it is.

14 Q You said you collected some blood inside the
15 garage. Did you also collect the glasses that are
16 shown in the photograph?

17 A Yes, I did.

18 Q And also the hat that was shown?

19 A Yes.

20 MR. SWARAT: Your Honor, I move both of these
21 into evidence.

22 MR. BOLT: No objection.

23 THE COURT: Without objection.

24 MR. SWARAT: This will be State's Exhibit
25 number 11.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 (State's Exhibit Number 11 is received into
2 evidence) .

3 MR. SWARAT: And Number 12 is the hat.

4 (State's Exhibit Number 12 is received into
5 evidence) .

6 BY MR. SWARAT:

7 Q Number 11 would be the eyeglasses and Number 12
8 would be the hat. Showing you State's Exhibit
9 Number 11 --

10 MR. SWARAT: I understand without objection,
11 Your Honor.

12 THE COURT: Is that correct?

13 MR. BOLT: That's correct.

14 BY MR. SWARAT:

15 Q Did you note any damage to these eyeglasses when
16 you recovered them?

17 A The eye pieces or the nose pieces are bent up
18 slightly, and there appears to be some type of
19 stain on the lenses that could possibly be blood.

20 MR. SWARAT: Your Honor, if I could show these
21 to the jury.

22 THE COURT: Yes, sir.

23 BY MR. SWARAT:

24 Q And also this was the hat, State's Exhibit
25 Number 12, that was shown in this photograph

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 (indicating)?

2 A Correct.

3 Q I guess approximately seven to eight feet away from
4 where the glasses were recovered?

5 A That general distance, yes.

6 Q There is some blood as you leave that area starting
7 right about in here (indicating)?

8 A Yes.

9 Q Those same eyeglasses are shown in this photograph
10 here (indicating) at the bottom?

11 A Yes, they are.

12 Q That's the same dolly that we are talking about?

13 A Yes, that would be the other view of the same
14 picture. It would be taken from the opposite way.

15 Q The hammer (indicating)?

16 A Yes.

17 Q And the hat is back over here (indicating). We
18 can't see it in this photograph?

19 A Correct, it is.

20 Q The blood, you say you collected blood in the
21 garage?

22 A Yes, I did.

23 MR. SWARAT: Your Honor, this is going to be
24 State's Exhibit Number 10. It's going to be in the form
25 of a summary chart. I understand it is without

VICKI HALLMAN -- DIRECT --- MR. SWARAT

1 objection, too.

2 MR. BOLT: That's correct.

3 (State's Exhibit Number 10 is received into
4 evidence).

5 BY MR. SWARAT:

6 Q What I would like you to do, Detective Hallman,
7 going from what you collected in the garage, then
8 I'm going to walk you through the rest of the
9 house.

10 A Okay.

11 Q You can use your notes if you'd like.

12 A Okay. There was one that I actually marked as the
13 box because I took the swab off the box that was in
14 the trailer.

15 (Witness writes on State's Exhibit Number 10).

16 Q And that was a swab?

17 A Correct, it was.

18 Q What type of evidence did you believe that
19 contained?

20 A Blood.

21 (Witness writes on State's Exhibit Number 10).

22 Q Was that item of evidence, the swab from the box,
23 sent to another agency to have it tested?

24 A It was sent to the South Carolina Law Enforcement
25 Division or S.L.E.D. for testing.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 Q Did you recover any other swabs inside the garage?

2 A No, not in the garage.

3 Q Now, I would like to proceed to the pool room. I
4 am showing you what is State's Exhibit Number 7, as
5 I understand without objection.

6 MR. BOLT: That's correct.

7 THE COURT: Without objection.

8 (State's Exhibit Number 7 is received into
9 evidence).

10 BY MR. SWARAT:

11 Q If you can start at the top and just tell us where
12 we are.

13 A That would be inside the pool room. This
14 (indicating) would be the back door that leads out
15 of the house. This (indicating) would be the door
16 or the area that would lead into the living room.

17 This (indicating) would be a picture that was
18 taken from the living room. You can see the
19 entrance to the kitchen here (indicating) and then
20 the entrance to the pool room here (indicating).

21 This photograph here (indicating), you can see
22 the entrance back into the living room and the two
23 windows in the kitchen. This one (indicating)
24 would be taken standing inside the living room
25 looking into the pool room.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 Q Let me stop you for just a second. These three up
2 top were taken at a later date after the furniture
3 had been removed?

4 A Correct, they were.

5 Q This (indicating) was taken the night of the
6 homicide?

7 A Yes. This one (indicating) would be a view back
8 into the pool room where you can see the overturned
9 stool and the pool cue. This one (indicating)
10 would be taken right at the entrance to the pool
11 room looking back. This (indicating) would be the
12 front door of the residence.

13 This one (indicating) would be taken in the
14 kitchen through this window. You can see the back
15 door into the back yard area. This (indicating)
16 would basically be another photograph from the
17 other window that you can see out into the back
18 yard.

19 Q Detective Hallman, did you find any blood in that
20 room? Did you document any blood?

21 A Yes, I did.

22 Q Would you describe the blood in the pool room as
23 being heavier or lighter than in the garage?

24 A It would be heavier than what was in the garage.

25 Q That's the blood we saw on the top of this pool

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 stool -- this bar tool here (indicating)?

2 A Yes, sir.

3 Q Then there was some blood also in the ceiling?

4 A Correct.

5 Q Did you collect any swabs of blood from the pool
6 room?

7 A Yes, I did.

8 (Witness writes on State's Exhibit Number 10) .

9 Q These swabs that were taken out of the ceiling, and
10 then you have got one that I will focus on in a
11 minute, marked ceiling, knuckle mark, where were
12 those items sent for testing?

13 A Those would also have been sent to S.L.E.D.

14 Q Were those ceiling tiles also collected and placed
15 into evidence?

16 A Yes, they were.

17 MR. SWARAT: Your Honor, I think I am just
18 going to move this whole box in as State's Exhibit
19 Number 13 instead of trying to mark these each
20 individually.

21 THE COURT: Any objection?

22 MR. BOLT: Those are the ceiling tiles?

23 MR. SWARAT: Yes, sir.

24 MR. BOLT: I don't have any objection.

25 THE COURT: Without objection.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 (State's Exhibit Number 13 is received into
2 evidence).

3 BY MR. SWARAT:

4 Q What I would like you to do is pull these out and
5 show the jury what you are talking about as knuckle
6 marks.

7 A These were located right at the entrance to the
8 pool room. As you can see, there are several
9 little areas that are indented. They basically
10 would match up with somebody who had slammed their
11 first up and made knuckle marks in it. This area
12 here (indicating) appears to have possibly been
13 caused by one of the bar stools being shoved up
14 into the ceiling.

15 Q Did you also photograph what you collected there or
16 what was collected there?

17 A Yes, I did.

18 Q Is this a photograph of these ceiling tiles as they
19 were in the ceiling?

20 A Yes, they are.

21 MR. SWARAT: Your Honor, this is going to be
22 State's Exhibit Number 14, as I understand without
23 objection?

24 THE COURT: Any objection?

25 MR. BOLT: We have reviewed the photographs,

VICKI HALLMAN -- DIRECT --- MR. SWARAT

1 Your Honor, each of these we have looked at with no
2 objection.

3 (State's Exhibit Number 14 is received into
4 evidence).

5 BY MR. SWARAT:

6 Q This is State's Exhibit Number 14, the knuckle
7 marks in the ceiling. Also the damage to the
8 ceiling. You should be able to see some blood in
9 the ceiling as well. The swab you have marked
10 exclusively the ceiling, was that taken out of the
11 knuckle mark or out of the unbroken section of the
12 ceiling?

13 A It would have been taken from the unbroken section
14 of the ceiling.

15 Q Then you took a swab directly from the knuckle
16 marks?

17 A Yes, I did.

18 Q Did you find any shell casings in the pool room?

19 A I did not.

20 Q Did you find any evidence of gunshots being taken
21 in the pool room?

22 A No.

23 Q Showing you what is marked as State's Exhibit
24 Number 8, it's a few select photos from the living
25 room. If you can just start from the top again and

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 orient the jury to what they are seeing.

2 A This (indicating) would be looking from the front
3 of the house, the entrance to the pool room here
4 (indicating), the kitchen here (indicating). This
5 (indicating) is basically the same photo that was
6 taken the night that I responded right from the
7 front door, and you can basically just see in to
8 the wood stove.

9 This would be the couch that would be located
10 right here (indicating) on this wall. The love
11 seat, which would actually be back in this corner
12 here (indicating), right behind the victim in that
13 corner.

14 This (indicating) is the entrance to the pool
15 room with the stuffed chair with one shell casing
16 being located here (indicating), and the overturned
17 coffee table. This photograph (indicating) would
18 be standing in front of the fireplace looking back
19 out towards the front entrance of the house.

20 Q And did you collect the shell casings that you are
21 talking about in the photographs and also on the
22 videotape?

23 A Yes, I did.

24 MR. SWARAT: Your Honor, that was State's 8, I
25 believe without objection.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 MR. BOLT: No objection.

2 (State's Exhibit Number 8 is received into
3 evidence).

4 MR. SWARAT: Your Honor, I think these would
5 be State's Exhibit Number 15.

6 Q Are these the shell casings that you collected the
7 night of the homicide?

8 A Yes, it is.

9 MR. SWARAT: Your Honor, I would like to
10 publish these to the jury as well.

11 THE COURT: Any objection?

12 MR. BOLT: No, Your Honor.

13 (State's Exhibit Number 15 is received into
14 evidence).

15 BY MR. SWARAT:

16 Q Were you able to note what caliber of shell casings
17 those were?

18 A They are .40-caliber rounds.

19 Q You told us before that you collected a spent round
20 out of the couch. I will show you what is going to
21 be marked as State's Exhibit Number 16. Did you
22 also collect shell casings -- excuse me -- a spent
23 round out of an area in the wall in the living
24 room?

25 A Yes, we did. Behind the love seat, there was a

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 vent, like an air conditioning type vent. Once we
2 opened the vent up, there was another spent round
3 found in that vent behind the love seat in the
4 corner.

5 Q This is the one found in the couch?

6 A Yes, that would be the one from the couch cushion.

7 Q You actually had to dig that out of the couch?

8 A We actually had to dig it out of the couch.

9 Q And this was found in the vent. I guess it would
10 be behind the little small table we saw near the
11 victim's feet?

12 A Actually it would be behind this love seat.

13 Q That is the bullet that comes out of that casing.
14 That's the business end of the gunshot?

15 A It is.

16 MR. SWARAT: I would move this in as Number
17 16, Your Honor.

18 MR. BOLT: No objection.

19 THE COURT: Without objection.

20 (State's Exhibit Number 16 is received into
21 evidence).

22 BY MR. SWARAT:

23 Q Did you take any swabs from the living room area of
24 the house?

25 A Not from the living room area itself, no.

VICKI HALLMAN -- DIRECT, -- MR. SWARAT

1 Q How about, I guess, this foyer area here
2 (indicating) near where the victim was lying?

3 A Yes, I took some swabs from that area also.

4 Q Could you document those for us as well on State's
5 Exhibit Number 10. This is the summary chart.

6 A (Witness complies).

7 Q Did you collect any other swabs from that area,
8 from the living room to the front door?

9 A No. There's three areas that I took swabs from in
10 this area.

11 Q Could you mark them individually if you would.

12 A Okay. (Witness complies).

13 Q Were they labeled different letters when you
14 submitted them?

15 A Yes, they were labeled differently from three
16 different locations.

17 Q If you could just put the appropriate labels. The
18 order really doesn't matter.

19 A Okay. (Witness complies).

20 Q I believe you can retake the witness stand. Thank
21 you very much.

22 A (Witness resumes the witness stand).

23 Q Detective Hallman, these blood swabs that you take,
24 can you explain to the jury how you collect them
25 and how you package them.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 A I use a sterile swab. They come in little packets.
2 I have to tear them open. I use distilled water.
3 It supposedly is a little bit purer than like tap
4 water. I would wet the swab with the distilled
5 water and then wipe it on the spot.

6 It would be allowed to dry, and it would be
7 packaged basically in an envelope and sealed shut.
8 Each one would be done individually so that they
9 wouldn't cross contaminate.

10 Q I will show you a document and ask you if recognize
11 it just to make sure we have got all the swabs you
12 collected. Have you seen that before?

13 A Actually I haven't seen it before.

14 Q Would it help to refresh your memory? Let me ask
15 you that.

16 A Yes, it would.

17 Q Let me make sure I have got it straight. I count
18 one swab we have on the board here from the box?

19 A Yes.

20 Q Was there also a separate swab taken from the floor
21 in the garage?

22 A No.

23 Q Check it. Take a look at that first and make sure
24 we are right.

25 A Actually I did. Yes, there was.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 Q So there was one from the box in the garage and a
2 separate one from the floor in the garage?

3 A Yes.

4 Q I can put that on there if you'd like. (Writing on
5 board). All right. So we have got one off the
6 garage, on the floor in the garage?

7 A Yes.

8 Q Was that also a swab that you took that you
9 believed to be blood?

10 A It was.

11 Q If you can continue about how these things are
12 packaged. Are they packaged all together? Do you
13 lump them all together?

14 A No, they have to be packaged individually.

15 Q So the garage box swab is in one separate package?

16 A It is.

17 Q The ceiling one is in a totally different package?

18 A It is.

19 Q Knuckle marks in a totally different package?

20 A Yes.

21 Q They are all kept completely separate?

22 A Yes.

23 Q After you collected those items, did you later
24 attend the autopsy of Mr. Lewis?

25 A I did.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 Q And were some items of evidence collected from his
2 body?

3 A Yes, they were.

4 Q What types of evidence did you see collected from
5 his body?

6 A There were five bullet fragments or bullets taken
7 from his body, the spent round, and also some
8 damaged coins.

9 Q I am showing you some items.. There are some
10 bullets contained within this packaging?

11 A Yes, there are.

12 Q And those were all collected from the body of
13 Mr. Lewis?

14 A Yes, they were.

15 MR. SWARAT: Your Honor, I believe these are
16 going to be State's Exhibit Number 17.

17 THE COURT: Any objection?

18 MR. BOLT: No, Your Honor.

19 (State's Exhibit Number 17 is received into
20 evidence).

21 BY MR. SWARAT:

22 Q Those items of evidence, those bullets, shell
23 casings, the bullets you collected also from the
24 house itself, were those items also taken to
25 S.L.E.D.?

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 A Yes, they were.

2 Q To see what testing you might be able to get off of
3 those?

4 A Correct.

5 Q About a week and a half after this homicide, were
6 you asked to take some photographs of Mr. Randy
7 Tyler?

8 A Yes, I was. I was contacted by Detective Fossum
9 and asked to respond and photograph Mr. Tyler.

10 Q And where did that take place?

11 A In the Lexington County Detention Center in the
12 booking area.

13 Q He had already been arrested by law enforcement?

14 A Yes, he had.

15 Q What area of his body in particular did you focus
16 on when you took photographs of him?

17 A I focused mainly on his hands.

18 Q And what caught your attention about his hands?

19 A He had what appeared to me to be healing injuries
20 on his knuckles.

21 MR. SWARAT: Your Honor, these are going to be
22 State's 18, 19, and 20, I understand without objection.

23 MR. BOLT: We have reviewed those. There is
24 no objection.

25 THE COURT: Without objection.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 (State's Exhibit Number 18-20 are received
2 into evidence).

3 BY MR. SWARAT:

4 Q Detective Hallman, this is State's Exhibit Number
5 18. It's a full view of the Defendant, Mr. Tyler?

6 A Yes, it is.

7 Q Did you take this full picture so you can identify
8 whose hands are in the other photographs, the
9 close-ups?

10 A Yes.

11 Q This is State's Exhibit Number 19. I want you to
12 point out what caught your attention.

13 A On his right hand up around the knuckle joints on
14 basically all the fingers there looked like there
15 were injuries that were in the process of healing.

16 Q And what was the date this photograph was taken?

17 A They were taken on July 23rd.

18 Q So some nine, ten days after the homicide?

19 A Yes.

20 Q And actually this is a close-up of the same thing,
21 of that one hand, State's Exhibit Number 20?

22 A Yes, it is.

23 Q Ten days after Mr. Lewis was killed?

24 A Yes.

25 Q When was Mr. Tyler placed into custody if you know?

VICKI HALLMAN -- DIRECT -- MR. SWARAT

1 A I believe he was arrested on the evening of the
2 14th.

3 Q When you have blood in a crime scene like you have
4 in this situation and you collect swabs as you did
5 in this case, do you need samples of blood to match
6 against those collected samples?

7 A Yes, we do.

8 Q Was a collection of blood taken from Mr. Lewis
9 himself at the autopsy?

10 A Yes.

11 Q Was that submitted to S.L.E.D. as well?

12 A Yes.

13 Q For comparison with these things that were
14 collected at the crime scene?

15 A Yes.

16 Q On July the 23rd of last year, was a sample of
17 blood collected from Mr. Tyler?

18 A Yes, it was.

19 Q Did you have any involvement in the care and
20 custody of that specimen?

21 A At the time part of my duties included being an
22 evidence custodian, and I signed in a sealed
23 suspect kit that had been taken from Mr. Tyler.

24 Q It was already sealed up?

25 A Yes, it was in a sealed envelope.

VICKI HALLMAN -- DIRECT -- MR. SWARAT

- 1 Q Where did you take possession of it?
- 2 A I took possession of it from Detective Mike Poole.
- 3 Q And that is Detective Poole seated on the front row
- 4 here (indicating)?
- 5 A Yes, it is.
- 6 Q The one whose beeper went off?
- 7 A Yes.
- 8 Q Later on that same afternoon, did you take into
- 9 your custody a sample on Travis Harsey?
- 10 A Yes, I did.
- 11 Q Completely separate from the one taken from Randy
- 12 Tyler?
- 13 A Yes, it was also in a sealed envelope.
- 14 Q Those samples, these that went out to S.L.E.D., the
- 15 separate sample from Randy Tyler and then a totally
- 16 separate packaging from Travis Harsey, where were
- 17 they sent?
- 18 A They were sent to S.L.E.D. for comparison.
- 19 Q With this blood that was collected at the crime
- 20 scene?
- 21 A Yes, it was.
- 22 Q And who took those items out to S.L.E.D.?
- 23 A I did.
- 24 Q And those would have been logged in at S.L.E.D.
- 25 through their evidence process?

VICKI HALLMAN -- CROSS -- MR. BOLT

1 A Yes, it would.

2 Q I believe Denise Eargle was their intake person
3 there at S.L.E.D.?

4 A Yes.

5 MR. SWARAT: Your Honor, I believe that's all
6 I have for Detective Hallman at this time.

7 Q Please answer any questions the defense might have
8 for you.

9 THE COURT: Cross.

10 CROSS EXAMINATION

11 BY MR. BOLT:

12 Q Detective Hallman, the ceiling tiles were removed.
13 They are in evidence in this box, right?

14 A Yes, sir.

15 Q Why were they removed?

16 A So they could be logged in as evidence.

17 Q You already had the photographs of them, right?

18 A Yes, sir.

19 Q Did you find anything on other ceiling tiles?

20 A I did not, no, sir.

21 Q Was that area searched by anybody in the Lexington
22 County Sheriff's Department?

23 A Yes, it was.

24 Q Did you also remove some carpet?

25 A Yes, I did.

VICKI HALLMAN -- CROSS -- MR. BOLT

1 Q Did you take charge and control of some carpet that
2 was removed?

3 A Yes, I did.

4 Q And what was the significance of your removal of
5 that carpet?

6 A There appeared to be a bloody shoe print on that
7 carpet.

8 Q And was that processed?

9 A No, sir.

10 Q Why was it not processed?

11 A Actually it was compared against the shoes of the
12 victim.

13 Q Right.

14 A It did not match with the victim, and at that time
15 we had no other shoes to compare it with.

16 Q Were some burned shoes recovered by anybody else
17 with Lexington County?

18 A There appeared to be some -- yes, sir, there were.

19 Q And do you know who they belonged to?

20 A I know who they supposedly belonged to.

21 Q Well, let me ask you this. Do you know who took or
22 showed Lexington County Sheriff's Department where
23 the shoes were?

24 A Yes.

25 Q Was it a member of the Harsey family?

VICKI HALLMAN -- REDIRECT -- MR. SWARAT

1 A Yes.

2 Q Was it Samuel Harsey?

3 A I was not there present. That's what I was told,
4 yes, sir.

5 Q All right. Now, were measurements made of the shoe
6 prints?

7 A I don't know.

8 Q The dimensions, the length and width of the shoe
9 prints?

10 A In the house?

11 Q The footprints in the house, were they measured?

12 A It was a partial shoe print. It wasn't a complete
13 shoe print.

14 Q I see.

15 MR. BOLT: That's all I have. Thank you.

16 THE COURT: Redirect?

17 MR. SWARAT: Just one or two on redirect.

18 REDIRECT EXAMINATION

19 BY MR. SWARAT:

20 Q Mr. Bolt asked you about the area above those
21 ceiling tiles that were collected?

22 A Yes, sir.

23 Q Above where the knuckle marks were in the blood?

24 A Yes.

25 Q You know from looking at some of the photographs

VICKI HALLMAN -- REDIRECT -- MR. SWARAT

1 and also from law enforcement that there was some
2 type of storage compartment up in the ceiling
3 there?

4 A Yes, there was.

5 Q I believe without getting you down, this is State's
6 Exhibit Number 7. Can you point to it in this
7 photograph?

8 A You can also see it in this one where the ceiling
9 tiles were taken out. There appears to be a
10 compartment up inside that area.

11 Q Was it a large enough space to hide something like
12 money?

13 A Yes, it was.

14 Q And this is the compartment that is very close to
15 the door going into the living room in this
16 photograph?

17 A It's right up above it basically. You step inside
18 the pool room, and it's right up above it.

19 Q And that's where the damage was to the ceiling
20 tile?

21 A Yes, sir, it was.

22 Q And there was some type of storage compartment up
23 there?

24 A Yes.

25 Q Thank you.

MICHAEL POOLE -- DIRECT -- MR. SWARAT

1 MR. SWARAT: I believe that's all.

2 MR. BOLT: Nothing else.

3 THE COURT: You can step down. You are free
4 to leave.

5 MR. SWARAT: At this time we call Detective
6 Mike Poole. Your Honor, this is a little bit out of
7 order. Mr. Poole needs to go to Washington, D.C. this
8 afternoon, and I need to get his testimony in if I
9 could.

10 THE COURT: Yes, sir.

11 MICHAEL POOLE, being first
12 duly sworn, testified as follows:

13 CLERK: State your full name and spell your
14 last, please.

15 THE WITNESS: My name is Michael Poole,
16 P-O-O-L-E.

17 DIRECT EXAMINATION

18 BY MR. SWARAT:

19 Q I called you Detective Poole. I don't know if that
20 was the correct title or not. What is your title
21 at the Sheriff's Department?

22 A It's an investigator, yes.

23 Q Did you have any involvement in this case,
24 Detective Poole?

25 A I was asked to assist in taking the Defendant to

MICHAEL POOLE -- DIRECT -- MR. SWARAT

1 the Occupational Health Clinic over in Three
2 Fountains on July 23rd, 2002.

3 Q Was that in the morning or the afternoon of the
4 23rd?

5 A That was in the morning.

6 Q And who went with you?

7 A Detective Fossum sitting over there.

8 Q Yourself?

9 A Yes.

10 Q And also the Defendant, Randy Tyler?

11 A That's correct.

12 Q What was the purpose of taking him to Lexington
13 Occupational Health Care?

14 A We went to collect a sample kit that contained
15 blood and hair samples from the Defendant.

16 Q And were you present when the blood and hair
17 samples were collected from Mr. Tyler?

18 A Yes.

19 Q And what was done with those items as they were
20 collected from Mr. Tyler?

21 A The nurse went by the package and read it in
22 detail. She took each hair sample and put them in

23 a sealed package. She put it in there, went by the
24 directions; and she sealed each piece of evidence.

25 There was a saliva sample. She sealed it.

MICHAEL POOLE -- DIRECT -- MR. SWARAT

1 There was some hair samples from the head. I
2 remember she actually had to pluck the hair instead
3 of cut it. She put each one in a sealed -- in an
4 envelope and sealed it.

5 She just went exactly by the directions on the
6 S.L.E.D. sample kit. She also took a blood sample
7 and put it in an envelope and sealed it as well.
8 Then after she was concluded, she put it in a
9 bigger envelope; and it was sealed with
10 tamper-proof tape, I believe.

11 Q I am showing you what is going to be marked as
12 State's Exhibit Number 21.

13 MR. BOLT: No objection.

14 THE COURT: Without objection.

15 (State's Exhibit Number 21 is received into
16 evidence).

17 BY MR. SWARAT:

18 Q Is this the packaging you are referring to, the
19 type of packaging you are referring to?

20 A Yes. The envelopes went in there and it was sealed
21 in that, that's correct.

22 Q And you say it's in a tamper-proof type of
23 packaging?

24 A Well, the package, yes. It had tamper-proof tape
25 on the outside.

MICHAEL POOLE -- DIRECT -- MR. SWARAT

1 Q It would have been removed later once it was
2 tested?

3 A Right.

4 Q And you took these items into your possession?

5 A That's correct.

6 Q Who did you deliver those items to?

7 A To the evidence room and Detective Hallman. I
8 actually handed it to her because she was there.

9 Q And that was done the same morning of the 23rd?

10 A That was about noontime.

11 Q Later on that evening or late afternoon, did you
12 have the occasion to be in the company of Travis
13 Harsey?

14 A That's correct. That was after lunch.

15 Q Did you go through the same process with Travis
16 Harsey?

17 A Yes, we did.

18 Q And also collect his blood?

19 A Uh-huh. (Indicating affirmative response). That's
20 correct.

21 Q Sealed the same way?

22 A Yes.

23 Q And delivered to the evidence locker?

24 A Yes.

25 Q To Detective Hallman?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 A She was there as well in the afternoon. I handed
2 it to her.

3 Q But at a totally different time from Mr. Tyler?

4 A Correct.

5 Q Thank you.

6 MR. SWARAT: I believe that's all I have.

7 MR. BOLT: I don't have any questions.

8 MR. SWARAT: Your Honor, I ask that he be
9 excused.

10 THE COURT: Like everybody else, he is free to
11 go.

12 MR. SWARAT: Your Honor, the State calls James
13 Williams.

14 JAMES THOMAS WILLIAMS, being
15 first duly sworn, testified as follows:

16 CLERK: Have a seat up there and state your
17 full name, spelling your last, please.

18 THE WITNESS: My name is James Thomas
19 Williams, W-I-L-L-I-A-M-S.

20 DIRECT EXAMINATION

21 BY MR. SWARAT:

22 Q Mr. Williams, good morning.

23 A Good morning.

24 Q Mr. Williams, do you sometimes -- are you called
25 Jimmy?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

- 1 A Right.
- 2 Q Which do you prefer?
- 3 A Jimmy.
- 4 Q Mr. Williams, where are you from? Where do you
- 5 reside?
- 6 A A little town called Gadsden next to Eastover off.
- 7 Bluff Road.
- 8 Q If you go down Bluff Road toward the Congaree
- 9 National Monument, do you live down toward that
- 10 way?
- 11 A I'm on the other side of it.
- 12 Q But down like you are going from Columbia to say,
- 13 601?
- 14 A Right. I'm about seven miles before you get to
- 15 601.
- 16 Q And who lives around you, Mr. Williams?
- 17 A My parents and my sister.
- 18 Q Who is your sister?
- 19 A Her name is Brenda Branham.
- 20 Q If you could spell her last name, please,
- 21 Mr. Williams.
- 22 A B-R-A-N-H-A-M.
- 23 Q And how are you related to the Defendant, Randy
- 24 Tyler?
- 25 A He married my niece.

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 Q How long ago were they married? How long have you
2 known Mr. Tyler?

3 A I don't know, four years, I reckon, three or four
4 years.

5 Q Back on July the 13th of last year, do you recall
6 giving Randy Tyler a ride somewhere in the Columbia
7 area?

8 A Yes, sir.

9 Q And where did he tell you he needed to go?

10 A He asked me if I would take him over to a friend's
11 of his house, and they was going to go ride out and
12 talk to another fellow.

13 Q Ride out to talk to who?

14 A A fellow called Corky.

15 Q Corky Lewis?

16 A Right.

17 Q A fellow that he called Corky?

18 A Right.

19 Q And who was in the car with you or the vehicle
20 riding with you to this other man's house?

21 A Just me and Randy.

22 Q And on the way to the other man's house in
23 Columbia, did he tell you anything about his
24 relationship with Corky?

25 A Just they was supposed to be making plans. They

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 had plans to go fishing the following weekend.

2 Q Say that again.

3 A They had plans to go fishing the following weekend.

4 Q Plans to go fishing?

5 A The following weekend.

6 Q Did he indicate to you whether not he was happy
7 with Corky?

8 A He was a little upset with him; but, you know, I
9 didn't really think much about that.

10 Q You didn't think much about it?

11 A No, sir.

12 Q About how long a ride is it from Gadsden where
13 y'all left from to this other man's house?

14 A Thirty, 35 minutes.

15 Q And whose house was it, Mr. Williams?

16 A A fellow named Travis.

17 Q Do you know his last name?

18 A No, sir.

19 Q A fellow named Travis?

20 A Yes, sir.

21 Q Do you recall, Mr. Williams, giving a statement to
22 law enforcement?

23 A Yes, sir.

24 Q I want to talk to you about the first time you
25 talked to law enforcement. Randy told you that

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 he --

2 MR. BOLT: Object to the leading.

3 MR. SWARAT: I'm sorry. I didn't even finish
4 the question.

5 THE COURT: He is objecting to the leading.

6 MR. BOLT: He is saying, "Randy told you." He
7 can ask him to quote him.

8 THE COURT: It sounds like it, but I will go
9 ahead and let him ask the question and see if it is.

10 BY MR. SWARAT:

11 Q You just told the jury that Randy said he was going
12 to see a fellow named Corky?

13 A Yes, sir.

14 Q Who was he taking with him if you know?

15 A Him and Travis were supposed to ride over there.

16 Q And do you know that they did eventually go and see
17 Corky that night?

18 A Randy told me the next day that they went to see
19 him.

20 Q Do you recall Randy telling you to lie if the
21 police came and talked to you about this?

22 MR. BOLT: Objection to the leading, Your
23 Honor.

24 MR. SWARAT: I'm talking about what Randy
25 said.

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 MR. BOLT: He can ask him what he said. He
2 can't --

3 THE COURT: The objection is sustained.

4 MR. BOLT: He can't supply the answer.

5 THE COURT: Rephrase the question.

6 BY MR. SWARAT:

7 Q What did Randy tell you to tell the police if they
8 came and talked with you, Mr. Williams?

9 A That we had went fishing because he was in fear for
10 his wife and his son.

11 Q Mr. Williams, I'm showing you a document and ask if
12 you recognize that.

13 A Yes, sir.

14 Q What does it say at the top here?

15 A That's my name, James Williams.

16 Q And you are talking to a detective from the
17 Lexington County Sheriff's Department?

18 A I don't know if he was Lexington County or Richland
19 County.

20 Q Where was this statement taken?

21 A Next door to my house at my sister's house.

22 Q What does this statement say -- can you read that
23 for us.

24 MR. BOLT: Your Honor, I object.

25 MR. SWARAT: What is the objection?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 MR. BOLT: He can ask him a question. He
2 can't just publish the document.

3 MR. SWARAT: I am asking him questions.

4 MR. BOLT: If he doesn't remember, he can
5 refresh it.

6 THE COURT: I understand. Is it this
7 witness's statement?

8 MR. SWARAT: Yes, Your Honor.

9 THE COURT: You don't need to use the
10 statement. Ask him the question. If he is challenged
11 on cross, then you can go into the statement if you want
12 to go into what he said when.

13 BY MR. SWARAT:

14 Q Mr. Williams, do you recall telling law
15 enforcement, this detective, "I went fishing with
16 Randy at the sawdust pile until around 11, 11:30.
17 When we got back, I went to my house and went to
18 bed.

19 "I did not see Randy anymore that night. I
20 saw him around 9:30 the next morning. I lived next
21 to my sister Brenda Branham who he lives with. He
22 is married to my niece Gina.

23 "He was fishing off the bank -- we was fishing
24 off the bank -- because my boat is broken. We go
25 fishing four to five times a week"?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 A Yes, sir.

2 Q Mr. Williams, was that statement true?

3 A No, sir.

4 Q Who told you to tell the police that?

5 A Randy asked me to because he was in fear for his
6 wife and his son.

7 Q At a later time do you recall giving another
8 statement to law enforcement?

9 A Yes, sir.

10 Q Did you admit to law enforcement during that
11 statement that the first one was a lie?

12 A Yes, sir.

13 Q And that Randy told you to lie?

14 A He asked me to lie.

15 Q Asked you to lie?

16 A Yes, sir.

17 Q I'm showing you a document and I ask if you
18 recognize that three pages.

19 A Yes, sir.

20 Q Do you recall giving that statement there to
21 Detective Frier sitting right there?

22 A Yes, sir, I guess it was Detective Frier. I don't
23 remember what he looks like.

24 Q Do you recall telling Detective Frier, "I lied when
25 I gave the police a statement about Randy Tyler"?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 A Yes, sir.

2 Q "I lied when I said we were fishing"?

3 A Yes, sir.

4 Q "Randy asked me to tell this story to the police
5 for the safety of the baby"?

6 A Yes, sir, the baby and Gina, his wife.

7 Q "The truth about Saturday is that Randy --

8 MR. BOLT: Your Honor, I object. I don't
9 believe it is proper for him to call his own witness and
10 publish the statement.

11 THE COURT: Yes, sir, sustained.

12 MR. SWARAT: Your Honor, I have got a matter
13 of law I need to take up outside the presence of the
14 jury.

15 THE COURT: Ladies and gentlemen, step to the
16 jury room, please. While you are there, be sure not to
17 talk about the case.

18 (The jury retires to the jury room).

19 THE COURT: The jury is secured. Mr. Swarat.

20 MR. SWARAT: Your Honor, Mr. Williams is
21 related by marriage to the Defendant, Randy Tyler.
22 He gave three statements in this case. The first
23 was the fishing story. The second statement he gave was
24 a written statement to Detective Frier where he lays out
25 Mr. Tyler's motive for going to see Corky Lewis.

1 He also lays out several facts about seeing
2 the magazine of the gun, seeing bullets in the gun, his
3 conversations with Randy Tyler about what he was mad at
4 him about, that it was about money and that he was going
5 over there to see him. There's a number of facts.

6 There are about ten pages of the typed
7 statement. Your Honor, he is a witness identified with
8 the Defendant. I believe under 611 and 613 at this time
9 I can ask the Court to allow me to have some leeway with
10 questioning him. I would like to ask him leading
11 questions based on 611 and 613.

12 THE COURT: What about that, Mr. Bolt?
13 Actually, Mr Swarat, what you should have done was just
14 gone ahead and done that in the first place.

15 MR. SWARAT: I didn't know he was going to do
16 this, Your Honor. I apologize. I thought Mr. Williams
17 was going to talk freely.

18 MR. BOLT: Your Honor, my objection was that
19 all he has done is to ask the witness to authenticate
20 the statement, and he just reads the statement.
21 Otherwise there is no need to call the witness, and the
22 hearsay rule would be dispensed with. The State would
23 be allowed to just enter it into the record.

24 At this point we haven't had the witness, as
25 far as I can tell, recant anything in the statements.

1 He hasn't been anything less than forthcoming. I think
2 the solicitor just wants to publish the statements, and
3 I don't believe that is appropriate under the rules of
4 evidence.

5 THE COURT: Yes, sir. Well, both of you are
6 right. Mr. Swarat, what I will do is, given the
7 circumstances with him, I will declare him a hostile
8 witness for purposes of the rules of evidence and allow
9 you to lead him.

10 MR. SWARAT: Thank you, Your Honor.

11 THE COURT: But you still can't get into the
12 evidence though. What you can do is again simply go --
13 you can't get into the statements, excuse me. You can
14 go through and use the statements for yourself for your
15 own records if you need to.

16 Now, if he recants on something, obviously at
17 that point you can ask him if he said so and so in a
18 prior statement. But in that sense Mr. Bolt is right.
19 You can't just simply go through the statements with
20 him. So both of you are right.

21 MR. SWARAT: Yes, Your Honor. Thank you. I
22 will do it in that fashion.

23 THE COURT: Okay. Do both of you want to go
24 ahead and take a short break at this point?

25 MR. SWARAT: That would be fine.

1 MR. BOLT: Yes, sir.

2 THE COURT: We have been going about an hour
3 and a half or so. We will take a short break and stand
4 in recess for a few minutes. Thank you.

5 MR. SWARAT: Your Honor, I ask you to advise
6 Mr. Williams that he can't speak to anybody about
7 his testimony.

8 THE COURT: Yes. Mr. Williams, during the
9 break you can move around if you want to, but just don't
10 talk to anybody about your testimony. I would suggest
11 that you just don't talk to anybody, period.

12 THE WITNESS: All right.

13 THE COURT: Okay?

14 THE WITNESS: Yes, sir.

15 (Whereupon there was a recess).

16 MR. SWARAT: Your Honor, I have one matter we
17 need to put on the record before the jury comes in. I
18 talked to Mr. Bolt during the break, and I have got a
19 number of chain witnesses from S.L.E.D. and other
20 agencies on the blood issue. Mr. Bolt has agreed to
21 stipulate to the chain of custody on the blood from
22 Mr. Tyler.

23 MR. BOLT: I have reviewed the documents, Your
24 Honor. Everything is in order. So it would be a waste
25 of time to bring these witnesses in to authenticate

1 that.

2 MR. SWARAT: At this time I will have somebody
3 to get in touch with them.

4 THE COURT: Mr. Tyler, do you understand what
5 that means? Have they been over that with you?

6 MR. BOLT: Your Honor, let me do that.

7 (Pause).

8 MR. BOLT: I have explained it to him.

9 THE COURT: Mr. Tyler, it means in this case
10 with certain things like blood and other substances, the
11 State has to show what is called a chain of evidence.

12 In other words, from the time it was taken at
13 the crime scene all the way into court, every step it
14 went through and in essence that it was looked after the
15 entire time.

16 Your attorney indicates that he has looked at
17 the evidence and realizes if the State were to put it
18 up, it would establish the chain of evidence. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: He has indicated he is not going
22 to require the State to put witnesses up. You don't
23 wish to make any complaint about it. Do you have any
24 objection to that?

25 THE DEFENDANT: No, sir, I don't.

1 THE COURT: Are you ready then, Mr. Swarat?

2 MR. SWARAT: Yes, Your Honor.

3 BAILLIFF: Do you want the witness back on the
4 stand.

5 THE COURT: Yes, sir, put him back up here.

6 JAMES THOMAS WILLIAMS, having
7 been previously duly sworn, resumed the witness stand
8 and testified as follows:

9 THE COURT: Bring the jury in.

10 (The jury returns to the courtroom).

11 THE COURT: All parties and attorneys are in
12 the courtroom, and all jurors have now returned.

13 Mr. Swarat, as we indicated a moment ago, what
14 I will do is for the reasons given, I will allow you to
15 lead this witness. Again, don't have him testify from
16 the statements unless he testifies as to something that
17 is different from the statement.

18 MR. SWARAT: So he has been declared a hostile
19 witness?

20 THE COURT: Yes, sir, again, only for purposes
21 of Rule 611.

22 MR. SWARAT: Yes, Your Honor, I understand.
23 Thank you.

24 MR. BOLT: Your Honor, can the witness pull
25 forward. I cannot see him.

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 THE COURT: Yes, sir. Can you sit up a little
2 bit further, please, sir.

3 (Witness complies).

4 DIRECT EXAMINATION

5 BY MR. SWARAT:

6 Q Mr. Williams, on July the 13th, 2002, you gave
7 Randy Tyler a ride to Travis' house?

8 A Yes, sir.

9 Q True?

10 A Yes, sir.

11 Q This was late evening July the 13th, 2002?

12 A Yes, sir.

13 Q You and Randy Tyler are in the car together, in the
14 vehicle together?

15 A Right.

16 Q Went to Travis'?

17 A Right.

18 Q On the way up there, Randy told you he was mad with
19 Corky; true?

20 A He said he was upset with Corky.

21 Q That it was about money, true?

22 A Yes, sir.

23 Q And something to do with his brother Matt and the
24 money?

25 A Yes, sir.

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 Q Randy Tyler told you on the way up there he was
2 going with Travis to Corky's?

3 A Yes, sir.

4 Q About the money?

5 A He didn't specifically say about the money, but
6 they had a fishing trip planned.

7 Q Did you ever tell the police anything about this
8 fishing trip you are talking about now?

9 A I don't recall.

10 Q Would looking at your statements refresh your
11 memory?

12 A I mean, I said it was about the money; but I didn't
13 say anything about a fishing trip. They were going
14 to go fishing, but I don't have anything about the
15 fishing trip in my statement.

16 Q You gave one statement to the police down at your
17 place?

18 A Yes, sir.

19 Q You gave a written statement to the police at the
20 Sheriff's Department?

21 A Right.

22 Q Some two days later after the first statement?

23 A Two or three days later.

24 Q And then there was a tape recording done?

25 A Yes, sir.

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 Q In addition to the second written statement?

2 A Yes, sir.

3 Q And nowhere in those statements do you say anything
4 about him and Corky having a planned fishing trip;
5 did you, Mr. Williams?

6 A No, sir.

7 Q You told the police he was mad at Corky?

8 A Yes, sir, upset. He was upset with Corky.

9 Q You used the word mad though, didn't you?

10 A I might have.

11 Q Let me show you your statements and let you take a
12 look. Mr. Williams, I am showing you the first
13 written statement you did with Detective Frier. So
14 this would have been your second statement. Take
15 your time.

16 A Okay. (Pause).

17 Q What did you tell Detective Frier in that written
18 statement at the Sheriff's Department two days
19 after the fishing story?

20 A I said in the statement he was mad with Corky.

21 Q When you got to Travis' house, who was there,
22 Mr. Williams?

23 A Travis, his girlfriend or wife or whatever, and
24 three kids.

25 Q So Travis, his girlfriend, some small children,

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 three small children?

2 A Right.

3 Q You and Randy Tyler?

4 A Right.

5 Q During that time did Travis and Randy speak to one
6 another?

7 A They spoke in the back. I didn't hear what they
8 were talking about.

9 Q When they went in the back, who went back there?

10 A Randy and Travis.

11 Q The bedroom, kitchen? What type of room were they
12 in?

13 A They was in the bedroom.

14 Q Alone?

15 A Yes, sir.

16 Q And you weren't privy to that conversation?

17 A No, sir, I stayed in the living room where the kids
18 was.

19 Q Approximately how long did they stay in that back
20 room together talking?

21 A I'm not sure, probably 10 to 15 minutes.

22 Q A good while?

23 A A few minutes.

24 Q At some point did you go back into that bedroom
25 with Travis and Randy?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 A I went to tell them that I was going to go ahead
2 and leave. I mean, I wanted to make sure Randy was
3 going to be able to get home.

4 Q You were ready to go?

5 A Yes, sir.

6 Q And when you were back there with Randy and Travis,
7 did you see any evidence of a gun?

8 A I didn't see a gun.

9 Q Did you see anything connected with a gun?

10 A I seen what looked like a clip.

11 Q Where was that in the room?

12 A Laying on the bed.

13 Q And all three of y'all were in there together?

14 A Yes, sir.

15 Q It was laying on the bed?

16 A Yes, sir.

17 Q Did you see any evidence of bullets or a bullet in
18 that clip?

19 A I seen -- the bed was dark and the room just had a
20 lamp on, and I seen what looked like the tip of a
21 bullet.

22 Q In the clip?

23 A Yes, what looked like a clip.

24 Q In the thing that looked like a clip, you saw what
25 you thought was the tip of a bullet?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 A Right.

2 Q Have you ever hunted?

3 A Yes, sir.

4 Q You know what bullets look like?

5 A I know what bullets look like.

6 Q Look like a bullet to you?

7 A The tip of it.

8 Q Inside that clip. Did you see a gun?

9 A I didn't see any guns.

10 Q Mr. Williams, at some point did you leave that
11 bedroom where the clip and the bullet was in the
12 clip with Randy and Travis?

13 A I went back in the living room.

14 Q Where did they go? What did they do?

15 A They come in there behind me.

16 Q Did you see a gun then?

17 A No, sir.

18 Q How was Travis Harsey dressed that night,
19 Mr. Williams?

20 A He had on a pair of baggie pants and a baggie
21 shirt.

22 Q Baggie pants and a baggie shirt?

23 A Yes, sir.

24 Q How about Randy Tyler over there, how was he
25 dressed that night?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

- 1 A A pair of blue jeans and a T-shirt, which was
2 tight.
- 3 Q Tight to his body?
- 4 A Right.
- 5 Q Light colored T-shirt, dark colored T-shirt?
- 6 A I believe it was a light colored T-shirt.
- 7 Q Regular old T-shirt?
- 8 A Right.
- 9 Q Dress appropriately for the weather in the summer
10 in Columbia?
- 11 A Yes, sir.
- 12 Q Did Randy and Travis leave to go to Corky's before
13 you left?
- 14 A No, sir.
- 15 Q When you left where were they?
- 16 A They was still standing in the little dining room
17 area right there.
- 18 Q What vehicle did they have to go in?
- 19 A Burgundy Cadillac as far as I know.
- 20 Q A burgundy Cadillac?
- 21 A Yes.
- 22 Q Did Randy have transportation at that point in
23 time?
- 24 A He had transportation but it was at his house.
- 25 Q Was it working?

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

- 1 A He was having some problems with it.
- 2 Q That's why he got a ride with you?
- 3 A Right.
- 4 Q Did they tell you where they were going to go?
- 5 A They said they was going to ride over to Corky's.
- 6 Q Do you recall having a conversation with Randy
- 7 Tyler the next morning, the day after you took him
- 8 over to Travis'?
- 9 A Yes, sir.
- 10 Q Randy Tyler told you that he argued with Corky at
- 11 Corky's house; didn't he, Mr. Williams?
- 12 A He said they got in a little argument.
- 13 Q Got in an argument; is that right?
- 14 A Yes, sir.
- 15 Q Randy arguing with Corky. He told you that?
- 16 A Yes, sir.
- 17 Q What did he say about Travis and what he was
- 18 wearing when they got to Corky's?
- 19 A He didn't say nothing about what they were wearing.
- 20 Q Do you recall Randy Tyler telling you something
- 21 about Travis having on a mask and gloves?
- 22 A No, sir.
- 23 Q Just a second.
- 24 (Pause).
- 25 Q So he never told you anything about a mask and

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 gloves?

2 A No, sir.

3 Q What did Randy tell you happened with Travis and
4 Corky after Randy and Corky started arguing?

5 A He told me that Travis shot Corky.

6 Q What part of the house did he indicate that Travis
7 shot Corky?

8 A He never indicated.

9 Q Did he tell you that he saw Corky get shot?

10 A Yes, sir.

11 Q Did he tell you he saw Corky hit the floor?

12 A Yes, sir.

13 Q Did he tell you that he knew Corky was dead?

14 A He said he believed he was dead. He said when he
15 left out of there, he knowed that he had killed
16 him.

17 Q Do you recall telling Detective Frier in response
18 to this question, "What did Randy say?"

19 "He was scared. He said that they got him.
20 Him and Corky had been arguing and that Randy
21 pulled out a gun and shot Corky." Do you recall
22 telling Detective Frier that?

23 A Not that Randy pulled out a gun and shot Corky.

24 Q Excuse me. Travis pulled out a gun and shot Corky.

25 A Yes, sir.

JAMES WILLIAMS -- DIRECT -- MR. SWARAT

1 Q "That they got him. Randy and Corky were arguing,
2 and Travis pulled out a gun and shot Corky." Do
3 you recall telling Detective Frier that?

4 A I recall telling him that Travis -- that Randy said
5 Travis pulled out a gun and shot Corky. I don't
6 remember saying that they got him.

7 Q I am showing you part of your transcribed tape
8 recorded statement and ask if you recognize what is
9 shown in here.

10 A Yes, sir. That's what it says.

11 Q That's what it says; isn't that right?

12 A Yes, sir.

13 Q You deny telling the police that?

14 A No, if it's transcribed (sic) down right there, I
15 said it. I don't remember him saying -- you know,
16 I said, "They got him," but I just...

17 Q You now remember telling Detective Frier that?

18 A As far as the recording, yes.

19 Q Did Randy in any part of his conversation with you
20 tell you Travis was mad at Corky?

21 A No.

22 Q Did Travis say in front of you that he was mad at
23 Corky?

24 A No, me and Travis didn't talk.

25 Q Just Travis and Randy talking back there in that

JAMES WILLIAMS -- CROSS -- MR. BOLT

1 room, right?

2 A Yes, sir.

3 Q Where the clip and the bullets were?

4 A What I thought what appeared to be.

5 MR. SWARAT: Your Honor, that's all I have at
6 this time. Oh, excuse me. I apologize.

7 BY MR. SWARAT:

8 Q Mr. Williams, I've got to ask you this as part of
9 our rules. Mr. Williams, are you the same James
10 Williams that was convicted on February the 2nd of
11 1999 of breach of trust with fraudulent intent; is
12 that correct?

13 A Yes, sir.

14 Q And you are the same James Williams that was
15 convicted on September the 4th of 2001 of
16 manufacturing marijuana?

17 A Yes, sir.

18 MR. SWARAT: That's all I have.

19 THE COURT: Cross.

20 CROSS EXAMINATION

21 BY MR. BOLT:

22 Q Mr. Williams, I'm Dennis Bolt. I represent
23 Mr. Tyler. How are you doing?

24 A All right, sir. How about you?

25 Q I'm fine. You said earlier when Mr. Swarat was

JAMES WILLIAMS -- CROSS -- MR. BOLT

1 questioning you, I wrote down a phrase, "for the
2 safety of the baby." Do you mean to tell us that
3 Randy told you he was scared for his baby?

4 A Yes, sir.

5 Q Scared of who, Travis?

6 A Yes, sir.

7 Q And Travis' brother?

8 A Yes, sir.

9 Q And do you remember specifically telling Sergeant
10 Frier that Travis' brother Sammy might come over
11 and do something to the kids? "He was scared and I
12 was scared for Gina"?

13 A Yes, sir.

14 Q Gina is your niece. You were scared for her?

15 A Yes, sir.

16 Q Was Randy scared of Travis? Did he appear to be
17 scared of Travis when you talked to him after Corky
18 had been killed?

19 A Yes, sir, he was.

20 Q Back over at that house, at Travis' house, was
21 there something that happened to cause you to
22 decide -- my word, not yours -- "I better get out
23 of here"?

24 A No, sir.

25 Q Do you remember a child being there?

JAMES WILLIAMS -- CROSS -- MR. BOLT

1 A Three of them.

2 Q Any mention of a gun?

3 A The child said something about Travis having a gun,
4 but Travis said he didn't.

5 Q Travis' child said Travis had a gun?

6 A Right.

7 Q Now, in the time that you rode Randy all the way
8 from Bluff Road to Corky's (sic) house, about how
9 long did that take to get over there?

10 A About 35 minutes, 30, 35 minutes.

11 Q Did you ever see Randy with any kind of gun?

12 A No, sir.

13 Q And when you talked to Randy the next day, he told
14 you that Travis had shot Corky?

15 A Yes, sir.

16 Q He didn't say that he shot Corky, did he?

17 A No, sir.

18 Q And he didn't even say that he beat Corky, did he?

19 A No, sir.

20 Q You mentioned fishing. As far as you knew, did
21 Randy and Corky go fishing together from time to
22 time?

23 A Yes, sir.

24 Q Go striper fishing?

25 A I don't know what kind of fishing.

JAMES WILLIAMS -- CROSS -- MR. BOLT

1 Q Did he ever go fishing at night as far as you knew?

2 A Me and Randy did a lot of fishing at night.

3 Q And this -- you call it a clip or some people call
4 it a magazine?

5 A Yes, sir.

6 Q It's the thing that goes inside of a semiautomatic
7 pistol and holds bullets?

8 A It holds bullets.

9 Q And you saw that at Travis Harsey's house on the
10 bed?

11 A What appeared to be.

12 Q That's the same house where you heard the child say
13 that Travis had a gun?

14 A Yes, sir.

15 Q Is that what caused you to leave at the time, the
16 mention of a gun?

17 A No, sir. That was all afterwards. I carried Randy
18 over there, and I wanted to make sure he was going
19 to be able to get back home because it's a long ride
20 from my house, and I wasn't going to come back.

21 Q I got you.

22 A So I just went back there to let him know that I
23 was getting ready to leave.

24 MR. BOLT: Just a moment, Your Honor.

25 THE COURT: Yes, sir.

JAMES WILLIAMS -- REDIRECT -- MR. SWARAT

1 (Pause) .

2 MR. BOLT: I don't have anymore questions of
3 Mr. Williams.

4 THE COURT: Redirect.

5 MR. SWARAT: I have a few, Your Honor.

6 THE COURT: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. SWARAT:

9 Q I forgot to ask you. I appreciate Mr. Bolt doing
10 that. One of the children was talking about a gun?

11 A Right.

12 Q About Travis having a gun?

13 A Yes, sir.

14 Q In the presence of everybody he said that?

15 A Yes, sir.

16 Q So everybody had heard about the gun before you
17 left the house?

18 A Yes, sir.

19 Q And you had seen the clip and bullets?

20 A What appeared to be.

21 Q Right. So there wasn't any mystery about the
22 gun before you left. The gun had been talked
23 about?

24 A There was a gun that was mentioned.

25 Q Did Randy ever tell you that the police ought to

JAMES WILLIAMS -- RECROSS -- MR. BOLT

1 look at Matt, that Matt might be involved in this?

2 A No, sir.

3 Q And he had heard Matt was in town?

4 A No, sir.

5 Q Did he tell you that Gina also was going to tell
6 the fishing story to the police?

7 A No, sir.

8 Q Did he tell you that his mother-in-law was also
9 going to tell the fishing story to the police if
10 the police talked to them?

11 A No, sir.

12 Q Did he ever tell you that he just ran out of the
13 house before any shooting took place?

14 A No, sir.

15 Q And did he tell you that Travis put on a mask and
16 gloves and then shot Corky?

17 A No, sir.

18 Q Thank you.

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

20 RECROSS EXAMINATION

21 BY MR. BOLT:

22 Q Mr. Williams, one more thing. It's in response to
23 a question Mr. Swarat asked you. In your statement
24 you said, "That little boy came back out from the
25 back. He said something about Travis had a gun."

JAMES WILLIAMS -- RECROSS -- MR. BOLT

1 So he had come out of the back bedroom when he said
2 that?

3 A Yes, sir.

4 Q And that's the bedroom where Travis and Randy were?

5 A Yes, sir.

6 MR. BOLT: Thank you.

7 THE COURT: You can step down, Mr. Williams.
8 You are free to go if you wish.

9 THE WITNESS: Thank you, sir.

10 MR. SWARAT: Your Honor, at this time I want
11 to move in two certified convictions for Mr. Tyler. The
12 first, I believe, would be marked --

13 MR. BOLT: Let me see it.

14 (Attorneys confer).

15 MR. SWARAT: That would be State's Exhibit
16 Number 22. The next one will be State's Exhibit Number
17 23 in evidence. These are two convictions for breaking
18 and entering with intent to steal out of the State of
19 Michigan.

20 They are offered solely for one of the
21 elements of burglary in the first degree, as two or more
22 prior convictions of burglary.

23 THE COURT: Yes, sir. Let's wait for Mr. Bolt
24 to look it over.

25 MR. BOLT: I don't have any objection, Your

1 Honor. These appeared to be certified copies.

2 THE COURT: Let the court reporter go ahead
3 and mark them.

4 (State's Exhibit Number 22-23 are received
5 into evidence).

6 MR. SWARAT: They are State's Exhibit 22 and
7 23, both certified copies.

8 THE COURT: All right. Are they marked,
9 Madame Court Reporter?

10 COURT REPORTER: Yes, sir.

11 THE COURT: Ladies and gentlemen, let me tell
12 you what this is. Don't look at it yet. The law says
13 that one ground on which the State may bring a charge of
14 burglary first is that a person has two prior
15 burglaries.

16 So for that reason they are required to submit
17 that into the record. I want to be sure that you don't
18 make any more of it than that. It is simply done for
19 that one reason, and it is not to be considered as any
20 part of this case itself.

21 In terms of this case and these charges
22 against this Defendant, they must be proved by the State
23 beyond a reasonable doubt, as I have told you several
24 times already.

25 So the fact that there may be two prior

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 burglary convictions introduced has nothing to do with
2 this case. They are done only for purposes of what are
3 called charging papers more than anything. That are
4 done just to show what the charges are.

5 But in terms of this case, the State must
6 prove this case separately and independently from
7 anything else. So be sure to bear that in mind when you
8 consider that. That's done only for those purposes.

9 Any exception to that charge from the State?

10 MR. SWARAT: None from the State, Your Honor.

11 THE COURT: Defense?

12 MR. BOLT: No, Your Honor.

13 THE COURT: Call your next witness.

14 MR. SWARAT: Your Honor at this time we call
15 Donna Hutto.

16 DONNA HUTTO, being first duly
17 sworn, testified as follows:

18 CLERK: Have a seat, ma'am, and please state
19 your full name and spell your last for us.

20 THE WITNESS: Donna Hutto, H-U-T-T-O.

21 DIRECT EXAMINATION

22 BY MR. SWARAT:

23 Q Mrs. Hutto, I hate to ask this of a female witness,
24 but how old are you?

25 A Forty-two.

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 Q Do you have any children?

2 A One.

3 Q A little boy or a little girl?

4 A A boy, 25.

5 Q Do you know an individual by the name of Robert
6 Lewis who also goes by Corky?

7 A He was my boyfriend.

8 Q How long were you together, Mrs. Hutto?

9 A Ten years.

10 Q Does Corky have any children?

11 A He has two, a boy and girl.

12 COURT REPORTER: Judge, can I ask the witness
13 to speak a little louder.

14 THE COURT: Yes, ma'am. Please speak up and
15 get a little closer to the microphone.

16 BY MR. SWARAT:

17 Q Mrs. Hutto, do you know an individual by the name
18 of Randy Tyler?

19 A Yes, sir.

20 Q And how long before this happened had you known
21 Randy Tyler?

22 A ~~Probably two or three years.~~

23 Q Mrs. Hutto, you are going to have to speak up a
24 little louder.

25 A Two or three years.

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 Q Had he ever been to your home before at
2 Highway?

3 A Yes, sir.

4 Q During your time with Corky Lewis, had you ever
5 lived at another location?

6 A Yes, sir.

7 Q Had Randy Tyler ever been to that residence?

8 A Once or twice.

9 Q How about any other residences involving you or
10 Corky's family?

11 A He was at my mom's once.

12 Q Roughly how many times do you think you have met
13 Randy Tyler?

14 A Probably 10, 15, 20 maybe.

15 Q During July of last year before this happened, had
16 you seen Randy Tyler in close time to this?

17 A Yes.

18 Q Approximately how many days, weeks, months before
19 this happened?

20 A Two days.

21 Q Two days?

22 A Two days.

23 Q Forty-eight hours before this happened?

24 A Yes, sir.

25 Q Where was he when you saw him?

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 A In our living room.

2 Q Who was he there with?

3 A He was by his self.

4 Q Was Corky there in the house?

5 A Yeah.

6 Q Let me talk to you a little bit about the night of
7 July 13th of 2002. What did y'all do that night,
8 you and Corky?

9 A We had been fishing all night the night before. We
10 come home about two or 3:00 o'clock in the
11 afternoon. I started playing on the computer, and
12 he was out there working on a four-wheeler and was
13 welding on a trailer.

14 Q Working on a trailer?

15 A Yeah, welding on a trailer.

16 Q There was a four-wheeler he was also working on?

17 A Yeah.

18 Q What part of your residence was he working on that?

19 A In the garage.

20 Q Late that evening, late that Saturday night, did
21 you take a nap, lay down?

22 A Yeah.

23 Q Where?

24 A On the couch, the little love seat.

25 Q In the living room that is shown in State's Exhibit

DONNA HUTTO -- DIRECT -- MR. SWARAT

- 1 Number 8, this living room here (indicating)?
- 2 A Yeah.
- 3 Q Do you see the love seat that you were sleeping on?
- 4 A This one (indicating).
- 5 Q This one here (indicating) in the bottom picture?
- 6 A Uh-huh. (Indicating affirmative response).
- 7 Q Approximately what time did you lay down to take a
- 8 nap?
- 9 A I would say about ten, 10:30 maybe.
- 10 Q And Corky was still in the garage?
- 11 A Yeah.
- 12 Q At some point later that night, were you awakened?
- 13 A Yes.
- 14 Q What woke you up, Mrs. Hutto?
- 15 A The dogs kept coming in and jumping on me barking,
- 16 and I heard somebody arguing outside.
- 17 Q You heard somebody arguing outside?
- 18 A Uh-huh. (Indicating affirmative response).
- 19 Q Towards your front yard or towards your back yard?
- 20 A The back yard.
- 21 Q Towards the garage area?
- 22 A Yes.
- 23 Q Did you recognize the voices of the people that
- 24 were arguing?
- 25 A Yes.

DONNA HUTTO -- DIRECT --- MR. SWARAT

1 Q Whose voices did you recognize?

2 A Randy's and Corky's.

3 Q Randy and Corky?

4 A Uh-huh. (Indicating affirmative response).

5 Q Could you hear what Corky was saying?

6 A Yes.

7 Q What did you hear Corky say?

8 A He said, "I ain't done no kind of shit like that,
9 Randy. Randy, I ain't done no kind of shit like
10 that."

11 Q He called him Randy?

12 A Yes, twice.

13 Q "I ain't done no kind of -- and I guess there was a
14 four-letter word?

15 A Yep.

16 Q "...like that, Randy"?

17 A Uh-huh. (Indicating affirmative response).

18 Q Was he saying it in a quiet tone or --

19 A No.

20 Q Can you describe it for us?

21 A Like he didn't know why he was getting accused of
22 whatever he was getting accused of, scared. I
23 don't know. He was in fear or something.

24 Q Did you hear any response to that, "I ain't done no
25 kind of stuff like that, Randy"?

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 A Huh-uh. (Indicating negative response).

2 Q Did you hear any other conversation coming from
3 Randy?

4 A Not at that time.

5 Q When you heard that, what did you do or where did
6 you go in the house?

7 A I went and got a cigarette and I went back in the
8 purple bedroom, and I used the bathroom. I looked
9 out to see if I could see Randy's car out the
10 window.

11 Q From your master bedroom, you can look out the
12 window and see your front yard?

13 A Yep.

14 Q Did you see Randy's car out there?

15 A No.

16 Q Did you see any cars other than your cars out
17 there?

18 A No.

19 Q Did anybody knock at the door, ring the doorbell or
20 anything like that?

21 A No.

22 Q After you looked out the window to see if you could
23 see Randy's car, where did you go?

24 A I went to the kitchen.

25 Q And from the kitchen can you see into various parts

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 of your house?

2 A Into the pool room to the outside.

3 Q Into the pool room?

4 A Uh-huh. (Indicating affirmative response).

5 Q And looking through there, can you also see into
6 the back yard?

7 A Yes.

8 Q Could you that night?

9 A Yes.

10 Q In the summertime do you normally leave your doors
11 open?

12 A Yeah, we leave them open for the dogs to come in
13 and out the back doors.

14 Q So the dogs can come in and out if they want to
15 come in and out?

16 A Yeah.

17 Q Showing you a photograph on State's Exhibit Number
18 7, does this show the point of view you had looking
19 out into the back yard?

20 A Yes.

21 Q And that's your kitchen window looking across the
22 pool table room into the back yard?

23 A Yes.

24 Q Mrs. Hutto, when you looked into the back yard, who
25 did you see?

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 A I saw Randy walking into the garage.

2 Q Randy Tyler?

3 A Randy Tyler.

4 Q Tell this jury how Randy Tyler was dressed at that
5 time.

6 A He had on a baseball cap, a baseball jacket. He
7 had something around his face like a partial mask,
8 and he had his hands in his pocket.

9 Q And also had clothing --

10 A He had a pair of jeans on.

11 Q This baseball jacket you are talking about, did it
12 cover up all his skin?

13 A Yes.

14 Q Did it appear to be a heavy-type jacket?

15 A No, it was like a little light baseball jacket.

16 Q But it covered everything?

17 A Covered up, yep, and he had his hands in his
18 pocket.

19 Q His hands were in his pockets?

20 A Yes, in his coat pocket.

21 Q He had a baseball cap on?

22 A Uh-huh. (Indicating affirmative response).

23 Q And something else around his face?

24 A It was something like on his sides. You could see
25 some of his face, but you couldn't see all of it.

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 There was something on the sides of his face.

2 Q You couldn't see his entire face?

3 A Not straight on, but you could tell it was him.

4 Q Did you hear Randy Tyler saying anything then?

5 A I was real scared. I didn't know what to do. I
6 heard Randy say, "Come on. Let's go in the F.ing
7 house."

8 Q Who said that?

9 A Randy said that to Corky. "Let's go in the F.ing
10 house."

11 Q "Let's go in the F.ing house"?

12 A Yep.

13 Q And Randy Tyler was saying that to Corky?

14 A Yep.

15 Q What was Corky's response to that?

16 A He said, "We don't need to go in the F.ing house."

17 Q He didn't want him in there?

18 A No.

19 Q Was there anything about Corky's voice that made
20 you afraid?

21 A You could tell something was wrong. He was scared.

22 Q He was scared?

23 A He was mad. He was scared. It sounded like, yeah.

24 Q Did you hear Randy say anything after, "Let's go in
25 the F.ing house"?

DONNA HUTTO -- DIRECT -- MR. SWARAT

- 1 A No.
- 2 Q What did you do then?
- 3 A I thought all kinds of stuff, dialing 911; but I
- 4 thought they was going to come in the house and
- 5 they was going to shoot us.
- 6 Q That's right outside your back door, right?
- 7 A Yeah.
- 8 Q Did you have time to go try to call 911 at your
- 9 house?
- 10 A No. I didn't think I did, no.
- 11 Q Had you been expecting any visitors that night?
- 12 A No.
- 13 Q Had Corky relayed to you any plans with Randy about
- 14 going fishing later on down the road?
- 15 A No.
- 16 Q Did you stay in the house or did you leave?
- 17 A I left.
- 18 Q Why did you leave?
- 19 A Because I thought that Randy was going to come in
- 20 there and shoot me and Corky.
- 21 Q Where did you go?
- 22 A I went to my brother John's house.
- 23 Q Why did you go to Johnny's house?
- 24 A He was the only person I knew close by that would
- 25 help, could help me.

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 Q And did you tell Johnny what you had seen?

2 A Yes.

3 Q Did you try to get Johnny to help Corky?

4 A Yes.

5 Q And in that evening did y'all also call the police?

6 A Yes.

7 Q At some point did you go back down to
8 Highway, your house?

9 A Yes.

10 Q Did you see Corky?

11 A Yes.

12 Q Mrs. Hutto, did you hear a third voice that night
13 during that argument?

14 A No, sir.

15 Q Didn't hear any other voices?

16 A No, sir.

17 Q Did you see any other individuals in your household
18 or in your yard?

19 A No, sir.

20 Q Do you know Travis Harsey?

21 A No, sir.

22 Q Had you ever heard of Travis Harsey before this all
23 went down?

24 A No, sir.

25 Q Were you aware of any disagreements between Corky

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 and Travis Harsey?

2 A No, sir.

3 Q When you left your residence to go to Johnny's,
4 what did you leave in?

5 A My car.

6 Q What door did you go out of?

7 A The front door.

8 Q When you went out the front door, did you see any
9 vehicles that weren't yours or Corky's?

10 A No, sir.

11 Q When you drove out of your driveway, did you see
12 any vehicles that weren't yours or Corky's?

13 A No, sir.

14 Q When you came back, did you talk to the police?

15 A Yes, sir.

16 Q Did you tell them what you saw?

17 A Yes, sir.

18 Q Do you recall talking to Detective Frier, who is
19 right here (indicating), at your house in the
20 middle of the night that night?

21 A Yes, sir.

22 Q Do you recall that night him showing you some
23 photographs?

24 A Yep. Yes, sir.

25 Q Showing this to you without showing it to the jury

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 at this time, I ask you if you recognize what is
2 shown in those photographs.

3 A Yes, sir.

4 Q And is Randy Tyler in those photographs?

5 A Yes, sir.

6 Q And did you pick out Randy Tyler?

7 A Yes, sir.

8 Q And is that your signature on that form as well?

9 A Yes, sir.

10 Q What is written on the bottom of that form?

11 A Right here (indicating)?

12 Q Yes, ma'am?

13 A It says, "This is the man that was at my home
14 yelling at Corky Lewis when I fled to seek help."

15 MR. SWARAT: Your Honor, I move that into
16 evidence at this time.

17 THE COURT: Any objection?

18 MR. BOLT: I don't know that I have seen that,
19 Your Honor.

20 (Pause).

21 MR. BOLT: No objection.

22 MR. SWARAT: Your Honor, I believe it would be
23 State's 24.

24 (State's Exhibit Number 24 is received into
25 evidence).

DONNA HUTTO -- DIRECT -- MR. SWARAT

1 BY MR. SWARAT:

2 Q Did Detective Frier suggest to you anybody you
3 should pick out?

4 A No, sir.

5 Q You knew who it was?

6 A Yes, sir.

7 Q And you did this the same night as the homicide?

8 A Yes, sir.

9 Q Mrs. Hutto, was there any damage inside your house
10 before you left it that night?

11 A No, sir.

12 Q Was there any damage to the ceiling in the pool
13 table room?

14 A No, sir.

15 Q Were you aware that there was an area in the pool
16 table room in the ceiling that was damaged?

17 A Later on.

18 Q In that ceiling is there a compartment up there?

19 A Yes, it is.

20 Q Did Corky sometimes keep money up in that
21 compartment?

22 A Yes, sir.

23 Q You have seen the video of the crime scene. In
24 your bedroom were any drawers pulled out before you
25 left your residence?

DONNA HUTTO -- DIRECT -- MR. SWARAT

- 1 A No, sir.
- 2 Q Any closets gone through?
- 3 A No, sir.
- 4 Q Did you normally keep your house a mess?
- 5 A No, sir.
- 6 Q Was it like that before you left it?
- 7 A No, sir.
- 8 Q Mrs. Hutto, is there any doubt in your mind
- 9 whatsoever who you saw arguing with Corky Lewis at
- 10 your house the night he was killed?
- 11 A No, sir.
- 12 Q Would you point to him in the courtroom.
- 13 A Right over there (indicating).
- 14 Q Can you describe what he is wearing for us.
- 15 A Excuse me?
- 16 Q Can you describe what he is wearing for us.
- 17 A Right now?
- 18 Q Yes, ma'am.
- 19 A He's got on a beige shirt and glasses.
- 20 Q Is that how he appeared that night at your house?
- 21 A No, sir.

22 MR. SWARAT: Your Honor, I believe that's all

23 I have at this time.

24 THE COURT: Cross.

25 MR. BOLT: Just one moment, Your Honor,

DONNA HUTTO -- CROSS -- MR. BOLT

1 please.

2 (Pause).

3 CROSS EXAMINATION

4 BY MR. BOLT:

5 Q Mrs. Hutto, you said you looked out the window.

6 You have an add-on room to the back of your house?

7 A Uh-huh. (Indicating affirmative response).

8 Q The pool room has got a window in it?

9 A Uh-huh. (Indicating affirmative response). Two of
10 them.

11 Q And it looks into the kitchen?

12 A Uh-huh. (Indicating affirmative response).

13 Q And you can see through the open door of the
14 kitchen into your back yard; is that about it?

15 A You can see through the windows from the kitchen --

16 THE COURT: Ma'am, slow down just a little
17 bit, please.

18 A You can see. There's two windows in the kitchen.

19 Q Right.

20 A That you can see into the pool room and out the
21 door and vice-versa.

22 Q Okay. Which is the one on the outside of the house
23 by the yard? Is that the kitchen or the pool room?

24 A That's in the kitchen.

25 Q So if you look through the window of the pool room,

DONNA HUTTO -- CROSS -- MR. BOLT

1 you would look into the kitchen; wouldn't you?

2 A Yes.

3 Q And then you can see outside of that into your back
4 yard?

5 A Yes, sir.

6 Q If I was looking that way right now, your garage
7 would be on the left, the left-hand side looking
8 out?

9 A If you are looking through the kitchen to the pool
10 room?

11 Q Yes, into the back yard.

12 A It would be like straight on, like slanted but you
13 could see still see.

14 Q Right. If you look through the window, you would
15 see the yard?

16 A Yes.

17 Q And on the side is your garage. Is that where
18 Corky was working when you went to --

19 A He was inside the garage

20 Q He was inside the garage. You testified and you
21 said in your statement to Sergeant Frier, I
22 believe, that the first thing that attracted your
23 attention was the sound of voices?

24 A Yes, sir.

25 Q Where were those voices coming from?

DONNA HUTTO -- CROSS. -- MR. BOLT

1 A The garage.

2 Q But then you later said you saw Randy walk into the
3 garage from the yard?

4 A Yes, sir.

5 Q Was that after you heard the angry voices that you
6 described?

7 A Yes, sir.

8 Q You fell asleep sometime up in the evening, right?

9 A Yes, sir.

10 Q And when you went to sleep, as far as you knew,
11 Corky was out there welding in the garage?

12 A Yes, sir.

13 Q The big garage. You've got another smaller one, I
14 believe?

15 A There's one in the back that didn't have anything
16 in it.

17 Q Right. And you're saying that you saw Randy walk
18 into the garage after you were awakened by the
19 angry voices?

20 A Yes, sir.

21 Q Which you believe came from the garage?

22 A Yes, sir.

23 Q All right. Now, you took time to smoke a
24 cigarette?

25 A No, I just went and got a cigarette.

DONNA HUTTO -- CROSS -- MR. BOLT

- 1 Q You went to the bathroom?
- 2 A I went to the bathroom and I looked out the window.
- 3 Q And you went to your brother's house?
- 4 A Yes, after.
- 5 Q Is that right?
- 6 A After the second time I heard them.
- 7 Q The second time you heard them?
- 8 A Uh-huh. (Indicating affirmative response).
- 9 Q And roughly how much time elapsed from the time you
- 10 were awakened until you left your house?
- 11 A I have no idea.
- 12 Q And you didn't see anybody with a gun at your house
- 13 that night, did you?
- 14 A No, sir.
- 15 Q Randy had been there two days before?
- 16 A Yes, sir.
- 17 Q And was everything fine between him and Corky at
- 18 that time?
- 19 A As far as I knew.
- 20 Q They had known each other for some time?
- 21 A A couple of years.
- 22 Q Had been in the drug business together?
- 23 A I guess if you want to say that maybe.
- 24 Q Was that the money that Corky kept up above the
- 25 ceiling tiles was drug money?

DONNA HUTTO -- CROSS -- MR. BOLT

1 A I don't know.

2 Q You know of any other place on his property or any
3 other property that he had access to where he kept
4 money, cash money?

5 A He had had different spots.

6 Q Did anybody in your family keep money for him?

7 A No, sir.

8 Q Now, at some point did you or your brother Johnny
9 call 911?

10 A Yes, sir.

11 Q Was it you or Johnny?

12 A Johnny did.

13 Q You didn't call 911 from the house?

14 A No.

15 Q Did you have a cell phone?

16 A No.

17 Q And you went to your brother's house and y'all came
18 back. You discovered that Corky was dead.

19 A Yes, sir.

20 Q And that is when you called 911, when Johnny called
21 911?

22 A That was before we left the house to go back out
23 there.

24 Q From his house?

25 A Yeah.

DONNA HUTTO -- REDIRECT -- MR. SWARAT

1 Q I think you said earlier, you said, you thought
2 "they was going to shoot us." When did you -- do
3 you remember saying that?

4 A No, sir.

5 Q You never saw any other male that night? You
6 didn't see Travis Harsey?

7 A No, sir.

8 Q You didn't know Travis Harsey?

9 A No, sir.

10 MR. BOLT: Just a moment, Your Honor, please.

11 THE COURT: Yes, sir.

12 (Pause).

13 MR. BOLT: That's all I have, Your Honor.

14 THE COURT: Any redirect?

15 MR. SWARAT: A little bit, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. SWARAT:

18 Q Mr. Bolt asked you about waking up?

19 A Uh-huh. (Indicating affirmative response).

20 Q When you first woke up, you heard Corky say
21 something to Randy; is that accurate?

22 A Yes, sir.

23 Q And what did he say when you first woke up?

24 A I heard Randy mumbling. I couldn't make out what
25 he said. I heard Corky say, "I ain't done no kind

DONNA HUTTO -- RECROSS -- MR. BOLT.

1 of shit like that, Randy. Randy, I ain't done no
2 kind of shit like that."

3 Q Then you left and went to go see if Randy's car was
4 out front?

5 A Yes, sir.

6 Q Then you came back?

7 A Yes, sir.

8 Q Then you looked out your kitchen window and saw
9 Randy?

10 A Yes, sir.

11 Q And Randy told Corky to do something?

12 A Told him to go in the F.ing house.

13 Q "Go in the F.ing house"?

14 A Uh-huh. (Indicating affirmative response).

15 Q Did it sound like he was asking him to go inside or
16 ordering him to go inside?

17 A He was making him go inside.

18 MR. SWARAT: That's all I have, Your Honor.

19 THE COURT: Any recross?

20 MR. BOLT: Just a moment, Your Honor.

21 (Pause).

22 RECROSS EXAMINATION

23 BY MR. BOLT:

24 Q Mrs. Hutto, to be sure about this, after you heard
25 the voices, you said you saw Randy Tyler go into

DONNA HUTTO -- RECROSS -- MR. BOLT

1 the garage from the right to the left. You said
2 from the right?

3 A Yes, sir.

4 Q Thank you.

5 THE COURT: You can step down. Mrs. Hutto,
6 you are free to go if you would like to.

7 MR. SWARAT: Your Honor, may we approach?

8 THE COURT: Yes, sir.

9 (Whereupon there was a bench conference off the
10 record in the presence of the jury but out of the
11 hearing of the jury).

12 THE COURT: Ladies and gentlemen, we will go
13 ahead and take a lunch break at this point. I will ask
14 you to be back in the jury room at 2:00 o'clock.
15 Remember, we don't talk about the case. See you back at
16 two.

17 (The jury is excused for lunch at 12:30 p.m.)

18 THE COURT: Counsel, the jury is secured.
19 Anything before we recess from the State?

20 MR. SWARAT: No, Your Honor.

21 THE COURT: Defense?

22 MR. BOLT: No, Your Honor.

23 THE COURT: See you back at two.

24 MR. SWARAT: Yes, sir.

25 (Whereupon there was a luncheon recess).

1 (Court Reporter's Note: Because one of the
2 bullet fragments was not marked during the course of
3 testimony, State's Exhibit Number 16 becomes 16-A and
4 16-B, both containing one bullet fragment).

5 (State's Exhibit Number 16-A&B is received
6 into evidence).

7 THE COURT: Mr. Swarat, are you ready?

8 MR. SWARAT: Yes, Your Honor.

9 THE COURT: Mr. Bolt?

10 MR. BOLT: Yes, sir.

11 THE COURT: Bring the jury in.

12 MR. SWARAT: Your Honor, we have one thing we
13 need to put on the record.

14 THE COURT: Hold up on the jury.

15 MR. SWARAT: There was a numbering problem
16 with some of the exhibits. We have corrected it.
17 Coconut corrected it. I believe we have both agreed to
18 the new numbering that is present on one of the
19 exhibits. I can't remember the exact details.

20 THE COURT: Is that right?

21 MR. BOLT: Your Honor, we talked about it
22 during the break. There is no objection.

23 THE COURT: Coconut, is that right?

24 COURT REPORTER: Yes, sir. Thank you.

25 THE COURT: Anything else?

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 MR. SWARAT: No, Your Honor.

2 THE COURT: Let's bring the jury in, please.

3 (The jury returns to the courtroom at

4 3:05 p.m.)

5 THE COURT: All parties and attorneys are in
6 the courtroom, and all jurors have returned.

7 Mr. Swarat, call your next witness, please.

8 MR. SWARAT: At this time we call Detective
9 Scottie Frier.

10 SCOTTIE FRIER, being first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SWARAT:

14 Q Detective Frier, how are you employed?

15 A I'm employed with the Lexington County Sheriff's
16 Department.

17 Q What is your position with the Lexington County
18 Sheriff's Department?

19 A I am currently a sergeant supervising the major
20 crimes unit.

21 Q How long have you been in law enforcement?

22 A Eighteen years, sir.

23 Q In your capacity as a major crimes investigator,
24 were you involved in the investigation of this
25 case?

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 A Yes, sir, I was. I was the chief investigating
2 officer of the homicide of Robert Lewis.

3 Q When did you become part of the investigation?
4 When did you come on the scene?

5 A I responded to the scene at Highway
6 in Lexington County very shortly after Deputy Todd
7 Hartman had arrived. I picked up some -- I was on
8 duty at the time and picked up some radio
9 conversation and could tell from the transmission
10 that there was a problem, knew that major crimes
11 would be called down there, so I started heading in
12 that direction.

13 Q So sometime after midnight of the 13th, the early
14 morning hours of the 14th?

15 A Very close to midnight or a little after, yes, sir.

16 Q When you arrived on the scene, did you have
17 conversation with any of the citizen witnesses that
18 were present?

19 A Yes, sir. After a brief conversation with Deputy
20 Hartman, I spoke with and interviewed Donna Hutto.

21 Q As a result of your conversation with Mrs. Hutto,
22 did you develop a suspect in this case?

23 A Yes, sir. She specifically identified Randy Tyler
24 as having been at her home and involved in an
25 altercation or an argument with Corky Lewis or

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 Robert Lewis.

2 Q To make sure that you were talking about the same
3 Randy Tyler, did you take some steps to identify a
4 person by face?

5 A Yes. We had a photo lineup compiled that contained
6 a photograph of the Randy Tyler we believed that
7 she was talking about based on some identifiers
8 that she had provided to us. That photo lineup was
9 subsequently shown to her.

10 Q I'm showing you what has been marked as State's
11 Exhibit Number 24. Is that a photo lineup that you
12 showed to Donna Hutto?

13 A Yes, sir. That, in fact, was the original photo
14 lineup that I showed to her.

15 Q When did you show that lineup to Mrs. Hutto?

16 A I showed that to her on the early morning hours of
17 July 14, 2002 at her home.

18 Q There at Savannah Highway?

19 A Yes, sir.

20 Q And did she have any hesitation about the person
21 she picked out?

22 A No, sir, none whatsoever. Then I had her make some
23 notations on the form indicating who she was
24 identifying as Randall Tyler.

25 Q As a result did you want to find Mr. Tyler?

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 A Yes, sir, he became the primary person of interest
2 in this case.

3 Q Did you and law enforcement take steps to locate
4 him at a known residence?

5 A Yes, we did. Officers responded to a residence on
6 Bluff Road that we learned he was living at.

7 Q Were you able to locate Mr. Tyler at that time?
8 Was he located at that time?

9 A No, sir. Our initial efforts to locate him, we
10 were not able to find Mr. Tyler. We were able to
11 speak with some family members concerning his
12 possible whereabouts.

13 Q James Williams, who testified earlier, was he one
14 of those family witnesses?

15 A Yes, he was.

16 Q And at the time Mr. Williams, I believe, told law
17 enforcement that Randy Tyler was fishing with him
18 the night of the homicide?

19 A Right. He presented an alibi for Randy Tyler that
20 he was fishing, which would have been at a time
21 frame consistent of when the homicide had taken
22 place.

23 Q Did other family members present the same alibi?

24 A Yes. Some interviews were conducted with Randall
25 Tyler's wife and his mother-in-law, who also

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 indicated that he was returning home from a fishing
2 trip with Mr. Williams at a time frame that would
3 have been consistent with when the murder would
4 have happened. So they were in some form also
5 establishing an alibi for Mr. Tyler.

6 Q So if he was really fishing, he couldn't have been
7 there at the house?

8 A Correct. They put him returning home at about the
9 time the homicide would have taken place.
10 According to their statement, there would have been
11 no way he would have been involved.

12 Q And he would have been in a different county at the
13 time he was fishing?

14 A Yes, sir, some 30 to 40 miles away from the
15 homicide scene.

16 Q At some point did you make contact with Randy
17 Tyler?

18 A Yes, we did. Randy Tyler was brought to the
19 Sheriff's Department the afternoon of Sunday, the
20 14th. He was brought into the Sheriff's Department
21 and I met with him there.

22 Q Do you know approximately what time he was brought
23 to the Sheriff's Department?

24 A It was in the afternoon I want to say. I'm not
25 exactly sure what time. It should be noted on the

SCOTTIE FRIER -- DIRECT --- MR. SWARAT

1 booking or processing paperwork, but I just don't
2 remember the time off the top of my head. It was
3 in the afternoon.

4 Q As a result did you place him under arrest for the
5 murder of Robert "Corky" Lewis?

6 A Yes, he was charged at the time he was brought in.

7 Q And also burglary in the first degree?

8 A That is correct.

9 Q And I believe he was also charged later on with
10 criminal conspiracy in addition?

11 A Yes, he was.

12 Q By the grand jury?

13 A Yes, sir.

14 Q During your initial contact with him the late
15 afternoon of the 14th, did you have any meaningful
16 conversation with Mr. Tyler?

17 A Some brief explanation was given Mr. Tyler
18 regarding the charge against him, and some basis of
19 the charge was explained to him. And at that point
20 in time, we were not able to interview him; and he
21 was escorted towards the jail.

22 Q As you were escorting Mr. Tyler to the jail, did he
23 volunteer some information to you?

24 A Yes. While we were escorting him, we were not
25 questioning him. He -- the best way to explain

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 it -- he basically just sort of proffered to us --

2 Q Let me ask you something first. Did you tell him
3 about Donna Hutto?

4 A Yes. It was explained to him that he was being
5 charged based on an eyewitness identification
6 placing him at the crime scene just before the
7 homicide would have taken place.

8 Q So before he proffered this information, you told
9 him, "Donna Hutto says you were there, and you were
10 the one involved with arguing with Corky Lewis"?

11 A Right. He was specifically explained that an
12 eyewitness put him at the crime scene.

13 Q And what information did he proffer to you,
14 Detective Frier?

15 A He presented to myself and Detective Fossum, who is
16 also seated in the courtroom, that we should look
17 at his brother. He explained that his brother was
18 in town, that his brother looked like him, and
19 explained that his brother and he did not get
20 along.

21 It was basically in the fashion of, "If my
22 brother did something like this, it wouldn't hurt
23 my brother's feelings to put it on me." So he
24 basically gave us, "You need to look at my
25 brother."

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

- 1 Q Did he tell you that he was at Corky Lewis' house?
- 2 A No.
- 3 Q That he, Randy Tyler, was at Corky Lewis' house at
- 4 that time?
- 5 A I basically took the comments he made to us as,
- 6 "Well, if you think you have me identified at the
- 7 house, perhaps you should be looking at my
- 8 brother," basically inferring to us that maybe we
- 9 had an improper identification.
- 10 Q Later on, I believe the next day sometime, did you
- 11 have a conversation with somebody representing
- 12 Randy Tyler?
- 13 A Yes, I did.
- 14 Q Who was that individual?
- 15 A I had a conversation with Lawrence Simmons who is
- 16 an attorney here in Lexington.
- 17 Q And he indicated to you that he was representing
- 18 Randy Tyler on these charges at the time?
- 19 A That is correct.
- 20 Q As a result did Mr. Simmons, the attorney, and
- 21 Mr. Tyler speak with you about this case?
- 22 A Yes, they did. Let me make sure we get the dates
- 23 right on this. This would have been -- Mr. Tyler
- 24 turned himself in on the 14th, which was Sunday.
- 25 Q Okay.

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 A The conversation I had with the attorney
2 representing Mr. Tyler at the time, Mr. Simmons,
3 took place on the 16th.

4 Q Let me stop you for just a moment in time here.

5 A Yes, sir.

6 Q Let me go back to James Williams.

7 A Yes, sir.

8 Q About the fishing story.

9 A Yes, sir.

10 Q Who was supposedly fishing with Randy Tyler the
11 night of the homicide?

12 A James Williams provided a statement that he and
13 Randall Tyler were fishing on the night of the
14 13th and arrived home very shortly before midnight
15 on the 13th.

16 Q And his wife provided that same story?

17 A She and the mother-in-law indicated that he
18 returned home from fishing at a time consistent
19 with what Mr. Williams had said.

20 Q But the fishing buddy was James Williams?

21 A Correct. The only person who said they were
22 actually at the lake fishing was James Williams.

23 Q Before you had this conversation with Mr. Simmons,
24 the attorney --

25 A Yes, sir.

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 Q -- did you go back and talk to Mr. Williams again?

2 A Yes, I did. After speaking with Mrs. Hutto the
3 night of the crime and then a couple of follow-up
4 interviews that I had with her after that, there
5 was no way I wasn't convinced. She was adamant in
6 her belief that that was Randy Tyler in the home.
7 She was just concrete on that fact.

8 But then I had an issue with James Williams
9 alibiing him out. Basically as an investigator,
10 I'm at this point where this woman is so passionate
11 about him being there, but yet I have got someone
12 claiming he is fishing.

13 So with that in mind, I went back to Williams
14 to try to get some explanation for why I have got
15 him in two places.

16 Q You also looked into Matt Tyler, his brother?

17 A Extensively, yes, sir, based on his scenario or
18 possibility that he presented to us. I was able to
19 locate him in Michigan, learned that he was on
20 probation, learned that he was being monitored by
21 the State of Michigan's Probation and Pardon Office
22 and had that probation and pardon officer, who is
23 specifically entrusted with his maintenance, do
24 some research for that time period to determine
25 where he was and if we could account for his hours

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 basically or his location in the State of
2 Michigan.

3 Q And that didn't jell with what Mr. Tyler had told
4 you when he proffered the stuff about Matt Tyler?

5 A Absolutely not. I could put, based on the
6 investigation by the Michigan authorities, I could
7 put him at work days before and days after the
8 homicide.

9 And then their conversation with his wife in
10 Michigan put him at home during the weekend. He
11 works Thursday, Friday. He is home on the weekend.
12 He is back Monday, Tuesday at work, just as he
13 should have been.

14 Q Armed with that information, you talked to James
15 Williams?

16 A Yes, sir.

17 Q What then happens?

18 A When I approached Mr. Williams at his home on
19 Tuesday afternoon, he and I got in my patrol car
20 and drove a short distance away from his home where
21 I could talk to him in private.

22 During the conversation Mr. Williams became
23 very upset, very nervous. And basically his words
24 were, "I can't lie anymore. I wasn't fishing."
25 And he gives me some explanation as to why he had

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 given that original statement.

2 Q And some of the information we have heard earlier
3 in front of the jury?

4 A That he was directed by Mr. Tyler to give a
5 statement that he was fishing.

6 Q And he also gave you, I believe, the tape recorded
7 statement about taking him to Travis'?

8 A Right. I took a handwritten statement from
9 Mr. Williams at his home and then instructed him to
10 follow me in his personal vehicle back to the
11 Sheriff's Department where I could get a more
12 detailed, tape recorded statement from him and
13 determine if we had any other issues we needed to
14 deal with with Mr. Williams.

15 Q So this is the first time you have heard about
16 Travis?

17 A That's correct. That was the second part of
18 interest of the statement of Mr. Williams is that
19 he introduces us to a Travis Harsey as having been
20 possibly involved in this issue.

21 Q And is that a photo lineup you showed to
22 Mr. Williams?

23 A Yes, this is a photo lineup that we compiled. This
24 photo lineup does not contain a photograph of
25 Mr. Tyler. It does, however, contain a photograph

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 of who we believed, based on Mr. Williams'
2 information, to be Travis Harsey.

3 Q You wanted to corroborate this new story by
4 Mr. Williams?

5 A That's correct. We needed to make sure we knew who
6 we were talking about as well.

7 MR. SWARAT: Your Honor, we move this into
8 evidence as State's Exhibit Number 25.

9 MR. BOLT: No objection.

10 THE COURT: Without objection.

11 (State's Exhibit Number 25 is received into
12 evidence).

13 BY MR. SWARAT:

14 Q What is written on the bottom of that form,
15 Detective Frier?

16 A I have written the words, "This is the man I left
17 Randy with. His name is Travis. Travis and Randy
18 said they were going to Corky's house on Saturday
19 night." And I had Mr. Williams initial that
20 notation on the bottom of the form.

21 Q This is the other man that is also charged with
22 murder, burglary first, and criminal conspiracy; is
23 that right?

24 A Yes, he is currently facing the same charges as
25 Mr. Tyler and will be next up for trial concerning

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 this issue.

2 Q When you talked to Mr. Simmons, the attorney
3 representing Randy Tyler, did you relay to
4 Mr. Simmons that the alibi, the fishing story, had
5 fallen apart?

6 A Yes. The first conversation I had with Mr. Simmons
7 was just he and I. I indicated to him perhaps he
8 may want to speak to his client, that Mr. Williams
9 has now given us a detailed statement that is not
10 going to bode well for his client's interests.

11 Q So Mr. Simmons knows the fishing story is falling
12 apart and that James Williams puts him in the
13 company of Travis going to Corky's?

14 A Right. Not only is the story falling apart, but we
15 are getting specific details from Mr. Williams not
16 only before but then some explanations and some
17 statements from Mr. Tyler about what happened at
18 the crime scene.

19 Q Right.

20 A And all that is relayed to Mr. Simmons.

21 Q Later on that evening after that has been explained
22 to Mr. Simmons?

23 A Yes, sir.

24 Q Do you sit down with Mr. Simmons and Mr. Tyler?

25 A Yes, sir. That takes place a little after

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 6:00 p.m. on the 16th at the Sheriff's Office.

2 Q Was he advised of his constitutional rights at that
3 time?

4 A Yes, he was. There is a -- I had intended, with
5 his attorney present or while his attorney was
6 present, I had intended to take a statement from
7 him.

8 So in order to do that we use a form that
9 we take of a suspect or defendant's statement,
10 which lays out their rights under the Miranda
11 decision.

12 I explained those rights to him on that
13 form, had him initial those rights indicating
14 that he would waive those rights, and then had his
15 attorney initial as well indicating that the
16 attorney was present and understood that his client
17 was giving a statement.

18 Q And the words on the paper, the statement that he
19 is giving, he can tell you whatever he wants to
20 tell; is that right?

21 A Yes, sir. Whatever he is going to tell I am going
22 to produce. I may not write exactly word for word
23 what he says. I will summarize his statement and
24 allow him to review it.

25 Q And when he reviews it, can he change it if he

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 differs with any of the language? He can change
2 whatever he wants, right?

3 A Yes. He can change or make any corrections we
4 make. There are a couple of places where some
5 corrections are made. You notice two sets of
6 initials by those, both his and his attorney. If
7 there is any information he wants me to add or take
8 out, I will do so. We will make a notation of
9 that.

10 Q And you are buying it like they are selling it,
11 whatever they want to put on the record?

12 A Whatever he presents to me I will summarize and put
13 in his statement.

14 Q He gave you that written statement late on the
15 16th, I believe it would be?

16 A Yes, sir.

17 Q Is there a time there?

18 A The time it started was 18:15, which is 6:15 in the
19 afternoon.

20 Q How many pages is that statement?

21 A It's one page, sir.

22 Q Does his signature appear on the bottom?

23 A Both his signature, my signature notarizing his
24 signature, and his attorney's signature are all
25 present on the form.

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 Q And he gave it to you freely and voluntarily with
2 the advice of his attorney present?

3 A Absolutely.

4 MR. SWARAT: I move that into evidence at this
5 time, Your Honor. I believe it would be State's Exhibit
6 26.

7 MR. BOLT: No objection.

8 (State's Exhibit Number 26 is received into
9 evidence).

10 BY MR. SWARAT:

11 Q And, Detective Frier, if you could publish the
12 content of that statement to the jury.

13 A This is the statement that Randall Tyler provided
14 on July 16, 2002. It reads on, "On the date of
15 July 13, 2002, I rode with Travis Harsey to
16 Robert -- quote Corky -- end quote -- Lewis' house.

17 "Travis was driving his burgundy Cadillac.
18 While there I did not have a pistol on my person.
19 All of a sudden while I was shaking Corky's hand,
20 Travis came up with a mask and gloves on.

21 "Travis hit Corky in the head with a pistol.
22 It was a black pistol. Travis then led Corky and
23 me into his house. Travis shot into the couch. I
24 ran from the house.

25 "I heard several shots as I was running.

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 Travis picked me up on the road. Travis had a hand
2 full of shell casings. Travis said he shot him.
3 He said -- quote -- there is no veins. He is
4 turning pink, end quote."

5 Q So Mr. Tyler doesn't tell you about any argument
6 with Corky Lewis?

7 A No, he does not.

8 Q And he tells you that Travis Harsey had a mask on
9 and gloves on?

10 A Yes, sir.

11 Q And just all of a sudden he pulls out the gun?

12 A Yes, sir.

13 Q He didn't put himself there when Corky Lewis died?

14 A No, sir.

15 Q Being at the house at the time of his death?

16 A No, sir. According to his statement, the
17 information he gave me that night, Travis fires the
18 first shot; and according to Mr. Tyler, he takes
19 off running.

20 Q You had told Mr. Simmons about James Williams'
21 story changing from fishing to taking him up to
22 Travis' house?

23 A That's correct.

24 Q Did you tell him anything about the details from
25 the crime scene or the details of James Williams'

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 statement as far as what Randy Tyler told James?

2 A No, I didn't.. The only thing I explained to
3 Mr. Simmons was that the alibi of fishing was not
4 holding up. Mr. Williams had given us a statement
5 and the contents of his statement were not going to
6 bode well for his client. That was the detail I
7 went into with Mr. Simmons.

8 Q Didn't tell him anything about the forensic testing
9 you were having done or going to have done?

10 A No, sir, I did not.

11 Q Once Travis Harsey's name came into this, did you
12 want to make contact with Travis Harsey?

13 A Absolutely.

14 Q And did you make contact with Travis Harsey?

15 A Yes, Travis was subsequently arrested for this
16 incident.

17 Q As a result of that, did you have a chance to talk
18 with him also?

19 A He was interviewed at length, yes, sir.

20 Q Did Travis indicate to you where he parked his car
21 in relation --

22 MR. BOLT: Objection to hearsay. I think we
23 have a confrontation clause. He is a codefendant.

24 MR. SWARAT: Your Honor, I've got a matter of
25 law to take up outside the presence of the jury.

1 THE COURT: Ladies and gentlemen, let me ask
2 you to step to the jury room for a moment. While you
3 are there, be sure not to talk about the case.

4 (The jury retires to the jury room).

5 THE COURT: The jury is secured. Go ahead,
6 Mr. Swarat.

7 MR. SWARAT: My question to Detective Frier
8 was or was going to be: Did he, Travis Harsey, tell you
9 what he did? Did he tell you where he parked his car in
10 relation to Corky Lewis' house?

11 It doesn't violate the confrontation clause
12 unless it is: What did he, Travis Harsey, tell you
13 Randy Tyler did? I have got a case on that issue if you
14 would like to see it, State versus Evans.

15 THE COURT: Yes, sir. Mr. Bolt.

16 MR. BOLT: Your Honor, I don't know about his
17 case, but I just know I can't cross examine a
18 codefendant who is outside this courtroom. I can't test
19 his credibility.

20 MR. SWARAT: Your Honor, at this time it's a
21 statement against interest. It comes in. It's not
22 hearsay. It doesn't -- it's not a statement from Travis
23 Harsey saying what Randy Tyler did.

24 THE COURT: Yes, sir. Anything else,
25 Mr. Bolt?

1 MR. SWARAT: Your Honor, the cite on this case
2 is 457 Second, page 47, State versus Jerry Evans.

3 THE COURT: Mr. Bolt, do you have anything
4 else?

5 MR. BOLT: No, sir.

6 THE COURT: I am going to allow the statement
7 in, counsel, as long as it stays within the limits you
8 describe, Mr. Swarat.

9 MR. SWARAT: Yes, Your Honor.

10 THE COURT: Let's bring the jury back in.

11 (The jury returns to the courtroom).

12 THE COURT: Jurors, we will get you another
13 break in just a little while. All parties and attorneys
14 are in the courtroom, and all jurors have returned.

15 Continue, Mr. Swarat.

16 MR. SWARAT: Thank you, Your Honor.

17 **DIRECT EXAMINATION**

18 BY MR. SWARAT:

19 Q Detective Frier.

20 A Yes, sir.

21 Q The question I had for you: Did Travis Harsey tell
22 you where he parked his Cadillac car in relation to
23 Corky Lewis' house?

24 A Yes, he indicated he parked the car back up towards
25 the road hidden from the home.

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 Q Back up in the wood line up there that we saw in
2 the photographs?

3 A It would have been on the other side of the wood
4 line towards the main highway, which was 321.

5 Q Was a gun recovered belonging to Travis Harsey or a
6 portion of a gun?

7 A We believe what are portions of a gun that attempts
8 had been made to destroy the gun were recovered.

9 Q Melted it down?

10 A Yes, sir.

11 Q Were other members of the Harsey family arrested in
12 conjunction with this investigation?

13 A Yes, sir. His mother, his brother, and his wife
14 were all charged.

15 Q His brother that Mr. Bolt was talking about, I
16 believe Sam Harsey?

17 A Samuel Harsey was arrested, yes, his brother.

18 MR. SWARAT: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause).

21 BY MR. SWARAT:

22 Q Please answer any questions the defense may have
23 for you.

24 A Yes, sir.

25 THE COURT: Cross.

SCOTTIE FRIER -- CROSS -- MR. BOLT

1 MR. BOLT: Just one second if Your Honor
2 please.

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. BOLT:

6 Q Detective Frier, did Travis Harsey admit to having
7 a .40-caliber black pistol? Did he say on the date
8 of Mr. Lewis' death that he, Travis Harsey, had
9 owned a .40-caliber black handgun?

10 A Yes, he did.

11 Q Thank you.

12 MR. BOLT: I don't have anything else.

13 THE COURT: Redirect?

14 MR. SWARAT: No Your Honor.

15 THE COURT: You can step down.

16 THE WITNESS: Thank you, Your Honor.

17 MR. SWARAT: At this time the State calls
18 Dr. Janice Ross.

19 JANICE EDWARDS ROSS, being
20 first duly sworn, testified as follows:

21 CLERK: State your full name.

22 THE WITNESS: Janice Edwards Ross.

23 DIRECT EXAMINATION

24 BY MR. SWARAT:

25 Q Dr. Ross, how are you employed?

JANICE ROSS -- DIRECT -- MR. SWARAT

1 A I am a forensic pathologist and work with the
2 Newberry Pathological Associates in Newberry, South
3 Carolina.

4 Q And did you have the occasion to perform an autopsy
5 on an individual by the name of Robert Lewis?

6 A Yes, I did.

7 Q When was that autopsy performed?

8 A July 15, 2002.

9 Q Can you relate to the Court your education and
10 training, I guess starting with college.

11 A Yes. I went to the University of South Carolina.
12 I got a bachelor degree. Then I started medical
13 school in Charleston, South Carolina and
14 transferred to Syracuse, New York where I received
15 my M.D. in 1972.

16 I then continued pathology training, which is
17 the study of disease. Pathology is a discipline in
18 medicine that identifies and diagnoses cancers and
19 leukemias, that kind of thing.

20 Then I went through further study to become a
21 forensic pathologist. A forensic pathologist uses
22 the knowledge of pathology towards legal matters,
23 such things as homicides, suicides, and accidents.
24 We learn how to do autopsies pointed towards
25 documenting evidence and identifying patterns of

JANICE ROSS -- DIRECT -- MR. SWARAT

1 injury.

2 Q How long have you been a practicing pathologist?

3 A Twenty-seven years.

4 MR. SWARAT: Your Honor, I tender Dr. Ross as
5 an expert in the field of forensic pathology.

6 MR. BOLT: No objection.

7 THE COURT: Ladies and gentlemen of the jury,
8 let me explain what this means. An expert witness is a
9 person who is qualified as such because of her training,
10 background, education or experience in a particular
11 field.

12 As such, she is allowed to testify as an
13 expert in that field. She is allowed to give opinions.
14 Now, most witnesses are not allowed to give opinions.
15 They simply testify as to what they know about a case.
16 They can't give opinions.

17 Experts, however, can give opinions in their
18 field of expertise. Even though the expert gives the
19 opinion, you are still not bound by the opinion. It is
20 intended for your guidance only.

21 It's up to you to determine whether you want
22 to use it for your guidance. So you are not bound by
23 it. Just as with every other witness, you determine how
24 much weight and credibility you will give to it.

25 Any exception to the charge from the State?

JANICE ROSS -- DIRECT -- MR. SWARAT

1 MR. SWARAT: None from the State.

2 THE COURT: From the defense?

3 MR. BOLT: No, Your Honor.

4 THE COURT: Solicitor, go ahead.

5 BY MR. SWARAT:

6 Q Dr. Ross, can you briefly talk to us about how an
7 autopsy is performed or how you performed the
8 autopsy in this case.

9 A Yes. We first look at the victim from the outside,
10 including the clothing. Then we take the clothes
11 off and look again at the outside of the body to
12 determine injury and patterns of injury. We then
13 do a systematic review of the internal organs and
14 further identify injury or disease in the organs.

15 Q From the visual of Mr. Lewis, were you able to
16 determine any injuries outwardly?

17 A Yes. There were three lacerations on the top of
18 the head on the scalp, and there were a total of
19 six gunshot wounds.

20 Q The lacerations on the top of the scalp, were they
21 consistent with being gunshot wounds?

22 A No, sir.

23 Q What were they consistent with?

24 A A laceration is a split in the skin caused by the
25 skin being hit by an object. These were not quite

JANICE ROSS -- DIRECT -- MR. SWARAT

1 linear. They had a little curve on them, so they
2 were hit by some kind of instrument that was not
3 quite straight.

4 Q And did you document the injuries that you noted by
5 photograph as well?

6 A Yes.

7 MR. SWARAT: Your Honor, I know Mr. Bolt will
8 have an objection to this one. May we approach the
9 bench?

10 THE COURT: Yes, sir.

11 BY MR. SWARAT:

12 Q Let me ask first to lay the foundation. Does this
13 photograph document the head injuries the
14 lacerations that you have just spoken of?

15 A Yes.

16 (Whereupon there was a bench conference off the
17 record in the presence of the jury but out of the
18 hearing of the jury.)

19 THE COURT: Counsel, we will put more on the
20 record later. I am going to allow the photograph to be
21 admitted. I find that any -- from having reviewed the
22 photograph -- that any potential prejudice would be
23 outweighed by the probative value.

24 (State's Exhibit Number 27 is received into
25 evidence).

JANICE ROSS -- DIRECT -- MR. SWARAT

1 BY MR. SWARAT:

2 Q Dr. Ross, above my fingers, those are the injuries
3 that you say were caused by a blunt object?

4 A Yes.

5 Q They were not caused by a gunshot wound?

6 A That's correct. They were not.

7 Q To give an orientation, this would be directly on
8 top of Mr. Lewis' head?

9 A Yes.

10 Q Could these injuries to the top of his head have
11 been caused by a fall? Would that be consistent?

12 A Not unless he fell from a height on top of his
13 head. Still then it would not be caused by a fall.
14 When your head hits -- when your head hits the
15 floor or hard object from a standing position, it
16 hits on an area where you could think of as a hat.

17 A hat brim would be something in one of those
18 areas. This is on top of the head. Even if he
19 fell from a fall and on the top of his head hitting
20 a flat surface, it would have given a rounder
21 abrasion scrape.

22 Q They wouldn't look like this?

23 A That is correct.

24 Q You also told us that there were six gunshot
25 injuries?

JANICE ROSS -- DIRECT -- MR. SWARAT

1 A Yes, 'sir.

2 Q Can you show on me maybe, and explain to the jury
3 where these gunshot injuries were.

4 A (Witness leaves the witness stand). I guess we can
5 start with the leg and go up. Okay, turn around.
6 There were -- there was one entrance wound into the
7 left buttock, the top of the buttock around towards
8 the waistband of a pair of pants. This injury went
9 towards the front and actually hit the hip joint,
10 and we retrieved the bullet from that area.

11 There were two similar wounds in the right
12 buttock area, upper buttock area. One of these
13 went upward and ended up in the soft tissue in the
14 back over the abdomen. It did go into the abdomen,
15 but it went -- it was in the soft tissue, sort of
16 in front of the backbone.

17 The other one went downward and fractured the
18 right thigh bone, which is called the femur.
19 Another wound went into the back of the right
20 thigh, and it actually went through a pocket that
21 had some change in it and carried three coins into
22 the wound; and they ended up in a similar area next
23 to a fracture of the thigh bone, the femur. So
24 there was one in the left, two in the right
25 buttock, one in the right thigh.

JANICE ROSS -- DIRECT -- MR. SWARAT

1 Q Let me ask you this. Those gunshots, did they come
2 from the back of Mr. Lewis or did they come from
3 the front of Mr. Lewis?

4 A They came from the back.

5 Q He was shot from the back with those?

6 A Yes.

7 Q Please continue.

8 A If you will turn around. There was one wound that
9 went into the right forearm and came down and
10 fractured the wrist. We retrieved that bullet from
11 the wrist area.

12 Q I have shown the jury the crime scene videotape and
13 also to you. It is the gaping wound that on his
14 foreman?

15 A Yes. For part of the way, it went and just kind of
16 abraded the skin. Then it went under the surface.
17 So the first part of it just kind of split the
18 skin.

19 Q And that was the fifth gunshot wound?

20 A That's correct.

21 Q And then the last one?

22 A The last one went in the left arm and continued to
23 through the chest, all the way across; and we
24 retrieved the bullet out of the right chest cavity.
25 That wound caused -- went through the upper lobes

JANICE ROSS -- DIRECT -- MR. SWARAT

1 of both lungs and went through the aorta, which is
2 the main artery coming off the heart.

3 There was a lot of bleeding out into the chest
4 cavity from those wounds. There was a thousand
5 C.C.s, which is about three units of blood, in the
6 right chest cavity; and there was another 600 C.C.s
7 in the left chest cavity. So he suddenly lost at
8 least a third of his blood volume.

9 Q The last one we just talked about, how long could
10 he have survived with that injury?

11 A Minutes.

12 Q Not a very long time?

13 A Not a very long time.

14 Q That's the one that killed him?

15 A Yes.

16 Q Please retake the witness stand.

17 A (Witness resumes the witness stand).

18 Q The one that broke his leg, would that mostly have
19 immobilized him?

20 A Yes, he would have had a lot of trouble standing up
21 with that leg fracture on the right. Also the left
22 hip was fractured by one bullet.

23 Q So he wouldn't have much movement once those two
24 shots were in his body?

25 A That's correct.

JANICE ROSS -- CROSS, -- MR. BOLT

1 Q How about pain?

2 A Significant.

3 Q I know this sounds like a stupid question. What
4 did you determine the cause of death to be?

5 A The cause of death is exsanguination, which means
6 bleeding out, due to the lacerations in the lungs
7 and the aorta due to the gunshot wound of the arm
8 that went into the chest.

9 Q I believe that's all I have. Thank you very much,
10 Dr. Ross.

11 THE COURT: Cross.

12 CROSS EXAMINATION

13 BY MR. BOLT:

14 Q Dr. Ross, I don't know if you testified to this and
15 pardon me if you did, did you determine the caliber
16 of the bullets that were retrieved from Mr. Lewis'
17 body?

18 A They measured out to be .40-caliber.

19 Q All of them?

20 A Yes, sir.

21 Q Now, I think in your autopsy report or pathology
22 report, you characterized the various gunshot
23 wounds as -- the one you described most recently
24 that caused the massive blood loss as a fatal,
25 distant, penetrating .40-caliber gunshot wound;

JANICE ROSS -- CROSS -- MR. BOLT

1 right?

2 A Yes.

3 Q And others you classified as either superficial or
4 potentially fatal. I take that as the plain
5 meaning of those. Superficial wounds were not
6 fatal, nor would they have been?

7 A Correct.

8 Q Potentially fatal could have been?

9 A That's correct.

10 Q Now, the lacerations to the scalp, were any of
11 those fatal injuries?

12 A Those wounds could have caused unconsciousness and
13 could have caused death in some people. There was
14 no fracture of the skull underneath. There was no
15 bleeding around the brain.

16 It's very likely that he could have continued
17 to move after those wounds however. The wounds,
18 the only thing I can say about them is that they
19 were made before death because they had reaction to
20 them.

21 Q Right. And I think you also concluded that the
22 three lacerations, only the one in the superior

23 left parietal region showed contusion to the
24 underlying scalp. Do you recall writing that?

25 A That's correct.

JANICE ROSS -- REDIRECT -- MR. SWARAT

1 Q And by characterizing the gunshot wounds as
2 distant, what do you mean?

3 A That will depend on the gun and the length of the
4 barrel, all kind of things. But in general, it
5 means that the end of the gun was three to more
6 feet away from the body, from the target.

7 Q Closer than that range you would normally find, I
8 believe, stippling or tattooing it's called; and
9 you found none of that with regards to Mr. Lewis'
10 wounds?

11 A That's correct.

12 Q Thank you.

13 MR. BOLT: I don't have anymore questions.

14 THE COURT: Any redirect?

15 MR. SWARAT: Just one.

16 REDIRECT EXAMINATION

17 BY MR. SWARAT:

18 Q The blunt force trauma injuries to the scalp?

19 A Yes.

20 Q Would he have had much blood loss with those?

21 A Very much.

22 Q So the area around his head would have been
23 probably saturated with blood?

24 A Yes.

25 Q Thank you.

ADRIAN RILEY -- DIRECT -- MR. SWARAT

1 MR. SWARAT: That's all I have.

2 MR. BOLT: Nothing else.

3 THE COURT: You can step down, and you are
4 free to go.

5 MR. SWARAT: I ask that she be excused.

6 THE COURT: You are.

7 THE WITNESS: Thank you.

8 MR. SWARAT: Your Honor, at this time we call
9 S.L.E.D. Agent Adrian Riley.

10 ADRIAN NICHOLE RILEY, being
11 first duly sworn, testified as follows:

12 CLERK: Have a seat, please, ma'am, and state
13 your full name on the record, please.

14 THE WITNESS: Adrian Nichole Riley.

15 **DIRECT EXAMINATION**

16 BY MR. SWARAT:

17 Q Agent Riley, how are you employed?

18 A I am a special agent assigned to the forensic
19 D.N.A. analysis unit at the South Carolina Law
20 Enforcement Division, more commonly known as
21 S.L.E.D.

22 Q Can you relate to the Court and to the jury your
23 education and qualifications in D.N.A.

24 A Yes. I have a Bachelor of Science degree in
25 Biology from the University of South Carolina, the

ADRIAN RILEY -- DIRECT -- MR. SWARAT

1 Columbia campus. I have over seven years
2 experience in the laboratory, having joined
3 S.L.E.D. in 1997.

4 So I have been there a little over six years,
5 for four of those years as a forensic D.N.A.
6 analyst. Upon coming to S.L.E.D., I received
7 on-the-job training from a court qualified analyst,
8 as well as I have some postgraduate course work in
9 the field of forensic D.N.A. analysis, such as
10 molecular biology, statistics, genetics, and so on.

11 I have also attended numerous symposiums and
12 conferences to stay abreast of the field of D.N.A.
13 analysis and any changes or new developments as
14 they occur.

15 Q Have you testified in the courtrooms of South
16 Carolina?

17 A Yes, sir, I have.

18 Q Have you ever been refused as an expert?

19 A No, sir, I have not.

20 MR. SWARAT: Your Honor, at this time I would
21 offer Agent Riley as an expert in the field of D.N.A.

22 MR. BOLT: I don't object.

23 THE COURT: Without objection. Again, ladies
24 and gentlemen, this witness will be qualified as an
25 expert. Remember, she is allowed to give an opinion in

ADRIAN RILEY -- DIRECT -- MR. SWARAT

1 the area of her expertise. You are not bound by the
2 opinion. You decide how much weight or credibility to
3 give to it.

4 Any exception to the charge from the State?

5 MR. SWARAT: None from the State, Your Honor.

6 THE COURT: Defense?

7 MR. BOLT: No, sir.

8 THE COURT: Continue, Solicitor.

9 BY MR. SWARAT:

10 Q Agent Riley, did you receive any items for testing
11 in this particular case?

12 A Yes, sir, I did.

13 Q What items did you receive for testing?

14 A I received items from the crime scene, as well as
15 standards from the victim, as well as the subject,
16 two subjects.

17 Q And let me clarify. You are a scientist. That's
18 it, right?

19 A Yes, sir.

20 Q Do you know Robert "Corky" Lewis?

21 A No, sir.

22 Q Do you know Randall Scott Tyler?

23 A No, sir.

24 Q Do you know Travis Harsey?

25 A No, sir.

ADRIAN RILEY -- DIRECT -- MR. SWARAT

1 Q Don't know any of those people?

2 A No.

3 Q What testing did you perform on the items that were
4 submitted to you?

5 A Initially we performed serology testing, which is
6 the identification of body fluids. In this case I
7 identified the body fluid as human blood.

8 Q Were all of the samples that were submitted for
9 testing, the unknowns I guess, were they all human
10 blood?

11 A Yes, sir, they were.

12 Q Were those samples sorted out and given identifiers
13 as to where they were collected in this crime
14 scene?

15 A Yes, sir, they were.

16 Q We can start from anyone that you want to. If you
17 can start with the first sample. And how many
18 samples did you receive that were unknowns?

19 A Six samples were unknown that were tested.

20 Q Did you receive a sample that was identified as
21 being found in the garage on a box?

22 A Yes, sir. I received a sample, which was our
23 S.L.E.D. item number 25, a swab marked garage; and
24 S.L.E.D. item number 26, a swab marked box.

25 Q And were you able to get a D.N.A. profile on the

ADRIAN RILEY -- DIRECT -- MR. SWARAT

1 swab marked garage? Let me start with that one.

2 A Yes, sir, I was.

3 Q And whose D.N.A. was that?

4 A The D.N.A. profile developed from this item matched
5 the D.N.A. profile of Robert Lewis.

6 (Mr. Swarat writes on State's Exhibit Number
7 10).

8 Q You said item number 26 was the swab marked box?

9 A Yes, sir.

10 Q Did you get a D.N.A. profile off the swab that was
11 marked box?

12 A Yes, sir, I did. The D.N.A. profile developed from
13 this item also matched the D.N.A. profile of Robert
14 Lewis.

15 (Mr. Swarat writes on State's Exhibit Number
16 10).

17 Q Did you get a sample that was marked G.?

18 A Yes, sir, I did. That is our item number 20.

19 Q And on item number 20, the one marked G., did you
20 get a D.N.A. profile?

21 A Yes, sir, I did. The D.N.A. profile developed from
22 item 20 matches the D.N.A. profile of Robert Lewis.

23 Q That was Robert Lewis' blood?

24 A Yes, sir.

25 (Mr. Swarat writes on State's Exhibit Number

ADRIAN RILEY -- DIRECT -- MR. SWARAT

1 10).

2 Q Did you have a sample that was marked, "Swab marked
3 H.1"?

4 A Yes, sir.

5 Q And did you do a D.N.A. profile off that one?

6 A Yes, sir, I did.

7 Q Who blood was that?

8 A The D.N.A. profile developed from the blood on this
9 item also matched the D.N.A. profile of Robert
10 Lewis.

11 (Mr. Swarat writes on State's Exhibit Number
12 10).

13 Q Did you do an D.N.A. analysis on the swab marked
14 H.2?

15 A Yes, sir.

16 Q Whose blood did that end up being? Whose D.N.A.
17 was that?

18 A Also Robert Lewis.

19 (Mr. Swarat writes on State's Exhibit Number
20 10).

21 Q Did you get a swab marked ceiling?

22 A Yes, sir, I did.

23 Q Were you able to develop D.N.A. off the swab marked
24 ceiling?

25 A Yes, I was. This D.N.A. profile developed from

ADRIAN RILEY -- DIRECT --, MR. SWARAT

1 item 24, the swab marked ceiling, also matched the
2 D.N.A. profile of Robert Lewis.

3 Q Did you get a swab that you analyzed that was
4 marked, "knuckle"?

5 A Yes, sir, I did.

6 Q The swab marked knuckle, were you able to develop a
7 D.N.A. profile off of that swab?

8 A Yes, I was.

9 Q Whose D.N.A. did that end up being?

10 A The D.N.A. developed from item 23, which was the
11 swab marked knuckle, matches the D.N.A. profile of
12 Randy Tyler.

13 (Mr. Swarat writes on State's Exhibit Number
14 10).

15 Q Agent Riley, any doubt about any of those?

16 A Within a reasonable degree of scientific certainty,
17 no.

18 Q What are the odds of the D.N.A. sample marked
19 knuckle being another individual on the planet?

20 A The probability of randomly selecting an unrelated
21 individual having a D.N.A. profile matching this
22 item is approximately 1 in 15 billion.

23 Q One in 15 billion?

24 A Yes, sir.

25 Q How many people are on the planet Earth?

ADRIAN RILEY -- CROSS -- MR. BOLT

1 A I believe it's currently about 6.2 billion in the
2 world.

3 Q Agent Riley, you have never been to this crime
4 scene?

5 A No, sir.

6 Q You don't know anything other than the scientific
7 testing you did?

8 A Yes, sir.

9 MR. SWARAT: That's all I have.

10 THE COURT: Cross.

11 CROSS EXAMINATION

12 BY MR. BOLT:

13 Q Agent Riley, you had some saliva sample standards.
14 Why were those not analyzed?

15 A I did receive saliva standards which are part of
16 the suspect evidence collection kit. In a suspect
17 kit, we receive blood standards, as well as saliva
18 standards.

19 Our most pristine sample that we like to work
20 with is blood. So we usually don't do saliva if we
21 have the blood and can develop a D.N.A. profile
22 from that.

23 Q Why was sent it to you?

24 A Well, the D.N.A. that is found in your blood and
25 your saliva and in your hair and your skin is all

ADRIAN RILEY -- CROSS -- MR. BOLT

1 the same. It does not vary from each place on your
2 body.

3 Q I'm just asking why would they send both if it's
4 not analyzed?

5 A They send both just in case the blood standard for
6 some reason did not work, if it was, say, collected
7 in a tube and it was coagulated by the time we
8 received it and it just did not work, then we would
9 then go to the saliva standard and perform D.N.A.

10 analysis on that.

11 Q Item Number 23, which you identified as the D.N.A.
12 of Randall Tyler, knuckle swab, was sent to you in
13 what form?

14 A As a swab.

15 Q Just a small swab?

16 A Yes, sir.

17 Q It wasn't a vile of blood, it was a swab on which a
18 small amount of blood had been collected; is that
19 right?

20 A Yes, sir, it was a swab.

21 Q Kind of like a Q-tip?

22 A I received one swab marked knuckle. It was one
23 Q-tip swab, yes, sir.

24 Q All right. Thank you.

25 THE COURT: Redirect?

'ADRIAN RILEY -- REDIRECT -- MR. SWARAT

1 MR. SWARAT: Just one.

2 REDIRECT EXAMINATION

3 BY MR. SWARAT:

4 Q Were any of these items, any of these swabs that
5 were submitted, identified with Travis Harsey?

6 A No, sir, they were not.

7 Q Thank you.

8 MR. SWARAT: That's all I have and I ask that
9 she be excused.

10 THE COURT: Anything else, Mr. Bolt?

11 MR. BOLT: No, Your Honor.

12 THE COURT: Agent, you are free to go. You
13 can leave if you would like to.

14 MR. SWARAT: Your Honor, with that the State
15 rests.

16 THE COURT: Ladies and gentlemen, as you have
17 heard, the State has rested their case at this time.
18 There are some matters I need to take up with the
19 attorneys. I will ask you to step to the jury room
20 while I do. Remember, don't talk about the case.

21 (The jury retires to the jury room).

22 THE COURT: The jury is secured. Any motions,
23 Mr. Swarat?

24 MR. SWARAT: None from the State.

25 THE COURT: I assumed they weren't. Any from

1 the defense?

2 MR. BOLT: Just a moment, Your Honor.

3 (Pause).

4 MR. BOLT: Your Honor, I move for a directed
5 verdict, first of all, as to the murder count. There is
6 testimony that there were angry words uttered by the
7 Defendant, Mr. Tyler.

8 The testimony, all of the testimony, with
9 respect to the weapon is linked to Mr. Harsey, the
10 codefendant, who is not before you and not at trial at
11 this time.

12 The pathologist testified -- I suppose an
13 inference could be made with the D.N.A. on the ceiling
14 tile that Mr. Tyler struck the victim, but the testimony
15 by the pathologist is that none of those injuries were
16 fatal.

17 There is no testimony linking Mr. Tyler to the
18 weapon, which I believe the only reasonable inference
19 would be that it's Mr. Harsey's .40-caliber Glock
20 firearm.

21 Moreover I would move for a directed verdict
22 on the conspiracy charge because there is absolutely no
23 evidence of any conspiracy. The testimony of
24 Mr. Williams was he dropped Mr. Tyler off at
25 Mr. Harsey's house, that they were going to see

1 Mr. Lewis.

2 But there was never any testimony of what they
3 were going to do when they got there. There is no
4 testimony that Mr. Harsey conspired with Mr. Tyler or
5 that Mr. Tyler conspired with Mr. Harsey. It's just
6 that they were going there. That's not enough to
7 support a verdict for conspiracy.

8 THE COURT: Counsel, I would have to deny the
9 motion. There is enough circumstantial evidence at
10 least to allow the State to go forward, of course,
11 particularly under the hand of one is the hand of all
12 theory, but even on some of the other circumstantial
13 evidence also. So I would have to deny the motion.

14 Solicitor, do you want to put anything on the
15 record at all?

16 MR. SWARAT: No, Your Honor.

17 THE COURT: Anything else, Mr. Bolt?

18 MR. BOLT: Not at this time, Your Honor.

19 THE COURT: Are you going to want to start
20 your case this afternoon or do you want to wait until in
21 the morning?

22 MR. BOLT: No, sir. Mr. Swarat, consistent
23 with his pattern, has caught me off guard. Frankly, we
24 thought -- we talked about the case. We thought it
25 would go well until early this evening, perhaps

1 tomorrow. So I really need the time to consult with my
2 client --

3 THE COURT: That's fine.

4 MR. BOLT: -- and start in the morning if that
5 would be appropriate. Our case will not take over half
6 a day.

7 THE COURT: What I need to do is ask him some
8 questions now.

9 MR. BOLT: Yes, sir.

10 THE COURT: I will give him some time to think
11 about it. You can talk with him, and he can give the
12 answers back tomorrow.

13 MR. BOLT: Yes, sir.

14 THE COURT: Mr. Tyler, would you stand up,
15 please, sir. Madame Clerk, would you put him under
16 oath.

17 RANDALL SCOTT TYLER is first
18 duly sworn.

19 THE COURT: Mr. Tyler, we have discussed some
20 of this before. But you understand that this is a case
21 in which the State has charged you with three criminal
22 offenses. Since they have charged you, they have the
23 burden of proof.

24 In other words, they must prove you guilty
25 beyond a reasonable doubt. And, of course, they have to

1 call witnesses to do that, which they have just done.

2 You, of course, have no burden of proof. You
3 don't have to prove a single thing. That means you can
4 do one of two things. You can just stop at this point
5 and just let the jury decide whether or not the State
6 has proven their case based on what is in the record now
7 or you can go ahead and go forward.

8 In other words, first of all, you can call a
9 case. In other words, you can call witnesses if you
10 wish; but you don't have to. It is your choice to do
11 that.

12 Now, if you don't call any case at all, then
13 you would have -- I believe, as I recall, you introduced
14 no evidence. So your lawyer would have the last closing
15 argument if you wanted that. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And, of course, it's your decision
18 as to whether to do that. The other decision is as to
19 whether to testify or not. You have a right to testify
20 if you want to, but you don't have to testify.

21 If you would choose not to testify, I would
22 tell the jury that they could not consider that in any
23 way. In fact, they could not even talk about it in the
24 jury room. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, if you were to testify, then
2 that would mean that you would have to answer any
3 questions your lawyer put up that were appropriate, but
4 you would also have to answer any appropriate questions
5 from the solicitor. Do you understand that?

6 THE DEFENDANT: Yes, sir, I do.

7 THE COURT: I think we have already been over
8 the fact that if you testified -- I believe, Solicitor,
9 as I recall, there were no prior convictions that could
10 actually be brought up; is that correct?

11 MR. SWARAT: I wasn't planning on it, no, Your
12 Honor.

13 THE COURT: Right. Do you understand they
14 would not be able to ask you about any prior
15 convictions? Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So you understand these are your
18 decisions to make?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, do you feel that you are
21 emotionally and physically able to make these decisions?

22 THE DEFENDANT: Yes, I do, sir.

23 THE COURT: Today have you had any kind of
24 medication, drugs or alcohol or anything at all that
25 influences your ability to make these decisions?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you had a chance to talk with
3 your lawyer?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I understand he wants to talk to
6 you a little bit more around that. Do you understand
7 that?

8 THE DEFENDANT: (Nods head). (Indicating
9 affirmative response).

10 THE COURT: Have you been satisfied with your
11 lawyer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you feel like he has done what
14 you wanted him to?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you have had his advice in
17 this matter?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: What I'm going to do is give you a
20 chance to talk with him. Then when we come back in the
21 morning, I will ask you basically these same questions
22 again.

23 THE DEFENDANT: Okay.

24 THE COURT: That will be after you had a
25 chance to talk with him. What will happen in the

1 morning is that if you call no case, then of course we
2 will be prepared to go to the jury with closings. But
3 if you do call a case, then we will get started into
4 that first thing in the morning. Do you understand
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any questions about
8 any of this at this point?

9 THE DEFENDANT: No, sir. I feel that I need
10 to testify because there was three of us actually there,
11 and one is gone.

12 THE COURT: Yes, sir.

13 THE DEFENDANT: People need to know the whole
14 story, not just part of the story.

15 THE COURT: And you understand that certainly
16 you can do that; but if you change your mind before in
17 the morning, you can do that if you want to. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: It's up to you.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: We will take that up in the
23 morning first thing then. Anything else then, Mr. Bolt?

24 MR. BOLT: Your Honor, Mr. Tyler has asked me
25 to request in the form of an oral motion that the jury

1 be taken to the crime scene for a viewing to see this
2 property. So I make that motion at this time.

3 THE COURT: What is the State's position on
4 the motion?

5 MR. SWARAT: I will leave it to the Court. I
6 will not object to it.

7 THE COURT: We will allow them to do that
8 tomorrow after we have completed all the evidence. Of
9 course, I will give them the appropriate charge at the
10 time.

11 MR. SWARAT: Your Honor, I want to prepare
12 you, it's quite a field trip. It's about a good
13 50-minute ride down there.

14 THE COURT: Okay.

15 DEPUTY: It's almost to the Orangeburg County
16 line.

17 THE COURT: Yes, I'm familiar with that area
18 down there. I assumed it would take awhile. I
19 remember, I think it was with the Starnes' case, when we
20 all went down to Pelion. I didn't think we would ever
21 find it.

22 DEPUTY: I know exactly how you feel.

23 THE COURT: I will see you then in the
24 morning. Let's bring the jury back in and let me tell
25 them before we leave them in the room.

1 MR. BOLT: What time did you say, Your Honor?

2 THE COURT: Nine-thirty.

3 MR. SWARAT: Your Honor, I have one problem.
4 The house is rented.

5 THE COURT: Sir?

6 MR. SWARAT: The house is rented right now.

7 THE COURT: We can talk about that in just a
8 second then.

9 (The jury returns to the courtroom).

10 THE COURT: All parties and attorneys are in
11 the courtroom, and all jurors have returned.

12 Madame Forelady, what we are going to do is
13 go -- since the State has rested their case, what I
14 normally do if it is near the end of the day is give the
15 defense some time to get prepared to start their case
16 the next morning.

17 So that is what we are going to do now. We
18 will stop for the day. I will ask you to come back in
19 the morning at 9:30. I anticipate we should get the
20 case over with sometime tomorrow. But certainly if we
21 don't, we certainly will move as quickly as we can to do
22 that.

23 Remember, we don't talk about the case. I
24 will see you back in the morning at 9:30. Have a good
25 evening.

1 (The jury is excused for the day at 4:10 p.m.)

2 THE COURT: Mr. Swarat, I understand you say
3 the house is rented?

4 MR. SWARAT: Yes, Your Honor. It's just
5 recently been leased and it's currently occupied. I
6 don't know how you want to deal with that. I don't know
7 if they would want to go inside or if the defense is
8 requesting that.

9 THE COURT: Well, what let's do is why don't
10 we have somebody contact the people who are there now
11 and see if they have any objection to it.

12 MR. SWARAT: If I knew we were going to do
13 this, I wouldn't have put all those pictures in.

14 THE COURT: If they object to doing it, then
15 we will decide that in the morning.

16 MR. SWARAT: Thank you, Your Honor.

17 THE COURT: With that in mind, we will be in
18 recess until 9:30 in the morning.

19 (Whereupon the proceedings were concluded for
20 June 10, 2003).

21 (The following proceedings were concluded for
22 June 11, 2003).

23 THE COURT: All parties and attorneys are in
24 the courtroom. Counsel, as I understand, I think we now
25 are about ready. This thing of going to the scene

1 turned out to be far more complicated than we could
2 imagine.

3 I note this for the record. I believe you
4 were able to contact the landlord who was not able to
5 contact the tenants. She indicated she would give her
6 permission to go at least on the property.

7 We cannot actually allow the jury to go inside
8 the house because of the privacy of the people who now
9 live there. What we will do is let them go out there.
10 It will work as follows.

11 Are the deputies in here that are going to go?
12 Madame Clerk, how about bring the deputies over now and
13 let's go ahead and get them sworn.

14 CLERK: I have two deputies and two bailiffs.

15 THE COURT: That's fine.

16 (The bailiffs and deputies are sworn to take
17 the jury to the scene).

18 THE COURT: All deputies and bailiffs are
19 sworn. Deputies and bailiffs, one second. Wait one
20 second. What I want all of you to do is this. Remember
21 this. When you get out there with them, you are to do
22 this.

23 Don't talk with the jury, period. I know it's
24 obviously tempting to talk about how the Gamecocks are
25 going to do next week, but don't even talk about that.

1 Just don't talk at all, and don't let them talk among
2 themselves. I know that means it's going to be a real
3 quiet van, but it's just got to be that way.

4 Once they get there, you can help them out.
5 Obviously if you have got to speak to them to tell them,
6 "Do you want me to open the door or do you want me to do
7 this," fine. You have got to do that. It's just a
8 matter of common sense. Don't talk about anything
9 beyond that.

10 Don't let them talk with each other or talk
11 with you. I am going to give them an instruction here
12 in just a minute, but it's important that you see to it
13 that they don't talk during the process. Thank you.

14 What will happen is these deputies will go. I
15 understand, Solicitor, you and Mr. Moses are going to
16 go; is that correct?

17 MR. SWARAT: That's correct.

18 THE COURT: With the investigator?

19 MR. SWARAT: We are just going to be in the
20 area. I don't really want to get down in there.

21 THE COURT: Right.

22 MR. SWARAT: Your Honor, logistically where is
23 the Defendant going to be in relation to the property?

24 THE COURT: I am getting into that in just a
25 minute. Mr. Bolt, you and the Defendant are going to

1 go; is that right?

2 MR. BOLT: Yes, sir.

3 THE COURT: What all of you have to do -- this
4 is to all attorneys and litigants -- stay across the
5 road. Don't come onto the property. Just stay at a
6 distance from there. You can watch, you can observe,
7 but obviously none of you can talk to the jury at all.
8 All you can simply do is observe.

9 In case either of you have any objection to
10 the way it's handled, you can always put it back on the
11 record when you come back in. It's to let you see what
12 goes on. It's just a matter of not talking to the jury.

13 I understand there will be some law
14 enforcement folks with the Defendant. But what I am
15 going to tell the jury, which is correct actually, is
16 that law enforcement is out there to see that nobody
17 bothers them while they are there.

18 So when they see a lot of law enforcement,
19 even around the Defendant, I think they will understand
20 that they are there just to look at the whole situation.

21 The other complication is that Siller advises
22 me there is some problem with dogs out in that area,
23 maybe some sort of wild dogs running around. They had
24 to have somebody already go out to the scene and make
25 sure -- the last thing we need to do is get a juror

1 bitten by a dog.

2 Like I said, this thing has really become much
3 more complicated than we could have imagined. I think
4 we are finally at that point. Anything before I bring
5 the jury in from the State?

6 MR. SWARAT: No.

7 THE COURT: For the defense.

8 MR. BOLT: No, sir, Your Honor.

9 THE COURT: Let's bring the jury in. What is
10 the address on this?

11 MR. SWARAT: Highway.

12 (The jury returns to the courtroom at
13 10:34 a.m.)

14 THE COURT: All parties and attorneys are in
15 the courtroom and all jurors have now returned.

16 Madame Forelady, and ladies and gentlemen,
17 thank you for your patience. Let me tell you why you
18 have had to wait a little while. At this time we are
19 going to have you taken to the scene at
20 Highway. This is the scene where the events are alleged
21 to have occurred in this case.

22 Now, it will be shown to you. It's been
23 agreed upon by the parties. It will be shown to you and
24 you will see it, but no other statements are to be made
25 to you or by you.

1 It will be your duty to make a careful view of
2 the place involved, but you will not take any testimony.
3 You must not permit any statement about the case to be
4 made to you during that time or even in your presence.

5 You cannot make any experiments or tests in
6 connection with the place. Because the taking of
7 experiments or tests would be the equivalent of taking
8 evidence, which the law does not allow in this
9 circumstance.

10 The purpose is simply to allow you to visit
11 the overall -- to view rather -- the overall dimensions
12 and physical surroundings on the outside of the
13 interior.

14 The condition of the premises should not be
15 taken into consideration by you in any way. This is
16 because so much time has elapsed that any inferences you
17 draw would be speculative. That would be improper. You
18 don't know what changes may have been made to the
19 property during that period of time.

20 So I would instruct you then that it's not
21 proper for you to discuss or consider the condition of
22 the property today as it affects any issue in this case.

23 Again, the purpose is simply to allow you to visit and
24 view the premises and just have a firsthand knowledge of
25 what the premises look like.

1 At this time we are going to let you go out
2 there. The deputies and bailiffs are going to go with
3 you. I will tell you this. The attorneys and the folks
4 involved in the case will also be there, but they will
5 be across the road. They won't talk to you.

6 You will see several law enforcement people
7 there. The reason they are there is to make sure that
8 nobody bothers you while you are out there. We don't
9 anticipate that happening, but obviously if 13 people go
10 walking onto somebody's front yard, some neighbor is
11 liable to come out and want to know what is going on.

12 Obviously if they see a bunch of law
13 enforcement -- let's control the radios, please -- if
14 they see a lot of law enforcement people there, they are
15 not going to bother you; and they won't say anything.

16 So that's why they are out there. I want you
17 to be sure you understand that. I realize that makes
18 for sort of a quiet van all the way down there, and it
19 apparently is a good little stretch down there; but
20 that's just the way it has to be.

21 It's very important. Don't talk about it.
22 Don't talk about the case at all obviously. Don't do
23 any discussion at all down there. View the property and
24 still don't make any -- you will obviously view it and
25 you will have your own impressions of it, but again

1 don't make any final conclusions about anything until
2 you have heard everything in the case.

3 With that in mind, we are going to let the
4 deputies and bailiffs go ahead and go with you at this
5 time. The county vans are ready to take you.

6 Madame Forelady, if you need anything, if
7 anybody needs a door open or something like that, I will
8 leave it to you to tell the deputies that; okay?

9 FORELADY: Yes, sir.

10 THE COURT: You just can't go inside.

11 (The jury leaves the courtroom).

12 THE COURT: Any exception to that charge from
13 the State?

14 MR. SWARAT: None from the State.

15 THE COURT: Defense?

16 MR. BOLT: No, Your Honor.

17 THE COURT: Counsel, I know y'all want to get
18 behind them or something, at least get on down there.
19 So I will let you head on down there now. Again, the
20 only ones going are Mr. Swarat, Mr. Moses and your
21 investigator?

22 MR. SWARAT: Detective Frier is going to drive
23 us.

24 THE COURT: Mr. Bolt and the Defendant, right?

25 MR. BOLT: Yes, sir.

1 THE COURT: I will see you when you get back.

2 (Whereupon there was a recess).

3 THE COURT: The State, are you ready to start
4 back?

5 MR. SWARAT: Yes, sir.

6 THE COURT: Let me note, first of all, all of
7 you went to the scene of the allegations. Any
8 exceptions or comments on the way things transpired from
9 the State?

10 MR. SWARAT: Your Honor, by the time we got
11 out there, they were getting ready to leave and head
12 back. I didn't really see what transpired. I guess I
13 will listen to see if there is any problem over here
14 from the defense prospective.

15 THE COURT: Mr. Bolt?

16 MR. BOLT: No, Your Honor. I followed your
17 instructions and remained across the highway.
18 Everything when totally uneventful. I have no objection
19 or problem with the way the jury viewing transpired.

20 THE COURT: Okay. Let me note, Deputy Novak,
21 I think you went with the jury. Did anything of any
22 note occur during the trip?

23 DEPUTY: No, sir.

24 THE COURT: Thank you. I believe yesterday we
25 had left off talking with the Defendant about his rights

1 in this matter.

2 Mr. Tyler, let me ask you to stand again,
3 please, sir. Have you had further opportunity now to
4 talk with your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand again --
7 remember we asked you all this yesterday -- and I ask
8 again today, have you had any kind of medication or
9 drugs or alcohol or anything at all that influences your
10 judgment today?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you feel like you are capable
13 of making decisions that you need to make?

14 THE DEFENDANT: Yes, sir, I do.

15 THE COURT: You have had a chance to talk with
16 your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you been satisfied with his
19 advice?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And I would ask then, first of
22 all, have you decided whether you will call a case?

23 Will you call any witnesses?

24 THE DEFENDANT: Yes.

25 THE COURT: And you understand, of course,

1 that that would mean that your lawyer would not have the
2 final closing argument.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Also, do you plan to testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand again, once you
7 start, you have to answer any questions from your lawyer
8 and from the State's lawyer? Do you understand that?

9 THE DEFENDANT: This is very important. Yes,
10 sir, I do.

11 THE COURT: And in essence even to the point
12 that the jury comes in before your lawyer calls you,
13 you have a right to change your mind if you want to. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: Do you have any questions of me
17 about all of this?

18 THE DEFENDANT: No, sir.

19 THE COURT: The State, are you ready?

20 MR. SWARAT: The State is ready.

21 THE COURT: Is the defense ready?

22 MR. BOLT: Pardon, Your Honor?

23 THE COURT: Are you ready?

24 MR. BOLT: Yes, sir.

25 THE COURT: Bring the jury.

RANDALL TYLER -- DIRECT -- MR. BOLT

1 (The jury returns to the courtroom at
2 12:35 p.m.)

3 THE COURT: All parties and attorneys are in
4 the courtroom, and all jurors have returned. Mr. Bolt.

5 MR. BOLT: Thank you, Your Honor. We call
6 Randall Tyler.

7
8 RANDALL SCOTT TYLER, being
9 first duly sworn, testified as follows:

10 CLERK: Have a seat and state your full name,
11 please.

12 THE WITNESS: My name is Randy Scott Tyler.

13 DIRECT EXAMINATION

14 BY MR. BOLT:

15 Q Mr. Tyler, do you go by Randy?

16 A Yes, sir.

17 Q I want you to speak directly into the microphone.
18 It's important for all the jurors to hear you,
19 okay?

20 A Yes, sir.

21 Q How old are you?

22 A Thirty-six.

23 Q And where were you born, Randy?

24 A Jackson, Michigan.

25 Q And did you grow up in the State of Michigan?

RANDALL TYLER -- DIRECT -- MR. BOLT

- 1 A Yes, sir.
- 2 Q You are currently a resident of South Carolina?
- 3 A Yes, sir.
- 4 Q How long have you lived in South Carolina?
- 5 A Approximately five years.
- 6 Q Back on the 13th of July, 2002, the date that
- 7 Mr. Lewis was killed, where did you live at that
- 8 time?
- 9 A Road.
- 10 Q And that's over in Richland County?
- 11 A Yes, sir.
- 12 Q Are you married?
- 13 A Yes, sir.
- 14 Q And do you have children?
- 15 A Three.
- 16 Q And throughout the case your wife and mother have
- 17 been here with you. I believe they are out
- 18 temporarily right now?
- 19 A Yes, sir.
- 20 Q Randy, Robert Lewis we have heard was known as
- 21 Corky Lewis. Did you know him?
- 22 A Yes, sir, I did.
- 23 Q And how long had you known him back on the 13th of
- 24 July of last year?
- 25 A Approximately four years.

RANDALL TYLER -- DIRECT -- MR. BOLT

1 Q And was your relationship with him a good
2 relationship? How would you characterize your
3 relationship with Corky Lewis?

4 A He was a very good friend of mine.

5 Q Approximately two days before Mr. Lewis' death --
6 that is, on the 11th, thereabouts, of July last
7 year -- did you go to his house?

8 A Yes, sir, I did.

9 Q And did anything out of the ordinary happen on that
10 day?

11 A No.

12 Q Did you have a friendly relationship with him on
13 that day?

14 A Yeah.

15 Q At the time of his death -- that is, once again the
16 13th of July, last year -- did you have any
17 intention of going to his house on Savannah Highway
18 and killing him?

19 A No, sir.

20 Q Did you have any malice in your heart toward him?

21 A No, sir.

22 Q Did you want him dead?

23 A No.

24 Q Did you form some plan with a guy named Travis
25 Harsey to go to Corky's house and kill him or rob

RANDALL TYLER -- DIRECT -- MR. BOLT

1 him?

2 A No, sir.

3 Q Now, was there something other than friendship that
4 was the basis of your relationship with Mr. Lewis?

5 A Drugs.

6 Q And tell me about that. Did y'all buy drugs or
7 sell drugs or what?

8 A Buy and sell drugs.

9 Q Both of you?

10 A Yes.

11 Q How about Travis Harsey? Did he buy and sell
12 drugs?

13 A Travis got drugs from me, and I got drugs from
14 Corky.

15 Q And at the time of Mr. Lewis' death, were you
16 selling drugs to Travis Harsey?

17 A Yes, sir.

18 Q And who did you get the drugs from that you sold to
19 Travis Harsey?

20 A From Corky.

21 Q Now, you have heard testimony about where Mr. Lewis
22 and his wife Donna Hutto lived?

23 A Right.

24 Q How many times had you been there at the time of
25 Mr. Lewis' death?

RANDALL TYLER -- DIRECT -- MR. BOLT

1 A Prior to that?

2 Q Yes.

3 A A lot.

4 Q Approximately how many times had you been there?

5 A I knew him four years, a lot.

6 Q Did he have another place that you visited from
7 time to time?

8 A Her, Donna's house, and they had a lake house out
9 on Lake Murray.

10 Q On the 13th of July last year, Mr. Lewis had a lake
11 house on Lake Murray?

12 A Yes, sir.

13 Q Whereabouts?

14 A In Jake's landing.

15 Q Did you ever see Mr. Lewis at Jake's Landing at his
16 property there?

17 A Yes, sir.

18 Q Did you ever go fishing with him out there?

19 A Yes, sir.

20 Q Now, I want you to direct your attention to the
21 13th of July, 2002; all right? It's the day
22 Mr. Lewis died, the day he was shot. Did you have
23 an occasion to go to his house?

24 A Can I --

25 Q Did you go to his house? Just yes or no right now.

RANDALL TYLER -- DIRECT -- MR. BOLT

1 A Both houses, yes, sir.

2 Q I want you to back up and tell us, from the time --
3 did you go with Jimmy Williams, your wife's uncle,
4 I believe he is?

5 A Yes, sir.

6 Q The gentleman who testified yesterday?

7 A Yes, sir.

8 Q Just pick it up from the beginning and tell us what
9 happened.

10 A From the time Jimmy took me?

11 Q From the time you left with Jimmy. Tell me --

12 A Jimmy was taking me over --

13 Q -- where you went and why you went there.

14 A Travis wanted some dope.

15 Q I didn't hear that.

16 A Travis wanted some dope.

17 Q Travis Harsey, your codefendant?

18 A He had wanted some dope. He called me a couple of
19 days before this. That's when I called Corky.
20 That's when I went out to Savannah Highway. This
21 was a couple of days prior.

22 I went in the house. Donna was in the
23 computer room. Corky and me was in the living
24 room. I said, "You got anything?" He said, "No, I
25 won't have anything until this weekend."

RANDALL TYLER -- DIRECT -- MR. BOLT

1 Q When you said, "You got anything," what were you
2 referring to?

3 A Drugs.

4 Q What kind of drugs?

5 A Crystal meth.

6 Q So he didn't have any drugs?

7 A He said, "I won't have anything until this
8 weekend." I said, "So what do you want to do?
9 Where are you going to be at?" He said the lake
10 house. I said, "Do you want to go fishing?" He
11 said yeah and I left.

12 Q That was two days before? That was about the 11th
13 of July?

14 A Yeah, I wasn't even there probably -- I wasn't at
15 the house probably maybe a half hour.

16 Q Okay.

17 A Maybe a half hour.

18 Q All right.

19 A I left and a couple of days later I talked to
20 Travis. He said, "You got anything?" I said,
21 "Well, it will be the weekend before I can get you
22 anything." I told him my car was broke down.

23 Q Was it?

24 A Yes. Yes, it was. Yes, it was. So I asked Jimmy
25 to give me a ride over to Travis'. Jimmy gives me

RANDALL TYLER -- DIRECT -- MR. BOLT

1 a ride over to Travis'. We were at Travis' maybe
2 15 minutes, 20 minutes. We went in. We went in
3 the bedroom. When we were first in the living
4 room, I don't know if you guys know what a blunt
5 is.

6 Q Wait. Did you go to the lake house first?

7 A After we left Travis', we went to the lake house
8 first.

9 Q Go ahead. You were at Travis'. Jimmy takes you
10 there. Go ahead.

11 MR. SWARAT: Your Honor, if defense counsel
12 will let him testify.

13 MR. BOLT: I'm sorry.

14 A We went in the bedroom because I asked Travis could
15 I roll a blunt. I didn't want to roll it in front
16 of his kids. We went in his bedroom. I rolled a
17 blunt. It probably took two minutes, three
18 minutes.

19 I rolled a blunt. I asked Jimmy if he wanted
20 to smoke it. Jimmy said no. He said, "I got to
21 get out of here. I got to go." I said okay.

22 We all left at the same time. Jimmy got in
23 his truck and left. I got in Travis' car with him.
24 We rode down the road to Jake's Landing. I was
25 just going to get a few ounces of dope, get him the

RANDALL TYLER -- DIRECT -- MR. BOLT

1 dope; and he was going to be on his way. We was
2 going to be fishing.

3 I didn't have to tote no dope. I didn't have
4 to do nothing. He wasn't -- him and Donna weren't
5 at the lake house. So he was going to carry me
6 back to my house out on Bluff Road.

7 When we were going down 26, we passed 321. I
8 said, "Heck with it. Just give me a ride out to
9 the other house." He gave me a ride out to the
10 other house. We pulled in the driveway. I said,
11 "I will be right back."

12 I didn't go there to get dope because it was a
13 hot house. The house has been raided before.
14 There was no dope even at this house. I wanted to
15 find out --

16 Q Slow down. Slow down.

17 A I just wanted to find out if we were going to go to
18 the lake house and do the transaction and go
19 fishing and what have you. When I got out of the
20 car, the garage light was on; but the front yard
21 light was not.

22 The yard was dark. That wasn't normal.
23 Usually there is a big mercury light on the side
24 and a mercury light on the front of the house and a
25 mercury light in the back yard.

RANDALL TYLER -- DIRECT -- MR. BOLT

1 But the front yard was dark. I could see the
2 garage light on. When I come around the side of
3 the garage, the bay was open. Corky was in the
4 back corner.

5 And prior to all this, I had been helping him
6 work on his trailer and Donna, too. When I come in
7 the garage, he was like, "What do you think?" He
8 pointed right at the trailer because he had done a
9 lot more work to it since then. I said, "Yeah,
10 that's looking good."

11 I went to shake his hand. When I went to
12 shake his hand, he said, "Randy," like that. If
13 somebody was to come up behind you, you are going
14 to look like this (indicating). When he hollered
15 and he looked behind me, I turned and Travis
16 come -- he run into the side of me. He hit him in
17 the head.

18 We both -- when we both fell, Corky had a hold
19 of my hand. When he fell he dug my hand when he
20 fell into the corner of the garage. He stood up.
21 We both stood up. Travis hit him again. He pulled
22 the pistol on us, and he led us in the house. He
23 made us.

24 Q Did you take a gun there?

25 A No. No, sir.

RANDALL TYLER -- DIRECT -- MR. BOLT

1 Q Did you have a gun on you at all that night?

2 A No, sir.

3 Q All right. Go ahead.

4 A He ordered us into the house. When we come across
5 the threshold of the house coming into the door,
6 Corky about fell on me. I mean, we were scared.
7 We were trying to get out of his way.

8 When we got into the house, there was -- we
9 kind of fell a little bit. There was like a little
10 altercation because he was bigger than I was. He
11 was behind me. We went through.

12 We come into the house. I sat on the couch,
13 he sat on the couch; and Travis was in front of us
14 with a gun hollering, "Where is -- can I used the
15 word?

16 Q You can use the word, yeah.

17 A "Where's the fucking dope? Where's the fucking
18 dope?" We couldn't get him to put the gun down.
19 We tried to get him to put the gun down. He
20 wouldn't put the fucking gun down.

21 He hit Corky again. Corky was on the side of
22 me. He hit him again. Corky stood up and he went
23 to run past me, and he landed on the love seat.

24 I come around the couch by the love seat with
25 him. I was sitting right beside him. Travis was

RANDALL TYLER -- DIRECT -- MR. BOLT

1 in front of the coffee table saying, "Where's the
2 fucking dope? Where's the fucking dope?"

3 He shot like that. When he shot it went into
4 the couch because I seen the white stuff come out
5 of the couch, and the powder hit me in the head
6 because the gun was so close. I turned like that
7 (indicating).

8 The door, the front door, was half that far
9 away (indicating). It was wide open. I grabbed
10 the door and I run down. I run down the driveway.
11 I run down the road. I got halfway down that
12 hill --

13 Q Let me stop right there. You went out of the
14 house?

15 A Yes.

16 Q You went out the driveway in front of the house?

17 A Yes.

18 Q You got to the highway?

19 A Yeah.

20 Q Which way did you go, left or right?

21 A To the right.

22 Q Is there a hill out there that goes down?

23 A Yes, there is.

24 Q All right. Go ahead.

25 A I was running as fast and as hard as I could. I

RANDALL TYLER -- DIRECT -- MR. BOLT

1 got somewheres in the middle of the hill, the
2 bottom of the hill. I couldn't even breathe. I
3 couldn't even swallow. If you ever run that hard,
4 you couldn't swallow. I just couldn't swallow.

5 All of a sudden he pulled up behind me
6 flashing lights. I didn't know. I turned around
7 like that, and there was Travis with a pistol
8 hollering, "Get in the fucking car. Get in the
9 fucking car."

10 I got in the car. He pulled off. When he
11 pulled off, he told me, he just started hollering
12 and screaming, "You better take my fucking name out
13 of your mouth. You better take my fucking name out
14 of your mouth."

15 I don't remember anything after that. I don't
16 remember the ride home. I know when I got to my
17 house --

18 Q Did you ever try to rob Corky that night?

19 A No.

20 Q Did you go there -- did you sit down with Travis
21 Harsey and come up with a conspiracy or a plan or a
22 plot to rob or kill Corky Lewis?

23 A No, no.

24 Q Let me ask you about this. Did you ever -- did
25 Corky Lewis, in fact, ever display any charity

RANDALL TYLER -- DIRECT -- MR. BOLT

1 toward you?

2 A Corky would give me anything I asked for, anything.

3 Q Did you ever buy or sell a car to him?

4 A Yeah, I bought a car. He bought my car, for way
5 more than it was worth.

6 Q Did he ever give you the car back?

7 A Yes. Yes, he did. And I sold the car two or three
8 days before this incident happened.

9 Q So he bought a car from you and gave you the car
10 back?

11 A Yes.

12 Q So you had the money and the car?

13 A Yeah.

14 Q That's pretty nice.

15 A Yeah. It was only three of us there.

16 Q Okay. Do you have any conscious recollection of
17 what happened after Travis picked you up on the
18 highway?

19 A (Witness shakes head). (Indicating negative
20 response).

21 Q Do you remember going home at some point?

22 A The next thing that I remember is when he told me
23 to get out of the car. He told me I better take
24 his name out of my mouth.

25 Q What did that mean, "Take my name out of your

RANDALL TYLER -- DIRECT -- MR. BOLT

1 mouth"? What did you infer that that meant? What
2 did you believe that meant?

3 A That I better keep my mouth shut.

4 Q Just a minute.

5 MR. BOLT: Where are the exhibits?

6 (Pause).

7 COURT REPORTER: Judge, they were up here this
8 morning. I really don't know what happened to them.
9 Let me call the clerk.

10 THE COURT: Jurors, let me ask you to step to
11 the jury room just for a moment. While you are there,
12 be sure not to talk about the case.

13 (The jury retires to the jury room).

14 THE COURT: The jury is secured. Let's get
15 everything together before they come back in.

16 (Pause).

17 THE COURT: Counsel, I understand the court
18 reporter is ready now. Let me ask one thing, too. How
19 long do you anticipate your direct will be, Mr. Bolt?

20 MR. BOLT: Another 15, 20 minutes.

21 THE COURT: Mr. Swarat, how long do you
22 anticipate cross will be?

23 MR. SWARAT: I don't know. I don't know what
24 he's going to say.

25 THE COURT: Okay. I'm debating. At some

1 point -- it sounds like you wouldn't be able to get
2 through your direct before around one-ish.

3 MR. BOLT: I wouldn't.

4 THE COURT: Why don't we go ahead and just let
5 the jury have lunch at this point.

6 MR. BOLT: All right, sir.

7 THE COURT: Let's bring them out and let me
8 tell them that.

9 (The jury returns to the courtroom).

10 THE COURT: All parties and attorneys are in
11 the courtroom, and all jurors have returned.

12 Let's do this. Ladies and gentlemen, the
13 reason we brought you back out, and I hate to have to
14 bring you out to do this. And by the way, I understand
15 somebody asked about why you have to go in and out so
16 much.

17 There's a very good reason. I appreciate you
18 asking the question, too. When things come up during a
19 trial, we don't have the convenience of taking them up
20 later on. We have to take them up right then. We have
21 got to get things resolved.

22 The danger of taking something up with you
23 sitting in that box is that you may hear the wrong
24 thing. If something accidentally comes out and you hear
25 the wrong thing, then I have to declare a mistrial,

1 which means that we have cost the State thousands of
2 dollars in having to go through a trial all over again.

3 The reason is to be sure that you just don't
4 hear the wrong thing. We have to protect
5 everybody's rights. The way we protect everybody's
6 rights in a case such as this is being sure that you
7 just don't hear the wrong thing.

8 So that's why you have to go in and out so
9 much. That's why for example, just now it may have
10 seemed like a seemingly innocent thing, just looking for
11 a picture. The problem is we had to go through a lot in
12 finding all the evidence and everything, and I just
13 can't take that kind of a chance.

14 You will recall for example -- I don't think
15 you were in there the other day. We had in another
16 case, not even related to this, a juror on Monday -- I
17 think it was after you were gone -- a juror made the
18 wrong comment.

19 She didn't mean anything wrong by it. It was
20 a mistake on her part, but I had to basically declare
21 that whole jury void for that particular case because of
22 one comment. The fact is that one comment taken the
23 wrong way can wipe out all that we have done in the
24 case, and we just don't want to do that.

25 So that's why you have to go back and forth so

1 much. We have to be extremely careful about what we do.
2 That's why you went out just now. Again, you never
3 know. It seemed very innocent.

4 But while they were going through the drawers
5 and everything and looking for all the evidence,
6 somebody could have said the wrong thing; and it would
7 have been a mess. So the reason you do it because I am
8 just very cautious about it. I don't know to take any
9 chances.

10 Anyway, at this point we are going to go ahead
11 and take a lunch break. As you know, we have brought in
12 lunch for you, the lunch you have ordered. We thought
13 at this point or we had hoped at this point that we
14 would have been ready to -- that you would have been
15 deliberating. It hasn't quite worked out that way.

16 Let me tell you this. The reason it didn't
17 work out is as you were going to view the jury scene
18 this morning, as it turned out with the folks who have
19 to set all that up, there was a lot of complications
20 involved. We just had -- some of the people who were
21 setting it up actually had to go out to the scene before
22 you did.

23 And by way of example, somebody said something
24 about neighbors having wild dogs or something in the
25 area. They didn't want to take a chance with that. So

1 we had to be very careful. That's why it took so long.
2 We apologize for that. But again that was for your
3 safety that that was done.

4 Anyway, lunch is ordered for you if you want
5 to stay and eat. You are actually free to go and do
6 whatever you want to do at lunch also if you wish. I
7 will leave that up to you.

8 The other decision that I am going to have you
9 make in a little while is this. We are probably going
10 to finish the case sometime later this afternoon.

11 Madame Forelady, you will need to talk it over with the
12 jury.

13 We have two ways we can do it. We can go
14 ahead and have the closing summations and the charge
15 this afternoon or this evening actually get the case to
16 you.

17 If we do I estimate the closing summations and
18 the charge probably would take an hour and a half to two
19 hours between them, all that put together, which would
20 mean you probably will wind up getting this case
21 sometime after 5:00 o'clock.

22 Here is the deal. Once you have got the case,
23 you are not going home after that. You have got to stay
24 in the jury room until you arrive at a verdict. The
25 law, in fact, requires that if we send you home -- we

1 can't send you home. We have got to send you to a motel
2 for the night if it becomes necessary.

3 I just tell you that ahead of time so that you
4 understand that if you have obligations or anything you
5 have got to do tonight, you need to consider whether you
6 want to do it tonight or whether you want to come back
7 in the morning.

8 I personally don't have a problem either way
9 because I am going to be here doing something. Dealing
10 with you wonderful people is just as good as anything
11 else for me. So I don't have a problem either way.

12 I want you to understand, I don't want
13 somebody to get in here tonight and say, "I've got a
14 problem. I've got to get out of here," and then find
15 out you are not going anywhere.

16 That's why I need for you to make that
17 determination. I leave it to juries when we get to that
18 point. I leave that decision to jurors if you can get a
19 clear consensus. If you can't get a clear consensus,
20 like you are divided on it, then I will make the
21 decision.

22 Anyway, I want to be sure you understand that,
23 Madame Forelady, so y'all understand kind of where we
24 are going at this point. The fact is I think it will be
25 at least after five before you actually get the case.

1 So again, I don't have a problem either way.
2 It's up to you whether you want to stay tonight or
3 whether you want to come back in the morning. I will
4 let you decide that if you can get a consensus.

5 With that in mind, we will take a lunch break.
6 I will ask you to be back at 2:30. Remember, don't talk
7 about the case. Again, you can stay in the jury room
8 and eat or you can go somewhere if you want to or
9 whatever.

10 (The jury is excused for lunch at 1:00 p.m.)

11 THE COURT: The jury is secured. Counsel, one
12 reason for that long, rambling charge was I am advised
13 by the bailiffs that some of the jurors have been asking
14 questions about -- and you just have this sometimes with
15 different jurors. Different people react different
16 ways.

17 Some of them were asking why they have to go
18 out so much and why we do things the way we do. That's
19 why I wanted to be sure and let them know. As you know,
20 I particularly wanted to be sure that they know the
21 circumstances about once they have to stay and so forth.
22 Any exception to those instructions to the jury from the
23 State?

24 MR. SWARAT: No, Your Honor.

25 THE COURT: Defense?

1 MR. BOLT: No, sir.

2 THE COURT: We will see you back at 2:30.

3 MR. SWARAT: Your Honor, I just want to make
4 sure Mr. Tyler understands he is in the middle of his
5 testimony.

6 THE COURT: I am about to do that. Mr. Tyler,
7 you understand that you are in the middle of your
8 testimony. So you can't talk with anybody about your
9 testimony at this point.

10 THE WITNESS: That's fine.

11 THE COURT: Do you understand?

12 THE WITNESS: Yes, sir.

13 THE COURT: You have got to be very careful
14 about that.

15 THE WITNESS: Yes, sir.

16 THE COURT: With that in mind, we will go
17 ahead and recess and be back at 2:30.

18 (Whereupon there was a luncheon recess).

19 THE COURT: Is the State ready?

20 MR. SWARAT: The State is ready, Your Honor.

21 THE COURT: Is the defense ready?

22 MR. BOLT: Yes, Your Honor.

23 THE COURT: Bring the jury in. Ask the
24 Defendant to come back to the stand.

25 RANDALL SCOTT TYLER, having

1 been previously duly sworn, resumed the witness stand
2 and testified as follows:

3 (The jury returns to the courtroom).

4 THE COURT: All parties and attorneys are
5 present, and all jurors have returned.

6 Madame Forelady, has the jury developed any
7 sort of idea as to what you prefer to do this evening or
8 tomorrow?

9 FORELADY: Yes, we would like to return
10 tomorrow at 9:00 a.m.

11 THE COURT: Then that's what we will do. We
12 will finish whatever we need to do. After you are gone,
13 what I normally do is I have a charge conference with
14 the lawyers where I go over the charges.

15 We will do that today so that everything is
16 done. Once you get in, we will be prepared to go right
17 into closings.

18 FORELADY: Thank you.

19 THE COURT: Thank you, ma'am. I appreciate
20 your prompt work on it, too. Mr. Bolt.

21 MR. BOLT: Your Honor, just one quick
22 question. We will be making closing statements in the
23 morning?

24 THE COURT: Yes, sir, That's correct.

25 MR. BOLT: Thank you.

RANDY TYLER -- DIRECT -- MR. BOLT

DIRECT EXAMINATION

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BY MR. BOLT:

Q Randy, let me see if I can recall where we were.

You are back at home. You remember being at home?

A Yes, sir.

Q After that did you ever call Travis Harsey on the telephone?

A Yes, I did.

Q What was the reason for calling Travis Harsey on the telephone?

A Because I really didn't know what to do. I was scared. I called his house. It rang four or five times. The answering machine picked up so I hung up.

Q Hold on a minute. I want you to speak into the microphone. Calm down.

A The answering machine picked up so I hung up. I then hung up the phone, and I called Gene Frye. He's a bondsman that -- he is a pretty good friend of mine. I called Gene to tell him what happened.

He said, "Randy, they've got a B.O.L.O. on you." I said, "What is that?" He said, "Be on the lookout." I said, "What do you want me to do, go turn myself in?" He said, "No, you let me find out what's going on and just sit tight, and I will get

RANDY TYLER -- DIRECT -- MR. BOLT

1 back with you."

2 I hung the phone up and picked the phone up
3 again, and I called Travis. When he answered the
4 phone, I told him, "They know what you did, and I
5 am getting ready to tell."

6 He told me to keep my mouth shut and to go
7 call him from the pay phone. About two or three
8 minutes from my house, there's a phone. So I hung
9 the phone up and went down to the pay phone. I
10 called him.

11 He told me to take his name out of my mouth.
12 He threatened my life, my wife, and my child. I
13 told him, "I have to tell them, Travis. I'm
14 telling them. I'm not going to prison for
15 something I didn't do."

16 So I went back and I called Gene Frye. He
17 told me to go hide in the weeds until he got there
18 to come and get me. Gene Frye --

19 MR. BOLT: Your Honor, it's not offered for
20 the truth of the matter asserted, and there is no
21 objection, the conversation with Mr. Frye.

22 MR. SWARAT: Your Honor, I don't know what it
23 is yet.

24 BY MR. BOLT:

25 Q Go ahead.

RANDY TYLER -- DIRECT -- MR. BOLT

1 A Gene Frye, he -- I did just what he told me to. He
2 told me just to hide in the weeds is his exact
3 words. I got to say it like that, "Hide in the
4 weeds until I get there." Where we live I hid in
5 the weeds until Gene came to pick me up and brought
6 me up here.

7 Q Mr. Lewis was killed on the 13th of July.

8 A Yes, sir.

9 Q When was this conversation with Mr. Frye?

10 A Roughly -- I don't know exactly -- roughly
11 8:00 o'clock in the morning because I didn't sleep
12 at all.

13 Q On the subsequent day, the day after you went to
14 Mr. Lewis' house?

15 A It was the very next morning within, like I said,
16 eight, maybe 8:30, 9:00 o'clock.

17 Q And did Mr. Frye ultimately bring you to the
18 Sheriff's Department?

19 A Yes.

20 Q On that day?

21 A Yes.

22 Q You turned yourself in, got booked, fingerprinted,
23 processed, and all that?

24 A Yes, sir.

25 Q And they charged you with murder and burglary?

RANDY TYLER -- DIRECT -- MR. BOLT

1 A Mr. Frier said, he said, "I wish you would waive
2 your rights and talk to me like a man." I said,
3 "This is murder you're talking about. I don't want
4 to talk until I talk to my lawyer." He said okay.

5 Q Did you ever say anything about your brother Matt?

6 A Yes, I did.

7 Q Why did you do that?

8 A I tried to implicate him just so that they wouldn't
9 be looking at me because who is go to believe me?
10 Who? I got tattoos. I got a record. I'm scared.
11 I got a wife and three children. I didn't kill
12 nobody.

13 Q Were you having any personal difficulties with your
14 brother Matt at that time?

15 A I've been having personal difficulties with my
16 brother for about two years.

17 Q And ultimately did you sign a statement?

18 A Yes, I did.

19 Q It was a rather brief statement?

20 A I told them to, "Get my lawyer up here, and I will
21 tell you what happened."

22 Q That was Mr. Simmons?

23 A Yes.

24 Q We heard about that yesterday.

25 A And it took Mr. Simmons a couple of days to get up

RANDY TYLER -- DIRECT --, MR! BOLT

1 here. But when Mr. Simmons got up here, he
2 arranged a meeting with Mr. Frier. We sat there
3 and I told Lawrence what happened.

4 He went in the other room and talked to
5 Mr. Frier. Mr. Frier come back in and I tried to
6 tell him what happened. He just took a brief
7 statement, and he said, "Slow down. Slow down."
8 He said, "I don't need it all. I just need enough
9 just to go arrest the other guy."

10 He said, "I will be back to talk to you
11 later." Here 11 months has gone by and not one
12 person, no one, not one person has asked me what
13 happened that night, nobody.

14 Q Had your brother Matt falsely implicated you? Has
15 he ever stolen anything from you or your wife?

16 A Pardon?

17 Q Your brother Matt, has he ever stolen anything from
18 you?

19 A He stole my wife's car.

20 Q And I take it the two of you don't have a very good
21 relationship?

22 A No. The last time I seen him, he stole my wife's
23 car. We were in Kentucky at my grandmother's. He
24 stole her car, her purse. He left us stranded
25 there, and then he run around the countryside

RANDY TYLER -- DIRECT -- MR. BOLT

1 threatening to kill me.

2 Q What were you wearing when you went to Mr. Lewis'
3 house?

4 A A blue Harley Davidson T-shirt, a pair of blue
5 jeans, and a Yankee's ball cap.

6 Q What was Travis wearing?

7 A A dark pair of baggie jeans. I don't remember
8 seeing a coat. He had on a baggie shirt, but I
9 don't remember it being a coat. I remember
10 Donna testifying that she seen a coat, but I don't
11 remember him having a coat. I didn't see a coat.

12 Q When you went into the garage to talk to Mr. Lewis,
13 how did you enter the garage?

14 A From the bay door. I said hey to him before I even
15 walked in the door. He looked up and he was like,
16 "What's up?" That's when he pointed at the
17 trailer. He was like, "Look at it."

18 Because the last time that I had -- we had
19 worked on the trailer was when we had the frame,
20 just the frame; and we were just laying the grate
21 steel down on it. As a matter of fact, he was
22 showing me how to weld, how to weld the grate steel
23 down on it.

24 Q Now, at any time did you ever agree with, plan
25 with, plot with Travis Harsey to rob or kill Corky

RANDY TYLER -- DIRECT -- MR! BOLT

1 Lewis?

2 A No, no.

3 Q Did you agree with, plan with, plot with Travis
4 Harsey to do anything else to Corky Lewis?

5 A All he was supposed to do was give me a ride, just
6 to give me a ride and get some dope.

7 Q The only agreement you had with Travis Harsey was
8 to buy drugs from Corky?

9 A I wasn't even buying them from him. Corky would
10 front them to me.

11 Q Fronting you?

12 A Front them to me.

13 Q What does that mean?

14 A I didn't have to have no money. I could go there
15 and get them on my word.

16 Q Would you sell the drugs to somebody else?

17 A I would give them -- it was actually all's I would
18 do is give the drugs to Travis. He would sell it
19 to his friends. All's he would do is give me the
20 money, and I would turn around and give the money
21 back to Corky and get more drugs.

22 Q Is that the kind of working relationship that you
23 had for some time with Corky?

24 A That is how I met Corky and Donna, under that
25 specific drug. That was the whole -- that's how we

RANDY TYLER -- DIRECT -- MR. BOLT

1 met.

2 Q Did you hit Corky with your hands or with a gun or
3 anything?

4 A No, sir. No, sir.

5 Q After you entered the garage from the open bay, did
6 you ever go out of the garage and come back in
7 through the side door or another door?

8 A No, sir.

9 Q Did you ever wear a baseball jacket?

10 A No. I never left the garage until we were forced
11 out of that garage with a gun.

12 Q Do you have any recollection of how much
13 time elapsed from the time you ran out the front
14 door until you saw Travis down at the bottom of the
15 hill on 321?

16 A I would say five, maybe five, ten minutes. I don't
17 know how long it took me to get that far. I
18 couldn't run no farther.

19 Q Now, did you ever talk to -- I think his name is
20 Jimmy Williams, who is Gina's, your wife's uncle?

21 A Yes, I did.

22 Q Did you ever talk with him about what he might say
23 or would say to the police if asked?

24 A No. I asked him to lie for me. I told him, I
25 said, "Jimmy, look, Travis did something really

RANDY TYLER -- DIRECT -- MR. BOLT

1 stupid last night. He said he shot him and killed
2 him."

3 So I told Jimmy and Jimmy said, "What are you
4 going to do?" I said, "Who is going to believe
5 me?" I asked him to lie for me. I asked him to
6 lie for me because Gina and the baby, he was
7 threatening to kill them.

8 Q Is that what Jimmy was referring to in his
9 statement about the safety of the baby?

10 A He said he was going to kill them, him and his
11 brother.

12 Q You described the gun discharging?

13 A Yes.

14 Q How many shots were fired before you left the
15 house?

16 A One.

17 Q Was that the shot into the sofa or the love seat,
18 whatever?

19 A The powder hit me in the forehead. That's what
20 made me flinch like that (indicating). When I
21 flinched like that, the hallway was maybe this wide
22 (indicating), and the love seat was here
23 (indicating). When I turned the door was open
24 about that far (indicating). That's when I just
25 grabbed it and I run and I run.

RANDY TYLER -- DIRECT -- MR. BOLT

1 Q When you were in custody, they took pictures of
2 your hand with some abrasions on your knuckles?

3 A They did.

4 Q How did you sustain those once again?

5 A To my -- I have played this over in my head a
6 million times because it's a nightmare. When he
7 grabbed -- when Corky had my hand and when he said,
8 "Randy," like that, I turned and looked. When
9 Travis come butting into me, he hit him. He hit
10 him.

11 He had the pistol in his left hand. When he
12 hit him, he fell. Corky weighs 250-pounds. He
13 pulled off my hand like that (indicating), and he
14 pulled me to the ground.

15 I still have the circular scar. It was his
16 fingernail that pulled off my hand at -- it pulled
17 on the inside of all my fingers. It was a
18 fingernail.

19 Q Did you go to the ground along with Corky?

20 A He pulled us both to the ground. He weighed
21 250-pounds.

22 Q While you were in the garage and Travis came in the
23 garage, did he pull out the .40-caliber -- was it a
24 pistol?

25 A He had the pistol in his hand when he come. When

RANDALL TYLER -- CROSS -- MR. SWARAT

1 Corky hollered, "Randy," you know what I mean? If
2 somebody was coming up behind you, if I was talking
3 to you and see somebody, I'd look like that
4 (indicating).

5 That's what he did. He looked behind and
6 said, "Randy." When I turned around, he was right
7 there. He was right there, just that quick. It
8 was just that quick of a motion.

9 Q Did you kill Corky?

10 A No.

11 Q Did you want anybody to kill Corky?

12 A No, I didn't.

13 Q Did you plan to kill Corky?

14 A No, I didn't.

15 Q Did you plan to commit any crime whatsoever in
16 Corky's house?

17 A No, I had no reason.

18 Q Answer any questions Mr. Swarat may have.

19 THE COURT: Cross.

20 CROSS EXAMINATION

21 BY MR. SWARAT:

22 Q Mr. Tyler, what you are telling the ladies and
23 gentlemen of the jury is that you are not
24 responsible for any of this at all; right?

25 A Yes, sir.

RANDALL TYLER -- CROSS -- MR. SWARAT

1 Q You didn't have anything to do with it?

2 A No, sir.

3 Q Mr. Tyler, you have to agree with me Donna Hutto
4 was right; wasn't she?

5 A About what?

6 Q You were there that night. It was you there. She
7 was right about that, wasn't she?

8 A As far as my presence being there?

9 Q Do you understand the question?

10 A No.

11 Q She was right about you being there?

12 A What I'm hear you saying is --

13 Q Okay.

14 A -- that I was present at that house.

15 Q No, sir. I'm asking you if Donna Hutto was right
16 about that.

17 A No.

18 Q She is not right about that?

19 A As far as -- clarify the question. I never denied
20 being there.

21 Q Okay. Were you speaking and yelling at Corky?

22 A No.

23 Q You weren't yelling at Corky?

24 A Nope.

25 Q And Corky didn't say, "Randy, we don't need to go

RANDALL TYLER -- CROSS -- MR. SWARAT

1 into the F.ing house"?

2 A No.

3 Q He didn't say anything like that --

4 A No.

5 Q -- in your presence?

6 A No, he had no reason to.

7 Q And he didn't say, "Randy, I ain't done no kind of
8 stuff like that." He didn't say anything like
9 that?

10 A He had no reason to.

11 Q And you are telling this jury, I guess, that she
12 didn't see you out this doorway at the bottom of
13 these stairs (indicating)?

14 A No, she didn't.

15 Q That wasn't you?

16 A Nope.

17 Q So you are telling them that was Travis?

18 A If that's what -- I don't know who it was. I am
19 telling you it wasn't me.

20 Q Well, who was there besides you and Travis,
21 Mr. Tyler?

22 A I was in the garage.

23 Q Hold on a second. Who was there besides you and
24 Travis then?

25 A I don't know.

RANDALL TYLER -- CROSS -- MR. SWARAT

1 Q You don't know?

2 A I didn't even see Donna there. She wasn't even
3 there. Me and Corky was in the house --

4 Q So you were never at the bottom of these stairs
5 (indicating)?

6 A No, sir, except for when I was ordered in the
7 house; and Corky was right behind me. He was right
8 behind me.

9 Q And you know that if you look out of their house,
10 you can see out of this pool room into the back
11 yard. You know that. You have been there before.

12 A Yeah.

13 Q And you know that if you are standing in her
14 kitchen looking through this window (indicating),
15 you can see out into the back yard like she is
16 talking about. You know that is true, right?

17 A Yeah.

18 Q If she is standing right there (indicating), she
19 can see right down at the bottom of those stairs.
20 There is no doubt about it. And you know that that
21 door was open that night. Y'all didn't have to
22 open any doors to get into the house, did you?

23 A Yes, I did. The door wasn't open.

24 Q You did?

25 A No, I had to open the door. I had to open the

RANDALL TYLER -- CROSS -- MR. SWARAT

1 door.

2 Q So she is not right about that?

3 A That door was not open. Neither door was open.
4 The garage, the service door of the garage, was
5 open; but the house was not open.

6 Q But, Mr. Tyler, you weren't fishing that night;
7 were you?

8 A When?

9 Q You weren't fishing that night, were you?

10 A I was supposed to go fishing with Corky that night.

11 Q But you weren't fishing with your wife's uncle --

12 A No.

13 Q -- James Williams, that night like you told him to
14 tell the police; were you?

15 A No.

16 Q And you did tell him to tell the police, "I was
17 fishing with you, James"?

18 A Yeah.

19 Q You call him Jimmy?

20 A I asked him to lie for me, yeah.

21 Q Right. "Tell the police if they come and ask."
22 And you know that they did come and ask.

23 A When I asked Jimmy to do that, it was after I had
24 talked to Gene Frye and already knew the police
25 were looking for me.

RANDALL TYLER -- CROSS -- MR. SWARAT

1 Q He said he talked to you at 9:00 o'clock the next
2 morning?

3 A Roughly.

4 Q Is that true?

5 A Roughly, yeah. I didn't have a watch on, but
6 roughly, yeah.

7 Q And you know the police had been all over your area
8 down there. You live right next door to James,
9 don't you?

10 A Yeah. But I when I had called Gene Frye that
11 morning, he said, "Randy, they have a B.O.L.O. on
12 you." I said, "What is that?" He said, "Be on the
13 lookout." I said, "Well, what do you want me to
14 do? Do you want me to go turn myself in?" He said
15 no.

16 Q I guess Gene Frye could walk in here and testify to
17 that since he knows about all that, right?

18 A Yes, he could.

19 Q Are you going to call him as a witness? Are you,
20 Mr. Tyler? Are you going to call him as a witness?

21 A Yes.

22 Q You are?

23 A If you don't believe me, he can attest to it. Yes,
24 sir. Yes, sir, I would be more than --

25 Q You are asking this jury to believe you, sir.

RANDALL TYLER -- CROSS -- MR. SWARAT

1 A Yes, sir.

2 Q And you are going to call him as a witness?

3 A If that's what it takes, sir, yes, sir.

4 Q Well, you are on trial for murder. Don't you think
5 it's important for him to be here?

6 A Yes. Yes, I do.

7 Q Is he here?

8 A No.

9 Q You also told your wife Gina to tell the same lie
10 about you fishing that night; didn't you, sir?

11 A It wasn't that I asked her to lie for me. When I
12 left the house that night, her and her mother both
13 thought I was going fishing with Corky.

14 Q Okay. So they just happened to tell the same lie
15 that James did, that you were fishing that night;
16 isn't that right?

17 A Yeah.

18 Q And you knew that the police were all over Bluff
19 Road within hours of this murder. You know that
20 you, don't you?

21 A No.

22 Q You don't know that?

23 A No.

24 Q You know they were looking for you and only you?

25 A I was at home.

RANDALL TYLER -- CROSS -- MR. SWARAT

1 Q You know that, don't you?

2 A When this happened, I got -- I was home within
3 ample amount of time to go from there to there.

4 Q I thought you said you couldn't remember what
5 happened after Travis picked you up on the road.

6 A I'm saying when he dropped me off, it was still
7 dark. When he said, "Get out of the car," I got
8 out of the car. The next thing I remember I was
9 standing on my front porch.

10 The porch light was out. It was still dark.
11 I went in the house and sat on the couch, and I
12 didn't know what to do. I didn't know what to do.
13 I didn't even sleep.

14 Q Do you admit or deny that you told your wife's
15 uncle, James, on the way to Travis', "I'm mad with
16 Corky. I'm mad with Corky about money"?

17 A I didn't tell him that.

18 Q You didn't tell him that?

19 A Nope. I was mad with --

20 Q You were mad with Corky about money and something
21 about your brother Matt.

22 A I was mad at my brother about money.

23 Q Okay. You didn't say you were mad at Corky then?

24 A No.

25 Q And do you recall telling James the next morning,

RANDALL TYLER -- CROSS -- MR. SWARAT

- 1 "I saw Corky hit the floor. I know he was dead"?
- 2 A I did not say that.
- 3 Q You didn't say that?
- 4 A No, nope.
- 5 Q You didn't tell him, "I know Corky got shot because
- 6 I saw him get shot"?
- 7 A No. No, I did not tell him.
- 8 Q I guess you didn't go through the Lewis' bedroom
- 9 then, did you, pulling out drawers and stuff?
- 10 A No. For what? There's nothing there.
- 11 Q And you weren't trying to get into that hidden
- 12 compartment in the ceiling then, were you?
- 13 A I didn't know there was a hidden compartment.
- 14 Q I guess that's not your blood in the ceiling then?
- 15 A I didn't put my blood in the ceiling.
- 16 Q Who put it there then, sir?
- 17 A I don't know.
- 18 Q You don't know?
- 19 A No, I don't.
- 20 Q But you say you didn't do it?
- 21 A No.
- 22 Q It just happened by magic, I guess?
- 23 A I had no reason to do it.
- 24 Q And you were such good friends with your friend
- 25 Corky that you wouldn't do anything to Corky?

RANDALL TYLER -- CROSS -- MR. SWARAT

1 A For what?

2 Q You wouldn't go to Corky's and maybe try to rob
3 some money from him or maybe rob some drugs from
4 him, would you?

5 A I wouldn't have to. He would give me whatever I
6 asked him for.

7 Q And that's because he was your good friend, right?

8 A Yes, he is.

9 Q But the first thing you do when you talk to
10 Detective Frier, you don't tell the story you just
11 told this jury. And he let you talk to him as long
12 as you wanted to, didn't he?

13 A No.

14 Q You said, "You've got two seconds and that's it"?

15 A No, I told -- the first time I talked to him or the
16 second time?

17 Q The first time when you told him about Matt --

18 A The first time --

19 Q -- "Look into Matt."

20 A The first time I talked to him when Gene Frye and
21 me walked in, we sit down. Gene sat to the left of
22 me, and Frier come in. He said, "I wish you'd
23 waive your rights and talk to me like a man." I
24 said, "I don't have nothing to say to you. This is
25 murder. It's very serious." I said, "Get my

RANDALL TYLER -- CROSS -- MR. SWARAT

1 lawyer up here and I will talk to you."

2 Q You didn't say, "I'm afraid of Travis. You are not
3 going to believe what Travis did"?

4 A I didn't say nothing.

5 Q "He hurt my friend Corky. I want to tell you what
6 happened because Travis did a horrible thing." You
7 didn't say anything of that to Detective Frier, did
8 you?

9 A My lawyer wasn't present.

10 Q But you didn't tell him all that when he was
11 present?

12 A He wouldn't let me. He said -- when I tried to
13 tell him what happened --

14 Q You didn't say, "He threatened my wife and kids and
15 family," did you?

16 A Yes, I did.

17 Q You told him that?

18 A Yes, I did. I told Lawrence Simmons, too.

19 Q I thought you said earlier he wouldn't let you tell
20 him.

21 A He wouldn't let me tell him explicitly what
22 happened in detail. He would not let me. He
23 said, "Just slow down, Randy. I need a brief
24 statement so I can arrest him. I'll back to
25 talk to you later and to find out everything

RANDALL TYLER -- CROSS -- MR. SWARAT

1 else."

2 Q Did you pick up the phone and call the police and
3 say, "Help me. Save me from Travis. Travis is a
4 mad killer, and I need to tell you what happened.
5 I need to save my family"? You didn't call the
6 police, did you?

7 A No.

8 Q No, you sure didn't.

9 A He threatened my life.

10 Q And you are telling this jury you ran out of the
11 house before any violence happened to Corky --

12 A Yes, sir, I did.

13 Q -- any gunshots happened to Corky. And you just
14 happened to meet back up with Travis up at the road
15 somewhere?

16 A I didn't meet back up with him. I was running from
17 him, and he just pulled up flashing the lights. I
18 turned around and looked and there he was. I
19 opened the door and he said, "Get in the frickin'
20 car. Get in the frickin' car."

21 Q And you said you went to the right like you are
22 going back towards Travis'?

23 A Towards Travis'?

24 Q If you took a right on 321 leaving Corky's house,
25 it would be going backed toward town; wouldn't it?

RANDALL TYLER -- CROSS -- MR. SWARAT

1 A Yeah.

2 Q And you didn't go left going back toward Orangeburg
3 instead so you know you wouldn't cross paths?

4 A No. What do you --

5 Q Or you didn't hide in the weeds like you hid in the
6 weeds at your house?

7 A I was running.

8 Q Yeah, because you knew the police were looking for
9 you; isn't that right?

10 A No.

11 Q You didn't know the police were looking for you?

12 A That I was running?

13 Q You didn't know the entire police department was
14 looking for you and only you the entire morning and
15 talking to your family?

16 A You're talking about that night and now you are
17 talking about this morning.

18 Q No, sir. No, sir.

19 A When I ran --

20 Q You could have hid from Travis if what you are
21 saying is true. You could have gone off in the
22 woods. There's plenty of woods around there.

23 A It happened (indicating noise) that quick. What
24 could I do?

25 Q And you're telling this jury that y'all just pulled

RANDALL TYLER -- CROSS -- MR. SWARAT

1 up in the driveway like just plan business?

2 A I don't --

3 Q Why would Travis say he parked his car way up at
4 the road so nobody could see? Why would Travis say
5 that and hurt himself?

6 A I don't know.

7 Q That wouldn't make any sense, would it?

8 A I don't know.

9 Q And Donna, why in the world would you say, "When I
10 looked out, I didn't see any cars. When I looked
11 out that front door, I didn't see any cars"?

12 A The porch light was off.

13 Q The porch light was off?

14 A It was dark. When I ran it was dark outside.

15 Q They can look at the crime scene videotape and see
16 what it was like out there, sir. The jury can look
17 at that and decide whether you are telling the
18 truth. You are saying there is no way Donna could
19 have seen that car in her driveway?

20 A Yes, she could have.

21 Q But she didn't because it wasn't there, Mr. Tyler.

22 A Yes, it was. Yes, it was. When we pulled down in
23 the driveway --

24 Q Travis just says that about himself just to make
25 himself look worse. I guess that is what you are

RANDALL TYLER -- REDIRECT -- MR. BOLT

1 telling this jury?

2 A I don't know what Travis said. Where is Travis?

3 Q Travis is going to be tried in two months,
4 Mr. Tyler. You know he is charged with murder just
5 like you are.

6 A I haven't hurt nobody.

7 Q And you can't explain how that blood got in the
8 ceiling in those knuckle marks, can you?

9 A No, sir.

10 Q That just happened by magic?

11 A I didn't do it.

12 MR. SWARAT: Your Honor, that's all I have at
13 this time.

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION

16 BY MR. BOLT:

17 Q When Detective Fryer said you turned yourself in on
18 the date, is that true, you turned yourself in?

19 A I called Gene Frye and I was under his supervision,
20 but --

21 Q You came in and turned yourself in?

22 A Yes, I did.

23 Q Thank you.

24 MR. BOLT: I don't have anything else.

25 MR. SWARAT: I do.

RANDALL TYLER -- RECROSS -- MR. SWARAT

RECROSS EXAMINATION

BY MR. SWARAT:

Q Mr. Frye brought you in in handcuffs; didn't he, Mr. Tyler?

A He gave me the handcuffs in front of the police department and said, "Put these on because I have to have them on you when I take you in so they don't jump on you."

Q Okay.

MR. SWARAT: I don't have anything else.

MR. BOLT: That's all.

THE COURT: You can step down.

MR. BOLT: Your Honor, that's the Defendant's case.

THE COURT: Let me ask both of you to approach just one second.

(Whereupon there was a bench conference off the record in the presence of the jury but out of the hearing of the jury).

MR. BOLT: That's it, Your Honor.

MR. SWARAT: Your Honor, may we approach?

THE COURT: Yes, sir.

(Whereupon there was a bench conference off the record in the presence of the jury but out of the hearing of the jury).

1 THE COURT: The defense as I understand has
2 rested?

3 MR. BOLT: Yes, sir, Your Honor.

4 THE COURT: And the State doesn't plan to call
5 any further testimony or rebuttal?

6 MR. SWARAT: Your Honor, I intend to call
7 Detective Frier in reply; but based on what we talked
8 about at the side bar, I would be willing to go forward
9 if the jury sees fit to go forward.

10 THE COURT: Ladies and gentlemen, Madame
11 Forelady, what I will do is I will let you go back to
12 the jury room and talk about this. We are through a
13 little quicker than I thought we would be.

14 If you want to talk about it and change your
15 mind and consider going ahead and finishing today, you
16 can do that if you want to. It looks like you probably
17 would probably get the case before 5:00 o'clock.

18 Of course, the only thing to remember is that
19 once you are in the jury room though, you do have to
20 stay there to get to the point of a verdict. And how
21 long you are in there obviously would be up to you in
22 term of reaching a verdict.

23 What I will do is give you just a second.
24 I've got to take up a couple matters with the lawyers
25 anyway. So I will give you a few minutes in there to

1 talk about it if you want to and let me know.

2 If you want to do the same thing and still
3 come back tomorrow, that's okay, too. If you want to
4 stay today, that's okay, too.

5 FORELADY: Can I ask a question?

6 THE COURT: Sure.

7 FORELADY: Did he say he had one more witness?

8 THE COURT: He said he was not going to call
9 the witness.

10 FORELADY: He is not going to call the
11 witness. So we would just do closing arguments?

12 THE COURT: Right.

13 FORELADY: If we decide to come back.

14 THE COURT: Yes. You mean today or tomorrow?

15 FORELADY: Yes, sir, if we decide to come back
16 today.

17 THE COURT: Today. If you decide today, we
18 will get all the way to the point of getting the case to
19 you.

20 FORELADY: Okay.

21 THE COURT: If you will step out a few
22 minutes.

23 (The jury retires to the jury room).

24 THE COURT: The jury is secured.

25 MR. BOLT: Your Honor, I'm sorry. While we

1 are going to the jury charges, I am confused. I'm sure
2 it's my own fault.

3 THE COURT: Yes, sir.

4 MR. BOLT: Were you giving them the option of
5 just making the closing statements and then --

6 THE COURT: No, I will charge, too.

7 MR. BOLT: And you will charge but bring them
8 back to deliberate tomorrow?

9 THE COURT: No, they will stay tonight.

10 MR. BOLT: I think she is under the impression
11 from that last question that we could argue and charge
12 and come back and deliberate tomorrow.

13 THE COURT: I'm sorry.

14 MR. SWARAT: I didn't get that.

15 THE COURT: I didn't pick that up. I thought
16 I told her that once they are here, they have got to
17 stay here. They are not going anywhere.

18 MR. BOLT: I know you said that. It was
19 unequivocal. That's the way it sounded to me.

20 THE COURT: If they want to stay, I will ask
21 them that to be sure --

22 MR. BOLT: Okay.

23 THE COURT: -- that she understands that.
24 Again, you understand, I am not trying to talk them out
25 of doing it. I just want them to understand the

1 repercussions of both alternatives.

2 Any motions? Did either of you want to renew
3 motions at all?

4 MR. BOLT: Your Honor, I just renew the
5 motions I made at the end of the State's case.

6 MR. SWARAT: That's all, Your Honor.

7 THE COURT: So noted and denied, counsel. On
8 the burglary charge, counsel, let me note in terms of
9 the additional aggravating factors that are involved,
10 let's go through and see what your positions are on
11 them.

12 As you know, one is that while effecting entry
13 or being in the dwelling, that the Defendant is armed
14 with a deadly weapon or explosive. What is your
15 position on that being included?

16 MR. SWARAT: I think it applies to the facts,
17 and it's alleged in the indictment as one of the
18 possible choices.

19 THE COURT: Right.

20 MR. BOLT: Your Honor, there was no testimony
21 that my client was armed with a deadly weapon.

22 MR. SWARAT: It doesn't have to be his client.
23 It's the hand of one. It's either one of them.

24 THE COURT: What about that, Mr. Bolt? It
25 says he or another participant.

1 MR. SWARAT: Under State versus McCaskel, I
2 believe it is also.

3 THE COURT: Don't even need the case law on
4 this. This is a statute. It says he or another
5 participant.

6 MR. BOLT: All right, Your Honor.

7 THE COURT: (D), causes physical injury. That
8 obviously would apply. There has been testimony to
9 that. Uses or threatens a dangerous instrument,
10 displays what is or appears to be a knife, pistol, et
11 cetera. Of course, the prior record and the nighttime.

12 So I would think that all of these would be
13 involved in it. Any disagreement with that?

14 MR. SWARAT: None from the State, Your Honor.

15 MR. BOLT: It appears to be so.

16 THE COURT: Okay. Why don't we -- did you
17 have any other proposed changes to the charges,
18 Mr. Bolt?

19 MR. BOLT: Your Honor, I looked at them with
20 your law clerk and everything looks fine.

21 THE COURT: Counsel, let me ask also, what is
22 your position on giving the jury a copy of the charge?

23 MR. SWARAT: No objection, Your Honor.

24 MR. BOLT: I am not opposed to it. Your
25 Honor, I just noticed that there is a prior bad acts

1 charge in here which I don't really believes applies to
2 the case.

3 MR. SWARAT: I think after the drug testimony,
4 Your Honor, I believe it might be.

5 THE COURT: I usually put that in any time
6 there is an allegation that a crime came out, drug
7 charges. That obviously implies that he was involved
8 with drugs beforehand. I just include that in the event
9 you want it.

10 If you want it out, Mr. Bolt, I don't know
11 that there is any problem taking it out.

12 MR. BOLT: I would like it out.

13 MR. SWARAT: I just want to make sure on the
14 record that he is asking to have it taken out.

15 MR. BOLT: Yes, sir.

16 MR. SWARAT: And that his client agrees with
17 it.

18 THE COURT: Yes, sir. Mr. Tyler, do you
19 understand what Mr. Bolt is wanting to do with it?

20 MR. BOLT: Just one second.

21 (Pause).

22 MR. BOLT: Leave it in, Your Honor.

23 THE COURT: Okay, we will. The jury indicates
24 they still want to come back in the morning. Ask the
25 jury to come back in. Mark the note from the jury,

1 please.

2 COURT REPORTER: Yes, sir.

3 (Court's Exhibit Number 1 is marked for
4 purposes of the record).

5 MR. SWARAT: Your Honor, I believe I will call
6 Detective Frier in reply then.

7 THE COURT: Okay.

8 (The jury returns to the courtroom).

9 THE COURT: All parties and attorneys are in
10 the courtroom, and all the jurors have returned.

11 Madame Forelady, I understand the jury still
12 prefers to come back in the morning?

13 FORELADY: Yes, sir.

14 THE COURT: Is that correct, jurors? Still
15 9:00 o'clock?

16 FORELADY: Yes, sir.

17 THE COURT: The State, I believe as you heard
18 earlier, had a rebuttal witness they weren't going to
19 call if we were going on. But they are going to go
20 ahead and call the rebuttal witness this afternoon. It
21 still won't take that long, so don't worry.

22 Go ahead, Solicitor.

23 MR. SWARAT: The State calls Detective Scottie
24 Frier.

25 CLERK: Is he still under oath, Your Honor?

SCOTTIE FRIER -- DIRECT --, MR. SWARAT

1 THE COURT: Yes, ma'am.

2 CLERK: Thank you.

3 THE COURT: You are still under oath,
4 Sergeant.

5 THE WITNESS: Thank you, your Honor.

6 SCOTTIE R. FRIER, having
7 being previously duly sworn, resumed the witness stand
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SWARAT:

11 Q Detective Frier, when did you have information
12 about Randall Scott Tyler in this investigation?

13 A Immediately from my interview with Donna Hutto.
14 She identified him as Randall --

15 MR. BOLT: I can't hear with the thunder.

16 THE COURT: I agree. I have got the sound on.
17 Go ahead.

18 A Donna Hutto immediately identified Randall Tyler
19 the night this happened, very shortly afterwards,
20 that he was the subject involved.

21 Q By name and I believe also by face; is that
22 correct?

23 MR. BOLT: Your Honor, this is not proper
24 redirect. This is redundant. This has been asked and
25 answered in the case in chief.

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 THE COURT: I understand. I will give him a,
2 little bit of room. Just don't go too far with it,
3 Solicitor.

4 MR. SWARAT: Okay.

5 Q Did you send agents of law enforcement down to find
6 him on Bluff Road?

7 A Yes, we initiated efforts to locate Randy Tyler
8 immediately.

9 Q Immediately?

10 A Yes, sir.

11 Q And did agents of law enforcement speak to his
12 friends and family -- they all live together right
13 there in a little compound, don't they?

14 A Two houses side by side, yes, sir.

15 Q That was done immediately?

16 A Yes, sir. As soon as we got what we were sure was
17 a concrete address, we started in that area.

18 Q And the first contact with his family, it was the
19 fishing story?

20 A That's correct.

21 Q Did you have any contact with Randall Scott Tyler
22 early that morning?

23 A No, we did not.

24 Q Later on you did have contact with Mr. Tyler?

25 A Yes, when I was informed that Gene Frye had brought

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 him into the Sheriff's Office.

2 Q And he brought him in from down on Bluff Road?

3 A That's my understanding, yes, sir.

4 Q Where law enforcement also was very heavily
5 present?

6 A Yes, sir.

7 Q He didn't turn himself into law enforcement?

8 A No, sir, he did not. He was brought up in by Gene
9 Frye.

10 Q And did you give him an opportunity to tell you
11 anything he wanted to?

12 A Yes, sir. I gave him an opportunity first to talk
13 at length all the time he needed with his attorney.
14 Then I had a conversation with his attorney who
15 basically laid out for me what was going to be an
16 explanation.

17 Then I sat down with Mr. Tyler and the
18 attorney present, and Mr. Tyler presented me
19 with an explanation that we reduced to a
20 statement.

21 Q Who is the first person that said the name Travis
22 Harsey in this investigation?

23 A To law enforcement it would have been James
24 Williams.

25 Q James Williams?

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 A That's correct.

2 Q And he identified Mr. Harsey --

3 MR. BOLT: Your Honor, I need to object to
4 this. This is just the same series of questions and
5 answers that we heard in the case in chief.

6 MR. SWARAT: I will be very brief with this,
7 Your Honor.

8 MR. BOLT: It doesn't matter if it's brief,
9 Your Honor. It's just not proper rebuttal.

10 THE COURT: I understand. A lot of this has
11 already come up on direct. Go ahead and get to the
12 point.

13 BY MR. SWARAT:

14 Q And he also identified him in this photo lineup?

15 A James Williams did, yes, sir.

16 Q And they don't look anything alike?

17 A No, sir.

18 Q And you relayed that information to Mr. Simmons,
19 his attorney?

20 A I relayed to him that the alibi witness had changed
21 his story. I didn't go into a lot of detail with
22 Mr. Simmons. I simply told him that, "Information
23 has now come out that is not going to be very good
24 for your client. The alibi is broken, and I have
25 got detrimental information on your client."

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 Q Then you sat down with his attorney and Mr. Tyler
2 together?

3 A Yes, sir. I met with his attorney first, allowed
4 his attorney whatever amount of time he needed to
5 talk to Mr. Tyler alone and away from me, and then
6 sat down with Mr. Tyler and his attorney together.

7 Q And did you limit him to a one-page statement, tell
8 him that he only had that much space to write in?

9 A Anything he would have told me, I would have
10 documented.

11 Q Would you have stayed there for 20 pages of
12 writing?

13 MR. BOLT: Your Honor, I just have to object
14 for the record. This is complete recapitulation on the
15 same witnesses.

16 MR. SWARAT: No, sir. He has testified this
17 detective cut him off and wouldn't listen to him and
18 wouldn't hear his story. It's in reply to that.

19 THE COURT: I understand. Actually we have
20 now got to something that is admissible on rebuttal. Go
21 ahead.

22 MR. SWARAT: Thank you, Your Honor.

23 Q You would let him go as long as he wanted to go?

24 A Absolutely.

25 Q Did he ever at any time tell you he was afraid of

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 Travis Harsey?

2 A No.

3 Q Did he ever at any time tell you that Travis Harsey
4 had threatened the lives of his family, his
5 children, anything like that?

6 A No, he did not.

7 Q Never told you anything like that?

8 A No, he did not.

9 Q In the time between now -- from then to the
10 trial -- did he ever write you a note, try to
11 contact you, say, "I want to tell you some more
12 about this thing. It's real important"?

13 A No, sir, he did not. To make sure that the jury
14 understands, I can't reapproach him when he is
15 represented by counsel unless he asks me to do
16 that. There was an inference made that I never
17 would go talk to him and follow up with the
18 statement.

19 I am not allowed to do that. He is
20 represented by counsel. I would violate that
21 protection he has if I go speak to him without
22 either going through his attorney or Mr. Tyler
23 initiating a request to me that he needs to speak
24 to me.

25 Q But you didn't tell him, "Hurry up, hurry up, hurry

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 up. I just need the basics"? You didn't tell him
2 anything like that.

3 A No, sir. I would be a little remiss in my duties
4 if he is going to give me information out of a
5 homicide scene, and I tell him I'm in a hurry, I
6 can't take it.

7 Q In fact, based on James Williams' information, you
8 already had warrants for Travis Harsey for murder
9 and burglary first?

10 A We were tentative on making sure we had the
11 codefendant implication; but, yes, sir, we had
12 Mr. Harsey identified; and we had Mr. Williams
13 saying that Travis and Randy were going to that
14 place. So, yes, sir.

15 Q And what took place at the crime scene based on
16 what Mr. Tyler had said to Mr. Williams?

17 A That is correct.

18 Q At any time did you say, "I don't want to hear
19 that. That's not important to me. You can't tell
20 me. I'm sorry," nothing like that?

21 A No, sir. If he would have given more particular
22 details out of the -- you have got someone who is
23 involved in a homicide giving you details, you are
24 not going to tell him to hush and not continue on
25 with what he is telling you.

SCOTTIE FRIER -- DIRECT -- MR. SWARAT

1 Q Did he ever tell you Corky Lewis knocked him to the
2 ground and scraped his knuckles?

3 A No, sir. Today is the first I have heard of any of
4 that.

5 Q Thank you.

6 MR. SWARAT: That's all I have.

7 THE COURT: Cross?

8 MR. BOLT: I don't have any questions.

9 THE COURT: You can step down.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Any other rebuttal testimony from
12 the State?

13 MR. SWARAT: No, Your Honor.

14 THE COURT: Ladies and gentlemen, that
15 concludes all of the evidence in this case. As I
16 indicated, we will go by the schedule that you wish to
17 do, which means that we will come back in the morning
18 and have the closings at that time.

19 Again, I will be having a conference with the
20 lawyers this afternoon and make sure everything is
21 wrapped up and ready. But at 9:00 o'clock they will
22 have closing statements. I will give you an instruction
23 on the law. Then sometime in the morning it will be
24 your case.

25 When you leave this evening, remember be sure

1 we don't talk about the case. We will see you back in
2 the morning at nine. Have a good evening.

3 (The jury is excused for the day at 3:25 p.m.)

4 THE COURT: Any further motions from the
5 defense?

6 MR. BOLT: No, Your Honor.

7 THE COURT: Obviously, I assume you want to
8 renew them.

9 MR. BOLT: Yes, sir.

10 THE COURT: I will note they have been
11 renewed. Anything from the State?

12 MR. SWARAT: No, Your Honor.

13 THE COURT: Anything else on the charge?

14 MR. SWARAT: No, Your Honor. Mr. Moses is
15 going to open on the law, and I am going to close on the
16 facts.

17 THE COURT: Throw him in.

18 MR. SWARAT: Yes, sir, got to get his feet wet
19 somehow.

20 THE COURT: There you go. I will see all of
21 you in the morning at 9:00 o'clock.

22 (Whereupon the proceedings were concluded
23 June 11, 2003).

24 (The following proceedings were reported on
25 June 12, 2003).

1 THE COURT: Counsel, I believe both of you
2 have a copy of the charge. Are there any exceptions to
3 the final charge given to you, from the State?

4 MR. SWARAT: None from the State, Your Honor.

5 THE COURT: Defense?

6 MR. BOLT: No, Your Honor.

7 THE COURT: Anything before we bring the jury
8 in?

9 MR. SWARAT: Nothing from the State. Your
10 Honor, Mr. Moses will open on the law.

11 THE COURT: That's what I understood. Are you
12 ready, Mr. Moses?

13 MR. MOSES: Absolutely, Your Honor.

14 THE COURT: It's your big moment. This is
15 your time.

16 MR. MOSES: Yes, sir.

17 THE COURT: Your time has arrived. The only
18 question is whether you will let Mr. Swarat give the
19 last closing.

20 MR. SWARAT: He hasn't decided yet, Your
21 Honor.

22 THE COURT: Okay. Are you ready, Mr. Bolt?

23 MR. BOLT: Yes, sir.

24 THE COURT: All right. Let's bring them in.

25 (The jury returns to the courtroom at

1 9:05 a.m.)

2 THE COURT: All parties and attorneys are in
3 the courtroom and all jurors have returned.

4 Ladies and gentlemen, as we told you
5 yesterday, the only thing left this morning is to have
6 the closing statements by the lawyers, and then I will
7 give you a charge on the law. In just a few minutes
8 here, it's going to be your case.

9 The order in which we will proceed is as
10 follows: The State is required to open on the law.
11 Mr. Moses will do that for the State. Then Mr. Bolt
12 will give his final closing for the defense. Then
13 Mr. Swarat will give the final closing for the State.

14 After they have done that, I will give you an
15 instruction on the law. At that point, sometime this
16 morning, it's going to be your case. It's very
17 important that you give the attorneys your undivided
18 attention at this time.

19 Remember, as I told you earlier, closing
20 statements are not evidence. The evidence is already
21 in. It's done. Closing statements are the right of the
22 attorney to comment on the evidence. Of course, you are
23 free to accept or reject their position on the evidence;
24 but I certainly encourage you to listen to them very
25 closely.

1 With that in mind, are you ready, Mr. Moses?

2 MR. MOSES: Yes, Your Honor.

3 THE COURT: All right. Bailiffs and deputies,
4 let's secure the doors through all the closings if you
5 would. If anyone needs to leave, if you need to step
6 out, you need to do so now. Mr. Moses.

7 MR. MOSES: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes, sir.

10 **CLOSING STATEMENT**

11 MR. MOSES: Good morning, ladies and
12 gentlemen. My name is Marion Moses. I'm an assistant
13 solicitor here, along with Mr. Swarat. I've been the
14 one kind of sitting here behind the scene until now.

15 I am going to explain to you a little bit
16 about the charges that Mr. Tyler is facing. He is
17 facing criminal conspiracy, burglary in the first
18 degree, and murder

19 Again, let me explain a little bit about
20 criminal conspiracy. Criminal conspiracy is an
21 agreement between two or more people to do something
22 with the intent to do something wrong, to do an unlawful
23 act. That's all it is. It's very simple. It's an
24 agreement between two or more people to do an unlawful
25 act.

1 Now, criminal conspiracy can be proven in a
2 manner of ways. One way is through circumstantial
3 evidence. On circumstantial evidence, you may not hear
4 something that has come directly from the witness stand
5 and come right out of somebody's mouth, but you can
6 infer something through your logical, reasonable skills
7 and through your common sense that an event occurred.

8 So let me give you a little story that I like
9 to explain to you about circumstantial evidence. If on
10 a January morning or January evening, you go home. It's
11 cold outside. It's clear. You go to sleep. You wake
12 up the next morning and you open your window, lo and
13 behold, it's white with snow everywhere. It's
14 blanketed.

15 You didn't see it snow. You didn't hear it
16 snow. But you know that it snowed last night. No
17 Hollywood crew came in and put fake snow in your yard.
18 It snowed last night. That's circumstantial evidence.
19 You don't see it. Nobody told you that it snowed. But
20 you can infer through your logical reasoning that it
21 snowed last night.

22 That's kind of what I'm talking about. Use
23 the circumstantial evidence in this case. Let's talk
24 about it. You heard Mr. James Williams get on the stand
25 a couple of days ago. That's Mr. Tyler's uncle-in-law

1 and next door neighborhood.

2 He had no reason to get up here and lie to
3 you. He got up here and told you that he gave Randy
4 Tyler a ride to Travis Harsey's house. And on that ride
5 out there, Randy Tyler told James Williams, "I'm mad
6 with Corky. I am mad with Corky Lewis over money, over
7 drugs."

8 He told James Williams that. James Williams
9 has no reason to make that up. He gets out at Travis'
10 house. In the back room, he sees -- James Williams --
11 sees a clip on the bed with a bullet. Then the kid
12 comes out of the room and says, "Daddy has got a gun,"
13 talking about Travis Harsey. Then James Williams
14 leaves.

15 Now, nobody told you that they were plotting
16 this thing. Nobody has said they were planning it,
17 conspiring together; but through your circumstantial
18 evidence, logical reasoning, you can infer that there
19 was a criminal conspiracy, that Randy Tyler went to
20 Travis Harsey's house.

21 And not only that, ladies and gentlemen, you
22 rode out to the crime scene yesterday. You know how
23 long a ride it is to get out there. Well, they had a
24 little bit longer ride than that to go all the way
25 out there to Corky Lewis' house and talk about what they

1 were going to do. I submit to you through
2 circumstantial evidence there is a criminal
3 conspiracy involved here.

4 The next thing I will talk to you about is
5 burglary. Burglary is the unlawful -- burglary is the
6 entry into someone's residence. We call it a
7 dwelling -- it's the entry into someone's residence
8 without the permission or consent of the owner. It is
9 as simple as that.

10 Burglary in the first degree requires one
11 aggravating circumstance attached to that definition I
12 just gave you. There's the entry into someone's
13 residence without their consent plus one aggravating
14 factor.

15 I will give you a list of about five
16 aggravating factors. Keep in mind that the State only
17 has to prove one of them. That's all. I will give you
18 five that we have proved.

19 The first one is entry into someone's
20 residence without their consent, plus one other thing:
21 That the person charged with burglary has two prior
22 burglary convictions.

23 Ladies and gentlemen, this is in the evidence.
24 Randy Tyler has two burglary convictions. He is charged
25 with burglary first. That's one aggravating

1 circumstance already satisfied.

2 Second, that the burglary occurred in the
3 nighttime. Ladies and gentlemen, this crime occurred
4 close to midnight on July 13th. In South Carolina close
5 to midnight is dark outside. Aggravating factor number
6 two satisfied. It was dark outside, in the nighttime

7 The other one is that Corky Lewis was
8 assaulted at his residence. He had pistol whip marks in
9 his head, and he was shot and killed. I would submit to
10 you that he was assaulted -- and not only assaulted
11 because assault means just a threat, a verbal threat.
12 He was more than assaulted. He was hit in the head and
13 he was killed. Aggravating circumstance number three
14 proved.

15 Another aggravating circumstance is that a
16 deadly weapon was used. In the entry without consent,
17 there was a pistol used, aggravating circumstance number
18 four.

19 And number five, that the people involved with
20 the burglary in the nighttime went over there with
21 intent to steal or commit a larceny. I submit to you
22 they went there to take money and drugs, aggravating
23 circumstance number five.

24 That's five different aggravating
25 circumstances that the State has proven. Keep in mind

1 we only have to prove one. That's the grounds for
2 burglary first.

3 Let me move on to murder. Murder is the
4 unlawful killing of another human being with malice
5 after -- aforethought. We do not have to prove that
6 Randy Tyler intended for Corky Lewis to die that night,
7 don't have to prove that.

8 All we have to do is the prove that there was
9 malice. Malice, now, is ill will or hostility towards
10 another human being. It's as simple as that: Ill will
11 or hostility towards another human being. Malice can be
12 proven in a matter of different ways.

13 One, it can be inferred if the use of a deadly
14 weapon is used. You can infer malice by the use of a
15 deadly weapon right there. Malice can be shown through
16 acts of preparation or prior planning. Malice is a
17 state of the mind that shows that the person is acting
18 with a dark evil heart.

19 If we prove malice, it's murder, boom. We
20 have got murder. It is murder if we prove malice.
21 Malice is when somebody knows that they are doing an
22 unlawful act. They are doing something wrong and they
23 know it.

24 If Corky Lewis was killed with a weapon, with
25 a deadly weapon -- which he was killed with a

1 .40-caliber pistol -- you can infer malice from it. If
2 Randy Tyler was involved in any way whatsoever and we
3 have malice, Randy Tyler, the gentleman over there, is
4 guilty of murder. Thank you.

5 THE COURT: Mr. Bolt.

6 CLOSING STATEMENT

7 MR. BOLT: Thank you, Your Honor. Ladies and
8 gentlemen of the jury, with all due respect to
9 Mr. Moses, a very able prosecutor, his analogy about the
10 snow is not applicable to the concept of conspiracy.

11 To prove that some act, some bad act, has
12 occurred, some crime has occurred, is not enough. You
13 can't just say, well, something happened, two people
14 were in the house; therefore, there is a conspiracy.

15 When we finish talking, Judge Westbrook is
16 going to explain to you the legal principles that relate
17 to the crimes with which Mr. Tyler is charged. He will
18 define the crimes, the three crimes with which he is
19 charged: Murder, burglary and conspiracy.

20 He will talk to you about the concept of
21 reasonable doubt, credibility of witnesses. In other
22 words, there are some yardsticks, some rules of thumb
23 that you as jurors are allowed to use in assessing the
24 evidence and coming to a decision if you can in this
25 case and in fact in any other criminal case.

1 I want to talk you about those legal
2 principles. But, first of all, I have got to refute
3 this idea that you can prove a conspiracy by just the
4 happening of some untoward or bad act. The law says
5 that there has to be -- and the State has to prove it
6 beyond each and every reasonable doubt -- an agreement,
7 a preexisting agreement. Okay?

8 If I were to go out here to a place and
9 somebody was with me and somebody did something that was
10 a crime and we were together, if you use Mr. Moses'
11 analogy, you would say that is proof of a conspiracy.

12 But the law is different and Judge Westbrook
13 will tell you this. The State has to prove that when
14 Randy Tyler and Travis Harsey went to that house on
15 July the 13th, last year, at the time they got to the
16 property, there was some agreement between them.

17 I looked back through the testimony and I took
18 notes and wrote things down. I never heard any
19 testimony about an agreement. Where is the agreement?
20 What words were said that you could say, okay, those
21 words imply an agreement? From those words I can infer,
22 conclude, deduce that there was an agreement.

23 There isn't any. Jimmy Williams said -- and
24 Jimmy Williams is an interesting fellow. He obviously
25 didn't want to be here. He obviously didn't want to be

1 up here testifying and appearing that he was
2 incriminating or saying things about his niece's
3 husband.

4 But what did he say when you break his
5 testimony down? One of the things I know he said was
6 that Randy was afraid for his baby. He was afraid of
7 Travis. He was afraid of Travis Harsey. And he used
8 the words mad and upset. About what?

9 When he was pressed, it had something to do
10 with money and than he added Matt, the brother Matt, of
11 whom you have heard Randy speak that there was ill will
12 and bad blood between them. It was the same man who had
13 stolen his wife's car and threatened to kill him.

14 So you look back. He's upset. He's mad. Is
15 that enough? Is that malice aforethought? The law
16 requires that there be a combination of a previous evil
17 intent, previous evil intent, and some act. Okay?

18 That's all there is. There is no other
19 testimony about it. When he explained it, he said
20 something about Matt and money, the brother Matt, the
21 same one that he admits falsely accusing because he was
22 scared.

23 He was at the scene of a murder. He has got a
24 criminal record. He's got tattoos. He's from Michigan
25 originally. Well, how many people under those

1 circumstances would have done differently?

2 Fear. He is still scared today. You could
3 tell from his demeanor on the witness stand. He is
4 still scared today. But I challenge anyone to produce
5 and identify evidence of some agreement between Travis
6 Harsey and Randy Tyler.

7 Like: You got the gun. You got the car. We
8 are going to do this. This is what we are going to do.
9 This is our agreement. We are going to go over there
10 and rob Corky. We are going to go over there and kill
11 Corky. We are going to go over there and beat Corky.
12 There isn't any evidence whatsoever of a conspiracy.

13 A reasonable doubt is a doubt that will cause
14 a reasonable person to hesitate to act. When you go
15 back in that jury room and you look at the jury
16 instructions, what the judge is going to give you, I
17 believe a copy of them, look at the legal principle of
18 conspiracy.

19 Say to yourselves: Are we firmly convinced?
20 Are we firmly convinced that there is evidence of a
21 conspiracy and a pre-existing agreement to go there and
22 do something? Just because it happened doesn't mean
23 there is a conspiracy.

24 Use your common sense, use your intelligence,
25 and you will easily conclude that there is absolutely --

1 not only is there a reasonable doubt, there is no
2 evidence whatsoever of a conspiracy.

3 Okay. You move on to the other charges. Of
4 course, those are a lot more serious than conspiracy.
5 Murder is the ultimate crime. Burglary is a crime that
6 is considered just as serious.

7 So what is the evidence? I want to go back
8 and look at the testimony of the witnesses we heard in
9 the case. The compelling thing about this case is you
10 really don't know what happened, except that Corky Lewis
11 was brutally shot, shot five times.

12 You heard the pathologist testify. He was
13 beaten in the head. Those were not fatal wounds, but
14 they were serious wounds and they were painful wounds.
15 He sustained one fatal wound, two potentially fatal
16 wounds, and two superficial wounds.

17 So he had three gunshots wounds that could
18 have killed him. Where did those wounds come from? It
19 came from a .40-caliber Glock pistol that the State,
20 Officer Frier and the other detective, testified
21 belonged to who? Travis Harsey.

22 Where was the gun recovered, what was left of
23 it? It was recovered off in the woods somewhere, and
24 the person that showed it to them was Travis Harsey's
25 little brother Sammy.

1 He burned the Glock pistol and he burned a
2 pair of shoes. He burned a pair of shoes because there
3 were two bloody footprints in Corky Lewis' house.

4 Remember Detective Vicki Hallman testifying
5 that she cut the carpet up where those footprints were,
6 and they couldn't process that. If they could have
7 processed them, it wouldn't have mattered because Sammy
8 Harsey burned the shoes.

9 Jimmy Williams saw a clip, a magazine, that
10 goes up in the butt of a Glock pistol. He didn't say a
11 Glock pistol, but it was a magazine. So let's infer and
12 I think it's reasonable to conclude that that was the
13 clip to Travis Harsey's pistol.

14 Jimmy Williams drove a long way from Bluff
15 Road out in Gadsden, South Carolina over to Bush River
16 Road where Travis Harsey lived. He never saw Randy with
17 a pistol. Randy didn't have a pistol. Nobody ever
18 said that Randy had a pistol

19 But Travis Harsey isn't here. He's not on
20 trial. He is the person who owned the .40-caliber Glock
21 pistol. He's the person whose brother burned the pistol
22 and burned the shoes, but he is not here.

23 Now, Randy says, "I go there. I go through
24 the open bay in the garage, and I start talking to
25 Corky." Donna says, "I was awakened" -- and this is my

1 terminology, not necessarily hers -- "by angry words."

2 She heard some voices from the garage. I
3 asked her about that? "From the garage?"

4 "Yes".

5 "When you went to bed, Corky was in the
6 garage?"

7 "Yes".

8 "You heard voices that appeared to come from
9 the garage?"

10 "Yes".

11 But she said she saw Randy -- remember when
12 you looked through those two windows out in the back
13 yard -- going from the right to the left into the garage
14 later.

15 So if Randy and Corky are in the garage -- and
16 let's assume that her testimony is accurate -- that they
17 were exchanging or Randy was speaking angrily to Corky
18 and Corky was saying, "I don't do that kind of thing,"
19 or whatever, then it makes a little sense for Randy to
20 later come into the garage from the right to the left.

21 I don't doubt that there were angry words. If
22 you listen to what Randy said, he said angry words came
23 from Travis Harsey, the man who owned the Glock
24 .40-caliber pistol that was burned by his brother.

25 I don't say this to demean or disparage or

1 discredit Ms. Hutto. She just that night lost her
2 husband. I'm sure all of this was somewhat of a blur to
3 her.

4 If you have ever been confronted with a
5 traumatic experience like that, I am sure you can't
6 recall everything with scientific accuracy. I don't
7 fault her for that.

8 I am just saying this man is faced with
9 murder, conspiracy, and burglary. He is entitled for
10 you to examine the facts and the evidence in this case
11 dispassionately and honestly and without any prejudice
12 or passion or bias or sympathy.

13 But it's not believable that Randy Tyler and
14 Corky Lewis were in the garage exchanging words and then
15 to say that Randy came in later because he was already
16 there, and he said he was already there.

17 So there is consistency there in that respect
18 because he was in the garage. Then he said that Travis
19 Harsey came in, rushed him, had the gun; and he and
20 Corky fell and that's how his hand was scraped. So
21 there is no question that his blood would have been on
22 the scene. Okay? No question about that.

23 Then you heard his testimony about what Travis
24 did later. One shot is fired into the sofa or the love
25 seat, one or the other, I don't recall which. You have

1 seen the pictures. You will be able to take these
2 pictures back in the jury room.

3 You know because the forensic people and the
4 detectives have testified there was a gunshot wound to
5 the love seat and I believe the sofa. That's what he
6 was talking about, and the white stuff came up out of
7 the furniture, and he ran.

8 He was picked up, I don't know, something like
9 half a mile later. He's at the bottom of the hill. You
10 heard what he said Travis said, "Take my F-ing name out
11 of your mouth. Take my name out of your mouth. Take my
12 name out of your mouth." Is that consistent with Jimmy
13 Williams' testimony that Randy was afraid for the baby,
14 that Randy was afraid for his wife, for his family?

15 Malice, ill will. Donna Hutto said that Randy
16 had been there two days before, everything was fine.
17 Corky had actual bought a car from Randy for \$7,500 and
18 then gave him the car back. So he gets the money and
19 the car. That's pretty nice. That's a wonderful thing
20 to do.

21 So is there ill will between these men? It's
22 not flattering to anybody that the basis of their
23 relationship was selling drugs. You can't explain that
24 away. That's not a very nice thing.

25 The judge is going to tell you though that

1 that is not evidence of these crimes. I don't care what
2 any of these people did in the drug business, it is not
3 evidence of murder, conspiracy or burglary.

4 You cannot and you are not allowed to use that
5 as evidence of anything, other than the fact that that's
6 what it was. That was the basis of their relationship.

7 But the bottom line is their relationship was
8 friendly and good and positive. There was no
9 pre-existing ill will. There was no previous evil
10 intent combined with some act so that you can conclude
11 that a murder has occurred.

12 He admits encouraging Jimmy Williams to give a
13 false alibi. He admits all that. He admits falsely
14 incriminating his brother. Because of what? It's a
15 good thing that none of us have ever been in that
16 situation.

17 What would a normal -- what would a person do?
18 Okay, yeah, the good thing to do, perhaps the most moral
19 or obviously the most moral thing to do is to find a
20 phone somewhere and call.

21 But it was the next day. It was the next day
22 and he didn't. He was not forthcoming. No one can deny
23 that. He was not forthcoming. He falsely incriminated
24 his brother.

25 But Jimmy Williams obviously -- and I think

1 Mr. Swarat or Mr. Moses talked about this at one point.
2 He was uncomfortable being here. He is testifying
3 against a family member, but he basically finally told
4 the truth.

5 And part of that truth is -- part of that
6 truth is -- that Randy was afraid of Travis. Here is a
7 guy that had this gun that said, "Take my name out of
8 your mouth," repeatedly. He has threatened to kill you,
9 threatened to kill your family.

10 So it's only logical, it's only normal that
11 Randy would be afraid. It's only logical, it's only
12 normal under these circumstances -- not the best
13 behavior in the world -- but it's only logical and
14 normal under these circumstances for him not to be
15 forthcoming.

16 There are so many things in this case that
17 don't make a lot of sense, that don't help us, that
18 don't aid us in finding the truth. Corky's blood was on
19 the scene of the crime. He was beaten and shot five
20 times.

21 His blood was on the ceiling tile. I mean,
22 are we to assume that Corky was standing on the stool
23 trying to get the ceiling tiles down, that he was
24 jumping? That's not believable. There wasn't a lot of
25 blood up there. It wasn't like from the gunshot wound,

1 like a splatter mark or anything like that.

2 So what happened? What are the acts that were
3 done in the house by Randy Tyler from which you can base
4 a verdict of murder on? You don't know. He told you.
5 He told you what he did.

6 What contradicts what he told you? His blood
7 is on the ceiling tile, but does that tell you what he
8 did? Does that tell you what act he committed that
9 would be murder?

10 Does that tell you what act he committed that
11 would be burglary? Does that refute his testimony that
12 he went there with no intention to commit a crime when
13 he was there?

14 There is one element that Mr. Moses left out
15 of burglary. You have to be convinced, firmly convinced
16 the law requires, firmly convinced that when he went
17 there, he had the specific intention to commit a crime.

18 What crime did he go there to commit? What
19 evidence is there that when he went there, at the time
20 he entered the bay of that garage that he had the
21 intention to commit a crime?

22 What was the crime he intended to commit?
23 What is the evidence that he intended to commit that
24 crime? Just because a crime occurred doesn't mean that
25 he went there with the intention to commit a crime.

1 You can use circumstantial evidence, but you
2 can't use speculation, ladies and gentlemen. Too much
3 is at stake. I don't think -- this is just my
4 opinion -- I don't think any reasonable person who has
5 listened to the testimony in this case believes that
6 that man fired that gun five times into Corky Lewis or
7 pistol whipped and beat him.

8 I think it's clear from the testimony and the
9 record and the evidence in this case that that was
10 Travis Harsey. Okay? I don't think there could be a
11 serious question about it.

12 But there is another legal principle here.
13 The judge is going to tell you about this. In common
14 phraseology we say the hand of one is the hand of all.
15 You know, when you were a child and your momma and daddy
16 said be careful of the people you hang out with if you
17 get in trouble.

18 Well, the law has a principle that is about
19 the same. It says if two people go out together and one
20 of them commits a crime, then the other one and all the
21 people in the group may also be guilty of that very same
22 crime.

23 Under the right circumstances, if two people
24 go out to commit a crime and one person commits a
25 murder, well the second person may be also guilty of

1 murder if the right circumstances apply.

2 I want to talk to you just a little bit about
3 that principle, the hand of one is the hand of all.
4 Excuse me while I go through my notes here. A person
5 who joins with another person, joins with another
6 person, to accomplish an illegal purpose -- and they
7 have to join with them for that illegal purpose. They
8 can't be just two people out, and all of a sudden one
9 just ups and commits a crime. You are not guilty under
10 those circumstances.

11 That second person may be criminally liable
12 for everything done by his associate if it's incidental
13 to the execution of the common design and purpose.

14 Once again, where is the evidence of a common
15 design and purpose? You see, how do you know -- and
16 there is no testimony of any intent on the part of Randy
17 Tyler.

18 There has got to be some evidence. We can't
19 just guess it. We can't just guess it. We can't say oh
20 my God, if we have a reasonable doubt, if we are not
21 firmly convinced as the law requires, we may let a
22 murderer go.

23 Because it's got to be more than that. It's
24 got to be stronger than that. It has got to be more
25 sufficient than that. That's why I said you can't let

1 passion, prejudice, bias or sympathy influence your
2 verdict. You can't let sympathy for the victim's family
3 or sympathy for the Defendant's family influence you in
4 any way whatsoever.

5 So where is evidence of that common design and
6 purpose? The person must personally commit a crime and
7 be present at the scene and intentionally or through a
8 common design, once again, aid, abet or assist in the
9 commission of that crime.

10 So you have got to find out under the felony
11 principle -- excuse me -- felony murder doctrine of the
12 hand of one is the hand of all, as we call it, you have
13 got to decide what Travis Harsey was doing and how Randy
14 Tyler aided and abetted him.

15 And since we don't know, except that he
16 committed murder, we don't know what else he did, and
17 there is no evidence of aiding or abetting, how did
18 Randy Tyler, in other words, physically aid and abet
19 Travis Harsey?

20 Because what he said was that gun came out.
21 He started beating Corky. He fired a shot. Randy left
22 and obviously Travis Harsey fired the other four shots
23 after that or however many shots were fired. It may
24 have been more shots fired than entered Mr. Lewis' body.
25 I don't remember.

1 So if Randy Tyler is there. If it's a
2 reasonable inference under the facts and circumstances
3 of this case, as Randy Tyler testified, that they go
4 there and Travis Harsey just takes out that gun and
5 beats Corky Lewis and kills him, if Randy Tyler didn't
6 plan that, didn't intend that, didn't aid him in doing
7 that, then he is not guilty of murder.

8 He is not guilty of murder because he didn't
9 fire the gun. He is not guilty of murder under the hand
10 of one is the hand of all. Mere presence, the judge
11 will tell, is not enough.

12 Mere presence is not enough. He has got to be
13 physically doing some thing, committing some act that
14 furthers some purpose, some plan, some intention of
15 Travis Harsey's.

16 Ladies and gentlemen, what happened? How do
17 we know what happened? Any conclusion you reach in this
18 case has got to be based on evidence, admissible
19 evidence, whatever you heard from the witnesses,
20 whatever physical things you have seen -- photographs,
21 physical objects entered into evidence by any witness,
22 and your visit to the house yesterday.

23 It's a terrible thing that has happened.
24 Nothing I say -- please don't take anything I say as
25 demeaning what happened, belittling what happened. It's

1 a horrible thing.

2 I don't care if all these people were drug
3 dealers -- Mr. Lewis, my client, Mr. Harsey, all of
4 them -- no one deserves to be pistol whipped and shot
5 five times with a .40-caliber handgun. It's just wrong.
6 It's illegal and it's immoral.

7 I don't stand up here to try to tell you that
8 anybody on my side of the courtroom -- my client, his
9 family, anybody -- is glad what happened. Everybody is
10 sorry that it happened. There isn't any question about
11 that.

12 But I think if you look at the evidence in
13 this case objectively and fairly and reasonably with
14 your God-given common sense, you will easily conclude
15 that the person who killed Corky Lewis is Travis Harsey.

16 I mean, why else would his little brother be
17 the one taking this gun down in the woods and burning
18 it, taking some shoes down in the woods and burning
19 them?

20 It wasn't my client, it wasn't his brother, it
21 wasn't his wife, it wasn't his mother, it wasn't his
22 family. It was none of them. It was the Harsey family.
23 That's where the gun came from.

24 Remember that. Don't forget that, please. It
25 came from his house. His little boy said, "Daddy had a

1 gun." Jimmy Williams told you that. His own child said
2 Travis had a gun. Jimmy saw the clip in the bedroom.

3 What you are going to hear from Mr. Swarat is
4 well, fine, Mr. Bolt is up here trying to create all
5 this doubt; but it's his client in that house. If
6 everybody saw the gun, he surely must have seen it.

7 But is that evidence of an agreement? Is that
8 evidence of a plan? Is that evidence of a fixed
9 intention to do a wrongful act? Is that evidence of
10 malice toward Corky Lewis?

11 I mean, the phrase is firmly convinced. How
12 in the world can you be firmly convinced that this man
13 is guilty of murder, conspiracy or burglary if you can't
14 be firmly convinced of what even happened?

15 All we really know that happened, to me the
16 only thing you can be firmly convinced of, is that
17 Travis Harsey shot and killed Corky Lewis. That's
18 pretty clear.

19 Hold on one minute. Pardon me. I left one of
20 my notes over here. Now, you cannot base a verdict on
21 speculation, surmise, and guesswork. And one of the
22 final things I would like to talk about is the evidence.

23 What does the evidence lead you to conclude?
24 What would be a fair conclusion from the evidence as to
25 what Randy Tyler did with respect to the death of Corky

1 Lewis? Nothing.

2 Remember the pathologist's testimony, not one
3 word about any facial injuries. To the extent the State
4 wants you to believe that Randy Tyler's knuckles were
5 scraped because he beat Corky Lewis, there is no
6 testimony.

7 You heard the scalp wounds obviously were from
8 some instrument. That would be the gun butt would be my
9 conclusion that was wielded by Travis Harsey. There is
10 no evidence of any trauma to his face. None whatsoever.

11 So he was taken into custody. He lied and
12 then tried to incriminate his brother. He didn't give a
13 ten-page statement.. What is that evidence of? What is
14 that evidence of as far as it relates to these three
15 charges, these three indictments? It's evidence of
16 fear. It's evidence of dishonesty based on fear. It's
17 in the record. It's not me making this up.

18 I remember asking Sergeant Frier about his
19 interview with Mr. Williams, and I believe he is the one
20 who said, "Yeah, fear for safety of the baby." So
21 Mr. Williams said that on the stand, and he told
22 Detective Frier that last year when he was interviewed.

23 So at the end of day, when you sit down and
24 look at the facts and evidence in this case, you have
25 got to take these three charges that Judge Westbrook

1 will explain to you, and you've got to take the facts
2 and circumstances that you know them to be from the
3 witness stand and say: "Am I firmly convinced of all
4 the elements of this charge? Am I firmly convinced that
5 there was some specific agreement between these two men?

6 What is the evidence of the agreement? You
7 can't assume an agreement. There is no evidence of an
8 agreement. That's of little comfort to Mr. Tyler
9 because that would still leave murder and burglary. So
10 you move on to the elements of those offenses, and you
11 look at every element that the State has to prove beyond
12 a reasonable doubt.

13 Burglary. Where is the evidence that when
14 Randy Tyler arrived at that address on 321 that at that
15 time he had the specific intention to commit a crime?
16 There is no evidence of that.

17 Then on the murder charge, there are two ways
18 that Randy Tyler can be guilty of murder if you find the
19 evidence supports it. One, he fired the weapon. He
20 took the other man, Travis Harsey's, .40-caliber Glock
21 pistol and shot Corky Lewis five times with it. There
22 is no evidence of that none at all, not one bit of
23 evidence.

24 So then you move on to the hand of one is the
25 hand of all. Then you have to find he was there with

1 some specific intention to aid Travis Harsey who was
2 committing some illegal act, and he was trying to help
3 him do that thing. And there isn't any evidence of that
4 because there is no evidence of what Travis Harsey was
5 doing.

6 There is no evidence that Randy Tyler helped
7 him assault and kill Corky Lewis, quite the contrary.
8 He said he didn't, and there is no evidence to
9 contradict it. There is none whatsoever in the record.

10 The angry words? Well, the angry words, is it
11 not logical to infer that those came from Travis Harsey?
12 He's the guy that left and had his family dispose of the
13 gun.

14 Once again, not to belabor a point, but Donna
15 Hutto says, "I was awakened by words from the garage."
16 It's just not reasonable to believe that after that
17 point, Randy Tyler went into the garage from this side
18 door. There isn't.

19 It's just not credible to believe that.
20 Again, it doesn't matter what the reason for it is. You
21 can't use that kind of testimony to base a murder
22 verdict on. You just can't do it.

23 So that's what you have to do is look at the
24 evidence and match them up to the elements of these
25 indictments. I have no doubt that you will find that

1 there is a reasonable doubt, and you are not firmly
2 convinced. Thank you.

3 MR. SWARAT: Your Honor, I need a moment or
4 two if I could to put some things together.

5 THE COURT: Yes, sir.

6 (Pause).

7 **CLOSING STATEMENT**

8 MR. SWARAT: Madame Forelady, and ladies and
9 gentlemen of the jury, good morning. First of all, on
10 behalf of Mr. Moses, myself, and members of law
11 enforcement and the people of Lexington County, which I
12 represent in this case, I want to thank you for the
13 service you have given to us this week.

14 I have noticed that you have paid close
15 attention to both sides, as it should be. You focused
16 on the evidence, and that's what I asked you to do at
17 the start.

18 I asked you to use your good common sense,
19 your own experiences in life and the things that you
20 bring uniquely to the jury box and decide the truth, the
21 truth about what those two men were doing that night.

22 ~~What you are doing right now as you sit in the~~
23 jury box is one of the most valuable things we have in
24 our society. It's extremely, extremely important. Many
25 people over time have talked about the value of jury

1 service.

2 One of the best quotes I have ever heard was
3 by Sir Winston Churchill. Now, there are many different
4 generations in the jury box today. Some of you may not
5 who he was.

6 He was the leader of Great Britain during
7 World War II. He was in that country going through a
8 terrible time. Germany was bombing his country every
9 night. It was a tough time, a lot of loss of life,
10 people giving up their lives in service to their country
11 in wartime.

12 And when asked about jury service many years
13 down the road, he said jury service is the highest form
14 of service you can give to your community in peacetime,
15 that just short of putting your life on the line against
16 a foreign enemy, jury service is the highest form of
17 service that you can give.

18 Because you are putting yourselves on the line
19 against those domestic enemies, those people that walk
20 among us, ladies and gentlemen, that won't follow the
21 law: Dope dealing, murdering, thieving, conniving thugs
22 like Travis Harsey -- I agree with Mr. Bolt on that --
23 and Randy Tyler, both of them.

24 Mr. Bolt wants to kind of muddy up the water
25 with you a little bit, Travis Harsey, Travis Harsey,

1 Travis Harsey. My guy, he is just a poor old victim.
2 He's a victim of circumstance. He is not a bad guy,
3 just a victim of circumstance. Old Travis Harsey, that
4 mean, evil fellow, he is the one that did all this.

5 Well, ladies and gentlemen, a jury is going to
6 get to hear about Travis Harsey. I want to bring up
7 something the judge told you at the start. We have got
8 rules we have to follow. There are rules that prevented
9 us from putting Travis Harsey in the courtroom this week
10 with Mr. Tyler.

11 I am not even allowed to explain to you what
12 the rules are. If you want to ask me after the trial is
13 over, I would be happy to explain it to you. That's a
14 shell game. That's a smoke screen. I wasn't allowed to
15 do it.

16 I will deal with Travis Harsey. Or better
17 yet, the citizens of the community just like yourselves
18 with deal with Travis Harsey. It won't be very long,
19 but today we are here to deal about Randy Tyler and his
20 participation in this crime.

21 Ladies and gentlemen, I don't have a side
22 really. It is my duty to point you toward the truth.
23 If that truth exonerates Randy Tyler, so be it, if
24 that's what the evidence truly is.

25 If the truth points to his guilt, so be it. I

1 don't have any enemies, any friends in this process. I
2 am supposed to point you toward the truth as a part of
3 the justice system.

4 Mr. Bolt is representing Randy Tyler. That's
5 his client. I submit to you he is trying to muddy that
6 water, get you a little confused about what we have to
7 prove and what Mr. Tyler's participation is.

8 There is a story an old lawyer told me about.
9 You are walking through the woods and you see a puddle
10 there, and you see a big shiny quarter in there. One
11 man looks down and says, "Look at that quarter there in
12 the water."

13 The lawyer take a stick and stirs up all that
14 mud, and you can't see anything in there. What
15 quarter? That's what Mr. Bolt is trying to do with
16 you.

17 I told you at the very start to focus on the
18 law, the hand of one is the hand of all. They were
19 involved in this crime. I told you to focus on that. I
20 am praying you will.

21 Let me explain to you what I submit to you is
22 the evidence of Mr. Tyler's participation in this case.
23 Who goes to Travis Harsey? Randy Tyler. What is the
24 conversation with Jimmy, family member Jimmy, on the way
25 up there?

1 "I'm mad at Corky. I'm mad at Corky about
2 money. I'm not real happy with my brother Matt." It
3 probably is sanitized in that police statement a little
4 bit.

5 "That damn Corky owes me money. He's got my
6 money. I am going to get my money. He and Matt, they
7 have been doing some deals around behind my back. They
8 are cutting me out of this money. I will get my money."

9 What do you think it was really like in that
10 car ride on the way to Travis Harsey's house? Use your
11 good common sense, your own experiences in life. They
12 get there. Remember they go in the back room for about
13 10 to 15 minutes?

14 They are smoking some drugs or something back
15 there alone. They weren't just sitting back there
16 smoking drugs for 10 to 15 minutes. They were talking
17 about what they were getting ready to do.

18 Jimmy told you. They were going over to
19 Corky's. They were going over to Corky's. Everybody in
20 that household, by the time they left, knew about the
21 gun, even little children, ladies and gentlemen. That
22 is a shame, little children walking around the house
23 talking about a gun. That's just absolutely shameful.

24 Jimmy walks back there, sees the clip, sees
25 what he believes to be a bullet in there. Ladies and

1 gentlemen, he knew exactly what he saw. He just doesn't
2 want to tell you that, not on his family member. That's
3 understandable.

4 But you get to use your common sense. What is
5 Mr. Tyler wearing when he's over there? Blue jeans and
6 a light-colored T-shirt. What is he wearing by the time
7 he is all the way out there to Swansea where he went?

8 And, ladies and gentlemen, it wasn't my idea,
9 but it certainly helps you to understand the layout of
10 this. What Mr. Moses told you is very important. They
11 had a long way to ride together and a long way to talk
12 about it.

13 You will get to see Mr. Tyler's statement.
14 What has Travis Harsey got by the time he is out there?
15 A mask and gloves. And don't tell me he didn't know the
16 gun was there.

17 If he wants you to believe that Mr. Tyler over
18 there didn't know the gun was there, that's an insult to
19 your good common sense. That's an absolute insult to
20 your intelligence. A mask and gloves riding together in
21 the car.

22 And Randy Tyler has changed his clothes. He
23 has got something covering up his arms. He has got a
24 hat covering up that silver hair that is distinct to
25 Randy Tyler, and he has got something around his face.

1 I notice Mr. Bolt didn't discuss that with you.

2 What did Donna Hutto say about he had a little
3 something around covering his face, had that hat on, had
4 that long coat on? But, ladies and gentlemen, Donna
5 Hutto knows Randy Tyler.

6 What is he trying to cover up? Those things
7 that identify on him that she would see to know that is
8 Randy Tyler. What is he trying to cover up with the cap
9 that he didn't have on when Jimmy was there?

10 Jimmy didn't tell you anything about a ball
11 cap. He is trying to cover up that silver hair that is
12 so distinct to Randy Tyler. What is Travis Harsey
13 trying to cover up with a mask and gloves?

14 Ladies and gentlemen, let's talk about the
15 credibility and believability of the witnesses that
16 testified. The judge is going to tell you what that
17 means.

18 Believability just means you can believe what
19 they say because they were in a position to see or hear
20 or do what they said they did. Let's boil it down to
21 what you have to believe to find Randy Tyler not guilty
22 of these crimes.

23 You would have to believe every word that came
24 out of Randy Tyler's mouth from that witness stand to
25 believe he is not guilty. If you disbelieve him in any

1 way whatsoever, he is guilty of all of it.

2 You would have to believe everything Randy
3 Tyler has told you. That's your choice. If you want to
4 believe dope-dealing, conspiring-with-thugs Randy Tyler,
5 that's your choice. We don't get a second shot at this.
6 If you find him not guilty, he walks out of this
7 courtroom, no punishment, no charge. It's over.

8 We don't get a chance to appeal your decision.
9 That's why it's so important. That's why I am so
10 passionate about it. I want to make sure you understand
11 the truth before you leave this courtroom.

12 Donna Hutto. The plan was going just fine
13 until Donna Hutto got into the mix. She tore it up. It
14 fell apart. What did you hear about where that car was
15 parked, ladies and gentlemen?

16 Mr. Bolt told you there had to be some type of
17 agreement. Well, it doesn't have to be a written
18 agreement. It doesn't have to be a spoken agreement.
19 If you can tell by their actions that they are
20 conspiring with one another, that's enough. You can
21 tell by their actions that there is some type of
22 agreement to do an unlawful act. It doesn't have to be
23 spoken words.

24 Where does Travis Harsey put himself in
25 relation to that house parking the car? He is up here

1 (indicating) in the tree line where he can't be seen
2 from the house.

3 Now, would you rather park in the driveway and
4 walk a short distance to Corky's or would you rather
5 park way up here (indicating) and have to walk the long
6 way? Use your good common sense.

7 Why are they parking out of sight? Mr. Bolt
8 wants you to believe, I guess, that Donna didn't see
9 that car that was parked right in her driveway because
10 Randy told you it was right in the driveway.

11 You know, sometimes the most simple little
12 things will escape you. It may be my fault. I walked
13 out last night to put some things in my truck, and I sat
14 there and just listened for a second.

15 I live in a neighborhood. There are lots of
16 folks around, but it was real quiet. Out there in the
17 country, it's even more quiet. I thought about the
18 noise.

19 When Donna rushed out that door running for
20 her life, she knocked that door open. It makes noise.
21 She cranked up that car and she peeled out of that
22 driveway.

23 I started thinking about that. Randy Tyler
24 sure heard that. Travis Harsey sure heard that. That's
25 where the fishing story starts being made up right then

1 and there. They have got to say something.

2 "Jimmy, if the police come and talk to you
3 now, I was fishing with you. Wife, if the police come
4 and talk to you, I was fishing with you. Mother-in-law,
5 if the police come and talk to you, I was fishing with
6 you."

7 They were talking. They were as good as
8 " caught when that car pulled out of that driveway. If he
9 had really been parked in the driveway, Donna would have
10 ran right into the front of him because there was no
11 other place to park. She was parked in the driveway.
12 She had to get out.

13 That car is parked up in the wood line, and
14 they are sneaking into the property. What does Donna
15 hear Corky say? "Randy, I ain't done no stuff like
16 that." I am sure it wasn't stuff. "Randy, I ain't done
17 no stuff like that. Randy, we don't need to go into the
18 F-ing house."

19 Randy is standing out there when she sees him
20 right in here (indicating) faced toward the garage,
21 faced toward that door which was open that night. If
22 you want to see the crime scene videotape, take a look
23 at it.

24 He is standing right there (indicating) facing
25 into the garage. What is he doing? He is ordering

1 Corky Lewis into his house. "You better give me that
2 damn money you owe me, Corky. Where is the money,
3 Corky?"

4 I don't doubt at all that Travis Harsey was in
5 that garage with that gun pointing on Corky Lewis. But
6 who is giving the marching orders, ladies and gentlemen?
7 Randy Tyler.

8 She doesn't hear a third voice. She was clear
9 about that. "I didn't hear any other voices. I don't
10 know Travis Harsey. I've never heard of Travis Harsey
11 until this thing happened to Corky."

12 Who is laying down the law and giving the
13 marching orders? Ladies and gentlemen, if you are going
14 to order me around on my property in my house, you
15 better have a gun and some help. That's all Travis
16 Harsey is. He's hired help. He's his hit man.

17 But Randy Tyler is running the show. Randy
18 Tyler is making the plans. Randy Tyler has been to the
19 house before and knows Corky has got money. Randy Tyler
20 has been to the house and knows where Corky hides his
21 money.

22 But as soon as that car peels out now, time is
23 getting short. They've got to know the police are going
24 to be there eventually. Time is getting short and they
25 start getting a little sloppy.

1 He is beating on that ceiling. You heard
2 about those knuckle marks. You can still see, even
3 though they have been swabbed, you can still see his
4 knuckle marks and a little bit of blood where he is
5 beating into that ceiling.

6 You heard about the secret compartment up
7 there where Corky kept money and/or probably drugs. Why
8 is Randy beating on the ceiling, ladies and gentlemen?
9 He is trying to get into that secret compartment and get
10 that money. It was all about money. Common sense.

11 They took that overturned bar stool, the one
12 that was down here on the floor right there
13 (indicating). See the one laying down (indicating)?
14 They are beating on that ceiling trying to get into that
15 secret compartment.

16 And where is Corky when all this is going on?
17 "You are going to give us that money, Corky." That
18 man's lifeblood is all over the top of that other bar
19 stool right there (indicating).

20 And you know he is beaten by then. There is
21 blood in that garage. He has been beaten. He has been
22 assaulted. His blood is all over the top of that stool.

23 How does Corky's blood get on the ceiling?
24 Well, when Randy is swinging up there trying to knock
25 that ceiling tile out, some of Corky's blood was

1 probably on him and got up there, too.

2 Don't doubt for a second that Randy Tyler
3 doesn't have that man's blood on his hands. He did that
4 night, he did then, and he does today. He's got Corky's
5 blood on his hands, and that's why Corky's blood is on
6 that ceiling tile.

7 Uncle Jimmy. Uncle Jimmy lied for him like he
8 told him to. Ladies and gentlemen, that man, that is
9 his source of income right there down in the compound
10 down on Bluff Road. That is the big money man right
11 there, the dope dealer.

12 He's going to give the marching orders, and
13 you are going to march. He is funding everything.
14 Jimmy is going to lie if you tell him to lie. So is his
15 wife, so is his momma-in-law. They are going to lie to
16 protect that money. Use your common sense.

17 When Jimmy is finally pressed, that's when the
18 rest of it cracks, ladies and gentlemen. The first
19 thing you hear about Travis Harsey is from Uncle Jimmy.
20 That is the first time Travis' name got in this.

21 Then it's a race to see who is going to tell
22 on who. Then it's a race to see who is going to tell on
23 who. Of course, Randy wants to say Travis did all of
24 it. Jimmy finally had to open up and tell the truth.

25 You have to disbelieve what is at the crime

1 scene to believe Randy Tyler. Not only were they trying
2 to get into the ceiling as evidenced from those ceiling
3 tiles and Randy's blood up there, they also went through
4 the bedrooms.

5 Look at that crime scene video: Closet doors
6 open, drawers from the dressers in the bedroom pulled
7 out. They are looking for something, money and drugs.
8 It's the reason they went there. Two dope dealers
9 turned on one of their own, and it's about money, ladies
10 and gentlemen.

11 Now, I didn't expect him to do this. I
12 thought he would do all this other stuff but did not
13 expect him to attack Detective Frier. Nineteen years of
14 experience in law enforcement. He is head of the major
15 crimes division.

16 He has done more good things for his community
17 than some of us will ever do in a lifetime. He wants to
18 go after him and say, "Oh, he didn't treat me fair
19 either."

20 He wants to blame it on law enforcement, blame
21 it on Travis, blame it on circumstances, blame it on
22 Uncle Jimmy. He will probably blame it on all of us one
23 day, too.

24 What do you want to really believe? What do
25 you know to be the truth? The D.N.A. from Randy's

1 blood. Now he has got to come up with some kind of
2 explanation for that. So he is talking about he falls
3 down with Corky.

4 Well, what did Detective Frier tell you? "The
5 first time I heard that was today." The first time
6 Detective Frier heard anything like that. Don't you
7 think that would have been important if it were the
8 truth? Don't you think that would have been important?

9 This (indicating) is ten days after the crime,
10 ladies and gentlemen. They had a chance to heal quite a
11 bit. Does it look like somebody's fingernails scraped
12 across his knuckles? Oh, he was hell bent to get in
13 there and get that money.

14 Which version do you believe, ladies and
15 gentlemen? We ask you for the truth. I will never ask
16 you for anything more. Please don't give us anything
17 less. To believe his story is an insult to your common
18 sense. I'm not going to sit there and do that to you.
19 Just find the truth. Thank you.

20 (Whereupon the Court charged the jury as
21 follows).

22 THE COURT: Ladies and gentlemen, at this time
23 it's my duty to instruct you as to the law which applies
24 in this case. Let me tell you, Madame Forelady, that I
25 will give to you a copy of the written charge. You will

1 have it with you in the jury room.

2 And let me be sure to caution you not to give
3 any greater weight to any particular part of the charge.
4 You have to consider all the charge in its entirety.

5 Now, Madame Forelady, and ladies and
6 gentlemen, the State of South Carolina charges the
7 Defendant, Randall Scott Tyler, with three offenses.
8 They charge him with murder, they charge him with
9 burglary in the first degree, and with criminal
10 conspiracy.

11 They do so by the indictments that I
12 previously showed you. If you will recall, I read them
13 to you, so I will not read them again. To these
14 indictments the Defendant pleads not guilty.

15 That thereby places upon the State the burden
16 of proving the Defendant guilty beyond a reasonable
17 doubt. You should consider all the evidence or lack of
18 evidence in determining whether the State has met its
19 burden of proof.

20 A person charged with committing a criminal
21 offense in South Carolina is never required to prove his
22 innocence. The Defendant has no burden of proof. It is
23 a vital and important rule of law in our State that the
24 Defendant in a criminal trial, no matter how serious the
25 offense, must always be presumed innocent until his

1 guilt has been proven beyond a reasonable doubt.

2 This presumption of innocence remains with him
3 at all times, from the time of arraignment, all the way
4 through trial and unless and until a jury reaches a
5 verdict of guilty beyond a reasonable doubt.

6 It is the solemn duty of you as the jury if
7 you are not clearly convinced of his guilt beyond every
8 reasonable doubt to the contrary to find the Defendant
9 not guilty.

10 What is proof beyond a reasonable doubt?
11 First, a reasonable doubt is a doubt that would cause a
12 reasonable person to hesitate to act. Proof beyond a
13 reasonable doubt is proof that leaves you firmly
14 convinced of the Defendant's guilt.

15 You know, there are very few things in the
16 world that we know with absolutely certainty. And In
17 criminal cases the law does not require proof that
18 overcomes every possible doubt.

19 So if based on your consideration of the
20 evidence you are firmly convinced that the Defendant is
21 guilty of the crime charged, then you must find him
22 guilty.

23 On the other hand, if you think there is a
24 really possibility that he is not guilty, then you must
25 give him the benefit of that doubt and find him not

1 guilty.

2 I told you earlier, if you recall, that you
3 are the finders of fact. I don't have the right to pass
4 upon the facts, nor may I express any opinion that I
5 might have about them one way or another, nor may I
6 intimate in any way what I think about the innocence or
7 guilt of the Defendant.

8 Now, as finders of fact, you are also the
9 judges of the credibility, in other words, the
10 believability of the witnesses who have testified. In
11 passing on their credibility, you may consider a number
12 of factors, such as the appearance and manner of the
13 witness on the stand, which is sometimes referred to as
14 the demeanor of the witness.

15 You may consider whether the witness was
16 forthright or hesitant, whether he or she had consistent
17 testimony or whether it contained discrepancies. You
18 may consider the ability of the witness to know the
19 facts about which he or she testified and whether the
20 witness had a cause or a reason to be biased or
21 prejudiced in favor of the testimony that he or she
22 gave.

23 You may consider whether the witness's
24 testimony was corroborated, in other words, made
25 stronger by the other evidence in the case or was it

1 make weaker, in other words, impeached by the other
2 evidence in the case?

3 You also heard evidence of prior convictions
4 of crimes of certain witnesses who testified. This
5 evidence was admitted and may be considered only for the
6 purpose of evaluating the credibility or believability
7 of that witness.

8 You can use evidence of convictions to
9 determine whether a witness is truthful or worthy of
10 belief, and you decide how much weight to give to the
11 evidence.

12 Now, as jurors you have a right to believe a
13 small portion of a witness's testimony and discard the
14 rest or vice-versa. You may believe the testimony of
15 one witness against all the others or vice-versa. Of
16 course, most certainly you don't do so by merely
17 counting the number of witnesses who testified for each
18 side.

19 Throughout this process you have but one goal,
20 and that is to seek the truth, regardless of the source
21 from which it may have come. And you do so bearing in
22 mind that you must give the Defendant the benefit of
23 every possible doubt.

24 Now, among the witnesses you have heard were
25 people who were referred to as expert witnesses. An

1 expert witness is a witness with knowledge, skill,
2 training, experience or education in a particular field
3 and who is allowed to give his or her opinion as an
4 expert in that field.

5 In determining the weight to be given to such
6 an opinion, you should consider the qualifications and
7 the credibility of the witness, and the reasons given
8 for his or her opinion.

9 Remember, I told you, you are not bound by the
10 opinion of any expert witness. You decide how much
11 weight to give to the testimony of each expert witness.

12 Now, in a case such as this and in almost
13 every case, there are generally presented two types of
14 evidence: Direct evidence and circumstantial evidence.

15 Direct evidence is the testimony of a person
16 who claims to have knowledge of an actual fact, for
17 example, an eyewitness. Circumstantial evidence is
18 proof of a chain of facts and circumstances which
19 indicate the existence of a fact in issue.

20 The law makes no distinction between the
21 weight or value to be given to either direct evidence or
22 circumstantial evidence, nor is a greater degree of
23 certainty required for circumstantial evidence than it
24 is for direct evidence.

25 You should weigh all the evidence in the case;

1 and after doing so, if you are not convinced of the
2 guilt of the Defendant beyond a reasonable doubt, you
3 must find him not guilty.

4 Now, there were also introduced in this case
5 statements alleged to have been made by the Defendant.
6 While it my duty as the judge to determine whether the
7 statements are to be admitted, it is your duty as the
8 jury to determine the existence, the voluntariness, and
9 any weight to be given to any alleged statement by the
10 Defendant.

11 In other words, you must first make the
12 ultimate determination of whether or not the Defendant
13 in fact made the statement. If you determine he did not
14 make the statement, then you must not consider it for
15 any purposes.

16 But if you determine that he did make the
17 statement, then you next must determine whether it was
18 voluntary. And if you determine it was voluntary, then
19 you would decide what weight, if any, to be given to it.

20 You must carefully scrutinize all of the
21 surrounding circumstances before giving any weight to
22 any alleged statement. You must be satisfied beyond a
23 reasonable doubt that the statement was made by the
24 Defendant, that it was uninfluenced by promise of reward
25 or threat of harm.

1 And if you find beyond a reasonable doubt that
2 the statement was made voluntarily, then you must decide
3 what weight, if any, should be given to the statement.
4 Of course, if you find the statement was not made
5 voluntarily, then you must not consider the statement as
6 evidence for any purpose.

7 Now, you also heard evidence of allegations of
8 prior bad acts by the Defendant referring to drugs. You
9 may consider that evidence only for the limited purpose
10 of determining motive or intent of the Defendant.

11 You may not consider it and you must not
12 consider it to determine guilt or innocence, nor may you
13 consider it as to the character of the Defendant. You
14 can consider it only as to the issues of motive or
15 intent. Of course, it's still up to you to determine
16 the weight or credibility to be given to that evidence.

17 Now, remember I told you earlier that you are
18 the judges of the facts, and that same evidence makes me
19 the instructor of the law. You must accept as correct
20 the law as I give it to you. If I am wrong about
21 anything, there is a time and a place that it can be
22 corrected; but for today's purposes, you must accept it
23 as correct.

24 Let me caution you that it's not what you
25 think the law should be, but it is in fact what I tell

1 you that the law is. Remember I have told you before
2 that you have very wide discretion when it comes to the
3 facts of the case.

4 No one can disturb your finding of the facts.
5 However, you do not have that discretion when it come to
6 the law. You must accept it strictly as I give it to
7 you and apply it to the facts as you find them.

8 Now, let's discuss the charges, each of the
9 three charges, against the Defendant in this matter.
10 The first is a charge of murder. The legislature has
11 defined murder as follows.

12 Murder is the killing of any person with
13 malice aforethought either express or implied. Again,
14 the South Carolina legislature has said murder is the
15 killing of any person with malice aforethought either
16 express or implied.

17 In order to convict on murder, the State must
18 prove not only the killing of Mr. Lewis but that it was
19 done with malice aforethought. In the law malice is
20 referred to as a term of art.

21 In other words, it is a technical term. It
22 means wickedness. It means there was no just cause or
23 excuse. It is something that springs from depravity,
24 from a heart devoid of social duty and fatally bent upon
25 mischief.

1 While the law does not require that malice
2 shall exist for any particular length of time before the
3 commission of the act in question, it simply says it
4 must be aforethought. There must be a combination of
5 the previous evil intent and the act producing the fatal
6 result.

7 Now, the words express or implied don't mean
8 different kinds of malice but only the way or the manner
9 in which malice can be shown to exist. In other words,
10 malice may be proven by direct evidence or by inferences
11 from the facts and circumstances that are proven.

12 So in other words, proof of malice may be
13 expressed, in other words, direct where there is
14 evidence of previous threats or lying in wait or, in
15 other words, circumstances which show directly that an
16 intent to kill existed.

17 But the circumstances of many homicides will
18 prevent the possibility of offering this kind of
19 evidence of the existence of malice. So of necessity
20 the law says that malice may be inferred under certain
21 circumstances even without direct evidence as to what
22 was in the Defendant's heart and mind.

23 Malice may be inferred from the willful,
24 deliberate, and intentional doing of an unlawful act
25 without just cause or excuse or it may be inferred from

1 the use of a deadly weapon.

2 The resulting implication only permits rather
3 than requires you as the jury to infer malice. This
4 permissive inference is of an evidentiary nature, and
5 the implication does not require you as the jury to
6 infer malice but only permits you to do so.

7 In other words, the inference of malice from
8 the use of a deadly weapon is simply an evidentiary fact
9 to be taken into consideration by the jury along with
10 other evidence in the case. It is to be given such
11 weight as you the jury determine it should receive.

12 The inference of malice may be drawn from the
13 proof of use of a deadly weapon if you as the jury
14 conclude that it's proper after considering all the
15 facts and circumstances in the case. I also charge you
16 that the State is not required to prove a motive for the
17 killing.

18 Now, in South Carolina we have a legal theory
19 called the hand of one is the hand of all. What it
20 means is this. One who joins with another to accomplish
21 an illegal purpose is liable criminally for everything
22 done by his confederate incidental to the execution of
23 the common design and purpose.

24 A person must purposefully commit the crime or
25 be present at the scene of the crime and intentionally

1 or through a common design aid, abet or assist in the
2 commission of that crime through some overt act. The
3 act of one then is the act of all or, in other words,
4 the hand of one is the hand of all.

5 Now, mere presence at the scene is
6 insufficient to prove someone guilty of a crime. The
7 burden is on the State to prove every element of a crime
8 charged.

9 If you find after reviewing all the evidence
10 that the State has proven that the Defendant was only
11 present at the scene of the crime and they have not
12 proven any other participation in the crime, then you
13 must find the Defendant not guilty. The law is that
14 proof of mere presence at the scene of a crime is not
15 enough to find someone guilty.

16 The second charge is a charge of burglary in
17 the first degree. In this case the State has charged
18 the Defendant with the offense of burglary in the first
19 degree. This is a statutory offense. In other words,
20 it means that our legislature has passed a law that sets
21 forth the elements of this crime and gives us certain
22 definitions.

23 That law reads as follows. It says that a
24 person is guilty of burglary in the first degree if the
25 person enters a dwelling without consent and with intent

1 to commit a crime therein; and either, (1), when in
2 effecting entry or while in the dwelling or in immediate
3 flight therefrom, he or another participant in the
4 crime:

5 (A), is armed with a deadly weapon or
6 explosive; or (B), causes physical injury to any person
7 who is not a participant in the crime; or (C), uses or
8 threatens the use of a dangerous instrument; or (D),
9 displays what is or appears to be a knife, pistol,
10 revolver, rifle, shotgun, machine gun or other firearm.

11 Or, (2), the burglary is committed by a person
12 with a prior record of two or more convictions for
13 burglary or housebreaking or a combination of both; or
14 (3), the entering or remaining occurs in the nighttime.

15 I notice that some of you look like your eyes
16 are about to glaze over because there is a lot of detail
17 in this. But again don't worry. You are going to have
18 the charge, the written charge, in the jury room with
19 you.

20 Now, again, our law says that the person is
21 guilty of burglary in the first degree if the person
22 enters the dwelling without consent and with the intent
23 to commit a crime therein and the entering or remaining
24 occurs in the nighttime.

25 So in order for the State to prove the

1 Defendant guilty, they must prove each of the following
2 elements with proof beyond a reasonable doubt. In other
3 words, these elements are as follows:

4 One, that it was the Defendant; two, that he
5 entered a dwelling; three, that he did so without
6 consent; and, four, that he did so with the intent to
7 commit a crime therein; and, five, that either the entry
8 or remaining after the entry occurs in the nighttime.

9 Or that the Defendant has two or more previous
10 convictions for housebreaking or burglary. Or that
11 while entering remaining or leaving the dwelling, the
12 Defendant or another participant in the crime was either
13 armed with a deadly weapon or explosive or causes
14 physical injury to any person who is not a participant
15 in the crime.

16 Or uses or threatens the use of a dangerous
17 instrument or displays what appears to be a knife,
18 pistol or revolver. Again, each of these elements must
19 be proven beyond a reasonable doubt.

20 Now, our legislature defines a dwelling house
21 to include the living quarters of a building that is
22 used or normally used for sleeping, living or lodging by
23 a person.

24 The State must prove, as I told you, that the
25 entry occurred with the intent to commit a crime

1 therein. It's necessary that the criminal intent
2 existed at the time of the entering.

3 It is not enough that the criminal intent is
4 formed after the entry. On the other hand, where the
5 intent exists at the time of entry, it is not a defense
6 that the intent was abandoned after the entry. The
7 reason is that the entry with criminal intent completes
8 the crime of burglary.

9 Now, the third charge is conspiracy. The
10 Defendant, as I told you, is charged with the crime of
11 criminal conspiracy. A conspiracy is an agreement
12 between two or more persons to do an unlawful act in an
13 unlawful way.

14 The agreement alone constitutes the offense.
15 You as the jury must decide whether a conspiracy existed
16 and whether the Defendant was an active party to the
17 alleged conspiracy.

18 Before the Defendant may be convicted, it must
19 be proven beyond a reasonable doubt that a conspiracy
20 existed and that the Defendant was a knowing party to
21 the conspiracy and that an unlawful act was committed by
22 someone in furtherance of the conspiracy.

23 If the people are not acting together but are
24 acting separately and individually, then you may
25 rightfully conclude that they are not involved in a

1 conspiracy,

2 However, if two or more people pursue the same
3 unlawful goal, one doing one act and another person
4 performing another, then you may conclude they are in a
5 conspiracy to achieve that unlawful goal.

6 Now, Madame Forelady, and ladies and
7 gentlemen, you have been sworn to sit as fair and
8 impartial jurors. You have been sworn to impartially
9 try and determine the facts of this case.

10 And when you comply with your oath to do so,
11 then no one will have a right to criticize your verdict.
12 You will have fully discharged your duty as jurors.

13 Now, you must not be influenced by opinions or
14 expressions or ideas which you may have heard outside of
15 this courtroom, but you must decide the case only from
16 the evidence and the sworn lips of the witnesses and the
17 other evidence introduced.

18 You must not be influenced in any way by any
19 type of passion, prejudice or improper sympathy for or
20 against any of the parties. You have no friends to
21 reward. You have no enemies to punish. Both sides are
22 entitled to a fair trial at your hands.

23 There are two possible verdicts you may find
24 on each charge. You may find the Defendant either not
25 guilty or guilty. Of course, there is no significance

1 in the way in which I state them. One has to be stated
2 first. It's that simple.

3 You must not take into account the fact that
4 the Defendant is charged with more than one offense. He
5 is entitled to a fair trial on each charge against him.
6 You must not be prejudiced by the fact that there is
7 more than one charge.

8 As to each charge, you must consider whether
9 the State has proven the elements of that charge beyond
10 a reasonable doubt. Your verdict must be a unanimous
11 verdict. In other words, it must be agreed upon by all
12 of you.

13 Madame Forelady, it's your duty to preside
14 over the deliberations of the jury. When the jury
15 agrees on the verdict, then it will be up to you to
16 write it on the verdict form that I gave you and sign it
17 and date it as the forelady. You will have the verdict
18 form back in there with you.

19 At this time I have to take up some matters
20 with the lawyers. So I am going to ask, jurors, if you
21 will step to the jury room. It's very important. While
22 you are there, be sure you don't start talking about the
23 case and don't start deliberating. We are going to
24 actually send word for you when it's time to start
25 deliberating. Yes, ma'am.

1 FORELADY: If we have questions or need any
2 clarity, how do we need to take that up with the Court?

3 THE COURT: What you can do is, you can do it
4 in -- and I apologize. I left that out of the charge.
5 It's usually in it. When you arrive at a unanimous
6 verdict, knock on the door; and we will take the
7 verdict. I will tell you that first.

8 Also, if you have any questions or inquiries,
9 you can do it in one of two ways. Knock on the door, in
10 which case I will let you and the entire jury come out,
11 and you can ask the questions. Or you can simply send a
12 written note.

13 I will leave it up to you to decide how you
14 want to do that. If you have questions of law, of
15 course, you can always consult with the written charge
16 which will be in the jury room with you though. If you
17 have anything beyond that, you can ask the question
18 either of those two ways.

19 FORELADY: Thank you.

20 THE COURT: With that in mind, let me ask you
21 to step to the jury room.

22 (The jury retires to the jury room).

23 THE COURT: The jury is secured. Any
24 exception to the charge from the State?

25 MR. SWARAT: None from the State, Your Honor.

1 THE COURT: Defense?

2 MR. BOLT: No, Your Honor.

3 THE COURT: Counsel, if you would come up and
4 go over the evidence with the court reporter.

5 (Pause).

6 THE COURT: I need quiet in the courtroom,
7 please. The court reporter indicates that all of you
8 have been over the exhibits. Do all of you agree that
9 those are the proper exhibits to go into the jury room?

10 MR. BOLT: Yes, sir.

11 MR. SWARAT: Yes, Your Honor.

12 THE COURT: Mr. Bailiff, if you would --
13 Madame Clerk, I'm sorry. Go ahead and take it in and
14 advise the jury that they can begin deliberating. One
15 thing, how about give this to the court reporter.

16 Madame Court Report, that is the charge. How
17 about mark it as a Court's exhibit, please.

18 COURT REPORTER: Yes, sir.

19 (Court's Exhibit Number 2 is marked for
20 purposes of the record).

21 (The jury commences its deliberation at
22 10:38 a.m.)

23 THE COURT: Mr. Bailiff, tell them to make
24 sure to bring the alternate out.

25 (The alternate returns to the courtroom and is

1 excused).

2 THE COURT: We will stand in recess subject to
3 the call of the jury.

4 (Whereupon there was a recess).

5 (The following occurred at 12:05 p.m.)

6 THE COURT: Let's bring the jury in.

7 (The jury returns to the courtroom).

8 THE COURT: All parties and attorneys are in
9 the courtroom, and all jurors are now with us.

10 Madame Forelady, I have about three or four
11 questions, I think four questions, you have sent.

12 FORELADY: Yes, sir.

13 THE COURT: On a couple of them, you have
14 asked for written statements from Donna Hutto and Jimmy
15 Williams. We are not allowed to give you those. You
16 are limited to what was in the -- only the evidence that
17 has come in. We can't add to the evidence. So we can't
18 do that.

19 You want the T.V. to view the videotape. The
20 T.V. actually works off this equipment here. So you
21 will have to view it here in the courtroom. You can do
22 that though.

23 The other I just had a question. It says you
24 need to hear from Randy Tyler his explanation of what he
25 did after he drove up to the house?

1 FORELADY: Yes, sir.

2 THE COURT: And what he did -- does that mean
3 what he did immediately after?

4 FORELADY: Yes, sir. When he drove up in the
5 driveway, as he stated, what did he do next?

6 THE COURT: Okay. Madame Court Reporter, can
7 you find that?

8 COURT REPORTER: Right this second, Judge? I
9 just have to figure out where it is.

10 THE COURT: Let's do this. Let me let you
11 step back. It takes her a while to find it. She has
12 got to find the particular place in the transcript. We
13 are required to give you the direct and the cross
14 examination related to it. She has got to find those.

15 FORELADY: Can I ask you a question? If we do
16 not have the written statements of Donna Hutto, we had
17 originally asked if we could hear what Donna Hutto said
18 whenever -- right before she left, right before she left
19 the house. That's what we needed to know.

20 THE COURT: We can find that also. What we
21 will do is you have to give us just a few minutes to let
22 us find that and get the T.V. set up. We will let you
23 step back to the jury room. You can continue
24 deliberating if you want to. But once we have got that,
25 we will bring you back out. Let me ask this, are you

1 going to want to have lunch ordered?

2 FORELADY: Probably so.

3 THE COURT: Let me ask the clerk. She will
4 come back in just a minute to take your orders, okay?

5 FORELADY: Thank you.

6 (The jury retires to the jury room).

7 THE COURT: They jury is secured. Counsel, we
8 will just need a few minutes to let Coconut do this.
9 Y'all can be setting the T.V. up.

10 Coconut, mark the note from the jury as a
11 Court's exhibit.

12 (Court's Exhibit Number 3 is marked for
13 purposes of the record).

14 (Whereupon there was a recess).

15 THE COURT: Counsel, I understand we are ready
16 for the jury. Is the State ready?

17 MR. SWARAT: The State is ready.

18 THE COURT: Defense ready.

19 MR. BOLT: Yes, sir, Your Honor.

20 THE COURT: Madame Court Reporter, do you
21 prefer to get through the testimony first?

22 COURT REPORTER: Yes, sir.

23 THE COURT: We will do that first. Bring the
24 jury.

25 (The jury returns to the courtroom).

1 THE COURT: All parties and attorneys are in
2 the courtroom, and all jurors have returned.

3 Ladies and gentlemen, what we will do is the
4 court reporter will play back the testimony that you
5 requested, and then we will let you see the video.

6 (The testimony of Donna Hutto was played back
7 for the jury).

8 THE COURT: Ladies and gentlemen, what she
9 will do is play Mr. Tyler's testimony. Madame Forelady,
10 what we will do is if you reach a point where you have
11 heard what you want to hear, just let us know.

12 FORELADY: Okay.

13 THE COURT: And we will stop it at that point.

14 FORELADY: Thank you.

15 (A portion of the testimony of Randall Scott
16 Tyler was played for the jury).

17 THE COURT: Now we can set up the V.C.R. so
18 they can watch that.

19 (State's Exhibit 5, videotape, is replayed for
20 the jury).

21 THE COURT: Is that everything you need to
22 see?

23 FORELADY: Yes, sir, it is everything we need
24 to see. We will need explanation about the hand of one
25 and mere presence. Can you instruct us on that one more

1 time?

2 THE COURT: Those are actually in the written
3 charge that I gave you.

4 FORELADY: Okay.

5 THE COURT: If you want me to, I will give
6 them to you; but all I will do is just be giving to you
7 what is already in there.

8 FORELADY: That's fine.

9 THE COURT: Is that satisfactory with you?

10 FORELADY: Yes, thank you.

11 THE COURT: If you will go back and lunch
12 should be here. In fact, lunch is here now. One thing
13 about lunch. While you are eating, you can continue
14 deliberating while you are eating or you can stop.
15 That's up to you, either way you want to do it.

16 FORELADY: Thank you.

17 THE COURT: Thank you.

18 (The jury retires to continue its deliberation
19 at 1:25 p.m.)

20 (The following occurred at 4:36 p.m.)

21 THE COURT: The Defendant is here. Is the
22 State ready to take the verdict?

23 MR. SWARAT: Yes, Your Honor.

24 THE COURT: Is the defense ready?

25 MR. BOLT: Yes, Your Honor.

1 THE COURT: There is to be no reaction to the
2 verdict, regardless of what it is by anyone, pro or con.
3 Anyone violating this rule will be escorted from the
4 courtroom.

5 Deputies and bailiffs, please take your
6 positions when the jury comes in. Bring the jury in,
7 please.

8 (The jury returns to open court to report its
9 verdict).

10 THE COURT: All parties and attorneys are in
11 the courtroom, and all jurors are now with us. Madame
12 Clerk.

13 CLERK: Madame Forelady, have you reached your
14 verdict?

15 FORELADY: Yes, ma'am, we have.

16 CLERK: Please pass them up by bailiff.

17 (Hands to Court).

18 THE COURT: Publish them.

19 CLERK: Yes, sir.

20 (Whereupon the verdicts of the jury were
21 published as follows).

22 CLERK: Indictment 2003-GS-32-2264, Indictment
23 2003-GS-32-2265, and Indictment 2003-GS-32-2266, the
24 State versus Randy Tyler, we the jury by unanimous
25 consent find the Defendant Randy Tyler on the charge of

1 murder guilty.

2 We the jury by unanimous consent find the
3 Defendant Randy Tyler on the charge of criminal
4 conspiracy guilty.

5 We the jury by unanimous consent find the
6 Defendant Randy Tyler on the charge of burglary first,
7 we find the Defendant guilty. It is so signed Jeannie
8 Dunn, foreperson.

9 Madame Forelady, and ladies and gentlemen of
10 the jury, if this so be your verdicts, please indicate
11 each of you by raising your right hand.

12 (All jurors so indicate).

13 CLERK: All hands are raised, Your Honor.

14 THE COURT: Thank you, ma'am. If you would,
15 Madame Clerk, go ahead and poll the jury for me, please.

16 CLERK: Yes, sir.

17 THE COURT: Ladies and gentlemen, the clerk
18 will ask you two questions. The first question will be:
19 Was this your verdict in the jury room? And if you say
20 yes, then the next question will be: Is it still your
21 verdict? Those are the two questions she will ask you.
22 Go ahead.

23 CLERK: If you will hold your hand up as I
24 call your name so I can recognize you, please. Frances
25 Martoi.

1 JUROR: (Indicating).

2 CLERK: As to the verdicts, were these your
3 verdicts in the jury room?

4 JUROR: Yes, ma'am.

5 CLERK: And are they still your verdicts?

6 JUROR: Yes, ma'am.

7 CLERK: Martin McLemore.

8 JUROR: (Indicating).

9 CLERK: As to the verdicts, were these your
10 verdicts in the jury room?

11 JUROR: Yes, ma'am.

12 CLERK: Are they still your verdicts?

13 JUROR: Yes, ma'am.

14 CLERK: Jack Parrish.

15 JUROR: Yes, ma'am.

16 CLERK: As to the verdicts, were these your
17 verdicts in the jury room?

18 JUROR: Yes, ma'am.

19 CLERK: Are they still your verdicts?

20 JUROR: Yes, ma'am.

21 CLERK: Caroline -- excuse me. She was
22 excused. Rebecca Collum.

23 JUROR: (Indicating).

24 CLERK: As to the verdicts, were these your
25 verdicts in the jury room?

1 JUROR: Yes, ma'am.

2 CLERK: And are they still your verdicts?

3 JUROR: Yes, ma'am.

4 CLERK: William Henninger.

5 JUROR: (Indicating).

6 CLERK: As to the verdicts, were these your
7 verdicts in the jury room?

8 JUROR: Yes, ma'am.

9 CLERK: And are they still your verdicts?

10 JUROR: Yes, ma'am.

11 CLERK: Rozelle Hook.

12 JUROR: Yes, ma'am.

13 CLERK: As to the verdicts, were these your
14 verdicts in the jury room?

15 JUROR: Yes, ma'am.

16 CLERK: And are they still your verdicts?

17 JUROR: Yes, ma'am.

18 CLERK: Jillian Major.

19 JUROR: Yes, ma'am.

20 CLERK: As to the verdicts, were these your
21 verdicts in the jury room?

22 JUROR: Yes, ma'am.

23 CLERK: And are they still your verdicts?

24 JUROR: Yes, ma'am.

25 THE COURT: Marty Harris.

1 JUROR: (Indicating).

2 CLERK: As to the verdicts, were these your
3 verdicts in the jury room?

4 JUROR: Yes, ma'am.

5 CLERK: Are they still your verdicts?

6 JUROR: Yes, ma'am.

7 CLERK: Sonya Amaker.

8 JUROR: Yes, ma'am.

9 CLERK: As to the verdicts, were these your
10 verdicts in the jury room?

11 JUROR: Yes, ma'am.

12 CLERK: Are they still your verdicts?

13 JUROR: Yes, ma'am.

14 CLERK: Jeannie Dunn.

15 JUROR: Yes, ma'am.

16 CLERK: As to the verdicts, were these your
17 verdicts in the jury room?

18 JUROR: Yes, ma'am.

19 CLERK: And are they still your verdicts?

20 JUROR: Yes, ma'am.

21 CLERK: Douglas Simon.

22 JUROR: (Indicating).

23 CLERK: As to the verdicts, were these your
24 verdicts in the jury room?

25 JUROR: Yes, ma'am.

1 CLERK: And are they still your verdicts?

2 JUROR: Yes, ma'am.

3 CLERK: Jesse Ybabes.

4 JUROR: (Indicating).

5 CLERK: As to the verdicts, were these your
6 verdicts in the jury room?

7 JUROR: Yes, ma'am.

8 CLERK: And are they still your verdicts?

9 JUROR: Yes, ma'am.

10 CLERK: All jurors are polled, Your Honor.

11 THE COURT: Thank you. Any motions before we
12 release the jury from the State?

13 MR. SWARAT: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. BOLT: No, Your Honor.

16 THE COURT: Ladies and gentlemen, let me thank
17 you first for participating with us in the trial. I
18 suspect at this point all of you know better than the
19 other people on Monday what we meant when we said that
20 we couldn't do what we do without you.

21 That's why you are very important to us, to
22 have your ability to help us resolve these issues. And,
23 of course, we realize that we have basically taken you
24 from the security and comfort of your homes and have
25 brought you into a very violent world that you are not

1 used to being in.

2 Granted, you may see it on T.V. or in the
3 newspaper, but certainly you are not used to being as
4 involved as you are with this. I thought all of you
5 handled yourselves admirably.

6 Obviously, you were very serious about your
7 role as jurors. You took your job seriously. We
8 certainly appreciate that. At this time we are going to
9 release you. Your jury duty is over. You have to give
10 your badges back though. At this time we are going to
11 have -- we don't have the sentencing sheets, do we?

12 CLERK: No, sir. I also need the forelady to
13 sign the indictments.

14 MR. SWARAT: Your Honor, I believe I do have
15 some filled out.

16 THE COURT: You do? If you do, we will do
17 them now. If you don't, we will sentence in the
18 morning.

19 (Hands to clerk).

20 THE COURT: Are they in order, Madame Clerk?

21 CLERK: Yes, sir. I just have to make sure I
22 get them marked and coded, Your Honor.

23 THE COURT: Ladies and gentlemen, we will go
24 ahead and sentence this afternoon then. You are welcome
25 to stay for sentencing if you want to. You are also

1 free to go if you want to. It's entirely up to you.

2 If you want to stay, you can stay in the jury
3 box or you can go sit back out here in the courtroom or
4 you can go ahead and leave. If any of you -- I have a
5 policy that if any jurors want to talk about the case
6 afterwards, talk about why we did what we did when we
7 are through, I will make myself available to you.

8 Any of you who want to have any questions or
9 want to talk with me, just wait in the jury room
10 afterward; and I will come in and talk with you. You
11 don't have to obviously. You can go if you want to.

12 Sometimes I have gone back and every juror was
13 waiting to talk about something. Then sometimes I went
14 back to an empty room. Either way is okay. I will
15 leave that to you.

16 Again, we thank you for your participation.
17 So at this time then, you can do one of three things.
18 You can remain in the box or you can leave and go home
19 or you can step out here to the back of the courtroom.
20 I will leave that up to you.

21 FORELADY: If we have a question as a group,
22 can you not discuss -- you are asked so much when you
23 leave when you have been a juror all week. Can you say
24 anything to anybody about the case?

25 THE COURT: Oh, yes, ma'am. You sure can.

1 It's over with. You can talk with anybody you want to
2 now.

3 FORELADY: Thank you.

4 THE COURT: In fact, if you have any
5 questions, if you will just wait, I will be in the jury
6 room afterward. Whatever you want to do is okay at this
7 point.

8 (The jury is excused).

9 THE COURT: Before sentencing, Solicitor,
10 anything?

11 MR. SWARAT: Yes, Your Honor. I talked with
12 Mr. Bolt just a minute ago. As Your Honor is aware of
13 Mr. Tyler's prior record, there is also an outstanding
14 charge of burglary in the first degree out of a totally
15 different case that we have on Mr. Tyler.

16 I have given him the option to go ahead and
17 plead today on that if he wants to. I know he wants to
18 discuss that with his client. I understand that. I
19 will leave that open through next week sometime. I will
20 talk with Mr. Bolt about that.

21 MR. BOLT: Your Honor, Mr. Simmons represents
22 him on that. So I don't -- it would not be appropriate
23 for me to advise him on that.

24 THE COURT: I understand.

25 MR. SWARAT: Under the life without parole

1 statute, I think I need to advise him of that at least.

2 THE COURT: I understand, yes, sir.

3 MR. SWARAT: Your Honor, based on the
4 brutality of this crime and his prior record, we would
5 be asking for a life without parole sentence on this
6 case. The victim's family would like not to address the
7 Court at this time.

8 THE COURT: Mr. Bolt.

9 MR. BOLT: Well, if Your Honor please, you
10 know obviously that the jury didn't find this
11 constituted a reasonable doubt. But the perplexing
12 thing about this case is based on the evidence, we don't
13 know what happened.

14 We still don't know who killed Corky Lewis.
15 We don't know who pulled the trigger. I'm not going to
16 rehash the evidence, but that's a perplexing thing and a
17 puzzling thing.

18 My client has told me from the very first day
19 I interviewed him in the jail he did not kill him. He
20 did not pull the trigger. He is unwavering in that
21 assertion.

22 Sadly, ironically you heard some of this; but
23 there is a lot of it that didn't come into the record.
24 These men had been friends for many years. Albeit they
25 met as drugs dealers, but that doesn't mean that the

1 bonds of friendship weren't deep and weren't strong and
2 were long standing.

3 That is the sad thing about it. Every time I
4 have talked to my client in the jail, he has been
5 extremely emotional about this. I know, whether it's
6 the trauma of being there and seeing what happened,
7 being involved in what happened or losing a friend, I
8 know that he has been overwrought emotionally about this
9 every single time I have ever spoken with him. That has
10 been many, many times, more so than anybody I have ever
11 represented in almost 30 years as a trial lawyer.

12 He is 36 years old. He has been in jail for
13 eleven months on this charge. He is here with his
14 mother Linda Hughes who has been steadfast in her
15 support and love for him. She has called me many times
16 concerned about him. His wife Gina Tyler is here to his
17 immediate right and his sister in the red top is here
18 with him. Linda, anything you want to say?

19 MRS. LINDA TYLER: I believe he is innocent.

20 MR. BOLT: Your Honor, she is a single parent,
21 raised five children. He and Matt and his other
22 siblings grew up pretty hard and pretty rough. He has
23 had a touch life.

24 He and I have talked today while we were
25 waiting for the jury. I said, "Randy, in your life is

1 there anything you would take back?" And he says, "Yep,
2 getting involved in drugs."

3 That's what put him here. That's a sad thing.
4 It's killing the family. It's killing him. And
5 regardless of who pulled the trigger, who did what, that
6 is what killed Corky Lewis.

7 The Bible says -- and I don't want to get
8 maudlin -- the wages of sin are death. The wages of
9 drugs are destruction, and we have seen it, all the
10 devastation this has caused because all these men were
11 involved in drugs.

12 That's all I know to say, Your Honor. I would
13 ask you to take into consideration those two burglaries
14 were very remote in time. They involved breaking in and
15 stealing boats. There weren't breaking into residences
16 in the nighttime or anything like that.

17 Randy, is there anything you want to say?

18 THE DEFENDANT: I still through this all I
19 claim my innocence. Corky was my friend. I didn't go
20 there to hurt him, and I didn't kill him. I don't know
21 what else to say. It was all over drugs, but he is
22 still my friend.

23 THE COURT: Counsel, as you know, I am always
24 guided by the findings of the jury in making a decision
25 on the sentence.

1 MR. BOLT: Certainly, Your Honor.

2 THE COURT: Of course, in this matter they
3 have found him guilty of conspiracy, as well as the
4 burglary also and the murder. I think in terms of that
5 guidance, I believe I am constrained to give the
6 sentence that I give.

7 On the charge of murder, I will order the
8 Defendant committed to the Department of Corrections for
9 the term of his natural life without parole. On the
10 charge of burglary in the first degree, I will order him
11 committed to the Department of Corrections for the term
12 of his natural life. On the conspiracy charge, for five
13 years. All sentences are to run concurrent. Thank you,
14 sir.

15 MR. SWARAT: Thank you, Your Honor.

16 THE COURT: Anything else at this time?

17 MR. SWARAT: None from the State, Your Honor.

18 THE COURT: We will stand in recess.

19 (Whereupon the proceedings were concluded for
20 June 12, 2003).

21 (The following proceedings were reported on
22 June 13, 2003).

23 THE COURT: Mr. Bolt.

24 MR. BOLT: Are you ready to hear from me?

25 THE COURT: Yes, sir.

1 MR. BOLT: Your Honor, thank you for hearing
2 me. I would like to move at this time orally for a new
3 trial in lieu of filing a written motion under the
4 authority of State versus Best which provides that we
5 can do that.

6 I have two grounds, Your Honor. Number one,
7 insufficiency of the evidence. As you know, Mr. Tyler
8 was convicted on all three counts, all three
9 indictments, separate indictments.

10 First, as to burglary, it's my view and my
11 belief that there is not sufficient evidence to sustain
12 a conviction for burglary inasmuch as there was no
13 evidence of a preexisting criminal intent on the part of
14 Mr. Tyler when he entered the residence.

15 There is no question that he did enter the
16 residence. He himself said he was in the residence, but
17 I believe there was no evidence from which the jury
18 could deduce that he had the requisite criminal intent
19 such as is required to sustain a guilty verdict for
20 burglary.

21 Moreover, on the murder charge, it's clear to
22 me at least from the evidence in the record, the jury
23 based its murder conviction on the hand of one is the
24 hand of all doctrine.

25 Looking at a fairly recent case, a 1990 case

1 called State versus Langley, which was a case reversed
2 on other grounds, there is a good discussion by Justice
3 Burnette on the doctrine of hand of one, hand of all.

4 He compares that to the accessory theory of
5 liability. He says -- just a moment, Your Honor. Of
6 course, the hand of one, hand of all theory says that
7 one who joins with another to accomplish an illegal
8 purpose is liable criminally for everything done by his
9 confederate incidental to the execution of the common
10 design and purpose.

11 But it says, quote: To admit evidence under
12 this theory, the existence of the common design and the
13 participation of the accused against whom the evidence
14 is offered should first be shown.

15 Your Honor, of course, did not grant my motion
16 for directed verdict on the conspiracy charge, but this
17 is a separate argument. Of course, I also move for a
18 new trial on the conspiracy indictment.

19 The point is that there was no evidence of a
20 common design, Your Honor. Just because two people are
21 in a place together and some untoward result occurs
22 doesn't mean they went there with a common design or
23 purpose.

24 I just believe in this case there is no
25 evidence of that. There is evidence that a murder

1 occurred, a homicide occurred; but there is no evidence
2 of a common design participation.

3 That has to be in the record. There has to be
4 evidence of a common design and participation of this
5 man in that design before the jury can find him guilty
6 under the hand of one, hand of all theory.

7 Finally, I would move for a new trial on the
8 basis of the Court allowing into evidence the photo of
9 the autopsy. I believe that the prejudicial value of
10 that photograph of the shaved head of the victim
11 outweighed any probative value, especially in light of
12 the fact that pathologist testified that the scalp
13 wounds were not fatal. Thank you, Your Honor.

14 THE COURT: Counsel, I note the motion. I
15 would deny the motion. I think all the issues were
16 appropriately put before the jury. Of course, they made
17 their --

18 MR. BOLT: Yes, sir.

19 THE COURT: -- findings as a result of it.
20 Mr. Swarat, did you want to put anything on the record
21 at all?

22 MR. SWARAT: No, Your Honor.

23 THE COURT: All right.

24 MR. BOLT: Thank you, Your Honor.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

STATE OF SOUTH CAROLINA)

County of LEXINGTON)RANDALL S. TYLER #294029)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina ; and)
ATTORNEY GENERAL, HENRY McMASTER)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2007-CP32-0907

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORRECTIONAL INSTITUTION, P.O. BOX 205 EA-41
RIDGEVILLE, SOUTH CAROLINA, 29472
2. Name and location of Court which imposed sentence GENERAL SESSIONS;
LEXINGTON COUNTY
3. Name(s) of co-defendant(s) (if any) TRAVIS HARSEY (alleged) SAMUEL HARSEY
KEISHA SIMPSON; DEBORAH HARSEY
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) (2003-GS-32-2264; CRIMINAL CONSPIRACY)

(b) (2003-GS-32-2266) BURGLARY FIRST DEGREE(c) (2003-GS-32-2266: MURDER)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) JUNE 12, 2003 5years for criminal conspiracy (concurrent)(b) JUNE 12, 2003 LIFE for burglary first (concurrent)(c) JUNE 12, 2003 LIFE for murder (concurrent)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty JURY TRIAL

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALSii. SOUTH CAROLINA SUPREME COURT

iii. _____

(b) the result in each such Court to which you appealed:

i. AFFIRMEDii. AFFIRMED

iii. _____

(c) the date of each such result:

i. ~~UNKNOWN~~ September 4, 2003ii. ~~UNKNOWN~~ January 4, 2007

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. UNKNOWNii. UNKNOWN

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/AA TRUE COPY
100
S.C. C.C.P., G.S. & F.C.

- (b) N/A
- (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) DENIAL OF DUE PROCESS
- (c) PROSECUTORIAL MISCONDUCT

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHED MEMORANDUM OF LAW & FACTS IN SUPPORT
- (b) PROSECUTOR USED CONTRADICTORY THEORIES TO OBTAIN 2 CONVICTIONS
- (c) PROSECUTOR TOOK PART OF THE INVESTIGATORY APPARATUS/AND CLOSING

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. DENNIS BOLT, ESQ.
914 RICHLAND ST, SUITE C-100, COLUMBIA, SC. 29202
 ii. SAME AS ABOVE
 iii. ROBERT DUDEK, ESQ.
SOUTH CAROLINA APPELLATE DEFENSE
 (b) the proceedings at which each such attorney represented you:
 i. JURY TRIAL
 ii. SENTENCING
 iii. DIRECT APPEAL, PETITION FOR WRIT OF CERT. TO S.C. SUPREME COURT

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19. State clearly the relief you seek in filing this application:

VACATE SENTENCE AND CONVICTION/REMAND FOR NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

SCL

Revised 3/2003

2007-CP32-0907

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

VERIFICATION

I, RANDALL S. TYLER #294029, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Randall S. Tyler

SWORN to and subscribed before me this 15
day of March, 07.

Yvette Blane (L.S.)
Notary Public

My Commission Expires: 8/20/2016

AM

FILED

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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ORIGINAL

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, RANDALL S. TYLER #294029, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

15 day of March, 2007


Notary Public

2007-CP32-0907

My Commission Expires: 8/2/2016

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Lex. Ct. T.O.C.F., G.S. & F.C.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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Randall S. Tyler #294029
Lieber Corr. Inst.
P.O. Box 205 EA-41
Ridgeville, SC. 29472

RE: Post Conviction Relief Application and Memorandum of Law in Support.

March 15, 2007

Dear Ms. Beth Carrigg,

Enclosed for filing, please find the Original and (1) one copy of my Post Conviction Relief Application and Memorandum of Law in Support.

Could you please clock stamp the copy and return it to me.

For your convenience I have enclosed a self addressed, sufficient postage affixed envelope to return my copy to me.

I truly do thank you very much for your time and consideration in this matter.

Kindest Regards,

cc/file

/s/

Randall S. Tyler #294029

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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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FILED

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON

INDICT. NO.'S 2003-GS-32-2264;2265;2266

RANDALL S. TYLER #294029.....PETITIONER,

-VS-

STATE OF SOUTH CAROLINA; and

ATTORNEY GENERAL, HENRY McMASTER.....RESPONDENT,

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION RELIEF
BROUGHT PURSUANT TO: S.C. CODE ANN.
§17-27-20 THROUGH §17-27-120

Respectfully Submitted,

/s/

Randall S. Tyler #294029

Submitted this ____ day of _____, 2007

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ISSUES PRESENTED

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE HIGHLY PREJUDICIAL, OPINION TESTIMONY FROM A STATE'S WITNESS, WHO HAD NOT BEEN QUALIFIED AS AN EXPERT BY THE TRIAL COURT?

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE PROSECUTION "SOLICITING HIGHLY PREJUDICIAL OPINION TESTIMONY" FROM A STATE'S WITNESS WHO HAD "NOT" BEEN QUALIFIED AS AN EXPERT BY THE TRIAL COURT?

ISSUE (C) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE PROSECUTION IMPEACHING PETITIONER'S EXCULPATORY VERSION OF EVENTS THAT WERE TOLD FOR THE FIRST TIME AT TRIAL, THAT RESULTED IN THE PROSECUTION CROSSING THE DOYLE-OHIO LINE, THAT RESULTED IN A DENIAL OF DUE PROCESS THAT DENIED PETITIONER HIS RIGHT TO A FAIR TRIAL?

ISSUE (D) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE PROSECUTION'S IMPROPER CLOSING THAT RESULTED IN MISQUOTES OF LAW, LYING TO THE JURY ABOUT RULES, AND DELIBERATELY PLACING HIGHLY PREJUDICIAL REMARKS OF MISQUOTED EVIDENCE THAT RESULTED IN PROSECUTORIAL MISCONDUCT AND DENIED PETITIONER HIS RIGHT TO A FAIR TRIAL?

ISSUE (E) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE SOLICITOR'S IMPROPER CLOSING COMMENTS ON MALICE THAT BOLSTERED THE STATE'S CASE?

ISSUE (F) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S MALICE INSTRUCTIONS THAT IN EFFECT SHIFTED THE BURDEN OF PROOF?

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IN
EX. CO. C.C.C.P. Q.B. & F.C.

IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

RANDALL S. TYLER #294029

) INDICT. No. 2003-GS-32-2264; 2265; 2266

PETITIONER

)

-v-

)

STATE OF SOUTH CAROLINA; and
ATTORNEY GENERAL, HENRY McMASTER

)

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION
RELIEF BROUGHT PURSUANT TO: S.C.

RESPONDENT

)

CODE ANN. §17-27-20 THROUGH §17-27-120

COMES NOW, Randall S. Tyler, pro-se, known herein after as Petitioner, seeking relief in this Court, claiming that his constitutional rights were violated at trial in a number of ways, including, but not limited to his Sixth Amendment Right to the effective assistance of trial counsel, as well as his Rights to a fair trial, that is protected under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Petitioner presents this Application and Memorandum of Law in Support, pursuant to S.C. Code Ann. §17-27-20 through §17-27-120. The issues included herein along with Petitioner's statement of facts, will show unto this Court that Petitioner is entitled to the requested relief stated herein.

Respectfully Submitted,

/s/

Randall S. Tyler #294029

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ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE "HIGHLY PREJUDICIAL, OPINION TESTIMONY" FROM A STATE'S WITNESS, WHO HAD NOT BEEN QUALIFIED AS AN EXPERT BY THE TRIAL COURT?

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE PROSECUTION "SOLICITING HIGHLY PREJUDICIAL OPINION TESTIMONY" FROM A STATE'S WITNESS WHO HAD "NOT" BEEN QUALIFIED AS AN EXPERT BY THE TRIAL COURT?

To save the Court's time, Petitioner will argue these issues together since the facts of one encompass the other.

FACTS

Petitioner contends that the State's BLOOD evidence was presented by a NON-EXPERT Witness, and that this evidence was [inadmissible]; due to it's [unreliability]. That Counsel failed to object to the solicitation of BLOOD testimony some [48] times by one State witness; who was not allowed to give Expert Witness testimony without having been qualified as an Expert by the Trial Court.

During the State's case in chief; Detective Vicki Hallman gave the following testimony..(infra)[Tr.p.91, L.20-25, through Tr.p.130, L.1-15]; without objection from Trial Counsel. The Prosecution was allowed to lead and use the word BLOOD [48] times in a very "inflammatory and prejudicial" manner over and over repeatedly without objection from Trial Counsel, thus allowing Petitioner to be unduly prejudiced in the eyes of the Jury.

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Q). There is a little area right here in the middle that is recessed there. You say from the outside looking in, the "victims" body was visible?

A). Yes sir.

Q). Did you do a crime scene videotape in this case?

A). Yes I did.

MR. SWARAT: Your Honor, at this time we move this into evidence as State's Exhibit Number 5, I believe without objection?

MR. BOLT: Without objection, Your Honor. [Tr.p.94, L.16-25].

During the playing of the videotape State's Exhibit No.5 [Tr.p.95, L.17-18]; the following colloquy was recorded:

Q). Did you find any BLOOD or foreign substance in the garage?

A). Yes, there were BLOOD drops in the garage. [Tr.p.97, L.11-12]

A). Correct. This would be the front door. You can see the "victim" lying right here. Then basically I would move into the house from here. This would be standing or right outside the front door with the storm door open, you can see the livingroom area with an overturned table, "the victim, one of the injuries to his arm". [Tr.p.97, L.19-25].

Appeared to be some BLOOD on the back area of that couch also.

Q). Could you tell if that was transferred BLOOD or 90-degree BLOOD drops?

A). It was transferred BLOOD.

Q). Explain to the jury what that means.

A). Transferred BLOOD is usually BLOOD that is moved from one object to another and it's usually in larger pools, where as BLOOD splatter or BLOOD droplets would be small and circular or illiptical. [Tr.p.98, L.15-25].

Q). Was there an amount of BLOOD in his hair?

A). Yes, there was a large amount of BLOOD in his hair. [Tr.p.99, L.4-5].

Upright barstool that has 90-degree BLOOD splatter. [Tr.p.100, L.20].

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knuckle marks with small traces of BLOOD [Tr.p.101, L.2-4].

Q). How about BLOOD just out on the ceiling tiles? [Tr.p.101, L.6].

A). That's the 90-degree BLOOD splatter on the upright stool. There is also some other BLOOD splatter that. [Tr.p.101, L.24-25].

Q). Did you find any BLOOD in this area over in the garage? [Tr.p.103, L.2-3].

Q). If you walk in the front door, the "body" is to the left?

A). The "body" is to the left. [Tr.p.103, L.19-21].

Q). This area is very wet with BLOOD here? [Tr.p.105, L.13].

Q). Let me stop you for a second. Did you detect and BLOOD in this area?

A). Yes, there is a [drop] of BLOOD.

Q). Maybe you can see it in this photograph.

A). Correct, you can see it better in this one. There is [one drop] of BLOOD that is on the floor here. [Tr.p.107, L.14-19].

Q). Was any BLOOD found on that box?

A). Yes, there were droplets of BLOOD on the top of..[Tr.p.107, L.24-25].

Q). ...and some BLOOD...is this BLOOD heavy or fairly...[Tr.p.108, L.4].

Q). You said you collected some BLOOD inside the..[Tr.p.108, L.14].

Q). Did you note any damage to these eyeglasses when you recovered them?

A). The eye pieces or the nose pieces are bent up slightly, and there [appears to be some type of stain on the lenses that could possibly be BLOOD.

MR. SWARAT: Your Honor, if I could show these to the Jury.

THE COURT: Yes, Sir. [Tr.p.109, L.15-22].

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Q). There is some **BLOOD** as you leave that area starting right about here. [Tr.p.110, L.6-7].

Q). The **BLOOD** you say you collected **BLOOD** in the garage area? [Tr.p.110, L.20-21].

Q). What type of evidence did you [believe] that contained?

A). **BLOOD**. [Tr.p.111, L.18-20].

Q). Detective Hallman, did you find any **BLOOD** in that room?, Did you document any **BLOOD**. [Tr.p.113, L.19-20].

Q). Would you describe the **BLOOD** in the poolroom as being heavier or lighter than in the garage? [Tr.p.113, L.19-20].

Q). That's the **BLOOD** we saw on the top of this pool...[Tr.p.113, L.25].

Q). Then there was some **BLOOD** also in the ceiling..[Tr.p.114, L.3].

Q). Did you collect any swabs of **BLOOD** from the poolroom? [Tr.p.114, L.5-6].

You should be able to see some **BLOOD** in the ceiling as well. [Tr.p.116, L.8-9].

Q). Detective Hallman, these **BLOOD** swabs that you take..[Tr.p.120, L.23].

Q). Was that also a swab that you took that you [believed] to be **BLOOD**. [Tr.p.122, L.8-9].

Q). When you have **BLOOD** in a crime scene like you have..[Tr.p.126, L.3]...do you need samples of **BLOOD** to match..[Tr.p.126, L.5].

Q). Was a collection of **BLOOD** taken from Mr. Lewis? [Tr.p.126, L.8].

BLOOD collected from Mr. Tyler..[Tr.p.126, L.17].

Q). With this **BLOOD** that was collected at the crime scene..[Tr.p.127, L.19-20].

Q). Above where the knuckle marks were in.. **BLOOD**..[Tr.p.130, L.23].

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DISCUSSION

Petitioner contends that the testimony solicited by the Prosecution was deliberately placed before the Jury in a manner calculated to envoke personal prejudice against Petitioner. Furthermore, that the personal opinion, or belief of a NON-Qualified Expert witness jeopardized the integrity of the trial process.

This is dubly true when the testimony is cast in a "prejudicial and emotional" term, like the testimony solicited in the instant case. Petitioner contends that this was a baseless maneuver used in order to gain an advantage for the State; and it was inconsistent with the standards required of the State. In the context of criminal trials, the prosecution is held to uniquely high standards of conduct. In Berger v. United State 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935), The United States Supreme Court indicated: "The United States Attorney is the representative not of an ordinary party to a controversy, but a sovereignty to govern all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As, such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnest and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.

It is as much his [duty] to refrain from [improper] methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." 295 U.S. at 88, 55 S.Ct. 629 at 633 (emphasis added). The South Carolina Supreme Court echoed this same standard in State v. King 71 S.E.2d 793 (1952). "A solicitor is an officer of the court representing a

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the people, including the accused, and occupies a quasi-judicial position and must see that justice is done, that no conviction takes place except in [strict] conformity with the law and that the accused is not deprived of any constitutional rights or privileges and, however strong his/her belief may be of an accused's guilt, he must conduct the trial in a manner fair and impartial to the accused..."The Court has specifically indicated that the "duty of a solicitor is to see that justice is done and not just to convict the defendant and furthermore, the solicitor is quasi-judicial officer, and must not do things which prevent a fair trial. State v. Durden 212 S.E.2d 587 (1975).

Petitioner contends that this was all the more damaging coupled with the fact that Vicki Hallman was not qualified by the Court as an Expert to even give such testimony. In South Carolina, opinion testimony by a lay witness, is governed by the South Carolina Rules of Evidence (701); which states ("If the witness is not testifying as an Expert, The witness's testimony in the form of opinion or inference 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;
- (C) Do not require special knowledge, skill, experience or training.

Petitioner contends that Counsel should have objected on the grounds that the testimony given by Vicki Hallman [violated] Section (C) of the S.C.R.E. (701).

For South Carolina specifically drafted Section (C) "to emphasize that a Lay person may not give Expert Opinions".

In 1993, The United States Supreme Court held that, "The Trial Judge must ensure that any and all scientific testimony or evidence admitted in, be not only relevant, "but reliable" . Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993).

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S.Ct. 2786; also see Taylor v. State 889 P.2d 319, Where the Court said: "Reliability refers to trust worthiness of the evidence. In a case involving scientific evidence, Evidentiary reliability will be based upon scientific validity."

This standard applies both to "novel scientific techniques" and "well established propositions". Daubert (supra) 113 S.Ct. at 2796.

In short, Daubert (supra); requires that any Expert testimony pertaining to "scientific knowledge"; requires special knowledge, skill and training; which clearly the witness Vicki Hallman [DID NOT] have.

Here Counsel let the witness testify some [48] times without objection to the validity of the BLOOD taken at the crime scene; in that in some instances had [NOT] even been [TESTED] to see if it matched Petitioner's blood type, [or] if it was even blood at all.

This unchallenged testimony, So infected the trial with unfairness as to make the resulting conviction a denial of due process, that is protected by the Fourteenth Amendment. Donnelly v. DeChristoforo 94 S.Ct. 1868.

The introduction of the [assumed] BLOOD evidence test constituted a pivotal point in the trial of Petitioner, in that it had the potential to reasonably establish in the Jurors minds that Petitioner's blood was found throughout the crime scene, or that large amounts of blood were scattered about the crime scene regardless of whose blood type it matched. Which would raise an inference in the minds of the Jurors that damaging evidence existed against Petitioner.

While a Court reviewing counsel's conduct in ineffective assistance of counsel claim is not to judge the actions in hindsight. Strickland 104 S.Ct. 2065; it's plainly clear that at the times this evidence was being introduced it would have be highly prejudicial to Petitioner's case.

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Trial Counsel however failed to make any contemporaneous objections to either the qualifications of the witness or the reliability of the testimony by a NON-EXPERT witness. The State's entire case against Petitioner consisted of circumstantial evidence; in light of the fact that Petitioner's defense was that of "mere presence". And while a timely objection by Counsel may not have excluded the testimony, the lack of any objection clearly prejudiced Petitioner, since the testimony was solicited from a Lay witness in violation S.C.R.E. (701)(C), and the lack of any objection deserves emphasis.

Additionally the failure of Counsel to object, later foreclosed Petitioner from being in a position to challenge the issue of this testimony by a non-expert witness on Appeal.

For the foregoing reasons Petitioner submits that he was denied the effective assistance of trial counsel at trial, by the deficient performance of Counsel when Counsel failed to object to the highly prejudicial testimony of a non-expert witness whose testimony surely mislead the Jury in reaching their verdict.

For the afore mentioned, Petitioner will forever pray that this Court will grant the requested relief of a new trial.

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ISSUE (C) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE PROSECUTION IMPEACHING PETITIONER'S EXCULPATORY VERSION OF EVENTS THAT WERE TOLD FOR THE FIRST TIME AT TRIAL, THAT RESULTED IN THE PROSECUTION CROSSING THE DOYLE-OHIO LINE, THAT RESULTED IN A DENIAL OF DUE PROCESS THAT DENIED PETITIONER HIS RIGHT TO A FAIR TRIAL?

FACTS

At the begining of Petitioner's trial, an in camera hearing was held with Detective Scottie Frier where the following colloquy was recorded:

A). MR. TYLER WAS BROUGHT TO THE SHERIFF'S DEPARTMENT BY A BONDSMAN WHO WAS HOLDING A BOND ON HIM FOR A PRIOR CHARGE.

Q). AND HE TURNED HIM INTO LAWENFORCEMENT?

A). YES, HE DID.

Q). AS A RESULT OF THAT, DID YOU HAVE CONVERSATION WITH MR. TYLER?

A). WE HAD A BRIEF CONVERSATION WITH ORIGINALLY, EXPLAINED TO HIM WHAT THE CHARGES WERE, AND SOME VERY CURSORY EXPLANATION OR SOME UNDERSTANDING OF THE INFORMATION THAT WE HAD AGAINST HIM IF YOU WILL.

Q). OKAY.

A). AT THAT PARTICULAR TIME, MR. TYLER HAD INDICATED THAT HE DIDN'T WANT TO MAKE ANY STATEMENTS, THAT HE WANTED TO CONSULT WITH AN ATTORNEY.

Q). HE HAD BEEN ADVISED OF HIS RIGHTS?

A). YES, HE WAS. HE WAS ADVISED WHAT THE CHARGES WERE PENDING, SOME VERY CURSORY INFORMATION ABOUT WHAT WE HAD..[Trp.64, L.7-25]..DEVELOPED, AND THE FACT THAT HE HAD THE RIGHT TO TALK TO AN ATTORNEY OR TO MAKE A STATEMENT TO US.

Q). AND HE INDICATED THAT HE WANTED TO EXERCISE THAT RIGHT?

A) THAT'S CORRECT.

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Q). AT THAT TIME DID YOU ASK HIM ANY QUESTIONS, INTERROGATE HIM IN ANY WAY WHATSOEVER?

A). NO, SIR, ANY INTERROGATION OR INTERVIEW MUST STOP AT THAT POINT. [Tr.p.65, L.1-9].

It has now been well established that Petitioner invoked his Post-Miranda rights to remain silent until Petitioner could consult with an attorney regarding the charges that were brought against him.

During trial Petitioner took the stand in his own defense, and the following colloquy was recorded without objection from Trial Counsel, as recorded:

Q).BUT THE FIRST THING YOU DO WHEN YOU TALK TO DETECTIVE FRIER, YOU DON'T TELL THE STORY YOU JUST TOLD THIS JURY. AND HE LET YOU TALK TO HIM AS LONG AS YOU WANTED TO DIDN'T HE?[Tr.p.299, L.9-12].

A). THE FIRST TIME I TALKED TO HIM WHEN GENE FRYE AND ME WALKED IN, WE SIT DOWN. GENE SAT TO THE LEFT OF ME, AND FRIER COME IN. HE SAID, "I WISH YOU'D WAIVE YOUR RIGHTS AND TALK TO ME LIKE A MAN." I SAID, "I DON'T HAVE ANYTHING TO SAY TO YOU.THIS IS MURDER. IT'S VERY SERIOUS." I SAID, "GET MY..[Tr.p.299, L.20-25]..LAWYER UP HERE AND I WILL TALK TO YOU."

Q). YOU DIDN'T SAY, "I'M AFRAID OF TRAVIS" YOU ARE NOT GOING TO BELIEVE WHAT TRAVIS DID"?

A).I DIDN'T SAY NOTHING.

Q). "HE HURT MY FRIEND CORKY. I WANT TO TELL YOU WHAT HAPPENED BECAUSE TRAVIS DID A HORRIBLE THING." YOU DIDN'T SAY ANYTHING OF THAT TO DETECTIVE FRIER, DID YOU?.

A).MY LAWYER WASN'T PRESENT. [Tr.p.300, L.1-9].

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The Prosecution further argued the following to the Jury in closing summation without objection from Counsel, as recorded:

NOW I DIDN'T EXPECT HIM TO DO THIS. I THOUGHT HE WOULD DO ALL THIS OTHER STUFF BUT I DID NOT EXPECT HIM TO ATTACK DETECTIVE FRIER. NINETEEN YEARS OF EXPERIENCE IN LAW ENFORCEMENT. HE IS HEAD OF THE MAJOR CRIMES DIVISION. HE HAS DONE MORE GOOD THINGS FOR HIS COMMUNITY THAN SOME OF US WILL EVER DO IN A LIFETIME. HE WANTS TO GO AFTER HIM AND SAY, "OH, HE DIDN'T TREAT ME FAIR EITHER". HE WANTS TO BLAME IT ON LAW ENFORCEMENT, BLAME IT TRAVIS, BLAME IT ON CIRCUMSTANCES, BLAME IT UNCLE JIMMY. HE WILL PROBABLY BLAME IT ALL OF US ONE DAY, TOO.

WHAT DO YOU WANT TO REALLY BELIEVE? WHAT DO YOU KNOW ABOUT THE TRUTH? THE D.N.A. FROM RANDY'S..[Tr.p.364, L.11-25]..BLOOD. NOW HE HAS GOT TO COME UP WITH SOME KIND OF EXPLANATION FOR THAT. SO HE IS TALKING ABOUT HE FALLS. WELL, WHAT DID DETECTIVE FRIER TELL YOU? "THE FIRST TIME I HEARD THAT WAS TODAY." THE FIRST TIME DETECTIVE FRIER HEARD ANYTHING LIKE THAT. DON'T YOU THINK THAT WOULD HAVE BEEN IMPORTANT IF IT WERE THE TRUTH? DON'T YOU THINK THAT WOULD HAVE BEEN IMPORTANT? [Tr.p.365, L.1-8].

DISCUSSION

Petitioner contends that he was denied the effective assistance of trial Counsel as guaranteed by the Six Amendment when Counsel failed to object to the Prosecution improperly impeaching Petitioner's exculpatory version of events that were told for the first time at trial when Petitioner testified in his own defense, and thus the Prosecution's statements were ultimately damaging to the point of crossing the Dolye-Ohio line that resulted in a complete denial of due process that is protected under the Constitution of the United States.

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In Doyle-Ohio 426 U.S. 610, 96 S.Ct. 2240; the United States Supreme Court held: "A state prosecutor violates a defendant's due process rights by impeaching his exculpatory story, told for the first time at trial, through cross-examination regarding his post-arrest silence. Doyle 426 at 611.

The Court reasoned that because Miranda warnings implicitly assure the silence will carry no penalty "it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial." Id at 618. Relying on Doyle (supra), Our Supreme Court held: "The State may neither comment upon nor present evidence at trial of a defendant's decision to exercise his right to remain silent and to be represented by an attorney. Edmond v. State 341 S.C. 340, 345; 534 S.E.2d 682, 685 (2000).

Petitioner contends that for Counsel's failure to object to the Prosecution's improper impeaching of Petitioner's testimony, further to allow the Prosecution to further argue it to the Jury denied Petitioner a fair trial that is protected under the Fourteenth Amendment of the State and Federal Constitution. It is improper for the State to refer to or comment upon a defendant's exercise of a constitutional right. State v. Johnson 293 S.C. 321, 360 S.E.2d 317 (1987); Such comments may not be made either directly or indirectly. State v. Goolsby 275 S.C. 110, 268 S.E.2d 31 (1980) overruled on other grounds by State v. Torrence 305 S.C. 45, 406 S.E.2d 315 (1991), also see State v. Rouse 262 S.C. 581, 206 S.E.2d 873 (1974).

In particular, the State may neither comment upon nor present evidence at trial of a defendant's decision to exercise his right to remain silent or be represented by an attorney. See Doyle (supra); "The due process clause of the Fourteenth Amendment is violated when a State Prosecutor seeks to impeach a defendant's exculpatory story, told for the first time at trial, by

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cross-examining them about their post trial arrest silence, after receiving the Miranda warnings. Griffin v. California 380 U.S. 609, 85 S.Ct. 1225, 14 L.Ed2d 106 (1965), The Fifth and Fourteenth Amendments forbid comment by the prosecution on an accused's silence or failure to testify, as well instructions by the court that such silence is evidence of guilt. State v. Cockerham 294 S.C. 380, 360 S.E.2d 22 (holding that prosecutor's direct reference to defendant's silence and indirect comments on defendant's exercise of his rights to counsel and jury violated defendant's Due Process rights and were reversible error in murder and kidnaping trial). State v. Hawkins 292 S.C. 418, 423, 357 S.E.2d 10, 13 (1987)(reversing conviction where prosecutor improperly commented upon defendant's failure to testify and explaining that such a comment essentially is a comment upon the defendant's right to remain silent. overruled on other grounds by State v. Torrence (supra); State v. Woods 282 S.C. 18, 20, 316 S.E.2d 673, 674 (1984) reversing conviction where solicitor improperly introduced evidence that defendant had exercised his right to remain silent. State v. Holiday 333 S.C. 332, 509 S.E.2d 280 (Ct.App.1998)(reversing conviction because solicitor's cross-examination of defendant as to why he had not told his version of events until the day of trial, was improper in that the question clearly referenced his Post-Miranda Silence.

The principles are rooted in Due Process and the belief that justice is best served when a trial is fundamentally fair. See Brecht v. Abrahmson 507 U.S. 619, 629, 113 S.Ct. 1710, 1717, 123 L.Ed2d 353, 367 (1993); Wainright v. Greenfield 474 U.S. 284, 291, 106 S.Ct. 634, 638, 88 L.Ed2d 623, 630 (1986); Miranda v. Arizona 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed2d 654 (1966). The obvious purpose is to prevent jurors from improperly inferring guilt from the

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defendant exercising a constitutional right to silence and counsel.

Surely Counsel should have objected to this line of cross-examination that resulted in a denial of due process and the right to the effective assistance of trial counsel. The prejudice incurred is easily seen for Petitioner was denied his right to a fair trial by exercising his constitutional rights that are protected by the United States Constitution as well as the State Constitution. Counsel's failure to object resulted in a deficient performance that clearly undermined the results of the outcome of the proceedings. Strickland v. Washington 466 U.S. 668.

This is clearly an error of the Prosecution as well as Counsel's failure to object that cannot be considered harmless beyond reasonable doubt. This was plain error; and is plainly seen. And Counsel should have objected. For the aforementioned reasons and violations of Petitioner's rights Petitioner will forever pray that this Court will grant the requested relief of a new trial. For this relief Petitioner will forever pray.

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ISSUE (D) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE PROSECUTION'S IMPROPER CLOSING THAT RESULTED IN MISQUOTES OF LAW, LYING TO THE JURY ABOUT RULES, AND DELIBERATELY PLACING HIGHLY PREJUDICIAL REMARKS OF MISQUOTED EVIDENCE THAT RESULTED IN PROSECUTORIAL MISCONDUCT AND DENIED PETITIONER HIS RIGHT TO A FAIR TRIAL?

FACTS

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Petitioner contends that he was denied the effective assistance of trial counsel when Counsel failed to object to the Prosecution's highly prejudicial improper closing, that consisted of "misquotes of law"; "deliberately lying to the Jury"; "mischaracterizing evidence that resulted in manufacturing evidence into the record".

Due to the gross amount of errors involved in the Prosecution's closing, and the amount of time it would take to sift and sort each error out individually, Petitioner will give testimony in support of these allegations at the PCR hearing, in order to sufficiently develop his contentions to these claims and sufficiently develop the record.

As was noted above, due to gross amount of errors complained of Petitioner will sight a few references that are supported by the record. It is undisputed that Petitioner was tried separately from Harsey (co-defendant); and could not confront Harsey in the Courtroom. During trial Petitioner testified in his own defense and the following colloquy was recorded:

Q). TRAVIS JUST SAYS THAT ABOUT HIMSELF JUST TO MAKE HIMSELF LOOK WORSE. I GUESS THAT IS WHAT YOU ARE..[Tr.p.303, L.24-25]..TELLING THIS JURY?

A). I DON'T KNOW WHAT TRAVIS SAID. WHERE IS TRAVIS?

Q). TRAVIS IS GOING TO BE TRIED IN TWO MONTHS,
MR. TYLER. YOU KNOW HE IS CHARGED WITH MURDER
JUST LIKE YOU ARE

A). I HAVEN'T HURT NOBODY..[Tr.p.304, L.1-6].

Here the Prosecution has now alluded to the Jury alleged statements made by Harsey that Petitioner was not able to challenge in the Courtroom. As is seen from above Petitioner is unaware of [any] statements made by Harsey. This was all the more damaging, for the Prosecution was allowed to place this highly prejudicial statement in front of the Jury to prove the truth of the matter asserted as well as to discredit Petitioner in the eyes of the Jury. Petitioner has made it clear that he "doesn't know what Harsey said", and further Petitioner asked the Prosecution.. "Where is Travis?".

During closing the Prosecution gave the following closing statement to the Jury with out objection from Counsel., as recorded:

WELL, LADIES AND GENTLEMEN, A JURY IS GOING TO HEAR ABOUT TRAVIS HARSEY. I WANT TO BRING UP SOMETHING THE JUDGE TOLD YOU AT THE START. WE HAVE GOT RULES TO FOLLOW. THERE ARE RULES THAT PREVENTED US FROM PUTTING TRAVIS HARSEY IN THE COURTROOM THIS WEEK WITH MR. TYLER.
I AM NOT EVEN ALLOWED TO EXPLAIN WHAT THE RULES ARE. IF YOU WANT TO ASK ME AFTER THE TRIAL IS OVER, I WOULD BE HAPPY TO EXPLAIN IT TO YOU. THAT'S A SHELL GAME. THAT'S A SMOKE SCREEN. I WASN'T ALLOWED TO DO IT. [Tr.p.353, L.5-15].

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Now, the Prosecution has been allowed to successfully allude the Jury away from the reasons that Travis Harsey was not in the Courtroom. Interestingly, the Prosecution has been allowed to "misquote law" and "lie" to the Jury about the "RULES" that didn't allow the Prosecution to try Petitioner and Harsey together in an attempt to "bolster" the State's case. Surely Counsel should have objected. Petitioner further contends that the Trial Court should have [corrected] this misquote of law as well.

The Prosecution further argued to the Jury without objection from Counsel;
as recorded:

BECAUSE YOU ARE PUTTING YOURSELVES ON THE LINE
AGAINST THOSE DOMESTIC ENEMIES, THOSE PEOPLE
THAT WALK AMONG US, LADIES AND GENTLEMEN, THAT
WON'T FOLLOW THE LAW: DOPE-DEALING, MURDERING,
THIEVING, CONIVING THUGS LIKE TRAVIS HARSEY—I
AGREE WITH MR. BOLT ON THAT—AND RANDY TYLER,
BOTH OF THEM. [Tr.p.352, L.18-23].

Here the Prosecution was allowed to break the "Golden Rule" without
objection from Counsel, by allowing the Prosecution to use this "passion
invoked" statement of suggesting to the Jurors as it does that they put
themselves in the shoes of one of the parties. This has allowed the Jury to
"depart" from neutrality and decide the case on the basis of personal interest
and bias rather than the evidence.

The Prosecution further argued the following to the Jury without objection
from Counsel; as recorded:

WHAT'S TRAVIS HARSEY GOT BY THE TIME HE IS OUT
THERE. A MASK AND GLOVES. AND DON'T TELL ME HE
DIDN'T KNOW THAT GUN WAS THERE.
IF HE WANTS YOU TO BELIEVE THAT MR. TYLER OVER
THERE DIDN'T KNOW THE GUN WAS THERE. THAT'S AN
INSULT TO YOUR GOOD COMMON SENSE. THAT'S AN
ABSOLUTE INSULT TO YOUR INTELLIGENCE.
[Tr.p.356, L.14-20].

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The Prosecution has now just told the Jury that if they believed
Petitioner's version of events it would be an "insult to their common sense,
and intelligence". Surely Counsel should have objected to this statement and
at least asked the Trial Court for a curative instruction, but as is seen
Counsel did nothing, which deserves emphasis.

The Prosecution yet further argues to the Jury without objection from Counsel; as recorded.

LET'S BOIL IT DOWN TO WHAT YOU HAVE TO BELIEVE TO FIND RANDY TYLER NOT GUILTY OF THESE CRIMES. YOU WOULD HAVE TO BELIEVE EVERY WORD THAT CAME OUT OF RANDY TYLER'S MOUTH FROM THAT WITNESS STAND TO BELIEVE HE IS NOT GUILTY. IF YOU DISBELIEVE HIM IN ANY WAY WHATSOEVER, HE IS GUILTY OF ALL OF IT. YOU WOULD HAVE TO BELIEVE EVERYTHING RANDY TYLER HAS TOLD YOU. THAT'S YOUR CHOICE. IF YOU WANT TO BELIEVE DOPE-DEALING, CONSPIRING-WITH-THUGS RANDY TYLER, THAT'S YOUR CHOICE. WE DON'T GET A SECOND SHOT AT THIS. IF YOU FIND HIM NOT GUILTY, HE WALKS OUT OF THIS COURTROOM, NO PUNISHMENT, NO CHARGE, IT'S OVER. WE DON'T GET A CHANCE TO APPEAL YOUR DECISION. THAT'S WHY IT'S SO IMPORTANT. THAT'S WHY I'M SO PASSIONATE ABOUT IT...I WANT TO MAKE SURE YOU UNDERSTAND THE TRUTH BEFORE YOU LEAVE THIS COURTROOM. [Tr.p.357, L.20-25, p.358, L.1-11].

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Petitioner contends that Counsel clearly should have objected to this argument, for the Prosecution has just "misquoted law" to the Jury. This is a blatant misquote, for the Jury only needs to have "reasonable doubt" about any "element" of the offense alleged. Yet, the Prosecution was allowed to "misquote law" and discredit Petitioner by telling the Jury that's their choice "if they want to believe Dope-Dealing, Conspiring-With-Thugs Randy Tyler". And the Prosecution further invoked his "passionate" pleading to the Jury and begged them for a guilty verdict. Surely the above statement should have been objected to, as well the Trial Court should have intervened, especially due to the fact the Prosecution had already misquoted law to the Jury when he told the Jury that there are "RULES" that prevented them from trying Petitioner and Harsey together. It is the duty of the Trial Court to correct mistakes of law made by Counsel in argument to the Jury. United States v. Varlark (CA.2NY) 225 F.2d 665; Frady v. People 96 Colo. 43, 40 P.2d 606, 96 ALR. 1052; Linder v. State 156 Neb. 504, 56 N.W.2d 734.

Although Counsel did not object and the Trial Court did not intervene, the Prosecution was further allowed to argue to the Jury without objection from Counsel; as recorded

WHICH VERSION DO YOU BELIEVE, LADIES AND GENTLEMEN? WE ASK FOR THE TRUTH. I WILL NEVER ASK YOU FOR ANYTHING MORE. PLEASE DON'T GIVE US ANYTHING LESS. TO BELIEVE HIS STORY IS AN INSULT TO YOUR COMMON SENSE. I'M NOT GOING TO SIT THERE AND DO THAT TO YOU. [Tr.p.365, L.1-18].

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DISCUSSION

Petitioner contends that he was denied the effective assistance of trial counsel as guaranteed by the Sixth Amendment of the S.C. Const. as well as the United States Constitution when Counsel failed to object to the improper closing argument of the Prosecution and as a result of Counsel's failure to object Petitioner was further prejudiced as he was denied his Fourteenth Amendment right to a fair trial that is protected under the Due Process Clause.

Petitioner further contends that this contention also supports Petitioner allegation that the Prosecution's closing resulted in "Prosecutorial Misconduct". The role of an American prosecutor as a minister of justice is firmly established. SEE Berger v. United States 295 U.S. 78, 88 (1935)(government attorney is the representative "of a sovereignty whose obligation to govern impartially is as compelling as it's obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done"); ABA Standards for Criminal Justice: Prosecution Function & Defense Function, Standard 3-1.2(c) (3d ed. 1993) ("The duty of the prosecution is to seek justice, not merely to

convict."); Nat'l Dist. Attys. Ass'n, National Prosecution Standards, Standard 1.1 (2nd ed. 1991) ("The primary responsibility of prosecution is to see that justice is accomplished."). Thus, a prosecutor may not seek a conviction at any price. State v. Porter 526 N.W.2d 359, 362-63 (Minn. 1995); Salitros 499 N.W.2d at 817.

The Court, quoting State v. Gilstrap 205 S.C. 412, 416, 32 S.E.2d 163, 164-65 (1944) reasoned.. "The rule followed in this State, and we think in most jurisdiction, is that if upon the whole case, it appears to the Court that the defendant was prejudiced by the language used, as a result of which he did not have a fair and impartial trial, it would be the duty of the Court to reverse the case and remand it for a new trial. The Court further opined; "an argument of this nature addressed to the jury tends to completely destroy and nullify all sense of impartiality in a case of this kind. It's logical effect is to arouse passion and prejudice. Jurors are sworn to be governed by the evidence and it is their duty to regard the facts of the case impersonally. SEE State v. Cannon 93 S.E.2d 889; State v. White 246 S.C. 502, 144 S.E.2d 481; State v. Gilstrap (supra).

The Solicitor's argument must not be calculated to arouse the passions and prejudices of the jurors. State v. Copeland 321 S.C. 318, 468 S.E.2d 620 (1996). While there are numerous kinds of trial conduct that are improper for prosecutors..in example; "alluding in argument to the defendant's exercise of right to remain silent; or to the defendant's failure to call witnesses; misstating the presumption of innocence; interjecting the Prosecutor's personal opinion about the veracity of witnesses; inflaming the passions and prejudices of the jury; disparaging the defendant's defense to the charges". In the case at bar Petitioner contends that the record conclusively supports that the Solicitor did in fact commit [all] of the aforementioned during

Petitioner's trial, that resulted in a denial of due process. Darden v. Wainright 477 U.S. 168, 181, 106 S.Ct. 2464, 2471, also see Donnelly v. DeChristoforo 416 U.S. 637, 94 S.Ct. 1868.

Many of these prohibitions also appear in standards of conduct the American Bar Association has established for prosecutors and defense counsel alike. See ABA Standards for Criminal Justice, Prosecution Function & Defense Function, Standards 3-5.9(prosecution); 4-7.4 to 4-7.8(defense). Prosecutors as well as defense counsel, are aware of case law proscribing particular conduct as well as the standards of conduct prescribed by the ABA. Courts throughout the circuits have struggled with the errors complained of in the instant case, and other circuits have struggled to effectively respond to the problems presented when prosecutors engage in off-limits conduct. The Illinois Supreme Court has referred to prosecutorial misconduct as "a problem that courts across the country have, for the most part, been unable or unwilling to control. People V. Johnson 803 N.E.2d 405, 412 (Ill.2003). A Florida intermediate appellate court described a "veritable torrent of cases" involving significant prosecutorial improprieties, noted that "this pattern of conduct cannot be tolerated," and expressed frustration that the court's "prior efforts to eliminate the practice have proven entirely inadequate." Thornton v. State 852 So.2d 911, 914-915 (Fla.Dist.Ct.App. 2003)(citation omitted). The problem is not new: 60 years ago Judge Jerome Frank of the Second Circuit Court of Appeals expressed his frustration that denouncing serious misconduct but not reversing shows an "attitude of helpless piety" and breeds a cynical attitude toward the judiciary. United States v. Antonelli Fireworks Co. 155 F.2d 631, 661 (2nd Cir.1946)(Frank J., dissenting).

Where the defendant demonstrates that the prosecutor's conduct constitutes

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an error that is plain, the burden would then shift to the state to demonstrate lack of prejudice, that is, the misconduct did not affect substantial rights. Placing the burden on the prosecution to show lack of prejudice is not a novel approach. In Chapman v. California, the case in which the United States Supreme Court held that constitutional error can be harmless, the Court placed the burden on the government, stating.. "Certainly error, constitutional error* * *casts on someone other than the person prejudiced by it a burden to show that it was harmless. It is for that reason that the original common-law harmless-error rule put the burden on the beneficiary of the error either to prove that there was no injury or to suffer a reversal of his erroneously obtained judgement." 386 U.S. 18, 24 (1967). The Court "requir[ed] the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Id. Chapman was itself a prosecutorial misconduct case, involving impermissible comment of the defendant's election not to testify at trial. Id. at 24-25. Similarly, at least two states, including Wisconsin, follow, Chapman and continue to place the burden on the prosecution to show lack of prejudice. SEE Wilson v. State 874 So.2d 1155, 1159 (Ala.Crim.App.2003)(holding the state must establish that prosecutorial misconduct did not injuriously affect defendant's substantial rights); State v. King 555 N.W.2d 189, 194 (Wis.Ct.App.1996)(holding that under the state's plain-error rule, burden is on the prosecution to prove that plain error is harmless).

Reducing the incidence of prosecutorial misconduct is a shared obligation of prosecutors, who need to be aware of and comply with prescribed standards of conduct; defense counsel; who should seek corrective action by the trial court when the misconduct occurs; and trial courts, "have a duty to intervene

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and caution the prosecutor, even in the absence of objection". State v. Glaze 452 N.W.2d 655, 662 (Minn.1990). To satisfy the requirements of reversal, the prosecutorial misconduct must be "so pronounced and persistent that it permeates the entire atmosphere of the trial. United State v. Blevins 555 F.2d 1236, 1240 (5th Cir.) cert. denied 434 U.S. 1016, 98 S.Ct. 733, 54 L.E.2d 761.

Clearly an attorney may not express his personal opinion as to the credibility of a witnesses or his own belief regarding a defendant's guilt. United States v. Morris 568 F.2d 396, 401. It is clear that it is error for a prosecutor to mischaracterize evidence in summation. Gaithers v. United States 413 F.2d 1061, 1079 (1969). In order to warrant reversal, an improper prosecutorial remark must cause substantial prejudice to the defendant. In determining whether a defendant has suffered substantial prejudice, one must look at the severity of the misconduct, the measures adopted to cure the misconduct, and certainty of conviction absent the improper remarks. United State v. Monaghan 741 F.2d 1434, 1443 (DC. Cir. 1984), cert. denied 470 U.S. 1085, 105 S.Ct. 1847, 85 L.Ed2d 146.

Petitioner contends that Counsel should have objected to this line of argument that unduly prejudiced Petitioner. For the Solicitor in closing to tell the Jury.."you are putting yourselves against petitioner"....to believe his story is an insult to your common sense"...These statements clearly infer that if the Jury couldn't return a verdict of guilty they didn't have common sense. Telling the Jury that there are "RULES" that prevented the Solicitor from putting Haresy and Petitioner in the Courtroom together...was in fact directly lying to the Jury, as there is no such rule. Then for the Solicitor to tell the Jury that if they disbelieved one word Petitioner said from the stand, then he was guilty, but that was their choice if they wanted to believe, Dope-Dealing-Conspiring with-thugs Randy Tyler. This was clearly a

misstatement of law, for the only thing the Jury had to do is have reasonable doubt about any element of the offense charged. For Counsel not to object to these direct violations of Petitioner's constitutional right to a fair trial Petitioner was unduly prejudiced at a very critical stage of the proceeding. See Donnelly v. DeChristoforo (supra); Simmons v. State 331 S.C. 333, 503 S.E.2d 164 (1998)(solicitor improperly injected, without objection, parole considerations); Fossick v. State 317 S.C. 375, 453 S.E.2d 899 (1995), cert. denied 116 S.Ct. 271 (Oct.2,1995)(failure to object to improper closing argument regarding the defendant's lack of remorse was ineffective assistance of counsel); Mincey v. State 314 S.C. 355, 444 S.E.2d 510 (1994)(failure to object to improper solicitor argument held ineffective assistance of counsel); State v. Hinton 210 S.C. 480, 43 S.E.2d 360 (1947)(solicitor's improper remarks probably affected the verdict).

The first prong of Strickland test is deficient performance. Here, trial Counsel's failure to object to the many inappropriate statements made by the Solicitor was blatantly deficient. The record is conclusive and was is proven cannot be denied. The prejudice incurred is easily seen for Petitioner was denied his right to a fair trial.

For the aforementioned reasons and violations of the Solicitor's improper closing that rouse to the level of prosecutorial misconduct that violated Petitioner's Fourteenth Amendment right to a fair trial. And for Counsel's deficient performance for not objecting, violated Petitioner's Sixth Amendment right to the effective assistance of Counsel. Petitioner will forever pray that this Court will grant the requested relief of a new trial.

For this relief Petitioner will forever pray.

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ISSUE (E) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE SOLICITOR'S
IMPROPER COMMENTS ON MALICE THAT BOLSTERED THE STATE'S CASE?

ISSUE (F) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S
MALICE INSTRUCTIONS THAT IN EFFECT SHIFTED THE BURDEN OF PROOF?

TO SAVE THE COURT'S TIME, PETITIONER WILL ARGUE THESE ISSUES TOGETHER SINCE
THE FACTS OF ONE ENCOMPASS THE OTHER.

FACTS

During closing argument to the Jury Assistant Solicitor Moses argued the
following to the Jury:

ALL WE HAVE TO DO IS THE PROVE THAT THERE WAS MALICE.
MALICE, NOW IS ILL WILL OR HOSTILITY TOWARDS ANOTHER HUMAN
BEING. IT'S AS SIMPLE AS THAT: ILL WILL OR HOSTILITY TOWARDS
ANOTHER HUMAN BEING.
MALICE CAN BE PROVEN IN A MATTER OF DIFFERENT WAYS. ONE, IT
CAN BE INFERRED IF THE USE OF A DEADLY WEAPON IS USED. YOU
CAN INFER MALICE BY THE USE OF A DEADLY WEAPON RIGHT THERE.
MALICE CAN BE SHOWN THROUGH ACTS OF PREPARATION OR PRIOR
PLANNING. MALICE IS A STATE OF MIND THAT SHOWS THAT THE
PERSON IS ACTING WITH A DARK EVIL HEART.
IF WE PROVE MALICE, IT'S MURDER, BOOM. WE HAVE GOT MURDER.
IT IS MURDER IF WE PROVE MALICE.
MALICE IS WHEN SOMEBODY KNOWS THAT THEY ARE DOING AN
UNLAWFUL ACT. THEY ARE DOING SOMETHING WRONG AND THEY KNOW
IT.

The Prosecution has just told the Jury that malice could be inferred if
the use of a deadly weapon is used. The Solicitor as is seen from the above

underlined has also told the Jury that if there were acts of preparation or prior planing, then malice could be inferred. This was all the more damaging for Counsel not to object for it is a fact that Petitioner and the victim were "planning" a prior drug deal. The Prosecution was further allowed to the Jury that "if Corky Lewis was killed with a deadly weapon—which he was killed with a .40 caliber pistol—you can infer malice from it." as recorded:

IF CORKY LEWIS WAS KILLED WITH A WEAPON, WITH A DEADLY WEAPON—WHICH HE WAS KILLED WITH A .40 CALIBER PISTOL—YOU CAN INFER MALICE FROM IT. IF RANDY TYLER WAS INVOLVED IN ANY WAY WHATSOEVER AND WE HAVE MALICE, RANDY TYLER, THE GENTLEMAN OVER THERE, IS GUILTY OF MURDER. [Tr.p.329, L.11-25, p.330, L.1-4].

Coming directly after this argument the Court gave the following instructions to the Jury on malice; as recorded:

NOW, THE WORDS EXPRESS OR IMPLIED DON'T MEAN DIFFERENT KINDS OF MALICE BUT ONLY THE WAY OR THE MANNER IN WHICH MALICE CAN BE SHOWN TO EXIST. IN OTHER WORDS, MALICE MAY BE PROVEN BY DIRECT EVIDENCE OR INFERENCES FROM FACTS AND CIRCUMSTANCES THAT ARE PROVEN.

SO IN OTHER WORDS, PROOF OF MALICE MAY BE EXPRESSED, IN OTHER WORDS, DIRECT WHERE THERE IS EVIDENCE OF PREVIOUS THREATS OR LYING IN WAIT OR, IN OTHER WORDS, CIRCUMSTANCES WHICH SHOW DIRECTLY THAT AN INTENT TO KILL EXISTED. [Tr.p.374, L.7-16].

MALICE MAY BE INFERRED FROM THE WILLFUL, DELIBERATE, AND INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST CAUSE OR EXCUSE OR IT MAY BE INFERRED FROM THE USE OF A DEADLY WEAPON. [Tr.p.374, L.23-25, p.375, L.1].

THE INFERENCE OF MALICE MAY BE DRAWN FROM THE PROOF OF USE OF A DEADLY WEAPON IF YOU AS THE JURY CONCLUDE IT'S PROPER AFTER CONSIDERING ALL THE FACTS AND CIRCUMSTANCES IN THE CASE. [Tr.p.375, L.12-15].

The Court has just told the Jury that malice may be expressed, "in other words, direct where there is evidence of previous threats or lying in wait or, in other words, circumstances which show directly that an intent to kill

existed'. The Trial Court further told the Jury that "malice may be inferred from the willful, deliberate, and intentional doing of an "unlawful act" without just cause or excuse or "it may be inferred from the use of a deadly weapon". The Trial Court has just echoed the same line in the State's closing argument. Counsel should have objected to this erroneous charge, for the Court has also told the Jury that if they could find that Petitioner was doing an "unlawful act" then they could infer malice. This was very damaging given the circumstances of Petitioner case for it was clearly proven that Petitioner and the Victim were planing to do an unlawful act..."Drugs". The Jury has been told that they need to look no further than the "unlawful act" to hang a guilty verdict on.

The Court further told the Jury that if they could find malice from the "unlawful act" then if a deadly weapon was used then malice was mandatory. To cement this contention the Trial Court even went a step further and instructed the Jury that they could "draw" malice from the "proof" of use of a deadly weapon if they as the Jury [conclude] it proper.

DISCUSSION

In a long line of cases, culminating in Yates v. Evatt 111 S.Ct. 1884 (1991), The United States Supreme Court has recognized that the prosecution [must prove each and every element] of the crime charged beyond a reasonable doubt. In re Winship 397 U.S. 158 (1970). The burden of proof on any element cannot be shifted to the defense, because doing so decreases the State's burden of proving the crime beyond a reasonable doubt.

As early as 1975 the United States Supreme Court considered a Maine Rule which required the defendant charged with murder to prove that he acted in the heat of passion in order to reduce the homicide to manslaughter. The Court

determined that a State could not shift the burden of proof on any element of the crime to the defendant. Mullaney v. Wilbur 421 U.S. 684 at 701 (1975). The Court found the risk described to be intolerable and reversed Wilbur's conviction.

The United States Supreme Court overturned a conviction in Sandstrom v. Montana 442 U.S. 510 (1979). Montana law provided that a person could be charged with deliberate homicide when that person "purposely or knowingly" caused the death of another and, at Sandstrom's trial, the trial judge instructed the jury that, "The law presumes that a person intends the ordinary consequences of his voluntary acts. Sandstrom (supra) at 512.

After considering Sandstrom's argument, the Court agreed that the effect of that was to shift the burden of proof to Sandstrom on a critical element of the offense, (that he purposely or knowingly killed another person). The Court again noted that a State must prove every element of the crime charged beyond a reasonable doubt and that the defendant cannot be required to prove any element of his defense or disprove any element of his crime. A "reasonable juror might have interpreted the instructions either as a conclusive presumption or as a burden shifting presumption, but either interpretation, the Court rendered the instruction unconstitutional.

The United States Supreme Court was confronted with another burden shifting jury instruction in Francis v. Franklin 471 U.S. 307 (1985). The Court found that the use of a "rebuttable" presumption was also unconstitutional for the same reasons set forth in Sandstrom (supra). The defendant there was charged with malice murder, and his sole defense was that he lacked the requisite intent to kill. The Court focused on, and held unconstitutional two sentences of the trial judge's jury charge; as follows: "the acts of a person of sound mind and discretion are presumed to be the

product of the person's will, but the presumption may be rebutted. A person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts, but the presumption may be rebutted. Francis v. Franklin (supra) at 311. The Franklin, Court evaluated both conclusive and rebuttable mandatory presumptions and concluded that both place the burden of persuasion on the defendant. Franklin (supra) at 314. Both types of presumptions were deemed unconstitutional because they relieved the State "of the affirmative burden of persuasion on the presumed element" by instructing the jury that it must find the presumed element unless the defendant persuades the jury not to make such finding. Franklin (supra) at 355 [S]uch shifting of the burden of persuasion with respect to a fact the state deems so important that it must be either proved or presumed, is impermissible under the Due Process Clause. See Patterson v. New York 432 U.S. 197, 215 (1977). As part of it's decision the Court refused to find that a presumptive jury instruction is cured if the jury is told that the presumption may be rebutted by the defendant. The Court noted that such an instruction does not cure the violation of the Due Process Clause because telling the jury that the defendant may rebut the presumption only serves to shift the burden of proof more firmly to the defense.

In deciding Francis v. Franklin, the Court relied upon it's decision in Mullaney v. Wilbur, just as the Court did in Sandstrom. But more importantly, all three cases relied upon the bedrock constitutional principles set forth in In re Winship (supra)(that a state must prove every fact of every element of the crime charged beyond a reasonable doubt, and mandatory burden shifting jury instructions relieves the State of that burden or proof in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

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Tex. Co. E.C.C.P., G.S. & F.C.

Shortly after Franklin was decided, a South Carolina case began winding it's way through the appeals process on it's way to consideration by the United States Supreme Court. Dale Robert Yates was convicted of murder and sentenced to death. His direct appeals were denied at all levels, SEE State v. Yates 310 S.E.2d 805 (1982) cert. denied, Yates v. South Carolina 462 U.S. 1124 (1983). Yates then filed a Petition for writ of habeas corpus to the South Carolina Supreme Court. Yates claimed that the trial court erred in charging the jury.. "that malice is implied or presumed from the use of a deadly weapon, because that presumption relieved the State of it's burden of proof on an essential element of the crime. His application was denied summarily by the Court. Yates then filed an appeal to the United States Supreme Court in 1985, that Court remanded his case to the South Carolina Supreme for reconsideration in light of Francis v. Franklin (supra) SEE Yates v. Aiken 474 U.S. 896 (1985). On remand of the Yates case, the Supreme Court of South Carolina noted that the jury instruction at Yates trial suffered from the same infirmities present in State v. Elmore 308 S.E.2d 781 (1983) and addressed in Francis v. Franklin (supra). Yates 349 S.E.2d 84 (1986). The Court neglected to consider Yates, in light of Francis v. Franklin, however, and questioned only whether it's previous decision in Elmore (supra) should be applied retroactively. After deciding that Elmore would not be applied retroactively, the Court affirmed Yates' conviction.

Yates again appealed to the United States Supreme Court. In a second decision issued early in 1988, the Court briefly recounted the procedural history of Yates, against the background of decisions in Sandstrom, Elmore, Franklin and In re Winship. The Court noted that the South Carolina opinion apparently concluded that Franklin was not to be applied retroactively because

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it had announced a new rule of law. The Supreme Court disagreed, however saying Franklin, was merely an extension and reaffirmation of it's prior decisions. The Yates, opinion concluded, since it [The Supreme Court of South Carolina] has considered the merits of the federal claim, it has a duty to grant the relief that federal law requires. Yates v. Aiken 484 U.S. 211 (1988). Again the South Carolina Supreme Court refused to vacate Yates conviction, finding that the charge used was harmless error. Yates v. Aiken 391 S.E.2d 530 (1989). Once again Yates appealed this denial to the United States Supreme Court. In it's third review of his conviction; the United States Supreme Court set aside Yates conviction without a third remand to the South Carolina Supreme Court. Yates v. Evatt 500 U.S. 391.

Based on case law, there is no doubt that the malice instructions given in Petitioner's trial were unconstitutional mandatory and burden shifting. And were additionally erroneous and confusing by the Court instructing the Jury that there were (3) types of malice. That being that malice could also be inferred from the deliberate and intentional doing of an "unlawful act" [or] "the use of a deadly weapon" [or] "malice could be "drawn" from the proof of the use of a deadly weapon". For in essence there has really been no finding of guilt beyond a reasonable doubt, for the trial Court relieved the State of proving every element of the offense alleged.

The trial Court told the Jury that if they could [conclude] that Petitioner had committed an intentional "unlawful act" that he knew to be wrong, then the Jury could hang a guilty verdict on the "unlawful act" because malice was involved. Clearly selling and dealing drugs is an "unlawful act" but in no way constitutes malice nor murder. Secondly, the Judge told the Jury that if they couldn't find malice from the "unlawful act", then if there was a deadly weapon used...it's mandatory because malice is there. Thirdly, the trial

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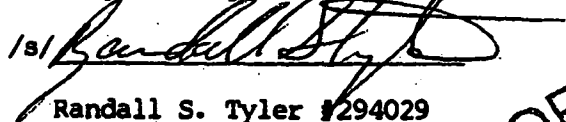
CONCLUSION

Petitioner believes that through the issues presented, citations of authorities relied on, that he has shown unto this Court that he was denied his Sixth Amendment right to the effective assistance of trial Counsel that is guaranteed by the Sixth Amendment, as well as Petitioner was also denied his right to a fair trial that is protected under the Due Process Clause of the Fourteenth Amendment of the South Carolina Constitution as well as the United States Constitution.

DUE TO THE COMPLEXITY OF THE ISSUES INVOLVED, AND THE FACT THAT SCDC HAS NOT PURCHASED ANY NEW LAW BOOKS SINCE 2003. THE PRISON LAW LIBRARY IS INADEQUATE TO PROPERLY RESEARCH AND PREPARE ALL REMAINING ISSUES NOT RAISED HEREIN. PETITIONER IS A LAYMAN AND NOT REPRESENTED BY COUNSEL, THEREFORE ANY ISSUES NOT RAISED HEREIN IS NOT WAIVED, EXPRESSED, OR IMPLIED, PETITIONER WOULD ASK TO BE APPOINTED COUNSEL AS SOON AS POSSIBLE TO RESEARCH AND AMEND [ANY AND ALL] REMAINING ISSUES. PETITIONER HEREBY RESERVES THAT RIGHT.

For the requested relief stated herein, Petitioner will forever pray that this Court will grant the requested relief of a new trial.

Respectfully Submitted,

/s/ 

Randall S. Tyler #294029

Submitted this 15 day of March, 2007

A TRUE COPY
 Tex. Co. C.C.P., C.S. & F.C.

ORIGINAL 447

IN THE STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
)

SCL

RANDALL S. TYLER #294029

) INDICT. No. 2003-GS-32-2264; 2265; 2266

PETITIONER

-v-

) CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA; and

ATTORNEY GENERAL, HENRY McMASTER

RESPONDENT

A TRUE COPY
Lex. Co. C.C.P. G.S. § 20.

I, Randall S. Tyler, do hereby swear under the penalty of perjury that I have placed the Original and (1) one copy of this Application for Post Conviction Relief & Memorandum of Law in Support, in a properly addressed, sufficient postage affixed envelope, and mailed to the Clerk of Court for Lexington County, Honorable Thomas Comerford, 139 E. Main St., Lexington, S.C. 29072-3494. This was done by placing the aforesaid document[s] in the U.S. Mailroom here at Lieber Correctional Institution.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 15 DAY OF March, 2007

Yvette Blume
NOTARY PUBLIC

MY COMM. EXPIRES 8/20/2016

Respectfully Submitted,

/s/ Randall S. Tyler
Randall S. Tyler #294029
Lieber Corr. Inst.
P.O. Box 205 EA-41
Ridgeville, SC. 29472

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2007 MAR 16 P 4 14

AM
FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

2007-CP-32-907

Randall S. Tyler, # 294029,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

Respondent, making its Return to the application for post conviction relief (PCR) filed March 16, 2007, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the June 2003 term of the Lexington County Grand Jury for criminal conspiracy (03-GS-32-2264), burglary-1st degree (03-GS-32-2265) and murder (03-GS-32-226). Dennis Bolt, Esquire, represented him. On June 12, 2003, Applicant underwent trial, pursuant to which he was found guilty. He was sentenced by the Honorable Marc H. Westbrook to confinement for life for murder, life for burglary and five (5) years for criminal conspiracy.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Tyler, Op. No. 05-UP-274 (S.C. Ct. App. filed April 19, 2005). Applicant subsequently filed a Petition for Rehearing on July 6, 2005. The South Carolina Court of Appeals denied Applicant's motion by

order dated August 29, 2005. Applicant subsequently filed a Petition for Writ of Certiorari in the original jurisdiction of the South Carolina Supreme Court, which was denied by order dated January 4, 2007.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript, the order of the South Carolina Court of Appeals affirming Applicant's conviction and sentence, Applicant's Petition for Rehearing, the order of the Court of Appeals denying Applicant's Petition for Rehearing, Applicant's Petition for Writ of Certiorari and the order of the South Carolina Supreme Court denying Applicant's Petition for Writ of Certiorari. Any of the above not so attached will be forwarded upon receipt.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Denial of due process; and
3. Prosecutorial misconduct.

III.

Respondent interprets each of Applicant's allegations to be claims that he received ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

WHEREFORE, having made its Return, the State requests that a hearing be held:

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL E. GRIGG
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 14, 2007.

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Randall Tyler, # 294029)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Case No.: 2007-CP-32-0907

ORDER OF CONTINUANCE

This matter comes before the Court by way of an application for post-conviction relief. An evidentiary hearing was scheduled for September 15, 2008, at the Lexington County Courthouse. Prior to the hearing, counsel for the Applicant informed this Court that she had a scheduling conflict and requested that this matter be continued to a later term of court for post-conviction relief.

This Court finds that this matter should be continued until the next term of court for post-conviction relief matters in the 11TH Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled; and,
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!

Beith A. Carrigg
Clerk of Court
Lexington, SC

NKE
Filed
2008 SEP 11 PM 5:27

William P. Keesley
William P. Keesley
Presiding Circuit Court Judge

SEPT. 10, 2008

EDGEFIELD, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP3200907

Randall S Tyler vs. State Of South Carolina

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Lexington, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the n/a, and a copy mailed first class this 29th day of September, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

Adrianne L. Turner
P.O. Box 8448
Columbia, SC 29202

Gregory P. Jones, Jr. SC Attorney General's
Office PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg

SCRPC APP-24/FORM 4

Beth A. Carrigg - Clerk of Court *th*

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Randall S. Tyler #294029,

☐ Plaintiff,

v.

State of South Carolina,

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-32-00907

MOTION INFORMATION FORM
AND COVER SHEET

ORIGINAL

check box above indicating submitting party

Plaintiff's Attorney: Adrienne L. Turner, Esquire
Address: Post Office Box 8448
Columbia, South Carolina 29202Phone: Fax:
E-mail: Other:Defendant's Attorney Gregory P. Jones, Jr.
Address: Post Office Box 11549
Columbia, South Carolina 29202Phone: 803 734-3737 Fax: 803 734-4113
E-Mail: Other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: YES/NO

SECTION II: Motion Type

- ☐ Written motion attached
☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.

Gregory P. Jones, Jr. 9/2/2008
 Signature of Attorney for Plaintiff/Defendant Date Submitted:

SECTION III: Motion Fee

☐ PAID-AMOUNT:☐ EXEMPT: (check reason)

- ☐ Rule To Show Case in Child or Spousal Support
☐ Domestic Abuse of Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writ from motion made in open court per judge's instructions
 Name of court reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

Belinda Carrigg
 Clerk of Court
 Lexington, SC

2008 SEP 11 PM 5:27

Filed



HEDRICK GARDNER

HEDRICK GARDNER KINCHELOE & GAROFALO LLP

ATTORNEYS AT LAW

CHARLOTTE • RALEIGH • WILMINGTON • COLUMBIA

October 1, 2008

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 E. Main Street
Lexington, SC 29072

Reply To:

ADRIANNE L. TURNER

Attorney

Direct: (803) 727-1208

Fax: (803) 727-1259

Email: aturner@hedrickgardner.com

RE: Randall S. Tyler #294029 v. State of South Carolina
Case No.: 2007-CP-32-00907
Our File No: 80-00292

Dear Ms. Carrigg:

Please accept this letter as notification that I am now employed with Hedrick Gardner Kincheloe and Garofalo, LLP at the address listed below. Please change the records in the above-referenced file to reflect this change. Via a copy of this letter, I am also copying counsel for the State of this change.

Please contact me if you have any questions.

Sincerely,



Adrienne L. Turner

NKE

ALT/ejs

cc: Gregory P. Jones, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Case No.: 2007-CP-32-0907

2008 NOV 13 A 9:46

Randall Tyler, # 294029

Applicant,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

v.

State of South Carolina,

Respondent.

ORDER OF CONTINUANCE

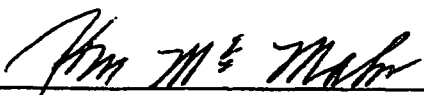
This matter comes before the Court by way of an application for post-conviction relief. An evidentiary hearing was scheduled for November 18, 2008, at the Lexington County Courthouse. Prior to the hearing, the State learned that its witness, Dennis Bolt, would be outside the country on the day of the hearing. The State requests that the hearing be continued.

This Court finds that this matter should be continued until the next term of court for post-conviction relief matters in the 11TH Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled; and,
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!



R. Knox McMahon
Chief Administrative Judge

9 Nov, 2008

Lexington, South Carolina.

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO: 2007CP3200907

Randall S Tyler vs. State Of South Carolina

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Lexington, South Carolina, this .

Court Reporter: _____

 PRESIDING JUDGE -

This judgment was entered on the n/a, and a copy mailed first class this 18th day of November, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

Adrianne L. Turner
 P.O. Box 11267
 Columbia, SC 29211

Gregory P. Jones, Jr. SC Attorney General's
 Office PO Box 11549 Columbia, SC 29211

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg

SCRCP APP-24/FORM 4

Beth A. Carrigg - Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

C.A. No. 2007-CP-32-00907

Randall S. Tyler #294029,

Plaintiff,

Vs.

State of South Carolina,

Defendant.

ORDER OF CONTINUANCE

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2009 MAY 19 PM 4:37

FILED

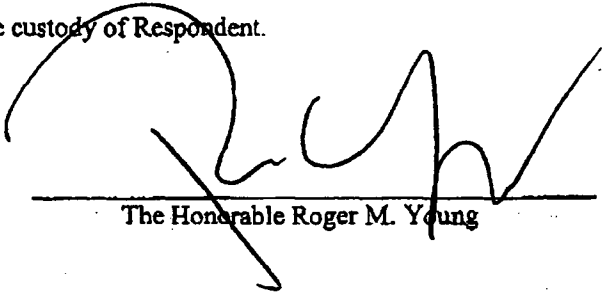
This matter comes before the Court by way of an application for post-conviction relief. An evidentiary hearing was scheduled for May 20, 2009, at the Lexington County Courthouse. Prior to the hearing, counsel for the Applicant informed this Court that the Applicant desires additional time to assist counsel in preparations for the hearing and requested that this matter be continued to a later term of court for post-conviction relief.

This Court finds that this matter should be continued until the next term of court for post-conviction relief matters in the 11th Judicial Circuit.

IT IS THEREFORE ORDERED:

1. that this post-conviction relief matter shall be continued and rescheduled; and,
2. applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!


The Honorable Roger M. Young

May 19, 2009

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP3200907

Randall S Tyler vs. State Of South Carolina

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Lexington, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the n/a, and a copy mailed first class this 21st day of May, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Adrianne Turner

A. West Lee

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg

SCRPC APP-24/FORM 4

Beth A. Carrigg - Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Randall S. Tyler, #294029)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2007-CP-32-0907

2009 NOV 18 A 9:41

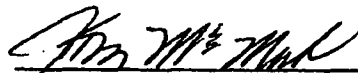
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC**ORDER OF CONTINUANCE**

This matter comes to the court by way of a post-conviction relief application filed March 16, 2007. An evidentiary hearing was convened on September 2, 2009. The Applicant was present at the hearing and represented by Adrienne Turner, Esquire. A. West Lee of the South Carolina Attorney General's Office represented Respondent. The Applicant's attorney moved for a continuance in the matter. Good cause having been shown, this Court grants a continuance in the matter.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief hearing is **CONTINUED** to the next suitable term of post-conviction relief court.
2. The Applicant is remanded to the custody of the Respondent during the pendency of this case.

IT IS SO ORDERED.


R. Knox McMahon
Presiding Judge
Eleventh Judicial Circuit

17 NOV, 2009Lexington, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP3200907

Randall S Tyler vs. State Of South Carolina

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered:
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court.

Dated at Lexington, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the n/a, and a copy mailed first class this 24th day of November, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Adrianne Turner Hedrick Gardner Kincheloe
& Garofalo P.O. Box 11267 Columbia, SC
29211

West Lee SC Attorney General's Office PO Box
11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/eh

SCRPC APP-24/FORM 4

Beth A. Carrigg - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Randall S. Tyler #294029,
☐ Plaintiff,

v.

State of South Carolina,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-32-00907

FILED

MOTION INFORMATION FORM
AND COVER SHEET

2009 NOV 18 A 9:41

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

check box above indicating submitting party

Plaintiff's Attorney: Adrienne L. Turner, Esquire
Address: Post Office Box 8448
Columbia, South Carolina 29202Defendant's Attorney A. West Lee
Address: Post Office Box 11549
Columbia, South Carolina 29202Phone: Fax:
E-mail: Other:Phone: 803 734-3737 Fax: 803 734-4113
E-Mail: Other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

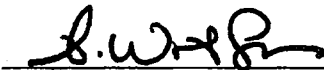
Estimated Time Needed:

Court Reporter Needed: YES/NO

SECTION II: Motion Type

- ☐ Written motion attached
☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff/Defendant Date Submitted: 11/5/09

SECTION III: Motion Fee

- ☐ PAID-AMOUNT:
☐ EXEMPT: (check reason)
☐ Rule To Show Case in Child or Spousal Support
☐ Domestic Abuse of Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of court reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

NOV 4 63



ORIGINAL
FILED

2009 NOV 18 A 9:40

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

HENRY McMASTER
ATTORNEY GENERAL

November 5, 2009

The Honorable R. Knox McMahon
205 East Main Street
Lexington, South Carolina 29072-3456

Re: Randall S. Tyler v. State of South Carolina
Case#2007-CP-32-00907

Dear Judge McMahon:

Enclosed please find the proposed original Order in the above-captioned case. If this Order meets with your approval, please sign same and forward to the County Clerk of Court to be filed and served.

Sincerely,

A. West Lee
Assistant Attorney General

AWL/las

Enclosure: noted

cc: Adrienne L. Turner, Esquire w/enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON

CA/No. 2007-CP-32-0907

ORIGINAL

FILED
2007 JUN -5 P 3:03
JESSICA C. HARRIS
CLERK OF COURT
LEXINGTON, SC

RANDALL TYLER #294029.....PETITIONER,

-VS-

STATE OF SOUTH CAROLINA.....RESPONDENT,

AMENDED POST CONVICTION RELIEF
APPLICATION PURSUANT TO RULE 15 SCRPC

Respectfully Submitted,

/s/

Randall Tyler #294029

TABLE OF CONTENTS

MEMORANDUM OF LAW, ...	1
ISSUE (G), ...	2
ISSUE (H), ...	2
ISSUE (I), ...	10
ISSUE (J), ...	13
ISSUE (K), ...	18
CONCLUSION, ...	25
MOTION TO ADDRESS ALL ISSUES PRESENTED, ...	26
CERTIFICATE OF SERVICE, ...	27

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF OF COMMON PLEAS
COUNTY OF LEXINGTON)

RANDALL S. TYLER #294029) CA/No. 2007-CP-32-0907
PETITIONER,)
-V-) AMENDED POST CONVICTION
STATE OF SOUTH CAROLINA) RELIEF APPLICATION PURSUANT
RESPONDENT,) TO: RULE 15 SCRCP

COMES NOW, Randall Tyler, by and through attorney of record who respectfully moves this Honorable Court to amend the above captioned Post Conviction Relief Application pursuant to Rule 15 SCRCP.

Respectfully Submitted,

/s/

Randall Tyler

BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

2007-CP-32-0907

FILED

ISSUE (G) WAS COUNSEL INEFFECTIVE FOR FAILING TO IMPEACH STATE'S KEY WITNESS DONNA HUTTO WITH HER (3) THREE PRIOR INCONSISTENT STATEMENTS THAT CONTRADICTED HER TESTIMONY GIVEN DURING TRIAL, AND AS A RESULT OF COUNSEL'S FAILURE TO DO SO DENIED PETITIONER HIS RIGHT TO EFFECTIVE CROSS-EXAMINATION?

ISSUE (H) WAS COUNSEL INEFFECTIVE FOR FAILING TO INTRODUCE DONNA HUTTO'S (3) THREE PRIOR INCONSISTENT STATEMENTS INTO EVIDENCE THAT CONTRADICTED HER TESTIMONY GIVEN DURING TRIAL?

FACTS

From the onset of the trial, during opening summation to the jury, Petitioner's counsel made the following statement to the jury, as recorded:

Unlike many of the witnesses who you will hear during this trial who gave a statement, two statements, three statements filled with inconsistencies, Randy Tyler has said from the date he turned himself in, "This is what happened. I was there. Robert Lewis -- whose name is Corky -- was my friend. I have been with him many times. I did not kill him. I did not beat him. He was my friend. I did not do this. [Tr.p.57, L.1-9].

Counsel openly told the jury that they will get to hear the one, two and three inconsistent statements filled with inconsistencies from the onset of the trial.

During cross-examination of State's witness Donno Hutto,

Counsel brought the jury's attention to one of the statements made by Donna Hutto to Sergeant Frier, as recorded:

Q). He was inside the garage. You testified and you said in your statement to Sergeant Frier, I believe, that the first thing that attracted your attention was the sound of voices. [Tr.p.185, L.20-13].

During jury deliberations, the jury sent a note to the Court and the Court brought the jury back out, at which time the jury requested the following, as recorded:

THE COURT: On a couple of them, you have asked for the written statements from Donna Hutto and Jimmy Williams. We are not allowed to give you those. You are limited to what was in the -- only the evidence that has come in. We can't add to the evidence. So we can't do that. [Tr.p.384, L.13-18].

It is clear that Donna Hutto's statement(s) were of importance to the jury. Counsel, from the onset, told the jury that they would get the statements, but Counsel did not impeach Donna Hutto with the (3) three inconsistent statements given to law enforcement the night of the incident. All (3) three statements, which were not only inconsistent with one another, but also directly conflicted with the testimony that Donna Hutto gave during trial.

Petitioner asserts that this was the pivotal point of the trial because Donna Hutto was the State's key witness. Donna Hutto's "time frame" in her testimony is not only questionable by her testimony, but was also in question by the Police as well. (emphasis supplied). Thus, the very reason law enforcement had to interview Donna and Johnny Hutto multiple times. However, due to Counsel not impeaching Donna Hutto with her (3) three prior inconsistent statements, the jury was precluded from this information. The Police reports state that the reason for the second interview was that the "time line" on the CAD report did not "shuck and jive" as it should have. Id Police Reports. Donna Hutto testified that she fled the house to get help. [Tr.p.178, L.18-25]. She testified that she fled to her brother Johnny's house and when they returned they found the victim dead and called 911. To the contrary, (1) one of the (3) three statements lays out a completely "different" time frame. This time frame will be more thoroughly explored in detail during Petitioner's PCR hearing because (1) one of Donna Hutto's statements reveals that she rode around for nearly one (1) hour "before" calling 911. (emphasis supplied).

Petitioner asserts that he was denied his constitutionally guaranteed right to the effective assistance of trial counsel when Counsel failed to impeach Donna Hutto with her (3) three prior inconsistent statements to law enforcement. Counsel had an obligation to and could have easily admitted the (3) three statements as substantive evidence.

DISCUSSION

The prior inconsistent statement must be inconsistent with the trial testimony. The variance between the statements must be material. Anderson v. Elliot 228 S.C. 371, 90 S.E.2d 367 (1955). The witness must be confronted with the prior statement before he/she can be impeached. State v. Roper 274 S.C. 14, 260 S.E.2d 705 (1979).

In 1982, the South Carolina Supreme Court changed the traditional rule. State v. Copeland 278 S.C. 572, 300 S.E.2d 63 (1982) cert. denied 460 U.S. 1103 (1983). Under Copeland, a prior inconsistent statement is admissible as substantive, as well as for impeachment, when a declarant testifies at trial and is available for cross-examination.

The Court gave three reasons for changing the rule, (1) the oath is not as strong a guaranty of truth as it may have been in the past, (2) the traditional rule requires the court to give unrealistic and confusing instructions to the jury, and (3) the declarant is present and subject to cross-examination so the jury can determine the credibility of the witness and his/her statement. This aspect of Copeland (supra) is preserved in the South Carolina Rules of Evidence in Rule 801(d)(1).

Since Copeland (supra), the Court has had the opportunity to clarify when a prior inconsistent statement can be used as substantive evidence. A prior statement can only be used as substantive evidence, at least in a criminal trial when the opposing party has an effective opportunity to cross-examine the declarant. In State v. Pffirman 300 S.C. 84, 386 S.E.2d 461

(1989), the declarant refused to admit the statement imputed him and the Supreme Court held that the defendant was denied effective cross-examination. Generally, a party must satisfy five (5) requirements to impeach a witness with a prior inconsistent statement. These requirements are, (1) the statement must have been made prior to the trial testimony to be impeached; (2) the prior statement must be inconsistent with the trial testimony; (3) the witness must be confronted with the prior statement before impeachment; (4) the cross-examiner must complete the impeachment by proving the prior statement; and (5) the prior statement must not be on a collateral matter.

Prior inconsistent statement may be found from any number of sources and they may be written or oral. Sources for prior inconsistent statements include, (1) statements made to a friend or acquaintance, State v. Galloway 263 S.C. 585, 211 S.E.2d 885 (1975); or (2) statements made to an investigator. See Varnadore v. Nationwide Mut. Ins. 289 S.C. 155, 345 S.E.2d 711 (1986); also see State v. Thompson 305 S.C. 496, 409 S.E.2d 420 (Ct.App.1991)(law enforcement investigator).

Other cases in South Carolina recognizing impeachment by omission include an omission from a statement made during a case investigation. See State v. Thompson (supra), which is similar to the case at hand. The Court has also recognized that failure to come forward with evidence is a proper omission for impeachment. See Taylor v. State 258 S.C. 396, 188 S.E.2d 850 (1970); also see State v. Nathari 303 S.C. 188, 399 S.E.2d 597 (Ct.App.1990). In

the instant case, Donna Hutto and her brother Johnny Hutto gave "multiple inconsistent statements" to law enforcement. In fact, one of Donna Hutto's (3) three statements clearly reveals that she was to "lie" to law enforcement to conceal the fact that her brother Johnny Hutto returned to the victim's home carrying a .38 pistol.

In the instant case Counsel was completely aware of the inconsistent statements given by both Donna and Johnny Hutto; their intent to conceal facts concerning the case, and that the statements were material.(emphasis supplied). Counsel's failure to impeach State's witness Donna Hutto clearly prejudiced Petitioner's rights to a fair trial. Petitioner asserts that he was denied his constitutionally guaranteed right to the effective assistance of trial counsel when Counsel failed to impeach Donna Hutto with her (3) three prior inconsistent statements. This is not what the Sixth Amendment prescribes as effective representation. The test formulated in Strickland v. Washington 466 U.S. 668, the Court identified two components to any ineffective assistance of counsel claim; (1) deficient performance and (2) prejudice. In the instant case counsel performance fell below the objective standard of reasonableness when he failed to impeach Donna Hutto with her (3) three prior inconsistent statements. The prejudice incurred is seen because Petitioner was denied the right to adequately confront the witness against him that denied him a fair trial. In Bruton v. United States 391 U.S. 123 (1968) the United States Supreme Court

clearly established the general right to confront one's accusers, and the right to adequately cross-examination of witness against him. In Pointer v. Texas 380 U.S. 400 the United States Supreme Court confirmed "that the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him" secured by the Sixth Amendment, Id at 404; a major reason underlying the constitutional confrontation rule is to give the defendant charged with a crime an opportunity to cross-examine the witnesses against him. Id at 406-407.

Surely Counsel's failure to impeach Donna Hutto with her (3) three prior inconsistent statements denied Petitioner the right to effective cross-examination of the witnesses against him and in failing to do so denied Petitioner his right to a fair trial because Petitioner was unable to adequately confront the accuser and such deficiency caused the jury not to hear the inconsistencies in Donna Hutto's testimony. Had the jury heard the (3) three prior inconsistent statements there is a reasonable probability that the outcome of trial would have been different. Counsel's inactions here fell below the objective standard of reasonableness as required by trial attorneys. Petitioner was prejudiced by Counsel's failure to impeach Donna Hutto with her (3) three prior inconsistent statements and Counsel could have at least introduced the (3) three inconsistent statements as substantive evidence.

Petitioner was denied his constitutionally guaranteed right to the effective assistance of trial counsel and as a result of

of Counsel's failures Petitioner was denied his right to a fair trial.

For the aforementioned reasons Petitioner will forever pray that this Court will grant the requested relief of a new trial.

ISSUE (I) WAS COUNSEL INEFFECTIVE FOR NOT OBJECTING AND PERMITTING THE PROSECUTION TO PIT PETITIONER WHO GAVE EXCULPATORY TESTIMONY IN HIS OWN BEHALF, AGAINST AN ALLEGED CO-DEFENDANT WHO WAS NOT PRESENT DURING THE TRIAL, AND THUS THE ALLEGED STATEMENTS OF TRAVIS HARSEY COULD NOT BE CHALLENGED, AND THE ERROR WAS UNFAIRLY PREJUDICIAL BECAUSE PETITIONER'S CREDIBILITY WAS A CRITICAL ISSUE IN THE CASE?

FACTS

During trial Petitioner took the stand in his own defense that ultimately resulted in exculpatory testimony. Yet, during cross-examination the Prosecution was allowed to pit Petitioner's testimony against an alleged co-defendant's statements who was not present during trial. The following colloquy was recorded:

Q. Why would Travis say he parked his car way up at the road so nobody could see? Why would Travis say that and hurt himself?

A. I don't know. [Tr.p.303, L.3-6].

Q. Travis just says that about himself just to make himself look worse. I guess that is what you are telling this jury?

A. I don't know what Travis said. Where is Travis?

Q. Travis is going to be tried in two months Mr. Tyler. You know he is charged with murder just like you are.

A. I haven't hurt nobody. [Tr.p.303, L.24-25, p.304, L.1-6].

Petitioner asserts that he was denied his constitutionally guaranteed right to the effective assistance of trial counsel when counsel failed to object to the Prosecution's improper pitting of Petitioner and as a result Petitioner was prejudiced because he was denied his constitutionally guaranteed right to a fair trial that is protected by the Fourteenth Amendment of the United States Constitution.

DISCUSSION

In State v. Sapps 295 S.C. 484, 369 S.E.2d 145 (1988), the South Carolina Supreme Court reversed Sapps' conviction because the assistant solicitor on cross-examination forced the defendant to attack the veracity of the State's witnesses. Since Sapps' credibility was a key element to his defense that he did not commit the rape, the Supreme Court found that the questioning prejudiced Sapps' right to a fair trial. A similar result applied in State v. Brown 297 S.C. 27, 374 S.E.2d 669 (1988).

In the instant case Petitioner's credibility was critical and as in Sapps' (supra); Yet the instant case is distinguishable from Sapps because in the instant case the Solicitor improperly pitted Petitioner's testimony against the veracity of a individual who was not only an alleged co-defendant but who also was [not] present during trial and therefore, could [not] be challenged by cross-examination. Here, in contrast Petitioner steadfastly denied involvement and the similar senierio that resulted in Sapps and Brown (supra) is in effect.

The basic premise is no matter how a question is worded, anytime a solicitor asks a defendant to comment on the truthfulness or explain testimony of an adverse witness, this is in effect being pitted against the adverse witness. This kind of argumentative questioning is improper. See State v. Bryant 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994); State v. Sapps (supra) at 486, 369 S.E.2d 145-46 (1988). Petitioner asserts that counsel was ineffective for failing to object to the Solicitor improperly pitting Petitioner, and as a result Petitioner was prejudiced because he did not receive a fair trial.

For the aforementioned violations, Petitioner will forever pray that this Court will grant the requested relief of a new trial.

ISSUE (J) WAS COUNSEL INEFFECTIVE FOR FAILING TO DO ANY PRETRIAL INVESTIGATION, INCLUDING, BUT NOT LIMITED TO SLED REPORTS?

FACTS

Petitioner asserts that he was denied his Sixth Amendment constitutionally guaranteed right to the effective assistance of trial counsel when counsel failed to do any pretrial investigation; both factual and legal.

Petitioner asserts that counsel had an obligation to investigate and prepare for trial. At a minimum counsel should have not only reviewed the Police Reports but counsel should have also contacted the South Carolina Law Enforcement Division ("SLED") to ascertain what was discovered during SLED's investigation and analysis of the evidence in the case. Counsel's failure to investigate allowed the Solicitor to manipulate and cherry pick the facts that were placed before the jury. Had Counsel of investigated the SLED Reports it would have been clearly visible that the Solicitor took part of the investigatory apparatus, thus not only manipulating the evidence but also tainting the trial process.

To fully develop this issue Petitioner will present SLED Reports as evidence and testimony in support during the PCR hearing. After Petitioner was convicted and sentenced to prison Petitioner wrote numerous letters to SLED concerning their case file of the evidence in the case. Upon reviewing the SLED Reports it is visible that the Prosecution manipulated the evidence

(emphasis supplied). The SLED Reports will become part of the record during the PCR hearing; as the Prosecution "opened the door" in closing summation to the jury concerning "Police Reports. See [Tr.p.355, L.2-3].

DISCUSSION

The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense." U.S. Const. amend. VI. The right to the effective assistance of counsel means the right to "effective" assistance of counsel. Cuyler v. Sullivan 446 U.S. 335, 344, 352 (1980); Also see United States v. Morrison 449 U.S. 361, 366 (1981); Tollett v. Henderson 411 U.S. 258, 266-68.

At the heart of effective representation is the independent duty to investigate and prepare. Goodwin v. Balkcom 684 F.2d 794, 805 (11th.Cir) cert. denied _____ U.S. _____, 103 S.Ct. 1798. Therefore, permissible trial strategy can never include the "failure" to conduct reasonably substantial investigation of the case.

The test formulated in Strickland v. Washington 466 U.S. 668, for determining whether counsel has rendered constitutionally ineffective assistance reflects this concern. In Strickland, the court identified two components to any ineffective assistance claim. (1) deficient performance; and (2) prejudice. Under that decision, a criminal defendant alleging prejudice must show that

counsel's errors were serious enough to deprive the defendant of a fair trial. Strickland v. Washington 466 U.S. at 687; see also Kimmelman v. Morrison 477 U.S. 365, 374 (the essence of an ineffective assistance of counsel claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect.).

Preparation and investigation "must be more than perfunctory." Counsel has an affirmative duty to conduct appropriate investigation, both factual and legal. Coles v. Peyton 389 F.2d 224, 226 (4th.Cir) cert. denied 393 U.S. 849 (1968). The failure to ascertain and investigate possible defense had often resulted in finding that the defendant was denied adequate representation. See Goodwin v. Swenson 287 F.Supp. 166, 176-86 (W.D.Mo.1968).

The primary input of the attorney to his client's case is that of professional expertise. Even in a simple criminal case, meticulous investigation and thoughtful legal analysis will often reveal a panolpy of issues--to which the defendant, a layman, will be oblivious. Garland v. Cox 472 F.2d 875, 879 (4th.Cir.).

The notion that defense counsel must obtain information that the State has and will use against the defendant is not simply a matter of common sense. The American Bar Association Standards for Criminal Justice, Prosecution and Defense Function describes the obligation in terms no one could misunderstand in circumstances of a case like this one: "It is the duty of the

lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. See ABA Standards for Criminal Justice 4-4.1 (2d ed. 1982 Supp.). The newer version of the Standards now reads that any "investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities." ABA Standards for Criminal Justice, Prosecution Function and Defense Function 4-4.1 (3d ed. 1993). There is no material difference between these two phrasings, and in any case counsel should make reasonable efforts to learn the information in possession of the prosecution and "law enforcement authorities." In the instant case it is readily apparent that Counsel read the Sheriff Department's reports since counsel informed the jury of inconsistent statements from the onset of the trial, as well as counsel's own omissions to the Court at the conclusion of the trial, quoting counsel..."Sadly, ironically you heard some of this, but there is a lot that didn't come into the record." [Tr.p.398, L.22-23]. (emphasis supplied).

The failure to investigate, research and prepare is equivalent to no representation at all. Brubaker v. Dickson 310 F.2d 30; accord with Williams v. Beto 354 F.2d 698 and Brooks v. Texas 381 F.2d 619.

Petitioner asserts that he was denied his constitutionally

guaranteed right to the effective assistance of counsel when counsel failed to do any pretrial investigation and as a result Petitioner was prejudiced by also being denied his right to a fair trial that is protected under the Fourteenth Amendment of the United States Constitution. For the aforementioned reasons, Petitioner respectfully prays that this Court will grant the requested relief of a new trial.

ISSUE (K) WAS COUNSEL INEFFECTIVE FOR FAILING TO INTRODUCE A NON-TESTIFYING CO-DEFENDANT TRAVIS HARSEY'S WRITTEN AND COMPLETE ORAL STATEMENTS INTO EVIDENCE WHEN THE STATE ELICTED ONLY PORTIONS OF HARSEY'S ORAL STATEMENTS MADE TO DETECTIVE FRIER?

FACTS

During trial the State called Detective Scottie Frier as a witness. During Frier's testimony the following was recorded:

Q. Once Travis Harsey's name came into this, did you want to make contact with Travis Harsey?

A. Absolutely.

Q. And did you make contact with Travis Harsey?

A. Yes, Travis was subsequently arrested for this incident.

Q. And as a result of that, did you have a chance to talk with him also?

A. He was interviewed at length, yes sir.

Q. Did Travis indicate to you where he parked his car in relation --- [Tr.p.211, L.11-21].

Counsel objected to hearsay, due to a confrontation clause issue. [Tr.p.211, L.22-23]. The State moved to have the jury removed to take up an issue of law outside the presence of the jury. [Tr.p.211, L.24-25].

The State argued that the question was to be to Detective Frier -- "Did he, Travis Harsey tell you what he did? Did he tell you where he parked his car in relation to Corky Lewis' home."

[Tr.p.212, L.7-10]. The State further argued that it doesn't violate the confrontation clause unless it is: What he, Travis Harsey, tell you what Randy Tyler did? [Tr.p.212, L.11-13]. The State overcame the argument and Travis Harsey's [oral statements] to Detective Frier were introduced into evidence. The following was recorded once the jury returned to the Courtroom, as recorded:

Q. The question I had for you: Did Travis Harsey tell you where he parked his Cadillac car in relation to Corky Lewis' home?

A. Yes, he indicated he parked the car back up towards the road hidden from the home. [Tr.p.213, L.21-25].

Q. Back up in the wood line up there that we saw in the photographs?

A. It would have been on the other side of the wood line towards the main highway, which was 321. [Tr.p.214, L.1-4].

During trial, Petitioner took the stand in his own defense and the following collguy was recorded on cross-examination:

Q. Why would Travis say he parked his car way up at the road so nobody could see? Why would Travis say that and hurt himself?

A. I don't know. [Tr.p.303, L.3-6].

Q. Travis just says that about himself just to make himself look worse. I guess that is what you are telling this jury?

A. I don't know what Travis said. Where is Travis. [Tr.p.303, L.24-25, p.304, L.1-2].

During closing summation to the jury the Prosecution argued "Where dose Travis Harsey put himself in relation to that house parking the car? He is up here (indicating) in the tree line where he can't be seen from the house. [Tr.p.358, L.24-25, p.359, L.1-2], "That car is parked up in the wood line, and they are sneaking into the property." [Tr.p.360, L.13-14].

Petitioner asserts that counsel should have moved to introduce Travis Harsey's complete written statement to be considered with the oral statement the State was relying on under the rule of completeness. Especially since Travis Harsey's oral statement was placed before the jury to prove the truth of the matter asserted. Had the jury been allowed to review Travis Harsey's entire statement they could have weighed the truthfulness of the statements given by Harsey. Harsey's statement consisted of quotes: "Farthest I go into the house is poolroom. I run to my car Randy had gloves and a mask on after he came out of the house." Harsey's statement further says "Took Randy back to his house didn't take the gun back from Randy." (end quote). This information would have been critical before the jury since the jury was already informed that the police obtained the gun from Harsey's brother Samuel who was destroying the gun for Harsey.

Counsel should have moved to introduce Harsey's entire statement into evidence. As was noted Harsey's statement claimed Petitioner had the gun and Harsey "didn't take the gun from Petitioner." Yet, the State's evidence revealed that Harsey gave the gun to his brother Samuel Harsey and that is where law enforcement obtained the weapon. [Tr.p.346, L.12-23]. Further Harsey's statement claimed that Petitioner "had on gloves." Yet, to the contrary the State's evidence also revealed that Vicki Hallman Id Officer from the Lexington County Sheriffs Department was contacted by Detective Fossum and was asked to take pictures of what appeared to be healing injuries on Petitioner's knuckles. [Tr.p.124, L.19-20]. Thus, raising the question of how could Petitioner have injuries on his hands "if" he was wearing gloves. The threshold issue is that Harsey's statement were filled with inconsistencies and lies [not] supported by evidence. Although the State was allowed to elicit an oral statement given by Harsey to Detective Frier and submit it to the jury to prove the truth of matter asserted.

Petitioner asserts that he was denied his Sixth Amendment guarantee to the effective assistance of trial counsel when counsel failed to introduce Harsey's written statement into evidence to allow the jury to weigh and consider the entirety of Harsey's statements, written and oral under the rule of completeness, and the failure to do so denied Petitioner his right to a fair trial, as the jury was only allowed to consider a one sided statement presented by the State.

DISCUSSION

Petitioner asserts that a statement of a non-testifying co-defendant in the instant case is admissible under the circumstances. Harsey's statement(s) in the instant case were admissible under State v. Jackson 265 S.C. 278, 284, 217 S.E.2d 794, 797 (1975). In Jackson it was held: "When part of a conversation is put into evidence, an adverse party is entitled to prove the remainder of the conversation, so long as it is relevant, particularly when it explains or gives new meaning to the part initially recited. "All statements made in conversation, in relation to the same subject matter, are to supposed to have been intended to explain or qualify each other, and therefore the plainest principles of justice requires that if one statement is to be used against the party, all of the other statements tending to explain or qualify this use should be shown and considered in connection with it." 265 S.C. at 284, 217 S.E.2d at 797 (emphasis supplied; internal citations omitted).

In the instant case under Jackson, once the State elicited to utilize Harsey's "oral" statement to Detective Frier, justice required that Harsey's remaining statements tending to explain or qualify the oral statement should have been considered in connection therewith. As noted, previously, Detective Frier testified on direct examination concerning the substance of the oral conversation with Harsey concerning the where Harsey allegedly parked his car.

Rule 106 provides: When a writing, or recorded statement, or party thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. Rule 106 is based on the rule of completeness and seeks to avoid the unfairness of misleading impression created by taking matters out of context. Rule 106 [of the Federal Rules of Evidence] is a procedural device governing the timing of completion evidence; the Rule is "primarily designed to affect the order of proof." It means that the adverse party need not wait until cross-examination or rebuttal. As such, the Rule reduces the risk that the writing or recording will be taken out of context and that an initial misleading impression will take hold in the mind of the jury. Citing S. Saltzburg, M. Martin & D. Capra, Federal Rules of Evidence Manual, 98-99 (1998). The Historical Notes to Rule 106 recognize however, that adoption of the rule does not change the order of proof as to the remainder of an **unrecorded conversation**; the party seeking to bring out the remainder must do so during cross-examination or during the party's case." (emphasis supplied). Accordingly Rule 106 merely requires that an "oral" or "unrecorded conversation" be brought out upon cross-examination, rather than on direct examination, the rule does not, however, prohibit introduction of "oral" statements or otherwise vitiate the rule of completeness as it applies to such statements. The common law of this State extends the rule of completeness to

"oral" communications. See Jackson supra, Accord with State v. Eugenio 219 Wis.2d 391, 579 N.W.2d 642 (1998)(notwithstanding provision identical to Rule 106 referencing only to written or recorded statements, common law rule of completeness continues to exist for "oral" statements). State v. Cruz-Meza 76 P.3d 1165 (Utah 2003)(recognizing rule of completeness may be applied to oral statements through Rule 611); State v. Johnson 479 A.2d 1284 (Maine 1984). See also United States v. Haddad 10 F.3d 1252 (7th.Cir.1993)(citing 1 Weinstein & Berger, Weinstein's Evidence, §106-4 (1992). Accordingly, where as here, the State elects to use a witness to elicit portions of a conversation (and semi-incriminating statements therein) made by a co-defendant, the rule of completeness requires the defendant to be permitted to inquire into the full substance of that conversation.

The deficient performance is seen as counsel failed introduce Harsey's statement into evidence when the State elicited cherry picked portions of an oral statement made to Detective Frier. The prejudice incurred is easily seen as Harsey's oral statement was placed before the jury to prove the truth of the matter asserted. Petitioner contends that he was denied his right to fair trial when counsel failed to introduce Harsey's statements into evidence. Thus denying Petitioner his Sixth Amendment right to the effective assistance of trial counsel. Strickland v. Washington 466 U.S. 688 (1984).

For the aforementioned reasons Petitioner respectfully prays that this Court will grant the requested relief of a new trial.

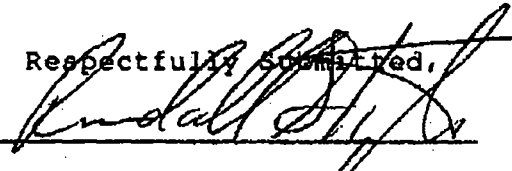
CONCLUSION

WHEREFORE, Petitioner respectfully prays that this Court will find that Petitioner was denied his right to the effective assistance of trial counsel and as a result was also denied his right to a fair trial.

Petitioner respectfully prays that this Court will grant the requested relief of a new trial.

Respectfully Submitted,

/s/


Randall Tyler 294029

ORIGINAL

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

)

FILED
2007 MAR -5 P 3:03
BETH A. CANNING
CLERK OF COURT
LEXINGTON

RANDALL TYLER #294029

) CA/No. 2007-CP-32-0907

PETITIONER,

)

-V-

)

MOTION TO ADDRESS ALL ISSUES

STATE OF SOUTH CAROLINA

)

PRESENTED PURSUANT TO:

RESPONDENT,

)

S.C. CODE ANN. §17-27-80

)

COMES NOW, Randall Tyler, by and through attorney of record who respectfully asks this Honorable Court to direct the Attorney General's Office to address [all] issues presented, pursuant to S.C. Code Ann. §17-27-80, as decided by the South Carolina Supreme Court in Pruitt v. State, 423 S.E.2d 127. That each and every issue presented be addressed at any PCR hearing that is held according to Bryson v. State, 493 S.E.2d 500 (1997). Petitioner further asks that each and every issue raised herein be addressed by the Court, at any hearing that is held and that this Court direct that all issues be addressed in Order issued by this Court.

For the requested, Petitioner respectfully prays.

Respectfully Submitted,

/s/

Randall Tyler

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

ORIGINAL

RANDALL TYLER #294029) CA/No. 2007-CP-32-0907
PETITIONER,)
-V-) **CERTIFICATE OF SERVICE**
STATE OF SOUTH CAROLINA)
RESPONDENT,)

I, Randall Tyler, do hereby swear and declare that I have mailed the Original and (1) copy of the enclosed PCR amended application and motion to address all issues presented to the Lexington County Clerk of Court, 139 E. Main St., Lexington County, SC. 29072-3494.

I further state that copy of the aforesaid was also mailed to the S.C. Attorney General's Office, Mr. Henry McMaster, P.O. Box 11549, Columbia, SC. 29211, the same day stated herein.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 3RD DAY OF March, 2010

Sylvia Jones
NOTARY PUBLIC

MY COMM. EXPIRES 1/24/2018

Respectfully submitted,

/s/ Randall Tyler
Randall Tyler

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2010 MAR - 5 10 3:03

FILED

Randall S. Tyler
SCDC# 294029
Lieber Corr. Inst.
P.O. Box 205 EA-41
Ridgeville, SC. 29472

RE: Amended PCR Application, CA/No. 2007-CP-32-0907

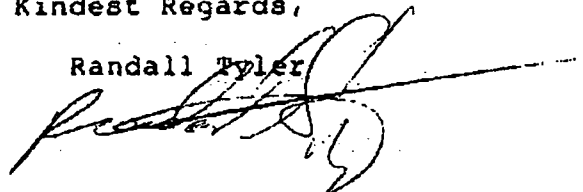
Dear Clerk,

Enclosed for filing in the above captioned case number, please find the Original and (1) one copy of the amended PCR application. Could you please clock stamp the copy and return it to me in the envelope I have enclosed for your convenience.

I thank you very much for your time and consideration in this matter.

Kindest Regards,

Randall Tyler



enclosures:
file
Attorney General
Lexington County Clerk of Court

BETTY A. CHAPMAN
CLERK OF COURT
LEXINGTON, SC

2010 MAR -5 P 3:01

FILED

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO.: 2007-CP-32-0907

Randall Tyler
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

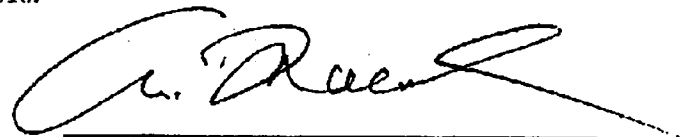
IT IS ORDERED AND ADJUDGED:

- ☒ Formal order to follow:
☐ Statement of Judgment by the Court:

Applicant's Motion for Continuance is GRANTED. Matter is to be continued until August 30th Post Conviction Relief Term of Court. The Court notes that if any difficulties are encountered in obtaining discovery, Applicant's attorney is to notify Assistant Attorney General of the matter. Mr. Lee, on behalf of the State, to prepare the appropriate ORDER.

Dated at Lexington, South Carolina this 17th day of May, 2010.

Court Reporter: Rema G. Thomas



Alexander S. Macaulay
PRESIDING JUDGE

This judgment was entered on the N/A day of N/A, 2010, and a copy mailed first class this 21st day of May, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

Adrianne Turner, Esquire
ATTORNEY(S) FOR PLAINTIFF

A. West Lee, Esquire
ATTORNEY(S) FOR DEFENDANT

CLERK OF COURT

BETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

2010 MAY 20 P 1:53

FILED LMC

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Randall S. Tyler, #294029

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Case No.: 2007-CP-32-0907

ORDER OF CONTINUANCE

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JUL 27 A 11:23
CLERK OF COURT
LEXINGTON SC

This matter comes to the court by way of a post-conviction relief application filed March 16, 2007. An evidentiary hearing was convened on May 17, 2010. The Applicant was present at the hearing and represented by Adrienne Turner, Esquire. A. West Lee of the South Carolina Attorney General's Office represented Respondent. The Applicant's attorney moved for a continuance in the matter, and also moved to be granted court ordered discovery in the case, specifically requesting access to the original defense attorney's file. Good cause having been shown, this Court grants a continuance in the matter. This Court also grants Applicant's PCR Counsel limited discovery, and notes that Applicant guilty plea counsel, Mr. Dennis Bolt, Esquire, shall release his file relating to this case to Ms. Turner.

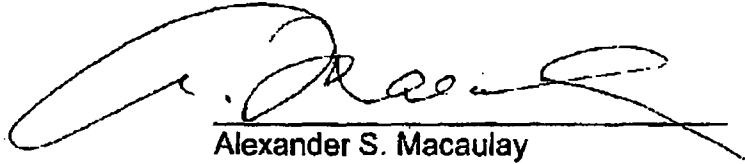
IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief hearing is **CONTINUED** to the next suitable term of post-conviction relief court.
2. Applicant's PCR Counsel shall be granted access to guilty plea counsel's file relating to the underlying case.

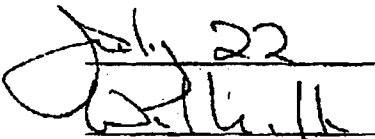


3. The Applicant is remanded to the custody of the Respondent during the pendency of this case.

IT IS SO ORDERED.



Alexander S. Macaulay
Presiding Judge
Eleventh Judicial Circuit

 22, 2010
South Carolina

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CLERK OF COURT
LEXINGTON, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO.: 2007-CP-32-0907

Randall Tyler
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

CHECK ONE:

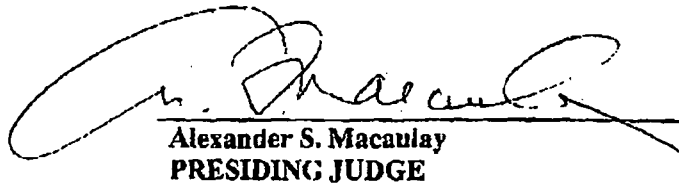
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(h), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☒ See Attached Order:
☐ Statement of Judgment by the Court:

Dated at Walhalla, South Carolina this 22nd day of July, 2010.

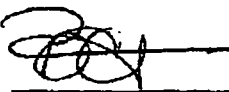
Court Reporter: Rema G. Thomas


 Alexander S. Macaulay
 PRESIDING JUDGE

This judgment was entered on the N/A day of N/A, 20—, and a copy mailed first class this 5th day of Aug, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

Adrianne Turner, Esquire
 ATTORNEY(S) FOR PLAINTIFF

A. West Lee, Esquire
 ATTORNEY(S) FOR DEFENDANT


 7/27/2010
 CLERK OF COURT

FILED
 JUL 27 AM 11:23
 2010



**State of South Carolina
Tenth Judicial Circuit Court**

ALEXANDER S. MACAULAY
JUDGE

MICHAEL D. WRIGHT
LAW CLERK

OCCONEE COUNTY COURTHOUSE

POST OFFICE DRAWER 428
WALHALLA, SOUTH CAROLINA 29981-0428

TELEPHONE: (864) 638-4266
FACSIMILE: (864) 638-4267
E-MAIL: amacaulayk@sccourts.org

July 22, 2010

TheHonorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Lexington, South Carolina 29072

RE: Randall S. Tyler v. State of South Carolina 2007-CP-32-0907

Dear Mrs. Carrigg:

Enclosed please find the final Order of Continuance in the above referenced case from the Post-Conviction Relief Term of Court the week of May 17, 2010. Upon filing, please provide a clocked copy to the respective parties per their request.

If you have any questions, or if I may be of any further assistance in this matter, please do not hesitate to contact me.

With kindest regards I remain,

Very truly yours,

Michael D. Wright

Enclosure: Noted

FILED
 2010 JUL 27 A 11:23
 CLERK OF COURT
 LEXINGTON CO SC

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) 2007-CP-32-00907

RANDALL S. TYLER)
) APPLICANT)
) vs.) TRANSCRIPT OF RECORD
))
STATE OF SOUTH CAROLINA)
) RESPONDENT)

September 17, 2010
Lexington, South Carolina

B E F O R E:

HON. R. KNOX MCMAHON, Judge.

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

MS. TURNER, ESQ.
Attorney for the APPLICANT

A. WEST LEE, ASSISTANT ATTORNEY GENERAL
Attorney for the RESPONDENT

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

(There were no witnesses produced.)

EXHIBITS

(There were no exhibits marked.)