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STATE OF SOUTH CAROLINA

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IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Berkeley County

Roger M. Young, Circuit Court Judge

DERRICK GRANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000563

APPENDIX

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ASHLEIGH R WILSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
<u>SCHMERBER</u> HEARING TRANSCRIPT (JUNE 11, 2003).....	1
PRETRIAL HEARING TRANSCRIPT (NOVEMBER 21, 2003)	27
PRETRIAL HEARING TRANSCRIPT (JANUARY 7, 2004).....	48
PRETRIAL HEARING TRANSCRIPT (FEBRUARY 13, 2004)	99
TRIAL TRANSCRIPT (FEBRUARY 23, 2004)	111
RECONSTRUCTION HEARING TRANSCRIPT (JANUARY 29, 2010)	889
COURT OF APPEALS' OPINION NO. 2011-UP-499 (FILED NOVEMBER 9, 2011).....	925
APPLICATION FOR POST-CONVICTION RELIEF	927
AMENDMENT TO POST-CONVICTION RELIEF APPLICATION (JULY 12, 2013).....	934
AMENDMENT TO POST-CONVICTION RELIEF APPLICATION (JULY 17, 2013).....	935
RETURN	936
POST-CONVICTION RELIEF HEARING TRANSCRIPT (SEPTEMBER 18, 2013)	940
APPLICANT'S EXHIBIT #1	1006
ORDER OF DISMISSAL	1009
INDICTMENT	1018

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 seat.

2 Q. Were the keys in the victim's car when it was
3 recovered?

4 A. No, sir.

5 Q. I show you what is marked as State's Exhibit 15.

6 A. That is the left door, driver's door of the car,
7 below the outside handle it shows an area of what
8 appeared to be a blood droplet or two blood droplets.

9 Q. And, finally, State's Exhibit 18.

10 A. That's the steering wheel of the vehicle and it
11 documents what appeared to be blood transfer on the
12 steering wheel.

13 Q. Did you attempt to make some swabs of some of
14 these areas of blood?

15 A. Yes, sir, I did.

16 MR. JENNINGS: (Tenders documents to be
17 marked).

18 COURT REPORTER: State's Exhibits 70, 71
19 and 72 for identification.

20 THE COURT: Very well.

21 MR. JENNINGS: Thank you.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. JENNINGS:

24 Q. I show you what is marked as State's Exhibit 70.

25 A. (Upon review), that's a swab sample that I took

1 from the left door, outside.

2 Q. State's Exhibit 71?

3 A. It is a swab sample from the steering wheel of
4 the vehicle.

5 Q. And State's Exhibit 72?

6 A. A swab sample from the interior, left side
7 driver's panel -- left side door panel, handle area.

8 Q. All of these were taken by you and secured in
9 Evidence?

10 A. Yes, sir.

11 Q. Did you send them to SLED?

12 A. Yes.

13 MR. JENNINGS: Your Honor, we would offer
14 State's Exhibits 70, 71 and 72 into evidence.

15 THE COURT: Any objection, Mr. Grant?

16 DERRICK GRANT: No, sir.

17 THE COURT: State's Exhibits 70, 71 and
18 72, an envelope containing swab samples, admitted into
19 evidence without objection.

20 (SO ENTERED AS STATE'S EXHIBIT 70)

21 (SO ENTERED AS STATE'S EXHIBIT 71)

22 (SO ENTERED AS STATE'S EXHIBIT 72)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. JENNINGS:

25 Q. In looking at the interior of the car, did you

1 also find a fingernail?

2 A. Yes, I did, on the right-hand side of the car.

3 Q. I show you what has been marked as State's

4 Exhibit 73, do you recognize that?

5 A. Yes, sir. It's a fingernail from the right front

6 seat at the door sill.

7 Q. That was also secured to be sent to SLED?

8 A. Yes, sir.

9 MR. JENNINGS: We would offer State's
10 Exhibit 73 into evidence.

11 THE COURT: Any objection?

12 DERRICK GRANT: No objection, Your
13 Honor.

14 THE COURT: State's Exhibit 73 is
15 admitted into evidence without objection.

16 (SO ENTERED AS STATE'S EXHIBIT 73)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. JENNINGS:

19 Q. I neglected to ask when we were talking about
20 State's Exhibit 57, which was the victim's red coat,
21 was a broken fingernail found in that item?

22 A. Yes, sir.

23 Q. I show you what is marked as State's Exhibit 74.

24 A. Yes, sir, that's a fingernail that was removed
25 from the coat found in the driveway off of Lemon Lane.

1 MR. JENNINGS: We would offer State's
2 Exhibit 74 into evidence, as well?

3 THE COURT: Any objection, Mr. Grant?

4 DERRICK GRANT: No objection, Your
5 Honor.

6 THE COURT: State's Exhibit 74, an
7 envelope containing a broken fingernail, into evi-
8 dence without objection.

9 (SO ENTERED AS STATE'S EXHIBIT 74)

10 DIRECT EXAMINATION CONTINUED

11 BY MR. JENNINGS:

12 Q. And both of those items were also sent to SLED?

13 A. Yes, sir, they were.

14 Q. At some point a decision was made to contact the
15 South Carolina Law Enforcement Division and ask them
16 to come and help out with the interior of the vehicle?

17 A. Yes, sir.

18 Q. And Agent Coonfield responded to do that?

19 A. Yes, sir, he did. On the 30th of December, I
20 believe.

21 Q. Prior to that did you have an opportunity to
22 process the exterior of the vehicle, looking for a
23 fingerprint?

24 A. Yes, sir.

25 Q. What process would you have used to do that?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 A. We typically start with mainly dust, if it is a
2 smooth surface. Then you can use chemical enhance-
3 ments to look for blood prints. In that particular
4 case, I used dust.

5 Q. Did you find any fingerprints?

6 A. Yes, sir.

7 Q. I show you what is marked as State's Exhibit 64,
8 do you recognize that?

9 A. Yes, sir, that's a latent lift off the right
10 fender of the car.

11 Q. And State's Exhibit 65?

12 A. A latent lift from the right hood of the car.

13 Q. And those were also turned over to Agent
14 Coonfield to run comparisons?

15 A. Yes, sir.

16 MR. JENNINGS: Your Honor, we would offer
17 State's Exhibit 64 and 65 into evidence.

18 THE COURT: Any objection?

19 DERRICK GRANT: No objection, Your Honor.

20 THE COURT: State's Exhibits 64 and 65
21 admitted into evidence without objection.

22 (SO ENTERED AS STATE'S EXHIBIT 64)

23 (SO ENTERED AS STATE'S EXHIBIT 65)

24 DIRECT EXAMINATION CONTINUED

25 BY MR. JENNINGS:

1 Q. Detective Paul Tierney is a detective with the
2 Sheriff's Department?

3 A. Yes, sir, he is.

4 Q. And I believe that he was present at the autopsy
5 of Miss Sottile?

6 A. Yes, sir.

7 Q. And he turned in several items, into Evidence?

8 A. Yes, sir, he did.

9 Q. I show you what has been marked as State's
10 Exhibit 75, which is a blood sample taken from Miss
11 Sottile that was turned in to you?

12 A. Yes, sir.

13 Q. State's Exhibit 76 is fingernail clippings from
14 her left hand?

15 A. Yes, sir.

16 Q. State's Exhibit 77 is vaginal swabs taken during
17 her autopsy?

18 A. Yes, sir.

19 Q. State's Exhibit 78 is fingernail clippings from
20 her right hand?

21 A. Yes, sir.

22 Q. And State's Exhibit 79 is the hair that was
23 removed from her abdomen during the autopsy?

24 A. Yes, sir.

25 Q. And all those items were turned in to you?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 A. Yes, sir.

2 MR. JENNINGS: Your Honor, we would
3 offer those items into evidence.

4 DERRICK GRANT: No objection, Your
5 Honor.

6 THE COURT: Without objection, State's
7 Exhibit 76, 77, 78 and 79 are admitted into evidence.

8 COURT REPORTER: And State's Exhibit 75.

9 THE COURT: And 75. Excuse me. Thank
10 you.

11 (SO ENTERED AS STATE'S EXHIBIT 75)

12 (SO ENTERED AS STATE'S EXHIBIT 76)

13 (SO ENTERED AS STATE'S EXHIBIT 77)

14 (SO ENTERED AS STATE'S EXHIBIT 78)

15 (SO ENTERED AS STATE'S EXHIBIT 79)

16 DIRECT EXAMINATION CONTINUED

17 BY MR. JENNINGS:

18 Q. On December 30th, were you were notified that
19 Defendant Derrick Grant was taken into custody?

20 A. Yes, sir, I was. I was notified to take photo-
21 graphs of injuries of the Defendant.

22 Q. Do you see him in the courtroom today?

23 A. Yes, sir.

24 Q. Can you identify him, please?

25 A. He is sitting over there, in the tan sweater.

1 Q. And you took two photographs?

2 A. Yes, sir.

3 Q. I show you what has been marked as State's
4 Exhibit 28.

5 A. That's a photograph of the underside wrist area
6 of the left hand, showing a laceration.

7 Q. State's Exhibit 29?

8 A. The back of the Defendant's head, showing a small
9 laceration or abrasion on the left-hand side of the
10 back of his neck.

11 Q. What time were these photographs taken on the
12 30th?

13 A. Approximately 3:00 o'clock in the morning.

14 Q. Any other injuries to Mr. Grant's hands?

15 A. No, sir, not that I recall.

16 Q. And later on the 30th is when Agent Coonfield from
17 SLED arrived to help process the scene -- or to help
18 process the car? Sorry.

19 A. Correct.

20 Q. Okay. He will testify to the majority of that.
21 You were present when the rearview mirror of the
22 victim's car was removed?

23 A. Yes, sir, I was.

24 Q. I show you what is marked as State's Exhibit 47.

25 Do you recognize that?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

399

1 A. Yes, sir, that's the mirror that Agent Coonfield
2 removed from the vehicle.

3 Q. Were you present when it was removed?

4 A. Yes, sir, I was.

5 Q. Did you see any substance on the back of the
6 mirror?

7 A. Yes, sir, there was substance that appeared to
8 be blood on the back of the mirror.

9 Q. And did you see anything embedded in the blood
10 that would be valuable for future investigative
11 purposes?

12 A. Yes, sir, Agent Coonfield and I discussed what
13 appeared to be ridge detail of a partial fingerprint
14 on the back of the rearview mirror.

15 Q. Can you explain to the jury what ridge detail is?

16 A. A fingerprint is comprised of ridges. Those
17 ridges flow from one side of the finger to the other.
18 Individual identifying characteristics are within each
19 ridge. Some ridges flow, stop. Some ridges flare or
20 bifurcate. When we refer to "ridge detail", that's
21 the lines within the fingerprints and any area that
22 might be useful for identification.

23 Q. And you noticed what looked like blood and
24 possible ridge detail on State's Exhibit 47?

25 A. Yes, sir.

1 MR. JENNINGS: We would offer State's
2 Exhibit 47 into evidence, Your Honor.

3 THE COURT: Any objection, Mr. Grant?

4 DERRICK GRANT: No objection, Your
5 Honor.

6 THE COURT: Without objection, State's
7 Exhibit 47 is admitted into evidence.

8 (SO ENTERED AS STATE'S EXHIBIT 47)

9 DIRECT EXAMINATION CONTINUED

10 BY MR. JENNINGS:

11 Q. And Agent Coonfield took that item to perform
12 further testing?

13 A. Yes, sir, back to the South Carolina Law
14 Enforcement Division's lab.

15 Q. On December 31st, you turned a number of items
16 over to Detective Dunn who is a detective with the
17 Sheriff's department?

18 A. Yes, sir.

19 Q. To be transported up to SLED for testing?

20 A. Yes, sir.

21 Q. Those would have included the tire casts:
22 State's Exhibit 44, 45 and 46? You turned those
23 over to him?

24 A. Yes, sir, I did.

25 Q. You would have turned over all the items taken at

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

401

1 the autopsy: State's Exhibits 78, 79, 77, 76 and 75?

2 A. Yes, sir.

3 Q. You provided him with the swabs that you took out
4 of the victim's car?

5 A. Yes, sir, I did.

6 Q. Which are State's Exhibits 70, 72 and 71?

7 A. Yes.

8 Q. You provided him with the two swabs taken off her
9 rings, State's Exhibits 67 and 68?

10 A. Yes, sir.

11 Q. As well as the two fingernails that had been
12 found, State's Exhibits 73 and 74?

13 A. Yes, sir.

14 Q. Had any of those items been altered in any way
15 while they were in your custody?

16 A. No, sir.

17 Q. Anything added to them, that was not on them when
18 you took custody of them?

19 A. No, sir.

20 Q. You also provided him with a fingerprint card
21 from a Shawn Elkins, State's Exhibit 80?

22 A. Yes, sir. This is a standard ten-print card
23 bearing the name Shawn Elkins.

24 MR. JENNINGS: We would offer State's
25 Exhibit 80 into evidence, as well.

1 THE COURT: Any objection?

2 DERRICK GRANT: No, Your Honor.

3 THE COURT: State's Exhibit 80, a
4 fingerprint card, admitted into evidence without
5 objection.

6 (SO ENTERED AS STATE'S EXHIBIT 80)

7 DIRECT EXAMINATION CONTINUED

8 BY MR. JENNINGS:

9 Q. You also provided him with a fingerprint card
10 from Derrick Grant?

11 A. Yes, sir, I did.

12 Q. And with State's Exhibit 59, which were finger-
13 prints lifted from the victim's body?

14 A. Yes, sir.

15 MR. JENNINGS: We offer State's Exhibit 59
16 into evidence.

17 THE COURT: Any objection?

18 DERRICK GRANT: No objection, Your
19 Honor.

20 THE COURT: Without objection, State's
21 Exhibit 59, another fingerprint card, is admitted into
22 evidence.

23 (SO ENTERED AS STATE'S EXHIBIT 59)

24 DIRECT EXAMINATION CONTINUED

25 BY MR. JENNINGS:

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Q. Shawn Elkins' prints were submitted for elimina-
2 tion purposes for any possible prints that might have
3 been in the car?

4 A. Yes, sir, I believe so.

5 MR. JENNINGS: Getting down to the end. I
6 appreciate your patience.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. JENNINGS:

9 Q. On January 9th, 2003, Detective Buchanan turned in
10 what is marked as State's Exhibit 43, which is a ring
11 and bracelet that was removed from Mr. Grant?

12 A. Yes, sir, these were items that he turned in.

13 Q. And you took custody of those?

14 A. Yes.

15 Q. And those remain secure in your possession?

16 A. In the Evidence room, yes, sir.

17 Q. Were there any items or any substances added to
18 that ring while it was in your possession?

19 A. No, sir.

20 Q. When items are locked in the Evidence room,
21 doesn't anybody have access to those?

22 A. Just the two other people that are in the Crime
23 Scene office and myself.

24 Q. So other people would not be free to come in and
25 alter the evidence or to tamper with it in any way?

- 1 A. No, sir.
- 2 Q. On June 13th, Crystal Diess was an employee in
3 your department?
- 4 A. Yes, sir. She is Crystal Spence now.
- 5 Q. She's been married?
- 6 A. Yes, sir.
- 7 Q. Did she turn in a suspect sample that had been
8 taken from Mr. Grant?
- 9 A. Yes, sir. She turned in a suspect kit.
- 10 Q. What items are typically in a suspect kit?
- 11 A. Known blood, saliva samples, hair samples.
- 12 Q. And that is taken as a matter of course?
- 13 A. Yes.
- 14 Q. I show you what is marked as State's Exhibit 81.
15 Those items were turned in to you?
- 16 A. Yes.
- 17 Q. And remained secured in the Evidence room?
- 18 A. Yes, sir.
- 19 Q. And ultimately Bill Salisbury, who at the time
20 was an employee, ---
- 21 A. Correct.
- 22 Q. --- took those up to SLED on June 18th?
- 23 A. Yes, sir.
- 24 MR. JENNINGS: We would also move State's
25 Exhibit 81 into evidence.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

515
405

1 THE COURT: Any objection, Mr. Grant?

2 DERRICK GRANT: No objection, Your

3 Honor.

4 THE COURT: State's Exhibit 81, a suspect
5 kit, is admitted into evidence without objection.

6 (SO ENTERED AS STATE'S EXHIBIT 81)

7 MR. JENNINGS: And I know that it doesn't
8 seem possible but we actually missed two things.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. JENNINGS:

11 Q. State's Exhibit 50 and State's Exhibit 51 were
12 two shoes that you removed from the interior of the
13 victim's car?

14 A. Yes, sir.

15 Q. And those were taken as evidence by you?

16 A. Yes, sir. They appeared to have what appeared
17 to be blood on them.

18 MR. JENNINGS: We would offer State's
19 Exhibits 50 and 51 into evidence.

20 THE COURT: Any objection, Mr. Grant?

21 DERRICK GRANT: No objection, Your

22 Honor.

23 THE COURT: Without objection, State's
24 Exhibits 50 and 51 are admitted into evidence.

25 (SO ENTERED AS STATE'S EXHIBIT 50)

1 (SO ENTERED AS STATE'S EXHIBIT 51)

2 MR. JENNINGS: I beg the Court's
3 indulgence.

4 THE COURT: Take your time.

5 MR. JENNINGS: Thank you, Officer Kokinda.
6 If you would, please answer any questions that Mr.
7 Grant may have for you.

8 THE COURT: Mr. Grant, you have cross-
9 examination?

10 DERRICK GRANT: Yes, sir.

11 THE COURT: All right. Let's take a
12 break for just a second and let the jury stretch for
13 just a minute and then we'll come back in. That will
14 give you a chance to collect your thoughts, as well.

15 DERRICK GRANT: Thank you.

16 THE COURT: Ladies and Gentlemen, I am
17 going to let you go to your jury room. Do not begin
18 your deliberations, don't discuss the case. We will
19 be with you in about ten minutes.

20 (JURY OUT @ 5:04 P.M.)

21 THE COURT: Anything from the State?

22 MR. JENNINGS: No, sir.

23 THE COURT: Anything from the defense,
24 Mr. Grant, before recessing?

25 DERRICK GRANT: I would like to have a

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 couple of minutes right here.

2 THE COURT: Can he remain there to work
3 on his questions? If you would permit that, I would
4 appreciate it.

5 DEPUTY LAWRENCE: Yes, sir.

6 THE COURT: If you would just stay with
7 him right there.

8 DEPUTY LAWRENCE: (Affirmative nod).

9 THE COURT: Thank you very much. Mr.
10 Grant, we will let you work there.

11 DERRICK GRANT: Thank you, Your Honor.

12 THE COURT: We will be at-ease. Mr.
13 Kokinda, I would ask that during this break that you
14 not have any conversation with the State or with Mr.
15 Grant.

16 SGT. KOKINDA: Yes, Your Honor.

17 THE COURT: Thank you.

18 (BRIEF RECESS 5:07 - 5:15 P.M.)

19 (DEFENDANT PRESENT)

20 THE COURT: Is the State ready?

21 MR. JENNINGS: State's ready, Your Honor.

22 THE COURT: Mr. Grant, are you ready?

23 DERRICK GRANT: Yes, Your Honor.

24 (JURY IN @ 5:15 P.M.)

25 THE COURT: Thank you, Ladies and

1 Gentlemen, we are now ready to continue. Mr. Grant,
2 you may begin your cross examination, sir.

3 CROSS EXAMINATION

4 BY DERRICK GRANT:

5 Q. Good afternoon, Mr. Kokinda. Do you remember
6 serving me with a warrant, a search warrant, for my
7 blood, head hair, pubic hair, saliva samples?

8 A. Could you speak up just a little bit?

9 Q. Do you remember serving me a search warrant for
10 my blood, pubic hair, head hair in December '02?

11 A. Yes, sir, at 3:00 p.m.

12 Q. Did I have a severe cut to my left wrist?

13 A. At that time?

14 Q. Yes, sir.

15 A. Yes, sir.

16 Q. Do you know exactly how many tubes of blood did
17 the Berkeley County Sheriff's Office -- samples of my
18 blood did the Berkeley County Sheriff's Office have
19 from me?

20 A. From you?

21 Q. Took possession from me?

22 A. Sorry, I'm not -- that came to be in our
23 possession? Or how many that we took from you?

24 Q. Throughout the investigation, do you know exactly
25 how many tubes of blood that were provided by me to

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

409

1 the Berkeley County Sheriff's Office?

2 A. On the 31st of December, I believe two tubes were
3 taken from you in my presence. I believe that it's
4 standard, that the kit needs two tubes. But the crime
5 scene tech did a -- in June, they got a court Order
6 and got two more tubes.

7 Q. So there was a total of four blood tubes that was
8 provided from me to the Berkeley County Sheriff's
9 Office?

10 A. Yes.

11 Q. Can I ask why a second sample of blood was needed
12 from me?

13 A. I can't answer that question. That's something
14 that the Solicitor's office decided, it was by court
15 Order.

16 Q. Are you familiar with a guy by the name of Donald
17 Lynch who was a suspect in this case?

18 A. I am familiar with the name "Donald Lynch" in
19 reference to this case. I had a ten-print card from
20 him.

21 Q. Exactly what type of DNA did he provide for the
22 Berkeley County Sheriff's Office?

23 A. Blood was drawn from Donald Lynch and submitted
24 to SLED.

25 Q. Are you familiar with a Shawn Elkins that was a

- 1 suspect?
- 2 A. Yes.
- 3 Q. What type of DNA was provided by Shawn Elkins?
- 4 A. I am not sure if he was a suspect but I know
- 5 that blood was drawn from him to also be submitted.
- 6 Q. What type of DNA was provided from Mr. Grant?
- 7 A. From Mr. Grant?
- 8 Q. Yes. From me.
- 9 A. Tubes of blood were drawn from you.
- 10 Q. Exactly what type of DNA was provided from me?
- 11 A. It was in the form of blood.
- 12 Q. Did I provide blood, head hair, pubic hair and
- 13 saliva samples on December 30th, 2002?
- 14 A. Yes, sir, I show "blood standard, pulled head
- 15 hair, pulled pubic hair and saliva" samples. That's
- 16 a pretty standard suspect kit, known blood kit.
- 17 Q. Why didn't Donald Lynch give head hair, pubic
- 18 hair and saliva samples?
- 19 A. I don't know.
- 20 Q. Why didn't Shawn Elkins give head hair, pubic
- 21 hair and saliva samples?
- 22 A. Again, I can't answer that question.
- 23 Q. What race is Donald Lynch?
- 24 A. (No response).
- 25 Q. Do you know his race?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 A. I believe Donald Lynch is white, Caucasian..

2 Q. Do you know the race of Shawn Elkins?

3 A. No, sir, I don't.

4 Q. Have you ever seen/met Shawn Elkins?

5 A. No.

6 Q. To get a -- in order to get a comparative DNA,
7 exactly what type of DNA samples, what type of
8 physical items are needed from a person to get a
9 comparative -- to get a -- can you get a person's DNA
10 from just blood? Let me rephrase that.

11 If you have unknown blood at a crime scene, can
12 you get -- can you -- if you take blood on a suspect
13 and you compare just that blood that you took from the
14 suspect to unknown blood or would you need other
15 items, like my head hair, pubic hair and saliva, to
16 get exact DNA?

17 A. I am not sure the exact procedures that SLED
18 uses. I am not a DNA analyst. I am more familiar
19 with fingerprints.

20 Q. How long have you been in this field?

21 A. Approximately twelve, thirteen years. But,
22 again, I am not a DNA analyst.

23 Q. Well, I'm not a lawyer.

24 THE COURT: Mr. Grant, again, ---

25 DERRICK GRANT: Okay, thank you, Your

1 Honor.

2 THE COURT: --- please ask a question
3 that is appropriate, sir.

4 DERRICK GRANT: Okay. Thank you, Your
5 Honor.

6 CROSS EXAMINATION CONTINUED

7 BY DERRICK GRANT:

8 Q. The tire impressions that were taken from the
9 crime scene, the scene of the crime, does it match
10 the tires of the victim? Do you know that?

11 A. I didn't conduct that examination, so I can't
12 answer that question.

13 Q. Are you the reporting officer in reference to
14 the location and recovery of the victim's vehicle?

15 A. No, sir, I wasn't at the recovery of the victim's
16 vehicle in Charleston.

17 Q. Are you the reporting officer -- could I show you
18 a document?

19 A. Okay.

20 Q. Do you recognize this document?

21 A. Yes, this is a supplemental report that I did in
22 reference to my processing the vehicle.

23 Q. Is that your name to the bottom?

24 A. Yes, sir.

25 COURT REPORTER: This will be Defendant's

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Exhibit 4.

2 THE COURT: Defendant's Exhibit 4, for
3 identification only.

4 DERRICK GRANT: Yes, sir. Thank you.

5 MR. JENNINGS: Your Honor, may I see
6 what he is showing the witness?

7 THE COURT: Yes, sir.

8 MR. JENNINGS: (Upon review), thank
9 you.

10 CROSS EXAMINATION CONTINUED

11 BY DERRICK GRANT:

12 Q. Exactly what did -- did you process the victim's
13 vehicle?

14 A. Yes, sir, I did. And the State Law Enforcement
15 Division also did.

16 Q. What date did you process the victim's vehicle?

17 A. The 27th of December.

18 Q. Did you blue-light the victim's vehicle at that
19 time?

20 A. Excuse me?

21 Q. Did you blue-light the victim's vehicle at the
22 time -- the exterior, the interior of the vehicle?

23 A. I don't understand what you're trying to ask me.

24 Q. That report that I just shown you, what date did
25 you write the report?

1 A. (Upon review), you're referring to the particular
2 report that you showed me?

3 Q. Yes, sir.

4 A. It's dated January 3rd of 2003.

5 Q. So do you know what date that I was arrested and
6 charged with this murder?

7 A. I know on the 30th of December that I photographed
8 you at 3:00 o'clock in the morning. I am not sure if
9 you were under arrest for this particular case or not.

10 DERRICK GRANT: Object for the record.

11 I want to ---

12 THE COURT: No, sir.

13 DERRICK GRANT: Thank you. Thank you.

14 THE COURT: You can't do that, sir.

15 DERRICK GRANT: Thank you.

16 CROSS EXAMINATION CONTINUED

17 BY DERRICK GRANT:

18 Q. I realize that this report was written after my
19 -- after I -- after I was charged. Also, when you
20 processed the victim's vehicle on December 27th, 2002,
21 how did you write the report on January 3rd, 2003?

22 A. I wrote it when I had time to write it.

23 Q. You could write anything in the report. Right?

24 A. My supplemental report reflects my observations
25 and what I collected.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Q. But the report was written after I got arrested
2 and charged with the crime.

3 A. Again, I don't know when you were charged with
4 the crime or when ---

5 Q. All right. Was blood -- when you processed the
6 victim's vehicle on December 27th, 2002, did you see
7 blood on the victim's left window, the driver's side
8 window?

9 A. On the left driver's side door window?

10 Q. Interior window on the driver's side?

11 A. I don't recall seeing any blood there, no.

12 Q. Did you see blood on the outside of the driver's
13 side window?

14 A. On the window itself?

15 Q. Yes.

16 A. No.

17 Q. Did you see blood where you sit down on the
18 driver's seat?

19 A. The ---

20 Q. The seat part of the victim's vehicle, on the
21 driver's side?

22 A. Are you talking about on the cloth part of that
23 seat?

24 Q. Yes.

25 A. No, sir.

- 1 Q. Did you see blood on the part that you lay your
2 back on?
- 3 A. On the back rest, the cloth? Again, the cloth
4 part?
- 5 Q. Yes, the cloth part.
- 6 A. No.
- 7 Q. Did you see blood on the passenger seat, the
8 cloth part?
- 9 A. No, sir.
- 10 Q. Did you see blood on the floor on the passenger
11 side?
- 12 A. The passenger side floor?
- 13 Q. Yeah, on the carpet?
- 14 A. No, sir.
- 15 Q. Anywhere?
- 16 A. On the passenger side?
- 17 Q. Yes, sir.
- 18 A. The passenger door, interior, there was a small
19 transfer area.
- 20 Q. Did you see blood on the driver's side floor, the
21 carpet in the victim's vehicle?
- 22 A. No, sir.
- 23 Q. Did you see blood on the interior?
- 24 A. On the headliner of the vehicle?
- 25 Q. Yeah, the headliner?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 A. No.

2 Q. Did you see blood on the back right passenger
3 seat?

4 A. No, sir.

5 Q. Did you see blood on the right back floor,
6 carpet?

7 A. No, sir.

8 Q. Did you see blood on the left floor carpet?

9 A. Left front or back?

10 Q. Left back?

11 A. No, sir.

12 Q. Would you please name each area of the victim's
13 vehicle where blood was found?

14 A. That I observed?

15 Q. That you observed when you processed the vehicle
16 on December 27th, 2002.

17 A. The left front hood area, fender area.

18 Q. Interior, please.

19 A. Are we talking about the interior?

20 Q. Yes, sir. I beg your pardon.

21 A. The left door panel, the driver's side door
22 panel, on the interior handle.

23 The side of the seat. Not the cloth part of the
24 seat but on the side of the driver's seat there was a
25 plastic piece which had what appeared to be blood on

1 it.

2 The handle that moves the seat front and back had
3 an area that appeared to have blood on it.

4 And the steering wheel.

5 Q. Could you please note where blood was found on
6 the exterior of the victim's vehicle when you
7 processed the vehicle on December 27th, 2002?

8 A. On the left hood area and fender area.

9 On the left door, underneath the door handle.

10 Q. From your experience can you say that was from
11 someone getting in the car?

12 MR. JENNINGS: Objection, Your Honor, that
13 calls for speculation.

14 THE COURT: Sustained. You can lay a
15 foundation or try to, but right now we don't have a
16 sufficient basis for him to make that conclusion.

17 CROSS EXAMINATION CONTINUED

18 BY DERRICK GRANT:

19 Q. What did you find under the victim's right front
20 seat when you processed the victim's vehicle on
21 December 27th, 2002?

22 A. Under the right front seat?

23 Q. Yes, on December 27th, 2002?

24 A. A partial fingernail.

25 Q. Do you found a fingernail under the victim's

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 passenger seat, under the seat of the victim's
2 passenger -- under the passenger seat of the victim's
3 vehicle?

4 A. Well, it was actually the area between the door
5 sill and the seat. You open the door and you've got
6 the bottom that is normally covered by the door, like
7 a door sill. Between that area and the seat there is
8 like a three or four-inch gap area, and it was in that
9 area.

10 Q. When you processed the victim's vehicle,
11 evidently you took your time to process the victim's
12 vehicle on December 27th, 2002, if you found something
13 as small as a fingernail. Do you agree on that?

14 A. I didn't complete the processing of the vehicle.

15 Q. If you found a broken fingernail, you had to have
16 been really looking. That's pretty small.

17 A. I was processing the vehicle as I would normally
18 process a vehicle.

19 Q. When was blood found on the victim's rearview
20 mirror?

21 A. That was ---

22 Q. What date?

23 A. That was found on the 30th. That's when the South
24 Carolina Law Enforcement Division removed the mirror.

25 Q. Three days later from when you processed the

1 victim's vehicle, from when you found a broken
2 fingernail but you didn't find blood, supposedly
3 blood, on the rearview mirror?
4 A. That's correct. As I said, I didn't finish
5 processing the vehicle.
6 Q. But you found something as small as a broken
7 fingernail?
8 A. Yes, sir.
9 Q. Did you observe -- when you took the photographs
10 of my person on December 30th, 2002, that morning, did
11 the cut to my left wrist -- was it fresh?
12 A. Well, it was open.
13 Q. Open? Would you consider it to be a fresh cut?
14 Within three or four days?
15 A. Possibly.
16 Q. The nick that I had on my back/neck, would you
17 consider that to be fresh?
18 A. That appeared to be healing.
19 Q. So it appeared to be healing?
20 A. (Affirmative nod).
21 Q. So you would not consider that to be fresh?
22 A. No, sir.
23 Q. Did you observe, on 2002, on December 30th, 2002,
24 was -- I wouldn't use the word "ordered" but did I
25 take all my clothes off for you to take a photo of my

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

- 1 body?
- 2 A. I don't recall.
- 3 Q. Did you observe any fresh scratches on my body
- 4 anywhere else? On my person?
- 5 A. I just documented the wound on the left hand and
- 6 small cut on the back of the neck. That's the only
- 7 two things that I recall.
- 8 Q. I know that you answered the question your way
- 9 and I respect that, but did you see fresh scratches
- 10 on my body when you took pictures?
- 11 A. Other than the two areas that I photographed, no.
- 12 I'm sure that if there were more than I would have
- 13 photographed those.
- 14 Q. Did you have in your possession a ring and
- 15 bracelet that belongs to me?
- 16 A. Yes, sir.
- 17 Q. You took it for evidence?
- 18 A. Yes, sir.
- 19 Q. Exactly what is the name, the full name, of the
- 20 detective that gave you -- how did you ---
- 21 A. Detective Tim Buchanan.
- 22 Q. Detective Buchanan?
- 23 A. Yes, sir.
- 24 Q. On what date?
- 25 A. January 9th.

1 Q. Do you know the examination that was requested
2 for my ring, what type of examination was requested?

3 A. I don't recall but I would imagine -- I think
4 that it was DNA.

5 Q. Can I show you a document of the examiner's
6 questions of my ring?

7 A. Okay.

8 Q. I know that is not your signature. Could you
9 please state the examination requested for my ring?

10 THE COURT: What was the question, Mr.
11 Grant? Sorry, but I didn't hear it.

12 DERRICK GRANT: The question is, Can you
13 please state the examination requested for my ring?
14 The DNA on -- on that sheet, they've got "Examination
15 Requested".

16 THE COURT: Hold on a second. Do you
17 (witness) understand the question?

18 WITNESS: Yes, sir, I do. It was to
19 test blood, tissue and semen. Both the ring and the
20 bracelet were to be tested for blood and tissue.

21 CROSS EXAMINATION CONTINUED

22 BY DERRICK GRANT:

23 Q. Blood and tissue?

24 A. Um-humm.

25 Q. Can I show you a SLED sheet ---

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 MR. JENNINGS: Your Honor, I would ask that
2 he mark it.

3 THE COURT: Yes, we need to mark it, Mr.
4 Grant.

5 COURT REPORTER: Defendant's Exhibit 5
6 for identification.

7 THE COURT: Defendant's 5 for ID only.

8 COURT REPORTER: Do you have another one?

9 DERRICK GRANT: (Tenders).

10 COURT REPORTER: Defendant's Exhibits 5
11 and 6 for identification.

12 DERRICK GRANT: Excuse the incon-
13 venience. Okay?

14 CROSS EXAMINATION CONTINUED

15 BY DERRICK GRANT:

16 Q. Would you please state again, would you mind,
17 please, sir, what examination was requested for my
18 ring?

19 A. It says to test for blood and tissue.

20 Q. How about my bracelet?

21 A. The same thing, test for blood and tissue.

22 Q. Thank you, sir. I would like to show you this
23 SLED Lab Inventory sheet. Excuse me just a minute --
24 would you please read Item 23, the description in Item
25 23?

- 1 A. Item 23 is a swab (blood) from ring.
- 2 Q. That's the victim's ring?
- 3 A. Correct.
- 4 Q. Could you state the examination requested for the
5 victim's ring?
- 6 A. It says DNA.
- 7 Q. It don't say "tissue and blood".
- 8 A. That's correct. I wrote this entire sheet. DNA
9 is the lab area that it goes to.
- 10 Q. Could you please read the description of Item 21?
- 11 A. Item 21 is a "red, Old Navy brand jacket".
- 12 Q. And that's the victim's jacket?
- 13 A. Yes, sir, the jacket that was located in the
14 driveway.
- 15 Q. Can you please state the examination requested
16 for the victim's jacket?
- 17 A. "Trace/DNA."
- 18 Q. Could you please state the examination requested
19 for my jacket?
- 20 A. Test for "blood, tissue and semen".
- 21 Q. All right. Sgt. Kokinda, my ring, the victim's
22 ring, they are rings. Can you explain why two
23 different tests was requested for the same type item,
24 being that both items were evidence?
- 25 A. Yes. The first inventory sheet or, rather, the

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 second one that you showed me, which I consider to be
2 the first, the one that I wrote, when I write in the
3 examination space, I don't write a specific request.
4 I write the area that it goes to. If I have a latent
5 fingerprint, it goes to Latents. If I have a tire
6 impression, it goes to Latents. If I have something
7 that is biological in origin, I just put DNA. If I
8 have something that might be trace material, I put
9 Trace.

10 Q. Your name is not the delivery person here. His
11 name is John V. Dunn.

12 A. I understand that but I -- I wrote that, that's
13 my handwriting, as far as the inventory itself.

14 Q. That's yours?

15 A. (Affirmative nod).

16 Q. Item 21, red Old Navy jacket. That was the
17 victim's jacket, correct?

18 A. Correct.

19 Q. The examination requested is Trace/DNA?

20 A. Correct.

21 Q. Item 71 is my jacket. The examination requested
22 is blood, tissue and semen. Correct?

23 A. That's what is written on that sheet. Yes, sir.
24 But I didn't write that.

25 Q. I know. Were you at the crime scene when the

- 1 victim was found on December 26th, 2002?
- 2 A. When the victim was found.
- 3 Q. Yes.
- 4 A. No, sir. I arrived at about 5:00 o'clock in the
5 evening.
- 6 Q. Are there trees in that area?
- 7 A. Yes, sir.
- 8 Q. Are there high bushes in that area?
- 9 A. It's a wooded area. So, sure, there are bushes.
- 10 Q. Would you please state, Mr. Kokinda, exactly what
11 was found around the victim's body at the crime scene?
- 12 A. Exactly what was found as far as objects?
- 13 Q. Yes.
- 14 A. There was an earring, gold in color with a clear
15 stone; a cross pendant, gold colored; ring, gold
16 colored with an "R" emblem on it; a ring, gold colored
17 with a heart-shaped emblem; and a gold in color broken
18 chain.
- 19 Q. Who else was at the crime scene? Was the coroner
20 at the crime scene with you at that same time?
- 21 A. Yes, sir, the Deputy Coroner.
- 22 Q. Can I show you ---
- 23 A. Sure.
- 24 Q. Would you please read exactly what ---
- 25 MR. JENNINGS: Objection, Your Honor.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 THE COURT: Sustained. You can't do
2 that. Under the Rules, it has to be introduced into
3 evidence first before it can be published, Mr. Grant.

4 DERRICK GRANT: Yes, sir. Thank you, Your
5 Honor.

6 CROSS EXAMINATION CONTINUED

7 BY DERRICK GRANT:

8 Q. Were you and the coroner at the crime scene at
9 the same exact time?

10 A. You mean the Deputy Coroner or the Coroner?

11 Q. I've got his name right here, Mr. Bill Salisbury.

12 A. Salisbury, Deputy Coroner.

13 Q. Okay.

14 A. Yes, sir.

15 Q. Would both of you state exactly the same things
16 that was found around the victim?

17 MR. JENNINGS: Objection, Your Honor. That
18 would call for him to ---

19 THE COURT: Sustained. That calls for
20 speculation. Under 602, he can't possibly know what
21 Mr. Salisbury is going to testify to.

22 CROSS EXAMINATION CONTINUED

23 BY DERRICK GRANT:

24 Q. On December 27th, 2002, when you processed the
25 victim's vehicle, did you take every swab of blood

1 from each area to Evidence at that time?

2 A. The samples that I took on the 27th?

3 Q. Yeah.

4 A. No, sir.

5 Q. So you left samples of areas ---

6 A. I took a sampling from each area.

7 Q. Right. On December 27th, did you take samples
8 of blood from each area of the victim's vehicle? On
9 December 27th of 2002? To place in Evidence?

10 A. I took three samples from the victim's vehicle
11 to place in Evidence on the 27th.

12 Q. Did you take blood from the front seat adjusting
13 handle into Evidence?

14 A. No, sir.

15 Q. Did you take the blood from the hood into
16 Evidence?

17 A. Yes, sir. Left side.

18 Q. You did?

19 A. No, sir, I stand corrected. I did not.

20 Q. Did you not take blood from the hood area at that
21 time?

22 A. No, sir. No, sir, I did not.

23 Q. Did you take blood from the left front window and
24 take it into Evidence at that time?

25 A. The left?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Q. Front fender of the victim's ---

2 A. Left window or left fender?

3 Q. Did you take blood from the left front fender of
4 the victim's vehicle and take it into Evidence at that
5 time when you processed the car on December 27th, 2002?

6 A. No, sir.

7 Q. Do you know the result from any DNA that was
8 taken?

9 MR. JENNINGS: Objection, Your Honor.

10 THE COURT: Sustained. That would call
11 for hearsay, Mr. Grant.

12 CROSS EXAMINATION CONTINUED

13 BY DERRICK GRANT:

14 Q. Did you get to observe the cut to my left wrist
15 on December 30th, 2002, when you took photos?

16 A. I took the photographs of it, (affirmative nod).

17 Q. Were any other pictures taken of me, that you
18 take, at that time?

19 A. By me?

20 Q. You or anyone else?

21 A. I don't believe that anyone else took any photo-
22 graphs of you other than possibly the jail, the
23 booking person.

24 Q. You testified that the victim was -- (pause).

25 Well, what exactly was found in the victim's right

1 hand at the crime scene?

2 A. In the right hand?

3 Q. Yes.

4 A. Hairs.

5 Q. One hair? Two hairs?

6 A. A couple of hairs.

7 Q. Here you have a numerous of hairs in the report?

8 A. Right. "Numerous", meaning more than one.

9 Q. Numerous meaning more than one. Yeah. You
10 testified that when a person is getting cut that they
11 pull their hair.

12 A. I said that it's been my experience that in the
13 attacks that I've worked that people, if they're being
14 overtaken, tend to go in a fetal position, like this
15 (demonstrating), to protect themselves.

16 Q. Did you know those hairs were never tested?

17 MR. JENNINGS: Objection.

18 THE COURT: Sustained. Calls ---

19 DERRICK GRANT: I'm sorry, Your Honor.

20 THE COURT: That's all right, Mr. Grant.

21 You have to remember that this witness can only
22 testify to what he knows of his own knowledge. You
23 can't ask questions about things that he doesn't know.
24 You will have to find that out from someone else.
25 Unless he's an expert.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 CROSS EXAMINATION CONTINUED

2 BY DERRICK GRANT:

3 Q. Exactly what is your occupation?

4 A. I am the sergeant of Forensic Services for the
5 Berkeley County Sheriff's Office.

6 Q. What type of -- what exactly is your job? What
7 are your ---

8 A. My duties?

9 Q. --- duties?

10 A. I process crime scenes as directed by the
11 Investigative Division, process items for finger-
12 prints, transfer evidence to the South Carolina Law
13 Enforcement Division when we might need further
14 analyses or analyses that we can't do here. My area
15 of expertise is fingerprint comparison and video
16 analysis.

17 Q. Did you take prints from the victim's right door
18 handle?

19 A. Fingerprints?

20 Q. The victim's car? Right, fingerprints. Latent
21 prints. On the victim's left passenger side door?

22 A. That area was processed. I believe that the
23 latent lifts -- I'd have to look in my notes. I don't
24 think that there were any prints recovered from the
25 door handle itself.

1 Q. I would like to show you Exhibit 6 again, please.

2 A. Okay.

3 Q. Can you please state did you have any latent
4 prints ---

5 MR. JENNINGS: Objection, Your Honor. If he
6 is going to ---

7 THE COURT: Sustained. It has to be
8 admitted into evidence if you intend to have it
9 published, Mr. Grant. Again, it is hearsay until it
10 is admitted.

11 MR. JENNINGS: I have no objection if he
12 wants to admit it.

13 THE COURT: Do you want to put it into
14 evidence, it speaks for itself then. That's ---

15 DERRICK GRANT: Could I consult with
16 (Ms. Kennedy)?

17 THE COURT: Sure. Why don't you
18 approach for just a second. It's not necessary this
19 be on the record, Deb. It's just more of a scheduling
20 check.

21 COURT REPORTER: Thank you.

22 (OFF RECORD SIDEBAR)

23 THE COURT: Thank you, Mr. Grant. Sorry
24 to interrupt you. Please take a moment to talk to Ms.
25 Kennedy.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 (DEFENDANT CONSULTS WITH ADVISOR)

2 DERRICK GRANT: Your Honor, I would like
3 to backtrack and place those into evidence at this
4 time. Exhibits 4, 5, and 6.

5 THE COURT: Any objection?

6 MR. JENNINGS: No objection, Your
7 Honor.

8 THE COURT: All right, Defendant's
9 Exhibits 4, 5 and 6 are admitted into evidence with-
10 out objection.

11 (SO ENTERED AS DEFENDANT'S EXHIBIT 4)

12 (SO ENTERED AS DEFENDANT'S EXHIBIT 5)

13 (SO ENTERED AS DEFENDANT'S EXHIBIT 6)

14 CROSS EXAMINATION RESUMED

15 BY DERRICK GRANT:

16 Q. Can you please read and tell, and state, if you
17 took latent prints from the victim's right driver's
18 side door?

19 A. You're talking to latent lifts that were
20 submitted to the South Carolina Law Enforcement
21 Division?

22 Q. Just do you have it listed? Even listed? For
23 prints? Latent prints?

24 A. I don't ---

25 Q. From the victim's left/right -- the victim's

1 right passenger exterior door handle?

2 A. There are no latent lifts listed.

3 Q. So you never took prints from the victim's right
4 -- the victim's right exterior door handle.

5 A. I never recovered any prints.

6 Q. Well, did you test it? Do you have it up here
7 for testing?

8 A. These latents are the actual image of what you
9 see on the object. When you are processing an item,
10 you don't always have ridge detail. If you have ridge
11 detail, then it can be compared and you record that
12 either by photograph or latent lifts so that you can
13 do an examination.

14 Q. Did you request latent lifts on the victim's
15 right hood?

16 A. There is an itemized list of what was submitted
17 to SLED. There was a latent lift from the right hood
18 submitted for examination.

19 DERRICK GRANT: Your Honor, no further
20 questions.

21 THE COURT: Redirect, Solicitor?

22 MR. JENNINGS: No questions.

23 THE COURT: Do you wish for Mr. Kokinda
24 to be excused?

25 MR. JENNINGS: Yes, sir.

1 THE COURT: Mr. Grant, have you got any
2 objection to Mr. Kokinda being excused?

3 DERRICK GRANT: I do not.

4 THE COURT: Mr. Kokinda, you may come
5 down and you're excused. Thank you, sir.

6 (WITNESS STEPS DOWN)

7 COURT REPORTER: May I have the exhibits,
8 Mr. Grant?

9 DERRICK GRANT: Yes, ma'am, (tenders).

10 COURT REPORTER: Thank you.

11 THE COURT: All right, thank you very
12 much. Ladies and Gentlemen, given the hour, we will
13 now take our recess for the evening.

14 Please remember that you have commenced this
15 process of dispute resolution and you've heard some
16 testimony, but it still would be very inappropriate
17 for you to begin your deliberation, collectively or
18 individually.

19 Individual deliberations, quite honestly,
20 can start -- and I think that sometimes, generally,
21 we just don't think about it. I remember probably
22 the first time that I excused a jury. I thought, you
23 know, these people go home and if someone is there, I
24 would imagine the question would be, 'What's going
25 on?' A normal response would be to tell them what you

1 have heard today. That would be pretty normal. The
2 minute you did that, you would have at that moment
3 started your individual deliberations. So you're
4 going to have to talk about something else for awhile.
5 Just talk about the process or anything that you want
6 but do not discuss the case in any form.

7 Do not allow anybody to talk with you about
8 this case, or to talk about it in your presence.
9 Again, I would ask that you please not read the
10 newspaper, not to watch any news programs about this.
11 If that is your custom and practice, I appreciate the
12 sacrifice that you're making for the State and Mr.
13 Grant. Set it aside and you'll have an opportunity
14 to catch up with it when this matter is concluded.

15 Have a good evening. I would ask, please,
16 that you return to your jury room by 9:30 in the
17 morning.

18 (JURY OUT @ 6:20 P.M.)

19 THE COURT: Anything from the State
20 before we recess?

21 MR. JENNINGS: No, sir, Your Honor.

22 THE COURT: Anything from the defense,
23 Mr. Grant, before we recess?

24 DERRICK GRANT: No, Your Honor.

25 THE COURT: Thank you, sir. Have a good

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 evening. We will see everyone at 9:30 in the morning.

2 (COURT IN RECESS)

3 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 FEBRUARY 25, 2004

9:30 A.M.

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(DEFENDANT PRESENT)

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THE COURT: Mr. Grant, I have been
advised by your advisor that you wish to have a
sidebar before we commence this morning.

DERRICK GRANT: Yes, Your Honor.

THE COURT: Very well. Solicitor, if
you would approach, please. Mr. Grant.

SIDEBAR:

DERRICK GRANT: Good morning.

THE COURT: Yes, sir.

DERRICK GRANT: First of all, Your
Honor, my family was
having trouble -- my
family hired a private
investigator to subpoena
thirty witnesses for me,
and I had Steven J.
Lambert on the subpoena
list. But for whatever
reason, the private
investigator was not
able to ---

MR. HOISINGTON: He's present, so he will

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

2 DERRICK GRANT: I want to subpoena him
3 also.

11 DERRICK GRANT: I want to call him.

19 DERRICK GRANT: That is why I want to
20 subpoena him.

21 THE COURT: You're not listening to me.
22 That has nothing to do with
23 subpoenas, because he is here
24 and I can keep him here.
25 What we are doing -- when the

1 witness comes down, I will if
2 I can excuse the witness from
3 the subpoena. That's why we
4 go through those questions.
5 That's why I ask the State if
6 they wish for a witness to be
7 excused and then ---

8 DERRICK GRANT: Yes, Your Honor.

9 THE COURT: And that's why I ask you. It
10 is up to you as to whether or
11 not you want him to stay,
12 because you have a right to
13 have any witness that has
14 been subpoenaed to remain, so
15 that you will have an
16 opportunity to recall. But
17 understand something, it is
18 not an automatic right. You
19 have to show me why you could
20 not have asked those ques-
21 tions on cross-examination.
22 And let me just tell, as I am
23 sure that Ms. Kennedy has
24 already told you, that you
25 are much better asking

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

441

1 questions on cross-examina-
2 tion than direct examination,
3 because in direct examination
4 they have to be phrased a
5 certain way. So I don't know
6 what you would hold off on
7 doing. You have to be care-
8 ful about recalling
9 witnesses. I would be happy
10 to keep any witness that you
11 want that has been subpoenaed
12 under that subpoena and only
13 then can you excuse them
14 through the Court's
15 permission. But, please
16 don't keep people subpoenaed
17 that you can't call again.
18 That's all that I am asking.

19 DERRICK GRANT: There is another point
20 that I wanted to bring
21 to your attention, Your
22 Honor. Understanding I
23 don't want you to get
24 upset with me, but I
25 still would like to get

1 Steven J. subpoenaed by
2 the Court.
3 THE COURT: But, sir, you don't need it.
4 He is subpoenaed. I'm trying
5 to explain to you that when a
6 witness is subpoenaed it
7 doesn't matter who subpoenaed
8 the witness.
9 DERRICK GRANT: But I just want him on
10 my list.
11 THE COURT: You don't have to have him on
12 your list.
13 DERRICK GRANT: I don't?
14 THE COURT: No. Tell me what your
15 purpose is, tell me why
16 you think that is
17 necessary.
18 DERRICK GRANT: He is a big part of my
19 defense. And, see, I am
20 not familiar with the
21 law. You know that.
22 THE COURT: That's what I am trying to
23 tell you he is going to
24 testify and the fact that
25 he's on your list, that

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

443

1 doesn't have anything to do
2 with your case. What happens
3 on the record is what has to
4 do with your case. Your
5 defense in not through what
6 is on your list but through
7 the testimony that is given.

8 DERRICK GRANT: Okay.

9 THE COURT: So the fact of who subpoenaed
10 him doesn't make any
11 difference.

12 DERRICK GRANT: Being that he is here
13 under the State's
14 subpoena ---

15 THE COURT: I just told you that he
16 is here and he can't
17 leave until they ask
18 permission and you
19 agree. If you don't
20 agree, then he can't
21 leave.

22 DERRICK GRANT: What about if I don't
23 want him today, I want
24 him tomorrow?

25 THE COURT: I just told you. But the

1 problem is that when they
2 call him you have to ask him
3 questions. You can't wait
4 until tomorrow to ---

5 DERRICK GRANT: I am going to ask him
6 questions.

7 THE COURT: But, see, there is one
8 thing that you have to
9 understand -- let me
10 just tell you something,
11 I've had this problem --
12 I've been working with
13 high school kids for
14 about twenty years with
15 mock trials. One of the
16 things that we do is
17 that we compete against
18 teams all over the
19 United States sometimes.
20 When you go into other
21 states, for instance two
22 years ago we were in a
23 competition in Minne-
24 sota. In Minnesota, you
25 would be right, 'All I

1 want is a yes or no
2 answer.' That's correct
3 in Minnesota, but it's
4 not correct for South
5 Carolina. See, that is
6 the difference in the
7 law. Also, there is a
8 difference in the law,
9 too, in some states
10 that, I believe, you
11 have the right to simply
12 say, 'I don't want to
13 question this witness
14 now. I will recall him
15 later.' And if you
16 wanted to do that, now,
17 then say that. Say, 'I
18 don't have any questions
19 of this witness now.'
20 Then I could recall him,
21 but the problem that you
22 have is that you would
23 need to talk to his
24 lawyer. From a lawyer's
25 perspective, you want to

1 have a witness on cross-
2 examination -- not
3 direct.
4 On cross-examination,
5 you can ask leading
6 questions. Leading
7 questions are questions
8 where you state what you
9 want the witness to say.
10 On direct examination,
11 you cannot do that.
12 DERRICK GRANT: Can I keep both doors
13 open?
14 THE COURT: Well, Mr. Grant, that is ---
15 DERRICK GRANT: That's okay.
16 THE COURT: Mr. Grant, let me just
17 tell you this, again,
18 and it's very -- it
19 happens, and it is not
20 your fault but you
21 undertook this under-
22 standing the complica-
23 tions. Now you're
24 beginning to see clearly
25 why I kept telling you

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 that you need to get an
2 attorney.
3 DERRICK GRANT: Okay. That's one Motion
4 that I've got.
5 THE COURT: Well, he is under subpoena.
6 You don't have to subpoena.
7 But if you want to have him
8 served, you have to have an
9 investigator and have him
10 served ---
11 DERRICK GRANT: That is the second
12 question, can I be
13 allowed to speak to my
14 family to let them know
15 that right quickly,
16 please.
17 THE COURT: Whatever security
18 allows. That is up to
19 them.
20 DERRICK GRANT: Do they allow it?
21 THE COURT: If they allow it, I
22 don't have any problem
23 with it. You can't
24 speak with them right
25 now, though.

1 DERRICK GRANT: Would you give me time
2 to know when we're
3 closing, because I want
4 to have time to call my
5 thirty witnesses.

6 THE COURT: Closing arguments are when we
7 finish.

8 DERRICK GRANT: Are we going to finish
9 today?

10 THE COURT: I don't know, but if we
11 finish today then we
12 probably won't do
13 closing arguments until
14 tomorrow. It just
15 depends on the time we
16 finish. I would suggest
17 that you need to be
18 working on your closing
19 arguments at night,
20 that's what lawyers have
21 to do.

22 DERRICK GRANT: Well, we're putting
23 things together today.
24 If I could speak to
25 security about talking

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

449

1 to my family.

2 THE COURT: You may, but you need to do
3 that during a break. Right
4 now we have to get started.

5 DERRICK GRANT: Yes, sir.

6 THE COURT: Thank you.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Is the State ready to
9 proceed?

10 MR. JENNINGS: The State is ready.

11 THE COURT: Mr. Grant, are you ready to
12 proceed, sir?

13 DERRICK GRANT: Yes, Your Honor.

14 THE COURT: Very well. Let's bring in
15 our jury, please.

16 DERRICK GRANT: Your Honor, could I
17 please -- I have one more Motion.

18 THE COURT: All right, what's the
19 Motion.

20 DERRICK GRANT: I would ask that -- can
21 you please ask Solicitor Blair Jennings to not direct
22 to me as the Defendant, to direct me as Mr. Grant?

23 THE COURT: No, sir, I can't. That's
24 part of it, but if you will bear with that -- I've
25 already indicated to the jury that "defendant" is just

1 a term that means that you're the person that is
2 charged with this offense. That's the only
3 significance of that term. I will instruct the jury
4 again because I'll use that term during my charge,
5 too. It's a legal term and it means nothing more than
6 just simply -- rather than calling you "Mr. Grant", he
7 can say it in one word, 'the defendant', the 'person
8 who is charged with a crime', that's what that means.

9 DERRICK GRANT: Thank you, Your Honor.

10 THE COURT: So I am not going to require
11 him to do that.

12 DERRICK GRANT: Thank you.

13 THE COURT: Thank you, sir. Are we ready
14 now for the jury?

15 MR. JENNINGS: Yes, sir.

16 THE COURT: Mr. Grant?

17 DERRICK GRANT: Yes, Your Honor.

18 THE COURT: Let's bring in the jury.

19 (JURY IN @ 9:45 A.M.)

20 THE COURT: Good morning, Ladies and
21 Gentlemen. I understand that you had some preliminary
22 refreshments and hope that you had a chance to enjoy
23 them. Thank you for your patience with the Court.
24 There were some things that I needed to take care of
25 this morning, and I apologize to you for keeping you

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

451

1 waiting. Hopefully you used it as a chance to have
2 some peaceful time. I appreciate you being punctual
3 and we're ready to move forward now.

4 Before starting, however, I need to ask you
5 do each of you solemnly swear or affirm that you have
6 not permitted anyone to talk with you about this case,
7 you've not talked with anyone about this case and/or
8 you've not read any newspaper articles, nor viewed any
9 news accounts or television accounts concerning this
10 trial. If you can make that commitment, say "I do."
11 (All jurors respond affirmatively.)

12 THE COURT: If there is any juror that is
13 unable to make that commitment? (No response). Thank
14 you very much, Ladies and Gentlemen. Solicitor, call
15 your next witness.

16 MR. JENNINGS: Thank you, Your Honor,
17 may it please the Court.

18 THE COURT: Yes, sir.

19 MR. JENNINGS: We call Officer Annette
20 Moore.

21 (WITNESS TAKES STAND)

22 ANNETTE RIVERS MOORE,
23 being duly sworn to tell the truth, the whole truth
24 and nothing but the truth, testified, as follows:

25 DIRECT EXAMINATION

- 1 BY MR. JENNINGS:
- 2 Q. Good morning, Ms. Moore. Where are you employed?
- 3 A. Detention Center.
- 4 Q. That's with Berkeley County?
- 5 A. (Affirmative nod), Berkeley County.
- 6 Q. What is your occupation there?
- 7 A. I am a sergeant.
- 8 Q. And, at times, -- how long have you worked there?
- 9 A. Since December of '99
- 10 Q. At times while you have been employed there, are
- 11 you familiar with the process of fingerprinting people
- 12 when they are arrested?
- 13 A. Yes.
- 14 Q. Have you had the opportunity to do that on
- 15 numerous occasions?
- 16 A. Yes.
- 17 Q. Are you familiar with a man by the name of
- 18 Derrick Grant?
- 19 A. Yes.
- 20 Q. Do you see him in the courtroom today?
- 21 A. Yes.
- 22 Q. Can you point him out to the jury, please.
- 23 A. He's sitting there (indicating Defendant).
- 24 Q. Did you have an opportunity -- were you working
- 25 in the Detention Center on November 22nd of 2000?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

453

1 A. Yes.

2 Q. Did you have an opportunity to take what is known
3 as a standard ten-print card of Mr. Grant?

4 A. Yes.

5 Q. I show you what is marked as State's Exhibit 82.
6 Do you recognize that?

7 A. (Upon review), yes.

8 Q. Whose signature is on that card?

9 A. Derrick Grant's.

10 Q. And did you write his birth date?

11 A. Yes.

12 Q. What is that?

13 A. [REDACTED].

14 Q. And is your name written on this exhibit ---

15 A. Yes.

16 Q. --- as the person taking the fingerprints?

17 A. Yes.

18 MR. JENNINGS: We would offer State's
19 Exhibit 82 into evidence, Your Honor.

20 THE COURT: Any objection, Mr. Grant?

21 DERRICK GRANT: No, Your Honor.

22 THE COURT: Very well, State's Exhibit
23 82 is admitted into evidence without objection.

24 (SO ENTERED AS STATE'S EXHIBIT 82)

25 MR. JENNINGS: Thank you, Officer Moore.

1 Please answer any questions that the defense may have
2 for you.

3 THE COURT: You may cross examine.

4 DERRICK GRANT: No questions, Your
5 Honor.

6 THE COURT: Very well, you may come
7 down.

8 (WITNESS STEPS DOWN)

9 THE COURT: Do you wish the witness to
10 be excused, Solicitor?

11 MR. JENNINGS: Please.

12 THE COURT: Any objection, Mr. Grant?

13 DERRICK GRANT: No, Your Honor.

14 THE COURT: Very well, you are free to
15 leave. Thank you very much. You may call your next
16 witness.

17 MR. JENNINGS: The State calls Agent
18 Phillip Coonfield.

19 (WITNESS TAKES STAND)

20 PHILLIP COONFIELD,
21 being duly sworn to tell the truth, the whole truth
22 and nothing but the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY MR. JENNINGS:

25 Q. Good afternoon, Agent Coonfield.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

- 1 A. Good ---
- 2 Q. Good morning. I'm sorry.
- 3 A. Good morning.
- 4 Q. Where are you employed?
- 5 A. I am employed with the South Carolina Law
6 Enforcement Division, commonly known as SLED.
- 7 Q. What department do you work in at SLED?
- 8 A. I am currently in the Latent Print/Crime Scene
9 department.
- 10 Q. In the Latent Print department, what do you do?
11 What is your responsibility?
- 12 A. Our duties and responsibilities include
13 responding to crime scenes, statewide, when we're
14 requested by local agencies.
- 15 We also are responsible for the collection and
16 examination of fingerprints, footwear and tire tread
17 evidence.
- 18 We also are responsible for blood stain pattern
19 analyses, as well as crime scene reconstruction.
- 20 Q. Are there some cases that at SLED you will work
21 at the primary investigative agency?
- 22 A. That's correct.
- 23 Q. What would some of those cases be?
- 24 A. As the primary investigative agency it would be
25 cases such as officer-involved shootings or basically

1 any other case where we are requested to work as the
2 primary.

3 Q. Does the majority of your work come from local
4 law enforcement agencies requesting your assistance?

5 A. That's correct.

6 Q. And that's how you became involved in this case?

7 A. Yes, sir.

8 Q. If you would go over with the jury, what is your
9 education since you graduated from high school?

10 A. I have a Bachelor of Science degree from Francis
11 Marion University. I am a certified law enforcement
12 officer in the state of South Carolina.

13 I have completed the SLED two-year in-house
14 training program on qualifying in the field of
15 fingerprints, crime scenes, as well as tire tread
16 comparison.

17 I have also completed several courses in advanced
18 fingerprints, blood stain pattern analysis, crime
19 scene reconstruction and crime scene photography -- as
20 well as the chemical enhancement of fingerprints.

21 Q. And all that work that you've done with finger-
22 print, does that involve not only processing items
23 for fingerprints but does it also involve identifying
24 fingerprints?

25 A. (Affirmative nod), we are responsible for

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 processing the prints as well as the examination and
2 comparison of the fingerprints.

3 We also do -- another area that we do is actually
4 taking rolled prints, which includes post-mortem
5 rolled prints, for identification purposes.

6 Q. I believe that you also noted the training that
7 you've had in tire tread analysis?

8 A. Yes, sir.

9 Q. And that was a class that you have taken?

10 A. Tire tread analysis, there is a proficiency test
11 in which we take -- it's administered by SLED. There
12 are also several required readings that we have.
13 Also, I've toured a Bridgestone/Firestone plant which
14 shows us how tires are manufactured from the beginning
15 to the end.

16 Q. How many times, if you had to estimate, -- first
17 of all, how many years have you been with SLED?

18 A. I've been with SLED approximately four a half
19 years.

20 Q. In that four and a half years, if you had to
21 estimate, how many times have you had the opportunity
22 to examine a crime scene or items of evidence to see
23 if fingerprints were present?

24 A. I have worked over a hundred crime scenes myself
25 but -- in addition to the evidence that comes into

1 SLED -- I've analyzed well over several thousand
2 fingerprints and several hundred pieces of evidence.

3 Q. And tire treads, have you had the opportunity to
4 look at an unknown tire tread and compare that with a
5 known tread?

6 A. Yes, sir. Working alongside a court-qualified
7 senior examiner, I have also compared tire treads in
8 several cases.

9 Q. Have you had the opportunity to testify in courts
10 in South Carolina as an expert in the area of finger-
11 print identification?

12 A. Yes, sir.

13 Q. How many times have you done that?

14 A. About five times.

15 Q. Have you had an opportunity to testify in the
16 area of tire tread identification?

17 A. No, sir.

18 Q. But you have the training that you've noted to
19 the jury?

20 A. That's correct.

21 MR. JENNINGS: Your Honor, at this time I
22 would offer him as an expert in the area of finger-
23 print processing and fingerprint analysis and, in
24 addition, also tire tread analysis.

25 THE COURT: Would you care to question

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

459

1 this witness regarding his qualifications, Mr. Grant?

2 DERRICK GRANT: (No response).

3 THE COURT: You have the right before I
4 permit him to render opinions to ask him any questions
5 that you want about his qualifications and background.

6 DERRICK GRANT: Excuse me (consults with
7 Ms. Kennedy). No objection, Your Honor.

8 THE COURT: Very well. Thank you very
9 much. He will be permitted to render opinions in
10 those areas, Solicitor.

11 MR. JENNINGS: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. JENNINGS:

15 Q. Agent Coonfield, when were you notified by the
16 Berkeley County Sheriff's Office that they had re-
17 quested your assistance?

18 A. I was notified on December 29th, 2002, which I
19 believe was a Sunday.

20 Q. What were coming down to assist with?

21 A. We received a call from Captain Rick Ollic with
22 the Berkeley County Sheriff's Office and he asked us
23 to come down and assist with processing a vehicle that
24 was possibly involved in a death investigation.

25 Q. What day did you come down to Moncks Corner?

1 A. It was the next day, December 30th.

2 Q. Who did you meet with from the Sheriff's depart-
3 ment?

4 A. I met with Sgt. Dean Kokinda with the Berkeley
5 County Sheriff's department.

6 Q. With the Forensics division?

7 A. That's correct.

8 Q. Did you have an opportunity to talk with Sgt.
9 Kokinda about what he had already done with the
10 vehicle?

11 A. Yes, sir.

12 Q. As you came into contact with the vehicle, what
13 was the first thing that you did?

14 A. As we came into contact with the vehicle, the
15 first thing that we did was a visual analysis:
16 basically taking our flashlights and going around the
17 car and noting any items of evidence or items of
18 interest that we wanted to particularly be concerned
19 with.

20 Q. Did you have an opportunity to photograph the
21 car?

22 A. Yes, sir. After we do our visual examination,
23 what we do is take general as well as closeup
24 photographs of the entire vehicle. At that time we
25 did take photographs of this vehicle.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

461

1 Q. What is the purpose of taking photographs of an
2 item?

3 A. Photographs serve several purposes. Of course,
4 for documentation purposes but it also serves as our
5 'notes' to kind to show us, you know, later down the
6 road what we also did in processing that scene or that
7 vehicle.

8 Q. I show you what is marked as State's Exhibits 19,
9 20, 21, 22, 23, 24 and 25. If you would, take a look
10 at those photos and see if you recognize them.

11 A. (Upon review), yes. These are the photographs
12 that we took.

13 Q. Do they fairly and accurately depict how the
14 vehicle looked on December 30th when you came into
15 contact with it?

16 A. Yes, sir.

17 MR. JENNINGS: Your Honor, we would offer
18 these into evidence, 19 through 25.

19 DERRICK GRANT: No objection, Your
20 Honor.

21 THE COURT: Very well, sState's Exhibits
22 19, 20, 21, 22, 23, 24 and 25 are admitted into
23 evidence without objection, each being a photograph.

24 (SO ENTERED AS STATE'S EXHIBIT 19)

25 (SO ENTERED AS STATE'S EXHIBIT 20)

1 (SO ENTERED AS STATE'S EXHIBIT 21)

2 (SO ENTERED AS STATE'S EXHIBIT 22)

3 (SO ENTERED AS STATE'S EXHIBIT 23)

4 (SO ENTERED AS STATE'S EXHIBIT 24)

5 (SO ENTERED AS STATE'S EXHIBIT 25)

6 DIRECT EXAMINATION CONTINUED

7 BY MR. JENNINGS:

8 Q. And you began with the exterior of the car?

9 A. (Affirmative nod).

10 Q. Could you explain to the jury what process that
11 you used to do that?

12 A. After we spoke with Sgt. Kokinda, he relayed the
13 information to us that he had begun to process the
14 exterior of the vehicle but had not processed the
15 interior of the vehicle.

16 We have a chemical known as LCV, which is blood
17 reagent which stains blood a purple-blue color. The
18 first thing that we after we documented everything
19 was to spray the exterior of the vehicle with that
20 chemical.

21 Q. What -- did you see anything based on that
22 process?

23 A. Yes, sir, we had several reactions with our LCV.
24 What we do at that point is we use a scale tape, which
25 is just like a sticky-type ruler. We will place that

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 on there and we will photograph it again. We did
2 photograph several different impressions.

3 Q. Explain -- the LCV, what does that react with?

4 A. LCV is a chemical known as leucocrystal violet
5 and it reacts with a particular agent in the blood
6 known as hemoglobin.

7 Q. What are the results if it does react with
8 hemoglobin?

9 A. If it does react with the hemoglobin, then the
10 LCV will become a -- the blood stain will become a
11 purple-dark blue color and you'll be able to see it
12 and at that time photograph it.

13 Q. I show you what has been marked as State's
14 Exhibit 19. The jury has already seen some photo-
15 graphs taken by Berkeley County and the Charleston
16 Police Department. In this photograph, blood is
17 apparent to the naked eye. Do you use the LCV to see
18 the splatter or pattern of the blood or what exactly
19 do you use it for?

20 A. LCV is used for several reasons. One of the main
21 reasons is to enhance any print or any blood that you
22 may not be able to see with the naked eye. It works
23 well when blood has been removed or cleaned. It will
24 react with the residue that is left over.

25 Q. Did you have an opportunity to process the

1 interior of the vehicle?

2 A. Yes, sir.

3 Q. Let me go back. On the exterior, Detective
4 Kokinda had provided you with two latent fingerprints
5 that he lifted, that we will talk about later. Did
6 you find any latent fingerprints on the exterior of
7 the vehicle?

8 A. No, sir, we did not.

9 Q. Explain the process, if you would, that you use
10 when processing the interior of the vehicle?

11 A. On the interior of the vehicle, once again we
12 take our general and closeup photographs of the entire
13 inside of the vehicle.

14 Next what we did was to process the interior of
15 the vehicle and any items of evidence with black
16 powder and a basic fingerprint brush.

17 At that time, we did observe an item of evidence
18 or a particular item that was a drinking glass under-
19 neath the passenger seat. We removed it and we
20 fingerprinted it right there, or we dusted it for
21 fingerprints right there.

22 After that, -- I'm sorry.

23 Q. Off that item, you found two fingerprints?

24 A. That's correct.

25 Q. I show you what has been marked as State's

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Exhibits 101 and 102. Do you recognize those?

2 A. (Upon review), yes.

3 Q. Those are the fingerprints that you took off the
4 glass?

5 A. That's correct.

6 MR. JENNINGS: We would offer 101 and 102
7 into evidence, Your Honor.

8 THE COURT: Any objection?

9 DERRICK GRANT: No objection, Your Honor.

10 THE COURT: State's Exhibits 101 and 102
11 admitted into evidence without objection.

12 (SO ENTERED AS STATE'S EXHIBIT 101)

13 (SO ENTERED AS STATE'S EXHIBIT 102)

14 DIRECT EXAMINATION CONTINUED

15 BY MR. JENNINGS:

16 Q. Did you note several areas of blood on the
17 interior of the vehicle?

18 A. Yes, sir. At that time, as we were doing when we
19 were doing the interior processing we did note several
20 areas of blood on the interior of the vehicle,
21 including around the steering wheel, around the
22 driver's side seat, the driver's side door, as well as
23 several other areas inside the vehicle.

24 Q. I show you what is marked as State's Exhibit 25.

25 Is that the blood that you noted on the steering

1 wheel?

2 A. Yes, sir.

3 Q. What, if anything, did you do to take a sample of
4 that blood?

5 A. There were several areas swabbed for the blood
6 after we observed the blood. What we will do is that
7 we will just take a basic swab, and with a saline
8 solution we wet the swab. We will collect the sample,
9 allow it to air dry and seal the swabs in small manila
10 envelopes in order to be transferred to another
11 department for analysis.

12 Q. And you took a swab from the steering wheel?

13 A. That's correct.

14 Q. I believe the other picture that you looked at,
15 State's Exhibit 19, shows the front driver's side
16 fender area. Did you take a swab from that area of
17 the vehicle?

18 A. I took a swab from the front driver's side
19 quarter panel, yes, sir; the fender area.

20 Q. And I believe that you noted inside the driver's
21 side door that blood is noted?

22 A. Yes, sir.

23 Q. I show you what is marked as State's Exhibit 22.

24 A. (Upon review), yes, sir?

25 Q. And was a sample or a swab taken from that area?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

- 1 . A. That's correct.
- 2 Q. I believe that you noted blood on the running
3 board on the driver's side of the vehicle?
- 4 A. Yes, sir.
- 5 Q. I show you what is marked as State's Exhibit 23.
6 And if you need it, I'll hand you a pointer if you
7 want to point out anything to the jury, (tendering).
- 8 A. Thank you.
- 9 Q. Can you identify in that photograph what it was
10 that you noted?
- 11 A. The blood that we observed -- if I can hold my
12 hand steady -- was right in this area along the
13 running board. There are also a few more, very small
14 drops of blood right in here (indicating with laser
15 pointer).
- 16 Q. Okay. You also noted blood on the front seat,
17 the adjuster handle of the front seat?
- 18 A. Yes, sir.
- 19 Q. I show you what has been marked as State's
20 Exhibit 24.
- 21 A. (Upon review), yes, sir?
- 22 Q. And a swab was taken of that location?
- 23 A. Yes, sir.
- 24 Q. I show you what has marked as State's Exhibit 99.
- 25 A. Okay.

1 Q. A swab was also taken off of the driver's side
2 headlight?

3 A. That's correct.

4 Q. And showing you State's Exhibit 20, you noted
5 blood on the passenger door interior handle?

6 A. Yes, sir.

7 Q. And blood was taken off of that?

8 A. That's correct.

9 Q. I show you has been marked as State's Exhibits
10 96, 97, 98, 99, 100 and 101. Do you recognize those?

11 THE COURT: You said 101?

12 MR. JENNINGS: Yes, sir.

13 THE COURT: We have already got 101 as a
14 fingerprint card. Excuse me for interrupting.

15 COURT REPORTER: Shall I mark that 103?

16 MR. JENNINGS: Okay. We will make 101 that
17 I showed you, we've amended to be 103.

18 WITNESS: Okay.

19 MR. JENNINGS: Please see if you recognize
20 those.

21 WITNESS: (Upon review), yes, sir.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. JENNINGS:

24 Q. Those are the swabs that you took?

25 A. Yes, sir, those are the swabs that we took during

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 our processing of the vehicle.

2 MR. JENNINGS: Your Honor, we would offer
3 State's Exhibits 96, 97, 98, 99, 100 and 103 into
4 evidence.

5 THE COURT: Any objection?

6 DERRICK GRANT: No, sir, Your Honor.

7 THE COURT: State's Exhibits 96, 87, 98,
8 99, 100 and 103, each being a manila envelope
9 containing a swab, is into evidence without objection.

10 (SO ENTERED AS STATE'S EXHIBIT 96)

11 (SO ENTERED AS STATE'S EXHIBIT 97)

12 (SO ENTERED AS STATE'S EXHIBIT 98)

13 (SO ENTERED AS STATE'S EXHIBIT 99)

14 (SO ENTERED AS STATE'S EXHIBIT 100)

15 (SO ENTERED AS STATE'S EXHIBIT 103)

16 DIRECT EXAMINATION CONTINUED

17 BY MR. JENNINGS:

18 Q. What did you do with those swabs when you got
19 back to Columbia?

20 A. Once I got back to Columbia, the swabs were
21 logged into our evidence login. They were transferred
22 to the DNA department.

23 Q. And did you place them in a particular place for
24 the DNA department?

25 A. Yes, sir. All our envelopes are sealed with our

1 item number our initials and they are then sealed
2 again in a glassine evidence bag, again with our
3 initials. Then they are placed in a DNA drop box,
4 which will be picked up by the DNA department later
5 on.

6 Q. Had those items been tampered with in any way
7 prior to you sealing them and placing them in the DNA
8 refrigerator?

9 A. No, sir.

10 Q. And that is a secure area?

11 A. That is a secure area, yes, sir.

12 Q. At the time when you were processing this
13 vehicle, did you have any idea who a potential suspect
14 was?

15 A. No, sir.

16 Q. Were any fingerprints found on the interior of
17 the vehicle other than on the rearview mirror -- and
18 we will talk about that item later. Any other areas
19 of the car?

20 A. The only other area that fingerprints were found
21 were from the drinking glass that we tested.

22 Q. On the steering wheel and other areas of the
23 vehicle, there were no fingerprints?

24 A. No, sir.

25 Q. Take a few minutes, if you would, and sort of

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

471

1 explain fingerprinting and some of the terms that you
2 will be using. Can you explain to the jury what a
3 latent fingerprint is?

4 A. Yes, sir. From the -- basically on the tips of
5 your fingers and on the soles and toes of your feet
6 are raised portions of skin. These raised portions
7 are known in the science as "friction ridge skin".
8 On each of these ridges there are tiny minute pores
9 that are constantly exuding sweat. When these ridges
10 and that sweat come into contact with other items,
11 such as your face, or contaminants such as blood,
12 these items will adhere to the ridges. When the
13 ridges come in contact with another item, the imprint
14 of those impressions from the ridges may be left on
15 that item. That's what is known as a latent print.

16 Unlike you see on television, you don't always
17 leave a fingerprint. Different surfaces are better
18 for prints. An item such as this table top would be
19 a very good area/surface for prints to be left. But
20 an item such as this (styrofoam) cup or the carpet
21 would not be a good surface for prints to be left.

22 Q. As an example, if you wanted me come up and touch
23 your cup or place my hand on this table, even though
24 you saw me do it and knew that I touched that item
25 there is a chance that if you came back and looked for

1 my fingerprints that you might not find my fingerprint
2 on that item?

3 A. That's true. And it's based on several different
4 factors. One is the conditions of the subject's
5 prints. Many people who work in certain fields, for
6 example who wash dishes or who work with bricks or
7 other areas like that, may wear down their ridges on
8 their fingerprints. Also it depends on if the person
9 is sweating or depends on the climate such as if it is
10 very hot, which again the person is probably sweating.
11 It will also depend on, as we said earlier, the
12 surface that was touched. So you don't always leave
13 a fingerprint although the item was touched.

14 Q. You mentioned sweat as being a possible medium
15 that could leave a fingerprint. Would blood be
16 another such medium?

17 A. Yes, sir, blood would be another medium.

18 Q. And the latent fingerprints, as you've testified,
19 would be fingerprints that you would lift off an
20 object that you would not know whose fingerprints
21 that was?

22 A. Right.

23 Q. And you'd have a known print ---

24 A. Right.

25 Q. Explain what a known fingerprint is.

1 A. A known fingerprint is simply an inked
2 impression. An inked impression of the fingerprint,
3 which ink is rolled onto the finger and then the
4 finger is rolled onto a white backer, such as a
5 fingerprint card, resulting in leaving the impression
6 of the ridges or fingerprint.

7 On the fingerprint card there are places for
8 relevant information like the person's name, date of
9 birth, social security number and other information
10 such as that. That is known as a known or inked
11 fingerprint.

12 Q. How did you -- if you had a latent fingerprint
13 and a known fingerprint, how would you go about making
14 a comparison between those two to see if that was the
15 person that left the latent print?

16 A. In order to make a comparison, what we would do
17 is that we would compare the ridge detail in the
18 unknown print to the ridge detail in the known print,
19 which would be the inked fingerprint card. We would
20 try to determine whether or not the points in those
21 prints occupy the same relative position in order to
22 determine whether or not they match.

23 The "points" that I am referring to, there are
24 three basic points that we are looking for. The
25 points are -- a ridge that flows and ends is known as

1 an ending ridge; a ridge that flows and forks into two
2 different ridges is known as forking ridge; and then
3 there dots. What we will do is, we will compare these
4 points in their relative positions to the points in
5 the known print and, again, determine whether or not
6 they are in the same position with no unexplainable
7 differences.

8 Q. Let's go back to the rearview mirror from the
9 victim's car. Did you have an opportunity when you
10 were in Columbia to look at that -- I mean when you
11 were in Moncks Corner. Sorry. Did you have an
12 opportunity when you were in Moncks Corner to look
13 at that item?

14 A. Yes, sir.

15 Q. What did you note on the rearview mirror?

16 A. When we were first doing out visual, at that time
17 we did not that there appeared to be some red-brown
18 stains or possibly blood on the back of the rearview
19 mirror. Later on we removed that mirror and observed
20 what appeared to be the ridge detail which I was
21 speaking about in what appeared to be blood on the
22 back of the mirror.

23 Q. I show you what is marked as State's Exhibit 47.
24 Do you recognize that?

25 A. Yes, sir.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Q. What is that?

2 A. This the rearview mirror that we collected from
3 the victim's car.

4 Q. Did you take this back to Columbia?

5 A. Yes, sir.

6 Q. Explain what you did with the rearview mirror
7 once you arrived back in Columbia?

8 A. Once we got back to Columbia, back to our lab,
9 what we did is -- again, we used oblique lighting,
10 which is basically lighting from the ceiling or from
11 your flashlight where you can turn and observe the
12 ridges on the rearview mirror.

13 The next thing that we did was submitted that
14 rearview mirror to our photography department to be
15 scaled, with the scale tape that I was speaking about
16 earlier, and to be photographed with a one-to-one
17 scale and a black-and-white picture.

18 I then took the mirror and processed it with a
19 chemical known as amino-black, which is basically the
20 same thing as the LCV, which I spoke of earlier. It's
21 a dye stain that stains blood a purple color. At that
22 time I processed it, noticed the ridge detail more
23 developed on the mirror.

24 Then I resubmitted it to photography to be
25 rephotographed.

1 Q. The LCV process, does that have an effect, to
2 your knowledge, on any latent DNA testing?

3 A. No, sir.

4 Q. I show you what has been marked as State's
5 Exhibit 84, do you recognize that photograph?

6 A. Yes, sir.

7 Q. What is that a photograph of?

8 A. This is a photograph of the back of the rearview
9 mirror showing the scale tape that I put on the rear-
10 view mirror, item number, initials, lab number, and it
11 is also showing the fingerprints that developed from
12 the amino-black, the fingerprints in blood.

13 Q. Does that fairly and accurately depict the back
14 of the rearview mirror?

15 A. Yes, sir.

16 MR. JENNINGS: Your Honor, we would offer
17 State's Exhibit 84 into evidence.

18 THE COURT: Any objection?

19 DERRICK GRANT: No objection, Your
20 Honor.

21 THE COURT: Without objection, State's
22 Exhibit 84 is admitted.

23 (SO ENTERED AS STATE'S EXHIBIT 84)

24 DIRECT EXAMINATION CONTINUED

25 BY MR. JENNINGS:

1 Q. This is a dark picture. If you could, explain to
2 the jury what they are looking at.

3 A. It's kind of hard to see in this photograph but
4 right here where you see -- this is my case number, my
5 lab number, and these are my initials.

6 These numbers here indicate the two different
7 latents that were developed on this mirror. This is
8 an arrow pointing to the latent numbered one and this
9 is an arrow pointing to latent number two. This
10 represents "I", which was Item 13, which was my item
11 number for the rearview mirror.

12 Q. The dark area on the back of the rearview mirror,
13 what is that showing a reaction of?

14 A. These dark areas that you see right in here and
15 right up in here where you see this black are the
16 reactions from the amino-black; which is reacting to
17 the blood, staining it a purple color.

18 Q. Once you had the rearview mirror back in
19 Columbia, prior to being photographed, had any
20 substances been added to that mirror?

21 A. No, sir.

22 Q. Were you able to, ultimately, take a swab of the
23 blood that was on the back of the rearview mirror?

24 A. Yes, sir, after I processed it with the chemical
25 I took a swab from the back of the rearview mirror.

1 Q. Let me show you what has been marked as State's
2 Exhibit 95, do you recognize that?

3 A. Yes, sir.

4 Q. What is State's Exhibit 95?

5 A. State's Exhibit 95 is the envelope that contain
6 the swabs that I swiped from the back of the rearview
7 mirror.

8 Q. And like the other swabs that you had taken, you
9 also turned this in to the DNA lockbox?

10 A. That's correct.

11 MR. JENNINGS: Your Honor, we would offer
12 State's Exhibit 95 into evidence.

13 DERRICK GRANT: No objection.

14 THE COURT: Without objection, State's
15 Exhibit 95 is admitted.

16 (SO ENTERED AS STATE'S EXHIBIT 95)

17 DIRECT EXAMINATION CONTINUED

18 BY MR. JENNINGS:

19 Q. Was there sufficient ridge detail on either Item
20 13.1 or Item 13.2 for you to make a comparison to a
21 known print?

22 A. Yes, sir.

23 Q. Which print did you make a comparison of?

24 A. Item 13.2.

25 Q. And had you been provided by the Berkeley County

1 Sheriff's Office with a known fingerprint card of
2 Derrick Grant?

3 A. Yes, sir.

4 Q. I show you what is marked as State's Exhibit 82,
5 do you recognize that?

6 A. (Upon review), I do.

7 Q. And did you have that card as your known card to
8 use?

9 A. That's correct.

10 Q. Did you have any opportunity to prepare an
11 exhibit for court today documenting the latent prints
12 which was Item 13.2 in comparison with the known
13 fingerprint of Derrick Grant?

14 A. I did.

15 Q. I show you what has been marked as State's
16 Exhibit 83, do you recognize that item?

17 A. Yes, sir.

18 Q. What does this represent?

19 A. This is a charted fingerprint chart that is an
20 enlargement of both the latent print and the inked
21 print for comparison and for demonstrative purposes.

22 MR. JENNINGS: Your Honor, we would offer
23 State's Exhibit 83 into evidence.

24 DERRICK GRANT: No objection, Your
25 Honor.

1 THE COURT: Very well, State's Exhibit
2 83 is admitted without objection.

3 (SO ENTERED AS STATE'S EXHIBIT 83)

4 DIRECT EXAMINATION CONTINUED

5 BY MR. JENNINGS:

6 Q. Would it be easier for you to explain your
7 diagram from the jury (sic) box or would you like
8 to approach the jury?

9 A. It would probably be better if I could stand.

10 MR. JENNINGS: Your Honor, may the witness
11 leave the witness stand?

12 THE COURT: He may.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. JENNINGS:

15 Q. Agent Coonfield, please make sure that you keep
16 your voice up so that the court reporter can hear you.

17 A. Okay.

18 Q. If you would, explain to the jury what they are
19 looking at which is a photograph of the latent print
20 taken from the rearview mirror.

21 A. That's correct. This is two enlargements, two
22 photographic enlargements that were done by our photo-
23 graph department.

24 The one that you see on my right is the enlarge-
25 ment of the latent fingerprints that were taken from

1 the rearview mirror or that were developed on the
2 rearview mirror.

3 The inked print on the left is the print on the
4 fingerprint card that was submitted to me that I
5 identified to the latent print. We also have this
6 enlarged.

7 The black lines that you see in here are the
8 ridges from I was explaining earlier and the red lines
9 and numbers are the lines and numbers that I put on
10 there to demonstrate how we make our comparison, and
11 to demonstrate to what point they were used in the
12 print.

13 As you can see, there's well over ten points
14 which I plotted for clarity purposes. But there are
15 several others in here that I did not plot.

16 Q. You mentioned some terms like beginning points,
17 ending points. If you could, point out some of those
18 to the jury please.

19 A. If you notice the inked print -- I will show you
20 several different points. If you will look at item
21 one, point number one, you will see that this is a
22 ridge that flows up and stops. That's known as an
23 "ending ridge".

24 Come down from that ending ridge and count over
25 points, which is designated by number "2", and you'll

1 see another ending ridge.

2 If we can refer to the latent print. Look over
3 to Item 1, there is an ending ridge which is
4 designated by the red line. You count over two points
5 to number "2" and there's another ending ridge.

6 Q. So what you are looking for is that you're
7 looking for latent prints which correspond -- you're
8 looking for points or characteristics of a latent
9 print which correspond to exact characteristics on a
10 known print?

11 A. That's right. To be sure that they are the same,
12 of course, and that they are in the same exact
13 position with no discernible differences.

14 Other points that we look at, if you will look at
15 number "3", is a ridge that flows down and then breaks
16 into two. That's what I refer to as a "forking
17 ridge".

18 You can refer back to the latent print and you
19 will also see that there is a ridge that flows down
20 and breaks into two ridges, number "2", and that is
21 also a forking ridge which is in the same relative
22 position with no discernible difference.

23 If you go through all these points, we can show
24 that each of these points are identical in both prints
25 and that they are in the same position with no

1 discernible differences.

2 Q. And you felt comfortable, based on your
3 experience, with having over ten areas that matched
4 exactly on the latent print with the fingerprint of
5 Derrick Grant, in concluding that it was his finger-
6 prints that were on that rearview mirror?

7 A. Yes, sir. I had -- those are certain points in
8 his prints that were identified, which is in my
9 experience a very high number of corresponding
10 characteristics for a print like this.

11 Q. Based on your opinion, whose fingerprint was
12 that on the back of the rearview mirror?

13 A. This fingerprint on the back of the rearview
14 mirror was identified to the right index finger of the
15 fingerprint card that was bearing the name of Derrick
16 Grant.

17 Q. If you could, could you point out to the jury
18 which finger is your right index finger on your hand.

19 A. On my hand, this is the right index finger
20 (displaying).

21 Q. Thank you. You can take your seat.

22 A. (Complies).

23 Q. As part of your internal procedures within SLED,
24 are your results always checked by other people in
25 your department?

1 A. Yes, sir, we have what is known as a hundred
2 percent case review. All of my results are checked
3 by another qualified examiner.

4 Q. If you would, explain the fingerprint that was
5 left in blood -- if it possible that Mr. Grant's
6 fingerprint was on the back of that mirror and then
7 that blood was subsequently added on top of that
8 fingerprint to create the bloody fingerprint?

9 A. If anything -- if blood was added to the top of a
10 fingerprint, that fingerprint would be destroyed or
11 would be covered up. Fingerprints are very fragile,
12 you know, based on the moisture. Based on my training
13 and experience, I would have to say that the print
14 would probably be destroyed or, again, covered up.

15 Q. So in your opinion, what was on Mr. Grant's right
16 index finger when he touched it to the back of the
17 rearview mirror?

18 A. On the right index finger that I identified from
19 the fingerprint card, the blood had to be on that
20 right index finger when it came in contact with the
21 surface of the rearview mirror.

22 Q. Item 13.1, that print, -- your comparison was
23 based on 13.2.

24 A. (Affirmative nod).

25 Q. On the Item 13.1 print, were you able to make

1 any comparison with that?

2 A. No, sir. Item 13.1 from the rearview mirror
3 was a conclusion of no value. 'No value' simply means
4 that there was not enough detail there for me to make
5 a case, a conclusion, or that there was no detail
6 there at all. In this case the 'no value' was that
7 there was some ridge detail there but there was not
8 enough to render a conclusion.

9 Q. You had been provided with a number of finger-
10 print cards. Mr. Grant's, which you have already
11 testified to. The victim's fingerprints, State's
12 Exhibit 59.

13 A. Yes, sir.

14 Q. And for elimination purposes you were provided
15 with State's Exhibit 80, a fingerprint card of Shawn
16 Elkins?

17 A. That's correct.

18 Q. So any of the fingerprints that were listed from
19 any of the items, did you compare it to each of these
20 items?

21 A. Any fingerprints that were not identified were
22 compared to each of these items and also ran on our
23 automated fingerprint identification system if there
24 was sufficient quality.

25 Q. What system is that?

1 A. The automated fingerprint identification system
2 is our AFIS. It is a computer that stores the
3 fingerprint cards of subjects in South Carolina as
4 well as nationwide. You can place a latent print in
5 the computer system and it will search it against that
6 data base and will give you the top hits from that
7 computer. At that time what we have to do is to pull
8 the fingerprint cards from our Records divisions and
9 then we will physically make an identification or not
10 identify that card. So it's not left up to the
11 computer. The computer just gives us suggestions,
12 then we will actually make the identification
13 ourselves.

14 Q. One thing that I neglected to ask you, is there
15 any way to date a fingerprint as in when it was left?

16 A. That depends on what it was left in. As in this
17 case the fingerprint was left in blood, so we know
18 that the fingerprint was after bloodletting occurred.

19 Q. But as far as the time or how old a fingerprint,
20 is there any way to tell how old that it is?

21 A. No, sir.

22 Q. Let's go through some of the fingerprints that
23 were lifted from some of the items. State's Exhibit
24 100 and 102 were the fingerprints that you lifted from
25 the glass found underneath the passenger seat.

1 With State's Exhibit 102, were you able to make
2 any conclusions regarding whose fingerprint that was?

3 A. May I refer to my notes?

4 Q. You may.

5 A. (Upon review), Item 14, State's Exhibit 102, was
6 not identified to any of the subjects that I have.

7 Q. That would have been the victim, Miss Sottile,
8 her boyfriend Mr. Elkins, or the Defendant, Mr. Grant?

9 A. That's correct.

10 Q. State's Exhibit 101?

11 A. State's Exhibit 101 was a 'no value' for
12 identification. Which as I said earlier, there was
13 not enough ridge detail present to make any type of
14 conclusion, whether to include someone or to exclude
15 them.

16 Q. And you had no way of knowing whose fingerprints
17 that was or when the glass was touched?

18 A. That's correct.

19 Q. A number of fingerprints were provided to you by
20 Sgt. Kokinda. Do you receive those from him?

21 A. Yes, sir, we received those from the Berkeley
22 County Sheriff's Office.

23 Q. I show you first what is marked as State's
24 Exhibit 60, which is a latent fingerprint lifted off
25 of a Budweiser beer can that was found at the scene.

1 Were you able to make a comparison with that finger-
2 print?

3 A. Yes, sir, I was.

4 Q. What kind of match was made?

5 A. Referring to State's Exhibit 60, which is my Item
6 46, there were two latents observed on this item.
7 They were subitemized, which means that it was given
8 a subitem number, which would be 46.1 and 46.2.

9 46.1 was ran on the AFIS system and a hit came
10 back. I subsequently pulled the card and identified
11 that to one Anthony Mack.

12 Q. I show you what is marked as State's Exhibit 85,
13 is that the fingerprint card for Mr. Mack?

14 A. (Upon review), yes, sir.

15 MR. JENNINGS: We would offer State's
16 Exhibit 85 into evidence, Your Honor.

17 THE COURT: Any objection?

18 DERRICK GRANT: No objection.

19 THE COURT: Without objection, State's
20 Exhibit 85 is admitted.

21 (SO ENTERED AS STATE'S EXHIBIT 85)

22 DIRECT EXAMINATION CONTINUED

23 BY MR. JENNINGS:

24 Q. I show you what is marked as State's Exhibit 61,
25 which is another fingerprint off of the Budweiser can.

1 What was your conclusion as to the fingerprint?

2 A. My conclusion to State's Exhibit 61, which was my
3 Item 47, is that there was no conclusion with the
4 fingerprint cards, uh, with -- no conclusion with any
5 of the fingerprint cards.

6 'No conclusion' means that the area that is in
7 the fingerprint is not represented in the fingerprint
8 card. For example, it could have been the very tip of
9 a finger or the very side or the very base of a finger
10 that did not reproduced with the fingerprint was taken
11 on the fingerprint card.

12 Q. I show you what is marked as State's Exhibit 65,
13 a fingerprint that Sgt. Kokinda took off of the right
14 hood of the victim's vehicle. What was your
15 conclusion as to that item?

16 A. My conclusion to Item 48, State's Exhibit 65, was
17 a conclusion of no value for identification.

18 Q. Thank you. State's Exhibit 62 is another finger-
19 print off of the Budweiser can. What were the results
20 of that analysis?

21 A. State's Exhibit 62, which is my Item 49, were
22 that there were two latents that I observed on the
23 print, on the card, excuse me, and I again subitemized
24 them in 49.1 and 49.2.

25 On 49.1, the first, no identifications were made

1 to the subjects that were submitted to me. In other
2 words the report is not identified with any of the
3 subjects. 49.2 is a no conclusion. The latents were
4 not suitable for the AFIS computer.

5 Q. Thank you. State's Exhibit 63 is a latent
6 fingerprint lifted off of a CD that was found at the
7 scene by Sgt. Kokinda. What were the results of your
8 analysis?

9 A. State's Exhibit 63 is my Item 50, there was no
10 conclusion with the victim's fingerprints; again,
11 based on that this may be the top of a finger, or a
12 part of the finger that did not reproduce when the
13 victim's fingerprints were taken post-mortem.

14 All the results are that they were not identified
15 with Shawn Elkins, Derrick Grant or Anthony Mack.
16 They were not suitable for the AFIS computer.

17 Q. State's Exhibit 64, which is a latent fingerprint
18 taken off of the right fender of the victim's vehicle.
19 What was the result of your analysis?

20 A. State's Exhibit 54, which is my Item 51, the
21 results of my analysis were that the result of this
22 fingerprint or this ridge detail was of no value for
23 identification.

24 Q. Finally, we talked about that you were aware that
25 two tire treads were reproduced from the crime scene.

1 Were you aware of that?

2 A. Yes, sir.

3 Q. I show you what is marked as State's Exhibit 26,
4 and ask if you recognize that photograph?

5 A. Yes, sir, that's the photograph of the tire taken
6 by myself from the victim's vehicle.

7 Q. Tire tread, in a way is that analysis similar to
8 fingerprint analysis in that you would have an unknown
9 tire tread at a scene and then you'd have a known tire
10 tread to make a comparison?

11 A. Right.

12 Q. Did you receive some unknown tire treads in
13 Columbia that Sgt. Kokinda provided you with?

14 A. Yes, sir. I received some unknown tire tread
15 casts from Berkeley County Sheriff's Office.

16 Q. A cast, is that a familiar way of making or
17 recreating the tread that was at the scene?

18 A. Yes, sir. A cast is made usually what's known
19 as dental stone or some other type of casting
20 material. Dental stone is the same type of material
21 that you would get in your mouth for a dentist to make
22 a mold of your mouth. That's the kind that we use.
23 There are several other products that are used. It's
24 basically, uh, the cast is secured with a metal ring
25 and then the cast material is poured in there and

1 allowed to dry.

2 Q. I show you what is marked as State's Exhibits 45
3 and 46. Sgt. Kokinda has already testified about
4 these items, did you receive those two items?

5 A. Yes, sir.

6 Q. And those were his 1.1 and 1.2, which were two
7 casts made of the same tread, of an extended tread.

8 A. Okay.

9 Q. Did you receive those in your possession?

10 A. Yes, sir.

11 Q. And you would have marked this with your own
12 numbers, your own SLED numbers?

13 A. That's correct.

14 Q. What were they in your SLED numbers?

15 A. They were items -- these items were -- this was
16 Item 16.

17 Q. State's Exhibit 46 was Item 16?

18 A. Yes, sir. And State's Exhibit 45 was my Item
19 18.

20 Q. Did you also receive State's Exhibit 44, which
21 was Sgt. Kokinda's number "2" from the crime scene?

22 A. Yes, sir. State's Exhibit, I marked it SLED
23 number or Item 17.

24 Q. How did you -- if you could explain to the jury
25 briefly, how did you go about making a comparison with

1 those molds to the known tire of the victim's car?

2 A. The first thing that we would do is we would take
3 the cast and we would have it photographed by our
4 photography department on a one to one scale, black-
5 and-white.

6 We would also take the color photograph that we
7 took from the crime scene and from processing the car
8 and we would also have our photography department make
9 that into a one to one black-and white photograph, so
10 we would have the one to one impression that we could
11 compare to the one to one photograph of the cast.

12 Q. I show you what is marked as State's Exhibit 87.
13 Do you recognize that photograph?

14 A. Yes, sir. This is a photographic enlargement of
15 the smaller picture that you saw earlier of the tire
16 that we took from the victim's vehicle.

17 Q. And State's Exhibit 86, do you recognize that?

18 A. Yes, sir.

19 Q. What is that a photograph of?

20 A. This is a photograph of the cast designated Item
21 16 that I received.

22 Q. And that's State's Exhibit 46. Do you recognize
23 State's Exhibit 89?

24 A. Yes, sir. This is a photograph of the cast, of
25 my Item 18 that I also received.

1 Q. And that's State's Exhibit 45. Finally, State's
2 Exhibit 88, do you recognize that photograph?

3 A. Yes, sir. State's Exhibit 88 is a photograph of
4 my Item 17, of the cast that I received.

5 Q. What were your conclusions in relation to -- Sgt.
6 Kokinda took two, noted two tire treads at the scene:
7 State's Exhibit 46, which was your Item 16 and State's
8 Exhibit 44, which was Item 17, represented two casts
9 of the two tire treads. What were your conclusions
10 regarding those treads in relation to the known tread
11 from the victim's car?

12 A. My conclusions were that the casts, my Item 16
13 and Item 17, corresponded in the combined class
14 characteristics of my Item 1.1, which is the known
15 tire impression.

16 Q. And as to State's Exhibit 45, which was your Item
17 18, which was the second half of State's Exhibit 46,
18 was there enough detail in that to make a conclusion
19 regarding that tread?

20 A. No, sir, there was not enough detail to either
21 include or exclude that tire tread.

22 MR. JENNINGS: Your Honor, we would offer
23 86, 87, 88 and 89 into evidence.

24 THE COURT: Any objection?

25 DERRICK GRANT: No objection.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

605
495

1 THE COURT: Without objection, State's
2 Exhibits 86, 87, 88 and 89 -- Solicitor, 89 as well?

3 MR. JENNINGS: Yes, sir.

4 THE COURT: Into evidence, each being a
5 photograph of a tire tread.

6 (SO ENTERED AS STATE'S EXHIBIT 86)

7 (SO ENTERED AS STATE'S EXHIBIT 87)

8 (SO ENTERED AS STATE'S EXHIBIT 88)

9 (SO ENTERED AS STATE'S EXHIBIT 89)

10 DIRECT EXAMINATION CONTINUED

11 BY MR. JENNINGS:

12 Q. Based on your conclusions, the two tire treads
13 that were found at the scene were of the same combined
14 class characteristics of the known tire from the
15 victim's car?

16 A. That's correct.

17 MR. JENNINGS: Beg the Court's indulgence.

18 THE COURT: Sure.

19 MR. JENNINGS: That's all that I have.

20 Please answer any questions that Mr. Grant has for
21 you.

22 THE COURT: You may cross-examine, Mr.
23 Grant.

24 DERRICK GRANT: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY DERRICK GRANT:

2 Q. How are you doing, Mr. Coonsfield (sic)?

3 A. Fine.

4 Q. We will pretty much go through the same stage
5 that we went through now, but I would like to do it
6 my way.

7 A. Okay.

8 Q. How old are you? What exactly is your age right
9 now?

10 A. I'm twenty-eight years old.

11 Q. How long have you worked for SLED?

12 A. For SLED, I've worked about six years. I worked
13 one year in the Records division, working with
14 fingerprints. I've worked over four and a half,
15 almost five years, in the Latent Prints/Crime Scene
16 area.

17 Q. Exactly what are your duties as far as -- exactly
18 what are your duties?

19 MR. JENNINGS: Objection, Your Honor. He's
20 already testified to that. I don't know what it has
21 to do with cross examination.

22 THE COURT: If you want to deal with
23 specific aspects about what he has already testified,
24 Mr. Grant, you may. At this point, it's repetitious
25 and under 403 I would sustain the objection as it

1 being cumulative.

2 DERRICK GRANT: Well, Your Honor, a lot
3 of questions that I would ask ---

4 THE COURT: Mr. Grant. If you want to
5 approach, sir, ---

6 DERRICK GRANT: Thank you, Your Honor.

7 THE COURT: Solicitor.

8 SIDEBAR:

9 THE COURT: I mentioned to you when we
10 started the Rules of Evidence
11 that govern what goes on in
12 this courtroom, and the ques-
13 tions that lawyers are
14 permitted to ask. The fact
15 that you want to ask them,
16 they are excluded by the
17 Rules. I'm sorry, but the
18 Rule stands. That's my ---

19 DERRICK GRANT: Your Honor.

20 THE COURT: --- responsibility. I
21 respect your right to differ
22 with me but it's in the
23 record that you've asked the
24 question and he's made the
25 objection. So your record is

1 protected for further review.
2 One of the things that you
3 have to understand is that
4 the witness has testified.
5 I know you've been taking
6 notes, I've watched you, and
7 when you're taking notes you
8 possibly are not listening as
9 intently to what the witness
10 is saying as you would
11 normally do. Some people are
12 better at that than others,
13 but I doubt that you are
14 because of the pressure that
15 you're under. The fact that
16 you didn't hear it, the fact
17 that you maybe want to do it
18 again, that is not -- it is
19 not necessary because the
20 record of the case is what
21 the witness testifies and it
22 is there. You cannot repeat
23 questions just to make them a
24 part of your case because the
25 whole case is everybody's

1 testimony. That's what the
2 Rule says and under 403,
3 which is the rule that says
4 that I as the judge can
5 exclude cumulative evidence.
6 For example, how long he has
7 worked with SLED, that has
8 already been asked. That
9 question was asked, so it is
10 already in the record for
11 your purposes. You don't
12 need to ask it again.

13 DERRICK GRANT: But I want to ask him
14 some questions.

15 THE COURT: You can ask him -- you can
16 ask the questions. If he
17 wants to object, then he can
18 object. But that is the way
19 that it will have to work.

20 DERRICK GRANT: Thank you, Your Honor.

21 (SIDEBAR CONCLUDED)

22 THE COURT: You may proceed, Mr. Grant.

23 CROSS EXAMINATION RESUMED

24 BY DERRICK GRANT:

25 Q. How many times have you testified for the

1 Berkeley County Sheriff's Office in murder crimes,
2 or any crime, period?

3 A. This is my first time.

4 Q. First time?

5 A. Yes, sir.

6 Q. Did you pull prints from the victim's left door?

7 A. I'm sorry?

8 Q. Did you pull prints from the victim's left door
9 handle?

10 A. No, sir, no prints were pulled or lifted from the
11 handle.

12 Q. Did you test it?

13 A. What type of testing? I'm sorry, could you
14 clarify that?

15 Q. When you get -- when you find an object at a
16 crime scene, you pull prints from that item; right?
17 Correct?

18 A. Yes, sir, we attempt to -- once we process it, if
19 we cannot lift the item, we will photograph it if
20 there are latent prints on it. Yes, sir.

21 Q. My question is, did you attempt, did you ever
22 attempt to pull prints on the victim's left door
23 handle?

24 A. From -- I'm sorry, is that from the driver's side
25 or passenger's?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Q. Could I show you a document?

2 A. Yes, sir.

3 Q. Do you recognize that?

4 A. Yes, sir.

5 Q. Is that yours, your report?

6 A. Yes, sir, this is our report from the laboratory.

7 Q. Thank you, sir.

8 A. Yes, sir.

9 MR. JENNINGS: Your Honor, if we could have
10 it marked.

11 THE COURT: Are you going to ask him
12 questions concerning that document?

13 DERRICK GRANT: Yes, Your Honor.

14 THE COURT: Very well. Please have it
15 marked, please, sir, if you would.

16 COURT REPORTER: Defendant's Exhibit 7
17 for identification.

18 DERRICK GRANT: Thank you. Your Honor,
19 could I speak -- could I have another conference with
20 you, Your Honor?

21 THE COURT: Yes, sir. Approach, please.

22 SIDEBAR:

23 DERRICK GRANT: I apologize.

24 THE COURT: No apology necessary.

25 DERRICK GRANT: I need to go back into

1 my exhibits. I need to
2 know what my exhibits
3 are.

4 THE COURT: Don't you have a list?

5 COURT REPORTER: I gave you an updated
6 list this morning, I
7 handed it to Ms. Kennedy
8 before you came in.

9 DERRICK GRANT: Okay, thank you, ma'am.
10 Sorry.

11 THE COURT: No problem.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Mr. Brown, you may proceed.

14 DERRICK GRANT: If I could excuse the
15 Court for just a minute?

16 THE COURT: Sure. Take your time.

17 DERRICK GRANT: Thank you, Your Honor.

18 CROSS EXAMINATION CONTINUED

19 BY DERRICK GRANT:

20 Q. Mr. Coonfield, ---

21 DERRICK GRANT: If the Court would let
22 me, I would like to call Exhibit, my Exhibit 5.

23 COURT REPORTER: Defendant's Exhibit 5,
24 (tendering).

25 DERRICK GRANT: And Exhibit 6?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 COURT REPORTER: Defendant's Exhibit 6,
2 (tendering).

3 DERRICK GRANT: Thank you.

4 COURT REPORTER: Yes, sir.

5 CROSS EXAMINATION CONTINUED

6 BY DERRICK GRANT:

7 Q. Do you recognize Item 28, a description of Item
8 28?

9 A. Yes, sir. Item 28 says, "swab (blood) steering
10 wheel".

11 Q. Thank you.

12 A. Yes, sir.

13 Q. Do you see "left door handle" listed on that on
14 list of three pages, consisting of three pages? Will
15 you take the time to go through it and see if you see
16 "left door handle"?

17 A. Yes, sir, Item 29 says, "Swab (blood) left door
18 interior handle."

19 THE COURT: Why don't you just read it,
20 point it out to him, Mr. Grant? You have the item and
21 you can just point it out to him.

22 DERRICK GRANT: Okay.

23 CROSS EXAMINATION CONTINUED

24 BY DERRICK GRANT:

25 Q. Item 27, could you please read that out loud?

- 1 A. Yes, sir.
- 2 Q. The item and examination requested, please, sir.
- 3 A. Okay. It says, "Item 27, swab (blood) left door
4 outside" and "DNA" is the request.
- 5 Q. Did they request the fingerprints on that door,
6 is that listed on there?
- 7 A. I'm sorry. Could you clarify the question?
- 8 Q. Did -- on the examination requested, does it
9 request latent lifts, latent pulls? Exactly what
10 examination is requested on that item?
- 11 A. The only examination requested on the blood swabs
12 is DNA.
- 13 Q. From where?
- 14 A. From the left door outside is a DNA request.
- 15 Q. Does it list the examination for latent prints?
- 16 A. No, sir.
- 17 Q. Thank you. So no prints were taken on the left
18 door handle outside?
- 19 A. That's correct.
- 20 Q. Can you please read Item 29, please, sir?
- 21 THE COURT: What is the exhibit that you
22 are handing him?
- 23 DERRICK GRANT: Exhibit 6. Excuse the
24 Court.
- 25 THE COURT: That's all right.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 WITNESS: On Exhibit 6, Item 29 reads, "Swab
2 (blood), left door interior handle." The examination
3 requested is DNA.

4 CROSS EXAMINATION CONTINUED

5 BY DERRICK GRANT:

6 Q. Did you pull prints -- is latent prints listed on
7 the examination requested?

8 A. No, sir.

9 Q. Did you pull prints from the left door interior
10 handle?

11 A. No, sir.

12 Q. Would you please read Item 28, the description
13 and the examination requested, please?

14 A. Item 28 reads: "Swab (blood) steering wheel",
15 the examination is DNA. That's Exhibit 6.

16 Q. Did you pull fingerprints from the victim's
17 steering wheel?

18 A. No, sir.

19 Q. Thank you.

20 A. Yes, sir.

21 Q. To go back through this, so fingerprints were
22 not lifted on the left door handle; correct?

23 A. That's correct.

24 Q. The right door handle of the victim's vehicle?

25 A. That's correct.

- 1 Q. The steering wheel of the victim's vehicle?
- 2 A. Yes, sir.
- 3 Q. And the left door interior handle of the victim's
- 4 vehicle?
- 5 A. That's correct.
- 6 Q. Can you remember the name(s) of the person or
- 7 persons whose fingerprint cards that you had to
- 8 compare with the prints involved -- involved in
- 9 reference to this case?
- 10 A. Yes, sir.
- 11 Q. Could you state those persons' name?
- 12 A. Yes, sir. May I refer to my notes?
- 13 Q. Yes, sir.
- 14 A. Thank you. (Upon review), the names of the
- 15 fingerprint cards that I received were:
- 16 Rachel Sottile,
- 17 Shawn Isaac Elkins, and
- 18 Derrick Grant.
- 19 Q. Thank you. Shawn Elkins is a person who you
- 20 testified as just a -- I can't call him a suspect,
- 21 but just for elimination purposes?
- 22 A. (No response).
- 23 Q. He was eliminated?
- 24 A. Yes, sir.
- 25 Q. I would like to hand you Exhibit 6 again.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 A. Okay.

2 Q. Would you please read Item 66, please?

3 A. You want me to read it all the way through?

4 Q. I'm sorry. Yes. The item, the description.

5 A. Okay.

6 Q. And the examination requested.

7 A. Item 66 say, "Blood of Donald Lynch" and it also
8 has our E-number, which is our tracking number. The
9 examination is BA/DS, which stands for blood alcohol/
10 drug screen.

11 Q. Would you please read Item 53, description of
12 evidence and examination requested, please?

13 MR. JENNINGS: Your Honor, I am going to
14 object. This is in his report.

15 THE COURT: Yes. Approach, please, Mr.
16 Grant, Solicitor.

17 SIDEBAR:

18 THE COURT: I know that this is not
19 something that you do. This
20 is probably the first trial
21 that you have ever been
22 involved with in your life.
23 I've been involved in a few
24 over the last ten years. All
25 of them, or some of them,

1 with SLED. What you need to
2 do is -- the questions that
3 you are asking has nothing to
4 do with him. He's here to
5 testify about the finger-
6 prints and that's it. He
7 can't testify about DNA
8 because he is not qualified
9 to do that. I assume that
10 they are going to have
11 somebody that is going to
12 testify about DNA. All of
13 those entries that say that
14 request DNA have nothing to
15 do with fingerprints, so he
16 doesn't have any knowledge.
17 You're asking him things that
18 really are not even pertinent
19 to anything. They are not
20 relevant. The reason that
21 they are not relevant is
22 because he doesn't know
23 anything. He is doing what
24 you're asking him and he's
25 reading the report but he

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

509

1 doesn't have to do that
2 because the report is in
3 evidence.

4 DERRICK GRANT: Your Honor, you know
5 what, you're correct.
6 I just got off a little
7 bit to the side.

8 THE COURT: That's no problem. I under-
9 stand what you're doing. One
10 of the things is that you
11 want to do, on the voir dire,
12 is determine who you can get
13 the fingerprints in from, and
14 that's a very legitimate
15 concern.

16 DERRICK GRANT: That was it.

17 THE COURT: And you have to listen to the
18 questions, because he has
19 testified that all areas
20 don't necessary show it. So
21 the fact that he didn't see
22 something doesn't necessarily
23 mean anything. You can ask
24 any questions of this witness
25 concerning the crime scene,

1 what he had to do with the
2 crime scene; and I think he
3 processed the tire tread, so
4 you could ask him about tire
5 treads; and fingerprints.

6 But as for just reading the
7 evidence records, he doesn't
8 need to do that.

9 DERRICK GRANT: Well, there's something
10 that will come together.

11 THE COURT: Go ahead and ask -- I'm going
12 to sustain the objection and
13 you can move on to something
14 else.

15 (SIDEBAR CONCLUDED)

16 THE COURT: I am going to sustain the
17 objection at this point and you can move on to
18 something else. Thank you.

19 DERRICK GRANT: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION RESUMED

22 BY DERRICK GRANT:

23 Q. Do you still have Exhibit 6, Officer Coonsfield,
24 Coonfield.

25 A. Coonfield. Yes.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

- 1 Q. Officer Coonfield or Mr. Coonfield?
- 2 A. Either one is fine.
- 3 Q. Do you still have Exhibit 6?
- 4 A. Yes, sir.
- 5 Q. Mr. Coonfield, would you read Item 53, please,
- 6 the description of evidence and examination requested?
- 7 A. Yes, sir. Item 53 says, "Standard ten-print,
- 8 Elkins, Shawn". The examination requested says
- 9 "Latents".
- 10 Q. Would you please read Item 54?
- 11 A. Yes, sir. Item 54 says, "Standard ten-print -
- 12 Grant, Derrick" and the examination requested is also
- 13 "Latents". This is Exhibit 6.
- 14 Q. Did you pull any -- do you have a ten-print card
- 15 of a Donald Lynch in your records?
- 16 A. May I refer to my notes?
- 17 Q. Yes, sir.
- 18 A. (Upon review), no, sir, I did not.
- 19 Q. Thank you.
- 20 A. Okay.
- 21 Q. Is it correct that you had print cards of Derrick
- 22 Grant?
- 23 A. Yes, sir.
- 24 Q. Of Shawn Elkins?
- 25 A. Yes, sir.

1 Q. But no print card for Donald Lynch?

2 A. That's correct.

3 Q. But he did provide blood?

4 MR. JENNINGS: Objection, Your Honor.

5 DERRICK GRANT: Excuse me, Your Honor.

6 THE COURT: Sustained.

7 DERRICK GRANT: Excuse me, do you have
8 a copy of Exhibit 7?

9 COURT REPORTER: Yes, sir, I believe
10 you have it there.

11 THE COURT: The one that you have, I
12 think is the one that has been marked.

13 DERRICK GRANT: Oh, okay.

14 THE COURT: Mr. Grant, we can make you
15 a copy at the recess. You can use the original.

16 DERRICK GRANT: Oh, okay.

17 CROSS EXAMINATION CONTINUED

18 BY DERRICK GRANT:

19 Q. Exhibit 7, ---

20 THE COURT: Remember, at this point it is
21 ID only because it has not been introduced. Okay?

22 CROSS EXAMINATION CONTINUED

23 BY DERRICK GRANT:

24 Q. Would you take the time to review this document,
25 please? Well, do you recognize that report, Mr.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Coonfield?

2 A. Yes, sir.

3 Q. Is that your report?

4 A. Yes, sir.

5 Q. Would you take the time to review it quickly?

6 THE COURT: Why don't you ask him a
7 question and then he can review if he needs to refresh
8 his mind with the report. Please ask a question
9 first.

10 CROSS EXAMINATION CONTINUED

11 BY DERRICK GRANT:

12 Q. Would you please list Item 14 ---

13 MR. JENNINGS: Objection, Your Honor, not
14 in evidence.

15 THE COURT: It has to be introduced into
16 evidence before you can ask a question.

17 DERRICK GRANT: Could I do that?

18 THE COURT: Do you object to it, Mr.
19 Solicitor?

20 MR. JENNINGS: No, sir.

21 THE COURT: Very well, it is admitted
22 as Defendant's Exhibit 7 without objection and now you
23 can publish it.

24 DERRICK GRANT: Am I to give this to you
25 (court reporter)?

1 COURT REPORTER: Yes, sir. Defendant's
2 Exhibit 7.

3 (SO ENTERED AS DEFENDANT'S EXHIBIT 7)

4 CROSS EXAMINATION RESUMED

5 BY DERRICK GRANT:

6 Q. Exhibit 7, (tendering to witness).

7 A. I'm sorry, what item number was that?

8 Q. Would you please read Item 14?

9 A. Yes, sir. Item 14 says, "white backer bearing
10 latent impressions and marks (glass underneath right
11 front passenger seat)."

12 Q. Is that the victim's vehicle?

13 A. Evidently.

14 Q. Yesterday, Officer Dean Kokinda ---

15 MR. JENNINGS: Objection, Your Honor.

16 THE COURT: I need to hear the question
17 before ---

18 DERRICK GRANT: I can ---

19 THE COURT: Just one second, Mr. Grant.
20 I need to hear the full question, Solicitor. I don't
21 know what it -- because he's being offered as an
22 expert witness, certainly he made be entitled to --
23 he may be asking him opinions concerning something.
24 So state your full question. But before you answer,
25 Officer Coonfield, pause a minute and let me rule on

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 the objection. Please state your full question.

2 DERRICK GRANT: Thank you, Your Honor.

3 Let's try it again.

4 CROSS EXAMINATION RESUMED

5 BY DERRICK GRANT:

6 Q. Would you please read Item 14 ---

7 THE COURT: No, no. You were stating a
8 question about yesterday.

9 DERRICK GRANT: Yeah.

10 THE COURT: We don't need to go back
11 that far. State your question about 'yesterday
12 somebody testified' ---

13 DERRICK GRANT: I am just trying to get
14 the jury -- being that there was a little distraction.

15 THE COURT: The important part is --
16 well, I think that he's already published that, but go
17 ahead. You can proceed.

18 DERRICK GRANT: Thank you, Your Honor.

19 THE COURT: You may continue.

20 DERRICK GRANT: I can continue?

21 THE COURT: Yeah. You can go ahead and
22 do it however you want to do it.

23 DERRICK GRANT: Thank you, Your Honor.

24 CROSS EXAMINATION RESUMED

25 BY DERRICK GRANT:

1 Q. Would you please read that portion of (Item) 14
2 description again, please?

3 A. Yes, sir. Item 14 says, "white backer bearing
4 latent impressions and marks (glass underneath front
5 passenger seat)."

6 Q. Yesterday, Sgt. Kokinda testified that a broken
7 fingernail was under the victim's front passenger
8 seat, but this right here is a broken glass under the
9 right front passenger seat.

10 THE COURT: What's the question?

11 DERRICK GRANT: Your Honor, I am just ---

12 MR. JENNINGS: Objection.

13 THE COURT: I sustain the objection.

14 You have to phrase a question, sir, you can't just
15 make statements. Again, that is a part of the argu-
16 ment that you can reserve until that time.

17 DERRICK GRANT: Okay.

18 THE COURT: Thank you, sir.

19 DERRICK GRANT: Yes, sir.

20 CROSS EXAMINATION CONTINUED

21 BY DERRICK GRANT:

22 Q. Would you please read Item 15?

23 A. Yes, sir. Item 15 says, "white backer bearing
24 latent impressions and marks (glass underneath front
25 passenger seat)".

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Q. Underneath the front passenger seat?

2 A. Yes, sir.

3 DERRICK GRANT: Excuse the Court just
4 a second.'

5 THE COURT: Sure. Why don't we do this,
6 give you a chance to confer with Ms. Kennedy and let
7 the jury -- we've been going now for about an hour and
8 half. Let's take a break at this point.

9 Ladies and Gentlemen, I am going to let you
10 go to your jury room but, please, do not begin your
11 deliberations. Don't discuss this case among your-
12 selves. We will be with you in about ten minutes or
13 so. Please remain seated while the jury is excused.

14 (JURY OUT @ 11:20 A.M.)

15 THE COURT: Mr. Grant, just a second.

16 BAILIFF WIGGINS: Jury is out, Your Honor.

17 THE COURT: Thank you. One of the
18 customs, Mr. Grant, and proper procedure is that when
19 the jury is exiting everyone else remains seated.

20 DERRICK GRANT: Yes, sir.

21 THE COURT: You may retrieve whatever it
22 is that you wish from Mr. Coonfield now, but you may
23 not talk with him during this brief. Okay?

24 DERRICK GRANT: Yes, sir.

25 THE COURT: Agent Coonfield, during this

1 break, I would ask that you not have any conversations
2 with Mr. Grant or anyone with the Solicitor's office.

3 WITNESS: Yes, sir.

4 THE COURT: Thank you. Ms. Garrison, if
5 we could have another sidebar?

6 COURT REPORTER: Yes, sir.

7 SIDEBAR:

8 DERRICK GRANT: Your Honor, as the
9 judge, this is your
10 courtroom. I feel like
11 any dilemmas that I have
12 that I should bring it
13 towards you. The
14 officers that surround
15 me -- and please don't
16 get upset at me.

17 THE COURT: Mr. Grant, I'm not upset with
18 you. I'm listening to you.

19 DERRICK GRANT: They are trying to make
20 me move, to go into the
21 back when I don't have,
22 when I don't want to go
23 in the back. I want to
24 sit here.

25 THE COURT: I understand. But you have

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

519

1 to understand, too, that ---
2 DERRICK GRANT: If Blair Jennings can
3 stay out here, why can't
4 I?
5 THE COURT: Mr. Grant, this is one of
6 those reasons why I kept
7 telling you, telling other
8 people, that you don't want
9 to represent yourself. There
10 are procedures that have to
11 be followed. They apply to
12 you, they apply to every
13 single person. I have tried
14 cases in this courtroom for
15 ten years and you're being
16 treated the same as every
17 other person that has ever
18 been incarcerated while they
19 are in trial. During
20 recesses, the persons are
21 taken out of the courtroom
22 and placed in lockup. It is
23 part of the security
24 procedure. That is not to
25 suggest that you are going to

1 do anything or that you're
2 going to try to hurt anybody
3 or that you're going to try
4 to run. It's just procedure.
5 To give you an example of
6 that, when I go into the
7 courthouse in Charleston, if
8 I don't come in from the
9 judges' entrance, do you know
10 what happens to me?

11 DERRICK GRANT: No, sir.

12 THE COURT: I have to go through
13 security. I even have to
14 pick up my pants legs so that
15 they can wave the wand on me,
16 every single time that I come
17 in. They don't make
18 exceptions for me. So you're
19 incarcerated, and a person
20 who is incarcerated -- and,
21 for example, yesterday I
22 violated the rules by asking
23 them to waive the rule so
24 that you could consult your
25 family. If there's something

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

521

1 specific that you need to do,
2 I will try to accommodate
3 you. You don't need to be
4 upset, it's just part of the
5 procedure. It's the same
6 time when I've told people in
7 the audience to sit down when
8 the jury is leaving. Just
9 part of the procedure.

10 DERRICK GRANT: My Motion is to grant me
11 a Motion to be able
12 during any recess period
13 time to be able to sit
14 at the desk.

15 THE COURT: I just told you that you
16 can't do that unless there is
17 a specific reason. There's no
18 reason why you can't work in
19 the back.

20 DERRICK GRANT: Well, it's kind of hard
21 and inconvenient.

22 THE COURT: I understand that.

23 DERRICK GRANT: Your Honor, what type of
24 -- what can I say about
25 -- I know the court

1 reporter is reporting
2 everything on the
3 record.
4 THE COURT: She is, and this is on the
5 record.
6 DERRICK GRANT: But, for example, right
7 now me and Ms. Kennedy
8 was communicating and
9 one of the news
10 reporters said, 'What
11 did he say?' One of the
12 officers went right to
13 that reporter and told
14 her what we said. They
15 are trying to make me
16 feel like I'm a bad guy,
17 that they're going to
18 put on TV that I acted
19 up in court.
20 THE COURT: The best way that you can
21 refute that is, don't do it.
22 When people report something,
23 there has to be some evidence
24 of it. Insofar as the
25 communications, I will

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

523

1 certainly state that
2 communications between you
3 and Ms. Kennedy, while they
4 are not attorney/client
5 privileged, -- I will place a
6 restriction on that. I will
7 be happy to do that.

8 DERRICK GRANT: Well, how close can they
9 be?

10 THE COURT: Let me explain something to
11 you that I am sure that Ms.
12 Kennedy has explained to you.
13 If they report anything, it
14 has to relate to evidence to
15 the case.

16 DERRICK GRANT: To the case?

17 THE COURT: To the evidence. And that's
18 why I've instructed the jury
19 that they're not to talk to
20 anyone outside or to view any
21 news reports. They will be
22 further instructed to decide
23 this case based on what they
24 have heard from that witness
25 stand and nothing else.

1 Nothing else that goes on
2 outside can never, ever be
3 discussed. There are some
4 times when you can refer to
5 things and if it is
6 connected, but it has to be
7 connected to evidence. Okay?

8 DERRICK GRANT: Thank you, Your Honor.

9 (SIDEBAR CONCLUDED)

10 (BRIEF RECESS 11:30 - 11:40 A.M.)

11 (DEFENDANT PRESENT)

12 THE COURT: Is the defense ready to
13 proceed?

14 DERRICK GRANT: Yes, Your Honor.

15 THE COURT: The State is ready to
16 proceed?

17 DERRICK GRANT: Yes, sir.

18 THE COURT: Bring in our jury, please.

19 (JURY IN @ 11:42 A.M.)

20 THE COURT: Thank you very much, Ladies
21 and Gentlemen. We are ready to resumed. You may
22 continue your cross examination, Mr. Grant.

23 DERRICK GRANT: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 DERRICK GRANT: Your Honor, due to the

1 recess, I would like to backtrack a little bit.

2 THE COURT: You can ask the questions.

3 If there is an objection, then I will entertain those
4 objections. Proceed.

5 CROSS EXAMINATION RESUMED

6 BY DERRICK GRANT:

7 Q. Mr. Coonfield, I would like to show to you
8 Exhibit 6.

9 A. (Review).

10 Q. Did you have a Donald Lynch fingerprint card?

11 MR. JENNINGS: Objection.

12 THE COURT: You've already asked that,
13 Mr. Grant. Sustained. It's cumulative.

14 DERRICK GRANT: I am only trying to
15 refresh the jury's memory.

16 THE COURT: No, sir. Approach, please.

17 SIDEBAR:

18 THE COURT: Mr. Grant, I believe that you
19 have been trying to abide by
20 my rules but you are continu-
21 ing to make the statements
22 that I have told you that you
23 can't make. I am about to
24 determine that you are
25 intentionally doing exactly

1 that, and you don't want to
2 do that. Okay?
3 DERRICK GRANT: I want to connect ---
4 THE COURT: We had an understanding that
5 I was going to treat you as a
6 professional and I think I've
7 done that thus far, and
8 you've done that thus far,
9 but we are getting very close
10 to my inferring something
11 else by your continued
12 violations of what I am
13 telling you that you can't
14 do.
15 DERRICK GRANT: Well, I need some
16 information.
17 THE COURT: Mr. Grant, I can't advise you
18 as a lawyer. I'm just
19 sharing with you my concern
20 -- and I share such concerns
21 with lawyers when necessary.
22 One of the chief complaints
23 that I hear from juries is
24 that lawyers tend to repeat
25 themselves and they're

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 offended by it. You know
2 why? Because it assumes that
3 they are not listening. They
4 consider it an insult.

5 DERRICK GRANT: Oh, and I just did it.

6 THE COURT: By continuing to repeat the
7 same -- sometimes there are
8 things that need to be
9 stressed. I agree with you
10 that some things that are
11 important must be stressed.
12 When you're asking a question
13 along those lines, I may not
14 sustain an objection. Those
15 are decisions that lawyers
16 have to make, but you have to
17 balance that to ensure that
18 you don't continually do
19 things that antagonize the
20 jury.

21 DERRICK GRANT: Your Honor, I did not
22 intentionally ---

23 THE COURT: I understand. I just like to
24 communicate. Sometimes I
25 think something but I don't

1 share it and then I react it.
2 The best way to keep from
3 doing that is to tell some-
4 body exactly what I am
5 thinking, so that you know
6 where I am and we won't have
7 any problems.

8 DERRICK GRANT: Yes, sir.

9 (SIDE BAR CONCLUDED)

10 THE COURT: Objection sustained. Mr.
11 Grant, you may continue.

12 CROSS EXAMINATION RESUMED

13 BY DERRICK GRANT:

14 Q. Mr. Coonfield, I would like to show you another
15 SLED inventory sheet. Is that your name, your
16 signature at the bottom?

17 A. Yes, sir.

18 Q. Can you identify that, please?

19 A. Yes, sir, this is a SLED laboratory inventory
20 sheet of the items that I logged in on 12-31-2002,
21 signed by me.

22 Q. You have identified it?

23 A. Yes, sir.

24 DERRICK GRANT: I would like to ask that
25 this be an exhibit, Your Honor.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 THE COURT: Okay. Any objection?

2 MR. JENNINGS: He's offering it in
3 evidence?

4 THE COURT: Yes.

5 MR. JENNINGS: No objection.

6 THE COURT: Defendant's Exhibit 8, a one-
7 page document into evidence.

8 (SO ENTERED AS DEFENDANT'S EXHIBIT 8)

9 DERRICK GRANT: Excuse the Court.

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION RESUMED

12 BY DERRICK GRANT:

13 Q. Mr. Coonfield, I would like to show you another
14 SLED laboratory inventory sheet.

15 A. Okay.

16 Q. Is that your name to the bottom?

17 A. Yes, sir.

18 Q. Do you recognize the document?

19 A. I do.

20 Q. Thank you.

21 DERRICK GRANT: Your Honor, I would
22 like to place this into evidence as an exhibit and
23 evidence.

24 MR. JENNINGS: May I see it?

25 THE COURT: Yes.

1 DERRICK GRANT: (Tenders) .
2 MR. JENNINGS: (Upon review), no
3 objection.
4 THE COURT: Defendant's Exhibit 9 into
5 evidence without objection.
6 (SO ENTERED AS DEFENDANT'S EXHIBIT 9)
7 DERRICK GRANT: Excuse me, again,
8 please.
9 THE COURT: Okay.
10 DERRICK GRANT: Excuse me, the jury,
11 for me boring you'all.
12 MR. JENNINGS: Objection, Your Honor.
13 THE COURT: Sustained.
14 DERRICK GRANT: Excuse me.
15 THE COURT: Can't make those statements.
16 DERRICK GRANT: Excuse me.
17 THE COURT: Hold on just a second, Mr.
18 Grant. Approach, please.
19 SIDEBAR:
20 DERRICK GRANT: I'm sorry about that,
21 Judge.
22 THE COURT: I am not upset about
23 that, I am not concerned
24 about that. But I have
25 a duty to do. You've

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

531

1 introduced two documents
2 and haven't asked any
3 questions about them.
4 DERRICK GRANT: Well, I'm going to ask
5 the question right now.
6 THE COURT: Well, ask the question
7 because I can't allow you to
8 introduce documents without
9 asking questions about them
10 because all we're doing is --
11 when this case is over,
12 somebody has got to be
13 responsible for all of these
14 things. Until there is a
15 question about them, I don't
16 know the relevance of them.
17 So you've got to ask so --
18 DERRICK GRANT: Your Honor, please
19 excuse me.
20 THE COURT: Okay.
21 (SIDEBAR CONCLUDED)
22 THE COURT:
23 CROSS EXAMINATION RESUMED
24 BY DERRICK GRANT:
25 Q. I would like to give you a copy of Defendant's

1 Exhibit 8.

2 A. (Review).

3 Q. Would you please read -- what is Item 13? The

4 item and the description, please.

5 A. Item 13's description is, "one rearview mirror

6 from vehicle".

7 Q. What was the examination requested?

8 A. The examination requested was Latents.

9 Q. What date was this examination requested?

10 A. I'm sorry?

11 Q. What date was this examination requested?

12 A. Pardon?

13 Q. What date was this examination requested from

14 you?

15 A. That was on 12/31/2002.

16 Q. On 12/31/2002, you requested latent lifts from

17 the rearview mirror?

18 A. Yes, sir.

19 Q. You did?

20 A. Yes, sir.

21 Q. Correct?

22 A. Yes, sir.

23 Q. Mr. Coonfield, I would like to show you

24 Defendant's Exhibit 9, SLED laboratory inventory

25 sheet.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

- 1 A. Okay.
- 2 Q. Have you got a problem with all of them
- 3 (exhibits) up there (on witness stand)?
- 4 A. No, sir.
- 5 Q. Thank you.
- 6 A. That's fine.
- 7 Q. Have you already recognized that sheet, that
- 8 document?
- 9 A. Yes, sir.
- 10 Q. Would you state Item 13.3 for me, please?
- 11 A. Yes, sir. Item 13.3 says, "Swabs collected from
- 12 rearview mirror of vehicle", and the examination
- 13 requested is DNA.
- 14 Q. On what date did you request that examination?
- 15 A. That swab was taken or that examination was
- 16 requested on 1-7-2003.
- 17 Q. January 7th, 2003?
- 18 A. Yes, sir.
- 19 Q. Approximately how many days from the day that you
- 20 lifted the rearview mirror from the victim's vehicle
- 21 for latent prints was apart from the day you lifted
- 22 the victim's rearview mirror for DNA testing?
- 23 Approximately how many days apart?
- 24 A. That would be about six days.
- 25 Q. Do you have Defendant's Exhibit 8 up there, Mr.

- 1 Coonfield?
- 2 A. Yes, sir.
- 3 Q. What is Item 26? Could you please state Item 26?
- 4 A. On Defendant's Exhibit 8, sir?
- 5 Q. Yes, sir.
- 6 A. Exhibit 8 only goes through Item 15.
- 7 Q. Can I show you?
- 8 A. Yes, sir.
- 9 Q. Would you please read that?
- 10 A. That would be Items 2 through 6, 2-6, which
- 11 would be "five envelopes containing hair", and the
- 12 examination requested says Storage.
- 13 Q. Can I ask you how you ended up with five
- 14 envelopes of hair if your qualification is latent
- 15 prints or tire casts?
- 16 A. Yes, sir. The hair was collected during our
- 17 processing of the interior of the vehicle. It was
- 18 noted and it was collected with tweezers, placed in
- 19 an envelope, sealed and brought back for examination
- 20 by another department. Which at this time, it was
- 21 held in storage before it would go for examination.
- 22 Q. You just testified that the hair was found in
- 23 the victim's vehicle?
- 24 A. Yes, sir.
- 25 Q. Can I state for the record, Mr. Coonfield, ---

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

645
535

1 MR. JENNINGS: Objection, Your Honor.

2 THE COURT: Sustained. Just ask your
3 questions.

4 DERRICK GRANT: All right.

5 CROSS EXAMINATION CONTINUED

6 BY DERRICK GRANT:

7 Q. Did you take the hairs from the victim's vehicle?

8 A. That's correct. Also my partner, Special Agent
9 David Black, was with me and we assisted each other in
10 taking the hairs. So, yes, sir, we did.

11 Q. The question that I was asking -- and excuse me
12 for not remembering everything -- was did you process
13 the victim's vehicle?

14 A. Yes, sir.

15 Q. On what day did you process the victim's vehicle,
16 if you don't mind repeating it?

17 A. Okay, that was, I believe, 12-30-2002, December
18 30th, 2002. If you don't mind, I'll refer to my notes
19 to be sure of that.

20 Q. Okay.

21 A. Thank you. (Upon review), yes, sir. December
22 30th, 2002, is the day that we processed the vehicle.

23 Q. 2003?

24 A. 2002.

25 Q. What date did you lift the swabs from the

1 victim's vehicle?

2 A. On Defendant's Exhibit 8, the date that I listed
3 Items 7 through 12, which states that they are swabs
4 from the vehicle, was on 12-31-2002.

5 Q. That was one day after?

6 A. Yes, sir.

7 Q. Do you have Defendant's Exhibit 9 with you?

8 A. No, sir.

9 Q. Sorry, I'm asking you that and I've got it in my
10 hand. Excuse me, I can get this back right now.

11 Okay?

12 A. All right.

13 Q. Excuse me.

14 A. (Review of Defendant's Exhibit 9).

15 Q. Can you state what date did you lift -- would you
16 please read Item 13.3.

17 MR. JENNINGS: Objection, asked and
18 answered.

19 THE COURT: Sustained. And, Mr. Grant,
20 you understand that all these exhibits, that the jury
21 will have them and they can read them as much as they
22 want to. You're entitled to refer to them in closing
23 arguments, if you want. They're already admitted into
24 evidence. It's not necessary that the witness read
25 them because the jury will have these exhibits with

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 them when they go to deliberate.

2 DERRICK GRANT: Thank you, Your Honor.

3 CROSS EXAMINATION CONTINUED

4 BY DERRICK GRANT:

5 Q. Exhibit 5, you testified that 2 through 6 is five
6 envelopes containing hair. Would you restate exactly
7 where or what portion of the victim's vehicle the hair
8 was taken?

9 A. On Exhibit 5?

10 Q. Exhibit 8.

11 A. Exhibit 8?

12 Q. (Affirmative nod).

13 A. Could you repeat your question, please?

14 Q. Could you please state exactly where the hair
15 that was taken by you from the victim's vehicle,
16 exactly where you found hairs?

17 A. Based on Defendant's Exhibit 8, I am ---

18 Q. Excuse me. Excuse me for cutting you off.
19 Proceed.

20 A. Based on Defendant's Exhibit 8, Items 2-6 that
21 you refer to, is marked only "five envelopes
22 containing hair". In my notes and on the envelopes
23 themselves is where the location is marked as to where
24 the hairs came from.

25 Q. Do you happen to have those hairs here today,

1 sir?

2 A. Yes, sir.

3 Q. Would you please read the notes or what that
4 states -- can you or would you, please?

5 A. Yes, sir. From a photocopy of the envelope --
6 sorry, not from a photocopy but from the handwritten
7 notes, I have:

8 "hair from driver's side door sill,
9 hair from front driver's seat,
10 hair from ---

11 Q. Excuse me. Could you go back to number two, you
12 said the driver's seat, the driver's side?

13 A. Yes, sir. And hair from the front driver's seat.

14 Q. Okay.

15 A. The next one, which would be the third, would be
16 hair from passenger side doorsill.

17 The fourth would be hair from right side of
18 driver's seat headrest or seat headrest.

19 The fifth would be hair from the rear passenger
20 compartment, center hump, is what we call it.

21 Q. Thank you. Like the hump on the floor board
22 between the driver's and passenger's seat?

23 A. Yes, sir, on the floorboard -- the hump where it
24 actually runs underneath the vehicle.

25 Q. And you found those hairs?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 A. Yes, sir.

2 Q. Mr. Coonfield, are you familiar with the SLED
3 lab case notes coversheet?

4 A. Yes, sir.

5 Q. I would like to get those exhibits back from you.

6 A. (Tenders).

7 THE COURT: Mr. Grant, if you've finished
8 with the exhibits, place them on the exhibit table,
9 please, so that we don't have a chance of getting them
10 mixed with the other papers.

11 DERRICK GRANT: Yes, sir.

12 THE COURT: Thank you very much.

13 CROSS EXAMINATION RESUMED

14 BY DERRICK GRANT:

15 Q. Do you recognize that document?

16 A. Yes, sir.

17 Q. Is that the document that has your signature?

18 A. Not my signature but my last name is printed on
19 here.

20 Q. Did you print that? Is that your document?

21 A. Yes, sir.

22 Q. Thank you.

23 MR. JENNINGS: I would like to place this
24 as an exhibit.

25 COURT REPORTER: Defendant's Exhibit 10

1 for identification.

2 THE COURT: Any objection?

3 MR. JENNINGS: I would object to that
4 document being offered into evidence. It's not
5 relevance. If he has questions that he would like to
6 ask, Agent Coonfield,

7 DERRICK GRANT: I haven't asked ---

8 THE COURT: Sustained. You can ask the
9 questions -- at this point, it is not relevant. But
10 you can go ahead and ask questions.

11 (SO ENTERED AS DEFENDANT'S EXHIBIT 10)

12 DERRICK GRANT: Thank you, Your Honor.

13 CROSS EXAMINATION CONTINUED

14 BY DERRICK GRANT:

15 Q. When did you start your analysis, on what date?

16 A. My analysis was started on December 31st, ---

17 Q. Of what year?

18 A. The analysis was started in 2002. There's a
19 typographical error on that blue sheet that instead
20 of "02" says "03".

21 Q. On the SLED laboratory case notes coversheet that
22 I am about to hand you right now, what date does it
23 say that the analysis started?

24 A. It says that the analysis started on 12-31-03.

25 Q. 12-31-03?

1 A. Yes, sir.

2 Q. What date does it say that the analysis ended?

3 A. 02-05-03.

4 Q. February 5th, 2003?

5 A. Yes, sir.

6 Q. Do you see an error with that?

7 A. Yes, sir.

8 Q. How many other errors have you made?

9 MR. JENNINGS: Objection, argumenta-
10 tive.

11 THE COURT: Sustained.

12 DERRICK GRANT: No further questions,
13 Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. JENNINGS:

16 Q. Agent Coonfield, I just want to clarify a few
17 things. The victim's car, who was in charge of
18 processing it? Using the LCV, looking for any
19 fingerprints?

20 A. Myself.

21 Q. And did Sgt. Kokinda also process a part of the
22 car prior to your arrival?

23 A. Yes, sir.

24 Q. Defendant's Exhibits 6 and 8, which are the SLED
25 evidence inventory sheets, would any of these sheets

1 contain a request to process the car for fingerprints?

2 A. No, sir.

3 Q. Because who would have done that?

4 A. That request would have come from the Berkeley
5 County Sheriff's office during the initial call.

6 Q. But you didn't have to request someone to do,
7 because who did it?

8 A. I did it myself.

9 Q. So the fact that nowhere on these sheets would it
10 say 'please process the driver's side door for finger-
11 prints'; correct?

12 A. That's correct.

13 Q. You processed the entire car of Rachel Sottile's,
14 correct?

15 A. Yes, sir.

16 Q. Did you check the interior of the driver's side
17 door?

18 A. Yes, sir.

19 Q. Did you check the steering wheel?

20 A. Yes, sir.

21 Q. All those areas with the LCV that you testified
22 about?

23 A. Correct.

24 Q. Were there any fingerprints found on those items?

25 A. Only on the glass underneath the seat and on the

1 rearview mirror.

2 Q. So on the driver's side door, were there any
3 fingerprints?

4 A. No, sir.

5 Q. On the steering wheel, were there any finger-
6 prints?

7 A. No, sir.

8 Q. Is there are no fingerprints there, can you go
9 back and recreate fingerprints?

10 A. No, sir.

11 Q. Besides the glass on the floor, where was the
12 only other fingerprint that you found inside of her
13 car?

14 A. On the back of the rearview mirror.

15 Q. And that fingerprint was in what substance?

16 A. That fingerprint was in blood.

17 Q. And whose fingerprint was that?

18 A. It was identified by me to the right index finger
19 of the fingerprint card bearing the name Derrick
20 Grant.

21 Q. And you took State's Exhibit 47 with you from
22 Moncks Corner up to Columbia; is that right?

23 A. Yes, sir.

24 Q. And you would have done your paperwork on it,
25 as Mr. Grant pointed on, on the 31st?

- 1 A. Correct.
- 2 Q. I believe that you testified that when you had
3 the rearview mirror that first you sent it to be
4 photographed?
- 5 A. Yes, sir.
- 6 Q. As it was, prior to any amino-black being
7 administered?
- 8 A. Correct.
- 9 Q. You got it back and tested it with amino-black?
- 10 A. Yes, sir.
- 11 Q. Noted the ridge detail?
- 12 A. That's right.
- 13 Q. Sent it again to photography to be photographed?
- 14 A. Yes, sir.
- 15 Q. And that was to document fingerprints 13.1 and
16 13.2?
- 17 A. That's correct.
- 18 Q. Got it back?
- 19 A. Yes, sir.
- 20 Q. Took a swab off of State's Exhibit 47, which was
21 State's Exhibit 95; correct?
- 22 A. Yes, sir.
- 23 Q. And submitted that swab to DNA for testing to
24 determine whose blood that was; correct?
- 25 A. That's correct.

1 Q. And that entire process took from December 31st
2 until January the 7th?

3 A. Yes, sir.

4 Q. And that was when it was turned in to the DNA
5 lockbox?

6 A. That's correct.

7 Q. Was that tampered with? State's Exhibit 47, was
8 that tampered with in any way?

9 A. No, sir.

10 Q. Was any blood ever added to this item?

11 A. No, sir.

12 Q. Was Mr. Grant's fingerprints superimposed onto
13 that while it was in your possession?

14 A. No, sir.

15 Q. You testified about head hairs that were removed
16 from the interior of the victim's vehicle?

17 A. Yes, sir.

18 Q. I show you what is marked as State's Exhibit 108,
19 does that contain the packet that you retrieved?

20 A. It does.

21 MR. JENNINGS: We would offer 108 into
22 evidence.

23 THE COURT: Any objection, Mr. Grant?

24 DERRICK GRANT: No, Your Honor. May I
25 ask to see the package?

1 THE COURT: Sure.

2 DERRICK GRANT: (Upon review), Your
3 Honor, may I ask a question?

4 THE COURT: You will have him on re-
5 cross.

6 DERRICK GRANT: Thank you.

7 THE COURT: Do you object to the
8 admission of this document?

9 DERRICK GRANT: Yes, Your Honor.

10 THE COURT: You do object to it?

11 DERRICK GRANT: (Affirmative nod).

12 THE COURT: Approach the Bench.

13 DERRICK GRANT: One second.

14 THE COURT: Do you object?

15 DERRICK GRANT: Excuse me -- (sidebar
16 with Ms. Kennedy) -- no objection, Your Honor.

17 THE COURT: Very well, without objection
18 State's Exhibit 108 is admitted, a bag containing hair
19 samples.

20 (SO ENTERED AS STATE'S EXHIBIT 108)

21 MR. JENNINGS: That's all that I have,
22 Agent Coonfield. Thank you.

23 THE COURT: Recross?

24 DERRICK GRANT: Yes, Your Honor.

25 (Pause). No further questions, Your Honor.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

657
547

1 THE COURT: No questions?

2 DERRICK GRANT: No, sir, Your Honor.

3 I would like to ---

4 THE COURT: All right, do ---

5 DERRICK GRANT: I am only doing what you
6 tell me, Your Honor.

7 THE COURT: Thank you, sir. Appreciate
8 it. No questions. Any objection to the Agent being
9 excused?

10 DERRICK GRANT: I have him by subpoena
11 -- list, Your Honor.

12 THE COURT: Do you object to him being
13 excused?

14 DERRICK GRANT: No, he can be excused.

15 THE COURT: You may come down and you're
16 free to leave, sir.

17 (WITNESS STEPS DOWN)

18 THE COURT: You may call your next
19 witness.

20 MR. HOISINGTON: The State would call
21 Dr. Erin Presnell.

22 (WITNESS TAKES STAND)

23 SUSAN ERIN PRESNELL,
24 being duly sworn to tell the truth, the whole truth
25 and nothing but the truth, testified, as follows:

1 DIRECT EXAMINATION

2 BY MR. HOISINGTON:

3 Q. Dr. Presnell, you are a medical doctor?

4 A. Yes, I am a medical doctor. I'm a pathologist
5 at MUSC.

6 Q. If you would, just give us a brief overview of
7 what a pathologist does.

8 A. Well, most people think of pathologists as the
9 person who does the autopsies, and in fact that's
10 what I do. But pathology is basically the diagnosis
11 of disease. For example, if any of you go to your
12 family physician and have a biopsy, that tissue will
13 go to a pathologist. The pathologist will look at it
14 grossly, they will look at it under a microscope and
15 come up with a diagnosis.

16 Forensic Pathology is actually a sub-speciality
17 of Pathology. Instead of looking at individual pieces
18 of tissue or bodily fluids, I am working with the
19 whole entire body in, of course, what is called an
20 autopsy.

21 Q. Since you mentioned that, would you describe for
22 the jury what an autopsy entails typically?

23 A. Well, like I mentioned with Forensic Pathology,
24 the type of autopsy that we do is an autopsy that's on
25 any unnatural death: accident, homicide or suicide.

1 We also do autopsies on unexpected death, which fre-
2 quently can be a natural death but just an unexpected
3 death. For instance, if someone dies at a very young
4 age of a heart attack and they didn't have a history,
5 they would fall under our jurisdiction as well.

6 When you do an autopsy, -- all of our forensic
7 cases are a complete autopsy. We do a full frontal
8 examination, documenting any injuries, document any
9 kind of disease processes that you could can see
10 externally. We do diagrams and photographs.

11 Then we go and examine the internal part of the
12 body. We will actually look at all the internal
13 organs, remove them all, take samples of them so that
14 the samples will go off and come back to us -- on a
15 glass slide so that we can look at them underneath the
16 microscope. We are, again, looking for more disease
17 processes or anything that might contribute to the
18 autopsy.

19 Also during the process we collect body fluids to
20 test for drugs and alcohol, for a toxicology analysis.

21 Then after we do this autopsy and all the infor-
22 mation comes back, then we of course put it all
23 together in an autopsy report and the final conclusion
24 will be the cause and manner of death.

25 The cause being of course what caused the death.

1 The manner of death being whether it was a
2 suicide, accident homicide or a natural death.

3 Q. We have kind of talked about what an autopsy
4 is. How as a doctor are you qualified to perform
5 autopsies? Tell us something about your education
6 and training, if you will?

7 A. Well, pathologists are medical doctors. They
8 have a basic college degree, they go to medical school
9 and get their degree, and then after medical school,
10 to become a pathologist, you choose the speciality of
11 Pathology and you do a four to five-year residency in
12 training in that -- in the area of Pathology. After
13 that, if you want to do forensic pathology, be Board-
14 certified in Forensic Pathology, you do an additional
15 year of just Forensic Pathology.

16 Q. At this point, are you yet Board-certified?

17 A. Yes, I took the national boards in Forensic
18 Pathology in 1999.

19 Q. Now, as a result of your occupation, how many
20 autopsies have you performed. Just a rough estimate?

21 A. I haven't really kept up with the numbers but
22 easily over a thousand.

23 Q. As a result of those autopsies, have you been
24 called on, on occasions, to testify in court?

25 A. Yes, I have.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Q. Approximately how many times have you been
2 qualified as an expert in forensic pathology?

3 A. I would estimate about thirty.

4 Q. You took part in the autopsy of Rachel Sottile?

5 A. Yes, I did.

6 MR. HOISINGTON: Your Honor, I move to
7 qualify her as an expert in Forensic Pathology at
8 this time.

9 THE COURT: Very well. Do you care to
10 examine her as to her qualifications, Mr. Grant?

11 DERRICK GRANT: No objection.

12 THE COURT: Very well, she will be
13 permitted to render opinions in the area of forensic
14 pathology.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. HOISINGTON:

17 Q. If you need to refer to your notes, please do.
18 On what day did you perform the autopsy on Rachel
19 Sottile?

20 A. On December 27th, 2002.

21 Q. Can you give us a general overview of the find-
22 ings that you made as a result of that autopsy? And
23 then we will go into the specifics in a minute.

24 A. Okay. Like I said, when we do an autopsy, we do
25 examine and document all external injuries. In this

1 particular case, on Miss Sottile, we had multiple --
2 well, first of all, let me list the type of injuries
3 and then let me describe exactly what they mean, even
4 though some of it might be obvious.

5 We have multiple lacerations, abrasions, and
6 contusions and incisions to her body.

7 A laceration, this is an injury that is caused by
8 blunt force trauma. It's something -- some blunt type
9 of force breaks the skin and causes it to split.
10 That's a laceration. This is different from an
11 incised wound, often called a cut, which is caused by
12 a sharp instrument which actually cuts the skin.
13 So they are different, a laceration versus a cut which
14 cuts the skin apart.

15 Like I said, she also had contusions and
16 abrasions, which are -- abrasions are kind of like
17 scratches. An abrasion is where you scrape the skin
18 off. So a scratch is a type of abrasion.

19 She had multiple blunt force injuries, she had
20 multiple lacerations to her head, multiple contusions
21 to her head and abrasions to her face. She also had
22 multiple cuts, or incised wounds, -- again, cuts are
23 from a sharp-type instrument. She also had multiple
24 contusions and had cuts/scratches, because sometimes
25 it is kind of hard to tell if it is a very superficial

1 cut whether it's a cut from a knife or if it is a
2 scratch -- those were on her face, her arms and her
3 hands, as well as several contusions on her body and
4 her legs.

5 Q. As a result of your training and experience, have
6 you had an occasion to see what is known as defensive
7 wounds?

8 A. Yes. Defensive wounds -- uh, defensive wounds
9 typically occur in a particular pattern. When someone
10 is being cut, their first instinct is to put their
11 arms up in front (demonstrating) of the person's body
12 so that they feel they are defending themselves or
13 protecting their head or body from the attack.

14 Typically, a classified defense injury is to the
15 back of the arms here, whether it be from beating or
16 cuts or stabs or incised wounds from a sharp-bladed
17 instrument.

18 Q. Did you observe what you'd call defensive wounds
19 on Miss Rachel Sottile?

20 A. Yes. Like I said, she had numerous contusions on
21 her hands, cuts and scratches on the backs of the
22 hands and arms as well as on the front of the hands
23 and wrists.

24 Q. Now, I believe -- we will get back to the
25 evidence here in a minute, but I believe that you

1 said that as a result of a typical autopsy that you
2 do a toxicology screen?

3 A. Yes, we do.

4 Q. And that's to determine whether or not there are
5 drugs or alcohol in the blood?

6 A. Right.

7 Q. Would you tell the jury the results of the toxicology
8 screen on Rachel Sottile?

9 A. Her screen was negative. Her blood was negative
10 for both alcohol and drugs.

11 Q. I want you to look at several exhibits. State's
12 Exhibit 104, 105, 106 and 107 and also State's Exhibit
13 3 and 2, which I believe are without objection and are
14 already at this point in evidence. Additionally,
15 State's Exhibit 109. If you would, look at those and
16 see if you can identify them.

17 A. Exhibits 104, 105, 106 and 107 are diagrams that
18 were prepared based on the diagrams that I completed
19 at autopsy. Exhibits 2 and 3 are two photographs
20 taken at the time of autopsy.

21 Q. And State's Exhibit 109, what does that appear to
22 be to you?

23 A. Exhibit 109 seems to be a ruler with inch marks
24 and centimeters on it.

25 Q. Would the utilization of these particular

1 exhibits help you in describing for the jury the
2 nature of her injuries and the cause of death?

3 A. Yes, it would help because they show not only the
4 pattern or the grouping of injuries but also some of
5 the angled nature of some of the injuries to the head.

6 MR. HOISINGTON: I would like to move it
7 into evidence at this time, Your Honor.

8 THE COURT: Any objection?

9 DERRICK GRANT: No objection, Your
10 Honor.

11 THE COURT: Very well, State's Exhibits
12 104, 105, 106, 107, being a diagram, are admitted into
13 evidence without objection. State's Exhibit 109 is
14 admitted without objection. State's Exhibits 2 and 3,
15 each being a photograph, admitted without objection.

16 (SO ENTERED AS STATE'S EXHIBIT 2)

17 (SO ENTERED AS STATE'S EXHIBIT 3)

18 (SO ENTERED AS STATE'S EXHIBIT 104)

19 (SO ENTERED AS STATE'S EXHIBIT 105)

20 (SO ENTERED AS STATE'S EXHIBIT 106)

21 (SO ENTERED AS STATE'S EXHIBIT 107)

22 (SO ENTERED AS STATE'S EXHIBIT 109)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. HOISINGTON:

25 Q. Dr. Presnell, if you would look at State's

1 Exhibit 104 and tell the jury what you have detailed
2 on there for them -- this would be a representation of
3 Rachel Sottile?

4 A. Yes, this is the diagram that we did at the time
5 of autopsy and what this is to show, mostly, is the
6 incised wounds, also called cuts, the injuries made by
7 a sharp instrument.

8 The major injuries -- well, first of all, when we
9 label our injuries, when we enumerate the different
10 types of cut and injuries, -- well, in this case we
11 gave them letters: A, B, C, D.

12 Here is A, here is B, here is C and here is D.

13 Then there is another one right there, E.

14 The major injury, and actually what was
15 documented as the cause of death, is this incised
16 wound, "C". You can see that's very irregular, very
17 jagged. It comes across the front of the neck, as you
18 can see here, from the left side to -- well, I can't
19 say it was the left side, but you see here on the left
20 side and then it goes across the neck and also up the
21 right side. This is a continuation of it up on the
22 right side here. This was all one incised wound to
23 the neck, and you see multiple jagged edges. That
24 wound goes through the neck muscles and into the
25 underlying tissue to the right carotid artery, causing

- 1 exsanguination.
- 2 Q. And what is exsanguination?
- 3 A. Exsanguination would be bleeding to death.
- 4 Q. And is that -- in your opinion, was this the
- 5 cause of death?
- 6 A. Yes, it's what we listed as the cause of death.
- 7 Q. What type of force is required in order to effect
- 8 this type of wound?
- 9 A. I don't have any poundage type report of the
- 10 force, any numbers. All I can say is whatever it took
- 11 to actually cause the injury. I don't know if the
- 12 blade was sharp or whether it was not, which would
- 13 take more force. That is something that I can't tell
- 14 from the autopsy.
- 15 Q. Approximately how deep is that wound?
- 16 A. I don't have a record of it here -- if you'll
- 17 just give me a minute, I will look at my notes.
- 18 (Upon review), 1.4 inches.
- 19 Q. Nine inches deep?
- 20 A. 1.4 inches. About an inch and a half.
- 21 Q. All right. Now, you said that -- are you able to
- 22 form at least an opinion as to which direction the cut
- 23 came from?
- 24 A. In reading textbook examples of excise wounds to
- 25 the neck, there are typically two ways that they can

1 be delivered. If somebody is standing in front of a
2 victim, oftentimes you will see -- and they are using a
3 sharp bladed instrument -- angled slash marks on their
4 neck, this way (indicating).

5 If they are approached from behind, a lot of
6 times you will see the excise wound start on the front
7 of the neck and extend upward behind the ear, giving
8 an upward direction. In this case, it appears that it
9 began on the left side of the neck because it extends
10 up towards the ear on the right side of the neck.

11 Q. So that would be consistent with being approached
12 from the back?

13 A. Yes.

14 Q. What are these particular abrasions that you have
15 marked?

16 A. These are in addition to the major cut demon-
17 strated, all this, all these little marks, tend to
18 make up the hash marks. These marks here are
19 additional cuts, real superficial cuts. Right here
20 we have hash marks here, that's contusions and a lot
21 of bruising around the chin and neck area, as well as
22 what they call an abrasion around the chin right here.

23 Q. Is there anything else that this chart will tell
24 us that I failed to ask you about?

25 A. No, I think the main injuries are demonstrated.

1 Q. I show you State's Exhibit 105, which is again a
2 chart that you prepared?

3 A. Yes. Specifically this is additional injuries
4 to the head. It was just getting a little bit too
5 complicated to put it all on the other chart, so we
6 did this separately. Mostly what we see are these
7 little triangular or angled-shaped marks right here,
8 which are what we call lacerations. This is a blunt
9 force trauma injury, injuries, to the head causing
10 the skin to split. We also see some contusion or
11 bruising on the eyes, and I pointed out the bruising
12 around the chin and neck area there. Abrasion on the
13 cheek. Abrasion on the chin. A contusion or bruise
14 over the left eyebrow. These two marks right here
15 are abrasions, as well.

16 Q. Blunt force trauma, how many open wounds were
17 you able to characterize as ---

18 A. She had at least seven to the head.

19 Q. Would you typically get that type of open, blunt
20 force trauma wounds with the naked fist?

21 A. On the face -- on the softer tissues of the face,
22 you do see lacerations from blunt force trauma with a
23 fist. Once you get up into the thicker skin of the
24 scalp, a lot of times they can be -- a lot times they
25 are from heavier objects.

1 Q. Is that what is suggested by the nature of her
2 injuries?

3 A Yes, with the lacerations back in this area. It
4 suggests that there was a heavier or sharper object
5 than just the fist.

6 Q. I show you State's Exhibit 106.

7 A. This is just additional documentation of her
8 injuries. The dot marks are contusions or bruising
9 that we see around the chest, on the arm, the elbow
10 and the upper arm right here, and then we see -- I
11 tried to make them red but they didn't much turn out.
12 The red ones are little cuts and scratches on the
13 backs of the arms and the front of the arm here. And
14 there are actually several contusions, these black
15 marks, on her legs.

16 Q. Do you have any way of knowing what caused these
17 types of contusions or what they might be consistent?

18 A. These contusions are what we call nonpattern.
19 They don't actually show a pattern, so we can't say
20 what actually caused it.

21 Q. Would it be consistent with a person kneeling on
22 someone?

23 A. It is consistent with a blunt type of trauma,
24 something that doesn't have a pattern to be reproduced
25 on the skin, and certainly someone kneeling on them

1 could account for that.

2 Q. I show you State's Exhibit 107, can you tell us
3 what that depicts?

4 A. This is a diagram of her hands. I used the red
5 color but the red is not showing up very well --
6 specifically these little linear marks here are across
7 what we call the posterior, or the back, of the hands.
8 Also, on the left hand we have a lot more bruising or
9 contusions to the back of the hand. This marks are
10 consistent with defense-type wounds.

11 On this side of the hand, we have multiple cuts
12 and scratches on the -- this strip on the side, as
13 well as down here by the wrist, as well as on the
14 front of the wrist. There are a couple of those on
15 the right hand, as well.

16 Q. Defensive wound nature, what could cause the cuts
17 on the hand like that?

18 A. When you get a cut on the hands, there might have
19 been a sharp instrument involved and you tried to grab
20 it or you held up your hands to ward it off.

21 Q. All right. I am going to show you a couple of
22 pictures that further demonstrate these injuries.

23 But while we have got you here, let me ask you a
24 question as to your medical expertise on something.
25 While you are in medical school, do you learn anything

1 about the growth and the shedding of human hair?

2 A. Vaguely. It's kind of -- it's probably reviewed,
3 but that's been a long time ago. I can't say that I
4 recall ---

5 Q. Is it unusual for a human being to shed hair on a
6 daily basis?

7 A. No, that's a natural thing, for us to shed hair
8 on a daily basis.

9 Q. Now I want to show you State's Exhibit 2 -- can
10 we focus that a bit? Obviously this is not the way
11 that she appeared when she came in to your autopsy
12 room?

13 A. No. When the victim comes to us -- we try to
14 collect as much information as we can before we --
15 and often we have to clean them up to be able to see
16 the injuries. Part of that process is -- you can see
17 here that you can see the injuries in the scalp. She
18 came in with her full hair but we had to shave the
19 hair in order to demonstrate the injuries.

20 Q. Okay. I show you State's Exhibit 3, what is
21 that showing us?

22 A. These are two of the lacerations on her forehead.
23 If you will go back to the other photograph real
24 quickly, the previous exhibit, ---

25 Q. (Complies).

1 A. --- this wound here is the large incisor wound,
2 the cause of death. These right here are the
3 lacerations that I was pointing out on the diagram
4 of the head. What we are looking at in the next
5 photograph are these two lacerations right here above
6 the eyebrows. These two lacerations, it's kind of
7 hard to see but, uh, these lacerations here have a
8 very angled nature, which we described in the report.

9 Q. And what does that suggest to you?

10 A. Well, a lot of times when skin is struck it can
11 split and, like I was saying before, that can cause
12 what we call a laceration. If the skin is cut with a
13 particular object, that object can imprint on the skin
14 and often you can get a laceration that is similar in
15 nature to the object. It depends on the type of skin,
16 the thickness of the skin and also on the underlying
17 boney structure. Remember that the head is curved,
18 the skull is curved, so depending on what actually
19 struck -- it could be a number of things but this
20 laceration is consistent with something that had an
21 angle to it.

22 Q. This little ruler down there, was is the purpose
23 of that?

24 A. This right here is the autopsy number on it and
25 the inches marked on it would be to correlate or to

1 help us to measure the actual injury.

2 Q. On State's Exhibit 109, which appears to be a
3 copy of a ruler like that. I want to put that over
4 there and see if that matches. This photo appears to
5 be a one-to-one representation?

6 A. Yes.

7 Q. I show you what has been marked as State's
8 Exhibit 43, which is a ring from the Defendant.
9 Let's see if I can get it to show up on here (ELMO).
10 Did you have an occasion to look at that ring?

11 A. I saw this ring several weeks ago in the
12 conference room of Forensics office at MUSC.

13 Q. Can you say whether this (ring) is in all ways
14 consistent with the injuries that you observed on her
15 forehead?

16 A. This ring is consistent with the injury on her
17 forehead.

18 MR. HOISINGTON: Thank you very much.
19 Please answer any questions that Mr. Grant may have,
20 please.

21 THE COURT: You may cross examine.

22 DERRICK GRANT: Yes, Your Honor.

23 CROSS EXAMINATION

24 BY DERRICK GRANT:

25 Q. How are you doing, Ms. Presnell?

- 1 A. Good, thank you.
- 2 Q. Being that you just commented on that ring, can
3 you say for a fact that that ring was used?
- 4 A. No, I can't.
- 5 Q. Have you testified for homicide cases for
6 Berkeley County Sheriff's Office before, in the past?
- 7 A. I am trying to remember if I have done Berkeley
8 County before. I can't remember the courtroom, so --
9 I may have been here once in Berkeley County but I
10 don't recall.
- 11 Q. You have?
- 12 A. I think so. I am not -- like I said, I can't
13 remember exactly which county. I have done homicide
14 cases for Berkeley County but as far as testifying,
15 I'm not sure if I have visited Berkeley County.
- 16 Q. Have you testified for any State, testified for
17 South Carolina State in any homicide cases?
- 18 A. Yes, I have.
- 19 Q. Approximately how many?
- 20 A. I would estimate about thirty.
- 21 Q. That ring that was just showed on the camera,
22 did you get to see that ring personally?
- 23 A. Yeah, I saw the ring several weeks ago in the
24 office at MUSC.
- 25 Q. So you had that ring in your presence at that

1 time?

2 A. Yes, sir, -- well, it appears to be that ring.

3 The ring was furnished to me by the Solicitor who had
4 gotten the ring for a conference to review this case.

5 Q. So you did the autopsy on the victim also,
6 correct?

7 A. Yes.

8 Q. Did you do any examination of that ring?

9 A. I didn't do anything other than measure it.

10 Q. So you had the ring in your hand?

11 A. Yes.

12 Q. When did you do the autopsy on Rachel Satell
13 (Sotille)?

14 A. The autopsy was done in December 2002, but I
15 didn't see the ring until several weeks ago.

16 Q. Several weeks ago?

17 A. Um-humm, (affirmative nod).

18 Q. You described that if a person is defending
19 themselves that they would have their arms like
20 towards this way here (demonstrating)?

21 A. The classic defense injury is on the back of the
22 arms and hands because they are protecting their head
23 and face. They could have their arms any number of
24 ways. The injuries and the pattern that were on her
25 arms was consistent with defense injuries.

1 Q. Ms. Presnell, can you say for a fact that a
2 person's defense wounds would be on the back of the
3 hands?

4 A. They could be on the back of the hands but they
5 could also be on the front.

6 Q. Can you say -- so a defense wound can be on the
7 front of a person's hands also?

8 A. Yes, they can be on the front, particularly if
9 a person puts their hands out this way to grasp the
10 object or sharp instrument.

11 Q. Is it possible that a person could get a defense
12 wound on their wrist?

13 A. Yes, you can get a defense wound on the wrist.
14 Again, I was just describing the classic defensive
15 injuries, where they classically show up. You could
16 put the arms in such a position that you could get a
17 defense injury, say, on the wrist.

18 Q. You testified that a sharp -- not a sharp. You
19 testified that an object was used to make the wounds
20 to the victim's head?

21 A. I was just saying that as far as causing
22 lacerations on the head that we see multiple --
23 well, we see lacerations on the soft skin of the face
24 easily. As you move into the more thick skin of the
25 scalp, a lot of times an object has been used. I am

1 not saying a hundred percent that this injury could
2 not have been done by a fist, but more typically when
3 we see injuries an object has been involved.

4 Q. Why do say a fist?

5 A. I'm saying something that is not -- not heavy,
6 not as heavy as, for example, a metal object.

7 Q. Can I show you the MUSC autopsy report?

8 A. Yes.

9 THE COURT: Hold on second. Mr. Grant,
10 you may want to approach.

11 SIDEBAR:

12 THE COURT: There is a Rule, 611(a),
13 and I have not invoked it
14 yet but I am very close to
15 invoking to prevent -- I have
16 the responsibility to make
17 sure that this trial
18 progresses and keeps its
19 focus on the vital issues.
20 One of the things that
21 you have to remember, and I'm
22 sure Ms. Kennedy has probably
23 told you this, is that your
24 defense is that somebody else
25 killed her. This witness

1 only testifies as to the
2 cause of death. She doesn't
3 testify that you or who --
4 you really don't have any
5 questions of this witness,
6 because you didn't kill her.
7 That's what you said. So why
8 are you asking her questions?
9 DERRICK GRANT: Because of my defense.
10 THE COURT: Your defense is that you
11 don't know who killed her,
12 you don't know who killed
13 this person. Do you?
14 DERRICK GRANT: (No response).
15 THE COURT: So you don't need to ask her
16 what -- be careful, because
17 what you're going to do, that
18 entire document is going to
19 be sent back to the jury and
20 you don't want the jury to
21 read that document, I don't
22 believe.
23 DERRICK GRANT: Okay.
24 THE COURT: All right.
25 (SIDEBAR CONCLUDED)

1 CROSS EXAMINATION CONTINUED

2 BY DERRICK GRANT:

3 Q. You stated, you testified that a sharp object was
4 used to make the cuts on the victim's head?

5 A. When I say a sharp object, what I am referring
6 to is cuts or incised wounds. Remember there is a
7 difference between laceration and a cut or an incise
8 wound. The definition of a cut or incised wound is
9 that it is indicative of the use of a sharp instru-
10 ment. That's what I am referring to when I refer to
11 it as a cut or an incised wound, that it was performed
12 by a sharp edged instrument.

13 Q. Do you -- did you get a case history report from
14 the coroner, deputy coroner?

15 A. The way South Carolina is set up, we're a coroner
16 system, so the cases that we get are referred to us by
17 the coroner. The coroner authorizes the autopsy and
18 provides the information that he knows at the time
19 prior to us starting an autopsy. Some more informa-
20 tion becomes known later on but when we do the autopsy
21 there is usually only a brief history that the coroner
22 will provide.

23 Q. Was there any sign of rape to the victim?

24 A. We did a sexual assault examination on Miss
25 Sottile and it appears that she did not have any

1 external trauma to her genitalia. We also did a stain
2 of the oral cavity and vagina, looking for sperm, and
3 didn't see any sperm once we examined those slides.
4 I will say that just because there is no trauma and
5 there is no sperm, that doesn't necessarily mean that
6 there wasn't intercourse. However, we don't have any
7 documentation of it.

8 Q. Can you say for a fact that that ring that was
9 showed, I think that was (SLED) Exhibit 72, was used
10 to make the bruises on Rachel Satell (Sotille)?

11 A. No, I can't say that was exactly the ring.

12 DERRICK GRANT: No further questions, Your
13 Honor.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. HOISINGTON:

17 Q. But you can say that is in all ways consistent
18 with the ring?

19 A. It is consistent with the square nature of the
20 ring.

21 Q. Did I understand you to say that the fact that
22 there is no trauma present that that precludes
23 consensual sex?

24 A. Right, it does not preclude any type of
25 intercourse.

1 MR. HOISINGTON: No further questions.

2 May this witness be released?

3 THE COURT: Just a second. Recross?

4 DERRICK GRANT: No, Your Honor.

5 THE COURT: You wish her to be excused?

6 MR. HOISINGTON: Yes, sir.

7 THE COURT: Any objections to the doctor
8 being excused?

9 DERRICK GRANT: Oh, no objection, Your
10 Honor.

11 THE COURT: You are free to leave. That
12 you very much, Dr. Presnell.

13 (WITNESS STEPS DOWN)

14 THE COURT: Ladies and Gentlemen, at this
15 point I am going to excuse you for lunch. Please
16 remember that while you are at lunch, of course, do
17 not discuss this case among yourselves or permit
18 anyone to talk with you about it or to talk about it
19 in your presence. Also, I would urge you again not to
20 read any newspaper accounts or watch any television or
21 news accounts of this trial. I would ask that you
22 please return to your jury room by 2:15, and we will
23 resume the trial at that time. Thank you.

24 (JURY OUT @ 1:00 P.M.)

25 THE COURT: Anything from the State

1 before recessing?

2 MR. JENNINGS: No, sir.

3 THE COURT: Anything from the defense,
4 Mr. Grant?

5 DERRICK GRANT: Yes, Your Honor.

6 THE COURT: All right.

7 DERRICK GRANT: Can you -- I have a
8 problem with the officers talking to the Press and
9 talking to the decedent (sic) like after we close.
10 Is there anything that you can do about that?

11 THE COURT: Well, of course, the
12 officers can talk to the Press if they wish to talk
13 to the Press. I would ask those officers that are
14 seated near you, that they not share or disclose
15 anything that is said by you to Ms. Kennedy or any
16 discussions that occur between the two of you during
17 the trial. Obviously if you talk to the officers,
18 then that's -- they are free to discuss that, but I
19 doubt that is going to happen.

20 So I would ask add that those officers --
21 they are certainly charged with the responsibility to
22 preserve inviolate what discussions are going on
23 between Ms. Kennedy and Mr. Grant. While Ms. Kennedy
24 is not Mr. Grant's attorney, she is an advisor and he
25 needs to have that degree of confidentiality. He

1 should be afforded that, and I would appreciate you
2 giving him the opportunity to do that. I am not
3 suggesting by that admonition that you violated
4 anything. Thank you.

5 OFFICER LAWRENCE: Yes, sir.

6 THE COURT: Mr. Grant, anything else?

7 DERRICK GRANT: No, Your Honor. Thank
8 you.

9 THE COURT: Very well, sir. We will be
10 at-ease until 2:15.

11 (LUNCH RECESS 1:05 - 2:15 P.M.)

12 (DEFENDANT PRESENT)

13 DERRICK GRANT: Your Honor, I would like
14 to have a sideboard (sic).

15 THE COURT: Pertaining to what?

16 DERRICK GRANT: I'd like it to be on the
17 record with the Solicitor here.

18 THE COURT: Approach, please.

19 SIDEBAR:

20 THE COURT: Okay, what is it?

21 DERRICK GRANT: I did make a Motion for
22 no witnesses to be
23 present in the courtroom
24 and, so, can a witness
25 that is subpoenaed be in

1 the courtroom?

2 THE COURT: Were they on the witness
3 list?

4 DERRICK GRANT: He's not on the witness
5 list but he's been
6 subpoenaed.

7 THE COURT: By whom?

8 DERRICK GRANT: By the State.

9 THE COURT: If the State doesn't have him
10 as a called witness, a sub-
11 poenaed witness, it doesn't
12 mean a thing. The question
13 is whether or not -- if there
14 is a witness in the courtroom
15 and they call that witness to
16 testify, then that witness
17 would have violated the rule
18 on sequestration or the Order
19 on sequestration. But just
20 because they are subpoenaed
21 doesn't mean that they have
22 to be sequestered.

23 MR. HOISINGTON: Your Honor, could we ask
24 that when he makes a
25 Motion and the jury is

1 not here that he just
2 make it from the table?
3 THE COURT: The one thing that is
4 happening here, and I
5 appreciate your patience --
6 and it occurred to me this
7 morning that it may be some-
8 thing that I am going to
9 continue to do. Ms. Garrison
10 is using a stenomask to
11 record this and you don't
12 hear anything and, therefore,
13 can't read anything about it
14 in the newspaper. The reason
15 for that is that we've done
16 it all here in a sidebar and
17 everything that we're doing
18 is verbatim on the record.
19 And I appreciate Ms. Garrison
20 being willing to do that.
21 I apologize for the incon-
22 venience but I think when I
23 have a trial that is covered
24 by the media, like this
25 trial, it is very helpful to

1 keep comments that might end
2 up in the paper or on the
3 news from being argued in
4 open court.

5 MR. HOISINGTOIN: Would he mind telling us
6 who the witness is?

7 DERRICK GRANT: Bernie Lockwood. I've
8 seen him in the court-
9 room for a while, too.

10 THE COURT: Well, just because he is in
11 the courtroom -- he just
12 can't hear testimony. I
13 mean, he can come into the
14 courtroom when no one is
15 testifying.

16 DERRICK GRANT: Okay.

17 THE COURT: Thank you, sir.

18 (SIDEBAR CONCLUDED)

19 THE COURT: All right, is the
20 defense ready to proceed?

21 DERRICK GRANT: Yes, Your Honor.

22 THE COURT: Is the State ready?

23 MR. JENNINGS: Yes, sir.

24 THE COURT: Bring in the jury, please.

25 (JURY IN @ 2:19 P.M.)

1 THE COURT: Ladies and Gentlemen, we
2 are ready to continue. I hope that you had a good
3 lunch. Solicitor, you may call your next witness.

4 MR. HOISINGTON: Thank you, Judge. The
5 State calls Janice Bryson.

6 (WITNESS TAKES STAND)

7 JANICE BRYSON, being
8 duly sworn to tell the truth, the whole truth and
9 nothing but the truth, testified, as follows:

10 DIRECT EXAMINATION

11 BY MR. HOISINGTON:

12 Q. Agent Bryson, you are employed by the South
13 Carolina Law Enforcement Division?

14 A. Yes, sir.

15 Q. How long have you been working for SLED?

16 A. Fourteen years.

17 Q. Tell the jury what you do for them?

18 A. I work in the evidence processing department,
19 I'm an evidence technician. I visually examine a
20 variety of items that are sent to the lab for the
21 collection of hair and fiber. I also perform chemical
22 and serological testing on things for the presence of
23 blood and semen.

24 Q. What do you try to accomplish by doing those
25 things?

1 A. I am collecting the evidence and sending it to
2 the proper department.

3 Q. And you don't see anything of evidence to put a
4 value on the items that you look at, what do you do at
5 that point?

6 A. If I am looking for blood, I take the respon-
7 sibility and say that there is no blood detected. If
8 there is no semen, I take that responsibility and say
9 no semen was detected.

10 Q. Then there would be no further testing of that
11 item?

12 A. That's correct.

13 Q. What type of training have you had in order to
14 perform your duties?

15 A. I am an Associate Degree from the University of
16 South Carolina and while at SLED I have trained under
17 court-qualified forensic experts in the areas of
18 serology, trace and DNA. I also trained for a year
19 under the senior technician in our department. SLED
20 is nationally-accredited by the American Society of
21 Crime Laboratory Directors. It's a requirement of
22 ASCLD that each examiner and technician be certified,
23 and I have been certified in the collection of hair,
24 fiber, blood and semen.

25 Q. Were you on duty when the case involving the

1 victim Rachel Sottile came into the SLED office?

2 A. Yes, sir.

3 Q. Did you have a responsibility regarding the
4 evidence that was being tested on that?

5 A. A request was made for blood and semen, yes.

6 Q. What items were you looking at?

7 A. I processed a pair of white pants, a red jacket,
8 ring and bracelet.

9 Q. From those white pants, red jacket, ring and
10 bracelet, did you identify any items that needed
11 further analysis?

12 A. I did.

13 Q. Tell us about those. It may helpful if I showed
14 you this exhibits: State's Exhibit 90, 91, 92, 93, and
15 94. If you could, look at those and tell us if those
16 are your envelopes and, if so, what you requested.

17 A. Yes, sir, these are mine.

18 MR. HOISINGTON: I think that they are
19 already in evidence, Your Honor.

20 THE COURT: They are.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. HOISINGTON:

23 Q. If you would, go over the process that you used
24 and what those envelopes signify for you.

25 A. The pair of white pants, I was looking for blood

1 and semen. The test that we do for semen is the
2 presumption test for semen. I used an alternate light
3 source that will fluoresce the body fluids. I circle
4 those areas that fluoresce and then I go back and do a
5 spot test of each area that I've circle. If that test
6 comes up positive, I take a cutting. Also for blood,
7 there's a three-step chemical test. If that test is
8 positive, I will take a cutting and forward it to the
9 DNA department.

10 Q. On the white pants, did you find any positive --
11 signifying items?

12 A. Yes, sir, I took two cuttings that were positive
13 for the presumptive test of semen and one cutting that
14 was positive for the presumptive test of blood.

15 Q. Once you take those cuttings, what is your next
16 step?

17 A. I place the cuttings in a gold coin envelope and
18 I seal and initial them on the back. Then I place
19 these envelopes in a heat-seal pouch. I seal the
20 heat-seal pouch and I drop it in the DNA box.

21 Q. In regards to the white pants that you have, what
22 did you do and what tests did you request on that?

23 A. I requested -- two of the cuttings were made for
24 blood and one stained for semen.

25 Q. When you do that, where do you forward it?

1 A. I'm sorry?

2 Q. Once you make that request, where do you forward
3 the cuttings?

4 A. To the DNA department. I made two cuttings for
5 semen and one for blood.

6 Q. And those are represented by which envelope,
7 which exhibit?

8 A. 90, 91, and 92.

9 Q. So the next person that would be involved with
10 this to do any testing would be Steve Lambert?

11 A. That's correct.

12 Q. Now, did you do further tests?

13 A. I processed a gold ring.

14 Q. That would be SLED 72.1?

15 A. That's correct.

16 Q. Did you process it and also take photographs?

17 A. I did.

18 Q. Did you make any preliminary findings as to the
19 ring?

20 A. No, sir. What I did, I just swab the ring
21 entirely and sent that swab to the DNA department.

22 Q. Tell the jury how you went about swabbing this
23 particular item.

24 A. What I do, I just put a drop of saline on the
25 swab and then I just swab the whole ring, inside and

- 1 out, and ---
- 2 Q. Then package that?
- 3 A. (Affirmative nod).
- 4 Q. And that is in which package there?
- 5 A. 72.1 was from the ring.
- 6 Q. Which is State's Exhibit number?
- 7 A. 93.
- 8 Q. And then as to the bracelet?
- 9 A. I just did the same thing. I just put saline on
- 10 a swab and swabbed inside the bracelet and then put
- 11 the swab in here.
- 12 Q. What State's Exhibit is that?
- 13 A. 94.
- 14 Q. And that, again, went to Steve Lambert, as well,
- 15 in DNA?
- 16 A. I dropped it in the DNA box, (affirmative nod).
- 17 Q. Now I show you State's Exhibit 43 and ask you if
- 18 you would look at this, please.
- 19 A. (Complies). There are SLED items 72 and 73
- 20 that I processed. These are my initial and the SLED
- 21 lab number, the item numbers, and the date that I
- 22 processed it.
- 23 Q. What was the date that you processed that ring?
- 24 A. April 10th, 2003.
- 25 Q. So it would have been in the custody of SLED from

1 the time that it was transported to SLED to begin with
2 until at least then?

3 A. That's correct.

4 Q. And does it show on there what time that it was
5 transported to SLED?

6 A. Not on here, it doesn't.

7 Q. Do you records reflect it?

8 A. Items 72 and 73?

9 Q. Yes, ma'am.

10 A. (Upon review), it was brought to SLED on January
11 30th, 2003.

12 Q. Sorry?

13 A. January 30th, 2003.

14 MR. HOISINGTON: Are these in evidence
15 in this case? I would move these into evidence at
16 this time, 90, 91, 92, 93 and 94.

17 THE COURT: Any objection?

18 DERRICK GRANT: No objection, Your
19 Honor.

20 THE COURT: State's Exhibits 90 through
21 94, being a manila envelope, is in evidence without
22 objection.

23 (SO ENTERED AS STATE'S EXHIBIT 90)

24 (SO ENTERED AS STATE'S EXHIBIT 91)

25 (SO ENTERED AS STATE'S EXHIBIT 92)

1 (SO ENTERED AS STATE'S EXHIBIT 93)

2 (SO ENTERED AS STATE'S EXHIBIT 94)

3 MR. HOISINGTON: Please answer any
4 questions that Mr. Derrick Grant has.

5 DERRICK GRANT: No questions of this
6 witness.

7 THE COURT: Very well. You may come
8 down.

9 (WITNESS STEPS DOWN)

10 MR. HOISINGTON: We would call Steve
11 Lambert.

12 (WITNESS TAKES STAND)

13 STEVEN J. LAMBERT,
14 being duly sworn to tell the truth, the whole truth
15 and nothing but the truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY MR. HOISINGTON:

18 Q. Mr. Lambert, where are you employed?

19 A. South Carolina Law Enforcement Division.

20 Q. You are an Agent with SLED?

21 A. Yes, sir.

22 Q. Have long have you been working with SLED?

23 A. Since January of 1990.

24 Q. And what are your areas of responsibilities?

25 A. I am assigned to the Forensics laboratory, to

1 the DNA lab where we do serology and DNA analysis.

2 Q. Can you describe what that entails, for the
3 jury?

4 A. Okay. Serology is the study of body fluids. We
5 receive evidence from crime scene and we're interested
6 in knowing, first of all, what kind of body fluids
7 that it is, whether it is semen, saliva, blood. I
8 identify those body fluids. Once we do that, we
9 determine whether or not we have enough to do a DNA
10 typing on it. We proceed with the DNA typing to see
11 if we can find out whose body fluids that may belong
12 to.

13 Q. I am going to ask you in a second to give us in
14 layman's terms an understanding of what DNA is. But
15 before we get to that, would you tell us about the
16 type of education that you have had and the type of
17 training that you have been given.

18 A. I've got a bachelor's degree in Chemistry in Mars
19 Hill College, 1983; I have a doctorate degree from the
20 University of South Carolina in BioChemistry, in 1990.
21 When I came to SLED, I trained under the supervision
22 of their court-qualified analysts at SLED. I went to
23 the FBI Academy and received training, got graduate
24 credits from the University of Virginia in their FBI
25 DNA-typing course. I was a visiting scientist at the

1 FBI Academy. I've also attended numerous symposiums
2 and seminars over the years.

3 Q. As a result of your training and expertise, have
4 you had occasion to do numerous DNA tests in the past?

5 A. Yes.

6 Q. Approximately how many tests have you run?

7 A. We typically do about fifty cases a year, and
8 I've been doing it for approximately twelve or
9 thirteen years.

10 Q. And in those fifty cases, is there typically more
11 than one samples that you examine in a case?

12 A. Typically anywhere from about five to ten samples
13 per case.

14 Q. As a result of this employment, have you had
15 occasion to testify in Court before?

16 A. Yes, I have.

17 Q. Have you testified as an expert witness in the
18 field of DNA analysis?

19 A. Yes.

20 Q. How many times?

21 A. Over sixty.

22 MR. HOISINGTOIN: Your Honor, we would
23 offer him at this time as an expert in the field of
24 DNA and hair-type analysis.

25 DERRICK GRANT: No objection.

1 THE COURT: Very well. He will be
2 permitted to render opinions in those areas.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HOISINGTON:

5 Q. If you would now give us an overview of the
6 science of DNA, how it works and what you're looking
7 for.

8 A. Okay. DNA stands for deoxyribonucleic acid.
9 It's a chemical and it's found in virtually ever
10 single one of your cells in your body. Encoded in
11 that chemical are the instructions to make us who we
12 are. We start off as a single cell when we are
13 conceived and that cell divides and divides and with
14 each division the DNA is passed on. Within that DNA
15 are the instructions for how the cell is going to be
16 composed, what kind of protein that it is going to be
17 made out of. It basically tells us who we are.

18 The vast majority of everybody's DNA in this room
19 is the same, about ninety-nine percent of our DNA is
20 the same for everybody.

21 But there's a small portion of the DNA -- but
22 there is a small portion of the DNA that makes us
23 different from each other. That's the part that we
24 zero in on as forensic scientists.

25 The only two individuals who would have the same

1 DNA would be identical twins since they start off with
2 a single egg, that egg splits and becomes two
3 individual eggs. Other than that, everyone's DNA
4 within that small part of DNA that makes us different
5 from each other.

6 So we can tell individuals apart. Blood left at
7 a crime scene, we can test that and compare that back
8 to victims or suspects to see if we can find a match
9 to see who that blood belonged to.

10 Q. Are you always looking specifically for matches
11 or do you look for stuff that don't match?

12 A. A certain number of our samples don't match.
13 Quite often we call agencies up and say, 'you've got
14 the wrong individual, it didn't match the blood at
15 the crime scene' or the semen at the crime scene,
16 'so you need to look for someone else.'

17 Q. So it is used for exclusion as well as inclusion?

18 A. Absolutely.

19 Q. One of the things that I am curious about, when
20 you receive samples, how are they typically processed
21 and sent to you?

22 A. When they come in to SLED, they are either sent
23 up to my lab in one of two different ways. They
24 either pass through evidence processing, through
25 Janice Bryson's lab and she would take the larger

1 items and examine those and make cuttings of those
2 items and then pass the cuttings on to us. Or, in
3 some cases the swabs taken from a crime scene that
4 are small enough that there doesn't have to be any
5 processing done to those. Those go directly to our
6 lab. We analyze those without any evidence
7 processing.

8 Q. Now, what is it that you physically compare those
9 samples to?

10 A. We receive blood standards from victims/suspects
11 who might have left blood or biological material at a
12 crime scene. We will do the same typing on those
13 standards and develop DNA prints from them and compare
14 them to the DNA prints from the evidence.

15 Q. When you review these standards, do you typically
16 know what the investigation has revealed about the
17 people that are sending in those standards or that the
18 standards are coming from?

19 A. No, sir. We receive all of these samples from
20 agencies across the state and we know very little
21 about them or the crime, other than it is a sexual
22 assault, a murder, a burglary or something like that.

23 Q. So if you get samples from three or four people,
24 you don't know if you have three or four defendants
25 or one defendant?

- 1 A. That's correct.
- 2 Q. That has nothing to do with your analysis of ---
- 3 A. We test those samples -- whether or not it is a
- 4 defendant or victim, we process them the same way.
- 5 Q. Calling your attention to the case -- I know that
- 6 you'll have a lab number on it. But it's now known
- 7 as the case involving Rachel Sottile, who is the
- 8 victim.
- 9 A. Yes, sir.
- 10 Q. I think all your reports reference that also?
- 11 A. Yes, sir.
- 12 Q. You had the responsibility to analyze evidence
- 13 that was provided in this case?
- 14 A. Yes, sir.
- 15 Q. Now, in looking at -- I need to get a little bit
- 16 of an overview. It looks to me that at least twenty-
- 17 three samples were actually analyzed; is that right.
- 18 A. That's correct. Somewhere in the range of
- 19 twenty-three, plus the blood standards that we drew.
- 20 Q. When you get samples, do you routinely analyze
- 21 everything that you get or do you make a determination
- 22 of what should be analyzed or can't be analyzed?
- 23 A. We look at the samples to see what is going to
- 24 be the best samples. Obviously we can't test every
- 25 single sample physically. Like I said before, it's

1 about ten samples per case. In cases that involve
2 several scenes, different vehicles, different spots,
3 autopsy samples, we will make an exception and do
4 more samples. But even then we try to narrow it down
5 to the samples that are going to give us the most
6 information about the scene.

7 Q. In this particular case, how many blood samples
8 were you given, blood standards, to try to compare to
9 the samples that were taken as evidence?

10 A. There were blood standards from four different
11 individuals.

12 Q. Can you name who you got them from?

13 A. Yes. We received blood standards from Rachel
14 Sottile, the victim; from Shawn Elkins; from Donald
15 Lynch; and from Derrick Grant.

16 Q. All right. Did you know at that time that Rachel
17 Sottile was even the victim?

18 A. She was indicated as the victim on the log-in
19 paperwork at SLED.

20 Q. Now, of the twenty-three samples that you
21 actually got some results of, let me ask you as an
22 overview, did any of them point to Shawn Elkins
23 and/or Donald Lynch?

24 A. Of those twenty-three samples that I tested,
25 they were excluded on every single one that gave me

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 a print. Not every single one of the blood samples
2 gave me a DNA print. There just wasn't enough sample
3 on some of them. But on the ones that did give me a
4 print, I did not see any biological material from
5 Elkins or Lynch.

6 Q. Now, along with blood samples, sometimes you are
7 given other items from suspects or possible witnesses
8 are you not?

9 A. Uh, -- sometimes.

10 Q. What, typically, would you be given?

11 A. Could you repeat that question?

12 Q. Yeah. I mean, other than a blood sample are you
13 sometimes given from a possible suspect or witness --
14 are you given other items in order to run DNA
15 profiles? Like hair?

16 A. That's correct. In the suspect collection kit
17 there's -- we collect two items of blood and a saliva
18 standard. The saliva standard was used probably more
19 often about seven or eight years ago when we were
20 doing saliva, because you would have to do that to
21 determine something about the individual's secreter
22 status which had to do with their blood type. We
23 don't do that typing more. So we typically don't do
24 anything with the saliva standard. We just test the
25 blood standard. If the blood standard happened to

1 be degraded, we might back up and go to that saliva
2 standard and use it. But primarily the blood standard
3 is the one that we use.

4 Q. So in this case, every standard that you utilized
5 was blood?

6 A. Yeah.

7 Q. All right. Would you sometimes get hair and be
8 requested to do a DNA analysis on that?

9 A. We do. Primarily the evidence that we test first
10 is the evidence from the scene: blood, semen. Then
11 the hair comes in during the second level of analysis
12 that would be performed if we didn't get any results
13 on that first analysis.

14 Q. Can you tell us why you would not go first with
15 the hair analysis?

16 A. Hair analysis typically doesn't give you a result
17 as often as a blood sample would. We're pretty
18 confident that we can get a DNA from blood. Hair, to
19 have a hair result, the hair just can't fall out. It
20 has to be pulled out and it has to have quite a bit of
21 root material on it for us to get a DNA print in our
22 laboratory. So we are going to go with the samples
23 that we know that we can get a print on first.

24 Q. In this particular case, do you recall whether
25 you tested any hair at all?

1 A. I was requested to do some hairs in this case
2 that there was some question about and did not get a
3 DNA print from any of the hairs; which, again, didn't
4 surprise me because it's not the usual case to get a
5 DNA print from hair.

6 Q. Would that be the test that was done on -- let me
7 show you State's Exhibit 79 and ask if that is the one
8 that you did analysis on?

9 A. Well, it's got my initials on it. Let me see if
10 I can see the item number, (reviewing). I believe
11 that was my Item 39, hair from abdomen. That's
12 correct. I did not get a DNA print when I tested
13 that.

14 Q. Where does it show that hair was taken from?

15 A. "Hair from abdomen".

16 Q. Of the victim?

17 A. I assume that it was from the victim.

18 Q. All right. Let's go over for a minute the test-
19 ing that you had done that did result in analysis.

20 A. Okay.

21 Q. Let's see if we can start with -- I want to show
22 you your Items 8 and 9, which are marked State's
23 Exhibits 97 and 98.

24 A. Okay. These are swabs from a vehicle. State's
25 Exhibit 97 is from the front driver's side quarter

1 panel and State's Exhibit 98 is from the bottom of
2 the steering wheel. What happened is that someone was
3 processing this car, taking some sterile Q-tips,
4 moistened them with a little bit of distilled water
5 and swabbed whatever biological material was there.
6 In this case it turned out to blood. Dried those
7 items out and then submitted it to the lab.

8 Q. Did you preform a DNA analysis of that?

9 A. Yes, I did.

10 Q. Tell us, does the Item 8 -- your number eight --
11 identify anybody out of the four samples that you
12 have.

13 Q. Out of those four samples that were submitted,
14 that particular sample matched Derrick Grant. The
15 probability of a random person from the population
16 that it would be unrelated is about one in 4.5
17 trillion individuals, so it's an extremely rare DNA
18 print and it matches Derrick Grant. It was done on
19 the blood on the front, driver's side, quarter panel
20 of the victim's vehicle.

21 Q. Now, your SLED number, Item 9, which is exhibit
22 number -- the next one on there?

23 A. It is 98, taken from the steering wheel.

24 Q. Did you perform an analysis on that also?

25 A. Yes, I did.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

707
597

1 Q. What did you find as a result of that analysis?

2 A. That turned out to be a mixture of more than one
3 individual. We can detect these when we do DNA
4 typing. It was a mixture of two individuals' blood.
5 The major contributor to that stain, there was a
6 little more of one than the other, was from Rachel
7 Sottile. The minor contributor was consistent with
8 coming from Derrick Grant.

9 Q. Now, 13.1, State's Exhibit 95, if you would look
10 at that and see if you recognize that exhibit and
11 whether you tested it.

12 A. Yes, this was my Item 13.3. It's a swab from the
13 back of a rearview mirror of vehicle. I recognize the
14 packaging, it has my initials on that.

15 Q. What was the finding as the result of that test?

16 A. That particular sample again turned out to be
17 a mixture of two different individuals. They were
18 pretty much equal on that sample. The major
19 contributor being Rachel Sottile, which was just a
20 little bit more. The minor contributor was consistent
21 with coming from Derrick Grant.

22 Q. Now, if it doesn't pile up too much, we will just
23 keep going through this.

24 A. Okay.

25 Q. I show you State's Exhibit 74, which is Item 22;

1 State's Exhibit 67, which is your Item 23; and State's
2 Exhibit 68, which is your Item 24.

3 A. Okay.

4 Q. Make sure that I have those right for you.

5 A. Okay. This is my Items 22, 23 and 24.

6 Q. Tell us what Item 22 is and what your analysis
7 revealed.

8 A. Item 22, State's Exhibit 74, is a broken finger-
9 nail collected from the victim's jacket. Sometimes
10 we are able to get a DNA print, such as if the victim
11 were to scratch a suspect they might get a little bit
12 of the skin under a fingernail. In this case, we
13 attempted to get a DNA print from that but were
14 unsuccessful. There wasn't enough cellular material
15 there.

16 Q. Your Item 23?

17 A. Item 23 is a swab from the left index ring on
18 finger, State's Exhibit 67.

19 Q. Would that be the victim's finger?

20 A. It doesn't say on this particular item. I
21 probably have it in my notes if you want me to refer
22 to those.

23 Q. If you would, please.

24 A. (Upon review), it was submitted to our laboratory
25 as a swab of putative blood from the left ring.

1 Again, I am assuming that's from the victim but
2 there's nothing indicated on my log-in sheet.

3 Q. In any case, what was the results of your tests?

4 A. That Item 23, the swab from the left ring, was
5 negative. Again, I didn't get a ---

6 Q. And your Item 24, which was Exhibit ---

7 A. State's Exhibit 68. It's a swab from the finger
8 on the left index finger, and I did not get a DNA
9 print from that item either.

10 Q. I call your attention to your exhibit number
11 (Item) 27, which is State's Exhibit 70; to your Item
12 28, which is State's Exhibit 71; and your Item 29,
13 which is State's Exhibit 72.

14 A. Okay.

15 Q. I ask you to review those and tell us what your
16 investigation revealed.

17 A. (Upon review), Items 27, 28 and 29.

18 Item 27 is another swab from a vehicle, from the
19 left door -- on the outside of the vehicle. The DNA
20 print developed from that matched Derrick Grant. The
21 probability of randomly selecting someone from the
22 population who would have that DNA print is one out
23 of every 52 Quadrillion individuals. It's a very
24 rare DNA print and was found on the outside of that
25 vehicle.

1 Item 28 is a swab from the steering wheel of that
2 vehicle. Again, it is another mixture -- pretty much
3 equal -- of someone matching Derrick Grant and Rachel
4 Sottile.

5 Item 29 is a swab from the left door interior
6 handle on the car. Another mixture of blood with the
7 major contributor matching Derrick Grant, the minor
8 contributor matching Rachel Sottile.

9 Q. Moving along in your investigation, State's
10 Exhibit 92, which is Item 30.1; Item 30.2, which is
11 State's Exhibit 90; and 30.3, which is State's
12 Exhibit 92.

13 A. Okay.

14 Q. I would ask you to look at those and tell us
15 where you got those from and what your investigation
16 revealed.

17 A. These are cuttings from a pair of pants that were
18 submitted to my laboratory after it went through
19 evidence processing. 30.1 and 30.2 were identified as
20 having semen on those items. When I tested it in the
21 laboratory, I confirmed that it was human semen. And
22 Item 30.3 had human blood on it.

23 Item 30.1, the item with the semen, there is a
24 DNA print that is a mixture of Rachel Sottile and
25 Derrick Grant. Even though there is semen on a

1 particular item, there could be secretions from the
2 female that also accompany that. Quite often in semen
3 samples we will get a mixed sample.

4 Q. So it is not necessary that it be purely blood in
5 order to be able to determine DNA?

6 A. Purely blood or purely semen.

7 Q. How about, can sweat give you DNA sometimes?

8 A. It could if there is enough cellular material in
9 it. It's much rarer for sweat to give DNA.

10 Q. Now, did you mention Item 30.3, State's Exhibit
11 92?

12 A. Let me do 30.2 before I forget to mention that.

13 Q. All right.

14 A. It's another cutting from the victim's pants and
15 there wasn't semen from that cutting and actually very
16 little DNA at all. The partial print that I got
17 matched Rachel Sottile. There wasn't enough from the
18 semen contributor to get a print on that.

19 30.3 is the blood cutting from the pants. It
20 matched the victim's, Rachel Sottile.

21 Q. Now I show you State's Exhibit 73, which is your
22 Item 33.

23 A. Okay.

24 Q. Is that your envelope?

25 A. Yes. Item 33 is a broken nail from the right

1 front seat, under the seat, between the seat and the
2 door of the vehicle, and the DNA print from that
3 matched Rachel Sottile.

4 Q. I believe that you have already testified as to
5 the hair that was SLED Item 39, State's Exhibit 79,
6 which was the victim's hair off her abdomen?

7 A. That's correct.

8 Q. All right. I call your attention to Item 40,
9 State's Exhibit 77, and ask if you can tell us what
10 this is?

11 A. This is the vaginal swab collected from Rachel
12 Sottile at autopsy. I tested those and identified
13 semen on the vaginal swabs. Again, we got a mixture.
14 Sometimes you just don't have enough sperm to
15 completely get a print from the sperm. In this case
16 it was a mixture of Rachel Sottile and Derrick Grant.

17 Q. Your Items 44 and 45, State's Exhibits 78 and 76.

18 A. Item 44 is the fingernail clippings taken from
19 Rachel Sottile during the autopsy, from her right
20 hand, and Item 45 is from the left hand. I tested the
21 clippings from the right hand and did not get a DNA
22 print from those. I tested what little cellular
23 material that was in the clippings from the left hand
24 and that matched Rachel Sottile; which is not unusual
25 for someone to have their own DNA print under their

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 fingernails.

2 Q. Now, I have your Item 72.1, State's Exhibit 93;
3 73.1, State's Exhibit 94.

4 A. Item 72.1 is a swab from a ring. It's State's
5 Exhibit 93. The DNA print that I developed from that
6 was a mixture of two major individuals which matched
7 Derrick Grant and Rachel Sottile, plus there is a
8 minor print from a third individual on that item, on
9 the ring.

10 Item 73.1 was a swab from a bracelet and it was
11 insufficient for a DNA analysis.

12 Q. Now, I believe that you already testified that
13 none of the samples that you had been given to compare
14 it to matched the third party on that ring?

15 A. That's correct. Neither Derrick Grant, Rachel
16 Sottile, Shawn Elkins nor Donald Lynch have those DNA
17 prints of that additional person on Item 72.1, which
18 was State's Exhibit 93. So they were excluded as
19 having that DNA.

20 Q. What might be a possibility of where that third
21 person's DNA may have come from?

22 A. It's difficult to speculate. With these with a
23 ring, it's handled. It's being taken off, put back
24 on. More than one individual ---

25 DERRICK GRANT: Objection, Your Honor.

1 THE COURT: Yes, sir.

2 DERRICK GRANT: Speculation.

3 THE COURT: Lay a foundation, Solicitor.
4 I sustain the objection.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. HOISINGTON:

7 Q. A ring in general -- have you found samples of
8 DNA on rings in the past?

9 A. I don't recall that I've been submitted DNA from
10 a ring. I've been submitted DNA for testing from
11 different objects that people would come in contact
12 with and handle, but I don't remember a ring
13 specifically.

14 Q. The DNA that you're testing for does not always
15 come from blood; is that correct?

16 A. That's correct.

17 Q. So it could come from a number of sources?

18 A. (Affirmative nod), it could come literally from
19 skin cells with reference to a ring. If it's handled
20 or rubbed up against the finger, it's going to pick up
21 skin cells over the life of the ring. As long as it
22 is in a place where those cells are not destroyed,
23 they are going to remain with the object. Whenever
24 we test it, they're going to show up -- possibly as
25 a minor contributor.

1 Q. And the size of that third DNA sample was very
2 small compared to the other two?

3 A. Compared to the other two it was the minor
4 contributor, yes.

5 Q. There were a number of other tests that you ran.
6 If they just didn't result in anything, you put down
7 no DNA or no comparison; right?

8 A. That's correct.

9 Q. Other than the one hair sample that we talked
10 about, did you do any other tests on hair?

11 A. I believe in this case that that was the only
12 hair that I tested. (Upon review), that's correct.

13 Q. Have you had a chance today to look at a couple
14 of samples that were taken as a result of this
15 investigation?

16 A. Yes, I did.

17 Q. I want to show you State's Exhibit 69 and ask you
18 to look at that for a second.

19 A. (Complies). State's Exhibit 69 contains an
20 envelope with hair from the right hand -- and
21 No. 17, No. 18, hair from left hand.

22 Q. If you would, describe the hair that's in the
23 envelope from the right hand.

24 DERRICK GRANT: Objection, Your Honor.

25 THE COURT: Basic of objection?

1 DERRICK GRANT: That's an in-court
2 identification by ---

3 THE COURT: What is the basis of your
4 objection?

5 DERRICK GRANT: Basically he's identify-
6 ing the evidence in court.

7 THE COURT: He is testifying to something
8 that he's examined. Overruled.

9 MR. HOISINGTON: Yes, sir. He has looked
10 at it but he has not done a full examination.

11 THE COURT: I will allow him to look at
12 what is in evidence, Mr. Grant. And I'll be happy to
13 hear from you further, if need be.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. HOISINGTON:

16 Q. You may continue.

17 A. Item, uh, -- it's identified as hair from the
18 right hand or a collection of hair, several hairs.
19 It looks like there would be enough hair to probably
20 do DNA on it in that case. Without looking at it
21 under a microscope -- what you really have to look at
22 is the root. That's the part that contains the DNA.
23 You can six or seven inches of hair shaft and you're
24 not going to get a DNA print from that. You have to
25 use the root, which pulls out a little bit of the

1 flesh when it comes out. Without looking at this with
2 a microscope, I can't ---

3 Q. How long is that hair?

4 A. That hair is probably several inches long, three,
5 four, five inches long.

6 Q. You believe that could be analyzed?

7 A. It could be.

8 Q. But you are not requested to analyze it?

9 A. No, sir.

10 Q. Looking at the other envelope?

11 A. The other envelope contains two small hair frag-
12 ments which do with the naked eye appear to be hair
13 fragments and does not appear to have a root on either
14 one of these.

15 Q. The color, are they any different than the other
16 package?

17 A. I can't tell without looking at it under a
18 microscope.

19 Q. In regard to the samples that were taken from the
20 floor or the seats of the car, did you do any tests on
21 that?

22 A. No, sir.

23 Q. And in your experience, where might hair come
24 from that's found in the car?

25 A. We constantly shed hair all the time. I don't

1 know what the exact rate is, but we're constantly in
2 the process of shedding hair. And typically, that
3 hair that we shed isn't very good for doing DNA typing
4 on because it doesn't have enough root material on it.
5 You pretty much have to pull it out for me to get a
6 print.

7 Q. So that might be a test of last resort?

8 A. Absolutely.

9 MR. HOISINGTON: The State has no further
10 questions. Please answer any questions that Mr. Grant
11 has.

12 THE COURT: Mr. Grant, you may cross-
13 examine.

14 CROSS EXAMINATION

15 BY DERRICK GRANT:

16 Q. Good afternoon, Mr. Lambert.

17 A. Good afternoon.

18 Q. Let's go back to Item 72.1, if you don't mind,
19 sir.

20 A. Okay.

21 Q. You testified that is a swab from a ring?

22 A. That's correct.

23 Q. Is that my ring?

24 A. It was identified to me as "swab from ring",
25 I am not sure who it originated from.

1 Q. That's me.

2 A. Okay.

3 Q. Let's go back to Item 22.

4 A. Okay.

5 Q. I would like to show you -- I've handed you

6 Exhibit 6.

7 A. That's correct.

8 Q. Did you test any hair fragments from that ring,

9 from that swab?

10 A. I just received the swab. I didn't receive the

11 ring. There were no hair fragments on the swab that

12 I noted.

13 Q. Was there a third/unknown blood DNA on that

14 right?

15 A. There was some minor DNA fragments that were from

16 a third/unknown person that was on that ring. The two

17 major prints matched Derrick Grant and Rachel Sottile,

18 mixed together.

19 Q. Let's go back to Item 22.

20 A. Okay.

21 Q. I would like to show you -- excuse me.

22 DERRICK GRANT: Could I see 55 and 53,

23 ma'am.

24 COURT REPORTER: Yes, sir, (tendering).

25 DERRICK GRANT: Thank you.

1 CROSS EXAMINATION CONTINUED

2 BY DERRICK GRANT:

3 Q. Can you show me State's Exhibit 25?

4 A. Item 25?

5 Q. Exhibit 6.

6 A. That's correct.

7 Q. You testified that Item 22 was a broken finger-
8 nail from the victim's jacket; correct?

9 A. That is the way that it was submitted, yes, sir.

10 Q. Can you please tell me what is Item 2 on exhibit
11 that I hand you?

12 A. Item 2? Let's see, I've got Exhibit 6.

13 Q. Item 22.

14 A. Item 22 says, "Broken fingernail with blood
15 (from victim's jacket)."

16 Q. But you testified that you tested a broken
17 fingernail from the victim's jacket. This says broken
18 fingernail with blood. What happened to the blood?

19 A. What we usually do -- when I put out my results
20 -- they don't know whether it is blood or not, it's
21 up to determine whether or not it was. But sometimes
22 they will say 'blood slide from floor' and we just
23 submit that when we put it in our report as "swab from
24 floor". At the point that they submit it, they don't
25 know whether it's human blood or not.

1 Q. But Item 2 says blood, correct?

2 A. Item 22 ---

3 Q. Item 22 says "blood on victim's" -- "broken
4 fingernail with blood from victim's jacket".
5 Correct?

6 A. That's what they logged it in as, yes.

7 Q. But you didn't test for blood?

8 A. There wasn't enough. If there was any blood on
9 that fingernail there wasn't enough to do an analysis
10 on. So we went straight ahead to DNA and it turned
11 out that there wasn't enough to even do the DNA on
12 that fingernail.

13 If I am going to do one of the two testes,
14 serology and DNA, I am going to test for DNA because
15 if I use it up for serology, just to show that it is
16 blood, I've consumed it and taken away any chance that
17 I have to do DNA.

18 In this case, I reported that I wasn't able to
19 say that there was blood because I went straight to
20 DNA.

21 Q. So you did not test blood on the broken finger-
22 nail from the victim's jacket?

23 A. That's correct.

24 Q. Thank you. You testified that Item 39 is unknown
25 hair from the victim's abdomen and was submitted for

- 1 testing; correct?
- 2 A. That's correct.
- 3 Q. Can you please tell me, please state what is the
- 4 description of Item 25?
- 5 A. Item 25 is ---
- 6 Q. On Exhibit -- (pause).
- 7 A. On Exhibit 6?
- 8 Q. Yes, sir.
- 9 A. Item 25 says, "hair from victim's right hand".
- 10 Q. Did they submit 25 to you for testing?
- 11 A. That went to Trace/Analysis, you'll see on the
- 12 right-hand side of the log-in sheet that the
- 13 examinations requested were from Trace. I am not in
- 14 the Trace department. Some times they will do their
- 15 analyses and send those on to us. In this case, I got
- 16 several other DNA results from numerous other items,
- 17 so we didn't do the trace analysis.
- 18 Q. Did this single item come to you for testing?
- 19 A. No, it did not.
- 20 Q. But this single item, Item 22, 25, excuse me, is
- 21 hair from victim's right hand, "numerous hairs from
- 22 victim's right hand".
- 23 A. That's correct.
- 24 Q. So they did submit Item 39 to you, "unknown hairs
- 25 on victim's abdomen"?

1 A. That's correct.

2 Q. I mean, why would they send two different hairs
3 from two different places?

4 A. Later on -- I've got two different reports. The
5 first report was submitted in October of 2003. The
6 second report, I just finished up the testing on
7 February 12th, 2004. There were several other items
8 indicated by the Solicitor's office that they were
9 interested in submitting for testing. One of those
10 was the Item 39, that hair from the abdomen. So I
11 tested that. It was not requested to do the other
12 hair, Items 25 or 26.

13 Q. I wonder why.

14 A. I was just asked to test those items and I
15 performed the tests.

16 Q. Could you please read Item 26 on Exhibit 6?

17 A. Item 26 says, "Hair from the victim's left hand".
18 Those two hair fragments that I just looked at a
19 second ago, we wouldn't have been able to DNA print
20 anyway. They didn't have enough material.

21 Q. Was Item 26, hair from the victim's left hand,
22 submitted to you for testing?

23 A. No.

24 Q. But Item 39, hair from the victim's abdomen, was
25 submitted to you for testing?

1 THE COURT: You have asked that, Mr.
2 Grant. He said that it was. It's in the record.

3 CROSS EXAMINATION CONTINUED

4 BY DERRICK GRANT:

5 Q. Was there any skin under the victim's nails?
6 Tissue?

7 A. In the fingernail scraping, which is my Items 44
8 and 45, Item 44 did not give me any DNA results. Item
9 45 matched Rachel Sottile. That was the only skin
10 under the fingernail clippings.

11 Then the only other fingernail was that broken
12 fingernail from the jacket. It was negative also.

13 So I didn't pick up anybody under the fingernail
14 other than Rachel Sottile.

15 Q. Did you see any skin/tissue on Item 72.1, the
16 swab from my ring?

17 A. (Negative gesture), I just received the swab.
18 We don't examine that microscopically. I just went
19 ahead and tested it for DNA.

20 Q. Item 30.1, you testified as a cutting coming
21 from the victim's pants?

22 A. Yes, sir.

23 Q. Can you say for a fact that that was Derrick
24 Grant's blood on the victim's pants?

25 A. It is a mixture on that particular cutting of

1 Rachel Sottile and Derrick Grant. It is consistent
2 with coming from those two individuals. The
3 probability of somebody contributing to that
4 particular mixture would be one out of every fifteen
5 hundred individuals.

6 Q. One out of every fifteen hundred?

7 A. Yes, sir.

8 Q. Can you say for a fact that that blood on the
9 pants, from the cutting of the pants, was Derrick
10 Grant's blood?

11 A. That was a semen stain on 30.1, and -- no, I can
12 not say for a fact that it did but that's consistent
13 with being Rachel Sottile and Derrick Grant.

14 Q. Thank you. Item 31, 32 is a cutting from the
15 victim's pants.

16 A. 30.2, yes.

17 Q. 30.2, yes. Can you say for a fact that that
18 blood was Derrick Grant's blood?

19 A. That particular item was matched -- well, it gave
20 me a partial print and it matched Rachel Sottile. No,
21 Derrick Grant didn't appear in that particular sample.

22 Q. Item 30.3, blood from the victim's pants.

23 A. That particular sample matched Rachel Sottile.
24 That was a blood stain.

25 Q. Was Derrick Grant's blood on Item 30.3?

1 A. No.

2 Q. Would you please go back to Exhibit 6?

3 A. Okay.

4 Q. Would you describe Item 31 to me, please?

5 A. Item 31 is submitted as a "shoe, black, left
6 (victim's) with blood", and it was submitted for
7 Trace/DNA testing.

8 Q. Item 31 says, "shoe, black, left (victim's) with
9 blood"?

10 A. Yes, sir.

11 Q. Was Item 31 submitted to you for testing, the
12 victim's show with blood on it?

13 A. No, it wasn't. And I don't know for sure whether
14 that went through evidence processing. What happens
15 when they submit an item like that that is a piece of
16 clothing or shoes or something like that, it will go
17 to the evidence processing lab first. First, they
18 will look for any blood and do the presumptive test.
19 If they don't see any blood, then they don't submit
20 anything on to me. So I am not sure whether that
21 sample was negative in evidence processing. I didn't
22 receive anything off of that sample. I didn't do any
23 testing on that.

24 Q. Is Item 31, "show, black, left (victim's) with
25 blood", on the SLED sheet that you just read?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

617 727

1 A. Yes, sir.

2 Q. But it was not tested?

3 A. It wasn't tested by me.

4 Q. Yes, through you?

5 A. Let me look and see if it appears on Janice
6 Bryson's report. (Upon review), it appears on her
7 report. She doesn't indicate receiving any ---

8 MR. HOISINGTON: Objection, Your Honor.

9 THE COURT: Hold on just a second. No
10 need to publish that now. The question was did he
11 test it and he answered 'no'. Move on, Mr. Grant.

12 CROSS EXAMINATION CONTINUED

13 BY DERRICK GRANT:

14 Q. Item 32, "shoe, black, right (victim's) with
15 blood".

16 MR. HOISINGTON: Objection, Your Honor.

17 THE COURT: You have asked about both
18 shoes now.

19 DERRICK GRANT: Oh, I did?

20 THE COURT: Yes, sir.

21 DERRICK GRANT: Okay. Sorry.

22 THE COURT: You just asked him if he
23 tested both sides, so he's answered your question.

24 DERRICK GRANT: Yes, sir.

25 CROSS EXAMINATION RESUMED

1 BY DERRICK GRANT:

2 Q. Item 27 is, "Swab, left, left door outside".

3 A. Yes, sir.

4 Q. You testified that it was my blood?

5 A. That's correct.

6 Q. Item 29, "swab, blood, left door interior
7 handle". You testified ---

8 THE COURT: Mr. Grant, do you want to
9 approach, please?

10 SIDEBAR:

11 THE COURT: Let me read to you Rule 611,
12 and this is what I'm about to
13 start using. 611(a) says
14 that the Court shall exercise
15 reasonable control over the
16 mode and order of interroga-
17 tion of witnesses and in
18 presenting evidence so as to
19 make the interrogation and
20 presentation of evidence
21 effective for the ascertain-
22 ment of the truth and to
23 avoid needless consumption of
24 time. Now, as I understand
25 what your theory has been is

11 DERRICK GRANT: I see, Your Honor. I
12 see.

20 DERRICK GRANT: Yes, sir.

24 DERRICK GRANT: Yes, sir.

25 (SIDEBAR CONCLUDED)

1 THE COURT: Mr. Grant, you may continue.

2 DERRICK GRANT: Excuse the Court, Your
3 Honor?

4 THE COURT: Take your time, Mr. Grant.

5 CROSS EXAMINATION RESUMED

6 BY DERRICK GRANT:

7 Q. Those hairs that the State provided for you to
8 observe, the two fragments, were they hairs from your
9 experience of a black race?

10 A. They didn't appear to be. The clump of hairs did
11 not appear to be. The two fragments, I don't know
12 what it is that you're looking at. I am not a hair
13 expert. The only thing that I do with hair is look at
14 the end of it to see if there is enough root to do DNA
15 on. The shaft and the other part of it are out of my
16 expertise.

17 Q. That was hairs from Rachel's right hand and left
18 hand?

19 A. That's correct.

20 Q. Did it appear to be Caucasian?

21 A. The hairs from the right hand, which was the
22 clump of hair, appeared to be Caucasian.

23 Q. Did you have -- in order to do a complete DNA,
24 exactly what items would you need from a person?

25 A. To do a standard from an individual?

1 Q. To do a comparison analysis?

2 A. What we do is we receive blood from an indivi-
3 dual, or you could do what is called buckle swab where
4 you take a Q-tip and swab their gums. Either of those
5 works fine for a DNA standard.

6 Q. So if you've got blood samples, just blood
7 samples, from an unknown person and you've got unknown
8 blood right here, you would be able to detect that it
9 is unknown blood with just the blood that you have
10 here?

11 A. That's correct. If you've got blood from an
12 individual and you've got blood that you developed
13 from a piece of evidence, you've got plenty to do a
14 DNA typing.

15 Q. Were you submitted hair, head hair, pubic --
16 pubic head hair, pubic hair and saliva from me?

17 A. Probably so. I know that I received saliva. I
18 don't know about the pulled pubic hairs, but they
19 probably collected those. We don't test those. The
20 only thing that they do is look at those for hair
21 comparisons under a microscope in the Trace lab.
22 That's all done in the Trace department. For DNA,
23 I don't test the hair that the take like that.

24 DERRICK GRANT: No further questions
25 at this time.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 THE COURT: Redirect?

2 MR. HOISINGTON: No further questions,
3 Your Honor.

4 THE COURT: Do you wish for Mr. Lambert
5 to be excused?

6 MR. HOISINGTON: Yes, sir.

7 THE COURT: Any objection, Mr. Grant?

8 DERRICK GRANT: Yes, sir.

9 THE COURT: You object?

10 DERRICK GRANT: Yes, sir.

11 THE COURT: All right. Mr. Lambert, I
12 need for you to remain with us. You are still under
13 subpoena.

14 WITNESS: Yes, sir.

15 THE COURT: All right, call your next
16 witness.

17 MR. JENNINGS: I recall Captain Rick Ollic
18 with the Berkeley County Sheriff's Office.

19 THE COURT: Captain Ollic, I would
20 remind you, sir, that you are still under oath in
21 this matter.

22 CAPTAIN OLLIC: Yes, sir.

23 (WITNESS TAKES STAND)

24 RICK OLLIC, being duly
25 reminded that he is sworn to tell the truth, the whole

1 truth and nothing but the truth, testified, as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. JENNINGS:

5 Q. Captain Ollic, you were present when testimony
6 was taken regarding fingerprints that were taken off
7 the Budweiser beer can found at the scene?

8 A. I was.

9 Q. And were matched to any Anthony Mack?

10 A. Yes.

11 Q. As part of your investigation, did you locate
12 Anthony Mack?

13 A. Yes, we did. My investigators went out and
14 located him. He's a 41-year-old black male who
15 lives in the general area of Lemon Lane where the
16 crime scene was.

17 Q. And does he have friends in the Lemon Lane area?

18 A. Yes, he acquaints that area quite a bit, he has
19 friends in that area, and he discarded a beer can out
20 there which was in the proximity of the crime scene.

21 Q. Based on your investigation, did he have any
22 involvement with this situation?

23 A. He did not.

24 MR. JENNINGS: That's all that I have.

25 Please answer any questions that Mr. Grant has.

1 THE COURT: You may cross examine.

2 CROSS EXAMINATION

3 BY DERRICK GRANT:

4 Q. Hello, Captain Ollic.

5 A. Good afternoon, sir.

6 Q. You testified that there was not a third suspect
7 or individual in this case?

8 A. That's correct.

9 DERRICK GRANT: No further questions.

10 THE COURT: Redirect?

11 MR. JENNINGS: No, sir.

12 THE COURT: You may come down.

13 (WITNESS STEPS DOWN)

14 THE COURT: Call your next witness.

15 MR. JENNINGS: At this time, Your
16 Honor, the State rests.

17 THE COURT: All right. Ladies and
18 Gentlemen, at this point there are some matters of
19 law that I must take up out of your presence. I ask
20 you to go to your jury room. Do not begin your
21 deliberations or discuss this case. We will be with
22 you -- it will probably take me fifteen or twenty
23 minutes, maybe even longer.

24 (JURY OUT @ 3:30 P.M.)

25 THE COURT: Any Motions from the State?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

735
625

1 MR. JENNINGS: No, sir.
2 THE COURT: Mr. Grant?
3 DERRICK GRANT: May I -- (sidebar with
4 Ms. Kennedy).
5 THE COURT: Yes, sir, take you time.
6 DERRICK GRANT: No Motions, Your Honor.
7 THE COURT: Don't you want to make a
8 Motion for a directed verdict, Mr. Grant?
9 DERRICK GRANT: No, I do not.
10 THE COURT: Are you sure? I will ask you
11 again, you do not wish to make a Motion for a directed
12 verdict?
13 DERRICK GRANT: No, Your Honor.
14 THE COURT: Very well. And you've had a
15 chance to talk with your lawyer -- your assistant?
16 DERRICK GRANT: One more second, Your
17 Honor, (sidebar with Ms. Kennedy). Your Honor?
18 THE COURT: Yes, sir?
19 DERRICK GRANT: No, Your Honor.
20 THE COURT: Very well. Thank you. All
21 right, Mr. Grant, you have indicated -- how many of
22 the State's witnesses do we have retained? Patty, do
23 you have a list of those? I know Mr. Lambert was one.
24 Do you intend to recall Mr. Lambert?
25 DERRICK GRANT: Yes, sir.

1 THE COURT: For what reason, sir?

2 DERRICK GRANT: Your Honor, I don't
3 need him.

4 THE COURT: Sir?

5 DERRICK GRANT: I said you can release
6 him.

7 THE COURT: I can release Mr. Lambert?

8 DERRICK GRANT: Yes, Your Honor.

9 THE COURT: You're sure?

10 DERRICK GRANT: Yes, Your Honor.

11 THE COURT: Do you want a moment? We
12 can take a break and let you'all talk, or are you
13 comfortable with that?

14 DERRICK GRANT: I'm comfortable.

15 THE COURT: Very well. Please tell Mr.
16 Lambert that he is free to leave. Mr. Grant, do you
17 want a moment to talk with Ms. Kennedy about -- we
18 are now at the point where I need to talk to you about
19 whether or not you plan to testify. Do you need a
20 moment to talk with your lawyer about that issue?

21 DERRICK GRANT: No, Your Honor.

22 THE COURT: You are prepared to answer
23 the questions?

24 DERRICK GRANT: Yes, Your Honor.

25 THE COURT: Have you had an opportunity

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

627 737

1 to think about that?

2 DERRICK GRANT: Yes, sir, Your Honor.

3 THE COURT: And what is your decision?

4 DERRICK GRANT: I am not going to
5 testify. I plead the Fifth.

6 THE COURT: You understand that it is
7 your right, of course, not to take the stand?

8 DERRICK GRANT: Yes, sir.

9 THE COURT: And, of course, I will
10 instruct the jury that they cannot use that against
11 you in any fashion. Do you understand that?

12 DERRICK GRANT: Yes, Your Honor.

13 THE COURT: I will further tell them
14 that if they do that they have violated their oath
15 and the commitment that they have made to you and
16 to the State.

17 But, of course, it is also your right to
18 testify. You have a right to take the stand. Do you
19 understand that?

20 DERRICK GRANT: Yes, Your Honor.

21 THE COURT: Of course, if you take the
22 stand you are subject to cross-examination and you
23 understand that, as well?

24 DERRICK GRANT: Yes, sir.

25 THE COURT: Are you under the influence

1 of any alcohol or medication?

2 MR. JENNINGS: No, Your Honor.

3 THE COURT: Have you taken any drugs or
4 any medication in the last twenty-four hours?

5 DERRICK GRANT: No, Your Honor.

6 THE COURT: Have you had time to think
7 about this? I know that you've been prepared and
8 obviously have spent a great deal of time in preparing
9 this case to represent yourself. But have you taken
10 time to step back and just think about whether you
11 want to testify or not?

12 DERRICK GRANT: Yes, Your Honor.

13 THE COURT: And you are very comfortable
14 with your decision?

15 DERRICK GRANT: Yes, Your Honor.

16 THE COURT: Very well, thank you very
17 much.

18 DERRICK GRANT: Thank you.

19 THE COURT: Let the record reflect that
20 Mr. Grant has indicated it is his desire not to
21 testify in this matter. I find from my conversations
22 with Mr. Grant that he has made this decision freely,
23 voluntarily, knowingly and intelligently.

24 Mr. Grant, unless I hear from you further
25 -- please understand that this is a preliminary

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

739
629

1 decision. If at any time between now and when you
2 tell that the defense rests you should wish to change
3 your mind, just tell me that we need to talk about
4 your right to testify because you want to talk about
5 that further. But if I don't hear from you, I will
6 assume that it is still your decision not to testify.
7 Do you understand?

8 DERRICK GRANT: I understand, Your
9 Honor.

10 THE COURT: Is that agreeable with you?

11 DERRICK GRANT: Yes, Your Honor.

12 THE COURT: All right, are you prepared
13 to call your first witness, Mr. Grant?

14 DERRICK GRANT: No, Your Honor.

15 THE COURT: You're not?

16 DERRICK GRANT: No, sir.

17 THE COURT: How long do you need?

18 DERRICK GRANT: About thirty minutes?

19 THE COURT: How about seeing what you can
20 do in about twenty?

21 DERRICK GRANT: Yes, Your Honor.

22 THE COURT: Thank you.

23 MR. JENNINGS: Your Honor, I would
24 just renew what we discussed earlier before because
25 the majority of his witnesses are third-party guilt

1 issue. I would ask that those witnesses be questioned
2 outside the presence of the jury.

3 THE COURT: What I would like to do is
4 rather than keep the jury -- you understand, you've
5 had an opportunity to read about third party guilt?

6 DERRICK GRANT: Your Honor, most of the
7 witnesses I won't even recall.

8 THE COURT: All right. Okay. Thank
9 you, sir. We will be at-ease for about twenty
10 minutes.

11 (BRIEF RECESS 3:45 - 4:10 P.M.)

12 (DEFENDANT PRESENT)

13 THE COURT: Before we start calling
14 witnesses, I need to share with you something.
15 There's a Motion that has been filed by the State
16 concerning third-party guilt. I am sure that you
17 have probably read these cases cited by the Solicitor.
18 As far as I know, this is the law. If you have any
19 law that you wish for me to read that is not
20 consistent with this, I will be happy to do so.

21 Clearly by the result of a number of cases,
22 and I have checked several, it's the law in this State
23 that the evidence offered by the accused during the
24 commission of a crime by another must be limited to
25 such facts as are inconsistent with the accused's own

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 guilt and to such facts as raise a reasonable
2 inference or presumption as to his innocence.
3 Evidence which can have no other effect than to cast
4 a bare suspicion upon another or raise a conjectural
5 inference as to the commission of a crime by another
6 is not admissible.

7 Let me state that again. It doesn't say
8 that he might have, it says that it's not admissible.

9 Then it goes on to say that before such
10 testimony can be received there must such proof of
11 connection with it, such a trait or facts or
12 circumstances that tend clearly to point out such
13 other person(s) as the guilty party.

14 I say that to you to say that in calling
15 persons to -- I don't know and I don't want you to
16 tell me, and I am not asking you to do that, because
17 you are entitled to present these persons.

18 But just understand that before we have
19 testimony that simply says, and I don't know what this
20 parties will say -- whether you were friends with her
21 or whether you had an argument with her, with Miss
22 Sottile, I am going to have to have some evidence that
23 shows that somebody else is the perpetrator. And it
24 has to be more than a mere suspicion.

25 For instance, the theory that you have

1 suggested through your cross-examination of witnesses,
2 there is going to have to be some testimony to
3 establish that. Okay?

4 DERRICK GRANT: Yes, sir, Your Honor.

5 THE COURT: Okay. Are we ready to
6 proceed? Are you ready for the jury to return?

7 DERRICK GRANT: Your Honor, I have
8 added ---

9 THE COURT: You don't have to tell me.
10 Just call them when you need them. I just wanted to
11 go over that with you again because I would anticipate
12 that -- the Solicitor has filed his Motion. If the
13 testimony is nothing more than conjecture, I assume
14 that there is going to be an objection. And so you
15 need to be prepared to argue why it is not just simply
16 conjecture or suspicion.

17 DERRICK GRANT: Your Honor, the question
18 that I was going to ask you is that on the list of
19 potential witnesses, I added some names to it.

20 THE COURT: Mr. Grant, you don't have to
21 -- as I know you, the list of witnesses, the people
22 that you have subpoenaed, that means nothing to me. I
23 am only concerned with people who come up and put
24 their hand on the Bible and present testimony. The
25 record in this case has nothing to do with your list

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

743
633

1 or the people that have subpoenas, insofar as for the
2 jury's consideration. Okay?

3 DERRICK GRANT: Your Honor, can I with-
4 draw my list back from you?

5 THE COURT: You don't have to -- just
6 because you have given me a list, you're not bound by
7 that. It's the same thing as I told you about
8 subpoenaing a witness and you don't call the witness,
9 that's okay. We make those decisions every day,
10 people do it all the time.

11 DERRICK GRANT: Thank you, Your Honor.

12 THE COURT: Okay. Thank you, sir. All
13 right, are you ready to call your first witness?

14 DERRICK GRANT: Yes, Your Honor.

15 THE COURT: Okay, let's bring in the
16 jury.

17 (JURY IN @ 4:20 P.M.)

18 THE COURT: Thank you, Ladies and Gentle-
19 men. We are ready to continue now. We appreciate
20 your patience. Mr. Grant, you may call your first
21 witness.

22 DERRICK GRANT: Your Honor, I would
23 like to call Carrie Bennett.

24 (WITNESS TAKES STAND)

25 CARRIE BENNETT, being

1 duly sworn to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY DERRICK GRANT:

5 Q. How are you doing, Mr. Bennett?

6 A. Very well. You?

7 Q. Did you give a statement pertaining to this case,
8 on December 30th, 2002?

9 A. Huh?

10 Q. Did you give a statement pertaining to this case
11 in 2002, to the Berkeley County Sheriff's Office?

12 A. What happened?

13 Q. Did you give a statement to ---

14 A. A statement? I ain't give nobody a statement.

15 Q. Is your name Miss Carrie G. Bennett?

16 A. Um-humm, (affirmative nod).

17 Q. Are you 78 years old?

18 A. 79.

19 Q. Were you 78 years old on ---

20 A. 79.

21 Q. --- December 30th, 2002?

22 A. 79. I'm 79 now.

23 Q. Is your address [REDACTED] Huger, South
24 Carolina?

25 A. Um-humm.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Q. Is your home phone number [REDACTED] 9?

2 A. Um-humm.

3 Q. Your date of birth is [REDACTED] ---

4 THE COURT: Why don't you just show her
5 the statement and let her read it? Maybe that will
6 refresh her recollection. Don't read from the
7 statement outloud, Ms. Bennett. Just look at it.

8 WITNESS: If I can read it. My eyes
9 has got real bad. (Upon review), yes, the little
10 boy was cleaning the house for me. The little boy
11 was cleaning the yard.

12 THE COURT: Ma'am, just hold on a second.
13 Wait until he asks a question.

14 DERRICK GRANT: (Tenders document to be
15 marked as exhibit).

16 COURT REPORTER: Defendant's Exhibit 11,
17 for identification.

18 THE COURT: Defendant's 11, for ID only.

19 DIRECT EXAMINATION CONTINUED

20 BY DERRICK GRANT:

21 Q. Did a detective or detectives enter into your
22 garage on December 30th, 2002?

23 A. I guess, the same time that they arrested you.
24 That's the only time.

25 Q. Did a detective or detectives have in their

1 hand(s) a firearm?

2 A. A what?

3 Q. A gun?

4 A. They had a gun!

5 Q. Did they have a gun in their hand(s)?

6 A. I didn't see it.

7 Q. You didn't see a gun?

8 A. (Negative gesture).

9 DERRICK GRANT: Your Honor, I rest.

10 No further questions.

11 THE COURT: All right. Any questions,
12 Solicitor?

13 MR. JENNINGS: No, sir.

14 THE COURT: You may come down, Ms.
15 Bennett.

16 (WITNESS STEPS DOWN)

17 THE COURT: Do you want Ms. Bennett to
18 be excused?

19 DERRICK GRANT: Yes, Your Honor.

20 THE COURT: Any objection?

21 MR. JENNINGS: No objection.

22 THE COURT: You may call your next
23 witness.

24 DERRICK GRANT: I would like to call
25 Toni M. Montomy (phonetic) M-o-n-t-y-o-m-e-n-y.

1 MR. JENNINGS: Your Honor, Toni Montgomery,
2 I don't believe that he served her. She is an
3 employee with SLED. I spoke with her last week and
4 she had not received a subpoena from him.

5 DERRICK GRANT: Your Honor, I've got a
6 copy of the subpoena right here.

7 THE COURT: Hold on a second. We need
8 to take that up -- call your next witness, please.

9 DERRICK GRANT: Your Honor, ---

10 THE COURT: We can take that up out of
11 the presence of the jury.

12 DERRICK GRANT: Excuse me. Okay?
13 Your Honor, Toni M. Montgomery is the only witness
14 that I have.

15 THE COURT: She's not present. Call
16 your next witness. I will take that up with you in
17 just a moment.

18 DERRICK GRANT: I don't have no more
19 witnesses.

20 THE COURT: That's all your witnesses?

21 DERRICK GRANT: Yes, sir.

22 THE COURT: Are you ready to rest your
23 case?

24 DERRICK GRANT: Yes, Your Honor.

25 THE COURT: Ladies and Gentlemen, there's

1 a matter of law that I need to take up out of your
2 presence. Please go to your jury room. Please do
3 not begin your deliberations. We will be with you
4 shortly.

5 (JURY OUT @ 4:35 P.M.)

6 THE COURT: Mr. Grant, you have indicated
7 that you have subpoenaed Ms. Montgomery. Do you have
8 your subpoena?

9 DERRICK GRANT: Yes, Your Honor.

10 THE COURT: Is there a Certificate of
11 Service?

12 DERRICK GRANT: Yes, Your Honor.

13 THE COURT: May I see it?

14 DERRICK GRANT: (Tenders).

15 THE COURT: (Upon review), does Toni
16 Montgomery work for the Sheriff's department?

17 MR. JENNINGS: No, sir, she works for
18 SLED. It was served at the wrong location.

19 THE COURT: The address is Toni
20 Montgomery at the Berkeley County Sheriff's Office.

21 DERRICK GRANT: I was going by what the
22 subpoena said.

23 THE COURT: Then you have Ronald Brown
24 who is the process server. I will have to get with
25 Ronald Brown.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

639

1 MR. JENNINGS: Your Honor, we are willing to
2 stipulate that when they took his blood on the 31st
3 that there were no legal drugs or alcohol in it?

4 THE COURT: Is that the purpose of her
5 testimony?

6 DERRICK GRANT: To state it for the
7 record, yes, that would be her testimony.

8 THE COURT: Is that all that she would
9 testify to?

10 DERRICK GRANT: That's all that she will
11 testify to.

12 THE COURT: All right, then you can
13 stipulate that. That takes care of it.

14 DERRICK GRANT: Okay. Your Honor, I did
15 say that I didn't want to call any other witnesses but
16 I do want to call a witness.

17 THE COURT: All right. What's the
18 stipulation, so that I can tell the jury? That when
19 he was arrested that he didn't have ---

20 MR. JENNINGS: That when his blood was
21 taken on the first occasion, on the 31st, that there
22 was no illegal drugs or alcohol present in his blood.

23 THE COURT: All right, we will bring in
24 the jury. Who is the next witness that you want to
25 call?

1 DERRICK GRANT: Heather Browder.

2 MR. JENNINGS: I would ask him to
3 proffer Mrs. Browder's testimony. He had the
4 opportunity to cross-examine her.

5 THE COURT: What is the purpose of Mrs.
6 Browder's testimony? Why is it necessary to recall
7 her?

8 DERRICK GRANT: The purpose of Mrs.
9 Browder's statement is to confirm that she did see
10 the victim on December 26th, 2002, wearing blue jeans.

11 THE COURT: She has already testified
12 to that.

13 DERRICK GRANT: I am just trying to get
14 her statement in evidence.

15 MR. JENNINGS: That's bolstering.

16 THE COURT: Mr. Grant, you can't do that
17 under the Rules -- especially if there is an objection
18 and the Solicitor says that he is going to object.
19 She has already testified that she saw her. There's
20 no challenge for that, so you don't need a statement
21 to verify that. She's already testified to that.

22 But if you want to proffer that testimony,
23 we can bring her in and let you proffer it.

24 DERRICK GRANT: Yes, Your Honor.

25 THE COURT: You would like to proffer

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 the evidence?

2 DERRICK GRANT: What's ---

3 THE COURT: Proffer means that you call
4 her up outside of the presence of the jury and you ask
5 the questions that you want to ask her.

6 DERRICK GRANT: Yes, Your Honor.

7 THE COURT: 'Yes', you want to proffer
8 her?

9 DERRICK GRANT: Will the jury know?
10 Will it still be stated on the record?

11 THE COURT: She has already testified to
12 that. Again, Mr. Grant, keep in mind that a witness
13 doesn't have to keep restating something. Once it is
14 stated one time, it's a part of the record of this
15 case. It's for the jury's consideration whether they
16 believe it or not. You're entitled to argue that
17 because she has already testified to it. That's why
18 you want something in evidence, so that you can argue
19 that to the jury as a defense. One of the reasons.

20 You may consider it to be an important fact,
21 and I certainly understand the significance of that,
22 that she was seen in blue jeans and later found
23 wearing white pants. So, clearly, I understand that
24 inconsistency. But she's already testified to it.

25 If you're going to call her to testify

1 again, it is really improper and you're not going to
2 be able -- I mean, I haven't heard all the testimony
3 on it. If you want to proffer it and see if you can
4 get your statement into evidence, I will be happy for
5 you to do so. It's up to you.

6 DERRICK GRANT: Never mind.

7 THE COURT: Do you want to proffer it?

8 DERRICK GRANT: No, not proffer. Your
9 Honor, that's good enough right there.

10 THE COURT: No. All I have done is I've
11 just told you that before recalling the witness that
12 if all you want her to do is to restate what she has
13 already stated, you don't have to do that.

14 DERRICK GRANT: Okay, Your Honor. I
15 would like to have a second, please.

16 THE COURT: Sure.

17 DERRICK GRANT: (Sidebar with Ms.
18 Kennedy), okay. Your Honor, I would like to call one
19 more witness.

20 THE COURT: Yes, sir. Who is it?

21 DERRICK GRANT: Jason W. Watson.

22 THE COURT: All right, let's bring in the
23 jury, please.

24 (JURY IN @ 4:50 P.M.)

25 THE COURT: Thank you, Ladies and

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Gentlemen. During the recess, the parties stipulated
2 -- and a stipulation is simply a method of presenting
3 testimony for your consideration. It is stipulated
4 that the witness Toni Montgomery, if she were present,
5 would testify that the blood sample analyzed -- taken
6 from the Defendant on December 31st, 2020, and then
7 analyzed, that analysis was negative as to alcohol and
8 any illegal drugs. You will consider that now with
9 all the other evidence in this case and give it such
10 weight as you believe that it would be entitled.
11 Thank you.

12 Mr. Grant, you may call your next witness.

13 DERRICK GRANT: Your Honor, I would like
14 to call Jason W. Watson to the stand.

15 THE COURT: All right, sir.

16 (WITNESS TAKES STAND)

17 JASON W. WATSON,
18 being duly sworn to tell the truth, the whole truth
19 and nothing but the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY DERRICK GRANT:

22 Q. How are you, Mr. Watson?

23 A. Fine.

24 Q. Would you state your place of employment?

25 A. My place of employment?

1 Q. Would you state the name of the employment,
2 where you worked at in December 2002?

3 A. Atlanta Bread Company.

4 Q. Do you know a Miss Rachel Satell (Sotille)?

5 A. Rachel Sottile?

6 Q. Sottile?

7 A. I do.

8 Q. Did she work at the Atlantic Bread Company?

9 A. She did.

10 Q. Did Rachel Satell (Sotille) request time off at
11 the Atlanta Bread Company in 2002?

12 A. At any given time during the fiscal year? Or is
13 there a specific timeframe?

14 Q. That would be my next question.

15 A. Okay. I'm sure ---

16 Q. When -- (pause) -- did Rachel Satell (Sotille)
17 request time off at the Atlanta Bread Company in
18 December 2002?

19 A. I think she did towards the end of December, yes.
20 The specific dates, I don't have those for you.

21 Q. Approximately how long was it before her
22 unfortunate death that she requested the time off?

23 A. I'd have to go back and look. I'm not sure.
24 You're asking me how long it was that she requested
25 off?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

755
645

1 Q. Before?

2 A. I don't know. I'm not sure.

3 Q. Can I show you a statement?

4 A. (No response).

5 Q. Is that your name on that statement?

6 A. Yes, it is.

7 Q. Is that your signature on that statement?

8 A. Yes, it is.

9 Q. Do you recognize that signature?

10 A. I do.

11 Q. Thank you. Do you feel -- do you want to read

12 over that statement?

13 A. If you're going to be asking me questions about

14 the statement, I probably need to.

15 Q. If you would.

16 A. Okay, if you'll give me just a moment.

17 Q. Take your time.

18 A. (Upon review), okay.

19 DERRICK GRANT: Thank you.

20 THE COURT: Have it marked, please.

21 Exhibit 11?

22 COURT REPORTER: Defendant's Exhibit 12.

23 DERRICK GRANT: Your Honor, can I

24 place it into evidence?

25 MR. JENNINGS: Objection, Your Honor.

1 THE COURT: Sustained. You can ask him
2 questions relative to it, Mr. Grant.

3 DIRECT EXAMINATION CONTINUED

4 BY DERRICK GRANT:

5 Q. The question was, did Rachel Satell (Sotille)
6 ask for or request for time off in December?

7 A. Yes.

8 Q. In December 2002?

9 A. She requested time off in December. I'd have to
10 look at what date through what date. I'd have to go
11 back and look in my records. According to that
12 statement, it started on the 28th but that didn't have
13 a finishing date; according to the report that I just
14 read.

15 Q. She requested time off ---

16 A. --- starting the 28th of December.

17 Q. December 2002?

18 A. Correct.

19 Q. Did anyone come in ---

20 MR. JENNINGS: Objection, relevancy and
21 our prior Motion that we filed.

22 THE COURT: I haven't heard the question
23 yet. He said "Did anyone come in", and I don't know
24 what he is going to ---

25 MR. JENNINGS: May we approach?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 THE COURT: Approach.

2 SIDEBAR:

3 MR. JENNINGS: That is improper before the
4 jury. Once he asks the
5 question did anybody come in
6 that that ---

7 DERRICK GRANT: Your Honor, he doesn't
8 know what I am going to
9 ask.

10 MR. JENNINGS: I would ask that we do this
11 outside the presence of the
12 jury.

13 THE COURT: I am not going to do that
14 outside of the jury. I am --
15 Mr. Grant, you understand and
16 if you think that you're on
17 the borderline of that then
18 -- but I will tell you now
19 that you need to proffer
20 that. If you're comfortable
21 that you're not going to
22 violate what I've indicated
23 to you about thirty-party
24 guilt, then you can ask the
25 question.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 DERRICK GRANT: Well, Your Honor, ---

2 THE COURT: Okay.

3 (SIDEBAR CONCLUDED)

4 THE COURT: Okay. You may continue, Mr.
5 Grant.

6 DERRICK GRANT: Thank you, Your Honor.

7 DIRECT EXAMINATION RESUMED

8 BY DERRICK GRANT:

9 Q. Did anyone come into the Atlanta Bread Company
10 and call the victim, Rachel Satell (Sotille), the
11 "B" word?

12 MR. JENNINGS: Objection, Your Honor.

13 THE COURT: Calls for hearsay and has no
14 relevancy at this point. Sustained.

15 DIRECT EXAMINATION CONTINUED

16 BY DERRICK GRANT:

17 Q. Did a white male come onto the job in December --
18 in December 2002 -- did a white male enter into the
19 Atlanta Bread Company with an attitude?

20 MR. JENNINGS: Objection. He is
21 deliberately asking the same question.

22 THE COURT: Solicitor, don't argue
23 before the jury. Restate your question. Sustained.

24 DERRICK GRANT: I can't get it out,
25 Your Honor.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 THE COURT: The objection is sustained.

2 It is irrelevant.

3 DERRICK GRANT: No further questions,

4 Your Honor.

5 THE COURT: Any questions?

6 MR. JENNINGS: No, sir.

7 THE COURT: You may come down.

8 (WITNESS STEPS DOWN)

9 THE COURT: Do you want Mr. Watson to be
10 excused?

11 DERRICK GRANT: No objection, Your
12 Honor.

13 THE COURT: Any objection?

14 MR. JENNINGS: No, sir.

15 THE COURT: Mr. Watson, you are free to
16 leave.

17 DERRICK GRANT: Your Honor, can we
18 proffer?

19 THE COURT: Hold that for just a second.
20 Do you have any other witnesses?

21 DERRICK GRANT: I might have a couple
22 more, Your Honor.

23 THE COURT: Mr. Watson, please be
24 patient. We will be with you momentarily. Mr.
25 Grant, call your next witness.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 DERRICK GRANT: Your Honor, I would like
2 to call Greg Mussey to the stand -- M-u-s-s-e-y.

3 BAILIFF: No response, Your Honor.

4 THE COURT: No response?

5 BAILIFF: No, sir.

6 THE COURT: Do you have a subpoena, Mr.
7 Grant?

8 DERRICK GRANT: Yes, Your Honor.

9 THE COURT: All right, Ladies and
10 Gentlemen, I need for you to go to your jury room.
11 Do not begin your deliberations. Don't discuss the
12 case. We will be with you in just a few minutes.

13 (JURY OUT @ 5:10 P.M.)

14 (WITNESS TAKES STAND)

15 THE COURT: May I see your subpoena?

16 DERRICK GRANT: Yes, sir.

17 THE COURT: According to the affidavit
18 of service on the back of the subpoena it says "Non-
19 service", no service.

20 DERRICK GRANT: Can I see that, Your
21 Honor?

22 THE COURT: Sure. (Tenders).

23 DERRICK GRANT: I don't see ---

24 THE COURT: What is it that you want to
25 address. Mr. Ott has signed it and certified that he

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 did serve Mr. Mussey.

2 DERRICK GRANT: But it has "serve on"
3 and it's got his name right there.

4 THE COURT: And under "manner of
5 service" it says "nonservice". That's what he is
6 saying. If you want to bring Mr. Ott in to say that
7 he served it, that this is in error, you can try to do
8 that. The form that he has filed out and signed says
9 "Nonservice".

10 The last one that I saw, "in person" was
11 written in there as the means of service; which
12 indicates service. I can't attest to all of them but
13 I've seen two of the ones that you've handed me. This
14 one clearly states "nonservice". You can keep the
15 original in your file. I am going to make a copy of
16 it and mark it as Court's Exhibit 2 in this trial.

17 (SO ENTERED AS COURT'S EXHIBIT 2)

18 THE COURT: Is there anything else that
19 you want to state on the record about Mr. Mussey? If
20 there's nothing further, let's get Mr. Watson in so
21 that we can make the proffer.

22 DERRICK GRANT: I really need him
23 subpoenaed, Your Honor. I really need him here.

24 THE COURT: Sir, I ---

25 DERRICK GRANT: No, Your Honor. Thank

1 you.

2 THE COURT: This is nothing else that
3 you want to say to me about the subpoena showing
4 nonservice? You have nothing to contradict that,
5 do you?

6 DERRICK GRANT: No, Your Honor.

7 THE COURT: Very well. Bring Mr. Watson
8 back.

9 (WITNESS TAKES STAND)

10 THE COURT: You can go ahead and proceed
11 with your proffer of a statement, Mr. Grant.

12 DERRICK GRANT: Thank you.

13 JASON WATSON, being
14 duly reminded that he was sworn to tell the truth,
15 the whole truth and nothing but the truth, testified,
16 as follows:

17 DIRECT EXAMINATION

18 BY DERRICK GRANT:

19 Q. How are you doing again, Mr. Watson?

20 A. (No verbal response).

21 Q. Did a guy come ---

22 THE COURT: Mr. Grant, all you are doing
23 for this proffer now -- we don't go back through it.
24 All you're doing is asking him about the statement
25 that you wanted to introduce. That's all that you are

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 doing. We are not asking those same questions again.

2 The only thing a proffer is for is to deal
3 specifically with that statement and its introduction.
4 That's all that we are doing.

5 DERRICK GRANT: Thank you. So can I ask
6 him any way, you're saying?

7 THE COURT: All you're doing is asking
8 questions. Under 611(a), I am going to ask you to
9 focus strictly on the statement. You don't need to
10 ask questions about 'did someone come in', because
11 that doesn't have anything to do with his statement.

12 DERRICK GRANT: Yes, it does, Your
13 Honor.

14 THE COURT: No, sir, it doesn't. All
15 you're doing in introducing the statement. That's
16 the sole purpose of the proffer. He's already
17 identified the statement, so go ahead and ask your
18 questions about it and move for its introduction.

19 DERRICK GRANT: The question that I
20 would like to ask him was pertaining to the statement.

21 THE COURT: The statement, you've moving
22 for the introduction of the statement. That's what
23 you said that you wanted to do.

24 DERRICK GRANT: Yes, Your Honor.

25 THE COURT: Well, that's all that we are

1 doing here. You had him on the stand to ask him any
2 questions that you wanted to. You finished your
3 examination. So now all we are doing is proffering
4 the statement. You've basically done it, you just
5 need to go through the process to have it introduced.

6 DERRICK GRANT: Excuse me, Your Honor,
7 (sidebar with Ms. Kennedy).

8 DIRECT EXAMINATION RESUMED

9 BY MR. GRANT:

10 Q. Do you recognize this statement?

11 A. Yes.

12 Q. Is that your signature to the bottom of that
13 statement?

14 A. It is.

15 Q. Is that your statement?

16 A. It is.

17 DERRICK GRANT: All right. Your Honor,
18 I would like to place this into evidence.

19 THE COURT: Any objection?

20 MR. JENNINGS: Yes, sir, I would renew
21 our objection.

22 THE COURT: Basis of the objection?

23 MR. JENNINGS: Relevancy, contains
24 hearsay statements, contains evidence of third-party
25 guilt barred in our previously filed Motion, and since

1 he has testified the written statement would be simply
2 bolstering of his testimony.

3 THE COURT: All right. Can you tell me,
4 Mr. Grant, has he contradicted anything in that state-
5 ment or the testimony, by the questions that have been
6 permitted?

7 DERRICK GRANT: No, Your Honor.

8 THE COURT: Okay. Then the Court would
9 find that the witness was available for examination.
10 The Court asked, in fact instructed, Mr. Grant if he
11 had any relevant questions pertinent to that statement
12 -- there were some questions that you were trying to
13 ask, for which the Court sustained an objection for,
14 and of course the record speaks to that. The Court
15 would find then that the other portions of the
16 statement would be cumulative under 403. It further-
17 more contains matters which -- may I see the
18 statement?

19 DERRICK GRANT: (Tenders).

20 THE COURT: Thank you very much.
21 (Upon review), obviously it contains hearsay as well
22 from the deceased, Rachel Sottile.

23 There is also testimony contained in the
24 statement concerning what appears to be offered for
25 third-party guilty, which does not meet the standards

1 stated to Mr. Grant prior to the commencement of this
2 case.

3 Therefore the Court, for all of those
4 reasons, as well as it would provide testimony from
5 a witness who really -- it's not in the form of sworn
6 testimony at all. It's just a statement. It is
7 bolstering of that witness' testimony.

8 For those reasons, the Court sustains the
9 objection to Defendant's Exhibit 12 and, now
10 proffered, pursuant to the Rules it is preserved.

11 That's the only proffer that you have for
12 this witness, Mr. Grant?

13 DERRICK GRANT: Yes, Your Honor.

14 THE COURT: Very good. Mr. Watson, you
15 may come down.

16 (WITNESS STEPS DOWN)

17 THE COURT: You may now be excused, sir.
18 Do you have any additional witnesses, Mr. Grant?

19 DERRICK GRANT: Yes, Your Honor.

20 THE COURT: Who?

21 DERRICK GRANT: I need a minute.

22 THE COURT: All right. Mr. Grant, I am
23 going to do this for you. I am going to take a recess
24 until tomorrow. I want your case to move just like
25 the State's case. When you finish a witness and I

1 say, 'Mr. Grant, call your next witness', you need to
2 have them come forward, you need to have your
3 questions ready, you need to be ready to go. Okay?

4 DERRICK GRANT: Yes, sir, Your Honor.

5 THE COURT: So you have your homework
6 in line for tonight.

7 DERRICK GRANT: Thank you, Your Honor.

8 THE COURT: All right, bring in the
9 jury, please.

10 (JURY IN @ 4:49 P.M.)

11 THE COURT: Thank you, Ladies and
12 Gentlemen. I appreciate your patience. There are a
13 few matters that we need to deal with and I noticed
14 the hour and felt that we might as well excuse you for
15 the rest of the day while we complete those matters.

16 Please understand that during this recess
17 that it would be inappropriate for you to begin your
18 deliberations, individually or collectively.

19 Again, I would ask that you not talk with
20 anyone that may be at home about this case. Further-
21 more, I would instruct you to please not read any
22 newspapers articles about this case or watch any
23 television about this case.

24 Have a good evening and I look forward to
25 seeing you at 9:30 tomorrow morning. Thank you very

1 much.

2 (JURY DISMISSED @ 4:51 P.M.)

3 THE COURT: All right. Mr. Grant, what
4 I am going to ask you to do also -- I know that you've
5 talked with Ms. Kennedy. Ms. Kennedy is your legal
6 consultant. You may not fully understand the law
7 concerning third-party guilt but -- but rather than
8 to have all these witnesses who are waiting now,
9 subpoenaed by you, I want any witnesses who are
10 nothing more than third-party guilt, potential third-
11 party guilt witnesses, I want those witnesses present
12 at 9:00 in the morning. You can proffer their
13 testimony, if you wish. We are going to do them one
14 by one. You've already seen today that the Court is
15 not going to permit just innuendo or suggestive --
16 there has to be something there. Ms. Kennedy can tell
17 you that you have to have some evidence that basically
18 says that you're innocent. It has to relate to that.

19 Thus far, the evidence does not relate --
20 does not suggest that. So there has to be something
21 for me to connect the chain of circumstances that
22 point to another person that would say that you are
23 not the guilty party.

24 You can't put in, 'Well, we had a fight.'
25 Or, 'we potentially had a fight', without that other

1 evidence. Okay?

2 DERRICK GRANT: Yes, Your Honor.

3 THE COURT: So I want you to do that,
4 because I don't want to hold these people another day,
5 having been subpoenaed, and then not be used. That's
6 not fair to them, it's not to the State, it's not fair
7 to you. Okay?

8 DERRICK GRANT: Yes, Your Honor.

9 THE COURT: Thank you, sir. Anything
10 further from the State?

11 MR. HOISINGTON: Since I'm sure Mr. Grant
12 will be working on his closing argument tonight, if
13 Your Honor could give him the parameters and admonish
14 him ---

15 THE COURT: Okay. The closing argument
16 will -- of course, once you rest we will go forward
17 into closing arguments. I will give you a brief
18 break, maybe ten or fifteen minutes, to collect your
19 thoughts at that point.

20 As I have already indicated to you at side-
21 bar, closing arguments are limited to the evidence in
22 the case and reasonable inferences to be drawn.
23 That's it. You're not at liberty to argue matters
24 that are not in evidence or that are not reasonably
25 inferred from the evidence. So please, as you prepare

1 your closing argument, you need to keep that in mind.

2 Okay?

3 DERRICK GRANT: Thank you, Your Honor.

4 MR. HOISINGTON: Thank you, Judge.

5 THE COURT: And the original subpoena is
6 being returned to Mr. Grant. Mr. Grant, I have a copy
7 which I've made Court's Exhibit 2. That's the exhibit
8 that indicates that it was not served.

9 (SO ENTERED AS COURT'S EXHIBIT 2)

10 DERRICK GRANT: Yes, Your Honor.

11 THE COURT: See you in the morning at
12 9:00 o'clock.

13 (COURT IN RECESS @ 5:10 P.M.)

14 (TRANSCRIPT CONTINUED NEXT PAGE)

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State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

771
661

1 FEBRUARY 26, 2004

9:00 A.M.

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(DEFENDANT PRESENT)

4

THE COURT: Please let the record reflect

5

that Mr. Grant is present. Good morning to you, Mr.

6

Grant.

7

DERRICK GRANT: Good morning, Your

8

Honor.

9

THE COURT: Is the Defense ready to

10

continue its case?

11

DERRICK GRANT: Yes, Your Honor.

12

THE COURT: Very well. Good morning,

13

Solicitor.

14

MR. JENNINGS: Good morning.

15

THE COURT: Is the State ready to

16

continue?

17

MR. JENNINGS: Yes, sir.

18

THE COURT: Very good.

19

DERRICK GRANT: I do have one Motion

20

that I would like to ---

21

THE COURT: All right, let me hear from

22

you.

23

DERRICK GRANT: In opening statements,

24

he (indicating Mr. Hoisington) came within inches of

25

me in opening statement. I would ask that in his

1 closing statement that whatever he say he is not to
2 get in my face.

3 THE COURT: No, sir. Appreciate that but
4 that's called a trial attorney's strategy.

5 DERRICK GRANT: So I can do the same?

6 THE COURT: You can do the same. But,
7 remember, he didn't touch you and you cannot ---

8 DERRICK GRANT: Right, he didn't touch
9 me. Thank you.

10 THE COURT: Okay. Thank you. Anything
11 else?

12 MR. HOISINGTON: Judge, I would just like
13 to ask one thing. May we approach?

14 SIDEBAR:

15 MR. HOISINGTON: I would just ask that in
16 his closing argument
17 that he not be allowed
18 to approach, us or the
19 jurors, with anything in
20 his hands.

21 THE COURT: And that would be true for
22 you, too.

23 MR. HOISINGTON: Yes, sir.

24 THE COURT: That's just wise.

25 DERRICK GRANT: He came this far from

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

773
663

1 me.

2 THE COURT: But nothing in your hands,
3 either of you.

4 DERRICK GRANT: You would never have to
5 worry about me or
6 nothing like that.

7 THE COURT: I know, you've told me that.
8 Thank you.

9 (SIDEBAR CONCLUDED)

10 THE COURT: If we're ready, let's bring
11 in the jury. State's ready?

12 MR. JENNINGS: Yes, sir.

13 THE COURT: Mr. Grant?

14 DERRICK GRANT: Yes, Your Honor.

15 (JURY IN @ 9:30 A.M.)

16 THE COURT: Good morning, Ladies and
17 Gentlemen. What a change from yesterday this morning.
18 I'm glad to be here and not out on the road or not
19 somewhere else. I know you would probably rather be
20 other places, but at least we're inside and warm and
21 dry right now.

22 I hope that you had a restful evening.
23 Again, I need to ask do each of you solemnly swear or
24 affirm that you have not talked with anyone this case
25 or permitted anyone to talk with you about this case

1 or to talk about it in your presence. That you have
2 not reviewed any news accounts or this case, nor have
3 you read any newspaper articles about the case. If
4 you can make that commitment to the State and to Mr.
5 Grant, please indicate that saying "I do". (All
6 jurors respond affirmatively).

7 Are there any members of the jury who could
8 not make that commitment? (No response). Thank you
9 very much.

10 We are ready to continue in this matter.
11 Please give your attention to the next witness. Mr.
12 Grant, you may call your next witness, sir.

13 DERRICK GRANT: I would like to call
14 Lieutenant John Plitsch to the stand.

15 (WITNESS TAKES STAND)

16 JOHN A. PLITSCH,
17 being duly sworn to tell the truth, the whole truth
18 and nothing but the truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY DERRICK GRANT:

21 Q. Good morning, Mr. Plitsch.

22 A. Good morning.

23 Q. Did you arrest me on December 30th, 29th, and that
24 -- early -- December 29th, 2002, right into December
25 30th, 2002?

1 A. Yes.

2 Q. Where did you -- exactly where did you arrest me
3 at?

4 A. [REDACTED] Road in Huger.

5 Q. Would you describe the area, the building that I
6 was in when you arrested me?

7 A. You were in a detached garage, more like a
8 community hangout for persons who live in that
9 community -- apparent residents.

10 Q. Actually how many people was present?

11 A. I couldn't recall offhand.

12 Q. Was I ---

13 A. More than three.

14 Q. Was I in there by myself or ---

15 A. No. There were other people present.

16 DERRICK GRANT: No further questions.

17 THE COURT: Any questions?

18 MR. JENNINGS: No, sir.

19 THE COURT: You may step down. Thank
20 you.

21 (WITNESS STEPS DOWN)

22 THE COURT: Do you wish for him to be
23 excused?

24 DERRICK GRANT: Your Honor, could I ask
25 one more question?

1 MR. JENNINGS: He's already ---

2 THE COURT: I'll allow it.

3 DIRECT EXAMINATION RESUMED

4 BY DERRICK GRANT:

5 Q. Did you enter into the garage ---

6 A. I'm sorry?

7 Q. When you arrested me on December 30th, 2002, did
8 you enter into the garage?

9 A. Yes.

10 Q. Did you have a search warrant?

11 A. No.

12 Q. Did you knock on the door?

13 A. No. It was open.

14 Q. It was already wide open?

15 A. Yes, there was an individual outside waiting for
16 us.

17 Q. So did you ask for the owner's permission?

18 A. No.

19 Q. To enter?

20 A. No.

21 Q. When you arrived in the garage, was I sitting or
22 sleeping?

23 A. You were sitting.

24 Q. Awake?

25 A. I don't recall if you were awake or not.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

777
667

1 DERRICK GRANT: Thank you, no questions.
2 THE COURT: Any questions?
3 MR. JENNINGS: No, sir.
4 THE COURT: Do you wish for him to be
5 excused?
6 DERRICK GRANT: Yes, sir.
7 THE COURT: You are free to leave now.
8 Call your next witness, please.
9 DERRICK GRANT: Your Honor, I call Sgt.
10 Tim Buchanan to the stand.
11 (WITNESS TAKES STAND)
12 TIMOTHY BUCHANAN,
13 reminded that he is duly sworn to tell the truth, the
14 whole truth and nothing but the truth, testified, as
15 follows:
16 DIRECT EXAMINATION
17 BY DERRICK GRANT:
18 Q. Good morning, sir.
19 A. Good morning.
20 Q. On January 9th -- on what date did you take my
21 ring and bracelet into evidence?
22 A. What date?
23 Q. Yes, sir.
24 A. You just said January 9th?
25 Q. Excuse me. Was there any other detectives

1 present or any other personnel present when you took
2 my ring into custody?

3 A. I don't recall if there were anyone other than
4 other correctional officers at the jail.

5 Q. Did you have a search warrant to take my ring
6 into custody?

7 A. We used a seizure form from the detention center.

8 Q. Did you have my permission to take my ring?

9 A. We didn't ask your permission.

10 Q. So you just went and got the ring, the ring and
11 bracelet, and put it into evidence?

12 A. The property was already seized.

13 Q. When one gets arrested at the detention center,
14 his property is placed into the Berkeley County
15 Detention Center's Property, correct?

16 A. To the Sheriff's office, (affirmative nod).

17 Q. To the Berkeley County Detention Center?

18 A. Which is the Sheriff's office.

19 Q. Okay. So you have the legal right to just go
20 get anything that ---

21 MR. JENNINGS: Objection.

22 THE COURT: Mr. Grant, you're moving
23 into an area that has already been decided as a matter
24 of law is improper -- it is improper examination of
25 this witness. Under 611(a), I am going to ask you to

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

779
669

1 move on to some other line of questioning.

2 DERRICK GRANT: Thank you, Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY DERRICK GRANT:

5 Q. On what date was my ring entered into evidence?

6 A. I believe the same day that I took it, on the 9th.

7 Q. My ring was entered into evidence January 31st.

8 THE COURT: Now, you're arguing.

9 DERRICK GRANT: Thank you, thank you,
10 thank you. Thank you.

11 THE COURT: Any questions?

12 DERRICK GRANT: No, Your Honor.

13 CROSS EXAMINATION

14 BY MR. JENNINGS:

15 Q. Detective Buchanan, you are aware of the findings
16 from the autopsy of Rachel Sottile?

17 A. Yes, sir, the blunt trauma.

18 Q. And you have seen photographs of State's Exhibit
19 43?

20 A. Yes, sir.

21 Q. As an investigator, you would go and try to find
22 items which might be consistent with or that would
23 match having caused those wounds?

24 A. Yes, sir.

25 Q. And knowing the defendant, seeing him when he was

1 arrested, had a large gold ring that would be
2 consistent with the wounds on her head, is that the
3 reason you went and took that into evidence?

4 DERRICK GRANT: Objection.

5 WITNESS: That's correct.

6 THE COURT: Basis of your objection?

7 DERRICK GRANT: I believe several
8 grounds. He's not an expert to say that my ring is
9 a weapon.

10 THE COURT: Overruled. You can redirect
11 him concerning that, but your objection is overruled.
12 Okay? It does not -- 701 opinion, it is his opinion.

13 DERRICK GRANT: Yes, sir.

14 MR. JENNINGS: Thank you, Your Honor.

15 CROSS EXAMINATION CONTINUED

16 BY MR. JENNINGS:

17 Q. And I believe that you turned the ring, State's
18 Exhibit 43, in to the Berkeley County Evidence Room
19 on January 9th?

20 A. Yes, sir, that's correct.

21 Q. And it was secured at that time?

22 A. Yes, sir.

23 Q. When it may have been taken up to SLED, you have
24 no knowledge of that?

25 A. No, sir, we just submit the forms to have them

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

781
671

1 sent to SLED for examination.

2 MR. JENNINGS: That's all that I have.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY DERRICK GRANT:

6 Q. How long have you worked for the Berkeley County
7 Sheriff's Office?

8 A. For the Sheriff's Office, six years now.

9 Q. Are you a racist?

10 MR. JENNINGS: Objection, Your Honor.

11 THE COURT: Sustained. Not relevant.

12 DERRICK GRANT: Thank you, Your Honor.

13 No further questions.

14 THE COURT: Very well, you may come down.

15 (WITNESS STEPS DOWN)

16 THE COURT: Do you have any objection to
17 Detective Buchanan being excused?

18 DERRICK GRANT: No, sir.

19 THE COURT: State?

20 MR. JENNINGS: No, sir.

21 THE COURT: Very well, you are free to
22 leave. Call your next witness.

23 DERRICK GRANT: Your Honor, the Defense
24 rests.

25 THE COURT: Any reply testimony?

1 MR. JENNINGS: No, sir.

2 THE COURT: Ladies and Gentlemen, that
3 will conclude the evidentiary portion. There still
4 remains two very important aspects of this process of
5 dispute resolution. One is closing arguments and, of
6 course, the charge on the law.

7 There are some matters now that I have to
8 take up out of your presence. I am going to ask you
9 now to go to your jury room. Do not begin your
10 deliberations until the Court instructs you to do
11 that. I will be doing that shortly, but you're not at
12 liberty to commence them now notwithstanding the fact
13 that you are not going to hear any more evidence. We
14 will be with you in probably twenty or twenty-five
15 minutes.

16 (JURY OUT @ 9:38 A.M.)

17 THE COURT: Any Motions from the State?

18 MR. JENNINGS: None from the State,
19 Your Honor.

20 THE COURT: Any Motion from the Defense?

21 DERRICK GRANT: (Sidebar with Ms.
22 Kennedy). No, Your Honor.

23 THE COURT: No Motions?

24 DERRICK GRANT: No, Your Honor.

25 THE COURT: You've had an opportunity to

1 discuss this matter with Ms. Kennedy?

2 DERRICK GRANT: Yes.

3 THE COURT: And she has advised you of
4 the necessity of making a Motion?

5 DERRICK GRANT: Yes, Your Honor.

6 THE COURT: And you elect not to make
7 that Motion?

8 DERRICK GRANT: Yes, sir.

9 THE COURT: Notwithstanding her advice?

10 DERRICK GRANT: Yes, Your Honor.

11 THE COURT: That is your personal

12 decision as ---

13 DERRICK GRANT: Yes, Your Honor.

14 THE COURT: --- your attorney?

15 DERRICK GRANT: Yes, Your Honor.

16 THE COURT: You have had a chance to
17 think about what you're doing?

18 DERRICK GRANT: Yes, sir.

19 THE COURT: And the consequences of it?

20 DERRICK GRANT: Yes, Your Honor.

21 THE COURT: Very well. No Motions.

22 All right, any specific requests to charge from the
23 State?

24 MR. JENNINGS: None from the State. I
25 don't believe that there is anything to support a

1 charge on a lesser-included offense.

2 THE COURT: No, there is not. Any
3 specific requests to charge from the Defendant?

4 DERRICK GRANT: Your Honor, can you
5 take into consideration to look into a charge that
6 has the circumstantial evidence?

7 THE COURT: Sure, I am going to charge
8 circumstantial evidence. I am going to charge both
9 the *Griffin* charge and -- I have merged my charge with
10 the charge of old and the charge that says that the
11 State is entitled to rely on circumstantial evidence,
12 direct evidence, no greater proof is required of
13 circumstantial evidence than direct and that they are
14 entitled to the same weight. I am going to charge
15 that the State has to prove circumstances beyond a
16 reasonable doubt and that the circumstances must be
17 linked so that they can basically/conclusively
18 establish that you were the perpetrator of this
19 offense. It has to be more than just being merely
20 suspicion, it has to be more than being probable, it
21 has to be proof beyond a reasonable doubt. Of course,
22 I'm paraphrasing but that will all be in the
23 circumstantial/direct evidence charge.

24 DERRICK GRANT: Thank you, Your Honor.

25 THE COURT: Does that answer your

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

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675

1 question?

2 DERRICK GRANT: Yes, sir.

3 THE COURT: Very well. Any other
4 charges that you wish ---

5 DERRICK GRANT: I wanted you to take
6 into consideration the misprison of a felony charge.

7 THE COURT: There is no misprison of a
8 felony here. The only charge that I have to give to
9 the jury is the indicted offense. That's the only
10 charge that I am permitted to give instructions on,
11 in accordance with the law because that's the charge
12 that you've been charged with.

13 DERRICK GRANT: Okay. Thank you.

14 THE COURT: Anything else, Mr. Grant?

15 DERRICK GRANT: No, Your Honor.

16 THE COURT: Solicitor?

17 MR. JENNINGS: No, sir.

18 THE COURT: Very well. We will be at-
19 ease for about ten minutes.

20 (BRIEF RECESS 9:50 - 10:00 A.M.)

21 (DEFENDANT PRESENT)

22 THE COURT: Is the State going to waive
23 its opening?

24 MR. JENNINGS: Yes, sir.

25 THE COURT: Mr. Grant, are you ready?

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 DERRICK GRANT: Yes, Your Honor.

2 THE COURT: All right, let's bring in
3 our jury, please.

4 (JURY IN @ 10:00 A.M.)

5 THE COURT: Thank you, Ladies and Gentle-
6 men. First, let me thank you for the attention that
7 you have given during this trial. From where I sit,
8 I have an opportunity to observe you and I appreciate
9 the manner in which you've approached your responsi-
10 bilities as judges of the facts in this case. You
11 have certainly honored your oath in that regard and on
12 behalf of the State and Mr. Grant, I thank you for
13 that.

14 We are now moving into a part of the trial
15 that while there is no evidence that you will hear
16 from either party in either of the next two stages
17 they are still very, very important steps in this
18 process. Their remarks in closing arguments will be
19 helpful to you when you begin your deliberation and in
20 analyzing the evidence in this case and, of course, in
21 applying the law.

22 Please give the attorneys and Mr. Grant
23 your undivided attention while they give their
24 closing remarks.

25 During the charge portion -- again, I will

1 not -- nothing that I say should be considered
2 evidence, but I will discuss the legal aspect of the
3 case with you, give you some legal principles and, of
4 course, it is that law which you ultimately are going
5 to apply when you begin your deliberations.

6 Thank you, again. Please give your atten-
7 tion now to the closing arguments.

8 Mr. Grant, the State has waived opening.
9 You may proceed.

10 DERRICK GRANT: Good morning. May it
11 please the Court, The Honorable Judge Dennis?

12 THE COURT: Yes, sir.

13 DERRICK GRANT: Prosecution.

14 MR. JENNINGS: (Affirmative nod).

15 DERRICK GRANT: The victim's family and,
16 not the least, the Grant family, friends, supporters.

17 I wrote down some things that I want to say
18 to you. I know them off the top of my head but I
19 wrote them down. If I only make any one comment to
20 you about the evidence in this case, I'd like to
21 thank you for being attentive jurors in this case.
22 I realize that you have made a sacrifice to leave your
23 homes, jobs and loved ones. I would like to thank you
24 for serving as jurors in this case.

25 You have the evidence. Remember my opening

1 statement, remember all witnesses' testimony. I've
2 tried my best to prove my innocence. My job is done
3 now. This case rests in your hands.

4 One day this case will be over. One day
5 when this case is over, this case will come back to
6 you. It could be ten years, be twenty years.

7 Any verdict besides Not Guilty, ask your-
8 selves these questions:

9 It has been established that there was
10 unknown blood, DNA, of at least a third perpetrator in
11 this case that the Berkeley County Sheriff's Office
12 don't know who it is. It could be anyone's, but yet
13 I am on trial. Can you say for a fact that I killed
14 the victim when you've got at least a third/unknown
15 person out there?

16 Can you say for a fact that I had any
17 involvement with the victim's unfortunate death?

18 Any verdict other than Not Guilty, you would
19 be sentencing an innocent man to prison, and maybe for
20 the rest of his life.

21 But at least a third, a third/unknown person
22 that nobody else knows.

23 I ask you to please have an open mind with
24 the evidence. There's two sides of a story and this
25 case is no exception. The truth is often hidden like

1 a shadow in darkness. The truth is often hidden like
2 a shadow in darkness. This case is not closed when
3 you've got at least a third person involved in this
4 case.

5 I, Derrick Grant, did not kill Rachel Satell
6 (Sotille). I, Derrick Grant, did not kill Rachel
7 Satell (Sotille).

8 I don't care what evidence that they show,
9 they used the evidence against me. Berkeley County
10 Sheriff's Office set me up. But -- that's just my
11 word. And, excuse me, for my attitude but this is
12 very, very, very emotional time for me.

13 I want you to remember Heather Browder's
14 testimony. Heather Browder testified that Rachel was
15 at a gas station, at The Pantry gas station, around
16 6:30 a.m. to 6:45 a.m., wearing bluejeans. When
17 Rachel left The Pantry gas station, she decided to
18 take a right. At this gas station, you can take a
19 right or you can take a left. If you take a right,
20 you'd be going toward Huger. If you take a left,
21 you'd be going towards Mount Pleasant. Rachel had
22 to be at work at 6:00 o'clock, evidently she had no
23 intention of going to work. I am pretty sure that
24 the Solicitor has got something for that.

25 Remember Jason Watson's testimony. Rachel

1 requested time off in December, starting December 28th,
2 2002, but yet she was attacked and killed December
3 26th, 2002, two days before her death (sic) because she
4 knew she was scared or something. Did she tell any-
5 one, was there any testimony that -- did I threaten
6 her?

7 This would be the most -- the pictures of
8 the bruises on Rachel Satell's (Sotille) head is very,
9 very devastating. I'm asking you to do something that
10 will be disturbing, but I want you -- because this
11 plays a role in your decision, your verdict. I want
12 you to please, please look at the bruises on her head
13 and please tell me if a ring could do that type of
14 bruises on a person's head. A ring! Look at my ring.
15 You'll see three -- three -- would you please look at
16 my ring and tell me if my ring could do that type of
17 bruising?

18 The Berkeley County Sheriff's Office took my
19 ring, they had to find something. They had to find
20 something. They had to find something, and they took
21 my ring.

22 I got arrested December 30th. January came
23 and I guess they came to the conclusion, 'Man, we
24 gotta find something, man.' 'Something to say that he
25 did it.' 'We don't have no weapon', there wasn't no

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 weapon, 'so we gotta use what he's got, against him.'
2 That's the weapon! That's what they're saying,
3 'That's the weapon!'

4 They saying that I took the ring and I was
5 like "Humpf, humpf, humpf" (gesturing with fisted
6 right hand in downward motion). That's what they're
7 saying! They make me out to be this monster. But
8 that's the definition of a murderer, I am not a
9 murderer.

10 Somebody has to go down for this crime,
11 according to the Berkeley County Sheriff's Office.
12 It's not who did it, their job is not to prove my
13 innocence, their job -- they get paid on their sheet,
14 "Cleared by arrest". Right. It doesn't matter
15 whether he did it or didn't do it, 'He did it!'

16 Nothing -- the truth is being hidden. I
17 did not kill Rachel Sottile. The Berkeley County
18 Sheriff's Office set me up.

19 Remember the testimony of Vondra Vickery,
20 she testified that she seen me at the head of CC Road
21 and Charity -- Charity Church Road, in Huger, at 3:30
22 a.m., in the morning. It was dark, yet they had a
23 picture that showed a light post right there. This
24 woman got on the stand and described a supposedly
25 knife that I had, down to the "T". But yet I asked

1 her one question, 'Did you tell the Berkeley County
2 Sheriff's Office what I had on?' 'I couldn't see,
3 it was too dark, but you had on dark clothes.'

4 You gotta ask yourself questions.

5 You got Danny Mayos (sic), Danny Neals
6 Maples, he said 'Yeah', I confessed, in front of seven
7 different people there that I killed the victim. This
8 is from an inmate in the Berkeley County detention
9 center. In front of six or seven people, I confessed
10 that I killed the victim? I looked him in his eye and
11 said I killed the victim?

12 Excuse me, but -- Travis Middleton, I did
13 talk to him. I did tell him the truth, but he turned
14 that around. An inmate at the Berkeley County
15 detention center.

16 I got arrested December 30th, 2002. I was
17 arrested for fourteen months and they brought to the
18 stand two witnesses that was inmates. I got arrested
19 December 31st -- I got charged December 31st, 2002.
20 Travis Middleton said that I confessed December 30th,
21 2002. Danny Mills (Maple) said that I confessed to
22 him January -- I mean December 30th, 2002.

23 So from January -- from December 30th, 2002,
24 I was incarcerated for a whole year and no more
25 statements. I guess I said, 'I am going to stop

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 confessing.' They used what they needed to get a
2 conviction. I was set up. I want you'all to know
3 that. "No weapon formed against me shall prosper."
4 Thank you.

5 THE COURT: Thank you. Solicitor.

6 MR. JENNINGS: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. JENNINGS: I would like to thank you
9 for your service this week. I know that it's been a
10 long week. I've watched you and I know that you've
11 paid attention. For that, on behalf of the State of
12 South Carolina and the family of Rachel Sottile, we
13 are extremely grateful.

14 As the Judge told you at the beginning of
15 the trial, every party here, ever person has their own
16 role. Judge Dennis is the judge of the law. He's
17 made certain rulings throughout the trial as far as
18 admissibility of the evidence and objections during
19 the trial. He made rulings as to whether or not that
20 was evidence that you could hear.

21 You, individually and collectively, are the
22 judges of the facts. Once I conclude my closing
23 argument and the Judge charges you on the law, you
24 will be able to go back to your jury room and, as a
25 group, decide what happened on December 26th, 2002,

1 and in the days that followed.

2 What Mr. Grant is sorely mistaken about is
3 the role of the Solicitor's Office and the role of the
4 Berkeley County Sheriff's Department. Our role is not
5 to simply convict people. The role of the Sheriff's
6 Department is not to arrest innocent people and frame
7 them for crimes that they did not commit. Our role is
8 to find the truth.

9 Unfortunately for Derrick Grant, the truth
10 points directly to him. I was told a long time ago
11 that facts are stubborn things. You can try to twist
12 them, you can try to pull them, try to mold them into
13 something else, but you can't change the facts. The
14 facts of this case, no matter how much the Defendant
15 may try to divert your attention from it, is that
16 every fact points conclusively to his guilt.

17 I want to take a few minutes to talk to you
18 about what exactly he is charged with, what the
19 elements are, what we are required to prove. As Judge
20 Dennis told you, he has been charged with murder --
21 the most serious offense in our state and in our
22 country and, yet, it has probably the shortest
23 definition. "Murder" is defined as the unlawful
24 killing of another with malice aforethought.

25 The unlawful killing of another with malice

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 aforethought. The two key terms in this definition is
2 malice aforethought.

3 Malice is a legal term, legal jargon, and
4 Judge Dennis will give you a detailed definition but
5 suffice it to say that "malice" is "acting with a dark
6 and evil heart" or a "heart fatally bent on mischief."
7 I submit to you, Ladies and Gentlemen, that nothing is
8 more malicious than slitting the throat of another
9 human being.

10 "Aforethought" -- let me back up.

11 There's two ways that you can find malice.
12 It can either be express or implied. Express malice
13 is if someone were to say, 'I am going to kill you.'
14 Implied malice, you can imply malice either by the use
15 of a deadly weapon or by the person's conduct. That's
16 what I was talking about. Slitting somebody's throat,
17 I would submit to you, implies the presence of malice.

18 "Aforethought" simply means that the malice
19 had to exist even just a split second prior to the
20 fatal blow being dealt.

21 Sometimes you will hear terms such as "pre-
22 meditation", which is not an element of murder in
23 South Carolina. All that is required is that in the
24 split second prior to Derrick Grant beating Rachel
25 Sottile in her head and slitting her throat that he

1 had malice in his heart, that he was acting with a
2 dark and evil heart and a heart fatally bent on
3 mischief.

4 How are we required, to what level are we
5 required to prove his guilt? It is not required that
6 it be proven beyond any doubt, any shadow of a doubt.
7 Criminal law in our country has the highest legal
8 standard, which is beyond a reasonable doubt. A
9 reasonable doubt is just that, a doubt which is
10 reasonable.

11 Judge Dennis will charge you that if after
12 hearing all the evidence you are firmly convinced that
13 he is guilty, then it would be your obligation to find
14 him guilty.

15 How have we gone about proving Mr. Grant's
16 guilt? By presenting evidence through testimony and
17 by submitting physical items of evidence, which you
18 will have back in the jury room.

19 There are two types of evidence:

20 Direct evidence, which is what somebody
21 observes through their senses, what they have seen and
22 heard, smelled, tasted.

23 Circumstantial evidence, which is a
24 fact to which you add another fact to and draw some
25 conclusion.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 The best example that I can give of
2 circumstantial evidence is that if you go to bed one
3 night and look out on your lawn and see the grass,
4 knowing that it is going to be cold that night and
5 there's a chance of precipitation, then you wake up in
6 the morning and see freshly fallen snow on your lawn.
7 You didn't see it snow during the night but getting
8 up in the morning, taking all those facts together,
9 knowing that it was clear the night before and knowing
10 that it was going to be cold, with precipitation, you
11 put all those facts together and realize that it
12 snowed.

13 Those are the types of evidence that we
14 submitted to you.

15 I submit to you in this case, Ladies and
16 Gentlemen, that there is no question that Rachel
17 Sottile was murdered. The only question for you to
18 decide is did Derrick Grant do it. That will be your
19 obligation when you retire to the jury room.

20 As I told you before, I submit to you and I
21 am going to spend the remainder of my closing argument
22 talking about every single piece of evidence, which
23 evidence points to the guilt of Derrick Grant.

24 I will start and try to do this in an
25 orderly manner. You will have all the evidence when

1 you go back to the jury room.

2 Starting with the crime scene, you will have
3 all the photographs. State's Exhibit 30, Rachel
4 Sottile's body was found about 5:00 o'clock on the
5 afternoon of December 26th, 2002. You heard the
6 description of the crime scene. The only areas of
7 blood were around her body, the only areas of struggle
8 were around her body.

9 What is the first contact that we have with
10 Mr. Grant during this time period? About 9:00 o'clock
11 on the evening of December the 25th and then 3:30 that
12 morning, on the morning of December 26th, approximately
13 three to four hours prior to Rachel's death.

14 Ms. Vickery testified and you'll have the
15 photograph of the intersection of Cainhoy Road and
16 Clements Ferry (sic) Road where she saw him and you
17 can see the light pole with the light affixed to it.
18 She saw him with a knife in his hand, the first time
19 using it and then at 3:30 when he was trying to get a
20 ride from her, to get into her car after she'd said
21 that she didn't want to give him a ride, he had that
22 knife clutched in his hand.

23 Importantly, he did not have that knife when
24 he was arrested on December 30th, and that knife was
25 never found when they searched his room on December

1 31st, prior to that search warrant.

2 Some things we are never going to know about
3 this case. How did Rachel come into contact with the
4 person who ended her life, we will never know. We
5 know that she was supposed to be at work at 6:00
6 that morning and that at 6:30 she was getting gas
7 and heading back towards Huger.

8 Where they came into contact, we don't know.
9 The reason that we don't know is because Derrick Grant
10 guaranteed that Rachel Sottile would never appear in a
11 courtroom and tell what happened to her. He guarante-
12 ed that by slicing her throat and leaving her body in
13 those woods.

14 As he told Travis Middleton, "a dead woman
15 can't talk." He's exactly right. Because the benefit
16 for Mr. Grant and any other person who has ever
17 murdered someone is that murder is a crime of
18 isolation. Typically the only people there are the
19 defendant and the victim.

20 As Mr. Grant so aptly pointed out, the
21 victim cannot tell her story. Mr. Grant had the
22 ultimate advantage in that he knew the facts, knew
23 what evidence was going to be there and he could craft
24 a story to almost perfectly explain all the evidence.

25 One fact that I want to point out. The

1 Defendant said in his opening statement that he knew
2 the victim. Today is the first day that he could even
3 pronounce her last name correctly. I submit to you
4 that there is no evidence in this case that he knew
5 her, no evidence that she was with him voluntarily.
6 The only evidence points to the fact that he killed
7 her.

8 How do we know -- Mr. Grant said that we
9 didn't prove that he was even at the scene. Let's
10 talk about the evidence that places him at the scene.

11 DERRICK GRANT: Object, Your Honor. I
12 never said that I wasn't at the scene.

13 THE COURT: He is entitled to talk about
14 the evidence and inferences.

15 DERRICK GRANT: But he said that I said
16 that I wasn't at the scene.

17 THE COURT: Sir, I have already
18 indicated that your remarks and the Solicitor's
19 remarks are not evidence. He is confining his
20 argument to the evidence. You may continue.

21 MR. JENNINGS: Thank you. The first
22 indication that we have and the first evidence that
23 starts to appear is when Rachel's car is found early
24 on the morning of December 27th. You may have wondered
25 when we were going painstakingly through all the

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 evidence why were we introducing all of the
2 photographs taken by the different agencies. You will
3 have back in your jury room photographs taken by the
4 Charleston Police Department of her car where it was
5 found that morning; you'll have the photographs taken
6 by the Berkeley County Sheriff's Office as they had it
7 in their bay, processing it; and you will have the
8 photographs taken by the South Carolina Law Enforce-
9 ment Divisions when Agent Coonfield came and processed
10 the car.

11 The purpose of the photographs is to
12 document what they are looking at, every person in
13 this case going the extra mile to guarantee that
14 everything was documented -- that all the t's were
15 crossed and that all the i's were dotted.

16 How do we know that Derrick Grant was at
17 that scene when Rachel was cut? The blood -- and I
18 will take this picture, State's Exhibit 19, the blood
19 from the left front fender of the victim's car, Agent
20 Lambert testified was the Defendant's blood -- one in
21 however many trillion.

22 Blood off the driver's side door, shown in
23 State's Exhibit 21, also the Defendant's blood.

24 Blood off the driver's side interior door
25 handle, a transfer, shown in State's Exhibit 22, was

1 a mixture of Rachel Sottile's and also the Defendant's
2 blood.

3 And from two locations off the steering
4 wheel, State's Exhibit 25. Two locations were tested,
5 from both the bottom and from the middle of the
6 steering wheel. Both of those locations were
7 conclusively a mixture of Derrick Grant's and Rachel
8 Sottile's blood.

9 The two facts that we know from that are
10 that Derrick Grant was present when she was cut and
11 that he was cut. There was a source for her blood
12 and a source for his blood. Is there any other
13 explanation for how that occurred other than that
14 he was present when she was killed? I submit to you
15 that there is not.

16 We also know that he was present, by his
17 semen found on the vaginal swab and on the exterior of
18 her pants. More evidence proving that he was present.

19 State's Exhibit 47 is the rearview mirror
20 taken out of the victim's car. You will remember the
21 testimony of Agent Coonfield about how they processed
22 that, applying the amino-black to lift the print that
23 was on it, noted the ridge detail and made the
24 comparison between the fingerprint that he found and
25 he matched that to Derrick Grant's right index finger.

1 And the blood swab that was sent to DNA and tested by
2 Agent Lambert was conclusive with that being a mixture
3 of Derrick Grant's and Rachel Sottile's blood. That
4 he left his bloody fingerprint on the rearview mirror
5 as he drove that car downtown also places him at the
6 scene.

7 There is no evidence at this crime scene of
8 any other person being present. No other DNA in the
9 car explaining or offering evidence that someone else
10 was present. No fingerprints. You heard the
11 testimony about how they painstakingly processed the
12 entire exterior of the car and the interior of the car
13 looking for fingerprints, and the only fingerprint
14 that they found was Derrick Grant's bloody fingerprint
15 with his blood and Rachel Sottile's.

16 Then as the day progresses, I submit to you
17 that he took the car downtown and left it and began to
18 make his way back to where he feels comfortable, back
19 to his home area, back to Cainhoy.

20 He gets to the Texaco station, as it was
21 then, at the intersection of Highway 41 and Highway
22 17, and I submit to you that this is the most credible
23 testimony of this trial. Two men who live in his
24 community, that he grew up with, Bobbie Lawrence and
25 Eddie Washington. If ever there was somebody that he

1 was going to tell the truth to, if that was the truth,
2 wouldn't it be these two men?

3 But with Bobbie Lawrence, we get our first
4 lie. Mr. Lawrence sees him with something over his
5 wrist and asks him, 'What happened?' He said, 'Ah,
6 I got in scrap with my girlfriend.' That's the first
7 story. I think he said scrape, that he had been
8 downtown with his girlfriend. He'd been downtown and
9 he'd been in a scrape, but it wasn't with his girl-
10 friend.

11 Mr. Lawrence says, 'I can't give you a ride
12 home, I'm going to the church. But Eddie's going
13 home.'

14 So he gets in Eddie's truck and they start
15 driving. Mr. Washington looks at him, if you remember
16 his testimony, sees the cut on his wrist and says,
17 'Derrick, what happened to you?' And what does Mr.
18 Grant tell him? He "doesn't want to talk about it."
19 Our second story.

20 If ever there was a time to say, 'You're not
21 going to be believe what happened. I am so glad I
22 found you. You know me, you grew up with me.' Isn't
23 this the time to say 'this is what happened to me,
24 let's go tell the police that this young lady's body
25 is out in the woods', and 'let me get my story on

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 record.' But what does he do when they drive by a
2 police officer pulling out of Rivertown?

3 My mother always told me when I was growing
4 up that your actions speak louder than words. What
5 does Derrick Grant do when they drive pass a police
6 officer? He slinks down in his seat so that the
7 officer couldn't see him. Eddie Washington realized
8 that something was going on and he told you, "I
9 speeded up because I wanted to get him out of my
10 truck."

11 Those are the actions of a guilty man.
12 There is no other explanation for why he slunk down
13 in his chair.

14 Mr. Washington asked him, 'Why don't you go
15 to the hospital? That's a pretty bad cut.' And he
16 says that he doesn't want to go. And he's smart not
17 to go. You heard the testimony of Officer Favero,
18 that had he gone to the hospital with that cut that he
19 was going to draw attention. He was going to have to
20 start explaining what happened to him, and things
21 would start crumbling on him and it would be found out
22 what he did. So he went home and tried to hide.

23 You remember what Mr. Grant told Mr.
24 Washington when they got home and he let him out of
25 the truck? He told him two things, "Don't tell

1 anybody that you saw me today, and don't tell anybody
2 that you gave me a ride home." He's acting like a
3 guilty man and he's talking like a guilty man.

4 Let's talk about the people that he talked
5 to. He brought up Mr. Maples and Mr. Middleton. Mr.
6 Maples testified that he had not heard anything about
7 this murder.

8 And I want you to concentrate on, please,
9 while you're talking about these witnesses' testimony
10 in the jury room, credibility from witnesses can come
11 from a number of ways. It can come from who they are,
12 it can come from what they do, and it can also come
13 from what they say. Is what they said corroborated by
14 evidence or is it discredited by evidence? I submit
15 to you that the intriguing part of a criminal trial is
16 that the State does not get to pick its witnesses.
17 It's not like a civil trial where you can go out and
18 hire a professional witness to come in and testify to
19 what you want. Derrick Grant picked these witnesses.

20 Why did he not talk any more while he was in
21 jail? I have no idea. I know that he was talking
22 when he first got in there because Mr. Maples and Mr.
23 Middleton told you things that they would have no way
24 of knowing other than the fact that they talked to
25 Derrick Grant.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Mr. Maples told you that when Mr. Grant was
2 in there that he was walking around like a caged
3 animal. I submit to you that at that point that he
4 had been arrested, he had not been charged but he was
5 realizing that all the walls were closing in on him.

6 He was realizing that they weren't far away
7 from finding out what he'd done. He'd knew all the
8 evidence that was at the scene linking him to this
9 brutal crime.

10 He started asking Mr. Maples about DNA.
11 Ask yourself, how would Mr. Maples know to bring up
12 questions about DNA? The detectives at that time had
13 no idea whose blood that was going to be, whose it was
14 going to match. They had no idea that Mr. Grant had
15 had sex with the victim, that his semen was going to
16 match. And Mr. Maples told you what Derrick Grant
17 told him. He said, 'So what if I killed the fucking
18 bitch? At least I got my nut off.' Mr. Maples had
19 no way of knowing that unless that man (indicating
20 Defendant) told him.

21 The Berkeley County Sheriff's Office
22 wouldn't go out on that kind of limb, not knowing what
23 the DNA evidence was going to show. Those were
24 Derrick Grant's words.

25 What did Mr. Middleton have to say? You

1 could see by his demeanor that he did not want to be
2 here testifying against a person that he knew. But
3 he came forward and told the truth.

4 And how did -- I want you to remember that
5 the only evidence in this case of anybody else being
6 at this scene is the lie that Derrick Grant told Mr.
7 Middleton. And how did he start that story off? Mr.
8 Middleton first saw him in the cell writing his story
9 down and, as he characterized it, trying to get his
10 story straight.

11 Which reminds me, prior to that we had our
12 third story about the cut. Mr. Middleton said that
13 the first time that he saw Mr. Grant that he asked him
14 how he'd gotten that nasty cut on his wrist and he
15 told him "barbed wire". That's our third story. Mr.
16 Middleton told you that he's worked with barbed-wire
17 and he knows that you don't get a cut that deep from
18 barbed wire. So, automatically, he knew that
19 something was up.

20 But Mr. Grant started off with his story to
21 him of, 'How does this sound?' And Mr. Middleton knew
22 that no good story ever starts that way. I submit to
23 you that he was starting his lie and each and every
24 person here knows that it was a lie.

25 As I told you, Derrick Grant had all the

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 facts. He had the ability to come up with a story
2 to explain how all that blood got there.

3 What I ask you to do is to look at the
4 evidence and look and see if any of the evidence
5 supports the lie that he told. As I pointed out
6 earlier, there was no other blood in that car. There
7 were no other fingerprints in that car. There were no
8 signs of struggle at that crime scene.

9 You saw how meticulously Sergeant Kokinda
10 processed the scene. They collected everything down
11 to water bottles, beer cans, everything. They would
12 have noted if there had been areas of disturbances.
13 No other areas of blood other than by Rachel's body.

14 The two tire tracks, they even went so far
15 as to collect every tire track that was present at the
16 scene. No other tire tracks, other than associated
17 with the victim's car.

18 Most importantly, Derrick Grant had no
19 defensive wounds on his body. When you're back in the
20 jury room you will have State's Exhibit 107 showing
21 the cuts, bruises, and lacerations on Rachel Sottile's
22 hands as she fought with Derrick Grant as he had that
23 knife and was beating her in the face. You will see
24 the number of injuries that she had.

25 I submit to you that had Derrick Grant been

1 in any type of situation that even remotely matched
2 what Rachel was involved with, his hands would look
3 like this (State's Exhibit 107). But the butcher
4 never gets cut.

5 Derrick Grant had one cut, and we will talk
6 about that later.

7 Travis knew that he was lying. Remember
8 what he told Derrick when he told him his 'story'.
9 He said, 'Sure, kid, it's your lie. You can tell it
10 any way you want.' If Travis Middleton didn't
11 believe Derrick Grant, how can you?

12 Mr. Grant asked Travis and Mr. Maples,
13 'wouldn't you have been willing to do anything to
14 have gotten out of the trouble that you were in?'
15 Mr. Middleton got nothing, he spent seven more months
16 in jail. Mr. Maples finished his time here and went
17 down to Charleston to do more time. But ask yourself
18 one question. If he was concerned about what Mr.
19 Maples would be willing to do and what Mr. Middleton
20 would be willing to do, what would Derrick Grant be
21 willing to do to get away with this crime?

22 Finally, we have our fourth story when he
23 has the opportunity to talk to Captain Ollic the night
24 he was arrested. What does he tell Captain Ollic?
25 'I got no idea how I got cut.' Not, 'I don't want to

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

701

1 talk about it'; not, 'it's none of your business.'

2 "I don't know." He has no idea what they're talking
3 about, no idea what happened to Rachel. Five days
4 after the -- four days after the fact, sorry, he has
5 no idea.

6 Mr. Grant's biggest problem, as I told you,
7 is that every piece of evidence points to his guilt.
8 And he is going to do everything that he can do to get
9 you to lose your focus and take your attention off of
10 this mountain of evidence. This is what we call "red
11 herrings", throwing things out to try to make you lose
12 your focus.

13 Things such as the hair in the victim's
14 hands. Sergeant Kokinda testified that he looked at
15 the hair that was taken out of her hands and that it
16 matched her hair and that the hair in her other hand
17 was broken fragments of her hair. Which, I submit to
18 you, is perfectly reasonable that as he was beating
19 her head and she covered her head to try to block
20 those blows that her hair came out in her hands.

21 I remind you again that there is not a shred
22 of evidence in this case that anybody was present at
23 the scene other than Derrick Grant and Rachel Sottile.

24 And I have to agree with Mr. Grant, with one
25 thing that he said in his closing argument. His ring,

1 I wrote it down, is devastating. He came up with a
2 story to try to explain every fact but he can't
3 explain the ring. He's admitted that it is his.
4 There is no explanation for the wounds that you will
5 see in your jury room -- I apologize for the graphic
6 nature of the pictures, but horrendous crimes create
7 horrendous pictures and we had to show them to you.
8 You will see, in State's Exhibit 2, the multiple
9 wounds to her head and he beat her repeatedly.

10 And remember the testimony of Dr. Presnell.
11 She said that ring is consistent with having caused
12 these wounds. The most incredible piece of evidence
13 in this crime, that links Derrick Grant conclusively,
14 insurmountably to this crime, a fact that he cannot
15 explain, is State's Exhibit 3.

16 I ask each of you when you get back in your
17 jury room to take this photo (State's Exhibit 3) and
18 take State's Exhibit 43, this ring, take this ring and
19 on this photograph that is to scale -- (displaying
20 ring and State's Exhibit 3). That proves beyond any
21 doubt, beyond any shadow of a doubt that this ring was
22 on Derrick Grant's hand as he pummeled her head and
23 killed her.

24 The curved part of her forehead as he
25 punched her over and over and over again (demon-

1 strating). He left his calling card right on her
2 forehead as half of this ring dug into her forehead
3 and left the name "Derrick Grant" imprinted.

4 Rachel Sottile might as well have walked
5 through the doors of this courtroom, taken the witness
6 stand and told you that he did it. The evidence is
7 that compelling.

8 I submit to you, Ladies and Gentlemen, that
9 you don't have to be an expert to look at that photo-
10 graph and look at that ring. You can be a teacher, an
11 accountant, an attorney, a doctor, somebody who stays
12 home with their children, anybody can look at that
13 photograph and match it with that ring and realize
14 that that man (indicating Defendant) killed Rachel
15 Sottile.

16 Make no mistaken, Ladies and Gentlemen, that
17 the Derrick Grant that you have seen in this courtroom
18 this week is not the Derrick Grant that Rachel saw
19 that morning in those woods. Every piece of evidence
20 in this case points conclusively to Derrick Grant.

21 Whatever happened, he didn't like it. He
22 beat her horribly and repeatedly in her head, I submit
23 to you, until she was laying defenseless on the
24 ground. He reached over her, grabbed her with his
25 left hand, took that knife and slit her throat. I

1 submit to you that as he struggled to get that dull
2 knife through her throat, to kill her, to guarantee
3 that she could not come into a court and tell what
4 happened that day -- as he jerked and pulled on that
5 knife, as he had his arm around her throat, the knife
6 finally gave and he cut his left wrist.

7 You will have this photograph, State's
8 Exhibit 28, back in the jury room. This was a self-
9 indicated wound. Not part of his plan, but the blood
10 from that wound is what ties him to this crime.

11 Derrick Grant is responsible for the brutal
12 murder of Rachel Sottile. The facts and justice
13 demand that he be held accountable.

14 The word "verdict", Ladies and Gentlemen,
15 comes from the Latin word *veredictum*, which means "to
16 speak the truth". I submit to you that the only
17 verdict in this case which speaks the truth is that
18 Derrick Grant is guilty of murder.

19 Thank you very much.

20 THE COURT: Ladies and Gentlemen of the
21 jury, you have been sitting for quite a while. Would
22 you like a break before we do the charge?

23 FOREMAN: Everybody okay? (Affirmative
24 responses from several jurors).

25 THE COURT: Thank you. Now it becomes my

1 responsibility in the final portion of this trial to
2 give you instruction on the law. Of course, it is
3 your duty as the judges or finder of the facts to
4 accept the law as I give it to you and to apply that
5 law fairly and impartially to the facts as you will
6 ultimately determine them to be.

7 Those photographs -- we need to collect
8 those photographs. Ms Wiggins, if you would assist
9 me in collecting those photographs.

10 BAILIFF WIGGINS: (Complies).

11 THE COURT: While I have absolutely
12 nothing with the factual determination, nothing that
13 I say now should be considered by you as an indication
14 or as a suggestion of how we are to resolve the
15 factual issue. You, likewise, have nothing to do with
16 the law in this.

17 You will recall that we talked it when we
18 started this process, that you and I will work
19 together. You will make decisions on the facts and it
20 is my responsibility to make decisions on the law.
21 And part of the commitment that you've made to the
22 State and to Mr. Grant is to accept this law and apply
23 this law fairly and impartially to the facts. That
24 applies even to situations where you may hear a
25 principle of law with which you may differ. I respect

1 your right to feel that way but you promised the
2 parties in this dispute that you would set aside that
3 feeling and take the law as I instruct you.

4 Please understand that it is my responsi-
5 bility to instruct you and that I have to put this
6 instruction in some order. Please don't put any more
7 weight or emphasis on any one aspect of the charge but
8 consider the charge as a whole. Again, it is your
9 responsibility to take the law and it is your
10 exclusive duty to determine the effect, the value,
11 the weight and the truth of the evidence.

12 Once you do that, once you evaluate the
13 evidence in this case and apply the law, then Mr.
14 Grant and the State will receive a fair and impartial
15 determination in this trial. That is what we are to
16 be about, we are here to seek the truth in this
17 controversy. Your verdict is to speak the truth.

18 Now, I am going to define a number of terms
19 for you. Please understand that you must accept those
20 definitions and apply them. If I don't define a term
21 or a word to your satisfaction, please remember
22 something throughout the entire process. You were
23 selected because of your commonsense, your sense of
24 logic and reason. You should apply that understanding
25 to this terms. Don't try to complicate dit. Apply

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 your ordinary understanding to the terms unless they
2 are otherwise defined.

3 I mentioned to you when we started the
4 process that a term that you may hear, and you may
5 hear it during my instruction, is the term
6 "Defendant." That term is a legal term that is simply
7 used to identify a party against whom a claim is made.
8 It is used in both civil and criminal disputes. Mr.
9 Grant has been identified as the defendant and it
10 means simply that that is the person against whom the
11 claim has been made in this dispute.

12 Of course, you will recall that I mentioned
13 to you when we started that this claim is made or that
14 the accusation is made by this document that I hold in
15 my hand. It is what it appears to be and nothing more
16 than that, a piece of paper. We call it an indict-
17 ment and it accused Mr. Grant of committing the
18 offense of Murder on December 26th, 2002, by unlawfully
19 with malice aforethought killing Rachel Sottile by
20 means of an incision wound to her neck and blunt force
21 trauma to her head. As a result, Miss Sottile died.

22 Of course, as to this indictment, Mr. Grant
23 has rendered a plea of Not Guilty, which places then
24 upon the State the burden to prove his guilt beyond a
25 reasonable doubt.

1 As you know and as we have discussed,
2 persons accused of the commission of a criminal
3 offense either in this state or in this country are
4 never required to come in and prove themselves
5 innocence. This principle of law we call "the
6 presumption of innocence".

7 Each of you is required under our law, and
8 by your oath, to actively presume that Mr. Grant is
9 not guilty. The presumption of innocence is main-
10 tained at all times throughout the trial of the case
11 and is only removed when and if the State brings in
12 enough evidence to persuade you beyond all reasonable
13 doubt that Mr. Grant is guilty of this offense.

14 So obviously, Ladies and Gentlemen, the fact
15 that one is accused of a criminal offense, they have
16 absolutely no burden in the process of defending that
17 charge or allegation. The fact that a person does not
18 testify in his or her own behalf must not and cannot
19 be considered against that individual under any
20 circumstances or in any manner whatsoever. Persons
21 charged with criminal offenses have a Constitutional
22 right to remain silent and the assertion of such right
23 cannot and must not be considered by you as guilt in
24 your determinations at trial. Therefore, under that
25 law and pursuant to the oath that you took, you are to

1 reach no inference or draw no conclusions whatsoever
2 from the fact that Mr. Grant did not testify in this
3 case. His failure to testify cannot and must not be
4 discussed in the jury room.

5 The burden of proof, as I have stated, rests
6 upon the State. They are required to prove his guilt
7 beyond a reasonable doubt and the failure of the
8 Defendant to testify is not allowed to be considered
9 by you.

10 Ladies and Gentlemen, if you do consider
11 that or if you discuss that, then you have violated
12 the oath that you took when you started this process.

13 The State has the burden of proof and the
14 State has to present evidence beyond a reasonable
15 doubt, sufficient evidence that convinces you beyond
16 a reasonable doubt of his guilt.

17 What is a reasonable doubt? As I stated
18 when we commenced this process, a reasonable doubt
19 is a doubt which would make an honest, sincere,
20 conscientious juror searching for the truth in a
21 case to hesitate to act or take some action.

22 Proof beyond a reasonable doubt is proof
23 that leaves you firmly convinced of the Defendant's
24 guilt. In this life, in this world, there are very
25 few things that we know with absolute certainty.

1 In a criminal case, in a criminal dispute such as
2 this, our law does not require proof that overcomes
3 every possible doubt.

4 If based on the consideration of the
5 evidence you are firmly convinced that Mr. Grant is
6 guilty of the crime charged, then you must by virtue
7 of the oath that you took return a verdict of Guilty.

8 If on the other hand you think that there
9 is a real possibility that he is not guilty, then you
10 must return a verdict of Not Guilty.

11 You are instructed that you are to give to
12 Mr. Grant the benefit of all doubt arising from all
13 the evidence in the case or from the lack or absence
14 of evidence in the case. It's up to you, Ladies and
15 Gentlemen, to determine whether or not reasonable
16 doubt does exist as to his guilt.

17 I charge you in that regard that when you
18 consider this -- and I mentioned "arising in the
19 whole case", let me talk about what that means.

20 "Arising in the whole case" means simply, as
21 the term would imply, that you consider all that the
22 State is required to prove in that respect, all the
23 elements that they are required to prove. They are
24 required to prove, as I mentioned to you, each beyond
25 a reasonable doubt.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 And I tell you that if you have a doubt as
2 to how to resolve any one of those elements or any
3 aspect of that element, then it would be your duty to
4 resolve that doubt in Mr. Grant's favor.

5 Evidence, Ladies and Gentlemen, can be
6 presented in two ways. Or, really, there's two types
7 of evidence that I need to define which you generally
8 see in this process of dispute resolution. One we
9 call direct evidence and the other indirect, but the
10 more popular name, more common name is 'circumstantial
11 evidence'.

12 Direct evidence, as the name would imply, is
13 generally related to one's sensory perceptions. I saw
14 something, I heard something, I felt something, or the
15 like.

16 And if you, Ladies and Gentlemen, determine
17 that there is circumstantial evidence and you link
18 them either through inductive or deductive reasoning,
19 you will come to another conclusion or the existence
20 of another fact. That's what we are talking about
21 when we talk about circumstantial evidence.

22 Now, I would tell you, Ladies and Gentlemen,
23 that it is quite common when presented evidence in a
24 case for a jury to have to evaluate both direct and
25 circumstantial evidence. That means that means of

1 presenting evidence -- it is generally, it is not
2 uncommon to have that presented in this case.

3 Our law makes absolutely no distinction
4 between the weight or the value to be given either
5 to direct evidence or to circumstantial evidence.
6 Nor is any greater degree of certainty required of
7 circumstantial evidence than of direct evidence.
8 You must weigh all the evidence in this case and
9 determine what you find to be the truth.

10 The law does say this, however, as to
11 circumstantial evidence: as to each of those
12 circumstances or facts upon which the State is
13 relying, they must establish each of those beyond a
14 reasonable doubt.

15 Secondly, that the State has to prove that
16 these facts must point conclusively to the guilt of
17 Mr. Grant. They must be wholly and perfectly
18 consistent with each other, in every particular
19 respect. I further instruct you that the mere fact
20 that the circumstances brought out in a case are
21 strongly suspicious of guilt or that the circumstances
22 are such that the defendant's guilt is probable, that
23 that would not be enough. Because, as you will
24 remember, the evidence must be more than someone being
25 -- must be more than mere suspicion or must be more

1 than somebody being 'probably guilty'. The proof
2 required of the State is the proof that would satisfy
3 you beyond a reasonable doubt.

4 Now, the evidence, we know, we've been
5 talking it repeatedly throughout this trial, consists
6 of the testimony of witnesses who have taken that
7 stand and the exhibits that were introduced through
8 their testimony.

9 The remarks of the attorneys and Mr. Grant
10 in their opening statements and in their closing
11 arguments cannot be considered evidence at all. Their
12 remarks are given to help you understand the evidence,
13 to understand and apply the law but you must disregard
14 any remarks of the attorneys or Mr. Grant that is not
15 consistent with the evidence as you recall that
16 evidence or which may be inconsistent with the law as
17 I give it to you.

18 Now, Ladies and Gentlemen, generally our
19 rules of evidence do not permit witnesses to render
20 opinions except in very limited situations and
21 circumstances. We do have an exception to this rule
22 that exists for witnesses that we identify as expert
23 witnesses. Some persons who are witnesses who by
24 virtue of their education and experience have some
25 expertise in some art, science, profession or calling

1 are permitted to render opinions as to relevant and
2 material matters in which that expert claims or in
3 which that witness claims some expertise. The witness
4 is also permitted to give reasons for that opinion.
5 You should consider any expert opinion received in
6 evidence in this case like any other evidence, and
7 give it the weight that you believe that it deserves.

8 If you decide, in considering the evidence
9 in this case, that the opinion of the expert is not
10 based on sufficient education and experience or if
11 you conclude that the reasons given in support for
12 the opinion are not sound, or that the opinion may be
13 outweighed by other evidence in the case, you're
14 entitled to disregard the opinion entirely. Because,
15 you see, an expert's opinion is to be given no greater
16 weight than any other witness simply because the
17 witness claims some expertise.

18 Further, you are not required to even accept
19 an expert's opinion even though it is not contradict-
20 ed. Because, you see, the opinion of an expert is to
21 assist you in evaluating the evidence and in applying
22 or determining the true facts of this case and not for
23 the purpose of controlling your judgment.

24 How do you decide the evidence in this case?
25 How do you decide the factual issues in this case?

1 Obviously it requires you to evaluate the credibility,
2 the believability of the testimony. But, again,
3 Ladies and Gentlemen, as I just stated with expert
4 testimony, the fact that testimony in the case is not
5 contradicted directly does not necessarily render it
6 undisputed. For, you see, the law recognizes that
7 there would always be the inherent probability,
8 believability, credibility of one's testimony. That
9 is what you must determine. And you determine that,
10 Ladies and Gentlemen, as you have determined these
11 types of decisions throughout your life. You apply
12 your commonsense, your sense of logic and reason.
13 You make that determination fairly and impartially.

14 There are many factors that one may consider
15 to assist them in rendering this type of decision. I
16 am going to discuss some of those factors with you
17 now, but I will tell you in advance that this list is
18 certainly not all-inclusive. If I fail to mention a
19 factor or method that you have employed in your life
20 to assist you and you've found that to be beneficial
21 and reliable, then I would certainly urge you to use
22 it when you begin your deliberations.

23 But some of the factors that one may want to
24 consider to assist them in making this determination
25 would be:

1 The appearance of the witness, how did they
2 appear to you? Straightforward or hesitant in
3 answering questions?

4 Was the testimony of a witness consistent or
5 inconsistent? Was it strengthened or weakened by
6 other evidence in this case?

7 How did the witness come to know the facts
8 that he or she testified to and what was the ability
9 of that witness to know those particular facts?

10 Is there a reason that the witness would
11 have to give testimony that may be beneficial to one
12 side or the other? In other words, is the witness
13 bias or prejudiced for or detrimental to someone?

14 In making these determinations, Ladies and
15 Gentlemen, our law gives you very broad discretion.
16 You have the right to believe many witnesses against
17 one, one witness against many. You have the right to
18 believe all of a witness' testimony, parts of a
19 witness' testimony or none of a witness' testimony.

20 Of course, in making your determinations you
21 are not to do this arbitrarily. But if there is a
22 reason in the record of the evidence in this case for
23 taking that position, you have that prerogative.
24 Because, you see, your mission, your objective is to
25 determine the truth in this case. You must consider

1 all of the evidence in order to make that determina-
2 tion.

3 Let's look now at the offense that has been
4 charged. I mentioned to you that Mr. Grant has been
5 accused of the offense of murder. Our law defines
6 "Murder", in Section §16-3-10 of our Code of Laws, as
7 "the killing of any person with malice aforethought,
8 either express or implied."

9 The State, in order to obtain a conviction
10 for the offense of murder must prove beyond a
11 reasonable doubt that Mr. Grant killed another person
12 with malice aforethought.

13 Malice, Ladies and Gentlemen, is hatred, ill
14 will or hostility towards another person. It is the
15 intentional doing of a wrongful act without just cause
16 or excuse and with an intent to inflict any injury
17 under circumstances that the law will infer as evil
18 intent.

19 'Malice aforethought' does not require that
20 malice exist for any particular time before the act is
21 committed. Malice must exist in the mind of the
22 defendant just before and at the time that the act is
23 committed. Therefore, there must be a combination of
24 a previous evil intent and the act itself.

25 Malice aforethought, Ladies and Gentlemen,

1 may be expressed or inferred. Now, these terms do not
2 mean different kinds of malice but merely the manner
3 in which malice may be shown to have existed.

4 That is either by direct evidence, which
5 would simply say that someone expressed some malice
6 or speaks evil or hatred towards another person and
7 prepared to do this, commit this act, beforehand.
8 Then the act is later accomplished. That would be
9 direct evidence of malice aforethought.

10 Malice aforethought may be inferred from
11 conduct showing a total disregard for human life.
12 Inferred malice may also arise when the deed is done
13 with a deadly weapon.

14 A "deadly weapon" is defined as any article,
15 instrument or substance which is likely to cause death
16 or great bodily harm. The use of a deadly weapon,
17 Ladies and Gentlemen, permits you to infer malice but
18 it does not require you to infer malice. If the facts
19 prove beyond a reasonable doubt, sufficient to raise
20 an inference of malice to your satisfaction, this
21 inference would simply be an evidentiary fact to be
22 taken into consideration by you together with all
23 other facts in evidence. You're entitled to give it
24 such weight as you believe it to be entitled.

25 And, as I stated, again you are free to

1 accept or reject this permissive inference of malice.

2 "Criminal intent", Ladies and Gentlemen, is
3 the -- is an element which is necessary for the crime
4 of murder. And as with all the other elements that we
5 have discussed, it must be proven or established
6 beyond a reasonable doubt. Criminal intent is always
7 a matter that you have to determine by looking at the
8 circumstances surrounding a situation. The law says
9 that criminal intent may be inferred by the
10 circumstances which have been established beyond a
11 reasonable doubt by the evidence in this case.

12 Now, I would tell you that insofar as
13 criminal intent is concerned, our law does not require
14 that the State prove a motive. Although the presence
15 or absence of motive may be a factor for your
16 consideration in determining whether or not intent has
17 been established.

18 Criminal intent is a state of mind that
19 operates jointly with an act and commission of a
20 crime. It includes consequences which represent the
21 very purpose for which the act is done or are which
22 are known to be substantially certain to result
23 regardless of one's specific intent.

24 Criminal intent is the mental state, a
25 conscious state of wrongdoing and it's up to you,

1 Ladies and Gentlemen, to determine if the State has
2 established beyond a reasonable doubt that Mr. Grant
3 is the person who committed this act. Then it would
4 be your responsibility from the evidence to determine,
5 based on those circumstances, what his intention was
6 at that time. As I indicated to you, it must be
7 established beyond a reasonable doubt.

8 Ladies and Gentlemen, you must remember
9 throughout this entire process that you were not
10 selected to be partisans or advocates for either side.
11 You have no friends or enemies in this process. You
12 are here today to apply your commonsense, your sense
13 of logic and reasoning, fairly and impartially.

14 And obviously those terms also mean that
15 when we as judges are called upon to make this type of
16 decision, we also must promise that we will set aside
17 all human emotion because it has no place in this
18 process. You must set aside anger, sympathy, concern
19 -- that should not enter in at all. This process is
20 one that is very deliberate and very methodical.

21 You, in just a few moments, will begin that
22 methodical process of analyzing the evidence in this
23 case and deciding what you find to be credible and
24 believable, and then answer the questions, one by one:
25 Has the State convinced you beyond a reasonable doubt

1 as to this element, this element, this element? Right
2 on down the list.

3 And if your answer is yes, then you will
4 return a verdict of Guilty.

5 If your answer is no, as to one or more,
6 then you must return a verdict of Not Guilty.

7 To assist you, Mr. Presiding Juror, in
8 returning that verdict, I have prepared the verdict
9 form. I want to discuss it with you. Please under-
10 stand that the order in which the choices appear means
11 absolutely nothing. I had to put them in some order.
12 I am not suggesting how you are to resolve this. You
13 will note that there are two.

14 Also, you will note that it is captioned.
15 That means absolutely nothing. That is just simply
16 to facilitate the filing of the document.

17 The first choice, the form reads, "We, the
18 jury, by unanimous consent find the Defendant,
19 Derrick Grant, on the charge of Murder" -- and the
20 first choice is Guilty, the second choice is Not
21 Guilty.

22 You will note that for each choice there is
23 a blank that precedes it. Whichever your choice, I
24 would ask you to place a check or a cross mark in that
25 blank and then circle your choice.

1 Once you have done that, you will sign where
2 it says "Presiding Juror" and then you will have
3 completed the verdict form.

4 As you know, if you mark Guilty or Not
5 Guilty, all of you must agree, all twelve of you.
6 Twelve to zero is the count. Eleven to one won't
7 work.

8 Guilty, twelve to zero of you have agreed
9 that the State has met its burden.

10 Not Guilty, twelve to zero you will have
11 agreed that State has failed to meet its burden at
12 least as to one. If they fail on one, then you have
13 to return a verdict of Not Guilty.

14 I know you're anxious to get started and
15 you're almost to that point. I need to ask now, of
16 the first twelve of you selected do any of you feel
17 that you will not be able to continue? If so, raise
18 your hand? (No response). Thank you.

19 The alternates, at this point I am going to
20 ask -- in just a moment, I am going to excuse the jury
21 and you from the courtroom. I know that you're
22 anxious to start but I have to discuss my charge with
23 the attorneys and Mr. Grant to find out if there needs
24 to be any additional instruction or clarification. If
25 so, we will return all of you to the courtroom to

1 accomplish that.

2 But if there aren't any exceptions or addi-
3 tions, then we will gather the exhibits and deliver
4 them to you at that time. Then once you receive them,
5 not before, you may begin your deliberations.

6 Now, once you commence your deliberations,
7 Ladies and Gentlemen, the only restriction that I
8 place on the deliberations is simply this: If any
9 juror has to leave the table for any reason, you must
10 stop deliberating until all twelve of you are
11 together.

12 Other than that, you may proceed as you deem
13 fit and proper. I thank you for your attention to my
14 remarks, I thank you for your attention to the
15 attorney's remarks, Mr. Grant's, and your attention to
16 the witnesses throughout this trial. Please retire
17 to your jury room but do not begin your deliberations
18 until you have received the exhibits.

19 I would ask the alternate jurors to go into
20 my chambers. I will be speak with you in just a
21 moment.

22 (JURY OUT @ 11:40 A.M.)

23 THE COURT: Exceptions or additions from
24 the State?

25 MR. JENNINGS: None from the State.

1 THE COURT: Exceptions or additions from
2 Mr. Grant?

3 DERRICK GRANT: No, Your Honor.

4 THE COURT: Thank you very much, we will
5 be at-ease. You may want to check and make sure that
6 the exhibits -- I think that we have a checklist to go
7 over and then we will be at-ease and await the jury's
8 decision.

9 COURT REPORTER: For the State, we have
10 Exhibits 1 through 109. State's Exhibits 1 and 42
11 were marked for identification only.

12 MR. JENNINGS: What is Exhibit 42?

13 COURT REPORTER: Favero's report.

14 MR. JENNINGS: That's right. Thank you.

15 COURT REPORTER: Mr. Grant, do you agree?

16 DERRICK GRANT: (Upon review), yes,
17 ma'am.

18 COURT REPORTER: For the defense, we have
19 Defendant's Exhibit 4 through 10. Exhibits 1 through
20 3 and Exhibit 11 and Exhibit 12 were marked for
21 identification only.

22 MS. KENNEDY: That's right. Right,
23 Derrick?

24 DERRICK GRANT: Right.

25 COURT REPORTER: You may take the

1 evidence with the verdict form to the jury and tell
2 them to commence deliberations.

3 BAILIFF WIGGINS: Yes, ma'am.

4 (JURY IN DELIBERATIONS @ 11:52 A.M.)

5 (JURY NOTE REQUESTING MAP)

6 (DEFENDANT PRESENT)

7 DERRICK GRANT: Your Honor?

8 THE COURT: Just one second until the
9 Solicitor gets here. I can't talk to you before that.

10 DERRICK GRANT: Okay.

11 (SOLICITOR JENNINGS PRESENT)

12 THE COURT: We have a question from the
13 jury asking, "Can we have a map of Berkeley County
14 showing the Cainhoy/Huger area in detail?" Signed by
15 the presiding juror.

16 I have written to the presiding juror,
17 "The jury now has all of the evidence to consider.
18 The evidence consists of testimony of the witnesses
19 and exhibits introduced through the testimony of
20 witnesses. The jury must decide the issues in this
21 case by considering and evaluating that evidence and
22 nothing else."

23 Any objection from the State, or do you want
24 to voluntarily give them a map?

25 MR. JENNINGS: It really doesn't matter

1 to me.

2 THE COURT: Mr. Grant, do you have any
3 objection to it or do you want to voluntarily give
4 them a map?

5 DERRICK GRANT: No objection, Your
6 Honor.

7 THE COURT: You want them to decide it
8 based on the evidence and not give them -- or do you
9 want them to have a map?

10 DERRICK GRANT: I want them to have a
11 map.

12 THE COURT: Solicitor, do you have any
13 objection to a map?

14 MR. JENNINGS: No, sir.

15 THE COURT: Then I will write, "The
16 parties have agreed that you will have a map. We
17 will provide you with a map." Okay?

18 MR. JENNINGS: Yes, sir.

19 THE COURT: Do we have a map, such a
20 map available?

21 MR. JENNINGS: We had one that we were
22 going to use but didn't end up using it.

23 THE COURT: All right, why don't you
24 bring that in and we will send that back. Is that
25 okay with you, Mr. Grant?

1 DERRICK GRANT: Yes, Your Honor. Your
2 Honor, will I be able to look at the map before ---

3 THE COURT: Yes, sir.

4 DERRICK GRANT: (Upon review), they are
5 going to get this whole map right here?

6 THE COURT: Yes, sir.

7 DERRICK GRANT: Would the area be marked
8 where ---

9 THE COURT: No, sir.

10 DERRICK GRANT: They are just going to
11 take this back there?

12 THE COURT: They've asked for a map, they
13 can look at it for whatever purposes that they want.

14 DERRICK GRANT: No objection -- (sidebar
15 with Ms. Kennedy). No objection, Your Honor.

16 THE COURT: All right. Let me see the
17 map, please, Solicitor.

18 MR. JENNINGS: (Tenders)

19 THE COURT: (Upon review), all right.
20 Why don't we mark this for purposes of this as Court's
21 Exhibit 3A. Exhibit 3A will be the map consistent
22 with this note, Court's Exhibit 3. I am going to
23 change my response to the note to read, "Generally a
24 jury must decide issues in a case by considering and
25 evaluating evidence and nothing else, but in this case

1 the parties have agreed to submit this map as you have
2 requested." Is that acceptable?

3 DERRICK GRANT: Thank you, Your Honor.

4 MR. JENNINGS: Yes, sir.

5 (SO ENTERED AS COURT'S EXHIBIT 3)

6 (SO ENTERED AS COURT'S EXHIBIT 3A)

7 THE COURT: The reason I am adding that
8 is I don't want them to think that they can start a
9 free reign of asking for additional information.
10 That's the reason why I want them to understand that
11 they must decide the case from the evidence.

12 All right, any objection to the Court's
13 response, Mr. Grant?

14 DERRICK GRANT: No, Your Honor.

15 THE COURT: Very well, we will be at-
16 ease.

17 (DELIBERATIONS CONTINUE)

18 (NOTIFIED OF JURY QUESTION @ 1:25 P.M.)

19 (DEFENDANT PRESENT)

20 THE COURT: All right, thank you very
21 much. Let the record reflect that Mr. Grant is
22 present. The jury, by a note to be marked as Court's
23 Exhibit 4, have requested that we replay the testimony
24 of Ms. Browder and Ms. Youngberg. If you would bring
25 them in, I will discuss that with them and we will

1 allow them to hear as much of the testimony and they
2 desire. I am not going to require them to hear all of
3 it. I am just going to tell the presiding juror that
4 as of such time they have heard whatever portions that
5 they want to hear that if he will raise his hand that
6 we will stop that testimony at that point. I am not
7 going to ask them what they need to hear or what
8 questions that they may have. I will let the jury
9 discuss that among themselves.

10 Is the State ready to bring in the jury?

11 MR. JENNINGS: Yes, sir.

12 THE COURT: Is the Defendant ready?

13 DERRICK GRANT: Yes, Your Honor.

14 THE COURT: All right, please invite the
15 jury to return.

16 (JURY IN @ 1:55 P.M.)

17 (SO ENTERED AS COURT'S EXHIBIT 4)

18 THE COURT: Thank you very much, Ladies
19 and Gentlemen. Court's Exhibit 4, Mr. Presiding
20 Juror, is the jury note requesting that the jury
21 would like to hear the testimony or portions of the
22 testimony of Ms. Browder and then Ms. Youngberg.

23 What we are prepared to do and what we will
24 do is I will play that testimony, starting first with
25 Ms. Browder. I will play it as long as is necessary.

1 By that, I mean that I don't want you to tell me or
2 any juror to tell me what portion that they wish to
3 hear. At such time as the jury has heard, or jurors,
4 whatever, has heard what they need to hear from that
5 witness, if they will just make it known to you, if
6 you will raise your hand, we will stop that testimony
7 and then proceed to the testimony of Ms. Youngberg
8 with the same process.

9 Please remember that testimony of witnesses
10 consists, of course, of direct examination, cross
11 examination, sometimes redirect and sometimes recross.
12 You may have to hear all of it to hear that portion
13 that you need to hear, but I don't want you to tell me
14 anything about that. I will just play it as long as
15 the jury needs it played. Okay?

16 FOREMAN: Okay.

17 THE COURT: Ms. Garrison, are you ready?

18 COURT REPORTER: Yes, sir, I am.

19 THE COURT: You may proceed..

20 (WHEREUPON TESTIMONY OF HEATHER BROWDER

21 REPLAYED IN ITS ENTIRETY)

22 COURT REPORTER: The next witness is Ms.
23 Youngberg.

24 (WHEREUPON TESTIMONY OF VONDA YOUNGBERG

25 REPLAYED IN ITS ENTIRETY)

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

841
731

1 COURT REPORTER: That is the end of her
2 testimony, Your Honor.

3 THE COURT: Thank you. Ladies and
4 Gentlemen, you may retire and resume your delibera-
5 tions.

6 (JURY OUT @ 2:17 P.M.)

7 THE COURT: Anything from the State?

8 MR. JENNINGS: No, sir.

9 THE COURT: Anything from the defense,
10 Mr. Grant?

11 DERRICK GRANT: No, Your Honor.

12 THE COURT: Very well, we will be in
13 recess and at-ease until we hear further from the
14 jury.

15 (RECESS 2:20 - 4:20 P.M.)

16 (DEFENDANT PRESENT)

17 (NOTIFIED OF JURY QUESTION @ 4:20 P.M.)

18 THE COURT: Let the record reflect that
19 Mr. Grant is present. Court's Exhibit 5, the jury has
20 made the following inquiry or request: "May we have
21 a copy or listen again to the Judge's charge concern-
22 ing the four elements for determining guilt or
23 innocence?"

24 I am going to bring them back in. I've
25 prepared to give them the charge that pertains to the

1 elements of murder. I am going to ask exactly what
2 they are looking for or if they want the entire
3 charge. If they are, then I've prepared a copy and I
4 will give them that portion of the charge so that they
5 can take it back and reread it. Any objection from
6 the State to doing it in that manner?

7 MR. JENNINGS: No, sir.

8 THE COURT: Any objection from the
9 defense, Mr. Grant?

10 DERRICK GRANT: No, Your Honor.

11 THE COURT: Thank you. Ask the jury to
12 return, please.

13 (JURY IN @ 4:27 P.M.)

14 THE COURT: Thank you very much, Ladies
15 and Gentlemen. As I understand the request that you
16 have, and I will read it, you want a copy of or to
17 listen again to my charge particularly concerning the
18 four elements for determining guilt/innocence. I am
19 assuming that you're asking me for the charge that
20 defines murder and what is necessary to establish the
21 offense of murder. Is that correct? Or do you want
22 the entire charge?

23 FOREMAN: If I may, Your Honor, I don't
24 believe that we want the entire charge -- and anybody
25 can stop me anytime here.

1 THE COURT: What I would ask you to do
2 is to state what you were asking, to clarify. Then if
3 there are any further discussions we will let you
4 return to the jury room to discuss it.

5 FOREMAN: Thank you, Your Honor. I
6 believe that the question centers in part on the
7 definition of murder and also in part on any specific
8 elements that we might treat as stepping stones, if
9 you will, towards a decision of guilt or innocence;
10 if that makes sense.

11 THE COURT: All right. Well, what I am
12 going to do is I am going to print for you and send it
13 back the portion of my charge that discusses the
14 offense of murder, what is required. Obviously you
15 know that the State must prove those elements by the
16 evidence and you have to determine whether the
17 evidence is there to meet that, and define those
18 elements beyond a reasonable doubt. That process, I
19 can give you but it's a mental process of your going
20 through and just simply asking yourself whether you
21 believe the evidence and if you are convinced beyond
22 a reasonable doubt that that element is established.

23 I will send that to you. You can discuss
24 that. If you need further aspects of my charge, just
25 let me know and I will furnish those to you.

1 I will ask that you retire and I will be
2 sending this to you shortly.

3 (JURY OUT @ 4:35 P.M.)

4 THE COURT: Any objection, exceptions or
5 additions from the State?

6 MR. JENNINGS: No, sir.

7 THE COURT: Mr. Grant, from the Defense?

8 DERRICK GRANT: No, Your Honor.

9 THE COURT: Thank you very much, we will
10 be at-ease and I will send that to them. I will be
11 happy to provide you with a copy of what I am sending.
12 The question requesting the clarification shall be
13 Court's Exhibit ---

14 COURT REPORTER: Court's Exhibit 5, and
15 the written submission to the jury as Court's Exhibit
16 5-A.

17 THE COURT: Thank you.

18 (SO ENTERED AS COURT'S EXHIBIT 5)

19 (SO ENTERED AS COURT'S EXHIBIT 5-A)

20 (RECESS 4:40 - 5:30 P.M.)

21 (NOTIFIED OF JURY REQUEST @ 5:30 P.M.)

22 (DEFENDANT PRESENT)

23 THE COURT: All right, we have received
24 what will be marked as Court's Exhibit 6. "May we
25 have a printed copy of the judge's charge delivered

1 after the portion we already have -- have already
2 received. That is, beginning where the section we
3 have leaves off."

4 I have printed -- the next section that I
5 gave to them was discussing criminal intent. I have
6 printed that as I gave it to them. I've also included
7 that portion -- I am going to bring them in and tell
8 them that I didn't include the portion where I
9 discussed the verdict form, and I probably state a
10 little more than that when I am down there, but that's
11 the essence of what I said. So that part really
12 doesn't have anything to do with the issues of
13 criminal intent, but I will bring them in and explain
14 that to them. Any objections from the State?

15 MR. JENNINGS: No, sir.

16 THE COURT: Any objections, Mr. Grant?

17 DERRICK GRANT: No.

18 THE COURT: Sir?

19 DERRICK GRANT: No, Your Honor.

20 THE COURT: Ask the jury to return,
21 please. Please mark that as Court's Exhibits 6 and
22 6-A.

23 COURT REPORTER: Yes, sir.

24 (SO ENTERED AS COURT'S EXHIBIT 6)

25 (SO ENTERED AS COURT'S EXHIBIT 6-A)

1 (JURY IN @ 5:33 P.M.)

2 THE COURT: Thank you, Ladies and
3 Gentlemen. I figured that rather than hand this to
4 somebody and then have them hand it to you, I thought
5 I'd just come down here and hand it to you myself.

6 I have what is now Court's Exhibit 6. The
7 question is, may you have the printed copy of my
8 charge delivered after the portion you already have
9 received, beginning with the section that leaves off.
10 The next section is what I defined as criminal intent.
11 I have printed that for you. I have also included the
12 last section, which is the general language that talks
13 about or again goes back to your duties. I did not
14 include the portion where I explained the verdict form
15 to you. If you need that again, I will be happy to do
16 that as well.

17 I am handing that to you now. If you need
18 further portions of my charge, please just let me
19 know.

20 FOREMAN: Thank you, Your Honor. We
21 want to thank the court for its patience.

22 THE COURT: No problem. Thank you for
23 your diligence. We appreciate the jury continuing on
24 this case. Thank you very much. You may now retire
25 and resume your deliberations.

1 (JURY OUT @ 5:45 P.M.)

2 THE COURT: Any exceptions or additions
3 from the State?

4 MR. JENNINGS: No, sir.

5 THE COURT: Exceptions or additions from
6 the Defense, Mr. Grant?

7 DERRICK GRANT: No, Your Honor.

8 THE COURT: All right, we will be at-
9 ease.

10 (RECESS 5:45 - 8:57 P.M.)

11 (NOTIFIED OF JURY REQUEST @ 8:57 P.M.)

12 (DEFENDANT PRESENT)

13 THE COURT: Let the record reflect that
14 Mr. Grant is present. Mr. Grant, Solicitor, by what
15 has now been marked as Court's Exhibit 7, the jury
16 has requested that we replay the testimony of the DNA
17 analyst, Mr. Lambert, and particularly as to the DNA
18 of Exhibits 90, 91 and 92, the cuttings of the pants.
19 So I am going to play the entire testimony. I will
20 just start it and play it until they tell me to stop.
21 Ms. Garrison, you tell me when you're ready.

22 COURT REPORTER: Just a moment.

23 THE COURT: Take your time.

24 COURT REPORTER: Thank you. I'm ready,
25 Judge.

1 THE COURT: Is the State ready?

2 MR. JENNINGS: Yes, sir.

3 THE COURT: Is the Defendant ready?

4 DERRICK GRANT: Yes, Your Honor.

5 THE COURT: Invite the jury to return,
6 please. And this is Court's 7?

7 COURT REPORTER: Yes, sir.

8 (SO ENTERED AS COURT'S EXHIBIT 7)

9 (JURY IN @ 9:02 P.M.)

10 THE COURT: Thank you very much, Ladies
11 and Gentlemen. By what is now marked as Court's
12 Exhibit 7, the jury has requested that we replay the
13 testimony of the DNA analyst. I believe that to be
14 Mr. Lambert. What I will do again, we will start from
15 the beginning of his testimony and we will continue to
16 play it until you signal us to stop.

17 FOREMAN: Okay.

18 THE COURT: And I realize that you have
19 asked specifically as to Exhibits 90, 91 and 91, and
20 the cuttings of the pants. But we will start from the
21 beginning. Ready, Ms. Garrison, whenever you are.

22 WHEREUPON TESTIMONY OF STEVEN LAMBERT

23 REPLAYED, AS FOLLOWS:

24 STEVEN J. LAMBERT,
25 being duly sworn to tell the truth, the whole truth

1 *and nothing but the truth, testified, as follows:*

2 *DIRECT EXAMINATION*

3 *BY MR. HOISINGTON:*

4 Q. *Mr. Lambert, where are you employed?*

5 A. *South Carolina Law Enforcement Division.*

6 Q. *You are an Agent with SLED?*

7 A. *Yes, sir.*

8 Q. *How long have you been working with SLED?*

9 A. *Since January of 1990.*

10 Q. *And what are your areas of responsibilities?*

11 A. *I am assigned to the Forensics laboratory, to*
12 *the DNA lab where we do serology and DNA analysis.*

13 Q. *Can you describe what that entails, for the*
14 *jury?*

15 A. *Okay. Serology is the study of body fluids. We*
16 *receive evidence from crime scenes and we're*
17 *interested in knowing, first of all, what kind of body*
18 *fluids that it is, whether it is semen, saliva, blood.*
19 *I identify those body fluids. Once we do that, we*
20 *determine whether or not we have enough to do a DNA*
21 *typing on it. We proceed with the DNA typing to see*
22 *if we can find out whose body fluids that may belong*
23 *to.*

24 Q. *I am going to ask you in a second to give us in*

1 layman's terms an understanding of what DNA is. But
2 before we get to that, would you tell us about the
3 type of education that you have had and the type of
4 training that you have been given.

5 A. I've got a bachelor's degree in Chemistry in Mars
6 Hill College, 1983; I have a doctorate degree from the
7 University of South Carolina in BioChemistry, in 1990.
8 When I came to SLED, I trained under the supervision
9 of their court-qualified analysts at SLED. I went to
10 the FBI Academy and received training, got graduate
11 credits from the University of Virginia in their FBI
12 DNA-typing course. I was a visiting scientist at the
13 FBI Academy. I've also attended numerous symposiums
14 and seminars over the years.

15 Q. As a result of your training and expertise, have
16 you had occasion to do numerous DNA tests in the past?

17 A. Yes.

18 Q. Approximately how many tests have you run?

19 A. We typically do about fifty cases a year, and
20 I've been doing it for approximately twelve or
21 thirteen years.

22 Q. And in those fifty cases, is there typically more
23 than one samples that you examine in a case?

24 A. Typically anywhere from about five to ten samples

1 per case.

2 Q. As a result of this employment, have you had
3 occasion to testify in Court before?

4 A. Yes, I have.

5 Q. Have you testified as an expert witness in the
6 field of DNA analysis?

7 A. Yes.

8 Q. How many times?

9 A. Over sixty.

10 MR. HOISINGTOIN: Your Honor, we would
11 offer him at this time as an expert in the field of
12 DNA and hair-type analysis.

13 DERRICK GRANT: No objection.

14 THE COURT: Very well. He will be
15 permitted to render opinions in those areas.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. HOISINGTON:

18 Q. If you would now give us an overview of the
19 science of DNA, how it works and what you're looking
20 for.

21 A. Okay. DNA stands for deoxyribonucleic acid.
22 It's a chemical and it's found in virtually ever
23 single one of your cells in your body. Encoded in
24 that chemical are the instructions to make us who we

1 are. We start off as a single cell when we are
2 conceived and that cell divides and divides and with
3 each division the DNA is passed on. Within that DNA
4 are the instructions for how the cell is going to be
5 composed, what kind of protein that it is going to be
6 made out of. It basically tells us who we are.

7 The vast majority of everybody's DNA in this room
8 is the same, about ninety-nine percent of our DNA is
9 the same for everybody. But there's a small portion
10 of the DNA.

11 But there is a small portion of the DNA that
12 makes us different from each other. That's the part
13 that we zero in on as forensic scientists.

14 The only two individuals who would have the same
15 DNA would be identical twins since they start off with
16 a single egg, that egg splits and becomes two
17 individual eggs. Other than that, everyone's DNA
18 within that small part of DNA that makes us different
19 from each other.

20 So we can tell individuals apart. Blood left at
21 a crime scene, we can test that and compare that back
22 to victims or suspects to see if we can find a match
23 to see who that blood belonged to.

24 Q. Are you always looking specifically for matches

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 or do you look for stuff that don't match?

2 A. A certain number of our samples don't match.

3 Quite often we call agencies up and say, 'you've got
4 the wrong individual, it didn't match the blood at the
5 crime scene' or the semen at the crime scene, 'so you
6 need to look for someone else.'

7 Q. So it is used for exclusion as well as inclusion?

8 A. Absolutely.

9 Q. One of the things that I am curious about, when
10 you receive samples, how are they typically processed
11 and sent to you?

12 A. When they come in to SLED, they are either sent
13 up to my lab in one of two different ways. They
14 either pass through evidence processing, through
15 Janice Bryson's lab and she would take the larger
16 items and examine those and make cuttings of those
17 items and then pass the cuttings on to us.

18 Or, in some cases the swabs taken from a crime
19 scene that are small enough that there doesn't have to
20 be any processing done to those. Those go directly to
21 our lab. We analyze those without any evidence
22 processing.

23 Q. Now, what is it that you physically compare those
24 samples to?

1 A. We receive blood standards from victims/suspects
2 who might have left blood or biological material at a
3 crime scene. We will do the same typing on those
4 standards and develop DNA prints from them and compare
5 them to the DNA prints from the evidence.

6 Q. When you review these standards, do you typically
7 know what the investigation has revealed about the
8 people that are sending in those standards or that the
9 standards are coming from?

10 A. No, sir. We receive all of these samples from
11 agencies across the state and we know very little
12 about them or the crime, other than it is a sexual
13 assault, a murder, a burglary or something like that.

14 Q. So if you get samples from three or four people,
15 you don't know if you have three or four defendants or
16 one defendant?

17 A. That's correct.

18 Q. That has nothing to do with your analysis
19 of ---

20 A. We test those samples -- whether or not it
21 is a defendant or victim, we process them the
22 same way.

23 Q. Calling your attention to the case -- I know that
24 you'all have a lab number on it. But it's now known

1 *as the case involving Rachel Sottile, who is the*
2 *victim.*

3 A. *Yes, sir.*

4 Q. *I think all your reports reference that also?*

5 A. *Yes, sir.*

6 Q. *You had the responsibility to analyze evidence*
7 *that was provided in this case?*

8 A. *Yes, sir.*

9 Q. *Now, in looking at -- I need to get a little bit*
10 *of an overview. It looks to me that at least twenty-*
11 *three samples were actually analyzed; is that right.*

12 A. *That's correct. Somewhere in the range of*
13 *twenty-three, plus the blood standards that we drew.*

14 Q. *When you get samples, do you routinely analyze*
15 *everything that you get or do you make a determination*
16 *of what should be analyzed or can't be analyzed?*

17 A. *We look at the samples to see what is going to*
18 *be the best samples. Obviously we can't test every*
19 *single sample physically. Like I said before, it's*
20 *about ten samples per case. In cases that involve*
21 *several scene, different vehicles, different spots,*
22 *autopsy samples, we will make an exception and do more*
23 *samples. But even then we try to narrow it down to*
24 *the samples that are going to give us the most*

1 information about the scene.

2 Q. In this particular case, how many blood samples
3 were you given, blood standards, to try
4 to compare to the samples that were taken as evidence.

5 A. There were blood standards from four different
6 individuals.

7 Q. Can you name who you got them from?

8 A. Yes. We received blood standards from Rachel
9 Sottile, the victim; from Shawn Elkins; from Donald
10 Lynch; and from Derrick Grant.

11 Q. All right. Did you know at that time that Rachel
12 Sottile was even the victim?

13 A. She was indicated as the victim on the log-in
14 paperwork at SLED.

15 Q. Now, of the twenty-three samples that you
16 actually got some results of, let me ask you as an
17 overview, did any of them point to Shawn Elkins
18 and/or Donald Lynch?

19 A. Of those twenty-three samples that I tested,
20 they were excluded on every single one that gave me a
21 print. Not every single one of the blood samples gave
22 me a DNA print. There just wasn't enough sample on
23 some of them. But on the ones that did give me a
24 print, I did not see any biological material from

1 *Elkins or Lynch.*

2 *Q. Now, along with blood samples, sometimes you are*
3 *given other items from suspects or possible witnesses*
4 *are you not?*

5 *A. Uh, -- sometimes.*

6 *Q. What, typically, would you be given?*

7 *A. Could you repeat that question?*

8 *Q. Yeah. I mean, other than a blood sample are you*
9 *sometimes given from a possible suspect or witness,*
10 *are you given other items in order to run DNA*
11 *profiles? Like hair?*

12 *A. That's correct. In the suspect collection kit*
13 *there's -- we collect two items of blood and a saliva*
14 *standard. The saliva standard was used probably more*
15 *often about seven or eight years ago when we were*
16 *doing saliva, because you would have to do that to*
17 *determine something about the individual's secreter*
18 *status which had to do with their blood type. We*
19 *don't do that typing more. So we typically don't do*
20 *anything with the saliva standard. We just test the*
21 *blood standard. If the blood standard happened to*
22 *be degraded, we might back up and go to that saliva*
23 *standard and use it. But primarily the blood standard*
24 *is the one that we use.*

1 Q. So in this case, every standard that you utilized
2 was blood?

3 A. Yeah.

4 Q. All right. Would you sometimes get hair and be
5 requested to do a DNA analysis on that?

6 A. We do. Primarily the evidence that we test first
7 is the evidence from the scene: blood, semen. Then
8 the hair comes in during the second level of analysis
9 that would be performed if we didn't get any results
10 on that first analysis.

11 Q. Can you tell us why you would not go first with
12 the hair analysis?

13 A. Hair analysis typically doesn't give you a result
14 as often as a blood sample would. We're pretty
15 confident that we can get a DNA from blood. Hair, to
16 have a hair result, the hair just can't fall out. It
17 has to be pulled out and it has to have quite a bit of
18 root material on it for us to get a DNA print in our
19 laboratory. So we are going to go with the samples
20 that we know that we can get a print on first.

21 Q. In this particular case, do you recall whether
22 you tested any hair at all?

23 A. I was requested to do some hairs on this case
24 that there was some question about and did not get a

1 DNA print from any of the hairs; which, again, didn't
2 surprise me because it's not the usual case to get a
3 DNA print from hair.

4 Q. Would that be the test that was done on -- let me
5 show you State's Exhibit 79 and ask if that is the one
6 that you did analysis on?

7 A. Well, it's got my initials on it. Let me see if
8 I can see the item number, (reviewing). I believe
9 that was my Item 39, hair from abdomen. That's
10 correct. I did not get a DNA print when I tested
11 that.

12 Q. Where does it show that hair was taken from?

13 A. "Hair from abdomen".

14 Q. Of the victim?

15 A. I assume that it was from the victim.

16 Q. All right. Let's go over for a minute the test-
17 ing that you had done that did result in analysis.

18 A. Okay.

19 Q. Let's see if we can start with -- I want to show
20 you your Items 8 and 9, which are marked State's
21 Exhibits 97 and 98.

22 A. Okay. These are swabs from a vehicle. State's
23 Exhibit 97 is from the front driver's side quarter
24 panel and State's Exhibit 98 is from the bottom of

1 the steering wheel. What happened is that someone was
2 processing this car, taking some sterile Q-tips,
3 moisten them with a little bit of distilled water and
4 swabbed whatever biological material was there. In
5 this case it turned out to blood. Dried those items
6 out and then submitted it to the lab.

7 Q. Did you preform a DNA analysis of that?

8 A. Yes, I did.

9 Q. Tell us, does the Item 8 -- your number eight --
10 identify anybody out of the four samples that you
11 have.

12 Q. Out of those four samples that were submitted,
13 that particular sample matched Derrick Grant. The
14 probability of a random person from the population
15 that it would be unrelated is about one in 4.5
16 trillion individuals, so it an extremely rare DNA
17 print and it matches Derrick Grant. It was done on
18 the blood on the front, driver's side, quarter panel
19 of the victim's vehicle.

20 Q. Now, your SLED number, Item 9, which is exhibit
21 number -- the next one on there?

22 A. It is 98, taken from the steering wheel.

23 Q. Did you perform an analysis on that also?

24 A. Yes, I did.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

751

1 Q. What did you find as a result of that analysis?

2 A. That turned out to be a mixture of more than one
3 individual. We can detect these when we do DNA
4 typing. It was a mixture of two individuals' blood.
5 The major contributor to that stain, there was a
6 little more of one than the other, was from Rachel
7 Sottile. The minor contributor was consistent with
8 coming from Derrick Grant.

9 Q. Now, 13.1, State's Exhibit 95, if you would look
10 at that and see if you recognize that exhibit and
11 whether you tested it.

12 A. Yes, this was my Item 13.3. It's a swab from the
13 back of a rearview mirror of vehicle. I recognize the
14 packaging, it has my initials on that.

15 Q. What was the finding as the result of that test?

16 A. That particular sample again turned out to be
17 a mixture of two different individuals. They were
18 pretty much equal on that sample. The major con-
19 tributor being Rachel Sottile, which was just a little
20 bit more. The minor contributor was consistent with
21 coming from Derrick Grant.

22 Q. Now, if it doesn't pile up too much, we will just
23 keep going through this.

24 A. Okay.

1 Q. I show you State's Exhibit 74, which is Item 22;
2 State's Exhibit 67, which is your Item 23; and State's
3 Exhibit 68, which is your Item 24.

4 A. Okay.

5 Q. Make sure that I have those right for you.

6 A. Okay. This is my Items 22, 23 and 24.

7 Q. Tell us what Item 22 is and what your analysis
8 revealed.

9 A. Item 22, State's Exhibit 74, is a broken finger-
10 nail collected from the victim's jacket. Sometimes we
11 are able to get a DNA print, such as if the victim
12 were to scratch a suspect they might get a little bit
13 of the skin under a fingernail. In this case, we
14 attempted to get a DNA print from that but were
15 unsuccessful. There wasn't enough cellular material
16 there.

17 Q. Your Item 23?

18 A. Item 23 is a swab from the left index ring on
19 finger, State's Exhibit 67.

20 Q. Would that be the victim's finger?

21 A. It doesn't say on this particular item. I
22 probably have it in my notes if you want me to refer
23 to those.

24 Q. If you would, please.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

753

1 A. (Upon review), it was submitted to our laboratory
2 as a swab of putative blood from the left ring.

3 Again, I am assuming that's from the victim but
4 there's nothing indicated on my log-in sheet.

5 Q. In any case, what was the results of your tests?

6 A. That Item 23, the swab from the left ring, was
7 negative. Again, I didn't get a ---

8 Q. And your Item 24, which was Exhibit ---

9 A. State's Exhibit 68. It's a swab from the finger
10 on the left index finger, and I did not get a DNA
11 print from that item either.

12 Q. I call your attention to your exhibit number
13 (Item) 27, which is State's Exhibit 70; to your Item
14 28, which is State's Exhibit 71; and your Item 29,
15 which is State's Exhibit 72.

16 A. Okay.

17 Q. I ask you to review those and tell us what your
18 investigation revealed.

19 A. (Upon review), Items 27, 28 and 29.

20 Item 27 is another swab from a vehicle, from the
21 left door -- on the outside of the vehicle. The DNA
22 print developed from that matched Derrick Grant. The
23 probability of randomly selecting someone from the
24 population who would have that DNA print is one out of

1 every 52 Quadrillion individuals. It's a very
2 rare DNA print and was found on the outside of that
3 vehicle.

4 Item 28 is a swab from the steering wheel of that
5 vehicle. Again, it is another mixture -- pretty much
6 equal -- of someone matching Derrick Grant and Rachel
7 Sottile.

8 Item 29 is a swab from the left door interior
9 handle on the car. Another mixture of blood with the
10 major contributor matching Derrick Grant, the minor
11 contributor matching Rachel Sottile.

12 Q. Moving along in your investigation, State's
13 Exhibit 92, which is Item 30.1; Item 30.2, which is
14 State's Exhibit 90; and 30.3, which is State's
15 Exhibit 92.

16 A. Okay.

17 Q. I would ask you to look at those and tell us
18 where you got those from and what your investigation
19 revealed.

20 A. These are cuttings from a pair of pants that were
21 submitted to my laboratory after it went through
22 evidence processing. 30.1 and 30.2 were identified as
23 having semen on those items. When I tested it in the
24 laboratory, I confirmed that it was human semen. And

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 Item 30.3 had human blood on it.

2 Item 30.1, the item with the semen, there is a
3 DNA print that is a mixture of Rachel Sottile and
4 Derrick Grant. Even though there is semen on a
5 particular item, there could be secretions from the
6 female that also accompany that. Quite often in semen
7 samples we will get a mixed sample.

8 Q. So it is not necessary that it be purely blood in
9 order to be able to determine DNA?

10 A. Purely blood or purely semen.

11 Q. How about, can sweat give you DNA sometimes?

12 A. It could if there is enough cellular material in
13 it. It's much rarer for sweat to give DNA.

14 Q. Now, did you mention Item 30.3, State's Exhibit
15 92?

16 A. Let me do 30.2 before I forget to mention that.

17 Q. All right.

18 A. It's another cutting from the victim's pants and
19 there wasn't semen from that cutting and actually very
20 little DNA at all. The partial print that I got
21 matched Rachel Sottile. There wasn't enough from the
22 semen contributor to get a print on that.

23 30.3 is the blood cutting from the pants. It
24 matched the victim's, Rachel Sottile.

1 Q. Now I show you State's Exhibit 73, which is your
2 Item 33.

3 A. Okay.

4 Q. Is that your envelope?

5 A. Yes. Item 33 is a broken nail from the right
6 front seat, under the seat, between the seat and the
7 door of the vehicle, and the DNA print from that
8 matched Rachel Sottile.

9 Q. I believe that you have already testified as to
10 the hair that was SLED Item 39, State's Exhibit 79,
11 which was the victim's hair off her abdomen?

12 A. That's correct.

13 Q. All right. I call your attention to Item 40,
14 State's Exhibit 77, and ask if you can tell us what
15 this is?

16 A. This is the vaginal swab collected from Rachel
17 Sottile at autopsy. I tested those and identified
18 semen on the vaginal swabs. Again, we got a mixture.
19 Sometimes you just don't have enough sperm to
20 completely get a print from the sperm. In this case
21 it was a mixture of Rachel Sottile and Derrick Grant.

22 Q. Your Items 44 and 45, State's Exhibits 78 and 76.

23 A. Item 44 is the fingernail clippings taken from
24 Rachel Sottile during the autopsy, from her right

1 hand, and Item 45 is from the left hand. I tested the
2 clippings from the right hand and did not get a DNA
3 print from those. I tested what little cellular
4 material that was in the clippings from the left hand
5 and that matched Rachel Sottile; which is not unusual
6 for someone to have their own DNA print under their
7 fingernails.

8 Q. Now, I have your Item 72.1, State's Exhibit 93;
9 73.1, State's Exhibit 94.

10 FOREMAN: Your Honor, I believe that's
11 all that we need.

12 (WHEREUPON PLAYBACK CONCLUDED)

13 THE COURT: All right. You may retire
14 to your jury room and resume your deliberations.

15 (JURY OUT @ 9:25 P.M.)

16 THE COURT: Any exceptions or additions
17 from the State?

18 MR. JENNINGS: Nothing from the State,
19 Your Honor.

20 THE COURT: Any exceptions or additions
21 from Mr. Grant?

22 DERRICK GRANT: (Sidebar with Ms.
23 Kennedy), no, Your Honor.

24 THE COURT: Very well, we will be at-
25 ease. Thank you.

1 DERRICK GRANT: Your Honor, can I make
2 a Motion for the entire tape to be played?

3 THE COURT: Yes, sir, you can go ahead
4 and make that Motion.

5 DERRICK GRANT: Your Honor, I would like
6 to make a Motion for the entire tape to be played of
7 Steven J. Lambert.

8 THE COURT: I appreciate that Motion.
9 As I indicated earlier, we will see what the Court
10 wishes to do with it. I don't ask the jury what
11 they're looking for. I don't make that inquiry
12 because I think that's an invasion of their province.

13 That's why I start playing the tape and I
14 play it until the jury tells me to stop. I am not
15 going to impose upon the jury and require them to
16 listen to anything that they don't indicate they need.

17 I previously explained to the jury that a
18 witness consists of direct examination, cross
19 examination and possibly redirect and recross. I
20 don't think that I need to restate that. I think
21 that they understand that fully.

22 I note that the jury reached a point where
23 they -- whatever juror signaled the foreperson to stop
24 the tape, I honored that request.

25 Your Motion is noted. Thank you very much.

1 Anything else, Mr. Grant?

2 DERRICK GRANT: No, Your Honor.

3 THE COURT: Very well, we will be at-
4 ease.

5 (NOTIFIED OF JURY QUESTION @ 10:10 P.M.)

6 (RECESS 9:25 to 10:10 P.M.)

7 (DEFENDANT PRESENT)

8 THE COURT: Let the record reflect that
9 Mr. Grant is present. Approach, please. This
10 doesn't have to be on the record, just scheduling.

11 (OFF RECORD SIDEBAR)

12 THE COURT: All right, let's bring in the
13 jury, please.

14 (JURY IN @ 10:12 P.M.)

15 THE COURT: Thank you very much, Ladies
16 and Gentlemen. The note that I have from the jury,
17 which is now Court's Exhibit 8, reads in part, "In
18 order to reach a verdict, is it incumbent upon the
19 jury to believe every fact of evidence asserted by the
20 State."

21 My response to that would be to restate for
22 you and remind you of the instruction wherein I said
23 that you have the right as a juror to believe one
24 witness against many, many witnesses against one, you
25 have the right to believe all of a witness' testimony,

1 parts of a witness' testimony or none of a witness'
2 testimony. As I stated, you don't make this decision
3 arbitrarily, capriciously, but you have that right.

4 What is incumbent and what is essential for
5 a verdict is -- a verdict of Guilty is that the State
6 must establish and you must believe, beyond a
7 reasonable doubt, that the State has proved that Mr.
8 Grant, as alleged in the indictment, killed another
9 person, namely Rachel Sottile, with malice
10 aforethought. That malice aforethought may be express
11 or implied. Those are essential to a conviction.

12 If the State fails on any one of those, any
13 aspect of that, the killing of another with malice
14 aforethought, then the verdict must be Not Guilty.

15 Insofar as the other parts of it, if it is
16 not essential to that, you're free to believe it or to
17 disbelieve it, but the jury must unanimously agree
18 that those elements -- the killing of another by the
19 defendant with malice aforethought, either express or
20 implied -- has to be established, and you have to
21 believe that the evidence convinces you beyond a
22 reasonable doubt as to that aspect. Okay?

23 FOREMAN: Yes, sir.

24 THE COURT: If you need further instruc-
25 tion, just let me know.

1 FOREMAN: Thank you, Your Honor.

2 (JURY OUT @ 10:16 P.M.)

3 THE COURT: Any exceptions or additions
4 from the State?

5 MR. JENNINGS: Nothing from the State.

6 THE COURT: Any exceptions or additions,
7 Mr. Grant?

8 DERRICK GRANT: May I?

9 THE COURT: Sure. Take your time, sir.

10 DERRICK GRANT: (Sidebar with Ms.
11 Kennedy). No, Your Honor.

12 THE COURT: Mr. Grant, you asked a ques-
13 tion and I didn't -- this note is part of the record
14 and at such time as this matter is concluded, you're
15 welcome to a copy of any part of the record.

16 DERRICK GRANT: Thank you, Your Honor.

17 THE COURT: You are welcome, sir. All
18 right, we will be at-ease.

19 (RECESS 10:17 - 10:25 P.M.)

20 THE COURT: Ladies and Gentlemen, I am
21 advised that the jury has reached a verdict. This
22 jury has been deliberating now almost nine hours --
23 almost ten hours. I will have to say that they have
24 been one of the more deliberate groups that I have
25 ever worked with. They have never once indicated that

1 they were not able to pursue or continue or wished to
2 go home. That's not what you typically have. Usually
3 you have a jury out for about two hours, dragging,
4 saying, 'We can't decide this case.' But this jury
5 apparently took their job seriously and they have
6 worked diligently.

7 I appreciate the manner in which all you
8 have observed this trial has conducted themselves this
9 week. This has been an extremely difficult week for
10 everybody. I know that there are very deep feelings
11 in this room. I know that there are anxious feelings
12 right now.

13 One thing that I want you to understand,
14 though, is that I have the greatest respect for this
15 institution, the institution of justice that we have
16 in this country, for its court, for the process, for
17 the people that appear here and for the people that
18 work here daily. It is an institution that deserves
19 respect, from me, from the people that use it, and
20 from you. That respect, I think, has been shown
21 throughout this trial. I am going to ask that that
22 respect continue. I mean by that, when the jury's
23 verdict is published, I want absolutely no outburst
24 whatsoever. I want no reaction from anyone in this
25 courtroom.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 If you feel that you will be unable to
2 contain your emotions, I respect that but I ask that
3 you leave now. If you remain, I will assume that it
4 will be your intention and desire to honor that
5 request. Does anyone feel that it is necessary to
6 leave? (One person exits courtroom). Thank you
7 very much. All right, let's invite the jury to
8 return.

9 COURT REPORTER: We need Mr. Grant,
10 Judge.

11 THE COURT: We do. Thank you very much.

12 (DEFENDANT PRESENT)

13 THE COURT: Mr. Grant, I have been
14 advised that the jury has reached a verdict. I have
15 just advised the audience that I appreciate their
16 demeanor this week, how they have conducted them-
17 selves. I want to say the same to you, as well.

18 DERRICK GRANT: (Affirmative nod).

19 THE COURT: I know it's been a very
20 difficult time for you, I understand that, and I very
21 much appreciate the respect that you have shown during
22 this process. I ask as the verdict is published that
23 you continue to demonstrate that same respect for the
24 process.

25 DERRICK GRANT: Yes, sir.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 THE COURT: Thank you very much.

2 DERRICK GRANT: You've got my word on
3 that, Your Honor.

4 THE COURT: That's all you have to say,
5 and I thank you for that. Let's ask the jury to
6 return, please.

7 (JURY IN @ 10:32 P.M.)

8 THE COURT: Thank you very much, Ladies
9 and Gentlemen. Mr. Bowden, the jury has reached a
10 verdict?

11 FOREMAN: Yes, Your Honor, we have.

12 THE COURT: If you would pass the verdict
13 form to Ms. Allison, please.

14 FOREMAN: (Complies).

15 BAILIFF ALLISON: (Tenders to Judge).

16 THE COURT: The verdict form has been
17 properly completed. The State of South Carolina,
18 County of Berkeley, Case Number 03-GS-08-0499, the
19 State of South Carolina versus Derrick Grant,
20 (reading):

21 We, the jury, by unanimous consent, find
22 the Defendant Derrick Grant, on the charge of murder,
23 Guilty.

24 Signed: Gregory Bowden, Presiding Juror.

25 Dated: February 26th, 2004.

1 Ladies and Gentlemen of the jury, if the
2 Court has accurately published your verdict, please
3 indicate that by raising your right hand.

4 (ALL JURORS RAISE RIGHT HAND)

5 THE COURT: Let the record reflect that
6 each juror has raised their right hand in response to
7 the Court's question. Thank you. Anything further
8 for the jury from the State?

9 MR. JENNINGS: Nothing from the State,
10 Your Honor.

11 THE COURT: Anything further from Mr.
12 Grant, of the jury?

13 DERRICK GRANT: Yes, I would like to
14 say something, please.

15 THE COURT: Anything of the jury, before
16 I dismiss the jury?

17 DERRICK GRANT: (Sidebar with Ms.
18 Kennedy). No, Your Honor.

19 THE COURT: Very well. Ladies and
20 Gentlemen of the jury, I spoke of you before you
21 returned to this courtroom. My statements to the
22 audience, I now get to share with you. It is very
23 unusual but truly an honor and a privilege to have
24 served in a situation with a jury like you.

25 Many times you have juries deliberate and

1 in two or three hours the knock comes and they say,
2 'We are unable to reach a verdict.' Not once in this
3 extended period of deliberation did you ever even
4 suggest that.

5 Instead what you did -- I was reading a
6 charge that we call an Allen charge that we give when
7 a jury has indicated that they are at an impasse to
8 encourage the jury to continue to try to find a
9 solution. A part of that is simply just to say that
10 it is not something that you customarily do and it
11 takes a while to get to the point where you begin that
12 exchange, that give-and-take and that explanation.
13 Obviously you, through diligence, have pursued that.

14 Please understand that I am not commenting
15 on your verdict. Your verdict is something that you
16 undertook. You took an oath just as I did. And
17 you've reached this decision based on the facts and
18 the law.

19 Thank you for the manner in which you
20 approached your duties, your determination to resolve
21 the dispute. I thank you for that.

22 You are now free to leave. You are free to
23 discuss this case, if you wish. If you choose not to
24 discuss this case, that is also your right. If some-
25 one should persist in asking you questions after you

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 have advised them that you do not wish to talk about
2 it, please let Mrs. Brown know. She can contact me
3 and we will render assistance for you.

4 Thank you again. You have earned your
5 exemption and -- I will be happy to answer any
6 questions any juror may have about what has happened,
7 where you are, anything about any question that you
8 want. If you wish to remain, I will be with you in
9 just a few moments. Thank you very much. You are
10 excused.

11 (JURY DISMISSED)

12 THE COURT: Anything further from the
13 State?

14 MR. JENNINGS: Nothing from the State,
15 Your Honor.

16 THE COURT: Mr. Grant?

17 DERRICK GRANT: (Sidebar with Ms.
18 Kennedy), -- no, Your Honor.

19 THE COURT: No Motions, sir?

20 DERRICK GRANT: I would like to be able
21 to say something.

22 THE COURT: I will -- at this time --
23 I will be happy to -- if what you want to say is a
24 Motion, I will be happy to hear from you if there is
25 a Motion that you wish to make.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 If it is not a Motion, then I am going to
2 allow you an opportunity to speak and I will be happy
3 to hear from you.

4 DERRICK GRANT: I would like to be able
5 to put a Motion in for an appeal.

6 THE COURT: Well, what is your Motion?

7 DERRICK GRANT: I would like to put a
8 Motion in for an appeal.

9 THE COURT: Do you wish to make any
10 Motion concerning the jury's verdict?

11 DERRICK GRANT: Yes, Your Honor.

12 THE COURT: What is that Motion?

13 DERRICK GRANT: One second, please.

14 THE COURT: Yes, sir.

15 DERRICK GRANT: (Sidebar with Ms.
16 Kennedy). I would like to put in a Motion to set
17 aside the verdict. I feel like the State has failed
18 to meet its burden, burden of proof.

19 THE COURT: The Motion for a new trial
20 on the inadequacy of the evidence is denied. To the
21 extent that it is preserved, the Court makes no
22 comment about that and I make no finding about that as
23 to whether or not the Motion is consistent with your
24 actions previously. The Court does note your -- an
25 effort to make a Motion for a new trial. That Motion

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

769

1 is denied. Do you wish to delay sentencing or are you
2 ready to go into the process of sentencing?

3 DERRICK GRANT: I'm ready.

4 THE COURT: All right. Well, we will
5 take about -- the Solicitor has to do a few things.
6 We will be at-ease for about five minutes, ten minutes
7 or so.

8 Ladies and Gentlemen, let me also commend
9 you again and thank you very much for your reaction
10 and no reaction to the verdict. We will be at-ease
11 at this point. Thank you.

12 I will be back in just a few minutes.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: Solicitor, is there anything
16 from the State before sentencing?

17 MR. JENNINGS: Your Honor, I will point
18 out that Mr. Grant has a prior record, a previous
19 conviction for the possession of a stolen vehicle,
20 forgery, assaulting a police officer while resisting
21 arrest and -- forgery, another resisting arrest.
22 I would submit to Your Honor that based on the facts
23 of this case that there is only one sentence that
24 would be appropriate.

25 THE COURT: Okay.

1 MR. HOISINGTON: Your Honor, as you can
2 see, there are a number of Rachel Sottile's family and
3 friends out there. We've asked that they narrow it
4 down to three, to make a brief presentation to Your
5 Honor on behalf of the family.

6 THE COURT: I will be happy to hear from
7 you. Thank you very much. Sir, if you would, please,
8 give me your full name so the record will be complete.

9 MR. SOTTILE: John Anthony Sottile, III.

10 THE COURT: Yes, sir, Mr. Sottile.

11 MR. SOTTILE: Your Honor, Derrick
12 Grant brutally raped and murdered my daughter and then
13 threw her in the woods like she was a piece of trash.
14 As a father, I ask that you punish this maniac to the
15 fullest extent of the law so that he can never do this
16 to anybody else's daughter. Thank you.

17 THE COURT: Thank you, sir. I'm sorry
18 for you and your family, sir.

19 MS. HICKMAN: My name is Lisa Hickman. I
20 am Rachel's aunt. I am here to speak on behalf of
21 someone else and as part of this family, I am honored
22 to do so.

23 I have come up here today to share the grief
24 and sorrow of a very courageous woman, and my heart
25 goes out to her. I will read to you her words, the

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 words of Rachel's mother:

2 "I want everyone to know that my heart is
3 ripped apart for the child who had so much
4 to offer and a life yet to be lived.
5 There's a great hole in my life now. I miss
6 my daughter very, very much. Rachel had a
7 heart of gold and was loved so much by
8 everyone. She was strong and loving and
9 embracing. She was never without a smile.
10 And when Rachel hugged you, you could just
11 feel the love from her. Rachel was helpful,
12 especially to her friends and had special
13 bonds with her brother Johnny. Her brother
14 has been robbed of having a big sister, one
15 who took care of him. There was a bond
16 between this brother and sister that is no
17 more. I feel the sorrow of this loss, the
18 loss to this family and these friends, the
19 loss of Rachel, the loss of her life, the
20 life that was taken. For the child with the
21 golden heart, I want to see justice done and
22 to know that his life will be spent behind
23 bars forever. Terry Sottile."

24 THE COURT: Thank you. Yes, ma'am?

25 MS. MARTIN: Elizabeth Sottile Martin.

1 My sister was an all-American girl, with all-American
2 dreams. She was loving, kind, caring and compassion-
3 ate. She also found the good in everyone and really
4 believed that she could change the world to make it a
5 better place. She had many, many friends who
6 absolutely adored her. I only wish I could touch as
7 many lives as she did.

8 Rachel went to school full-time studying to
9 be an EMT, also worked part-time and still made time
10 to care for our younger brother who was in an accident
11 several years ago and is paralyzed.

12 Little did we know on the night of December
13 26th that Rachel's dreams would be shattered and our
14 lives would be changed forever. I will never forget
15 that horrible night I got the call, some days it feels
16 like yesterday. My father could hardly talk. I knew
17 that it was bad but never would have imagined who is
18 capable of doing such a thing.

19 There are truly no words that can describe
20 the pain and the hurt that my family has endured since
21 my sister's death. Many sleepless night, nightmares,
22 only to awaken in fear and to then imagine the fear
23 she must have felt during her last minutes.

24 There is a huge void that will never be
25 filled. This senseless, almost unbearable act took

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

773

1 our peace, our comfort, our security, our hopes and
2 dreams and familiar personalities. We will never
3 understand the brutality that befell Rachel.

4 If I had one wish in the world, it would be
5 that no one would ever have to go through what my
6 family experienced on the night of December 26th, what
7 we have endured since, and what we must carry with us
8 the rest of our lives.

9 Derrick Grant is a murderer and deserves to
10 suffer the way my sister suffered. But that will not
11 bring my sister back. I pray each night for Derrick
12 Grant to be blessed with a conscience, so that he can
13 feel for himself all the pain that he has created.

14 Your Honor, on behalf of my mother, my
15 father and my family, I respectfully request that
16 Derrick Grant received the full punishment that the
17 law provides for his brutal act. I beg you to give
18 this man a sentence that will ensure that he is
19 reminded daily of what he did. Life.

20 THE COURT: Thank you, Mrs. Martin.
21 Solicitor, anything else?

22 MR. JENNINGS: No, Your Honor.

23 THE COURT: All right, Mr. Grant, I told
24 you that I would let you have an opportunity to speak.
25 You may at this time.

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 DERRICK GRANT: I would like to speak to
2 my family.

3 THE COURT: Yes, sir, you may speak to
4 your family from where you stand. Sure. Yes, sir.

5 DERRICK GRANT: I would like to speak
6 to my mother, my father, cousins, friends, Berkeley
7 County Sheriff's Office deputies, the Satell (sic)
8 family, ---

9 THE COURT: Sottile, Mr. Grant.

10 DERRICK GRANT: Sottile.

11 THE COURT: Thank you.

12 DERRICK GRANT: --- the killer is still
13 out there. Okay?

14 MALE VOICE FROM GALLERY: You're the
15 murderer.

16 DERRICK GRANT: (Laughs). My family,
17 I love you all. I am going to be okay. Okay?
18 Keep me in your prayers. I did not kill Rachel.
19 Berkeley County Sheriff's Office, Rick Ollic, ---

20 THE COURT: Mr. Grant. Mr. Grant,
21 you're not going to be permitted to do that, sir.
22 You can speak to your family. No more.

23 DERRICK GRANT: I just got attacked.

24 THE COURT: Sir?

25 DERRICK GRANT: I just got attacked by

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 the victim's family.

2 THE COURT: Sir, let me just tell you
3 something. This process now has nothing to do with
4 -- and you're not helping with anything except really
5 making it worse for yourself, a worse situation. I am
6 not going to listen to it anymore. I've tolerated it
7 thus far, I don't have to tolerate it anymore.

8 DERRICK GRANT: Thank you, Your Honor.

9 THE COURT: I ---

10 DERRICK GRANT: Thank you, Your Honor.

11 THE COURT: I am not going ---

12 DERRICK GRANT: That's fine. Thank you,
13 Your Honor.

14 THE COURT: --- to listen to any more of
15 that. If you want to tell me something -- is there
16 anything else that you want to tell me before I
17 pronounce sentence?

18 DERRICK GRANT: I am an innocent man.

19 THE COURT: Well, the jury said not.

20 DERRICK GRANT: Well, yeah, they said --
21 can my mother and father stand beside me now?

22 THE COURT: Sure. And I will be happy
23 to hear from your mother and father if they wish to
24 speak. They can come forward, and I just ask that
25 they give their full names if they wish to speak.

1 Come on forward, sir. I will be delighted to hear
2 from you, sir.

3 MR. GRANT (father): I raised ten kids,
4 six boys and four girls, and I know all of my kids.
5 I don't believe that Derrick did do this. He is a
6 gentle child, I want you to know that. He has our
7 support all the way.

8 DERRICK GRANT: I know that.

9 THE COURT: Thank you.

10 DERRICK GRANT: Come on, Mama.

11 THE COURT: Ms. Grant, is there anything
12 that you wish to say, ma'am?

13 MS. GRANT (mother): My son is innocent
14 and we leave everything in God's hands. We believe
15 that He is going to work things out.

16 THE COURT: Thank you, ma'am. I
17 appreciate that. Mr. Grant, is there anything else
18 that you wish to say?

19 DERRICK GRANT: It's all in your hands
20 now.

21 THE COURT: Thank you, sir. I, too, am
22 a parent and, Mr. and Mrs. Grant, I can share your
23 feelings having children. I understand that, and I
24 can understand your feelings tonight.

25 But I also have the greatest respect for

State of South Carolina v. Derrick Grant
Case No. 03-GS-08-0499
Jury Trial of February 23-27, 2004
Before The Honorable R. Markley Dennis, Jr.

1 this process. It's a process that has withstood the
2 test of time. I think the jury has spoken, not-
3 withstanding yours and Derrick Grant's statement, the
4 Court is confident that the jury reached the correct
5 verdict in this case. And the only appropriate
6 punishment for the crime committed in this situation
7 is that you, Derrick Grant, never be able to perform
8 this horrible deathly crime outside prison walls --
9 and I pray not inside either, but certainly that you
10 not be free to walk the streets of this country again.
11 The sentence of the Court on 03-GS-08-0499 is that you
12 be committed to the Department of Corrections for your
13 natural life. Good luck to you. God bless you.
14 That concludes this proceeding. Court is adjourned.

15 (COURT ADJOURNED)

16 (TRANSCRIPT CONCLUDED)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)

3

4

CERTIFICATE OF COURT REPORTER

5 I, the undersigned, Deborah Garrison, Circuit
6 Court Reporter for the 9th Judicial Circuit of the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete transcript
9 of the jury trial before The Honorable R. Markley
10 Dennis, Jr., on February 23-27th, 2004;

11 I do further certify that I am neither kin nor
12 counsel to any of the parties and have no interest in
13 the outcome of this action.

14

15


Deborah A. Garrison

16

17

18

19

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21

22

23 Charleston, South Carolina

24 April 30, 2004

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF GENERAL SESSIONS
DOCKET NO. 2003-GS-08-0499

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

VS.

January 29, 2010
Moncks Corner, South Carolina

DERRICK GRANT,

Defendant.

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., Judge

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

BLAIR JENNINGS, ESQ.
DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

PATTY KENNEDY, ESQ.
PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

EDGAR SAULTER, ESQ.
ASSISTANT ATTORNEY GENERAL

GEORGE BISHOP, ESQ.

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

1 THE COURT: All right.
2 Thank you very much. We're
3 here today, and I'm not, I
4 know there's something to do
5 with a transcript, that we
6 can't seem to locate a
7 transcript. Let the record
8 reflect that Mr. Grant is
9 present. Good morning, Mr.
10 Grant. And I've received a
11 call from Mr. Savitz who has
12 Miss Kennedy here, sort of
13 standing in his place, so what
14 I'm going to do first is have
15 a statement as to why we're
16 here and then if you wish to
17 respond to that statement I'll
18 give you an opportunity to do
19 that or Miss Kennedy. Okay?

20 THE DEFENDANT: Yes,
21 sir.

22 THE COURT: All right.
23 Mr. Saulter.

24 MR. SAULTER: Thank
25 you, your Honor. Basically

1 this matter has been remanded
2 to the Court for the Court to
3 attempt to reconstruct the
4 record of the hearing held on
5 April thirtieth, 2003 and, if
6 necessary, the December third,
7 2003 hearing transcript with
8 respect to what advice, if
9 any, the Court had given Mr.
10 Grant concerning the dangers
11 of self-representation and
12 what the Court found as to
13 whether or not Mr. Grant made
14 a knowing and intelligent
15 waiver of his right to
16 counsel.

17 THE COURT: Okay.

18 MR. SAULTER: Under
19 Ferrera versus California and
20 State versus Dixon.

21 THE DEFENDANT: Your
22 Honor --

23 MR. SAULTER: Again the
24 reason for the oral remand is
25 because we were unable to

1 locate the two transcripts,
2 April thirtieth and December
3 three, 2003 transcripts.

4 THE COURT: All right.
5 Do you have the transcript of
6 the hearing on November the
7 twenty-first, 2003?

8 MR. SAULTER: Yes, sir,
9 your Honor. I've already
10 provided the parties with a
11 copy of that transcript.

12 THE COURT: All right.
13 All right.

14 THE DEFENDANT: I don't
15 have a copy of that.

16 THE COURT: You don't
17 have a copy of that?

18 THE DEFENDANT: No,
19 sir.

20 THE COURT: Okay. Does
21 Mr. Savitz have a copy of
22 that?

23 THE DEFENDANT: Me and
24 my attorney have very few
25 conversations.

1 THE COURT: Okay.

2 THE DEFENDANT: I don't
3 know what he got.

4 MS. KENNEDY: Your
5 Honor, if I may, for purposes
6 of clarification, in my
7 conversation with Mr. Savitz
8 on Wednesday, he indicated
9 that he had received a
10 transcript by email from, from
11 your clerk, so he has it but
12 he's just recently received
13 it.

14 THE COURT: I know.
15 Has anyone contacted Miss
16 Garrison to find out if she
17 has any additional
18 transcripts? She was the
19 court reporter at least on
20 November twenty-first. Who
21 was the court reporter on
22 December the, the third?

23 MR. SAULTER: I have
24 not, your Honor. I do not
25 know if Mr. Savitz has.

1 MS. KENNEDY: Your
2 Honor, if I may again, I spoke
3 to Miss Garrison about it
4 because she, in her effort to
5 try to locate all the
6 transcripts, what we were able
7 to do is, because Mr. Grant
8 was in the Charleston County
9 Detention Center, and we were
10 able to reconstruct the number
11 of times that he was brought
12 here for hearings prior to
13 being transferred here
14 permanently, by contacting
15 Charleston County and they
16 gave us the dates that they
17 did transport him and my
18 conversations with Miss
19 Garrison would reflect that
20 the only one that she was in
21 court for was the November
22 twenty-first one.

23 THE COURT: Okay.
24 Well, the November
25 twenty-first transcript

1 basically talks about what we
2 had previously talked about.
3 I mean I can't, I remember Mr.
4 Bishop being present. I
5 remember talking, that Mr.
6 Grant wanted to have him
7 terminated and wanted to
8 proceed pro se. I remember
9 him I didn't -- -- just one
10 second, Mr. Grant, then I'm,
11 I'm basically stating my
12 recollection and then I'll be
13 happy to allow you to make a
14 statement, sir. That's not a
15 problem. And I can't remember
16 specifically everything that
17 we talked about. I can tell
18 you that it was along the
19 lines, though, of what every
20 single time we were together
21 the conversation generally was
22 as contained in the November
23 the twenty-first transcript.
24 And it's what he wanted to do.
25 I, I was trying to

1 recollect, and we don't have a
2 transcript of when you were
3 appointed to assist.

4 **MS. KENNEDY:** Your
5 Honor, it was the same was the
6 same November twenty-first
7 proceeding.

8 **THE COURT:** That's when
9 you were appointed?

10 **MS. KENNEDY:** Yes, sir.

11 **THE COURT:** Well, I
12 know you were, you mentioned
13 that you were going to provide
14 him books but I don't
15 remember, when, when did I ask
16 you to sit with him at trial?

17 **MS. KENNEDY:** I stand
18 corrected, your Honor. I
19 think it was December third
20 and I think when Mr. Grant
21 also talked about that he be
22 brought back up here, and
23 that's all that happened.

24 **THE COURT:** All right.

25 **MS. KENNEDY:** My

1 apologies, your Honor.

2 THE COURT: Okay. But
3 that, subsequent to that there
4 was further statement that he
5 wanted to do that but I
6 appointed Miss Kennedy to
7 basically serve as his
8 counsel, if you will, but not
9 representing him because we
10 talked about that. We put --
11 I thought we put that on the
12 record before we put the
13 trial, that would -- that he's
14 elected to not have an
15 attorney but Miss Kennedy was
16 there to assist and she would
17 be available if he needed to
18 inquire. That's my
19 recollection.

20 Mr. Bishop, do you,
21 Mr. Bishop is here. I
22 remember you were present and
23 basically made some -- but
24 I'll defer to you as to
25 what --

1 **MR. BISHOP:** Thank you,
2 your Honor. If it please, if
3 the Court please, and I don't
4 know whether you want me under
5 oath or how, how we want to do
6 this, but I have, I have my
7 file and I've reviewed that in
8 preparation somewhat for today
9 and I would, would crave
10 reference to an order that's
11 dated I think the fifth that
12 reflects a hearing that was
13 held on April the thirtieth in
14 this court.

15 **THE COURT:** Correct.

16 **MR. BISHOP:** And I was
17 relieved upon petition. My
18 petition at Mr. Grant's
19 request to, to have me
20 relieved as his attorney. His
21 father had retained me.

22 **THE COURT:** I remember
23 that.

24 **MR. BISHOP:** Derrick
25 did not, I don't know, I think

1 my recollection was basically
2 I won't have been his lawyer
3 of choice and he and I had
4 some differing ideas about how
5 to proceed in his best
6 interests. And we both
7 agreed -- I mean we weren't
8 adversarial to each other. We
9 both agreed that, that if,
10 that if he doesn't want me to
11 represent him then I wouldn't
12 be in a position to
13 effectively represent him and
14 I, I filed this, filed the
15 petition along that line to be
16 relieved. We had the hearing
17 on the thirtieth of April.
18 This is, this is not a
19 clerk-drafted order. This is
20 my order because I remember
21 doing it and I didn't cite in
22 the order to make that part of
23 the, part of the issue we're
24 here, but I didn't cite rhyme
25 and verse as to your findings

1 or your colloquy with Mr.
2 Grant, but I can tell you that
3 you it was thorough enough
4 that I didn't think I was
5 getting out. I mean you, you
6 were very, as I recall, deeply
7 inquiring with him as to his
8 understanding of whether or
9 not he knew what he was doing
10 by asking not, not to be
11 represented and, and to
12 potentially at that time be
13 proceeding pro se. I recall
14 very clearly that you
15 admonished him to the dangers
16 of that, to the, to the folly
17 of that, to the, to that may
18 very well not being in his
19 best interests because he's
20 not trained as, as, as I've
21 seen you do any number of
22 times when that issue's been
23 before you. But to be able
24 like yourself to cite
25 specifically line by line the

1 exact colloquy, I can't, I
2 can't do that.

3 THE COURT: Okay.

4 MR. BISHOP: But I can
5 tell you that I felt then it
6 was thorough enough and again
7 I would say that I, I didn't
8 know until you said it, that I
9 was, that I was being relieved
10 and I think I tried to, to
11 caption -- capture that in
12 this order although I didn't
13 again cite verbatim your, your
14 exact words.

15 THE COURT: Do you have
16 a copy?

17 MR. BISHOP: This is,
18 this is my only copy.

19 THE COURT: That's
20 fine. I wanted to just review
21 it just for a second. I'm
22 curious as to --

23 MR. BISHOP: It's in
24 the record.

25 THE COURT: It's in the

1 record. You have this order
2 in the record.

3 MR. SAULTER: Yes, your
4 Honor. In fact it's in the
5 record on appeal before the
6 Court of Appeals.

7 MR. BISHOP: And I do,
8 your Honor, I apologize I do
9 have a copy that is not
10 signed, but --

11 THE COURT: Okay. No.
12 It's no problem. I just want
13 to be sure. Okay. Thank you,
14 Mr. Bishop.

15 MR. BISHOP: Thank you.

16 THE COURT: All right
17 Mr. Grant, you had -- I'll be
18 happy to hear from you of
19 recollection of -- right now
20 we're focusing on the April,
21 the April thirtieth hearing
22 and any other things you want
23 to say concerning the November
24 hearing.

25 THE DEFENDANT: Yes.

1 Only thing I got to say is
2 that I did not --

3 THE COURT: You don't
4 have to stand. Thank you.

5 THE DEFENDANT: All
6 right.

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

9 THE DEFENDANT: Yes,
10 sir. Thank you. I, I didn't
11 want to represent myself. I
12 was forced to represent
13 myself. That's all I have to
14 say.

15 THE COURT: I'm not
16 sure I understand your
17 statement. You were forced to
18 represent yourself. How so?

19 THE DEFENDANT:
20 Pressure by the system.

21 THE COURT: How was the
22 system -- how did the system
23 specifically pressure you?

24 THE DEFENDANT: That's
25 all I have to say, your Honor.

1 THE COURT: Can you
2 give me what we -- what the
3 system did to pressure you?

4 THE DEFENDANT: That's
5 all I have to say, your Honor.
6 I can't get into details.

7 THE COURT: Okay. Mr.
8 Jennings?

9 MR. JENNINGS: I'd like
10 to supplement something, your
11 Honor. As far as the April
12 thirtieth '02 hearing, I was
13 handling the case at the time
14 on behalf of the solicitor's
15 office and had begun talking
16 with Mr. Bishop about the case
17 and I think a key factor as
18 to, as to that hearing was
19 that Mr. Grant's father was
20 here in court and it was the
21 relationship that his father
22 had with Mr. Bishop that had
23 led to that representation and
24 your Honor questioned Mr.
25 Grant's father specifically as

1 to whether he was going to go
2 hire another attorney. He
3 told you he was not.

4 THE COURT: That's
5 correct.

6 MR. JENNINGS: And you
7 had a colloquy with Derrick
8 Grant as to whether he
9 understood that fact. He
10 understood that fact and at
11 the time we had begun an
12 appearance system here in
13 Berkeley County. And we
14 routinely, we would bring
15 defendants before you who did
16 not have counsel at the time
17 and part of your regular
18 colloquy with those defendants
19 would be obviously to advise
20 them of their charge and the
21 potential punishment that they
22 were facing, and obviously in
23 this case Mr. Grant was fully
24 aware that he was facing
25 thirty years to life in prison

1 and you obviously talked to
2 him about the possibility, did
3 he want to apply for the
4 public defender's office. He
5 did not want to use the
6 services of the public
7 defender's office, and made
8 the specific statement to the
9 Court that he was going to
10 represent himself.

11 And as you did in all
12 the cases, went over with him
13 the dangers of representing
14 himself. That was repeated as
15 we've seen in the transcript
16 that we got from the November
17 twenty-first, 2003 hearing
18 because really beginning in
19 May of, of '02 per the Court's
20 instructions the Solicitor's
21 Office was dealing with Mr.
22 Grant in a pro se manner.

23 THE COURT: Correct.

24 MR. JENNINGS: At that
25 time he was in Charleston

1 County. I've got notes from
2 going down to see him on May
3 the thirtieth of 2003 and we
4 provided him a complete copy
5 of the file. Then we were
6 back before your Honor after
7 the November twenty-first
8 hearing. There is a long
9 dialogue between your Honor
10 and Mr. Grant because you told
11 him the trial was obviously
12 coming up in February and he
13 needed to file any motions and
14 he asked you how do I do that,
15 what's the procedure?

16 THE COURT: Correct.

17 MR. JENNINGS: And
18 there was a long dialogue as
19 to that's exactly the reason
20 why he needs to have an
21 attorney.

22 THE COURT: Correct.

23 MR. JENNINGS: And he
24 confirms all through that
25 hearing that he wanted to

1 continue to represent him. He
2 knew that. He was provided
3 with rule books to help him in
4 that procedure. And then we
5 were back before your Honor on
6 December the third of 2003
7 hearing all of the motions
8 that he filed in a pro se
9 manner and there was more
10 discussion at that hearing,
11 since the trial coming up in
12 two months. Your Honor
13 repeatedly telling him you
14 would appoint him an attorney
15 because every time we were
16 together after Miss Kennedy
17 was appointed as a co-counsel
18 to answer any questions, you
19 had discussions with Mr. Grant
20 as to the difference between
21 hybrid counsel, which is not
22 allowed, as opposed to the
23 role of Miss Kennedy there to
24 answer his questions and
25 repeatedly asking him to allow

1 Miss Kennedy to represent him
2 just because of those dangers.

3 And then back again
4 on January the seventh, 2004
5 we were back before you for
6 another motions hearing. Mr.
7 Grant had filed a motion to
8 dismiss or quash the
9 indictments and then there's
10 another discussion during that
11 hearing as well addressing the
12 role of Miss Kennedy, talking
13 a bit about hybrid
14 representation, and, and you
15 did go over with him
16 repeatedly again the dangers
17 of, of representing himself at
18 trial and he again reaffirmed
19 to you, making a knowing
20 decision, that he only wanted
21 Miss Kennedy's assistance and
22 not the services of an
23 attorney.

24 THE COURT: Okay. Do
25 we have transcripts of

1 hearings -- as I understand,
2 we don't have a transcript of
3 April thirtieth or the
4 December third. But we have a
5 transcript of the hearing in,
6 in January?

7 MR. SAULTER: January
8 seventh transcript?

9 THE COURT: Yes.

10 MR. SAULTER: Yes, sir,
11 your Honor.

12 THE COURT: Sir?

13 MR. SAULTER: Yes, sir,
14 your Honor.

15 THE COURT: And that
16 sets forth again -- I will
17 tell you that it was my
18 recollection that every single
19 time after April that we had a
20 discussion about the dangers
21 of representing ones self, we
22 went into more depth on some
23 than we did on others, but
24 there was always, as I recall
25 it, a discussion which I think

1 is reflected in the
2 transcripts. I have not seen
3 them other than the
4 twenty-first. But what was
5 interesting in reviewing the
6 twenty-first is it came up
7 because I remember Mr. Grant
8 asking me the question about
9 how do you do that, and that
10 was -- it was the perfect
11 lead-in for my discussion that
12 that's precisely the problem,
13 that's exactly what I'm trying
14 to tell you. You can't --
15 it's so difficult. And that's
16 when we talked about having
17 access to some law books and
18 Miss Kennedy was kind enough
19 to do that and then you made
20 reference that he was going to
21 be brought back here so that
22 that would be facilitated.
23 But clearly there was always
24 an on-going concern. And in
25 fact, to be honest with you,

1 it's still to this day. I use
2 it as an example in discussing
3 when I've discussed this issue
4 with people from time-to-time
5 I tell them that I had to --
6 the real sad occasion where a
7 gentleman represented himself
8 and, frankly, Mr. Grant, I
9 said it to you during the
10 trial. I was really amazed
11 at, at how much you had
12 gleaned by your studies and
13 how, how you conducted
14 yourself at trial. I still
15 think as I did, then I still
16 think it's a poor idea but it
17 was something that he clearly
18 had indicated he wanted to do
19 and as I understand it that's
20 the bottom line, fundamentally
21 his right. I, I don't know
22 what more we could have done
23 to assist Mr. Grant other than
24 to deny him the right to
25 represent ones self and I

1 didn't see it that I had that
2 option.

3 That's where we were.
4 I mean he talks about the
5 pressure part. I, I, as I
6 stated every single time, I
7 wouldn't have had those
8 conversations if I didn't feel
9 that Mr. Grant was making a
10 serious mistake. But Mr.
11 Grant, notwithstanding the
12 admonition and notwithstanding
13 the advice to the contrary,
14 notwithstanding the fact that
15 Miss Kennedy was there and she
16 was conferring with him as
17 well, as, as a consult. I
18 don't want to know what they
19 talked about. I didn't ask.
20 But all of that, he still felt
21 the need to represent himself
22 for some reason. And I did
23 all we could to keep him from
24 making that mistake, but he
25 made it.

1 I, I still think it
2 was a mistake when you
3 represent yourself. I don't
4 mind saying that on the
5 record. I said that from the
6 start. And so but I don't
7 know what more we can do to
8 construct or reconstruct. I
9 know Mr. Bishop was present.
10 I know he's right. I really
11 and truly came very close to
12 denying the motion, but Mr.
13 Grant convinced me that that's
14 not what he wanted to do and
15 his daddy was there and his
16 daddy, I remember talking to
17 him and I remember him saying
18 I'm not going to hire anybody
19 else.

20 So Mr. Grant chose
21 the course, he controlled it
22 and he was in control the day
23 we tried this case.
24 Throughout we had discussions
25 and he -- we had bench

1 conferences. He handled it,
2 his trial, and there was never
3 a moment where he simply
4 seemed to say I don't want to
5 be here, I don't want to be
6 doing this. On the contrary.
7 He demonstrated and he clearly
8 presented himself as he wanted
9 to represent himself, which
10 was not a good idea.

11 So I don't know what
12 more we can do than trying to
13 reconstruct. I was trying to
14 pull up and I guess you all
15 have done that. They don't
16 save the court reporter
17 assignments for the December
18 third hearing or the court
19 reporter didn't have it?

20 MR. SAULTER: I don't
21 believe the court reporter had
22 it.

23 MS. KENNEDY: Your
24 Honor, Miss Garrison didn't
25 have it. In my conversations

1 with her she seemed to think
2 that -- and I don't recall the
3 reporter's name, but it's
4 something where she's no
5 longer active in the system.

6 THE COURT: Okay.

7 MS. KENNEDY: She
8 seemed to think it was a
9 reporter that was no longer
10 working.

11 THE COURT: Karen
12 Martin would have been April
13 thirtieth because she, she
14 wasn't -- it wasn't too much
15 longer after that that she
16 went on the federal system.

17 MR. SAULTER: Yes, your
18 Honor. This case was
19 originally handled by direct
20 appeal by another lawyer and
21 she made the effort to gather
22 all the transcripts, what she
23 had.

24 THE COURT: I see.
25 Okay. Well, I will tell you

1 that the transcripts that you
2 have, and I haven't read the,
3 the January, but as I recall
4 every single time we met,
5 every single hearing we had, I
6 revisited that issue. I
7 believe I revisited it at the
8 day of trial, the day we went
9 to trial. So, but I defer to
10 the record on that. I can't
11 recall it specifically but I,
12 my recollection is we had it
13 one more time before, before
14 we started the trial.

15 So, Mr. Grant,
16 anything else that you wish to
17 add other than what you've
18 already stated in the record?

19 THE DEFENDANT: No,
20 sir.

21 THE COURT: Thank you
22 very much, Mr. Grant. I
23 believe that concludes the
24 hearing. I don't know what
25 more we can do, Mr. Saulter.

1 **MR. SAULTER:** The only
2 thing I would ask, your Honor,
3 I think it's almost obvious
4 even if it's unstated, whether
5 or not the Court found that he
6 made a knowing decision.

7 **THE COURT:** Absolutely.
8 The Court made that
9 determination, made the
10 finding on the record, and the
11 Court again finds that he made
12 a knowing waiver of his right
13 to counsel. Notwithstanding
14 the strong urgings of the
15 Court and others. Mr. Bishop.
16 I mean it was just everybody
17 was saying don't do this. But
18 he elected to do it and
19 that's, as I understand the
20 law, that's his right and I
21 can't deprive him of that and
22 so the Court deferred which I
23 think I'm, I was required to
24 do. If that was error then
25 they'll have to reverse it but

1 I don't --

2 MR. JENNINGS: You made
3 that specific finding on April
4 thirtieth because that was
5 when his dad said he wasn't
6 hiring another attorney.

7 THE COURT: Precisely.

8 MR. JENNINGS: You
9 asked, you asked Mr. Grant,
10 you understand that? He said
11 yes, I want to represent
12 myself and you went through
13 all the --

14 THE COURT: The order
15 would not have been signed had
16 I not found that. You know,
17 an order doesn't recite that,
18 but clearly that was, that,
19 that was the only basis on
20 which I could make that, sign
21 that order. I mean I had, I
22 had to have found that to sign
23 the order because the order
24 would have been in error
25 otherwise. So it clearly was

1 made.

2 Yes, sir, Mr. Grant?

3 **THE DEFENDANT:** The
4 order, I have an order. The
5 order that you signed, right?
6 It's two different orders with
7 two different signatures.

8 **THE COURT:** I don't
9 know what -- well --

10 **THE DEFENDANT:** Can I
11 show it to you?

12 **THE COURT:** Well, sure.
13 What you probably are
14 referring to, Mr. Grant, is I
15 would assume is one of them
16 has been conformed and --

17 **THE DEFENDANT:** It's
18 totally different.

19 **THE COURT:** I
20 understand it's totally
21 different. Somebody else
22 conforms them. I don't
23 conform them. The order that
24 was published -- we'll be
25 happy to get you a certified

1 copy from the record but my
2 guess is the record has a
3 certified copy.

4 MR. SAULTER: Yes, sir,
5 your Honor. It does.

6 THE COURT: The copy
7 that you have will never be
8 the same as the one on file.
9 The one on file is what
10 controls us.

11 THE DEFENDANT: I'll
12 show you, your Honor.

13 THE COURT: I'm sure
14 it's different.

15 THE DEFENDANT: No.
16 It's totally different.

17 THE COURT: I
18 understand it. Probably
19 signed by my secretary or my
20 clerk. Mr. Grant, you don't
21 have to show me. I would
22 agree with you. All, all it
23 is is a conformed copy.
24 That's it is.

25 THE DEFENDANT: So

1 you're it could have been
2 signed by your secretary?

3 THE COURT: No. I'm
4 saying that the order itself
5 is what governs. That's just
6 a, that's just a courtesy copy
7 provided to you. That's all
8 that's done. It's just simply
9 saying yeah, the judge signed
10 it. That, where there's a
11 slash it probably has an S.
12 It's simply saying I've looked
13 at the order. The order has
14 been signed by the judge.
15 That's what that says. It's
16 called a conformed copy.

17 THE DEFENDANT: Okay.

18 THE COURT: But, but,
19 but the one, the one that's in
20 the record is the one that
21 controls. That's, that's
22 what's on file.

23 THE DEFENDANT: But did
24 you sign both the order?

25 THE COURT: I signed

1 one order, sir. The order
2 that's on the file, in the
3 file and now the record is the
4 order I signed.

5 THE DEFENDANT: Thank
6 you, your Honor.

7 THE COURT: Thank you,
8 sir.

9 THE DEFENDANT: All
10 right.

11 THE COURT: Okay. And
12 I signed that order after
13 finding that he made a
14 voluntary waiver of his right
15 to counsel. Thank you all.

16 MR. JENNINGS: Thank
17 you.

18 MR. SAULTER: Thank
19 you.

20 THE COURT: Appreciate
21 it.

22

23

24

25

CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Berkeley County, South Carolina on the 29th day of January, 2010.

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

DATED: _____

August 27, 2010

Heather Gayle Burns RDR

HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Derrick Grant, Appellant.

Appeal From Berkeley County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-499
Submitted November 1, 2011 – Filed November 9, 2011

AFFIRMED

Senior Appellate Defender Joseph L. Savitz, III, of Columbia,
for Appellant.

Attorney General Alan M. Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney General
Donald J. Zelenka, and Assistant Attorney General Melody J.
Brown, all of Columbia; and Solicitor Scarlett A. Wilson, of
Charleston, for Respondent.

PER CURIAM: Derrick Grant appeals his conviction for murder, arguing the circuit court erred in allowing him to proceed with his trial pro se because his waiver of his right to counsel was not knowingly and intelligently made.[1] We affirm.[2]

A defendant may waive his right to counsel and proceed pro se. State v. McLauren, 349 S.C. 488, 493, 563 S.E.2d 346, 348 (Ct. App. 2002); see also Faretta v. California, 422 U.S. 806, 817 (1975) ("[F]orcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so."). The waiver, however, must be made knowingly and intelligently. McLauren, 349 S.C. at 493, 563 S.E.2d at 348. The defendant must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. Id. at 493, 563 S.E.2d at 348-49. "[T]he record [must] establish [the defendant] knows what he is doing and his choice is made with eyes open." Faretta, 422 U.S. at 835 (internal quotation marks omitted). Thus, "[t]he ultimate test of whether a defendant has made a knowing and intelligent waiver of the right to counsel is not the [circuit court's] advice, but the defendant's understanding." McLauren, 349 S.C. at 493, 563 S.E.2d at 348 (citation and internal quotation marks omitted). "In the absence of a specific inquiry by the [circuit court] addressing the disadvantages of a pro se defense as required by the second Faretta prong, the appellate court will look to the record to determine whether [a defendant] had sufficient background or was apprised of his rights by some other source." Id. at 494, 563 S.E.2d at 349; cf. Faretta, 422 U.S. at 835 ("The record affirmatively shows that Faretta was literate, competent, and understanding, and that he was voluntarily exercising his informed free will.").

South Carolina courts consider the following series of factors "in determining if [a defendant] had sufficient

(1) the [defendant's] age, educational background, and physical and mental health; (2) whether the [defendant] was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the [defendant] and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the [defendant's] waiver resulted from either coercion or mistreatment.

State v. Cash, 309 S.C. 40, 42-43, 419 S.E.2d 811, 813 (Ct. App. 1992).

Here, we find the record shows Grant was knowingly and voluntarily exercising his informed free will. In addition to the circuit court's repeated warnings of the dangers of self-representation throughout the pretrial phase and at the beginning of the trial, the record, in light of the Cash factors, supports the finding Grant understood his right to counsel and the consequences of self-representation. Grant was a literate adult with a criminal history, but no evidence suggests any physical or mental impairment. He was represented by counsel until he requested the circuit court, approximately four months after his arrest, to relieve him of his representation for irreconcilable differences over how his defense should be conducted. Grant never attempted to delay proceedings, voluntarily withdrawing his only motion for a continuance of the trial. Up until he was assisted by standby counsel, he made several motions to suppress evidence and requests for discovery materials under Rule 5, SCRCrimP. Moreover, the circuit court, on multiple occasions, suggested he retain a public defender to represent him. However, Grant made his mistrust of public defenders clear, noting he was comfortable with his self-representation while also declaring he was "scared out of [his] mind, not knowing nothing about nothing." Cf. Faratta, 422 U.S. at 807-08 (involving a defendant who opted to represent himself because of what he perceived as an overwhelming caseload of the public defender).

At trial, Grant displayed a competent understanding of the process. He made several objections and successfully suppressed a photograph for its prejudicial effect. He cross-examined many of the State's witnesses, engaging the State's investigators in particularly lengthy examinations. Thus, the record shows Grant knew what he was doing and that he made his choice with eyes open. Accordingly, the decision of the circuit court is

AFFIRMED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

[1] Because we find the waiver was valid, we decline to address any remaining issues. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

2012 CP - 08 - 1399

STATE OF SOUTH CAROLINA

County of BerkeleyDerrick Grant 300073
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF2012 MAY 11 AM 11:58
FILEDINSTRUCTIONS - 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 430 Oaklawn Rd, Pelzer S.C. 29669
Perry Correctional Institution
2. Name and location of Court which imposed sentence Berkeley County
Monks Corner S.C. P.O. Box 219
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder 03-53-08-0499
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) February 27 2004 Life without Parole
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____
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. S.E. Court of Appeals
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. Conviction Affirmed
ii. _____
iii. _____
(c) the date of each such result:
i. November 2011 Term
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. N/A
ii. _____
iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
(a) N/A
(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 Appellate Counsel
- (b) Denial of Due Process of Law
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages
- (b) See attached pages
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No
- (b) your trial, if any? Pro Se
- (c) your sentencing? Pro Se
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Joseph Savitz Office of Appellate Defense
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
- No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Joseph Savitz Office of Appellate Defense
1330 Lady St. Suite 401, Columbia S.C. 29201 P.O. Box 11589
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Direct Appeal
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Berkley)

VERIFICATION

FILED
JULY 11 AM 11:58
CLERK OF COURT

I, Derrick Grant, 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.

Derrick Grant

SWORN to and subscribed before me this 1st
day of May, 2016.

Steven T. Melnick (L.S.)
Notary Public

My Commission Expires: January 7, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

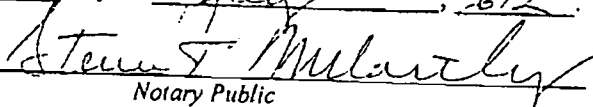
I, Derrick Grant, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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

1st day of May, 2012.


Notary Public

My Commission Expires: January 7, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BERRKELEY

Derrick Grant

Applicant

State of South Carolina

Respondent,

IN THE COMMON PLEAS COURT

12 JUL 17 2013
DATE & TIME CANCELLEDJUL 17 2013
BEAUFORT COUNTY, S.C.
CLERK OF COURT

DOCKET NO.: 2012-CP-08-1399

AMENDMENT TO
POST CONVICTION RELIEF
APPLICATIONMAILED
CLERK OF COURT
BERRKELEY COUNTY, S.C.

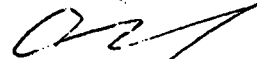
2013 JUL 24 PM 4:59

The Applicant through undersigned Counsel wishes to Amend his Application
for Post Conviction Relief filed on May 11, 2012, to include the following:

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

1. Appellate Counsel did not argue on appeal
2. Appellate Counsel did not show up for January 29, 2010 reconstruction Hearing.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, DERRICK GRANT



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

July 12, 2013



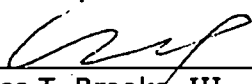
STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF BERKELEY	)	
	)	DOCKET NO.: 2012-CP-08-1399
Derrick Grant	)	
	)	
Applicant	)	AMENDMENT TO
	)	POST CONVICTION RELIEF
	)	APPLICATION
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

2013 AUG 29 PM 1:02
 CLERK OF COURT
 BERKELEY COUNTY, SC

The Applicant through undersigned Counsel wishes to Amend his Application for Post Conviction Relief filed on May 11, 2012, to include the following:

Applicant contends his June 11, 2003, DNA Pre-trial hearing as unconstitutional due to the fact he was without counsel and did not knowingly and intelligently waive his right to Court appointed counsel.

RESPECTFULLY SUBMITTED ON BEHALF OF
 APPLICANT, DERRICK GRANT



 Charles T. Brooks, III
 Attorney for Applicant
 309 Broad Street
 Post office Box 3512
 Sumter, South Carolina, 29150
 (803) 418-5708

July 17, 2013

CTB

VB

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2012-CP-08-1399
Derrick Grant, # 300073,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 11, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the March 2003 term of the Berkeley County Grand Jury for murder (2003-GS-08-0499).

On February 26, 2004, the Applicant proceeded to trial without counsel and was convicted. The Applicant was sentenced by the Honorable R. Markley Dennis, Jr. to confinement for a period of life without parole (LWOP).

The Applicant filed a timely Notice of Appeal with the South Carolina Court of Appeals. Joseph Savitz, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The South Carolina Court of Appeals affirmed the Applicant's

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

conviction and the Remittitur was issued. State v. Grant, No.. 2011-UP-495 (S.C. Ct. App. November 9, 2011).

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the appellate documents. The trial transcript will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Appellate Counsel
2. Denial of due process of laws.

III.

The Applicant alleges he received ineffective assistance of appellate counsel. The Respondent submits appellate counsel's performance was reasonable and effective. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005);

Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

IV.

The Applicant further alleges that he was denied due process of law. While the Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: ASH R. WILSON
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 1, 2013.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BERKELEY 2012-CP-08-1399

DERRICK GRANT)
) TRANSCRIPT OF RECORD
 Applicant,)
) September 18, 2013
 -vs-)
)
 STATE OF SOUTH CAROLINA,) Charleston, South Carolina
)
 Respondent.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Charles Brooks, III, Esquire
Attorney for the Applicant

Ashleigh Wilson, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1		I N D E X			
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Derrick Grant	8	25	--	--
4	Joseph Savitz	32	39	--	--
5	Blair Jennings	42	47	54	--
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1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	Applicant's 1	Transcript	24	24
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1 (September 18, 2013.)

2 THE COURT: This Derrick Grant? Are you
3 Derrick Grant?

4 THE APPLICANT: Yes, sir.

5 THE COURT: All right. Mr. Brooks?

6 MR. BROOKS: How you doing, Judge.

7 THE COURT: All right. This is Derrick Grant
8 versus State of South Carolina, 2012-CP-08-1399.
9 Mr. Grant got convicted of murder and got life without
10 parole, so he is now alleging ineffective assistance of
11 counsel. You want to give me a brief opening as to what
12 this is about.

13 MR. BROOKS: Judge, I know in looking at it,
14 you're going to see that my client represented himself at
15 the trial and he had Mr. Savitz, who is also the public
16 defender, to handle an appeal of this matter. He's
17 raised some issues basically arguing ineffective
18 assistance of appellate counsel. A lot of this revolves
19 around whether or not he voluntarily and knowingly waived
20 his right to counsel.

21 THE COURT: At the trial level?

22 MR. BROOKS: At the trial level. In addition
23 to that, he's going to argue that his appellate lawyer
24 was ineffective for not arguing about not having counsel
25 or being properly waived and knowingly and properly

1 waived his right to counsel at the pretrial level,
2 specifically when there was a Schmerber hearing when they
3 drew the blood.

4 THE COURT: All right. What's the State's
5 position?

6 MS. WILSON: Your Honor, it's my
7 understanding that this issue was raised in a direct
8 appeal and it was ruled on by the Court, and the Court
9 found that Mr. Grant voluntarily waived his right to
10 counsel. I'm not really sure --

11 THE COURT: Is that correct?

12 MS. WILSON: Have you --

13 THE COURT: The State rule -- I mean the
14 appellate Court ruled on it? All right. This is the
15 Court of Appeals opinion?

16 Let me take a look at it.

17 MS. WILSON: And you also, Your Honor, have a
18 copy of the transcript where the appellate Court is
19 remanded to the lower Court to reconstruct the hearing,
20 and there was testimony at that point about the waiver.

21 THE COURT: I guess I didn't understand. In
22 light of the fact that I have two volumes of testimony,
23 it appears to be -- what is this about, reconstructing
24 the record?

25 MS. WILSON: Your Honor, you also have these

1 additional documents. It's about maybe five other
2 transcripts from the proceedings, and one of them is
3 dated January 29, 2010, and that's the reconstruction of
4 the waiver.

5 THE COURT: January 29th transcript?

6 MS. WILSON: Yes, Your Honor.

7 THE COURT: So did they find the transcript?

8 MS. WILSON: No, they didn't find it.

9 THE COURT: A transcript of a particular
10 hearing? I got two volumes --

11 MS. WILSON: Oh, the transcript of
12 preliminary hearing where he waived his right to counsel.

13 THE COURT: Help me out here, Mr. Brooks. If
14 the Appellate Court has ruled on this very issue on a
15 direct appeal, how is it that it can be raised in a
16 post-conviction relief action? What's the theory on
17 that?

18 MR. BROOKS: The theory is that the appellate
19 counsel was ineffective because he did not argue about
20 whether or not Mr. Grant had waived it properly at
21 pretrial hearing, and the reason that's critical is
22 obviously the State had taken blood and then turned
23 around and used that against Mr. Grant, and that pretrial
24 matter was a critical stage of the proceeding.

25 What Mr. Grant is saying is that his

1 appellate lawyer did not effectively brief that issue
2 that was raised to the appellate Court.

3 THE COURT: What's the State's position on
4 that?

5 MS. WILSON: Well, Your Honor, we have
6 Mr. Savitz available. He can testify by phone, so we can
7 put him up and ask him about it, but I don't see how it
8 matters when ultimately the Court found he voluntarily
9 waived his right to counsel.

10 THE COURT: All right. Well, let's get --
11 has the phone call already gone through? Are you waiting
12 for it? Okay. Well, let's get counsel on the --

13 MS. WILSON: I don't know who Mr. Brooks
14 wants to call in his case, but whatever.

15 THE COURT: All right. Is it that how you
16 want to proceed, is get the lawyer on the phone?

17 MR. BROOKS: Well, it's my position that my
18 client was going to do the bulk of the testifying for us.
19 I think at this point it's unclear as to whether we want
20 to actually call Mr. Savitz in our case, but I understand
21 I had talked with Ms. Wilson about Mr. Savitz potentially
22 testifying via phone, which I don't see a problem with.

23 THE COURT: So you want to proceed by calling
24 your client?

25 MR. BROOKS: Yes, sir.

1 THE COURT: Bring him up.

2 DERRICK GRANT,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BROOKS:

7 Q. Mr. Grant, how are you today?

8 A. Okay.

9 Q. Now, you brought this post-conviction relief
10 application; is that correct, challenging your
11 conviction?

12 A. Yes, sir.

13 Q. Okay. And we have talked about your allegations
14 in regards to Mr. Savitz, who was your Court appointed
15 appellate counsel; is that correct?

16 A. Yes, sir.

17 Q. And some background information. You had actually
18 proceeded in this trial pro se?

19 A. Yes, sir.

20 Q. Okay. Now, correct me if I'm wrong about your
21 allegation. Your allegation is that your appellate
22 counsel was ineffective for not arguing effectively
23 whether or not you had waived counsel at the pretrial
24 hearing known as the Schmerber hearing; is that correct?

25 A. Yes, sir.

1 Q. Can you explain that.

2 A. At my Appellate Court, he argued on appeal more or
3 less I did not knowingly and intelligently waive my right
4 to counsel to proceed pro se at trial. My argument is
5 that he did not -- in the record on appeal that I did not
6 knowingly and intelligently waive my right to counsel at
7 my pretrial hearing, which is a critical stage of the
8 proceeding, and I have an exhibit right here that I would
9 like to submit to the Court through my attorney, June
10 11th, 2003 transcript --

11 Q. You said the transcript. Now, the Court's got
12 that.

13 A. All right. So I would like --

14 Q. Because that's part of the record.

15 A. I would like to grant the Court's attention to the
16 June 11, 2003 transcript so I can prove my case.

17 MS. WILSON: Your Honor, I'm sorry I didn't
18 do this before, but would you mind if we called Mr.
19 Savitz and have him hear the Applicant's
20 attorney before he testifies, if we could put him on
21 speaker so he could hear the Applicant's testimony?

22 THE COURT: That is probably a good idea.
23 They're usually here. Do you have any objection to that?

24 MR. BROOKS: No, sir.

25 THE COURT: All right.

1 MS. WILSON: We're in Mr. Grant's hearing.
2 Mr. Grant is on the stand, and I'll call you after
3 Mr. Grant's testimony, but I just wanted you to hear
4 Mr. Grant's testimony, but we're going to put you on mute
5 so you can hear his testimony so you know what he
6 testified to, is that okay? All right. Thank you.

7 Can you hear us now pretty well? If for some
8 reason you can't hear Mr. Grant, just let us know and
9 then we'll just -- can you mute your phone? Just mute
10 your phone and then if you can't hear, just holler out
11 and let us know.

12 THE COURT: All right. Go ahead, Mr. Brooks.
13 BY MR. BROOKS:

14 Q. All right. Now, Mr. Grant, you were explaining as
15 to why this was important.

16 A. Okay. Like I was saying, in Mr. Savitz's brief
17 that he submitted to the Courts and his appellate brief,
18 he did not argue that I did not knowingly and
19 intelligently waive my right to counsel at my pretrial,
20 my June 11, 2003 pretrial hearing. He had argued in his
21 appellate brief that I did not knowingly and
22 intelligently waive my right to counsel at my June 11th,
23 2003 hearing, the outcome of my appeal would have been
24 different, and I would like to show the Courts -- show
25 the Court how my June 11, 2003 transcript hearing is a

1 critical stage of the proceeding and how I did not
2 knowingly and intelligently waive my right to counsel.

3 Q. Now, Mr. Grant, the June 11, 2003 hearing that
4 you're referring to, that was before Judge Dennis; is
5 that correct?

6 A. Yes, sir.

7 Q. And you had no counsel?

8 A. I had no counsel.

9 Q. But that's the hearing to determine whether or not
10 the State could take the blood; is that correct?

11 A. Yes, sir.

12 Q. Okay. Why was it important for you to have legal
13 representation? What -- because the Court is going to
14 ask, what difference would that have made, had you been
15 told your right to waive counsel or not at that hearing
16 which was just to draw the blood?

17 A. Under the United States constitution, the Sixth
18 Amendment, I have the right to counsel. I have the right
19 to counsel at every critical proceeding. That's my
20 right, and if I did not knowingly and intelligently waive
21 my right to counsel, the Court was bound to appoint
22 counsel, and when I appeared at the June 11, 2003
23 hearing, the Court did not advise me that I had the right
24 to have the Court appoint counsel, neither did I waive my
25 right to counsel. The Court did not advise me of the

1 disadvantages or the dangers or nothing of having an
2 attorney, of appearing without an attorney.

3 Q. Now, Mr. Grant, if you had a lawyer at that
4 hearing, would the State still have been able to get a
5 Court order to draw your blood?

6 A. That's a question that cannot be answered, due to
7 the fact that no one could actually say what would have
8 happened had I had a lawyer. That's -- again, under the
9 Sixth Amendment right under the United States
10 constitution, I have a Sixth Amendment right to have
11 counsel. The point of that count is up in the air. I
12 can't say whether the State would still have obtained my
13 DNA samples or not.

14 My argument is that I did not have the rights that
15 were guaranteed to me at this hearing. I'm guaranteed to
16 have the right to counsel. This is my -- this is my
17 guarantee. This is something that the United States
18 constitution guarantees me. I did not waive this right
19 to not have counsel at this hearing. My appellate
20 attorney did not argue this to the appellate Courts.

21 Q. Is it your position that your appellate lawyer
22 only argued whether or not you had properly waived
23 counsel at the trial, though?

24 A. The appellate Courts in their decision, they
25 stated that I knowingly and intelligently waived my right

1 to counsel to proceed pro se at trial. They didn't say
2 that I knowingly and intelligently waived my right to
3 counsel to proceed pro se at my pretrial hearing.

4 There's a difference.

5 Q. Okay. And what we are claiming is that Mr. Savitz
6 was ineffective for not raising that issue?

7 A. Absolutely.

8 Q. Now, is it there anything else you want to add as
9 a part of your PCR that we haven't told the judge here
10 this morning?

11 A. Yes, yes.

12 Q. What else?

13 A. Okay. Additionally, there was a January 29th,
14 2010 deconstruction hearing, and at this hearing, my
15 appellate attorney, Joseph Savage, he consent to have
16 this hearing but he never showed up at the hearing, and
17 this is again a violation of my Sixth Amendment right to
18 counsel, because the Court, at this time, had Patricia
19 Kennedy from the public defender office to sit with me
20 throughout this hearing. Patricia Kennedy is not my
21 attorney of record, and I have some laws and cases that I
22 would like to read also to cover up what I'm saying.

23 Q. Let me ask you this while you're looking at this,
24 Mr. Grant.

25 A. Yes, sir.

1 Q. Your trial lawyer was you.

2 A. Yes.

3 Q. So for purposes of the reconstruction, the trial
4 lawyer that needed to be present at that reconstruction
5 would have been you; is that right?

6 A. That's -- no, it's not right. It's not correct.

7 Q. Okay. So what are you -- at the reconstruction,
8 we're talking about the reconstruction hearing now.

9 A. Yes.

10 Q. What are you saying that Mr. Savitz was
11 ineffective in doing? Are you saying he should have been
12 at that hearing?

13 A. Joseph Savage from the office of appellate defense
14 was appointed to represent me on direct appeal.

15 Q. All right.

16 A. When the appellate Courts remanded my case back to
17 the lower Courts --

18 Q. For reconstruction?

19 A. -- for a reconstruction hearing, Joseph Savitz, as
20 my attorney, being appointed to represent me, it was his
21 duty to be at this hearing.

22 Q. Okay. All right. And he wasn't there.

23 A. And he was not there, and that's another violation
24 of my Sixth Amendment right to counsel.

25 Q. And, technically, the only counsel you had besides

1 yourself, which you were your own trial counsel, was you
2 had a member of the public defender's office sit with
3 you.

4 A. Sit with me, exactly.

5 Q. Who didn't have anything to do with your case?

6 A. Who didn't have anything to do with my case, who
7 basically testified for the State. He didn't testify on
8 my behalf --

9 THE COURT: No, wait. The phone made a
10 couple beeps so we may have lost Mr. Savage. All right.
11 Sorry about that.

12 BY MR. BROOKS:

13 Q. All right. Ready to begin, Mr. Grant?

14 A. Yes, sir.

15 Q. All right. So now, just for clarification, we're
16 saying that Mr. Savage didn't argue about waiver of
17 counsel at the pretrial hearing; and that, number two,
18 that he should have been at the reconstruction hearing
19 which was in January 2010.

20 A. Yes, sir.

21 Q. Is that correct?

22 A. He consent to have evidence, exhibits that --
23 Joseph Savage consent to having the January 29, 2000
24 hearing. He consented to having it. He knew about it
25 beforehand, and, as an attorney, it was his duty to be

1 present at this hearing.

2 Q. Okay.

3 A. If he knew he wasn't going to be able to attend
4 this hearing, it probably would be more appropriate for
5 him to reschedule when he would be able to be present.

6 Q. Okay.

7 A. For the hearing to go on without me having --
8 appointing an attorney is a violation of my Sixth
9 Amendment right to counsel.

10 Q. Your position is at that point he was your lawyer.

11 A. That's my understanding, yes. He was appointed to
12 represent me.

13 Q. Okay.

14 A. I didn't know nothing about a reconstruction
15 hearing. I don't know what to say, what not to say at a
16 reconstruction hearing.

17 Q. You didn't know what to object to? You didn't
18 have any idea how to advocate for yourself in that
19 reconstruction hearing?

20 A. Exactly.

21 Q. Is that what you're saying?

22 A. Yes. And under the laws and the cases that I'm
23 about to read, they essentially confirm what I'm saying.

24 Q. Now, let me ask you this about cases you want to
25 read. Are these things that we've already submitted to

1 the Court or --

2 A. No. I haven't submitted these -- I was going to
3 put this on the record --

4 Q. Okay.

5 A. -- if you don't mind. There is some things that I
6 would like to put on the record that I know that's on the
7 record, and it would be a lot of the things that I just
8 already said, but I wrote it down so I could cap it all
9 so everything could be on the record.

10 Q. Let me tell you this, and this might help you out.
11 There are two ways to put something on the record. One
12 is to testify, and another is if it's written document
13 that is be presented to the Court and -- like, for
14 instance, your application. You don't have to read your
15 application, because that's already in the record. The
16 reconstruction hearing, you don't have to read that.
17 That's already in the record. The 2003 hearing that you
18 are talking about, it's already in the record.

19 It's in the record, so if there is something that
20 is written, sometimes it's better for the Courts to see
21 it as opposed to hearing somebody who came in from the
22 institution to read it.

23 Do you understand that?

24 A. Yes, sir.

25 Q. Because a lot of times we, as people, we have the

1 tendency to read faster and it makes it a little more
2 difficult for this lady sitting right here next to you as
3 the court reporter to get all that down, and that's not
4 what we want to do. So if it's written, to make sure
5 it's in the record, we probably want to file it. Okay?

6 A. Yes, sir. I would like to read these. These are
7 my notes that I wrote down myself, if I could read.

8 Q. All right. And this is about why this is
9 important; is that correct?

10 A. All this here is the June 11, 2003 hearing, the
11 January 29th, 2010 hearing.

12 Q. Okay. Go ahead.

13 A. Okay. In the case of Carnely, C-a-r-n-e-l-y,
14 versus Cochran, C-o-c-h-r-a-n, 82 Supreme Court 884, this
15 Court held that the record must show there must be an
16 allegation and evidence will show an accused was offered
17 counsel but intelligently and understandably rejected the
18 offer. Anything less is not a waiver of counsel.

19 The right cannot be waived unless an offer of
20 counsel had been made, and the reason that I read this
21 case is this, because, again, at the June 11, 2003
22 hearing, the Court never offered me counsel, and, again,
23 my appellate attorney never presented this issue to the
24 appellate Courts.

25 Okay. Under Brandon versus State 548 S.E. 2d.

1 866, this Court held a defendant's knowingly and
2 voluntary waiver of a statutory or constitutional right
3 must be established by a complete record and may be
4 accomplished by a conversation between the Court and the
5 defendant, between the Court and the defendant's lawyer
6 or both, and the reason why I'm bringing this case up is
7 this, is because the State is saying that I knowingly and
8 intelligently waive my right to counsel at a hearing
9 where there is no transcript of this hearing, and this
10 case is saying that if a person -- if a defendant
11 knowingly and voluntarily waived his statutory or
12 constitutional right, it must be established by a
13 complete record.

14 There is no complete record. There is no record,
15 period, of me knowingly and intelligently waiving my
16 right to counsel prior to me proceeding pro se at my June
17 11, 2003 hearing, and had attorney Joseph Savage argued
18 this issue in direct appeal, the outcome of my case --
19 the outcome of the Court's decision may have been
20 different.

21 Under *Fereta versus California*, which is the
22 leading case on pro se litigants, 95 Supreme Court 2525,
23 this Court held in order to waive the right to counsel,
24 the accused must be advised of his right to counsel and
25 adequately warned of the dangers and disadvantages of

1 self-representation. Fereta Court also held the right to
2 self-representation cannot be held without first
3 soliciting a valid waiver of the right to counsel from
4 the defendant, and, again, at my June 11, 2003 hearing,
5 the Courts never advised me of the dangers or the
6 disadvantages of appearing without counsel.

7 Again, the Courts never elicited a valid waiver of
8 a right to counsel from me at my June 11, 2003 hearing.
9 Had Joseph Savage effectively argued this issue to the
10 appellate Courts that I did not knowingly and
11 intelligently waive my right to counsel to proceed pro se
12 at my June 11, 2003 hearing, the outcome of my case may
13 have been different, and the United States versus Wade --

14 Q. Let me ask you this: Is there something you got
15 written that you can submit to the Court and make sure
16 that it's on the record as opposed to you reading it?

17 A. I didn't make a copy of my notes.

18 Q. Okay.

19 MR. BROOKS: Your Honor, can we --

20 THE COURT: Can you what?

21 MR. BROOKS: Can we make a copy --

22 THE COURT: Of his notes? His notes aren't
23 evidence. They're only being used to refresh his memory,
24 so he doesn't just get to hand up his notes.

25 MR. BROOKS: Okay.

1 THE WITNESS: Under United States versus
2 Wade, 388 US 218, this Court held that the Sixth
3 Amendment right to counsel attaches to critical stages of
4 pretrial proceedings --

5 THE COURT: Let me ask you this: How many
6 pages has he got?

7 THE WITNESS: One more. My notes?

8 THE COURT: Yeah.

9 THE WITNESS: A half a page.

10 THE COURT: All right. That's fine. Go
11 ahead.

12 THE WITNESS: And, again, under United States
13 versus Wade, this is a United States Supreme Court case,
14 and this Court specifically confirmed my theory that my
15 June 11th, 2003 -- my June 11, 2003 hearing was indeed a
16 critical stage of proceeding, and my Sixth Amendment
17 right to counsel was attached to this hearing.

18 And under the Savage being ineffective,
19 Simpkins versus State, 401 S.E. 2d. 142, this case held
20 post-conviction relief of a new trial granted based on
21 appellate counsel's failure to raise an issue that
22 constituted reversible error. And, again, this confirmed
23 that I am entitled to a new trial based on Savage, not
24 including any record on appeal, of reversible error.

25 And Ezell versus State, E-z-e-l-l, 548 SE 2d.

1 852, this Court held appellate counsel failure to include
2 a record on appeal at audio improperly at trial
3 constituted ineffective assistance of counsel. Ezell
4 Court also held appropriate remedy for appellate
5 counsel's ineffective assistance of defendant by failure
6 to present on appeal at audiotape improperly admitted at
7 trial was a new trial where result of defendant's appeal
8 would have been different if tape had been presented.

9 I would like to say for the record that my
10 Sixth Amendment right to counsel was violated, my Fourth
11 Amendment right against unreasonable search and seizures
12 was violated, and my Fourth Amendment right to due
13 process of law was violated when I proceeded pro se at
14 the June 11, 2003 hearing, and, again, how Joseph Savage
15 did not argue this on appeal.

16 BY MR. BROOKS:

17 Q. Is that everything we've put on the record now,
18 Mr. Grant?

19 A. I have some more things I would like to put on the
20 record.

21 Okay. Back to the January 20, 2010 reconstruction
22 hearing, it was a hearing to reconstruct my allegedly
23 waiver of counsel hearing. Now, Joseph Savage consent to
24 having the reconstruction hearing because he -- like I
25 said, a reconstruction hearing was supposed to be

1 reconstruction of my allegedly waiver of counsel hearing.
2 I would like to submit this -- this is Exhibit C. This
3 is a letter from Joseph Savage, October 24th, 2005, and
4 there he told the office -- I wrote the office of
5 disciplinary counsel making a complaint against Joseph
6 Savage representation of my case.

7 This letter is a response to my complaint, and
8 this letter, he said within the past two weeks, we
9 received the transcript of the waiver of counsel, and
10 what I'm taking this as is on October 24, 2005, Joseph
11 Savage is saying that he have a transcript of my waiver
12 of counsel, but there was never a transcript of my waiver
13 of counsel produced.

14 He's saying that he had the transcript in this
15 letter but then he never produced it. There was never a
16 waiver of counsel transcript produced throughout my whole
17 case nowhere on the record, nowhere, and I would like to
18 submit this as evidence -- if he had the transcript, I
19 would like to see this transcript. I'm pretty sure the
20 Courts and everybody else would like to see this
21 transcript.

22 So if it please Court, I would like to submit this
23 on the record as Exhibit C through my attorney.

24 MR. BROOKS: Judge, we would submit this to
25 the Court as Applicant's 1.

1 THE COURT: Without objection, admitted.

2 (Applicant's Exhibit No. 1 marked for
3 identification and admitted into evidence.)

4 BY MR. BROOKS:

5 Q. Mr. Grant, is that everything? We put forth
6 everything for purposes of the PCR today; is that
7 correct?

8 A. No, sir.

9 Q. No, sir?

10 A. No, sir.

11 Q. Is there something else we haven't put up?

12 A. Well, there is some more things I would like to
13 say.

14 Q. Okay.

15 A. Had Joseph Savage was -- like I say, Joseph Savage
16 did not attend my January 29th, 2010 reconstruction
17 hearing. Had Joseph Savage been present at my January
18 29th, 2010 hearing, I would have been able to put up a
19 defense to the State's contention that I knowingly and
20 intelligently waived my right to counsel.

21 Being that I was without counsel, being that
22 Joseph Savage was not at my reconstruction hearing. I
23 did not say nothing. I did not oppose what the State was
24 saying, and that was something that ended up hurting me,
25 so I'm explaining -- I'm just letting it be known for the

1 record that's why I didn't say anything at the January
2 29th, 2010, hearing because I was under the impression
3 that I was without counsel and I didn't want to say
4 anything that could hurt me.

5 Q. Okay.

6 A. Joseph Savage was ineffective for his
7 representation, not including in the record on appeal
8 that I did not knowingly and intelligently waive my right
9 to counsel at the June 11, 2003 pretrial hearing. Had he
10 argued the issue, included the issue on appeal, the
11 outcome of my appeal would have been different.

12 Q. All right. All right. Now, Mr. Grant, I think
13 we're going to put it out there. Are we done now?

14 A. Yes.

15 Q. Okay. Answer any questions of Ms. Wilson.

16 CROSS-EXAMINATION

17 BY MS. WILSON:

18 Q. Good morning, Mr. Grant.

19 A. Good morning.

20 Q. Initially you were represented by George Bishop;
21 is that correct?

22 A. Yes.

23 Q. Okay. And, ultimately, you fired Mr. Bishop,
24 right?

25 A. Yes.

1 Q. Okay. And you asked -- did you ask Judge Dennis
2 to have Mr. Bishop relieved?

3 A. I can't remember.

4 Q. You don't remember. Okay. Did you have a hearing
5 where it was Judge Dennis and Mr. Jennings and Mr. Bishop
6 where y'all talked about firing Mr. Bishop?

7 A. There was an April 30th, 2003 hearing where George
8 Bishop was relieved at counsel.

9 Q. Okay. And during that hearing when Mr. Bishop was
10 relieved, did the Court tell you it was a bad idea to
11 fire him and represent yourself?

12 A. No, ma'am. The Court never advised me of nothing
13 like that.

14 Q. What happened at the hearing?

15 A. Some things I can remember; some things I can't
16 remember.

17 Q. Tell me what you can remember. That's fine.

18 A. I can't remember.

19 Q. You can't remember anything?

20 A. Certain things.

21 Q. Okay. Can you tell the Court what you recall from
22 that hearing.

23 A. You're talking ten years ago, but I know what they
24 didn't do. What they said they did do, I know they
25 didn't do, and, for example, they did not advise me of my

1 right to counsel. They did not advise me of my -- that
2 the Court had -- that the Court was in position to
3 appoint me counsel. They did not advise me of the
4 dangers and disadvantages. I do remember that.

5 Q. Okay. So ultimately you proceeded pro se at your
6 trial; is that correct?

7 A. Yes.

8 Q. And you had help from Ms. Pat Kennedy, who
9 assisted you?

10 A. Yes.

11 Q. And this issue about the Court not telling you
12 about your right to counsel and the dangers of self
13 representation and stuff, that is what Mr. Savage
14 presented on appeal; is that correct?

15 A. That's not correct.

16 Q. That's not what he talked about on your appeal?

17 A. I can't remember.

18 Q. So you don't recall or no?

19 A. I can't recall. I don't remember.

20 Q. You can't recall? Do you recall how the Court
21 ruled on your appeal?

22 A. Yes.

23 Q. What did the Court rule?

24 A. Okay. The appellate Courts ruled that I knowingly
25 and intelligently waived my right to counsel to proceed

1 pro se at trial, not pretrial.

2 Q. And did you speak with Mr. Savitz about the issues
3 on appeal?

4 A. Yes. I speak with Savage numerous amount of time
5 about my June 11, 2003 pretrial hearing where I did not
6 knowingly and intelligently waive my right to counsel,
7 and he did not argue that issue on appeal.

8 Q. So you told him about that issue?

9 A. Yes, I'm studying the law, and once I was
10 incarcerated for studying the law, I realized there was
11 reversible error.

12 Q. Do you have a copy of your June 11, 2003 hearing
13 transcript?

14 A. Yes.

15 Q. Can you turn to page four of that with me.

16 A. Sure.

17 Q. And during this hearing, do you recall the Court
18 putting on the record that they talked to you about
19 representing yourself and that you were going to go
20 forward on that motion pro se that day?

21 A. Where are you?

22 Q. I'm page four of the June 11, 2003 transcript.
23 I'm just asking, during the hearing, do you recall the
24 Court talking to you about representing yourself?

25 A. No. Representing myself when?

1 Q. Okay. Well, let's look on page four of the June
2 11 transcript, and I'm not asking this to be smart, but
3 can you read and follow along with this?

4 A. Sure.

5 Q. Wonderful. So at page 4, at line 13 where it
6 starts the Court, it says the Court: All right, sir.
7 First of all, Mr. Grant, let me inquire before I hear
8 from you. The last time you were here, you asked me to
9 dismiss your attorney, Mr. Bishop, and I did that. You
10 also advised the Court that you did not wish to have a
11 public defender appointed to represent you, that if you
12 did have and you did desire counsel, you would obtain
13 counsel yourself; is that correct, sir?

14 And what was your response?

15 A. My response was, yes, sir. My response -- hold,
16 hold, hold -- I'm not finished answering the question.

17 Q. Take your time.

18 A. When I said, Yes, sir, I was saying yes, sir that
19 we was here, that we did -- I did ask him to relieve
20 George Bishop. I did not say, Yes, sir to -- I said that
21 he did offer me the public defender to appoint -- he -- I
22 did not say yes to he also advised the Court that you did
23 not wish to have the public defender appointed to
24 represent you. I was never advised of this. I don't
25 know where this came from.

1 Q. Okay. Thank you. But you were present at the
2 hearing; that's correct?

3 A. What hearing?

4 Q. Were you present at the June 11 hearing?

5 A. Yes.

6 Q. Prior to this Schmerber hearing, did you volunteer
7 your blood and pubic hairs to the State?

8 A. Yes.

9 MS. WILSON: Thank you, Mr. Grant.

10 THE COURT: Redirect?

11 MR. BROOKS: No further questions.

12 THE COURT: Any recross, or redirect?

13 THE WITNESS: Yes.

14 THE COURT: That question was directed to
15 him.

16 MR. BROOKS: I don't have any other
17 questions.

18 THE COURT: You need to talk with him?

19 THE WITNESS: I have something I want to put
20 on the record.

21 THE COURT: What is that?

22 THE WITNESS: I would like -- I take the
23 Court's attention -- I'm at this June 11, 2003 hearing to
24 page 18, line 17 through 25.

25 THE COURT: Let me get that. Page 18?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right.

3 THE WITNESS: I would like to read something,
4 sir, once I can find the page. Okay.

5 I'm taking this as this: At the April 30,
6 2003 hearing, Judge Dennis presided over that hearing.

7 THE COURT: Uh-huh.

8 THE WITNESS: Judge Dennis presided over this
9 January -- over this June 11, 2003 hearing. As we read
10 page 18 of the June 11, 2003 transcript, line 17 through
11 22, Judge Dennis himself said this: Let me just point
12 out something again today by your actions because at some
13 point in time I'm going to have to make -- I or some
14 judge is going to have to make a determination as to
15 whether or not they're going to permit you to proceed pro
16 se, but there has to be a hearing to make that
17 determination, that is, represent yourself.

18 Here, on the record, in the transcript, the
19 judge, Judge Dennis, the Court, is confirming that there
20 was never a determination as of whether or not I would be
21 present -- there was never a determination as to whether
22 or not I would be able to permit -- I'll be able to --
23 the Court itself on the record is confirming that a
24 determination as to whether or not I'll be able to
25 proceed pro se have not been made.

1 Now, the State is saying that at the April
2 30, 2003 hearing that a determination had been made.
3 Judge Dennis is saying that a determination have not been
4 made.

5 THE COURT: Okay. Well, that's a good point.
6 Anything else?

7 THE WITNESS: No, sir.

8 THE COURT: All right. You can step down.
9 All right. Mr. Brooks, do you have any other
10 witnesses?

11 MR. BROOKS: That's the Applicant's case.

12 THE COURT: All right. The State?

13 MS. WILSON: The State would call Mr. Savitz.

14 THE COURT: Are you still with us?

15 THE WITNESS: Yes.

16 JOSEPH L. SAVITZ,
17 having been first duly sworn,
18 was examined and testified as follows via telephone:

19 DIRECT EXAMINATION

20 THE COURT: All right. Ms. Wilson, go ahead.

21 BY MS. WILSON:

22 Q. Good morning, Mr. Savitz.

23 A. Good morning.

24 Q. Could you tell the Court your experience as an
25 appellate attorney?

1 A. I went to work at the office of appellate defense
2 starting in January the 2nd of 1985. I eventually became
3 and I believe I was the chief attorney at the time I
4 represented Mr. Grant. I left appellate defense on
5 January the 2nd of 2011.

6 Q. Thank you.

7 A. And during that time I specialized in murder
8 cases, specifically death penalties and noncapital.

9 Q. Could you tell the Court your process of reviewing
10 appellate cases once you received them through your
11 office, or your former office.

12 A. Yeah, yeah. What we do is we contact the court
13 reporter and get the transcripts of the trial, and, like
14 I said, I specialized in murder cases. It was me and
15 another guy. We basically split the death penalty cases,
16 and I just got Mr. Grant's case. I didn't ask for it.
17 It was just assigned to me, and what we do is we order
18 the transcripts, and, like every case, I read through it
19 and try to identify some issues that I thought might be
20 meritorious and get him a new trial on appeal.

21 The obvious issue in this case was the fact this
22 was a murder case, I believe, and he represented himself,
23 so I didn't see any issues other than the waiver of the
24 right to counsel. He says that's the big issue in this
25 case. I agree with that.

1 The problem I had was I was never able to find a
2 copy of the transcript of the waiver hearing, and
3 Mr. Grant wasn't very helpful to me, because when I asked
4 him to give me the date, judge, court reporter, if he
5 knew who it was, he told me the hearing didn't even
6 exist.

7 I think now he's saying something different, but
8 at the time he told me that the hearing did not even
9 exist, and so I exhausted -- the correspondence from me,
10 the court reporter, me and Mr. Grant, me and the Court is
11 a lot more extensive than the documents Mr. Grant has
12 selected and put in his PCR application.

13 I can get the file from archives and go
14 through it, if that would be some help for the Court, but
15 I was never able to find the transcript of the initial
16 waiver hearing. Everything I found is in the appendix
17 that I filed with the initial Anders brief.

18 Q. Thank you, Mr. Savitz. So ultimately, could you
19 tell the Court what the issue was you raised during
20 Mr. Grant's direct appeal?

21 A. I can't remember -- like I said, I don't have the
22 file, but I think it was -- I mean, we went back and
23 forth trying to find this waiver hearing, and I still
24 think that's the big issue of the case, and before I
25 could get to what I did, he should have had a lawyer at

1 trial. He should not have represented himself, and the
2 record would have reflected that if he didn't waive his
3 right to counsel, then he probably deserves a new trial.

4 If there is something I could do to bring that to
5 the Court's attention, maybe I was ineffective, but I
6 could just not find a transcript, and he was of no help
7 to me in finding the transcript. The issue I raised, I
8 think, had to do with a jury charge maybe, and I filed an
9 Anders brief. And I had a lot of communications with the
10 Court about this case and my inability to find the
11 transcript; plus, he filed a grievance against me at some
12 point, so there was a lot going on with this case, but I
13 eventually -- everything I could find about the case I
14 put into an appendix. I sent it to the Court, and they
15 sent it back to me and they said brief the issue I think
16 I had raised but also brief the issue about whether he
17 voluntarily waived his right to counsel, and so what I
18 ended up arguing was that the record didn't really
19 reflect whether he did or not, since we didn't have this
20 transcript, and since we didn't have this transcript, he
21 should get a new trial, and the Court rejected that.

22 Q. Okay. Mr. Savitz, today, Mr. Grant is saying that
23 you should have also argued the issue about whether or
24 not he waived counsel at the Schmerber hearing. Did you
25 talk to him about that? Was that a meritorious issue in

1 your eyes? I'm sorry. Go ahead.

2 A. I'm sorry for interrupting you. I mean, he waived
3 counsel, ostensibly waived counsel, at the hearing that
4 we don't have the transcript of, and you don't have to
5 waive counsel at every single stage of the proceedings.
6 Once you waive the right to counsel, you have waived your
7 right to counsel, and the judge said, Hey, you know,
8 maybe you don't want to be representing yourself. This
9 isn't a good idea.

10 So he clearly waived it at the Schmerber hearing,
11 if he didn't before.

12 Q. So you didn't think that that was a meritorious
13 issue to present?

14 A. No. I still don't.

15 Q. Okay. And do you recall a June 11 -- I'm sorry, a
16 January 29, 2010 reconstruction hearing?

17 A. No, I do not. I don't, but I -- you know, I mean,
18 what he says, I lined up an attorney to sit there with
19 him during the hearing. I mean, at that point in time,
20 he was still saying that there wasn't -- that there
21 wasn't a waiver hearing, that there wasn't a transcript
22 filed, and, I mean, I had reason to believe that that was
23 not true, and I was not going to present that kind of
24 testimony in the court, particularly since he already
25 filed a grievance. Against me, so if he had the

1 reconstruction hearing and I got him a lawyer to sit
2 there with him, and you know, what happened what
3 happened.

4 Q. Okay. And ultimately -- well, Mr. Grant presented
5 a letter to the Court today, and it's dated October 24,
6 2005, and in the letter it says that you were writing to
7 him, and I think you were saying -- well, hold on one
8 second. Let me look at the exhibit, and I'll tell you
9 exactly what it says.

10 This is Petitioner's Exhibit 1, and it's dated
11 October 24, 2005, and it is to Barbara Hinson,
12 administrative assistant at the South Carolina Supreme
13 Court, and it says: Dear Ms. Hinson, it says Mr. Grant
14 represented himself at his murder trial. He's serving a
15 sentence of life imprisonment for the crime. Within the
16 past two weeks, we received a transcript of his waiver of
17 counsel.

18 Do you recall writing that letter to Ms.
19 Hinson and, I guess, copying it --

20 A. Yeah. That was in response to the grievance he
21 filed against me during the appeal, and what happened, we
22 got a transcript in, and it was purported to be of the
23 transcript, the waiver hearing. I think -- it may have
24 been his murder hearing, but it was not the waiver
25 hearing. We were never able to obtain the waiver

1 hearing, and it's not like -- the way getting transcripts
2 works is, it's not just me writing the court reporter,
3 getting a transcript, and then deciding not to put it in
4 the record.

5 That goes through Court administration. There is
6 an easy way to show whether or not I got a waiver hearing
7 transcript in this case and neglected to include it on
8 appeal, and that's by checking with Court administration,
9 and if anybody checks with Court administration, they
10 will see that we did not get any other transcripts than
11 the ones that are in the appendix.

12 I never had a waiver hearing transcript, and when
13 I said in that letter I got and was going to start
14 working on his appeal in a month, whatever, two weeks, we
15 got a transcript in, but when I started looking at it, it
16 was clear it was not the transcript of the waiver
17 hearing, which I don't believe has ever surfaced. There
18 is not one there today, right?

19 Q. No, there's not.

20 A. There is not one there today that showed he
21 voluntarily waived counsel, so nobody is going to find
22 that.

23 MS. WILSON: Thank you, Mr. Savitz. I'm
24 going to have you hold the line for Mr. Brooks's
25 cross-examination. Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: Mr. Brooks?

3 CROSS-EXAMINATION

4 BY MR. BROOKS:

5 Q. Mr. Savitz?

6 A. Mr. Brooks, how are you doing?

7 Q. I'm doing wonderful. How are you today?

8 Now, basically, that letter to disciplinary
9 counsel was basically saying -- even though it's worded
10 that you have a waiver hearing transcript --

11 A. Yes.

12 Q. -- you actually have the Schmerber hearing
13 transcript?

14 A. You know, I think that's right, because it was
15 something that was sent to us purporting to be the waiver
16 hearing transcript, but it turned out it wasn't. I mean,
17 I was never -- I never got a waiver hearing transcript.
18 I mean, the allegation, I guess, is that I got a
19 transcript showing he didn't voluntarily waive his right
20 to counsel, that I decided not to put that in the record
21 to sabotage his people.

22 If that's the allegations, I did not do that. I
23 may have missed an issue. I'm not saying I'm perfect,
24 but if he's accusing me of sabotaging his appeal, that
25 didn't happen.

1 Q. Now, basically, the letter to disciplinary
2 counsel --

3 A. Right.

4 Q. -- was basically a -- I guess misprint, because
5 what you really meant to say was you had the transcript
6 from the Schmerber hearing.

7 A. What happened was, I was told that it was -- the
8 transcripts come in, and, you know, there's a system. We
9 order what we call the waiver hearing transcript. A
10 transcript came in. I was told that the transcript I had
11 ordered was here, and I was told that, I believe, by the
12 court reporter, that the transcript I wanted. Well, it
13 turns out -- the Schmerber hearing is the one where the
14 judge said, Maybe you don't want to waive your right to
15 counsel. It is kind of a waiver hearing within the
16 Schmerber hearing. I think that's what it was, but I'm
17 not positive. I don't have my file in front of me.

18 But as far as -- I still don't know the date of
19 the waiver hearing that we're talking about. He never --
20 it's not that he wouldn't tell me the day. He said the
21 hearing didn't even exist, and so that's what I dealt
22 with up, until I saw his PCR application. I mean, he
23 never said there is a waiver hearing. Here is the date
24 of it. Here is the judge. He never told me there was a
25 waiver hearing I needed to get. What he told me was

1 there wasn't a waiver hearing at all.

2 Q. So I'm just asking you about the letter from the
3 disciplinary counsel. You basically -- the reason you
4 said in your letter, I have the waiver hearing transcript
5 is because you thought it was a waiver hearing
6 transcript.

7 A. I thought it was -- yeah, I thought it was the
8 waiver hearing transcript, but as it turns out, it was
9 not.

10 Q. All right. And you do acknowledge that you did
11 not come to the hearing where there was a reconstruction
12 done back in January of 2013?

13 A. Oh, yeah, I acknowledge that.

14 Q. Okay. Did you -- in your appellate brief, you
15 didn't argue about whether or not Mr. Grant had waived
16 his right to counsel prior to that Schmerber hearing?

17 A. Well, not in my initial Anders brief I didn't.
18 But in the brief, they ordered me to brief not just the
19 issue I've raised, but -- and even, you know, this is a
20 bad case. He shouldn't have represented himself.

21 I didn't have any other issues other than the
22 waiver of the right to counsel, so he's right to focus on
23 that. There wasn't any problems with that. What the
24 Court asked me to file, after I filed the Anders brief is
25 whether or not he voluntarily waived his right to

1 counsel. What I argued, based upon what I had in front
2 of me was no, he did not, and, B, because we couldn't
3 find the transcript of the initial waiver hearing that he
4 should get a new trial, so I argued two things about it,
5 and they rejected both of them.

6 Q. Okay. All right.

7 MR. BROOKS: I beg Court's indulgence, Your
8 Honor. Judge, I have no other questions for Mr. Savitz.

9 THE COURT: All right. Any redirect?

10 MS. WILSON: Nothing further. Thank you, Mr.
11 Savitz.

12 THE COURT: Thank you, Mr. Savitz.

13 THE WITNESS: Thank you. I appreciate it.

14 THE COURT: Okay. All right. Anything
15 further from the State?

16 MS. WILSON: Yes, Your Honor. State would
17 call Blair Jennings.

18 THE COURT: All right. Before we bring him
19 up, let's me just take five minutes to use rest room, if
20 anybody else needs to, we'll be back.

21 (Recess taken.)

22 MS. WILSON: We call Blair Jennings.

23 BLAIR JENNINGS,

24 having been first duly sworn,

25 was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. WILSON:

3 Q. Good afternoon, Mr. Jennings. Were you the
4 solicitor that was assigned to prosecute Mr. Grant's
5 trial?

6 A. I was.

7 Q. And can you give us a little history of your
8 background as an attorney.9 A. At that time I had been in the Berkeley County
10 solicitor's office for three years. I had started when
11 Ralph Hoisington was elected. Prior to that, I
12 prosecuted in Richland County for three-and-a-half years
13 and was in private practice for roughly a year in between
14 the two.15 Q. And were you present when Mr. Grant waived his
16 right to counsel?17 A. Yes. I handled the case -- I was involved from
18 the time the crime was committed all the way through the
19 trial.20 Q. Can you talk to us about the waiver hearing with
21 Judge Dennis.22 A. Well, I mean, there's not any one single waiver
23 hearing. It happened. Mr. Grant was arrested on
24 December 31st of 2002, was incarcerated, obviously for
25 murder, and didn't have a bond hearing until March the

1 6th. Mr. Grant's father had retained George Bishop who
2 is an attorney in Moncks Corner. Bond hearing was held
3 with Judge Dennis. At that time, I think Judge Dennis
4 presided over all our General Sessions terms. Bond was
5 set.

6 Mr. Grant wasn't able to make it, and the first
7 hearing was April 30th when Mr. Grant wanted to terminate
8 the services of Mr. Bishop. So that was the first time
9 Judge Dennis went over with him ad nauseam the risks and
10 dangers of proceeding without an attorney, asked him if
11 he wanted to have the public defender appointed.

12 At that time, Ms. Kennedy was the head public
13 defender. She was obviously in court during all our
14 sessions. Mr. Grant did not want the public defender's
15 office appointed specifically and told Judge Dennis that
16 he was going to represent himself but was going to make
17 plans to hire another attorney, so all that was clearly
18 laid out on the record, the risks and disadvantages of
19 that decision.

20 Q. At other proceedings where Mr. Grant represented
21 himself pro se, did the Court discuss his decision to
22 represent himself?

23 A. Yes, I think literally every time we were in
24 court. That April 30th hearing, we had a Schmerber
25 hearing on July 11, I think that's already been

1 referenced in 2003. Judge Dennis went through those
2 issues again, and, really, his questions would come up
3 over procedure or how things went in the courtroom.
4 Judge Dennis would also use that as an opportunity to
5 point out to Mr. Grant about why he was making a poor
6 decision.

7 It was his decision to make, that at every
8 hearing, Judge Dennis went over that. Specifically, we
9 had the June 11th Schmerber hearing, which also I think
10 significantly for the issue of the impact it had on the
11 trial, the sheriff's office already had his blood and
12 hair samples from December the 31st. I don't recall
13 whether Mr. Grant had given that voluntarily or whether
14 as a result of a search warrant, but during that time the
15 Supreme Court had come out with -- had rendered a
16 decision of specific language that needed to be in search
17 warrants, so I do recall in an effort, you know, it was a
18 high profile case, obviously very serious case, so to
19 cross all the Ts and dot all the Is, I did want to have a
20 hearing to just make sure everything was done correctly.

21 So that was the purpose of the hearing, but for
22 evidentiary purpose, his blood was already in evidence.
23 But then we had subsequent hearings on December the 3rd
24 of 2003 to address a number of motions Mr. Grant had
25 filed, pretrial.

1 Again, the issue at pretrial was addressed.
2 December 8th of 2003, we were back in front of Judge
3 Dennis again and addressed the attorney issue. January
4 the 7th of 2004 there was another hearing with Judge
5 Dennis. It was at that point Mr. Grant had asked to have
6 the public defender appointed as co-counsel, which
7 obviously is not permitted under the case law, and
8 through the discourse between Mr. Grant and Judge Dennis,
9 the decision was made that Ms. Kennedy would be appointed
10 to assist him but would actually not participate in the
11 trial, and that's what Mr. Grant wanted and how he wanted
12 to proceed.

13 Then February the 13th of 2004 was another
14 pretrial conference on the record where we again
15 addressed it, and it came up numerous times during the
16 trial that was in February of 2004.

17 Q. Could you outline for the Court some of the
18 evidence the State had against Mr. Grant, or what was
19 presented at trial?

20 A. There were -- at the point when Ms. Sotille's body
21 was found the day after Christmas. Sort of as the pieces
22 started to come together, her car was found abandoned
23 downtown at the foot of where the old bridge came in
24 downtown Charleston, on Line Street. Circumstantially,
25 working backwards, we found, or detectives found, a

1 witness who gave Mr. Grant a ride from Highway 17 in
2 Mount Pleasant out to his home in Cainhoy on the morning
3 of the 26th, which fit in line with after the car would
4 have been dropped, obviously, after the murder. He had a
5 fresh, severe laceration on his wrist as well as blood
6 all over his clothes.

7 Subsequently, there were statements he made to
8 witnesses implicating himself in the murder. There were
9 statements to people in the detention center that
10 testified about statements he had made confessing to the
11 murder. DNA evidence was found in Ms. Sotille's car that
12 placed Mr. Grant at the scene. DNA was recovered from
13 Ms. Sotille that matched Mr. Grant significantly. He had
14 a ring on his finger that was taken when he was arrested
15 and that had Ms. Sotille's blood in it that was testified
16 to by SLED agent.

17 So it was a very strong case.

18 MS. WILSON: Thank you, Mr. Jennings.

19 THE COURT: Mr. Brooks?

20 CROSS-EXAMINATION

21 BY MR. BROOKS:

22 Q. Mr. Jennings, you indicated that law enforcement
23 had -- prior to that June 2008 Schmerber hearing, law
24 enforcement had already had Mr. Grant's blood DNA; is
25 that correct?

1 A. That's correct.

2 Q. And they had gotten it through a search warrant;
3 is that your recollection?

4 A. I didn't recall if it was a search warrant or if
5 he had consented to them taking it.

6 Q. Right. Obviously, you were not privy to that; is
7 that correct?

8 A. I was privy to it. Just don't remember now.

9 Q. And at the time that was taken, did he have
10 counsel? Did he have Mr. Bishop representing him?

11 A. That was the day he was arrested.

12 Q. Okay. Do you recall what time period he had
13 Mr. Bishop representing him through what time that
14 Mr. Bishop was terminated?

15 A. He was arrested December 31st of 2002, and his
16 father retained Mr. Bishop within days of him being
17 arrested, and then Mr. Bishop represented him from that
18 bond hearing up until that April 30th hearing.

19 Q. Do you know whether or not law enforcement had
20 gotten the blood prior to Mr. Bishop's representation?

21 A. Yes.

22 Q. They -- you said yes, they had gotten?

23 A. Yes, they had. They got -- the samples were taken
24 on December 31 when he was arrested.

25 Q. Okay. And they had -- you don't know whether or

1 not Mr. Grant had consented to it?

2 A. I don't recall.

3 Q. So take me back. Why did you have the hearing in
4 June of 2003, the Schmerber hearing in 2003, even though
5 law enforcement already had it? What was your reason for
6 that?

7 A. Again, I don't recall the specific reason. All I
8 know is to make sure that the record was -- it was clean.
9 I don't recall if it was language from the search warrant
10 that I thought might have been an issue or if he
11 consented. I don't recall the specific reason, but --

12 Q. I'm just trying to work this through. If law
13 enforcement already had the blood and they either got it
14 through a valid search warrant or he had consented, then
15 there would not be a need for June 2003 Schmerber
16 hearing, would there not?

17 A. No. The issue at this time, the Supreme Court in
18 the early 2000s had come out with a decision saying that
19 search warrants, when you get blood, search warrants
20 cannot just have the normal language of a normal search
21 warrant. They have to include the language from a
22 Schmerber order, that it's the least intrusive means of
23 getting it, is there probable cause to suspect that the
24 person is guilty -- or that there is a reasonable
25 probability that you're going to find evidence that is

1 relevant to the crime.

2 So the best I can guess at this time is that was
3 the issue, that there may have been some issue with the
4 language in the search warrant, and I wanted to make sure
5 that that didn't later become an issue with how the blood
6 was obtained.

7 Q. And so that was the real reason for having that
8 Schmerber hearing, is you said you wanted to keep your
9 record clean, correct?

10 A. Yes.

11 Q. And we acknowledge that when they got his blood,
12 he didn't have counsel, and even at the Schmerber
13 hearing, during the bulk of the Schmerber hearing, he
14 didn't have counsel and he was not told about his waiver
15 of his right to counsel until that hearing was just about
16 complete; is that --

17 A. That's not true.

18 Q. That's not accurate?

19 A. No.

20 Q. Okay. When was he informed by the Court that he
21 was waiving his right to counsel?

22 A. When he --

23 Q. To your recollection.

24 A. When he asked that George Bishop be relieved of
25 his attorney on April 30th of 2003.

1 Q. Okay. And that was before Judge Dennis, correct?

2 A. Correct.

3 Q. And at the beginning of the Schmerber hearing, he
4 wasn't reminded of that; is that fair to say?

5 A. I don't think that's accurate. I mean, as we were
6 laying -- sort of getting up to speed of where we were, I
7 sort of recounted how we had gotten there, reminding
8 Judge Dennis at the April 30th hearing that Judge Dennis
9 had given him the opportunity of having the public
10 defender appointed, that he had declined that, that
11 obviously he was free at any time to retain counsel and
12 had not done that and that he was going to be
13 representing himself and that was all confirmed at the
14 beginning of that hearing, and any time we were in court,
15 addressing his case, that was addressed, making sure that
16 he still didn't have an attorney and still wanted to
17 represent himself.

18 Q. Okay. And is that pretty much your recollection
19 through all of these subsequent pretrial hearings that
20 you stated there was always a reminder?

21 A. Absolutely. Ad nauseam.

22 MR. BROOKS: Beg Court's indulgence, Your
23 Honor.

24 BY MR. BROOKS:

25 Q. Mr. Jennings?

1 A. Yes, sir.

2 Q. There was a hearing on April 30th when George
3 Bishop was relieved; is that correct?

4 A. That's correct.

5 Q. That's the hearing that there was no transcript
6 for that had to be reconstructed in January 2010; is that
7 correct?

8 A. I don't know.

9 Q. But it's fair to say that you don't have a
10 transcript of that hearing, April 2003?

11 A. I don't have the transcript of the hearing. I do
12 have -- we have Judge Dennis's order, and that
13 specifically lays out in the order specifically what he
14 advised Mr. Grant of as far as the dangers of
15 representing himself, the fact that if he did relieve
16 Mr. Bishop -- because I think, if I recall correctly,
17 Mr. Grant's father was at the hearing and told Judge
18 Dennis that he didn't agree with Mr. Grant's decision.
19 He wasn't going to hire another attorney.

20 Q. Okay.

21 A. And then Judge Dennis obviously gave him the
22 opportunity to have the public defender appointed, which
23 he did not want because he thinks that they were paid by
24 the same people that paid the solicitor, paid the judges,
25 and that everybody is in this conspiracy together.

1 Q. Is there any reason why the Schmerber hearing
2 could not have been held at that same time, that April
3 30, 2003 as opposed to more than a month later?

4 A. I hadn't given anybody notice of the hearing. We
5 just hadn't gotten to that point, so we were procedurally
6 working through this case.

7 Q. So basically what happened after Mr. Bishop was
8 relieved, there was no other counsel involved, you're
9 going back and looking at your file, preparation for
10 eventual trial, that's when you noticed a potential
11 problem that you wanted to make the record clean; is that
12 correct? Is that a fair way --

13 A. This is a big case, obviously. It's high profile
14 and pretty horrific facts. The other thing to keep in
15 mind, Mr. Grant clearly knew what he was doing. He had
16 asked me and the detective to come meet with him in the
17 Charleston County Detention Center. We did that.

18 He provided a statement, a written statement,
19 tried -- with some exculpatory evidence that didn't turn
20 out to be true, but he knew what he was doing.

21 Q. I got that, but just help me out now. Is that a
22 fair and accurate description, there was a hearing on
23 April 30th, 2003, Mr. Bishop was relieved, and a little
24 more than a month later, during that period, you
25 obviously felt compelled for some reason or another to

1 have a Schmerber hearing, even though they already had
2 the blood, and you felt compelled because you felt like,
3 Hey, the Supreme Court had come out with a case that said
4 the search warrant needed to have this language. I don't
5 know if he confessed, but in order to make sure, use your
6 words, in order to make sure the record is clean, that's
7 why you had the hearing on June 11, 2003; is that
8 correct?

9 A. Yes.

10 MR. BROOKS: Beg the Court's indulgence. No
11 other questions, Judge.

12 THE COURT: Anything further from the State?

13 MS. WILSON: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. WILSON:

16 Q. Mr. Jennings, you have a copy of your June 11,
17 2003 transcript from this murder hearing; is that
18 correct?

19 A. I have part of it. I don't know that I have all
20 of it.

21 Q. Do you have page 13?

22 A. I don't.

23 Q. Okay. Your Honor, may I approach the witness?

24 THE COURT: You may.

25 BY MS. WILSON:

1 Q. And can you review that and see if you can
2 refresh -- if you can refresh your recollection on how
3 exactly the State initially got Mr. Grant's blood.

4 A. It was a search warrant.

5 Q. It was a search warrant. Okay. You didn't
6 purposely delay the Schmerber hearing so that Mr. Grant
7 would have to proceed without counsel; is that correct?

8 A. No.

9 Q. Okay.

10 A. Again, that was clearly Mr. Grant's decision.

11 Q. Okay.

12 A. Judge Dennis had given him all his options and, to
13 the extent they could, I think, steer him obviously in
14 the direction of having an attorney, either keeping
15 Mr. Bishop or having the public defender or Mr. Grant
16 make -- I mean, it was a knowing and intelligent decision
17 to proceed without an attorney represent himself.

18 MS. WILSON: Well, thank you.

19 THE COURT: Recross?

20 MR. BROOKS: No, sir.

21 THE COURT: You can step down. Thank you.
22 Anything further from the State?

23 MS. WILSON: Nothing further from the State,
24 Your Honor.

25 THE COURT: Anything in reply?

1 MR. BROOKS: Nothing in reply, Your Honor.

2 THE COURT: Well, I got to read through some
3 transcripts, so why don't I do that and let you know what
4 I decide. Okay?

5 MS. WILSON: Thank you, Your Honor.

6 MR. BROOKS: Thank you.

7 - - -

8 (Whereupon, the proceedings were concluded.)

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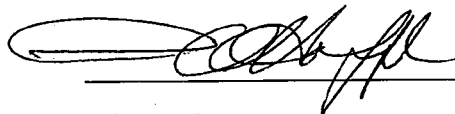
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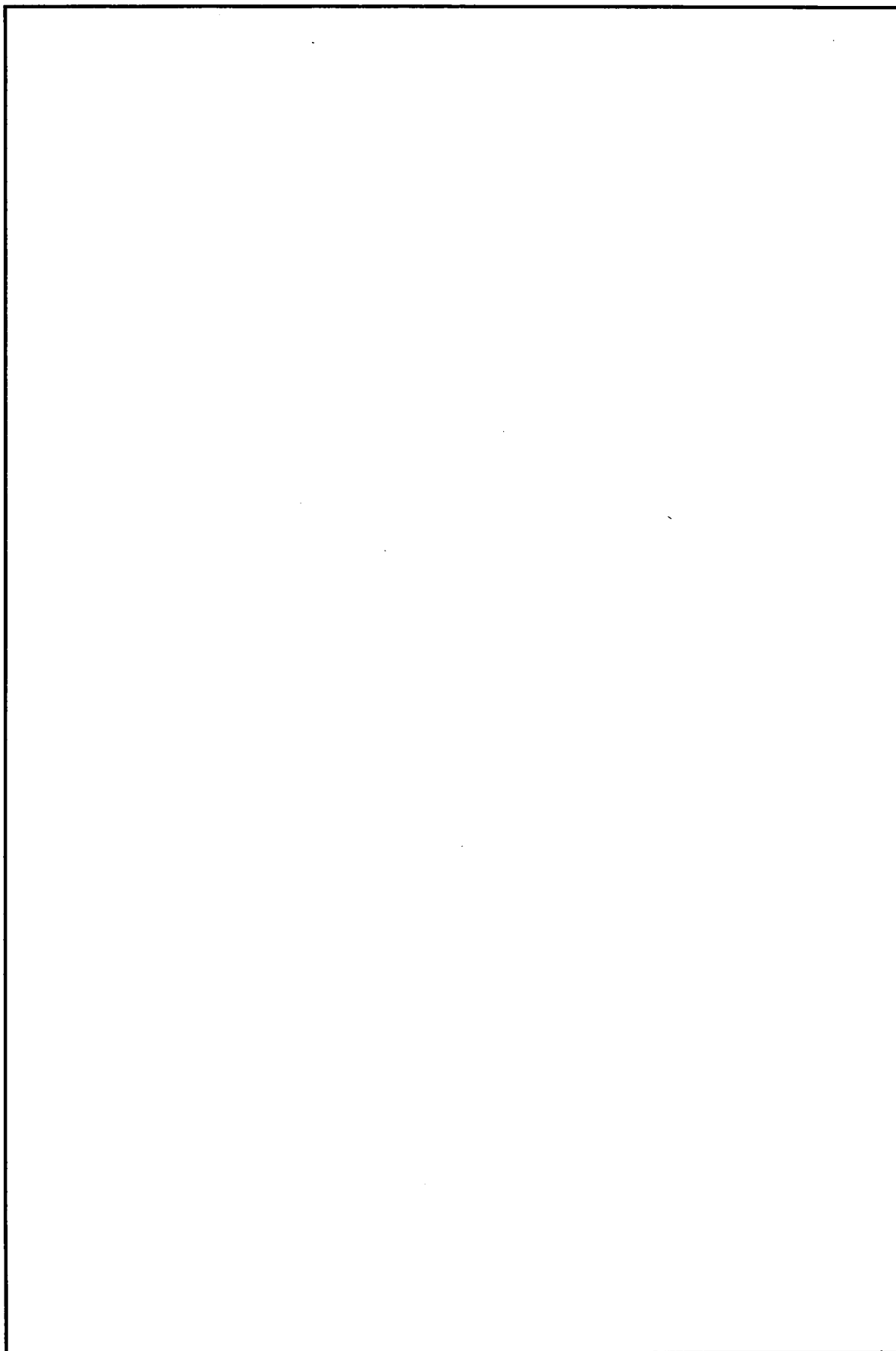
I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 18th of September 2013.

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

January 26, 2014

A handwritten signature in dark ink, appearing to read 'A. Haffenden', is written over a horizontal line.

Circuit Court Reporter



1 1 [4] - 3:3, 23:25, 24:2, 37:10 11 [26] - 9:16, 10:20, 10:25, 11:3, 11:22, 18:10, 18:21, 19:17, 20:4, 20:8, 20:12, 21:15, 22:14, 25:9, 28:5, 28:12, 28:22, 29:2, 30:4, 30:23, 31:9, 31:10, 36:15, 44:25, 54:7, 54:16 11th [4] - 9:10, 10:22, 21:15, 45:9 13 [2] - 29:5, 54:21 13th [1] - 46:13 142 [1] - 21:19 17 [3] - 30:24, 31:10, 47:1 18 [5] - 1:6, 4:1, 30:24, 30:25, 31:10 18th [1] - 57:8 1985 [1] - 33:2	2 20 [1] - 22:21 2000 [1] - 15:23 2000s [1] - 49:18 2002 [2] - 43:24, 48:15 2003 [39] - 9:10, 9:16, 10:20, 10:23, 10:25, 11:3, 11:22, 17:17, 18:10, 18:21, 19:17, 20:4, 20:8, 20:12, 21:15, 22:14, 25:9, 26:7, 28:5, 28:12, 28:22, 30:23, 31:6, 31:9, 31:10, 32:2, 45:1, 45:24, 46:2, 49:4, 49:15, 50:25, 52:10, 53:3, 53:23, 54:7, 54:17 2004 [3] - 46:4, 46:13, 46:16 2005 [4] - 23:3, 23:10, 37:6, 37:11 2008 [1] - 47:23 2010 [10] - 6:3, 13:14, 15:19, 18:11, 22:21, 24:16, 24:18, 25:2, 36:16, 52:6 2011 [1] - 33:5 2012-CP-08-1399 [2] - 1:2, 4:8 2013 [4] - 1:6, 4:1, 41:12, 57:8 2014 [1] - 57:11	218 [1] - 21:2 22 [1] - 31:11 24 [5] - 3:3, 23:10, 37:5, 37:11 24th [1] - 23:3 25 [2] - 2:3, 30:24 2525 [1] - 19:22 26 [1] - 57:11 26th [1] - 47:3 29 [3] - 6:3, 15:23, 36:16 29th [6] - 6:5, 13:13, 18:11, 24:16, 24:18, 25:2 2d [3] - 18:25, 21:19, 21:25 2nd [2] - 33:2, 33:5	3 30 [3] - 31:5, 32:2, 53:3 30th [8] - 26:7, 44:7, 44:24, 48:18, 50:25, 51:8, 52:2, 53:23 31 [1] - 48:24 31st [3] - 43:24, 45:12, 48:15 32 [1] - 2:4 388 [1] - 21:2 39 [1] - 2:4 3rd [1] - 45:23	4 4 [1] - 29:5 401 [1] - 21:19 42 [1] - 2:5 47 [1] - 2:5	5 54 [1] - 2:5 548 [2] - 18:25, 21:25	6 6th [1] - 44:1	7 7th [1] - 46:4	8 8 [1] - 2:3 82 [1] - 18:14 852 [1] - 22:1 866 [1] - 19:1 884 [1] - 18:14 8th [1] - 46:2	9 95 [1] - 19:22	A abandoned [1] - 46:22 able [11] - 12:4, 16:3, 16:5, 24:18, 31:22, 31:24, 34:1, 34:15, 37:25, 44:6 Absolutely [2] - 13:7, 51:21 accomplished [1] - 19:4 accurate [4] - 50:18, 51:5, 53:22, 57:4 accused [2] - 18:16, 19:24 accusing [1] - 39:24 acknowledge [3] - 41:10, 41:13, 50:11 action [1] - 6:16 actions [1] - 31:12 Ad [1] - 51:21 ad [1] - 44:9 add [1] - 13:8 addition [1] - 4:22 additional [1] - 6:1 Additionally [1] - 13:13 address [1] - 45:24 addressed [4] - 46:1, 46:3, 46:15, 51:15 addressing [1] - 51:15 adequately [1] - 19:25 administration [3] - 38:5, 38:8, 38:9 administrative [1] - 37:12 admitted [3] - 22:6, 24:1, 24:3 advise [5] - 11:23, 11:25, 26:25, 27:1, 27:3 advised [7] - 19:24, 20:5, 26:12, 29:10, 29:22, 29:24, 52:14 advocate [1] - 16:18 afternoon [1] - 43:3 agent [1] - 47:16 ago [1] - 26:23 agree [2] - 33:25, 52:18 ahead [5] - 10:12, 18:12, 21:11, 32:20, 36:1	air [1] - 12:11 allegation [4] - 8:21, 18:16, 39:18 allegations [2] - 8:13, 39:22 allegedly [2] - 22:22, 23:1 alleging [1] - 4:10 Amanda [2] - 1:18, 57:1 Amendment [11] - 11:18, 12:9, 12:10, 13:17, 14:24, 16:9, 21:3, 21:16, 22:10, 22:11, 22:12 amount [1] - 28:4 Anders [4] - 34:17, 35:9, 41:17, 41:24 Answer [1] - 25:15 answered [1] - 12:6 answering [1] - 29:16 appeal [28] - 4:16, 5:8, 6:15, 9:2, 9:5, 10:23, 14:14, 19:18, 21:24, 22:2, 22:6, 22:7, 22:15, 25:7, 25:10, 25:11, 27:14, 27:16, 27:21, 28:3, 28:7, 33:20, 34:20, 37:21, 38:8, 38:14, 39:24, 57:6 Appeals [1] - 5:15 appeared [1] - 11:22 appearing [2] - 12:2, 20:6 Appellate [2] - 6:14, 9:2 appellate [30] - 4:18, 4:23, 5:14, 5:18, 6:18, 7:1, 7:2, 8:15, 8:21, 10:17, 10:21, 12:19, 12:20, 12:21, 12:24, 13:15, 14:13, 14:16, 18:23, 18:24, 20:10, 21:21, 22:1, 22:4, 27:24, 32:25, 33:1, 33:4, 33:10, 41:14 appendix [3] - 34:16, 35:14, 38:11 Applicant [2] - 1:5, 1:15 APPLICANT [1] - 4:4 Applicant's [6] - 3:3, 9:19, 9:21, 23:25, 24:2, 32:11 application [5] - 8:10, 17:14, 17:15, 34:12, 40:22 appoint [4] - 11:21,	11:24, 27:3, 29:21 appointed [12] - 8:14, 14:14, 14:20, 16:11, 29:11, 29:23, 44:11, 44:15, 46:6, 46:9, 51:10, 52:22 appointing [1] - 16:8 appreciate [1] - 42:13 approach [1] - 54:23 appropriate [2] - 16:4, 22:4 April [12] - 26:7, 31:5, 32:1, 44:7, 44:24, 48:18, 50:25, 51:8, 52:2, 52:10, 53:2, 53:23 archives [1] - 34:13 argue [8] - 4:23, 6:19, 10:18, 12:20, 15:16, 22:15, 28:7, 41:15 argued [9] - 9:2, 10:20, 12:22, 19:17, 20:9, 25:10, 35:23, 42:1, 42:4 arguing [4] - 4:17, 4:24, 8:22, 35:18 argument [2] - 9:4, 12:14 arrested [6] - 43:23, 47:14, 48:11, 48:15, 48:17, 48:24 Ashleigh [1] - 1:16 assigned [2] - 33:17, 43:4 assist [1] - 46:10 assistance [4] - 4:10, 4:18, 22:3, 22:5 assistant [1] - 37:12 assisted [1] - 27:9 attached [1] - 21:17 attaches [1] - 21:3 attend [2] - 16:3, 24:16 attention [3] - 9:15, 30:23, 35:5 Attorney [2] - 1:15, 1:16 attorney [27] - 9:9, 9:20, 12:2, 12:20, 13:15, 13:21, 14:20, 15:25, 16:8, 18:23, 19:17, 23:23, 29:9, 32:25, 33:3, 36:18, 43:8, 44:2, 44:10, 44:17, 46:3, 50:25, 51:16, 52:19, 55:14, 55:17 audio [1] - 22:2

audiotape [1] - 22:6 available [1] - 7:6	bridge [1] - 46:23 brief [14] - 4:11, 7:1, 10:16, 10:17, 10:21, 34:17, 35:9, 35:15, 35:16, 41:14, 41:17, 41:18, 41:24 Briefly [1] - 54:13 Bring [1] - 8:1 bring [2] - 35:4, 42:18 bringing [1] - 19:6 BROOKS [28] - 4:6, 4:13, 4:22, 6:18, 7:17, 7:25, 8:6, 9:24, 10:13, 15:12, 20:19, 20:21, 20:25, 22:16, 23:24, 24:4, 30:11, 30:16, 32:11, 39:4, 42:7, 47:21, 51:22, 51:24, 54:10, 55:20, 56:1, 56:6 Brooks [9] - 1:14, 4:5, 6:13, 7:13, 10:12, 32:9, 39:2, 39:6, 47:19 Brooks's [1] - 38:24 brought [1] - 8:9 bulk [2] - 7:18, 50:13 BY [13] - 8:6, 10:13, 15:12, 22:16, 24:4, 25:17, 32:21, 39:4, 43:2, 47:21, 51:24, 54:15, 54:25	41:20, 43:17, 45:18, 46:7, 47:17, 51:15, 53:6, 53:13, 54:3, 57:6 cases [7] - 13:21, 16:22, 16:24, 33:8, 33:10, 33:14, 33:15 Center [1] - 53:17 center [1] - 47:9 Certain [1] - 26:20 certify [2] - 57:3, 57:9 challenging [1] - 8:10 charge [1] - 35:8 Charles [1] - 1:14 Charleston [3] - 1:7, 46:24, 53:17 checking [1] - 38:8 checks [1] - 38:9 chief [1] - 33:3 Christmas [1] - 46:21 Circuit [4] - 1:19, 57:2, 57:7, 57:15 Circumstantially [1] - 46:24 claiming [1] - 13:5 clarification [1] - 15:15 clean [4] - 49:8, 50:9, 53:11, 54:6 clear [1] - 38:16 clearly [4] - 36:10, 44:17, 53:15, 55:10 client [3] - 4:14, 7:18, 7:24 clothes [1] - 47:6 co [1] - 46:6 co-counsel [1] - 46:6 Cochran [1] - 18:14 COCHRAN [1] - 18:14 committed [1] - 43:18 COMMON [1] - 1:1 communications [1] - 35:9 compelled [2] - 53:25, 54:2 complaint [2] - 23:5, 23:7 complete [5] - 19:3, 19:13, 19:14, 50:16, 57:4 concluded [1] - 56:8 conference [1] - 46:14 confessed [1] - 54:5 confessing [1] -	47:10 confirm [1] - 16:23 confirmed [3] - 21:14, 21:22, 51:13 confirming [2] - 31:19, 31:23 consent [4] - 13:15, 15:22, 15:23, 22:23 consented [5] - 15:24, 48:5, 49:1, 49:11, 49:14 conspiracy [1] - 52:25 constituted [2] - 21:22, 22:3 constitution [3] - 11:17, 12:10, 12:18 constitutional [2] - 19:2, 19:12 contact [1] - 33:12 contention [1] - 24:19 conversation [1] - 19:4 convicted [1] - 4:9 conviction [4] - 6:16, 8:9, 8:11, 21:20 copy [6] - 5:18, 20:17, 20:21, 28:12, 34:2, 54:16 copying [1] - 37:19 Corner [1] - 44:2 Correct [1] - 51:2 correct [29] - 5:11, 8:10, 8:15, 8:20, 8:24, 11:5, 11:10, 14:6, 15:21, 18:9, 24:7, 25:21, 27:6, 27:14, 27:15, 29:13, 30:2, 47:25, 48:1, 48:7, 50:9, 51:1, 52:3, 52:4, 52:7, 53:12, 54:8, 54:18, 55:7 correctly [2] - 45:20, 52:16 correspondence [1] - 34:9 counsel [105] - 4:11, 4:18, 4:20, 4:24, 5:1, 5:10, 6:12, 6:19, 7:9, 7:12, 8:15, 8:22, 8:23, 9:4, 9:6, 10:19, 10:22, 11:2, 11:7, 11:8, 11:15, 11:18, 11:19, 11:21, 11:22, 11:24, 11:25, 12:11, 12:16, 12:19, 12:23, 13:1, 13:3, 13:18, 14:24, 14:25, 15:1, 15:17, 16:9, 18:17, 18:18, 18:20, 18:22, 19:8, 19:16, 19:23, 19:24, 20:3, 20:6, 20:8, 20:11, 21:3, 21:17, 22:1, 22:3, 22:10, 22:23, 23:1, 23:5, 23:9, 23:12, 23:13, 23:16, 24:20, 24:21, 25:3, 25:9, 26:8, 27:1, 27:3, 27:12, 27:25, 28:6, 29:12, 29:13, 33:24, 35:3, 35:17, 35:24, 36:3, 36:5, 36:6, 36:7, 37:17, 38:21, 39:9, 39:20, 40:2, 40:15, 41:3, 41:16, 41:22, 42:1, 43:16, 46:6, 48:10, 50:12, 50:14, 50:15, 50:21, 51:11, 53:8, 55:7, 57:10 counsel's [2] - 21:21, 22:5 count [1] - 12:11 County [4] - 43:9, 43:12, 53:17, 57:7 COUNTY [1] - 1:2 couple [1] - 15:10 COURT [53] - 1:1, 4:2, 4:5, 4:7, 4:21, 5:4, 5:11, 5:13, 5:21, 6:5, 6:7, 6:9, 6:13, 7:3, 7:10, 7:15, 7:23, 8:1, 9:22, 9:25, 10:12, 15:9, 20:20, 20:22, 21:5, 21:8, 21:10, 24:1, 30:10, 30:12, 30:14, 30:18, 30:21, 30:25, 31:2, 31:7, 32:5, 32:8, 32:12, 32:14, 32:20, 39:2, 42:9, 42:12, 42:14, 42:18, 47:19, 54:12, 54:24, 55:19, 55:21, 55:25, 56:2 court [10] - 18:3, 33:12, 34:4, 34:10, 36:24, 38:2, 40:12, 44:13, 44:24, 51:14 Court [79] - 1:19, 5:8, 5:14, 5:15, 5:18, 5:19, 6:14, 7:2, 7:8, 8:14, 9:2, 9:9, 10:25, 11:13, 11:21, 11:23, 11:24, 11:25, 12:5, 13:18, 17:1, 17:13, 18:14, 18:15, 18:22, 19:1, 19:4, 19:5, 19:22, 19:23, 20:1, 20:15, 21:2, 21:13, 21:14,
B			
background [2] - 8:17, 43:8 backwards [1] - 46:25 bad [2] - 26:10, 41:20 Barbara [1] - 37:11 based [3] - 21:20, 21:23, 42:1 became [1] - 33:2 become [1] - 50:5 beeps [1] - 15:10 beforehand [1] - 15:25 Beg [2] - 51:22, 54:10 beg [1] - 42:7 begin [1] - 15:13 beginning [2] - 51:3, 51:14 behalf [1] - 15:8 BERKELEY [1] - 1:2 Berkeley [2] - 43:9, 57:7 best [1] - 50:2 better [1] - 17:20 between [4] - 19:4, 19:5, 43:13, 46:8 big [3] - 33:24, 34:24, 53:13 Bishop [22] - 25:20, 25:23, 26:2, 26:5, 26:6, 26:8, 26:9, 29:9, 29:20, 44:1, 44:8, 48:10, 48:13, 48:14, 48:16, 48:17, 50:24, 52:3, 52:16, 53:7, 53:23, 55:15 Bishop's [1] - 48:20 Blair [3] - 2:5, 42:17, 42:22 BLAIR [1] - 42:23 blood [18] - 5:3, 6:22, 11:10, 11:16, 12:5, 30:7, 45:11, 45:22, 47:5, 47:15, 47:24, 48:20, 49:13, 49:19, 50:5, 50:11, 54:2, 55:3 body [1] - 46:20 bond [2] - 43:25, 48:18 Bond [2] - 44:2, 44:4 bound [1] - 11:21 Brandon [1] - 18:25	C Cainhoy [1] - 47:2 California [1] - 19:21 cannot [4] - 12:6, 18:19, 20:2, 49:20 cap [1] - 17:8 captioned [1] - 57:6 car [3] - 46:22, 47:3, 47:11 Carnely [1] - 18:13 CARNELY [1] - 18:13 CAROLINA [2] - 1:1, 1:7 Carolina [5] - 1:7, 4:8, 37:12, 57:3, 57:7 case [39] - 7:14, 7:20, 9:16, 14:16, 15:5, 15:6, 18:13, 18:21, 19:6, 19:10, 19:18, 19:22, 20:12, 21:13, 21:19, 23:6, 23:17, 32:11, 33:16, 33:18, 33:21, 33:22, 33:25, 34:24, 35:10, 35:12, 35:13, 38:7,		

22:1, 22:4, 23:22,
23:25, 26:10, 26:12,
26:21, 27:2, 27:11,
27:20, 27:23, 28:17,
28:24, 29:6, 29:10,
29:22, 31:19, 31:23,
32:24, 33:9, 34:10,
34:14, 34:19, 35:10,
35:14, 35:21, 37:5,
37:13, 38:5, 38:8,
38:9, 41:24, 44:21,
45:15, 46:17, 49:17,
50:20, 54:3, 57:2,
57:7, 57:15
Court's [8] - 9:11,
9:15, 19:19, 30:23,
35:5, 42:7, 51:22,
54:10
courtroom [1] - 45:3
Courts [13] - 10:17,
10:24, 12:20, 12:24,
14:16, 14:17, 17:20,
18:24, 20:5, 20:7,
20:10, 23:20, 27:24
cover [1] - 13:22
crime [3] - 37:15,
43:18, 50:1
critical [7] - 6:21,
6:24, 9:7, 11:1, 11:19,
21:3, 21:16
cross [2] - 38:25,
45:19
CROSS [4] - 2:2,
25:16, 39:3, 47:20
CROSS-
EXAMINATION [3] -
25:16, 39:3, 47:20
cross-examination
[1] - 38:25
CRR [2] - 1:18, 57:1

D

dangers [7] - 12:1,
19:25, 20:5, 27:4,
27:12, 44:10, 52:14
date [3] - 34:4,
40:18, 40:23
dated [3] - 6:3, 37:5,
37:10
days [1] - 48:16
dealt [1] - 40:21
Dear [1] - 37:13
death [2] - 33:8,
33:15
December [6] -
43:24, 45:12, 45:23,
46:2, 48:15, 48:24
decide [1] - 56:4
decided [1] - 39:20

deciding [1] - 38:3
decision [12] - 12:24,
19:19, 44:19, 44:21,
45:6, 45:7, 45:16,
46:9, 49:18, 52:18,
55:10, 55:16
declined [1] - 51:10
deconstruction [1] -
13:14
defendant [4] - 19:5,
19:10, 20:4, 22:5
defendant's [3] -
19:1, 19:5, 22:7
defender [11] - 4:16,
13:19, 29:11, 29:21,
29:23, 44:11, 44:13,
46:6, 51:10, 52:22,
55:15
defender's [2] - 15:2,
44:14
defense [4] - 14:13,
24:19, 33:1, 33:4
delay [1] - 55:6
Dennis [25] - 11:4,
26:1, 26:5, 31:6, 31:8,
31:11, 31:19, 32:3,
43:21, 44:3, 44:9,
44:15, 45:1, 45:4,
45:8, 46:3, 46:5, 46:8,
51:1, 51:8, 52:18,
52:21, 55:12
Dennis's [1] - 52:12
DERRICK [2] - 1:4,
8:2
Derrick [4] - 2:3, 4:2,
4:3, 4:7
description [1] -
53:22
DESCRIPTION [1] -
3:2
deserves [1] - 35:3
desire [1] - 29:12
detective [1] - 53:16
detectives [1] -
46:25
detention [1] - 47:9
Detention [1] - 53:17
determination [7] -
31:14, 31:17, 31:20,
31:21, 31:24, 32:2,
32:3
determine [1] - 11:9
difference [2] -
11:14, 13:4
different [6] - 10:24,
19:20, 20:13, 22:8,
25:11, 34:7
difficult [1] - 18:2
direct [5] - 5:7, 6:15,
14:14, 19:18, 34:20

DIRECT [4] - 2:2,
8:5, 32:19, 43:1
directed [1] - 30:14
direction [1] - 55:14
disadvantages [5] -
12:1, 19:25, 20:6,
27:4, 44:18
disciplinary [4] -
23:5, 39:8, 40:1, 41:3
discourse [1] - 46:8
discuss [1] - 44:21
dismiss [1] - 29:9
DNA [4] - 12:13,
47:11, 47:12, 47:24
document [1] - 17:12
documents [2] - 6:1,
34:11
done [4] - 25:13,
41:12, 45:20, 51:12
dot [1] - 45:19
down [5] - 17:8,
18:3, 18:7, 32:8,
55:21
downtown [2] -
46:23, 46:24
draw [2] - 11:16,
12:5
drew [1] - 5:3
dropped [1] - 47:4
due [2] - 12:6, 22:12
duly [3] - 8:3, 32:17,
42:24
during [12] - 26:9,
28:17, 28:23, 33:7,
34:19, 36:19, 37:21,
44:13, 45:14, 46:15,
50:13, 53:24
duty [2] - 14:21,
15:25

E

early [1] - 49:18
easy [1] - 38:6
effectively [3] - 7:1,
8:22, 20:9
effort [1] - 45:17
either [2] - 49:13,
55:14
elected [1] - 43:11
elicited [1] - 20:7
ended [2] - 24:24,
35:18
enforcement [5] -
47:22, 47:24, 48:19,
49:5, 49:13
entitled [1] - 21:23
error [3] - 21:22,
21:24, 28:11
Esquire [2] - 1:14,

1:16
essentially [1] -
16:23
established [2] -
19:3, 19:12
EV [1] - 3:2
eventual [1] - 53:10
eventually [2] - 33:2,
35:13
evidence [11] -
15:22, 18:16, 20:23,
23:18, 24:3, 45:22,
46:18, 47:11, 49:25,
53:19, 57:5
evidentiary [1] -
45:22
exactly [3] - 15:4,
37:9, 55:3
Exactly [1] - 16:20
examination [1] -
38:25
EXAMINATION [7] -
8:5, 25:16, 32:19,
39:3, 43:1, 47:20,
54:14
examined [3] - 8:4,
32:18, 42:25
example [1] - 26:25
exculpatory [1] -
53:19
exhausted [1] - 34:9
Exhibit [4] - 23:2,
23:23, 24:2, 37:10
exhibit [2] - 9:8, 37:8
exhibits [1] - 15:22
exist [3] - 34:6, 34:9,
40:21
experience [1] -
32:24
explain [1] - 9:1
explaining [2] -
10:14, 24:25
extensive [1] - 34:11
extent [1] - 55:13
eyes [1] - 36:1
Ezell [2] - 21:25, 22:3
EZELL [1] - 21:25

F

fact [4] - 5:22, 12:7,
33:21, 52:15
facts [1] - 53:14
failure [3] - 21:21,
22:1, 22:5
fair [4] - 51:4, 52:9,
53:12, 53:22
far [2] - 40:18, 52:14
faster [1] - 18:1
father [3] - 44:1,

48:16, 52:17
February [2] - 46:13,
46:16
felt [3] - 53:25, 54:2
Fereta [2] - 19:21,
20:1
file [6] - 18:5, 34:13,
34:22, 40:17, 41:24,
53:9
filed [8] - 34:17,
35:8, 35:11, 36:22,
36:25, 37:21, 41:24,
45:25
fine [2] - 21:10,
26:17
finger [1] - 47:14
finished [1] - 29:16
fire [1] - 26:11
fired [1] - 25:23
firing [1] - 26:6
first [6] - 8:3, 20:2,
32:17, 42:24, 44:6,
44:8
First [1] - 29:7
fit [1] - 47:3
five [2] - 6:1, 42:19
focus [1] - 41:22
follow [1] - 29:3
follows [3] - 8:4,
32:18, 42:25
foot [1] - 46:23
foregoing [1] - 57:4
former [1] - 33:11
forth [2] - 24:5, 34:23
forward [1] - 28:20
four [3] - 28:15,
28:22, 29:1
Fourth [2] - 22:10,
22:12
free [1] - 51:11
fresh [1] - 47:5
front [3] - 40:17,
42:1, 46:2

G

General [1] - 44:4
George [6] - 25:20,
26:7, 29:20, 44:1,
50:24, 52:2
given [4] - 45:13,
51:9, 53:4, 55:12
grant [1] - 9:15
GRANT [2] - 1:4, 8:2
Grant [52] - 2:3, 4:2,
4:3, 4:7, 4:9, 5:9,
6:20, 6:23, 6:25, 8:7,
10:2, 10:8, 10:14,
11:3, 12:3, 13:24,
15:13, 22:18, 24:5,